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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 19th
day of August, 1997.

Mountain Iron & Supply Company,)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-96-372</u>
)	
Missouri Gas Energy, a division)	
of Southern Union Company,)	
)	
Respondent.)	
)	

ORDER APPROVING STIPULATION AND AGREEMENT

On July 23, 1997, a Stipulation And Agreement was filed in this case signed by the Staff of the Missouri Public Service Commission (Staff), Mountain Iron & Supply Company (Mountain Iron) and Missouri Gas Energy, a division of Southern Union Company (MGE), which provided for the settlement of a complaint filed by Mountain Iron against MGE. Mountain Iron complained that MGE's tariff was unlawful as to the assessment of penalties during times of alleged curtailment of transportation services. Mountain Iron also alleged arithmetical errors and meter reading errors in MGE's billing.

Findings of Fact

The Missouri Public Service Commission, having considered all the evidence, makes the following findings of fact.

The Stipulation And Agreement represents a negotiated settlement which has the purpose of terminating the complaints made by Mountain Iron

against MGE and setting up a process for which disagreements on billing errors may be resolved between the parties. The Stipulation And Agreement is attached to this order and is incorporated herein by reference.

The Stipulation And Agreement indicates that the parties have agreed that Mountain Iron will not contest the billings for penalties assessed to the customers of Mountain Iron by MGE up to and including May 1, 1996. Mountain Iron also stated that it was unaware of any billing problems pertaining to its customers since May 1, 1996. The Stipulation And Agreement provides that Mountain Iron will meet with MGE before filing any complaint case regarding any of its transportation customers' bills relating to periods after May 1, 1996, and MGE agrees that it will meet with Mountain Iron to discuss and determine if a billing error has occurred. Mountain Iron and MGE have agreed to work in good faith to resolve any such problems or concerns raised by such transportation customer.

The Stipulation And Agreement specifies that MGE will make refunds to three customers of MGE (US Toy, Dexter Automotive and Atlanta Terminal) as specified in paragraph 9.B of the Stipulation And Agreement. The Stipulation And Agreement also states that agents of MGE and Mountain Iron have met for the purposes of assisting Mountain Iron in understanding the billing process of MGE for transportation customers during specified time periods. MGE has agreed that in its next proposed tariff it will include language providing for a "Pooled Transportation Service" to its transportation customers by the terms set out specifically in the Stipulation And Agreement in paragraph 9.D. Mountain Iron has acknowledged that MGE is only obligated to make a general proposal as contained in paragraph 9.D and that MGE may add provisions that it deems appropriate.

Further, MGE has agreed to not oppose intervention by Mountain Iron in the next MGE general rate case. The Stipulation And Agreement specifies that Staff only concurs in MGE's right to file a proposed tariff in paragraph 9.D and expresses no position regarding the acceptability or advisability of a proposed tariff regarding an aggregated Pooled Transportation Service.

The Stipulation And Agreement states that MGE agrees to conduct educational programs in St. Joseph, Kansas City and Joplin regarding what situations give rise to penalties and how to avoid them. MGE also agrees to dismiss its current pending civil litigation between MGE and Mountain Iron which is designated as Case No. 96-0943-CV-W-3 in the United States District Court for the Western District of Missouri, if there is no appeal of the Commission's decision. Mountain Iron agrees to dismiss its current complaint upon approval of the Stipulation And Agreement by the Commission. The parties further agree that this agreement shall not bind them in any manner in this or in any other proceeding except as otherwise expressly specified in the Stipulation And Agreement.

The Commission has considered the Stipulation And Agreement and finds the terms just and reasonable. With the understanding that the Stipulation And Agreement represents a negotiated settlement for the sole purpose of resolving and settling the current complaint case, the Commission accepts the Stipulation And Agreement as being a reasonable settlement of the issues. Settlements of issues between the parties is favored as an efficient means of resolving disputes.

Conclusions of Law

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

The Commission has jurisdiction over this matter pursuant to Chapters 386 and 393, RSMo 1994. The standard for Commission approval of the Stipulation And Agreement is whether it is in the public interest.

