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EXHIBIT

Exhibit No.: _____
Issue(s): Regulatory Commission Expense
Chillicothe Former Manufactured Gas Plant
Remediation Pipeline Right-Of-Way Clearing Plan
Witness: Ted Robertson
Type of Exhibit: Direct
Sponsoring Party: Public Counsel
Case Number: GR-2009-0434
Date Testimony Prepared: October 20, 2009

DIRECT TESTIMONY
OF
TED ROBERTSON

Submitted on Behalf of
the Office of the Public Counsel

EMPIRE DISTRICT GAS COMPANY
Case No. GR-2009-0434

** Denotes Highly Confidential Information that has been redacted **

October 20, 2009

NP

CPC Exhibit No. 25 NP
Case No(s) GR-2009-0434
Date 1-08-10 Rptr KF

TABLE OF CONTENTS

Testimony	Page
Introduction	1
Regulatory Commission Expense	3
Chillicothe FMGP Remediation	20
Pipeline ROW Clearing Plan	25

1
2
3
4
5
6
7

**DIRECT TESTIMONY
OF
TED ROBERTSON**

**EMPIRE DISTRICT GAS COMPANY
CASE NO. GR-2009-0434**

8 **I. INTRODUCTION**

9 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

10 A. Ted Robertson, P. O. Box 2230, Jefferson City, Missouri 65102.

11
12 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

13 A. I am employed by the Office of the Public Counsel of the State of Missouri (OPC or
14 Public Counsel) as a Public Utility Accountant III.

15
16 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND OTHER
17 QUALIFICATIONS.

18 A. I graduated from Southwest Missouri State University in Springfield, Missouri, with
19 a Bachelor of Science Degree in Accounting. In November, 1988, I passed the
20 Uniform Certified Public Accountant (CPA) Examination, and obtained CPA
21 certification from the State of Missouri in 1989. My Missouri CPA license number is
22 2004012798.

23
24 Q. WHAT IS THE NATURE OF YOUR CURRENT DUTIES WHILE IN THE EMPLOY
25 OF THE PUBLIC COUNSEL?

NP

1 A. Under the direction of the OPC Chief Public Utility Accountant, Mr. Russell W.
2 Trippensee, I am responsible for performing audits and examinations of the books
3 and records of public utilities operating within the State of Missouri.
4

5 Q. HAVE YOU RECEIVED SPECIALIZED TRAINING RELATED TO PUBLIC
6 UTILITY ACCOUNTING?

7 A. Yes. In addition to being employed by the Office of the Public Counsel since 1990, I
8 have attended the National Association of Regulatory Utility Commissioners
9 (NARUC) Annual Regulatory Studies Program at Michigan State University, and I
10 have also participated in numerous training seminars relating to this specific area of
11 accounting study.
12

13 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI PUBLIC
14 SERVICE COMMISSION?

15 A. Yes, I have. Please refer to Schedule No. TJR-1, attached to this direct testimony,
16 for a listing of cases in which I have previously submitted testimony before the
17 Missouri Public Service Commission (MPSC or Commission).
18

19 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

20 A. The purpose of this direct testimony is to address the Public Counsel's positions
21 regarding the determination of an appropriate level of costs associated with Empire
22 District Gas Company's (Empire, EDG or Company) Regulatory Commission

1 Expense, Chillicothe Former Manufactured Gas Plant Remediation (FMGP) and
2 Pipeline Right-Of-Way (ROW) Clearing Plan.

3
4 **II. REGULATORY COMMISSION EXPENSE**

5 Q. WHAT IS THE ISSUE?

6 A. The issue is how to determine the proper amount of regulatory commission
7 expense Company should be authorized to include in the development of future
8 rates.

9
10 Q. PLEASE SUMMARIZE THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE.

11 A. Public Counsel's position is that the amount of regulatory commission expense,
12 included in the development of Company's rates, should only include a normalized
13 annual level of charges that directly benefit ratepayers. Since both shareholders
14 and ratepayers benefit from the activities from which these charges derive, both
15 parties should be held responsible for their payment.

16
17 Q. WHAT ARE THE TYPES OF COSTS NORMALLY BOOKED BY COMPANY AS
18 REGULATORY COMMISSION EXPENSE?

19 A. Since this is the Company's first general rate increase case after acquiring the gas
20 operations from Aquila, Inc., the only costs booked to-date relate to its annual
21 MPSC Assessment and the instant rate case. The assessment costs have been
22 booked in Federal Energy Regulatory Commission (FERC) Uniform System of

1 Accounts (USOA) expense account No. 928, while the costs to process the general
2 rate increase case have been booked to the asset account USOA No. 186.815.

3

4 Q. WILL THE COSTS CURRENTLY BOOKED IN USOA NO. 186.815 ULTIMATELY
5 BE FLOWED THROUGH AS AN EXPENSE IN USOA NO. 928?

6 A. Yes, but only to the extent that they are authorized as a cost of service item by the
7 Commission.

8

9 Q. IS THE PUBLIC COUNSEL RECOMMENDING ANY DISALLOWANCE OF THE
10 COMPANY'S COMMISSION ASSESSMENT?

11 A. No. Public Counsel believes that a small increase in the Commission's assessment
12 is warranted so that the most current assessment received by the Company from
13 the Commission is allowed in the development of rates. Thus, the increase
14 recommended is approximately \$848.00.

