

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

The Staff of the Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2011-0100
	)	
Missouri Gas Energy, a Division of Southern Union Company	)	
	)	
	)	
Respondent.	)	

**MEMORANDUM OF LAW IN SUPPORT OF RESPONSE TO STAFF'S  
MOTION FOR SUMMARY DETERMINATION**

COMES NOW Respondent Missouri Gas Energy ("MGE"), by and through undersigned counsel, and submits this Memorandum of Law in Support of its Response to Staff's Motion for Summary Determination.

**Standard for Granting Motion for Summary Disposition**

The Commission's Rule 4 CSR 240-2.117(1)(E) states that the Commission may grant a Motion for Summary Determination if a showing has been made that (1) there is no genuine issue as to any material fact, (2) that the moving party is entitled to relief as a matter of law as to all or any part of the case, and (3) the Commission determines granting summary relief is in the public interest. Staff's Motion for Summary Determination in this case ("Staff's Motion") fails to meet any of these requirements. Staff urges the Commission to act contrary to Missouri law by stating (without citation) that "summary determinations should be favored, not disfavored."<sup>1</sup> In fact, Missouri case law has the opposite guidance. Missouri courts advise that summary judgment is a

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<sup>1</sup> Staff's Suggestions in Support of its Motion for Summary Determination, p. 2.

drastic remedy that borders on a denial of due process because it effectively denies the opposing party a day in court<sup>2</sup> and that accordingly; great care should be exercised in utilizing it.<sup>3</sup>

Staff's Motion also fails as a matter of law because the Commission previously approved MGE's Tariff Sheet R-34 and the Order approving that sheet became final long ago. Staff's Motion is a collateral attack on a validly approved tariff and must fail.

## ARGUMENT

### Staff is not Entitled to Relief as a Matter of Law

Staff's Complaint is deficient, inconsistent with statutory and case law, and inconsistent with the Commission's decision in its Case No. GT-2009-0056. As such, Staff is not entitled to relief as a matter of law.

MGE's Tariff Sheet R-34<sup>4</sup> was approved pursuant to the Commission's April 3, 2007 Order Regarding Motion for Expedited Consideration and Approval of Tariff Sheet<sup>5</sup> in compliance with the Commission's Report and Order in MGE's 2006-2007 rate case, Case No. GR-2006-0422.<sup>6</sup> As a validly approved tariff, MGE's Tariff Sheet R-34 is presumed to be both lawful and reasonable under Missouri statutes and case law.<sup>7</sup> As the party challenging a presumptively lawful tariff provision bears the burden of proof,

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<sup>2</sup> See *Butler v. Hurlbut* (App. E.D. 1992) 826 S.W.2d 90.

<sup>3</sup> See *Weber v. Les Petite Academies, Inc.* (App.1973) 490 S.W.2d 278; *Citizens State Bank of Nevada v. Wales* (App.1971) 469 S.W.2d 750; *Pitman Mfg. Co. v. Centropolis Transfer Co.* (Sup.1970) 461 S.W.2d 866; *Stanturf v. Sipes* (Sup.1969) 447 S.W.2d 558, 35 A.L.R.3d 834; *Elliott v. Harris* (Sup.1968) 423 S.W.2d 831; *E. O. Dorsch Elec. Co. v. Knickerbocker Const. Co.* (Sup.1967) 417 S.W.2d 936; *E. O. Dorsch Elec. Co. v. Plaza Const. Co.* (Sup.1967) 413 S.W.2d 167; *Cooper v. Finke* (Sup.1964) 376 S.W.2d 225.

<sup>4</sup> Attached as Exhibit 2.

<sup>5</sup> A copy of the order is attached hereto as Exhibit 3.

<sup>6</sup> *In the Matter of Missouri Gas Energy's Tariffs Increasing Rates for Gas Service Provided to Customers in the Company's Missouri Service Area*, GR-2006-0422. MGE had a subsequent rate case in 2009-2010, GR-2009-0355 in which Staff did not contest this tariff language.

<sup>7</sup> See §386.270, RSMo and State ex rel. Shepherd v. Public Service Commission of Missouri, 142 S.W.2d 346 (Mo. App. 1940) (stating that an order of the Public Service Commission is prima facie lawful and reasonable, and the burden of proof to show that it is unlawful or unreasonable is on the one so contending).

Staff must do more than provide vague assertions and hypotheticals that the tariff offends “policy”.<sup>8</sup> In this case, Staff must make specific allegations of conduct in which the utility has engaged that violates a law, Commission rule or an order or decision of the Commission. No such conduct is alleged in the Complaint, much less proved up in the Motion. Consequently, Staff has not met its burden to rebut the presumption of lawfulness.

Staff’s challenge of the lawfulness and reasonableness of MGE’s Tariff Sheet R-34 is barred by §386.550 RSMo, which provides that “In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.”<sup>9</sup> In this case, there is no actual case or controversy between MGE and a customer concerning the application of a tariff to a particular set of facts. Instead, Staff’s allegations solely relate to the reasonableness of MGE’s validly approved tariff. Consequently, the Complaint represents a direct challenge to the lawfulness and reasonableness of the tariff sheet and is, therefore, an impermissible collateral attack on the Commission’s April 3, 2007 Order Regarding Motion for Expedited Consideration and Approval of Tariff Sheets in Case No. GR-2006-0422. Collateral attacks on orders and decisions are clearly barred by §386.550 RSMo. MGE’s rate case GR-2006-0422 is long since final and Staff’s collateral attack on the Commission’s order in that case is barred.

The Commission’s complaint rule only authorizes the filing of a complaint to address allegations of a violation of any statute, a violation of a rule, or a violation of an order or decision of the Commission.<sup>10</sup> Staff’s Complaint is not authorized by the Commission’s complaint rule because the Complaint does not allege a violation by MGE of any statute, rule, decision or order of the Commission. No discernable or actual

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<sup>8</sup> Staff Suggestions in Support at p. 14.

<sup>9</sup> Section 386.550, RSMo.

<sup>10</sup> 4 CSR 240-2.070(1).

factual situations are alleged in Staff's Motion involving a purported violation of statute, rule, or order that could fit under the Complaint rule. Further, the Commission in Case No. GR-2006-0422 approved MGE's Tariff Sheet R-34. Consequently, Staff has no standing to file the Complaint in this case.

Additionally, the liability limitation provisions of the type at issue in MGE's Tariff Sheet R-34 are a lawful exercise of the Commission's ratemaking authority. The Missouri Supreme Court has recognized that it is lawful for the Commission to regulate a utility's liabilities inasmuch as its rights and privileges are subject to regulation.<sup>11</sup> The Commission in the recent Laclede decision expressly acknowledged that the Commission possesses the legal authority to provide for liability limitations when approving a proposed tariff.<sup>12</sup> Staff also admits that it is "not uncommon for utilities to include liability-limiting provisions in their tariffs."<sup>13</sup>

**The Laclede decision is not a statement of public policy.**

As in the Complaint filed in this case, Staff's Motion for Summary Determination ("Motion") relies heavily on the Commission's January 13, 2010, Report and Order in Case No. GT-2009-0056<sup>14</sup> (the "Laclede Case"). Staff's Complaint states its belief that the Commission's decision in that case "embodies an authoritative statement of

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<sup>11</sup> *Warner v. Southwestern Bell Telephone Co.*, 428 S.W.2d 596 (Mo. 1968).

<sup>12</sup> GT-2009-0056, *In the Matter of Laclede Gas Company's Tariff Revision Designed to Clarify Its Liability for Damages Occurring on Customer Piping and Equipment*, Report and Order at p. 7-8. ("According to the Missouri Supreme Court the Commission has the authority to approve or reject tariffs limiting liability. The Missouri Supreme Court confirmed this concept in a case concerning telegraph tariffs. In *State ex rel. Western Union Telegraph v. Public Service Commission* [264 S.W. 669 (Mo. 1924)], Western Union's tariffs limited its liability for mistakes, delays and even non-delivery of messages. The Court found that the limitation of liability was one of the terms of telegraph service, along with the rate charged for the service. Since the rates were deemed lawful, the limitations of liability included with the rates were lawful too. The Court stated that "the power to pass on the reasonableness and lawfulness of rates necessarily includes the power to determine the reasonableness and lawfulness of such limitations of liability as are integral parts of the rates.")

<sup>13</sup> See Staff's Suggestions in Support of Its Motion for Summary Determination, p. 3.

<sup>14</sup> *In the Matter of Laclede Gas Company's Tariff Revision Designed to Clarify Its Liability for Damages Occurring on Customer Piping and Equipment*.

Commission policy” with respect to tariff sheets that may limit the liability of a public utility under particular circumstances.<sup>15</sup> Staff’s belief is legally and factually incorrect.

The Commission’s Report and Order in the Laclede Case does not and cannot represent a statement of general applicability. The docket was created by the filing of a proposed tariff by Laclede Gas Company (“Laclede”). It was not a rulemaking proceeding initiated by the Commission purporting to affect all gas or electric utilities in some overarching fashion.<sup>16</sup> The parties to the Laclede Case were Laclede, the Commission’s Staff and the Office of the Public Counsel. MGE was not a party to the Laclede Case nor was any other investor-owned utility.<sup>17</sup> The Commission’s decision, if final, may be binding on Laclede but it is not binding on MGE or any other regulated utility. To suggest otherwise presents serious due process concerns because MGE was not provided with notice or an opportunity to be heard.

