

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FP Grandboro, LLC,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2008-0228</u>
)	
Missouri Gas Energy,)	
)	
Respondent.)	

ORDER DIRECTING FILING

Issue Date: April 2, 2008

Effective Date: April 2, 2008

FP Grandboro, LLC ("FPG") filed a formal complaint against Missouri Gas Energy ("MGE") on January 10, 2008.¹ FPG alleged that it owns a 17-building, multi-unit residential apartment complex located in Grandview, Missouri known as Sterling Pointe Apartments ("SPA"). FPG further alleged that on October 23, 2007, MGE improperly shut off natural gas service to the entire complex and its 200+ residents, setting off a chain of events that ultimately resulted in FPG having to replace 111 of the gas furnaces at SPA. FPG sought the following relief: (1) reimbursement of its replacement costs for the 111 gas furnaces; (2) reimbursement of its labor costs related to inspection and replacement of the 111 furnaces; (3) reimbursement of its expenses associated with financing the purchase of the 111 replacement furnaces; (4) reimbursement of its loss of income resulting from the

¹ Unless otherwise specified, all dates in this order refer to the calendar year 2008.

departure of tenants that moved out of SPA due to the natural gas being shut off by MGE; and (5) reimbursement of its attorney's fees.

On January 23, the Commission notified MGE of the complaint and allowed it thirty days in which to answer as provided by 4 CSR 240-2.070(7). The same day, pursuant to 4 CSR 240-2.070(10), the Commission ordered its Staff to commence an investigation of FPG's formal complaint and to file a report concerning the results of its investigation no later than three weeks after MGE filed its answer to the complaint, which was due no later than February 22.

MGE timely filed its answer on February 21, and on March 14, Staff timely filed a verified report based on its investigation. Among many other things, in those pleadings, MGE and Staff both averred that the complaint should be dismissed because even if the Commission were to find all of the allegations made therein to be true, it lacks authority to grant any of the five forms of relief sought by FPG. In particular, Staff cited well-established Missouri case law indicating that because the Commission is not a court and its adjudicative authority is not plenary, it "cannot enter a money judgment for one party against another" and "cannot grant monetary relief for compensation for past overcharges or damages."² Moreover, to date, FPG has not cited any contrary authority of any kind.

Although a prehearing conference is typically the next procedural step in a complaint case such as this, the Commission sees no point in moving forward with the case unless: (1) FPG affirmatively demonstrates that the Commission has the legal authority to grant any or all of the five forms of relief sought by FPG in its complaint as originally filed; or (2)

² *May Dept. Stores Co. v. Union Elec. Light & Power Co.*, 107 S.W.2d 41, 58 (Mo. 1937). See also *Am. Petroleum Exch. v. Pub. Serv. Comm'n*, 172 S.W.2d 952, 955 (Mo. 1943) (Commission has no authority to award pecuniary relief or consequential damages, and also lacks the authority to do equity or grant equitable

FPG amends its complaint to seek a form of relief the Commission is capable of granting.
FPG will be given two weeks to file an appropriate pleading.

IT IS ORDERED THAT:

1. FP Grandboro, LLC shall, by not later than 5:00 p.m. on Wednesday, April 16, 2008: (1) file an appropriate pleading affirmatively demonstrating that the Commission has the legal authority to grant any or all of the five forms of relief sought by the company in its complaint as originally filed; or (2) file a first amended complaint seeking a form of relief the Commission is capable of granting.
2. This order shall become effective on April 2, 2008.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Benjamin H. Lane, Regulatory Law
Judge, by delegation of authority
under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 2nd day of April, 2008.

relief); *Wilshire Constr. Co. v. Union Elec. Co.*, 463 S.W.2d 903, 905 (Mo. 1971) (Commission cannot enter a money judgment).