

Exhibit No.: _____
Issue(s): FASB 106 Funding
Former Manufactured Gas Plant Remediation
Regulatory Commission Expense
Infinium Software Amortization
SLRP AAO Amortization
Witness: Ted Robertson
Type of Exhibit: Surrebuttal
Sponsoring Party: Public Counsel
Case Number: GR-2009-0355
Date Testimony Prepared: October 14, 2009

SURREBUTTAL TESTIMONY

OF

TED ROBERTSON

Submitted on Behalf of
the Office of the Public Counsel

MISSOURI GAS ENERGY

Case No. GR-2009-0355

October 14, 2009

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OF
TED ROBERTSON

MISSOURI GAS ENERGY
CASE NO. GR-2009-0355

8 I. INTRODUCTION

9 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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

11
12 Q. ARE YOU THE SAME TED ROBERTSON THAT HAS PREVIOUSLY FILED DIRECT AND
13 REBUTTAL TESTIMONY IN THIS CASE?

14 A. Yes.

15
16 Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?

17 A. The purpose of my testimony is to respond to the rebuttal testimonies of the following witnesses:

18 Missouri Public Service Commission (MPSC or Commission) Staff Witnesses -

- 19
20 1. Keith D. Foster - Regulatory Commission Expense.
21
22 2. Mark L. Oligschlaeger - Financial Accounting Standards Board Statement No. 106 (FASB
23 106 or OPEB), Employers' Accounting for Postretirement Benefits Other Than Pensions,
24 Funding.
25

26 Missouri Gas Energy Witnesses -

- 27
28 1. Michael R. Noack - Former Manufactured Gas Plant (FMGP) Remediation, Safety Line
29 Replacement Program (SLRP) Accounting Authority Order (AAO) Amortization, Infinium
30 Software Amortization and Regulatory Commission Expense.
31
32 2. Derek J. Tomka - FMGP Remediation.
33
34 3. John A. Davis - FASB 106 Funding.
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36

37 II. FASB 106 FUNDING

38 Q. DOES COMPANY BELIEVE IT IS NOT REQUIRED TO FULLY FUND ITS FASB 106 COSTS?

39 A. Yes. Company witness, Mr. John A. Davis, states on page 2, lines 22-24, that Missouri statute does
40 not require any particular funding level.

1 Q. IS THE ASSERTION MADE BY MR. DAVIS ON FUNDING REQUIREMENTS CORRECT?

2 A. No. The relevant Missouri statute is Section 386.315 RSMo which was approved by the Missouri
3 Legislature in 1994 (House Bill 1405). Section 386.315 RSMo states, in part:

4

5 2. A public utility which uses Financial Accounting Standard 106 shall be
6 required to use an independent external funding mechanism that restricts
7 disbursements only for qualified retiree benefits. In no event shall any
8 funds remaining in such funding mechanisms revert to the utility after all
9 qualified benefits have been paid; rather, the funding mechanism shall
10 include terms which require all funds to be used for employee or retiree
11 benefits.
12
13

14 Q. IS THE COMPANY CURRENTLY IN COMPLIANCE WITH FUNDING REQUIREMENTS UNDER
15 SECTION 386.315?

16 A. No. It is my understanding that Company as not been in compliance since mid-year 2003.
17 Company corroborates this on page 3, line 14, of Mr. Davis's rebuttal testimony:

18

19 ...MGE has not funded the full extent of its SFAS 106 liability...
20
21

22 Q. MR. DAVIS ALSO ASSERTS, ON PAGE 3, LINES 2-12, OF HIS REBUTTAL TESTIMONY, THAT
23 THE COMPANY IS BOOKING ITS FASB 106 COSTS ACCORDING TO GENERALLY ACCEPTED
24 ACCOUNTING PROCEDURES (GAAP); THEREBY IMPLYING THAT THAT SHOULD BE
25 SUFFICIENT FOR REGULATORY RATEMAKING PURPOSES. IS HIS ASSESSMENT
26 CORRECT?

