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**

REPORT AND ORDER

Issue Date: September 8, 2005

Effective Date: September 18, 2005

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For the Staff of the Missouri Public Service Commission

REGULATORY LAW JUDGE: Morris L. Woodruff

REPORT AND ORDER

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Summary

This report and order grants Missouri Gas Energy an Accounting Authority Order to permit it to defer its expenses incurred to pay property taxes on natural gas held in storage in the state of Kansas. Missouri Gas Energy will be allowed to defer taxes paid for tax years 2004, 2005, and 2006. The company will be required to begin amortization of the deferred amounts at the beginning of the month following a final judicial determination of the legality of the Kansas property taxes. Amortization must occur over a five-year period.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact. The Commission in making this decision has considered the positions and arguments of all of the parties. Failure to specifically address a piece of evidence, position, or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Procedural History

On October 10, 2004, Missouri Gas Energy, a division of Southern Union Company (MGE), filed an application for an accounting authority order (AAO) that would authorize deferred accounting treatment for certain new property taxes incurred by MGE in the state of Kansas for natural gas held in storage in that state. On October 14, the Commission issued notice of MGE's application and established November 4 as the deadline for the submission of applications to intervene. A timely application to intervene was filed by the Midwest Gas Users' Association.[1] The Commission allowed that organization to intervene on November 9.

The parties prefiled direct, rebuttal, and surrebuttal testimony. An evidentiary hearing was held on March 8, 2005. Initial post-hearing briefs were submitted on April 26, with reply briefs filed May 10. Midwest Gas Users' Association did not participate in the hearing and did not file briefs.

Overview

MGE is a division of Southern Union Company. As a division, MGE has no separate corporate existence apart from Southern Union. MGE's divisional headquarters is located in Kansas City, Missouri, and it provides natural gas service to customers in Kansas City, Joplin, St. Joseph, and other smaller cities in the western half of Missouri. MGE does not serve customers in the state of Kansas. MGE is a local distribution company, sometimes referred to by the acronym LDC. That means that MGE purchases natural gas from a

[1] The Midwest Gas Users' Association is an unincorporated non-profit association consisting of and representing business concerns and corporations that are substantial users of natural gas.

supplier, pays to transport the gas to Missouri over one or more interstate pipelines, and then distributes the natural gas to its customers in this state.

As a part of its routine operations, MGE keeps a portion of its natural gas supply in storage in underground formations in the state of Kansas. In June of 2004, the Kansas legislature enacted a law that permits Kansas counties to assess property taxes against the value of natural gas held in storage in that county.[2]

The law enacted in 2004 was not Kansas' first attempt to tax natural gas held in storage in that state. Kansas had attempted to assess and collect property taxes on such gas before 2003. However, in October 2003, the Kansas Supreme Court issued a decision, in an appeal brought by MGE and other companies, in which it held that out-of-state natural gas distributors, such as MGE, were entitled to a merchant's inventory exemption from the property tax by the terms of the Kansas constitution.[3] The 2004 law was enacted as an attempt to close that loophole.

Before it successfully obtained an exemption to the Kansas property tax on gas in storage as a result of the Kansas Supreme Court decision, MGE had anticipated including that tax in its cost of service for the purpose of calculating its rates. In the rate case filed in 2000 – Case No. GR-2001-292 – the Commission's Staff included $400,000 for payment of

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[2] House Substitute for Senate Bill No. 147, Noack Revised Schedule MRN-1, Ex. 4.

[3] *In the Matter of the Application of Central Illinois Public Services Company*, 276 Kan 612, 78 P.3d 419 (2003) That decision contains an extensive discussion of the history of the tax on natural gas held in storage in Kansas. In brief, before 1999 Kansas counties were able to collect such taxes from the interstate pipeline companies that held title to the storage gas. In 1999, the FERC issued Order 636 that unbundled the interstate pipeline industry and prohibited the interstate pipeline companies from holding title to the storage gas. The Kansas Supreme Court's decision held that the out-state gas distribution companies, such as MGE, that now held title to the storage gas, did not meet the Kansas constitution's definition of a utility and as a result, MGE and the other plaintiff's were entitled to an exemption from the tax.

