Exhibit No.:	
Issues:	*History and Prudence of Mid-Kansas Riverside Contracts*
Witness:	*Thomas A. Shaw, CPA*
Sponsoring Party:	*MoPSC Staff*
Type of Exhibit:	*Surrebuttal Testimony*
Case No.:	*GR-96-450*
Date Testimony Prepared:	*July 18, 2001*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

SURREBUTTAL TESTIMONY

OF

THOMAS A. SHAW, CPA

MISSOURI GAS ENERGY,
A DIVISION OF SOUTHERN UNION COMPANY

CASE NO. GR-96-450

Jefferson City, Missouri
July 2001

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OF

THOMAS A. SHAW

CASE NO. GR-96-450

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THOMAS A. SHAW, CPA

MISSOURI GAS ENERGY

CASE NO. GR-96-450

Q. Please state your name and business address.

A. Thomas A. Shaw, 207 SE 591 Road, Warrensburg, MO 64093.

Q. Are you the same Thomas A. Shaw who has previously filed rebuttal testimony in this case?

A. Yes.

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

A. I am currently employed by Central Missouri State University as Director of Accounting Services.

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

A. The Staff of the Missouri Public Service Commission (Staff). My rebuttal testimony (page 3, lines 3-8) briefly describes how I became involved in this case upon my resignation from the Missouri Public Service Commission (MPSC or Commission) in September 1998. Although resolution of this case has been significantly delayed, the reasons and necessity for my involvement in this case remain the same. My contract with Staff was therefore renewed on April 19, 2001.

Q. What is the purpose of your surrebuttal testimony?

A. My surrebuttal testimony will primarily address incomplete or inaccurate information provided in the rebuttal testimony of Mid-Kansas/Riverside witness Dennis M. Langley. Although the contents of this testimony is primarily directed at Mr. Langley, the same facts and circumstances affect Missouri Gas Energy (MGE or Company) witness Langston in the following areas:

- General comments
- Settlement negotiation process
- Prudence
- Settlement value
- Summary

Q. Why does your testimony primarily address Mr. Langley and Mr. Langston?

A. Other than the Staff, Mr. Langley and Mr. Langston are the only witnesses who have filed testimony in this case with first-hand knowledge of the events and actions surrounding Case Nos. GR-93-140, GR-94-101 and GR-94-228 before the MPSC.

GENERAL COMMENTS

Q. Please explain the relevance of Case Nos. GR-93-140, GR-94-101 and GR-94-228?

A. These previous cases involved the refund of monies to Missouri ratepayers for natural gas charges incurred under Mid-Kansas/Riverside contracts similar to this case. In Case No. GR-93-140, the MPSC found the Mid-Kansas/Riverside contract imprudent and ordered a disallowance of approximately $1.3 million. While Case No. GR-93-140 was on appeal, a Stipulation And Agreement (S&A) refunding approximately

$4.5 million to Missouri ratepayers was filed in Case Nos. GR-94-101 and GR-94-228 and approved by the Commission effective June 21, 1996. Specific language was included in the S&A approved in Case Nos. GR-94-101 and GR-94-228 allowing Staff the opportunity to again review the prudence of Mid-Kansas/Riverside charges encompassing the 12-month ACA period in this case.

Q. Do Mr. Langley and Mr. Langston believe that the Commission is prohibited from examining the prudence of the Mid-Kansas/Riverside contract?

A. Yes, Mid-Kansas/Riverside and MGE both misconstrue and misapply the settlement approved in Case Nos. GR-94-101 and GR-94-228 despite previous representations and specific language addressing this matter. I believe it is imperative for the Commission to receive additional information regarding the settlement negotiation process and intent of Staff, MGE, Mid-Kansas/Riverside and Western Resources, Inc. (WRI) when the S&A in Case Nos. GR-94-101 and GR-94-228 was filed.

SETTLEMENT NEGOTIATION PROCESS

Q. Mr. Langley (Langley rebuttal, page 7, lines 8-12) briefly discusses settlement negotiations involving Mr. Rob Hack, General Counsel for the MPSC at that time. Does Mr. Langley provide sufficient detail or background regarding Mr. Hack's involvement with settlement negotiations in Case Nos. GR-94-101 and GR-94-228?

A. No, Mr. Langley (Langley rebuttal, page 7, lines 8-12) glazes over Mid-Kansas/Riverside's and Staff's previous difficulties to reach a global settlement on "all matters, including a number of complicated issues pending before the Federal Energy Regulatory Commission (FERC)." Although I agree these negotiations were intense and prolonged (Langley rebuttal, page 5, line 3), Mid-Kansas/Riverside and MGE fail to

provide sufficient details regarding the settlement negotiation process in Case Nos. GR-94-101 and GR-94-228 and the significant disagreements which ultimately led to Mr. Hack's involvement.

Q. Please explain.

A. An approximate $1.3 million disallowance in Case No. GR-93-140 effective July 25, 1995, triggered negotiations. By September 14, 1995, Staff received an agenda of discussion topics for Case Nos. GR-94-101 and GR-94-228 prepared by Mid-Kansas/Riverside (Schedule 1 of this testimony). After discussing the various topics listed on Schedule 1 of this testimony, Mid-Kansas/Riverside prepared and presented "Draft 1" S&A for review dated October 11, 1995 (Schedule 2 of this testimony).

Q. Did the parties reach agreement on the Draft 1 S&A prepared by Mid-Kansas/Riverside?

A. No.

Q. Did other circumstances further complicate negotiations in Case Nos. GR-94-101 and GR-94-228?

A. Yes, the Federal Energy Regulatory Commission (FERC) initiated proceedings involving Mid-Kansas/Riverside on November 2, 1995. In essence, the FERC proceedings were initiated to determine whether Mid-Kansas/Riverside affiliates would remain subject to the regulatory jurisdiction of the Kansas Corporation Commission (KCC) as distinct intrastate pipelines or function as a single interstate pipeline subject to federal jurisdiction. When these proceedings were initiated, Mid-Kansas/Riverside's primary focus became reaching a "global settlement" during late

1995 and the first quarter of 1996 as indicated by Mr. Langley (Langley rebuttal, page 7, lines 9-10).

Q. Did Mid-Kansas/Riverside notify other interested parties of its intent to pursue a FERC global settlement involving Case Nos. GR-94-101 and GR-94-228?

A. Apparently not. On December 4, 1995, I received a telephone call from Mr. Don Barry, trial attorney for WRI in ongoing court proceedings before the United States District Court, involving contracts with Mid-Kansas/Riverside. Details of this conversation are included as Schedule 3 to this testimony and were provided to Dave Sommerer, Manager of the Procurement Analysis Department. After considering Mr. Langley's representations, WRI requested further meetings with Staff to discuss potential settlement of Missouri ACA cases separate from Mid-Kansas/Riverside's FERC process. In fact, Mr. Barry stated he did not want settlement of Case No. GR-94-101 (for which WRI was liable) "held hostage" by Mid-Kansas/Riverside.

Q. Shortly after the conversation documented in Schedule 3, did you become aware that Mid-Kansas/Riverside initiated discussions with the MPSC?

A. Yes, on December 7, 1995, Mid-Kansas/Riverside initiated contact with at least four MPSC Commissioners and its Executive Director. Schedule 4, attached to this testimony, is a file memorandum documenting my concerns at that time and providing further information regarding Mr. Langley's contact.

Q. Shortly after contacting the MPSC, did Mid-Kansas/Riverside draft a proposed FERC settlement which impacted Missouri ACA cases?

A. Yes, Mid-Kansas/Riverside presented a draft FERC S&A for Staff review on January 5, 1996 (attached as Schedule 5 to this testimony). A memorandum dated

January 9, 1996, from me and Dave Sommerer, routed through Ken Rademan (Director of the Utility Services Division) to Penny Baker and Carmen Morrissey, highlighted significant implications to pending Missouri ACA cases with Mid-Kansas/Riverside's proposed FERC S&A (attached as Schedule 6 to this testimony).

Q. Did Mid-Kansas/Riverside continue further negotiations and prepare additional FERC settlements for Staff review?

A. Yes, however, Mid-Kansas/Riverside and Staff could never reach a mutually agreeable settlement in writing. Although the parties continued ongoing and frank discussions, certain items considered unacceptable to Staff remained in the settlement proposals prepared by Mid-Kansas/Riverside.

Q. Did Staff also rely on outside counsel to determine the implications of Mid-Kansas/Riverside's proposed FERC S&A?

A. Yes, on March 20, 1996, MGE's outside counsel summarized significant rate matters and other contract law issues unresolved with Mid-Kansas/Riverside's proposed FERC settlement (Schedule 7 of this testimony).

Q. After its proposed FERC settlements were continually rejected by Staff, what action did Mid-Kansas/Riverside employ?

A. Mr. Brent Stewart (attorney for Mid-Kansas/Riverside) issued a letter to Mr. Hack on March 22, 1996, with carbon copies to the MPSC, its Executive Director and FERC-assigned staff (Schedule 8 to this testimony). Mr. Stewart expressed Mid-Kansas/Riverside's frustration with the ongoing negotiation processes and requested the opportunity for him and his client to meet with the MPSC in person, during a closed agenda, as soon as practical, with the hope of spurring action. At the culmination of

Mr. Stewart's scathing attack on the settlement negotiation processes and raising potential personnel issues, Mid-Kansas/Riverside requested Mr. Hack (or the Commission) appoint someone in the General Counsel's office with authority to reach a settlement not subject to veto by Staff.

Q. Do you know whether Mid-Kansas/Riverside was granted the opportunity for a closed meeting with the Commission?

A. No, I do not.

Q. Are you aware of the General Counsel's office being granted authority to negotiate with Mid-Kansas/Riverside irrespective of Staff input?

A. No, I am not.

Q. Did Mr. Hack become directly involved in Case Nos. GR-94-101 and GR-94-228 after Mid-Kansas/Riverside's correspondence dated March 22, 1996?

A. Yes.

Q. Please explain the negotiation process after Mid-Kansas/Riverside's request for Mr. Hack's involvement.

A. All interested parties again met to pursue settlement negotiations and agreed to use the October 11, 1995, Draft 1 S&A prepared by Mid-Kansas/Riverside as a "framework" for discussion. Based on the historical difficulties with S&A's prepared by Mid-Kansas/Riverside, Mr. Hack assumed primary responsibility for drafting acceptable language based on the parties' representations and agreements at that meeting.

Q. Was Mr. Hack able to prepare an acceptable written settlement between Mid-Kansas/Riverside and Staff?

A. Yes. Although further clarifications were made, on April 26, 1996, Mid-Kansas/Riverside provided express, written consent to the settlement document attached as Schedule 5 to the rebuttal testimony of Staff witness Sommerer.

Q. During these settlement negotiations was Mid-Kansas/Riverside ever limited or precluded from full and active participation as alleged by Mr. Langley (Langley rebuttal, page 7, lines 20-21)?

A. No, Mid-Kansas/Riverside faced the primary financial liability in the settlement and at all times was a primary advocate for settlement while actively participating in negotiations and drafting acceptable language.

Q. When Mid-Kansas/Riverside controlled the negotiating process, were all interested parties provided the opportunity to fully and actively participate in settlement discussions?

A. No, Mid-Kansas/Riverside seemed to prefer meetings and/or discussions with certain key individuals and/or prospective allies rather than involve all interested parties. I am aware of the following examples:

- In December 1995, Mid-Kansas/Riverside apparently provided WRI mistaken information regarding the current status of ACA negotiations (Schedule 3 of this testimony).
- Mid-Kansas/Riverside apparently provided the KCC and the MPSC conflicting information regarding proposed FERC settlement negotiations (Schedule 9 of this testimony).
- Mid-Kansas/Riverside specifically requested that Staff not contact MGE regarding proposed FERC negotiations (Schedule 6 of this testimony).

In each of these instances, the documentation demonstrates interested parties were either not aware of ongoing settlement negotiations, not provided full and accurate information or not provided opportunity for review and comment.

PRUDENCE

Q. Mr. Langley (Langley rebuttal, page 4, lines 19-21) indicates Mid-Kansas/Riverside desired to forever resolve the prudence of its contracts. Would you agree?

A. Yes, this concept was prevalent throughout Mid-Kansas/Riverside's drafting of settlement documents and the entire negotiation process. Regardless, Staff was ***never*** persuaded to even ***consider*** approving the Mid-Kansas/Riverside contract(s) in perpetuity.

Q. Did Mid-Kansas/Riverside recognize this fact?

A. Yes, the following documents substantiate this understanding:

- Mid-Kansas/Riverside wanted a grace period until 1997 or 1998 in which Staff would agree not to raise prudence challenges against certain contracts between WRI, MGE and Mid-Kansas/Riverside (Schedule 3 of this testimony). Staff was not prepared to accept such a settlement proposal.
- Mid-Kansas/Riverside's letter of March 23, 1996 (Schedule 8 to this testimony) admits Staff did not like provisions related to contract pre-approval.

- Question from the MPSC's Executive Director "why Staff was concerned about settling the Riverside issue in Case No. GR-94-228 out past June 30, 1995" documented within Schedule 4 of this testimony.
- Specific written acceptance by Mid-Kansas/Riverside of an S&A specifying a safe harbor (i.e. grace period) from prudence review until the ACA period ending June 30, 1997 (Sommerer rebuttal, Schedule 5).
- Language specifically stating "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 June 30, 1997 (Sommerer rebuttal, Schedule 4-4).

On April 30, 1996, Mr. Hack received comments from MGE intended to provide additional clarification to the S&A previously agreed to by all interested parties. After further discussions, MGE's suggested ***clarifying*** comments were incorporated into the S&A approved in Case Nos. GR-94-101 and GR-94-228.

SETTLEMENT VALUE

Q. Mr. Langley (Langley rebuttal, page 5, line 19 and page 6, lines 6-7) indicates "there is simply no way" Mid-Kansas/Riverside would have been willing to commit $2.5 million as a stop gap measure. How would you respond?

A. Mr. Langley ignores the significant financial implications facing Mid-Kansas/Riverside in lieu of a $2.5 million settlement including:

- Reimbursement to MGE of approximately $1.3 million for the Commission-ordered disallowance in Case No. GR-93-140, including

interest, retroactive to the first day of service recovery was denied. This amount was to be refunded to MGE ratepayers with the Company's next ACA filing, irrespective of appellate review (Langston direct, Schedule MTL-2, page 8).

- Simultaneous with the above-listed reimbursement, Mid-Kansas/Riverside also faced the requirement to deposit additional monies into an escrow account as if the same denial was ordered in the immediately succeeding ACA period covered by Case Nos. GR-94-101 and GR-94-228 (Langston direct, Schedule MTL-2, page 8).
- If a disallowance was ordered for a second consecutive ACA period (i.e., Case Nos. GR-94-101 and GR-94-228), in addition to refunding the monies referenced above, Mid-Kansas/Riverside faced the requirement to reduce rates for the remaining term of the contract.

