EXHIBIT

Exhibit No.:	
Issue(s):	Environmental AAO
Witness:	Ted Robertson
Type of Exhibit:	Rebuttal
Sponsoring Party:	Public Counsel
Case Number:	GU-2007-0480
Date Testimony Prepared:	June 18, 2008

REBUTTAL TESTIMONY

OF

TED ROBERTSON

Submitted on Behalf of
the Office of the Public Counsel

Missouri Gas Utility, Inc.

Case No. GU-2007-0480

June 18, 2008

OPC Exhibit No. 12
Case No(s) GU-2007-0480
Date 8-11-08 Rptr KF

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
Missouri Gas Energy, a division of	)	
Southern Union Company, for an	)	Case No. GU-2007-0480
Accounting Authority Order Concerning	)	
Environmental Compliance Activities	)	

AFFIDAVIT OF TED ROBERTSON

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

Ted Robertson, of lawful age and being first duly sworn, deposes and states:

1. My name is Ted Robertson. I am a Public Utility Accountant for the Office of the Public Counsel.

2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony.

3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.

Ted Robertson, C.P.A.
Public Utility Accountant III

Subscribed and sworn to me this 18th day of June 2008.

NOTARY PUBLIC NOTARY SEAL STATE OF MISSOURI

JERENE A. BUCKMAN
My Commission Expires
August 10, 2009
Cole County
Commission #05754036

Jerene A. Buckman
Notary Public

My commission expires August 10, 2009.

REBUTTAL TESTIMONY
OF
TED ROBERTSON

MISSOURI GAS ENERGY
CASE NO. GU-2007-0480

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. Ted Robertson, PO Box 2230, Jefferson City, Missouri 65102-2230.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by the Missouri Office of the Public Counsel (OPC or Public Counsel) as a Public Utility Accountant III.

Q. WHAT IS THE NATURE OF YOUR CURRENT DUTIES AT THE OPC?

A. Under the direction of the OPC Chief Public Utility Accountant, Mr. Russell W. Trippensee, I am responsible for performing audits and examinations of the books and records of public utilities operating within the state of Missouri.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND OTHER QUALIFICATIONS.

A. I graduated in May, 1988, from Missouri State University in Springfield, Missouri, with a Bachelor of Science Degree in Accounting. In November of 1988, I passed the Uniform Certified Public Accountant Examination, and I obtained

Certified Public Accountant (CPA) certification from the state of Missouri in 1989. My CPA license number is 2004012798.

Q. HAVE YOU RECEIVED SPECIALIZED TRAINING RELATED TO PUBLIC UTILITY ACCOUNTING?

A. Yes. In addition to being employed by the Missouri Office of the Public Counsel since July 1990, I have attended the NARUC Annual Regulatory Studies Program at Michigan State University and I have also participated in numerous training seminars relating to this specific area of accounting study.

Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION (COMMISSION OR MPSC)?

A. Yes, I have testified on numerous issues before this Commission. Please refer to Schedule TJR-1, attached to this testimony, for a listing of cases in which I have submitted testimony.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I am sponsoring the Public Counsel's position regarding Southern Union's (MGE (a division of Southern Union), Company or Utility) request for an Accounting

Authority Order (AAO) to defer, for possible future recovery from Missouri ratepayers, Manufactured Gas Plant (MGP) remediation costs.

III. ACCOUNTING AUTHORITY ORDER

Q. WHAT IS IT THAT SOUTHERN UNION REQUESTS?

A. On page eight of its Application, the utility requests an AAO with the following language:

> The Company is authorized to record on its books a regulatory asset, which represents its incurred costs and payments received associated with the evaluation, remedial and clean-up obligations of MGE arising out of utility related ownership and/or operation of manufactured gas plants and sites associated with the operation and disposal activities from such gas plants. In addition to the actual remedial and clean-up costs, this regulatory asset shall also include costs of acquiring property associated with the clean up of such sites as well as litigation costs, claims, judgments, expenditures made in efforts to obtain insurance reimbursements, and settlements – including the costs of obtaining such settlements – associated with such sites. MGE may maintain this regulatory asset on its books until the effective date of the Report and Order in MGE's next general rate proceeding.

Furthermore, the utility's response to OPC Data Request No. 1008 states:

> The company is requesting permission to defer the future costs of the clean-up as they occur.

Q. IS SOUTHERN UNION REQUESTING DEFERRAL OF ANY ENVIRONMENTAL COSTS OTHER THAN THOSE ASSOCIATED WITH MGP REMEDIATION ACTIVITIES?

A. No. Regarding other costs for the various environmental cleanup activities incurred by the utility (e.g., mercury, asbestos, waste oil, underground storage tanks, etc.), its response to OPC Data Request No. 1006 states:

> These costs are not being included in the costs which will be covered by the AAO. Only those costs pertaining to MGPs will be included in the deferral.

Furthermore, the utility's response to OPC Data Request No. 1005 states:

> MGE is not requesting deferral of any environmental costs other than the MGP related costs.

Q. SOUTHERN UNION DISCUSSES SECTION 386.266.2, RSMo IN ITS APPLICATION. IS THE STATUTE RELEVANT TO THE DETERMINATION OF THIS ISSUE?

A. No. As discussed on page eight of the utility's Application, recovery of MGP remediation costs via this statute is not relevant since the statute does not provide for such recovery.

Q. DOES SOUTHERN UNION KNOW THE AMOUNT OF MGP REMEDIATION COSTS IT SEEKS TO DEFER FOR FUTURE RECOVERY?

A. No. On page five of the utility's Application it identifies some estimates of future costs, but on page six it states:

> MGP sites operated up to 125 years ago and have been lying dormant and generally undetected/unnoticed for up to 100 years in

> some cases. The remnants of the MGPs are generally no longer visible; they have been covered over long ago and are below the ground. As such, it is impossible to ascertain the magnitude of something that cannot be seen. <u>No one can ascertain the scope of the investigation, assessment and remediation activities – or the magnitude of the associated costs -- until the investigation, assessment and remediation activities are conducted. Thus, there is uncertainty as to the ultimate cost of the remediation efforts</u>.
>
> (Emphasis added by OPC)

Furthermore, the utility's response to OPC Data Request No. 1011 (and 1012-1014) states:

> Additional costs will continue to be incurred by MGE in the future, even though the timing and magnitude of such costs cannot presently be ascertained.
>
> The timing and magnitude of remediation activities in FMGP projects are difficult to predict and are subject to numerous variables...
>
> The estimates of future costs provided in Ms. Callaway's direct testimony are based on MGE's and Southern Union Company's past experience with remediation activities as well as information on the costs of investigation and remediation of FMGP sites across the country. Accordingly, since detailed estimates are difficult to project, only broad estimate ranges may be provided.

Q. DOES SOUTHERN UNION KNOW WHAT FUTURE EXPENDITURES FOR MGP REMEDIATION WILL BE?

A. No. The utility's response to MPSC Staff Data Request No. 5 states:

> There is no information on future expenditures.

And, the response to MPSC Staff Data Request No. 16 adds:

> At this time there are no estimates of the projected MGP costs until MGE excavates and coordinates the voluntary remediation efforts with MDNR.

