

**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

**MISSOURI GAS UTILITIES' COMMENTS IN OPPOSITION TO PUBLIC COUNSEL'S  
MOTION FOR A FINDING OF NECESSITY FOR RULEMAKING**

**COME NOW** Missouri Gas Energy ("MGE"), a division of Southern Union Company, Laclede Gas Company, Aquila, Atmos Energy Corporation ("Atmos"), and Southern Missouri Gas Company, L.P. (collectively, "Missouri Gas Utilities"), by and through counsel, and for their verified comments respectfully states as follows to the Missouri Public Service Commission ("Commission"):

**I.       Procedural Posture**

1.       Public Counsel filed its motion to open a new case and for a finding of necessity for rulemaking on October 21, 2005, seeking to amend, on an emergency basis, certain provisions of the Cold Weather Rule (4 CSR 240-13.055). Public Counsel supplemented this motion with a verification on October 24, 2005, and, following a Commission notice directing interested parties to file - by November 5, 2005 - comments on whether a necessity exists to pursue the amendments sought by Public Counsel, with a motion for expedited treatment on October 25, 2005.

2.       Missouri Gas Utilities submit these comments in accordance with the Commission's notice and in a good faith effort to explain their position on this matter as fully and quickly as possible. Nevertheless, because Missouri Gas Utilities have only had a limited opportunity to review the substance of the amendments proposed by Public Counsel, Missouri Gas Utilities reserve all rights if this matter moves forward.

## **II. Comments in Opposition to Finding of Necessity**

1. Missouri Gas Utilities do not believe a necessity exists to pursue amendments to the Cold Weather Rule on an expedited emergency basis.

2. Ten days prior to the onset of the winter heating season, Public Counsel has requested that the Commission promulgate an emergency rule (addressing payment requirements as a condition for gas utility service re-connection by customers with arrearages in the winter months of November 2005 through March 2006) on an expedited basis.

3. The cause of Public Counsel's so-called emergency – that natural gas prices are at record high levels – has been reported for months now in the mainstream media. Nevertheless, Public Counsel makes no effort whatsoever to explain why it was unable to make its request to the Commission on a more timely basis in light of the widespread reporting of this issue, and the fact that the November 1 onset of winter in this part of the country is also a well-established fact that cannot be characterized as a surprise.

4. Public Counsel also fails to mention the fact that the Cold Weather Rule it seeks to amend on an expedited emergency basis has only recently been subject to comprehensive review and revision by the Commission, with those revisions having become effective little more than twelve months ago, on October 30, 2004. (See Case No. GX-2004-0496) Nor does Public Counsel make any effort to explain why those revisions are inadequate, or why the conditions currently prevailing were not or could not have been contemplated during the rulemaking process that was completed only last year.

5. Public Counsel also fails to mention the fact that the emergency amendment to the Cold Weather Rule promulgated by the Commission in 2001 (See Case No. AX-2002-203) was stayed, as to MGE and Atmos, by order of the Cole County Circuit Court because the funding mechanism – an accounting authority order (“AAO”) – was deemed insufficient by the court to compensate MGE and Atmos for the reductions in revenue, income and achieved returns resulting from that emergency amendment. (See Attachment 1) Although Public Counsel liberally refers to the 2001 emergency cold weather rule initiative as support for its current request, nowhere does Public Counsel make any attempt to explain why or how the funding mechanism it has proposed – an AAO – could be held to provide the companies with a reasonable opportunity for revenue neutrality when the same funding mechanism was deemed inadequate by the court in 2002.<sup>1</sup>

6. Moreover, even setting aside the insufficiency of the funding mechanism proposed by Public Counsel for the sake of argument, Public Counsel makes absolutely no attempt to explain why or how it is reasonably possible for an “emergency” to recur so frequently with respect to the very same Commission rule. Here, Public Counsel

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<sup>1</sup> MGE’s position on this remains the same as it was during the 2001 emergency cold weather rule proceedings: an AAO does not provide sufficient compensation for the reduced revenues, income and achieved returns resulting from the emergency amendments to the Cold Weather Rule. If, despite the absence of any legitimate “emergency” in this situation, the Commission nevertheless decides to move forward with this matter and consider emergency amendments to the Cold Weather Rule, MGE suggests that the funding issue must be addressed in some manner other than an AAO if the Commission hopes to avoid having any emergency amendments reviewed, and stayed, by the courts. The concurrent implementation of a bad debt tracker or PGA revision to include the gas cost portion of bad debts therein, which would allow timely rate adjustments to ensure the companies’ uncollectible revenues do not exceed their

Footnote continued on the next page.

proposes emergency amendments on an expedited basis to the Cold Weather Rule, a rule which was amended on an emergency basis only four years ago (See Case No. AX-2002-203) and which was amended pursuant to the normal rulemaking process only twelve months ago (See Case No. GX-2004-0496). The Cold Weather Rule is either reasonable or it is not; amending it continually – especially through the emergency process – serves no one's interests, raises significant doubt as to the validity of Public Counsel's claims of "emergency" and is, therefore, unlawful.

