



**MISSOURI GAS ENERGY**

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**ROBERT J. HACK**  
Vice President, Pricing & Regulatory Affairs

February 20, 2001

**FILED**

**FEB 21 2001**

**Missouri Public  
Service Commission**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

**RE: Case No. <sup>GE</sup>GO-2001-393, Missouri Gas Energy**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter, please find an original and eight (8) conformed copies of **Missouri Gas Energy's Brief**.

A copy of this filing has been mailed or hand-delivered this date to counsel of record.

Thank you for bringing this matter to the attention of the Commission. Please call me if you have any questions regarding this matter.

Sincerely,

C: F. Jay Cummings  
Gary Duffy  
Thomas Schwarz, Jr.  
Douglas Micheel  
Stuart Conrad  
Jan Marcason  
*Karl Zobrist/ David Hill*

Enclosures

FILED

FEB 21 2001

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

In the matter of Missouri Gas Energy's )  
Application for 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. )

Case No. <sup>GE</sup>GO-2001-393

**MISSOURI GAS ENERGY'S BRIEF**

**Comes now** Missouri Gas Energy ("MGE"), a division of Southern Union Company, by and through counsel, and pursuant to the briefing schedule ordered herein, respectfully submits its brief.

**I. Introduction and Procedural History**

MGE filed this application for variance on January 18, 2001. Due to extremely cold weather conditions and extremely high gas prices during this winter heating season, MGE seeks to use specific monies for the benefit of lower-income customers, instead of using such funds to reduce the PGA rate prospectively for all customers by less than \$0.002 per Ccf.

By notice dated January 22, 2001, the Commission directed that responses to MGE's application for variance be filed no later than January 29, 2001.

On January 23, 2001, the Midwest Gas Users' Association ("MGUA") filed its statement of position and application for intervention.

On January 29, 2001, the Commission's Staff ("Staff") and the Office of the Public Counsel ("Public Counsel") filed their responses to MGE's application for variance.

MGE filed its response to MGUA's statement of position and the responses of the Staff and Public Counsel on January 30, 2001.

On February 1, 2001, the Commission granted MGUA's application for intervention.

On February 2, 2001, MGE filed a response to a discussion by the Commission of this matter that occurred during the February 1, 2001, agenda session.

On February 5, 2001, MGUA filed a response to MGE's February 2, 2001, pleading.

On February 6, 2001, the Mid America Assistance Coalition ("MAAC") filed its motion for leave to intervene out of time and statement of position.

The Commission granted MAAC's motion to intervene by order dated February 8, 2001, and on that same date scheduled a hearing for February 15, 2001.

The Commission convened an evidentiary hearing in this matter on February 15, 2001, in the Commission's offices in Jefferson City, following which a briefing schedule was established.

This matter now stands ready for decision by the Commission.

## **II. Statement of Facts**

### **A. Record Cold Weather & Record High Gas Prices Produce Record High Gas Bills.**

It is undisputed that weather has been extremely cold this winter; sustained wind chills of twenty to thirty degrees below zero occurred in December. (Tr. 33) The Commission may also take official notice of the numerous reports that the November-December time period was the coldest in recorded history for Missouri. Section 536.070(6) RSMo 1994.

It is also undisputed that gas prices this winter have reached unprecedented high levels. (Tr. 60) The Commission may also take official notice of its own records (namely, canceled and effective PGA rate tariff sheets) which demonstrate that PGA levels this winter have been higher than ever. Section 536.070(6) RSMo 1994 and 4 CSR 240-2.130(2).

The combination of extremely cold weather and unprecedented high natural gas prices has resulted in gas bills at levels so high they have never before been seen. (Tr. 60) This fact is also undisputed.

B. Energy Assistance Is Needed Now.

The combination of extremely cold weather and high gas prices has confronted natural gas consumers with bills at levels never before seen. (Tr. 32, 60) No party disputes this fact. Even the Staff, which opposes MGE's application for variance, admits that the situation this winter "... has been quite bad." (Tr. 140)

Numerous public meetings have been held during which customers have talked about the difficulties presented by this winter's gas bills. (Tr. 34) Moreover, many customers—in particular the elderly and the working poor—are ineligible to receive assistance from traditional sources. (Tr. 34, 120-121)

C. The Distribution Plan Will Assist Customers In Need Who Would Not Qualify For Any Other Assistance.

The distribution plan embodied in the application for variance has been designed to make meaningful assistance available to customers throughout MGE's service territory who would not otherwise get assistance. (Tr. 37) In particular, LIHEAP funds are available only to those with incomes up to 125% of poverty and ECIP ("Emergency

