

3. On October 28, Staff filed the Motion in which it argued that the Commission should reject the Tariff Sheet because (i) it contained numerous facial and substantive defects, and (ii) approval would constitute unlawful, single issue ratemaking. MGE respectfully submits that the Staff is incorrect on both points. In the end, this matter is not about tariff technicalities or single issue ratemaking, but whether the Commission wants to provide temporary aid to customers whose energy assistance is being delayed by another state agency.

Alleged Facial and Substantive Defects

4. MGE and Staff agree that “low income assistance is an important topic, and any of these issues [raised by Staff] may appear independently trivial...” (Motion, p. 7) However, Staff goes on to state that, because of the importance and legal significance of tariffs, the “multitude of internal inconsistencies” in the Tariff Sheet prevents Staff from supporting it. MGE disagrees that such internal inconsistencies exist, and asserts that the Tariff Sheet is both clear and worthwhile. Even if Staff was right about these inconsistencies, MGE urges the Commission to elevate the substantive need the Tariff Sheet addresses over any such technical errors.

5. Staff criticizes the Tariff Sheet as representing an entirely new program rather than a revision to the low-income program on Sheet R-93. This is merely a matter of semantics. The Tariff Sheet is intended to aid low-income customers just like the original low-income program on Sheet R-93. Whether one refers to the Tariff Sheet as a revised, supplemental, or new component of MGE’s low-income program,² it is unmistakably a low-income program, and is identical to a program twice approved for Laclede Gas.

² The Tariff Sheet proposal is referred to herein as the “30% Component.”

6. Staff alleges a conflict in program periods because the original program ended in 2014, while the 30% Component applies to the 2016-17 winter. (Motion, p. 5) While these time periods certainly are different, that does not create a conflict. It is difficult to see how these discrete time periods could possibly be confusing.

7. Staff alleges that the eligibility levels for the 30% Component conflicts with the original program, because the original program applied to household income up to 185% of the Federal Poverty Level (“FPL”), versus 150% for the 30% Component. (*Id.*) The 150% FPL is a common place to draw a line in low-income programs, including the two identical Laclede Gas programs and a 2006 Laclede low-income program. Given the timing and temporary nature of the 30% Component, further justification for the FPL seems unnecessary.

8. Staff argues that adding \$300,000 to the \$400,000 in the original program would result in a total of \$700,000, which exceeds the original \$400,000. (Motion, p. 6) Laclede agrees with Staff’s calculations, but asserts that supplementing the original program on a temporary basis does not create a conflict with that program.

9. Staff argues that the ten year recovery period under the energy efficiency programs conflicts with the five year recovery period under the original low-income program. Since MGE proposes to recover these amounts in the same way as the energy efficiency programs, MGE accepts the ten year recovery period. If the full \$300,000 proposed in the 30% program is expended, MGE customers would pay roughly ½ cent per month, likely not to begin until 2018. For the same reasons stated above, MGE states that the recovery periods may be different, but do not conflict.

Single Issue Ratemaking

10. MGE respectfully disagrees with Staff that the Tariff Sheet constitutes unlawful single issue ratemaking. First, Missouri courts have already ruled that actions by the Commission to approve similar changes in service terms are lawful. For example, in *State ex rel. Missouri Office of Public Counsel v. Public Service Commission*, 293 S.W.3d 63 (Mo.App. S.D 2009) hereinafter “*Public Counsel I*”), the Southern District Court of Appeals upheld a Commission Order that authorized MGE to recover approximately \$900,000 in costs that had been incurred by MGE to comply with the Commission’s emergency amendments to the CWR in 2006.³ A significant portion of those deferred costs related to the same plan proposed in this case, because the 2006 emergency amendment permitted customers to restore service by paying the lesser of 50% or \$500 of their arrearages rather than the 80% that would otherwise have been due under the CWR. Notably, Staff supported the amendment and associated cost recovery, and did not assert that single issue ratemaking interfered with it in any way.

