

FILED<sup>3</sup>

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

JUL 21 2003

Missouri Public  
Service Commission

In the Matter of Missouri Gas	)	
Energy's Tariff Filing to Implement	)	Tariff Filing No.
Daily Balance Management for Large	)	JG-2004-0009
Volume Transport Customers	)	

REQUEST FOR SUSPENSION OF TARIFF AND  
APPLICATION TO INTERVENE  
OF MIDWEST GAS USERS' ASSOCIATION

Comes now MIDWEST GAS USERS ASSOCIATION ("Midwest") and requests that the proposed tariffs filed herein by Missouri Gas Energy a division of Southern Union Corporation ("MGE") be **suspended** and further, pursuant to 4 C.S.R. 240-2.075, applies to **intervene** herein and become a party hereto in respect to the above matter. In support thereof, Midwest respectfully states:

1. Midwest is an unincorporated non-profit association consisting of and representing its membership of business concerns and corporations which are substantial users of natural gas at their plants situated in such states as Kansas, Missouri and Oklahoma of which numerous members have plants and facilities which are located in and consume natural gas within the State of Missouri. A listing of Midwest members and participants is attached hereto as Appendix A.<sup>1/</sup>

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<sup>1/</sup>Midwest is active in several jurisdictions and in several areas of concern. Pursuant to 4 CSR 240-2.075(3), the attached listing includes Midwest members and companies that have at various times and in various matters participated through Midwest in proceedings in Missouri, Kansas and at the Federal Energy Regula-  
(continued...)

2. Midwest's interest in proceedings affecting the rates, terms and conditions of large customer natural gas service has been repeatedly recognized by the Missouri Public Service Commission in permitting Midwest's intervention in proceedings affecting The Gas Service Company, its successors, KPL Gas Service Company and Western Resources, Missouri Public Service Company, Ameren Union Electric and in various generic dockets involving the terms and conditions of natural gas transportation and purchased gas adjustment clauses for natural gas companies in the State of Missouri. Furthermore, Midwest's interest in proceedings affecting natural gas rates, and the terms and conditions of natural gas service has been recognized by the Federal Power Commission and the Federal Energy Regulatory Commission in granting Midwest's intervention in numerous dockets concerning Williams Natural Gas Pipeline Company Central and other generic dockets concerning the terms and conditions of

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<sup>1/</sup>(...continued)

tory Commission. Direct participation in a particular case varies depending on the nature of the case, the location and the service area of the utility involved. Present participants interested in this case are Archer Daniels Midland Company, United States Gypsum Company, Vance Brothers, Inc., EnerSys Inc. (formerly Hawker Energy Co., City of North Kansas City, Mo., Blevins Asphalt Const. Co. Inc., Independence Power & Light Department of the City of Independence, Missouri, Park University, Missouri Southern State College, Simmons Foods, Inc., Boehringer Ingelheim Company, Plaza-Ford Ideal Laundry and Dry Cleaners Inc., AAA Uniform & Linen Supply, Clay & Bailey Mfg. Co., The Groves, City of Higginsville, Missouri, Kessinger/Hunter Co., Milnot Co., Fairview Greenhouse, Inc., SaraLee Company. Other participants' involvement is pending and is expected to be drawn from the attached listing.

natural gas service, including Orders 436, 500, 451, 528, and Orders 636 and 637.

3. On or about July 1, 2003, Missouri Gas Energy, a Division of Southern Union Corporation (MGE), filed proposed tariffs seeking a change in the provisions of the utility's transportation tariff and the ability to institute a "daily balancing" regime on its distribution system. The proposed tariffs would not only institute such a regime on the MGE distribution system for transportation customers but would also alter the current distribution and curtailment priority associated with service to those customers in a manner that appears to establish these separate transportation customers as "providers of last resort" for MGE's system supply gas. Such provisions are objectionable.

4. Moreover, this proposed change in MGE's transportation tariff dishonors a stipulation and agreement whereby these transportation customers have been required to pay to install expensive electronic gas measurement equipment and pay for the telephone lines necessary to poll such equipment by MGE in exchange for which these customers were entitled to have their deliveries into the MGE system determined by their actual usage plus associated system losses. MGE has not sought to adjust its tariff provisions in these regards and this denies these transportation customers the benefit of the bargain made several years ago.

