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September 19, 2002

Mr. Dale Hardy Roberts  
Executive Secretary  
Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED<sup>3</sup>**

SEP 19 2002

Missouri Public  
Service Commission

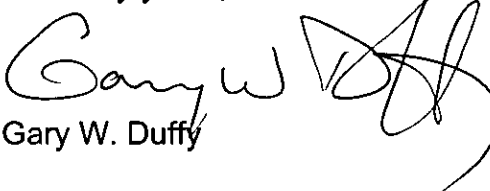
**RE:** Case No. GR-2001-382  
(consolidated with GR-2000-425, GR-99-304, and GR-98-167)

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of an Application for Rehearing and Motion for Reconsideration in these consolidated cases.

If you have any questions, please give me a call.

Sincerely yours,

  
Gary W. Duffy

Enclosures

cc w/encl:

Office of Public Counsel  
Office of the General Counsel  
Jim Deutsch  
Jeff Keevil  
Rob Hack  
Mike Langston

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

|   |             |                      |
|---|-------------|----------------------|
| In the Matter of Missouri Gas Energy's Purchased<br>Gas Adjustment Tariff Revisions to be Reviewed<br>in its 2000-2001 Actual Cost Adjustment.      | )<br>)<br>) | Case No. GR-2001-382 |
| In the Matter of Missouri Gas Energy's Purchased<br>Gas Cost Adjustment Factors to be Reviewed<br>in its 1999-2000 Actual Cost Adjustment.          | )<br>)<br>) | Case No. GR-2000-425 |
| In the Matter of Missouri Gas Energy's Purchased<br>Gas Cost Adjustment Factors to be Reviewed<br>in its 1998-1999 Actual Cost Adjustment.          | )<br>)<br>) | Case No. GR-99-304   |
| In the Matter of Missouri Gas Energy's Purchased<br>Gas Cost Adjustment Tariff Revisions to be<br>Reviewed in its 1997-1998 Actual Cost Adjustment. | )<br>)<br>) | Case No. GR-98-167   |

**APPLICATION FOR REHEARING AND  
MOTION FOR RECONSIDERATION**

Comes now Missouri Gas Energy (MGE), a division of Southern Union  
Company, by and through its counsel, and for its application for rehearing and motion  
for reconsideration and respectfully states as follows:

1. MGE seeks rehearing and reconsideration by the Commission of certain  
aspects of its "Order Consolidating Cases, Finding Jurisdiction to Proceed, and  
Directing the Parties to File a Proposed Procedural Schedule" (the Order) issued on  
September 10, 2002. In brief, MGE objects to the portion of the order which bifurcates  
the hearing on the "MKP/RPC contract adjustment" from the hearing on the other  
issues in the consolidated cases, and MGE objects to the portion of the order which  
"concludes that the filed-rate doctrine does not preclude it from considering the

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adjustment proposed by Staff.”

### **Bifurcation of Hearing**

2. MGE does not oppose the consolidation of the four cases, but considers that it is inadvisable and unnecessary to bifurcate the hearing process. Accordingly, MGE seeks reconsideration by the Commission and an order which calls for a procedural schedule which leads to one hearing on all issues in all four cases. MGE shares the Commission’s stated desire “to move all of these cases forward.” MGE does not consider that the “uncertainty” surrounding the MKP/RPC adjustment because of the pending appeal should block that. While the Commission’s order moves some issues forward, it is not likely to lead to a timely resolution of all of the issues in this situation. A resolution by the Commission of all of the issues is necessary before any judicial review of a Commission decision can commence. Considering the time it will likely take the Circuit Court of Cole County to reach a resolution on the pending appeal in Case No. 02CV324478, and the time it could take the Court of Appeals (at least a year based on past examples) to consider an appeal by the losing party in Circuit Court, there is unlikely to be a final judicial resolution of the GR-96-450 appeal before the spring of 2004. Therefore, while some issues might be tried, briefed and presented to the Commission for decision in the spring of 2003 in these consolidated cases, it is likely to be more than another year after that before there would be resolution on all the issues and the Commission would be in a position to issue a Report and Order. The question then presented is: Why does the Commission want to build that much additional time into resolving these cases, when it does not have to?

