

**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	)	File No. GT-2013-0330
Designed to Implement an Experimental	)	Tariff No. YG-2013-0255
Pilot Program	)	

**REPLY OF MISSOURI GAS ENERGY**

COMES NOW Southern Union Company, d/b/a Missouri Gas Energy ("MGE") and in its reply to the Order Directing Notice and Setting Deadline for Responses issued by the Missouri Public Service Commission ("Commission"), states as follows:

1. Background.

- a. The May 22, 2011 tornado in Joplin, Missouri left over a six-mile path of destruction through the heart of the city and was the single deadliest tornado in the United States in over sixty years. MGE's customers, friends, and employees were impacted by this disaster. MGE and its predecessor companies have served the citizens of Joplin for over one hundred and thirty five years. As a long-standing member of the Joplin community, MGE was – and remains - committed to find ways to help Joplin rebuild quicker and better.
- b. In 2011, MGE proposed the Rebuild Joplin program to the members of MGE's Energy Efficiency Collaborative ("EEC").<sup>1</sup> The Rebuild Joplin Program expanded on MGE's existing energy efficiency programs and was designed to encourage energy efficient building practices and the installation of energy efficient appliances. The simple premise of the program is that given the need for rebuilding in the Joplin area, MGE wanted to use the opportunity to encourage energy efficient rebuilding. Like "green" building programs in other tornado-

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<sup>1</sup> Referred to by OPC in its filing as the "Energy Efficiency Group" or "EEG." The term "Energy Efficiency Collaborative" or "EEC" was used by the Commission in MGE's last rate case, so MGE retains "EEC" for purposes of consistency.

impacted areas – Tuscaloosa, Alabama, and Greensburg, Kansas - Joplin has the potential to not only rebuild, but to transform – by making long-term energy efficient decisions now.

- c. Both the Staff of the Missouri Public Service Commission (“Staff”) as well as the Missouri Department of Natural Resources (“MDNR”) supported the original Rebuild Joplin Program, as well as this request for a short extension to May 1, 2013. Now, as then, the Office of Public Counsel (“OPC”) is the only member of the EEC which opposes the program.
- d. The Rebuild Joplin Program tariffs went into effect by operation of law on December 9, 2011 in Case No. GT-2012-0170 after the Commission provided its Notice Regarding Tariff Filing on December 7, 2011 over OPC’s objections. MGE participated in an on-the-record presentation to the Commission on April 12, 2012 on the progress of the Rebuild Joplin Program. The Program is set to expire on December 31, 2012.
- e. MGE has requested a short extension of the Rebuild Joplin Program to May 1, 2013 in a tariff filing dated November 30, 2012. In addition to providing more time for Joplin area residents to take advantage of this program, the extension also coincides generally with the date that new furnace efficiency regulations are subject to change.
- f. OPC opposes this four-month extension, citing reasons contained in its Motion to Reject Tariff Filing, or In the Alternative, Motion to Suspend Tariff, and Motion for an Evidentiary Hearing (“OPC’s Motion to Suspend”). Staff has filed a recommendation to extend the effective date consistent with MGE’s proposal on December 14, 2012.<sup>2</sup>

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<sup>2</sup> Staff Recommendation Regarding MGE’s Tariff Sheets to Extend the Effective Date of the Rebuild Joplin Experimental Pilot Program to May 1, 2013.

## **2. Overview of MGE's Position as to Tariff Implementation.**

The rationale for MGE's proposal to extend these tariffs is discussed in detail in its Tariff Filing Letter, which is attached as Exhibit A. MGE will not restate those reasons here, other than to note that rebuilding in Joplin has not been as fast as was anticipated. MGE has made best efforts to promote the program, but the pace of rebuilding is not as strong as MGE, Joplin leaders, or others anticipated.

In considering OPC's Motion to Suspend, the Commission must keep in mind the practical issues associated with MGE's proposal. MGE has in place a mechanism that it believes will assist with the rebuilding efforts in Joplin. Those rebuilding efforts have proceeded slower than any party anticipated. Thus, MGE would like to extend the Program for a period of time to allow more Joplin-area customers take advantage of the tariff provisions.

