

MISSOURI PUBLIC SERVICE COMMISSION

BOX 360

PERSON CITY MO 65102



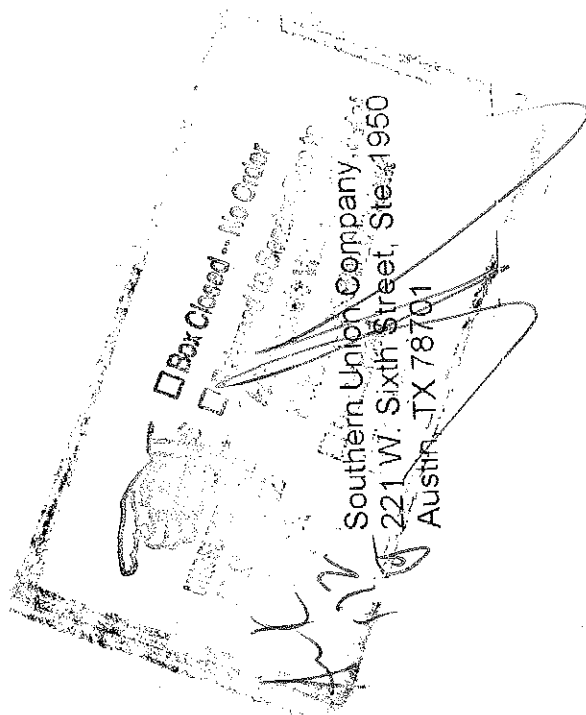
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FILED<sup>3</sup>

OCT 20 2010

Missouri Public  
Service Commission



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Southern Union Company,  
221 W. Sixth Street, Ste. 1950  
Austin, TX 78701

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

**X**

☐ Agent  
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Certified Mail ☐ Express Mail
- ☐ Registered ☐ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number  
(Transfer from service label)

7007 0710 0002 2047 9824

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-15-40

6-C-11-0101 10-8-10

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

Superior Bowen Asphalt Company, L.L.C., )  
)  
Complainant, )  
)  
v. )  
)  
Southern Union Company, )  
221 W. Sixth Street, Ste. 1950 )  
Austin, TX 78701 )  
CERTIFIED MAIL )  
)  
Respondent. )

**File No. GC-2011-0101**

## NOTICE OF CONTESTED CASE

Issue Date: October 8, 2010

The Commission is giving notice of the commencement of a contested case. On October 7, 2010, the complainant filed the complaint, a copy of which accompanies this notice. Such filing vested the right to a pre-decision evidentiary hearing in the respondent,<sup>1</sup> so that filing instituted a contested case.<sup>2</sup>

A contested case is a formal hearing procedure, but it allows for waiver of procedural formalities and a decision without a hearing,<sup>3</sup> including by stipulation and agreement.<sup>4</sup> Provisions governing discovery are at the Commission's regulation 4 CSR 240-2.090. The Commission's regulations<sup>5</sup> require the filing of an answer not later than November 8, 2010.

As an alternative to the formal evidentiary hearing procedure, the Commission offers mediation. Mediation is a voluntary process in which a neutral person assists the

<sup>1</sup> Section 386.390.5, RSMo 2000; *Jamison v. Dept. of Soc. Servs.*, 218 S.W.3d 399, 408-09 (Mo. banc 2007); *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

<sup>2</sup> Sections 536.063(1), RSMo 2000; Section 536.010(4), RSMo Supp. 2009.

<sup>3</sup> Sections 536.060, RSMo 2000.

<sup>4</sup> *Id.* and 4 CSR 240-2.115.

<sup>5</sup> 4 CSR 240-2.070(7) and (8).

parties in exploring opportunities for settlement. Upon a request for mediation, the Commission may suspend the filing date set forth in this order.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'S. C. Reed', is written over a faint, illegible stamp.

Steven C. Reed  
Secretary

( S E A L )

Dated at Jefferson City, Missouri,  
on this 8<sup>th</sup> day of October, 2010.

Jordan, Senior Regulatory Law Judge

**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](mailto: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: 

JEREMIAH D. FINNEGAN MO#18416

STUART W. CONRAD MO#23966

C. EDWARD PETERSON MO#42398

DAVID W. WOODSMALL MO#40747

1209 Penntower Office Center

3100 Broadway

Kansas City, MO 64111

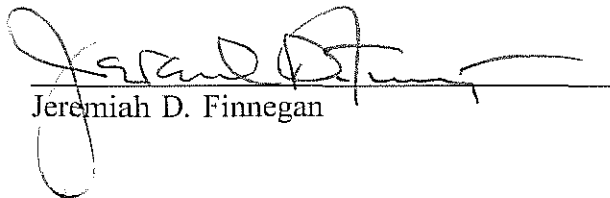
(816) 753-1122

(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](mailto: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](mailto:mopco.ded.mo.gov).

  
Jeremiah D. Finnegan



January 5, 2009

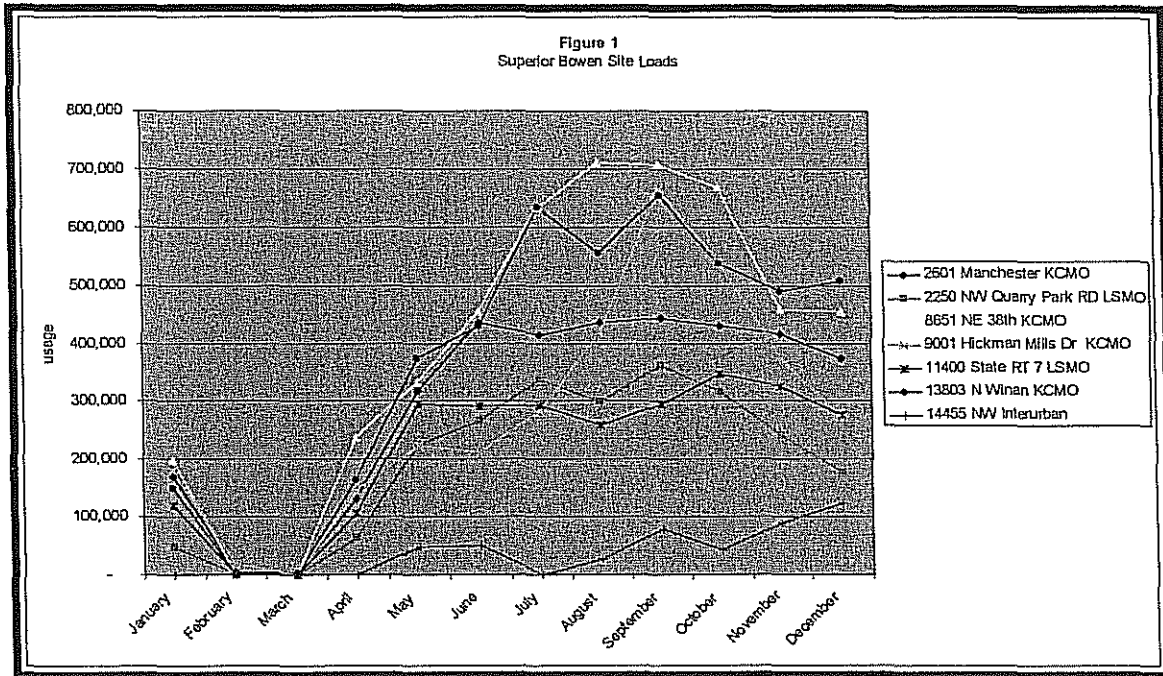
Ms Patti Reardon  
Missouri Gas Energy  
PO Box 412662  
Kansas City, MO 64141-2662

