

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

The Staff of the Missouri Public Service Commission,
Complainant,
vs.
Laclede Gas Company, doing business as Missouri Gas Energy,
and
Southern Union Company, formerly doing business as Missouri Gas Energy,
Respondents.

Case No. GC-2014-



COMPLAINT

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), by and through counsel, pursuant to Section 386.390, RSMo 2000,¹ and for its Complaint states as follows:

Introduction

1. This Complaint concerns a natural gas explosion and subsequent fire that occurred at approximately 6:02 p.m. (CST), on Tuesday, February 19, 2013, at JJ’s Restaurant in Kansas City, Missouri. The explosion and fire killed one person, injured more than a dozen others, totally destroyed the restaurant and its contents, damaged nearby buildings, and left more than a score of persons unemployed. Respondents are the present and former operators of Missouri Gas Energy (“MGE”), the regulated provider of retail natural gas service to the Kansas City area, including JJ’s Restaurant.

¹ Unless otherwise specified, all statutory references are to the Revised Statutes of Missouri (“RSMo.”), revision of 2000, as subsequently amended.

Staff contends that MGE² violated certain of the Commission's *Gas Safety Rules* with respect to the events of February 19th regarding MGE's actions to protect persons and property subsequent to the damage to the natural gas main.

Complainant

2. Complainant is the Staff of the Missouri Public Service Commission ("Commission"), acting through the Chief Staff Counsel as authorized by Commission Rule 4 CSR 240-2.070(1).

Respondents

3. Respondent Laclede Gas Company ("Laclede") is a Missouri general business corporation in good standing, incorporated on March 2, 1857, as Laclede Gas Light Company; its principal place of business is located at 720 Olive Street, St. Louis, Missouri 63101 and its registered agent is Mary Caola Kullman, 720 Olive Street, Room 1527, St. Louis, Missouri 63101. Laclede is a wholly-owned subsidiary of The Laclede Group, Inc., a publicly-traded Missouri general business corporation in good standing and a public utility holding company. The Laclede Group's principal place of business is also located at 720 Olive Street, St. Louis, Missouri 63101.

4. Respondent Southern Union Company is a Delaware general business corporation in good standing, headquartered at 5444 Westheimer Road, Houston, Texas 77056. Southern Union Company is properly registered as a foreign corporation doing business in Missouri and its registered agent is CSC-Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, Missouri 65101.

5. Operating under the fictitious name "Missouri Gas Energy" or "MGE" and using gas plant it owns or controls, Laclede presently provides, and Southern Union

² For convenience, Staff will refer to the Respondents as "MGE."

Company formerly provided, natural gas at retail for light, heat and power to a service area encompassing Kansas City, Missouri, including JJ's Restaurant, pursuant to a CCN issued -- and tariffs approved -- by this Commission, serving approximately 501,000 residential, commercial and industrial customers in thirty-four Missouri counties. Effective July 31, 2013, in Case No. GM-2013-0254, this Commission granted Laclede a CCN and all necessary authority to acquire and thereafter operate Southern Union Company's Missouri franchise, works and system, including the fictitious name "Missouri Gas Energy" or "MGE," and that transaction closed effective September 1, 2013. As required by the Commission's order, Laclede thereafter adopted Southern Union Company's existing tariffs and now provides retail natural gas service in Southern Union Company's former Missouri service area, using Southern Union Company's former franchise, works and system, employing many of Southern Union Company's former employees, pursuant to Southern Union Company's former tariffs under the fictitious name "Missouri Gas Energy" or "MGE." At all times pertinent to the events described in Paragraph 1, above, Southern Union Company operating as "Missouri Gas Energy" or "MGE" provided retail gas service to JJ's Restaurant and vicinity.

Jurisdiction

6. By virtue of the activities described in Paragraphs 3, 4 and 5, above, Respondent Laclede is now, and at all times pertinent to the events described in Paragraph 1, above, Respondent Southern Union Company formerly was, a "gas corporation" within the intendments of § 386.020(18), and a "public utility" within the intendments of § 386.020(43), and thus subject to the jurisdiction of this Commission and to the provisions of the Public Service Commission Law at Chapters 386 and 393, RSMo.

