

EXHIBIT

Exhibit No.:
Issue(s): FASB 106 Funding
Former Manufactured Gas Plant Remediation
Kansas Property Tax AAO
Infinium Software Amortization
Witness: Ted Robertson
Type of Exhibit: Rebuttal
Sponsoring Party: Public Counsel
Case Number: GR-2009-0355
Date Testimony Prepared: September 28, 2009

REBUTTAL TESTIMONY

OF

TED ROBERTSON

FILED²

NOV 09 2009

Submitted on Behalf of
the Office of the Public Counsel

Missouri Public
Service Commission

MISSOURI GAS ENERGY

Case No. GR-2009-0355

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

September 28, 2009

ORC Exhibit No. 82 NP
Case No(s) GR-2009-0355
Date 10-26-09 Rptr KF

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

In the Matter of Missouri Gas Energy's)
Tariff Sheets Designed to Increase Rates)
for Gas Service in the Company's)
Missouri Service Area.)

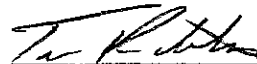
Case No. GR-2009-0355

AFFIDAVIT OF TED ROBERTSON

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ted Robertson, of lawful age and being first duly sworn, deposes and states:

1. My name is Ted Robertson. I am a Public Utility Accountant for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.




Ted Robertson, C.P.A.
Public Utility Accountant III

Subscribed and sworn to me this 28th day of September, 2009.



JERENE A. BUCKMAN
My Commission Expires
August 23, 2013
Cole County
Commission #09754037



Jerene A. Buckman
Notary Public

My Commission expires August 23, 2013.

TABLE OF CONTENTS

Testimony	Page
Introduction	1
FASB 106 Funding	1
Former Manufactured Gas Plant Remediation	2
Kansas Property Tax Accounting Authority Order	8
Infinium Software Amortization	11

REBUTTAL TESTIMONY
OF
TED ROBERTSON

MISSOURI GAS ENERGY
CASE NO. GR-2009-0355

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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

Q. ARE YOU THE SAME TED ROBERTSON THAT HAS PREVIOUSLY FILED
DIRECT TESTIMONY IN THIS CASE?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of this rebuttal testimony is to address the appropriate level of costs
associated with Missouri Gas Energy's ("MGE" or "Company") Financial Accounting
Standards Board Statement of Accounting Financial Standards No. 106 -
Postretirement Benefits Other Than Pensions ("FASB" or "OPEB" or "SFAS 106")
funding, Former Manufactured Gas Plant Remediation ("FMGP"), Kansas Property
Tax Accounting Authority Order ("AAO"), and Infinium Software Amortization.

II. FASB 106 FUNDING

Q. WHAT IS COMPANY'S POSITION ON THIS ISSUE?

1 A. It is my understanding that the Company does not believe that it must fund its
2 OPEB plans for any excess of FASB 106 expense included in rates over what it
3 has distributed on a pay as you go basis.
4

5 Q. WAS THERE AN EXCESS OF EXPENSE INCLUDED IN ITS RATES FOR THE
6 YEARS SUBSEQUENT TO WHEN COMPANY STOPPED FULLY FUNDING AT
7 THE LEVEL OF EXPENSE DETERMINED BY FASB 106?

8 A. Public Counsel is in the process of reviewing the data to answer this question.
9 However, to reiterate the Public Counsel's position, if the amount of OPEB expense
10 included in rates was greater than the amount Company actually funded its plans,
11 then Company should be required to fund the plans by that excess amount.
12 Otherwise, ratepayers have provided Company with a revenue source which it has
13 not utilized for its intended purpose. Ratepayers should not be required to funnel
14 monies to the Company for unsupported purposes. Furthermore, a lack of
15 appropriate funding creates an additional problem in that it likely causes an
16 unnecessary increase in the annual SFAS 106 plan expense on a going forward
17 basis because the funds are not available to the plan to earn a return which in turn
18 lowers the level of the annual expense.
19

20 III. FORMER MANUFACTURED GAS PLANT REMEDIATION

21 Q. DOES COMPANY'S REQUEST INCLUDE COST RECOVERY FOR
22 ENVIRONMENTAL ACTIVITIES OTHER THAN FMGP REMEDIATION?

1 A. Yes. The Company's request includes costs for other environmental remediation
2 activities such as; **

3 **

4
5 Q. IS YOUR TESTIMONY MEANT TO ADDRESS ANY OF THOSE OTHER
6 ENVIRONMENTAL REMEDIATION COSTS?

7 A. No. This testimony is only related to the remediation activities associated with the
8 former manufactured gas plant.

9
10 Q. DOES PUBLIC COUNSEL BELIEVE THAT THE TOTAL COST INCURRED AS
11 OF THE END OF CALENDAR YEAR 2008 HAVE BEEN INFLATED BY THE
12 COMPANY?

13 A. Yes. Company has failed to explain to the Commission that it has received
14 favorable tax income treatment for the remediation costs which has in turn lowered
15 the amount of its actual total costs incurred.

16
17 Q. HAS SOUTHERN UNION COMPANY BENEFITED FROM FEDERAL AND STATE
18 TAX LAW WITH REGARD TO INCOME TAX DEDUCTIONS FOR REMEDIATION
19 COSTS INCURRED?

20 A. Yes. Company's response to OPC Data Request No. 1023 states, in part:

21
22 Southern Union includes MGE's and all other division's and
23 subsidiaries' environmental remediation expenses as a business
24 expense on its tax return which reduces income and creates a
25 reduction in tax expense (effective rate of 37-38%).

1
2
3 And, Company's response to OPC Data Request No. 1011 which referenced the
4 Company response to OPC Data Request No. 1029 in MGE Case No. GU-2007-
5 0480 states:
6

7 Southern Union Company's ("Company") policy is to deduct
8 qualifying environmental expenditures as paid or incurred pursuant
9 IRC Section 198 (expired as of 12/31/07 unless extended by
10 Congress). Environmental deductions are included as an expense in
11 the Company's consolidated Federal Income tax return and
12 corresponding state income tax returns. Southern Union's federal
13 and state tax benefits from these environmental deductions have
14 averaged approximately 37-38% since acquiring MGE.
15
16

17 Q. WHAT IS THE RELEVANCE OF SOUTHERN UNION COMPANY BENEFITTING
18 FROM THE INCOME TAX DEDUCTION?

19 A. To the extent that the tax deduction lowers Southern Union Company's income tax
20 expense and payments, it effectively reduces the actual cost of the expenditures
21 incurred for remediation activities by approximately 37-38%. That is, for every
22 dollar Southern Union Company spent on remediation activities, the government
23 subsidization via the tax deduction, reduced its actual cost and cash flow by
24 approximately 37 to 38 cents.
25

26 Q. WHAT IS THE AMOUNT OF REMEDIATION COSTS INCURRED THROUGH
27 THE END OF THE TEST YEAR FOR FMGP CLEAN-UP?

1 A. Company's response to OPC Data Request No. 1004 states that total costs
2 incurred through the end of 2008, for FMGP activities, are approximately
3 ** ** However, the response also shows approximately **
4 **
5 activities of which a portion is also likely related to FMGP activities. Lastly, for
6 calendar year 2008, Company's responses to OPC Data Request No. 1027 and
7 MPSC Staff Data Request No. 243 show that Southern Union Company allocated
8 an additional \$223,962 of non-payroll and \$6,502 of payroll costs for insurance
9 recovery and other activities related to environmental remediation (note: OPC
10 believes it is possible that similarly allocated costs occurred in prior years).

11
12 Q. ASSUMING THAT THE COSTS IDENTIFIED IN THE PREVIOUS Q&A ARE
13 ACCURATE AND ALL FMGP RELATED, WHAT IS THE TOTAL COST
14 ACTUALLY INCURRED BY SOUTHERN UNION COMPANY FOR FMGP
15 REMEDIATION?

16 A. The costs identified above total ** **; however, when adjusted for the
17 tax deductions taken (i.e., 37% - 38%) the total cost incurred would approximate
18 ** **

19
20 Q. WOULD THE TAX SAVINGS BE OFFSET BY TAXES PAID ON INSURANCE
21 REIMBURSEMENTS?

