

**Exhibit No.:** \_\_\_\_\_  
**Issue(s):** Regulatory Commission Expense  
Chillicothe Former Manufactured Gas Plant  
Remediation Pipeline Right-Of-Way Clearing Plan  
**Witness:** Ted Robertson  
**Type of Exhibit:** Direct  
**Sponsoring Party:** Public Counsel  
**Case Number:** GR-2009-0434  
**Date Testimony Prepared:** October 20, 2009

**DIRECT TESTIMONY**  
  
**OF**  
  
**TED ROBERTSON**

Submitted on Behalf of  
the Office of the Public Counsel

**EMPIRE DISTRICT GAS COMPANY**  
  
**Case No. GR-2009-0434**

\*\*

Denotes Highly Confidential Information that has been redacted

\*\*

October 20, 2009

**NP**

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

In the Matter of The Empire District  
Gas Company of Joplin, Missouri for  
Authority to File Tariffs Increasing  
Rates for Gas Service Provided to  
Customers in the Missouri Service  
Area of the Company. )  
)  
)  
)  
)  
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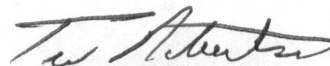
Case No. GR-2009-0434

**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 a Public Utility Accountant for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my direct 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.

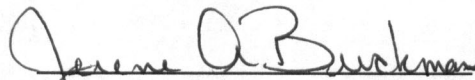


Ted Robertson, C.P.A.  
Public Utility Accountant III

Subscribed and sworn to me this 20<sup>th</sup> day of October 2009.



JERENE A. BUCKMAN  
My Commission Expires  
August 23, 2013  
Cole County  
Commission #09754037



Jerene A. Buckman  
Notary Public

My Commission expires August 23, 2013.

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DIRECT TESTIMONY  
OF  
TED ROBERTSON

EMPIRE DISTRICT GAS COMPANY  
CASE NO. GR-2009-0434

I. **INTRODUCTION**

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Ted Robertson, P. O. Box 2230, Jefferson City, Missouri 65102.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by the Office of the Public Counsel of the State of Missouri (OPC or Public Counsel) as a Public Utility Accountant III.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND OTHER QUALIFICATIONS.

A. I graduated from Southwest Missouri State University in Springfield, Missouri, with a Bachelor of Science Degree in Accounting. In November, 1988, I passed the Uniform Certified Public Accountant (CPA) Examination, and obtained CPA certification from the State of Missouri in 1989. My Missouri CPA license number is 2004012798.

Q. WHAT IS THE NATURE OF YOUR CURRENT DUTIES WHILE IN THE EMPLOY OF THE PUBLIC COUNSEL?

NP

1 A. Under the direction of the OPC Chief Public Utility Accountant, Mr. Russell W.  
2 Trippensee, I am responsible for performing audits and examinations of the books  
3 and records of public utilities operating within the State of Missouri.  
4

5 Q. HAVE YOU RECEIVED SPECIALIZED TRAINING RELATED TO PUBLIC  
6 UTILITY ACCOUNTING?

7 A. Yes. In addition to being employed by the Office of the Public Counsel since 1990, I  
8 have attended the National Association of Regulatory Utility Commissioners  
9 (NARUC) Annual Regulatory Studies Program at Michigan State University, and I  
10 have also participated in numerous training seminars relating to this specific area of  
11 accounting study.  
12

13 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI PUBLIC  
14 SERVICE COMMISSION?

15 A. Yes, I have. Please refer to Schedule No. TJR-1, attached to this direct testimony,  
16 for a listing of cases in which I have previously submitted testimony before the  
17 Missouri Public Service Commission (MPSC or Commission).  
18

19 Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

20 A. The purpose of this direct testimony is to address the Public Counsel's positions  
21 regarding the determination of an appropriate level of costs associated with Empire  
22 District Gas Company's (Empire, EDG or Company) Regulatory Commission

Expense, Chillicothe Former Manufactured Gas Plant Remediation (FMGP) and Pipeline Right-Of-Way (ROW) Clearing Plan.

**II. REGULATORY COMMISSION EXPENSE**

Q. WHAT IS THE ISSUE?

A. The issue is how to determine the proper amount of regulatory commission expense Company should be authorized to include in the development of future rates.

Q. PLEASE SUMMARIZE THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE.

A. Public Counsel's position is that the amount of regulatory commission expense, included in the development of Company's rates, should only include a normalized annual level of charges that directly benefit ratepayers. Since both shareholders and ratepayers benefit from the activities from which these charges derive, both parties should be held responsible for their payment.

Q. WHAT ARE THE TYPES OF COSTS NORMALLY BOOKED BY COMPANY AS REGULATORY COMMISSION EXPENSE?

A. Since this is the Company's first general rate increase case after acquiring the gas operations from Aquila, Inc., the only costs booked to-date relate to its annual MPSC Assessment and the instant rate case. The assessment costs have been booked in Federal Energy Regulatory Commission (FERC) Uniform System of

1 Accounts (USOA) expense account No. 928, while the costs to process the general  
2 rate increase case have been booked to the asset account USOA No. 186.815.

3  
4 Q. WILL THE COSTS CURRENTLY BOOKED IN USOA NO. 186.815 ULTIMATELY  
5 BE FLOWED THROUGH AS AN EXPENSE IN USOA NO. 928?

6 A. Yes, but only to the extent that they are authorized as a cost of service item by the  
7 Commission.

8  
9 Q. IS THE PUBLIC COUNSEL RECOMMENDING ANY DISALLOWANCE OF THE  
10 COMPANY'S COMMISSION ASSESSMENT?

