

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

In the matter of proposed Emergency	)	
Amendment to Commission	)	Case No.
Rule 4 CSR 240-13.055	)	

**PUBLIC COUNSEL’S MOTION TO OPEN A NEW CASE AND FOR A FINDING  
OF NECESSITY FOR RULEMAKING**

COMES NOW the Office of the Public Counsel pursuant to Section 536.041, RSMo 2000 and Commission Rule 4 CSR-2.180 and for its Motion to Open a New Case and for a Finding of Necessity for Rulemaking states as follows:

**PURPOSE OF THE EMERGENCY AMENDMENT**

1. Wholesale natural gas prices for the upcoming winter have reached record highs. Even if the winter proves to be a mild one, these high gas prices will create a hardship for many customers. The US Department of Energy has recently predicted that residential heating bills will increase 48 percent this coming winter for households heating primarily with natural gas. See, Energy Information Administration, "Short-Term Energy Outlook - October 12, 2005 Release." Representatives of local natural gas utilities have repeatedly warned the Commission and the news media that residential natural gas heating bills will increase 30-50% this winter. See, e.g., filings made in connection with Case Nos. GW-2006-0110 (In the Matter of an Investigation into the Status of Missouri's Natural Gas Local Distribution Companies' Compliance with Commission Rule 4 CSR 240-40.018) and GR-2005-0279 (Tariff filed by Southern Missouri Gas Company).

2. Without action by the Commission, the record high gas prices will likely lead to short-term harm:

(1) many more residential gas customers this winter will have difficulty timely paying their gas bills even though they have never missed payments before;

(2) residential gas customers who have failed to fulfill a previous cold weather or other payment agreement once again will fall into arrears and;

(3) there is a significant potential that a large number of residential gas customers will have their gas service disconnected this winter and will be unable get service reconnected.

3. Based upon Public Counsel's discussions with gas utility representatives, it appears that the gas utilities do not usually permit a residential customer to enroll in a budget billing or level payment plan if the customer's account balance is already in arrears. For example, Laclede Gas Company's tariff provides that only customers "with no arrears" are eligible for budget billing. (Laclede Gas Company Tariff, at R-39.)

4. In 1984, the Commission promulgated 4 CSR 240-13.055 known as the Cold Weather Rule relating to any residential gas or electric service that is necessary to the proper function and operation of heating equipment.

5. In the fall of 2001, faced with the situation where large numbers of residential gas customers remained disconnected due to unusually high gas bills from the previous winter, the Commission promulgated an emergency amendment to the Cold Weather Rule applicable only to gas utilities, that allowed customers to pay down past due balances and be reconnected in time for the winter. See, Record of Case No. AX 2002-203. That rule provided more lenient reconnection terms for residential customers,

prohibited additional deposit requirements, prohibited the assessment of late payment charges on deferred amounts, prohibited interest charges on account balances for the deferral period, required that existing deposits be applied to account balances in arrears to avoid disconnection and permitted gas utilities to collect the expenses associated with the emergency amendment. That emergency amendment was in effect from November 18, 2001 through March 31, 2002.

6. For the reasons stated above, Public Counsel urges the Commission to again implement all of the changes to the Cold Weather Rule promulgated on an emergency basis in November 2001, with some minor modifications proposed by Public Counsel.

7. In addition, Public Counsel requests that the Commission make several additional emergency amendments to the Cold Weather Rule, also to be applicable only to gas utilities. (The text of the Public Counsel's proposed emergency amendments is attached to this motion.)

These proposed amendments provide:

(1) Budget billing shall be available to all residential customers during the period this rule is in effect, including the ability to include any recent arrearage amount in the budget billing program;

(2) The budget billing plan shall be available to a residential gas customer whether or not that customer's account is in arrears;

(3) Gas utilities shall offer all customers who fall into arrears during the period that the emergency amendment is in effect a "clean slate" if the customers, by making all the required payments on a payment agreement or otherwise, bring their

balances current at any time before November 1, 2006. A "clean slate" means that the customers would be treated as if they had never been in arrears or defaulted on any payment agreement or cold weather agreement with the gas utility; and

(4) Gas utilities shall include a notice in the next billing cycle that informs customers of the existence and terms of the emergency amendments. The text of the notice shall be submitted by the gas utilities for approval by the Staff of the Public Service Commission in accordance with the minimum acceptable language guidelines established by the Commission.

