

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

In the Matter of a Proposed)	
Amendment to the Commission's)	Case No. GX-2004-0496
Cold Weather Rule		

**COMMENTS OF
MISSOURI UTILITIES**

Pursuant to the Notice published in the May17, 2004, Missouri Register, Vol. 29, No. 10, Aquila, Inc., Atmos Energy Corporation, The Empire District Electric Company, Kansas City Power and Light Company, Laclede Gas Company, Missouri Gas Energy, and Union Electric Company d/b/a AmerenUE (hereinafter the "Missouri Utilities") respectfully submit the following comments in response to the Missouri Public Service Commission's ("Commission") Proposed Amendment to the Cold Weather Rule at 4 CSR 240-13.055 ("Proposed Amendment").

A. Introduction/Summary of Comments

As set forth in the Missouri Register, the Proposed Amendment would make several modifications to the Commission's existing Cold Weather Rule, which is found at 4 CSR 240-13.055. As originally proposed, these modifications would have required: (a) that disconnection of service notices only be issued to customers where an actual intent to disconnect service exists; (b) that customers moving from one residence to another in a utility's service area not be treated as new customers for certain purposes; (c) that customers who have fallen behind on their Cold Weather Rule payment agreement be given an opportunity to pay any missed installments, and remain on the agreement, if they make such payments before service is discontinued; and (d) that customers be eligible for a Cold Weather Rule payment agreements if they have not defaulted on such an agreement within the last three years.

At the same time that the Proposed Amendment was being developed and issued, the Commission also established a Task Force for purposes of evaluating potential changes to the Cold Weather Rule as well as longer-term affordability measures that could assist customers in maintaining their utility service (the “Task Force”). A number of the Missouri Utilities have actively participated in the deliberations of the Task Force since its inception. And the Missouri Utilities as a group want to commend the Commission for its use of the Task Force as a vehicle for obtaining input from interested stakeholders and for forging a consensus, where possible, on the issues raised by the Commission’s initiative.

Consistent with this overall purpose, the Task Force has, in fact, reached a consensus on a number of modifications to the Cold Weather Rule, each of which is addressed in separate comments submitted by the Task Force. As discussed below, the Missouri Utilities support adoption of these modifications and will accordingly limit their comments to a brief explanation of why they believe such modifications should be adopted by the Commission in lieu of what was originally set forth in the Proposed Amendment.

The members of the Task Force were not, however, able to reach a consensus on all issues. For example, the Missouri Utilities anticipate that some members of the Task Force may propose further modifications to the Cold Weather Rule relating to the current temperature threshold of 30 degrees Fahrenheit below which service cannot be disconnected during the Cold Weather Rule period. Modifications may also be proposed to the amount of arrearages that customers who have defaulted on a previous Cold Weather Rule payment agreement are currently required to pay in order to be

reconnected. The Missouri Utilities have serious legal and policy concerns regarding whether the Commission can or should adopt such modifications. The Missouri Utilities therefore reserve the right to comment on such modifications at the public hearing scheduled in this case in the event they are actually proposed.

Finally, the Missouri Utilities believe that at least one additional modification to the Proposed Amendment should be made to comply with prevailing legal requirements in the event the Commission decides that any Rule changes beyond those recommended by the Task Force should be made. Specifically, language should be added to new Section (12) of the Proposed Amendment to clarify that utilities will be permitted to file tariffs and adjust their rates as necessary to permit recovery of any estimated increase in operating expenses or decrease in revenues resulting from implementation of any modifications to the Rule. (*See* Attachment 1). As discussed below, Missouri courts have repeatedly held that if the Commission promulgates a rule or takes other actions outside of a general rate case proceeding that affects a utility's revenues, then the Commission must implement such changes on a revenue neutral basis. That is, the Commission must allow the affected utilities to file tariffs to compensate for any adverse financial effects caused by its action. *See e.g.* cases discussed in ***State ex rel. Alma Telephone Company, et al. v. Public Service Commission***, 40 S.W.3d 381 (Mo.App. 2001).

This requirement for revenue neutrality between rate cases has also been recognized and enforced by the Commission itself on numerous occasions. Indeed, the Commission has repeatedly rejected utility tariff filings on the grounds that such tariffs would unlawfully allow the utility to increase its revenues between rate cases without a consideration of all relevant factors. *See Re: UtiliCorp United Inc.'s Tariff Filed to*

Update the Rules and Regulations for Gas, Case No. GT-2001-484, Order Rejecting Tariff (April 3, 2001); *In the Matter of the Chapter 33 Tariff Filing of Miller Telephone Company*, Report and Order, Case No. TT-2001-257 (December 12, 2000); and, *Re: Laclede Gas Company*, Case No. GT-2003-0117, Report and Order (January 16, 2003).

