

**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 ANSWER AND
MOTION TO DISMISS COMPLAINT**

COMES NOW Missouri Gas Energy (“MGE”), an operating unit of Laclede Gas Company (“Laclede”), and hereby submits its Answer and Motion to Dismiss the Complaint filed by the Staff (“Complainant”) on December 15, 2015. In support thereof, MGE states as follows:

SUMMARY

1. Complainant alleges that MGE violated a Commission Rule (4 CSR 240-13.020(1)) and a Company tariff (Section 7.02 of Second Revised Tariff Sheet R-47, hereinafter “Tariff Rule 7.02”) because, in converting MGE’s billing system to the Laclede system and contemporaneously reducing its billing cycles from 21 to 18, MGE issued some bills during one month’s billing cycles that were longer than the normal 35 day billing standard. Complainant alleges that it has received two customer complaints on the matter. Complainant alleges that MGE’s failure to obtain a variance to issue bills outside the normal 26-35 day billing period constitutes a violation of the billing rules.

2. In response, MGE acknowledges that, in order to reduce the number of cycles it bills from 21 to 18, to match Laclede’s billing cycles, MGE necessarily issued bills to less than 10% of its customers outside of the normal 26-35 day billing window on

a one-time basis. MGE did not need a variance to make this billing cycle change for two reasons. First, both the Commission rules and MGE's tariff clearly provide for a utility to change billing cycles without seeking Commission approval. Second, even if such a rule did not exist, MGE's one-time exception to the 26-35 day billing period to accommodate an unusual and abnormal event – i.e. a reduction in the number of billing cycles - did not violate Commission Rule 13.020(1) which only requires a utility to “normally” render a bill for a “normal” usage period of 26-35 days.

3. Rule 13.020(6) and MGE Tariff Rule 7.02 provide a clear exception to the normal practice of rendering bills within a billing period of 26-35 days. These provisions allow MGE to make changes to customers' billing cycles, including ones that would change the billing cycle by 9 days or more. By their very nature, such changes in customer billing cycles would require bills to be rendered outside of the 26-35 day window. For example, if a customer's billing cycle were to be moved by 10 days (e.g. from the 1st of the month to the 11th), the billing period for the first bill issued after the change would have to be either shortened to 10 days (by rendering a bill on the 1st and another on the 11th) or lengthened to 40 days (by rendering a bill on the 1st, and the next bill on the 11th of the succeeding month). Under the terms of Commission Rule 13.020(6) and Tariff Rule 7.02, however, MGE is not required to seek a variance for such a change, but must only provide notification to customers. In other words, these rule provisions permit the Company to operate its business and go beyond the normal billing period when changing billing cycles. In effect, through its adoption of these provisions, the Commission has said: “MGE, we expect you to normally render a bill covering a period of 26-35 days, but if you make a change to your billing cycles, even a significant change, you don't have to come to us, just let your customers know.”

4. In addition to authorizing billing cycle changes that will result in billing periods falling outside of the normal 26-35 day window, the rules and tariff provisions governing that window also clearly indicate that it is not an absolute, inflexible standard that must be observed in every instance. To the contrary, Rule 13.020(1) only instructs MGE to “normally” render a bill for a “normal” usage period of 26-35 days. (See also Rule 13.015(1)(C) defining a “billing period.”) The clear inference is that MGE may bill outside the normal period under circumstances that are not “normal.” The fact that MGE has not made a major billing cycle change in this century indicates the unusual and abnormal nature of this event. As a result, by their own terms, these rule provisions permit MGE to render bills outside the normal billing period to accommodate this consolidation of billing cycles. Complainant has not alleged that MGE billed customers outside the normal billing period either in the month before or in the month after the billing cycle change.

ANSWER

5. With respect to paragraph 1, MGE admits that the Complaint concerns MGE’s issuance of bills in excess of the standard 26-35 day billing cycle.

6. MGE admits the allegation in paragraph 2.

7. MGE admits the allegation in paragraph 3.

8. MGE admits the allegation in paragraph 4.

9. MGE admits the allegation in paragraph 5.

10. MGE admits the allegation in paragraph 6.

11. MGE admits that Complainant copied a portion of Section 386.390.1 RSMo into paragraph 7 of the Complaint. The statute speaks for itself.

12. MGE admits that Complainant copied a portion of Section 386.570.1 RSMo into paragraph 8 of the Complaint. The statute speaks for itself.

13. MGE admits that Complainant copied a portion of Section 393.140.2 RSMo into paragraph 9 of the Complaint. The statute speaks for itself.

14. MGE admits that Complainant accurately captured the gravamen of its complaint in paragraph 10.

15. MGE admits the allegation in paragraph 11.

16. MGE admits the allegation in paragraph 12.

17. MGE admits the allegation in paragraph 13 to the extent that Complainant believed a variance was necessary for the billing cycle change. MGE denies that such a variance is required.

