

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
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.)	

MGE’s RESPONSE TO STAFF’S MOTION FOR SUMMARY DETERMINATION

COMES NOW Respondent Missouri Gas Energy (“MGE”) by and through counsel, pursuant to 4 CSR 240-2.117(1)(C) and for its response to Staff’s Motion for Summary Determination (“Motion”), states as follows:

1. Paragraph 1 of the Motion does not contain a statement of material fact and, consequently, no admission or denial is required.
2. Paragraph 2 of the Motion does not contain a statement of material fact and, consequently, no admission or denial is required.
3. Paragraph 3 of the Motion does not contain a statement of material fact and, consequently, no admission or denial is required.
4. Paragraph 4 of the Motion does not contain a statement of material fact and, consequently, no admission or denial is required.
5. With respect to paragraph 5 of the Motion, MGE denies that there is no genuine issue as to the material facts set out in paragraphs 6-12 of the Motion all as more specifically set forth below in the corresponding numbered paragraphs.

6. MGE admits that Staff states in its Complaint that its Chief Staff Counsel has filed the Complaint citing Commission Rule 4 CSR 240-2.070(1) as its authorization. MGE specifically denies that 4 CSR 240-2.070(1) authorizes the Complaint in that there is a dispute as to whether the matter before the Commission involves the topics specified in 4 CSR 240-2.070(1). These matters were previously addressed in MGE's November 29, 2010, Motion to Dismiss Complaint. (EFIS Doc. 10). This topic is addressed in more detail in MGE's memorandum in support of its response to the Motion.

7. MGE admits that it has admitted the facts set forth in paragraph 7 of the Motion.

8. MGE admits that it has admitted that it is a "gas corporation" and a "public utility" as defined in §386.020 RSMo and, as such, is subject to the supervision and control of the Commission as provided by law.

9. With respect to paragraph 9 of the Motion, MGE states that it does not contain an allegation of material fact and, consequently, no admission or denial is possible.

10. MGE denies that it has admitted in its Answer "that the Commission is expressly authorized to hear and determine complaints concerning tariff provisions of public utilities by §393.140(5)." MGE's Answer states the following:

Respondent admits that the Commission has the authority to hear and determine certain complaints as provided by law. The quoted language in paragraph 6 of the Complaint speaks for itself and does not require a response. Respondent denies the remaining allegations contained in paragraph 6 of the Complaint.

11. With respect to paragraph 11 of the Motion, MGE denies Staff's characterization of MGE's admission. MGE's Answer states the following:

Respondent admits that the Commission issued a Report and Order in its Case No. GT-2009-0056 on January 13, 2010. Respondent admits that the subject matter of that case with certain tariff sheets proposed

by Laclede Gas Company. Respondent admits that Laclede is a public utility that distributes natural gas at retail in Missouri pursuant to tariffs approved by the Commission. Respondent further states that the Commission's Report and Order in its Case No. GT-2009-0056 speaks for itself and does not require a response. Respondent denies the remaining allegations contained in paragraph 7.

MGE further states that paragraph 11 of the Motion does not contain an allegation of material fact and, consequently, no admission or denial is possible.

12. MGE admits that it has admitted that the copy of Sheet R-34 attached to the Complaint was filed with and approved by the Commission in 2007. MGE states that the matters stated in paragraphs 12B and 12C are not allegations of material fact within the meaning of Commission Rule 4 CSR 240-2.117 and, consequently, no admission or denial is possible. MGE admits Staff's representation that the matters set forth in paragraphs 12D and E are "not material."

13. MGE admits that its Answer denies that its tariff sheet R-34 is not just and reasonable. As discussed more fully in MGE's Suggestions in Support, to the extent that Staff's unsupported hypotheticals are deemed "material facts," the materials facts in dispute are:

(a) (1) The tariff sheet does not purport to "immunize MGE from all liability" as asserted by Staff. As an example, the opening paragraph of tariff sheet R-34 only addresses customer-owned and maintained equipment and states that the Company will be held harmless for property damage unless it can be shown to have "been caused by willful default or gross negligence."

(2) In those circumstances where the tariff does limit the Company's liability, they are such that a limitation of civil liability is reasonable and appropriate. By way of example, the tariff

provides for a reasonable limitation of liability as in the case of service disruptions caused by court orders or matters beyond the Company's control or equipment failures on the customer's side of the meter and over which the Company has no ownership interest or control.

