BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the investigation of certain PGA-related issues involving Missouri Gas Energy, a division of Southern Union Company.	))))	Case No. GO-94-318 Phase I

REPORT AND ORDER

Issue Date: September 7, 1995

Effective Date: September 19, 1995

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APPEARANCES

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and

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and

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James M. Fischer, Attorney at Law, 101 West McCarty Street, Suite 215, Jefferson City, Missouri 65101, for Fidelity Natural Gas, Inc.; Greeley Gas Company, a division of Atmos Energy Corporation; and Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, L.C.

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Gerald T. McNeive, Jr., Associate General Counsel, and **Michael Pendergast**, Assistant General Counsel, Laclede Gas Company, 720 Olive Street, Room 1530, St. Louis, Missouri 63101, for Laclede Gas Company.

Richard W. French, and **C. Brent Stewart**, French & Stewart, 1001 East Cherry Street, Suite 302, Columbia, Missouri 65201, for Trigen-Kansas City District Energy Corporation.

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and

Gary Boyle, Staff Attorney, Williams Natural Gas Company, One Williams Center, Tulsa, Oklahoma 74172, for Williams Natural Gas Company.

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and

Pat Currier, Attorney, United States Department of Energy, Post Office Box 10202, Kansas City, Missouri 64141, for the United States Department of Energy and the Federal Executive Agencies.

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William M. Barvick, Attorney at Law, 240 East High Street, Suite 202, Jefferson City, Missouri 65101, for the City of Kansas City, Missouri.

Ronald K. Evans, Associate General Counsel, Union Electric Company, 1901 Chouteau Avenue, Post Office Box 149, St. Louis, Missouri 63166, for Union Electric Company.

Michael J. Gorman, Shughart, Thomson & Kilroy, P.C., 120 West 12th Street, Suite 1800, Kansas City, Missouri 64105, for Cohen-Esrey Real Estate.

Lewis R. Mills, Jr., Deputy Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Steven Dottheim, Deputy General Counsel, and **Penny G. Baker**, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE LAW JUDGE: **Thomas H. Luckenbill, Deputy Chief.**

REPORT AND ORDER

On April 8, 1994, Missouri Gas Energy, a division of Southern Union Company (MGE), filed a motion to establish a docket to address certain Purchased Gas Adjustment (PGA) related issues. This motion was made by MGE under the terms of the unanimous stipulation and agreement filed by the parties in Case No. GR-93-240. Case No. GR-93-240 was the most recent rate case of Western Resources, Inc. d/b/a Gas Service, a Western Resources Company (WRI). MGE is the successor of WRI with respect to all Missouri properties formerly owned and operated by WRI with the exception of the Palmyra service area, which was

purchased by United Cities Gas Company. Southern Union Company (parent of MGE) acquired all the Missouri properties of WRI, except for the Palmyra service area, on or about January 31, 1994. The unanimous stipulation and agreement filed in GR-93-240 deferred all issues raised by the parties in that proceeding relative to the PGA to a subsequent proceeding. Some of these issues (e.g., transition costs) have been addressed by interested parties and the Commission in Cases GT-95-32 and GR-95-33.

On April 15, 1994, the Commission issued an Order And Notice which established a prehearing conference and made parties to GR-93-240 parties to this docket.

Trigen-Kansas City District Energy Corporation; Williams Natural Gas Company (WNG); the City of Kansas City, Missouri (Kansas City); Union Electric Company; Tartan Energy Company, L.C., d/b/a Southern Missouri Gas Company, L.C.; Fidelity Natural Gas, Inc.; Greeley Gas Company, a division of Atmos Energy Corporation; Missouri Public Service, a division of UtiliCorp United Inc.; Associated Natural Gas Company, a division of Arkansas Western Gas Company; United Cities Gas Company; St. Joseph Light and Power Company; Laclede Gas Company; and Cohen-Esrey Real Estate all applied for and were granted intervention in this proceeding.

On July 29, 1994, the parties jointly filed a list of issues and positions. On or about August 19, 1994, further statements of position and recommended procedural treatment of issues were filed by various parties. On or about September 2, 1994, responses to the recommendations of various parties were filed.

On October 19, 1994, the Commission issued an Order Defining Scope Of Docket, Providing Notice And Establishing Prehearing Conference. This order defined seven issues for consideration in this docket.

