BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Tariffs Increasing Rates for Gas Service Provided to Customers in the Company's Missouri Service Area.	))))	Case No. GR-2006-0422

MISSOURI GAS ENERGY'S RESPONSE TO
PUBLIC COUNSEL'S APPLICATION FOR REHEARING

COMES NOW Missouri Gas Energy ("MGE"), a division of Southern Union Company ("Southern Union"), by and through the undersigned counsel, and for its response to the Application for Rehearing filed herein by the Office of the Public Counsel ("Public Counsel") respectfully states as follows to the Missouri Public Service Commission (the "Commission"):

Introduction

On March 22, 2007, the Commission issued its *Report and Order* in the above-captioned case, to be effective March 30, 2007. On March 29, 2007, prior to the effective date of the *Report and Order*, Public Counsel filed an Application for Rehearing, alleging that the *Report and Order* is erroneous, unlawful, unjust, unreasonable, arbitrary and capricious, unsupported by substantial and competent evidence, is against the weight of the evidence, is in violation of the constitutional provisions for due process, is in violation of the constitutional provisions for equal protection, is unauthorized by law, was made upon unlawful procedure and without a fair trial, constitutes an abuse of discretion, and contains inadequate findings of fact and conclusions of law.

With its Application for Rehearing, Public Counsel has not demonstrated that there is sufficient reason to grant rehearing as requested therein. Public Counsel's Application for Rehearing fails to raise any issue which has not already been considered and addressed by the

Commission, but each matter addressed by Public Counsel in its Application for Rehearing is addressed briefly below.

Discussion and Argument

1. Rate Design. The portion of the *Report and Order* adopting a straight fixed-variable ("SFV") rate design for MGE contains sufficient findings of fact and conclusions of law and is just, reasonable, and lawful and is based on competent and substantial evidence. The argument of Public Counsel to the contrary is without merit. It is clear that the Commission carefully considered the evidence on this issue, weighed and balanced all competing interests, and reached a decision which serves the public interest and complies with the principles set forth by the United States Supreme Court in *Bluefield Water Works v. Public Service Comm'n*, 262 U.S. 679, 692 (1923) and *Fed. Power Comm. v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). The SFV rate design is consistent with good public policy, including the critical need to promote energy conservation in an increasingly warming environment.

MGE submitted undisputed evidence that it has consistently failed to recover its fixed distribution costs because, among other things, almost half of MGE's fixed costs are recovered through the ups and downs of volumetric sales. The evidence also demonstrated that the SFV rate design, often referred to generally as "revenue decoupling," has been adopted in some form in several of the jurisdictions analyzed by MGE's and Staff's rate of return experts and has significant benefits for both MGE and ratepayers.

A SFV rate design eliminates an undesirable incentive which was present in what Public Counsel refers to as the rate design which had been in place for decades. Previously, MGE had every incentive to encourage natural gas consumption (thus, increasing its recovery of fixed costs) and discourage energy conservation. In full recognition of the impact of a SFV rate

structure, MGE has committed itself to several conservation initiatives. Contrary to Public Counsel's contention, the evidence presented clearly demonstrated that the SFV rate structure will not punish low income, low usage customers.

Public Counsel argues that the SFV rate design "essentially guarantees" that MGE will recover its costs. A SFV rate design does not guarantee cost recovery. This was admitted to and acknowledged by Public Counsel's own witness. There was no evidence that a SFV rate structure eliminates incentives to cut costs and conserve energy. As to conservation, the evidence demonstrated that with variations in natural gas bills linked directly and solely to consumption, the SFV rate structure actually encourages conservation. The evidence also demonstrated that the SFV structure gives MGE the incentive to encourage energy conservation and work with its customers in doing so.

2. Natural Gas Conservation. Public Counsel asserts that the Commission has failed to issue findings of fact on this issue, but this portion of the *Report and Order* is sufficient to explain to a reviewing court how the issue was resolved, and the Commission's decision on this issue is amply supported by competent and substantial evidence in the record.

Public Counsel also asserts that the conservation program meets the definition of a prohibited promotional practice, because the program may provide an incentive for customers to switch from electric to gas water heaters. Public Counsel provides no authority for this assertion, other than citing to 4 CSR 240.3.255, 14.010, 14.020, and 14.030. A careful review of these rules reveals that the program is a "promotional practice" – not a *prohibited* promotional practice.

