

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Tariffs )	
Increasing Rates for Gas Service Provided to )	Case No. GR-2006-0422
Customers in the Company's Missouri )	
Service Area. )	

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

COMES NOW Missouri Gas Energy ("MGE") and in response to Staff's Motion to Strike and Motion for Expedited Treatment, states as follows:

1. Late on Thursday, November 30, 2006, Staff filed a Motion to Strike and Motion for Expedited Treatment (the "Motion") concerning rebuttal testimony of MGE witness Thomas Sullivan on the issue of depreciation. The premise of Staff's Motion is fundamentally flawed. Staff's claim that the rebuttal testimony of Thomas Sullivan inappropriately "supplements" his pre-filed, prepared direct testimony is wrong. To the contrary, Mr. Sullivan's rebuttal testimony simply takes the opportunity correct an obvious mistake in his direct testimony. For the reasons set forth below, the Motion should be denied.

2. In his direct testimony, witness Sullivan sponsors Exhibit TJS-2 which is a summary analysis of the Black & Veatch study of the depreciation accrual rates for MGE. The cover letter that appears on the second page of that document states that Black & Veatch "recommends implementation of the rates set forth in Column H of Table 4-2" of the report. Mr. Sullivan's direct testimony, however, contained an erroneous conflicting statement in lines 10 and 11 of page 3 where he states, "I recommend that the Company implement the whole life rates contained in Column (J) of Table 4-1."

3. In his rebuttal testimony, Mr. Sullivan took the opportunity at page 4, lines 6-16, to correct this erroneous statement. Mr. Sullivan's full correcting statement is as follows:

Yes, I misspoke on page 3, lines 3-5 of my direct testimony when I referred to the depreciation rates in Column H of Table 4-2 as remaining life rates. The depreciation rates in Column H of Table 4-2 are not remaining life rates but rather whole life rates reflecting a reserve adjustment. As such, I should have recommended the depreciation rates in Column H of Table 4-2, not the depreciation rates shown in Column J of Table 4-1 as stated on page 3, line 11 of my direct testimony.

In the prior question and answer, the depreciation rates in Column H of Table 4-2 are the same as the depreciation rates shown in Column U of Table 4-1. These depreciation rates, as corrected in my rebuttal, are depreciation rates I am recommending that the Company use. (emphasis added)

No new evidence is being presented in Mr. Sullivan's rebuttal in contravention of Commission Rule 4 CSR 240-2.130. The depreciation rates being recommended by Mr. Sullivan were included in his direct testimony in Exhibit TJS-2. The rebuttal testimony above merely corrects an erroneous statement contained in his direct testimony and the revised schedules reflect that change and minor corrections to industry average service lives and net salvage allowances for general plant accounts. This is routine practice in rebuttal testimony.

4. Staff's claim that Mr. Sullivan is recommending remaining life rates in his rebuttal testimony is not correct. He is recommending in both his direct and rebuttal testimony whole life rates with a reserve adjustment. This is not a change to the whole life method of calculation as conceded by Staff witness

Macias in his direct testimony on page 8 where he notes that a reserve adjustment may be appropriate depending on the circumstances.

5. Staff's Motion is accompanied by an affidavit of Gregory E. Macias which purports to summarize the conversation that Mr. Macias had with Mr. Sullivan concerning the correction to Mr. Sullivan's testimony. The Macias affidavit should be disregarded as impermissible hearsay in that it is offered for the truth of the matters asserted. To the extent that that aspect of the affidavit is considered by the Commission in support of Staff's Motion, however, MGE states that Mr. Macias's recollection of his conversation with Mr. Sullivan is misleading and the Commission should disregard it. As noted in the accompanying affidavit of Mr. Thomas Sullivan, the correction of his direct testimony contained in his rebuttal does not represent a change in technique for calculating depreciation expense.

6. Staff's implicit claim of surprise is not credible. MGE provided Staff with a copy of the Black & Veatch depreciation study, including its implementation recommendation, in June of 2005. The study was filed as a part of MGE's positive case in May of 2006. One is left to wonder why Staff did not inquire of MGE, as part of Staff routine audit in this case, why MGE's recommendation in the rate case appeared to be at odds with a study Staff had had in its possession for almost a year.

7. Staff is not prejudiced by Mr. Sullivan's correction in his rebuttal testimony and, in fact, Mr. Sullivan's correction in his pre-filed testimony avoids prejudice at the time of hearing. As the Commission is aware, it is customary for

witnesses to be asked if they have any corrections to make to their pre-filed, prepared testimony when they take the stand at the time of hearing to sponsor testimony. Rather than waiting until the time of hearing to correct the misstatement in his direct testimony, Mr. Sullivan has corrected it well in advance of that time in his rebuttal testimony thus allowing Staff and other parties a more than adequate opportunity to respond.

8. For all the foregoing reasons, Staff's Motion should be denied.

BRYDON, SWEARENGEN & ENGLAND

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## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was electronically transmitted, sent by U.S. Mail, postage prepaid, or hand-delivered, on this 6th day of December, 2006, to:

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