

Respondent

3. Respondent is Southern Union Company, a Delaware general business corporation in good standing, headquartered at 5444 Westheimer Road, Houston, Texas 77056, which engages in the business of distributing natural gas at retail in Missouri under the registered fictitious name “Missouri Gas Energy” (MGE). Southern Union Company is properly registered as a foreign corporation doing business in Missouri and its registered agent is CT Corporation System at 120 South Central Avenue, Clayton, Missouri 63105. Southern Union’s Missouri headquarters is located at 3420 Broadway, Kansas City, Missouri 64111. Operating as MGE, Southern Union distributes natural gas for light, heat and power, using gas plant that it owns or operates, to approximately 501,000 residential, commercial and industrial customers in 34 Missouri counties under tariffs approved by this Commission. Respondent will be referred to as MGE in this complaint.

Jurisdiction

4. By virtue of its activities described in Paragraph 3, above, MGE is a gas corporation pursuant to § 386.020(18) and a public utility pursuant to § 386.020(43), and is therefore subject to the jurisdiction of the Commission under sections 386.250 and 393.140.

5. This Commission has authority to hear and determine complaints against public utilities pursuant to § 386.390.1, which provides that “[c]omplaint may be made ... in writing, setting forth any act or thing done or omitted to be done by any corporation ... in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission”

6. The Commission is expressly authorized to hear and determine complaints concerning the tariff provisions of public utilities by § 393.140(5), which provides:

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

The Commission's Position on Tariffs Purporting to Limit Liability

7. On January 13, 2010, the Commission issued its Report and Order in Case No. GT-2009-0056, concerning certain tariff sheets proposed by Laclede Gas Company ("Laclede") that purported to limit Laclede's liability to its customers for damage resulting from Laclede's negligence. Like Respondent MGE, Laclede is a public utility that distributes natural gas at retail in Missouri pursuant to tariffs approved by this Commission. In rejecting the proposed tariff sheets, the Commission stated:

Ultimately, even though the Commission has the legal authority to add some liability limits in tariffs, it is choosing not to do so in this case because the limitations in the Amended Tariff are not just and reasonable. The court system is qualified to determine whether negligence has occurred even in matters involving regulated utilities. The state legislature is also an appropriate place to set liability limits on negligence claims or to give more specific authority to the Commission in this area. Laclede has produced no convincing evidence that it would be in the public interest for the Commission to limit liability in the manner it proposes. The Commission, therefore, concludes it is unreasonable to include liability limiting language in Laclede's tariffs as proposed in the Amended Tariff and rejects the tariffs.

8. On July 21, 2019, the Commission denied Laclede's timely-filed Application for Rehearing and Alternative Request for Clarification. Laclede has not sought a writ of review and the time for doing so has now passed. Consequently, Staff considers the Report and Order issued in Case No. GT-2009-0056 to embody an authoritative statement of Commission policy. For this reason, Staff brings this action against MGE so that the Commission may take up and consider the liability-limiting provisions of MGE's current tariff Sheet R-34, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by reference.

9. Staff contends that MGE's Tariff Sheet R-34 is not just and reasonable in that the tariff sheet:

- (a) Purports to immunize MGE from all liability, even in cases in which MGE fails to comply with Commission rules and applicable codes and standards;
- (b) Purports to limit MGE's liability even when MGE is negligent in the operation of its system, so that, for example, MGE would not be liable for over-pressuring its system and thereby causing damage to a customer's home and appliances;
- (c) Purports to limit MGE's liability even when MGE has inspected the customer's equipment; and
- (d) Purports to limit MGE's liability even for gross negligence or wanton or willful conduct.

10. Additionally, Staff contends that MGE's Tariff Sheet R-34 does not comply with the Commission's Natural Gas Safety Rules 4 CSR 240-40.030(10)(J) and 4 CSR

240-40.030(12)(S), in that the tariff sheet:

(a) Purports to eliminate MGE's duty to test for leakage in a competent way, ensure compliance with industry standards and local codes, and warn of potential hazards;

(b) Purports to eliminate MGE's duty to test for leakage in a competent way, ensure compliance with industry standards and local codes, and to discontinue service to a customer when equipment is unsafe;

11. On account of all the foregoing, MGE's Tariff Sheet R-34 is unjust, unreasonable, unlawful, and void and unenforceable as a matter of public policy.

12. Staff has contacted MGE prior to the filing of this complaint and has attempted to resolve the issues herein complained of through negotiation, but to no avail.

WHEREFORE, Staff prays that the Commission will give notice to Respondent MGE as required by law and, after hearing, enter its order (1) finding that MGE's Tariff Sheet R-34 is unjust, unreasonable, unlawful, violates public policy, and is void and unenforceable, (2) finding that MGE's Tariff Sheet R-34 does not comply with the Commission's Natural Gas Safety Rules 4 CSR-240-40.030(10)(J) and 4 CSR 240-40.030(12)(S); and (3) pursuant to § 393.140(5), requiring MGE to file revised tariff sheets that are just and reasonable and in compliance with the Commission's rules and the law; and granting such other and further relief as the Commission deems just.

Respectfully Submitted,

/s/ Kevin A. Thompson

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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 fail, malfunction or fall into disrepair at any time and as such the owner/customer of the premises being served shall be aware of this fact, and Company shall owe customer no duty to warn of potential hazards that may exist with such facilities on the delivery side of the gas meter, its related appurtenances and piping.

The owner/customer shall be responsible at all times for the safekeeping of all Company property installed on the premises being served, and to that end shall give no one, except the Company's authorized employees, contractors or agents, access to such property. The owner/customer of the premises being served shall be liable for and shall indemnify, hold harmless and defend the Company for the cost of repairs for damage done to Company's property due to negligence or misuse of it by the owner/customer or persons on the premises affected thereby.

The Company shall not be liable for loss, damage or injury to persons or property, in any manner directly or indirectly connected with or arising out of the delivery of gas through piping or gas utilization equipment on the delivery side of the meter, which shall include but not be limited to any and all such loss, damage or injury involving piping, vents or gas utilization equipment, whether inspected or not by the Company, or occasioned by interruption, failure to commence delivery, or failure of service or delay in commencing service due to accident to or breakdown of plant, lines, or equipment, strike, riot, act of God, order of any court or judge granted in any bonafide adverse legal proceedings or action or any order of any commission or tribunal having jurisdiction; or, without limitation by the preceding enumeration, any other act or things due to causes beyond Company's control, or attributable to the negligence of the Company, its employees, contractors or agents.

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month day year

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ISSUED BY Michael R. Noack

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