

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

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

RECOMMENDED ORDER GRANTING SUMMARY DETERMINATION

Issue Date: March 7, 2013

Effective Date: April 19, 2013

On September 24, 2012, Unice Harris ("Ms. Harris") filed a complaint with the Missouri Public Service Commission ("Commission") against Southern Union Company d/b/a Missouri Gas Energy ("MGE"). MGE filed an answer denying Ms. Harris' allegations that MGE violated its tariffs. On November 14, 2012, the Commission's Staff filed a *Staff's Report* describing its investigation into the allegations of the complaint and concluding that MGE did not violate any statute, rule or tariff in providing gas service to Ms. Harris.

On January 28, 2013, MGE filed a *Motion for Summary Determination and Memorandum of Law in Support Thereof* ("motion"), alleging that there are no disputed material facts and that MGE has acted in accordance with its tariffs and Commission rules. Pursuant to Commission Rule 4 CSR 240-2.117(1)(C), the parties had thirty days to file a response in opposition to the motion. Staff filed a response to MGE's motion on February 28, 2013 reiterating its previous recommendation, but Ms. Harris has filed no response.

FINDINGS OF FACT

In its motion for summary determination, MGE asserted that certain material facts are undisputedly true. Since Ms. Harris has not contested that assertion, the Commission finds that the following facts are true:

1. Complainant Unice Harris is a customer of MGE residing in Lee's Summit, Missouri.

2. Respondent Southern Union Company d/b/a Missouri Gas Energy is a gas corporation and public utility as defined in Section 386.020, RSMo, engaged in the business of the manufacture, distribution, sale or furnishing of gas and subject to the regulatory authority of the Commission pursuant to Chapters 386 and 393, RSMo.

3. On September 24, 2012, Ms. Harris filed a small formal complaint with the Commission, alleging the following:

Plaintiff seeks to have all charges removed from plaintiffs bill from 2006 as the statute of limitations has run on this debt in addition MGE had a responsibility to provide accurate billing within each 30 day cycle. It is now 2012 and a bill from 2006 mysteriously appears on the current statement.

4. In her complaint, Ms. Harris requests the following relief: "Removal of all charges from 2006 or 2009".

5. Ms. Harris owes an unpaid debt of \$592.92 to MGE for natural gas service provided to her. That balance consists of the following amounts:

- a. \$198.22– Balance of Ms. Harris' account (#0029732107) at the time she filed for Chapter 13 bankruptcy on August 11, 2010. This amount was incurred at 5424 NE Sunshine Drive, Lee's Summit, MO just prior to the filing of Ms. Harris' bankruptcy petition, not in 2006 as claimed by Ms. Harris. A

post-bankruptcy petition account (#7735992665) was opened with a balance of \$0.00.

- b. \$305.70– Balance of Ms. Harris' account (#7735992665) for services provided at 5424 NE Sunshine Drive, Lee's Summit, MO at the time Ms. Harris moved to 4612 B NE Whispering Winds, Lee's Summit, MO, on or about January 20, 2011. Ms. Harris filed an additional bankruptcy petition that was converted from Chapter 13 to Chapter 7 on January 31, 2011. A new account (#196196770) was opened at the new address at that time with a balance of \$0.00.
 - c. \$24.00– Collection fee charged on July 19, 2012 gas bill in accordance with MGE's tariff (Sections 3.11 and 14.0) for the cost of a July 3, 2012 trip to the service address to attempt to collect payment.
 - d. \$65.00– Reconnection fee charged on July 19, 2012 gas bill in accordance with MGE's tariff (Sections 3.12 and 14.0) for the cost of making a second trip to the service address on July 3, 2012 to restore service.
6. None of the charges that are currently owed by Ms. Harris to MGE were incurred in 2006.
7. Services were provided to Ms. Harris on the subject account at 5424 NE Sunshine Drive on an ongoing basis and various payments were made by Ms. Harris. MGE billed for services provided pursuant to this account as recently as January 2011.
8. Ms. Harris has filed bankruptcy petitions at least twice, but neither filing resulted in a discharge of Ms. Harris' creditors, and the debts Ms. Harris owed to MGE have never been discharged.

