

Exhibit No.: _____
Issues: Mid-Kansas II Contract
Witness: Michael T. Langston
Type of exhibit: Surrebuttal Testimony
Sponsoring Party: Missouri Gas Energy
Case No.: GR-96-450
Date testimony prepared: July 18, 2001

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

MISSOURI GAS ENERGY

CASE NO. GR-96-450

FILED²

OCT 12 2001

Missouri Public
Service Commission

SURREBUTTAL TESTIMONY OF

MICHAEL T. LANGSTON

Exhibit No. 3
Date 9/17/01 Case No. GR-96-450
Reporter Kem

Jefferson City, Missouri
July 18, 2001

SURREBUTTAL TESTIMONY OF MICHAEL T. LANGSTON

Table of Contents

1.	STIPULATION AND AGREEMENT	1
2.	MID-KANSAS II CONTRACT HISTORY	8
3.	CONCULSION	13

1 SURREBUTTAL TESTIMONY OF MICHAEL T. LANGSTON

2 CASE NO. GR-96-450

3 July 18, 2001

4
5 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

6 A. My name is Michael T. Langston. My business address is Southern Union Company,
7 504 Lavaca, Suite 800, Austin, Texas 78701.

8
9 **Q. ARE YOU THE SAME MICHAEL T. LANGSTON THAT HAS PREPARED**
10 **DIRECT AND REBUTTAL TESTIMONY IN THIS PROCEEDING?**

11 A. Yes.

12
13 **Q. PLEASE STATE THE PURPOSE OF THIS SURREBUTTAL TESTIMONY.**

14 A. My surrebuttal testimony will address the rebuttal testimony filed by Missouri Public
15 Service Commission (MPSC) Staff witness Wallis regarding his interpretation of the May
16 2, 1996 Stipulation Agreement in Case Nos. GR-94-101 and GR-94-228, and also that of
17 MPSC Staff witnesses Shaw and Sommerer regarding the February 24, 1995, agreement.

18
19 **1. MAY 2, 1996 STIPULATION AND AGREEMENT**

20
21 **Q. WHAT DO YOU UNDERSTAND TO BE STAFF WITNESS WALLIS' POSITION**
22 **ON THE MAY 2, 1996 STIPULATION AND AGREEMENT, AS REFLECTED IN**
23 **HIS REBUTTAL TESTIMONY?**

1 A. Mr. Wallis takes issue with my direct testimony where I had pointed out the provisions in
2 the Stipulation and Agreement which prohibited the Staff from proposing a prudence
3 disallowance with regard to the decision to execute the Mid-Kansas Interim-Firm Gas
4 Purchase Contract ("Mid-Kansas II Contract"). On page 2, at lines 6-10, Mr. Wallis
5 cites one sentence from the agreement which he says allows the Staff to make a prudence
6 challenge to the overall contract services.

7
8 **Q. WHAT IS THE SENTENCE HE CITES?**

9 A. It says: "In addition, the Signatories agree that the transportation rates and gas costs
10 charged pursuant to the Missouri Agreements shall not be the subject of any further ACA
11 prudence review until the case associated with the audit period commencing July 1, 1996,
12 and ending June 30, 1997."

13
14 **Q DO YOU AGREE WITH MR. WALLIS' POSITION WITH REGARD TO THAT**
15 **SENTENCE?**

16 A No. He has taken that one sentence out of context. Since it starts with "In addition," I
17 believe you have to read it in conjunction with the previous sentence, which says: "As a
18 result of this Stipulation and Agreement, the Signatories agree that neither the execution
19 of the MKP/WR Sales Agreement and the Riverside/WR Transportation Agreement I, nor
20 the decisions associated with the execution of the Missouri Agreements shall be the
21 subject of any further prudence review."