If the Commission should decide to allow these tariffs to go into effect as proposed, MGE will happily provide those opportunities for the benefit of their customers. On the other hand, if the tariff sheets are suspended, there is little incentive for the Company to incur the additional costs and to utilize the resources that would be required to pursue this matter through hearing.

MGE, therefore, asks that the Commission consider its decision to reject or suspend the tariffs based on a) the documents before it, b) the filings in GT-2012-0170 and c) based on the discussion held at the on-the-record presentation in GT-2012-0170 in April 2012 to be determinative as to the future of the proposed Joplin rebuild tariff sheet(s). MGE will gladly honor that decision, whatever it may be, and move forward with that decision.

3. **OPC's Procedural Objections are Meritless.**

a. **This is Not a Contested Case, so OPC's Arguments Do Not Apply.**

OPC alleges that MGE's tariffs should be rejected as having violated Commission Rule 4 CSR 240-4.020(2). The referenced rule states that, "any regulated entity that intends to file a case likely to be a contested case shall file a notice with the secretary of the commission a minimum of sixty (60) days prior to filing such case." MGE did not file a sixty day notice concerning this tariff filing. However, the rule referenced by the OPC is not invoked by a tariff filing.

First, MGE has not filed a "case." It has filed proposed tariff sheets. Only in certain specific circumstances does the Commission even create a "case file" concerning tariff sheets.<sup>3</sup>

Further, not every case file is considered a "contested case." As the Commission stated in its Order Directing Notice and Setting Deadlines for Responses ("Order Directing Notice"), "this is a non-contested case . . .".<sup>4</sup> Section 536.010(4) defines a contested case as "a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Unless the tariff is suspended, no hearing is required in this matter by any law.<sup>5</sup>

Thus, Commission Rule 4 CSR 240-4.020(2) is not applicable to this situation. There has been no violation of the rule and the OPC provides no basis for the Commission to reject MGE's tariff filing.

b. **There Have Been No Ex Parte Communications.**

Moreover, not only has the letter of Rule 4 CSR 240-4.020(2) not been violated, the spirit of the rule has also not been violated. The purpose of this rule is to provide a means for the commissioners to police themselves and parties with regard to ex parte contacts. MGE has had

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<sup>3</sup> See Commission Rule 4 CSR 240-2.065

<sup>4</sup> Order Directing Notice, p. 1.

<sup>5</sup> See Sections 393.140 and 393.150, RSMo 2000."

no communication with the commissioners about this tariff filing or the subject thereof since the hearing that was conducted by the Commission on April 12, 2012. Accordingly, the OPC's concerns should be allayed. Further, because this matter was the subject of a hearing involving MGE, Staff and the OPC only seven months ago, the commissioners were well acquainted with the subject matter. Even if required, a sixty day notice would have served no purpose and added nothing to this situation other than needless delay.

c. MGE Followed Agreed-Upon Procedural Requirements.

In GC-2011-0339, the members of the EEC entered into a Stipulation and Agreement as to how “future issues are to be handled when the EEC is unable to reach consensus.”<sup>6</sup> The Stipulation describes voting and dispute resolution procedures. In the event that a vote is non-unanimous, MGE is required to “bring the matter to the attention of the Commission by filing a tariff (with cover letter noting the lack of EEC consensus)” and that “any party opposing such tariff may file a motion with the Commission to reject or suspend the tariff in accordance with the Commission’s normal procedural rules.”<sup>7</sup> The Stipulation was “the result of extensive negotiation among the Parties...”<sup>8</sup>. MGE followed those agreed-upon rules here. OPC simply has no basis to request that the Commission reject MGE’s proposed tariff on procedural grounds when MGE followed the procedures set forth in a Stipulation that OPC signed. OPC’s procedural objections are meritless and should be rejected.