15

16 Q. WHAT IS THE TEST YEAR AMOUNT OF GENERAL RATE INCREASE CASE
17 EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS?

18 A. For the Commission ordered test year, twelve months ended December 31, 2008,
19 the balance booked in USOA No. 186.815 is \$22,920 (source: General Ledger).

20

21 Q. WHAT IS THE AMOUNT OF GENERAL RATE INCREASE CASE EXPENSE
22 COMPANY RECORDED IN ITS FINANCIAL RECORDS FOR THE TWELVE

1 MONTHS ENDED JUNE 30, 2009 UPDATE FOR KNOWN AND MEASURABLE
2 COSTS?

3 A. For the twelve months ended June 30, 2009, the balance booked in USOA No.
4 186.815 is \$129,530.35 (source: General Ledger and Company response to MPSC
5 Staff DR No. 101.1).

6
7 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE TEST YEAR OR UPDATE
8 BALANCES BOOKED TO USOA ACCOUNT NO. 186.815 REPRESENT A
9 REASONABLE LEVEL OF GENERAL RATE CASE INCREASE EXPENSE FOR
10 INCLUSION IN THE DEVELOPMENT OF FUTURE RATES?

11 A. No.

12
13 Q. WHAT COSTS ASSOCIATED WITH A GENERAL RATE INCREASE CASE
14 SHOULD BE RECOVERED FROM SHAREHOLDERS AND RATEPAYERS?

15 A. Costs associated with a general rate increase case should first be analyzed to
16 determine if they are prudent, reasonable and necessary. Those that are
17 determined not prudent, reasonable or necessary should not be reimbursed by
18 ratepayers. For example, costs incurred by Company personnel, outside legal and
19 outside consultants that are determined imprudent, unreasonable or unnecessary
20 should be automatically disallowed. In addition, if the utility has employees capable
21 of developing and supporting the case cost of service study (COSS), the cost of
22 hiring of higher-priced outside legal or consultants should not be allowed either.
23 Once the prudent, reasonable and necessary costs of the specific case are

1 determined, the balance should then be split evenly between shareholders and
2 ratepayers as they represent charges associated with activities that benefit both.
3 The ratepayer's allocated portion can then be included in the development of future
4 rates by normalizing the cost commensurate with the Company's average general
5 rate case filing history.

6

7 Q. HOW DO SHAREHOLDERS AND RATEPAYERS BENEFIT FROM THE
8 ACTIVITIES ASSOCIATED WITH A GENERAL RATE INCREASE CASE?

9 A. Customers definitely have an interest in ensuring that their utilities' rates are just
10 and reasonable, which is the ultimate objective of any rate case, whether it
11 results in an increase or decrease in a given utility's rates; however, both
12 shareholders and ratepayers benefit in many ways from a strong stable
13 organization that has competent management at its helm. The utility that is able to
14 respond to all stakeholders with the services and other requirements that they
15 expect necessitates that the utility be able to access debt markets at competitive
16 rates. That entails that the earnings capacity of the utility must be sufficient to fund
17 its construction and operational processes while providing an adequate return to
18 shareholders. In addition, operational processes must be able to fulfill the utility's
19 commitments of safe and reasonably priced service to ratepayers. All of which can
20 only be done if the utility is allowed to recover a reasonable return on its investment
21 and recover prudent, reasonable and necessary expenses. General rate increase
22 cases provide the avenue upon which the utility seeks to obtain the proper revenue
23 requirement (i.e., rates) which will allow it to meet those goals. Furthermore,

1 shareholders benefit even more from any efficiencies that management may be
2 able to incorporate into the organization; thereby, increasing the likelihood of growth
3 in future stock prices and dividends they may receive.

4
5 Q. HAVE YOU REVIEWED COMPANY'S ESTIMATED COSTS TO DEVELOP AND
6 PROCESS THE INSTANT CASE?

7 A. Yes. Company's response to Public Counsel Data Request No. 1007 provided a
8 listing that shows an estimated ** ** may be expended to process the
9 instant case. The breakdown of the costs is as follows:

10 **

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21 Q. IS PUBLIC COUNSEL CONCERNED ABOUT THE LARGE EXPENDITURES
22 COMPANY EXPECTS TO INCUR FOR PROCESSING THE CURRENT
23 GENERAL RATE INCREASE CASE?

24 A. Yes. Public Counsel has become increasingly concerned with the level of rate
25 case expense among utilities in general. For example, costs associated with
26 outside legal representation and consultants is extremely costly and represents
27 the majority of the costs of Company's estimate; however, all of these costs are

1 properly within management's control. As a result, rate case expense, like any
2 other expenditure, is an area where companies should seek to contain costs.

3

4 Q. DOES PUBLIC COUNSEL BELIEVE THAT OUTSIDE LEGAL AND
5 CONSULTANT COSTS HAVE BECOME EXCESSIVE AND THAT THE
6 COMPANY HAS LITTLE INCENTIVE TO CONTROL THESE COSTS?

7 A. Yes. The use of costly outsiders to process and defend the rate increase request
8 is particularly disconcerting when one considers that Company may be able to
9 process the case without hiring outside people. It is likely that many of the
10 Company's employees hold degrees from colleges and universities which likely
11 match or exceed the educational requirements needed to prepare and defend a
12 cost of service study (COSS) - not to mention the combined work experience and
13 acquired skills of all its employees. These employees should be able to perform
14 most, if not all, of the work required. Thus, Company should not see a large
15 additional expenditure for preparing and supporting a COSS request.

