

1 BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
2 OF THE STATE OF MISSOURI
3

4 In the Matter of Missouri Gas)
5 Energy's Purchased Gas Adjustment)
6 Tariff Revisions to be Reviewed)Case No. GR-2002-348
7 In Its 2001-2002 Actual Cost)
8 Adjustment.)

9
10 PRE-HEARING CONFERENCE

11 TRANSCRIPT OF PROCEEDINGS

12 VOLUME I

13 NANCY DIPPELL, Senior Regulatory Law Judge,
14 Presiding

15
16 Tuesday, February 17, 2003

17 9:00 a.m.

18 Public Service Commission

19 200 Madison Street

20 Jefferson City, MO 65102

21

22

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EXHIBIT INSTRUCTIONS: No exhibits.

Phonetic Spelling: (Ph.)
Exactly as Stated: (sic)

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TRANSCRIPT OF PROCEEDINGS

JUDGE DIPPELL: This is Case No.
GR-2002-348 in the matter of Missouri Gas
Energy's Purchased Gas Adjustment Tariff
Revisions to be Reviewed In Its 2001-2002
Actual Cost Adjustment. My name is Nancy
Dippell, and the I'm the regulatory law judge
assigned to this matter. And we're here today
for a prehearing conference in this matter.
And I'd like to begin by asking for entries of
appearance from counsel. They've already made
written entries of appearance, so if you just
want to state your name and who you're
representing, that's -- that's fine.
Mr. Berlin, would you begin?

MR. BERLIN: Yes, your Honor.
Robert S. Berlin, attorney appearing on behalf
of staff of the Missouri Public Service
Commission, Post Office Box 360, Jefferson
City, Missouri, 65102.

MR. HACK: Robert Hack, appearing
for Missouri Gas Energy.

MR. KEEVIL: Jeff Keevil appearing
on behalf of Kansas Pipeline Company.

JUDGE DIPPELL: Currently, we have

1 no one present from Office of Public Counsel.
2 All right. First of all, I wanted to begin by
3 asking some questions. I had some questions.
4 There was some issues in -- Missouri Gas
5 Energy had filed a Motion to Strike -- or
6 that's what they had titled it. And I wanted
7 to ask some questions to get some
8 clarification about that. There was -- there
9 were some highly confidential materials in the
10 -- in the filing. So if questions I ask or
11 answers you need to give me contain that,
12 please be aware that currently we're on the
13 public record. If we need to go in camera or
14 whatever, we can can do that. But I just
15 wanted to make sure that we don't go into that
16 on public record.

17 I wanted to begin by asking staff about
18 its request for information by March 2nd. Is
19 -- is there a particular reason for the March
20 2nd deadline? Or was there -- I guess that's
21 my question.

22 MR. BERLIN: Yes, your Honor. The
23 reason is so that we would have information
24 for the 2002/2003 case that we're currently
25 reviewing.

1 JUDGE DIPPELL: And why wouldn't the
2 request be made in the 2002/2003 case?

3 MS. JENKINS: They had -- they
4 haven't provided that level of detail, and we
5 aren't -- we didn't get it in that case and we
6 don't expect to get it in the 2003 case unless
7 we can agree to it.

8 THE COURT REPORTER: Could I get
9 your name, please?

10 MS. JENKINS: Lisa Jenkins, staff.

11 JUDGE DIPPELL: Let me ask MGE. If
12 MGE were directed to file that information by
13 March of 2002, could it be provided?

14 MR. HACK: Since we're now in 2004,
15 no.

16 JUDGE DIPPELL: I'm sorry. I'm
17 sorry. By March 2nd.

18 MR. HACK: I don't believe so. I
19 will say that -- that one of things we're
20 prepared to do today is to sit down with the
21 staff and talk with them about information and
22 our ability to provide information. We'd like
23 to get a better understanding of what it is
24 they think they need and put together a
25 timetable, hopefully by agreement that we

1 could have those discussions and -- and pull
2 that information together. But -- but as it
3 stands right now, I would have to say no, I
4 don't believe we can do it by March 2nd.

5 JUDGE DIPPELL: And then there was a
6 lot of information in the pleadings about
7 report and order, the decision the Commission
8 made in case GR-96-450. And -- and, in fact,
9 there was a lot of reference to making the
10 same arguments that were made in that case.
11 And since some of you may be more familiar
12 with that case than I am, I'm just going to
13 ask you to kind of make it simple for me and
14 -- Mr. Berlin, what -- what issue in GR-96-450
15 on appeal is the issue in this case?

