

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 19th day of  
April, 2007.

In the Matter of the Application of Alliance Gas Energy     )  
Corporation for a Certificate of Public Convenience and     )  
Necessity Authorizing It to Construct, Install, Own,     )  
Operate, Control, Manage and Maintain a Natural Gas     ) **Case No. GA-2007-0168**  
Distribution System to Provide Gas Service in Branson,     )  
Branson West, Reeds Spring, and Hollister, Missouri     )

**ORDER DENYING APPLICATION TO INTERVENE**

Issue Date: April 19, 2007

Effective Date: April 19, 2007

On October 26, 2006, Alliance Gas Energy Corporation ("AGE") filed an application with the Missouri Public Service Commission requesting that the Commission grant AGE authority to provide natural gas service to customers in four southwest Missouri communities.

On November 2, 2006, the Commission issued notice of AGE's application to members of the public at large and other potentially interested parties and established an intervention deadline of December 4, 2006. On November 8 and November 30, 2006, respectively, Missouri Gas Energy ("MGE," a division of Southern Union Company) and Ozark Energy Partners, LLC ("Ozark") filed timely applications to intervene pursuant to Commission Rule 4 CSR 240-2.075, which governs intervention. The Commission granted those applications by order dated December 11, 2006. Thereafter, on February 21, 2007,

Southern Star Central Gas Pipeline, Inc. (“Southern Star”) filed an application to intervene out-of-time, which the Commission granted on March 6, 2007.

The Missouri Propane Gas Association (“MPGA”) submitted an application to intervene in this case on April 3, 2007 – four months after the intervention deadline set by the Commission. On April 6, 2007, AGE filed a pleading opposing MPGA’s late-filed application and requesting that the Commission deny the application. More than ten days have now passed since that pleading was filed, and no additional responses have been filed by any party. Therefore, the issue is ripe for the Commission to decide, since parties are “allowed not more than ten (10) days from the date of filing in which to respond to any pleading unless otherwise ordered by the commission.”<sup>1</sup>

According to the application, MPGA is a Missouri not-for-profit corporation headquartered in Jefferson City which represents the interests of propane gas retailers throughout the State of Missouri, including a few retailer-members located in or near the area AGE proposes to serve with natural gas.

In accordance with 4 CSR 240-2.075(2), the application states MPGA’s interests in this case, the reason it is seeking intervention, and that it anticipates opposing the relief sought by AGE. The application also demonstrates that MPGA has interests in this case that are different from those of the general public and which may be adversely affected by a final order arising from this case. See 4 CSR 240-2.075(4)(A).

AGE does not contend that MPGA failed to make any of those required showings. Instead, it argues that the application should be denied because it does not show good cause for MPGA’s failure to seek intervention before the deadline of December 4, 2006, as required by 4 CSR 240-2.075(5).

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<sup>1</sup> 4 CSR 240-2.080(15).

Commission Rule 4 CSR 240-2.075(5) states: “Applications to intervene filed after the intervention date may be granted upon a showing of good cause.” The language of the rule makes two things plain – and both are discretionary determinations. First, an applicant who seeks to intervene after the intervention date set by the Commission must make “a showing of good cause.” Second, even if a late applicant makes such a showing, intervention remains permissive, not mandatory, and the Commission still may or may not grant the application.<sup>2</sup>

Although the term “good cause” is frequently used in the law,<sup>3</sup> the rule does not define it. Therefore, it is appropriate to resort to the dictionary to determine its ordinary meaning.<sup>4</sup> Good cause “generally means a substantial reason amounting in law to a legal excuse for failing to perform an act required by law.”<sup>5</sup> Similarly, “good cause” has also been judicially defined as a “substantial reason or cause which would cause or justify the ordinary person to neglect one of his [legal] duties.”<sup>6</sup>

Of course, not just *any* cause or excuse will do. To constitute *good* cause, the reason or legal excuse given “must be real not imaginary, substantial not trifling, and

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<sup>2</sup> See *Torrington Co. v. U.S.*, 832 F.Supp. 379, 385 (Ct. Int’l Trade 1993) (existence of one or more factors constituting “good cause” does not compel grant of requested relief).

<sup>3</sup> *State v. Davis*, 469 S.W.2d 1, 5 (Mo. 1971).

<sup>4</sup> See *State ex rel. Hall v. Wolf*, 710 S.W.2d 302, 303 (Mo. App. E.D. 1986) (in absence of legislative definition, court used dictionary to ascertain the ordinary meaning of the term “good cause” as used in a Missouri statute); *Davis*, 469 S.W.2d at 4-5 (same).

<sup>5</sup> *Black’s Law Dictionary* 692 (6th ed. 1990).