8. The Commission should take notice that other states have taken steps to strengthen cold weather-related rules this winter.

- In Tennessee, gas utilities have submitted a petition to the Tennessee Regulatory Authority for approval of a stipulation whereby the gas utilities would voluntarily agree, between November 1, 2005 and March 31, 2006, to make their budget billing arrangements available to all residential customers who are in good standing as of November 1, 2005. (TRA Docket No. 500281.) The budget billing plans would be offered even to those customers who have fallen behind in their payments due to the high gas costs this winter. Any past due balances would be rolled into the budget billing plan.

- In Illinois, the Governor has secured agreement from all utilities to waive reconnection fees and deposit fees for low-income households receiving LIHEAP assistance.

- The Indiana Utility Regulatory Commission has recently initiated rulemaking to modify deposit and reconnection charges for residential natural gas customers.

- Several other states have existing laws or regulations establishing complete or nearly complete moratoriums on disconnections during the cold weather period.

9. As with the emergency amendment promulgated in November 2001, Public Counsel does not object to cost recovery for the incremental costs of gas utilities' compliance with the emergency amendment through an appropriate Accounting Authority Order. Accordingly, Public Counsel estimates that there will be no significant negative fiscal impact on gas utilities or any other private entities.

### **COMMISSION'S RULEMAKING AUTHORITY**

10. Pursuant to Section 536.016, RSMo 2000, the Commission may propose rules "based upon substantial evidence on the record and a finding by [the Commission] that the rule is necessary to carry out the purposes of the statute that granted such rulemaking authority."

11. With respect to 4 CSR 240-13.055, the Commission's rulemaking authority is provided by Sections 386.250(6), 393.130 and 393.140 RSMo 2000. In particular, Section 386.250(6) authorizes the Commission to adopt such "rules as are supported by evidence as to reasonableness and which prescribe the conditions of rendering public utility service and billing for public utility service." Such rules are to be filed with the Secretary of State and published as provided in Chapter 536 RSMo.

12. Section 536.025, RSMo 2000 sets forth the powers of any state agency to promulgate rules on an emergency basis. The Commission is a "state agency" as defined in Section 536.010(5), RSMo 2000. Under Section 536.025, the Commission may amend a rule on an emergency basis only if it:

(1) Finds that an immediate danger to the public health, safety or welfare requires emergency action or the rule is necessary to preserve a compelling governmental interest that requires an early effective date as permitted pursuant to this section;

(2) Follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances;

(3) Follows procedures which comply with the protections extended by the Missouri and United States Constitutions; and

(4) Limits the scope of such rule to the circumstances creating an emergency and requiring emergency action.

13. Public Counsel believes it is clear that the potential for widespread disconnections among residential gas customers in Missouri represents an immediate danger to the public health safety and welfare and that, therefore, an emergency rule is necessary to preserve a compelling government interest requiring an early effective date for the rule.

14. Public Counsel believes that, under the required timeframes for non-emergency rulemaking, a rule could not be promulgated which would take effect in time to impact the coming cold weather season.

15. Public Counsel believes that providing all interested parties the opportunity to comment in writing or to testify at a public hearing would provide adequate procedural fairness and due process.

16. Public Counsel believes that the proposed amendments are limited in scope to the circumstances creating an emergency and requiring emergency action in that they help Missouri residential gas customers to spread out payments and avoid disconnection as a result of unprecedented high gas bills this winter.

WHEREFORE, Public Counsel respectfully requests that the Commission: (1) open a case regarding emergency amendments to 4 CSR 240-13.055, (2) find that the

proposed emergency rulemaking is necessary to maintain the availability of residential gas service to Missourians in the coming winter months, and (3) seek comment from interested parties and hold a public hearing on the proposed emergency amendments on an expedited basis.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 21<sup>st</sup> day of October 2005.

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