BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Purchased Gas Adjustment (PGA) Factors to be Audited in its 2002-2003 Actual Cost Adjustment Actual Cost Adjustment.	))))	**Case No. GR-2003-0330**

STAFF'S PREHEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Commission's General Counsel, and for its Prehearing Brief, states as follows:

Introduction

Summary:

Staff urges the Commission to disallow costs imprudently incurred by MGE for natural gas transportation capacity that the Company should have known it did not need. Unnecessary costs, carelessly incurred, are not part of a just and reasonable rate and so cannot be lawfully recovered from the ratepayers.[1] Staff's evidence shows that MGE relied upon an inadequate methodology to forecast its winter heating season transportation requirement, contracted for too much capacity, and now seeks to recover the costs of its mistake from the ratepayers.

Background:

These two consolidated cases[2] are part of a series of cases concerning disallowances proposed by Staff following its Actual Cost Adjustment (ACA) audit for costs incurred by

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[1] All charges for gas service must be just and reasonable. Section 393.130.1, RSMo. 2000; *State ex rel. Associated Natural Gas Co. v. PSC,* 954 S.W.2d 520, 528 (Mo. App., W.D. 1997).

[2] The Commission consolidated Case Nos. GR-2002-348 and GR-2003-0330, relating to the 2001-2002 and 2002-2003 PGA/ACA periods, respectively, for all purposes. *In the Matter of Missouri Gas Energy's Purchased Gas Adjustment (PGA) Factors to be Audited in Its 2002-2003* Actual Cost Adjustment, Case No. GR-2003-0330 (*Order Consolidating Cases and Establishing Procedural Schedule,* issued April 12, 2005) at p. 1-2 ("*Consolidation Order*").

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Missouri Gas Energy (MGE) for the transportation of natural gas and passed on to ratepayers on an interim basis by the Purchased Gas Adjustment (PGA) mechanism.[3] While all of these cases involve proposed disallowances based on costs incurred for transportation over the Kansas Pipeline, that issue is not presently before the Commission.[4] Now before the Commission is Staff's proposed disallowance, over two successive PGA/ACA periods, of MGE's excessive reserve transportation costs:[5]

PERIOD	CASE	PROPOSED DISALLOWANCE
2001-2002	GR-2002-348	$2,041,931
2002-2003	GR-2003-0330	$2,015,661
TOTAL:		**$4,057,592**

These costs were incurred by MGE due to its refusal to adopt a reasonable and effective method for predicting its winter heating season transportation needs. Consequently, MGE's ratepayers have had to foot the bill for MGE's sloppy and inaccurate forecasting. Staff has proposed adjustments in favor of the ratepayers so that MGE's shareholders would pay for management's mistakes rather than MGE's ratepayers.[6]

The Governing Standard:

The Missouri Supreme Court has succinctly described the PGA/ACA process:[7]

> Natural gas distribution companies such as MGE are allowed to recoup approved costs for obtaining natural gas from their suppliers as part of the rate they charge

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[3] The cases are: GR-96-450, GR-98-167, GR-99-304, GR-2000-425, GR-2001-382, GR-2002-348, and GR-2003-0330. The proposed adjustments aggregate to nearly $35 million dollars.

[4] "[T]he Commission has decided to move forward with other issues while waiting for an appellate decision on the Kansas Pipeline issue." *Consolidation Order* at p. 2. The Kansas Pipeline was formerly operated by the Mid-Kansas Partnership and Riverside Pipeline Company.

[5] Jenkins Direct, 5.

[6] For convenience, Staff refers to the Company as MGE. In fact, Missouri Gas Energy (MGE) is a fictitious name under which Southern Union Company conducts its Missouri local gas distribution business.

[7] *State ex rel. Riverside Pipeline Co., L.P. v. PSC of Mo.*, 165 S.W.3d 152, 153-154 (Mo. banc 2005).

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> their customers. Periodically, the PSC conducts an Actual Cost Adjustment (ACA) review to determine what costs public utilities are allowed to recover from their customers. As part of this effort, the PSC staff conducts a "prudence review" to evaluate the utility's contracts with its suppliers. The staff then decides whether the costs associated with the contracts should be disallowed in whole or part.

