ATTACHMENT B

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Tariffs Increasing Rates for Gas Service Provided to Customers in the Company's Missouri Service Area	))))	**Case No. GR-2006-0422** Tariff File No. YG-2006-0845

REPORT AND ORDER

Issue Date: March 22, 2007

Effective Date: March 30, 2007

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Missouri Gas Energy's Tariffs Increasing Rates for Gas Service Provided to Customers in the Company's Missouri Service Area	))))	**Case No. GR-2006-0422** Tariff File No. YG-2006-0845

APPEARANCES

Paul Boudreau, James Swearengen, Dean Cooper, Russ Mitten, Janet Wheeler, and Diana Carter, Attorneys at Law, Brydon, Swearengen & England, 312 E. Capitol Avenue, Jefferson City, Missouri 65102,

For Missouri Gas Energy, a division of Southern Union Company.

Stuart W. Conrad, Attorney at Law, Finnegan, Conrad & Peterson, LLC, 3100 Broadway Street, Suite 1209, Kansas City, Missouri 64111,

For Midwest Gas Users Association.

Jeremiah D. Finnegan, Attorney at Law, Finnegan, Conrad & Peterson, LLC, 3100 Broadway Street, Suite 1209, Kansas City, Missouri 64111,

For Central Missouri State University, University of Missouri- Kansas City and Jackson County.

Mark W. Comley, Attorney at Law, Newman, Comley & Ruth, 601 Monroe, Suite 301, Post Office Box 537, Jefferson City, Missouri 65102,

For the City of Kansas City.

Jeffrey Keevil, Attorney at Law, Stewart & Keevil, 4603 John Garry Drive, Suite 11, Columbia, Missouri 65203,

For Trigen-Kansas City Energy Corporation.

Marc Poston, Attorney at Law, Office of the Public Counsel, Post Office Box 2230, Jefferson City, Missouri 65102,

For the Office of the Public Counsel and the public.

Kevin A. Thompson, Robert Franson, Lera Shemwell, Robert Berlin, David Meyer, Steven Reed, Attorneys at Law, Governor Office Building, Suite 800, 200 Madison Street, Jefferson City, Missouri 65102,

For the Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Kennard L. Jones

REPORT AND ORDER

Table of Contents

Summary

In this report and order, the Commission finds that Missouri Gas Energy, a division of Southern Union Company, is entitled to a rate increase sufficient to generate a revenue increase of approximately $27,206,968.

FINDINGS OF FACT

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Procedural History

On May 1, 2006, Missouri Gas Energy, a division of Southern Union Company, filed tariff sheets designed to implement a general rate increase for natural gas service in the amount of $41,651,345. The tariff sheets carried an effective date of June 2, 2006.

On May 12, 2006, the Commission suspended MGE's tariff until March 30, 2007. The maximum amount of time allowed for suspension under the controlling statute.[1] The Commission also directed that notice of MGE's tariff filing be provided to the public, setting June 1, 2006, as the deadline for the submission of applications to intervene.

The Commission granted timely applications to intervene that were filed by Trigen-Kansas City Energy Corporation, Midwest Gas Users Association, University of Missouri-Kansas City and Central Missouri State University. The Commission also granted requests to intervene, filed out of time, by The City of Kansas City, Missouri and the County of Jackson, Missouri. The Commission denied an untimely request to intervene by

[1] Section 393.150, RSMo 2000.

Cornerstone Energy, Inc. The Commission found that the former out-of-time requests were supported by good cause, while the latter was not.

On July 13, 2006, the Commission established the test year for this case as the 12-month period ending December 2005, updated for known and measurable changes through June 30, 2006. The parties also settled on a further true-up period through October 31, 2006, for the purpose of updating certain cost components. Also in its order, the Commission established a procedural schedule with the first day of the hearing beginning on January 8, 2007.

The Commission conducted local public hearings at which the Commission heard comments from MGE's customers regarding MGE's request for a rate increase. The hearings were held in Kansas City, Joplin, Republic, Warrensburg, Nevada, St. Joseph and Slater, Missouri.

The parties prefiled direct, rebuttal and surrebuttal testimony. The evidentiary hearing began on January 8, 2007, and continued through January 17. True-up testimony was entered into the record during the course of the hearing and with consent of all of the parties the true-up hearing was canceled as being unnecessary.

Partial Stipulations and Agreements

Prior to the start of the evidentiary hearing, MGE, Staff, OPC, MGUA, UMKC, CMSU and the County of Jackson, Missouri submitted a Partial Nonunanimous Stipulation and Agreement with regard to customer class cost of service. Although the City of Kansas City and Trigen did not enter the agreement, they did not oppose it. The Commission approved the agreement. The Commission also approved an unopposed Partial Nonunanimous Stipulation and Agreement, filed by MGE and Staff, concerning depreciation schedules.

Overview

MGE is a division of Southern Union Company. As a division, MGE has no separate corporate existence apart from Southern Union. MGE's divisional headquarters is located in Kansas City, Missouri and provides service to customers in Kansas City, St. Joseph, Joplin and other cities in western Missouri. MGE is a local distribution company, sometimes referred to by the acronym, "LDC." That means that MGE purchases natural gas from a supplier, pays to transport the gas to Missouri over one or more interstate pipelines, and then distributes the natural gas to its customers in this state. Southern Union is headquartered in Wilkes-Barre, Pennsylvania. In addition to MGE, Southern Union has one other division in New England that acts as an LDC.

Noted earlier, as an LDC, MGE must purchase natural gas from supply sources, transport the gas over an interstate pipeline, and then distribute it to its customers. This Commission does not have any authority to regulate the price that MGE must pay to purchase and transport gas over the interstate pipeline. The purchase price of natural gas is set by the market and transportation rates are regulated by the Federal Energy Regulatory Commission (FERC). As a result, this rate case has nothing to do with those aspects of the cost of natural gas.

The price that MGE must pay to purchase and transport natural gas is passed through, dollar for dollar, to its customers through the PGA/ACA process. Therefore, if MGE is to recover its cost of distributing natural gas to its customers, and earn a profit, it must have another source of income. It is those costs, and that source of income, that are at issue in this rate case.

