

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

Office of the Public Counsel,)	
)	
Complainant,)	
)	
v.)	
)	Case No. GC-2011-_____
Southern Union Company d/b/a Missouri)	
Gas Energy,)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Complaint against Southern Union Company d/b/a Missouri Gas Energy (MGE) states:

1. OPC files this Complaint to address: 1) MGE's violation of a Commission order which occurred when MGE made a unilateral decision regarding MGE's energy efficiency programs, which the Commission specifically determined would operate according to consensus decision making between MGE, OPC, the Commission's Staff (Staff) and the Missouri Department of Natural Resources (DNR); 2) MGE's violation of a Commission order which occurred when MGE took actions to implement a non-consensus decision without first bringing the issue to the Commission for resolution; and 3) MGE's attempt to include a full fuel cycle analysis into a program evaluation intended to determine the effectiveness of MGE's existing natural gas energy efficiency programs, not to promote MGE's load building efforts.

2. MGE is a gas corporation subject to regulation by the Commission under § 386.020(18) RSMo 2010 Cum. Supp., § 386.250(1), and § 393.140.¹ MGE's business address is 3420 Broadway, Kansas City, Missouri 64111.

3. OPC is authorized to file complaints against public utility corporations under § 386.390 and 4 CSR 240-2.070. OPC's address is 200 Madison Street, Jefferson City, Missouri 65102.

4. Prior to this filing, representatives from OPC directly contacted representatives of MGE and discussed the issues addressed herein. OPC also provided MGE with a draft copy of this Complaint on April 7, 2011.

COUNT 1

5. In 2007, in Commission Case Number GT-2008-0005, *In the Matter of Missouri Gas Energy's Proposed Tariff Sheets to Administer Natural Gas Conservation Program*, the Commission approved a Unanimous Stipulation and Agreement between MGE, Staff and OPC regarding the administration of MGE's natural gas energy efficiency programs. The approved agreement provided in part:

An MGE Energy Efficiency Collaborative (EEC) will be formed to oversee the design and implementation of MGE's energy efficiency programs. The charter members of the MGE EEC will include MGE, Commission Staff, Public Counsel and Department of Natural Resources. The EEC will seek to make decisions by consensus but where consensus cannot be reached, any of the charter members may petition the Commission to resolve, in accordance with its normal procedural rules, any differences over the selection of specific future programs for implementation or other aspects of the energy efficiency program development and **evaluation process**. [emphasis added].

6. In 2010, in Commission Case Number GR-2009-0355, *In the Matter of Missouri Gas Energy and its Tariff Filing to Implement a General Rate Increase for*

¹ All statutory references are to Missouri Revised Statutes 2000 unless otherwise noted.

Natural Gas Service, the Commission resolved an issue over whether MGE's energy efficiency program decisions should continue to require a consensus between MGE, Staff, OPC and DNR, or whether the EEC should be changed to be advisory only, allowing MGE to make decisions without consensus. The parties presented the issue to the Commission as follows:

Should the energy efficiency collaborative formed after MGE's most recently concluded rate case as a result of the Commission's approval of the Unanimous Stipulation and Agreement in Case No. GT-2008-0005 be modified to an advisory group rather than a consensus decision making collaborative?

7. MGE, Staff, and DNR argued that MGE's EEC should be changed from a consensus collaborative to an advisory collaborative. MGE's energy efficiency witness, Mr. David Hendershot, was critical of a consensus collaborative when he testified that the existing consensus collaborative requires unanimity among the parties to act.² OPC was the only party that supported continuing the collaborative in its consensus capacity.

8. In the Commission's February 10, 2010 Report and Order in Case Number GR-2009-0355, the Commission agreed with OPC and concluded that MGE's EEC "should remain a consensus group, and should not be modified to an advisory group."

9. The reasons for maintaining the EEC as a consensus group rather than an advisory group, according to the Commission's Report and Order, are:

- MGE has "the least amount of experience in energy efficiency programs of any of the collaborative members";
- "MGE benefited greatly from the experience of Staff, DNR, and OPC during the collaborative process"; and

² Case Number GR-2009-0355, Testimony of MGE witness Mr. David Hendershot, Evidentiary Hearing Volume 12, October 30, 2009, pp. 710-712.

- The “support and guidance” that MGE “received from the other experienced collaborative members” increased the offerings of residential energy efficiency programs.

10. Beginning in 2010, the EEC began collaborating to develop a request for proposal (RFP) to hire a consultant to perform an evaluation of the effectiveness of MGE’s energy efficiency programs.

11. One item of disagreement among the parties in developing the RFP is MGE’s proposal to include a request that the consultant perform a “full fuel cycle” analysis in addition to using the standard cost benefit measurements such as the total resource cost (TRC) analysis to evaluate MGE’s energy efficiency programs.

