EXHIBIT

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Missouri Public
Service Commission

Exhibit No.:	
Issue(s):	FASB 106 Funding Regulatory Commission Expense Former Manufactured Gas Plant Remediation Safety Line Replacement Program Kansas Property Tax Expense Oklahoma Property Tax Expense Infinium Software Amortization
Witness:	Ted Robertson
Type of Exhibit:	Direct
Sponsoring Party:	Public Counsel
Case Number:	GR-2009-0355
Date Testimony Prepared:	August 21, 2009

DIRECT TESTIMONY

OF

TED ROBERTSON

Submitted on Behalf of
the Office of the Public Counsel

MISSOURI GAS ENERGY

Case No. GR-2009-0355

August 21, 2009

OPC Exhibit No. 81
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Date 10-26-09 Rptr KF

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Submitted on Behalf of
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MISSOURI GAS ENERGY

Case No. GR-2009-0355

August 21, 2009

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-2009-0355

AFFIDAVIT OF TED ROBERTSON

STATE OF MISSOURI)
) **ss**
COUNTY OF COLE)

Ted Robertson, of lawful age and being first duly sworn, deposes and states:

1. My name is Ted Robertson. I am a Public Utility Accountant for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my direct testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Ted Robertson, C.P.A.
Public Utility Accountant III

Subscribed and sworn to me this 21st day of August, 2009.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

SHYLAH C. BROSSIER
My Commission Expires
June 8, 2013
Cole County
Commission #09812742

Shylah C. Brossier
Notary Public

My Commission expires June 8, 2013.

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DIRECT TESTIMONY
OF
TED ROBERTSON

MISSOURI GAS ENERGY
CASE NO. GR-2009-0355

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Ted Robertson, P. O. Box 2230, Jefferson City, Missouri 65102.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by the Office of the Public Counsel of the State of Missouri ("OPC" or "Public Counsel") as a Public Utility Accountant III.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND OTHER QUALIFICATIONS.

A. I graduated from Southwest Missouri State University in Springfield, Missouri, with a Bachelor of Science Degree in Accounting. In November, 1988, I passed the Uniform Certified Public Accountant ("CPA") Examination, and obtained CPA certification from the State of Missouri in 1989. My Missouri CPA license number is 2004012798.

Q. WHAT IS THE NATURE OF YOUR CURRENT DUTIES WHILE IN THE EMPLOY OF THE PUBLIC COUNSEL?

A. Under the direction of the OPC Chief Public Utility Accountant, Mr. Russell W. Trippensee, I am responsible for performing audits and examinations of the books and records of public utilities operating within the State of Missouri.

Q. HAVE YOU RECEIVED SPECIALIZED TRAINING RELATED TO PUBLIC UTILITY ACCOUNTING?

A. Yes. In addition to being employed by the Office of the Public Counsel since 1990, I have attended the National Association of Regulatory Utility Commissioners ("NARUC") Annual Regulatory Studies Program at Michigan State University, and I have also participated in numerous training seminars relating to this specific area of accounting study.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION?

A. Yes, I have. Please refer to Schedule No. TJR-1, attached to this direct testimony, for a listing of cases in which I have previously submitted testimony before the Missouri Public Service Commission ("MPSC" or "Commission").

Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY?

A. The purpose of this direct testimony is to address the Public Counsel's positions regarding the determination of an appropriate level of costs associated with Missouri Gas Energy's ("MGE" or "Company") Financial Accounting Standards Board Statement of Financial Accounting Standards No. 106 ("FASB 106") funding,

Regulatory Commission Expense, Safety Line Replacement Program ("SLRP"), Former Manufactured Gas Plant Remediation ("FMGP"), Kansas Property Tax Expense, Oklahoma Property Tax Expense and Infinium Software Amortization.

II. FASB 106 FUNDING

Q. WHAT IS THE ISSUE?

A. Company apparently has not funded its FASB 106 Voluntary Employee Benefit Association ("VEBA") Trust appropriately. In fact, its funding level has been significantly less than the amount of expense it has booked to its financial records.

Q. PLEASE CONTINUE.

A. Company's response to MPSC Staff Data Request No. 126 provided an analysis that shows since January 1997 through the end of December 2008 its cumulative funding to the VEBA was $19,292,883.77 while its cumulative expense was $32,807,657.04. This represents an unfunded expense difference of $13,514,773.27.

Q. WHAT IS THE DIFFERENCE AS OF THE END OF APRIL 2009?

A. The difference in unfunded expense has grown to $14,048,781.85.

Q. SHOULD THE COMPANY BE REQUIRED TO FUND ITS FASB 106 PLANS BY AN AMOUNT AT LEAST EQUAL TO THE LEVEL OF FASB 106 EXPENSE INCLUDED IN REGULATED RATES?

A. Yes. If ratepayers have provided the funds to Company, they should have been utilized for the purpose intended and not for the discretionary use of Company.

Q. WHAT IS PUBLIC COUNSEL'S RECOMMENDATION FOR THIS ISSUE?

A. Public Counsel is still in the process of analyzing this issue and will address it further in rebuttal testimony.

III. REGULATORY COMMISSION EXPENSE

Q. WHAT IS THE ISSUE?

A. The issue is how to determine the proper amount of regulatory commission expense Company should be authorized to include in the development of future rates.

Q. PLEASE SUMMARIZE THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE.

A. Public Counsel's position is that the amount of regulatory commission expense, included in the development of Company's rates, should only include a normalized annual level of charges that directly benefit ratepayers. Since both shareholders and ratepayers benefit from the activities from which these charges derive, both parties should be held responsible for their payment.

Q. WHAT ARE THE TYPES OF COSTS THAT ARE NORMALLY BOOKED BY COMPANY AS REGULATORY COMMISSION EXPENSE?

A. Regulatory commission expense typically consists of charges associated with activities such as general rate increase cases initiated by Company, annual MPSC and NARUC assessments, and various other legal proceedings before the Commission (e.g., certification filings, ACA cases, complaints, etc.) or the Federal Energy Regulatory Commission. Individual costs within each category may include items such as:

1. Printing (e.g., rate notification letters, initial filing, testimony, briefs, other)
2. Postage
3. Legal Counsel
4. Consultants
5. Miscellaneous Expenses (e.g., stated by individual for outside legal, consultants and utility personnel for travel, hotel, meals, other, etc.)
6. MPSC and NARUC Annual Assessments

Q WHAT IS THE TEST YEAR AMOUNT OF REGULATORY COMMISSION EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS?

A. For the Commission ordered test year, twelve months ended December 31, 2008, the balance booked in Uniform System of Accounts ("USOA") Account No. 928 is $2,584,881 (source: General Ledger).

Q WHAT IS THE AMOUNT OF REGULATORY COMMISSION EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS FOR THE TWELVE MONTHS ENDED APRIL 30, 2009 UPDATE?

A. For the twelve months ended April 30, 2009, the balance booked in USOA Account No. 928 is $2,227,770 (source: General Ledger).

Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE TEST YEAR OR UPDATE BALANCES BOOKED TO USOA ACCOUNT NO. 928 REPRESENT A REASONABLE LEVEL OF REGULATORY COMMISSION EXPENSE FOR INCLUSION IN THE DEVELOMENT OF FUTURE RATES?

A. No.

Q. WHAT REGULATORY COMMISSION EXPENSE SHOULD RATEPAYERS BE HELD RESPONSIBLE FOR PAYMENT?

A. On a going forward basis, Company is expected to incur charges within three broad areas of regulatory commission expense. As I mentioned earlier, these three areas consist of costs associated with general rate increase cases, assessments from the MPSC and NARUC and a host of other cases in which Company is a party before the MPSC or FERC. Public Counsel believes that charges incurred for each of these three discrete activities should be analyzed in detail so as to determine the costs that should be included in the cost of service.

Q. WHAT COSTS ASSOCIATED WITH GENERAL RATE INCREASE CASES SHOULD BE RECOVERED FROM SHAREHOLDERS AND RATEPAYERS?

A. Costs associated with general rate increase cases should first be analyzed to determine if they are prudent, reasonable and necessary. Those that are

determined not prudent, reasonable or necessary should not be reimbursed by ratepayers. For example, costs incurred by Company personnel, outside legal and outside consultants that are determined imprudent, unreasonable or unnecessary should be automatically disallowed. In addition, if the utility has employees capable of developing and supporting the case cost of service study (COSS), the cost of hiring of higher-priced outside legal or consultants should not be allowed either. Once the prudent, reasonable and necessary costs of the specific case are determined, the balance should then be split evenly between shareholders and ratepayers as they represent charges associated with activities that benefit both. The ratepayer's allocated portion can then be included in the development of future rates by normalizing the cost commensurate with the Company's average general rate case filing history.

Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE COSTS ASSOCIATED WITH THE CURRENT GENERAL RATE INCREASE CASE SHOULD BE UTILIZED TO DEVELOP THE NORMALIZED AMOUNT OF RATE CASE EXPENSE TO INCLUDE IN THE DETERMINATION OF FUTURE RATES?

A. Yes. On a going forward basis, Public Counsel believes that the costs incurred in the instant case should be utilized to determined the annual level of rate case expense to include in the determination of rates since they represent the most recent actual costs one can expect the utility to incur.

Q. HOW DO SHAREHOLDERS AND RATEPAYERS BENEFIT FROM THE ACTIVITIES ASSOCIATED WITH GENERAL RATE INCREASE CASES?

A. Customers definitely have an interest in ensuring that their utilities' rates are just and reasonable, which is the ultimate objective of any rate case, whether it results in an increase or decrease in a given utility's rates; however, both shareholders and ratepayers benefit in many ways from a strong stable organization that has competent management at its helm. The utility that is able to respond to all stakeholders with the services and other requirements that they expect necessitates that the utility be able to access debt markets at competitive rates. That entails that the earnings capacity of the utility must be sufficient to fund its construction and operational processes while providing an adequate return to shareholders. In addition, operational processes must be able to fulfill the utility's commitments of safe and reasonably priced service to ratepayers. All of which can only be done if the utility is allowed to recover a reasonable return on its investment and recover prudent, reasonable and necessary expenses. General rate increase cases provide the avenue upon which the utility seeks to obtain the proper revenue requirement (i.e., rates) which will allow it to meet those goals. Furthermore, shareholders benefit even more from any efficiencies that management may be able to incorporate into the organization; thereby, increasing the likelihood of growth in future stock prices and dividends they may receive.

Q. HAVE YOU REVIEWED COMPANY'S ESTIMATED COSTS TO DEVELOP AND PROCESS THE INSTANT CASE?

A. Yes. Company's response to MPSC Data Request No. 28 provides a listing that shows an estimated $1,001,250 may be expended to process the instant case. The breakdown of the costs is as follows:

1.	Cost of Capital - AUS Consultants	$61,000
2.	Class Cost of Service Allocation - Ruhter & Reynolds	$50,250
3.	Cash Working Capital Analysis - Black & Veatch	$80,000
4.	Billing Determinants - Black & Veatch	$104,000
5.	Rate Design - Black & Veatch	$77,000
6.	Depreciation - Black & Veatch	$14,500
7.	Environmental - Burns & McDonnell	$9,500
8.	Brydon Swearingen	$250,000
9.	Phil Thompson	$10,000
10.	Out of Pocket	$20,000
11.	Other	$325,000

Q. IS PUBLIC COUNSEL CONCERNED ABOUT THE LARGE EXPENDITURES MGE EXPECTS TO INCUR FOR PROCESSING THE CURRENT GENERAL RATE INCREASE CASE?

A. Yes. Public Counsel has become increasingly concerned with the level of rate case expense among utilities in general. For example, costs associated with outside legal representation and consultants is extremely costly and represents the majority of the costs of MGE's estimate; however, all of these costs are properly within management's control. As a result, rate case expense, like any other expenditure, is an area where companies should seek to contain costs.

Q. DOES PUBLIC COUNSEL BELIEVE THAT OUTSIDE LEGAL AND CONSULTANT COSTS HAVE BECOME EXCESSIVE AND THAT THE COMPANY HAS NO INCENTIVE TO CONTROL THESE COSTS?

A. Yes. The use of costly outsiders to process and defend the rate increase request is particularly disconcerting when one considers that MGE is a relatively large utility with approximately 700 employees (source: MPSC Staff DR No. 37.1). Many of these employees hold degrees from colleges and universities which likely match or exceed the educational requirements needed to prepare and defend a cost of service study (COSS) - not to mention their combined work experience and acquired skills. These employees should be able to perform most, if not all, of the work required. Thus, MGE should not see a large additional expenditure for preparing and supporting a COSS request. Companies should be aware that a "pass-through" of rate case expense is not automatic and the Commission should certainly review the expenses for prudency, reasonableness and necessity to ensure that they are not improper or excessive. Especially in today's economic climate.

Q. IS IT YOUR BELIEF THAT SPECIFIC RATE CASE COSTS ARE NOT BEING PRUDENTLY INCURRED BY THE COMPANY?

A. Yes. OPC believes that the Company has not attempted to appropriately control the costs it estimated to incur for the current case. MGE's needless use of outside legal and consultant services indicates such.

Q. IS THE COST ASSOCIATED WITH COMPANY'S USE OF OUTSIDE LEGAL AND OUTSIDE CONSULTANT SERVICES EXCESSIVE?

A. Yes. In my opinion, the costs are excessive. As of the end of December 2008 MGE alone had approximately 700 employees on its payroll. Among these employees are a number of attorneys, accountants, and engineers that presumably could have been utilized to prepare, file and defend its rate increase request. In fact, Company has to its credit sought to contain certain rate case expenses by using in-house resources to prepare and represent many of its accounting matters. However, Company chose to go outside its employee base by hiring several entities to develop and present other areas of its case. Public Counsel believes that the in-house resources should have been expanded to include legal and other activities for as much of the rate case work as possible before resorting to outside legal and consultants only when necessary.

Q. DOES PUBLIC COUNSEL BELIEVE THAT THE COMPANY HAS THE PROPER INCENTIVE TO CONTROL THE LEVEL OF EXPENDITURES IT IS INCURRING FOR THE CURRENT GENERAL RATE INCREASE CASE?

A. No. Company's management apparently believes that because it decides to incur outside legal and outside consultant costs to assist it in processing its request for a rate increase, those expenditures should be considered and authorized as an automatic recovery from ratepayers. Public Counsel believes that rationale is neither appropriate or reasonable. It is not appropriate because

the idea itself results in monopolistic inefficiencies which lead to higher rates than should have actually occurred. The utility should always be actively seeking to reduce its cost structure so that ratepayers do not end up paying higher rates than absolutely necessary, but the indiscriminate incurrence of excessive expenditures runs counter to that goal. Also, it is not reasonable due to the fact that if the expenditures are to be incurred they must be done so with the understanding that they are the most cost-effective alternative and that their incurrence will be scrutinized thoroughly so as to avoid the payment of improper or unreasonable charges. Company's view that it can spend whatever it desires to process its rate increase request, because the expenditures are an entitlement subject to automatic recovery, provides no incentive for the controlling of the costs at issue.

Q. SHOULD REASONABLE AND NECESSARY EXPENDITURES TO PREPARE AND PRESENT A RATE CASE BE ALLOWED IN THE DETERMINATION OF FUTURE RATES RECOVERED FROM RATEPAYERS?

A. Yes; however, ratepayers should be held accountable only for a proportionate share of such expenditures since both ratepayers and shareholders benefit from their incurrence. If the costs incurred are determined to be reasonable and necessary, both ratepayers and shareholders should be responsible for their payment since both parties benefit from these expenditures.

Q. DO YOU BELIEVE THAT THE EXPENDITURES COMPANY IS INCURRING FOR LEGAL COSTS AND CONSULTANTS COSTS IN THE RATE CASE ARE REASONABLE AND NECESSARY?

A. No.

Q. SHOULD THE COMMISSION SUBSTITUTE ITS JUDGMENT FOR THAT OF THE UTILITY'S MANAGEMENT IN CHOOSING WHICH RATE CASE EXPENSES TO INCUR?

A. No. The Commission should not seek to substitute its judgment – or that of any intervenor – for the Company's in determining which consultant or legal counsel is best suited to serve the company's interests; however, the need to contain rate case expense should be accorded a high priority for rate case work. In seeking recovery of rate case expense, companies must provide an adequate justification and showing that their choice of outside services is both reasonable and cost-effective. A company that seeks to recover rate case expense when it has not properly evaluated its options is not something ratepayers should have to underwrite. Recovery should not be automatic.

Q. SHOULD THE COMMISSION DETER THE COMPANY FROM SEEKING NECESSARY ASSISTANCE TO DEVELOP AND IMPLEMENT ITS GENERAL RATE INCREASE CASES?

A. No. The Commission should not deter Company from seeking necessary assistance in preparing, supporting and implementing a new COSS. However,

Company currently has approximately 700 employees whose wages and benefits are treated as operating expenses and paid by its customers. It is probable that a greater number of these employees could have been utilized to prepare and defend the Company's request for the rate increase.

The ongoing operations of a utility include justifying its rate structure and supporting rate increase requests. Some of MGE's employees presumably have sufficient expertise and familiarity with utility regulation to enable them to assist in the preparation of a COSS and then support their findings before the Commission; thus, Company should be able to prepare and implement a new COSS without the need of making large expenditures for outside legal or consultants. Company should be advised that in order for the expense of outside legal or consultants to be considered allowable rate case expenses, they must be incurred in the most efficient and prudent manner possible.