27 A. No. GAAP are utilized primarily for the preparation of financial books and records of publicly
28 traded entities; however, the procedures do not govern the ratemaking authority of the Missouri
29 Legislature or the Missouri Public Service Commission. Further, I do not believe that the
30 Commission, when it authorizes rates for MGE, intends for the Company to fund its FASB 106 plans
31 by an amount less than the cost it authorized in rates. To do so would be nonsensical since the
32 excess funds would essentially create an unsupervised "slush fund" for the benefit of the Company's
33 management and shareholders. However, the funds of which the "slush fund" consists would at

1 some later date be required to suddenly reappear in order to pay for future FASB 106 benefits and at
2 that time they may or may not be available.

3
4 Q. WHAT IS THE AMOUNT OF UNDERFUNDING THAT PUBLIC COUNSEL BELIEVES EXISTS?

5 A. On page 15, lines 7-12, of Mr. Mark L. Oligschlaeger's rebuttal testimony he identifies that the utility
6 has underfunded its FASB 106 plans by approximately \$16.5 million. Public Counsel believes that
7 this amount is a reasonable approximation of the underfunding that exists; however, the Company
8 has recently provided additional information regarding earnings achieved on the plan assets that may
9 lead to an adjustment to that amount. Public Counsel is also reviewing the Company information.

10
11 III. FORMER MANUFACTURED GAS PLANT REMEDIATION

12 Q. COMPANY WITNESS, MR. MICHAEL R. NOACK ASSERTS THAT THE FMGP PROPERTIES IN
13 QUESTION ARE CURRENTLY USED FOR VARIOUS ASPECTS OF MGE'S CURRENT
14 OPERATIONS. IS HE CORRECT?

15 A. I have no reason to doubt Mr. Noack's assertions; however, no party denies that the FMGP utilized in
16 the manufacturing of gas (which is the heart of this issue) was discontinued and dismantled a very
17 long time ago. Further, Public Counsel has not proposed any adjustments to Company's rate base
18 to disallow land or other investment at the locations that is currently utilized in the operations of the
19 utility.

20
21 Q. MR. NOACK STATES ON PAGE 3, LINES 13-15, OF HIS REBUTTAL TESTIMONY THAT THE
22 COMMISSION, IN CASE NO. GU-2007-0480, FOUND THAT REMEDIATION OF FORMER
23 MANUFACTURED PAS PLANT SITES IS A NORMAL COST OF DOING BUSINESS FOR A
24 LOCAL DISTRIBUTION COMPANY. IS THAT CORRECT?

25 A. Yes. The language he references was stated as a findings of fact on page 6 of the *Report and Order*
26 in the case; however, the reference utilized was a Q. & A. stated on page 32 of my rebuttal
27 testimony. The Q. & A. is as follows:
28

1 Q. ARE NORMAL COSTS OF AN LDC USUALLY GRANTED AAO
2 TREATMENT?

3 A. No. Whether or not one agrees, or disagrees, as to the ultimate ratemaking
4 treatment of the future MGP remediation costs, authorization to defer
5 normal costs are not considered within the usual realm of costs for the
6 granting of an AAO. Company readily admits that it considers the MGP
7 remediation costs to be a "normal cost of doing business for an LDC these
8 days;" thus, the costs cannot also be AAO deferrable extraordinary or
9 abnormal costs. The two views are mutually exclusive.

10
11 (Emphasis by OPC)
12
13

14 Case No. GU-2007-0480 consisted of a request by MGE for an AAO for FMGP remediation costs,
15 but MGE stated that the costs were a normal cost of doing business; therefore, the Commission did
16 not find them to be extraordinary and did not authorize the AAO. The Commission's acceptance as
17 a finding of fact of the Company's interpretation that the FMGP remediation costs are a normal cost
18 of doing business does not constitute, in my opinion, any support that the Commission was inclined
19 to treat the FMGP remediation costs as a recoverable item in rates. In fact, in the AAO case, the
20 Commission did not make any finding for the inclusion of the FMGP remediation costs in Company's
21 normal cost of service for regulatory ratemaking purposes.

22
23 Q. BEGINNING ON PAGE 5 OF HIS TESTIMONY MR. NOACK SUGGESTS THE USE OF A
24 "TRACKER" AS AN ALTERNATIVE WAY TO ADDRESS THE RECOVERY OF THE
25 REMEDIATION COSTS. WOULD A TRACKER BE APPROPRIATE FOR THESE COSTS?