11 A. No. Public Counsel believes that a small increase in the Commission's assessment  
12 is warranted so that the most current assessment received by the Company from  
13 the Commission is allowed in the development of rates. Thus, the increase  
14 recommended is approximately \$848.00.

15  
16 Q WHAT IS THE TEST YEAR AMOUNT OF GENERAL RATE INCREASE CASE  
17 EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS?

18 A. For the Commission ordered test year, twelve months ended December 31, 2008,  
19 the balance booked in USOA No. 186.815 is \$22,920 (source: General Ledger).

20  
21 Q WHAT IS THE AMOUNT OF GENERAL RATE INCREASE CASE EXPENSE  
22 COMPANY RECORDED IN ITS FINANCIAL RECORDS FOR THE TWELVE

MONTHS ENDED JUNE 30, 2009 UPDATE FOR KNOWN AND MEASURABLE  
COSTS?

A. For the twelve months ended June 30, 2009, the balance booked in USOA No. 186.815 is \$129,530.35 (source: General Ledger and Company response to MPSC Staff DR No. 101.1).

Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE TEST YEAR OR UPDATE BALANCES BOOKED TO USOA ACCOUNT NO. 186.815 REPRESENT A REASONABLE LEVEL OF GENERAL RATE CASE INCREASE EXPENSE FOR INCLUSION IN THE DEVELOPMENT OF FUTURE RATES?

A. No.

Q. WHAT COSTS ASSOCIATED WITH A GENERAL RATE INCREASE CASE SHOULD BE RECOVERED FROM SHAREHOLDERS AND RATEPAYERS?

A. Costs associated with a general rate increase case should first be analyzed to determine if they are prudent, reasonable and necessary. Those that are determined not prudent, reasonable or necessary should not be reimbursed by ratepayers. For example, costs incurred by Company personnel, outside legal and outside consultants that are determined imprudent, unreasonable or unnecessary should be automatically disallowed. In addition, if the utility has employees capable of developing and supporting the case cost of service study (COSS), the cost of hiring of higher-priced outside legal or consultants should not be allowed either. Once the prudent, reasonable and necessary costs of the specific case are



1 determined, the balance should then be split evenly between shareholders and  
2 ratepayers as they represent charges associated with activities that benefit both.  
3 The ratepayer's allocated portion can then be included in the development of future  
4 rates by normalizing the cost commensurate with the Company's average general  
5 rate case filing history.  
6

7 Q. HOW DO SHAREHOLDERS AND RATEPAYERS BENEFIT FROM THE  
8 ACTIVITIES ASSOCIATED WITH A GENERAL RATE INCREASE CASE?

9 A. Customers definitely have an interest in ensuring that their utilities' rates are just  
10 and reasonable, which is the ultimate objective of any rate case, whether it  
11 results in an increase or decrease in a given utility's rates; however, both  
12 shareholders and ratepayers benefit in many ways from a strong stable  
13 organization that has competent management at its helm. The utility that is able to  
14 respond to all stakeholders with the services and other requirements that they  
15 expect necessitates that the utility be able to access debt markets at competitive  
16 rates. That entails that the earnings capacity of the utility must be sufficient to fund  
17 its construction and operational processes while providing an adequate return to  
18 shareholders. In addition, operational processes must be able to fulfill the utility's  
19 commitments of safe and reasonably priced service to ratepayers. All of which can  
20 only be done if the utility is allowed to recover a reasonable return on its investment  
21 and recover prudent, reasonable and necessary expenses. General rate increase  
22 cases provide the avenue upon which the utility seeks to obtain the proper revenue  
23 requirement (i.e., rates) which will allow it to meet those goals. Furthermore,

1 shareholders benefit even more from any efficiencies that management may be  
2 able to incorporate into the organization; thereby, increasing the likelihood of growth  
3 in future stock prices and dividends they may receive.

4  
5 Q. HAVE YOU REVIEWED COMPANY'S ESTIMATED COSTS TO DEVELOP AND  
6 PROCESS THE INSTANT CASE?

7 A. Yes. Company's response to Public Counsel Data Request No. 1007 provided a  
8 listing that shows an estimated \*\*. \*\* may be expended to process the  
9 instant case. The breakdown of the costs is as follows:

10 \*\*

11  
12  
13  
14  
15  
16  
17  
18  
19  
20 \*\*

21 Q. IS PUBLIC COUNSEL CONCERNED ABOUT THE LARGE EXPENDITURES  
22 COMPANY EXPECTS TO INCUR FOR PROCESSING THE CURRENT  
23 GENERAL RATE INCREASE CASE?

24 A. Yes. Public Counsel has become increasingly concerned with the level of rate  
25 case expense among utilities in general. For example, costs associated with  
26 outside legal representation and consultants is extremely costly and represents  
27 the majority of the costs of Company's estimate; however, all of these costs are

1 properly within management's control. As a result, rate case expense, like any  
2 other expenditure, is an area where companies should seek to contain costs.

3  
4 Q. DOES PUBLIC COUNSEL BELIEVE THAT OUTSIDE LEGAL AND  
5 CONSULTANT COSTS HAVE BECOME EXCESSIVE AND THAT THE  
6 COMPANY HAS LITTLE INCENTIVE TO CONTROL THESE COSTS?

