

Exhibit No.: _____
Issue: Accounting Authority
Order
Witness: Michael R. Noack
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Missouri Gas Energy
Case No.: GU-2005-0095
Date Filed: February 15, 2005

MISSOURI PUBLIC SERVICE COMMISSION

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MISSOURI GAS ENERGY

CASE NO. GU-2005-0095

Missouri Public
Service Commission

SURREBUTTAL TESTIMONY

OF

MICHAEL R. NOACK

Jefferson City, Missouri

February 2005

Exhibit No. 3
Case No(s) GU-2005-0095
Date 3-8-05 Rptr TM

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri Gas)
Energy, a Division of Southern Union Company,)
for an Accounting Authority Order Concerning the)
Kansas Property Tax for Gas in Storage)

Case No. GU-2005-0095

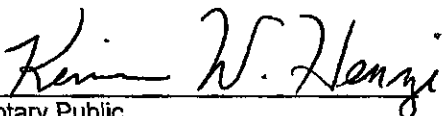
AFFIDAVIT OF MICHAEL R. NOACK

STATE OF MISSOURI)
)
COUNTY OF JACKSON) ss.

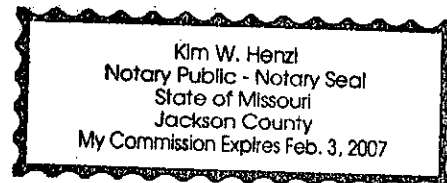
Michael R. Noack, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


MICHAEL R. NOACK

Subscribed and sworn to before me this 15th day of February 2005.


Notary Public

My Commission Expires: Feb. 3, 2007



**SURREBUTTAL TESTIMONY OF MICHAEL R. NOACK
ON BEHALF OF
MISSOURI GAS ENERGY
GU-2005-0095**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Michael R. Noack, 3420 Broadway, Kansas City, Missouri.

3

4 **Q. ARE YOU THE SAME MICHAEL R. NOACK WHO PREVIOUSLY SUBMITTED**
5 **DIRECT AND REBUTTAL TESTIMONY IN THIS PROCEEDING?**

6 A. Yes.

7

8 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

9 A. I will address the rebuttal testimony of Office of the Public Counsel ("OPC") witness Bolin
10 opposing MGE's request that the Missouri Public Service Commission issue an Accounting
11 Authority Order to permit deferral of property taxes assessed on gas stored on MGE's behalf
12 in the State of Kansas. I will also respond to Ms. Bolin's discussion of the FERC Uniform
13 System of Accounts (USOA), her discussion of Generally Accepted Accounting Principles
14 (GAAP) and finally address her discussion of the proper amount of property taxes built into
15 MGE's current rates.

16

17 **Q. ON PAGE 3 OF HER REBUTTAL TESTIMONY, MS. BOLIN STATES THAT**
18 **MGE'S REQUEST FOR AN AAO IS SIMPLY AN ATTEMPT TO INSULATE ITS**
19 **SHAREHOLDERS FROM REGULATORY LAG ASSOCIATED WITH THE**

1 **CHANGE IN ONLY ONE EXPENSE ITEM. DO YOU AGREE WITH THAT**
2 **STATEMENT?**

3 A. No. MGE initially requested that these new Kansas taxes be included in the cost of service
4 in Case No. GR-2004-0209 when all cost-of-service items were under consideration, but later
5 at the hearing agreed that it would be reasonable for the Commission to grant an AAO
6 instead due to MGE's intent to challenge the legality of these new Kansas taxes. Ms. Bolin
7 testified during the True-Up Hearing in Case No. GR-2004-0209 that the Commission should
8 not include these costs in rates because these new Kansas taxes did not meet the known and
9 measurable standard. (Surrebuttal Schedule MRN-1, page 2559, line 20 through page 2560,
10 line 13 of transcript from GR-2004-0209) Now, in this proceeding, when it is convenient for
11 OPC to take a position that is diametrically opposed to this testimony she offered in July
12 2004, Ms. Bolin argues that because these new Kansas taxes are "normal and recurring"
13 expense items, they are not appropriate for deferral authority.