11. An identical result was reached by the Western District Court of Appeals in *State ex rel. Office of the Public Counsel vs Public Service Commission*, 301 S.W.3d. 556 (Mo.App. W.D. 2009) (hereinafter “*Public Counsel II*”), in which the Court confirmed the Commission’s authority to permit Laclede to defer for recovery in its next rate case approximately \$2.5 million in costs it had incurred to comply with the same emergency amendments to the CWR. In determining that the Commission acted properly, the Courts in both *Public Counsel I* and *II* rejected assertions that permitting the deferral and future recovery of CWR costs constituted unlawful retroactive

³ See 4 CSR 240-13.055(14)(A)

ratemaking. *Id.* at 569-570. Again, the single issue ratemaking argument was not even raised.

12. The Court's holdings in *Public Counsel I and II*, represent a strong endorsement of the Commission's power to approve the tariff at issue in this proceeding. Like the tariff proposal in this case, the emergency amendments and associated deferral orders were promulgated and implemented by the Commission outside the context of a general rate case proceeding. Like the tariff proposal in this case, such costs were also driven by the virtually identical changes in the upfront arrearage payments that customers were required to make to restore or maintain service during the winter heating season. If the Commission possessed the authority outside of rate case to approve rule changes that made it easier for low-income customers to restore or maintain service on the eve of the winter heating season, and to permit utilities to defer and recover the associated costs, it certainly has the authority to take similar action with respect to a tariff filing that does the same thing.

13. The Commission's authority to approve the Company's tariff is also supported by numerous other instances where the Commission has authorized applications or tariff filings for the purpose of assisting customers and deferring the associated costs. The most notable and directly applicable examples of this are the two occasions on which the Commission approved the same kind of tariff proposal for Laclede Gas Company, once in December 2010 (*see* Case No. GR-2010-0171; Tariff No. YG-2011-0305) and again in December of 2011 (*see* Case No. GR-2010-0171; File No. YG-2012-0252). Significantly, the Staff did not oppose either of these tariff filings and, in fact, submitted a recommendation affirmatively supporting Commission approval of

the 2011 filing. While the amounts being proposed for deferral in this instance may be slightly larger than those authorized in these two prior tariff filings, they are significantly smaller than those authorized by the Commission and upheld in *Public Counsel I* and *II*. The specific value of the amount being deferred, however, has no bearing on the legality of the Commission's authority to consider and approve such tariffs outside the context of general rate case. The Commission either has the authority to take such action or it does not, regardless of the amount being deferred or the method being used to express that power. The historical record shows that the Commission had the authority to take such action in 2006, 2010 and 2011 and MGE respectfully submits that it has the authority to take such action again in 2016.

14. The Commission has taken a number of actions over the years that further demonstrate its authority to approve requests to provide additional help to customers during challenging circumstances. Examples include special programs or tariff accommodations to assist customers devastated by tornados or floods. (*see Re Missouri Gas Energy's Tariff Sheets Designed to Implement an Experimental Pilot Program to Assist Rebuilding in the Area of Joplin*, Case No. GT-2012-0170, Notice Regarding Tariff Filing (December 2009); *Re The Empire District Electric Company for the Issuance of an Accounting Authority Order Relating to its Electrical Operations*, Case No. EU-2011-0387, Order Approving and Incorporating Unanimous Stipulation and Agreement, (November 30, 2011)) In these cases, the Commission used its regulatory authority to permit and encourage utilities to make a positive contribution to people adversely affected by these events.

15. In this instance a need has been created by a delay in energy assistance that will leave some low-income customers without access to the resources necessary to restore utility services as the winter heating season begins. Approval of the Company's tariff proposal will not be a panacea, but it would help hundreds and perhaps even thousands of customers in a way that has been found to be both lawful and reasonable in the recent past. For all of these reasons, the Commission should approve the Company's Tariff Sheet and deny Staff's Motion to Reject it.

WHEREFORE, for the foregoing reasons, MGE respectfully requests that the Commission issue its Order approving the Revised Tariff Sheet for service rendered on and after November 4, 2016.

Respectfully Submitted,

LACLEDE GAS COMPANY

/s/ Rick Zucker

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the parties of record in this case on this 31st day of October, 2016 by United States mail, hand-delivery, email, or facsimile.

/s/ Marcia Spangler