12. A full fuel cycle (FFC) analysis would compare the use of natural gas to the use of electricity for the purpose of evaluating the benefits of encouraging ratepayers to switch from electric energy to natural gas energy for water and space heating end uses.

13. Throughout the EEC meetings regarding the evaluation RFP, and in subsequent correspondence between OPC and the EEC, OPC repeatedly expressed OPC’s opposition to including an FFC analysis in the energy efficiency program evaluation.³

14. In MGE’s Response to the Commission’s Order Directing Filing of Status Report, filed in Case No. GT-2011-0049, *In the Matter of Missouri Gas Energy’s Tariff Sheets Designed to Increase the Rebate Level for Tank Water Heaters*, MGE first brought the disagreement over the FFC analysis to the Commission’s attention when MGE recognized the lack of consensus and stated:

³ The reasons for OPC’s opposition to soliciting an FFC analysis through the energy efficiency evaluation RFP are explained in Count II of this Complaint.

In the September 1, 2010 EEC meeting, MGE also submitted for review a proposed RFP for the evaluation of MGE's residential space heat program as well as MGE's Home Performance with Energy Star Program. MGE sought to include several evaluation measures in its evaluation proposal, including the Total Resource Cost Test ("TRC"), Societal Test, Utility Cost Test, Ratepayer Impact Test, Participant Test, as well as an analysis and consideration of the full fuel cycle. The EEC has not reached consensus on its Program Evaluation RFP, primarily due to MGE's request to include the full fuel cycle analysis as part of the RFP. MGE may need to seek Commission review to resolve the EEC's stalemate on this RFP, but additional efforts are being made to reach consensus on this matter.⁴ [emphasis added].

MGE clearly recognized that no consensus was reached, as required by the ordered terms of the EEC decision making process, and that it may need to bring this matter to the Commission for resolution if consensus could not be reached.

15. In response to MGE's pleading indicating its desire to include an FFC analysis in the energy efficiency evaluation RFP, OPC explained to the Commission:

OPC agrees with MGE's statement that the reason the EEC has not agreed on the RFP is due to MGE's efforts to include a "full fuel cycle analysis" as part of the RFP. OPC opposes MGE's attempts to include a full fuel cycle analysis as part of the required evaluation of its space heating of HPw/ES [Home Performance with Energy Star Program] programs because such an analysis is way beyond the scope of issues that should be addressed by the EEC. Furthermore, such an analysis is not relevant to performing a process evaluation or an impact evaluation that assesses the load reduction that can be attributed to MGE's space heating and HPw/ES programs. Finally, the scope of work in the RFPs should be limited to the analysis relevant to evaluations that are required for these programs so that the evaluator is focused on providing a credible and reliable evaluation of information needed to help guide future program design and funding.⁵

OPC further stated in its pleading:

OPC would be pleased to see further consideration of full-fuel-cycle and fuel switching issues in Missouri. We do not, however, believe that the MGE EEC is the proper place to have further consideration of these issues. These

⁴ MGE's Response to the Commission's Order Directing Filing of Status Report, Case No. GT-2011-0049, p. 4, January 7, 2011.

⁵ Public Counsels' Reply to MGE's Response to the Commission's Order Directing Filing of Status Report, Case No. GT-2011-0049, p. 5, January 18, 2011.

issues could be addressed by the Commission opening a workshop docket where all of the regulated gas and electric utilities, along with other stakeholders, could begin a dialogue about whether and how Missouri's regulated energy utilities should develop programs to address fuel switching issues.⁶

16. Despite OPC's repeated opposition to including the FFC analysis in the RFP, MGE ignored OPC's position and the fact that consensus has not been reached by the EEC. Despite the clear lack of consensus, MGE issued an RFP that included a request for the consultant to perform an FFC analysis. See Attachment A, p. 2.

17. MGE's actions are a violation of the Commission's Report and Order issued in GR-2009-0355 in that MGE did not follow the mandate that EEC decisions must be made by consensus, or brought to the Commission for resolution. Rather than bring this matter to the Commission as required if MGE wished to pursue the FFC analysis, MGE chose to treat OPC's position as advisory in nature, and to treat the collaborative as an advisory collaborative, and acted on its own without consensus from the EEC.

18. As a result of MGE's actions that violate the Commission's February 10, 2010 Report and Order, MGE's actions are unlawful pursuant to §§ 386.270, 386.490, 386.550, 386.570, and 386.580 RSMo.

