BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy and	)	
Its Tariff Filing to Implement a General Rate	)	**Case No. GR-2009-0355**
Increase for Natural Gas Service	)	Tariff No. YG-2009-0714

STATEMENT OF POSITIONS/PREHEARING BRIEF OF CONSTELLATION NEWENERGY-GAS DIVISION, LLC.

COMES NOW Constellation NewEnergy-Gas Division, LLC (hereinafter referred to as "Constellation"), and submits its Statement of Positions/Prehearing Brief in this matter.

Transportation Threshold Issue

1. Should the threshold for eligibility for transportation service be lowered, as proposed by Constellatilon?

Constellation proposes that MGE should lower its threshold for eligibility for transportation service. MGE currently limits transportation service only to those customers "the Company expects will exceed 15,000 Ccf in any one month of a 12-month billing period." (Haubensak Direct, p. 2, ll. 19-21.) MGE's existing threshold of 15,000 Ccf in any one month of a 12-month billing period has not changed since MGE acquired the property from Western Resources in 1994. (Haubensak Direct, p. 6, ll. 20-24.)

Constellation proposes that MGE's threshold be changed to allow transportation to non-residential gas customers with annual usage of 30,000 Ccf per year. (Haubensak Direct, p. 3, ll. 3-4.) The new threshold proposed by Constellation would remain higher than the transportation threshold of Ameren-Union Electric (all non-residential customers) and Empire District Gas Company

(5,000 Ccf per year) in Missouri. (Haubensak Direct, p. 5, ll. 3-6) 30,000 Ccf per year is currently the transportation threshold in place on the Kansas Gas Service system. That system is just across the river from MGE's service territory in the Kansas City area. A number of commercial enterprises in the Kansas City area that have establishments on both sides of the state line already avail themselves of transportation service from Kansas Gas Service, but do not qualify for transportation from MGE because of the substantially higher threshold in place on the Missouri side of the river. Constellation's proposed change would mean that customers in MGE's proposed Large General Service (LGS) class would be eligible for small-volume transportation service if they had annual usage of 30,000 Ccf per year. (Haubensak Direct, p. 4, ll. 3-14.)

Other Kansas gas utilities, including Atmos and Black Hills, have even lower thresholds for transportation eligibility than Kansas Gas Service. In 2007, the Iowa Utilities Board ordered that Iowa utilities open up their systems to all non-residential customers desiring transportation service. In Nebraska, the two major gas utilities, Black Hills and Source Gas, offer transportation service to all commercial and industrial customers, regardless of size. (Haubensak Direct, p. 5, ll. 8-14.)

Attached to Mr. Haubensak's direct testimony are the applicable tariff pages for the utilities identified above. (Schedule RJH 1) Also attached is the order of the Iowa Utilities Board opening up transportation to all non-residential small volume customers. (Schedule RJH 2) (Haubensak Direct, p. 5, ll. 14-17.)

Lowering the threshold for transportation eligibility will benefit small volume non-residential gas customers. Sometimes a gas marketer such as Constellation can offer a lower price for the natural gas commodity it purchases for delivery to a transportation customer. More importantly, a marketer can offer end-users price protection so that a price can be locked in for an extended period of time. While MGE changes its gas commodity costs to customers on a quarterly basis, through the Purchased Gas Adjustment (PGA), Constellation may offer its transportation customers a fixed price that they can depend on for up to 24 months. In addition, Constellation provides a pre-packaged, diversified portfolio consisting of a strategic blend of fixed price, call options, and index-priced gas. The objective of this offering is to reduce exposure to high prices while still allowing the customer to benefit in a falling market. Lowering the eligibility threshold for transportation would allow qualifying LGS customers the opportunity to lock in a price, which greatly assists them in budgeting for the future. These options would be a benefit to customers such as motels, restaurants, laundromats, apartment complexes, colleges, etc. to be able to lock in a gas price for an extended period of time. (Haubensak Direct, p. 7, ll. 3-19.)

Attached to Mr. Haubensak's direct testimony are letters from a number of MGE customers which are not currently eligible for transportation service that would like to have a transportation option. (Schedule RJH 3) It is Constellation's belief that additional letters were sent directly to the Commission supporting lowering the threshold. (Haubensak Direct, p. 9 , l. 19 – p. 10, l. 2.)

2. Should telemetry equipment be required for small volume transportation customers?

Constellation also proposes that telemetry equipment not be required for new small volume transportation customers. Telemetry equipment, sometimes referred to as electronic flow measurement (EFM) equipment or electronic gas metering (EGM) devices, is equipment that measures the volume of gas taken daily (and sometimes hourly) by the customer. This equipment is certainly necessary for measuring the volume of gas taken by large-volume industrial customers. However, for small-volume customers, where the load is very predictable, this equipment is not necessary. Also, the cost of the equipment, which usually is paid for by the customer, becomes a deterrent to a customer choosing a transportation service. (Haubensak Direct, p. 8, ll. 9-17.)