16 Companies should be aware that a "pass-through" of rate case expense is not
17 automatic and the Commission should certainly review the expenses for
18 prudence, reasonableness and necessity to ensure that they are not improper or
19 excessive. Especially in today's economic climate.

20

21 Q. IS IT YOUR BELIEF THAT SPECIFIC RATE CASE COSTS ARE NOT BEING
22 PRUDENTLY INCURRED BY THE COMPANY?

1 A. Yes. OPC believes that the Company has not attempted to appropriately control
2 the costs it has estimated to incur for the current case. Company's use of
3 outside legal and consultant services indicates such.

4

5 Q. IS THE COST ASSOCIATED WITH COMPANY'S USE OF OUTSIDE LEGAL
6 AND OUTSIDE CONSULTANT SERVICES EXCESSIVE?

7 A. Yes. In my opinion, the costs are excessive given that it is likely Company
8 employees could have performed the work. Public Counsel believes that the in-
9 house resources should have been utilized to the fullest extent to include legal
10 and other activities for as much of the rate case work as possible before resorting
11 to outside legal and consultants only when necessary.

12

13 Q. DOES PUBLIC COUNSEL BELIEVE THAT THE COMPANY HAS THE PROPER
14 INCENTIVE TO CONTROL THE LEVEL OF EXPENDITURES IT IS INCURRING
15 FOR THE CURRENT GENERAL RATE INCREASE CASE?

16 A. No. Company's management apparently believes that because it decides to
17 incur outside legal and outside consultant costs to assist it in processing its
18 request for a rate increase, those expenditures should be considered and
19 authorized as an automatic recovery from ratepayers. Public Counsel believes
20 that rationale is neither appropriate or reasonable. It is not appropriate because
21 the idea itself results in monopolistic inefficiencies which lead to higher rates than
22 should have actually occurred. The utility should always be actively seeking to

1 reduce its cost structure so that ratepayers do not end up paying rates higher
2 than absolutely necessary, but the indiscriminate incurrence of excessive
3 expenditures runs counter to that goal. Also, it is not reasonable due to the fact
4 that if the expenditures are to be incurred they must be done so with the
5 understanding that they are the most cost-effective alternative and that their
6 incurrence will be scrutinized thoroughly so as to avoid the payment of improper
7 or unreasonable charges. Company's view that it can spend whatever it desires
8 to process its rate increase request, because the expenditures are an entitlement
9 subject to automatic recovery, provides no incentive for the controlling of the
10 costs at issue.

11
12 Q. SHOULD REASONABLE AND NECESSARY EXPENDITURES TO PREPARE
13 AND PRESENT A RATE CASE BE ALLOWED IN THE DETERMINATION OF
14 FUTURE RATES RECOVERED FROM RATEPAYERS?

15 A. Yes; however, ratepayers should be held accountable only for a proportionate
16 share of such expenditures since both ratepayers and shareholders benefit from
17 their incurrence. If the costs incurred are determined to be reasonable and
18 necessary, both ratepayers and shareholders should be responsible for their
19 payment since both parties benefit from these expenditures.

20
21 Q. SHOULD THE COMMISSION SUBSTITUTE ITS JUDGMENT FOR THAT OF
22 THE UTILITY'S MANAGEMENT IN CHOOSING WHICH RATE CASE
23 EXPENSES TO INCUR?

1 A. No. The Commission should not seek to substitute its judgment – or that of any
2 intervenor – for the Company’s in determining which consultant or legal counsel
3 is best suited to serve its interests; however, the need to contain rate case
4 expense should be accorded a high priority for rate case work. In seeking
5 recovery of rate case expense, utilities must provide an adequate justification
6 and showing that their choice of outside services is both reasonable and cost-
7 effective. A utility that seeks to recover rate case expense when it has not
8 properly evaluated its options is not something ratepayers should have to
9 underwrite. Recovery should not be automatic.

10
11 Q. WHAT ROLE SHOULD THE COMMISSION PLAY IN THE COMPANY’S
12 DECISION TO SEEK ASSISTANCE TO DEVELOP AND IMPLEMENT ITS
13 GENERAL RATE INCREASE CASES?

14 A. How a utility processes its rate case is their choice. The Commission’s role is to
15 evaluate that choice. Therefore, the evaluation should recognize that the
16 Company currently has employees whose wages and benefits are treated as
17 operating expenses and paid by its customers and it is probable that a greater
18 *number of these employees could have been utilized to prepare and defend the*
19 Company’s request for the rate increase.

20
21 The ongoing operations of a utility include justifying its rate structure and
22 supporting rate increase requests. Some of Company’s employees presumably
23 have sufficient expertise and familiarity with utility regulation to enable them to

1 assist in the preparation of a COSS and then support their findings before the
2 Commission; thus, Company should be able to prepare and implement a new
3 COSS without the need of making large expenditures for outside legal or
4 consultants. Company should be advised that in order for the expense of outside
5 legal or consultants to be considered allowable rate case expenses they must be
6 incurred in the most efficient and prudent manner possible.
7

8 Q. IS PUBLIC COUNSEL TAKING A NARROW VIEW THAT RATE CASES THAT
9 RESULT IN RATE INCREASES ONLY BENEFIT THE UTILITY'S
10 SHAREHOLDERS BY INCREASING EARNINGS?

