

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

MOTION TO DISMISS COMPLAINT

COMES NOW Respondent Missouri Gas Energy (“MGE”) and for its Motion to Dismiss Staff’s Complaint, states the following:

1. On October 7, 2010, Staff filed a formal Complaint against MGE alleging the unlawfulness and unreasonableness of a specified tariff sheet, (specifically, Tariff Sheet R-34). The Complaint should be dismissed because it is unauthorized under Commission rule 4 CSR 240-2.070 (“Complaints”).

2. Commission rule 4 CSR 240-2.070 “establishes the procedures for filing formal and informal complaints with the Commission.” Subsection (1) of that rule states as follows:

The Commission on its own motion, the Commission Staff, through the General Counsel, the Office of the Public Counsel, or any person or public utility who feels aggrieved by a violation of any statute, rule, order or decision within the Commission’s jurisdiction may file a complaint. The aggrieved party, or complainant, has the option to file either an informal or formal complaint. (emphasis added).

This rule does not give Staff the authority to file a complaint concerning the reasonableness of a public utility's lawfully approved tariff. A duly-authorized tariff is, by definition, in full compliance with all applicable laws, rules and orders of the Commission.

3. Furthermore, the allegation that MGE's Tariff Sheet R-34 is unjust, unreasonable, unlawful, violates public policy and is void and unenforceable is easily and summarily rebutted.

The tariff provision limiting civil liability for certain incidents is not unlawful

4. The Commission has already determined that a tariff sheet limiting civil liability for certain activities or events of a regulated utility is not unlawful. It has recently stated that it "has the authority to prescribe certain limits on the liabilities of its regulated entities when those liabilities affect just and reasonable rates."¹ In fact, tariff sheets limiting the liability of Missouri utilities in a variety of scenarios (i.e., service or transportation interruptions, curtailments, inspections or the condition of customer equipment) are fairly commonplace.

MGE's Tariff Sheet R-34 is not in violation of any statute, rule, order or decision of the Commission

5. The allegation in Staff's Complaint that there is a violation of any statute, rule, order or decision of the Commission with respect to MGE's Tariff Sheet R-34 is likewise groundless in that the tariff sheet was approved by the Commission in an April 3, 2007, Order Regarding Motion for Expedited

¹ Report and Order in Case No. GT-2009-0056, page 10.

Consideration and Approval of Tariff Sheets in Case No. GR-2006-0422. A copy of the order is attached hereto.

6. 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") case², 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 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. Finally, if it is the Commission's policy to discourage reasonable limitations of liability as Staff contends, it is a policy that is honored most prominently in the breach. As noted in ¶4 above, such tariff provisions are routine.

Conclusion

7. As has been shown above, Staff's Complaint is not authorized by 4 CSR 240-2.070 and, furthermore, there are no grounds to support the allegations of Staff's Complaint that MGE's lawfully approved Tariff Sheet R-34 violates any statute, rule, order or decision of the Commission or is otherwise unlawful. As such, Staff has no basis to bring the Complaint and it should be dismissed.

² *Re Laclede Gas Company*, Case No. GT-2009-0056.

WHEREFORE, for the reasons aforesaid, MGE requests that the Commission dismiss Staff's Complaint and for such other relief as is appropriate in the circumstances.

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 29th day of November, 2010.

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/s/ Paul A. Boudreau

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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 3rd day of
April, 2007.

In the Matter of Missouri Gas Energy's Tariffs)
Increasing Rates for Gas Service Provided)
to Customers in the Company's Missouri)
Service Area)

Case No. GR-2006-0422

**ORDER REGARDING MOTION FOR EXPEDITED CONSIDERATION
AND APPROVAL OF TARIFF SHEETS IN COMPLIANCE WITH
COMMISSION ORDER**

Issue Date: April 3, 2007

Effective Date: April 3, 2007

Missouri Gas Energy, a division of Southern Union Company initiated this proposed rate case on May 1, 2006 by filing with the Missouri Public Service Commission tariff sheets with an effective date of June 2, 2006. Under Missouri law, the Commission has the authority to suspend the effectiveness of the proposed tariff sheets for a period of 120 days beyond the effective date.¹ To further consider the proposed rate increase, the Commission has the authority to suspend the tariff sheets for an additional period not to exceed six months.² The proposed tariff sheets must therefore be either rejected or approved no later than March 30, 2007.³

On March 22, the Commission issued a Report and Order bearing an effective date of March 30, authorizing MGE to file tariff sheets in compliance with the Commission's

¹ RSMo Section 393.150.1.

