

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

Ronald Kitchen,	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2006-0066
	)	
Missouri Gas Energy,	)	
A Division of Southern Union Company,	)	
	)	
Respondent.	)	

**MGE’S RESPONSE TO STAFF MEMORANDUM  
AND WAIVER OF RIGHT TO HEARING**

**Comes now** Missouri Gas Energy (MGE), a division of Southern Union Company, by and through counsel, and pursuant to the Missouri Public Service Commission’s (Commission) order herein dated September12, 2005, respectfully submits the following as its response to the Commission Staff’s Memorandum:

**BACKGROUND**

1. On September 12, 2005, the Commission issued its Order Directing Filing of Staff Investigation and Report and Order Directing Complainant to Respond to Motion to Dismiss (Order Directing Filing). In response to the Order Directing Filing, the Commission Staff (Staff) filed its Memorandum on October 7, 2005. The Order Directing Filing further provided that the parties might file, no later than October 24, 2005, a response to the Commission Staff’s Memorandum.

**RESPONSE TO STAFF MEMORANDUM**

2. In its Memorandum, the Staff identifies several “essential points” or facts “where there appears to be agreement between the Complainant and MGE.” MGE is in agreement with

those facts and would further suggest that there is also no disagreement as to the following facts:

- Complainant does not reside at the 10602 E. 20<sup>th</sup> Street address and did not reside at that address during the period relevant to this complaint;
- Jennifer Kitchen was the party-of-record at the 416 N Emery address. When she vacated that address on April 20, 1998, she owed MGE \$241.71;
- The Complainant never resided at 416 N Emery, and never cosigned for that service;
- After leaving the 416 N Emery address, Jennifer Kitchen eventually resided at 10602 E. 20th St;
- The Complainant has been the named customer and, therefore, the person responsible for the bill for the 10602 E. 20th Street address since July 31, 1996;
- After a period of the bill being delinquent at 10602 E. 20th Street, service was disconnected on September 15, 2003;
- After disconnection, and after the complainant's daughter requested that service be turned back on, as a condition of reestablishing service at the 10602 E. 20<sup>th</sup> St. address, MGE requested payment of the \$241.71 obligation incurred by his daughter at the 416 N Emery address, plus the \$389.36 arrearage for usage at the 10602 E. 20th St. address; and,
- Although the Complainant protested the transfer of his daughter's debt to his account, he did eventually pay the obligation. Records indicate that the Complainant filed an informal complaint with this Commission and received written response back from Commission personnel on September 25, 2003, informing him that his daughter's debt needed to be paid prior to reestablishing service. On December 22, 2003, the Complainant entered into

a payment agreement that eventually resolved both the arrearage for the 10602 E. 20th St. address and the debt that his daughter had incurred at the 416 N Emery address.

3. The Staff Memorandum concludes that MGE was not entitled to collect from Complainant the \$241.71 obligation incurred by his daughter Jennifer Kitchen at her prior residence before commencing service in Complainant's name at 10602 E. 20<sup>th</sup> Street. Staff's conclusion is based upon its interpretation of the then applicable Section 3.02 and Section 3.07 of MGE's tariff. This is contrary to the response that the Commission Staff provided to Mr. Kitchen by its letter dated September 25, 2003, wherein the Staff found that "it does not appear that MGE violated their filed and approved tariff." (Attachment to Mr. Kitchen's Complaint). The Commission further concluded its September 25, 2003 letter to Mr. Kitchen by pointing out that:

. . . it appears that Jennifer has been residing at the location; however, she did not place the service in her name. If you do not want the debt transferred to the account in your name, you may want to consider having Jennifer place the service in her name. By placing the service in Jennifer's name she will be solely responsible for payment.

4. Section 3.02 stated in relevant part that MGE was not 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." The section further stated that "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."

5. Section 3.07 stated in relevant part that the Company could not discontinue service for “the failure to pay the bill of another customer unless the customer whose service is sought to be discontinued received substantial benefit and use of the service.”

6. Staff reasoned that because this situation involved a reconnection after discontinuance for non-payment, that the dispute did not arise “at the time of application.” Memorandum, p. 4. The Staff therefore found that the Company’s rules on disconnection were “more applicable to this situation.” Memorandum, p. 5.

7. The question in this matter certainly does not concern the discontinuance of service. It is undisputed that the service at 10602 E. 20<sup>th</sup> Street was discontinued on September 15, 2003, for non-payment of bills related to service provided to that address. The question is what amounts could be collected before service was again commenced at that address.

8. “Time of application” is not defined by the tariff. However, the remainder of the tariff indicates that this is a situation that Section 3.02 was meant to address. Jennifer Kitchen was living at 10602 E. 20<sup>th</sup> Street and was using Complainant’s name on the bill to avoid payment of an earlier bill, in spite of the fact that Mr. Kitchen did not live at that address. Section 3.02 states that it cannot be avoided “by any other person acting for or on behalf of” the indebted customer. Section 3.02 further addresses the transfer of these types of amounts when a customer has moved “from one location to another.” Such movement does not comport with Staff’s treatment of the “time of application” language.

9. Furthermore, MGE’s tariff’s describes a “discontinuance of service,” such as that experienced at 10602 E. 20<sup>th</sup> Street, to be a “cessation of service by Company not requested by customer.” Section 1.10, Sheet R-7. If service has ceased, it is reasonable that it must be thereafter “commenced” in order to start again. Section 3.02’s reference to the time of

application refers to the process a customer must complete to commence service after it has been discontinued. In this case, the application includes payment or other arrangements related to the past due amounts. Section 3.02 is therefore applicable to this Complaint and that section authorizes the actions taken by MGE.

#### **WAIVER OF HEARING**

10. MGE believes that the relevant facts in this matter are not in dispute and that the sole question for the Commission is the application of MGE's tariff language to those facts. Accordingly, MGE hereby states that it waives its right to a hearing in this matter in order to allow this matter to be submitted to the Commission based solely on the information in the pleadings, to include the Complaint, MGE's Verified Answer and Motion to Dismiss, Staff's Memorandum and this Response.

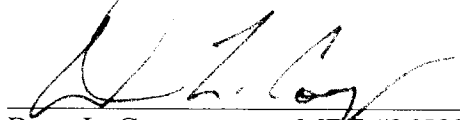
11. The waiver of hearing is particularly appropriate in this case because the question to be decided by the Commission will not have prospective application. As stated in Staff's Memorandum, the tariffs at issue in this matter have been superceded as a result of Commission Rule 4 CSR 240-13.035 (Denial of Service). MGE's revised tariff sheets filed in response to the promulgation of this rule became effective on April 15, 2005.

**WHEREFORE,** Respondent MGE respectfully submits the foregoing as its

response to the Commission Staff's Memorandum.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.



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#### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or e-mailed on October 19<sup>th</sup>, 2005, to:

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