

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

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| In the Matter of Missouri Gas Energy and |) | |
| Its Tariff Filing to Implement a General Rate |) | Case No. GR-2009-0355 |
| Increase for Natural Gas Service |) | Tariff No. YG-2010-0500 |

**REPLY TO PUBLIC COUNSEL'S RESPONSE TO
MGE'S ARGUMENT REGARDING TARIFF EFFECTIVE DATE**

COMES NOW Southern Union Company ("Southern Union"), d/b/a Missouri Gas Energy ("MGE"), a division of Southern Union, by and through counsel, and in reply to Public Counsel's Response filed herein on February 23, 2010, respectfully states as follows to the Missouri Public Service Commission (the "Commission"):

1. On February 10, 2010, the Commission issued its Report and Order in the captioned-matter bearing an effective date of February 20, 2010. The Report and Order authorized MGE to file revised tariffs and rate schedules designed to increase its annual revenues in compliance with said Report and Order.

2. As directed, MGE filed revised tariff sheets designed to effectuate the decisions made by the Commission in the Report and Order. MGE also filed a motion for expedited treatment requesting that the tariff sheets be approved for service rendered on and after February 28, 2010, the operation of law date in this case. MGE also requested that the Commission provide a reasonable amount of time between the issuance and the effective date of the order approving the compliance tariffs so that an application for rehearing might be filed.¹ The Commission thereafter directed that any party wishing to object to MGE's compliance tariffs do so no later than February 22, 2010.

¹ MGE submits that an order issued February 24, 2010 to be effective February 28, 2010 does, in fact, provide a reasonable amount of time for the filing of an application for rehearing.

3. On February 22, 2010, the Public Counsel filed an "Objection to Tariff." By said pleading, however, the Public Counsel did not allege that MGE's proposed compliance tariffs are not in conformity with the terms of the Commission's Report and Order. Instead, the Public Counsel simply objected to the Commission's approval of the tariffs "for the same reasons that OPC seeks rehearing" of the Report and Order. In other words, the Public Counsel objects to the tariffs only because the Public Counsel objects to the underlying Report and Order and not because the tariffs somehow fail to comply with that Report and Order.

4. Thereafter, on February 23, 2010, the Public Counsel filed a "Reply to MGE's Argument Regarding the Effective Date of the Tariff." This submission reveals that once again, the Public Counsel, with adequate time to prepare and file a pleading regarding the substance of MGE's compliance tariffs, does not claim that the tariffs are not in full compliance with the terms of the Report and Order. Instead, in this latest pleading, the Public Counsel simply suggests that the Commission should "take the time needed to appropriately study" the applications for rehearing and motion for clarification filed with regard to the Report and Order. These matters, of course, have absolutely nothing to do with the implementation of the compliance tariffs.

5. As noted in previous filings, according to the Staff of the Commission MGE's tariffs are in compliance with the Report and Order. No party disputes this fact. Accordingly, there is no basis to delay approval of these tariff sheets beyond February 28, 2010, as such action would be inconsistent with the requirements of the law and long-standing Commission custom, practice and precedent.

6. RSMo. §393.150 authorizes the Commission to suspend the effectiveness of proposed rate schedules for a period of one hundred and twenty days beyond the proposed effective date, plus an additional period not to exceed six months. The Commission lacks the authority to suspend the effectiveness of rate schedules for a longer period of time. Moreover, in this case, *the Commission has already found and concluded that MGE's rates currently in effect are not just and reasonable² and that new rate schedules in conformity with the Commission's Report and Order must be established.* This Report and Order has not been modified or stayed and is in full force and effect. Again, the Commission Staff has indicated that the tariffs comply with the Report and Order and no party has claimed otherwise. Historically the Commission has had an interest in seeing that its lawful and reasonable orders are followed.

7. The notion that the new rate schedules should not take effect until the rehearing process on the underlying Report and Order has run its course is patently false and totally contrary to the well-established and lawful process. Pursuant to RSMo. §386.500.1, if the Commission grants rehearing, an order of the Commission on rehearing need not be issued for another thirty days *following the final submission of the case on rehearing.* Further delaying the approval of MGE's compliance tariffs until after the Commission takes up applications for rehearing and/or until after the completion of the rehearing process is inconsistent with RSMo. §393.150 which limits the Commission's ability to suspend the effectiveness of rate schedules for a period longer than one hundred and twenty days plus six months beyond the proposed effective date. And what if the Commission did grant a rehearing and subsequently issue a new order

² In fact, MGE has been experiencing a revenue shortfall in excess of \$40,000 daily for almost five months (i.e. since the end of the true up period, September 30, 2009).

that called for a different result with different rates? According to the Public Counsel's logic, those new rates could not take effect until the rehearing process involving that new order ran its course. That could lead to the absurd result that new rates could never take effect. And what if the shoe were on the other foot and in the present case the Commission had ordered a rate reduction? Would the Public Counsel argue that the rate reduction could not take effect until MGE's application for rehearing had been ruled on? The answer is obvious.

8. The law is clear on this point. Section 386.500.3, provides that an application for a rehearing "shall not excuse any corporation or person or public utility from complying with or obeying any order or decision or any requirement of an order or decision of the commission, or operate in any manner to stay or postpone the enforcement thereof except as the commission may by order direct." Further, if the Commission grants rehearing, the order issued on rehearing, pursuant to §386.500.4, may "abrogate, change or modify" the terms of the original Report and Order and "shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision."

WHEREFORE, MGE respectfully requests that the Commission grant its Motion for Expedited Treatment and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less than Thirty Days' Notice and approve the tariff sheets MGE has filed to be effective for service rendered on and after February 28, 2010.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 24TH day of February, 2010, to:

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