3. MGE’s position is that the Commission should proceed to hear all the

issues in all four cases in one hearing. As the following discussion shows, there should not be a material adverse effect from proceeding to hearing on all issues. In the Order, the Commission posits four possible outcomes from the pending appeal of Case No. GR-96-450 by Mid-Kansas and Riverside. For example, the Commission first posits a result of the stipulation barring the Staff's adjustment (i.e., Mid-Kansas/Riverside prevails). If that is the final resolution, and it comes after a hearing on all issues, then all that has been wasted is the incremental time and resources of the parties and the Commission in hearing those issues in a trial that is going to take place anyway. Second, the Commission posits a final judicial decision that the stipulation does not bar Staff's adjustment. In that situation, a hearing on all issues would be necessary anyway. The third scenario is a remand for further findings. Depending on the timing of that result, and whether the court determines that a further hearing is necessary in order to make those findings, there may or may not have to be another hearing. The fourth scenario is that the courts would uphold the Commission's decision that it did not have to make a determination on the meaning of the stipulation. The result of that is the same as the second scenario, i.e., a hearing would be necessary in these cases anyway.

4. It appears to MGE that, based on the analysis above, the "trade-off" is between a hearing in the spring of next year on all issues, which could lead to a Report and Order in mid-2003 on these four cases, or proceeding as the Commission currently contemplates, with the result being that there is not likely to be a Report and Order until mid to late 2004 at the earliest. If the stated desire is to "move these cases forward" and "move toward a resolution of MGE's PGA cases" then the logical choice is to

abandon the bifurcation.

5. MGE makes this recommendation with the knowledge that it is a departure from its previous position. It also is cognizant that Mid-Kansas/Riverside is likely to oppose such a change. However, it is MGE's position that the MKP/RPC issues were heavily litigated in Case No. GR-96-450, so the parties should be familiar with the issues and the evidence. If the Staff has no new evidence regarding imprudence on that topic which has arisen in these four ACA periods, as it has openly indicated on a previous occasion, then the result should be the same as in Case No. GR-96-450. Therefore, given the scenarios posited by the Commission, the "worst" case is that there is a one in four chance that the trial of the MKP/RPC issues in these consolidated cases will be rendered moot by a judicial decision that the stipulation barred such an adjustment in the first place.

#### **Filed Rate Doctrine**

6. MGE is concerned about the portion of the Order that considers the Filed Rate Doctrine and "concludes that the filed-rate doctrine does not preclude it from considering the adjustment proposed by Staff." If this is a "final" determination by the Commission on this point in these cases, then MGE considers that to be a decision which is unlawful, unjust and unreasonable, and as a consequence, MGE seeks rehearing on that point pursuant to § 386.500 RSMo 2000.

7. The memorandum filed by MGE in GR-2001-382 presented a detailed discussion of the law on the Filed Rate Doctrine and the "Pike County exception." MGE also presented facts from Case No. GR-96-450 to demonstrate how the facts which the Commission has already examined lead inescapably to the conclusion that MGE had

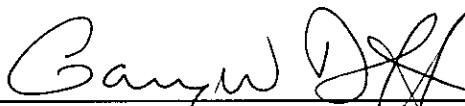
no economical alternative to purchasing from Mid-Kansas/Riverside. The Pike County exception hinges on an alternative being present. The memorandum of the Staff did not show there was any such alternative. The Commission has already concluded in Case No. GR-96-450 that there was no such alternative. If the Commission is merely concluding that, at this time, it has no evidence in this case on which to make a ruling as to whether there is preemption due to the filed rate doctrine, then it should have so stated. That clearly allows parties to present evidence and arguments in these cases that preemption either exists or not. On the other hand, if the Commission is indicating through its conclusion that it has made a substantive determination that preemption does not, and cannot, exist in this situation, then the Commission's decision is unlawful because it is not supported by competent and substantial evidence (since there is no evidentiary record at all in these cases) and there are insufficient findings of fact and conclusions of law to support the decision of the Commission.

8. The Order also concludes that the Commission "has jurisdiction to proceed." MGE did not challenge the subject matter jurisdiction of the Commission to take evidence in these proceedings. MGE pointed out the case law which clearly says that it is unconstitutional (i.e., a violation of the Supremacy Clause of the U.S. Constitution) for the Commission to trap costs which result from a FERC-approved rate in the absence of a Pike County type situation, where the evidence shows a viable and economical alternative which was consciously ignored by the utility.

WHEREFORE, MGE seeks reconsideration by the Commission of the bifurcation of the hearing in these consolidated cases and an order which calls for a hearing on all issues at the same time. Further, MGE seeks reconsideration and rehearing by the

Commission as to its decision that "the filed-rate doctrine does not preclude it from considering the adjustment proposed by Staff."

Respectfully submitted,



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Certificate of Service

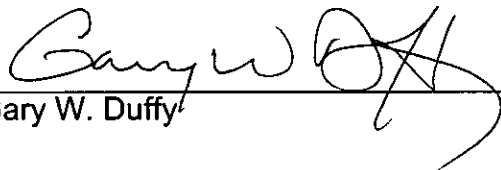
I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered, on this 19<sup>th</sup> day of September, 2002, to:

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Missouri Public Service Commission  
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Gary W. Duffy

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