

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2011-0100
)	
Missouri Gas Energy, a Division of Southern Union Company)	
)	
Respondent.)	

APPLICATION FOR REHEARING AND MOTION FOR CLARIFICATION

COMES NOW Respondent Southern Union Company d/b/a Missouri Gas Energy ("MGE" or "Company"), by and through the undersigned counsel, and pursuant to §386.500, RSMo 4 CSR 240-2.080 and 4 CSR 240-2.160, submits its Application for Rehearing of, and Motion for Clarification regarding, the Final Decision and Order to Review a New Tariff Sheet issued in the above-captioned case on November 9, 2011 (the "Final Decision"). In support of this Application for Rehearing and Motion for Clarification, MGE states the following to the Missouri Public Service Commission ("Commission"):

1. On November 9, 2011, the Commission issued its Final Decision in the above-captioned case, to be become effective on November 19, 2011. The Order purports to grant relief on cross motions for summary determination filed by the Commission's Staff ("Staff") and the Company pursuant to Commission

rule 4 CSR 240-2.117. The Commission should reconsider its Final Decision and grant rehearing with respect to matters in which summary determination should not have been granted. Such action should be taken because the Final Decision of the Commission is unconstitutional, unlawful, unjust, in excess of the Commission's statutory authority, unreasonable, arbitrary and capricious for all the reasons set forth herein, both individually and collectively.

Allegations of Error and Basis for Rehearing

2. The Commission's Final Decision, insofar as it purports to grant summary determination in favor of the Complainant Staff, is erroneous and unauthorized in that it does not comply with the Commission's rule governing the circumstances under which summary disposition may be granted. The Commission's summary disposition rule, 4 CSR 240-2.117, states as follows:

(E) The commission may grant the motion for summary determination if the pleadings, testimony, discovery, affidavits, and memoranda on file show that **there is no genuine issue as to any material fact**, that any party is entitled to relief as a matter of law as to all or any part of the case, and the commission determines that it is in the public interest. An order granting summary determination shall include findings of fact and conclusions of law. (emphasis added)

There is no basis for the Commission to have reached the apparent conclusion that there is no genuine issue as to all of the material facts alleged in Staff's Motion for Summary Determination. MGE disputed certain aspects of the material facts set forth in Staff's Complaint.¹ Additionally, the Company challenged Staff's characterization of certain matters as facts and pointed out

¹ EFIS Document No. 26.

that they were mere conjecture.² Consequently, summary determination in favor of Staff on any issue is inappropriate. The Commission's rule expressly addresses the circumstance presented.

(F) If the commission grants a motion for summary determination, but does not dispose thereby of the entire case, it shall hold an evidentiary hearing to resolve the remaining issues. Those facts found in the order granting partial summary determination shall be established for purposes of the hearing.

In this case, the Commission was required to hold a hearing on the specific allegations in Staff's Complaint to the extent those issues have not been resolved by the grant of summary determination in favor of MGE.³

3. The Commission's failure to hold a hearing despite the fact that the Company disputed certain matters contained in the statement of facts in Staff's Motion for Summary Disposition has denied MGE the due process to which it is entitled by §386.390 RSMo.,⁴ and by Constitutions of the United States⁵ and the State of Missouri.⁶

4. At page 4 of the Final Decision, the Commission purports to take official notice of certain scientific and technical facts pursuant to §536.070(6),

² "Genuine" for summary judgment purposes, implies that the dispute must be real and substantial and not one of conjecture, theory and possibilities. *Rice v. Hodapp*, 919 S.W.2d 240 (Mo. 1996). See also, *Andes v. Albano*, 853 S.W.2d 936 (Mo. 1993).

³ Granting certain aspects of MGE's Motion for Summary Determination was not in error because Staff admitted each of the Company's allegations of material fact.

⁴ Subsections 2, 4 and 5 of Section 386.390 RSMo., clearly contemplate that a hearing will be held by the Commission on complaints as to the justness and reasonableness of any rule or regulation heretofore fixed for a public utility, such as the liability limitation tariff sheet at issue in this complaint.

⁵ U.S. Const. Amend. XIV, §1.

⁶ Mo. Const. Art. I, §10.

