

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

SUPERIOR BOWEN ASPHALT COMPANY,)	
L.L.C.,)	
)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. GC-2011-0101
)	
)	
MISSOURI GAS ENERGY, a division of)	
Southern Union Company)	
)	
)	
RESPONDENT)	

SUPERIOR BOWEN'S RESPONSE TO STAFF REPORT

COME NOW Complainant, Superior Bowen Asphalt Company, L.L.C., ("Superior Bowen"), by and through Counsel, and for its Response to Staff Report, respectfully states as follows:

1. On February 25, 2011, Staff filed its Report on the allegations in the Complaint as directed by the Commission in its *Second Order Extending Time to File Report and Responses*. In such Order, the Commission also set March 9, 2011 as the date any responses to the Staff Report are due.

2. In the first place, we wish to state that in its Introduction on Appendix A-1 and A-2, Staff has done a credible job in summarizing the Complaint and what Superior Bowen is seeking in its Complaint. However, we do have concerns with Staff's Analysis and Report commencing on Appendix A-2 through Appendix A-8.

3. Starting at the bottom of Appendix A-2 and running throughout the Staff's Analysis and Report, it is Staff's position that for Staff to properly analyze the allegations concerning the necessity for MGE to replace its cast iron mains serving Superior Bowen, the Staff needs to know the delivery pressure that Superior Bowen informed MGE was required to be delivered at the MGE delivery point to Superior Bowen (delivery point pressure). It then states that neither Superior Bowen nor MGE could tell Staff the requested delivery point pressure.

4. It is understandable that Superior Bowen could not tell Staff the requested delivery point pressure because it is an asphalt company and not a public utility. It knows asphalt. It does not know, nor is it required to know, gas, other than it needs it as a fuel to manufacture asphalt. In fact, all it knew about the need for additional gas pressure was that it needed 8.5 psig for the new furnace and was burning gas at 6.5 psig in its old furnace. This information was communicated to MGE, the entity with the duty to provide service, instrumentalities and facilities as shall be safe, adequate and in all respects just and reasonable and without undue discrimination.

5. On the other hand, it is not understandable how MGE, a regulated gas public utility, could not tell Staff the required delivery point pressure, when it had gone ahead and replaced gas lines and facilities and charged Superior Bowen a substantial sum for doing so. In the first place, as a public utility, MGE has a duty to the public, of which Superior Bowen is a member, to know its operations. Secondly, inasmuch as it determined to replace the cast iron mains, which were only operating at 15 psig when they were capable of operating at 25 psig, in order for its actions in doing so to have been just and reasonable, it must have made the determination based on a reputable analysis of the needs of Superior Bowen. Surely, everyone

in utility regulation knows that it is not the customer, who tells the gas company what to build - this is totally beyond any policies or procedures in this industry and when dealing with a dangerous commodity as natural gas, it would also be an unsafe practice. Instead, the customer request is limited to where their facility is located, the gas flow required and the desired gas pressure. Based on this information, the gas company's duty is to determine the minimum appropriate action required to accommodate this request. Nevertheless, while Staff cannot determine whether or not it was necessary to replace the cast iron mains without knowing the delivery point pressure, MGE, without knowing the delivery point pressure somehow determined that 25 psig in its cast iron mains was not enough pressure to provide Superior Bowen with 8.5 psig at its gas burner and decided that it had to replace the cast iron mains at a very high cost to Superior Bowen. Under the circumstances, MGE should have informed Superior Bowen that all that was needed to be done was for Superior Bowen to modify or replace Superior Bowen's existing pressure regulator to increase the pressure from 6.5 psig to 8.5 psig at a cost of a few thousand dollars.

6. After all, if 15 psig in MGE's system was adequate over the years to allow Superior Bowen to obtain 6.5 psig at its old burner, it is a far stretch to say that delivering gas at somewhere between 15 psig and 25 psig, which is within the allowable limits for cast iron mains, is not adequate to provide Superior Bowen with 8.5 psig at its new burner. Surely, an analysis by MGE would have discovered this.

