

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,

Respondent

v.

MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY;

Respondent

OFFICE OF PUBLIC COUNSEL.

Appellant

DOCKET NUMBER WD74732

DATE: October 23, 2012

Appeal From:

PUBLIC SERVICE COMMISSION

Appellate Judges:

Division Four

James Edward Welsh, C.J., Thomas H. Newton, J., and Charles E. Atwell, Sp. J.

Attorneys:

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Attorneys:

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Paul Boudreau, Jefferson City, MO

Counsel for Respondent Southern Union Co.

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI,
Respondent, v. MISSOURI GAS ENERGY, A DIVISION OF
SOUTHERN UNION COMPANY; Respondent, OFFICE OF PUBLIC
COUNSEL, Appellant**

WD74732

Public Service Commission

Before Division Four Judges: James Edward Welsh, C.J., Thomas H. Newton, J., and Charles E. Atwell, Sp. J.

The Office of the Public Counsel (OPC) appeals the Public Service Commission's granting summary determination in favor of Southern Union Company, d/b/a Missouri Gas Energy (MGE), in regard to MGE's Tariff Sheet R-34, which concerned in part MGE's legal liability to its customers in tort. The OPC claims that the Commission's order granting MGE's motion for summary determination is unlawful because it lacks the required public interest determination as required by 4 CSR 240-2.117(1)(E) and lacks sufficient findings and conclusions to support the summary determination. Further, the OPC asserts that the Commission erred to the extent that it allowed MGE's tariff to include an exculpatory clause releasing MGE from liability for any injuries or harm caused by MGE's negligence occurring on customer-owned gas utilization equipment on the customer side of the meter. In particular, the OPC contends that the Commission's order is unlawful and unreasonable in that (1) granting such immunity was beyond the Commission's authority, (2) the Commission's decision violates common law and public policy, and (3) the Commission failed to articulate a rational basis for contradicting a recent order in another case before the Commission, where the Commission rejected a similar provision regarding immunity.

REVERSED AND REMANDED

Division Four holds:

(1) Because Regulation 4 CSR 240-2.117(1)(E) does not require the Commission to make a specific articulated public interest finding in its order, the Commission's order granting MGE's motion for summary determination is not unlawful.

(2) The Commission's decision is unlawful to the extent that it allowed MGE's tariff to include an exculpatory clause immunizing MGE from liability for personal injury or property damage caused by MGE's negligence but manifesting itself on customer-owned gas utilization equipment on the customer side of the meter. Because we find no statute abrogating a customer's right to sue a public utility company for negligence involving personal injury or property damage, we conclude that the Commission's decision is unlawful because it acted beyond its authority.

Opinion by: James Edward Welsh, Judge

October 23, 2012

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