

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 26th day  
of August, 2009.

In the Matter of the Application of Missouri Gas	)	
Energy, a Division of Southern Union Company	)	
for an Accounting Authority Order Concerning	)	<b><u>File No. GU-2010-0015</u></b>
Kansas Property Tax for Gas in Storage	)	

**ORDER DENYING MOTION TO DISMISS, RELIEVING STAFF OF THE  
OBLIGATION TO FILE A RECOMMENDATION, AND SCHEDULING A  
PREHEARING CONFERENCE**

Issue Date: August 26, 2009

Effective Date: August 26, 2009

On July 13, 2009, Missouri Gas Energy, a division of Southern Union Company (MGE), applied for an accounting authority order (AAO) that would authorize deferred accounting treatment for the cost of certain new Kansas property taxes on the value of natural gas stored in Kansas. On August 6, the Office of the Public Counsel filed a motion asking the Commission to dismiss MGE's application, or in the alternative, to set this matter for hearing. MGE responded to Public Counsel's motion on August 14.

Public Counsel argues the Commission should dismiss MGE's application because the property tax expenses for which MGE seeks accounting authority are not extraordinary or unique expenses and thus are not an appropriate subject for an AAO. Public Counsel further contends MGE's request for an AAO is premature because no taxes have yet been assessed and the amount of any future tax is not known and measurable. MGE responds that the new Kansas property taxes are significant, unique, and extraordinary and,

therefore, appropriate for deferral under an AAO. MGE also points out that in 2005, the Commission granted MGE an AAO regarding a previous attempt by Kansas to impose similar property taxes.<sup>1</sup>

Public Counsel's motion is in substance a motion to dismiss for failure to state a cause of action. The Missouri Supreme Court indicates a motion to dismiss for failure to state a cause of action:

assumes that all of plaintiff's averments are true, and liberally grants to plaintiff all reasonable inferences therefrom. No attempt is made to weigh any facts alleged as to whether they are credible or persuasive. Instead, the petition is reviewed in an almost academic manner to determine if the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case.<sup>2</sup>

If the allegations in MGE's application are accepted as true, as they must be for purposes of considering the motion to dismiss, it is apparent that MGE has stated a cause upon which the Commission can grant relief. The Commission has a great deal of discretion to determine whether an AAO is appropriate, and only after hearing the evidence and arguments of the parties can the Commission determine whether MGE should be granted the accounting authority it requests. Therefore, the Commission will deny Public Counsel's motion to dismiss so that this matter can proceed toward a hearing.

Before Public Counsel filed its motion to dismiss, the Commission ordered its Staff to file a recommendation regarding MGE's application for an AAO by September 8. Since the Commission will be scheduling a hearing, Staff will have an opportunity to state its position through the hearing process. As a result, a separate Staff recommendation is no longer

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<sup>1</sup> *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*. 14 Mo. P.S.C.3d 1 (2005).

<sup>2</sup> *State ex rel Union Elec. Co. v. Dolan*, 256 S.W.3d 77, 82 (Mo. 2008), quoting, *Reynolds v. Diamond Foods & Poultry, Inc.*, 79 S.W.3d 907, 909 (Mo. banc 2002).

necessary or appropriate. Therefore, the Commission will relieve Staff of its obligation to submit a recommendation.

In order to move this matter toward resolution, the Commission will schedule a prehearing conference at which the parties shall develop a proposed procedural schedule.

**THE COMMISSION ORDERS THAT :**

1. The Office of the Public Counsel's Motion to Dismiss Missouri Gas Energy's Request for an Accounting Authority Order is denied.

2. The Commission's Staff is relieved of its obligation to file a recommendation by September 8, 2009.

3. A prehearing conference shall be held on September 11, 2009, beginning at 10:00 a.m., in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. This conference will be held in a building that meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this conference, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the conference.

4. This order shall become effective immediately upon issuance.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Clayton, Chm., Davis, Jarrett,  
Gunn, and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge