

**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 Costs.)	

PUBLIC COUNSEL’S RESPONSE

COMES NOW the Missouri Office of the Public Counsel and for its Response to the Commission’s Order Directing Filing states:

1. On July 28, 2008, the Commission issued its Order Directing Filing, which “questions whether there are premises upon which” the Commission should approve or reject Missouri Gas Energy’s (MGE) request for an Accounting Authority Order (AAO). The Order asks the parties whether there are “factual findings and/or legal conclusions that must first be determined in order to reach the final decision of whether the Commission should grant an AAO to MGE.” The Order directs the parties to file responses no later than August 1, 2008.¹

2. The Commission requires gas corporations to utilize the Uniform System of Accounts (USOA) adopted by the Federal Energy Regulatory Commission (FERC). 4 CSR 240-40.040. In its AAO Application, MGE seeks to deviate from traditional regulatory accounting principles and the traditional method of setting rates whereby the Commission considers all relevant expenses in a particular historical test year to

¹ The Order also characterizes Public Counsel’s participation in this matter as “minimal.” However, Public Counsel has participated extensively throughout the case, including Public Counsel’s participation at the prehearing conference, the gathering of data through

determine a reasonable revenue requirement for the future. This substantial deviation from the protections offered by the traditional rate setting method places a substantial burden of proof on the applicant.

3. The standard for considering an AAO request requires MGE to meet its burden of proving the expenses it seeks to defer are extraordinary, unusual and unique and not recurring. In past AAO requests, the Commission determined that the “initial inquiry is whether the costs sought to be deferred are indeed extraordinary,” and if the costs are not extraordinary, “the inquiry is at an end, and the other questions are moot.” *In the Matter of Missouri Public Service and St. Joseph Light and Power, Divisions of Utilicorp United, Inc., for Recognition of Uncollectibles Expense Under the Terms of 4 CSR 240-13.055(10)1*, GO-2002-175, Report and Order, p.6, November 14, 2002.

4. To determine whether a cost is extraordinary, the USOA adopted by the Commission in 4 CSR 240-40.040, defines “extraordinary items” in General Instruction No. 7 as follows:

Extraordinary items. It is the intent that net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments as described in paragraph 7.1 and long-term debt as described in paragraph 17 below. Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, 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 determining significance, items should be considered individually and not in the aggregate. However, the effects of a series of related transactions arising from a single specific and identifiable event or plan of action should be considered in the aggregate.) To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary

discovery, visiting MGE’s offices to review data, participating in settlement meetings, and filing rebuttal testimony with the Commission.

items. Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary. [emphasis added].

Under the USOA, extraordinary expenses must not be a normal business expense, they must not be expected to recur in the foreseeable future, and they must be more than 5 percent of income. These are the parameters the Commission should employ when determining whether MGE has satisfied its burden of proof. The question to ask is whether MGE has proven:

- a. MGP environmental remediation expenses are extraordinary, unusual, unique and not a normal business expense for MGE;
- b. MGP environmental remediation expenses are not expected to recur in the foreseeable future; and
- c. The MGP environmental remediation expenses are more than five (5) percent of MGE's income.

If MGE's evidence does not support these findings and conclusions, the AAO request should be denied.

5. In addition to the findings and conclusions necessary in an AAO proceeding, the Commission must also determine whether passing MGP remediation costs onto consumers is just and reasonable regardless of the accounting method employed. Public Counsel asserts that it is not just and reasonable because: 1) Southern Union's shareholders, not consumers, assumed MGP remediation liability (a business risk) when it acquired MGE and received consideration for assuming this liability in the purchase price of the system; 2) Ratepayers already compensate stockholders for assuming business risk through a risk premium in the Return on Equity issued in MGE's revenue requirement; 3) MGP remediation costs are not used and useful in the current provision of service to consumers; and 4) The MGP plants were private unregulated

entities that sold the contaminant by-products to manufacture pitch and tar paper, and consumers should not be required to reimburse Southern Union for liabilities towards unregulated entities and their unregulated customers. If the Commission concludes that Southern Union should not be allowed to pass these expenses onto consumers, the AAO inquiry would become moot.

WHEREFORE, the Office of the Public Counsel respectfully offers this response highlighting the findings and conclusions to be determined in this case.

Respectfully submitted,
OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 1st day of August 2008:

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