RE: Superior Bowen

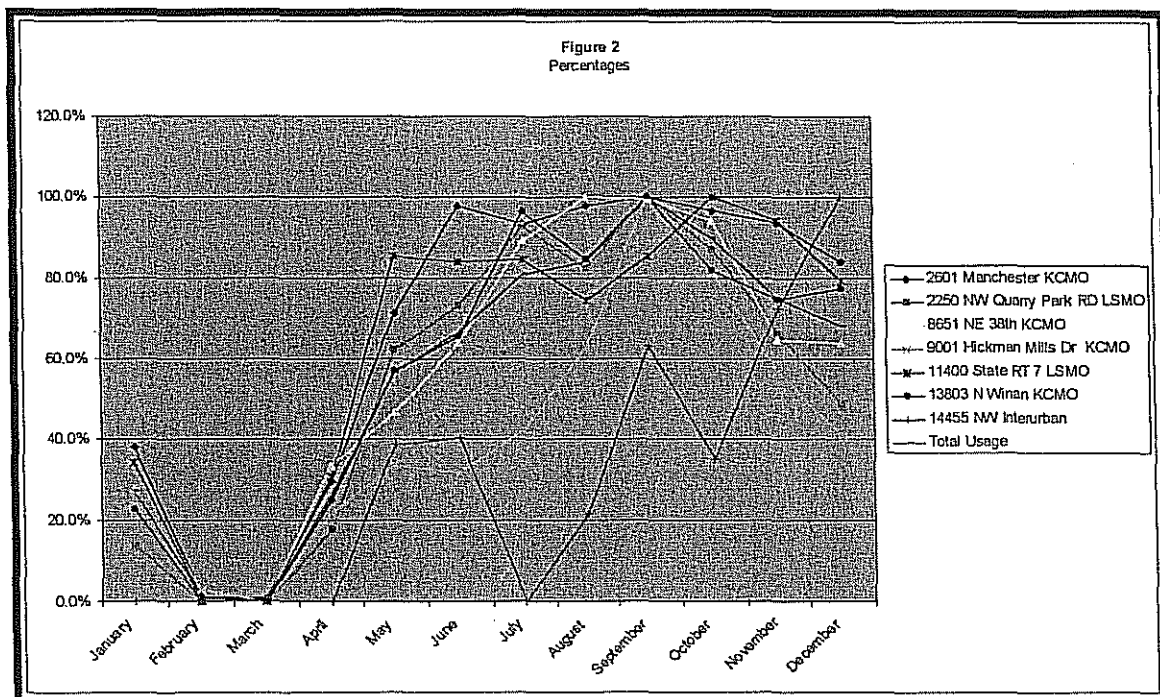
Dear Patti:

Thank you for reviewing this letter and other information regarding service for Superior Bowen's facility located at 2601 Manchester Road. Upon reviewing the enclosed information the goal will be to identify a mutually agreeable plan for the site. The information and analysis American Energy has provided is based on the gas usage data as provided by Missouri Gas Energy ("MGE") and is intended to determine whether improvements proposed by MGE are actually needed.

Based on American Energy's review of the usage data, we believe MGE has honestly erred in proposing such a drastic improvement to its distribution system. Figure 1 below shows that all of the Superior Bowen plants peak in the summer months and not when MGE is experiencing a peak in consumption. Any incremental load increase by Superior Bowen's plan will be during MGE's non-peak season. This will actually improve the overall load factor for MGE thereby lowering the incremental cost by spreading fixed costs over more volume.



Since American Energy is only able to see loads for the Superior Bowen sites, we are requesting MGE to provide the combined loads (no names) for all customers that are located between the substation and the Superior Bowen site located at 2601 Manchester. Without seeing the data, our assumption is that the loads will be nearly the inverse of the Superior Bowen load. As a result, the additional Superior Bowen load for the 2601 Manchester site will not present any challenge to the MGE system and in fact, as mentioned before, will actually improve the load factor. In reviewing usage for the site for the years 2004 through 2008, on a percentage of that site's peak usage, December averages barely above 80%, January is less than 40%, and February through March is less than 10% of the peak usage. See Figure 2 below.



While the previous discussion addresses the volumetric issue, it is also understood that MGE currently has 15psi in the street but supplies Superior Bowen through a regulator at an estimated 7.5psi at the burner tip. Based on the volumetric assumptions above, it is believed that MGE can adjust its regulator to provide Superior Bowen the needed 8.5psi at the burner tip.

If MGE still believes that the upgrade is necessary, American Energy will take issue with several cost components, including the over-inflated cost to provide the work. Most of our objections are related to the excessive overheads that escalate the price to an unreasonable level. Actually, based on pricing we developed, the installation of an on-site compressor would be less than the system upgrades being proposed by MGE. Finally, we do not believe that the Missouri Public Service Commission will support MGE's logic for using more than 4,757,822 CCF before any amounts are applied to the line upgrade, as the usage at other plants is independent of this plant.

The analysis and commentary American Energy has presented is based on limited information, so any additional information that MGE can provide that may shed additional light on this subject is welcomed.

As stated above, if MGE applies the gas load information to the proper months and to the existing load profiles then MGE will arrive at the same conclusion that the upgrades are not warranted.

Regardless of MGE's decision, we look forward to working with you to develop a mutually agreeable resolution and to provide Superior Bowen with the service requirements they need.

Please feel free to call me to discuss this in more detail after you have been able to review these findings.

Sincerely,

Greg Elam  
American Energy Solutions





January 15, 2009

Ms Patti Reardon  
Missouri Gas Energy  
PO Box 412662  
Kansas City, MO 64141-2662

RE: Superior Bowen

Dear Patti:

I am following up to our discussions regarding natural gas service for Superior Bowen's facility located at 2601 Manchester Road. As you know, we have had a difficult time in understanding why MGE simply cannot increase the gas pressure needed to provide adequate service to Superior Bowen. Specifically, I am referring to the conversation you, David Glass and I had last week which included a discussion on the cast iron pipe that still exists on the MGE system, including the section that feeds the Superior Bowen facility.

During this discussion, David Glass confirmed that the cast iron pipe, which is part of the Public Service Commission's ("Commission") approved plan for replacement, cannot withstand the additional few pounds of pressure needed for Superior Bowen. Clearly, this is a safety issue and not a line extension application. Further, this safety issue has been approved by the Commission to be remedied. When I stated that "since this is a program already approved by the Commission, and the customer should not pay for the replacement", David stated that we (Superior Bowen) are forcing the project to occur sooner than MGE had planned for replacing the pipe. Specifically, he stated 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. Additionally, he stated that this specific section of line, with the exception of a couple small accounts, only serves Superior Bowen and, therefore, is much further down the MGE priority list for replacement.

As I responded, if Superior Bowen is responsible for accelerating the replacement, then we should pay no more than the time value of money to expedite the replacement. However, after further thought on the issue, it appears that MGE is discriminating against Superior Bowen because they are a transport customer. Clearly, if Superior Bowen was purchasing its gas from MGE, the response to our request would be different.

