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December 4, 2003

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

**FILED**

**DEC 04 2003**

RE: *Michael E. McKinzy, Sr. v. Missouri Gas Energy*  
Case No. GC-2003-0579

**Missouri Public  
Service Commission**

Dear Mr. Roberts:

Enclosed for filing on behalf of Missouri Gas Energy in the above-referenced matter are the original and eight (8) copies of each of the following documents:

- Motion for Summary Determination or, in the Alternative, for Dismissal of Complaint; and,
- Suggestions in Support of Motion for Summary Determination or, in the Alternative, for Dismissal of Complaint.

A copy of the foregoing documents has been hand-delivered or mailed this date to each party of record.

Thank you for your attention to this matter.

Sincerely,

By:

BRYDON, SWEARENGEN & ENGLAND P.C.

  
Dean L. Cooper

DLC/jar

Enclosures

cc: Michael E. McKinzy, Sr.  
Bob Berlin  
Doug Micheel

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED

DEC 04 2003

Missouri Public  
Service Commission

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

Case No. GC-2003-0579

**MOTION FOR SUMMARY DETERMINATION OR, IN THE ALTERNATIVE,  
FOR DISMISSAL OF COMPLAINT**

COMES NOW Missouri Gas Energy, a division of Southern Union Company ("MGE"), by and through its counsel, and, pursuant to 4 CSR 240-2.117, moves this Commission to enter its Order in the nature of Summary Determination in MGE's favor concerning all issues remaining for decision in the above-captioned matter. In the alternative, MGE moves for dismissal of this Complaint in its entirety. In support of this Motion, MGE respectfully states the following:

**Undisputed Facts**

1. On June 30, 2003, Complainant initiated this matter by filing a Complaint with this Commission against MGE based on a refusal to provide gas service.
2. On February 16, 2003, Complainant married Ms. Tamara Nance. *See* MGE's Answer to Complaint, filed July 22, 2003 ("Answer"), par. 5 (a); and, Staff Report of Investigation and Recommendation, filed September 8, 2003 ("Staff Report"), par. 4 (a).
3. On March 2, 2003, Complainant entered into a lease of the residence located at 8004 Overton Drive, Raytown, Missouri (sometimes referred to herein as the "subject residence"). The gas service at the time Complainant entered the lease was in the name of the property owners

and landlords, Mr. & Mrs. Gerald Lee. *See Answer, par. 5(b) and Staff Report, par. 4(b).*

4. On April 9, 2003, Complainant requested gas service with MGE to service his leased residence at 8004 Overton Drive, Raytown, Missouri. *See Answer, par. 5(c) and Staff Report, par. 4(c).*

5. On June 18, 2003, the gas service was shut off at 8004 Overton Drive as per the property owners'/landlords' request. Prior to Complainant's lease of the property, the gas service was being provided under the homeowner's name, Gerald Lee. Mr. Lee contacted MGE and requested the gas to be disconnected. *See Answer, par. 5(d) and Staff Report, par. 4(d).*

6. On June 18, 2003, Complainant requested gas service at 8004 Overton Drive initiated in his name. At that time, Complainant provided the social security number of his wife, Tamara Nance. Upon investigation, MGE informed Complainant that his gas account would not be commenced at the subject residence until Ms. Nance's unpaid bill of \$449.96 accrued for past service to her residence from 12/17/98 through 3/30/99 at 3928 Highland Avenue, Kansas City, Missouri was paid. *See Answer, par. 5(e) and Staff Report, par. 4(e).*

7. On June 18, 2003, MGE personnel later informed Complainant that gas service would be turned on at 8004 Overton Drive if ½ of the debt owed under Ms. Nance's name (\$224.98) was paid. *See Answer, par. 5(f) and Staff Report, par. 4(f).*

8. On June 18, 2003, Complainant disputed the billing stating that he was not married to Ms. Nance at the time the gas was used and that he had never lived at 3928 Highland Avenue. *See Answer, par. 5(g) and Staff Report, par. 4(g).*

9. Section 3.02 on Sheets Nos. R-19 and R-20 of MGE's General Terms and Conditions specifically states 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.