7 A. Yes. The use of costly outsiders to process and defend the rate increase request  
8 is particularly disconcerting when one considers that Company may be able to  
9 process the case without hiring outside people. It is likely that many of the  
10 Company's employees hold degrees from colleges and universities which likely  
11 match or exceed the educational requirements needed to prepare and defend a  
12 cost of service study (COSS) - not to mention the combined work experience and  
13 acquired skills of all its employees. These employees should be able to perform  
14 most, if not all, of the work required. Thus, Company should not see a large  
15 additional expenditure for preparing and supporting a COSS request.  
16 Companies should be aware that a "pass-through" of rate case expense is not  
17 automatic and the Commission should certainly review the expenses for  
18 prudence, reasonableness and necessity to ensure that they are not improper or  
19 excessive. Especially in today's economic climate.

20  
21 Q. IS IT YOUR BELIEF THAT SPECIFIC RATE CASE COSTS ARE NOT BEING  
22 PRUDENTLY INCURRED BY THE COMPANY?

1 A. Yes. OPC believes that the Company has not attempted to appropriately control  
2 the costs it has estimated to incur for the current case. Company's use of  
3 outside legal and consultant services indicates such.

4  
5 Q. IS THE COST ASSOCIATED WITH COMPANY'S USE OF OUTSIDE LEGAL  
6 AND OUTSIDE CONSULTANT SERVICES EXCESSIVE?

7 A. Yes. In my opinion, the costs are excessive given that it is likely Company  
8 employees could have performed the work. Public Counsel believes that the in-  
9 house resources should have been utilized to the fullest extent to include legal  
10 and other activities for as much of the rate case work as possible before resorting  
11 to outside legal and consultants only when necessary.

12  
13 Q. DOES PUBLIC COUNSEL BELIEVE THAT THE COMPANY HAS THE PROPER  
14 INCENTIVE TO CONTROL THE LEVEL OF EXPENDITURES IT IS INCURRING  
15 FOR THE CURRENT GENERAL RATE INCREASE CASE?

16 A. No. Company's management apparently believes that because it decides to  
17 incur outside legal and outside consultant costs to assist it in processing its  
18 request for a rate increase, those expenditures should be considered and  
19 authorized as an automatic recovery from ratepayers. Public Counsel believes  
20 that rationale is neither appropriate or reasonable. It is not appropriate because  
21 the idea itself results in monopolistic inefficiencies which lead to higher rates than  
22 should have actually occurred. The utility should always be actively seeking to

1        reduce its cost structure so that ratepayers do not end up paying rates higher  
2        than absolutely necessary, but the indiscriminate incurrence of excessive  
3        expenditures runs counter to that goal. Also, it is not reasonable due to the fact  
4        that if the expenditures are to be incurred they must be done so with the  
5        understanding that they are the most cost-effective alternative and that their  
6        incurrence will be scrutinized thoroughly so as to avoid the payment of improper  
7        or unreasonable charges. Company's view that it can spend whatever it desires  
8        to process its rate increase request, because the expenditures are an entitlement  
9        subject to automatic recovery, provides no incentive for the controlling of the  
10       costs at issue.

11  
12    Q.    SHOULD REASONABLE AND NECESSARY EXPENDITURES TO PREPARE  
13        AND PRESENT A RATE CASE BE ALLOWED IN THE DETERMINATION OF  
14        FUTURE RATES RECOVERED FROM RATEPAYERS?

15    A.    Yes; however, ratepayers should be held accountable only for a proportionate  
16        share of such expenditures since both ratepayers and shareholders benefit from  
17        their incurrence. If the costs incurred are determined to be reasonable and  
18        necessary, both ratepayers and shareholders should be responsible for their  
19        payment since both parties benefit from these expenditures.

20  
21    Q.    SHOULD THE COMMISSION SUBSTITUTE ITS JUDGMENT FOR THAT OF  
22        THE UTILITY'S MANAGEMENT IN CHOOSING WHICH RATE CASE  
23        EXPENSES TO INCUR?

1 A. No. The Commission should not seek to substitute its judgment – or that of any  
2 intervenor – for the Company's in determining which consultant or legal counsel  
3 is best suited to serve its interests; however, the need to contain rate case  
4 expense should be accorded a high priority for rate case work. In seeking  
5 recovery of rate case expense, utilities must provide an adequate justification  
6 and showing that their choice of outside services is both reasonable and cost-  
7 effective. A utility that seeks to recover rate case expense when it has not  
8 properly evaluated its options is not something ratepayers should have to  
9 underwrite. Recovery should not be automatic.

10  
11 Q. WHAT ROLE SHOULD THE COMMISSION PLAY IN THE COMPANY'S  
12 DECISION TO SEEK ASSISTANCE TO DEVELOP AND IMPLEMENT ITS  
13 GENERAL RATE INCREASE CASES?

14 A. How a utility processes its rate case is their choice. The Commission's role is to  
15 evaluate that choice. Therefore, the evaluation should recognize that the  
16 Company currently has employees whose wages and benefits are treated as  
17 operating expenses and paid by its customers and it is probable that a greater  
18 number of these employees could have been utilized to prepare and defend the  
19 Company's request for the rate increase.

20  
21 The ongoing operations of a utility include justifying its rate structure and  
22 supporting rate increase requests. Some of Company's employees presumably  
23 have sufficient expertise and familiarity with utility regulation to enable them to

1 assist in the preparation of a COSS and then support their findings before the  
2 Commission; thus, Company should be able to prepare and implement a new  
3 COSS without the need of making large expenditures for outside legal or  
4 consultants. Company should be advised that in order for the expense of outside  
5 legal or consultants to be considered allowable rate case expenses they must be  
6 incurred in the most efficient and prudent manner possible.  
7

8 Q. IS PUBLIC COUNSEL TAKING A NARROW VIEW THAT RATE CASES THAT  
9 RESULT IN RATE INCREASES ONLY BENEFIT THE UTILITY'S  
10 SHAREHOLDERS BY INCREASING EARNINGS?

