

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

In the matter of Missouri Gas Energy's )  
Purchased Gas Cost Adjustment (PGA) )  
Factors to be Audited in its 2004- )  
2005 Actual Cost Adjustment. )

Case No. GR-2005-0169

**MISSOURI GAS ENERGY'S RESPONSE TO STAFF RECOMMENDATION**

**Comes now** Southern Union Company, through its Missouri Gas Energy ("MGE") division, and for its response to the Recommendation of the Staff of the Missouri Public Service Commission ("Staff"), respectfully states the following:

1. On December 29, 2006, the Staff filed its Recommendation and Memorandum herein in which it states that it has reviewed MGE's 2004-2005 Actual Cost Adjustment (ACA) filing covering the period of July 1, 2004 through June 30, 2005. By order dated January 3, 2007, the Commission directed MGE to respond to the Staff's recommendation no later than January 29, 2007. This is MGE's filing in compliance with that order.
2. The Memorandum alleges that monetary disallowances should be imposed on MGE for two topics which the Staff identified as: A) Mid-Kansas Partnership/Riverside Pipeline Company ("RPC"); and B) Excess Transportation Capacity. The Staff identified two "Transportation Issues" where it indicated no monetary disallowances. The Staff also included three recommendations it alleges will improve MGE's gas supply planning in categories it listed as A) Peak Day Planning/Reliability Analysis, B) Storage Planning, and C) Hedging. MGE will address each of these in the order in which they were presented in the Memorandum.

## **Transportation Issues**

3. **Cash-Out Provisions.** Staff raises a concern about what appears to be a potential or hypothetical situation of a transportation customer “gaming” the present MGE tariff provisions. Staff indicates that its concern may be addressed by certain tariff changes proposed in the current MGE rate case, GR-2006-0422, regarding imbalances, and indicates it will monitor this situation in the future. MGE’s response is that it is certainly willing to review any specific proposed tariff changes that the Staff believes will address Staff’s concerns and the Staff should not hesitate to contact MGE directly with its proposals as soon as possible.

4. **Taxation on Daily Balances.** Staff indicates a concern regarding the booking of certain tax amounts and requests that MGE provide Staff the entries to the proposed tax related accounts designed to correct the book entries. MGE’s response is that it will provide Staff with the proposed correcting entries that will adjust the tax amounts to the correct book entries.

## **Items Involving Proposed Disallowances**

### **MKP/RPC Disallowance**

5. MGE opposes this proposed disallowance. Without limiting any arguments it may make in the future if this case moves forward, MGE offers the following as its initial response. The proposed disallowance of \$1,965,531 for this ACA period is apparently based on the same rationale as the MKP/RPC disallowance proposed by Staff in Case No. GR-96-450. The Commission rejected that rationale in Case No. GR-96-450 by Report and Order dated March 12, 2002, on the basis that the Staff had not sufficiently proved its allegations. There is no allegation in this memorandum of any evidence in the possession of the Staff that the Commission has not already considered on this subject. The Memorandum implies there were actions related to these contracts by MGE dating back to 1991, which is impossible since that was more than two years before MGE commenced operations. The Staff’s continued pursuit of

this matter when the Commission has already ruled on the merits against the Staff's disallowance is a waste of resources for everyone involved. While a portion of Case No. GR-96-450 is still on appeal relating to the scope of a settlement, the Commission's decision in that case to reject the Staff's proposal because of a failure of proof is not on appeal. Although MGE opposes the proposed MKP/RPC disallowance in this case on all of the same grounds that it previously expressed in Case No. GR-96-450, including the fact that the Commission approved the transfer of the contract for the MKP/RPC pipeline as a part of its approval of the sale of assets that essentially created MGE, this more recent time period (July 2004-June 2005) presents a separate and compelling basis for the Commission to reject the proposed MKP/RPC disallowance in this case. The Staff apparently uses the rates MGE paid to that interstate pipeline, compared to the rates of another interstate pipeline, as the basis for calculating the proposed disallowance. Thus, the essence of the Staff's argument is that the rates of one pipeline are too high compared to the rates of the other pipeline. The rates of *both* pipelines are under the exclusive jurisdiction of the Federal Energy Regulatory Commission ("FERC"). The MKP/RPC rates that represent the starting point of the Staff's calculation first took effect under FERC auspices on May 11, 1998. See, generally, ***Kansas Pipeline Company, et al.***, 83 FERC, para. 61,107 (1998), reh'g denied 87 FERC, para. 61,020 (1999). MGE had no choice to do anything different and therefore has only paid MKP/RPC at the rate levels approved by FERC. The money MGE paid pursuant to these FERC-jurisdictional MKP/RPC rates is therefore not subject to disallowance by a state regulatory commission under the constitutional principles embodied in the filed rate doctrine. See, ***Nantahala Power & Light Co. v. Thornburg***, 476 U.S. 953, 90 L.Ed. 943, 106 S.Ct. 2349 (1986) and ***State ex rel. Associated Natural Gas Company v. Public Service Commission***, 954 S.W.2d 520, 530-531 (Mo.App.W.D. 1997).