WHEREFORE, Missouri Gas Utilities respectfully request that the Commission decline to find that a necessity exists to pursue the amendments to the Cold Weather Rule sought by Public Counsel on an emergency and expedited basis.

Respectfully submitted,

**/s/ Robert J. Hack**

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ATTORNEY FOR MISSOURI GAS ENERGY

**/s/ Michael C. Pendergast**

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ATTORNEY FOR LACLEDE GAS COMPANY

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respective rate case allowances for that item, may provide such a solution. Missouri Gas Utilities are exploring this possibility.

/s/ Dean L. Cooper

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ATTORNEY FOR AQUILA

/s/ James M. Fischer

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ATTORNEY FOR ATMOS ENERGY  
CORPORATION AND SOUTHERN MISSOURI  
GAS COMPANY, L.P.

### **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 4<sup>th</sup> day of November, 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/ Robert J. Hack

**IN THE CIRCUIT COURT OF COLE COUNTY  
STATE OF MISSOURI**

STATE OF MISSOURI ex rel.  
MISSOURI GAS ENERGY,  
a division of SOUTHERN UNION  
COMPANY,

Relator,

v.

PUBLIC SERVICE COMMISSION of  
the State of Missouri,

Respondent.

Case No. 01CV325865, lead case

STATE OF MISSOURI ex rel.  
ATMOS ENERGY CORPORATION,  
D/B/A UNITED CITIES GAS  
COMPANY AND GREELEY GAS  
COMPANY,

Relator,

v.

PUBLIC SERVICE COMMISSION of  
the State of Missouri,

Respondent.

Case No. 01CV325866, consolidated

**ORDER GRANTING STAY**

On the 27<sup>th</sup> day of November, 2001, a hearing was held at which evidence was submitted to the Court on the Motions for Stay made by the Relators in the above-entitled causes which have been consolidated. Appearing for Relator Atmos Energy Corporation d/b/a United Cities Gas Company and Greeley Gas Company was Mr. James M. Fischer. Appearing for Relator Missouri Gas Energy, a division of Southern Union Company, were Mr. Dean L. Cooper and Mr. Robert J. Hack. Appearing for Intervenor Office of the Public Counsel was Mr. Douglas Micheel. Appearing for

Respondent Missouri Public Service Commission were Mr. Dana Joyce and Mr. Eric Anderson. The record reflects that Respondent had at least three day's notice of the hearing as required by Section 386.520 RSMo 2000.

The parties jointly offered the transcript and exhibits from the preliminary injunction hearing conducted by the Circuit Court in Case No. 01 CV325788 on November 21, 2001, for the Court's consideration in regard to the motions for stay. The Court admitted the transcript and exhibits into the record. At the proceeding which was the subject of the transcript, the Relators called Mr. Michael Noack, Mr. Jerry Williams and Mr. Charles Steven Green, who were cross-examined by counsel for the Intervenor Office of the Public Counsel and Respondent and also answered questions directed by the Court. These witnesses provided testimony regarding the impact a certain emergency rule of the Respondent will have on the operations of Missouri Gas Energy and Atmos Energy Corporation. The Respondent called Ms. Janet Hoerschgen and Mr. Robert Schallenberg as witnesses, who were cross-examined by counsel for Relators and also answered questions directed by the Court. Intervenor Office of the Public Counsel called Mr. Russ Trippensee as a witness, who was cross-examined by counsel for Relators. Having received evidence offered regarding the Motions for Stay and also having heard the statements of counsel and being fully advised in the premises, the Court finds as follows:

1. That this action is properly before the Court pursuant to Section 386.510 RSMo 2000, pursuant to applications for writs of review properly and timely filed by Relators under §386.510 RSMo 2000, and that Relators are all public utilities subject to the jurisdiction of the Respondent, Missouri Public Service Commission ("Commission" or "Respondent").

2. That pursuant to the provisions of Section 386.520.1 RSMo 2000, this Court in its discretion may "stay or suspend, in whole or in part, the operation of" an order or decision of the Commission upon a finding of great or irreparable damage.

