

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY**

**May 9, 2001**

**CASE NO: GC-2001-593**

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

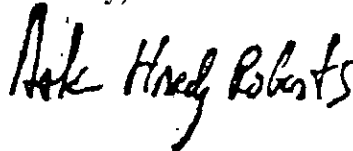
**Missouri Gas Energy**  
Legal Department  
3420 Broadway  
Kansas City, MO 64111

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

**Donald C. Otto, Jr., Esq.**  
901 Missouri Boulevard #163  
Jefferson City, MO 65101

**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**

TXU Energy Services, Inc., and	)	
Schreiber Foods, Inc.,	)	
	)	
Complainants,	)	
	)	
v.	)	<u>Case No. GC-2001-593</u>
	)	
Missouri Gas Energy, a Division	)	
of Southern Union Company,	)	
	)	
Respondent.	)	

**NOTICE OF COMPLAINT**

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

On April 20, 2001, TXU Energy Services, Inc., and Schreiber Foods, Inc., filed a complaint with the Missouri Public Service Commission against Missouri Gas Energy, a copy of which is enclosed. Pursuant to 4 CSR 240-2.070, Respondent shall have **30 days** from the date of this notice to file an answer or to file notice that 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 shall be due shall be suspended pending the resolution of the mediation process. Additional information regarding the mediation process is enclosed.

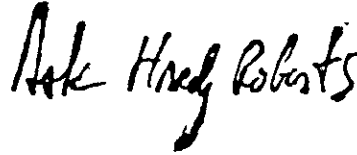
If the Complainant declines the opportunity to seek mediation, the Respondent will be notified in writing that the tolling has ceased and will also be notified of the date by which an answer or notice of satisfaction must be filed. That period will usually be the remainder of the original 30-day period.

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

Secretary, 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



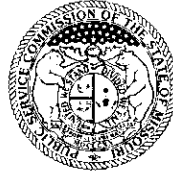
Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

Dated at Jefferson City, Missouri,  
on this 9th day of May, 2001.

Copy to: Donald C. Otto, Jr., Esq.  
901 Missouri Boulevard #163  
Jefferson City, Missouri 65101

Thompson, Deputy Chief Regulatory Law Judge



**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**  
Executive Director

**GORDON L. PERSINGER**  
Director, Research and Public Affairs

**WESS A. HENDERSON**  
Director, Utility Operations

**ROBERT SCHALLENBERG**  
Director, Utility Services

**DONNA M. KOLILIS**  
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 a 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.

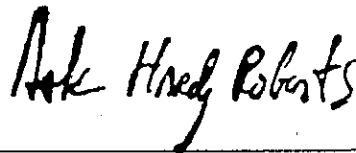
The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating 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.



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Dale Hardy Roberts  
Secretary of the Commission

Date: May 9, 2001

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED<sup>3</sup>

APR 20 2001

Missouri Public  
Service Commission

In Re:

TXU ENERGY SERVICES, INC., and  
SCHREIBER FOODS, INC

Complainants

vs.

MISSOURI GAS ENERGY, A DIVISION OF  
SOUTHERN UNION COMPANY,

Respondent

Case No. GC-2001-593

**COMPLAINT**

Comes now Complainants and, pursuant to Section 386.390 RSMo. (2000) and 4  
CSR 240-2.070, for their Complaint against Respondent states as follows :

1. Complainant, TXUES Energy Services, Inc.(hereinafter "TXUES") is a  
Texas corporation with its principle place of business in Dallas, Texas and  
is engaged in the business of supplying natural gas to it customers. Its  
Missouri Offices are located at 911 Main Street, Suite 622, Kansas City,  
Missouri 64105 .
2. Complainant Schreiber Foods is a Wisconsin corporation authorized to do  
business in the state of Missouri and is a customer of both TXUES Energy

Services and MGE. Schreiber Foods' address is 108 W. North Street, P.O. Box 351, Mt. Vernon Missouri 65712 where Schreiber Foods operates a plant where the natural gas service in question was performed.

