

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

**SUPERIOR BOWEN ASPHALT COMPANY,)
L.L.C.,)**

COMPLAINANT)

v.)

CASE NO. _____)

**MISSOURI GAS ENERGY, a division of)
Southern Union Company)**

RESPONDENT)

COMPLAINT

COME NOW Complainant, Superior Bowen Asphalt Company, L.L.C., ("Superior Bowen"), pursuant to Section 386.390, RSMo. and 4 CSR 240-2.070 of the Commission's Rules of Practice and Procedure, and for its Complaint against Missouri Gas Energy, a division of Southern Union Company ("MGE"), respectfully shows as follows:

1. Complainant Superior Bowen is a Missouri limited liability company located at 2501 Manchester Trafficway, Kansas City, Missouri 64129. Superior Bowen receives natural gas service as a transportation customer of MGE at several locations in MGE's Missouri service area. Its telephone number is (816) 921-8200 and its fax number is (816) 921-8251. Its contact person at such location is: Trey Bowen, whose e-mail address is tbowen@superiorbowen.com.

2. Respondent Missouri Gas Energy ("MGE") is a gas corporation and public utility as defined in §386.020, RSMo. engaged in the business of manufacture, distribution, sale or furnishing of natural gas for light, heat or power, subject to the regulatory authority of the

Commission pursuant to Chapters 386 and 393, RSMo. It is located at 3420 Broadway, Kansas City, Missouri 64111.

3. Complainant has directly contacted MGE concerning the matter of this complaint, however, such efforts did not result in any resolution.

4. Superior Bowen uses natural gas at several locations in MGE's service area where it has asphalt plants. The natural gas is used in the heating of asphalt and rocks in a furnace or kiln to produce the hot mix asphalt product that is usable as a paving material.

5. In July of 2008, Superior Bowen informed MGE that it intended to install a new, more efficient natural gas fired furnace at its 2501 Manchester Trafficway asphalt plant which would replace its existing natural gas fired furnace at such plant.

6. That at the time of the request to MGE Superior Bowen was being served as a transportation customer by MGE at such address from MGE's mains in the street at 15 psi of pressure, which Superior Bowen reduced by its own regulator to 6.5 psi at the burner tip of the furnace to be replaced.

7. It burned approximately 90,000 ccf of natural gas a month (9,000 MMbtu/Month) from April through October each year at such plant.

8. Inasmuch as in order to lay asphalt, outside temperatures must be at least 40 degrees and rising, the entire operation of Superior Bowen's plant is off-peak insofar as MGE's operations are concerned. The plant is virtually shut down in late November or early December of each year until April of the following year.

9. During the months of November through March, the winter season when the vast majority of MGE gas demand is at its greatest, Superior Bowen's plant is not in operation.

10. During MGE's off-peak summer months when there is much lower demand for natural gas on MGE's system, Superior Bowen's need for natural gas is at its greatest.

11. This relationship provides MGE an opportunity to ship gas and receive revenues therefrom during MGE'S off-peak time.

12. That Superior Bowen's new gas fired furnace needs gas pressure of 8.5 psi at the burner tip or an increase of 2 psi over the pressure supply of 6.5 psi that was needed for the replaced furnace.

13. That during the months of April through October when the plant is operating, the new furnace will burn approximately 100,000 ccf a month (10,000 MMbtu/Month) or only about 10,000 ccf a month (1,000 MMbtu/Month) more than the furnace it replaced.

14. That in response to Superior Bowen's request for an additional 2 psi of gas pressure (from 6.5 psi to 8.5 psi), Ray Wilson of MGE at a meeting with Larry Gervy of Superior Bowen in July of 2008 advised Mr. Gervy that the cost to Superior to receive gas at 8.5 psi at the burner tip rather than 6.5 psi would be minimal.

15. In reliance thereon, Superior Bowen proceeded to follow through with its plans to replace its furnace, at a cost of approximately \$5.3 million.

16. Thereafter, in early October 2008, MGE subsequently informed Superior Bowen, that in order for MGE to provide Superior Bowen with its requested increase of 2 psi in pressure, it would be necessary for MGE to replace 1553 linear feet of pipe, increase the pressure from 15 psi to 50 psi, and install a replacement regulator at a substation to reduce the pressure from 50 psi to 25 psi. MGE estimated the cost thereof at \$273,573.00 and advised Superior Bowen that it would be required to pay MGE \$238,570.00 for its portion of the work to be done before MGE

would take any action to provide Superior Bowen with the 8.5 psi of pressure it needed for the operation of its replacement furnace.