Q. ARE ACCOUNTING AUTHORITY ORDERS NORMALLY GRANTED FOR NON-OPERATING COSTS THAT ARE NOT KNOWN AND MEASURABLE?

A. No.

Q. HAVE COSTS WHICH ARE NOT KNOWN AND MEASURABLE BEEN GRANTED AAO DEFERRAL TREATMENT IN A RECENT CASE?

A. No, however, Southern Union would have this Commission believe that is a possibility. On page seven of Southern Union's Application, referencing the Report and Order in MGE Case No. GU-2005-0095, it states that, "The fact that costs may not be known or measurable does not prohibit the issuance of an accounting authority order concerning these costs." What Southern Union does not tell the Commission is that the language on page nine of the Report and Order states:

> For a cost to be included in a utility's cost of service for the purpose of calculating the utility's rates, <u>that cost must be both known and measurable</u>. MGE's Kansas property tax bill is currently measurable; MGE knows how much it has been told to pay. <u>But until it is finally determined whether MGE will be required to pay the tax, the actual cost cannot be said to be known</u>.
>
> (Emphasis added by OPC)

And, on page fifteen of the Report and Order it states:

> As a general rule, for an item of cost to be included in a utility's cost of service, that item of cost must be both known and measurable. A utility's customers should not be expected to pay, through their rates, for costs that are speculative and might never actually be incurred. MGE's Kansas tax liability is now measurable – it has received a bill from the Kansas tax authorities for the 2004 year, and future tax bills can be estimated – <u>but its Kansas tax liability is not yet known because of the uncertainty resulting from the ongoing legal challenge</u>.
>
> (Emphasis added by OPC)

As the language states, the relevance of whether the property tax was known and measurable was not the issue. The amount of property tax assessed to MGE by Kansas was based on the value of the gas in storage as of December 31 each year so the cost was measurable and it was known to be a property tax assessment. What was not known was whether or not the property tax liability would ever be paid to the taxing jurisdictions because of the ongoing legal challenge. This set of facts is completely different from the circumstances of the instant case in that the MGP remediation costs which Southern Union wants approval to defer are not measurable and cannot be identified with any specificity. Why? Because they do not yet exist. Company's response to OPC Data Request No. 1017 states, in part:

> As explained in the supplemental testimony of Mr. Noack, the company does not as of March 31, 2008 have any unreimbursed FMGP related expenses.

Q. DOES PUBLIC COUNSEL OPPOSE SOUTHERN UNION'S APPLICATION FOR THE MGP REMEDIATION ACCOUNTING AUTHORITY ORDER?

A. Yes. Public Counsel generally supports the MPSC *Staff Recommendation* and *Memorandum* previously filed in the instant case. As explained in the MPSC Staff documents, Public Counsel also does not believe that the utility's request for an AAO is appropriate because they do not meet the standards for deferral authorization. The estimated costs are not extraordinary, unusual, unique, non-recurring or material.

In addition, Public Counsel believes that an AAO is inappropriate for several other important reasons. For example, the MGP remediation costs have no relationship to the current provision of services that the utility provides to Missouri ratepayers. <u>The MGP costs Southern Union incurs are associated with the remediation of contamination created by gas manufacturing plants that, to my knowledge, ceased operation prior to the MPSC being established in 1913</u>. The plants do not exist and therefore are not used and useful in the current provision of service to Missouri ratepayers. Furthermore, it appears that the gas manufacturing plants were in fact private unregulated entities that sold their by-products (contaminants) to other nonregulated companies which may have used the byproducts to manufacture pitch and tar paper for sale thereby causing more contamination. Missouri ratepayers should not be required to reimburse Southern Union for liabilities which flow from unregulated entities or their unregulated customers.

Also, Southern Union assumed the MGP remediation liabilities of Western Resources Inc. (WRI), n/k/a Westar, with its purchase of the ownership interest of the regulated Missouri utility. I believe that the associated MGP remediation liability flows through the ownership interest in the properties and not from the regulated utility services MGE provides. Southern Union not MGE owns the properties at issue. MGE is just a regulated operating division within Southern Union's corporate umbrella. The utility has no ownership interest in the Missouri properties due to the fact that it is just a registered fictitious name utilized for the Southern Union regulated operations in this jurisdiction. Southern Union entered into the purchase willingly and without coercion and it knew that, in the future, MGP remediation costs would be incurred. In fact, it analyzed the issue and publicly documented that it did not believe the costs would exceed the amounts identified in the asset purchase agreements. However, Southern Union now believes those earlier estimates will be exceeded. Missouri ratepayers should not be required to reimburse Southern Union for MGP remediation costs it willingly assumed from Western Resources Inc. (thereby potentially releasing WRI from funding the payment of MGP remediation costs) just because its purchase analysis may prove to be inaccurate. If the result of increased MGP remediation costs is that Southern Union made a bad bargain (e.g., paid a higher purchase price than current or future circumstances would indicate prudent) in its purchase of the regulated Missouri utility properties that is a risk its stockholders accepted. Missouri ratepayers have no responsibility or duty to "save" or compensate Southern Union stockholders from bad financial decisions authorized by their board of directors and management.

Lastly, Southern Union has not yet presented claims to Western Resources Inc. for MGP remediation costs pursuant to the terms of the asset purchase agreements. Commission approval of the AAO requested by MGE would send a signal to WRI that it is possible MGP remediation costs for which it has some liability will be recovered from Missouri ratepayers. That signal would surely strengthen a WRI legal position that its liability was absolved via the terms of the MGE purchase agreement; whereas, if the AAO is denied, recovery of some MGP remediation costs from WRI appears a more probable outcome. Southern Union assumed the MGP remediation liability of Western Resources Inc. willingly for its shareholders but Missouri ratepayers and the MPSC have not. Company's response to OPC Data Request No. 1024 states:

> Southern Union Company chose to enter into the sale/purchase agreement that resulted in its acquisition of Missouri Gas Energy. <u>It was an arms' length transaction</u> and we are not aware that Missouri regulators or ratepayers coerced or pressured the transaction.
>
> (Emphasis added by OPC)

The Commission should not let a Southern Union negotiated agreement be the deciding factor that lets WRI "off the hook" for payment of its share of the MGP remediation costs. If the shareholders of Southern Union wanted to accept the

MGP risk, fine. However, neither the Commission nor Missouri ratepayers were parties to the negotiation, thus the Commission should not approve an AAO that could possibly substantiate a WRI legal position that Missouri ratepayers are providing the funding so it need not.

Q. ARE THE COSTS IN QUESTION UNPREDICTABLE?

A. No. They are unknown as to the total amount to be incurred but not unpredictable in that costs will be incurred. Southern Union knew that when it purchased the Missouri utility because activities associated with the MGP remediation have been incurred on a continuing basis ever since.

Q. ARE THE COSTS IN QUESTION COMPLETELY OUTSIDE THE CONTROL OF SOUTHERN UNION?

A. No. Southern Union has considerable experience with MGP remediation in Missouri. Since acquiring MGE in 1994 it has been active in the State with regard to MGP remediation activities. It has hired consultants, attorneys and other experts to assist its own employees in the associated investigative, assessment, cleanup and monitoring activities. It has essentially managed the work of those outside parties and is familiar with similar processes it may encounter in the future. That experience combined with the skills/training of its employees should not be discounted in assessing its ability to control future costs incurred.

Q. ARE THE COSTS IN QUESTION RELATED TO UNUSUAL OCCURRENCES SUCH AS FLOODS OR STORMS?

A. No. The contamination which is the object of the remediation occurred over periods of many years, maybe decades, and are not the result of sudden isolated "Acts of God." In fact, history tells us that in most instances the contamination was a willful act of prior owners and management.

Q. ARE THE COSTS IN QUESTION RELATED TO ACTS OF GOVERNMENT?

A. Yes. However, the fact that Federal and State governments are mandating the cleanup of properties contaminated many decades in the past does not lessen the responsibility of Southern Union's shareholders to fund the payment of the associated remediation costs. Southern Union's management knew, or should have known, what they were buying when it purchased the Missouri properties. If the MGP remediation costs prove to be greater than the amounts negotiated in the original purchase contract, shareholders, whose investment and welfare protection is the primary goal of management, should be held solely responsible for the costs because management made what could be perceived as a bad bargain. If Southern Union shareholders are not satisfied with the results of the operations, they should replace the current management for one that would better meet their goals.

In addition, to my knowledge and experience, the total rate of return provided Missouri regulated utilities has always incorporated a percentage above the risk-free rate of return in order to compensate ratepayers for the business and financial risks associated with actions such as the implementation of both existing and new laws and regulations mandated by governments (the government mandates at issue here have been in effect for decades). Therefore, it would be nonsensical to grant Southern Union the authorization to defer the MGP remediation costs for "possible" future recovery from Missouri ratepayers since rates have reflected an authorized return on equity for shareholders that reflects these risks. The utility's past and current shareholders have benefited from the equity return premium and have likely been compensated for these costs.