Powers of the Commission

7. Pursuant to §§ 386.250(1) and 393.140(1), this Commission is charged with the supervision and regulation of public utilities engaged in the supply of natural gas at retail and is authorized by §§ 386.250(6), 386.310.1, and 393.140 to promulgate safety rules applicable to the transportation and distribution of natural gas. Pursuant to this authority, the Commission has duly promulgated its Rule 4 CSR 240-40.030, *Safety Standards—Transportation of Gas by Pipeline (“Gas Safety Rules”)*. Monetary penalties are authorized by §§ 386.570 and 386.572 for the violation of the Commission’s rules.

8. This Commission has authority to hear and determine complaints against public utilities pursuant to § 386.390.1, which provides that “[c]omplaint may be made ... in writing, setting forth any act or thing done or omitted to be done by any corporation ... in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the Commission”

9. This Commission is authorized by § 386.310.1, after a hearing upon a complaint, to require a public utility to operate its system in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and to this end to require the performance of any other act which the health or safety of its employees, customers or the public may demand.

10. This Commission is authorized by § 393.140(2) to investigate the methods employed in distributing gas and to order “such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such gas . . . and those employed in the manufacture and distribution thereof[.]”

Facts Common to All Counts

11. Heartland Midwest, LLC, is a Kansas limited liability corporation in good standing that is duly authorized to do business in Missouri. Heartland Midwest is in the business of utility construction.

12. “Time Warner Cable” is a registered fictitious name belonging to Time Warner Cable Information Services (Missouri), LLC, a Delaware limited liability corporation in good standing that is duly authorized to do business in Missouri. It is a subsidiary of Time Warner Cable. On its website, Time Warner Cable states that it is a publicly-traded company (“TWC” on the New York Stock Exchange), the second-largest cable provider in the nation, serving over 15 million subscribers in 29 states including Missouri, and employing 50,000 persons. According to Time Warner Cable’s most recent Form 10-K filed with the United States Securities and Exchange Commission (“SEC”), the company generates some \$16.5 billion in annual revenue. Time Warner Cable provides video, high-speed data and voice services over its broadband cable system to residential and business customers, as well as security and home management services, networking, transport, cloud-enabled hosting, managed applications, and other services.

13. Missouri One Call System, Inc. (“MOCS”), is a Missouri not-for-profit corporation in good standing headquartered in Jefferson City, Missouri. It is the “notification center” referred to in the Underground Facility Safety and Damage Prevention Act at §§ 319.010 through 319.050. All owners or operators of underground facilities in Missouri are required to participate in the notification center, §§ 319.022 and 319.028; and all persons proposing to excavate in a public right-of-way are required to submit a locate request to the notification center at least two but not more than ten

business days prior to excavating, § 319.026.

14. On its website, MOCS states that, upon notification of intent to excavate, it notifies appropriate member utilities who then determine whether there are underground facilities in the affected area. After it is determined that underground facilities are present, the locate request is dispatched to a field locator to locate the facilities and mark the excavation site with paint, stakes, or flags. Facilities are marked according to specific guidelines and color codes: yellow to indicate natural gas facilities, red to indicate electrical facilities, blue to indicate potable water, green to indicate sanitary sewer facilities, and orange to indicate communication facilities. Under the guidelines, the marks show only the approximate location of the facility, which may be anywhere within a zone extending 24 inches on either side of the markings. Additionally, the markings are not required to indicate the actual depth of the facility. Excavators are required to dig “in a safe and prudent manner” to avoid damaging underground facilities, § 319.041. Methods used to confirm the exact location of facilities include “potholing,” which is the digging of a test hole by non-mechanical means to expose an underground facility to verify its location and depth.

15. USIC Locating Services, Inc. (“USIC”), is an Indiana general business corporation in good standing that is duly authorized to do business in Missouri. According to its website, USIC is a subsidiary of United States Infrastructure Corporation and is the largest provider of underground utility locating services in North America. In addition to utility locating and marking services, USIC offers underground facility damage prevention damage prevention services. USIC is a field locator.

16. JJ’s Restaurant was located on the northeast corner at the intersection of Belleview Avenue and West 48th Street; its address was 910 West 48th Street, Kansas

City, Missouri.

17. In February 2013, Heartland Midwest, LLC, a construction contractor for Time Warner Cable, was performing a horizontal drilling project in portions of Kansas City, Missouri, served by MGE. The purpose of the horizontal drilling project was the installation of an underground telecommunications cable.

18. On February 6, 2013, Heartland Midwest submitted a request to MOCS to locate the underground facilities in the area of the intersection of Belleview Avenue and West 48th Street in Kansas City, Missouri.

