

1 A. Yes. Company's response to OPC Data Request No. 1006 states that a claim has
2 been made on Western Resources Inc., for \$2,500,864.
3

4 Q. DOES PUBLIC COUNSEL HAVE ANY CONCERNS ABOUT THE CLAIM
5 AMOUNT?

6 A. Yes. Public Counsel would be remiss if it did not point out to the Commission that
7 Company did not begin to incur substantial FMGP remediation costs until calendar
8 year ** ** and even then it did not exceed ** ** cumulative until
9 calendar year ** ** (source: Company's response to OPC Data Request No.
10 1004). Because Company did not address the remediation issues in a more timely
11 manner I believe that its claim to Western Resources Inc. is far less that it could
12 have been.
13

14 Q. WHAT WAS THE POTENTIAL LIABILITY AMOUNT FOR WESTERN
15 RESOURCES INC.?

16 A. According to the *Environmental Liability Agreement* between the parties, Western
17 Resources Inc. was liable for up to 50% of \$15 million of costs incurred that
18 exceeded reimbursements from other parties. That is, Western Resources Inc. had
19 a potential liability of up to \$7.5 million. Instead, the current claim is almost \$5
20 million less.
21

22 Q. DOES THE PUBLIC COUNSEL BELIEVE THAT THE COMPANY WAS LAX IN
23 ITS ATTENDING TO THE REMEDIATION ACTIVITIES MORE QUICKLY?

1 A. The undertaking of the remediation activities is an extremely burdensome task and
2 numerous factors must fall in line before the events occur; however, the costs and
3 when they were incurred should not be dismissed. The Company did not
4 undertake a serious level of remediation activities for approximately six (6) to eight
5 (8) years after it was acquired by Southern Union Company in January 1994 (the
6 acquisition of MGE occurred on January 31, 1994 per Company's response to OPC
7 Data Request No. 1150 in MGE Case No. GR-2001-292) even though Article 2(b)
8 of the *Environmental Liability Agreement* states:

9
10 All covered matters discovered by Buyer more than two (2) years
11 following the date of this Agreement shall be the sole responsibility of
12 the Buyer.
13
14

15 By the end of 1996 MGE should have been aware of the areas subject to
16 reimbursements by Western Resources Inc.; however, the time lag that followed
17 before remediation activities were begun in earnest, in effect, has allowed Western
18 Resources Inc., to avoid its liability for costs which Company now requests
19 ratepayers to pay.
20

21 IV. KANSAS PROPERTY TAX ACCOUNTING AUTHORITY ORDER

22 Q. WHAT IS THE ISSUE?

23 A. Company requested an Accounting Authority Order in Missouri Gas Energy Case
24 No. GU-2010-0015 to defer property tax on natural gas held in storage in the State
25 of Kansas.

1

2 Q. WAS THE AAO CASE SUBSEQUENTLY CONSOLIDATED WITH THE INSTANT
3 CASE?

4 A. Yes. The cases were consolidated pursuant to the Commission *Order*
5 *Consolidating Cases* dated September 8, 2009.
6

7 Q. WHAT IS THE PUBLIC COUNSEL'S POSITION REGARDING THE REQUEST
8 FOR THE AAO?

9 A. Public Counsel recommends that the Commission deny the Company's request for
10 the AAO.
11

12 Q. WHY DOES PUBLIC COUNSEL OPPOSE THE REQUEST?

13 A. Company's request attempts to define a normal ongoing cost, i.e., property tax, as
14 something that it is not. For example, an accounting authority order is normally
15 granted because the expense at issue is considered extraordinary, unusual or
16 unique, non-recurring and in some instances material. However, property tax is an
17 expense which is always included in a utility's cost of service when rates are set.
18 The actual future annual amount may go up or it may go down, but it is still a
19 normal ongoing expense which does not meet the requirements necessary to allow
20 it the special accounting treatment an AAO provides.
21

22 Q. WHY DOES THE PROPERTY TAX REQUEST FAIL TO MEET THE
23 REQUIREMENTS FOR COMMISSION AUTHORIZATION OF AN AAO?

1 A. The FERC Uniform System of Accounts, adopted by this Commission, definition of
2 "extraordinary items" is defined in the USOA General Instructions, paragraph
3 15,017, as:

4
5 7. Extraordinary items. It is the intent that net income shall reflect all
6 items of profit and loss during the period with the exception of prior
7 period adjustments as described in paragraph 7.1 in long-term debt as
8 described in paragraph 17 below. Those items relate to the effect of
9 events and transactions which have occurred during the current
10 period and which are not typical or customary business activities of
11 the company shall be considered extraordinary items. Accordingly,
12 they will not be events and transactions of significant effect which
13 would not be expected to recur frequently and which would not be
14 considered as recurring factors in any evaluation of the ordinary
15 operating process of business. (In determining significance, items of
16 similar nature should be considered in the aggregate. Dissimilar items
17 should be considered individually; however, if they are few in number,
18 they may be considered in the aggregate.) To be considered as
19 extraordinary under the above guidelines, an item should be more
20 than approximately five percent of income computed before
21 extraordinary items. Commission approval must be obtained to treat
22 an item of less than five percent as extraordinary.
23
24

25 However, as I stated previously, property tax expense is always included in a
26 utility's cost of service in the development of its rates; thus, it is by definition and
27 normal regulatory ratemaking action, a recurring, ordinary and usual cost.
28 Therefore, the Company's allegation that the expense is unusual and unique
29 (Michael R. Noack Direct Testimony, Case No. GU-2010-0015, page 6, lines 23 -
30 26) is not accurate.
31

32 Q. IS THE EXPENSE AT ISSUE MATERIAL IN RELATION TO COMPANY'S
33 FINANCIAL POSITION?