16 MR. SOMMERER: Perhaps, your Honor,
17 my name is david Sommerer, and I'm a member of
18 the Commission's Procurement Analysis
19 Department. And that issue relates to a
20 contract, Kansas Pipeline Company contract,
21 that the staff believes contains excessive
22 charges for pipeline transportation. It's
23 been an ongoing issue for the past several
24 actual cost adjustments. And right now, that
25 issue continues to be before -- I think it's

1 the Appeals Court. And the staff has believed
2 that it's more efficient for the decision to
3 be made there because it may impact the
4 staff's ultimate recommendation in these -- in
5 these cases, these actual cost adjustment
6 cases. So in Case. No. GR-96-450, the
7 Commission made a decision, and that decision
8 was that it did not believe staff had
9 sufficient evidence to make a disallowance, a
10 prudence disallowance for that contract and
11 those resulting costs for Kansas Pipeline
12 costs.

13 And we've had that similar issue
14 quantified and brought forward for a string of
15 ACA periods after that particular ACA case.
16 And that issue continues to be argued in the
17 -- in the Appeals Court. And we're waiting
18 for a decision there. And I believe Mr. Hack
19 or Mr. Keevil may know what that schedule is.
20 But that's the status as I know it.

21 MR. KEEVIL: Judge, if I could
22 address that a little bit, the issue of -- and
23 I -- forgive me. I didn't notice a great deal
24 of discussion in documents that had been filed
25 in this case regarding that case. But I -- I

1 do know a little bit about that old case. The
2 issue which was appealed originally in that --
3 well, not originally. The issue which was
4 appealed in that case dealt with how a
5 stipulation that predated that case should be
6 interpreted.

7 The Circuit Court then has issued their
8 decision. And it -- as Mr. Sommerer said, the
9 case is currently in the Western District
10 Court of Appeals. I -- we're actually not
11 lead counsel on the appeal. But I believe
12 that the Commission's brief is due sometime
13 this week in the Court of Appeals, although it
14 was -- let me point out if I could, it was the
15 Commission which appealed the case from
16 Circuit Court to the Court of Appeals. Then
17 pursuant to that somewhat unusual Court rule,
18 my client wound up having -- again, we aren't
19 lead counsel on the appeal. But my clients
20 wound up having to file the initial brief at
21 the Court of Appeals despite the fact that the
22 Commission was actually the one taking the
23 appeal to the Court of Appeals. So that's why
24 I believe the Commission's brief I think is
25 due sometime this week in the Court of

1 Appeals.

2 And then there would be another --
3 another round of responses, obviously, from my
4 client in the Court of Appeals. The -- the
5 way I see that -- I do agree, certainly, with
6 the -- a lot of times Mr. Sommerer and I -- I
7 think he'll agree with me on this. We often
8 disagree. But one thing I do agree with, if I
9 understood him correctly, I think it would be
10 more efficient to allow that case to proceed
11 before we jump into this case, this 2002-348
12 case.

13 And I say that for several reasons,
14 actually. The -- the cases which predate this
15 case but which are not the case on appeal, the
16 four that Judge Wood recently had a first
17 round appearing time, in that case, you're
18 probably aware, but may not be, that the
19 Commission decided to hold off on addressing
20 the -- what staff and MGE have referred to as
21 MKP/RPC contract issue. In those cases, on
22 basis that -- addressing them, I believe this
23 is -- let's see. From September 10th, 2002,
24 the Commission issued an order that said it
25 would -- they didn't want to waste everyone's

1 time and resources since the issue may be
2 resolved in the -- in the court proceeding. I
3 think that still holds true here. And I'm not
4 even, quite frankly, sure that you could
5 address the issues in this case until the
6 issues are resolved in the cases in front of
7 it. I -- perhaps you can. I'm not saying you
8 can't. But I'm -- I'm just not clear on that
9 one. But you'd be able to --

10 And then, finally, at the time the
11 Commission made that decision in the
12 consolidated GR-2001-382 cases to hold that
13 issue off pending court review, the Circuit
14 Court had not yet ruled, that at that point
15 the case was in Circuit Court rather than in
16 the Appellate Court and Circuit Court had not
17 yet ruled, obviously. And the Circuit Court
18 has since ruled and directed -- give me just a
19 second here. Ordered the Commission to limit
20 its -- any future proceedings in such a way
21 that I don't believe that -- that as long as
22 that Circuit Court order is still out there,
23 you really couldn't go forward any. Although
24 it is on appeal, it has not been stayed. The
25 Circuit Court order has not been stayed.

1 JUDGE DIPPELL: I'm sorry. The
2 Circuit Court order, is that --

3 MR. KEEVIL: This would be the
4 Circuit Court order that led to the what is
5 now in the Court of Appeals as Mr. Sommerer
6 referred to.

