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June 7, 2001

**FILED**

JUN 7 2001

Mr. Dale Hardy Roberts  
Executive Secretary  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

Missouri Public  
Service Commission

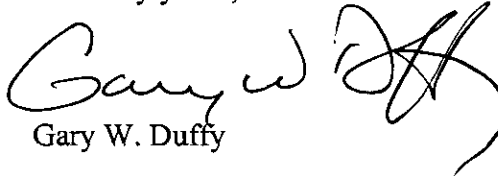
**RE: Case No. GC-2001-593**  
**TXU Energy Services, Inc. and Schreiber Foods, Inc. vs. MGE**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding on behalf of MGE please find an original and eight copies of the Answer to Complaint.

If you have any questions, please give me a call.

Sincerely yours,

  
Gary W. Duffy

Enclosures  
cc w/encl:

Don Otto  
Office of Public Counsel  
Office of the General Counsel  
Rob Hack  
John Lassman

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

**FILED**

JUN 7 2001

TXU Energy Services, Inc., and )  
Schreiber Foods, Inc. )

Complainants, )

v. )

Missouri Gas Energy, a Division of )  
Southern Union Company, )

Respondent. )

Missouri Public  
Service Commission

Case No. GC-2001-593

**ANSWER TO COMPLAINT**

COMES NOW Missouri Gas Energy, a division of Southern Union Company, and, in accordance with Section 386.390, RSMo 2000 and Missouri Public Service Commission ("Commission") rule 4 CSR 240-2.070, states as follows as its answer and affirmative defenses to the Complaint filed by TXU Energy Services, Inc. ("TXUES") and Schreiber Foods, Inc. ("Schreiber") (collectively, "Complainants"):

**BACKGROUND**

1. Southern Union Company is a corporation duly incorporated under the laws of the state of Delaware and conducts business in Missouri under the fictitious name of Missouri Gas Energy ("MGE"). MGE's principal office and place of business is at 3420 Broadway, Kansas City, Missouri 64111. MGE conducts the business of a "gas corporation" and provides natural gas service in the Missouri counties of Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Cooper, Dade, Dekalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Newton, Pettis, Platte, Ray, Saline, Stone, and Vernon, subject to the jurisdiction of the Commission.

2. Correspondence, communications, orders and decisions regarding this matter should be addressed to:

Gary W. Duffy  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 E. Capitol Avenue  
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3. On April 20, 2001, Complainants filed a Complaint with the Commission. In response, a Notice of Complaint was issued by the Commission which directed MGE to file an answer to the Complaint on or before June 8, 2001.

#### **ANSWER**

4. Except as expressly admitted in this Answer, MGE denies each and every other allegation contained in Complainants' Complaint.

5. MGE is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered 1. of the Complaint, and therefore denies same.

6. MGE admits that Schreiber is a customer of MGE and that Schreiber has a location at 108 W. North Street, P.O. Box 351, Mt. Vernon, Missouri 65712. MGE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 2. of the Complaint, and therefore denies same.

7. MGE admits that it conducts the business of a "gas corporation" in the State of Missouri including the transportation and delivery of natural gas and that its principal business address in the State of Missouri is 3420 Broadway, Kansas City, Missouri 64111. MGE further

admits that as a "gas corporation" it is subject to regulation by the Commission and that it has authorized and effective tariff sheets on file with the Commission. MGE denies the remaining allegations contained in paragraph numbered 3. of the Complaint.

8. MGE admits that Williams Gas Pipelines Central, Inc. ("Williams") provides MGE with access to nominated volumes and that Williams delivers natural gas to MGE for distribution to its customers. MGE denies that Williams affirmatively notifies MGE specifically of these nominated volumes. MGE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 4. of the Complaint, and therefore denies same.

9. MGE admits that it is a "gas corporation" subject to the regulation of the Commission. The statutes identified in paragraph 5 of the Complaint are the best evidence of their content and speak for themselves. MGE denies the remaining allegations in paragraph numbered 5. to the extent they are inconsistent with the statutes.

10. MGE admits that it was aware in late July, 2000, that TXUES had previously made nominations on behalf of Schreiber. MGE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 6. of the Complaint, and therefore denies same.

11. MGE is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered 7. of the Complaint, and therefore denies same. MGE further states that it understands that the true basis for the Complaint concerns nominations, or the lack thereof, for July of 2000, not August of 2000.

12. MGE denies the allegations contained in paragraph numbered 8. of the Complaint. MGE further states that it understands that the true basis for the Complaint concerns

nominations, or the lack thereof, for July of 2000.

13. MGE admits that it mails bills for its services to Schreiber at P.O. Box 351, Mount Vernon, Missouri 65712-0351. MGE denies the remaining allegations contained in paragraph numbered 9. of the Complaint.

