

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

The Staff of the Missouri Public Service )  
Commission, )  
 )  
Complainant, )  
 )  
v. )  
 )  
Missouri Gas Energy, a Division of )  
Southern Union Company )  
 )  
Respondent. )

Case No. GC-2011-0100

**MISSOURI GAS ENERGY'S RESPONSE TO PUBLIC COUNSEL'S  
MOTION TO REJECT FILING**

COMES NOW Respondent Missouri Gas Energy ("MGE") and for its response to Public Counsel's Motion to Reject Filing states the following:

1. On June 16, 2011, Public Counsel filed a Motion to Reject MGE's Reply to Staff's Suggestions in Opposition to MGE's Motion for Summary Determination.<sup>1</sup> Public Counsel's Motion is groundless and it should be denied.

2. As a preliminary matter, Public Counsel has no proper standing to file the Motion in that it is not a moving party entitled to any affirmative relief. Public Counsel has not filed a motion for summary disposition in this case, and, consequently, cannot claim to be prejudiced by MGE's filing which addresses a Staff filing even if the Commission were to conclude that it was filed out of time, which is not the case as explained herein. As such, the Motion should be denied.

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<sup>1</sup> EFIS Document No. 34.

3. Additionally, Public Counsel's Motion mistakenly relies on Commission rule 4 CSR 240-2.080(15) which establishes a ten (10) day filing requirement to respond to a "pleading". The term "pleading" is defined by the Commission as any "application, complaint, petition, answer, motion, staff recommendation or other similar written document, which is not a tariff or correspondence, which is filed in a case. A brief is not a pleading under this definition."<sup>2</sup> (emphasis added) MGE's June 16<sup>th</sup> Reply is a supplemental legal memorandum and in the nature of a brief; not a pleading.

4. The Commission's rule 4 CSR 240-2.117 (Summary Disposition) provides that the moving party file a motion and an "attached. . . separate legal memorandum explaining why summary determination should be granted."<sup>3</sup> The responding party is permitted to file a response and an "attached. . . legal memorandum explaining why summary determination should not be granted."<sup>4</sup> As such, the pleadings and the briefs are discrete elements. MGE's filing is intended as a rebuttal to Staff's separate legal memorandum (i.e., its Suggestions in Support of its Response) as reflected in the title of the document.<sup>5</sup> Consequently, Public Counsel's reliance on the ten (10) day filing requirement for pleadings in Commission rule 4 CSR 240-2.010 is misplaced. This is further illustrated by the fact that MGE's filing does not fit into any of the categories that the Commission's rule defines as a pleading. It is not an application or a complaint or a petition or an answer or a motion or a Staff recommendation or other similar written document.

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<sup>2</sup> 4 CSR 240-2.010(13).

<sup>3</sup> See, subsection (B).

<sup>4</sup> See, subsection (C).

<sup>5</sup> "Reply of Missouri Gas Energy to Staff's Suggestions in Opposition to MGE's Motion for Summary Determination" (Emphasis added).

5. It is apparent that Staff, the only other party with a legitimate interest in this particular issue, shares MGE's view. MGE filed its Motion for Summary Determination on April 11, 2011. Staff filed its Suggestions in Opposition to that motion along with its reply to MGE's memorandum of law in support of its Response to Staff's Motion for Summary Determination<sup>6</sup> on May 18, 2011, thirty-seven (37) days later. It appears that Public Counsel the only party operating under the misconception that the Commission's pleadings rule has any bearing on the topic.

6. Public Counsel asserts that MGE "knowingly" filed the reply after it was due.<sup>7</sup> As noted above, that is not the case. MGE's filing is specifically exempted from Commission rule 4 CSR 240-2.080(15).

7. In paragraph 7 of the motion, Public Counsel attempts to use a previous filing by MGE against it, but this claim is too clever by half. There is no discrepancy or inconsistency on the part of MGE. Public Counsel ignored sequence of filings contemplated by Commission rule 4 CSR 240-2.080 and the applicable filing deadline for its filing as established by an order of the Commission.<sup>8</sup> MGE, on the other hand, faced no filing deadline because its submission is not a pleading under the Commission's rules of practice.

8. As noted above, MGE and Staff, the moving parties on cross motions for summary determination, have been operating with the clear understanding that Commission rule 4 CSR 240-2.080(15) is not applicable to the filing of legal memoranda

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<sup>6</sup> That document is entitled "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." (Emphasis added)

<sup>7</sup> Motion, ¶ 6.

<sup>8</sup> EFIS Document No. 23.

in support of or opposing cross motions for summary determination. If the Commission should nevertheless conclude that the Complainant and Respondent in this case have each filed their respective replies out of time, MGE requests that the Commission grant a variance of that requirement as to MGE's reply in that Staff would not be prejudiced by permitting the filing at this time. First, MGE's submission has caused no undue delay in the processing of this case. Second, Staff filed its own reply to MGE's Memorandum of Law well over ten days after it was filed. Third, the submission simply permits MGE, the moving party with respect to its Motion for Summary Determination, to open and close the dialogue as is the custom in general civil and appellate practice concerning the briefing of cases. This puts MGE in no better position than Staff which has opened and closed with respect to its own Motion for Summary Determination. Moreover and importantly, Public Counsel would not be prejudiced because it is not a moving party and consequently, is not entitled to any affirmative relief.

WHEREFORE, MGE requests that the Commission deny Public Counsel's Motion to Reject Filing or, in the alternative, that it grant a variance from the requirement of 4 CSR 240-2.080(15) as to MGE's Reply for good cause shown.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission to all counsel of record on this 17<sup>th</sup> day of June, 2011.

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