4. Response to OPC’s Motion.

a. The Slow Pace of Rebuilding has Impacted Program Participation. When it initially opposed the Rebuild Joplin Program in November 2011, OPC objected to it (in part) for what OPC described as the “excessively high \$1,000,000 cap on program expenditures,”<sup>9</sup>

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<sup>6</sup> GC-2011-0339, Stipulation and Agreement, filed on August 5, 2011, approved on August 17, 2011, and made effective on August 27, 2011.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> OPC Motion to Suspend, GT-2012-0170, p. 3, para. 4.

stating that the “\$1,000,000 expenditure cap ... is much higher than necessary.”<sup>10</sup> Now that the program has expended far fewer funds than anticipated given the slow pace of rebuilding in Joplin, OPC reverses course and calls the low level of expenditures from the program “lackluster.”<sup>11</sup> The lower amount of program expenditures should have alleviated OPC’s concern of over-spending. There are numerous reasons for the slow pace of rebuilding in Joplin. OPC’s alleged concerns on program expenditures are meritless and contradictory.

b. Cost Effectiveness Cannot Be Evaluated Until the Program is Complete.

OPC spends much of its Motion to Suspend arguing about the cost-effectiveness of a program that is not yet complete, including current program expenditures. Without addressing the merits of each of OPC’s assertions, MGE notes that the cost-effectiveness of any program cannot be determined until all program costs are calculated. Under the terms of the tariff, a detailed post-implementation evaluation is required six months after the program’s termination date, not now. OPC’s assertions to the contrary are inaccurate.

MGE has not relied upon, as characterized by OPC “outdated cost benefit information”<sup>12</sup> because the cost benefit analysis relied upon at the start of the Rebuild Joplin Program (by MGE, MDNR, and Staff when they voted for the program) was only an estimate. This estimate was that the program would be cost-effective under the Utility Cost Test.<sup>13</sup> This estimated cost effectiveness analysis was based on anticipated costs, anticipated program expenditures, and anticipated numbers of incentives. OPC’s request to conduct an evaluation of “what went wrong”<sup>14</sup> between the estimated number of rebates and the actual number of rebates is

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<sup>10</sup> *Id.* at p. 10.

<sup>11</sup> OPC Motion to Suspend, GT-2013-0330, p. 3, para. 5.

<sup>12</sup> *Id.*, at para. 6.

<sup>13</sup> OPC characterizes this as “MGE’s preferred test” in paragraph 6 of its Motion to Suspend. As MGE noted in GT 2012-0170, seems the most consistent with the definition of ‘cost effective’ found in regulations, but it is one of many tests for cost effectiveness. As an experimental program, the Rebuild Joplin Program offers more opportunity to evaluate these tests.

<sup>14</sup> OPC Motion to Suspend, para. 9.

explained in MGE's Tariff Filing Letter - rebuilding in Joplin is slower than what was anticipated. No further explanation is necessary.

OPC's argues that Ameren Missouri recently cancelled its water heater program, so MGE should cancel its program. OPC provides no context or data as to why Ameren, a dual energy utility, chose to eliminate natural gas water heaters from its energy efficiency programs. OPC fails to mention that Laclede Gas and The Empire District Electric Company still have water heater programs. OPC's point that Ameren cancelled their program, while of some interest, is not compelling.

Finally, OPC's argument that MGE has a "detailed evaluation completed just months ago that provides better and more current information on the cost effectiveness of MGE's water heating and space heating"<sup>15</sup> needs further explanation than what OPC provides. While it is true that Nexant, Inc. completed a cost effectiveness evaluation dated August 10, 2012, OPC fails to mention that the period covered in the report is from 2009 through March 2011. Although the report was completed "just months ago",<sup>16</sup> the report does not contain "current information,"<sup>17</sup> as OPC asserts. The report actually addresses program information that is up to three years old. The evaluation reviewed all of MGE's programs that existed during that period. Notably absent from that review was the Rebuild Joplin Program, which did not exist during the period of the evaluation. If OPC seeks "current information," it should look to an evaluation of the program it has issue with – which will be provided six months after program completion.

c. Advertising Expenditures Should Be Evaluated Upon Program Completion.

MGE sent out a request for proposal to advertising agencies in January 2012 in an effort to engage a new firm to 1) improve the quality of its energy efficiency advertising, 2) increase public awareness of its energy efficiency programs, and 3) better connect consumers to MGE's

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<sup>15</sup> Id. at para. 6.

<sup>16</sup> Id.

<sup>17</sup> Id.

energy efficiency programs. The impression of MGE management was that the public had limited awareness of MGE's energy efficiency programs and that the only way to grow the program was through targeted and expanded advertising. That impression was confirmed during the RFP process when advertising company surveys showed insufficient awareness of MGE's programs.

