

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

Unice Harris,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2013-0116
)	
Southern Union Company, d/b/a)	
Missouri Gas Energy,)	
)	
Respondent.)	

**MOTION FOR SUMMARY DETERMINATION
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

COMES NOW Southern Union Company, d/b/a Missouri Gas Energy (MGE or Respondent), and, pursuant to 4 CSR 240-2.117(1), respectfully states the following to the Missouri Public Service Commission (Commission) as its Motion for, and Memorandum of Law in Support of, Summary Determination:

MATERIAL FACTS

1. MGE is a public utility subject to the jurisdiction of the Commission, as provided by law.¹

2. Complainant alleges as follows:

Plaintiff seeks to have all charges removed from plaintiffs bill from 2006 as the statute of limitations has run on this debt in addition MGE had a responsibility to provide accurate billing within each 30 day cycle. It is now 2012 and a bill from 2006 mysteriously appears on the current statement.²

¹ Complaint, para. 1; MGE's Answer, para. 1.

² Complaint, para. 2.

3. None of the charges that are currently owed by Complainant were incurred in 2006.³

4. The total amount of disputed charges is \$592.92. That balance consists of the following amounts:

\$198.22 Balance of Ms. Harris' account (#0029732107) (*See **Appendix A-HC***) at the time she filed for Chapter 13 bankruptcy on August 11, 2010. This amount was incurred at 5424 NE Sunshine Drive, Lee's Summit, MO just prior to the filing of Ms. Harris' bankruptcy petition, not in 2006 as claimed by Ms. Harris. A post-bankruptcy petition account (#7735992665) was opened with a balance of \$0.00.

\$305.70 Balance of Ms. Harris' account (#7735992665) for services provided at 5424 NE Sunshine Drive, Lee's Summit, MO (*See **Appendix B-HC***) at the time Ms. Harris moved to 4612 B NE Whispering Winds, Lee's Summit, MO, on or about January 20, 2011. Ms. Harris filed an additional bankruptcy petition that was converted from Chapter 13 to Chapter 7 on January 31, 2011. A new account (#196196770) was opened at the new address at that time with a balance of \$0.00.

\$24.00 Collection fee charged on July 19, 2012 gas bill in accordance with MGE's tariff (Sections 3.11 and 14.0) for the cost of a July 3, 2012 trip to the service address to attempt to collect payment.

\$65.00 Reconnection fee charged on July 19, 2012 gas bill in accordance with MGE's tariff (Sections 3.12 and 14.0) for the cost of making a second trip to the service address on July 3, 2012 to restore service.

\$592.92 Total amount of disputed charges.⁴

5. Services were provided to Ms. Harris on the subject account at 5424 NE Sunshine Drive on an ongoing basis and various payments were made by Ms. Harris. The Company billed for services provided pursuant to this account as recently as January 2011.

³ Supported by Affidavit attached hereto.

⁴ Supported by Affidavit attached hereto.

6. Moreover, as noted above, while Ms. Harris has filed bankruptcy petitions at least twice, neither filing resulted in a discharge of Ms. Harris' creditors and the debts Ms. Harris owed to MGE have never been discharged.⁵

STANDARD

7. The standard for approval of MGE's Motion for Summary Determination requires a showing that: (1) there is no genuine issue as to any material fact; (2) that the moving party is entitled to relief as a matter of law as to all or any part of the case; and, (3) the Commission determines granting summary relief is in the public interest.⁶

DISCUSSION

8. Ms. Harris owes an unpaid debt of \$592.92 to MGE for natural gas service provided to her.

9. Commission Rule 4 CSR 240-13.050(1)(A) provides that a utility may discontinue service for failure to pay an undisputed delinquent utility charge for services provided by that utility or by its regulated affiliate. Similarly, MGE's Tariff Sheet R-21, Rule 3.07(A) provides that MGE may discontinue service for non-payment of an undisputed delinquent charge.