In reviewing the cost proposed by MGE, after stripping away all of the overheads, we have estimated that the cost to accelerate the project 5 years is approximately \$30,000. I have been authorized to offer MGE this amount to move this project along. To the extent MGE insists on the full proposed cost, we will immediately seek a ruling from the Commission on the matter.

Obviously, we would rather move forward and not have to file a complaint, but Superior Bowen has emphasized that time is of the essence and they need to have their facility up and operating.

I am hopeful that you view our response as an indication of our desire to work with MGE to obtain service for Superior Bowen. However, we want Superior Bowen to be treated fair and we hope you understand our position. As stated prior, regardless of MGE's decision, we look forward to working with you to develop a mutually agreeable resolution and to provide Superior Bowen with the service requirements they need.

I look forward to hearing from you on this matter.

Sincerely,

Greg Elam  
American Energy Solutions





**MISSOURI GAS ENERGY**

3420 Broadway • Kansas City, MO • 64111-2404 • (816) 756-5261

January 20, 2009

Mr. Greg Elam  
American Energy  
10601 Mission Road, Suite 210  
Leawood, KS 66206

RE: Superior Bowen

Dear Greg,

Thank you for your letter dated January 15, 2009, concerning Superior Bowen's request for increased pressure and associated facilities upgrades in connection with gas service provided by MGE to 2601 Manchester in Kansas City, Missouri. We have reviewed your analysis and request for pricing of facilities upgrades and have concluded that we cannot accommodate that request. MGE's proposed contribution for the facilities upgrades Superior Bowen has requested, which we stand by, is within the guidelines of our MoPSC-approved tariff, in particular Sheet No. 61.3, item number 10 (see attached). Please contact me, should you need further explanation or discussion on this matter.

Thank you,

Patti Reardon

REC'D OCT 23 2003

Missouri Gas Energy,  
a Division of Southern Union CompanyFor: All Missouri Service Areas  
Service CommissionTRANSPORTATION PROVISIONSTRPR

- (b) Index Price: The index price shall be determined as the arithmetic average of the first-of-the-month index prices published in Inside F.E.R.C.'s Gas Market Report for the month immediately following the month in which the imbalance occurred, for

Southern Star Central Gas Pipeline, Inc. f/k/a Williams Gas Pipeline Central Inc. (Texas, Kansas, Oklahoma) (If Inside FERC's Gas Market Report does not publish an index price for Southern Star, then the alternate index price approved by FERC for use by Southern Star Central will be substituted.)

And

Panhandle Eastern Pipe Line Company (Texas and Oklahoma)

- (10) Limitations: If the Company's system capacity is inadequate to meet all of its other demands for sales and transportation service, the services supplied under this schedule may be curtailed in accordance with the Priority of Service rules in the Company's General Terms and Conditions. If a supply deficiency occurs in the volume of gas available to the Company for resale, and the customer's supply delivered to the Company for transportation continues to be available, then the customer may continue to receive full transportation service even though sales gas of the same or higher priority is being curtailed. The determination of system capacity limitations shall be in the sole discretion of the Company reasonably exercised. 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 cost (including indirect costs) of such system enlargements are borne by the customer. Title to such expanded facilities shall be and remain in the Company free and clear of any lien or equity by the customer. Nothing herein contained shall be construed as obligating the Company to construct any extensions of its facilities.

- (11) Limitation of Transportation Service and Other Charges: Transportation shall be available only where the gas supply contracts, tariffs and schedules under which the Company obtains its gas supplies permit. Any conditions or limitations on transportation by the Company imposed by such contracts, tariffs and schedules shall be applicable to service hereunder. In the event that this transportation service causes the incurrence of demand charges, standby charges, reservation charges, penalties or like charges from the Company's gas suppliers or transporters, which charges are in addition to charges for gas actually received by the Company, such charges shall be billed to the customer in addition to amounts for service rendered hereunder.

DATE OF ISSUE: October 23 2003  
Month Day Year

DATE EFFECTIVE: November 01 2003  
Month Day Year  
NOV 01 2003

ISSUED BY: Robert J. Hack

Vice President, Pricing and Regulatory Affairs

Missouri Public Service Commission  
Missouri Gas Energy  
Kansas City, MO. 64111

67-04-49  
FILED NOV 01 2003



## SUPERIOR BOWEN ASPHALT COMPANY, L.L.C.

2501 Manchester Trafficway • Kansas City, Missouri 64129  
(816) 921-8200 • Fax (816) 921-8251



February 9, 2009

Ms. Patti Reardon  
Missouri Gas Energy  
PO Box 412662  
Kansas City, MO 64141-2662

RE: Superior Bowen

Dear Ms. Reardon:

I am following up recent discussions between you and Mr. Elam of American Energy regarding the natural gas service improvements that MGE says is necessary to provide adequate service for Superior Bowen's facility located at 2501 Manchester Road. Based on the various correspondences between you and American Energy, we do not believe Superior Bowen should be required to pay for all 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 do so under protest. Would you please advise us on the steps we need to take to get the project started. We would like to sign the contract and get you the check this week. Could you please resend us the contract for signature and let me know the exact amount the check needs to be made out for, and to whom. Also, could you please provide us with a project schedule, which I think you said would be about four weeks once we gave you the green light.

Please feel free to contact me should you have any questions.

Sincerely,

Trey Bowen

"An Equal Opportunity Employer"

Exhibit E

State *Missouri (2)*

Tax Code.

Contract No.

Operating Area: Kansas City

W.O. 083141

2/13/09

## CONTRACT FOR THE REPLACEMENT OF NATURAL GAS FACILITIES

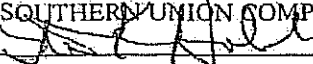
THIS AGREEMENT entered into this \_\_\_\_ day of February, 2009, by and between SUPERIOR BOWEN ASPHALT "Applicant" and MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY, "Company". The Company is a public utility engaged in the distribution of natural gas and Applicant has requested the Company to replace its existing natural gas facilities.

The parties agree as follows:

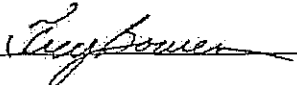
- (1) In accordance with the provisions of Company's General Terms and Conditions, Applicant has contributed the estimated sum \$175,032.00 (one hundred seventy-five thousand and thirty-two dollars) to the Company for the replacement of gas facilities and Company agrees to construct the requested replacement as described in Exhibit A if Applicant pays the actual cost thereof. The estimated sum paid by Applicant will be held as partial payment for the replacement work described herein. Company shall not be required to commence such replacement work until the partial payment called for herein has been paid to Company.
- (2) Following the completion of the replacement work, the Company will determine the actual cost of the replacement. The Company will thereafter apply the partial payment previously received by it against such total cost and shall bill Applicant for the actual cost less the partial payment previously paid. Applicant agrees to pay to Company within thirty (30) days of such finalized costs that amount by which the partial payment exceeds the actual cost of the replacement work.
- (3) If the actual cost of the replacement project is less than the partial payment made thereon by Applicant, Company agrees to refund to Applicant within thirty (30) days of such finalized costs that amount by which the partial payment exceeds the actual cost of the relocation work.
- (4) For a period of five years from the date of this Agreement, Applicant shall receive a refund in the amount of \$.01845 per ccf for natural gas usage at their Manchester facility, exceeding 832,980 ccf per year. Refunds will be calculated at the end of each twelve month period for a period of five years. Applicant shall be responsible for requesting yearly refund.
- (5) Notwithstanding any other provision in this agreement to the contrary, the obligation of Company to make refunds to Applicant is limited as follows:
  - (a) The total refunds shall in no event exceed the amount of the contribution.
- (6) If installation of the natural gas facilities contemplated by this agreement is not commenced within six (6) months of the date of this agreement due to the unreadiness or unwillingness of Applicant to allow construction to commence, Company will return the exact amount of the above contribution. Commensurate with the tendered return of those funds by the Company, this agreement shall terminate with no further liability on the part of either party arising therefrom.
- (7) It is expressly understood and agreed between the parties that the above-described replacement shall be the absolute property of Company free of any liens, claims, or equity of Applicant.
- (8) This Agreement is made pursuant to the Company's Tariff on file with the state regulatory agency for the state where the replacement is located. The relevant terms of those Tariffs are incorporated in this Agreement by this reference.