In implementing its energy efficiency programs, MGE strives to follow the Commission's direction that MGE have robust and cost-effective energy efficiency programs which provide real cost and energy savings to consumers.

In the past, MGE's efforts to increase energy efficiency incentive levels – to make them more attractive to consumers, increase program participation, and provide cost real savings to participants – have been thwarted by the state's consumer advocate, OPC. Faced with evidence that there is insufficient awareness of its energy efficient programs – instead of doing nothing, as OPC would seem to advocate, MGE has implemented advertising campaigns that are focused on advocating energy efficiency. Simply put, if MGE wants to attract customers to energy efficiency programs, customers have to be aware of them.

Accordingly, MGE notified the EEC on October 5, 2012 that it had engaged an advertising agency. At that time, MGE sent the EEC examples of its advertising campaign. These efforts are designed to increase awareness and have more customers take advantage of the programs that the Commission has ordered.

As with any advertising program, development costs are higher in the beginning, when costs are incurred associated with determining the target audience, the method of communication, and developing creative approaches. Accordingly, the overall impact of an advertising campaign can only be measured after the program has been put in place - by measuring public awareness before and after the campaign. MGE plans to continue monitoring



its expenditures, the impact on customer awareness, and on the number of rebates it provides. Ultimately, MGE's intent is to make these energy efficiency programs successful. It would be "mismanagement" for MGE to not act to ensure consumers know about its programs. It is not appropriate to analyze expenditures now, when the impact of MGE's efforts to increase awareness of its programs is unknown.

**5. 2013 Energy Efficiency Budget.**

OPC complains that MGE has not provided it with its 2013 Energy Efficiency budget "on or around November 1." MGE provided its proposed 2013 budget to the EEC on December 14, 2012. There are a number of variables related to energy efficiency in 2013 – impact of the economy, projected impact of MGE's energy efficiency advertising campaign, impact of new energy efficiency rules, etc. MGE took additional time to come up with projected estimates for its 2013 budget, but that budget is now in the hands of the EEC.

**6. Joplin Home Builder's Association Award.**

MGE is appreciative of the Commission's support of its Rebuild Joplin Program, including the assistance of other EEC members in developing the program. The impact of this program – and other MGE efforts in Joplin – are evidenced by MGE's recent award by the Joplin Home Builder's Association ("Joplin HBA"). MGE was given the Associate of the Year Award by the Joplin HBA. In the award speech, the HBA remarked that "MGE has kept a constant hand on the costs and supply of natural gas to Joplin residents" and that after the tornado, "MGE has stepped up to the plate to assist...". MGE hosted a breakfast for builders, provided information on its energy efficiency programs, initiated the Rebuild Joplin Program, and "worked on public/private projects that are intended to educate the public on Green Building and the advantages that can be found in that initiative." Although MGE is the recipient of the

reward, it is shared equally by the Commission and other members of the EEC who made programs like this one possible.

## 7. **CONCLUSION.**

MGE asks for a four month extension to its Rebuild Joplin Program. MGE understands its obligation to have cost-effective programs and understands its obligation to be good stewards of its resources. These efforts – and the program's cost effectiveness - can only be measured once the program is complete.

Ultimately, MGE would much rather be in the position of taking the initiative – to offer a program to assist energy efficient rebuilding efforts – as opposed to have done nothing. If the program helps 10 customers or 10,000 customers, as long as those customers make energy efficient choices, there has been incremental success. An effort has been made that was – and is- intended to have long-term impact in a devastated area. These experimental tariffs should remain in effect and should be extended through May 1, 2013..

**WHEREFORE**, MGE respectfully requests that the Commission permit these tariffs go into effect by operation of law.

Respectfully submitted,

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Todd J. Jacobs MGE #52366  
Senior Director- Legal  
Southern Union Company, d/b/a Missouri Gas Energy  
3420 Broadway  
Kansas City, MO 64111  
(816) 360-5976 (direct)  
(816) 360-5903 (fax)  
[todd.jacobs@sug.com](mailto:todd.jacobs@sug.com)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed to all counsel of record this 17<sup>th</sup> day of December 2012.

/s/

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Todd J. Jacobs