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July 31, 2002

Executive Secretary  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED**

JUL 31 2002

**RE:** Case No. GR-98-167

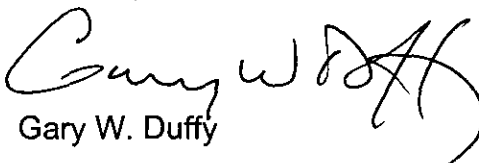
Missouri Public  
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of MGE's Reply to "Staff's Response."

If you have any questions, please give me a call.

Sincerely yours,

  
Gary W. Duffy

Enclosures

cc w/encl:

John Coffman, Office of Public Counsel  
Tim Schwarz, Office of General Counsel  
Jeff Keevil  
Rob Hack  
Mike Langston

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of Missouri Gas Energy's )  
Purchased Gas Cost Adjustment tariff )  
Revisions to be reviewed in its 1997- )  
1998 Actual Cost Adjustment. )

Case No. GR-98-167

**FILED**  
JUL 31 2002  
Missouri Public  
Service Commission

**MGE'S REPLY TO  
"STAFF'S RESPONSE"**

Comes now Missouri Gas Energy, a division of Southern Union Company, and for its reply to "Staff's Response" filed in this case on July 26, 2002, respectfully states as follows:

1. Although not denominated as such, the Staff's response appears to be a motion to consolidate four cases and a request to take official notice of "the record" in Case No. GR-96-450. In the second unnumbered paragraph, the Staff "asks the Commission to consolidate all cases and proceed to hearing. Staff believes that the Commission should take official notice of the record in GR-96-450 in the consolidated cases ... ." MGE considers it necessary and appropriate to respond to these requests by Staff, whether formally set out as motions or not.

**Consolidation**

2. Under the present schedule, as directed by the Commission, MGE intends to file a memorandum on August 15 in Case No. GR-2001-382 which addresses the filed rate doctrine's application to the Mid-Kansas/Riverside issues which Staff has raised. Since the pipeline came under FERC jurisdiction in May 1998, MGE's position

is that fact, and the evidence already considered by the Commission in Case No. GR-96-450, have a significant impact on the issue. Therefore, MGE's position is that before any consolidation is considered, the Commission should have the opportunity to evaluate the memos to be filed on August 15, and any responsive materials.

3. If the Mid-Kansas/Riverside issue in Case No. GR-2001-382 is not resolved through an application of the filed rate doctrine, then MGE believes the Commission should wait on final judicial resolution of Case No. GR-96-450 before proceeding to trial on the Mid-Kansas/Riverside issues in Case Nos. GR-98-167, GR-99-304, GR-2000-425, and GR-2001-382. The Staff indicated to the Commission when it was considering the rehearing application in Case No. GR-96-450 that the Staff did not have any new evidence to present regarding alleged imprudence; that it had presented everything it had in Case No. GR-96-450. The only thing which presumably would vary then would be the quantification of the amounts in the various ACA periods.

4. As the Commission knows, the pipelines have pursued judicial review of Case No. GR-96-450 which is pending in the circuit court of Cole County. Under local court rules, the initial brief is due August 5, responsive briefs on August 25, and a reply brief on September 4. Given that there presumably will be a judicial resolution of the question whether the stipulation discussed in Case No. GR-96-450 bars further disallowances for imprudence, MGE's position is that it would be a significant waste of the resources of several companies, the Staff, the Public Counsel, and the Commission, to proceed to hearing at the Commission again while that question is pending in the courts.

5. MGE has already indicated that it is willing to proceed to trial on the non-

MKP/RPC issues in Case No. GR-2001-382. By "non-MKP/RPC issues" MGE means the issues denominated as "Capacity Release on Kansas Pipeline Company" and "Purchasing Practices" in the May 31, 2002 Staff Memorandum. However, if MGE is also required to proceed to trial simultaneously on the MKP/RPC issues from the ACA periods referenced on page 2 of the May 31 Staff Memorandum (Case Nos. GR-98-167, GR-99-304, and GR-2000-425) -- which total over \$16,000,000 -- MGE will require a longer procedural schedule because significantly more material will obviously have to be covered in such a case.

#### **Official Notice**

6. As to the Staff's request to take "official notice" of presumably the entire record in Case No. GR-96-450, in a consolidated case, MGE has substantial objections. The statute that allows the Commission to take "official notice," § 536.070 RSMo 2000, says that "In any contested case:

(6) Agencies shall take official notice of all matters of which the courts take judicial notice. They may also take official notice of technical or scientific facts, not judicially cognizable, within their competence, if they notify the parties, either during a hearing or in writing before a hearing, or before findings are made after hearing, of the facts of which they propose to take such notice and give the parties reasonable opportunity to contest such facts or otherwise show that it would not be proper for the agency to take such notice of them."

7. According to ***Blacks Law Dictionary***, judicial notice is a procedure whereby a court, in conducting a trial, or framing its decision, will, of its own motion, and without the production of evidence, recognize the existence and truth of certain facts having a bearing on the controversy at bar, which, from their nature, are not properly the subject of testimony, or which are universally regarded as established by common

notoriety, e.g., the laws of the state, international law, historical events, the constitution and course of nature, main geographical features, etc. An example would be that "the sun rises in the East."

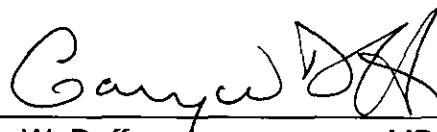
8. It does not appear from its text that § 536.070 RSMo contemplates the taking of "official notice" of an entire record in a contested proceeding, which can consist of many controversial issues and many things which are not "technical or scientific facts." Therefore, the Commission does not have the authority to grant the Staff's request. The statute sets out a procedure to be followed if official notice is to be taken of "facts." The Staff has not indicated what "facts" it wishes to have noticed.

#### **Other Matters**

9. As to other matters and allegations contained in the Staff's Response, such as Staff's general characterization of issues or differences in cases yet to be tried, or speculation about the availability of unidentified witnesses in the future, MGE is not prepared to concede that Staff's characterizations are necessarily correct. It is MGE's position that these matters are not yet ripe for consideration. By making a specific reply to some items raised in Staff's Response and not others, the Commission should not consider that MGE has agreed with other assertions of the Staff.

WHEREFORE, MGE requests that the Commission at least defer consideration of consolidation and refuse the Staff's request for official notice.

Respectfully submitted,



Gary W. Duffy

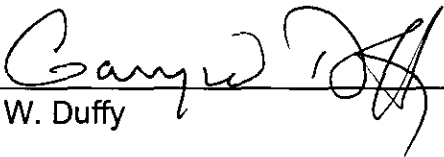
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**Certificate of Service**

The undersigned certifies that a true and correct copy of the foregoing was served this 31st day of July, 2002, by either hand delivery or placement of same with the United States Postal Service in Jefferson City, Missouri, first class postage prepaid, to the counsel listed below.

  
\_\_\_\_\_  
Gary W. Duffy

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Office of the Public Counsel  
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98-167replytonconsol&offnotice/gdmydocs/wp8

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