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ORIGINAL

September 19, 2002

FILED<sup>3</sup>

SEP 19 2002

Missouri Public Service Commission  
Attn: Secretary of the Commission  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, Mo. 65102-0360

Missouri Public  
Service Commission

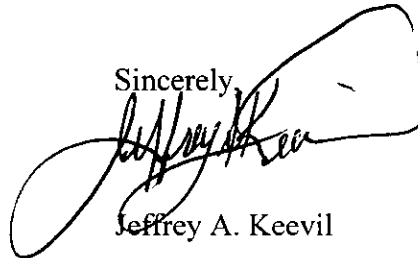
RE: Case Nos. GR-2001-382, GR-2000-425, GR-99-304 and GR-98-167

Dear Mr. Roberts:

Enclosed for filing in the above-referenced cases are an original and the appropriate number of copies of an APPLICATION FOR REHEARING, RECONSIDERATION AND/OR CLARIFICATION on behalf of Riverside Pipeline Company, L.P., Mid-Kansas Partnership and Kansas Pipeline Company.

Copies of this filing have on this date been mailed or hand-delivered to counsel of record. Thank you for your attention to this matter.

Sincerely,



Jeffrey A. Keevil

JAK/er  
Enclosures  
cc: counsel of record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>  
SEP 19 2002

Missouri Public  
Service Commission

In the Matter of Missouri Gas Energy's )  
Purchased Gas Adjustment Tariff Revisions ) Case No. GR-2001-382  
To be Reviewed in its 2000-2001 Actual )  
Cost Adjustment. )

In the Matter of Missouri Gas Energy's )  
Purchased Gas Cost Adjustment Factors ) Case No. GR-2000-425  
To be Reviewed in its 1999-2000 Actual )  
Cost Adjustment. )

In the Matter of Missouri Gas Energy's )  
Purchased Gas Cost Adjustment Factors ) Case No. GR-99-304  
To be Reviewed in its 1998-1999 Actual )  
Cost Adjustment. )

In the Matter of Missouri Gas Energy's )  
Purchased Gas Cost Adjustment Tariff ) Case No. GR-98-167  
Revisions to be Reviewed in its 1997-1998 )  
Actual Cost Adjustment. )

**APPLICATION FOR REHEARING,  
RECONSIDERATION AND/OR CLARIFICATION**

**COME NOW** Riverside Pipeline Company, L.P. ("RPC"), Mid-Kansas Partnership ("MKP") and Kansas Pipeline Company ("KPC") (collectively "Applicants"), pursuant to Section 386.500 RSMo and 4 CSR 240-2.160, and for their Application for Rehearing, Reconsideration and/or Clarification of the Commission's Order Consolidating Cases, Finding Jurisdiction to Proceed, and Directing the Parties to File a Proposed Procedural Schedule issued on September 10, 2002, in the above-captioned cases respectfully state as follows:

1. On September 10, 2002, the Commission issued an Order Consolidating Cases, Finding Jurisdiction to Proceed, and Directing the Parties to File a Proposed

Procedural Schedule (the "Order") in this case, with an effective date of September 20, 2002. The Order is unlawful, unjust, unreasonable, arbitrary and capricious, an abuse of discretion, not supported by competent and substantial evidence on the record and deprives Applicants of their rights to due process and equal protection as guaranteed by the Missouri and United States Constitutions for the reasons set out below.

2. The Commission erred in concluding that the filed-rate doctrine does not preclude the Commission from considering the disallowance/adjustment proposed by Staff, and erred to the extent that it concluded that the "Pike County Doctrine" allows it to consider the disallowance/adjustment proposed by Staff.

The Commission appears to base its erroneous conclusion on the belief that the question of "the ability, or inability, of MGE to avoid paying MKP/RPC's rates" is irrelevant to this question. However, both this Commission and the Missouri Court of Appeals have previously recognized that the existence of the Pike County Doctrine, which the Commission refers to in the Order as an *exception* to the filed-rate doctrine, depends upon the alternatives available. *See, e.g., American-National Can Co. v. Laclede Gas Co.*, 30 Mo. P.S.C. (N.S.) 32 (1989); *State of Missouri ex rel. Midwest Gas Users' Association v. Public Service Commission*, 976 S.W.2d 485, 489 (Mo. Ct. App. 1998). As the Commission determined in Case No. GR-96-450, MGE had no alternatives at the relevant time, therefore Pike County does not apply. The Commission's conclusion that that the filed-rate doctrine does not preclude the Commission from considering the disallowance/adjustment proposed by Staff, and to the extent that it concluded that the "Pike County Doctrine" allows it to consider the disallowance/adjustment proposed by Staff, is incorrect.

