

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Southern Union Company)	
d/b/a Missouri Gas Energy's Tariff Sheets)	Case No. GT-2012-_____
Designed to Implement an Experimental)	Tariff File No. JG-2011-0051
Pilot Program)	

MOTION TO SUSPEND TARIFF

COMES NOW the Missouri Office of the Public Counsel and for its Motion to Suspend Tariff states as follows:

1. On November 9, 2011, Southern Union Company d/b/a Missouri Gas Energy (MGE) filed revised tariff sheets "to implement an Experimental Pilot program called the Rebuild Joplin Program." MGE's proposed tariff sheets (attached and labeled Appendix A) were assigned Tariff File Number JG-2012-0211 and bear an effective date of December 9, 2011. The Rebuild Joplin Program actually includes two separate energy efficiency programs; one in which rebates for most natural gas appliances are increased to twice the amount available to MGE customers not in the Joplin area (Rebuild Joplin: Experimental Pilot Program for Residential and SGS Natural Gas Energy Efficiency Incentives) and another for newly constructed homes that meet Energy Star efficiency guidelines (Rebuild Joplin: Energy Star New Homes Experimental Pilot Program).

2. As MGE notes in its cover letter accompanying this tariff filing, the MGE Energy Efficiency Collaborative (EEC) has engaged in ongoing discussions since July about how MGE might help facilitate Joplin rebuilding efforts with energy efficiency programs. Public Counsel made participating in these discussions a high priority and attempted to make constructive contributions to those discussions. From the start of those

discussions, OPC informed other collaborative members that we believed the appropriate focus for our discussions was to: (1) identify any gaps that might exist in MGE's current energy efficiency program offerings and (2) seek to develop new programs or enhancements to existing programs where such gaps were identified.

3. Public Counsel identified two gaps in MGE's existing efficiency program offerings and supported new and enhanced programs to fill those gaps. The first gap that Public Counsel identified was the lack of tiered rebates for natural gas appliances. Most other Missouri natural gas utilities offer tiered rebates for appliances so that customers will get higher rebate amounts for ultra-high efficient appliances than they do for the lower levels of high efficiency appliances. Tiered rebates are especially important for water heaters and furnaces since they provide higher rebates for buying ultra-high efficient appliances and can help move customers to deciding to purchase the ultra-high efficient appliance that will have even greater natural gas savings than the savings level achieved by mid-range energy efficient gas appliances. The collaborative responded positively to OPC's proposal for tiered rebates that would be available throughout MGE's entire service territory and the tariff filing made with collaborative consensus support (see Tariff No. JG-2012-0212) is the result of the initiative sparked by Public Counsel's identification of the first gap in MGE's existing programs.

4. The other gap that OPC identified with respect to a new home construction gas energy efficiency program was identified by all collaborative members and the collaborative spent much of its Joplin-related efforts attempting to create a reasonable and cost effective program design and the corresponding tariff language for this type of program. While Public Counsel generally supported moving forward with an Energy Star

New Homes pilot program for the Joplin area, we had several major disagreements with the final program design that was supported by the other three collaborative members.¹ Those disagreements are described in detail below and included: (1) the failure to require that natural gas be the primary heating source in the new homes eligible for MGE rebates, (2) the unnecessary requirement that program participants install natural gas water heaters, and (3) the excessively high \$1,000,000 cap on program expenditures for the programs that would only be available in the Joplin area. An alternative proposal for an Energy Star New Homes pilot program that addressed the three concerns cited above was supported by three collaborative members, including OPC, but was not supported by MGE.

5. Collaborative discussions also included having appliance rebates available to Joplin area customers that would be two to three times as high as the rebates that were available to the rest of MGE's customers. Public Counsel consistently opposed offering greatly increased appliance rebates exclusively for Joplin area customers because we believed that once we filled the gap that had been identified with respect to offering tiered rebates for gas appliances, there was no justification for offering appliance rebates in the Joplin area that would be two or three times the level of rebates offered to the rest of MGE's customers.

6. MGE states that it "proposes enhanced energy appliance incentives for the Joplin area to help Joplin rebuild quicker, greener, and better." The proposed program includes increases to most of the rebate levels for natural gas appliances including doubling natural gas furnace rebates from \$200 to \$400 or from \$300 to \$600 depending

¹ Offering this program as a pilot that could assess the benefits of offering a similar program throughout all of MGE's service territory was an essential element of OPC supporting this type of program.

upon the efficiency rating of the furnace, and doubling natural gas boiler rebates from \$200 to \$400.

7. The Energy Star New Homes program provides rebates for new homes in the Joplin area that install a natural gas water heater and use natural gas as either the primary heating source or as the secondary heating source by providing natural gas back-up for electric heat pumps. Public Counsel would have supported this program if: (1) it limited eligibility to new homes that used natural gas as the primary source of space heat, (2) it did not contain the unrelated eligibility requirement that a gas water heater must be installed in the new home and (3) it contained a reasonable budget cap consistent with its designation as a pilot program.