The Office of the Public Counsel did not sign this Stipulation And Agreement. Commission regulations provide that the Commission may treat a nonunanimous Stipulation And Agreement as unanimous in cases where the nonsignatory parties do not request a hearing within five days. 4 CSR 240-2.115(1). The failure to request a hearing constitutes a waiver of the parties right to a hearing. 4 CSR 240-2.115(3).

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered such an opportunity. If no proper party or governmental entity files an application to intervene and neither the Commission's Staff nor the Office of the Public Counsel requests a hearing, the Commission may determine that a hearing is not necessary. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Comm'n, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission determines that the Stipulation And Agreement is in the public interest and it should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation And Agreement attached to this order as Attachment 1 and filed in this case on July 23, 1997, is hereby approved and adopted for the settlement of the complaint filed by Mountain Iron & Supply Company against Missouri Gas Energy, a division of Southern Union Company, on May 3, 1996, and an amended complaint on October 3, 1996.

2. That Mountain Iron & Supply Company and Missouri Gas Energy will comply with all the provisions as set out in the attached Stipulation And Agreement.

3. That this order shall become effective on August 29, 1997.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Cecil I. Wright".

**Cecil I. Wright
Executive Secretary**

(S E A L)

Crompton, Drainer, Murray
and Lumpe, CC., concur.

ALJ: Luckenbill

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
JUL 23 1997
MISSOURI
PUBLIC SERVICE COMMISSION

MOUNTAIN IRON & SUPPLY COMPANY,
Complainant,

v.

MISSOURI GAS ENERGY, a division
of Southern Union Company,
Respondent.

Case No. GC-96-372

STIPULATION AND AGREEMENT

Come now Complainant Mountain Iron & Supply Company ("Mountain Iron"), the Staff of the Commission ("Staff"), and Respondent Missouri Gas Energy ("MGE"), by and through their respective counsel, and submit the following stipulation and agreement which disposes of all issues in this proceeding:

Procedural History

1. On May 3, 1996, Mountain Iron & Supply Company filed a Complaint against MGE. Mountain Iron alleged that MGE's tariff was unlawful with respect to the assessment of penalties during times of alleged curtailment of transportation service. Mountain Iron also alleged arithmetical errors and meter reading errors. On June 6, 1996, MGE filed an Answer to the Complaint and also moved to dismiss the Complaint.

2. The Commission established an early prehearing conference for July 17, 1996, which was subsequently rescheduled to July 25, 1996. A Protective Order was issued on May 9, 1996. On July 25, 1996, MGE filed a Motion for Summary Determination along with supporting

affidavits and Suggestions in Support of the Motion. On July 26, 1996, the Staff filed a Motion to Establish Procedural Schedule. On August 1, 1996, the Commission issued an Order Establishing Procedural Schedule which called for Complainant to file direct testimony on September 10, 1996, MGE and others to file rebuttal testimony on December 3, 1996; surrebuttal and cross-surrebuttal on December 19, 1996, and a hearing on January 15 and 16, 1997.

3. On or about August 6, 1996, Mountain Iron filed a Verified Response to MGE's Motion for Summary Determination. On August 16, 1996, Mountain Iron filed a Motion to Revise Procedural Schedule due to the departure of one of its officers and potential witnesses. On August 23, 1996, the Commission issued an Order Amending Procedural Schedule. That order called for Complainant to file direct testimony on November 11, 1996; MGE and others to file rebuttal testimony on February 3, 1997; surrebuttal and cross-surrebuttal on February 19, 1997, and a hearing on March 13 and 14, 1997.

4. On September 4, 1996, the Commission issued an "Order Regarding Complaint" which determined that the Complaint did not meet the statutory and rule requirements of the Commission "insofar as the complaint attacks MGE's tariff sheets ... which deal with unauthorized overrun penalties." The Order also directed Mountain Iron to file an amended complaint to specifically plead claims against MGE relating to alleged errors in applying its tariffs no later than October 4, 1996.

5. On October 3, 1996, Mountain Iron filed an Amended Complaint. On November 4, 1996, MGE filed an Answer to Amended Complaint. On November 7, Mountain Iron filed a Motion to Revise Procedural Schedule. On November 14, 1996, the Staff filed a Response to that motion, and on November 18, 1996, MGE did the same. On November 12, 1996, the Commission issued a Notice suspending the procedural schedule in this case until further order

of the Commission.