11 A. No. Although an argument could certainly be made for that view. The need for
12 a base rate filing is initiated by the utility and driven by its desire to obtain an
13 increase in rates, but an authorized revenue requirement merely gives the utility
14 an opportunity to earn a return on its investments. Increased rates do not
15 necessarily mean higher earnings will be achieved for shareholders. Other
16 benefits include the ability to provide safe, adequate and proper utility service.
17

18 Q. SHOULD CONSUMERS BE FORCED TO PAY FOR ELABORATE DEFENSES
19 OF PRIVATE INTEREST?

20 A. No. Costs incurred by Company to present and defend positions on expense
21 recovery and investment return which primarily benefit shareholders should not be
22 recovered from ratepayers.
23

1 Q. WHAT DOES PUBLIC COUNSEL BELIEVE CONSTITUTES AN ELABORATE
2 DEFENSE?

3 A. Elaborate defense, as used here, consists of Company's hiring of outside legal and
4 consultant services to support its general rate increase case when it is very likely its
5 own personnel could have done the job just as well and perhaps more effectively.
6

7 Q. SHOULD RATEPAYERS BE AFFORDED EVERY OPPORTUNITY TO SAVE
8 MONEY THROUGH REDUCED COSTS AND EFFICIENT SERVICE?

9 A. Yes. Since utility ratepayers are a captive population, the utility should use all
10 means possible to ensure that ratepayers receive safe and efficient service at the
11 most reasonable and efficient cost possible.
12

13 Q. DOES THE COMPANY'S USE OF OUTSIDE CONSULTANTS TO SUPPORT ITS
14 GENERAL RATE INCREASE CASE FILING YIELD EFFICIENT SERVICE AT A
15 REASONABLE COST?

16 A. No. Company likely has sufficient personnel resources to process a general rate
17 increase case in this State; however, Company did not fully utilize those resources.
18 The Company chose instead to hire an outside legal firm to handle the legal
19 aspects of the case. Public Counsel believes that to be an inefficient use of
20 Company resources. The same goes for Company's utilization of outside
21 consultants for the accounting, depreciation and economic activities associated with
22 the current case. Utilization of its own and/or parent employees would have likely
23 been more cost-effective.

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Q. DOES PUBLIC COUNSEL BELIEVE THAT SHAREHOLDERS SHOULD CARRY AN EQUAL PROPORTION OF THE COST OF THIS RATE CASE FOR WHICH THEY TOO RECEIVE A BENEFIT?

A. Yes. Benefits that inure to ratepayers from a utility rate case are at least matched (if not exceeded) by benefits enjoyed by the shareholders of the utility. Therefore, utilities should be vigilant in controlling their rate case expenses so that neither owners and customers are unduly burdened by the incurrence of unnecessary or inefficient costs.

Q. WHAT SHARING OF PRUDENT, REASONABLE AND NECESSARY COSTS DOES PUBLIC COUNSEL PROPOSE?

A. Public Counsel recommends that once the level of prudent, reasonable and necessary costs is determined they should be shared 50%/50% between shareholders and ratepayers.

Q. WHY DOES PUBLIC COUNSEL BELIEVE THAT A 50/50 SHARING OF THE COSTS IS APPROPRIATE?

A. A general rate increase case arises for the benefit of a utility's shareholders due to the fact that a primary motivation in filing a rate case is to add shareholder value by increasing rates. Thus, prudent, reasonable and necessary expenses resulting from the rate case should be shared 50/50 between shareholders and

1 ratepayers so that the shareholders bear some of the burden for the benefits they
2 receive.

3
4 Q. DOES SHAREHOLDER PAYMENT OF A PORTION OF THE RATE CASE
5 EXPENDITURES CONSTITUTE AN UN-EQUITABLE FORFEITURE?

6 A. Not in my opinion. Since the shareholders stand to gain from the opportunity to
7 earn any increase in revenue requirement authorized by the Commission, they
8 too benefit from the costs incurred to proceed with the case. It stands to reason
9 that if the authorized revenue requirement exceeds the costs they expended they
10 have a net benefit; thus, there is no un-equitable forfeiture.

11
12 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE COMMISSION SHOULD
13 DISCOURAGE UTILITIES FROM HIRING OUTSIDE LEGAL COUNSEL OR
14 CONSULTANTS TO SUPPORT THEIR POSITIONS?

15 A. No. It is not the Commission's place to micro-manage the utility; however, neither
16 should the Commission automatically allow the utility to "pass-through" the charges
17 for the expenditures simply because the Company's management chose to incur
18 the costs.

19
20 Q. ARE RATE CASE COSTS OUTSIDE THE CONTROL OF MANAGEMENT?

21 A. No. There are a certain amount of "embedded costs" inherent in any general rate
22 increase case; however, most of the costs are not outside of the Company's
23 control. For example, the Company chooses the employees, attorneys and

1 consultants it wants to represent its case. The Company then chooses how they
2 are going to comply with discovery and what efforts, if any, they will make to
3 facilitate and economize the process. Furthermore, the Company dictates what
4 measures it will make to mitigate rate case expense by choosing which positions
5 it favors and seeks to pursue or not pursue within the case.

6
7 Q. JUST BECAUSE THE COMPANY CHOOSES TO INCUR CERTAIN
8 EXPENDITURES SHOULD THE COMMISSION ASSUME THAT THE COSTS
9 ARE PRUDENT, REASONABLE AND NECESSARY?

