

**TRUE-UP TESTIMONY**

**OF**

**KIMBERLY K. BOLIN**

**MISSOURI GAS ENERGY**

**CASE NO. GR-2004-0209**

**Q. PLEASE STATE YOUR NAME AND ADDRESS.**

A. Kimberly K. Bolin, P.O. Box 2230, Jefferson City, Missouri 65102.

**Q. ARE YOU THE SAME KIMBERLY K. BOLIN WHO FILED DIRECT, REBUTTAL, AND SURREBUTTAL TESTIMONY IN THIS CASE?**

A. Yes.

**Q. WHAT IS THE PURPOSE OF YOUR TRUE-UP TESTIMONY?**

A. The purpose of my true-up testimony is to express the Office of the Public Counsel's (Public Counsel or OPC) position regarding rate case expense.

**Q. HOW MUCH RATE CASE EXPENSE HAS MISSOURI GAS ENERGY (MGE OR COMPANY) CLAIMED IT INCURRED FOR THIS RATE CASE PROCEEDING?**

A. The Company claims it incurred \$1,333,683 in presenting this rate case to this Commission. Attached as Schedule KKB-1 is a listing of all costs the Company claims were incurred in this rate case proceeding.

**Q. DOES PUBLIC COUNSEL BELIEVE THIS AMOUNT IS A REASONABLE AMOUNT FOR RATE CASE EXPENSE?**

A. No. This amount is not a reasonable amount for a Company to incur. This is more than twice the amount MGE has incurred in the past for rate case expense.

1   **Q.   WHAT WAS THE AMOUNT OF RATE CASE EXPENSE ALLOWED IN MGE'S**  
2       **LAST TWO LITIGATED RATE CASES, CASE NO. GR-96-285 AND CASE**  
3       **NO. GR-98-140?**

4   A.   In Case No GR-96-285, the Company incurred \$537,185 for rate case expense. This rate case was  
5       extremely litigious, as it was Missouri Gas Energy's first rate case in the state of Missouri. Fifty-  
6       nine issues were litigated, which is an inordinate number of issues for a typical rate case.

7       In Case No. GR-98-140, twenty-seven issues were litigated with Missouri Gas Energy being  
8       allowed to include in its cost of service \$579,566 for rate case expense amortized over a two year  
9       period.

10   **Q.   HOW MANY ISSUES WERE TRIED IN THIS RATE PROCEEDING?**

11   A.   Roughly 12 issues, significantly less than MGE's past two litigated rate cases.

12   **Q.   WHAT AMOUNT SHOULD BE INCLUDED IN THE COST OF SERVICE FOR**  
13       **RATE CASE EXPENSE?**

14   A.   Public Counsel has formulated two options for rate case expense. Option one is an average of the  
15       past two litigated rate cases and OPC's adjusted rate case expense for this case of \$787,766, which  
16       results in an amount of \$634,839 amortized over a three year period for an annual amount of  
17       \$211,613. This option reflects a normalization process. Option two uses an adjusted amount of  
18       \$787,766 for the cost of the current case amortized over a three year period. This would be an  
19       annual amount of \$262,589 in the overall cost of service.

20   **Q.   HOW DID PUBLIC COUNSEL ARRIVE AT ITS ADJUSTED RATE CASE**  
21       **EXPENSE AMOUNT?**

1 A. I examined the invoices, employee expense reports and Company provided cost estimates which  
2 were provided to me through OPC data request 1065. I then reviewed the rate case expense  
3 incurred in both Case No. GR-96-285 and Case No. GR-98-140 and determined that the amount  
4 incurred for this case was unreasonable. In examining the differences between the previous two  
5 litigated rate cases and this rate case, the major drivers of the increased costs for this case are the  
6 legal fees charged by the outside law firms, the amount paid for Mr. Quain's testimony and the  
7 contract amount that was paid to Dr. Morin for his rate of return testimony.