Additionally, the facts of the two cases differ in significant respects. Procedurally, MGE’s Tariff Sheet R-34 has been approved by the Commission. Indeed, some paragraphs of Sheet R-34 that Staff suddenly finds so troubling have been in effect for more than seventeen years.<sup>18</sup> Laclede’s proposed tariff, on the other hand, was expressly *disapproved* by the Commission as reflected in the January 13, 2010 Report and Order and never went into effect. The tariff language as originally proposed by Laclede (and as subsequently jointly proposed by Laclede and Staff) was not identical to the language of MGE’s Tariff Sheet R-34. In fact, there are substantial differences. Consequently, the circumstances in the Laclede case differ dramatically from the circumstances in this case.

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<sup>15</sup> Staff Complaint at paragraph 8, p. 4.

<sup>16</sup> See, Exhibit A to Staff’s Motion, Item No. 1 on the docket sheet.

<sup>17</sup> See, Exhibit A to Staff’s Motion. MGE did not file an application to intervene in the case and it was not made a party to the case by order of the Commission.

<sup>18</sup> Discussed *infra*. *See also* attached Exhibit 1, affidavit of Michael R. Noack.

Finally, the Commission in the Laclede Case discussed at length that Laclede has both regulated and unregulated lines of business and expressed concern about the advantage that a Commission-approved limitation of liability might confer on the utility *vis-a-vis* its unregulated competitors. MGE, by contrast, has no unregulated lines of business so there is no such concern in this case.<sup>19</sup>

**MGE's Tariff Sheet R-34 is presumptively lawful and reasonable and Staff has not alleged any material facts that would tend to rebut the presumption of reasonableness.**

Because MGE's Tariff Sheet R-34 was approved pursuant to an April 3, 2007 Order Regarding Motion for Expedited Consideration and Approval of Tariff Sheet<sup>20</sup> in compliance with the Commission's Report and Order in its Case No. GR-2006-0422,<sup>21</sup> MGE's Tariff Sheet R-34 enjoys a presumption that it is both lawful and reasonable.<sup>22</sup> Further, as discussed more fully below, the first two paragraphs of Sheet R-34 are identical to previously-approved MGE's tariffs that have been in effect since 1994.<sup>23</sup> With respect to those first two paragraphs, it is simply untenable that Staff is attempting to have the Commission set aside its order approving this tariff, for purely hypothetical and inaccurate arguments, purportedly because of a Commission decision (the Laclede Case) that has no legitimate force and effect on MGE. Those first two paragraphs contain language that has been in effect for seventeen years.<sup>24</sup>

In sum and substance, Staff's Motion claims that there is no dispute that MGE's Tariff Sheet R-34 is unreasonable in that the scope of the liability limitations embodied

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<sup>19</sup> See, Exhibit 1, attached affidavit of Michael R. Noack.

<sup>20</sup> A copy of the order is attached hereto as Exhibit 3.

<sup>21</sup> *In the Matter of Missouri Gas Energy's Tariffs Increasing Rates for Gas Service Provided to Customers in the Company's Missouri Service Area.*

<sup>22</sup> See, §386.270, RSMo.

<sup>23</sup> See Exhibit 1, the attached affidavit of Michael R. Noack and Exhibits 2 and 4. MGE's Tariff Sheet No. R-34 has been filed and made effective five times – on February 1, 1994, April 18, 1999, August 6, 2001, June 14, 2003, and (in its current form) on April 3, 2007.

<sup>24</sup> The first two paragraphs of Sheet R-34 are identical to the tariffs previously approved by the Commission and have been in place since 1994.

there are too sweeping (arguing four hypotheticals)<sup>25</sup> and, also, that it is at odds with certain provisions of the Commission's gas safety rules.<sup>26</sup> Whether the tariff is unreasonable in scope is something that can only be ascertained by reference to what the regulation states and, more importantly, how it is being applied to actual factual circumstances. In this case, the Staff has not accurately analyzed the regulations or applied them to actual factual circumstances.

### **Staff's Hypothetical Assertions are Not "Material Facts"**

On page 3 of its Supporting Memorandum, Staff offers four hypotheticals to illustrate its concerns with Tariff Sheet R-34. Importantly, these are not facts, only suppositions. There is no pending dispute between an MGE customer and MGE before the Commission as to the application of any aspect of this language. Absent an actual case or controversy that presents facts which might support a Staff hypothetical, there is no basis for concluding that the tariff language is unreasonable either in design or in effect. In essence, Staff is asking the Commission to issue an advisory opinion, something it has no authority to do.<sup>27</sup> As to the Staff's four hypotheticals, there is no fact for MGE to admit or deny<sup>28</sup> except that its tariff says what it says and MGE already has admitted it says what it says.<sup>29</sup> Beyond that, Staff has not alleged in its Complaint or Motion any material fact that would tend to show that the scope of the liability limitation language in Tariff Sheet R-34 is unreasonably broad in actual practice. Staff's Complaint and Motion offer only conclusory statements based on vague hypothetical circumstances which do not present a sufficient evidentiary basis for the Commission to conclude the liability limitation is unreasonable as a matter of law. In that Staff is unable

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<sup>25</sup> See, Complaint ¶9.

<sup>26</sup> See, Complaint ¶10.

<sup>27</sup> See, *State ex rel., Kansas Power and Light Company*, 770 S.W.2d 740, 743 (Mo. App. 1989).

<sup>28</sup> Notable by its absence is any testimonial evidence by way of witness affidavit filed in support of the Motion other than the Affidavit of the Commission's records custodian.

<sup>29</sup> See, Answer ¶ 8.

to even show a “material fact” in these hypotheticals, let alone a material fact that is at issue, Staff’s Motion must fail.

**MGE’s Tariff is Reasonable.**

To the extent that the Commission deems Staff’s four hypotheticals “material facts,” or insofar as the Commission determines that Staff’s Motion should be determined by a legal interpretation of the Tariff Sheet R-34, MGE asserts, as discussed more fully below, that its tariff is just and reasonable,<sup>30</sup> that the tariff complies with the Commission’s “Natural Gas Safety Rules,”<sup>31</sup> and that the tariff is enforceable as a matter of public policy.<sup>32</sup> As discussed more fully below, MGE disputes each of Staff’s hypotheticals and assertions.

**The Rationale and Support for a Limitation of Liability.**

As discussed above, Missouri Courts and the Commission have found that liability limitation provisions are a lawful exercise of the Commission’s ratemaking authority. The Commission clearly has the authority to adopt tariffs which impose reasonable limits on liability for utilities. The Missouri Supreme Court recognized that it is lawful for the Commission to regulate a utility’s liabilities inasmuch as its rights and privileges are subject to regulation.<sup>33</sup> The Commission in the recent Laclede Case expressly acknowledged that it has the legal authority to provide for liability limitation in the context of a tariff filing.<sup>34</sup> Staff also admits that it is “not uncommon for utilities to

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<sup>30</sup> See, Staff’s Motion at p. 6, citing to Paragraph 9 of Staff’s Complaint.

<sup>31</sup> Staff’s Motion at p. 6, citing paragraph 10 of Staff’s Complaint. 4 CSR 240-40 contains the “Gas Utilities and Gas Safety Standards.” Staff focuses on 4 CSR 240-40.030 (10)(J) and 4 CSR 240-40.030 (12)(S), which will be referred to as the “Natural Gas Safety Rules” for purposes of this motion. Both regulations are attached as Exhibit 6.

<sup>32</sup> Staff’s Motion at p. 6, citing paragraph 11 of Staff’s Complaint.

<sup>33</sup> *Warner v. Southwestern Bell Telephone Co.*, 428 S.W.2d 596 (Mo. 1968).

<sup>34</sup> Report and Order at p. 7-8. (“According to the Missouri Supreme Court the Commission has the authority to approve or reject tariffs limiting liability. The Missouri Supreme Court confirmed this



include liability-limiting provisions in their tariffs.”<sup>35</sup> Staff’s assertions that MGE’s tariff language “goes farther than others” is contradicted by the tariff language itself as well as by language in other Missouri utility tariffs. An understanding of MGE’s tariffs and Missouri’s Natural Gas Safety Rules are an important backdrop to understanding MGE’s tariff.

