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 Accounting Authority Order concerning the Kansas Property Tax for Gas in Storage.	))))))	Case No. GU-2005-0095

STAFF'S REPLY BRIEF

Staff believes that its position is adequately set out in its brief. Thus, Staff will make only a short response to both the Office of the Public Counsel and to Missouri Gas Energy.

I. Reply to Office of the Public Counsel

Public Counsel asserts that the property tax is a normal, recurring, known and measurable item in the usual course of business of MGE. Property taxes are a familiar item in the test year of every MGE rate case. But, Public Counsel also asserts that property taxes are not known now, and will not be known until the resolution of litigation in Kansas. Thus, property tax could not be properly included in expense if MGE were to file a rate case today. How can such seemingly contradictory positions be maintained? The answer is equivocation.

Equivocate means "[T]o use a word in more than one application or sense; to use words of double meaning; to deal in ambiguities." Compact Edition of the Oxford English Dictionary; Volume I, p. 888; Oxford University Press; (1971). When we confuse the different meanings a single word or phrase may have, or use a word or phrase in different senses in the same context,

we are using it equivocally, *Logic for Lawyers*; p. 11-3; Ruggero J. Aldisert; Clark, Boardman Callaghan; (1992). In this case, Public Counsel shifts the meaning of "property tax" from the Missouri property tax (a known, measurable, normal and recurring expense always included in MGE test years) to the Kansas property tax (not known, not found in any MGE test year) without alerting the reader that he has done so. The Kansas property tax will remain an unusual and non-recurring event until such time as it finally passes judicial muster; conflating it with the Missouri property tax does not change it.

Public Counsel makes much of a $400,000 allowance for Kansas property taxes in MGE's 2001 rate case. Staff admits to embarrassment that in settling Case No. GR-2001-292 it cited the Kansas property tax as support for a $400,000 increase to MGE's revenue requirement. Staff's gaffe in that case, however, did not and does not transform the Kansas property tax into a known, measurable, normal and recurring expense. That case merely illustrates the importance of the policy that expenses be both known and measurable before use as support for revenue requirement.

As Public Counsel has acknowledged, for this case, the Kansas property tax will remain an unknown item until final judicial resolution of the challenges to it. Likewise, whether it recurs will not be known until the summer of 2006. Because it is also a material item, the Commission should authorize MGE to defer the 2004 and 2005 Kansas property taxes.

II. In Reply to MGE

MGE's argument that amortization of Kansas property tax deferrals should be delayed until 2008 is premised on an unspoken, unwritten assumption that it has a right to recover all of

the AAO deferrals directly in rates. MGE cites no authority for this premise on the amortization of this AAO, and the reason for this shortcoming is simple - there is no such authority.

Authority, in fact, contravenes MGE's unspoken assertion. The Court of Appeals has twice affirmed that granting of an AAO does not constitute a promise on the issue of later rate recovery. *State ex rel. Office of the Public Counsel v. Public Service Commission*, 858 S.W. 2d 806 (Mo App. 1993); *Missouri Gas Energy v. Public Service Commission*, 978 S.W. 2d 434 (Mo. App. 1998). In disposing of MGE's Points I (collateral estoppel invoked to preclude Commission from allowing less than full recovery of deferral) and IV (denial of full recovery constituted a retrospective law), the *MGE* Court cited *Public Counsel* for the proposition that the grant of an AAO does not create a binding expectation of later rate recovery. 978 S.W 2d at 438, 439.

Commission orders granting AAOs are in accord. For example, in Case No. WO-2002-273, granting an AAO to Missouri American Water, the Commission noted:

> The immediate and primary benefit of an AAO to the utility is that the deferred item is booked as a regulatory asset rather than as an expense, thereby improving the financial picture of the utility during the deferral period. The regulatory asset is amortized over a prescribed interval and a portion is recognized as an expense each month. A secondary and more remote benefit of an AAO is that, during a subsequent rate case, the Commission may permit recovery in rates of some portion of the amount deferred. However, it is well-established that the mere granting of an AAO does not guarantee recovery of any amount of the deferral.

See, also, *In the matter of Missouri Cities Water Company*, 2 MPSC 3d 60 (1993); *In re Union Electric*, 1 MPSC 3d 328, 330 (EO-92-179) (1992); GO-2002-0048; *In the matter of the application of Missouri Public Service*, 1 MoPSC 3d 200, 203-204 (1991).

Prompt amortization of any deferral under this AAO balances the interests of patrons and the utility (§386.610); preserves the primary benefit of an AAO (deferring the immediate charge

to earnings); mitigates against a possible large later write-off; and permits the possibility of a later, albeit reduced, direct recovery in rates.

WHEREFORE, the Staff renews its recommendation that the Commission authorize MGE to defer the 2004 and 2005 property tax on its gas stored in Kansas; and order MGE to amortize any deferral over 60 months, beginning in the month following the final judicial decision on the lawfulness of the tax.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 10th day of May, 2005.

/s/ Thomas R. Schwarz, Jr.