

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

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

**PUBLIC COUNSEL’S REPLY TO MGE’S RESPONSE
REGARDING PUBLIC COUNSEL’S MOTION TO REJECT**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Reply to Southern Union Company d/b/a Missouri Gas Energy’s (MGE) June 17, 2011 Response to Public Counsel’s Motion to Reject Filing, states:

1. In its response to Public Counsel’s Motion to Reject Filing, MGE raises the surprising argument that its June 16, 2011 *Reply of Missouri Gas Energy to Staff’s Suggestions in Opposition to MGE’s Motion for Summary Determination* (“MGE Reply”) is a brief and not a pleading. MGE’s flawed legal analysis, and misguided belief that briefs are free of any procedural time restraints and may be filed at the whim of the filing party, is no basis for allowing MGE to file a response almost three weeks late.

2. Commission rule 4 CSR 240-2.080(15) requires that “[p]arties 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.” MGE’s argument that the MGE Reply was a brief is misplaced in that the question to ask is whether the *Staff’s*

Suggestions in Opposition to MGE's Motion for Summary Determination and Staff's Reply to MGE's Response to Staff's Motion for Summary Determination (Staff's Suggestions) filed on May 18, 2011 is a pleading because the rule applies to responses to pleadings – it does not address whether the response itself should be in the form of a pleading or a brief. The Staff's Suggestions is clearly a pleading under Commission rule 4 CSR 240-2.010, which defines the term “pleading” as follows:

Pleading means any application, complaint, petition, answer, motion, staff recommendation, or other similar written document, which is not a tariff or correspondence, and which is filed in a case. A brief is not a pleading under this definition.

Accordingly, the Staff's Suggestions is a pleading because it is a written document that is similar to an answer or a motion in that it responds directly to MGE's motion for summary determination. MGE's response to that pleading was therefore required by 4 CSR 240-2.080(15) to be filed within ten (10) days of the Staff's pleading.

3. MGE's assertion that its filing is a brief raises an additional reason to reject the filing. Commission rule 4 CSR 240-2.140 addresses the filing of briefs, and states that “[t]he commission or presiding officer shall determine whether the parties may file briefs...in any case.” Neither the Commission nor the presiding officer authorized the filing of briefs in this case. If the Commission believes MGE's excuse that its filing was a brief, OPC asks the Commission to reject the filing because the filing of briefs has not been authorized by the Commission as required by 4 CSR 240-2.140.

4. MGE points to the *Staff's Reply to MGE's Response to Staff's Motion for Summary Determination*, filed thirty-seven (37) days after MGE's Motion for Summary Determination, as proof that Staff agrees with MGE's conclusion that MGE's Reply was a brief with no procedural time constraints. MGE's conclusion as to the Staff's “view”

regarding MGE's Reply is nothing more than conjecture. Moreover, one obvious difference between MGE's filing and the Staff's filing is that no party filed a motion to reject the Staff's filing, whereas OPC filed a timely motion to reject MGE's filing.

5. MGE also argues that OPC "has no proper standing to file the Motion in that it is not a moving party entitled to any affirmative relief." MGE cites to no legal authority for its legal conclusion, and with good reason. Missouri statutes specifically authorize OPC to "represent and protect the interests of the public in any proceeding before" the Commission. § 386.710 RSMo 2000. OPC's standing to represent the interests of consumers is clearly established. Furthermore, nothing prohibits OPC from protecting the interests of consumers by filing a motion with the Commission asking the Commission to enforce the procedural requirements contained in the Commission's rules.

WHEREFORE, the Office of the Public Counsel respectfully asks the Commission to reject MGE's June 16, 2011 *Reply of Missouri Gas Energy to Staff's Suggestions in Opposition to MGE's Motion for Summary Determination* for violating the Commission's procedural rules 4 CSR 240-2.080(15) and/or 4 CSR 240-2.140.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 27th day of June 2011:

/s/ Marc Poston