Q. DOES PUBLIC COUNSEL DISAGREE WITH MPSC STAFF'S RECOMMENDATIONS IN THE EVENT THAT THE COMMISSION APPROVES THE REQUESTED AAO?

A. Staff's recommendations, if the AAO is approved, are reasonable; however, let me be very clear, Public Counsel is adamant in its belief that this AAO should not be approved. The majority of the costs identified by Company are only estimates of possible future charges; they are not known and measurable. Southern Union should not be allowed to defer for possible future recovery from ratepayers costs which do not exist. In fact, it is the Public Counsel's believe that none of the costs associated with the MGP remediation activities should ever flow through rates for recovery from ratepayers.

Q. PLEASE CONTINUE.

A. Southern Union's request in this Application is just another step in its continuing quest to require Missouri ratepayers to compensate its shareholders for costs which I firmly believe belong solely to the shareholders. Though the Commission has often expounded on how an AAO is not to be inferred as a ratemaking process, it is, and has always been, a first step in the recovery of deferred costs from ratepayers. Commission approval for deferral of the alleged costs would give rise to a possible (I would say probable since I know of no AAO case where the utility was not authorized to eventually recover all, or nearly all, of the costs it deferred) ratemaking recognition or "legitimizing" of the costs allowed deferral. The AAO, if approved, would permit the utility to create an asset out of costs where recovery is not expected from other non-ratepayer sources, for financial reporting purposes; whereas, without approval it would have to expense the costs in the year actually incurred. This Commission should not provide the utility a conduit for recovery of Southern Union MGP remediation costs from ratepayers.

Southern Union has been incurring costs for MGP remediation activities ever since it first purchased the Missouri properties from Western Resources Inc. and MGE has consistently attempted to garner Commission authorization for recovery of the costs in nearly every general rate increase case since the purchase. The Commission has, in all prior cases, consistently denied Southern Union's MGP remediation cost recovery requests. The Commission's rationale for denial often dealt with seeking to provide an incentive to Southern Union to obtain recovery from other parties such as insurance companies, other potentially responsible parties and Western Resources Inc. To-date, the incentive has worked because the greater part of the costs actually incurred have been recovered from other entities or Southern Union's commitment to have shareholders fund an initial $3 million for the MGP remediation activities.

Q. HAS THE COMPANY FULLY ACHIEVED ITS RESPONSIBILITY TO HAVE OTHER PARTIES REIMBURSE IT FOR MGP REMEDIATION ACTIVITIES?

A. No. Southern Union has not obtained from Western Resources Inc. any payments for the costs associated with MGP remediation activities. In the *Environmental Liability Agreement* (ELA) - which, by the way, is a public document and should not be regarded highly confidential as erroneously stated in the MPSC *Staff Recommendation* and *Memorandum* filed in this case - entered into as part of the purchase transaction between Southern Union and Western Resources Inc., it states, beginning on page six:

(v). Buyer/Seller Shared Liability Amount Upon exhaustion of relief contemplated under subparagraphs (c)(i) through (iv), Buyer and Seller shall share equally in payment of costs incurred by Buyer in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i) through (iii) (or paid by Buyer under subparagraph (c) (1v)) to a maximum aggregate amount of Fifteen Million Dollars ($15,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount. Notwithstanding anything to the contrary herein, seller's total liability for Covered Matters shall be limited to the amount of Seven Million Five Hundred Thousand Dollars ($7,500,000.00), and Buyer shall indemnify and hold Seller harmless with respect to all claims, costs, demands and liabilities with respect to all other Covered Matters.

(d) Limitation on Seller's Liability. Seller's liability under Subparagraph (c) above shall terminate upon that date (the "Termination Date") which is fifteen (15) years after the Closing Date. From and after the Termination Date, Seller shall have no further obligations or responsibilities with respect to all other Covered Matters.

(e) Costs Incurred by Buyer and Seller. For the purposes of this Agreement, Seller and Buyer agree that the costs incurred by Buyer or Seller with respect to Covered Matters for which the other party is liable pursuant to Subparagraph (c) above shall include only costs and expenses actually paid to unrelated third parties, and in no event shall Buyer or Seller be responsible for nor shall either party receive credit for (i) pre-closing costs or expenses, or (ii) any costs or expenses paid with respect to any of either party's employees or any of either party's overhead. Each party hereby agrees to use its best reasonable efforts to control costs incurred for which the other party may be responsible and shall provide such other party with quarterly reports of costs incurred.

(f) Duty to consult. Buyer and Seller shall at all times consult with and keep each other apprised of all activities and costs incurred in connection with Covered Matters, and Buyer and Seller shall indemnify and hold the other party harmless from any unreasonable expense incurred. Each party shall apprise the other party of those respective activities on a quarterly interval on all active Covered Matters.

(g) Standstill Agreement. In the event either Buyer or Seller is notified that they or either of them is asked to respond as a Potentially Responsible Party ("PRP") under any federal, state or local law or regulation with regard to a Covered Matter, the party receiving such notice shall notify the other party off the receipt of such notice, and shall deliver a copy of all notices and documents received, within ten (10) business days after receipt. With regard to Covered Matters, Buyer and Seller each covenant and agree not to sue the other or attempt in any manner to avoid responsibility as a PRP by seeking or attempting to shift or allocate responsibility to the other. Buyer and Seller agree to cooperate in the identification of all other PRPs for purposes of participation, remediation cost sharing and liability to regulatory agencies.

Article 3. MISCELLANEOUS, (a) Dispute Resolution. No party to this Agreement shall be entitled to take legal action with respect to any dispute relating hereto until it has complied in good faith with the following alternative dispute resolution procedures, provided however, this Article shall not apply to the extent it is deemed necessary to take legal action immediately to preserve a party's adequate remedy.

(i). Negotiation. The parties shall attempt promptly and in good faith to resolve any dispute arising out of or relating to this Agreement, through negotiations between representatives who have authority to settle the controversy. Any party may give the other party written notice of any such dispute not resolved in the normal course of such negotiations. Within twenty (20) days after delivery of the notice, representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and to attempt to resolve the dispute, until the parties conclude that the dispute cannot be resolved through unassisted negotiation. Negotiations extending sixty (60) days after notice shall be deemed at an impasse, unless otherwise agreed by the parties.

If a negotiator for a party hereto intends to be accompanied at a meeting by an attorney, the other negotiator(s) shall be given a least ten (10) business days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Article are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal and state Rules of Evidence.

(ii) ADR Procedure. If a dispute with more than $100,000.00 at issue has not been resolved within sixty (60) days of the disputing party's notice, a party wishing resolution of the dispute ("Claimant") shall initiate assisted Alternative Dispute Resolution (ADR) proceedings as described in this Article. Once the Claimant has notified the other ("Respondent") of a desire to initiate ADR proceedings, the proceedings shall be governed as follows: By mutual agreement, the parties shall select the ADR method they wish to use. That ADR method may include arbitration, mediation, minitrial, or any other method which best suits the circumstances of the dispute. The parties shall agree in writing to the chosen ADR method and the procedural rules to be followed within thirty (30) days after receipt of notice of intent to initiate ADR proceedings. To the extent the parties are unable to agree on procedural rules in whole or in part, the current Center for Public Resources (CPR) Model Procedure for Mediation of Business Disputes, CPR Model Mini-trial Procedure, or CPR Commercial Arbitration Rules--whichever applies to the chosen ADR method--shall control, to the extent such rules are consistent with the provisions of this Article. If the parties are unable to agree on an ADR method, the method shall be arbitration.

