

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

In the Matter of the Application of)	
Southern Missouri Gas Company, L.P.)	Case No. GR-2010-0347
Request for a Small Company Rate)	Tariff File No. JG-2011-0253
Increase.)	

**SOUTHERN MISSOURI GAS COMPANY'S
REPLY TO PUBLIC COUNSEL'S RESPONSE
AND RESPONSE TO ORDER DIRECTING FILING**

COMES NOW Southern Missouri Gas Company, L.P. d/b/a Southern Missouri Natural Gas ("SMNG" or "Company"), pursuant to Missouri Public Service Commission ("Commission") Rules 4 CSR 240-2.080(15) and 4 CSR 240-3.050, and for its Reply to Public Counsel's Response in Opposition to Agreement and Request for Evidentiary Hearing ("Response"), and its Response To Order Directing Filing issued on December 23, 2010, respectfully states as follows:

BACKGROUND

1. On May 21, 2010, SMNG submitted a letter to the Secretary of the Missouri Public Service Commission ("Commission") in accordance with the provisions of Commission Rule 4 CSR 240-3.050, Small Utility Rate Case Procedure¹ ("Small Company Procedures"), initiating this small company revenue increase request ("Request"). The Company provides service to approximately 8,000 customers.²

¹ As reflected in the Code of State Regulations, the Purpose of the Small Utility Rate Case Procedure is stated as follows: "This rule provides procedures whereby certain small utilities may request increases in their overall operating revenues, without complying with the rules pertaining to general rate cases set forth elsewhere in this chapter."

² 4 CSR 240-3.050(1) provides, in part: "Notwithstanding the provisions of any other commission rule to the contrary, a gas utility serving ten thousand (10,000) or fewer customers . . . shall be considered a small utility under this rule."

2. The Small Company Procedure, *sui generis* to small utilities, is governed by its own set of rules. Under such rules, the Company requests an increase by filing a letter asking for a revenue increase and is specifically directed by the rule not to file any tariffs.³

3. In its May 21, 2010 letter, SMNG requested an increase of \$1,000,000 in its annual gas service operating revenues.⁴ In accordance with the Small Company Procedure, the Staff of the Commission (“Staff”) initiated an audit of SMNG’s books and records and a review of SMNG’s existing tariff (referred to as “Staff’s Investigation”). Upon completion of Staff’s Investigation, Staff provided its results to both SMNG and the Office of the Public Counsel (“OPC”) with Staff’s initial recommendations for the resolution of SMNG’s Request, and other information regarding Staff’s Investigation.

4. Staff and Company entered into a “Company/Staff Agreement Regarding Disposition of Small Natural Gas Company Revenue Increase Request” (“Disposition Agreement”) on November 17, 2010, setting forth the signatories’ proposed resolution to all of the issues pertaining to the Company’s revenue increase request. Staff filed the Disposition Agreement, via EFIS, on that date.

5. Included among the terms of the Disposition Agreement, was the requirement that “SMNG shall file proposed tariff revisions with the Commission containing the rates, charges, and language set out in the specimen tariff sheets attached. (Attachment A).” Pursuant to, and in accordance with, the Disposition Agreement and Commission Rule 4 CSR 240-3.050(14), on November 17, 2010, SMNG filed proposed

³ “A utility filing such a request shall specify the amount of the revenue increase that it is seeking, but shall not submit any proposed tariff revisions with the request.” 4 CSR 240-3.050(2) (Emphasis added).

⁴ Pursuant to 4 CSR 240-3.050(7), SMNG mailed written notice of the request to each of its customers within the prescribed thirty-day time frame.

tariff revisions identical to the specimen tariff sheets with the Commission, bearing an effective date not fewer than forty-five (45) days after they were filed (January 1, 2011), to implement the agreement. Said tariff filing was assigned Tariff File No. JG-2011-0253.

6. In addition, and in conformance with the Small Company Procedure, SMNG mailed its Second Customer Notice to each of its customers (said Notice having been approved by both Staff and OPC) regarding the proposed tariff revisions and providing a summary of proposed rates on an average residential customer's bill. The notice invited customer comments and contained comment submission instructions. Staff filed a copy of the Second Customer Notice in the case file on November 26, 2010.