Q. IS PUBLIC COUNSEL TAKING A NARROW VIEW THAT RATE CASES THAT RESULT IN RATE INCREASES ONLY BENEFIT THE UTILITY'S SHAREHOLDERS BY INCREASING EARNINGS?

A. No. Although an argument could certainly be made for that view. The need for a base rate filing is initiated by the utility and driven by its desire to obtain an increase in rates, but an authorized revenue requirement merely gives the utility an opportunity to earn a return on its investments. Increased rates do not

necessarily mean higher earnings will be achieved for shareholders. Other benefits include the ability to provide safe, adequate and proper utility service.

Q. SHOULD CONSUMERS BE FORCED TO PAY FOR ELABORATE DEFENSES OF PRIVATE INTEREST?

A. No. Costs incurred by Company to present and defend positions on expense recovery and investment return which primarily benefit shareholders should not be recovered from ratepayers.

Q. WHAT DOES PUBLIC COUNSEL BELIEVE CONSTITUTES AN ELABORATE DEFENSE?

A. Elaborate defense, as used here, consists of Company's hiring of outside legal and consultant services to support its rate case when it is very likely its own personnel could have done the job just as well and perhaps more effectively.

Q. SHOULD RATEPAYERS BE AFFORDED EVERY OPPORTUNITY TO SAVE MONEY THROUGH REDUCED COSTS AND EFFICIENT SERVICE?

A. Yes. Since utility ratepayers are a captive population, the utility should use all means possible to ensure that ratepayers receive safe and efficient service at the most reasonable and efficient cost possible.

Q. DOES THE COMPANY'S USE OF OUTSIDE CONSULTANTS TO SUPPORT ITS RATE CASE FILING YIELD EFFICIENT SERVICE AT A REASONABLE COST?

A. No. MGE and its parent company likely have sufficient personnel resources to process a general rate increase case in this State; however, MGE did not fully utilize those resources. For example, Mr. Robert Hack, CEO of MGE, previously worked for a number of years at the MPSC and was in fact a former General Counsel for the Commission. His knowledge of the inner workings of the Commission and the processing of a general rate increase case is extensive. However, instead of utilizing Mr. Hack's (or any other MGE/SUC attorney) knowledge and skills to present its case, the Company chose to hire an outside legal firm to handle the legal aspects of the case. Public Counsel believes that to be an inefficient use of Company resources. The same goes for Company's utilization of outside consultants for the accounting, depreciation, economic and environmental activities associated with the current case. Utilization of its own and/or parent employees would have likely provided services in a more cost-effective manner.

Q. DOES PUBLIC COUNSEL BELIEVE THAT SHAREHOLDERS SHOULD CARRY AN EQUAL PROPORTION OF THE COST OF THIS RATE CASE FOR WHICH THEY TOO RECEIVE A BENEFIT?

A. Yes. Benefits that inure to ratepayers from a utility rate case are at least matched (if not exceeded) by benefits enjoyed by the shareholders of the same utility. Therefore, utilities should be vigilant in controlling their rate case expenses so that owners and customers are not unduly burdened by the incurrence of unnecessary or inefficient costs.

Q. WHAT SHARING OF PRUDENT, REASONABLE AND NECESSARY COSTS DOES PUBLIC COUNSEL PROPOSE?

A. Public Counsel recommends that once the level of prudent, reasonable and necessary costs is determined they should be shared 50%/50% between shareholders and ratepayers.

Q. WHY DOES PUBLIC COUNSEL BELIEVE THAT A 50/50 SHARING OF THE COSTS IS APPROPRIATE?

A. A general rate increase case arises for the benefit of a company's shareholders due to the fact that a primary motivation in filing a rate case is to add shareholder value by increasing rates. Thus, prudent, reasonable and necessary expenses resulting from the rate case should be shared 50/50 between shareholders and ratepayers so that the shareholders bear some of the burden for the benefits they receive.

Q. DOES SHAREHOLDER PAYMENT OF A PORTION OF THE RATE CASE EXPENDITURES CONSTITUTE AN UN-EQUITABLE FORFEITURE?

A. Not in my opinion. Since the shareholders stand to gain from the opportunity to earn any increase in revenue requirement authorized by the Commission, they too benefit from the costs incurred to proceed with the case. It stands to reason that if the authorized revenue requirement exceeds the case costs they will expend, they have a net benefit; thus, there is no un-equitable forfeiture.

Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE COMMISSION SHOULD DISCOURAGE UTILITIES FROM HIRING OUTSIDE LEGAL COUNSEL OR CONSULTANTS TO SUPPORT THEIR POSITIONS?

A. No. It is not the Commission's place to micro-manage the utility; however, neither should the Commission automatically allow the utility to "pass-through" the charges for the expenditures simply because the Company's management chose to incur the costs.

Q. ARE RATE CASE COSTS OUTSIDE THE CONTROL OF MANAGEMENT?

A. No. There are a certain amount of "embedded costs" inherent in any general rate increase case; however, most of the costs are not outside of the Company's control. For example, the Company chooses the employees, attorneys and consultants it wants to represent its case. The Company then chooses how they are going to comply with discovery and what efforts, if any, they will make to facilitate and economize the process. Furthermore, the Company dictates what measures it will make to mitigate rate case expense by choosing which positions it favors and seeks to pursue or not pursue within the case.

Q. JUST BECAUSE THE COMPANY CHOOSES TO INCUR CERTAIN EXPENDITURES SHOULD THE COMMISSION ASSUME THAT THE COSTS ARE PRUDENT, REASONABLE AND NECESSARY?

A. No. Even though there are certain costs inherent in the Commission's process, the costs should still be prudent, reasonable and necessary. The Commission should not assume that just because the utility expended the time and cost its rate case expenditures should be automatically recoverable from ratepayers. In fact, most of the Company's estimated rate case expense is not prudent, reasonable or necessary.

It is incumbent on the Company to mitigate its rate case expense because the Company alone has chosen to initiate and process the rate increase request. Moreover, if the Company decides to engage in conduct that increases rate case expense, it is the Company that has the burden of establishing the amount incurred and showing that it is prudent, reasonable and necessary. The Commission is obligated to consider competing policies of what expenses should be considered in ratemaking decisions including rate case expense. Therefore, in establishing rates, the Commission is required to balance the public need for adequate, efficient, and reasonable service with the utility's need for sufficient revenue to meet the cost of furnishing service and earning a reasonable return on investment. MGE apparently expects the Commission to take its word that the costs it expects to incur are prudent, reasonable and necessary. That is not a reasonable position because rate case expenditures involve a high degree of management choice and discretion over whether or not to incur each expenditure. The Commission should look past MGE's simplistic position and base its decision on whether or not each expenditure was prudent.

Q. DO YOU PROPOSE TO DISALLOW ALL COMPANY'S RATE CASE EXPENSE?

A. No. Public Counsel recommends that the Commission recognize that rate case expenses benefit both MGE and ratepayers; thus, shareholders should also be held responsible for a portion of the costs related to the burden. Because rate proceedings are a part of the normal course of business for a utility and because rate proceedings, by establishing just and reasonable rates, are conducted for the benefit of both ratepayers and shareholders, it is widely accepted that rate case expenses are one aspect of a utility's operating costs and are recoverable in a general rate proceeding. However, because shareholders and ratepayers both benefit, a policy of requiring only ratepayers to pay the costs is not reasonable.

In general, if costs incurred by a utility to prepare and present a rate case are prudent, reasonable and necessary they should be properly recoverable from both shareholders and ratepayers. The ratepayer's portion should be treated as an ordinary and reasonable cost of doing business.

The Commission should also note that the amount estimated to be expended by Company in this general rate increase case (i.e., approximately $1,001,250) should be considered excessive for a utility which applies for rate increases relatively frequently, understands the regulatory process, has personnel on its staff who were previously directly involved in the regulatory process, and is

litigating essentially the same issues as those litigated in its last several general rate increase cases.

Q. WHAT IS THE ANNUALIZED AMOUNT OF RATE CASE EXPENSE YOU ARE PROPOSING THAT THE COMPANY RECEIVE?

A. Public Counsel recommends that the Commission ignore the costs of prior general rate increase cases booked in Company's financial records and focus its attention on the costs Company is incurring to process the current case. Within that context, Public Counsel recommends that the question of who benefits from the costs is an important consideration to take into account since rate case expense is a complex problem in that consumers should not be forced to pay elaborate defenses of private interests. Therefore, the Commission should disallow costs Company expects to incur that are associated with the outside legal and consultants hired by the utility to process the current case. Company bears the burden of proof in these proceedings and it must establish that any expenditure it incurs is prudent, reasonable and necessary. That, in Public Counsel's opinion, has not occurred.

