Exhibit No.:
Issues: Prudence standard,
1996 S & A,
Prudence of 1995
Mid-Kansas/Riverside Contracts
Witness: David M. Sommerer
Sponsoring Party: MoPSC Staff
Type of Exhibit: Rebuttal Testimony
Case No.: GR-96-450

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

DAVID M. SOMMERER

CASE NO. GR-96-450

Jefferson City, Missouri
December 1998

REBUTTAL TESTIMONY

OF

DAVID M. SOMMERER

MISSOURI GAS ENERGY,

a division of

SOUTHERN UNION COMPANY

CASE NO. GR-96-450

Q. Please state your name and business address.

A. David Sommerer, P. O. Box 360, Jefferson City, Mo. 65102

Q. By whom are you employed and in what capacity?

A. I am the Manager of the Procurement Analysis Department with the Missouri Public Service Commission.

Q. How long have you been employed with the Commission?

A. Approximately 14 years.

Q. Please describe your educational background and experience.

A. In May 1983, I received a Bachelor of Science degree in Business Administration with a major in Accounting from Southern Illinois University at Carbondale, Illinois. In May 1984, I received a Master of Accountancy degree from the same university. Also, in May 1984, I sat for and passed the Uniform Certified Public Accountants examination. Upon graduation, I accepted employment with the Commission.

Q. What has been the nature of your duties at the Commission?

A. From 1984 to 1990, I assisted with audits and examinations of the books and records of public utilities operating within the State of Missouri. In 1988, the responsibility for conducting the Actual Cost Adjustment (ACA) audits of natural gas utilities was given to the Accounting Department. I assumed responsibility for planning and implementing these audits and trained available Staff on the requirements and conduct of the audits. I participated in most of the ACA audits from early 1988 to early 1990. On November 1, 1990, I transferred to the Commission's Energy Department. Until November of 1993, my duties consisted of reviews of various tariff proposals by electric and gas utilities, Purchased Gas Adjustment (PGA) reviews, and tariff reviews as part of a rate case. In November of 1993, I assumed my present duties of managing a newly created department called the Procurement Analysis Department. This Department was created to more fully address the emerging changes in the gas industry especially as they impacted utilities' recovery of gas costs. My duties have included managing the five member staff, reviewing ACA audits and recommendations, participating in the gas integrated resource planning project, serving on the gas project team, and participating in matters relating to natural gas service in the State of Missouri.

Q. Have you previously testified before this Commission?

A. Yes. A list of cases in which I have filed testimony is included as **Schedule 1** of my rebuttal testimony.

Q. What is the purpose of your testimony in this case?

A. The purpose of my testimony is to rebut the testimony of Michael T. Langston filed in Missouri Gas Energy ("MGE" or "Company") in Case No. GR-96-450.

Case No. GR-96-450 is for the Actual Cost Adjustment ("ACA") for the 12 months ended June 30, 1997.

Q. Please provide an overview of your testimony.

A. I will first provide an overall summary of the case. Then I will address the background of the May 2, 1996 Stipulation and Agreement in MGE Case No. GR-94-228. This discussion will rebut pages 9 and 10 of the direct testimony of MGE witness Michael Langston. Next my testimony will provide a discussion of the Missouri Public Service Commission's prudence standard. This discussion will lead directly into how the prudence standard has been applied by the Staff in this case. Staff witness Mike Wallis has presented direct testimony on the calculation of the adjustment and is providing rebuttal testimony regarding the May 2, 1996 Stipulation and Agreement. Staff witness Tom Shaw will provide testimony on a historical analysis of the contracts and the 1996 Stipulation and Agreement.

Summary and Overview

Q. Please summarize the Staff position.

A. The Staff's position can be summarized as follows:

- the May 2, 1996 Stipulation and Agreement in MGE Case No. GR-94-228 does not preclude a prudence disallowance in this case;
- the reservation charges paid by MGE under its contracts with Riverside/MKP are excessive as compared to the traditional pipeline in the area;
- the excessive charges paid by MGE were imprudently incurred.

Q. Could you provide the Commission with an overall assessment of the contracts at issue in this case.

A. Yes. To provide some background, I have attached the Commission's Report and Order in Western Resources Inc. (WRI, MGE's predecessor) Case No. GR-93-140. See **Schedule 2**. This case addressed a 1990 contract (with an Oct. 1991 amendment) between WRI and Mid-Kansas/Riverside. As noted in the Order, the initial contract contained a price cap tied to a Williams Natural Gas Company (WNG) price. This price protection was subsequently removed in the 1991 amendment. The Commission agreed with the Staff that the amended contract was imprudent, and that excessive costs of $ 1,319,902.76 should be disallowed. The new amendment allowed "cost-of-service" based rates which far exceeded the WNG referenced price. The Commission issued its decision on July 14, 1995. MGE inherited this contract, through its purchase of most of WRI's gas distribution properties in Missouri, as of February 1, 1994.

For the ACA period following Case No. GR-93-140, the Staff once again (in June of 1995) calculated the ACA period detriment associated with the imprudent contract. In February of 1995, MGE executed contracts with Mid-Kansas/Riverside replacing the imprudent 1991 agreement. The Staff in this case, Case No. GR-96-450, is proposing a disallowance of some of the costs under one of these contracts, the February 1995 Mid-Kansas Sales Agreement.

The 1995 contracts embody the same provisions which led the Commission to find the 1991 contract imprudent. They were negotiated as a result of contentious litigation in Federal Court filed by MGE in June of 1994 against WRI and the Bishop

Group. The resulting contracts (the 1995 contracts) only somewhat mitigated the detrimental aspects of the 1991 contract. Staff Witness Mike Wallis has made offsets to his adjustment to account for the temporary benefits achieved by MGE as part of its renegotiation of the 1991 contract. The Commission found that the heart of the problem with the 1991 contract was the excessive transportation charges when compared to the WNG alternative. These transportation charges were simply continued in the 1995 contracts. The 1995 contracts mainly contain the imprudent costs from the 1991 amended contract. The 1995 renegotiated contracts cannot make imprudent costs prudent by merely transferring them to a new contract. The outer wrapping may appear to be an improvement, but the unwanted contents remain.

Q. What was MGE's opinion of the 1991 agreement?

A. In June of 1994, in a pleading in Federal Court (See **Schedule 3**) MGE expressed grave concern about the excessive costs associated with this contract. Unfortunately, when MGE settled the litigation in February of 1995, it only provided for a temporary and partial mitigation of the high transportation rates found in the 1991 agreement.

May 2, 1996 Stipulation and Agreement

Q. Is a prudence adjustment precluded by the Stipulation and Agreement executed May 2, 1996 (1996 S & A)? **See Schedule 4.**

A. No.

Q. What is the basis for your conclusion?

A. In this discussion, since I am not an attorney, I do not intend to render a legal opinion on what the Stipulation authorizes. My intention is to provide background information that should be useful in understanding the meaning of the Stipulation and Agreement.

Q. Did you participate in reviewing and commenting on various drafts of the 1996 S & A?

A. Yes.

Q. Did you participate in settlement discussions in MGE Case No. GR-94-228?

A. Yes.

Q. What role did you have in the settlement discussions and the 1996 S & A?

A. My participation involved reviewing the various drafts from a management review perspective.

Q. Was it the Staff's intent to permanently restrict prudence reviews for the "Missouri Agreements"?

A. No. Throughout the course of negotiations in Case No. GR-94-228 in late 1995 and early 1996 the Staff struggled with the concept of settling any Actual Cost Adjustment (ACA) period beyond the period at issue in Case No. GR-94-228. Staff was reluctant to provide a "safe harbor" against prudence reviews for an extended period of time. The reason for this reluctance was the uncertainty about the level of detriment in future years and an unwillingness to give a pre-approval of such a long-term contract. The Staff in a prior ACA case (Case No. GR-93-140) had been precluded from reviewing

a long-term contract relating to the Tight Sands litigation and was concerned about the consequences of similar long-term pre-approvals.

With respect to the 1991 contract, after a lengthy negotiation process the Staff was willing to compromise on a limited safe harbor period, based on the settlement payment received. This safe harbor period ended after June 30, 1996.

Q. Please describe the phrase "Missouri Agreements".

A. The term refers to a listing of four (4) agreements referenced in Paragraph 4 of the 1996 S & A. To simplify the discussion it is helpful to understand that the first two (2) agreements listed refer to 1990 contracts that were executed by Western Resources, and amended in 1991. Costs under these contracts eventually became the subject a Missouri Public Service Commission disallowance in Case No. GR-93-140.

The last two (2) agreements cited refer to contracts that were executed by MGE in February of 1995. The costs under the Sales Agreement are the subject of the Staff's disallowance in this case. The Transportation Agreement did not become effective until 1998 and simply replaces the bundled sales and transport service with "transport only" service after the Federal Energy Regulatory Commission asserted jurisdiction.

Q. Could you explain the changes in the language of the 1996 S &A regarding prudence reviews in the days preceding the filing of the 1996 S & A?

A. Yes. To facilitate the discussion, I have included drafts and comments relating to the final stages of drafting the 1996 S & A.

Q. **Schedule 5** is a copy of a draft Stipulation dated April 26, 1996. The Stipulation has a cover sheet from Tino Monaldo, an attorney for Riverside/Mid-Kansas. It states on this cover sheet that Riverside and Staff had agreed to the attached

Stipulation. Page 5 of **Schedule 5**, ¶ 5 states, in part, as follows: As a result of this Stipulation and Agreement, the parties agree that neither the execution of the Missouri Agreements, the rates charged pursuant thereto, nor the decisions associated with the execution of the Missouri Agreements shall be subject to any further ACA prudence review until the audit period commencing July 1, 1996, and ending June 30, 1997. The intent of the Parties by this Stipulation and Agreement is that the rates charged pursuant to the Missouri Agreements shall not be disallowed for recovery under Docket Nos. GR-93-140; GR-94-101; GR-94-228; GR-95-82 and GR-96-78. These contracts will be subject to the compliance and operational review of the MPSC for all periods, and MGE's ACA balance may be subject to adjustment as a result of such review...

The draft Stipulation went on (page 4, ¶ 5) to indicate that a $4,000,000 settlement payment would be paid. The conclusion that can be drawn from the April 26, 1996 draft is that Riverside agreed that it was paying only for a temporary respite from prudence reviews, specifically, until the ACA period ending June 30, 1996.

Q. Please describe **Schedule 6.**

A. **Schedule 6** is a copy of MGE's comments of the April 26, 1996 draft. The editorial handwritten comments on this copy are my own made for internal discussion in 1996.

On page 2 of **Schedule 6**, MGE states:

For clarification, MGE would like to see this sentence replaced with the following As a result of this Stipulation and Agreement, the Parties agree that neither the execution of the Missouri Agreements or the decisions associated with the execution of the Missouri Agreements shall be the subject of any further ACA prudence review. In addition, the

Parties agree that the rates charged pursuant thereto shall not be the subject of any further ACA prudence review until the case associated with the audit period commencing July 1, 1996 and ending June 30, 1997. The Missouri Agreements will be subject to the compliance and operational review (as described herein) of the Staff for all periods on and after July 1, 1994, and MGE's ACA balance may be adjusted as a result of such review.

Q. What is your comment on this section?

A. First, MGE sought merely to clarify the prudence language. Clarify means "to make or become easier to understand". So the original language specifying that prudence reviews of the contract would commence for the period ending June 30, 1997, was merely being clarified or made "easier to understand".

Q. Why did the Staff agree to change the original language in this section.

A. The second sentence in paragraph 5 stated that the transportation rates and gas costs charged pursuant to the Missouri Agreements should not be the subject of any further ACA prudence review **until** the case associated with the audit period commencing July 1, 1996, and ending June 30, 1997. (Emphasis added) In my experience, I know of no special or limited ACA prudence review. A prudence review is a prudence review, and it is either precluded completely, as was the case for the ACA periods 92/93, 93/94, 94/95, 95/96, or it is an unrestricted review of the Company's purchasing practices.

However, the Staff did recognize an MGE concern that there needed to be an unequivocal assurance that there would be no prudence review on these contracts during the agreed upon limited time period. The Staff had earlier added language that would allow an operational and compliance review of the contracts and any resulting

adjustments. This review pertained to periods covered by the operational and compliance review back to 1994. MGE apparently was unclear about whether or not these reviews would somehow be broadened to allow a prudence review at any time. The Staff attempted to alleviate these concerns and agreed to additional clarifications. Thus, a significant amount of time was spent clarifying the scope of any operational and compliance review.

Q. Are there other indications that support your contention of a limited period where prudence reviews would be precluded versus the life of contract opinion held by Mr. Langston?

A. There are several areas that make it clear that the bar against prudence reviews is of limited duration. On page 5 of **Schedule 6**, the Company clearly recognized that the ACA process itself might be of limited duration. MGE took steps to recognize the changing regulatory environment by proposing to credit the settlement payment to its ratepayers through whatever functional equivalent of an ACA factor may exist at that time. Assuming the company believed that the ACA process might be replaced in the near future by some incentive process or a rate case approach, why would it only have sought safety from a specific type of regulatory mechanism, an ACA prudence review? Why did it not suggest rate case prudence reviews or prudence reviews in any forum would be precluded? The answer is that the prudence review prohibition was of such a limited time duration, that it wasn't even an issue.

On page 3 of **Schedule 6**, the Company attempted to clarify how prudence reviews would be affected by the Commission approved incentive plan (EGCIM). MGE recognized that there could be a prudence review of the Missouri Agreements if MGE's

cost rose to a level where a prudence review is triggered under its EGCIM. MGE's comments in **Schedule 6** clearly indicated that they *expected* a prudence review if certain incentive plan thresholds were met.

The S & A was further modified to make it clear that the incentive plan did not impact the transportation charges associated with the Missouri Agreements (See the footnote 1 in the May 2, S&A, attached as **Schedule 4** to my testimony). In other words, transportation charges were not to be considered in the incentive plan but would remain subject to a traditional prudence review. MGE emphasized this in response to the Staff's complaint regarding MGE's incentive plan in Case No. GC-98-335 and the Staff's proposal to terminate the EGCIM in MGE Case No. GO-96-243.

MGE itself had some initial confusion about this in an early 1997 response in Case No. GR-96-450. **Schedule 7** is an MGE response to Riverside's request to intervene in this case. MGE's response suggests that prudence reviews could only take place if certain thresholds were reached. Later the Company reversed this position by confirming the Staff's position that transportation costs are not subject to the incentive plan or the prudence thresholds described therein. (See MGE's September 1, 1998 reply to Riverside's response in this case)

Another instance that points to the limited (ACA periods ending June 30, 1996) safe harbor period, is the fact that the cases listed end with MGE Case No. GR-96-78. It would have been a simple matter to refer to "all subsequent ACA cases for the life of the contract". This wasn't done, however, because the parties knew the exact docket numbers and ACA periods that were settled.

MGE attempted to limit Staff's ability to review future ACA periods on page 3 of its comments by stating:

Although the prudence of entering the Missouri Agreements is finally settled by this Stipulation, additional questions may arise regarding the administration of the contracts by MGE in Staff's compliance and operational review.

This suggested addition was quickly modified to indicate that is was only the MKP/WR Sales Agreement and Riverside/WR Transportation I Agreement that were finally settled. These "1990" agreements were superceded by the 1995 agreements that are the subject of this case. This is clearly an instance where MGE sought to expand the prudence review limitation well beyond what Riverside and Staff had intended.

Q. Please describe **Schedule 8**.

A. **Schedule 8** is a subsequent draft of the 1996 S & A incorporating some of MGE's comments. It is included to provide the Commission with a more complete picture of how the language changes were incorporated. When **Schedule 8** is reviewed in conjunction with **Schedules 5, and 6**, a progression of the final week of negotiations can be analyzed.

