

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

In the Matter of Missouri Gas Energy's)
Tariff Sheets Designed to Increase)
Rates for Gas service in the)
Company's Missouri Service Area)

Case No. GR-2004-0209

**MISSOURI GAS ENERGY'S REPLY TO STAFF'S REPLY TO RESPONSE OF
MISSOURI GAS ENERGY TO STAFF MOTION TO STRIKE AND MOTION FOR
EXPEDITED TREATMENT**

COMES NOW Southern Union Company, d/b/a Missouri Gas Energy ("MGE"), and for its Reply to Staff's Reply to MGE's Response to Staff Motion to Strike and Motion for Expedited Treatment, states the following:

1. On May 24, 2004, Staff filed its Reply to MGE's Response to Staff Motion to Strike and Motion for Expedited Treatment (hereinafter, "Staff's Reply"). Staff's Reply does nothing to cure the deficiencies concerning its Motion to Strike portions of MGE witness Michael R. Noack's prepared direct testimony (the "Motion").

2. Staff does not deny its Motion failed to comply with the requirements of Commission rule 4 CSR 240-2.080(16)(C). Indeed, Staff has yet to explain why it waited over six months to file its Motion and then to request expedited consideration.

3. As to the merits of Staff's Reply, Staff wrongly equates the filing of prepared testimony by MGE with the act of offering evidence into the record. This puts the cart before the horse. The purpose of filing prepared direct testimony in advance of the evidentiary hearing is to put other parties on notice of the positions being taken and arguments being made. The testimony is actually offered into evidence at the time of hearing. It is significant that nowhere in Staff's Reply does Staff contend that it has

been surprised by the depreciation study performed by Black & Veatch for MGE in the year 2000. Indeed, Staff has been provided with that study on three (3) prior occasions.

4. As noted in MGE's May 20, 2004, Response, the Black & Veatch depreciation study was filed with the Commission's energy department in approximately June of 2000 in accordance with Commission rule 4 CSR 240-40.040 (now, 4 CSR 240-3.275). The depreciation study has also been provided to Staff in this case in response to Staff data request 187. Third, and finally, the depreciation study was filed as a matter of public record in MGE's prior rate case, Case No. GR-2001-292, as noted by Mr. Noack at page 17 of his prepared direct testimony in this case.¹ Staff cannot claim surprise and in fact, has not claimed surprise in any of its pleadings about the existence or contents of the Black & Veatch study.

5. Anticipating the filing of the depreciation study in MGE's rebuttal testimony, Staff has lodged a premature subsidiary objection claiming that the filing of the depreciation study now would violate the Commission rule regarding prepared rebuttal testimony. See, 4 CSR 240-2.130(7)(B). This objection is not properly before the Commission and should be rejected. If Staff has an objection to MGE's submission of the depreciation study in this case, the time to lodge an objection is after MGE actually files the study as part of its rebuttal testimony.

6. In any event, any such objection lacks merit. As noted in MGE's prior Response, and notwithstanding Commission rule 4 CSR 240-2.130 (2), MGE is filing the Black & Veatch depreciation study in this case to rebut the direct testimony of Staff

¹ Mr. Noack's reference to the depreciation study is sufficient under Commission rule 4 CSR 240-2.130(2) which expressly permits reference to a document filed as public record without the need for producing it as an exhibit.

witness Mathis who has proposed that annualized depreciation expense be based on current rates. Responding to Ms. Mathis' proposal by providing the depreciation study upon which Mr. Noack has relied is proper rebuttal testimony because it was only upon the filing of Ms. Mathis' direct testimony that MGE knew whether any issue existed.

7. In this regard, another consideration for the Commission is the concern it has expressed through the initiation of the Case Efficiency Roundtable process that the evidentiary record in rate cases should not be unnecessarily burdened by voluminous documentation unless a matter is genuinely put at issue. If the Commission grants Staff's Motion because the Black & Veatch depreciation study was not gratuitously filed of record as part of MGE's prepared direct testimony in November 4, 2003, the Commission will be sending a strong signal to all utilities that they had better hereafter structure their rate case filings as a preemptive "document dump" by throwing into the record every document associated with any issue that conceivably may be contested, including those previously filed as public record. This would seem to be anathema to the stated objectives of the ongoing Case Efficiency Roundtable discussions.

8. MGE's approach in this case, to the contrary, is consistent with the principles of the case efficiency initiative the Commission has put into motion. MGE is filing the Black & Veatch depreciation study at the time its subject matter has been put at issue. Not only is this consistent with the Commission's rules governing the appropriate content of prepared rebuttal testimony, it also is fully consistent with the objectives of streamlining and simplifying the rate case record and process.

9. In conclusion, Staff does not deny that it has failed to comply with the Commission's rule requiring statement why its Motion "was filed as soon as it could

have been or an explanation of why it was not.” More importantly, Staff is not complaining that it is surprised by the contents of MGE’s depreciation study, nor can it so complain, because the study has been provided to Staff on no fewer than three (3) previous occasions over the course of nearly 4 years. Also, MGE complied in all respects with the Commission rules on evidence by referring to a document that was made a matter of public record in MGE’s prior rate case. Finally, Staff’s anticipatory objection to MGE’s rebuttal testimony is premature and, in any event, without merit because the use of the Black & Veatch depreciation study in MGE’s rebuttal testimony is to rebut statements in Staff witness Mathis’ direct testimony.

WHEREFORE, MGE restates its request that the Commission deny Staff’s Motion for the reasons stated here and above and stated previously in MGE’s May 20, 2004, Response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 25th day of May 2004 to the following:

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