CONCLUSIONS OF LAW

The Commission has the authority to hear the complaint.¹ The complaint alleges facts within the small formal complaint procedure², which includes a time limit for issuing a recommendation subject to good cause. Good cause includes a good faith request for reasonable relief.³ The parties asked for a hearing date past the deadline and filed requests for continuances and a dispositive motion. Those facts constitute good cause to extend the time limit. Therefore, the time limits are extended.

Commission Rule 4 CSR 240-2.117(1) establishes the procedure for the filing of a motion for summary determination in cases before the Commission. Commission Rule 4 CSR 240-2.117(1)(E) provides that the Commission may grant a motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the Commission determines that the granting of summary determination is in the public interest.

The movant has the burden to prove summary disposition is proper.⁴ When the movant introduces facts showing a right to judgment as a matter of law, the burden then shifts to the non-movant, who must respond with countervailing evidence showing that

¹ Section 386.390.1, RSMo 2000.

² 4 CSR 240-2.070(15).

³ *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App., W.D. 1996).

⁴ *ITT Commercial Fin. Corp. v. Mid-Am. Marine Supply Corp.*, 854 S.W.2d 371, 378 (Mo.banc 1993). That case discusses Missouri Supreme Court Rule 74.04, which is sufficiently similar to the Commission's regulation to make cases interpreting the rule helpful in understanding the regulation. *Johnson v. Mo. Bd. of Nursing Adm'rs*, 130 S.W.3d 619, 626 (Mo. App., W.D. 2004).

there is a genuine dispute as to one or more of the movant's material facts.⁵ In this case, MGE has presented facts verified by affidavit that show that Ms. Harris owes an unpaid debt of \$592.92 to MGE for natural gas service provided to her. None of those charges were incurred in 2006 as alleged by Ms. Harris, and the charges have not been discharged in bankruptcy. Ms. Harris has not presented any evidence to dispute these facts, and there is no evidence that MGE's bills for service to Ms. Harris contained any improper charges. The Commission concludes that there are no genuine issues of fact and that MGE did not violate any statute, Commission rule or tariff.

Ms. Harris' assertion that "the statute of limitations has run on this debt" is not applicable because statutes of limitation apply to "civil actions"⁶, rather than administrative proceedings before the Commission. Even assuming that the shortest relevant statute of limitations did apply, the facts demonstrate that the debt was incurred within that period of time.⁷ In addition, the Commission cannot grant the relief that Ms. Harris seeks, which is to remove certain charges from her bill. The Commission does not have the authority to provide equitable relief, determine damages, or award pecuniary relief⁸, and cannot enter a money judgment.⁹

The public interest clearly favors the quick and efficient resolution of this matter by summary determination without an evidentiary hearing since "[t]he time and cost to hold hearings on [a] matter when there is no genuine issue as to any material fact would be

⁵ *Id.* at 381.

⁶ Section 516.100, RSMo.

⁷ Section 516.120(1), RSMo.

⁸ *American Petroleum Exchange v. Public Service Com'n*, 172 S.W.2d 952, 955 (Mo. 1943).

⁹ *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).

contrary to the public interest.”¹⁰ MGE has demonstrated that there are no genuine issues of material fact and that the undisputed facts show that MGE did not violate a statute, Commission rule or tariff. Therefore, MGE is entitled to relief as a matter of law and granting the motion would be in the public interest, so the Commission will grant MGE’s motion.

THE COMMISSION ORDERS THAT:

1. Southern Union Company d/b/a Missouri Gas Energy’s *Motion for Summary Determination* is granted.
2. Unice Harris’ complaint is denied.
3. This order is effective on April 19, 2013.¹¹
4. This file shall close on April 20, 2013.

BY THE COMMISSION



Shelley Brueggemann
Acting Secretary

Michael Bushmann, Regulatory Law Judge
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 7th day of March, 2013.

¹⁰ *Determination on the Pleadings, In the Matter of the Application of Aquila Inc. for an Accounting Authority Order Concerning Fuel Purchases, Case No. EU-2005-0041 (Oct. 7, 2004). See also, Wood & Hulston Bank v. Mahan, 815 S.W.2d 454, 457 (Mo. App. 1991).*

¹¹ The Commission has provided an effective date other than 30 days to allows time for (i) comments under 4 CSR 240-2.070(15)(H); (ii) a Commission decision under 4 CSR 240-2.070(15)(H); and the ordinary 30-day effective date for a Commission decision under Section 386.490.2, RSMo.