

**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)	Case No. GU-2007-0480
Accounting Authority Order Concerning)	
Environmental Compliance Activities.)	

**PUBLIC COUNSEL’S RESPONSE
TO MGE’S MOTION TO STRIKE**

COMES NOW the Missouri Office of the Public Counsel and for its Response to Missouri Gas Energy’s Motion to Strike Portions of Public Counsel Brief states:

1. Missouri Gas Energy (MGE) filed a motion on October 20, 2008 asking the Commission to strike portions of Public Counsel’s Brief. MGE’s motion mostly contains argument responding to Public Counsel’s brief, violating the Commission’s September 12, 2008 briefing order that limits post-hearing briefs to one round as agreed to by the parties. Public Counsel stands by its evidentiary references and offers this response to each allegation in MGE’s motion.

2. MGE first seeks to strike Public Counsel’s introduction section that provides background into MGE’s request for an Accounting Authority Order. Public Counsel’s brief states that MGE’s revenue requirement includes a return on equity that considers MGE’s business risks including the risk of environmental liability. Public Counsel’s brief also states that MGE’s current rate design eliminates weather risks and customer conservation risks. MGE argues that these portions of Public Counsel’s brief should be stricken because they are not based on the evidentiary record. Public Counsel

refers the Commission to the Rebuttal Testimony of Mr. Ted Robertson, Exhibit No. 12, at page 13:

...the total rate of return provided Missouri regulated utilities has always incorporated a percentage above the risk-free rate of return in order to compensate ratepayers for the business and financial risks associated with actions such as the implementation of both existing and new laws and regulations mandated by governments.

Here Mr. Robertson testified that utilities such as MGE have always incorporated business and financial risks into the rate of return, including risks associated with government regulations. This is ample evidence for the Commission to conclude that business risks such as environmental liability are already included in the rate of return approved by the Commission. And the Commission's conclusions regarding the weather risk and conservation risk impacts of MGE's current rate design, also cited by Public Counsel, are found in the *Report and Order* in Case No. GR-2006-0422 and are properly reference in Public Counsel's brief.

3. MGE alleges that Public Counsel mischaracterized the testimony of MGE witness Ms. Crystal Callaway by arguing that "during the evidentiary hearing, MGE's witness testified that Station A was fully remediated and that MGE did not need to do much work at Station A." Public Counsel unintentionally referenced Station "A" as being fully remediated, but it was Public Counsel's intention to state that Station "B" was fully remediated. This is consistent with Ms. Callaway's testimony that "[w]e just completed Station B parcel in 2008." (Tr. 138). This simple oversight is obvious from the transcript and does not change the point being made in Public Counsel's brief; that one of the sites MGE identified as a potential liability site has been remediated.

4. MGE's next argument refutes Public Counsel's statement that the Joplin and Independence site "may never require MGE to incur any expense." MGE's criticism is surprising since MGE's witness clearly recognized that these sites may or may not incur liability. However, Public Counsel cited to Pages 143-144 of the transcript, but should have also referenced Page 143-145 of the transcript to include the testimony by Ms. Callaway that proves MGE's liability on these two sites is unknown at this time.

5. MGE also seeks to refute Public Counsel's argument that MGE has been forecasting environmental remediation expenses since its 2004 rate case. For support, the Commission needs to look no further than the fact that in the 2004 and 2006 rate cases MGE sought to recover environmental expenses from ratepayers. It is clear that MGE has been forecasting environmental expenses since at least 2004. Public Counsel's reference to Exhibit 10 was included to support the portion of the sentence that states "MGE has been incurring these expenses annually." Public Counsel believed the forecasting of expenses is obvious and self evident from MGE's prior requests. The evidence of these forecasts is substantial. On page 10 of Exhibit 1, the Direct Testimony of MGE's Director of Pricing and Regulatory Affairs, Mr. Michael Noack clearly indicates that MGE attempted to include an Environmental Response Fund in rates to recover MGE's environmental liability.

6. MGE refutes Public Counsel's argument that MGE received consideration in the purchase price of the system from Western Resources. Public Counsel cites to the testimony of Mr. Ted Robertson, which MGE had a full and fair opportunity to cross-examine and rebut. Mr. Robertson's testimony that MGE's consideration in the purchase price was "likely" is proven further by the language of the Environmental Liability

Agreement (ELA) that clearly states the ELA is incorporated into the Asset Purchase Agreement for “consideration.” (Ex. 9). Rather than offer a legitimate reason for striking portions of Public Counsel’s brief, MGE simply offers additional argument and testimony references in an attempt to refute this fact. MGE should be admonished for filing responsive arguments disguised as a motion to strike.

7. As shown above, Public Counsel’s brief includes proper evidence and authority references. For these reasons, MGE’s motion to strike portions of Public Counsel’s brief should be denied.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission deny MGE’s Motion to Strike.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 30th day of October 2008:

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