

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
April 3, 2001

CASE NO: GS-2001-216; GC-2001-436

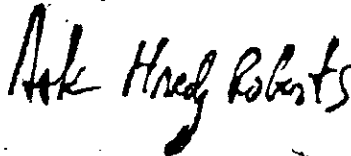
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

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 an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of April, 2001.

In the Matter of Missouri Gas Energy,)	
a Division of Southern Union Company,)	
Regarding an Incident at 205 East Oak)	<u>Case No. GS-2001-216</u>
Street, Warrensburg, Missouri, on)	
July 24, 2000)	

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

**ORDER APPROVING SETTLEMENT AGREEMENT
AND SATISFACTION OF COMPLAINT**

This order approves the Settlement Agreement and Satisfaction of Complaint, attached as Attachment 1, which was filed with the Missouri Public Service Commission by Missouri Gas Energy, a division of Southern Union Company, and the Staff of the Commission on March 16, 2001. The Office of the Public Counsel has filed no pleadings in this case.

The Commission established case number GS-2001-216 on February 9, 2001, to receive a gas incident report from Staff and the response of MGE. The case concerns an incident on July 24, 2000, involving a natural gas explosion, fire, and loss of life at 205 East Oak Street in Warrensburg, Missouri.

Case number GC-2001-436 involves a complaint filed on February 9, 2001, by Staff against MGE, alleging that in the incident above, MGE violated Section 319.030(1), RSMo, concerning notification of underground facilities.

Briefly and partially restated, the Agreement and Satisfaction informed the Commission that MGE intends to implement, or continue to implement, the recommendations made by the Staff in its Incident Report. MGE alleges that it promptly investigated the incident and took corrective action against the employee who failed to properly locate the underground facilities. In addition, MGE claims that, upon returning to work, the employee was retrained in facilities-locating procedures. MGE continues to emphasize to all employees who locate facilities the importance and necessity of being accurate and uses the incident as a training example. MGE has changed the locate procedures in its Warrensburg serving office so that additional information about service lines is placed on facilities-locate requests when they are transmitted from MGE's Lee's Summit serving office to Warrensburg. In addition, MGE's training department is reviewing locate procedures across the MGE system to determine whether modifications are appropriate in other geographical areas. MGE will report to Staff no later than May 1, 2001.

There is no need for an evidentiary hearing since no party requested one. The *Deffenderfer* case holds that the requirement of a hearing has been fulfilled when those desiring to be heard are offered an opportunity to be heard. If no party requests an evidentiary hearing, the Commission may determine that an evidentiary hearing is not necessary and may make a decision based on the Agreement and Satisfaction.¹

¹ See *State ex rel. Deffenderfer Enterprises, Inc. v. P.S.C.*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission concludes that all issues were settled by the Agreement and Satisfaction. Under Section 536.060, RSMo, the Commission has the legal authority to accept the Agreement and Satisfaction as resolving the case.

The Commission will approve the Agreement and Satisfaction.

IT IS THEREFORE ORDERED:


1. That the Missouri Public Service Commission approves the Settlement Agreement and Satisfaction of Complaint filed on March 16, 2001, signed by Missouri Gas Energy, a division of Southern Union Company, and the Staff of the Commission, attached as Attachment 1.

2. That the complaint filed by the Staff of the Missouri Public Service Commission on February 9, 2001, in case number GC-2001-436, is dismissed.

3. That this order shall become effective on April 13, 2001.

4. That both of these cases may be closed on April 14, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, and Simmons, CC., concur
Gaw, C., not participating

Hopkins, Senior Regulatory Law Judge

FILED

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

MAR 16 2001

Missouri Public
Service Commission

In the matter of Missouri Gas Energy,)
A division of Southern Union Company,)
Regarding an incident at 205 East Oak)
Street, Warrensburg, Missouri, on July 24,)
2001.)

