

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

In the Matter of a Working Case to Consider the)	
Establishment of a Low-Income Customer)	
Class or Other Means to Help Make Natural Gas)	File No. GW-2013-0046
Utility Services Affordable)	

**SOUTHERN UNION COMPANY’S COMMENTS REGARDING
THE COMMISSION’S INVESTIGATION INTO A LOW-INCOME CUSTOMER CLASS
OR OTHER MEANS TO HELP MAKE NATURAL GAS UTILITY SERVICE
AFFORDABLE**

COMES NOW, Southern Union Company, d/b/a Missouri Gas Energy (“MGE”) and for its response to the Missouri Public Service Commission’s (“Commission”) invitation to submit comments in this matter, respectfully replies as follows:

1. On August 8th, 2012, the Commission issued an Order Opening an Investigation into the Establishment of a Low-Income Customer Class or Other Means to Help Make Natural Gas Utility Service Affordable. The Commission directed utilities, organizations, individuals, and other stakeholders to provide input on how to “reduce the financial burden on low-income customers while providing a fair and adequate return to the regulated utilities.” On that same date, the Commission issued similar orders related to the affordability of electric and water service and requested similar input from stakeholders of those utilities.

2. Summary of MGE’s Position. First and foremost, MGE applauds the Commission’s efforts to explore ways to assist those most in need. Developing sound strategies to help the financially disadvantaged pay for utility services is a laudable goal and MGE believes that the Commission and stakeholders can provide valuable insight in this area.

For its part, MGE is actively engaged in efforts to assist customers who have difficulty paying utility bills by maintaining strong ties to charitable and community organizations, by helping customers find charitable and government resources, and by working with customers to

develop payment plans to ensure continuity of service. Ultimately, efforts to have all customers pay for the fair cost of natural gas service (even if payments are from charitable or governmental assistance programs) helps not only financially challenged customers, but other customers and our shareholders as well.

As one philosopher noted well, however, “[t]o give away money is an easy matter in any man’s power. But to decide to whom to give it, and how large and when, and for what purpose and how, is neither in every man’s power nor an easy matter.”¹ While the Commission can compile information from stakeholders, analyze that data, and potentially provide valuable input as to whether a low-income rate class or other assistance programs are warranted, MGE believes that the Missouri legislature is the appropriate venue for the consideration of such programs. As noted by a Commission in another jurisdiction, a broad shift from cost-based ratemaking to a rate structure designed to address the needs of low-income customers “involves the redistribution of income,” which is “a public policy question with social and financial implications that are better addressed by the policy-making body of the State ... the ... legislature.”²

Further, absent statutory authorization, MGE respectfully submits its concern that the Commission has neither the express nor the implied authority to implement a low-income rate class. Accordingly, any action on the Commission’s part to implement such programs would be highly susceptible to reversal by the courts. Given the importance of clarity in the regulatory process, particularly when such a significant shift in policy would impact all residential customers and change the cost-based nature of ratemaking in Missouri, MGE urges the Commission to obtain input from stakeholders, develop sound strategies and options, but ultimately defer this matter to the Missouri legislature for consideration and action.

¹ Aristotle, *The Nicomachean Ethics* 47 (Robert Williams trans., Longman’s, Green & Co. 2d ed. 1876), quoted in *Giving Well: The Ethics of Philanthropy* (Patricia Illingworth, Thomas Pogge & Leif Wenar eds., 2010).

² *Re Lifeline Rates for Electric Service*, 73 Md. PSC 702, 706, Case No. 7456, Order No. 66010, (1982).

3. Lack of Direct or Implied Statutory Authority.

a. The Commission is “a creature of statute and can only exercise the powers that are expressly conferred to it.”³ Section 393.130.2 provides that natural gas utilities cannot charge different rates for customers under the “same or substantially similar circumstances.” The statute states that:

“no gas corporation...shall directly or indirectly by any special rate ... collect or receive from any person or corporation a greater or less compensation for gas ... or for any service rendered ... except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service ... under the same or substantially similar circumstances or conditions.”