6. Staff makes allegations on page 3 of the Memorandum to the effect that MGE could have taken some alleged “opportunities” to lower KPC rates, although Staff also says this was “litigated in Case No. GR-96-450.” Without further clarification by Staff, MGE is unable to ascertain if these alleged “opportunities” are actually new allegations of imprudence or simply a re-allegation of matters the Commission has already considered.

7. As noted in the memorandum, FERC has ordered significant reductions to the rate levels and ordered refunds by MKP/RPC (Enbridge) totaling \$13,572,479, all of which have already been flowed back to MGE’s customers through the operation of the PGA provisions. That there is an inextricable link between the level of the FERC approved rates and the Staff proposed disallowance for each ACA period is demonstrated on page 3 where Staff says those FERC-ordered refunds “would, in effect, reduce the disallowances” it has been proposing since GR-98-167. Staff’s Memorandum notes that the refund has been made, and claims on the bottom of page 3 that “the Staff has used the FERC refund as a direct offset to the original disallowance.” The numbers for the Staff’s proposed disallowances for the cases previous to this one, however, as shown in the “Adjustment” column in the table on page 3, are the *exact same numbers* they have always been. (The amounts shown for the “adjustments” for Case Nos. GR-96-450, GR-98-167, GR-99-304, and GR-2000-425 are exactly the same ones that appear in the Staff’s May 31, 2002 Memorandum.) It therefore appears to MGE that the Staff has made no attempt to show the effect of the “reductions” it says have taken place as a result of the FERC-ordered refunds on the adjustments it shows on page 3. Therefore, MGE is unsure as to how much the Staff believes is still in dispute regarding the seven listed cases since Staff has not shown any specific quantification of the effect of the reductions for each listed case. The Commission should order the Staff to make a filing that shows the reductions the Staff

indicates would be appropriate so all interested parties are at least made aware of the Staff's proposed quantification.

8. The Commission has chosen to bifurcate this subject from other subjects in several recent MGE ACA cases on the basis that there is still an appeal pending by the successors in interest to MKP/RPC. At this time, from the information available to MGE, it appears that the relevant appeal is still pending and is back in the Supreme Court of Missouri for the second time.

### **Excess Transportation Capacity**

9. MGE opposes this proposed Staff disallowance. Without limiting any arguments it may make in the future if this case moves forward, MGE offers the following as its initial response. It is apparently the same general topic that the Staff characterized as "Excess Reserve Margin" in its Memorandum dated December 29, 2005, in Case No. GR-2005-0104. MGE has not had an opportunity to thoroughly study the Staff's workpapers for this case to determine the exact basis for Staff's calculations, but from the discussion in the Memorandum, this proposed disallowance of \$2,357,827 for the period of July 1, 2004 through June 30, 2005, also appears to use the same general approach Staff relied upon in the currently pending consolidated cases of GR-2002-348 and GR-2003-0330, where it was referred to as an "Excess Capacity Disallowance." Those consolidated cases were tried in late August of 2006, and post-hearing briefs and proposed orders were filed with the Commission on October 23, 2006.

10. At the hearing of Case Nos. GR-2002-348 and GR-2003-0330 and in briefs, MGE documented significant flaws in the "home-grown" assumptions and methods underlying Staff's conclusions that gave rise to its proposed disallowance. MGE clearly demonstrated that Staff's

approach quantifying projected total customer usage on an extremely cold day was statistically flawed and unreliable when compared against actually-experienced temperatures, and neither recognized, accepted, nor actually in use anywhere else. MGE demonstrated that its projected usage was in line with a “best practices” in the industry approach, and that Staff’s statistical assumptions created a “garbage-in, garbage out” result that is not worthy of serious consideration. It therefore would probably be most efficient if the Commission ruled on the issue as tried in GR-2002-348 and GR-2003-0330 before forcing the parties to prepare for additional litigation on the same general topic.

