

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

Michael E. McKinzy, Sr.,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2003-0579
)	
Missouri Gas Energy,)	
)	
Respondent.)	

APPLICATION FOR REHEARING

COMES NOW Missouri Gas Energy, a division of Southern Union Company ("MGE"), by and through counsel, pursuant to RSMo. §386.500 and 4 CSR 240-2.160, and respectfully asks that the Missouri Public Service Commission (the "Commission") grant rehearing with respect to its August 5, 2004, *Report and Order* issued in the above-captioned case.

For the reasons stated herein, the Report and Order is unlawful, unjust, unreasonable, arbitrary, capricious, involves an abuse of discretion, is unsupported by competent and substantial evidence upon the whole record, is in excess of statutory authority, and is unconstitutional in all material matters of fact and law, in the particulars hereinafter stated for the following reasons and in the following respects:

TRANSFER ISSUE

The Commission found as follows concerning the question of whether or not MGE could transfer Ms. Nance's past due debt of \$449.96 to Mr. McKinzy's account at 8004 Overton Street:

Mr. McKinzy's complaint is thus sustained only to the extent that MGE may not transfer Ms. Nance's past-due debt to Mr. McKinzy's account at this time. If in the future Mr. McKinzy and Ms. Nance commence or transfer service in MGE's service area, and Ms. Nance still has a past due debt with MGE, Section 3.02 would apply, as would any other relevant Commission rule.

On June 2, 2004, at Mr. McKinzy's request, natural gas service was terminated to Mr. McKinzy at 8004 Overton Street. In terminating this service, Mr. McKinzy reported that he was moving from 8004 Overton. Thus, based upon this information, the Commission should rehear this matter and find that the aspect of Mr. McKinzy's Complaint concerning a current transfer should be dismissed as moot.

Additionally, because there was no evidence that MGE had attempted to transfer Ms. Nance's bill to Mr. McKinzy's account at 8004 Overton, the Commission's decision as to this issue is in the nature of judicial declaratory relief and unauthorized under Missouri law. *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 76 (Mo. banc 1982) (Not even the legislature can "turn an administrative agency into a court by granting it power that has been constitutionally reserved to the judiciary.").

PREPONDERANCE OF THE EVIDENCE

Mr. McKinzy has failed to show by a preponderance of the evidence that his wife was not living at 8004 Overton when he first applied for service on April 9, 2003. Mr. McKinzy's only evidence is his uncorroborated testimony as to this fact.

The Commission has "explained away" several pieces of evidence contrary to Mr. McKinzy's position. In particular, the Commission has chosen to believe Mr. McKinzy's speculation ("Mr. McKinzy *suggested* that his wife *may have* changed her address" Report and Order, p. 6 (emphasis added)) as to why his wife reported to the Missouri Department of Revenue on March 25, 2003, that her residence was 8004 Overton.

Section 302.171.1, RSMo requires applicants for a driver's license to provide both their residence and their mailing address. Providing false information is punishable by law. Section 302.230, RSMo.

Ms. McKinzy did not differentiate between her mailing address and her residence. In fact, her prior license contained the location where Mr. McKinzy indicated she was living at the time he applied for service. If she was not going to reside at 8004 Overton, there would be no reason for the change in her license.

The Commission's treatment of the evidence before it assumes that Ms. Nance has committed a misdemeanor punishable under Section 302.230, RSMo. There is no evidence of this misdemeanor other than Mr. McKinzy's speculation and should not be relied upon by the Commission.

Further, Mr. McKinzy failed to provide any records indicating that Ms. Nance lived elsewhere during the relevant time period (April of 2003) and MGE was unable to identify Ms. Nance as a customer at any other address (Tr. 208-209, 213-214).

In light of this, as well as the additional evidence considered by the Commission, the Commission's decision is unsupported by competent and substantial evidence.

INTERPRETATION OF SECTION 3.02

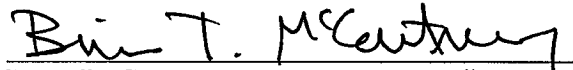
The Commission found that Section 3.02 of MGE's tariff "does not allow the company to transfer the past-due debt of Ms. Nance to Mr. McKinzy's account at 8004 Overton Street" because "once service has been commenced or transferred, the section no longer applies." (Report and Order, p. 16).

The Commission bases its interpretation on the fact that the "entire section addresses *commencing* or *transferring* service when an applicant or a member of applicant's household has a prior indebtedness." (*Id.*). This approach ignores the more encompassing nature of situations the tariff provision is designed to cover. The title of this section is "Prior Indebtedness of Customer." This title suggests general provisions applying to more than merely "commencing or transferring service."

Accordingly, the provision identified by MGE - "Company reserves the right to transfer any unpaid amount from prior service(s) to a current service account" - must be read to apply to all instances of prior customer indebtedness. MGE asks that the Commission rehear, and reconsider, its decision and determine that the above tariff provision allows for the transfer of prior indebtedness to a current service account in any situation where a member of the household is indebted to MGE.

WHEREFORE, Missouri Gas Energy respectfully requests the Commission to grant a rehearing and, upon reconsideration, issue a new order setting aside its August 5, 2004, *Report and Order*, which new order is consistent with the evidence and applicable law as more fully set forth above in this pleading.

Respectfully submitted,



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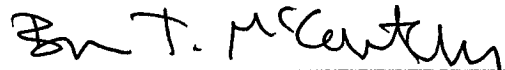
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered or sent by U.S. Mail, postage prepaid, on August 13th, 2004, to the following:

Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101

Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101

Michael E. McKinzy, Sr.
8004 Overton Drive
Raytown, Missouri 64138



Brian T. McCartney

VERIFICATION

STATE OF MISSOURI)

COUNTY OF Jackson)

ss

I, Kim Lambert, state that I am employed by Missouri Gas Energy, a division of Southern Union Company ("MGE") as MANAGER; that I have read the above and foregoing document; that the statements contained therein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of MGE.

Kim Lambert

Subscribed and sworn to before me this 13th day of August, 2004.

Danielle R. Mc Gaughy
Notary Public

My Commission Expires:

DANIELLE R. McGAUGHY
Notary Public - State of Missouri
Commissioned in Jackson County
My Commission Expires Nov. 7, 2004

(SEAL)