

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

In the Matter of Southern Union Company)	
d/b/a Missouri Gas Energy, Sigma)	
Acquisition Corporation and Energy)	
Transfer Equity, L.P., for an Order)	Case No. GM-2011-0412
Authorizing them to Perform in)	
Accordance with a Merger Agreement and)	
to Undertake Related Transactions.)	

**PUBLIC COUNSEL’S RESPONSE TO THE
NON-UNANIMOUS STIPULATION AND AGREEMENT**

COMES NOW the Missouri Office of the Public Counsel (OPC) and for its Response to the Non-Unanimous Stipulation and Agreement states as follows:

1. On February 16, 2012, the Public Service Commission’s (“PSC” or “Commission”) Staff entered into a Non-Unanimous Stipulation and Agreement (“Stipulation”) with Southern Union Company d/b/a Missouri Gas Energy (“Southern Union” or “MGE”), Sigma Acquisition Corporation (“Sigma”) and Energy Transfer Equity, L.P. (“ETE”). The purpose of the Stipulation is to resolve issues regarding the merger request filed by Southern Union, Sigma and ETE.

2. The Office of the Public Counsel (“OPC”) participated in settlement discussions with the parties, but ultimately determined that it would not sign the Stipulation. OPC submits this Response to the Stipulation to explain OPC’s reasons for not agreeing to the terms of the Stipulation.

3. OPC’s primary concern with the Stipulation is its reliance upon commitments from MGE to ensure that there is no public detriment as a result of the proposed transaction. In the Stipulation, MGE “commits to take all reasonable efforts to

eliminate any potential detriment that may result from the Transaction.”¹ To this end, MGE commits to “ensure that the retail distribution rates for MGE ratepayers shall not increase as a result of the Transaction, and Southern Union agrees never to recommend...an increase to the cost of service for MGE as a result of the Transaction.”² Unfortunately, MGE’s credibility in making and standing behind consumer-protecting commitments eroded with MGE’s recent attempt to renege on a similar consumer-protecting commitment made by MGE in 2003 when Southern Union Company acquired Panhandle Eastern Pipeline Company (“Panhandle”). As a result, OPC questions whether MGE will honor the commitments in the Stipulation.

4. In 2003, MGE entered into a Stipulation and Agreement (“Agreement”) with OPC and the Staff of the Commission that resolved Southern Union’s application to acquire Panhandle. A key condition in the Agreement that allowed the parties to resolve the case in favor of approving MGE’s acquisition application was that MGE would maintain the existing price discount on natural gas acquired from Panhandle as long as MGE and Panhandle were affiliated:

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 provision does not alter MGE’s obligation to obtain the best terms for gas transportation that it can... This paragraph 6.A. shall apply for only so long as MGE is an affiliate of SUPC [Southern Union Panhandle Corporation] and Successor Entities.”³

¹ Non-Unanimous Stipulation and Agreement, p. 10.

² *Id.*

³ Stipulation and Agreement, Case Number GM-2003-0238, Filed March 24, 2003, pp. 12-13.

Appendix 2 to the Agreement made it clear that this “discount-preservation mechanism” would continue to apply even if MGE negotiated a new rate with its affiliate Panhandle:

It is also understood that this discount-preservation mechanism is intended to ensure that MGE’s current discount percentage on Panhandle...is not exceeded, for purposes of calculating MGE’s PGA rates, as a result of subsequent negotiations between MGE and SUPC.⁴

5. MGE’s counsel, Mr. Robert Hack, confirmed this commitment when questioned by the Commission during a March 26, 2003 presentation:

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.

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.

...

COMMISSIONER GAW: If you get to that point where the contracts are renegotiated, if it - - it if were feasible or if it were possible to get a lower rate, discount rate - -

MR. HACK: Right.

COMMISSIONER GAW: - - would the PGA then reflect that?

MR. HACK: Absolutely.

⁴ *Id.*, Appendix 2, Non-Proprietary.

COMMISSIONER GAW: But if there is a higher rate, you can't negotiate the same rate, the PGA would still reflect the current, the current discount?

MR. HACK: Correct.

COMMISSIONER GAW: Here's the other side that I want to understand. Is it foreseeable that the FERC could suggest if, for instance, discounts given to other LDCs were not as good, that the FERC could say, you cut a special deal here and we're not going to allow that discount? Is it possible that that could occur with the rules contemplated on affiliate transactions that are out there?

MR. HACK: Well, I don't think that the affiliate rules would change the result one way or the other.

COMMISSIONER GAW: All right.

MR. HACK: If there's a special deal that can't be justified as, quote, due discrimination, then there is that kind of possibility, but - - and that's why we structured the condition here the way we did, to be in agreement to MGE not to pass on any more than the discount level. Whatever the negotiations are going to be, they're going to be based upon the Panhandle's need to comply with the law.

COMMISSIONER GAW: Yeah. Okay. So if they - - if Panhandle has to raise its rates because of that scenario - - and I realize what may be very farfetched - - but in that event, the PGA would actually reflect the change under this agreement or not?

MR. HACK: It would not. We would pay the rate, but the PGA rate wouldn't reflect it. They would charge whatever they charge.

COMMISSIONER GAW: Okay. Mr. Micheel?

MR. MICHEEL:⁵ The obligation is MGE's obligation. The obligation in the stipulation has nothing to do with Panhandle Eastern.

COMMISSIONER GAW: I understand that concept. I wanted to make sure that I was tracking it, and I - - I appreciate the explanation, because that clears it up for me a lot. The current - - and, again, that's - - that goes on indefinitely as long - - as long as this affiliation exists?

⁵ Mr. Micheel was counsel for the Office of the Public Counsel.

MR. HACK: I can tell you that's not something we were real wild about, but - -

COMMISSIONER GAW: I understand.

MR. FRANSON:⁶ But they did, of course, agree to that.⁷

6. Despite MGE's written commitment in the 2003 Agreement, and MGE's 2003 verbal commitment made on the record by Mr. Hack (now MGE's Chief Operating Officer), MGE recently asked the Commission to allow MGE to renege on its obligation to continue the Panhandle discount. That case, Case Number GE-2011-0282, is currently pending before the Commission.

7. MGE's unabashed willingness to back out of its past commitments should raise red flags with the Commission. MGE's commitments are no longer credible. How long will MGE follow-through on its promise in the Stipulation that it "shall never recommend an increase to the cost of capital for MGE as a result of this Transaction"?⁸ How long will MGE follow-through on its promise to "take all reasonable steps...to eliminate any other detriment resulting from the transaction"?⁹ It is impossible to know the answers to these questions. Unfortunately, Public Counsel has little faith in MGE's willingness follow through on these commitments. For these reasons, OPC is not a party to the Stipulation.

8. OPC does not seek an evidentiary hearing in this matter and believes the Stipulation is ready for Commission consideration. OPC only requests that the Commission maintain the non-unanimous status of the Stipulation.

⁶ Mr. Franson was counsel for the Staff of the Commission.

⁷ Case Number GM-2003-0238, Transcript of Proceedings, Presentation of Stipulation & Agreement, March 26, 2003, Volume 4, pp. 83-88.

⁸ Stipulation, p. 15.

⁹ *Id.* p. 21.

WHEREFORE, the Office of the Public Counsel respectfully submits this
Response to the Non-Unanimous Stipulation and Agreement.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all counsel of record this 23rd day of February 2012:

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