The Commission may disallow a utility's recovery of costs from its ratepayers only upon a finding (1) that the utility acted imprudently and (2) that the imprudence resulted in harm to the utility's ratepayers.[8]

Where Staff proposes a disallowance and, as here, the Company objects, the matter comes on to the Commission for resolution as a contested case. In resolving such cases, the Commission has employed a "prudence standard."[9] Under this standard, the Company's costs are presumed to have been prudently incurred until "some other participant in the proceeding creates a serious doubt as to the prudence of an expenditure, then the [Company] has the burden of dispelling these doubts and proving the questioned expenditure to have been prudent."[10] Thus, "Staff's burden is to show that [MGE] acted imprudently in making gas supply arrangements which caused higher gas costs than if prudent decisions had been made."[11]

Staff's "burden," however, is *not* the burden of proof, but is rather the burden of production involved in rebutting the presumption of prudence initially enjoyed by the

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[8] *State ex rel. Associated Natural Gas Co. v. PSC,* 954 S.W.2d 520, 529 (Mo. App., W.D. 1997).

[9] So described by the Commission, for example, at *In the Matter of Missouri Gas Energy,* 11 Mo.P.S.C.3d 206, 222-223 (2002).

[10] *St. ex rel. Associated Natural Gas Co., supra,* 954 S.W.2d at 528; *quoting In the Matter of Union Electric,* 27 Mo. P.S.C. (N.S.) 183, 193 (1985), *in turn quoting Anaheim, Riverside, Etc. v. Fed. Energy Reg. Com'n,* 669 F.2d 799, 809 (D.C. Cir. 1981).

[11] *St. ex rel. Associated Natural Gas Co., supra,* 954 S.W.2d at 529, *quoting In the Matter of Western Resources,* Case No. GR-93-140 (*Order Denying Motion to Strike Testimony,* issued December 9, 1994).

Company.[12] The burden of proof in a rate case such as this one is, by statute, always upon the Company.[13] The presumption of prudence places the initial burden of going forward with the evidence upon the party challenging the utility's expenditures and the "utility need not demonstrate in its case-in-chief that all [its] expenditures are prudent."[14]

Rebuttal of the initial presumption of prudence can be as simple as showing the poor outcome of management's decision-making. Thus, "[i]n the Union Electric case, the Commission found that the showing of two billion dollars in cost overruns associated with the building of the Callaway nuclear plant was sufficient to raise serious doubts about the prudence of Union Electric's expenditures, thus shifting the burden to Union Electric to show that its expenditures were prudent."[15]

Once the initial presumption of prudence is overcome, the Commission evaluates the prudence of the Company's conduct using a standard of reasonable care requiring due diligence.[16] "The Commission will assess management decisions at the time they are made and ask the question, 'Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it

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[12] "Most presumptions are rules of evidence calling for a certain result in a given case unless the adversely affected party overcomes it with other evidence. A presumption shifts the burden of production or persuasion to the opposing party, who can then attempt to overcome the presumption." *Black's Law Dictionary* 1203 (1999).

[13] § 393.150.2, RSMo 2000; *In the Matter of Missouri Gas Energy, supra,* 11 Mo.P.S.C.3d at 222; *In the Matter of Western Resources,* 3 Mo.P.S.C.3d 480, 488 (1995). A PGA/ACA case is, by definition, a rate case and the Commission's prudence review is an exercise of its ratemaking authority. *State ex rel. Midwest Gas Users' Ass'n v. PSC,* 976 S.W.2d 470, 479-483 (Mo. App., W.D. 1998).

[14] *In the Matter of Missouri Gas Energy, supra,* 11 Mo.P.S.C.3d at 222.

[15] *Id.,* at 223.

[16] *In the Matter of Missouri-American Water Co.,* 9 Mo.P.S.C.3d 254, 280-281 (2000); *Union Electric, supra,* 27 Mo. P.S.C. (N.S.) at 194.

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assessed the situation?'"[17] The Commission has stated:[18]

> [T]he company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering that the company had to solve its problem prospectively rather than in reliance on hindsight. In effect, our responsibility is to determine how reasonable people would have performed the tasks that confronted the company.

