

BEFORE THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS

JUL 15 2009



In the Matter of the Application of )  
Midwest Energy, Inc. for Approval ) Docket No. 09-MDWE-792-RTS  
to Make Certain Changes in Its Charges )  
for Electric Service. )

TESTIMONY OF MICHAEL VOLKER ON BEHALF OF MIDWEST ENERGY,  
INC. IN SUPPORT OF STIPULATED SETTLEMENT AGREEMENT

1 Q. Please state your name, position and business qualifications.

2 A. My name is Michael Volker. I am the Director of Regulatory and Energy  
3 Services for Midwest Energy, Inc. ("Midwest Energy" or the "Company") and am  
4 responsible for developing gas and electric tariffs, including rates, rules and  
5 regulations for utility services, managing the energy services activities, measuring  
6 customer satisfaction, and developing forecasts. I joined Midwest Energy in 1999  
7 as the Manager of Pricing and Market Research, and have been in my current  
8 position since 2006. A full statement of my business qualifications appears in my  
9 direct testimony filed in this proceeding. I have testified before this Commission  
10 a number of times on rate-related topics.

11 Q. Did you previously file direct testimony in this proceeding?

12 A. Yes, I filed direct testimony in this docket on April 9, 2009.

13 Q. What is the purpose of your testimony?

1 A. I am testifying on behalf of Midwest Energy in support of the Stipulation and  
2 Agreement between the Commission Staff, the Citizens' Utility Ratepayer Board  
3 ("CURB") and the Company (jointly referred to as the "Parties").  
4

5 **HISTORY OF PROCEEDING AND REQUEST FOR ABBREVIATED RATE CASE PURSUANT TO**  
6 **K.A.R. 82-1-231(B)(3)**  
7

8 **Q. Would you please briefly summarize the background of this proceeding,**  
9 **including Midwest Energy's need for this abbreviated rate case?**

10 A. On December 21, 2007, Midwest Energy filed an electric rate application, along  
11 with supporting testimony and schedules, seeking approval to make certain  
12 changes in its charges for electric service in accordance with K.S.A. 66-117 and  
13 K.A.R. 82-1-231. That application was docketed as 08-MDWE-594-RTS ("the  
14 594 Docket"). On June 16, 2008, Staff, Midwest Energy and CURB filed a Joint  
15 Motion to Approve Stipulation and Agreement (the "594 Agreement"). The 594  
16 Agreement provided for the resolution of all outstanding issues pertaining to the  
17 594 Docket, including an overall annual revenue increase of \$9,250,000. In  
18 addition, because total capital expenditures for Midwest Energy's Goodman  
19 Energy Center ("GMEC") would not be known until calendar year-end 2008 and  
20 substantial rebuild work continued related to FEMA-designated storms, the  
21 parties to the 594 Agreement also agreed to support Midwest Energy's request for  
22 prior Commission approval to file an abbreviated rate case pursuant to K.A.R. 82-  
23 1-231(b)(3).

24 **Q. Please continue.**

1 A. Pursuant to the 594 Agreement, the abbreviated rate case was to be filed no  
2 sooner than February 1, 2009. On August 5, 2008, the Commission issued an  
3 Order approving the 594 Stipulation and Agreement, including Midwest Energy's  
4 request to file an abbreviated rate case.

5 On April 9, 2009, Midwest Energy filed its abbreviated rate case Application,  
6 supporting testimony, and supporting exhibits. As agreed to in the 594  
7 Agreement, the primary purposes of this abbreviated case were to: (i) update  
8 Midwest Energy's plant for FEMA projects and GMEC, including associated  
9 retirements; (ii) update GMEC O&M with the most recent information available;  
10 (iii) determine the incremental revenue requirement associated with the FEMA  
11 projects and GMEC, and (iv) make certain agreed-upon corrections.

12 **Q. Have the parties now agreed upon a settlement of all outstanding issues in  
13 this abbreviated rate filing?**

14 A. Yes. I will summarize the terms of the settlement agreement below.

15  
16 **THE SETTLEMENT PROCESS**

17 **Q. Who are the parties to this docket?**

18 A. The parties to this docket are Midwest Energy, Commission Staff, and CURB.  
19 There are no other parties to this proceeding.