The parties shall select a single neutral third party (a "Neutral") to preside over the APR proceedings, by the following procedure: Within fifteen (15) days after an ADR method is established, the Claimant shall submit a list of five (5) acceptable Neutrals to the Respondent. Each Neutral listed shall be sufficiently qualified, including demonstrated neutrality, experience and competence regarding the subject matter of the dispute. A Neutral shall be deemed to have adequate experience if an attorney or former judge. None of the Neutrals may be present or former employees, attorneys, or agents of either party. The list shall supply information about each Neutral, including address, and relevant background and experience (including education, employment history and prior ADR assignments). Within fifteen (15) days after receiving the Claimant's list of Neutrals, the Respondent shall

> select one Neutral from the list, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Respondent, the Respondent shall submit a list of five (5) Neutrals, together with the above background information, to the Claimant. Each of the Neutrals shall meet the conditions stated above regarding the Claimant's Neutrals. Within fifteen (15) days after receiving the Respondent's list of Neutrals, the Claimant shall select one Neutral, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Claimant, then the parties shall request assistance from the Center for Public Resources, Inc., to select a Neutral.
>
> The ADR proceeding shall take place within thirty (30) days after the Neutral has been selected. The Neutral shall issue a written decision within thirty (30) days after the ADR proceeding is complete. Each party shall be responsible for an equal share of the costs of the ADR proceeding. The parties agree that any applicable statute of limitations shall be tolled during the pendency of the ADR proceedings, and no legal action may be brought in connection with this Agreement during the pendency of an ADA proceeding.
>
> The Neutral's written decision shall become final and binding the parties, unless a party objects in writing within thirty (30) days of receipt of the decision. The objecting party may then file a lawsuit in any court allowed by this Contract. The Neutral's written decision and the record of the proceeding shall be admissible in the objecting party's lawsuit.
>
> (b) Incorporation By Reference. This Agreement constitutes a part of the Asset Purchase Agreement dated July 9, 1993 between the parties.

Public Counsel has attached a copy of the entire *Environmental Liability Agreement,* which was an attachment to the *Agreement for Purchase of Assets* between Southern Union Company and Western Resources Inc., to this testimony as

Schedule TJR-2 (source: Robertson Rebuttal Testimony, Schedule TJR-1, MGE Case No. GR-2001-292).

Q. DOES SOUTHERN UNION EXPECT IT WILL ASSERT A CLAIM TO WESTERN RESOURCES INC.?

A. Yes. The utility's response to OPC Data Request No. 1015 states:

> It is anticipated that the claim will be asserted/filed in the second quarter of 2008. The amount is not yet known and the full claim amount won't be known until January 31, 2009.

Q. SHOULD RATEPAYERS BE HELD POTENTIALLY LIABLE FOR MGP REMEDIATION COSTS RECOVERABLE FROM WESTERN RESOURCES INC., OR OTHERS?

A. No. MGP remediation costs that are recoverable from Western Resources Inc., or others, should not be provided deferral treatment pursuant to an AAO.

Q. SHOULD RATEPAYERS BE HELD POTENTIALLY LIABLE FOR FUTURE MGP REMEDIATION COSTS THAT EXCEED RECOVERIES FROM WESTERN RESOURCES INC., OR OTHER SOURCES?

A. No. Again, MGP remediation costs, past or future, should not be provided deferral treatment pursuant to an AAO because the deferral would subject Missouri ratepayers to potential liability for their payment. These costs are not incurred for the provision of any current or future services to Missouri ratepayers. They are, in fact, a liability which belongs solely to the shareholders of Southern Union and they should not be relieved of their responsibility to pay the future costs. To do otherwise would allow Southern Union to turn a liability into an asset by unloading its liability onto ratepayers; ratepayers that never agreed to accept this liability. Southern Union, on the other hand, freely agreed to accept this liability.

Q. WHY DOES THE PUBLIC COUNSEL BELIEVE THAT THE PAYMENT OF THE MGP REMEDIATION COSTS BELONG SOLELY TO THE SOUTHERN UNION SHAREHOLDERS?

A. Our position is based on the fact that Southern Union in its purchase of the Missouri regulated utility operations knew that MGP sites existed and that costs associated with their remediation would likely occur. The ELA was drafted to insure the Southern Union shareholders that Western Resources Inc., would share in the costs in the event that recovery could not be achieved from insurance companies, other potentially responsible parties or ratepayers. Thus, I firmly believe that during the purchase negotiations, Southern Union, contemplated its risk associated with the possible remediation activities and adjusted it offered purchase prices accordingly. To assume otherwise would imply the purchasing party did not perform a proper due diligence and/or was not financially savvy - both assumptions I find to be unlikely and foolish. In fact, I believe that just the opposite is true.

In its Amended Annual Report to the Securities and Exchange Commission (SEC), Form 10-K/A, filed on September 30, 1994, Southern Union states:

> By virtue of notice under the Missouri Asset Purchase Agreement and its preliminary, non-invasive review, the Company became aware prior to closing of eleven such sites in the service territory of Missouri Gas Energy. Based on information reviewed, it appears that neither Western Resources nor any predecessor in interest ever owned or operated at least three of those sites.
>
> Subsequent to the closing of the Missouri Acquisition, as a result of an environmental audit, the Company has discovered the existence of possibly six additional sites in the service territory of Missouri Gas Energy. Southern Union has so informed Western Resources. The Company does not know if any of these additional sites were ever owned or operated by Western Resources or any of its predecessors in interest. Western Resources informed the Company that it was notified in 1991 by the EPA that it was evaluating one of the sites (in St. Joseph, Missouri) for any potential threat to human health and the environment. Western Resources also advised the Company on September 15, 1994 that as of that date the EPA had not notified it that any further action was required. Evaluation of the remainder of the sites by appropriate federal and state regulatory authorities may occur in the future. <u>At that time and based upon information available to management, the Company believed that the costs of any remediation efforts that may be required for these sites for which it may ultimately have responsibility will not exceed the aggregate amount subject to substantial sharing by Western Resources</u>.
>
> (Emphasis added by OPC)

The SEC report clearly states that the Southern Union was aware of the potential MGP remediation liabilities that existed. It not only contemplated its possible future risk, but it also made the claim that the associated costs for which

Southern Union may ultimately have responsibility will not exceed the aggregate amount subject to substantial sharing by Western Resources Inc.

Southern Union was aware of at least eleven MGP sites during the purchase negotiations. In addition, it was aware that, potentially, others also existed. A fact which later proved to be true. Yet, with all this knowledge of the potential future risk, Southern Union, for the benefit of its shareholders, purchased the Missouri regulated utility properties and declared that it had reasonably calculated the potential liability of the future costs and developed sharing agreements with Western Resources Inc., to recover those costs. I believe that during the purchase transaction between Southern Union and Western Resources Inc., Southern Union would have (or should have) offered a lower purchase price contemplating its potential liability for future MGP remediation costs. Southern Union stockholders willingly assumed the risk and should have adjusted their offer price accordingly. Therefore, Southern Union should not, now, be allowed to defer the estimates of future costs it alleges for possible recovery from Missouri ratepayers.

Q. HAS SOUTHERN UNION INCURRED SIGNIFICANT MGP REMEDIATION COSTS NOT REIMBURSED BY INSURANCE OR THE TERMS OF ITS PURCHASE CONTRACT WITH WESTERN RESOURCES INC.?

A. No.

Q. DOES PUBLIC COUNSEL BELIEVE THAT ALL OF THE MGP REMEDIATION COSTS ALLEGED BY SOUTHERN UNION ARE VALID MGP REMEDIATION COSTS?

A. No. I believe that some of the alleged costs may not be valid MGP remediation costs; however, since Public Counsel believes that none of the alleged MGP remediation costs should be considered for potential reimbursement by Missouri ratepayers, I have not performed procedures necessary to challenge the validity or accuracy of each of the specific costs identified by Southern Union.

Q. HAVE ANY OF THE ALLEGED SOUTHERN UNION MGP REMEDIATION COSTS EVER BEEN INCLUDED IN MISSOURI RATES?

A. No. The utility's response to MPSC Staff Data Request No. 4 states:

> No costs have ever been included in previous rates. A request was made to start a fund to pay the costs from in both case no. GR-2004-0209 and GR-2006-0422. The request was denied in both cases.

Q. IF THE COMMISSION WERE TO GRANT THIS APPLICATION, WOULD THAT GRANTING BE INCONSISTENT WITH THEIR FINDINGS AND CONCLUSION IN THE LAST MGE RATE CASE?

A. Yes, I believe that it would. In fact, I believe that it would be inconsistent with the Commission's rulings in MGE's last two rate cases, i.e., GR-2004-0209 and GR-2006-0422.

