

**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

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

COMES NOW Missouri Gas Energy ("MGE"), and for its response to the Motion to Strike and Motion for Expedited Treatment filed by the Staff of the Missouri Public Service Commission ("Staff"), states as follows:

1. On May 14, 2004, Staff filed a Motion to Strike and Motion for Expedited Treatment (the "Motion") requesting the Commission to strike portions of the prepared direct testimony of MGE witness Michael R. Noack filed on November 4, 2003. Staff's Motion should be denied for the reasons set forth below.

2. Staff's Motion should be denied because it has not been timely filed. Staff points out in the Motion, Mr. Noack's direct testimony was filed on November 4, 2003, over six (6) months ago. Inexplicably, Staff has waited until May 14, 2004, to register its objections and to file a Motion for Expedited Treatment.

3. All of the information pertinent to the Motion has been available to Staff since the time Mr. Noack's testimony was filed in early November 2003. Yet, Staff has waited until the eve of the hearing, and without explanation, to file a Motion to Strike the testimony. Since Staff waited over six (6) months to lodge its objection, the Motion should be denied as having been waived or as untimely filed.

4. Also, Staff's Motion for Expedited Treatment does not comply with the Commission's rule governing motions for expedited treatment. The Commission's rules of practice and procedure specifically address the filing of motions for expedited treatment and such motions are required to contain certain specific statements including an explanation of why "the pleading was filed as soon as it could have been or an explanation of why it was not." See, 4 CSR 240-2.080(16)(C). Staff's failure to comply with the Commission's rule in this regard is an independent basis for the Motion to be denied.

5. If the Commission determines not to deny Staff's Motion on the grounds that it is untimely or that Staff's objections have been waived, the Motion should be denied because it has no merit. Staff's objection is premised on § 536.070 (11) RSMo which, among other things, sets forth the standards for the admission of certain types of studies or compilations of figures.

6. Staff has moved to strike certain portions of Mr. Noack's direct testimony,¹ including Schedule H-12 appended thereto. This portion of Mr. Noack's testimony discusses a proposed adjustment to depreciation expense and is based, in part, on recommendations contained in a depreciation study performed by Black & Veatch in the year 2000. Staff has objected to Mr. Noack's testimony in this regard as inadmissible hearsay testimony.

7. Staff's objection is far wide of the mark. Mr. Noack is not sponsoring the Black & Veatch depreciation study as evidence to be offered into the record in this case in connection with his direct testimony. Consequently, § 536.070 (11) RSMo is not

¹ The testimony appears on pages 16 and 17.

applicable to Mr. Noack's testimony regarding adjustment H-12. To the contrary, Mr. Noack is simply sponsoring a proposed adjustment to annualized depreciation expense. These are accounting adjustments with respect to which Mr. Noack is perfectly qualified to testify.

8. As noted on pages 1 and 2 of his November 4, 2003 direct testimony, Mr. Noack has a Bachelor of Science degree in Business Administration with a major in Accounting from the University of Missouri-Columbia. He has extensive professional experience in the area of public utility financial accounting, including accounting for rate case purposes. He is a Certified Public Accountant in the State of Kansas and a member of the Kansas Society of Certified Public Accountants. His testimony is within his area of expertise and he is qualified to answer questions regarding the accounting adjustments which he is sponsoring.

9. Mr. Noack has both the educational and professional background and experience to testify about the adjustments that he has proposed, including adjustment H-12. In that regard, he is entitled to rely on such documents and information as he believes are appropriate, which documents and information are of a nature customarily relied upon by experts in his field, in making his recommendations to the Commission.

10. Staff's objection and its reliance on § 536.070 (11) RSMo in an effort to exclude that portion of Mr. Noack's direct testimony is misguided. As noted above, Mr. Noack is not sponsoring the 2000 Black & Veatch depreciation study to which he refers on page 17 of his prepared direct testimony. To the contrary, that depreciation study already has been provided to the Staff in approximately June 2000 in accordance with Commission rule 4 CSR 240-40.040 (the predecessor to the rule now found at 4 CSR

240-3.275). That study also has been provided to Staff in this case in response to a data request. Consequently, Staff's objection to Mr. Noack's reference to the depreciation study is perplexing to MGE. Staff cannot claim surprise or unfamiliarity with its contents.

11. Also, as noted in §536.070 (11) RSMo, "the circumstances relating to the making of such an examination, study, audit, compilation of figures or survey, including the nature and extent of the qualifications of the maker, may be shown to affect the weight of such evidence but such showing shall not effect its admissibility." Thus, Staff's untimely objection, to the extent it has any applicability to the circumstances presented, ultimately goes to the weight to be given the information upon which Mr. Noack has relied, not its admissibility. Moreover, MGE expects to offer the Black & Veatch depreciation study as evidence in this case in its rebuttal testimony. This testimony will be addressing the recommendation of Staff witness Mathis contained in her direct testimony regarding depreciation rates to be authorized by the Commission which are different than those sought by MGE. Thus, Staff's Motion soon will be a moot point because MGE's depreciation study will be sponsored by a witness who will in all respects meet the standards set forth in §536.070 RSMo for sponsoring such an exhibit.

12. In summary, Staff's objection has been filed over six (6) months since the time Mr. Noack's prepared testimony was filed and should be deemed to have been filed out-of-time by the Commission. Moreover, Staff's Motion for Expedited Consideration does not comply with the Commission rule 4 CSR 240-2.080 (16) which sets forth specifically the requirements for justifying a motion for expedited treatment. Ultimately, Staff's Motion has no merit. Mr. Noack's testimony is not hearsay testimony.

Mr. Noack is testifying with respect to a proposed adjustment to depreciation expense and depreciation rates in this rate case, an accounting change he is well-qualified to address. Mr. Noack is not sponsoring the 2000 Black & Veatch depreciation study which has previously been submitted to the Commission Staff in accordance with the Commission's rules. Consequently, Staff's objection to those portions of Mr. Noack's direct testimony set forth in the Motion has no applicability to the circumstances presented.

WHEREFORE, MGE requests that the Commission deny Staff's Motion to Strike and Motion for Expedited Consideration for the reasons here and above set forth.

Respectfully submitted,



Paul A. Boudreau MO #33155
BRYDON, SWEARENGEN & ENGLAND, P.C.
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
(573) 635-7166 Phone
(573) 635-0427 Fax
paulb@brydonlaw.com

Attorneys for Applicant, Southern Union
Company d/b/a Missouri Gas Energy

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 20th day of May 2004 to the following:

Mr. Robert V. Franson
General Counsel's Office
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Mr. Douglas E. Micheel
Office of the Public Counsel
Governor Office Building
200 Madison Street, Suite 650
P.O. Box 2230
Jefferson City, MO 65102-2230

Mr. Jeremiah D. Finnegan
Finnegan, Conrad & Peterson
1209 Penntower Office Center
3100 Broadway, Ste. 1209
Kansas City, MO 64111

Mr. Stuart W. Conrad
Finnegan, Conrad & Peterson
1209 Penntower Office Center
3100 Broadway, Ste. 1209
Kansas City, MO 64111

Mr. Mark W. Comley
Newman, Comley & Ruth
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102

Major Craig Paulson
Federal Executive Agencies
139 Barnes Drive, Suite 1
Tyndall AFB, FL 32403-5319

Mr. Marc Ellinger
Blitz, Bardgett & Deutsch, LC
308 E. High, Suite 301
Jefferson City, MO 65101