These three factors alone could result in immediate financial hardship of approximately $4.5 million, including interest, for Case Nos. GR-93-140, GR-94-101 and GR-94-228 in addition to reducing base rates without further delay. Based on MGE's contracted capacity, every $1.00/MMBtu reduction in Mid-Kansas/Riverside demand charge would result in decreased revenues of approximately $550,000 a year ($1.00 * 46,332/MMBtu * 12 months = $555,984). Staff estimated the total ratepayer detriment to be approximately $63,000,000 over the remaining life of the contract. (Shaw rebuttal, Schedule 3)

Q. Did Mid-Kansas/Riverside face other potential significant liabilities in addition to Missouri ratepayers?

A. Yes, Mid-Kansas/Riverside faced a change in regulatory jurisdiction from the KCC to the FERC. These FERC proceedings included a consolidated review of Mid-Kansas/Riverside's system effectively operating as an interstate pipeline subject to federal regulation rather than separate intrastate facilities regulated by the KCC. As a result of its FERC proceedings, Mid-Kansas/Riverside remained subject to further rate reductions and refunds in addition to its ongoing Missouri ACA cases.

Q. While presenting and advocating a proposed settlement in its FERC proceedings, did Mid-Kansas/Riverside quantify alleged benefits far exceeding the $2.5 million negotiated in Case Nos. GR-94-101 and GR-94-101?

A. Yes, as early as January 23, 1996, Mid-Kansas/Riverside was touting alleged Missouri ratepayer benefits near $9 million available from its proposed FERC settlement (Schedule 10 attached to this testimony). In addition to the alleged $9 million savings, Mid-Kansas/Riverside represented its proposed FERC S&A was revenue neutral/rate neutral to Missouri customers.

Q. After nearly two months of additional negotiations was Staff persuaded that Mid-Kansas/Riverside's proposed FERC S&A resulted in Missouri ratepayer benefit?

A. No, Staff expressed the following concerns:

- MGE's Outside counsel determined that Mid-Kansas/Riverside's proposed FERC S&A was contrary to provisions contained in existing contract(s) with MGE (Schedule 7 of this testimony) and would result in significant Missouri ratepayer detriment. In fact, MGE's outside counsel opined the proposed FERC S&A would "artificially inflate" rates by millions of

dollars per year and allow Mid-Kansas/Riverside "broad discretion to recover undefined transition costs (for which no estimate is provided)."

- The Procurement Analysis Department quantified approximately $7.5 million in excess charges incurred under the Mid-Kansas/Riverside adjustment during the July 1992 through June 1995 time period (Shaw rebuttal, Schedule 3).
- The proposed FERC S&A would result in: vague language giving Mid-Kansas/Riverside an opportunity to dismiss ongoing ACA prudence cases, disruption and possibly overturning existing contracts, and approval of broad, over-reaching transition cost provisions.

Q. During negotiations did Mid-Kansas/Riverside suggest other approaches to valuing the prudence, or lack thereof, of its contract(s) in future ACA proceedings?

A. Yes, Mr. Langley wanted Missouri ratepayers to absorb costs associated with fostering a pipeline environment from "beachhead" to maturity. Mr. Langley continues to advocate this philosophy with his rebuttal testimony (Langley rebuttal, page 14, line 22) in this case.

Q. During negotiations did Mid-Kansas/Riverside request further guidance and/or definition for valuing the prudence of its contract(s), or lack thereof, in future ACA proceedings?

A. Yes, Mid-Kansas/Riverside tried to elicit assumptions and references to certain ***South KC Mo Agreements*** between WRI and MGE. However, great uncertainty existed regarding Mid-Kansas/Riverside's ability to implement the South KC Mo Agreements during this period and, if it could do so, under what terms and conditions.

Staff was not willing to incorporate such uncertainty into the S&A filed in Case Nos. GR-94-101 and GR-94-228.

Q. How did the South KC Mo Agreements figure in to the settlement negotiations in Case Nos. GR-94-101 and GR-94-228?

A. The parties agreed to specific settlement language that directly coincided with Mid-Kansas/Riverside's contractual in-service date(s) for the South KC Mo Agreement with MGE. This language clearly and unambiguously states "(T)he 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 June 30, 1997."

Q. Was Mid-Kansas/Riverside able to implement the South KC Mo Agreement with MGE within the ACA period under review?

A. Not to my knowledge, which has been affirmed by Staff. However, as early as October 11, 1995, Mid-Kansas/Riverside desired Staff to incorporate settlement language stating natural gas volumes under the South KC Mo Agreements should reasonably have flowed in the ACA period covered in Case No. GR-94-228.

SUMMARY

Q. Please summarize your surrebuttal testimony in this case.

A. My surrebuttal testimony provides additional first-hand evidence and documentation regarding the settlement negotiation process and monies refunded to Missouri ratepayers as a result of excess charges by Mid-Kansas/Riverside in previous cases before the MSPC. Although the $4.0 million settlement in Case Nos. GR-93-140,

GR-94-101 and GR-94-228 and two additional ACA periods resulted in significant concessions by all parties, the S&A clearly and unambiguously states Mid-Kansas/Riverside again becomes subject to full prudence review with the ACA period covered by this case.

Staff's rebuttal and surrebuttal testimony in this case provides information known and available to MGE when renegotiating the Mid-Kansas/Riverside contract(s) at issue in this case, as well as further documentation related to the settlement negotiation process and intent of the parties in Case Nos. GR-94-101 and GR-94-228. The Commission's previous concerns and findings in Case No. GR-93-140 were not alleviated with MGE's continued agreement to pay maximum reservation charges under the renegotiated Mid-Kansas/Riverside contract(s). Staff believes the Commission should reaffirm its previous decisions by finding MGE's decision to pay maximum reservation charges on the Mid-Kansas/Riverside pipeline system imprudent.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Gas Cost Adjustment Tariff Revisions to be reviewed in its 1996-1997 Annual Reconciliation Adjustment Account.	)))))	Case No. GR-96-450

AFFIDAVIT OF THOMAS A. SHAW

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 Surrebuttal Testimony in question and answer form, consisting of 15 pages to be presented in the above case; that the answers in the foregoing Surrebuttal 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

Subscribed and sworn to before me this 18th day of July 2001.

TONI M. CHARLTON
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF COLE
My Commission Expires December 28, 2004

AGENDA re: 94-228, et. al.

September 14, 1995 10:00a.m.
Prepared by Riverside Pipeline Company

I. MPSC Case Nos. 94-101 and 94-228

A. Marker/Cap Calculation Adjustments

1. Cap of WNG + Riverside - $0.15
2. Load Factor of 23%, more or less
3. Direct Bills which were embedded in the Rate Schedule F-2 (Take or Pay, PCBs, etc.)
4. Direct Bills which were not embedded in the Rate Schedule F-2 (Transition Costs, Contract Reformations, etc.)
5. Gathering System Rates embedded in the Rate Schedule F-2
6. TOK Price Savings Adjustment
7. WACOG and WACOT
8. Carry Forward/Carry Backward or X%/year grace, e.g. within 10% of Marker for this period, 15% for next period, etc.
9. Adder for Increased Flexibility/Reliability
10. Other

B. Prudency Shifting Provision

C. Mutual Language as per "Competition" or "Competitive Price"

1. Similar Price for Similar Service
2. Lower at Times and Higher at Times
3. One Year Snapshots are Not Determinative
4. Price is Not the Only Consideration (Reliability, Flexibility, Safety, etc.)
5. Impact on Competitors Price
6. Competitive Regime which Maximizes Competition

D. Appropriateness of a Marker given No Marker

1. Contract Term Ended December 31, 1992
2. 636 Eliminated Rate Schedule F-2 on October 1, 1993
3. New MGE Contract Effective June 1, 1995
4. When does the Marker/Cap Concept terminate, and how is Prudency to be approached thereafter?
5. How are Non-Price Criteria to be quantified (e.g. Supply Diversity, Enhanced Reliability, etc.)?
6. Are there Contract Issues or Terms which can be altered which would assure Prudency?

II. 93-140

III. Post 94-228 Until New MGE Contract (95-802, et. al.)

IV. New MGE Contracts

A. Riverside I as Amended

B. Riverside II

C. WACOT/WACOG for Competitive Comparisons

V. Global Settlement I to IV Above

A. SX Through to a Point Where We Can Agree Contracts are Prudent

B. Prudency Accepted Initially Subject to Change in Circumstances

STIPULATION AND AGREEMENT

Comes now: (1) Western Resources Inc., f/k/a Gas Service Company ("WRI"); (2) the Missouri Gas Energy Division of Southern Union Company ("MGE"); (3) Riverside Pipeline Company, L.P. ("Riverside"); (4) Mid-Kansas Partnership ("MKP"); (5) the Staff of the Public Service Commission of Missouri ("Staff"); and (6) the Office of Public Counsel ("Public Counsel") (collectively the "Parties") enter into this Stipulation and Agreement ("Stipulation") and stipulate, agree, resolve, compromise and settle the matters set forth below as follows:

1. In Case No. GR-93-140 (covering the period of July 1, 1992 through June 30, 1993) before the Public Service Commission of Missouri ("Commission"), Staff issued its recommendation on April 29, 1994 and the Commission held hearings related thereto on February 2 through February 3, 1995. On July 14, 1995, the Commission issued its Report and Order ("Report and Order"). On July 24, 1995, WRI, MGE, Riverside and MKP filed Applications for Rehearing of the Commission's Report and Order. On September 18, 1995, the Commission denied the Applications for Rehearing. On September 29, 1995, October 2, 1995 and October 4, 1995, WRI, Riverside/MKP, and MGE filed Petitions for Writ of Review respectively. On October 10, 1995, the Circuit Court of Cole County, Missouri issued a Stay of the Report and Order .

2. In Case Nos. GR-94-101 and GR-94-228 before the Commission, Staff issued its recommendation on June 16, 1995. The ACA period of Case Nos. GR-94-101 and GR-

94-228 is July 1, 1993 to June 30, 1994. GR-94-101 covers the period of July 1, 1993 through January 31, 1994. On or about January 31, 1994 MGE acquired most of WRI's gas local distribution company properties in Missouri. Therefore, GR-94-228 covers the period of February 1, 1994 through June 30, 1994, that portion of the ACA during which MGE owned and operated the described Missouri local distribution properties.

3. The Commission established Case No. GR-95-82 for the ACA period of July 1, 1994 to June 30, 1995 related to the purchase and sale of gas by MGE.

4. The Commission established Case No. GR-96-78 for the ACA period of July 1, 1995 to June 30, 1996 related to the purchase and sale of gas by MGE.

5. Staff has reviewed the following Agreements between or among WRI, MGE, Riverside and MKP and any applicable charges or payments associated therewith:

A. Sales Agreement dated January 15, 1990, between WRI and MKP, as amended on October 3, 1991 and February 24, 1995, with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "MKP/WRI Sales Agreement";

B. Transportation Agreement dated January 15, 1990, between WRI and Riverside, as amended by letter agreement dated September 15, 1992, with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "Riverside/WRI Transportation Agreement I";

Not included Finalize Wrapsheet

C. Transportation Agreement dated October 22, 1991, between WRI and Riverside, as amended September 15, 1992, with a maximum daily quantity of 329,000 Mmbtu, hereinafter the "Riverside/WRI Transportation Agreement II";

D. Sales Agreement dated February 24, 1995, between MGE and MKP with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "MKP/ MGE Sales Agreement";

E. Transportation Agreement dated February 24, 1995, between MGE and Riverside with a maximum daily quantity of 46,332 Mmbtu, hereinafter the "Riverside/MGE Transportation Agreement I"; and

not included

F. Transportation Agreement dated February 24, 1995, between MGE and Riverside with a maximum daily quantity of 150,000 Mmbtu, hereinafter the "Riverside/MGE Transportation Agreement II".

The MKP/WRI Sales Agreement, the Riverside/WRI Transportation Agreement I and the Riverside/WRI Transportation Agreement II may be collectively referred to herein as the "WRI Agreements". The MKP/MGE Sales Agreement, the Riverside/MGE Transportation Agreement I and the Riverside/MGE Transportation Agreement II may be collectively referred to herein as the "MGE Agreements".

The MKP/WRI Sales Agreement, the Riverside/WRI Transportation Agreement I, the MKP/MGE Sales Agreement and the Riverside/MGE Transportation Agreement I (all having a maximum daily quantity of 46,332 Mmbtu) may be collectively referred to herein

as the "North KC Mo Agreements"; while the Riverside/WRI Transportation Agreement II and the Riverside/MGE Transportation Agreement II may be collectively referred to herein as the "South KC Mo Agreements".

Finally, all of the above Agreements (A to F inclusive) may be collectively referred to herein as the "Missouri Agreements". Each and every one of the Missouri Agreements and any and all applicable charges or payments associated therewith are deemed to be reasonable and prudent and in the public interest. Moreover, as a result of this Stipulation none of the Missouri Contracts, nor the decisions made pursuant thereto or associated therewith, shall be subject to an ACA Audit until the audit period commencing July 1, 1998 and ending June 30, 1999 (assuming the PGA is still applicable to MGE at such time).

6. In full settlement, resolution, compromise and final termination of any and all claims of any type whatsoever that have been made, or would have been made by Staff or Public Counsel against WRI, MGE, Riverside and/or MKP, relating to the Missouri Agreements for a time period from and after July 1, 1992 until June 30, 1998, subject to the issuance of a Commission Order adopting and stating the provisions of this Stipulation as its final order, and subject to MGE and Riverside/MKP notifying the Staff that they have resolved any contractual issues between them as to the payment of said monies described herein and therein; WRI and/or Riverside/MKP hereby agree to tender payment in the amount of $_____, hereinafter the "Settlement Payment", to MGE, upon the condition that MGE shall effect a reduction in its ACA Account equal to

the amount paid hereunder over a period not to exceed one year, commencing no later than 90 days after the issuance of a Commission order adopting this Stipulation, the result of which shall be a reduction in the gas cost of the consumer customers of MGE. MKP/Riverside may elect to directly (or indirectly via non-regulated affiliated entities) invest any amount up to $_____ of such Settlement Payment in natural gas vehicle refueling and/or conversion and/or natural gas air conditioning projects in the Kansas City, Missouri Metro Area; and if they elect to do so, then such amounts shall be deducted from the amount to be paid to MGE thus not reduced from the ACA Account nor result in a reduction in the gas cost of the customers of MGE, but would of course benefit the energy consumers of the Kansas City, Missouri Metro Area by increasing inter-fuel competition.

the process arrangement.

