BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Proposed Amendment	)	
To Commission Rule 4 CSR 240-13.055.	)	Case No. GX-2006-0434

APPLICATION FOR REHEARING

COMES NOW Missouri Gas Energy (MGE), a division of Southern Union Company, pursuant to §386.500 RSMo 2000 and 4 CSR 240-2.160, and, for its Application for Rehearing, respectfully states as follows to the Missouri Public Service Commission (Commission):

1. On August 11, 2006, the Commission issued a Final Order of Rulemaking in this case approving an amendment to the Commission's Cold Weather Rule identified as 4 CSR 240-13.055(14) (the Amendment). In the Final Order, which bore an effective date of August 21, 2006, the Commission directed that the Amendment be transmitted to the Missouri Secretary of State.

2. The Final Order and the Amendment are unlawful, unjust, unreasonable, arbitrary, and not supported by competent and substantial evidence, all in material matters of fact and law, individually or cumulatively, or both, as indicated below.

RECOVERY OF COSTS

3. The Amendment first fails to provide adequate cost recovery in violation of the Commission's own rule, as well as constitutional provisions.

4. The existing Cold Weather Rule has a provision which states that the ". . . commission shall recognize and permit recovery of reasonable operating expenses incurred by a utility because of the rule." 4 CSR 240-13.055(12). MGE's present rates are based, in part, upon the collection policies currently found within the existing Commission rules and MGE's tariffs.

5. The Amendment serves to reduce those revenues by requiring lesser payments of past due amounts in order to reconnect, or maintain, utility service for those customers who have previously failed to follow through on payment plans under existing rules. Also, by requiring the reconnection, or preventing the disconnection, of customers who would otherwise be off the system and consequently no longer accruing gas service bills, the Amendment requires MGE to incur greater bad debts than otherwise would exist and thereby suffer increased revenue losses.

6. Issues related to compliance with 4 CSR 240-13.055(12) already exist. Years of experience have shown that MGE has not recovered its costs of compliance with the provisions of the Commission's existing Cold Weather Rule. MGE (as detailed in the Comments of Missouri Utilities, filed July 14, 2006) has under-recovered its uncollectible expenses over the past 10 years by an annual average of approximately $1.7 million. Further, over the past 5 years, more than 90% of these uncollectible expenses have been caused by the residential customers who benefit from the lenient reconnection, deposit and payment terms mandated by the terms of the Cold Weather Rule promulgated by the Commission. This 4 CSR 240-13.055(12) problem is exacerbated by the Amendment.

7. The Amendment's additional requirements also create an "unconstitutional taking of revenues without due process and is a revenue reduction imposed by the Commission without considering all relevant factors," as the Commission has not found, nor does it have any basis to find, that MGE's rates are unreasonable or unjust.

8. The Amendment attempts to address the increased expenses, reduced revenues, reduced income and reduced achieved returns resulting from this rule change through an accounting authority order. This mechanism would permit the booking of expenses and revenues for later recovery as determined by the Commission in a subsequent general rate case.

This would effectuate an "unlawful shifting of the burden of proof" to MGE to prove that it is due revenues to which it is already entitled and therefore does not constitute an adequate recovery mechanism. See *State ex rel. Alma Telephone Company, et al. v. Public Service Commission*, 40 S.W.3d 381 (Mo.App. 2001).

FISCAL NOTE

9. To the extent MGE is provided with recovery of the costs of compliance, a further question is raised as to the adequacy of the Amendment's fiscal note.

10. Section 526.205.1, RSMo 2000 states in part that:

> Any state agency filing a notice of proposed rulemaking, as required by section 536.021, whereby the adoption, amendment, or rescission of the rule would require an expenditure of money by or a reduction in income for any person, firm, corporation, association, partnership, proprietorship or business entity of any kind or character which is estimated to cost more than five hundred dollars in the aggregate, shall at the time of filing the notice with the secretary of state file a fiscal note containing the following information and estimates of cost:
>
> (1) An estimate of the number of persons, firms, corporations, associations, partnerships, proprietorships or business entities of any kind or character by class which would likely be affected by the adoption of the proposed rule, amendment or rescission of a rule;
>
> * * * * *
>
> (3) An estimate in the aggregate as to the cost of compliance with the rule, amendment or rescission of a rule by the affected persons, firms, corporations, associations, partnerships, proprietorships or business entities of any kind or character.

