

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

Staff of the Public Service Commission of Missouri	)	
	)	
	)	
vs.	)	Case No. GC-2003-0314
	)	
Southern Missouri Gas Company, L.P.	)	

**MOTION TO DISMISS OR IN THE ALTERNATIVE TO HOLD CASE IN  
ABEYANCE PENDING OUTCOME OF CASE NO. GR-2001-388,  
ANSWER AND AFFIRMATIVE DEFENSES  
OF RESPONDENT SOUTHERN MISSOURI GAS COMPANY, L.P.**

COMES NOW Respondent, Southern Missouri Gas Company, L.P. ("SMGC"), pursuant to Commission Rule 4 CSR 240-2.070, and respectfully submits its Motion to Dismiss, or In The Alternative, To Hold Case In Abeyance Pending Outcome of Case No. GR-2001-388, Answer and Affirmative Defenses to the Complaint filed in this matter on March 29, 2002.

**INTRODUCTION**

1. The subject matter of the Complaint filed by the Staff on March 7, 2003, has been fully litigated in a hearing before the Commission on March 11, 2003 in Case No. GR-2001-388. The issues raised in this proceeding are now being briefed in Case No. GR-2001-388, and the Commission will resolve the relevant issues raised by the Complaint in the context of Case No. GR-2001-388. SMGC therefore respectfully requests that this proceeding be dismissed, or in the alternative, held in abeyance pending the decision in Case No. GR-2001-388.

2. While it would appear that the Staff has raised its alleged grievance with SMGC in the context of Case No. GR-2001-388, the Staff chose to also file its Formal Complaint in this matter just two business days before Case No. GR-2001-388 was scheduled to be heard by the Commission. Since this matter was filed as a Formal Complaint, it must comport with the requirements of the above referenced Commission Rule. As fully set forth below, the subject Formal Complaint does not meet these requirements and, therefore, this matter should be dismissed.

### **MOTION TO DISMISS**

For its Motion to Dismiss, pursuant to Commission Rule 4 CSR 240-2.070(6), SMGC states:

1. The instant Complaint fails to comply with the requirements set forth in Commission Rule 4 CSR 240-2.070, in that it does not contain the information required in Subsection (5) of said Rule. Among the deficiencies, most notable is the omission of any statement regarding "[t]he jurisdiction of the commission over the subject matter of the complaint;" (i.e. the provisioning of gas supplies for transportation customers). In addition, the Complaint fails to include a "statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made."

2. Complainant has failed to state a claim upon which relief can be granted.  
(a) As fully set forth in Subsections (1) and (3) of the Commission's Rule, the complainant must be aggrieved by a violation of any statute, rule, order or decision within the Commission's jurisdiction. While the Complaint alleges that SMGC violated its own tariff and Section 393.130, RSMo. Supp. 2002, it fails to allege that the

provisioning and/or sale of gas supplies to transportation customers is within the jurisdiction of the Commission and therefore required to be offered as a Missouri-tariffed service, or is otherwise prohibited by the provisions of Section 393.130;

(b) The provisioning and/or sale of gas supplies to transportation customers is preempted by federal law, pursuant to the rules, regulations and orders of the Federal Energy Regulatory Commission ("FERC").

### **ANSWER**

For its Answer, pursuant to Commission Rule 4 CSR 240-2.070(8), SMGC states as follows:

1. Respondent admits the allegations contained in Paragraph 1 of the Complaint.

2. Respondent admits the allegations contained in Paragraph 2 of the Complaint.

3. Respondent admits the allegations contained in Paragraph 3 of the Complaint. Respondent admits that Southern Missouri Gas Company, L.P. is a public utility under the jurisdiction of the Public Service Commission of the State of Missouri. However, SMGC denies that the Commission has jurisdiction over the subject matter of this Complaint.

4. Respondent admits that it may furnish service under its Rate Schedules and the Rules and Regulations as set forth in its Tariff Sheets.

5. Respondent denies the allegations contained in paragraph 5, including specifically the allegation that SMGC has created an unauthorized class of customers.

6. Respondent re-alleges and incorporates by reference the statements and answers contained in Paragraphs 1 through 5 above.

7. Paragraph 7 contains a paraphrase of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute so provides, but otherwise denies the allegations in Paragraph 7. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.

8. Respondent denies the allegations contained in paragraph 8.

9. Respondent denies the allegations contained in paragraph 9.

10. Respondent re-alleges and incorporates by reference the statements and answers contained in Paragraphs 1 through 9 above.

11. Paragraph 11 contains a paraphrase of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute so provides, but otherwise denies the allegations in Paragraph 11. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.

12. Respondent denies the allegations contained in paragraph 12 of the Complaint.

13. Respondent denies the allegations contained in paragraph 13 of the Complaint.

14. Respondent re-alleges and incorporates by reference the statements and answers contained in Paragraphs 1 through 13 above.

15. Paragraph 15 contains a paraphrase of a statute rather than allegations of fact to which an answer is required, but to the extent an answer may be deemed to be required, and to the extent that the quotation is accurate, Respondent admits that the cited statute so provides, but otherwise denies the allegations in Paragraph 15. The Commission is respectfully referred to the cited statutory provision for a full and complete statement of its contents.

16. Respondent denies the allegations contained in paragraph 16 of the Complaint.

#### **AFFIRMATIVE DEFENSES**

For its Affirmative Defenses, SMGC states as follows:

1. SMGC acted lawfully and prudently by providing unregulated services related to the provisioning and/or sale of gas supplies to transportation customers, and SMGC's ratepayers benefited by such activities.

2. The Complaint fails to state a claim upon which relief can be granted.

3. The Commission lacks jurisdiction over the provisioning and/or sales of gas supplies for transportation customers, pursuant to the rules, regulations, and orders of the Federal Energy Regulatory Commission.

4. The Commission lacks jurisdiction over the provisioning and/or sales of gas supplies to transportation customers in interstate commerce. Section 386.030. RSMo. 2000.

5. The proposed penalties would interfere with interstate commerce.

6. The Commission lacks the statutory authority to assess penalties for Respondent engaging in unregulated activities permitted by law.

7. The Complaint fails to include a “statement as to whether the complainant has directly contacted the person, corporation or public utility about which complaint is being made.”

8. There is an action pending between the same parties as to all material portions of the Complaint. Accordingly, as set forth in the Introduction, *supra*, until there is a **final** adjudication of Case No. GR-2001-388, this Complaint is, and shall be, an unnecessary expenditure of both the Commission's and Respondent's time and resources, and should be dismissed, or in the alternative, held in abeyance pending the final adjudication of Case No. GR-2001-388.

**WHEREFORE**, having fully answered and for the reasons set forth above, Southern Missouri Gas Company, L.P. requests the Commission to enter an Order dismissing the Complaint filed herein, or in the alternative, hold the case in abeyance pending resolution of Case No. GR-2001-388.

Respectfully submitted,

  
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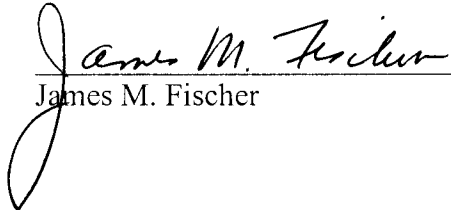
Attorneys for Southern Missouri Gas  
Company, L.P.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was emailed, mailed or hand-delivered, this 9th day of April, 2003, to:

Dana K. Joyce/Robert Franson  
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James M. Fischer