Exhibit No.:
Issues: History and prudence of Mid-Kansas/ Riverside Contracts
Witness: Thomas A. Shaw, CPA
Sponsoring Party: MoPSC Staff
Type of Exhibit: Rebuttal Testimony
Case No.: GR-96-450

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

THOMAS A. SHAW, CPA

MISSOURI GAS ENERGY, A DIVISION OF SOUTHERN UNION COMPANY

CASE NO. GR-96-450

Jefferson City, Missouri
December 1998

****Denotes Highly Confidential Information****

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REBUTTAL TESTIMONY

OF

THOMAS A. SHAW, CPA

CASE NO. GR-96-450

MISSOURI GAS ENERGY

Q. Please state your name and business address.

A. Thomas A. Shaw and my current business address is Room B-33A, State Capitol, Jefferson City, MO 65101-6806.

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

A. I am employed by the Missouri House of Representatives as Director of Accounting.

Q. Please describe your education and professional experience.

A. I obtained a Bachelor of Science in Business Administration (emphasis in Accounting) from Central Missouri State University in Warrensburg, MO during the summer of 1985 and subsequently obtained my license as a Certified Public Accountant.

Q. Please describe your work history and responsibilities prior to accepting employment with the Missouri House of Representatives.

A. Prior to accepting my current position with the Missouri House of Representatives, I was employed by the Missouri Public Service Commission (MPSC or Commission) for many years. I began my initial employment with the MPSC in October of 1985 as a Regulatory Auditor in the Electric Department and continued in that position until November of 1990. My responsibilities in the Electric Department included

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developing methods for estimating short-term electric usage and purchase power opportunities for use in production costing models to simulate electric utility operations.

Upon reorganization of the MPSC in November 1990, I was a Regulatory Auditor in the Energy Department until September 1993. My responsibilities included reviewing such items as Purchased Gas Adjustment (PGA) filings, natural gas rate design, reliability of natural gas supply, and general tariff administration for all MPSC regulated gas and electric operations.

I obtained the position of Regulatory Auditor in the Procurement Analysis Department upon its creation by the Commission in October 1993. My responsibilities with the Procurement Analysis Department primarily included reviewing and analyzing Actual Cost Adjustment (ACA) filings of natural gas local distribution companies. During this period, I also participated in the development and implementation of natural gas incentive mechanisms for Missouri Gas Energy (MGE or Company) and Laclede Gas Company. I remained with the Procurement Analysis Department until my initial resignation from the Commission on November 1, 1996.

In March 1997 I again became employed by the MPSC as Assistant Manager of Accounting. My primary responsibilities as Assistant Manager of Accounting included the oversight, administration, supervision, coordination, and participation in case work and personnel matters involving auditors domiciled in the MPSC's Kansas City satellite office. I resigned my position as Assistant Manager of Accounting on September 30, 1998 and became Director of Accounting for the Missouri House of Representatives on October 1, 1998.

Q. On whose behalf are you sponsoring testimony for purposes of this case?

A. I am sponsoring testimony on behalf of the Staff of the Missouri Public Service Commission (Staff).

Q. Please explain how you became involved in this case.

A. I was the primary Staff witness involved in a $4 million refund settlement to Missouri ratepayers by Stipulation and Agreement (S&A) filed in Case Nos. GR-94-101 and GR-94-228 on May 2, 1996. Because of my personal knowledge and participation in those cases and settlement negotiations, Staff requested I perform certain consulting services for purposes of this case subsequent to my resignation.

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

A. I will provide additional explanation and/or clarification to certain statements in the direct testimony of MGE witness Langston regarding the history of MPSC cases involving Mid-Kansas/Riverside, information known and available to MGE prior to renegotiating the contract at issue in this case, and settlement negotiations in Case Nos. GR-94-101 and GR-94-228.

MPSC HISTORY INVOLVING MID-KANSAS/RIVERSIDE

Q. MGE witness Langston's direct testimony briefly discusses historical Mid-Kansas/Riverside contracts (page 6, line 14 through page 9, line 1) before the MPSC. Did Mr. Langston provide sufficient background to understand the introduction of Mid-Kansas/Riverside into the Kansas City market and continuing business relationship?

A. No, not in my opinion. Company witness Langston generally discusses the history of Mid-Kansas/Riverside and certain contracts transferred to MGE upon its purchase of the Missouri properties in February 1994. MGE subsequently renegotiated contracts with Mid-Kansas/Riverside on February 24, 1995, which are the subject of this case.

Q. Please provide greater detail of the historical MPSC cases involving Mid-Kansas/Riverside.

A. Case Nos. GR-90-40 and GR-91-149 involved MGE's predecessor KPL Gas Service (KPL), which subsequently became known as Western Resources, Inc. (WR). In those cases, the MPSC Staff challenged the prudence of KPL's decision-making process as a result of Federal Energy Regulatory Commission (FERC) Order No. 436. FERC Order No. 436 authorized KPL the opportunity to reduce its historical dependence on Williams Natural Gas Company (WNG) interstate pipeline providing service under what was considered a *full requirements* contract. WNG's full requirements contract was a *bundled* service consisting of natural gas procurement, transportation, and storage services for city-gate deliveries at an FERC-approved rate. With the advent of FERC Order No. 436, KPL had the opportunity to reduce its historical reliance on WNG's full requirements contracts by using either ***reduction*** or ***conversion*** rights. By choosing to utilize its reduction rights, KPL *transferred* a portion of its demand to alternative pipeline suppliers, while conversion rights allowed KPL to procure its own gas supply and utilize WNG for transportation service. Staff believed KPL's decision to utilize reduction rights on Mid-Kansas/Riverside as an alternative to procuring its own gas supply and acquiring transportation service on WNG was imprudent.