14. MGE denies the allegations contained in paragraph numbered 10. of the Complaint.

15. MGE denies that it has failed to follow procedures identified in its tariffs. MGE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 11. of the Complaint, and therefore denies same.

16. MGE denies the allegations contained in paragraph numbered 12. of the Complaint.

17. MGE admits that it has taken a position that the unauthorized use charge it has billed Schreiber cannot be unilaterally waived by MGE. MGE denies the remaining allegations contained in paragraph numbered 13. of the Complaint.

18. MGE admits that it has informed Schreiber that natural gas will not be shut off at the Mount Vernon facility without adequate notice. MGE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 14. of the Complaint, and therefore denies same.

19. MGE denies that it has, in the past, given prior period adjustments to customers in unauthorized use charge situations similar to that which Schreiber has experienced. MGE is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph numbered 15. of the Complaint, and therefore denies same.

20. MGE denies the allegations contained in paragraph numbered 16. of the

Complaint.

21. MGE denies the allegations contained in paragraph numbered 17. of the Complaint.

### **AFFIRMATIVE DEFENSES**

22. Further answering, and as an affirmative defense, MGE states that the Complaint fails to state facts or a cause of action upon which relief can be granted. Further, to the extent that Complainants allege the rates or charges of MGE are unreasonable, the Complaint is not in accordance with Section 386.390 RSMo 2000 or 4 CSR 240-2.070 in that the Complaint is neither brought by the Commission's own motion nor "signed by the public counsel or the mayor or the president or chairman of the board of aldermen or a majority of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers" of MGE's natural gas service.

23. Further answering, and as an affirmative defense, MGE states that TXUES lacks the legal capacity to sue or to bring this Complaint. TXUES is not a customer of MGE, and therefore has no standing to claim relief pursuant to any provision of MGE's tariff, nor does TXUES have any contractual relationship with MGE concerning MGE's regulated natural gas services.

24. Further answering, and as an affirmative defense, MGE states that the Commission lacks jurisdiction over the subject matter of this Complaint.

25. Further answering, and as an affirmative defense, MGE states that it has acted in compliance with its approved tariffs.

## **FURTHER EXPLANATION**

26. In an effort to assist the Commission and to better frame the issues, MGE will further explain its understanding of the events related to the unauthorized use charge that has been billed by MGE to Schreiber.

27. Schreiber is a transportation customer of MGE, having executed a Contract for Sale or Transportation of Natural Gas in accordance with MGE's P.S.C. Mo. No. 1, First Revised Sheet No. 40 and First Revised Sheets Nos. 50-53, on June 1, 1999.

28. Schreiber receives interstate transportation of natural gas from Williams. Schreiber receives intrastate transportation of natural gas from MGE.

29. In this case, MGE believes the controversy stems from the fact that Williams showed no nominations for Schreiber for the month of July 2000 (not August, as alleged in the Complaint) for the account in controversy here (since Schreiber has two accounts with MGE). MGE has no specific knowledge at this time as to whether Schreiber, or some agent acting for Schreiber, failed to make a nomination with Williams or whether Williams failed to act on a nomination that was in fact made. MGE is not a part of that process. All MGE knows is that no nomination was acknowledged for the particular account by Williams. Transportation customers have until the last day of the month to address their nominations with Williams. Thus, specifically, Schreiber had until July 31, 2000, to adjust its nominations for the month of July with Williams.

30. MGE's tariff, and in particular, P.S.C. Mo. No. 1, Original Sheet No. 61.3, states in part that: "Unauthorized use charge will be assessed to transportation customers for all natural gas volumes taken in excess of customer's authorized gas volumes delivered to a Company's delivery location, for the customer's account, plus any Contract Demand level." It further

provides that this unauthorized use charge "will be assessed to transportation customers on a daily basis . . . in the event no nomination exists for such customer (zero nomination)."

31. Nominations are the responsibility of the transportation customer. MGE has no authority or obligation to make nominations on behalf of a customer. Further, MGE has no obligation under its tariff to notify a customer that a nomination has not been made or whether the nomination is sufficient for the customer's needs. Although nominations are the responsibility of the customer, purely as a courtesy to its customers, MGE may periodically check the Williams electronic bulletin board to assess whether any of its customers have failed to make their required nominations. Access to this electronic bulletin board is also available to both Schreiber and TXUES. In this particular situation, MGE employee Teresa Villanueva, Transportation Services Billing, did check the Williams electronic bulletin board and made a courtesy call to Schreiber on July 20, 2000, to inquire about the lack of any nomination for the Mount Vernon plant of Schreiber. She left a message asking for someone to call her back about this matter.