5. This change is related to a proposal by Southern Star Central Gas Pipeline, formerly Williams Gas Pipeline Central, in a proceeding at FERC<sup>2/</sup> wherein Central also seeks to adopt a daily allocation regime for its pipeline. That proposal has been protested and opposed by a large number of Central customers, including MGE and the FERC has suspended the effectiveness of that proposal until November 1, 2003. Accordingly, there is no immediate need for MGE to institute these changes on its system and there is adequate time for them to be considered by this Commission.

6. The proposed changes and modifications to MGE's transportation tariff will have an adverse impact on transportation customers of all sizes on the MGE distribution system. However, the adverse impact will be borne directly by these customers in increased costs of management of natural gas supplies, increased costs for the natural gas commodity itself and will further deny these customers access to the balancing, tolerance and other terms and conditions to which they are entitled as shippers on Central under its FERC-approved tariffs.

7. Further, the proposed tariffs appear to alter the priority of delivery by granting a preference to MGE system supply and making the transportation customers the "providers of last resort" behind MGE's city gate. Under MGE's current tariffs, if a transportation customer purchases firm transportation services on Central's system, and is able to cause its gas

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<sup>2/</sup> The FERC Docket is designated as RP03-356.

supplies to be delivered to an MGE city gate interconnection with Central, MGE has committed to deliver that gas to the transportation customer unless it is physically unable to do so, even though supplies of gas that MGE has contracted to move through Central are, for one reason or another, curtailed or shut in. The proposed change would appear to alter this delivery sequence and make transportation customers guarantors of MGE's system supply without any compensation to them. It also relieves MGE of the responsibility to make prudent arrangements for the purchase and delivery of its natural gas supplies from producers and through transporting pipelines and to prudently manage these arrangements so that MGE's system supplies for its sales customers are secure and shifts that responsibility to MGE's transportation customers.

8. To the extent that this proposal violates the terms and conditions of the "burner-tip balancing agreement" in Case No. GR-93-240 and renders the investment that transportation customers have made to install electronic gas measurement equipment at their locations valueless to them, this proposal confiscates their property by rendering this investment valueless without just compensation or appropriate due process of law.<sup>3/</sup>

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<sup>3/</sup> MGE asserts in its transmittal letter that its filing is to "accommodate termination of the Pre-determined Allocation Agreement (a/k/a Burner Tip Balancing Agreement) with Southern Star Central Gas Pipeline . . . ." Midwest and other parties are signatories to that agreement and Midwest does not agree that Southern Star has the ability to unilaterally terminate such agreement or that Southern Star and MGE may bilaterally terminate such agreement. Midwest and each transportation customer ex-  
(continued...)

While a public utility may condemn private property for public purposes, it cannot do so without appropriate proceedings or paying just compensation.

9. Midwest is not insouciant to MGE's circumstances as a point operator on the Central system. While Midwest is willing to work with MGE to make reasonable adjustments to MGE transportation arrangements it is unwilling to simply accede to unilateral changes in those terms and conditions that have serious adverse impact upon the operations and natural gas management schemes of hundreds of transportation customers and thrust them unwillingly into the position of being uncompensated guarantors of MGE's system supply arrangements without proper consideration of these customers' interests and is, moreover, unwilling to accept the unilateral termination of the burner-tip balancing agreement by Central or by MGE. Midwest intends to take action to defend its members rights under that agreement in such fora as may be necessary.

10. Midwest has other concerns regarding the proposed tariffs. The proposal appears to establish a "pool" of transportation customers among which may operate to deny them the tolerances that they are paying for as shippers on the Central system and aggregate these tolerances to MGE for MGE's benefit in its operations, again without compensation to these customers and in

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<sup>3/</sup>(...continued)  
pressly reserves all its and their rights pursuant to that agreement. Accordingly, in Midwest's view, no "termination" of that agreement has occurred or will occur without Midwest's (and others') agreement.

possible violations of FERC equal-access provisions and pertinent FERC Rules. This action would introduce discrimination into the existing arrangements because it would deny these customers access to the interstate pipeline system on an equivalent basis and under the same terms and conditions as MGE obtains for its transportation services.

