

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
June 27, 2002**

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

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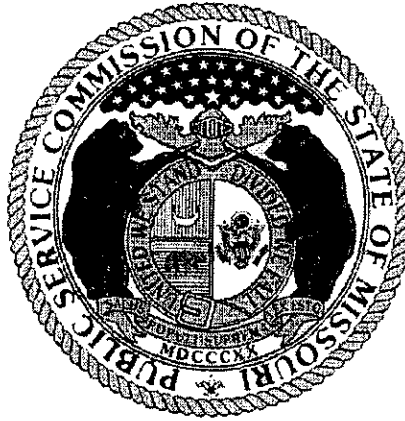
**Enclosed find certified copy of a REPORT AND ORDER in the above-numbered case(s).**

**Sincerely,**

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**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.,

Petitioners,

v.

Missouri Gas Energy, a Division of Southern  
Union Company,

Respondent.

**Case No. GC-2001-593**

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**REPORT AND ORDER**

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**Issue Date:** June 27, 2002

**Effective Date:** July 7, 2002

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

TXU Energy Services, Inc., and Schreiber  
Foods, Inc.,

Petitioners,

v.

Missouri Gas Energy, a Division of Southern  
Union Company,

Respondent.

**Case No. GC-2001-593**

**APPEARANCES**

**Donald C. Otto, Jr.**, Attorney at Law, 901 Missouri Boulevard, Jefferson City, Missouri 65101, for Petitioners TXU Energy Services, Inc., and Schreiber Foods, Inc.

**Gary W. Duffy, Esq.**, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for Respondent Missouri Gas Energy, a Division of Southern Union Company.

**Lera L. Shemwell**, Associate General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGE:** Kevin A. Thompson, Deputy Chief.

**REPORT AND ORDER**

**Procedural History**

Petitioners TXU Energy Services, Inc., and Schreiber Foods, Inc., filed their Complaint on April 20, 2001, and the Commission issued its Notice of Complaint on May 9.

Respondent Missouri Gas Energy, a division of Southern Union Company, timely answered on June 7; Petitioners replied on June 27.

Following a prehearing conference on July 9, the Commission, on July 31, adopted the procedural schedule proposed by the parties. The Commission also adopted its standard protective order on that date. According to the Commission's usual practice, the parties pre-filed written testimony for each witness. The parties also filed an agreed list of issues for determination by the Commission and each party filed a statement of its position on each issue.

Pursuant to the procedural schedule, the Commission convened an evidentiary hearing on February 19, 2002. All parties were represented at the evidentiary hearing. At the hearing, the parties waived their right to cross-examine witnesses and submitted the case on the prefiled testimony. The Commission established a schedule for post-hearing briefs and the last brief was filed on March 26. The parties also filed proposed findings of fact and conclusions of law by April 3, 2002.

### **Discussion**

The parties jointly submitted a list of issues for determination by the Commission. Each party also submitted a statement of its position on each issue. Only Staff provided any explanation of its position. In setting out the issues developed by the parties and the parties' stated positions on those issues, the Commission seeks only to inform the reader of these items. The parties' framing of the issues may not accurately reflect the material issues under the applicable statutes and rules.

**1. Should Schreiber Foods be required to pay an unauthorized use charge for gas used in July 2000?**

Petitioners urge the Commission to determine this question in the negative, while Respondent takes the affirmative. The Commission's Staff also suggests an affirmative answer to this question.

**2. Did Missouri Gas Energy do what was required by its tariff?**

Again, Petitioners urge the negative and Respondent urges the affirmative. Staff also takes the affirmative on this question.

**Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Schreiber Foods, Inc., is a manufacturer of cheese products and frozen entrees headquartered in Green Bay, Wisconsin. Among several others, Schreiber operates a plant in Mt. Vernon, Missouri, where the natural gas service in question was provided. Schreiber has four plants in Missouri, out of a total of 12 plants. Dairy plants such as Schreiber's Mt. Vernon facility are intensive energy users. Schreiber uses heat to pasteurize raw milk. Schreiber uses additional energy to process the pasteurized milk into

cheese and to process milk into such products as powdered milk. Schreiber consumes a large volume of natural gas each month.

