

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

The Staff of the Missouri Public)	
Service Commission,)	
Complainant,)	
v.)	Case No. GC-2016-0149
)	
Missouri Gas Energy, an Operating)	
Unit of Laclede Gas Company,)	
Respondent.)	

**MISSOURI GAS ENERGY’S REPLY TO STAFF’S RESPONSE TO MGE’S
MOTION TO DISMISS COMPLAINT AND, IN THE ALTERNATIVE,
MOTION FOR SUMMARY DETERMINATION**

COMES NOW Missouri Gas Energy (“MGE”), an operating unit of Laclede Gas Company (“Laclede”), and hereby replies to Staff’s response to MGE’s motion to dismiss the Staff’s complaint. In the alternative, MGE requests summary determination. In support thereof, MGE states as follows:

I. REPLY TO STAFF’S RESPONSE ON MOTION TO DISMISS

1. In responding to MGE’s motion to dismiss, Staff correctly argues that a motion to dismiss tests only the legal sufficiency of the complaint, and requires only that Staff show a set of facts entitling the Complainant to relief. In testing the Complaint, the facts alleged by the Complainant must be accepted as true.

2. MGE asserts that Staff has not alleged a set of facts entitling it to relief. Staff has alleged that MGE made a change to its billing cycles, and in doing so, issued bills covering a period longer than 35 days. Accepting this factual allegation as true does not entitle Complainant to relief.

3. Staff believes that, except for certain exceptions that do not apply here, Commission Rule 4 CSR 240-13.020 prohibits MGE from issuing a bill that covers a period longer than 35 days (a “long bill”). In its Response, MGE has pointed out that

Commission Rule 13.020(6) clearly permits MGE to issue long bills in a situation in which it is changing its billing cycles. Therefore, MGE is permitted, as a matter of law, to do exactly what Staff has alleged – issue long bills in connection with a billing cycle change.

4. The first sentence of Rule 13.020(6) effectively provides that MGE may bill customers on a cyclical basis if the customer receives the bill around the same time every month. The rule next states:

“If a utility changes a meter reading route or schedule which results in a change of nine (9) days or more of a billing cycle, notice shall be given to the affected customer at least fifteen (15) days prior to the date the customer receives a bill based on the new cycle.”

5. Section 7.02 of Sheet R-7 of MGE’s Tariff contains identical language. This language clearly assumes that (i) MGE has the business discretion to change its billing cycles; (ii) if the change moves a billing cycle by eight (8) days or less, MGE is not required to notify customers; (iii) MGE has the business discretion to change its billing cycles by nine (9) days or more; and (iv) if MGE does change its billing cycles by nine (9) days or more, MGE shall notify customers.

6. Staff acknowledges MGE’s argument, but claims that MGE has not set out facts that support the application of Rule 13.020(6) to this case. Presumably, Staff wants MGE to explain how a rule that permits the Company to change billing cycles necessarily means that MGE can issue long bills in connection with such a change. MGE thought it had done exactly that on page 2 of its Motion to Dismiss. In fact, it was Staff that offered no explanation as to why it believed the rule was inapplicable. Notwithstanding Staff’s omission, MGE will illustrate again why this is true.

7. Assume a customer is normally billed on or about the first day of the month. Accordingly, assume MGE billed this customer on September 1, 2015. Assume that on September 2, MGE changes this customer's billing cycle to the tenth of the month. For the customer's next bill, MGE has two choices: (A) issue the next bill on September 10, just nine (9) days after the September 1 bill, or (B) issue the next bill on October 10, which is 39 days after the September 1 bill.¹ In either case, MGE will have billed outside the normal 26-35 day billing period. As stated in paragraph 5 above, MGE is clearly permitted to make a billing cycle change, including a change of nine (9) days or more. Moving billing cycles necessarily requires a corresponding change in a billing period. In the example above, such change resulted in a 39 day bill, a bill that is longer than the normal 26-35 day period. Therefore, Rule 13.020(6) expressly assumes that MGE may issue a long bill in connection with a billing cycle change, which is exactly what happened in this case, as alleged by Staff.

8. As a result, accepting as true Staff's assertion that MGE issued long bills in connection with a billing cycle change, does not state a claim for relief because MGE's actions were permitted by Rule 13.020(6). In effect, Staff has accused MGE of doing what it is allowed to do. The Commission should dismiss Staff's complaint as failing to state a claim on which relief may be granted, as provided by Commission Rule 4 CSR 240-2.070(7).

¹ In making a similar billing cycle change in 2013, Laclede chose to issue "short" bills that were prorated to bill less than the normal monthly charge. Laclede did not receive complaints about the lower charge; however, Laclede did receive complaints that it billed customers twice over a short period. Based on this experience, Laclede opted to issue long bills in implementing the cycle change for MGE. Staff did not file a complaint over the short bills in 2013.