11. While the proposed amendment contained a fiscal note, this fiscal note only attempted to identify the cost for certain natural gas local distribution companies (LDC).[1] Section 526.205.1 requires that an estimate of the number and aggregate cost be made for each affected person. If the Commission truly believes that the LDC's costs of compliance will be

[1] The Commission examined 7 entities, 5 of which were identified as having information that was "undetermined" or "unknown."

recovered, the Commission has failed to estimate the number of customers to be impacted and the aggregate cost to be born by those customers.

12. "The very purpose of the notice procedure for a proposed rule is to allow opportunity for comment by supporters or opponents of the measure, and so to induce a modification. . . . To neglect the notice . . . or to give effect to a proposed rule before the time for comment has run . . . undermines the integrity of the procedure. *NME Hospitals v. Department of Social Servs., Div. of Medical Servs.*, 850 S.W.2d 71, 74 (Mo. banc 1993) (quoting *St. Louis Christian Home v. Missouri Comm'n on Human Rights*, 634 S.W.2d 508, 515 (Mo. App. 1982)). If an entity potentially affected by a proposed rule sees a public notice of rulemaking reflecting no cost or minimal cost of compliance, that entity may choose not to participate in the rulemaking process. If, on the other hand, the entity anticipates substantial compliance costs, it will be far more inclined to get involved. With such participation, state agencies are more likely to adequately consider the economic impact of their rulemaking activities, better rules are adopted, and public support for such rules is generated." *Missouri Hospital Association, et al. v. Air Conservation Commission*, 874 S.W.2d 380, 391 (Mo.App. W.D. 1994).

13. In this case, the Commission's failure to provide a fiscal note which estimates the impact on individual customers of the LDC's is a violation of Section 536.205 in that it has not provided potentially affected parties with the information necessary for those persons to decide whether or not to participate in the rulemaking process.

14. In *Missouri Hospital Association*, the Court of Appeals found that the state did not follow 536.205 because "it did not make a comprehensive and diligent effort to determine all private entities that would likely be affected and did not estimate the number of such entities by class in a manner giving them reasonable notice that they would be affected . . . ." Id. at 388.

The Court, therefore, found the challenged rules to be void for their failure to comply with the fiscal note requirements.

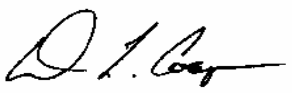
15. The Commission's failure in this case to make estimates regarding the impact on individual persons similarly renders the Amendment void.

CONCLUSION

16. The Amendment fails to provide for adequate recovery of MGE's costs of compliance in violation of 4 CSR 240-13.055(12) and constitutional provisions. To the extent it does provide MGE with recovery of a portion of its costs of compliance, the Commission has failed to assess the impacts on MGE's customers in violation of Section 536.205. For each of these reasons, the Commission should grant a rehearing and take action to address the deficiencies.

WHEREFORE, MGE asks that the Commission rehear this matter and issue an order providing a rule that addresses the concerns expressed herein.

Respectfully submitted,



Dean L. Cooper Mo. Bar #36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
573.635.7166 (voice)
573.635.3847 (fax)
Email: dcooper@brydonlaw.com
Attorneys for Missouri Gas Energy,
a division of Southern Union Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by electronic mail, on this 18th day of August, 2006, to the following:

General Counsel's Office
gencounsel@psc.mo.gov
Jacqueline Hutchinson
Jahutchinson@gmail.com

John Coffman
john@johncoffman.net

Wendy Tatro, AmereUE
WTatro@ameren.com

Marc Poston
Marc.poston@ded.mo.gov
Michael Pendergast, Laclede
mpendergast@lacledegas.com

James Fischer, Fischer & Dority
jfischerpc@AOL.com