10 A. No. Even though there are certain costs inherent in the Commission's process,
11 the costs should still be prudent, reasonable and necessary. The Commission
12 should not assume that just because the utility expended the time and cost its
13 rate case expenditures should be automatically recoverable from ratepayers. In
14 fact, in my opinion, most of the Company's estimated rate case expense is not
15 prudent, reasonable or necessary.

16
17 It is incumbent on the Company to mitigate its rate case expense because the
18 Company alone has chosen to initiate and process the rate increase request.
19 Moreover, if the Company decides to engage in conduct that increases rate case
20 expense, it is the Company that has the burden of establishing the amount
21 incurred and showing that it is prudent, reasonable and necessary. The
22 Commission is obligated to consider competing policies of what expenses should
23 be considered in ratemaking decisions including rate case expense. Therefore,

1 in establishing rates, the Commission is required to balance the public need for
2 adequate, efficient, and reasonable service with the utility's need for sufficient
3 revenue to meet the cost of furnishing service and earning a reasonable return
4 on investment. Company apparently expects the Commission to take its word
5 that the costs it expects to incur are prudent, reasonable and necessary. That is
6 not a reasonable position because rate case expenditures involve a high degree
7 of management choice and discretion over whether or not to incur each
8 expenditure. The Commission should look past Company's simplistic position
9 and base its decision on whether or not each expenditure was prudent.

10
11 Q. DO YOU PROPOSE TO DISALLOW ALL OF THE GENERAL RATE INCREASE
12 CASE EXPENSE COMPANY INCURS?

13 A. No. Public Counsel recommends that the Commission recognize that rate case
14 expenses benefit both Company and ratepayers; thus, shareholders should also
15 be held responsible for a portion of the costs related to that burden. Because
16 rate proceedings are a part of the normal course of business for a utility and
17 because rate proceedings, by establishing just and reasonable rates, are
18 conducted for the benefit of both ratepayers and shareholders, it is widely accepted
19 that rate case expenses are one aspect of a utility's operating costs and are
20 recoverable in a general rate proceeding. However, because shareholders and
21 ratepayers both benefit, a policy of requiring only ratepayers to pay the costs is not
22 reasonable.

23

1 In general, if costs incurred by a utility to prepare and present a rate case are
2 prudent, reasonable and necessary they should be properly recoverable from both
3 shareholders and ratepayers. The ratepayer's portion should be treated as an
4 ordinary and reasonable cost of doing business.

5
6 The Commission should also note that the amount estimated to be expended by
7 Company in this general rate increase case (i.e., approximately ** **) should
8 be considered excessive for a utility whose parent company (i.e., Empire
9 District Electric Company) applies for rate increases relatively frequently,
10 understands the regulatory process, has personnel on its staff who are regularly
11 directly involved in the regulatory process, and has litigated essentially the same
12 type of issues in its last several electric general rate increase cases.

13
14 Q. WHAT IS THE ANNUALIZED AMOUNT OF RATE CASE EXPENSE YOU ARE
15 RECOMMENDING?

16 A. Public Counsel recommends that the question of who benefits from the costs is an
17 important consideration to take into account since rate case expense is a complex
18 problem in that consumers should not be forced to pay elaborate defenses of
19 private interests. Therefore, the Commission should disallow costs Company
20 expects to incur that are associated with the outside law firm and consultants hired
21 by the utility to process the current case. Company bears the burden of proof in
22 these proceedings and it must establish that any expenditure it incurs is prudent,
23 reasonable and necessary. That, in Public Counsel's opinion, has not occurred.

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Furthermore, the Commission should not approve in-house general rate increase expenditures as an allowable component of rate case expense if the in-house charges for preparation and implementation of a COSS will be recovered in other in-house cost categories. For example, rate case expense should not include recovery for expenses that are otherwise included in test year expenses, including salaries for utility employees that prepare the filing, act as witnesses or provide the legal requirements to develop, process and implement the rate increase request. Disallowing these costs from rate case expense will avoid duplicate accounting of amounts already incorporated in operating expense.

Therefore, Public Counsel recommends that Company be allowed to recover only 50% of its incremental in-house rate case activities determined by the Commission to be prudent, reasonable and necessary. However, since the costs are a moving target in that they will continue to be incurred through the end of the update period and true-up (if it is authorized), the total rate case expense is not yet known. Public Counsel will update the Commission on its recommendation in later testimony.

Q. IS THERE A NEED TO NORMALIZE THE ANNUALIZED RATE CASE EXPENSE AUTHORIZED BY THE COMMISSION?

A. Yes. Since utilities do not normally file a rate increase request on a yearly basis, the costs that they incur to process the activity should be recovered over a period of years representative of how often the utility's rates are actually changed from

1 one case to another. The costs should be normalized (averaged) over that period
2 of time necessary to complete the cycle for the activity.

3

4 Q. DOES PUBLIC COUNSEL RECOMMEND A SPECIFIC NORMALIZATION
5 PERIOD?

6 A. Yes. I have reviewed the frequency of occurrence for Company's general rate
7 increase filings and Public Counsel recommends that, for this rate case, that a
8 three year normalization of the costs is the most appropriate amount to include in
9 the cost of service.