There is no statutory authority in Chapter 393 – or anywhere else in Missouri law- that would expressly permit the Commission to direct utilities to have different rates for the same class of customers – in this case, natural gas residential customers. There is no statutory language regarding special or discounted rates for low-income customers, nor is there statutory authority to require other customers to subsidize such discounts. Accordingly, MGE is concerned that the lack of such express authority would prevent the Commission from mandating low-income rates.

b. There are also strong concerns that the Commission does not have implied statutory authority through its broad ratemaking powers to mandate different rates for low-income residential customers. The term “same or substantially similar circumstances” is broad enough to allow some discretion to the Commission to consider what is “similar” or “same” treatment or circumstances,⁴ but previous Missouri proceedings as well as cases in other jurisdictions show the challenge of arguing “implied” authority for what would be a sweeping policy change. Differing treatment of low income customers has been previously rejected by the Commission - other than in instances in which parties in a rate case agreed to experimental low-income rates or

³ *State ex rel. Missouri, K&T Ry. Co. v. Public Service Commission of Missouri*, 219 S.W. 386 (Mo 1919).

⁴ See additional discussion in FN 5.

programs.⁵ By way of example, in Case No. GE-2001-393, MGE sought a variance from its tariffs in order to assign certain funds to assist low-income residential customers who were having difficulty paying their gas bills during a period of cold weather and high natural gas prices.⁶ In that case, MGE proposed to provide \$976,715 in refunds and unauthorized use charges to a third party not-for-profit agency that provided energy bill payment assistance to low-income customers. Both Staff and Public Counsel opposed the request for variance, arguing that the Commission lacked statutory authority to grant the requested waiver.⁷ While the Commission expressed sympathy for low-income customers,⁸ it found that providing refunds only to low-income customers would violate the statutory requirement not to charge different rates to similarly-situated customers (i.e. residential customers),⁹ that the Commission was prohibited by law from granting a variance, and that such a variance “was not consistent with sound public policy.”¹⁰ In that case, the Commission noted that while it had “considerable discretionary authority setting rates,” that “this discretion is limited by the applicable statute” and that “where, as here, a procedure before the Commission is prescribed by statute the statute must be

⁵ Although there are examples of experimental low-income rates and programs that have been approved in Missouri, counsel's search for Commission decisions related to approved low-income tariffs only found examples of Commission approval of stipulations and agreements among parties in rate cases rather than cases in which the Commission directed the implementation of such rates. Case No. GE-2001-393 involved a proposal by MGE to offer low-income assistance funding, which was opposed by the Public Counsel and Staff and was subsequently rejected by the Commission. MGE notes that in response to Public Counsel objections to an experimental tariff to increase energy efficient appliance rebates to Joplin tornado victims in GT-2012-0170, MGE argued that there was no absolute bar to differential treatment of customers, but rather that there could be different treatment of customers as long as it was not unreasonable or undue. In its Notice Regarding Tariff Filing dated December 9, 2011, the Commission found that Joplin residents were not under same or substantially similar circumstance or conditions as the remainder of MGE's service territory due to the destruction from the May 22, 2011 tornado. While there are arguments that low income customers are not “similarly situated” to other customers, or that important public policy considerations warrant a Commission determination that low-income customers are not similarly situated, there are important distinctions that should be drawn. The Rebuild Joplin Tariffs were experimental, limited in time, limited in scope, confined to a small geographic area, and were part of a pre-existing and approved energy efficiency program. In contrast, any low-income tariff would impact all residential customers, would be broad in scope, would impact all customers in Missouri, and would result in a significant change to cost-based ratemaking. This difference is sufficient to warrant legislative involvement.

⁶ *Re Missouri Gas Energy*, GE-2001-393, 207 PUR 4th 488, 2001 WL 410297 (March 6, 2001).

⁷ *Id.* at 491.

⁸ *Id.* at 494.

⁹ *Id.* at 493.