3. That the Relators have moved this Court to issue a stay of the effectiveness of a certain Order of Rulemaking ("the Order") and the resulting emergency administrative rule of Respondent. The Order was issued by Respondent

on November 8, 2001, and filed by Respondent with the Missouri Secretary of State on November 8, 2001. The Order was issued in proceedings before the Commission styled – Case No. AX-2002-203 – "In the Matter of the Proposed Emergency Amendment to Commission Rule 4 CSR 240-13.055." The emergency rule resulting from this Order was to take effect on November 18, 2001, pursuant to law, unless stayed by this Court. See, 4 CSR 240-13.055(13), of which this Court took judicial notice.

4. That the evidence shows that the provisions of the Order and the resulting emergency rule would impose significant new financial and operational requirements upon each of the Relators. Specifically, the emergency rule will require Relators to institute new and relaxed collection procedures for their customers who are: 1) disconnected and in default on a cold weather rule (4 CSR 240-13.055) payment plan; and, 2) threatened with disconnection. These new requirements will limit the payments that Relators may require of such customers prior to disconnecting, connecting or reconnecting natural gas service. In so doing, the emergency rule will lower Relators' existing revenues, income and achieved returns by reducing the amount of cash they are able to collect before: 1) connecting or reconnecting service; or, 2) disconnecting service to a customer threatened with disconnection. In addition, the emergency rule will further lower Relators' existing income and achieved returns by requiring increased expenses for computer programming necessary to comply with the amendment.

5. That the evidence presented by the Relators shows that the emergency rule will significantly lower Relators existing revenue, income and achieved returns - by way of reduced cash collections and increased computer programming expenses. The evidence presented by the Relators also establishes that Respondent has provided no reasonable assurance that such reduced revenues, income and achieved returns will be compensated. As such, the evidence presented by the Relators establishes that the emergency rule will cause them great or irreparable harm.

6. That the evidence presented by the Relators indicates that there is no mechanism in place by which they can unilaterally and timely increase their rates or charges for public utility service to recover the costs of compliance with these new



procedures and, thus, have no adequate remedy at law.

7. That the evidence presented shows that if the effectiveness of the Order and the associated emergency rule is not stayed with regard to the Relators, the Relators will each suffer lower revenue, income and achieved return levels in the magnitude of hundreds of thousands of dollars to comply with the emergency rule while judicial review of the Order is pending.

8. That the pleadings show the Relators have presented several challenges to the lawfulness of the Order and the associated emergency rule. This Court is not ruling on the merits of those challenges in this order.

9. That the Relators wish to maintain the status quo through this Court issuing a stay order to prevent the new requirements going into effect as to them prior to a final resolution of the judicial review of the Commission's decision.

10. This Court finds that each of the Relators will suffer great or irreparable damage unless the Commission's Order of November 8, 2001, and the resulting administrative emergency rule is stayed as requested by Relators. The Commission, unless stayed, will likely seek to require Relators to comply with this emergency rule. If Relators expend the time and funds necessary to comply with this emergency rule, but are successful on appeal: 1) there is at present no assurance that Relators will be able to recoup the expenditures made in compliance with the emergency rule and recoup the lost revenues, income and achieved earning resulting from the emergency rule; 2) such expenditures and losses are great; and, 3) these factors present great or irreparable damage to Relators as contemplated by Section 386.520 RSMo 2000. The Court finds that the Motions for Stay in essence ask the Court to invoke its equity jurisdiction to maintain the status quo pending the final outcome of the judicial review of the lawfulness of the emergency rule and the procedure by which they were promulgated. The Court finds that it can do so by ordering that the effectiveness of the emergency rule, namely: 4 CSR 240-13.055(13), be stayed as to these Relators pending the final outcome of judicial review.

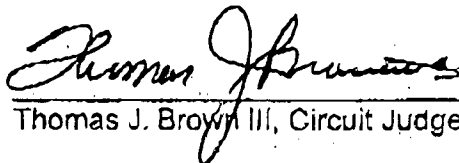
11. That the Relators, in compliance with subsection 3 of section 386.520 RSMo, shall submit a joint suspending bond in the amount of \$1,000.00, payable to the

State of Missouri to secure the prompt payment of all damages caused by the delay in enforcement of the Orders of the Commission. The form of signature bond by an officer of one of the Relators proposed by Relators is hereby approved for such purpose.

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED BY THE COURT THAT:

1. The Motions for Stay of the Relators are hereby granted.
2. The effectiveness of 4 CSR 240-13.055(13) as to each of the Relators in this cause is hereby stayed, and the Commission is also hereby stayed from requiring any Relator herein to comply with any of the provisions of those rules, either directly or indirectly, such stay to remain in full force and effect until further order of this Court.
3. This stay order is issued to preserve the status quo existing prior to the effectiveness of 4 CSR 240-13.055(13), so as to prevent great or irreparable damage to Relators pending a final ruling on the merits of the petitions for writ of review filed by Relators. This stay order is not intended to be a determination of the substantive rights of any party arising from the Orders.
4. That the form of suspending bond presented by Relators in the amount of \$1,000.00 is hereby approved.

