

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

In the Matter of Missouri Gas Energy,	)	
a Division of Southern Union Company,	)	<b><u>Case No. GT-2012-0183</u></b>
Liability Tariff Filing.	)	Tariff No. YG-2012-0261

**STAFF'S RECOMMENDATION TO REJECT PROPOSED  
COMPLIANCE TARIFF**

**COMES NOW** the Staff of the Missouri Public Service Commission, by and through counsel, and for its *Recommendation to Reject Proposed Compliance Tariff*, states as follows:

1. This case was opened by order of the Commission on December 12, 2011, as a vehicle within which to process MGE's liability tariff (Tariff File No. YG-2012-0261), the revision of which the Commission ordered on November 9, 2011, in Case No. GC-2011-0100.

2. Also on December 12, 2011, the Commission directed Staff to file its recommendation concerning MGE's proposed revised liability tariff no later than December 29, 2011.

3. As is more fully explained in the attached memorandum, Staff has examined the proposed revised liability tariff and is of the opinion that it does not comply with the Commission's order and should therefore be REJECTED.

**WHEREFORE**, Staff prays that the Commission will accept its recommendation and reject MGE's proposed revised liability tariff, Tariff File No. YG-2012-0261, and order MGE to file a compliant revised liability tariff within five days; and grant such other and further relief as the Commission deems just in the circumstances.

Respectfully submitted,

s/ Kevin A. Thompson  
**KEVIN A. THOMPSON**  
Missouri Bar Number 36288  
Chief Staff Counsel

Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
573-751-6514 (Voice)  
573-526-6969 (Fax)  
kevin.thompson@psc.mo.gov

Attorney for the Staff of the Missouri Public  
Service Commission.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **29<sup>th</sup> day of December, 2011**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

**s/ Kevin A. Thompson**

## MEMORANDUM

TO: Missouri Public Service Commission Official Case File,  
Case No. GT-2012-0183, File No. YG-2012-0261, Missouri Gas Energy, a division of  
Southern Union Company

FROM: Tom Imhoff, Energy Unit - Tariffs/Rate Design  
Bob Leonberger, Energy Unit – Gas Safety/Engineering

/s/ Thomas M. Imhoff 12/29/11      /s/ Kevin Thompson 12/29/11  
Energy Unit/Date      Staff Counsel's Office/Date

SUBJECT: Staff Recommendation for Rejection of Missouri Gas Energy's Compliance Tariff Filing

DATE: December 29, 2011

On November 9, 2011, the Missouri Public Service Commission (Commission), issued its Report and Order (Order) in Case No. GC-2011-0100, directing Missouri Gas Energy (MGE or Company), a division of Southern Union Company, to file a new tariff sheet that modifies or removes those terms of the existing tariff ruled unjust and unreasonable in compliance with the Commission's Order.

On December 9, 2011, MGE filed P.S.C No. 1 Fourth Revised Sheet R-34 and First Revised Sheet R-34.1 in response to the Commission's Order.

On December 12, 2011, the Commission issued a NOTICE AND ORDER SETTING FOR RESPONSES TO TARIFF, AND OPENING NEW FILE (New Case) Order which opened up a new case, GT-2012-0183 and ordered the Commission Staff to issue a recommendation on the tariff sheets by December 29, 2011.

Staff has reviewed those tariff sheets and notes that they do not comply with the Commission's November 9th Order. On page 26 of the Order, the Commission states paragraph 1 on Sheet R-34 is unjust and unreasonable. The Commission's Order states on page 26 of the Order that the provision in paragraph 1 "goes beyond Company immunity from customer claims of negligence (Sheet R-34 Paragraph 5) and customer indemnity for persons on the premises (Sheet R-34 Paragraph 4). It makes the customer liable to third persons, like an all electric neighbor, for the Company's negligence." In addition, the Commission's Order states that the provision "is unjust and unreasonable because it makes the customer liable to third persons for the Company's conduct. To indemnify the Company from those losses is the purpose of commercial liability insurance, which is a cost of doing business. No public policy supports making an insurer out of a customer who is powerless - and is not paid - to control those risks." MGE recovers the cost of its liability insurance in base rates.

In its new Sheet R-34 filing, MGE deleted the words, "willful default or gross" in Paragraph 1, but left the remaining language in paragraph 1 that the Commission found to be unjust and unreasonable in File

No. GC-2011-0100. Consequently, Staff concludes that MGE did not file a tariff that is in compliance with the Commission's Order.

Accordingly, the Staff recommends that the Commission reject tariff sheets R-34 and R-34.1 filed on December 9, 2011, and Order MGE to file its tariff sheets in compliance with the Commission's Order of November 9, 2011, within 5 days of Staff's filed recommendation.

The reasons given above provide Staff's analysis and reasoning for recommending rejection of the tariff. Although not related to the recommendation for rejection, Staff has operational concerns about the applicability of the remaining tariff language. The concerns are discussed in Attachment 1 to this recommendation.

The Staff has verified that this company has filed its annual report and is not delinquent on any assessment. Staff is not aware of any other matter before the Commission that affects, or is affected by, this filing.