RSMo. To the extent not requested by either movant, this action on the part of the Commission is unauthorized by law in that the Commission (1) failed to notify the parties of what facts it was taking notice of and (2) failed to take such action sufficiently in advance of the Final Decision such that parties were given a “reasonable opportunity to contest such facts or otherwise show it would not be proper for the agency to take such notice of them.” Additionally, it was inappropriate for the Commission to, on its own motion, purport to take official notice of any facts in the circumstance of pending cross motions for summary determination. The Commission’s rule 4 CSR 240-2.117 is completely self-contained and exclusive of the hearing process. It contemplates that a movant “state with particularity in separate numbered paragraphs each material fact as to which movant claims there is no genuine issue”⁷ and that the Respondent “admit or deny each of movant’s factual statements in numbered paragraphs corresponding to the numbered paragraphs in the motion for summary determination” and stating why the allegations of material fact remain in dispute.⁸ This carefully fashioned and highly choreographed sequence of events does not provide for any independent fact finding process. The Commission’s effort to overlay a procedure for taking extrinsic evidence is not contemplated by the express terms of its rule nor as part of any summary judgment practice countenanced in civil litigation. Such matters are not, therefore, competent or substantial evidence upon which summary determination may be granted.

⁷ 4 CSR 240-2.117(B).

⁸ 4 CSR 240-2.117(C).

5. The Final Decision of the Commission, to the extent it reaches the conclusion at page 9 that §393.140(11), RSMo authorizes the Commission to “initiate [a] change” to a utility’s tariff sheets, would give the Commission unfettered authority to interfere with the management prerogatives of the Company, that is, to establish terms and conditions of service. The Commission is purely a creature of statute and its powers are limited to those conferred by statute, either expressly or by clear implication as necessary to carry out the powers specifically granted to it. *State ex rel. Public Service Commission v. Bonacker*, 906 S.W.2d 896 (Mo.App. S.D. 1995); *See also, State ex rel. Utility Consumers Council v. Public Service Commission*, 585 S.W.2d 41 (Mo. banc 1979). Further, “it must be kept in mind that the Commission’s authority to regulate does not include the right to dictate the manner in which a regulated utility shall conduct its business.” *Bonacker*, at 899 (*quoting State v. Public Service Commission*, 406 S.W.2d 5, 11 (Mo. banc 1966)). The statutory language cited by the Commission was not intended to give the Commission authority to peruse tariff sheets already on file with and approved by it and to direct – of its own volition and in the absence of due process provided by a hearing – that changes to terms of service be made but, rather, its purpose is to avoid unwritten rules and regulations affecting public service which would not be reasonably available to customers. In other words, the statute permits the Commission to require that a utility’s rules and regulations of operation be in writing as a matter of public record-nothing more.

6. At page 11 of the Final Decision, the Commission erroneously concludes that there is no case or controversy requirement applicable to Commission proceedings in negating MGE's claim that Staff's Complaint is not ripe for determination. The Commission also incorrectly concludes the Company has cited no authority applying the ripeness doctrine to a tribunal other than that of the judicial branch. The requirement that there be an actual case or controversy with respect to which the Commission may purport to grant relief has been applied to proceedings of the Commission. *See, State ex rel. Kansas Power and Light Company*, 770 S.W.2d 740 (Mo. App. W.D. 1989). In that case, The Court of Appeals declined to permit judicial review of an order of the Commission because it was "apparent that the report and order does not present any issues which are ripe for judicial determination." *Id.* at 742. The Commission only acts with legal authority, the Court concluded, when it addressed questions "presented in a factual context requiring resolution of an actual controversy" and, ultimately, **"the report and order should not have been promulgated in an order when it did not address a live dispute."** *Id.* at 743. (emphasis added) More recently, the Court of Appeals held that the Commission has jurisdiction over utility rates "when a controversy arises" over a rate schedule upon which a contract is based. *State ex rel. GS Technologies v. Public Service Commission*, 116 S.W.3d 680, 696 (Mo. App. W.D. 2003). These decisions refute the idea that a controversy is an optional element when the Commission issues an order purporting to require a change in conduct. More significantly, without the predicate requirement of an actual dispute about the

application of a tariffed regulation (as opposed to the hypothetical concerns voiced by Staff), there is nothing for the courts to review and MGE will be denied effective judicial review as guaranteed by the Missouri Constitution and the Missouri Public Service Commission Act (the "Act"). See, Mo. Const. Art. V, §18; §386.510 RSMo. (as amended in Senate Bill 48)

7. Because the Final Order was issued in the absence of an actual controversy, the Commission lacked statutory authority for its issuance and acted in excess of its jurisdiction under the Act.