8. Cost effectiveness analysis performed by MGE's consultant showed that the program would be barely cost effective under the Utility Cost Test (UTC), but **only for new homes that used natural gas as the primary heating source**. (Even with this additional eligibility restriction limiting participation to homes where natural gas is the primary heating source, the program still failed to achieve cost effectiveness under the Total Resource Cost (TRC) test.) Despite the fact that the use of natural gas as the primary source of space heat is needed for this program to achieve cost effectiveness even under the more lenient UTC cost effectiveness test, MGE's proposed tariffs for this program do not require newly constructed homes that are eligible for this rebate to use natural gas as the primary source of space heat.

9. The program design for the Energy Star New Homes program is also flawed because only new homes that install a natural gas water heater are eligible for the \$800 rebates paid for homes that are built to meet the Energy Star New Homes

guidelines. The Energy Star New Homes guidelines permit homes to qualify with either a gas or electric water heater and the cost effectiveness analysis performed by MGE's consultant does not show any natural gas savings related to water heating usage since the calculated savings are all related to the natural gas furnace using less gas to heat a home that is better insulated and incorporates other construction techniques that will reduce heat loss during the heating season. Requiring new homes to use natural gas water heaters creates an arbitrary barrier to participation that is unrelated to the energy savings that are generated from the more energy efficient home construction practices that this program seeks to promote. MGE's relatively new Straight Fixed Variable (SFV) rate design may be making it more difficult for MGE to retain existing water heating load and attract new water heating load, but this energy efficiency program is not the right place to try and address that problem.

10. Public Counsel opposes MGE's proposed tariff and requests that the Commission issue an order suspending the tariff and setting this matter for an evidentiary hearing to determine whether the proposed programs are just and reasonable. Public Counsel contends that the proposal is not just and reasonable as follows:

a. The purpose of MGE's Energy Efficiency Programs is to encourage customers to purchase and install high efficiency equipment. The justification for requiring all ratepayers to fund MGE's current energy efficiency programs is that reduced demand for natural gas will "reduce the wholesale price of natural gas" and "generate direct cost savings to natural gas consumers."²

² *Report and Order*, Case No. GR-2009-0355, In the Matter of Missouri Gas Energy and its Tariff Filing to Implement a General Rate Increase for Natural Gas Service, February 10, 2010, p. 57.

b. The proposed rebate levels in MGE's pending service territory-wide tariff (see Tariff No. JG-2012-0212) will provide enhanced incentives to customers throughout MGE's service territory, including Joplin, to purchase efficient natural gas water heaters, furnaces and boilers. The EEC was able to achieve consensus support for this filing that provides higher rebate levels for water heaters and furnaces. There is no evidence to suggest that the higher appliance rebate levels proposed for a limited portion of MGE's service territory in the Joplin area will result in the purchase of a greater number of energy efficient appliances. Instead, the increased rebate levels could cause available energy efficiency funds to deplete faster, reducing the available funds for other customers not in the Joplin area, and resulting in fewer system-wide rebates and weakening the downward pressure on gas rates. The concern about large rebates provided to Joplin area customers depleting funds available for non-Joplin customers is enhanced by the extremely high \$1,000,000 cap on program expenditures for the special Joplin programs.

c. Current natural gas prices are low, and projections are for relatively low price levels for natural gas in the future³, which raises concerns that some of the existing natural gas energy efficiency programs in Missouri are not cost effective. The Commission has found that "the EEC should take all steps necessary to work toward the implementation of **cost-effective** energy efficiency programs..."⁴[Emphasis Added.] The Henry Hub spot market price on November 28, 2011 was just \$2.83/MMBtu. If cost effectiveness is questionable at the existing rebate levels, doubling the rebate levels for natural gas appliances is not a reasonable response. A more reasonable response is to

³ See natural gas price long-term forecast in the 2011 Annual Energy Outlook issued by the Energy Information Administration in April 2011 at http://www.eia.gov/forecasts/aeo/source_natural_gas.cfm

⁴ *Report and Order*, Case No. GR-2009-0355, In the Matter of Missouri Gas Energy and its Tariff Filing to Implement a General Rate Increase for Natural Gas Service, February 10, 2010, p. 62.

complete the evaluation of the existing MGE appliance rebate programs for residential customers before doubling the level of Joplin area rebates for most natural gas appliances

d. Current low gas prices also create a heightened concern for the proposed Energy Star New Homes Program, which a cost effective analysis shows is not cost effective under a Total Resource Cost (TRC) analysis and is barely cost effective under a Utility Cost Test (UTC) analysis for homes where gas is the primary source of space heat. As noted above in paragraph 3, UTC analysis does not yield cost effective results under the actual program design that is proposed in the tariff because that design permits customers to participate and receive \$800 rebates even when natural gas is not the primary fuel used for space heating. If this analysis was redone at current gas prices, even the UTC analysis that assumed natural gas as the primary fuel used for space heating (unlike the more permissive program design as proposed by MGE) would show that the program is not cost effective. Offering the Energy Star New Homes Program as a tariffed promotional practice when it is not cost effective is not just and reasonable and not permitted by the Commission's Promotional Practices Rule.

