

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's)
Tariffs Increasing Rates for Gas Service) **Case No. GR-2006-0422**
Provided to Customers in the Company's)
Missouri Service Area)

ORDER DENYING MOTION TO STRIKE

Issue Date: December 6, 2006

Effective Date: December 6, 2006

Background

On May 1, 2006, Missouri Gas Energy filed its direct testimony. In his direct testimony, Missouri Gas Energy's witness Thomas Sullivan refers to "column J" of "Table 4-1" and "column H" of "Table 4-2" attached to his testimony. These attachments are depreciation expense rates. After having stated that "the depreciation expense rates contained in column (H) of table 4-2 . . . are based on the remaining life methodology," Mr. Sullivan goes on to recommend that MGE "implement the whole life rates contained in column (J) of Table 4-1."

On November 21, the parties filed rebuttal testimony. As part of his rebuttal testimony, Mr. Sullivan states that he misspoke when he referred to the depreciation rates of column H as remaining life rates. He adds that he should have referred to them as whole life rates reflecting a reserve adjustment and that MGE should implement the rates contained in column H rather than those contained in column J.

On November 30, the Staff of the Commission filed a motion to strike those portions of Mr. Sullivan's testimony that refer to or rely on the change in, or correction of, his recommendation. In its motion, Staff states that this change in methodology adds

\$618,848 to the depreciation issue. Staff argues that granting its motion will obviate the need to respond to the change in depreciation methodology. In its response to Staff's motion, MGE states that in his rebuttal testimony Mr. Sullivan was simply attempting to correct an obvious error made in his direct testimony. Rather than wait until Mr. Sullivan was on the stand during the hearing to correct the testimony, MGE states that it took the opportunity to do so in its rebuttal. MGE also requests that the Commission disregard the affidavit of Gregory Macias attached to Staff's motion. The affidavit contains a reference to a telephone call between Mr. Macias and Mr. Sullivan. MGE argues that this is impermissible hearsay.

Finally, on December 6, Staff filed a reply to MGE's response. Staff insists that Mr. Sullivan is not correcting an error but is rather changing methodology.

Discussion

Commission rule 4 CSR 240-2.130(7)(A) requires that prefiled direct testimony include all testimony and exhibits asserting and explaining that party's entire case-in-chief. Both schedules are contained in MGE's direct testimony. Staff was therefore afforded an opportunity, since May 1, 2006, to review these schedules regardless of Mr. Sullivan's mischaracterization of schedules J and H. Commission rule 4 CSR 240-2.130(8) requires that MGE secure permission from the Commission or presiding judge prior to supplementing its testimony. MGE has not supplemented its direct testimony. Rather, MGE has corrected its testimony as is routinely done during evidentiary hearings. Further, as a practical matter, to grant Staff's motion would be to force Mr. Sullivan, through his direct, to recommend depreciation rates that are inconsistent with his position. This is a strange result.

However, the parties must be afforded an opportunity to respond to Mr. Sullivan's correction. This opportunity cannot be had with the filing of surrebuttal testimony, which is due to be filed on December 11. That date is only several days away from the date of this order. Although, arguably, Staff will have had 20 days from the date MGE filed the rebuttal testimony, the Commission will not allow Staff, or any other party, to possibly be prejudiced.

Finally, MGE suggests that the Commission disregard Mr. Macias' affidavit as impermissible hearsay. The Commission will note that Mr. Macias' affidavit has not been offered into evidence. Further, it is unlikely that it will be offered. In the event that it is, the Commission will entertain objections at that time. Although the Commission is aware that Mr. Sullivan's rebuttal testimony has not been offered either, the Commission would rather entertain objections to prefiled testimony prior to the evidentiary hearing because unlike Mr. Macias' affidavit, Mr. Sullivan's rebuttal testimony will more than likely be offered as evidence.

Conclusion

In light of the above discussion, the Commission will deny Staff's motion but will afford the parties an opportunity to respond to that objectionable portion of Mr. Sullivan's rebuttal testimony. Additionally, the parties should be aware that Mr. Sullivan's position is subject to cross-examination and since the filing of rebuttal testimony, there will have been enough time to prepare for such.

IT IS ORDERED THAT:

1. The Staff of the Commission's motion to strike portions of Missouri Gas Energy's witness Thomas Sullivan's testimony is denied.

2. Any party wishing to respond to the correction in Thomas Sullivan's rebuttal testimony may do so by "Supplemental Rebuttal to Thomas Sullivan's Corrected Direct" no later than December 29, 2006.

3. This order shall become effective on December 6, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Kennard L. Jones, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 6th day of December, 2006.