

MEMORANDUM

TO: Missouri Public Service Commission Official Case File
Case No. GE-2011-0282, Southern Union Company d/b/a Missouri Gas Energy's
Application for Waiver/Variance

FROM: Anne Allee, Regulatory Auditor - Procurement Analysis Department
David M. Sommerer, Manager - Procurement Analysis Department

/s/ Anne M. Allee 08/25/11
Project Coordinator / Date

/s/ Lera L. Shemwell 08/25/11
General Counsel's Office / Date

SUBJECT: Staff's Report to Commission Regarding MGE's Application for Waiver/Variance
from Commission's Order in Case No. GM-2003-0238

DATE: August 25, 2011

INTRODUCTION

Southern Union Company d/b/a Missouri Gas Energy ("MGE" or "Company") filed an application for a waiver/variance from the Order in Case No. GM-2003-0238 to allow MGE, beginning July 1, 2010 (the start of MGE's 2010/2011 ACA period), to calculate its PGA utilizing the actual transportation and storage rates currently being paid to Panhandle Eastern Pipe Line Company ("Panhandle"). The Commission's July 19, 2011 Order directs the Staff of the Missouri Public Service Commission ("Staff") to investigate and file a recommendation regarding MGE's application no later than August 25, 2011.

BACKGROUND

Southern Union Company d/b/a Missouri Gas Energy filed an Application with the Missouri Public Service Commission ("Commission") for authority to acquire, directly or indirectly, up to and including one hundred percent equity interest of Panhandle Eastern Pipe Line Company, including its subsidiaries on January 13, 2003 in Case No. GM-2003-0238. A Stipulation and Agreement ("Stipulation") recommending approval of the transaction was filed in that case on March 25, 2003. The Stipulation contained the following condition in paragraph 6.A.:

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.

...

.... This paragraph 6.A. shall apply for only so long as MGE is an affiliate of SUPC and Successor Entities.

**** Denotes Highly Confidential Information ****

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MGE's Panhandle discounts to the FERC maximum tariff rate set out in Appendix 2 are
** _____ ** for transportation and ** _____ ** for storage.

The Commission approved the Company's Stipulation and the Application subject to the conditions set out in the Stipulation on March 27, 2003.

STAFF RECOMMENDATION

As a result of the information discussed below, Staff recommends the Commission deny MGE's request for a waiver/variance from the Commission's Order in Case No. GM-2003-0238. Staff does not agree MGE has offered a compelling reason to terminate the discount provision in the Stipulation.

In paragraph 12 of its application, MGE states market conditions have changed considerably since the Stipulation in Case No. GM-2003-0238 such that it was unable to obtain transportation and storage discounts in its recent contract negotiations with Panhandle. At paragraph 14, MGE states the continuation of the imputed discount guarantees a rate that is not just and reasonable to MGE.

Staff reviewed MGE's documentation of the changes in market conditions. MGE states Panhandle advised that its pipeline transportation and storage services were fully subscribed and that discounts were no longer offered. MGE elected the right of first refusal ("ROFR") process with Panhandle as a market test for its capacity. The ROFR process requires the pipeline to post the capacity for bidding from other parties. However it allows MGE to retain its capacity as long as it is willing to match the highest bid Panhandle receives for the capacity. Panhandle notified MGE it received an acceptable bid for MGE's storage capacity and received no acceptable bids for MGE transportation capacity. MGE matched the 21 year bid at maximum tariff rates in order to retain its Panhandle storage capacity. Panhandle provided MGE summary transportation contract information which showed the recent contract rates for transportation capacity. Based on this transportation summary information, Staff found there are other Panhandle customers' receiving transportation discounts.

Beginning April 1, 2010, MGE has decreased its Panhandle transportation capacity which reduced the transportation fees paid by MGE to Panhandle. Staff's analysis shows MGE will be required for PGA/ACA purposes to reduce its actual gas costs by approximately
** _____ ** annually in order to comply with the Panhandle discount condition in the Stipulation. This means the Company will not recover this amount from its customers.

The Stipulation in Case No. GM-2003-0238 includes a date for termination of the discount condition. The Stipulation states the condition shall apply for only so long as MGE is an affiliate of Southern Union Panhandle Corporation and Successor Entities. The Staff found no reference to changing market conditions as a reason for terminating the discount provision. A review of the March 26, 2003 Transcript of Proceedings,

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Presentation of the Stipulation & Agreement, contains a discussion of the discount condition. The questions of Commissioner Gaw and answers by Mr. Hack indicate MGE's understanding of term of the discount provision. Following is an excerpt from the transcript of the proceedings:

COMMISSIONER GAW: I understand that there's an understanding in the stip that the current discounts that are there will stay in place. I'm not clear, I can't recall if there was a -- how long that is intended to go on or is anticipated to go on. (transcript, page 83, lines 21-25)

MR. HACK: Well, let me just clarify that. It's intended to go as long -- it's intended to run as long as there is a relationship, an affiliate relationship between MGE and Southern Union Panhandle. What it -- what the provision actually says is that for purposes of calculating MGE's PGA rates, that discount will be used.

Our contracts with Panhandle run -- again, I'm running from the top of my head -- through I'm going to say October or August of '05. So there will be no change in the contract between now and then.

To the extent there is a change in the contract thereafter, it will be whatever we're able to negotiate with the Panhandle. But for purposes of our PGA rates, we will -- we will continue to use that discount percentage.

So Panhandle will be able to comply with its non-discrimination standard at the FERC level by charging us what they're able to negotiate. We will try to protect our interests in those negotiations as best we can, but for purposes of PGA setting, that's what we've agreed to. (transcript page 84, lines 1-20)

The transcript indicates MGE understood, as Panhandle contracts expired in the future, it was possible MGE's discounts would not continue in the future and if that were to occur, MGE would be unable to recover a portion of its actual gas costs from its customers. The transcript also indicates MGE understood the discount provision was to continue as long as MGE and Panhandle were affiliates. Based on the information stated above, Staff opposes MGE's request for waiver/variance from the Commission's Order in Case No. GM-2003-0238 as MGE's request is in violation of the negotiated agreement reached by the parties and approved by the Commission in this case.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Southern Union Company)
d/b/ Missouri Gas Energy's Application for)
Waiver/Variance)
Case No. GE-2011-0282

AFFIDAVIT OF ANNE M. ALLEE

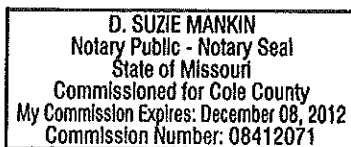
STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

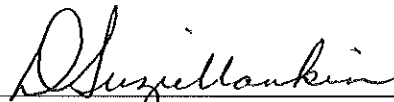
Anne M. Allee, of lawful age, on her oath states: that she has participated in the preparation of the foregoing Staff Recommendation in memorandum form, to be presented in the above case; that the information in the Staff Recommendation was developed by her; that she has knowledge of the matters set forth in such Staff Recommendation; and that such matters are true and correct to the best of her knowledge and belief.



Anne M. Allee

Subscribed and sworn to before me this 25th day of August, 2011.





Notary Public