

Exhibit No.:
Issues: *Environmental Response Fund*
Witness: *Paul R. Harrison*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Rebuttal Testimony*
Case No.: *GR-2006-0422*
Date Testimony Prepared: *November 21, 2006*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

PAUL R. HARRISON

MISSOURI GAS ENERGY

CASE NO. GR-2006-0422

Jefferson City, Missouri
November 2006

****Denotes Highly Confidential Information****

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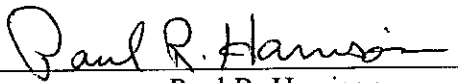
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Tariff)
Sheets Designed to Increase Rates for Gas Service) Case No. GR-2006-0422
in the Company's Missouri Service Area)

AFFIDAVIT OF PAUL R. HARRISON

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)


Paul R. Harrison, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 7 pages to be presented in the above case; that the answers in the foregoing Rebuttal 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.


Paul R. Harrison

Subscribed and sworn to before me this 20th day of November 2009



ASHLEY M. HARRISON
My Commission Expires
August 31, 2010
Cole County
Commission #00889378


Notary Public

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1 sites, disposal sites, or sites to which material may have migrated, as a result of the operation
2 or decommissioning of gas manufacturing facilities.

3 Q. Please explain the Environmental Response Fund (ERF) proposed by
4 Company witness Noack.

5 A. This issue relates to the Company's proposal to establish an ERF to be included
6 in rates of \$500,000 for clean up of sites where previous owners of MGE's properties
7 formerly operated a MGP. This proposal is discussed in the direct testimony of Company
8 witness Noack at pages 23 and 24 and Schedule H-25, page 2, attached to his testimony.

9 The ERF is intended to work as a "tracking mechanism" by which MGP costs (of
10 unknown future quantity) are collected from customers through a separate rate element, and
11 later "trued up" by the Company by comparing the amount of the rate collections to the MGP
12 expense actually incurred by MGE.

13 It is my understanding that any over-recovery or under-recovery of MGP costs, as
14 reflected by the tracking mechanism, will be refunded to/collected from customers at a later
15 date. Also, as part of this proposal, the Company proposes that fifty percent (50%) of any
16 applicable insurance proceeds and/or contributions obtained from Westar Energy and/or
17 contributions obtained from potentially responsible parties (PRP), net of costs associated with
18 obtaining such proceeds and/or contributions, shall be credited to this fund. Westar Energy is
19 the current name of Western Resources, Inc (WRI), the owner of MGE's Missouri gas
20 properties prior to 1994.

21 Q. What happens to the other 50% of insurance proceeds and/or contributions
22 obtained from Westar Energy and/or contributions obtained from PRPs?

1 A. In response to Staff Data Request No. 7.3, which is an update of the
2 Company's responses to Staff Data Request No. 9.1 through 9.5 in MGE's last rate case
3 (GR-2004-0209), the Company states that under the terms of the proposed ERF, contributions
4 to and/or proceeds obtained from other parties, net of the cost of obtaining such contributions
5 and/or proceeds, shall be shared evenly between the Company's shareholders (as a form of
6 profit) and customers (as a credit to the ERF). The fund shall also be given credit for the
7 accrued liability in the amount of \$3,000,000 recorded on Southern Union Company's
8 (Southern Union's) books following the acquisition of the Missouri property (which was to
9 become MGE) from WRI. Southern Union is the parent company of MGE.

10 Thus, under the Company's ERF proposal, shareholders would receive the benefit of
11 50% of any insurance proceeds and/or contributions received to reimburse MGE for MGP
12 environmental costs. While customers are expected to pay 100% of the costs of MGPs, they
13 would receive credit for only one-half of any reimbursements.

14 Q. How are MGP costs treated by MGE?

15 A. In response to Staff Data Request No. 7.3, the Company states that currently
16 MGP clean-up costs are being booked at the Southern Union's corporate level. No costs are
17 being booked at the MGE level at the present time. The \$500,000 proposal for the ERF is an
18 estimate of an appropriate level to use to establish a fund from which future costs can be paid.
19 MGE also believes the ERF is appropriate in that it will prevent future rate shock at such time
20 as the costs are incurred. It is intended that all monies paid into the fund will be held in a
21 separately segregated interest bearing account.

