Exhibit No.: _____
Issue(s): Kansas Storage Gas Property Tax/
Former Manufactured Gas
Plant Remediation/
Pension Tracker Amortizations/
Plaza Explosion Costs
Witness/Type of Exhibit: Robertson/Surrebuttal
Sponsoring Party: Public Counsel
Case No.: GR-2014-0007

SURREBUTTAL TESTIMONY

OF

TED ROBERTSON

Submitted on Behalf of the Office of the Public Counsel

MISSOURI GAS ENERGY
A DIVISION OF LACLEDE GAS

CASE NO. GR-2014-0007

April 3, 2014

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the General Rate Increase Tariffs of Missouri Gas Energy, a Division of Laclede Gas Company	))))	Case No. GR-2014-0007

AFFIDAVIT OF TED ROBERTSON

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Ted Robertson, of lawful age and being first duly sworn, deposes and states:

1. My name is Ted Robertson. I am the Chief Public Utility Accountant for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Ted Robertson, C.P.A.
Chief Public Utility Accountant

Subscribed and sworn to me this 3rd day of April 2014.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 23, 2017
Cole County
Commission #13754037

Jerene A. Buckman
Notary Public

My Commission expires August 23, 2017.

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SURREBUTTAL TESTIMONY
OF
TED ROBERTSON

MISSOURI GAS ENERGY
CASE NO. GR-2014-0007

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Ted Robertson, PO Box 2230, Jefferson City, Missouri 65102-2230.

Q. ARE YOU THE SAME TED ROBERTSON THAT HAS PREVIOUSLY FILED DIRECT, SUPPLEMENTAL DIRECT TRUE-UP, AND REBUTTAL TESTIMONY IN THIS CASE?

A. Yes.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

A. The purpose of this rebuttal testimony is to respond to the rebuttal testimony of Company witnesses, Mr. Glenn Buck, regarding the Kansas storage gas property tax accounting authority order ("AAO") and Mr. Michael R. Noack regarding former manufactured gas plant ("FMGP") environmental remediation costs, pension tracker amortizations and Plaza explosion costs.

III. KANSAS STORAGE GAS PROPERTY TAX

Q. WHAT IS THE ISSUE?

A. Beginning on page 6 of Mr. Buck's rebuttal testimony he briefly discusses the legal and ratemaking events surrounding this issue. In particular, he discusses the recent negative ruling by the Kansas Supreme Court and Company's (along with other interested entities)

subsequent attempt to seek review of the issue at the U.S. Supreme Court. Because it is uncertain as to whether the U.S. Supreme Court will choose to hear the plea or reject it on hearing; thus, making the tax final and un-appealable, Company seeks to modify the accounting authority order it entered into in Missouri Gas Energy Case No. GR-2009-0355.

Q. WHAT WAS AGREED TO PURSUANT TO THE KANSAS STORAGE GAS PROPERTY TAX AAO IN CASE NO. GR-2009-0355?

A. Beginning on page 6, line 20, of Mr. Buck's rebuttal, he succinctly states,

> The parties entered into a Stipulation and Agreement in that rate case in which MGE agreed to defer the future tax expenses and begin amortizing them in the month after the final judicial resolution of the legality of the tax.

Q. WHAT RATEMAKING DOES COMPANY NOW REQUEST FROM THE COMMISSION?

A. Beginning on page 9, line 1, of Mr. Buck's rebuttal testimony, he discusses two possible alternatives, 1) include in the current case expenses consisting of an annualized level of Kansas storage gas property tax plus an amortization of the balance currently deferred in the AAO the total of which is to be "tracked" via a two-way tracker and trued-up at a later date. Any future over or under recoveries would be calculated in Company's next rate case and flowed back to the appropriate party, shareholder or ratepayer, through an accounting authority order, or 2) renew the current AAO with the provision that amortization of expenses would not begin until the effective date of rates in the next general rate proceeding.

Q. ON WHAT AUTHORITY DOES THE COMPANY RELY TO STATE THAT THE CURRENT AAO CAN BE MODIFIED?

A. Beginning on page 7, line 19, of Mr. Buck's rebuttal testimony, he highlights language from the previously discussed Stipulation and Agreement which states,

> If MGE files a general rate case prior to that final resolution, ratemaking treatment of the deferral may be considered within that case.

Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THE COMPANY'S PROPOSED RATEMAKING ALTERNATIVES?

A. Public Counsel strongly opposes the inclusion of any expense amounts in the development of the cost of service for the current case. To-date the amounts Company has deferred only represent accruals for amounts it estimates it may have to pay if a favorable resolution is not achieved through its legal maneuverings. Company has not actually paid out any monies to the taxing authorities concerning this issue. Thus, Public Counsel believes it is premature to include any expense in the cost of service when the cost has not actually been incurred, is based on estimates, and is not, at this time, a verifiable amount that is known and measureable.

Regarding the Company's second alternative, Public Counsel is not opposed to the proposal if additional minor modifications are included. The first modification would be that the amortization would not begin as described if the legal resolution was not final at the time of the Company's next rate case. If the legal resolution were not final, the AAO should continue as authorized in the current case. OPC's second modification is that language also be included in the authorization preventing the Company from over-recovering the amounts deferred pursuant to the AAO. Such language would consist of two components, 1) upon final legal resolution the actual amounts owed the taxing authorities should be supported by appropriate documentation and verified, and the amount deferred in the AAO

at that time be adjusted to the verified cost to be paid before the annual amortization amount for the deferred balance is determined, and 2) if between future rate cases, the balance deferred in the AAO becomes fully-amortized (recovered in rates), the amount of the amortization included in rates between the time that the AAO deferred balance becomes fully-amortized and the effective date of Company's next general rate change be calculated and returned to ratepayers over a time period not to exceed five years. Public Counsel believes it reasonable that if the Company is to be protected from under-recovery of the AAO deferred balances, it is no less reasonable that ratepayers also be protected from possible future over-recovery of those same costs.

IV. FMGP REMEDIATION

Q. WHAT IS THE ISSUE?

A. On page 13, lines 16 – 22, of his rebuttal testimony, Mr. Noack states that he does not agree with OPC's recommendation to exclude the former manufactured gas plant costs because, "These costs are all necessary and appropriate costs associated with assets that have served customers over many years." Public Counsel believes that Mr. Noack's statement is a misleading and ultimately incorrect allegation.

Q. PLEASE CONTINUE.

A. The costs at issue are associated with the cleanup of FMGP sites that have not produced or manufactured gas for many decades. Company agrees with this position in its response to MPSC Staff DR No. 9.2, Question 5, in MGE Case No. GR-2004-0209 (provided in response to MPSC Staff DR No. 44.1 in the instant case) it stated,

> Answer: MGP facilities are no longer in use.

However, Mr. Noack testimony attempts to mislead the Commission into believing that the FMGP costs are costs associated with assets that have served customers over many years. That is a false statement. The remediation of FMGP sites relates to facilities that no longer exist.

Q. IS PUBLIC COUNSEL RECOMMENDING ANY DISALLOWANCES FOR IN-SERVICE PLANT OR OPERATIONS LOCATED ON SITES OWNED BY THE COMPANY BUT FORMERLY OCCUPIED BY THE FMGP?

A. No. Neither the OPC, nor the MPSC Staff to my knowledge, has recommended any disallowance to Company's land or facility costs which are used in useful in the provision of customer service and currently residing on the locations of the former manufactured gas plant operations. The costs for the operation of current used and useful plant is included in the recommendations of all the parties; however, the costs for remediation of manufactured gas plant facilities that have not been in operation for decades is not.