Nothing herein is to be construed as determining or admitting any liability between WRI and Riverside/MKP, between MGE and Riverside/MKP and/or MGE and WRI. The Parties agree that the Commission does not herein or otherwise determine the rights or obligations, or compliance or non compliance with terms and conditions of any contract between or among WRI, MKP and/or Riverside; between or among MGE, Riverside and/or MKP and between or among MGE and WRI. The Settlement Payment paid hereunder shall in no manner whatsoever be deemed to be admission of fault, responsibility or liability of any matter whatsoever by WRI, MGE, Riverside and/or MKP. Settlement Payment is purely and exclusively for the purpose of avoiding the cost of litigation and regulatory proceedings and for purposes of gaining the Stipulation herein set forth by other Parties and is to be construed as that and nothing more. Nothing herein or

in orders of the Commission in GR-93-140 is to be construed by the Parties or the Commissions as a denial by the Commission of MGE's right to recover any amounts paid to MKP and/or Riverside pursuant to the terms of any of the North KC Mo Agreements. Similarly nothing herein or in the orders of the Commission in GR-93-140 is to be construed by the Parties or the Commission as a denial by the Commission of WRI's right to recover any amounts paid to MKP and/or Riverside pursuant to the terms of any of the North KC Mo Agreements.

The # don't apply to these agreem

7. Notwithstanding anything to the contrary herein the Settlement Payment shall not in any manner be related to the MGE Agreements, except, and only except, that MGE and MKP/Riverside must agree how such Settlement Payment shall be treated pursuant to the MGE Agreements before this Stipulation can become effective .

addresses current contract provisions.

8. It is expressly stipulated and agreed by the Parties that the Settlement Payment is a singular, lump sum, one time payment; conversely the Settlement Payment is NOT to be construed as multiple payments or as relating to a period of more than one audit year, or more than one ACA period, and it is conclusively stipulated and deemed NOT to be a payment(s) for disallowance for two (2) consecutive audit years, with respect to the provisions of any of the North KC Mo Agreements, as amended. The Parties agree that the Settlement Payment shall in no manner be deemed to be payments made for adjustments or disallowances in gas costs or a denial of WRI or MGE's right to recover amounts paid to MKP or Riverside for the same or similar reasons, in two consecutive ACA periods.

9. The adjustment proposed by Staff and ordered by the Commission in Case No. GR-93-140 as described in paragraph 1 of this Stipulation, shall be conclusively deemed by the Parties to be based on alleged deficiencies in the review and determination process of WRI in its extension of the MKP/WRI Sales Agreement; conversely, such adjustment represents no determination whatsoever that the price charged or paid thereunder or under any of the North KC Mo Agreements was or is non-competitive or was or is in any manner excessive. Moreover, it is agreed that such process deficiencies were in no manner the fault or responsibility of MKP or Riverside.

10. The South KC Mo Agreements are deemed by Parties to be, in part, for the specific purpose of lowering the weighted average rates and charges, when weight averaged with the applicable North KC Mo Agreements. WRI, Riverside and MKP agree that the Riverside/WRI Transportation Agreement II, was in part, to culminate with the examination of multiple alternatives by WRI. Riverside and MKP . WRI, Riverside and MKP agree for purposes of this Stipulation that it was their intent, via the Riverside/WRI Transportation Agreement II to lower the weighted average charge of the WRI Agreements.

Andrew Anderson.
They Need support to say that we support KPOCs statement that WRI failed to recog savings of Anderson calc. causing trouble.

11. The Staff, MKP, Riverside and Public Counsel agree for purposes of this Stipulation that the volumes included in the South KC Mo Agreements should reasonably have been sold/purchased commencing during the ACA period in Case No. GR- 94-228, et. seq., and that it is in no manner the fault or cause of Riverside or MKP that such

described volumes were not sold and/or purchased commencing in such ACA period. The Staff, MKP, Riverside and Public Counsel agree for the purpose of this Stipulation that if such volumes had been sold/purchased pursuant to the South KC Mo Agreements commencing in the ACA period in Case No. GR-94-228, that no adjustment for the charges of Riverside or MKP in the GR-94-101, 228, GR-95-82 or GR-96-78 ACA periods would be appropriate.

12. WRI denies that it is or was in any manner at fault or responsible for any delay in the sale/purchase of any volumes in excess of those volumes included in MKP/WRI Sales Agreement, including those volumes represented by the South KC Mo in the Case Nos. GR-94-101, GR-94-228, GR-95-82 and GR-96-78 time period, or any other time period.

13. This Stipulation shall remain in full force and affect and shall continue to bind the Parties, in the event the ACA procedure (and the audit of gas costs as to their reasonableness) is terminated, but shall be applicable to any subsequent examination (as of the audit period commencing on July 1, 1998 and ending June 30, 1999) by the Commission of the Parties of the Missouri Agreements or of the charges/payments related thereto. For purposes of calculating the rates and total charges to customers pursuant to the Missouri Agreements in the above entitled cases or in subsequent examination, the applicable rates and total charges to customers pursuant to the Missouri Agreements shall be weight averaged.

14. The Parties agree that the MGE Agreements further the Commission's goal to foster competition and to that end stipulate to the following:

A. The MGE Agreements assist in the establishment of pipe-on-pipe competition as to meaningful, long term, stable, reliable and economic transportation for substantial volumes of gas into the Kansas City, Missouri Metro Area previously served by a single pipeline transporter;

B. The MGE Agreements foster competition not only as to the price of gas and transportation, but as to other substantial items, including but not limited to reliability, safety, flexibility and load following;

C. The MGE Agreements enhance supply diversity and flexibility for MGE;

D. In analyzing the competitiveness of the MGE Agreements, the rates and charges of such agreements will be weight averaged;

E. Competitiveness shall be viewed over an extended period of time in order to avoid the risks of temporary anomalies and competitiveness standards shall be applied equally to all competitors over such time frame.

CONFIDENTIAL

MEMORANDUM

To: Dave Sommerer

From: Tom Shaw TS

RE: Conversation with Don Barry, Western Resources, Inc.

Date: December 4, 1995

The purpose of this memo is to document the telephone conversation I had with Don Barry (trial attorney) for Western Resources, Inc. (WRI) on December 1, 1995. Mr. Barry called to "see what the hell is going on at the Missouri PSC".

Mr. Barry indicated that WRI met with Kansas Pipeline Operating Company (KPOC) on Wednesday, November 29 regarding the potential settlement of Case Nos. GR-94-101, GR-94-228 and GR-95-82 (or some combination thereof). Mr. Barry said KPOC indicated that Staff apparently had a "change of heart" and we were not interested in settling any of these cases because we had decided that we were going to "sandbag" WRI and pursue potential prudence challenges regarding delay and/or implementation of the Linchpin and Wraparound Agreements. I indicated to Mr. Barry that a settlement offer was on the table for KPOC regarding these cases and that Staff does not intend to pursue any prudence arguments regarding the Linchpin and/or Wraparound Agreements.

Mr. Barry then asked what caused the negotiations to cease. I told Mr. Barry that KPOC wants Staff to agree to the following items (which we currently are not prepared to do):

1. KPOC wants language that Staff has reviewed "**any and all payments or charges associated therewith**" of certain contracts between WRI, MGE and/or KPOC.
2. KPOC wants language specifying that contracts between WRI, MGE and/or KPOC are **prudent for the specified periods**.
3. KPOC wants a "**grace period until 1997 or 1998**" in which Staff would agree not to raise prudence challenges against certain contracts between WRI, MGE and/or KPOC.

Mr. Barry stated that he "did not want settlement of Case No. GR-94-101 to be held hostage by KPOC". Mr. Barry indicated that WRI would be interested in meeting with Staff and discussing potential resolution of Case No. GR-94-101; for which WRI has liability for through January 31, 1994. I told Mr. Barry that Staff would be open for settlement discussions with WRI regarding Case No. GR-94-101; however, the week of December 4th would not work very well for us since gas supply model training is scheduled for the majority of this week.

I expect Mr. Barry to contact either Penny Baker or myself regarding a potential meeting with WRI and Staff during the week of December 11.

copy: Penny Baker
Ken Rademan

CONFIDENTIAL

MEMORANDUM

To: File

From: Tom Shaw

RE: KPOC visit with Commissioner's and David Rauch

Date: December 8, 1995

Today I became aware of occurrences that apparently happened yesterday at the Commission with Mr. Dennis Langeley of Kansas Pipeline Operating Company (KPOC) and their Missouri counsel, Brent Stewart .

In discussions yesterday with Penny Baker, I was told that KPOC was scheduled to be on the agenda to discuss "what's going on at FERC with KPOC". I asked if anyone from General Counsel was going to attend the agenda and Penny told me that either Jeff Keevil and/or Rob Hack would be there to assure that nothing inappropriate was discussed. Later that afternoon I went down to talk to Jeff Keevil to see what was discussed and Jeff indicated that he did not attend the agenda and had no specific knowledge of what was discussed. I asked Jeff whether Rob had attended the agenda and he did not think Rob did.

Today, Penny informed me that the meeting everyone thought was scheduled for the agenda actually ended up being separate meetings with the Commissioners (two at a time) and David Rauch. Penny said that Commissioner's Mueller and Drainer came to her yesterday and said that KPOC had just met with them and had left to go talk to Commissioner's McClure and Kincheloe. Penny stated that Mueller and Drainer asked her "to go to McClure's office and attend the meeting to make sure nothing inappropriate was discussed." Penny said she then went to McClure's office to listen, but indicated nothing inappropriate was discussed.

Penny also told me that she had already spent "at least an hour" today meeting with David Rauch because he needed further clarification on "how PGA/ACA's work, what's going on with KPOC at FERC and why Staff was concerned about settling the Riverside issue in Case No. GR-94-228 out past June 30, 1995." Penny said that Rauch needed further clarification about these issues because he had met with KPOC and "only heard KPOC's perspective of what's going on".

I believe this memo is necessary to document the potential ex parte communication that may have occurred yesterday. Penny did not indicate that anything inappropriate was discussed with any of the Commissioners. However, Commissioner's Mueller and Drainer apparently felt that is was necessary to get Penny after their meeting with KPOC to "make sure nothing inappropriate was discussed with Commissioner's McClure and Kincheloe". Obviously, KPOC did take the time to give David Rauch their perspective of Staff's hesitance to settle the Riverside adjustment in Case No. GR-94-228 and our unwillingness in agreeing not to address the prudence of the new MGE agreements until the years 1997 or 1998.

PRIVILEGED AND CONFIDENTIAL

FOR SETTLEMENT PURPOSES ONLY

The document attached hereto entitled "Joint Stipulation and Agreement of Settlement and Application for Certificate of Public Convenience and Necessity" (Draft No. 2) is priviliged and confidential. It is a preliminary draft, submitted for settlement purposes only, and is subject to change. We request that the draft and its contents not be discussed with or disclosed to any other party in FERC Docket Nos. RP95-212, *et al.*, or to any other person outside the Kansas Corporation Commission, its employees, representatives, and attorneys, without the express written consent of Kansas Pipeline Partnership, its representatives or attorneys.

Per Remy
We don't preapprove it.

Go over.
Trans OK
Feb Kivar
Again.

There should be capacity release. on Bishop.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

KansOk Partnership	)	
Kansas Pipeline Partnership	)	Docket No. RP95-212-000
Riverside Pipeline Company, L.P.	)	
	)	and
Williams Natural Gas Company	)	
vs.	)	Docket No. RP95-395-000
Kansas Pipeline Operating Company	)	
KansOk Partnership	)	(Consolidated)
Kansas Pipeline Partnership	)	
Riverside Pipeline Company, L.P.	)	
	)	
KansOk Partnership	)	Docket No. PR94-3-000
	)	
Riverside Pipeline Company	)	Docket No. CP96-_____
	)	
	)	(Not Consolidated)

JOINT STIPULATION AND AGREEMENT OF SETTLEMENT AND APPLICATION FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

In accordance with Rule 602 of the Commission's Rules of Practice and Procedure, Kansas Pipeline Partnership ("Kansas Pipeline"), KansOk Partnership ("KansOk"), and Riverside Pipeline Company, L.P. ("Riverside") (collectively referred to as "Kansas Pipeline, *et al.*") and the following parties that have agreed to join in this Offer of Settlement, **[to be added]**, together referred to as ("Signatory Parties") respectfully submit the following Stipulation and Agreement of Settlement ("Settlement") to resolve all issues raised by the captioned proceedings upon the terms, conditions, and provisions set forth below. A Commission order approving the Settlement will provide Kansas Pipeline, *et al.* and their customers with certainty on important issues and ensure implementation of Order 636 on an expedited basis, consistent with the Commission's

November 2, 1995 "Order on Show Cause and Complaint and Consolidating Proceedings" ("November 2 Order"), 73 FERC ¶ 61,160 (1995).

Approval of this Settlement will:

- Resolve the jurisdictional status of Kansas Pipeline, *et al.* through the voluntary acceptance of Natural Gas Act ("NGA") jurisdiction over the combined pipeline entity;
- Permit Kansas Pipeline, *et al.* to restructure their existing sales and transportation services in compliance with Order 636 and initiate service pursuant to the *pro forma* tariff submitted herewith;
- Approve rates for such restructured services which are in the public interest;
- Resolve KansOk's pending rehearing in Docket No. PR94-3-000 by establishing final rates and refunds for past periods; and
- Perhaps most importantly, minimize disruption to Kansas Pipeline, *et al.*'s customers and the market generally through expeditious approval of new authorizations ensuring the continued availability of competitive natural gas services in Kansas and Missouri.

Prompt approval of the Settlement will provide Kansas Pipeline, *et al.*'s customers the rate and regulatory assurances they need to plan and operate their businesses now and in the years to come. In addition, it will permit "Newco" (as the surviving pipeline entity)[1/] to concentrate on serving the needs of its market and developing new competitive opportunities for its customers.

[1/] Certain partnership transfer issues, including the identity of the surviving entity and ownership structure, have yet to be decided.

ARTICLE I

IDENTITY OF SIGNATORY PARTIES

Kansas Pipeline and KansOk are Kansas partnerships and Riverside is a Kansas limited partnership owning the natural gas pipeline facilities that the Commission found to be subject to its NGA jurisdiction in the November 2 Order. Their principal place of business is in Lenexa, Kansas.

The name, title, and mailing addresses of the persons to whom communications and correspondence concerning this Settlement should be directed are:

William H. Penniman
Sterling H. Smith
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100

Tino M. Monaldo, Esq.
Tino M. Monaldo, Chartered
335 North Washington
Corporate Square, Suite 130
P.O. Box 728
Hutchinson, Kansas 67504-0728

James P. Zakoura
Smithyman & Zakoura
650 Commerce Plaza
7300 West 110th Street
Overland Park, Kansas 66210

Mr. Joe Whitaker
Riverside Pipeline Company, L.P.
8325 Lenexa Drive, Suite 255
Lenexa, Kansas 66214

The parties who are joining this Settlement as Signatory Parties are as follows: (list).

