



MISSOURI GAS ENERGY

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ROBERT J. HACK
SENIOR ATTORNEY

December 19, 1997

FILED

DEC 22 1997

MISSOURI
PUBLIC SERVICE COMMISSION

Mr. Daie Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
301 West High, Suite 530
Jefferson City, Missouri 65102

RE: Case No. GR-98-140, Missouri Gas Energy

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find an original and fourteen copies of MGE's Reply to the Staff's Response to MGE's Proposed Procedural Schedule. Please file-stamp the extra copy that is enclosed and return it to my office in the enclosed self-addressed envelope.

This filing has been mailed or hand delivered this date to the Office of Public Counsel.

Thank you for your attention to this matter. If there are any questions, please let me know.

Sincerely,

RJH:mc

Enclosure

cc: Service List

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

DEC 22 1997

MISSOURI
PUBLIC SERVICE COMMISSION

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-98-140

**MGE'S REPLY TO THE STAFF'S RESPONSE TO MGE'S PROPOSED
PROCEDURAL SCHEDULE**

Comes now Missouri Gas Energy ("MGE"), by and through counsel, and for its reply to the Staff response filed herein on or about December 12, 1997, respectfully states the following:

I. MGE's discovery management proposal is reasonable because it allows sufficient time for a thorough audit of MGE's books, does not impair the presentation of the Staff's or any other party's case and recognizes that MGE bears the overall burden of proof in this general rate proceeding.¹

1. The Staff states that the discovery management principles suggested by MGE would prevent the Staff from conducting a thorough audit and would impair the presentation of its case. MGE had no such intent when it made its proposal and, in fact, specifically tailored its proposal to avoid such effects.

2. MGE fully understands that the Staff and other parties must have access to information in the possession of MGE in order for those parties to prepare their cases. MGE's proposal provides for a full five and one-half months of audit time prior to the effectiveness of a temporary--for less than six weeks--cessation of MGE being required to respond to discovery.

¹ For the Commission's convenience the organization of this pleading parallels that of the Staff's December 12, 1997, response. MGE has therefore first addressed the Staff's comments regarding the proposed discovery management principles. Although MGE believes that discovery management principles are meaningful and should be pursued, the most important decision to be made on the basis of this set of pleadings is the adoption of a reasonable procedural schedule.

MGE believes that five and one-half months should be more than ample time for the Staff to conduct a thorough audit and prepare its case.

3. As the party required to respond to the vast majority of discovery in its own general rate proceedings, MGE fully understands the reality of the discovery process. The direct cases of the Staff and the other parties on all issues, including revenue requirement, class cost of service and rate design, presumably will be based, at least in part, on information those parties have obtained from MGE. The information that forms the basis of the direct testimony positions of the Staff and other parties should, therefore, already be in the possession of the parties who have filed direct cases. As such, the Staff should direct its discovery requests to those other parties, not MGE, in order to understand the basis of those parties' direct testimony positions and prepare rebuttal testimony. As the Commission will recall, MGE's direct testimony, having been filed in late November and updated in late January, will already have been subject to review for a substantial period of time prior to the proposed effectiveness of any discovery management principles. MGE's proposal does not impair the presentation of the Staff's rebuttal testimony.

4. MGE has not made its discovery management proposal with the intention of abusing the discovery process. Under MGE's proposal, if data request responses are due from MGE prior to the effectiveness of the discovery management principles, then responses not provided by MGE on time would not be subject to the proposed limitation; data request responses otherwise due from MGE during the limitation period would become due a corresponding period of time following the conclusion of the limitation period (e.g., a response otherwise due ten days into the limitation period would become due ten days after the conclusion of the limitation period); and data request responses received by MGE during the limitation

period would be due twenty days after the conclusion of the limitation period. MGE believes this adequately responds to the Staff's professed fear of MGE abusing the discovery process. Nevertheless, should the Commission adopt MGE's proposal and find that such abuse has occurred, the Commission retains full authority to immediately abandon MGE's proposal.

