

## MGE'S APPLICATION FOR WAIVER/VARIANCE

1. MGE is a division of Southern Union Company, which is duly incorporated under the laws of the State of Delaware and conducts business in Missouri under the fictitious name of “Missouri Gas Energy.” MGE’s principal office and place of business is located at 3420 Broadway, Kansas City, Missouri 64111. A copy of a certificate from the Missouri Secretary of State indicating that Southern Union Company is authorized to do business in Missouri as a foreign corporation was submitted in Case No. GU-2010-0015. A copy of a certificate from the Missouri Secretary of State indicating that Missouri Gas Energy is a registered fictitious name of Southern Union Company was submitted in Case No. GU-2010-0015. Both documents are incorporated herein by reference and made a part hereof for all purposes in accordance with 4 CSR 240-060(1)(G).

2. Other than cases that have been docketed at the Commission, MGE has no pending action or final unsatisfied judgments against it from any state or federal agency or court within the past three years that involve customer service. MGE has no annual report or assessment fees that are overdue. MGE currently conducts business as a “gas corporation” and provides natural gas service to approximately 500,000 customers in the Missouri counties of Andrew, Barry, Barton,

Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Dade, Dekalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Pettis, Platte, Ray, Saline, Stone, and Vernon, subject to the jurisdiction of the Missouri Public Service Commission as provided by law.

3. Communications relating to this application and proceeding should be directed to the undersigned counsel and the following:

Michael R. Noack  
 Director, Pricing and Regulatory Affairs  
 Missouri Gas Energy  
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### **BACKGROUND**

4. On January 13, 2003, in Case No. GM-2003-0238, Southern Union Company filed an application asking the Commission for authority to acquire, directly or indirectly, up to and including one hundred percent of the equity interests of Panhandle Eastern Pipeline Company, including its subsidiaries.<sup>1</sup>

5. A Stipulation and Agreement (“Stipulation”) signed by MGE/Southern Union Company, the Commission Staff, and the Office of the Public Counsel was filed on March 25, 2003. The remaining parties in the case - Kansas City Power & Light Company, Union Electric Company d/b/a Ameren Missouri, Midwest Gas Users’ Association, the Missouri Attorney

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<sup>1</sup> In its application, Southern Union Company indicated that the necessity of prior Commission authorization was questionable and that the Commission may not have had jurisdiction over the transaction. Southern Union noted, however, that the application was filed out of an “abundance of caution” and in “an effort to keep the Commission fully informed,” but that it should not be construed as an admission on the part of Southern Union that the Commission’s approval was required. (see p. 7 of the application, GM-2003-0238, In the Matter of the Application of Southern Union Company d/b/a Missouri Gas Energy For Authority to Acquire Directly or Indirectly, Up to and Including One Hundred Percent (100%) of the Equity Interest of Panhandle Eastern Pipeline Company, Including Its Subsidiaries, and to Take All Other Actions Reasonably Necessary to Effectuate Said Transaction).

General and Laclede Gas Company -- indicated that they did not object to the Stipulation and did not request a hearing.

6. The Stipulation indicated that the parties agreed that the Commission should approve MGE's application to acquire the equity interests of Panhandle Eastern Pipeline Company. However, the Stipulation further asked the Commission to condition its approval of the application on several requirements to be imposed on MGE/Southern Union Company.

7. One of the conditions contained in the Stipulation stated as follows:

MGE agrees, for purposes of calculating its purchase gas adjustment ("PGA") and actual cost adjustment ("ACA") rates, to maintain at least the same percentage of discount it is currently receiving on Panhandle and Southern Star Central for purposes of transportation and storage costs passed through the PGA clause to MGE's ratepayers as provided in Highly Confidential Appendix 2 hereto.<sup>2</sup>

8. The discounts to be preserved by this provision concerned both transportation discounts \*\* \_\_\_\_\_ %\*\* and storage discounts \*\* \_\_\_\_\_ %\*\*.<sup>3</sup>

9. The Commission issued its Order Approving Stipulation and Agreement and Approving Application ("Order") in Case No. GM-2003-0238, on March 27, 2003.

### **REQUEST**

10. MGE seeks a waiver/variance from the Commission's Order in Case No. GM-2003-0238, to allow MGE -- beginning July 1, 2010 (the start of the 2010/2011 ACA period) -- to calculate its PGA utilizing the actual transportation and storage rates currently being paid to Panhandle Eastern (under new contracts which became effective on April 1, 2010).

11. MGE believes that the PGA/discount provision in the Stipulation was designed to ensure that MGE would not favor its then new affiliate (Panhandle Eastern) in a way that would

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<sup>2</sup> See the Stipulation at paragraph 6(A), p. 12.