Furthermore, the Commission should not approve in-house general rate increase expenditures as an allowable component of rate case expense if the in-house charges for preparation and implementation of a COSS will be recovered in other in-house cost categories. For example, rate case expense should not include recovery for expenses that are otherwise included in test year expenses, including salaries for utility employees that prepare the filing, act as witnesses or

provide the legal requirements to develop, process and implement the rate increase request. Disallowing these costs from rate case expense will avoid duplicate accounting of amounts already incorporated in operating expense.

Therefore, Public Counsel recommends that Company be allowed to recover only 50% of its incremental in-house rate case activities determined by the Commission to be prudent, reasonable and necessary. However, since the costs are a moving target in that they will continue to be incurred through the end of the update period and true-up (if it is authorized), the total rate case expense will not be known until sometime after the end of September 2009. Public Counsel will update the Commission on its recommendation in later testimony.

Q. IS THERE A NEED TO NORMALIZE THE ANNUALIZED RATE CASE EXPENSE AUTHORIZED BY THE COMMISSION?

A. Yes. Since utilities do not normally file a rate increase request on a yearly basis, the costs that they incur to process the activity should be recovered over a period of years representative of how often the utility's rates are actually changed from one case to another. The costs should be normalized (averaged) over that period of time necessary to complete the cycle for the activity.

Q. DOES PUBLIC COUNSEL RECOMMEND A SPECIFIC NORMALIZATION PERIOD?

A. Yes. I have reviewed the frequency of occurrence for Company's general rate increase filings and Public Counsel recommends that, for this rate case, the Commission authorized rate case costs should be normalized for a three-year cycle of rate case occurrences. Thus, I believe, that a three year normalization of the costs is the most appropriate amount to include in the cost of service.

Q. DO YOU PROPOSE THE INCLUSION IN YOUR NORMALIZED LEVEL OF RATE CASE EXPENSE ANY OTHER COSTS ASSOCIATED WITH ANY PRIOR GENERAL RATE INCREASE CASE?

A. No. Public Counsel recommends that only rate case expense associated with the current rate increase request be allowed in rates on a going forward basis. To include expenses incurred for prior cases would constitute double recovery of the costs from the ratepayers. All related COSS issues of the prior cases will likely be issues again in this rate case; thus, the expenses appropriately incurred to present Company's current proposed increase will be included in the rate case expense normalization ultimately authorized by the Commission in the instant case.

Q. WHAT REGULATORY COMMISSION COSTS ASSOCIATED WITH MPSC AND NARUC ASSESSMENTS SHOULD BE RECOVERED FROM SHAREHOLDERS AND RATEPAYERS?

A. OPC recommends that the most recent assessment from the MPSC be allowed as an expense in the determination of the Company's cost of service since this is the

known and measurable cost to be incurred by the utility on a going forward basis. As for the NARUC assessment, Public Counsel does not believe that the associated cost should be recorded as a regulatory commission expense. The assessment is more related to that of a dues for Company's affiliation with an industry or fraternal organization. Dues, if authorized as an operating expense by the Commission, are properly recorded in USOA Account No. 930.2 as a miscellaneous general expense.

Q. WHAT ARE THE MOST CURRENT MPSC AND NARUC ASSESSMENT COSTS?

A. Company's response to OPC Data Request No. 1014 identified the assessment costs for the MPSC and NARUC as $1,485,731.56 and $5,018.40, respectively.

Q. WHAT REGULATORY COMMISSION COSTS ASSOCIATED WITH OTHER CASES IN WHICH COMPANY IS A PARTY BEFORE THE MPSC SHOULD BE RECOVERED FROM SHAREHOLDERS AND RATEPAYERS?

A. The costs for the other cases at issue are an accumulation of outside legal representation before the Commission and FERC. For example, the following is a listing of cases which Company has booked costs during the test year and update period:

1. Brydon, Swearingen & England

   2R0001 - General Regulatory
   2R0007 - Certification Filings
   2R0032 - Application for ISRS
   2R0052 - Trigen HA-2006-0294

2R0055 - KCPL ER-2006-0314
2R0057 - Ozark Energy GA-2006-0561
2R0059 - ACA Case GR-2006-0291
2R0061 - Alliance Case GA-2007-0168
2R0063 - MGP Environmental AAO
2R0064 - Natural Gas Conservation
2R0066 - ACA Case GR-2007-0256
2R0068 - Linda Light Complaint
2R0069 - Sterling Point Complaint
2R0070 - Staff vs. MGE GC-2009-0036
2R0072 - ACA Case GR-2009-0268

2. Schiff, Hardin & Waite

2R0011 - FERC Issues

3. Sonnenschein, Nath & Rosenthal

2R0062 - Platte Co. Cert GA-2007-0289

It is Public Counsel's recommendation that the legal costs associated with these cases should be entirely eliminated from the development of the annual level regulatory commission expense included in the development of future rates since, as for general rate increase cases, the legal representation could have been handled more cost-effectively and efficiently by MGE or its parent company employees.

IV. FORMER MANFACTURED GAS PLANT REMEDIATION

Q. WHAT IS THE ISSUE?

A. This issue concerns the determination of the appropriate level of remediation costs for Former Manufactured Gas Plant to include in the development of rates for the instant case.

Q WHAT IS THE TEST YEAR AMOUNT OF FORMER MANFACTURED GAS PLANT REMEDIATION EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS?

A. For the Commission ordered test year, twelve months ended December 31, 2008, the expense amount was $3,425,041 (source: General Ledger). However, this amount may vary somewhat since Company has indicated that Corporate also allocated some environmental costs to MGE. Public Counsel, as I prepared this testimony, has data requests outstanding requesting information which should clarify whether the Corporate allocated amounts are included in the amount identified or would be an addition to it.

Q WHAT IS THE AMOUNT OF FORMER MANFACTURED GAS PLANT REMEDIATION EXPENSE COMPANY RECORDED IN ITS FINANCIAL RECORDS FOR THE TWELVE MONTHS ENDED APRIL 30, 2009 UPDATE?

A. For the Commission ordered updated test year, twelve months ended April 30, 2009, the expense amount is $3,861.97 (source: General Ledger). This amount may also change depending on the Company's responses to the OPC data requests mentioned in the previous Q&A.

Q. WHAT ARE FORMER MANUFACTURED GAS PLANT REMEDIATION COSTS?

A. FMGP remediation costs can be defined as all investigations, testing, land acquisition (if appropriate), cleanup and/or litigation costs and expenses or other

liabilities, excluding personal injury claims, specifically relating to former gas manufacturing facility sites, disposal sites or sites to which hazardous material may have migrated, as a result of the operation or decommissioning of the former gas manufacturing facilities.

Q. WHY IS THE COMPANY POTENTIALLY LIABLE TO INCUR FORMER MANUFACTURED GAS PLANT CLEANUP COSTS?

A. To deal with the contamination and cleanup problems presented by abandoned and/or inactive hazardous waste sites, Congress in 1980 enacted the Comprehensive Environment Compensation and Liability Act ("CERCLA" or "Superfund"). CERCLA provided funding and enforcement authority to the Environmental Protection Agency ("EPA") to enable it to respond to hazardous substance releases and to enable the EPA to undertake or regulate the cleanup of those hazardous sites where owners/operators were either without resources or unwilling to implement such cleanups.

In 1986 CERCLA was amended by the Superfund Amendments and Reauthorization Act which intensified Superfund activities and set a goal of achieving "permanent' solutions at Superfund sites. CERCLA imposes strict, joint and several liability on present or former owners or operators of facilities where substances have been or are threatened to be released into the environment.

Potentially responsible parties ("PRP") included owners of contaminated land from point of contamination to date, operators (which is interpreted as any party that had possession, control or influence over the premises during the same period), transporters and generators of the contaminants regardless of whether they directly released such substances into the environment.

Q. MISSOURI GAS ENERGY IS A POTENTIALLY RESPONSIBLE PARTY FOR HOW MANY FORMER MANUFACTURED GAS PLANT SITES?

A. MGE has identified that it currently has ownership interests in six (6) FMGP sites that could require potential responsibility for cleanup efforts. In addition to the currently owned sites, Company has identified fourteen (14) facilities it does not own which may or may not involve it as a PRP under the Superfund statute (source: MPSC Staff DR No. 5.1).

Q. IS PUBLIC COUNSEL OPPOSED TO INCLUDING FORMER MANUFACTURED GAS PLANT REMEDIATION COSTS IN MISSOURI GAS ENERGY'S COST OF SERVICE?