14
15 **Q. WHAT WERE THE COMMISSION'S FINDINGS RELATED TO THE PROPERTY**
16 **TAXES ON GAS IN STORAGE IN KANSAS IN CASE NO. GR-2004-0209?**

17 A. The Commission concluded that the new Kansas property taxes on gas in storage would not
18 be included in rates from the GR-2004-0209 case. That was not all of the comments made
19 by the Commission on this issue however. The Commission also added the following
20 language to the findings:

21 "This is a harsh result for MGE, as it will likely be paying taxes that are not
22 included in its cost of service for calculation of rates in this case. An
23 accounting authority order allowing MGE to defer those tax payments for
24 possible recovery in its next rate case would be a means of avoiding that
25 result. However, this case is not the appropriate forum for deciding whether

1 to grant MGE such an AAO. The other parties have not been given a
2 reasonable opportunity to present testimony and arguments to the
3 Commission regarding this issue. If MGE wishes to request an AAO, it may
4 file a separate application to which the Commission will give due
5 consideration.”
6

7 The Commission did not approve an AAO in the rate case, but did acknowledge that the
8 property taxes were being assessed and that if in fact MGE lost the appeal the tax expense
9 would not be recovered through rates absent an AAO.
10

11 **Q. ON PAGE 3 OF HER REBUTTAL TESTIMONY, MS. BOLIN DISCUSSES THE**
12 **FERC UNIFORM SYSTEM OF ACCOUNTS (USOA) AND THE FACT THAT THE**
13 **COMMISSION REQUIRES NATURAL GAS COMPANIES IN THE STATE OF**
14 **MISSOURI TO FOLLOW THE USOA. DOES MGE FOLLOW THE FERC USOA?**

15 **A.** MGE follows the FERC USOA and the associated instructions, except where the
16 Commission has ordered a departure from the USOA. In fact at the present time, the new
17 Kansas property taxes assessed on gas in storage have been booked to Account 408.1 in
18 accordance with the USOA and generally accepted accounting principles (“GAAP”), even
19 though MGE has not yet had to pay those new taxes.

20 **Q. DO YOU AGREE WITH MS. BOLIN’S DISCUSSION OF WHEN AN AAO SHOULD**
21 **BE GRANTED FOUND ON PAGE 4, LINE 11 THROUGH PAGE 6, LINE 22 OF**
22 **HER REBUTTAL TESTIMONY?**

23 **A.** No. However, instead of repeating my thoughts regarding why this AAO should be granted,
24 I believe that the Commission should take notice of Staff witness Hyneman’s direct

1 testimony in this case (from Page 3, Line 7 through Page 6, Line 22), where he explains why
2 the Missouri Commission Staff believes that the AAO should be granted.
3

4 **Q. IN HER REBUTTAL TESTIMONY, BEGINNING ON PAGE 6, LINE 23 AND**
5 **CONTINUING THROUGH PAGE 7, LINE 21, MS. BOLIN SUGGESTS THAT**
6 **SINCE MGE HAS NOT ACTUALLY PAID THE TAX THE REQUEST FOR THE**
7 **AAO IS PREMATURE. DO YOU AGREE WITH MS. BOLIN'S STATEMENTS?**

8 A. No. In compliance with GAAP, MGE has had to record the property taxes as an expense in
9 the period ended December 31, 2004. The \$1.7 million in expense is included in account
10 408.1-Taxes Other than Income Taxes, and will remain there unless the Commission grants
11 the request for an AAO. Other statements of Ms. Bolin regarding MGE's intention to fight
12 these taxes vigorously are accurate.
13

14 **Q. ON PAGE 8 OF HER REBUTTAL TESTIMONY, MS. BOLIN CLAIMS THAT MGE**
15 **PAID \$8,214,899 IN PROPERTY TAXES (EXCLUDING THE TAXES ON THE GAS**
16 **IN STORAGE) FOR THE YEAR 2004 WHEN IN FACT \$8,523,776 WAS INCLUDED**
17 **IN CURRENT RATES. IS THAT A CORRECT COMPARISON OF COSTS WITH**
18 **REVENUES FROM THE RATE CASE?**

