

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

The Staff of the Missouri Public Service )  
Commission, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 Missouri Gas Energy, a Division of )  
Southern Union Company )  
 )  
 )  
 Respondent. )

Case No. GC-2011-0100

**REPLY TO PUBLIC COUNSEL’S RESPONSE AND MOTION TO FILE OUT OF TIME**

COMES NOW Respondent MGE and for its Reply to Public Counsel’s Response in Motion to File Out of Time states the following:

1. On June 15, 2011, Public Counsel filed a response to MGE’s Motion to Reject Suggestions of Public Counsel in Support of Staff’s Motion for Summary Determination,<sup>1</sup> because they were filed out of time and out of sequence.

2. Public Counsel in its response claims that its filing was actually responsive to Staff’s Suggestions in Opposition to MGE’s Motion for Summary Determination.<sup>2</sup> This *post hoc* rationalization is plainly refuted by the title Public Counsel gave its filing, that is, “Public Counsel’s Suggestions in Support of Staff’s Motion for Summary Determination”. (Emphasis added)

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<sup>1</sup> EFIS Document No. 32.

<sup>2</sup> See, Response ¶ 3.

3. Public Counsel offers the fiction that paragraphs 3 and 4 of its Suggestions explain that the filing was actually in support of Staff's Suggestions in Opposition to MGE's Motion for Summary Determination despite the title of the filing, but paragraphs 3 and 4 quite simply do not say that. Paragraph 3 contains a factual observation that "Staff filed a responsive pleading wherein Staff explained" the relief it seeks in the case, but the mere matter-of-fact reference to another party's filing hardly rises to the level of a response. At best, it is an acknowledgment.

4. In paragraph 6 of its Response, Public Counsel claims that MGE has not explained how it would be prejudiced by permitting Public Counsel's filing. The prejudice (as explained by MGE in its motion to reject the filing) is that Public Counsel's submission at this late date presents new material and, thus, deprives MGE of the opportunity to respond to it as contemplated by Commission rule 4 CSR 240-2.117(1)(C) because MGE already has responded to Staff's Motion for Summary Determination and the accompanying legal memorandum.

5. If the Commission should nevertheless decide to deny MGE's motion to reject Public Counsel's suggestions, MGE should be given a reasonable opportunity to file a separate legal memorandum addressing the matters raised by Public Counsel.

WHEREFORE, MGE renews its request the Commission reject Public Counsel's Suggestions in Support of Staff's Motion for Summary Determination or, in the alternative, requests that the Commission permit MGE to file a separate legal memorandum addressing Public Counsel's suggestions.

Respectfully submitted,

/s/ Paul A. Boudreau

Paul A. Boudreau MBE #33155  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
P. O. Box 456  
Jefferson City, MO 65102  
Phone: (573) 635-7166  
Fax: (573) 634-7431  
[paulb@brydonlaw.com](mailto:paulb@brydonlaw.com)

Todd J. Jacobs MBE #52366  
Senior Attorney  
Missouri Gas Energy,  
a division of Southern Union Company  
3420 Broadway  
Kansas City, MO 64111  
Phone: (816) 360-5976  
Fax: (816) 360-5903  
[todd.jacobs@sug.com](mailto:todd.jacobs@sug.com)

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission to all counsel of record on this 17<sup>th</sup> day of June, 2011.

Kevin Thompson  
Public Service Commission  
200 Madison Street  
Jefferson City, MO 65102

Robert Berlin  
Public Service Commission  
200 Madison Street  
Jefferson City, MO 65102

Marc Poston  
Office of Public Counsel  
200 Madison Street  
Jefferson City, MO 65102

/s/ Paul A. Boudreau

Paul A. Boudreau