

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

Office of the Public Counsel,)	
)	
Complainant,)	
)	
v.)	
)	Case No. GC-2011-339
Southern Union Company d/b/a Missouri)	
Gas Energy,)	
)	
Respondent.)	

**PUBLIC COUNSEL’S RESPONSE TO
MGE’S ANSWER AND MOTION TO DISMISS**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Response to Southern Union Company d/b/a Missouri Gas Energy’s (MGE) Answer and Motion to Dismiss Complaint states:

1. OPC’s Complaint against MGE requests the following relief: **Count I:** An order finding that MGE violated a Commission Report and Order when MGE acted without the consensus of the Energy Efficiency Collaborative (EEC) and without first bringing the disagreement to the Commission for resolution, and to pursue penalties against MGE; **Count II:** An order directing MGE to issue a new request for proposal (RFP) for energy-efficiency program evaluations that does not include a request for bidders to bid on performing a full fuel cycle (FFC) analysis.

2. On May 16, 2011, MGE filed its Answer and a Motion to Dismiss Complaint. The Commission’s May 18, 2011 Order Directing Filing ordered responses

to MGE's Answer and Motion to Dismiss Complaint to be filed by June 2, 2011. This response replies to both MGE filings.

3. MGE's Answer and Motion to Dismiss Complaint state that "MGE has determined not to conduct a FFC analysis through this RFP."¹ In the interest of moving forward with the evaluations of MGE's energy efficiency programs without further delay, OPC is no longer pursuing Count II of OPC's Complaint. Despite the fact that the number of bids received and the cost quotes included in those bids may have been negatively impacted by MGE's unilateral decision to require program evaluation bidders to also bid on conducting an unrelated FFC analysis, OPC has reviewed the few bids that were received and is hopeful that an acceptable evaluator can be found from these bids. For this reason, OPC no longer seeks an order from the Commission ordering MGE to reissue the RFP without the FFC request. Eliminating Count II still leaves Count I as a live issue for Commission determination.

4. MGE claims that by no longer pursuing an FFC analysis through the RFP that OPC's Complaint is rendered moot. OPC strongly disagrees and asserts that two areas of disagreement remain to be decided. MGE and OPC still disagree over whether consensus is required for decisions on MGE's energy efficiency programs. This must be resolved to ensure the EEC operates as ordered by the Commission. MGE and OPC also disagree over whether MGE violated the Commission's Report and Order when MGE went against the consensus vote and unilaterally required RFP bidders to also bid on an FFC analysis. This second disagreement must be resolved to address OPC's allegations that MGE violated a Commission order, which if found to be true, occurred regardless of any future attempts by MGE to mitigate adverse impacts of the violation. These

disagreements have not been rendered moot by MGE's decision not to pursue an FFC analysis through the RFP.

5. MGE's Answer to Count I of the Complaint concedes that the EEC did not reach consensus on including an FFC in the RFP.² MGE defends its disregard for reaching consensus on the program evaluation RFP by claiming that the EEC members "provided extensive comments on the wording of the RFP, which MGE generally accepted."³ This response highlights MGE's misguided belief that energy efficiency program evaluation decisions do not require consensus, and that MGE may "accept" or reject any party's disapproval of actions MGE wishes to take regarding the energy efficiency programs.

6. MGE argues in its Motion to Dismiss that although MGE initially wanted an FFC analysis to be paid for by energy efficiency funds, MGE now asserts that "no energy efficiency funds have been expended on this analysis or on the RFP" and that "MGE informed the EEC that it would not use energy efficiency funds if it chose to engage a consultant to perform the analysis."⁴ Even so, the expenditure of energy efficiency funds was only one of several concerns OPC has with MGE's actions, and not using energy efficiency funds cannot fix the negative impact the FFC request may have had on the bids received. For example, it cannot fix the possibility that including a request for an FFC analysis could have reduced the number of bids received as qualified evaluation bidders may not have been qualified to perform an FFC analysis. It cannot fix the possibility that including the request for an FFC analysis could have caused potential

¹ Answer, pp. 1, 6.

² Answer, pp. 4-5; Motion to Dismiss Complaint, p. 2.

³ Answer, p. 2.

⁴ Motion to Dismiss Complaint, p. 1.

RFP bidders not to bid to avoid the contentiousness of an analysis that could be strongly opposed by Missouri's electric companies. Consultants may not want to offend other utility companies that they may consider potential future clients for energy efficiency evaluations. Ensuring energy efficiency funds are not spent on the FFC analysis also cannot fix the fact that MGE unnecessarily burdened the EEC to further MGE's load building goals by piggybacking off the EEC's RFP rather than releasing its own separate RFP. The EEC was not established to subsidize or assist MGE in promoting its load building initiatives.⁵ Protecting energy efficiency funds also cannot fix the fact that the load-building efforts that MGE hoped to promote with an FFC analysis conflicts directly with the goal of an energy efficiency evaluation.

7. MGE argues that "[t]he EEC, which has input on energy efficiency programs, has no authority to dictate what MGE can and cannot do if energy efficiency funds or programs are not at issue."⁶ MGE apparently believes the EEC has no input over the selection process for a consultant to evaluate MGE's energy efficiency programs. However, as OPC pointed out in its Complaint, prior MGE filings from this year recognizing the need for consensus on program evaluation decisions contradict MGE's newfound position on program evaluations.⁷ Moreover, the EEC was specifically ordered by the Commission to be a continuation of the EEC from MGE's prior rate case.⁸ When the Commission continued the EEC, the Commission also continued the

⁵ It is worth noting that MGE's FFC load building initiative conflict with MGE's assertions when requesting the controversial straight-fixed variable (SFV) rate design that an SFV rate design would remove MGE's efforts to encourage gas usage.

⁶ Motion to Dismiss Complaint, p. 3.

⁷ Complaint, pp. 4-5, citing MGE's Response to the Commission's Order Directing Filing of Status Report, Case No. GT-2011-0049, p. 4, January 7, 2011.

requirement that the EEC continue making decisions on evaluating MGE's energy efficiency programs. The Commission has never taken actions to narrow the scope of the energy efficiency tasks (including evaluation) to which the consensus decision-making process applies.

8. For these reasons, OPC urges the Commission to deny MGE's Motion to Dismiss Complaint regarding Count I of OPC's Complaint.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission: 1) Find MGE in violation of the Commission's February 10, 2010 Report and Order issued in Case Number GR-2009-0355 and in violation of MGE's Tariff; 2) Pursue penalties in circuit court of two-thousand dollars (\$2,000) for each offense; 3) Dismiss Count II of OPC's Complaint; and 4) Deny MGE's Motion to Dismiss Complaint regarding Count I of OPC's Complaint.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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⁸ The Report and Order in Case No. GR-2009-0355 (p.5) states that "[t]he energy efficiency collaborative formed after MGE's most recently concluded rate case should remain a consensus group" which continues the then-existing EEC.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 27th day of May 2011.

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