

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Missouri Gas Energy's)
Tariffs Increasing Rates for Gas Service)
Provided to Customers in the Company's)
Missouri Service Area.)

Case No. GR-2006-0422

**THE OFFICE OF THE PUBLIC COUNSEL'S RESPONSE
TO MISSOURI GAS ENERGY'S MOTION TO EXCLUDE
THE TESTIMONY AND OPINIONS OF RUSSELL TRIPPENSEE**

COMES NOW the Office of the Public Counsel and in response to the motion to exclude the testimony and opinions of Mr. Russell Trippensee states:

1. On November 21, 2006, Public Counsel's witness Mr. Russell Trippensee filed Rebuttal Testimony to "address the revenue requirement implications of the proposed changes in rate design." Mr. Trippensee states that Staff and Missouri Gas Energy "have proposed rate design changes that will significantly reduce the risk associated with the Company's ability to earn its authorized rate of return," yet neither party makes "any allowance in their return on equity recommendation to recognize these proposed dramatic changes in the rate structure for the weather sensitive customer classes, in particular residential customers."

2. On December 21, 2006, MGE filed a motion requesting that the Commission exclude the testimony and opinions of Mr. Trippensee. MGE's motion appears to be an attempt to further supplement MGE's eighty-one page "position statement" with additional argument regarding Mr. Trippensee's testimony. Public Counsel offers this response, and asks that the Commission reject MGE's motion for the reasons explained below.

3. MGE argues that no proper foundation has been laid to qualify Mr. Trippensee as an expert or to show that Mr. Trippensee's testimony is reliable. MGE cites to Section 490.065

RSMo 2000, which states:

1. In any civil action, if scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

2. Testimony by such an expert witness in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

3. The facts or data in a particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing and must be of a type reasonably relied upon by experts in the field in forming opinions or inferences upon the subject and must be otherwise reasonably reliable.

4. If a reasonable foundation is laid, an expert may testify in terms of opinion or inference and give the reasons therefor without the use of hypothetical questions, unless the court believes the use of a hypothetical question will make the expert's opinion more understandable or of greater assistance to the jury due to the particular facts of the case.

Experts must be qualified by "knowledge, skill, experience, training or education." As explained below, Mr. Trippensee possesses all five qualifications and is clearly a qualified expert on the matters raised in his testimony.

Education and Training

4. Mr. Trippensee received his formal education from the University of Missouri - Columbia where he earned a Bachelor of Science in Business Administration. Mr. Trippensee explained in his deposition that in 1977 the University of Missouri's Business Administration School did not graduate students with a specific major. However, Mr. Trippensee carried sufficient hours to qualify him for a major in both Finance and Accounting. Mr. Trippensee is also a licensed Certified Public Accountant, which required two-hundred (200) to two-hundred

fifty (250) hours of study in accounting, including study of finance principles. In addition, Mr. Trippensee received training on utility finance regulation from the Regulatory Studies Program at Michigan State University, and has attended numerous seminars and continuing legal education training throughout the course of his career. Mr. Trippensee has also conducted seminars on regulatory practices that included the topic of finance rate of return. Mr. Trippensee's education and training are more than sufficient to qualify him as an expert on the implications associated with completely eliminating weather related business risk from a utility.

5. While the education and training of MGE's witnesses is irrelevant to the subject of Mr. Trippensee's qualifications, MGE details its rate of return witness Mr. Hanley's backgrounds apparently for comparison purposes. Mr. Hanley holds a bachelor's degree in business administration, just as the Staff's expert on this subject, Mr. David Murray, also holds a bachelors degree in business administration. If the education and training of the other witnesses on this subject is any test for qualified expert witnesses, Mr. Trippensee's education and training clearly qualifies him as an expert on the business risk that should be factored into a return on equity calculation. Otherwise the majority of the testimony filed in this case and all Commission cases on rate of return should be stricken.

Knowledge, Skill and Experience

6. MGE argues that Mr. Trippensee "has not taught or lectured on cost of capital calculation at any level, has not written any books or articles and has not been published on any subject." Section 490.065 RSMo 2000 does not dictate the manner in which an expert achieves their knowledge, skill and experience, and it certainly does not suggest that writing articles and lecturing on subjects provides additional knowledge, skill or experience that cannot be achieved to a greater extent through real-life experience. Mr. Trippensee explained in his deposition that

his responsibilities as Public Counsel's Chief Accountant are broad. This demanding position, in an understaffed office with limited resources, does not afford Mr. Trippensee the opportunity to devote time to writing articles for publication. Mr. Trippensee's knowledge and skill on business risk, gained through twenty-nine (29) years of experience studying and/or testifying on nearly every accounting and finance theory and argument brought before this Commission, is more than sufficient to qualify him as an expert on the subject of business risk and the impacts of eliminating weather risk entirely for a utility. For the last ten (10) years, Mr. Trippensee has had direct supervision over and responsibility for the Public Counsel witnesses responsible for providing testimony on rate of return on equity and capital structure issues. Few witnesses testifying before the Commission today can claim an equal number of years of accumulated knowledge, skill and experience in the field of rate of return regulation.

