

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

MISSOURI PUBLIC SERVICE COMMISSION

MISSOURI GAS ENERGY

CASE NO. GR-2009-0355

FILED²

NOV 09 2009

Missouri Public
Service Commission

SURREBUTTAL TESTIMONY OF

DEREK J. TOMKA

Jefferson City, Missouri

October 2009

MGE Exhibit No. 38
Case No(s). GR-2009-0355
Date 10-26-09 Rptr KF

TABLE OF CONTENTS

I. WITNESS INTRODUCTION.....	1
II. PURPOSE	1
III. TIMING	1

1 **I. WITNESS INTRODUCTION**

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

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

5

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

8 A. Yes.

9

10 **II. PURPOSE**

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

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

17

18 **III. TIMING**

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

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

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

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

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

17
18 Q. **WHY IS THAT?**

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

1

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

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

13

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

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

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

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

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

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

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

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

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

7

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

9 A. Yes, it does.

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 DEREK J. TOMKA

STATE OF RI

)

ss.

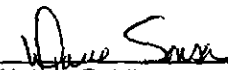
COUNTY OF Bristol

)

Derek J. Tomka, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


DEREK J. TOMKA

Subscribed and sworn to before me this 13th day of October 2009.


Notary Public

My Commission Expires: 7/1/13