

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-3847
E-Mail: dcooper@brydonlaw.com

DEAN L. COOPER
MARK G. ANDERSON
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONE

May 17, 2004

FILED²
MAY 17 2004
Missouri Public
Service Commission

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102

RE: Missouri Gas Energy
Case No. GC-2003-0579

Dear Mr. Roberts:

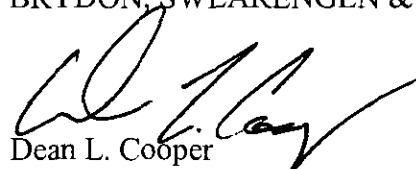
Enclosed are the original and eight (8) copies of Missouri Gas Energy's Brief for filing in the above-referenced matter.

Thank you for your assistance in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Dean L. Cooper

DLC/jar

Enclosures

cc: John Coffman
Dana K. Joyce
Michael E. McKinzy, Sr.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAY 17 2004

Missouri Public
Service Commission

Michael E. McKinzy, Sr.,)
)
Complainant,)
)
v.)
)
Missouri Gas Energy,)
)
Respondent.)

Case No. GC-2003-0579

MISSOURI GAS ENERGY'S BRIEF

COMES NOW Missouri Gas Energy, a division of Southern Union Company ("MGE"), by and through its counsel, and, as its post-hearing brief in this matter state as follows to the Missouri Public Service Commission ("Commission"):

FACTS

This Complaint initially concerns Mr. McKinzy's request that MGE provide him with natural gas service at 8004 Overton in Raytown, Missouri. Prior to his move to 8004 Overton in March of 2003, Mr. McKinzy had not been an MGE customer since January of 2002, a period of more than one year (Exh. 1, p. 1-2; Exh. 8; Tr. 99-100).

Previously, Mr. McKinzy had married Ms. Tamara Nance on February 16, 2003 (Exh. 3; Tr. 101). Ms. Nance/McKinzy owed MGE \$449.96 for natural gas service provided to her at a prior address (Exh. 12, Lambert Reb., p. 3).

In March of 2003, Mr. McKinzy signed an agreement to lease a home located at 8004 Overton and moved in later that month (Exh. 1, McKinzy Dir., p. 2; Tr. 101). At the time Mr. McKinzy moved into 8004 Overton, natural gas service at the address was being provided in the

name of Gerald Lee (Exh. 12, Lambert Reb., p. 2).

On April 9, 2003, Mr. McKinzy sought to have the natural gas service at 8004 Overton placed in his name (Exh. 12, Lambert Reb., p. 3). During the application process, Mr. McKinzy was asked whether he was married and if his wife would be living with him. He stated that she would be living with him, provided his wife's name to MGE and later provided her social security number (Exh. 12, Lambert Reb., Sch. KL-1 (page 2)).

Ms. Nance/McKinzy had earlier, on March 25, 2003, amended her driver's license records maintained by the Missouri Department of Revenue to reflect her name as Tamara L McKinzy (she previously was known as Tamara L Nance) and to reflect her address as 8004 Overton, Raytown, MO (her address was previously listed as 6107 E 8th St, Kansas City, MO) (Exh. 10 and 11).

When it was determined that Ms. Nance/McKinzy owed MGE for a previous account, MGE refused to commence service in accordance with Section 3.02 of its tariffs which states, in part:

3.02 PRIOR INDEBTEDNESS OF CUSTOMER: *Company shall not be required to commence supplying gas service if at the time of application, the applicant, or any member of applicant's household (who has received benefit from previous gas service), is indebted to Company for such gas service previously supplied at the same premises or any former premises until payment of such indebtedness shall have been made. This provision cannot be avoided by substituting an application for service at the same or at a new location signed by some other member of the former customer's household or by any other person acting for or on behalf of such customer.*

(Emphasis added) (Exh. 12, Lambert Reb, p. 4-5).

Mr. Gerald Lee continued to be MGE's customer¹ at 8004 Overton until June 17, 2003, when Mr. Lee asked MGE to terminate the natural gas service being provided to 8004 Overton (Exh. 12,

¹ MGE's Tariff Section 1.04 and 4 CSR 240-13.015(1)(D) defines "customer" as "a person or legal entity responsible for payment for service except one denoted as a guarantor."