Case No. GS-2001-216

SETTLEMENT AGREEMENT AND SATISFACTION OF COMPLAINT

Come now Missouri Gas Energy ("MGE"), a division of Southern Union Company, and the Staff of the Missouri Public Service Commission ("Staff"), by and through their respective counsel, and respectfully state as follows:

Procedural History

1. On February 9, 2001, the Staff filed a "Gas Incident Report" ("the Incident Report") in Case No. GS-2001-216. The Incident Report relates the relevant facts as found by the Staff surrounding an incident which occurred at approximately 2:40 p.m. CDST on July 24, 2000, in which a natural gas flash fire occurred at 205 East Oak Street in Warrensburg, Missouri ("the incident"). The two-story, single-family dwelling sustained moderate damage as a result of the fire and one resident sustained burn injuries and was taken to the hospital for in-patient treatment.

2. Also on February 9, 2001 the Staff filed a "Complaint" against MGE alleging violation of section 319.030(1) RSMo, regarding the location of underground facilities.

3. The Staff states on page 6 of the Incident Report (in the last sentence of the first full paragraph): "[A]dditionally, MGE did not receive any leak or odor calls from any residents of the 200 block of East Oak Street during the six months prior to the incident." MGE apologizes for leading the Staff to this erroneous conclusion. In fact, MGE responded to a leak call (which resulted from third party damage to an MGE service line for which a locate request had not been received) from a resident of the 200 block of East Oak Street in February of 2000. In addition, the Staff makes one operational recommendation in the Incident Report pertaining to training in locate procedures.

4. By order dated February 14, 2001 in Case No. GS-2001-216, MGE was advised that its response to the Incident Report is due no later than March 19, 2001. By a "Notice of Complaint" dated February 14, 2001, in Case No. GC-2001-436, MGE was advised that it was to file an Answer or the measures taken to satisfy the Complaint on or before March 16, 2001. This Settlement Agreement and Satisfaction of Complaint is designed to obviate the need for MGE to make a response in Case No. GS-2001-216 and an Answer in Case No. GC-2001-436.

Settlement Agreement and Satisfaction of Complaint

5. Without conceding the legal merits of any Staff allegation of violation, MGE provides the following response to the recommendation made in the Incident Report. MGE intends to implement, or continue to implement, the operational recommendation made by the Staff in its Incident Report as follows:

- A. MGE promptly investigated this incident and took corrective action upon the employee who failed to properly locate the facilities in question.¹ In addition, upon returning to work this employee was retrained by MGE in facilities locating procedures.
- B. MGE continues to emphasize to all employees who locate facilities the importance and necessity of making accurate locates and uses the circumstances of this incident as a training example.
- C. MGE has reviewed the locate procedures used in its Warrensburg serving office and has implemented a change whereby additional information pertaining to service lines will be placed on facilities locate requests when they are transmitted from MGE's Lee's Summit serving office to Warrensburg. In addition, MGE's training department is conducting a broader review of locate procedures across the MGE system to determine whether modifications are appropriate for existing locate procedures in other geographical areas. MGE will provide to the Staff, no later than May 1, 2001, a report on the conclusions reached from this review.

6. These undertakings by MGE and their acceptance by the Staff, as well as the other aspects of this document, form a reasonable basis for settlement of the referenced dockets and any claims within the jurisdiction of the Commission arising from the incident. The commitments made by MGE herein shall constitute full settlement and satisfaction of any claims

¹ It should be noted that this was a long-term employee with a solid performance history who, in MGE's opinion, was properly and adequately trained. MGE believes this employee's failure to properly locate facilities in this particular instance resulted from an assumption that employee made about the circumstances of that specific worksite. This employee's familiarity with the practices of the excavator involved and the lateness of the hour when the employee

or causes of action which have been or might in the future be asserted against MGE before the Commission, which arise out of, are based upon, or could have been based upon, the facts surrounding the incident as related in the Incident Report.

7. This document shall not be construed to operate as a waiver or release of the Staff's right and ability to conduct follow-up evaluations of the representations made herein, or to in any way impair or affect the Staff's ability to file, or MGE's ability to contest, recommendations or complaints involving applications of the Commission's rules or Missouri law cited in the previously referenced Incident Report or Complaint to any future incidents, situations or events involving MGE, or to any other natural gas system operated under the jurisdiction of the Commission.

