

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

Ronald Kitchen,	)	
	Complainant,	)
	)	
v.	)	Case No. GC-2006-0066
	)	
Missouri Gas Energy,	)	
A Division of Southern Union Company,	)	
	)	
	Respondent.	)

**MGE REVISED POSITION AS TO SPECIFIC ISSUE  
AND OFFER OF JUDGMENT/SATISFACTION**

**Comes Now** Missouri Gas Energy (MGE), a division of Southern Union Company, by and through counsel, and respectfully States as follows to the Missouri Public Service Commission ("Commission"):

**REVISED POSITION AS TO SPECIFIC ISSUE**

1. The issue of Complainant's residence has arisen in previous pleadings in this case. Based upon various facts,<sup>1</sup> MGE has alleged in prior pleadings that Complainant was not residing at 10602 E. 20<sup>th</sup> Street in Independence, Missouri, during the period relevant to this complaint. While the underlying facts have not changed, MGE no longer takes a position or makes any allegation as to where Complainant was residing during the relevant period.

2. MGE believes that the critical issue in this complaint is the fact that Complainant's daughter (Jennifer Kitchen) lived at 10602 E. 20<sup>th</sup> Street in Independence, Missouri, during the relevant time period. This fact has been well established by the parties'

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<sup>1</sup> Including the existence of a second gas account in Complainant's name at 9822 Westport Road (MGE Response to Order, Appendix 5), the fact Complainant's wife resided at 9822 Westport Road (Staff Response to Questions, p. 2), the fact that Complainant's adult daughter resided at the subject address (Complainant Response to Commission Order, filed November 14, 2005; Staff Response to Questions, p. 2) and a business record concerning a conversation with Complainant (MGE Response to Order, Appendix 5).

pleadings in this case and is the fact necessary to support MGE's interpretation of the subject tariff provisions.<sup>2</sup>

### **OFFER OF JUDGMENT/SATISFACTION**

3. MGE pointed out in an earlier pleading that the tariff provisions at issue in this complaint have been superseded as a result of Commission Rule 4 CSR 240-13.035 (Denial of Service).<sup>3</sup> MGE's revised tariff sheets filed in response to the promulgation of this rule became effective on April 15, 2005. Thus, the Commission's decision will have no prospective effect.

4. Accordingly, MGE makes an offer of judgment/satisfaction in an attempt to avoid the expenditure of Complainant, Respondent, Staff and Commission resources necessary for the hearing of this matter. MGE's offer of judgment/satisfaction is as follows:

MGE offers to credit Complainant's account at 106 E. 20<sup>th</sup> Street with \$241.71 (the entire amount previously transferred to this account from the account of Jennifer Kitchen (416 N. Emery)), if such action will satisfy this Complaint.

5. MGE believes that the relief offered is all the relief to which Complainant would be entitled if he were to prevail and that therefore such action would satisfy the Complaint.

**WHEREFORE**, Respondent MGE respectfully submits the foregoing as its Revised

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<sup>2</sup> "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." *Bauer v. Southwestern Bell Telephone Company*, 958 S.W.2d 568, 570 (Mo. App. 1997).

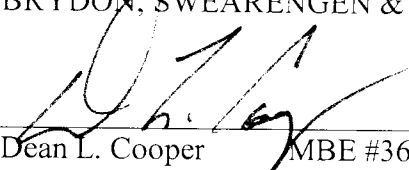
<sup>3</sup> Partially based upon this circumstance, MGE sought to waive its right to hearing in this matter. That waiver was not accepted by the Commission as Complainant was not willing to allow the Commission to decide the case on the pleadings.

Position as to Specific Issue and Offer of Judgment/Satisfaction.

Respectfully submitted,

BRYDON, SWEARENGEN & ENGLAND P.C.

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**Certificate of Service**

I hereby certify that copies of the foregoing have been sent by U.S. Mail, postage prepaid, or by electronic mail on March 1, 2006, to:

Mr. Ronald Kitchen  
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