

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 2nd day of
March, 2011.

In the Matter of the Application of)	
Southern Union Company, d/b/a)	<u>Case No. GO-2011-0269</u>
Missouri Gas Energy, for Approval to Change its)	Tracking No. JG-2011-0433
Infrastructure System Replacement Surcharge)	

**ORDER SUSPENDING TARIFF, NOTICE OF CONTESTED CASE, AND
ORDER DIRECTING FILINGS AND PUBLICATION OF NOTICE**

Issue Date: March 2, 2011

Effective Date: March 2, 2011

The Missouri Public Service Commission is:

- suspending the tariff that accompanies the application,
- giving notice of a contested case, and
- directing, and setting deadlines, for applications to intervene and other filings.

The Commission is also directing the publication of this notice and order.

On February 22, 2011, Southern Union Company ("Southern Union") filed a tariff sheet ("tariff") and an Application and Petition ("petition"). The tariff and petition seek an adjustment to Southern Union's infrastructure system replacement surcharge ("ISRS"). The petition includes supporting affidavits and an example customer information. Upon such filing:

. . . the commission shall conduct an examination of the
proposed ISRS [;¹]

and decide whether the:

¹ Section 393.1015.2(1), RSMo Supp. 2009.

. . . petition complies with the requirements of sections 393.1009 to 393.1015 [²]

The tariff bears an effective date of March 24, 2011.

The petition also includes a motion for waiver of the notice of intent requirement under 4 CSR 240-4.020.

A. Tariff Suspension and Notice of Contested Case

The tariff's effective date is not time enough for the Commission to discharge the statutory duties described. The statutes allow the Commission to suspend the tariff for a period of 120 days beyond the tariff's effective date.³ The statutes also provide that Commission must decide the petition as follows:

The commission may hold a hearing on the petition and any associated rate schedules and shall issue an order to become effective not later than one hundred twenty days after the petition is filed. [⁴]

Therefore, the Commission will suspend the tariff until one hundred twenty days after the petition's filing date.

Suspension of a tariff may occur only pending a "full" hearing and decision on the tariff's propriety.⁵ Because the "hearing involv[es] a rate sought to be increased, the burden of proof to show that the . . . proposed increased rate is just and reasonable shall be upon the gas corporation seeking the increase[. ⁶]" The provision for a full pre-decision hearing signifies that this action must now be a "contested case."⁷

² Section 393.1015.2(4), RSMo Supp. 2009.

³ Section 393.150.1, RSMo 2000.

⁴ Section 393.1015.1.2(3), RSMo Supp. 2009.

⁵ Section 393.150.1, RSMo 2000.

⁶ Section 393.150.2, RSMo 2000.

⁷ Section 536.010(4), RSMo Supp. 2009; *Jamison v. Dept. of Soc. Servs.*, 218 S.W.3d 399, 408-09 (Mo. banc 2007); *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities and a decision without a hearing,⁸ including by stipulation and agreement.⁹ The Commission has published regulations on discovery at 4 CSR 240-2.090. This order and notice requires the parties to file responsive pleadings¹⁰ as follows.

B. Responsive Filings

The petition certifies compliance with the requirement to:

. . . . serve the office of the public counsel with a copy of its petition, its [tariff], and its supporting documentation.^[11]

The Commission's regulations provide:

[T]he office of the public counsel may, within ten (10) days of the gas utility's filing of this information, submit comments regarding these notices to the commission.^[12]

That date would be just four days from the issuance of this notice and order, but the Commission may extend that time.¹³ Therefore, the Commission will order the filing of such comments under an extended time.

The petition also certifies service on the Commission's General Counsel. The General Counsel represents the Commission's staff ("Staff").¹⁴ Staff's authority is as follows:

The staff of the commission may examine information of the gas corporation to confirm that the underlying costs are in accordance with the provisions of sections 393.1009 to 393.1015, and to confirm proper calculation of the proposed

⁸ Sections 536.060, RSMo 2000.

⁹ 4 CSR 240-2.115.

¹⁰ Section 536.067(2)(d), RSMo 2000.

¹¹ Section 393.1015.1(1), RSMo Supp. 2009.

¹² 4 CSR 240-3.265(9).

¹³ 4 CSR 240-2.050(3)(A).

¹⁴ 4 CSR 240-2.040(1).

charge, and may submit a report regarding its examination to the commission not later than sixty days after the petition is filed. No other revenue requirement or ratemaking issues may be examined in consideration of the petition or associated proposed rate schedules filed pursuant to the provisions of sections 393.1009 to 393.1015. [¹⁵]

Therefore, the Commission will order Staff to file a report as described in that statute.

The Commission will also set deadlines for any application to intervene, any response to an application to intervene, any reply to any responsive filing, and any response to the request for waiver.

C. Notice of this Action

The statutes also require the Commission to “publish notice of the filing[.]”¹⁶ so the Commission will order publication of this notice and order.

THE COMMISSION ORDERS THAT:

1. The tariff sheet assigned tracking number JG-2011-0433, issued and filed by Southern Union Company d/b/a Missouri Gas Energy on February 22, 2011, is suspended through June 22, 2011.
2. The specific tariff sheet suspended is:

P.S.C. MO. No. 1

Twelfth Revised Sheet No. 10, Canceling Eleventh Revised Sheet No. 10

3. No later than March 4, 2011, any response to the motion for waiver of notice of intent shall be filed.

¹⁵ Section 393.1015.2(2), RSMo Supp. 2009.

¹⁶ Section 393.1015.1(2), RSMo Supp. 2009.

4. No later than March 8, 2011, the Office of Public Counsel shall file any comment as to any example notices that accompany the application and petition.

5. No later than March 15, 2011, any application for intervention shall be filed by delivery to:

Secretary, Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

or by entry into the Commission's electronic filing and information system ("EFIS").

6. No later than March 18, 2011, any response to any comment of the Office of Public Counsel shall be filed.

7. No later than March 25, 2011, any response to any application for intervention shall be filed.

8. No later than April 25, 2011, the Commission's staff shall file a report as described in the body of this order.

9. No later than May 5, 2011, any response to the report of the Commission's staff shall be filed.

10. The Commission's Data Center shall mail a copy of this notice and order to the county commission of any counties served by Southern Union Company d/b/a Missouri Gas Energy and to all parties in the most recent general rate case of Southern Union Company d/b/a Missouri Gas Energy.

11. The Commission's Public Information Office shall make notice of this order available to the media serving the counties served by Southern Union Company d/b/a Missouri Gas Energy and to the members of the General Assembly representing the counties served by Southern Union Company d/b/a Missouri Gas Energy.

12. This order shall become effective immediately on issuance.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed
Secretary

(S E A L)

Gunn, Chm., Clayton, Davis, Jarrett,
and Kenney, CC., concur.

Jordan, Senior Regulatory Law Judge