

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

In the Matter of Missouri Gas Energy's Tariffs	)	
Increasing Rates for Gas Service Provided to	)	Case No. GR-2006-0422
Customers in the Company's Missouri Service	)	
Area.	)	

**MGE'S REPLY TO PUBLIC COUNSEL'S  
RESPONSE IN OPPOSITION TO ACCOUNTING AUTHORITY ORDER**

Comes now Missouri Gas Energy (MGE), a division of Southern Union Company, and, in reply to the Office of the Public Counsel's (Public Counsel) Response in Opposition to MGE's Request for an Accounting Authority Order (Response in Opposition to AAO), states as follows to the Missouri Public Service Commission (Commission):

1. On August 7, 2006, MGE filed a Motion for Accounting Authority Order based upon the terms of the Commission's 2005 emergency cold weather rule (Emergency Amendment 4 CSR 240-13.055(14), Case No. GX-2006-0181). MGE stated that it had complied with the terms of the Emergency Amendment, suffered revenue losses and costs increases as a result and therefore was applying for the AAO called for by the rule.

2. On August 17, 2006, the Public Counsel filed its Response in Opposition to AAO wherein Public Counsel argued that the Commission could not grant the requested AAO because: 1) the Emergency Amendment was no longer in effect (having expired by its own terms on March 31, 2006); and, 2) Public Counsel believed that the terms of the AAO requested were too vague.

**AAO AUTHORIZED?**

3. Public Counsel's attack on this AAO request is interesting based on the

representations it has made to both the Circuit Court of Cole County and the Western District Court of Appeals. For example, in its recent amicus brief before the Court of Appeals, Public Counsel assured the Court that “through the AAO mechanism” MGE is “allowed to book any amounts not ultimately paid by the customer (bad debt expense) *to be recovered with interest* in each Respondent’s next rate case.” Missouri Court of Appeal, Western District, Case No. WD66666, Public Counsel Brf., p. 20 (emphasis added). Public Counsel’s statements and actions are inconsistent when viewed in the most charitable light, and certainly do not deserve to be accorded any credibility.

4. Regardless of the effective dates of the Emergency Amendment, the Commission certainly has the discretion to grant an AAO. In *State ex. rel. Office of the Public Counsel v. Public Service Com'n of Missouri*, 858 S.W.2d 806 (Mo. App. 1993), the Court of Appeals upheld the authority of the PSC, as granted by §393.140, RSMo., to hear an application by a utility and grant to a utility the permission to defer extraordinary expenses from one period to another. Thus, in the alternative to the AAO authorized by the Emergency Amendment, the Commission should consider this AAO request with a view toward its discretionary authority to order such accounting treatment. Government action is a category that has previously been acknowledged to be an appropriate basis for the grant of an AAO. The Emergency Amendment is therefore an appropriate basis for an AAO.

### **AAO TERMS**

5. Public Counsel substantively attacks the AAO request on two grounds. First, Public Counsel alleges that the request is too vague in that it does not explain in any detail how to determine the cost of compliance. Second, Public Counsel alleges that the request is defective

because MGE asks that the AAO be allowed to remain on MGE's books until the conclusion of its next general rate case.

6. As to the determination of the cost of compliance, the Commission set out those parameters in the Emergency Amendment, which may perhaps be supplemented by the terms of the permanent changes to the Cold Weather Rule promulgated recently by the Commission in Case No. GX-2006-0434. In asking for an AAO in accordance with terms established by the Commission, MGE assumes that these Commission-established parameters will be applicable and satisfactory. If Public Counsel does not believe the parameters are sufficient, its objection is directed to the Commission's orders, not MGE's request.

7. Public Counsel's argument concerning the termination date of the AAO is also misplaced. Initially, it should be made clear that this is not a question related to the period of time that costs can be booked to the requested AAO. The Emergency Amendment provides the answer to that question in that costs may be booked to the resulting AAO until September 30, 2007. 4 CSR 240-13.055(14)(G)a.

8. The issue raised by Public Counsel relates to how long the resulting regulatory asset may remain on MGE's books until it is addressed in a general rate case. MGE's request asks that the resulting regulatory asset be allowed to remain on MGE's books until the effective date of a Report and Order in MGE's next general rate proceeding (i.e. the first general rate case after GR-2006-0422). While Public Counsel complains about this approach, it does not suggest what time period it believes would be appropriate.

9. This subject is one that has been discussed in relation to a variety of AAO's over recent years and the Commission has taken different approaches in different situations. MGE is

not aware of any case law that has found the approach proposed by MGE to be unlawful.

10. MGE's proposal is appropriate in this case because of the nature of the subject matter. The Commission has imposed the additional restrictions found in the Emergency Amendment based upon circumstances beyond MGE's control. As a result, MGE's ability to present its resulting compliance costs to the Commission for consideration in a rate case should not be time limited such that it either forces MGE to file a rate case earlier than it otherwise would have or, in the alternative, forces MGE to forego possible recovery of valid compliance costs attributable to the Commission's actions.

### **TIMING**

11. The Staff of the Commission states in its pleading that it will audit the cost of MGE's compliance with the Emergency Amendment in this case and make its "Recommendation regarding such costs, including the amount of costs to include in rates and the length of any amortization of these costs into the cost of service, in its Direct Testimony."<sup>1</sup>

12. MGE's fiscal year is based upon a calendar year. Thus, its books for 2006 will close shortly after the first of next year. For an accounting authority to have any impact on MGE's financial picture, it must be effective by the time those books close. Thus, MGE asks that the Commission consider this timing issue and issue the requested AAO promptly so that MGE may record on its books this calendar year the increased costs and lost revenues resulting from MGE's compliance with the terms of the Emergency Amendment.

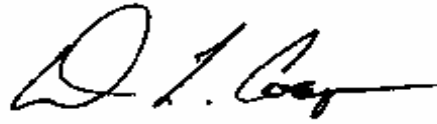
WHEREFORE, MGE respectfully requests that the Commission issue its Accounting Authority Order, consistent with MGE's Motion for Accounting Authority Order Concerning the

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<sup>1</sup> Staff's Supplemental Pleading Regarding MGE's Motion for Accounting Authority Order

Emergency Cold Weather Rule, and for such further orders as the Commission should find reasonable and just.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. L. Cooper", with a horizontal line underneath.

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ATTORNEYS FOR MISSOURI GAS ENERGY,  
A DIVISION OF SOUTHERN UNION  
COMPANY

## CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 25<sup>th</sup> day of August, 2006, to:

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