

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 7<sup>th</sup> day of  
November, 2018.

Locustwood Associates,	)	
	)	
Complainant,	)	
	)	<b>File No. GC-2018-0267</b>
v.	)	
	)	
Spire Missouri, Inc. d/b/a Spire,	)	
	)	
Respondent	)	

**ORDER GRANTING SPIRE MISSOURI'S MOTION FOR SUMMARY  
DETERMINATION**

Issue Date: November 7, 2018

Effective Date: December 7, 2018

**Procedural History**

On March 30, 2018, the Locustwood Associates ("Locustwood") filed a complaint against Spire Missouri, Inc., d/b/a Spire ("Spire"). The Complaint alleges that Spire failed to provide safe, proper, and adequate service by failing to notify Locustwood that it had shut off gas service to one of Complainant's tenants resulting in damage to Complainant's property. Spire answered the complaint and filed a motion for summary determination, and supporting memorandum on August 23. Spire's motion states that under its contract and tariff rules it is not required to notify the landlord after service is discontinued for nonpayment by a tenant. On September 7, the Staff of the Public Service Commission filed its report and investigation concerning the complaint. On September 21, Locustwood filed its *Response to Movant's Statement of Material Facts and Complainant's Statement of*

*Material Facts in Dispute, Locustwood Legal Memorandum in Opposition to Respondent's Motion for Summary Determination, Exhibits to Legal Memorandum.*

**Findings of Fact**

The following undisputed facts are taken from the Complaint, Spire's Answer, Staff's report, Spire's motion for summary determination, and from Locustwood's response to Spire's motion for summary determination.

1. Respondent Spire, then known as Missouri Gas Energy ("MGE") provided gas service to the tenant at 9922 Locust Street, Kansas City, Missouri, the property at issue in this complaint.

2. Spire is a utility regulated by this Commission.

3. Complainant Locustwood Associates, a Missouri Partnership, is the owner and landlord of 9922 Locust Street.

4. Locustwood provided, as an attachment to its complaint, a rental agreement between itself and the tenant for 9922 Locust dated August 24, 2014. The rental agreement states that the rental period shall be from September 13, 2014, through September 30, 2015. Paragraph 11 of the rental agreement states in part: "The tenant shall pay all of the utilities on the premises rented herein."

5. Locustwood provided, as an attachment to its complaint, a copy of the Revert to Owner Agreement between Paul Sinclair, Miryam Sinclair, Christopher White, Cheryl White, and MGE. Locustwood Associates is listed on the mailing address for billing statements.

a. Paragraph 1 states:

The sole purpose of this Agreement is to maintain the continuity of gas service at the Property upon a vacating tenant's voluntary discontinuance of service.

b. Paragraph 5 states:

MGE shall not automatically transfer gas service to Landlord's name and no prior notice shall be provided to Landlord in the event MGE discontinues gas service for a tenant's (i) nonpayment, or (ii) violation of MGE's terms of service. In no event shall MGE incur any liability arising from any discontinuance of gas service pursuant to this section. This Agreement does not extend MGE's obligations to Landlord beyond those provided by law.

c. Paragraph 7 provides that the agreement remains in effect unless terminated by either party with 30 days prior written notice.

6. The terms of the Revert to Owner Agreement are consistent with Spire's (MGE's) 2010 Commission authorized tariff regarding contracts for continuation of gas service in the owner's name if service is terminated at the tenant's request.

7. Spire (MGE) disconnected service to its customer, the tenant at 9922 Locust Street on or about September 8, 2017, for non-payment of gas bills.

8. Spire (MGE) did not notify Locustwood that it had disconnected gas service.

9. Locustwood inspected the property at 9922 Locust Street on December 30, 2017, and discovered that the gas meter had a lock on it and several pipes had frozen.

10. Locustwood provided, as an attachment to its complaint, bills from Lexington Plumbing and Heating Company, and B&J Textures for repairs for damage it states were caused by frozen pipes. The bills totaled \$3,079.50, the amount Locustwood states its insurance covered, minus a \$2,500 deductible it paid.