17. That on January 5, 2009, Superior Bowen, through its energy consultant, Greg Elam of American Energy Solutions, sent a letter to MGE in an effort to identify a mutually agreeable plan for the site and questioning the alleged need for the modifications to MGE's distribution system to provide an additional 2 psi and stated that based on the volumetric assumptions contained in his letter that were based on the gas usage data provided by MGE that the increase in psi could be achieved by a minor adjustment to the current regulator to provide the needed 8.5 psi at the burner tip. A true copy of such letter is attached as Exhibit A and incorporated by reference.

18. Shortly thereafter, Mr. Elam had a conference with MGE's Patti Reardon and David Glass to discuss the points raised by Mr. Elam in his letter of January 5th, which included a discussion on the cast iron pipe that still exists on the MGE system, including the section that fed the Superior Bowen facility.

19. Mr. Elam then sent a letter dated January 15, 2009 to Patti Reardon in which Mr. Elam described the discussions that he had with her and Mr. Glass. During such discussions, *inter alia*:

- a. Mr. Glass confirmed that the cast iron pipe serving Superior Bowen is a part of MGE's Commission approved plan for replacement, *i.e.*, Safety Line Replacement Program ("SLRP") and asserted that such pipe cannot safely withstand the additional few pounds of pressure needed for Superior Bowen and must be replaced;

b. In response to Mr. Elam's statement that "since this is a program already approved by the Commission, the customer should not pay for the replacement," Mr. Glass replied that: Superior Bowen is "forcing the project to occur sooner than MGE planned for replacing the pipe" and that "because Superior Bowen is a transport customer MGE does not earn as much on their account as they do with other customers supplied by MGE.";

c. Additionally Mr. Glass stated "that this specific section of line, with the exception of a couple of small accounts, only serves Superior Bowen and, therefore, is much further down the MGE priority list for replacement.";

d. In response, Mr. Elam advised that if Superior Bowen is responsible for accelerating the replacement, then it should pay no more than the time value of money to expedite the replacement and after estimating the time-cost to accelerate the project by 5 years at approximately \$30,000, offered to pay MGE such amount to move the project along in lieu of paying the entire cost of the project;

e. However, after further thought on the issue, Mr. Elam stated that: "it appears that MGE is discriminating against Superior Bowen because they are a transport customer." Nevertheless, in order to move this project along he continued to offer the \$30,000.

A true copy of such letter is attached as Exhibit **B** and incorporated by reference.

20. In response to Mr. Elam's January 15th letter, Ms. Reardon of MGE sent Mr. Elam a letter dated January 20, 2009, a true copy of which is attached as Exhibit **C** and incorporated by reference.

21. In her letter, Ms. Reardon advised Mr. Elam that "we have reviewed your analysis and request for pricing of facilities upgrades and have concluded that we cannot accommodate that request" and stated that they stand by MGE's proposed contribution from Superior Bowen for the facilities upgrades which "is within the guidelines of our MoPSC-approved tariff, in particular Tariff Sheet No. 61.3, item number 10". A copy of such tariff sheet is attached as Exhibit **D** and incorporated by reference.

22. In such letter, Ms. Reardon did not raise any objections or attempt to refute any statement that Mr. Elam had attributed to her or David Glass at the meeting Mr. Elam had with them.

23. On February 9, 2009, Trey Bowen of Superior Bowen sent Ms. Patti Reardon a letter advising her that based on the correspondence between her and Mr. Elam's firm, American Energy, Superior Bowen does "not believe Superior Bowen should be required to pay for the improvements, including the exorbitant pricing of the install. However, because Superior Bowen needs its facility operating soon, we have no other choice but to pay MGE, but to do so under protest." He also requested that she resend the contract for signature and the exact amount of the check. A true copy of such letter is attached as Exhibit **E** and incorporated by reference.

24. On February 13, 2009, Mr. Bowen signed the resent Contract and sent it to MGE together with a check for \$175,032.00, the amount of partial payment called for in the resent Contract. A true copy of the Contract and the cancelled check is attached as Exhibit **F** and incorporated by reference.

25. That since the requested 2 psi pressure increase was to be at Superior Bowen's delivery point, *i.e.*, Superior Bowen's replacement furnace, the 15 psi in MGE's mains in the street was adequate pressure to provide Superior Bowen with 8.5 psi at the burner tip.

26. That the improvements by MGE to its system were not required to accommodate Superior Bowen's request for increased delivery pressure of 2 psi at its furnace.

27. That, in order to increase Superior Bowen's pressure by an additional 2 psi at its furnace it was only necessary for Superior Bowen to modify or replace its existing pressure regulator at its delivery point.