11. The proposal also introduces an entire new set of operational flow order provisions which appear to not only be unnecessary, but may result in the confiscation of transportation customers' gas to balance MGE's allocations at its city gates. Such provisions have no place in a distribution company's tariffs. The distribution company's obligation should be to deliver the gas to the transportation customer unless it is physically unable to do so. The proposed provisions fail to distinguish between an inability to deliver gas from any source and a shortage that is caused by MGE's own system supplies being subjected to an upstream curtailment that does not affect transportation customers ability to deliver their natural gas to MGE city gates. Transportation customers are concerned that their supplies of gas are coming from different sources and may not be subject to the same upstream curtailment circumstances as MGE's system supply gas. In no circumstances should MGE be able to employ its position as a distributor to rely on or to otherwise use transportation customers' natural gas supplies to meet its own system supply and public utility obligations. The proposed tariffs, however, appear not only to permit this to occur, but actually

encourage and enable it to occur. For example, proposed sheet 64, subparagraph (e) asserts that MGE shall have the authority to "purchase" transportation customers' natural gas supplies in certain circumstances. No pricing is established, and importantly no recognition is given to the confiscatory nature of such purchases. MGE is, with respect to transportation customers' gas, a common carrier regulated by this Commission, and has and should have no right to confiscate transportation customers' gas to fulfil its own public utility obligation of prudently providing for its customers' supply of natural gas. For example, transportation customers who have paid premium prices for firm transportation through the pipeline and possibly even storage services on the pipeline to further assure reliability should not have their gas supplies confiscated because MGE "needs" them to guarantee MGE's own obligation to arrange prudent supplies and reliable delivery arrangements for its system supply customers.

12. Accordingly, Midwest requests that MGE's proposed tariffs be suspended or otherwise delayed or deferred in their effectiveness and potentially set for hearing with sufficient time for an appropriate investigation of the matter, the preparation of testimony if needed and opportunity for discussions with MGE. Clearly there will be no need for such changes through November 1, 2003 at the earliest and such changes may not be needed at all if the Central proposals are rejected by FERC or if Central is otherwise prohibited from a unilateral violation of the burner-tip balancing agreement.

13. As major customers of MGE, Midwest participants will be affected by this filing to a material but as yet undetermined extent as suggested in earlier paragraphs of this Application. The impact will vary depending upon the size of the transportation customer and their specific upstream transportation arrangements with their suppliers.

14. Because MGE transports gas for use by Midwest members under separate transportation rate schedules and because of the size and consumption patterns of Midwest's members, Midwest is in the special position of representing interests which will not and cannot be represented adequately by any other party and which interests are direct and immediate and differ from those of the general public. Therefore, it will aid the Commission and protect the public interest that Midwest be permitted to intervene in this proceeding so as to protect its interest which no other party is in a position properly to protect and adequately represent herein.

15. For purposes of 4 CSR 240-2.075(2), Midwest states that it is opposed to the discriminatory pricing of natural gas distribution services as well as discrimination in the terms and conditions of providing such service. Further, Midwest states that MGE's proposal has not been shown to be just and reasonable and may be unjust and unreasonable and is certainly to the adverse interest of transportation customers generally. Midwest is unable to make a more specific formulation or statement of the

positions it will take in the issues in this case pending further review of MGE's filing and expected discovery.

WHEREFORE, Midwest prays: (a) that MGE's proposal be suspended or deferred pending investigation and a hearing thereon; (b) that an appropriate procedural schedule be ordered; (c) that Midwest be permitted to intervene herein and be made a party hereto with all rights to have notice of and participate in hearings to present evidence, cross-examine witnesses, file briefs and participate in argument, should any be had; and (d) for all other needful and proper relief.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.

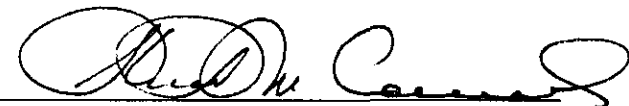


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ATTORNEYS FOR MIDWEST GAS USERS'  
ASSOCIATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by U.S. mail, postage prepaid addressed to all parties by their attorneys of record as disclosed by the pleadings and orders herein.