Utilities in Missouri do not require the installation of telemetry equipment for customers on the school program. In addition, telemetry equipment is not presently required on the Empire District system for small-volume transportation customers. In Iowa and Nebraska, none of the utilities require installation of telemetry equipment in order to receive small-volume transportation service. This is also true for the Kansas Gas Service customers across the river from the MGE service territory. (Haubensak Direct, p. 8, l. 21 – p. 9, l. 5.)

If the Commission were to determine that telemetry is necessary for new transportation customers under the new, lower threshold, MGE should be required to revise its tariff to reflect current, lower telemetry costs. (Haubensak Surrebuttal, p. 12, ll. 16-23.) MGE's current tariff (Sheet 71), last changed in1998 when telemetry equipment costs were much higher than they are today, shows a charge for telemetry equipment ("EGM," or Electronic Gas Metering charges) of up to $5,000. (Schedule RJH 7.) MGE has charged $3,000 to $4,000 in recent months for installing telemetry equipment. (Schedule RJH 7.) These charges for installation of telemetry equipment are much higher than Constellation has experienced in recent years for customers that choose to take transportation service in other states. (Haubensak Surrebuttal, p . 9, l. 20 – p. 10, l. 8.)

Mr. Haubensak's surrebuttal testimony includes documentation of telemetry costs in Illinois, Iowa, Kansas, Minnesota, Nebraska, South Dakota and Wisconsin that demonstrates that MGE's charges for telemetry are excessive. (Haubensak Surrebuttal, p. 10, l. 11 – p. 12, l. 5; Schedules RJH 7-12.) Staff accounting data in this case indicate a cost of $846.00 per transportation customer for telemetry equipment. (Haubensak Surrebuttal, p. 12, ll. 8-13.) Empire District Gas Company's cost for telemetry equipment for small volume transportation customers is $1,070.

MGE's charges for telemetry equipment are far higher than for utilities in other states and not reflective of current costs for such equipment. MGE should be required to get its charges in line with other utilities. MGE's current, unjustified high charges for telemetry equipment deny transportation service to customers who would at least like to consider transportation as an alternative.

3. Would lowering the threshold for transportation eligibility have a negative effect on MGE or on MGE's firm sales customers?

Lowering the transportation threshold would have no detrimental effect on MGE or its system supply, sales customers. The tariffs of the other utilities identified in Mr. Haubensak's direct testimony have provisions for balancing, and cash-outs and incremental fees to cover the cost of providing transportation service and to protect the customers choosing to stay on sales service from incurring any additional costs. (Haubensak Direct, p. 10, ll. 6-9.)

Existing firm sales customers that switch to transportation service would require no more transmission capacity as transportation customers than they do as sales customers. Mechanisms exist that will ensure that new transportation customers continue to pay for capacity, that MGE continues to be paid for capacity, and that no costs are stranded that could be shifted to other customer classes. (Haubensak Surrebuttal, p. 3, l. 2 – p. 4, l. 3.)

A transition period would be required to either set up the process for making nominations for the non-telemetered customers and development of a balancing service for these customers, to insure MGE is fully reimbursed for their costs and that no additional costs are placed on the remaining sales customers. A transition period would also be required to install telemetry equipment, if that were required. (Haubensak Surrebuttal, p. 5, ll. 4-13.)

None of the matters raised in Mr. Kirkland's Rebuttal Testimony (on behalf of MGE) is an obstacle to lowering the threshold for transportation eligibility, as evidenced in the other states cited in Mr. Haubensak's Direct and Rebuttal

Testimony. In fact, MGE is already providing transportation service, without telemetry, to schools in Missouri. Constellation's proposal in this case is merely an expansion of a service which MGE is already providing. (Haubensak Surrebuttal, p. 5, l. 21 – p. 6, l. 2.)

Operational Flow Orders (OFOs)

Constellation urges the Commission to require MGE to add explicit language to its transportation tariff limiting the circumstances under which MGE may issue an Operational Flow Order (OFO). When MGE issues an OFO, marketers like Constellation are held to a much higher standard for balancing their nominations of gas and deliveries of gas to their customers than when an OFO is not in effect. Likewise, other transportation customers are held to a higher standard for balancing nominations and use. Specifically, under an OFO, marketers and other transporters are required to balance nominations and deliveries daily, rather than monthly, or be subject to penalties for daily over-nominations or under-nominations. (Haubensak Direct, p. 11, ll. 2-13; Haubensak Surrebuttal, p. 8, ll. 6-12.)

