

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.)	

**RESPONSE OF MISSOURI GAS ENERGY TO PUBLIC COUNSEL’S SUGGESTIONS
IN SUPPORT OF STAFF’S MOTION FOR SUMMARY DETERMINATION**

COMES NOW Southern Union Company d/b/a Missouri Gas Energy (“MGE”) and provides the following response to Public Counsel’s Suggestions in Support of Staff’s Motion for Summary Determination filed on June 2, 2011 (“Suggestions”), as authorized by the Commission’s Order Denying Motion to Reject, and Granting Motions to File Out of Time and to File Reply, dated July 21, 2011.

Summary

Several things are apparent from a reading of Public Counsel’s Suggestions. First, Public Counsel’s arguments are premised on the erroneous assumption that the Commission’s January 13, 2010, decision in its Case No. GT-2009-0056¹ is dispositive of the circumstances in this case. Second, the concerns identified by Public Counsel are not based on any actual case or controversy that is properly before the

¹ *In the matter of Laclede Gas Company’s Tariff Revision Designed to Clarify its Liability for Damages Occurring on Customer Piping and Equipment Beyond the Company’s Meter.*

Commission. As such, Public Counsel's Suggestions offer no independent basis whatsoever for granting Staff's Motion for Summary Determination. Finally, Public Counsel, like Staff, wrongly claims that Tariff Sheet R-34 conflicts with certain provisions of the Commission's gas safety rule. This is not the case.

Public Counsel's Suggestions are Based on a Faulty Premise

Public Counsel, like Staff, relies exclusively on the Commission's decision in the *Laclede* case.² That reliance is misplaced. As noted in a previous filing by MGE:

Staff places primary reliance in the Commission's recent Report and Order in Case No. GT-2009-0056 which it claims "embodies an authoritative statement of Commission policy" with respect to tariffs that may limit the liability of a public utility. The *Laclede* Case does not represent a statement of general applicability. That docket was created by the filing of a proposed tariff by Laclede Gas Company ("Laclede"). It was not a rulemaking proceeding initiated by the Commission purporting to affect regulated utilities in some generic fashion. The only parties to the case were Laclede, Staff and Public Counsel. MGE was not a party to the case nor was any other investor-owned utility. The decision in the *Laclede* Case does not purport to make the ordered sections of the decision applicable to any other company other than Laclede. Though binding on Laclede, if final, it is not binding on MGE or any other regulated utility nor can it be.

Additionally, the facts of the two cases differ in significant respects. MGE's Tariff Sheet R-34 has been approved by the Commission and is currently in effect. Laclede's proposed tariff on the other hand, was expressly *disapproved* by the Commission as reflected in the January 13, 2010 Report and Order. It never went into effect. The tariff language as originally proposed by Laclede (and as subsequently jointly proposed by Laclede and Staff) was not identical to the language of MGE's Tariff Sheet R-34. In fact, there were substantial differences.

Finally, 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 concerns about the advantage that a Commission-approved limitation of liability might confer to the utility *vis-à-vis* its unregulated competitors. MGE, by way of contrast, has no unregulated lines of business. It does not manufacture, sell, assemble, install, repair or own the equipment that utilizes natural gas on the

² Suggestions, ¶¶ 4, 10.

customer side of the meter. As such, the concern articulated by the Commission is not one that is relevant to MGE.³

Simply put, the *Laclede* case and the case at hand are factually and procedurally distinguishable. As such, the former case is not controlling here nor is it dispositive of the outcome of any issue presented in this case.

The Matters Alleged in Public Counsel’s Suggestions Are Not Ripe For Consideration

Like Staff, Public Counsel mistakenly assumes that there is an actual dispute for the Commission to resolve. This is not so.

The starkly speculative nature of Public Counsel’s concerns is revealed by the language contained in its Suggestions.

The language in MGE’s tariff would likely have the same adverse impact on MGE’s customers This language could deter customers from filing legitimate claims.⁴

MGE’s gross negligence could cause a leak on MGE’s own service line causing injury or damage. . . . MGE could negligently overlook a gas leak This tariff provision may act to deter legitimate claims. . . .⁵ (emphasis added)

What is apparent is that none of the scenarios are alleged to actually have occurred, consequently, the Suggestions are nothing more than speculation. No customer of MGE has claimed to have been treated unfairly by an application of the tariff language to an actual event on the part of MGE. The abstract concerns offered by Public Counsel do not present an actual case or controversy that the Commission has

³ Memorandum of Law in Support of Missouri Gas Energy’s Motion for Summary Determination, pp. 7-8.

⁴ Suggestions, ¶ 5.

⁵ Suggestions, ¶ 6.

authority to resolve. The Commission has no legal authority to issue advisory opinions. *State ex rel. Kansas Power and Light Company*, 770 S.W.2d 740, 743 (Mo. App. 1989).

Tariff Sheet R-34 does not Conflict with the Commission's Gas Safety Rule

Public Counsel has essentially adopted Staff's interpretation of various provisions of the disputed tariff language. In that regard, Public Counsel claims that the tariff language conflicts with the Commission's gas safety rule and in particular, 4 CSR 240-40.030(10)(J) and (12)(S). As MGE has previously explained, there is no conflict between its tariffs and the Commission's gas safety rules.

Tariff Sheet R-34 addresses the duty to warn of *potential* hazards whereas the regulations address the Company's obligation to warn of *actual* hazards that might exist at the time MGE turns on the flow of gas to new fuel line installations under subsection (10)(J) or when MGE turns on the flow of gas to a customer under (12)(S). While MGE has an obligation to comply with the terms of those two subsections with respect to any actual hazards that exist at the time MGE engages in activities covered by such regulations, the third paragraph of Tariff Sheet R-34 is expressly limited to hazards that are, at the time the gas is turned on, only potential hazards, (" . . .Company shall owe customer no duty to warn of potential hazards that may exist. . . ") such as equipment or piping that might later fail, malfunction or fall in disrepair (hazards which, in MGE's view, could require any number of speculative or remote warnings during each service visit.)

Public Counsel's Suggestions do not establish a conflict between the terms of Tariff Sheet R-34 and MGE's obligations under the terms of the Commission's gas safety rule. To the contrary, all of the speculative scenarios offered by Public Counsel could only occur after MGE has inspected a customer's premises; a fact that illustrates

the two matters (i.e., inspection of customer piping/equipment and legal liabilities) operate wholly independently. In other words, legal liabilities, if any, do not come into play until after an inspection has taken place.

Conclusion

Public Counsel's Suggestions provide no independent basis for granting Staff's Motion for Summary Determination in this case. To the contrary, the arguments offered by Public Counsel contain all of the same factual and legal deficiencies as are presented by Staff's Motion for Summary Determination. As such, Staff's Motion for Summary Determination should be denied for the reasons aforesaid and for the reasons previously provided in response to Staff's Motion for Summary Determination and supporting suggestions.

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 July, 2011.

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