5. MGE has not made its discovery management proposal with the intention of limiting the Commission's authority and, in fact, MGE's proposal would not limit the Commission's authority to obtain information from MGE. MGE simply asks that the Commission adopt a proposal that requires the parties to reasonably manage their discovery of MGE so that MGE has a reasonable opportunity of carrying the overall burden of proof to which it is subject in this general rate proceeding. Discovery management tools are routinely used in other fora, including the FERC and United States District Courts, with none of the catastrophic results predicted by the Staff. The Commission has recognized the need for change in other areas, MGE suggests that discovery management is another area where change ought to be explored. This case presents an opportunity to determine whether the use of discovery management principles can enable the more efficient prosecution of Commission proceedings.

II. The January 30, 1998, update of MGE's direct case.

1. The only reservation MGE has with respect to the restrictions proposed by the Staff regarding the scope of the proposed update of MGE's direct case arises if an event that could not be anticipated justifying a revenue requirement adjustment occurs subsequent to the November 26, 1997, filing of its direct testimony. In that event, MGE reserves the right to propose an adjustment in the January 30, 1998, update for an item that was not reflected in MGE's direct testimony.

III. The Staff's proposed procedural schedule is unreasonable and its on-site audit time has not been limited.

1. At the time MGE prepared its direct testimony, MGE did not know what test year would be used for this case. In addition, MGE's direct testimony filing on November 26, 1997, pre-dated the conclusion of the unanimously recommended update period, which is December 31, 1997. The Staff criticism of MGE's direct filing for not reflecting the test year and update period to be used in this case is therefore meritless.

2. MGE cannot control how the Staff manages its work; MGE certainly has not prevented the Staff from commencing its on-site audit. The procedural schedule proposed by MGE gives the Staff five and one-half months to file its direct testimony which, in MGE's view, should be sufficient time for the Staff to conduct a thorough audit. This is particularly true in light of the fact that the Staff conducted an audit of MGE in a rate case that concluded less than one year ago.

3. The Staff admits that under its proposed procedural schedule it has "cut the amount of time" between direct testimony and prehearing and rebuttal testimony. The Staff refuses to acknowledge that this "time cutting" disproportionately affects MGE because, for the most part, MGE is the only party that has any interest in rebutting revenue requirement testimony which is typically submitted by the Staff and, to a lesser extent, the Office of the Public Counsel.² By and large, the other parties (not MGE of course) restrict their testimony to class

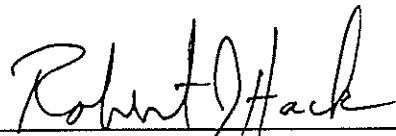
² MGE's proposal recognizes that the Staff needs a reasonable amount of time to conduct an audit. Comparison of MGE's proposal with that adopted by the Commission in Case No. GR-96-285 shows that the amount of time between MGE's tariff filing and the Staff's direct testimony is roughly the same (five and one-half months) while the amount of time between the Staff's direct testimony and MGE's rebuttal--which primarily affects MGE--has been reduced by eleven days (52 in Case No. GR-96-285, 41 under MGE's proposal in this case).

cost of service, tariff and rate design issues. As a consequence, it is neither surprising nor relevant that MGE is the only party to object to the Staff's proposed procedural schedule.

4. The Staff's proposed procedural schedule fails to provide MGE with sufficient time to respond to the direct testimony of the other parties. As such, the Staff's proposed procedural schedule runs afoul of the requirement that the Commission observe fundamental principles of due process and fair play in the procedures it uses. The Staff's proposal also fails to provide reasonable time to prepare for the prehearing conference. As such, the Staff's proposal is likely to generate a greater number of issues that cannot be settled and will require hearing. MGE's proposal suffers from none of these infirmities.

Wherefore, MGE respectfully requests that the Commission reject the Staff's proposed procedural schedule, adopt the procedural schedule proposed by MGE and adopt the discovery management principles proposed by MGE.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 22nd day of December, 1997.

Robert J. Hack

SERVICE LIST

Case NO. GR-98-140

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