Prudence Standard

Q. Please describe the Commission's prudence standard.

A. To test the reasonableness of a company's costs, the Commission uses a standard of prudence. This standard was discussed in the Commission's Report and Orders in the cases concerning the Callaway and Wolf creek nuclear power plants. In the Callaway case the Commission determined "that the appropriate standard was enunciated by the New York Public Service Commission in Re: Consolidated Edison

Company of New York, Inc., 45 P.U.R., 4th, 1982. In that case at page 331, the New York Commission rejected an earlier 'rational basis' standard in favor of a reasonable care standard:

> More recently, and in cases more directly on point, we have articulated the standard against which a utility's conduct in circumstances such as these should be measured as follows: '...the 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. Case 27123, Re: Consolidated Edison Company of New York, Inc., Opinion 79-1, January 16, 1979.'"

The Missouri PSC went on to state: "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 assessed the situation?'" The Commission did not adopt a standard of perfection and would not rely on hindsight.

In Kansas Power and Light Company Case No. GR-89-48 the Commission indicated that the Company "has the burden of showing its proposed rates are just and reasonable." The Company "has the burden of showing the reasonableness of costs associated with its rates for gas." Further it stated, "The standard is that when some participant in a proceeding creates a serious doubt as to the prudence of an expenditure, then the company has the burden of dispelling those doubts and proving that the questioned expenditure was prudent."

Finally, in Western Resources Case No. GR-93-140 the Commission decided to clarify the parameters of gas cost prudence reviews. It stated:

"The Commission is of the opinion that a prudence review of this type must focus primarily on the cause(s) of the allegedly excessive gas costs. Put another way, the proponent of a gas cost adjustment must raise a serious doubt with the Commission as to the prudence of the decision (or failure to make a decision) that caused what the proponent views as excessive gas costs. The Commission is of the opinion that evidence relating to the decision-making process is relevant to the extent that the existence of a prudent decision-making process may preclude the adjustment. In addition, evidence about the particular controversial expenditures is needed for the Commission to determine the amount of the adjustment. Specifically, the Commission needs evidence of the actual expenditure(s) incurred during the ACA period resulting from the alleged imprudent decision. In addition, it is helpful to the Commission to have evidence as to the amount that the expenditures would have been if the local distribution company had acted in a prudent manner. The critical matter of proof is the prudence or imprudence of the decision from which expenses result."

Application of the Prudence Standard

Q. What is the cause of the excessive gas cost in this case?

A. The cause of the excessive gas cost is primarily attributable to high fixed reservation charges on the Kansas Pipeline Company system as compared to William Gas Pipeline-Central (WNG). The rates are compared on **Schedule 9**. **Schedule 9** graphically displays the tremendous difference in reservation charges on the three (3) pipelines serving Kansas City in the 1996-97 ACA period. For simplification purposes, I used the rates prevailing for the longest time periods during the 1996-97 ACA period. Mike Wallis's adjustment has also accounted for the variable transportation charges and the well-head price differences on the pipelines. The high fixed reservation charges are the result of contract provisions in the 1995 MGE contracts. Mr. Wallis has made a direct comparison of an available pipeline supplier with the actual excessive rates paid. Mr. Shaw has created serious doubt as to the prudence of incurring the higher costs. Mr. Wallis's calculation gives the Commission the actual expenditures incurred during the

ACA period resulting from the alleged imprudent decision. It also provides evidence as to the amount of the expenditures had the company acted in a prudent manner.

Q. Do you have any other concerns with MGE's contract with MKP.

A. Yes. The Commission should be made aware that the gas commodity offset that had a mitigating effect on the Staff's adjustment in this case will probably not be available after 1998. This is because the less expensive gas index is no longer available under the current Riverside/MGE transportation contract.

Further, a 1997 Stipulation and Agreement signed by Kansas Pipeline Company, Western Resources/Kansas Gas Service Company, and the KCC will result in rates that eventually reflect WNG rates in Kansas for the Kansas side of the Kansas Pipeline agreements. This could provide the ironic result that Western Resources/Kansas Gas Service Company's customers in Kansas City, Kansas, will be paying rates which will be far lower than the rates Kansas City, Missouri citizens will be paying for similar services under MGE's contract.

Q. Please summarize your testimony.

A. The new 1995 contracts essentially carryover price terms from the 1991 contract which the Commission found imprudent. The 1996 S & A was not intended to preclude prudence reviews for the life of the contracts. The Staff has followed the Commissions' historical prudence standard in this case.

Q. Does this conclude your rebuttal testimony?

A. Yes, it does.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Cost Adjustment Tariff Revisions to be Reviewed in its 1996-1997 Annual Reconciliation Adjustment Account.	))))	Case No. GR-96-450

AFFIDAVIT OF DAVID M. SOMMERER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

David M. Sommerer, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 15 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

David M. Sommerer

Subscribed and sworn to before me this 16th day of December, 1998

Notary Public

My Commission Expires: _____

TONI M. WILLMENO NOTARY SEAL NOTARY PUBLIC STATE OF MISSOURI

TONI WILLMENO
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF CALLAWAY
MY COMMISSION EXPIRES JUNE 24 2000

CASES WHERE TESTIMONY WAS FILED

DAVID M. SOMMERER

COMPANY	CASE NO.
Missouri-American Water Company	WR-85-16
Great River Gas Company	GR-85-136
Grand River Mutual Telephone	TR-85-242
Associated Natural Gas Company	GR-86-86
Empire District Electric Company	WR-86-151
Grand River Mutual Telephone Company	TR-87-25
Great River Gas Company	GM-87-65
KPL Gas Service Company	GR-89-48
KPL Gas Service Company	GR-90-16
KPL Gas Service Company	GR-90-50
Associated Natural Gas Company	GR-90-152
United Cities Gas Company	GR-90-233
United Cities Gas Company	GR-91-249
Laclede Gas Company	GR-92-165
United Cities Gas Company	GR-93-47
Western Resources Inc.	GR-93-240
Union Electric Company	GR-93-106
Missouri Public Service	GA-95-216
Missouri Gas Energy	GO-94-318
Missouri Gas Energy	GO-97-409
United Cities Gas Company	GO-97-410
Missouri Gas Energy	GC-98-335
Laclede Gas Company	GO-98-484
Laclede Gas Company	GR-98-374
Laclede Gas Company	GC-99-121

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of tariffs filed by Western Resources, Inc., d/b/a Gas Service, a Western Resources Company, to reflect rate changes to be reviewed in the company's 1992-1993 Actual Cost Adjustment.	)))))	Case No. GR-93-140

REPORT AND ORDER

Issue Date: July 14, 1995

Effective Date: July 25, 1995

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of tariffs filed by Western Resources, Inc., d/b/a Gas Service, a Western Resources Company, to reflect rate changes to be reviewed in the company's 1992-1993 Actual Cost Adjustment.	)))))	Case No. GR-93-140

APPEARANCES

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and

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and

Robert J. Wise, Wise and Ford, 1005 Grand Avenue, Suite 700, Kansas City, Missouri 64106, for Mid-Kansas Partnership and Riverside Pipeline Company, L.P.

Stuart W. Conrad, Finnegan, Conrad & Peterson, 1209 Penntower Center, 3100 Broadway, Kansas City, Missouri 64111, for Midwest Gas Users Association.

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and

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Lewis R. Mills, Jr., Deputy Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Jeffrey A. Keevil, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE LAW JUDGE: **Thomas H. Luckenbill, Deputy.**

REPORT AND ORDER

On August 20, 1993, Western Resources, Inc. (WRI or Company) filed its 1992-1993 Actual Cost Adjustment (ACA) filing in this docket. WRI was a natural gas local distribution company in Missouri during the period covered by this ACA filing. The period of gas purchases reviewed in this ACA proceeding is the period from July 1, 1992, to June 30, 1993. The Purchased Gas Adjustment (PGA) provisions in a utility's tariff provide a mechanism by which the utility can pass through estimated gas cost changes to customers. The ACA filing is made to ensure that gas costs passed on to customers reflect the utility's actual expenditures for gas rather than the PGA estimated costs. In addition, the ACA filing provides interested parties an opportunity to review the prudence of decisions underlying gas costs passed on to ratepayers by gas utilities through use of the PGA provisions. If there is a dispute regarding the pass through of certain gas costs by operation of the PGA tariff sheets, then the parties interested in the dispute bring it before the Commission in the context of the ACA filing.

On November 29, 1993, Midwest Gas Users Association (MGUA) filed an application to intervene. MGUA was granted intervention by an order dated December 14, 1993.

On January 14, 1994, WRI filed a motion requesting that the Commission order that the prudence of WRI's decision to enter into the Wyoming Tight Sands (WTS) contracts or to agreement to the specific terms of those contracts not be heard as issues in this case. On March 8, 1994, the Commission issued an order granting WRI's motion to limit issues. Also, on March 8, 1994, the Commission granted intervention to Riverside Pipeline Company, L.P. (Riverside), Mid-Kansas Partnership (Mid-Kansas), and Missouri Gas Energy, a Southern Union Company (MGE).

On April 29, 1994, the Procurement Analysis Department of the Staff of the Missouri Public Service Commission filed a memorandum concerning the instant ACA filing. WRI, MGE, Riverside and Mid-Kansas filed responses to Staff's memorandum.

The Commission established a procedural schedule for this case by its order dated June 22, 1994. On September 1, 1994, WRI filed the testimony of Messrs. Brown and Tangeman. On November 17, 1994, Staff filed rebuttal testimony of Messrs. Shaw and Wallis; MGUA filed the testimony of Mr. Kies; and Riverside/Mid-Kansas filed the testimony of Messrs. Putnam, Dunn and Stalon.

On November 29, 1994, the Commission convened a prehearing conference in which all parties participated.

On December 16, 1994, a Hearing Memorandum was filed which identified five contested issues to be decided by the Commission. The five contested issues identified in the Hearing Memorandum are: (1) Wyoming Tight Sands allocation adjustment; (2) deferred Wyoming Tight Sands commodity discount; (3) procedures manual to document and explain WRI's process for completing Attachment 7 of the minimum filing requirements; (4) removal of the price cap from the Mid-Kansas contract; and (5) allocation of take-or-pay charges to transportation customers.

On February 2, 1995, the evidentiary hearing commenced. The evidentiary hearing adjourned on the evening of February 3, 1995. The parties filed briefs and the matter is now before the Commission for decision.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

1. Wyoming Tight Sands Allocation Adjustment

The issue presented is whether WRI has properly allocated Wyoming Tight Sands (WTS) contract gas costs to Missouri during the ACA period involved in this case.

The ACA filing made by Western Resources, Inc. (WRI) allocates 57.98 percent of the WTS contract gas costs to Missouri during the applicable period. This percentage was developed by taking Missouri gas consumption and dividing that amount by total interstate system gas during the period.

WRI states that it allocated all gas purchased for its interstate system during the ACA period according to the jurisdictional receipts during that same period. WRI states that all of its interstate system purchased gas costs have historically been allocated in this manner.

The Staff contends that an adjustment in the amount of $745,986.73 should be made to decrease Missouri's allocated share of WRI's natural gas cost to reflect a WTS allocation factor of 50.29 percent. The basis of Staff's proposed 50.29 percent allocation factor is a study done by George Donkin, an expert hired by several plaintiffs in the Wyoming Tight Sands litigation. Mr. Donkin's study was based upon actual takes of gas by WRI from Williams Natural Gas Company (WNG) for the period November 1980 through December 1988. Staff argues that the WTS gas supply contracts were the direct result of the WTS settlement in which Missouri customers were determined to have a 50.29 percent share of the associated benefits and, therefore, Missouri customers should not be responsible for more than 50.29 percent of the WTS costs. Specifically, Staff states that WRI's Wichita customers have received the benefits of the WTS settlement without incurring their share of the reservation charges. The Staff's testimony implies that WRI should manage its interstate and intrastate systems in a manner such that Missouri never bears more than 50.29 percent of the WTS gas costs.

The Commission finds that Staff's argument does not prevail because Staff's argument rests upon at least two incorrect assumptions. These assumptions are: (1) that the 50.29 percent factor developed by Mr. Donkin in the antitrust litigation is not only an estimate of gas usage during the period that the alleged illegal activity occurred but that the factor is a ceiling on WTS gas costs allocable to Missouri; and (2) that there is no legitimate basis to distinguish between the interstate and intrastate systems of WRI.

The Commission finds that there is no direct evidence to support the conclusion that Mr. Donkin's estimate was to be used as a ceiling for purposes of allocating WTS gas costs. Mr. Donkin's estimate was based on takes of WRI from WNG during the period of alleged overpricing by the defendants in the antitrust litigation (i.e., November, 1980 to December, 1988). The Commission finds that the purpose of Mr. Donkin's study was to assure that damages recovered as a result of the antitrust suit were apportioned and returned to customers of WRI in a manner consistent with the incurrence of the damages.

An important question is whether it is appropriate for WRI to treat its interstate system as distinct from its Kansas intrastate system. The intrastate system runs from the Kansas Hugoton natural gas field to central Kansas. Although the Kansas intrastate system was hooked into the WNG system, takes from the WNG system were minimal. In fact, the takes of the Kansas intrastate system from WNG were so small that Mr. Donkin did not use them in connection with his study in the antitrust litigation.

The evidence in this proceeding indicates that the Kansas intrastate system pipeline and the customers on it received no damages from the WTS settlement. All of the WTS gas goes into WRI's interstate system. The Commission concludes that it is appropriate for WRI to view its intrastate and interstate systems as distinct from one another. Therefore, the Commission finds that the allocation of WTS reservation charges to Missouri in a manner consistent with

Missouri consumption as a percentage of total sales of interstate gas during the ACA period is not a practice which justifies an adjustment.

2. Deferred Wyoming Tight Sands Commodity Discount

The Staff's position is that WRI should be ordered to reduce natural gas costs by $1,332,855 to reflect the present value effect of deferral of WTS commodity discounts from the first two years of the contract to years 11 through 20 of the contract.

By making numerous assumptions, including but not limited to the future price of natural gas and appropriate discount rate, Staff states that it performed a present value analysis that showed the present value effect of the Farmland agreement to be a negative $1,332,855. The specific calculation of this number does not appear in the instant record. Although it appears that Staff assumed no change in natural gas prices because the Company would not provide a specific estimated gas cost change projection in response to a data request, a thorough discussion of the assumptions underlying the calculation of the proposed adjustment is lacking.

WRI's position is that the actual cost of WTS gas received by WRI during the ACA period under review should be reflected in rates with no adjustment based on the exchange agreement between WRI and Farmland Industries. WRI further states that the exchange agreement was prudent and no alternative would have assured more benefits to customers.

WRI suggests that by entering into the Farmland agreement it avoided take-or-pay liabilities from other suppliers that it would otherwise have had to pay if it had taken the full amount of WTS gas allowed by the settlement. Specifically, WRI states that it avoided approximately $4,575,000 in take-or-pay costs, $2,477,000 of which is attributable to the state of Missouri. This assertion by WRI is not strongly controverted by the evidence presented herein.

The savings to Missouri of approximately $2,477,000 exceeds the $1,332,855 proposed adjustment. Thus, it is not necessary for the Commission to reach the questions of what assumptions were made to develop Staff's proposed adjustment, whether those assumptions are reasonable, and whether there is a logical match between the ACA period and the proposed adjustment.

The Commission finds that the record presented in this case does not justify Staff's proposed adjustment for the deferral of Wyoming Tight Sands commodity discounts.

3. Procedures Manual

Staff maintains that WRI should be ordered by the Commission to develop and file a procedures manual which documents and explains WRI's process for completing Attachment 7 of the ACA minimum filing requirements.

WRI maintains that the issue of whether to file the procedures manual has become moot because Gas Service is no longer responsible for an ACA filing in this state.

Staff concedes that WRI is partially correct in that Missouri Gas Energy (MGE) is responsible for filing the ACA data for the period July 1, 1993, through June 30, 1994, which has been docketed by this Commission as Case No. GR-94-228. Staff points out, however, that WRI was the Missouri regulated local distribution company (LDC) from the period July 1, 1993 through January 31, 1994, and should possess the documentation and expertise necessary for supporting all procurement decisions prior to sale of the Missouri properties. Staff states that MGE has included Attachment 7 of the ACA minimum filing requirements in GR-94-228, and MGE's Attachment 7 includes data similar to that provided by WRI in the instant case. Staff does not agree that this issue has become moot because Staff will have to analyze and evaluate Attachment 7 of MGE's ACA minimum filing requirements, which includes varying allocations to Missouri. Staff

indicates that it has had difficulty in obtaining complete and sufficient documentation from WRI regarding the Company's nominations process and an explanation of all factors which ultimately affect jurisdictional gas costs and that Staff believes a procedures manual is necessary to evaluate the information provided by WRI and included as Attachment 7 in Case No. GR-94-228.

The Commission has determined that it will not require WRI to file a procedures manual in this docket. After reviewing Staff's testimony, it appears to the Commission that the Staff's primary concern is the justification of material filed in GR-94-228. The Commission notes that WRI is not a party to GR-94-228 at this time. However, WRI states in the Hearing Memorandum that it "proposes to address Staff's information needs through oral and written data requests and by providing Staff a narrative of actual practices and procedures followed rather than retroactively creating a manual." WRI's testimony and Hearing Memorandum statements are vague in that a reader cannot tell whether they are referring to GR-93-140 or GR-94-228. This is a distinction of some importance because GR-93-140 and GR-94-228 deal with distinct time periods. It would seem logical that WRI's statement in the Hearing Memorandum refers to GR-94-228 because after the issuance of this Report And Order, no further ACA factor adjustments can be made to address potential detrimental rate impacts suffered by Missouri ratepayers as a result of imprudent gas purchasing decisions made by WRI during the period July 1, 1992, to June 30, 1993.

The parties have agreed that Missouri Gas Energy has completed the minimum filing requirements in GR-94-228. Discovery of materials or information underlying the minimum filing requirements in GR-94-228 should be conducted in GR-94-228.

4. Removal of Price Cap from Mid-Kansas Contract

Staff's position is that removal of the price cap provision contained in WRI's original contract with Mid-Kansas Partnership was inappropriate and the Commission should order WRI to reduce natural gas costs by $1,319,902.76 to reflect the cost to Missouri ratepayers of removing this price cap provision.

WRI's position is that consideration of the circumstances surrounding the amendments demonstrates that WRI acted prudently in amending the 1988 contracts.

Along with removal of the price cap provision, the agreement was amended such that Mid-Kansas agreed to reimburse WRI for regulatory disallowances. Company witness Brown testified that this provided a strong incentive to keep Mid-Kansas gas prices reasonable and competitive.

Staff witness Wallis testified that the regulatory disallowance provision does not provide a strong incentive to keep Mid-Kansas gas prices reasonable and competitive but rather merely shifts the responsibility for any regulatory disallowances to Mid-Kansas.

Staff bases its position partially on an eight-page internal correspondence, dated February 22, 1991, from Jack Roberts, KPL Gas Service's former Director of Gas Supply, to Bill Johnson, President of KPL Gas Service. The Kansas Power and Light Company (KPL) adopted the name Western Resources, Inc. (WRI) on May 8, 1992. Mr. Roberts had retired from KPL Gas Service at the time the document was written. Mr. Roberts was serving as a consultant at the time of its writing. (Ex. 3HC, p. 7. ll. 3-5). Mr. Roberts states: "They have removed the WNG cap! They have added the obligation for KPL to pay gathering and transport costs with no limit so he could arrange the most expensive gas that's out there and KPL must pay. This is ludicrous. This would be imprudent on KPL to agree." (Ex. 33HC, Sch. 1-3). In reference to the proposed removal of the price cap, Mr. Roberts further states: "This is KPL's price protection lid that

KPC is so eager to eliminate which would likely expose KPL to substantial costs well beyond other more *economic* alternatives." (Ex. 33HC, Sch. 1-5). KPC is an acronym for Kansas Pipeline Company.

Staff witness Wallis included a calculation of the proposed price cap adjustment as Schedule 2 attached to his rebuttal testimony. The price cap adjustment is calculated by multiplying the monthly Riverside volumes by the monthly Williams Natural Gas Company F-2 rates less the 15-cent price cap. The total of these amounts is subtracted from the actual Riverside costs to derive the $1,319,903 price cap adjustment.

Mid-Kansas Partnership and Riverside Pipeline Company, L.P. (Mid-Kansas/Riverside) state that WRI acted prudently in amending the 1988 contracts. Mid-Kansas/Riverside further state that the agreement, as amended, is fully consistent with stated policy objectives of the Missouri Public Service Commission regarding competition in the natural gas industry, provided natural gas at prices below comparable suppliers for comparable goods and services during the ACA period, and provides both short and long term price and reliability benefits to citizens of the state of Missouri.

WRI argues that removal of the price cap provision was needed to continue the agreement with Mid-Kansas and that continuation of the agreement was important to bring "pipe on pipe" competition to the Kansas City, Missouri market. However, the Staff counters that the original agreement brought Mid-Kansas as a competitor to Williams Natural Gas Company. The amended agreement did not bring a new competitor to the market.

WRI offered testimony suggesting the importance of introducing a competitor to Williams Natural Gas Company for the transportation of natural gas to the Kansas City, Missouri area. However, Mid-Kansas and Riverside had already been brought into the market as competitors as a result of the original agreement between KPL, Mid-Kansas and Riverside. There is no compelling evidence that

removal of the price cap provision was necessary to retain Mid-Kansas and Riverside as competitors to Williams Natural Gas Company for the transportation of gas to the Kansas City, Missouri area.

The Commission finds that WRI's (nominal successor to KPL) decision to enter into an agreement allowing removal of the price cap provision in the Mid-Kansas/Riverside contract was imprudent because WRI has produced no compelling evidence to counter the conclusion that removal of the price cap was imprudent. In addition, Mr. Jack Roberts, a consultant and former gas supply manager, retained by KPL, advised KPL that removal of the price cap would be imprudent on KPL's part. Finally, the evidence does not demonstrate that removal of the price cap provision was necessary to retain Mid-Kansas and Riverside as competitors to Williams Natural Gas Company for the transportation of gas to the Kansas City, Missouri area.

The Commission finds that the calculation of the amount of the adjustment performed by Staff witness Wallis, and shown as Schedule 2 attached to his rebuttal testimony, is reasonable. Thus, the Commission will order WRI to reduce its natural gas costs by $1,319,902.76 to reflect the cost of its imprudent decision to permit removal of the price cap provision from its contract with Mid-Kansas/Riverside.

5. Allocation of Take-or-Pay Charges to Transportation Customers

MGUA contends that the allocation of take-or-pay costs to transportation customers who were formerly "C" and "I" (commercial and industrial) customers on the KPL/Gas Service/WNG system is inappropriate, unjust and unreasonable in that such customers had no responsibility for causing these costs to be incurred. Moreover, MGUA suggests that take-or-pay costs are not gas costs and should not be charged under the purchased gas adjustment clause.

MGUA argues that Williams Natural Gas Company had no obligation of service in any significant sense to the historically low priority interruptible and curtailable customers. MGUA contends that the motivation for WNG to enter into penalty clauses in supply contracts is not found in any service obligation to these customers; rather, it is found in the significant and unique full requirements service obligation which WNG maintained for the customers that were served under WNG's firm service "F" rate schedule.

MGUA argues that due to WNG's unique tariff structure and Federal Energy Regulatory Commission settlement agreements that "there is no factual basis to assert that the former C and I customers that were and are now transporters in any way caused or were included in allocations of take-or-pay costs to KPL."

WRI's position is that take-or-pay charges should be recovered from all customers through a surcharge on all throughput. WRI witness Brown testified that WRI supports Staff's position that take-or-pay costs are properly recovered from all customers, including transportation customers. Mr. Brown further testified that the take-or-pay costs resulted from elimination of the pipelines' merchant function, that transportation customers received significant benefits of that transportation and those customers should bear a share of the costs.

Staff's position is that WRI's PGA tariff should provide for the recovery of take-or-pay charges. Furthermore, WRI's PGA should provide for the collection of take-or-pay charges from its transportation customers. Therefore, no adjustment is appropriate for this issue.

The Commission is of the opinion that the provision of natural gas to former C and I customers of KPL was a cause of take-or-pay liabilities to WNG and, indirectly, to KPL. The Commission is further of the opinion that the manner by which WNG allocated take-or-pay liabilities does not affect what entities contributed to the original causation of those liabilities.

The Commission agrees with Staff's reasoning on this issue. MGUA's members were former sales customers, although interruptible sales customers, and they are now transportation customers. WNG used the same gas supply contracts to serve both its firm and interruptible loads since it contracted to its supply on a system-wide basis. As previously stated by the Commission, "Transportation customers share, with other customers, responsibility for the purchase deficiencies which triggered TOP liabilities." ***RE: Missouri Public Service***, 30 Mo. P.S.C. (N.S.) 39, 43 (1989).

The Commission finds that since members of MGUA were former sales customers, it makes no difference what pipeline served the LDC; the pipeline had to contract with a producer/supplier to acquire the gas, and it was these contracts, for which the members of MGUA were at least partially responsible, that led to incurrence of take-or-pay liabilities. Therefore, the Commission will not order an adjustment in connection with the allocation of take-or-pay charges issue.

The Commission did not receive Exhibit 18 into the record at the hearing. The Commission will receive Exhibit 18 into the record. In order to ensure clarity of the record, Exhibit 19, pages 1 through 3 and the first nine lines of text on page 4 are hereby received as evidence. The material from page 4, line 10, through the end of page 9 of the document marked as Exhibit 19 has been preserved as an offer of proof.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission has jurisdiction over the rates charged by WRI pursuant to the provisions of Section 393.130, R.S.Mo. 1994. The Commission is obligated to ensure that the rates charged customers are just and reasonable and

a company shall charge only those rates which are found to be just and reasonable by the Commission.

The Commission has approved tariffs for WRI which allow WRI to alter the rates for the cost of gas outside the context of a general rate case. These PGA/ACA tariffs establish a process whereby WRI may periodically file estimated changes in its cost of gas from suppliers of natural gas. The ACA filing is made to ensure that gas costs passed on to customers reflect the utility's actual expenditures for gas rather than the PGA estimated costs. In addition, the ACA filing provides interested parties an opportunity to review the prudence of decisions underlying gas costs passed on to ratepayers by gas utilities through use of the PGA provisions.

It is well settled that the utility (WRI in this instance) has the burden of showing that the gas costs passed on to ratepayers through operation of the PGA tariff are just and reasonable. WRI has the burden of showing the reasonableness of gas costs associated with its rates for natural gas, including rates resulting from application of the WRI's PGA tariff.

To test the reasonableness of WRI's gas costs, the Commission uses a standard of prudence. This standard has been discussed in previous Commission reports and orders in connection with nuclear power plant costs as well as gas costs. ***RE: Union Electric Company***, 27 Mo. P.S.C. (N.S.) 183, 192 (1988); ***RE: Kansas City Power & Light Company***, 28 Mo. P.S.C. (N.S.) 228, 280 (1986). The standard is that when some participant in a proceeding creates a serious doubt as to the prudence of an expenditure, then the company has the burden of dispelling those doubts and proving that the questioned expenditure was prudent.

The Commission will take this opportunity to elaborate upon the prudence standard as applied to gas purchasing practices. The incurrence of expenditures or accrued liabilities on the part of local distribution companies in exchange for the physical delivery of natural gas results from action or

inaction on the part of individuals in the employ of the local distribution company at some point in time. It appears to the Commission that it needs to clarify the parameters of gas cost prudence reviews. The Commission is of the opinion that a prudence review of this type must focus primarily on the cause(s) of the allegedly excessive gas costs. Put another way, the proponent of a gas cost adjustment must raise a serious doubt with the Commission as to the prudence of the decision (or failure to make a decision) that caused what the proponent views as excessive gas costs. The Commission is of the opinion that evidence relating to the decision-making process is relevant to the extent that the existence of a prudent decision-making process may preclude the adjustment. In addition, evidence about the particular controversial expenditures is needed for the Commission to determine the amount of the adjustment. Specifically, the Commission needs evidence of the actual expenditure(s) incurred during the ACA period resulting from the alleged imprudent decision. In addition, it is helpful to the Commission to have evidence as to the amount that the expenditures would have been if the local distribution company had acted in a prudent manner. The critical matter of proof is the prudence or imprudence of the decision from which expenses result.

It appears to the Commission that the Staff's theory underlying the deferred WTS discount issue is that an adjustment should be made in an amount equal to the negative net present value of the decision based on numerous assumptions. The Commission observes that the negative net present value approach appears inconsistent with the concept of an Actual Cost Adjustment process. This ACA period is July 1, 1992, to June 30, 1993. To prove an adjustment, the Staff must create a serious doubt as to the prudence of expenditures incurred during the ACA period. In the area of gas purchasing agreements, expenditures may be incurred for significant periods of time beyond the time of the decision. The amount of a proposed adjustment must be based on

excessive expenditures incurred during the particular ACA period involved. The incurrence of these excessive expenditures may, and probably will, occur in a period after the period of time during which the alleged imprudent decision or decisions giving rise to such excessive expenditures were made. Staff's approach to the deferred WTS discounts appears inconsistent with the ACA procedure in that the amount of Staff's adjustment is calculated over the 20-year life of the contract while the ACA period is a one-year period. Although Staff has raised a serious doubt as to the prudence of the WTS commodity discounts deferral, the Commission concludes that the record in this case does not justify Staff's proposed adjustment.

The Commission concludes that Staff has raised a serious doubt concerning the cost associated with the removal of the price cap on the WRI/Mid-Kansas contract. The Commission determines that WRI has the burden to prove the reasonableness of its decision to allow removal of the price cap provision of the Mid-Kansas/Riverside contract. The Commission concludes that WRI failed to prove the reasonableness of its decision to allow removal of the price cap and resulting costs of the Mid-Kansas/Riverside contract. Furthermore, the Commission finds that WRI's decision to allow removal of the price cap was imprudent as set out in the findings of fact.

IT IS THEREFORE ORDERED:

1. That Exhibit 18 be, and is hereby received for the record of this proceeding.

2. That pages 1 through 3 and the first nine lines of text on page 4 of Exhibit 19 be, and are hereby received for the record of this proceeding.

3. That the material from page 4, line 10, through the end of page 9 of Exhibit 19 is hereby preserved as an offer of proof.

4. That Western Resources, Inc., shall reduce its natural gas costs by $1,319,902.76 to reflect the cost of its imprudent decision to permit removal of the price cap provision in connection with its agreement with Mid-Kansas Partnership and Riverside Pipeline Company, L.P.

5. That those motions and objections not specifically ruled on in this Report And Order and hereby denied or overruled.

6. That this Report And Order shall become effective on the 25th day of July, 1995.

BY THE COMMISSION

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Kincheloe and Crumpton, CC., concur.

Dated at Jefferson City, Missouri, on this 14th day of July, 1995.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

SOUTHERN UNION COMPANY 502 Lavaca Street Austin, Texas 78701, Plaintiff, v. THE BISHOP GROUP, LTD., BISHOP PIPELINE COMPANY, KANSAS NATURAL PARTNERSHIP, KANSAS PIPELINE PARTNERSHIP, KANSOK PARTNERSHIP, RIVERSIDE PIPELINE PARTNERSHIP, RIVERSIDE PIPELINE COMPANY, L.P., KANSAS PIPELINE OPERATING COMPANY, and MID-KANSAS PARTNERSHIP 8325 Lenexa Drive, Suite 400 Lenexa, Kansas 66214, Defendants.	§ § § § § § § § § § § § § § § § § § §	Civ. Action No. _____

COMPLAINT

Southern Union Company ("Southern Union"), for its Complaint, states as follows:

Parties

1. Plaintiff Southern Union is a corporation incorporated under the laws of the State of Delaware, with its principal place of business in Austin, Texas. Therefore, Southern Union is a citizen of the State of Texas.

2. Defendant The Bishop Group, Ltd. ("Bishop") is a corporation incorporated under the laws of the State of Kansas, with its principal place of business in Kansas. Therefore, Bishop is a citizen of the State of Kansas.

3. Defendant Bishop Pipeline Company ("BPC") is a corporation incorporated under the laws of the State of Kansas, with its principal place of business in Kansas. Therefore, BPC is a citizen of the State of Kansas.