II. MOTION FOR SUMMARY DETERMINATION

9. The motion to dismiss is the proper pleading in this case, and should be granted by the Commission. However, since a motion to dismiss is in the nature of a summary determination, if the Commission believes the motion to dismiss is not the appropriate vehicle, then, in the alternative, MGE submits its motion for summary determination, in accordance with Commission Rule 4 CSR 240-2.117.² As indicated above, there is no genuine issue as to the following material facts:

10. Laclede reduced MGE's billing cycles from 21 to 18. (Staff Complaint, paragraph 12)

11. MGE anticipated that this process would result in MGE issuing a significant number of long bills. (Staff Complaint, paragraph 18)

12. MGE did in fact issue long bills. (Staff Complaint, paragraph 21)

13. Attached hereto as Exhibit A is MGE's Legal Memorandum.

14. In conclusion, the Complaint should be dismissed because the allegations against MGE do not constitute a violation of any law, or of any rule, order or decision of the Commission. However, if the Commission is not inclined to grant the motion to dismiss, MGE requests that it grant this motion for summary determination.

WHEREFORE, MGE respectfully requests that the Commission grant its motion to dismiss or, in the alternative, that the Commission grant its motion for summary determination.

² The motion for summary determination contains the same facts and law as the motion to dismiss, further confirming that the motion to dismiss is the correct vehicle.

Respectfully submitted,

/s/ Rick Zucker

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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing pleading was served on the Complainant, the General Counsel of the Staff of the Missouri Public Service Commission, and the Office of Public Counsel on this 4th day of February, 2016 by United States mail, hand-delivery, email, or facsimile.

/s/ Marcia Spangler

LEGAL MEMORANDUM

For the reasons set forth below, summary determination should be granted because the material facts asserted in Staff's complaint are agreed to by MGE and do not entitle Staff to relief as a matter of law. No testimony, discovery or affidavits are necessary to support summary determination, because Staff's factual assertions accuse MGE of doing what it is allowed to do.

Staff alleges that, in connection with a billing change, MGE has issued bills that cover a period longer than 35 days ("long bills") without first obtaining a variance to Commission Rule 4 CSR 240-13.020 to issue bills outside the normal billing period of 26-35 days.

MGE agrees with Staff's allegations, but asserts that issuing long bills is clearly permitted by Commission Rule 13.020(6) when changing customer billing cycles. This assertion also applies to the same language in Section 7.02 on MGE Tariff Sheet R-47, which was also cited by Staff. Therefore, MGE is permitted, as a matter of law, to do exactly what Staff has alleged – issue long bills in connection with a billing cycle change.

The first sentence of Rule 13.020(6) effectively provides that MGE may bill customers on a cyclical basis if the customer receives the bill around the same time every month. The rule next states:

“If a utility changes a meter reading route or schedule which results in a change of nine (9) days or more of a billing cycle, notice shall be given to the affected customer at least fifteen (15) days prior to the date the customer receives a bill based on the new cycle.”

This language clearly assumes that (i) MGE has the business discretion to change its billing cycles; (ii) if the change moves a billing cycle by eight (8) days or less, MGE is not required to notify customers; (iii) MGE has the business discretion to change its

billing cycles by nine (9) days or more; and (iv) if MGE does change its billing cycles by nine (9) days or more, MGE shall notify customers. As explained below, the fact that the rule permits MGE to change billing cycles necessarily means that MGE can issue long bills in connection with such a change.

Assume a customer is normally billed on or about the first day of the month. Accordingly, assume MGE billed this customer on September 1, 2015. Assume that on September 2, MGE changes this customer's billing cycle to the tenth of the month. For the customer's next bill, MGE has two choices: (A) issue the next bill on September 10, just nine (9) days after the September 1 bill, or (B) issue the next bill on October 10, which is 39 days after the September 1 bill. In either case, MGE will have billed outside the normal 26-35 day billing period. As stated above, MGE is clearly permitted to make a billing cycle change, including a change of nine (9) days or more. Moving billing cycles necessarily requires a corresponding change in a billing period. In the example above, such change resulted in a 39 day bill, a bill that is longer than the normal 26-35 day period. Therefore, Rule 13.020(6) expressly assumes that MGE may issue a long bill in connection with a billing cycle change, which is exactly what happened in this case, as alleged by Staff.

Since there is no genuine issue as to a material fact, and since MGE is only doing what it is allowed to do, MGE is entitled to summary determination as a matter of law. Accordingly, if the Commission declines to dismiss the complaint, the Commission should grant MGE summary determination because the facts do not entitle Complainant to relief, as provided in Commission Rule 4 CSR 240-2.117(E). Further disposing of a case that fails to state a violation by MGE of any law, or Commission rule, order or decision avoids an inefficient use of the resources of the Commission, Staff and

Company, and serves the public interest of reducing costs paid by taxpayers and customers.