

1 A. It is my understanding that the Company does not believe that it must fund its  
2 OPEB plans for any excess of FASB 106 expense included in rates over what it  
3 has distributed on a pay as you go basis.  
4

5 Q. WAS THERE AN EXCESS OF EXPENSE INCLUDED IN ITS RATES FOR THE  
6 YEARS SUBSEQUENT TO WHEN COMPANY STOPPED FULLY FUNDING AT  
7 THE LEVEL OF EXPENSE DETERMINED BY FASB 106?

8 A. Public Counsel is in the process of reviewing the data to answer this question.  
9 However, to reiterate the Public Counsel's position, if the amount of OPEB expense  
10 included in rates was greater than the amount Company actually funded its plans,  
11 then Company should be required to fund the plans by that excess amount.  
12 Otherwise, ratepayers have provided Company with a revenue source which it has  
13 not utilized for its intended purpose. Ratepayers should not be required to funnel  
14 monies to the Company for unsupported purposes. Furthermore, a lack of  
15 appropriate funding creates an additional problem in that it likely causes an  
16 unnecessary increase in the annual SFAS 106 plan expense on a going forward  
17 basis because the funds are not available to the plan to earn a return which in turn  
18 lowers the level of the annual expense.  
19

20 III. FORMER MANUFACTURED GAS PLANT REMEDIATION

21 Q. DOES COMPANY'S REQUEST INCLUDE COST RECOVERY FOR  
22 ENVIRONMENTAL ACTIVITIES OTHER THAN FMGP REMEDIATION?

1 A. Yes. The Company's request includes costs for other environmental remediation  
2 activities such as; \*\*

3 \*\*

4  
5 Q. IS YOUR TESTIMONY MEANT TO ADDRESS ANY OF THOSE OTHER  
6 ENVIRONMENTAL REMEDIATION COSTS?

7 A. No. This testimony is only related to the remediation activities associated with the  
8 former manufactured gas plant.

9  
10 Q. DOES PUBLIC COUNSEL BELIEVE THAT THE TOTAL COST INCURRED AS  
11 OF THE END OF CALENDAR YEAR 2008 HAVE BEEN INFLATED BY THE  
12 COMPANY?

13 A Yes. Company has failed to explain to the Commission that is has received  
14 favorable tax income treatment for the remediation costs which has in turn lowered  
15 the amount of its actual total costs incurred.

16  
17 Q. HAS SOUTHERN UNION COMPANY BENEFITED FROM FEDERAL AND STATE  
18 TAX LAW WITH REGARD TO INCOME TAX DEDUCTIONS FOR REMEDIATION  
19 COSTS INCURRED?

20 A. Yes. Company's response to OPC Data Request No. 1023 states, in part:

21  
22 Southern Union includes MGE's and all other division's and  
23 subsidiaries' environmental remediation expenses as a business  
24 expense on its tax return which reduces income and creates a  
25 reduction in tax expense (effective rate of 37-38%).

1  
2  
3 And, Company's response to OPC Data Request No. 1011 which referenced the  
4 Company response to OPC Data Request No. 1029 in MGE Case No. GU-2007-  
5 0480 states:  
6

7 Southern Union Company's ("Company") policy is to deduct  
8 qualifying environmental expenditures as paid or incurred pursuant  
9 IRC Section 198 (expired as of 12/31/07 unless extended by  
10 Congress). Environmental deductions are included as an expense in  
11 the Company's consolidated Federal Income tax return and  
12 corresponding state income tax returns. Southern Union's federal  
13 and state tax benefits from these environmental deductions have  
14 averaged approximately 37-38% since acquiring MGE.  
15  
16

17 Q. WHAT IS THE RELEVANCE OF SOUTHERN UNION COMPANY BENEFITTING  
18 FROM THE INCOME TAX DEDUCTION?

19 A. To the extent that the tax deduction lowers Southern Union Company's income tax  
20 expense and payments, it effectively reduces the actual cost of the expenditures  
21 incurred for remediation activities by approximately 37-38%. That is, for every  
22 dollar Southern Union Company spent on remediation activities, the government  
23 subsidization via the tax deduction, reduced its actual cost and cash flow by  
24 approximately 37 to 38 cents.  
25

26 Q. WHAT IS THE AMOUNT OF REMEDIATION COSTS INCURRED THROUGH  
27 THE END OF THE TEST YEAR FOR FMGP CLEAN-UP?



1 A. Company's response to OPC Data Request No. 1004 states that total costs  
2 incurred through the end of 2008, for FMGP activities, are approximately  
3 \*\* \*\* However, the response also shows approximately \*\*  
4 \*\*  
5 activities of which a portion is also likely related to FMGP activities. Lastly, for  
6 calendar year 2008, Company's responses to OPC Data Request No. 1027 and  
7 MPSC Staff Data Request No. 243 show that Southern Union Company allocated  
8 an additional \$223,962 of non-payroll and \$6,502 of payroll costs for insurance  
9 recovery and other activities related to environmental remediation (note: OPC  
10 believes it is possible that similarly allocated costs occurred in prior years).

11  
12 Q. ASSUMING THAT THE COSTS IDENTIFIED IN THE PREVIOUS Q&A ARE  
13 ACCURATE AND ALL FMGP RELATED, WHAT IS THE TOTAL COST  
14 ACTUALLY INCURRED BY SOUTHERN UNION COMPANY FOR FMGP  
15 REMEDIATION?

16 A. The costs identified above total \*\* \*\*, however, when adjusted for the  
17 tax deductions taken (i.e., 37% - 38%) the total cost incurred would approximate

18 \*\* \*\*.

19  
20 Q. WOULD THE TAX SAVINGS BE OFFSET BY TAXES PAID ON INSURANCE  
21 REIMBURSEMENTS?

22 A. Yes. Company's response to OPC Data Request No. 1004 identified  
23 reimbursements of approximately \*\* \*\* (not including the initial

1       \$3,000,000 of costs paid by Southern Union Company pursuant to the MGE  
2       purchase *Environmental Liability Agreement* (attached to my Direct Testimony as  
3       Schedule TJR-2) or offset by costs, to obtain insurance recoveries, some of which  
4       may have already been allocated to MGE via past Corporate allocations). Tax  
5       expense on this amount would have offset the tax deductions so that the net tax  
6       savings would approximate \*\*               \*\* to \*\*               \*\* (i.e., (\*\*               \*\*  
7       less \*\*               \*\*) times 37% - 38%). Thus, total actual costs incurred, but not  
8       reimbursed, as of the end of calendar year 2008 would approximate \*\*               \*\*  
9       to \*\*               \*\* (i.e., \*\*               \*\* less \*\*               \*\* less the net tax  
10       savings).

11  
12   Q.   WILL PUBLIC COUNSEL NEED TO UPDATE THE COMMISSION IN FUTURE  
13       TESTIMONY ON THE AMOUNTS DISCUSSED IN THE TAX DEDUCTION  
14       TESTIMONY ABOVE?

15   A.   Yes. Public Counsel still has questions for the Company regarding its definition of  
16       MGE activities and associated costs as provided in its response to OPC Data  
17       Request No. 1004. Further, Public Counsel requires further clarification from  
18       Company regarding environmental costs allocated from Corporate and deductions  
19       for insurance reimbursements. Company responses to these items may require  
20       some modification of the amounts discussed.

21  
22   Q.   HAS COMPANY SOUGHT TO RECOVER ANY OF THE REMEDIATION COSTS  
23       FROM THE WESTERN RESOURCES, INC.?