7 JUDGE DIPPELL: Okay.

8 MR. KEEVIL: Let me see if I've got
9 a date on this. June 9th, 2003, Circuit Court
10 order in Circuit Court Case 02CV324478. That
11 would probably be -- I don't know if it would
12 be or not. But this was the, as Mr. Sommerer
13 indicated, appellate review of GR-96-450, I
14 guess. And my clients were the ones that took
15 the review to the Circuit Court. But at the
16 Circuit Court, the Circuit Court found in
17 favor of my client. So the Commission then
18 took it up to the Court of Appeals, and that's
19 where it -- where it sits now. So for all of
20 those reasons -- No. 1, I think it would be
21 best to wait for efficiency purposes. And No.
22 2, I -- I honestly think you probably have to
23 -- to wait for legal reasons.

24 JUDGE DIPPELL: Okay. Mr. Hack, did
25 you want to respond to any of that?

1 MR. HACK: We have a little bit
2 different perspective, I guess. We're looking
3 for closure on this issue. The Commission's
4 order in 96-450 addressed the '96/'97 year,
5 about three and a half million dollars in
6 proposed disallowance. Since that time,
7 there's been another almost \$27 million in
8 disallowances proposed. Those disallowances
9 hit our books as contingent liabilities that
10 we have to report on our financial statements
11 publicly. And that's a drag on perceptions of
12 our company.

13 We think the Commission has made its
14 decision. We have heard nothing that
15 indicates the staff has anything new or
16 different to say. And -- and we don't see
17 that there's any basis at all to continue to
18 pile up these multi-million dollar contingent
19 liabilities on our books when the Commission
20 has already made its decision.

21 It does have a tortured history,
22 extensive history. MGE has played no part at
23 all in extending the time of -- of getting
24 closure on this matter. And we -- we need to
25 see some movement, some progress. Otherwise,

1 I don't know when it's going to end. So ours
2 is more of a practical concern at this point.
3 And I don't believe that -- and I haven't
4 looked at it. I haven't looked at the law
5 from this perspective recently. I don't
6 believe that the appeal precludes the
7 Commission from addressing this. I -- I don't
8 think the pending appeal precludes the
9 Commission from asking its staff whether it
10 has anything new or different. And if it
11 doesn't have anything new or different, then I
12 think the Commission can very well say, Let's
13 put this -- let's put this one to bed. Let's
14 spend our time on other things. Let's not
15 drag the company's financials down over --
16 over an issue that has already been decided.

17 MR. KEEVIL: Well, Judge, if the
18 question is can the Commission dismiss the
19 proposed adjustment, that's one thing. If the
20 question is whether the Commission can proceed
21 to a full-blown hearing and evidence and all
22 that, then I think it's something -- something
23 entirely different. And I would, Judge -- if
24 -- I would just offer -- and I don't know if
25 you want it or not. I do have a copy of that

1 Circuit Court judgement in case -- in case
2 you'd like a copy of it.

3 JUDGE DIPPELL: Okay.

4 MR. KEEVIL: The -- and it's really
5 this order that I believe precludes it, not
6 the fact that there is an appeal. It's the
7 fact we now have a Circuit Court order that
8 says this proposed adjustment is precluded and
9 the Commission is barred from further actions
10 related thereto.

11 JUDGE DIPPELL: All right. And
12 that's just an -- the order and judgment in
13 Case No. 02CV324478 from the Circuit Court of
14 Cole County that Mr. Keevil handed me, and the
15 Commission can certainly take notice of that.
16 So, Mr. Hack, then, what you titled a Motion
17 to Strike, that's basically a motion to
18 dismiss those issues from this determination?

19 MR. HACK: Yes.

20 JUDGE DIPPELL: And then you noted
21 several times in your motion some discovery
22 issues with the staff. Have those been
23 resolved?

24 MR. HACK: Those -- we have -- we
25 have had some discussion on these. We have

1 not had an opportunity to contact you yet. I
2 was hoping to see where we got today before
3 finally determining whether those were closed
4 or not.

5 JUDGE DIPPELL: Okay.

6 MR. KEEVIL: Just -- Judge, just
7 before you get too far off, again, so you
8 don't misunderstand what I'm saying, as far as
9 dismissing Mr. Hack's request to dismiss Mid
10 Kansas -- Kansas Pipeline issues, I think that
11 would be consistent with the Circuit Court
12 order I just handed you, whereas proceeding
13 through a full-blown hearing and all would not
14 be. Just so --

15 JUDGE DIPPELL: All right. And does
16 the Kansas Pipeline Company have a position as
17 to that request?

18 MR. KEEVIL: As to dismissal?

19 JUDGE DIPPELL: Yes.

20 MR. KEEVIL: We certainly would not
21 oppose it if you -- if you wanted to dismiss
22 that. You know, actually, in all honesty,
23 Judge, Mr. Hack talked about delaying the
24 case. And just so everyone recognizes this,
25 again, I go back to the fact that while we can

1 originally appeal the GR-96-450 to the Circuit
2 Court, we did not appeal the Circuit Court
3 judgment. So any delay that may have been
4 occasioned after whatever that order is dated
5 is -- that's not our fault, certainly. And I
6 suppose the Commission could if it decided to
7 do so dismiss its Court of Appeals appeal and
8 just allow that Circuit Court judgment to
9 stand.