SO ORDERED:



Thomas J. Brown III, Circuit Judge, Division I

Dated: November 21, 2001

## BOND

STATE OF MISSOURI     )  
                                  )SS.  
COUNTY OF COLE     )

KNOW ALL MEN BY THESE PRESENTS: that Missouri Gas Energy, a division of Southern Union Company, a Delaware Corporation, is held and firmly bound unto the State of Missouri to pay \$1,000.00 as damages due to any harm that may be caused to Respondent by the delay in implementation of its Order of November 8, 2001, in Case No. AX-2002-203.

Dated this 27<sup>th</sup> day of November, 2001.

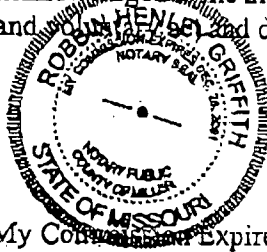
Missouri Gas Energy

By: Robert J. Hack

Robert J. Hack

VP, Pricing and Regulatory Affairs

Before me, the undersigned, a notary public in the State of Missouri, County of Cole, on the 27<sup>th</sup> day of November, 2001, the identical person who subscribed that name of the maker thereof to the foregoing Bond as the VP, Pricing and Regulatory Affairs of Missouri Gas Energy, and acknowledged to me that he executed the same as his free and voluntary act and deed and as the free and lawful act and deed of such corporation for the uses and purposes therein set forth.



Robin Henry Griffith  
Notary Public

My Commission Expires:

12-28-01

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI  
19TH JUDICIAL CIRCUIT  
DIVISION NO. I

STATE EX REL. MISSOURI GAS  
ENERGY, A DIVISION OF Southern  
vs. Union Company

No. 01CV325865

Public Service Commission

Date of Proceeding: 27 NOV 2001

Nature of Proceeding: Stay Hearing

APPEARANCES:

ERIC ANDERSON - ~~MISSOURI~~

DANA K. JOYCE - ~~MISSOURI~~

Douglas E. Michael

Robert J. Hark & Dean Cooper

ATTORNEY FOR:

MISSOURI PUBLIC SERVICE COMM

MISSOURI PUBLIC SERVICE COMM

Office of the Public Counsel

Missouri Gas Energy

☒ DOCKET SHEET ENTRY ☒ ORDER ☐ JUDGMENT ☐ STIPULATION ☐ OTHER

☒ AS FOLLOWS ☐ ATTACHED HERETO

☐ AGREED TO BY:

- ① Office of the Public Counsel is granted leave to intervene;
- ② Parties appear, evidence taken, argument made concerning motion for stay;
- ③ Stay granted, Relator to prepare order;
- ④ Briefing schedule on merits set as follows:  
Dec. 5, 2001 - Initial  
Dec. 12, 2001 - Response  
Dec. 19, 2001 - Reply
- ⑤ Oral argument on merits to be heard December 20, 2001, at 1:00 P.M.
- ⑥ Case consolidated with Case No. 01CV32586 for briefing and argument. 01CV32586 to be the lead case.

☐ SUBMITTED BY:

Eric Anderson  
Robert J. Hark & Dean Cooper  
James M. Ketchum

ATTORNEY FOR:

MO PSC

OPC

Missouri Gas Energy

Atmos Energy Corporation

SO ORDERED this 27 day of Nov, 2001

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IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI  
19TH JUDICIAL CIRCUIT  
DIVISION NO. I

State ex rel. Atmos

vs.

No. 01CV325866

Public Service Commission

Date of Proceeding: 27 November 2001

Nature of Proceeding: Stay Hearing

APPEARANCES:

Dale E. Michael  
ERIC ANDERSON & DANA K. JOYCE,  
ROD HARK / DEAN COOPER

ATTORNEY FOR:

OPC  
MO PSC  
MBK

☒ DOCKET SHEET ENTRY ☒ ORDER ☐ JUDGMENT ☐ STIPULATION ☐ OTHER

☒ AS FOLLOWS ☐ ATTACHED HERETO

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01CV325865 to be the lead case.

☐ SUBMITTED BY:

Dale E. Michael  
Eric Anderson  
Dean Cooper  
Jane M. Feacher

ATTORNEY FOR:

OPC  
MO PSC  
MBK

Atmos Energy Corporation  
SO ORDERED this 27 day of Nov, 2001