¹⁰ *Id.* at 494.

followed.”¹¹ The Commission also noted that “approving this variance would result in intraclass rate level differences, creating a new class of customers: the disadvantaged or low-income customer class.”¹² The Commission stated that “all ratepayers [were] facing hardships due to increased cost of gas” and that “MGE’s proposal would take funds from customers who are not eligible for other assistance with this winter’s high gas bills and would contribute those funds to a select few customers,” which would result in MGE ratepayers being forced to contribute to a charitable organization, a practice the Commission finds inappropriate, even though well-intentioned.”¹³ Cases in other jurisdictions are similarly instructive, where Courts have rebuffed public service commission efforts to address rate or bill impacts on low-income residential customers when State statutes granted no express authority to those commissions.¹⁴

c. While the Commission is not bound by its prior decision in GE-2001-393 or cases in other jurisdictions, MGE points out those matters for one important point: the lack of clarity and strong arguments against any implied authority to make broad changes and mandate significant rate differentials in the same class of customers. The the Commission itself determined that it lacked direct or implied statutory authority to approve an income-based variance to tariffs in GE-2001-393. Any Commission action to impose low-income rates would be highly susceptible to appellate arguments that the Commission exceeded its authority. Any low-income rate class would impact all of Missouri’s residential customers, would have an unknown financial impact on utilities and their residential customers, and would potentially require significant administrative

¹¹ Id. at 493, internal citations omitted. The Commission also considered the applicability of Section 393.140(11) in this case.

¹² Id.

¹³ Id.

¹⁴ See, e.g. *Arkansas Gas Consumers, Inc. v. Arkansas Public Service Commission*, 118 S.W.3d 109 (Ark. 2003)(holding that the Arkansas PSC lacked the authority to develop and mandate a temporary program requiring the reconnection of disconnected natural gas customers who met certain income guidelines. The program involved the payment of past-due and subsequent debt for the following winter season through the PGA, company recovery of bad-debt write-offs, and subsequent repayment of debt by participants over no more than a thirty-six month period).

efforts to implement by utility companies. Accordingly, the Commission should seek direct statutory authority from the Missouri legislature before implementing such a broad change with no clear statutory underpinning.

4. MGE's Commitment to Customer Assistance. MGE is actively committed to help customers find assistance when they need help to pay their utility bill. MGE has a committed group of customer advisors, its own utility payment fund program, and long-standing low-income weatherization program. By agreement among parties in a previous rate case, MGE also implemented an experimental low-income rate that was subsidized by other customers – an effort that was terminated due to lack of customer interest.

a. Customer Advisors. In order to assist low income customers and those having difficulty in paying their MGE bills, MGE has a dedicated group of customer advisors whose primary purpose is to coordinate with outside agencies, provide information to customers on assistance options, and direct customers to outside agencies in order to obtain Low Income Home Energy Assistance Program ("LIHEAP") funds - which are comprised of Energy Assistance/Regular Heating (EA) and Energy Crisis Intervention Program (ECIP) funds¹⁵ - or assist customers in obtaining other agency funds earmarked for energy assistance. EA funds are designed to provide financial assistance to help pay heating bills for Missourians during the months of October, November, December, January, February, and March. Eligibility requirements for EA are based on income, household size, available resources and responsibility for payment of home heating costs. Eligibility for EA may also qualify individuals for additional financial assistance through ECIP. MGE's customer advisors are well-versed in LIHEAP eligibility requirements and work hard to maintain solid communication between MGE and community action agencies and to find solutions for customers.

¹⁵ Detail in this section on LIHEAP is taken from the Missouri Department of Social Services website, which may be found at <http://www.dss.mo.gov/fsd/liheap.htm>.

b. Neighbors Helping Neighbors. MGE's Neighbors Helping Neighbors program is a company-created fund in which customers and employees can make monthly or one time donations which are managed by the Mid-America Assistance Coalition and disbursed to local agencies to assist members of the community with utility costs. MGE matches all donations applied to MGE customer bills under this program.

c. Low Income Weatherization: MGE provides \$750,000 per year to a weatherization program that assists low income residential customers in reducing their energy consumption. This long-standing program began as an experimental tariff in GR-96-285 as part of a Commission-approved Stipulation and Agreement.

d. Experimental Low Income Rates. In Case No. GR-2001-292, the Commission approved a Second Revised Stipulation and Agreement whereby MGE agreed to develop an Experimental Low Income Rate ("ELIR") in conjunction with the Staff of the Missouri Public Service Commission ("Staff"), Office of Public Counsel ("Public Counsel") and other interested parties. The ELIR was eventually developed into a tariff that was made effective on November 1, 2001. The program allowed eligible participants to receive a credit of either \$20 or \$40 per month (depending on income level) for up to 24 months. The ELIR Tariff was offered to applicants who:

