

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

|                      |   |                       |
|----------------------|---|-----------------------|
| FP Grandboro, LLC,   | ) |                       |
|                      | ) |                       |
| Complainant,         | ) |                       |
|                      | ) |                       |
| v.                   | ) | Case No. GC-2008-0228 |
|                      | ) |                       |
| Missouri Gas Energy, | ) |                       |
|                      | ) |                       |
| Respondent.          | ) |                       |

**MGE’S ANSWER TO COMPLAINT**

COMES NOW Missouri Gas Energy, a division of Southern Union Company (“MGE” or “Respondent”), by and through its counsel, and, pursuant to 4 CSR 240-2.070, respectfully states the following to the Missouri Public Service Commission (“Commission”) as its answer and affirmative defenses to the Complaint filed by FP Grandboro, LLC (“Complainant”):

1. MGE admits that it is a public utility subject to the jurisdiction of the Commission, as provided by law.
2. Correspondence, communications, orders and decisions regarding this matter should be addressed to the undersigned counsel and:

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**COMPLAINT AND RELIEF SOUGHT**

3. Complainant alleges that it owns a multi-unit residential complex situated in Grandview, Missouri, that operates under the name Sterling Point Apartments. On October 23,

2007, MGE shut off gas to these units based on safety concerns. Complainant alleges that this gas shut off was improper and seeks the following relief:

- reimbursement of Complainant's costs to replace 111 furnaces;
- reimbursement of Complainant's labor costs related to inspection and replacement of the above furnaces;
- reimbursement of costs related to the financing of the above furnace replacements;
- reimbursement of losses resulting from the departure of tenants that moved while the natural gas was shut off; and,
- reimbursement of attorneys fees.

#### **ANSWER**

4. Prior to October 23, 2007, MGE had made multiple service calls to the Sterling Pointe Apartments ("Sterling Pointe") due to aging, malfunctioning, and poorly maintained natural gas appliances. In those service calls, MGE service personnel noted rusted and leaking flue pipes, improperly maintained furnaces, disconnected furnace wires, and leaking control valves. MGE service personnel had discovered flue pipes (which exhaust gases and possibly carbon monoxide to the atmosphere) that were so rusted and in such poor condition that they collapsed under their own weight and could have vented exhaust gases inside buildings. In another instance, MGE service personnel found that a new commercial water heater had been installed in an apartment building without a flue and was therefore blowing exhaust gas directly into an apartment building. Any of these situations could have caused death or serious injuries to the tenants of Sterling Pointe.

5. MGE service personnel had previously discussed the poor condition of these appliances with Sterling Pointe maintenance and management personnel. On multiple occasions, MGE personnel had noted unsafe conditions in appliances (by placing a “red-tag” on the appliance) and had terminated service to those appliances. In some instances, MGE service personnel found red-tagged appliances that were placed back in operation without being properly repaired. The appliances were deteriorating due to age and were not being addressed by Sterling Pointe management or maintenance personnel.

6. Out of concern for customer safety, MGE called personnel from the City of Grandview Codes Department and the Grandview Fire Department on October 23, 2007 to independently inspect the condition of natural gas appliances at Sterling Pointe. The City of Grandview Codes and Fire Department personnel also observed the substandard condition of the equipment at Sterling Pointe. As a result, MGE shut off natural gas service for the entire complex. Natural gas service was re-initiated only after the appliances passed inspections performed by the City of Grandview building inspectors.

7. MGE operated in accordance with its tariffs and Missouri regulations when it shut off gas service to Sterling Pointe on October 23, 2007 due to these safety concerns. When initiating gas service to a customer or when it responds to a service call, MGE is required to perform certain tests and inspections on customer lines and equipment. Specifically, the Company is required to perform “visual inspection(s) of the exposed, accessible customer gas piping.” (4CSR 240-40.030 (12)(S)1.A). In addition, the Company is required to conduct a visual inspection of “all connected equipment” (e.g. natural gas appliances) to determine if the requirements of applicable and adopted codes are met to “assure safe service.” (Id.) The “visual

inspection” is, by its very nature, a limited inspection.

8. MGE does not repair appliances, nor does it purport to thoroughly diagnose every possible safety or maintenance issue with an appliance. MGE is required to only conduct a limited visual inspection and notify the customer of any readily observable safety issues. The customer is responsible for maintaining, repairing, or (if necessary) replacing appliances so that they operate safely and efficiently. Customers must maintain and repair piping and appliances by hiring qualified, licensed plumbers or HVAC technicians.

