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August 5, 2002

Missouri Public Service Commission
Attn: Secretary of the Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102-0360

FILED⁴
AUG 05 2002
Missouri Public
Service Commission

Re: Case No. GR-99-304

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and eight (8) copies of the Reply To Staff Response filed on behalf of Kansas Pipeline Company.

Copies of the filing have on this date been mailed or hand-delivered to counsel for all parties of record. Thank you.

Sincerely,


Brent Stewart

CBS/bt

Enclosure

cc: Counsel for all parties of record
Chris Kaitson

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's)
Purchased Gas Adjustment Tariff)
Revisions to be Reviewed in its 1998-1999)
Actual Cost Adjustment.)

Case No. GR-99-304

FILED⁴
AUG 05 2002

Missouri Public
Service Commission

REPLY TO "STAFF'S RESPONSE"

COMES NOW Intervenor Kansas Pipeline Company ("Intervenor") pursuant to 4 CSR 240-2.080(15), and for its Reply To Staff's Response filed on July 26, 2002, respectfully states as follows:

1. While not made in the form of a motion, "Staff's Response" requests that the Commission consolidate Case Nos. GR-98-167, GR-99-304, GR-2000-425, and GR-2001-382, that the consolidated cases proceed to hearing with testimony filed in November 2002, and that the Commission "take official notice of the record in GR-96-450 in the consolidated cases". Intervenor opposes Staff's requests.

Consolidation/Scheduling

2. The parties have been directed by the Commission in Case No. GR-2001-382 to file no later than August 15, 2002 a memorandum indicating how the filed rate doctrine applies to Staff's proposed MKP/RPC adjustment. Intervenor intends to do so. It would be premature for the Commission to consider the consolidation of these four cases until after it has had the opportunity to consider what might be filed by the parties relating to the filed rate doctrine.

3. Disposition of all or some of these cases pursuant to the filed rate doctrine notwithstanding, proceeding to hearing on the Staff's MKP/RPC proposed adjustments in this and the other pending ACA cases is wholly inappropriate while the threshold, *fundamental*

issue of whether the Stipulation and Agreement at issue in Case No. GR-96-450 bars such adjustments is (at long last) now under judicial review.¹ Staff correctly notes that “[i]f the courts construe the S&A to preclude further adjustments based on the RPC/MKP contracts, then no further proceedings are permitted in Cases GR-98-167, GR-99-304, GR-2000-425, and GR-2001-382 with respect to the RPC/MKP contracts” and that “[i]n such a situation, proceedings in those cases on the issue will be wasted efforts”. Intervenor agrees and here reiterates by reference its earlier response on this issue filed on June 27, 2002.

4. Consolidating these cases and proceeding to hearing at this time is both impractical and will constitute an avoidable and significant waste of resources for all involved. Aside from the very likely possibility that the Stipulation and Agreement issue necessarily will again be at issue in the pending ACA cases since the issue has not yet been resolved, the calculations of Staff’s proposed MKP/RPC adjustments, and Staff’s support therefor, in each of the cases Staff proposes to consolidate will have to be examined by expert witnesses, most if not all of whom will have to come from out of state and will have to be secured and confirmed for scheduling purposes. Additional discovery necessarily will be required, including depositions, especially if, as Staff seems to suggest, it is not certain who Staff’s witnesses will be. Staff already has conducted its audit in each of the cases, yet Intervenor has not had the opportunity to conduct discovery of Staff, given the progress of GR-96-450. All of this certainly makes impractical if not impossible Staff’s proposed “schedule” wherein it suggests a November testimony filing

¹ Contrary to Staff’s implication, Intervenor consistently has sought to have the Stipulation and Agreement issue finally resolved since the very inception of Case No. GR-96-450 so any “delay” which now might be caused by judicial review of the Stipulation and Agreement issue in Case No. GR-96-450 hardly can be attributed to Intervenor.

and April hearing--a proposal for which Staff admits it had not previously consulted with the other parties. The added costs of litigation and resource commitment of the parties and the Commission is not insignificant and could easily and should be avoided by awaiting a final, non-appealable judicial order in GR-96-450.

