

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	<u>File No. GC-2011-0100</u>
)	
Missouri Gas Energy, a Division of Southern Union Company,)	
)	
)	
Respondent.)	

**ORDER DENYING MOTIONS TO STRIKE, GRANTING MOTION TO AMEND,
AND DIRECTING FILING OF RESPONSE TO MOTION FOR
SUMMARY DETERMINATION**

Issue Date: March 21, 2011

Effective Date: March 21, 2011

Procedural History

On October 7, 2010, the Staff of the Missouri Public Service Commission filed a complaint against Missouri Gas Energy alleging that its tariff sheet regarding certain liability limitations was “unjust, unreasonable, unlawful, violates public policy, and is void and unenforceable”¹ and that the tariff sheet does not comply with 4 CSR 240-40.030(10)(J) and 4 CSR 240-40.030(12)(S). MGE timely filed its answer, including its affirmative defenses, on November 12, 2010. Staff filed a reply to the answer and affirmative defenses on November 17, 2010. On that same day, Staff also filed a Motion to Strike Insufficient Affirmative Defense. On November 29, 2010, MGE filed a motion to dismiss the complaint, a response to Staff’s motion to strike, and a

¹ *Complaint*, (filed October 7, 2010) p. 5.

motion to strike staff's reply. Staff responded to MGE's motion to dismiss and filed a Motion for Summary Determination on December 1, 2010.

On December 6, 2010 a prehearing conference was held. At the prehearing conference counsel for the parties were questioned about the timing for the ruling on the motion to dismiss. It was agreed that the motion need not be ruled on immediately but could wait and be ruled on after an answer had been received to the motion for summary determination. A procedural schedule was set for the filing of testimony and holding of a hearing in the event the motions were both denied. As the time for the response to the motion for summary determination grew near, MGE informed the Commission that fairness required that the Commission rule on the motion to dismiss the complaint before MGE files a response to the motion for summary determination. In turn, Staff informed the Commission that fairness and efficiency required that the motion for summary determination be ruled on before prefiled testimony being prepared. Thus, the procedural schedule was suspended.

Motion to Strike Insufficient Affirmative Defense and Motion to Strike Staff's Reply

In its Motion to Strike Insufficient Affirmative Defense, Staff argues that MGE's affirmative defense of estoppel should be dismissed for failure to plead any facts establishing estoppel. MGE opposes Staff's motion to strike, arguing that the motion to strike is unauthorized by the complaint rule² and the motion provides no legal authority for striking an affirmative defense for failure to plead sufficient facts. In addition, MGE requests leave to file additional facts to support its estoppel defense.

² 4 CSR 240-2.070.

MGE is required by 4 CSR 240-2.070(7) to plead in its answer its affirmative defenses. The Missouri Supreme Court has stated that “a complaint under the Public Service Commission Law is not to be tested by the technical rules of pleading; if it fairly presents for determination some matter which falls within the jurisdiction of the Commission, it is sufficient.”³ The Commission determines that pleading an affirmative defense should be treated in a similar manner. Under this standard, the pleading of an affirmative defense is interpreted liberally and not “under the technical rules of pleading.” MGE has pled facts in its answer related to the previous Commission order which MGE provides as its defense of estoppel. MGE has also requested permission to amend its pleading to state additional facts in support of its defense. The Commission will grant the motion to amend and deny the motion to strike the affirmative defense.

MGE also filed a Motion to Strike Staff’s Reply. MGE argues that a pleading that is not specifically authorized by the complaint rule cannot be filed. The Commission’s procedural rules liberally allow parties to file responses to pleadings of the other parties, so long as they are timely filed.⁴ The Commission’s complaint rule merely sets out what is required to file a complaint and answer but does not purport to exclude the filing of additional pleadings, nor set out the entirety of the complaint process. The Complaint rule must be read in conjunction with the remaining procedural rules of the Commission. The Commission shall deny the motion to strike staff’s reply.

³ *St. ex rel. Kansas City Terminal Railway Co. v. Public Service Commission*, 308 Mo. 359, 372, 272 S.W. 957, 960 (banc 1925).

⁴ “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.” 4 CSR 240-2.080(15). (Emphasis added).

Response to Motion for Summary Determination

Upon further consideration of the motion to dismiss, the affirmative defenses, and the motion for summary determination, the Commission determines that the three are too interdependent to separate without allowing MGE an opportunity to fully respond to each. Thus, the Commission will set a new date for MGE's response to the Motion for Summary Determination and for the filing of any competing motion for summary determination.

THE COMMISSION ORDERS THAT:

1. The Motion to Strike Insufficient Affirmative Defense filed by the Staff of the Commission on November 17, 2010, is denied.
2. The Motion to Strike Staff's Reply filed by Missouri Gas Energy on November 29, 2010, is denied.
3. The request for leave to amend affirmative defense filed by Missouri Gas Energy is granted.
4. No later than April 11, 2011, Missouri Gas Energy shall file its response to the Motion for Summary Determination.
5. All motions for summary determination shall be filed no later than April 11, 2011.

6. This order shall become effective upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Nancy Dippell, Deputy Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of March, 2011.