22 Q. Why is the Company potentially liable to incur MGP cleanup expenditures in
23 the first place?

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

8 In 1986, CERCLA was amended by the Superfund Amendments and Reauthorization
9 Act (SARA), which intensified Superfund activities and set a goal of achieving “permanent”
10 solutions at Superfund sites. CERCLA imposes strict, joint, and several liabilities on present
11 or former owners or operators of facilities where substances have been or are threatened to be
12 released into the environment. PRPs include owners of contaminated land from point of
13 contamination to date, operators (which is interpreted as any party that had possession,
14 control, or influence over the premises during the same period), transporters, and generators
15 of the contaminants regardless of whether they directly released such substances into the
16 environment.

17 Q. For how many Missouri MGP sites is Southern Union a PRP?

18 A. Southern Union has recognized that it currently has ownership interests in six
19 sites in Missouri that could require potential responsibility for cleanup efforts. In addition to
20 the currently owned sites, the Company has identified fourteen unowned facilities for which it
21 may or may not be a PRP under the Superfund statute.

22 Q. Has MGE’s liability for the above mentioned sites been determined?

1 A. No. The Company's response to Staff Data Request No. 7.3 states that no final
2 determination has been made for MGE's liability of the above-mentioned sites. Such
3 determinations are typically made through the litigation or settlement process in the event
4 remediation is necessary at a given site. If MGE is held responsible for a given site, MGE
5 will pursue recovery from available PRPs, insurance proceeds or WRI.

6 Q. What is the Staff's position on the ERF proposal?

7 A. The Staff believes that the \$500,000 environmental fund should not be allowed
8 as an MGE operating expense in this case.

9 Q. Please explain why the Staff opposes inclusion of MGE's proposed ERF for
10 manufactured gas site remediation costs in MGE's cost of service.

11 A. The Staff's opposition to the inclusion of the manufactured gas plant site
12 remediation costs in MGE's instant case cost of service is based on a number of reasons. The
13 primary reason is that MGE and WRI have already recognized and accepted that they, their
14 insurers and potentially other PRP's are responsible for the costs of the MGP remediation.

15 Pursuant to the terms of the highly confidential *Environmental Liability Agreement*
16 (ELA), dated January 31, 1994, (attached as Highly Confidential Schedule 1 to this
17 testimony)** _____
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Q. What are the other reasons the Staff is opposed to rate recovery of MGE's proposed MGP fund?

A. MGE's MGP costs do not meet the longstanding Commission requirement that costs to be included in cost of service must be known and measurable. During the Staff's field work in this case, MGE was unable to provide the Staff with an estimate or projections of the dollar amount associated with the mediation and clean up of MGP sites.

Also, to the extent the ERF is intended to be used as a true-up or tracking mechanism, and current customers are required to pay for the cost of service not recovered from past customers or be reimbursed for past over-payments in rates (e.g., past rates were set too low or too high), my counsel advised me that MGE's proposal could constitute single-issue and retroactive ratemaking.

Finally, it has been a longstanding policy of this Commission that shareholders, not ratepayers, receive the benefits of gains or losses (below-the-line treatment) of any sale or removal from service of Company-owned land or other investment. Since it is the shareholder who receives either the gain or the loss on an investment's disposal, it is the shareholder who should shoulder the responsibility for any legal liability that arises at a later date related to the investment.

Q. Does MGE's proposed ERF contain a flaw in design?

A. Yes, automatic recovery of the remediation costs from MGE's customers in rates reduces the incentive for the Company to seek partial or complete recovery of the costs from other past owners of the plant sites or Company's insurers.

1 Q. How does the Staff recommend that MGE treat any MGP costs it may incur in
2 the future?

3 A. MGP costs specifically attributable to MGE may be charged to expense and
4 MGE can seek recovery of these costs at an appropriate time. MGE should be prepared to
5 demonstrate that it has maximized recovery from third parties of MGP costs before seeking
6 recovery from customers. In addition, if MGE's MGP costs meet the Commission's
7 requirements for accounting authority orders (AAOs), MGE is free to seek a Commission
8 AAO for these costs.

9 Q. Does this conclude your rebuttal testimony?

10 A. Yes, it does.

SCHEDULE ONE HAS BEEN DEEMED
HIGHLY CONFIDENTIAL IN ITS ENTIRETY