11 A. No. Although an argument could certainly be made for that view. The need for  
12 a base rate filing is initiated by the utility and driven by its desire to obtain an  
13 increase in rates, but an authorized revenue requirement merely gives the utility  
14 an opportunity to earn a return on its investments. Increased rates do not  
15 necessarily mean higher earnings will be achieved for shareholders. Other  
16 benefits include the ability to provide safe, adequate and proper utility service.  
17

18 Q. SHOULD CONSUMERS BE FORCED TO PAY FOR ELABORATE DEFENSES  
19 OF PRIVATE INTEREST?

20 A. No. Costs incurred by Company to present and defend positions on expense  
21 recovery and investment return which primarily benefit shareholders should not be  
22 recovered from ratepayers.  
23

1 Q. WHAT DOES PUBLIC COUNSEL BELIEVE CONSTITUTES AN ELABORATE  
2 DEFENSE?

3 A. Elaborate defense, as used here, consists of Company's hiring of outside legal and  
4 consultant services to support its general rate increase case when it is very likely its  
5 own personnel could have done the job just as well and perhaps more effectively.  
6

7 Q. SHOULD RATEPAYERS BE AFFORDED EVERY OPPORTUNITY TO SAVE  
8 MONEY THROUGH REDUCED COSTS AND EFFICIENT SERVICE?

9 A. Yes. Since utility ratepayers are a captive population, the utility should use all  
10 means possible to ensure that ratepayers receive safe and efficient service at the  
11 most reasonable and efficient cost possible.  
12

13 Q. DOES THE COMPANY'S USE OF OUTSIDE CONSULTANTS TO SUPPORT ITS  
14 GENERAL RATE INCREASE CASE FILING YIELD EFFICIENT SERVICE AT A  
15 REASONABLE COST?

16 A. No. Company likely has sufficient personnel resources to process a general rate  
17 increase case in this State; however, Company did not fully utilize those resources.  
18 The Company chose instead to hire an outside legal firm to handle the legal  
19 aspects of the case. Public Counsel believes that to be an inefficient use of  
20 Company resources. The same goes for Company's utilization of outside  
21 consultants for the accounting, depreciation and economic activities associated with  
22 the current case. Utilization of its own and/or parent employees would have likely  
23 been more cost-effective.



1  
2 Q. DOES PUBLIC COUNSEL BELIEVE THAT SHAREHOLDERS SHOULD CARRY  
3 AN EQUAL PROPORTION OF THE COST OF THIS RATE CASE FOR WHICH  
4 THEY TOO RECEIVE A BENEFIT?

5 A. Yes. Benefits that inure to ratepayers from a utility rate case are at least matched  
6 (if not exceeded) by benefits enjoyed by the shareholders of the utility. Therefore,  
7 utilities should be vigilant in controlling their rate case expenses so that neither  
8 owners and customers are unduly burdened by the incurrence of unnecessary or  
9 inefficient costs.

10  
11 Q. WHAT SHARING OF PRUDENT, REASONABLE AND NECESSARY COSTS  
12 DOES PUBLIC COUNSEL PROPOSE?

13 A. Public Counsel recommends that once the level of prudent, reasonable and  
14 necessary costs is determined they should be shared 50%/50% between  
15 shareholders and ratepayers.

16  
17 Q. WHY DOES PUBLIC COUNSEL BELIEVE THAT A 50/50 SHARING OF THE  
18 COSTS IS APPROPRIATE?

19 A. A general rate increase case arises for the benefit of a utility's shareholders due  
20 to the fact that a primary motivation in filing a rate case is to add shareholder  
21 value by increasing rates. Thus, prudent, reasonable and necessary expenses  
22 resulting from the rate case should be shared 50/50 between shareholders and

1 ratepayers so that the shareholders bear some of the burden for the benefits they  
2 receive.

3  
4 Q. DOES SHAREHOLDER PAYMENT OF A PORTION OF THE RATE CASE  
5 EXPENDITURES CONSTITUTE AN UN-EQUITABLE FORFEITURE?

6 A. Not in my opinion. Since the shareholders stand to gain from the opportunity to  
7 earn any increase in revenue requirement authorized by the Commission, they  
8 too benefit from the costs incurred to proceed with the case. It stands to reason  
9 that if the authorized revenue requirement exceeds the costs they expended they  
10 have a net benefit; thus, there is no un-equitable forfeiture.

11  
12 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE COMMISSION SHOULD  
13 DISCOURAGE UTILITIES FROM HIRING OUTSIDE LEGAL COUNSEL OR  
14 CONSULTANTS TO SUPPORT THEIR POSITIONS?

15 A. No. It is not the Commission's place to micro-manage the utility; however, neither  
16 should the Commission automatically allow the utility to "pass-through" the charges  
17 for the expenditures simply because the Company's management chose to incur  
18 the costs.

19  
20 Q. ARE RATE CASE COSTS OUTSIDE THE CONTROL OF MANAGEMENT?