Regardless of how one may view the merits of this approach to handling items between rate cases, there is no legal basis for applying these principles differently based on whether the action is a rule that decreases revenues or a tariff filing that increases them. Accordingly, should the Commission decide to adopt Rule changes other than those proposed by the Task Force, it should also adopt the proposed language set forth in Attachment 1.

B. Task Force Recommendations

As previously noted, the Commission's Cold Weather Rule Task Force reached a consensus on a number of modifications to the Proposed Amendment. Each of those modifications, and the reasons for making them, are addressed at some length in the Comments submitted by the Task Force. Accordingly, the Missouri Utilities will limit their comments to a brief discussion of why they believe the major modifications recommended by the Task Force should be adopted.

1. Procedures for Registering Elderly or Disabled Customers (New Section (1)(C))

The Missouri Utilities believe that the new procedures recommended by the Task Force for addressing elderly and disabled customers will make for a more orderly, efficient and effective process for identifying and registering such customers. By clarifying the documentation that a customer may provide to qualify for registration,

including the use of disability award letters from the federal government, the new procedures should simplify the registration process for many customers. And by establishing an annual renewal process, the new procedures should ensure that registration lists remain current and are updated in an orderly manner. For all of these reasons, the Missouri Utilities recommend that these procedures be adopted by the Commission as part of the Proposed Amendment.

2. Restrictions on Representations of Service Terminations (Section (4))

Section (4) of the Proposed Amendment contained language that purported to prohibit threats of service disconnections when the utility had no present intent to actually discontinue service. In its original form, this proposed prohibition was vague, difficult to administer and potentially inconsistent with other Rule provisions that affirmatively require that customers be provided with multiple notices before service may be discontinued. In contrast, the new language proposed by the Task Force for Section (4) avoids these problems by focusing on those circumstances where there is a known “no-cut” day under the temperature moratorium provisions of the Cold Weather Rule. On such days, the new language would affirmatively prohibit utility employees from making oral representations that service may be discontinued during the time the moratorium is in effect. The Missouri Utilities believe this is a workable and appropriate addition to the Cold Weather Rule and should be approved by the Commission.

3. Right to Reinstate Cold Weather Rule Payment Agreements (New Sections (7) and (10)(A)(5))

Both the Proposed Amendment, as well as the modifications proposed by the Task Force, contain language that would allow customers to reinstate or preserve existing Cold Weather Rule agreements under various circumstances. The first circumstance

involves a situation where a customer moves from one residence to another in a utility's service area during the Cold Weather Rule period. Under such circumstances, the new Section (7) language recommended by the Task Force provides that the utility shall permit the customer to receive service and maintain the benefit of the payment obligations set forth in the Cold Weather Rule Agreement so long as the customer pays all past due installments on the agreement as well as any past due amounts for service that was not included in the agreement. Although this represents an expansion of reinstatement rights over what was originally proposed in the Cold Weather Rule, the Missouri Utilities believe that the provision recommended by the Task Force is reasonable and should be adopted by the Commission.

For the same reasons, the Missouri Utilities also support adoption of the Task Force's recommended language for Section (10)(A)(5). This language is designed to provide the same reinstatement rights as those set forth in Section (7) in those circumstances where a customer faces imminent disconnection at his or her existing service location. Once again, the Missouri Utilities believe that it is reasonable and appropriate to provide customers with the opportunity to preserve their Cold Weather Rule payment agreements and avoid disconnection as long as the appropriate payments set forth in the proposed provision are made prior to disconnection.

4. Elimination of 3 Year Agreement Language

As originally drafted, the Proposed Amendment contained modifications to subsections 1 and 2 of renumbered Section (10)(C) that would have specified that customers are eligible for certain initial payments under Cold Weather Rule payment agreements as long as they did not default on such an agreement within the last three (3)

years. Since customers already remain eligible for Cold Weather Rule payment agreements as long as they make the required payments provided by the Rule, it was determined that this three year default language was unnecessary. Accordingly, like the Task Force, the Missouri Utilities recommended that this language be deleted from any final Amendment.

5. Other Modifications

In addition to the major modifications discussed above, the Missouri Utilities also support the other modifications recommended by the Task Force as an appropriate and reasonable compromise of the issues that were raised by various Task Force members. The Missouri Utilities would therefore urge the Commission to adopt such modifications to its Proposed Amendment.

C. Revenue Neutrality Provision

As discussed above, several members of the Task Force may propose additional modifications to the Proposed Amendment relating to the temperature threshold below which service may not be discontinued during the Cold Weather Rule period, as well as to the current payment terms for re-establishing service when a customer has previously defaulted on a Cold Weather Rule Agreement. Although the Missouri Utilities believe that there is no justification for such modifications, and that there are, in fact, a number of legal and policy considerations that preclude their adoption, they will reserve their comments until a specific proposal is made.

