

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of December, 2022.

Structural Glass Systems, Inc.,)	
)	
Complainant,)	
)	
v.)	<u>File No. GC-2023-0143</u>
)	
Spire Missouri, Inc. d/b/a Spire)	
)	
Respondent.)	

ORDER DENYING MOTION TO DISMISS

Issue Date: December 8, 2022

Effective Date: December 8, 2022

Structural Glass Systems, Inc. (SGS) filed a complaint against Spire Missouri, Inc. d/b/a Spire (Spire) on October 25, 2022. The complaint alleges that Spire’s installation of defective metering equipment resulted in Spire’s issuing a bill to collect an undercharge of \$7,822.66 that cannot be billed or assessed to SGS, that the bill resulted from Spire’s negligence, and that Spire’s negligence has caused damage to SGS in the form of the bill for the alleged gas service and consequential damages. Spire filed a motion to dismiss the complaint on November 23, 2022. SGS responded in opposition to the motion to dismiss on November 25, 2022.

Spire’s motion to dismiss argues that SGS has failed to allege facts in its complaint that would support a conclusion that Spire has violated any law, rule, or Commission approved tariff, or facts sufficient to support a finding of negligence; and that SGS has failed to allege facts giving rise to a claim for consequential damages. Spire argues that

even if it inadvertently installed metering hardware that resulted in an incorrect reading of gas usage, its re-billing to collect for actual gas service provided is not only authorized, but required in order to avoid any rate discrimination.

In its response, SGS asserts that its complaint is sufficient to state a claim because it alleges that Spire is billing it for gas service which was not provided, in that the language of the complaint states: “. . . Respondents present charge for natural gas of \$7,822.66 resulted from an “under charge” for natural gas service allegedly provided to Complainant . . .” SGS argues that its characterization of gas service as “alleged” poses the question of whether the gas service billed for was provided. Additionally, SGS indicates in its complaint that the amount at issue is \$7,822.66.

Spire’s motion is a motion to dismiss the complaint for failure to state a cause of action. In ruling on that motion, the Commission merely considers the adequacy of the complaint.¹ It must assume that all averments in the complaint are true and must liberally grant to the complainant all reasonable inferences from those averments. The Commission does not weigh any facts alleged in the complaint to determine whether they are credible or persuasive.² Further, “[c]omplaints or other pleas before the Commission are not tested by the rules applicable to pleadings in general, if a complaint or petition ‘fairly presents for determination some matter that falls within the jurisdiction of the Commission, it is sufficient.’”³ Section 386.390(1), RSMo (Supp. 2020), gives the Commission jurisdiction to hear complaints about:

¹ *State ex rel. Laclede Gas Company v., Public Service Com’n of Missouri*, 392 S.W. 3d 24, 38 (Mo. App. W.D. 2012).

² *Foremost Ins. Co. v. Public Service Com’n of Missouri*, 985 S.W. 2d 793, 796 (Mo. App. W.D. 1998).

³ *State ex rel. Chicago B. & Q. R. Co. v. Public Service Commission*, 334 S.W.2d 54, 58 (Mo. 1960), quoting, *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission*, 308 Mo. 359, 372, 272 S.W. 957, 960 (Mo. 1925).

any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission; ...

After examining SGS's complaint in light of the guiding legal standard, the Commission finds that the complaint is sufficient to state a cause of action that can be addressed by the Commission. Specifically, the complaint alleges that Spire billed SGS for gas service that it did not provide and cannot be billed or assessed to it. The Commission cannot make any findings or reach any conclusions about the truth of those allegations at this time, but the allegations are sufficient to properly place this complaint within the Commission's jurisdiction.

On December 1, Spire filed its reply to SGS's response to its motion to dismiss, and on December 7, SGS filed its response to that reply. Neither filing enhanced the arguments presented in previous filings.

The Commission's order of October 26, 2022 directs Spire to file its answer to the complaint no later than November 25, 2022. Spire filed its motion to dismiss on November 23, 2022, but has not filed an answer to the complaint. The Commission will direct Spire to file its answer to the complaint.

The Commission finds that SGS's complaint states a cause of action against Spire, and Spire's motion to dismiss will be denied.

THE COMMISSION ORDERS THAT:

1. Spire's Motion to Dismiss is denied.
2. Spire shall file its answer to the complaint no later than December 19, 2022.
3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Rupp, Coleman, Holsman, and
Kolkmeier CC., concur.

Keeling, Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 8th day of December, 2022.




Morris L. Woodruff
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

December 8, 2022

File/Case No. GC-2023-0143

**Missouri Public Service
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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Morris L. Woodruff
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.