

IN THE CIRCUIT COURT OF JEFFERSON CITY, MISSOURI

James Dudley)	
4247 Agnes)	PSC # GC-2004-0216
Complainant)	
V.)	
Missouri Gas Energy Company)	
Jackson County)	
Respondent)	

FILED²

NOV 18 2004

Missouri Public
Service Commission

Complainant Motion for Review

Comes now the Complainant (James Dudley) is requesting this court to review the Commission Report and Order in according to V.A.M.S Rule 386-510.

1. Complainant resided at 4231 Tracy Kansas City Mo. when this cause of action accrued
2. Complainant resides at 4247 Agnes, Kansas City, MO 64130.
3. Respondent (Missouri Gas Energy) is the business owned and operated by Southern Union Company and licensed to do in the state of Missouri.
4. MGE is a public utility subject to the jurisdiction of the State of Missouri's Public Service Commission as provided by law.
5. This Court has jurisdiction over the parties and subject matter pursuant to MO. Rev. Stat. 386.510
6. This Court has jurisdiction over the PSC and the Commission MO Rev. stat. 386.510
7. Venue is proper under MO Rev. Stat. 386.510 , the PSC is located in Jefferson City Missouri

NO APPEARANCE REQUESTED

Cause of Actions

1. Respondent disconnected Complainant gas service while a dispute was in action with Missouri Gas Energy (MGE) and the Public Service Commission (PSC) schedule 4pg4 #1,2,3
2. Respondent transferred a \$2,204 which was found out later that the Tenant gas bill of \$2,099 in the name of Ms.Sarha Chappelow whom either lived at 4024 Prospect or authorized someone to use her name and two years later her bill was transferred to Mr. Dudley home at 4231 Tracy in June 25, 2002. Schedule 1 and 2
3. Complainant received a gas bill in the amount of \$2,510 on July 10, 2002 at Mr. Dudley home at 4231 Tracy. schedule 1
4. Complainant did dispute that billing account of \$2,510.00 at 4231 Tracy with Respondent on July 12, and 24th of 2002 and that is two times and gas service was disconnected on July 30, 2002, .6 day later. Schedule 14
5. Later Mr. Dudley found out that MGE transferred the 4024 Prospect bill of a tenant to the complainant home at 4231 Tracy were the gas service was disconnected on July 30,2002 .schedule 10 pg3# 7,8,9,10
6. Ms. Chappelow's name was removed from the 4024 Prospect's gas billing account and was replaced with Complainant's name
7. Respondent applied the \$2,204 from 4024 Prospect along with the \$305.00 that was the June Bill for 4231 Tracy on June 25, 2002. schedule 14 b
8. Complainant received a gas bill for \$2,510.00 at 4231 Tracy on July 10, 2002.
Schedule 1

9. Complainant called Respondent on July 12, 2002 and disputed the bill with Mrs. Bussey whom worked for MGE for the property at 4231 Tracy.
10. Complainant wrote the Public Service Commission on July 18, 2002, disputing the (gas) billing account at 4231 Tracy. Schedule 4 pg 5
11. Complainant called Respondent again on July 24, 2002 disputing the gas account at 4231 Tracy. Schedule 14 , 7-24-02
12. The Public Service Commission informed MGE to stop all collection proceedings on July 30, 2002 on the billing account at 4231 Tracy. Schedule 4 pg 4 # 1,2,3

TRANSFERRED ISSUES

13. Mr. Dudley was not a customer of MGE from Sept. 25, 2000 until April 27, 2001 at 4024 Prospect Ms. Chappelow was.
14. Mr. Dudley never lived at 4024 Prospect it was always rental property.
15. The gas account was in Ms. Sarah Chappelow name whom my have lived there or allow someone to used her name.
16. Mr. Dudley never told anyone at MGE that he would be responsible for any tenant gas bill
17. MGE put Ms. Chappelow on a payment plan
18. MGE accepted 4 gas payments from Ms. Chappelow on the bill at 4024 Prospect
19. Mr. Dudley is not responsible for a tenant utilities bill. Rule 704.4 , 11: 74 Ex # 1
20. The transferred was improper in this action by MGE.