10

11 **III. CHILLICOTHE FORMER MANUFACTURED GAS PLANT REMEDIATION**

12 Q. WHAT IS THE ISSUE?

13 A. This issue concerns the determination of the appropriate level of remediation costs
14 for Former Manufactured Gas Plant to include in the development of rates for the
15 instant case.

16

17 Q. WHAT IS THE TEST YEAR AMOUNT OF FORMER MANUFACTURED GAS
18 PLANT REMEDIATION EXPENSE COMPANY RECORDED IN ITS FINANCIAL
19 RECORDS?

20 A. During the Commission ordered test year, twelve months ended December 31,
21 2008, updated for known and measurable changes through June 30, 2009 (source:
22 *Order Setting Procedural Schedule and Setting Test Year, Effective Date July 31,*
23 *2009*), the Company did not incur any expenditures. However, Company's General

1 Ledger and response to MPSC Staff Data Request No. 103.1 show that
2 expenditures were incurred during calendar year 2007 and subsequent to the
3 known and measurable period of the instant case.
4

5 Q. WHY IS THE COMPANY REQUESTING RECOVERY OF COSTS IF IT DID NOT
6 INCUR ANY IN THE TEST YEAR OR KNOWN AND MEASURABLE PERIOD OF
7 THE INSTANT CASE?

8 A. The Stipulation and Agreement in Empire, Case No. GO-2006-0205, allows the
9 Company to seek, but does not guarantee, recovery of actual expenditures
10 incurred to remediate the FMGP. This is referenced in the direct testimony, page
11 16, lines 16-23, of Company witness, Ms. Jayna R. Long as:

12 (b) EDG may request recovery in a future rate case of actually
13 incurred expenditures for the remediation of the Chillicothe site
14 acquired in this transaction. EDG agrees not to seek recovery in
15 any future rate case for remediation expenditures that EDG has not
16 actually incurred. To the extent that actually incurred remediation
17 expenditures are found to be imprudent or unnecessary, EDG
18 agrees that such expenditures are not to be recovered from EDG's
19 gas customers. Nothing in this Stipulation precludes the non-EDG
20 Signatories to this Stipulation from opposing the recovery of any
21 such expenditures in a future rate case.
22
23

24 Q. WHAT IS THE AMOUNT OF REMEDIATION COSTS THAT THE COMPANY IS
25 REQUESTING TO RECOVER?

26 A. Ms. Long's direct testimony, page 16, lines 27-30, states Company has included
27 \$67,140 in rate base and requests to amortize this amount over five years which
28 would provide for an annual expense amortization of \$13,428. However,
29 Company's response to MPSC Staff Data Request No. 103.1 identified that the

1 \$67,140 was in error. The amount, Company now states, that should be included
2 in rate base and then amortized is \$125,511.

3

4 Q. DOES PUBLIC COUNSEL HAVE CONCERNS WITH THE AMOUNT IDENTIFIED
5 BY THE COMPANY IN ITS RESPONSE TO MPSC STAFF DATA REQUEST NO.
6 103.1?

7 A. Yes. My review of the Company's General Ledger identified that the expenditures
8 actually incurred and booked prior to the end of the instant case known and
9 measurable period were, excluding certain AFUDC charges, approximately
10 \$126,171.89. A difference of approximately \$661.

11

12 Q. WILL THE COSTS BE UPDATED AS THE INSTANT CASE PROGRESSES?

13 A. Yes.

14

15 Q. WHAT ARE FORMER MANUFACTURED GAS PLANT REMEDIATION COSTS?

16 A. FMGP remediation costs can be defined as all investigations, testing, land
17 acquisition (if appropriate), cleanup and/or litigation costs and expenses or other
18 liabilities, excluding personal injury claims, specifically relating to former gas
19 manufacturing facility sites, disposal sites or sites to which hazardous material may
20 have migrated, as a result of the operation or decommissioning of the former gas
21 manufacturing facilities.

22

1 Q. WHY IS THE COMPANY POTENTIALLY LIABLE TO INCUR FORMER
2 MANUFACTURED GAS PLANT REMEDIATION COSTS?

3 A. Since Company acquired the FMGP site in its purchase of the gas operations from
4 Aquila Inc., it is now a potentially responsible party (PRP) and as such can be held
5 responsible for the remediation of the contamination at the site.

6
7 Q. PLEASE DESCRIBE THE RELEVANT LAW THAT REQUIRES THE
8 REMEDIATION OF THE FMGP SITE.

9 A. To deal with the contamination and cleanup problems presented by abandoned
10 and/or inactive hazardous waste sites, Congress in 1980 enacted the
11 Comprehensive Environment Compensation and Liability Act (CERCLA or
12 Superfund). CERCLA provided funding and enforcement authority to the
13 Environmental Protection Agency (EPA) to enable it to respond to hazardous
14 substance releases and to enable the EPA to undertake or regulate the cleanup of
15 those hazardous sites where owners/operators were either without resources or
16 unwilling to implement such cleanups.

17
18 In 1986 CERCLA was amended by the Superfund Amendments and
19 Reauthorization Act which intensified Superfund activities and set a goal of
20 achieving "permanent" solutions at Superfund sites. CERCLA imposes strict, joint
21 and several liability on present or former owners or operators of facilities where
22 substances have been or are threatened to be released into the environment.