7. Nevertheless, MGE admits that it did not perform such an analysis. In its response to Staff DR 0008, MGE stated that:

"1) MGE's distribution system, as configured in July 2008, was capable of delivering the volume of gas that was requested by Superior Bowen, but would not have been able to meet the pressure requested by Superior Bowen.

2) Analysis was not necessary to show that MGE's distribution system would not be sufficient to provide both the volume and pressure requirements of Superior Bowen.. Without the proposed load increase, Mr. Gervy [sic] had told MGE that it was not providing sufficient pressure to serve the plant addition."

Mr. Larry Gervy of Superior Bowen denies that he made such statement. He says that he just told MGE that the new plant requires higher pressure (8.5 psig instead of 6.5 psig) and is prepared to state same under oath. If such is the case, then MGE's reason for not conducting an analysis is baseless and unreasonable.

Moreover, even after Superior Bowen subsequently engaged Mr. Greg Elam of American Energy as a consultant and Mr. Elam raised concerns in a January 5, 2009 letter (Exhibit A to the Complaint) that "MGE has honestly erred in proposing such a drastic improvement to its distribution system" and "that MGE can adjust its regulator to provide Superior Bowen the needed 8.5psi at the burner tip", MGE still did not prepare an analysis as to the necessity of its drastic solution of replacing the cast iron pipes to supply Superior Bowen with an additional 2 psig of pressure.

8. Further, more technical engineering type comments in response to the PSC Staff Report by Superior Bowen's gas pipeline engineering consultant, William C. Kallberg, whose Resume/Curriculum Vitae is attached as Appendix 1, are as follows:

- The issue of "delivery point pressure" is immaterial. The issue is whether MGE needed to make system modifications, and to what extent if any, at the expense of Superior Bowen in order to provide a pressure increase of 2 psi above the previous pressure. There

was never any discussion about where this pressure was measured before, it was simply 6.5 psig.

If a system pressure of 15 psig was adequate to deliver 6.5 psig to Superior, why did they need to upgrade to 58 psig to deliver 8.5 psig to Superior? And then, why did MGE decide to install a regulator downstream of the meter that would reduce pressure to 25 psig?

In an e-mail attachment from David Glass to Greg Elam dated January 07, 2009, which had not been previously viewed, David Glass of MGE discussed that system upgrades were proposed due to the pressure requirements requested by Superior Bowen to serve new equipment, based on higher pressures, not higher volume, needed for the new equipment. He stated that system pressures at the Superior location could be in the 8.5 to 10 psi range when Superior was using gas and that MGE delivered gas at full system pressure at the meter set with no further regulation. There is no clear indication by Glass that an upgrade in the MGE system must be made to deliver the additional 2 psi of pressure. Any variation in system pressure was and would be controlled by Superior by means of a pressure regulator downstream of the meter that could be readily modified (or replaced) as needed to deliver the additional 2 psi to their piping system and equipment. That e-mail seems to negate, at least in part, the need for upgrading the MGE system. It isn't clear where the meter is, but system pressure to it is as Glass states. Since the system pressure did get increased (to 58 psig) and then reduced by MGE downstream of the meter to (25 psig), there was no need for Superior to install a larger regulator. Had there been no upgrade, Superior could have installed a larger regulator, even put it closer

to the furnace, that would have the capacity at the available system pressure to deliver the additional 2 psi pressure. The only real change at Superior was to extend their piping to the new furnace location, with insignificant increase in pressure drop.

How did MGE determine so quickly, without discussing any details with Superior at the meeting that did not take place in July of 2008 (it apparently took place in August 2008), determine that they needed a system pressure greater than 25 psig, a pressure not permitted in cast iron pipe with unreinforced bell and spigot joints, to deliver 8.5 psig instead of the previous 6.5 psig from a 15 psig system pressure? Do we have documentation that this cast iron pipe in question was the unreinforced bell and spigot type of pipe? And even if it was, 25 psig would be allowed. The federal pipeline safety code, and the Missouri code as well, allow for a procedure called "uprating", under which the pressure could have been raised to as little as 17 psig (two psi more than was adequate to deliver 6.5 psig) and still have been well under the 25 psig limit for unreinforced bell and spigot cast iron pipe. Of course, it could have increased it up to 25 psig and still have been within the limits.