MGE TARIFFS RULES (8-8.01) AND CODE OF STATE REGULATIONS

(4 CSR – 240 -)

21. MGE did not to follow their tariffs rules from (8.80 1.) General Terms and Conditions for gas service. (Section 8) Claims and Complaints Settlements- Residential Only, Ex 3 and

4 CRS 240-13.045 Dispute Ex. 1 nor 4 CSR 240-13.050 Discontinuance of Service Ex 2 #5

22. The rule of **PSC Dispute- 4 CSR-240-13.045 (#1)** A dispute must be registered with the utility at least twenty-four (24) hours prior the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by these rules. Ex 1 # 1

23. Complainant had registered with the gas utility within 24 hours. Complainant spoke with Respondent on July 12 and 24th of 2002. Complainant's gas service was disconnected on July 30, 2002. schedule 14, 7-25-2002

24. Rule of **PSC 240-13.050 (#1-5)** service should not have been discontinued during (#1) Service may be discontinuance for any of the following reasons. A Nonpayment of an undisputed delinquent charge (#5) A utility shall not discontinue residential service pursuant to section (1) unless written notice by first class mail is sent to the customer at service shall not be issued as to that portion of a bill which is determined to be an amount in dispute pursuant to **sections 4 CSR 240-13.045 (5) and (6)** that is least ten days prior to the date of the discontinuance. A notice of discontinuance of currently the subject of a dispute pending with the utility or complaint before the commission nor shall such a notice be issued as to any bill or portion of a bill which is the subject of a settlement agreement except after breach of the settlement agreement unless the utility inadvertently

issues the notice in which case the utility shall take necessary steps to withdraw or cancel this notice. Ex 2

25. Respondent failed to comply with General Terms and Conditions for gas service

(Section 8) Claims and Complaints Settlements- Residential Only,

8.01 complaint and disputed claims: When a customer advises the company

Prior to the date of proposed discontinuance of service that all or any part of any billing rendered is in dispute the company shall:

A. A dispute must be registered with the utility at least twenty-four (24) hours prior the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by these rules. Ex. 3

20. Complainant's had registered with the gas utility within 24 hours. Complainant spoke with Respondent on July 12 and 24th of 2002. Complainant's gas service was disconnected on July 30, 2002. Schedule 14, 7-24-2002

21. 8.06 Failure to Reach Agreement: If the company does not resolve the complaint to the satisfaction of the customer, the company representative shall advise the customer:

A. That each party has right to register an informal complaint with the Commission

B. of the address and telephone number where the customer may file an informal complaint with the Commission.

22. 8.08: Discontinuance pending Decision: The Company shall not discontinue residential service or issues a notice of discontinuance relative to the matter in dispute pending the decision of the hearing examiner or other Commission personal except pursuant to the terms of interim determination

ISSUES FOR THE COURT

James Dudley (complainant) pursuant to RSMo. # 386.510 respectfully asks that the Court review with respect to the Commission Report and Order issued in the above case

For the reasons stated herein the Report and Order is unjust, unreasonable, and unsupported by competent evidence upon MGE facts. For the following reasons and in the following respects:

1. Mr. Dudley produced documents after documents showing that MGE and MGE Attorneys, MGE staff Wanda Bussey that stated that Mr. Dudley refused to pay the total amount that his gas service was disconnected on July 30, 2002 not on July 24, 2002.
 2. MGE never showed the Commission one document that a notice letter was sent out to Mr. Dudley in May, June, July, of 2002, for the amount of \$305. There is not one past due notice that the Commission looked at for the month of June in the amount of \$305 which is what MGE's issue is about.(schedule # 13a-b) Complaint's issue is the dispute of \$2,510 and the discontinuance of service, while the dispute is pending, 8.01 4CSR 240-13.045,Ex #1-3.
 3. MGE never showed one document to the Commission verifying that a message was ever sent or received Mr. Dudley from any of MGE's staff.
- Mr. Dudley strongly objects to the Commission not using any of his exhibit or schedules documents in their decision in this matter.
4. The Commission never ruled on 8.01 or 4CSR -240-13.45 dispute issues Ex#1-3.
 5. The Commission considered only Ms. Shirley Bolden's Rebuttal when she admitted that she did not become involved in this case until July 30, 2002.

6. The Commission never considered Mrs. Wanda Bussey, MGE's attorneys, Martine Montemore, Robert Hack nor the courts documents that was sent to the Circuit Court or PSC. Schedule 10 pg 3, 7 schedule 11 pg3 # 1-13 schedule 15 MGE Answer to the PSC. Pg 4 # 1-10
7. The Commission was extremely bias in there order.
8. The Commission considered PSC Staff whom never even read the many documents that was sent to them.

DISCONTINUE OF SERVICE, FOR PAST DUE AMOUNT

Complainant feels that the Commission erred in their ruling on the disconnection issues for the amount of \$305.00 being past due and the issues of dispute.

On the issue of a past due amount of \$305.00 and the disconnection of the service at 4231 Tracy on July 30, 2002.