8. The Final Decision is also erroneous to the extent it purports to link the requirement that a matter be ripe to a complainant's request for damages (or lack thereof). The Commission has no authority to award money damages so the lack of an allegation of damage has no bearing upon whether an issue is ripe for a determination in the context of contested proceeding because the issue is not relevant in any Commission proceeding. See, *Straube v. Bowling Green Gas Company*, 227 S.W.2d 666 (Mo. 1950); *American Petroleum Exchange v. Public Service Commission*, 172 S.W.2d 952 (Mo. 1943). To the extent the Commission is, rather, utilizing the term "damage" in a more general fashion (i.e., as simply meaning "harm" or "prejudice"), it has misconstrued and misapplied the law which is intended to make it clear that a complainant need not have a pecuniary interest that may be affected by an order, but, that it nevertheless must have a discernible interest in the outcome. See, *State ex rel. Consumers Public Service Company v. Public Service Commission*, 180 S.W.2d 40 (Mo. 1944). There must be a "showing of interest". *State ex rel Rouveyrol v. Donnelly*, 285

S.W.2d 669 (Mo. 1956). Thus, the “absence of direct damage” clause in §386.390.3 RSMo., does not mean that anyone can come in and complain about any abstract or conceptual grievance. As noted above, there must be an actual controversy presented for the Commission to resolve.

9. The Commission erred in concluding that the matters alleged by Staff are ripe for determination. The allegations presented by Staff in an effort to claim that certain aspects of Tariff Sheet R-34 are unlawful, unjust or unreasonable are speculative in nature and depend on conjecture about how a customer *might* be adversely impacted by a *possible* application of the tariff language to a hypothetical set of facts. Staff does not allege that a particular customer has had the terms of the tariff actually applied to it in an unjust or unreasonable manner.

10. The Commission erred in concluding at page 11 of its Final Decision that its Order is not an advisory opinion. The Commission’s Final Decision is beyond authority granted by law. It may not promulgate abstract declarations of rights because it has no authority to pronounce any principle of law or equity. *See, Lusk v. Atkinson*, 186 S.W. 703, 705 (Mo. banc 1916). All of the matters addressed in Staff’s Motion for Summary Determination deal with hypothetical facts as applied to abstract principles of civil liability or indemnification. Consequently, the Final Decision is essentially advisory in nature.

11. The Final Decision is further in error to the extent that it concludes that Staff’s Complaint is not a prohibited collateral action under §386.550, RSMo.

The Commission's reliance on §386.490.2, RSMo which references an action by the Commission that might change or abrogate a prior order does not cure the deficiency inherent in Staff's Complaint. MGE's Tariff Sheet R-34 was approved in an April 3, 2007, Order Regarding Motion for Expedited Consideration and Approval of Tariff Sheets in Case No. GR-2006-0422 (the "Tariff Order"). Staff has not disputed this fact and, in fact, has admitted it. Staff's Complaint does not, however, request that the Tariff Order be changed or abrogated⁹ and the Commission in its Final Decision does not purport to change or abrogate that order. Accordingly, §386.490.2, RSMo is inapplicable to the circumstances at hand. The Complaint is a collateral action to challenge the terms of a tariff expressly approved in Case No. GR-2006-0422 and it is, therefore, barred by operation of law.

12. To the extent that the Commission's Final Decision purports to delegate to its Staff standing to file a Complaint under 1 CSR 240-2.070, such action does not grant the Commission's Staff authority to file a complaint concerning Tariff Sheet R-34 because Staff has not alleged in its Complaint any violation by MGE of a statute, rule, order or decision of the Commission. The Commission's purported delegation authority as set forth in the Final Decision

⁹ Indeed, Staff cannot now challenge that order because it long ago became effective in accordance with its terms and it may not now be revisited within the statutory scheme of judicial review provided by the Act. As such, any attack on the unlawfulness or unreasonableness of Tariff R-34 is a challenge in a collateral proceeding. See, *State ex rel. Mid-Missouri Telephone Company v. Public Service Commission*, 867 S.W.2d 561 (Mo. App. W.D. 1993).

does not cure this fundamental deficiency in Staff's Complaint. As such, Staff has made no showing that it is entitled to relief as a matter of law.¹⁰

Motion for Clarification

13. Notwithstanding the significant procedural and other errors specified above, MGE may not have a principled objection to the substance of the order based on the Company's interpretation of the holdings regarding specific paragraphs of the tariff sheet on file with the Commission. In that regard, MGE has attached a draft tariff sheet as **Appendix A**, which illustrates changes the Company is prepared to file in a good faith effort to modify in a satisfactory fashion the several features of Tariff Sheet R-34 which the Commission has found to be unjust or unreasonable.

