



## Single Issue Ratemaking

4. MGE argues generally that approval of its proposed tariff would not constitute single-issue ratemaking by alleging that courts have approved “similar changes” in the past, citing *State ex. rel. Missouri Office of Public Counsel v. Public Service Commission*, 293 S.W.3d 63 (Mo.App. S.D. 2009) (*Public Counsel I*). However, the Court in *Public Counsel I* states that natural gas utilities have the ability to recover costs of complying with amendments made to the Cold Weather Rule, and that this “recovery is implemented by a utility’s request for an accounting authority order (AAO)...” *Id.*, at 77. (Emphasis Added). The Western District Court of Appeals explained the importance of an AAO, stating it “allows for certain costs to be separately accounted for *possible* future recovery in a future ratemaking proceeding.” *State ex rel. Office of Public Counsel v. Missouri Public Service Commission*, 301 S.W.3d 556, 569-570 (Mo. App., W.D. 2009) (*Public Counsel II*).<sup>1</sup> The courts look to the *possibility* of recovery for a deferred cost as determinative in evaluating whether ratemaking occurs in this context. *Id.* MGE’s proposal does not seek recovery through an AAO, but rather seeks to mandate recovery through its proposed tariff language. As such, approval of MGE’s proposed tariffs would constitute a single-issue ratemaking by mandating recovery of costs, rather than providing a possibility of recovery through an AAO. The cases cited by MGE do not support its position.

5. MGE further argues that the Commission has authority to approve “special programs or tariff accommodations to assist customers devastated by tornadoes or

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<sup>1</sup> Staff discussed *Public Counsel II* at its pertinent facts in its initial pleading. Pg. 4, Para 7. That case found that a company could recover uncollected and deferred program costs through an Accounting Authority Order (AAO). *Public Counsel II*, at 569. MGE’s current proposal is not an AAO application.

floods.” *Response*, at pg. 6. MGE has not alleged in its initial pleading that its proposed tariff sheet is promulgated in response to a natural disaster, nor has MGE provided any evidence of a natural disaster occurring in MGE’s service territory that would necessitate such extraordinary action. Regarding the two case files MGE offers in support of its position it is worth noting that a hearing occurred in GT-2012-0170; and that the subject of EU-2011-0387 was an application for an AAO, and not a tariff.

6. MGE points to the Commission’s prior approval of a similar Laclede Gas Company program as evidence of the Commission’s authority in this case. However, unlike this case, Laclede Gas Company’s program was initiated in a rate case, with half the budget of MGE’s proposed program. GR-2010-0171, EFIS 181. MGE has an existing low-income assistance program whose application deadline term has lapsed. MGE’s existing low-income assistance programs were created in a rate case. The program considered and approved in the rate case is not the program MGE has submitted in its proposed tariffs. Whereas Staff has supported renewal of Laclede Gas Company’s program<sup>2</sup> outside of a rate case, MGE’s proposed tariff creates an entirely new program that has not been approved in a rate case, leaving parties no opportunity to consider all relevant factors. Since MGE is not seeking to renew a program promulgated from a rate case, but rather creates an entirely new program, the facts of this case are distinguishable from those in Laclede Gas Company and are not informative on the issue at hand.

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<sup>2</sup> Previous renewals of Laclede Gas Company’s low-income assistance program had the same budget and disbursement limits as initially authorized in GT-2010-0171. Laclede Gas Company’s current filing in Case. No. GT-2017-0123, seeks renewal of its program under different budget and disbursement limits.

## Facial and Substantive Defects

7. MGE's states that its proposed program is "identical to a program twice approved for Laclede Gas." *Response*, at pg. 2. That is false. Laclede Gas Company's program had an annual budget of \$150,000 and disbursement limits of \$1,000 per elderly or disabled customer, and \$500 for all other eligible customers. See GT-2010-0171. MGE's proposed budget represents a 100% increase over any Laclede Gas Company's program previously approved by the Commission. MGE's proposed disbursement amounts of \$800 per elderly or disabled customer, and \$500 for all other eligible customers is a 20% decrease from any Laclede Gas Company's program previously approved by the Commission. Furthermore, Laclede Gas Company's program operated from an annual low-income program budget. MGE has no such budget.

8. MGE asserts there are no inconsistencies, and alternatively argues that "if Staff [were] right about these inconsistencies, MGE urges the Commission to elevate the substantive need the Tariff Sheet addresses over any such technical errors." *Response*, at pg. 2. However, MGE fails to recognize that tariffs have "the same force and effect as a statute, and it becomes state law" upon approval from the Commission. *Midland Realty Co. v. Kansas City Power & Light Co.*, 300 U.S. 109, 114 (1937), *aff'g* 93 S.W.2d 954 (Mo. 1936). The "technical errors" MGE refers to reinstate the program enrollment period that expired in August 2014; reduce income eligible households from 185% of the Federal Poverty Level (FPL) to 150%; add an additional \$300,000 to its program budget; and alter its recovery timeline. These are substantive errors which will affect the provision of its proposed program:

A.) MGE argues that the existing program's expiration in 2014 will not create a conflict with its proposed tariff, causing confusion for customers. Staff believes that customers may be confused by the terms of MGE's proposed tariff. MGE seeks to insert its proposed language as Subparagraph 5 under the Temporary Low-Income Energy Affordability Program identified on Sheet No. R-93. Further, the proposed tariff sheet header states "Temporary Low-Income Energy Affordability Program (continued)." (Emphasis added). Furthermore, Staff argues that because the proposal fails to identify an independent application term, the only operative term determining customer enrollment are those identified in R-93. Tariffs are state law. For MGE to assert that an application deadline that expired two years ago "does not create a conflict" with its proposed tariff insinuates MGE's intent to violate the terms of the existing tariff upon approval.

B) MGE argues that a 150% FPL is "common place", but MGE authored and agreed to the 185% FPL terms of its existing low-income program in R-93. Accepting its proposal would permit the company to modify the number of customers initially contemplated as eligible under the existing low-income program.

C) MGE admits its proposal would create a \$700,000 budget for its low-income program. However, pursuant to the terms of the Stipulation and Agreement previously approved by the Commission, the company shall only be permitted to defer and recover up to \$400,000 to fund its energy affordability programs. Sheet No. R-93 limits the funding of the low-income program to \$400,000. Because MGE admits its proposal exceeds the budget allocated to low-income affordability programs, the

proposed tariff would violate the funding terms of the tariff and the recovery terms from the Commission-approved Stipulation and Agreement.

D) MGE argues that there is no conflict between its proposal's ten year recovery period, and the five year recovery period in Sheet No. R-93. The recovery for MGE's existing low-income program was set in a Stipulation and Agreement, wherein it states that recovery of program funds shall be in accordance with the terms "set forth in specimen Tariff Sheet R-93." GR-2014-0007, EFIS #115, *Stipulation and Agreement*, pg. 18 (Apr. 24, 2014). R-93 states that any Company funds used in the Program shall be recovered "over a five-year period..." MGE's proposal conflicts with the language of the existing tariff and the terms of the Stipulation and Agreement between the parties.

**WHEREFORE**, Staff respectfully requests that the Commission issue an order denying the motion for expedited treatment and rejecting the proposed tariff assigned Tariff Tracking No. YG-2017-0061.

Respectfully submitted,

**/s/ Hampton Williams**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing has been served, by hand delivery, electronic mail, or First Class United States Mail, postage prepaid, to all parties of record on the Service List maintained for this case by the Data Center of the Missouri Public Service Commission, on this 2nd day of November, 2016.

**/s/ Hampton Williams**