

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

James Dudley,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2004-0216
)	
Missouri Gas Energy,)	
)	
Respondent.)	

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, states as follows to the Missouri Public Service Commission (“Commission”):

DISCUSSION

MGE will address separately on the following pages the two issues identified at the hearing. That is, the issue related to the discontinuance of service at 4231 Tracy and the issue of Mr. Dudley’s (or “Complainant”) responsibility for the amounts related to service provided to the mystery tenant at 4024 Prospect.

- A) Was the discontinuation of natural gas service at 4231 Tracy (Mr. Dudley’s residence) proper and in accordance with Commission rules and the Company’s tariffs?**

Complainant alleges that a disconnection of the natural gas service at 4231 Tracy in Kansas City, Missouri, in July of 2002, was improper. The parties dispute the reason for the July, 2002 discontinuance. Mr. Dudley believes that the discontinuance results from his non-payment of

amounts transferred to his bill from 4024 Prospect (rental property owned at that time by Mr. Dudley) after a notice of disconnection was issued for 4231 Tracy. MGE asserts that the overwhelming evidence indicates that the discontinuance was the result of Mr. Dudley's non-payment of undisputed amounts owed by Mr. Dudley for natural gas service provided to 4231 Tracy.

In assessing the evidence and the actions of the parties, the Commission should remember that payment history of the 4231 Tracy account was extremely spotty. Mr. Dudley's service at this address was previously discontinued for non-payment on July 5, 2001 (Exh. 3, Bolden Reb., p. 6). It was again discontinued for non-payment in February of 2003. (Tr. 98; Exh. 5, Dudley Sur., Sch. 5).

Mr. Dudley would have known that his account at 4231 Tracy was not paid in full in July of 2002. From December 10, 2001 through July, 2002, this account was only paid in full twice (as of January 2, 2002 and as of February 27, 2002). (Exh. 5, Dudley Sur., Sch. 13). In fact, from May 7, 2002 through July 24, 2002, Mr. Dudley made no payments toward the amount owed for service provided to 4231 Tracy. (Exh. 3, Bolden Sur., pp. 3-5).

Schedule 13 to Mr. Dudley's Surrebuttal Testimony further reveals that as of the June 10, 2002 bill, Mr. Dudley owed MGE \$305.54 for service provided to 4231 Tracy. (*Id.*). That amount is again reflected on the Mr. Dudley's bill dated July 10, 2002, as the "previous balance." (Exh. 5, Dudley Sur., Sch. 1).

Pursuant to Company procedures, and in accordance with approved tariffs, MGE notified Mr. Dudley several times of an impending discontinuation of his gas service at 4231 Tracy between May 9, 2002 and July 16, 2002. (Exh. 3, Bolden Reb., p.3). Schedules SB-1-1 through SB-4-2 to the Rebuttal Testimony of Ms. Shirley Bolden reflect that the following notices were provided to Mr.

Dudley during this period of time:

- May 5, 2002 - Disconnect notice mailed (Exh. 3, Bolden Reb., SB-1-1);
- May 15, 2002 - 96 hour notice for shut off mailed containing a past due amount of \$202.53 (Exh. 3, Bolden Reb., SB-1-3);
- May 16, 2002 - Left a message at 4231 Tracy concerning shut off (early intervention). Past due amount of \$202.53 (Exh. 3, Bolden Reb., SB-1-5 and SB-1-6);
- June 10, 2002 - Disconnect notice mailed (Exh. 3, Bolden Reb., SB-1-7);
- June 14, 2002 - 96 hour notice for shut off mailed containing a past due amount of \$266.95 (Exh. 3, Bolden Reb., SB-1-9);
- June 15, 2002 - Contacted person at residence concerning shut off (early intervention). Past due amount of \$266.95 (Exh. 3, Bolden Reb., SB-1-11 and SB-1-12);
- July 10, 2002 - Disconnect notice mailed (Exh. 3, Bolden Reb., SB-2-1);
- July 16, 2002 - 96 hour notice for shut off mailed containing a past due amount of \$306.16 (Exh. 3, Bolden Reb., SB-3-1);
- July 17, 2002 - Left message at residence concerning shut off (early intervention). Past due amount of \$306.16 (Exh. 3, Bolden Reb., SB-4-1 and SB-4-2); and,
- July 24, 2002 - Service at 4231 Tracy shut off at meter (Exh. 3, Bolden Reb., SB-5-1).

As can be seen from the evidence, these notices were based upon Mr. Dudley's failure to pay for natural gas provided in Mr. Dudley's name at 4231 Tracy (his residence). Ultimately, service

was discontinued at 4231 Tracy because of Mr. Dudley's failure to pay amounts owed at that time for service provided at 4231 Tracy.