22 **Q. WHY IS THAT SENTENCE YOU JUST QUOTED IMPORTANT?**

23 A. The term "Missouri Agreements" used in that sentence includes the February 24, 1995

1 agreement. The Staff is proposing a substantial disallowance based on the alleged
2 imprudence of MGE in deciding to enter into that February 24, 1995 agreement. If you
3 just simplify the sentence that I am emphasizing, it would read: "As a result of this
4 Stipulation and Agreement, the Signatories agree that neither the execution of [certain
5 agreements], nor the decisions associated with the execution of the [February 24, 1995
6 Agreement] shall be the subject of any further prudence review." That clearly says that
7 the parties agree that the decisions associated with the execution of the February 24, 1995
8 Mid Kansas II agreement **shall not be the subject of any further prudence review**. By
9 "any further" prudence review I believe the parties meant the common meaning which
10 would be "no more than there already has been." Therefore, the plain meaning of the
11 sentence is that the parties agreed there would be **no more prudence reviews** with regard
12 to the **decision to execute** the February 24, 1995 Mid Kansas II agreement. Yet that is
13 exactly what the Staff is proposing to do in this case.

14
15 **Q. WHERE DOES THE SENTENCE MR. WALLIS RELIES UPON APPEAR IN**
16 **RELATION TO THE SENTENCE YOU JUST DISCUSSED?**

17 A. It is the sentence that follows. Again, it says: "In addition, the Signatories agree that the
18 transportation rates and gas costs charged pursuant to the Missouri Agreements shall not
19 be the subject of any further ACA prudence review until the case associated with the
20 audit period commencing July 1, 1996, and ending June 30, 1997."

21 **Q. WHAT EFFECT DOES MR. WALLIS SAY THAT SENTENCE HAS?**

22 A. He says on page 2 of his rebuttal, at lines 3 and 4, that it "allows the Staff to propose
23 prudence disallowances for excessive transportation rates and gas costs for any MGE

1 ACA period which begins after July 1, 1996.”

2
3 **Q. THERE SEEMS TO BE A CONFLICT BETWEEN THE FIRST SENTENCE**
4 **THAT YOU QUOTE, AND THE INTERPRETATION GIVEN THE SECOND**
5 **SENTENCE BY MR. WALLIS. DO YOU AGREE WITH THAT?**

6 A. There is only a conflict if you accept the unreasonable interpretation placed on the second
7 sentence by Mr. Wallis. As I said earlier, in the first sentence, the parties said there
8 would be no more prudence reviews on the decision to execute the Mid-Kansas II
9 agreement. The way Mr. Wallis wants to interpret the second sentence, the parties are
10 directly contradicting what they said in the previous sentence. To me, that makes no
11 sense and no rational person would have entered into such an agreement. Why would
12 you say one thing, and then follow it with a sentence that directly contradicts what you
13 just said?

14
15 **Q. SINCE YOU WERE INVOLVED IN THE DRAFTING OF THE STIPULATION**
16 **AND AGREEMENT, CAN YOU SPEAK TO WHETHER MGE INTENDED TO**
17 **OBTAIN THE ASSURANCE THAT IT WOULD NOT HAVE ANY FURTHER**
18 **PRUDENCE REVIEWS ON THE DECISION TO EXECUTE THE MID-KANSAS**
19 **II AGREEMENT IN THE FIRST SENTENCE, AND THEN COMPLETELY**
20 **ABANDON OR REVOKE THAT ASSURANCE IN THE SECOND SENTENCE?**

21 A. Absolutely not. It says in paragraph 4.C. of the Stipulation and Agreement that this
22 February 24, 1995 Mid-Kansas II agreement has been reviewed by the Staff. It then says
23 that it and the other contracts mentioned in paragraph 4 are referred to in the Stipulation

1 and Agreement as "the Missouri Agreements." Then it says in paragraph 5 that the
2 decisions associated with the execution of the Missouri Agreements shall not be subject
3 to any further prudence reviews. It would make no sense to follow that statement with
4 one that completely contradicts it.