MGE began the rate case process when it filed its tariff on May 1, 2006. In doing so, MGE asserted that it was entitled to increase its rates enough to generate an additional $41,651,345 in general revenues per year. MGE set out its rationale for increasing its rates in the direct testimony that it filed along with its tariff on May 1. In addition to its filed testimony, MGE provided work papers and other detailed information and records to the Staff of the Commission, Public Counsel and other intervening parties to determine whether the requested rate increase is just and reasonable.

Because of the complexity of a rate case, there are a multitude of matters about which the parties could disagree. However, there was agreement between the parties about many matters; hence, those potential issues were not brought before the Commission. Where the parties disagreed, they prefiled written testimony for the purpose of bringing those issues to the attention of the Commission. All parties were given an opportunity to prefile three rounds of testimony – direct, rebuttal, and surrebuttal. Prior to the start of the hearing, the parties submitted a Joint Statement of Issues that required resolution by the Commission.

As noted, the issues of depreciation and class cost of service were resolved by Stipulation and Agreement and will not be further addressed in this report and order. The remaining issues will be addressed in turn. The issue description for each issue is taken from the statement of issues. Factual matters will be addressed in the Findings of Fact section. If an issue also contains a legal aspect, that portion of the issue will be addressed in the Conclusions of Law section.

Generally, all parties agree that MGE has experienced a revenue deficiency. However, this does not mean that MGE operated at a loss. In fact, it did earn a return of

between 5.74% and 8.29%.[2] For the calendar year of 2005 MGE's overall rate of return was 7.49%. And for 2006 it was considerably lower due to weather being 77% of normal.[3]

The Issues

1. Capital Structure

Issue Description: *What is the appropriate capital structure (i.e., the relative proportions of long-term debt, short-term debt, preferred equity, and common equity) to use in calculating MGE's cost of service?*

Determining an appropriate capital structure for MGE is complicated by the fact that MGE is a division of Southern Union and does not issue its own debt or equity. Therefore, MGE does not have its own capital structure.

As a substitute for its non-existent capital structure, MGE proposes to use a hypothetical capital structure consisting of 46% equity and 54% debt. MGE's proposed structure is as follows:[4]

Common Equity	46%
Long-Term Debt	44.09%
Short-Term Debt	9.91%

However, if the Commission does not adopt the proposed hypothetical capital structure, MGE is willing to accept the actual capital structure of Southern Union as of October 31, 2006.[5]

---

[2] Transcript, Page 950, Lines 12-24.

[3] Transcript, Page 590, Lines 12-16.

[4] Hanley Direct, Ex. 1, Page 3.

[5] Transcript, Page 170, Lines 17-23.

Southern Union has an identifiable capital structure.[6] Staff recommends that the Commission use the actual consolidated capital structure of Southern Union, as of October 31, 2006. The following is the capital structure offered by Staff:[7]

Common Equity	36.06%
Long-Term Debt	55.92%
Preferred Stock	4.71%
Short-Term Debt	3.3%

OPC did not take a position on this issue.

It is important to note that the capital structure recommended by Staff contains a much smaller proportion of common stock than does the structure recommended by MGE. It costs the company more to issue equity that it does to incur debt. Therefore, a capital structure that uses a lot of debt with relatively low levels of equity is less expensive for the company. That means, all else being equal, a capital structure that includes a low percentage of equity and a large percentage of debt will be less costly, resulting in a lower rate of return, and consequently a lower revenue requirement and lower rates to customers.

However, a high percentage of debt in a capital structure has an effect on the cost of equity. The shareholders in a company – the holders of equity – are subordinate to holders of debt. Generally, the company must pay the interest on debt, such as bonds issued by the company, before it can pay dividends to its shareholders or before it can invest profits in other ways that benefit the shareholders. If a company's gross income goes down, the risk is borne by the shareholders. Furthermore, if the company has to be liquidated, the

---

[6] Transcript, Page 60, Line 24.

[7] Murray True-Up, Ex. 205, Page 3, Lines 1-3.

holders of debt get paid first. The shareholders get whatever is left over. Therefore, a company with a capital structure that includes a high percentage of debt is more risky for shareholders. The shareholders will consequently demand a higher rate of return to compensate them for the increased risk caused by the high level of debt.

Southern Union's capital structure, as proposed by Staff, contains a good deal more debt and less equity than the capital structure proposed by MGE. That means the capital structure proposed by Staff poses more risk to the shareholder than that proposed by MGE. MGE contends that the use of its proposed capital structure, one using proxy companies to reflect the capital structure of a stand-alone LDC, is particularly appropriate in light of Southern Union's transition to being primarily a transportation and storage company.

This issue was discussed by the Commission in MGE's last rate case.[8] As discussed in that case, the capital structure of Southern Union is the result of its management decisions. Hence, Southern Union, and ultimately MGE, must operate with the result of its decisions. MGE stresses that the make-up of Southern Union has changed so dramatically, that use of a hypothetical capital structure is warranted. This premise, however, does not change the Commission's reasoning in MGE's last rate case. Therefore, the capital structure, as proposed by Staff, shall be used.

2. Rate Design

Issue Description: *What is the appropriate rate design for residential, small general service, large volume service and large general service classes?*

Historically, MGE has operated under a rate design that allows it to recover a portion of its fixed cost through a customer charge. The remaining portion is recovered through volumetric rates, the amount of gas MGE sells to its customers. Currently, MGE recovers

[8] Report and Order, Commission Case No. GR-2004-0209, *issued,* September 21, 2004.

55% of its fixed cost through a customer charge and 45% of its fixed cost through volumetric rates.[9] Since 1996, the annual average usage per residential customer has generally declined.[10] MGE posits that because of this decline, coupled with the fact that 90% of its customer base is residential, it has been unable to earn its Commission authorized rate of return.[11] Hence, MGE seeks Commission approval of a Straight-Fixed Variable (SFV) rate design for the Residential class because of the under-recovery of its costs through volumetric rates and because of the high degree of heat sensitivity effecting the class.[12] The SFV design is one through which the company will recover all of its fixed costs through a fixed, monthly customer charge. Although its preferred rate design is the SFV design, as an alternative MGE proposes a design consisting of a weather normalization adjustment mechanism applicable to Residential, Small General Service and Large General Service classes.[13] The only class omitted is the Large Volume Service class.