10 JUDGE DIPPELL: Okay. I'm going to
11 skip around here just a little bit because I
12 -- I wrote down some questions, and I want to
13 make sure I get them answered for myself.
14 Just trying to understand all of this. And
15 some of this is new to me. As you said, it
16 has a somewhat tortured past, so I want to
17 make sure I understand it.

18 Mr. Hack, in your -- in your motion on
19 the second page, you -- you make a statement
20 at the very end that says, These FURK
21 jurisdictional MKP/RPC rates are therefore not
22 subject to disallowance under the filed rate
23 doctrine.

24 MR. HACK: Right.

25 JUDGE DIPPELL: So could -- could

1 you just argue that a little more for me and
2 explain --

3 MR. HACK: I wish I could. I -- but
4 I can point you to that the issue was fully
5 addressed and briefed in GR-96-450 during the
6 2000 -- summer of 2002, as I recall. I guess
7 our -- our view is that -- and I'll probably
8 butcher the -- the technical details. But
9 these rates have been approved as just and
10 reasonable by the FURK and -- and that the
11 FURK is aware that the reasonableness of these
12 rates ought to be challenged.

13 MR. KEEVIL: Judge --

14 JUDGE DIPPELL: Yes, sir,
15 Mr. Keevil.

16 MR. KEEVIL: I would disagree
17 slightly -- I agree with the conclusion he
18 came to. But when he said it was fully
19 briefed in GR-96-450, at the time of the
20 GR-96-450, I'm not sure that all of the rates
21 were -- of my client were FURK jurisdictional.
22 So I'm not sure that the issue was fully
23 briefed in GR-96-450.

24 MR. HACK: And I'll agree there.
25 But I can say that -- that -- that the rates

1 came into effect May 11, 1998. The -- and I
2 did misspeak. It wasn't briefed in 96-450.
3 It was briefed in the consolidated cases under
4 2001-382. And -- and it was briefed as a part
5 of a procedural step to decide whether to
6 consolidate, whether or not to consolidate,
7 what issues to address and when. So ---

8 MR. KEEVIL: That's right.

9 MR. HACK: I'm -- it's all starting
10 to come back to me.

11 JUDGE DIPPELL: Okay. I just have
12 myself a note. It says, Explain the
13 GR-2002-705 transportation and storage costs
14 incentive mechanism argument.

15 MR. HACK: I guess our -- our point
16 there, your Honor, is -- is part and parcel of
17 -- of the -- the prudence procedure that the
18 Commission uses. But the prudence is presumed
19 on part of the company in the first instance.
20 And there has to be a showing, an affirmative
21 showing by somebody alleging imprudence, that
22 there is reason to believe that some
23 unreasonable action, some unreasonable
24 decision has occurred. What -- what we're
25 laying out here is that for the entirety of

1 this time period, which is July 1, '01 through
2 June 30, '02, there was -- there was in effect
3 as a result of a Commission order approving a
4 settlement agreement, a transportation and
5 storage cost savings incentive mechanism.
6 And under that mechanism, MGE generated
7 unchallenged and undisputed by anybody \$3.8
8 million in savings compared to the benchmark
9 that was laid out in that order. And MGE's
10 share under that order of those savings was
11 about \$1.14 million.

12 Now, despite that mechanism, that
13 Commission approved mechanism, dealing with
14 transportation and storage costs, under which
15 MGE inarguably generated almost \$4 million in
16 savings, now the staff is coming after the
17 fact and saying, Oh, you know what, there's
18 \$1.2 million in excess costs, excess
19 transportation costs here. And those -- those
20 two assertions cannot co-exist. They are
21 mutually exclusive of one another.

22 JUDGE DIPPELL: Mr. Berlin, did you
23 have any response or anything else you want to
24 add to staff's position on it?

25 MR. BERLIN: Well, your Honor, as

1 stated in staff's response to MGE's Motion to
2 Strike with regard to MGE raising the filed
3 rate doctrine as a defense, I would like to
4 reiterate that staff is not challenging the
5 FURK rate but instead challenging MGE's
6 judgement in entering into this particular
7 contract. And, therefore, failure of judgment
8 is not protected by the filed rate doctrine.
9 So that is staff's position with regard to
10 that issue if I -- if I understand your line
11 of questions correctly.

12 JUDGE DIPPELL: With regard to the
13 incentive mechanism, with regard to the
14 transportation and storage costs incentive
15 mechanism?

16 MR. BERLIN: Yes, your Honor.

17 MR. HACK: Those are different
18 issues.

19 JUDGE DIPPELL: And that's -- I
20 guess -- I understand that to be your
21 response, Mr. Berlin, to the -- to the filed
22 rate doctrine argument. But I -- I'm asking
23 also about staff's position on the argument
24 that Mr. Hack was just saying in regard to the
25 GR-2000-705 case where the Commission approved

1 the incentive mechanism.