Lambert Reb., Sch. KL-2; Tr. 217). Mr. Lee's service was terminated by MGE on June 18, 2003 (Exh. 12, Lambert Reb., Sch. KL-3; Tr. 217), and a "Final Bill" was sent to Mr. Lee (Exh. 2, McKinzy Sur., Sch. 2).

MGE later initiated natural gas service in Mr. McKinzy's name at 8004 Overton on September 11, 2003, after reviewing the Staff's Recommendation in this case (Exh. 12, Lambert Reb., p. 5).

MGE has taken no further action to collect the amount still owed by Ms. Nance/McKinzy (Tr. 155) because of the pending dispute. Ms. Nance /McKinzy has made no payment toward this amount and Mr. McKinzy did not indicate that his wife has any plans to do so (Tr. 219-220).

DISCUSSION

The Commission heard this matter on April 14, 2004. At the hearing, the Commission provided the parties the opportunity to file a brief summarizing their positions.

A. Transfer of Ms. Nance/McKinzy Bill to 8004 Overton -

Because Mr. McKinzy is currently receiving gas service from MGE. MGE believes that the primary, and perhaps only, relevant issue in this matter is whether MGE can transfer to Mr. McKinzy's account the amounts owed by his wife (the former Tamara Nance) for service MGE provided to her at a prior address. MGE believes that it can transfer this amount to Mr. McKinzy's bill in accordance with Section 3.02 of MGE's approved tariffs. Section 3.02 reads as follows:

3.02 PRIOR INDEBTEDNESS OF CUSTOMER: Company shall not be required to commence supplying gas service if at the time of application, the applicant, or any member of applicant's household (who has received benefit from previous gas service), is indebted to Company for such gas service previously supplied at the same premises or any former premises until payment of such indebtedness shall have been made. This provision cannot be avoided by substituting an application for service at the same or at a new location signed by some other

member of the former customer's household or by any other person acting for or on behalf of such customer.

In order to expedite service to a customer moving from one location to another, Company may provide service at the new location before all bills and charges are paid for service at the prior location. *Company reserves the right to transfer any unpaid amount from prior service(s) to a current service account.* Such transferred bills are then subject to the provision of Sections 7.07 and 7.08 herein.

(Sheets R-19 and R-20 (emphasis added)). MGE believes that because Ms. Nance/McKinzy is clearly now a member of Mr. McKinzy's household (Exh. 2, McKinzy Sur., p. 3; Tr. 101), the italicized sentence provides MGE the ability to include this amount due on Mr. McKinzy's bill.

As acknowledged by the Company at the hearing, the import of this is somewhat limited. Because service to the subject residence and to Complainant has already commenced, MGE concedes that it would not be authorized to discontinue service pursuant to its tariff for non-payment of the transferred amount, because Complainant had not received the substantial benefit and use of the service supplied to Ms. Nance/McKinzy's prior residence. Rather, MGE would be limited to refusing commencement of service to any new residence the couple might move into together (Suggestions in Support of Motion for Summary Determination, p. 4, Footnote 1).

B. Matters Not At Issue -

MGE believes the following issues/allegations raised by Mr. McKinzy do not apply to the situation at hand:

1. Discontinuance of Service - Mr. McKinzy's service has never been discontinued.

A "discontinuance of service" is defined as a "cessation of service by Company not requested by Customer" (4 CSR 240-13.015(1)(I)); Tariff Section 1.10, Sheet R-7).

A "termination of service" differs from a discontinuation as a termination is defined as a "cessation of gas service requested by a customer" (Tariff Section 1.37, Sheet

R-10; 4 CSR 240-13.015(1)(W)). The termination of service at 8004 Overton in June of 2003 at the request of MGE's customer, Mr. Lee was not a discontinuation of service. Therefore, the notice requirements for discontinuation of service cited by Mr. McKinzy (i.e. ten days written notice and twenty-four (24) hour notice) are not applicable to the situation at hand.