4. Defendant Kansas Natural Partnership ("KNP") is a partnership organized and existing under the laws of the State of Kansas. KNP's principal place of business is located in the State of Kansas. Therefore, KNP is a citizen of the State of Kansas.

5. Kansas Pipeline Partnership ("KPP") is a partnership organized and existing under the laws of the State of Kansas. KPP's principal place of business is located in the State of Kansas. Therefore, KPP is a citizen of the State of Kansas.

6. Defendant KansOk Partnership ("KOP") is a partnership organized and existing under the laws of the State of Kansas. KOP's principal place of business is located in the State of Kansas. Therefore, KOP is a citizen of the State of Kansas.

7. Defendant Riverside Pipeline Partnership ("RPP") is a partnership organized and existing under the laws of the State of Kansas. RPP's principal place of business is located in the State of Kansas. Therefore, RPP is a citizen of the State of Kansas.

8. Defendant Riverside Pipeline Company, L.P. ("RPCLP") is a partnership organized and existing under the laws of the State of Kansas. RPCLP's principal place of business is located in the State of Kansas. Therefore, RPCLP is a citizen of the State of Kansas.

9. Defendant Kansas Pipeline Operating Company ("KPOC") is a corporation incorporated under the laws of the State of Kansas, with its principal place of business in Kansas. Therefore, Bishop is a citizen of the State of Kansas.

10. Defendant Mid-Kansas Partnership ("Mid-Kansas") is a partnership organized and existing under the laws of the State of Kansas. Mid-Kansas' principal place of business is located in the State of Kansas. Therefore, Mid-Kansas is a citizen of the State of Kansas.

Jurisdiction and Venue

11. This Court has jurisdiction in this matter under 28 U.S.C. § 1332 (a)(1) and 2201 because there is complete diversity of citizenship and the amount in controversy, exclusive of interest and costs, exceeds $50,000. This district is the proper venue for this matter because a substantial part of the property that is the subject of this action is situated within this Court's judicial district.

12. Among other remedies, plaintiff brings this action to enforce its rights under a letter agreement between Southern Union and Bishop dated May 24, 1993, referred to and further discussed in paragraph 30 hereof, and that agreement, dated January 15, 1990, as amended, currently between Southern Union and Mid-Kansas, referred to and further discussed in paragraph 60 hereof. The plaintiff seeks the enforcement and specific performance of these agreements, as well as a declaration by this Court pursuant to the Declaratory Judgment Act, 28 U.S.C. Section 2201, et seq., of its rights, as well as certain obligations of the defendants under these

Agreements. An actual, substantial and immediate controversy of a justiciable nature presently exists between plaintiffs and defendants concerning the construction and interpretation of these agreements.

Facts

Background

13. At all times material to this Complaint, Southern Union has been engaged in the business of the local distribution of gas. In recent years, Southern Union has been engaged in pursuing potential opportunities for the expansion of its role in that line of business, including through the acquisition of such businesses owned by others.

14. Prior to May 24, 1993, Western Resources, Inc. ("Western"), a gas and electric utility owning local gas distribution businesses in the States of Kansas, Missouri and Oklahoma, stated its intention to solicit bids from interested third parties for the sale of those businesses.

15. In response, representatives of Southern Union initiated discussions with Western concerning the properties.

16. As part of those discussions, Western recommended to Southern Union that Southern Union make a joint bid for the properties with Bishop and another company, Oneok, Inc. ("Oneok"). Southern Union had no previous dealings with or contact with Bishop, but at Western's recommendation, Southern Union proceeded to initiate discussions with Bishop.

17. Thereafter, Bishop, Southern Union and Oneok proceeded to discuss the potential for making a joint bid for the Western properties.

The Joint Bidding Agreement and the Side Letter Agreement

18. After establishing their respective interests in the properties being put up for sale by Western, on May 24, 1993, Southern Union, Bishop and Oneok entered into a Joint Bidding Agreement (the "Bidding Agreement"). The Bidding Agreement provided for the terms under which those parties jointly would bid for the properties being put up for sale by Western and the terms which would govern in the event one or more of the parties later decided to terminate their further participation in the joint bid. A copy of the Bidding Agreement is attached hereto as Exhibit A-1. Southern Union may be contractually or otherwise obligated to maintain the confidentiality of certain of the information contained in this document. Until it is better able to determine its obligations in this regard, this document has been filed with this Court under seal.

19. In the course of the negotiation of the Bidding Agreement, Southern Union and Bishop separately discussed an arrangement between those two entities which would provide Bishop with certain opportunities to provide goods and services to Southern Union in the event Southern Union was the successful bidder for the portion of Western's properties in which it was interested.

20. Because Southern Union had not previously done business with or had any relationship with Bishop, Southern Union was reluctant to enter into any such agreement.

21. However, Bishop represented that absent reaching such an agreement with Southern Union, Bishop would not enter into the Bidding Agreement.

22. Moreover, Bishop represented that the size and significance of the additional opportunities it was seeking to obtain through such an agreement were limited.

23. In this regard, Bishop represented that the opportunities which it sought to obtain primarily were in the form of a larger pipeline transportation market share than it currently served of the Western properties proposed to be acquired by Southern Union. Bishop represented that the total market share it desired was limited to fifty percent (50%) of the residential and commercial (excluding industrial) market served through the Western properties proposed to be acquired by Southern Union.

24. In discussions with Southern Union concerning this provision, Bishop represented that the agreement was of minimal significance. In this regard, Bishop represented that, through its existing arrangements with Western, Bishop and its various subsidiaries and affiliates already were serving approximately 42 to 43% of the relevant market.

25. These representations by Bishop were material.

26. Southern Union relied on this representation. The terms and conditions under which Bishop sought to provide these additional services potentially were not as favorable to Southern

Union as Southern Union might be able to obtain from other third-party providers in the marketplace. However, in reliance on Bishop's representation that the market share to be covered by such arrangements was limited, Southern Union concluded that this concern was outweighed by other considerations.

27. In addition, during the course of the discussions Bishop represented that it was "ready, willing and able" to provide the additional transportation services to be covered by the agreement.

28. This representation by Bishop was material.

29. Southern Union relied on this representation. As the opportunities for additional service sought to be created by Bishop arose, Southern Union would need to be able to implement such service immediately. Because natural gas is a commodity critical to the health, safety and welfare of its customers, Southern Union could not incur any material delays between the time that such requirements might arise and the time when service would begin. Southern Union relied on Bishop's representations in determining that these criteria were satisfied.

30. In reliance on these representations by Bishop, on May 24, 1993, Southern Union entered into an agreement with Bishop providing for the opportunities sought by Bishop. This agreement is commonly referred to between Bishop and Southern Union as the "Side Letter Agreement". A copy of this agreement is attached hereto as Exhibit A-2. Southern Union may be contractually or otherwise obligated to maintain the confidentiality of certain of the information contained in this document. Until it is better

able to determine its obligations in this regard, this document has been filed with this Court under seal.

31. Bishop knew that Southern Union was relying on Bishop's representations in entering into the Side Letter Agreement.

32. In the Side Letter Agreement, Southern Union and Bishop provided that the Agreement would terminate and become void and of no force and effect, subject to certain limitations, "upon termination of or withdrawal from the Joint Bidding Agreement by Bishop."

33. While the Side Letter Agreement also provided that Bishop could substitute Oneok for Bishop in certain respects in the joint bid to be submitted by the parties, the clear meaning of the Side Letter Agreement was that Southern Union would not continue to be obligated to the commitments made in the Side Letter Agreement if the Bidding Agreement was terminated as a direct or indirect consequence of Bishop's actions.

Subsequent Events Relating to Bishop's Proposed Transportation Service

34. The Side Letter Agreement provides that the additional transportation services therein contemplated are to be provided by the "certified pipeline companies of Bishop."

35. KPP, KNP, KOP and RPCLP (the "Partnerships") are affiliates of Bishop which own pipeline facilities and are certificated by various regulatory agencies to provide transportation service. The managing partner of KPP, KNP and KOP is BPC. The managing partner of RPCLP is RPP, of which the managing partner is BPC. The actual operation of the pipeline

facilities owned by these entities is provided pursuant to agreements between these entities and KPOC. BPC and KPOC are owned or controlled by Bishop. Through its ownership of these two entities, Bishop also owns controlling interest in or controls the Partnerships. As a consequence, all of these entities are under the common control of Bishop and are hereinafter collectively referred to as the "Bishop Entities".

36. Subsequent to entering into the Bidding Agreement and the Side Letter Agreement, Southern Union entered into detailed due diligence of the contractual arrangements covering the properties proposed to be sold by Western.

37. As one aspect of that due diligence, on June 16, 1993, Southern Union attended a meeting in Kansas City, Missouri, involving Western, the Bishop Entities and Southern Union.

38. At that meeting and contrary to the representations made by Bishop in the course of the negotiation of the Side Letter Agreement, the Bishop Entities stated that they were not then currently serving anywhere near 42 to 43% of the market covered by the properties proposed to be acquired by Southern Union. Rather, the Bishop Entities stated that their current share of the relevant market was small.

39. Indeed, at the meeting the Bishop Entities stated that they did not even have in place with Western existing contracts under which they could serve up to the share of Western's market which Bishop had represented they were then serving at the time of the negotiation of the Side Letter Agreement. While the Bishop Entities stated that there was some contractual relationship in

place designed to reach these levels, they also stated that additional amendments to those agreements would be required in order to effectuate any such service.

40. No such amendments ever were entered into between Western and the Bishop Entities.

41. Finally, at the meeting the Bishop Entities stated that they did not then have in place the facilities necessary to enable them to serve up to 50% of the portion of Western's market proposed to be acquired by Southern Union in the manner indicated by the Side Letter Agreement. Rather, the Bishop Entities stated that in order to be "ready, willing and able" to serve such a share of the market, they would be required either to build or acquire substantial new facilities at significant cost.

42. No additional facilities enabling the Bishop Entities to increase its deliveries into the market area intended to be covered by the Side Letter Agreement ever have been acquired or constructed by the Bishop Entities.

43. The current share of the relevant market covered by the Side Letter Agreement which is served by the Bishop Entities continues to be small.

Subsequent Events Relating to the
Termination of the Joint Bidding Agreement

44. Subsequent to entering into the Bidding Agreement, Oneok, Southern Union and Bishop commenced negotiations with Western regarding the potential sale of the properties of interest to each of the bidders.

45. Southern Union negotiated with Western regarding the sale of that portion of Western's properties which it proposed to sell which were located in Missouri, Oneok negotiated with Western regarding the sale of Western's Oklahoma properties, and Oneok, acting as Bishop's nominee, negotiated with Western regarding the sale of Western's Kansas properties.

46. Thereafter, on June 22, 1993, Oneok and Bishop advised Southern Union that Bishop had assigned to Oneok, Bishop's interest in the bid for Western's Kansas distribution properties. By so doing, Bishop withdrew from the bidding and negotiation for the purchase of any of Western's properties and, thus, from the Bidding Agreement.

47. Pursuant to its terms, such a withdrawal did not terminate the Side Letter Agreement if done after the acceptance of the joint bid by Western or after any parties to the Bidding Agreement had commenced good faith negotiations of definitive agreements with Western.

48. However, under the Bidding Agreement, such an assignment placed Oneok in the shoes of Bishop and any subsequent termination of or withdrawal by Oneok from the Bidding Agreement prior to the culmination of the bidding and negotiation process also would serve to terminate the Side Letter Agreement.

49. Thereafter, prior to the culmination of the bidding and negotiation process, Western ceased to negotiate with Oneok regarding the sale of any of Western's distribution properties. Pursuant to paragraph 5 of the Bidding Agreement, such a decision by Western not to negotiate further with Oneok regarding the sale

of any of the distribution properties had the effect of terminating the Bidding Agreement.

50. Oneok's failure to be able to negotiate further with Western also had the effect of causing Oneok to withdraw from the Bidding Agreement prior to the culmination of the bidding process.

51. These events had the consequence of terminating the Side Letter Agreement according to its own terms.

Subsequent Events Relating to the
Significance of the Side Letter Agreement

52. The Side Letter Agreement had no significance if Southern Union failed to acquire the Western properties in which it had an interest. The only significance of the Side Letter Agreement was in the event Southern Union was able to acquire the Western properties in which it had an interest.

53. On January 31, 1994, Southern Union acquired from Western that portion of Western's local gas distribution properties which Western put up for sale in which Southern Union had an interest. These are the gas distribution properties put up for sale by Western which are located in various portions of western Missouri, including the Missouri portion of the Kansas City metro area.

54. As a result of its acquisition of these properties, Southern Union is responsible for arranging for the long-term supply and related transportation services appropriate to the requirements of those gas distribution properties.

55. The Side Letter Agreement is of no force and effect because Southern Union was fraudulently induced into its execution by Bishop and because the Side Letter Agreement otherwise was

terminated according to its terms by reason of the termination or withdrawal by Oneok from the Bidding Agreement.

56. Southern Union conveyed that position to Bishop during a telephone conference on or about September 5, 1993.

57. Bishop disputed that position and asserted that the Side Letter Agreement continued to have force and effect.

58. This controversy currently is serving as a cloud on Southern Union's ability to enter into appropriate long-term arrangements covering the requirements of its Missouri gas distribution properties. By creating the potential that Southern Union may be required to contract with the Bishop Entities for such requirements on the terms and conditions contained in the Side Letter Agreement, this controversy impairs Southern Union's ability to solicit and contract with other providers of such services on terms and conditions potentially more favorable to Southern Union and its customers.

The Mid-Kansas Contract

59. As part of its acquisition of Western's Missouri gas distribution properties, Southern Union accepted assignment of another contract which also currently is in dispute between Southern Union and Bishop.

60. That contract, dated January 15, 1990, as amended, is between The Kansas Power and Light Company (subsequently, Western) and Mid-Kansas Partnership. A copy of the agreement, together with all amendments thereto, is attached hereto as Exhibit B-1. Southern Union may be contractually or otherwise obligated to maintain the confidentiality of certain of the information

contained in this document. Until it is better able to determine its obligations in this regard, this document has been filed with this Court under seal.

61. This agreement covers the sale of gas by Mid-Kansas to Southern Union. This agreement commonly is referred to between Southern Union and Bishop as the "Mid-Kansas Contract."

62. Mid-Kansas is a partnership, the managing partner of which is BPC. The actual operation of Mid-Kansas is provided pursuant to agreements between these entities and KPOC. Through its ownership of BPC and KPOC, Bishop controls Mid-Kansas.

63. The Mid-Kansas Contract provides for the sale of gas by Mid-Kansas to Southern Union for resale by Southern Union in connection with its Missouri gas distribution properties.

64. The means by which that gas is delivered by Mid-Kansas to Southern Union involves the use of a number of pipeline affiliates of Mid-Kansas also owned or controlled by Bishop. The gas ultimately sold to Southern Union is acquired by Mid-Kansas from sources of supply in the field and then transported by Mid-Kansas through transportation agreements each with KNP, KPP, RPCLP and KOP before being delivered to Southern Union.

65. At each stage of transportation, Mid-Kansas pays a transportation fee to the Bishop-controlled entity providing the transportation service.

66. Under the terms and conditions of the Mid-Kansas Contract, Mid-Kansas is permitted to increase the price it charges Southern Union by the sum of the charges Mid-Kansas pays to others for transportation services.

67. A substantial portion of the total price paid by Southern Union under the Mid-Kansas Contract is derived from the transportation charges Mid-Kansas pays to its affiliates.

68. At the time the Mid-Kansas Contract was negotiated and executed, the sales prices being charged by Mid-Kansas were competitive with those available from other, third-party sources of supply which reasonably were able to deliver gas into the Kansas City, Missouri area.

69. The continuation of this condition -- the fact that the price of the supplies acquired under the Mid-Kansas Contract would remain competitive with those available from other, third-party sources of supply throughout the remaining term of the Contract -- was a basic assumption upon which the Contract was made.