Q. IS MISSOURI GAS ENERGY ALSO A POTENTIALLY RESPONSIBLE PARTY ("PRP") FOR FORMER MANUFACTURED GAS PLANT SITES IT DOES NOT OWN AND WHICH WILL NEVER BE USED AND USEFUL IN ITS UTILITY OPERATIONS?

A. Yes. In its response to OPC Data Request No. 1002, Missouri Gas Energy Case No. GR-96-285, the Company identified that it currently has ownership interests in six sites that could require potential responsibility for cleanup efforts, and an additional thirteen un-owned facilities which may or may not involve it as a potentially responsible party. The FMGP sites are:

OWNED FACILITIES

St. Joseph	4th & Cedar
Kansas City	223 Gillis
Kansas City	1st & Campbell
Kansas City	20th & Indiana
Joplin	520 East 5th
Independence	23rd & Pleasant

UNOWNED FACILITIES

Harrisonville	N. Independence & Former Railroad Intersection
Excelsior Springs	400 W. Excelsior
Warrensburg	Unknown Address
Joplin	Kentucky Avenue
Independence	S. River Blvd. & W. Pacific
Kansas City	1621 West 25th St.
Marshall	400 N. Lafayette Ave.
Marshall	Eastwood & N. Ellsworth Ave.
Monette	6th & Front St.
St. Joseph	6th & Olive
St. Joseph	5th & Angelique
Carthage	411 N. Main
Carthage	SW corner of Garrison & Limestone

This information is corroborated on page 8 of my direct testimony in MGE Case No. GR-2001-292. However, in a subsequent rate case, MGE Case No. GR-2004-0209, in response to MPSC DR No. 9.2 (included in response to MPSC DR No. 44.1 in the instant case) Company added one more un-owned facility to the list, and in MGE Case No. GR-2006-0422, in response to OPC DR No. 1005, Company identified it had sold one of the owned properties. Thus, based on information provided by the Company, it currently has ownership interests in five (5) facilities and has potential liability in fourteen (14) un-owned sites.

Q. PLEASE EXPLAIN THE CONCEPT "USED AND USEFUL".

A. One of the Public Counsel's main objections to the Company proposed treatment of this issue is that we believe that it violates the regulatory "used and useful" standard. The

general rule is that, "the rate base on which a return may be earned is the amount of property used and useful, at the time of the rate inquiry, in rendering a designated utility service." (A.J.G. Priest, Principles of Public Utility Regulation (1969), p. 139, vol. 1). This principle is certainly grounded in common sense. In dividing the responsibility for a utility's operations between ratepayers and stockholders, regulators have traditionally required that stockholders rather than ratepayers be required to bear the costs of any utility investment which is not used and useful to provide service to the ratepayers.

In a recent discussion of the policy in Missouri, State ex rel. Union Electric v. Public Service of the State of Missouri, 765 S.W. 2d 618 (Mo. App. 1988), the Court of Appeals for the Western District endorsed the used and useful policy. That case involved Union Electric's appeal of the Commission's denial of the costs of cancellation of its Callaway II nuclear unit. The Commission ruled that the risk of cancellation should be borne by the shareholder, since if it was not, the shareholder's investment would be practically risk free. The Court, in upholding the Commission's decision, stated:

> The utility property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful. This used and useful concept provides a well-defined standard for determining what properties of a utility can be included in its rate base.

The “used and useful” test is commonly used by regulatory commissions to determine if an item should be included as a utility's cost of service component. Under this concept, only the costs associated with plant or property that currently provides utility service to the public is authorized for cost of service treatment.

Ratepayers should not be held responsible for additional costs that do not increase service capabilities or provide cost benefits. The FMGP site remediation costs being incurred are associated with plant that is no longer in service and therefore no longer used and useful. The FMGP sites benefited ratepayers that received service decades ago, long before most MGE customers began receiving service. The Company is asking the Commission to have current customers pay for plant that does not operate to provide current utility service. This is not the normal practice of this Commission, and it is unreasonable to force a consumer to pay for something they are not using. MGE is entitled to the opportunity to earn a fair rate of return only upon monies prudently invested in property used and useful in rendering utility service.

