

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant)	
v.)	Case No. GT-2012-0183
)	Tariff No. YG-2012-0261
Missouri Gas Energy, a Division of)	
Southern Union Company,)	
)	
Respondent.)	

**PUBLIC COUNSEL'S
MOTION TO SUSPEND TARIFF**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Motion to Suspend Tariff Filing states:

1. On December 12, 2011, the Commission issued its Notice and Order Setting Date for Responses to Tariff, and Opening New File. The Order gives interested parties until December 29, 2011 to respond to Southern Union Company d/b/a Missouri Gas Energy's (MGE) proposed tariff sheets, Tariff No. YG-2012-0261 (*See Attachment*).
2. OPC urges the Commission to suspend the proposed tariff sheets and set this matter for an evidentiary hearing to give OPC an opportunity to submit evidence to the Commission regarding these important issues of public safety and liability.
3. MGE's tariff filing proposes changes to MGE's PSC MO No. 1, Fourth Revised Sheet No. R-34 that are not in the public interest because they do not protect consumers from the negligent actions of MGE's employees. For example, the second paragraph of MGE's proposed Tariff Sheet R-34 states that MGE will not be liable for

any loss, damage or injury whatsoever including claims of injury to persons or property damage caused by leaking gas on customer equipment *or* MGE-owned equipment. In other words, MGE's gross negligence could cause a leak on MGE's own service line or yard line, causing injury and damage, yet MGE's tariff purports to make MGE immune from "any loss, damage or injury whatsoever" caused by leaking gas on service lines and yard lines. Service lines and yard lines are company-owned equipment¹ and without understanding the specific facts involved in a particular leaking service line, giving MGE blanket immunity disregards situations where MGE and not the customer should be accountable for the loss, damage or injury. If it was the Commission's intention to only grant MGE immunity from liability created by customer-owned equipment, the proposed tariff goes well beyond just customer-owned equipment and would make MGE immune from liability even where MGE is responsible for maintaining the equipment.

4. The third paragraph in MGE's proposed Sheet No. R-34 is also contrary to the public interest because it grants MGE immunity from warning customers of potential hazards that exist on the downstream side of the meter. A court of law is better able to assess the facts surrounding any incident involving loss, damage or injury to determine whether MGE had a duty to warn its customer of a hazard or potential hazard.

5. The first paragraph on proposed Sheet No. R-34.1 is another egregious anti-consumer provision in the proposed tariff because it would grant MGE immunity from loss, damage or injury even where MGE's negligence causes the loss, damage or injury. The Commission's primary responsibility is to protect the public interest, and this

1. See 4 CSR 240-40.030(1)(B)(28); 4 CSR 240-40.030(1)(B)(36); and MGE's Tariff Sheet No. R-32.

paragraph does nothing to protect consumers, and could only be used by MGE to shield itself from liability in situations where the loss, damage or injury was caused by MGE.

6. The best way to address the safety issues raised by the tariff filing is to suspend the proposed tariff filing and set this matter for an evidentiary hearing. The issues raised by this tariff filing are not only issues of economic concern, but more importantly, they involve issues of public safety, which increases the scrutiny that the Commission must apply to its decision to approve, reject or suspend the proposed tariff change. Summarily dismissing these issues without allowing them to be fully vetted before the Commission in an evidentiary hearing is against the public interest. Lessening MGE's immunity will only serve to lessen MGE's focus on safety and in alerting customers to potential hazards.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission suspend MGE's proposed Tariff File No. YG-2012-0261 and set this matter for an evidentiary hearing.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 29th day of December 2011:

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/s/ Marc Poston

P.S.C. MO. No. 1
Canceling P.S.C. MO. No. 1

Fifth Revised
Fourth Revised

SHEET No. R-34
SHEET No. R-34

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

3.19 COMPANY LIABILITY: Customer shall save Company harmless from all claims for trespass, injury to persons, or damage to lawns, trees, shrubs, buildings or other property that may be caused by reason of the installation, operation, or replacement of the service line, yard line and other necessary appurtenances to serve customer unless it shall affirmatively appear that the injury to persons or damage to property complained of has been caused by negligence on the part of Company or its accredited personnel.

Company may refuse or discontinue service if an inspection or test reveals leakage, escape or loss of gas on customer's premises. Provided that the Company has complied with 4 CSR 240-40.030(10)(J), 4 CSR 240-40.030(12)(S) and 4 CSR 240-40.030(14)(B), Company will not be liable for any loss, damage or injury whatsoever caused by such leakage, escape or loss of gas from customer's service line, yard line, ancillary lines, house piping, appliances or other equipment.

The Company does not own, nor is it responsible for the repair or maintenance of any piping, vents, or gas utilization equipment on the downstream side of the gas meter, its related appurtenances and piping. All piping, vents or gas utilization equipment furnished by the owner/customer of the premises being served shall be suitable for the purposes hereof and the owner/customer of the premises shall be responsible for the repair and maintenance of such at all times in accordance with accepted practice and in conformity with requirements of public health and safety, as set forth by the properly constituted authorities and by the Company. As with any fixture or appurtenance within premises, piping, vents or gas utilization equipment can fail, malfunction or fall into disrepair at any time and as such the owner/customer of the premises being served shall be aware of this fact, and Company shall owe customer no duty to warn of potential hazards that may exist with such facilities on the downstream side of the gas meter, its related appurtenances and piping, provided that the Company has complied with 4 CSR 240-40.030(10)(J), 4 CSR 240-40.030(12)(S) and 4 CSR 240-40.030(14)(B).

The owner/customer shall be responsible at all times for the safekeeping of all Company property installed on the premises being served, and to that end shall give no one, except the Company's authorized employees, contractors or agents, access to such property. The owner/customer of the premises being served shall be liable for and shall indemnify, hold harmless and defend the Company for the cost of repairs for damage done to Company's property due to negligence or misuse of it by the owner/customer or persons on the premises affected thereby.

DATE OF ISSUE December 9, 2011
month day year

DATE EFFECTIVE January 8, 2012
month day year

ISSUED BY Michael R. Noack

Director, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

Attachment

P.S.C. MO. No. 1
Canceling P.S.C. MO. No. 1

First Revised
Original

SHEET No. R-34.1
SHEET No. R-34.1

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

Provided that the Company has complied with 4 CSR 240-40.030(10)(J), 4 CSR 240-40.030(12)(S) and 4 CSR 240-40.030(14)(B), 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, which shall include but not be limited to any and all such loss, damage or injury involving piping, vents or gas utilization equipment not owned by the Company downstream of the gas meter, whether inspected or not by the Company, or occasioned by interruption, failure to commence delivery, or failure of service or delay in commencing service due to accident to or breakdown of plant, lines, or equipment, strike, riot, act of God, order of any court or judge granted in any bonafide adverse legal proceedings or action or any order of any commission or tribunal having jurisdiction; or, without limitation by the preceding enumeration, any other act or things due to causes beyond Company's control, or attributable to the negligence of the Company, its employees, contractors or agents, provided that the Company has complied with 4 CSR 240-40.030(10)(J), 4 CSR 240-40.030(12)(S) and 4 CSR 240-40.030(14)(B).

- 3.20 Company will waive all connection or reconnection charges necessitated because gas service was disconnected due to property damage incurred because of the May 22, 2011 tornado. If so requested, customers should be prepared to provide proof of damage sustained during the tornado. This waiver authority shall expire on May 22, 2012.

DATE OF ISSUE December 9 2011
month day year

DATE EFFECTIVE January 8 2012
month day year

ISSUED BY Michael R. Noack

Director, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

Attachment