Further, if a pressure greater than 15 psig was considered unsafe, why was this area of the system not replaced previously? Was it more or less safe than the area where the section of cast iron main came apart and blew out of the ground without warning? MGE claims there was no history of corrosion or known damage in the area serving Superior.

They also claim there was no such history where the pipe came apart and blew out of the ground. After that incident, MGE had heightened safety concerns about the operating pressure of its cast iron mains operating at 25 psig or above, as well as the integrity and safe operating pressure of its cast iron system in general. If this was of such concern, why did they plan to take seventy-one (71) years to replace the remaining cast iron pipe in their system? And if 71 years was the target period, did it matter that the area serving Superior was replaced at an earlier date than it otherwise may have been scheduled?

· If the pipe in question was not scheduled for replacement under the Safety Line Replacement Program (SLRP), then under what plan was it to be replaced during the next 71 years? As was pointed out above, cast iron can be in apparently good condition one minute and then come apart and blow out of the ground the next minute. What assurances were there that this would not happen again, maybe near Superior, and why were some other segments of cast iron in this same area replaced previously?

· Superior had no control over what pipe was in the MGE system on Manchester Trafficway. Nor the pressure at which it should or could be operated. They merely wished to install a new, more efficient asphalt furnace and MGE initially led them to believe this would not be a problem and that any cost to Superior would be minimal. Sooner or later, this area of cast iron pipe would need to be replaced, at which time it would be included in the MGE rate base along with the other segments in the system. If another customer in this area would request a higher gas pressure, would they then be

charged some amount, probably half the cost, and that money be refunded to Superior?

And what about the next customer and the next customer, etc.?

9. One other comment not relating to engineering is that Counsel disagrees with Staff's belief that MGE's Tariff Sheet No. 61.3, item No. 10 would properly apply to allow MGE to charge for the upgrades since the rule itself states that the rule only applies "if capacity limitations restrict the volume of gas that the customer desires to be transported..." It is clear that the upgrades were based on pressure and not volumes.

In the e-mail purportedly sent to Greg Elam on January 7, 2009¹ referred to on Appendix A-3 of Staff's Report and quoted in part by Staff, in a paragraph that was not quoted by Staff, Mr. David Glass, MGE's Director of Engineering, stated the following:

"The upgrades to Missouri Gas Energy's system were proposed due to the pressure requirements requested by Superior Bowen to serve newly purchased equipment. **The upgrade was based on higher pressure needed to operate the new equipment. Volume was never a deciding factor in determining an upgrade.**" [Emphasis added.]

Thus, since the rule only applies if capacity limitations restrict the **volume of gas** the customer desires to be transported and there is no limitation on the volume of gas to be transported, this rule does not apply. Since it is MGE's rule, if they want it to apply to pressure requirements

¹ The first time Counsel saw this e-mail was on February 18, 2011, when it was supplied to Staff by Mr. Noack. It came as a surprise to Counsel since in his January 13, 2011 Response to Superior Bowen's DR No. 0012, requesting a copy of "all communications between MGE and Superior Bowen from June 2008 through 2011", Mr. Noack stated: "All communications between MGE and Superior Bowen on this matter were attached to Superior Bowen's complaint." Of course, a review of the Complaint discloses that this e-mail was not attached.

they can seek to amend the rule for future applications but such subsequent rule change will not apply retroactively to Superior Bowen's current complaint.

10. Counsel does not object to Staff's Recommendation that a conference be scheduled involving all parties to discuss the Complaint and attempt to work toward a solution. As for a date in March, that depends on the schedules of Counsel and their witnesses, so we should try to find a mutually acceptable date for all parties be it in March or April.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.,

By: 

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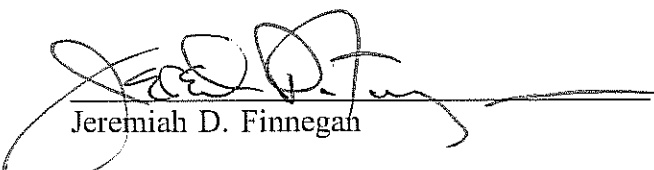
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ATTORNEYS FOR COMPLAINANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Response was e-mailed this 9th day of March 2011 to Todd J. Jacobs, Missouri Gas Energy Legal Department, at todd.jacobs@sug.com; to the Office of Public Counsel at mopco@ded.mo.gov and lewis.mills@ded.mo.gov; and Bob Berlin, PSC Staff Counsel at bob.berlin@psc.mo.gov.