ARTICLE II

BACKGROUND AND PROCEDURAL HISTORY

Kansas Pipeline began business in 1985 as an intrastate pipeline under a certificate issued by the KCC. It has provided intrastate services in Kansas from its inception on an open access basis. However, because of an anti-bypass provision and other conditions imposed in its original certificate, Kansas Pipeline has been foreclosed from the vast majority of the transportation and sales markets in the state. These market restrictions caused Kansas Pipeline to incur substantial costs over the years, which were recently addressed in KCC Docket No. 190,362-U with the approval of certain market entry costs now being recovered in rates.

Four years after being certificated by the KCC, Kansas Pipeline obtained a limited-jurisdiction, Hinshaw blanket certificate under Section 284.224 of the Commission's regulations.[2] The KCC has comprehensively regulated Kansas Pipeline's sales and transportation services, and only recently completed one of the most extensive rate cases in KCC history. The KCC's order establishing Kansas Pipeline's currently effective rates was issued in

[2] *Kansas Pipeline Co.*, 49 FERC ¶ 61,235 (1989).

Docket No. 190,362-U on March 17, 1995, with rehearing orders issued June 16, 1995, November 6, 1995, and December 8, 1995; the proceeding is now final.

Prior to the November 2 Order, approximately half of Kansas Pipeline's business involved sales and transportation of gas to intrastate customers in Kansas under rates and tariffs filed with and approved by the KCC. The remainder of Kansas Pipeline's service was interstate transportation provided in accordance with its limited jurisdiction certificate under Part 284 of the Commission's regulations.

The Commission issued an NGA § 7 certificate to Riverside in 1989, in Docket No. CP89-983, authorizing the construction of a 2-mile interstate pipeline segment across the Kansas-Missouri border.[3] The new facilities were interconnected with those of Riverside's affiliate, Kansas Pipeline. In 1991, Riverside acquired or constructed two 1-mile pipeline segments at the Kansas-Oklahoma border under self-implementing authority granted by NGPA § 601 and Section 284.3(c) of the Commission's regulations. These facilities were designed to bring natural gas that previously flowed in the Oklahoma intrastate market to markets in Kansas and Missouri. Riverside's facilities interconnected with KansOk in Oklahoma and Kansas Natural Partnership in Kansas.[4] KansOk commenced service under NGPA § 311 in 1990; its rates and conditions of service were approved by the Commission in *KansOk Partnership*, 58 FERC ¶ 61,152 (1992).

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[3] *Riverside Pipeline Co.*, 48 FERC ¶ 61,309 (1989).

[4] A merger between Kansas Natural Partnership and Kansas Pipeline was recently approved by the KCC.

In 1993, Riverside filed tariff sheets to comply with Order 636; these were approved in *Riverside Pipeline Co.*, 63 FERC ¶ 61,249 (1993).

KansOk filed with the Commission to restate its rates for NGPA § 311 service in 1993. That proceeding was docketed as *KansOk Partnership*, Docket No. PR94-3-000. On June 15, 1995, the Commission issued its order establishing new rates for KansOk.[5] Rehearing of that order is now pending.

In response to issues raised in Docket No. PR94-3-000, the Commission issued a Show Cause Order in Docket No. RP95-212-000 on May 31, 1995, directing Kansas Pipeline, *et al.* to show cause why the Commission should not (1) view Kansas Pipeline, KansOk, and Riverside as one interstate pipeline subject to the Commission's jurisdiction under the Natural Gas Act ("NGA"), or (2) find KansOk to be an interstate pipeline subject to the Commission's NGA jurisdiction.[6] Kansas Pipeline, *et al.* filed an answer to that order on June 30, 1995, arguing that the activities of Kansas Pipeline and KansOk were lawful and authorized by the terms of the Natural Gas Policy Act ("NGPA") and a limited-jurisdiction blanket certificate previously issued to Kansas Pipeline,[7] and did not subject the three companies to the Commission's jurisdiction as a single interstate pipeline company under the NGA.

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[5] *KansOk Partnership*, 71 FERC ¶ 61,340 (1995).

[6] *KansOk Partnership, et al.*, 71 FERC ¶ 61,242 (1995).

[7] *Kansas Pipeline Co.*, 49 FERC ¶ 61,235 (1989).

On July 21, 1995, Williams Natural Gas Company ("Williams") filed a complaint in Docket No. RP95-395-000 raising issues similar to those in the Show Cause Order and contending that the Commission should regulate Kansas Pipeline, KansOk, and Riverside as a single interstate pipeline company under the NGA. Kansas Pipeline, *et al.* submitted an answer to that complaint on August 21, 1995.

On November 2, 1995, the Commission issued its order finding that Kansas Pipeline, *et al.'s* pipeline system constitutes an interstate pipeline subject to the Commission's NGA jurisdiction. The Order requires Kansas Pipeline, *et al.* to file for certificate authorization to operate the system, including proposed initial rates and a tariff setting forth terms and conditions of service complying with Order 636. On November 13, 1995, Kansas Pipeline, *et al.* filed for a Stay of the November 2 Order, followed by a request for rehearing on December 1, 1995. On December 8, 1995, the Commission granted the stay and further clarified the November 2 Order.

ARTICLE III

PURPOSE AND SCOPE OF SETTLEMENT

This Stipulation and Agreement represents a negotiated settlement of all issues in Docket Nos. RP95-212-000, RP95-395-000, PR94-3-000, and CP96-xx-000, including certificate, rate, restructuring, and jurisdictional issues arising out of the Commission's November 2 Order. An overriding goal of this Settlement is to provide rate and regulatory certainty for the customers of Kansas Pipeline, *et al.*, while at the same time insuring revenue neutrality for Kansas Pipeline,

et al. in the transition from state to federal regulation under the NGA and cost neutrality for their customers and the ultimate ratepayers in the State of Kansas and the State of Missouri. The parties recognize that principles of cost and revenue neutrality require recognition of transition costs in rates. Signatory Parties agree that they will file comments supporting the Settlement, and that they will not request changes, modifications, or conditions to its terms.

This Settlement shall not pertain to or resolve any issue, or approve any costs under consideration in KCC Docket Nos. 192,506-U, 192,391-U, and 192,507-U. Signatory Parties recognize and agree that the Settlement in no way constitutes acceptance or rejection of any issue in KCC Docket Nos. 192,506-U, 192,391-U, and 192,507-U.

ARTICLE IV

GLOSSARY

Certain terms used in this Settlement shall be defined as follows:

Effective Date: July 1, 1996, if the Settlement is approved on or before May 1, 1996; if not, the Effective Date shall be as provided in Article IX.

KCC: The State Corporation Commission of the State of Kansas, which has jurisdiction over intrastate natural gas public utilities in Kansas under Kansas Law.

MGE: Missouri Gas Energy, a division of Southern Union Company, a local distribution company owning facilities in Kansas City, Missouri. MGE has been a transportation customer of Kansas Pipeline, *et al.*

MPSC: The Missouri Public Service Commission, which has jurisdiction over intrastate natural gas public utilities in Missouri under Missouri law.

Newco: For purposes of this Settlement, Newco is the name of the pipeline entity that will own and operate the combined facilities, assets, and properties of Kansas Pipeline, KansOk, and Riverside as described in Article V(A). As previously noted, certain partnership transfer issues have not been finally decided or approved by the companies' lenders.

Transok Lease: This term shall refer to that certain Agreement of Lease between KansOk Partnership and Transok, Inc. dated April 24, 1992, including all exhibits and amendments thereto and any assignments executed pursuant to this Settlement.

Western Resources: Western Resources, Inc., a local distribution company owning facilities in Kansas City, Kansas and other Kansas cities. Western Resources has been a transportation and sales customer of Kansas Pipeline, *et al.*

ARTICLE V

RESTRUCTURING OF SERVICES

Section 1: Consolidation of Facilities

A. On the Effective Date hereof, Kansas Pipeline, KansOk, and Riverside shall combine their pipeline facilities into a single interstate pipeline system owned and operated by Newco and subject to the Commission's jurisdiction under the Natural Gas Act. Except as provided in Paragraph B, Article V, all pipelines and related facilities, including but not limited

to, compressors, meter and measurement stations, contracts, contract rights, land, rights of way, easements, leases, licenses, road and railroad crossings, interests in real estate, personal property rights, and all other tangible and intangible rights, interests, and assets of any nature whatsoever currently held by Kansas Pipeline, KansOk, and Riverside shall be transferred to Newco. Approval of this Settlement shall constitute the Commission's authorization under NGA § 7 for Newco to operate the consolidated interstate pipeline system described in the certificate application filed in Docket No. CP96-xx-000, as modified by the terms hereof.

B. After transfer of the pipeline assets currently held by Kansas Pipeline to Newco, Kansas Pipeline shall remain a Kansas intrastate natural gas public utility subject to the provisions of Chapter 66, Kansas Statutes Annotated, and continue to validly hold: (1) the Certificate of Convenience and Necessity issued by the Kansas Corporation Commission to Kansas Pipeline Company, L.P. on January 11, 1985, in KCC Docket No. 142,683-U, and transferred to Kansas Pipeline Partnership on March 17, 1995, in KCC Docket No. 190,362-U; (2) the Certificate of Convenience and Necessity issued by the Kansas Corporation Commission to Phenix Transmission Company on May 29, 1985, in KCC Docket No. 143,306-U, and transferred to Kansas Pipeline Partnership on March 17, 1995, in KCC Docket No. 190,362-U. Kansas Pipeline shall be authorized to transfer the Certificates described herein to an affiliate at any time within twelve (12) months subsequent to the Effective Date hereof, as defined in Article IX. Kansas Pipeline, KansOk, and/or their transferees shall hereafter continue to be authorized to engage in any activities permitted by State or Federal law or regulation.

C. The KCC's agreement to this Settlement shall constitute its determination that Kansas Pipeline is authorized to abandon existing services and facilities subject to the jurisdiction of the KCC, as set forth in Section 1(A) above, without further obligation under its contracts or tariff. The rates set forth in Appendix A shall be deemed fair, just, and reasonable, and shall be final rates for purposes of all periods prior to the effective date of this Settlement. Kansas Pipeline shall have no future refund or other liability regarding sales and transportation services previously provided by Kansas Pipeline subject to the jurisdiction of the KCC. In consideration for the rate moratorium imposed by Article X hereof, the KCC and the MPSC agree that (1) the rates paid by Kansas Pipeline, *et al.'s* customers for services previously provided by Kansas Pipeline, KansOk, Kansas Natural, Riverside, Mid-Kansas Partnership, and/or MarGasCo Partnership and/or paid to such companies by any local distribution company subject to their jurisdiction, and (2) the rates paid by Newco's customers for services established in this Settlement, shall not be subject to disallowance or challenge on prudence or other grounds in any state proceeding. The rate moratorium shall not, however, preclude the KCC from filing a complaint under NGA Section 5, provided such complaint is limited to the issue of whether any future gas contract(s) entered into by Newco and any company subject to KCC jurisdiction is(are) just and reasonable.[8/] As provided in Article III above, it is understood and agreed that this Settlement shall not pertain to or resolve any issue, or approve any costs under consideration in

[8/] As provided in Article VI(C), in any such future rate proceeding, the plant account data set forth in Appendix E to this Settlement, which represents Newco's plant, depreciation, and regulatory assets as of the date stated therein, shall not be subject to challenge.

Do we currently have a price cap or a moratorium in NGE contracts

KCC Docket Nos. 192,506-U, 192,391-U, and 192,507-U. Signatory parties recognize and agree that the Settlement in no way constitutes acceptance or rejection of any issue in KCC Docket Nos. 192,506-U, 192,391-U, and 192,507-U.

D. To comply with the Commission's objective of setting rates that reflect the distance over which gas is transported,[9] while minimizing rate changes to existing customers, rate zones shall be established which generally reflect customers' pre-existing contract service structure. As more fully defined in the General Terms and Conditions of the *pro forma* tariff attached hereto, Zone 1 shall generally include the former KansOk system and Riverside's facilities at the Oklahoma/Kansas border, Zone 2 shall be the former Kansas Natural Partnership system, and Zone 3 shall include all facilities east of Kansas Pipeline's existing interconnections with Kansas Natural in Franklin and Anderson Counties, Kansas, including Riverside's facilities at the Kansas/Missouri border.[10]

Section 2: Unbundling

Except as provided in Section 4 below, upon the Effective Date of the Settlement, all firm sales and transportation capacity formerly held by customers of Kansas Pipeline, *et al.* shall be unbundled, converted into an equivalent quantity of firm transportation capacity under Newco's Rate Schedule FT, and allocated as follows (volumes stated in MMBtu/day):

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[9] 18 C.F.R. § 284.7(d)(3).

[10] Kansas Pipeline's existing rates, recently approved by the KCC, are based on a two-zone rate structure, with Zone 1 as the former Kansas Natural Partnership and Zone 2 as the old Kansas Pipeline system (before its merger with Kansas Natural).

	Zone 1	Zone 2	Zone 3
Western Resources	48.668	83.668	62.568
Missouri Gas Energy	46.332	46.332	46.332

The term of new service agreements shall be equal to the term of these customers' existing firm contracts. Executed precedent agreements reflecting the above quantities are attached hereto at Appendix B. Western Resources shall have the right to purchase gas on an unbundled basis under Newco's Rate Schedule FS. In the event Western Resources does not enter into contracts with Newco to purchase gas in the quantities set forth above, Western Resources shall be responsible for transition costs attributable to the unbundling of Kansas Pipeline's KCC-approved sales, as provided in Article VIII(E).

Section 3: Transok Lease

A. If authorized by the Commission without subjecting Transok to NGA jurisdiction, the Transok Lease shall be retained by Newco and used as an extension of Newco's pipeline system. Customers transporting gas under Rate Schedules FT, SCT, and IT shall be able to utilize Transok Lease rights held by Newco, provided however, that customers' use of such capacity will be subject to the terms and conditions of the Lease. Allocation of capacity shall be in accordance with Newco's General Terms and Conditions. Fixed costs of $1,317,700 attributable to the Transok Lease are included in the Settlement rates.[11] Riverside's reservation

[11] Fixed costs shall be equal to the minimum yearly lease obligation as set forth in Article 4.1(a) of the Transok Lease.

charge shall be increased to reflect any increase in such fixed costs pursuant to the terms of the Lease. All variable costs attributable to the Transok Lease plus fuel and line loss shall be tracked and recovered from shippers actually using the Transok Lease through a Transportation Cost Adjustment provision ("TCA") set forth in Newco's General Terms and Conditions.