8 **Q. PLEASE DESCRIBE THE LEGAL FEES THAT MISSOURI GAS ENERGY**  
9 **INCURRED IN PRESENTING THIS RATE CASE?**

10 A. Missouri Gas Energy hired several outside law firms to assist MGE's in house counsel, Robert  
11 Hack in preparing for the hearing and in cross-examination of witnesses. MGE hired the following  
12 law firms; Brydon, Swearngen and England (BSE), Kasowitz, Benson, Torres and Friedman,  
13 (KBT & F) Lathrop and Gage, and Watson Bishop London and Brophy (WBLB).

14 **Q. HOW MUCH WAS PAID TO BRYDON, SWEARENGEN & ENGLAND?**

15 A. \$213,154.

16 **Q. WHAT TYPE OF WORK DID BSE PERFORM FOR MISSOURI GAS ENERGY?**

17 A. Based on my review of the bills, BSE reviewed testimony, prepared cross-examination of witnesses,  
18 participated in the hearing and depositions. Schedule KKB-2 is an invoice from BSE showing the  
19 variety of services they provided MGE.

20 **Q. HOW MUCH WAS PAID TO LATHROP & GAGE?**

21 A. \$12,732.

1   **Q.   WHAT SERVICES DID LATHROP & GAGE PROVIDE MGE?**

2   A.   Based upon my review of the Lathrop and Gage invoices. Lathrop and Gage reviewed and gathered  
3       documents for data requests sent to Missouri Gas Energy.

4   **Q.   WHAT WAS THE ESTIMATED AMOUNT OF CHARGES THAT MGE CLAIMS IT**  
5       **WILL HAVE TO PAY KASOWITZ, BENSON, TORRES AND FRIEDMAN?**

6   A.   The Company has provided an estimate of \$613,842 for the total costs that MGE will pay this law  
7       firm. MGE did not provide copies of all of the invoices for services provided to MGE from  
8       Kasowitz, Benson, Torres and Friedman, thus I was unable to determine how much of the work  
9       performed by this law firm was related to the rate case or if it was related to other legal matters.

10   **Q.   WHAT INFORMATION DID MGE PROVIDE FOR THE KASOWITZ, BENSON,**  
11       **TORRES AND FRIEDMAN CHARGES?**

12   A.   MGE provided two invoices totaling \$88,976 and an e-mail from KBT & F estimating the amount  
13       of time spent by the law firm for the rate case during the months of April, May and June (See  
14       Schedule KKB-3).

15   **Q.   SHOULD ALL OF THE \$613,842 ESTIMATED KBT & F FEES BE INCLUDED**  
16       **IN RATE CASE EXPENSE?**

17   A.   No for several reasons. One reason being the hourly rate charged by KBT & F for services  
18       provided to MGE is excessive.

19   **Q.   PLEASE EXPLAIN.**

1 A. KBT & F charges \$690 per hour, this is more than three times the amount charged by the firm  
2 Brydon, Swearngen & England, which is located in Jefferson City, Missouri and has several  
3 attorneys with considerable experience in the utility regulation arena.

4 **Q. HAVE YOU PREVIOUSLY TESTIFIED REGARDING MGE'S RATE CASE**  
5 **EXPENSE?**

6 A. Yes, I have. I testified in Case No. GR-98-140 as to what the appropriate expenses should be  
7 considered as rate case expense to included in the cost of service. I have also reviewed other  
8 charges for legal work in many other utility companies in the state of Missouri during the course of  
9 my work.

10 **Q. HAVE YOU EVER SEEN AN HOURLY RATE OF \$690 CHARGED TO A**  
11 **REGULATED UTILITY COMPANY IN THE STATE OF MISSOURI FOR LEGAL**  
12 **WORK PERFORMED?**

13 A. No.

14 **Q. DID YOU PERFORM ANY RESEARCH AS TO WHAT THE CUSTOMARY AND**  
15 **USUAL RATES FOR LEGAL SERVICES FOR A REGULATED UTILTY IN**  
16 **MISSOURI ARE?**

17 A.. Yes. I conferred with Senior Public Counsel, Mike Dandino. Attached as Schedule KKB-7 is a  
18 memo from Mike Dandino stating that the amount charged by the law firm of Kasowitz, Benson,  
19 Torres & Friedman is not in the customary and usual range of hourly rates for regulatory work in  
20 Missouri. Also, attached to Mr. Dandino's memo is a survey performed by the Missouri Bar  
21 Association regarding the salaries and fees charged by lawyers in Missouri.

