

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

In the Matter of Missouri Gas Energy's)	
Purchased Gas Adjustment (PGA))	
Factors to be Audited in its 2002-2003)	<u>Case No. GR-2003-0330</u>
Actual Cost Adjustment.)	

STAFF'S POST-HEARING BRIEF

COMES NOW the Staff of the Missouri Public Service Commission, by and through the Commission's General Counsel, and for its Post-Hearing Brief, states as follows:

Introduction:

The purpose of the Post-Hearing Brief is to update the argument presented in the Pre-Hearing Brief by citing the Commission to the significant evidence adduced at the intervening evidentiary hearing. The undersigned counsel have diligently reviewed the hearing transcript and the Commission's Orders herein, but have not been able to find any page limit for this brief. Nonetheless, counsel will limit their remarks for the sake of brevity. Staff specifically incorporates herein by reference both its Pre-Hearing Brief and its Proposed Findings of Fact and Conclusions of Law, filed simultaneously with this brief.

Staff's burden in this rate case is to adduce evidence sufficient to rebut the presumption of prudence enjoyed by the utility. Assuming that burden is met, the burden passes to the Company to show that its conduct was prudent and that the costs it proposes to recover from the ratepayers are just and reasonable. In the

present case, Staff suggests that it has adduced evidence that is more than sufficient to rebut the presumption of prudence and that MGE has utterly failed to demonstrate that its conduct was prudent and that the costs at issue were just and reasonable and fairly chargeable to the ratepayers.

What is the significance of the testimony of MGE's expert witness, John Reed?

Nothing. Reed's testimony has no significance whatsoever. Its purpose is simply to misdirect and confuse the Commission. The Commission should disregard Reed's testimony.

MGE's defense in this case has been a concerted attack on Staff's expert, Lesa Jenkins. MGE's attorney, Gary Duffy, set up the attack in his opening statement:

"MGE's evidence will show that Staff made judgment errors in the assumptions it used in its equation that affect the results of its equation" (Tr. 1:8).

"MGE's evidence will show that because the Staff used so much usage data from relatively warm days, days that were not even below freezing, that that judgment call skewed the results of the Staff's equation downward" (Tr. 1:10-11).

"MGE's evidence will show that if you backcast Staff's predictions onto actual cold weather situations that are in the peak day range, high usage/cold temperatures, and that's basically these black dots that Mr. Reed relied upon for his data inputs, Staff's method consistently under-predicts the demand that actually occurred" (Tr. 1:11-12).

“MGE's evidence will show also that there were other problems with the Staff's approach, including its consistent failure to consider real world elements of the capacity contracting process and operating performance, all of which lead to the conclusion that Staff's approach is unreliable” (Tr. 1:12).

Why so much attention on Staff in Mr. Duffy's opening? MGE is the defendant here, not Staff. The reason is that Mr. Duffy, in a classic defense-attorney tactic, is attempting to redefine the case and to put Staff on trial.

MGE continued its strategy by producing a highly-paid “expert” at hearing,¹ John Reed, who testified against Ms. Jenkins:

“[I]t's my view that the approach [Staff] utilized here is not consistent with the policy in this state or in other states with regard to a prudence investigation” (Tr. 1:40-41).

Reed testified that I'm not trying to offer a defense or critique of the company's methodology,” yet he was perfectly happy to state that “The conclusion I've drawn first and foremost is that the Commission Staff's disallowance, recommended disallowance is unreasonable because it's a flawed analysis” (Tr. 1:46).

“Staff's position as outlined in the December 2003 and December 2004 Memos fails to meet the prudence standards outlined above on numerous fronts. First, there are no defined capacity planning standards in Missouri. Therefore, Staff's claim that MGE has surplus capacity is based upon its own, ad hoc

¹ Reed testified that he charges \$450 per hour, plus expenses, and that his total bill for the case might well approach \$100,000. Tr. 1:33-35.

methodology that has never been subjected to any sort of critical analysis, much less approved by the Commission or formally disseminated to the gas utilities subject to the jurisdiction of the Commission. Second, when I conducted an independent demand/supply analysis for the 2001/2002 and 2002/2003 ACA periods using the same robust design day planning methodology reflected in MGE's current reliability report, the analysis produced results that were not materially different than the analysis produced by MGE in its reliability reports for the 2001/2002 and 2002/2003 ACA periods. Lastly, the approach and analysis upon which Staff's proposed disallowance is based is fundamentally flawed, and thus, Staff's analysis cannot be relied upon as a means to calculate design day demand, let alone determine whether MGE had surplus capacity" (Reed Direct, at 22). Rather than testifying about *how good* MGE's analytical process was, Reed testified about *how bad* Staff's was. But, so what? Staff is not on trial here.

In addition to attacking Staff, Reed also attempted to misdirect the Commission's attention away from MGE's flawed planning process:

"That is the genesis of the costs in that they're at issue in this case. All parties looked at the decision-making process by which they made that commitment. But I think the real -- the focus needs to be on the commitment itself: Was it a prudent or imprudent commitment? And if it was imprudent, what were the cost consequences of that imprudence?" (Tr. 1:100).

Staff could easily provide additional examples of MGE's attempted sleight-of-hand. But further examples are not necessary.

The only issues in this case, as Staff pointed out in its Prehearing Brief, are these:

(1) Is there evidence of conduct on MGE's part such that the initial presumption of prudence is rebutted?