1. Previous in this matter does not mean past due.
2. Previous in this matter means before another amount was added to Mr. Dudley's charge of \$305.00 which was added from the transfer amount of \$2,204.00. (Schedule #1-13b)
3. Mr. Dudley was bill on 6/10/02 for \$266 and on 6/10/02 was charge \$38 for the month of June 2002 and also bill on 6/25/2002 for \$2204 that was an transferred bill.(schedule 1, 13B)
4. Mr. Dudley was never past due for the \$305.00 charge in April, May, June or July of 2002. (Schedule 13, B, C)
5. Mr. Dudley's account went like this
 1. In May of 2002 Mr. Dudley gas bill was \$266.00.
 2. On June 10, 2002 MGE transferred the \$266.00 to Mr. Dudley's June bill.

3. On June 10, 2002 MGE billed Mr. Dudley \$38.00 and added the \$38.00 to the \$266.00 which made the bill \$305.00. (Schedule 13, B)
6. In June of 2002 if MGE had not transferred the \$2,204.00 to Mr. Dudley's bill in July of 2002 the bill would have been \$305.00 for the month of July 2002.
7. From the records the bill should have read like this, Previous bill \$266.00 and current bill \$38.00 and pay this amount \$305.00 by July 22, 2002. (Schedule#1-#13b-c)
8. That was not the case because \$2,204.00 was transferred and added to the \$305.00 which made Mr. Dudley's bill \$2,2510.00.(schedule#1-13 b-c)
9. In this case the previous bill of \$305.00 was the first amount on June 10, 2002 then June 25, 2002 MGE added the transferred amount of \$2,204.00, which in this case previous before the transfer bill of \$2,204.00.
10. Still the \$305.00 was not past due until 21 days from rendition, MGE Tariff 1.08 delinquent charge.
11. Past due does not mean previous.
12. Previous does not mean past due.
13. Current does not mean past due, or previous, they mean what they say.
14. Again previous mean before something was added.
15. Past due mean late or delinquent on a charge.
16. The \$305. charge was on the July 10th bill, for the June bill. Schedule 13 b 6-10-2002 .
17. And again Schedule 2, page 2 MGE told the PSC staff Tracy Leonberger that they would accept \$1,000 to restore the gas service, MGE did not say they would accept \$305.00 to restore the gas service.

18. You can't be past due for \$305.00, if you never received a bill for \$ 305. The first disconnect notice I received was for \$2,510., the second gas disconnect notice \$2,528.00 not \$305.00. (Schedule 1)

DISPUTE ISSUE

19. Mr. Dudley disputed his gas bill of \$2510 with Mrs. Wanda Bussey whom works for MGE; Mr. Dudley called MGE on the 12th and the 24th of July 2002.(schedule 14 7-24-02) MGE tariffs states in section 8 # **8.01 Dispute and Discontinuance Pending Decision** while MGE failed to adhere to their own tariff.(Ex1 #1 -3 #8.01-8.02)

20. MGE was never supposed to disconnect Mr. Dudley's gas service in July of 2002. Additionally because there was no evidence that MGE had attempted to remove the transferred bill nor make any agreement with Mr. Dudley about his gas bill for the amount of \$2,510 or the \$305 as required by MGE's tariffs **8.01-8.08 and PSC 4CSR 240-13.045.**(Ex1#1-3#8.01-8.02)

21. Mr. Dudley did receive a gas bill for the amount of \$2,510 on July 10, 2002, which showed it as a previous bill for \$305 and the transferred amount of \$2,204. (schedule#1)

22. Ms. Bolden did not become involved in this case until July 30, 2002 and she has never spoken with Mr. Dudley at all about this matter.

23. Mr. Dudley talked with MGE's staff Mrs. Wanda Bussey on July 24, 2002 and she did not mention anything about a message being left on Mr. Dudley's home. (Schedule 14,)July 24, 2002.

24. Mr. Dudley talked with MGE staff Mrs. Wanda Bussey on July 24, 2002 and there was no mention of Mr. Dudley's gas service being disconnected at that time. Schedule 14

25. When Mr. Dudley called MGE on July 12 he stated to Mrs. Wanda Bussey that the \$2510 was not his bill that made it a dispute.(Ex1#1-3#8.01)