20 **Q. Given that all parties to the docket are also parties to the Stipulation and  
21 Agreement, is the Stipulation and Agreement unanimous?**

22 A. Yes, that is correct.

23 **Q. Who participated in the settlement negotiations in this docket?**

1 A. Representatives from Midwest Energy, Staff, and CURB participated in the  
2 settlement negotiations in this docket. The parties had numerous discussions by  
3 telephone and ultimately a settlement of all issues was reached, culminating in the  
4 Stipulation and Agreement filed with the Commission on July 13, 2009.

5 **TERMS OF THE STIPULATION AND AGREEMENT**

6 **Q. Would you please provide an overview of the Stipulation and Agreement and**  
7 **explain the essential terms?**

8 A. The parties have agreed that Midwest Energy should be granted an overall annual  
9 revenue increase of \$1,405,852. Midwest Energy views the stipulated revenue  
10 requirement as a reasonable resolution of the revenue requirement issues in this  
11 case. The agreed-upon revenue increase is comparable to the original filing  
12 Midwest Energy made in this docket (\$1,862,608) even with the application of  
13 three adjustments made by Staff to: (1) plant in service (\$875,201); (2)  
14 accumulated depreciation (\$4,823,287); and (3) working capital (-\$105,938),  
15 respectively. In addition, CURB recommended a further decrease to the GMEC  
16 non-fuel operation and maintenance (O&M) expense and related cash working  
17 capital of \$200,000. The net impact of these four adjustments is a reduction in  
18 revenue requirement of \$456,756 from the Company's original filed request.

19 **Q. Please explain the adjustments made to plant in service and accumulated**  
20 **depreciation from the Company's original filing.**

21 A. The adjustments to plant in service and accumulated depreciation are related. In  
22 the process of responding to discovery related to the abbreviated filing, the  
23 Company realized that it had included certain FEMA project costs that were also

1 included in its Transmission Delivery Charge (“TDC”) filing (Docket No. 09-  
2 MDWE-875-TAR). Therefore, Midwest informally notified Staff and CURB that  
3 it was revising its claim in the abbreviated rate filing to remove these FEMA  
4 project costs. The first adjustment proposed by Staff increases plant in service by  
5 \$875,201. The second adjustment proposed by Staff increases accumulated  
6 depreciation by \$4,823,287. The net effect of these adjustments on rate base is a  
7 decrease of \$3,948,086. The impact of these adjustments on revenue requirement  
8 and the requested increase is a reduction of \$249,079.

9 **Q. Please explain Staff’s adjustment to working capital?**

10 A. The third adjustment decreases the working capital component of rate base by  
11 \$105,938. The adjustment reflects an updated value associated with the gas  
12 inventory balance from the Company’s initial filing. At the time of the  
13 Application, the Company did not have a full year of normal GMEC operation  
14 and thereby utilized 9 months of gas storage data. Staff’s adjustment updates the  
15 Company’s initial filing by reflecting a 13-month average balance to the GMEC  
16 gas inventory. The decrease to rate base results in a decrease to revenue  
17 requirement of \$7,677.

18 **Q. Please explain CURB’s adjustment to the GMEC non-fuel O&M expense?**

19 A. All the parties to this docket admit the difficulty in estimating an appropriate level  
20 of ongoing, normal GMEC non-fuel O&M expense without sufficient operating  
21 history at the plant. At the time of the filing, the Company made its best estimate  
22 (\$1,774,594) of the appropriate GMEC non-fuel O&M expense based on budget  
23 estimates from the provider of the GMEC O&M services, North American Energy

1 Services (NAES). While the Company still believes its estimate is reasonable,  
2 CURB witness Andrea Crane proposed two alternative methods for calculating  
3 the GMEC non-fuel O&M expense. The first method annualized the actual  
4 expense incurred from September 2008 thru April 2009 and resulted in GMEC  
5 non-fuel O&M expense of \$1,549,021 - a reduction of \$225,573. The second  
6 method annualized the actual expense incurred from January thru April of 2009  
7 and resulted in GMEC non-fuel O&M expense of \$1,314,043 - a reduction of  
8 \$460,551. These two methods are discussed in detail in Ms. Crane's July 13,  
9 2009 testimony.