TXU Energy Services, Inc., a Texas corporation, is a wholly owned subsidiary of TXU Corporation of Dallas, Texas. TXU Corporation is the ninth largest energy services company in the world, with annual revenues of \$22 billion and assets of \$45 billion. TXU has approximately 11 million customers world-wide and generates 30,000 megawatts of electricity annually. Its natural-gas-marketing operation serves 8,500 customers nationwide, including 75 utilities. Schreiber is one of TXU Energy's natural gas customers.

Missouri Gas Energy is a fictitious name under which Southern Union Company conducts business in Missouri as a retailer of natural gas. Missouri Gas Energy has both regular or "system sales" customers and transportation customers. Missouri Gas Energy does not sell gas to its transportation customers; rather, it delivers gas to them via its pipeline and distribution facilities. The transportation customers buy the gas elsewhere. Schreiber is one of Missouri Gas Energy's 403 transportation customers. Schreiber is neither the largest nor the smallest of Missouri Gas Energy's transportation customers. Missouri Gas Energy bills Schreiber monthly for transportation services.

TXU Energy Services provides natural gas service to Schreiber under a contract, using pipelines operated by Williams Gas Pipelines Central, Inc. (Williams), and by Respondent Missouri Gas Energy. Under its contract with Schreiber, TXU purchases natural gas from wholesalers and ships it to Schreiber via the third-party pipelines. TXU also advises the pipelines of the volume of gas that will be supplied to Schreiber each month. This process is referred to as "nomination." Specifically, TXU sends the nomination to Williams Pipeline each month by computer. Missouri Gas Energy, in turn, learns of the

nomination from Williams. The nomination for a given month can be made as late as the last day of the month. Where a nomination is not made and gas is delivered, unauthorized use charges apply. The purpose of nomination is to allocate the available gas transport volume. The purpose of unauthorized use charges is to penalize customers who use more than their allocated share of gas. This issue is particularly important during periods of high demand for gas, such as the winter heating season.

Williams posts the nominations it receives on its electronic bulletin board. Missouri Gas Energy can access this electronic bulletin board and uses this method to learn of nominations that affect it. Although Schreiber was and is a transportation customer of Missouri Gas Energy, TXU never made nominations on Schreiber's behalf directly with Missouri Gas Energy. TXU only made nominations on Schreiber's behalf with Williams. Missouri Gas Energy's business practice, then and now, was to accept nominations made with Williams as nominations made with Missouri Gas Energy.

Missouri Gas Energy did not receive or otherwise learn of a nomination for Schreiber for the month of July, 2000. The reason the nomination process failed that month is not known. Because a volume of gas was delivered to Schreiber over Missouri Gas Energy's pipeline that month, although no nomination had been received, Missouri Gas Energy billed Schreiber \$58,851.47 in unauthorized usage charges.<sup>1</sup> Schreiber has never paid that bill. Unlike Missouri Gas Energy, Williams Pipeline has agreed to waive any charges and penalties. Williams also offered to allow TXU to make a retroactive nomination, but Missouri Gas Energy refused. Missouri Gas Energy is currently still providing

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<sup>1</sup> Staff treats this figure as Highly Confidential in its prepared testimony. However, the figure appears in the nonconfidential testimony of witnesses for Petitioners and Respondent. Thus, the figure is part of the public record and the Commission need not treat it as Highly Confidential in this Report and Order.

transportation services to Schreiber. Missouri Gas Energy has billed other transportation customers for unauthorized usage charges.