Staff agrees that the SFV design should be implemented.[14] Staff argues that customers in the Residential class are homogeneous with respect to the cost of serving them and that it is unfair to collect these costs through a volumetric rate design.[15] Staff goes on to reason that the volumetric rate design causes high-use customers to subsidize the cost of low-use customers. Staff also reasons that the SFV design will reduce volatility of customer bills. An additional benefit of the proposed rate design, set out by Staff and the company, is that the objective of the shareholders and ratepayers will be better aligned

---

[9] Transcript, Page 634, Lines 2-5.

[10] Feingold, Schedule RAF-7.

[11] Transcript, Page 632, Pages 2-8.

[12] Transcript, Page 686, Lines 14-23.

[13] Transcript, Page 16, Lines 19-23.

[14] Staff Post Hearing Brief, Page 18.

[15] Staff's Post Hearing Brief, Page 18.

because the utility's revenues will no longer depend on how much gas it sells. Currently, MGE has an incentive to sell more gas to at least recover its costs. The current rate design therefore discourages natural gas conservation efforts on the part of the company. If the SFV design is adopted, the company is committed to offering several natural gas conservation initiatives. Finally, the SFV design will promote accuracy. Under the current design, presumptions are made about sales volumes to try to match MGE's fixed cost. In this instant, there is often over or under payment. The proposed rate design eliminates this concern with regard to the Residential class.

OPC opposes any change in the current rate design.[16] Although OPC opposes the SFV design, as a participant in an energy task force it agreed that the Commission should incorporate rate designs that remove the disincentive for utilities to pursue programs aimed as reducing usage.[17] OPC's recommendation in support of the current rate design does not remove the company's disincentive to pursue programs aimed as reducing natural gas usage.[18] As discussed above, the SFV rate design does just that. Also, as discussed above, declining customer usage coupled with the current rate design, will exacerbate MGE's inability to recover it fixed costs. OPC does not dispute that customer usage is declining and will continue to do so through 2010 to 2020, as put forth by MGE's witness in light of a forecast set out by the American Gas Association.[19]

---

[16] Transcript, Page 562, Pages 6-16.

[17] Transcript, Page 566, Lines 4-10.

[18] Transcript, Page 537, Lines 10-15.

[19] Transcript, Page 534, Lines 1-18.

Although OPC opposes the SFV design because it lessens the customer's ability to have control over the amount of his or her bill,[20] OPC agrees that that under the SFV design customers would save by reducing their natural gas usage.[21] Further, OPC agrees that customers will not pay as much in colder-than-normal winters.[22] Under the SFV design, weather is removed from the risk factor calculation.[23] OPC opposed the SFV design as unjustifiable in a separate matter because the company had not proposed any meaningful conservation programs.[24] Notwithstanding, in this matter MGE has proposed conservation programs. Also, MGE has had in place a Low Income Weatherization program for some time.[25] Lastly, OPC particularly opposes the SFV design in conjunction with tariff language regarding seasonal disconnects,[26] which will be discussed below.

The Commission points out that MGE and Staff propose a SFV design only for MGE's Residential class and not for its Small General Service class because it is more heterogeneous than the Residential class.[27] The Commission finds MGE and Staff's arguments for a rate design that will protect MGE from the vagaries of weather to be persuasive. The Commission shall approve the SFV rate design for MGE's residential class.

---

[20] Transcript, Page 537, Lines 10-18.

[21] Transcript, Page 580, Lines 23-25.

[22] Transcript, Page 579, Lines 14-18.

[23] Transcript, Page 92, Lines 6-12.

[24] Transcript, Page 541, Lines 4-9.

[25] Transcript, Page 541, Lines 10-13.

[26] Transcript, Page 571, Lines 15-18.

[27] Transcript, Page 684, Lines 13-20.

3. Unrecovered Cost of Service Amortization

Issue Description: *Should MGE recover $15.6 million in rates amortized over five years for alleged revenue loss due to lower customer gas use for the period of January through June of 2006?*

Staff and OPC argue that to authorize this expense would constitute retroactive ratemaking.[28] MGE agrees that to grant this request would constitute retroactive ratemaking.[29] Because all parties of interest[30] agree that this request is illegal, the Commission will deny MGE's proposal.

4. Property Tax Refund

Issue Description: *What is the proper treatment of $5,554,068 in property tax refunds received by MGE during the test year of 2005?*

During the test year of 2005, MGE received a refund of property taxes paid during 2002, 2003 and 2004. Staff proposes to put that money in a deferred account and to amortize it over five years; reducing the amount of property tax expense that would otherwise be included in rates.[31] Staff contends that to do so does not constitute retroactive ratemaking because the money was received during the test year.[32] However, Staff contends that in this regard, rates were properly set for the years 2002, 2003, and 2004.[33] Then Staff goes on to state that in light of the company having recovered the taxes, this expense was set too high in rates.[34] In setting rates, there is always a risk that the expense for property taxes will be under or over estimated. The company therefore has

---

[28] Transcript, Page 1006, Lines 8-12.

[29] Transcript, Page 284, Lines 19-25.

[30] The only parties arguing this issue are MGE, Staff and OPC.

[31] Transcript, Page 848, Lines 12-20.

[32] Transcript, Page 850, Lines 21-25.

[33] Transcript, Page 851, Lines 21-22.

[34] Transcript, Page 854, Lines 3-4.

the risk of not recovering its property taxes. In this case, the property tax expense was set too high, just as cost of service was set too low in the preceding issue.

MGE argues that Staff's proposal constitutes retroactive ratemaking and that the Missouri Supreme Court has determined, in setting rates, that the Commission can consider past excess recovery by a utility only insofar as it is relevant to a determination of what rate is necessary to provide a just and reasonable return.[35] Interestingly, Staff notes in its opening argument that "the test year concept is to take a snapshot of the company's incoming revenues and outgoing expenses and work with those to determine the appropriate rates." Although Staff goes further to propose inclusion of the refund in rates, Staff's statement is consistent with the argument put forth by MGE.

Based on its Conclusions of Law and the above findings, the Commission will deny Staff's request to amortize the property taxes refunded to MGE in 2005.

