

OCT 09 2001

ATTORNEY FOR COMPLAINANTS

1 Q. Please State your name

2 A. Mark Wolf

3 Q. By whom are you employed

4 A. TXU Energy Services.

5 Q. Generally what is the business of TXU Energy Services

6 A. Complainant, TXUES Energy Services, Inc. is a Texas corporation with its principle

7 place of business in Dallas, Texas and is engaged in the business of supplying natural

8 gas to it customers. TXU Energy Service's Missouri Offices are located at 911 Main

9 Street, Suite 622, Kansas City, Missouri 64105

10 Q. What is you job description with TXU Energy Services?

11 A. I am the Area Merchandising Director, responsible for energy marketing and delivery

12 in the Midwest Region.

13 Q. And is TXU authorized to do business in the State of Missouri.

14 A. Yes, Attached as Schedule 1 is our Certificate of Corporate Good Standing.

15 Q. And are you authorized to testify on behalf of TXU Energy Services

16 A. Yes.

17 Q. Is one of your customers Schreiber Foods?

18 A. Yes

19 Q. How long has Schreiber been one of your customers?

20 A. Since June of 1999

21 Q. Generally describe nomination process for natural gas as it applies to Schrieber

22 Foods

1 A. Pursuant its contract with Schreiber, TXUES nominates certain volumes of natural
2 gas to meet its customer's anticipated needs with Williams Pipeline via computer.
3 Williams Pipeline, in turn, notifies MGE of these nominated volumes for all customers,
4 such as Schreiber, who are purchasing natural gas from marketers such as TXUES and
5 delivers those volumes to MGE for distribution to the customer

6 Q. Other than the month that is in dispute in this complaint, has that procedure
7 successfully worked as far as Schreiber Foods is concerned?

8 A. Yes, each month, with one exception, July, 2000, a nomination has been
9 successfully made by TXU for Schreiber Foods' natural gas needs to Williams pipeline
10 and that amount of natural gas has been delivered to Schreiber via Williams and MGE.

11 Q. What happened in July, 2000?

12 There was a mistake somewhere in the process of nomination. Either TXU did not
13 properly make the computer nomination with Williams, or Williams did not properly book
14 the nomination. As of this date, we have not been able to document where the error
15 took place, although TXU believes that the normal computer nomination procedures
16 were followed and TXU did not realize there was any problem with the nomination until
17 it was contacted by Schreiber Foods that a penalty had been billed . In any event, due
18 to this situation, apparently no natural gas nomination notification was sent to MGE.
19 and MGE made no notification to TXU that a nomination had not been recorded.

20 Q: To TXU's knowledge did anyone from MGE contact TXU regarding the lack of
21 nomination for July, 2000?

22 A: No.

1 Q: In MGE's Answer to the complaint, it indicates that a Ms. Villanueva called an "Eric"
2 at TXU Energy Services prior to July 31, 2000 concerning nominations for Schrieber
3 what is your response to that?

4 A: TXU has no employee named "Eric." We have no record of being notified by MGE of
5 this situation. If we had been properly notified, the nomination would have been made
6 immediately, there would be no reason for us not to do so. MGE knows who the proper
7 contacts at TXU are and who receives E-Mail notices and correspondence with them
8 regularly and there is no "Eric" on that list. Notices from MGE are always sent to myself
9 or Susan Forsland Obviously, if notified, this whole unfortunate situation would have
10 been avoided.

11 Q: What about Schrieber foods.

12 A: Our investigation indicates that there may have been a phone call from MGE to an
13 employee at Schreiber Foods regarding the nomination. However the person contacted
14 apparently had no knowledge of the nomination process and was not the person in
15 charge of energy matters for Schreiber Foods. It does not appear that any effort was
16 made to contact anyone with proper authority at Schrieber or anyone who handled
17 Schreiber's natural gas billings. No written notification was sent to either TXU or
18 Schreiber regarding the situation and no information was given to Schreiber Foods, in
19 any form, that if the nomination error was not corrected there would be a substantial
20 penalty involved.

21 Q: What do you believe the proper procedure should be in this instance.

22 A: MGE knew that TXU was the natural gas supplier for this customer and had been for
23 over a year. The nominations had, in previous months, always come through in a timely

1 fashion and there had been no difficulty in the nomination process. MGE has the
2 names, telephone numbers and E-Mail addresses of persons responsible at TXU for
3 such natural gas deliveries. In addition MGE should know, in a case like this, that it is
4 important to contact the person who handles energy matters for the company. In this
5 case, when it became known to MGE that a nomination had not been made for July
6 2000 as was normally done, MGE should have notified TXU that, according to their
7 records, no nomination had yet been made to determine if there had been an error.
8 Further, confirmed notification to the customer, in writing if necessary, should have been
9 made immediately that not only notified the customer that no nomination had been
10 made, but that outlined the consequences, particularly the charges that would be
11 assessed if no nomination was made by the end of the month.

12 Q: What is your basis for believing that is the duty of MGE in this situation.

13 A: MGE, Williams, and TXU had been operating together for over a year in the purchase
14 and delivery of natural gas to this customer. As soon as it was obvious that something
15 had gone somewhere in the normal process of nomination I would expect any business
16 involved in energy delivery to take the steps necessary to make everyone was aware of
17 the problem and its consequences in order to protect the customer. As such, it is TXU's
18 position that MGE violated its duty of "reasonable diligence" per paragraph 8 of the Sale
19 or Transportation of Natural Gas Contract found at Sheet 53 of MGE's tariff, effective
20 Sept. 2, 1998 by not notifying TXU of the situation so that it could be corrected before
21 July 31, 2000 and by not giving detailed and explicit notification to Schrieber, in writing,
22 of the lack of nomination and its financial consequences.