19. Beginning on February 9, 2013, and finishing on February 15, 2013, USIC marked the area that Heartland Midwest proposed to excavate in the vicinity of the intersection of Belleview Avenue and West 48th Street with colored paint. With respect to the pavement on the north side of West 48th Street adjacent to the alley on the east side of JJ's Restaurant, USIC marked the pavement with a single line of yellow paint indicating a natural gas facility and a single line of red paint indicating an electrical facility. In fact, there were three underground facilities in that area, two electrical facilities and one natural gas facility.

20. MGE's underground natural gas facility under the pavement referred to in Paragraph 19, above, was a two-inch diameter polyethylene pipe running east-west along the north side of West 48th Street; a similar gas main ran north-south under Belleview Avenue. On February 19, 2013, the main under West 48th Street was operating at a pressure of approximately 25 psig, well below the maximum allowable operating pressure for this main of 58 psig. Two service lines ran to JJ's Restaurant from the main on West 48th Street and a third service line ran to JJ's Restaurant from the Belleview Avenue main. The meter was active on the service line from the main on

Belleview Avenue; the two meters were active on the two service lines from the main on West 48th Street.

21. On February 19, 2013, Heartland Midwest personnel were using horizontal directional drilling equipment to bore beneath the alley adjacent to the east side of JJ's Restaurant and across West 48th Street. Some time before 4:55 p.m., the drill bit struck the West 48th Street natural gas main, causing a hole approximately 2 inches by 2 inches in size. Heartland Midwest immediately notified emergency services of the broken gas line.

22. At about 4:55 p.m. on February 19, 2013, MGE Dispatch received a report from the Kansas City Fire Department ("KCFD") of a natural gas main hit at 910 West 48th Street. MGE Dispatch notified a MGE "specialty person" of the hit at 4:56 p.m. A "specialty person" is a MGE designated first responder with specific knowledge of construction and maintenance department duties and the ability to locate MGE's natural gas facilities.

23. At about 4:59 p.m., MGE Dispatch dispatched a construction and maintenance ("C&M") crew to the location of the natural gas main hit. The C&M Foreman arrived at the scene at 5:32 p.m. At 5:00 p.m., Heartland Midwest informed MGE it had hit a natural gas main.

24. At about 5:04 p.m., KCFD Pumper 19 arrived on the scene. KCFD firefighters met with Heartland Midwest personnel upon arrival. Heartland personnel told the KCFD the natural gas main was punctured and leaking. The KCFD personnel entered JJ's Restaurant and immediately noticed a natural gas odor. The KCFD Incident Report states that the KCFD "told management to put out all ignition sources in the kitchen and throughout the establishment." However, the firefighters did not order an evacuation of

JJ's Restaurant. KCFD Pumper 19 left the scene at 5:17 p.m., approximately one minute after MGE's Specialty Person arrived.

25. At about 5:16 p.m., the Specialty Person arrived on the scene, about 20 minutes after notification of the main break. At about 5:19 p.m., the Specialty Person called MGE Dispatch asking for additional personnel. The Specialty Person then went over to the alley just east of JJ's Restaurant to evaluate the situation. The Specialty Person reported that there was a pothole near the location of the damaged natural gas main. The Specialty Person confirmed that natural gas was leaking based on both an audible hissing noise and visible bubbling of the backfill material observed in the pothole located between the red and yellow utility markings on the pavement. Around 5:25 p.m., the Specialty Person called MGE Dispatch a second time to again request that additional personnel be sent to the scene.

26. After arriving at 5:32 p.m., the C&M Foreman was briefed by the Specialty Person. He examined the pothole in the alley by JJ's Restaurant. The C&M Crew arrived at about 5:37 with a backhoe. As the crew unloaded the backhoe, the C&M Foreman and a USIC representative photographed the pavement markings at the site of the break. After the crew removed a portion of the pavement with the backhoe, the C&M Foreman began digging by hand to locate the broken main.

