BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of proposed emergency amendment to Commission rule 4 CSR 240-13.055.	)))	Case No. GX-2006-0181

VERIFIED RESPONSE TO STAFF'S COMMENTS

COME NOW Missouri Gas Energy ("MGE"), a division of Southern Union Company, Laclede Gas Company, Aquila and Atmos Energy Corporation (collectively Missouri Gas Utilities), by and through counsel, and in response to Staff's Comments on the LDC's December 5, 2005 Proposal, and on Revenue Neutrality, state as follows:

1. On December 7, 2005, the Staff filed its Comments in the above-captioned case in which it criticized the proposal that had been submitted by the Missouri Gas Utilities during the hearing on December 6, 2005 to address the financial impacts of the emergency changes to the Cold Weather Rule that have been proposed in this proceeding. Among other things, the Staff suggests that the Utilities' proposal overstates the financial impact of the rule changes, and questions whether anything other than an Accounting Authority Order is necessary to address those impacts.

2. Staff Counsel nevertheless candidly acknowledged at the December 6, 2005 hearing in this case that the very same increases in the wholesale price of natural gas that have prompted concerns over the ability of some customers to pay their bills this winter also pose a significant financial threat to the local distribution companies that serve them. Specifically, they have the potential to drive-up the companies' actual bad debt amounts to levels that are dramatically higher than the bad debt allowances

included in their rates.[1] It is important to bear in mind that even before the most recent changes to the Cold Weather Rule were proposed, Missouri utilities had already spent hundreds of millions of dollars more to procure the gas supplies needed to serve their customers – much of it months in advance of when they would even begin to start collecting the associated costs from their customers. In addition, they had already incurred millions of dollars more in bad debts than the amounts they were recovering in rates for service. And they were spending, or had committed to spend, millions of dollars more to assist their most vulnerable customers in maintaining or regaining access to utility service.

3. It is in this context that emergency changes to the Cold Weather Rule have been proposed. And it is clear that such changes will only exacerbate the utilities' already significant exposure to bad debts. How do we know that? Well to begin with, the last time emergency changes were made to the Cold Weather Rule in 2001, the state's largest gas utility, Laclede Gas Company, experienced an increase in its bad debts of approximately $2.7 million, as verified by the Commission's own Staff in Laclede's last general rate case proceeding. Notably, that increase occurred under circumstances where the major factor giving rise to those bad debts – i.e. the cost of gas – is some forty percent higher today than it was then. Given that consideration, it can be expected that the increase in bad debts would be substantially greater in an environment, like the one that prevails today, where such underlying costs are substantially higher.

[1]MGE's bad debt experience in 2001 provides a telling example of how great that disparity can become. Specifically, MGE's write-offs for calendar year 2001 (which followed the last extremely high gas price
Footnote continued on the next page.

4. We also know that some 24,000 Laclede customers took advantage of the emergency provisions promulgated in 2001. If history repeats itself then an additional 24,000 customers would retain or regain service under the more lenient provisions of the proposed emergency rule provisions in this case. How would that affect Laclede's bad debt exposure? As the information presented in response to questions from Commissioner Gaw indicates, customers who are currently disconnected (and therefore more likely to leave the Company with a bad debt) already have an average arrearage balance of $858. If the arrearage balance for similarly disconnected customers in the next year was to increase by the same 40% to 45% that Staff has projected for winter bills overall, the average arrearage balance for disconnected customers could easily grow by $343 ($858 x .40). This, in turn, would translate into an incremental increase in bad debt exposure for Laclede alone of about $4.1 million if *half* of the customers affected by the emergency provisions of rule were to leave Laclede with a bad debt (12,000 x $343) and $6.2 million if three quarters of them did (18,000 x $343).[2] While $4 million to $6 million equates to an increase of only about one half of one percent in the overall cost of service (including gas costs) that Laclede must recover from its customers, it can represent anywhere from fourteen to twenty-one percent of the entire net income that Laclede earns from its regulated services. And even these effects, as significant as they are, do not take into account the additional bad debt exposure – and

---

winter of 2000-2001) exceeded $14.6 million, while the bad debt allowance currently included in MGE's rates is only $7.042 million.

[2]Similar analysis for MGE produces an estimated increase in bad debt exposure resulting from the emergency amendments to the Cold Weather Rule of approximately $2.25 Million to $3.375 Million (assuming 15,000 customers take advantage of the rule and either 50% or 75% of those customers leave a bad debt write-off 40% higher than the current $750 average arrearage of a disconnected customer).

associated earnings shortfalls – arising from factors other than the effects of the emergency rule provisions.

5. That is precisely why Laclede and other gas utilities that would be similarly affected by the emergency provisions of the rule have stressed the importance of implementing an appropriate funding mechanism to cover the cost of complying with those provisions. And there is no sound reason, as a matter of law, equity or public policy, why such a mechanism should not be approved by the Commission, as they have been by an increasing number of regulatory commissions in other jurisdictions.