Kansas property taxes in its calculation of MGE's annual revenue requirement.[4] However, that case was settled by a stipulation and agreement among the parties by which they agreed upon an appropriate dollar amount of revenue to allow MGE to recover in its rates. The settlement did not specify the individual items that went into the revenue requirement and Kansas property taxes never became an issue.[5]

MGE filed its next rate case – Case No. GR-2004-0209 – in November 2003. At that time, Kansas was not imposing a property tax on storage gas. As a result, such a tax was not included in any party's calculation of MGE's revenue requirement relating to property taxes. A contested hearing was held in GR-2004-0209 from June 21 through July 2, 2004. Because the Kansas legislature did not pass a statute that attempted to reimpose the property tax until that hearing was underway, the tax never became an issue at that stage of the hearing.

The hearing did not, however, end on July 2. On July 23, 2004, the Commission held a "true-up" hearing in GR-2004-0209 for the purpose of updating certain costs on several issues identified by the parties before the main hearing. Property taxes were not identified as a true-up issue.[6] Nevertheless, MGE attempted to include the additional costs it would incur as a result of the newly imposed Kansas property taxes in its revenue requirement for the first time at the true-up hearing.

At the true-up hearing in GR-2004-0209, the Commission's Staff argued that while the new Kansas property taxes should not be included in MGE's revenue requirement for

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[4] Transcript page 108, lines 7-25.

[5] Transcript page 208, lines 18-22. The entire stipulation and agreement is exhibit 17.

[6] Transcript, pages 48-53.

that case, it would be appropriate for the Commission to grant MGE an AAO to allow those new taxes to be deferred for consideration in a future rate case. MGE indicated that it was willing to accept an AAO as a substitute for immediate inclusion of the taxes in the company's revenue requirement. Public Counsel and other parties to that rate case flatly opposed both the inclusion of the Kansas taxes in the revenue requirement and the issuance of an AAO.

In its Report and Order in GR-2004-0209, issued September 21, 2004, the Commission held that the new Kansas property taxes could not be included in MGE's revenue requirement for that case. As the basis for that decision, the Commission indicated that MGE's potential tax liability was not currently known or measurable. As a further basis for its decision, the Commission found that property taxes had not been included as a true-up issue and as a result, opposing parties had not received adequate notice of that issue, or of the question of the issuance of an AAO, to allow those issues to be considered in that case. The Commission did, however, indicate that if MGE wished to request an AAO, it should file a separate application, to which the Commission would give due consideration. The application for an AAO that is the subject of this case followed a few weeks later.

The Specifics of the Requested AAO

The amount of taxes assessed to MGE by Kansas is based on the value of the gas in storage as of December 31 for each year. Because it is based on the value of the stored gas, the amount of tax owed will fluctuate in future years as the value of the gas goes up and down.[7] For 2004, the first year for which the tax will be owed, MGE has been

[7] Transcript, page 63, lines 3-8.

assessed and billed a total of $1,721,830.[8] The full amount of the assessed and billed taxes have been recorded on MGE's books as an expense as of December 2004.[9]

The amount of taxes that Kansas seeks to impose on MGE is substantial in relation to MGE's annual income. The amount assessed for taxes in 2004 represents 9.03% of MGE's net income for 2004.[10] MGE has a history of failing to earn its allowed rate of return and if it is unable to recover the cost of paying the Kansas property taxes it is even less likely to earn the rate of return that the Commission authorized in the company's most recent rate case.[11]

MGE has appealed its tax bill to the Kansas Board of Tax Appeals, as well as to the Kansas courts.[12] As a result, although the full amount of taxes for 2004 have been recorded as an expense on MGE's books, MGE will not actually have to pay the assessed taxes until after its scheduled hearing with the Board of Tax Appeals.[13] MGE anticipates receiving a final decision on its tax appeal in mid-2006.[14]

If the Commission grants the AAO that MGE requests, MGE would move the Kansas taxes that are currently booked as expenses into a deferred account. If MGE is successful in overturning the Kansas tax, then the deferred amounts would simply be written off against the payable that is also booked, with no effect on the companies earnings.[15] If, on

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[8] Noack Direct, Ex. 1, page 3, lines 1-4.

[9] Noack Direct, Ex. 1, page 3, lines 11-14.