Missouri’s Natural Gas Safety Rules make it clear that natural gas piping and equipment on the delivery side of the meter (i.e., “downstream” of the MGE’s meter) are owned and maintained by the customer. The Company’s responsibility to maintain piping and equipment stops at the meter. This fact should not be controversial and is clearly contemplated by the regulations. Specifically, 4 CSR 240-40.030 (10)(J) is titled “Test Requirements for Customer-Owned Fuel Lines,” and that regulation discusses the limited visual inspection of “customer gas piping ... and all connected equipment” during the initial physical gas turn-on to a new customer-owned fuel line.<sup>36</sup> This regulation is unsurprising, given the fact that MGE does not furnish, manufacture, assemble, install, maintain, control, or own customer-owned pipes, vents, fixtures, and equipment/appliances.<sup>37</sup> The customer controls and is responsible for the condition of customer-owned piping, and equipment (as they should be) absent an actual observation of a defect by MGE that is within the scope of MGE’s O&M standard on visual inspection. Customers are simply in the better position to maintain and monitor their own equipment. MGE is rarely in a customer’s home, generally only at the time

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concept in a case concerning telegraph tariffs. In *State ex rel. Western Union Telegraph v. Public Service Commission* [264 S.W. 669 (Mo. 1924)], Western Union’s tariffs limited its liability for mistakes, delays and even non-delivery of messages. The Court found that the limitation of liability was one of the terms of telegraph service, along with the rate charged for the service. Since the rates were deemed lawful, the limitations of liability included with the rates were lawful too. The Court stated that “the power to pass on the reasonableness and lawfulness of rates necessarily includes the power to determine the reasonableness and lawfulness of such limitations of liability as are integral parts of the rates.”)

<sup>35</sup> See Staff’s Suggestions in Support of Its Motion for Summary Determination, p. 3.

<sup>36</sup> 4 CSR 240-40.030(10)(J)(1)(B) (emphasis added), see Exhibit 6.

<sup>37</sup> See Exhibit 1, Affidavit of Michael R. Noack.

service is initiated,<sup>38</sup> when service is turned on,<sup>39</sup> or when the customer advises MGE of a problem with the delivery of natural gas.<sup>40</sup>

MGE's Tariff Sheet R-35 (one that is not subject to a complaint by the Staff) also expressly contemplates the fact that customers are responsible for their own equipment.

That tariff sheet states in part that:

Any and all piping, appliances, equipment or facilities (except meters, regulators, or related equipment owned by Company and located on customer's premises) required to utilize gas service beyond the point of delivery shall be furnished, installed and maintained in a safe efficient, and proper operating condition at the expense of customer and shall be the sole responsibility of customer...<sup>41</sup>.

Given the fact that customers have the responsibility to maintain their own piping and equipment, it makes sense that MGE's regulatory-mandated inspection requirements are limited in nature when initiating gas service. The Natural Gas Safety Rules require testing for leakage and then only a "visual inspection" of the "exposed, accessible customer gas piping" and "all connected<sup>42</sup> equipment" to determine that the requirements of "applicable industry codes, standards or procedures adopted by the operator" to "assure safe service" are met.<sup>43</sup> As this is only a limited visual inspection for obvious gas safety hazards for accessible piping and equipment, and the company has no obligation to - and does not - own, manufacture, assemble, install, or maintain the

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<sup>38</sup> As contemplated in 4 CSR 240-40.030(10)(J), "Test Requirements for Customer-Owned Fuel Lines," which discusses an operator's duties when turning on the flow of gas to new fuel line installations. See Exhibit 6.

<sup>39</sup> As contemplated in 4 CSR 240-40.030(12)(S), "Providing Service to Customers," which discusses operator's requirements when turning on the flow of gas to a customer. See exhibit 6.

<sup>40</sup> See Exhibit 1, Affidavit of Michael R. Noack.

<sup>41</sup> MGE Tariff Sheet No. R-35, Section 4.01, emphasis added, attached as Exhibit 5. This tariff language has been in place since February 1994.

<sup>42</sup> The term "connected" equipment is also important, in that MGE can only conduct its limited visual inspection on equipment connected at the time of inspection. MGE may not be aware of new equipment installed by a customer or a licensed professional after MGE's initial limited visual inspection.

<sup>43</sup> See 4 CSR 240-40.030 (10)(J) and 4 CSR 240-40.030 (12)(S), attached as Exhibit 6.

equipment on the customer's side of the meter, a limitation of liability is perfectly appropriate.

In this regulatory context, it is understandable why Missouri courts have validated Commission-approved limitation of liability tariffs "since the utility is regulated in its rights and privileges, it should likewise be regulated to some extent in its liabilities."<sup>44</sup>

**Staff Has Failed to Show that MGE's Tariff Provisions are Unreasonable.**

The Commission should reject Staff's assertions that MGE's Tariff Sheet R-34 "purports to immunize MGE from all liability" even if MGE fails to comply with Commission rules, that it is improper for MGE to limit its liability in the operation of its system, that the tariff purports to limit liability for all inspections of the customer's equipment, and that the tariff purports to limit MGE's liability for gross negligence or wanton or willful misconduct.<sup>45</sup> Simply put, the tariff does not say these things and Staff presents no evidence whatsoever that MGE has attempted to apply the tariff in this manner, or in any manner described by its vague hypotheticals. Staff's Motion should be denied because of its complete lack of evidence. Without a case or controversy, any allegation of a tariff violation based on specific facts, MGE has not found any Staff assertion of a "material fact," but MGE will rebut Staff's vague allegations as to the reasonableness of its tariff below.

**Paragraph One and Two.**

The Commission should note that the language in Paragraphs One and Two of Tariff Sheet No. R-34 has been in place since February 1994.<sup>46</sup> Staff is silent as to why a limitation of liability tariff that contains language that has been in place for over

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<sup>44</sup> Warner v. Southwestern Bell Telephone Co., 428 SW.2d 596 (Mo. 1968), as cited in the Laclede Case, GT-2009-0056.

<sup>45</sup> Staff's Suggestions in Support, p. 3.

<sup>46</sup> See Exhibit 1, Affidavit of Michael R. Noack and Exhibit 2 (current version of R-34) and Exhibit 4, copies of Tariff Sheet R-34 as filed on February 1, 1994, April 18, 1999, August 6, 2001, and June 14, 2003. The language in these paragraphs is identical to the current language in the first two paragraphs of R-34 filed on April 3, 2007.

seventeen years is suddenly unacceptable. Also, there is no actual case or controversy related to these paragraphs. These unsupported speculations should not be deemed to be an allegation of a “material fact.”<sup>47</sup>

Paragraphs One and Two of Sheet No. R-34 state that:

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.

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.

As discussed above, a limitation of liability is appropriate and permitted by the Commission and Missouri courts for regulated utilities such as MGE. These limitations of liability can include limitations for error or simple negligence as specified in Paragraph One.<sup>48</sup> As shown in Paragraph One, Staff is flat wrong when it contends that MGE's tariff “purports to limit MGE's liability even for gross negligence or wanton or willful misconduct.”<sup>49</sup> To the extent this unsupported speculation is deemed to present a “material fact”,<sup>50</sup> the tariff does not say this. Paragraph One specifically excludes MGE's “willful default or gross negligence.”<sup>51</sup> Further, contrary to Staff's assertions, this paragraph does not “effectively bar claims” by MGE customers.<sup>52</sup> Customers still have

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<sup>47</sup> It is MGE's contention that an allegation of this nature does not present an evidentiary fact. It is, rather, opinion or speculation.

<sup>48</sup> See Warner v. Southwestern Bell Telephone, 428 S.W.2d 596, (Mo. 1968).

<sup>49</sup> Staff's Suggestions in Support, p. 3.

<sup>50</sup> It is MGE's contention that this is not an allegation of fact, but, rather, a legal conclusion.

<sup>51</sup> Tariff Sheet No. R-34 also has a specific mention of “negligence,” so it is apparent that Staff is incorrect in its assertion that the tariff somehow limits MGE's gross negligence or wanton or willful misconduct. Staff's Motion must fail on this point.

<sup>52</sup> Staff Suggestions in Support, p. 6.

the ability, as they have for seventeen years, to sue MGE under Paragraph One with complaints containing allegations of MGE's willful default or gross negligence.<sup>53</sup>

Further, it is important to note that the only type of natural gas piping and equipment addressed in Paragraph Two of Sheet No. R-34 (and subject to the limitation of liability in that paragraph) is piping and equipment owned and maintained by the customer, not piping and equipment owned and maintained by MGE. By its own terms, Paragraph Two addresses only those situations in which there are leaks to a "customer's service line, yard line, ancillary lines, house piping, appliances or other equipment." Staff muddies this fact by discussing "mains that run under streets" and listing descriptions of Company-owned equipment in MGE's tariffs,<sup>54</sup> without confining its analysis to the customer-owned equipment that is the sole equipment addressed by that paragraph of the tariff. Paragraph Two includes a limitation of liability for leaks in the following customer equipment:

- a "customer's service line," defined in MGE's Tariffs as a "Service Line – Customer Owned" or "that portion of the service line which is owned by customer..."<sup>55</sup>
- a "yard line" is defined as "the underground piping installed from the outlet of the Company's meter to the building wall."<sup>56</sup> Again, this is specifically limited to "customer" yard lines as defined in Paragraph Two.
- A customer "ancillary line," defined in MGE's Tariffs as "exterior piping installed by customer" and connected to "the yard line to supply fuel to any exterior appliance or apparatus."<sup>57</sup>
- Customer "house piping," defined in MGE's tariffs as "all piping, fixtures, valves, appliances and apparatus of any kind installed downstream of the outlet of Company's meter or Company owned piping, whichever is

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<sup>53</sup> MGE disputes Staff's assertions of "procedural and substantive unconscionability" of the language in Paragraph One in that (1) other limitation of liability tariffs have been approved for Missouri utilities (as admitted by Staff), (2) this paragraph has been in place for seventeen years without any Staff claims of "unconscionability," (3) MGE's disagreement with Staff's analysis, (4) the fact that Staff has failed to present any pending factual scenario or example of MGE's application of this paragraph under Staff's interpretation, and (5) Staff's own admission that its analysis on this language is "merely illustrative" rather than determinative. Staff has not met its burden for a Motion for Summary Determination on the language of this paragraph.

