

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
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MISSOURI
PUBLIC SERVICE COMMISSION

In the matter of Missouri Gas Energy's
tariff sheets designed to increase rates
for gas service provided in the company's
Missouri service area.

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) Case No. GR-98-140
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**JACKSON COUNTY'S RESPONSE TO MISSOURI GAS ENERGY'S SUGGESTIONS
IN OPPOSITION TO
JACKSON COUNTY'S APPLICATION TO INTERVENE**

On October 30, 1997, Missouri Gas Energy ("MGE") filed Suggestions in Opposition to the Application of Jackson County, Missouri ("County") to Intervene. In it, MGE objected to the portion of the County's application to intervene on behalf of its citizens and businesses. MGE did not object to the County's application to intervene on behalf of itself as a customer. MGE requested that the County's "intervention should be limited to representation of its own interests as a purchaser of natural gas service". In such Suggestions, MGE cited no cases. It only referred to Section 386.710, RSMo 1994, for the proposition that since the Office of Public Counsel ("OPC") is specifically empowered to "...represent and protect the public interest...", Jackson County cannot represent the interests of the public within its own county boundaries. MGE's attempt to limit the participation is not supported by such statute or by the case law in Missouri.

In the first place, Section 386.710 does not preclude Jackson County from representing the citizens and businesses located in Jackson County, which Jackson county proposes to represent, in addition to its own interests as a purchaser of gas service. In citing a portion of the statute, MGE failed to preface its quote with the important word "may" as found in the statute. The entire provision reads as follows:

(2) He may represent and protect the interests of the public in any proceeding before ...the public service commission.

The permissiveness of OPC's interest in PSC proceedings is further buttressed in subsection (3) where it is stated:

(3) He shall have the discretion to represent or refrain from representing the public in any proceeding...

However, more important than the fact that the OPC's representation of the public is not required but rather is discretionary with OPC, is the provision in the last sentence of subsection (3) which reads as follows:

(3) ...Nothing in this section shall be construed to limit the right of any person, firm, or corporation specified in subsection 1 of section 386.390 to...make complaint or...intervene in proceedings or other matters before the commission.

A review of Section 386.390.1, RSMO, discloses that in addition to the OPC, "any body politic or municipal corporation" may file a complaint. Thus, Jackson County as a "body politic" is specifically authorized to file complaints against public utilities. Furthermore, the statute also specifically authorizes, in addition to the OPC, a "city, town, village or county" to file complaints as to rates of public utilities. It is clear that Jackson County is, thus, authorized under Section 386.710 to intervene without any limitation on its right to intervene on behalf of its citizens as well as a purchaser of gas, since nothing in the statute "shall be construed to limit" its right to intervene.

Furthermore, the right of a municipality, county or other body politic to intervene on behalf of its citizens, i.e., the public in the locality or territory affected, was a right recognized by the Courts long before the OPC statutes were passed in 1977 and the passage of such statute

was not intended to limit such preexisting rights as the legislature clearly expressed in Section 386.710 (3).

In State ex rel. Consumers Public Service Co. v. Public Service Commission, 180 S.W. 2d 40 (Mo. banc 1944), the Supreme Court, en banc, ruled with respect to who has the right to intervene as a party before the Commission as follows at 180 S.W. 2d 46:

Considering the Public Service Commission Act as a whole, it seems apparent that parties to cases before the Commission, whether as complainants or intervenors are not required to have a pecuniary interest, or property or other rights, which will be directly or immediately affected by the order sought or even its enforcement. The reasonable construction seems to be that the interest necessary to authorize intervention should be the same as that required to become a complainant upon whose complaint a case is commenced. Any local partisan interest in the situation involved, such as a customer, representative of the public in the locality or territory affected (State ex rel. City of St. Louis v. Public Service Comm., 317 Mo. 815, 296 S.W. 790);... is surely sufficient to show an interest... and, therefore, is likewise a sufficient basis for intervention. [Emphasis added].