22 A. Yes. Company's response to OPC Data Request No. 1004 identified
23 reimbursements of approximately ** ** (not including the initial

1 \$3,000,000 of costs paid by Southern Union Company pursuant to the MGE
2 purchase *Environmental Liability Agreement* (attached to my Direct Testimony as
3 Schedule TJR-2) or offset by costs, to obtain insurance recoveries, some of which
4 may have already been allocated to MGE via past Corporate allocations). Tax
5 expense on this amount would have offset the tax deductions so that the net tax
6 savings would approximate ** ** to ** ** (i.e., (** **
7 less ** **) times 37% - 38%). Thus, total actual costs incurred, but not
8 reimbursed, as of the end of calendar year 2008 would approximate ** **
9 to ** ** (i.e., ** ** less ** ** less the net tax
10 savings).

11

12 Q. WILL PUBLIC COUNSEL NEED TO UPDATE THE COMMISSION IN FUTURE
13 TESTIMONY ON THE AMOUNTS DISCUSSED IN THE TAX DEDUCTION
14 TESTIMONY ABOVE?

15 A. Yes. Public Counsel still has questions for the Company regarding its definition of
16 MGE activities and associated costs as provided in its response to OPC Data
17 Request No. 1004. Further, Public Counsel requires further clarification from
18 Company regarding environmental costs allocated from Corporate and deductions
19 for insurance reimbursements. Company responses to these items may require
20 some modification of the amounts discussed.

21

22 Q. HAS COMPANY SOUGHT TO RECOVER ANY OF THE REMEDIATION COSTS
23 FROM THE WESTERN RESOURCES, INC.?

1 A. Yes. Company's response to OPC Data Request No. 1006 states that a claim has
2 been made on Western Resources Inc., for \$2,500,864.

3
4 Q. DOES PUBLIC COUNSEL HAVE ANY CONCERNS ABOUT THE CLAIM
5 AMOUNT?

6 A. Yes. Public Counsel would be remiss if it did not point out to the Commission that
7 Company did not begin to incur substantial FMGP remediation costs until calendar
8 year ** ** and even then it did not exceed ** ** cumulative until
9 calendar year ** ** (source: Company's response to OPC Data Request No.
10 1004). Because Company did not address the remediation issues in a more timely
11 manner I believe that its claim to Western Resources Inc. is far less that it could
12 have been.

13
14 Q. WHAT WAS THE POTENTIAL LIABILITY AMOUNT FOR WESTERN
15 RESOURCES INC.?

16 A. According to the *Environmental Liability Agreement* between the parties, Western
17 Resources Inc. was liable for up to 50% of \$15 million of costs incurred that
18 exceeded reimbursements from other parties. That is, Western Resources Inc. had
19 a potential liability of up to \$7.5 million. Instead, the current claim is almost \$5
20 million less.

21
22 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE COMPANY WAS LAX IN
23 ITS ATTENDING TO THE REMEDIATION ACTIVITIES MORE QUICKLY?

1 A. The undertaking of the remediation activities is an extremely burdensome task and
2 numerous factors must fall in line before the events occur; however, the costs and
3 when they were incurred should not be dismissed. The Company did not
4 undertake a serious level of remediation activities for approximately six (6) to eight
5 (8) years after it was acquired by Southern Union Company in January 1994 (the
6 acquisition of MGE occurred on January 31, 1994 per Company's response to OPC
7 Data Request No. 1150 in MGE Case No. GR-2001-292) even though Article 2(b)
8 of the *Environmental Liability Agreement* states:

9

10 All covered matters discovered by Buyer more than two (2) years
11 following the date of this Agreement shall be the sole responsibility of
12 the Buyer.
13
14

15 By the end of 1996 MGE should have been aware of the areas subject to
16 reimbursements by Western Resources Inc.; however, the time lag that followed
17 before remediation activities were begun in earnest, in effect, has allowed Western
18 Resources Inc., to avoid its liability for costs which Company now requests
19 ratepayers to pay.
20

21 IV. KANSAS PROPERTY TAX ACCOUNTING AUTHORITY ORDER

22 Q. WHAT IS THE ISSUE?

23 A. Company requested an Accounting Authority Order in Missouri Gas Energy Case
24 No. GU-2010-0015 to defer property tax on natural gas held in storage in the State
25 of Kansas.