19. MGE's actions are also a violation of MGE's tariff, which mirrors the requirements of the Commission's Report and Order, and which require that "[t]he EEC will seek to make decisions by consensus, but where consensus cannot be reached, any of the charter members may petition the Commission to resolve, in accordance with its normal procedural rules, any differences over the selection of specific future programs for implementation, funding, or any other aspects of the energy efficiency program

⁶ *Id.* pp. 5-6.

development and evaluation process.” MGE Tariff, P.S.C No. 1, Eighth Revised, Sheet No. 99, and P.S.C No. 1, Second Revised, Sheet No. 103.1. By acting without consensus, and by not first seeking Commission resolution before acting, MGE has violated its tariff.

20. Each day that MGE continues to offer the RFP to potential bidders without first obtaining consensus of the EEC for the terms of the RFP is a separate and distinct violation of the Report and Order and a separate and distinct violation of MGE’s Tariff. § 386.570 RSMo.

21. MGE advised the EEC that it issued the RFP on March 21, 2011. As of the date of this pleading, April 12, 2011, MGE has committed twenty-three (23) separate and distinct violations of the Commission’s Report and Order, one violation for each day MGE has offered the RFP without consensus of the EEC. MGE has also committed an additional twenty-three (23) separate and distinct violations of MGE Tariff, P.S.C No. 1, Eighth Revised, Sheet No. 99 and P.S.C No. 1, Second Revised, Sheet No. 103.1.

22. OPC urges the Commission to find MGE in violation of the Commission’s February 10, 2010 Report and Order issued in Case Number GR-2009-0355, and MGE’s Tariff, and to pursue penalties in circuit court of two-thousand dollars (\$2,000) for each offense. § 386.570 RSMo.

Count II

23. MGE’s unilateral decision to include a request for an FFC analysis in the energy efficiency program evaluation RFP is inconsistent with the purpose of evaluating MGE’s energy efficiency programs. Accordingly, OPC urges the Commission to order MGE to withdraw the RFP and remove the request for bidders to bid on conducting an FFC analysis.

24. OPC supports an evaluation RFP that focuses on the mission of the MGE EEC without distraction. The EEC's mission is to oversee the design, implementation and evaluation of MGE's energy efficiency programs so that these programs will cost effectively decrease natural gas consumption and encourage more effective utilization of natural gas through the replacement of less efficient natural gas equipment with high efficiency natural gas equipment and other high efficiency equipment and measures.

25. More specifically, the evaluation sought through the RFP should focus on the core responsibilities of the collaborative – developing a portfolio of cost effective natural gas energy efficiency programs for MGE's customers and performing post-implementation evaluations of those programs to: (1) see if they are resulting in the delivery of cost effective gas energy efficiency services for MGE's customers and (2) see if there are ways to improve those programs. Since FFC analysis provides information about the relative efficiencies and cost effectiveness of gas end use measures vs. electric end use measures, it is not relevant to the EEC's mission of working together to develop natural gas energy efficiency programs that are intended to help MGE's customers use natural gas more efficiently.

26. OPC opposes MGE's efforts to inject the fuel switching issue, and the FFC analysis that supports it, into the evaluation of natural gas energy efficiency programs because this issue and FFC analysis are not related to evaluating the cost effectiveness of the MGE water heater and furnace, programs that are intended to *decrease* natural gas consumption through the replacement of less efficient natural gas equipment with high efficiency natural gas equipment and other high efficiency equipment and measures.

27. It is, of course, MGE's prerogative to bring fuel switching issues and the FFC analysis that supports it to the Commission as MGE has already done in KCP&L's current rate case (Case Number ER-2010-0355). In that case, MGE hired John J. Reed, a consultant who is the Chairman and CEO of Concentric Energy Advisors and CE Capital Advisors, to promote full fuel cycle studies and advocate for fuel switching issues on behalf of MGE. However, MGE's initiatives in the area of FFC analysis and fuel switching should remain separate from the activities of the EEC as these initiatives are at best unrelated, and at worst inconsistent (i.e. fuel switching from electric to gas based on FFC analysis *increases* gas usage rather than decreasing it) with the mission of the EEC.

28. MGE is seeking to raise these issues and gather more analysis and information to support its fuel switching initiatives in the EEC by incorporating FFC analysis into the EEC's program evaluation RFP. These MGE efforts to use the EEC as a vehicle to gather more analysis and information to support its fuel switching initiatives appear to be taking place as MGE anticipates not achieving its fuel switching program goals in the KCP&L rate case due to MGE's failure to present persuasive evidence to support the fuel switching programs. The Report and Order in Case Number ER-2010-355 contains the Commission's decision not to approve the proposed fuel switching programs for the very reason that MGE may have anticipated – that “the Commission gives little weight to the reports and recommendations relied on by MGE in this proceeding.”⁷ MGE should not be permitted to force the EEC to participate in MGE's efforts to gather additional information and analysis to support its load building efforts through a fuel switching initiative.