5. Weather Normalization

Issue Description: *What is the appropriate measure of normal weather to be used in calculating 1) MGE's revenue requirement and 2) the billing determinants to be used in establishing MGE's volumetric rate elements?*

The Commission has historically used a 30-year average in determining what the normal temperature should be.[36] Staff gathers its information from the National Oceanic Atmospheric Administration (NOAA). Currently, the NOAA's period for calculating a normal climate is the 30-year period between January 1, 1971 and December 31, 2000.[37] The "normal" temperature is ultimately used to determine what the cost of each unit of gas

---

[35] Transcript, Page 855, Lines 11-17.

[36] Transcript, Page 671, Line 25 – Page 672, Line 2

[37] Transcript, Page 675, Lines 22-25.

should be. MGE proposes to use what is described as a 10-year rolling average to determine normal weather.

MGE argues Staff's recommendation of the 30-year period is flawed because Staff's proposal fails to consider circumstances that reasonable can be expected to occur while rates are in effect.[38] MGE goes on to argue that "the theory underlying the policy should generate a result that has some relationship to reality; otherwise, what we do here is just a formality."[39] MGE points out that if the Commission adopts the SFV rate design, weather normalization will not be an issue for its residential customers.[40]

Staff has problems with the 10-year normal because it's too short to provide the necessary stability. Temperature variations can span across decades. Also, the rolling average will change every year and depending on which year is the test year we could end up with different normals.[41] Staff's position is that the 30-year normal is a better reflection than the 10-year rolling average of what is normal.[42]

As noted above, the Commission has historically used the 30-year normal. As MGE has stated, under the SFV rate design this will not be an issue for 90% of the company's customers. The Commission continues to use the 30-year normal and finds that it should be consistent when applying a method of weather normalization between utilities. In the absence of more convincing evidence that this methodology should be changed, the Commission will continue to adopt the 30-year weather normalization as proposed by Staff.

---

[38] Transcript, Page 665, Lines 2-7.

[39] Transcript, Page 668, Lines 9-11.

[40] Transcript, Page 668, Lines 14-21.

[41] Transcript, Page 742, Lines 16-25.

[42] MGE's current tariff. P.S.C Mo. No. 1, Fourth Revised Sheet No. 96.

6. Low Income Weatherization

Issue Description: *What is the appropriate level of low-income weatherization funding to be used in calculating MGE's cost of service and how should such funding be allocated among the geographic regions of MGE's service territory?*

MGE currently provides $367,000 of ratepayer funds to the weatherization program in Clay, Platte and Jackson Counties.[43] An additional $132,368 is administered throughout the rest of MGE's service territory for a total of $500,000. The program was initiated in 1994 and currently serves between 200-300 customers per year.[44] Among other things, the program includes appliance replacement, installation of insulation and energy audits.[45] As a result of demand for the program, the City of Kansas City, the program administrator, requests an additional $250,000. Kansas City states that the funds are exhausted before the end of each year.[46] Approximately $1,700 per person is spent through the program.[47] Kansas City states that it will be able to serve an additional 100-150 customers with the additional $250,000.

Staff and MGE support additional funding for the program. However, they agree that the additional funding should be $100,000 rather than $250,000. Further, at Staff's suggestion, they agree that an additional $20,000 should be used to evaluate the program's effectiveness.[48] MGE states that the $100,000 increase is sufficient in light of

---

[43] Transcript, Page 132, Lines 15-16.

[44] Transcript, Page 135, Lines 17-19.

[45] Transcript, Page 137, Lines18-24.

[46] Transcript, Page 134, Lines 6-16.

[47] Transcript, Page 136, Lines 10-11.

[48] Transcript, Page 811, Lines 7-13.

the fact that Kansas City does not have much of a backlog and that a 20-25% increase at this time makes sense.[49]

The Commission finds that the existing low-income weatherization program has been successful and should be continued with additional funding. In light of the growing concern regarding energy conservation, the Commission will direct MGE to fund the low-income weatherization program with an additional $250,000 to be allocated in the same proportion as the current program.

7. Natural Gas Conservation

Issue Description: *Should funding for natural gas conservation programs be included in MGE's cost of service?*

As discussed earlier, under the SFV rate design, MGE's disincentive to promote natural gas conservation is removed. With the disincentive removed, the company is willing to "offer" conservation programs to better align themselves with the interest of the customer.[50] The company offers $705,000 to be included in rates to go toward a gas water heater rebate program.[51] The Commission notes, however, that this program is particularly in the company's interest as it provides an incentive for customers to switch from electric to gas water heaters.[52] Additionally, the company is offering $45,000 to be included in rates to educate the public about energy conservation.[53] This program would be an on-line audit (energy calculator) linked to the Department of Energy.[54] MGE anticipates lowering its return requirement by $1 million under the SFV design and using that money for

---

[49] Transcript, Page 625, Lines 2-14.

[50] Transcript, Page 390, Lines 20-25.

[51] Transcript, Page 440, Lines 9-11.

[52] Transcript, Page 441, Line 23 - Page 442, Line 4.

[53] Transcript, Page 439, Lines 7-25.

[54] Transcript, Page 627, Lines 3-10.

conservation programs.[55] The Commission shall approve the conservation program proposed by Staff and MGE.

8. Environmental Response Fund

Issue Description: *Should the environmental response fund proposed by MGE be adopted and what, if any, level of environmental costs should be used in calculating MGE's cost of service? MGE requests that the amount of the fund be $500,000, annually.*

MGE is seeking authority to establish an environmental response fund of $500,000 annually, through rates, to meet its obligation to pay costs associated with several manufactured gas sites purchased by Southern Union.[56] The company proposes that $500,000 be set aside every year until such time as the costs are incurred.[57] MGE agrees that the costs associated with the clean-up are impossible to know.[58] MGE's contractual obligation with regard to the clean up of these sites is to seek rate recovery.[59] This proposal was rejected when presented to the Commission in MGE's last rate case.[60] The premises underlying that discussion have not changed.

In the future, MGE may incur an unknown and unknowable amount of financial liability for the cleanup of environmental hazards left over from the operation of manufactured gas facilities 100 to 125 years ago.[61] Manufactured gas facilities were used before the advent of interstate natural gas pipelines in the 1940s. Before there were interstate pipelines, gas could not be transported over long distances so gas companies

---

[55] Transcript, Page 808, Lines 6-25.