1    **Q.    PLEASE DESCRIBE SURVEY THAT IS ATTACHED TO MR. DANDINO'S**  
2    **MEMORANDUM?**

3    A.    Attached to Mr. Dandino's memorandum are results from a 2003 survey performed by the Missouri  
4    Bar Association regarding the salaries and fees charged by lawyers in Missouri (The Missouri Bar  
5    Economic Survey 2003). Pages 41 and 42 of this survey show the distribution of hourly rates for  
6    Administrative/Regulatory Law work in Missouri. As reported in this survey, only 21.1 percent  
7    charged rates above \$225 per hour for office work and only 33.3 percent charge over \$225 per hour  
8    for trial work in the area of Administrative/Regulatory Law.

9    **Q.    WHO WERE THE KBT & F ATTORNEYS WHO PERFORMED THE WORK FOR**  
10   **MGE?**

11   A.    Eric Herschmann and Michael Fay.

12   **Q.    DOES EITHER MR. HERSCHMANN OR MR. FAY HAVE ANY EXPERIENCE**  
13   **LITIGATING UTILITY RATE INCREASE CASES?**

14   A.    No. Attached to my testimony as Schedule KKB-4, is a copy of OPC data request number 1066  
15   which states that neither Mr. Herschmann or Mr. Fay have litigated any regulated utility rate cases,  
16   unlike the firm of BSE which has many years experience in litigating regulated utility rate cases.

17   **Q.    WAS THE RATE OF RETURN ISSUE THE ONLY ISSUE THAT KASOWITZ,**  
18   **BENSON, TORRES AND FRIEDMAN LITIGATED IN THIS PROCEEDING?**

19   A.    Yes. KBT & F did not litigate any other issues beside the rate of return issue.

20   **Q.    IN MOST RATE CASES BEFORE THIS COMMISSION IS THE RATE OF**  
21   **RETURN ISSUE A CONTESTED ISSUE WITH A LARGE DOLLAR IMPACT?**

1 A. Yes, the issue of rate of return is almost always a highly contested issue. It is also usually the issue  
2 that has the biggest impact money wise on the outcome of the rate case and Case No. GR-2004-  
3 0209 was no different than any other rate case.

4 **Q. WHO DID THE LAW FIRM OF KBT & F SEND THEIR BILLS TO WORK**  
5 **SERVICES PROVIDED IN THIS RATE CASE?**

6 A. The invoices where sent to Dennis Morgan, Esq., General Counsel at Southern Union Gas  
7 Company. The charges for these services where paid for by Southern Union Company and then  
8 allocated and charged to MGE.

9 **Q. IN HIS TESTIMONY BEFORE THE COMMISSION ON JUNE 24, 2004, DID**  
10 **THE MGE'S COO AND PRESIDENT ADMIT HE WAS NOT THE ONE WHO**  
11 **HIRED KBT & F?**

12 A. Yes, Mr. Oglesby admitted the following:

13 By Mr. Micheel

14 Q. Are you aware that MGE has retained the law firm of Kasowitz, Benson,  
15 Torres & Friedman in this case?

16 A. No, I'm not.

17 Q. You don't know who Mr. Herschmann works for?

18 A. I know Mr. Herschmann. I didn't know the name of the firm he worked  
19 for.

20 Q. Is that his law firm?

21 A. I don't know.

22 Q. Okay. Do you have that exhibit in front of you? Well, let me ask you this.  
23 So, you're not the person – you're the CEO (sic) and President of MGE; is  
24 that correct?

1 A. Yes, that is correct.

2 Q. But you're not the person who made the decision to hire Kasowitz,  
3 Benson, Mr. Herschmann's law firm, correct?

4 A. That's correct.

5 (Tr. Vol 15, pps. 1236 and 1237)

6 **Q. DOES THE FACT THAT MR. OGLESBY DID NOT MAKE THE DECISION TO**  
7 **HIRE KBT & F, BUT RATHER SOUTHERN UNION COMPANY HIRED KBT & F**  
8 **SUGGEST A POSSIBLE LACK OF FISCAL CONTROL OVER THE RATE CASE**  
9 **EXPENSE INCURRED BY MGE?**