29. The consultant chosen to complete the evaluation of MGE's energy efficiency programs should remain focused on that task and that task alone, and should not be distracted by the need to simultaneously conduct a full fuel cycle analysis. The consultant may consider a full fuel cycle analysis to be an opportunity to build a relationship with MGE's gas marketing team and could intentionally or unintentionally focus its intentions on the full fuel cycle analysis at the expense of the energy efficiency evaluations.

30. OPC agrees with a position expressed by the Staff on whether an FFC analysis needs to be part of the MGE natural gas energy efficiency program evaluation. The Staff stated in a December 28, 2010 e-mail to the EEC that the "Staff's position is now that the FFC analysis is not necessary for the MGE evaluation because the evaluation involves a comparison of the efficiency gains of replacing older gas appliances with newer gas appliances". An FFC analysis, in contrast, would compare replacing electric appliances with gas appliances.

31. In the past, MGE has recognized that load building programs⁸ are inconsistent with the purposes of MGE's energy efficiency programs. In an MGE pleading filed in Case Number GT-2007-0477, *In the Matter of Missouri Gas Energy Proposed Tariff Sheets to Administer Natural Gas Conservation Initiatives*, MGE

⁷ *In the Matter of the Application of Kansas City Power & Light Company for Approval to Make Certain Changes in its Charges for Electric Service to Continue the Implementation of Its Regulatory Plan*, Case No. ER-2010-0355, Report and Order, pp. 94-105, April 12, 2011.

⁸ "Load-building program" is defined by 4 CSR 240-14.010(6)(J) as "an organized promotional effort by a utility to persuade energy-related decision makers to choose the form of energy supplied by that utility instead of other forms of energy for the provision of energy services or to persuade customers to increase their use of that utility's form of energy, either by substituting it for other forms of energy or by increasing the level or variety of energy services used."

distinguished its natural gas energy efficiency programs from a load building promotional practice:

...the objective behind a promotional practice generally is to implement a load building program. Conservation programs, by contrast, are intended to accomplish precisely the opposite objective.⁹

MGE repeated this same argument in a subsequent pleading:

The Commission already has concluded that MGE's natural gas conservation program "is not included in the Commission's definitions of what constitutes promotional practices", a conclusion that is justified by the fact that the principal objective behind the Commission's promotion practices rules is to regulate load-building programs whereas a fuel conservation program has the opposite goal and effect.¹⁰

On this point, OPC agrees with MGE in that MGE's fuel conservation programs have an opposite objective to a load-building initiative, which is exactly what an FFC analysis would seek to accomplish when it compares natural gas efficiency to electric efficiency.

32. An additional reason why an FFC analysis should not be included in the RFP is the potential for MGE's customers to unknowingly subsidize the cost of the full fuel cycle analysis. Despite efforts by the consultant to separately track costs associated with evaluating the energy efficiency programs from the costs associated with analyzing a full fuel cycle, and to bill those costs separately, there is no way to ensure that cost of the full fuel cycle analysis, or the consultant time spent on the full fuel cycle analysis, will not be subsidized by costs billed to ratepayers, or by consultant time that should be devoted to energy efficiency evaluations. OPC opposes having existing or future customers subsidizing MGE's load-building initiatives and requests a Commission order

⁹ Suggestions of Missouri Gas Energy in Opposition to the Office of the Public Counsel's Motion to Suspend Tariff, Case No. GT-2007-0477, *In the Matter of Missouri Gas Energy Proposed Tariff Sheets to Administer Natural Gas Conservation Initiatives*, June 13, 2007, p. 2.

directing MGE to reissue the RFP without including a request for an FFC analysis. The only way to ensure there is no subsidy is to require MGE to perform any full fuel cycle analysis pursuant to a separate MGE request for proposal that is not tied to the evaluation of natural gas energy efficiency programs.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission: 1) find MGE in violation of the Commission's February 10, 2010 Report and Order issued in Case Number GR-2009-0355 and in violation of MGE's Tariff, and to pursue penalties in circuit court of two-thousand dollars (\$2,000) for each offense; and 2) order MGE to issue a new RFP that does not include a request for potential energy efficiency program evaluators to bid on performing an FFC analysis.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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¹⁰ Motion Regarding Tariff Sheets, Tariff File No. JG-2008-0010, *In the Matter of Missouri Gas Energy Proposed Tariff Sheets to Administer Natural Gas Conservation Programs*, July 3, 2007, p.2.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 12th day of April 2011.

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/s/ Marc Poston