B. In the event the Commission does not authorize Newco to hold leased capacity on Transok, or determines that Newco may not hold capacity without subjecting Transok to the Commission's NGA jurisdiction, Newco shall assign all rights and obligations under the Transok Lease to the following parties and in the following quantities:

Western Resources	46,107 MMBtu/day
Missouri Gas Energy	43,893 MMBtu/day

Transok shall consent to such assignment and release KansOk and/or Newco from all obligations under the Lease. Western Resources and MGE agree to accept the assignment and to be bound by the terms of the Transok Lease. Upon such assignment to MGE and Western, all fixed costs associated with the Transok Lease shall be removed from the Settlement cost of service.

C. Approval of this Settlement shall constitute the Commission's determination that assignment of the Transok Lease, and the use of the Lease by Newco, Western Resources, and/or MGE to receive gas in Oklahoma for redelivery to Kansas, Missouri, or other states shall not subject Transok, Western Resources, or MGE to the Commission's jurisdiction under the Natural Gas Act. The KCC's and the MPSC's agreement to this Settlement shall constitute their determination that the rates and charges set forth in the Transok Lease are fair, just, and

reasonable and shall not be subject to disallowance or challenge on prudence or other grounds in state regulatory proceedings.

Section 4: Small Customer Services

Any customer subscribing to 5,000 MMBtu per day or less of firm capacity shall be eligible for service under Rate Schedule SCT for small customers. Capacity held by the following customers shall be unbundled and converted into an equivalent quantity of capacity under a new Rate Schedule SCT for Small Customers (current *annual* volumes stated in MMBtu):

	Zone 1	Zone 2	Zone 3
United Cities	0	6,704	1,460,800
Greeley Gas Co.	0	16,970	16,970

The term of these customers' contracts shall equal the term of their existing contracts with Kansas Pipeline. The unbundling of Kansas Pipeline's KCC-approved sales to United Cities and Greeley Gas Company creates transition costs which shall be recoverable pursuant to Article VII hereof. United Cities and Greeley Gas Company may elect to terminate their contracts upon the payment of an exit fee as provided in Section 7 of this Article V.

Section 5: Sales Service

Approval of this Settlement shall constitute Commission authorization for Newco to make sales of gas on an unbundled basis under a blanket sales certificate and Rate Schedule FS, as set forth in the *pro forma* tariff attached hereto.

Section 6: Interruptible Transportation

All customers previously holding interruptible transportation agreements on Kansas Pipeline, *et al.* shall be served under Newco's Rate Schedule IT, as set forth in the *pro forma* tariff contained in Appendix C attached hereto.

Section 7: Exit Fee

Any customer shall be entitled to terminate its contract with Newco upon the payment of all applicable transition costs and a mutually agreeable exit fee.

ARTICLE VI

SETTLEMENT RATES AND REFUNDS

A. The Settlement base tariff rates are determined on the basis of a negotiated total dollar settlement utilizing a cost of service of $31,144,541 [12] (excluding gas costs) and total system throughput for firm services of 11,212,196 MMBtu. The cost of service reflects a return on equity of 12.5 percent, a cost of debt of 9.64 percent, and a 50/50 hypothetical capital structure. The Settlement Rates are derived from the existing FERC-approved and KCC-approved rates that were in effect as of the November 2 Order, and are designed to preserve the revenue stream in place at that time, on which the companies' financial commitments are based.

[12] In the event the Transok Lease is assigned to Western Resources and MGE, the total cost of service (excluding gas costs) is $29,820,526.

90,000
90 OK
3
2.7

The Settlement uses the straight fixed-variable methodology for rate design purposes. Rates are developed on a zone basis and are additive, so that customers pay rates that include costs associated only with facilities they actually use. Appendix D sets forth the Settlement Rates that will be applicable to the period commencing on the Effective Date of this Settlement. The Commission's order approving the Settlement shall constitute authority to charge such Settlement Rates until the rates are changed prospectively pursuant to Section 4 or Section 5 of the NGA. Newco shall have no obligation to make a general rate filing under Section 4 of the NGA. [Note: Rates will be subject to adjustment depending on treatment of Transok Lease, transition costs, and other factors.]

B. The Settlement Rates allocate no costs to interruptible transportation (IT) service. While the rates set forth in Attachment D are in effect, Newco agrees to credit ninety percent (90%) of all IT revenues collected in excess of applicable surcharges and variable costs incurred in providing the service to firm capacity holders under Rate Schedule FT, provided however, that Newco shall be entitled to retain the share of such revenues attributable to firm customers paying less than the maximum applicable tariff rate. Revenues shall be allocated among firm customers served under Rate Schedule FT on the basis of firm contract demand. Newco shall be entitled to retain without refund obligation (1) the remaining ten percent (10%) of such revenues, plus (2) all IT revenue credits attributable to firm customers paying less than maximum applicable tariff rates.

C. The Signatory Parties agree (a) to accept the plant account data set forth in Appendix E hereto as correct and binding as of the date set forth therein for purposes of this proceeding and all future proceedings, and (b) not to challenge such plant account data in any future rate proceeding. Approval of this Settlement shall constitute the Commission's confirmation that the plant cost data shown on Appendix E represent Newco's original cost and accumulated depreciation as of the date stated, both for purposes of accounting of such items on its books and for purposes of future rate determinations. The provisions of this Article VI(C) shall survive the term of the Settlement Rates provided in Article VI(A) above.

D. Newco shall be authorized to direct bill Western Resources for certain charges previously approved by the KCC, in accordance with the schedule set forth below. Carrying charges calculated in accordance with 18 C.F.R. § 15467 shall be added to these amounts beginning March 17, 1995.

Invoice Date	Amount	Payment Due
On or before 3/17/96	$1,342,489	On or before 3/27/96
On or before 3/17/97	$1,342,489	On or before 3/27/97

E. Newco shall be authorized to adjust its rates annually as set forth herein to reflect to reflect ad valorem taxes (property taxes) paid. On or before December 1 of each calendar year, Newco shall file with the Commission a statement setting forth the property tax costs incurred. Any such charges may be estimated once the tax rate is known. Such costs shall be included as a surcharge to the otherwise applicable reservation charges, to be effective on the 1st

day of January immediately subsequent to such December 1 filing. Any over/undercollection compared with the actual ad valorem tax (property tax) increase/decrease charged to expenses shall be recovered or credited, as appropriate, with interest, through a surcharge in subsequent periods to customers served under Rate Schedule FT.

violates 2% cap in K treaty

F. As provided by Article V, Section 3(A) above, Newco shall be authorized to make limited NGA Section 4 filings to recover all increases in fixed costs attributable to any Transok Lease capacity retained by Newco. Variable costs shall be tracked and billed monthly to shippers based on their actual use of receipt points and the corresponding rates set forth in the Transok Lease.

G. Within 20 days after the Effective Date of the Settlement, Newco shall file revised tariff sheets to reflect the settlement base rates set forth in Appendix D hereto. Nothing herein shall affect Newco's right to file for authority to implement rate changes to recover ACA, GRI, or similar charges. ?

→ FERC charges

don't have this

H. The rates contained in Appendix F reflect a negotiated settlement of the fair and equitable rates to be charged and collected in *KansOk Partnership*, Docket No. PR94-3-000 for the locked-in period beginning December 1, 1993 and ending on the date on which the rates set forth in Appendix D become effective. Newco shall make refunds, with interest computed as prescribed in Section 154.67 of the Commission's regulations, of all amounts collected by KansOk in excess of the rates set forth in Appendix F.

MGE, Riverside, and/or Mid-Kansas Partnership are parties to certain proceedings before the MPSC, identified as Case Nos. GR93-140, GR94-101, GR94-228, GR95-82 and GR96-78. MGE, Newco and the MPSC agree that any refunds payable to Mid-Kansas that are related to FERC Docket No. PR94-3-000 shall be credited, on a dollar-for-dollar basis, to: (1) any Stipulation and Agreement that settles the MPSC Dockets, or (2) any actual gas cost adjustment that may be ordered by the MPSC in the referenced MPSC dockets, so long as Mid-Kansas pays to MGE any refund amount it receives from KansOk/Newco, and MGE reduces its gas costs in the State of Missouri by an equal amount.

No.?

No.

ARTICLE VII

TRANSITION COSTS

Keep prudence challenge open!

All these are subject to limited challenges.

A. Newco shall be authorized to recover from its firm customers the costs of complying with the Commission's November 2 Order and implementing Order 636 on its system through limited NGA Section 4 rate filings. In such proceedings, no other costs shall be at issue, and billing determinants underlying this Settlement shall be used to calculate rates and/or surcharges. The following costs shall be deemed eligible as transition costs, recovered through a direct bill, and assigned two-thirds to Western Resources and one-third to MGE:

Problem with definition

1. Costs of meters, valves, telemetry and communications equipment, computers, software, and systems prudent or required to operate the pipeline system efficiently and in compliance with the NGA and Order 636; extn. $ 1.1 mill.m.

Could you state a maximum.

KCC wants 425K cap

2. Maintenance or upgrading of existing facilities, if any, required to meet Department of Transportation guidelines for interstate pipelines;

Not typical TC cost. Company argue that they want associated w/ this proceeding, because prudent, or will not recover. $2.6 mil.

3. Regulatory expenses associated with this proceeding;

4. All costs associated with reorganizing Kansas Pipeline, KansOk, and Riverside into a single pipeline entity, including but not limited to legal and professional fees, mortgage registration fees and taxes, costs attributable to assigning and filing rights of way and other instruments.

Typical. $25K

Gaping whole to moratorium. dilutes moratorium.

5. Any other costs not specifically identified above but the result of Kansas Pipeline, *et al.*'s acceptance of NGA jurisdiction, consolidation and/or compliance with the terms of this Settlement.

Overly Broad.

B. The following transition costs shall be amortized over a 3-year period and recovered through a direct bill:

1. Costs associated with the unbundling of Kansas Pipeline's sales to United Cities and Greeley Gas Company; these transition costs, totaling $2,525,561, shall be direct-billed exclusively to United Cities and Greeley Gas Company on the basis of annual billing determinants.

2. Authorized regulatory expenses of $1,705,374, net of $1,597,841 recognized in KCC authorized rates, associated with KCC Docket No. 190,362-U, shall be direct billed exclusively to Western Resources, together with any additional regulatory expenses associated therewith.

1/3 to MGE
In all cases?

These shad be shareholder costs.

3. Regulatory expenses related to KCC Dockets not otherwise specifically provided for herein and for the recovery of which there has not been an application or request submitted to the KCC shall be direct-billed exclusively to Western Resources, together with any additional regulatory expense associated therewith

4. Litigation expenses related to Case Nos. 94-509-CV-W-1 and 94-0511-CV-W-1, United States District Court, Western District of Missouri, in the amount of $2,570,882, shall be direct-billed to Western Resources.

5. Regulatory expenses associated with MPSC Docket Nos. GR93-140 and GR94-101 shall be direct billed exclusively to Western Resources; regulatory expenses associated with MPSC Docket Nos. GR94-228, GR95-82 and GR96-78 shall be direct-billed to MGE.

6. Regulatory expenses of $_____ associated with FERC Docket No. PR94-3-000, together with any additional regulatory expenses associated therewith.

No!

C. In the event that Kansas Pipeline, *et al.'s* change in regulatory status causes or in any way contributes to an increase in the cost of debt under their existing loan agreements, the rates contained in Appendix D shall be adjusted accordingly. These costs shall be recoverable through a limited NGA Section 4 filing as provided in Paragraph A above.

No!

(D.) If, as a result of this proceeding, Newco is required to reorganize its partnership into a corporate form in order to maintain its financing arrangements or its eligibility for a tax allowance, all costs associated with such reorganization shall be recognized as a regulatory asset and included in rate base, to be recovered over the remaining life of the pipeline facilities.

Acct 186 pre approv.

Does this need to be a Section 4 filing?

E. In the event Western Resources elects not to purchase gas from Newco under Rate Schedule FS, transition costs associated with the unbundling of Kansas Pipeline's sale to Western Resources shall be amortized over a 3-year period and direct-billed to Western Resources.

F. Agreement to this Settlement by the KCC and MPSC constitutes their determination that all transitions costs payable under the terms of this Settlement shall be recoverable in the rates of public utilities subject to their jurisdiction.

No

Preapproval.

G. In the event the Commission reduces the rates set forth in Appendix D or otherwise prevents Newco from recovering annual revenues of $31,144,541, exclusive of transition costs set forth in this Article VII, the difference between the revenues actually collected and $31,144,541 shall be recoverable as a transition cost. Such costs shall be assigned two-thirds to Western Resources and one-third to MGE.

H. If (1) the Commission's regulation of Kansas Pipeline, *et al.* as an interstate pipeline causes, directly or indirectly, the breach of any contract(s) between Kansas Pipeline, KansOk, or Riverside and Western Resources or MGE in existence as of November 2, 1995, and (2) costs attributable to such contract(s) are not otherwise recoverable under the terms of this Article VII, then the net present value of such contract(s) shall be deemed a transition cost to be amortized over a three-year period and recovered from Western Resources and/or MGE. In the alternative, the parties may negotiate a mutually agreeable exit fee related to the breached contract(s).

No

Could cause Breach.

How could they be breached by MGE? By virtue of moving to FERC, if MGE wants to switch they must pay an exit fee.

4 x 150

140 million T.C.

ARTICLE IX

EFFECTIVENESS

A. Kansas Pipeline has made binding gas purchase commitments to support its KCC-approved sales to Western Resources through June 30, 1996. If this Settlement is approved by the Commission without modification or condition on or before May 1, 1996, the Effective Date of the Settlement shall be July 1, 1996. If this Settlement is not approved by such date, Kansas Pipeline will be required to make additional gas purchase commitments, the costs of which Newco shall be authorized to recover as transition costs pursuant to Paragraph VII above. Such costs will be attributable to the buyout or buydown of gas purchase commitments made to suppliers underlying Kansas Pipeline's sale to Western Resources.

Where in article 7 ?

B. Except as provided in Paragraph A above, the Effective Date of the Settlement shall be on the first day of the first month following thirty (30) days after a Final Order approving the Settlement without modification or condition. For purposes of this Settlement, a "Final Order" means a Commission order which is no longer subject to further proceedings before the Commission. Any order shall be deemed to be a Final Order as of the last date for filing an application for rehearing when no such application(s) for rehearing is filed, or on the date of the Commission order denying all applications for rehearing.

when is that a final order.

C. The provisions of this Settlement are not severable. This Stipulation and Agreement shall not become effective unless and until the Commission has issued an order approving all the terms and conditions of this Settlement without modification or conditions, and

Inconsistent with other provisions

1) Giving up appeal right
2) Moratorium
3) Y3 TC cost allocation

ARTICLE X

RATE MORATORIUM

A. Newco agrees that, except for (1) limited NGA Section 4 filings to recover transition costs as provided in Article VII, (2) rate adjustments permitted by Articles VI (F) and (G) above, and (3) the provisions of Paragraph B below, it shall not file a general rate increase pursuant to Section 4 of the NGA or otherwise increase its rates to be effective prior to July 1, 1999.