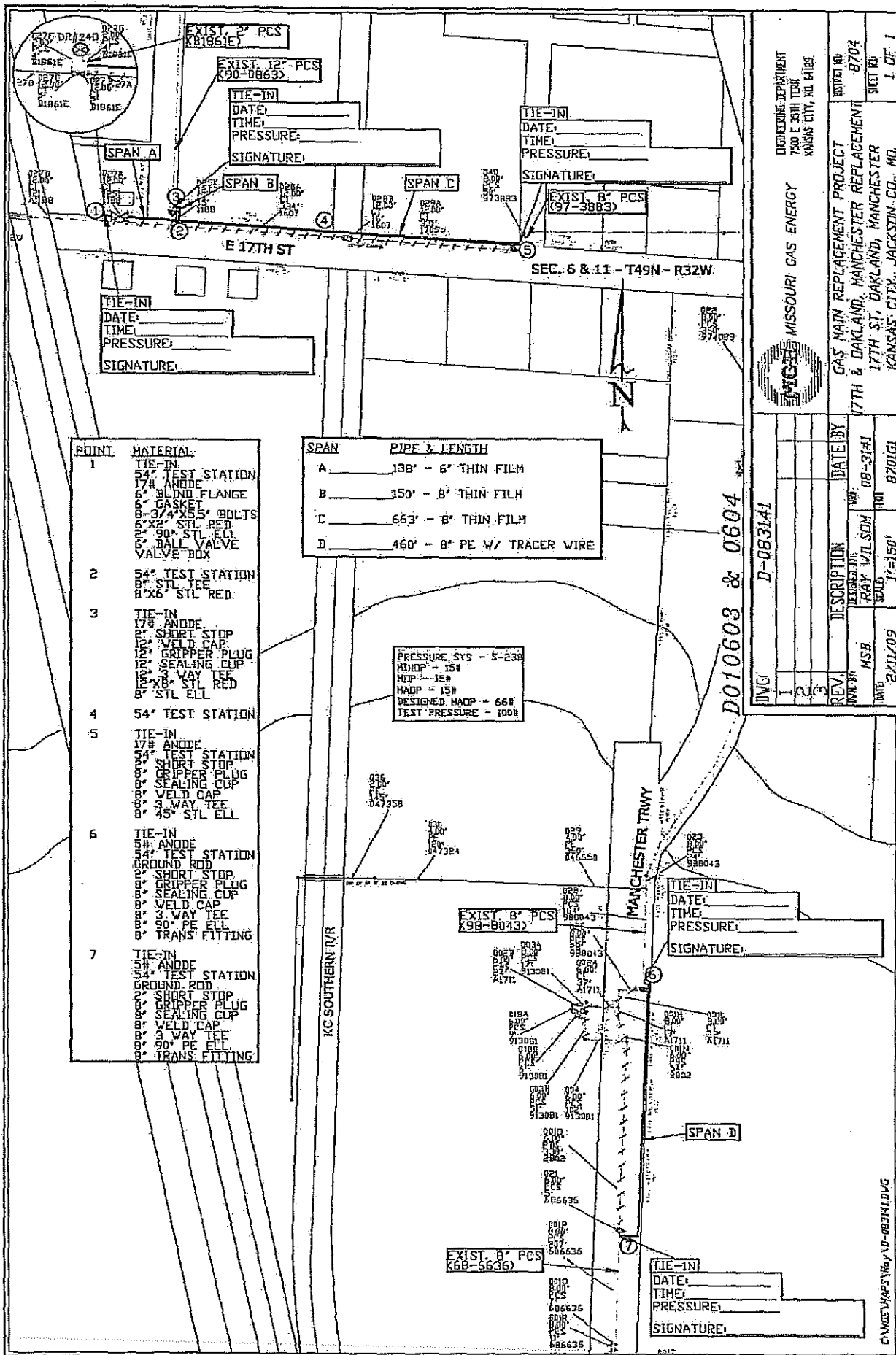
IN WITNESSETH WHEREOF, the parties have executed this Agreement as of the day and the year first above written.

MISSOURI GAS ENERGY, A DIVISION  
OF SOUTHERN UNION COMPANY

By 

SUPERIOR BOWEN ASPHALT

By 



P.O. Box 9589  
11030 Hickman Mills Dr.  
Kansas City, MO 64134



UMB Bank, N.A.  
St. Joseph, Missouri 64507

CHECK NO. 00038406

36-1901  
1612

DATE \_\_\_\_\_

AMOUNT

PAY TO THE ORDER OF

02/13/09 \*\*\*\*\*\$175,032.00

MISSOURI GAS ENERGY INC  
000000024519  
PO BOX 219255  
KANSAS CITY, MO 641219255



*[Handwritten Signature]*  
AUTORIZED SIGNATURE

~~4-11 REF. 1025 - DISCREPANCY WITH REF. 1025~~  SECURITY FEATURES INCLUDED, DETAILS ON BACK  ~~SEE BACK FOR AUTHENTIC WATERMARK~~

**N°038406** K 10 2190 75

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CREDIT WITHIN NAMED PAYEE  
WITHOUT PREJUDICE ABSENT  
OF ENDORSEMENT GUARANTEED  
MISSOURI GAS ENERGY  
ACCT. #98708572-35  
UMB BANK 111 S 860-7819  
KANSAS CITY, MO  
# 10100658

“三三制”：“三”指“工人、农民、小资产阶级”；“制”指“政权”。

BUREAU OF AMERICAN NAUTICS  
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 92/23/49

004287346



**Commissioners**

**ROBERT M. CLAYTON III**  
Chairman

**JEFF DAVIS**

**TERRY JARRETT**

**KEVIN GUNN**

**ROBERT S. KENNEY**

***Missouri Public Service Commission***

POST OFFICE BOX 360  
JEFFERSON CITY, MISSOURI 65102  
573-751-3234  
573-751-1847 (Fax Number)  
<http://www.psc.mo.gov>

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Executive Director

**DANA K. JOYCE**  
Director, Administration and  
Regulatory Policy

**ROBERT SCHALLENBERG**  
Director, Utility Services

**NATELLE DIETRICH**  
Director, Utility Operations

**STEVEN C. REED**  
Secretary/General Counsel

**KEVIN A. THOMPSON**  
Chief Staff Counsel

**Information Sheet Regarding Mediation of Commission Formal Complaint Cases**

Mediation is a process whereby the parties themselves work to resolve their dispute with the aid of a neutral third-party mediator. This process is sometimes referred to as "facilitated negotiation." The mediator's role is advisory and although the mediator may offer suggestions, the mediator has no authority to impose a solution nor will the mediator determine who "wins." Instead, the mediator simply works with both parties to facilitate communications and to attempt to enable the parties to reach an agreement which is mutually agreeable to both the complainant and the respondent.

