

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

In the Matter of Missouri Gas Energy's)
Tariffs Increasing Rates for Gas Service)
Provided to Customers in the Company's)
Missouri Service Area.)

Case No. GR-2006-0422

**THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE TO
MISSOURI GAS ENERGY'S MOTION TO STRIKE PORTIONS OF
THE SURREBUTTAL TESTIMONY OF BARBARA MEISENHEIMER**

COMES NOW the Office of the Public Counsel and in response to Missouri Gas Energy's motion to strike portions of the surrebuttal testimony of Barbara Meisenheimer states:

1. On December 8, 2006, the Commission issued its *Prehearing Order*, which gave parties until 12:00 p.m. on January 4, 2007 to object to the admission into evidence of any prefiled testimony. At 11:45 a.m. on January 4, 2007, MGE filed a motion to strike portions of the December 11, 2006 surrebuttal testimony of Public Counsel's witness Ms. Barbara Meisenheimer.

2. The testimony in question is a response to testimony from MGE's witness Dr. Philip Thompson wherein he concludes that low-income MGE customers may use more gas than higher income customers based upon his study of aggregate data per zip code. Ms. Meisenheimer's response states that Dr. Thompson's zip code study is not "sufficiently disaggregated to compare specific patterns of income and consumption among low and high income households." (Meisenheimer Surrebuttal, p. 10). Next, Ms. Meisenheimer testified that Dr. Thompson's zip code study contradicts historic evidence on the relationship between income and consumption for low-income households, and contradicts a study Ms. Meisenheimer preformed herself. (Id.). MGE objects to these latter two portions of Ms. Meisenheimer's

testimony. MGE's objections are unfounded because MGE offers no legal basis for the relief requested and for the additional reasons explained below.

3. Ms. Meisenheimer testified that Dr. Thompson's study contradicts previous testimony by Mr. Roger Colton before the Commission that presented information from the U.S. Department of Energy, the U.S. Department of Health and Human Services, and the U.S. Bureau of Labor Statistics Consumer Expenditure Surveys "demonstrating that low-income consumers actually have **below average** natural gas usage" (Meisenheimer Surrebuttal, p. 10). MGE argues that because Mr. Colton is not a witness to this case and cannot obtain discovery or cross-examine Mr. Colton, the Commission should strike Ms. Meisenheimer's testimony. Ms. Meisenheimer testified that Dr. Thompson's zip code study contradicts her expert opinion of the "historic evidence" on income-consumption studies, and explains the basis of her expert knowledge by referencing the studies of Mr. Colton. Ms. Meisenheimer does not offer Mr. Colton's studies for the truth Mr. Colton's conclusions; rather, she identifies his studies to explain the basis for her expert knowledge on the subject. In *State of Missouri ex rel. State Highway Commission of Missouri v. Barron*, 400 S.W.2d 33, 37 (Mo. 1966), the Missouri Supreme Court addressed the admissibility of expert testimony and stated:

His knowledge and expertise is acquired from many sources, some of which are hearsay sources as a matter of necessity. For instance, a well-qualified expert ordinarily attempts to exhaust the prior learning in the field. This necessarily involves the absorption of much data based upon or constituting hearsay, such as statements in textbooks, lectures by those professing specialized knowledge, opinions and experiences of others, etc. ... The hearsay and best evidence rules should not be applied to prevent an expert witness from giving the basis of his opinion.

And in *Fierstein v. DePaul Health Center*, 24 S.W.3d 220, (Mo. App. E.D. 2000), the Missouri Court of Appeals held that "[t]he essential test of expert opinion evidence is whether it will be helpful to the fact finder." The testimony of Ms. Meisenheimer is extremely helpful to the

Commission because it allows the Commission to fully understand the true impact of the proposals before it.