² RSMo Section 393.150.2.

³ One hundred twenty days beyond May 1, 2006 is September 30, 2006. An additional six months is March 30, 2007.

Order. MGE filed such tariff sheets on March 28, requesting that the Commission approve the tariff sheets to be effective on and after April 1. In its request, MGE explains in a footnote that:

Although MGE would typically seek to effectuate these compliance tariff sheets on the effective date of the Report and Order (March 30, 2007), because seasonal rate changes are scheduled to occur only two days thereafter (on April 1, 2007), MGE seeks to effectuate these compliance tariff sheets on April 1, 2007, in order to mitigate the number of rate changes that occur within a short period of time. The practical result of this request is to delay MGE's rate increase for two days and this delay will cause no harm to any customer.

MGE argues that the Commission's denial of its request would be to deny MGE of a certain portion of the rate relief to which the Commission has already found MGE to be entitled; further, that such denial would be unlawful, unjust, unreasonable, and not a result intended by the Commission. MGE filed a substitute tariff sheet on March 29, 2007.

On March 30, 2007, the Staff of the Commission filed its Recommendation. Staff states that it has reviewed MGE's tariff sheets and recommends that the Commission approve the tariff sheets to be effective on and after April 1, 2007. Staff points out that unless the Commission orders otherwise and for good cause shown, MGE must give the Commission thirty days notice of the proposed tariff sheets prior to the effective date of such tariff sheets.⁴ Stating that good cause has been shown, Staff supports MGE's request.

The Commission has reviewed MGE's request that the Commission approve the tariff sheets to be effective on or after April 1, 2007. Upon such review, and of the Recommendation the Commission's Staff, the Commission finds that there is good cause to

⁴ RSMo 393.140 (11).

approve the tariff sheets to be effective on less than 30 days' notice and shall approve the tariff sheets to be effective on and after April 3, 2007.

IT IS ORDERED THAT:

1. Missouri Gas Energy, a division of Southern Union Company's Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less Than Thirty Days' Notice is granted.

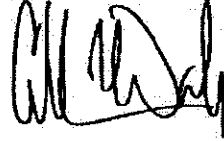
2. Missouri Gas Energy, a division of Southern Union Company's proposed tariff, assigned Tariff File No. YG-2007-0689 is approved as amended to be effective on and after April 3, 2007:

P.S.C. MO. No. 1

**Sixth Revised Sheet No. 10, Cancelling Fifth Revised Sheet No. 10
Thirteenth Revised Sheet No. 24.3, Cancelling Twelfth Revised Sheet No. 24.3
Seventh Revised Sheet No. 25, Cancelling Sixth Revised Sheet No. 25
Seventh Revised Sheet No. 28, Cancelling Sixth Revised Sheet No. 28
Seventh Revised Sheet No. 31, Cancelling Sixth Revised Sheet No. 31
Second Revised Sheet No. 39, Cancelling First Revised Sheet No. 39
Fourth Revised Sheet No. 40, Cancelling Third Revised Sheet No. 40
Seventh Revised Sheet No. 42, Cancelling Sixth Revised Sheet No. 42
Second Revised Sheet No. 61.2, Cancelling First Revised Sheet No. 61.2
Seventh Revised Sheet No. 76, Cancelling Sixth Revised Sheet No. 76
Sixth Revised Sheet No. 77, Cancelling Fifth Revised Sheet No. 77
Third Revised Sheet No. 83, Cancelling Second Revised Sheet No. 83
Seventh Revised Sheet No. 94, Cancelling Sixth Revised Sheet No. 94
Fifth Revised Sheet No. 96, Cancelling Fourth Revised Sheet No. 96
Fourth Revised Sheet No. 97, Cancelling Third Revised Sheet No. 97
Third Revised Sheet No. 98, Cancelling Second Revised Sheet No. 98
Fourth Revised Sheet No. R-34, Cancelling Third Revised Sheet No. R-34**

3. This order shall be effective April 3, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a faint rectangular stamp.

Colleen M. Dale
Secretary

(SEAL)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Jones, Senior Regulatory Law Judge