

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy)
Inc.'s Filing of Revised Tariffs to) Case No. GR-2014-0007
Increase its Annual Revenues for)
Natural Gas)

REPLY TO STAFF RESPONSE AND MOTION FOR PROTECTIVE ORDER

COMES NOW Panhandle Eastern Pipe Line Company, LP (“Panhandle”), and for its Reply to Staff Response and Motion for Protective Order states the following to the Missouri Public Service Commission (“Commission”):

Introduction

1. Panhandle is a Delaware limited partnership registered to do business in Missouri as a foreign limited partnership. Southern Union Company (“Southern Union”) formerly operated as a public utility in Missouri under the fictitious name “Missouri Gas Energy.” On September 1, 2013, Southern Union sold its Missouri local distribution assets to Laclede Gas Company. Effective upon the closing of the transaction, Southern Union was “authorized to terminate its responsibilities as a gas corporation in Missouri subject to the jurisdiction of the commission.”¹ Southern Union was merged into Panhandle, effective January 10, 2014, with Panhandle being the surviving entity.

2. Panhandle is not a party to this case.

¹ *Order Approving Unanimous Stipulation and Agreement*, Case No. GM-2013-0254 (July 31, 2013).

3. On February 13, 2014, at the request of the Commission Staff (“Staff”), the Commission issued a *Subpoena Duces Tecum – Order to Produce Documents* in this case directing Panhandle to produce:

. . . copies of workpapers of external audits of Panhandle Eastern Pipe Line Company, LP’s predecessor in interest, Southern Union Company, conducted by Grant Thornton LLP that relate to Southern Union Company during the time of 2012 through 2013. . . .

4. Panhandle has filed objections to and a motion to quash Staff’s subpoena.

5. Staff filed a response to Panhandle’s objections and motion to quash on March 7, 2014. Notably absent from Staff’s response was any challenge to, or contradiction of, Panhandle’s assertion that it could find no record of Southern Union Company’s external auditor work papers ever having been provided to Staff (or any other party) in any Commission proceeding.

6. If the Commission does not grant Panhandle’s motion to quash Staff’s subpoena, then Panhandle respectfully requests that the Commission issue a Protective Order pursuant to Rule 56.01(c)(1) that “discovery not be had” or, in the alternative, specifically restricting the terms and conditions for such discovery to include only the Missouri Gas Energy (“MGE”) workpapers during the relevant periods of time between 2012 and 2013.

Parameters and Standard for Protective Order

7. Missouri’s Rule of Civil Procedure Rule 56.01(c) provides that Protective Orders may be granted upon motion by the person from whom discovery is sought. For good cause shown, the court may make any order which justice requires to protect a

person from annoyance, embarrassment, oppression, or undue burden or expense. “The order may provide that the discovery not be had or may be had only as to certain matters or on specified terms and conditions.” *State ex rel. Pooker v. Kramer*, 216 S.W.3d 670, 672 (Mo. banc 2007). Production of the documents requested by Staff would result in annoyance, oppression, undue burden, and undue expense. Therefore, Panhandle respectfully requests that the Commission issue an order that the discovery sought by Staff “not be had” or, alternatively, that the discovery sought by Staff be strictly limited.

8. Good cause exists in this instance to grant the relief requested herein. First, Staff’s subpoena is overly broad. In the years 2012 and 2013, Southern Union’s business operations went well beyond the activities of its Missouri regulated local distribution company. Southern Union’s 2012 Form 10-K, filed with the Securities and Exchange Commission, described its operations as including three distinct reportable segments:

- a. Transportation and Storage - primarily engaged in the interstate transportation and storage of natural gas.
- b. Gathering and Processing - primarily engaged in the gathering, treating, processing and redelivery of natural gas and NGL in Texas and New Mexico.
- c. Distribution - primarily engaged in the local distribution of natural gas in Missouri and Massachusetts, with operations conducted through the Company’s operating divisions: Missouri Gas Energy and New England Gas Company.

Staff’s request for *all* external audit information pertaining to Southern Union would necessarily include operations and subjects far beyond those regulated by the Commission and, as a result, is overly broad.

9. Panhandle's concerns about Staff's annoying, oppressive, overly broad, and overly burdensome discovery are evidenced in Staff's March 7, 2014 Response:

[D]uring the test year, MGE was Southern Union. During the test year, MGE had no legal existence or capital structure independent of Southern Union. Therefore, the results of the external audit of Southern Union – an independent review of the regulated utility's operations during the test year – is the exact subject matter of the pending action, this rate case.

Staff Response, p. 3, ¶12 (emphasis original). Here, Staff mistakenly concludes that MGE “was” Southern Union and fails to recognize that Southern Union's activities were much broader than the activities of its MGE operations.

10. Southern Union sold the MGE assets as of September 1, 2013. Thus, a request for all workpapers associated with audits conducted in 2013 necessarily includes time periods beyond those which Southern Union operated a Missouri-regulated local distribution company. Moreover, historical information from Southern Union has no relevance for setting future rates now that MGE's assets are owned by Laclede Gas Company. Historical test years are used “because past expenses of a utility can be used as a basis for determining what rate is reasonable to be charged in the future.” *In the Matter of Lake Region Water and Sewer Company*, File No. SR-2010-0110, *Report and Order*, issued August 19, 2010, p. 6 (citing *State ex rel. Utility Consumers' Council of Missouri Inc. v. Public Service Comm'n*, 585 S.W.2d 41, 59 (Mo. banc 1979)). Because MGE's assets are now owned by Laclede Gas Company, the past expenses of Southern Union (especially those expenses associated with businesses and operations other than

MGE) have little to do with MGE's circumstances going forward. A protective order is appropriate to limit discovery sought from third parties that is not limited to relevant activities and time periods and is thus "intrusive, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence." *State ex rel Horenstein v. Eckelcamp*, 228 S.W.3d 56, 58 (Mo. App. E.D. 2007).

11. Panhandle has made a good faith effort to meet the information needs expressed by Staff. Southern Union previously facilitated access to the auditor workpapers associated with the Company's former MGE division, as it has done in past cases before this Commission. Panhandle is not aware of any past case where access was provided to the Southern Union-specific auditor workpapers.

12. After being advised that the scope of Staff's inquiry regarding Southern Union Company's external auditor work papers was focused on five specific subject matter areas, Panhandle attempted to address Staff's concern by providing an officer's certificate stating that, with respect to five subject matter areas of interest to Staff, the Southern Union external auditor work papers did not contain any additional non-privileged information beyond that contained in the external audit work papers prepared for the Company's former MGE division. As stated above, those MGE external auditor work papers have already been made available to Staff. "[P]rivacy rights of non-parties must be considered in weighing the need for requested documents." *State ex rel. Blue Cross & Blue Shield v. Anderson*, 897 S.W.2d 167, 171 (Mo. App. S.D. 1995), And even if the Commission determines that the information sought by Staff is properly discoverable, the Commission "should consider whether the information can be adequately furnished in a manner less

intrusive, less burdensome, or less expensive than that designated by the requesting party.” *Id.* at 169.

WHEREFORE, if the Commission does not grant Panhandle's motion to quash, then Panhandle respectfully requests that the Commission issue a Protective Order consistent with Missouri Rule 56.01(c) ruling that the discovery sought by Staff shall “not be had” or, in the alternative, strictly limiting the scope of that discovery and the terms under which it may be had to only include MGE workpapers during the relevant time period between 2012 and 2013.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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