A. Yes.

Q. PLEASE EXPLAIN WHY.

A. Public Counsel's opposition to the inclusion of the former manufactured gas plant remediation costs in MGE's cost of service is based on several reasons. For example, MGE and Western Resources Inc. (WRI) have already recognized and

accepted that they, their insurers and potentially other PRP's are responsible for the costs of the FMGP remediation (WRI is the former owner of the Missouri gas utility assets). Pursuant to the terms of the *Environmental Liability Agreement* attached to the *Agreement for Purchase of Assets* between Southern Union Company and Western Resources Inc., the Companies have agreed to share the liability for payment of any costs associated with any MGP remediation that might occur subsequent to Southern Union Company buying the Missouri gas utility assets. The *Environmental Liability Agreement* is attached to this direct testimony as Schedule TJR-2 (source: Robertson Rebuttal Testimony, Schedule TJR-1, MGE Case No. GR-2001-292).

Also, Public Counsel believes that the costs should not be included in customer's rates because, 1) to my knowledge, none of the former manufactured gas plants are currently in operation. Therefore, the FMGP plant is not used and useful in providing service to current customers. If current customers are required to pay for the cost of service not recovered from past customers (e.g., past rates were set too low), the result is intergenerational inequity, and possibly retroactive ratemaking will occur, 2) present customers should not be required to pay for past deficits of the Company in future rates, 3) Public Counsel believes that shareholders are compensated for this particular business risk through the risk premium inherent to the equity portion of the Company's weighted average rate of return, 4) shareholders, not ratepayers, receive the benefits of any gains or losses (i.e., below-the line treatment) of any sale or removal from service of Company-owned

land or investment. Since it is the shareholder who receives the benefit associated with the gain, or the loss, on an investment's disposal, it is the shareholder who should bear the responsibility for any legal liability that arises at a later date related to the investment, 5) the liability for the remediation costs are not incurred because of the gas service Missouri Gas Energy provides to its current customers. Missouri Gas Energy is a PRP because it either owns the property now or its predecessor owned the property at sometime in the past, and 6) automatic recovery of the remediation costs from Missouri Gas Energy's customers may reduce the incentive for the Company to seek partial or complete recovery of the costs from other past owners of the plant sites or Company insurers.

V. SAFETY LINE REPLACEMENT PROGRAM

Q. WHAT IS THE ISSUE?

A. The Safety Line Replacement Program was mandated by Commission Rule 4 CSR 240-40.030 which required all gas companies to establish a gas main and line replacement program. Company accumulated the costs and then deferred the amounts pursuant to several Accounting Authority Orders ("AAO") authorized by the Commission. Therefore, the issue concerns the determination of the appropriate level of SLRP costs to include in the development of rates for the instant case.

Q. WHAT IS AN ACCOUNTING AUTHORITY ORDER?

A. An Accounting Authority Order is an accounting mechanism that permits deferral of costs from one period to another. The items deferred are booked as an asset rather than as an expense, thus improving the financial picture of the utility in question during the deferral period. During a subsequent rate case, the Commission determines what portion, if any, of the deferred amounts will be recovered in rates via a possible "return on" and "return of." An AAO allows an utility to increase reported earnings for the financial period in which the deferral occurs and subsequently recover those earnings in a future period to the extent the deferred amounts are included in future rates.

Q. WHAT HAPPENS WHEN A COST IS DEFERRED?

A. When a cost (i.e., expense) is deferred, it is removed from the income statement and entered on the balance sheet. In this instance, Company has booked the deferred costs to USOA Account No. 1823 - Extraordinary Property Losses.

Q. PLEASE EXPLAIN THE TERMS "RETURN OF" AND "RETURN ON."

A. If an expenditure is recorded on the income statement as an expense it is compared dollar for dollar to revenues. This comparison is referred to as a "return of" because a dollar of expense is matched by a dollar of revenue in the determination of revenue requirement. "Return on" occurs when an expenditure is capitalized within the balance sheet because it increased the value of a balance sheet asset or investment. This capitalization is then included in the rate base

calculation, which is a preliminary step in determining the earnings the company achieves on its total regulatory investment.

Q WHAT IS THE TEST YEAR AMOUNT OF SAFETY LINE REPLACEMENT PROGRAM COSTS COMPANY RECORDED IN ITS FINANCIAL RECORDS?

A. For the Commission ordered test year, twelve months ended December 31, 2008, the expense amount amortized to USOA Account Nos. 40300002, 40810015 and 41900001 was $2,237,008 (source: General Ledger).

Q WHAT IS THE AMOUNT OF SAFETY LINE REPLACEMENT PROGRAM COSTS COMPANY RECORDED IN ITS FINANCIAL RECORDS FOR THE TWELVE MONTHS ENDED APRIL 31, 2009 UPDATE?

A. For the Commission ordered updated test year, twelve months ended April 30, 2009, the expense amount amortized to USOA Account Nos. 40300002, 40810015 and 41900001 was $1,529,133 (source: General Ledger).

Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE TEST YEAR OR UPDATED TEST YEAR AMOUNTS BOOKED REPRESENT A REASONABLE LEVEL OF AMORTIZATION EXPENSE FOR INCLUSION IN THE DEVELOMENT OF FUTURE RATES?

A. No. Company has been amortizing costs associated with five (5) separate SLRP programs (i.e., SLRP #2 through SLRP #6). However, as of the end of July 2008 SLRP #2 through #4 were fully amortized, but revenues associated with these three

(3) programs were still included in current rates reimbursed by ratepayers. Since the revenues associated with those three (3) programs are still being collected from ratepayers, they should be utilized to reduce the balances of the remaining deferrals for SLRP #5 and #6.

Public Counsel calculates that the revenues associated with the amortization of the five (5) SLRP programs through February 28, 2010 (the effective law date of the instant case) will over-recover the deferrals for all five (5) SLRP programs by approximately $1,397,640. In fact, my calculations show that by the end of September 2009 (i.e., the end of the true-up period proposed by Company) MGE will have received revenues from current and past rates sufficient to recover the entire balance of all SLRP costs it has deferred. In fact, by the end of September 2009 Company will have over-recovered approximately $62,304. Therefore, Public Counsel recommends that the SLRP expense amortization, for the development of new rates on an ongoing basis, be eliminated completely. Public Counsel's adjustment to the booked expense levels identified above would reduce the test year or updated test year amounts by $2,237,008 and $1,529,133, respectively.

Q. SHOULD THE COMPANY BE ALLOWED TO EARN A RETURN ON ANY UNAMORTIZED BALANCE ASSOCIATED WITH THE FIVE (5) SLRPS?

A. No. In MGE Case No. GR-98-140, the Commission ordered that guaranteeing the Company a "return of" and "return on" the unamortized SLRP deferral is not a fair allocation of regulatory lag resulting from the ongoing construction project.

Therefore, consistent with that Commission decision, Public Counsel recommends that any adjustment to its rate base so that it can earn a "return on" the unamortized SLRP deferrals be denied. Besides, as I have already identified, all SLRP costs deferred by Company will be recovered by the end of September 2009. Thus, at that time, the SLRP deferred balances will be over-recovered and there will no longer be a need to show any remaining balances.

VI. KANSAS PROPERTY TAX EXPENSE

Q. WHAT IS THE ISSUE?

A. The issue pertains to Company's accrual of expenses to pay property taxes on natural gas held in storage in the State of Kansas.

Q WHAT IS THE TEST YEAR AMOUNT OF KANSAS PROPERTY TAX COMPANY RECORDED IN ITS FINANCIAL RECORDS?

A. Company did not book any Kansas property tax in calendar year 2008 (source: General Ledger and MPSC Staff DR No. 91).

Q WHAT IS THE AMOUNT OF KANSAS PROPERTY TAX COMPANY RECORDED IN ITS FINANCIAL RECORDS FOR THE TWELVE MONTHS ENDED APRIL 30, 2009 UPDATE?

A. For the Commission ordered updated test year, twelve months ended April 30, 2009, Company accrued $581,852 to USOA Account No. 40810008 (source:

General Ledger). This amount consists of $145,463 per month for the period January through April 2009 (source: MPSC Staff DR No. 153).

Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE?

A. Public Counsel recommends that the $581,852 be disallowed because it is an accrual of costs which may never be incurred and if incurred will be paid subsequent to the end of the Commission ordered test year, update period and Company requested true-up period.

Q. ARE THERE OTHER REASONS THAT SUPPORT PUBLIC COUNSEL'S RECOMMENDATION THAT THE AMOUNT BE DISALLOWED?

A. Yes. Company has, in the recent past, been involved as a party to litigation to prevent the assessment of the property tax and those cases were resolved in its favor. Recently, however, the Kansas Legislature modified its law to allow the assessment to occur, but MGE had stated that it will likely initiate legal proceedings post July 1, 2009 to challenge the new law (source: MPSC Staff DR No. 154). If that litigation is initiated, and is also successful, then refunds of any future payments would occur and those refunds would not have to be returned to Missouri ratepayers without Commission authorization.