23

1 Further, potentially responsible parties include owners of contaminated land from
2 point of contamination to date, operators (which is interpreted as any party that had
3 possession, control or influence over the premises during the same period),
4 transporters and generators of the contaminants regardless of whether they directly
5 released such substances into the environment.

6

7 Q. IS PUBLIC COUNSEL OPPOSED TO INCLUDING FORMER MANUFACTURED
8 GAS PLANT REMEDIATION COSTS IN COMPANY'S COST OF SERVICE?

9 A. Yes.

10

11 Q. PLEASE EXPLAIN WHY.

12 A. Public Counsel's opposition to the inclusion of the FMGP remediation costs in the
13 Company's cost of service is based on the following, 1) the former manufactured
14 gas plant is not currently in operation. Therefore, the FMGP plant is not used and
15 useful in providing service to current customers. If current customers are required
16 to pay for the cost of service not recovered from past customers (e.g., past rates
17 were set too low), the result is intergenerational inequity, and possibly retroactive
18 ratemaking will occur, 2) present customers should not be required to pay for past
19 deficits of the Company in future rates, 3) Public Counsel believes that
20 shareholders are compensated for this particular business risk through the risk
21 premium inherent to the equity portion of the Company's weighted average rate of
22 return, 4) shareholders, not ratepayers, receive the benefits of any gains or losses
23 (i.e., below-the line treatment) of any sale or removal from service of Company-

1 owned land or investment. Since it is the shareholder who receives the benefit
2 associated with the gain, or the loss, on an investment's disposal, it is the
3 shareholder who should bear the responsibility for any legal liability that arises at a
4 later date related to the investment, 5) the liability for the remediation costs are not
5 incurred because of the gas service Company provides to its current customers.
6 Company is a PRP only because it now owns the property, 6) automatic recovery
7 of the remediation costs from Company's customers may reduce the incentive for it
8 to seek partial or complete recovery of the costs from other prior owners of the plant
9 site or insurers, 7) no expenditures were actually incurred during the instant case
10 test year or known and measureable period, and 8) Company knew when it
11 purchased the property that a liability existed; therefore, it is likely that it took this
12 fact into account and lowered its final purchase price accordingly.

13
14 **IV. PIPELINE RIGHT-OF WAY CLEARING PLAN**

15 Q. WHAT IS THE ISSUE?

16 A. Company proposes to implement a new right-of-way clearing program which would
17 increase test year expense by a total of approximately \$62,160 (i.e., \$24,906 for its
18 Northwest territory and \$37,254 for the North/South territory).

19
20 Q. HAS THE NEW PROGRAM BEEN IMPLEMENTED YET?

21 A. Company states that the program was recently implemented, but was not in place
22 during the test year used in this rate case (page 2, lines 7-9, direct testimony of
23 Company witness, Mr. Steven R. Teter).

1

2 Q. WHY WAS THE PROGRAM IMPLEMENTED?

3 A. Company states it has approximately 265 miles of natural gas pipeline (page 2, line
4 14, direct testimony of Company witness, Mr. Steven R. Teter), and that during the
5 last 10 years the property was owned by Aquila, Inc., the resources dedicated to
6 ROW clearing were limited. As a result, the conditions along the ROW have
7 deteriorated and steps must be taken to improve the operating conditions along the
8 Company's pipeline ROW (page 2, lines 20-23, direct testimony of Company
9 witness, Mr. Steven R. Teter).

10

11 Q. WHAT IS THE PLAN?

12 A. Company states that the core component of this plan is the establishment of a five-
13 year cycle of clearing that would allow for each segment of pipeline operated by
14 EDG to be cleared every fifth year (page 3, lines 16-17, direct testimony of
15 Company witness, Mr. Steven R. Teter).

16

17 Q. HOW WERE THE COMPANY'S PROPOSED COSTS DETERMINED?

18 A. Company states that based on previous experience with ROW clearing and an
19 actual cost of approximately \$2,000 per mile of pipeline ROW cleared in 2008, it
20 estimated annual costs of approximately \$110,000 (page 4, lines 7-10, direct
21 testimony of Company witness, Mr. Steven R. Teter).

22

1 Q. WAS THE COMPANY ABLE TO PROVIDE DOCUMENTATION THAT WOULD
2 VERIFY THE ACCURACY OF ITS COST ESTIMATES?

3 A. No. Company's response to Public Counsel Data Request No. 1005 states:

4

5 The cost per mile for clearing referenced in my testimony was based
6 on conversation in September of 2008 with the contractor that
7 actually did the clearing work in the fall of 2008. The work was
8 actually done on an hourly basis and the contractor was estimating
9 how much time it would take him to reach certain points. My
10 reference to previous experience with the cost of ROW clearing
11 related to recollections of previous hourly rates and previous total
12 costs per mile, none of this documentation is available.

13

14 (Emphasis by OPC)

15

16

17 Q. IS ANY OF THE PIPELINE ABOVE GROUND.

18 A. Company's response to Public Counsel Data Request No. 1005 states:

19

20 Virtually none of this pipeline if above ground.

21

22

23 Q. HAS THE CONDITION OF THE PIPELINE DETRIORATED SO AS TO BE A
24 DANGER TO PUBLIC SAFETY?

25 A. That does not appear to be the case. Company's response to Public Counsel Data
26 Request No. 1006 states:

27

28 By "deterioration of the conditions" it was simply meant that the ROW
29 needs to be cleared and some erosion issues addressed to provide
30 the accessibility and visibility needed for safer operation of the
31 pipeline. Our effort is to establish a routine schedule of clearing that
32 better maintains the pipeline right of ways of EDG.