6. To the contrary, consider what has happened in the four years since the issue of funding the costs of complying with an emergency change to the Cold Weather Rule last came before the Commission. First, the only court to evaluate this specific issue determined that the Commission not only has the power, but the affirmative legal obligation, to provide a compensatory funding mechanism when it changes rules between rate cases in a way that decreases the revenues to which a utility is lawfully entitled.[3] The argument that an AAO alone serves to adequately compensate the utilities for the lost revenues, income and earnings that will result from the contemplated emergency amendments to the Cold Weather Rule simply ignores the clear precedent of *State ex rel. Alma Telephone Company, et al. v. Public Service Commission*, 40 S.W.3d 381 (Mo.App. 2001) ("*Alma")*. *Alma* recognized that the utilities' present rates and revenues are based, in part, upon the collection policies currently found within the

[3]Such a notion should not sound foreign to anyone versed in Missouri utility law since it is nothing more than the flip side of the single issue ratemaking theory which holds that the Commission should not generally increase the revenues that a utility is authorized to receive between rate cases without a consideration of all relevant factors. (See Attachment 1 to the Missouri Gas Utility's Initial Response in this case which contains a copy of the *Alma* decision by the Cole County Circuit Court in which an

Footnote continued on the next page.

existing Commission rules and the companies' approved tariffs. The emergency amendments would serve to reduce those revenues, however, by allowing certain customers to make lower initial payments of past due amounts in order to reconnect or maintain utility service and by requiring the reconnection of customers who would not otherwise be on the system and who are more likely to leave the Company with a bad debt. The amendments, therefore, would create an "unconstitutional taking of revenues without due process and is a revenue reduction imposed by the Commission without considering all relevant factors," as the Commission has not found, nor does it have any basis to find, that the utilities' current rates and revenues are unreasonable or unjust.[4]

7. Second, in the years subsequent to 2001, the Commission created a Long-Term Affordability Task Force as part of its last revisions to the Cold Weather Rule in 2004. After meeting on numerous occasions, the Task Force developed and presented to the Commission a variety of potential funding mechanisms that could be employed by the Commission to assist low-income customers in paying their utility bills. Notably, these are the very same customers who are the intended beneficiaries of the emergency CWR provisions at issue in this case and who create the greatest potential for increases in bad debts as a result of implementing such provisions. Finally, as

---

accounting authority order was deemed insufficient to compensate the utilities for the reductions in revenue, income and achieved returns resulting from that emergency amendment).

[4] *Alma* also recognized that the AAO approach unlawfully shifts the burden of proof by providing that utilities may only book the deferred expenses "for possible recovery in" a subsequent rate case. This diminishment of the utilities' expectation of rate recovery (*See State ex rel. Missouri Gas Energy v. Public Service Commission*, 978 S.W.2d 434, 438 (Mo.App. 1998), citing *State ex rel. Office of the Public Counsel v. Public Service Commission*, 858 S.W.2d at 813) is particularly objectionable given the fact that the utility was already entitled to recover the deferred amounts under its lawful tariffs. The fact that MGE and other utilities have also had to write-off or forego recovery of million of dollars deferred under previous AAOs, also makes them reluctant to subject themselves once again to cost recovery shortfalls through the AAO process.

demonstrated by the various orders presented on December 6, 2005, a number of jurisdictions have determined that one common sense solution to the increased bad debt exposure faced by utilities in today's environment is to permit them to recover the gas cost portion of their bad debts through the Purchased Gas Adjustment Mechanism. Since that mechanism is specifically designed to recover gas costs and has been found lawful by Missouri courts, it provides a promising and entirely appropriate way of dealing with the financial impacts arising from implementation of the proposed emergency amendments to the Cold Weather Rule.

8. Given this backdrop, there is no good reason why the same funding impasse that existed four years ago when the last emergency revisions to the Cold Weather Rule were made should reappear today. The regulated utility providers, the customers who depend on them, and the scores of people from various governmental agencies and community service organizations who took the Commission's admonition to address affordability issues seriously, deserve something better than yet another regulatory and legal train wreck now that those issues are once again at the forefront. In short, they deserve a good faith effort to leave the same old tired arguments behind – arguments that are not nearly as conclusive as their proponents would suggest – and arrive at a solution that actually accomplishes something both now and in the future.