10 **Q. Please continue.**

11 A. Ms. Crane goes on to discuss that actual costs may not be an accurate projection  
12 of prospective costs since GMEC is a new plant. Given the difficulty of  
13 estimating GMEC non-fuel O&M absent sufficient operating history, Ms. Crane  
14 has recommended a compromise position between the Company- proposed  
15 amount and her own methods. The resulting compromise reduces revenue  
16 requirement by \$200,000. This reduction to revenue requirement is in addition to  
17 the adjustments proposed by Staff. The Company agrees that this is a reasonable  
18 compromise for estimating the appropriate level of GMEC non-fuel O&M  
19 expense.

20 **Q. Please summarize the resulting increase.**

21 A. Midwest Energy filed this abbreviated rate filing on April 9, 2009 requesting an  
22 increase of \$1,862,608. On June 30, 2009 Staff witness George Rohrer filed  
23 testimony recommending an increase of \$1,605,852, a reduction of \$256,756 from

1 the Company's initial request. Staff's reduction was based on three adjustments  
2 to rate base: an increase to plant in service, an increase to accumulated  
3 depreciation, and a decrease to working capital. The first two adjustments were  
4 related to a correction noted during discovery that resulted from FEMA storm-  
5 related plant investment that was also included in the Company's TDC filing.  
6 The third adjustment from Staff was the revenue requirement impact of a change  
7 in working capital caused by updating the GMEC gas inventory. Finally, on  
8 July 13, 2009, CURB witness Andrea Crane filed testimony recommending a  
9 fourth adjustment to GMEC non-fuel O&M expense that resulted in a decrease of  
10 an additional \$200,000 from the Company's request. The sum of the four  
11 adjustments is a decrease of \$456,756 from the initial Company request. The  
12 resulting increase is \$1,405,852.

13 **Q. Does Midwest Energy agree with the four adjustments proposed by Staff and**  
14 **CURB?**

15 A. Yes. The first two adjustments to rate base were recognized by the Company  
16 during the discovery phase. The third adjustment to working capital is a result of  
17 updated gas inventory information. The fourth adjustment to GMEC non-fuel  
18 O&M expense is a compromise that acknowledges the inherent difficulties of the  
19 various methods of estimating the expense. Midwest Energy agrees that all four  
20 adjustments are reasonable and thereby supports this Stipulation and Agreement  
21 as a fair and equitable compromise of the issues in this proceeding.

22 **Q. Will the Stipulation and Agreement require new rate design?**

1 A. No. The Stipulation and Agreement from Docket 08-MDWE-594-RTS requires  
2 that any incremental increase in revenues that may be required in this abbreviated  
3 rate case will be recovered proportionally across all rate classes through increases  
4 in energy charges. The fixed customer and demand charges will not be altered.  
5 The resulting rate increase will be \$0.001251 per kWh applied to all energy  
6 charges. The allocation of the requested increase to each of the rate classes is  
7 provided for in Exhibit\_MJV-1.

8

9 **THE STIPULATION AND AGREEMENT CONFORMS WITH KANSAS LAW REGARDING**  
10 **STIPULATED SETTLEMENT AGREEMENTS**

11 **Q. Does the stipulation and agreement conform to applicable Kansas law?**

12 A. Yes, I believe so, though I am not an attorney. However, the Stipulation and  
13 Agreement was fully and fairly negotiated, represents a reasonable compromise  
14 based on all parties' prefiled positions, and will result in just and reasonable rates  
15 for Midwest Energy's customers. Kansas law recognizes a strong policy favoring  
16 and encouraging settlements.<sup>1</sup> It appears that this Commission has acknowledged  
17 that the settlement standards set forth in the *Farmland Industries*<sup>2</sup> and *CURB*<sup>3</sup>  
18 cases regarding non-unanimous settlements apply equally to every other  
19 settlement agreement placed before it for consideration. This Commission has  
20 recently stated, "no settlement proposal, unanimous or contested; black-box or  
21 transparent, relieves the three-member Commission of its responsibility to make

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<sup>1</sup> *Bright v. LSI Corp.*, 254 Kan. 853, 858, 869 P.2d 686. (1994).

<sup>2</sup> *Farmland Industries, Inc. v. Kansas Corporation Comm'n*, 24 Kan.App.2d 172, 186-88, 943 P.2d 470 (1997).