Missouri Gas Energy generates a list of transportation customers for whom no nomination has been received each month at mid-month. An employee of Missouri Gas Energy then attempts to contact each such customer by telephone, using a contacts list provided by the customer. The purpose of the contact is to warn the customer of the possibility of unauthorized use charges. Teresa Villanueva, a transportation specialist employed by Missouri Gas Energy, telephoned Schreiber in mid-July, 2000, when she discovered that no nomination had been made for Schreiber for the month. However, neither of the contact persons provided by Schreiber were still employed there at the time of Villanueva's call. Consequently, Villanueva left a message concerning the potential unauthorized usage charges. Villanueva also spoke by telephone to Ralph McClury, a Schreiber employee, concerning the lack of a nomination for July 2000. Villanueva also spoke by telephone to Evan Moore, an employee of TXU Energy, and advised him that unauthorized usage charges would result if a nomination were not made for Schreiber for July 2000. Moore was one of two TXU Energy employees responsible for making the monthly nominations for Schreiber.

Petitioners admit that an attempt was made by some employee of Missouri Gas Energy via telephone to warn Schreiber prior to the last day of July 2000 of the lack of nomination and the potential unauthorized use charge. However, Petitioners deny that any attempt was made by Missouri Gas Energy to contact TXU Energy in time to avoid the charges. Petitioners presented the testimony of Mark Wolf, an employee of TXU Energy, which contradicts the testimony of Teresa Villanueva as to her telephone call to



Evan Moore at TXU Energy. Petitioners did not present the testimony of Mr. Moore. On this point, having considered the testimony in question, the Commission finds the testimony of Ms. Villanueva to be more credible than that of Mr. Wolf. Ms. Villanueva, after all, testified about her own actions, while Mr. Wolf only repeated what he believes he has been told.

Missouri Gas Energy does not make nominations for any of its transportation customers and, indeed, is unable to do so. Missouri Gas Energy does nominate the gas that it purchases and transports for resale to its regular customers. The point of resale for such gas is the meter of the individual customer.

The nominations are made by accessing an electronic bulletin board maintained by Williams. Each entity with nomination authority has a separate password. E-mails exchanged by Evan Moore and Mark Wolf of TXU Energy show that they were experiencing difficulty in July 2000 with Williams' electronic bulletin board nomination system. On July 5, Moore stated to Wolf as follows in an e-mail:<sup>2</sup>

Evan Moore  
07/05/2000 04:11 PM

To: Mark Wolf/Marketing/Kansas City/EES/US@EESINC  
cc:

Subject:       williams

markus

sorry it took so long but here is your confirmation for the williams retail nominations. i will provide you with the exact brakdown [sic] by contract in the next day or so.

i nomed all retail customers at the volumes that you specified in you [sic] first of the month spreadsheet except the two i have listed below.

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<sup>2</sup>Spelling and capitalization as in the original.

i will check with williams but perhaps you might want to get involoved [sic] as well. two retails were not tied to the billing locations i had for them or had some other problem. they are:

customer location # cust.# daily vol

1.) hillshire 012746 09447 564/d i know this is a new customer so that could be the problem.

2.) schreiber 017456 06279a 104/d we spoke of this one as well but it (the system) still does not like it.

if you have any questions, please call.

(Exhibit 5, Schedule MN-4, page 7, no. 16.)

Wolf replied to Moore, "We need to get these noms in. So try this, if it doesn't work calls [sic] WNG.<sup>3</sup> Please keep me posted." (Ex. 5, Sch. MN-4, page 7, no. 15).

On July 10, 2000, Evan Moore sent the following e-mail to Mark Wolf:

Evan Moore  
07/10/2000 08:18 AM

To: Mark Wolf/Marketing/Kansas City/EES/US@EESINC  
cc:

Subject: Re: williams

mark

schreiber [sic] and hillshire are in, hillshire got in today for flow started on 07/11. i grossed up the volume to 832/d.  
 $564 * 31 = 17,484$ .....  $17,484 / 21 = 832.5/d$ .

i found that schreiber was already in at 111/d.

thank you for your patentience [sic] in this matter.

evan

(Exhibit 5, Schedule MN-4, page 5, no. 12.)