Jeremiah D. Finnegan

RESUME/CURRICULUM VITAE

William C. Kallberg
 Pipeline Safety Engineer
 Cell Phone: 612-910-7825

William C. (Bill) Kallberg began his career in the Natural Gas Distribution Industry immediately after graduation from the University of Minnesota in 1960. He served in the U.S. Army in 1961 and 1962, including an assignment at the Army Engineer Center at Ft. Belvoir, VA, followed by a one-year tour of duty at Osan Air Base in Korea. Upon separation from active duty, Bill returned to work as a Design Engineer for a major investor-owned gas distribution company. From 1963 to 1986, Bill progressed to Supervising Engineer, Superintendent of Construction and Maintenance, Manager of Construction and Maintenance, Manager of Engineering and Director of Long-Range Planning. During this period, he experienced the transition from the voluntary standards of ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" to the mandatory requirements of Title 49 CFR Part 192 "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards." In addition to his primary responsibilities, Bill was regularly involved in reviewing and responding to the rule-making process of Part 192.

Bill subsequently worked as a Construction Inspection Contractor in gas distribution, followed by employment as Gas Engineer and Operations Manager for a large municipal gas/electric/water utility. Since 1994, Bill has been a Contractor/Consultant and Expert Witness, specializing in issues related to pipeline safety regulations involving both gas (Part 192) and hazardous liquids (Part 195) pipeline systems.

During the period of 1973 to 1980, Bill served on the Metropolitan Utilities Coordinating Committee (MUCC), a Minnesota Twin Cities area group that promoted "Call Before You Dig", presented safety seminars on prevention of damage to underground utilities and developed the original specifications for the present Gopher State One-Call Center.

For over forty years in the gas industry, Bill has performed and directed design, construction, operation, maintenance, record-keeping, craft training, development of operation and maintenance plans, construction standards, material standards, contractor audits, welder qualification, operator qualification programs and plans, pipeline safety inspector training, expert witness testimony and operator qualification evaluator training. Bill has been qualified and has qualified others in joining of plastic by heat fusion, electrofusion and mechanical joints.

As of August 16, 2010, Bill's current activities include:

Pipeline Safety Engineer – ProSource Technologies, Inc.	Current
Authorized Evaluator - Veriforce and MEA/ETN	
Hazardous Liquids Consultant - Midwest Energy Association	
Expert Witness in Pipeline-Related Personal Injury Case in California	
Expert Witness in Pipeline-Related Personal Injury Case in Michigan	
Expert Witness in Pipeline Damage Case in Michigan	
Associate Staff Member - Transportation Safety Institute, Oklahoma City, OK.	
Welding Qualification Consultant - Midwest Natural Gas Company, LaCrosse, WI	

<u>EDUCATION:</u>	University of Minnesota	Bach. Civ. Eng.	1960
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<u>EXPERT WITNESS:</u>	Defective Material Case in Texas	Current
	Pipeline-Related Personal Injury Case in North Dakota	Current
	Pipeline-Related Personal Injury Case in California	2006-2008
	Pipeline-Related Personal Injury Case in Wisconsin	2007-2008
	Pipeline-Related Personal Injury Case in Michigan	2005-Current
	Natural Gas Pipeline Damage Case in Michigan	2004-Current
	Natural Gas-Related Personal Injury Case- in California	2004-2005
	Natural Gas Explosion in Michigan	2001-2002
	Propane Gas Explosion in Minnesota	1999
	Natural Gas Explosion in Wisconsin	1997

PIPELINE SAFETY EXPERIENCE:

