

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	<u>Case No. GC-2011-0100</u>
)	
Missouri Gas Energy, a Division of Southern Union Company,)	
)	
Respondent.)	

**STAFF’S RESPONSE TO MGE’S MOTION FOR EXTENSION
OF TIME TO RESPOND TO STAFF’S MOTION FOR
SUMMARY DETERMINATION**

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 for Extension of Time to Respond to Staff’s Motion for Summary Determination, 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. The gravamen of Staff’s *Complaint* is that MGE’s Tariff Sheet R-34 contains liability limiting provisions similar to those found unconscionable as contrary to the public interest by the Commission in another case.

2. Thereafter, on December 1, 2010, Staff filed its *Motion for Summary Determination* pursuant to Commission Rule 4 CSR 240-2.117. That rule provides that the party defending against a motion for summary determination shall file its response thirty days after the motion is filed, showing therein either that disputed material facts

remain for hearing or that the movant is not entitled to relief as a matter of law or both.

3. On December 21, 2010, Respondent MGE filed its *Motion for Extension of Time to File Response* seeking an extension until April 14, 2011, to file its response to Staff's *Motion for Summary Determination*. In support of its bold and unparalleled request, MGE asserts:

A. That Staff lacks standing to complain about MGE's tariff and Staff's *Complaint* is "an unauthorized filing," and Staff consequently cannot be entitled to relief as a matter of law;¹

B. That Staff's motion "is premature and improper because no discovery has been taken in this case," such that Staff "wants the Commission to overturn centuries of Anglo-American jurisprudence and disregard even the most fundamental elements of due process and fairness by asking the Commission to make a summary determination on contested facts without a hearing" (emphasis in the original);²

C. That responding as called for by the cited rule "would be an unjustified waste of MGE's resources," "would put the cart well before the horse," and "is an essentially pointless endeavor";³ and

D. That "no party will be prejudiced by granting the relief requested[.]"⁴

4. Staff is opposed to MGE's motion for the reasons set out below:

A. Staff is authorized to file complaints and its complaint herein is

¹ MGE's Motion, ¶ 2.

² MGE's Motion, ¶¶ 1 & 3.

³ MGE's Motion, ¶¶ 4 & 6.

⁴ MGE's Motion, ¶ 5.

not “an unauthorized pleading.” Staff responded to this argument, raised in MGE’s *Motion to Dismiss*, in its response filed on December 1, 2010, pointing out that, in its *Complaint*, Staff relied upon two statutory complaint authorities, one of which was the independent and self-sufficient complaint authority created by § 393.140(5), RSMo.⁵

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

Staff further pointed out that 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. Certainly MGE has not cited any authority to the contrary.

B. In filing its *Motion for Summary Determination*, Staff has done only what the rule authorizes. The Commission’s Rule 4 CSR 240-2.117 is

⁵ All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (“RSMo”), revision of 2000.

patterned on Supreme Court Rule 74.04, Summary Judgment, and is not novel or unusual. If, as MGE asserts, material facts remain in dispute, the Company need only file the affidavit of a witness able to so testify to defeat Staff's motion.

C. What discovery? Exactly what facts does MGE need to discover in the four-and-one-half month extension it seeks? If ever a complaint presented a pure question of law, this is it. Sheet R-34 says what it says – the Commission will either find it objectionable or it won't. What possible discovery is needed? The Commission should require MGE to supplement its motion with a detailed description of the discovery it plans and an explanation of how it is relevant to the issues raised by Staff's *Complaint*.

D. Staff will be prejudiced if the requested extension is granted. The purpose of summary determination is to save time, money and scarce resources. MGE seeks to force Staff to draft testimony and fully prepare for hearing, knowing that Staff's resources are stretched to the limit by the numerous major rate cases presently pending. MGE's vindictive motion should be denied.

5. In conclusion, Staff states that this case presents a question of law that may be quickly resolved via summary determination. Where summary determination is appropriate, it is favored because it saves the parties and the tribunal money, time and resources. This case requires no discovery and no hearing. It is a question that may be decided on Staff's motion – MGE can file a cross-motion for summary determination if it wants.

WHEREFORE, Staff prays that the Commission will deny MGE's *Motion for Extension of Time to Respond*; and grant such other and further relief as the

Commission deems just in the premises.

Respectfully Submitted,

/s/ Kevin A. Thompson

Kevin A. Thompson
Missouri Bar No. 36288
Chief Staff Counsel

Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-6514 (telephone)
573-526-6969 (facsimile)
kevin.thompson@psc.mo.gov

Attorney for the Staff of the Missouri
Public Service Commission.

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 **5th day of January, 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