PREPONDERANCE OF THE EVIDENCE

1. MGE failed to show any evidence that Mr. Dudley received a bill for \$305 before July10, 2002.
 2. MGE failed to show any evidence that the gas service at Mr. Dudley's home at 4231 Tracy was not disconnected for any other reason than the transferred bill of Ms. Sarah Chappelow's gas bill at 4024 Prospect.
 3. MGE failed to show any evidence that Mr. Dudley did not dispute the gas bill he received from MGE in the amount of \$2510.
 4. MGE only evidence was Ms. Shirley Bolden's uncorroborated testimony as to these facts. Who only became apart of this case on July 30, 2002 .
 5. Further MGE failed to provide any records indicating that Mr. Dudley was **PAST DUE FOR \$305 .**
- In light of this as well as additional evidence considered by the Commission the Commissions decision is unsupported by competent and substantial evidence.
6. Mr. Dudley's gas service at 4231 Tracy was disconnected on July 30, 2002, not on July 24, 2002. Complaint's schedule 10, page 3 #
 7. Mr. Dudley was not past due for \$305.
 8. Mr. Dudley was never notified of having to make any kind of payment for the amount of \$305 from Mrs. Bussey nor Ms. Bolden.

BASIS FOR DISCONTINUANCE

COMPLAINANT SCHEDULES AND EXHIBITS

#1 Shows THE \$2,510 under to avoid and NOT \$305 that Mr. Dudley received on July 10, 2002.

#2 PSC response letter August 23, 2002, (PG 2 line 1, 2, 3) shows MGE asking for \$1,000 to restored Mr. Dudley gas service not \$305.

5 Shows that MGE was asking for \$ 2,586 not \$305 in August, 2002

6 Shows that MGE was asking for \$ 2,895 not 305 in 8/15/2003

7 Shows that MGE was asking for \$ 2,895 not 305 in 9/5/2003

8 Shows that MGE was asking for \$ 2,256 not 305 in 11/11/2002

9 Statement shows that MGE was asking for \$ 2,797 not 305 in Nov 6, 2002

#10 MGE Motion for Summary Judgment Uncontroverted Facts, Page 3 #7, 8, 9, 10. Not July 24th, but on July 30, 2002. Shows that MGE was disconnecting Mr. Dudley gas service because of the transfer bill and that service was disconnected on July 30, 2002 not July 24, 2002

In November 6, 2002, Affidavit of **Wand Bussey** not **Ms. Bolden**, (Page 5 #15, 16,17,18) not on July 24, but on July 30, 2002 and no mention of Mr. Dudley gas service being disconnected for the past due of \$305 being the reason for the disconnection of 4231 Tracy.

#11 Motion for Summary Judgment-page 1 #7, 8,9,10 still on July 30, 2002 not July 24, 2002. (Page 3 #3, 4, 5, 6,) still on July 30, 2002 not on July 24, 2002 and after refusal to pay the total amount.

#12 Suggestions in Opposition, Page 1 #5,6,7,8,9,10,11,12 not for the amount of \$305 but total amount.

Page 6 1,2,3,4,5,6,7,8,9,10,11,12 not for the amount of \$305 and not on July 24, as Ms. Bolden stated, but on July 30, 2002.

#13 B 6-10-02 \$266

6-10-02 38

6-10-02 305

6-25-02 \$2,204 not \$104

6-25-02 \$2,510 not \$305

7-10-02 \$2,510 not \$305

#14 Mr. Dudley called MGE on July 24, 2002 at 12:30pm and 12:41pm

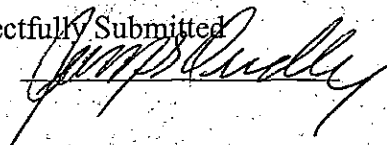
#15 MGE answer to the PSC page 4, # 5, 6, 7, stated that MGE had the right to transfer the Prospect bill and disconnect the gas service at 4231 Tracy

#17 Mr. Dudley and MGE's attorneys came to agreement on September 25, 2002, which was part of the Discovery. Schedule 17

MGE never introduced one Exhibit that showed Mr. Dudley was past due for \$305 nor that a notice letter was ever sent in that amount.

WHEREFORE: James Dudley, (Complainant) respectfully requests the Court to grant a new order setting aside Commission Order and Report with a new Order that is consistent with the evidence as more fully set forth above in this pleading and Complainant's pray for entry of judgment in their favor and against Respondent.