5
6 **Q. IS THERE ANOTHER INTERPRETATION FOR THE SENTENCE THAT MR.**
7 **WALLIS RELIES UPON THAT DOES NOT REACH A RIDICULOUS RESULT?**

8 A. Yes. When we were negotiating on the settlement, it was my understanding that while
9 the Staff was agreeing to settle the question of the prudence of the decisions that led to
10 the execution of the various agreements, including the Mid-Kansas II agreement since it
11 was one of the listed "Missouri Agreements," the Staff nevertheless still wanted to be
12 able to conduct prudence reviews on the "compliance and operational" aspects of how the
13 contracts were actually administered by MGE. As indicated by material found on
14 Schedule 6-3 of Mr. Sommerer's rebuttal, MGE was very concerned about there being
15 "exceptions to the general rule that disallowances will not be allowed regarding the
16 Missouri Agreements." That clearly indicates we were under the impression that there
17 would be no prudence disallowances for the Missouri Agreements. So we said: "We
18 need to know exactly what those exceptions are (i.e., that would allow such
19 disallowances) before we can agree to this settlement." The material in Schedule 6-3 then
20 indicates that there was a conversation with Rob Hack, who was the attorney representing
21 the Staff, about this topic.

22
23 I don't know exactly why all of the sentences got put together the way they did, but

1 MGE's interpretation of the sentence Mr. Wallis relies upon was that it meant that the
2 "transportation rates and gas costs (as opposed to the decision to enter into the agreement)
3 charged pursuant to the Missouri Agreements shall not be the subject of any further ACA
4 prudence review until the case associated with the audit period commencing July 1, 1996,
5 and ending June 30, 1997" and after that time they would be subject to only this
6 operational and compliance review the Staff wanted. Due to the wording of the first
7 sentence of the agreement, the agreements would not be subject to a prudence review on
8 why they were executed in the first place. The very next sentence says "The Missouri
9 Agreements will be subject to the compliance and operational review ... for all periods on
10 and after July 1, 1994" Therefore, if you interpret the sentence Mr. Wallis relies upon
11 as a general statement introducing the concept that there could be prudence reviews on
12 the "transportation rates and gas costs" but not the underlying decisions to execute the
13 agreements, and that these prudence reviews after July 1, 1994 will be for "compliance
14 and operational review" as explained further on in the paragraph, it makes sense and
15 doesn't reach the ridiculous result argued by Mr. Wallis.

16 It is clear that there was a provision designed to allow the Staff to challenge the
17 utilization of the underlying service arrangements, but not the prudence of the Mid-
18 Kansas II Agreement itself. MGE did not have a problem with that because it recognized
19 that someone could argue that MGE administered the contract in an imprudent fashion,
20 and it did not seek to prohibit such an inquiry. A prudence disallowance which is
21 premised on "compliance and operational" aspects is clearly allowed by the settlement.
22 To interpret the one sentence the way Mr. Wallis does is to negate the effect of the first
23 sentence entirely, which is an illogical result and certainly not what the parties intended.

1

2 **Q. ARE YOU AWARE OF ANY OTHER INFORMATION TO SUPPORT YOUR**
3 **POSITION?**

4 A. Yes. The Staff sent Rob Hack a data request in this case asking what his recollection of
5 the events regarding the stipulation and agreement was, and what he believed was the
6 intent of the parties with regard to the prudence of the Missouri Agreements. At the time,
7 Mr. Hack was the Staff's attorney negotiating the Stipulation and Agreement. I find it
8 interesting that the Staff did that, considering that Mr. Shaw on page 16 alleges what
9 assurances his own attorney gave him about the Stipulation and Agreement.

10

11 In his response to Data Request number 6038, Mr. Hack indicates a similar position to
12 that which I am expressing in this testimony. Mr. Hack's response is attached hereto as
13 Schedule MTL-20. My reading of Mr. Hack's response is that he contradicts the position
14 taken by Mr. Wallis and Mr. Shaw.