VII. OKLAHOMA PROPERTY TAX EXPENSE

Q. WHAT IS THE ISSUE?

A. Company has an ongoing dispute within the State of Oklahoma similar to that occurring in the State of Kansas regarding the right of the taxing authorities to assess property tax on gas stored within their jurisdiction. Currently Company is seeking a review in the United States Supreme Court of an appeal to the Oklahoma Supreme Court after the utility won a Woods County District Court final ruling in the favor of the utility's claim that the gas is exempt from taxation.

Q. IS OKLAHOMA PROPERTY TAX INCLUDED IN MGE'S TEST YEAR IN THE INSTANT CASE?

A. Yes. According to Company response to MPSC Staff Data Request No. 91 and Company's 2008 General Ledger, during the test year the utility booked in USOA Account No. 40810008 approximately $170,559 for property tax related to gas storage in the State of Oklahoma.

Q WHAT IS THE AMOUNT OF OKLAHOMA PROPERTY TAX COMPANY RECORDED IN ITS FINANCIAL RECORDS FOR THE TWELVE MONTHS ENDED APRIL 30, 2009 UPDATE?

A. For the Commission ordered updated test year, twelve months ended April 30, 2009, Company booked $192,431 to USOA Account No. 40810008 (source: General Ledger).

Q. WHAT IS THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE?

A. Public Counsel recommends that the Commission disallow the Oklahoma property tax expense in the determination of rates in the instant case. If the Oklahoma property tax costs are included in MGE's rates, and the Company ultimately prevails in the courts, Missouri ratepayers will not benefit from the refunds even though they are the source which actually funded the total (possibly excessive) costs. That is, MGE's owners would reap an unwarranted benefit because Company would be under no obligation to channel the refunds back to the Missouri ratepayers.

VIII. INFINIUM SOFTWARE AMORTIZATION

Q. WHAT IS THE ISSUE?

A. This issue concerns should the unrecovered cost associated with MGE's Infinium Software be included in rates through an amortization to expense.

Q. HAS THE COMMISSION AUTHORIZED COMPANY TO DEFER AND AMORTIZE THE UNRECOVERED INFINIUM SOFTWARE COSTS?

A. Yes. In MGE Case No. GR-2006-0422, the Commission authorized Company to defer the unrecovered cost balance and amortize the amount over five (5) years. On page 21 of the *Report And Order*, it states:

> The Commission finds that the property shall be amortized over 5 years as proposed by Staff and MGE.

Q WHAT IS THE TEST YEAR AMOUNT OF INFINIUM SOFTWARE COSTS COMPANY RECORDED IN ITS FINANCIAL RECORDS?

A. For the Commission ordered test year, twelve months ended December 31, 2008, the expense amount amortized to USOA Account No. 42500001 was $199,992 (source: General Ledger). The unrecovered balance, booked in USOA Account No. 18230029, at the end of calendar year 2008 was $649,969 (source: General Ledger).

Q. WILL THE AMOUNTS IDENTIFIED IN THE PREVIOUS Q&A CHANGE DUE TO THE UPDATE PERIOD ORDERED BY THE COMMISSION?

A. The annual expense amortization will not change; however, since four (4) more months of amortization will have passed, the remaining unrecovered balance at the end of April 2009 is $583,305 (source: General Ledger).

Q. PLEASE SUMMARIZE THE PUBLIC COUNSEL'S POSITION ON THIS ISSUE.

A. Public Counsel recommends that the entire unamortized balance be disallowed and written off as a non-recoverable loss.

Q. WHY DOES PUBLIC COUNSEL BELIEVE THAT THE UNRECOVERED COST OF THE INFINIUM SOFTWARE SHOULD NOT BE INCLUDED IN RATES?

A. I believe that the Commission erred in its rationale for allowing Company to defer and amortize the unrecovered costs pursuant to its *Report and Order* in MGE Case No. GR-2006-0422. The Commission's authorization relied upon a convoluted and

misapplied interpretation of the ratemaking concept of "used and useful." For example, the Commission recognized that Company had voluntarily made an adjustment to remove the plant investment from its rate base so that it would not earn a return on the plant. The Commission then presumed that since the plant would not garner a return for the Company, OPC's argument that the plant was not used and useful was not relevant to its decision. The Commission failed to recognize that the ratemaking concepts of "used and useful" and "return on/return of" are not mutually exclusive when applied to items of investment.

Q. PLEASE DESCRIBE THE CONCEPT OF "USED AND USEFUL" AND ITS RATEMAKING APPLICATION.

A. The general rule is that, "the rate base on which a return may be earned is the amount of property used and useful, at the time of the rate inquiry, in rendering a designated utility service." (A.J.G. Priest, Principles of Public Utility Regulation (1969), p. 139, vol. 1). Thus, the ratemaking concept is certainly grounded in common sense. In dividing the responsibility for a utility's operations between ratepayers and stockholders, regulators have traditionally required that stockholders rather than ratepayers be required to bear the costs of any utility investment which is not used and useful to provide service to the ratepayers.

Q. HAS IT BEEN THE COMMISSION'S PRACTICE TO FOLLOW THE CONCEPT AS DESCRIBED IN THE PRIOR Q&A?

A. Yes. In a discussion of the policy in Missouri, State ex rel. Union Electric v. Public Service of the State of Missouri, 765 S.W. 2d 618 (Mo. App. 1988), the Court of Appeals for the Western District endorsed the used and useful policy. That case involved Union Electric's appeal of the Commission's denial of the costs of cancellation of its Callaway II nuclear unit. The Commission ruled that the risk of cancellation should be borne by the shareholder, since if it was not, the shareholder's investment would be practically risk free. The Court, in upholding the Commission's decision, stated:

> The utility property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful. This used and useful concept provides a well-defined standard for determining what properties of a utility can be included in its rate base.

Q. BRIEFLY EXPLAIN THE TERMS "RETURN OF" AND "RETURN ON" AGAIN.

A. If an expenditure is recorded on the income statement as an expense it is compared dollar for dollar to revenues. This comparison is referred to as a "return of" because a dollar of expense is matched by a dollar of revenue in the determination of revenue requirement. "Return on" occurs when an expenditure is capitalized within the balance sheet because it increased the value of a balance sheet asset or investment. This capitalization is then included in the rate base calculation, which is a preliminary step in determining the earnings the company achieves on its total regulatory investment.

Q. PLEASE CONTINUE.

A. In ratemaking, for regulated public utilities, investment made by a company is not included in the development of rates unless it is determined to be used and useful. If the investment is determined to be in-service to ratepayers, the investment is said to be used and useful. Once determined to be used and useful, the utility is allowed to earn a "return on" and "return of" the investment. The "return on" constitutes the authorized weighted rate of return while the "return of" represents, in this instance, the amortization of the investment to expense. If the investment is determined to be not in-service to ratepayers, it is not used and useful; thus, it is not allowed to include either a "return on" or a "return of" in rates. Without the investment actually being in-service to ratepayers, the utility should never be allowed either a "return on" or a "return of" the investment.

Q. HOW DID THE COMMISSION ERR IN ITS EARLIER DECISION-MAKING?

A. The Commission erred in its earlier authorization because it recognized that the investment was not in-service to ratepayers, and would not earn a "return on" the balance that remained unamortized, but it authorized the "return of" the unrecovered costs anyhow. In essence, the Commission inappropriately convoluted the ratemaking concepts by splitting the parts into independent components and then misapplied the "return of" portion by authorizing Company an amortization to expense of a plant balance that was not in-service to ratepayers. Without the investment actually providing service to ratepayers, there should be no "return on" or "return of" included in rates.

Q. ARE THE REASONS FOR DISALLOWANCE AS EXPRESSED IN YOUR TESTIMONY IN MGE CASE NO. GR-2006-0422 STILL RELEVANT?

A. Yes.

Q. IS THERE ANOTHER CONCERN YOU WOULD LIKE TO BRIEFLY MENTION?

A. Yes. Public Counsel believes that the Commission's decision in the prior general rate increase case has supported the Company's possible violation of software copyright laws. For example, on page twenty (20) of the *Report and Order*, MGE Case No. GR-2006-0422, the Commission states that MGE would continue to use the Infinium Software for a time entry system until March of 2007 if it converts the payroll system over to Oracle. However, it is my understanding that Company's alleged use of the software may be illegal because it stopped paying required licensing fees to the vendor sometime prior to its migration to the new Oracle and Powerplant systems in January 2005. If Company is truly using (as alleged) the Infinium Software for activities not authorized by the software's vendor, Public Counsel does not believe it appropriate that the Commission should, by inaccurate application of regulatory ratemaking concepts, knowingly encourage or support the Company's violation of existing copyright statutes.

Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

CASE PARTICIPATION
OF
TED ROBERTSON

Company Name	Case No.
Missouri Public Service Company	GR-90-198
United Telephone Company of Missouri	TR-90-273
Choctaw Telephone Company	TR-91-86
Missouri Cities Water Company	WR-91-172
United Cities Gas Company	GR-91-249
St. Louis County Water Company	WR-91-361
Missouri Cities Water Company	WR-92-207
Imperial Utility Corporation	SR-92-290
Expanded Calling Scopes	TO-92-306
United Cities Gas Company	GR-93-47
Missouri Public Service Company	GR-93-172
Southwestern Bell Telephone Company	TO-93-192
Missouri-American Water Company	WR-93-212
Southwestern Bell Telephone Company	TC-93-224
Imperial Utility Corporation	SR-94-16
St. Joseph Light & Power Company	ER-94-163
Raytown Water Company	WR-94-211
Capital City Water Company	WR-94-297
Raytown Water Company	WR-94-300
St. Louis County Water Company	WR-95-145
United Cities Gas Company	GR-95-160
Missouri-American Water Company	WR-95-205
Laclede Gas Company	GR-96-193
Imperial Utility Corporation	SC-96-427
Missouri Gas Energy	GR-96-285
Union Electric Company	EO-96-14
Union Electric Company	EM-96-149
Missouri-American Water Company	WR-97-237
St. Louis County Water Company	WR-97-382
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GR-98-374
United Water Missouri Inc.	WR-99-326
Laclede Gas Company	GR-99-315
Missouri Gas Energy	GO-99-258
Missouri-American Water Company	WM-2000-222
Atmos Energy Corporation	WM-2000-312
UtiliCorp/St. Joseph Merger	EM-2000-292
UtiliCorp/Empire Merger	EM-2000-369
Union Electric Company	GR-2000-512
St. Louis County Water Company	WR-2000-844
Missouri Gas Energy	GR-2001-292
UtiliCorp United, Inc.	ER-2001-672
Union Electric Company	EC-2002-1
Empire District Electric Company	ER-2002-424

Schedule TJR-1.1

CASE PARTICIPATION
OF
TED ROBERTSON

Company Name	Case No.
Missouri Gas Energy	GM-2003-0238
Aquila Inc.	EF-2003-0465
Aquila Inc.	ER-2004-0034
Empire District Electric Company	ER-2004-0570
Aquila Inc.	EO-2005-0156
Aquila, Inc.	ER-2005-0436
Hickory Hills Water & Sewer Company	WR-2006-0250
Empire District Electric Company	ER-2006-0315
Central Jefferson County Utilities	WC-2007-0038
Missouri Gas Energy	GR-2006-0422
Central Jefferson County Utilities	SO-2007-0071
Aquila, Inc.	ER-2007-0004
Laclede Gas Company	GR-2007-0208
Kansas City Power & Light Company	ER-2007-0291
Missouri Gas Utility, Inc.	GR-2008-0060
Empire District Electric Company	ER-2008-0093
Missouri Gas Energy	GU-2007-0480
Stoddard County Sewer Company	SO-2008-0289
Missouri-American Water Company	WR-2008-0311
Union Electric Company	ER-2008-0318
Aquila, Inc., d/b/a KCPL GMOC	ER-2009-0090
Missouri Gas Energy	GR-2009-0355

EXHIBIT 13.01

ENVIRONMENTAL LIABILITY AGREEMENT FILE COPY

ENVIRONMENTAL LIABILITY AGREEMENT (the "Agreement"), dated as of _____, 199___ between WESTERN RESOURCES, INC., a Kansas corporation ("Seller") and SOUTHERN UNION COMPANY, a Delaware corporation ("Buyer").

WHEREAS, Seller and Buyer have entered into an Agreement for Purchase of Assets dated as of _____ 1993, (the "Asset Purchase Agreement"), in which this Agreement is incorporated by reference pursuant to Article XIII of the Asset Purchase Agreement; and

WHEREAS, Buyer and Seller desire to provide a framework for the liability of the parties for Environmental Claims and for the sharing of Environmental Costs;

NOW, THEREFORE, in consideration thereof and of the respective covenants, representations and warranties herein contained, the parties agree as follows:

Article 1. ASSUMPTION OF LIABILITY. Except as hereinafter provided, Buyer hereby (a) assumes and agrees to be responsible for all Environmental Claims now pending or that may hereafter arise with respect to the Assets and the Business and (b) agrees to pay, perform and discharge, as and when due and payable, all Environmental Costs with respect to such Environmental Claims. Buyer hereby agrees, except as herein provided, to indemnify and hold Seller harmless from and against all Environmental Claims and Environmental Costs which Buyer has assumed or agreed to be responsible for pursuant to this Article 1. The procedures set

forth in Section 12.02 of the Asset Purchase Agreement concerning recovery of costs for matters subject to indemnification are incorporated herein by reference and made a part hereof, and Seller and Buyer agree to comply with the procedures set forth in said Section 12.02 in making any claim relating to indemnification. For the purposes of Buyer's assumption of liability, agreement to pay, perform and discharge and to indemnify set forth in this Article 1, Article 2(c)(v) and Article 2(d) only, the term "Environmental Claim" shall include, in addition to those claims which are included within such term as defined in the Asset Purchase Agreement, any and all such claims and other matters hereafter arising which are based in whole or in part upon (A) any amendment or modification which occurs after the Closing Date of any Environmental Law which is extant on the Closing Date; (B) any law, statute, ordinance, rule, regulation, order or determination of any governmental authority or agency enacted or adopted after the Closing Date which would, if such law, statute, ordinance, rule, regulation, order or determination were in effect on the Closing Date, be an Environmental Law; or (C) any change in interpretation of any Environmental Law after the Closing Date by any court or by any governmental agencies having authority to enforce such Environmental Law.

Article 2. DEFINITION OF COVERED MATTERS. (a) Definition. As used herein, the term "Covered Matters" shall mean and refer to all Environmental Claims and Environmental Costs related to the Assets or the Business which (i) arise out of or are based upon

Environmental Laws, and (ii) are not included in Assumed Liabilities.

(b) Newly Discovered Matters. Covered Matters that are discovered by Buyer prior to the date which is two (2) years following the date of this Agreement shall be subject to the cost sharing provisions contained herein. All Covered Matters discovered by Buyer more than two (2) years following the date of this Agreement shall be the sole responsibility of Buyer.

(c) Shared Liability. (i) Insurance First Line of Recovery. Seller shall undertake, at its sole expense, to conduct an Environmental Insurance Archaeology Survey ("Survey") for all Plants and other locations identified on Schedule 6.18 of the Asset Purchase Agreement within thirty (30) days of the Closing Date and promptly thereafter provide Buyer with the results of the Survey. To the extent that Seller may lawfully do so without adversely affecting the insurance coverage disclosed by the Survey, Seller hereby agrees that the insurance coverage disclosed by that Survey shall constitute the first line of recovery. For any Covered Matter discovered by Buyer after Closing, Buyer shall as promptly as possible after the discovery of such Covered Matter provide notice of such discovery, together with all factual information and copies of all notices, environmental assessments, reports and other information, to Seller's Environmental Services Department so as to allow Seller to provide prompt and timely notice to the appropriate insurance carrier or carriers identified in the Survey. The parties thereafter agree to cooperate in the filing and prosecution of

claims with the appropriate insurance carrier(s) in a manner that the parties mutually agree so as to expeditiously prosecute such claims. Amounts recovered from such insurance carrier(s) from the prosecution of such claims shall, after allowance for Seller's post closing outside legal fees and other reasonable out of pocket expenses, be paid to Buyer. In the event insurance recovery is protracted, the parties shall accelerate the shared cost provisions of subparagraphs (c)(ii) through (v), crediting subsequent insurance or PRP contributions to the parties as their interests appear in subparagraphs (iv) and (v).

(ii) Potentially Responsible Party First Line of Recovery. In those instances where other Potentially Responsible Parties (PRPs) are identified for purposes of cost sharing in the remediation of any site, amounts recovered from such PRPs shall, after allowance for Buyer and Seller's post closing outside legal fees and other reasonable out of pocket expenses, be paid to Buyer and credited against the cost incurred with respect to such required remediation. In the event PRP recovery is protracted, the parties shall accelerate the sharing of cost as provided for in subparagraphs (c)(iii) through (v) hereof, crediting subsequent insurance or PRP contributions to the parties as their interests appear in subparagraphs (iv) and (v).. If Seller and Buyer agree to so accelerate the sharing of costs, then Seller shall, prior to the application of any subsequent insurance proceeds or PRP contributions, be entitled to receive reimbursement of amounts advanced under subparagraph (c)(v) for post-closing costs incurred

in connection with Covered Matters as provided herein pursuant to said subparagraph.