The Company's initiatives recognize energy efficiency as a high-priority, make a strong and sustainable commitment to implement cost-effective energy efficiency efforts, promote broad

communication of the benefits of and opportunities for energy efficiency, and promote timely and stable funding for a program designed to deliver cost-effective energy efficiency. The water heater rebate program is designed to encourage customers to install energy efficient water heaters, thereby potentially reducing a substantial portion of the usage within MGE's residential service class. The portion of the Commission's *Report and Order* dealing with this issue is just, reasonable, and lawful.

3. Infinium Software. Public Counsel's argument on this issue is based upon errors of both fact and law. The Infinium system continues to be used by MGE. The evidence is clear that the Company has been able to reduce its overall software expense by converting to the Oracle system before its investment in Infinium was fully recovered. The Commission properly rejected Public Counsel's attempt to have it both ways – reaping the benefits of conversion but refusing to pay the costs. This portion of the *Report and Order* is just and reasonable and contains sufficient findings of fact.

4. Emergency Cold Weather Rule ("ECWR"). Public Counsel again asserts that the Commission has failed to make sufficient findings of fact, but this portion of the *Report and Order* is sufficient to explain to a reviewing court how the issue was resolved, and the Commission's decision on this issue is amply supported by competent and substantial evidence in the record.

Public Counsel also argues that the *Report and Order* allows MGE to recover costs not attributed to the ECWR and that the approved calculation violates the ECWR by allowing MGE to recover costs incurred by MGE with or without the ECWR. Public Counsel's arguments are without merit. The Commission-approved Accounting Authority Order authorized the Company to maintain a regulatory asset on its books for costs related to complying with the emergency

cold weather rule. MGE accumulated a balance of $901,331 on its books as of June 30, 2006, representing the difference between what MGE would have collected and what MGE actually collected from 2,976 customers whose service was reconnected under the emergency rule but was later disconnected for non-payment of bills. The Commission properly granted MGE's request to amortize the deferred cost through an AAO and properly found that $901,331 should be amortized over a three-year period. The portion of the *Report and Order* dealing with this issue is just and lawful.

5. Kansas Property Tax AAO. This portion of the *Report and Order* is just and reasonable and contains sufficient findings of fact. Pursuant to the Accounting Authority Order authorized in Case No. GU-2005-0095, MGE deferred a total of $3,422,206 of Kansas property taxes for the years 2004 and 2005, and the issue of whether property taxes should be assessed on stored gas has been appealed and is still pending in the Kansas Supreme Court. This issue is separate from and does not relate to the issue of tax refunds in Oklahoma. If MGE had not challenged the State of Kansas' attempt to levy property taxes on gas held on MGE's account in Kansas, there would be no basis to challenge the inclusion of these taxes in customer rates which would be higher as a result. MGE's appeal of this tax will serve to benefit customers if successful. The Commission properly authorized MGE to continue the deferral.

6. Commission Procedure. Lastly, the *Report and Order* was not issued upon unlawful procedure, and MGE was not afforded an unfair opportunity to present additional argument, as alleged by Public Counsel.

By its Order of July 13, 2006, the Commission directed each party to file a statement of its position, including a summary of the factual and legal points relied on by the party, and the Commission directed that each such statement be simple and concise and not contain argument.

The Order further provided that briefs shall be filed in accordance with 4 CSR 240-2.080, shall follow the list of issues, and shall set forth and cite to the applicable portions of the record. The Order then provided for "prehearing briefing" to be filed on or before December 16, 2006. MGE complied with this Order, and no other party was prejudiced by MGE's filings in this regard.

The Commission conducted local public hearings in this matter at which the Commission heard comments from MGE's customers regarding MGE's request for a rate increase. The hearings were held in Kansas City, Joplin, Republic, Warrensburg, Nevada, St. Joseph and Slater, Missouri. The parties prefiled direct, rebuttal and surrebuttal testimony. The evidentiary hearing began on January 8, 2007, and continued through January 17. True-up testimony was entered into the record during the course of the hearing, and with the consent of all of the parties, the true-up hearing was canceled as being unnecessary. No matter the length of MGE's prehearing brief, all parties to the proceeding were afforded due process.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was electronically transmitted, sent by U.S. Mail, postage prepaid, or hand-delivered, on this 5th day of April, 2007, to:

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