21 A. No. There are a certain amount of "embedded costs" inherent in any general rate  
22 increase case; however, most of the costs are not outside of the Company's  
23 control. For example, the Company chooses the employees, attorneys and

1 consultants it wants to represent its case. The Company then chooses how they  
2 are going to comply with discovery and what efforts, if any, they will make to  
3 facilitate and economize the process. Furthermore, the Company dictates what  
4 measures it will make to mitigate rate case expense by choosing which positions  
5 it favors and seeks to pursue or not pursue within the case.

6  
7 Q. JUST BECAUSE THE COMPANY CHOOSES TO INCUR CERTAIN  
8 EXPENDITURES SHOULD THE COMMISSION ASSUME THAT THE COSTS  
9 ARE PRUDENT, REASONABLE AND NECESSARY?

10 A. No. Even though there are certain costs inherent in the Commission's process,  
11 the costs should still be prudent, reasonable and necessary. The Commission  
12 should not assume that just because the utility expended the time and cost its  
13 rate case expenditures should be automatically recoverable from ratepayers. In  
14 fact, in my opinion, most of the Company's estimated rate case expense is not  
15 prudent, reasonable or necessary.

16  
17 It is incumbent on the Company to mitigate its rate case expense because the  
18 Company alone has chosen to initiate and process the rate increase request.  
19 Moreover, if the Company decides to engage in conduct that increases rate case  
20 expense, it is the Company that has the burden of establishing the amount  
21 incurred and showing that it is prudent, reasonable and necessary. The  
22 Commission is obligated to consider competing policies of what expenses should  
23 be considered in ratemaking decisions including rate case expense. Therefore,

1 in establishing rates, the Commission is required to balance the public need for  
2 adequate, efficient, and reasonable service with the utility's need for sufficient  
3 revenue to meet the cost of furnishing service and earning a reasonable return  
4 on investment. Company apparently expects the Commission to take its word  
5 that the costs it expects to incur are prudent, reasonable and necessary. That is  
6 not a reasonable position because rate case expenditures involve a high degree  
7 of management choice and discretion over whether or not to incur each  
8 expenditure. The Commission should look past Company's simplistic position  
9 and base its decision on whether or not each expenditure was prudent.  
10

11 Q. DO YOU PROPOSE TO DISALLOW ALL OF THE GENERAL RATE INCREASE  
12 CASE EXPENSE COMPANY INCURS?

13 A. No. Public Counsel recommends that the Commission recognize that rate case  
14 expenses benefit both Company and ratepayers; thus, shareholders should also  
15 be held responsible for a portion of the costs related to that burden. Because  
16 rate proceedings are a part of the normal course of business for a utility and  
17 because rate proceedings, by establishing just and reasonable rates, are  
18 conducted for the benefit of both ratepayers and shareholders, it is widely accepted  
19 that rate case expenses are one aspect of a utility's operating costs and are  
20 recoverable in a general rate proceeding. However, because shareholders and  
21 ratepayers both benefit, a policy of requiring only ratepayers to pay the costs is not  
22 reasonable.  
23

1 In general, if costs incurred by a utility to prepare and present a rate case are  
2 prudent, reasonable and necessary they should be properly recoverable from both  
3 shareholders and ratepayers. The ratepayer's portion should be treated as an  
4 ordinary and reasonable cost of doing business.

5  
6 The Commission should also note that the amount estimated to be expended by  
7 Company in this general rate increase case (i.e., approximately \*\* \*\*) should  
8 be considered excessive for a utility whose parent company (i.e., Empire  
9 District Electric Company) applies for rate increases relatively frequently,  
10 understands the regulatory process, has personnel on its staff who are regularly  
11 directly involved in the regulatory process, and has litigated essentially the same  
12 type of issues in its last several electric general rate increase cases.

13  
14 Q. WHAT IS THE ANNUALIZED AMOUNT OF RATE CASE EXPENSE YOU ARE  
15 RECOMMENDING?

16 A. Public Counsel recommends that the question of who benefits from the costs is an  
17 important consideration to take into account since rate case expense is a complex  
18 problem in that consumers should not be forced to pay elaborate defenses of  
19 private interests. Therefore, the Commission should disallow costs Company  
20 expects to incur that are associated with the outside law firm and consultants hired  
21 by the utility to process the current case. Company bears the burden of proof in  
22 these proceedings and it must establish that any expenditure it incurs is prudent,  
23 reasonable and necessary. That, in Public Counsel's opinion, has not occurred.

1  
2 Furthermore, the Commission should not approve in-house general rate increase  
3 expenditures as an allowable component of rate case expense if the in-house  
4 charges for preparation and implementation of a COSS will be recovered in other  
5 in-house cost categories. For example, rate case expense should not include  
6 recovery for expenses that are otherwise included in test year expenses,  
7 including salaries for utility employees that prepare the filing, act as witnesses or  
8 provide the legal requirements to develop, process and implement the rate  
9 increase request. Disallowing these costs from rate case expense will avoid  
10 duplicate accounting of amounts already incorporated in operating expense.

11  
12 Therefore, Public Counsel recommends that Company be allowed to recover only  
13 50% of its incremental in-house rate case activities determined by the Commission  
14 to be prudent, reasonable and necessary. However, since the costs are a moving  
15 target in that they will continue to be incurred through the end of the update period  
16 and true-up (if it is authorized), the total rate case expense is not yet known. Public  
17 Counsel will update the Commission on its recommendation in later testimony.

18  
19 Q. IS THERE A NEED TO NORMALIZE THE ANNUALIZED RATE CASE  
20 EXPENSE AUTHORIZED BY THE COMMISSION?