(iii) Recovery of Remediation Costs through Regulated Cost of Service. In addition to seeking the relief contemplated under subparagraphs (c)(i) or (ii), Buyer shall request from the appropriate regulatory agency having jurisdiction in the state where any remediation site is located for authority to include the cost incurred by Buyer in connection with the remediation of such site, above that recovered under subparagraphs (c)(i) or (ii), in its applicable rates or other charges for service. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall retain complete discretion as to the timing of any filings with the appropriate regulatory agencies and may seek to recover such amount in rates either before or after the recovery of any amounts pursuant to any other provision of this agreement. Buyer shall be deemed to have recovered in its applicable rates or other charges for service an amount equal to the greater of (A) the amount actually authorized for inclusion in Buyer's applicable rate or other charges for service reflected in tariffs, or (B) the amount which would be recovered if Buyer would have been authorized to include in its applicable rate or other charges for service reflected in tariffs an amount which would have been authorized for such inclusion if Buyer's request for inclusion had been accorded the treatment accorded similar expenditures under similar facts and circumstances by the applicable regulatory agency.

(iv) Buyer's Initial Sole Liability Amount. Upon exhaustion

of relief contemplated under subparagraphs (c)(i), (ii) and (iii), Buyer shall thereafter be solely liable (as between Seller and Buyer) for the payment of costs incurred by Buyer or Seller in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i), (ii) and (iii) in the aggregate amount of Three Million Dollars ($3,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount.

(v) Buyer/Seller Shared Liability Amount. Upon exhaustion of relief contemplated under subparagraphs (c)(i) through (iv), Buyer and Seller shall share equally in payment of costs incurred by Buyer in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i) through (iii) (or paid by Buyer under subparagraph (c)(iv)) to a maximum aggregate amount of Fifteen Million Dollars ($15,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount. Notwithstanding anything to the contrary herein, Seller's total liability for Covered Matters shall be limited to the amount of Seven Million Five Hundred Thousand Dollars ($7,500,000.00), and Buyer shall indemnify and hold Seller harmless with respect to all claims, costs, demands and liabilities with respect to all other Covered Matters.

(d) Limitation on Seller's Liability. Seller's liability under Subparagraph (c) above shall terminate upon that date (the "Termination Date") which is fifteen (15) years after the Closing Date. From and after the Termination Date, Seller shall have no

further obligations or responsibilities with respect to all other Covered Matters.

(e) Costs Incurred by Buyer and Seller. For the purposes of this Agreement, Seller and Buyer agree that the costs incurred by Buyer or Seller with respect to Covered Matters for which the other party is liable pursuant to Subparagraph (c) above shall include only costs and expenses actually paid to unrelated third parties, and in no event shall Buyer or Seller be responsible for nor shall either party receive credit for (i) pre-closing costs or expenses, or (ii) any costs or expenses paid with respect to any of either party's employees or any of either party's overhead. Each party hereby agrees to use its best reasonable efforts to control costs incurred for which the other party may be responsible and shall provide such other party with quarterly reports of costs incurred.

(f) Duty to Consult. Buyer and Seller shall at all times consult with and keep each other apprised of all activities and costs incurred in connection with Covered Matters, and Buyer and Seller shall indemnify and hold the other party harmless from any unreasonable expense incurred. Each party shall apprise the other party of those respective activities on a quarterly interval on all active Covered Matters.

(g) Standstill Agreement. In the event either Buyer or Seller is notified that they or either of them is asked to respond as a Potentially Responsible Party ("PRP") under any federal, state or local law or regulation with regard to a Covered Matter, the party receiving such notice shall notify the other party of the receipt

of such notice, and shall deliver a copy of all notices and documents received, within ten (10) business days after receipt. With regard to Covered Matters, Buyer and Seller each covenant and agree not to sue the other or attempt in any manner to avoid responsibility as a PRP by seeking or attempting to shift or allocate responsibility to the other. Buyer and Seller agree to cooperate in the identification of all other PRPs for purposes of participation, remediation cost sharing and liability to regulatory agencies.

Article 3. MISCELLANEOUS. (a) Dispute Resolution. No party to this Agreement shall be entitled to take legal action with respect to any dispute relating hereto until it has complied in good faith with the following alternative dispute resolution procedures, provided however, this Article shall not apply to the extent it is deemed necessary to take legal action immediately to preserve a party's adequate remedy.

(i) Negotiation. The parties shall attempt promptly and in good faith to resolve any dispute arising out of or relating to this Agreement, through negotiations between representatives who have authority to settle the controversy. Any party may give the other party written notice of any such dispute not resolved in the normal course of such negotiations. Within twenty (20) days after delivery of the notice, representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and to attempt to resolve the dispute, until the parties conclude that the

dispute cannot be resolved through unassisted negotiation. Negotiations extending sixty (60) days after notice shall be deemed at an impasse, unless otherwise agreed by the parties.

If a negotiator for a party hereto intends to be accompanied at a meeting by an attorney, the other negotiator(s) shall be given at least ten (10) business days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Article are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal and state Rules of Evidence.

(ii) ADR Procedure. If a dispute with more than $100,000.00 at issue has not been resolved within sixty (60) days of the disputing party's notice, a party wishing resolution of the dispute ("Claimant") shall initiate assisted Alternative Dispute Resolution (ADR) proceedings as described in this Article. Once the Claimant has notified the other ("Respondent") of a desire to initiate ADR proceedings, the proceedings shall be governed as follows: By mutual agreement, the parties shall select the ADR method they wish to use. That ADR method may include arbitration, mediation, mini-trial, or any other method which best suits the circumstances of the dispute. The parties shall agree in writing to the chosen ADR method and the procedural rules to be followed within thirty (30) days after receipt of notice of intent to initiate ADR proceedings. To the extent the parties are unable to agree on procedural rules in whole or in part, the current Center for Public Resources (CPR) Model Procedure for Mediation of Business Disputes, CPR Model Mini-

trial Procedure, or CPR Commercial Arbitration Rules--whichever applies to the chosen ADR method--shall control, to the extent such rules are consistent with the provisions of this Article. If the parties are unable to agree on an ADR method, the method shall be arbitration.

The parties shall select a single neutral third party (a "Neutral") to preside over the ADR proceedings, by the following procedure: Within fifteen (15) days after an ADR method is established, the Claimant shall submit a list of five (5) acceptable Neutrals to the Respondent. Each Neutral listed shall be sufficiently qualified, including demonstrated neutrality, experience and competence regarding the subject matter of the dispute. A Neutral shall be deemed to have adequate experience if an attorney or former judge. None of the Neutrals may be present or former employees, attorneys, or agents of either party. The list shall supply information about each Neutral, including address, and relevant background and experience (including education, employment history and prior ADR assignments). Within fifteen (15) days after receiving the Claimant's list of Neutrals, the Respondent shall select one Neutral from the list, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Respondent, the Respondent shall submit a list of five (5) Neutrals, together with the above background information, to the Claimant. Each of the Neutrals shall meet the conditions stated above regarding the Claimant's Neutrals. Within fifteen (15) days after receiving the

Respondent's list of Neutrals, the Claimant shall select one Neutral, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Claimant, then the parties shall request assistance from the Center for Public Resources, Inc., to select a Neutral.

The ADR proceeding shall take place within thirty (30) days after the Neutral has been selected. The Neutral shall issue a written decision within thirty (30) days after the ADR proceeding is complete. Each party shall be responsible for an equal share of the costs of the ADR proceeding. The parties agree that any applicable statute of limitations shall be tolled during the pendency of the ADR proceedings, and no legal action may be brought in connection with this agreement during the pendency of an ADR proceeding.

The Neutral's written decision shall become final and binding on the parties, unless a party objects in writing within thirty (30) days of receipt of the decision. The objecting party may then file a lawsuit in any court allowed by this Contract. The Neutral's written decision and the record of the proceeding shall be admissible in the objecting party's lawsuit.

(b) Incorporation By Reference. This Agreement constitutes a part of the Asset Purchase Agreement dated _____ , 1993 between the parties.

(c) Savings Provision. This Agreement, and the terms, provisions, covenants and agreements contained herein, shall

survive the Closing.

(d) Defined Terms. All terms used herein as defined terms and not defined herein shall have the meaning set forth in the Asset Purchase Agreement.

Article 4. WARRANTIES AND REPRESENTATIONS CONTAINED IN THE ASSET PURCHASE AGREEMENT. Notwithstanding any provision that may be contained in this Agreement or the Asset Purchase Agreement to the contrary, the terms and the conditions of this Agreement shall not affect, or in any way limit, any claim for an Indemnifiable Loss that Buyer may have arising out of any breach of the Seller's warranties and representations contained in the Asset Purchase Agreement, including, but not limited to Section 6.18 thereof, and not withstanding the provisions of Article XII, Loss in the event of a breach of the warranties and representations contained in Section 6.18 in the same manner as provided for other Indemnifiable Losses under Article XII of the Asset Purchase Agreement.

IN WITNESS WHEREOF, The parties hereto have duly executed this Agreement as of the date first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

BUYER

By _____

SELLER

By _____