27. At some time about 5:48 p.m., MGE Service Technician No. 1 arrived at the scene.³ After conferring with the Specialty Person, Service Technician No. 1 entered JJ's Restaurant to check for natural gas. His combustible gas indicator ("CGI") registered a reading between 3.5%-4.0% gas-in-air. An alarm on the CGI warned Service Technician No. 1 of a low battery condition. Service Technician No. 1 advised

³ Service Technician No. 1 originally arrived at the scene at about 5:31 p.m. but left again to check a gas leak report on Belleview Avenue. He stated that he returned to the scene at around 5:48 p.m.

the manager of JJ's Restaurant to evacuate the building, stating that MGE's policy is to evacuate occupants from a building when 1% or more natural gas-in-air is detected. Service Technician No. 1 left JJ's Restaurant to get new batteries for his CGI.

28. At about 5:47 p.m., MGE Service Technician No. 2 arrived at the scene and was in his vehicle when Service Technician No. 1 walked out of JJ's Restaurant to get batteries for his CGI. While Service Technician No. 1 was replacing the batteries in his CGI, Service Technician No. 2 entered JJ's Restaurant and detected gas-in-air between 3.5%-4.0%. Service Technician No. 1 re-entered the building, now equipped with new batteries, after Service Technician No. 2 and obtained similar gas-in-air readings. Service Technician No. 2 told the manager of JJ's Restaurant to evacuate the building. After Service Technician No. 2 told the manager of JJ's Restaurant to evacuate the building, both service technicians left JJ's Restaurant. The service technicians took no steps to ensure a sense of urgency or to ensure that JJ's Restaurant was actually evacuated.

29. The two service technicians reported their gas-in-air findings at JJ's Restaurant to the MGE Duty Supervisor at about 5:51 p.m. Neither the Duty Supervisor nor any MGE personnel on site at West 48th Street took steps to evacuate all MGE employees from the immediate area, eliminate all potential ignition sources, remove manhole covers, ventilate structures or reduce system pressure or cut-off the gas supply to the area of the broken main or to coordinate with the KCFD or the Kansas City Police Department.

30. Service Technician No. 1 then checked for gas outside of the House of Elan, located east of JJ's Restaurant on West 48th Street, across the alley. He obtained a

reading of about 1.1% gas-in-air. He entered the building and instructed the owner to evacuate.

31. After reporting to the Duty Supervisor as described in Paragraph 29, above, Service Technician No. 2 assisted a patron leaving JJ's Restaurant by temporarily blocking Belleview Avenue with cones. Both service technicians then entered the multistory Plazaview Building, adjacent to JJ's Restaurant to the north, to investigate a gas odor report on the 3rd floor. As they walked into the stairwell of the Plazaview Building, at about 6:02 p.m., the explosion occurred at JJ's Restaurant. In addition, when the explosion occurred, the C&M Foreman was hand digging in order to locate the broken main. The explosion occurred approximately one hour and ten minutes after the main was broken.

32. The explosion occurred because natural gas escaped from the break in the West 48th Street natural gas main, migrated through backfill material beneath the street, alley and sidewalk at JJ's Restaurant, and through nearby sanitary sewers. The migrating natural gas accumulated within the restaurant to an explosive gas-in-air mixture and was ignited by an undetermined ignition source.

COUNT I

33. Staff hereby realleges and incorporates herein by reference all of the allegations set out in Paragraphs 1 through 32, above.

34. Among the gas safety rules duly promulgated by the Commission pursuant to delegated authority is Rule 4 CSR 240-40.030(12)(C)1., which requires each operator to "prepare **and follow** for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response . . ." ⁴ Likewise,

⁴ Emphasis added.

Rule 4 CSR 240-40.030(12)(J)1. requires each operator to “establish written procedures to minimize the hazard resulting from a gas pipeline emergency.” Rule 4 CSR 240-40.030(1)(G)3. requires each operator to “maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under this rule.”

35. MGE is now, and was at all times herein pertinent, an “operator” within the meaning of the Commission’s Gas Safety Rules at 4 CSR 240-40.030.

36. Among other things, the emergency plan required by Rule 4 CSR 240-40.030(12)(J)1 must provide for:

C. Responding promptly and effectively to a notice of each type of emergency, including the following:

(l) Gas detected inside or near a building;

* * *

E. Taking actions directed toward protecting people first and then property;

F. Causing an emergency shutdown and pressure reduction in any section of the operator’s pipeline system necessary to minimize hazards to life or property;