The mediation process is explicitly a problem-solving one in which neither the parties nor the mediator are bound by the usual constraints such as the rules of evidence or the other formal procedures required in hearings before the Missouri Public Service Commission. The Regulatory Law Judges at the Public Service Commission are trained mediators and this service is offered to parties who have formal complaints pending before the Public Service Commission at no charge. In addition, the assistance of an attorney is not necessary for mediation. In fact, the parties are encouraged not to bring an attorney to the mediation meeting.

The formal complaint process before the Commission invariably results in a determination by which there is a "winner" and a "loser" although the value of winning may well be offset by the cost of attorneys fees and the delays of protracted litigation. Mediation is not only a much quicker process but it also offers the unique opportunity for informal, direct communication between the two parties to the complaint and mediation is far more likely to result in a settlement which, because it was mutually agreed to, pleases both parties. This is traditionally referred to as "win-win" agreement.

The traditional mediator's role is to (1) help the participants understand the mediation process, (2) facilitate their ability to speak directly to each other, (3) maintain order, (4) clarify misunderstandings, (5) assist in identifying issues, (6) diffuse unrealistic expectations, (7) assist in translating one participant's perspective or proposal into a form that is more understandable and acceptable to the other participant, (8) assist the

participants with the actual negotiation process, (9) occasionally a mediator may propose a possible solution, and (10) on rare occasions a mediator may encourage a participant to accept a particular solution. The Judge assigned to be the mediator will not be the same Judge assigned to the contested complaint.

In order for the Commission to refer a complaint case to mediation, the parties must both agree to mediate their conflict in good faith. The party filing the complaint must agree to appear and to make a good faith effort to mediate and the utility company against which the complaint has been filed must send a representative who has full authority to settle the complaint case. The essence of mediation stems from the fact that the participants are both genuinely interested in resolving the complaint.

Because mediation thrives in an atmosphere of free and open discussion, all settlement offers and other information which is revealed during mediation is shielded against subsequent disclosure in front of the Missouri Public Service Commission and is considered to be privileged information. The only information which must be disclosed to the Public Service Commission is (a) whether the case has been settled and (b) whether, irrespective of the outcome, the mediation effort was considered to be a worthwhile endeavor. The Commission will not ask what took place during the mediation.

If the dispute is settled at the mediation, the Commission will require a signed release from the complainant in order for the Commission to dismiss the formal complaint case. If the dispute is not resolved through the mediation process, neither party will be prejudiced for having taken part in the mediation and, at that point, the formal complaint case will simply resume its normal course.

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name and title.

Steven C. Reed  
Secretary

**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](mailto: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: 

JEREMIAH D. FINNEGAN MO#18416

STUART W. CONRAD MO#23966

C. EDWARD PETERSON MO#42398

DAVID W. WOODSMALL MO#40747

1209 Penntower Office Center

3100 Broadway

Kansas City, MO 64111

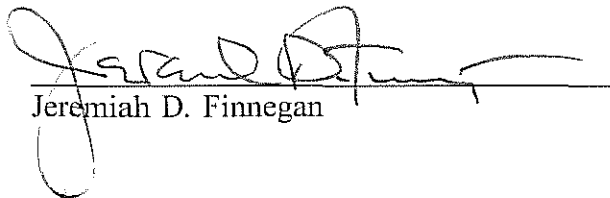
(816) 753-1122

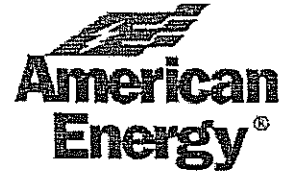
(816) 756-0373 FAX

**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](mailto: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](mailto:mopco.ded.mo.gov).

  
Jeremiah D. Finnegan



January 5, 2009

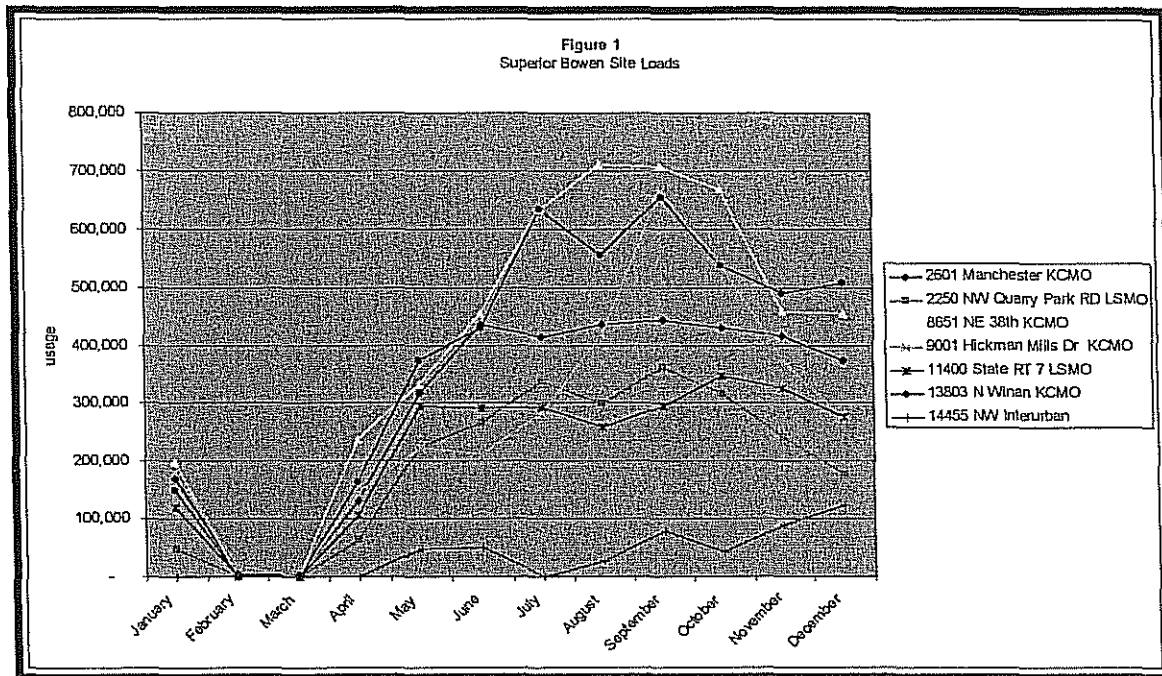
Ms Patti Reardon  
Missouri Gas Energy  
PO Box 412662  
Kansas City, MO 64141-2662

