

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

The Staff of the Missouri Public Service Commission	)	
Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	<u>Case No. GC-2016-0149</u>
	)	
Missouri Gas Energy, an operating unit of	)	
Laclede Gas Company	)	
	)	
Respondent.	)	

**STAFF'S RESPONSE TO MISSOURI GAS ENERGY'S
MOTION TO DISMISS COMPLAINT**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), by and through counsel, and for its response to Missouri Gas Energy's Motion to Dismiss Complaint hereby states:

1. This matter is a complaint case and commenced when Staff filed its *Complaint* against Missouri Gas Energy ("MGE") on December 15, 2015, alleging a violation of Commission Rules and MGE's tariff.

2. On January 19, 2016, MGE filed its *Answer and Motion to Dismiss Complaint*, asking that the Commission dismiss Staff's *Complaint* on the grounds that "Commission Rule 4 CSR 240-2.070(7) provides for the Commission to dismiss complaints that fail to state a claim upon which relief may be granted."¹ MGE does not dispute the major facts alleged in Staff's Complaint, but moves to dismiss on these grounds because MGE claims its actions do not constitute a violation of Commission rules or its tariff. Additionally, MGE states that Commission Rule 4 CSR 240-13.020(6)

¹ MGE's *Answer and Motion to Dismiss* ¶ 32

contemplates that MGE's actions are allowable.²

What is the Applicable Standard?

3. A motion to dismiss for failure to state a claim tests only the legal sufficiency of the complaint.³ All well-pleaded factual allegations in the complaint must be accepted as true and the facts must be liberally construed to support the complaint.⁴ Complainants enjoy the benefit of all reasonable inferences.⁵ The complaint should not be dismissed unless it shows no set of facts entitling the complainants to relief.⁶

The Sufficiency of the Complaint

4. Staff's *Complaint* alleges that the Complainant is the Staff of the Missouri Public Service Commission; that MGE is an operating unit of Laclede Gas Company and is a gas corporation regulated by this Commission; and that the *Complaint* is brought under § 386.390.1, RSMo.⁷ The *Complaint* prays that the Commission will:

Will provide notice to Respondent, convene a hearing on Staff's *Complaint*, and, after hearing, determine that Laclede d/b/a MGE has violated Commission Rules and their tariff as alleged herein by Staff, and authorize its General Counsel to seek appropriate penalties for those violations in Circuit Court; and grant such other and further relief as is just in the circumstances.

5. The Commission has discussed the requisites of a complaint under § 386.390, RSMo, in detail.⁸ Those relevant to this issue include (1) an allegation of a

² *Id.*

³ For this discussion, see J.R. Devine, *Missouri Civil Pleading and Practice*, Section 20-3 (1986), and ***Christ et al. v. Southwestern Bell Telephone Co. et al.***, 12 MoPSC3d 70, 79-86 (Jan. 9, 2003) (***Order Regarding Motions to Dismiss***), *Christ, supra*, Case No. TC-2003-0066 (***Order Denying Rehearing and Denying Complainants' Alternative Motion for Leave to Amend***, iss'd Feb. 4, 2003) at pp. 4-7 (not published in MoPSC reports).

⁴ ***Nazeri v. Missouri Valley College***, 860 S.W.2d 303, 306 (Mo. banc 1993).

⁵ *Id.*

⁶ *Id.*

⁷ *Complaint*, ¶ 7

⁸ ***Christ et al. v. Southwestern Bell Telephone Co. et al.***, 12 MoPSC3d 70, 79-86 (Jan. 9, 2003) (***Order Regarding Motions to Dismiss***), and ***Christ et al. v. Southwestern Bell Telephone Co. et al.***, Case No. TC-2003-0066 (***Order Denying Rehearing and Denying Complainants' Alternative Motion for Leave to Amend***, iss'd Feb. 4, 2003).

violation of a statute or a Commission rule or order, and (2) sufficiently specific to fairly apprise the respondent of the events that constitute the alleged violation.

6. Turning to the *Complaint* herein at issue, it is apparent that these pleading requirements have been met. Commission Rule 4 CSR 13.020(1) states that a utility “shall normally render a bill for each billing period to every residential customer in accordance with commission rules and its approved tariff.” In addition, Commission Rule 4 CSR 13.015(1)(C) defines the term “Billing Period” as “... a normal usage period of not less than twenty-six (26) nor more than thirty-five (35) days for a monthly billed customer nor more than one hundred (100) days for a quarterly billed customer, except for initial, corrected, or final bills.” The *Complaint* alleges that due to a conversion to a new billing system, MGE has rendered bills for a normal monthly usage period in excess of the normal 26 to 35 day billing period. When read together, the above listed Commission Rules require regulated utilities to issue bills based upon a normal usage period of 26 to 35 days, unless the bill is an initial bill, corrected bill, or a final bill. By including the specific caveats of initial, corrected, or final bills, the word “normal” contemplates a bill that is not an initial, corrected, or final bill. Because the *Complaint* alleges that the bills issued by MGE covering a billing period in excess of 26 to 35 days were not initial, corrected, or final bills, the *Complaint* alleges a violation of Commission Rules.

7. MGE also states that Commission Rule 4 CSR 240-13.020(6) contemplates that MGE’s actions are allowable. However, MGE’s own motion does not set out any facts as to how this Commission Rule applies in this instance. MGE merely states that this rule “clearly contemplates that MGE’s actions are allowable, eliminating

a need for a variance.”⁹ Staff disagrees that this rule “clearly contemplates” that MGE’s actions are allowable, and believes that this rule does not apply in this instance.

8. Staff urges the Commission to deny MGE’s *Motion to Dismiss* because, when considered under the applicable standard, the *Complaint* has met all of the applicable pleading requirements and MGE’s assertion that the *Complaint* fails to state a claim is shown to be without merit.

WHEREFORE, Staff files this Response and recommends the Commission deny MGE’s *Motion to Dismiss*.

Respectfully Submitted,

/s/ Mark Johnson

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copy of the foregoing were served electronic mail or First Class United States Postal Mail postage prepaid to all counsel of record this 29th day of January, 2016.

/s/ Mark Johnson

⁹ MGE’s *Answer and Motion to Dismiss* ¶ 32