

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

In Re The Transportation Tariff Proposed       )  
Modification Of Missouri Gas Energy Filed       )  
On May 15, 2008 Proposing Changes To The       )  
Existing Transportation Tariff.                        )

**Case No. GT-2008-0393**  
Tariff No. JG-2008-0680

**STAFF RESPONSE TO MIDWEST GAS USERS ASSOCIATION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Response, states as follows:

1. On May 15, 2008, Missouri Gas Energy (MGE) properly filed a proposed tariff sheet bearing an effective date of June 15, 2008, assigned tariff filing no. JG-2008-0680.
2. MGE's firm sales customers, which are mostly residential customers, now pay the transportation costs caused by large volume transport customers (those that buy and transport their own gas) on the amount of gas they over-nominate (over-order). MGE proposes to eliminate this situation because it works an unintended incentive for large volume transport customers and it creates a cost borne by MGE's firm sales customers.
3. MGE's tariff filing correctly provided for a 30 day suspension and notice period as provided for under Commission Rule 4 CSR 240-2.065 and Section 393.140 (11) RSMO.

**BACKGROUND**

4. On June 9, 2008, the Staff completed its Memorandum in support of MGE's proposed tariff revision and placed it as an item on the June 12, 2008 Agenda meeting.
5. At the June 12, 2008 Agenda meeting, the Commission discussed the tariff and withdrew discussion, allowing it to go into effect by operation of law.

6. On June 12, 2008, counsel for the Midwest Gas Users' Association (Midwest) filed its *Objection And Request For Suspension of Proposed Tariff Sheet [and] Request for Expedited Treatment* (Objection), creating the above-captioned case. In its Objection, Midwest counsel said it only became aware of this filing at the June 12<sup>th</sup> agenda meeting, apparently not monitoring tariff filings on the Commission's Electronic Information and Filing System (EFIS).

7. In its Objection, Midwest asked the Commission for a suspension of 45 days and for expedited treatment of its request. The next day, June 13, 2008, the Commission issued its order suspending tariff to June 22, 2008, and directed any responses to Midwest's motions be filed no later than 10:00am on June 18, 2008.

8. On June 17, 2008, the Staff filed its response along with Staff's verified Memorandum in support of MGE's proposed tariff change, further stating more time is needed for the parties to discuss the effect of this tariff and to clarify any misunderstandings arising from it. Accordingly, Staff was unopposed to suspending the tariff for further discussion.

9. On June 18, 2008, MGE responded to Midwest pointing out:

Leaving the subject provision in place would require MGE to pay for transportation that it does not need in order to serve its customers....MGE has proposed to eliminate the payment of transportation costs where a transport customer has over nominated [and]...believes that this change will provide an additional incentive for customers to balance their nomination and usage as closely as possible.

The proposed change does not create a "windfall to MGE" as alleged by Midwest. The consequences of the payment for this gas is borne by MGE's purchased gas adjustment (PGA) account – the more MGE pays the transporters for this gas, the higher the PGA for sales customers and the less MGE pays transporters for this gas, the lower the PGA for sales customers."

10. That same day, June 18, 2008, Midwest replied to the responses of Staff and MGE, informing the Commission it may not be able to conclude its discussions with MGE by June 22, 2008.

11. On June 19, 2008, the Commission issued its Order Suspending Tariff stating the Commission encourages communication between the state's utilities and their customers, and granting in part Midwest's request by further suspending the tariff to June 27, 2008, to allow additional communication between MGE and Midwest.

12. On June 23, 2008, Midwest filed its *Motion Of Midwest Gas Users' Association To Shorten Response Time For Responses To Data Requests [and] Alternative Motion For Further Suspension [and] Request For Expedited Consideration [and] Request For Shortened Response Time To Motion* (June 23<sup>rd</sup> Motion). Therein, Midwest informed the Commission it had issued 15 Data Requests to MGE. Incredibly, Midwest motioned the Commission to shorten MGE's time to respond to its data requests to one day, being due the next day, June 24, 2008.

13. On June 25, 2008, Midwest filed its *Objection, Motion To Schedule Hearing, Request To Post Ex-Parte Communication And Motion To Recuse* ( June 25th Objection).

14. Not 24 hours later, on June 26, 2008, Midwest filed its *Renewed Request To Suspend And To Schedule Hearing [and] Request For Expedited Consideration [and] Status Report* (June 26<sup>th</sup> Request).

15. That same day, June 26, 2008, MGE filed an extension of proposed effective date of tariff to July 26, 2008.

16. On June 26, 2008, the Commission issued its *Order Setting Response Time and Notice of Voluntary Extension of Tariff Effective Date* (June 26<sup>th</sup> Order) further suspending the tariff to July 26, 2008, and directing any responses to Midwest's motions to schedule a hearing and any other motion filed by Midwest to no later than July 1, 2008.