Q. How were Case Nos. GR-90-40 and GR-91-149 resolved?

A. The parties executed a Stipulation and Agreement, which was approved by the MPSC. Although the Commission approved the S&A, it expressed the following concern in its Report and Order:

> The Commission has certain reservations concerning whether Gas Service's decision to exercise its reduction rights and reduce purchases from WNG and replace them with purchases from Mid-Kansas Gas Gathering, L.P. (Mid-Kansas) via the Riverside Pipeline Company was prudent. 2 MoPSC 3d 194,198 (1993)

Q. Were subsequent modifications made to the contract at issue in Case Nos. GR-90-40 and GR-91-149?

A. Yes, these modifications were addressed in Case No. GR-93-140. The most substantial modifications/amendments included removal of the price protection contained in the original contract; extension of the contract term until the year 2009; and Mid-Kansas/Riverside accepting responsibility to reimburse KPL for any regulatory disallowances ordered. Staff challenged the prudence of amending the Mid-Kansas/Riverside contract and the issue was fully litigated before the Commission in Case No. GR-93-140.

Q. What did the Commission determine in Case No. GR-93-140?

A. The Commission determined the amended Mid-Kansas/Riverside contract was imprudent. The contract found imprudent by the MPSC in Case No. GR-93-140 was the subject of a Stipulation and Agreement filed in Case Nos. GR-94-101 and GR-94-228 on May 2, 1996.

Q. Is the Mid-Kansas/Riverside contract involving Case Nos. GR-93-140, GR-94-101 and GR-94-228 under consideration in this proceeding?

A. No, the contract at issue in this case was negotiated by MGE and executed on February 24, 1995. For purposes of this case, Staff is challenging the prudence of the rates and charges arising from MGE's contract with Mid-Kansas/Riverside executed on February 24, 1995 based on information known and available at that time.

INFORMATION KNOWN & AVAILABLE PRIOR TO RENEGOTIATION

Q. What information was known and available to MGE when it renegotiated the Mid-Kansas/Riverside contracts on February 24, 1995?

A. MGE was aware of the following:

- Staff and MPSC concerns in historical dockets involving the excessively high delivered cost-of-gas under the Mid-Kansas/Riverside contracts.
- Pending litigation in the Western District Court of Missouri.
- Mid-Kansas/Riverside rate increases pending before the Kansas Corporation Commission.
- Available pipeline alternatives and rates.
- Framework for pending gas cost incentive mechanism.

Q. Please discuss how MGE would have been aware of Staff and MPSC concerns involving historical Mid-Kansas/Riverside contracts.

A. The Commission's Report and Order in Case Nos. GR-90-40 and GR-91-149, as well as filed testimony in Case No. GR-93-140 was available to MGE prior to its execution of the February 24, 1995 contracts. Staff and Commission action in these cases expressed both historical and current concerns regarding Mid-Kansas/Riverside contracts. In addition, the evidentiary hearing in Case No. GR-93-140 case also occurred early in the month of February 1995.

Q. What was the primary Staff and Commission concern known to MGE prior to executing the Mid-Kansas/Riverside contracts in February 1995?

A. The historical and pending docket's demonstrated concerns regarding the delivered cost-of-gas from Mid-Kansas/Riverside and its affiliated entities (sometimes referred to as the Bishop Group) in comparison to known and available alternative pipeline providers during these periods. The excessive delivered cost-of-gas is a result of charges incurred for the procurement of natural gas in Oklahoma and transportation of natural gas through various Bishop Group pipeline affiliates for ultimate delivery in Kansas City, Missouri. During the period under review, the Bishop Group consists of several intrastate pipelines interconnected with an interstate pipeline crossing both the Oklahoma/Kansas and Kansas/Missouri borders (Riverside Pipeline Company, L.P.). These cumulative pipeline transportation charges result in an excessive delivered cost-of-gas compared to available alternative services.

Q. Were the cumulative Mid-Kansas/Riverside transportation charges also a concern to KPL?

A. Yes. The contract at issue in Case Nos. GR-90-40 and GR-91-149 contained price protection for the Mid-Kansas/Riverside delivered cost-of-gas in comparison to WNG's FERC-approved rate for its full requirements customers. However, the price protection contained in the original Mid-Kansas/Riverside contract has been excluded in all subsequent amendments. Admitted into evidence in Case No. GR-93-140 was an internal memorandum from KPL's consultant/gas supply manager that recognized removal of the price protection and agreeing to pay the Bishop Group affiliated charges would be an imprudent decision. KPL's consultant/gas supply manager's internal memorandum is included as Schedule 1 to this testimony.

Q. Did MGE also have litigation pending against the Bishop Group prior to negotiating the February 24, 1995 contracts at issue in this case?

A. Yes. Shortly after acquiring its Missouri properties, MGE filed lawsuits in the United States District Court for the Western District of Missouri (District Court) against both WR and Mid-Kansas/Riverside. MGE sought a declaratory judgment that it be entitled to cancel the existing Mid-Kansas/Riverside contracts and be relieved from taking any gas supplies or have any further obligations under the contracts. MGE asserted that Mid-Kansas/Riverside's administration of the contract with its affiliated entities was of such materiality and magnitude to justify termination of the existing contracts.

Q. Please briefly explain MGE's allegations in District Court.

A. MGE alleged that the prices charged for deliveries under the existing Mid-Kansas/Riverside contracts were substantially in excess of those available from other, third-party sources of supply that were reasonably available to deliver gas into the Kansas City market. MGE alleged that Mid-Kansas/Riverside had breached its implied duty of good faith and fair dealing in connection with the contract by using affiliates to transport gas at excessive rates, when other, third-party transporters could be used to provide the same services at reasonable rates. MGE alleged the Mid-Kansas/Riverside affiliates conducted business under the contract in a self-dealing manner to maximize profits and protect the financial interests of its affiliates, rather than maintain costs at reasonable levels.

