

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

In the Matter of Southern Union)	
Company d/b/a Missouri Gas Energy's)	Case No. GE-2011-0282
Application for Waiver/Variance)	

**STAFF'S SUGGESTIONS REGARDING
THE OFFICE OF THE PUBLIC COUNSEL'S MOTION
FOR SUMMARY DETERMINATION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Suggestions Regarding the Office of the Public Counsel's (OPC) *Motion for Summary Determination* suggests the Commission consider the following:

1. On June 29, 2011 Missouri Gas Energy (MGE) filed in this case asking the Commission to permit MGE to stop complying with one of the principal conditions contained in the Stipulation and Agreement in Case No. GM-2003-0238.¹
2. In GM-2003-0238, Southern Union, parent company of MGE, applied to the Commission for permission to purchase Panhandle Eastern Pipeline Company (PEPL). PEPL is an interstate natural gas transportation pipeline.
3. PEPL serves the Kansas City area and MGE purchases natural gas transportation from PEPL to serve its Kansas City area customers.
4. After the transaction was completed MGE and PEPL became affiliated companies.

¹ The case was captioned *In the Matter of the Application of Southern Union Company d/b/a Missouri Gas Energy for Authority to Acquire Directly, or Indirectly, Up to and Including One Hundred Percent (100%) of the Equity Interests of Panhandle Eastern Pipeline Company including its Subsidiaries, and to Take All Other Actions Reasonably Necessary to Effectuate Said Transaction.*

5. The condition from which MGE seeks a waiver is the requirement MGE apply the discounted rate with PEPL for transportation and storage services to the PGA rate it charges its customers. (called the “discount preservation mechanism”).

6. At the time of the transaction, MGE had contracts with PEPL under which MGE paid discounted rates for transportation and storage services. To gain support of the parties, Southern Union agreed to a condition that, as long as MGE and PEPL were affiliates, MGE’s customers would pay no more for PEPL services than that discounted rate. In other words, MGE would not charge customers any higher rate than it was paying PEPL at the time Southern Union acquired PEPL. (the discount preservation mechanism in Appendix 2 to the Stipulation in GM-2003-0238.)

7. This specific provision was one part of an overall Stipulation offered to the Commission for approval. Among other things, this provision reduced concerns with affiliate transactions issues that might result from MGE and PEPL affiliation.

8. Southern Union signed on behalf of its shareholders that:

MGE agrees, for purposes of calculating its purchased gas adjustment (“PGA”) and actual cost adjustment (“ACA”) rates, to maintain at least the same percentage of discount it is currently receiving on Panhandle and Southern Star Central for purposes of transportation and storage costs passed through the PGA clause to MGE’s ratepayers as provided in Highly Confidential Appendix 2 hereto.. . This paragraph 6.A. shall apply for only so long as MGE is an affiliate of SUPC [Southern Union Panhandle Corporation] and Successor Entities.

Stipulation, GM-2003-0238, Mar. 24, 2003, pp. 12-13.

9. The condition in the Stipulation and Agreement is unambiguous. Even if it were ambiguous, Appendix 2 to the Stipulation made clear the PEPL rates MGE would charge its customers so long as it was affiliated with Southern Union Panhandle Corporation.

10. Even if both the Stipulation and Agreement and Appendix A were ambiguous, or there were any question as to MGE's commitment to this condition, the testimony of Robert (Rob) J. Hack's testimony in response to Commissioner Gaw's questions made Southern Union's commitment clear.² OPC has cited that discussion in its *Motion* at pages 2-4.

11. Not only did Southern Union understand exactly what the agreement was, Southern Union is a sophisticated experienced company that freely negotiated the Stipulation and understood the risk that markets change over time and that it potentially may not recover a portion of its actual gas cost from its MGE customers.

12. Southern Union/MGE made a commitment to its shareholders, to the parties to the case, to this Commission and to its customers. They agreed to maintain "discount preservation mechanism" as long as MGE and PEPL were affiliates.

13. Southern Union/MGE could have offered a different sunset provision, but they did not do so. They are bound by the commitments they made freely.

14. MGE could have negotiated a different or additional termination date or condition. It did not do so. All the evidence supports the conclusion MGE understood and intended to be bound by the "discount preservation mechanism." The discount preservation mechanism should remain in place until MGE and PEPL are no longer affiliates.

15. Staff suggests that the Stipulation and Agreement in Case No. GM-2003-0238, along with Appendix 2, Mr. Hack's testimony in that case, demonstrate that there is no genuine dispute of material fact. The Commission should grant OPC's

² See Transcript of proceedings Case No. GM-2003-0238, March 26, 2003, Vol. 4, pp. 83-88 as quoted in OPC's *Motion* pp. 2-4.

request for relief as a matter of law and find that the public interest demands that OPC's *Motion* be granted and MGE's *Motion* be dismissed summarily.

WHEREFORE, Staff recommends the Commission grant summary determination and enter its order (1) finding that Southern Union and MGE are bound by the provisions of the Stipulation and Agreement in Case No. GM-2003-0238; (2) finding that *MGE's Application* is summarily dismissed.

Respectfully submitted,

/s/ Lera L. Shemwell

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this 25th day of August 2011, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

/s/ Lera L. Shemwell