On January 27, 1995, the Commission issued an Order Establishing Procedural Schedule. This order separated the docket into two phases. On May 2, 1995, the Commission convened a prehearing conference at which all parties were represented.

On May 19, 1995, a hearing memorandum was filed which provided the positions of the parties on each of the six issues to be decided by the Commission in phase I of this docket. The six issues to be decided in phase I are: (1) whether Missouri Gas Energy's PGA clause should be modified so that it applies solely to sales customers; (2) whether electronic gas metering (EGM) should be required of transportation customers; (3) whether EGM should be required of all transportation customers, or is there a threshold amount of gas purchases below which a transportation customer should not be required to have EGM; (4) if there is a threshold amount of gas purchases below which a transportation customer should not be required to have EGM, what is the threshold amount; (5) whether the present method of burner-tip balancing for transportation customers is adequate or should be expanded; and (6) what are the appropriate limits, if any, on contracting requirements with local gas distribution companies.

On May 23, 1995, the evidentiary hearing commenced. The evidentiary hearing adjourned on May 24, 1995. Briefs have been filed and phase I issues are now before the Commission for decision.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

1. Whether Missouri Gas Energy's Purchased Gas Adjustment (PGA) Clause Should Be Modified So That It Applies Solely to Sales Customers

Midwest Gas Users Association (MGUA) and the United States Department of Energy (DOE) maintain that MGE's PGA clause should be modified so that it applies solely to sales customers. Commission Staff (Staff), MGE, Kansas City, and Office of the Public Counsel (OPC) maintain that MGE's PGA clause should not be modified so that it applies solely to sales customers.

MGUA states that the structure of MGE's PGA clause predates transportation on MGE's system and relates to a time when customers behind MGE's city gates were either interruptible or firm sales customers. MGUA argues that MGE's PGA clause is being inappropriately and incorrectly used as a vehicle to charge non-purchased gas costs to customers who do not purchase gas from MGE. MGUA contends that the PGA clause was never intended nor designed to track costs that are not purchased gas costs, nor to apply to customers that are not purchasing their gas supplies from MGE. MGUA states that the PGA clause is for purchased gas which is purchased for resale to MGE's sales customers, and that the PGA clause, if retained, should be restored to its original function and applied only to sales customers.

MGUA argues that the application of the PGA clause to transporters makes PGA and ACA (Actual Cost Adjustment) cases far, far more difficult and complex for the Commission and its Staff to address than they should be. MGUA states that returning the PGA/ACA process to its original purpose will permit any transportation-related issues to be addressed far more analytically and carefully.

The Commission observes that the only costs being passed through MGE's PGA which are borne by transportation customers are take-or-pay costs and certain transition costs (i.e., gas supply realignment costs and stranded

investment costs). The Commission determines that nonsales customers shall continue to be obligated to pay for take-or-pay and certain transition costs implemented through MGE's PGA clause, because no compelling reason to segregate nonsales customers from sales customers with respect to the payment of these costs has been presented. These costs have arisen due to regulatory changes at the federal level. The Commission finds that transportation customers as well as sales customers contributed to cause these costs and transportation customers should therefore share financial responsibility with other consumers of natural gas for these costs. The Commission does not agree with the apparent premise of MGUA's position that the actions of the Federal Energy Regulatory Commission (FERC) to deregulate the United States natural gas industry results in current nonsales customers being held harmless for financial burdens associated with these actions. MGUA alludes to some alternative method to implement recovery of these costs from transportation customers but no specific alternative proposal is provided. Thus, the Commission finds, based on the record in this proceeding, that use of the PGA clause to recover take-or-pay costs and certain transition costs is the most reasonable means to recover take-or-pay and certain transition costs from transportation customers.

The Commission finds, however, that its determination regarding the use of the PGA to recover take-or-pay and certain transition costs from transportation customers does not necessarily mean that the current PGA/ACA mechanism contained in MGE's tariff is the best possible method. The Commission looks forward to reviewing reasonable alternative approaches to the current gas procurement mechanism, or modifications to the current mechanism, in the course of phase II of this docket.

