

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

The Staff of the Missouri Public Service Commission,)	
)	
Complainant,)	
)	
vs.)	Case No. GC-2014-0216
)	
Laclede Gas Company, doing business as Missouri Gas Energy,)	
)	
and)	
)	
Southern Union Company, formerly doing business as Missouri Gas Energy)	
)	
Respondents.)	

ANSWER OF LACLEDE GAS COMPANY TO COMPLAINT

Respondent Laclede Gas Company, doing business as Missouri Gas Energy (“MGE”) for its Answer to the Complaint of the Staff of the Missouri Public Service Commission (“Complaint”), responds to the allegations in the Complaint as follows:

1. MGE admits that on February 19, 2013, an explosion and subsequent fire damaged JJ’s Restaurant, located in Kansas City, Missouri, and resulted in the death of one person, destroyed the restaurant and some of its contents, damaged nearby buildings, injured other people and left some people unemployed for unknown periods of time. MGE admits that Laclede Gas Company is the present operator and Respondent Southern Union Company (“Southern Union”) is a prior operator of Missouri Gas Energy, which is the regulated provider of retail natural gas service to the Kansas City area, including JJ’s Restaurant. MGE admits that Staff contends that MGE violated certain of the Missouri Public Service Commission’s (“MPSC”) Gas Safety Rules with respect to the events of February 19, but MGE expressly denies all such contentions. Further responding, MGE is without knowledge or information

sufficient to form a belief as to truth of the remaining allegations in Paragraph 1 of the Complaint and therefore denies the same.

Complainant

2. MGE admits that Staff is the Complainant in this case.

Respondents

3. MGE admits the allegations in Paragraph 3 of the Complaint.
4. MGE denies that Southern Union's headquarters are located at 5444 Westheimer Road, Houston, Texas 77056, and states that MGE is without knowledge or information sufficient to form a belief as to truth of the remaining allegations in Paragraph 4 of the Complaint and therefore denies the same.

5. MGE admits the allegations in Paragraph 5 of the Complaint.

Jurisdiction

6. To the extent the allegations in Paragraph 6 are directed at MGE, MGE admits the allegations. To the extent the allegations in Paragraph 6 are directed at Respondent Southern Union, MGE states that Southern Union was formerly a "gas corporation" within the intendments of § 386.020(18), and a "public utility" within the intendments of § 386.020(43), but MGE is without information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 6 of the Complaint and therefore denies the same.

Powers of the Commission

7. – 10. Responding to the allegations in Paragraphs 7 through 10, inclusive, of the Complaint, MGE admits that the Commission has certain authority, powers and obligations as provided by law, but MGE denies the allegations to the extent Paragraphs 7 through 10 fail to properly or accurately set forth such authority, powers or obligations.

Facts Common to All Counts

11. MGE is without knowledge or information sufficient to form a belief as to truth of the allegations in Paragraphs 11 of the Complaint and therefore denies the same. Further responding, MGE states that R.S.Mo. § 386.390.1 authorizes the Commission to make a complaint against any entity, including Heartland Midwest.

12. MGE is without knowledge or information sufficient to form a belief as to truth of the allegations in Paragraph 12 of the Complaint and therefore denies the same. Further responding, MGE states that Time Warner Cable is subject to the jurisdiction of the Commission pursuant to the 2007 Video Services Providers Act, RS Mo §67.2675 et seq. Further responding, MGE states that R.S.Mo. § 386.390.1 authorizes the Commission to make a complaint against any entity, including Time Warner Cable.

13. – 17. MGE admits the allegations in Paragraphs 13 through 17, inclusive, of the Complaint.

18. MGE admits the allegations in Paragraph 18 of the Complaint. Further responding, MGE states that Heartland Midwest, LLC made other locate requests for such area, including requests on February 19, 2013 prior to the time when Heartland Midwest, LLC struck MGE's gas main and that Heartland Midwest, LLC failed to wait the required period of time after making such request prior to commencing excavation.

19. Responding to the allegations in Paragraph 19, MGE admits that there were yellow paint marks in the alley that properly indicated the location of MGE's gas facility at or near that location. MGE is without knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 19 of the Complaint, and therefore denies the same.

20. MGE admits the allegations in Paragraph 20 of the Complaint.

21. MGE admits that on February 19, 2013, Heartland Midwest, LLC personnel were using horizontal directional drilling equipment to bore beneath the alley adjacent to the east side of JJ's Restaurant and that at some time well before 4:55 p.m., Heartland Midwest, LLC's drill hit MGE's West 48th Street natural gas main, causing a hole. MGE is without knowledge or information sufficient to form a belief as to the size of the hole Heartland Midwest caused and therefore denies the allegations concerning the size of the hole. MGE denies the remaining allegations in Paragraph 21 of the Complaint.

