

	)	
<b>Superior Bowen Asphalt Company,</b>	)	
<b>L.L.C.</b>	)	
	)	
<b>Complainant</b>	)	
	)	<b>Case No. GC-2011-0101</b>
<b>v.</b>	)	
	)	
<b>Missouri Gas Energy, a division of</b>	)	
<b>Southern Union Company,</b>	)	
	)	
<b>Respondent.</b>	)	

This Amended Non-Unanimous Stipulation and Agreement is entered into between Superior Bowen Asphalt Company, LLC (“Superior Bowen”); Missouri Gas Energy, a division of Southern Union Company (“MGE”); and the Staff of the Missouri Public Service Commission (“Staff”) (collectively, the “Signatories”), and is intended to supersede the Non-Unanimous Stipulation And Agreement filed by the Signatories on April 2, 2012.

**WHEREAS**, MGE delivers natural gas to Superior Bowen as a transportation customer to its facility located at 2501 Manchester Trafficway, Kansas City, Missouri 64129;

**WHEREAS**, in July 2008, Superior Bowen notified MGE that it planned to replace natural gas equipment at its 2501 Manchester Trafficway asphalt plant;

**WHEREAS**, MGE, acting under its Tariff Sheet 61.3 required Superior Bowen to pay for the replacement of cast iron distribution main and other portions of MGE's natural gas delivery system leading to Superior Bowen's asphalt plant in order to address what MGE alleged were operational and safety issues stemming from Superior Bowen's change in equipment;

**WHEREAS**, Superior Bowen's position was, *inter alia*, that a) the main and system upgrades were unnecessary as the natural gas delivery pressure was sufficient to accommodate the equipment change; b) the system upgrade requirement was unjust, unreasonable, and discriminatory; and c) MGE's requirement for Superior Bowen to pay for such upgrades was not required under MGE's Tariff Sheet 61.3;

**WHEREAS**, MGE's position was, *inter alia*, that a) the main and system upgrades were necessary for operational and safety reasons; b) that Superior Bowen was required to pay for a portion of such upgrades under MGE's tariffs due to increased natural gas delivery volume and pressure; and c) that MGE acted in accordance with its tariffs, Commission rules, and Missouri law;

**WHEREAS**, Superior Bowen paid MGE \$175,032 under protest to upgrade MGE's natural gas distribution system providing natural gas to its asphalt plant;

**WHEREAS**, the \$175,032 gas distribution main replacement cost paid by Superior Bowen to MGE is set forth and verified in Exhibit F of Superior Bowen's Complaint filed October 7, 2010, Schedule TB-2 of the Direct Testimony of Trey Bowen

filed June 3, 2011, and the Answer of Southern Union Company, d/b/a Missouri Gas Energy filed November 22, 2010;

**WHEREAS**, in the interests of settlement and compromise, the Signatories have agreed to settle the matter as described herein.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and conditions herein contained, the Signatories hereby agree as follows:

1. The Signatories agree that:
  - \$99,768 of the gas main replacement cost paid by Superior Bowen to MGE will be refunded by MGE to Superior Bowen, and MGE will not seek recovery of this amount in an ISRS filing. The Signatories agree to recommend that the Commission authorize MGE to include the \$99,768 portion of the gas main replacement in rate base in its next general rate case filing; and,
  - The remaining \$75,264 of the gas main replacement cost paid by Superior Bowen to MGE will be retained by MGE as an advance for its construction.
2. MGE shall, within fifteen days of the effective date of a Commission order approving the Stipulation and Agreement, deliver a check to Superior Bowen in the amount of \$99,768, as settlement in full of all claims between Superior Bowen and MGE relating to the replacement of MGE's gas facilities providing natural gas service to Superior Bowen's Manchester Trafficway Plant.
3. The terms of this Stipulation and Agreement shall not preclude the Commission from considering the ratemaking treatment to be afforded any of the settled matters in any later proceeding.
4. In exchange for MGE's commitments as outlined above, the Signatories agree that Superior Bowen's Complaint shall be dismissed with prejudice, and that Superior Bowen shall release, and hereby does release, MGE and its representatives from any and all related claims that Superior Bowen has or may have against them

related to the subject of this Complaint upon the delivery of payment as described herein. The Signatories believe this Stipulation and Agreement is consistent with the public interest.

5. As an aid to facilitate the Commission's independent review of the terms of this stipulation and agreement and for purposes of establishing an evidentiary record in further support thereof, the Signatories move that the Commission may admit into evidence the Complaint filed by Superior Bowen, the Answer filed by MGE, and the Staff Report. If the Commission does not approve this Stipulation and Agreement unconditionally and without modification, the Signatories reserve the right to make any appropriate objections to the admission of these items into evidence at hearing and to reset the procedural schedule.

6. The Office of the Public Counsel has indicated that it will not be a Signatory to this Amended Non-Unanimous Stipulation And Agreement, that it will not oppose the Stipulation and Agreement, and that it will not request a hearing.

7. Under Commission Rule 4 CSR 2402.115(2), if no one objects to a non-unanimous stipulation and agreement within seven (7) days, the Commission may treat the stipulation and agreement as unanimous.

8. Unless otherwise explicitly provided herein, none of the Signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation to, any other method of cost determination or cost allocation or revenue-related methodology. Other than as explicitly provided herein, none of the Signatories shall be prejudiced or bound in any

manner in this or any other proceeding by the terms of this Stipulation and Agreement regardless of whether this Stipulation and Agreement is approved.

9. This Stipulation and Agreement has resulted from extensive negotiations among the Signatories and the terms hereof are interdependent. If the Commission does not approve this Stipulation and Agreement unconditionally and without modification, then this Stipulation and Agreement shall be void and no Signatory shall be bound by any of the agreements or provisions hereof, except as explicitly provided herein.

10. If the Commission does not unconditionally approve this Stipulation and Agreement without modification, and notwithstanding the provision herein that it shall become void, neither this Stipulation and Agreement nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Party has for a decision in accordance with §536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Signatories shall retain all procedural and due process rights as fully as though this Stipulation and Agreement had not been presented for approval.

11. In the event the Commission unconditionally accepts the specific terms of this Stipulation and Agreement without modification, the Signatories waive the following rights only as to the issues resolved herein: 1) their respective rights to present oral argument and written briefs pursuant to §536.080.1 RSMo 2000; 2) their respective rights to seek rehearing, pursuant to §536.500 RSMo 2000; and 3) their respective rights to judicial review pursuant to §386.510 RSMo 2000. This waiver applies only to a final unappealed Commission order unconditionally approving this Stipulation and

Agreement issued in this proceeding and only to the issues that are resolved hereby. It does not apply to any matters raised in any prior or subsequent Commission proceeding or any matters not explicitly addressed by this Stipulation and Agreement.

**WHEREFORE**, for the foregoing reasons, the undersigned Signatories respectfully request that the Commission issue its Order approving and incorporating the terms of this Amended Non-Unanimous Stipulation and Agreement and dismissing this Complaint with prejudice.

Respectfully submitted,

/s/Robert S. Berlin

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**ATTORNEYS FOR SUPERIOR BOWEN**

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been emailed on this 26th day of April 2012 to all parties on the Commission's service list in this case.

/s/ Robert S. Berlin \_\_\_\_\_