70. In reliance on the continuation of that assumption, Southern Union accepted assignment of the Mid-Kansas Contract effective as of January 31, 1994.

71. Since that time, the prices charged for deliveries made under the Mid-Kansas Contract have been substantially in excess of those which are available from other, third party sources of supply which reasonably are available to deliver gas into the Kansas City, Missouri area.

72. The primary reason for these excessive charges is the rates which Mid-Kansas is paying to its affiliates for the transportation of the gas sold under the Mid-Kansas Contract. These costs are higher than Mid-Kansas would incur if it transported the gas it is purchasing in the field on pipelines other than those owned by its affiliates.

73. Certain of Mid-Kansas' pipeline affiliates recently have increased their rates applicable to service under the Mid-Kansas Contract.

74. As a result of these increases, Southern Union reasonably anticipates that the difference between the amounts it pays under the Mid-Kansas Contract and the prices which are available from other, third party sources of supply will increase even further in the future.

75. An additional reason for these excessive charges is the decision by Mid-Kansas to source the gas delivered under the Mid-Kansas Contract on its affiliates' systems to the exclusion of gas available on third party systems.

76. Under the Mid-Kansas Contract, Mid-Kansas is not required to acquire the gas delivered under the Contract from any particular source of supply. While Mid-Kansas has chosen to acquire gas along the pipeline systems owned by its affiliates, it could as easily acquire gas from sources supply located along other pipeline systems.

77. The unilateral decision by Mid-Kansas to acquire gas along the systems owned by its affiliates results in greater charges to Southern Union under the Mid-Kansas Contract than would be incurred in the event Mid-Kansas sourced gas on other pipelines.

78. The Mid-Kansas Contract is for the sale of goods.

79. As such, Mid-Kansas is under a duty to administer the terms of the Contract in good faith and with fair dealing. The terms of this duty are strict in the context of the Mid-Kansas Contract because of the fact that it contains a price term which

permits Mid-Kansas to recover all of the third-party costs it may incur in performance of the Contract and a large portion of those costs are being incurred in connection with self-dealing between Mid-Kansas and its affiliates.

CAUSES OF ACTION

Count I

(Fraudulent Misrepresentation by Bishop)

80. Southern Union incorporates by reference and realleges paragraphs 1 through 79 hereof as though they are fully set forth herein.

81. Bishop made certain representations to Southern Union in connection with the formation of the Side Letter Agreement. Specifically, Bishop stated, among other things, that:

a. As of May 24, 1993, Bishop and its various subsidiaries and affiliates were serving approximately 42 to 43% of the market served through the Western properties proposed to be acquired by Southern Union; and

b. As of May 24, 1993, Bishop was able to provide additional transportation service into the market served by the Western properties proposed to be acquired by Southern Union in an amount equal to fifty percent (50%) of the requirements of that market.

82. Bishop's representations were false and material.

83. Bishop was aware that its representations were false, or was ignorant of the truth and, in the face of such ignorance, nevertheless made such representations.

84. Bishop intended for Southern Union to act on Bishop's representations.

85. Southern Union was not aware that Bishop's representations were false.

86. Southern Union justifiably and reasonably relied on the truth of Bishop's false representation.

87. Southern Union had a right to rely on Bishop's false representations.

88. As a consequent and proximate result of Bishop's false representations, Southern Union has suffered and is continuing to suffer damages in excess of $50,000.00, the total amount of which is to be proven at trial.

Count II

(Fraudulent Inducement by Bishop)

89. Southern Union incorporates by reference and realleges paragraphs 1 through 88 hereof as though they are fully set forth herein.

90. As a consequent and proximate result of Bishop's false representations, Southern Union was fraudulently induced by Bishop to enter into the Side Letter Agreement.

91. As a consequent and proximate result of Bishop's fraudulent inducement, Southern Union has suffered damages and is continuing to suffer damages in excess of $50,000.00, the total amount of which is to be proven at trial.

Count III

(Intentional Misrepresentation by Bishop)

92. Southern Union incorporates by reference and realleges paragraphs 1 through 91 hereof as though they are fully set forth herein.

93. As a consequent and proximate result of Bishop's intentional misrepresentations, Southern Union has suffered and is continuing to suffer damages in excess of $50,000.00, the total amount of which is to be proven at trial.

Count IV

(Negligent Misrepresentation by Bishop)

94. Southern Union incorporates by reference and realleges paragraphs 1 through 93 hereof as though they are fully set forth herein.

95. Bishop supplied information to Southern Union in the course of business or because of Bishop's pecuniary interests.

96. Because Bishop failed to exercise reasonable care or competence, the information supplied to Southern Union was false.

97. Bishop intentionally and knowingly provided the information for Southern Union's guidance in connection with a particular business transaction.

98. Bishop intended for Southern Union to act on Bishop's representations.

99. Southern Union was not aware that Bishop's representations were false.

100. Southern Union justifiably and reasonably relied on the truth of Bishop's representations.

101. Southern Union had a right to rely on Bishop's representations.

102. As a consequent and proximate result of Bishop's false representations, Southern Union has suffered and is continuing to suffer damages in excess of $50,000.00, the total amount of which is to be proven at trial.

Count V

(Breach by Bishop of Implied Duty of Good Faith and Fair Dealing in Connection with the Side Letter Agreement)

103. Southern Union incorporates by reference and realleges paragraphs 1 through 102 hereof as though they are fully set forth herein.

104. Bishop had an implied duty of good faith and fair dealing in connection with the formation of the Side Letter Agreement.

105. Bishop breached that duty and obligation by, among other things:

a. Failing to deal fully and openly with respect to describing the current level at which it was supplying the market served through the Western properties proposed to be acquired by Southern Union.

b. Failing to disclose fully or accurately the current status of its efforts to supply the market served through the Western properties proposed to be acquired by Southern Union.

c. Failing to deal fully and openly with respect to describing its capabilities to supply fifty percent (50%) of the market served through the Western properties proposed to be acquired by Southern Union.

d. Failing to disclose fully and accurately the status of its efforts to expand its capabilities to supply fifty percent (50%) of the market served through the Western properties proposed to be acquired by Southern Union.

106. Bishop was aware that its dealings with Southern Union in connection with the formation of the Side Letter Agreement were other than in good faith and fair.

107. Bishop intended for Southern Union to act on Bishop's dealings in the formation of the Side Letter Agreement.

108. Southern Union justifiably and reasonably relied on Bishop to deal in good faith and fairly with respect to the formation of the Side Letter Agreement.

109. Southern Union had a right to rely on Bishop to deal with Southern Union in good faith and fairly with respect to the formation of the Side Letter Agreement.

110. As a consequent and proximate result of Bishop's failure to deal with Southern Union in good faith and fairly with respect to the formation of the Side Letter Agreement, Southern Union has suffered and is continuing to suffer damages in excess of $50,000.00, the total amount of which is to be proven at trial.

Count VI

(Request for Declaratory Judgment Involving
Southern Union's Responsibilities
Under the Side Letter Agreement)

111. Southern Union incorporates by reference and realleges paragraphs 1 through 110 hereof as though they are fully set forth herein.

112. The Side Letter Agreement is of no force and effect because Southern Union was fraudulently induced into its execution by Bishop.

113. The Side Letter Agreement is of no force and effect because the Side Letter Agreement terminated according to its own terms by reason of the termination or withdrawal by Bishop and, then, its designee, Oneok, from the Bidding Agreement.

114. Southern Union has stated the same to Bishop and Bishop has disputed these statements.

115. Accordingly, Southern Union sues for a declaratory judgment that the Side Letter Agreement is of no force and effect.

Count VII

(Breach by Bishop of Implied Duty of Good Faith and
Fair Dealing in Connection with the Mid-Kansas Contract)

116. Southern Union incorporates by reference and realleges paragraphs 1 through 115 hereof as though they are fully set forth herein.

117. Bishop has an implied duty of good faith and fair dealing under the Mid-Kansas Contract.

118. Consistent with that duty, Bishop is obligated to administer the Mid-Kansas Contract in good faith and fairly.

119. Mid-Kansas has breached that duty and obligation by, among other things:

a. Using its affiliates to transport gas at excessive rates, when other, third-party transporters could be used to provide the same services at reasonable rates.

b. Acquiring gas accessible only to pipeline systems owned by its affiliates, resulting in excessive prices to Southern Union, when substitute supplies could be acquired from alternative sources and transported and delivered to Southern Union's facilities at a reasonable price.

c. Conducting its business under the Mid-Kansas Contract in a self-dealing manner such as to maximize and protect the financial interests of its affiliates, rather than maintain the costs being incurred by Southern Union at reasonable levels.

120. Bishop was aware that its dealings with Southern Union in connection with the Mid-Kansas Contract were other than in good faith and fair.

121. Bishop intended for Southern Union to act on Bishop's dealings with respect to the Mid-Kansas Contract.

122. Southern Union justifiably and reasonable relied on Bishop to deal in good faith and fairly with respect to the Mid-Kansas Contract.

123. Southern Union had a right to rely on Bishop to deal with Southern Union in good faith and fairly with respect to the Mid-Kansas Contract.

124. As a consequent and proximate result of Bishop's failure to deal with Southern Union in good faith and fairly with respect to the Mid-Kansas Contract, Southern Union has suffered and is continuing to suffer damages in excess of $50,000.00, the total amount of which is to be proven at trial.

Count VIII

(Request for Declaratory Judgment Involving Southern Union's Responsibilities Under the Mid-Kansas Contract)

125. Southern Union incorporates by reference and realleges paragraphs 1 through 124 hereof as though they are fully set forth herein.

126. Southern Union asserts that the breach by Bishop of its implied duty of good faith and fair dealing under the Mid-Kansas Contract is of such magnitude and materiality as to justify its termination.

127. Mid-Kansas is continuing its present practices and threatens to expand those practices in the immediate future.

128. Mid-Kansas' past conduct and threatened future conduct in this regard undermines any reasonable expectation that Mid-Kansas will perform according to the terms of the Mid-Kansas Contract, consistent with it implied duty of good faith and fair dealing.

129. Mid-Kansas' breach substantially impairs the value of the whole contract and justifies the cancellation of the Mid-Kansas Contract by Southern Union.

130. Southern Union sues for a declaratory judgment that it is entitled to cancel and cease taking any supplies under or have any obligation under the Mid-Kansas Contract.

Relief Requested

WHEREFORE, premises considered, Southern Union prays for judgment against Bishop as follows:

1. On Count I, a judgment against Bishop for compensatory damages in an amount in excess of fifty thousand dollars ($50,000.00);

2. On Count II, a judgment against Bishop for compensatory damages in an amount in excess of fifty thousand dollars ($50,000.00);

3. On Count III, a judgment against Bishop for compensatory damages in an amount in excess of fifty thousand dollars ($50,000.00);

4. On Count IV, a judgment against Bishop for compensatory damages in an amount in excess of fifty thousand dollars ($50,000.00);

5. On Count V, a judgment against Bishop for compensatory damages in an amount in excess of fifty thousand dollars ($50,000.00);

6. On Count VI, a declaratory judgment against the Bishop Entities in the manner indicated in that count;

7. On Count VII, a judgment against Bishop for compensatory damages in an amount in excess of fifty thousand dollars ($50,000.00);

8. On Count VIII, a declaratory judgment against Mid-Kansas and Bishop in the manner indicated in that count;

9. For Counts I through VIII, a judgment against Bishop and the Bishop Entities;

10. Prejudgment interest at the highest lawful rate;

11. Postjudgment interest at the highest lawful rate;

12. Costs of suit and court;

13. Attorneys' fees and expenses; and

14. All such other and further relief, at law or in equity, to which Southern Union may be justly entitled.

Respectfully submitted,

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June 1, 1994

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Gas Service, a Western Resources Company, tariff sheets reflecting PGA changes to be reviewed in the Company's 1993-1994 Actual Cost Adjustment	)	Case No. GR-94-101
In the matter of Missouri Gas Energy's tariff revisions for the former Gas Service area (exclusive of the Palmyra area) to be reviewed in the Actual Cost Adjustment for the period February 1, 1994 through June 30, 1994	)	Case No. GR-94-228

STIPULATION AND AGREEMENT

Come now: (1) Western Resources Inc., f/k/a Gas Service Company ("WR"); (2) Missouri Gas Energy, a Division of Southern Union Company ("MGE"); (3) Riverside Pipeline Company, L.P. ("Riverside"); (4) Mid-Kansas Partnership ("MKP"); (5) the Staff of the Public Service Commission of Missouri ("Staff"); and (6) the Office of Public Counsel ("Public Counsel") (collectively the "Signatories") and enter into this Stipulation and Agreement ("Stipulation") by which they stipulate, agree, resolve, compromise and settle the matters set forth below as follows:

1. In Case No. GR-93-140 (covering the ACA period of July 1, 1992 through June 30, 1993) before the Public Service Commission of Missouri ("Commission"), Staff issued its recommendation on April 29, 1994 and the Commission held hearings related thereto on February 2 through February 3, 1995. On July 14, 1995, the Commission issued its Report and Order ("Report and Order"). On July 24, 1995, WR, MGE, Riverside and MKP filed Applications for Rehearing of the Commission's Report and Order. On September 18, 1995, the Commission denied the Applications for Rehearing. On September 29, 1995 Riverside/MKP and WR (on October 2,

1995) filed Petitions for Writ of Review respectively. On October 10, 1995, the Circuit Court of Cole County, Missouri issued a Stay of the Report and Order . MGUA also filed a Petition for Writ of Review. The appeals have been consolidated, briefs filed and the cases are pending in the Circuit Court of Cole County, Missouri as Case Nos. CV195-1163CC, CV195-1170CC and CV195-1242CC. Nothing in this Stipulation is designed to affect the status of Case No. CV195-1242CC, which is the appeal taken by MGUA.

2. In Case Nos. GR-94-101 and GR-94-228 before the Commission, Staff issued its recommendation on June 16, 1995. The ACA period of Case Nos. GR-94-101 and GR-94-228 is July 1, 1993 to June 30, 1994. GR-94-101 covers WR's PGA changes to be reviewed in its 1993/1994 Actual Cost Adjustment. Southern Union Company d/b/a MGE acquired most of WR's gas distribution properties in Missouri as of February 1, 1994. GR-94-228 includes the PGA costs and revenues for the five month period ending June 30, 1994. On March 1, 1994, United Cities Gas Company ("United Cities") acquired the remaining Missouri properties of WR, being the properties in the Palmyra District. Case No. GR-94-227 was established by the Commission to cover the ACA period for WR from February 1, 1994, through June 30, 1994. Case No. GR-94-227 has been held in abeyance pending the outcome of Case Nos. GR-93-140, GR-94-101 and GR-94-228. The basis on which United Cities and the Palmyra district are involved in these matters is that WR did not have a separate PGA/ACA for Palmyra. Therefore, costs related to Riverside/MKP are included in the amounts paid by Palmyra customers during the periods relative to GR-93-140 and GR-94-101. Customers in Palmyra have never actually received any gas from Riverside/MKP. Palmyra is served exclusively by Panhandle Eastern Pipe Line Company. WR, however, commingled the gas costs from Palmyra with the other districts in the administration of the PGA/ACA. As a result of that,

Palmyra residents paid costs which were established on Riverside/MKP amounts. Subsequent to February 1, 1994, no costs arising from Riverside/MKP have been allocated to the Palmyra District. As of March 1, 1994, United Cities had tariffs in effect establishing a PGA/ACA for Palmyra which did not include any Riverside/MKP amounts.

3. The Commission established Case No. GR-95-82 for the ACA period of July 1, 1994 to June 30, 1995. The Commission has also established Case No. GR-96-78 for the ACA period of July 1, 1995 to June 30, 1996.

