

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

In the Matter of Southern Missouri Natural	)	
Gas Company, L.P.'s Purchased Gas	)	
Adjustment (PGA) Factors to be Reviewed in	)	<u>Case No. GR-2006-0352</u>
Its 2005-2006 Actual Cost Adjustment	)	

**MOTION IN LIMINE**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and for its Objections to the Rebuttal Testimony of Randal T. Maffett respectfully states as follows:

1. Staff objects to lines 15-19 of the answer to the question that is asked on line 14 of page 2 of the rebuttal testimony of Randal T. Maffett. This portion of the answer contains a legal conclusion that this witness is not competent to render.

2. Staff objects to lines 3-17 of page 3 of the rebuttal testimony of Randal T. Maffett. These lines contain impermissible opinions about the credibility of another witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*, 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988). *See also, Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

3. Staff objects to lines 23-24 of page 3 and line 1 of page 4 of the rebuttal testimony of Randal T. Maffett. These lines contain impermissible opinions about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder

by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*. 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988)). *See also, Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998). Furthermore, this testimony contains a legal conclusion that this witness is not competent to render.

4. Staff objects to lines 3-4 of page 4 of the rebuttal testimony of Randal T. Maffett. This portion of the answer contains a legal conclusion that this witness is not competent to render.

5. Staff objects to the question and answer contained in lines 12-24 of page 6 of the rebuttal testimony of Randal T. Maffett. These lines contain impermissible opinions about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*. 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988)). *See also, Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

6. Staff objects to the question and answer contained in lines 8-21 of page 8 of the rebuttal testimony of Randal T. Maffett. These lines contain impermissible opinions about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*. 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*,

762 S.W.2d 820, 823 (Mo.banc 1988). *See also, Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

7. Staff objects to the question and answer contained in lines 1-7 of page 9 of the rebuttal testimony of Randal T. Maffett. These lines contain impermissible opinions about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*. 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988). *See also, Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

8. Staff objects to the question and answer contained in lines 8-19 of page 14 of the rebuttal testimony of Randal T. Maffett. These lines contain impermissible opinions about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*. 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988). *See also, Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

9. Staff objects to the question and answer contained in lines 21-24 of page 14 and lines 1-3 of page 15 of the rebuttal testimony of Randal T. Maffett. These lines contain impermissible opinions about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the

credibility of Dr. Choe. *State v. Whitmill*. 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988). *See also*, *Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

10. Staff objects to lines 21-24 of page 14 of the rebuttal testimony of Randal T. Maffett. These lines mischaracterize the testimony of Dr. Choe.

11. Staff objects to lines 4-8 of page 16, up to the sentence beginning “For example,” of the rebuttal testimony of Randal T. Maffett. These lines are argumentative. Furthermore, these lines contain impermissible opinions about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*. 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988). *See also*, *Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

12. Staff objects to the phrase “and Staff’s apparent view of a ‘prudent’ hedging plan” found in lines 19-20 of page 16 of the rebuttal testimony of Randal T. Maffett. These lines are argumentative. Furthermore, these lines contain impermissible opinions about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*. 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988). *See also*, *Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

13. Staff objects to the phrase “Staff’s suggested ‘prudent’ approach” in line 23 of page 16 of the rebuttal testimony of Randal T. Maffett. This phrase is argumentative. Furthermore, this phrase contains an impermissible opinion about the credibility of another witness by an expert witness. Witness credibility is to be determined by the finder of fact and this testimony invades the province of the fact-finder by impermissibly seeking to undermine the credibility of Dr. Choe. *State v. Whitmill*, 780 S.W.2d 45, 47 (Mo.banc 1989) (citing *State v. Lawhorn*, 762 S.W.2d 820, 823 (Mo.banc 1988). *See also, Peterson v. National Carriers, Inc.*, 972 S.W.2d 349, 357 (Mo. App. W.D. 1998).

14. Staff objects to the sentence “However, this is not what the Commission should do when reviewing the prudence of the company’s actions” found in lines 22-23 of page 17 of the rebuttal testimony of Randal T. Maffett. This statement contains an impermissible opinion about the ultimate issue to be decided by the Commission.

15. Staff objects to the question and answer found at lines 4-15 of page 19 of the rebuttal testimony of Randal T. Maffett. This question and answer calls for a legal conclusion that the witness is not competent to render. Furthermore, this question and answer contains an impermissible opinion about the ultimate issue to be decided by the Commission.

**WHEREFORE,** Staff requests that Commission issue an Order allowing any party who wishes to respond to these objections to do so no later than ten days after the filing of this Motion in Limine. Staff further requests that the Commission rule on the objections and responses prior to the hearing scheduled on November 29, 2007.

Respectfully submitted,

/s/ Jennifer Heintz

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### **Certificate of Service**

I hereby certify that the foregoing instrument was hand-delivered, mailed via first-class mail, postage prepaid, or electronically mailed to counsel of all parties to this cause on this 1<sup>st</sup> day of November, 2007.

/s/ Jennifer Heintz