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<sup>3</sup>"WNG" is Williams Natural Gas.

Michael R. Noack of Missouri Gas Energy went on to testify, "There was a problem that TXUES knew about on July 5, 2000, the essence of which is that the nominations were not being accepted by the Williams electronic process, and as a result, Williams delivered no gas to MGE for Schreiber's account." (Ex. 5, page 12, lines 1-4).<sup>4</sup> Based on Noack's testimony and the exhibits sponsored by Noack, the Commission finds that Evan Moore attempted to make a nomination for Schreiber on July 5, 2002, using Williams' electronic bulletin board and that, for unknown reasons, the bulletin board malfunctioned and did not accept the nomination.

Pursuant to its tariff, Missouri Gas Energy places all money received as unauthorized usage charges into its Purchased Gas Adjustment fund. Thus, such funds serve to reduce gas costs for Missouri Gas Energy's system sales customers. These funds do not benefit transportation customers in any way.

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law.

#### ***Jurisdiction:***

Missouri Gas Energy, a division of the Southern Union Company, is a "gas corporation" and a "public utility" within the intendments of the Missouri Public Service Commission Law.<sup>5</sup> The Missouri Public Service Commission, therefore, has jurisdiction over the services, activities and rates of Missouri Gas Energy.<sup>6</sup> The Commission is

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<sup>4</sup>"TXUES" is TXU Energy Services. "MGE" is Missouri Gas Energy.

<sup>5</sup>Section 386.020, (18) and (42), RSMo Supp. 2001. Section 386.010 states that Chapter 386 shall be known as the "Missouri Public Service Commission Law."

<sup>6</sup>Sections 386.020(42) and 386.250(1), RSMo Supp. 2001.

authorized to hear and determine complaints made by "any corporation or person" concerning "any act or thing done or omitted to be done by any corporation, person or public utility."<sup>7</sup>

***The Complaint:***

Petitioners complain that Missouri Gas Energy has violated Missouri law, Commission regulations, and its own tariffs, as follows:

1. That Missouri Gas Energy violated its duty of "reasonable diligence," found in Paragraph 8 of the Sale or Transportation of Natural Gas contract form at Sheet 53 of Missouri Gas Energy's tariff, by failing to advise the appropriate person at Schreiber or TXU of the lack of any nomination for July 2000 and by failing to warn Schreiber of the potential financial consequences.

2. That Missouri Gas Energy has allowed prior period adjustments to other customers but denied such an adjustment to Schreiber and TXU, thereby violating Section 393.130, 2 and 3, which provisions prohibit discriminatory treatment of customers by gas corporations.

3. That Missouri Gas Energy did not bill Schreiber on a daily basis, thereby violating the provisions of its tariff, sheet 61.3.

4. That Missouri Gas Energy has violated Section 393.130.1 by its conduct in this matter in that its actions have not been "just and reasonable."

5. That the actions and penalty charges in this matter are not supported by Missouri Gas Energy's tariffs on file with the Commission at the time of the occurrences.

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<sup>7</sup>Section 386.390.1, RSMo 2000.

Petitioners pray that the Commission will invalidate the unauthorized use charge imposed by Missouri Gas Energy on Schreiber Foods and require that Missouri Gas Energy issue a prior period adjustment or other appropriate adjustment to Schreiber. Petitioners also seek an order prohibiting Missouri Gas Energy from ceasing gas deliveries to Schreiber.

***Burden of Proof:***

The Petitioner bears the burden of proof in a case, such as this one, in which the complainant alleges that a regulated utility has engaged in unjust or unreasonable actions.<sup>8</sup> Thus, Schreiber and TXU must establish all facts necessary to support the relief they seek by a preponderance of the credible evidence.