19 A. No it is not. I have prepared Schedule MRN-2 which is a comparison of the property taxes
20 actually paid beginning August 6, 2001 (when rates went into effect from Case No. GR-
21 2001-292) through December 31, 2004 (when the new rates from Case No. GR-2004-0209
22 were in effect) with the amount of property taxes which were included in the rates charged

1 customers for that same time period. As shown on Schedule MRN-2, MGE under-collected
2 property taxes by \$3,080,383 for that same time period.

3
4 **Q. ON PAGE 10, LINE 5, MS. BOLIN SUGGESTS THAT MGE IS ASKING THE**
5 **COMMISSION TO GRANT AN AAO SO THAT MGE CAN BETTER MANAGE ITS**
6 **REPORTED EARNINGS WHILE THE COMMISSION'S GOAL SHOULD BE TO**
7 **GIVE THE COMPANY AN OPPORTUNITY TO EARN A FAIR RATE OF**
8 **RETURN. IS THIS WHAT MGE IS REQUESTING?**

9 **A.** No. As pointed out earlier in my testimony, the Commission found in Case No. GR-2004-
10 0209 that if MGE loses its appeal of the legality of these new taxes, MGE will be paying out
11 amounts for these new taxes that are not included in the cost of service for calculation of
12 rates. By granting the AAO, the Commission will be accomplishing the goal to which Ms.
13 Bolin referred of setting rates to give MGE the opportunity to earn a fair and reasonable
14 return. MGE is not attempting to "manage" its reported earnings; MGE is attempting to earn
15 a fair and reasonable return.

16
17 **Q. BEGINNING ON PAGE 10, LINE 10 THROUGH PAGE 12, LINE 19 OF HER**
18 **REUTTAL TESTIMONY, MS. BOLIN SEEMS TO BE TESTIFYING THAT BY**
19 **GRANTING AN AAO THE COMMISSION WILL IN SOME WAY NOT ONLY BE**
20 **BREAKING TRADITIONAL RATEMAKING PRACTICES, BUT ALSO BE**
21 **BREAKING GAAP AND USOA RULES BY VIOLATING THE MATCHING**
22 **PRINCIPLE. DO YOU AGREE WITH MS. BOLIN'S REASONING?**

1 A. No I do not. The purpose of the AAO is to defer those costs to the time period in which the
2 revenues associated with those costs will be collected. If the property taxes were not
3 deferred, but the Commission allowed MGE to collect some portion of those taxes in the
4 next rate case, then there would be a violation of the matching principle. By deferring now
5 and amortizing the deferral to expense and including that amortization in rates in the next
6 rate case, the Commission will be doing exactly what Ms. Bolin says should be done;
7 matching revenues with associated costs.

8

9 **Q. DO YOU AGREE WITH MS. BOLIN ON WHEN THE AMORTIZATION SHOULD**
10 **BEGIN IF THE AAO IS GRANTED?**

11 A. No. She is simply agreeing with Staff on when the amortization should begin if the AAO is
12 granted. I have previously addressed the testimony of Staff witness Hyneman on this subject
13 in my rebuttal testimony and have no changes to that testimony at the present time.

14

15 **Q. DOES THAT CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

16 A. Yes it does.

1 it's appropriate to take new issues that could
2 have or should have been in the original case and
3 raise those issues in a true-up proceeding?

4 A I said I thought the true-up
5 proceeding is -- my understanding is true-up
6 proceeding is the methodologies are same, numbers
7 are updated, so I do not believe so. This is just
8 a number update.

9 Q Do you have a view of whether or not
10 this is raising an entirely new issue?

11 A Yes, it is.

12 Q And do you think that's appropriate?

13 A I do not think it is appropriate.

14 Q Do you think it is appropriate for
15 an accounting authority order to be granted for
16 this item?

17 A No, I do not. Like I said, I do not
18 think property taxes are anything unusual or
19 extraordinary about them.

20 Q Do you know if -- would you consider
21 these property taxes to be known and measurable?
22 If not, why not; if so, why?