### **Conclusions of Law**

A. Spire is a “gas corporation”, and a “public utility” as defined in Sections 386.020(18) and 386.020(43), RSMo, respectively, and as such is subject to the, supervision, control and regulation of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes.

B. Section 386.390.1, RSMo, authorizes the Commission to hear and decide complaints “setting forth any act or thing done or omitted to be done by any corporation, person or public utility in violation, or claimed to be in violation, of any provision of law subject to the commission's authority, of any rule promulgated by the commission, of any utility tariff, or of any order or decision of the commission...”

C. Commission Rule 4 CSR 240-2.117(1)(E) allows the Commission to grant a motion for 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.”

D. Commission Rule 4 CSR 240-2.117(1)(B) states: “Motions for summary determination shall state with particularity in separately numbered paragraphs each material fact to which movant claims there is no genuine issue, with specific references to the pleadings, testimony, discovery, or affidavits that demonstrate the lack of issue as to such facts.”

E. Spire’s (MGE’s) 2010 tariff YG-2010-0500 Sheet R-39 Section 4.11 states: “The owner of rental property may contract in writing for gas service to be continued automatically in the owner's name, with full responsibility for payment for all gas thereafter

delivered, when service is terminated at the request of the tenant.” That provision does not apply where service is terminated by the utility for nonpayment.

F. No statute or Commission rule requires a utility to give notice to the landlord when service is disconnected for nonpayment by the tenant.

### **Decision**

Locustwood states that Spire’s motion should be dismissed for violation of Commission rule 4 CSR 240-2.117(B) and Rule 74.04(e) of the Missouri Rules of Civil Procedure for failure to attach documents referenced or include affidavits. Rule 74.04(e) does not apply because that rule governs summary judgment not summary determination by the Commission. Commission rule 4 CSR 240-2.117(B) only requires that the motion reference the pleadings, testimony, discovery, or affidavits; not that movant attach them.

The Commission may grant a motion for summary determination where there are no issues as to any material fact and a party is entitled to relief as a matter of law. Locustwood in its memorandum in opposition to Spire’s summary determination motion lists several statutes and Commission rules that it believes Spire has violated, but provides no disputed material facts. The Commission’s Staff in page two of its report states: “There is no disagreement between Spire and Locustwood regarding the propriety of the discontinuance of service for nonpayment which occurred in September 2017; however, Spire and Locustwood do not agree on whether appropriate action was taken after service was discontinued.” Locustwood argues that Spire had an obligation to notify them after the discontinuance of service; this is a question of law.

Under Spire’s (MGE’s) tariff from 2010, when the Revert to Owner Agreement was signed, Spire only had to continue service in the owner’s name if service was terminated at

the request of the tenant. Spire's (MGE's) Revert to Owner Agreement is in compliance with its Commission authorized tariff.

The Commission finds that there are no contested material facts and that the motion for summary determination is sufficient. Further, the Commission finds that Spire has not committed a violation subject to the Commission's authority as there is no provision of law, rule, tariff, or order requiring them to notify the landlord when service is disconnected for nonpayment of a tenant. Therefore, the Commission will grant Respondents' motion for summary determination.

**THE COMMISSION ORDERS THAT:**

1. Spire Missouri's Motion for Summary Determination is granted.
2. Locustwood Associates' Complaint is dismissed.
3. This order shall be effective on December 7, 2018.

**BY THE COMMISSION**



*Morris L. Woodruff*

Morris L. Woodruff  
Secretary

Silvey, Chm., Kenney, Hall, Rupp, and  
Coleman, CC., concur.

Clark, Regulatory Law Judge

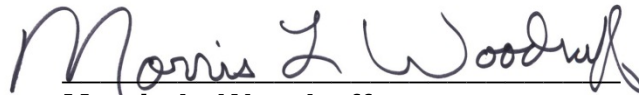
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 7<sup>th</sup> day of November 2018.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**November 7, 2018**

**File/Case No. GC-2018-0267**

**Missouri Public Service  
Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

**Sincerely,**



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.