3. Respondent, Missouri Gas Energy, a division of Southern Union Company (hereafter "MGE") is a Missouri regulated utility authorized to engage in the production, transportation and delivery of natural gas in the state of Missouri and which has tariffs on file with the Missouri Public Service Commission and whose business address is: 3420 Broadway, Kansas City, Missouri 64111.
4. Pursuant to contract, TXUES (along with other companies) nominates certain volumes of natural gas to meet its customer's anticipated needs with Williams Pipeline. Williams Pipeline, in turn, notifies MGE of these nominated volumes for all customers who are purchasing natural gas from marketers such as TXUES and delivers those volumes to MGE for distribution to the customer.
5. As MGE is a regulated utility authorized by this Commission to operate as a gas company with tariffs on file and as this matter involves the sale and transportation of natural gas in the state of Missouri, the Missouri Public Service Commission has jurisdiction over this complaint pursuant to Sections 393.140, 386.250(1), and 386.390 of the Revised Statutes of Missouri (2000).
6. The arrangements between TXUES, Williams Pipeline and Schreiber Foods had been in place since June of 1999, therefore MGE was aware of

10. Said \$78,000 was a single penalty charge for the month of August and was not billed on a daily basis as required by MGE's tariffs (Sheet 61.3, effective Sept. 2, 1998).
11. Had Schreiber Foods received a daily bill as required by MGE's tariffs, the deviation from normal gas purchasing and delivery procedure would have become immediately known to Schreiber Foods. By MGE not following its required tariffed procedures, Schreiber Foods was not made aware of the circumstances or consequences of the situation until the \$78,000 charge for the entire month had accrued, making it impossible for Schreiber Foods to correct the situation.
12. TXUES was not made aware of the situation until the middle of September, after Schreiber Foods received the penalty bill, and immediately began discussions with MGE and Williams Pipeline concerning a resolution of the problem.
13. Williams Pipeline did agree to make a prior period adjustment if MGE would be agreeable to do so. But, despite an earlier verbal agreement by MGE to make such a prior period adjustment, MGE has continued to refuse to enter into this reasonable solution and has confirmed to Schreiber Foods that the penalty would not be waived or an adjustment given.
14. In addition, on April 16, 2001, Schreiber Foods received a shut-off notice for non-payment of the penalty. However, MGE has advised Schreiber Foods that the shutoff would not take place "without adequate notice."

15. It is the best information and belief of Complainant TXUES that MGE has, in the past, given prior period adjustments to other customers in similar situations.

16. As a direct result of MGE's actions in this regard, Complainants have been directly harmed and will be harmed in the future, warranting action by this Commission.

17. MGE's actions and charges in this regard are a violation of Missouri statutes, regulations and MGE's tariffs, to wit:

- a. By failing to adequately notify either the individual authorized for energy matters at Schreiber Foods or TXUES of the lack of scheduled gas delivery for August, 2000, and by failing to inform anyone at Schreiber Foods of the potential financial consequences stemming from the lack of nomination, MGE violated its duty of reasonable diligence per paragraph 8 of the Sale or Transportation of Natural Gas Contract found at Sheet 53 of MGE's tariff, effective Sept. 2, 1998.
- b. By allowing a prior period adjustment to other customers in similar situations, but not in this instance, MGE is in violation of Sections 393.130.2 and 393.130.3 RSMo. (2000).
- c. By failing to bill Schreiber Foods on a daily basis, MGE violated the requirement found at Sheet 61.3 of its tariff, effective September 2, 1998.

d. MGE's actions in this matter violate Section 393.130.1 RSMo.

(2000) as not being just and reasonable.

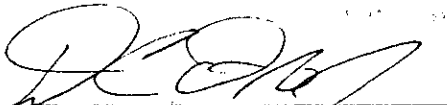
e. The actions and penalty charges in this matter are not supported by

MGE's tariffs on file with the Commission at the time of the

occurrences set out herein.

WHEREFORE, Complainants respectfully request an Order of the Commission pursuant to Sections 386.250 and 393.140 RSMo (2000) invalidating the penalty charge in the instant matter and requiring Respondent to issue a prior period adjustment or other such appropriate adjustment to Schreiber Foods and for whatever other relief the Commission deems lawful and appropriate and for an immediate Order to MGE not to shut off or otherwise cease gas deliveries to Schreiber Foods on the basis of the unpaid August 2000 penalty bill while this matter is pending.

Respectfully Submitted,



Donald C. Otto, Jr. #33844  
901 Missouri Blvd. #163  
Jefferson City, MO 65101  
(573) 690-2849

ATTORNEY FOR COMPLAINANTS

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:

Missouri Gas Energy  
Legal Dept.  
3420 Broadway  
Kansas City, MO 64111

4a. Article Number

4b. Service Type

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

7. Date of Delivery

MAY 11 2001

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X *[Signature]*

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

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

GC-01-593  
P 505 766 667

US Postal Service  
**Receipt for Certified Mail**  
No Insurance Coverage Provided.  
Do not use for International Mail (See reverse)

Sent to	
Missouri Gas Energy	
Street & Number	
3420 Broadway	
Post Office, State, & ZIP Code	
Kansas City MO 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	

PS Form 3800, April 1995

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 9<sup>th</sup> day of May 2001.

*[Signature]*

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