1 **Q. WAS IT MGE'S INTENT THAT THE STIPULATION AND AGREEMENT**
2 **FINALLY ADDRESS PRUDENCE ISSUES WITH REGARD TO THE**
3 **EXECUTION OF THE "MISSOURI AGREEMENTS"?**

4 A. Yes. I think that is the only reasonable interpretation of the collection of sentences in
5 paragraph 5 of the Stipulation and Agreement. It is only operational or compliance issues
6 that were "fair game" for the Staff to review for prudence on and after July 1, 1994. If
7 you read further in paragraph 5, you find a sentence which says "The intent of the
8 Signatories ... is that the Commission ... issue an order holding ... that the findings and
9 conclusions regarding the prudence of the execution of the Missouri Agreements ... shall
10 be compromised and settled as provided for herein." Why would you go to the trouble of
11 saying that you were compromising and settling the prudence of the execution of the
12 Missouri Agreements" as that sentence says, if you were going to strip that concept out of
13 the Agreement in the sentence Mr. Wallis relies upon? It just doesn't make any sense.

14
15 **MID-KANSAS II CONTRACT HISTORY**
16

17 **Q. DOES MR. SHAW, IN HIS REBUTTAL TESTIMONY, RAISE SIMILAR**
18 **CONTRACT PRUDENCE ISSUES AS THOSE RAISED BY MR. WALLIS?**

19 A. Yes. From page 4, line 3, through page 5, line 23, Mr. Shaw attempts to go into further
20 history regarding the various regulatory agreements and proceedings impacting the
21 predecessor agreements to the February 24, 1995 amendment. In his testimony, he
22 briefly discusses the history in MPSC cases GR-90-40, GR-91-149, GR-93-140, GR-94-
23 101, and GR-94-228.

1
2 **Q. DO YOU BELIEVE THAT THE ISSUES OR FINDINGS IN THOSE CASES**
3 **HAVE ANY BEARING IN THIS PROCEEDING?**

4 A. No. All of those issues were resolved by the Stipulation and Agreement dated May 2,
5 1996, that was executed in Case Nos. GR-94-101 and GR-94-228.
6

7 **Q. DOES MR. SHAW ULTIMATELY INDICATE THAT THE CONTRACT UNDER**
8 **REVIEW IN THIS PROCEEDING IS A DIFFERENT ONE?**

9 A. Yes. Mr. Shaw indicates, from page 5, line 24 to page 6, line 4 of his rebuttal testimony
10 that the agreement dated February 24, 1995, is the contract which is the subject of this
11 proceeding -- the Mid-Kansas II agreement.
12

13 **Q. HAS MR. SHAW EVER INDICATED THAT THERE ARE PROVISIONS**
14 **WITHIN THE MID-KANSAS II AGREEMENT THAT HAVE BEEN**
15 **DETRIMENTAL TO RATE PAYERS?**

16 A. In his deposition taken on October 28, 1998, in Jefferson City, Mr. Shaw could not
17 identify any provision detrimental to the rate payers. This section of his deposition has
18 been designated as Schedule DML 3-2 and is attached to the rebuttal testimony of Dennis
19 M. Langley in this case. In addition, in his rebuttal testimony filed in December 1998, at
20 page 11, lines 5-10, Mr. Shaw indicates that the February 24, 1995 agreement (Mid-
21 Kansas II) provided benefits not available in the original contract. Mr. Shaw goes on to
22 indicate that the "benefits [of Mid-Kansas II] do not eliminate the detrimental impact
23 associated with MGE's imprudent decision to pay maximum rates to the Bishop Group."

1 The provision that called for the payment of maximum rates, however, arose under the
2 original contract, and those decisions were subject to the provision in the Stipulation and
3 Agreement, in which the Staff agreed that the prudence of those decisions would not be
4 reviewed in further proceedings.

5
6 **Q. DID MR. SHAW INDICATE ADDITIONAL CONCERNS IN HIS REBUTTAL**
7 **TESTIMONY?**

8 A. On page 13, lines 4-13, Mr. Shaw says that demonstrated by an internal Staff memo dated
9 March 29, 1996, that the Staff's Procurement and Analysis Department felt that there was
10 continuing detriment of \$4 million per year.

11
12 **Q. IS THERE ANY INDICATION THAT THIS INTERNAL STAFF MEMO WAS**
13 **PROVIDED TO ANY OF THE PARTIES TO THE MAY 2, 1996 STIPULATION**
14 **AND AGREEMENT?**

15 A. No. I don't believe it is the Staff's normal practice to share its internal memos with
16 utility companies. This one was not provided to me prior to our execution of the
17 Stipulation and Agreement.