<sup>54</sup> Staff's Motion at pp. 8-9.

<sup>55</sup> Sheet R-10, emphasis added.

<sup>56</sup> Sheet R-10.

<sup>57</sup> Tariff Sheet R-6, emphasis added.

farther downstream.”<sup>58</sup> Again, this addresses customer owned and installed equipment.

- Customer “appliances or other equipment,” is not defined in MGE’s tariffs, but is self-defined. This type of equipment is owned, installed, and maintained by the customer.

Paragraph Two does not include a limitation of liability for MGE-owned and maintained equipment described in MGE’s tariffs (yet still incorrectly included in Staff’s analysis),<sup>59</sup>

including:

- “Main,” a gas pipe owned, operated and maintained by Company...”<sup>60</sup>
- “Meter or Meter Installation,” meters needed to measure the quantity of gas to customers, which are Company owned and maintained equipment.<sup>61</sup>
- “Service Line,” as expressly distinguished from “Service Line – Customer Owned” in both MGE’s tariffs and in Paragraph Two.<sup>62</sup> This service line is owned, installed, and maintained by MGE.

Given the regulatory framework discussed above - that customers are required by Commission regulation, the Natural Gas Safety Rules, and MGE Tariffs to maintain their own piping and equipment - the limitation of liability in this section is appropriate and reasonable. It is specifically focused on customer-owned and customer-maintained piping and equipment.

Finally, Staff’s bald assertion that Paragraph Two somehow limits MGE’s potential liability for delivery of gas at too high a pressure is nowhere to be found in the actual language of the tariff. Again, it is difficult for the Company to broadly respond to undefined hypothetical situations as opposed to an actual factual scenario.<sup>63</sup>

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<sup>58</sup> Tariff Sheet R-8.

<sup>59</sup> See Staff’s Suggestions in Support at p. 8.

<sup>60</sup> Tariff Sheet R-8.

<sup>61</sup> Tariff Sheet R-8.

<sup>62</sup> Tariff Sheet R-8.

<sup>63</sup> Insofar that Paragraph Two or other sections of R-34 would limit the Company’s liability for over-pressure situations, MGE notes that such limitations of liability for delivery are quite common among other utilities. See Exhibit 7, which contains sections of tariffs from other utilities that are similar to MGE’s tariff. KCP&L’s Tariff Sheet No. 1.11, Section 3.09 states that the Company need only exercise “reasonable diligence” to supply service “but does not guarantee the supply of electric service against irregularities and interruptions.” It goes on to state that KCP&L is not liable for damage or loss “regardless of cause” except where due to the company’s “willful misconduct or gross negligence.” KCP&L’s Sheet No 1.14, Section 3.17 limits the liability of KCP&L except for its

### Paragraph Three.

Paragraph Three of Tariff Sheet R-34 goes into more detail on the maintenance and repair of customer-owned piping and equipment, is consistent with Natural Gas Safety Rules and Commission regulations, and is a reasonable limitation of liability. Again, Staff offers no actual case or controversy related to this paragraph. Staff's unsupported speculations should not be deemed to be an allegation of a "material fact."<sup>64</sup> In fact, Paragraph Three of Tariff Sheet R-34 provides clarity to ownership and maintenance requirements by stating:

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 of 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.

Consistent with the Natural Gas Safety Rules and MGE Tariffs, this section contains the unremarkable statement that MGE "does not own, nor is it responsible for

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"willful misconduct or gross negligence." Union Electric Company's Gas Service Tariff Sheet No. 52 states that the customer is "totally responsible" for the operation and condition of its piping and equipment and that the customer is "liable for any loss, damage or injury caused by the leakage, escape, or loss of gas on customer's side of the point of delivery." Atmos Energy's Sheet No. 110 states that the company "shall not be liable for loss or damage resulting from interruptions or deficiencies in service occasioned by any cause except willful default or willful neglect." Given these other validly approved tariff provisions for other Missouri utilities, it is difficult to discern how Staff can prevail with an argument that MGE's tariffs are somehow unreasonable, that they violate Commission policy, and are out of the mainstream.

<sup>64</sup> It is MGE's contention that an allegation of this nature does not present an evidentiary fact. It is, rather, opinion or speculation.

the repair or maintenance” of any customer piping and equipment (defined as “piping, vents, or gas utilization equipment on the delivery side of the gas meter.”<sup>65</sup> It further states that the “owner/customer of the premises” is responsible for the repair and maintenance of that equipment and piping. Paragraph Three notes that like any other piece of equipment, “piping... and gas utilization equipment can fail, malfunction, or fall into disrepair at any time.” Again, all of these assertions are consistent with Commission regulations, the Natural Gas Safety Rules, and MGE’s tariffs. They reflect the reality that customers own and should maintain their equipment and that customers are in a much better position to do so.

On pages 10 and 11 of the Staff’s Supporting Memorandum, Staff unconvincingly contends that the provisions of the third paragraph of Tariff Sheet R-34 conflict in some fashion with the Commission’s gas safety rules, specifically, subsections 4 CSR 240-40.030(10)(J) and (12)(S).<sup>66</sup> Staff does not provide any explanation or legitimate basis for its position. Moreover, an examination of MGE’s approved tariff and subsections (10)(J) and (12)(S) demonstrates that there is no conflict between the Commission’s gas safety rules and Tariff Sheet R-34.

Staff’s argument apparently focuses on part of the last sentence of the third paragraph which provides “... 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.” By its express terms, this sentence is limited to “potential” hazards and accordingly does not apply to “actual” hazards that might exist at

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<sup>65</sup> As discussed below, Staff’s interpretation of “delivery side of the meter” as being the “upstream or company side”(see Staff Suggestions in Support on p. 13) in Paragraph Five is wrong, as is readily apparent in Paragraph Three. The “delivery side of the meter,” since it includes customer appliances, has to be on the customer’s side of the meter or “downstream” of the Company’s meter.

<sup>66</sup> Both subsections are attached as Exhibit 6. Staff does not appear to cite the current version of 4 CSR 240-40.30(12)(S), which is found at the Missouri Secretary of State’s website at <http://www.sos.mo.gov/adrules/csr/current/4csr/4c240-40.pdf> at p. 45. The current language is not materially different from the older version used in Staff’s brief, but the discrepancy should be noted as paragraphs in the new version have been changed.



the time MGE turns on the flow of gas to new fuel line installations under (10)(J) or when MGE turns on the flow of gas to a customer under (12)(S). While MGE has an obligation to comply with the terms of subsections (10)(J) and (12)(S) with respect to any actual hazards that exist at the time MGE engages in activities covered by such regulations, the third paragraph of Tariff Sheet R-34 is expressly limited to hazards that are, at the time gas is turned on, (1) only potential hazards, such as equipment or piping that might later fail, malfunction, or fall into disrepair and (2) that are within the scope of MGE's O&M standard on visual inspection.

The phrase "such facilities" in the quoted section of the third paragraph of Tariff Sheet R-34 refers to "any fixture or appurtenance within premises, piping, vents or gas utilization equipment" previously identified in the same sentence. The provisions of (12)(S) contain no requirements to provide warnings about "potential hazards that may exist with such facilities on the delivery side of the gas meter, its related appurtenances and piping." Rather, (12)(S) contains specific provisions about other information that an operator must provide to customers such as information about how to contact the operator in the event of an emergency or to report a gas odor, information about how to contact the operator when excavation work is to be performed and information about the customer's responsibility for maintaining his/her gas piping and utilization equipment.

MGE does not dispute that it is subject to the Natural Gas Safety Rules. Staff has made no assertion nor any showing that MGE has somehow ignored the Natural Gas Safety Rules since Tariff Sheet R-34 became effective in 2007. Staff has not asserted that MGE has disregarded its obligations under any gas safety regulation or that MGE has stopped warning of actual gas safety hazards that are within the scope of MGE's O&M standard on visual inspection. Instead, Staff trots out another unsupported hypothetical and inaccurate analysis and asks the Commission to grant its Motion without any supporting evidence. Staff's Motion should be denied.

#### Paragraph Four.

Paragraph Four of Sheet No. R-34 merely states that customers will be liable for damage done to MGE's property kept on the customer's premises due to the customer's negligence or misuse of the property. Specifically, the paragraph states that:

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.

In order to provide natural gas service, MGE has to keep Company equipment on customer property, including meters, company-owned lines, and other equipment (such as regulators).<sup>67</sup> It is appropriate and reasonable to require that the customer not misuse MGE equipment and to be responsible for his or her own negligence and that of others on his or her property if Company equipment is damaged. What is particularly perplexing about Staff's assertion on this paragraph is that it notes that "this sort of provision is not unusual," cites an Ameren Missouri tariff that is "comparable," and still argues that the paragraph is "unreasonable," without any substantive analysis. (This also begs the question as to whether Staff has filed a similar complaint against Ameren or other Missouri utilities seeking to overturn similar "tariff language). Staff again offers a vague hypothetical, without any grounding in fact, that the provision "does not release the customer from liability in cases in which the damage resulted from circumstances beyond the customer's control."<sup>68</sup> It is difficult, if not impossible to effectively respond to such a vague assertion which is untied to a factual situation, other than to note that the

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<sup>67</sup> See Exhibit 1, Affidavit of Michael R. Noack.