2 MR. BERLIN: Your Honor, I'll have
3 Mr. Sommerer answer that one. He's closer to
4 that particular issue than I am.

5 MR. SOMMERER: Your Honor, there --
6 the staff would say that the Case No.
7 GL-2000-705 had a stipulation and agreement
8 that was signed between the parties that
9 implemented the incentive plan. And as part
10 of that stipulation and agreement, there was a
11 provision that did allow or consider prudence
12 reviews that they would continue. And staff
13 believes that just because there is an
14 incentive program in place, there is the
15 possibility that you may have imprudence.

16 The staff believes that MGE was
17 over-contracted. And although it had savings
18 in some areas, it still maintained, in staff's
19 view, an excessive level of contract demand.

20 JUDGE DIPPELL: Mr. Keevil, did you
21 have anything else to add to that position in
22 this case appeal?

23 MR. KEEVIL: Your Honor, in all
24 honesty, I am not that familiar with -- at
25 least currently about the GR-2000-705

1 incentive mechanism. So as far as the
2 specifics of this proposal, I really don't
3 have anything to add. But I -- I would simply
4 -- I guess this kind of also relates back to
5 what I was saying earlier, and I'm sure
6 Mr. Hack would disagree with me on this, but,
7 you know, staff takes however long they take,
8 a year, fifteen months, whatever to conduct
9 their ACA audit. And during that time MGE is
10 obviously involved in responding and aware at
11 least somewhat of where staff is going. I
12 don't honestly know what this -- the basis of
13 this proposed excess capacity is, whether it
14 relates to my client's contracts with MGE or
15 not at this point and believe that as far as
16 setting a hearing for testimony, schedule, or
17 any type of schedule like that, I would have
18 to at this point until at least I know more
19 about the issue and the basis for the proposed
20 adjustment oppose going forward on the -- on
21 the issue for the same -- basically for the
22 same reasons as the first issue, although the
23 first issue is obviously more directly
24 impacted by what I've previously said.

25 I also think -- I don't think you want to

1 bifurcate things out like they did in the last
2 case because, frankly, I don't think that
3 works very well.

4 JUDGE DIPPELL: And when you say
5 last case, you mean --

6 MR. KEEVIL: Well, the last case
7 that went to hearing here, the 2001-382
8 consolidated case. So my preference -- and,
9 again, I'm sure MGE disagrees with me. My
10 preference would be to hold the entire case in
11 abeyance pending the judicial review, at least
12 the monetary disallowances.

13 Now, as for whether MGE agrees to provide
14 certain information to -- you know, that's
15 MGE's status issues. But as far as the
16 monetary disallowances or at least until I'm
17 more familiar with the basis for this proposed
18 excess capacity, that may or may not impact my
19 clients. And, frankly, at this point, I just
20 don't know.

21 JUDGE DIPPELL: Okay. And then as
22 far as staff's recommendations, are the four
23 points and subpoints -- I'm sorry -- five --
24 five points and sub points listed in the last
25 of staff's recommendations as recommendations,

1 those are everything staff is requesting in
2 this case?

3 MR. BERLIN: Your Honor, what
4 document are you referring to?

5 JUDGE DIPPELL: To your response --
6 to your recommendations. The -- these items
7 listed in the recommendations -- I'm just
8 trying to make sure that I didn't miss
9 something staff was requesting earlier in the
10 recommendation. The --

11 MR. BERLIN: That -- that covers
12 everything, your Honor.

13 JUDGE DIPPELL: Okay. Let's go back
14 to staff's request for information, then.
15 From a procedural standpoint, that's what's
16 foremost on my mind because staff has
17 requested this information by a certain date.
18 And I'm trying to figure out the practicality
19 of that. Why isn't a request for 2003/2004
20 information or -- or -- or even earlier
21 information, why wasn't that done as a data
22 request in the context of this case instead of
23 -- why does the Commission need to order that?
24 Is there --

25 MR. KEEVIL: You mean a data request

1 on that case?

2 JUDGE DIPPELL: Or a data request in
3 that case. It's sort of a two-part question.

4 MR. BERLIN: It's -- it's done
5 because we're not getting the information that
6 we've requested through DRs. So our view is
7 that by Commission order we would get that
8 information.

9 JUDGE DIPPELL: Okay. But staff
10 hasn't made any attempts to compel that
11 information.

12 MR. BERLIN: Well, your Honor,
13 apparently the studies have not been done.
14 So an order to compel would serve no purpose
15 to gather information that does not exist.

16 JUDGE DIPPELL: Then let's back up
17 one step further then and talk about the
18 relevance of the 2003/2004 information in the
19 context of this -- this case. Can you make
20 the connection for me, Mr. Berlin?