18
19 **Q. WAS THIS INTERNAL MEMO MADE PRIOR TO EXECUTION OF THE**
20 **STIPULATION AND AGREEMENT WHICH PURPORTED TO RESOLVE THE**
21 **CONTRACT PRUDENCE ISSUE?**

22 A. Yes. The Stipulation and Agreement, which did provide for reimbursement and
23 payments to rate payers under Case Nos. GR-94-101 and GR-94-228, was executed May

1 2, 1996. With the Stipulation and Agreement following so close to the internal memo
2 revealed here by Mr. Shaw, and given the broad language dealing with the prudence of
3 the decisions regarding the execution of the Missouri Agreements, the resolution of these
4 cases within the Stipulation and Agreement would not be plausible unless the intentions
5 of the parties, including the Staff, were as reflected by Mr. Hack in his answer to Data
6 Request number 6038 attached hereto. It is clear to me that all parties must read the
7 entire provisions of the Stipulation and Agreement to understand that while "prudence"
8 reviews could continue regarding the February 24, 1995 contracts, such prudence reviews
9 were with regard to operational and compliance actions only.

10
11 **Q. WHAT REACTION DO YOU HAVE TO MR. SHAW'S ALLEGATION ON**
12 **PAGE 13 AT LINE 19 THAT "ALL PARTIES TO THE SETTLEMENT**
13 **NEGOTIATIONS WERE AWARE THAT THE MID-KANSAS/RIVERSIDE**
14 **CONTRACTS OF FEBRUARY 24, 1995 HAD NOT ALLEVIATED STAFF'S**
15 **MOST SIGNIFICANT CONCERNS FROM PREVIOUS DOCKETS"?**

16 **A.** *We certainly could not read the mind of the Staff members. We were not aware of the*
17 *internal memo that he discusses, and even if we were, I don't think that would have*
18 *mattered. Later on in his testimony on page 14, he points to an un-executed draft of the*
19 *Stipulation for the proposition that Staff and Mid-Kansas only agreed to a deferral of a*
20 *prudence determination. The language he cites is not what was contained in the final*
21 *agreement, and it certainly could not be used to bind MGE who wasn't a part of the*
22 *bilateral negotiations between Staff and Mid-Kansas/Riverside.*

1 **Q. DURING THE NEGOTIATIONS, DID MGE SEEK TO CLARIFY THAT WHILE**
2 **THE PRUDENCE OF THE UNDERLYING DECISIONS WAS BEING SETTLED,**
3 **THERE STILL COULD BE PRUDENCE REVIEWS ON THE**
4 **ADMINISTRATION OF THE CONTRACTS?**

5 **A.** Yes. Although his interpretation is different, in the rebuttal testimony of David M.
6 Sommerer on page 8, line 16 through page 9, line 11, Mr. Sommerer notes that comments
7 were submitted by MGE on the draft Stipulation and Agreement. In this, he clearly states
8 that the "clarification" MGE sought concerned a prohibition against reviewing the
9 decisions associated with execution of the Missouri agreements as well as the fact that the
10 Missouri Agreements would be subject to compliance and operational review on and after
11 July 1, 1994. The fact that all of these topics are included in the same comment is clear
12 proof that MGE understood that the prudence of the underlying decisions to enter into the
13 agreement was being finally settled, but that there would be exceptions for how the
14 contracts were actually administered.