P.S.C. MO. No. 1

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Fourth Revised SHEET No. R-34 Canceling Third Revised SHEET No. R-34

First Revised SHEET No. R-34.1 Canceling Original SHEET No. R-34.1

In addition to the reasons identified for rejection of the tariff, Staff has additional concerns with the compliance tariff language. These items were generally identified in Staff's October 7, 2010 complaint, but because the issues were decided on summary determination, the issues were not fully vetted. Staff recognizes these concerns are beyond the scope of the Commission's Order of November 9, 2011, but believes the Commission should be aware of the concerns nonetheless. Staff will address these issues in the company's next rate case or other applicable future filings.

#### Staff's additional concerns with compliance tariff language

The tariff continues to state the Company is not liable for claims; yet, in some cases, damages, losses, or injuries may be directly related to failure of MGE facilities, MGE personnel or contractors, or caused by water/debris from the Company's piping being transferred to customer-owned piping. Second, the tariff states the Company is not liable for damage to customer property. Staff recommends it be clear that the Company has the responsibility to restore the customer's property after installation work. Third, MGE should be required to inform customers of the specific deficiencies it found during the inspections required by 4 CSR 240-40.030(10)(J) and 4 CSR 240-40.030(12)(S) that resulted in their service being discontinued. More detail about each of Staff's concerns is provided below.

#### Paragraph 2 of the Tariff Sheet

According to 4 CSR 240-40.030(12)(S)3., the company shall discontinue service if a customer's fuel line or gas utilization equipment are "determined to be unsafe." This is more restrictive than the tariff language, which states the Company can refuse or discontinue service if there is leakage, escape or loss of gas on the customers' premises. The tariff sheet does not contain language indicating the Company will inform the customer of the specific reason(s) why the service was refused or discontinued. Further in the paragraph, the tariff states that "Company will not be liable for any loss, damage or injury whatsoever caused by such leakage..." While Staff agrees the Company should not be responsible for damages for leakage that was identified during the required inspection and service was discontinued and the customer later resumes service, the Company should not be absolved for any loss, damage, or injury whatsoever.

#### Paragraph 3 of the Tariff Sheet

The tariff states the owner/customer is responsible for the repair and maintenance of piping, vents and gas utilization equipment on the downstream side of the gas meter "at all times." Normal maintenance and repair to piping and equipment downstream of the meter is the customer's responsibility. However, Staff has investigated problems with gas utilization equipment downstream of the meter that was the result of issues on a company's facilities upstream of the meter. Staff's opinion is the customer should not be responsible for problems or damages the Company may cause. Problems that may occur on the company facilities that could cause damage to, or problems on customer utilization equipment include over-pressure of customer piping or water/debris in customer piping and equipment from company-piping. As noted above in comments for paragraph 2, the tariff sheet does not contain language informing the customer of the specific reason(s) why the service was refused or discontinued due to deficiencies found during the required inspection it conducts in accordance with 4 CSR 240-40.030(10)(J) and 4 CSR 240-40.030(12)(S).

#### Paragraph 5 of the Tariff Sheet

As noted in Staff's comments for paragraphs 2 and 3 above, the tariff sheet does not contain language indicating the Company will inform the customer of the specific reason(s) why the service was refused

or discontinued due to deficiencies found during the required inspection it conducts, in accordance with 4 CSR 240-40.030(10)(J) and 4 CSR 240-40.030(12)(S) . Further, paragraph 5 states “...the Company shall not be liable for loss, damage or injury to persons or property, in any manner directly or indirectly connected with or arising out of the delivery of gas through piping or gas utilization equipment on the downstream side of the gas meter...” As noted in comments for paragraph 3, there are events that can occur on Company equipment upstream of the meter, or from water/debris in Company piping that has caused damage/loss/injury downstream of the meter and Staff believes MGE should be responsible for those damages in those specific events.

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Company's Liability Tariff Filing

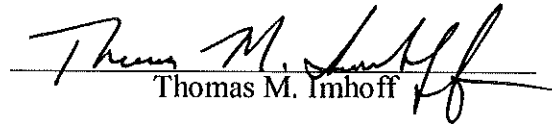
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Case No. GT-2012-0183

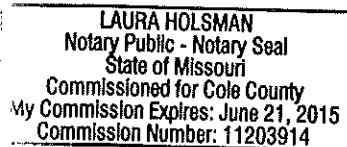
**AFFIDAVIT OF THOMAS M. IMHOFF**

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

Thomas M. Imhoff, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.

  
Thomas M. Imhoff

Subscribed and sworn to before me this 29<sup>th</sup> day of December, 2011.



  
Notary Public

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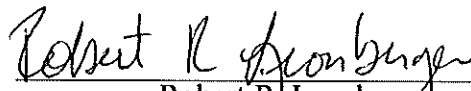
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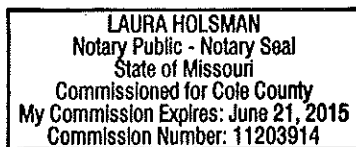
**AFFIDAVIT OF ROBERT R. LEONBERGER**

STATE OF MISSOURI     )  
                                  ) ss  
COUNTY OF COLE     )

Robert R. Leonberger, of lawful age, on oath states: that he participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was provided to him; that he has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true to the best of his knowledge and belief.

  
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Robert R. Leonberger

Subscribed and sworn to before me this 29<sup>th</sup> day of December, 2011.



  
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Notary Public