26 A. No. It is Public Counsel's position that MGE's ratepayers not be held responsible for any of the
27 FMGP remediation costs. Therefore, Public Counsel is generally opposed to any mechanism that
28 would pass the costs to ratepayers. However, in regard to trackers in general, Public Counsel is
29 opposed to the use of trackers since they have the effect of distorting the ratemaking process. This
30 occurs because the costs associated with a tracker are selectively trued-up while other elements in
31 the cost of service may be over-recovering at the same time. Thus, the utility may still be recovering
32 its authorized return or even more. Though the normal regulatory ratemaking process is not perfect,
33 it does allow for the review of all costs associated with a utility's operation and that provides the

1 Commission and all stakeholders with a more accurate assessment of the costs Company is actually
2 incurring.

3

4 Q. DO YOU BELIEVE THE TESTIMONY OF COMPANY WITNESS, MR. DEREK J. TOMKA,
5 PROVIDES ANY SUBSTANTIVE ASSISTANCE TO THE COMMISSION IN ITS DELIBERATIONS
6 ON THIS ISSUE?

7 A. No. Mr. Tomka's testimony provides a very brief and limited historical description of former
8 manufactured gas plant and its remediation in general. It is a topic which has been covered in
9 greater length and depth in other testimony, by several other witness, many times before this
10 Commission. However, he does identify two interesting topics, 1) is there a public interest
11 associated with the remediation efforts, and 2) what became of the by-products of the manufactured
12 gas process.

13

14 Q. DOES PUBLIC COUNSEL BELIEVE THAT THERE IS A PUBLIC INTEREST ASSOCIATED WITH
15 THE REMEDIATION EFFORTS?

16 A. Yes. However, the question that Mr. Tomka does not state, but is really addressing, is that of who
17 should pay for the remediation costs. Public Counsel has already stated its position on this issue
18 and provided the rationale for it so I will not repeat Public Counsel's position, but it is relevant that the
19 Company and its shareholders have the responsibility for the remediation activities so that the
20 "public" is protected from the possible harmful effects of the contamination that exists at these sites.

21

22 Q. WHAT IS INTERESTING ABOUT THE BY-PRODUCTS ASSOCIATED WITH THE FORMER
23 MANUFACTURED GAS PROCESS?

24 A. As Mr. Tomka identifies on page 5, lines 10-11, of his rebuttal testimony, some of these materials
25 were sold as raw materials to the chemical and manufacturing industry during the time that these
26 activities occurred. That is relevant because it is possible that these sales constituted un-regulated
27 activities wherein revenues were recognized and increased the prior owner's net income, but were
28 not included in the regulatory ratemaking process. In essence the sellers of the by-products may not

1 have had to include those revenues as a cost of service reduction in the development of rates for the
2 regulated utility. Thus, the previous managers and owners of the utility likely had access to monies
3 which could have been utilized to mitigate the contamination of the sites for which MGE now
4 requests current ratepayers fund.

5
6 IV. REGULATORY COMMISSION EXPENSE

7 Q. DOES THE MPSC STAFF BELIEVE THAT THE COMPANY'S REQUEST FOR REGULATORY
8 COMMISSION EXPENSE IS REASONABLE?

9 A. The MPSC Staff rebuttal testimony did not address Public Counsel's total regulatory commission
10 expense issue in its entirety, but for the portion related to general rate increase case expense it
11 would seem so. On page 5, lines 6-11, of Mr. Keith D. Foster's rebuttal testimony he states:

12
13 Staff believes that, under the regulatory system in this jurisdiction, the overriding
14 purpose of which is to protect the public interest, a utility is required to incur certain
15 costs in attempting to establish new rate levels. Given this fact, rate case expenses
16 are a necessary cost for utilities to incur from time to time and, as with all necessary
17 costs incurred in providing utility service, reasonable and prudent rate case
18 expenses should be included in a utility's cost of service for purposes of setting
19 rates.
20
21

22 Q. DOES PUBLIC COUNSEL BELIEVE THAT NECESSARY, REASONABLE AND PRUDENT RATE
23 CASE EXPENSE SHOULD BE ALLOWED IN RATES?

24 A. Yes.

25
26 Q. DID MR. FOSTER'S REBUTTAL TESTIMONY IDENTIFY IF THE COMPANY'S REQUESTED
27 RATE CASE EXPENSE WAS NECESSARY, REASONABLE AND PRUDENT?