14. The language changes illustrated in the attachment are calculated to address the Commission's concerns *as understood by MGE*, but MGE's understanding may be imperfect.¹¹ Accordingly, MGE requests that the Commission clarify its order by assessing whether the language in the attached draft tariff (Appendix A) would sufficiently address the Commission's concerns as set forth in the Final Decision.

¹⁰ See, 4 CSR 240-2.117(E).

¹¹ In this regard, MGE would note that the first and second paragraphs of Sheet No. R-34 were not part of the revisions implemented as a result of MGE's 2006 rate case other than the addition of one word (i.e., "gross") in the first paragraph. Otherwise, that language has been a part of MGE's tariff since 1994. This tariff language was most likely in effect well before that time, since the tariffs were adopted by Southern Union from Western Resources' tariffs after Southern Union's acquisition of MGE in 1994. It has not been controversial or problematic. See **Appendix B**, which contains each of MGE's tariff sheet R-34 on file since 1994.

WHEREFORE, MGE requests that the Commission grant rehearing with respect to its Final Decision granting summary determination on issues favorable to Complainant Staff and, upon reconsideration of the matters reheard, issue a new order consistent with this filing. Alternatively, MGE requests that the Commission clarify its Final Decision by indicating whether the changes suggested in the attached Appendix A to this filing would cure the deficiencies the Commission has identified in its Final Decision.

Respectfully submitted,

/s/ Paul A. Boudreau
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic transmission to all counsel of record on this 18th day of November, 2011.

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/s/ Paul A. Boudreau
Paul A. Boudreau

COMPANY LIABILITY:

Customer shall save Company harmless from all claims for trespass, injury to persons, or damage to lawns, trees, shrubs, buildings or other property that may be caused by reason of the installation, operation, or replacement of the service line, yard line and other necessary appurtenances to serve customer unless it shall affirmatively appear that the injury to persons or damage to property complained of has been caused by willful default or gross negligence on the part of Company or its accredited personnel.

Company may refuse or discontinue service if an inspection or test reveals leakage, escape or loss of gas on customer's premises. Provided that the Company has complied with 4 CSR 240-40.030(10)(J), 4 CSR 240-40.030(12)(S) and 4 CSR 240-40.030(14)(B). Company will not be liable for any loss, damage or injury whatsoever caused by such leakage, escape or loss of gas from customer's service line, yard line, ancillary lines, house piping, appliances or other equipment.

The Company does not own, nor is it responsible for the repair or maintenance of any piping, vents, or gas utilization equipment on the ~~delivery-downstream~~ side of the gas meter, its related appurtenances and piping. All piping, vents or gas utilization equipment furnished by the owner/customer of the premises being served shall be suitable for the purposes hereof and the owner/customer of the premises shall be responsible for the repair and maintenance of such at all times in accordance with accepted practice and in conformity with requirements of public health and safety, as set forth by the properly constituted authorities and by the Company. As with any fixture or appurtenance within premises, piping, vents or gas utilization equipment can fail, malfunction or fall into disrepair at any time and as such the owner/customer of the premises being served shall be aware of this fact, and Company shall owe customer no duty to warn of potential hazards that may exist with such facilities on the ~~delivery-downstream~~ side of the gas meter, its related appurtenances and piping, provided that the Company has complied with 4 CSR 240-40.030(10)(J), 4 CSR 240-40.030(12)(S) and 4 CSR 240-40.030(14)(B).

The owner/customer shall be responsible at all times for the safekeeping of all Company property installed on the premises being served, and to that end shall give no one, except the Company's authorized employees, contractors or agents, access to such property. The owner/customer of the premises being served shall be liable for and shall indemnify, hold harmless and defend the Company for the cost of repairs for damage done to Company's property due to negligence or misuse of it by the owner/customer or persons on the premises affected thereby.