The purpose of the regulatory ratemaking process is to identify a reasonable monetary return that the monopoly enterprise has the opportunity to earn. Regulation does not guarantee that level of earnings, nor does it force a company to return any overearnings retroactively, in the event overearnings occur. Even if the former FMGPs are assumed to have been used and useful utility property at the time the pollution of the land occurred, and the cleanup costs had not been anticipated while the plant was in use, current ratepayers should not be held captive to their recovery. In simplistic terms, the ratepayers part of the regulatory bargain is to provide the Company with a level of revenues that allow it to earn the Commission approved rate of return on current used and useful investment along with the costs of operating and maintaining that investment, and no more. Ratepayers do not assume, willing or implied, any risk assumed by the stockholders.

MGE's proposal implicitly states that because federal statutes, unrelated to its provision of utility service to customers, will cause the Company's expenditures to increase, ratepayers and not stockholders should be held responsible for those costs. The Company is

attempting to pass the natural risks associated with a business that is a continuing enterprise, a "going-concern", entirely from stockholders to ratepayers. Stockholders, not ratepayers, are the actual risk-takers and for assumption of risk they receive a market determined return on their investment. If an unexpected event occurs that affects the Company either in a negative or positive manner then stockholders, not ratepayers, should weather the effects.

As stated above, MGE has a current ownership interest in only five FMGP sites, but it has identified fourteen other FMGP sites it does not own in which it may or may not be a PRP. While it is undisputed that no manufactured gas is being produced at any of the sites identified, it is extremely relevant that the fourteen FMGP sites not owned by the utility will never produce or provide any services to the customers of MGE. To include any costs associated with the remediation of these sites would be completely unreasonable. They play no part in the current operations of MGE. They are nothing more than a legal obligation of MGE's parent company. Therefore, Laclede Gas Company shareholders, not MGE ratepayers, are solely responsible for any remediation costs they incur.

Q. ARE THERE OTHER REASONS THAT, FOR THE FIVE FMGP SITES ACTUALLY OWNED BY MGE, RATEPAYERS SHOULD NOT BE HELP RESPONSIBLE FOR REIMBURSEMENT OF THEIR REMEDIATION COSTS?

A. Yes. Essentially, the activities involved in the FMGP remediation process are intended to bring the property in question back up to a normal standard of usability or, at least, a non-threatening status level. What I mean by that statement is that a FMGP site that has been cleaned-up is capable of being sold and/or utilized for other purposes. As such, if Company desires it could likely sell its interest in the properties possibly without recourse. If that occurs, any gain associated with a property's sale would naturally flow to the

shareholders. In such a situation, shareholders would directly benefit from a sale that was only made possible because ratepayers funded the activities that brought the site back up to par so it could be sold. Ratepayers would be harmed in two ways, 1) they reimbursed the utility for the remediation costs but received no services from it, and 2) they do not share in the gain when the site is sold.

Q. ARE GAINS AND LOSSES ON THE SALE OF UTILITY PROPERTY IN THE STATE OF MISSOURI EVER SHARED WITH RATEPAYERS?

A. No. Based on past Commission practice, utilities in Missouri expect that any gain on a sale of an asset (i.e., any sale of an asset in excess of its net book value) will flow to shareholders and not to ratepayers. To my knowledge, no Missouri utilities have come forward proposing to share gains from the sale of assets with ratepayers. It is inconsistent to expect ratepayers to pay for remediation of the assets when only shareholders reap the benefits of any gains when a company disposes of utility property.

Q. WERE RATEPAYERS AT FAULT FOR THE FMGP CONTAMINATION?

A. No. Ratepayers had no input as to the manner in which FMGP sites were operated or dismantled nor were they at fault for the contamination of the FMGP sites.

