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September 10, 2002

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

FILED²
SEP 10 2002
Missouri Public
Service Commission

RE: Case No. GN-2003-0016

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case are an original and the appropriate number of copies of a RESPONSE TO STAFF RECOMMENDATION on behalf of Missouri Gas Company.

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,


Jeffrey A. Keevil

JAK/er
Enclosures
cc: counsel of record

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

FILED²

SEP 10 2002

**Missouri Public
Service Commission**

In the matter of the Application of)
Missouri Gas Company for)
Authorization to Convert to a)
Limited Liability Company and)
Change its Name Accordingly)

Case No. GN-2003-0016

RESPONSE TO STAFF RECOMMENDATION

Comes Now Missouri Gas Company ("MGC" or "Applicant") and for its Response to Staff Recommendation pursuant to the Commission's Order Shortening Time for Response ("Order") issued herein on September 9, 2002, states as follows:

1. As recognized in the Commission's Order, in its recommendation Staff did not object to MGC's application. In its recommendation Staff did not dispute the averments in MGC's application that after the conversion to a limited liability company and corresponding name change the company's capitalization, balance sheet, assets, tariffs and operations will remain unchanged. Likewise, Staff did not dispute that the conversion will not result in any change to MGC's rates, rate base or any applicable ratemaking principles. Staff made no claim that MGC's conversion to an LLC would in fact be detrimental.

2. In its recommendation Staff requested that four conditions be imposed on the approval of MGC's application. MGC does not object to the first two of Staff's proposed conditions, namely that MGC be ordered to:

A. Provide Staff a copy of the organization agreement and operating agreement for Missouri Gas Company, LLC before the name change and reorganization¹ takes effect; and

B. Provide Staff updates of the organization agreement and operating agreement for Missouri Gas Company, LLC as they occur after the name change and reorganization² is approved by the Commission.

3. However, MGC does object to the imposition of the last two of Staff's proposed conditions, namely that MGC be ordered to:

C. Provide Staff access to personal income tax returns of the LLC members during any rate case proceeding to allow Staff to determine the level of income taxes that should be allowed in cost of service; and

D. The Company agrees that for ratemaking purposes, the ADIT balance is not reduced or eliminated when existing members sell regulated assets or assign their rights to a new member.

The reason for MGC's objection to these two conditions is, quite simply, that these conditions are matters that can, and should, be addressed in the context of a future rate case proceeding rather than the instant proceeding. As Staff did in Case No. GM-2001-585 (the case in which MGC's parent company, UPL, was acquired by Gateway Pipeline Company), Staff is attempting to impose conditions in this case which should be addressed, if at all, in a future rate case. In its Report and Order in Case No. GM-2001-585, at page 30, the Commission stated that "[Staff's] Proposed conditions 1, 9, 16 and 18 all relate to issues that would arise in a rate case. The Commission will not prejudge

¹ Staff uses the term "reorganization" in its recommendation, however, the legal action to be undertaken by MGC is actually "conversion" rather than "reorganization", as reflected in the application.

² See footnote 1.

these matters. Nothing in this Report and Order should be considered a finding regarding ratemaking treatment for any matter presented in this case or arising in the future.”

Likewise, in *In the Matter of the Joint Application of UtiliCorp United Inc. and St. Joseph Light & Power Company* and *In the Matter of the Joint Application of UtiliCorp United Inc. and The Empire District Electric Company*, the Commission stated:

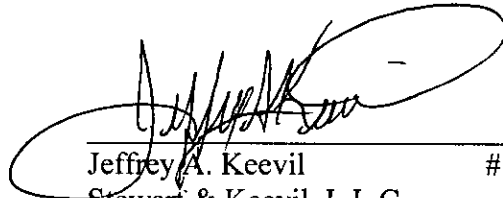
In order to avoid single-issue ratemaking, the Commission has avoided making decisions about rate case matters outside of the context of a rate case. In fact, the Commission typically includes language in non-ratemaking cases that specifically provides that the ratemaking treatment to be afforded a transaction will be considered in a later proceeding.

In the Matter of the Joint Application of UtiliCorp United Inc. and St. Joseph Light & Power Company, Case No. EM-2000-292, p. 40, Report and Order issued December 14, 2000; *In the Matter of the Joint Application of UtiliCorp United Inc. and The Empire District Electric Company*, Case No. EM-2000-369, p. 40, Report and Order issued December 28, 2000.

In its application, MGC specifically stated that “MGC is not seeking, nor will the conversion result in, any change to MGC’s rates.” (emphasis added) MGC would not object to inclusion in the Commission’s order approving its application of the customary condition that nothing in the order in this case shall be considered as a finding by the Commission for ratemaking purposes of the involved properties. If MGC’s application is approved Staff will have the same discovery and investigative abilities it has today, and the Commission will be able to address tax matters (*i.e.*, such as those addressed by the last two of Staff’s proposed conditions) in the context of any future rate case.

WHEREFORE, MGC respectfully requests the Commission issue an order granting the authorizations sought in MGC's application filed herein on July 25, 2002; adopting the first two conditions (conditions A and B) contained in Staff's Recommendation filed on September 4, 2002, if the Commission deems such conditions necessary; and rejecting the last two conditions (conditions C and D) contained in Staff's Recommendation filed on September 4, 2002.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served by placing same in United States mail, first class postage paid, or by hand delivery, to counsel of record on this 10th day of September, 2002.