***Affirmative Defenses:***

In answer to the Complaint, Missouri Gas Energy raises certain affirmative defenses:

1. That the Complaint fails to state "facts or a cause of action" upon which relief can be granted.
2. That the Complaint, to the extent that it asserts that Missouri Gas Energy's rates or charges are unreasonable, is not perfected as required by Section 386.390 and Regulation 4 CSR 240-2.070.
3. That TXU "lacks the legal capacity to sue or bring this Complaint" because it is not a customer of Missouri Gas Energy and has no contractual relationship with Missouri Gas Energy.

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<sup>8</sup> *Ahlstrom v. Empire District Electric Company*, 4 Mo.P.S.C.3d 187, 202 (1995); *Margulis v. Union Electric Company*, 30 Mo.P.S.C. (N.S.) 517, 523 (1991).

4. That the Commission lacks subject matter jurisdiction over the subject matter of this Complaint.

5. That Missouri Gas Energy has acted in compliance with its approved tariffs.

An affirmative defense "seeks to defeat or avoid the plaintiff's cause of action, and avers that even if the allegations of the petition are taken as true, the plaintiff cannot prevail because there are additional facts that permit the defendant to avoid the legal responsibility alleged."<sup>9</sup> However, these additional facts must be stated with particularity in the defending party's answer or other responsive pleading:

When a party asserts an affirmative defense, the pleading "shall contain a short and plain statement of the facts showing that the pleader is entitled to the defense or avoidance." Because the purpose of Rule 55.08 is to provide notice to the plaintiff, . . . the facts supporting a defense must be pled in the same manner as they would be with claims. Mere conclusory allegations constitute inadequate pleadings.<sup>10</sup>

Pleadings in Commission practice are not held to the same standard as are pleadings under Supreme Court Rule 55.08.<sup>11</sup> Nonetheless, as a matter of fundamental fairness amounting to due process of law, a party asserting an affirmative defense in a proceeding before the Commission must allege the specific facts outside the complaint upon which it relies and as to which it has the burden of proof. Otherwise, the responding party cannot know what facts it must contest.

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<sup>9</sup> *Mobley v. Baker*, 2002 WL 522691 (Mo. App., W.D., April 9, 2002) at \*4.

<sup>10</sup> *Business Men's Assurance Co. of America v. Graham*, 891 S.W.2d 438, 448 (Mo. App., W.D. 1994).

<sup>11</sup> "[A] complaint under the Public Service Commission Law is not to be tested by the technical rules of pleading; if it fairly presents for determination some matter which falls within the jurisdiction of the Commission, it is sufficient." *State ex rel. Kansas City Terminal Ry. Co. v. Public Service Commission*, 272 S.W. 957, 308 Mo. 359 (Mo. 1925).

## ***Discussion:***

This case is straightforward. Schreiber Foods, a transportation customer of Missouri Gas Energy, incurred an unauthorized use charge under Missouri Gas Energy's tariff because it failed to make a nomination prior to the end of the month of July, 2000. The tariff in question, P.S.C. Mo. No. 1, Original Sheet 61.3, effective September 2, 1998, provides:

### **UNAUTHORIZED USE CHARGES**

Unauthorized use charges will be assessed to transportation customers for all natural gas volumes taken in excess of customer's authorized gas volumes delivered to a Company's delivery location, for the customer's account, plus any Contract Demand level. Unauthorized use charges will be assessed to transportation customers on a daily basis:

during times of an MGE curtailment, and/or

during times of an interstate pipeline interruption or curtailment;  
and/or

in the event no nomination exists for such customer (zero nomination).

The Company will bill unauthorized use charges to transportation customers on a daily basis pursuant to this rate schedule, in addition to any upstream penalties assessed directly to the customer by the delivering pipeline, and/or penalties assessed to the Company by the delivering pipeline, which can be directly attributed to unauthorized use by such customer(s).