<sup>3</sup> See the attached Highly Confidential Appendix A, titled "Comparison of Annualized Costs," which shows the computation of the discount. The discounts are also noted in Appendix A to the Stipulation.

be detrimental to MGE's customers. To do this, MGE was required to maintain certain pipeline discounts negotiated by MGE before Panhandle Eastern became an affiliate.

12. More than eight years have now passed since the subject provision was negotiated by the parties to Case No. GM-2003-0238 and approved by the Commission in March 2003. The transportation and storage contracts MGE held with Panhandle Eastern in March 2003 expired on March 31, 2005, and thereafter MGE and Panhandle Eastern negotiated and executed two separate five-year transportation agreements (the first commencing April 1, 2005 and expiring March 31, 2010 and the second, currently in effect, commencing April 1, 2010 which will expire March 31, 2015). MGE and Panhandle Eastern also negotiated two separate storage deals (the first commencing April 1, 2005 and expiring March 31, 2010 and the second, currently in effect, commencing April 1, 2010 which will expire March 31, 2031). Since the Commission approved the Stipulation in Case No. GM-2003-0238, market conditions have changed considerably. Consequently, in its most recent contract negotiations with Panhandle Eastern (in the context of contracts that were expiring on March 31, 2010), MGE was unable to obtain any such discounts with respect to transportation or storage capacity on Panhandle Eastern. The result is that MGE has been and, unless this application is granted, will continue to be required to utilize transportation and storage expense in the calculation of its PGA that is far less than the actual expense incurred by MGE.<sup>4</sup>

13. With the transportation and storage contracts that became effective April 1, 2010, MGE was able to restructure the Panhandle Eastern contracts such that MGE's actual usage of Panhandle Eastern's services has decreased, resulting in a significant reduction in transportation

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<sup>4</sup> In compliance with the discount provision approved by the Commission in Case No. GM-2003-0238, MGE/Southern Union have imputed non-existent discounts of approximately \*\*\$\_\_\_\_\_\*\* through ACA adjustments, as shown in the attached Highly Confidential Appendix B. This figure pertains to the contracts between MGE and Panhandle that were effective from April 1, 2005 through March 31, 2010. By this application, MGE does not seek to affect in any way the discounts imputed from April 1, 2005 through March 31, 2010. The relief MGE seeks herein, if granted, would only affect ACA periods beginning on and after July 1, 2010.

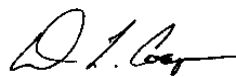
and storage fees paid by MGE to Panhandle. The total, annual amount paid by MGE for Panhandle Eastern transportation and storage capacity cost (i.e., beginning with the new contract term effective April 1, 2010 which has no discounts) is now approximately \$\*\*\_\_\_\_\_\*\* per year less than the annual amount paid by MGE for Panhandle Eastern transportation and storage capacity when the Commission approved the Stipulation in Case No. GM-2003-0238 (when MGE's Panhandle rates were discounted considerably).<sup>5</sup>

14. The continuation of the imputed discount guarantees a rate that is not just and reasonable to MGE.

15. Accordingly, MGE requests that the Commission grant MGE a waiver/variance from the Order in Case No. GM-2003-0238 such that MGE – beginning July 1, 2010 (the start of the 2010/2011 ACA period) – is allowed to calculate its PGA utilizing the actual transportation and storage costs being paid to Panhandle Eastern. MGE understands that these costs are subject to audit and prudence review during the ACA process.

WHEREFORE, MGE respectfully moves the Commission to grant the relief requested herein as set forth in paragraph 15.

Respectfully submitted,



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<sup>5</sup> See the attached Highly Confidential Appendix A, titled "Comparison of Annualized Costs."

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ATTORNEYS FOR MISSOURI GAS ENERGY

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been sent by electronic mail this 29<sup>th</sup> day of June, 2011, to the following, being the representatives of all of the parties to Commission Case No. GM-2003-0238:

Kevin Thompson  
Missouri Public Service Commission  
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Lewis Mills  
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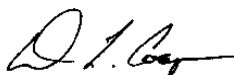
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VERIFICATION

STATE OF Missouri )  
COUNTY OF Jackson ) ss

I, Kurt Gregson, state that I am employed by Southern Union Company d/b/a Missouri Gas Energy ("MGE") as Director of Gas Supply; that I have read the above and foregoing document; that the statements contained therein are true and correct to the best of my information, knowledge and belief; and, that I am authorized to make this statement on behalf of MGE.

K. D. [Signature]

Subscribed and sworn to before me this 29 day of June, 2011.

Karen Hotchkiss  
Notary Public

My Commission Expires:

10/5/13  
(SEAL)

