

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

In the Matter of Missouri Gas Energy's )  
Tariffs Increasing Rates for Gas Service )  
Provided to Customers in the Company's )  
Missouri Service Area. )

Case No. GR-2006-0422

**MOTION FOR RECONSIDERATION OF ORDER  
DENYING MOTION TO REJECT PREHEARING BRIEF**

COMES NOW the Office of the Public Counsel and states:

1. On December 19, 2006, Public Counsel filed a motion to reject the prehearing brief of Missouri Gas Energy. Public Counsel stated that MGE's brief violated the Commission's July 13, 2006 *Order Regarding Procedural Schedule, Test Year and True-Up Hearing* ("Order") because: 1) At 81-pages in length, it violated the requirement that it be "simple and concise;" and 2) It violated the requirement that the brief "not contain argument about why the party believes its position to be the correct one."

2. On January 11, 2006, the Commission's *Order Denying Motion to Reject Prehearing Brief* denied Public Counsel's motion. The Commission concluded that MGE has not violated the *Order* because the ordered paragraph does not restrict the length of the prehearing briefs and that the other parties were not prejudiced. Public Counsel asks that the Commission reconsider this conclusion because the *Order* does appear to restrict the length of the prehearing briefs in that they were required to be "simple and concise." While the *Order* may not have given a specific page limitation, it did provide a limitation that was understood and followed by all parties but MGE. Counsel for MGE has practiced before this Commission for many years, and should be well aware of what constitutes a simple and concise brief before the

Commission. An eighty-one (81) page prehearing brief is far from simple and concise by any standard.

3. The Commission's *Order Denying Motion to Reject Prehearing Brief* allows MGE to violate the Commission's earlier *Order* while providing no apparent explanation to address the second point raised by Public Counsel's - that MGE's brief contains extensive argument in spite of the explicit limitation in the *Order* that the prehearing briefs "not contain argument about why the party believes its position to be the correct one." For example, pages 19-25 of MGE's prehearing brief attacks the Staff and Public Counsel positions regarding return on equity with lengthy argument. This is just one example of the argument contained in MGE's prehearing brief, argument that clearly violated the Commission's *Order*. The Commission's *Order Denying Motion to Reject Prehearing Brief* does not explain why one party should be allowed to violate the Commission's *Order* while the remaining parties followed the *Order*.

4. Despite the Commission's conclusion that no party was prejudiced, Public Counsel believes it is prejudiced and the public's procedural due process rights violated in that MGE was allowed a significantly greater opportunity to provide argument to the Commission than Public Counsel. Considering both the prehearing and posthearing briefs, MGE will be allowed to provide 111 pages of argument and the other parties will be restricted to 30 pages of argument simply because the other parties followed the Commission's *Order*. MGE should not be allowed to blatantly violate a Commission order. As the representative of the ratepayers, ratepayers that will be required to pay for an increase in rates, the briefing limitations placed upon the Public Counsel should also apply to MGE. The Commission's purpose is to serve and protect ratepayers. *State ex rel. Capital City Water Co. v. P.S.C.*, 850 SW2d 903 (Mo. App.

W.D. 1993). The protection given the utility “is merely incidental.” *State ex rel. Electric Co. of Missouri v. Atkinson*, 204 SW 897 (Mo. 1918).

5. MGE submitted a second prehearing brief in response to Public Counsel’s motion to reject the original prehearing brief. Although the second prehearing brief was filed out-of-time, Public Counsel will not oppose a Commission order accepting that brief in lieu of the original prehearing brief.

6. This motion is filed consistent with Commission Rule 4 CSR 240-2.160.

WHEREFORE, the Office of the Public Counsel respectfully submits this motion that requests a reconsideration of the Commission’s *Order Denying Motion to Reject Prehearing Brief* and an order rejecting MGE’s prehearing brief.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 22<sup>nd</sup> day of January 2007:

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/s/ **Marc Poston**

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