

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) **Case No. GR-2006-0422**
Customers in the Company's Missouri Service)
Area)

ORDER DENYING MOTION TO REJECT PREHEARING BRIEF

Issue Date: January 11, 2007

Effective Date: January 11, 2007

On December 19, 2006, the Office of the Public Counsel filed a motion to reject the prehearing brief filed by Missouri Gas Energy. OPC argues that MGE's brief violates the Commission's order regarding the filing of prehearing briefs. In support of its argument, OPC cites a condition in the Commission's order regarding the procedural schedule issued on July 13, 2006. Condition "D" of that order states as follows:

Each party shall file a statement of its position on each disputed issue, including a summary of the factual and legal points relied on by the party. Such statement shall be simple and concise, shall follow the issues set out in the issues list, and shall not contain argument about why the party believes its position to be the correct one.

OPC further points out that MGE's prehearing brief is 81 pages long and that the other parties, whose briefs are considerably shorter, are prejudiced in that MGE has provided additional argument. Finally, OPC points to Commission rule 4 CSR 240-2.080(14), which states that briefs which are not in compliance with Commission orders shall not be accepted for filing.

In its response, MGE points out that in the ordered paragraphs of the Commission order of July 13, the Commission refers to "Prehearing Briefing." However, in the list of

conditions the Commission refers to “statement of position,” as cited by OPC and referred to above. MGE argues that this creates ambiguity in what is expected of the parties. MGE further asserts that there is no page limitation referred to in the ordered paragraph having to do with prehearing briefing.

MGE also argues that a number of factors warrant the length and depth of its brief. First, MGE bears the burden of proof on all of the contested issues, unlike all of the other parties. Also, with the difference of opinion regarding the required revenue being approximately \$20 million with 15 issues remaining, MGE’s brief provides a necessary and meaningful synopsis, particularly given the complexity of some of the issues.

With regard to OPC’s argument that the other parties have been prejudiced, MGE states that OPC has failed to show what specific prejudice would result. MGE further questions how anyone can be prejudiced by better understanding MGE’s positions and arguments to the extent presented in its brief.

With its response to OPC’s motion, MGE filed a statement of position which is considerably shorter in length than its brief. MGE states, however, that the statement is not intended to be a substitute for the brief.

Discussion

MGE is correct in asserting that the Commission’s order presents an ambiguity. However, no other party’s prehearing brief approaches the length and depth of that filed by MGE. The second longest brief, that of the Staff of the Commission, is only 18 pages long. Like MGE, Staff must also address all of the contested issues. Further, if there were an ambiguity, it would seem that the party perceiving such would consult with the presiding judge. This did not happen. Nonetheless, contrary to what OPC asserts, MGE has not

violated a Commission order. As pointed out by MGE, the ordered paragraph does not restrict the length of the prehearing briefs.

With regard to the other parties being prejudiced by MGE having filed its brief as such, the Commission finds that any possible prejudice does not rise to a level to warrant rejecting MGE's brief. As MGE points out, the brief better clarifies MGE's positions on the issues. However, this may help or hinder MGE. It does not follow that to better understand a position, the Commission will agree with it. Quite the contrary: The Commission may in its better understanding more firmly disagree. For these reasons, the Commission will deny OPC's motion.

IT IS ORDERED THAT:

1. The Office of the Public Counsel's motion to reject Missouri Gas Energy's prehearing brief is denied.
2. This order shall become effective on January 11, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Kennard L. Jones, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 11th day of January, 2007.