10 A. Yes it does.

11 **Q. WHAT AMOUNT ARE YOU RECOMMENDING BE ALLOWED IN RATE CASE**  
12 **EXPENSE FOR THE KBT & F CHARGES?**

13 A. \$171,950.

14 **Q. PLEASE EXPLAIN HOW YOU ARRIVED AT THIS AMOUNT?**

15 A. First I examined the two invoices that MGE provided. These invoices where for work performed  
16 from December 2003 through March 2004. The total hours billed for these two invoices were  
17 133.75 hours. I then added the estimated hours for April, May and June of 726 hours to the 133.75  
18 hours to arrive at a total amount spent working on this case of 859.75 hours.

19 **Q. WHAT HOURLY RATE DID YOU APPLY TO THESE HOURS?**

20 A. I used an hourly rate of \$200. This rate is comparable to the hourly rate charged by Brydon,  
21 Swearngen and England and other law firms performing regulatory work in the State of Missouri.

22 **Q. DID YOU ALLOW ANY TRAVEL AND MEAL EXPENSES?**



1 A. No, I did not allow any of the travel and meal expenses because no documentation was provided as  
2 to what the expenses were. However, in examining MGE employee expense reports and the hotel  
3 charges, I found expenses for Mr. Herschmann and I included these documented expenses in my  
4 rate case expense recommendation.

5 **Q. HOW MUCH DID MGE PAY WATSON BISHOP LONDON BROPHY?**

6 A. \$47,522

7 **Q. WHAT SERVICES DID WATSON BISHOP LONDON BROPHY PROVIDE MGE?**

8 A. Based upon my review of the invoices from Watson, Bishop, London, Brophy, this law firm  
9 reviewed previous testimonies filed by the Missouri Public Service Commission Staff (Staff) for the  
10 law firm of Kasowitz, Benson, Torres & Friedman. (See Attached Schedule KKB-5)

11 **Q. SHOULD THE CHARGES FOR THE FIRM WATSON, BISHOP, LONDON &  
12 BROPHY BE INCLUDED IN RATE CASE EXEPNSE?**

13 A. No. The services provided to MGE through WBLB were also provided by Brydon, Swearengen &  
14 England, the work this firm performed was duplicative and unnecessary.

15 **Q. DID THE COMPANY HIRE ANOTHER OUTSIDE ATTORNEY TO PREPARE  
16 TESTIMONY ON PUBLIC POLICY?**

17 A. Yes, the Company hired a former Pennsylvania Public Service Commissioner, John Quain, he is  
18 now with the law firm of Klett, Rooney, Lieber & Schorling (KRLS) to prepare public policy  
19 testimony.

20 **Q. HOW MUCH DID MGE PAY KLEET ROONEY LIEBER AND SCHORLING?**

21 A. \$36,303.

1 Q. WHO HIRED KLEET, ROONEY, LIEBER AND SCHORLING?

2 A. Southern Union Company.

3 Q. DOES SOUTHERN UNION COMPANY PAY KLEET, ROONEY, LIEBER AND  
4 SCHOLRING A MONTHLY RETAINER FEE?

5 A. Yes, Southern Union Company pays KRLS a \$20,000 monthly retainer.

6 Q. DOES SOUTHERN UNION COMPANY ALLOCATE ANY OF THIS RETAINER TO  
7 MGE?

8 A. Yes, however the method by which the retainer is allocated is not shown on any of the invoices  
9 MGE provided to us. Also the invoices do not show what type of work Mr. Quain performed or  
10 how long it took Mr. Quain to perform the tasks.

11 Q. WHAT EVIDENCE DID MR. QUAIN PRESENT IN THIS CASE?

12 A. Mr. Quain did not present any evidence as it relates to MGE in this case. Mr. Quain's testimony  
13 only consisted of a general discussion on how to set a rate of return for a Company based upon  
14 public policy and legal policy, such as the Hope Natural Gas and Bluefield Waterworks cases.

15 Q. IS IT COMMON KNOWLEDGE IN THE UTILITY REGULATION INDUSTRY  
16 THAT WHEN SETTING A RATE OF RETURN A COMMISSION SHOULD  
17 CONSIDER ITS PUBLIC POLICY OBJECTIVES?

