

Exhibit No.: \_\_\_\_\_  
Issues: Environmental Cost  
Recovery  
Witness: Derek J. Tomka  
Sponsoring Party: Missouri Gas Energy  
Case No.: GR-2009-0355  
Date Testimony Prepared: Oct 14, 2009

MISSOURI PUBLIC SERVICE COMMISSION

MISSOURI GAS ENERGY

CASE NO. GR-2009-0355

SURREBUTTAL TESTIMONY OF

DEREK J. TOMKA

Jefferson City, Missouri

October 2009

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1     **I.     WITNESS INTRODUCTION**

2     **Q.     PLEASE STATE YOUR NAME.**

3     A.     My name is Derek J. Tomka and my business address is 45 North Main Street,  
4             Fall River, Massachusetts, 02720.

5

6     **Q.     ARE YOU THE SAME DEREK J. TOMKA THAT PREVIOUSLY FILED**  
7             **REBUTTAL TESTIMONY IN THIS CASE?**

8     A.     Yes.

9

10    **II.    PURPOSE**

11    **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
12            **PROCEEDING?**

13    A.     The purpose of my testimony is to respond to the Rebuttal Testimony of Office of  
14             the Public Counsel (OPC) witness Ted Robertson as it relates to the timing of  
15             Missouri Gas Energy's (MGE) former manufactured gas plant (MGP)  
16             remediation efforts.

17

18    **III.   TIMING**

19    **Q.     OPC WITNESS ROBERTSON STATES IN HIS REBUTTAL TESTIMONY**  
20            **THAT BECAUSE MGE "DID NOT ADDRESS THE REMEDIATION**  
21            **ISSUES IN A MORE TIMELY MANNER" "ITS CLAIM TO WESTERN**

1       **RESOURCES INC. IS FAR LESS THAN IT COULD HAVE BEEN” (PAGE**  
2       **7). HOW DO YOU RESPOND?**

3       A.     OPC’s witness Robertson testifies that “The undertaking of the remediation  
4       activities is an extremely burdensome task and numerous factors must fall in line  
5       before the events occur.” (page 8) I agree with Mr. Robertson’s statement and it  
6       is my opinion that MGE’s approach to the remediation of former MGP sites has  
7       been extremely reasonable given the circumstances surrounding these sites and  
8       the efforts MGE has made to defer the impact on its customers.

9  
10     **Q.     TO DATE, HAVE MGE’S CUSTOMERS BEEN REQUIRED TO MAKE**  
11     **ANY     CONTRIBUTION     TOWARD     THE     FORMER     MGP**  
12     **REMEDICATION?**

13     A.     No. While the existence of potential liability associated with this remediation has  
14     been known for many years, MGE’s approach to these remediation efforts has  
15     protected MGE's customers from any contribution toward remediation costs  
16     during the more than fifteen (15) years Southern Union has owned the properties.

17  
18     **Q.     WHY IS THAT?**

19     A.     Up until June of 2008, MGE’s remediation costs were largely offset by the  
20     insurance recovery efforts that have been discussed in the Rebuttal Testimony of  
21     MGE witness Dennis Morgan and the fact that, pursuant to the Environmental  
22     Liability Agreement between MGE and Western Resources, MGE agreed to bear  
23     responsibility for the first \$3 million of unreimbursed costs incurred before  
24     January 31, 2009.

1

2   **Q.   MR. ROBERTSON SEEMS TO INDICATE THAT MGE SHOULD HAVE**  
3       **PERFORMED REMEDIATION OF THESE SITES AS QUICKLY AS**  
4       **POSSIBLE IN ORDER TO MAXIMIZE RECOVERIES FROM WESTERN**  
5       **RESOURCES.   HOW DID MGE APPROACH ITS DECISIONS IN**  
6       **REGARD TO THE FORMER MGP SITES?**

7   A.   Maximizing recoveries from Western Resources was not the sole criterion  
8       considered in making complex remediation decisions. MGE's decisions must not  
9       only comply with local, state, and federal statutes and regulations, but they must  
10      also carefully consider the timing, scope, impact and cost of remediation. Most of  
11      these former MGP sites are MGE service centers, and environmental remediation  
12      at these facilities results in significant business disruptions to the Company.

13

14   **Q.   MR. ROBERTSON POINTS OUT THAT MGE DID NOT BEGIN TO**  
15       **INCUR SUBSTANTIAL REMEDIATION COSTS UNTIL 1999**  
16       **(ROBERTSON REB., P. 7). HAS THE LEVEL OF GOVERNMENTAL**  
17       **CONCERN RELATED TO THE FORMER MGP SITES DIFFERED**  
18       **OVER TIME?**

19   A.   Yes. In the early 1990s, the United States Environmental Protection Agency  
20       (EPA) did some initial preliminary assessments at former MGP sites across the  
21       country. If the sites did not score high enough to pose a serious threat to the  
22       environment or human health, then no further remedial action was planned at  
23       these sites.

1 Then, in the late 1990s and early 2000s, MDNR's Site Assessment Unit started  
2 reassessing some former MGP sites in Missouri. It was only after this  
3 reassessment by MDNR that some former MGP sites were recommended for the  
4 Superfund list, or were threatened with placement on the Superfund list.

5  
6 **Q. ULTIMATELY, DID MGE WAIT FOR ITS SITES TO BE PLACED ON**  
7 **THE SUPERFUND LIST?**

8 A. No. Instead of allowing sites to be Superfund listed, MGE has to date elected to  
9 enter into the Brownfields/Voluntary Cleanup Program (B/VCP) as to the  
10 identified sites (i.e., 1<sup>st</sup> and Gillis in Kansas City; Station A in Kansas City, the St.  
11 Joseph service center; and the Independence training facility).

12  
13 **Q. WHY HAS MGE UTILIZED THE VOLUNTARY CLEAN UP PROGRAM**  
14 **INSTEAD OF PROCEEDING UNDER SUPERFUND?**

15 A. The B/VCP is more economical and flexible in that it allows MGE to use  
16 discretion as to how and when to proceed, providing more control over how much  
17 must be spent. Whereas remedies undertaken in the Superfund program are  
18 typically prescriptive, time consuming, and expensive, MDNR's B/VCP allows  
19 flexibility within the framework of MDNR's regulations thereby typically  
20 providing for less expensive cleanups.

21  
22 **Q. TO SUMMARIZE, HOW WOULD YOU DESCRIBE MGE'S FORMER**  
23 **MGP REMEDIATION EFFORTS?**

1     A.     MGE's actions have been both reasonable and prudent. MGE has undertaken  
2           substantial remediation work under the oversight of MDNR and has maintained a  
3           positive and constructive relationship with MDNR in the process. MGE has  
4           responded in a timely and appropriate manner to the demands of the law and  
5           governmental authorities, while minimizing the remediation costs and the impact  
6           on MGE customers.

7

8     **Q.     DOES THAT CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

9     A.     Yes, it does.