PUBLIC COUNSEL'S RESPONSE

7. On December 14, 2010, OPC filed its Response, alleging that:

OPC opposes this agreement because the revenue requirement agreed to by Staff and SMGC may include an acquisition premium above the value of the plant being included in rate base. Including the acquisition premium in rates would be significantly detrimental to ratepayers because it would force ratepayers to overcompensate SMGC for plant that has been written-down as impaired assets. Rate base should include the value of the assets after the write down to reflect the true value of the assets without forcing ratepayers to pay an acquisition premium.

OPC states that this is the only issue that OPC seeks to resolve through an evidentiary hearing. OPC also references 4 CSR 240-3.050(24), and observes that the rate case must be submitted to the Commission by February 21, 2011. "Accordingly, OPC requests an evidentiary hearing in late January 2011 or early February 2011 to give the parties sufficient time to file briefs by February 21, 2011." (Response, p. 2).

ORDER DIRECTING FILING

8. On December 16, 2010, the Commission issued its Notice of Contested Case And Order Directing Filing (“Notice”) directing that Staff file its response to the *Office of the Public Counsel’s Response in Opposition to Agreement and Request for Evidentiary Hearing* be filed by December 23, 2010. The Notice also stated: “As to any such allegation of fact, the responses shall admit, deny, or state that the filing party has insufficient information to admit or deny. The Commission will also order a proposed procedural schedule for the evidentiary hearing.” Subsequently, on December 23, 2010, the Commission issued its Order Directing Filing (“Order”) directing that SMNG file a pleading in response to the *Office of the Public Counsel’s Response in Opposition to Agreement and Request for Evidentiary Hearing*, said response to be filed no later than December 28, 2010. The Order stated: “As to any allegation in the motion relating to an acquisition premium the utility’s response shall admit, deny, or state that the utility has insufficient information to admit or deny such allegation.”

SMNG’S REPLY AND RESPONSE TO ORDER DIRECTING FILING

9. For its response to the Order, SMNG generally denies Public Counsel’s allegations relating to an acquisition premium. SMNG specifically denies Public Counsel’s allegation that there is a possibility of an acquisition premium. Secondly, OPC has no basis for its assertion that the “revenue requirement agreed to by Staff and SMNG may include an acquisition premium above the value of the plant being included in rates” and SMNG hereby denies this allegation.

10. In *Re UtiliCorp United Inc. and St. Joseph Light & Power Company for Authority To Merge*, 12 Mo.P.S.C.3d 388, 389-90 (February 26, 2004), the Commission has defined an “acquisition adjustment” as follows:

For regulatory purposes, an acquisition adjustment is simply the difference between the consideration that the purchaser pays for the assets and the net book value of those assets. As a general rule, only the original cost of utility plant to the first owner devoting the property to public service, adjusted for depreciation, should be included in the utility’s rate base. (*emphasis added*).

As the Commission knows, SMNG has never purchased another public utility or another public utility’s assets in its brief history, and therefore it is simply impossible for SMNG to have an “acquisition premium” reflected on its books, or in its revenue requirement in this case. OPC’s arguments are totally without merit. However, by merely raising this unprecedented position, OPC will cause the Company to miss the opportunity to receive needed rate relief during the current heating season, after ten years of no general rate increases, and continuing losses incurred. (See Paragraph 13, *infra*.) Unfortunately, there will be no method for the Company to recover these foregone heating season revenues after the Commission reaffirms its previous positions on acquisition premiums and rejects Public Counsel’s specious arguments in this case.

11. Secondly, there have been no asset write-downs to the books of SMNG, and SMNG denies this allegation. Apparently, OPC’s position is based upon an assumption that SMNG’s assets on its regulated books should have been written down in the past if some other entity acquired the equity of SMNG for less than its book value. However, there is no basis for this assumption in Generally Accepted Accounting Principles (GAAP) or in the laws of Missouri.