<sup>6</sup> *Graham v. State*, 134 N.W. 249, 250 (Neb. 1912). Missouri appellate courts have also recognized and applied an objective “ordinary person” standard. See, e.g., *Cent. Mo. Paving Co. v. Labor & Indus. Relations Comm’n*, 575 S.W.2d 889, 892 (Mo. App. W.D. 1978) (“[T]he standard by which good cause is measured is one of reasonableness as applied to the average man or woman.”)

reasonable not whimsical.”<sup>7</sup> And some legitimate factual showing is required, not just the mere conclusion of a party or his attorney.<sup>8</sup>

Applying these well-established legal principles to the facts before it, the Commission will deny MPGA’s untimely application to intervene since it clearly does not show “good cause” for MPGA’s failure to seek intervention before the deadline of December 4, 2006, as required by Commission Rule 4 CSR 240-2.075(5).

As to the issue of good cause, MPGA’s application states only that its “failure to timely file a motion to intervene in this case was not intentional.” However, as correctly argued by AGE in its response, this does not constitute a showing of *any cause*, much less a showing of *good cause* under Commission Rule 4 CSR 240-2.075(5).<sup>9</sup> Furthermore, if the Commission were to conclude that it did, an applicant would then be entitled to intervene at any time, so long as its failure to intervene on a timely basis was not the result of a conscious, deliberate decision to delay entering the case – which would completely eviscerate the rule.

The Commission recently addressed a similar situation in which a company filed an application to intervene almost two months out-of-time, explaining that it “only recently became aware of this proceeding, and therefore has not previously sought intervention in

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<sup>7</sup> *Belle State Bank v. Indus. Comm’n*, 547 S.W.2d 841, 846 (Mo. App. S.D. 1977). See also *Barclay White Co. v. Unemployment Compensation Bd.*, 50 A.2d 336, 339 (Pa. 1947) (to show good cause, reason given must be real, substantial, and reasonable).

<sup>8</sup> See generally *Haynes v. Williams*, 522 S.W.2d 623, 627 (Mo. App. E.D. 1975); *Havrisko v. U.S.*, 68 F.Supp. 771, 772 (E.D.N.Y. 1946); *The Kegums*, 73 F.Supp. 831, 832 (S.D.N.Y. 1947).

<sup>9</sup> See generally Order Denying Intervention, *In the Matter of the Application of NuVox Communications of Missouri, Inc. for an Investigation*, Case No. TO-2006-0360 (Aug. 7, 2006) at 2 (“[B]ecause Verizon has filed its request out of time without stating any reason for having done so, the Commission will deny the company’s request to intervene.”)

this matter.”<sup>10</sup> The Commission firmly declined to consider this explanation as a showing of good cause under Commission Rule 4 CSR 240-2.075(5), stating:

The Commission finds that [the company] has not stated good cause for filing its untimely request for intervention. . . . Were the Commission to accept “we just found out” as good cause for filing a request to intervene almost two months out of time, “good cause,” as used in the Commission’s rule, would have no substance. This is particularly so when it is a proposed intervenor’s business to know what is going on in its environment. The Commission will therefore deny [the company’s] request to intervene.<sup>11</sup>

These considerations are equally applicable here.

MPGA also claims that its untimely application to intervene should be granted since “the Commission granted [Southern Star’s] Motion to Intervene out of time in this case as recently as March 6, 2007.” The Commission finds this “me too” or “piggyback” approach unpersuasive, because it has long been the law in Missouri that a finding of good cause “must depend upon the circumstances of each case to be determined by the sound discretion of the court.”<sup>12</sup> Accordingly, good cause “depends upon the circumstances of the individual case, and a finding of its existence lies largely in the discretion of the officer or court to which the decision is committed.”<sup>13</sup>

Nevertheless, other than to point out that they both filed applications to intervene out-of-time, MPGA does not even attempt to show how the facts and circumstances attending Southern Star’s application are substantially similar to those here. Indeed, as AGE correctly observes in its response, MPGA and Southern Star are not similarly situated

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<sup>10</sup> Order Denying Application to Intervene, *In the Matter of Missouri Gas Energy’s Tariffs Increasing Rates for Gas Service Provided to Customers in the Company’s Missouri Service Area*, Case No. GR-2006-0422 (Aug. 28, 2006) at 1.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> *Buttinger v. Ely & Walker Dry Goods Co.*, 42 S.W.2d 982, 984 (Mo. App. E.D. 1931). See also *Streitz v. Juneau*, 940 S.W.2d 548, 551 (Mo. App. S.D. 1997) (noting that good cause “depends upon the circumstances of each case”).

<sup>13</sup> *Wilson v. Morris*, 369 S.W.2d 402, 407 (Mo. 1963); *Matter of Seiser*, 604 S.W.2d 644, 646 (Mo. App. E.D. 1980).

(procedurally or otherwise) and did not late-file their intervention requests for the same reasons. Moreover, unlike the situation with MPGA, Southern Star's request for intervention out-of-time was not opposed by any existing party.

Therefore, the Commission rejects MPGA's suggestion that its untimely application to intervene should be granted simply because the Commission previously granted Southern Star's untimely application to intervene.

For all these reasons, the Commission will deny MPGA's late-filed application to intervene in this matter.

**IT IS ORDERED THAT:**

1. The Missouri Propane Gas Association's Application to Intervene is denied.
2. This order shall become effective on April 19, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray and Appling, CC., concur  
Gaw and Clayton, CC., dissent

Lane, Regulatory Law Judge