BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

James Dudley,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2004-0216
	)	
Missouri Gas Energy,	)	
	)	
Respondent.	)	

APPLICATION FOR REHEARING

COMES NOW Missouri Gas Energy, a division of Southern Union Company ("MGE"), by and through counsel, pursuant to RSMo. §386.500 and 4 CSR 240-2.160, and respectfully asks that the Missouri Public Service Commission (the "Commission") grant rehearing in regard to its October 19, 2004, *Report and Order* issued in the above-captioned case.

For the reasons stated herein, the Report and Order is unlawful, unjust, unreasonable, arbitrary, capricious, involves an abuse of discretion, is unsupported by competent and substantial evidence upon the whole record, is in excess of statutory authority, and is unconstitutional in all material matters of fact and law, in the particulars hereinafter stated for the following reasons and in the following respects:

SERVICE AT 4024 PROSPECT - $2,099.96 DEBT

MGE asks that the Commission rehear, and reconsider, its decision and determine that the unpaid bills in the amount of $2,099.96, associated with service provided to 4024 Prospect, may be transferred to Mr. Dudley's bill. In regard to this issue, there appears to be no dispute that:

- Mr. Dudley was during the time period relevant to this complaint the owner and landlord at 4024 Prospect (Report and Order, p. 5);

- A person identifying him or herself as "Sara Chappelow" initiated service at 4024 Prospect, which resulted in a $2,099.96 debt owed to MGE (*Id.*);
- The person who established the subject service appears to not be Ms. Chappalow (*Id.*);
- Mr. Dudley is unable to identify to whom he leased 4024 Prospect during the relevant time period. Mr. Dudley no longer alleges that Sarah Chappelow ever rented his property. (Tr. 65). Mr. Dudley reports instead that he leased the property to someone named "Diane." (*Id.*). However, Mr. Dudley does not remember Diane's last name. (*Id.*). This testimony at hearing was a change even from his Direct Testimony wherein Mr. Dudley stated that "Sarah Chappelow had a contract with Respondent." (Exh. 4, Dudley Dir., p. 2 (para. 6)). Mr. Dudley also does not now remember whether or not he had a written lease with "Diane." (*Id.* at p. 65-67). However, he does state that if he did have a written lease with "Diane," it was either stolen from his car, or taken out of his car by persons who were repairing a tire on his car. (*Id.*).;
- The winter of 2000-2001 was extremely cold (the relevant service was provided to 4024 Prospect from September 2000, through April 2001). (Exh. 3, Bolden Reb., p. 8).
- The property at 4024 Prospect was in deteriorating condition. (*Id.*).
- The fact that the property was supplied heat during this cold winter prevented further deterioration of the property. (*Id.*).
- This is something that would be of special importance to Mr. Dudley who represents that his primary occupation is "real estate," or the care and upkeep of

real estate. (*Id.*).

- Mr. Dudley was concerned enough about the care and upkeep of these premises that he paid a Kansas City Power & Light Company bill for 4024 Prospect during the same time natural gas service was being provided to 4024 Prospect in the name of Sarah Chappelow. (Exh. 3, Bolden Reb., p. 8-9).

The Commission's Report and Order discusses the theory of implied contract that underlies the "benefit and use" rule traditionally applied by the Commission. The Commission acknowledged in this discussion that a person may be liable for service provided, even where there is an absence of a specific request for such service, when he or she has the benefit and use of such service. *See Bowman v. The Gas Service Company*, 27 P.S.C. (N.S.) 44 (1984). What the Commission did not discuss was the origin of this approach, which is found in *Laclede Gas Company v. Hampton Speedway Company, et al.*, 520 S.W.2d 625 (Mo. App. 1975).

In *Laclede Gas*, the Missouri Court of Appeals stated the "general principle is that, even though there has been no specific request for goods or services, where goods and services are *knowingly accepted* by the party receiving the benefit, there is an obligation to pay the reasonable value of such services and a promise to pay such reasonable value is inferred by either the conduct of the parties or by law under circumstances which would justify the belief that the party furnishing such service expected payment." *Laclede Gas* at 630 (emphasis added). The Court further stated "it may be reasonably inferred that *by receiving the benefit and use* of gas and gas service, a promise to pay the lawful and reasonable charges of such service is implied." (*Id.*) (emphasis added). When these facts exist, the distinction as to who is or is not a customer is unimportant.

The Commission's Report and Order found that no implied contract existed because there

was a lack of "intent to benefit" and that "any benefit Mr. Dudley may have received . . . was unintended." Report and Order, p. 14. This is not the standard set forth in *Laclede Gas*. All that is required is a knowing acceptance and the receipt of the benefit. Those elements exist in this case.

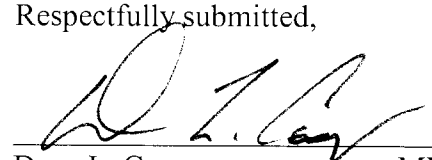
In October of 2000, a month after the service was placed in the name of Sara Chappalow, Mr. Dudley visited the MGE business office to inquire about the status of the service at 4024 Prospect. (Exh. 3, Bolden Reb., p. 6). He further was concerned enough about the care and upkeep of his rental property that he paid a Kansas City Power & Light Company bill for 4024 Prospect during the same time natural gas service was being provided to 4024 Prospect in the name of Sarah Chappelow. (Exh. 3, Bolden Reb., p. 8-9). This was important during the extremely cold winter of 2000-2001 as Mr. Dudley's rental property would have suffered significant deterioration, without the presence of heat.

The Commission's reliance on Mr. Dudley's intent is misplaced. A benefit was received by Mr. Dudley. This is sufficient under the case law to establish an implied contract for natural gas service and an obligation to pay for such service.

WHEREFORE, because the Commission's focus on intent is inappropriate, Missouri Gas Energy respectfully requests the Commission to grant a rehearing and, upon reconsideration, issue a new order setting aside that part of its October 19, 2004, *Report and Order* described herein and find that Mr. Dudley is responsible for the $2,099.96 owed to MGE

for service provided to 4024 Prospect.

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 U.S. Mail, postage prepaid, or electronic mail on October 28, 2004, to the following:

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