<sup>68</sup> Staff's Suggestions in Support at p. 12.

tariff requires MGE to show “negligence” or “misuse” involving the owner/customer or other persons that resulted in damage to Company property. This language is clear enough to allow a court to determine liability and causation based on actual facts.

**Paragraph Five.**

Staff’s critique of Paragraph Five is premised on an incorrect interpretation of its plain language. Paragraph Five states that:

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.

Staff incorrectly argues that “the delivery side of the meter” is “the upstream or company side,” and that Paragraph Five “disclaims any responsibility for damage resulting from leaks” on “company owned piping.”<sup>69</sup> This interpretation is incorrect, as can be readily seen by reviewing how the term is used elsewhere in Sheet R-34. In Paragraph Three, the “delivery side of the meter” is described as including customer equipment rather than MGE equipment and includes “gas utilization equipment.” Paragraph Three notes that “the Company does not own ... equipment on the delivery side of the gas meter.” Arguing that the “delivery side of the meter” is the “upstream or company side” given this

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<sup>69</sup> Staff Suggestions in Support, p. 13.

use in Paragraph Three does not make sense. There is no other reasonable definition of this term and Staff bases its critique of Paragraph Five on this incorrect interpretation.

Further, to the extent Staff's unsupported speculation about Paragraph Five is deemed to present a "material fact", the tariff in part addresses customers' use of their own equipment and damage to that equipment caused by delays in service or service interruptions.<sup>70</sup> This scope of protection includes those circumstances in which MGE has inspected a connected appliance, but this is unremarkable in that an inspection of a customer's equipment when initiating service is only a limited visual inspection for obvious gas safety hazards and the company has no obligation to, and does not, furnish, manufacture, assemble, install, maintain, control, or own the equipment on the customer's side of the meter.<sup>71</sup> As such, it is perfectly reasonable to limit its liability for dangerous conditions that are not apparent, not within the scope of MGE's O&M standard on visual inspection, or which manifest themselves at a time after the inspection was performed.

**Granting the Relief Requested in the Motion is not in the Public**

**Interest**

There is no actual dispute pending before the Commission which is in need of resolution in this case and the Commission should not accept Staff's invitation to issue what would amount to nothing more than an advisory opinion based on supposition, speculation and conjecture. In its Complaint, Staff has articulated only hypothetical concerns with the language of Tariff Sheet R-34, but no person with a proprietary or pecuniary interest that might be adversely affected by MGE's liability limitation tariff is challenging it. In such circumstances, no adequate record can be made on the scope or reasonableness of the liability limitation language.

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<sup>70</sup> Tariff Sheet R-34, fifth paragraph.

<sup>71</sup> See discussion of the Natural Gas Safety Rules, supra.

Ultimately, the liability limitation language contained in Tariff Sheet R-34 is limited in scope and addresses the reasonable business expectations of MGE related to the installation, operation, or replacement of service lines and incidents, circumstances or events that may occur on the customer's side of the meter which are completely beyond the Company's control. It is perfectly appropriate that such protections be embodied in the company's rules of operation in that its rights and privileges are subject to regulation so its liabilities too should be defined. Such provisions go to the cost of providing service and are integral to the determination of just and reasonable rates for the general public served by MGE.

WHEREFORE, MGE requests that the Commission deny Staff's Motion for Summary Determination for all of the reasons stated herein.

Respectfully submitted,

/S/

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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission to all counsel of record on this 11<sup>th</sup> day of April, 2011.

Kevin Thompson  
Public Service Commission  
200 Madison Street  
Jefferson City, MO 65102

Robert Berlin  
Public Service Commission  
200 Madison Street  
Jefferson City, MO 65102

Lewis Mills  
Office of Public Counsel  
200 Madison Street  
Jefferson City, MO 65102

\_\_\_\_\_  
*/s/*  
Todd J. Jacobs

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,	)
	)
Complainant,	)
	)
v.	)
	)
Missouri Gas Energy, a Division of Southern Union Company	)
	)
Respondent.	)

Case No. GC-2011-0100

AFFIDAVIT OF MICHAEL R. NOACK

STATE OF MISSOURI	)
	) ss.
COUNTY OF JACKSON	)

The undersigned, Michael R. Noack, first being duly sworn, upon his oath, states and deposes as follows:

1. I am above the age of majority, of sound mind, and capable of making this Affidavit. I have personal knowledge of all facts stated in this Affidavit
2. I am the Director of Pricing & Regulatory Affairs for Southern Union Gas Company d/b/a Missouri Gas Energy (MGE) and have authority to certify records on its behalf.
3. MGE is a natural gas local distribution company under the jurisdiction of the Missouri Public Service Commission (Commission).
4. MGE provides its regulated services pursuant to tariffs filed with and approved by the Commission.
5. MGE does not provide any unregulated services. MGE does not provide unregulated services such as gas appliance sales, gas appliance delivery and installation,

residential appliance services, parts warranties, or commercial and industrial appliance service.

6. Attached as Exhibit 3 to MGE's Memorandum of Law in Support of Response to Staff's Motion for Summary Determination ("MGE's Reply Motion") is the Commission's April 3, 2007 Order Regarding Motion for Expedited Consideration and Approval of Tariff Sheet in Commission Case No. GR-2006-0422.

7. Attached as Exhibits 2, 4, and 5 are relevant portions of the MGE tariffs, filed with and approved by the Commission. The relevant portions of the tariff attached hereto are exact duplicates of the originals.

8. Exhibit 4 of MGE's Reply Motion contains past versions of Tariff Sheet R-34, which have been on file since 1994.

9. "Delivery side of the meter," as used in Tariff Sheet R-34 is that side of the meter located downstream from the point of delivery at the meter, on the customer's side of the meter.

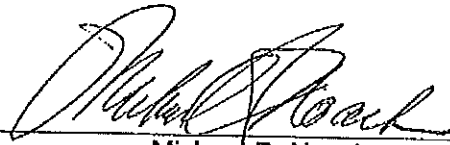
10. MGE is generally at customer homes when initiating service to a new installation, when turning on natural gas service, or when responding to a customer concern. There are limited other circumstances that may exist in which MGE is in a customer residence. There are circumstances in which MGE does not enter a customer residence for several years.

11. MGE does not furnish, manufacture, assemble, install, maintain, control, or own customer-owned pipes, vents, fixtures, and equipment/appliances on the delivery side ("downstream") of MGE's meter.

12. In order to provide natural gas service, MGE has to keep company-owned equipment on customer property, which may include meters, company-owned lines, and other equipment (such as regulators).



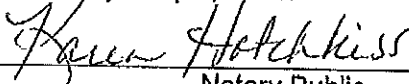
FURTHER AFFIANT SAYETH NAUGHT.

  
Michael R. Noack

STATE OF MISSOURI     )  
                                  ) ss.  
COUNTY OF JACKSON    )

I, Karen Hotchkiss, a Notary Public in and for the County and State aforesaid, do hereby certify that Michael R. Noack, Director of Pricing & Regulatory Affairs for Southern Union Gas Company d/b/a Missouri Gas Energy, being personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed and delivered this said instrument as his own free and voluntary act for the uses and purposes therein set forth.

Given under my hand and notarial seal this 11<sup>th</sup> day of April, 2011.

  
Notary Public

My Commission Expires:

10/5/13

KAREN HOTCHKISS  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Platte County  
My Commission Expires: Oct. 05, 2013  
COMMISSION #09876741

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

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.

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.

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 fall, 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.

DATE OF ISSUE March 28, 2007  
month day year

DATE EFFECTIVE April 28, 2007  
month day year  
April 3, 2007

ISSUED BY Michael R. Noack

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

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of April, 2007.

In the Matter of Missouri Gas Energy's Tariffs )  
Increasing Rates for Gas Service Provided ) **Case No. GR-2006-0422**  
to Customers in the Company's Missouri )  
Service Area )

**ORDER REGARDING MOTION FOR EXPEDITED CONSIDERATION  
AND APPROVAL OF TARIFF SHEETS IN COMPLIANCE WITH  
COMMISSION ORDER**

Issue Date: April 3, 2007

Effective Date: April 3, 2007

Missouri Gas Energy, a division of Southern Union Company initiated this proposed rate case on May 1, 2006 by filing with the Missouri Public Service Commission tariff sheets with an effective date of June 2, 2006. Under Missouri law, the Commission has the authority to suspend the effectiveness of the proposed tariff sheets for a period of 120 days beyond the effective date.<sup>1</sup> To further consider the proposed rate increase, the Commission has the authority to suspend the tariff sheets for an additional period not to exceed six months.<sup>2</sup> The proposed tariff sheets must therefore be either rejected or approved no later than March 30, 2007.<sup>3</sup>

On March 22, the Commission issued a Report and Order bearing an effective date of March 30, authorizing MGE to file tariff sheets in compliance with the Commission's

<sup>1</sup> RSMo Section 393.150.1.

