

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

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

**PUBLIC COUNSEL’S SUGGESTIONS IN SUPPORT OF  
STAFF’S MOTION FOR SUMMARY DETERMINATION**

**COMES NOW** the Missouri Office of the Public Counsel (OPC) and for its Suggestions in Support of Staff’s Motion for Summary Determination states:

1. The Commission’s Staff filed this Complaint on October 7, 2010 asserting that Tariff Sheet R-34 of the Southern Union Company d/b/a Missouri Gas Energy (MGE) tariff is not just and reasonable because it allows MGE to provide services that are unjust, unreasonable, and unsafe. The Staff states that Sheet R-34:

- Purports to immunize MGE from all liability, even in cases in which MGE fails to comply with Commission rules and applicable codes and standards;
- Purports to limit MGE’s liability even when MGE is negligent in the operation of its system, so that, for example, MGE would not be liable for over-pressuring its system and thereby causing damage to a customer’s home and appliances;
- Purports to limit MGE’s liability even when MGE has inspected the customer’s equipment; and
- Purports to limit MGE’s liability even for gross negligence or wanton or willful conduct.

2. The Staff's Complaint also asserts that MGE's Tariff Sheet R-34 violates the Commission's natural gas safety rules 4 CSR 240-40.030(10)(J) and 4 CSR 240-40.030(12)(S) in that Sheet R-34 purports to:

- Eliminate MGE's duty to test for leakage in a competent way;
- Eliminate MGE's duty to ensure compliance with industry standards and local codes;
- Eliminate MGE's duty to warn of potential hazards; and
- Eliminate MGE's duty to discontinue service to a customer when equipment is unsafe.

3. The Staff and MGE each filed a motion for summary determination that are now before the Commission for decision. On May 18, 2011, the Staff filed a responsive pleading wherein the Staff explained that the relief it seeks in this case is a Commission order that does the following:

- Finds that MGE's Tariff Sheet R-34 is unjust, unreasonable, unlawful, violates public policy, and is void and unenforceable,
- Finds that MGE's Tariff Sheet R-34 does not comply with the Commission's Natural Gas Safety Rules 4 CSR-240-40.030(10)(J) and 4 CSR 240-40.030(12)(S); and
- Requires MGE to file revised tariff sheets that are just and reasonable and in compliance with the Commission's rules and the law; and grants such other and further relief as the Commission deems just. (pursuant to § 393.140(5)).

4. OPC supports the relief sought by the Staff, which is consistent with the Commission's decision in Case Number GT-2010-0056 where the Commission rejected Laclede Gas Company's request to amend the liability language in its tariff. The Commission held that under Laclede's proposed tariff:

...Laclede would not be liable for “any damage or loss” resulting from an “order of any court or judge granted in any bonafide adverse legal proceedings or action.” A customer with a legitimate claim for damages may not file such a claim after reading the Amended Tariff language, or after consulting an attorney who has read the Amended Tariff language. Thus, Laclede’s Amended Tariff may act to deter legitimate claims against it.<sup>1</sup>

5. The language in MGE’s tariff would likely have the same adverse impact on MGE’s customers that the Commission rejected for Laclede’s customers. MGE’s Tariff Sheet R-34 includes five (5) separate paragraphs. The first paragraph states:

COMPANY LIABILITY – Customer shall save Company harmless from all claims for trespass, injury to persons, or damage to lawns, trees, shrubs, buildings or other property that may be caused by reason of the installation, operation, or replacement of the service line, yard line and other necessary appurtenances to serve customer unless it shall affirmatively appear that the injury to persons or damage to property complained of has been caused by willful default or gross negligence on the part of Company or its accredited personnel.

This first paragraph purports to make MGE immune from “all claims” for injury to persons or damage to property, including work performed by MGE, and including instances where MGE’s actions were negligent. This language could deter customers from filing legitimate claims.

6. The second paragraph of MGE’s Tariff Sheet R-34 states:

Company may refuse or discontinue service if an inspection or test reveals leakage, escape or loss of gas on customer’s premises. Company will not be liable for any loss, damage or injury whatsoever caused by such leakage, escape or loss of gas from customer’s service line, yard line, ancillary lines, house piping, appliances or other equipment.

This second paragraph essentially states that MGE will not be liable for any loss, damage or injury whatsoever including claims of injury to persons or property damage caused by

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<sup>1</sup> *In the Matter of Laclede Gas Company’s Tariff Revision Designed to Clarify its Liability for Damages Occurring on Customer Piping and Equipment*, Case No. GT-

leaking gas on customer equipment *or* MGE-owned equipment. In other words, MGE's gross negligence could cause a leak on MGE's own service line, causing injury and damage, yet MGE's tariff purports to make MGE immune from "any loss, damage or injury whatsoever" caused by leaking gas. Likewise, MGE could negligently overlook a gas leak when making a required inspection of the customer's equipment prior to connecting service, and this language would purport to make MGE immune from any liability whatsoever. This tariff provision may act to deter legitimate claims that an MGE customer might otherwise pursue in circuit court, which the Commission rejected for Laclede, and which should also be stricken from MGE's tariff.