RE: Superior Bowen

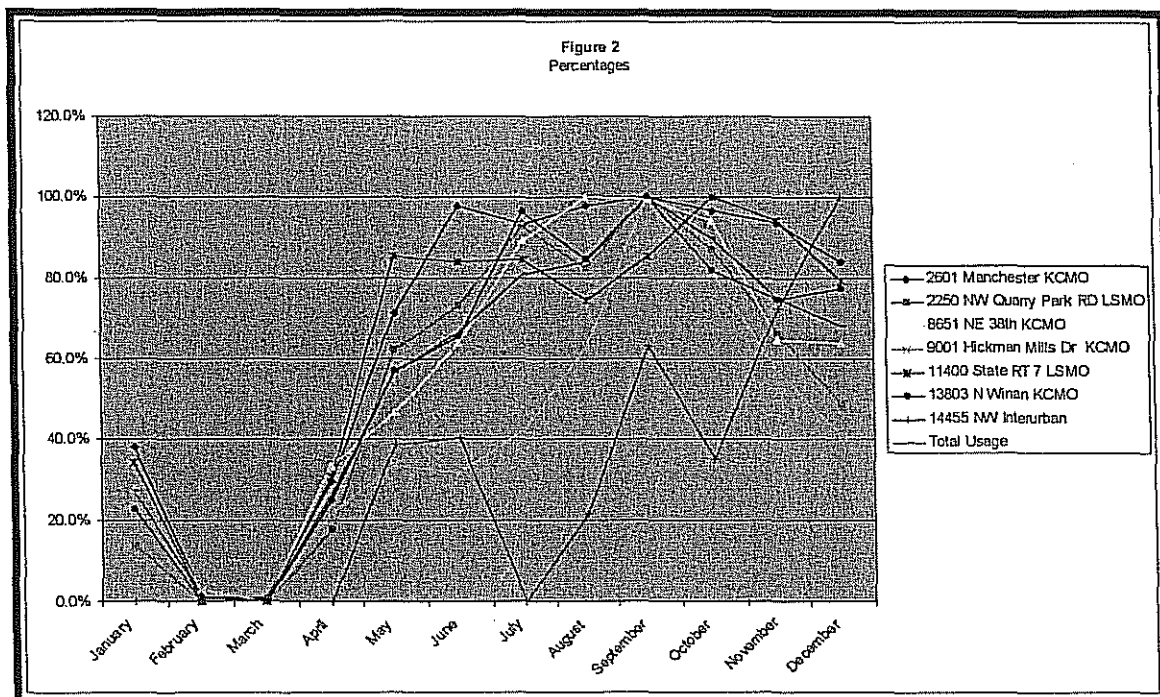
Dear Patti:

Thank you for reviewing this letter and other information regarding service for Superior Bowen's facility located at 2601 Manchester Road. Upon reviewing the enclosed information the goal will be to identify a mutually agreeable plan for the site. The information and analysis American Energy has provided is based on the gas usage data as provided by Missouri Gas Energy ("MGE") and is intended to determine whether improvements proposed by MGE are actually needed.

Based on American Energy's review of the usage data, we believe MGE has honestly erred in proposing such a drastic improvement to its distribution system. Figure 1 below shows that all of the Superior Bowen plants peak in the summer months and not when MGE is experiencing a peak in consumption. Any incremental load increase by Superior Bowen's plan will be during MGE's non-peak season. This will actually improve the overall load factor for MGE thereby lowering the incremental cost by spreading fixed costs over more volume.



Since American Energy is only able to see loads for the Superior Bowen sites, we are requesting MGE to provide the combined loads (no names) for all customers that are located between the substation and the Superior Bowen site located at 2601 Manchester. Without seeing the data, our assumption is that the loads will be nearly the inverse of the Superior Bowen load. As a result, the additional Superior Bowen load for the 2601 Manchester site will not present any challenge to the MGE system and in fact, as mentioned before, will actually improve the load factor. In reviewing usage for the site for the years 2004 through 2008, on a percentage of that site's peak usage, December averages barely above 80%, January is less than 40%, and February through March is less than 10% of the peak usage. See Figure 2 below.



While the previous discussion addresses the volumetric issue, it is also understood that MGE currently has 15psi in the street but supplies Superior Bowen through a regulator at an estimated 7.5psi at the burner tip. Based on the volumetric assumptions above, it is believed that MGE can adjust its regulator to provide Superior Bowen the needed 8.5psi at the burner tip.

If MGE still believes that the upgrade is necessary, American Energy will take issue with several cost components, including the over-inflated cost to provide the work. Most of our objections are related to the excessive overheads that escalate the price to an unreasonable level. Actually, based on pricing we developed, the installation of an on-site compressor would be less than the system upgrades being proposed by MGE. Finally, we do not believe that the Missouri Public Service Commission will support MGE's logic for using more than 4,757,822 CCF before any amounts are applied to the line upgrade, as the usage at other plants is independent of this plant.

The analysis and commentary American Energy has presented is based on limited information, so any additional information that MGE can provide that may shed additional light on this subject is welcomed.

As stated above, if MGE applies the gas load information to the proper months and to the existing load profiles then MGE will arrive at the same conclusion that the upgrades are not warranted.

Regardless of MGE's decision, we look forward to working with you to develop a mutually agreeable resolution and to provide Superior Bowen with the service requirements they need.

Please feel free to call me to discuss this in more detail after you have been able to review these findings.

Sincerely,

Greg Elam  
American Energy Solutions





January 15, 2009

Ms Patti Reardon  
Missouri Gas Energy  
PO Box 412662  
Kansas City, MO 64141-2662

RE: Superior Bowen

Dear Patti:

I am following up to our discussions regarding natural gas service for Superior Bowen's facility located at 2601 Manchester Road. As you know, we have had a difficult time in understanding why MGE simply cannot increase the gas pressure needed to provide adequate service to Superior Bowen. Specifically, I am referring to the conversation you, David Glass and I had last week which included a discussion on the cast iron pipe that still exists on the MGE system, including the section that feeds the Superior Bowen facility.

During this discussion, David Glass confirmed that the cast iron pipe, which is part of the Public Service Commission's ("Commission") approved plan for replacement, cannot withstand the additional few pounds of pressure needed for Superior Bowen. Clearly, this is a safety issue and not a line extension application. Further, this safety issue has been approved by the Commission to be remedied. When I stated that "since this is a program already approved by the Commission, and the customer should not pay for the replacement", David stated that we (Superior Bowen) are forcing the project to occur sooner than MGE had planned for replacing the pipe. Specifically, he stated 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. Additionally, he stated that this specific section of line, with the exception of a couple small accounts, only serves Superior Bowen and, therefore, is much further down the MGE priority list for replacement.

As I responded, if Superior Bowen is responsible for accelerating the replacement, then we should pay no more than the time value of money to expedite the replacement. However, after further thought on the issue, it appears that MGE is discriminating against Superior Bowen because they are a transport customer. Clearly, if Superior Bowen was purchasing its gas from MGE, the response to our request would be different.

In reviewing the cost proposed by MGE, after stripping away all of the overheads, we have estimated that the cost to accelerate the project 5 years is approximately \$30,000. I have been authorized to offer MGE this amount to move this project along. To the extent MGE insists on the full proposed cost, we will immediately seek a ruling from the Commission on the matter.

Obviously, we would rather move forward and not have to file a complaint, but Superior Bowen has emphasized that time is of the essence and they need to have their facility up and operating.

I am hopeful that you view our response as an indication of our desire to work with MGE to obtain service for Superior Bowen. However, we want Superior Bowen to be treated fair and we hope you understand our position. As stated prior, regardless of MGE's decision, we look forward to working with you to develop a mutually agreeable resolution and to provide Superior Bowen with the service requirements they need.

