

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

In the Matter of Missouri Gas Energy and)	
Its Tariff Filing to Implement a General Rate)	Case No. GR-2009-0355
Increase for Natural Gas Service)	Tariff No. YG-2009-0714

**MGE'S RESPONSE TO
PUBLIC COUNSEL'S OBJECTIONS TO EVIDENCE**

Comes now Missouri Gas Energy (MGE), a division of Southern Union Company, and, in response to Public Counsel's Objections to Allowing New Evidence Into the Record Regarding Laclede's Rate Design, states as follows to the Missouri Public Service Commission (Commission):

BACKGROUND

1. On November 2, 2009, during the evidentiary hearing and prior to the closing of the record (which has not yet occurred), Commissioner Davis requested a late-filed exhibit from MGE witness Mr. Noack concerning certain rate design issues and approaches. Mr. Noack was asked to provide further evidence that would indicate what the rates would be if the customer charge per month was left unchanged for residential customers and then following the rate design used in the last Laclede Gas Company rate case, an indication of what the charge for gas used would be for the first 30 therms used per month for MGE customers in a summer billing period of April through October and a winter billing period of November through March. The Regulatory Law Judge (RLJ) indicated that he would be glad to issue an order directing Mr. Noack to produce this information for the Commission. (Tr. 894)

2. At the time Commissioner Davis requested this additional evidence, counsel for the Office of the Public Counsel (Public Counsel) made no objection. (Tr.

894-912)

3. Four days after Commissioner Davis made this request, on November 6, 2009, the Public Counsel filed its Objections to Allowing New Evidence Into the Record Regarding Laclede's Rate Design (Objection). The Objection was targeted at the requested evidence.

GENERAL RESPONSE

4. As an initial matter, MGE is surprised by the strident, non-compromising tone of the Public Counsel's objections in view of the fact that Public Counsel witness Barb Meisenheimer suggested that a "middle ground" approach between the straight-fixed variable rate design (SFV) proposed by MGE and the "traditional" rate design proposed by Public Counsel is already "reasonably supported by the cost studies in the record." (Tr. 488-489)"

5. The Public Counsel now takes a different tact by drawing a line in the sand and telling the Commission it must choose one or the other, notwithstanding the fact that the Commission found the SFV rate design to be just and reasonable in MGE's last rate case for residential customers and that the burden of proof is on those challenging it to demonstrate otherwise.

6. The Public Counsel's position is further perplexing given that the SFV rate design greatly benefits those thought to be the Public Counsel's primary constituents – low-income residential customers who have high gas use. In any event, the objection should be denied for the following reasons.

ADMISSIBILITY OF FURTHER EVIDENCE

7. MGE believes that the Public Counsel has waived any objection it might have to the requested information. At the hearing, Public Counsel failed to object to the information that was requested by the Commissioner. Public Counsel instead requested that it be provided Mr. Noack's work papers and indicated that having such workpapers would allow it to "get a quick response back to the Commission." (Tr. 912) A "specific objection to evidence at the time the evidence is offered is required to preserve the issue for appellate review, and the failure to object at the earliest opportunity constitutes a waiver of that claim." *State v. Evenson*, 35 S.W.3d 486, 491 (Mo.App. S.D. 2000).

8. Moreover, it is permissible under the Commission's rules for the Commission to request additional evidence during the course of a hearing. Commission Rule 4 CSR 240-2.130(14) states as follows:

The presiding officer may require the production of further evidence upon any issue. The presiding officer may authorize the filing of specific evidence as a part of the record within a fixed time after submission, reserving exhibit numbers, and setting other conditions for such production.

9. Commission Rule 4 CSR 240-2.010(15) states that "presiding officer means a commissioner, or a law judge licensed to practice law in the state of Missouri and appointed by the commission to preside over a case."

10. In this case, the additional evidence was requested by Commissioner Davis and the RLJ suggested he would additionally issue an order requiring its

production. Thus, the Commission's rules clearly support the request for further evidence made in this case.

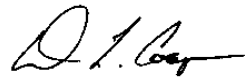
11. The Public Counsel's objection focuses on the wrong subparagraphs of Commission Rule 4 CSR 240-2.130. The Public Counsel suggests that the provision of further evidence violates subparagraph 7, which described the purpose of direct, rebuttal and surrebuttal testimony, and indicates that a waiver from subparagraph 7 would be necessary. Public Counsel also cites Commission Rule 4 CSR 240-2.130(8), which prohibits a party from supplementing prefiled testimony "unless ordered by the presiding officer or the commission."

12. As indicated above, Public Counsel's arguments do not focus on the appropriate section of the Commission's Rules. The request by a commissioner or the RLJ for additional information is permitted by the rules. Once so requested, the remaining issue is merely what conditions, if any, should be ordered in light of the new evidence.

13. At the hearing, the RLJ indicated he would issue an order permitting the parties approximately a week to respond to the requested information. (Tr. 911-12) MGE certainly does not object to any conditions that would allow Public Counsel the opportunity to respond to and explore the evidence to be provided by MGE. In addition to the opportunity to respond suggested by the RLJ, such conditions could include the opportunity to provide testimony in response to that filed by MGE and the opportunity to cross-examine witnesses. The latter condition would be consistent with the offer MGE made at the November 2, 2009 hearing to make Mr. Noack available for cross-examination at a later date. (Tr. 909)

WHEREFORE, MGE respectfully requests that the Commission consider this response and, thereafter, overrule Public Counsel's Objections to Allowing New Evidence Into the Record Regarding Laclede's Rate Design.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 11th day of November, 2009, to:

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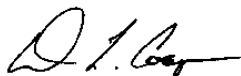
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