

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Ener-)
gy and Its Tariff Filing to Imple-) GR-2009-0355
ment a General Rate Increase for)
Natural Gas Service)

MOTION BY MIDWEST GAS USERS' ASSOCIATION
TO RECONSIDER AND RESCIND ORDER IMPROVIDENTLY GRANTING MOTION

MOTION FOR EXPEDITED TREATMENT

On Friday, October 16, 2009, after 4 p.m.,^{1/} and two days out of time, Missouri Gas Energy (MGE) submitted the purported surrebuttal testimony of its witness Kirkland along with a motion to permit this purported surrebuttal filing out of time.^{2/} MGE did not request a shortened response time to its motion.

The Commission's current rules, 4 CSR 240-2.080, provide the following:

(16) Any party seeking expedited treatment in any case shall include in the title of the pleading the words "Motion for Expedited Treatment." The pleading shall also set out with particularity the following:

(A) The date by which the party desires the commission to act;

(B) The harm that will be avoided, or the benefit that will accrue,

^{1/} Per EFIS, the filing was made on 10/16/2009 at 4:48 p.m.

^{2/} MGE's Motion was filed at 4:50:57 on 10/16/2009 per EFIS.

including a statement of the negative effect, or that there will be no negative effect, on the party's customers or the general public, if the commission acts by the date desired by the party; and

(C) That the pleading was filed as soon as it could have been or an explanation why it was not.

MGE's 10/16 Motion contains none of these recitations and is unverified.

October 16 was a Friday. On Monday morning, at roughly 10 a.m., Midwest filed a Notice that it intended to respond to MGE's Motion within the time period permitted by Commission Rules. The pertinent Commission Rule, also in 4 CSR 240-2.080, provides for not more than a ten-day period to respond to such a motion, as follows (and custom and practice typically provide for ten days unless a shortened time for response is requested):

(15) Parties shall be allowed not more than ten (10) days from the date of filing in which to respond to any pleading **unless otherwise ordered by the commission**. (Emphasis added).

MGE did not request expedited treatment for its Motion. Examination of EFIS does not show any order from the Commission shortening Midwest's time to respond nor does the record show the issuance of any form of notice that the response time would be shortened to less than three days (or one hour and 45 minutes, as the case may be). MGE did not recite that any other party had agreed in advance to its motion.

Notwithstanding these facts, on October 19, 2009, and **less than three calendar days** following the filing of MGE's motion, the Commission, acting by delegation, issued the follow-

ing Order titled: ORDER GRANTING MOTION FOR LEAVE TO FILE
SURREBUTTAL TESTIMONY OUT OF TIME, and providing:

On August 11, [sic] MGE filed the above-titled motion. MGE explains that due to the press of business, MGE was unable to timely finalize and file the surrebuttal testimony of David N. Kirkland. MGE states that no party will be prejudiced by the untimely filing of his testimony, as no party needs to respond to it, and as the hearing is due to begin next week.

The Commission will grant the motion.

This October 19, 2009 Order is obviously in error in several particulars. **First**, MGE's Motion was not filed on August 11, 2009 as recited in the Order. Indeed, surrebuttal testimony was not even scheduled to be due until October 14, 2009. A Motion to late-file surrebuttal testimony in this matter on August 11, 2009 would obviously be vastly premature. **Second**, the Order was issued less than three days after the filing of the MGE Motion. **Third**, given that the MGE Motion was filed at 5:50 p.m. on Friday and the Order was issued the following Monday at roughly 9:45 a.m.,^{3/} and assuming that the Regulatory Law Judge arrived at the Commission by no later than 8:00 a.m., MGE's Motion laid before the Commission and its decisional officer for roughly **one hour and 45 minutes** before MGE's Motion was considered and sustained, including the time it took to actually prepare and issue the Order in question.

^{3/} EFIS does not appear to provide the precise time that an order was entered. However, it does send out a notice that the Order was entered which appears to have been 9:44 a.m. on October 19, 2009.

This may be a record for a utility. Without question it's in competition for that honor. In any event this short an unrequested response time and without notice to parties seems an unusually brief time for a motion that (despite MGE's unverified and pontifical assertions) could be prejudicial to several parties and dealing with testimony on several contested issues, particularly when expedited consideration for the Motion was not even requested by the utility. Would that customers could receive the same unrequested expedited treatment and acceptance of our unverified recitations when seeking relief from the Commission. Given that **this** motion **does** explicitly seek expedited treatment, its processing time will present an interesting comparison.

Now it is certainly true that MGE "recited" in its unverified motion that no one would be prejudiced and that no subsequent filings would be due,^{4/} but under the Commission's Rule noted above, neither of these is ground for granting the motion on an extremely accelerated basis, thereby aborting any opportunity for any other party in the proceeding to be heard on the matter. It is certainly not sufficient for the utility to simply assert, whether verified or not, that it "needs" something. Were the contrary true, there would be no need for the contested rate case at all, and we could just move forward on the basis of unverified recitations by the utility that it "needs" more revenue. Sadly, a rush to judgment when the utility doesn't

^{4/} But the assertion that no one needs to respond to it may prove to be a stretch.

even request accelerated treatment simply denies the other parties procedural due process of law. Minimal procedural due process requires that the Commission follow its own rules, that notice given be reasonably calculated to apprise a party of a filing that could concern their interests coupled with a reasonable opportunity to respond. Due process applies to customers, also. It should be even more so in this circumstance where such extremely accelerated treatment was neither sought nor needed.

Custom and practice before the Commission is to permit opposing parties more than a couple of hours to respond to such a motion and, in most cases, 10 entire days, or roughly 240 hours. Even more so when no expedited request is tendered and the underlying motion is unverified. Moreover, the Order's recitations of supporting fact are quite obviously in error including the date of filing.

Accordingly Midwest Gas Users' Association moves that this improvidently issued and obviously incorrect Order be rescinded and that Midwest (and any other parties that might have interest in the matter) be permitted a full 10-day time period from the filing of the Motion within which to make clear to the Commission the numerous reasons that MGE's Motion should NOT be granted.

Insofar as **this** motion seeks expedited treatment: (A) Midwest is approaching a hearing on this matter and needs to have this matter resolved immediately so that we can move forward with preparation of a resistance to MGE's Motion; (B) rescinding this improvidently issued order will avoid the harm of further

embarrassment to the Commission and to its decisional officer, the benefit that will accrue is that due process and the Commission's own rules will be confirmed and the integrity of its processes will be sustained, there can be no negative effect on the public from a vindication of guarantees of procedural due process and there will be a public benefit from prompt action to rescind this improvident Order and to restore to Midwest and other parties their rights to be heard on this important matter; and (C) this motion could not have been prepared and filed prior to this date.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

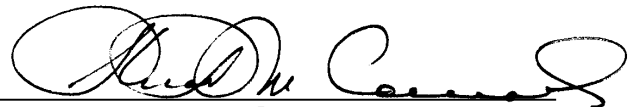


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ATTORNEYS FOR MIDWEST GAS USERS'
ASSOCIATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid addressed to all parties by their attorneys of record as disclosed by the pleadings and orders herein per the Commission's EFIS records.



Stuart W. Conrad

Dated: October 19, 2009