6. On December 10, 1996, the Commission issued an Order Amending Procedural Schedule which called for Complainant to file direct testimony on December 20, 1996; MGE and others to file rebuttal testimony on March 31, 1997; surrebuttal and cross-surrebuttal on April 21, 1997, and a hearing on May 15 and 16, 1997. On December 17, 1996, Mountain Iron filed a motion for extension of time to file direct testimony from December 20 to December 31, 1996. On December 19, the Commission issued an order changing the procedural schedule. The new schedule called for Complainant to file direct testimony on December 31, 1996; MGE and others to file rebuttal testimony on April 11, 1997; surrebuttal and cross-surrebuttal on May 2, 1997, and a hearing on May 29 and 30, 1997.

7. Mountain Iron filed the direct testimony of its witness, Peter Beren, on December 31, 1996.

8. On February 26, 1997, Mountain Iron and MGE filed a Joint Motion to Suspend Procedural Schedule. The Joint Motion recited that Complainant and Respondent had been engaging in discovery and had also been having settlement discussions. As a result of the settlement discussions, Mountain Iron and MGE represented that they had reached an agreement on some general principles of settlement of this proceeding, but needed additional time to refine them. The Joint Motion asked the Commission to suspend the procedural schedule to afford the parties time to devote to further settlement negotiations. They also represented that if they did not file a settlement document by May 30, 1997, they would propose a new procedural schedule. On March 7, 1997, the Commission granted the Joint Motion.

Agreed Upon Terms and Conditions

9. As a result of the aforementioned settlement negotiations, the identified parties

hereby stipulate and agree as follows:

A. MGE and Mountain Iron agree that Mountain Iron will not contest the billings for penalties assessed to the customers of Mountain Iron by MGE up to and including May 1, 1996. Mountain Iron states that it is not aware of any billing problems pertaining to its customers since May 1, 1996. Prior to Mountain Iron filing any complaint case regarding any of its transportation customers' bills relating to periods after May 1, 1996, Mountain Iron agrees that it will meet with MGE, and MGE agrees to meet with Mountain Iron, to discuss and determine if a billing error has occurred. Mountain Iron and MGE agree to work in good faith to attempt to resolve any such problems or concerns raised by such transportation customer. Only after Mountain Iron and MGE have reached an impasse in the negotiations shall Mountain Iron exercise its right to file an appropriate cause of action, if it so chooses.

B. MGE and Mountain Iron agree that MGE has held discussions with Williams Natural Gas ("WNG") to restate nominations on behalf of the three customers of Mountain Iron and MGE noted in paragraph 7 n. of the Amended Complaint for the days of January 30 and February 4, 1996, where a change in those nominations gave rise to a penalty billing to them. WNG has processed the nomination adjustments restoring the original nominations for the three customers, which allows MGE to make refunds to these three customers for the affected portion of the penalty billings assessed for the referenced days, with the corrections as follows:

	<u>Original Bill</u>	<u>Corrected Bill</u>
US Toy		
sales gas vol.	481 mcf \$2590.31	69mcf \$776.87
penalty	325 mcf \$4520.10	48 mcf \$689.70
Dexter Automotive		
sales gas vol.	400 mcf \$2241.13	100mcf \$937.93
penalty	394 mcf \$5614.50	79 mcf \$1125.75

Atlanta Terminal

sales gas vol.	714 mcf	\$3716.96	NONE
penalty	682 mcf	\$9711.38	NONE

MGE will take the necessary steps to make a timely refund as set out above.

C. MGE has reviewed with a representative of Mountain Iron billing information for all of Mountain Iron's customers who are also customers of MGE for the time periods of January and February 1996 for the express purpose of assisting Mountain Iron in understanding the billing process utilized by MGE for transportation customers during periods in which upstream pipelines have issued various types of operational flow orders which can affect the volumes of gas being delivered to MGE.