Q. What was the result of MGE's federal litigation?

A. The lawsuits against Mid-Kansas/Riverside and Western Resource were settled. As part of its settlement with Mid-Kansas/Riverside, MGE executed the contracts of February 24, 1995.

Q. Does the Mid-Kansas/Riverside contract of February 24, 1995 allow the Bishop Group to charge maximum rates on each of its affiliated pipelines?

A. Yes.

Q. Were the Bishop Group affiliates also requesting significant rate increases during this negotiation period?

A. Yes, Docket No. 190,362U was filed with the Kansas Corporation Commission on May 26, 1994. The proposed rate increase for the Bishop Group affiliated entities would result in fixed upstream transportation charges in excess of \$20.00/MMBtu per month for MGE (compared to WNG's rate of \$9.6832/MMBtu available at that time).

Q. Who is responsible for funding regulatory disallowances associated with the Mid-Kansas/Riverside contracts?

A. Pursuant to Paragraph 4.4(a) of the February 24, 1995 contract, Mid-Kansas/Riverside is responsible for funding regulatory disallowances. This provision is similar to the language contained in the Mid-Kansas/Riverside contract, which was found imprudent by the MPSC in Case No. GR-93-140.

Q. Would a regulatory disallowance also affect the term of the February 24, 1995 Mid-Kansas/Riverside contract?

A. Yes. Pursuant to Paragraph 4.4(b) of the February 24, 1995 contract, if a regulatory disallowance is ordered, the term of the contract will be ***extended.*** This provision was referenced as a "keep whole" provision by Mid-Kansas/Riverside witness Mr. Dennis M. Langley during his deposition in this case

Q. **____**

A. **____**

Q. Does Staff have available all settlements executed in the federal litigation between MGE, WR, and Mid-Kansas/Riverside?

A. No, settlements involving WR have not been provided as of this date. Therefore, Staff is unable to ascertain what additional consideration, if any was exchanged between the various parties in the federal litigation.

Q. Had MGE investigated the availability of alternative pipeline providers prior to executing the Mid-Kansas/Riverside contracts of February 24, 1995?

A. Yes. **____** This level of available capacity on WNG could more than displace the Mid-Kansas/Riverside contract (46,332 Dth) at issue in this case.

Q. Did this investigation also address comparable pipeline rates?

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A. Yes. WNG filed a rate case in January 1995 proposing to increase its fixed reservation charges to $9.6832/Dth. As previously indicated, the proposed fixed reservation charges of the Mid-Kansas/Riverside affiliates during the same period were in excess of $20.00/Dth.

Q. Does the Mid-Kansas/Riverside contract of February 24, 1995 provide benefits not available in the contract found imprudent by the Commission in Case No. GR-93-140?

A. Yes. However, Staff believes these benefits do not eliminate the detrimental impact associated with MGE's imprudent decision to pay maximum rates to the Bishop Group affiliates.

Q. What were the primary benefits obtained by MGE in comparison to the contract found imprudent by the MPSC in Case No. GR-93-140?

A. MGE negotiated a lower commodity charge and the ability to transport additional volumes at this lower rate during the ACA period under review. The commodity rate specified in Paragraph 4.2 of the February 24, 1995 contract is substantially lower than the historical index and premium used to determine the commodity costs under the contract found imprudent in Case No. GR-93-140. Furthermore, the ability to transport additional volumes at a more favorable cost resulted in additional benefit. However, this specified commodity charge reduction expired upon Mid-Kansas/Riverside's transportation service being authorized under the FERC's jurisdiction. The overall cost of this gas still exceeds the cost available from the WNG system when these contracts were renegotiated.

Q. Was MGE also in the developmental stages for a gas cost incentive mechanism during this period?

A. Yes, attached as Schedule 2 to this testimony is memorandum from Penny Baker (Staff attorney) to various parties in Case No. GO-94-318 dated February 22, 1995 based on a MGE fax of February 16, 1995. As indicated by Schedule 2, MGE was prepared to lead/moderate discussion regarding a *framework* for a gas cost incentive mechanism. It was during this meeting that initial discussion began regarding MGE's desire to incentize its natural gas commodity costs and determine tolerance zones or deadbands, cost/benefit sharing, treatment of capacity release, carving out specific contracts, length of expirement, implementation, reporting, etc.

Q. Did MGE desire a delivered cost-of-gas incentive mechanism?

A. No. Throughout Case No. GO-94-318, MGE argued against pipeline transportation and/or delivered cost-of-gas incentive mechanisms in lieu of its proposed commodity cost benchmark based on historical purchases. Although MGE certainly could not know what the Commission's ultimate decision in Case No. GO-94-318 would be, the Mid-Kansas/Riverside contract was executed the day after the incentive workshop.

STIPULATION AND AGREEMENT IN CASE NOS. GR-94-101 & GR-94-228

Q. When Staff was negotiating the settlement of Case Nos. GR-94-101 and GR-94-228, was it aware of the information known and available to MGE in February 1995?

A. Yes, Staff was aware of the information known and available to MGE, which is listed in the previous section of this testimony. By this time, the MPSC had also determined that the Mid-Kansas/Riverside contract in Case No. GR-93-140 was imprudent. Furthermore, all testimony in Case Nos. GR-94-101 and GR-94-228 had been filed and the hearing was pending.

Q. Was Staff aware of the Mid-Kansas/Riverside contract changes of February 24, 1995 prior to its settlement in Case Nos. GR-94-101 and GR-94-228?

A. Yes. However, Staff still believed that the February 24, 1995 Mid-Kansas/Riverside contract would likely result in additional excess charges being passed-through to Missouri ratepayers. This fact is confirmed by an internal memoranda from myself and Staff witness Sommerer, through Mr. Kenneth Rademan (Utility Services Division Director at that time), to Carmen Morrissey on March 29, 1996 which states, "The Procurement Analysis Department believes the full detriment to Missouri ratepayers will exceed $4 million per year beginning with the ACA period that starts July, 1995." A complete copy of this memo is attached as Schedule 3.