1 Q: In the past, has MGE ever directly contacted TXU about a nomination difficulty in
2 time for it to be rectified before a penalty was assessed?

3 A: Yes. MGE used to have very good communication with suppliers. This was when
4 Wilma Ppomey was the MGE employee in charge of the process. Since her departure,
5 MGE has taken the position that it has no obligation to assist or communicate with
6 suppliers.

7 Q: What is TXU's position regarding any requirement MGE may have to bill the
8 customer daily for the unauthorized use charge?

9 A: Prior to filing of the Complaint, we were in discussions with MGE about this situation.
10 As they noted in their answer, MGE took the position that MGE was bound by the
11 wording of its tariff, so they could not waive the unauthorized usage charge. However,
12 MGE's tariff specifically states on sheet 61.3 that when a nomination has not been
13 made MGE must bill the unauthorized use charge daily. It is important to note that this is
14 separate from the language from elsewhere on the tariff sheet which states that the
15 charge "accrues" daily. It is our position that by using the word "bill" daily, that MGE is
16 required to send to the customer a daily bill whenever an unauthorized use charge is
17 being "accrued." This makes perfect sense from the standpoint of protecting the
18 customer. If something has gone wrong in a customer's normal gas delivery procedure
19 and a penalty and the unauthorized usage charge is accruing, the customer needs to
20 know immediately that there has been a problem in order to correct it as soon as
21 possible. By billing the charge daily, as required by the tariff, the customer not only
22 knows that his normal gas delivery procedure has not taken place, but knows the
23 severe consequences of the problem because the charge will be right there on the bill.

1 And the customer will be receiving additional bills, daily, until the problem is corrected
2 which would set out the charges that are being incurred.

3 Q: What about MGE's position that such daily billing does not reflect how business is
4 done with Williams and others since a nomination can be made up to the last day of the
5 month that, retroactively, covers the entire month so that there would be no
6 unauthorized use charge?

7 A: First, while I recognize that the natural gas transportation business has changed over
8 the years and that MGE must work with entities like Williams, it is still MGE's tariff. If the
9 tariff needs to be changed to have it more accurately reflect how business is currently
10 being done, then MGE should request that the Commission allow it to modify the tariff.
11 Until such time, MGE should have to live by the tariff language, especially in a situation
12 where they are trying to enforce their tariff against another and are taking the position
13 that they have no flexibility in the matter due to their tariff. Secondly just because
14 nominations can be made up to the last day of a month does not make it impossible for
15 MGE to send bills to customers daily for each day gas is being supplied without a
16 nomination having been received. MGE would just need to have the bills make clear
17 that the unauthorized use charge will only be due if no nomination is received by MGE
18 before the end of the month. Such a procedure would meet the intent of the tariff by
19 protecting the customer's interests by giving it early notification of the problem and
20 would provide a written record that the customer had been made aware of the lack of
21 nomination and its financial consequences.

22 Q: If the Commission determines that the charges in question should not be assessed,
23 what is your understanding of Williams position regarding the matter?

1 A: Williams has already agreed to wave any charges or penalties in this matter that it
2 might otherwise asses. Williams also offered to allow TXU to make a retroactive
3 nomination to keep MGE whole, but MGE refused.

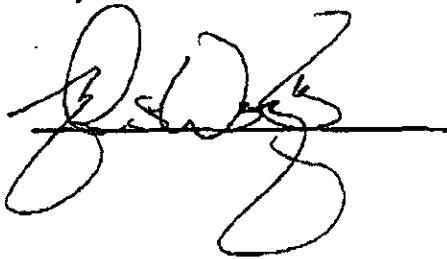
4 Q: Does this conclude your direct testimony?

5 Yes.

6

1
2 **VERIFICATION**

3
4 I, Mark Wolf II, hereby state under oath and subject to the penalties of perjury, that the
5 above testimony is true and accurate to the best of my information and belief.
6

7 

8
9 State of Missouri)
10 County of Jackson) ss
11

12
13 I, the undersigned, a Notary Public authorized to administer oaths in the State of
14 Missouri, certify that Mark F. Wolf, II appeared before me and that he willingly signed
15 the above document and that he did so as his free and voluntary act.
16

17 IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official
18 seal this 9th day of Oct., 2001.

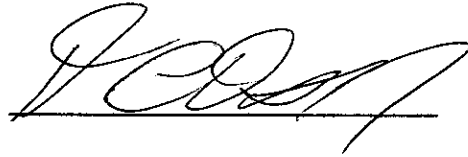
19
20 
21 Notary

SHELLEY R. WALKER
Notary Public-Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires March 14, 2006

My Commission Expires 3/14/2005

CERTIFICATE OF SERVICE

Comes now the undersigned and hereby states that a true and accurate copy of the foregoing Direct Testimony was hand-delivered to each party of record this 9th day of October, 2001.

A handwritten signature in black ink, appearing to be "J. C. Smith", written over a horizontal line.

No. F00479248

STATE OF MISSOURI



Matt Blunt
Secretary of State

CORPORATION DIVISION

CERTIFICATE OF CORPORATE GOOD STANDING - FOREIGN CORPORATION

I, MATT BLUNT, Secretary of State of the State of Missouri,
do hereby certify that the records in my office
and in my care and custody reveal that


TXU ENERGY SERVICES COMPANY

using in Missouri the name

TXU ENERGY SERVICES COMPANY

a TEXAS corporation filed its Evidence of Incorporation
with this State on the 25th day of JANUARY, 2000, and is in
good standing, having fully complied with all requirements
of this office.

IN TESTIMONY WHEREOF, I have set my
hand and imprinted the GREAT SEAL of
the State of Missouri, on this, the
9th day of OCTOBER, 2001.


Secretary of State

