

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

In the Matter of Missouri Gas Energy's)	
Tariff Sheets Designed to Increase the)	Case No. GT-2011-0049
Rebate Level for Tank Water Heaters.)	Tariff File No. JG-2011-0051

**PUBLIC COUNSEL'S RESPONSE TO ORDER
SHORTENING TIME FOR RESPONSE AND DIRECTING FILING**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Response to Order Shortening Time for Response and Directing Filing states as follows:

1. The Commission's August 25, 2010, Order Shortening Time for Response and Directing Filing directs OPC to explain if any harm will occur from allowing the tariff to become effective before the Commission investigates OPC's concerns regarding the water heater rebate. First, there is harm in allowing rebates for purchases of water heaters that do not meet the Energy Star criteria for energy efficiency, which this tariff would essentially do. Increasing the rebate amount from \$40 to \$100 for .62 EF (efficiency factor) on the second to last day (August 30, 2010) in which the .62 EF water heaters continue to meet the criteria for the Energy Star rating will create unnecessary confusion to customers acquiring new water heaters and contractors who install them. The EF standard will increase two days later on September 1, 2010 and the parties and the Commission should be considering the proper rebate level for tank water heaters that meet the new higher Energy Star EF criteria of .67 instead of expending the resources of the parties in debating the appropriate rebate level for the a soon-to-be outdated Energy Star criteria of a .62 EF. Public Counsel believes that \$100 rebates will not be sufficient to motivate most customers to choose tank storage water heaters with an EF rating of .67

due to the much higher incremental costs to purchase and install a .67 EF water heater relative to the purchase and installation costs of a .59 EF water heater.¹

2. Second, allowing the tariff to become effective before the Commission considers OPC's objections could unjustly cause the burden of proof to shift to OPC. MGE should bear the burden of proving that its tariff changes are just and reasonable. §386.430 RSMo. By allowing the tariff changes to become effective before OPC has an opportunity to be heard, OPC would be put in a position of arguing that an existing tariff should be suspended, which could cause the burden of proof to shift to OPC. Staff or MGE may challenge such a procedure without OPC filing a complaint.

3. The Commission's Order Shortening Time for Response and Directing Filing also directs OPC to state the legal authority under which the Commission should suspend the tariff. Section 393.150 RSMo gives the Commission the specific authority to suspend the operation of any schedule filed by MGE regarding utility practices.

4. MGE is proposing changes to its Promotional Practices tariff.² Under the Commission's promotional practices standards, Commission rule 4 CSR 240-14.030(1) states:

All promotional practices of a public utility or its affiliate shall be just and reasonable, reasonable as a business practice, economically feasible and compensatory and reasonably calculated to benefit both the utility and its customers.

¹ An EF of .59 is the federal minimum efficiency level standard for tank storage water heaters.

² Promotional practices are defined by 4 CSR 240-14.010(6)(L) as "any consideration offered or granted by a public utility or its affiliate to any person for the purpose, express or implied, of inducing the person to select and use the service or use additional service of the utility or to select or install any appliance or equipment designed to use the utility service, or for the purpose of influencing the person's choice or specification of the efficiency characteristics of appliances, equipment, buildings, utilization patterns or operating procedures." [emphasis added].

Accordingly, all promotional practices must be just and reasonable, including MGE's present request to increase the rebate amount for tank water heaters.

5. In light of the above recognition that MGE's tariff filing involves a promotional practice, there is an additional reason to suspend MGE's tariff proposal. MGE's proposed tariff filing does not include the supporting information required by 4 CSR 240-3.255(2)(B) for Gas Utility Promotional Practices. The filing does not provide documentation of the criteria used and the analysis performed to determine that providing \$100 rebates to encourage consumers to purchase tank storage water heaters with an EF rating of .62 will result in the acquisition of a cost-effective demand-side resource. This is an important element in any promotional practice designed to acquire demand-side resources. Without this documentation, there is no indication that the promotional practice is cost-effective and beneficial to MGE's ratepayers. For this reason, the proposed tariff changes should be suspended until such time that MGE has fully complied with the Commission's rules by providing the criteria used and analysis performed to determine that the demand-side resource is cost-effective. Once this missing information is provided, Public Counsel and any other interested party should be given an opportunity to evaluate the information and provide additional feedback to the Commission.

6. Public Counsel anticipates that MGE or other parties may argue that by suspending tariffs that include new rebates for efficiency measures other than tank storage water heaters, MGE's customers or the general public are harmed by the delay in the offering of these other new rebates. In response to this anticipated argument, Public Counsel notes that MGE and other collaborative members chose to group these other new

rebates which had unanimous support within the collaborative with the increased rebate amount for .62 EF rated tank storage water heaters even though this one rebate clearly did not have unanimous support despite Public Counsel's suggestions that the non-controversial efficiency measure rebates be separated so their implementation would not be delayed by the dispute over the tank water heater rebate amount. If MGE had separated out the non-controversial efficiency measures, as suggested by Public Counsel, MGE and other parties would not be able to make this argument.

WHEREFORE, the Office of the Public Counsel respectfully offers this response to the Commission's Order Shortening Time for Response and Directing Filing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 27th day of August 2010:

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