<sup>2</sup> RSMo Section 393.150.2.

<sup>3</sup> One hundred twenty days beyond May 1, 2006 is September 30, 2006. An additional six months is March 30, 2007.

Order. MGE filed such tariff sheets on March 28, requesting that the Commission approve the tariff sheets to be effective on and after April 1. In its request, MGE explains in a footnote that:

Although MGE would typically seek to effectuate these compliance tariff sheets on the effective date of the Report and Order (March 30, 2007), because seasonal rate changes are scheduled to occur only two days thereafter (on April 1, 2007), MGE seeks to effectuate these compliance tariff sheets on April 1, 2007, in order to mitigate the number of rate changes that occur within a short period of time. The practical result of this request is to delay MGE's rate increase for two days and this delay will cause no harm to any customer.

MGE argues that the Commission's denial of its request would be to deny MGE of a certain portion of the rate relief to which the Commission has already found MGE to be entitled; further, that such denial would be unlawful, unjust, unreasonable, and not a result intended by the Commission. MGE filed a substitute tariff sheet on March 29, 2007.

On March 30, 2007, the Staff of the Commission filed its Recommendation. Staff states that it has reviewed MGE's tariff sheets and recommends that the Commission approve the tariff sheets to be effective on and after April 1, 2007. Staff points out that unless the Commission orders otherwise and for good cause shown, MGE must give the Commission thirty days notice of the proposed tariff sheets prior to the effective date of such tariff sheets.<sup>4</sup> Stating that good cause has been shown, Staff supports MGE's request.

The Commission has reviewed MGE's request that the Commission approve the tariff sheets to be effective on or after April 1, 2007. Upon such review, and of the Recommendation the Commission's Staff, the Commission finds that there is good cause to

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<sup>4</sup> RSMo 393.140 (11).

approve the tariff sheets to be effective on less than 30 days' notice and shall approve the tariff sheets to be effective on and after April 3, 2007.

**IT IS ORDERED THAT:**

1. Missouri Gas Energy, a division of Southern Union Company's Motion for Expedited Consideration and Approval of Tariff Sheets Filed in Compliance with Commission Order on Less Than Thirty Days' Notice is granted.

2. Missouri Gas Energy, a division of Southern Union Company's proposed tariff, assigned Tariff File No. YG-2007-0689 is approved as amended to be effective on and after April 3, 2007:

**P.S.C. MO. No. 1**

**Sixth Revised Sheet No. 10, Cancelling Fifth Revised Sheet No. 10  
Thirteenth Revised Sheet No. 24.3, Cancelling Twelfth Revised Sheet No. 24.3  
Seventh Revised Sheet No. 25, Cancelling Sixth Revised Sheet No. 25  
Seventh Revised Sheet No. 28, Cancelling Sixth Revised Sheet No. 28  
Seventh Revised Sheet No. 31, Cancelling Sixth Revised Sheet No. 31  
Second Revised Sheet No. 39, Cancelling First Revised Sheet No. 39  
Fourth Revised Sheet No. 40, Cancelling Third Revised Sheet No. 40  
Seventh Revised Sheet No. 42, Cancelling Sixth Revised Sheet No. 42  
Second Revised Sheet No. 61.2, Cancelling First Revised Sheet No. 61.2  
Seventh Revised Sheet No. 76, Cancelling Sixth Revised Sheet No. 76  
Sixth Revised Sheet No. 77, Cancelling Fifth Revised Sheet No. 77  
Third Revised Sheet No. 83, Cancelling Second Revised Sheet No. 83  
Seventh Revised Sheet No. 94, Cancelling Sixth Revised Sheet No. 94  
Fifth Revised Sheet No. 96, Cancelling Fourth Revised Sheet No. 96  
Fourth Revised Sheet No. 97, Cancelling Third Revised Sheet No. 97  
Third Revised Sheet No. 98, Cancelling Second Revised Sheet No. 98  
Fourth Revised Sheet No. R-34, Cancelling Third Revised Sheet No. R-34**

3. This order shall be effective April 3, 2007.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale  
Secretary

(SEAL)

Davis, Chm., Murray, Gaw, Clayton,  
and Appling, CC., concur.

Jones, Senior Regulatory Law Judge

P.S.C.MO. No. 1

Original

SHEET No. R-34

Missouri Gas Energy,  
a Division of Southern Union Company For All Missouri Service Areas

RECEIVED

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

JAN 7 1994

MO. PUBLIC SERVICE COMM.

3.17 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.

CANCELED BY  
1st Rev. SHEET NO. R-34  
WHICH WAS FILED 4-18-99

FILED

FEB 1 1994  
94-40  
MO. PUBLIC SERVICE COMM.

DATE OF ISSUE January 7 1994 DATE EFFECTIVE February 1 1994  
month day year month day year

ISSUED BY F. Jay Cummings Vice President, Rates and Regulatory Affairs

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

First Revised  
Original

SHEET No. R-34

Missouri Gas Energy,  
a Division of Southern Union Company

For: All Missouri Service Areas

Missouri Public  
Service Commission

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

REC'D FEB 16 1999

3.18 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.

CANCELED BY  
2<sup>nd</sup> Rev. SHEET NO. R-34  
WHICH WAS FILED Aug 18, 2001  
6

Missouri Public  
Service Commission

FILED APR 18 1999

DATE OF ISSUE February 16 1999  
month day year

DATE EFFECTIVE April 18 1999  
month day year

ISSUED BY Robert J. Hack

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



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

Second Revised  
First Revised

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

Missouri Gas Energy,  
a Division of Southern Union Company

Missouri Public  
For: All Missouri Service Areas

REC'D JUL 16 2001

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

Service Commission

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.

CANCELED BY  
3<sup>rd</sup> Rev. SHEET NO. R-34  
WHICH WAS FILED June 14, 2003

Missouri Public

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Service Commission

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ISSUED BY Robert J. Hack

AUG 06 2001  
Vice President, Pricing and Regulatory Affairs  
Missouri Gas Energy, Kansas City, MO. 64111

P.S.C. MO. No. 1  
Cancelling 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

Missouri Public  
Service Commission

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

REC'D MAY 14 2003

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.

Missouri Public  
Service Commission

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

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Missouri Gas Energy,  
a Division of Southern Union Company

For All Missouri Service Areas

**GENERAL TERMS AND CONDITIONS FOR GAS SERVICE**

JAN 7 1994

**4. TAKING GAS SERVICE**

(MO. PUBLIC SERVICE COMMISSION)

4.01 CUSTOMER'S INSTALLATION: Any and all piping, appliances, equipment or facilities (except meters, regulators, or related equipment owned by Company and located on customer's premises) required to utilize gas service beyond the point of delivery shall be furnished, installed and maintained in a safe, efficient, and proper operating condition at the expense of customer and shall be the sole responsibility of customer, except that customer-owned service lines and yard lines will be maintained as provided for in Section 3.15.

4.02 STANDARDS AND APPROVALS: Customer's installation shall conform with all applicable laws, the requirement of all governmental authorities having jurisdiction, and all reasonable requirements of Company. All required approvals of customer's installation must be obtained by customer before Company shall be obligated to commence or continue supplying gas service to customer. Company shall inspect all accessible piping and connections and may refuse service or discontinue service until the foregoing provisions have been complied with.

4.03 SIZE OF PIPING: The size of pipe required for specific installations will be determined by the quantity of gas required, the length of the pipe, and pressure loss. The piping owned by Residential or General Service customers shall be so designed and installed that the loss of pressure between the meter and any gas-burning appliance does not exceed one-half inch of water column when all appliances of customer are operating simultaneously at maximum capacity. Failure to meet the requirements of this Section shall be deemed sufficient reason to refuse or discontinue service.

94-40

DATE OF ISSUE January 7 1994 DATE EFFECTIVE February 1 1994  
month day year month day year

ISSUED BY F. Jay Cummings Vice President, Rates and Regulatory Affairs



pressure of at least one (1) psi (6.9 kPa) gauge but not more than forty (40) psi (276 kPa) gauge must be given a leak test at a pressure of not less than fifty (50) psi (345 kPa) gauge.

3. Each segment of a service line (other than plastic) intended to be operated at pressures of more than forty (40) psi (276 kPa) gauge through ninety (90) psi (621 kPa) gauge must be tested to at least ninety (90) psi (621 kPa) gauge; if the service line is to be operated between ninety (90) psi (621 kPa) gauge and one hundred (100) psi (689 kPa) gauge, it must be tested to at least one hundred (100) psi (689 kPa) gauge; and if the service line may be operated at one hundred (100) psi (689 kPa) gauge; or more, it must, at a minimum, be tested using the appropriate factor in subparagraph (12)(M)1.B. of this rule, except that each segment of the steel service line stressed to twenty percent (20%) or more of SMYS must be tested in accordance with subsection (10)(D).

(G) Test Requirements for Plastic Pipelines. (192.513)

1. Each segment of a plastic pipeline must be tested in accordance with this subsection.

2. The test procedure must ensure discovery of all potentially hazardous leaks in the segment being tested.

3. The test pressure must be at least one hundred fifty percent (150%) of the maximum allowable operating pressure or fifty (50) psi (345 kPa) gauge, whichever is greater. However, the maximum test pressure may not be more than three (3) times the pressure determined under subsection (3)(I), at a temperature not less than the pipe temperature during the test.