Provided that the Company has complied with 4 CSR 240-40.030(10)(J), 4 CSR 240-40.030(12)(S) and 4 CSR 240-40.030(14)(B), the Company shall not be liable for loss, damage or injury to persons or property, in any manner directly or indirectly connected with or arising out of the delivery of gas through piping or gas utilization equipment on the ~~delivery-downstream~~ side of the gas meter, which shall include but not be limited to any and all such loss, damage or injury involving piping, vents or gas utilization equipment not owned by the Company downstream of the gas meter, whether inspected or not by the Company, or occasioned by interruption, failure to commence delivery, or failure of service or delay in commencing service due to accident to or breakdown of plant, lines, or equipment, strike, riot, act of God, order of any court or judge granted in any bonafide adverse legal proceedings or action or any order of any commission or tribunal having jurisdiction; or, without limitation by the preceding enumeration, any other act or things due to causes beyond Company's control, or attributable to the negligence of the Company, its employees, contractors or agents, provided that the Company has complied with 4 CSR 240-40.030(10)(J), 4 CSR 240-40.030(12)(S) and 4 CSR 240-40.030(14)(B).

P.S.C.MO. No. 1

Original

SHEET No. R-34

Missouri Gas Energy,
a Division of Southern Union Company For All Missouri Service Areas

RECEIVED

JAN 7 1994

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

MO. PUBLIC SERVICE COMM.

3.17 **COMPANY LIABILITY:** Customer shall save Company harmless from all claims for trespass, injury to persons, or damage to lawns, trees, shrubs, buildings or other property that may be caused by reason of the installation, operation, or replacement of the service line, yard line and other necessary appurtenances to serve customer unless it shall affirmatively appear that the injury to persons or damage to property complained of has been caused by willful default or negligence on the part of Company or its accredited personnel.

Company may refuse or discontinue service if an inspection or test reveals leakage, escape or loss of gas on customer's premises. Company will not be liable for any loss, damage or injury whatsoever caused by such leakage, escape or loss of gas from customer's service line, yard line, ancillary lines, house piping, appliances or other equipment.

CANCELED BY
1st Rev. SHEET NO. R-34
WHICH WAS FILED 4-18-99

FILED

FEB 1 1994
94-40
MO. PUBLIC SERVICE COMM.

DATE OF ISSUE January 7 1994 DATE EFFECTIVE February 1 1994
month day year month day year

ISSUED BY F. Jay Cummings Vice President, Rates and Regulatory Affairs

P.S.C. MO. No. 1
Canceling P.S.C. MO. No. 1

First Revised
Original

SHEET No. R-34

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

Missouri Public
Service Commission

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

REC'D FEB 16 1999

3.18 COMPANY LIABILITY: Customer shall save Company harmless from all claims for trespass, injury to persons, or damage to lawns, trees, shrubs, buildings or other property that may be caused by reason of the installation, operation, or replacement of the service line, yard line and other necessary appurtenances to serve customer unless it shall affirmatively appear that the injury to persons or damage to property complained of has been caused by willful default or negligence on the part of Company or its accredited personnel.

Company may refuse or discontinue service if an inspection or test reveals leakage, escape or loss of gas on customer's premises. Company will not be liable for any loss, damage or injury whatsoever caused by such leakage, escape or loss of gas from customer's service line, yard line, ancillary lines, house piping, appliances or other equipment.

2nd Rev. CANCELED BY SHEET NO. R-34
WHICH WAS FILED Aug. 28, 2001
6

Missouri Public
Service Commission

FILED APR 18 1999

DATE OF ISSUE February 16 1999
month day year

DATE EFFECTIVE April 18 1999
month day year

ISSUED BY Robert J. Hack Vice President, Pricing and Regulatory Affairs
Missouri Gas Energy
Kansas City, MO. 64111

P.S.C. MO. No. 1
Canceling P.S.C. MO. No. 1

Second Revised
First Revised

SHEET No. R-34
SHEET No. R-34

Missouri Gas Energy,
a Division of Southern Union Company

Missouri Public
For: All Missouri Service Areas

REC'D JUL 16 2001

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

Service Commission

3.19 COMPANY LIABILITY: Customer shall save Company harmless from all claims for trespass, injury to persons, or damage to lawns, trees, shrubs, buildings or other property that may be caused by reason of the installation, operation, or replacement of the service line, yard line and other necessary appurtenances to serve customer unless it shall affirmatively appear that the injury to persons or damage to property complained of has been caused by willful default or negligence on the part of Company or its accredited personnel.

Company may refuse or discontinue service if an inspection or test reveals leakage, escape or loss of gas on customer's premises. Company will not be liable for any loss, damage or injury whatsoever caused by such leakage, escape or loss of gas from customer's service line, yard line, ancillary lines, house piping, appliances or other equipment.