*Also See Answer, par. 6 and Staff Report, par. 6.*

10. Ms. Nance is not a lessee of the residence located at 8004 Overton Drive and Complainant states that his wife was not living at the subject premises at the time he leased those premises, nor was she living there at the time he filed the Complaint. *See Complaint; MGE's Response to Staff Report of Investigation and Recommendation; Satisfaction of Complaint, filed September 12, 2003, par. 2, and Attachment A to Staff Report, p. 2.*

11. MGE customer service personnel contacted Complainant on September 10, 2003, and made arrangements to commence gas service to the subject residence on September 11, 2003, which was accomplished as scheduled. In addition, MGE placed a notation on Complainant's account stating that the past debt of Ms. Nance will not be transferred to the account for gas service at the subject residence absent evidence that Ms. Nance is residing there. *See MGE's Response to Staff Report of Investigation and Recommendation; Satisfaction of Complaint, filed September 12, 2003, at par. 4.*

### **Motion**

After considering the above facts, on November 5, 2003, this Commission entered its Order Scheduling Prehearing Conference in which it indicated that this Complaint was not satisfied by the actions taken by MGE to provide gas service to the subject residence, because the possibility is left open that evidence may later reveal that Ms. Nance is in fact residing at the subject residence, and, under that scenario, MGE could attempt to transfer Ms. Nance's past debts to Complainant's gas account for the subject residence. *See* Order of November 5, p. 3. A prehearing conference was held on December 1, 2003, and a hearing in the matter has been proposed by the parties for February 4, 2004.

For the reasons set forth in more detail in the accompanying Suggestions In Support, the issues presented by the instant Complaint are appropriate for summary determination in MGE's favor. Summary disposition is warranted in this matter because even if, as the Commission posits, Ms. Nance were to move into the subject residence at some point in the future, (*and if* at that time her past debt with MGE had still not been paid) then the approved and lawful provisions of MGE's tariff will apply, and MGE would then be authorized to act pursuant to Tariff Section 3.02 (which also provides that "Company reserves the right to transfer any unpaid amount from prior service(s) to a current service account.") in regard to transferring the debt or, under the proper circumstances, refusing to commence service in the event of a new account. As this Commission is aware, a tariff approved by it "becomes Missouri law and has the same force and effect as a statute enacted by the legislature." *Bauer v. Southwestern Bell Telephone Co.*, 948 S.W.2d 568, 570 (Mo. App. E.D. 1997). Thus, MGE's approved tariff provisions will control MGE's action with regard to the debt collection if it is established that Ms. Nance has

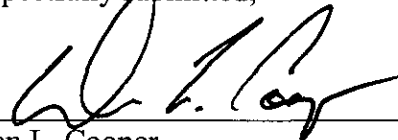
moved into the subject residence without having paid the past debt owed by her at her previous address.

In the alternative, the Commission should simply dismiss this matter on the grounds that there is no further relief which it is statutorily or constitutionally authorized to grant Complainant in response to his allegations. Under the present circumstances, in which Complainant is receiving gas service at the subject residence and his account is not burdened with Ms. Nance's past debt, the review and determination contemplated by the Commission in its Scheduling Order of November 5 amounts to a decision in the nature of a declaratory judgment, an action the Commission is not constitutionally permitted to undertake.

WHEREFORE, Respondent, Missouri Gas Energy, for all of the reasons set forth above and in its Suggestions In Support filed concurrently herewith, respectfully requests that this Commission enter an Order finding for MGE on all remaining issues, in that there are no genuine issues of material fact and MGE is entitled to determination as a matter of law; or, in the alternative, MGE requests that this Commission dismiss the Complaint herein on the basis that Complainant has received from MGE the relief he requests, and that in view thereof any further relief granted by this Commission would be in the nature of judicial declaratory relief and thus

unauthorized by the Constitution of the State of Missouri.

Respectfully submitted,



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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 December 4, 2003, 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