e. It is clear from positions taken by MGE in other cases that MGE is engaged in an effort to increase its customer base by promoting the purchase of natural gas appliances over the purchase of electric appliances, which includes efforts to induce fuel switching from electric to natural gas.⁵ Although MGE characterizes its proposed programs as an effort to assist Joplin, MGE's proposed programs appear to be a

⁵ Earlier this year MGE "proposed to compel KCP&L and GMO, competitors of MGE, to provide incentives to the Companies'[KCP&L's and GMO's] customers to decrease their electric usage and convert that consumption to its product—natural gas." Case Number ER-2010-0355, In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of Its Regulatory Plan, *Report and Order*, p. 94.

continuation of MGE's efforts to persuade consumers to purchase natural gas appliances rather than electric appliances. Increasing the number of MGE's customers and the gas usage per customer, and ultimately MGE's natural gas load, is not a legitimate purpose of MGE's energy efficiency programs, and in fact, will create upward pressure on natural gas prices through increased consumption.

f. The proposed Energy Star New Homes Program offers incentives to "residential builders, subcontractors, and individuals in the business of constructing new, residential homes," but requires participants to purchase *both* a natural gas water heater and a natural gas space heating system to receive the \$800 rebate for the more energy efficient home construction practices that this program seeks to promote.. This requirement is more aimed at building and maintaining load than achieving energy efficiency objectives since the requirement for a gas water heater to be installed in new homes does nothing to contribute to the cost effectiveness of this program because the gas usage reductions in MGE's cost effectiveness analysis are solely related to enhancing the thermal characteristics of the building structure and the water heater is not part of the building structure. This is an attempt to induce the purchase of natural gas appliances (specifically a natural gas water heater) over electric appliances, which is prohibited by the Promotional Practices Rule.

g. Promotional practices that attempt to induce a consumer to purchase natural gas appliances over electric appliances are prohibited by the Commission's Promotional Practices Rule. MGE's proposed tariff changes violate Commission Rule 4 CSR 240-14.020(1)(D) and (E), Prohibited Promotional Practices, which state:

(1) No public utility shall offer or grant any of the following promotional practices for the purpose of inducing any person to select and use the service or use additional service or use additional service of the utility:

(D) The furnishing of consideration to any dealer, architect, builder, engineer, subdivider, developer or other person for the sale, installation or use of appliances or equipment;

(E) The provision of free, or less than cost or value, wiring, piping, appliances or equipment to any other person; provided, that a utility, engaged in an appliance merchandise sales program, shall not be precluded from conducting legitimate closeouts of appliances, clearance sales and sales of damaged or returned appliances;

h. The portion of the proposed tariff containing greatly enhanced appliance rebates also violates the following:

(i). **4 CSR 240-14.030(2)**, Promotional Practices Standards, because it would create an “unreasonable difference in the offering or granting of promotional practices...between localities” as prohibited by the rule. There is no reasonable basis for requiring MGE customers in Kansas City, St. Joseph and Joplin to fund the rebuilding efforts in Joplin through these greatly enhanced appliance incentives.

(ii) **§ 393.130(2) RSMo Cum Sup 2010**, because it would apply substantially different rebates to Joplin area customers that are not available to customers in the rest of MGE’s service territory, despite the fact that all MGE customers fund the energy efficiency program.

(iii) **§ 393.130(3) RSMo Cum Sup 2010**, because it would grant an undue and unreasonable preference to a locality.

(iv) § 393.140(11) RSMo, because it would extend privileges to Joplin area customers and prospective customers that are not “extended to all persons and corporations under like circumstances.”

Public Counsel does not cite these same violations for the Energy Star New Homes pilot program because lessons learned from offering this program in the Joplin area could be used to create an Energy Star New Homes Program that would be offered throughout MGE’s entire service territory. For example, lessons are likely to be learned in the following areas: (1) developing relationships and experience with trade allies such as home builders associations, (2) developing relationships and experience with program implementers for this unique type of program, and (3) developing relationships and experience with the home energy raters who evaluate homes to determine compliance with Energy Star New Homes guidelines. However, the \$1,000,000 expenditure cap for both of these Joplin programs is much higher than necessary to implement successful pilot programs, so if the cap is not reduced, then these three violations would be applicable to both programs.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission suspend MGE’s proposed tariff changes and direct the parties to file a proposed procedural schedule that includes dates for an evidentiary hearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Deputy Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 30th day of November 2011:

General Counsel
Missouri Public Service Commission
PO Box 360
Jefferson City MO 65101
gencounsel@psc.mo.gov

/s/ Marc Poston