It is important to note now, however, that if such modifications were to be adopted they would, at a minimum, have the effect of decreasing utility revenues by diminishing the tools that utilities currently possess to collect the revenues that they are

lawfully entitled to under their approved and effective tariffs. In recent years, the Commission has been very clear that a regulatory action that tends to positively affect utility revenues, without taking into account all relevant factors, may not be considered outside the context of a rate case. For example, in its April 3, 2001, Order Rejecting Tariff in ***Re: UtiliCorp United, Inc.***, Case No. ET-2001-482, the Commission rejected UtiliCorp's tariff filing that was designed to synchronize late payment charges and other fees between its St. Joseph Light & Power and its Missouri Public Service divisions. The synchronization would have resulted in a temporary net increase in revenues to the utility of about \$11,000, without changing any fixed charges. Even though the increased cost to customers was de minimus, the Commission determined that it was obligated to review and consider all relevant factors, and that it simply did not have the authority to engage in single issue ratemaking.

The Commission once again relied on this principle in rejecting Laclede's experimental low-income assistance program in ***Re: Laclede Gas Company***, Case No. GT-2003-0117. In its January 16, 2003 Report and Order in that case, the Commission found that Laclede's program would result in higher earnings for the Company as a result of lower bad debt expenses. The Commission concluded that bad debt must be considered in the context of a rate case where all cost effects may be considered. (Report and Order at 15). *See also: Re: UtiliCorp United Inc.'s Tariff Filed to Update the Rules and Regulations for Gas*, Case No. GT-2001-484, Order Rejecting Tariff (April 3, 2001); *In the Matter of the Chapter 33 Tariff Filing of Miller Telephone Company*, Report and Order, Case No. TT-2001-257 (December 12, 2000).

As previously noted, regardless of how one may view the merits of the Commission's approach to such matters, the Commission cannot lawfully choose to ignore or apply these principles depending on whether the action is a rule that decreases revenues or a tariff filing that increases them. Accordingly, the Commission must either reject additional revisions to the Rule that would result in a financial detriment to the utilities or authorize the utilities to implement tariffs that would make them whole for any financial detriment caused by implementing the Proposed Rule, as set forth in the proposed language included in Attachment 1.

Indeed, to do otherwise would violate not only the Commission's own long-standing approach to such issues, but also the principle of revenue neutrality that has been consistently recognized by Missouri courts. See *State ex rel. Alma Telephone Company, et al. v. Public Service Commission*, 40 S.W.3d 381 (Mo.App. 2001); *State ex rel. Choctaw Telephone Company v. Public Service Commission*, Case No. CV193-66CC ; *State ex rel. Contel of Missouri, et al. v. Public Service Commission*, Cases Nos. CV190-190CC, CV190-191CC and CV190-193CC (April 29, 1990). Accordingly, should the Commission decide to make any further revisions to the Rule, it should also adopt the language set forth in Attachment 1.

E. Conclusion

For all of the foregoing reasons, the Missouri Utilities respectfully request that the Commission adopt the modifications recommended by the Task Force as well as the proposed language set forth in Attachment 1 to these comments should the Commission decide to adopt any further modifications beyond those recommended by the Task Force.

Respectfully Submitted,

/s/ Michael C. Pendergast

Michael C. Pendergast, #31763
Vice President & Associate General Counsel
Laclede Gas Company
720 Olive Street, Room 1520
St. Louis, MO 63101
Telephone: (314) 342-0532
Facsimile: (314) 421-1979
E-mail: mpendergast@lacledegas.com

Attorney for Laclede Gas Company

/s/Thomas M. Byrne

Thomas M. Byrne #33340
Union Electric Co.
One Ameren Plaza
1901 Chouteau Avenue
P.O. Box 66149, MC 1310
St. Louis, Mo. 63166-6149
Telephone: (314) 554-2514
Facsimile: (314) 554-4014
Email: tbyrne@ameren.com

Attorney for Union Electric Co.

/s/ Dean L. Cooper

Dean L. Cooper MBE #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
Telephone: (573) 635-7166
Facsimile: (573) 635-3847
dcooper@brydonlaw.com

Attorneys for The Empire District
Electric Company, Aquila, Inc., and
Missouri Gas Energy

/s/ James M. Fischer

James M. Fischer # 27543
FISCHER & DORITY, P.C.
101 Madison Street, Suite 400
Jefferson City, Missouri 65101
Telephone: (573) 636-6758
Facsimile: (573) 636-0383
E-mail: jfischerpc@aol.com

Attorneys for Atmos Energy
Corporation and Kansas City
Power and Light Company

Attachment 1

Proposed Addition to New Subsection 12 of 4 CSR 240-13.055

(12/10/) The commission shall recognize and permit recovery of reasonable operating expenses incurred by a utility because of this rule. If any change to this rule is implemented between general rate proceedings, the utility shall be permitted to file a tariff adjusting its rates as necessary to permit recovery of any estimated increase in operating expenses or decrease in revenues resulting from such implementation. Such tariff shall be subject to review and approval by the Commission and shall become effective at the same time as the Rule is made effective for the utility.