Mr. Trippensee's Testimony is Reliable

7. Staff and MGE have proposed rate designs that have not been previously approved by this Commission for any utility. These proposals are extreme even for states that have accepted revenue decoupling rate designs. Therefore, little data or experience exists *anywhere* with regard to methodologies for addressing the impact these rate designs have on business risk. The subject matter of Mr. Trippensee's testimony covers new ground that necessitates new ideas on how to address the impact of eliminating weather related business risk for a utility. Mr. Trippensee has provided the Commission with a logical approach at factoring risk reduction into the return on equity calculation using facts and data received from MGE and relied upon by the Commission's Staff. Mr. Trippensee utilizes his background in business, finance and utility regulation, and the manner in which return on equity is presently calculated, and presents a method to factor risk into the return on equity equation.

8. Using the Staff's facts and data, which Mr. Trippensee reviewed and found to be reliable, Mr. Trippensee determined that a return on equity that factors in the business risk reduction should be more than the cost of debt for MGE of 7.70% but less than the Staff's low end recommendation of 8.65%. This calculation first considered the "risk free" rate of return of 4.85% and the cost of debt included in the capital structure supporting rate base, which Mr. Murray calculated to be 3.98% for short-term debt and 7.70% for long-term debt.¹ Since "financial risk recognizes that cash flows for stockholders are subordinate to the legal rights of debt holders," Mr. Trippensee determined that equity investors would be properly compensated with a return on equity in excess of the cost of debt of 7.70%.² And since the Staff failed to factor a reduction in risk into Mr. Murray's calculation, Mr. Trippensee concluded that an appropriate return on equity should be less than the range supported by Mr. Murray's testimony of 8.65%.³ These figures are clearly supported by Mr. Trippensee's testimony as well as the testimony of Mr. Murray.

9. MGE witness Mr. Hanley addresses the issue of risk and how it factors into the return on equity calculation. Mr. Hanley states that in his calculations he adjusted return on equity *upward* by 0.15% to reflect the fact that MGE has no weather mitigation rate design. Mr. Hanley also testified that approval of such weather variability protections would *reduce* the "common equity cost rate risk by 0.25%."⁴ Mr. Hanley offers absolutely no testimony to quantify the basis for his 0.15% upward adjustment or his 0.25% downward adjustment proposals. It is surprising, given Mr. Hanley's lack of support for his figures that MGE is now

¹ Murray Direct, Schedule 22.

² Trippensee Rebuttal, p. 8-9.

³ Trippensee Rebuttal, pp. 11-12.

⁴ Hanley Direct, p. 73.

critical of Public Counsel's testimony that also proposes to reduce return on equity, but which supports such reduction with a range based on real data. It should also be noted that Mr. Hanley's 0.25% downward adjustment, if factored into the Staff's low end return on equity recommendation, would produce a return on equity of 8.4% - well within Mr. Trippensee's supported range of 7.7% to 8.65%.

10. In *State ex rel. Missouri Gas Energy v. PSC*, 186 S.W.3d 376 (Mo. App. W.D. 2005), the Court of Appeals upheld the Commission's decision to recognize the "higher risk to shareholders from the large amount of debt" in the capital structure for MGE. Likewise, Mr. Trippensee is simply asking the Commission to recognize the lower risk to shareholders from the elimination of weather variability. Mr. Trippensee's testimony on this very same issue was recently accepted into evidence by the Commission in Case No. GR-2006-0387, *In the Matter of Atmos Energy Corporation's Tariff Revision Designed to Consolidate Rates and Implement a General Rate Increase for Natural Gas Service in the Missouri Service Area of the Company*.

11. Attacking Public Counsel and Staff witness qualifications appears to be a new tactic for MGE that not only allows MGE an opportunity to supplement its argument, it also takes away valuable time and resources these state agencies require to best serve the interests of the public. In *MGE v. PSC*, the Court of Appeals rejected MGE's attempt to overturn the Commission's *Report and Order* on the grounds that the Commission relied upon "unqualified" expert witnesses. In that case the Commission refused to disqualify Staff and Public Counsel experts, despite MGE's arguments to the contrary. The Commission rejected MGE's attempt to disqualify a Public Counsel witness and held:⁵

⁵ *Order Regarding MGE's Motion to Exclude Certain Testimony and Exhibits of Travis Allen*, Case No. GR-2004-0209, July 20, 2004.

Missouri's Supreme Court has stated that "[a]ny weakness in the factual underpinnings of the expert's opinion or in the expert's knowledge goes to the weight that testimony should be given and not its admissibility. In general, the expert's opinion will be admissible, unless the expert's information is so slight as to render the opinion fundamentally unsupported."⁶ Furthermore, Missouri's courts have generally held that "[i]f the witness has some qualifications, the testimony may be permitted. The extent of an expert's training or experience goes to the weight of his testimony and does not render the testimony incompetent."⁷ In addition, the determination of whether a witness is qualified to give an expert opinion rests largely in the discretion of the trial court and its rulings on that question will not be disturbed on appeal absent a clear showing of abuse.⁸

The Commission's findings are well-supported in case law and should also be relied upon to reject MGE's attempt to disqualify Mr. Trippensee. Any strengths or weaknesses in Mr. Trippensee's testimony simply go to the weight that testimony should be given and not its admissibility.

WHEREFORE, Public Counsel respectfully offers this response and urges the Commission to reject MGE's motion to exclude the testimony and opinions of Mr. Russell Trippensee.

Respectfully submitted,

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⁶ *Alcorn v. Union Pacific Railroad Co.*, 50 S.W.3d 226, 246 (Mo 2001).

⁷ *Whitnell v. State*, 129 S.W.3d 409, 413 (Mo. App. E.D. 2004).

⁸ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 2nd day of January 2007:

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