Respectfully Submitted



James Dudley
4247 Agnes
Kansas City, MO 64130
(816) 682-1689

Remedies and Relief

- A. That Respondent's be allowed to receive gas service at his property.
- B. That MGE removed Ms. Sarah Chappelow bill of \$ 2,099 of Mr. Dudley gas billing account.
- C. Make a finding that MGE was not following their Tariffs Rules

James Dudley
4247 Agnes
Kansas City, MO 64130
(816) 682-1689

CERTIFICATE OF MAILING

I hereby certify on this ¹⁵~~10~~ day of ^{NOV}~~January~~ 200⁴~~3~~ that a copy of the foregoing was mailed or hand delivered to:

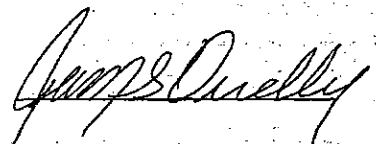
ROB HACK

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James Dudley

§ 11:73 HVAC System—Landlord's Responsibility

HVAC System. Landlord shall, at its expense, before commencement of the term of this Lease, have the air conditioning and heating equipment serving the premises inspected and placed in good operating condition and shall furnish to Tenant a written report from a reputable heating and air conditioning contractor certifying that such equipment is in good operating condition and adequate in capacity. Upon Landlord's failure to do so, Tenant may, at its option, cause the heating and air conditioning equipment placed in good operating condition and deduct the reasonable expense thereof from the rent.

The heating and air conditioning equipment will be maintained by Landlord at its expense. Should replacement of heating or air conditioning equipment become necessary through ordinary wear and tear or otherwise, Landlord, at its expense, agrees to replace same with another or others of at least equal efficiency and capacity to present equipment.

AUTHOR'S COMMENTS

For a small retail tenant, this type of clause is of extreme importance and the issue should always be addressed and expressly agreed on.

Research References

C.J.S. Landlord and Tenant § 369.

West's Key No. Digests, Landlord and Tenant ¶152.

§ 11:74 Utilities—Tenant's Responsibility

Utilities. Tenant shall furnish and pay for all electricity, gas, water, trash, and any services or utilities used on or assessed against the Premises, including Tenant's pro rata share of trash removal. Tenant shall make its own arrangements for such utilities to be billed directly to Tenant. No diminution or abatement of rent or other compensation shall or will be claimed by Tenant as a result of, nor shall this Lease or any of the obligations of Tenant be affected or reduced by reason of, any interruption, curtailment, or suspension of utilities or services to the Premises. If water service is not separately metered to the Premises, the following shall apply:

(a) Landlord shall furnish cold water to the Premises for the normal use of the restroom located on the Premises.

(b) Tenant shall pay its proportionate share of the cost of water service for the portion of the building where water service is not directly and separately metered to the tenants. Tenant's proportionate share shall be based on the rentable square feet in the Premises as compared to the total rentable square feet in the portion of the Building where

water service is not directly and separately metered to the tenants. Periodically, Landlord shall notify Tenant of its proportionate share of the cost of water service. Tenant shall pay to Landlord Tenant's proportionate share within ten (10) days after Landlord's notice.

Research References

C.J.S. Landlord and Tenant § 466-469.
West's Key No. Digests, Landlord and Tenant ⇨182.

§ 11:75 Right of Tenant to Alter, Remodel or Rebuild the Premises

The Tenant, during the term of this lease, may build, rebuild, remodel, recondition, rehabilitate, convert, change, and alter the Premises, and install and maintain additions and structures thereto, including internal and external changes, and may change the number of living units in the Premises and attach fixtures thereto, and make any and all improvements thereto, including utilities and roads, at the expense of the Tenant, and Tenant shall have full power and right, at any time during the term of this lease, provided Tenant is not then in default in the performance of any of its obligations hereunder, to tear down, remove and destroy the building or buildings on the leased Premises or any part thereof, or to alter or change the same in material respects, provided that the building or buildings so removed, torn down or destroyed shall be promptly rebuilt or replaced, at the Tenant's expense; *provided, however*, that these rights may be exercised only in accordance with plans and specifications submitted to and approved in writing by the Landlord. The Tenant may make such reasonable variations from, and modifications in, such plans and specifications originally approved by the Landlord as the Tenant deems necessary in the course of carrying out such plans and specifications. All such building, rebuilding, remodeling, reconditioning, rehabilitating, converting, changing, and altering of the Premises, and all additions, structures, and fixtures added to the Premises, by the Tenant, including utilities and roads, which are remaining thereon at the termination of this lease, however, accomplished, or when the Tenant begins reconversion of the Premises, shall then become the property of the Landlord; and the Tenant shall be under no obligation to restore or reconvert the Premises to their condition at the time of the execution of this lease; *provided, however*, that in the event the Tenant determines to terminate this lease, *except* where such termination is in pursuance of an election made by the Tenant under the provisions of paragraph _____ hereof, and the conversion of the Premises has been actually commenced but has not been completed, the Tenant, at its sole option, before such termination becomes effective, shall either complete the conversion or restore or reconvert the Premises