18 A. Yes.

19 Q. ARE THE HOPE AND BLUEFIELD CASES CONSIDERED BY MOST THE TWO  
20 CASES WHICH SET THE LEGAL STANDARD FOR THE SETTING OF THE  
21 RATE OF RETURN?

1 A. Yes. This Commission is well aware of the Hope and Bluefield cases.

2 Q. SHOULD THE EXPENSE INCURRED FOR MR. QUAIN'S SERVICES BE  
3 INCLUDED IN RATE CASE EXPENSE?

4 A. No, for two reasons. The first reason being the Company has not provided auditable invoices  
5 concerning Mr. Quain's time spent, thus it is impossible to guarantee that all of the money charged  
6 to MGE is strictly for this rate case expense and not something else. Also, Mr. Quain presented no  
7 evidence as it relates to MGE specially. Instead Mr. Quain presents a broad overview of things a  
8 Commission needs to look at when determining a rate of return.

9 Q. WHAT WAS THE AMOUNT CHARGED TO MGE FOR WITNESS MORINS'  
10 SERVICES IN THIS RATE CASE?

11 A. \$30,000. (See Schedule KKB-6)

12 Q. SHOULD ALL OF THIS CHARGE BE INCLUDED IN RATE CASE EXPENSE?

13 A. No, only \$9,800 should be included in rate case expense for the work performed by Dr. Morin.

14 Q. HOW DID YOU ARRIVE AT \$9,800 TO INCLUDE IN RATE CASE EXPENSE  
15 FOR WITNESS MORIN?

16 A. On page 20 of witness Morin's deposition he stated he had roughly spent 25 hours in preparing his  
17 written testimony. I then considered the fact that witness Morin testified before the Commission in  
18 Jefferson City for approximately 5 hours and that in preparing to testify he might have spent another  
19 5 hours. Thus I added to the 25 hours worked before testifying to the estimated 10 hours spent  
20 testifying and preparing to testify. I then applied a rate of \$280 an hour to the estimated 35 hours to  
21 arrive at \$9,800.

1     **Q.     WHY DID YOU USE AN HOURLY RATE OF \$280?**

2     A.     This is twice the rate charged by Company's other rate or return witness John Dunn. Using twice  
3           the hourly rate of witness Dunn, takes into consideration that Dr. Morin has a PhD and witness  
4           Dunn does not. Also, Dr. Morin has published books on the subject he testified about, while  
5           witness Dunn has not.

6     **Q.     PLEASE EXPLAIN WHY YOU BELIEVE THAT NOT ALL OF WITNESS**  
7           **MORIN'S CONTRACT PRICE SHOULD BE INCLUDED IN RATE CASE**  
8           **EXPENSE?**

9     A.     If one were to use the full \$30,000, witness Morin's hourly rate, assuming 35 hours would be  
10           approximately \$857 per hour. This hourly rate is over six times the hourly rate charged by  
11           Company's other witness John Dunn.

12    **Q.     DURING THE HEARING DID THE COMPANY'S PRESIDENT AND COO**  
13           **BELIEVE THE HOURLY RATE BEING PAID TO WITNESS MORIN WAS A**  
14           **HUGE AMOUNT OF MONEY?**

15    A.     Yes, he did. In fact when asked if he had known prior to Dr. Morin being hired that he would  
16           charge that huge amount he might have had serious thoughts about hiring Dr. Morin. (See Case No.  
17           GR-2004-0209 Transcript Vol. 13, page 1236)

18    **Q.     WHO HIRED DR. MORIN TO PERFORM WORK IN THIS RATE CASE?**

19    A.     Michael Fay of the law firm Kasowitz, Benson, Torres and Friedman, hired Dr. Morin. In fact in  
20           Dr. Morin's deposition on page 9 (Exhibit No. 30 Dunn Surrebuttal Schedule JCD-3) he stated that  
21           Michael Fay was his only contact in regard to this rate case and that he did not have a contact with  
22           Southern Union Company.

1 Q. WHEN DID MGE APPROVE THE EXPENDITURE OF \$30,000 FOR DR.  
2 MORIN'S TESTIMONY?

3 A. Mr. Oglesby approved the expenditure on May 27, 2004, three days after Dr. Morin filed rebuttal  
4 testimony for MGE.

