

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	
)	
Missouri Gas Energy, a Division of Southern Union Company,)	
)	
Respondent.)	

Case No. GC-2011-0100

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

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, and for its Response and Suggestions in Support of its Motion for Summary Determination pursuant to Commission Rule 4 CSR 240-2.117(1), states as follows:

Introduction

Staff filed its *Complaint* on October 7, 2010, asserting that Sheet R-34 of the tariffs of Missouri Gas Energy (“MGE”), which purports to limit MGE’s liability to its customers, (1) is not just and reasonable pursuant to § 393.140(5), RSMo, and (2) is not compliant with the Commission’s Gas Safety Rules, 4 CSR 240-40.030(10(J) and 4 CSR 240-40.030(12(S), pursuant to § 386.390.1. For relief, Staff prayed that the Commission would make the findings requested by Staff and require MGE to file revised tariff sheets. Staff did not then, and does not now, seek penalties against MGE.

Staff also filed its *Motion for Summary Determination* on December 1, 2010.

Despite the clear requirement of the Commission's rule that a response thereto be filed "not more than thirty (30) days after a motion for summary determination is served" and Staff's vigorous opposition to MGE's request for an extension up to and including April 14, 2011, to respond to Staff's *Motion for Summary Determination*, the Commission allowed MGE until April 11, 2011, to file its response, an interval of 131 days. On March 21, 2011, the Commission invited MGE to file its counter *Motion for Summary Determination*. MGE did so on April 11, 2011.

MGE's motion characterizes Staff's *Complaint* as "misconceived," "flawed" and "[b]eyond its several legal deficiencies . . . not based on facts but, rather, a misreading of the tariff in question[.]" In its memorandum, MGE characterizes Staff's *Complaint* as "deficient, inconsistent with statutory and case law, and inconsistent with the Commission's decision in its Case No. GT-2009-0056"; also as "legally and factually incorrect." MGE thus substitutes invective for analysis and *ad hominem* attack for argument.

Summary Determination:

Commission Rule 4 CSR 240-2.117(1)(E) authorizes summary determination "if the pleadings, testimony, discovery, affidavits, and memoranda on file show that there is no genuine issue as to any material fact, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest." Subsection (1)(C) of the rule authorizes any party to respond to a motion for summary determination not more than thirty days after the motion is served. Any such response "shall admit or deny each of movant's factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for

summary determination, shall state the reason for each denial, shall set out each additional material fact that remains in dispute, and shall support each factual assertion with specific references to the pleadings, testimony, discovery, or affidavits.” Any testimony, discovery or affidavits not previously filed that are relied on in the response must be attached to it. A memorandum opposing the motion for summary determination may also be filed.

Staff has already filed its own *Motion for Summary Determination* in this case. Staff believes that there are no material facts remaining for determination at hearing and that Staff is entitled to relief as a matter of law. As to the public interest, Staff believes that it demands that Staff’s complaint be sustained.

In response to MGE’s *Motion for Summary Determination*, Staff states:

1. Staff admits the allegations set out in Paragraph 1 of MGE’s *Motion for Summary Determination*.
2. Staff admits the allegations set out in Paragraph 2 of MGE’s *Motion for Summary Determination*.
3. Staff admits the allegations set out in Paragraph 3 of MGE’s *Motion for Summary Determination*.
4. Staff admits the allegations set out in Paragraph 4 of MGE’s *Motion for Summary Determination*.
5. Staff admits the allegations set out in Paragraph 5 of MGE’s *Motion for Summary Determination*.
6. Staff admits the allegations set out in Paragraph 6 of MGE’s *Motion for Summary Determination*.

7. Staff admits the allegations set out in Paragraph 7 of MGE's *Motion for Summary Determination*.

8. Staff admits the allegations set out in Paragraph 8 of MGE's *Motion for Summary Determination*.

9. Staff admits the allegations set out in Paragraph 9 of MGE's *Motion for Summary Determination*.

10. Staff admits the allegations set out in Paragraph 10 of MGE's *Motion for Summary Determination*.

11. Staff admits the allegations set out in Paragraph 11 of MGE's *Motion for Summary Determination*.

12. Staff admits the allegations set out in Paragraph 12 of MGE's *Motion for Summary Determination*.

13. Staff admits the allegations set out in Paragraph 13 of MGE's *Motion for Summary Determination*.

14. Staff admits the allegations set out in Paragraph 14 of MGE's *Motion for Summary Determination*.

15. Staff admits the allegations set out in Paragraph 15 of MGE's *Motion for Summary Determination*.

WHEREFORE, having fully responded to MGE's *Motion for Summary Determination*, Staff prays that the Commission will grant summary determination to Staff on its *Complaint* filed herein and enter its order (1) finding that MGE's Tariff Sheet R-34 is unjust, unreasonable, unlawful, violates public policy, and is void and unenforceable, (2) finding that MGE's 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); and (3) pursuant to § 393.140(5), requiring MGE to file revised tariff sheets that are just and reasonable and in compliance with the Commission's rules and the law; and granting such other and further relief as the Commission deems just.

Respectfully Submitted,

/s/ Kevin A. Thompson

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **18th day of May, 2011**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson