BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI



Office of the Public Counsel,)
	Complainant,)
v.		Case No. GC-97-497
Missouri Gas Energy, a Division Union Company, a Delaware Corpor))
	Respondent.)

REPORT AND ORDER

Issue Date: September 18, 1997

Effective Date: September 30, 1997

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Office of the Public Counsel,)
Complainant,)
v.) <u>Case No. GC-97-497</u>
Missouri Gas Energy, a Division of Southern)
Union Company, a Delaware Corporation,)
Respondent.)

APPEARANCES

Gary W. Duffy, Attorney, Brydon, Swearengen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for Missouri Gas Energy.

Robert J. Hack, Senior Attorney, Missouri Gas Energy, 3420 Broadway, Kansas City, Missouri 64111, for Missouri Gas Energy.

<u>Douglas E. Micheel</u>, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Thomas R. Schwarz, Jr., Deputy General Counsel, Post Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE:

Joseph A. Derque III.

REPORT AND ORDER

Procedural History

This docket was opened on May 13, 1997, as a result of a complaint filed by the Office of Public Counsel (OPC) alleging that Missouri Gas

Energy (MGE)¹ unlawfully billed certain residential, small general service and large general service customers during the months of November 1996 through February 1997, and further sent residential customers bills for an unauthorized billing period. The OPC alleged the unlawful bills were the result of use of unauthorized purchase gas adjustment-cost of gas (PGA/COG) rates by MGE.

On July 24, 1997, the parties, including MGE, the OPC and the Staff of the Commission (Staff) filed a Unanimous Stipulation and Agreement for Commission approval, purporting to settle all issues specified in the OPC complaint. An on-the-record presentation of that agreement was held by the Commission on August 14. On August 27 the Commission issued an order rejecting that proposed stipulation. In that order, the Commission stated that the proposed stipulation was unacceptable because it attempted to preclude the Commission from carrying out various statutory responsibilities as they related to MGE's activities prior to August 1, 1997, it contained no details regarding the administration of funds proposed to be donated as a charitable contribution and offered no assurances that the \$450,000 charitable donation was above MGE's current charitable donations.

On September 9 the parties filed another Unanimous Stipulation and Agreement, appended to this Report and Order and incorporated herein as Attachment A, intended to specifically address the concerns of the Commission as expressed in the August 27 order rejecting the first proposed stipulation.

¹Missouri Gas Energy is a division of Southern Union Company, is a public utility regulated by this Commission, and is engaged in providing natural gas service to the general public in Missouri.

Findings of Fact

The current proposed Stipulation provides for the following:

- 1. That MGE will issue a credit on bills to residential, small general service and large general service customers of \$15.00 each, making a rough total of \$1.5 million and, in addition, donate a cash contribution of \$450,000 to Mid America Assistance Coalition for the specific purpose of assisting customers in MGE's service territory who have difficulty paying their gas bills. The details regarding distribution of this contribution are attached to the proposed Stipulation and Agreement as Exhibit 1;
- 2. That MGE will continue to review and correct over-billings by use of bill credits;
- 3. That MGE will not seek to recover under-billings occurring from November 1996 through February 1997 which MGE has not sought to collect by re-billing;
- 4. That MGE will not seek to recover in rates the expenses it has incurred to correct past billing errors;
- 5. That MGE will be permitted to seek recovery in rates of the costs it has incurred to prevent future errors;
- 6. That the OPC will not initiate, support or otherwise assist in any complaints or petitions seeking penalties or damages from MGE for billing or meter reading occurring prior to August 1, 1997; and
- 7. That the Commission Staff will not initiate, support or otherwise assist in any complaints or petitions seeking penalties or damages from MGE for billing or meter reading

occurring prior to August 1, 1997, unless required by the Sunshine Law^2 or so ordered by the Commission.

Further, the footnote on page 4 of the September 9 Stipulation and Agreement shows that for fiscal year 1996-1997, MGE made \$112,107.92 in charitable contributions while \$71,895 had been budgeted; and for fiscal year 1997-1998, MGE has budgeted \$50,500 for charitable contributions which does not include the contribution provided for in this agreement. This clarifies the commitment of MGE with respect to the cash contribution of \$100,000.

The Commission finds that the current proposed Stipulation and Agreement remedies the Commission's concerns as expressed in the order of August 27, 1997 in that the provision for a charitable contribution is now in sufficient detail and the unlawful waiver provision has been omitted.

The Commission finds the proposed Stipulation and Agreement to be just, reasonable and in the public interest. The Commission will approve the agreement as set out in Attachment A to this Report and Order and order the compliance of the parties.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Missouri Gas Energy is a regulated public utility over which the Commission has jurisdiction in accordance with Chapters 386 and 393, RSMo 1994.

²Chapter 610, Revised Statutes of Missouri 1994.

The standard for Commission approval of a stipulation and agreement is whether the agreement is just, reasonable and in the public interest.

For the reasons as set out in this Report and Order, the Commission concludes that the agreement is just, reasonable and in the public interest.

IT IS THEREFORE ORDERED:

- 1. That the proposed Stipulation and Agreement, filed by the parties on September 9, 1997, is hereby approved.
- 2. That late-filed Exhibits 3, 4, 5, and the supplement to late-filed Exhibit 5 are received into the record.
- 3. That this Report And Order shall become effective on September 30, 1997.

BY THE COMMISSION

Beil July

Cecil I. Wright Executive Secretary

(SEAL)

Lumpe, Ch., Crumpton, Murray, and Drainer, CC., concur.

Dated at Jefferson City, Missouri, on this 18th day of September, 1997.

MILLED

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

SEP 0 9 1997

THE OFFICE OF THE PUBLIC COUNSEL Complainant,	PUBLIC SERVICE COMMISSION
v. MISSOURI GAS ENERGY, a division of Southern Union Company, Respondent.	Case No. GC-97-497

UNANIMOUS STIPULATION AND AGREEMENT

Come now Complainant the Office of the Public Counsel ("Public Counsel"), the Staff of the Missouri Public Service Commission ("Staff"), and Respondent Missouri Gas Energy ("MGE" or "Company"), by and through their respective counsel, and submit the following stipulation and agreement which, if approved by the Commission, will dispose of all issues in this proceeding:

Procedural History

- 1. On May 13, 1997, Public Counsel filed a Complaint against MGE. Public Counsel alleged that MGE unlawfully billed certain residential, small general service and large general service customers unauthorized purchase gas adjustment (PGA/COG) rates during the months of November 1996 through February 1997 and sent residential customer bills with an unauthorized billing period. On June 16, 1997, MGE filed an Answer to the Complaint and also moved to dismiss the Complaint.
- 2. A Protective Order was issued on May 15, 1997. On June 25, 1997, the Commission issued an Order directing the Staff to file a report of the results of its investigation by July 25, 1997.
- 3. On August 14, 1997, a hearing was convened for the presentation of a Stipulation and Agreement that had been filed on July 24, 1997. On or about August 28, 1997, the Commission issued an Order Rejecting Stipulation And Agreement in which it took issue with two specific items addressed in that Stipulation and Agreement: 1) the complaint moratorium and 2) the lack of detail regarding the proposed \$450,000 contribution to assist MGE customers who

need help paying their gas bills. This Stipulation and Agreement supersedes the Stipulation and Agreement which was filed on July 24, 1997, and is intended to address the Commission's concerns in those two areas (specifically, see paragraphs 4.A.ii. and 4.F. and Attachment 1).

Agreed Upon Terms and Conditions

4. As a result of settlement negotiations, MGE, Public Counsel and the Staff hereby offer the following stipulations and agreements for the Commission's approval. After the Commission's order approving this Stipulation and Agreement becomes final and non-appealable-

A. MGE shall:

i. issue a bill credit in the amount of \$15.00 to each customer (residential, small general service and large general service) who experienced an overbilling during November 1996 through February 1997 due either to PGA/COG billing errors during this time period or the erroneous implementation of the residential energy charge increase that was authorized to become effective February 1, 1997. For customers affected by such an overbilling during this time period who are no longer on MGE's system, MGE shall send the former customer a check for \$15.00. MGE will send a notice along with the \$15.00 bill credit stating, "The \$15.00 bill credit included on your bill this month resulted from the Missouri Public Service Commission's approval of the settlement of a complaint brought by the Missouri Office of the Public Counsel." MGE shall not seek to recover in rates the amounts represented by these bill credits in any proceeding. 104,981 customers will receive \$15.00 bill credits or checks. MGE will provide to Public Counsel and the Staff a list of such customers.

ii. make a cash contribution of \$450,000¹ to the Mid America Assistance Coalition, for the specific purpose of assisting customers in MGE's service territory who have difficulty paying their gas bills. See Attachment 1 for details regarding the distribution of this assistance.

¹ For fiscal year 1996-1997, MGE made \$112,107.92 in charitable contributions (\$71,895 had been budgeted). For fiscal year 1997-1998, MGE has budgeted \$50,500 for charitable contributions which does not include the contribution provided for in this agreement.

- B. MGE shall continue to review billings and will correct by bill credit overbillings, if any, that have not already been corrected. Specifically, MGE will examine PGA/COG charges from July 1, 1996, to the present, and application of the customer charge from October 1, 1995, through March 20, 1997.
- C. MGE shall not seek to recover through the operation of the PGA/EGCIM (Experimental Gas Cost Incentive Mechanism) clause or in any other way underbillings of the PGA/COG charge occurring from November 1996 through February 1997 which MGE has not sought to collect by re-billing.
- D. MGE shall not seek to recover in rates the expenses it has incurred to correct past billing errors through the provision of refunds, bill credits and information to customers including, but not limited to, interest paid on overbillings, non-payroll BASIC Team costs (including the cost of special mailings) and Coopers & Lybrand audit fees, to the extent the foregoing costs and fees relate solely to such correction of past billing errors.
- E. MGE shall be permitted to seek recovery in rates of the costs it has incurred to prevent future recurrence of such errors including, but not limited to, the addition of meter reading resources and customer service representatives, the upgrade of the call center network and the retention of Theodore Barry & Associates. The foregoing shall not operate as a limitation upon any party's ability to contest recovery of said expenses.
- F. The Office of the Public Counsel shall not initiate, support or otherwise assist in complaints or petitions seeking penalties against or damages from MGE, either before the Public Service Commission, the Courts or any other body, regarding billing or meter reading issues arising, or that may arise, out of facts, events and circumstances occurring prior to August 1, 1997, except as required by the Sunshine Law (Chapter 610 RSMo). The Commission Staff shall not initiate, support or otherwise assist in complaints or petitions seeking penalties against or damages from MGE, either before the Public Service Commission, the Courts or any other body, regarding billing or meter reading issues arising, or that may arise, out of the facts, events and circumstances occurring prior to August 1, 1997, except as required by the Sunshine Law

(Chapter 610 RSMo.) unless so ordered by the Commission. The signatories agree to notify MGE promptly should such requests be made under the Sunshine Law. This provision is intended as an absolute period of repose for the time period covered and requires dismissal with prejudice of Case No. GC-97-497 after the Stipulation and Agreement is approved by the Commission, but does not preclude action to enforce other terms of this agreement.

G. The Office of the Public Counsel has made the following statement in a press release: "Public Counsel believes MGE is taking significant steps to ensure that such overbillings do not occur in the future."

General Provisions

- 5. The parties further agree that none of them shall have been deemed to have approved or acquiesced in any ratemaking or procedural principle, any method of cost determination or cost allocation, or any service or payment standard, as a result of entering into this document, and none of the parties shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.
- 6. The parties further agree that this Stipulation and Agreement has resulted from extensive negotiations among the parties. The terms of this Stipulation and Agreement are interdependent. In the event the Commission does not approve and adopt the entirety of this Stipulation and Agreement, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.
- 7. To the extent the Commission approves and adopts this Stipulation and Agreement, the parties waive their respective rights pursuant to Section 536.080.1 RSMo 1994 to present testimony, to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1994; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1994.

- 8. The parties agree that the Staff may submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in this or any future proceeding, whether or not the Commission approves this Stipulation and Agreement.
- 9. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to the Protective Order issued in this case.
- 10. To assist the Commission in its review of this Stipulation and Agreement, the parties also request that the Commission advise them of any additional information that the Commission may desire from the parties relating to the matters addressed in the Stipulation and Agreement, including any procedures for furnishing such information to the Commission.

WHEREFORE, the undersigned parties respectfully request that the Commission issue its Order approving all of the terms and conditions of this Unanimous Stipulation and Agreement.

Respectfully submitted,

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MBE#36496

ADDENDUM TO STIPULATION AND AGREEMENT Case Nos. GC-97-33 and GC-97-497

Plan for Distribution of Funds through Charitable or Social Services Agencies

Following the hearing in the above-referenced case, MGE, the Office of Public Counsel (OPC), and Commission Staff (the parties) discussed the method by which to distribute the monies to be paid by MGE for the benefit of its eligible customers in need of assistance. The parties propose to engage the services of the Mid America Assistance Coalition (MAAC) to administer and oversee the distribution of the funds, at the direction of the parties. After initially deciding upon this, the parties consulted with MAAC; United Services of Kansas City; and the Missouri Department of Social Services, Division of Family Services.

MAAC is a not-for-profit corporation based in Kansas City, Missouri. Its mission is "to meet the immediate needs of people who are poor, hungry, and homeless today, and to support programs that guide them toward self-sufficiency tomorrow." The organization serves three distinct constituencies: individuals in need; service agencies; and policy makers.

The parties propose to utilize the expertise that MAAC has developed in assisting service agencies. MAAC has developed a standard intake form (SIF) now used by more than 140 agencies, and has built a state-of-the-art information network that has brought Kansas City the capability of a seamless service delivery system. In so doing, it works with public, civic, and charitable organizations to plan the allocation and prioritization of the community's emergency assistance resources.

MAAC programs are performed by eight full-time and one part-time staff, led by Executive Director Jan Marcason. MAAC is governed by an 18 member board of directors representative of the entire Kansas City area. MAAC's 1997 operating budget is \$397,500. Particularly useful to the parties are three of MAAC's core programs, the Information and Referral Hotline, Project Link/Data Collection, and Utility Fund Management.

Through the Information and Referral Hotline MAAC serves as one of the first places that persons in crisis seek help. Last year MAAC referred more than 25,000 individuals to local agencies who could provide emergency food, utility assistance, shelter, transportation, medicine or other basic services. Agencies call MAAC for referral information when they have exhausted their own resources, or when they do not provide the type of assistance a client needs. The parties appreciate that MAAC is a line agency, as well as an administrator.

Project Link is an on-line computer/telecommunications system which connects participating agencies with MAAC's database of social service recipients. Today, 69 local agencies have online connections to Project Link, which permits those agencies' staffs to search and add to a database containing records of more than 95,000 individuals and 580,0000 assists. Agencies use Project Link to determine if other organizations are currently aiding their clients, to reduce service duplication, to respond appropriately for families becoming dependent on emergency assistance, and to improve efficiency by replacing paper record keeping with electronic data entry. This program will permit MAAC to distribute the settlement funds in a timely, efficient and effective manner, at the direction of the parties.

MAAC currently oversees disbursement of nearly \$570,000 annually in privately donated utility assistance funds. An independent Allocations Committee, chaired by a MAAC board member, identifies needs throughout MAAC's service area and allocates, proportionally, utility aid funds for distribution through social service agencies. Project Link offers participating agencies on-line account information and client eligibility verification. These functions streamline the utility assistance process and allow agencies to maintain current resource information. These funds are audited annually by an outside, independent auditor. MAAC thus has available the resources, controls, and accountability that the parties require in the distribution of settlement funds.

If approved by the Commission, the terms of the distribution arrangements shall be:

1. MAAC shall be the clearing house agency which administers the distribution of the funds.

- 2. The contract between MGE and MAAC shall be developed in conjunction with the Staff and OPC, and shall be submitted to the Commission for approval.
- 3. MAAC shall employ its allocation formula, as revised in September, 1997, in distributing funds to participating agencies. The thirty-two agencies are listed in Exhibit 1, attached hereto.
 - 4. The funds will be used to assist eligible MGE customers with payment of natural gas bills.
 - 5. In order to be eligible for assistance from the funds, an agency client must: have an active MGE account, or be seeking to activate an MGE account; have a disconnect or shut off notice (if currently active); have an income at or below 150% of the federal poverty level; not receive assistance more than twice, nor in an amount totaling more than \$500; have a name and address on the SIF which matches utility records; establish the amount owed for service by a bill within 30 days of the date on the SIF, a final bill dated not earlier than March 31, 1997, or a billing history provided by MGE submit the SIF to MAAC for approval within 45 days of completing the form.
- 6. MAAC will advise each of the participating agencies of the client eligibility criteria for assistance from the funds, and will monitor and supervise participating agencies to insure that all funds are disbursed in accord with the conditions set forth herein. MAAC will advise participating agencies that the funds may be used in conjunction with other resources to assist clients, but that client needs should first be met with LIHEAP and/or ECIP funds, if available. MAAC will also advise agencies that \$50 is the minimum assistance level, with a maximum level of \$500. MAAC will also advise participating agencies that assistance (in the aggregate) between \$300 and \$500 shall be approved only after direct consultation with, and authorization by, MAAC.
- 7. MGE shall provide \$550,000 to MAAC (the total amount to be provided by MGE if the Commission approves the Stipulations and Agreements in both Case No. GC-97-33 and Case No. GC-97-497) on or before November 1, 1997. MAAC shall maintain this money in its trust account, and shall account for this money separately from any other such monies it may maintain in its trust account.
- 8. On November 3, 1997, MAAC will allocate 50% of the \$550,000 MGE Extra Help Fund, less the MAAC administrative reimbursement fee, to the 32 participating agencies serving MGE customers using the geographic formula of need approved by MAAC's Independent Allocations Committee. The other 50% will be retained in an "equal access" pool of money to be used on an as-needed basis by participating agencies that have depleted their original allocation. This will assure that the money is distributed based on the pre-determined geographic needs formula, while still giving some flexibility to those sites that experience unusually high levels of need during this period of time. After six months, any of the initial allocation which remains unspent will be returned to the "equal access" pool to be used by any of the participating agencies until the entire fund balance is distributed.
 - 9. As conditions for receiving payment for eligible customers under this program, MGE agrees; To restore and/or continue service to any customer for whom MGE has agreed to accept payment, pursuant to Commission rules and MGE's tariff; To waive deposit for customers whom MGE agrees to accept payment from the fund;
 - To provide service on the same terms or conditions of sale as it does to its other residential customers.
- 10. Twice monthly, MAAC will provide MGE with its reports which state the assistance provided by each participating agency. These reports shall provide the individual client assisted, the amount pledged from the fund, the client's MGE account number, and the client's service address. MAAC will tender MGE a check for the total amount of all participating agency authorized commitments shown on the report.

- 11. All client/customer information contained in any records or reports shall be considered confidential pursuant to §386.480 RSMo. The Staff and OPC shall have access to such records in possession of MGE for purposes of monitoring and enforcing the stipulation and agreement.
- 12. MAAC shall receive a fee of \$20,600, to be paid from the fund, for providing its services in disbursal of the funds. The funds available for distribution shall be reduced by this amount. MAAC shall provide MGE, the Staff, and OPC with a copy of the report of its outside auditor on all monies received and disbursed.

AGENCY	SERVICE AREA	FUNDS	PHONE	CONTACT
Bishop Sullivan Center	Northest Kansas City, Mo	\$15,200	231-0984	Mary McNeil
Community Assistance Council	Hickman Mills (South Kansas City)	10,000	763-3277	Carol Bird-Owsley
Community Services League	Independence, Mo & Eastern Jackson Co.	22,500	254-4100	Judy Drummond
Della C. Lamb	Northeast Kansas City, Mo.	7,100	842-8040	Sharon Loomis
		8,000	691-2900	
Don Bosco Center	Northeast Kansas City, Mo.		-	·
Economic Opportunity of St. Joe	St. Joseph, Mo. & surrounding area		316-233-8281	Pat Miller
Economic Security Corp of SW	Joplin, Mo. & surrounding area		417-781-0352	Debbie Markman
Grandview Assistance Program	Grandview, Mo.	4,000	761-1919	Chris Hoskins
Guadalupe Center	Westside Kansas City, Mo.	8,000	561-6885	Diane Tyler
Housing Information Center	Metropolitan Kansas City, Mo.	6,500	931-0443	Pat Gilmore
Howard County Human Resources	Fayette, Mo. & surrounding area	4,600	248-3505	Virginia Williams
Lee's Summit Social Services	Lee's Summit, Mo.	4,600	525-4357	
Lutheran Mission of the Good Shepherd	Westside Kansas City, Mo.	4,600	474-9094	Rev. Jim Mueller
Metropolitan Lutheran Ministry, Holmes	Central Kansas City, Mo.	17,500	931-0039	
Metropolitan Lutheran Ministry, Benton	Central Kansas City, Mo.	3,500	923-6331	
Metropolitan Lutheran Ministry, Clay Co.	Clay County, Missouri	10,000	454-5295	
Missouri Valley Human Resources	Lafayette County & surrounding area	27,000	886-7476	
Ozark Area CAA	Springfield, Mo. & surrounding area		417-864-3476	
Raytown Emergency Assistance Program	Raytown, Missouri	5,000	356-0054	Al Brown
Redemptorist Center	Central Kansas City, Mo.	2,500	931-9942	Loring Henderson/Trish Duffy
Salvation Army, Bellefontaine	Northeast Kansas City, Mo.	11,500	241-2526	Rick Harris
Salvation Army, Blue Springs	Blue Springs, Missouri	1,100	229-6718	John Harsh
Salvation Army, Blue Valley	Eastern Jackson County, Mo.	600	241-6485	Kelly Uptegrove
Salvation Army, Grandview	Grandview, Mo.	600	763-3244	Lisa Cable
Salvation Army, Independence	Independence, Mo.	5,000	252-3200	Cheryl Peters
Salvation Army, Westport	Central Kansas City, Mo.	600	753-6040	Eva Jenkins
Seton Center	East Central Kansas City, Mo.	13,000	923-3602	Beverly Brown
Share	Southeast Kansas City, Mo.	11,500	221-6268	Gladys Berridge
United Services CAA	Metropolitan Kansas City, Mo.	14,000	358-6868	Angie Porter
United Services, Clay	Clay County, Missouri	10,000	630-0037	Lorraine Hightower
United Services, Platte	Platte County, Missouri	7,500	858-5153	Carolyn Horseman
West Centeral Mo. CAA	Appleton City, Sedalia & surrounding area			Sue Ridenour/Faye Weisenburger
	Geographic Allocation	\$264,600		
	Balance in "Equal Access" Pool	\$264,800		