[56] Transcript, Page 885, Lines, 15-22.

[57] Transcript, Page 918, Lines 14-17.

[58] Transcript, Page 899, Lines 8-13 and Page 909, 23-25.

[59] Transcript, Page 904, Lines 23-25.

[60] Transcript, Page 917, Lines 12-16.

[61] Transcript, Page 900, Lines 1-3.

manufactured gas by heating coal or oil and collecting the gas that was driven off in the process. The primary byproduct that came from this process is tar, which contains hazardous carcinogens. This is what primarily drives investigation and remediation of the sites.[62] MGE agrees that it is not possible to ascertain the costs of investigation and remediation.[63] That the magnitude of the costs associated with this effort is impossible to know is again noted by MGE.[64] Further, to date, MGE has not paid any costs associated with the environmental clean up.[65]

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.

---

[62] Transcript, Page 895, Lines 2-9.

[63] Transcript, Page 896, Line 23 – Page 897, Line 6.

[64] Transcript, Page 899, Lines 8-13.

[65] Transcript, Page 908, Lines 12-17.

9. Infinium Software

Issue Description: *Should the Unrecovered cost associated with MGE's Infinium Software be included in rates through an amortization and, if so, over what period of time?*

MGE purchased the Infinium Software in 1995 and the estimated life was 10 years. The company switched to different software, Oracle, in 2005.[66] Although the original investment was almost fully amortized, each year after 1995, until 2001, enhancements and modifications were made to the Infinium system. Each enhancement was given a new 10-year life rather than being amortized for the remaining life of the Infinium system.[67] MGE is now requesting amortization of the remaining balance of the entire system,[68] which is approximately $1.23 million.[69]

The enhancements to the system were included in rate base in MGE's last rate case in 2004.[70] MGE is currently earning a return on those enhancements until they come out of rate base.[71] MGE points out that it continues to use the Infinium Software for a time entry system, which it intends to do until March of 2007 if it converts the payroll system over to Oracle.[72]

---

[66] Transcript, Page 1264, Lines 2-8.

[67] Transcript, Page 1264, Lines 11-21.

[68] Transcript, Page 1260, Lines 14-16.

[69] Transcript, Page 1035, Line 12-13.

[70] Transcript, Page 1266, Line 23 – Page 1267, Lines 2.

[71] Transcript, Page 1267, Lines 21-24.

[72] Transcript, Page 1257, Lines 9-18.

OPC argues that the system is not used and useful and opposes MGE's proposal.[73] In this regard, OPC refers to *State ex rel. Union Electric v. P.S.C.*, 765 S.W.2d 618 (Mo. App. 1988) in its post hearing brief. That case states that:

> The property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used and useful. This used and useful concept provides a well-defined standard for determining what properties of a utility can be included in rate base.

However, MGE made an adjustment to remove the plant investment in the software out of it's rate base, which means MGE will not earn a return on the plant.[74] With the concept of "use and useful" being the premise of OPC's opposition, its argument must be rejected. Both Staff and MGE point out that the plant is not included in rate base. Therefore, the company will not earn a return on the property. The concept of "used and useful" thus becomes irrelevant. The Commission finds that the property shall be amortized over 5 years as proposed by Staff and MGE.

10. Rate Case Expense

> ***Issue Description:*** *What is the appropriate amount and treatment of rate case expense, including amortization of prior rate case expense, in this case?*

From MGE's last rate case in 2004, the Commission authorized the company to amortize its rate case expense over three years. A balance of $148,971 remains to be amortized as of March 2007.[75] MGE proposes to amortize the current rate case expense with the remaining $148,971 over a three-year period.[76] Although in its pre and post hearing briefs Staff argues that to allow MGE to amortize the remaining rate case expense

---

[73] Transcript, Pages 1284 -1285.

[74] Transcript, Page 1266, Lines 15-20 and Page 1267, Lines 6-9.

[75] Transcript, Page 1040, Lines 1-3.

[76] Transcript, Page 1044, Lines 10 -13.

would constitute retroactive ratemaking, there is no mention of this argument during the hearing. In fact, Staff's position is that the rate case expense be normalized.[77] The Commission will therefore disregard Staff's argument that recovery of this expense would constitute retroactive ratemaking.

The Commission resolved this issue in MGE's last rate case to allow the company to recover, what was determined to be prudent costs, through amortization over three years. The Commission will not vacate its order in that regard. Staff and MGE propose to amortize the remaining rate case expense with that incurred in this case. The Commission will grant that request and allow MGE to amortize the combined amounts over a three-year period.

11. Emergency Cold Weather Rule AAO Recovery

Issue Description: *What is the proper rate treatment for costs deferred under the Emergency Cold Weather Rule AAO Recovery Mechanism?*

MGE is requesting about $900,000 through an AAO as a result of complying with the Emergency Cold Weather Rule.[78] On September 21, 2006, the Commission issued an order granting authority for an AAO for cost incurred under the cold-weather rule. In that order, the Commission directed the parties to brief and present testimony on this issue.

Staff testified that $901,331 represents the difference between the amount that the company could have collected under the old cold weather rule and the amount that MGE actually collected.[79] Staff recommends that this amount be amortized over three years.[80] Consistent with the Commission's order of September 21, 2006, the Commission will grant

---

[77] Transcript, Page 1045, Lines 21–24.

[78] Transcript, Page 1074, Line 11.

[79] Harrison Direct, Page 17, Lines 7-9.

[80] Harrison Direct, Page 17, Lines 20-21.

MGE's request to amortize the deferred cost through an AAO and finds that $901,331 shall be amortized over a three-year period.

12. Seasonal Disconnects

Issue Description: *Should the seasonal disconnect tariff language proposed by MGE be approved?*

Of its 450,000 customers, MGE has about 1,275 customers who voluntarily disconnect their service for period of up to seven months. MGE seeks approval to include in its tariff, language that will require those who "seasonally" disconnect to pay their portion of the fixed costs to provide service that they would have otherwise paid had they remained on the system. The customer would also have to pay the already-approved $45 reconnection fee. The maximum a customer would have to pay to be reconnected after voluntarily disconnecting for 7 months would be $237.50.[81] Staff calculated this figure to be $209.36.[82] Based on a SFV rate design, MGE estimates that the cost of those who seasonally disconnect is about $140,000.[83] Staff estimates this figure to be $114,447.[84]

MGE recognizes that today, this is not a substantial issue. MGE's intent is to discourage seasonal disconnection in the future.[85] However, there is no proposed language to protect customers who voluntarily disconnect for hospital stays, military obligations, or for students who vacate in the summer to return in the fall.[86] OPC argues that the proposed language will force customers to pay for a service they did not use during

---

[81] Transcript, Page 1095, Lines 8-20.

[82] Transcript, Page 1113, Lines 4-6.

[83] Transcript, Page 1085, Lines 14-17

[84] Transcript, Page, 1113, Lines 4-6.

[85] Transcript, Page 599, Lines 12-14.

[86] Transcript, Page 1094, Lines 20-24.

the time of disconnection, and it fails to take into account the various reasons a customer would need to be disconnected.[87]

Currently, customers pay a fixed charge of $11.65 per month. According to MGE, under the SFV rate design, this figure could increase to $27.50.[88] Essentially, MGE requests that the fixed monthly charge be increased while proposing language that punishes customers for disconnecting during a time of the year when gas is not needed. MGE's intent is to discourage people from disconnecting. However, under the higher fixed charge the opposite might occur. There is no way to predict what effect a SFV rate design will have on seasonal disconnection.

What is certain is that this currently not a big problem for MGE. Those who seasonally disconnect represent only .3% of MGE's residential customer base. The Commission realizes that it recently approved seasonal disconnection language in Atmos Energy Corporations' rate case.[89] However, in that case the customers who took advantage of seasonal disconnection comprised 10% of the company's residential customers. Also, the Atmos reconnection charge, at $24.00, is substantially lower than that of MGE. These distinctions justify the Commission taking a different course in this case. The Commission will, therefore, deny MGE's request to include language in its tariff regarding seasonal disconnection.

---

[87] Transcript, Page 1149, Lines 3-7.

[88] Transcript, Page 1103, Line 6.

[89] Commission Case No. GR-2006-0387. Report and Order, *issued* February 22, 2007.

13. Kansas Property Tax AAO

Issue Description: *Should the Kansas Property Tax AAO be continued past the expiration date ordered by the Commission in Case No. GU-2005-0095?*

In Case No. GU-2005-0095, the Commission granted MGE an Accounting Authority Order allowing it to record on its books a regulatory asset representing the expenses associated with property taxes. The property tax concerns natural gas storage held by MGE in the state of Kansas.[90] MGE contends that it should not have to pay the tax and informs the Commission that the matter is now before the Supreme Court of Kansas.

Staff agrees with MGE that there is no reason to vacate the Commission's prior Order. It also agrees that this issue involves no money and will make no difference with regard to revenue requirement.[91] OPC opposes this request arguing that the AAO is inappropriate because the costs to be deferred are not known and measurable.[92]

In its order initially granting the AAO, the Commission reasoned that an AAO is appropriate if MGE demonstrates that the costs to be deferred are "extraordinary, unusual and unique, and not recurring." In this case, the costs that MGE seeks to continue deferring are property taxes. In most cases, the payment of property taxes by a utility would not be a fit subject for an AAO. MGE, like all investor-owned utilities, routinely pays property taxes. Again, like all investor-owned utilities, MGE is routinely allowed to recover the taxes it pays from its ratepayers through the inclusion of those tax payments in its cost of service when its rates are calculated in a rate case.

The Kansas property tax on gas held in storage in that state is unusual in that MGE, which does not serve customers in Kansas, has never before had to pay property tax in

---

[90] Transcript, Pages 1288-1289.

[91] Transcript, Page 1291, Lines 9-19.

[92] Robertson Direct, Page 19.

Kansas. However, if the Kansas taxes are found to be legal in the ongoing court challenge, and MGE is required to pay the tax, it should be able to recover those tax payments for future years through its rates when it includes those taxes in its cost of service in a future rate case.

The problem is that, at the moment, MGE can not include the Kansas taxes in its cost of service in this rate case. 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 uncertain. MGE's Kansas tax liability is now *measurable* – it has received a bill from the Kansas tax authorities for the 2004 year. Future tax bills can be estimated – but its Kansas tax liability is not yet *known* because of the uncertainty resulting from the ongoing legal challenge. If MGE prevails in court, it may never have to pay the Kansas property taxes.

The amount of taxes that MGE might have to pay in Kansas is significant to both MGE and to its ratepayers. It would not be appropriate to allow MGE to recover millions of dollars from its ratepayers for taxes that it might never have to pay. On the other hand, taxes are a legitimate cost of doing business for which ratepayers should be responsible. It would not be fair to MGE's shareholders to shift that burden on to them if those taxes ultimately must be paid. Furthermore, it was MGE's decision to challenge the legality of the Kansas taxes, a decision that could greatly benefit its ratepayers, that has placed MGE in this difficult position. If MGE had accepted the Kansas taxes without challenge, it could have simply passed the added taxes on to its ratepayers through this rate case. Instead, by looking out for the interest of its ratepayers, it has created the possibility that it will not

be able to recover several million dollars to which it would otherwise be entitled. It is that conundrum that makes an AAO the appropriate means for dealing with the potential Kansas tax liability.

Having been granted an AAO, MGE may continue to defer the cost of paying the Kansas property taxes for consideration in a future rate case after the legality of those taxes is determined and the costs are both known and measurable. If those taxes are found to be illegal and MGE does not have to pay them, then the deferred amounts will simply be written off the balance sheet and neither the ratepayers nor the shareholders will be harmed. If, on the other hand, MGE ultimately must pay the taxes, it will be able to make its case for the inclusion of its additional tax liability into its cost of service in a future rate case.

This uncertainty surrounding MGE's obligation to pay a significant amount of taxes is an unusual and unique situation that is not likely to recur. As such, it meets the Sibley standard for the granting a continued AAO, which is appropriate.