Q. WHY IS IT SIGNIFICANT TO ESTABLISH THAT THE RATEPAYERS ARE NOT AT FAULT FOR THE FMGP CONTAMINATION?

A. It is significant to establish the ratepayers lack of fault in order to highlight the impropriety of MGE's proposal. The proposal is a classic example of a public utility trying to take advantage of the captive position of its customers. Essentially, it's the Company's desire to shift the risk and financial burden of the FMGP sites remediation from its shareholders to its customers. Customers did not cause the contamination. In fact, it is unlikely that current

customers played any part in the management and operation of the plant that is now being remediated. Any contamination that occurred was done under the auspices of managers of the Company or predecessors. To absolve them of this responsibility, for whatever reason, is not appropriate. The Company's shareholders have been reimbursed for the risk of events such as these through a Commission approved rate of return. Accordingly, the Company's shareholders should be held responsible for the resulting liabilities and costs.

Q. DOES THE PUBLIC COUNSEL BELIEVE THAT MGE'S OWNERS HAVE ALREADY BEEN REIMBURSED BY RATEPAYERS FOR THE FMGP REMEDIATION COSTS?

A. Yes. It is the Public Counsel's belief that Company's shareholders have already been reimbursed for the costs. Our position is that the utility's shareholders are compensated for this particular business risk through the risk premium applied to the equity portion of the utility's weighted average rate of return. Since businesses are dynamic, the risk of unknown business changes is a factor included in a utility's rate of return authorized by the Commission, and utility's in this State receive a monetary recovery for that risk each and every year of their existence. MGE, and/or its predecessors, received that monetary recovery for the FMGP sites at the time of their operation going forward every year to the present. The utility should not now be allowed an additional return to compensate it for those very same costs.

Q. DOES MR. NOACK RELY ON ANY OTHER COMMISSION ORDERS TO SUPPORT HIS POSITION?

A. Yes. Beginning on page 14, line 3, of his rebuttal testimony, he states,

> Q. Has the Commission previously indicated its belief that these FMGP remediation costs are ongoing in nature?

A. Yes. In a Report and Order issued on December 17, 2008 in Commission Case No. GU-2007-0480, the Commission made the following findings in regard to MGE's FMGP sites and its remediation costs:

1) "Cleanup costs are certain to occur in the near future;"

2) "Remediation of former manufactured gas plant sites is a normal cost of doing business for a local distribution gas company;" and,

3) "Remediation of FMGP sites is typical of a natural gas utility."

Q. WHAT WAS THE PURPOSE OF MGE CASE NO. GU-2007-0480?

A. In June of 2007, Missouri Gas Energy, a division of Southern Union Company, filed with the Missouri Public Service Commission an application for an accounting authority order. MGE requested special accounting treatment for costs associated with the cleanup of former manufactured gas sites purchased by Southern Union so that those costs may be considered for possible recovery in MGE's next rate case.

Q. DID THE COMMISSION AUTHORIZE COMPANY'S AAO REQUEST?

A. No. On page 14 of the Report and Order in Case No. GU-2007-0480 the Commission denied the Company's AAO request. It stated,

> DECISION
> Having made the above findings of fact and conclusions of law the Commission determines that MGE's costs associated with the remediation of FMGP sites is not extraordinary. The Commission will therefore deny MGE's application for an accounting authority order.

Q. DOES MR. NOACK'S RECITATION OF ONLY THREE OF THE THIRTY-ONE FINDINGS OF FACTS IN THAT CASE HAVE ANY BEARING ON WHAT EVIDENCE THE COMMISSION SHOULD UTILIZE TO BASE ITS DECISION IN THE CURRENT CASE?

