

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

Unice Harris,	)	
	)	
Complainant,	)	
	)	
v.	)	<b><u>Case No. GC-2013-0116</u></b>
	)	
Southern Union Company, d/b/a	)	
Missouri Gas Energy,	)	
	)	
Respondent.	)	

**STAFF'S RESPONSE  
TO MGE'S MOTION FOR SUMMARY DETERMINATION**

**COMES NOW** the Staff (Staff) of the Missouri Public Service Commission (Commission), by and through counsel, and for its response to MGE's Motion for Summary Determination (Motion) hereby respectfully states:

1. Staff filed its report in this case on November 14, 2012. As explained in the report, Staff found no evidence to support Complainant's position that she is not responsible for the total amount in dispute of \$592.92. Therefore Staff's report recommended the Commission dismiss the formal complaint or schedule a pre-hearing conference, which was held December 12, 2012.

2. Complainant has not provided Staff with any additional evidence since Staff filed its report. As a result, Staff reiterates its recommendation that the Commission dismiss the formal complaint or, in the alternative, proceed with the hearing to allow the parties to present additional evidence.

3. Staff agrees with MGE's description of the facts of this complaint in Paragraphs 4, 5 and 6 of its Motion.

4. Staff generally agrees with MGE's argument that Missouri's civil statutes of limitation are irrelevant to this complaint, since those limitations expressly apply to "civil actions."<sup>1</sup> Missouri's Rules of Civil Procedure describe a statute of limitations as an "affirmative defense" that shall be set forth "[i]n pleading to a preceding pleading."<sup>2</sup> In contrast, the Commission is authorized to hear and determine complaints "setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission."<sup>3</sup> Thus, in a complaint case, the Commission must determine whether MGE has so far acted unlawfully as to the Complainant. Staff's report concludes that MGE has not acted unlawfully in this matter so far. Missouri's statute of limitations may become relevant as an affirmative defense in the event MGE files a civil action for damages against the Complainant.<sup>4</sup>

5. Moreover, the Commission does not have the statutory authority to grant Complaint's request "to have all charges removed from plaintiff's bill from 2006," because the Commission does not have the authority to enter money judgments.<sup>5</sup>

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<sup>1</sup> Section 516.100 RSMo.

<sup>2</sup> Mo. Sup. Ct. R. 55.08.

<sup>3</sup> Section 386.390(1) RSMo.

<sup>4</sup> While Staff agrees with MGE's position that Missouri's civil statutes of limitation are irrelevant to this complaint case, Staff does not concede that *Berlin v. Pickett*, 221 S.W.3d 406 (Mo.App.W.D. 2006), a case involving expert witness fees and cited by MGE in its Motion, is relevant to this case.

<sup>5</sup> *State ex rel. GS Technologies Operating Co., Inc. v. Pub. Serv. Comm'n of State of Mo.*, 116 S.W.3d 680, 696 (Mo. Ct. App. 2003). "While the Commission does have exclusive jurisdiction of all utility rates, when a controversy arises over the construction of a contract or of a rate schedule upon which a contract is based, and a claim of an overcharge is made, only the courts can require an accounting or render a judgment for the overcharge. [Citation omitted]. This is so because the Commission 'cannot enforce, construe nor annul contracts, nor can it enter a money judgment.' [Citation omitted]. Likewise, the Commission does not have the authority to do equity or grant equitable relief."

**WHEREFORE**, Staff submits this response to MGE's Motion, and reiterates its recommendation that the Commission dismiss the complaint or, in the alternative, proceed with the evidentiary hearing to give the complainant the opportunity to produce additional evidence.

Respectfully Submitted,

**STAFF OF THE MISSOURI  
PUBLIC SERVICE COMMISSION**

**/s/ John D. Borgmeyer**

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 28<sup>th</sup> day of February, 2013.

**/s/ John D. Borgmeyer**