

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

In the Matter of Missouri Gas Energy's	)	
Tariff Sheets Designed to Increase	)	Case No. GR-2004-0209
Rates for Gas Service in the Company's	)	
Missouri Service Area	)	

**MISSOURI GAS ENERGY'S MOTION FOR EXPEDITED CONSIDERATION AND  
APPROVAL OF TARIFF SHEETS FILED IN COMPLIANCE  
WITH COMMISSION ORDER ON LESS THAN THIRTY DAYS' NOTICE**

COMES NOW Missouri Gas Energy ("MGE"), a division of Southern Union Company, by and through counsel, and for its Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less than Thirty Days' Notice, respectfully states as follows to the Missouri Public Service Commission (the "Commission"):

1. On September 21, 2004, the Commission issued its *Report and Order* herein, bearing an effective date of October 2, 2004, authorizing MGE to increase its annual revenues by approximately \$22.5 million.

2. Among other things, the *Report and Order* authorizes MGE to file a tariff sufficient to recover revenues as determined by the Commission in the *Report and Order*. (*Report and Order*, Ordered Paragraph 2, p. 92)

3. On this date, MGE has caused to be filed with the Commission revised tariff sheets designed to effectuate the decisions made by the Commission in the *Report and Order*.<sup>1</sup> Those revised tariff sheets bear an issue date of September 24, 2004, and an effective date thirty

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<sup>1</sup> The compliance tariff sheets are designed to produce an increase in annual revenues of \$22,370,000, excluding gross receipts taxes, franchise fees or other similar fees or taxes. In relation to the Request for Clarification filed herein by the Staff on or about September 22, 2004, it should be noted that the rate levels applicable to the Large General Service class and to the Large Volume Service class have been calculated in accordance with the understanding set forth in footnote 19 on page 79 of MGE's initial brief.

days hence in order to comply with 4 CSR 240-3.260.<sup>2</sup> As reflected in the cover letter accompanying the revised tariff sheets, however, and as reiterated more specifically herein, MGE requests that, for good cause, the compliance tariff sheets be made effective for service rendered on and after October 2, 2004.

4. To show good cause for waiver of the “thirty day” rule pursuant to 4 CSR 240-2.015 and approval of the revised tariff sheets to be effective for natural gas service rendered on and after October 2, 2004, MGE states that the tariff sheets have been filed in compliance with the Commission’s *Report and Order* herein. Moreover, MGE has been working with the Commission’s Staff -- as well as other parties to this proceeding -- in developing the revised tariff sheets, and, on information and belief, states that the Staff should be able to file its recommendation to approve the revised tariff sheets no later than noon on September 29, 2004.

5. MGE requests approval of the revised tariff sheets to be effective on October 2, 2004, as this would be consistent with the requirements of the law and long-standing Commission custom, practice and precedent, and not inconsistent with the purpose and intent of 4 CSR 240-3.260.

6. RSMo. Section 393.150.1 authorizes the Commission to suspend the effectiveness of rate schedules for a period of one hundred and twenty days beyond the proposed effective date. In addition, the Commission “. . . may, in its discretion, extend the time of suspension for a further period not exceeding six months.” Section 393.150.2. As a creature of statute, the

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<sup>2</sup> MGE has complied with the Commission rule by filing compliance tariff sheets with a proposed thirty day effective date, despite MGE’s belief that this is inappropriate and unnecessary. The tariff sheets which initiated this proceeding were filed on November 4, 2003, and were designed to become effective thirty days after filing – on December 4, 2003. The compliance tariff sheets filed simultaneously with this Motion are, in MGE’s view, nothing more than substitute tariff sheets which should become effective on the same date as both the operation of law date and the effective date of the *Report and Order*, in this instance October 2, 2004.

Commission has only such powers as are expressly conferred by the statutes and those reasonably incidental thereto. *State ex rel. Kansas City Transit, Inc. v. Public Service Commission*, 406 S.W.2d 5 (1966). The Commission therefore has no authority 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.

7. MGE initiated this rate proceeding on November 4, 2003, by the filing of tariff sheets that bore a proposed effective date of December 4, 2003. The Commission suspended the effectiveness of those tariff sheets until October 2, 2004, the full suspension period permitted under the law. Accordingly, unless the Commission approves the revised tariff sheets filed by MGE to be effective on October 2, 2004, Section 393.150 will be violated.

8. The Commission itself has an extended history of acting in accordance with this interpretation of Section 393.150. *See In re Missouri Gas Energy*, Report and Order, Case No. GR-96-285, p. 81, issued January 22, 1997; *In re St. Louis County Water Company*, 4 MPSC 3d 94, 119 (1995); *In re Capital City Water Company*, 3 MPSC 3d 333, 349 (1995); *In re Missouri Public Service*, 2 MPSC 3d 206, 220 (1993); *In re Kansas Power & Light Company*, 1 MPSC 3d 235, 253 (1992); *In re St. Louis County Water Company*, 29 MPSC (N.S.) 425, 452 (1988). MGE therefore requests nothing more than compliance with the law and past Commission precedent and practice.

9. Should the Commission deny this motion and delay the effectiveness of the revised tariff sheets MGE has filed in compliance with the *Report and Order* beyond October 2, 2004 (the operation of law date pursuant to Section 393.150), MGE will be denied recovery of a certain portion of the rate relief to which the Commission has already found MGE to be entitled.

This would be unlawful, unjust, unreasonable, confiscatory and, in MGE's opinion, a result not intended by the Commission.

WHEREFORE, MGE respectfully requests that the Commission grant this Motion for Expedited Consideration 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 October 2, 2004.

Respectfully submitted,

Robert J. Hack      MBE #36496  
Vice President - Pricing and Regulatory  
Affairs and Assistant Secretary  
Missouri Gas Energy  
3420 Broadway  
Kansas City, Missouri 64111  
Phone: (816) 360-5755  
Fax: (816) 360-5536  
rhack@mgemail.com



James C. Swearengen      MBE #21510  
Diana C. Farr      MBE #50527  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
Phone: (573) 635-7166  
Fax: (573) 634-7431  
Lrackers@brydonlaw.com

ATTORNEYS FOR MISSOURI GAS ENERGY

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, mailed by U.S. mail, or electronically transmitted on this 24th day of September, 2004, to all parties of record.