21 MR. BERLIN: Your Honor, it's just
22 staff's view that this represents our only
23 opportunity really to get -- to acquire this
24 information. And -- and as soon as a
25 deficiency is noted, staff reacts as -- as

1 soon as it possibly can. So, therefore, we
2 believe this represents our best opportunity
3 to gather this information.

4 JUDGE DIPPELL: And is this a
5 different procedure than staff has used for
6 this company or for other companies?

7 MR. BERLIN: My understanding, your
8 Honor, is this is a typical procedure for the
9 ACA process.

10 JUDGE DIPPELL: Is the request for
11 this future information typical procedure?

12 MR. BERLIN: Yes.

13 MR. HACK: We don't view it as
14 typical at all. And I want to caveat that by
15 saying that we are -- as I had said earlier,
16 we are prepared to sit down with staff and
17 talk about it. But -- but, you know, these
18 ACA cases aren't retrospective in nature.
19 They're designed to review past matters. The
20 -- the reliability report information that we
21 prepared and filed was not done pursuant to
22 any order in any ACA case. It was done
23 pursuant to the -- the orders in GR-2000-705
24 or -- or predecessor docket before that. So
25 -- so I -- they may have done this with other

1 companies in past and those other companies
2 may have accepted that, but we don't
3 necessarily accept that. And there are -- you
4 know, if there is to be a standard related to
5 prospective planning information and whatnot,
6 then it ought to be a rule and ought to apply
7 to everybody and ought not be to be done on an
8 ad hoc or post hoc basis through the ACA
9 process. All that being said, we're prepared
10 to sit down and talk about, you know, what we
11 can do with the staff.

12 JUDGE DIPPELL: Did you want to add
13 something, Mr. Berlin?

14 MR. BERLIN: Yes. I -- yes, your
15 Honor. We believe this is really about giving
16 the company notice as early as possible and
17 that -- rather than waiting due to the lack of
18 this information.

19 JUDGE DIPPELL: Okay. In your
20 summary -- well, in staff's summary on its
21 recommendation, there's a reference there to
22 GR-2001382. Is that a -- is that the correct
23 reference there? Or is that a typo?

24 MR. KEEVIL: Where are you, Judge?

25 JUDGE DIPPELL: I'm sorry. I'm on

1 page 11.

2 MR. HACK: Page 12. 11.

3 JUDGE DIPPELL: Of --

4 MR. KEEVIL: Oh, the beginning of

5 the summary?

6 JUDGE DIPPELL: Yeah.

7 MR. KEEVIL: Okay.

8 JUDGE DIPPELL: At the beginning of

9 the summary, it says, Staff has addressed the

10 following concerns regarding Case No.

11 GR-2001-382.

12 JUDGE DIPPELL: It just threw me off

13 a little bit.

14 MR. KEEVIL: I didn't even notice

15 that.

16 MR. BERLIN: Yes, your Honor. There

17 is a typo.

18 JUDGE DIPPELL: Okay. That makes

19 more sense.

20 MR. BERLIN: That is correct.

21 JUDGE DIPPELL: So that should be

22 the current case number?

23 MR. BERLIN: Yes. The current case

24 number is GR-2002-0348.

25 JUDGE DIPPELL: All right. Just

1 like I say, trying to keep track of what was
2 going where, and that threw me off just a
3 little bit. Okay. I -- I think that answers
4 my questions or at least giving me answers to
5 my questions, make me as much or more confused
6 as before. I'm going to give you all an
7 opportunity to give me a -- a brief argument
8 of your position. And I understand that
9 you're here to talk and work things out, and I
10 strongly encourage that given the complexity
11 of -- of this. And for me -- it will help me
12 if you all can -- can reach some agreement if
13 -- certainly, in making this make some sense.

14 Mr. Hack, would you like to just
15 briefly kind of summarize your motion and --
16 and the company's position?

17 MR. HACK: Yes. Yes. The -- we've
18 addressed all four issues in our response --
19 or four recommendations. Our -- our point
20 with respect to MKP/RPC disallowance is that
21 the Commission has already addressed it,
22 already rejected it. There doesn't seem to be
23 anything new. And if there is nothing new,
24 then on what basis is there to move forward?
25 As a technical matter, I guess, we haven't

1 suggested that that be struck or dismissed.
2 But we think -- we think that perhaps, you
3 know, a question -- and that's much of what
4 our discovery is sort of pending in limbo
5 right now, attempts to get to about whether
6 there's anything new, whether there's any new
7 basis from -- from 96-450. If there's not, we
8 don't see why there's any basis to waste any
9 time. At this point, those answers have been
10 been provided, and I don't -- we still have to
11 discuss that discovery.

