

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Tariffs)	
Increasing Rates for Gas Service Provided to)	Case No. GR-2006-0422
Customers in the Company's Missouri)	
Service Area.)	

**RESPONSE TO MOTION TO REJECT THE MISSOURI GAS ENERGY'S
PREHEARING BRIEF**

COMES NOW Missouri Gas Energy (hereinafter "MGE" or "Company") and provides the following response to the Motion to Reject Missouri Gas Energy's Prehearing Brief (the "Motion") filed by the Office of the Public Counsel ("Public Counsel").

1. On December 19, 2006, the Public Counsel filed its Motion requesting that the Commission reject MGE's Prehearing Brief that was filed on December 18, 2006. Public Counsel argues, variously, that the brief is not sufficiently "concise," that the brief contains impermissible argument and that the other parties to the case are prejudiced by MGE's brief. On December 19, 2006, the Commission issued an Order Shortening Time for Response directing that MGE respond to the Motion by no later than December 21, 2006.

2. The Commission's July 13, 2006 Order Regarding Procedural Schedule, Test Year and True-Up Hearing (the "Scheduling Order") provides for:

Prehearing Briefing (with issues following the same order as filed in the joint list of issues and references to supporting, prefiled testimony)

¶ Ordered:1, p. 5. MGE submits that its Prehearing Brief is in substantial compliance with the Commission's Scheduling Order. It follows the order of the Joint List of Issues and contains exhaustive references to the many volumes of

supporting, prefiled testimony.¹ That supportive testimony often takes the form of rebuttal of adverse testimony claimed to be erroneous so in that sense the testimony summarized in the Prehearing Brief is "argumentative". As is customary, MGE's brief also provides legal authority and the Company's analysis of the issues.

3. Public Counsel's argument that MGE's brief is not sufficiently "concise" should be taken in context. First of all, the Commission's Scheduling Order contains no page limitation.² Unlike Public Counsel, which has the luxury of being selective as to the issues with respect to which it has filed testimony in the case,³ MGE bears the burden of proof on nearly all of the remaining issues⁴ and, consequently must address every issue that has been identified as going to hearing. Consequently, it would be much easier for Public Counsel to file a brief containing far fewer pages than that filed by MGE.⁵

4. At first blush, an eighty-one page brief may seem lengthy, but, given the amount of testimony filed in this case (amounting to many hundreds of pages of testimony, charts and schedules) and the fact that the revenue requirement difference between MGE and other parties approaches \$20 million, providing a meaningful synopsis of fifteen issues in only eight-one pages is a

¹ MGE's brief is similar in form and approach to that filed by Staff.

² Public Counsel's reference to the thirty (30) page limit on the Post-Hearing Brief is not pertinent to the topic at hand. It is, however, instructive of how constrained the parties are in making their arguments to the Commission if the only opportunity to do so occurs in just a few pages shortly after the evidentiary hearing.

³ Public Counsel has filed testimony only with respect to seven (7) issues in this case. The Commission will note that Public Counsel's Statement of Position often contains the statement that it does not take a position on a particular issue.

⁴ The solitary exception is Staff's proposed PGA tariff language.

⁵ Public Counsel has not yet filed a brief, simply a statement of issues. As such, the relative page-length of the two documents is an apples to oranges comparison.

pretty fair accomplishment. Rate cases are exceedingly complex and they often necessitate correspondingly complex briefs. Additionally, many of the issues remaining in this case are not conducive to a cryptic, summary description. Moreover, such a summary description is not likely to be of any real help to the Commission. The issues of cost of capital, rate design, weather normalization, and depreciation each are highly involved and inherently lend themselves explanations of some length.

5. As to Public Counsel's claim that the Company's brief contains argument, MGE suggests the Scheduling Order is ambiguous in that conditions discussed in the text of the order refer to a "statement of position" while the calendar adopted on "Ordered" paragraph 1 directs the filing of a "prehearing brief." This ambiguity leaves it open to reasonable interpretation as to what is expected to be filed. From a practice standpoint, a brief is an inherently persuasive document that is intended to summarize a party's position on the issues coupled with why the decision-maker should resolve a matter in a particular fashion. Moreover, much of the testimony in this case - particularly the rebuttal and surrebuttal testimony - is argumentative. Indeed, the purpose of such testimony is to critique and challenge the testimony of the other parties and argue that such testimony is incorrect or unreliable. Simply summarizing such testimony is, therefore, argumentative, at least in tone.