<sup>3</sup> *Citizens' Utility Ratepayer Bd. v. State Corp. Comm'n of the State of Kansas*, 28 Kan.App.2d 313, 316-317, 16 P.3d 319 (Kan.App.2000); *Farmland Industries*, 24 Kan.App.2d at 186-87.



1 an independent judgment as to whether the settlement constitutes a reasonable  
2 remedy or resolution of the issues.”<sup>4</sup> As such, it appears that the applicable legal  
3 standard for reviewing the reasonableness of settlement agreements requires the  
4 Commission to make a finding, supported by substantial competent evidence from  
5 a review of the record as a whole, that the settlement will establish just and  
6 reasonable rates.

7 **THE STIPULATION AND AGREEMENT WILL RESULT IN JUST AND REASONABLE**  
8 **RATES**

9 **Q. Does the stipulation and agreement result in just and reasonable rates for**  
10 **Midwest Energy’s customers?**

11 A. Yes. In accordance with K.S.A. 66-101b, every electric public utility is required  
12 to furnish reasonably efficient and sufficient service at just and reasonable rates.  
13 Case law indicates that the “just and reasonable” standard coincides with the  
14 “zone of reasonableness” test as adopted by Kansas courts. The “just and  
15 reasonable” standard was first outlined by the United States Supreme Court.<sup>5</sup> The  
16 Court emphasized that when evaluating whether rates are just and reasonable, the  
17 Court emphasized that the focus of inquiry is properly on the end result or “total  
18 effect” of the rate order, rather than on the specific rate-setting method employed.  
19 In addition, the *Hope* case was followed by another Supreme Court case<sup>6</sup>, which  
20 found that the Natural Gas Act’s articulated “just and reasonable” standard  
21 coincides with the applicable constitutional standards and that any rate selected by

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<sup>4</sup> Order issued May 12, 2008, at para. 11, Docket No. 08-ATMG-280-RTS.

<sup>5</sup> *Power Comm’n v. Hope Gas Co.*, 320 U.S. 591, 64 S.Ct.281, 88 L.Ed 333 (1944).

<sup>6</sup> *Permian Basin Area Rate Cases*, 390 U.S. 747, 770, 88 S. Ct. 1344, 20 L.Ed 2d 312, *reh. denied* 392 U.S. 917, 88 S.Ct 2050 (1968).

1 a regulatory commission within the “broad zone of reasonableness” cannot  
2 properly be attacked as confiscatory.  
3 Applying these standards to the current stipulation and agreement, the agreed-  
4 upon revenue increase of \$1,405,852 falls within the range of increases and  
5 associated adjustments proposed by Staff, Midwest and CURB. Although this by  
6 itself is not conclusive evidence of the reasonableness of the stipulated revenue  
7 increase, Kansas law does indicate that the Commission’s goal in a ratemaking  
8 case should be to determine a rate that falls within a “zone of reasonableness”  
9 after applying a balancing test in which the interests of all concerned parties are  
10 considered.<sup>7</sup> In addition, the Kansas Supreme Court has discussed the “zone of  
11 reasonableness” as it applies to the Commission’s ratemaking function as follow:

12 There is an elusive range of reasonableness in calculating a fair  
13 rate of return. A court can only concern itself with the question as  
14 to whether a rate is so unreasonably low or so unreasonably high as  
15 to be unlawful. The in-between point, where the rate is most fair  
16 to the utility and its customers, is a matter for the State Corporation  
17 Commission’s determination.<sup>8</sup>  
18

19 In its Application, Midwest Energy filed for a rate increase of \$1,862,608.  
20 Staff, after its audit and investigation, recommended a rate increase for Midwest  
21 Energy of approximately \$1,605,852. CURB provided two methodologies for an  
22 additional adjustment GMEC non-fuel O&M expense that would have further  
23 reduced the increase by either \$225,573 or \$460,551, resulting in revenue  
24 increases of \$1,379,279 or \$1,145,301. While all parties agree to the adjustments  
25 made in Staff’s recommendation, CURB and the other parties agree that the

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<sup>7</sup> *Kansas Gas and Elec. Co., v. State Corp. Com’n*, 239 Kan 483, 488-92, 720 P.2d 1063 (Kan.1986).  
<sup>8</sup> *Southwestern Bell Tel. Co. v. State Corporation Commission*, 192 Kan. 39, 41, 386 P.2d 515 (1963).