21 A. Yes. Since utilities do not normally file a rate increase request on a yearly basis,  
22 the costs that they incur to process the activity should be recovered over a period  
23 of years representative of how often the utility's rates are actually changed from

one case to another. The costs should be normalized (averaged) over that period of time necessary to complete the cycle for the activity.

Q. DOES PUBLIC COUNSEL RECOMMEND A SPECIFIC NORMALIZATION PERIOD?

A. Yes. I have reviewed the frequency of occurrence for Company's general rate increase filings and Public Counsel recommends that, for this rate case, that a three year normalization of the costs is the most appropriate amount to include in the cost of service.

**III. CHILlicothe FORMER MANUFACTURED GAS PLANT REMEDIATION**

Q. WHAT IS THE ISSUE?

A. This issue concerns the determination of the appropriate level of remediation costs for Former Manufactured Gas Plant to include in the development of rates for the instant case.

Q WHAT IS THE TEST YEAR AMOUNT OF FORMER MANUFACTURED GAS PLANT REMEDIATION EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS?

A. During the Commission ordered test year, twelve months ended December 31, 2008, updated for known and measurable changes through June 30, 2009 (source: *Order Setting Procedural Schedule and Setting Test Year*, Effective Date July 31, 2009), the Company did not incur any expenditures. However, Company's General

Ledger and response to MPSC Staff Data Request No. 103.1 show that expenditures were incurred during calendar year 2007 and subsequent to the known and measurable period of the instant case.

Q. WHY IS THE COMPANY REQUESTING RECOVERY OF COSTS IF IT DID NOT INCUR ANY IN THE TEST YEAR OR KNOWN AND MEASURABLE PERIOD OF THE INSTANT CASE?

A. The Stipulation and Agreement in Empire, Case No. GO-2006-0205, allows the Company to seek, but does not guarantee, recovery of actual expenditures incurred to remediate the FMGP. This is referenced in the direct testimony, page 16, lines 16-23, of Company witness, Ms. Jayna R. Long as:

(b) EDG may request recovery in a future rate case of actually incurred expenditures for the remediation of the Chillicothe site acquired in this transaction. EDG agrees not to seek recovery in any future rate case for remediation expenditures that EDG has not actually incurred. To the extent that actually incurred remediation expenditures are found to be imprudent or unnecessary, EDG agrees that such expenditures are not to be recovered from EDG's gas customers. Nothing in this Stipulation precludes the non-EDG Signatories to this Stipulation from opposing the recovery of any such expenditures in a future rate case.

Q. WHAT IS THE AMOUNT OF REMEDIATION COSTS THAT THE COMPANY IS REQUESTING TO RECOVER?

A. Ms. Long's direct testimony, page 16, lines 27-30, states Company has included \$67,140 in rate base and requests to amortize this amount over five years which would provide for an annual expense amortization of \$13,428. However, Company's response to MPSC Staff Data Request No. 103.1 identified that the



1           \$67,140 was in error. The amount, Company now states, that should be included  
2           in rate base and then amortized is \$125,511.

3  
4   Q.   DOES PUBLIC COUNSEL HAVE CONCERNS WITH THE AMOUNT IDENTIFIED  
5       BY THE COMPANY IN ITS RESPONSE TO MPSC STAFF DATA REQUEST NO.  
6       103.1?

7   A.   Yes. My review of the Company's General Ledger identified that the expenditures  
8       actually incurred and booked prior to the end of the instant case known and  
9       measurable period were, excluding certain AFUDC charges, approximately  
10      \$126,171.89. A difference of approximately \$661.

11  
12   Q.   WILL THE COSTS BE UPDATED AS THE INSTANT CASE PROGRESSES?

13   A.   Yes.

14  
15   Q.   WHAT ARE FORMER MANUFACTURED GAS PLANT REMEDIATION COSTS?

16   A.   FMGP remediation costs can be defined as all investigations, testing, land  
17       acquisition (if appropriate), cleanup and/or litigation costs and expenses or other  
18       liabilities, excluding personal injury claims, specifically relating to former gas  
19       manufacturing facility sites, disposal sites or sites to which hazardous material may  
20       have migrated, as a result of the operation or decommissioning of the former gas  
21       manufacturing facilities.

1 Q. WHY IS THE COMPANY POTENTIALLY LIABLE TO INCUR FORMER  
2 MANUFACTURED GAS PLANT REMEDIATION COSTS?

3 A. Since Company acquired the FMGP site in its purchase of the gas operations from  
4 Aquila Inc., it is now a potentially responsible party (PRP) and as such can be held  
5 responsible for the remediation of the contamination at the site.  
6

7 Q. PLEASE DESCRIBE THE RELEVANT LAW THAT REQUIRES THE  
8 REMEDIATION OF THE FMGP SITE.

9 A. To deal with the contamination and cleanup problems presented by abandoned  
10 and/or inactive hazardous waste sites, Congress in 1980 enacted the  
11 Comprehensive Environment Compensation and Liability Act (CERCLA or  
12 Superfund). CERCLA provided funding and enforcement authority to the  
13 Environmental Protection Agency (EPA) to enable it to respond to hazardous  
14 substance releases and to enable the EPA to undertake or regulate the cleanup of  
15 those hazardous sites where owners/operators were either without resources or  
16 unwilling to implement such cleanups.  
17

18 In 1986 CERCLA was amended by the Superfund Amendments and  
19 Reauthorization Act which intensified Superfund activities and set a goal of  
20 achieving "permanent" solutions at Superfund sites. CERCLA imposes strict, joint  
21 and several liability on present or former owners or operators of facilities where  
22 substances have been or are threatened to be released into the environment.  
23

1 Further, potentially responsible parties include owners of contaminated land from  
2 point of contamination to date, operators (which is interpreted as any party that had  
3 possession, control or influence over the premises during the same period),  
4 transporters and generators of the contaminants regardless of whether they directly  
5 released such substances into the environment.