A. No, I do not believe that it does. The Commission's findings of facts in MGE Case No. GU-2007-0480 were only relevant to that proceeding and the Commission's decision in that case as to whether or not Company's request for an AAO met the requirements utilized by the Commission in granting an AAO. To my knowledge, no evidence as to who should be responsible for the ultimate payment of the costs (i.e., shareholders or ratepayers) was identified or presented in the AAO case. Therefore, the Commission's findings of fact in the AAO case have no relevance in the current case where such evidence has been vetted, in detail, for the Commission's examination.

Mr. Noack's desire to use the findings of fact from the AAO case in order to shape the Commission's view to one that the FMGP remediation costs are a normal ongoing cost of the utility, not unlike labor or repairs and maintenance, is at best incorrect and at worst a bit manipulative. The fact that the remediation costs are being incurred is undisputed, but who should be held responsible for payment of the costs depends on a myriad of facts and events not the least of which is who actually owns the sites being remediated, or to be remediated, who caused the pollution, and who benefited from the sale of the Company-owned facilities in the years leading up to and encompassing the actual remediation activities.

V. PENSION TRACKER AMORTIZATIONS

Q. WHAT IS THE ISSUE?

A. Beginning on page 23, line 21, of his rebuttal testimony, Mr. Noack discusses his opposition to the MPSC Staff's ratemaking treatment of the 2004 and 2006 pension asset amortizations. He states that the Staff's attempt to create a regulatory liability via application of negative amortization to the 2004 and 2006 pension amortizations is a violation of the Stipulation and Agreement in MGE Case No. GR-2009-0355.

Q. IS IT YOUR BELIEF THAT MR. NOACK HAS INCORRECTLY INTERPETED THE PARTIAL STIPULATION AND AGREEMENT FROM MGE CASE NO. GR-2009-0355?

A. Yes. Beginning on page 24, line 6, of his rebuttal testimony, Mr. Noack states,

> The way these amortizations were treated under the Stipulation and Agreement approved by Commission in MGE's previous rate case, Case No. GR-2009-0355, did not provide for negative amortizations of their balances. Rather the balances were to be amortized to zero, which they were.

However, Public Counsel believes that Mr. Noack's statement is incorrect because the Partial Stipulation and Agreement did in fact provide for the tracking and return to ratepayers of the so-called negative amortizations.

Q. PLEASE CONTINUE.

A. The Partial Stipulation and Agreement was identified as Attachment A to the Commission's February 10, 2010 Report and Order in MGE Case No. GR-2009-0355. On page 10 of the Partial Stipulation and Agreement it states,

> 21. <u>Recovery in rates of the prepaid pension asset amortizations listed above shall continue in subsequent rate cases as necessary until the asset balances are eliminated. The Company shall continue to be authorized to record as a regulatory asset/liability, as appropriate, the difference between the cash contributions made to the pension trusts, which are used in setting rates and the pension expense as recorded for financial reporting purposes as determined in accordance with generally accepted accounting principles (GAAP) pursuant to Financial Accounting Standard (FAS) 87 and FAS 88 (or such standard as the Financial Accounting Standards Board (FASB) may issue to supersede, amend, or interpret the existing standards), and that such difference shall be subject to recovery from or return to customers in future rates.</u>

22. The difference between the amount of pension expense included in Company's rates and the amount funded by Company shall be included in the Company's rate base in future rate proceedings.

(Emphasis added by OPC)

The language that Mr. Noack apparently relies on to support his position would be the first sentence in paragraph 21 of the Partial Stipulation and Agreement. As shown above that sentence states, "Recovery in rates of the prepaid pension asset amortizations listed above shall continue in subsequent rate cases as necessary until the asset balances are eliminated." However, Mr. Noack stopped short of explaining the entire agreement to the Commission. Beginning with the second sentence in paragraph 21 of the Partial Stipulation and Agreement it states, "The Company shall continue to be authorized to record as a regulatory asset/liability, as appropriate, the difference between the cash contributions made to the pension trusts, which are used in setting rates and the pension expense..., and that such difference shall be subject to recovery from or return to customers in future rates." Thus, the pension cost adjustments recommended by the MPSC Staff and supported by OPC are not only reasonable they are appropriate per the language of the Company's prior rate case Partial Stipulation and Agreement.