7. The third paragraph of MGE's Tariff Sheet R-34 states that MGE "shall owe customer no duty to warn of potential hazards that may exist with such facilities on the delivery side of the gas meter, its related appurtenances and piping." This tariff provision violates Commission rules requiring MGE to inspect customer equipment for potential hazards. Commission rule 4 CSR 240-40.030(10)(J) requires MGE to inspect new service line installations, and Commission rule 4 CSR 240-40.030(12)(S)1 requires MGE to inspect and test the service line, and to visually inspect "the exposed, accessible customer gas piping, interior and exterior, and all connected equipment" when MGE "physically turns on the flow of gas to a customer." Commission rule 4 CSR 240-40.030(12)(S)3 also requires MGE to discontinue service where the "fuel lines or gas utilization equipment are determined to be unsafe." MGE's Tariff Sheet R-34 violates these provisions because it attempts to lessen MGE's duty to discontinue service or otherwise mitigate potential hazards that MGE discovers or should discover through the required inspections.

8. The fourth paragraph of MGE's Tariff Sheet R-34 is unreasonable because it requires the customer to indemnify and hold MGE harmless for damages caused by "persons on the premises affected thereby" regardless of whether the customer acted negligently or was otherwise responsible for the actions of the "persons on the premises."

9. Lastly, MGE's Tariff Sheet R-34 also purports to eliminate all liability for MGE regardless of MGE's negligence. The following lengthy sentence encompasses the final paragraph of Tariff Sheet R-34:

The company shall not be liable for loss, damage or injury to persons or property, in any manner directly or indirectly connected with or arising out of the delivery of gas through piping or gas utilization equipment on the delivery side of the meter, which shall include but not be limited to any and all such loss, damage or injury involving piping, vents or gas utilization equipment, whether inspected or not by the Company, or occasioned by interruption, failure to commence delivery, or failure of service or delay in commencing service due to accident to or breakdown of plant, lines, or equipment, strike, riot, act of god, order of any court or judge granted in any bonafide adverse legal proceedings or action or any order of any commission or tribunal having jurisdiction; or, without limitation by the preceding enumeration, any other act or things due to causes beyond Company's control, or attributable to the negligence of the Company, its employees, contractors or agents.

The first part of this paragraph purports to eliminate all MGE liability for loss, damages or injuries that are related in any way regardless of whether MGE inspected the equipment, or whether a court of law or this Commission determines MGE should be liable. The last part of this paragraph purports to eliminate *all MGE liability* regardless of MGE's negligence when it states that MGE will not be liable for "any other act or things due to causes beyond Company's control, or attributable to the negligence of the Company, its employees, contractors or agents."

10. The Commission concluded in rejecting the proposed Laclede tariff that the liability limitations proposed by Laclede were not just and reasonable and that a court of law is better able to determine liability for negligent acts:

With regard to determining liability for negligent acts, Laclede did not persuade the Commission that the court system is not better able to assess the specific facts in determining negligence. A negligence claim involves many considerations which go to determine whether due care was exercised in the particular instance in which the question arises. Determining whether Laclede was negligent in a particular situation depends on the surrounding circumstances. Actions or omissions which would be clearly negligent in some circumstances might not be negligent in other circumstances. These important fact specific decisions regarding liability, especially with regard to unregulated services, should be left to the judicial system.

Ultimately, even though the Commission has the legal authority to add some liability limits in tariffs, it is choosing not to do so in this case because the limitations in the Amended Tariff are not just and reasonable. The court system is qualified to determine whether negligence has occurred even in matters involving regulated utilities. The state legislature is also an appropriate place to set liability limits on negligence claims or to give more specific authority to the Commission in this area. Laclede has produced no convincing evidence that it would be in the public interest for the Commission to limit liability in the manner it proposes. The Commission, therefore, concludes it is unreasonable to include liability limiting language in Laclede's tariffs as proposed in the Amended Tariff and rejects the tariffs.<sup>2</sup>

Just as the judicial system is better able to address Laclede's negligence, the judicial system is also better able to assess the specific facts in determining MGE's negligence.

11. MGE does not dispute the fact that its tariff includes the quoted language above. Conducting an evidentiary hearing in this matter would serve little purpose but to allow MGE to continue providing service under a tariff that includes an unjust and unreasonable liability provision. For these reasons, OPC urges the Commission to grant the Staff's Motion for Summary Determination.

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<sup>2</sup> *Id.* at pp. 12-13.

12. To the extent the Commission considers this filing to be prohibited by Commission rule 4 CSR 240-2.080(15) in that it was not filed within ten (10) days of the Staff's Motion for Summary Determination, OPC requests that the rule be waived to allow the Commission to consider these supporting suggestions from the perspective of the captive customers that could be wrongfully deterred by MGE's tariff from filing a legitimate claim against MGE.

WHEREFORE, the Office of the Public Counsel respectfully files these Suggestions in Support of the Staff's Motion for Summary Determination and requests an order from the Commission that: 1) Finds that MGE's Tariff Sheet R-34 is unjust, unreasonable, unlawful, violates public policy, and is void and unenforceable; 2) Finds that MGE's Tariff Sheet R-34 does not comply with the Commission's Natural Gas Safety Rules 4 CSR-240-40.030(10)(J) and 4 CSR 240-40.030(12)(S); and 3) Requires MGE to file revised tariff sheets that are just and reasonable and in compliance with the Commission's rules and the law (pursuant to § 393.140(5)); and grants such other and further relief as the Commission deems just.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 2<sup>nd</sup> day of June 2011:

**/s/ Marc Poston**

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