The United States Department of Energy (DOE) maintains that take-or-pay costs are not the types of costs that are eligible for automatic

adjustment clause treatment. DOE's argument is based on an interpretation of Section 393.270.4, R.S.Mo., and Missouri case law.

The Commission finds that if the issue of whether the PGA (or components thereof) violates Missouri law is to be addressed in this docket, it should be addressed in phase II.

2. - 4. Electronic Gas Metering (EGM)

MGE, Staff, and Kansas City maintain that all transportation customers should be required to have EGM. MOUNTAIN IRON & Supply Company (MOUNTAIN IRON) maintains that EGM is unnecessary for most transportation customers and will provide few, if any, of the benefits claimed for it.

The unanimous stipulation and agreement filed in Case No. GR-93-240, at page 3, provides that the parties have agreed to tariff language in this proceeding which requires customers who currently qualify for and take transportation service to install and pay for electronic gas metering (EGM) equipment and associated expenses. MGE's tariff sheets dealing with EGM resulted from the GR-93-240 stipulation and agreement, which MOUNTAIN IRON signed.

The EGM provisions are a tariffed procedure. Under Section 386.270, R.S.Mo., all rates and charges fixed by the Commission are prima facie lawful and reasonable. Therefore, MOUNTAIN IRON has the burden to demonstrate that the EGM provisions are unlawful or unreasonable.

MGE states that most of the funds required to be spent by transportation customers to purchase EGM equipment have been spent. The evidence demonstrates that MGE has a total of between 300 and 350 transportation customers and that the majority of those installations should be completed by the end of June of 1995 with the exception of approximately 30 customers.

Staff witness Hubbs testified in favor of requiring EGM for all transportation customers on MGE's system. In support of his position, Mr. Hubbs testified that without EGM, MGE will not be able to effectively assign and bill customers who are responsible for incurring costs on MGE's system. Mr. Hubbs further testified that without EGM, MGE's sales customers would become responsible for costs attributable to transportation customers (other than MGE) when Williams Natural Gas Company (WNG) has periods of daily balancing penalties.

The Commission finds that MOUNTAIN IRON has failed to show that the EGM tariff provisions are unlawful or unreasonable. The Commission finds that the installation of EGM equipment by transportation customers on MGE's system will allow MGE to better track the actual usage of gas during daily balancing periods on WNG's system. Thus, the Commission will not order MGE to modify its electronic gas metering tariff sheets.

5. Burner-tip Balancing

The Commission finds that MGE and WNG have agreed to an extension of burner-tip balancing to November 1, 2000. Staff suggests that the burner-tip balancing issue is beyond the control of this Commission but, rather, is a tariff issue regulated by the FERC. No party has indicated a dispute with the burner-tip balancing agreement between MGE and WNG.

The Commission finds that this issue has become moot.

6. Limits on Contracts With Local Gas Distribution Companies

The Staff maintains that marketers should not be allowed to contract for transportation service on a local distribution company's (LDC's) system. Staff states that currently this Commission permits only the end-user to contract with MGE for transportation service. Staff states that this provides a reason-

able degree of protection for the sales customers through the Commission's oversight and should be continued. Staff states that selling transportation service to a marketer for resale to end-users could bring the marketer within the jurisdiction of the Commission as a public utility.

Kansas City opposes the interjection of agents between sales customers and MGE. Kansas City states that the efforts of agents seeking to collect a number of sales customers into a group that is large enough to warrant purchasing transportation services should be prohibited. Further, Kansas City states that to allow this would create an unregulated middleman who would, in effect, be acting as a substitute for MGE, the regulated gas company. Kansas City states that these unregulated agents would introduce uncertainty into the reliability of gas service in Kansas City. End-users could be prematurely curtailed or, in the event of financial collapse of the unregulated agent, left without gas service in the middle of winter.

This issue appears to be directed at the operations of MOUNTAIN IRON. Mr. Richard D. Pemberton, President of MOUNTAIN IRON, filed testimony in this proceeding. Mr. Pemberton states that MOUNTAIN IRON is an independent natural gas marketing company. Mr. Pemberton states that MOUNTAIN IRON purchases and takes title to gas directly from producers; it transports its gas on pipelines and distribution systems owned by others; and it sells and delivers the gas to end-users, local distribution companies and pipelines in various states. Mr. Pemberton further testifies that MOUNTAIN IRON's focus has been on buying and reselling gas to small and medium-sized commercial and industrial end-users, and that MOUNTAIN IRON neither owns nor operates any pipelines nor any other publicly regulated facilities.