4. Ms. Meisenheimer also cites to Mr. Colton's paper published in the April 2002 Electricity Journal, which concluded that moving "a greater proportion of utility bills to fixed monthly charges are regressive in nature and will tend to impose adverse impacts on low-income consumers." This study also formed the basis for Ms. Meisenheimer's expert knowledge on income and consumption relationships. Mr. Colton's paper appeared in a publicly available document that MGE can access to introduce as evidence should MGE find fault in Mr. Colton's findings. MGE's witness, Mr. Frank Hanley, cites extensively throughout his direct testimony to publications that he claims supports his testimony on common equity. Mr. Hanley claims an efficient market hypothesis is the "cornerstone of investment theory" and cites to a journal article written by Eugene Fama and a text written by R.A. Brealey and S.C. Myers as proof. (Hanley Direct, p. 27-28). Mr. Hanley references an article written by Roger Morin to support his claim of what constitutes "fundamental economic value of a security." (Id.). Mr. Hanley finds support in the "academic and financial literature" for his position on common equity through an additional article by Charles Phillips. The last time Public Counsel checked the witness list, the names Fama, Brealey, Bonbright, Myers, Morin, Phillips, Jensen, Ross, Friend, Blume, Black, Scholes, Miller, Husic, Hamada, Macbeth, Basu, Reinganum, Litzenberger, Ramaswamy, Banz, Gibbons, Stambaugh and Shanken did not appear as MGE witnesses – all which were cited to by Mr. Hanley. (Hanley Direct, pp. 27-30, 34, 44, 58). It should also be noted that, to Public Counsel's knowledge, the findings quoted to by Mr. Hanley were not testified to by those authors under oath as to their truthfulness as was the testimony offered by Mr. Colton before this Commission.

5. Ms. Meisenheimer performed her own study based on individual household income and consumption data from the U.S. Department of Energy's 2001 Residential Energy Consumption Survey to calculate average consumption by categories of income and found that lower income categories had progressively lower gas consumption. (Meisenheimer Surrebuttal, p. 12). Ms. Meisenheimer achieved the results of her study using U.S. Department of Energy survey data from 4,823 households, with each data set broken down even further into value data representing characteristics of that household. Under Section 536.070 RSMo 2000, the results of Ms. Meisenheimer are admissible as evidence because it involved a large number of figures and because the study was: 1) Made by or under the supervision of a witness; 2) The witness is present at hearing; 3) The witness testifies as to the accuracy of the results; 4) The witness is subject to cross-examination; and 5) The witness is qualified to make the study. Section 536.070(11) RSMo 2000 states:

(11) The results of statistical examinations or studies, or of audits, compilations of figures, or surveys, involving interviews with many persons, or examination of many records, or of long or complicated accounts, or of a large number of figures, or involving the ascertainment of many related facts, shall be admissible as evidence of such results, if it shall appear that such examination, study, audit, compilation of figures, or survey was made by or under the supervision of a witness, who is present at the hearing, who testifies to the accuracy of such results, and who is subject to cross-examination, and if it shall further appear by evidence adduced that the witness making or under whose supervision such examination, study, audit, compilation of figures, or survey was made was basically qualified to make it. All the circumstances relating to the making of such an examination, study, audit, compilation of figures or survey, including the nature and extent of the qualifications of the maker, may be shown to affect the weight of such evidence but such showing shall not affect its admissibility.

Ms. Meisenheimer's study meets the requirements of Section 536.070(11) RSMo 2000. MGE had a month to review Ms. Meisenheimer's testimony and request that Public Counsel produce the above-mentioned publicly available materials cited in her testimony. MGE failed to do so and now seeks a last-minute remedy for MGE's oversight. If MGE questions the results of Ms.

Meisenheimer's study, the appropriate method for exploring the specifics of Ms. Meisenheimer's calculations is through cross-examination.

6. MGE's efforts to strike Ms. Meisenheimer's testimony are simply an attempt to remove strong evidence that clearly suggests MGE's proposed rate design will harm low-income consumers, facts which MGE wants to obscure through a zip code study meant to suggest otherwise. MGE's efforts to strike evidence of the true impact of MGE's rate design proposal should be rejected.

WHEREFORE, Public Counsel respectfully offers this response and urges the Commission to reject MGE's motion to strike the testimony of Ms. Barbara Meisenheimer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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