Crisis Intervention Program”) funds are available only to those with incomes up to 150% of poverty. (Tr. 121) In recognition of these limitations, MGE and MAAC designed the distribution plan predominantly for individuals who make between 150 and 200% of poverty and therefore do not qualify for LIHEAP or ECIP funds. (Tr. 121; *See also*, Verified Application, Attachment 2, p. 2, para. 5) The assistance to be made available through the application for variance would also be spread fairly throughout MGE’s service territory and would not be limited to the Kansas City metropolitan area. (*See*, Verified Application, Attachment 2, Exhibit 2) Energy assistance grants from the funds to be made available through the application for variance cannot exceed \$1,000.<sup>1</sup> (*See*, Verified Application, Attachment 2, para. 5)

### **III. Argument**

Public Counsel argues, while the Staff does little more than express vague concerns, that the Commission is legally barred from approving the application for variance. (Tr. 14 & 12) Most specifically, Public Counsel contends that approval of the application for variance would constitute unlawful discrimination in violation of sections 393.130.2 and 393.140(11) RSMo 1994. (Tr. 15) The Staff also suggests that the Commission should consider the judicially recognized ban on single-issue ratemaking in deciding whether to approve the application for variance.

Neither Public Counsel’s argument nor the Staff’s suggestion have any merit whatsoever. Although it is true that as a creature of statute, the Commission’s authority is limited to those powers set out in the relevant statutes and those necessarily inherent

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<sup>1</sup> By contrast, if the application for variance is denied, the prospective reduction to the PGA rate for all customers will amount to less than \$0.002 per Ccf. (*See*, Verified

thereto, the Public Counsel's argument, and the Staff's suggestion, that sections 393.130.2 and 393.140(11) legally bar Commission approval of the application for variance rely upon an unduly restrictive reading of those statutory subsections. Upon consideration of the entirety of these statutory subsections, as well as the relevant expository case law, the Commission will clearly understand that its authority is not so limited as Public Counsel argues and the Staff suggests.

A. The Distribution Plan Does Not Constitute Unlawful Discrimination.

1. The Statutes.

Section 393.130.2 RSMo 1994 provides, in part relevant to this matter, that

[N]o gas corporation . . . shall directly or indirectly by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas . . . or for any service rendered or to be rendered or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto **under the same or substantially similar circumstances or conditions.**

(emphasis supplied)

Section 393.140(11) provides, in part relevant to this matter that

**Unless the commission otherwise orders**, no change shall be made in any rate or charge . . . or any rule or regulation relating to any rate, charge or service . . . which shall have been filed and published by a gas corporation . . . in compliance with an order or decision of the commission, except after thirty days' notice to the commission . . . \* \* \* No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such services as specified in its schedule filed and in effect at the time; nor shall any corporation refund or remit in any manner or by any device any portion of the rates or charges so specified . . . or any rule or regulation . . . **except such as are regularly and uniformly extended to all persons and corporations under like circumstances.** The commission shall have power to prescribe the form of every such schedule, **and**

**from time to time prescribe by order such changes in the form thereof as may be deemed wise.**

(emphasis supplied)

2. The Case Law

Regulation and the fixing of rates for public utilities is largely a legislative function. *State ex rel. Laundry v. Pub. Serv. Comm'n*, 34 S.W.2d 37, 43 (Mo. Supreme Court 1931). Consequently, in order to be valid, Commission action classifying those users or consumers to whom such rates or charges will apply must meet the principle of sound legislative classification, and "[T]he basis of sound legislative classification is similarity of situations or condition with respect to the feature which renders the law appropriate and applicable." *Id.*

In *State ex rel. City of St. Louis v. Pub. Serv. Comm'n*, 36 S.W.2d 947 (1931), the Missouri Supreme Court addressed the issue of discrimination in the context of telephone rate setting. In so doing, the Court cited the following quotation with approval: "Arbitrary discriminations alone are unjust; if the difference in rates be based upon a reasonable and fair difference in conditions which equitable and logically justify a different rate, it is not an unjust discrimination." *Id.* At 950.