Staff's evidence shows, first, that the initial presumption of prudence is overcome due to MGE's inept planning, its unjustified purchase of more pipeline transportation capacity than it needed, and its slapstick-like inability to produce basic planning documents. Staff's evidence shows, second, that MGE's conduct was not reasonable given what its management knew or should have known at the time the decisions were made, because MGE did not use "due diligence to address all relevant factors" but instead relied upon sloppy and unreasonable forecasts of its transportation requirements when entering into a multi-year transportation contract. Staff's evidence shows, third, that the direct result of MGE's conduct is unnecessary and avoidable costs to ratepayers to cover for unnecessary transportation capacity. Based upon these showings, Staff urges the Commission to conclude that MGE's management was imprudent, that the ratepayers were thereby harmed, and that the cost of the unnecessary and excessive transportation capacity should therefore be disallowed.

Argument

The parties agreed upon a single issue to be determined by the Commission. The Staff's prehearing brief provides Staff's position on that issue and provides citations to prefiled

[17] *Union Electric, supra,* 27 Mo. P.S.C. (N.S.) at 194.

[18] *In the Matter of Missouri Gas Energy, supra,* 11 Mo.P.S.C.3d at 222-223, *citing Union Electric, supra,* 27 Mo. P.S.C. (N.S.) at 194, *quoting Consolidated Edison Company of New York, Inc.,* 45 P.U.R. 4th 331 (1982).

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testimony in support of Staff's position.[19]

The Issue: Given that MGE is entitled to recover in rates only its prudently-incurred gas costs, should the amount MGE is entitled to recover be reduced by $4,057,592 because of Staff's claim that MGE imprudently contracted for an excessive amount of pipeline capacity based upon its reliance on an allegedly unreasonable and inadequate capacity forecasting methodology, or should there be no disallowance because of MGE's claim that Staff's approach and calculations are allegedly unreasonable and flawed?

Rebutting the Presumption of Prudence:

The presumption of prudence is rebutted, and the utility is obliged to show that its costs and conduct are just and reasonable, when Staff points to facts that appear to show that the ratepayers are being overcharged. In the present case, those facts are (1) MGE's inept planning, (2) resulting in its contracting for more pipeline transportation capacity than it needed, and (3) its inability to produce records documenting its planning activities.

1. Inept Planning

Natural gas is transported from the production fields to local distribution companies (LDCs) like MGE over interstate pipelines.[20] Each pipeline has a finite capacity and an LDCs must reserve whatever fraction of that capacity is necessary to obtain the gas needed to serve its

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[19] Staff's Prehearing Brief is filed in conformity with the Commission's Order Adopting Procedural Schedule of September 13, 2005:

> Because much of the evidence will have been filed before the hearing, the parties must file pretrial briefs that address all the issues in dispute and all the relevant prefiled testimony. The parties will be required to file post-trial briefs and proposed findings of fact and conclusions of law on a schedule to be determined following the hearing.

In the Matter of Missouri Gas Energy's Purchased Gas Adjustment (PGA) Factors to be Audited in Its 2002-2003 Actual Cost Adjustment, Case No. GR-2003-0330 (*Order Adopting Procedural Schedule,* issued September 13, 2005) at p. 2.

[20] Jenkins Direct, 6.

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customers.[21] The LDC's task is more complex where, as here, the LDC has customers in several service areas that are served by different pipelines.[22] In that case, the LDC must reserve sufficient capacity for each of its service areas.

The process of reserving sufficient transportation capacity involves contracts that often extend for several years; consequently, each LDC must accurately forecast the gas volume that it will need in each of several future years and enter into sufficient contracts to obtain that volume.[23] The task is exacting: if an LDC contracts for too little capacity, it will not have sufficient gas and it will have to pay premium prices and penalties to obtain what it needs.[24] On the other hand, if the LDC contracts for too much capacity, the regulatory authority will seek to disallow its recovery of the associated costs from its customers.[25] That is the present situation.

In forecasting the volume of transportation capacity that it needs in future years, the LDC must plan for the coldest day that is likely to occur in each year, because that is the day that the greatest volume of gas will be required.[26] There are various ways of doing this and the Staff has never insisted that the LDCs use any particular method. However, Staff *does* insist that the method adopted by any LDC be reasonably reliable. MGE has not adopted a reasonably reliable method.[27]

The tools available to an LDC in making these forecasts are usage and weather data drawn from records of past years, growth estimates, and mathematical tools for analyzing the

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[21] Jenkins Direct, 6.