Constellation believes that MGE's tariffs should mirror those of its interstate pipelines to insure they recover all the penalties coming from the interstate pipeline from the party on their system responsible for the penalty. Anything more than that, such as being allowed to call an OFO when one is not being called by the interstate pipeline, means they are attempting to recover from someone else a penalty that the other party is not responsible for. (Haubensak Direct, p. 12, l. 21 – p. 13, l. 4.)

If MGE is allowed to call an OFO day without one being called by the applicable interstate pipeline, it means they apparently have not purchased enough natural gas supply to meet the needs of their sales customers. MGE's inability to forecast the needs of its own sales customers should not result in tighter balancing requirements for marketers like Constellation who have contracted with some other party to purchase gas supplies and meet the needs of their customers. (Haubensak Direct, p. 12, ll. 11-17.)

Yet, MGE has not only called OFO days recently, but called OFO *months* for the entire months of September and October 2009. (Haubensak Rebuttal, p. 3, l. 13 – p. 4, l. 4; Haubensak Surrebuttal, p. 7, l. 9-15; Schedule RJH 6.) By calling an OFO day when its interstate pipeline has not, MGE is imposing a higher standard on balancing accuracy on transportation customers and marketers than MGE itself is held to. (Haubensak Surrebuttal, p. 8, ll. 17-19.) These extraordinary "OFO months" (instead of the typical "OFO day") subject Constellation, other marketers and all transportation customers to greater penalties for imperfect balancing of nominations and deliveries, while allowing MGE to over-nominate or under-nominate its own supplies without risk of similar penalties from its interstate pipeline. This situation is patently unfair and should not be allowed by this Commission. (Haubensak Rebuttal, p. 3, ll. 5-10, 16-22.)

The Commission should order MGE to add language to its tariff that limits the circumstances under which MGE can call an OFO day or issue an

Operational Flow Order (OFO). The Commission should require MGE to only issue an OFO when MGE's interstate pipeline has issued an OFO, or in the case of a genuine system operational emergency. (Haubensak Rebuttal, p. 4, ll. 7-23; Haubensak Surrebuttal, p. 9, ll. 1-8.)

Other Transportation Tariff Issues

Some interstate pipelines allow for natural gas imbalances to be carried over to the next month. MGE can certainly take advantage of this provision. However, the proposed MGE tariff does not allow for marketers and customers purchasing their own gas supplies on the MGE system to receive this same benefit.

Requiring the marketer to be cashed out on a monthly basis when not required by the interstate pipeline results in the marketer being penalized on the cash-out pricing as explained starting on page 61.1 of MGE's proposed new transportation tariff. If the marketer under-nominates (nominates less gas than is actually delivered to its customers), the marketer must pay to MGE a *much* higher price for the extra gas it needed than the price MGE must pay to the marketer if the marketer *under*-nominates (nominates more gas than its transportation customers receive). (Haubensak Direct, p. 13, ll. 7-18.)

If MGE can carry-over its imbalances to the next month with its interstate pipeline, but the marketer cannot do so with MGE, MGE stands to unfairly benefit at the expense of the marketer and of transportation customers. This is another example of MGE putting unnecessary restrictions in its tariff to present a barrier to customers wanting to receive transportation service. (Haubensak Direct, p. 13, ll. 18 - 23.)

Staff makes a totally erroneous and unsubstantiated statement in its Staff Report in this case, on page 21, line 3: “The ability of transport customers to buy and sell gas from MGE is far more beneficial to the transport customer than to MGE or its ‘firm’ customers.” This statement is simply not accurate. With MGE’s proposed transportation tariff changes, endorsed by the Staff, MGE will always be able to recover any incremental costs or any fluctuations in gas prices caused by transportation customer activity. However, the proposed changes, coupled with the ability to call an OFO without the applicable pipeline calling an OFO, means that at times MGE will be unfairly charging costs to the transportation customers by overcharging when marketers’ nominations are less than actual deliveries to their customers, or underpaying when marketers’ nominations are greater than actual deliveries to their customers. With the ability to call an OFO whenever they want, coupled with the lower tolerances for cash-outs, MGE is effectively penalizing marketers and other transportation customers and giving themselves much more freedom to have significant fluctuations between how much gas they purchase for their system supply sales customers and how much gas they deliver to them. (Haubensak Rebuttal, p. 2. l. 15 – p. 3, l. 10.)

WHEREFORE, Constellation NewEnergy-Gas Division, LLC, respectfully submits this Statement of Positions/Prehearing Brief to the Missouri Public Service Commission in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document has been served electronically on the Office of Public Counsel at opcservice@ded.mo.gov, on the General Counsel's office at gencounsel@psc.mo.gov, and on all counsel of record this 22nd day of October 2009.

/s/ William D. Steinmeier

William D. Steinmeier