MOUNTAIN IRON expressed no opinion about this issue.

The Commission fails to see a specific recommendation by any party for Commission action based on law or regulation in connection with this issue. If any party believes that MOUNTAIN IRON's activities in this state have caused it to be conducting business as a gas corporation, then such party should file a complaint to that effect and put on proof of the unlawful activity.

An objection has been made to lines 2 through 19 on page 9 of Exhibit 17 and to Schedule 4, which is attached to Exhibit 17. These objections were taken with the case. Exhibit 17 is the rebuttal testimony of Staff witness Hubbs filed in this proceeding. The text on page 9 which has been objected to discusses the testimony of Mr. Richard A. Dixon which was filed in Case No. GR-90-16 (a Kansas Power and Light Company rate case). Schedule 4 is, according to Mr. Hubbs, an excerpt from Mr. Dixon's prefiled direct testimony in Case No. GR-90-16.

MGUA has objected to the admission of the referenced testimony and schedule into the record on the bases that this material is irrelevant and is hearsay offered for the truth of what it says.

The Commission will sustain MGUA's objection to this material because Staff offered it for the truth of what it says and MGUA was provided no opportunity to question Mr. Dixon about his statements in connection with this proceeding. Thus, the Commission will strike lines 2 through 19 on page 9 of Exhibit 17 and Schedule 4 which is attached to Exhibit 17.

In addition, it was pointed out by counsel at the hearing that a portion of the surrebuttal of MGUA witness Kies was a response to the objectionable portion of Staff witness Hubbs' testimony. Counsel for MGUA stated at hearing: "We would not object to withdrawing that portion of -- or all of 28 and those lines on 29 if the Commission, in its wisdom, determined to strike the

portion of Mr. Hubbs' material to which I have objected." Thus, the Commission will strike all of page 28 and lines 1 through 5 on page 29 of Exhibit 14.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Missouri Gas Energy, a division of Southern Union Company, is an investor-owned public utility engaged in the provision of natural gas service in the state of Missouri and, therefore, subject to the general jurisdiction of the Missouri Public Service Commission under Chapters 386 and 393, R.S.Mo.

The Commission makes the following observation in connection with the views expressed by the Staff, MGE, and Kansas City about limitations on contracting with LDCs. As previously pointed out, no specific relief based on law or regulations was requested with regard to this issue. It is the Commission's opinion that the only thing it could do in relation to this issue would be to make a declaration of law. The Commission is not inclined to make such a declaration since numerous cases in this jurisdiction have pointed out that the Commission has no power to declare any principle of law or equity. ***State ex rel. Fee Fee Trunk Sewer v. Litz***, 596 S.W.2d 466, 468 (Mo. App. 1980).

MGE was required to open this docket under the terms of the unanimous stipulation and agreement filed by the parties and approved by the Commission in GR-93-240. Although no action is required as a result of this order, the issues identified are to be considered resolved. The Commission observes that these issues were, to a large extent, resolved by the unanimous stipulation and agreement filed in GR-93-240 and the tariff sheets filed by KPL Gas Service under that unanimous stipulation and agreement.

IT IS THEREFORE ORDERED:

1. That the objection of Midwest Gas Users Association to lines 2 through 19 of text on page 9 of Exhibit 17 and Schedule 4 which is attached to Exhibit 17 be, and is, hereby sustained and that said testimony and schedule be hereby stricken from the record herein.

2. That all of page 28, and lines 1 through 5 of page 29 of exhibit 14, be, and are, hereby stricken from the record.

3. That those motions and objections not specifically ruled on in this Report And Order are hereby denied or overruled.

4. That the record will reflect that no action is required by the Commission of any party as a result of this Report And Order.

5. That this Report And Order shall become effective on the 19th day of September, 1995.

BY THE COMMISSION

David L Rauch

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Kincheloe and Crumpton, CC., concur and certify compliance with the provisions of Section 536.080, R.S.Mo. 1994.
Drainer, C., not participating.

Dated at Jefferson City, Missouri, on this 7th day of September, 1995.