9. MGE service persons are required to “red-tag” customer appliances if they determine that an unsafe condition exists during their visual inspection. A “red-tag” indicates an unsafe condition on an appliance that must be remedied before the appliance can be safely operated. A “red-tag” does not mean that a customer has to replace the appliance, nor does it purport to fully diagnose maintenance or safety conditions in that appliance. The red-tag only indicates that the service person noted something during his limited, visual inspection that indicates an unsafe condition appears to exist. Since the appliances are customer-owned, it is up to the customer to repair or replace the appliance to bring it up to a safe operating condition.

10. In the present case, MGE has responded to numerous service calls and has put multiple red-tags on appliances at Sterling Pointe, primarily because the equipment is poorly maintained and aging. By way of example, the following table describes a portion of the visits in the last two years to Sterling Pointe, with a description of the safety concerns noted:

|                                     |   |
|-------------------------------------|---|
| 13900<br>Grandboro<br>Apartment #5: | 2/15/07: red tagged furnace after finding several wires disconnected with broken wire terminal. Furnace was inoperable. |
|-------------------------------------|---|

|                                     |   |
|-------------------------------------|---|
| 13902<br>Grandboro<br>Apartment #7: | 9/10/07: red tagged range after finding delayed ignition at burner.   |
| 13902<br>Grandboro<br>Apartment #10 | 2/9/07: red tagged furnace after finding it in very poor condition.<br>Advised owner.   |
| 13904<br>Grandboro:                 | 10/16/07: red tagged furnace after observing delayed ignition on furnace (Apt. # 15).<br>10/1/07: red tagged (i) water heater after finding flue not drafting and no overflow tube, (ii) furnace after finding leak on pilot lines. (Apt. # 15)<br>7/16/07: red tagged furnace after finding leaking control valve and pilot line. (Apt. #15)<br>8/19/07: Bad safety on furnace (Apt. # 14)<br>10/9/06: Pilot light out at furnace, leaking flex valve on range supply, leaking control valve on water heater. Red-tagged three appliances. |
| 13908<br>Grandboro<br>Apartment #23 | 7/18/07: red tagged furnace after finding it in very poor condition.<br>Rusted flue in apartment 23 is part of the same common flue to furnaces for apartments 23, 25 and 27.<br>5/2/06: red tagged furnace after finding flue pipe split open, advised maintenance.  |
| 13908<br>Grandboro<br>Apartment #24 | 10/19/07: red tagged furnace after finding flue rusted out and separated from stack.<br>2/28/07: red tagged furnace after finding exhaust fan badly rusted and inoperable.<br>2/1/06: red tagged furnace after finding exhaust motor seized up.<br>Advised manager.   |
| 13908<br>Grandboro<br>Apartment #25 | 7/18/07: red tagged furnace after finding it in very poor condition.<br>1/18/07: red tagged furnace after finding it very dirty.<br>1/11/06: red tagged furnace after observing floating flames and scale covering burners.   |
| 13908<br>Grandboro<br>Apartment #27 | 10/3/07: red tagged furnace after finding it in bad condition. Needs to be replaced.<br>7/18/07: red tagged furnace after finding it in very poor condition.  |

|  |  |
|--|--|
| 13910<br>Grandboro<br>(public service<br>meter)    | 10/27/06: Found commercial water heater operating without the flue connected. Shut off, red-tagged, and advised manager.   |
| 13914<br>Grandboro<br>Apartment #46                | 7/3/07: red tagged furnace after finding it in very bad condition.<br>10/3/06: red tagged furnace after finding it in very bad condition.                                |
| 13918<br>Grandboro<br>Apartment #39                | 10/20/06: red tagged furnace after finding electrical wires hanging out of furnace.  |
| 5201 139 <sup>th</sup> St.<br>Apartment #54-<br>58 | 8/3/07: red tagged commercial water heater after finding 8" flue rusted out with several large holes. Advised maintenance and manager.                                   |
| 5203 139 <sup>th</sup> St.<br>Apartment #61        | 12/14/06: red tagged furnace after finding it in poor condition with exposed wiring and transformer not attached. Advised manager.                                       |
| 13905<br>Grandboro<br>Apartment #69                | 2/9/07: red tagged furnace after finding it in very bad condition. Observed floating flames and flame roll out. Right burner not igniting. Advised customer and manager. |
| 13905<br>Grandboro<br>Apartment #74                | 9/6/07: red tagged furnace after finding it in very poor condition. Advised manager.   |
| 13909<br>Grandboro<br>Apartment #83                | 8/20/07: red tagged water heater after finding open flue pipe.   |
| 13915<br>Grandboro<br>Apartment #98                | 7/23/07: red tagged furnace after finding it in poor condition.<br>8/14/06: red tagged range after finding leak on flex line.  |
| 13915<br>Grandboro<br>Apartment #99                | 7/18/07: red tagged furnace after finding it in poor condition.<br>7/24/06: red tagged water heater after finding leak on valve.   |
| 13921<br>Grandboro<br>Apartment #115               | 10/2/07: red tagged furnace after finding it in poor condition.<br>1/2/07: red tagged furnace after finding it in poor condition.  |