Authorized Evaluator	MEA/ETN	Current
Operator Qualification Consultant – Ellingson Drainage		2008
Operator Qualification Consultant	Delta Environmental	Current
Hazardous Liquids Consultant	Midwest Energy Association	Current
Gas Distribution Consultant	Minnesota Energy Resources Corporation	2006-2007

Consultant	Midwest Natural Gas Company	2006-Present
Master Evaluator	Midwest Energy Association	2000-2003
Evaluator Trainer	Midwest Energy Association	2002-2003
Consultant	Midwest Natural Gas Company	2001-Present
Subject Matter Expert	Midwest Energy Association	1999-2002
Consultant	Koch Pipeline	1998-2005
VP Engineering/Operations	P.A.C.E. (P.I.E.) Field Services	1997-1998
VP Midwest Regional Operations	Doran & Associates, Inc.	1995-1997
Gas Distribution Consultant		1994--Present
Operations Manager/Gas Engineer	Owatonna Public Utilities	1989-1994
Gas Distribution Consultant		1986-1989
Director Long Range Planning	Minnegasco, Inc. (Now Centerpoint Energy)	1983-1986
Manager of Engineering	Minnegasco, Inc. (Now Centerpoint Energy)	1980-1983
Manager of Constr/Maint	Minnegasco, Inc. (Now Centerpoint Energy)	1977-1980
Various Positions (Eng/Sup, etc)	Minnegasco, Inc. (Now Centerpoint Energy)	1960-1977

MEMBERSHIPS:

American Gas Association	Distribution Design/Development Committee	1982-1986
	Distribution Construction/Maintenance Committee	1976-1982
Midwest Energy Association/Energy Training Network		1963-Current
	Distribution Division	
	Operator Qualification	
	Q41-Q4All	
Metropolitan Utility Coordinating Committee		1973-1980

AWARDS:

American Gas Association	Award of Merit for 10 Years of Committee Activity and Service Award for Chairing a Committee of the Operating Section	1986
Midwest Energy Association	Certificate of Appreciation for Outstanding Service as a Participant in 1972 Operating Section Conference	1972

WORKSHOPS AND SEMINARS:

Midwest Energy Association	Annual Gas Operations Conference	2001-2003
Minnesota Office of Pipeline Safety	Educational Conferences	1996-1999
	Presenter – “Contract Language”	
Midwest Energy Association	Annual Gas Operations Conferences	1996-1998
Midwest Energy Association	Annual Management Conference	1997
Institute of Gas Technology	Economics of Gas Distribution Design	1982
American Gas Association	Annual Distribution Conference	1976-1986
	Planner, Presider and Presenter	
	“Repair of Plastic”	
	“Standardized Meter Sets”	
Institute of Gas Technology	Damage Prevention Symposium	1972
	Presenter: “Use of Plastic Gas Lines”	
Midwest Energy Association	10-12 Gas Operations Conferences	1963-1993
	Attendee, Presider and Presenter	

PUBLICATIONS:

O & M Manuals/Procedures:	Midwest Natural Gas, Inc.	1999-2000
	Sheehan’s Gas Company	
	Racine Community Utilities	
	Warren Community Utilities	
	Stephen Community Utilities	
	Hallock Community Utilities	
	Argyle Community Utilities	
	Hawley Community Utilities	
	Lake Park Community Utilities	
American Gas Association	Gas Engineering & Operating Procedures	1983-1985
	Contributing Author “Gas Line Design”	
	and “Gas Line Installation”	

OTHER:

Bill has been married to his wife, Elizabeth, since 1960. Together they have five children and ten grandchildren.

