

**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 TO DISMISS
STAFF’S COMPLAINT**

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

1. This matter is a complaint case and commenced when Staff filed its *Complaint* against Missouri Gas Energy (“MGE”) on October 7, 2010.
2. On November 29, 2010, MGE moved to dismiss Staff’s *Complaint* on the ground that “it is unauthorized under Commission rule 4 CSR 240-2.070 (“Complaints”).”¹ MGE goes on to quote a portion of subsection (1) of that rule, which authorizes Staff to complain about “a violation of any statute, rule, order or decision,” but not about unreasonable and unjust tariffs.²
3. In its *Complaint*, Staff relied upon two statutory complaint authorities, one of which was the independent and self-sufficient complaint authority created by

¹ MGE’s *Motion to Dismiss*, ¶ 1.

² *Id.*, at ¶ 2.

§ 393.140(5), RSMo:³

Whenever the Commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the Commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulation to be done and observed

4. The complaint authority at § 393.140(5), RSMo, is unrelated to the provisions of Rule 4 CSR 240-2.070(1), which restates the complaint authority found at § 386.390.1, RSMo. Section 393.140(5), RSMo, expressly authorizes the Commission to consider whether an existing and effective tariff is “unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law[.]” Section 393.140(5), RSMo, does not specify who may file such a complaint and it follows that anyone, including Staff, may do so.

5. The second complaint authority on which Staff relied was the complaint authority at § 386.390.1, RSMo, because it is Staff’s contention that MGE’s Sheet R-34 is inconsistent with provisions of the Commission’s natural gas safety rules.⁴ That contention is an allegation that the tariff sheet violates a rule as § 386.390.1, RSMo, and Rule 4 CSR 240-2.070(1) require.

6. MGE also asserts that Staff’s allegation that its Sheet R-34 is unjust, unreasonable, unlawful, contrary to public policy, void, and unenforceable, “is easily and

³ All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (“RSMo”), revision of 2000.

⁴ Rules 4 CSR 240-40.030(10)(J) and 4 CSR 240-40.030(12)(S).

summarily rebutted.”⁵ First, MGE asserts that its Sheet R-34 violates no statute, rule, order or decision of the Commission;⁶ second, it asserts that its Sheet R-34 does not violate the Commission’s decision concerning the liability limitation tariff proposed by Laclede Gas Company in Case No. GT-2009-0056. Staff believes that MGE is wrong in both of these assertions, but that is, after all, the ultimate issue in this case. Staff complains that MGE’s sheet R-34 is unjust and unreasonable and MGE responds that it is not. This is the issue the Commission must determine.

7. MGE seeks to distinguish the tariff sheet rejected in the Laclede case. Staff responds that it is up to the Commission to decide whether, in view of all the circumstances, it is of the opinion that MGE’s Sheet R-34 is still just and reasonable.

8. MGE also asserts that it is Staff’s position that the Commission’s policy is “to discourage reasonable limitation of liability[.]” Not so; Staff believes that it is **unreasonable** limitation of liability that should be discouraged and that this is also the position expressed by the Commission in its Laclede decision. Again, the Commission will have an opportunity to consider MGE’s Sheet R-34 and decide whether it is reasonable and just or not.

Conclusion:

MGE’s motion to dismiss is without perceptible merit. Contrary to MGE’s assertion, Staff’s *Complaint* alleges violations of Commission rules within the intendments of § 386.390.1, RSMo, and Rule 4 CSR 240-2.070(1). Likewise, § 393.140(5) authorizes the Commission to determine whether a currently effective tariff

⁵ *Id.*, at ¶ 3.

⁶ *Id.*, at ¶ 5.

is just and reasonable. MGE's *Motion to Dismiss* must fail because it does not identify any fatal flaws in Staff's *Complaint*.

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will deny MGE's *Motion to Dismiss Staff's Complaint*, and grant such other and further relief as the Commission deems just in the premises.

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 **1st day of December, 2010**, 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