[10] Noack Direct, Ex. 1, page 6, lines 18-20.

[11] Noack Direct, Ex. 1, Page 7, lines 12-21.

[12] *See.* Exhibit 12.

[13] Transcript, page 54, lines 8-10.

[14] Transcript, page 79, lines 6-12.

[15] Transcript page 63, lines 12-23.

the other hand, the legality and constitutionality of the Kansas tax is upheld, MGE would be able to ask the Commission to allow it to recover those deferred costs in its next rate case. Of course, if the Kansas property taxes are upheld, MGE would also be responsible for paying those taxes in future years.

Generally, the property taxes paid by a utility are considered to be a cost of doing business. The utility is allowed to recover those costs from its customers when those costs are included in the company's cost of service, which is used to establish the rates that the company will be allowed to charge. For example, MGE's cost of service established in its most recent rate case, GR-2004-0209, includes a normalized amount for payment of Missouri property taxes. If MGE were to file a new rate case, an estimation of the amount of Kansas property taxes MGE would be required to pay could simply be added to the existing property tax amount and those additional costs would be recovered from ratepayers. In that circumstance, there would be no need for an AAO.

There are, however, a couple of barriers that will make it difficult for MGE to recover for the Kansas taxes that it must pay simply by filing a new rate case. First, rate cases are expensive. For its last rate case, which ended in October 2004, MGE was allowed to recover nearly $900,000 from its ratepayers, amortized over a three-year period.[16] Filing a new rate case to recover the cost of paying the Kansas property taxes so soon after MGE's last rate case would impose a substantial financial cost on MGE's ratepayers.

The second barrier to recovering the Kansas property tax costs through a new rate case results from the uncertainty regarding the legality of the imposition of those taxes

[16] Transcript, pages 64-65, lines 17-25, 1-2.

against MGE. For a cost to be included in a utility's cost of service for the purpose of calculating the utility's rates, that cost must be both known and measurable.

MGE's Kansas property tax bill is currently measurable; MGE knows how much it has been told to pay. But until it is finally determined whether MGE will be required to pay the tax, the actual cost cannot be said to be known. If, in a new rate case, the Commission were to allow MGE to recover the cost of the Kansas taxes, those costs would be built into the company's rates and would result in higher rates charged to customers. If the Kansas taxes were then set aside, the higher rates would remain in effect, even though the higher costs had gone away. The result could be a windfall for the company and a detriment to ratepayers. For that reason, both Public Counsel and Staff indicate that they would oppose inclusion of the cost of paying Kansas property taxes in MGE's cost of service until the question of the legality of those taxes has been finally resolved.

Amortization

Assuming that MGE is allowed to defer the cost of paying its Kansas property taxes through an AAO, an additional issue arises concerning the amortization of that expense. It would not be appropriate to allow MGE, or any other utility, to defer an expense forever. At some point, the regulatory asset that is created through an AAO must be recognized as an expense. Usually that asset is turned back into an expense over a period of years through an amortization process. In other words, a percentage of the total cost is recognized as an expense in each subsequent year.

Once amortization begins the utility starts to lose the benefit of the AAO unless that expense is recognized in the company's rates through the filing of a rate case. It is entirely possible that a deferred expense could be amortized out of existence before a company

chooses to file a rate case. Indeed, that might be an appropriate result if the company is earning enough income to offset the deferred expenses so that it is earning a sufficient return without a rate increase.

MGE originally proposed that the amortization of the Kansas property tax expense begin on the effective date of the report and order in MGE's next general rate case.[17] Subsequently, in response to Staff's concern that a limit should be placed on the amount of time that the property tax asset could accrue on MGE's books, MGE proposed that if it has not filed its next rate case by May 31, 2008, it would cease further deferrals and begin amortizing the deferred taxes beginning June 1, 2008, with the amortization occurring over a five-year period.[18]

Staff countered that MGE should be required to begin amortizing the deferred Kansas property tax expenses beginning the month after the final judicial resolution of the legality of the Kansas tax. Staff agrees with MGE that the amortization should occur over a five-year period.[19] In addition, Staff would limit the amount of taxes that MGE could defer under the AAO to the taxes paid for the years 2004 and 2005.[20] Although Public Counsel opposes the granting of an AAO, if such an AAO is granted, it supports Staff's proposal regarding the period of deferral and amortization.[21]

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[17] Noack Direct, Ex. 1, page 8, lines 12-14.