(2) If so, has MGE shown that its conduct was prudent, given what its management knew or should have known at the time in the exercise of reasonable care?

(3) If there were questionable transactions or imprudent conduct, were the ratepayers thereby harmed?

Reed's testimony does not relate to any of these three questions. And, that's the whole point to MGE's strategy. By devoting a great deal of time, effort and expense to attacking Staff, MGE hopes the Commission will assume that the attack is somehow material to this case. In fact, it is not Jenkins or Staff that is on trial here, it is MGE. But MGE does not want the Commission to focus on the quality of its analysis and subsequent decision-making.

Staff's case is simple. MGE's 2001-2002 Reliability Report was so poorly done that MGE frankly did not know whether it needed capacity or had too much capacity when it renewed its Southern Star transportation contracts at the same volume. Remember, this decision must be analyzed in view of the fact that MGE had simultaneously added capacity via another pipeline.

Rebutting the Presumption of Imprudence:

The most salient change since the Pre-Hearing Brief is the revelation that MGE has been even more careless than Staff first suspected. In its Pre-Hearing

Brief, Staff pointed to three points as rebutting the presumption of prudence and warranting closer scrutiny of MGE's conduct. These points were:

- Inept planning;
- Resulting in the subscription of excess capacity; and
- Inability to produce planning documentation.

At hearing, none of these points was dispelled by MGE. And a fourth emerged:

- Inadequate firm capacity to serve the Joplin service area.

MGE's own witnesses provided ample testimony to the threat to the public health and welfare posed by the possibility of insufficient capacity to meet firm demand on a very cold day (Reed, at Tr. 1:119; Kirkland, at Direct, 6 and 9). MGE's witness Reed obligingly testified that MGE's management knew that its capacity position in Joplin was inadequate (Tr. 1:65, 73). How can the Commission conclude that the presumption of prudence has not been rebutted in the face of this testimony?

MGE's Conduct:

Another significant change has emerged since the Pre-Hearing Brief was filed, namely, an alternative theory of disallowance. MGE went to a lot of trouble to present evidence showing that capacity on the Southern Star pipeline was both very valuable and hard to get (Kirkland Rebuttal, at 38, 40-42; Kirkland Surrebuttal, at 12; Tr. 1:148). Based on this testimony – so that MGE's efforts won't go to naught – Staff now proposes an alternative theory: Even if MGE knew exactly what it was doing, the cost of the excess capacity must still be

disallowed because it was not “used and useful” and thus not chargeable to the ratepayers. The Commission has disallowed the excessive investments of utilities in the past.²

Did MGE have Excess Capacity?

The case comes down to whether or not MGE had excess capacity. This is where MGE’s unrelenting attack on Lesa Jenkins is meant to pay off – if the Commission concludes that her analysis is unreliable, then there is no evidence of excess capacity.

MGE’s attack on Staff’s analysis reduces to two assertions:

- Staff underestimated the non-weather-sensitive base load by more than half; and
- Staff consistently underestimated the design day requirement.

Both of these contentions are readily shown to be baseless.

MGE estimated its non-weather-sensitive base load by using July and August actual usage figures rather than a regression analysis, as Staff did (Jenkins Direct, at 20). However, in developing its base load factor, MGE failed to correct for the very significant amount of gas used in July and August by its electric utility customers to meet the temperature-sensitive air-conditioning load (Tr. 2:256). Consequently, MGE’s estimate of the non-temperature sensitive base load based upon its uncorrected summer usage data was more than double the figure calculated by Staff using a regression analysis (Tr. 1:87).

² *In the Matter of Missouri-American Water Company*, 9 Mo.P.S.C.3d 254, 283-284 (2000) (portion of cost of new St. Joseph water treatment plant excluded from rate base because not used and useful in that capacity of new plant was in excess of system’s current need).

Staff used the actual reported historical peak cold day for its calculation of the heat load, whereas MGE used the incorrect number (Jenkins Direct, at 11-13, 17). MGE contends that its number was not wrong, but merely “wind adjusted” (Kirkland Surrebuttal, at 13, 16). MGE admits that, if Staff’s figure were similarly wind adjusted, it would be very close to MGE’s (*Id.*) It is this lack of wind adjustment that MGE contends led Staff to understate the heat load (Kirkland Surrebuttal, at 16).

Conclusion:

WHEREFORE, on account of all the foregoing, Staff prays that the Commission will find, first, that the initial presumption of prudence is overcome; second, that MGE’s conduct was not reasonable given what its management knew or should have known at the time the decisions were made because MGE did not use “due diligence to address all relevant factors,” but instead entered into a multi-year transportation contract in reliance upon sloppy and unreasonable forecasts of its transportation requirements; third, that the direct result of MGE’s conduct was unnecessary and avoidable charges to ratepayers for excess and unnecessary transportation capacity; or, alternatively, that MGE knowingly entered into a multi-year transportation contract resulting in excess and unnecessary capacity that was not used and useful to serve ratepayers and the cost of which must consequently be disallowed. Based upon these findings, Staff further prays that the Commission will conclude that MGE’s management was imprudent, that the ratepayers were thereby harmed, and that the cost of the unnecessary and excessive transportation capacity should therefore be

disallowed; and that the Commission will grant such other and further relief as is just in the circumstances.

Respectfully submitted,

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/s/ Kevin A. Thompson

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