

Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

CONNIE MURRAY

ROBERT G. SCHEMENAUER

KELVIN L. SIMMONS

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

January 29, 2001

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²

JAN 29 2001

Missouri Public
Service Commission

RE: Case No. GE-2001-393

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S SUGGESTIONS IN OPPOSITION TO APPLICATION FOR WAIVER.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Thomas R. Schwarz, Jr.
Thomas R. Schwarz, Jr.
Deputy General Counsel
(573) 751-5239 (Telephone)
(573) 751-9285 (Fax)

TRS/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 29 2001

Missouri Public
Service Commission

In the Matter of Missouri Gas Energy's)
Application for a Variance from Sheet)
Nos. 24.18 and 61.4 to Permit the Use of)
Certain Federal Refunds and Unauthorized)
Use Charge Collections for the Benefit of)
Low-Income Customers in the Company's)
Service Area.)

Docket No. GE-2001-393

STAFF'S SUGGESTIONS IN OPPOSITION TO APPLICATION FOR WAIVER

COMES NOW the Staff ("Staff") of the Public Service Commission of Missouri ("Commission"), and in opposition to the application for waiver filed by Missouri Gas Energy, a division of Southern Union Company ("MGE" or "Company") January 18, 2001, states:

1. On January 18, MGE filed an application for variance from provisions of its tariff contained in Sheets 24.18 and 61.4. Sheet 24.18 provides, among other things, that unless ordered otherwise by the Commission, MGE refunds in excess of \$75,000 received from charges paid and recovered through the PGA applicable to Residential, Small General, large General and Unmetered Gaslight customers, shall be refunded to such customers as a reduction in PGA rates. Sheet 61.4 provides that revenues received from unauthorized use charges recovered pursuant to Sheet 61.3 of MGE's tariff will be considered gas cost recovery, and used as such in the development of future gas cost recovery during the ACA process.

2. MGE seeks a waiver of these provisions in two respects. First, MGE proposes to divert specified refunds and unauthorized use charges from the customers entitled to the moneys pursuant to its tariff. MGE proposes that the moneys thus diverted be devoted to providing

energy assistance to its low-income residential customers. Second, MGE proposes to return the funds to the selected customers in an accelerated timeframe. While Staff supports the second aspect of the waiver – accelerated return of funds to customers – it opposes the proposed diversion of refunds owed to all sales customers to a select subset of sales customers.

3. The funds at issue are not insignificant. MGE anticipates collecting from Williams Gas Pipelines Central some \$620,000 of refunds by order of the Federal Energy Regulatory Commission. MGE also anticipates collecting \$356,715 in unauthorized use charges from its transportation customers pursuant to bills it has issued in January for unauthorized usage by transportation customers in December, 2000.¹ MGE thus proposes to divert some \$976,715 from its customers entitled to the funds to its low-income customers.²

4. The goal of providing assistance to MGE's low-income customers is laudable. In this instance, however, the end cannot justify the means. It is not just low-income customers who are suffering. All of MGE's sales customers have been ravaged by the crushing coincidence of the coldest November/December temperatures on record with the highest prices for natural gas ever seen. Those Staff in attendance at a January 20, 2001 public meeting in Kansas City heard firsthand the voices of customers facing terrible choices as a result of natural gas bills beyond comprehension, and beyond their ability to pay.

5. A number of the speakers noted that their incomes were high enough to preclude assistance under the Low Income Home Energy Assistance Program ("LIHEAP") or the Crisis Intervention Program, but not sufficient to meet the cost of heating their homes. To Staff's

¹ Midwest Gas Users' Association has filed a motion to intervene in this case, and notes that action taken in this docket should not prejudice the right of transportation customers to verify the accuracy of unauthorized use charges, and to challenge any such charges the customers deem imposed in error.

² MGE also proposes to contribute \$250,000 of its own funds to the hotchpot, bringing the total to well over one million dollars.

knowledge, no such assistance is offered to small businesses, which also a staggering under the crushing cost of energy.

6. Particularly for the small business customer and the residential customer caught in the no-man's-land of middle income, the distribution of refunds and overcharge penalties provided in the tariff may be the only relief from the oppression of high gas prices and cold weather that they see this winter. It is true, as MGE notes, that the amount of refund pursuant to the tariff provisions is small. Nonetheless, even a small amount provides a ray of hope.

7. The Commission should not succumb to the allure of an appeal to a popular cause. The proper plea for assistance for low-income utility customers is made to the Governor and the General Assembly. The legislature can alter the criteria for energy assistance to acknowledge the devastating effects of this winter on those who normally would not need or seek such assistance. The legislature, at the Governor's call, has the power to appropriate funds for such purposes, balancing the need against the other demands on the State's purse. The Commission, in contrast, sets rates and refunds based on principles of cost causation. MGE does not suggest any standards by which to gauge when a departure from those principles is justified, nor how great the departure can be. If some customers can be deprived of their property, can shareholder property likewise be taken in "proper" circumstances? Precedent declares no, and good public policy requires that property of neither customer nor shareholder be appropriated to another's use. The Commission should not force a majority of MGE's ratepayers contribute involuntarily to even this popular cause.

8. Because many customers cannot pay their gas bills, MGE will have a higher level of bad debt expense this winter. Some, but not all, of these customers will be the low-income customers targeted in MGE's application. MGE's application diverts customer credits to reduce

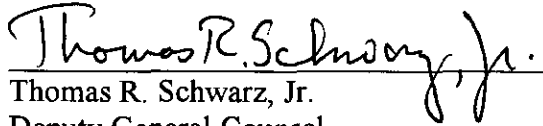
its bad debt expense, thereby increasing its winter profits. The issue of bad debt expense should and will be addressed in MGE's current rate case, GR-2001-292. Bad debt expense will be normalized in this case as well as the higher earnings that MGE will generate as a result of this cold winter. MGE's customers need pay no more to the Company to contribute to its earnings this winter.

8. Staff endorses MGE's proposal to accelerate the return to customers of any moneys available. Staff acknowledges MGE's generosity and sense of community in contributing its own funds to assist its low-income customers, and hopes that MGE will effectuate its gift even if the Commission properly rejects its appealing, but inappropriate, waiver request.

WHEREFORE, the Staff suggests that the Commission reject MGE's request for a waiver to divert customer refunds, but authorize a waiver of the provisions of MGE's tariff to permit prompt distribution of refunds and unauthorized usage charges pursuant to its PGA tariff.

Respectfully submitted,

DANA K. JOYCE
General Counsel


Thomas R. Schwarz, Jr.
Deputy General Counsel
Missouri Bar No. 29645

Attorney for the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-5239 (Telephone)
(573) 751-9285 (Fax)
e-mail: tschwarz@mail.state.mo.us

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 29th day of January 2001.

Thomas R. Selway Jr.

**Service List for
Case No. GE-2001-393
Revised: January 29, 2001 (SW)**

**Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102**

**Gary W. Duffy
Brydon, Swearengen & England P.C.
P.O. Box 456
Jefferson City, MO 65102-0456**

**Stuart W. Conrad
Finnegan, Conrad & Peterson
1209 Penntower Office
3100 Broadway
Kansas City, MO 64111**

**Robert J. Hack
Missouri Gas Energy
3420 Broadway
Kansas City, MO 64111**