[18] Noack Rebuttal, Ex. 2, page 4, lines 10-16.

[19] Hyneman Direct, Ex. 5, page 3, lines 3-6.

[20] Hyneman Surrebuttal, Ex. 6, page 2, lines 3-7.

[21] Bolin Rebuttal, Ex. 7, pages 12-13, lines 20-22, 1-20.

MGE estimated that under Staff's proposal it would be required to amortize approximately $57,000 per month once amortization began.[22] Unless MGE is able to incorporate that expense into its rates through a rate case by the time amortization begins, it will not be able to recover that expense from its ratepayers. Assuming that a final judicial decision on the legality of the Kansas property taxes will be obtained sometime in the summer of 2006, and that a rate case would need to be filed eleven months before the proposed rates could go into effect, under Staff's proposal, MGE would need to file a rate case in the late summer of 2005 if it is to recover all of the deferred expenses.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law.

MGE is a public utility, and a gas corporation, as those terms are defined in Section 386.020(42) and (18), RSMo 2000. As such, MGE is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

The Standard for Granting an AAO

As a gas company subject to the Commission's jurisdiction, MGE is required by regulation to keep all its accounts in conformity with the Uniform System of Accounts (USOA) prescribed by the Federal Energy Regulatory Commission.[23] In general, the USOA requires that a company's net income reflect all items of profit or loss occurring during the period. The USOA, however, recognizes that special accounting treatment, what this Commission refers to as an AAO, may be appropriate when accounting for

[22] Noack Rebuttal, Ex. 2, page 3, line 18.

[23] 4 CSR 240-40.040. The USOA for gas companies is found at 18 CFR part 201.

extraordinary items of profit or loss. The question then becomes, what is an extraordinary item?

The USOA indicates that an extraordinary item for which special accounting treatment would be appropriate is "of unusual nature and infrequent occurrence." Furthermore, "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 addition, the USOA requires that to be considered extraordinary, the item "should be more than approximately 5 percent of income, computed before extraordinary items."[24]

The Commission has also established a test to determine when an AAO should be granted. In a 1991 decision, often referred to as the Sibley case,[25] the Commission stated that it would consider the appropriateness of granting an AAO on a case by case basis. In doing so, it would approve an AAO for events that it found to be "extraordinary, unusual and unique, and not recurring."[26] The Commission's decision in the Sibley case was subsequently affirmed by the Missouri Court of Appeals.[27]

The classic example of an event that would be extraordinary, unusual and unique, and not recurring would be a fire, or flood, or ice storm that causes a large amount of damage to the utility's property. In those circumstances, it is generally agreed that the company should be permitted to defer the costs related to that extraordinary event through

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[24] 18 CFR part 201, general instruction 7.

[25] *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 MPSC 3d 200 (1991)

[26] *Id*. at 205.

[27] *State ex rel. Public Counsel v. Public Service Commission*, 858 S.W. 2d 806 (Mo. App. W.D. 1993)

an AAO.[28] However, the Commission has never limited the granting of an AAO to expenses resulting from such natural catastrophes.

On the contrary, the Commission has found that an AAO would be appropriate in a wide variety of circumstances. For example, in the Sibley case – the case in which the Commission set out its standards for the granting of an AAO – the Commission approved an AAO for the deferral of costs relating to refurbishment of the company's coal-fired generating plant.[29] Similarly, the Commission has granted an AAO for the deferral of costs related to a company's compliance with changed accounting standards,[30] and for a company's costs incurred to enhance security after the terrorist attacks of September 11, 2001.[31]

On several occasions, the Commission has granted AAOs authorizing deferral of costs relating to actions that a utility has been required to take as a result of governmental orders, regulations, or statutes. For example, the Commission has granted AAOs for costs related to a company's compliance with emergency amendments to the Commission's cold

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[28] For an example see: *In the Matter of Aquila Inc.'s Application for the Issuance of an Accounting Authority Order Relating to its Electrical Operations in the Aquila Networks-MPS Division as a Result of a Severe Ice Storm.* Order Granting Accounting Authority Order, Case No. EU-2002-1053 (June 27, 2002)