Mr. Dudley claims to have never seen or heard of any of these contacts (to include, apparently, his monthly bills for service). (Tr. 61-64). However, this is not too surprising. Mr. Dudley was found to have provided to the Commission one of the bills that he claimed never to have received. (Tr. 96). Then, in explanation he indicated that he often did not bother to open mail from MGE. (Tr. 97-98).

Discontinuance of service under the circumstances evident in this case is proper. MGE Tariff Section 8.01 contemplates that a customer may dispute "all or any part" of a bill (Exh. 4, Dudley Dir., Sch. 4). Commission Rule 4 CSR 240-13.050(1)(A) states in part that service may be discontinued for "non-payment of an undisputed delinquent charge."

Commission Rule 4 CSR 240-13.045(5) provides that "if a customer disputes a charge, s/he shall pay to the utility an amount equal to that part of the charge not in dispute." MGE Tariff Section 8.02 similarly stated that "if a customer makes a complaint on a disputed charge, he shall pay to the Company an amount equal to that part of the charge not in dispute." (Exh. 4, Dudley Dir., Sch. 4).

Mr. Dudley had amounts in arrears for several months at 4231 Tracy. He never made an attempt to pay these amounts or to dispute the amounts. Even after he received his July 2002 bill for 4231 Tracy that included the amounts from 4024 Prospect, he did not dispute the amounts associated with 4231 Tracy. Mr. Dudley stated in his letter to this Commission dated "7/18/02" that he was writing to the Commission "in regard to a gas bill for 2,204.59" that he says did not belong to him. (Exh. 7). \$2,204.59 is the amount reflected on Mr. Dudley's bill that was transferred from 4024 Prospect. (Exh. 5, Dudley Sur., Sch. 1). It was separate and apart from the previous balance

of \$305.54 for 4231 Tracy.

The rules cited by Mr. Dudley that prohibit discontinuance of service for non-payment of amounts in dispute serve a good purpose. However, those same rules recognize that they cannot be used as a shield against amounts clearly owed by the customer. Further, according to Staff witness Russo, there must be at least some “merit” to a complaint for it to qualify as a “dispute.” (Tr. 199). In fact, the Commission rules provide that “customers presenting frivolous disputes shall have no right to continued service.” Commission Rule 4 CSR 240-13.045(4).

In this case, there was never even an attempt to dispute the amounts associated with service provided to 4231 Tracy. Commission Rule 4 CSR 240-13.050(1) provides that “Service may be discontinued for . . . (A) Nonpayment of an undisputed delinquent charge.”

As to these undisputed amounts, MGE was free to use the collection methods provided for by Commission rules and MGE tariffs. MGE’s discontinuance of service to 4231 Tracy in July of 2002 was in accordance with these rules and tariffs.

B) May MGE transfer amounts related to natural gas service provided to 4024 Prospect (rental property owned by Mr. Dudley) to Mr. Dudley’s bill?

MGE provided natural gas service to 4024 Prospect in the name of a “Sarah Chappelow” from on or about September 26, 2000 through April of 2001. (Exh. 3, Bolden Reb., p. 5; Exh. 1, Russo Dir., p. 5). In April of 2001, it was reported to MGE that Sarah Chappelow never resided at 4024 Prospect. (Exh. 3, Bolden Reb., p. 6). MGE later was provided a police report indicating that Sarah Chappelow had items stolen from her car on September 15, 2000, to include her driver’s license and social security card. (*Id.*). A balance of \$2,099.96 remained outstanding for the period of time service was provided in the name of Sarah Chappelow. (*Id.* at p. 7).

MGE later provided service in Mr. Dudley's name at 4024 Prospect from August 3, 2001 through April 17, 2002. (*Id.* at p. 6-7). As of April 17, 2002, Mr. Dudley owed MGE \$104.63 for natural gas service provided in his name at 4024 Prospect. (*Id.* at p. 7-8). On April 24, 2002, MGE transferred the amount of \$2,099.96 to Mr. Dudley's account for 4024 Prospect. (*Id.* at p. 7). On June 25, 2002, MGE transferred the amount of \$2,204.59 (the \$2,099.96 incurred initially in the name of Sarah Chappelow, plus the \$104.63 incurred in Mr. Dudley's name at 4024 Prospect) from Mr. Dudley's 4024 Prospect account to his 4231 Tracy account. (*Id.*).