Stuart W. Conrad

Dated: July 21, 2003

## APPENDIX A

A D Mohr Farms	EnerSys, Inc.
A G Processing Inc.	Fairbanks Morse & Co.
AAA Uniform & Linen Supply	Fairbanks Morse Pump
ABB Power T & D Corporation	Fairmont C. C. Dairy
Alameda Plaza Inc.	Fairview Greenhouse, Inc.
Alameda Towers	Fasco Products, Inc.
American Bakeries Co.	Faultless Laundry
American Beauty Macaroni	Folger's Coffee Co.
Archer Daniels Midland Company	Ford Motor Co.
Ark City Packing Co.	Fox Run Apartments
Armco Inc.	Friskies Petcare Division of
Banquet Foods Corporation	Nestle' Inc.
Baptist Medical Center	Frito Lay
Bayer, Inc.	Gaines Foods
Bethany Hospital	General Mills
Blevins Asphalt Const. Co.	Griffin Wheel
Blueside Company	Guardian Management Inc.
BMA	Gulf & Western Mfg.
Boehringer Ingelheim Company	Guys Foods Inc.
Bowen Construction Co.	Hallmark Cards
Butler Manufacturing Co.	Hamm Asphalt Inc.
Cargill Inc.	Harvest Brand Inc.
Carnation Can Co.	Hercules, Inc.
Castlegate Ind. Inc.	Hills Division of Riviana
Certain-Teed Products Inc.	Hills Pet Food Division
Chesebrough-Ponds, Inc.	Hoeschst Marion Roussel
City of Augusta	[Quintiles]
City of Baldwin	Hospital Linen Service
City of Beloit	Hudson Farms
City of Higginsville, Missouri	Hudson Food Protein
City of Holton	Hudson Foods, Inc.
City of Horton	ICI Explosives USA, Inc.
City of Independence, Missouri	J C Nichols Co.
City of Palmyra	Kansas City Terminal Railway
City of Lincoln	Kessinger/Hunter Co.
City of Minneapolis	Koppers Co. Inc.
City of North Kansas City	Krause Milling Co.
City of Osborne	Lafarge Corporation
City of Ossawatimie	Lawrence Paper Company
City of Ottawa	Leggett & Platt
City of Sabetha	M F A Milling
Clay & Bailey Mfg. Co.	M K T Railroad
Coleman Alfalfa	Maytag Corporation
Colgate Palmolive	McNally Pittsburg
Continental Baking Company	Medical Center of Independence
Cook Paint & Varnish	Menorah Medical Center
Corn Products Company	Mid-America Dairymen
Danisco Cultor, Inc.	Midwest Conveyor
Doanes Products	Midwest Grain Products
Empire Cold Storage	Milnot Company

Mission Clay Products  
Missouri Plating Co.  
Missouri Southern State College  
Missouri Steel Castings  
Modine Manufacturing Company  
National ByProducts  
National Starch Company  
North Kansas City Memorial Hospital  
O'Sullivan Industries  
Owens Corning Fiberglas  
Park University  
PCS Nitrogen Co.  
Pet Milk Co.  
Philadelphia Quartz Co.  
Pittsburgh Corning Corporation  
Plaza-Ford Ideal Laundry & Dry Cleaners Inc.  
Potash Corporation  
Proctor & Gamble Co.  
Quaker Oats  
Ralston Purina Co.  
Reichhold Chemical Inc.  
Research Hospital and Medical Center  
Reynolds Metals Co.  
Rival Manufacturing Co.  
Safeway Stores  
Santa Fe Railroad  
SaraLee Company  
Sealright Mfg. Co.  
Sears Roebuck & Co.  
Seitz Foods Inc.  
Simmons Foods, Inc.  
Southwest Oil & Grease  
Sperry Vickers  
St. Francis Hospital  
St. John's Hospital  
St. Joseph Light & Power  
St. Joseph, Missouri  
St. Joseph's Center  
St. Joseph's Hospital  
St. Lukes Hospital  
St. Mary's Hospital  
Stahl Specialty Co.  
Standard Refining  
Steffen Dairy  
Swift and Company  
Swift Ind. Packing Co.  
Teva Pharmaceuticals, Inc.  
The Groves

Thomas J. Lipton Inc.  
Thompson Industries  
Tower Metal Products  
Town of Carrollton  
TransWorld Airlines  
Trigen - Kansas City District  
Trinity Lutheran Hospital  
Trumbull Asphalt  
U S Gypsum Co.  
Vance Brothers Asphalt  
W R Grace & Co.  
W S Dickey Clay Products Co.  
Wells Aluminum Inc.  
Winchester Foods Inc.  
Wire Rope Corporation of America, Inc.