28 A. Not in detail. Apparently, the MPSC Staff is taking the position of giving the Company "Carte Blanc"
29 recovery of all rate case expense costs that it incurs. That is, if the Company spends it then it must
30 be necessary, reasonable and prudent or so goes the "entitlement" (referenced by Mr. Foster on
31 page, line15, of his rebuttal testimony). To me, it appears that Mr. Foster has missed Public
32 Counsel's points entirely.

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Q. IS MGE "ENTITLED" TO AUTOMATIC RECOVERY OF ALL RATE CASE EXPENSE COSTS IT INCURS TO PROCESS A GENERAL RATE INCREASE CASE?

A. No. Traditional ratemaking concepts do not specify that a utility is "entitled" to recovery of any cost absent being able to support that the cost incurred is necessary, reasonable and prudent. Public Counsel's earlier testimony in the instant case provided an analysis of the actual costs being incurred and we believe that most of the costs being incurred were not necessary, were not reasonable and were not prudent. Had the MPSC Staff taken the time to analyze the costs requested in depth rather than asserting its support to some nonexistent and undefined "general rule" (stated on page 3, line 19, of Mr. Foster's rebuttal testimony) it should have recognized, as Public Counsel did, that it is likely that the Company already has personnel on its payroll that could have prepared the case in its entirety rather than resorting to the assistance of expensive outside consultants and legal counsel.

Q. IS IT PUBLIC COUNSEL'S POSITION THAT THE COMMISSION ALLOW A SPECIFIC RECOVERY OF RATE CASE EXPENSE?

A. No. Public Counsel, just like the MPSC Staff, proposes that the Commission authorize Company recovery of a normalized rate case expense amount.

Q. DOES THE COMPANY SUPPORT THE GENERAL POSITION OF THE MPSC STAFF?

A. Yes.

Q. DOES COMPANY ALLEGE THAT IT WOULD HAVE TO HIRE ADDITIONAL STAFF ON A PERMANENT BASIS AT RESOURCE LEVELS NEEDED ONLY FOR "PEAK" PERIODS IN ORDER TO PROCESS ITS GENERAL RATE INCREASE CASES?

A. Yes. Mr. Noack alludes to the possibility that the Company would have to hire additional personnel on full-time basis, but only use them for a "peak" period (page 18, lines17-23, of Mr. Noack's rebuttal testimony).

1 Q. DOES PUBLIC COUNSEL BELIEVE MR. NOACK'S ASSERTION IT WOULD HAVE TO HIRE
2 ADDITIONAL PERSONNEL HAS MERIT?

3 A. No. It is inconceivable to me that Company would even assert that it does not have the personnel to
4 process a general rate increase case in the State of Missouri given Southern Union Company and its
5 affiliates have approximately 700 employees - many of whom are probably highly educated and
6 probably have significant experience in their specific fields of training. My recommendation is that
7 the Company utilize its current work force and use them for the processing of its general rate
8 increase cases on a very limited part-time basis once every few years.

9
10 Q. WHAT IS THE BASIS FOR PUBLIC COUNSEL'S OPINION THAT THE UTILIZATION OF THE
11 COMPANY'S EMPLOYEES WOULD ONLY BE NEEDED ON A LIMITED PART-TIME BASIS
12 ONCE EVER FEW YEARS?

13 A. Historically, the Company does not file a rate case every year, e.g., reference MGE Case Nos. GR-
14 2001-292, GR-2004-0209, GR-2006-0422 and the instant case GR-2009-0355 general rate increase
15 cases. Thus, the filing of its general rate increase cases approximates one every 2 to 3 years. In
16 addition, personnel in the Office of The Public Counsel, and the MPSC Staff for that matter, usually
17 work on several different cases at the same time during any given year. A single general rate
18 increase case though a tedious process is not as complicated as Mr. Noack would have the
19 Commission believe. Mr. Noack's assertion that the process could not be completed by Company's
20 current employees as an inclusion into their normal work loads does not pass a common sense test.

21
22 V. INFINIUM SOFTWARE AMORTIZATION

23 Q. HAS COMPANY BEEN ABLE TO PROVIDE DOCUMENTATION THAT WOULD SUPPORT ITS
24 ALLEGATION THAT IT HAS THE RIGHT TO USE OF THE INFINIUM SOFTWARE?