28. That there was no need for MGE to have charged Superior Bowen for the improvements MGE made to its system to provide Superior Bowen with its requested pressure.

COUNT I

29. Complainant incorporates paragraphs 1-28 as if fully set forth in Count I.

30. That MGE's actions in replacing the gas line and requiring Superior Bowen to pay for the cost of replacement before it would serve Superior Bowen's need for an additional two (2 psi) pounds of pressure violates Section 393.130.1, RSMo. and is prohibited because such charge is unjust and unreasonable in that:

a. It was not reasonable nor necessary for MGE to replace its line or its regulator to provide safe and adequate service to Superior Bowen at the requested needed pressure of 8.5 psi at its delivery point;

b. That the line MGE replaced was to have been replaced pursuant to the MGE's Safety Line Replacement Program ("SLRP") for the replacement of cast iron mains as required by 4 CSR 240-40.030(15)(D) at MGE's expense and the costs for such

replacement allowed deferral treatment by MGE under authority of an Accounting Authority Order granted by the MoPSC or for immediate recovery under ISRS;

c. That Superior Bowen did not need nor request the replacement of the lines to allow MGE to provide excessive gas pressure at 50 psi that MGE decided to provide at the expense of Superior Bowen;

d. That the costs of the replacements MGE seeks to recover from Superior Bowen are excessive, unjust, unreasonable, and confiscatory.

WHEREFORE, Complainant prays for an order from this Commission:

1. Finding that it was not necessary for MGE to replace the lines and regulator to provide safe and adequate service to enable Superior Bowen to provide 8.5 psi at the burner tip of the new furnace;

2. Finding that the lines were to have been replaced pursuant to the MGE's Safety Line Replacement Program ("SLRP") for the replacement of cast iron mains as required by 4 CSR 240-40.030(15)(D) and the costs therefor allowed deferral treatment under authority of an Accounting Authority Order granted by the MoPSC or pursuant to ISRS and not charged to Superior Bowen;

3. Finding that the costs of the replacements MGE seeks to recover from Superior Bowen are excessive, unjust, unreasonable, and confiscatory;

4. Ordering MGE to refund to Superior Bowen with interest all monies paid under the Contract by Superior Bowen to MGE as a condition of supplying Superior Bowen with gas transportation service to operate its new furnace at its 2501 Manchester Trafficway plant.

5. For such other relief as the Commission shall deem meet and just in the premises.

COUNT II

31. Complainant incorporates paragraphs 1-30 as if fully set forth in Count II.

32. That MGE's actions in replacing the gas line and requiring Superior Bowen to pay for the cost of replacement before it would serve Superior Bowen's need for an additional two (2 psi) pounds of pressure for its new furnace violates Sections 393.130 and 393.140.11, RSMo. and is prohibited thereunder in that:

a. MGE has no applicable tariff provision under which it has been authorized by the MoPSC to make such charge; and

b. such action is prohibited by such statutes as being unjust and unreasonable and unduly discriminatory.

33. That MGE's reliance on its Tariff Sheet No. 61.3, item number 10, upon which it claims authority to charge Superior Bowen for the facilities upgrades it has made to allegedly allow Superior Bowen to receive gas at the requested pressure of 8.5 psi at its delivery point is not applicable to this situation because such rule applies only to the inadequacy of MGE's system capacity to provide the customer with the **volume** of gas the customer desires to be transported and not to increased **pressure**.

34. That Tariff Sheet No. 61.3, item number 10, does not apply here, where the issue is not a capacity limitation that restricts the volume of gas sought to be delivered, but rather an alleged safety concern on the part of MGE as to whether the cast iron pipe could safely provide Superior Bowen with the additional 2 psi of pressure needed by Superior Bowen at the burner tip without the cast iron pipes failing despite the fact that the pipes were operating with gas at 15 psi.

35. MGE's rule which MGE is claiming is applicable to charge Superior Bowen for the work it has performed is set out in full in Exhibit D above and reads in pertinent part as follows:

(10) Limitations: ...**If capacity limitations restrict the volume of gas which the customer desires to be transported**, the customer may request the Company to make reasonable enlargements in its existing facilities, which requests the Company shall not unreasonably refuse, provided that the actual costs (including indirect costs) of such system enlargements are borne by the customer...[Emphasis added.]

36. That Superior Bowen's request for a small increase in pressure (2 psi) at its delivery point to operate its new furnace at 8.5 psi is not a request for MGE to make an enlargement in MGE's existing facilities to provide additional capacity.