10. Ms. Harris mentions a 2006 debt and the possible application of a statute of limitation in her Complaint. Section 516.120(1), RSMo, sets a limitation period of five years to enforce any obligations and liabilities on contracts.⁷ Section 516.110(1), RSMo, creates a ten-year statute of limitations for actions upon any writing.⁸ Neither the Commission nor the Courts

⁵ Supported by Affidavit attached hereto.

⁶ See, Commission rule 4 CSR 240-2.117(E).

⁷ Section 516.120(1) provides that "all actions upon contracts, obligations or liabilities, express or implied" must be brought within five years.

⁸ Section 516.110(1) creates a ten-year statute of limitations for an "action upon any writing . . . for the payment of money or property."

have determined whether the five year or ten year statute of limitations applies to civil actions to collect past due public utility bills.

11. The Commission has previously found that a civil statute of limitations “can only serve as an affirmative defense to curtail a collection procedure available to MGE in circuit court” and that it has no effect on the existence of an unpaid debt for purposes of whether MGE must provide new service to the person, unless the debt has been declared extinguished by a court of competent jurisdiction.⁹

12. However, neither the length of whatever statute of limitations may apply nor the applicability of a statute of limitations to the provision of new service is determinative in this matter.

13. “In an implied contract action, if all services performed constitute a single, continuous whole, then the cause of action accrues when the last service is performed.” *Berlin v. Pickett*, 221 S.W.3d 406, 411 (Mo.App.W.D. 2006). “. . . [I]f it is a single account, the statute does not bar recovery for any services performed as a part of the whole.” *Id.* at 412. “An ‘open account’ is one in which there have been ongoing charges by one party and payments by another party, where the parties have not settled the charges, or where there are running or current dealings between them and the account is kept open in expectation of future dealings.” *Id.*

14. The Company billed for services provided pursuant to Ms. Harris’ account at 5424 NE Sunshine Drive as recently as January 2011. Thus, the account disputed by Ms. Harris accrued, for statute of limitations purposes, in 2011 – much less than five years ago. The statute

⁹ *Johnson v. Missouri Gas Energy*, Report and Order, Case No. GC-2008-0295 (November 16, 2008).

of limitations is irrelevant.¹⁰ Ms. Harris' reference to a statute of limitations provides her no relieve under the material facts.

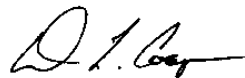
15. MGE has acted in accordance with Commission Rule and its tariff. As a result, the Complaint fails to state a claim upon which relief may be granted and should be summarily dismissed.

CONCLUSION

16. There is no genuine dispute as to the following material facts: (1) Ms. Harris owes an unpaid, disputed debt of \$592.92 to MGE for natural gas service; and, (2) even if a statute of limitations is applicable as she has alleged, the subject debt is within the shortest period of time which could arguably apply under a statute of limitations. Thus, in accordance with Commission Rule and MGE tariff, MGE may require payment of the past due amount.

WHEREFORE, MGE prays the Commission grant this motion for summary determination, as well as such other relief as the Commission deems reasonable and just.

Respectfully submitted,



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¹⁰ Further, a check given by Ms. Harris to MGE on or about July 11, 2012, in the amount of \$642.33 (which included the \$503.92 currently in dispute for account #'s 0029732107 and 7735992665) was returned for insufficient funds. Even if a statute of limitations defense were applicable to this matter, the returned check provides MGE with an additional civil cause of action against Ms. Harris, for which the statute of limitations would not have run.

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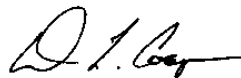
CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on January 28, 2013, to the following:

Office of the General Counsel
Governor Office Building
Jefferson City, MO 65101
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Unice Harris
4612B NE Whispering Winds
Lees Summit, MO 64064



AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF JACKSON) SS

I, Michael R. Noack, state that I am employed by Southern Union Company, d/b/a Missouri Gas Energy (MGE) as the Director, Pricing & Regulatory Affairs; that I have read the above and foregoing document; and, that the statements contained therein are true and correct to the best of my information, knowledge and belief.

Michael R. Noack

Subscribed and sworn to before me this 3rd day of January, 2013.

Kim W. Henzi
Notary Public

My Commission Expires:

Feb. 22, 2015
(SEAL)