Q. PLEASE EXPLAIN.

A. In both of the previous rate cases, MGE requested Commission authorization for a MGP remediation cost deferral tracking mechanism. On page 10, lines 9 - 13, of Mr. Michael R. Noack's direct testimony, in the instant case, he describes the prior requests for deferral authorization as:

> In those requests, the Company recommended that the ERF fund be treated as a "tracking mechanism" by which MGP costs (of unknown future quantity) would be collected from customers through a separate rate element, and later "trued up" by the Company by comparing the amount of the rate collections to the MGP expense actually incurred by MGE.

Q. HOW DID THE COMMISSION RULE ON THE MGP REMEDIATION COST DEFERRAL TRACKING MECHANISM IN MGE CASE NOS. GR-2004-0209 and GR-2006-0422?

A. In both cases, the Commission denied the Company's request. In its Report and Order, Case No. GR-2004-0209, the Commission stated:

> In the future, at least until 2009, costs not covered by insurance will be paid, in part, by Western Resources under the Environmental Liability Agreement between those companies. In sum, MGE's proposal to include $750,000 per year in its cost of service for future environmental cleanup costs is based entirely on speculation regarding costs that the company may never incur. Furthermore, the creation of a pre-funded source for the payment of these

> cleanup costs would remove much of Southern Union's incentive to ensure that only prudently incurred and necessary costs are paid. If the money has already been recovered from ratepayers and is being held in the Fund, Southern Union would have little incentive to not pay it out to settle claims brought against it. The Fund would be subject to audit by Staff and Public Counsel and they could seek a prudence adjustment if necessary. But the need for a prudence adjustment is difficult to prove and is not a good substitute for the company's own desire to prudently minimize its costs to improve its bottom line. For these reasons, the Commission finds that MGE's proposal to create an Environmental Response Fund should be rejected. [Order, pages 35-39.]

And, in its Report and Order, Case No. GR-2006-0422, the Commission stated:

> MGE agrees that it is not possible to ascertain the costs of investigation and remediation. That the magnitude of the costs associated with this effort is impossible to know is again noted by MGE. Further, to date, MGE has not paid any costs associated with the environmental clean up. That these costs are not known and measurable precludes their inclusion in rates. Furthermore, the creation of a pre-funded source for the payment of these cleanup costs would remove much of Southern Union's incentive to ensure that only prudently incurred and necessary costs are paid. If the money has already been recovered from ratepayers and is being held in the Fund, Southern Union would have little incentive to not pay it out to settle claims brought against it. Although the Fund would be subject to audit by Staff and Public Counsel and they could seek a prudence adjustment, the need for a prudence adjustment is difficult to prove and is not a good substitute for the company's own desire to prudently minimize its costs to improve its bottom line. For these reasons, the Commission finds that MGE's proposal to create an Environmental Response Fund shall be rejected. [Order, pages 18-20.]

Q. YOU STATED EARLIER THAT SOUTHERN UNION HAS RECOGNIZED THAT A PORTION OF THE MGP REMEDIATION COSTS INCURRED ARE THE EXCLUSIVE LIABILITY OF ITS SHAREHOLDERS, IS THAT CORRECT?

A. Yes. Southern Union is not requesting recovery from ratepayers of the initial $3,000,000 referenced in the Environmental Liability Agreement between it and Western Resources, Inc. This position is corroborated in the utility's response to MPSC Staff Data Request No. 6:

> 3. The company treated the $3,000,000 as an initial liability. To the extent corporate paid the bill related to MGE, this reduced the liability. The $3,000,000 will not be deferred as part of this AAO.

Q. ARE ANY SPECIFIC COSTS ALLOCATED TO THE INITIAL $3,000,000 LIABILITY ACCEPTED BY SOUTHERN UNION'S SHAREHOLDERS?

A. No. The utility's response to MPSC Staff Data Request No. 15 states:

> The $3,000,000 was an amount which offsets the entire cost of remediation to date. Specific costs are not allocated to the $3,000,000 book entry to offset the remediation costs.

Q. HAS SOUTHERN UNION RECOVERED ANY OF THE MGP REMEDIATION COSTS FROM WESTERN RESOURCES INC.?

A. No.

Q. IS IT SOUTHERN UNION'S INTENTION TO SEEK RECOVERY OF MGP REMEDIATION COSTS FROM WESTERN RESOURCES INC.?

A. Yes, if applicable to the purchase agreements between the parties. The utility's response to MPSC Staff Data Request No. 11 states:

> MGE intends to seek recovery from Westar of environmental costs covered by the environmental liability agreement to the extent that such costs exceed environmental recoveries obtained from PRPs, and insurance policies plus the initial $3,000,000 liability as referenced in the agreement.

Q. WHY DOES SOUTHERN UNION WANT THE AAO?

A. Southern Union's rationale for seeking the AAO is stated in the utility's response to MPSC Staff Data Request No. 11 as:

> Deferral of such costs as requested herein would simply remove them from MGE's income statement pending the recovery process (from whatever source).

Furthermore, the utility's response to OPC Data Request No. 1019 states that the costs through September 30, 2007 are less than 5 percent of income and, according to the direct testimony of Mr. Noack, page 9, lines 22 - 23, the regulated utility needs an order from the Commission in order to treat as extraordinary an event whose financial impact on it is less than 5 percent.

Q. DOES PUBLIC COUNSEL HAVE A BETTER IDEA TO REMOVE THE COSTS FROM MGE'S INCOME STATEMENT?

A. Yes. Simply transfer the liability/recoveries back to the Southern Union corporate books where, before January 2007, they formerly resided. That way the finances and rates of the Missouri regulated utility, MGE, will not be affected by any future liabilities or recoveries because it would not have to garner the Commission's authorization to defer the costs in order to satisfy either Generally Accepted Accounting Procedures or FERC Uniform System of Accounts recording requirements.

Q. WHAT AMOUNTS WERE TRANSFERRED FROM CORPORATE TO MGE?

A. The utility's response to MPSC Data Request No. 14 states that Southern Union transferred $1,821,472 from the corporation books to MGE books in January 2007. This was corroborated by the utility's response to OPC Data Request No. 1003 which states:

> The environmental costs associated with MGE properties was recorded on the corporate books until 12/31/06. Beginning 1/1/07, MGE is recording the costs on their own books.

Q. ARE ANY MISSOURI REGULATED UTILITIES CURRENTLY AUTHORIZED TO DEFER MGP REMEDIATION COSTS FOR POTENTIAL FUTURE RATEMAKING RECOVERY?

A. No.

Q. HAS THIS COMMISSION EVER GRANTED AUTHORIZATION TO DEFER OR RECOVER IN RATES COSTS ASSOCIATED WITH MGP REMEDIATION?

A. Yes, for two utilities. First, pursuant to a stipulation and agreement, in Laclede Gas Company Case No. GR-94-220, effective September 1, 1994, the parties reached an agreement wherein the Commission authorized Company to include in rates a level of MGP remediation costs and to establish an environmental cost deferral procedure to be utilized if the amount included in rates was exceeded. The environmental cost deferral was continued as a result of negotiated stipulation and agreement in Laclede's subsequent two rate cases. The deferral authority ultimately ended on July 31, 1999 as a result of the stipulation and agreement reached in Case No. GR-99-315, and second, in United Cities Gas Company, Case No. GA-98-464, the Commission authorized an AAO wherein the utility was allowed to defer costs related to its MGP site in Hannibal, Missouri. However, the Commission imposed a time requirement for filing of a subsequent rate case which the utility did not meet. Thus, its authority to defer MGP remediation costs lapsed and it never sought ratemaking treatment of any of deferred MGP remediation costs.