### **Unauthorized Use Charges**

1. \$1.50 for each Ccf of unauthorized use, plus
2. 125% (one-hundred and twenty-five percent) of the currently effective Purchased Gas Adjustment rate, excluding the refund factor, if any, plus

3. all interstate pipeline penalties and other charges incurred by the Company which are attributable to a customer's unauthorized use.

All interstate penalties and other charges shall be attributed and assigned to unauthorized use by specific transportation customers.

(Exhibit 3, Schedule 2).

Consequently, all of the natural gas that Schreiber used in July, 2000, was in excess of its nominated amount. Schreiber requested that Missouri Gas Energy permit it to make a late nomination, and thus avoid the charge; Williams apparently allowed this with respect to the interstate portion of the gas transportation. Missouri Gas Energy refused, however, correctly pointing out that it is bound by its Commission-approved tariff. Now Schreiber and TXU, with whom Schreiber deals in purchasing natural gas, seek relief from the Commission. To that end, Schreiber and TXU advance five different theories.

First, Petitioners argue that Missouri Gas Energy violated its duty of "reasonable diligence," found in Paragraph 8 of the Sale or Transportation of Natural Gas contract form at Sheet 52 of Missouri Gas Energy's tariff, by failing to advise the appropriate person at Schreiber or TXU of the lack of any nomination for July 2000 and by failing to warn Schreiber of the potential financial consequences. Paragraph 8 provides:

8. Company shall use reasonable diligence to provide a regular supply of natural gas subject to the priority of service provisions and other terms of Company's filed tariffs, but does not guarantee such supply. Company does not assume responsibility for interruption of service, whether caused by inadequacy of supply, equipment, facilities or because of uncontrollable forces, except when such interruption is the result of reckless, willful or wanton acts of Company, its agents or employees.

The language Petitioners rely on, by its plain terms, applies only to the provision of a regular supply of natural gas. There is no complaint in this record that Missouri Gas



Energy failed to provide a regular supply of natural gas to Schreiber; indeed, the record shows that Missouri Gas Energy supplied gas to Schreiber despite Schreiber's failure to make a timely nomination. The Commission does not agree that this language imposes any duty on Missouri Gas Energy to warn Schreiber of the financial effect of its failure to make a timely nomination. And, in any event, the record shows that Missouri Gas Energy did deliver a timely warning to Schreiber.

Second, Petitioners contend that Missouri Gas Energy has allowed prior period adjustments to other customers but nevertheless denied such an adjustment to Schreiber and TXU, thereby violating Section 393.130, 2 and 3, which provisions prohibit discriminatory treatment of customers by gas corporations. This argument must fail because Petitioners failed to adduce any evidence that Missouri Gas Energy has allowed such a "prior period adjustment" to any other customer.

Third, Petitioner argues that Missouri Gas Energy did not bill Schreiber on a daily basis, thereby violating the provisions of its tariff, Sheet 61.3. This is the theory upon which Petitioners principally rely. Petitioners state, "MGE's tariffs require it to bill a customer on a daily basis for unauthorized use charges. This did not take place. There was, rather than a daily bill, one single bill for the entire month of July 2000 sent to Schreiber Foods[.]" Petitioners insist that the word "bill" means to present a statement of charges to a customer.

This theory fails because, even if Petitioner's interpretation of Missouri Gas Energy's tariff were adopted, Petitioners do not explain why that would result in cancellation of the unauthorized use charge. Schreiber did not make a timely nomination and so must suffer the consequences set out in Missouri Gas Energy's tariff. If Missouri Gas Energy

were shown to have violated its tariff, then appropriate consequences would be imposed on Missouri Gas Energy. These consequences would not include cancellation of the unauthorized use charge.

