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**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 20th  
day of April, 1999.

In the Matter of Missouri Gas Energy's       )  
Application for Variance from Sheet Nos.    )  
22 and 23 Pertaining to Processing of       ) Case No. GO-98-500  
Certain Kansas Ad Valorem Tax Refunds for )  
the Large Volume Customer Class.           )

**ORDER APPROVING UNANIMOUS STIPULATION AND AGREEMENT**

Missouri Gas Energy (MGE) filed an application for a variance from sheet Nos. 22 and 23 of its tariff regarding the processing of certain refunds to large volume customer class on May 5, 1998. On May 11, 1998, an application for intervention was received from Midwest Gas Users Association (MGUA). On June 4, 1998, the Commission issued its Order Directing Notice and Granting Intervention to MGUA.

On September 11, 1998, Staff of the Commission (Staff) filed a memorandum recommending the following:

- 1) MGE be granted a one-time variance;
- 2) MGE be allowed to delay the refunds until 30 days after the effective date of the order authorizing the variance with interest accruing on the refund;
- 3) MGE's firm sales customers will receive 72.14 percent of the Kansas ad valorem taxes for the period of 1983 through 1988 through MGE's Purchased Gas Adjustment (PGA) tariff; and

- 4) the Wyoming Tight Sands (WTS) volumes may be used to distribute the refunds to the individual Large Customers.

On September 25, 1998, MGUA filed its response to Staff's recommendation and requested a prehearing conference be scheduled. On October 13, 1998, Ford Motor Company filed its Application to Intervene and also requested a prehearing conference. On February 16, 1999, the Commission issued its order granting intervention to Ford Motor Company and scheduling an early prehearing conference for March 3, 1999. On March 2, 1999, the Commission was advised that the parties had reached an agreement in this case and the prehearing conference was canceled.

On March 3, 1999, MGE filed a Motion for Protective Order which was granted by the Commission on March 16, 1999. The parties also filed their Unanimous Stipulation and Agreement on March 3, 1999. The Unanimous Stipulation and Agreement stated that MGE has received, and will likely continue to receive, refunds from Williams Natural Gas (Williams) as a result of action taken by the Federal Energy Regulatory Commission (FERC) in various dockets regarding Kansas ad valorem taxes. Because the refund periods at issue cover 1983 to 1988, MGE is unable to locate the individual customer data which corresponds to all of the various refund periods that is necessary to process the refunds for large volume customers as required by sheet No. 23 of MGE's tariff. The parties stated that MGE received certain of these refunds on February 2, 1998, and has been unable to process these refunds for large volume customers within 90 days of receipt as

required by sheet No. 22 of its tariff. Therefore, variance from the requirements of tariff sheet No. 22 and No. 23 is required.

The parties agreed to the terms and conditions upon which the refunds shall be made in the Unanimous Stipulation and Agreement. The parties have agreed that all Kansas ad valorem refunds received, now or in the future, by MGE from Williams will be refunded to the customers issuing 71.73 percent of the refunds to residential, small general service, large general service and unmetered gaslight customer classes and issuing 28.27 percent of the refunds to the large volume customer class. Refunds to the residential, small general service, large general service and unmetered gaslight customer classes are to be processed through the PGA procedure as set forth in sheet Nos. 21 and 22 of MGE's tariff.

The Unanimous Stipulation and Agreement stated that MGE reported that it began processing Kansas ad valorem tax refunds to these customer classes with the PGA filing that became effective on April 1, 1998 on the basis of a 65.115 percent allocation. If the Commission approves this Unanimous Stipulation and Agreement, MGE will process the remaining allocation of Kansas ad valorem tax refunds in MGE's possession to these customer classes with the effectiveness of MGE's next PGA filing. The remaining allocation for these classes is the difference between 65.115 percent and 71.73 percent of the Kansas ad valorem tax refunds.

