

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

In the Matter of Missouri Gas Energy Inc.'s)
Filing of Revised Tariffs to Increase its Annual) **Case No. GR-2014-0007**
Revenues for Natural Gas)

**STAFF'S REPLY TO PANHANDLE'S REPLY TO STAFF AND
MOTION FOR PROTECTIVE ORDER**

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and respectfully submits the following reply to Panhandle's *Reply to Staff Response and Motion for Protective Order* filed by Panhandle Eastern Pipeline on March 14, 2014:

1. Panhandle's reply states that Staff did not challenge or contradict Panhandle's assertion that it could find no record of Southern Union Company's external auditor work papers ever having been provided to Staff in any Commission proceeding.

2. This is incorrect. Staff did, in fact, challenge and contradict Panhandle's assertion. Staff's *Response*, filed March 7, included Appendix B—a data request and company response filed in MGE's previous rate case, Case No. GR-2009-0355. In that DR, Staff requested:

Please arrange for a review of the 2007 and 2008 external auditors workpapers related to MGE ***and of any entity that charges cost, either directly or indirectly to MGE.*** (Emphasis added).

MGE/Southern Union provided the following response:

This will be set up between the PWC¹ auditors and the Staff auditors.

¹ PricewaterhouseCoopers, LLP.

3. In Case No. GR-2009-0355, the “entity that charges costs... to MGE” was MGE’s parent company, Southern Union (now Panhandle). In that case, Southern Union did not object to the data request, and, according to its response to the data request, arranged for Staff’s review of the work papers. Staff is simply seeking the same review in this case.

4. Next, Panhandle’s response includes a motion for a protective order pursuant to Missouri Rule 56.01(c)(1), asking that “discovery not be had” or, in the alternative, restricting the terms of the discovery to include only MGE work papers during the relevant 2012-2013 time period.

5. Missouri Rule 56.01(c)(1) provides that “upon motion... and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions.”

6. For example, where a party’s financial information is relevant, but where the party is engaged in a highly competitive business such that disclosure to competitors could cause economic damage, the appropriate result is to order the discovery to be had, but to restrict the dissemination of the information outside the pending litigation.² It is not appropriate to completely bar access to the relevant material.³

7. Such a rule is particularly applicable here, where Panhandle cannot show any real annoyance, oppression, undue burden or expense. The fact that

² *In re the Marriage of Magnus*, 227 S.W.3d 510, 512-513 (Mo. App. W.D. 2007).

³ *Id.*

Southern Union's business operations go beyond Missouri regulated LDC activities is not grounds to avoid the discovery—indeed, Southern Union did not object on these or any grounds when Staff sought review of these same work papers in GR-2009-0355. Moreover, Staff has repeatedly explained that Staff routinely ignores information about non-regulated activities during such review; and Staff routinely executes non-disclosure agreements requiring Staff to keep confidential any information gained during its review of external audit work papers. The fact that Southern Union had other business activities does not change the essential relevant fact that MGE had no independent corporate identity separate from Southern Union during the test year in this rate case, GR-2014-0007.⁴

8. It should be noted that all Panhandle needs to do to comply with Staff's subpoena is give permission to its external auditors to allow Staff's review.

9. Staff need not reiterate why Panhandle's arguments about the test year are inapplicable to this matter.⁵ Nor does Staff need to explain again why Panhandle's blanket assertion of an undefined privilege cannot shield it from discovery of relevant documents.⁶

10. The stand-alone MGE work papers that Panhandle has provided in this case are not sufficient to allow Staff to evaluate whether Southern Union's allocation of corporate costs⁷ to MGE during the test year was reasonable in the context of Southern Union's operations, which is relevant because MGE has no corporate identity

⁴ *State ex rel. Missouri Office of the Public Counsel v. Public Service Commission*, 293 S.W.3d 63, 67-68 (Mo. App. S.D. 2009).

⁵ GR-2014-0007, EFIS No. 75, *Staff's Response to Panhandle's Objection to and Motion to Quash Subpoena*, p. 4-5.

⁶ *Id.* p. 8-10.

⁷ GR-2014-0007, Staff Report—Revenue Requirement Cost of Service, p. 96-107; *Rebuttal Testimony of Keith Majors*, p. 1-8.

separate from Southern Union, and because the test year is the starting point of developing rates in this case. Staff's review of Southern Union's work papers during the test year is also relevant to Staff's analysis of MGE's Kansas property taxes⁸ and the costs incurred related to the February 2013 explosion on the Plaza in Kansas City⁹, and the treatment of those costs are issues in this case. Therefore, Staff's request for Southern Union's external audit work papers during the test year is reasonably calculated to lead to the discovery of admissible evidence, and therefore Staff's subpoena must be granted.

WHEREFORE, Staff respectfully submits this reply for the Commission's consideration.

Respectfully Submitted,

**STAFF OF THE MISSOURI
PUBLIC SERVICE COMMISSION**

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⁸ GR-2014-0007, *Staff Report—Revenue Requirement Cost of Service*, p. 116.

⁹ *Id.* at p. 85-86.

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served electronically to all counsel of record this 24th day of March, 2014.

/s/ John D. Borgmeyer