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Q. WAS THE AAO CASE SUBSEQUENTLY CONSOLIDATED WITH THE INSTANT CASE?

A. Yes. The cases were consolidated pursuant to the *Commission Order Consolidating Cases* dated September 8, 2009.

Q. WHAT IS THE PUBLIC COUNSEL'S POSITION REGARDING THE REQUEST FOR THE AAO?

A. Public Counsel recommends that the Commission deny the Company's request for the AAO.

Q. WHY DOES PUBLIC COUNSEL OPPOSE THE REQUEST?

A. Company's request attempts to define a normal ongoing cost, i.e., property tax, as something that it is not. For example, an accounting authority order is normally granted because the expense at issue is considered extraordinary, unusual or unique, non-recurring and in some instances material. However, property tax is an expense which is always included in a utility's cost of service when rates are set. The actual future annual amount may go up or it may go down, but it is still a normal ongoing expense which does not meet the requirements necessary to allow it the special accounting treatment an AAO provides.

Q. WHY DOES THE PROPERTY TAX REQUEST FAIL TO MEET THE REQUIREMENTS FOR COMMISSION AUTHORIZATION OF AN AAO?

1 A. The FERC Uniform System of Accounts, adopted by this Commission, definition of
2 "extraordinary items" is defined in the USOA General Instructions, paragraph
3 15,017, as:

4
5 7. Extraordinary items. It is the intent that net income shall reflect all
6 items of profit and loss during the period with the exception of prior
7 period adjustments as described in paragraph 7.1 in long-term debt as
8 described in paragraph 17 below. Those items relate to the effect of
9 events and transactions which have occurred during the current
10 period and which are not typical or customary business activities of
11 the company shall be considered extraordinary items. Accordingly,
12 they will not be events and transactions of significant effect which
13 would not be expected to recur frequently and which would not be
14 considered as recurring factors in any evaluation of the ordinary
15 operating process of business. (In determining significance, items of
16 similar nature should be considered in the aggregate. Dissimilar items
17 should be considered individually; however, if they are few in number,
18 they may be considered in the aggregate.) To be considered as
19 extraordinary under the above guidelines, an item should be more
20 than approximately five percent of income computed before
21 extraordinary items. Commission approval must be obtained to treat
22 an item of less than five percent as extraordinary.
23
24

25 However, as I stated previously, property tax expense is always included in a
26 utility's cost of service in the development of its rates; thus, it is by definition and
27 normal regulatory ratemaking action, a recurring, ordinary and usual cost.
28 Therefore, the Company's allegation that the expense is unusual and unique
29 (Michael R. Noack Direct Testimony, Case No. GU-2010-0015, page 6, lines 23 -
30 26) is not accurate.
31

32 Q. IS THE EXPENSE AT ISSUE MATERIAL IN RELATION TO COMPANY'S
33 FINANCIAL POSITION?

1 A. The question of whether or not the alleged cost is material is an interesting, but
2 irrelevant topic since it is not extraordinary, unusual or unique. However, for
3 illustration purposes, the *Staff Accounting Schedules* filed with Staff's direct
4 testimony show that, at the mid-point rate of return, the net operating income
5 (including income taxes) for the Company is \$62,417,402 (i.e., \$43,912,040 plus
6 \$18,505,362). Dividing the alleged property tax amount, (i.e., \$1,345,123, shown
7 on page eight, line 15, of Mr. Noack's Direct Testimony, MGE Case No. GU-2010-
8 0015), by the net operating income results in a percentage of 2.2% (rounded). This
9 percentage is less than half what outside auditors and the Federal Energy
10 Regulatory Commission's Uniform System Of Accounts usually consider material.

11
12 V. INFINIUM SOFTWARE AMORTIZATION

13 Q. HAS COMPANY BEEN ABLE TO PROVIDE DOCUMENTATION THAT WOULD
14 SUPPORT ITS ALLEGATION THAT IT HAS THE RIGHT TO USE OF THE
15 INFINIUM SOFTWARE?