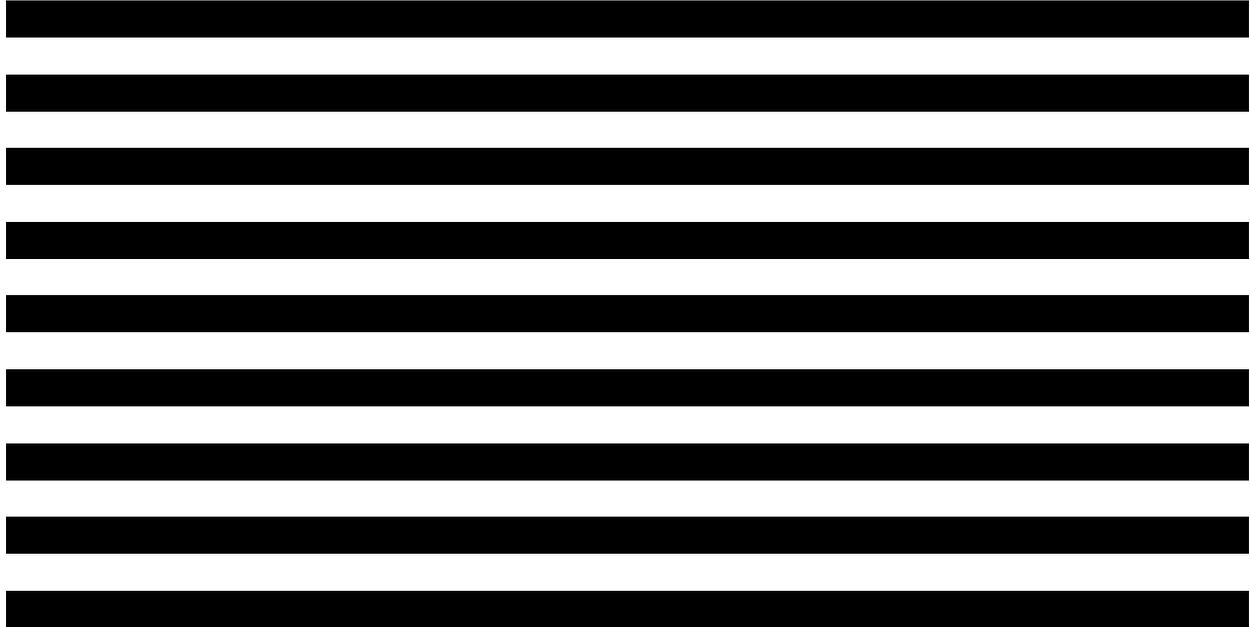
G. Making safe any actual or potential hazard to life or property;

H. Notifying appropriate fire, police, and other public officials of gas pipeline emergencies and coordinating with them both planned responses and actual responses during an emergency;

37. ** [REDACTED]

[REDACTED]

[REDACTED]



**

38. All of the CGI readings at JJ's Restaurant were in excess of 1% gas-in-air.

39. By its actions on February 19, 2013, MGE failed to comply with the Commission's *Gas Safety Rules* at 4 CSR 240-40.030 because:

- a. MGE failed to follow its emergency plan in that it failed to quickly assess available information to determine that a hazard to nearby structures existed.
- b. MGE failed to follow its emergency plan in that it failed to promptly determine the extent of the hazard by not determining if gas was accumulating inside nearby structures.
- c. MGE failed to follow its emergency plan in that it failed to remove all of the manhole covers in the vicinity of JJ's Restaurant despite multiple CGI readings in that building in excess of 1% gas-in-air.

- d. MGE personnel responding to the main break adjacent to JJ's Restaurant failed to take immediate corrective action providing for public safety and protecting property.
- e. MGE failed to coordinate effectively with the KCFD and the Kansas City Police Department.

WHEREFORE, Staff prays that the Commission, after due notice and hearing, will determine that MGE violated the Commission's *Gas Safety Rules* as stated herein and, pursuant to § 386.600, authorize its General Counsel to seek penalties under §§ 386.570, 386.572 and 386.590; and grant such other and further relief as is just in the premises.

COUNT II

40. Staff hereby realleges and incorporates herein by reference all of the allegations set out in Paragraphs 1 through 39, above.