18. MGE admits the allegation in paragraph 14. However, if the purpose of this allegation is to indicate that the variance drafted by MGE is evidence that MGE believed it needed a variance, nothing could be further from the truth. MGE clearly believed that it did not need a variance, and the draft variance itself so indicated in paragraph 10 of Exhibit A to the Complaint, where it states:

...the Company believes that exceptions to that normal requirement are contemplated and permitted, including instances where a significant number of bills with shortened or extended billing periods have to be issued on a one-time basis to accommodate a system conversion like the one described herein. After discussions with the Commission Staff, however, and out of an abundance of caution, the Company is requesting that the Commission grant a temporary variance from the rule and tariff provisions identified above to further confirm that this approach for dealing with the issue is acceptable.”

19. As implied by this language in paragraph 10 of the draft variance, MGE was hoping that it could work cooperatively with Complainant on the tariff changes necessary to accommodate the system conversion, and in that spirit, MGE attempted to

comply with the Complainant's request by creating and sending the draft variance request for Complainant's review. Moreover, it did so even though it viewed the request for an unnecessary variance as mostly an inefficient use of time and resources for itself and the other parties involved. In the end, however, the Staff opposed each of the other tariff changes that had been proposed by the Company to accommodate the system conversion, while falling silent on the draft variance relating to the billing period issue. In fact, to the Company's knowledge, the Complainant still has never responded, one way or another, to the draft variance it had requested and received from MGE. Since it received no response from Complainant, MGE was unable to file the request in its draft form since MGE had not received the required approval from Complainant to make the representation, in paragraph 12 of the draft, that Staff does not oppose the pleading.¹

20. The Commission rule cited by Complainant in paragraph 15 speaks for itself.

21. The Commission rule cited by Complainant in paragraph 16 speaks for itself.

22. The tariff provision cited by Complainant in paragraph 17 speaks for itself.

23. MGE admits the allegation in paragraph 18, but notes that in paragraph 7 of the draft variance, MGE also stated that there would be "a change in billing periods for some customers..." (Exhibit A to Complaint, p. 3, emphasis added)

24. MGE admits the allegation in paragraph 19.

¹ In opposing the modest tariff changes designed to align certain practices of Laclede and MGE, Staff took the confounding position that a utility could not make *any* tariff change outside of a rate case, even one that did not change any rates but just reconciled tariffs to the upgraded customer care and billing system. Given the effort required to defend against Staff's opposition to these tariff changes, and the absence of confirmation from Staff that the draft request for an unnecessary variance was acceptable, MGE did not pursue the variance. The Commission ultimately approved the proposed tariff provisions. (Case No. GT-2016-0026)

25. MGE moves to strike paragraph 20 as vague, irrelevant and unrelated to the Complaint. However, MGE notes that it would be unusual for a large system conversion to occur without complications.

26. MGE admits the allegation in paragraph 21 that Complainant received two informal complaints related to the billing cycle adjustment. The cited complaints speak for themselves.

27. MGE admits the allegation in paragraph 22.

28. MGE admits the allegation in paragraph 23.

29. With respect to paragraph 24, MGE is without information or belief to form a conclusion as to whether Complainant is concerned that more than 2 customers received “long” bills in connection with MGE’s bill cycle adjustment, but accepts Complainant at its word. MGE admits that the number of customers who received “long” bills is substantially greater than 2. Therefore, the overwhelming majority of customers who received “long” bills did not make informal complaints about the one-time billing change.

30. MGE denies the allegations in paragraph 25 of the Complaint.

31. MGE hereby denies all allegations in the Complaint not otherwise admitted herein.

MOTION TO DISMISS COMPLAINT

32. Commission Rule 4 CSR 240-2.070(7) provides for the Commission to dismiss complaints that fail to state a claim upon which relief may be granted. MGE moves to dismiss the Complaint on those grounds because, even if Complainant’s allegations are true, MGE’s actions do not constitute a violation of Commission rules or MGE’s tariff. The major facts that support the Complaint are not disputed, specifically

that MGE issued some bills in excess of the normal 35 day billing standard on a one-time basis due to the reduction of its billing cycles from 21 to 18 in connection with the conversion of MGE's computer system to the Laclede platform. Assuming these facts as true, Commission Rule 13.020(6) clearly contemplates that MGE's actions are allowable, eliminating the need for a variance. To further confirm this interpretation, Commission Rule 13.020(1) and 13.015(1)(C) combine to establish that MGE is required to *normally* bill within a normal usage period of 26-35 days. The unmistakable inference from the use of the word "normally" is that MGE may exceed these parameters in unusual, or abnormal, circumstances. Since a system conversion and bill cycle overhaul are not normal events, but are very rare, MGE was permitted to temporarily bill outside the normal window. In short, the rules are not meant to apply to billing cycle changes at all, and further are not meant to apply to a one-time abnormal event such as converting an entire billing system and changing the number of cycles in a month. Neither the rules nor MGE's tariff provide for the type of regulatory oversight that would require MGE to obtain Commission approval of a variance to change its billing cycles.

33. In conclusion, this 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.

WHEREFORE, MGE respectfully requests that the Commission accept this Answer and grant its Motion to Dismiss.

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 19th day of January, 2016 by United States mail, hand-delivery, email, or facsimile.

/s/ Rick Zucker