

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

In the matter of Missouri Gas Energy's)
Purchased Gas Cost Adjustment (PGA))
Factors to be Audited in its 2003-)
2004 Actual Cost Adjustment.)

Case No. GR-2005-0104

MGE'S REPLY TO STAFF'S RESPONSE

Comes now Southern Union Company, through its Missouri Gas Energy ("MGE") division, and for its Reply to the "Staff Response to Order Directing Response Requesting Consolidation, Rejoining of Bifurcated Cases, and Asking for Abeyance Pending a Decision From the Missouri Supreme Court" ("Staff's Response") filed March 28, 2006, respectfully states the following:

1. The Staff's Response goes far beyond the stated scope of the Commission's Order Directing Response and in essence is a motion for additional relief. MGE opposes the relief requested by the Staff Response as more fully set out in the reply below.

2. Rejoinder of Bifurcation is Neither Appropriate Nor Necessary: Staff's Response says it is "seeking the most expeditious resolution of all seven cases" involved with the Kansas Pipeline issues by seeking a rejoinder of the previous bifurcation of these issues and consolidating seven cases. (Staff's Response, Para. 4). It is not readily apparent to MGE how the Staff advocating even greater delay of *all* the cases coincides with its stated purpose of seeking the most "expeditious" resolution. Further, the Staff's Response does not mention *any event* that has altered the facts or situation extant when the Commission decided to bifurcate the Kansas Pipeline issues

in the first place. MGE is not aware of any event that forces a reexamination of that topic, so it must therefore assume that the reasons for the Commission's initial decision on bifurcation are still in effect.

3. Despite that, if the Commission really wishes to produce an expeditious resolution of the Kansas Pipeline issues, it has it within its power to do that unilaterally and without delay. It can simply issue an order striking that issue from all pending and future ACA cases on the basis that it has already decided that issue. It is the Staff that continues to press this issue in subsequent ACA cases, despite the Commission's decision in Case No. GR-96-450 that Staff did not show sufficient facts to prove imprudence. If the Staff could not demonstrate imprudence in Case No. GR-96-450 through its analysis of the facts and circumstances that existed more than a decade ago, how it is going to do that now – or two years from now? Simply put, the Staff has no new evidence regarding imprudence on the Kansas Pipeline issues that it will be able to proffer in any future hearing.

4. The Staff presented everything it had regarding alleged imprudence in Case No. GR-96-450 and the Commission said that was not enough. There is nothing that is going to change those historical facts in the future. The only thing that changes in each ACA period is the quantification of the disallowance. What possible reason is there to continue to flog this dead horse when Staff cannot produce any evidence that the Commission has not already heard and found wanting?

5. Such an order by the Commission directing the Staff to drop this issue for all pending and future cases also effectively moots the pending court cases. That, in turn,

removes the need to hold all these ACA cases in abeyance, as the Staff's Response requests, until further rulings by the Supreme Court (or the Western District of the Court of Appeals, if the case is sent back there for a third time). Such an order would presumably remove the concerns expressed by Enbridge, as successor to the Kansas Pipeline companies, that it will be financially responsible for Commission-ordered disallowances. So an order such as MGE recommends (1) eliminates the need to rejoin the bifurcation and (2) eliminates the need for Enbridge to pursue the pending litigation because it removes the threat of disallowances (3) and removes any need to hold cases in abeyance pending some court decision. It allows the pending cases to proceed to resolution because it eliminates the complications inherently caused by the bifurcation. That process produces an expeditious resolution, and all it does is simply reiterate what the Commission previously determined after a full hearing on the merits in Case No. GR-96-450. It also removes any impediment (in the nature of not being able to issue a final order because of the bifurcation) to the Commission reaching a decision in Case GR-2001-382, which was submitted in February 2004.

6. Consolidation Not Appropriate: MGE stated the reasons it had for opposing consolidation of GR-2005-0104 with GR-2003-0330 in its Response, and nothing in the Staff's Response alters that, so MGE will not repeat what it has already said. MGE does, however, wish to point out a major flaw in Staff's stated reasoning for consolidation of those and other cases. Staff states in paragraph 8 that "issues of hedging and storage utilization disallowances are present in this case and consolidated case GR-2001-382." If that statement by Staff is meant to imply there is likely to be a

contested issue on hedging and storage utilization in GR-2005-0104, as there was in GR-2001-382, then the Staff should re-read its Recommendation/Memorandum in GR-2005-0104. As pointed out in MGE's filing on January 30, 2006, the Staff found on page 7 of its memorandum that MGE did a "*reasonable job*" of hedging. Therefore, no monetary disallowance was mentioned on that topic. Although some "concerns" were stated, there also was no monetary disallowance proposed for the topic of storage utilization, either. So MGE does not foresee either of those topics becoming litigated issues. Therefore, it is pointless to discuss them in any consideration of consolidation of cases. Moreover, the different nature of Staff's position on hedging and storage utilization in GR-2005-0104 highlights the point made in MGE's Response that sometimes Staff's issues, although perhaps bearing the same general nomenclature, can evolve over time and develop factual dissimilarities between cases, which in turn reinforces MGE's arguments on why consolidation is not appropriate.

7. Further, it makes absolutely no sense to consolidate this (GR-2005-0104) or any other case with Case No. GR-2001-382. As previously stated, the record was closed on the latter case in late 2001 and it has been fully briefed and submitted to the Commission for more than two years. MGE's counsel is not familiar with any situation in which an active case (especially one where there has not even been any testimony) has been consolidated with one that has already been submitted to the Commission for decision. Cases are normally consolidated for purposes of combining the *hearings*. The hearings have already been held in GR-2001-382.

8. It is not in MGE's interest to unduly prolong resolution of ACA cases, especially where the magnitude of Staff's recommended disallowances, compounded by multiple cases with the same issue, require their disclosure in Securities & Exchange Commission filings and therefore raise concerns in the financing community. MGE has therefore pursued consolidations where there was sufficient similarity of issues and procedural status that consolidations made sense for all parties and allowed the orderly presentation of issues to the Commission. Moreover, it was MGE that pointed out the "final order" problem when the Commission first decided to bifurcate the Kansas Pipeline issues. It is entirely within the Commission's power to make that problem disappear and thereby allow the orderly progression of the resolution of the other issues. Granting the request of the Staff will not accomplish any of the goals of consolidation, which is to avoid unnecessary delay and cost.

WHEREFORE, MGE respectfully suggests that the Commission decline to consolidate GR-2005-0104 and GR-2003-0330 because there is no assurance that such a combination would avoid unnecessary costs or delay and a strong indication that it would produce unnecessary delay. Further, for the foregoing reasons, the Commission should reject the request of the Staff to rejoin the bifurcated issues and consolidate the seven mentioned cases.

Respectfully submitted,

/s/ Gary W. Duffy

Gary W. Duffy MBE #24905
Brydon, Swearengen & England, PC
312 East Capitol Ave.
P.O. Box 456
Jefferson City, MO 65102-0456
Direct e-mail: gwduffy@comcast.net
Direct telephone: 269 979-5504

ATTORNEY FOR MISSOURI GAS ENERGY

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was either mailed or hand delivered this 29th day of March, 2006, to:

Marc Poston
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Jeffrey A. Keevil
Stewart & Keevil
4603 John Garry Drive, Suite 11
Columbia, MO 65203

Thomas R. Schwarz, Jr.
Shelley E. Syler
General Counsel's Office
P.O. Box 360
Jefferson City, MO 65102

/s/ Brian T. McCartney

Brian T. McCartney