5. With regard specifically to Case No. GR-2001-382, Intervenor has taken no position on "whether the Commission should proceed to hear and consider the other issues² raised in Staff's recommendation, while awaiting a final decision on the appeal of the Report and Order that the Commission issued in Case No. GR-96-450" and does not hereby take a position on that question.

Official Notice

6. The Commission should reject Staff's request that the Commission take official notice of the record in Case No. GR-96-450 for purposes of hearing the subsequent ACA cases. First, it is not at all clear that Section 536.070 RSMo 2000 legally permits the Commission to take official notice of the entire *evidentiary record* in one case for use in a different, subsequent case, especially when such record is not limited to simply "technical or scientific facts".

7. Second, Staff's request is contrary to past Commission practice. Because of obvious due process concerns, the Commission has in the past when an objection has been raised refused to take official notice of record evidence from previous cases in subsequent cases where the witness was not present and subject to cross examination. *See, e.g., In the Matter of*

² Assuming that the "other issues" mean issues other than what has been denominated as the MKP/RPC Pipeline Adjustment, which encompasses several issues itself depending on what is meant by "issues".

the Investigation into the Effective Availability for Resale of Southwestern Bell Telephone Company's Local Plus Service by Interexchange Companies and Facilities-Based Competitive Local Exchange Companies, Case No. TO-2000-667 . To do otherwise denies other parties due process.

8. Third, it is unclear as to whether Staff is requesting that the entire record in Case No. GR-96-450, or only Staff-selected and heretofore unknown portions of that record, are to be subject to official notice. If Staff desires to have the Commission take official notice of any part of the record in GR-96-450, Staff first should be required to set out specifically exactly what portions of the record it is seeking to use, provide a justification for same, and the other parties then should be permitted the opportunity to respond accordingly.

9. Based on the evidentiary record, the Commission in GR-96-450 rejected Staff's proposed \$3,490,082.81 MKP/RPC prudence adjustment and in its *Order Denying Application For Rehearing* again found "that the evidence for imprudence that Staff presented was not persuasive". Staff states in its July 26, 2002 Response that "[t]he courts may reverse the decision in Case No. GR-96-450 for failure to make adequate findings and conclusions". While this is true, the Court obviously may also reverse on other grounds.

The Staff goes on to state that "[i]n such a situation, Case No. GR-96-450 stands in the posture of being decided de novo". Staff then states that "[i]f the courts construe the S&A to permit an adjustment, the Commission can consider the proposed GR-96-450 adjustments with the subsequent consolidated cases".

Staff's position is wholly unsupportable as a matter of law. Of all the issues raised in GR-96-450, only certain limited issues regarding the *Stipulation and Agreement* are now

subject to judicial review and possible further action by the Commission on remand. The Commission's findings and decision regarding other issues, such as but not limited to the sufficiency of Staff's case, were *not* appealed and are therefore final and conclusive. Section 386.550 RSMo 2000. When the Commission denied rehearing in GR-96-450, the evidentiary record in that case was closed, except as may be ordered by the court with respect to the Stipulation and Agreement only. Under no circumstances can the Commission in the future lawfully attempt to impose Staff's proposed prudence disallowance in Case No. GR-96-450. Moreover, as recognized by the Commission in its Order Denying Rehearing in GR-96-450, the evidentiary record in GR-96-450 standing alone cannot legally support Staff's proposed MKP/PRC adjustments in the subsequent ACA cases.

10. Intervenor frankly is not yet in a position to comment on other statements made by Staff in its Response, such as for example witness availability or unavailability. Intervenor's silence at this point as to any issue not herein specifically addressed should not be construed to mean that Intervenor necessarily concur with the Staff.

WHEREFORE, for all the above reasons, Intervenor Kansas Pipeline Company request that (i) the Commission hold this case open without a procedural schedule pending a final, non-appealable judicial resolution of GR-96-450, including any potential judicial review after a Commission decision on remand thereof; (ii) reject or at minimum defer Staff's request for consolidation; and (iii) reject Staff's request to take official notice.

Respectfully submitted,



Charles Brent Stewart, MoBar #34885

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ATTORNEY FOR INTERVENOR

KANSAS PIPELINE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served by placing same in first-class mail, postage prepaid, or by hand-delivery, to counsel for all parties of record on this 5th day of August, 2002.