A review of State ex rel. City of St. Louis v. Public Service Commission, 296 S.W. 790 (Mo. banc 1927), the case cited by the Court in the quote from Consumer Public Service Co., supra, further strengthens the position that MGE is wrong. At 296 S.W. 794, the Supreme Court, en banc, states:

The city is not only an interested party in these rate-fixing proceedings, because of its interest as a municipal corporation, but it is interested in behalf of its citizens. [Emphasis added].

Nor is MGE's position supported by State ex rel. McKittrick v. Public Service Commission, 175 S.W. 2d 857 (Mo. banc 1943). In the first place, McKittrick was decided by the Supreme Court, en banc, a year before the same court ruled in the Consumers Public Service

Co. case that a political subdivision could intervene as a "representative of the public in the locality or territory affected".

Secondly, McKittrick involved the question of whether the Attorney General could represent the general public of the entire state of Missouri on appeal. The Court held at 175 S.W. 2d at 865, that the Attorney General did not have the right to appeal since he did not have right to intervene before the Commission on behalf of the general public in the first place. The Court at 175 S.W. 2d at 862, held the Attorney General could only appear before the Commission if the state had a real interest involved, notwithstanding the fact that the General Counsel under the law represents the public, because such representation by the General Counsel is "general and not partisan,". The only change since such case is that OPC and not the PSC General Counsel has the right to represent the public of the state. And the only case we could find as to the effect of this switch in who represents the public of the state, State ex rel. Missouri Power & Light Company v. Riley, 546 S.W. 2d 792 (Mo. App. 1977), leads to the conclusion that nothing has changed other than the OPC has replaced the General Counsel as the exclusive representative of the public on a general, non-partisan basis, and that the Attorney General may represent the state on a partisan basis but still may not represent the general public of the entire state of Missouri on a non-partisan basis.¹ A review of the decision in the Missouri Power & Light Company case, inasmuch as it cites both McKittrick and Consumers Public Service Co. favorably, also leads to the inescapable conclusion that while the OPC now represents the general

¹ This case was decided in January 1977 and obviously led to the adoption of Section 386.710 later in the year in which the legislature not only clarified that its intent was to allow OPC to appeal decisions but also its intent that the empowerment of OPC to represent the public of the state was not intended to limit the rights to intervene existing in cities and counties or any other parties.

public of the state on a general, non-partisan basis, cities and other bodies politic, such as the County, may also continue to represent the citizens within their territories on a local partisan basis.

Thus, the law in Missouri is clear, that while the OPC may represent the public of the state on a general, non-partisan basis, political subdivisions may continue to intervene in Commission proceedings not only to represent their pecuniary interests as purchasers of utility services, but also as a partisan representative of the public in their locality. The law expressly provides that creation of the OPC was in no way to be construed as limiting the County's rights to intervention.

A review of the County's Application to Intervene shows that it is "its citizens" and not all the citizens of the state are the only members of the public Jackson County seeks to represent, hence, in addition to being authorized to intervene as a user of gas service itself, to which MGE has no objection, the County should also be authorized to intervene on behalf of its citizens.

WHEREFORE, the County requests that the Commission grant its Application to Intervene without any limitation.

Respectfully submitted,
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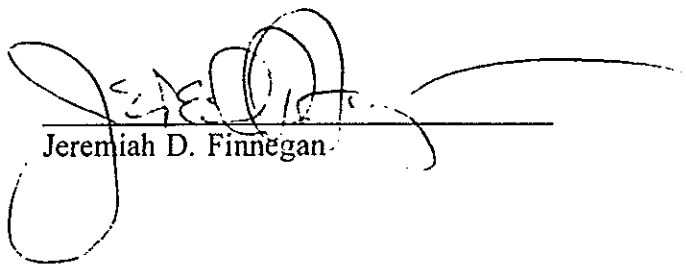
Certificate of Service

I hereby certify that a copy of the foregoing Application to Intervene was mailed, postage prepaid, this 31st day of October, 1997, to:

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