Q. DOES PUBLIC COUNSEL ALSO BELIEVE THAT THE PRIOR CASE PARTIAL STIPULATION AND AGREEMENT REQUIRES THAT THE PENSION TRACKERS UNAMORTIZED BALANCE, EITHER POSITIVE OR NEGATIVE, BE INCLUDED IN THE DETERMINATION OF COMPANY'S RATE BASE FOR THE CURRENT CASE?

A. Yes. Paragraph 22 of the Partial Stipulation and Agreement clearly states, "The difference between the amount of pension expense included in Company's rates and the amount funded by Company shall be included in the Company's rate base in future rate

proceedings." Thus, the MPSC Staff's rate base recommendation for this issue, which is supported by OPC, is also reasonable and appropriate.

Q. PLEASE SUMMARIZE PUBLIC COUNSEL'S POSITION FOR THIS ISSUE?

A. Public Counsel believes that the pension tracker expense and rate base adjustments recommended by the MPSC Staff are both reasonable and appropriate since they follow the requirements of the Partial Stipulation and Agreement from Company's last general rate increase case and the historical precedents from which the trackers themselves were originated and developed. That is, the trackers are to be utilized to ensure that the Company recovers the funds it actually contributes into its pension programs, but no more than what it contributes.

The use of the trackers was implemented to help mitigate the volatile nature of the costs associated with pension programs caused by economic considerations outside the control of the Company or the Commission. They were never intended to be a profit center for the utility as recommended by Mr. Noack. His attempt to misrepresent the language of the prior case Partial Stipulation and Agreement as allowing such an outcome is completely unreasonable and should not be authorized by this Commission.

VI. PLAZA EXPLOSION COSTS

Q. WHAT IS THE ISSUE?

A. This issue pertains to a gas explosion that occurred on the Plaza on February 19, 2013. Beginning on page 26, line 6, of his rebuttal testimony, Mr. Noack recommends that the Company be granted an AAO to defer various costs and payments related to the incident for possible future rate recovery.

Q. WHAT IS PUBLIC COUNSEL'S POSITION?

A. Public Counsel recommends that the Commission disallow the Company's request for an AAO. I do not believe that the gas explosion satisfies the requirements for an AAO authorization. AAOs are intended to be utilized for deferral and possible ratemaking of costs that are often described as caused by "acts of God" or governmental mandates that are not normally included in the development of rates because they cannot be predicted with any accuracy. While costs associated with a gas explosion may share some characteristics similar to costs normally included in an AAO, such as materiality, they are not extraordinary, unusual and unique, and not recurring.

Q. WOULD PUBLIC COUNSEL OPPOSE A DIFFERENT DEFERRAL MECHANISM FOR THE COSTS?

A. Public Counsel would not oppose the authorization of a tracker mechanism that would allow the Company to create a regulatory asset or liability the ratemaking of which would occur in the Company's next general rate increase case. The costs and payments that would be tracked would be as described in Mr. Noack's testimony; however, there would be no presumption of recovery or non-recovery in future rates. The beginning balance would be the actual costs incurred in the test year as identified by the MPSC Staff and adjustments to that balance would be future payments and reimbursements of costs related to the event.

Q. HOW DOES OPC'S PROPOSED DEFERRAL MECHANISM DIFFER FROM AN AAO?

A. It differs in two ways. First, it differs because it recognizes that the costs in question are not AAO type costs and thus, there is no presumption of the future recovery inherent in the deferral, and second, the tracker allows for the reduction of incurred costs via any

insurance or other reimbursements obtained by the utility. AAOs do not normally include or anticipate a reimbursement feature.

Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

A. Yes, it does.