[22] Jenkins Direct, 10.

[23] Jenkins Direct, 7-8.

[24] Jenkins Direct, 2.

[25] Jenkins Direct, 2, 6-7.

[26] Jenkins Direct, 2, 12.

[27] Jenkins Direct, 4, 11-12.

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data.[28] The coldest day that may be expected in each service area is referred to as the "peak day."[29] MGE uses Heating Degree Days (HDD) in its planning process; a Heating Degree Day is the number of degrees Fahrenheit by which the average temperature on a given day, at a given location, deviated from 65°.[30] Thus, a day on which the average temperature is 15° F is rated at 50 HDD. The peak day that MGE must plan for, consequently, is the highest HDD day recorded for each of its service areas.[31]

MGE has three, non-contiguous service areas arrayed in a north-to-south pattern: St. Joseph, Kansas City and Joplin.[32] Although the pipelines serving its service areas are configured such that **____, ________,** MGE engaged in total system capacity planning rather than planning by service area.[33] Likewise, MGE used a Kansas City peak day figure in planning for its system rather than a peak day value from each service area.[34] In selecting its peak day from the Kansas City data, MGE was not even accurate.[35] This is a material error that has significant results:[36]

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[28] Jenkins Direct, 7, 12.

[29] Jenkins Direct, 2.

[30] Jenkins Direct, 12.

[31] Jenkins Direct, 12.

[32] Jenkins Direct, 10.

[33] Jenkins Direct, 10, 19 (HC).

[34] Jenkins Direct, 12. The March 2004 Analysis and the October 2004 Analysis use separate peak days for Kansas City/St. Joseph and Joplin. MGE's selection of a peak day value for Joplin was also inaccurate. Jenkins Direct, 17.

[35] Jenkins Direct, 11-13, 17. MGE has offered a different peak HDD day in each of several planning documents based on data from **_____ **: **________** in its Reliability Reports; **_______ ** in its March 2004 Analysis; **______ ** in DR No. 96; and **________** in its October 2004 Analysis. Staff reviewed the same data and found that the correct value was **________ **. Likewise, MGE calculated a value of **_____ ** for Kansas City from NOAA data, while Staff reviewed that data and found that the correct figure was 80.5 HDD.

[36] Jenkins Direct, 17.

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PEAK DAY ESTIMATE	REQUIRED CAPACITY (dekatherms/day)				
[37]					
[38]					
[39]					

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In its Draft March 2004 Demand/Capacity Analysis ("March 2004 Analysis"), MGE offers a statistical analysis to support its choice of a peak day.[40]

** ______________________________ **[41]

** ______________________________ **[42]

** ______________________________ .**[43]

** ______________________________ .**[44]

By selecting only a single cold day from each of 30 years, MGE ignored many other cold days that occurred during that period.[45] A quite different result can be obtained, for example, by using the 30 coldest days that occurred during the 30 year period.[46]

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[37] Jenkins Direct, 18. This is the figure used by MGE in its Reliability Reports.

[38] Jenkins Direct, 18. This is the historic high HDD day from the **______________** data.

[39] The calculations are performed using the factors found in MGE's Reliability Reports; only the peak day figure varies. Jenkins, 18.

[40] Jenkins Direct, 13-14.

[41] **________________________.** Jenkins Direct, 14.

[42] Jenkins Direct, 14.

[43] Jenkins Direct, 14.

[44] Jenkins Direct, 13.

[45] Jenkins Direct, 14. For example, the coldest day in Year A would be included in the data set, while significantly colder days in Year B would be excluded because only the single coldest day in Year B would be included. The 2000-2001 winter alone included **______________________________.** Jenkins Rebuttal, 9.

[46] Jenkins Direct, 15.