MGE relied upon Section 3.02 of MGE's tariff which provides in part that "Company reserves the right to transfer any unpaid amount from prior service(s) to a current service account." The Missouri Court of Appeals has stated that the "general principle is that, even though there has been no specific request for goods or services, where goods and services are knowingly accepted by the party receiving the benefit, there is an obligation to pay the reasonable value of such services and a promise to pay such reasonable value is inferred by either the conduct of the parties or by law under circumstances which would justify the belief that the party furnishing such service expected payment." *Laclede Gas Company v. Hampton Speedway Company, et al.*, 520 S.W.2d 625, 630 (Mo. App. 1975). In *Laclede*, the Court went on to state that in regard to the provision of natural gas service "we believe and hold that allegations are sufficient to state a claim in an implied contract and that it may be reasonably inferred that *by receiving the benefit and use* of gas and gas service, a promise to pay the lawful and reasonable charges of such service is implied." (*Id.*) (emphasis added).

Mr. Dudley had the benefit and use of the service provided to his real estate located at 4024 Prospect during the cold winter of 2000-2001 in that further deterioration of the residence was prevented. The winter of 2000-2001 was extremely cold. (Exh. 3, Bolden Reb., p. 8). The property

at 4024 was in deteriorating condition. (*Id.*). The fact that the property was supplied heat during this cold winter prevented further deterioration of the property. (*Id.*). This is something that would be of special importance to Mr. Dudley who represents that his primary occupation is “real estate,” or the care and upkeep of real estate. (*Id.*).

Additionally, Mr. Dudley has been unable or unwilling to provide any evidence that would help identify any other person that may have had the use and benefit of this service. Mr. Dudley does not allege that Sarah Chappelow ever rented his property. (Tr. 65). Mr. Dudley reports instead that he leased the property to someone named “Diane.” (*Id.*). However, Mr. Dudley does not remember Diane’s last name. (*Id.*). This testimony at hearing is a change even from Mr. Dudley’s Direct Testimony in which he states “Sarah Chappelow had a contract with Respondent.” (Exh. 4, Dudley Dir., p. 2 (para. 6)).

Mr. Dudley also now does not remember whether or not he had a written lease with “Diane.” (*Id.* at p. 65-67). However, he does state that if he did have a written lease with “Diane,” it was either stolen from his car, or taken out of his car by persons who were repairing a tire on his car. (*Id.*).

This complete inability of the owner of the property to provide any meaningful information to identify a tenant, leads one to believe that either Mr. Dudley does not want to identify the tenant or that there never was a tenant. In either case, the only person that can be identified as having benefitted from the service provided to 4024 Prospect is the landlord, Mr. Dudley.

Other support for a determination that Mr. Dudley benefitted from the utility services provided to 4024 Prospect in Sarah Chappelow’s name can be found from the fact that Mr. Dudley paid a Kansas City Power & Light Company bill for 4024 Prospect during the same time natural gas

service was being provided to 4024 Prospect in the name of Sarah Chappelow. (Exh. 3, Bolden Reb., p. 8-9).

Based on these facts, Mr. Dudley should be responsible for the service provided in the name of Sarah Chappelow and the transfer of the \$2,099.96 associated with this service is appropriate.

Commencement of Future Service

Regardless of the outcome of the “Chappelow” amounts, the \$104.63 associated with service provided to 4024 Prospect in Mr. Dudley’s name is clearly appropriate for transfer to Mr. Dudley’s bill and should be paid, along with all other outstanding amounts before MGE is required to provide service to Mr. Dudley. Setting aside the “Chappelow” amounts, Mr. Dudley continues to owe MGE the following undisputed amounts related to the identified properties:

4231 Tracy	\$116.97
4024 Prospect	\$104.63
3312 Moulton	\$324.15
<u>3514 Bales</u>	<u>\$250.20</u>
Total	\$795.95

(Exh. 2, Russo Reb., p. 6).

Section 3.02 of MGE’s tariffs states, in part:

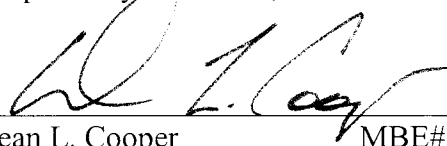
3.02 PRIOR INDEBTEDNESS OF CUSTOMER: *Company shall not be required to commence supplying gas service if at the time of application, the applicant, or any member of applicant’s household (who has received benefit from previous gas service), is indebted to Company for such gas service previously supplied 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. 1, Russo Cor. Dir., Sch. 2-2).

Thus, whether or not Mr. Dudley is found to be responsible for the “Chappelow” amounts, the above charges must be paid by Mr. Dudley before MGE is required to again commence providing service to him.

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 July 16th, 2004, to the following:

Bob Berlin
Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101

Doug Micheel
Office of the Public Counsel
Governor Office Building
Jefferson City, MO 65101

James Dudley
4247 Agnes
Kansas City, MO 64130