- Were MGE residential customers using gas for space heating,
- Were at no greater than 100 % of the federal poverty level,
- Agreed to enroll in MGE's Average bill Calculation Plan,
- Entered into pay agreements if they had outstanding arrearages,
- Agreed to fill out questionnaires on their energy use,
- Agreed to also apply for LIHEAP if they had not done so already;
- Agreed to apply for any other energy assistance programs as referred to

by the Company.

The ELIR tariff imposed a \$0.08/month surcharge on all of MGE's residential customers. MGE was required to obtain participant data on usage, arrears, payments, and other relevant factors to allow an evaluation of the program. MGE found this program to be very challenging in terms of customer interest and the ability to gather accurate customer poverty level information. MGE had to use a state agency to identify customers who qualified for the program. Nearly half of the participants who initially entered the program dropped out by January of 2004. MGE eventually closed the program in 2006 due to lack of customer interest. The money that was collected that was not claimed by qualifying customers was contributed to the Mid-America Assistance Coalition to distribute for energy assistance in MGE's service area. In its Report and Order in GR-2004-0209 dated September 21, 2004, the Commission stated that the ELIR was "an interesting attempt to make natural gas bills more affordable for low-income customers while ultimately saving money for MGE and its other ratepayers by reducing expenses that result from bad debts." However, it was "only an experimental program and has had problems" and the Commission declined "to pour more ratepayer funds into this program, particularly without the agreement of MGE."¹⁶ In sum, MGE found the program difficult to administer, that it garnered little customer interest, and the Commission ultimately declined to require MGE to expand or continue it.

5. Other States. While MGE has not conducted an exhaustive review of low income rates and programs in other jurisdictions, it would note that the jurisdiction mentioned by the Commission in its order, California, has a statute which directs the California Public Utilities Commission to develop low-income rate classes and programs.¹⁷ California funds low-income programs through a rate surcharge paid by all utility customers, has detailed qualification

¹⁶ Report and Order, GR-2004-0209, *In the Matter of MGE's Tariffs to Implement a General Rate Increase for Natural Gas Service*, September 21, 2004, pp. 64-65.

¹⁷ See California Public Utilities Code Section 382(b), which requires the California Public Utilities Commission to "ensure that low-income ratepayers are not jeopardized or overburdened by monthly energy expenditures" through "the establishment of different rates for low-income ratepayers, different levels of rate assistance, and energy efficiency programs."

requirements, and offers a rate discount for eligible residential customers. Should the Commission receive express statutory authority to develop low-income rates, California's programs (and those of other states) may be instructive for the Commission in its analysis of appropriate qualification levels, discounts, surcharges, and other components of a low-income customer class.

6. Participant Verification Procedures. With respect to pre-approval of customers, verification of income levels, and subsequent re-qualification of participants, MGE urges the Commission to look for ways to minimize the administrative burden on utilities. Detailed income verification and qualification screening are functions that are well within the purview of outside community action groups or governmental agencies. A simple qualification approval form (preferably by electronic means) that the applicant could provide to a utility - or that a utility can easily verify- would greatly simplify the administrative impact of a low-income program.

7. Bad Debt Expense. An assessment of any impact on bad debt expenses is not possible without a specific proposal.

8. Conclusion. While MGE does not believe that the Commission has the statutory authority to direct investor-owned utilities to implement a low-income rate class, this does not mean that MGE recommends a "do nothing" approach. MGE encourages the Commission to obtain input from stakeholders, determine the need for special rates, and develop well-considered recommendations, but respectfully asks the Commission to defer to the legislature this significant proposal to change cost-based ratemaking in Missouri. That said, MGE again appreciates the Commission's engagement with difficult issues such as this and stands ready to partner with the Commission and other stakeholders to develop a reasoned and effective solution to this and other issues.

WHEREFORE, MGE respectfully submits these comments to the Commission in this matter.

Respectfully submitted,

/s/

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