

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

In the Matter of Missouri Gas Energy (Laclede))
Tariff to Revise Natural Gas Rate Schedules)

File No. GT-2017-0124
Tariff No. YG-2017-0061

STAFF RECOMMENDATION/MOTION TO REJECT TARIFF SHEET

COMES NOW the Staff of the Missouri Public Service Commission and for its Recommendation/Motion to Reject Tariff Sheet (“Motion”) respectfully states as follows:

1. On October 25, 2016, Laclede Gas Company (“Company”) filed a tariff sheet for the Missouri Gas Energy (“MGE”) operating unit of the Company, which has a proposed effective date of November 24, 2016, and a motion for expedited treatment which seeks to make the tariff sheet effective November 4, 2016. The tariff sheet was assigned Tariff Tracking No. YG-2017-0061, attached hereto as Appendix A.

2. MGE seeks to create and implement an entirely new program as an amendment to its Temporary Low-Income Energy Affordability Program tariff provisions, the enrollment period for which has long since expired. Contrary to MGE’s submission letter, the proposed tariff is not a “revised tariff” as the tariff sheet seeks to implement an entirely new program, as reflected by the fact that the tariff sheet itself is numbered “Original” Sheet No. R-94.

3. Staff submits its motion to reject the proposed tariff of the grounds that implementation of the proposed tariff constitute a prohibited single-issue ratemaking, as well as numerous facial and substantive defects, as detailed below, that under the terms of the existing tariff would frustrate the implementation and operation of the proposed program, should the Commission approve the proposed tariff.

4. The proposed tariff sheet contains a built-in rate recovery provision, as it provides, in part, that “MGE shall be authorized to spend and defer for recovery in the Company’s next rate case proceeding, under terms identical to those applicable to the Company’s recovery of its deferred energy efficiency expenditures, an amount not to exceed \$300,000.”

5. The Commission should first note that the recovery provision to which the proposed tariff refers is the recovery provision applicable to MGE’s energy efficiency expenditures – not the Temporary Low-Income Energy Affordability Program which the tariff seeks to amend (which has its own recovery provision), and which is not an energy efficiency program. The Commission should also be aware that MGE has multiple energy efficiency programs, some of which appear to have conflicting funding recovery provisions. However, what appears to be the general energy efficiency funding recovery provision states on P.S.C. Mo. No. 6 First Revised Sheet No. 99:

The Company will fund energy efficiency programs, on an annual basis, toward the goal of .5% of the Company’s gross operating revenues. These amounts will be deferred and treated as a regulatory asset with a ten-year amortization period. Such amortization will begin on the effective date of rates in the Company’s next general rate case. Amounts spent under these programs will be included in MGE’s rate base in its next general rate case. . . .MGE’s expenditures will be subject to a prudence review in any relevant MPSC proceedings. Program Funding and recovery is subject to the Stipulation and Agreement in GR-2014-0007.

The Stipulation and Agreement in GR-2014-0007, referenced in the foregoing tariff, provides as follows on page 20:

(d) Subject to its continuing right to defer and recover such amounts in future rate case proceedings, MGE further agrees to fund energy efficiency programs up to target levels, as determined in the same manner as the target level of the period beginning October 1, 2014. It is expressly recognized that the Parties will seek to meet these targeted funding levels, subject to agreement by the EEC on appropriate program expenditures,

provided that the EEC agrees that such target levels may be exceeded by up to 25%, and that the EEC or any of its individual members may apply to the Commission for approval of an increase above 25%. Such appropriate program expenditures for the development, implementation and evaluation of energy efficiency programs that are not funded through rates shall be accumulated in a regulatory asset account at the time such expenditures are made, subject to a review by any party, including charter members of the EEC, for prudence as to implementation and evaluation of such programs. Such expenditures will then be reflected in MGE's rate base in its next general rate case in the same manner as other rate base items, provided that a ten-year amortization shall be presumed for such expenditures. No Party has raised an issue in this case through pre-filed testimony regarding the prudence of the costs of the C & EE regulatory asset balance of \$9,226,037 as of December 31, 2013. Any incremental expenditures after December 31, 2013, have not been reviewed; however, Staff and OPC may raise prudence concerns in the future.

In other words, MGE's proposed tariff essentially seeks to guarantee itself rate recovery of funds expended on the new program, arguably subject only to a prudence review by Staff or some other party. This shifts the initial burden to the party questioning prudence – not on the Company seeking to impose program costs onto rate payers.