12. Again, SMNG has not purchased any other public utilities or public utilities' assets, and it has no positive or negative acquisition adjustments on its books or in the Staff's revenue requirement in this case. Even if there were a negative or a positive acquisition adjustment on its books (which there is not), the Commission has a strong precedent that the net original cost standard is used in ratemaking in Missouri, notwithstanding the existence of a positive or a negative acquisition adjustment on the books of the public utility:

An acquisition adjustment can be either positive or negative. In other words, when a utility purchases an asset, it may pay more or less than the net original cost of the asset. When the utility pays more than net original cost, it is said to have paid an acquisition premium. But, in some circumstances, a utility may be able to purchase assets at less than net original cost. In that situation, the utility has a negative acquisition adjustment.

Missouri has traditionally applied the net original cost standard when considering the ratemaking treatment of acquisition adjustments. That means that the purchasing utility has not been allowed to recover an acquisition premium from its ratepayers. But it also means that ratepayers do not receive lower rates through a decreased rate base when the utility receives a negative acquisition adjustment. Even if a company acquires an asset at a bargain price, it is allowed to put the asset into its rate base at its net original cost. Similarly, ratepayers do not share in the gains a utility may realize from selling assets at prices above their net original cost. Those gains flow only to the utility's shareholders.

See e.g., Re UtiliCorp United Inc. and St. Joseph Light & Power Company for Authority To Merge, 12 Mo.P.S.C.3d 388, 389-90 (February 26, 2004). Since SMNG has not purchased any public utility or public utility assets above or below book value, it cannot have an acquisition adjustment. Therefore, the Company will vigorously oppose OPC's unprecedented proposal to delay the effectiveness of "just and reasonable" rates based upon OPC's unfounded theory.

13. SMNG provides safe and reliable natural gas distribution services to approximately 8,000 customers at prices competitive with alternative fuels. Not having received a general rate increase in approximately ten years, SMNG entered into the Disposition Agreement with the intent that a fully-audited increase could be achieved in a reasonably timely manner. As the Staff's accounting schedules reveal, approximately seventy percent (70%) of the Company's residential volumes are sold in the winter months. With volumes sold disproportionately weighted to the winter months, any delay to the opportunity to recover the proposed rate increase during the winter heating season will simply exacerbate this critical situation.

14. 4 CSR 240-3.050(20) provides:

If the public counsel files a request for an evidentiary hearing, the request shall include a specified list of issues that the public counsel believes should be the subject of the hearing. The utility's pending tariff revisions shall then be suspended, and the utility's case shall be resolved through contested case procedures conducted in the time remaining in the rate case process, consistent with the requirements of section (24), the requirements of due process, and fairness to the participants in the matter and the utility's ratepayers.

SMNG respectfully submits that, given the posture of this proceeding, fairness dictates that the Commission resolve this matter as expeditiously as possible. The Commission should require that Public Counsel make some colorable argument that could support its request for relief and an evidentiary hearing.

15. The Commission's Order provides that the parties shall file a proposed procedural schedule no later than December 30, 2010, and SMNG will be seeking an early resolution of this matter.

WHEREFORE, SMNG respectfully submits its Reply to the OPC's Response, and Response To Order Directing Filing, and hereby requests that the Commission order Public Counsel to present some lawful basis upon which relief could be granted, and otherwise requests that this matter be resolved as expeditiously as possible.

Sincerely,

/s/ James M. Fischer

James M. Fischer, MBN 27543
Email: jfischerpc@aol.com
Larry W. Dority, MBN 25617
Email: lawdority@sprintmail.com
Fischer & Dority, P.C.
101 Madison Street, Suite 400
Jefferson City, MO 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383

Attorneys for Southern Missouri Gas
Company, L.P. d/b/a Southern Missouri
Natural Gas

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the General Counsel of the Staff of the Missouri Public Service Commission and the Office of the Public Counsel on this 28th day of December, 2010 by hand-delivery, fax, electronic or regular mail.

/s/ James M. Fischer

James M. Fischer