12 Second -- second point relates to the
13 excess capacity disallowance. You know, in a
14 nutshell, we believe that a proponent of an
15 imprudence disallowance needs to come forward
16 with a prima fascia case showing some evidence
17 of an unreasonable decision. Staff has not
18 done that whatsoever despite having some 16 or
19 18 months to audit this ACA period. We have
20 come forward with three specific examples,
21 reasons, Commission approved items that --
22 that demonstrate that our transportation cost
23 savings were well within bounds. And we don't
24 think there's a prima fascia showing. We
25 don't think in the absence of a prima fascia

1 showing that we should be forced to spend
2 money, time and resources to defend a claim
3 that, in our view, doesn't exist.

4 Third point, hedging documentation, we
5 are also prepared to discuss that with them
6 today. But -- but, again, this is a
7 prospective standard that -- that the staff is
8 seeking to impose. And this is, by its very
9 nature, a retrospective case. It looks at
10 past matters. I'm not saying we're not
11 willing to discuss it with the staff. But the
12 proper procedure to use for imposing these
13 forward looking standards is not an ACA case.
14 It's a rule-making.

15 Peak day requirement study, we've talked
16 about that a little bit. But, again, that's a
17 prospective analysis that staff wants to see
18 done. Again, we're prepared to talk with them
19 about that today. We're not entirely certain
20 exactly what it is they want. We would -- we
21 would I think hope that we could come to some
22 resolution of that matter on a prospective
23 basis. But for the both the hedging and peak
24 day requirement study, there's some indication
25 in the staff recommendations that although

1 they made the recommendation in December of
2 2003 that they want us to do things related to
3 past periods. And you can't have it both
4 ways. Either it's a prospective standard or
5 it's not. We can't go back and change the
6 world. All we can do is -- is -- is act in
7 accordance with things prospectively. That's
8 it.

9 JUDGE DIPPELL: Okay. Would staff
10 like the opportunity to briefly summarize its
11 position?

12 MR. BERLIN: Your Honor, I'll let
13 Mr. Sommerer summarize staff's position.

14 MR. SOMMERER: Your Honor, the
15 first issue relates to the Kansas Pipeline
16 contract. The staff has continued to believe
17 over the past several years that that contract
18 is imprudent. There's an issue that sits
19 before the Appeals Court currently on the
20 interpretation of a 1996 stipulation and
21 agreement and whether that stipulation and
22 agreement precludes any prudence review
23 whatsoever. So we believe to go forward with
24 this issue may not be the most efficient
25 course of action for the Commission, pending

1 the ultimate outcome of whether that '96
2 stipulation and agreement precludes a prudence
3 disallowance or not.

4 The second issue relates to whether or
5 not there's excess capacity. The staff
6 doesn't believe that an incentive program
7 somehow precludes a prudence review. In fact,
8 we believe those reviews are authorized by a
9 stipulation and agreement. And we also
10 believe that MGE is over contract in terms of
11 their capacity levels and that that prudence
12 argument is based upon the staff's review of
13 those resources that are available to meet
14 MGE's demands. And, again, staff believes
15 that those resources are in excess of
16 reasonable amounts.

17 The third item and, really, the fourth
18 item relate to the staff's desire to have the
19 Commission order MGE to provide substantial
20 documentation with regard to hedging and peak
21 day requirements. These are critical areas.
22 I would have to remind the Commission that
23 there is no integrated resource planning
24 process for Missouri and the gas industry.
25 This is really the only opportunity that the

1 staff has, as of present time, to point out
2 what it believes to be deficiencies in the
3 planning process of local distribution
4 companies, local gas companies. We believe
5 that these are critical areas. The area of
6 hedging relates to how much diversity of
7 supply and how much protection there will be
8 for consumers with regard to price increases.
9 The area of peak day requirement study is a
10 basic fundamental requirement that gas
11 companies have to go through and relates to it
12 how much capacity they will have to reliable
13 -- reliably meet their firm peak day needs.
14 Those are the four issues that staff has
15 brought forward.

16 I would like to go back to Issue No. 1
17 and clarify that staff does believe that there
18 are some differences between GR-96-450 and the
19 current situation with regard to the Kansas
20 Pipeline cost in that the contract became a
21 transportation only contract in approximately
22 1998. And, therefore, the nature of that
23 contract and the nature the cost and the
24 contract itself changed at that point. So we
25 believe that's a significant difference.

1 JUDGE DIPPELL: Mr. Keevil, does
2 Kansas Pipeline Company have any particular
3 positions on any of those issues that you'd
4 like to summarize?

5 MR. KEEVIL: Well, yes. I guess so,
6 Judge. The -- as far as the motion to dismiss
7 is concerned, I agree with Mr. Hack that the
8 case, frankly, should be dismissed for the
9 reasons that Mr. Hack stated. As far as the
10 change in the contract Mr. Sommerer just
11 mentioned, the -- the contract -- there was a
12 package of contracts that were entered into
13 back in 1995, I think it was. And that was
14 was part of the package. And so that -- that
15 contract was -- has been there as long as the
16 other contract. It was reviewed and discussed
17 in the 96-450. So I don't think that's a big
18 change there. So like I said, I agree with
19 MGE. The case should be dismissed.