Q. Does MGE witness Langston contend that the Staff and Commission resolved the prudence of the February 24, 1995 Mid-Kansas/Riverside contract by the S&A filed in Case Nos. GR-94-101 and GR-94-228?

A. Yes, Company witness Langston alleges that a prudence review is precluded by the S&A filed in Case Nos. GR-94-101 and GR-94-228 (page 10, line 6 through page 12, line 4 of his direct testimony). However, all parties to the settlement negotiations were aware that the Mid-Kansas/Riverside contracts of February 24, 1995 had not alleviated Staffs most significant concerns from previous dockets.

Q. Were all parties aware that Staff would not consider giving up its rights to future prudence reviews of the February 24, 1995 Mid-Kansas/Riverside contracts?

A. Absolutely. Staff's never changed its position that it could not, and would not, recommend ***preapproval*** of the February 24, 1995 contracts.

Q. Is this fact evident in written documentation?

A. Yes, please refer to Schedule 5 attached to Staff witness Sommerer's rebuttal testimony in this case. Schedule 5 to Staff witness Sommerer's rebuttal testimony is an April 26, 1996 cover letter and draft S&A from Tino M. Monaldo (attorney for Mid-Kansas/Riverside) to other parties in Case Nos. GR-94-101 and GR-94-228. The attorney for Mid-Kansas/Riverside states, "The Staff of the MPSC and Riverside/Mid-Kansas have agreed to the attached Stipulation and Agreement."

The first sentence of paragraph 5 states, in part, "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-96-82."

This language clearly and unambiguously demonstrates Staff and Mid-Kansas/Riverside agreed that a prudence determination was simply being deferred until a subsequent ACA review in exchange for a ***safe harbor*** period encompassing the listed cases.

Q. Did the dollar value of the settlement change during the discussions from April 26 through May 2, 1996?

A. No, the dollar value of the settlement remained constant at $4 million.

Q. Is it common practice to discuss settlement negotiations and/or documents?

A. No. However, both MGE and Mid-Kansas/Riverside now allege that the Staff and Commission ***predetermined the prudence*** of the February 24, 1995 contracts by the S&A filed and approved in Case Nos. GR-94-101 and GR-94-228 S&A. Given that the MPSC had already ordered a $1.3 million disallowance in Case No. GR-93-140, testimony was filed and hearing pending in Case Nos. GR-94-101 and GR-94-228, and Staff's ongoing concerns with the February 24, 1995 Mid-Kansas/Riverside contract, allegations that Staff would agree to forego further prudence reviews in exchange for $4 million is ludicrous.

Q. Did Staff require language which maintained its rights for future prudence reviews in the Case Nos. GR-94-101 and GR-94-228 S&A?

A. Yes. The S&A clearly and unambiguously states, "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 on June 30, 1997." This case provides the first opportunity for Staff to address the prudence of the February 24, 1995 Mid-Kansas/Riverside contracts pursuant to the S&A in Case Nos. GR-94-101 and GR-94-228.

Q. Would you provide some insight regarding the modifications which are now considered ambiguous?

A. Yes. Because MGE had purchased its Missouri properties from WR and subsequently renegotiated the Mid-Kansas/Riverside contract, WR believed it would be inappropriate to require it to continue providing historical information and to request intervenor status in future cases before the MPSC. MGE, WR, and Mid-Kansas/Riverside all contended that information relevant to its federal litigation was inappropriate discovery in future dockets. Staff therefore believed it was reasonable to agree not to pursue information relevant to WR's historical decision-making processes and federal litigation at that time. Staff's General Counsel at that time assured the Procurement Analysis Department that such a reading of the S&A was reasonable and the statement, which specified the next period for a subsequent prudence review, provided adequate protection.

Q. Is this fact evident from other portions of the S&A in Case Nos. GR-94-101 and GR-94-228?

A. Yes. Page 5 of the S&A states, "Although the prudence of entering into the MKP/***WR*** Sales Agreement and the Riverside/***WR*** Transportation Agreement I is finally settled by this Stipulation..." Note again, Staff only agreed the historical ***WR*** contracts were finally settled by the S&A in Case Nos. GR-94-101 and GR-94-228.

Q. Would you please summarize your rebuttal testimony?

A. Staff believes MGE's decision to execute the Mid-Kansas/Riverside contract of February 24, 1995 is imprudent and results in excess charges being passed-through to Missouri ratepayers. Prior to executing the Mid-Kansas/Riverside contract at issue in this case, the Commission, its Staff, and even the consultant/gas supply manager of KPL Gas Service (MGE's predecessor) expressed concerns about the prudence of paying maximum reservation charges to each of the Bishop Group affiliated entities necessary to deliver natural gas to the Kansas City market. MGE also had information available which indicated that existing capacity sufficient to displace the contract at issue in this case could be obtained from alternative pipeline providers on significantly more economical terms.

Prior to executing the Mid-Kansas/Riverside contract in this case, MGE was also aware of Staff's concerns regarding the regulatory reimbursement provision. However, MGE and Mid-Kansas/Riverside negotiated an agreement that provides Mid-Kansas/Riverside being responsible for funding regulatory disallowances in exchange for **____ ________** Furthermore, should any regulatory disallowance be ordered, the term of the contract will be extended. This provision was classified as a ***make whole*** during the deposition of Mid-Kansas/Riverside witness Langley in this case. Staff believes these provisions are contrary to public policy because the local distribution company (MGE in this case) has effectively abandoned its continuing responsibilities to assure contractual rates and charges are just and reasonable. Please note that MGE witness Langston's direct testimony did not attempt to justify the prudence of the Mid-Kansas/Riverside contract of February 24, 1995.