9. To that end, the Missouri Gas Utilities wish to advise the Commission that despite their continuing reservations regarding the adequacy of the proposed emergency rule amendment filed by the Office of the Public Counsel on December 2, 2005, they are nevertheless willing to forego any legal challenge should the Commission approve the rule language proposed by Public Counsel, with only two

changes. First, to bring consistency in how compliance costs are measured from one utility to the next, the Missouri Gas utilities recommend that a new subsection d. (viii) be added to the rule specifying that: "For purposes of calculating the costs of complying with the rule, any amount owed by a customer for regulated service shall be deemed to be a bad debt that has been written off if, as of September 30, 2007, the customer has failed to pay a final bill by its delinquent date, or the customer is in threat of discontinuance and the Company has been unable to gain access required to discontinue service to that customer." Second, to ensure any costs not covered by one of the recovery mechanisms recommended by Public Counsel can be tracked for recovery consideration under the other, the Missouri Gas Utilities recommend that subsection (F) be revised to eliminate the word "either" and substitute the words "and/or" for the word "or" in the same line. With these two changes, the Missouri Gas Utilities are prepared to accept Public Counsel's proposed rule amendment in its entirety and file conforming tariffs incorporating Public Counsel's proposed language upon approval by the Commission.

10. At the same time, the Missouri Gas Utilities also believe that the fundamental issues raised in 2001 and again in this proceeding, including whether inclusion of the gas cost portion of bad debts in the PGA is lawful and appropriate, what kind of funding mechanism can and should be adopted by the Commission to cover the cost of complying with rule changes and programs designed to help more vulnerable customers maintain utility service during the winter, and what role the Commission and the legislature can and should play in providing such funding, need to be addressed once and for all. The Missouri Gas Utilities therefore request that upon conclusion of

this proceeding the Commission open a docket where these issues can be thoughtfully and fully considered, together with all of the work that has previously been done to address them, with the ultimate objective of resolving such issues in advance of the next winter heating season.

WHEREFORE, the Missouri Gas Utilities respectfully request that the Commission resolve this proceeding consistent with the recommendations set forth herein.

Respectfully submitted,

/s/ Michael C. Pendergast
Michael C. Pendergast MBE #31763
720 Olive Street, Room 1524
St. Louis, MO 63101
(314)342-0532 Phone
(314)421-1979 Fax
mpendergast@lacledegas.com
ATTORNEY FOR LACLEDE GAS COMPANY

/s/ Robert J. Hack
Robert J. Hack MBE #36496
3420 Broadway
Kansas City, MO 64111
(816) 360-5755 Phone
(816) 360-5536 Fax
rhack@mgemail.com
ATTORNEY FOR MISSOURI GAS ENERGY

/s/ **James M. Fischer**
James M. Fischer MBE #27543
Fischer & Dority
101 Madison St., Ste. 400
(573) 636-6758 Phone
(573) 636-0383 Fax
jfischerpc@aol.com
ATTORNEY FOR ATMOS ENERGY AND SOUTHERN MISSOURI GAS COMPANY, LP

/s/ **Dean L. Cooper**
Dean Cooper MBE #36592
Brydon, Swearengen & England, P.C.
312 Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
(573) 635-7166 Phone
(573) 635-0427 Fax
dcooper@brydonlaw.com
ATTORNEY FOR AQUILA

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by e-mail, first class mail or by hand delivery, on this 12th day of December, 2005 to the following:

General Counsel's Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Mr. Lewis R. Mills
Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230

/s/ Gerry Lynch

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Proposed Emergency Amendment to Commission Rule 4CSR 240-13.055	)))	Case No. GX-2006-0181

VERIFICATION

State of Missouri)
) SS.
City of St. Louis)

I, James A. Fallert, Controller of Laclede Gas Company, being first duly sworn, verify that I am familiar with the foregoing Verified Response to Staff's Comments in the above referenced case as it pertains to Laclede Gas Company; and that the matters set forth therein are true and correct to the best of my knowledge, information and belief.

James A. Fallert

Subscribed and sworn to before me this 12th day of December, 2005.

Notary Public

My Commission expires: December 18, 2008

KAREN A. ZURLIENE
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI, CITY OF ST. LOUIS
MY COMMISSION EXPIRES FEBRUARY 1[illegible]

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of proposed emergency amendment to Commission rule 4 CSR 240-13.055.	)))	Case No. GX-2006-0181

AFFIDAVIT

STATE OF MISSOURI	)	
	)	ss.
COUNTY OF JACKSON	)	

I, Michael R. Noack, having been duly sworn upon my oath, state that I am the Director, Pricing for Missouri Gas Energy, a division of Southern Union Company, that I am duly authorized to make this affidavit on behalf of Missouri Gas Energy, a division of Southern Union Company, and that the matters and things stated regarding MGE in footnote 1 and footnote 2 of the foregoing Verified Response To Staff's Comments are true and correct to the best of my information, knowledge and belief.

MICHAEL R. NOACK

Subscribed and sworn to before me this 12th day of December, 2005.

Notary Public

My Commission Expires: Feb. 3, 2007

Kim W. Henzi
Notary Public - Notary Seal
State of Missouri
Jackson County
My Commission Expires Feb. 3, 2007