[29] *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 MPSC 3d 200 (1991)

[30] *In the Matter of the Application of Union Electric Company for an Accounting Authority Order.* 1 MPSC 3d 329 (1992)

[31] *In the Matter of the Joint Application of Missouri-American Water Company, St. Louis Water Company, d/b/a Missouri-American Water Company, and Jefferson City Water Works Company, d/b/a Missouri-American Water Company, for an Accounting Authority Order Relating to Security Costs.* Report and Order on Remand, Case No. WO-2002-273 (November 10, 2004)

weather rule,[32] and for expenses related to a company's compliance with a gas safety line replacement program.[33]

DECISION

After applying the facts as it has found them to its conclusions of law, the Commission has reached the following decisions regarding the issues identified by the parties.

The Granting of an AAO is Appropriate

Based on the Sibley standard that the Commission has applied to requests for AAOs for the last fifteen years, an AAO is appropriate if MGE demonstrates that the costs to be deferred are "extraordinary, unusual and unique, and not recurring." In this case, the costs that MGE seeks to defer are property taxes. In most cases, the payment of property taxes by a utility would not be a fit subject for an AAO. MGE, like all investor-owned utilities, routinely pays property taxes. Again, like all other investor-owned utilities, MGE is routinely allowed to recover the taxes it pays from its ratepayers through the inclusion of those tax payments in its cost of service when its rates are calculated in a rate case.

The Kansas property tax on gas held in storage in that state is unusual in that MGE, which does not serve customers in Kansas, has never before had to pay property tax in Kansas. However, if the Kansas taxes are found to be legal in the ongoing court challenge,

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[32] *In the Matter of the Application of UtiliCorp United, Inc., d/b/a Missouri Public Service and St. Joseph Light and Power Company for an Accounting Authority Order Relating to Commission Rule 4 CSR 240-13.055(13).* 11 MPSC 3d 78 (2002), and *In the Matter of the Application of Missouri Gas Energy, a Division of Southern Union Company, for an Accounting Authority Order Relating to Commission Rule 4 CSR 240-13.055(13),* 11 MPSC 3d 317 (2002)

[33] *In the Matter of the Tariff Revisions of Missouri Gas Energy, a Division of Southern Union Company, Designed to Increase Rates for Natural Gas Service to Customers in the Missouri Service Area of the Company.* 10 MPSC 3d 369 (2001).

and MGE is required to pay the tax, it should be able to recover those tax payments for future years through its rates when it includes those taxes in its cost of service in a future rate case.

The problem is that, at the moment, MGE could not include the Kansas taxes in its cost of service even if it were to immediately file a new rate case. As a general rule, for an item of cost to be included in a utility's cost of service, that item of cost must be both known and measurable. A utility's customers should not be expected to pay, through their rates, for costs that are speculative and might never actually be incurred. MGE's Kansas tax liability is now measurable – it has received a bill from the Kansas tax authorities for the 2004 year, and future tax bills can be estimated – but its Kansas tax liability is not yet known because of the uncertainty resulting from the ongoing legal challenge. If MGE prevails in court, it may never have to pay the Kansas property taxes.

The amount of taxes that MGE might have to pay in Kansas is significant, both to MGE and to its ratepayers. It would not be appropriate to allow MGE to recover millions of dollars from its ratepayers for taxes that it might never have to pay. On the other hand, these taxes are a legitimate cost of doing business for which the ratepayers should be responsible. It would not be fair to MGE's shareholders to shift that burden on to them if those taxes ultimately must be paid. Furthermore, it was MGE's decision to challenge the legality of the Kansas taxes, a decision that could greatly benefit its ratepayers, that has placed MGE in this difficult position. If MGE had accepted the Kansas taxes without challenge, it could have simply passed the added taxes on to its ratepayers by filing a rate case. Instead, by looking out for the interest of its ratepayers, it has created the possibility that it will not be able to recover several million dollars to which it would otherwise be

entitled. It is that conundrum that makes an AAO the appropriate means for dealing with the potential Kansas tax liability.