16 A. No. In OPC Data Request No. 1025, I requested the Company to provide copies of
17 all documentation in its possession that supports its position that it still has the right
18 to continued use of the existing version of Infinium. Company's response states:

19
20 The Company can not locate copies of the licensing/maintenance
21 contracts associated with this software...
22
23

1 Q. IS IT YOUR UNDERSTANDING THAT THE COMPANY HAS THE BURDEN TO
2 SUPPORT, WITH ADEQUATE EVIDENCE, ITS REQUEST FOR RECOVERY OF
3 ALL COSTS ASSOCIATED WITH THE INSTANT CASE?

4 A. Yes.

5
6 Q. IS IT YOUR BELIEF THAT THE COMPANY HAS NOT BEEN ABLE TO SUPPORT
7 ITS STATEMENT THAT IT HAS THE RIGHT TO UTILIZE THE INFINIUM
8 SOFTWARE?

9 A. Yes. Company's failure to maintain, or obtain, documentation from the software
10 vendor that would either support or disprove its alleged right to use of the software
11 presents an obvious failure on its part to support its request for cost recovery.

12

13 Q. DOES SOUTHERN UNION COMPANY AND ITS AFFILIATES, OTHER THAN
14 MGE, UTILIZE A DIFFERENT TIME REPORTING SYSTEM FOR PAYROLL
15 PROCESSING?

16 A. Yes, according to MGE. Company's response to OPC Data Request No. 1018
17 stated Southern Union Company started using ADP software beginning with the
18 pay period ending date of August 11, 2007.

19

20 Q. WHEN SOUTHERN UNION COMPANY ADOPTED THE ADP SOFTWARE
21 WERE THE SYSTEMS SETUP TO HANDLE ALL EMPLOYEES WITHIN ITS
22 UMBRELLA?

1 A. Yes. Company's response to OPC Data Request No. 1018 provided a copy of the
2 contract with ADP, Inc., which identifies that it will handle the payroll processing
3 needs of all employees of Southern Union Company and its affiliates.
4

5 Q. DOES MGE ALLEGE THAT THE ADP SOFTWARE IS NOT FULLY CAPABLE OF
6 MEETING ITS BUSINESS NEEDS?

7 A. Yes. Company's response to OPC Data Request No. 1020 states:
8

9 MGE continues to use Infinium despite the fact that the remainder of
10 Southern Union has converted completely to ADP because of the
11 complexity of the MGE union pay rules. ADP has yet to develop a
12 solution that meets the business needs of MGE. Therefore, MGE
13 continues to use the Island Software solution that runs in Infinium.
14
15

16 Q. WHAT IS ISLAND SOFTWARE?

17 A. Island Software is the programmer/vendor the developed the time entry software
18 utilized by MGE on the Infinium system. Company's response to OPC Data
19 Request No. 1019 states:
20

21 MGE utilizes Payforce, Connections and GL but unlike SU Corporate,
22 MGE does not utilize E-Time for time entry. As an alternative to
23 using E-Time, MGE continues to use Infinium software and a related
24 application developed by Island Software for the time entry process.
25
26

27 Q. DOES THE ADP TIME ENTRY SOFTWARE ACTUALLY HAVE THE ABILITY TO
28 PROCESS PAYROLL FOR MGE'S UNION EMPLOYEES?

1 A. Yes. In its response to OPC Data Request Nos. 1019 and 1020, Company states
2 that it continues to use the Infinium Software for time entry because ADP has not
3 yet developed a solution that meets its business needs for the complex union pay
4 rules (step and grade calculations). However, Company's response to OPC Data
5 Request No. 1018 included a copy of the contract for ADP's software and services
6 which states:

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8 **

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13 **

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15 (Emphasis added by OPC)

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19 **

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7

(Emphasis added by OPC)

8 Q. IS IT PUBLIC COUNSEL'S BELIEF THAT THE ADP PAYROLL PROCESSING
9 PROGRAMS HAVE THE CAPABILITY TO PROCESS PAYROLL FOR ALL OF
10 MGE'S UNION AND NON-UNION EMPLOYEES?

11 A. Yes. Based on the language of the contract between ADP, Inc., and Southern
12 Union Company it appears that MGE's statements to the contrary are inaccurate.
13

14 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

15 A. Yes, it does.