11. MGE has contracted for pipeline capacity in a manner designed to meet customer demand given the numerous uncertainties inherent in the process, which include actual weather conditions, peak load forecasts, the timing of capacity availability, benefits of supply diversity, and the possibility of capacity or supply failure, among other factors. Many of those factors require judgment to be exercised. The Memorandum is completely devoid of any discussion of any specific capacity contracting decision the Staff contends that MGE made unreasonably in this ACA period, exactly when that supposedly unreasonable decision was made, or what viable alternatives were then available to that supposedly unreasonable decision. The success of MGE’s performance in regard to capacity contracting is supported by the fact that MGE’s system sales customers have never experienced a capacity-related curtailment, a matter to which the Staff’s proposed disallowance gives little apparent consideration.

## **Items Involving Staff’s Planning Recommendations**

### **Peak Day Planning/Reliability Analysis**

12. Staff briefly indicates on page 5 of the Memorandum that its comments and concerns on this topic are the same as what it presented in Case No. GR-2003-0330 (consolidated with Case No. GR-2002-0348). As MGE indicated above in this response, MGE cannot accept Staff's home-grown, flawed and unreliable approach to design day planning as the standard against which MGE should be measured. MGE is not willing to gamble the safety of its customers on extremely cold days on the results of Staff's algebraic equation with its flawed statistical assumptions. MGE has spent considerable time and effort attempting to demonstrate to the Staff more appropriate and reasonable approaches to design day planning (including face to face discussions) and is certainly willing to continue that effort. MGE has also been taking steps to refine its analysis even further. Since this is merely treated by Staff in the Memorandum as a "planning improvement recommendation," the Commission should recognize that Staff and MGE have differences of opinion on the best practices. MGE documented in the recently-tried case that there is no universally accepted industry standard regarding how to predict customer usage under extreme conditions, but there are certainly better methods out there than what the Staff chose to use.

### **Storage Planning**

13. Staff raises a "concern" on page 6 about MGE's use of storage and mentions that it would expect the plan for storage withdrawals to follow a similar distribution to that of normal heating degree days.

14. MGE's response is that it is opposed to this planning recommendation. Without limiting any arguments it may make in the future if this case moves forward, MGE offers the following as its initial response. This recommendation appears to be a re-hash of the Staff's storage-related theories and arguments presented and tried in Case No. GR-2001-382,

especially as to Staff's expected distribution of storage withdrawals. Unlike Staff's approach in Case No. GR-2001-382, the Staff here does not recommend a specific dollar disallowance regarding this topic. Case No. GR-2001-382 has been fully briefed and submitted and is awaiting decision by the Commission. MGE opposed the Staff's theories and arguments in that case with numerous facts and explanations by expert witnesses and sees no need to repeat here the detailed basis of its opposition, especially since no recommended disallowance has been identified. If these topics become a theoretical foundation for Staff testimony in a contested proceeding, MGE will address them at the appropriate time in the detail necessary and appropriate to their use.

### **Hedging**

15. Unlike its comments on the previous issues, the Staff concludes on page 6 that "MGE did a reasonable job of hedging for this ACA period." The Staff also makes some general recommendations regarding the hedging approach to which MGE will give due consideration, including the evaluation of longer time horizons for placing hedges. MGE's position that it will consider these particular recommendations should not be construed as an indication that it necessarily agrees with them or any premise on which they may be based. It simply indicates that MGE will give them proper consideration. There is no indication in the discussion appearing on pages 6 and 7 that MGE is required to do anything by any particular deadline, and there is no indication of a monetary disallowance associated with any of the recommendations. However, on page 9 in item 4, the Staff states that MGE's hedging information for 2005-2006 and 2006-2007 ACA periods should be submitted no later than May 1, 2007, or if MGE does not have such an analysis for those periods, then it should provide a more detailed analysis for the 2007-2008 ACA period no later than May 1, 2007.



16. MGE's response is that it is an unexpected pleasure to see the Staff indicate in writing in an ACA proceeding that MGE did a "reasonable job" on something. However, in addition to stating its inability to understand precisely what the Staff means by "hedging information," MGE disputes the necessity for it to submit the requested information by the artificial deadline of May 1, 2007. MGE has worked with both the Staff and the Commission to make them fully aware of MGE's intentions regarding hedging and MGE intends to continue to do that. Most recently, MGE personnel briefed the Commissioners on June 15, 2006, as to its hedging plans and status for the winter of 2006-2007, as have other natural gas providers. Moreover, MGE participated in Case No. GW-2006-0110, a working docket opened by the Commission at the request of the Office of the Public Counsel to look into the status of Missouri's natural gas distribution companies' compliance with regard to that topic. Given that MGE has already demonstrated a willingness to provide information regarding its hedging status and plans on a timely basis in such settings, and the fact that Case No. GW-2006-0110 has been closed with no formal actions having been taken by the Commission in response to recommendations made regarding the current hedging rule, MGE sees no compelling reason why it should be ordered to make the suggested filing on May 1, 2007.