6  
7 Q. IS PUBLIC COUNSEL OPPOSED TO INCLUDING FORMER MANUFACTURED  
8 GAS PLANT REMEDIATION COSTS IN COMPANY'S COST OF SERVICE?

9 A. Yes.

10  
11 Q. PLEASE EXPLAIN WHY.

12 A. Public Counsel's opposition to the inclusion of the FMGP remediation costs in the  
13 Company's cost of service is based on the following, 1) the former manufactured  
14 gas plant is not currently in operation. Therefore, the FMGP plant is not used and  
15 useful in providing service to current customers. If current customers are required  
16 to pay for the cost of service not recovered from past customers (e.g., past rates  
17 were set too low), the result is intergenerational inequity, and possibly retroactive  
18 ratemaking will occur, 2) present customers should not be required to pay for past  
19 deficits of the Company in future rates, 3) Public Counsel believes that  
20 shareholders are compensated for this particular business risk through the risk  
21 premium inherent to the equity portion of the Company's weighted average rate of  
22 return, 4) shareholders, not ratepayers, receive the benefits of any gains or losses  
23 (i.e., below-the line treatment) of any sale or removal from service of Company-

1 owned land or investment. Since it is the shareholder who receives the benefit  
2 associated with the gain, or the loss, on an investment's disposal, it is the  
3 shareholder who should bear the responsibility for any legal liability that arises at a  
4 later date related to the investment, 5) the liability for the remediation costs are not  
5 incurred because of the gas service Company provides to its current customers.  
6 Company is a PRP only because it now owns the property, 6) automatic recovery  
7 of the remediation costs from Company's customers may reduce the incentive for it  
8 to seek partial or complete recovery of the costs from other prior owners of the plant  
9 site or insurers, 7) no expenditures were actually incurred during the instant case  
10 test year or known and measureable period, and 8) Company knew when it  
11 purchased the property that a liability existed; therefore, it is likely that it took this  
12 fact into account and lowered its final purchase price accordingly.

13  
14 **IV. PIPELINE RIGHT-OF WAY CLEARING PLAN**

15 Q. WHAT IS THE ISSUE?

16 A. Company proposes to implement a new right-of-way clearing program which would  
17 increase test year expense by a total of approximately \$62,160 (i.e., \$24,906 for its  
18 Northwest territory and \$37,254 for the North/South territory).

19  
20 Q. HAS THE NEW PROGRAM BEEN IMPLEMENTED YET?

21 A. Company states that the program was recently implemented, but was not in place  
22 during the test year used in this rate case (page 2, lines 7-9, direct testimony of  
23 Company witness, Mr. Steven R. Teter).

1  
2 Q. WHY WAS THE PROGRAM IMPLEMENTED?

3 A. Company states it has approximately 265 miles of natural gas pipeline (page 2, line  
4 14, direct testimony of Company witness, Mr. Steven R. Teter), and that during the  
5 last 10 years the property was owned by Aquila, Inc., the resources dedicated to  
6 ROW clearing were limited. As a result, the conditions along the ROW have  
7 deteriorated and steps must be taken to improve the operating conditions along the  
8 Company's pipeline ROW (page 2, lines 20-23, direct testimony of Company  
9 witness, Mr. Steven R. Teter).  
10

11 Q. WHAT IS THE PLAN?

12 A. Company states that the core component of this plan is the establishment of a five-  
13 year cycle of clearing that would allow for each segment of pipeline operated by  
14 EDG to be cleared every fifth year (page 3, lines 16-17, direct testimony of  
15 Company witness, Mr. Steven R. Teter).  
16

17 Q. HOW WERE THE COMPANY'S PROPOSED COSTS DETERMINED?

18 A. Company states that based on previous experience with ROW clearing and an  
19 actual cost of approximately \$2,000 per mile of pipeline ROW cleared in 2008, it  
20 estimated annual costs of approximately \$110,000 (page 4, lines 7-10, direct  
21 testimony of Company witness, Mr. Steven R. Teter).  
22

1 Q. WAS THE COMPANY ABLE TO PROVIDE DOCUMENTATION THAT WOULD  
2 VERIFY THE ACCURACY OF ITS COST ESTIMATES?

3 A. No. Company's response to Public Counsel Data Request No. 1005 states:

4  
5 The cost per mile for clearing referenced in my testimony was based  
6 on conversation in September of 2008 with the contractor that  
7 actually did the clearing work in the fall of 2008. The work was  
8 actually done on an hourly basis and the contractor was estimating  
9 how much time it would take him to reach certain points. My  
10 reference to previous experience with the cost of ROW clearing  
11 related to recollections of previous hourly rates and previous total  
12 costs per mile, none of this documentation is available.

13  
14 (Emphasis by OPC)  
15  
16

17 Q. IS ANY OF THE PIPELINE ABOVE GROUND.

18 A. Company's response to Public Counsel Data Request No. 1005 states:

19  
20 Virtually none of this pipeline if above ground.  
21  
22

23 Q. HAS THE CONDITION OF THE PIPELINE DETRIORATED SO AS TO BE A  
24 DANGER TO PUBLIC SAFETY?

25 A. That does not appear to be the case. Company's response to Public Counsel Data  
26 Request No. 1006 states:

27  
28 By "deterioration of the conditions" it was simply meant that the ROW  
29 needs to be cleared and some erosion issues addressed to provide  
30 the accessibility and visibility needed for safer operation of the  
31 pipeline. Our effort is to establish a routine schedule of clearing that  
32 better maintains the pipeline right of ways of EDG.