I look forward to hearing from you on this matter.

Sincerely,

Greg Elam  
American Energy Solutions





**MISSOURI GAS ENERGY**

3420 Broadway • Kansas City, MO • 64111-2404 • (816) 756-5261

January 20, 2009

Mr. Greg Elam  
American Energy  
10601 Mission Road, Suite 210  
Leawood, KS 66206

RE: Superior Bowen

Dear Greg,

Thank you for your letter dated January 15, 2009, concerning Superior Bowen's request for increased pressure and associated facilities upgrades in connection with gas service provided by MGE to 2601 Manchester in Kansas City, Missouri. We have reviewed your analysis and request for pricing of facilities upgrades and have concluded that we cannot accommodate that request. MGE's proposed contribution for the facilities upgrades Superior Bowen has requested, which we stand by, is within the guidelines of our MoPSC-approved tariff, in particular Sheet No. 61.3, item number 10 (see attached). Please contact me, should you need further explanation or discussion on this matter.

Thank you,

Patti Reardon

REC'D OCT 23 2003

Missouri Gas Energy,  
a Division of Southern Union CompanyFor: All Missouri Service Areas  
Service CommissionTRANSPORTATION PROVISIONSTRPR

- (b) Index Price: The index price shall be determined as the arithmetic average of the first-of-the-month index prices published in Inside F.E.R.C.'s Gas Market Report for the month immediately following the month in which the imbalance occurred, for

Southern Star Central Gas Pipeline, Inc. f/k/a Williams Gas Pipeline Central Inc. (Texas, Kansas, Oklahoma) (If Inside FERC's Gas Market Report does not publish an index price for Southern Star, then the alternate index price approved by FERC for use by Southern Star Central will be substituted.)

And

Panhandle Eastern Pipe Line Company (Texas and Oklahoma)

- (10) Limitations: If the Company's system capacity is inadequate to meet all of its other demands for sales and transportation service, the services supplied under this schedule may be curtailed in accordance with the Priority of Service rules in the Company's General Terms and Conditions. If a supply deficiency occurs in the volume of gas available to the Company for resale, and the customer's supply delivered to the Company for transportation continues to be available, then the customer may continue to receive full transportation service even though sales gas of the same or higher priority is being curtailed. The determination of system capacity limitations shall be in the sole discretion of the Company reasonably exercised. 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 cost (including indirect costs) of such system enlargements are borne by the customer. Title to such expanded facilities shall be and remain in the Company free and clear of any lien or equity by the customer. Nothing herein contained shall be construed as obligating the Company to construct any extensions of its facilities.

- (11) Limitation of Transportation Service and Other Charges: Transportation shall be available only where the gas supply contracts, tariffs and schedules under which the Company obtains its gas supplies permit. Any conditions or limitations on transportation by the Company imposed by such contracts, tariffs and schedules shall be applicable to service hereunder. In the event that this transportation service causes the incurrence of demand charges, standby charges, reservation charges, penalties or like charges from the Company's gas suppliers or transporters, which charges are in addition to charges for gas actually received by the Company, such charges shall be billed to the customer in addition to amounts for service rendered hereunder.

DATE OF ISSUE: October 23 2003  
Month Day Year

DATE EFFECTIVE: November 01 2003  
Month Day Year  
NOV 01 2003

ISSUED BY: Robert J. Hack

Vice President, Pricing and Regulatory Affairs

Missouri Public Service Commission  
Missouri Gas Energy  
Kansas City, MO. 64111

67-04-49  
FILED NOV 01 2003



## SUPERIOR BOWEN ASPHALT COMPANY, L.L.C.

2501 Manchester Trafficway • Kansas City, Missouri 64129  
(816) 921-8200 • Fax (816) 921-8251



February 9, 2009

Ms. Patti Reardon  
Missouri Gas Energy  
PO Box 412662  
Kansas City, MO 64141-2662

RE: Superior Bowen

Dear Ms. Reardon:

I am following up recent discussions between you and Mr. Elam of American Energy regarding the natural gas service improvements that MGE says is necessary to provide adequate service for Superior Bowen's facility located at 2501 Manchester Road. Based on the various correspondences between you and American Energy, we do not believe Superior Bowen should be required to pay for all 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 do so under protest. Would you please advise us on the steps we need to take to get the project started. We would like to sign the contract and get you the check this week. Could you please resend us the contract for signature and let me know the exact amount the check needs to be made out for, and to whom. Also, could you please provide us with a project schedule, which I think you said would be about four weeks once we gave you the green light.

Please feel free to contact me should you have any questions.

Sincerely,

Trey Bowen

"An Equal Opportunity Employer"

Exhibit E

State *Missouri (2)*

Tax Code.

Contract No.

Operating Area: Kansas City

W.O. 083141

2/13/09

## CONTRACT FOR THE REPLACEMENT OF NATURAL GAS FACILITIES

THIS AGREEMENT entered into this \_\_\_\_ day of February, 2009, by and between SUPERIOR BOWEN ASPHALT "Applicant" and MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY, "Company". The Company is a public utility engaged in the distribution of natural gas and Applicant has requested the Company to replace its existing natural gas facilities.

The parties agree as follows:

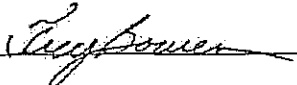
- (1) In accordance with the provisions of Company's General Terms and Conditions, Applicant has contributed the estimated sum \$175,032.00 (one hundred seventy-five thousand and thirty-two dollars) to the Company for the replacement of gas facilities and Company agrees to construct the requested replacement as described in Exhibit A if Applicant pays the actual cost thereof. The estimated sum paid by Applicant will be held as partial payment for the replacement work described herein. Company shall not be required to commence such replacement work until the partial payment called for herein has been paid to Company.
- (2) Following the completion of the replacement work, the Company will determine the actual cost of the replacement. The Company will thereafter apply the partial payment previously received by it against such total cost and shall bill Applicant for the actual cost less the partial payment previously paid. Applicant agrees to pay to Company within thirty (30) days of such finalized costs that amount by which the partial payment exceeds the actual cost of the replacement work.
- (3) If the actual cost of the replacement project is less than the partial payment made thereon by Applicant, Company agrees to refund to Applicant within thirty (30) days of such finalized costs that amount by which the partial payment exceeds the actual cost of the relocation work.
- (4) For a period of five years from the date of this Agreement, Applicant shall receive a refund in the amount of \$.01845 per ccf for natural gas usage at their Manchester facility, exceeding 832,980 ccf per year. Refunds will be calculated at the end of each twelve month period for a period of five years. Applicant shall be responsible for requesting yearly refund.
- (5) Notwithstanding any other provision in this agreement to the contrary, the obligation of Company to make refunds to Applicant is limited as follows:
  - (a) The total refunds shall in no event exceed the amount of the contribution.
- (6) If installation of the natural gas facilities contemplated by this agreement is not commenced within six (6) months of the date of this agreement due to the unreadiness or unwillingness of Applicant to allow construction to commence, Company will return the exact amount of the above contribution. Commensurate with the tendered return of those funds by the Company, this agreement shall terminate with no further liability on the part of either party arising therefrom.
- (7) It is expressly understood and agreed between the parties that the above-described replacement shall be the absolute property of Company free of any liens, claims, or equity of Applicant.
- (8) This Agreement is made pursuant to the Company's Tariff on file with the state regulatory agency for the state where the replacement is located. The relevant terms of those Tariffs are incorporated in this Agreement by this reference.

