MISSOURI COURT OF APPEALS WESTERN DISTRICT

THE STATE OF MISSOURI PUBLIC SERVICE COMMISSION

RESPONDENT,

THE OFFICE OF PUBLIC COUNSEL,

APPELLANT,

v. MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY

RESPONDENT.

DOCKET NUMBER WD75024 DATE: January 8, 2013

Appeal From:

Public Service Commission

Appellate Judges:

Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Attorneys:

Shelley E. Brueggemann and Kevin A. Thompson, Jefferson City, MO, for respondent Public Service Commission.

Vincent R. McCarthy and Paul A. Boudreau, Jefferson City, MO for respondent Missouri Gas Energy.

Marc D. Poston, Jefferson City, MO, for appellant.

MISSOURI APPELLATE COURT OPINION SUMMARY

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No. WD75024 Public Service Commission

Before Division Three: Alok Ahuja, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

The Office of the Public Counsel appeals the Public Service Commission's Order approving compliance tariff sheets entered in case number GT-2012-0183. The Order approved revised tariff sheets filed by Southern Union Company, d/b/a Missouri Gas Energy, following the Commission's Final Decision entered in a separate case which found that an earlier version of the tariff sheets was unjust and unreasonable. While OPC's appeal of the Final Decision in the earlier case was pending, OPC filed this appeal objecting to the Order because the revised tariff sheets exculpate MGE from liability for negligence causing personal injury or property damage.

Reversed and vacated.

Division Three holds:

Though OPC's points on appeal challenge the Order, OPC's substantive arguments are indistinguishable from OPC's challenges to the Final Decision entered in the earlier case and which was the subject of an earlier appeal. In the earlier appeal, we reversed the Final Decision on the grounds that the Commission acted beyond its statutory authority in concluding that it could authorize tariff sheets that exculpate public utilities from claims of negligence resulting in personal injury or property damage.

This appeal raises identical issues, and requires application of our holding in the earlier appeal. We need not analyze anew the Commission's lack of statutory authority to approve exculpatory clauses. The Order is unlawful.

Opinion by Cynthia L. Martin, Judge

January 8, 2013

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