14. Return on Equity

Issue Description: *What is the appropriate return on equity to use in calculating MGE's cost of service?*

Determining an appropriate return on equity is without a doubt the most difficult part of determining a rate of return. The cost of long-term debt and the cost of preferred stock are relatively easy to determine because their rate of return is specified within the instruments that create them. In contrast, determining a return on equity requires speciation about the desires and requirements of investors when they choose to invest their money in Southern Union rather than in some other investment opportunity. As a result, the Commission can not simply find a rate of return on equity that is unassailably,

scientifically, mathematically, or legally correct. Such a "correct" rate does not exist. Instead, the Commission must use its judgment to establish a rate of return on equity that will be attractive enough to investors to allow the utility to fairly compete for the investors' dollar in the capital market, without permitting an excessive rate of return on equity that would drive up rates for MGE's ratepayers. In order to obtain guidance about what rate of return on equity is appropriate, the Commission must turn to expert advice offered by financial analysts.

Three financial analysts offered recommendations regarding an appropriate return on equity in this case. MGE's witness, Frank Hanley, comparing the four cost-of-common-equity models[93] to proxies arrived at an initial return on equity of 11.5%. Hanley then argues that this return should be increased because MGE faces more risk because it is smaller than the average company in the proxy group and because it lacks protection from the vagaries of weather. In light of these added risks, Hanley increased his suggested return on equity by 45 basis points to arrive at 11.95%.[94] However, Hanley reduces this amount by 35 basis points, to 11.6%, if the SFV rate design were adopted.[95] Hanley then deducts another 10 points.[96] Staff's witness David Murray, relying on the DCF model and testing its reasonableness using the CAPM, arrived at a recommended return on equity in the range of 8.35 – 8.95%. He then adjusted this amount upward by 30 basis points because the average bond rating for the proxy group he used was "A" and that of Southern

---

[93] The four models are: 1) Discounted Cash Flow Model (DCF); Risk Premium Model (RPM); Capital Asset Pricing Model (CAPM); and Comparable Earnings Model (CEM).

[94] Hanley Direct, Page 74, Lines 1-4.

[95] Transcript, Page 80, Lines 10-18.

[96] Transcript, Page 80, Lines 16-18.

Union is "BBB". His resulting range for return on equity was thus, 8.65 – 9.25%.[97] Public Counsel's witness, Russell Trippensee, suggests that the return on equity be in the range of 7.70% to 8.65%. Trippensee argues that risk associated with earnings variability is essentially eliminated under the SFV rate design.[98]

Between the three experts, there is obvious disagreement on this issue. The more varying suggestions are between MGE and OPC, which is at best a difference of 2.95%. Staff and MGE, both using the DCF model, differ at best by 2.35%. Of course the credibility of all of the experts was challenged. Trippensee's expertise was even challenged to the extent of MGE moving to strike his testimony because he had not conducted an independent evaluation but instead simply critiqued those of Staff and MGE.

The Commission's obligation under the law, and as a matter of practical necessity, is to allow Southern Union an opportunity to earn a return that will allow it to compete in the capital market. No one, including ratepayers, benefits if MGE is starved for capital.

Hanley's recommended return on equity, on behalf of MGE, was 11.5%. Staff's suggestion, at best, is 9.25%. OPC's is even lower than that offered by Staff. The Commission notes that Staff, using the DCF model arrived at a return on equity for Southern Union of 10.83 to 13.43%.[99] This range does not consider proxies for MGE but rather considers the risks specifically associated with Southern Union. Because Staff argues that the actual capital structure of MGE should be used, Staff's recommended range of 8.65% to 9.25% is inconsistent with Staff's findings of an ROE directly associated with that capital structure.

---

[97] Murray Direct, Page 37, Lines 7-23.

[98] Rebuttal Testimony, Page 1, Lines 1-6.

[99] Transcript, Page 246, Lines 8-13.

OPC's recommendation holds very little weight as it did not perform any independent study on this issue. Rather, OPC seemed to have simply looked to Staff's recommendation and opined that Staff and MGE's recommendations do not reflect a reduction in risk associated with the SFV rate design.[100] It doesn't appear that OPC recognizes that at least one of Staff's proxy companies had a SFV rate design. All of the companies had some sort of revenue decoupling rate design. Additionally, although MGE's residential class comprises 90% of its customer base, only 65% of the company's revenue is from its residential customers.[101] MGE's small commercial class, alone, accounts for $35-40 million.[102]

MGE's witness uses four cost-of-common-equity models to arrive at his eventual recommendation of 11.5%.[103] MGE's results of the Discounted Cash Flow, Risk Premium and Capital Asset Pricing models are 10.43%, 10.53% and 10.44%, respectively. The average of those is 10.47%. However, when averaged with Comparable Earnings Model, resulting in a 14.25% ROE, this average goes to 11.41%. The Commission finds that the Comparable Earnings model result, almost 400-points different than the other 3 models, is not credible and should be excluded. Additionally, Mr. Hanley supplied the Commission with a list of authorized returns on common equity for gas companies with an average ROE of 10.53.[104] This is consistent with the resulting average of the three models discussed above.

---

[100] Trippensee Rebuttal, Page 12, Lines 1-6.

[101] Transcript, Page 176, Lines 21-25

[102] Transcript, Page 177, Lines 12-15.

[103] Hanley Direct, Schedule FJH-1.

[104] Hanley Direct, Schedule FJH-17.

From his original recommendation of 11.5% Mr. Hanley makes upward adjustments of 30 and 15 basis points due to MGE's size and its lack of protection from weather. To account for an SFV rate design for MGE, he makes a downward adjustment of 35 points to arrive at 11.6 and recommends 11.5. What is interesting about this downward adjustment is that it only reduces the ROE by 20 points. An SFV rate design protects the company from the vagaries of weather. Mr. Hanley first added 15 points for a lack of protection and then deducted 35 for such protection.

All of the parties agree that a determination of ROE is a complicated judgment call. The Commission is persuaded by Staff's conclusion of an ROE of 10.83 – 13.43%. This range is based on a recommended ROE for Southern Union, not an LDC standing alone. The Commission has found that the actual capital structure of Southern Union shall be used. Staff's conclusion is consistent with this finding. Because there must be consideration of the SFV rate design afforded MGE, the Commission will adopt the low end, 10.83%, of Staff's conclusion. Also, under Staff's DCF model, 10.83% is the projected cost of common equity.[105] This is where the Commission will start. Staff and MGE agree that the value of the SFV rate design is 30-35 basis points. As these suggestions are estimates, the Commission finds that the value of the SFV rate design is 32.5 points. A reduction of .325 from 10.83 results in a ROE of 10.5%. The Commission finds that MGE's return on equity shall be 10.5%, which is validated by the conclusions of the cost models, used by MGE and Staff, discussed above.