Individual Kansas ad valorem tax refunds to members of the large volume customer class will be made on the basis of the same Donkin Low method used to allocate the initial lump sum refunds of WTS anti-trust

settlement proceeds approved by the Commission in Case No. GR-91-286. The allocation factors to be used for each customer are set out in the highly confidential Attachment No. 1 to the Unanimous Stipulation and Agreement. The refunds to the large volume customer class will be made by check except that the agreement provides that MGE will be permitted to deduct any customer's delinquent bill or bad debt before making a refund to that customer, that MGE will charge an administrative fee of \$50 per customer which shall be deducted from the large volume customer's refund and retained by MGE, and that any customer with a refund amount of less than \$50 will not receive a refund.

In the event that MGE is unable to make a refund to a large volume customer, even after consultation with representatives of MGUA, those unreturned amounts shall be credited to the large volume refund account, retained until such time as a subsequent refund is received from MGE's suppliers and added to subsequent refund before distribution to large volume customers. The Unanimous Stipulation and Agreement stated that if, after consultation with MGUA, MGE is unable to locate that particular large volume customer to make a refund, MGE shall have no further obligation to attempt to locate such customer for the processing of subsequent Kansas ad valorem tax refunds.

The parties also agreed that the Kansas ad valorem tax refunds received by MGE prior to Commission approval of this Unanimous Stipulation and Agreement will have interest applied at the rate of six percent per annum for the period of time between MGE's receipt of the funds and MGE's issuance of the refund checks. For Kansas ad

valorem tax refunds received by MGE after Commission approval of this Unanimous Stipulation and Agreement, the parties agreed that if corresponding refund checks are not issued within 60 days of MGE's receipt of the Kansas ad valorem tax refunds, MGE shall not seek recovery of any interest differential on any interest paid to members of the large volume customer class on those refunds. The parties define interest differential as referring to either the positive or negative difference, if any, between the six percent interest rate applicable to any refund and the actual interest earned by MGE on the funds held during the applicable period. The Unanimous Stipulation and Agreement states that for Kansas ad valorem tax refunds received by MGE prior to Commission approval of the Unanimous Stipulation and Agreement, MGE may seek to recover any interest differential on any interest paid to the large volume customer class on such refunds and other parties reserve the right to oppose such recovery or to assert that any positive interest differential be credited to MGE's cost of service. The Unanimous Stipulation and Agreement does not specifically state where MGE may seek to recover the Interest Differential but implies that such may be recovered in the next general rate proceeding.

The parties agreed that MGE will mail refund checks to the large volume customer class members within 30 days of the effective date of the Commission's order approving this Unanimous Stipulation and Agreement for those Kansas ad valorem tax refunds already in its possession. The parties agreed that for subsequent Kansas ad valorem tax refunds MGE may receive from Williams, MGE will mail refund checks

to the large volume customer class members within 60 days of MGE's receipt of those refunds, provided that the amount to be refunded to the large volume customer class exceeds \$75,000 in the aggregate.

The Unanimous Stipulation and Agreement does not indicate how long MGE will retain the Kansas ad valorem tax refunds less than \$75,000 in the aggregate in the large volume refund account, or how those funds will be distributed in the end if they do not exceed \$75,000. The Commission finds that it would be reasonable for MGE to hold tax refunds less than \$75,000 in the aggregate until additional refunds are received that exceed \$75,000 in the aggregate for distribution at the same time. However, the Commission finds that is essential to determine what mechanism would be used if the tax refunds are resolved at the federal level and the amount to be refunded to the large volume customer refund account does not exceed \$75,000 in the aggregate. The Commission will order the funds remaining in the large volume refund account to be distributed to the large volume customer class even if it does not exceed \$75,000 in the aggregate when no further refunds are expected as a result of federal litigation involving the Kansas ad valorem taxes.

The Commission finds that good cause exists for granting MGE's application for variance from sheet Nos. 22 and 23 as it pertains to the processing of Kansas ad valorem tax refunds. Pursuant to Section 536.060 (RSMo 1994), the Commission accepts the Unanimous Stipulation and Agreement as resolution of the issues in this case. The Commission has reviewed the Unanimous Stipulation and Agreement, finds it to be reasonable and will approve it.