Q. DOES SOUTHERN UNION BELIEVE THAT MGP REMEDIATION AND LEGAL COSTS SHOULD BE RECOVERED FROM MISSOURI RATEPAYERS?

A. Yes. Regarding costs incurred if Southern Union is required to take legal action to force Western Resources Inc., to pay a portion of the MGP remediation costs incurred, the utility's response to MPSC Staff Data Request No. 11.1 states:

> To the extent that MGE takes such action (and incurs costs to do so), <u>any recoveries resulting from that action would serve to reduce the environmental costs borne by MGE's customers</u>. Consequently, the costs of such legal action - if required - <u>should be borne by MGE's customers</u>.
>
> (Emphasis added by OPC)

Q. SHOULD MISSOURI RATEPAYERS EVER BE HELD RESPONSIBLE FOR REIMBURSING SOUTHERN UNION FOR THE MGP REMEDIATION COSTS IT INCURS AS A RESULT OF ITS PURCHASE OF THE MISSOURI PROPERTIES?

A. No. The costs in question are not for the provision of any current or future gas service to Missouri ratepayers. As such, they should not be classified as a regulatory expense nor should they be deferred on the utility's books for possible future recovery. Southern Union's actions and MGE's request does not change the fact that Southern Union entered into a purchase agreement which may or may not yield the originally expected results. Company analysis for the purchase of MGE did not expect MGP remediation costs to exceed a certain amount and, currently, they have not. However, if the MGP remediation costs do eventually exceed the amounts identified in the original purchase analysis, Southern Union's shareholders alone should be responsible for the costs because their management negotiated an arms-length purchase and consummated the deal while fully aware of potential detriments to future earnings of the non-regulated entity.

Q. HAS THE UTILITY ACKNOWLEDGED THAT THE MGP REMEDIATION COSTS ARE NOT ABNORMAL?

A. Yes. In OPC Data Request No. 1007, I requested information regarding the penalization of ratepayers if they are required to reimburse Southern Union for the costs. The utility's response stated:

> If ratepayers foot the bill for the remaining remediation costs, shareholders will not be penalized for these. They are not being rewarded by having ratepayers pick up the bill <u>for a normal cost of doing business for an LDC these days</u>.
>
> (Emphasis added by OPC)

Q. ARE NORMAL COSTS OF AN LDC USUALLY GRANTED AAO TREATMENT?

A. No. Whether or not one agrees, or disagrees, as to the ultimate ratemaking treatment of the future MGP remediation costs, authorization to defer normal costs are not considered within the usual realm of costs for the granting of an AAO. Company readily admits that it considers the MGP remediation costs to be a "normal cost of doing business for an LDC these days;" thus, the costs cannot also be AAO deferrable extraordinary or abnormal costs. The two views are mutually exclusive.

Q. WOULD MGE BE PENALIZED IF THE COMMISSION DENIES ITS REQUEST FOR THE AAO?

A. No. The purchase price Southern Union's paid for the Missouri regulated utility properties in all likelihood included its analysis of the potential for future MGP remediation costs to be incurred and was adjusted accordingly. Its shareholders benefited from the likely lower purchase price paid then and now. There is no rationale reason to compensate them for past, present, or future MGP remediation costs for which they knew a liability existed.

Q. WOULD MISSOURI RATEPAYERS BE PENALIZED IF THE COMMISSION AUTHORIZES SOUTHERN UNION'S REQUEST FOR THE AAO?

A. Yes. Though it is an often stated rule that an AAO does not have a ratemaking effect, in and of itself, if the Commission adopts Southern Union's recent "accounting shuffle" of MGP remediation costs and therein authorizes the utility an AAO to defer future costs which are " not known or measurable," it will be providing a probable "legitimization" to the potential recovery of the costs from Missouri ratepayers. Missouri ratepayers should not be "tainted" by Southern Union's accounting entries which attempt to shift its MGP remediation liabilities to MGE nor its desire to pass the costs on to Missouri ratepayers. For example, in the utility's response to MPSC Staff Data Request No. 1, it states:

> By authorizing the AAO, customers will pay the proper level of expense and the company is not assuming the immediate risk of incurring the costs of a regulatory item without being able to include the cost in rates.

Clearly, it is Southern Union's intent to have Missouri ratepayers fund these corporate costs (costs not associated with MGE's provision of services to Missouri ratepayers) by ultimately having the Commission force them to reimburse it for MGP remediation costs which it may incur due to a potential liability miscalculation it made when it bargained for and purchased the Missouri regulated utility properties. In other words, Southern Union now wishes for the Commission to pass the <u>risk</u> for payment of future MGP remediation costs, which its shareholders knowingly and with free will accepted when it purchased the utility, onto the backs of Missouri ratepayers thereby absolving it of any responsibilities for the decisions and actions of its management. The transfer of the risk itself is a penalization of Missouri ratepayers.

SUMMARY

As explained in the MPSC *Staff Recommendation* and *Memorandum,* filed in this case, the MGP remediation costs for which Southern Union seeks an AAO do not meet the standards for which an AAO authorization is granted. The Uniform System of Accounts General Instruction No. 7, prescribed by the Federal Energy Regulatory Commission, states that an extraordinary item for which special accounting treatment would be appropriate is "of unusual nature and infrequent occurrence." Furthermore, "they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which would not reasonably be expected to recur in the foreseeable future." In addition, the USOA requires that to be considered extraordinary, the item "should be more than approximately 5 percent of income, computed before extraordinary items." Furthermore, the Commission has also established a test to determine when an AAO should be granted. In a 1991 decision, often referred to as the Sibley case, the Commission stated that it would consider the appropriateness of granting an AAO on a case by case basis. In doing so, it would approve an AAO for events that it found to be "extraordinary, unusual and unique, and not recurring." Therefore, the standards of neither the FERC nor the Commission have been meet and on that basis alone the Southern Union's AAO request should be denied.

Also, Public Counsel believes that Southern Union shareholders, not Missouri ratepayers, are actually responsible for payment of the MGP remediation costs because, 1) The purchase contract for the Missouri regulated utility properties recognizes that Southern Union knew of the potential liability for future MGP remediation and it likely, or should have, negotiated a lower purchase price based on what it determined was a probable level of future cost incurrence. Any negative effects of that bargain, just like any appropriate benefits, belong solely with Southern Union's shareholders not Missouri ratepayers. Southern Union's management and shareholders should not be simply released or freed from the effects of the risk they willingly accepted with the purchase just because events did not play out as they expected, 2) Approval of an AAO would likely inappropriately limit WRI's liability and strengthen a legal position that it does not have to provide any funding for the MGP remediation costs because it is more than likely Missouri ratepayers will be the required source of funds which pay the costs, 3) It appears that nonregulated entities and their customers created the contamination at issue prior to the Commission coming into existence in 1913. Regulated ratepayers should not be required to reimburse Southern Union for expenses/costs associated with the activities of unregulated entities or affiliates no matter what the date is that they ceased operations, 4) the rate of return risk premium, in all likelihood, has already compensated shareholders to some degree, if not entirely, for MGP remediation costs.

Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

A. Yes, it does.

CASE PARTICIPATION
OF
TED ROBERTSON

Company Name	Case No.
Missouri Public Service Company	GR-90-198
United Telephone Company of Missouri	TR-90-273
Choctaw Telephone Company	TR-91-86
Missouri Cities Water Company	WR-91-172
United Cities Gas Company	GR-91-249
St. Louis County Water Company	WR-91-361
Missouri Cities Water Company	WR-92-207
Imperial Utility Corporation	SR-92-290
Expanded Calling Scopes	TO-92-306
United Cities Gas Company	GR-93-47
Missouri Public Service Company	GR-93-172
Southwestern Bell Telephone Company	TO-93-192
Missouri-American Water Company	WR-93-212
Southwestern Bell Telephone Company	TC-93-224
Imperial Utility Corporation	SR-94-16
St. Joseph Light & Power Company	ER-94-163
Raytown Water Company	WR-94-211
Capital City Water Company	WR-94-297
Raytown Water Company	WR-94-300
St. Louis County Water Company	WR-95-145
United Cities Gas Company	GR-95-160
Missouri-American Water Company	WR-95-205
Laclede Gas Company	GR-96-193
Imperial Utility Corporation	SC-96-427
Missouri Gas Energy	GR-96-285
Union Electric Company	EO-96-14
Union Electric Company	EM-96-149
Missouri-American Water Company	WR-97-237
St. Louis County Water Company	WR-97-382
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GR-98-374
United Water Missouri Inc.	WR-99-326
Laclede Gas Company	GR-99-315
Missouri Gas Energy	GO-99-258
Missouri-American Water Company	WM-2000-222
Atmos Energy Corporation	WM-2000-312
UtiliCorp/St. Joseph Merger	EM-2000-292
UtiliCorp/Empire Merger	EM-2000-369
Union Electric Company	GR-2000-512
St. Louis County Water Company	WR-2000-844
Missouri Gas Energy	GR-2001-292
UtiliCorp United, Inc.	ER-2001-672
Union Electric Company	EC-2002-1
Empire District Electric Company	ER-2002-424