Furthermore, Company's response to MPSC Staff Data Request No. 104.1 which requested has the condition of the ROW deteriorated to the point that it impairs the gas operations and safety requirements of the pipeline states:

- a) No. EDG's pipelines meet all pipeline safety requirements,  
EDG views pipeline ROW clearing as a normal operational function.

(Emphasis by OPC)

Q. DOES THE COMPANY CURRENTLY PERFORM CLEARING OF THE RIGHT OF WAYS?

A. Yes. Company has recorded costs for ROW clearing in its financial books of record. In fact, Company's response to MPSC Staff Data Request No. 104 which requested details of the program that was in place for clearing the pipeline prior to the Company's request in this case states:

- a) The pipeline ROW was previously cleared on an as needed/identified basis.

Q. IS THE COMPANY BEING FORCED TO IMPLEMENT A NEW ROW CLEARING PLAN BY ANY REQUIREMENT OF THE COMMISSION OR ANY OTHER GOVERNMENTAL REGULATORY BODY?

A. No. The plan appears to be based solely on the initiative of the Company itself.

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Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE?

A. Public Counsel recommends that the proposal be denied.

Q. WHY DOES THE PUBLIC COUNSEL RECOMMEND THAT THE PROPOSAL BE DENIED?

A. Public Counsel's recommendation is based on several reasons, 1) the rationale for the new plan has not been substantiated as being necessary or even required by the Commission, 2) the costs which Mr. Teter proposes appear to be estimates which have not been supported by verifiable documentation, 3) the costs proposed will likely occur, if they occur at all, outside of the test year, the known and measurable period and the true-up of the instant case, and 4) the instant case will "pickup" all actual costs incurred for ROW clearing.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.



**CASE PARTICIPATION  
OF  
TED ROBERTSON**

<b><u>Company Name</u></b>	<b><u>Case No.</u></b>
Missouri Public Service Company	GR-90-198
United Telephone Company of Missouri	TR-90-273
Choctaw Telephone Company	TR-91-86
Missouri Cities Water Company	WR-91-172
United Cities Gas Company	GR-91-249
St. Louis County Water Company	WR-91-361
Missouri Cities Water Company	WR-92-207
Imperial Utility Corporation	SR-92-290
Expanded Calling Scopes	TO-92-306
United Cities Gas Company	GR-93-47
Missouri Public Service Company	GR-93-172
Southwestern Bell Telephone Company	TO-93-192
Missouri-American Water Company	WR-93-212
Southwestern Bell Telephone Company	TC-93-224
Imperial Utility Corporation	SR-94-16
St. Joseph Light & Power Company	ER-94-163
Raytown Water Company	WR-94-211
Capital City Water Company	WR-94-297
Raytown Water Company	WR-94-300
St. Louis County Water Company	WR-95-145
United Cities Gas Company	GR-95-160
Missouri-American Water Company	WR-95-205
Laclede Gas Company	GR-96-193
Imperial Utility Corporation	SC-96-427
Missouri Gas Energy	GR-96-285
Union Electric Company	EO-96-14
Union Electric Company	EM-96-149
Missouri-American Water Company	WR-97-237
St. Louis County Water Company	WR-97-382
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GR-98-374
United Water Missouri Inc.	WR-99-326
Laclede Gas Company	GR-99-315
Missouri Gas Energy	GO-99-258
Missouri-American Water Company	WM-2000-222
Atmos Energy Corporation	WM-2000-312
UtiliCorp/St. Joseph Merger	EM-2000-292
UtiliCorp/Empire Merger	EM-2000-369
Union Electric Company	GR-2000-512
St. Louis County Water Company	WR-2000-844
Missouri Gas Energy	GR-2001-292
UtiliCorp United, Inc.	ER-2001-672
Union Electric Company	EC-2002-1
Empire District Electric Company	ER-2002-424

**CASE PARTICIPATION  
OF  
TED ROBERTSON**

<b>Company Name</b>	<b>Case No.</b>
Missouri Gas Energy	GM-2003-0238
Aquila Inc.	EF-2003-0465
Aquila Inc.	ER-2004-0034
Empire District Electric Company	ER-2004-0570
Aquila Inc.	EO-2005-0156
Aquila, Inc.	ER-2005-0436
Hickory Hills Water & Sewer Company	WR-2006-0250
Empire District Electric Company	ER-2006-0315
Central Jefferson County Utilities	WC-2007-0038
Missouri Gas Energy	GR-2006-0422
Central Jefferson County Utilities	SO-2007-0071
Aquila, Inc.	ER-2007-0004
Laclede Gas Company	GR-2007-0208
Kansas City Power & Light Company	ER-2007-0291
Missouri Gas Utility, Inc.	GR-2008-0060
Empire District Electric Company	ER-2008-0093
Missouri Gas Energy	GU-2007-0480
Stoddard County Sewer Company	SO-2008-0289
Missouri-American Water Company	WR-2008-0311
Union Electric Company	ER-2008-0318
Aquila, Inc., d/b/a KCPL GMOC	ER-2009-0090
Missouri Gas Energy	GR-2009-0355
Empire District Gas Company	GR-2009-0434