1 calculation of GMEC non-fuel O&M is difficult. Thus, the stipulated revenue  
2 increase amount of \$1,405,852 appears to fall within the zone of reasonableness  
3 when one considers that the stipulated revenue increase does take into account the  
4 interests of all parties involved, because the stipulated amount is well within the  
5 original positions of the parties. The stipulated amount also satisfies the  
6 balancing test aspect of the zone of reasonableness evaluation because the  
7 stipulated amount necessarily represents the parties' recognition of the litigation  
8 risk that a party will not prevail on every element of its prefiled case.

9 **Q. Apart from the stipulated revenue increase, do the effects of the other aspects  
10 of the Stipulation and Agreement result in just and reasonable rates?**

11 A. Yes. Midwest Energy carefully considered the issues before the Commission and  
12 used its best judgment and knowledge of Commission precedent to determine  
13 where it might be successful and where compromise was warranted and  
14 appropriate. This is particularly evident in the compromise by all parties  
15 regarding the appropriate level of GMEC non-fuel O&M expense to reasonably  
16 include in rates. Midwest Energy therefore submits that evidence in the record in  
17 this docket clearly demonstrates that the provisions of the stipulation and  
18 agreement will establish just and reasonable rates.

19 **THE STIPULATION AND AGREEMENT IS IN THE PUBLIC INTEREST**

20 **Q. Is the Stipulation and Agreement in the public interest?**

21 A. Yes. Each party to this proceeding has a duty to protect the interests of the party  
22 it represents. Midwest Energy has a duty to its customers, who are also its  
23 owners. CURB represents the interests of residential and small commercial

1 customers. The Staff and the Commission are in the unique position of being  
2 required to weigh and balance the interests of the Company, the ratepayers, and  
3 any other party to a proceeding. It can be argued, consistent with the Court's  
4 statements in *Kansas Gas & Electric*, as discussed above, that "the focus of the  
5 inquiry (in setting "just and reasonable rates") is properly on the end result or  
6 "total effect" of the rate order, rather than upon the rate-setting method  
7 employed.<sup>9</sup> It is Midwest Energy's position that the "total effect" of the terms of  
8 the Stipulation and Agreement will result in just and reasonable rates and  
9 represents an equitable balancing of the interests of all parties. Thus, the  
10 Stipulation and Agreement is in the public interest, and should be adopted by the  
11 Commission in its entirety.

12  
13 **Q. Does this conclude your testimony at this time?**

14 **A.** Yes. Thank you.

15

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<sup>9</sup> *Kansas Gas & Electric*, 239 Kan at 489.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading has been e-mailed, faxed, hand-delivered and/or mailed, First Class, postage prepaid, this 5<sup>th</sup> day of July, 2009, to:

NIKI CHRISTOPHER, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604

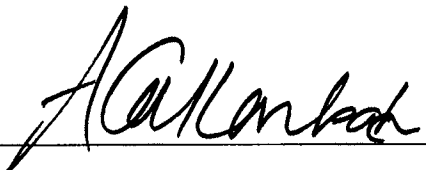
C. STEVEN RARRICK, ATTORNEY  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604

DAVID SPRINGE, CONSUMER COUNSEL  
CITIZENS' UTILITY RATEPAYER BOARD  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604

DANA BRADBURY, LITIGATION COUNSEL  
KANSAS CORPORATION COMMISSION  
1500 SW ARROWHEAD ROAD  
TOPEKA, KS 66604-4027

PATRICK PARKE, VP CUSTOMER SERVICE  
MIDWEST ENERGY, INC.  
1330 CANTERBURY ROAD  
PO BOX 898  
HAYS, KS 67601-0898

MICHAEL J VOLKER, DIR REGULATORY & ENERGY SERVICES  
MIDWEST ENERGY, INC.  
1330 CANTERBURY ROAD  
PO BOX 898  
HAYS, KS 67601-0898