8. This Settlement Agreement and Satisfaction of Complaint is a compromise of disputed claims and neither all nor any part of this document constitutes an admission of any violation of law, statute, rule, regulation or procedure of any kind by MGE. No waiver or modification of any defense which has been raised by MGE in these dockets is intended or should be assumed as a result of this document.

9. This document shall not be construed as or operate as a settlement, satisfaction, release or waiver of any claims or defenses MGE may have now or hereafter against any other person or entity arising from or relating to the facts surrounding the incident or the actions taken by MGE as a result of the incident; MGE expressly reserves all rights and defenses it may have in regard thereto.

arrived to make the locate request, led the employee to conclude that the excavation work was complete.

10. The Staff has represented to MGE that the foregoing Settlement Agreement and Satisfaction of Complaint is acceptable, and by execution of this document Staff recommends to the Commission that this Settlement Agreement and Satisfaction of Complaint be approved, in its entirety. If the document is not so approved in total, no party hereto shall be bound or prejudiced by any provisions contained herein or by any representations which have been made in the context of the attempted settlement hereof, and MGE shall be allowed a reasonable time in which to file a Response to the Incident Report and an Answer to the Complaint.

11. No party to this document believes the consideration and approval of this document requires a hearing before the Commission; however, the Staff and MGE stand ready if additional information is requested.

12. Nothing in this Settlement Agreement and Satisfaction of Complaint is intended to impinge or restrict in any matter the exercise by the Commission of any statutory right, including the right of access to information, and any statutory obligation.

13. The Staff also shall have the right to provide, at any agenda meeting at which this Settlement Agreement and Satisfaction of Complaint is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

14. This Settlement Agreement and Satisfaction of Complaint represents a negotiated settlement. Except as specified herein, the signatories to this document shall not be prejudiced,

bound by, or in any way affected by the terms of this Settlement Agreement and Satisfaction of Complaint: (a) in any future proceeding; (b) in any proceeding currently pending under a separate docket; or (c) in this proceeding should the Commission decide not to approve this Settlement Agreement and Satisfaction of Complaint in the instant proceeding.

15. If the Commission accepts the specific terms of this Settlement Agreement and Satisfaction of Complaint, the signatories waive their respective rights to cross-examine witnesses (subject to the provisions of paragraph 14); their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo², their respective rights to the reading of the transcript by the Commission pursuant to section 536.080.2; and their respective rights to judicial review pursuant to Section 386.510. This waiver applies only to a Commission Report and Order issued in this proceeding, and does not apply to any matters raised in any subsequent Commission proceeding, or any matters not explicitly addressed by this Settlement Agreement and Satisfaction of Complaint.

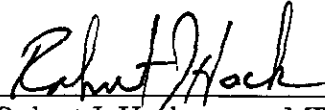
16. MGE and the Staff each agree and represent that the attorneys listed below are duly authorized to execute this Settlement Agreement and Satisfaction of Complaint on their respective behalf, and that this document represents a complete description of all of the considerations for this agreement.

WHEREFORE, MGE and the Staff respectfully request that the Commission issue its Order Approving the Settlement Agreement and Satisfaction of Complaint, in its entirety as set

² All statutory references herein are to RSMo 2000 unless specifically indicated otherwise.

forth herein, and to issue orders closing the above-captioned dockets.

Respectfully submitted,



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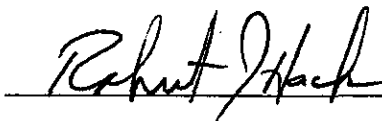
Attorney for the Staff of the Missouri Public
Service Commission

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was
either mailed or hand delivered this 15th day of March, 2001 to:

Mr. Clifford Snodgrass
P.O. Box 360
Jefferson City, MO 65102

Mr. Douglas E. Micheel
P.O. Box 7800
Jefferson City, MO 65102



ALL/Sec'y:

Hopkins/Boyle

Date Circulated

CASE NO.

3-27

*P.S. 101-216
EC-2001-436*

LT
Lump, Chair

me
Draimer, Vice Chair

me
Murray, Commissioner

Gail - N.P.
Scherer, Commissioner

LS
Simmons, Commissioner

Agenda Date

4-3

Action taken:

4-045

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 3rd day of April 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