15
16 **Q. DO YOU AGREE WITH MR. SOMMERER'S OUTLINE OF THE PRUDENCE**
17 **STANDARD IN HIS REBUTTAL TESTIMONY?**

18 **A.** Yes, Mr. Sommerer, beginning on page 12, line 17, described the applicable prudence
19 standards that this Commission should utilize. It is clear from this discussion that
20 prudence and management decisions must be reviewed in light of what is known at the
21 time the decisions are made. In this case, the Staff has questioned costs arising under the
22 February 24, 1995 agreements. These agreements were clearly a modification to the
23 previous contracts. The Staff clearly agreed that the prudence of such agreements were

1 finally settled by the May 2, 1996 Stipulation and Agreement in GR-94-101 and GR-94-
2 228 (what the Commission called Stipulation and Agreement # 2). The Staff has agreed
3 that there are no provisions in the February 24, 1995 agreements that are detrimental to
4 the rate payers when compared to the original agreements. Therefore, if the prudence of
5 the original agreements has been settled, and the 1995 agreements are an undisputed
6 improvement on the old agreements, there can be no realistic argument that would
7 support the position that the Mid-Kansas II agreement was imprudent.
8

9 **Q. CAN YOU PLEASE SUMMARIZE YOUR SURREBUTTAL TESTIMONY?**

10 A. Yes. The decisions involved in the underlying contracts in this case have been deemed
11 prudent by the second Stipulation and Agreement (May 2, 1996) approved by the
12 Commission in Cases GR-94-101 and GR-94-228. The subsequent agreement executed
13 February 24, 1995 provided only improvements in the underlying cost structures
14 compared to the original agreements which had previously been deemed prudent. The
15 Staff's proposal for disallowances in this case are based on supposition that somehow
16 "additional" improvements in these arrangements could have been made. There is no
17 evidence to support this and the Commission should not support the disallowance levels
18 proposed by the Staff in this case.
19

20 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

21 A. Yes, at this time.

MISSOURI GAS ENERGY
A Division of Southern Union Company

MISSOURI PUBLIC SERVICE COMMISSION
DATA INFORMATION REQUEST RESPONSE

Missouri Rate Case No: GR-96-450

Data Request No: 6038

Requested From: Missouri Gas Energy

Date Requested:

Information Requested:

Please provide dates that negotiations were held, and Mr. Hack's recollection of the intent of the parties with regard to the prudence of the "Missouri Agreement".

Requested By: MPSC Staff

Information Provided:

Mr. Hack has no specific recollection as to the dates of the negotiations beyond what is set forth in the response to MGE-6037.

Upon reviewing the May 2, 1996, Stipulation and Agreement, it is Mr. Hack's recollection that, by executing and filing the agreement, the parties intended that the MoPSC conclusively and finally resolve all issues associated with the prudence of the execution of the "Missouri Agreements" and that, on a going forward basis beginning with the ACA period commencing July 1, 1996, the only aspect of the "Missouri Agreements" that would be subject to review and possible adjustment on prudence grounds was the manner in which MGE operated under the "Missouri Agreement" (i.e., volumes taken, etc.). Compliance review (i.e., review of billing and payment accuracy), and possible adjustment on such grounds, was also preserved for the "Missouri Agreements" for periods beginning on and after July 1, 1994, by the intent of the parties in the May 2, 1996, Stipulation and Agreement.

Date Response Received: _____

Signed By: _____

Robert J. Hack
Vice President, Pricing & Reg. Affairs

Date: _____

4/17/01

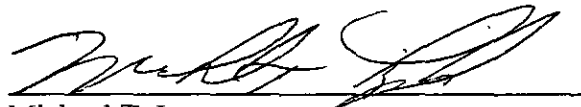
**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the matter of the Missouri Gas Energy's §
Gas Cost Adjustment Tariff Revisions to §
be Reviewed in its 1996-1997 Annual §
Reconciliation Adjustment Account § Case No. GR-96-450

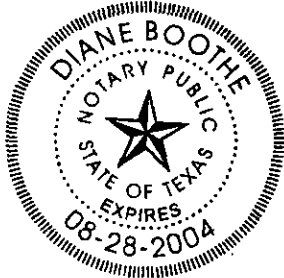
AFFIDAVIT OF MICHAEL T. LANGSTON

STATE OF TEXAS §
 § ss.
COUNTY OF TRAVIS §

Michael T. Langston, is, 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.


Michael T. Langston

Subscribed and sworn to before me this 18th day of July, 2001.




Notary Public

My Commission Expires: 8-28-2004