20 However, if you don't dismiss it, I don't
21 think -- No. 1, I don't think you should
22 proceed with the -- the case, 2002-348 case
23 for efficiency reasons as Mr. Sommerer
24 mentioned. I do agree with him on that part
25 of what he said. And as I mentioned earlier,

1 frankly, with all due respect, I don't think
2 you can proceed for certain legal reasons with
3 -- with this case until that appellate case is
4 resolved.

5 JUDGE DIPPELL: When you say with
6 this case, you mean with those particular
7 issues in this case?

8 MR. KEEVIL: Well, it would be with
9 my issues touching upon the MGE's contract
10 with -- with my client. And, frankly,
11 obviously, the first issue I believe is
12 barred. As far as excess capacity,
13 adjustment, as I said earlier, I don't
14 understand enough about exactly what it is
15 staff's proposing there to know whether that
16 implicates my client or not or whether it
17 would fall under the contracts or -- or -- or
18 what have you. And until we know more about
19 that, I -- I think that issue should be
20 treated similarly to first issue.

21 And as for the issues regarding whether
22 MGE should provide certain plans or
23 documentation or studies or whatnot, I take no
24 position on those issues.

25 JUDGE DIPPELL: All right.

1 Mr. Micheel, would you like to make an entry
2 of appearance?

3 MR. MICHEEL: Yes. I'm sorry I'm
4 late. Douglas E. Micheel appearing on behalf
5 of public counsel and the public.

6 JUDGE DIPPELL: We are at the very
7 end.

8 MR. MICHEEL: Great.

9 JUDGE DIPPELL: I've asked the other
10 counsel to summarize their positions on mainly
11 discussing MGE's motion. Does Office of
12 Public counsel have any position?

13 MR. MICHEEL: I'm not going to take
14 a position on that, your Honor. I'm just here
15 to enter my appearance.

16 JUDGE DIPPELL: All right.

17 MR. KEEVIL: Judge, before you go
18 off the record, if I could -- in the order
19 that you issued setting today's prehearing for
20 9 a.m., and you also included a statement that
21 the parties were required to file a -- ordered
22 to file a procedural schedule by next Tuesday,
23 I believe it was. Given everything that's
24 been raised this morning and -- and especially
25 my personal concerns, my client's concerns, I

1 would request that you suspend the order that
2 the parties file a procedure schedule by next
3 Tuesday. And I haven't talked with any of the
4 other parties. They may all disagree with me
5 on that. But I would request that on behalf
6 of my client.

7 JUDGE DIPPELL: And I -- I'm glad
8 you brought that up. That was sort of a -- a
9 standard procedure there, and I had questions
10 about that myself. What -- what is counsel's
11 feeling -- can we proceed with the proposed
12 procedural schedule before the Commission
13 rules on -- on Mr. Hack's motion or --

14 MR. HACK: I -- I think what we
15 would prefer to do is to have an opportunity
16 to have some level of conversation about
17 various of these matters and see if a
18 resolution probably aside from the MKP/RPC
19 issues can be discussed, arrived at within,
20 you know, a reasonable period of time. So
21 that's -- that's part of what I wanted to talk
22 about with the staff this morning. And -- and
23 in light of that, I think we can probably say,
24 let's -- that's proper to hold off on a
25 procedural schedule for a little while.

1 JUDGE DIPPELL: Mr. Berlin?

2 MR. BERLIN: We would agree that a

3 reasonable delay is in order.

4 JUDGE DIPPELL: All right. I will

5 order that the -- the directive to file a

6 proposed procedural schedule on February 24th

7 is -- will be suspended, then, that the

8 parties won't be required to do that. And I

9 will set a further time. And hopefully the

10 Commission will rule on the Motion to Dismiss

11 those issues. And, hopefully, you all will

12 reach some agreement as to some of those

13 issues today. And --

14 MR. HACK: Today or in the near

15 future.

16 JUDGE DIPPELL: Or in the near

17 future. And report back to me at least in --

18 in the next -- reasonable period of time? Is

19 that what you said? I'm not sure in

20 lawyer-speak what that really is. But in --

21 in time for the Commission to make some --

22 some timely judgements on the motion and so

23 on. Are there any other issues that need to

24 be brought up? I appreciate your coming. I

25 know it was inconvenient for some of you to be

1 here today, and I appreciate you doing it on
2 -- on somewhat short notice.

3 MR. HACK: Thank you very much.

4 JUDGE DIPPELL: Thank you all. We
5 can go off the record.

6 (The proceedings were concluded at 9:55
7 a.m. on February 17, 2004.)

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