

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

In the Matter of the Application of	)	
Missouri Gas Energy, a division of	)	
Southern Union Company, for an	)	Case No. GU-2010-0015
Accounting Authority Order Concerning	)	
Kansas Property Tax for Gas in Storage.	)	

**PUBLIC COUNSEL’S MOTION TO DISMISS MGE’S  
REQUEST FOR AN ACCOUNTING AUTHORITY ORDER,  
OR IN THE ALTERNATIVE, REQUEST FOR HEARING**

COMES NOW the Missouri Office of the Public Counsel (OPC) pursuant to 4 CSR 240-2.117(2) and for its Motion to Dismiss Missouri Gas Energy’s (MGE) Application for an Accounting Authority Order (AAO), or in the Alternative, Request for Hearing pursuant to Section 393.140 RSMo. 2000, states as follows:

1. On July 13, 2009, MGE requested an AAO to allow MGE to defer Kansas property tax payments for possible future recovery in MGE’s next rate case. MGE states that Kansas “enacted legislation that permits Kansas counties to assess property taxes against the value of natural gas held in storage in that county.” MGE’s application should be summarily dismissed because: 1) Property tax is a typical business expense and is therefore not extraordinary as required by the Uniform System of Accounts (USOA) for AAO deferrals; 2) If MGE is required to pay the Kansas property tax it would be an annual recurring expense and is therefore not extraordinary as required by the USOA for AAO deferrals; and 3) The filing is premature because no taxes have been assessed and the amount of any future tax is not known and measurable.

2. The AAO would allow MGE to defer taxes incurred in one period to give the appearance that they were incurred in a different period for purposes of including the taxes in a subsequent revenue requirement. Because a regulated utility's rates are set on the basis of costs determined in a designated test period, deferrals of costs from one period to another distort the true cost a company incurs to provide service. Deferring increased tax expenses in the current period to a future period for recovery could lead to an over-recovery because an AAO does not recognize other areas of savings during the prior period that may have offset the tax increase. AAOs violate the traditional method of setting rates and should be allowed only under limited circumstances.<sup>1</sup>

3. Commission rule 4 CSR 240-40.040 requires MGE to comply with the USOA. Under the USOA, deferring costs to a future period is allowed for "extraordinary items" defined by USOA General Instruction Number 7:

7. Extraordinary items. **It is the intent that net income shall reflect all items of profit and loss during the period** with the exception of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below. **Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future.** (In determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate.) To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary. [emphasis added].

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<sup>1</sup> 1 Mo. P.S.C.3d 200.

4. Past Commission decisions support dismissal of MGE's Application. In a 1991 AAO case the Commission determined that AAO's are appropriate only when the event is extraordinary, unusual and unique, and not recurring.<sup>2</sup> The Commission referenced the USOA definition of extraordinary item and noted:

The USOA recognizes that only extraordinary items should be deferred. The definition cited earlier states the intent of the USOA that net income shall reflect all items of profit and loss during the period and exceptions are only for those items which are of significant effect, not expected to recur frequently, and which are not considered in the evaluation of ordinary business operations.<sup>3</sup>

1 Mo.P.S.C.3d at 205. Property tax increases fail to meet any portion of the criteria. Last year in Case Number GU-2007-0480, In the Matter of the Application of Missouri Gas Energy, a division of Southern Union Company for an Accounting Authority Order Concerning Environmental Compliance Activities, the Commission denied MGE's request for an AAO to defer costs incurred remediating hazardous waste sites. The Commission's December 17, 2008 Report and Order summarized the USOA definition of extraordinary:

Thus, for an item to be considered "extraordinary" it must: (1) be of unusual nature; (2) be of infrequent occurrence; (3) be of significant effect; (4) be abnormal and significantly different from the ordinary and typical activities of the company; and (5) not reasonably be expected to recur in the foreseeable future.

The Kansas property taxes clearly do not satisfy the definition of extraordinary items that may be deferred under USOA General Instruction Number 7.

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<sup>2</sup> In the Matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Electrical Operations. In the matter of the Application of Missouri Public Service for the Issuance of an Accounting Order Relating to its Purchase Power Commitments, 1 Mo.P.S.C. 3d 200, 205 (1991).

<sup>3</sup> *Id.*

5. **Typical and ordinary business expense:** MGE already pays property taxes and other taxes, and therefore property taxes on gas held in storage are not “abnormal and significantly different from the ordinary and typical activities of the company” as required by the USOA for deferral. Property tax expenses are not extraordinary or unusual expenses, but are a normal part of the ordinary business operations of a regulated local distribution company. The USOA adopted by the Commission has two accounts that deal with property taxes, Account 236 Taxes Accrued and Account 408.1 Taxes (other than income taxes). Moreover, MGE has a certain level of property tax expense built into its revenue requirement. As noted by this Commission in Case Number WA-98-187, In the Matter of the Application of United Water Company, Inc. for an Accounting Authority Order Relating to FAS 106, “[i]t is not appropriate for a utility to defer normal, ongoing expense items. If a utility is allowed to defer those ongoing costs, it will result in the recouping of past losses in a subsequent rate case.”<sup>4</sup> The USOA definition of extraordinary items explicitly prohibits the deferral of typical and customary business activities. MGE’s application should be dismissed because property taxes are not extraordinary items and therefore are not appropriate for deferral because recoupment of past losses in a future rate case is not appropriate for typical and customary business activities.

6. **Recurring expense:** The USOA definition of extraordinary also requires that the item would not recur in the foreseeable future. The Kansas property tax expense would recur annually (MGE Application, p.4, paragraph 13), and would fail to satisfy the requirement that extraordinary items be non-recurring. MGE’s application should be dismissed because property taxes are not extraordinary items and therefore are not

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<sup>4</sup> Report and Order, p. 6, April 20, 1999.

appropriate for deferral because recoupment of past losses in a future rate case is not appropriate for expenses that will recur annually.

7. **Unknown and un-measurable.** MGE has not been assessed property taxes on gas held in storage under the new Kansas legislation, and therefore the tax is not known and measurable. (MGE Application, p.3, paragraph 8). It is premature to grant an AAO deferral on an unknown tax amount that MGE may or may not incur.

8. A Commission order allowing MGE to defer Kansas property taxes will reduce MGE's incentive to continue challenging the tax in Kansas.

9. If the Commission does not dismiss MGE's Application, OPC requests that the Commission set this matter for hearing to allow OPC to file prepared testimony to support its position that the property taxes at issue are not appropriate for the extraordinary treatment requested by MGE.

WHEREFORE, the Office of the Public Counsel respectfully requests that the Commission dismiss MGE's request for an AAO, or in the alternative, direct the parties to agree upon a proposed procedural schedule that includes an evidentiary hearing.

Respectfully submitted,  
OFFICE OF THE PUBLIC COUNSEL

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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 6<sup>th</sup> day of August 2009:

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