

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

In the Matter of Southern Union Company )	
d/b/a Missouri Gas Energy's Tariff Sheets )	Case No. GT-2012-0170
Designed to Implement an Experimental )	Tariff File No. JG-2011-0051
Pilot Program )	

**PUBLIC COUNSEL'S APPLICATION FOR REHEARING,  
MOTION FOR RECONSIDERATION,  
AND MOTION TO SCHEDULE AN EXPEDITED HEARING**

**COMES NOW** the Missouri Office of the Public Counsel ("OPC") and for its Application for Rehearing, Motion for Reconsideration, and Motion to Schedule an Expedited Hearing, states as follows:

1. OPC requests that the Commission take an unconventional approach in this case by scheduling an expedited evidentiary hearing while still allowing the Rebuild Joplin Program to go into effect. A hearing will afford OPC with an opportunity to present evidence to the Commission to demonstrate that the tariffs, with a few modifications, would be reasonable and acceptable to ratepayers. To expedite this matter, OPC would agree to forego prefiled testimony and present live testimony. At the conclusion of the hearing the Commission could either determine that changes to the Rebuild Joplin Program are warranted, and order such changes, or the Commission could allow the program to continue unchanged. Either way, the Commission will have an evidentiary basis with which to make an ultimate decision without delaying the start of the Rebuild Joplin Program. OPC is hopeful that this process would produce an improved tariff that will benefit all MGE ratepayers, including all Joplin ratepayers.

Ordering a hearing in this matter will allow this issue to be fully vetted, and it could result in an agreement among the parties without the need for an evidentiary hearing.

2. An evidentiary hearing in this matter, and a rehearing and reconsideration of the decision to allow the tariff to go into effect, is warranted for the following reasons, as supported by the Affidavit attached to this Application:

A. The Commission's Notice Regarding Tariff Filing ("Notice") allows energy efficiency funds to be reallocated to a program that OPC and MGE agree is not cost effective. During the Commission's December 7, 2011 Agenda Meeting discussion, commissioners acknowledged that the program was not cost effective. Accordingly, the Commission's decision is not just and reasonable nor is it in the public interest.

B. By taking ratepayer funds from throughout MGE's service territory and reallocating those funds to non-utility purposes (disaster relief) without affording OPC an opportunity to present evidence on whether the reallocation is just, reasonable, and in the public interest, the Commission violated OPC's right to due process of law under Section 10, Article 1, of the Constitution of Missouri.<sup>1</sup>

C. The Commission's authority is determined by statute, and no statute authorizes the Commission to use ratepayer dollars, collected from customers under the guise of energy efficiency, to fund a "pilot" disaster relief program.

D. The Commission violated 4 CSR 240-4.020(2) by not rejecting MGE's tariff filing in that MGE never filed the notice required by the rule.

E. Promotional practices that attempt to induce a consumer to purchase natural gas appliances over electric appliances are prohibited by the Commission's

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<sup>1</sup> "Section 10. Due process of law. – That no person shall be deprived of life, liberty or property without due process of law."

Promotional Practices Rule. Accordingly, the Commission's decision violates Commission Rule 4 CSR 240-14.020(1).

F. The decision violates the Commission's Promotional Practices Standards because it would create an "unreasonable difference in the offering or granting of promotional practices...between localities" as prohibited by 4 CSR 240-14.030(2).

G. The decision violates 4 CSR 240-3.255(2)(B)2, which establishes the filing requirements for promotional practices, and requires "a description of the evaluation criteria, the evaluation plan and the schedule for completing the evaluation." MGE did not comply with this requirement. MGE's tariff filing simply states that it will conduct process evaluations and cost effectiveness evaluations only "where feasible." In addition, the cover letter accompanying MGE's tariff filing stated that the purpose of the pilot is "to analyze the efficacy of the Program Administrator Cost Test" and "to analyze the performance of this program and the efficacy of the various cost effectiveness tests." The "efficacy" of the tests has already been thoroughly vetted at regulatory commissions throughout the United States as well as national forums (e.g. National Action Plan for Energy Efficiency) over the last fifteen years, and no purpose would be served through further evaluation of the efficacy of these various cost effectiveness tests. MGE's statement that an evaluation would "analyze the performance of this program" does not come close to complying with the filing requirements in 4 CSR 240-3.255(2)(B)2.

H. The decision violates § 393.130(2) RSMo Cum Sup 2010, because it would apply substantially different rebates to Joplin area customers that are not available to customers in the rest of MGE's service territory, despite the fact that all MGE customers fund the energy efficiency program.

I. The Notice violates § 393.130(3) RSMo Cum Sup 2010, because it would grant an undue and unreasonable preference to a locality.

J. The Notice violates § 393.140(11) RSMo, because it would extend privileges to Joplin area customers and prospective customers that are not “extended to all persons and corporations under like circumstances.”

K. The Commission’s Notice states that MGE’s proposal is a “pilot program.” Commission Rule 4 CSR 240-14.010(4) allows pilot programs “to evaluate the cost-effectiveness of potential demand-side resources.” MGE’s Rebuild Joplin Program is not being proposed for the purpose of evaluating the cost-effectiveness of potential demand-side resources and therefore is in violation of 4 CSR 240-14.010(4). Instead, the purpose of the programs, as stated in the tariff filing, is “to assist tornado victims, encourage rebuilding efforts, and promote energy efficiency in the tornado-impacted areas...” This is not a lawful purpose of a pilot program. Furthermore, by definition, demand-side resources are not to be construed to include load building programs, and requiring program participants to also use gas water heaters is a load building program in violation of 4 CSR 240-14.010(6)(E).

L. The Commission’s decision lacks sufficient findings of fact and conclusions of law to enable a court to determine the basis for the decision. In addition, the decision is not supported by competent and substantial evidence.

WHEREFORE, the Office of the Public Counsel respectfully requests rehearing, requests reconsideration, and requests that the Commission schedule an expedited hearing to take live testimony.

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 all counsel of record this 8<sup>th</sup> day of December 2011:

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