

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
February 14, 2001**

**CASE NO: GC-2001-436**

**Office of the Public Counsel**  
P.O. Box 7800  
Jefferson City, MO 65102

**Robert J. Hack**  
Missouri Gas Energy  
3420 Broadway  
Kansas City, MO 64111

**General Counsel**  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Enclosed find certified copy of a NOTICE in the above-numbered case(s).**

Sincerely,



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

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

|                                  |   |                             |
|----------------------------------|---|-----------------------------|
| The Staff of the Missouri Public | ) |                             |
| Service Commission,              | ) |                             |
| Complainant,                     | ) |                             |
|                                  | ) |                             |
| v.                               | ) | <u>Case No. GC-2001-436</u> |
|                                  | ) |                             |
| Missouri Gas Energy,             | ) |                             |
| Respondent.                      | ) |                             |

**NOTICE OF COMPLAINT**

Missouri Gas Energy  
Legal Department  
3420 Broadway  
Kansas City, Missouri 64111  
**CERTIFIED MAIL**

On February 9, 2001, the Staff of the Missouri Public Service Commission (Complainant) filed a complaint with the Missouri Public Service Commission (Commission) against Missouri Gas Energy (Respondent), a copy of which is enclosed. Pursuant to Commission Rule 4 CSR 240-2.070, the Respondent shall have 30 days from the date of this notice to file an answer or to file notification that the nature of the complaint has been satisfied.

In the alternative, the Respondent may file a written request that the complaint be referred to a neutral third-party mediator for **voluntary mediation** of the complaint. Upon receipt of a request for mediation, the 30-day time period shall be tolled while the Commission ascertains whether or not the Complainant is also willing to submit to voluntary mediation. If the Complainant agrees to mediation, the time period within which an answer is due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

All pleadings (the answer, the notice of satisfaction of complaint or request for mediation) shall be mailed to:

Secretary of the Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102-0360

A copy shall be served upon the Complainant at the Complainant's address as listed within the enclosed complaint. A copy of this notice has been mailed to the Complainant.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

(S E A L)

Dated at Jefferson City, Missouri,  
on this 14th day of February, 2001.

Copy to: The Staff of the Missouri Public Service Commission  
General Counsel, Missouri Public Service Commission

Hopkins, Senior Regulatory Law Judge

FILED<sup>3</sup>

FEB 09 2001

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

The Staff of the Missouri Public Service  
Commission, )

Complainant, )

v. )

Missouri Gas Energy )

Respondent. )

Case No. GC-2001- 436

COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the General Counsel, pursuant to § 386.390 RSMo 2000 and 4 CSR 240-2.070, and for its Complaint states as follows:

1. § 386.390 (1) RSMo 2000 establishes, among other things, that parties may present a Complaint before the Missouri Public Service Commission (Commission) regarding any act or omission committed by any person, corporation or public utility. This statute also provides that the Complaint may be based upon any alleged violation of any provision of law or of any rule or decision of the Commission.
2. Commission Rule 4 CSR 240-2.070 (1) provides, in part, that the Commission Staff has authority to file a Complaint through the General Counsel in connection with any violation of statute, rule, order or decision within the jurisdiction of the Commission.

3. Missouri Gas Energy (MGE) is a "gas corporation" as is defined in §386.020(18) RSMo 2000, and, as such, is a "public utility" subject to the Commission's jurisdiction pursuant to the terms of §386.020(42) RSMo 2000. MGE is also subject to the Commission's safety jurisdiction pursuant to the terms of §386.310 RSMo 2000.

4. Factually, at approximately 2:40 p.m., Central Daylight Time, on Monday, July 24, 2000, a natural gas flash fire occurred at a residence located at 205 East Oak Street in Warrensburg, Missouri. One occupant of 205 East Oak Street sustained burn related injuries as a result of the fire. The residential structure located at 205 East Oak Street sustained moderate fire damage as a result of the incident. Property damage related to the fire was estimated to be approximately \$40,000.00.

5. MGE owns and operates the natural gas distribution system in Warrensburg, Missouri. The natural gas distribution system, owned and operated by MGE, in the vicinity of 205 East Oak Street was operating at approximately 17 pounds per square-inch gauge at the time of the incident. The natural gas main serving 205 East Oak Street was a 2-inch diameter, bare steel pipeline. The natural gas service line (service line) serving 205 East Oak Street was a 7/8-inch diameter, polyethylene pipeline.

6. The Commission's Gas Department Safety/Engineering Staff conducted an investigation to evaluate the circumstances surrounding the fire at 205 East Oak Street in Warrensburg, Missouri. Staff has prepared and filed its *Gas Incident Report* in Case No. GS-2001-216 on February 9, 2001.

7. The Staff concluded that the probable cause of the incident was third-party damage to MGE's underground facilities by Installation Technologies Inc. (ITI). Specifically, the bit from it's boring machine came into contact with the natural gas service line to 205 East Oak Street, causing a puncture of the service line. Natural gas escaping from the hole punctured in the service line entered the sanitary sewer lateral to 205 East Oak Street, which was also damaged by the boring bit. Natural gas migrated through the sanitary sewer lateral into the laundry room of 205 East Oak Street, and was ignited by an undetermined source, possibly the standing pilot on the natural gas clothes dryer.