23 A I do not believe they're known and
24 measurable. I have not seen the final bill from
25 the taxing authority on this. There's even

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1 question if MGE -- if they're going to appeal this
2 law of -- challenge it. They may not have to pay
3 this in the future. There's lots of uncertainties
4 here.

5 Q And do you have an opinion about
6 whether items should be known and measurable
7 before they're included in a revenue requirement?

8 A I think they should be known and
9 measurable to be included in a revenue
10 requirement.

11 Q Do you believe that the property tax
12 expense is known?

13 A It is not known and measurable yet.

14 Q Okay. Mr. Hack entered into
15 evidence today Exhibit 51, the billings from
16 Kasowitz, Benson, Torres & Friedman. Do you
17 recall that?

18 A Yes, I do.

19 Q And you did not include those
20 billings in your true-up testimony. Is that -- my
21 understanding correct on that?

22 A That is correct. My true-up
23 testimony was based on using estimates that MGE
24 provided.

25 Q When did you receive the Kasowitz,

Surrebuttal Schedule MRN-2

Missouri Gas Energy
Actual Property Taxes vs. Property Taxes in Rates

Line No.		
	<u>Case GR-2001-292</u>	
1	Date rates went into effect	6-Aug-01
	<u>2001 Taxes</u>	
2	Percent of 2001 rates were in effect	40.27%
3	Property taxes included in Rates	<u>\$ 7,005,609</u>
4	Portion applicable to GR-2001-292 rates (Ln 2 x Ln 3)	<u>\$ 2,821,437</u>
5	Actual 2001 Property Taxes	\$ 7,769,641
6	Less Taxes Deferred by SLRP AAO	<u>\$ -</u>
7	Total 2001 Property Taxes	<u>\$ 7,769,641</u>
8	Amount Applicable to GR-2001-292 rates (Ln 2 x Ln 7)	<u>\$ 3,129,143</u>
9	Amount Over (Under) Collected 2001 (Ln 4 - Ln 8)	\$ (307,706)
	<u>2002 Taxes</u>	
10	Total 2002 Property Taxes	\$ 7,744,982
11	Less Taxes Deferred by SLRP AAO	<u>\$ 34,980</u>
12	Total 2002 Property Taxes to Collect thru Rates	<u>\$ 7,710,002</u>
13	Property taxes included in Rates	<u>\$ 7,005,609</u>
14	Amount Over (Under) Collected 2002 (Ln 13 - Ln 12)	\$ (704,393)
	<u>2003 Taxes</u>	
15	Total 2003 Property Taxes	\$ 8,372,743
16	Less Taxes Deferred by SLRP AAO	<u>\$ 134,820</u>
17	Total 2003 Property Taxes to Collect thru Rates	<u>\$ 8,237,923</u>
18	Property taxes included in Rates	<u>\$ 7,005,609</u>
19	Amount Over (Under) Collected 2003 (Ln 40 - Ln 38)	\$ (1,232,314)
	<u>2004 Taxes</u>	
20	Property taxes included in Rates in GR-2004-0209	<u>\$ 8,523,776</u>
21	Date New Rates went into effect	2-Oct-04
22	Percent of 2004 old rates were in effect	75.41%
23	Percent of 2004 new rates were in effect	24.59%
24	Total 2004 Property Tax Expense to Collect thru Rates	<u>\$ 8,214,899</u>
25	Property Taxes included in Rates from GR-2004-0209 (Ln 20 x Ln 23)	\$ 2,096,010
26	Property Taxes included in Rates from GR-2001-292 (Ln 2 x Ln 22)	<u>\$ 5,282,918</u>
27	Total Property Taxes Included in Rates in 2004	<u>\$ 7,378,929</u>
28	Amount Over (Under) Collected 2004 (Ln 27 - Ln 24)	\$ (835,970)
29	Total Over (Under) Collected from 8/6/01 through 12/31/04	<u>\$ (3,080,383)</u>