## **RESPONSE**

### Midwest's Motion for Hearing

17. In furtherance of Midwest's numerous filings telling the Commission it needs more information about this proposed tariff change, Midwest has transmitted 15 data requests to MGE and plans depositions of MGE and Staff. Last week, Midwest counsel told Staff he intends to depose MGE employee Mike Noack in Kansas City on July 7, 2008, and Staff employees Tom Imhoff and Jim Gray during the week of July 14 - 18 in Jefferson City. Also, Midwest has motioned the Commission for a hearing of this case. The Staff responds to this motion.

18. Midwest incorrectly relies on Section 393.150 RSMo as creating a right for Midwest to a hearing and mandating the Commission to hold a hearing. Section 393.150 does *not* create a right to a hearing and does *not* require the Commission to hold a hearing upon suspension of a tariff. This provision merely grants the Commission the authority to hold a hearing, *if* it so orders.

19. However, Staff believes this tariff proposal is a matter of great public interest and the Commission should address this proposal with all due haste. The interests of MGE's firm sales customers are affected because they are paying for the transportation costs caused by large volume transport customers that buy more gas than they use.

20. Recognizing Midwest has raised discovery issues apparently intended to gather reasons why its client transport customers should continue to receive this unintended incentive, the Staff considers an expedited hearing to be beneficial toward reaching a Commission decision on this matter. Moreover, it might be helpful for the Commission to understand why Midwest's large volume transport customers may believe they should be paid transportation costs on the gas

they over-order and sell back to MGE. Shining a light on the motives of Midwest's transport customers to keep requiring small firm sales customers to pay for the system imbalance created by these large volume transporters may help the Commission bring this matter to a speedier resolution.

21. Therefore, Staff recommends the Commission set this matter for hearing of live testimony no later than end of this month (July 31), further suspend the tariff accordingly, and order parties to supply a witness list to the Commission no later than July 22<sup>nd</sup>. To that end, the Staff notes that under Commission rule providing a 20 day standard response time for data requests, MGE's responses to Midwest would be due July 10, 2008.

#### Midwest Request To Post Ex-Parte Communications

22. In its June 25<sup>th</sup> Objection, Midwest made a request to post what Midwest has classified as an ex-parte communication that presumably occurred on June 19, 2008 at a weekly agenda meeting open to the public. The Staff finds Midwest's request to be wholly without merit and baseless.

23. At the June 19<sup>th</sup> Agenda meeting, the Commission discussed this tariff along with Midwest's June 18<sup>th</sup> pleading. In that pleading, Midwest informed the Commission it would not be able to conclude its discussions with MGE by the June 22<sup>nd</sup> effective date and requested the Commission further suspend the tariff so that Midwest could discuss the effects of the proposed tariff. When the Commission entertained this discussion in open agenda meeting, there were no facts in dispute, only the subject of Midwest's request for further suspension of the tariff. Furthermore, Midwest had been given all proper notice due it by law from the inception of this tariff filing. No hearing had been scheduled by the Commission and none is scheduled as of this date.

24. Under 4 CSR 240-020(7) the ex parte prohibitions "...apply from the time an on-the-record proceeding is set for hearing by the commission until the proceeding is terminated by final order of the commission. An on-the-record proceeding means a proceeding where a hearing is set and to be decided solely upon the record made in a commission hearing."

Midwest Motion to Recuse

25. In its June 25<sup>th</sup> Objection and as a result of Midwest's mistaken view the Commission had conducted prohibited ex parte communications with Staff, Midwest motioned the Commission to recuse itself to the extent the Commission had made up its mind based on communications with the Staff. This motion is completely baseless.

26. As stated in paragraph 4 above, the Staff had submitted its recommendation to the Commission in a Memorandum attached to the routing slip placing it for the first time on the June 12<sup>th</sup> open agenda meeting. In its June 12<sup>th</sup> Objection, Midwest claimed it was surprised by the tariff filing, even though MGE had provided proper notice under Commission rule and Missouri statute. Staff filed its response unopposed to Midwest's request for additional time to conduct discussions with MGE. Staff also filed its verified Memorandum in support of MGE's proposed tariff.

27. MGE properly filed this tariff with a 30 day suspension and notice period as provided by law. This case is uncontested. There is no hearing scheduled by the Commission. None of the discussion alleged by Midwest at the open public agenda meetings is subject to ex parte prohibition. Furthermore, the Commission has not made a decision about this tariff and this tariff has not gone into effect by operation of law.

WHEREFORE, for the above-stated reasons, the Staff prays the Commission accept its response to Midwest's June 25<sup>th</sup> Objection and accept Staff's recommendation contained in the body of this response.

Respectfully submitted,

**/s/ Robert S. Berlin**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record this 1st day of July 2008.

**/s/ Robert S. Berlin**