22. MGE admits that at about 4:55 p.m. on February 19, 2013, MGE Dispatch received a call from the Kansas City Fire Department ("KCFD") reporting that a construction company struck a gas line at 48th and Belleview. MGE admits that MGE Dispatch notified an MGE "specialty person" at about 4:56 p.m. and that a "specialty person" is an MGE designated first responder with knowledge of MGE construction and maintenance department duties and the ability to locate MGE's natural gas facilities. MGE denies the remaining allegations in Paragraph 22 of the Complaint.

23. MGE admits the allegations in Paragraph 23 of the Complaint.

24. Responding to the allegations in Paragraph 24 of the Complaint and based upon testimony provided by KCFD Pumper 19 personnel in the civil cases arising from the explosion, MGE admits that the Pumper 19 crew arrived at approximately 5:04 p.m., that the Pumper 19 crew communicated with Heartland Midwest, LLC personnel, that Heartland Midwest, LLC's personnel told the Pumper 19 crew they had hit a natural gas line and that gas was leaking, that the Pumper 19 crew entered JJ's Restaurant and immediately noticed a natural gas odor, that the KCFD Incident Report contains the quoted language, that KCFD Pumper 19 personnel did not order an evacuation of JJ's Restaurant despite smelling gas in the building and knowing there

was a risk of an explosion, and that Pumper 19 left the scene at approximately 5:17 p.m. MGE denies that KCFD Pumper 19 personnel were still present when MGE's Specialty Person arrived.

25. MGE admits that Paragraph 25 of the Complaint describes some of the actions undertaken by its Specialty Person shortly after he arrived at the scene. Further responding, MGE states that its Specialty Person undertook other actions not mentioned in Paragraph 25 of the Complaint.

26. MGE is without knowledge as to whether a USIC representative took photographs of the pavement markings at the site of the hit line while MGE's crew unloaded the backhoe, and therefore denies the same. MGE admits that Paragraph 26 describes some of the actions undertaken by its C&M Foreman and C&M Crew after arriving at the scene but denies that Paragraph 26 describes all of the actions undertaken by the C&M Foreman and C&M Crew after arriving at the scene

27. MGE generally admits the allegations in Paragraph 27 of the Complaint. In particular, MGE admits that Service Technician No. 1 told the manager of JJ's Restaurant to evacuate the building. This was the first of three evacuation orders by MGE personnel. Further responding, MGE states that prior to that time, no one had reported by telephone or orally to any employee of MGE that anyone had detected gas odor inside JJ's Restaurant and until that time, that no employee of MGE had knowledge that anyone had detected gas odor inside JJ's Restaurant.

28. MGE admits the allegations in the first four sentences of Paragraph 28 of the Complaint. MGE denies the allegations in the last sentence of Paragraph 28 of the Complaint.

29. MGE admits the allegations in the first sentence of Paragraph 29 of the Complaint. MGE denies the allegations in the second sentence of Paragraph 29. Further

responding, MGE states that its construction and maintenance crew, with the assistance of its Specialty Person, was attempting to vent the leaking gas to atmosphere to reduce/eliminate any gas migration and stop the flow of gas from the damaged main, while other service personnel were attempting to assess the scope of migration of gas in order to determine which structures needed to be evacuated to protect life. That excavation and investigation were continuing when the explosion occurred.

30. MGE admits the allegations in Paragraph 30 of the Complaint except that Service Technician No. 1 checked for the presence of gas in the air inside, not outside, the House of Elan.

31. MGE admits that Service Technician No. 2, after first consulting with MGE's Specialty Person, assisted a patron leaving JJ's Restaurant by removing cones at 48th Street and Belleview and stopping traffic so the patron could back out onto Belleview from where his vehicle was parked in front of JJ's Restaurant, but MGE denies that Service Technician No. 2 temporarily blocked Belleview Avenue with cones to do so. MGE admits the remaining allegations in Paragraph 31 of the Complaint, except it specifically denies that the explosion occurred approximately one hour and ten minutes after the gas main was broken by Heartland Midwest, LLC.

32. MGE is without knowledge or information sufficient to form a belief as to how natural gas accumulated inside JJ's and therefore denies all allegations about any pathway or pathways that natural gas took from the point where Heartland Midwest, LLC damaged MGE's gas main outside JJ's Restaurant, and therefore denies such allegations in Paragraph 32 of the Complaint. Further responding to Paragraph 32, MGE admits that gas accumulated inside JJ's and was ignited by an unknown ignition source. Further responding to Paragraph 32, MGE

states that the explosion occurred because Heartland Midwest, LLC, working for and on behalf of Time Warner Cable, negligently acted or failed to act by doing or failing to do certain things including but not limited to (a) failing to take reasonable and proper steps to avoid hitting MGE's gas main, (b) failing to timely report the damaged main such that MGE was left with insufficient time to stop the leak before the explosion occurred, and (c) failing to comply with Missouri statutes and Kansas City municipal ordinances concerning, among other things, underground drilling and use of public rights of way. MGE further states that the explosion occurred because Time Warner Cable failed to take reasonable steps to prevent the line hit. Further responding, MGE states that the actions of others contributed or may have contributed to cause the explosion.