4. During the test, the temperature of thermoplastic material may not be more than 100°F (38°C), or the temperature at which the material's long-term hydrostatic strength has been determined under the listed specification, whichever is greater.

(H) Environmental Protection and Safety Requirements. (192.515)

1. In conducting tests under this section, each operator shall ensure that every reasonable precaution is taken to protect its employees and the general public during the testing. Whenever the hoop stress of the segment of the pipeline being tested will exceed fifty percent (50%) of SMYS, the operator shall take all practicable steps to keep persons not working on the testing operation outside of the testing area until the pressure is reduced to or below the proposed maximum allowable operating pressure.

2. The operator shall ensure that the test medium is disposed of in a manner that will minimize damage to the environment.

(I) Records. (192.517)

1. For mains, each operator shall make and retain for the useful life of the pipeline, a record of each test performed under subsections (10)(C)-(E) and (G). (192.505, 192.507, 192.509 and 192.513) Where applicable to the test performed, the record must contain at least the following information, except as noted in subparagraph (10)(I)1.B.

A. The operator's name, the name of the operator's employee responsible for making the test and the name of any test company used;

B. Test medium used, except for tests performed pursuant to subsections (10)(E) and (G);

C. Test pressure;

D. Test duration;

E. Pressure recording charts or other record of pressure readings;

F. Elevation variations, whenever significant for the particular test;

G. Leaks and failures noted and their disposition;

H. Test date; and

I. Description of facilities being tested.

2. For service lines, each operator shall make and retain for the useful life of the pipeline, a record of each test performed under subsections (10)(F) and (G) (192.511 and 192.513) Where applicable to the test performed, the record must contain the test pressure, leaks and failures noted and their disposition and the date.

(J) Test Requirements for Customer-Owned Fuel Lines.

1. At the initial time an operator physically turns on the flow of gas to new fuel line installations—

A. Each segment of fuel line must be tested for leakage to at least the delivery pressure;

B. A visual inspection of the exposed, accessible customer gas piping, interior and exterior, and all connected equipment shall be conducted to determine that the requirements of any applicable industry codes, standards or procedures adopted by the operator to assure safe service are met; and

C. The requirements of any applicable local (city, county, etc.) codes must be met.

2. The temperature of thermoplastic material must not be more than one hundred degrees Fahrenheit (100°F) during the test.

3. A record of the test and inspection performed in accordance with this subsection

shall be maintained by the operator for a period of not less than two (2) years.

(11) Uprating.

(A) Scope. (192.551) This section prescribes minimum requirements for increasing maximum allowable operating pressures (uprating) for pipelines.

(B) General Requirements. (192.553)

1. Pressure increases. Whenever the requirements of this section require that an increase in operating pressure be made in increments, the pressure must be increased gradually, at a rate that can be controlled and in accordance with the following:

A. At the end of each incremental increase, the pressure must be held constant while the entire segment of the pipeline that is affected is checked for leaks. When a combustible gas is being used for uprating, all buried piping must be checked with a leak detection instrument after each incremental increase; and

B. Each leak detected must be repaired before a further pressure increase is made, except that a leak determined not to be potentially hazardous need not be repaired, if it is monitored during the pressure increase and it does not become potentially hazardous.

2. Records. Each operator who uprates a segment of pipeline shall retain for the life of the segment a record of each investigation required by this section, of all work performed, and of each pressure test conducted, in connection with the uprating.

3. Written plan. Each operator who uprates a segment of pipeline shall establish a written procedure that will ensure compliance with each applicable requirement of this section.

4. Limitation on increase in maximum allowable operating pressure. Except as provided in (11)(C)3., a new maximum allowable operating pressure established under this section may not exceed the maximum that would be allowed under (12)(M) and (12)(N) for a new segment of pipeline constructed of the same materials in the same location. However, when uprating a steel pipeline, if any variable necessary to determine the design pressure under the design formula in subsection (3)(C) is unknown, the MAOP may be increased as provided in subparagraph (12)(M)1.A.

5. Establishment of a new maximum allowable operating pressure. Subsections (12)(M) and (N) (192.619 and 192.621) must be reviewed when establishing a new MAOP. The pressure to which the pipeline is raised during the uprating procedure is the test pressure that must be divided by the appropriate factors in subparagraph (12)(M)1.B.



2. When a pipeline is being purged of gas by use of air, the air must be released into one (1) end of the line in a moderately rapid and continuous flow. If air cannot be supplied in sufficient quantity to prevent the formation of a hazardous mixture of gas and air, a slug of inert gas must be released into the line before the air.

**(S) Providing Service to Customers.**

1. At the time an operator physically turns on the flow of gas to a customer (see requirements in subsection (10)(J) for new fuel line installations)—

A. Each segment of fuel line must be tested for leakage to at least the delivery pressure; and

B. A visual inspection of the exposed, accessible customer gas piping, interior and exterior, and all connected equipment shall be conducted to determine that the requirements of any applicable industry codes, standards or procedures adopted by the operator to assure safe service are met. This visual inspection need not be met for emergency outages or curtailments. In the event a large commercial or industrial customer denies an operator access to the customer's premises, the operator does not need to comply with the above requirement if the operator obtains a signed statement from the customer stating that the customer will be responsible for inspecting its exposed, accessible gas piping and all connected equipment, to determine that the piping and equipment meets any applicable codes, standards, or procedures adopted by the operator to assure safe service. In the event the customer denies an operator access to its premises and refuses to sign a statement as described above, the operator may file with the commission an application for waiver of compliance with this provision.

2. When providing gas service to a new customer or a customer relocated from a different operating district, the operator must provide the customer with the following as soon as possible, but within seven (7) calendar days, unless the operator can demonstrate that the information would be the same:

A. Information on how to contact the operator in the event of an emergency or to report a gas odor;

B. Information on how and when to contact the operator when excavation work is to be performed; and

C. Information concerning the customer's responsibility for maintaining his/her gas piping and utilization equipment. In addition, the operator should determine if a customer notification is required by subsection (1)(K).

3. The operator shall discontinue service to any customer whose fuel lines or gas utilization equipment are determined to be unsafe. The operator, however, may continue providing service to the customer if the unsafe conditions are removed or effectively eliminated.

4. A record of the test and inspection performed in accordance with this subsection shall be maintained by the operator for a period of not less than two (2) years.

**(13) Maintenance.**

(A) Scope. (192.701) This section prescribes minimum requirements for maintenance of pipeline facilities.

(B) General. (192.703)

1. No person may operate a segment of pipeline unless it is maintained in accordance with this section.

2. Each segment of pipeline that becomes unsafe must be replaced, repaired or removed from service.

3. Leaks must be investigated, classified and repaired in accordance with section (14).

(C) Transmission Lines—Patrolling. (192.705)

1. Each operator shall have a patrol program to observe surface conditions on and adjacent to the transmission line right-of-way for indications of leaks, construction activity and other factors affecting safety and operation.

2. The frequency of patrols is determined by the size of the line, the operating pressures, the class location, terrain, weather and other relevant factors, but intervals between patrols may not be longer than prescribed in the following table:

**Maximum Interval Between Patrols**

Class Location of Line	At Highway and Railroad Crossing Locations	At All Other Locations
1, 2	7 1/2 months; but at least twice each calendar year	15 months; but at least once each calendar year
3	4 1/2 months; but at least four times each calendar year	7 1/2 months; but at least twice each calendar year
4	4 1/2 months; but at least four times each calendar year	4 1/2 months; but at least four times each calendar year

3. Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way.

(D) Transmission Lines—Leakage Surveys. (192.706)

1. Instrument leak detection surveys of a transmission line must be conducted—

A. In Class 3 locations, at intervals not exceeding seven and one-half (7 1/2) months but at least twice each calendar year;

B. In Class 4 locations, at intervals not exceeding four and one-half (4 1/2) months but at least four (4) times each calendar year; and

C. In all other locations, at intervals not exceeding fifteen (15) months but at least once each calendar year.

2. Distribution lines, yard lines and buried fuel lines connected to a transmission line must be leak surveyed in accordance with subsection (13)(M).

(E) Line Markers for Mains and Transmission Lines. (192.707)

1. Buried pipelines. Except as provided in paragraph (13)(E)2, a line marker must be placed and maintained as close as practical over each buried main and transmission line—

A. At each crossing of a public road or railroad. Some crossings may require markers to be placed on both sides due to visibility limitations or crossing widths; and

B. Wherever necessary to identify the location of the transmission line or main to reduce the possibility of damage or interference.

2. Exceptions for buried pipelines. Line markers are not required for the following buried pipelines—

A. Mains and transmission lines located at crossings of or under waterways and other bodies of water;

B. Feeder lines and transmission lines located in Class 3 or Class 4 locations where placement of a marker is impractical; or

C. Mains other than feeder lines in Class 3 or Class 4 locations where a damage prevention program is in effect under (12)(I).

3. Pipelines aboveground. Line markers must be placed and maintained along each section of a main and transmission line that is located aboveground.