By granting MGE an AAO, it will be allowed to defer the cost of paying the Kansas property taxes for consideration in a future rate case after the legality of those taxes is determined and the costs are known and measurable. If those taxes are found to be illegal and MGE does not have to pay them, then the deferred amounts will simply be written off the balance sheet and neither the ratepayers nor the shareholders will be harmed. If, on the other hand, MGE ultimately must pay the taxes, it will be able to make its case for the inclusion of its additional tax liability into its cost of service in a future rate case.

This uncertainty surrounding MGE's obligation to pay a significant amount of taxes is an unusual and unique situation that is not likely to recur. As such it meets the Sibley standard for the granting of an AAO and the granting of such an AAO is appropriate.

The Period of Deferral and Amortization

The Commission has found that an AAO should be granted to allow MGE to defer recognition of its Kansas property tax obligations because of the uncertainty surrounding its ultimate obligation to pay those taxes. Once the legality of those taxes is resolved by the appropriate court, that uncertainty goes away and the Kansas property taxes become just another item of expense. At that point the need for the AAO also goes away and the deferral must end.

MGE argues that the deferral should be allowed to continue until it is in a position to file its next rate case because otherwise it will not be able to recover the full amount of the deferred expenses from its customers in rates. That argument is not compelling because an AAO is not a guarantee that the company will be able to recover all of its deferred

expenses in rates. Indeed, under some circumstances the expenses deferred under an AAO may never be recovered in rates. If MGE wishes to recover its Kansas property tax expenses in its rates, it controls the date when it will file a rate case. Once the uncertainty surrounding the Kansas property taxes is judicially resolved, MGE is free to file a rate case at a date of its choosing to attempt to recover those costs. It would not be appropriate to continue the deferral just to allow MGE more time to file a rate case.

Furthermore, an extended deferral period increases the mismatch between the customers who benefit from the payment of the Kansas property taxes, and the customers who will be asked to pay for those costs. Obviously, MGE had customers in 2004 who will no longer be customers in 2008. The reverse is also true. MGE will have customers in 2008 who were not customers in 2004. By deferring costs from 2004 to 2008, the customers of 2008 will be required to subsidize the customers of 2004.

Any AAO creates a mismatch and resulting subsidization. For that reason, the deferral should not be allowed to continue any longer than necessary. An inappropriately long deferral period will only increase the mismatch. Since several million dollars would be deferred each year under the AAO, each year of deferral will substantially increase the subsidization.

For those reasons, the Commission agrees with Staff's position and will require MGE to start amortization of the deferred Kansas property tax expense beginning the month after the final judicial resolution of the legality of that tax.

In addition to requiring that MGE start amortization of the deferred Kansas property tax expenses promptly after final determination of the legality of that tax, Staff proposes that the company be allowed to defer only two years of taxes. In other words, MGE would

be allowed to defer Kansas property taxes only for the 2004 and 2005 tax years. However, since a judicial decision regarding the legality of the tax is not expected until the summer of 2006, a two-year limit on deferral of those expenses would unfairly deny MGE a portion of the benefit of the AAO. Therefore, the Commission will allow MGE to defer Kansas tax expenses for three years, 2004, 2005, and 2006.

IT IS THEREFORE ORDERED:

1. That Missouri Gas Energy, a division of Southern Union Company, is granted an Accounting Authority Order whereby the company is authorized to record on its books a regulatory asset, which represents the expenses associated with the property tax to be paid to the state of Kansas pursuant to Senate Bill 147 for tax years 2004, 2005, and 2006. Missouri Gas Energy may maintain this regulatory asset on its books until the beginning of the month after the final judicial resolution of the legality of that tax. Thereafter, Missouri Gas Energy shall commence amortization of the deferred amounts, with the amortization to be completed over a five-year period.

2. That nothing in this order shall be considered a finding by the Commission of the value or prudence for ratemaking purposes of the properties, transactions, and expenditures herein involved. The Commission reserves the right to consider any ratemaking treatment to be afforded the properties, transactions, and expenditures herein involved in a later proceeding.

3. That any pending motions that the Commission has not specifically ruled upon are denied.

4. That this report and order shall become effective on September 18, 2005.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray and Appling, CC., concur;
Gaw and Clayton, CC., dissent;
certify compliance with the
provisions of Section 536.080, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 8th day of September, 2005.