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MGE used the peak day figure it had selected to develop a heat load factor;[47] it then used the heat load factor with a base load factor to forecast the daily capacity required to meet peak day demand.[48] Although characterized by MGE as a "regression analysis," it is nothing of the sort.[49] In performing this analysis, MGE ignored available daily usage data for each service area.[50] MGE developed its heat load factor by evaluating usage on only one cold day each year.[51] MGE developed its base load factor by evaluating usage in the summer months when there are no HDD days; however, the base load factor used by MGE had not been updated since its 1997-1998 Reliability Report.[52] MGE developed these whole-system, peak day, capacity requirement forecasts:

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Staff, on the other hand, using data and methods available to MGE, calculated these peak day capacity-requirement forecasts by service area (MGE's forecast is set out at the bottom for comparison) :

[47] "Heat load" is a measurement of the gas required for heating purposes in cold weather in addition to the "base load" volume that does not vary throughout the year. Jenkins Direct, 19-20. While heat load is temperature-sensitive, base load is not. *Id.*

[48] Jenkins Direct, 19-20.

[49] Jenkins Rebuttal, 17; Jenkins Surrebuttal, 13. MGE was unable to produce these regression analyses on request. *Id.*

[50] Jenkins Direct, 19.

[51] Jenkins Direct, 20; Jenkins Surrebuttal, 14.

[52] Jenkins Direct, 20; Jenkins Rebuttal, 16.

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Staff contends that the numerous flaws in MGE's planning methods are sufficient, in and of themselves, to rebut the initial presumption of prudence. Calculation errors and unjustified assumptions do not lead to confidence in results. The presumption of prudence is nothing more than an assumption that a utility will do its work carefully and accurately. Staff has shown that MGE's planning was neither careful nor accurate.

2. Excess Capacity

A second badge of imprudence, sufficient to rebut the initial presumption of prudence, is the fact that MGE has contracted for too much pipeline capacity. Remember that, in the seminal case involving the Callaway Nuclear Plant, the presumption was rebutted by the fact of a $2 billion overrun.[54]

The following chart shows, for each of the two PGA/ACA periods here at issue and on a whole system basis, MGE's available capacity compared to (1) MGE's forecast peak day requirement, (2) Staff's forecast peak day requirement and (3) the capacity actually used:[55]

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[53] From MGE's 2001-2002 Reliability Report. Jenkins Direct, 26.

[54] *In the Matter of Missouri Gas Energy, supra,* 11 Mo.P.S.C.3d at 223.

[55] All figures taken from or calculated from the chart on page 18 of Jenkins' Direct, except for the actual usage figures, which are from MGE's response to Staff DR No. 105. MGE's forecast is from its 2001-2002 Reliability Report.

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The row denominated "Excess Reserve" sets out the figure, in dekatherms per day, by which the capacity available to MGE exceeded its forecast peak day requirement less an allowed reserve.[56] For both periods at issue, Staff's calculations reveal a significant excess. That excess represents unnecessary capacity that MGE now expects its ratepayers to pay for.[57] The actual usage figures are included for both periods to make it unmistakably clear that, even under Staff's analysis, the ratepayers are going to have to pay for quite a lot of capacity that proved to be unnecessary because these winters did not include demand at historic cold day levels. While it is reasonable to plan for a historic cold day, and to bill the ratepayers accordingly, it is neither just nor reasonable to make them pay a penny more than is necessary.

3. Inadequate Documentation

A third badge of imprudence, such that the Commission must require MGE to account for itself by proving that it prudently incurred the costs it seeks to recover from ratepayers, is its

[56] The allowed reserve is a calculated statistic; it is the standard error of y-estimate from Staff's regression analyses. Jenkins Direct, 18. It is allowed to account for variability in usage. Jenkins Direct, 27.

[57] Costing, respectively, $2,884,538 for 2001-2002 and $2,633,512 for 2002-2003, using the excess figures from the chart and the cost per dekatherm used by Staff to calculate the proposed disallowance for each period.

inability to produce documents that purportedly once existed. It is astonishing that an LDC would respond to a data request, like a third grader without her homework, that the documents are lost.[58] In the face of such carelessness, surely MGE's costs merit close scrutiny by the Commission.

MGE's Imprudent Conduct:

Once the initial presumption of prudence is rebutted, the utility must prove that the costs in question were prudently incurred, given what it knew or should have known at the time the decisions were actually made. The standard is reasonable care requiring due diligence.[59]

In addition to the unreasonable conduct described in the previous section, Staff contends that MGE was imprudent in that it did not reduce its available capacity in 2001 when it had the opportunity. MGE changed its pipeline contracts in 2001.[60] It added ** ______________________________ ______________ **[61] Staff contends that the latter decision was imprudent because it was done without first performing a comprehensive analysis of its capacity requirements.[62] Reasonable care and due diligence require that one determine how much capacity is actually needed before entering into a multi-year transportation contract.[63]

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[58] Jenkins Surrebuttal, 13. *See* MGE's responses to DR Nos. 49 and 151, Case No. GR-2002-348 ("The regression analysis for the Reliability Report 2001/2002 is unavailable."), and Rob Hack's Memo to Tim Schwarz, dated May 14, 2002 (Sch. 12-2 to Jenkins' Direct Testimony) (** ______________________________ **).