COUNT I

33. For its answer to Paragraph 33, MGE incorporates herein by this reference paragraphs 1 through 32, inclusive, of its Answer to the Complaint as if fully set forth at this point.

34. – 36. MGE admits the allegations in Paragraphs 34 through 36, inclusive, of the Complaint. MGE further states that it complied with all of the cited regulations.

37. MGE admits that it has adopted and maintains an emergency plan ("Plan") as required by MPSC's Gas Safety Standards at 4 CSR 240-40.030. Further responding to the allegations in Paragraph 37 of the Complaint, MGE states that the Plan speaks for itself and that MGE denies the allegations in Paragraph 37 to the extent such allegations do not accurately set forth the terms of the Plan.

38. MGE admits the allegations in Paragraph 38 of the Complaint to the extent it relates to CGI readings taken by MGE personnel. MGE further states that KCFD failed to take any CGI readings to determine the concentration of natural gas in air when KCFD personnel

were inside JJ's despite a strong odor of natural gas and, despite not knowing the concentration of gas, informed people inside JJ's that it was safe for them to remain there.

39. MGE denies the allegations of Paragraph 39 of the Complaint, including subparagraphs a. through e. of Paragraph 39.

WHEREFORE, MGE prays that Count I of the Complaint be dismissed and that the Commission grant MGE such other and further relief that is fair and just under the circumstances.

COUNT II

40. For its answer to Paragraph 40, MGE incorporates herein by this reference paragraphs 1 through 39, inclusive, of its Answer to the Complaint as if fully set forth at this point.

41. MGE admits that the MPSC has certain authority over MGE and its methods of operation as provided by applicable law, but MGE denies the allegations in Paragraph 41 of the Complaint to the extent that Staff has failed to accurately summarize or characterize such law. With respect to the recommendations set forth in subparts a. through g. of Paragraph 41 of the Complaint, MGE states that the implementation of Staff's recommendations is unnecessary and inappropriate because there is no evidence that MGE violated any of the Commission's regulations. Notwithstanding this lack of evidence, MGE is willing to meet with Staff to discuss Staff's recommendations regarding additional or revised procedures going forward. In addition, MGE is receptive to meeting with Staff and other Missouri operators in a workshop or other forum to discuss other potential improvements to emergency practices and procedures.

AFFIRMATIVE AND OTHER DEFENSES

MGE incorporates herein by this reference the facts stated or admitted to in its Answer and relies upon the following Affirmative Defenses and other defenses. MGE reserves the right to amend this Answer to assert additional separate affirmative defenses as deemed appropriate through continued discovery.

FIRST DEFENSE

In filing the Complaint, Staff acted arbitrarily, capriciously and without adequate foundation in fact or law in that the information MGE and its employees provided to Staff demonstrates that MGE did not violate any of the MPSC's Gas Safety Rules or any other statute, regulation, ordinance, or law of any kind.

SECOND DEFENSE

MGE met all of its obligations under the law with respect to the subject matter of the Complaint and the claims asserted by Complainant.

THIRD DEFENSE

At all relevant times, MGE exercised the degree of care which a reasonable and prudent person would use under like circumstances and met all applicable government and industry law, codes, regulations and standards and thus Complainant is barred from or not entitled to recovery herein against MGE.

FOURTH DEFENSE

MGE complied with all of its applicable operating procedures and tariffs, which procedures and tariffs were approved by Complainant, so that Complainant is estopped from asserting MGE failed to meet its obligations under the law with respect to the subject matter of the Complaint.

FIFTH DEFENSE

MGE complied with all of its applicable operating procedures and tariffs, which procedures and tariffs were approved by Complainant, so that Complainant has waived the right to assert that MGE failed to meet its obligations under the law with respect to the subject matter of the Complaint.

SIXTH DEFENSE

The incident that is the subject matter of Complaint and any and all damages allegedly sustained were caused by the intervening and superseding negligent, careless and intentional acts or omissions of persons or entities other than MGE and for which MGE was not responsible, and which acts or omissions MGE had no reason to anticipate. As a result, the Complaint should be barred or a finding should be made that MGE did not violate the Gas Safety Rules.

SEVENTH DEFENSE

MGE reserves the right to adopt any affirmative defenses asserted by any other party to this proceeding and to amend this Answer and/or assert additional affirmative defenses discovered through the course of discovery herein.

Finally, MGE denies all allegations not admitted in this Answer.

WHEREFORE, MGE prays that Count I and Count II of the Complaint be dismissed and that the Commission grant MGE such other and further relief that is fair and just under the circumstances.

Respectfully submitted

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ATTORNEYS FOR RESPONDENT LACLEDE GAS
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 2014, a true and accurate copy of the foregoing Answer was served by **email** and by **United States mail**, postage prepaid, on the Complainant at the address below and on the Office of the Public Counsel.

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