8. The Staff determined that MGE, prior to the incident, did not mark the location of their underground pipelines pursuant to the facility locate request made by ITI through Missouri One Call Systems Inc. on July 12, 2000.

9. §386.570 RSMo 2000, provides, in part, that the failure of any corporation, person or public utility to comply with any law of the State of Missouri, or any order, decision, rule, direction, demand or requirement of the Commission is subject to a penalty for each offense. Penalties authorized by this enactment consist of not less than one hundred dollars or more than two thousand dollars for each offense. In addition, this statute also indicates that in construing and enforcing the provisions of Chapter 386, the omission or failure of any officer, agent or employee of any corporation or public utility, acting within the scope of his official duties of employment, shall in every case be deemed the act, omission or failure of such corporation, person or public utility.

**Count 1**

10. The Respondent violated the explicit provisions of §319.030 (1) RSMo 2000, which provide, in part, that “every person owning or operating an underground facility to whom notice of intent to excavate is given...shall, upon receipt of such notice...inform the excavator as promptly as practical, but not in excess of two working days from receipt of such notice...of the approximate location of underground facilities in or near the area of the excavation so as to enable the person engaged in the excavation work to locate the facilities in advance of and during the excavation work.” The facts of this incident indicate that the Respondent did not inform the excavator of the approximate location of its underground facilities within two working days of the receipt of the notice on July 12, 2000, or anytime thereafter. Significant injury to person and damage to property occurred on July 24, 2000, when excavation activity in the area where marking was sought from MGE resulted in a rupture of the Respondent’s gas line. This rupture then allowed gas to enter the home at 205 East Oak Street in Warrensburg, Missouri. The gas ignited and the home was set afire.

**WHEREFORE**, the Staff respectfully requests the Commission find that MGE violated §319.030 (1) RSMo 2000, and further requests that the Commission authorize the Office of General Counsel to seek civil penalties in Circuit Court and order such other relief as the Commission may find just and reasonable.

**Service List for**

**Case No. GC-2001-\_\_\_\_\_**

**Revised: February 9, 2001 (SW)**

**Office of the Public Counsel**

**P.O. Box 7800**

**Jefferson City, MO 65102**

**Robert J. Hack**

**Missouri Gas Energy**

**3420 Broadway**

**Kansas City, MO 64111**





**Commissioners**

**SHEILA LUMPE**  
Chair

**M. DIANNE DRAINER**  
Vice Chair

**CONNIE MURRAY**

**ROBERT G. SCHEMENAUER**

**KELVIN L. SIMMONS**

**Missouri Public Service Commission**

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.state.mo.us>

**BRIAN D. KINKADE**  
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**GORDON L. PERSINGER**  
Director, Research and Public Affairs

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Director, Administration

**DALE HARDY ROBERTS**  
Secretary/Chief Regulatory Law Judge

**DANA K. JOYCE**  
General Counsel

**Information Sheet Regarding Mediation of Commission Formal Complaint Cases**

Mediation is process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. Although many private mediators charge as much as \$250 per hour, the University of Missouri-Columbia School of Law has agreed to provide this service to parties who have formal complaints pending before the Public Service Commission at no charge. Not only is the service provided free of charge, but mediation is also less expensive than the formal complaint process because the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The mediator will not possess any specialized knowledge of the utility industry or of utility law.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case.

If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

Date: January 25, 1999



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Dale Hardy Roberts  
Secretary of the Commission

GC-01-436  
P 102 3 562

GC-2001-436

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Robert J. Hack  
Missouri Gas Energy  
3420 Broadway  
Kansas City, MO 64111

4a. Article Number

P102 316 562

4b. Service Type

- ☐ Registered ☒ Certified  
☐ Express Mail ☐ Insured  
☐ Return Receipt for Merchandise ☐ COD

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FEB 16 2001

5. Received By: (Print Name)

G. Stewart

6. Signature: (Addressee or Agent)

X

8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

US Postal Service

**Receipt for Certified Mail**

No Insurance Coverage Provided.

Do not use for International Mail (See reverse)

|   |    |
|---|----|
| Sent to<br>Robert Hack (AGE)                                |    |
| Street & Number<br>3420 Broadway                            |    |
| Post Office, State, & ZIP Code<br>KCMO 64111                |    |
| Postage   | \$ |
| Certified Fee   |    |
| Special Delivery Fee  |    |
| Restricted Delivery Fee                                     |    |
| Return Receipt Showing to Whom & Date Delivered             |    |
| Return Receipt Showing to Whom, Date, & Addressee's Address |    |
| TOTAL Postage & Fees  | \$ |
| Postmark or Date  |    |

Thank you for using Return Receipt Service.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 14<sup>th</sup> day of February 2001.

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

