BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of Southern Union Company d/b/a)
Missouri Gas Energy's Application for Waiver/Variance)

File No. GE-2011-0282

NOTICE OF CONTESTED CASE ORDER DENYING MOTIONS FOR SUMMARY DETERMINATION AND DIRECTING FILING

Issue Date: September 28, 2011

Effective Date: September 28, 2011

On August 19, 2011, the Office of the Public Counsel filed a motion for summary determination requesting the Commission to deny Missouri Gas Energy's ("MGE") application for a waiver or variance. On August 25, 2011, the Commission's Staff filed suggestions supporting Public Counsel's motion. On September 19, 2011, MGE filed its own motion for summary determination.

Because MGE's application seeks a determination of a legal right that has been challenged, and the law requires a hearing before a decision, this has become a contested case.¹ Although the statutes and Commission regulations allow for a decision without a hearing,² the cross motions for summary determination demonstrate that there are material facts in dispute that the parties will not resolve. Consequently, the Commission will deny the motions and set an evidentiary hearing. The Commission's discovery rules are located at 4 CSR 240-2.090.

¹ A "'[c]ontested case' means a proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing." Section 536.010.4, RSMo Supp. 2010.

² Sections 536.060 and 536.063, RSMo 2000; Commission Rule 4 CSR 240-2.115.

The parties will be directed to file a proposed procedural schedule. The parties are advised that the Regulatory Law Judge presiding over this matter has schedule conflicts with the following days: October 20 & 31 2011; November 1, 10, 17-18, & 29, 2011; December 7 & 28, 2011; January 26 & 31, 2012; February 1-2, 10 & 21-28, 2012; and March 1-2, 21-23 & 29-30, 2012.

THE COMMISSION ORDERS THAT:

- 1. Public Counsel's Motion for Summary Determination is denied.
- 2. Southern Union Company d/b/a Missouri Gas Energy's Motion for Summary Determination is denied.
- 3. No later than October 13, 2011, the parties shall jointly file a proposed procedural schedule.
 - 4. This order shall become effective immediately upon issuance.

BY THE COMMISSION

Steven C. Reed Secretary

(SEAL)

Harold Stearley, Senior Regulatory Law Judge, by delegation of authority under Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri, on this 28th day of September, 2011.