In any event, the Petitioners have not shown that their construction of Missouri Gas Energy's tariff is the only correct one. "A tariff that has been approved by the Public Service Commission becomes Missouri law and has the same force and effect as a statute enacted by the legislature."<sup>12</sup> A tariff is subject to the same rules of construction as statutes.<sup>13</sup> When interpreting a statute, the primary goal is to determine "the intent of the legislature from the language used, to give effect to that intent if possible, and to consider words used in the statute in their plain and ordinary meaning."<sup>14</sup> The ordinary meaning of a word is usually derived from the dictionary.<sup>15</sup> The verb "bill" can mean either "to present a statement of costs or charges" or "to enter on a statement of costs."<sup>16</sup> Thus, both Petitioners' interpretation and Respondent's interpretation are permissible constructions of the tariff. The result is that Petitioners have failed to show that Missouri Gas Energy acted in violation of its tariff.

Fourth, Petitioners argue that Missouri Gas Energy has violated Section 393.130.1 by its conduct in this matter in that its actions have not been "just and reasonable." This argument, too, must fail. The Commission approved this tariff as just and reasonable when it was first presented for consideration. Petitioners have shown

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<sup>12</sup> *A.C. Jacobs and Co., Inc. v. Union Electric Co.*, 17 S.W.3d 579, 582 (Mo. App., W.D. 2000); quoting *Bauer v. Southwestern Bell Telephone Company*, 958 S.W.2d 568, 570 (Mo. App., E.D. 1997).

<sup>13</sup> *A.C. Jacobs, supra*, 17 S.W.3d at 584.

<sup>14</sup> *Lonergan v. May*, 53 S.W.3d 122, 126 (Mo. App., W.D. 2001); quoting *Farmers' & Laborers' Cooperative Insurance Association v. Director of Revenue*, 742 S.W.2d 141, 145 (Mo. banc 1987).

<sup>15</sup> *Preston v. State*, 33 S.W.3d 574, 578 (Mo. App., W.D. 2000).

<sup>16</sup> *American Heritage Dictionary* 178 (1982).

nothing to suggest that the Commission's initial approval of this tariff was a mistake. The penalty is entirely the result of Petitioners' own action or inaction.

Fifth, and finally, Petitioners argue that the actions and penalty charges in this matter are not supported by Missouri Gas Energy's tariffs on file with the Commission at the time of the occurrences. The Commission has already quoted the relevant sheet, P.S.C. Mo. No. 1, Original Sheet 61.3, effective September 2, 1998, at length above. The record shows that Missouri Gas Energy has acted in all respects in conformance with its Commission-approved tariff.

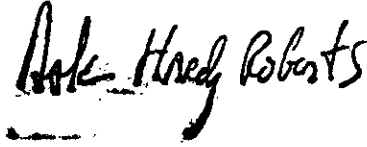
For these reasons, the Commission determines that Missouri Gas Energy appropriately imposed an unauthorized use charge on Schreiber and that the Complaint herein is without merit and should be dismissed.

**IT IS THEREFORE ORDERED:**

1. That the Complaint filed on April 20, 2001, by TXU Energy Services, Inc., and Schreiber Foods, Inc., is found after full hearing and briefing to be without merit and is therefore dismissed.

2. That this Report and Order shall become effective on July 7, 2002.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a horizontal line underneath the name.

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

**(SEAL)**

Simmons, Ch., Murray, Lumpe, Gaw,  
and Forbis, CC., concur and certify  
compliance with the provisions of  
Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 27th day of June, 2002.

ALJ/Secretary: Thompson / Pope  
Date Circulated 6-21 GC-2001-593 CASE NO.  
KS  
Simmons, Chair  
CM  
Murray, Commissioner  
88 2, 4, 13, 14, 17  
Lumpke, Commissioner  
7  
Gaw, Commissioner  
10/10  
Forbis, Commissioner  
6-27  
Agenda Date  
Action taken: 5-0 AS  
Must Vote Not Later Than \_\_\_\_\_

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 27<sup>th</sup> day of June 2002 .

Dale Hardy Roberts

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