D. In its next general rate case tariff filing, MGE agrees to propose tariff language which will provide for a new "Pooled Transportation Service" ("PTS") to its transportation customers utilizing the following general terms and conditions:

1) MGE will recognize an "aggregated pool" of gas supplies in any instance in which a single supplier (e.g. a gas marketer or broker) is serving a specified minimum number of customers who are also customers of MGE behind a particular MGE City Gate station.

2) The transportation customer who wishes to be a part of such an aggregated pool must be delivering its supply at MGE specified city gate locations.

3) The transportation customer who wishes to be part of such an aggregated pool must furnish MGE with written acknowledgment in which it agrees to be treated as being a part of an aggregated supply at such designated location at least ten (10) working days

prior to the first day of the flow month¹ in which the service is scheduled to begin.

E. Mountain Iron acknowledges MGE is only obligated to make a general proposal as contained in paragraph 9.D. above; that MGE may add additional provisions deemed appropriate by MGE, and that MGE cannot assure Mountain Iron that such a proposal will be accepted by the Commission. MGE agrees that it will not oppose Mountain Iron's intervention in MGE's next general rate case so that Mountain Iron will have an opportunity to present its views regarding the proposed PTS service. Staff only concurs in the right of MGE to file a proposed tariff as set out in paragraph D above and expresses no position regarding the acceptability or advisability of a proposed tariff regarding any aggregated PTS service.

F. MGE agrees to conduct an informal educational program in the St. Joseph, Kansas City, and Joplin areas within six months after approval of this Stipulation and Agreement by the Commission where transportation customers will have the opportunity to better understand the situations which can give rise to penalties and the methods by which MGE calculates penalties for transportation customers.

G. MGE agrees that within thirty (30) days after the effective date of an Order of the Commission approving this Stipulation and Agreement, assuming there is no appeal of the Commission's decision, MGE will dismiss with prejudice the civil litigation currently pending between MGE and Mountain Iron and designated as Case No. 96-0943-CV-W-3 in the United States District Court for the Western District of Missouri.

H. Mountain Iron agrees that within thirty (30) days after the effective date of an Order of the Commission approving this Stipulation and Agreement, assuming there is no

¹ For purposes of this agreement, a "flow month" means the calendar month in which pooled service is scheduled to begin.

appeal of the Commission's decision, Mountain Iron will dismiss with prejudice its complaint herein.

I. For those customers of Mountain Iron and MGE who entered into deferral agreements pending the outcome of this complaint proceeding, MGE will bill them the remainder of the applicable penalty plus the interest specified in the deferral agreement upon the execution of this Stipulation and Agreement.

10. The parties further agree that none of them shall have been 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, 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 Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.

11. The parties further agree that this Stipulation and Agreement has resulted from extensive negotiations among the parties. The terms of this Stipulation and Agreement are interdependent. In the event the Commission does not approve and adopt the entirety of this Stipulation and Agreement, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

12. To the extent the Commission approves and adopts this Stipulation and Agreement, 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.

13. The parties agree that the prefiled testimony of Mr. Peter Beren in this case shall be received into evidence without the necessity of him taking the stand.

14. The parties agree that the Staff may submit to the Commission a memorandum explaining its rationale for entering into this 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 privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in this or any future proceeding, whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to this Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

15. The Staff shall also have the right to provide, at any agenda meeting at which this 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.

16. To assist the Commission in its review of this 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 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 Stipulation and Agreement.

Respectfully submitted,

ANDERECK, EVANS, MILNE,
PEACE & BAUMHOER

By: Victor S. Scott
Victor S. Scott MBE 42963
305 East McCarty Street
Third Floor - Hawthorn Center
P.O. Box 1438
Jefferson City, Missouri 65102-1438
(573) 634-3422
Attorneys for Complainant

BRYDON, SWEARENGEN & ENGLAND P. C.

By: Gary W. Duffy
Gary W. Duffy MBE#24905
312 East Capitol Avenue
P. O. Box 456
Jefferson City, Missouri 65102-0456
(573) 635-7166
Attorneys for Respondent

R. Blair Hosford
R. Blair Hosford MBE 21775
Assistant General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-8702

Attorney 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 23rd day of July, 1997.

Gary W. Duffy
Gary W. Duffy

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