B. The rate moratorium set forth in Paragraph A above shall apply (1) to service to delivery points in Missouri, and (2) to existing contracts (or their successors as described in Article V, Sections 2 and 4), under which gas is currently flowing to customers in Kansas. It shall not apply to contracts providing for deliveries to Kansas under which service has not been initiated. Nothing herein shall preclude the KCC from filing a complaint under NGA Section 5, provided such complaint is limited to the issue of whether any future gas contract(s) entered into by Newco and any company subject to KCC jurisdiction is(are) just and reasonable.

C. Notwithstanding anything herein to the contrary and irrespective of whether this Settlement is approved by the Commission, by their signature hereto the MPSC and Newco agree to be bound as follows: from and after the date Newco, Riverside, *et al.*, and the MPSC affix their signatures hereto and until a four (4) year period after the Effective Date hereof, so long as Newco, Mid-Kansas and/or Riverside, *et al.* does not charge rates and charges any higher than those described herein, then the MPSC agrees not to disallow any of the rates and charges of

Newco to any entity regulated by the MPSC in any ACA or similar proceeding during any ACA period partially or wholly covered during said four (4) year period, including, but not limited to, rates and charges being paid by MGE to Newco, Kansas Pipeline, *et al.*, and/or Mid-Kansas Partnership under currently executed agreements between Riverside and/or Mid-Kansas Partnership and MGE, as may be amended. This agreement shall not affect the currently pending MPSC cases GR93-140, GR94-101, and/or GR94-228 but shall conclusively apply to all subsequent MPSC ACA audit periods through and including the end of such rate moratorium.

No.

D. If, as a result of legislation or actions of Commission, any successor agency, or any other governmental authority having jurisdiction, Newco is required to change the cost allocation, rate design, services, or billing determinants which underlie the rates in Appendix D in a manner that materially and adversely affects its ability to recover the cost of service that underlies the Appendix D rates, or, with respect to mandated changes in service, in a manner that materially increases Newco's cost of service in a manner that cannot be recovered through rates from such changed service, then Newco may, upon written notice to its customers, at any time terminate the rate moratorium provided in Paragraph A and file a general rate change pursuant to NGA Section 4.

E. Nothing in this Article IX shall preclude Newco from implementing incremental or other rates for new services not covered by this Settlement which commence after the date this Settlement is filed.

?

Exception to Moratorium.

No Name

ARTICLE XI

No 1

Newco shall succeed to the interest of Riverside under that certain firm gas transportation service agreement between MGE and Riverside dated February 24, 1995. The MPSC's agreement to this Settlement shall constitute its determination that such agreement is prudent and that amounts paid to Newco or its successors in interest pursuant to such agreement are fair, just, and reasonable and may be recovered by MGE in its rates, with the proviso that such price shall remain fixed (subject to the escalations in the discounted rate as set forth therein) for the term set forth therein.

ARTICLE XII

RESERVATIONS

Can't do this.

A. This Stipulation and Agreement is submitted pursuant to Rule 602 of the Commission's Rules of Practice and Procedure and all parties agree that unless it becomes effective in accordance with Article VII hereof, it shall be privileged and shall not be admissible in evidence or in any way described or discussed in any proceeding.

B. It is specifically understood that the settlement embodied in this Stipulation and Agreement represents a negotiated settlement with respect to Newco's rates and services, and neither Newco, its customers, the Commission, its Staff, nor any other person shall be deemed to have approved, accepted, agreed, or consented to any fact, ratemaking principle, or any method of cost of service determination, cost allocation, or rate design underlying or supposed to underlie

any of the rates or refunds provided in this Settlement, except as expressly provided in the Settlement.

C. Except as expressly provided by this Settlement, nothing herein is intended, nor shall it be construed, as limiting or affecting Newco's rights under the Natural Gas Act to file and place in effect any changes in rates or modifications, additions, or deletions to its FERC Gas Tariff employing concepts, methods, or provisions different from those reflected herein. Nothing herein shall limit Newco's authority under the Natural Gas Act, the Natural Gas Policy Act, or the Commission's regulations to make filings or construct facilities as authorized by law or regulation. Similarly, except as expressly provided by this Settlement, all parties hereto preserve their rights under the Natural Gas Act and Natural Gas Policy Act.

D. This Settlement shall not pertain to or resolve any issue, or approve any costs under consideration in KCC Docket Nos. 192,506-U, 192,391-U, and 192,507-U. Signatory Parties recognize and agree that the Settlement in no way constitutes acceptance or rejection of any issue in KCC Docket Nos. 192,506-U, 192,391-U, and 192,507-U.

All MPSC dockets.

E. In the event of a conflict between this Settlement and the terms of any other agreement between Kansas Pipeline, KansOk, Riverside, Mid-Kansas Partnership and/or MarGasCo Partnership and any party hereto, this Settlement shall prevail.

Contract law.

Respectfully submitted,

(Signatory Parties)

January _, 1996

Appendix A

KansOk Partnership, *et al.*
Docket Nos. CP95-212, *et al.*

Statement of KPP Settlement Rates

	Maximum	Minimum
Rate Schedule FT:		
Reservation Charge - $/MMBtu/Day/Month		
Zone 1	$8.4938	$0.0000
Zone 2	$8.4718	$0.0000
Usage Charge - $/MMBtu		
Zone 1	$0.0041	$0.0041
Zone 2	$0.0037	$0.0037
Rate Schedule IT:		
Usage Charge - $/MMBtu		
Zone 1	$0.2835	$0.0041
Zone 2	$0.2824	$0.0037

Appendix D

KansOk Partnership, *et al.*
Docket Nos. CP95-212, *et al.*

Statement of Settlement Rates
(Preliminary Calculations)

	Maximum Rate[1]	
	Transok Assigned	Transok Retained[2]
Rate Schedule FT:		
Reservation Charge - $/MMBtu/Day/Month		
Zone 1	$4.0098	$5.1712
Zone 2	$8.4824	$8.4824
Zone 3	$8.7239	$8.7239
Usage Charge - $/MMBtu		
Zone 1	$0.0050	$0.0050
Zone 2	$0.0050	$0.0050
Zone 3	$0.0050	$0.0050
Rate Schedule IT:		
Usage Charge - $/MMBtu		
Zone 1	$0.1368	$0.1750
Zone 2	$0.2839	$0.2839
Zone 3	$0.2918	$0.2918
Rate Schedule SCT:		
Usage Charge - $/MMBtu		
Zone 1	$0.3346	$0.4300
Zone 2	$0.7022	$0.7022
Zone 3	$0.7221	$0.7221

[1] Plus fuel, lost and accounted for gas, and applicable surcharges.

[2] Plus fuel, lost and unaccounted for gas, and variable charges attributable to the Transok Lease.

Appendix E

KansOk Partnership, *et al.*
Docket Nos. CP95-212, *et al.*

Gas Plant Accounts as of September 30, 1995

Line	Description	Amount
1	Gross Plant	$ 111,274,883
2	Accumulated Depreciation	$ (17,288,725)
3	**Net Plant**	**$ 93,986,158**
4	Regulatory Assets	$ 12,551,102
5	**Total Assets**	**$ 106,537,260**
6	AFUDC included in line 1	$ 31,372,738
7	Acquisition Adjustment included in line 1	$ 12,930,601

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MEMORANDUM

To: Penny Baker and Carmen Morrissey

From: Dave Sommerer and Tom Shaw - Procurement Analysis Department

Through: Ken Rademan

Date: January 9, 1996

RE: Bishop Group's Proposed S&A at FERC

The purpose of this memo is to provide you the Procurement Analysis Department's (PAD) evaluation of the proposed Stipulation and Agreement (S&A) circulated on January 3, 1996. Although PAD is not generally involved in FERC proceedings, we believe it is imperative that we provide you written documentation regarding some of our concerns with the S&A because of the effect it would have on currently-pending ACA cases. The following concerns are not all-encompassing, but based upon our review, PAD is **opposed** to the S&A for the following reasons:

1. Bishop wants to create a new affiliated pipeline (Newco) to operate the pipeline. However, "certain partnership transfer issues have not been finally decided or approved by the companies' lenders." Additionally;

   A. If this change in regulatory status "causes or in any way contributes to an increase in the cost of debt...the rates will be adjusted accordingly".

   B. If Newco is required to reorganize its partnership into a corporate form "...all costs associated with such reorganization shall be recognized as a regulatory asset and included in rate base."

   C. If regulation as an interstate pipeline causes, directly or indirectly, the breach of any contracts in existence as of November 2, 1995, the net present value of such contract shall be deemed a transition cost.

2. The rates specified in the S&A shall be **the final rates for all purposes of all periods prior to the effective date of the S&A and shall not be subject to disallowance or challenge on prudence or other grounds in any state proceeding**. Not only would the MPSC agree to rates on a going-forward basis, but would approve rates for historical periods; including prudence challenges currently pending before the MPSC.

3. Notwithstanding anything to the contrary and **irrespective of whether the Settlement is approved**, by attaching their signature, the MPSC agrees until a period four years after

HIGHLY CONFIDENTIAL

the effective date that rates included in the Settlement cannot be the subject of disallowance in any ACA docket or similar proceeding. The effective date of the S&A could be as long as "...a Commission order which is no longer subject to further proceedings..."; which includes potential rehearings. Obviously, the effective date to which the MPSC is bound could be a significant period of time.

4. Refunds due in the Kansok rate case would be allowed to be retained by Bishop and used as an offset to any MPSC disallowance ordered (rather than paid in addition to previously ordered disallowances).

5. Restructured services will require that MGE obtain unbundled services of an equivalent quantity of firm transportation capacity and term equal as existing contracts.

6. In the event that FERC does not authorize Newco to hold leased capacity on Transok, Bishop will assign some portion of the Transok lease to MGE and the MPSC's signature would "constitute determination that the rates and charges set forth in the Transok Lease are fair, just, and reasonable and shall not be subject to disallowance or challenge on prudence or other grounds in state proceedings."

7. The signatory parties would agree to accept the plant account data specified and not to challenge such data in any future proceedings. This provision survives the term of the S&A.

8. Transition costs would be preapproved and no prudence challenges would be available. However, such transition costs have not been quantified and would include such items as regulatory expenses, all costs associated with reorganizing the pipelines into a single entity (including but not limited to legal and professional fees, costs attributable to assigning rights of way and **other instruments), any other costs not specifically identified above but the result of consolidation and/or compliance with the terms of the S&A**. Additionally, transition costs would be generally recoverable assuming 2/3 WRI and 1/3 MGE. In the event FERC reduces S&A rates, reduction would also be a transition cost.

9. No signatory party could file compliant until four years after the effective date of the S&A (which, as previously discussed, could be a significant period of time).

10. Newco could terminate the rate moratorium due to actions of the FERC.

MGE has not been made aware of this S&A and, apparently, we cannot contact them to discuss how they would feel about this. Furthermore, we do not believe it is appropriate for the MPSC to become involved in preapproving MGE's potential restructured services.

In summary, this S&A would seriously jeopardize the PAD's position in currently pending ACA cases that excess costs are being charged to Missouri ratepayers. Due to these concerns (among others), the PAD does not believe the proposed S&A is in the best interest of Missouri ratepayers.

Copy: David Rauch

cc: Haas
Sommers
Shaw

FLEISCHMAN AND WALSH, L.L.P.
ATTORNEYS AT LAW
1400 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 939-7900

FACSIMILE COVER SHEET

	TO: NAME	FACSIMILE PHONE NO.	CONFIRMATION NUMBER
(1)	Penny Baker	314/751-9285	
(2)	Carmen Morrissey	314/751-0429	
(3)			
(4)			
(5)			
(6)			

From: James F. Moriarty Ext. 202/939-7919 Total No. of Pages Sent: (Including Cover Sheet) ____

RE: Southern Union/WNG Matter No.: 0451.0004 Attorney No.:

Date: March 20, 1996

REMARKS: Good Afternoon, Folks: Pursuant to our discussions this morning, please find attached a letter describing concerns with Riverside's draft S&A. Hope all is well and look forward to talking to you soon. Many thanks. Jim

If you experience any problems with MKP *(202)939-7948.*

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the above address via the U.S.

COMPLETION TIME: ____ : ____ ☐ A.M. ☐ P.M. | COMPLETION DATE: ____/____/____

FLEISCHMAN AND WALSH, L. L. P.

ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION

AARON I. FLEISCHMAN

FLEISCHMAN AND WALSH, P. C.
CHARLES S. WALSH
ARTHUR H. HARDING
STUART F. FELDSTEIN
RICHARD RUBIN
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FOR SETTLEMENT PURPOSES ONLY

March 20, 1996

Penny Baker, Esq.
Ms. Carmen Morrissey
Missouri Public Service Commission
301 West High Street
P.O. Box 360
Jefferson City, MO 65102

Re: Riverside Pipeline Company, et al.
Proposed Stipulation and Agreement

Dear Penny and Carmen:

Pursuant to our earlier discussions, we have reviewed the draft Stipulation and Agreement proposed by Riverside, et al., for resolution of the pending certificate and rate matters before the Federal Energy Regulatory Commission ("FERC"). It appears from a preliminary analysis that significant rate and other issues exist that must be satisfactorily resolved prior to the agreement of Missouri Gas Energy, A Division of Southern Union Company ("MGE"). In anticipation of our previously scheduled meeting with Riverside's counsel here in Washington on March 27 and 28, we expect to forward today a detailed list of these concerns and issues. However, in order to communicate MGE's position prior to any upcoming consideration by the Missouri Public Service Commission, we have summarized below the major issues.

First, MGE's existing contract with Riverside, et al., requires that MGE's rates be adjusted to reflect the outcome of the proceedings in Docket No. 190,352-U, before the Kansas Corporation Commission, and the KansOk Partnership rate case before the FERC in Docket No. PR94-3. In addition, MGE's rates are required to reflect the pre-KCC filed rates of KNP/KP, a proposed rate for KansOk transportation (the actual rate in effect at that time) and the existing rates for transportation on Riverside. However, the proposed Stipulation and Agreement does not reflect either of these rate understandings, thereby artificially inflating MGE's rates by millions of dollars per year.

Second, under its agreement with MGE, Riverside is obligated to absorb any costs above the demand and commodity rates specified in the MGE agreement, including any gas supply realignment costs, stranded costs, take-or-pay, environmental remediation, and other similar or dissimilar charges. The settlement does not reflect this understanding, but rather would allow Riverside broad discretion to recover undefined transition costs (for which no estimate is provided). Finally, MGE's settlement includes an option to obtain a direct assignment of a portion of the TransOk lease. The proposed settlement, however, will unilaterally delete that bargained-for contractual option and allow FERC to order an assignment of the TransOk capacity.