32. On July 24, 2000, having not received a return call from anyone at Schreiber, Ms. Villanueva again called Schreiber to inquire about the lack of nominations. After talking to three different people at the Mount Vernon plant, Ms. Villanueva was transferred to a Mr. Ralph McClury. Mr. McClury represented himself to her as the Schreiber plant manager. Ms. Villanueva explained the lack of nomination situation to Mr. McClury.

33. As a further courtesy, Ms. Villanueva contacted Williams after July 24, 2000, but before July 31, 2000, to see if a Schreiber nomination had been made. Ms. Villanueva spoke to Tammy Lytle of Williams about nominations for the Mount Vernon plant. Ms. Lytle at that time showed only one nomination for Schreiber which was made by TXUES. This nomination



concerned a different account than the one at issue here. (Account numbers are not contained in this pleading due to privacy concerns.) Ms. Lytle reported no July nomination for the Mount Vernon plant account. Ms. Lytle gave Ms. Villanueva the name of a contact at TXUES (a person named "Eric") that Williams maintained for Schreiber Foods.

34. Prior to July 31, 2000, Ms. Villanueva called "Eric" at TXUES to inquire about the nominations for the two accounts for Schreiber. Ms. Villanueva informed Eric that MGE had not seen evidence of a Williams nomination for the one Schreiber account. Eric told Ms. Villanueva that he believed he had made the nominations to Williams for Schreiber. Ms. Villanueva suggested that Eric should verify with Williams that there were nominations for each of the two Schreiber accounts.

35. No nominations for the one Schreiber account for the month of July were reflected by Williams by July 31, 2000. Consequently, in accordance with MGE's tariff (P.S.C. Mo. No. 1, Original Sheet No. 61.3), a unauthorized use charge for the month of July was assessed by MGE because the tariff says that "Unauthorized use charge will be assessed to transportation customers on a daily basis . . . in the event no nomination exists for such customer (zero nomination)." MGE's billing invoice dated August 3, 2000, includes both the charge for July services and the unauthorized use charge for Schreiber's failure to provide a nomination for the month of July 2000.

36. The \$78,634.00 which is described in the Complaint as the "penalty" is, in fact, the total amount due on the August 3, 2000, billing invoice based on the daily usage by Schreiber for the month of July. The unauthorized use charge portion of this amount is \$58,851.47. This was calculated in the following manner:  $36,650 \text{ ccf} \times \$1.50 = \$54,975.00$ .  $36,560 \text{ ccf} \times (\$0.42308 \times 25\%) = \$3,876.47$ . The total of \$54,975.00 and \$3,876.47 is \$58,851.47. The

amount of \$0.42308 is the PGA in effect at the relevant time. The unauthorized use charge would be 25 percent. The \$0.42308 (100 percent) would be billed as the PGA factor.

37. No unauthorized use charge was billed daily during the month of July 2000 because on Williams, Schreiber or its agent had until the last day of the month (in this case, July 31, 2000) to make its nomination for that month (July). Thus, no unauthorized use charge was incurred by Schreiber until July 31, 2001 had passed without a nomination having been made by it or on its behalf. After July 31, 2000, there was no longer an opportunity to correct this situation for the month of July.

38. MGE has had discussions and exchanged correspondence concerning this situation with Schreiber several times since August 2000. These communications have indicated that the unauthorized use charge is required to be charged by MGE by its tariff, that MGE must follow its tariffs or face sanctions or penalties itself, and that MGE cannot unilaterally waive its tariff provisions.

WHEREFORE, having fully answered and set forth its affirmative defenses in fact and in law, MGE respectfully requests that the Commission issue its order:

- (a) Dismissing the Complaint of TXU Energy Services, Inc.'s and Schreiber Foods, Inc.; and,
- (b) Granting such further relief as the Commission deems appropriate.

Respectfully submitted,



Gary W. Duffy MBE #24905  
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ATTORNEYS FOR  
MISSOURI GAS ENERGY, A DIVISION OF  
SOUTHERN UNION COMPANY

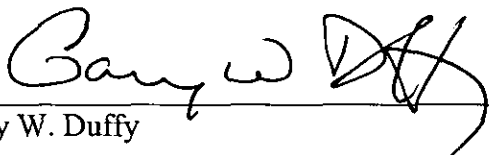
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed by deposit with the United States Postal Service, first class postage prepaid, or hand delivered this 7<sup>th</sup> day of June, 2001, to:

Donald C. Otto, Jr.  
Attorney at Law  
901 Missouri Boulevard #163  
Jefferson City, Missouri 65101

Office of the General Counsel  
Missouri Public Service Commission  
Governor State Office Building  
Jefferson City, Missouri

Office of the Public Counsel  
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Gary W. Duffy

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