4. Staff has reviewed the following Agreements between or among WR, MGE, Riverside and MKP.

A. Sales Agreement dated January 15, 1990, between WR and MKP, as amended on October 3, 1991, with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "MKP/WR Sales Agreement". The MKP/WR Sales Agreement was further amended on February 24, 1995, and terminated as of May 31, 1995;

B. Transportation Agreement dated January 15, 1990, between WR and Riverside, as amended by letter agreement dated September 15, 1992, with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "Riverside/WR Transportation Agreement I". The Riverside/ WR Transportation Agreement I terminated as of May 31, 1995;

C. Sales Agreement dated February 24, 1995, between MGE and MKP with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "MKP II Interim Firm Gas Sales Contract". Service under the MKP II Interim Firm Gas Sales Contract commenced on June 1, 1995;

D. Transportation Agreement dated February 24, 1995, between MGE and Riverside with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "Riverside/MGE Transportation Agreement I" which will become effective at a later date pursuant to the terms thereunder.

All of the above Agreements (A to D inclusive) may be collectively referred to herein as the "Missouri Agreements".

5. As a result of this Stipulation and Agreement, the Signatories agree that neither the execution of the MKP/WR Sales Agreement and the Riverside/WR Transportation Agreement I, nor the decisions associated with the execution of the Missouri Agreements shall be the subject of any further ACA prudence review. In addition, the Signatories agree that the transportation rates and gas costs charged pursuant to the Missouri Agreements shall not be the subject of any further ACA prudence review until the case associated with the audit period commencing July 1, 1996, and ending June 30, 1997. The Missouri Agreements will be subject to the compliance and operational review (as described herein) of the Staff for all periods on and after July 1, 1994, and MGE's ACA balance may be subject to adjustment as a result of such review.[1] The intent of the Signatories by this Stipulation and Agreement is that the Commission, in adopting this Stipulation and Agreement, issue

[1]As a result of the Commission's decision in Case No. GO-94-318, MGE is scheduled to have new tariffs in operation under an incentive PGA commencing July 1, 1996. Since those tariffs have not been submitted to the Commission, it is difficult to state with any certainty how they may relate to the settlement being effected by this Stipulation. However, it is the intention of the Signatories that to the extent there are gas cost (non-transportation) issues involving any of the Missouri Agreements which are relevant to the time periods after July 1, 1996, those amounts will come under the Incentive PGA provisions as approved by the Commission. As a result, any issues related to gas costs associated with the Missouri Agreements will be subject to the provision that unless MGE's costs subject to the Incentive PGA provisions to be filed rise to the level where a prudence review is triggered, there will be no prudence review of the Missouri Agreements.

an order holding that the transportation rates and gas costs charged pursuant to the Missouri Agreements shall not be disallowed by the Commission based on the reasons described above in this paragraph in Case Nos. GR-94-101, GR-94-227, GR-94-228, GR-95-82 and GR-96-78, and that the findings and conclusions regarding the prudence of the execution of the Missouri Agreements made by the Commission in Case No. GR-93-140 shall be compromised and settled as provided for herein. Although the prudence of entering into the MKP/WR Sales Agreement and the Riverside/WR Transportation Agreement I is finally settled by this Stipulation, additional questions may arise regarding the administration of the contracts by MGE and WR in Staff's compliance and operational review for all periods on and after July 1, 1994, as described above. Therefore, this Stipulation is not designed to preclude the Staff from making proposed adjustments regarding issues involving the manner in which gas is actually taken under the contracts (e.g., gas which was available under the contract was not taken for some reason) or issues involving billing matters (e.g., MGE paid more than was required under the contract due to a billing or mathematical error.) Further, as a consequence of the Commission adopting this Stipulation as provided herein, WR, Riverside/MKP, and MGE agree to make the necessary filings with the Circuit Court of Cole County, Missouri to dismiss the appeals they have taken from Case No. GR-93-140. These dismissals shall take place within ten days of the payments being made as scheduled in paragraph 7.A. As a consequence, WR and Riverside/MKP agree to pay the amounts which are owed due to Case No. GR-93-140 through the procedures described herein.

Nothing herein is to be construed as determining the rights, obligations, compliance or non-compliance with the terms and conditions of any contract between or among WR, MKP, Riverside, and MGE or any combination thereof. WR, MGE and Riverside/MKP agree that this Stipulation

shall in no manner whatsoever be deemed to be admission of fault, responsibility or liability of any matter whatsoever by WR, MGE, Riverside and/or MKP. WR, MGE and Riverside/MKP agree that this Stipulation is purely and exclusively for the purpose of avoiding the cost of litigation and regulatory proceedings and is to be construed as that and nothing more.

6. In consideration of the foregoing and the mutual agreements contained herein, and conditioned on the issuance of a Commission Order adopting this Stipulation and Agreement in its entirety without change, WR and Riverside/MKP hereby agree to tender payments as provided below. A total of $4,000,000 ("the Settlement Payment") shall be paid to effect a settlement of all issues involving the prudence of the execution of the Missouri Agreements as specified in paragraph 5 in the following cases: GR-93-140, GR-94-101, GR-94-227, GR-94-228, GR-95-82 and GR-96-78. Of the $4,000,000 total, $1,150,000 will be paid by WR and $2,850,000 will be paid by Riverside/MKP as specified in paragraph 7 below. Of these amounts, $3,992,500 shall be paid to MGE and $7,500 to United Cities so that each can cause the respective amounts to be credited to their respective ratepayers through the ACA process by lowering the otherwise applicable ACA factors. In this regard, MGE and United Cities are simply conduits for the delivery of these funds to their ratepayers.

7. The Settlement Payment shall be made as follows:

A. $2,492,500 shall be paid on or before August 5, 1996 to MGE, which amount shall include all payments which may be due under the appeal of Case No. GR-93-140. Of such amount, WR shall pay $1,150,000 and Riverside/MKP shall pay $1,342,500. Under the currently effective PGA/ACA provisions, MGE would, in turn, make its ACA filing on or about August 10, 1996, at the Commission, which

filing would reflect a credit of the amount received. Such credit will extinguish any and all obligations which MGE or WR or both have with regard to the findings and conclusions regarding the prudence of the execution of the Missouri Agreements made by the Commission in Case No. GR-93-140.

B. $7,500 shall be paid by Riverside/MKP on or before August 10, 1996 to United Cities, which shall, in turn, make a filing to reflect a credit of that amount in its next scheduled ACA filing with the Commission thereafter. Such credit shall extinguish any and all obligations which United Cities has regarding proposed disallowances by the Staff relating to the Missouri Agreements.

C. $1,500,000 shall be paid to MGE by Riverside/MKP on or before July 26, 1997. MGE shall, in turn, make an ACA filing at the Commission on or before August 1, 1997, which reflects a credit of that amount subject to the provisions of paragraph 7.D.

D. MGE is currently under order of the Commission in Case No. GO-94-318 (Phase II) to implement an Incentive PGA mechanism. Tariffs to do so are not yet due and have not been approved by the Commission. As a result of the uncertainty regarding what the structure of MGE's ACA may be in the future, all the parties can practically do at this time is state the intention that MGE will make a timely filing with the Commission proposing to credit that amount to its ratepayers through whatever functional equivalent of an ACA factor may exist at that time.

8. It is expressly stipulated and agreed by MGE, Riverside/MKP and Staff that the Settlement Payment shall be deemed to be a singular, lump sum, one time settlement payment made

in two installments as described in Paragraph 7 above; conversely MGE, Riverside/MKP and Staff agree the Settlement Payment is conclusively and irrebuttably NOT to be construed as multiple payments (even though the lump sum payment is being made in two installments) or as relating to disallowances for two (2) consecutive audit years, with respect to the provisions of any of the Missouri Agreements, as amended. MGE, Riverside/MKP and Staff agree that the Settlement Payment shall in no manner be deemed to be payments made for adjustments or disallowances in two consecutive ACA periods for the same or similar reasons or a denial of WR or MGE's right to recover amounts paid to MKP or Riverside in two consecutive ACA periods for the same or similar reasons.

9. None of the signatories to this Stipulation and Agreement shall have been deemed to have approved or acquiesced in any ratemaking or procedural principle or any method of cost determination or cost allocation, or any service or payment standard and none of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation in this or any other proceeding, except as otherwise expressly specified herein.

10. This Stipulation has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation in total, then this Stipulation shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

11. In the event the Commission accepts the specific terms of this Stipulation, the Signatories waive, with respect to the issues resolved herein: their respective rights pursuant to

Section 536.080.1 RSMo. 1986 to present testimony,[2] to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo. 1986; and their respective rights to judicial review pursuant to Section 386.510 RSMo. 1986 in regard to a Commission order approving this Stipulation and Agreement.

12. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation. Each Party shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all Parties. All memoranda submitted by the Parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all Parties, and shall not become a part of the record of the proceedings mentioned hereinabove or bind or prejudice the Party submitting such memorandum in said proceedings or in any future proceeding whether or not the Commission approves this Stipulation. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation, whether or not the Commission approves and adopts this Stipulation.

---

[2]The Signatories, the Midwest Gas Users Association and Williams Natural Gas agree that all of the testimony on the Riverside/MKP issue may be received into the record in Case Nos. GR-94-101 and GR-94-228 without the necessity of the respective witnesses taking the stand and, as a consequence, that the Commission need not rule on the contested motions to strike filed by Williams Natural Gas, WR and MGE.

The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

13. The terms of this Stipulation shall be binding on any successors and assigns of WR and Riverside/MKP and on the partners and general partners of Riverside/MKP.

14. In the event Riverside/MKP or any successor or affiliated entity fails to pay to MGE any of the amounts required herein, MGE shall be entitled to set off any such amounts against payments owed by MGE to Riverside/MKP or any successor or affiliated entity due to service taken by MGE under the MKP II Interim Firm Gas Sales Contract, the Riverside/MGE Transportation Agreement I and/or any successor agreements. Notwithstanding any other provision in this stipulation to the contrary, if such setoff is prevented from occurring or otherwise does not occur, in whole or in part, for any reason whatsoever, the Signatories agree that any amount owed to MGE by Riverside/MKP or any successor or affiliated entity pursuant to this Stipulation that is unpaid represents a regulatory disallowance under the above agreements.

Respectfully submitted,

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ATTORNEYS FOR KANSAS PARTNERSHIP
AND RIVERSIDE PIPELINE, L.P.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 2nd day of May, 1996.

Robert J Hoak

Service List
Combining Case Nos.
GR-94-101 and GR-94-228
April 10, 1996

Richard S. Brownlee, III
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Attorney at Law

335 North Washington
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Hutchinson, Kansas 67504-0728
316 669-9338

Tino M. Monaldo

April 26, 1996

TO: All Parties

RE: Proposed Settlement of MPSC Docket Nos. GR-93-140; GR-94-101; GR-94-228; GR-95-82 and GR-96-78

Mr. Robert Hack, general counsel for the MPSC, has instructed me to fax to all parties the attached Stipulation and Agreement. The Staff of the MPSC and Riverside/Mid Kansas have agreed to the attached Stipulation and Agreement.

Mr. Hack has asked that all parties either sign the Agreement or give him authority to sign by 10:00 a.m., Tuesday, April 30, 1996. Mr. Hack has also asked that if anybody has any questions regarding the Stipulation and Agreement to call him at his office at (314) 751-8705.

Thank you for your attention to this matter.

Sincerely,

Tino M. Monaldo

TINO M. MONALDO
An attorney for Riverside/Mid-Kansas

TMM:slh

cc: Gary Duffy
Marty Bregman
Gary Boyle
Doug Micheel
Stu Conrad

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FOR SETTLEMENT PURPOSES ONLY

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Gas Service, a Western Resources Company, tariff sheets reflecting PGA changes to be reviewed in the Company's 1993-1994 Actual Cost Adjustment	)))))	Case No. GR-94-101
In the matter of Missouri Gas Energy's tariff revisions for the former Gas Service area (exclusive of the Palmyra area) to be reviewed in the Actual Cost Adjustment for the period February 1, 1995 through June 30, 1994	))))))	Case No. GR-94-228

STIPULATION AND AGREEMENT

Comes now: (1) Western Resources Inc., f/k/a Gas Service Company ("WR"); (2) the Missouri Gas Energy, a Division of Southern Union Company ("MGE"); (3) Riverside Pipeline Company, L.P. ("Riverside"); (4) Mid-Kansas Partnership ("MKP"); (5) Williams Natural Gas Company ("WNG" or "Williams"); (6) Midwest Gas Users Association ("MGUA"); (7) the Staff of the Public Service Commission of Missouri ("Staff"); and (8) the Office of Public Counsel ("Public Counsel") (collectively the "Parties") enter into this Stipulation and Agreement ("Stipulation") and stipulate, agree, resolve, compromise and settle the matters set forth below as follows:

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1. In Case No. GR-93-140 (covering the ACA period of July 1, 1992 through June 30, 1993) before the Public Service Commission of Missouri ("Commission"), Staff issued its recommendation on April 29, 1994 and the Commission held hearings related thereto on February 2 through February 3, 1995. On July 14, 1995, the Commission issued its Report and Order ("Report and Order"). On July 24, 1995, WR, MGE, Riverside and MKP filed Applications for Rehearing of the Commission's Report and Order. On September 18, 1995, the Commission denied the Applications for Rehearing. On September 29, 1995 Riverside/MKP and WR (on October 2, 1995) filed Petitions for Writ of Review respectively. On October 10, 1995, the Circuit Court of Cole County, Missouri issued a Stay of the Report and Order .

2. In Case Nos. GR-94-101 and GR-94-228 before the Commission, Staff issued its recommendation on June 16, 1995. The ACA period of Case Nos. GR-94-101 and GR-94-228 is July 1, 1993 to June 30, 1994. GR-94-101 covers the period of July 1, 1993 through January 31, 1994. On or about January 31, 1994 MGE acquired most of WR's gas local distribution company properties in Missouri. GR-94-228 includes the PGA costs and revenues for the five month period ending June 30, 1994.

3. The Commission established Case No. GR-95-82 for the ACA period of July 1, 1994 to June 30, 1995 related to the purchase and sale of gas by MGE. The Commission

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established Case No. GR-96-78 for the ACA period of July 1, 1995 to June 30, 1996 related to the purchase and sale of gas by MGE.

4. Staff has reviewed the following Agreements between or among WR, MGE, Riverside and MKP.

A. Sales Agreement dated January 15, 1990, between WR and MKP, as amended on October 3, 1991, with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "MKP/WR Sales Agreement";

B. Transportation Agreement dated January 15, 1990, between WR and Riverside, as amended by letter agreement dated September 15, 1992, with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "Riverside/WR Transportation Agreement I";

C. Sales Agreement dated February 24, 1995, between MGE and MKP with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "MKP II Interim Firm Gas Transportation Contract";

D. Transportation Agreement dated February 24, 1995, between MGE and Riverside with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "Riverside/MGE Transportation Agreement I";

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All of the above Agreements (A to D inclusive) may be collectively referred to herein as the "Missouri Agreements."

5. As a result of this Stipulation and Agreement, the Parties agree that neither the execution of the Missouri Agreements, the rates charged pursuant thereto, nor the decisions associated with the execution of the Missouri Agreements shall be subject to any further ACA prudence review until the audit period commencing July 1, 1996, and ending June 30, 1997. The intent of the Parties by this Stipulation and Agreement is that the rates charged pursuant to the Missouri Agreements shall not be disallowed for recovery under Docket Nos. GR-93-140; GR-94-101; GR-94-228; GR-95-82 and GR-96-78. These contracts will be subject to the compliance and operational review of the MPSC for all periods, and MGE's ACA balance may be subject to adjustment as a result of such review. In consideration of the foregoing, subject to the issuance of a Commission Order adopting and stating the provisions of this Stipulation as its final order, WR and/or Riverside/MKP hereby agree to tender payment in an amount equal to $2,680,097.24 as settlement of Case No. GR-94-101, GR-94-228, GR-95-82 and GR-96-78. Further WR, Riverside/MKP and MGE agree to dismiss all appeals and stays arising out of or relating to Case No. GR-93-140 and, as a consequence, to pay the amounts owed by WR and/or Riverside/MKP due to Case No. GR-93-140. This results in a total Settlement Payment of $4,000,000. The intent of the Parties is that whatever amount is paid under Docket No. GR-93-140 by WR and/or Riverside/MKP should be deducted from or treated as a credit to the $4,000,000 Settlement Payment. Of the Settlement

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Payment, $3,992,500 shall be paid to MGE and $7,500 to United Cities Gas Company ("United Cities") upon the condition that MGE and United Cities shall effect a change in its ACA factor equal to the amount paid hereunder. The Settlement Payment shall be paid as follows:

(1) $2.5 million shall be paid on or before September 1, 1996, which amount includes all payments due under Docket No. GR-93-140.