MGE and Mid-Kansas/Riverside allege that the Staff and Commission previously agreed to the prudence of the February 24, 1995 Mid-Kansas/Riverside contract by the Stipulation and Agreement filed in Case Nos. GR-94-101 and GR-94-228. This is in spite of the clear and unambiguous settlement provisions stating the next prudence review period and discussions among the parties over many months of negotiation.

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In summary, Staff's calculation of ratepayer detriment associated with MGE's imprudent decision to execute the February 24, 1995 Mid-Kansas/Riverside contracts is reasonable based on information known and available to MGE at that time. Staff's utilization of a WNG firm transportation contract as a surrogate for calculating ratepayer detriment is reasonable given sufficient capacity was available at more economical terms. As discussed in the rebuttal testimony of Staff witness Sommerer, Staff's position in this case appears consistent with the prudence standards addressed by the MPSC in previous Report and Order's.

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	)	Case No. GR-96-450
Reconciliation Adjustment Account.	)	

AFFIDAVIT OF THOMAS A. SHAW, CPA

STATE OF MISSOURI	)	
	)	ss.
COUNTY OF COLE	)	

Thomas A. Shaw, 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 18 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.

Thomas A. Shaw

Thomas A. Shaw

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

Toni Willmeno

Notary Public

TONI M. WILLMENO
NOTARY SEAL
NOTARY PUBLIC
STATE OF MISSOURI

My Commission Expires: ____________

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

TO: Bill Johnson

FROM: Jack Roberts

DATE: February 22, 1991

SUBJECT: Kansas Pipeline etal. Proposals

CC:

KPL GAS SERVICE

INTERNAL CORRESPONDENCE

First, I find Putman's February 14, 1991, letter very confusing in that the contract outline does not match most of the contract drafts that he presented.

For example:

outline			contract	comment
#3 KNP	8 MM/D		KPP 8.4 MM/D	KNP vs. KPP?
#4 KPP	2 MM/D		not attached	
#5 MKP	20 MM/D		MKP 84.2 MM/D	20 v.s. 84.2?
		or	KPP 21.1 MM/D	MKP v.s. KPP?
		or	KNP 21.1 MM/D	MKP v.s. KNP?
#6 KPP	5 MM/D		not attached	
#7 KNP	5 MM/D		not attached	
#8 RPCLP	84.2 MM/D		Tpart 84.2 MM/P	attached

Second, I see no need to rush these negotiations and execute contracts by the ridiculous date of February 20, 1991! In fact, as I will comment below, there are many good reasons to go slow and in some cases, not go at all.

Third, we need to know why this consortium chooses to contract as KPP in one case and as KNP in another and as MKP in yet another! How does that relate to supply integrity and sourcing?

Fourth, two contracts provide for purchase volumes to go to Wichita–29.5 MM/D as early as 11/1/91 and 21.1 MM/D to begin 1/1/93 (2.555 Bcf and 1.825 Bcf annually). Wichita currently absorbs KPL's main system gas that is excess to the main system. I believe KPC's proposal would push out KPL's gas and not necessarily WNG's gas as would be the apparent intent. This is critical and needs to be thoroughly explored and plenty of "cushion" needs to exist to protect KPL's own Wichita market. Also, WNG is shipping KPL's gas for 18¢. KPC should be required

Schedule 1

to charge no more than 18¢. To do otherwise would be uneconomical. I had explored this with them several times and 24¢ was as low as they would go!

Fifth, why sign contracts now that don't start until January, 1993! This preempts KPL's ability to formulate and negotiate a new flexible arrangement with WNG for our future business relationship. KPC is trying to tie up KPL and apparently KPC must believe they have first right to KPL's market.

Sixth, our conversion rights for November 1, 1991, is 6%. If that is all absorbed as conversion (transport over WNG), that represents 21.4 MM/D and our Mesa contract already commits 15 MM/D of that 21.4 MM/D which leaves 6.4 MM/D, which if used as a reduction instead of conversion is worth 27 MM/D that could be assigned to someone like KPC. The proposal from KPC of 29.5 MM/D for Wichita, plus 4.2 MM/D for Ottawa adds to a total of 33.7 MM/D with total annual volume of 2.920 BCF. This exceeds the 27 MM/D and 2.340 BCF levels that would be allowed.

This, of course, also leaves no room to bring our new Oxy and Amoco contracts "into the fold" as a permanent conversion. It leaves them out in the "cold" and relegates them to continue as an interruptible service. I would not think that leaving the Amoco and Oxy contract arrangements as interruptible is prudent or in the spirit of those contract settlements.

The detailed calculations are as follows:

$$.06 \times \frac{130}{365} = \begin{array}{l} 21.4 \text{ MM/D} \\ \underline{-15.0} \text{ Mesa} \end{array}$$

$$\frac{6.4 \text{ MM/D } (365)}{130} = 1.8\% \text{ left}$$

1.8% of 1500 = 27 MM/D peak

$$\frac{130{,}000}{365} = 356.2/1500 = 23.75\% \text{ L.F.}$$

27 x 365 x .2375 = annual allowable = 2.340 BCF

Seventh, why are some of KPC's proposals terminating in 2003 and some in 2004? ... (not a major point)

Eight, the 35 MM/D Kansas City, Kansas contract is to be revised and extended. Additionally, KPC proposes another 21.1 MM/D for Kansas City, Kansas. There are times now when it is difficult to absorb the existing contract in Kansas City, Kansas, and to increase this volume will make it even more difficult. Of course, KPC's objective is to get WNG completely out of Kansas City. They don't care that some room for another supplier should exist for KPL for flex and reliability purposes. The operating people will find it harder and harder to serve Kansas City, Kansas with some WNG gas--the WNG volumes will be too small for good operation. We have reached the reverse argument that sponsored KPC in the first place – diversity of supply. KPC's proposal pushes WNG out at certain key and critical delivery points that serve a large distribution network. Several delivery points are needed to serve a network as large as Kansas City and KPC is trying to force their gas into this network at only two points when the system needs gas flowing at 6 to 7 points simultaneously. If KPC had supply at all of WNG and PEPL TBs, then it might work -- but they don't.

