

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. GC-2009-_____
)	
Missouri Gas Energy, a division of Southern Union Company,)	
)	
)	
Respondent.)	

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, pursuant to sections 386.390, 386.570 and 393.140(5) RSMo 2000 and 4 CSR 240-2.070, and for its Complaint states as follows:

Introduction and Summary

This complaint emerges from acts and omissions by MGE in its last rate case. In violation of the Commission's rules, MGE filed a proposed tariff sheet with changes that were not addressed by MGE's witnesses in their testimony. The tariff sheet, R-34, was the last page of 22 pages of tariff changes proposed by MGE. MGE's witnesses summarized and explained the tariff changes on the first 21 of the proposed tariff sheets but MGE did mention the changes to R-34, the last page, in any testimony. Because MGE did not tell the Staff about changes to R-34, the Staff was unaware of the changes and did not bring the changes to the Commission's attention. Thereafter, without deliberating upon or discussing MGE's changes to sheet R-34, this Commission approved R-34 along with other tariff sheets that the Commission did specifically

and knowingly approve. Staff learned of the changes to MGE's liability tariff, sheet R-34, after it was already approved. Staff alleges the liability tariff sheet does not comply with the Commission's gas safety rules and is in conflict with the law and public policy. Staff and MGE have attempted to resolve their dispute without success. Because of the important policy questions involved in changing the nature of MGE's liability to its customers, and the fact that MGE did not inform the Staff or Commission of its liability tariff changes so that the Commission could deliberate upon MGE's proposed changes, the Staff is compelled to bring this matter before the Commission for determination.

Violation of Commission Rules

1. Missouri Gas Energy (MGE) is a division of Southern Union Company located at 3420 Broadway, Kansas City, MO 64111.
2. MGE is a gas corporation as defined by section 386.020(18) that provides natural gas service to customers in Missouri under tariffs approved by the Missouri Public Service Commission.
3. MGE is a public utility as defined by section 386.020(42) and is subject to the jurisdiction of the Commission under sections 386.250 and 393.140.
4. On May 1, 2006, MGE filed tariffs with the Commission seeking an increase in rates charged to natural gas customers. The case was designated GR-2006-0422. MGE's revised tariffs were suspended until March 30, 2007.
5. MGE's revised tariff sheets included Sheet No. R-34 proposing to revise the general terms and conditions for gas service by changing the language regarding MGE's liability to customers. See Exhibit A, the old tariff sheet, and Exhibit B, the new tariff sheet.

6. MGE failed to provide a summary of the reasons for the proposed change in the tariff language in R-34 during the entire time the rate case was pending from May 2006 to April 2007, in spite of numerous meetings, discussions and negotiations with the Staff.

7. On March 22, 2007, the Commission issued its Report and Order deciding contested issues in the rate case. On March 28, 2007, MGE filed substitute tariff sheets to comply with the Commission's Report and Order. MGE included the same Sheet R-34 intended to change tariff language regarding liability. Again, MGE did not identify and summarize changes in its liability tariff.

8. MGE's proposed Sheet R-34 became effective by Commission Order on April 3, 2007.

9. Section 386.390.1 provides that "Complaint may be made . . . in writing, setting forth any act or thing done or omitted to be done by any person . . . in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission . . ."

10. MGE failed to comply with Rule 4 CSR 240-3.030(3)(B)(7) by failing to provide a summary of the reasons for the proposed tariff language changes in Sheet R-34. MGE did not file testimony to support the tariff language change, therefore, Staff did not address the tariff language in Staff testimony and the issue was not identified as requiring Commission determination. MGE was aware that this specific tariff provision, which limits MGE's liability to its customers, involved an important public policy question and should have been addressed in the testimony of MGE's policy witnesses.

11. MGE violated Rule 4 CSR 240-3.260 by failing to provide a summary of the effect of the tariff change on MGE's customers.

