

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

In the Matter of Missouri Gas Energy's	)	
Tariff Sheets Designed to Increase Rates	)	
for Gas Service in the Company's	)	Case No. GR-2009-0355
Missouri Service Area.	)	

**PUBLIC COUNSEL'S OBJECTIONS REGARDING  
MGE'S NEW DECOUPLING RATE DESIGN PROPOSAL**

**COMES NOW** the Office of the Public Counsel ("OPC") and offers the following objections:

1. On November 9, 2009, MGE filed a document entitled "Further Evidence Concerning Rate Design Prepared by Michael R. Noack as Required by Presiding Officer." MGE's filing attempts to propose a new decoupling rate design methodology.

2. On November 17, 2009, MGE filed its Motion to Modify Procedural Schedule to Address Additional Information. MGE requests that the Commission accept MGE's "evidence" on a new decoupling rate design and allow for cross-examination of Mr. Noack during the December 8-9, 2009 true-up hearing.

3. OPC renews its November 6, 2009 objections to these last-minute efforts to enter evidence into the record regarding a new and unstudied rate design methodology. Analyzing a decoupling rate design requires extensive analysis and discovery to determine the impact such rate design will have on consumers, and the impacts the rate design methodology will have on other aspects of MGE's rate filing such as an appropriate rate of return. As explained in OPC's prior objections, OPC will not have a reasonable opportunity to conduct this analysis and discovery. Under normal rate case

procedures established by the Missouri Legislature, parties are afforded a reasonable opportunity to investigate all proposed rate designs and to present their position and evidence on any proposed rate design. § 393.150 RSMo. This eleven-month process should not be replaced with an eleventh-hour proposal and a rushed hearing.

4. OPC will not be able to conduct another analysis of the impact the new decoupling rate design proposal would have on MGE's rate of return. Rate of return considerations must consider the level of business risks faced by the Company. (Ex.69, p.10). Rate design plays an integral part in determining a gas utility's risks because different rate designs mitigate or eliminate risks differently. OPC witness Mr. Daniel Lawton recommends a \$1,842,034 reduction to cost of service to account for the risk reduction caused by a straight fixed variable rate design (SFV). (Ex.69, p.13). Mr. Lawton is not available to provide a similar analysis of MGE's new decoupling rate design proposal. The impact on rate of return is a critical element of OPC's opposition to decoupling rate designs, and OPC would be deprived of an opportunity to submit this important evidence if MGE is allowed to introduce an additional decoupling rate design recommendation.

5. OPC will not have sufficient time to do a thorough research of all other jurisdictions that may have implemented a similar decoupling rate design. If a similar rate design exists in another jurisdiction, such information would be helpful in analyzing possible ratepayer impacts in Missouri.

6. MGE would object loudly if OPC were to propose a new rate design methodology after the end of the scheduled evidentiary hearing. In fact, MGE *did object*

to OPC witness Mr. Ryan Kind including an alternative position on energy efficiency funding in his *rebuttal testimony*. MGE counsel argued:

I believe it's an effort to get in the last word on this topic, where the company should have the opportunity to respond more fully throughout this process to proposals made in other parties' direct cases.

(Tr. 847). MGE seems perfectly willing to insert a new proposal after the end of the scheduled hearing. However, when OPC raised an alternative position in rebuttal testimony, MGE argued that it had not been given sufficient opportunity to respond. According to MGE, such proposals should be in a party's direct testimony. (Tr. 846).

7. In MGE's November 11, 2009 response to OPC's November 6, 2009 objections, MGE suggests that OPC should embrace the new decoupling proposal as a middle ground solution because OPC's witness testified that the cost studies support a middle ground solution. However, not all middle ground proposals are the same and not all middle ground proposals are supported by the record. A rate design that attempts to incorporate a high fixed rate with volumetric block rates has not been investigated, and is not a reasonable middle ground solution. One possible middle ground solution for the Commission that is supported by the record would be to vary from OPC's proposed fixed charge and simply select a fixed charge that the Commission concludes is reasonable. This two-part rate design was addressed in pre-filed testimony and during the evidentiary hearing. The remaining margin revenues would be recovered in a volumetric rate.

8 MGE's new proposal is not similar to the Laclede Gas Company rate design that MGE's rate schedule exhibit was supposed to mimic. Laclede's rate design uses blocked rates and ties those blocked rates to Laclede's purchased gas adjustment (PGA) rates. (Tr. 878-879). MGE's proposal is not tied to the PGA.

9. MGE's response to OPC's initial objections also states that OPC waived any objection it might have to the requested information. MGE quotes from case law that states an objection must come at the time the evidence is offered. If anything, OPC's objection is premature because the "evidence" has not been offered into the record. Furthermore, since MGE's response was not responsive to the information that was solicited by Commissioner Davis, as discussed below, OPC could not have waived an objection to evidence that no Commissioner requested and that was not foreseen by any party, except maybe MGE.

10. OPC also objects because MGE's new decoupling rate design proposal is not responsive to the Commissioner's request. Commissioner Davis asked Mr. Noack to file a residential tariff or rate schedule that leaves the customer charge at \$24.62 and follows the Laclede rate design for all remaining margin revenues. (Tr. 889, 894). Commissioner Davis also asked Mr. Noack to file a similar tariff or rate schedule for MGE's small general service (SGS) class using Ms. Meisenheimer's proposed customer charge. (Tr. 897-898). MGE has not complied with either directive because the residential rate design exhibit does not follow Laclede's rate design, and the SGS exhibit does not follow Ms. Meisenheimer's proposal. Rather than respond to the request, MGE has simply seized an opportunity to propose a new decoupling rate design.

11. OPC also objects to the new decoupling rate design proposal because it would continue with the high fixed charge that unnecessarily forces more costs onto low-volume consumers without cost justification. The proposal would maintain the high \$24.62 fixed customer charge that MGE's customers oppose. (Tr. 796, 806). The

consumer services department has not received a single call in support of the high fixed charge rate design. (Tr. 800-801). In other words, ratepayers that have raised the rate design issue are 100% opposed to the high fixed charge. The negative public reaction to a high fixed charge is indicative of the negative impact a high fixed charge has on rate affordability, and MGE's proposal is not responsive to ratepayers.

12. Granting MGE's request to introduce a new rate design proposal last minute would violate OPC's right to due process. Due process requires that administrative hearings be fair and consistent with rudimentary elements of fair play. *Fischer v. P.S.C.*, 645 S.W.2d 39 (Mo. App. 1982). One component of this due process requirement is that parties be afforded a full and fair hearing at a meaningful time and in a meaningful manner. *Id.* OPC asserts that the timing and manner of the proposed "hearing" on this new decoupling rate design proposal is not fair, nor would it provide OPC with a meaningful opportunity to challenge the evidence.

WHEREFORE, the Office of the Public Counsel respectfully objects to all evidence of MGE's new decoupling rate design proposal and to the Commission holding an additional hearing on this issue.

Respectfully submitted,

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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 23rd day of November 2009:

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