CASE PARTICIPATION
OF
TED ROBERTSON

Company Name	Case No.
Missouri Gas Energy	GM-2003-0238
Aquila Inc.	EF-2003-0465
Aquila Inc.	ER-2004-0034
Empire District Electric Company	ER-2004-0570
Aquila Inc.	EO-2005-0156
Aquila, Inc.	ER-2005-0436
Hickory Hills Water & Sewer Company	WR-2006-0250
Empire District Electric Company	ER-2006-0315
Central Jefferson County Utilities	WC-2007-0038
Missouri Gas Energy	GR-2006-0422
Central Jefferson County Utilities	SO-2007-0071
Aquila, Inc.	ER-2007-0004
Laclede Gas Company	GR-2007-0208
Kansas City Power & Light Company	ER-2007-0291
Missouri Gas Utility, Inc.	GR-2008-0060
Empire District Electric Company	ER-2008-0093
Missouri Gas Energy	GU-2007-0480

ENVIRONMENTAL LIABILITY AGREEMENT

FILE COPY

ENVIRONMENTAL LIABILITY AGREEMENT (the "Agreement"), dated as of ______________________________, 199___ between WESTERN RESOURCES, INC., a Kansas corporation ("Seller") and SOUTHERN UNION COMPANY, a Delaware corporation ("Buyer").

WHEREAS, Seller and Buyer have entered into an Agreement for Purchase of Assets dated as of ________ 1993, (the "Asset Purchase Agreement"), in which this Agreement is incorporated by reference pursuant to Article XIII of the Asset Purchase Agreement; and

WHEREAS, Buyer and Seller desire to provide a framework for the liability of the parties for Environmental Claims and for the sharing of Environmental Costs;

NOW, THEREFORE, in consideration thereof and of the respective covenants, representations and warranties herein contained, the parties agree as follows:

Article 1. ASSUMPTION OF LIABILITY. Except as hereinafter provided, Buyer hereby (a) assumes and agrees to be responsible for all Environmental Claims now pending or that may hereafter arise with respect to the Assets and the Business and (b) agrees to pay, perform and discharge, as and when due and payable, all Environmental Costs with respect to such Environmental Claims. Buyer hereby agrees, except as herein provided, to indemnify and hold Seller harmless from and against all Environmental Claims and Environmental Costs which Buyer has assumed or agreed to be responsible for pursuant to this Article 1. The procedures set forth in Section 12.02 of the Asset Purchase Agreement concerning recovery of costs for matters subject to indemnification are incorporated herein by reference and made a part hereof, and Seller and Buyer agree to comply with the procedures set forth in said Section 12.02 in making any claim relating to indemnification. For the purposes of Buyer's assumption of liability, agreement to pay, perform and discharge and to indemnify set forth in this Article 1, Article 2(c)(v) and Article 2(d) only, the term "Environmental Claim" shall include, in addition to those claims which are included within such term as defined in the Asset Purchase Agreement, any and all such claims and other matters hereafter arising which are based in whole or in part upon (A) any amendment or modification which occurs after the Closing Date of any Environmental Law which is extant on the Closing Date; (B) any law, statute, ordinance, rule, regulation, order or determination of any governmental authority or agency enacted or adopted after the Closing Date which would, if such law, statute, ordinance, rule, regulation, order or determination were in effect on the Closing Date, be an Environmental Law; or (C) any change in interpretation of any Environmental Law after the Closing Date by any court or by any governmental agencies having authority to enforce such Environmental Law.

Article 2. DEFINITION OF COVERED MATTERS. (a) Definition. As used herein, the term "Covered Matters" shall mean and refer to all Environmental Claims and Environmental Costs related to the Assets or the Business which (i) arise out of or are based upon

Environmental Laws, and (ii) are not included in Assumed Liabilities.

(b) Newly Discovered Matters. Covered Matters that are discovered by Buyer prior to the date which is two (2) years following the date of this Agreement shall be subject to the cost sharing provisions contained herein. All Covered Matters discovered by Buyer more than two (2) years following the date of this Agreement shall be the sole responsibility of Buyer.

(c) Shared Liability. (i) Insurance First Line of Recovery. Seller shall undertake, at its sole expense, to conduct an Environmental Insurance Archaeology Survey ("Survey") for all Plants and other locations identified on Schedule 6.18 of the Asset Purchase Agreement within thirty (30) days of the Closing Date and promptly thereafter provide Buyer with the results of the Survey. To the extent that Seller may lawfully do so without adversely affecting the insurance coverage disclosed by the Survey, Seller hereby agrees that the insurance coverage disclosed by that Survey shall constitute the first line of recovery. For any Covered Matter discovered by Buyer after Closing, Buyer shall as promptly as possible after the discovery of such Covered Matter provide notice of such discovery, together with all factual information and copies of all notices, environmental assessments, reports and other information, to Seller's Environmental Services Department so as to allow Seller to provide prompt and timely notice to the appropriate insurance carrier or carriers identified in the Survey. The parties thereafter agree to cooperate in the filing and prosecution of claims with the appropriate insurance carrier(s) in a manner that the parties mutually agree so as to expeditiously prosecute such claims. Amounts recovered from such insurance carrier(s) from the prosecution of such claims shall, after allowance for Seller's post closing outside legal fees and other reasonable out of pocket expenses, be paid to Buyer. In the event insurance recovery is protracted, the parties shall accelerate the shared cost provisions of subparagraphs (c)(ii) through (v), crediting subsequent insurance or PRP contributions to the parties as their interests appear in subparagraphs (iv) and (v).

(ii) Potentially Responsible Party First Line of Recovery. In those instances where other Potentially Responsible Parties (PRPs) are identified for purposes of cost sharing in the remediation of any site, amounts recovered from such PRPs shall, after allowance for Buyer and Seller's post closing outside legal fees and other reasonable out of pocket expenses, be paid to Buyer and credited against the cost incurred with respect to such required remediation. In the event PRP recovery is protracted, the parties shall accelerate the sharing of cost as provided for in subparagraphs (c)(iii) through (v) hereof, crediting subsequent insurance or PRP contributions to the parties as their interests appear in subparagraphs (iv) and (v).. If Seller and Buyer agree to so accelerate the sharing of costs, then Seller shall, prior to the application of any subsequent insurance proceeds or PRP contributions, be entitled to receive reimbursement of amounts advanced under subparagraph (c)(v) for post-closing costs incurred in connection with Covered Matters as provided herein pursuant to said subparagraph.

(iii) Recovery of Remediation Costs through Regulated Cost of Service. In addition to seeking the relief contemplated under subparagraphs (c)(i) or (ii), Buyer shall request from the appropriate regulatory agency having jurisdiction in the state where any remediation site is located for authority to include the cost incurred by Buyer in connection with the remediation of such site, above that recovered under subparagraphs (c)(i) or (ii), in its applicable rates or other charges for service. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall retain complete discretion as to the timing of any filings with the appropriate regulatory agencies and may seek to recover such amount in rates either before or after the recovery of any amounts pursuant to any other provision of this agreement. Buyer shall be deemed to have recovered in its applicable rates or other charges for service an amount equal to the greater of (A) the amount actually authorized for inclusion in Buyer's applicable rate or other charges for service reflected in tariffs, or (B) the amount which would be recovered if Buyer would have been authorized to include in its applicable rate or other charges for service reflected in tariffs an amount which would have been authorized for such inclusion if Buyer's request for inclusion had been accorded the treatment accorded similar expenditures under similar facts and circumstances by the applicable regulatory agency.