Based on our preliminary analysis, it appears that the proposed settlement is inconsistent with the contractual commitments of Riverside, et al. to MGE. We intend to convey this message on March 27th and 28th. Of course, we will immediately contact you as to all future developments and would appreciate any comments or suggestions.

Very truly yours,

James F. Moriarty
Attorney for
MISSOURI GAS ENERGY, A DIVISION
OF SOUTHERN UNION COMPANY

LAW OFFICES
FRENCH & STEWART

RICHARD W. FRENCH
CHARLES BRENT STEWART

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FACSIMILE 499-0638

March 22, 1996

Mr. Robert Hack
General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65101

Re: Riverside Pipeline Situation

Dear Rob:

Please find enclosed our written responses to the twenty-four questions posed in the March 18, 1996 correspondence from Bill Haas. Our responses and this cover letter are being provided to you pursuant to the confidentiality provisions of Section 386.480. We are responding as expeditiously as possible and in writing, as requested. I received Mr. Haas' correspondence (copy also enclosed) via facsimile at 4:45 p.m. on Monday, March 18. With some minor exceptions, this was the very first time since we first began discussions with the staff last December that we have received **any** written list of staff concerns, or for that matter, requests from the staff for additional information about the Stipulation. Coming as late in the process as it does, my client cannot help but feel like he is being whipsawed and that at least some staff members are attempting to derail or further delay positive Commission action on the Stipulation.

As you know, **in January and at your direction we removed virtually all of the Missouri-specific items from the Stipulation as originally proposed** so that Missouri could remain free to litigate and challenge any and all of those items now or in the future as it saw fit. As explained in our enclosed response to staff, basically all we have asked the Missouri Commission to do in the current Stipulation is to defer to the Kansas Corporation Commission's most recent rate case decision as to my client's rate base--as now modified at the KCC's direction in the March 8 Stipulation--so that my client will not have to relitigate at the FERC what already has taken over three and one-half years to litigate in Kansas. If my client and the KCC are to agree to the jurisdictional transfer from the KCC to the FERC, which is the very essence of the Stipulation itself, we must have some starting point upon which to base FERC-set rates in the future. Staff's March 18 questions/concerns indicate to me to that staff wants to re-open and fully re-litigate the previous KCC rate case and at this late date re-open negotiations on terms which you and Penny Baker in January specifically told us to take out of the prior draft because Missouri could not agree to them in the first place. While the Commission obviously can look into and consider whatever matters it wants

to, I cannot help but feel that what may be going on here is an eleventh-hour attempt to confuse and distract the Commissioners from the very limited issue now before them. At minimium it is clear that the staff now wants to substitute its judgement for that of the KCC in our previous Kansas rate case. We have, nevertheless, attempted to respond as best we can and as quickly as possible.

I am not sure that I can fully describe the frustration and disappointment that my client and I are feeling about our current situation, both with regard to the FERC Stipulation and with regard to our pending ACA cases. From the very first day that Rick and I undertook representing Riverside Pipeline last fall, I repeatedly have assured my client that the Commission staff was tough, but fair. The staff, I said, above all else would be totally professional in its approach and would operate in good faith. The staff, I said, could be relied on to fairly and objectively work with us at least in effectuating the difficult transition from Kansas to FERC jurisdiction, despite our differences over issues in our pending ACA cases.

The events of the last several months, and now Mr. Haas' correspondence, make me seriously question my previous assessment. While I do not want to believe it, it is easy to conclude from our current situation that: 1) the staff's true intent is to do everything in its power to thwart and prevent any positive Missouri Commission action on the FERC Stipulation (which has now been executed by the KCC and my client); 2) the staff is unwilling or at least unable to enter into meaningful settlement discussions with my client with regard to our pending ACA cases, either separately or in conjunction with possible settlement of the now pending court appeal of GR-93-140; and 3) that unless steps are taken immediately to prevent it, the staff or at least certain individual staff members will continue or be allowed to continue to pursue an unchecked agenda against my client at all levels. On the other hand, it may simply be that a combination of various internal staff situations and staff-to-staff miscommunications that have resulted in unintended consequences. In any event, the situation has finally become intolerable; something must be done.

To this end, I am formalizing in this letter to you the particulars of our situation and am sending copies to the Commissioners and to David Rauch for their review. I also hereby respectfully repeat my verbal request to you of Monday, March 18 that you relay to the Commission my request that my client be permitted to meet with the Commission in person, during a closed agenda session under "litigation", as soon as practically possible for the purpose of: 1) discussing and answering questions about our proposed FERC Stipulation; and 2) discussing the possibility of settlement of the GR-93-140 appeal and how we might reasonably handle the continuing ACA issues that necessarily flow from it in subsequent ACA periods. I have asked Rick to attempt to schedule this meeting when he hand-delivers this letter and our response to stafff. Hopefully the meeting can be arranged for sometime next Tuesday, March 26.

All my previous, informal attempts to work through our problems have proven extremely frustrating and totally unproductive. I repeatedly have attempted to resolve problems as they arose by going through established staff management channels, up to and including you and David Rauch. In virtually every instance I have been given the bureaucratic run-around and nothing gets resolved. I recognize that you and the staff have other priorities and matters that require your attention. From my perspective, however, the basic problem seems to be that when we ask no one seems willing to take personal responsibility for anything, no one claims to have any decision making power, and we get little if any feedback--even so, a "staff position" detrimental to my client somehow always seems to surface in closed agenda meetings with the Commission. Another example of this problem was when, after numerous prior discussions with the staff, Rick and I met with you, David Rauch and Ken Rademan to discuss a "global" settlement of our ACA issues. We left that meeting with what in my opinion was something workable only to be told a day or so later that "the staff" had discussed the matter and was not willing to proceed with what we had discussed.

Please understand that my criticisms are directed more at the *process* than they are directed toward any individual member of the staff. I think that you know me well enough to know that by sending this letter it is not my intent or desire to interfere with internal staff management matters or get into a protracted personal conflict with any individual staff member. It would not be appropriate, and frankly, I had enough of that when I was at the Commission. On the other hand, it has become obvious to me that the time has come to formalize our situation in writing in the hope that it will spur remedial action. I have no other option since, as you already have made it a point to remind me, I am precluded from approaching individual Commissioners with my concerns and I am not permitted to know, due to claims of attorney-client privilege, what the staff is telling the Commissioners in closed meetings and through confidential memoranda.

FERC STIPULATION

The chronology of our proposed Stipulation is necessary to understand our current situation. The vast majority of my client's operations have been and remain Kansas-specific and the bulk of my client's operations have been regulated by the KCC. My client just completed an extremely long and contentious general rate proceeding in Kansas, which I have been told has become known in Kansas as "the rate case from hell". During that case, my client's competitor, Williams Natural Gas, did everything possible to disrupt and impede the process; they even hired a professional communications firm to wage an all out public relations campaign against my client while the case was pending. Last year, the FERC reversed its long standing Section 311 and Hinshaw pipeline policies and determined that henceforth my client should be subject to FERC jurisdiction. My client and the KCC originally fought this FERC decision but after much negotiation have now agreed to effectuate the jurisdictional transfer via the current Stipulation and Agreement, which is intended to be

filed in my client's pending FERC docket. My client obviously wants to bring this matter to closure as quickly as possible so there at least will be more certainty in his regulatory status. My client did not seek or create this jurisdictional transfer but of necessity is forced to attempt to deal with it. The Missouri Commission was asked to participate in this jurisdictional transfer settlement because a portion of my client's operations affect Missouri.

After discussing the matter with you, on December 7, 1995 my client and I met with the Missouri Commissioners to discuss, in concept, what we were trying to accomplish via the Stipulation. We were directed by the Commission to work with Penny or Carmen Morrissey on specific language and they each attended our sessions with the Commissioners. Shortly thereafter, we prepared and sent a working draft of the proposed Stipulation to Penny and Carmen; we met with them on December 21 in Jefferson City and went through the document line-by-line. While the document necessarily contained numerous provisions, we attempted to explain to them that our intent was to make the Stipulation REVENUE NEUTRAL for my client, while taking into account the differences between KCC and FERC ratemaking treatments, and to attempt to balance what we thought would be the specific concerns of the Kansas and Missouri Commissions regarding ratepayer interests in their respective jurisdictions. I knew that some of the initial provisions we proposed would be difficult for the staff to agree to but we also included provisions that in my view were clearly beneficial to Missouri, and actually, contrary to my client's financial interest. In any event, we told them several times that we were extremely open to any suggestions or changes that they felt might be necessary and would work with them to incorporate any Missouri-specific language they wanted to include.

At that meeting we also felt it appropriate that we establish some basic ground rules regarding the settlement process itself. We first asked that the staff treat our discussions in strict confidence and explained our concerns about information leaking out of our settlement discussions and winding up with Williams Natural Gas. Given WNG's activities against us in Kansas and at the FERC, we viewed this as extremely important and still do. We also requested that the staff not contact other potential parties to the Stipulation willy nilly but rather work through us so that there would be some strucuture to the overall settlement discussions. Neither of these requests were novel; the Commission itself has done so in settlement discussions where multiple parties are involved. A "priority of parties" also was established. In our view it really did not matter what other parties might want until the two most important players--the KCC and the Missouri Commission--were first given an opportunity to review the first draft and tell us what each would require of us. As a practical matter we also knew that it would be fruitless to begin the process by "bringing all the potentially interested parties into one room to hash things out" due to the very nature of the subject matter and the number of interested parties. Besides, at the time we were facing a FERC-imposed deadline in January. We left that meeting believing that we had taken a good first step in beginning the settlement process.

Apparently we were mistaken. Despite repeated attempts on our part, several weeks then passed where we received virtually NO FEEDBACK (positive or negative) on the working draft. Staff-drafted amendment language was solicited but never provided although we were told it would be forthcoming. With minor exceptions, virtually all telephone calls were initiated by me and many times no one on the staff was available. Several of my phone calls were simply never returned. About all we *were* told was that staff generally did not like the provisions related to contract pre-approval, which of course we had expected, but really nothing more specific other than they needed time for further review. Not receiving anything specific from anyone on the staff, I contacted staff upper management several times but again nothing was forthcoming. It was about this time that it seemed that perhaps staff members other than Penny and Carmen were working on the project, but I was never able to get anything specifically confirmed so I did not know who other than Penny and Carmen I needed to contact, if anyone.

After going to the extreme of contacting her at home, I was able to arrange for Penny to participate in a conference call on January 18 with counsel for the KCC and others but even at this point she was either unable or unwilling to provide us with any concrete feedback or substitute language. Whether Carmen or other technical staff were still reviewing things, or were to provide Penny with information but had not, I simply do not know. All this time, our negotiations with the KCC were underway but we continued to hear nothing from staff. All I did know was that Penny apparently was talking with the KCC's counsel by this point. A large part of our frustration was that we could not address particular problems that we did not know existed, let alone draft specific language to address such problems. Again, the very first time we received anything in writing from the staff directed to us was on March 18.

On the afternoon of January 25--and without any prior notice or opportunity to respond to either the staff or to the Commission--I contacted Penny and was informed that she and certain, unspecified staff members had met with the Commission that morning to discuss the Stipulation. I still do not know if staff provided the Commission with a written memorandum or summary of staff's concerns at that meeting. All she would tell me was that "the Commission" had serious problems and concerns with the proposed document and therefore would not agree to become a signatory party. For whatever reason, she refused to disclose to me the exact nature and scope of the problems or participate in further discussion. I immediately notified my client and then again attempted to contact Penny for further information. I was told that she had left for the day. I then attempted to contact Carmen and you, but you both were unavailable, as was David Rauch when I first called. Not knowing who else on the staff to attempt to contact, I called Commissioner McClure to see if he could enlighten me at least as to what transpired during the agenda meeting. Unfortunately he was not in a position to do so because he had not attended that portion of the agenda session due to another committment. Shortly thereafter I was able to reach David Rauch who indicated to me that not only did the staff recommend that the Commission not sign the Stipulation, but that several (again undisclosed) staff members actually urged the Commission to actively

OPPOSE it. David also told me that the Commission decided to NOT actively oppose the Stipulation (even as currently drafted), despite staff's recommendation. You eventually called me around 5:00 p.m., presumably at David's request, and we set up a conference call between ourselves, Penny and my client for the next day.

It was during our conference call the morning of January 26 that you and Penny told us in no uncertain terms that the Commission could not sign the Stipulation as currently drafted and that our only option was to REMOVE ALL MISSOURI-SPECIFIC LANGUAGE FROM THE STIPULATION. We did discuss the pre-approval issue and several other general concerns. Later that day, and again on January 27, we suggested a possible compromise position whereby the Commission might be willing to become a signatory party. IT WAS AT THAT TIME that we removed all the Missouri-specific language with one exception. We asked the Missouri Commission at least agree to accept the KCC's rate base determination for my client's EXISTING plant accounts (and the rates resulting therefrom) since at the very minimum: 1) my client wanted to avoid relitigating what already had been fully litigated in Kansas; and 2) historically the Missouri and Kansas Commissions have always deferred to each other on ratemaking questions involving their respective jurisdictions on the basis of state-to-state comity and custom. We discussed this matter at some length and my firm recollection is that you and Penny agreed with us in principle at least that this approach *should* be workable from the staff's perspective and that there was a possibility that the Commission could agree to it, particularly in light of staff's previous recommendations. We even discussed specific limiting language to be added to the Stipulation and added same to the Stipulation with your concurrence; the new draft--which took out the previously "objectionable" Missouri-specific language--was then faxed to you. When asked if you wanted us to keep sending updated drafts as our negotiations with the KCC proceeded, you expressly said that you did not since the Stipulation no longer affected Missouri except for the rate base issue. At no time from that point did the staff ever request **any** further information from us, in writing or otherwise, at least until March 18.

Our negotiations with the KCC continued, now without the Missouri staff per its request, and I provided you with periodic verbal updates on our progress. Prior to February 27, I heard nothing from Penny except that she indicated to me when I called her in mid-February that: 1) we should not expect the Missouri Commission to vote until the KCC voted; and 2) the staff and the Commission would like to know MGE's reaction to the Stipulation before the Commission proceeded. Other than that, I heard nothing from the staff. Also at that time, discussions were underway with Western Resources and my client too was waiting to hear back from MGE. I continued to provide you with verbal updates and status reports, but again no problems were even suggested by staff.