4. Marker warning. The following must be written legibly on a background of sharply contrasting color on each line marker:

A. The word "Warning," "Caution" or "Danger," followed by the words "Gas (or name of gas transported) Pipeline" all of which, except for markers in heavily developed urban areas, must be in letters at least one inch (1") (25 millimeters) high with one-quarter inch (1/4") (6.4 millimeters) stroke; and

B. The name of the operator and telephone number (including area code) where the operator can be reached at all times.

(F) Record Keeping. (192.709)

1. For transmission lines each operator shall keep records covering each leak

**KANSAS CITY POWER & LIGHT COMPANY**

Exhibit 7

P.S.C. MO. No. 2 Fifth  Original Sheet No. 1.11  
 Revised

Cancelling P.S.C. MO. No. 2 Fourth  Original Sheet No. 1.11  
 Revised

For Missouri Retail Service Area

**GENERAL RULES AND REGULATIONS  
 APPLYING TO ELECTRIC SERVICE**

**3. SUPPLYING ELECTRIC SERVICE (continued)**

- 3.06 **ACCESS TO CUSTOMER PREMISES:** The Customer shall give the duly authorized agents and employees of the Company, when properly identified, full and free access to the premises of the Customer at all reasonable hours for the purpose of constructing, installing, inspecting, adjusting, repairing, maintaining, replacing or removing any of the Company's facilities on the premises of the Customer, reading meters, or for any other purpose incidental to the electric service supplied by the Company.
- 3.07 **DELIVERY OF ELECTRIC SERVICE TO CUSTOMER:** The Company shall supply electric service to the Customer at the Customer's point of delivery. The Customer shall provide a service entrance to be located at a suitable point on or near the Customer's premises as specified by the Company. Only authorized Company employees shall be permitted to energize the Customer's installation from the Company's facilities.
- 3.08 **COMPANY RESPONSIBILITY:** The obligation of the Company to supply electric service to the Customer shall be completed by the supplying of such electric service at the Customer's point of delivery for the operation of all electrical equipment on the premises of the Customer. The Company shall not be obligated to supply electric service to a Customer for a portion of the electrical requirements on the premises of the Customer, except pursuant to an applicable rate schedule therefore. The responsibility of the Company for the quality of service and the operation of its facilities ends at the point of delivery. The Company shall be required only to furnish, install and maintain one connection from its distribution facilities, service conductors from such connection to the Customer's point of delivery and one meter installation to measure such electric service to the Customer.
- 3.09 **CONTINUITY OF SERVICE:** The Company will use reasonable diligence to supply continuous electric service to the Customer but does not guarantee the supply of electric service against irregularities and interruptions. Except where due to the Company's willful misconduct or gross negligence, the Company shall not be considered in default of its service agreement and shall not be liable in negligence or otherwise for any claims for loss, expense or damage (including indirect, economic, special or consequential damage) regardless of cause.

DATE OF ISSUE: February 23, 2007  
 ISSUED BY: Chris B. Giles,  
 Vice President

DATE EFFECTIVE: March 30, 2007  
1201 Walnut, Kansas City, Mo. 64106

**Filed**  
 Missouri Public  
 Service Commission

# KANSAS CITY POWER & LIGHT COMPANY

P.S.C. MO. No. 2 Seventh  Original Sheet No. 1.14  
 Revised  
Cancelling P.S.C. MO. No. 2 Sixth  Original Sheet No. 1.14  
 Revised  
For Missouri Retail Service Area

## GENERAL RULES AND REGULATIONS APPLYING TO ELECTRIC SERVICE

### 3. SUPPLYING ELECTRIC SERVICE (continued)

- 3.14 **RECONNECTION OF ELECTRIC SERVICE:** The Company may impose a reconnection charge as a condition precedent to the restoration of electric service to a Customer whose electric service has been discontinued for any reason whatsoever, including discontinuance at the request of the Customer. If electric service is discontinued for nonpayment by the Customer of any delinquent electric service bill, the Company shall not be required to restore electric service to the Customer until all such delinquent bills have been paid, together with any such reconnection charge, and the Customer shall have complied with the credit regulations of the Company.
- 3.15 **REFUSAL TO SERVE:** The Company may refuse to supply electric service to any customer who fails or refuses to comply with any provisions of any applicable law, general order or rule of the Commission or rate schedule, rule or regulation of the Company in effect and on file with the Commission. However, nothing in this Rule 3.15 shall be construed as a reason for discrimination against a customer or applicant for service for exercising any right granted by 4 CSR 240-13, Utility Billing Practices.
- 3.16 **PROPERTY OF THE COMPANY:** All facilities furnished and installed by the Company on the premises of the Customer for the supply of electric service to the Customer shall be and remain the exclusive property of the Company. All facilities on the premises of the Customer which are or become the property of the Company shall be operated and maintained by and at the expense of the Company, may be replaced by the Company at any time, and may be removed by the Company upon termination of the Customer's service agreement or upon discontinuance by the Company of electric service to the Customer for any reason.
- 3.17 **LIABILITY OF COMPANY:** Except where due to the Company's willful misconduct or gross negligence, the Company shall not be liable in negligence or otherwise for any claims for loss, expense or damage (including indirect, economic, special or consequential damage) on account of fluctuations, interruption in, or curtailment of electric service; or for any delivery delay, breakdown; or failure of or damage to facilities; or any electric disturbance originating on or transmitted through electric systems with which the Company's system is interconnected, act of God or public enemy, strike, or other labor disturbance involving the Company or the Customer, civil, military or governmental authority.

### 4. TAKING ELECTRIC SERVICE

- 4.01 **CUSTOMER'S INSTALLATION:** Any and all wiring, appliance or equipment required to transform, control, regulate or utilize beyond the point of delivery the electric service supplied by the Company shall be furnished, installed and maintained by, and shall be the sole responsibility of, the Customer.

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Vice-President

DATE EFFECTIVE: March 30, 2007  
1201 Walnut, Kansas City, Mo. 64106

**Filed**

Missouri Public  
Service Commission

# UNION ELECTRIC COMPANY GAS SERVICE

Applying to MISSOURI SERVICE AREA

**RECEIVED**

VI. Customer's Installation

DEC 2 1988

A. Installation Standards

Customer's piping and gas burning equipment will be installed, operated and maintained by customer in conformity with applicable engineering standards, with the requirements of constituted authorities and with these Rules and Regulations. American National Standard - National Fuel Gas Code (latest edition) shall govern where no other code exists or where a local code is less restrictive than the National Fuel Gas Code.

**MISSOURI  
Public Service Commission**

B. Customer Responsibility

Customer will be totally responsible for the design, operation and continuing condition of customer's installation. Customer will also be liable for any loss, damage or injury caused by leakage, escape, or loss of gas on customer's side of the point of delivery.

C. Unsafe Conditions

Gas will be turned on only by Company. Company will refuse to turn on gas if it is known or suspected, or may without prior notice turn off gas if it is known or suspected, in Company's judgment, that customer's piping or appliances are in an unsafe condition, and service will not be turned on until such conditions are remedied.

**FILED**

JAN 1 1989

**Public Service Commission**

DATE OF ISSUE December 2, 1988

DATE EFFECTIVE January 1, 1989

ISSUED BY William E. Cornelius

Chairman

St. Louis, Missouri

Name of Officer

Title

Address



Cancelling P.S.C. MO. No. 1

Atmos Energy Corporation

FOR - All Areas

Name of Issuing Corporation

Community, Town or City

OTHER CONDITIONS OF SERVICE

The Company shall endeavor to furnish continuous service to the Customer but does not guarantee uninterrupted service. Further, the Company shall not be liable for loss or damage resulting from interruptions or deficiencies in service occasioned by any cause except willful default or willful neglect on its part.

Gas purchased from the Company shall be used by the Customer at one location and shall not be resold. The term "one location", as used herein, shall include separate buildings only if such separate buildings are immediately adjacent and not separated by either private or public right-of-way.

The Company will determine the adjustment, if any, to be made for wastage of gas occurring without knowledge to the Customer, on the basis of the circumstances involved in each specific instance.

Additional Load: Meters and equipment supplied by the Company for each Customer have definite capacities and no major addition to the equipment or load connected hereto shall be made except by consent of the Company. Failure to give notice of additions or changes in load, and to obtain Company's consent for same, shall render the Customer liable for any damage to any of Company's lines or equipment caused by the additional load or changed installation. The Customer agrees to notify the Company of any material changes in his installation or load conditions. Upon such notification, the Company will assist in determining if a change in rates is desirable. Unless required by substantial changes in the Customer's installation, not more than one change in rates will be made within any twelve-month period.

A Customer applying for or receiving gas service who also obtains a portion of its gas requirements from a source other than the Company is deemed to have partial service. The Customer shall, at its own expense, install and maintain at or after the Point of Delivery in a manner acceptable to the Company, adequate valves, switched or other equipment to segregate the delivery of Company provided or transported gas. This is necessary to preclude any commingling of gas from other sources with the natural gas delivered by the Company. This provision does not apply to pipeline quality natural gas purchased by the Customer from a source other than the Company and transported through the Company system.

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month day year

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month day year

ISSUED BY: Patricia Childers  
name of officer

Vice President-Rates and Regulatory Affairs  
title

Franklin, TN  
address

**Filed**

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Service Commission

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