

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

Filed  
November 18, 2011  
Data Center  
Missouri Public  
Service Commission

The Staff of the )  
Missouri Public Service Commission, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
Southern Union Company, )  
 )  
Respondent. )

File No. GC-2011-0100

**MISSOURI ASSOCIATION OF TRIAL ATTORNEYS'**

**APPLICATION FOR REHEARING**

COMES NOW the Missouri Association of Trial Attorneys (MATA) and, pursuant to §386.500.1, RSMo.<sup>1</sup> and 4 CSR 240-2.160, respectfully applies for rehearing of the Commission's *Final Decision and Order to File a New Tariff Sheet* in the above-captioned proceeding which was issued November 9, 2011 ("Order")<sup>2</sup>. In support of its Application, MATA states as follows:

1. MATA is a Missouri non-profit corporation which represents persons injured by negligent conduct, including negligent acts by public utilities. MATA is interested in preserving legal rights of people injured by the negligence of Southern Union Company d/b/a Missouri Gas Energy (MGE) as well as other public utilities regulated by the Commission.

2. MATA is interested in the matters determined in the Order because the Order purports to immunize MGE from liability for acts of negligence. Such immunity

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<sup>1</sup> Statutory references are the Missouri Revised Statutes (2000) unless otherwise noted.

<sup>2</sup> The Order provides that it constitutes the Commission's final decision subject to rehearing under Section 386.500 RSMo.

would increase the risk of injury by MGE and deprive those harmed by MGE's negligence of their rights to a legal remedy and a trial by jury. Additionally, MATA is interested in the Order because it concludes that "immunity for negligence is not generally contrary to the public interest". This conclusion is a general statement of policy which is contrary to Missouri law and inconsistent with the Commission's legal duty to protect the public.

4. The Order determines the lawfulness of MGE Tariff Sheet R-34, which provides in part as follows:

The Company shall not be liable for loss, damage or injury to persons or property in any manner directly or indirectly connected with or arising out of the delivery of gas through piping or gas utilization equipment on the delivery side of the meter, which shall include but not be limited to any and all such loss, damage or injury involving piping, vents or gas utilization equipment whether inspected or not by the Company, or occasioned by interruption, failure to commence delivery, or failure of service or delay in commencing service due to accident or breakdown of plant, lines, or equipment, strike, riot, act of God, **order of any court or judge granted in any bona fide adverse legal proceedings or action or any order of any commission or tribunal having jurisdiction**, or, without limitation by the preceding enumeration, any other act or things due to causes beyond Company's control, **or attributable to the negligence of the company, its employees, contractors or agents.**

This paragraph purports to eliminate all MGE liability for loss, damage or injury resulting from acts of negligence, even where a court of law determines MGE should be liable.

5. The Order rejects the portion of MGE Tariff Sheet R-34 immunizing MGE for liability for negligent inspection, leakage and repair. However, the Order approves the provisions of MGE Tariff Sheet R-34 immunizing MGE from liability for all other negligent conduct.

6. The Order is unjust, unlawful and unreasonable, violates the Commission's regulations, is against Missouri's public policy, exceeds the Commission's statutory authority and violates the Missouri Constitution in the following respects:

(a) The Order purports to immunize MGE from all liability for negligence except negligence for inspection, leakage and repair.

(b) The Order purports to nullify and abrogate Missouri court judgments.

(c) The Order purports to immunize MGE from liability for violations of statutes, Commission regulations and compliance with local codes and standards, including safety laws and regulations.

(d) The Order violates Article I, Section 14 of the Missouri Constitution by denying certain remedy afforded for injury to person and property.

(e) The Order violates Article I, Section 22 (A) of the Missouri Constitution and the Seventh Amendment to the United States Constitution by eliminating the right to trial by jury for persons injured by MGE's negligence.

(f) The Order deters those injured by MGE's negligent conduct from pursuing legitimate legal claims.

(g) The Commission lacks legal authority to immunize public utilities from liability for acts of negligence;

(h) The Commission lacks legal authority to hold public utilities harmless from court decisions;

(i) The Order is arbitrary, capricious and violates due process because it fails to articulate any rational basis to abrogate the Commission's decision *In the Matter of Laclede Gas Company's Tariff Revision Designed to Clarify Its Liability for Damages*

*Occurring on Customer Piping and Equipment, Case No. GT-2011-0056, Report and Order (January 13, 2010).*

7. The Commission's conclusion that "immunity for negligence is not generally contrary to the public interest" is unlawful, unjust, unreasonable, against Missouri public policy and unsupported by the record in this case.

WHEREFORE, MATA respectfully requests that the Commission grant its Application for Rehearing.

Respectfully submitted,

LANGDON & EMISON

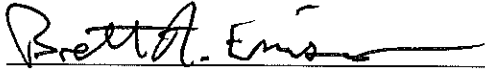
By 

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Attorney for the Missouri  
Association of Trial Attorneys

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been served by either electronic mail or United States mail this 18<sup>th</sup> day November, 2011, to all parties on the Commission's service list in this case.

  
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