[59] *In the Matter of Missouri-American Water Co., supra,* 9 Mo.P.S.C.3d at 280-281; *Union Electric, supra,* 27 Mo. P.S.C. (N.S.) at 194.

[60] Jenkins Direct, 29.

[61] Jenkins Direct, 29-30.

[62] Jenkins Direct, 30.

[63] Jenkins Direct, 28-29. ** ______________________________ ** *Id.*

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The Harm to the Ratepayers:

A disallowance is permissible only where the utility's imprudent conduct actually caused harm to the ratepayers.[64]

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[64] *State ex rel. Associated Natural Gas Co. v. PSC, supra,* 954 S.W.2d at 529.

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The above chart shows MGE's excess reserve margin in each service area, projected from 2001-2002 to 2005-2006.[65] By the latter period, Staff calculates a shortfall of **______** dekatherms per day in Joplin, with surpluses in Kansas City and St. Joseph of **________** and **_____**, respectively.[66] The sum of those surpluses is **______**, which is the amount that Staff proposes to disallow for each of the two periods at issue here as an excess and unjustified reserve margin.[67]

Staff has used this composite figure, drawn from its projection for 2005-2006, for two reasons: First, since pipeline contracts are often for a series of years, it is appropriate to use a five-year planning horizon.[68] **____**[69] furthermore, MGE's Reliability Reports show that MGE was planning three and four years in advance.[70] Second, in order to have the right amount of capacity at the end of a multi-year contract, in view of anticipated load-growth, it is acceptable to have excess capacity at the beginning.[71] Therefore, Staff proposes to disallow the amount of the unjustified excess at the end of the multi-year contract for each year of the contract. The proposed monetary disallowance for each period is calculated by multiplying the identified excess reserve margin,

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[65] Jenkins Direct, 28.

[66] *Id.*

[67] Jenkins Direct, 28-29.

[68] Jenkins Direct, 27, 29.

[69] Jenkins Direct, 29.

[70] Jenkins Rebuttal, 24-25.

[71] Jenkins Direct, 29.

________, by the reservation costs applicable to each period.[72] The figures are not identical because the reservation costs were not the same in each of the two periods.[73]

The result of MGE's imprudence, as demonstrated by Staff's evidence, is unjust and unreasonable costs to ratepayers in excess of $2 million annually. While it is fair to charge ratepayers for enough capacity to meet the demand expected on a historic peak cold day, it is unreasonable and unjust to require them to pay more. Where a gas utility has used inadequate forecasting methods, resulting in demonstrably unnecessary capacity costs, those costs should be disallowed. For these reasons, Staff urges the Commission to find in its favor herein.

Conclusion

WHEREFORE, Staff prays that the Commission will find, first, that the initial presumption of prudence is overcome; second, that MGE's conduct was not reasonable given what its management knew or should have known at the time the decisions were made because MGE did not use "due diligence to address all relevant factors," but instead entered into a multi-year transportation contract in reliance upon sloppy and unreasonable forecasts of its transportation requirements; third, that the direct result of MGE's conduct was unnecessary and avoidable charges to ratepayers for excess and unnecessary transportation capacity. Based upon these findings, Staff further prays that the Commission will conclude that MGE's management was imprudent, that the ratepayers were thereby harmed, and that the cost of the unnecessary and excessive transportation capacity should therefore be disallowed; and that the Commission will grant such other and further relief as is just in the circumstances.

[72] Jenkins Direct, 37-39.

[73] Jenkins Direct, 39.

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Respectfully submitted,

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Certificate of Service

I hereby certify that true and correct copies of the foregoing have been served by mail, hand-delivered, facsimile transmission, or electronic mail upon all counsel of record this 22nd day of August, 2006.

/s/ Kevin A. Thompson

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