6. It is worth noting that MGE's brief is not materially different in form, tone, or purpose than that filed by The Empire District Electric Company ("Empire") in its rate case, Case No. ER-2006-0315. In Empire's case, the

parties were told that the page limitation in the post-hearing brief was justified by the fact that the pre-hearing brief had no page limitation and consequently, the parties easily could refer to their pre-hearing briefs as necessary to make their case to the Commission. If the Commission now takes the position that the 30-page post-hearing brief is the only opportunity for a party to argue its case, it raises troubling due process concerns about a party's right to demonstrate the correctness of its recommendations based on the record evidence.

7. Public Counsel argues that other parties to the case will be prejudiced if MGE's brief is not rejected but Public Counsel fails to explain what specific prejudice may ensue. Certainly the other parties will not be prejudiced by understanding the nature of MGE's evidence, its rebuttal of adverse testimony, its critique of an opposing party's position and the legal principles upon which a number of its arguments are grounded. To the contrary, MGE's Prehearing Brief should provide clarity and insight as to the matters brought before the Commission by the Company. How can Public Counsel be prejudiced by understanding MGE's case?

8. Certainly, nothing should prohibit a party from fully stating its case for the benefit of the Commission in much the way a lawyer in a civil case outlines the evidence and the theory of the case in his or her opening statement. MGE believes that the questions of policy that it has presented in its filing are important and compelling and that the Commission should have a full appreciation for those matters before the evidence in the case is heard so it can fully understand the nature of the evidence at the time of hearing. If the

Commission determines what MGE has filed is not helpful, so be it. The Commission should not, however, be barred from giving MGE's filing the consideration it is due.

9. In the event the Commission concludes that Public Counsel's Motion has merit or that the Commission also would like a filing from MGE similar to the Statement of Position submitted by Public Counsel, MGE requests that the Commission accept the attached Statement of Position. MGE does not, however, consider the Statement of Position as a satisfactory substitute for a comprehensive briefing of the case.

WHEREFORE, for the reasons aforesaid, MGE requests that the Commission deny Public Counsel's Motion.

BRYDON, SWEARENGEN & ENGLAND

By: /s/ Paul A. Boudreau
Paul A. Boudreau Mo. Bar # 33155
BRYDON, SWEARENGEN & ENGLAND P.C.
P.O. Box 456
312 East Capitol Avenue
Jefferson City, MO 65102-0456
Telephone: (573) 635-7166
Facsimile: (573) 634-7431
paulb@brydonlaw.com
ATTORNEYS FOR MISSOURI GAS ENERGY,
A DIVISION OF SOUTHERN UNION
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was electronically transmitted, sent by U.S. Mail, postage prepaid, or hand-delivered, on this 21st day of December, 2006, to:

Robert Franson
Missouri Public Service Commission
Governor's Office Building
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102
Robert.franson@psc.mo.gov

Marc Poston
Office of the Public Counsel
Governor's Office Building
200 Madison Street
P.O. Box 2230
Jefferson City, MO 65102
marc.poston@ded.mo.gov

Stuart Conrad
Finnegan, Conrad & Peterson, LC
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Jeremiah Finnegan
Finnegan, Conrad & Peterson
3100 Broadway, Suite 1209
Kansas City, MO 64111
jfinnegan@fcplaw.com

Jeffrey Keevil
Stewart & Keevil, LLC
4603 John Garry Drive, Suite 11
Columbia, MO 65203
Per594@aol.com

Mark W. Comley
Newman, Comley & Ruth P.C.
P.O. Box 537
Jefferson City, MO 65102-0537
comleym@ncrpc.com

/s/ Paul A. Boudreau
Paul A. Boudreau