41. Pursuant to its authority under § 386.310.1 to require MGE to operate its system in such manner as promotes and safeguards the health and safety of its employees, customers, and the public, and pursuant to its authority under § 393.140(2) to order such reasonable improvements in MGE's methods of operation as will best promote the public interest, preserve the public health and protect both those using gas and those employed in the distribution of gas, Staff prays the Commission will order MGE to implement these recommendations:

- a. That MGE shall review and revise as necessary its procedures to make certain fire department, police department or any other entities with authority to evacuate individuals from buildings remain on the scene or are present during an emergency situation which may require

evacuation of buildings. Furthermore, that MGE review and revise as necessary its liaison program with the KCFD for identifying the various situations that may constitute a hazardous situation involving natural gas, the various actions that should be taken before MGE personnel arrive when a hazardous situation is identified, and when KCFD assistance may be needed.

- b. That MGE review and revise as necessary its procedures and employee training to ensure that when situations occur, such as when a gas-in-air reading above 1% is obtained in a structure, MGE personnel clearly, quickly, and forcefully communicate to building occupants the eminent danger of the situation and the urgency to immediately evacuate, regardless of the presence of fire, police or other public officials with authority to evacuate buildings. If these situations are encountered and fire, police or other public officials are not at the scene, they should be contacted immediately to respond and assist with evacuations and other emergency actions. MGE should not wait for them to arrive before beginning the evacuation.
- c. That MGE designate a person or persons that will be responsible when at the scene of an event where hazardous situations are identified for making certain that all the procedures contained in MGE's Emergency Plan are followed and executed promptly and adequately. This person or persons should ensure, coordinate and evaluate what actions have been taken and what actions need to be taken. Such actions can include, but are not limited to, leak surveys, leak investigations,

evacuations, response to odor calls, conversations with individuals, closing valves, shutting off gas, making repairs/replacements to MGE facilities and removing lids to manholes, valves, etc. to allow natural gas to vent to the atmosphere.

- d. That MGE include provisions in its emergency response procedures that, where possible, require emergency response efforts to be conducted at a safe distance from a potentially hazardous site and that MGE's procedures identify parameters for determining when a "safe zone" should be established during hazardous situations, such as gas-in-air readings above 1% detected in structures or significant concentrations of natural gas detected in sewers. The provisions should include the dangers of working in close proximity to potentially hazardous locations when sources of ignition have not been eliminated. Procedures and training should be explicit enough, and should detail a sequence of actions to be taken, that would allow field personnel to take the actions necessary to promptly avert safety hazards and to protect life and property. The boundaries of the "safe zone" should allow MGE personnel and emergency personnel to work at a safe distance from the hazard. In addition, MGE should consider eliminating sources of ignition, such as electric and gas service, in the "safe zone." All individuals, including MGE personnel, must stay out of the "safe zone" until the identified hazards to property and life have been mitigated. The circumstances of this incident should be incorporated into the training process.

- e. That MGE review and revise as necessary its procedures and employee training for responding to and taking appropriate actions for natural gas leaks that are considered as emergency gas leaks, identifying the various actions that should be taken when a hazardous situation is identified. Specifically, MGE procedures and employee training should include instruction on prompt and thorough leak investigations for early recognition of the existing hazards, including the magnitude and extent of migration of escaping natural gas and on appropriate actions contained in the Emergency Plan to protect life and property. The circumstances of this incident should be incorporated into this training process.
- f. That MGE review and revise its procedures as necessary to determine if/when MGE personnel should perform construction inspections when MGE is aware contractors are using the horizontal directional drilling method near MGE's underground facilities in areas with pavement contiguous to buildings. MGE may want to consider expanding the definition of areas designated as "High Profile Areas."
- g. That MGE file an action plan regarding each of the recommendations numbered a-f, above, at such time as the Commission shall designate, and that the action plan include MGE's proposed resolution for addressing each recommendation and the timeframe for implementing the resolution. For those recommendations where MGE determines no action is necessary, MGE must explain, and provide supporting documentation as available, the reason that no action is required.

Furthermore, MGE shall submit to Staff for review prior to implementation any proposed revisions to its Emergency Plan and training process.

WHEREFORE, Staff prays that the Commission, after due notice and hearing, will require MGE to implement the above recommendations in order to improve its methods of operation and safeguard the public welfare; and grant such other and further relief as is just in the premises.

Respectfully submitted,

/s/ Kevin A. Thompson

Kevin A. Thompson

Chief Staff Counsel

Missouri Bar No. 36288

P. O. Box 360

Jefferson City, MO 65102

(573) 751-6514 (Telephone)

(573) 526-6969 (Fax)

kevin.thompson@psc.mo.gov

Attorney for the Staff of the
Missouri Public Service Commission