6. By essentially seeking to guarantee rate recovery for funds distributed under the proposed program, the Commission should reject MGE's tariff as it constitutes single-issue ratemaking. Missouri courts have held, in reliance upon § 393.270 RSMo, that the Commission's "determination of the proper rate for [utilities] is to be based on all relevant factors rather than on consideration of just a single factor." *Midwest Gas Users' Ass'n v. PSC*, 976 S.W.2d 470, 479 (Mo. App., W.D. 1998); see also *Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (1979)(En Banc); *Missouri Water Company v. Public Service Commission*, 308 S.W.2d 704 (1957). When a rate is adjusted on the basis of a single factor, without consideration of all relevant factors, it is known as single-issue ratemaking. *Id.*, at 480. While approval of the proposed tariff will not immediately affect

rates, the proposed tariff language authorizes MGE to “spend and defer for recovery in the Company’s next rate case proceeding...an amount not to exceed \$300,000...” Once it is approved, a tariff has the force and effect of law and is binding on the utility, the public and the Commission. See *State ex rel. AG Processing, Inc. v. Public Service Commission*, 311 S.W.3d (Mo. App., W.D. 2010); *Bauer v. Southwestern Bell Tel. Co.*, 958 S.W.2d 568 (Mo. App., E.D. 1997).

7. In *State ex rel. Office of Public Counsel v. Missouri Public Service Commission*, the Court of Appeals found lawful an amendment to a pre-existing low-income assistance program promulgated in compliance with the Commission’s 2005 emergency cold weather rule, where a company’s program preserved its uncollected and deferred program costs through an Accounting Authority Order (AAO), pursuant to Commission Rule 4 CSR 240-13.055(14). The court held “[t]he Accounting Authority Order simply allows for certain costs to be separately accounted for *possible* future recovery in a future ratemaking proceeding.” 301 S.W.3d 556, 569-570 (Mo. App., W.D. 2009). The terms of the proposed tariff sheet are factually distinct from the program considered in the case. The proposed tariff is not promulgated in response to a change in Commission Rules that conflict with an existing tariffed program. Furthermore, as discussed above, MGE seeks what essentially amounts to a guaranteed recovery from its rate payers through the terms of the tariff, rather than the *possibility* of recovery in a subsequent rate case, as accomplished in the case through an AAO. Because MGE has built-in this cost recovery provision in its proposed program, this tariff sheet constitutes a single issue ratemaking, and should be rejected by the Commission.

8. Furthermore, Staff has identified several facial and substantive defects with the proposed tariff as additional grounds in support of its motion. The proposed tariff sheet creates a new program by inserting Subparagraph 5 as an amendment to MGE's existing Temporary Low-Income Energy Affordability Program, found on Sheet No. R-93, attached hereto as Appendix B. However, several terms of the proposed tariff sheet are in conflict with the existing tariff, as follows:

A. Existing Sheet No. R-93 provides that it was established due to the "unusually cold winter of 2013-14" and permits "customers to enroll in the Program from May 1, 2014 through August 31, 2014." MGE's proposed tariff sheet states that the new program ends on March 31, 2017, and is silent on the issue of registration deadlines. Thus, the program periods conflict (both of which purport to be part of the Temporary Low-Income Energy Affordability Program) and it is unclear whether any customers would be eligible to register for the proposed program should the Commission approve the tariff sheet.

B. Sheet No. R-93 states that households with incomes equal to or less than 185% of the Federal Poverty Level (FPL) shall be eligible for its existing program. The proposed tariff sheet reduces that threshold to 150% FPL, creating an internal conflict within the eligibility requirements for the program. MGE provides no explanation or justification as to why it would seek to change the low-income eligible households identified in the existing tariff. In addition, as MGE does not seek to amend the existing tariff, it is unclear whether households with incomes between 150% and 185% of the FPL will be eligible for the proposed program.

C. Sheet No. R-93 provides that the authorized program shall be funded up to \$400,000. This term was agreed through a Stipulation and Agreement, stating “[t]he Company shall also be permitted to defer and recover in future rates up to Four Hundred Thousand Dollars (\$400,000) to fund the **one-time** energy affordability programs set forth in specimen Tariff Sheet No. R-93 [emphasis added].” GR-2014-0007, EFIS #107, *Stipulation and Agreement* (Apr. 11, 2014). The proposed tariff (R-94) seeks to authorize spending and deferring for recovery a different funding allocation of \$300,000, meaning a total of \$700,000 would be moved through the Temporary Low-Income Energy Affordability Program, which conflicts with the total program funding approved by the Commission and agreed to by the signatories of the Stipulation and Agreement.