LIST OF PRIOR CASES

William C Kallberg
As of August 16, 2010

- 1997 Natural gas explosion in Wisconsin:
Gave partial deposition in case involving failure of a particular type of gas line connector – no further information on this case.
- 1999 Propane gas explosion in Minnesota:
Subrogation: St. Paul Co's (For Bug-O Neg-A Sheg School), Plaintiff v Bemidji Co-op, Defendant.
Retained by Pat O'Niell, attorney for Plaintiff.
Pended in Beltrami County, MN.
Gave expert opinion.
Case settled for Plaintiff before going to trial.
- 2001 Natural gas explosion in Michigan:
Estate of Jodi Fearer, et al Plaintiff v Dunigan Brothers, Inc. et al, Defendant.
Case No. 99 17525 NO, 00 17634 NO, 00 17633 NO, 00 17586, 00 17641 CZ, 01 18956 NO
Retained by Jeff Smolek, attorney for Defendant.
Pended in MI.
Gave expert opinion.
Case settled in 2002 for Defendant before going to trial.
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- 2002 Pipeline damage in Minnesota:
Williams Pipeline Company LLC, Plaintiff v R.D. Offutt Co., Defendant.
Case No. Civil 01-1969(JEL/RLE).
Retained by Tami Norgard, attorney for Defendant.
Pended in Grant Co. (?), MN.
Drafted an assessment and submitted an affidavit.
Case settled in 2003 for Defendant before going to trial.
- 2004 Natural gas-related fire in California:
Moreno, Plaintiff v Sempra Energy, Defendant.
Case No. L-01351.
Pended in Imperial County, CA.
Retained by George Heppner, attorney for Plaintiff.
Gave deposition.
Case settled in 2005 for Plaintiff before going to trial.
- 2004 Pipeline damage in Michigan
Michigan Consolidated Gas Company, Plaintiff v Bacco Construction Company, Defendant.
File Number 3525-18/4069.
Pended in MI.
Retained by M. Sean Fosmire, attorney for Defendant.
Advised on applicable pipeline safety and damage prevention rules, gave deposition.
Case settled in 2006 favorable to Defendant before going to trial.
- 2005 Pipeline-related injury in Michigan:
James Kott, Plaintiff v Michels Corp. Et Al, Defendants.
File No. 05-8007-NO.
Pended in MI.
Retained by John Underhill, attorney for Plaintiff.
Advised on applicable pipeline safety regulations, coordinated lab tests.
No known activity since July, 2006.

- 2006 Pipeline facility injury case in California.
William Casto v. Joseph Pluta, et al.
Case No. N/A.
Pended in Kern County, California.
Retained by George Baltaxe, Esq., attorney for Plaintiff.
Advised on applicable safety/prudent pipeline practices, inspected site, gave Declaration and Deposition.
Case settled in February, 2009, favorable to Plaintiff before going to trial.
- 2007 Pipeline easement case in Illinois.
Carlisle Kelly, et al Plaintiffs v. Enbridge (U.S.) Inc., Defendant.
Case No. 07-3245.
Pended in United States District Court, Central District of Illinois, Springfield Division.
Retained by Thomas Pliura, M.D., J.D., attorney for Plaintiffs.
Submitted Draft Opinion Report and gave Deposition.
Summary Judgement entered in favor of Defendant, case closed, May 16, 2008.
- 2008 Pipeline installation injury case in Wisconsin.
Joy Peterson, et al, Plaintiffs v Alliant Energy Corporation, et al, Defendants.
Case No. 07 CV-355.
Pended in Walworth County, WI.
Retained by Michael J. Donovan, Esq., McNally Law Offices, s.c.
Submitted Opinion Report and gave deposition.
Case settled favorable to Plaintiff before going to trial.
- 2009 Pipeline facility injury case in North Dakota.
Kevin Ross, Plaintiff v Bear Paw Energy, LLC, Defendant.
Case No. N/A.
Pending in North Dakota.
Retained by Dickson Law Office, Thomas Dickson, Esq., attorney for Plaintiff to advise on applicable safety and prudent pipeline practices.
Case newly in progress, submitted list of suggested interrogatories in November, 2009.
- 2010 Defective pipeline material case in Texas.
Mobeetie Resource Development v. Polyflow; Polymeric Pipe Tech Corp.
Case No.09 CV – 309CVE PJC
Pending in U.S. District, Northern District, Oklahoma
Retained by Paige N. Shelton, Esq., Conner & Winters, attorney for Plaintiff, to advise on suitability of piping material for the intended use in gas gathering system.
Case newly in progress, submitted Initial Opinion, scheduled for deposition, February, 2010.