37. That there were no capacity limitations on MGE's system restricting the volume of gas that Superior Bowen desired to be transported on MGE's system to operate its new furnace.

38. That the tariff sheet does not apply in this matter.

WHEREFORE, Complainant prays for an order from this Commission:

1. Finding that MGE's actions in replacing the gas line and other facilities and requiring Superior Bowen to pay for the cost of replacement before it would serve Superior Bowen's need for additional pressure violates Sections 393.130 and 393.140.11, RSMo. and is prohibited thereunder in that:

a. MGE has no applicable tariff provision under which it has been authorized by the MoPSC to make such charge; and

b. such action is prohibited by such statutes as being unjust and unreasonable and unduly discriminatory;

2. Finding that MGE's Tariff Sheet No. 61.3, item number 10, upon which MGE claims as authority to charge Superior Bowen for the facilities upgrades it has made is not applicable;

3. Finding that there were no capacity limitations restricting the volume of gas that Superior Bowen desires to be transported on MGE's system at its Manchester plant;

4. Ordering MGE to refund to Superior Bowen with interest all monies paid under the Contract MGE required Superior Bowen to enter before MGE would supply Superior Bowen with gas transportation service to operate its new furnace at its 2501 Manchester Trafficway plant.

5. For such other relief as the Commission shall deem meet and just in the premises.

COUNT III

39. Complainant incorporates paragraphs 1-38 as if fully set forth in Count III.

40. That MGE's actions in replacing the gas line and requiring Superior Bowen to pay for the cost of replacement before it would serve Superior Bowen's need for gas at its new furnace at an additional two (2 psi) pounds of pressure violates Sections 393.130 and 393.140.11, RSMo. and is prohibited thereunder in that the lines MGE sought to replace have already been approved by the MoPSC for replacement under MGE's Safety Line Replacement Program ("SLRP") and that MGE is unduly discriminating against Superior Bowen in not having replaced such lines under SLRP for the reason that Superior Bowen is a transportation customer and MGE

does not receive as much in revenues on transportation customer accounts as it does with customers whose gas is supplied and sold by MGE.

41. That by replacing more facilities than reasonable and necessary to serve Superior Bowen with the minimal additional pressure Superior Bowen needs for its new furnace at its operations at 2501 Manchester Trafficway, MGE is unduly discriminating against Superior Bowen by requiring Superior Bowen to pay for excessive facilities that do not benefit Superior Bowen but instead are an unlawful, unreasonable and discriminatory subsidization for the benefit of other current and potential customers on MGE's system served by such lines.

WHEREFORE, Complainant prays for an order from this Commission:

1. Finding that MGE is unduly discriminating against Superior Bowen by requiring Superior Bowen to pay for the replacement of lines already scheduled for replacement under SLRP because it is a transportation customer and not a sales customer of MGE;

2. Finding that MGE is unduly discriminating against Superior Bowen and giving undue preference and advantage to other current and potential customers of MGE by requiring Superior Bowen to pay at its sole expense for improvements that are in excess of what is needed by Superior Bowen for its new furnace but which would be available for use by current and potential customers of MGE served or to be served from the upgraded portion of MGE's system paid for by Superior Bowen; and

3. Ordering MGE to refund to Superior Bowen with interest all monies paid under the Contract MGE required Superior Bowen to enter before MGE would supply Superior Bowen with transportation gas service to operate its new furnace at its 2501 Manchester Trafficway plant.

4. For such other relief as the Commission shall deem meet and just in the premises.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

By: 

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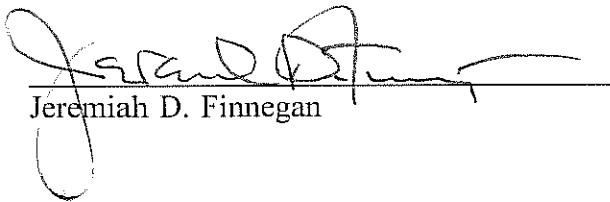
(816) 753-1122

(816) 756-0373 FAX

ATTORNEYS FOR COMPLAINT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Complaint was mailed this 7th day of October, 2010 via first class mail, postage prepaid to Todd J. Jacobs, Missouri Gas Energy Legal Department, 3420 Broadway, Kansas City, MO 64111-7516 or faxed to him at 816/360-5903 or emailed to him at todd.jacobs@sug.com; and to the Office of Public Counsel, Governor Office Building, 200 Madison, Suite 650, PO Box 7800, Jefferson City, MO 65101 or faxed to him at 573/751-5562 or emailed to him at mopco.ded.mo.gov.


Jeremiah D. Finnegan