D. Sheet No. R-93 states that any Company funds used in the approved program shall be deferred into a low-income asset account for recovery over a five-year period in the Company’s subsequent rate case. The terms of the proposed tariff sheet (R-94) provide that such funds shall be authorized for recovery “under terms identical to...its deferred energy efficiency expenditures...” MGE’s Tariff states that energy efficiency program funds “will be deferred and treated as a regulatory asset with a ten-year amortization period. . . .Amounts spent under these programs will be included in MGE’s rate base in its next general rate case.” P.S.C. Mo. No. 6, 1st Revised, Sheet No. 99. Therefore, the funding “recovery” mechanisms conflict between the Temporary Low-Income

Energy Affordability Program which MGE seeks to amend with the proposed tariff and the energy efficiency programs which MGE references in the proposed tariff. While Staff agrees low income assistance is an important topic, and any of these issues may appear independently trivial, the gravity of a tariff compels parties proposing sheets to exercise their best efforts and diligence to produce a draft that can clearly inform the public of its services. 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). Staff brought its concerns to MGE’s attention in discussions prior to its filing. The nexus of every inconsistency identified in this paragraph is that the proposed tariff sheet *is not* intended to amend the existing program, but instead creates an entirely new program. Given the multitude of internal inconsistencies, Staff does not support the new tariff sheet and requests the Commission reject the tariffs.

9. MGE also seeks expedited treatment of its proposed tariff pursuant to Commission Rule 4 CSR 240-2.080(14), although MGE cites subsection (16) rather than subsection (14) in its motion for expedited treatment. Subsection (C) requires a statement that the pleading was filed as soon as it could have been or an explanation why it was not. MGE opted for the former; however, the latter explanation may be more salient regarding the timing of this filing and MGE’s knowledge of the one-month delay in ECIP/LIHEAP payments. Both Laclede and MGE were aware of the impending changes several months ago, and even sent notices to customers in August regarding the change in the start date for ECIP/LIHEAP assistance payments. Even the Commission informed customers of this concern in its article “Programs to Help

Missourians Stay Warm During the Winter”, from the Fall 2016 edition PSC Connection. Instead of working with Staff and other parties to address this issue months ago - MGE did nothing. Now it seeks redress of its filing without any supporting documentation. Moreover, as Staff has identified, the request itself is unlawful as it would constitute single issue ratemaking. Given the concerns Staff has identified, the Commission should reject MGE’s tariff and deny the *Motion for Expedited Treatment*.

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 28th day of October, 2016.

/s/ Hampton Williams

RULES AND REGULATIONS

Temporary Low-Income Energy Affordability Program (continued)

5. On an experimental basis and for the period ending March 31, 2017, MGE shall be authorized to spend and defer for recovery in the Company's next rate case proceeding, under terms identical to those applicable to the Company's recovery of its deferred energy efficiency expenditures, an amount not to exceed \$300,000 to provide a one-time bill credit of 30% of existing arrearages to those qualifying customers who are required to pay 80% of their existing arrearages in order to restore or maintain service under the provisions of the Commission's Cold Weather Rule. Until such time as the \$300,000 amount is exhausted, such credit shall be made to eligible customers on whose behalf a pledge is made by a participating CAA that, together with any payment by the customer, equals 50% of the customer's existing arrearages, provided that the customer has a household income equal to or less than 150% of the FPL. No customer shall receive a credit pursuant to this provision greater than \$400 or, in the case of a registered elderly or a registered disabled customer, greater than \$800. The provision of such a credit shall not affect the customer's rights and obligations under the Cold Weather Rule. All customers participating in this one-time bill credit Program will be required to register with a CAA, apply for any energy assistance funds for which they might be eligible, and review and agree to implement cost-free, self-help energy conservation measures identified by the CAA. In addition, the CAAs will provide customers with basic budgeting information, as well as information about other potential sources of income such as the Earned Income Tax Credit. The CAA may use household registration from other assistance programs to determine eligibility for the Program.

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ISSUED BY: L. Craig Dowdy, Sr. VP, Ext. Affairs, Corp. Communications & Marketing
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