**IT IS THEREFORE ORDERED:**

1. That the Unanimous Stipulation and Agreement filed on March 3, 1999, by the parties, Attachment A to this order, is approved. Attachment A is a non-proprietary copy of the Unanimous Stipulation and Agreement. Attachment 1 to the Unanimous Stipulation and Agreement containing highly confidential information is not attached.

2. That Missouri Gas Energy shall distribute the funds remaining in the Large Volume refund account when no further Kansas ad valorem tax refunds are expected, and those funds shall be distributed in the same manner as agreed by the parties in the Unanimous Stipulation and Agreement, regardless of whether the amount of refunds exceed \$75,000 in the aggregate.

3. That this order shall become effective on April 30, 1999.

4. That this case may be closed after May 3, 1999.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

(S E A L)

Lumpe, Ch., Murray, Schemenauer  
and Drainer, CC., concur  
Crumpton, C., absent

Register, Regulatory Law Judge

FILED

MAR 3 1999

Missouri Public  
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of Missouri Gas Energy's )  
Application for variance from Sheet Nos. )  
22 and 23 pertaining to processing of )  
certain Kansas ad valorem tax refunds for )  
the large volume customer class. )

Case No. GO-98-500

**UNANIMOUS STIPULATION AND AGREEMENT**

Come now Missouri Gas Energy ("MGE" or "Company"), the Staff of the Missouri Public Service Commission ("Staff"), the Office of the Public Counsel ("Public Counsel"), the Midwest Gas Users' Association ("Midwest") and Ford Motor Company ("Ford"), by and through their respective counsel, and submit the following Unanimous Stipulation and Agreement which, if approved by the Commission, will permanently dispose of all issues in this proceeding.

**Procedural History**

1. On or about May 5, 1998, MGE initiated this proceeding by filing an Application for Variance from Sheet Nos. 22 and 23 of its tariff regarding the processing of certain refunds to the Large Volume Customer class. MGE has received, and will likely continue to receive, refunds from Williams Natural Gas ("Williams" now Williams Gas Pipelines Central) as a result of action taken by the Federal Energy Regulatory Commission ("FERC") in various dockets regarding Kansas ad valorem taxes. The refund periods are quite dated and MGE has been unable to locate the individual customer data which corresponds to all of the various refund periods that is necessary to process these refunds for Large Volume Customers in accordance with Sheet No. 23 of MGE's tariff. In addition, MGE received certain of these refunds on February 2, 1998, and has been unable to process these refunds for Large Volume Customers within 90 days of receipt as provided by Sheet No. 22 of its tariff.

ATTACHMENT A

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2. On June 4, 1998, the Commission issued an order which granted intervention to Midwest and directed MGE to provide notice of the Application for Variance to certain newspapers in its service territory.

3. On or about July 9, 1998, MGE notified the Commission that it had provided the notice required by the Commission's June 4, 1998, Order.

4. On September 15, 1998, the Staff filed its recommendation in this matter.

5. On or about October 12, 1998, Ford filed its Application to Intervene.

Agreed Upon Terms and Conditions

6. As a result of settlement negotiations, MGE, the Staff, Public Counsel, Midwest and Ford hereby stipulate and agree as:

A. All Kansas ad valorem refunds received, now or in the future, by MGE from Williams will be processed using a split of 71.73 percent for the Residential, Small General Service, Large General Service and Unmetered Gaslight Customer classes<sup>1</sup> and 28.27 percent for the Large Volume Customer class.<sup>2</sup> MGE enters into this Unanimous Stipulation and Agreement in order to process, in a timely manner for the benefit of MGE's customers, ad valorem tax refunds it actually receives from Williams. In the event that action occurs at the federal level which would require MGE to return Kansas ad valorem tax refunds, this Unanimous Stipulation and Agreement shall not serve to impair any rights or recourse MGE may have at that time.

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<sup>1</sup> Refunds to the Residential, Small General Service, Large General Service and Unmetered Gaslight Customer classes are processed through the PGA pursuant to Sheet Nos. 21 and 22 of MGE's tariff. MGE began processing Kansas ad valorem tax refunds to these customer classes with the PGA change that became effective on April 1, 1998, on the basis of a 65.115% allocation. If the Commission approves this Stipulation and Agreement, MGE will process the remaining allocation of Kansas ad valorem tax refunds in MGE's possession (i.e., the difference between 65.115% and 71.73%) to these customer classes with the effectiveness of MGE's next PGA filing.

<sup>2</sup> MGE also proposes to include in the initial refund process \$86,457.46 in Kansas ad valorem tax refunds received from Panhandle Eastern Pipe Line Company (through Kansas Gas Service, a division of OneOK, Inc.) on June 8, 1998, as a result of FERC docket no. RP-98-40 for the period October 1993, through June 1988.

B. Individual Kansas ad valorem tax refunds to members of the Large Volume Customer class shall be made on the basis of the same Donkin Low method used to allocate the initial lump sum refunds of Wyoming Tight Sands anti-trust settlement proceeds approved by the Commission in Case No. GR-91-286. The allocation factors to be used for each customer are set out in Highly Confidential Attachment 1.

C. Individual Kansas ad valorem tax refunds to members of the Large Volume Customer class shall be made by check. MGE will deduct the amount of any customer's delinquent bill or bad debt before making a refund to the customer. An administrative fee of \$50.00 per customer refund check shall be deducted from each Large Volume Customer's refund and retained by MGE. Any customers with refund amounts of less than \$50.00 will not receive a refund. In the event MGE is unable, after diligent efforts (including consultation with a representative of Midwest), to make a refund to a Large Volume Customer because of difficulties in locating such customer, such unreturned amounts shall be credited to the Large Volume refund account, retained until such time as a subsequent refund is received from MGE's suppliers and added to such subsequent refund before distribution to Large Volume Customers. If, after consultation with Midwest, MGE is unable to locate a particular Large Volume Customer to make a Kansas ad valorem tax refund, MGE shall have no further obligation to attempt to locate such customer for the processing of subsequent Kansas ad valorem tax refunds.

D. Kansas ad valorem tax refunds received prior to Commission approval of this Unanimous Stipulation and Agreement will have interest applied at the rate of 6 percent per annum for the period of time between MGE's receipt of the funds and MGE's issuance of the refund checks. For Kansas ad valorem tax refunds received by MGE after Commission approval of this Unanimous Stipulation and Agreement, if the corresponding refund checks are not issued within 60 days of MGE's receipt of the Kansas ad valorem tax refunds, MGE shall not seek recovery of any Interest Differential on any interest paid to members of the Large Volume Customer class on such refunds.

For Kansas ad valorem tax refunds received by MGE prior to Commission approval of this Unanimous Stipulation and Agreement, MGE may seek to recover any Interest Differential on any interest paid to the Large Volume Customer class on such refunds and other parties reserve the right to oppose such recovery or to assert that any positive Interest Differential be credited to MGE's cost of service. For purposes of this Unanimous Stipulation and Agreement, the term "Interest Differential" shall refer to the difference, if any, whether positive or negative, between the 6 percent interest rate applicable to any refund and the actual interest earned by MGE on the funds held during the applicable period.

E. MGE will mail to members of the Large Volume Customer class the refund checks for Kansas ad valorem tax refunds already in its possession within 30 days of the effective date of the Commission's order approving this Unanimous Stipulation and Agreement. For subsequent Kansas ad valorem tax refunds that MGE may receive from Williams, MGE will mail to members of the Large Volume Customer class refund checks within 60 days of MGE's receipt thereof, provided that the amount to be refunded to the Large Volume Customer class exceeds \$75,000 in the aggregate.

#### General Provisions

7. None of the signatories to this Unanimous Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, any method of cost determination or cost allocation, or any service or payment standard underlying or allegedly underlying this Unanimous Stipulation and Agreement as a result of entering into this document, and none of the parties shall be prejudiced or bound in any manner by the terms of this Unanimous Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.