Ninth, we just finished executing a contract with Panhandle that converted one-half of the Kansas load to firm transport backed by a good Phillips supply contract. Osawatomie and Paola are part of that load. To give that load to KPC now would be to thwart the current supply arrangements which will create contract difficulties.

Tenth, the following comments deal specifically with the proposed contract language.

Amendment to August 8, 1988 KPC L.P. contract which provides 35 MM/D to Kansas City, Kansas.

- Old 3.1 provides term to 1/1/93 and one year rollovers.
  Amended 3.1 provides October 31, 2005 term and five year rollovers.

Why is it necessary to have a term this long (12 years)? All of our contracts are for five years, even our WNG relationship. This gives KPL flexibility, and it is clear KPC wants to control and limit KPL's flexibility. Only the Amoco and Oxy contracts have long terms and we got a big discount for that! This 12-year term and 5-year rollover does not seem prudent to me.

- Old 4.1 - Seller's M&R and Exhibit A is provided.
  New 4.1 - Exhibit A is removed - now Putman does not have to show KPL his supply or transport contracts. I think KPL needs to have the right to see the integrity of the supply arrangements it is depending upon! WNG generally shares this kind of data with us but Putman has always been secretive. This does not seem prudent to blindly depend upon Putman's group.

- Old 5.2 - Price = cost + fixed margin of 40¢ or KPC's COS rate determined from true costs by KCC - but such rates cannot exceed WNG's PR-B (2) rate - 15¢.
  New 5.2 - 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.

- Old 6.1 - WNG month statement on approximately the 5th, pay in 10 days; KPC sends measurement record to KPL each month.
  New 6.1 - minor changes - okay.

- Old/New 6.3 - invoice addresses - okay.

- Old 8.1 - 35 MM/D and 3.033 Bcf/yr.
  \+ .3 additional grandfather.
  3.3333 total
  KPL market controls.

New 8.1 - *Okay to refer to 14.2 but KPL needs right to refer to what KPL's market will* accept! This language needs to be put back in.

- **Old 8.2 vs. New 8.2** - Buyer shall give as much prior notice to Seller "as the circumstances permit," before scheduling MDQ (35 MM/D). This is too vague and KPL has the <u>right</u> and the needs to get its 35 MM/D rate when<u>ever</u> it needs it!

  "The remedies recited in this numbered paragraph shall be the exclusive remedies available to Buyer under the circumstances cited above." KPL is limiting its liability in the event it fails to perform.

Again, KPC is reducing their responsibility by adding language on p. 5 ["failure . . . facilities].

reliability X

This would allow Phenix to transport KPC's gas and have freeze ups - their line carries more liquid and water vapor than most other major pipelines, and this increases our risk of interruption in mid-winter when we need it. Also, if KPC fails on WNG's peak, WNG has the right to penalize KPL!!!

It would be imprudent for KPL to let KPC put KPL in this risk posture!

- **Old 8.9** - no TOP.
  New 8.9 - puts KPC volumes ahead of WNG volumes and ahead of all of KPL's other contract volumes from Amoco, Oxy, Mobil, etc., etc.

This is an unreasonable hook that KPC has asked for! It would be imprudent for KPL to give KPC this exclusive first right.

- **Old 14.1** - 3 year load profile.
  New 14.1 - revision is okay.

- **New 8.10** - KPL will deliver KPC's gas to Industrials in Wyandotte County. Also at the election of KPC they can demand that KPL deliver to Industrial's or for KPC's supply at Riverside interconnect and deem it to meet this argument or KPC's Industrials agreements. So if Kansas City, Kansas can't absorb the gas - it can go to KPL's monthly load. (How does KPL's Riverside

  - *this added 8.10 paragraph is okay.*

The following comments relate to the proposed amendment of the January 15, 1990 contract.

- **Revised 2.1** - okay.

- **Revised 3.1** - term is to 2005 - I think this is imprudent to have this long of a commitment. The WNG contract and KPL's other regular agreements are not this long. Only where we get a discount (Oxy and Amoco) does KPL have a term over five years.

- **Revised 5.2** - same price language as the amended KPC contract - I feel these price revisions are imprudent as I noted on the KPC contract.

- **5.3** - 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.

- **6.1** - okay.

- **6.3** - okay.

- **8.1** - okay.

- **8.2** - prior notice "as circumstances permit" - vague - I have the same comments as the KPC contract. KPL is paying for the right to demand peak service anytime – just like our WNG & PEPL service. The problem is as usual, KPC wants a break on its performance requirement.

- **8.3** and **8.4** - same comments as KPC contract.

- **8.7** - probably okay.

- **8.11** - first priority as KPL's supplier is ridiculous - I have the same comment as on KPC contract.

- **8.12** - okay.

- **14.1** - okay.

<u>General comments concerning contract format</u>:

- For general reference, I have numbered the contracts 1 through 5.

- The five contracts are very similar and most of the language is identical.

- Contract #1 (KNP 33.7 MM/D)
  - typo on p. 4: 33,500 should be 33,700
  - typo on p. 5: 33,500 should be 33,700
  - page 6: "or civil disturbances; ... whichever is less, Seller shall <u>be obligated to</u> immediately ..." (should be revised to read like the other contracts for consistency).
  - page 6, four lines from bottom - the word "guaranteed" was omitted.
  - page 8, paragraph 8.13 should be revised to read like contract #2 for consistency.

- Contract #2 (KPP 8.400 MM/D)
  - make paragraph 8.13 in Contract #1 read like this paragraph 8.13 in Contract #2.

