

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

The Staff of the Missouri Public Service Commission,  
Complainant,  
vs.  
Laclede Gas Company, doing business as Missouri Gas Energy,  
and  
Southern Union Company, formerly doing business as Missouri Gas Energy,  
Respondents.

**Case No. GC-2014-0216**

**STAFF’S FURTHER RESPONSE TO PEPL**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its *Response to Respondents’ Motions to Dismiss*, states as follows:

1. A natural gas explosion and subsequent fire occurred on the evening of February 19, 2013, at JJ’s Restaurant in Kansas City, Missouri, killing one person, injuring more than a dozen others, destroying the restaurant and its contents, damaging nearby buildings, and leaving more than a score of persons unemployed.<sup>1</sup>

2. On February 6, 2014, Staff filed its investigation report (“*Staff Investigation Report*”) in Case No. GS-2013-0400, the investigatory docket opened by the Commission with respect to the explosion, and also a complaint initiating this case

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<sup>1</sup> This event will be referred to herein as “the explosion.”

against Respondents Southern Union Company, which formerly did business as MGE, and Laclede Gas Company, which presently does business as MGE.

3. On March 10, 2014, the day originally set for Respondents to answer Staff's *Complaint*, each of them filed a motion to dismiss. In its motion, Southern Union Company explained that it has since merged into its subsidiary, Panhandle Eastern Pipeline, LP ("PEPL").

4. On March 20, 2014, Staff filed its *Response to Respondents' Motions to Dismiss*.

5. On March 28, 2014, PEPL replied to Staff's *Response*.

6. Commission Rule 4 CSR 240-2.080(13) states:

Parties shall be allowed ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.

This response is filed within ten days of PEPL's *Reply* and the Commission has not ordered otherwise.

7. The gravamen of both PEPL's *Motion to Dismiss* and its *Reply to Staff's Response*, is that Southern Union Company no longer exists, that neither it nor its successor, PEPL, is engaged in regulated utility operations in Missouri, and that the Commission expressly relieved Southern Union of its obligations as a Missouri regulated utility upon consummation of its sale of MGE to Laclede. For all these reasons, PEPL stridently asserts, it is no longer within the jurisdiction of this Commission.

8. PEPL asserts that the "real question" is whether or not the Commission has complaint jurisdiction over Southern Union.

9. The answer to that “real question,” as counsel for PEPL knows abundantly well, is “yes,” as is conclusively demonstrated by the plain language of § 386.390.1, RSMo., the Commission’s primary complaint authority, which provides:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, **setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission;** provided, that no complaint shall be entertained by the commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service.

(Emphasis added.)

10. Staff suggests that PEPL falls within the ambit of “any corporation, person or public utility” and that it is thus subject to complaint before this Commission seeking administrative penalties for violations that occurred while it was a regulated public utility.

11. In support of its position, PEPL cites a Commission order dismissing a complaint issued in June 2002.<sup>2</sup> In that case, **Smith v. Lenzenhuber**, the proprietor of a regulated water utility (Smith) complained against an unregulated competitor (Lenzenhuber). The case lingered for an extended period of time while Staff investigated and the parties negotiated until, at length, Staff moved to dismiss because

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<sup>2</sup> **Smith v. Lenzenhuber**, Case No. WC-2001-417 (**Order Dismissing Complaint**, iss’d June 13, 2002).

a public water supply district – an entity not subject to commission regulation – had acquired the unregulated system. The Commission granted Staff’s *Motion to Dismiss*, stating:

The Commission holds that good cause exists to dismiss the complaint, i.e., that the Commission no longer has jurisdiction over the original subject matter of the complaint since the purchaser of the water system is not regulated by the Commission; it has no personal jurisdiction over Lenzenhuber since he no longer owns or operates a water system; and it does not have personal jurisdiction over the new owner of the water system.<sup>3</sup>

12. The quoted passage from ***Lenzenhuber*** is cited by PEPL in support of its position, that the Commission lacks jurisdiction and therefore must dismiss. Oddly, PEPL fails to mention that Staff had sought to assert jurisdiction over Lenzenhuber as a “water corporation”<sup>4</sup> and that it did not seek penalties against him. Once the public water supply district bought Lenzenhuber’s system, the problem was solved as far as Staff was concerned. It was no longer interested in Mr. Lenzenhuber and, apparently, the Commission wasn’t either.

13. The present case is not like ***Lenzenhuber***. Mr. Lenzenhuber was not involved in any event comparable to the explosion at JJ’s Restaurant. No one asked the Commission to assert personal jurisdiction over him pursuant to § 386.390.1, RSMo., and to impose penalties on him for his lawless conduct. Staff has not asked the Commission to exert its jurisdiction over PEPL as a “water corporation” or as a “gas corporation,” either. Staff has asked the Commission to assert its jurisdiction over PEPL under § 386.390.1, RSMo., as a “corporation, person or public utility.”

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<sup>3</sup> *Id.*, pp. 5-6.

<sup>4</sup> *Id.*, pp. 2-4. Of course, Mr. Lenzenhuber was within the Commission’s jurisdiction as a “person” alleged to have violated a statute within the Commission’s regulatory ambit; see § 386.390.1, RSMo.

**WHEREFORE**, by reason of all the foregoing, Staff prays that the *Motions to Dismiss* filed by PEPL be denied; and that the Commission grant such other and further relief as is just in the premises.

Respectfully submitted,

/s/ Kevin A. Thompson  
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**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon all parties of record listed in the official service list maintained for this case by the Data Center of the Missouri Public Service Commission either by First Class United States Mail, postage prepaid, or by hand delivery, or facsimile transmission, or by electronic mail, on this **31<sup>st</sup> day of March, 2014**.

Kevin A. Thompson