8. This Unanimous Stipulation and Agreement has resulted from extensive negotiations among the parties and the terms hereof are interdependent. In the event the Commission does not unconditionally approve and adopt the entirety of this Unanimous

Stipulation and Agreement without modification, then this Unanimous Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

9. If the Commission approves and adopts this Unanimous Stipulation and Agreement without condition and without modification, the parties waive their respective rights pursuant to Section 536.080.1 RSMo 1994 to present testimony, to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1994; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1994.

10. This Unanimous Stipulation and Agreement shall not be cited as a precedent or referred to in testimony as an assertion of the position of any party in any subsequent or pending judicial or administrative proceeding, except in a proceeding in which the sole purpose is to enforce compliance with the terms and conditions of this Unanimous Stipulation and Agreement.

11. If the Commission does not unconditionally approve this Unanimous Stipulation and Agreement without modification, this Unanimous Stipulation and Agreement and any agreements purported to be represented thereby shall be absolutely null, void, and of no force or effect whatsoever. In such case: (i) neither the execution, presentation or rejection of this Unanimous Stipulation and Agreement shall be admissible or referred to as an assertion of the position of any party in any subsequent administrative or judicial proceeding; (ii) neither the execution or presentation or rejection of this Unanimous Stipulation and Agreement, nor any comments of counsel, nor any testimony that may be offered in support of this Unanimous Stipulation and Agreement, whether or not objected to at the time, nor any exhibits that may be attached hereto or that may be offered in any such presentation, nor the receipt thereof by the Commission as a part of its consideration of this Unanimous Stipulation and Agreement, shall constitute a waiver of the rights that any party would have had for a hearing, for

cross-examination or for a decision in accordance with Section 536.080.1 or Missouri Constitution, Article V, Section 18, and such party or parties shall retain all their procedural and due process rights as fully as though this Unanimous Stipulation and Agreement had not been presented for approval, and (iii) any testimony or any exhibits that may have been offered or received in support of this Unanimous Stipulation and Agreement shall thereupon become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any further purpose whatsoever; provided, however, that the provisions of this subparagraph (iii) shall not preclude any party from offering such testimony or exhibits of its own as evidence in any subsequent proceeding.

12. Nothing in this Unanimous Stipulation and Agreement shall in any manner re-open, modify, abridge or alter any of the terms or conditions, obligations or responsibilities that were established or confirmed by the Commission's approval of the Stipulation and Agreement in Case No. GR-91-286.

13. The parties agree that the Staff may submit to the Commission a memorandum explaining its rationale for entering into this Unanimous Stipulation and Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered highly confidential to the extent so designated by the submitting party, shall be maintained on a confidential basis by all parties to the extent the submitting party has designated the memorandum as highly confidential, shall not become a part of the record of this proceeding to the extent the submitting party has designated the memorandum as highly confidential, and shall not bind or prejudice the party submitting such memorandum or any other party in this or any

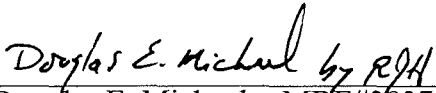
future proceeding, whether or not the Commission approves this Unanimous Stipulation and Agreement.

14. The Staff shall also have the right to provide, at any agenda meeting at which this Unanimous Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to the Protective Order issued in this case.

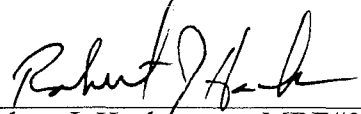
15. To assist the Commission in its review of this Unanimous Stipulation and Agreement, the parties also request that the Commission advise them of any additional information that the Commission may desire from the parties relating to the matters addressed in the Unanimous Stipulation and Agreement, including any procedures for furnishing such information to the Commission.

WHEREFORE, the undersigned parties respectfully request that the Commission issue its Order approving all of the terms and conditions of this Unanimous Stipulation and Agreement.

Respectfully submitted,

  
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ATTORNEYS FOR THE STAFF OF THE  
MISSOURI PUBLIC SERVICE COMMISSION

**Certificate of Service**

I hereby certify that a true and correct copy of the above and foregoing document was either mailed or hand delivered to all counsel of record this 2d day of March, 1999.

*Robert J. Hark*

**Service List--GO-98-500**

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**ATTACHMENT 1**

**HAS BEEN DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**