To my total surprise, on February 27 I discovered that "the Commission" had filed on February 22 a FORMAL PROTEST (copy enclosed) at the FERC in my client's docket. This Protest was not only unnecessarily inflammatory in tone, it also contained criticisms and

issues which heretofore were totally new to us. Neither I nor my client were provided with any prior notice that the Commission even intended to file the Protest nor was I even sent a courtesy copy of the document after it was filed (as you will recall, I traveled to Jefferson City to pick up a copy from you on February 28). Most disconcerting was that several portions of the Protest involved questions specifically challenging the KCC's determination of my client's rate base. This was totally unexpected and absolutely contrary to where we were led to believe we were with the staff as of January 27. It also was clearly contrary to what we had been led to believe was the Commission's last known official position--specifically, that the Commission was not moving forward to actively oppose what we were trying to accomplish through the Stipulation, especially since we had removed at your direction virtually all of the Missouri-specific language.

I presume that the Commission itself approved of this filing under its usual procedures; if so, we once again were denied any prior notice or opportunity to respond to the allegations contained therein, either at the staff or the Commission level. Nor were we informed, even after the fact, of the apparent change in the Commission's position. This also was the first time that I realized that Bill Haas had been assigned to work on this project, although I assumed that arrangements had been made to cover Penny's work in her absence. Your explanation that the filing was made solely for the purpose of "preserving issues for litigation" in the event a settlement was not reached is in my mind betrayed somewhat by the tone of the document itself, especially when it is compared to the extremely neutral and truly procedural "protest" filings made in the docket by the KCC, Western Resources and MGE. If I were of a suspicious nature I could easily conclude that this filing was intended by whoever drafted it for a very specific purpose; namely, to prompt other parties (including perhaps the FERC staff?) to pick up these issues in the event that the Missouri staff eventually was precluded from raising them in the future pursuant to a Commission directive. I do know that it is not uncommon for the staff to disagree with certain Commission decisions.

The KCC executed the Stipulation on Friday, March 8 and I made copies and hand-delivered them to you the following Monday, March 11. I asked my client to come to Jefferson City on Tuesday, March 12 so that he could be available to answer any questions that the staff or the Commission might have about the final document executed by the KCC. I recognized that it was highly unlikely that the Commission would be in a position that day to actually take action, but wanted to have my client available if there were questions. While we obviously are anxious to have this matter resolved, it was not our intent to ask the Commission to rule on something that it had not yet had an opportunity to review.

Both my client and I did talk with Carmen that afternoon but were surprised to learn that apparently she was not very familiar with our previous discussions regarding the rate base issue and that she had numerous concerns about a variety of matters. She promised me that she would "send me a list", which I assume was sent the afternoon of March 18. She reminded me that several years ago she had wanted the Missouri Commission to intervene in

my client's rate case in Kansas but that her request had been denied. She also indicated that she disapproved of how we had gone first to the KCC and the Missouri Commission to discuss the Stipulation and that she did not like the fact that we did not just begin the process by "inviting all interested parties into a room together to hammer out a document". She said that my client's request for what she referred to as "expedited action" on the Stipulation created, at least in her mind, the need to be extra cautious in agreeing to anything. I might add that this discussion was initiated by me, not Carmen.

While I certainly appreciate Carmen's candor (albeit coming for the first time so late in the process), I must admit that I was both surprised and extremely concerned, especially given everthing that had transpired up to this point. I suppose it was then that I began to realize that *at best* we were back to square one again, and perhaps even farther back than where we first started this process *last December*. My worst fears were confirmed when I received Mr. Haas' letter. If staff members had these concerns and needed this additional information, why did they wait so long to come forward? Now that negotiations have finally been concluded in Kansas and the KCC has signed the Stipulation, is it staff's desire to have us throw it out and start anew? Staff was given every opportunity to work through our negotiations with the KCC but chose not to do so. It certainly seems to me that we are truly being whipsawed here and we have not been and are not being treated fairly by the staff. If asked, I sincerely doubt staff would be upset if the Stipulation did not move forward--ever. Whether what is going on here is in fact a pursuit of a private staff agenda, or I hope something less devious in nature, something is terribly wrong.

GR-93-140 AND SUBSEQUENT ACA CASES

It is not my intention to here re-hash the various arguments made in GR-93-140. The Commission unfortunately will be hearing them again soon enough in our next ACA docket. What I can say, however, is that I have a growing fear that certain staff members who were involved in that case have attempted and will continue to attempt to derail any attempts my client and I make toward resolving our issues outside of protracted litigation. Admittedly, the issues involved are novel and will require some effort to get resolved; that does not mean, however, that a good faith resolution should not be attempted.

Part of our problem is that the issue staff prevailed on in GR-93-140 (now on appeal) continues through several subsequent ACA cases, two of which are now set for hearing before the Commission in May. Another part of the problem is staff limiting its after-the-fact review of the prudence and benefits of multiple-year gas contracts within the strict confines of one-year ACA periods--presumably because staff has no other choice under current procedures. When Rick and I first approached you and Jeff Keevil last fall about the possibility of reaching a settlement of the court appeal and recurring issues in our ACA cases, Jeff at least at that time did not believe a "global settlement" was possible. After further discussion with the two of you and other staff members, and after the meeting I referred to

earlier involving Ken Rademan and David Rauch (where basically an offer was made and then later withdrawn), we were told that: 1) only *the Commission* had the authority to settle the court appeal; 2) the staff was obligated to follow Commission precedent with regard to GR-93-140 issues in subsequent ACA proceedings, and so was not at liberty to settle anything in the ACA context even if it wanted to (which it did not); 3) ex parte problems existed if we were to attempt to discuss any issue in a pending case with the Commission; and 4) even if the exact same gas contract was involved, any settlement of future ACA cases was a policy call which, unless staff got some specific direction from the Commission itself, the staff was not in a position to make.

This argument is both circuitous, and taking into account staff's advocacy role, I believe self-serving. Despite this apparent "catch-22" situation, I have to believe that there *must* be some mechanism available to us to effectuate a settlement involving pending and future ACA cases in conjunction with our court appeal. After our initial attempts failed prior to December, we even tried to address the "future ACA case" question" through the vehicle of the FERC Stipulation, which of course was rejected upon the staff's recommendation. A settlement, of course, assumes that the staff is willing to entertain the possibility of a meaningful settlement. Based on what I have seen, I believe that the staff is either unwilling or believes that it is unable to do so. Internal disagreements among various staff members also adds to the problem, especially when it is unclear who on the staff has ultimate decision-making authority.

My client has been and remains willing to pursue a full settlement of this ongoing issue at all levels. My past attempts at having someone on the staff take charge to see what could be done on this have failed. I again repeat my verbal request to you to bring this matter to the Commission's attention. If the Commission is willing to entertain a "global settlement" of the GR-93-140/ACA matters, and you are not available to do so yourself, I would ask you or the Commission to appoint someone in the General Counsel's office and grant them the authority to sit down with us to attempt to reach a settlement that will not be subject to veto by some unkown staff member at the last minute. It seems to me that avoiding continuing and protracted litigation, as well as attempting to get a handle on the problems inherent in the current ACA process, would be in everyone's best interest.

I sincerely wish this letter had not been necessary. To the extent that certain staff members use this letter to further justify their view and treatment of my client, so be it--nothing has changed and obviously I can do nothing to change their minds. To the extent it provides additional information to you and the Commissioners and/or prompts a good faith effort to resolve matters outside litigation, it has been worthwhile.

Sincerely,

Brent Stewart

Brent Stewart

CBS/bt

Enclosures

cc: Commissioners
David Rauch
Penny Baker
Bill Haas
Carmen Morrissey
Dennis Langley

MEMORANDUM

To: Ken Rademan

From: David Sommerer

Date: January 12, 1996

Subject: Phone call from Penny Baker regarding KPOC Stip

Penny called at 1:00 PM to mention that Dick Morgan, the Washington Counsel for the KCC, was getting some conflicting information from Dennis Langeley regarding the KPOC Stipulation. Penny said that Mr. Langeley was indicating that the MoPSC was pushing for the proposed rate moratorium of KPOC's rates. Penny said this was not the case.

Penny said that Ken McClure stopped by her office and indicated that he had talked with a Commissioner from the KCC. Apparently, the KCC is not pushing for this Stipulation as Penny had been led to believe.

Dick Morgan, the Washington Counsel for the KCC, is setting up a conference call with Penny on Tuesday, January 16, 1996. Dennis Langeley will be in attendance in Dick Morgan's office in Washington D.C.

The purpose of the conference call appears to be an attempt to establish some consistency in the facts being presented in support of KPOC's proposed Stipulation. KPOC is under a deadline to file FERC jurisdictional tariffs by Wednesday, and according to Penny, the proposed Stipulation has been indefinitely delayed or at least won't be ready for filing in time for the FERC's imposed tariff deadline.

Finally, our Commission has indicated to Penny that it wants to be briefed on the status of the KPOC FERC case in its January, 24th agenda. Penny said she would notify us of the time of the Tuesday conference call.

copies: Tom Shaw

 PB CM Dave - Tom:

CONFIDENTIAL

LAW OFFICES
FRENCH & STEWART

RICHARD W. FRENCH
CHARLES BRENT STEWART

1001 Cherry Street
Suite 302
Columbia, Missouri 65201-7931

AREA CODE 314
TELEPHONE 499-0635
FACSIMILE 499-0638

FAX TRANSMITTAL COVER SHEET

DATE: 1-23-96

DELIVER TO: PENNY BAKER CONFIDENTIAL
— URGENT —

FROM: BRENT STEWART

NUMBER OF PAGES (including cover sheet) _____

ORIGINAL DOCUMENT WILL BE SENT VIA U.S. MAIL: YES _____ NO ✓

MESSAGE: THE DEPT. OF ENERGY HAS REQUESTED THAT THE FOLLOWING TWO PROVISIONS BE ADDED TO THE FERC S+A. PLEASE REVIEW AND FAX BACK ANY CHANGES YOU THINK ARE NEEDED.

THE KCC IS READY TO MOVE ON THE S+A BUT NEEDS YOUR LANGUAGE BEFORE THEY VOTE. PLEASE FAX ME YOUR LANGUAGE/CHANGES ASAP SO WE CAN REVIEW AND INSERT IT INTO THE FINAL DRAFT. LET ME KNOW IF I CAN ASSIST YOU IN ANY WAY — WE REALLY NEED TO GET THINGS TIED DOWN THIS WEEK. THANKS —

Brent

P.S. I'VE ALSO INCLUDED SOME NOTES RE: S+A ADVANTAGES.

Please call (314) 499-0635 if you have any trouble with this transmittal.

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-Section 8: Vehicular Natural Gas (VNG) Service-

Approval of this settlement shall constitute Commission authorization for Newco to make capital expenditures and expend funds for the construction of vehicular natural gas fueling, maintenance , and associated facilities and provision of wholesale and retail vehicular natural gas services. This authorization shall include authorization to provide retail transportation and retail sales service to customers within the territories of any Local Distribution Company pursuant to a Vehicular Natural Gas (VNG) tariff for each such LDC or for each such municipal area for which such services are provided. Such tariff shall be filed with the Commission prior to the provision of such sales or service. Capital investments and expenses associated with VNG service shall be eligible for cost of service rate recovery, on a per MMBtu basis, from all customers and eligible for passthrough through in the local distribution customers' service territory in which NGV service is provided through purchase gas adjustment recovery mechanisms, to the extent admitted or allowed by PUC's or other appropriate jurisdictions.

By approval of this settlement the KCC and MPSC authorize local distribution companies who receive charges for VNG service to collect such costs from retail customers on a per therm basis. As used herein, Vehicular Natural Gas shall be defined as follows: " Vehicular Natural Gas is natural gas that will be used, either in gaseous or liquefied state, as fuel in any self-propelled vehicle including automobiles, trucks, buses, mass transit ,rail,etc.".

END

CONFIDENTIAL

Demand Side Management and Energy Conservation Service (DSM)

Approval of this settlement shall constitute Commission authorization for Newco to make capital expenditures and expend funds for the development and implementation of Demand Side Management and energy conservation programs. This authorization shall include authorization to implement such programs within the service territories of any Local Distribution Company pursuant to a Demand Side Management (DSM) tariff for each such LDC or for each such municipal area for which such services are provided. Such tariff shall be filed with the Commission prior to the provision of such sales or service. Capital investments and expenses associated with DSM service shall be eligible for cost of service rate recovery, on a per MMBtu basis, from all customers and eligible for passthrough through in the local distribution customers' service territory in which DSM service is provided through purchase gas adjustment recovery mechanisms, to the extent admitted or allowed by PUC's or other appropriate jurisdictions.

Demand Side Management and Energy Conservation Program, as used herein, shall be defined as follows: " Any program of action by a utility which is results in the more efficient use of energy resources, reductions in emissions or pollutants, reduction in energy consumption, or increased economic efficiency in energy consumption." Example's of DSM service would be improvement of insulation in private or commercial buildings,automated or telemetric control of energy usage, fuel switching, etc.

By approval of this settlement the KCC authorize local distribution companies who receive charges for DSM service to collect such costs from retail customers on a per therm basis and/or to bill the customers which receive the service.

END

CONFIDENTIAL
FOR SETTLEMENT DISCUSSION PURPOSES ONLY

ADVANTAGES TO S+A

1.) SEE ITEMS LISTED ON PAGE 3.

2.) FREEZE IS BASED ON 1993 TEST YEAR DATA.

- IF DATA UPDATED TO 1995, COST OF SERVICE INCREASES A MINIMUM OF $2.5 MILLION PER YEAR WHICH WOULD BE BORNE 2/3 BY KANSAS & 1/3 MO FOR 1996-97 + 2/3 MO + 1/3 KS FOR 1998-99.
- FREEZE WILL THEREFORE SAVE MO AT LEAST $5+ MILLION

3.) ABSENT S+A, MANY ITEMS WOULD BE CAPITALIZED, NOT DIRECT BILLED, AND WOULD BE BILLED VOLUMETRICALLY

- MO SAVINGS W/ S+A ≅ $3 MILLION BY DIRECT BILLING (ICC RATE CASE EXPENSE, ICC CONTRACT CASE EXP., LINCHPIN LITIGATION etc)

4.) TRANSITION COSTS RESULTING FROM DEBUNDLING SALES AND TRANSPORTATION CONTRACTS ARE ABSORBED BY KPOC IN THE S+A.

- APPROXIMATELY $11 MILLION
- IF VOLUMETRICALLY BILLED OVER 5 YEARS (PER OTHER 636 CA MO'S SHARE WOULD BE ≅ $6 MILLION PLUS CARRYING COSTS

5.) MoPSC CAN ACTIVELY PARTICIPATE AT FERC IN FUTURE KPOC RATE CASES

6.) S+A REVENUE NEUTRAL/RATE NEUTRAL TO MO CUSTOMERS

- INCREASE IN RATE BASE WHICH OFFSETS THE DECREASE IN ROE IS LOST BY DEPRECIATION DURING THE MORITORIUM

7.) "SIDE BENEFITS"

GR-93-140, GR-94-101/94-228 SETTLE ON CONTRACT CAP ISSUE, REFUNDS FLOW, REDUCED LITIGATION