- Contract #3 (MKP @ 84,200 MM/D)
  - add words "for Buyer" on page 2, paragraph 4.1, line 5, after L.P.
  - page 5, line 8, typo 84000 should be 84,200.

- Contract #4 (KPP @ 21,100 MM/D)
  - page 2, two lines from bottom - line should read "amount up to the maximum sales margin rate authorized for Kansas Pipeline ..."
  - page 5, line 4 typo, 21,10000 should be 21,100.
  - page 8, last line should read, "and such deliveries shall be deemed to have been made in the State of Kansas, and vice"...

- Contract #5 (KNP @ 21,100 MM/D)
  - no typo or format comments.

Contract shortcomings or unreasonable positions:

Contract (#1 - #5)

- Term - *2003 or 2004 w/5 year rollovers*
  - This is too long a term and hurts KPL's flexibility.
  - 5-year rollovers is also an unreasonable hook which thwarts KPL's flexibility and options. It is obvious KPC is attempting to "tie up" KPL and control KPL's economic options.

- Delivery Points - the existing Wichita load will have difficulty in supporting this contract while at the same time allowing room for KPL's existing KGS contract and the WNG discount transport contract which moves 12-16 BCF/yr. of KPL's own gas into the Wichita market. This interference should not be permitted. It would be imprudent to setup another supplier that forces KPL's own gas out of Wichita. This could cause major take or pay problems with our Mesa contract and our Barber County production through KGS, not to mention the diseconomics of the KPC proposal.

- Price - this is the most abusive article (for all five contracts) in the entire proposal.
  - There is no lid.
  - Seller wants KPL to pay whatever the third party gathering and transport costs are as arranged for by Seller. This is a blank check - he could arrange for the most expensive service as well as direct that lucrative over priced business to his partners. In practically all of the supply deals I put together for KPL, the supplier pays for gathering which can range anywhere from 10¢ to 35¢ which is no small add on! Also, it has been KPL's policy that 3rd & 4th party or second and third tier transporters are excluded from force majeure exemptions in this contract; otherwise, KPC could set up a chain of transporters and that not only increases cost to KPL but the likelihood of performance failure for which KPC would claim exemption and KPL would go begging.

total cost + reliability

- Quantity - the ability to absorb these volumes must be studied in great detail - for example, Seller has generally proposed to deliver all the gas which in many cases represents a very large part of the market (if not all of it) at only one delivery point while five may exist to meet the diversity of the load. Cramming all the gas into one point when it used to go to up to 5 points can create a distribution problem.

- also as to the Paola and Osawatomie proposals that are currently committed under the PEPL contract, it will not be until November, 1992 before we can amend the Panhandle contract and reduce tables from Panhandle.

- KPL has a Phillips contract that replaces 1/2 of PEPL now. It would be imprudent to displace Phillips with KPC. Therefore, I suggest we consider giving one-half the Paola and Osawatomie load (the PEPL part) to KPC but not until November, 1992. This should be studied further, however.

- this last sentence in 8.1 should exist in all contracts or amendments.

- paragraph 8.2, last sentence, can be construed (and it would be) by KPC to deny KPL the <u>immediate</u> necessary action to get the peak volume when it may need it for rapid load demand changes. KPL is paying for a peak service that it should receive <u>on demand</u>. This is another attempt by KPC to make life easier for him at KPL's expense and to sell a subtlety described inferior service at a premium price.

- paragraph 8.3 allows the Phenix pipeline (which I consider less than reliable) to have freeze ups that interrupt KPL's ability to serve KPL and there is no compensation to KPL - just a phone call that says oops - "force majeure" on Phenix.

- The last sentence of 8.3 removes KPL's right to sue KPC for damages beyond replacement costs. This is objectionable give the vague performance commitment KPC has made in this contract.

- paragraph 8.4 again allows an escape based on the poor performance by others related to KPC's supply efforts. The last sentence of 8.4 is an escape just like the last sentence of 8.3.

- paragraph 8.5 is another attempt by Putman to put the burden of load variance upon KPL when in fact he is to "supply the market demand."

- this is the service we get from WNG and Panhandle!

- paragraph 8.9 should hold Seller to its responsibility to provide no less than 934 BTU - otherwise a penalty should exist.

- paragraph 8.11 - KPC wants KPL to agree that KPC's gas comes ahead of WNG or PEPL's gas. This is unreasonable and represents another typical Putman hook.

- paragraph 13.1 should not be construed to prohibit KPL access to its peak volume when it needs it to meet demand.

- paragraph 8.12 for contract 3&4 – KC, MO & KC, KS market demands are proposed to be used to back each other to absorb KPC's gas. Again, KPC seeks preferential takes from KPL and special access to KPL's load patters at the expense of KPL's other suppliers in the area, namely WNG & PEPL. This aspect of KPC's contract should be so noted, taken into account and weighed on KPL's side of the ledger.

- paragraph 8.13 for contract 3, 4, & 5 – provides for an unfair election by seller that is really a large hook into KPL and its market. Seller wants a large KPL commitment now with a seller right to withdraw its proposed supply by May 15, 1992, which leaves KPL about 1/2 year to make other arrangements!

This is also likely to be the time frame KPL will be negotiating with WNG for a new relationship to begin 1/1/93. KPC is attempting to interfere with, thwart and entangle KPL's process of dealing with the future relationship of its major supplier, WNG. This is very serious intervention.

The entire tone of 8.13 in the proposed contracts with a 2004 term, is very dictorial and manipulative. To give seller the right to double the 84.2 MM/D to Missouri, to double the 21.1 MM/D to KC, Kansas on top of the original 35 MM/D bringing the total to 77 MM/D and to double Wichita's 21.1 MM/D is absolutely a license to control KPL.