(iv) Buyer's Initial Sole Liability Amount. Upon exhaustion of relief contemplated under subparagraphs (c)(i), (ii) and (iii), Buyer shall thereafter be solely liable (as between Seller and Buyer) for the payment of costs incurred by Buyer or Seller in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i), (ii) and (iii) in the aggregate amount of Three Million Dollars ($3,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount.

(v). Buyer/Seller Shared Liability Amount. Upon exhaustion of relief contemplated under subparagraphs (c)(i) through (iv), Buyer and Seller shall share equally in payment of costs incurred by Buyer in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i) through (iii) (or paid by Buyer under subparagraph (c)(iv)) to a maximum aggregate amount of Fifteen Million Dollars ($15,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount. Notwithstanding anything to the contrary herein, Seller's total liability for Covered Matters shall be limited to the amount of Seven Million Five Hundred Thousand Dollars ($7,500,000.00), and Buyer shall indemnify and hold Seller harmless with respect to all claims, costs, demands and liabilities with respect to all other Covered Matters.

(d) Limitation on Seller's Liability. Seller's liability under Subparagraph (c) above shall terminate upon that date (the "Termination Date") which is fifteen (15) years after the Closing Date. From and after the Termination Date, Seller shall have no further obligations or responsibilities with respect to all other Covered Matters.

(e) Costs Incurred by Buyer and Seller. For the purposes of this Agreement, Seller and Buyer agree that the costs incurred by Buyer or Seller with respect to Covered Matters for which the other party is liable pursuant to Subparagraph (c) above shall include only costs and expenses actually paid to unrelated third parties, and in no event shall Buyer or Seller be responsible for nor shall either party receive credit for (i) pre-closing costs or expenses, or (ii) any costs or expenses paid with respect to any of either party's employees or any of either party's overhead. Each party hereby agrees to use its best reasonable efforts to control costs incurred for which the other party may be responsible and shall provide such other party with quarterly reports of costs incurred.

(f) Duty to Consult. Buyer and Seller shall at all times consult with and keep each other apprised of all activities and costs incurred in connection with Covered Matters, and Buyer and Seller shall indemnify and hold the other party harmless from any unreasonable expense incurred. Each party shall apprise the other party of those respective activities on a quarterly interval on all active Covered Matters.

(g) Standstill Agreement. In the event either Buyer or Seller is notified that they or either of them is asked to respond as a Potentially Responsible Party ("PRP") under any federal, state or local law or regulation with regard to a Covered Matter, the party receiving such notice shall notify the other party of the receipt of such notice, and shall deliver a copy of all notices and documents received, within ten (10) business days after receipt. With regard to Covered Matters, Buyer and Seller each covenant and agree not to sue the other or attempt in any manner to avoid responsibility as a PRP by seeking or attempting to shift or allocate responsibility to the other. Buyer and Seller agree to cooperate in the identification of all other PRPs for purposes of participation, remediation cost sharing and liability to regulatory agencies.

Article 3. MISCELLANEOUS. (a) Dispute Resolution. No party to this Agreement shall be entitled to take legal action with respect to any dispute relating hereto until it has complied in good faith with the following alternative dispute resolution procedures, provided however, this Article shall not apply to the extent it is deemed necessary to take legal action immediately to preserve a party's adequate remedy.

(i) Negotiation. The parties shall attempt promptly and in good faith to resolve any dispute arising out of or relating to this Agreement, through negotiations between representatives who have authority to settle the controversy. Any party may give the other party written notice of any such dispute not resolved in the normal course of such negotiations. Within twenty (20) days after delivery of the notice, representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and to attempt to resolve the dispute, until the parties conclude that the dispute cannot be resolved through unassisted negotiation. Negotiations extending sixty (60) days after notice shall be deemed at an impasse, unless otherwise agreed by the parties.

If a negotiator for a party hereto intends to be accompanied at a meeting by an attorney, the other negotiator(s) shall be given at least ten (10) business days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Article are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal and state Rules of Evidence.

(ii) ADR Procedure. If a dispute with more than $100,000.00 at issue has not been resolved within sixty (60) days of the disputing party's notice, a party wishing resolution of the dispute ("Claimant") shall initiate assisted Alternative Dispute Resolution (ADR) proceedings as described in this Article. Once the Claimant has notified the other ("Respondent") of a desire to initiate ADR proceedings, the proceedings shall be governed as follows: By mutual agreement, the parties shall select the ADR method they wish to use. That ADR method may include arbitration, mediation, mini-trial, or any other method which best suits the circumstances of the dispute. The parties shall agree in writing to the chosen ADR method and the procedural rules to be followed within thirty (30) days after receipt of notice of intent to initiate ADR proceedings. To the extent the parties are unable to agree on procedural rules in whole or in part, the current Center for Public Resources (CPR) Model Procedure for Mediation of Business Disputes, CPR Model Mini-trial Procedure, or CPR Commercial Arbitration Rules--whichever applies to the chosen ADR method--shall control, to the extent such rules are consistent with the provisions of this Article. If the parties are unable to agree on an ADR method, the method shall be arbitration.

The parties shall select a single neutral third party (a "Neutral") to preside over the ADR proceedings, by the following procedure: Within fifteen (15) days after an ADR method is established, the Claimant shall submit a list of five (5) acceptable Neutrals to the Respondent. Each Neutral listed shall be sufficiently qualified, including demonstrated neutrality, experience and competence regarding the subject matter of the dispute. A Neutral shall be deemed to have adequate experience if an attorney or former judge. None of the Neutrals may be present or former employees, attorneys, or agents of either party. The list shall supply information about each Neutral, including address, and relevant background and experience (including education, employment history and prior ADR assignments). Within fifteen (15) days after receiving the Claimant's list of Neutrals, the Respondent shall select one Neutral from the list, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Respondent, the Respondent shall submit a list of five (5) Neutrals, together with the above background information, to the Claimant. Each of the Neutrals shall meet the conditions stated above regarding the Claimant's Neutrals. Within fifteen (15) days after receiving the

Respondent's list of Neutrals, the Claimant shall select one Neutral, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Claimant, then the parties shall request assistance from the Center for Public Resources, Inc., to select a Neutral.

The ADR proceeding shall take place within thirty (30) days after the Neutral has been selected. The Neutral shall issue a written decision within thirty (30) days after the ADR proceeding is complete. Each party shall be responsible for an equal share of the costs of the ADR proceeding. The parties agree that any applicable statute of limitations shall be tolled during the pendency of the ADR proceedings, and no legal action may be brought in connection with this agreement during the pendency of an ADR proceeding.

The Neutral's written decision shall become final and binding on the parties, unless a party objects in writing within thirty (30) days of receipt of the decision. The objecting party may then file a lawsuit in any court allowed by this Contract. The Neutral's written decision and the record of the proceeding shall be admissible in the objecting party's lawsuit.

(b) Incorporation By Reference. This Agreement constitutes a part of the Asset Purchase Agreement dated ________ , 1993 between the parties.

(c) Savings Provision. This Agreement, and the terms, provisions, covenants and agreements contained herein, shall survive the Closing.

(d) Defined Terms. All terms used herein as defined terms and not defined herein shall have the meaning set forth in the Asset Purchase Agreement.

Article 4. WARRANTIES AND REPRESENTATIONS CONTAINED IN THE ASSET PURCHASE AGREEMENT. Notwithstanding any provision that may be contained in this Agreement or the Asset Purchase Agreement to the contrary, the terms and the conditions of this Agreement shall not affect, or in any way limit, any claim for an Indemnifiable Loss that Buyer may have arising out of any breach of the Seller's warranties and representations contained in the Asset Purchase Agreement, including, but not limited to Section 6.18 thereof, and not withstanding the provisions of Article XII, Loss in the event of a breach of the warranties and representations contained in Section 6.18 in the same manner as provided for other Indemnifiable Losses under Article XII of the Asset Purchase Agreement.

IN WITNESS WHEREOF, The parties hereto have duly executed this Agreement as of the date first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

BUYER

By ______________________

SELLER

By ______________________

TJR-2 Page 12