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Furthermore, Company's response to MPSC Staff Data Request No. 104.1 which requested has the condition of the ROW deteriorated to the point that it impairs the gas operations and safety requirements of the pipeline states:

a) No. EDG's pipelines meet all pipeline safety requirements.
EDG views pipeline ROW clearing as a normal operational function.

(Emphasis by OPC)

Q. DOES THE COMPANY CURRENTLY PERFORM CLEARING OF THE RIGHT OF WAYS?

A. Yes. Company has recorded costs for ROW clearing in its financial books of record. In fact, Company's response to MPSC Staff Data Request No. 104 which requested details of the program that was in place for clearing the pipeline prior to the Company's request in this case states:

a) The pipeline ROW was previously cleared on an as needed/identified basis.

Q. IS THE COMPANY BEING FORCED TO IMPLEMENT A NEW ROW CLEARING PLAN BY ANY REQUIREMENT OF THE COMMISSION OR ANY OTHER GOVERNMENTAL REGULATORY BODY?

A. No. The plan appears to be based solely on the initiative of the Company itself.

1

2 Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE?

3 A. Public Counsel recommends that the proposal be denied.

4

5 Q. WHY DOES THE PUBLIC COUNSEL RECOMMEND THAT THE PROPOSAL BE
6 DENIED?

7 A. Public Counsel's recommendation is based on several reasons, 1) the rationale for
8 the new plan has not been substantiated as being necessary or even required by
9 the Commission, 2) the costs which Mr. Teter proposes appear to be estimates
10 which have not been supported by verifiable documentation, 3) the costs proposed
11 will likely occur, if they occur at all, outside of the test year, the known and
12 measurable period and the true-up of the instant case, and 4) the instant case will
13 "pickup" all actual costs incurred for ROW clearing.

14

15 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

16 A. Yes, it does.

**CASE PARTICIPATION
OF
TED ROBERTSON**

<u>Company Name</u>	<u>Case No.</u>
Missouri Public Service Company	GR-90-198
United Telephone Company of Missouri	TR-90-273
Choctaw Telephone Company	TR-91-86
Missouri Cities Water Company	WR-91-172
United Cities Gas Company	GR-91-249
St. Louis County Water Company	WR-91-361
Missouri Cities Water Company	WR-92-207
Imperial Utility Corporation	SR-92-290
Expanded Calling Scopes	TO-92-306
United Cities Gas Company	GR-93-47
Missouri Public Service Company	GR-93-172
Southwestern Bell Telephone Company	TO-93-192
Missouri-American Water Company	WR-93-212
Southwestern Bell Telephone Company	TC-93-224
Imperial Utility Corporation	SR-94-16
St. Joseph Light & Power Company	ER-94-163
Raytown Water Company	WR-94-211
Capital City Water Company	WR-94-297
Raytown Water Company	WR-94-300
St. Louis County Water Company	WR-95-145
United Cities Gas Company	GR-95-160
Missouri-American Water Company	WR-95-205
Laclede Gas Company	GR-96-193
Imperial Utility Corporation	SC-96-427
Missouri Gas Energy	GR-96-285
Union Electric Company	EO-96-14
Union Electric Company	EM-96-149
Missouri-American Water Company	WR-97-237
St. Louis County Water Company	WR-97-382
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GR-98-374
United Water Missouri Inc.	WR-99-326
Laclede Gas Company	GR-99-315
Missouri Gas Energy	GO-99-258
Missouri-American Water Company	WM-2000-222
Atmos Energy Corporation	WM-2000-312
UtiliCorp/St. Joseph Merger	EM-2000-292
UtiliCorp/Empire Merger	EM-2000-369
Union Electric Company	GR-2000-512
St. Louis County Water Company	WR-2000-844
Missouri Gas Energy	GR-2001-292
UtiliCorp United, Inc.	ER-2001-672
Union Electric Company	EC-2002-1
Empire District Electric Company	ER-2002-424

**CASE PARTICIPATION
OF
TED ROBERTSON**

<u>Company Name</u>	<u>Case No.</u>
Missouri Gas Energy	GM-2003-0238
Aquila Inc.	EF-2003-0465
Aquila Inc.	ER-2004-0034
Empire District Electric Company	ER-2004-0570
Aquila Inc.	EO-2005-0156
Aquila, Inc.	ER-2005-0436
Hickory Hills Water & Sewer Company	WR-2006-0250
Empire District Electric Company	ER-2006-0315
Central Jefferson County Utilities	WC-2007-0038
Missouri Gas Energy	GR-2006-0422
Central Jefferson County Utilities	SO-2007-0071
Aquila, Inc.	ER-2007-0004
Laclede Gas Company	GR-2007-0208
Kansas City Power & Light Company	ER-2007-0291
Missouri Gas Utility, Inc.	GR-2008-0060
Empire District Electric Company	ER-2008-0093
Missouri Gas Energy	GU-2007-0480
Stoddard County Sewer Company	SO-2008-0289
Missouri-American Water Company	WR-2008-0311
Union Electric Company	ER-2008-0318
Aquila, Inc., d/b/a KCPL Gmoc	ER-2009-0090
Missouri Gas Energy	GR-2009-0355
Empire District Gas Company	GR-2009-0434