CANCELED BY
3rd Rev. SHEET NO. R-34
WHICH WAS FILED June 14, 2003

Missouri Public

FILED AUG 06 2001
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Service Commission

DATE OF ISSUE July 16, 2001
month day year

DATE EFFECTIVE August 06, 2001
month day year

ISSUED BY Robert J. Hack

AUG 06 2001
Vice President, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

P.S.C. MO. No. 1
Canceling P.S.C. MO. No. 1

Third Revised
Second Revised

SHEET No. R-34
SHEET No. R-34

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

Missouri Public
Service Commission

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

REC'D MAY 14 2003

3.19 COMPANY LIABILITY: Customer shall save Company harmless from all claims for trespass, injury to persons, or damage to lawns, trees, shrubs, buildings or other property that may be caused by reason of the installation, operation, or replacement of the service line, yard line and other necessary appurtenances to serve customer unless it shall affirmatively appear that the injury to persons or damage to property complained of has been caused by willful default or negligence on the part of Company or its accredited personnel.

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3.20 Company will waive all connection or reconnection charges necessitated because gas service was disconnected due to property damage incurred as a result of the May 2003 tornadoes. If so requested, customers should be prepared to provide proof of damage sustained during the tornadoes. This waiver authority shall expire on December 1, 2003.

Missouri Public
Service Commission

FILED JUN 14 2003

DATE OF ISSUE May 14, 2003
month day year

DATE EFFECTIVE June 14, 2003
month day year

ISSUED BY Robert J. Hack

Vice President, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

CANCELED BY LJM
REV. SHEET NO. R-34

WHICH WAS FILED 4/3/07

P.S.C. MO. No. 1
Cancelling P.S.C. MO. No. 1

Fourth Revised
Third Revised

SHEET No. R-34
SHEET No. R-34

Missouri Gas Energy,
a Division of Southern Union Company

For: All Missouri Service Areas

GENERAL TERMS AND CONDITIONS FOR GAS SERVICE

3.19 **COMPANY LIABILITY:** Customer shall save Company harmless from all claims for trespass, injury to persons, or damage to lawns, trees, shrubs, buildings or other property that may be caused by reason of the installation, operation, or replacement of the service line, yard line and other necessary appurtenances to serve customer unless it shall affirmatively appear that the injury to persons or damage to property complained of has been caused by willful default or gross negligence on the part of Company or its accredited personnel.

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The Company does not own, nor is it responsible for the repair or maintenance of any piping, vents, or gas utilization equipment on the delivery side of the gas meter, its related appurtenances and piping. All piping, vents or gas utilization equipment furnished by the owner/customer of the premises being served shall be suitable for the purposes hereof and the owner/customer of the premises shall be responsible for the repair and maintenance of such at all times in accordance with accepted practice and in conformity with requirements of public health and safety, as set forth by the properly constituted authorities and by the Company. As with any fixture or appurtenance within premises, piping, vents or gas utilization equipment can fall, malfunction or fall into disrepair at any time and as such the owner/customer of the premises being served shall be aware of this fact, and Company shall owe customer no duty to warn of potential hazards that may exist with such facilities on the delivery side of the gas meter, its related appurtenances and piping.

The owner/customer shall be responsible at all times for the safekeeping of all Company property installed on the premises being served, and to that end shall give no one, except the Company's authorized employees, contractors or agents, access to such property. The owner/customer of the premises being served shall be liable for and shall indemnify, hold harmless and defend the Company for the cost of repairs for damage done to Company's property due to negligence or misuse of it by the owner/customer or persons on the premises affected thereby.

The Company shall not be liable for loss, damage or injury to persons or property, in any manner directly or indirectly connected with or arising out of the delivery of gas through piping or gas utilization equipment on the delivery side of the meter, which shall include but not be limited to any and all such loss, damage or injury involving piping, vents or gas utilization equipment, whether inspected or not by the Company, or occasioned by interruption, failure to commence delivery, or failure of service or delay in commencing service due to accident to or breakdown of plant, lines, or equipment, strike, riot, act of God, order of any court or judge granted in any bonafide adverse legal proceedings or action or any order of any commission or tribunal having jurisdiction; or, without limitation by the preceding enumeration, any other act or things due to causes beyond Company's control, or attributable to the negligence of the Company, its employees, contractors or agents.

DATE OF ISSUE March 28, 2007
month day year

DATE EFFECTIVE April 28, 2007
month day year

ISSUED BY Michael R. Noack

Director, Pricing and Regulatory Affairs
Missouri Gas Energy, Kansas City, MO. 64111

GR-2006-0422

Filed
Missouri Public
Service Commission