12. MGE's Sheet R-34 does not comply with Commission Rules 4 CSR 240-

40.030(10)(J) and 40.030(12)(S) because the new tariff language contains language inconsistent with the Commission's rules in that the tariff: 1. Claims to immunize MGE from all liability even when MGE fails to comply with Commission rules and applicable codes and standards; 2. Eliminates MGE's duty to test for leakage in a competent way, ensure compliance with industry standards and local codes, and to warn of potential hazards in spite of rule 40.020(10)(J) requiring MGE to visually inspect the customers exposed piping; 3. Is not consistent with MGE's duty to test for leakage in a competent way, to ensure compliance with applicable codes and standards, and discontinue service to a customer when equipment is unsafe under 40.030(12)(S); 4. Claims to limit MGE's liability even when MGE is negligent in the operation of its system, e.g. MGE would not be liable for over-pressuring its system causing damage to a customer's home and appliances; 5. Proposes to limit MGE's liability even when MGE has inspected the customer's equipment; and 6. Purports to limit MGE's liability even for gross negligence or wanton or willful conduct.

13. Under section 393.140(5),

[w]hensoever the Commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or **regulations** of any such persons or corporations are **unjust, unreasonable**, unjustly discriminatory or unduly preferential or **in any wise in violation of any provision of law**, the **Commission shall determine** and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the **just and reasonable acts and regulations to be done and observed....** (emphasis added).

14. MGE's tariff revisions in R-34 are unjust, unreasonable, unlawful, and are void and unenforceable as a matter of public policy. MGE's tariff revisions resulted in a significant policy change with regard to limiting the company's liability and yet MGE failed to properly bring the changes to the Staff's and Commission's attention so that the Commission could

deliberate on and consider the important policy changes.

15. Section 386.570 provides that MGE is subject to penalties for its violations of the law and the Commission's rules. MGE's violations are continuing and each day's violation of the law and rules is a separate and distinct offense.

WHEREFORE, Staff prays that the Commission will give notice to Respondent as required by law and, after hearing, find that Respondent has violated Commission Rules 4 CSR 240-3.030(3)(B)(7); 3.260(5); 40.030(10)(J); and 40.030(12)(S) and find that MGE's tariff R-34 is unjust, unreasonable, violates public policy and the law, and pursuant to section 393.140(5) order MGE to file revised tariff sheets in compliance with the Commission's rules and the law. Staff also requests the Commission to find that each day that such violations existed are separate and distinct offenses and authorize the General Counsel to seek penalties for MGE's malfeasance.

Respectfully Submitted,

/s/ Steven C. Reed

Steven C. Reed #40616
Lera Shemwell #43792
Bob Berlin #51709

Attorneys for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-3015 (telephone)
573-751-9285 (facsimile)
steven.reed@psc.mo.gov

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

Third Revised
Second 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 willful default or 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. 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.

3.20 Company will waive all connection or reconnection charges necessitated because gas service was disconnected due to property damage incurred as a result of the May 2003 tornadoes. If so requested, customers should be prepared to provide proof of damage sustained during the tornadoes. This waiver authority shall expire on December 1, 2003.

DATE OF ISSUE May 14, 2003
month day year

DATE EFFECTIVE June 14, 2003
month day year

ISSUED BY Robert J. Hack Vice President, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

Cancelled
April 3, 2007
Missouri Public
Service Commission

Exhibit A

Filed
Missouri Public
Service Commission

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

Fourth Revised
Third Revised

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

Deleted: Third
Deleted: Second

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 willful default or gross negligence on the part of Company or its accredited personnel.

Formatted: Font: 9 pt

Company may refuse or discontinue service if an inspection or test reveals leakage, escape or loss of gas on customer's premises. 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.

Deleted: Company may

The Company does not own, nor is it responsible for the repair or maintenance of any piping, vents, or gas utilization equipment on the delivery 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 delivery side of the gas meter, its related appurtenances and piping.

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.

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 delivery side of the meter, which shall include but not be limited to any and all such loss, damage or injury involving piping, vents or gas utilization equipment, 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.

Formatted: Indent: Hanging: 0"

Deleted: 3.20 . Company will waive all connection or reconnection charges necessitated because gas service was disconnected due to property damage incurred as a result of the May 2003 tornadoes. If so requested, customers should be prepared to provide proof of damage sustained during the tornadoes. This waiver authority shall expire on December 1, 2003. ¶

DATE OF ISSUE May 2 2006 DATE EFFECTIVE June 2 2006
month day year month day year

ISSUED BY Michael R. Noack Director, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

Deleted: ¶

Deleted: 14

Deleted: 3

Deleted: 14

Deleted: 3

Deleted: Robert J. Hack

Deleted: Vice President

Exhibit B