  
\_\_\_\_\_

MIDWEST ENERGY, INC.  
ABBREVIATED RATE CASE  
ALLOCATION OF REVENUE REQUIREMENT BY SYSTEM & CLASS

	Class (1)	kWh by Class (2)	Percent of Total kWh (3)	Allocation of Revenue Requirement by Class (4)	Stipulated Revenue 594 Docket (5)	Percent Increase by Rate Class (5)
1	M System					
	Regular Res	220,934,221	19.67%	\$276,476	\$23,209,869	1.19%
2	All Elec Res	11,524,329	1.03%	\$14,421	\$1,059,219	1.36%
3	Annual Svc	1,333,302	0.12%	\$1,668	\$516,239	0.32%
4	GS Small	76,695,007	6.83%	\$95,976	\$8,071,839	1.19%
5	GS Small - DR	1,313,383	0.12%	\$1,644	\$124,722	1.32%
6	GS Small - TD	159,495	0.01%	\$200	\$16,092	1.24%
7	GS Medium	91,287,761	8.13%	\$114,237	\$8,669,761	1.32%
8	GS Large	79,342,448	7.06%	\$99,289	\$6,639,881	1.50%
9	GS Large - TOD	3,017,765	0.27%	\$3,776	\$287,619	1.31%
10	GS Large Heat	8,869,174	0.79%	\$11,099	\$684,337	1.62%
11	Tran Lev Svc	33,848,673	3.01%	\$42,358	\$2,339,686	1.81%
12	OFS Small	21,921,200	1.95%	\$27,432	\$2,062,985	1.33%
13	OFS Small - DR	31,949,627	2.84%	\$39,982	\$2,698,558	1.48%
14	OFS Small - TD	103,599	0.01%	\$130	\$11,554	1.12%
15	OFS Large	199,548,840	17.76%	\$249,714	\$15,753,019	1.59%
16	Irr - Frozen	18,262,610	1.63%	\$22,854	\$2,383,684	0.96%
17	Irr - TD	1,969,264	0.18%	\$2,464	\$227,489	1.08%
18	Irr - T&T	30,510,327	2.72%	\$38,180	\$3,079,814	1.24%
19	Irr - Incidental	1,522,601	0.14%	\$1,905	\$307,564	0.62%
20	Total	834,113,625		\$1,043,805	\$78,143,931	1.34%
21						
22	W System					
	Res - Reg	63,670,162	5.67%	\$79,676	\$6,079,417	1.31%
23	Res - Demand	4,264,467	0.38%	\$5,337	\$328,689	1.62%
24	GS Small	52,101,939	4.64%	\$65,200	\$4,713,132	1.38%
25	Schools	5,107,940	0.45%	\$6,392	\$394,383	1.62%
26	Large Power	119,055,107	10.60%	\$148,985	\$7,463,524	2.00%
27	Oil Field	37,476,987	3.34%	\$46,898	\$2,513,765	1.87%
28	Irrigation	7,638,517	0.68%	\$9,559	\$813,824	1.17%
29	Total	289,315,119		\$362,047	\$22,306,734	1.62%
30						
31	System Total	1,123,428,744	100.00%	\$1,405,852	\$100,450,665	1.40%
32						
33				Per kWh Incremental Increase:	\$0.001251	



6201 College Boulevard, Suite 500  
Overland Park, KS 66211  
(913) 451-8788  
Facsimile: (913) 451-6205  
www.polsinelli.com

Anne E. Callenbach  
(913) 234-7449  
acallenbach@polsinelli.com

July 15, 2009

**BY FAX 785-271-3354**

Susan Duffy  
Executive Director  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604

STATE CORPORATION COMMISSION

JUL 15 2009

**Re: Docket No. 09-MDWE-792-RTS**

Dear Susan:

On behalf of Midwest Energy, Inc., please accept for filing this facsimile copy of the **Testimony of Michael Volker on Behalf of Midwest Energy, Inc. in Support of Stipulated Settlement Agreement**. We are forwarding by regular mail the original and eight (8) copies of the **Testimony**.

Please file stamp the extra copy of the **Testimony** and transmittal letter and then return it to me in the self-addressed, stamped envelope. Thank you for your assistance and attention to this matter.

Sincerely,

Anne E. Callenbach

AEC:bks  
Enclosure  
cc: Pat Parke  
All Parties