Recent case law follows similar logic. In construing section 393.130.3, which contains anti-discrimination provisions consistent with those found in section 393.130.2, the Western District Court of Appeals concluded that the statute and the cases discussing it do not prohibit **all** discrimination. "If discrimination is reasonable because of the particular circumstances in the case, rates are not struck down merely because of the

dissimilarity.” *State ex rel. Office of the Public Counsel v. Pub. Serv. Comm’n*, 782 S.W.2d 822, 825 (Mo.App. W.D. 1990).

3. Analysis.

MGE freely admits that by its application for variance it is asking the Commission to authorize the disparate treatment of customers. Specifically, MGE seeks to make certain monies available to lower income customers and not other customers. In MGE’s opinion, such disparate treatment is warranted because this winter’s high gas bills pose the greatest hardship to lower income residential customers who do not otherwise qualify for assistance. The distribution plan embodied in the application for variance has been designed to make financial assistance available to an otherwise unserved group of customers—the working poor and the elderly with incomes just barely too high to qualify for traditional ECIP and LIHEAP funds. Moreover, denial of the application for variance would leave the disposition of the funds at issue to the traditional tariff procedure, providing virtually invisible relief (a reduction to the PGA rate of less than \$0.002 per Ccf) to all sales customers over the course of a year.

The discrimination MGE proposes is not arbitrary; it is based on the extraordinary winter we find ourselves in and the extreme difficulty it poses to lower-income customers. The disparate treatment of customers is based on income level differences. Under the circumstances presented by this winter, income level differences represent “. . . a reasonable and fair difference in conditions which equitable and logically justify a different rate . . .” such that “. . . it is not an unjust discrimination.” *State ex rel. City of St. Louis v. Pub. Serv. Comm’n*, 36 S.W.2d 947, 950 (1931). Because the disparate treatment proposed by MGE is based on differing income levels, it is not an unjust



discrimination and is therefore not violative of sections 393.130.2 and 393.140(11) RSMo 1994.

B. The Distribution Plan Does Not Constitute Unlawful Single-Issue Ratemaking.

The Staff has suggested, without ever specifically arguing, that the application for variance constitutes unlawful single-issue ratemaking. (Tr. 12) This suggestion puzzles MGE for a couple of reasons in addition to its vagueness.

First, under MGE's present tariffs and the Commission's current PGA procedure, the refunds at issue would never be subject to a general rate case. The options presented in this case are essentially two: 1) approve the application for variance and make meaningful assistance available immediately to customers in need; or 2) deny the application for variance and provide virtually invisible relief (a reduction to the PGA rate of less than \$0.002 per Ccf) to all sales customers over the course of a year. What relevance the issue of single-issue rate making has to this decision is not at all apparent to MGE.

Second, based on the testimony of its witness, it appears the Staff's single-issue rate making concerns may be driven somehow by the notion that uncollectibles expense is an item that is typically reviewed in the context of a general rate proceeding. (Tr. 138) In response, MGE would simply state that it has never before been presented with such an expansive view of the prohibition of single-issue rate making. That the argument is absolutely unsupportable is likely the best explanation for why the Staff has left it so vague and poorly defined.

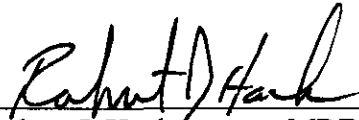
MGE would provide additional response to the Staff's single-issue rate making suggestions if that argument was sufficiently well defined for MGE to understand it.

### III. Conclusion

On the basis of all of the foregoing, MGE submits that it has demonstrated that the Commission possesses requisite authority to grant the application for variance filed by MGE on January 18, 2001. Furthermore, MGE has also shown that granting the application for variance is the appropriate course of action for the Commission to take at this time based on the extraordinary time we find ourselves in this winter. Therefore, MGE respectfully requests that the Commission grant, as expeditiously as possible, the requested variance which permits MGE to provide to MAAC for distribution to customers in MGE's service territory who have difficulty paying their gas bills 1) the refunds from Williams on account of FERC Docket No. IN01-2-000 and 2) the actual collections resulting from the \$1.50 per Ccf penalty component of unauthorized use billings for December. In the event the Commission so acts, MGE will fund the entirety

of the four percent (4%) fee assessed by MAAC for administration of the funds that are subject to the application for variance.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed or hand-delivered this 20<sup>th</sup> day of February, 2001, to:

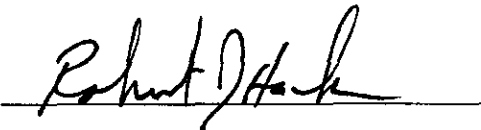
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A handwritten signature in black ink, appearing to read "Robert J. Hark", is written over a horizontal line.