11. When an appliance is “red-tagged,” MGE service personnel notify the customer of the condition and note the unsafe condition on the red-tag and/or their service record. If possible, the customer’s gas service is left on so that the customer may remedy the condition. If the condition is incapable of immediate remedy, however, gas service is terminated.

12. MGE’s “customers” in Sterling Pointe were either the tenants or Sterling Pointe management, depending on what type of service was being used. The tenants of Sterling Pointe were MGE customers for their heating needs, as the gas furnaces were individually metered. The management of Sterling Pointe was an MGE customer for cooking stoves and hot water heaters, as these appliances were connected to public service meters. When called by a tenant directly, or if Sterling Pointe management or maintenance personnel were not available, MGE service personnel would inform the tenant directly of any red-tagged furnaces or other appliances. The tenants should then have notified Sterling Pointe maintenance to repair the appliance or condition.

13. If Sterling Pointe maintenance personnel called MGE or if they were available, Company service personnel would notify Sterling Pointe maintenance or management of the condition. There are numerous instances in which MGE service records note that service persons informed Sterling Pointe management or maintenance personnel of red-tagged appliances or other unsafe conditions in need of repair.

14. MGE is required to terminate gas service if MGE determines that gas appliances are unsafe and if the unsafe condition cannot be effectively eliminated. (See 4 CSR 240-40.030 (12)(S)(3), which states that “(t)he operator shall discontinue service to any customer whose fuel lines or gas utilization equipment are determined to be unsafe.” (emphasis added). Once

immediate safety concerns are identified, MGE has no discretion to continue service. MGE must terminate service until the unsafe condition is corrected. Here, suspending service was required due to ongoing safety and maintenance issues that were simply not addressed by Sterling Pointe maintenance personnel or its management. The condition of the facilities was also observed by the City of Grandview Codes and Fire Department personnel.

15. MGE's tariff does not require it to provide advance notice to a customer if it must shut off gas service due to an unsafe condition. (See Rule 4.07, Sheet No. R-36 of the Company's General Terms and Conditions for Gas Service). Under that tariff, the Company is prohibited from resuming service until the "dangerous condition has been eliminated." (Id.)

16. MGE's tariffs also allow it to temporarily suspend gas service for safety or other reasons. (See Rule 3.06, Sheet No. R-21 of the Company's General Terms and Conditions for Gas Service). MGE's concerns for the safety of Sterling Pointe's residents are well-documented. Under that same tariff, MGE is required to "make reasonable efforts to restore service without unreasonable delay." (Id.) Once the City of Grandview inspected the appliances and indicated its belief that gas service could be re-initiated, MGE quickly restored gas service to the approved buildings. Further, by that same tariff, when there is interruption of service for safety reasons, MGE is not liable for damages caused by the suspension of service.

17. In the present case, MGE operated within the requirements of its tariffs and Missouri State Regulations when it shut off natural gas service to Sterling Pointe Apartments. MGE's actions were made out of concern for the safety for the residents of Sterling Pointe and after it lost confidence in Sterling Pointe's ability to safely repair and maintain the natural gas appliances at the apartment complex. Service was restored once the appliances passed city



inspection.

18. Except as expressly admitted in this answer, MGE denies each and every allegation contained in Complainants' Complaint.

### **AFFIRMATIVE DEFENSES**

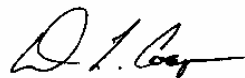
19. Further answering, MGE states that it has acted in accordance with its tariffs.

20. Further answering and for its second affirmative defense, MGE states that the Complaint fails to state a claim upon which relief may be granted.

21. Further answering and for its third affirmative defense, MGE states that the Commission does not have the authority or jurisdiction necessary to grant the relief requested by the Complainant.

WHEREFORE, having fully answered and set forth its affirmative defenses, Respondent Missouri Gas Energy, prays the Commission dismiss the Complaint and grant such other relief as the Commission deems reasonable and just.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI GAS ENERGY

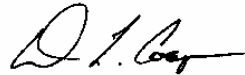
## CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on February 21, 2008, to the following:

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