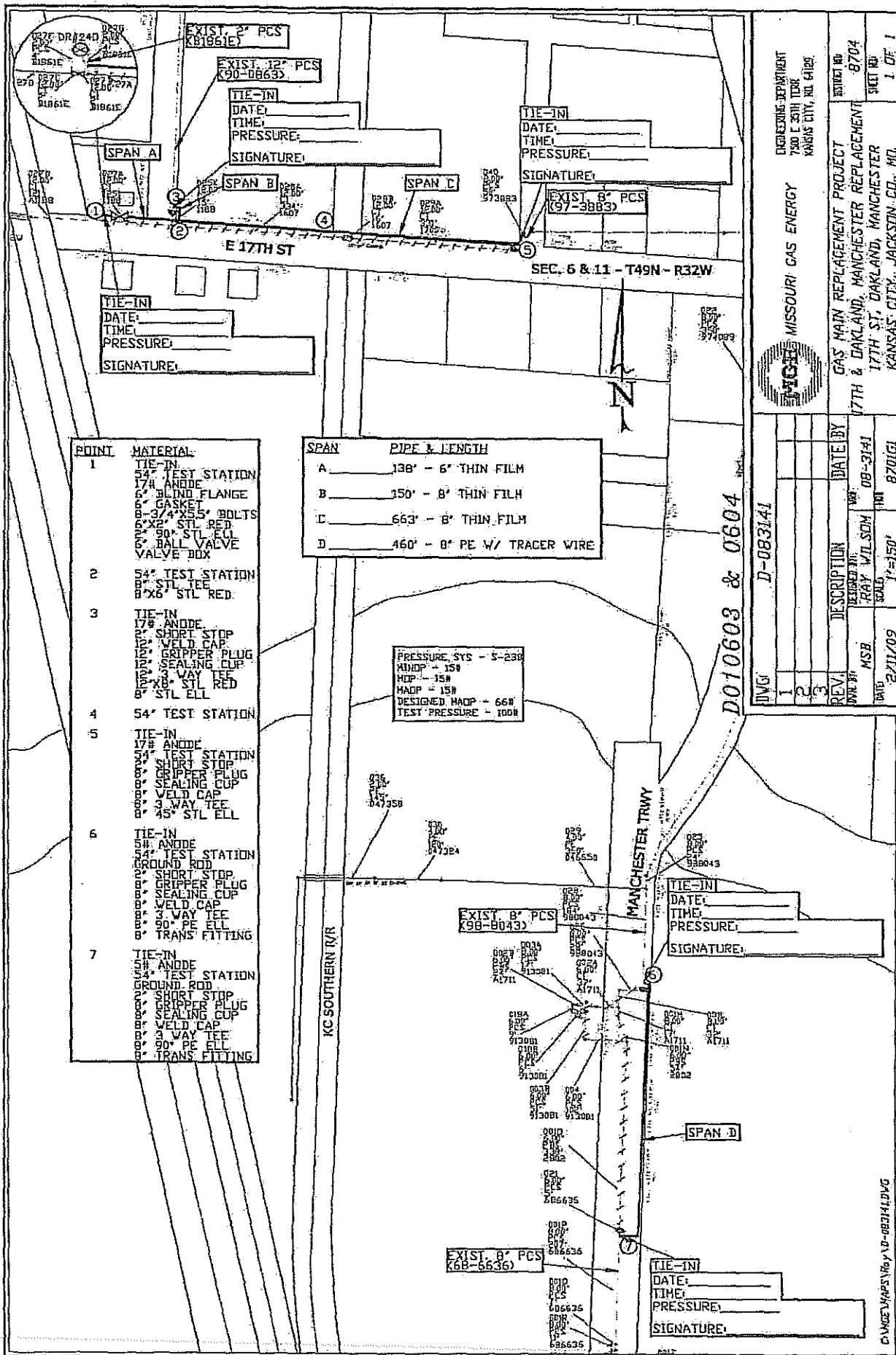
IN WITNESSETH WHEREOF, the parties have executed this Agreement as of the day and the year first above written.

MISSOURI GAS ENERGY, A DIVISION  
OF SOUTHERN UNION COMPANY

By 

SUPERIOR BOWEN ASPHALT

By 



P.O. Box 9589  
11030 Hickman Mills Dr.  
Kansas City, MO 64134



UMB Bank, N.A.  
St. Joseph, Missouri 64507

CHECK NO. 00038406

36-1901  
1612

DATE \_\_\_\_\_

AMOUNT

PAY TO THE ORDER OF

02/13/09 \*\*\*\*\*\$175,032.00

MISSOURI GAS ENERGY INC  
000000024519  
PO BOX 219255  
KANSAS CITY, MO 641219255



*[Handwritten Signature]*  
AUTORIZED SIGNATURE

~~4-11 REF. 1025 - DISCREPANCY WITH REF. 1025~~  SECURITY FEATURES INCLUDED, DETAILS ON BACK  ~~SEE BACK FOR AUTHENTIC WATERMARK~~

**N°038406** K 10 2190 75

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WITHOUT PREJUDICE ABSENT  
OF ENDORSEMENT GUARANTEED  
MISSOURI GAS ENERGY  
ACCT. #98708572-35  
UMB BANK 111 S 860-7889  
KANSAS CITY, MO  
# 101006958

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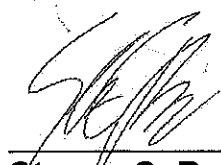
004287346

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 8<sup>th</sup> day of October 2010.**



---

**Steven C. Reed**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**October 08, 2010**

**File No. GC-2011-0101**

General Counsel's Office  
P.O. Box 360  
200 Madison Street, Suite 800  
Jefferson City, MO 65102

Lewis R. Mills, Jr.  
P.O. Box 2230  
200 Madison Street, Suite 650  
Jefferson City, MO 65102

Missouri Gas Energy  
Legal Department  
3420 Broadway  
Kansas City, MO 64111

Superior Bowen Asphalt Company,  
LLC  
Stuart Conrad  
3100 Broadway, Suite 1209  
Kansas City, MO 64111

Superior Bowen Asphalt Company,  
LLC  
Jeremiah Finnegan  
3100 Broadway, Suite 1209  
Kansas City, MO 64111

Superior Bowen Asphalt Company,  
LLC  
David Woodsmall  
428 E. Capitol Ave., Suite 300  
Jefferson City, MO 65101

Superior Bowen Asphalt Company,  
LLC  
C. Edward Peterson  
3100 Broadway, Suite 1209  
Kansas City, MO 64111

**Enclosed find a certified copy of a NOTICE in the above-numbered matter(s).**

**Sincerely,**



**Steven C. Reed**  
**Secretary**

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<b>U.S. Postal Service™</b>	
<b>CERTIFIED MAIL™ RECEIPT</b>	
<i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
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<b>OFFICIAL USE</b>	
Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total	
Sent To	
221 W. Sixth Street, Ste. 1950	
Austin, TX 78701	
PS Form 3800, August 2006 See Reverse for Instructions	