**Recommendations Listed by Staff in the Memorandum**

17. Under this heading on page 7, the Staff says that it recommends that this ACA case "remain open" pending an order from the Commission in several other ACA cases. If that means that the Staff believes there should not be a pre-hearing conference set in this case to develop a procedural schedule at this time, then MGE concurs. As this response indicates, there are only two issues on which there is a recommendation for a monetary disallowance. Given the pending appeal, the MKP/RPC issue remains in essentially the same status as when

it was first bifurcated in a previous ACA case. Until there is a final appellate resolution on the issues raised by Enbridge's appeal, MGE agrees with the Staff in that it sees no point in scheduling further hearings on that topic.

18. Under item 1 on page 7, a table with recommended Staff "ending balances" for three general topics is shown. Items in the first listed category deal with the KPC issue, which is being held in abeyance pending appeal. Therefore, it would be inappropriate for the Commission to assume results in pending cases that have not yet been tried and order MGE to accept Staff's untested balances. The item in the second and third listed categories, appear to match MGE's ending balance, and thus present no controversy.

19. The other issue associated with a dollar disallowance in this case appears to be based on essentially the same Staff approach to predicting customer usage under extreme conditions that was examined by the Commission in the hearing of Case No. GR-2003-0330 (consolidated with Case No. GR-2002-0348). Until there is a ruling on the merits of that, there is no compelling reason for the Commission to take any action in this proceeding at this time.

20. On page 8 of the Memorandum, **item 2**, Staff recommends "**consolidation**" of the issue it calls "Excess Transportation Capacity" in this case with what Staff called "Excess Reserve Margin" in Case No. GR-2005-0104, and then hold the issue in abeyance pending a decision on what it calls "the same issue" in Case No. GR-2003-0330. Staff then boldly states that if the Commission "accepts" Staff's adjustment in Case No. GR-2003-0330, MGE should be penalized millions of dollars without hearing by applying the result of that to other cases. MGE strongly objects to this approach as a denial of due process. First, consolidation of issues is something that must be carefully considered in each case since there can be subtle differences in facts or approaches from case to case that can produce dramatic differences, thus

overcoming an apparent similarity on the surface. MGE has agreed to numerous consolidations of ACA cases in the past and will continue to do so where it is the appropriate thing to do. In this situation, however, it is premature for consideration to be given to the consolidation of GR-2005-0104 with GR-2005-0169 on the apparently general topic of “excess reserve margin” or “excess transportation capacity.” One reason is that MGE has not had time to fully evaluate the intricacy of what the Staff has done in GR-2005-0169, so MGE is not prepared at this time to concede that facts and the Staff’s theories in those two cases are similar enough to warrant consolidation. Staff’s varying approaches in each case means that MGE has to employ outside experts to critically analyze and evaluate exactly what Staff has done, and that can take a considerable amount of time given its complexity. Additionally, the Staff itself indicates that it wants this case “held in abeyance” pending an order in Case No. GR-2003-0330. This case can certainly be “held in abeyance” as a stand-alone case while MGE investigates whether it is appropriate to consolidate it with another case that is also being “held in abeyance.” Finally, Staff’s suggestion in **item 2 on page 8** that if the results of Case No. GR-2003-0330 are favorable to Staff, that apparently should be used in a manner similar to the legal principles of “collateral estoppel” or “issue preclusion” without even so much as MGE being afforded a hearing in the other cases is entirely inappropriate and would constitute a denial of due process.

21. In item 4 on page 8, Staff repeats some of the same general recommendations regarding Hedging that it listed under on page 6. At this location, however, it also includes a recommendation that MGE submit certain information to the Staff by May 1, 2007. MGE previously responded in opposition to this recommendation in paragraph 16 above.

**WHEREFORE**, MGE respectfully offers the foregoing response to the Staff's Recommendation and Memorandum as ordered, and suggests that the Commission simply enter an order that this case will remain open pending further order from the Commission.

Respectfully submitted,

**/s/ Gary W. Duffy**

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**Certificate of Service**

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