2. **Reconnection of Gas Service** - Mr. McKinzy argues that MGE failed to reconnect his service in violation of Tariff Section 3.12 (Sheet No. R-30). Section 3.12 requires the Company to restore service promptly when a cause of "discontinuance of service" has been eliminated. As stated above, Mr. McKinzy did not suffer a discontinuance of service. Thus, Section 3.12 is not applicable to the situation at hand.
3. **Transfer Fee** - Mr. McKinzy also complains that MGE failed to "transfer" his service by refusing to "transfer" his old account that was terminated in January of 2002 to 8004 Overton. He also indicates that he should be charged a transfer fee rather than a connection fee for the initiation of service at 8004 Overton. The fact that this was not a "transfer" situation can be seen by a review of MGE tariffs. Tariff Section 3.03 describes a "transfer fee" as being applicable to when "natural gas service is not being initiated or reinstated but is continuing from a prior customer." The alternative to a "transfer fee" is a "connection fee," which is applicable "when natural gas service is being initiated for the first time or had been previously terminated *at the location*" (Id. (emphasis added)). Thus, a transfer fee, within the meaning of the tariffs, concerns a situation where the payment responsibility for

service provided at a single location can be transferred from one customer to another without the need for an MGE employee to visit the location to physically terminate and/or initiate service. Although he could have been charged the connection fee when gas service to 8004 Overton was commenced in September of 2003, Mr. McKinzy was ultimately charged \$5 (Tr. 188-189; Exh. 14 and 15).

C. Refusal to Commence Service -

As stated previously, MGE's initial refusal to commence service in Mr. McKinzy's name at 8004 Overton was due to the fact that Mr. McKinzy's wife owed MGE for a previous account. Section 3.02 of MGE's tariffs provides that MGE is not required to commence service if "the applicant, or any member of applicant's household" "is indebted to Company for such gas service previously supplied at the same premises or any former premises." This provision does not exist because MGE wants Mr. McKinzy to pay his wife's bill. It exists because MGE wants its bill paid and because Ms. Nance/McKinzy should pay her past bill before receiving the benefit and use of new service at 8004 Overton.

MGE initially refused to commence service to 8004 Overton as a result of the fact that Mr. McKinzy was married, he was not estranged from his wife and Mr. McKinzy initially reported that his wife would be occupying the residence with him. These facts were combined with the common expectation that a husband and wife typically live together in the same household.

Ms. Nance/McKinzy apparently had a similar expectation that she would be living at 8004 Overton. On March 25, 2003, Ms. Nance/McKinzy amended her driver's license records maintained by the Missouri Department of Revenue to reflect that her address was 8004 Overton, Raytown, MO (Exh. 11). A newspaper reporter from *The Call* by the name Tracy Allen also made this assumption

after interviewing Mr. McKinzy as she wrote that “[f]or about a month McKinzy and his new bride Tamara, . . . were forced to live without gas because of a prior gas service situation involving his new wife” (Exh. 12, Lambert Reb., Sch. KL-4; Tr. 102).

Mr. McKinzy was later given the opportunity to provide documents that would indicate that his wife did not live at 8004 Overton (Tr. 208-209). However, the records furnished by Mr. McKinzy did not address the relevant time period (April of 2003) and MGE was unable to identify Ms. Nance/McKinzy as a customer at any other address (Tr. 208-209, 213-214).

Section 3.02 further states that MGE is not required to commence service “until payment of such indebtedness shall have been made.” Therefore, MGE would have been within its rights to ask for payment of the entire outstanding balance prior to commencing service. Instead, in an effort to work with the customer, MGE requested at the time of application that one-half of the amount - \$224.98 - be paid before MGE commenced service (Exh. 12, Lambert Reb., p. 4). The McKinzy’s refused to do this.

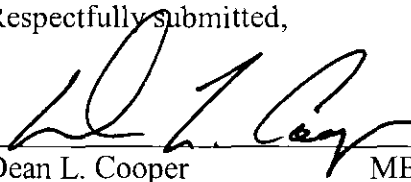
D. Conclusion

MGE’s customer service personnel receive a substantial number of calls on a monthly basis. In fact, in the month of March 2004, they received 165,000 telephone calls (Tr. 169). With this number of calls, MGE is not able to utilize private investigators to review every request for service. MGE must instead operate based upon the facts known to it. In this case, MGE believes that its actions were consistent with its tariffs based upon the facts known to MGE and the Commission should find in MGE’s favor.

WHEREFORE, Respondent Missouri Gas Energy respectfully requests that this Commission

find in MGE's favor based upon the evidence and the reasons stated herein.

Respectfully submitted,



Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-3847 facsimile
dcooper@brydonlaw.com

ATTORNEYS FOR MISSOURI GAS ENERGY

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 May 17th, 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