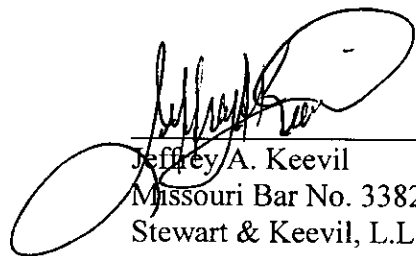
The Commission's erroneous conclusion also appears, on page 7 of the Order, to be based on a mistaken belief that *factual* matters, such as whether MGE had alternatives, have no bearing on its jurisdiction. However, any jurisdictional determination is based on several factual matters, for example such as, in the context of this case and the issue of the filed-rate doctrine, whether MGE is a "gas corporation" and "public utility" subject to the jurisdiction of the Commission, and whether the rates of the Applicants are regulated by the FERC. While there appears to be no dispute concerning these factual matters, they are nevertheless factual matters which have a clear bearing on Commission jurisdiction and the filed-rate doctrine. Therefore, the Commission's conclusion that whether MGE had alternatives is irrelevant to the filed-rate doctrine and Pike County Doctrine simply because the Commission sees the question of whether MGE had alternatives as a factual matter is clearly incorrect.

Also, as stated above, the Commission's Order refers to the Pike County Doctrine as an *exception* to the filed-rate doctrine (*See* Order at page 5). As an *exception* to the filed-rate doctrine, it was and is incumbent upon Staff, as the party advocating the exception, to show that the exception applies. This they did not, and could not, do, *i.e.*, they did not and could not show MGE had less costly alternatives available, given the Commission's decision in Case No. GR-96-450. Staff having failed to show that the *exception* applies, the Commission erred to the extent that it found the exception to apply.

Furthermore, to the extent that the Commission found the exception to apply, such determination was not (and could not be, given the Commission's decision in Case No. GR-96-450) based on competent and substantial evidence on the record of these consolidated proceedings, no evidence having been received in these proceedings.

WHEREFORE, Applicants respectfully request that the Commission issue an order (i) granting rehearing of the Order issued herein on September 10, 2002, and (ii) determining that the filed-rate doctrine precludes the Commission from considering the disallowance/adjustment<sup>1</sup> proposed by Staff. **In the alternative**, Applicants request the Commission issue an order clarifying that the Order does not finally resolve the filed-rate doctrine issue for purposes of these cases and does not preclude the parties from further addressing the issue of the filed-rate doctrine in these cases.

Respectfully submitted,



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PIPELINE COMPANY, RIVERSIDE  
PIPELINE COMPANY, L.P. AND MID-  
KANSAS PARTNERSHIP

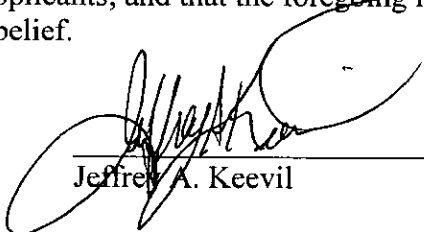
VERIFICATION

STATE OF MISSOURI     )  
                                  )  
COUNTY OF BOONE     )     ss

I, Jeffrey A. Keevil, being first duly sworn verify that I: am an attorney for Riverside Pipeline Company, L.P., Mid-Kansas Partnership and Kansas Pipeline

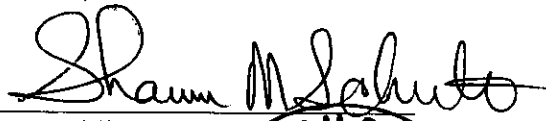
<sup>1</sup> The proposed adjustment at issue for purposes of the filed-rate doctrine is Staff's proposed MKP/RPC contract adjustment. The Commission appropriately and correctly determined in the Order that it would wait for a judicial resolution of the appeal arising out of Case No. GR-96-450 before proceeding further on the proposed MKP/RPC contract adjustment, except for the Commission's conclusions regarding the applicability of the filed-rate doctrine.

Company ("Applicants"), licensed to practice law in the State of Missouri; have been authorized to file the foregoing on behalf of Applicants; and that the foregoing is correct to the best of my knowledge, information and belief.

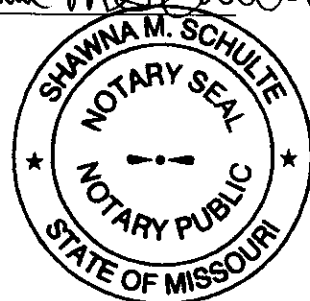
  
\_\_\_\_\_  
Jeffrey A. Keevil

Subscribed and sworn to before me this 19th day of September, 2002.

Shawna M. Schulte  
Notary Public Notary Seal  
STATE OF MISSOURI  
Boone County

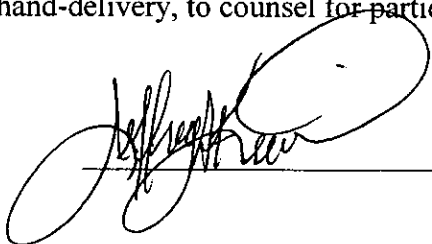


My Commission expires: ~~My Commission Expires Jan 13, 2004~~



**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing pleading was served by placing same in first-class mail, postage paid, or by hand-delivery, to counsel for parties of record on this 19th day of September, 2002.

  
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