(b) The tariff does not purport to immunize MGE from all liability in connection with its operation of its distribution system as alleged by Staff. The first paragraph addresses the installation and operation of "service line, yard line and other necessary appurtenances" (customer-owned equipment) and does not address Company-owned equipment in the larger distribution network. The last paragraph of the tariff addresses only the delivery of gas through customer-owned equipment (i.e., piping or gas utilization equipment on the delivery side of the meter).

(c) The tariff holds the Company harmless for loss or damage involving the operation of customer's piping or utilization equipment even though required to be inspected by the Company, but this is a reasonable limitation because:

(1) The Commission-mandated inspection is visual only and does not involve an in-depth mechanical assessment; and

(2) It is reasonable that the Company be held harmless for such loss or damage if it is associated with the operation of customer-owned equipment that the Company does not furnish, manufacture, assemble, install, maintain, control, or own.

(d) The language of the tariff does not "purport to limit MGE's liability even for gross negligence or wanton conduct." To the contrary,

it excludes “willful default or gross negligence” associated with property damage associated with service line work and only addresses ordinary negligence in the case customer equipment.

14. MGE admits that it denies that tariff sheet R-34 does not comply with the Commission’s Natural Gas Safety Rules 4 CSR 240-40.030(10)(J) and 4 CSR 240-40.030(12)(S). As discussed in more detail in MGE’s Suggestions in Support, there is no conflict with the Natural Gas Safety Rules since the rules require a limited visual inspection of connected piping and equipment. The tariff provision only addresses the fact that MGE has no requirement to warn of “potential” hazards under the Natural Gas Safety Rules as opposed to “actual” hazards. A plain reading of MGE’s tariff sheet R-34 supports this interpretation.

15. MGE admits that it denies that its tariff sheet R-34 is unjust, unreasonable, unlawful and void and unenforceable as a matter of public policy. Sheet R-34 is a tariff sheet filed with and approved by the Commission on April 3, 2007, in Case No. GR-2006-0422. Staff’s reliance on the Laclede Gas Company (“Laclede”) decision in Case No. GT-2009-0056 does not represent a general regulatory policy either in accordance with its express terms or by virtue of the process pursuant to which it came into being. The Report and Order does not state that the findings or conclusions are a pronouncement of general Commission policy. It was a case decided on its own unique facts. As MGE pointed out in its November 29, 2010, Motion to Dismiss Complaint:

Staff’s suggestion in the Complaint at ¶7 that MGE’s Tariff Sheet R-34 violates some public policy pronouncement contained in the Laclede Gas Company (“Laclede”) case¹, is misguided as well. That case is factually distinguishable. First of all, MGE’s tariff was approved by the Commission in 2007 whereas Laclede’s proposed tariff, which differed in many particulars, was rejected. Also, the Commission in the *Laclede* case went to some lengths to point out that Laclede has both regulated and unregulated lines of business and expressed concern about the advantage that a Commission-approved limitation of liability

¹ *Re Laclede Gas Company*, Case No. GT-2009-0056.

might confer on the utility *vis-à-vis* unregulated competitors. MGE, by way of contrast, has no unregulated lines of business so this concern is not implicated.

As such there are material facts that distinguish MGE's business from that of Laclede. Also, the only parties to the case were Staff, Laclede and Public Counsel. No other local distribution company (including MGE) was a party to the case and, as such, MGE is not bound by the "ordered" sections of the Laclede decision.

16. MGE admits that it admitted the matters contained in paragraph 16.

17. Paragraphs 17 and 18 of the Motion do not contain a statement of material fact and, consequently, no admission or denial is required.

18. Contemporaneously herewith, MGE is filing suggestions in support of this Response.

WHEREFORE, having shown that there are genuine issues of material fact and that Complainant is not entitled to relief as a matter of law to all or any part of the case, Respondent MGE prays that the Commission deny the Motion for Summary Determination.

Respectfully submitted,

/S/

Todd J. Jacobs MBE #52366
Senior Attorney
Missouri Gas Energy,
a division of Southern Union Company
3420 Broadway
Kansas City, MO 64111
Phone: (816) 360-5976
Fax: (816) 360-5903
todd.jacobs@sug.com

Paul A. Boudreau MBE #33155
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Phone: (573) 635-7166
Fax: (573) 634-7431
paulb@brydonlaw.com