25 A. No. On page 16, lines 11-14, of Mr. Noack's rebuttal testimony he states:

26

27 Infinium was informed in 2005 that Company did not intend to renew its annual
28 license. As a result, MGE does not have the rights to upgrade the Infinium
29 software. However, this does not preclude the Company's continued use of the
30 existing version of Infinium...

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Mr. Noack has repeatedly alleged Company has the right to continued use of the existing version of the Infinium Software, but it has not been able to provide documentation that supports the statement despite repeated attempts by Public Counsel for the information. Company has the burden to support its rate request and that burden requires that the regulatory investigative bodies be able to verify Company's allegations. This could have been done by simply having the Company contact the owner of the Infinium Software to have them provide a verifiable copy of the user rights contract or a statement that supports Company's allegation. Company chose not to perform that simple procedure thus, Public Counsel's recommendation is that the Company's request for continued amortization of the remaining unamortized balance should not be affirmed by Commission authorization for recovery.

VI. SLRP AAO AMORTIZATION

Q. IF THE COMMISSION DOES NOT ADOPT THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE, DOES THE COMPANY RECOGNIZE THAT REGULATORY LAG WILL ALLOW IT TO OVER-RECOVER, BY A SIGNIFICANT AMOUNT, THE AAO COSTS IT HAS DEFERRED?

A. I believe that it does. On page 12, lines 11-12, of Mr. Noack's rebuttal testimony he states:

The fact that the subject amortization periods did not match the period the rates were in effect, is a form of regulatory lag that, in this case, may advantage the Company.

Q. WHAT IS THE AMORTIZATION AMOUNT THAT COMPANY WILL OVER-RECOVER?

A. As I identified on page 33, lines 6-13, of my direct testimony, as of the end of September 2009, the Company will have over-recovered approximately \$62,304 and through the effective law date of February 28, 2010 the over-recovered amount will increase to approximately \$1,397,640. Furthermore, the over-recovered amount will continue to

1 increase as each future month passes if the Commission does not adopt the Public
2 Counsel's recommendation.

3
4 Q. DOES PUBLIC COUNSEL FIND IT IRONIC THAT THE COMPANY NOW ARGUES IT SHOULD
5 BE ALLOWED TO KEEP THESE ADDITIONAL MONIES DUE TO THE EFFECT OF
6 REGULATORY LAG?

7 A. No. The AAO process is a specialized non-normal ratemaking concept and process (it is essentially
8 single issue ratemaking). AAOs were originally setup and utilized to keep utilities from suffering the
9 harmful effects of regulatory lag. That is, regulatory lag was the primary reason for deviating from
10 the normal regulatory ratemaking process. In some of the earliest cases which essentially began the
11 process of utilizing AAOs in this State, Missouri Public Service Co., Case Nos. EO-91-358 and EO-
12 91-360, the Commission stated:

13
14 Lessening the effect of regulatory lag by deferring costs is beneficial to a company
15 but not particularly beneficial to ratepayers. Companies do not propose to defer
16 profits to subsequent rate cases to lessen the effects of regulatory lag, but insist it is
17 a benefit to defer costs. Regulatory lag is a part of the regulatory process and can
18 be a benefit as well as a detriment.
19
20

21 In essence, the Company's proposal is for it to inappropriately benefit from regulatory lag because
22 the final amortization of the AAO costs deferred (that is those AAOs which were fully recovered
23 before the end of September 2009) does not coincide with a rate change authorization from the
24 Commission. This occurred because several of the AAOs became fully amortized this year (2009),
25 but the amortization amounts included in rates continue to be collected until the next rate change
26 occurs. Thus, regulatory lag will allow the Company to have collected enough from ratepayers to
27 fulfill its recovery of the deferred amounts in the remaining AAOs that have not ran the course of the
28 amortization periods originally set for their recovery, but MGE wants more. Apparently, the earlier
29 Commission was somewhat prescient in that it correctly recognized how the specialized nature of an
30 AAO plays into a utility's predisposition to benefit its managers and shareholders at the expense of

1 ratepayers. That is, Company wants protection from regulatory lag detriments, but if regulatory lag
2 falls in its favor so be it.

3

4 Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?

5 A. Yes, it does.