

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

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| In the Matter of the Application of Missouri Gas |) | |
| Energy, a division of Southern Union Company, |) | Case No. GU-2007-0480 |
| for an Accounting Authority Order Concerning |) | |
| Environmental Compliance Activities. |) | |

MGE’S REPLY TO OPC RESPONSE

COMES NOW Missouri Gas Energy, a division of Southern Union Company (“MGE” or “Company”), and states the following to the Missouri Public Service Commission (“Commission”) in reply to the Office of the Public Counsel’s (“Public Counsel”) Response and Motion to Establish Procedural Schedule:

SUMMARY

Public Counsel has had more than enough time to conduct discovery as this case has been on file since June 13, 2007. Further, MGE’s proposed schedule provides additional time for discovery, if necessary. Because MGE is the applicant and carries the burden in this case, it should be permitted to open and close the presentation of evidence (*See* Commission Rule 4 CSR 240-2.110(5)). Lastly, Public Counsel is mistaken to indicate that MGE has not incurred costs that would fall within the requested accounting authority order (“AAO”). MGE has incurred such costs since the filing of this case and needs this matter to be considered prior to the end of this year, for the Commission’s decision to have meaning in regard to MGE’s financial statements.

DISCUSSION

1. On April 9, 2008, MGE filed its Motion to Set Procedural Schedule. This proposed schedule was supported by the Staff of the Commission. Thereafter, MGE filed its direct testimony on April 10, 2008.

2. Also on April 10, 2008, the Public Counsel filed its Response and Motion to Establish Procedural Schedule (“Response”). Public Counsel’s Response suggested that the schedule proposed by MGE was “hurried.” It further alleged that Public Counsel would need more time for discovery than the slightly more than six weeks between direct and rebuttal testimony built into MGE’s proposal (and the slightly more than thirteen weeks provided between direct testimony and the proposed hearing date). Lastly, Public Counsel alleged that it should be allowed to have the last word in regard to filed testimony.

3. First, MGE is surprised to find that there is a need more discovery in this case. The application has been on file since June 13, 2007. The issues are not new as the subject matter has been the subject of testimony in prior cases. Further, Public Counsel has had the benefit of the proposed stipulation of facts in terms of what MGE will seek to prove in the case. Any need for additional discovery is due to the Public Counsel’s inattention to this application for the past 10+ months, not the procedural schedule that has been proposed by MGE.

4. This being said, Public Counsel is not left without opportunity for discovery. The proposed schedule provides over six weeks between the filing of MGE’s direct testimony and the rebuttal testimony filing. This would theoretically be enough time for two rounds of data requests – and additional rounds between rebuttal testimony and the evidentiary hearing. It is unclear why this is not sufficient.

5. Public Counsel’s suggestion that it should be provided an opportunity to “respond to MGE’s testimony rebutting Public Counsel’s evidence” runs contrary to general legal theory. Commission Rule 4 CSR 240-2.110(5) provides support for the idea that the party with the burden should be the first and last party to provide testimony. The rule states that “the order of procedure in hearings shall be as follows, unless otherwise agreed to by the parties or ordered by

the presiding officer – (A) In all cases except investigation cases, the applicant . . . shall open and close” As the party carrying the burden in this case, MGE should be the first (and last) to produce evidence.

6. The schedule MGE proposed is more typical for an AAO case. Some examples of that are found in the following:

A) *In the Matter of the Application of Missouri Gas Energy*, Case No. GU-2005-0095, Order Adopting Procedural Schedule (December 16, 2004) (<http://www.psc.mo.gov/orders/2004/1216595.htm>);

B) *In the Matter of the Application of Laclede Gas Company*, Case No. GA-2002-429 (May 30, 2002) (<http://www.psc.mo.gov/orders/2002/05302429.htm>); and,

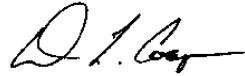
C) *In the Matter of the Joint Application of Missouri-American Water Company, St. Louis County Water Company and Jefferson City Water Works Company*, Case No. WO-2002-273 (January 28, 2002) (<http://www.psc.mo.gov/orders/2002/01182273.htm>).

7. Public Counsel further indicates that “MGE is not requesting an AAO for costs it has incurred and is only requesting an AAO for costs MGE believes it will incur in the ‘foreseeable future.’” Had Public Counsel conducted any discovery in this matter over the last six months, it would have found that MGE has made significant expenditures toward former manufactured gas plant sites at its Kansas City Central plant in late 2007 and 2008. Further, it has become likely that MGE will spend significant amounts on the former manufactured gas plant site in St. Joseph between now and early 2009.

8. As a result of these expenditures, this application for an accounting authority order is critical to MGE’s 2008 financial statements. The Commission’s decision will have to be issued prior to the end of 2008 to affect treatment of the above costs on MGE’s books. The schedule proposed by MGE will provide enough time for the case to be briefed and for the Commission to consider the issues without being rushed and should be approved by the Commission.

WHEREFORE, MGE moves the Commission to issue an order setting the above procedural schedule proposed by MGE.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI GAS ENERGY,
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, or sent by electronic mail, on April 16, 2008, to the following:

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