5 Q. DOES THE FACT THAT MGE'S COO AND PRESIDENT DID NOT APPROVE  
6 THE HIRING OF DR. MORIN UNTIL AFTER HE PERFORMED WORK SHOW A  
7 LACK OF FISCAL CONTROL OVER RATE CASE EXPENSE?

8 A. Yes, it does.

9 Q. BY REMOVING THE COSTS FOR MR. QUAIN AND THE LAW FIRM OF  
10 WATSON, BISHOP, LONDON, AND BROPHY AND ADJUSTING THE HOURLY  
11 RATE CHARGED BY DR. MORIN AND THE LAW FIRM OF KASOWITZ,  
12 BENSON, TORRES AND FRIEDMAN BRING THE RATE CASE EXPENSE TO A  
13 MORE REASONABLE LEVEL FOR MGE TO HAVE INCURRED IN PRESENTING  
14 THIS CASE?

15 A. Yes, it does. By using all of my adjustments the rate case expense then becomes \$787,766.  
16 However, this is still more than MGE's two previous litigated rate cases.

17 Q. WERE THERE ANY NEW OR UNIQUE ISSUES IN THIS RATE PROCEEDING  
18 THAT WOULD CAUSE MGE TO INCLUDE OVER \$1.3 MILLION DOLLARS IN  
19 RATE CASE EXPENSE?

20 A. No. The issues contested in this rate increase case are same issues that are contested in other rate  
21 proceedings within the State of Missouri and are similar to the issues raised in MGE's previous rate  
22 cases. Thus, the rate case expenses incurred by MGE are not reasonable or prudent. The amount

requested by MGE to be included in the cost of service should adjusted to a reasonable and prudent level

**Q. WHY SHOULD THE COMMISSION USE PUBLIC COUNSEL OPTION ONE IN DETERMINING THE APPROPRIATE AMOUNT FOR RATE CASE EXPENSE TO BE INCLUDED IN THE DETERMINATION OF REVENUE REQUIREMENT?**

A. As I stated earlier even after using all of my adjustments the rate case expense for the current case is still considerably higher then the past rate case expense incurred by MGE even though no new or unique issues were presented. In fact this case had 56.7 percent and 80 percent less litigated issues respectively than the previous two cases. Therefore I believe it is appropriate to use an average of the rate case expense from Case No. GR-96-285, (\$537,185) the rate case expense from Case No. GR-98-140 (\$579,566) and my adjusted rate case expense for this case of \$787,766 in determining a reasonable level of rate case expense to be included in the cost of service. This average is \$634,839 or on annual basis \$211,613 (amortized over a three year period).

It is appropriate to use normalization when determining the revenue requirement associated with expenses that fluctuate from period to period. This averaging process promotes rate stability and ensures rate are not developed using cost levels that are at either end of the range of fluctuation.

**Q. HAS THIS COMMISSION PREVIOUSLY DENIED RATE CASE EXPENSES BECAUSE THE EXPENSES WERE NOT NECESSARY OR PRUDENT AND USED HISTORICAL RATE CASE EXPENSE DATA?**

A. Yes. In Case No. WR-93-212, the Commission used historical data from Missouri-American Water Company's previous rate cases because the Commission found that the current rate case expense was not prudently incurred. The Commission stated on page 9 of the Report and Order:

1 “Disallowing all expense, or perhaps even disallowing any prudently  
2 incurred rate case expense could be viewed as violating the Company’s  
3 procedural rights. The Commission does not want to put itself in the  
4 position of discouraging necessary rate cases by discouraging rate case  
5 expense. The operative words here, however, are necessary and prudently  
6 incurred. The record does not reflect efforts at cost containment and  
7 consequently it does not support that these expenses have been prudently  
8 incurred.

9 The Commission finds that the Staff’s assessment of rate case expense, as  
10 based upon historical data from this company’s previous rate case  
11 expenses, is the more reasonable position.”

12 **Q. DOES THIS CONCLUDE YOUR TRUE-UP TESTIMONY?**

13 **A. Yes.**