

1 OPC believes management is responsible for planning and operating the activities of the Company.
2 If management is unable to or chooses not to implement processes and procedures which would
3 limit the effect of regulatory lag on its finances, the Company should not be protected by the
4 Commission with an effective guarantee of earnings. Therefore, in order that ratepayers and
5 shareholders both share in the effect of regulatory lag, the Public Counsel is recommending that the
6 Company be allowed to earn a return of the SLRP deferred balance, but not a return on the SLRP
7 deferred balance. Also all costs related to the 6th AAO should be disallowed since these costs are
8 being recovered through the Company's Infrastructure System Replacement Surcharge.

9
10 **ENVIRONMENTAL RESPONSE FUND**

11 **Q. WHAT COSTS ARE INCLUDED IN COMPANY'S PROPOSED ENVIRONMENTAL**
12 **RESPONSE FUND?**

13 A. Manufactured gas plant (MGP) remediation costs are included in Company's proposed
14 environmental response fund. MGP remediation costs can be defined as all investigations, testing,
15 land acquisition if appropriate, remediation and/or litigation costs, and expenses or other liabilities,
16 excluding personal injury claims, specifically relating to gas manufacturing facility sites, disposal
17 sites, or sites to which material may have migrated, as a result of the operation or decommissioning of
18 gas manufacturing facilities.

19 **Q. WHY IS THE COMPANY POTENTIALLY LIABLE TO INCUR MANUFACTURED**
20 **GAS PLANT CLEANUP EXPENDITURES?**

21 A. To deal with the contamination and cleanup problems presented by abandoned and/or inactive
22 hazardous waste sites, Congress in 1980 enacted the Comprehensive Environment Compensation

1 and Liability Act (CERCLA or Superfund). CERCLA provided funding and enforcement authority
2 to the Environmental Protection Agency (EPA) to enable it to respond to hazardous substance
3 releases and to enable the EPA to undertake or regulate the cleanup of those hazardous sites where
4 owners/operators were either without resources or unwilling to implement such cleanups. In 1986
5 CERCLA was amended by the Superfund Amendments and Reauthorization Act (SARA) which
6 intensified Superfund activities and set a goal of achieving "permanent" solutions at Superfund
7 sites. CERCLA imposes strict, joint and several liability on present or former owners or operators
8 of facilities where substances have been or are threatened to be released into the environment.
9 Potentially responsible parties (PRP) included owners of contaminated land from point of
10 contamination to date, operators (which is interpreted as any party that had possession, control, or
11 influence over the premises during the same period), transporters, and generators of the
12 contaminants regardless of whether they directly released such substances into the environment.

13 **Q. HOW MANY MGP SITES IS MISSOURI GAS ENERGY A POTENTIALLY**
14 **RESPONSIBLE PARTY?**

15 **A.** Missouri Gas Energy has recognized that it currently has ownership interests in six sites that could
16 require potential responsibility for cleanup efforts. In addition to the currently owned sites, the
17 Company has identified 14 unowned facilities which may or may not involve it as a potentially
18 responsible party under the Superfund statute. A list of the MGP sites are contained in the
19 attached highly confidential Schedule KKB-2, which is Missouri Office of Public Counsel data
20 request number 1030.

1 Q. WHAT IS THE AMOUNT THAT MISSOURI GAS ENERGY PROPOSES
2 INCLUDING IN ITS COST OF SERVICE FOR MANUFACTURED GAS PLANT
3 REMEDIATION COSTS?

4 A. The Company has proposed including \$750,000 annually.

5 Q. IS PUBLIC COUNSEL OPPOSED TO INCLUDING MGP REMEDIATION COSTS
6 IN MISSOURI GAS ENERGY'S COST OF SERVICE

7 A

8 Q. PLEASE EXPLAIN WHY.

9 A. Public Counsel's opposition to the inclusion of the manufactured gas plant site remediation costs in
10 Missouri Gas Energy's cost of service is based on several reasons. MGE and Western Resources
11 Inc., (WRI) have already recognized and accepted that they, their insurers and potentially other
12 PRP's are responsible for the costs of the MGP remediation (WRI is the former owner of the
13 Missouri gas utility assets). Pursuant to the terms of the *Environmental Liability Agreement*
14 attached to the *Agreement for Purchase of Assets* between Southern Union Company and Western
15 Resources Inc., the companies have agreed to share the liability for payment of any costs associated
16 with any MGP remediation that might occur subsequent to Southern Union Company buying the
17 Missouri gas utility assets.

18 Also, Public Counsel believes that the costs should not be included in customer's rates for
19 additional reasons, 1) to my knowledge none of the manufactured gas plants are currently in
20 operation. Therefore, these sites are not used and useful in providing service to current customers.
21 If current customers are required to pay for the cost of service not recovered from past customers
22 (e.g., past rates were set too low), the result is intergenerational inequity, and possibly retroactive

1 ratemaking. 2) Present customers should not be required to pay for past deficits of the Company in
2 future rates. 3) The investigation expenditures associated with potential superfund sites are a non-
3 recurring cost of operation. Shareholders are compensated for this particular business risk through
4 the risk premium applied to the equity portion of the Company's weighted average rate of return. 4)
5 shareholders, not ratepayers, receive the benefits of gains or losses (below-the line treatment) of any
6 sale or removal from service of Company-owned land or investment. Since it is the shareholder
7 who receives with the gain or the loss on an investment's disposal, it is the shareholder who should
8 shoulder the responsibility for any legal liability that arises at a later date related to the investment.
9 The liability for the remediation costs are not incurred because of the service Missouri Gas Energy
10 currently provides to its customers. Missouri Gas Energy is a potentially responsible party because
11 it either owns the property now or its predecessor owned the property at sometime in the past.
12 Automatic recovery of the remediation costs from Missouri Gas Energy's customers reduces the
13 incentive for the Company to seek partial or complete recovery of the costs from other past owners
14 of the plant sites or Company insurers.

15
16 **DUES AND DONATIONS**

17 **Q. WHAT ADJUSTMENT DO YOU PROPOSE TO THE TEST YEAR FOR DUES AND**
18 **DONATIONS EXPENSE?**

19 **A.** I recommend disallowing \$96,620 from the test year expenses for dues and donations.(See Schedule
20 KKB-3) This amount includes the \$40,000 of Missouri Energy Developers Association (MEDA)
21 dues the Company in its direct testimony has also proposed removing from the cost of service.