(2) The balance of the Settlement Payment shall be paid on or before September 1, 1997. MGE shall reflect a reduction in its 1996/1997 and 1997/1998 ACA filings to account for all payments described in Subparagraphs (1) and (2) of this Paragraph 5. MGE's compliance filing will distribute the Settlement Payment as nearly as practical over the 1996/1997 and 1997/1998 ACA periods. United Cities shall effect a reduction in its ACA account equal to the amount paid hereunder.

Nothing herein is to be construed as determining or admitting any liability between WR and Riverside/MKP, between MGE and Riverside/MKP and/or MGE and WR. WR , MGE, and Riverside/MKP agree that the Commission does not herein or otherwise determine the rights or obligations, or compliance or non-compliance with terms and conditions of any contract between or among WR, MKP and/or Riverside; between or among MGE, Riverside and/or MKP and between or among MGE and WR. WR, MGE and Riverside/MKP agree that the Settlement Payment paid hereunder shall in no manner whatsoever be deemed to be admission of fault, responsibility or liability of any matter

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whatsoever by WR, MGE, Riverside and/or MKP. WR, MGE and Riverside/MKP agree that the Settlement Payment is purely and exclusively for the purpose of avoiding the cost of litigation and regulatory proceedings and is to be construed as that and nothing more. WR and MGE stipulate that the terms of the Stipulation and Agreement or any subsequent Order pursuant hereto shall not be admissible by any party in any legal or arbitration proceedings between WR and MGE, including, but not limited to, Southern Union Company vs. Western Resources, Inc., et al No. 94-509-CV-W-1 and Southern Union Company vs. The Bishop Group, LTD. et al No. 94-0511-CV-W-1 both before the U.S. District Court for the Western District of Missouri, Western Division.

6. It is expressly stipulated and agreed by WR, MGE, Riverside/MKP and Staff that the Settlement Payment shall be deemed to be a singular, lump sum, one time settlement payment made in two installments as described in Paragraph 5 above; conversely WR, MGE, Riverside/MKP and Staff agree the Settlement Payment is conclusively and irrebuttably NOT to be construed as multiple payments (even though the lump sum payment is being made in two installments) or as relating to disallowances for two (2) consecutive audit years, with respect to the provisions of any of the Missouri Agreements, as amended. WR, MGE and Riverside/MKP agree that the Settlement Payment shall in no manner be deemed to be payments made for adjustments or disallowance's in gas costs or a denial of WR or MGE's right to recover amounts paid to MKP or Riverside for the same or similar reasons, in two consecutive ACA periods.

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7. None of the signatories to this Stipulation and Agreement shall have been deemed to have approved or acquiesced in any ratemaking or procedural principle or any method of cost determination or cost allocation, or any service or payment standard and none of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.

8. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not approve and adopt paragraphs 1 through 10 of this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

9. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Parties waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1 RSMo. 1986 to present testimony, to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo. 1986; and their respective rights to judicial review pursuant to Section 386.510 RSMo. 1986 in regard a Commission order approving this Stipulation and Agreement.

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10. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each Party shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all Parties. All memoranda submitted by the Parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all Parties, and shall not become a part of the record of the proceedings mentioned hereinabove or bind or prejudice the Party submitting such memorandum in said proceedings or in any future proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is

requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

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Respectfully submitted,

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To: Rob Hack, Tino Monaldo, Rick French, Marty Bregman, Gary Boyle, Doug Micheel, Stu Conrad

cc: Mike Langston, Jim Moriarty, Bob Cline

Date: April 30, 1996 5:10 p.m.

Fax #:

Pages: 6, including this cover sheet.

From: Gary W. Duffy

Subject: Draft stipulation in GR-93-140, GR-94-101, GR-94-228, GR-95-82 and GR-96-78

COMMENTS: Here are MGE's comments on the draft identified as "4/26/96 3:53 p.m." These were put together in a hurry in an attempt to meet your deadlines since we did not have a chance to look at this until yesterday morning. We request that you incorporate these comments in a new draft and submit it for our review.

- page 1, second line of text: strike "the" before "Missouri Gas Energy"

- page 1, last and next to last lines need to be reworded as follows:

> "Parties") and enter into this Stipulation and Agreement ("Stipulation") by which they stipulate, agree, resolve, compromise and settle the matters set forth below as follows:

- page 2, para. 1, at the end. You do not mention the application for rehearing and the writ of review filed by MGUA. We suggest the addition of the following:

> MGUA also filed for a writ of review. The appeals have been consolidated, briefs filed, and the cases are pending in the Circuit Court of Cole County, Missouri as Case Nos. CV195-1163 CC, CV195-1170CC, and CV195-1242CC. Nothing in this Stipulation is designed to affect the status of Case No. CV195-1242CC, which is the appeal taken by MGUA.

- page 2, para. 2, fourth line: Instead of "On or about January 31, 1994, MGE acquired most of

WR's gas local distribution company properties in Missouri." I suggest "Southern Union Company acquired most of WR's gas distribution properties in Missouri as of February 1, 1994."

● page 2, para. 2. I think we need to include a reference to the United Cities ACA dockets that involves these amounts. I suggest the following addition at the end of para. 2:

> On March 1, 1994, United Cities Gas Company ("United Cities") acquired the remaining Missouri properties of WR, being the properties in the Palmyra District. Case No. GR-94-227 was established by the Commission to cover the ACA period for WR from February 1, 1994 through June 30, 1994. That docket has been held in abeyance pending the outcome of Cases No. GR-93-140, GR-94-101 and GR-94-228. The basis on which United Cities and the Palmyra district are involved in these matters is that Western Resources did not have a separate PGA/ACA for Palmyra. Therefore, costs related to MKP/Riverside are included in the ~~balances~~ rates paid by Palmyra customers during the periods relative to GR-93-140 and GR-94-101. Customers in Palmyra have never actually received any gas from MKP/Riverside. Palmyra is served exclusively by Panhandle Eastern Pipe Line Company. Western Resources, however, commingled the gas costs from Palmyra with the other districts in the administration of the PGA/ACA. As a result of that, Palmyra residents paid ~~costs~~ rates which were established on MKP/Riverside amounts. Beginning on February 1, 1994, no costs arising from MKP/Riverside were allocated to the Palmyra District. As of March 1, 1994, United Cities had tariffs in effect establishing a PGA/ACA for Palmyra which did not include any MKP/Riverside amounts.

● page 2, para. 3., second line. I would strike "related to the purchase and sale of gas by MGE" as unnecessary language. It says "for the ACA period" and that ought to be enough.

● page 3, first line: insert "has also" before "established", put a period after "1996" at the end of the line and strike the material on the second line.

● page 3, para. 4. For clarification purposes, we suggest the following additions be made: At the end of subparagraph A, add "which terminated on May 31, 1995." At the end of subparagraph B, add "which terminated on May 31, 1995." At the end of subparagraph C add "which became effective on June 1, 1995." At the end of subparagraph D, add "which will become effective when Riverside has FERC authority to implement this transportation service." Is not effective yet ? What's this mean ? ?

● page 4, para. 5., first sentence.
For clarification, MGE would like to see this sentence replaced with the following

> As a result of this Stipulation and Agreement, the Parties agree that neither the execution of the Missouri Agreements or the decisions associated with the execution of the Missouri Agreements shall be the subject of any further ACA prudence review. In addition, the Parties agree that the rates charged pursuant thereto shall not be the subject of any further ACA prudence review until the case associated with the audit period commencing July 1, 1996 and ending June 30, 1997. The Missouri Agreements will be subject to the compliance and operational review (as described herein) of the Staff for all periods on and

after July 1, 1994, and MGE's ACA balance may be subject to adjustment as a result of such review.

● page 4, paragraph 5. MGE believes that there needs to be some language which addresses the fact that it contemplates having an "incentive PGA" in place on and after July 1, 1996. Here is an attempt:

> MGE is scheduled to have new tariffs in operation under an incentive PGA commencing July 1, 1996. Since those tariffs have not been submitted to the Commission, it is difficult to state with any certainty how they may relate to the settlement being effected by this Stipulation. However, it is the intention of the undersigned parties that to the extent there are gas cost (non-transportation) issues involving any of the Missouri Agreements which are relevant to the time periods after July 1, 1996, those amounts will come under the Incentive PGA provisions. As a result, any issues associated with the Missouri Agreements will be subject to the provision that unless MGE's costs subject to the Incentive PGA provisions to be filed rise to the level where a prudence review is triggered, there will be no prudence review of the Missouri Agreements.

● page 4, para. 5., second sentence: The sentence uses the term "shall not be disallowed" and then references Case No. GR-93-140. There were disallowances in that case, so it doesn't make sense to state it the way it is. I suggest the following alternative:

> The intent of the Parties by this Stipulation and Agreement is that the Commission, in adopting this Stipulation and Agreement, issue an order holding that the rates charged pursuant to the Missouri Agreements shall not be disallowed by the Commission in Case Nos. GR-94-101, GR-94-227, GR-94-228, GR-95-82 and GR-96-78, and that the disallowance made by the Commission in Case No. GR-93-140 shall be compromised and settled as provided for herein.

● page 4, para. 5, third sentence. MGE is not sure of the intent or effect of the third sentence. It appears to allow disallowances of amounts attributable to the Missouri Agreements in all of the aforementioned dockets as a result of a "compliance and operational review" by the Staff. We would like to better understand the intent of this phrasing. If there are exceptions to the general rule that disallowances will not be allowed regarding the Missouri Agreements, we need to know exactly what those exceptions are before we can agree to this settlement. Based on a conversation with Rob Hack, I think something like this might work instead as an addition to the sentence discussed above.

> Although the prudence of entering into the Missouri Agreements is finally settled by this Stipulation, additional questions may arise regarding the administration of the contracts by MGE in Staff's compliance and operational review. Therefore, this Stipulation is not designed to preclude the Staff from making proposed adjustments regarding issues involving the manner in which gas is actually taken under the contracts (e.g., gas which was available under the contract was not taken for some reason) or issues involving billing

matters (e.g., MGE paid more than was required under the contract due to a billing or mathematical error.)

● page 4, para. 5, beginning with the fourth sentence and continuing over to "Nothing herein" on page 5. The phrase "and/or" is not very precise and the rest of the sentence could use some improvement. It would also be helpful if the paragraph were broken up for more ease in comprehension. We suggest instead:

6. In consideration of the foregoing and the mutual agreements contained herein, and conditioned on the issuance of a Commission Order adopting this Stipulation and Agreement in its entirety without change, WR and Riverside/MKP hereby jointly and severally agree to tender payments as provided below. A total of $4,000,000 ("the Settlement Payment") shall be paid to effect a settlement of all issues involving the Missouri Agreements in the following cases: GR-93-140, GR-94-101, GR-94-227, GR-94-228, GR-95-82 and GR-96-78. Of the $4,000,000 total, $3,992,500 shall be paid to MGE and $7,500 to United Cities so that each can cause the respective amounts to be credited to their respective ratepayers through the ACA process by lowering the otherwise applicable ACA factors. In ~~this regard, MGE and United Cities are simply conduits for~~ the delivery of these funds to their ratepayers, and neither MGE nor United ~~Cities shall be required to make the filings~~ to implement ~~the credits if they do not timely receive the funds with which to make the credits~~. Similarly, if United Cities or MGE are required by order of any competent authority to return any of the $4,000,000 after United Cities or MGE have already made credits in reliance on the payment, United Cities and MGE shall be authorized to make the appropriate filings at the Commission, and the Commission shall authorize the implementation of such filings, to reverse the credits so that United Cities and MGE are held harmless ~~from~~ absorbing any of the $4,000,000 amount.

No.

7. The Settlement Payment shall be made as follows:

A. $2,492,500 shall be paid on or before August 5, 1996 to MGE, which amount shall include all payments which may be due under the appeal of Case No. GR-93-140. Under the currently effective PGA/ACA provisions, MGE would, in turn, make its ACA filing on or about August 10, 1996, at the Commission, which filing would reflect a credit of the amount received. Such credit will extinguish any and all obligations which MGE or WR or both have with regard to the disallowance ordered by the Commission in Case No. GR-93-140.

B. $7,500 shall be paid on or before August 10, 1996 to United Cities, which shall, in turn, make a filing to reflect a credit of that amount in its next scheduled ACA filing with the Commission thereafter. Such credit shall extinguish any and all obligations which United Cities has regarding proposed disallowances by the Staff relating to the Missouri Agreements.

C. $1,500,000 shall be paid to MGE on or before July 26, 1997. MGE shall, in turn, make an ACA filing at the Commission on or before August 1, 1997 which reflects a credit of that amount.

D. MGE is currently under order of the Commission in Case No. GO-94-318 (Phase II) to implement an Incentive PGA mechanism. Tariffs to do such are not yet due

and have not been approved by the Commission. As a result of the uncertainty regarding what the structure of the MGE's ACA may be in the future, all the parties can practically do at this time is state the intention that if and when MGE receives the funds specified, MGE will make a timely filing with the Commission proposing to credit that amount to its ratepayers through whatever functional equivalent of an ACA factor may exist at that time.

- page 4, para. 5, fifth sentence: This needs to be restructured as follows:

  Further, as a consequence of the Commission adopting this Stipulation as provided herein, WR, Riverside/MKP, and MGE agree to make the necessary filings with the Circuit Court of Cole County, Missouri to dismiss the appeals they have taken from Case No. GR-93.140. As a consequence, WR and Riverside/MKP agree to pay the amounts which are owed to the ratepayers due to Case No. GR-93-140 through the procedures described herein.

- page 5, paragraph beginning "Nothing herein is to be construed ... " Replace the first sentence with the following:

  Nothing herein is to be construed as determining the rights, obligations, compliance or non-compliance with the terms and conditions of any contract between or among WR, MKP, Riverside, and MGE or any combination thereof.

- page 5, next to last line: strike "Payment paid hereunder"

- page 6, second line. Strike "Payment"

- Page 6: We see no reason for the sentence which begins "WR and MGE stipulate that ..." beginning on the fourth line of the page and wish to have it stricken.

- Page 6. We see no reason for the last sentence on page 6, which begins "WR, MGE and Riverside/MKP agree that ..." and wish to have it eliminated.

- Page 9: MGE believes this should be clarified to address whether the prefiled testimony on these issues will be put into the record. Some people have testimony that address both issues, so it may be difficult to separate them. I understand there is a proposal that WNG may withdraw its filed testimony if MKP/Riverside agrees to some changes. I believe this document should address specifically what is entailed. I would rather not have to edit Mr. Langston's testimony and create a new Oxy-only version at this time.

- We need a new paragraph or section which says the following:

The terms of this Stipulation and Agreement shall be binding on any successors and assigns of WR and MKP/Riverside and the parent corporations thereof.

We believe we will also need a signature block for The Bishop Group to effectuate this.

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the matter of Missouri Gas Energy's Gas Cost Adjustment tariff revisions to be reviewed in its 1996-1997 Annual Reconciliation Adjustment.	))))	Case No. GR-96-450

RESPONSE AND OPPOSITION TO APPLICATION TO INTERVENE

Comes now Missouri Gas Energy ("MGE") and for its response to the Application for Intervention filed on December 27, 1996 by Riverside Pipeline Company, L.P. ("Riverside") and Mid-Kansas Partnership ("Mid-Kansas") respectfully states as follows:

1. MGE opposes the intervention of Riverside and Mid-Kansas in this proceeding on several grounds.

2. As noted, the application is several months out of time. The Commission established an intervention deadline of August 9, 1996, in its order issued on July 10, 1996. Other parties timely sought and were granted intervention. Mid-Kansas and Riverside did not seek intervention until December 27, 1996. MGE does not believe that Mid-Kansas/Riverside has established sufficient "good cause" for its delay in seeking intervention and its application should be denied on those grounds.

3. Additionally, a potential intervenor in this proceeding must establish an interest in the proceeding which is different from that of the general public. MGE believes that Mid-Kansas

and Riverside have no cognizable interest in the subject matter of this proceeding which is different from the general public. The question of the prudence of the contracts involving Mid-Kansas and Riverside was finally settled in Case Nos. GR-94-101 and GR-94-228 with the determination that they would not be subject to any further prudence review. (Stipulation filed May 2, 1996, ¶ 5, approved in Order dated June 11, 1996) While the transportation rates and sales costs will be subject to review in this docket, there has been a fundamental change in the review process which was designed to obviate the need for the type of prudence review experienced previously for such costs. The concept of the "incentive PGA" approach now in place is that so long as the costs are below a certain threshold, there will be no prudence review.

4. With the question of the prudence of the execution of the contracts totally out of the scope of this proceeding, and with the prospect of any prudence review only if MGE's costs exceed the predetermined levels, and no indication that there are any contractual provisions which would be triggered even if there were a prudence disallowance regarding Mid-Kansas/Riverside costs, MGE believes that the applicant for intervention has not demonstrated any interest in this proceeding which is different from the general public.

WHEREFORE, MGE requests that the Commission deny the requested intervention on either or both of the ground that it is out of time without good cause and that there is no established interest which is different from that of the general public.

Respectfully submitted,

Gary W. Duffy MoBE #24905
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(573) 635-7166
(573) 635-3847 facsimile

ATTORNEYS FOR MGE

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was mailed or hand-delivered on January 7, 1997, to all parties of record.

Gary W. Duffy

96450mk.opp/gdsu8/wpw

MEMORANDUM

TO: Rick French
Gary Duffy
Marty Bregman
Doug Micheel
Gary Boyle
Stuart Conrad

FROM: Rob Hack RCH

DATE: May 1, 1996

SUBJECT: **GR-94-101/228--Stipulation**

Attached is a near final version of the document that I plan to file by noon today. ¶ 14 is new and addresses the offset issue. The splits have not yet been filled in; they are in ¶¶ 6 and 7.A. and 7.B. I need to know what numbers to insert there. Everything else should be as we discussed it yesterday. Please provide comments or suggestions ASAP. Please advise if you think we need to schedule another conference call. My number is (573)751-8705. Thanks.

DRAFT

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of Gas Service, a Western Resources Company, tariff sheets reflecting PGA changes to be reviewed in the Company's 1993-1994 Actual Cost Adjustment	)	Case No. GR-94-101
In the matter of Missouri Gas Energy's tariff revisions for the former Gas Service area (exclusive of the Palmyra area) to be reviewed in the Actual Cost Adjustment for the period February 1, 1994 through June 30, 1994	)	Case No. GR-94-228

CONFIDENTIAL

STIPULATION AND AGREEMENT

Come now: (1) Western Resources Inc., f/k/a Gas Service Company ("WR"); (2) Missouri Gas Energy, a Division of Southern Union Company ("MGE"); (3) Riverside Pipeline Company, L.P. ("Riverside"); (4) Mid-Kansas Partnership ("MKP"); (5) the Staff of the Public Service Commission of Missouri ("Staff"); and (6) the Office of Public Counsel ("Public Counsel") (collectively the "Signatories") and enter into this Stipulation and Agreement ("Stipulation") by which they stipulate, agree, resolve, compromise and settle the matters set forth below as follows:

1. In Case No. GR-93-140 (covering the ACA period of July 1, 1992 through June 30, 1993) before the Public Service Commission of Missouri ("Commission"), Staff issued its recommendation on April 29, 1994 and the Commission held hearings related thereto on February 2 through February 3, 1995. On July 14, 1995, the Commission issued its Report and Order ("Report and Order"). On July 24, 1995, WR, MGE, Riverside and MKP filed Applications for

Rehearing of the Commission's Report and Order. On September 18, 1995, the Commission denied the Applications for Rehearing. On September 29, 1995 Riverside/MKP and WR (on October 2, 1995) filed Petitions for Writ of Review respectively. On October 10, 1995, the Circuit Court of Cole County, Missouri issued a Stay of the Report and Order . MGUA also filed a Petition for Writ of Review. The appeals have been consolidated, briefs filed and the cases are pending in the Circuit Court of Cole County, Missouri as Case Nos. CV195-1163CC, CV195-1170CC and CV195-1242CC. Nothing in this Stipulation is designed to affect the status of Case No. CV195-1242CC, which is the appeal taken by MGUA.

2. In Case Nos. GR-94-101 and GR-94-228 before the Commission, Staff issued its recommendation on June 16, 1995. The ACA period of Case Nos. GR-94-101 and GR-94-228 is July 1, 1993 to June 30, 1994. GR-94-101 covers WR's PGA changes to be reviewed in its 1993/1994 Actual Cost Adjustment. Southern Union Company d/b/a MGE acquired most of WR's gas distribution properties in Missouri as of February 1, 1994. GR-94-228 includes the PGA costs and revenues for the five month period ending June 30, 1994. On March 1, 1994, United Cities Gas Company ("United Cities") acquired the remaining Missouri properties of WR, being the properties in the Palmyra District. Case No. GR-94-227 was established by the Commission to cover the ACA period for WR from February 1, 1994, through June 30, 1994. Case No. GR-94-227 has been held in abeyance pending the outcome of Case Nos. GR-93-140, GR-94-101 and GR-94-228. The basis on which United Cities and the Palmyra district are involved in these matters is that WR did not have a separate PGA/ACA for Palmyra. Therefore, costs related to Riverside/MKP are included in the amounts paid by Palmyra customers during the periods relative to GR-93-140 and GR-94-101. Customers in Palmyra have never actually received any gas from Riverside/MKP. Palmyra is served

exclusively by Panhandle Eastern Pipe Line Company. WR, however, commingled the gas costs from Palmyra with the other districts in the administration of the PGA/ACA. As a result of that, Palmyra residents paid costs which were established on Riverside/MKP amounts. Subsequent to February 1, 1994, no costs arising from Riverside/MKP have been allocated to the Palmyra District. As of March 1, 1994, United Cities had tariffs in effect establishing a PGA/ACA for Palmyra which did not include any Riverside/MKP amounts.

3. The Commission established Case No. GR-95-82 for the ACA period of July 1, 1994 to June 30, 1995. The Commission has also established Case No. GR-96-78 for the ACA period of July 1, 1995 to June 30, 1996.

4. Staff has reviewed the following Agreements between or among WR, MGE, Riverside and MKP.

A. Sales Agreement dated January 15, 1990, between WR and MKP, as amended on October 3, 1991, with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "MKP/WR Sales Agreement". The MKP/WR Sales Agreement was amended on February 24, 1995, and terminated as of May 31, 1995;

B. Transportation Agreement dated January 15, 1990, between WR and Riverside, as amended by letter agreement dated September 15, 1992, with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "Riverside/WR Transportation Agreement I". The Riverside/ WR Transportation Agreement I terminated as of May 31, 1995;

C. Sales Agreement dated February 24, 1995, between MGE and MKP with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "MKP II Interim Firm

Gas Transportation Contract". Service under the MKP II Interim Firm Gas Transportation Contract commenced on June 1, 1995;

D. Transportation Agreement dated February 24, 1995, between MGE and Riverside with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "Riverside/MGE Transportation Agreement I" which will become effective at a later date pursuant to the terms thereunder.

All of the above Agreements (A to D inclusive) may be collectively referred to herein as the "Missouri Agreements".

5. As a result of this Stipulation and Agreement, the Signatories agree that neither the execution of the MKP/WR Sales Agreement and the Riverside/WR Transportation Agreement I nor the decisions associated with the execution of the Missouri Agreements shall be the subject of any further ACA prudence review. In addition, the Signatories agree that the rates charged pursuant to the Missouri Agreements shall not be the subject of any further ACA prudence review until the case associated with the audit period commencing July 1, 1996, and ending June 30, 1997. The Missouri Agreements will be subject to the compliance and operational review (as described herein) of the Staff for all periods on and after July 1, 1994, and MGE's ACA balance may be subject to adjustment as a result of such review.[1] The intent of the Signatories by this Stipulation and

[1]As a result of the Commission's decision in Case No. GO-94-318, MGE is scheduled to have new tariffs in operation under an incentive PGA commencing July 1, 1996. Since those tariffs have not been submitted to the Commission, it is difficult to state with any certainty how they may relate to the settlement being effected by this Stipulation. However, it is the intention of the Signatories that to the extent there are gas cost (non-transportation) issues involving any of the Missouri Agreements which are relevant to the time periods after July 1, 1996, those amounts will come under the Incentive PGA provisions as approved by the Commission. As a result, any issues (continued...)

Agreement is that the Commission, in adopting this Stipulation and Agreement, issue an order holding that the rates charged pursuant to the Missouri Agreements shall not be disallowed by the Commission for prudence of their execution in Case Nos. GR-94-101, GR-94-227, GR-94-228, GR-95-82 and GR-96-78, and that the findings and conclusions regarding the prudence of the execution of the Missouri Agreements made by the Commission in Case No. GR-93-140 shall be compromised and settled as provided for herein. Although the prudence of entering into the MKP/WR Sales Agreement and the Riverside/WR Transportation Agreement I is finally settled by this Stipulation, additional questions may arise regarding the administration of the contracts by MGE and WR in Staff's compliance and operational review. Therefore, this Stipulation is not designed to preclude the Staff from making proposed adjustments regarding issues involving the manner in which gas is actually taken under the contracts (e.g., gas which was available under the contract was not taken for some reason) or issues involving billing matters (e.g., MGE paid more than was required under the contract due to a billing or mathematical error.) Further, as a consequence of the Commission adopting this Stipulation as provided herein, WR, Riverside/MKP, and MGE agree to make the necessary filings with the Circuit Court of Cole County, Missouri to dismiss the appeals they have taken from Case No. GR-93-140. These dismissals shall take place within ten days of the payments scheduled in paragraph 7.A. As a consequence, WR and Riverside/MKP agree to pay the amounts which are owed to the ratepayers due to Case No. GR-93-140 through the procedures described herein.

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[1](...continued)
related to gas costs associated with the Missouri Agreements will be subject to the provision that unless MGE's costs subject to the Incentive PGA provisions to be filed rise to the level where a prudence review is triggered, there will be no prudence review of the Missouri Agreements.

A of "gas costs"

Nothing herein is to be construed as determining the rights, obligations, compliance or non-compliance with the terms and conditions of any contract between or among WR, MKP, Riverside, and MGE or any combination thereof. WR, MGE and Riverside/MKP agree that this Stipulation shall in no manner whatsoever be deemed to be admission of fault, responsibility or liability of any matter whatsoever by WR, MGE, Riverside and/or MKP. WR, MGE and Riverside/MKP agree that this Stipulation is purely and exclusively for the purpose of avoiding the cost of litigation and regulatory proceedings and is to be construed as that and nothing more.

6. In consideration of the foregoing and the mutual agreements contained herein, and conditioned on the issuance of a Commission Order adopting this Stipulation and Agreement in its entirety without change, WR and Riverside/MKP hereby agree to tender payments as provided below. A total of $4,000,000 ("the Settlement Payment") shall be paid to effect a settlement of all issues involving the prudence of the execution of the Missouri Agreements as specified in paragraph 5 in the following cases: GR-93-140, GR-94-101, GR-94-227, GR-94-228, GR-95-82 and GR-96-78. Of the $4,000,000 total, $abc,000,000 will be paid by WR and $def,000,000 will be paid by Riverside/MKP as specified in paragraph 7 below. Of these amounts, $3,992,500 shall be paid to MGE and $7,500 to United Cities so that each can cause the respective amounts to be credited to their respective ratepayers through the ACA process by lowering the otherwise applicable ACA factors. In this regard, MGE and United Cities are simply conduits for the delivery of these funds to their ratepayers.

7. The Settlement Payment shall be made as follows:

A. $2,492,500 shall be paid on or before August 5, 1996 to MGE, which amount shall include all payments which may be due under the appeal of Case No. GR-93-

and Rimroc shall not.

140. Of such amount, WR shall pay $fgh,000,000. Under the currently effective PGA/ACA provisions, MGE would, in turn, make its ACA filing on or about August 10, 1996, at the Commission, which filing would reflect a credit of the amount received. Such credit will extinguish any and all obligations which MGE or WR or both have with regard to the findings and conclusions regarding the prudence of the execution of the Missouri Agreements made by the Commission in Case No. GR-93-140.

B. $7,500 shall be paid on or before August 10, 1996 to United Cities, which shall, in turn, make a filing to reflect a credit of that amount in its next scheduled ACA filing with the Commission thereafter. Of such amount, WR shall pay $z,000. Such credit shall extinguish any and all obligations which United Cities has regarding proposed disallowances by the Staff relating to the Missouri Agreements.

C. $1,500,000 shall be paid to MGE on or before July 26, 1997. MGE shall, in turn, make an ACA filing at the Commission on or before August 1, 1997, which reflects a credit of that amount.

D. MGE is currently under order of the Commission in Case No. GO-94-318 (Phase II) to implement an Incentive PGA mechanism. Tariffs to do so are not yet due and have not been approved by the Commission. As a result of the uncertainty regarding what the structure of MGE's ACA may be in the future, all the parties can practically do at this time is state the intention that MGE will make a timely filing with the Commission proposing to credit that amount to its ratepayers through whatever functional equivalent of an ACA factor may exist at that time.

8. It is expressly stipulated and agreed by MGE, Riverside/MKP and Staff that the Settlement Payment shall be deemed to be a singular, lump sum, one time settlement payment made in two installments as described in Paragraph 7 above; conversely MGE, Riverside/MKP and Staff agree the Settlement Payment is conclusively and irrebuttably NOT to be construed as multiple payments (even though the lump sum payment is being made in two installments) or as relating to disallowances for two (2) consecutive audit years, with respect to the provisions of any of the Missouri Agreements, as amended. MGE, Riverside/MKP and Staff agree that the Settlement Payment shall in no manner be deemed to be payments made for adjustments or disallowances in gas costs in two consecutive ACA periods for the same or similar reasons or a denial of WR or MGE's right to recover amounts paid to MKP or Riverside in two consecutive ACA periods for the same or similar reasons.

9. None of the signatories to this Stipulation and Agreement shall have been deemed to have approved or acquiesced in any ratemaking or procedural principle or any method of cost determination or cost allocation, or any service or payment standard and none of the signatories shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.

10. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation and Agreement in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

11. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the Signatories waive, with respect to the issues resolved herein: their respective rights

pursuant to Section 536.080.1 RSMo. 1986 to present testimony,[2] to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo. 1986; and their respective rights to judicial review pursuant to Section 386.510 RSMo. 1986 in regard to a Commission order approving this Stipulation and Agreement.

12. If requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each Party shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all Parties. All memoranda submitted by the Parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all Parties, and shall not become a part of the record of the proceedings mentioned hereinabove or bind or prejudice the Party submitting such memorandum in said proceedings or in any future proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any Party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

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[2]The Signatories, the Midwest Gas Users Association and Williams Natural Gas agree that all of the testimony on the Riverside/MKP issue may be received into the record without the necessity of the respective witnesses taking the stand and, as a consequence, that the Commission need not rule on the contested motions to strike filed by Williams Natural Gas, WR and MGE.

The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

13. The terms of this Stipulation and Agreement shall be binding on any successors and assigns of WR and Riverside/MKP and on the partners and general partners of Riverside/MKP.

14. In the event Riverside/MKP fails to pay to MGE any of the amounts required herein, MGE shall be entitled to offset any such amounts against payments owed to Riverside/MKP due to service taken under the MKP II Interim Firm Gas Transportation Contract or the Riverside/MGE Transportation Agreement I.

Respectfully submitted,

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ATTORNEYS FOR KANSAS PARTNERSHIP
AND RIVERSIDE PIPELINE, L.P.

Total Reservation Charges for Pipelines Delivering Natural Gas to Kansas City, Missouri for the ACA Period 1996-1997