

**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

**PUBLIC COUNSEL'S TRUE-UP BRIEF**

The Office of the Public Counsel ("OPC") submits this True-Up Brief to address the issue of Rate Case Expense. OPC believes MGE's rate case expenses are excessive and should be limited as testified to by OPC's witness Mr. Ted Robertson, a public utility accountant and Certified Public Accountant (CPA).

In the Partial Stipulation and Agreement (Stipulation) filed by the parties on November 5, 2009, the parties settled on a base amount of \$72,382 from which to measure any true-up adjustment for rate case expense. (Stipulation, p.4). OPC does not object to including this \$72,382 in MGE's cost of service, which is an annual recovery based on a three year amortization. OPC does, however, object to half of the additional rate case expenses MGE claims in true-up. MGE is now claiming \$881,000 as its rate case expense. (Tr. 948). Taking out the agreed upon \$72,382, the remainder in dispute is \$808,618. OPC urges the Commission to disallow half of this expense, or \$404,309, to allow shareholders to carry their share of the rate case expense burden.

**1.     Mr. Robertson's Rate Case Expense Testimony**

Mr. Robertson explained that OPC is opposing MGE's request to recover all of MGE's rate case expenses in rates because ratepayers and shareholders should share in

this rate case expense burden since both ratepayers and shareholders benefit from these expenses. (Ex.81, p.4).

All costs included in rates by the Commission should be prudent, reasonable, and necessary. (*Id.* p.6). Costs that are unreasonable and imprudent should be disallowed from recovery by ratepayers. Once the prudent and reasonable costs are determined, they should be split evenly between ratepayers and shareholders. (*Id.* p.7).

OPC recognizes that ratepayers benefit from the rate case process that ensures utility rates are just and reasonable. (*Id.* p.8). However, OPC has become increasingly concerned with the increasing level of rate case expenses included in rates. (*Id.* p.9). For example, MGE's use of outside legal and outside consultants has become excessive. (*Id.* p.11). This problem is worsened by the fact that MGE has little incentive to control the level of rate case expenditures because MGE believes these expenditures should be authorized as an automatic recovery from ratepayers. (*Id.*). To the extent this automatic pass-through has been the practice in the recent past, OPC believes this case provides the Commission with an opportunity to limit these excessive expenditures and give the companies an incentive to seek further cost savings when processing rate cases. The most persuasive incentive would be a decision in this case that limits the legal and consultant expenses MGE is allowed to recover.

As stated above, ratepayers should only be held accountable for a share of rate case expenses since both ratepayers and shareholders benefit from rate cases. Ratepayers should not be held responsible for elaborate defenses that primarily benefit shareholders. (*Id.* p.15). Ratepayers had absolutely no input into MGE's decisions to hire a high-priced law firm and high-priced consultants to achieve its primary objective of increased

earnings for shareholders. OPC believes a 50/50 sharing of prudently incurred rate case expenses between ratepayers and shareholders is appropriate. (*Id.* p.17).

**2. Mr. Noack's Rate Case Expense Testimony**

MGE provided no evidence to suggest that the \$881,000 was prudently incurred. During the true-up hearing, MGE's witness Mr. Michael Noack could not identify the portion of the \$881,000 rate case expense requested by MGE that includes legal expenses paid to the law firm of Brydon, Swearingen & England. (Tr. 949). Mr. Noack was also unable to identify the rate charged by Brydon, Swearingen & England. OPC urges the Commission to order MGE to provide this amount in a late-filed exhibit, and to allow no more than 50% of the prudently incurred amount to be included in rates since both ratepayers and shareholders benefit from this amount.<sup>1</sup>

It became apparent during the true-up hearing that MGE made absolutely no effort to determine whether the law firm of Brydon, Swearingen & England was a prudent choice in comparison to other law firms. MGE did not issue a request for proposal (RFP) seeking bids for legal representation. (Tr. 945). MGE did not discuss representation with any other law firms. (Tr. 946). This is not prudent decision making.

In a decision by the Connecticut Department of Public Utility Control (CDPUC), the CDPUC disallowed \$250,000 legal fees because the company relied on outside law firms when in-house personnel could have shared in the workload:

The Department cannot condone the use of duplicative and potentially excessive outside legal services from two national law firms, which represented the Company along with internal counsel during the proceeding. In this regard, the Department will cap outside services legal expense at \$

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<sup>1</sup> The amount agreed to in the Partial Stipulation and Agreement should be excluded from this amount provided the Commission approves the Agreement.

600,000, thereby disallowing \$ 250,000 in outside legal service costs from the total rate case expense.<sup>2</sup>

Likewise, OPC believes MGE could have lowered its legal expenses by using MGE's internal counsel Mr. Todd Jacobs and Mr. Michael Smith in positions other than observer. Mr. Jacobs attended the evidentiary hearing and public hearings. (Tr. 946-947). Mr. Jacobs traveled to Austin, Texas to attend the deposition of OPC witness Mr. Daniel Lawton despite the fact that the deposition was not conducted by Mr. Jacobs, rather it was conducted by Mr. Jim Swearngen. (Tr. 312, 947). There is no apparent reason why a portion of the legal workload expensed by Brydon, Swearngen & England could not have been performed by Mr. Jacobs given that he is a licensed attorney and was present during every phase of this rate case.

OPC also urges the Commission to only allow 50% of the consultant expenses to be recovered in rates. The bulk of MGE's testimony came from outside consultants rather than relying more on the 670 employees of MGE. For example, MGE's rate design witness Mr. Russell Feingold essentially dusted off his testimony from 2006 and resubmitted it in this case. The same could have been done by an internal analyst familiar with MGE's *current rate design*, rather than relying on a high-priced analyst from Black & Veatch.

Regarding Mr. Feingold's testimony, Mr. Noack testified that the \$881,000 includes an additional \$17,500 for Mr. Feingold's expected work to be performed after the order is issued in this case. (Tr. 947). A \$17,500 additional expense appears excessive given Mr. Noack's testimony that Mr. Feingold would only be needed for 20 hours of additional work at \$350 an hour, which equals \$7,000 rather than \$17,500. (Tr.

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<sup>2</sup> *Application of Southern Connecticut Gas Company for a Rate Increase*, Docket No. 08-12-07, 2009 Conn. PUC LEXIS 134, Opinion, July 17, 2009.

948). There is no reason to believe this inflated consultant expense is not indicative of all consultant expenses claimed by MGE in this case. OPC urges the Commission to direct MGE to provide the Commission with a late-filed exhibit detailing the consultant portion of MGE's rate case expense, and allow only 50% of that amount in rates since shareholders are also benefiting from their testimony and any resulting rate increase.

### **3. Conclusion**

OPC urges the Commission to recognize that rate case expenses, like any other expense, should be prudently incurred and not simply passed through to ratepayers. Furthermore, rate case expenses benefit shareholders equally if not more than ratepayers, and therefore, shareholders should share in half of the expense. The Commission may also allocate a percentage other than 50% to shareholders as the Commission deems appropriate.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 5<sup>th</sup> day of January 2010:

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