The construction time is well taken and a perfect excuse for the positioning that KPC has taken, but on the other hand, this is an attempted shotgun marriage that very effectively eliminates KPL's flexibility and diversity and supply planning. By the time KPL learns that KPC's proposals are ill planned and uneconomic, KPL will have precious little time to deal with alternatives. It would be imprudent to (1) sign these three contracts that allow this control and (2) to permit this broad of an option to seller in any case.

It would be easier to consider hooks like this if price was attractive, but price is not attractive at all in these proposals. Price is another big hook in these proposals, which provides for a KPL blank check as to transport and gathering costs and absolutely no incentive on KPC to buy economical packages of gas. They simply propose to pass on their costs. The only half way prudent cost component of their charge is their own transmission COS as determined by the KCC.

MEMORANDUM

TO:
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FROM: Penny G. Baker, MoPSC--314-751-6651/FAX--314-751-9285 pgb

DATE: February 22, 1995

SUBJECT: **Missouri Gas Energy, Case No. GO-94-318**

The Workshop on Gas Cost Incentive Mechanisms, is to be held on February 23, 1995, (one day only) starting at 9:00 A.M., in the Senate Room, of the Howard Johnson Plaza (Formerly Holiday Inn), located at 422 Monroe Street, Jefferson City, Missouri. (PHONE--314-636-5101/FAX--314-636-9664)

cc:
David Rauch
Steve Dottheim
Ken Rademan
Dave Sommerer
Bo Matisziw
Randy Hubbs
Tom Shaw
Carmen Morrissey
Mike Proctor
Debbie Bernsen
Bob Schallenberg

Schedule 2

Workshop on Gas Cost Incentive Mechanisms
Case No. GO-94-318
February 23, 1995
9:00 a.m.

Suggested Agenda

Missouri Gas Energy (MGE) will lead/moderate the discussion on Items 1 through 4. MGE hopes that all parties will participate in the discussion of each of these items and other parties will lead the discussion of any additional issues related to the topic of the workshop (Item 5). MGE anticipates that the workshop will conclude on February 23.

1. Review of purpose of the workshop

2. Overview of gas cost incentive mechanisms
   - Policy objectives of incentive mechanisms
   - History of mechanisms and review of plans in other states

3. General issues in gas cost incentive mechanism design
   - Alternative methodologies
     - Elimination of PGA/ACA
     - City gate delivered prices
     - Supply price indices
   - Issues in methodology selection
     - Consistency with policy objectives
     - Availability of indices
     - Timeliness
     - Reliability
     - Geographic applicability and other
   - Contract term and purchase type
   - Tolerance zones or deadbands
   - Cost/benefit sharing
   - Treatment of capacity release
   - Basis for carve out of specific contracts
   - Length of experiment
   - Implementation timing
   - Reporting requirements

4. *Review of specific concerns to MGE*

5. Discussion of issues of concern to other parties

MEMORANDUM

HIGHLY CONFIDENTIAL

To: Carmen Morrissey

From: Tom Shaw, Dave Sommerer - Procurement Analysis Department

Through: Ken Rademan, Director - Utility Services Division

RE: Value of Riverside Issue in Current and Future ACA Dockets

Date: March 29, 1996

Per your request, we have attempted to quantify the value of the Riverside issue in both current and future dockets. These amounts have been quantified annually as an attachment with the following explanations.

In Case No. GR-93-140, the Commission ordered a disallowance of approximately $1.3 million due to WRI's imprudence in amending the existing Riverside contract at that time. Case No. GR-93-140 was appealed by both WRI and Riverside in Cole County Circuit Court and is pending resolution. In Case Nos. GR-94-101 and GR-94-228, which are currently pending, Staff has proposed an approximate $3.2 million disallowance based on the same contract that was under consideration in Case No. GR-93-140. Additionally, Staff's preliminary calculation in Case No. GR-95-82 results in a proposed disallowance of approximately $3 million. Currently, the Staff Recommendation in Case No. GR-95-82 is due on or before June 1, 1996. Therefore, the Procurement Analysis Department has quantified approximately $7.5 million in excess charges that have been incurred under the amended Riverside contract from July, 1992 through June, 1995.

Based on the settlement rates contained in Riverside's proposed FERC Stipulation in comparison to the existing rates of its pipeline competitor, the Procurement Analysis Department believes Riverside's "stacked reservation charges" will result in approximately $8 million per year in excess charges beginning with Case No. GR-96-78. However, MGE will achieve some "gas cost savings" during this period based on utilizing a more favorable index and premium which is a result of settlement in Federal District Court. Assuming the differential in spot market indices continues to exist at historical levels, MGE may achieve approximately $4 million in gas costs assuming this contract could be "fully baseloaded". We believe the $4 million in gas cost savings would offset the $8 million in "stacked pipeline reservation charges" and result in excess charges of approximately $4 million per year. However, please note these amounts are considered a best estimate based on information available at this time.

As an additional footnote, you should be aware that MGE will be entitled to retain a portion of the gas cost savings used to offset the stacked reservation charges due to implementation of Case No. GO-94-318; which is MGE's incentive PGA. Therefore, the Procurement Analysis Department believes the full detriment to Missouri ratepayers will exceed $4 million per year beginning with the ACA that starts July, 1995.

Attachment
Copy: David Rauch
Penny Baker
Bill Haas

Schedule 3

Attachment

Year Ended	Disallowance (Millions)	Cumulative (Millions)
June 30, 1993	1.3	
June 30, 1994	3.2	4.5
June 30, 1995	3	7.5
June 30, 1996	4	11.5
June 30, 1997	4	15.5
June 30, 1998	4	19.5
June 30, 1999	4	23.5
June 30, 2000	4	27.5
June 30, 2001	4	31.5
June 30, 2002	4	35.5
June 30, 2003	4	39.5
June 30, 2004	4	43.5
June 30, 2005	4	47.5
June 30, 2006	4	51.5
June 30, 2007	4	55.5
June 30, 2008	4	59.5
June 30, 2009	4	63.5