[105] Murray Direct, Schedule 18.

CONCLUSIONS OF LAW

The Missouri Public Service Commission has reached the following conclusions of law.

MGE is a public utility, and a gas corporation, as those terms are defined in Section 386.020(42) and (18), RSMo 2000. As such, MGE is subject to the Commission's jurisdiction pursuant to Chapters 386 and 393, RSMo.

Section 393.140 (11), RSMo 2000, gives the Commission the authority to regulate the rates that MGE may charge its customers for natural gas. When MGE filed a tariff designed to increase its rates, the Commission exercised its authority under Section 393.150, RSMo 2000, to suspend the effective date of that tariff for 120 days beyond the effective date of tariff, plus an additional six months.

In determining the rates that MGE may charge its customers, the Commission is required to determine that the proposed rate is just and reasonable.[106] MGE has the burden of proving that its proposed increase is just and reasonable.[107]

Unrecovered Cost of Service Amortization

All parties to this matter agree that to allow MGE to amortize this expense would constitute retroactive ratemaking. A well worded, although colloquial definition, is set out by Staff's witness Oligschlaeger as:

> the setting of rates to allow a utility to recover the specific costs of past events incurred by the utility so as to make utility shareholders "whole" or, conversely, it is the setting of rates to reimburse customers related to past over-earnings of a utility so as to make the customers "whole"[108]

---

[106] Section 393.150.2 RSMo 2000.

[107] Section 393.150.2, RSMo 2000.

[108] Oligschlaeger Rebuttal, Page, 4, Lines 6-10.

In light of the fact that all parties agree that to allow this cost to be amortized and included in current rates would constitute retroactive ratemaking, the Commission's conclusion must be consistent with that of all of the parties. Concluding that it would constitute retroactive ratemaking, the Commission will not allow MGE's request to amortize this lost.

Property Tax Refund

MGE argues that to amortize this refund and include it in current rates would constitute retroactive ratemaking. MGE points out that if the Commission allows Staff's request in this regard, it must also allow MGE's request under the issue of Unrecovered Cost of Service Amortization. Staff's reason for arguing that its request would not constitute retroactive ratemaking is that the money was received during the test year.

MGE's position assumes that Staff's request would constitute retroactive ratemaking. Then, in comparing this issue with Unrecovered Cost of Service, MGE argues that if the Commission adopts Staff's position on this issue it must adopt MGE's position under the previous issue. This argument simply begs the question of whether the Commission will allow retroactive ratemaking. Staff's position hinges on the test year.

The Commission will not adopt a position that would constitute retroactive ratemaking. As pointed out by MGE, "retroactive ratemaking is the setting of rates which permit a utility to recover past excess losses of which require it to refund past excess profit collected under at ate that did no perfectly match expenses plus rate-of-return with the rate actually established."[109] The same case goes on to hold that these past occurrences may

---

[109] *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (1979).

be considered insofar as it is necessary to determine what a just and reasonable rate would be going forward.

Like the issue of Unrecovered Cost of Service, the Commission concludes that to adopt Staff's request in this regard would constitute retroactive ratemaking.

Infinium Software

OPC argues that the system is not used and useful and opposes MGE's proposal. In this regard, OPC refers to *State ex rel. Union Electric v. P.S.C.*, 765 S.W.2d 618 (Mo. App. 1988) in its post hearing brief. That case states that:

> The property upon which a rate of return can be earned must be utilized to provide service to its customers. That is, it must be used ad useful. This used and useful concept provides a well-defined standard for determining what properties if a utility can be included in rate base.

However, MGE made an adjustment to remove the plant investment in the software out of its rate base, which means MGE will not earn a return on the plant. With the concept of "use and useful" being the premise of OPC's opposition, its argument must be rejected. Both Staff and MGE point out that the plant is not included in rate base. Therefore, the company will not earn a return on the property. The Commission concludes that the concept of "used and useful" then becomes irrelevant and will allow continued amortization of the software as proposed by MGE and Staff.

DECISION

After its findings of fact and conclusions of law, the Commission has reached the following decision regard the issues as identified by the parties.

1. **Capital Structure**

Issue Description: *What is the appropriate capital structure (i.e. the relative proportions of long-term debt, short-term debt, preferred equity, and common equity) to use in calculating MGE's cost of service?*

Common Equity	36.06%
Long-Term debt	55.92%
Preferred Stock	4.71%
Short-Term Debt	3.3%

2. **Rate Design**

Issue Description: *What is the appropriate rate design for residential, small general service, large volume service and large general service classes?*

The rate design for the residential class shall be the Straight-Fixed Variable Design proposed by Staff. To the extent that they are consistent with the Stipulation and Agreement regarding class cost of service, the current rate designs shall remain in effect for all non-residential classes.

3. **Unrecovered Cost of Service Amortization**

Issue Description: *Should MGE recover $15.6 million in rates amortized over five years for alleged revenue loss due to lower customer gas use for the period of January through June of 2006?*

No. The Commission rejects MGE's proposal on this issue.

4. **Property Tax Refund.**

Issue Description: *What is the proper treatment of $5,554,068 in property tax refunds received by MGE during the test year of 2005?*

The Commission denies Staff proposal to amortize this refund. MGE will be allowed to keep this money as a gain.

5. Weather Normalization

Issue Description: *What is the appropriate measure of normal weather to be used in calculating 1) MGE's revenue requirement and 2) the billing determinants to be used in establishing MGE's volumetric rates?*

The Commission adopts Staff position that the 30-year normal will be used and rejects MGE's proposal that a 10-year rolling average should be implemented.

6. Low Income Weatherization

Issue Description: *What is the appropriate level of low-income weatherization funding to be used in calculating MGE's cost of service and how should such funding be allocated among the geographical regions of MGE's service territory?*

The Commission adopts the City of Kansas City's proposal to allocate $250,000 to the Low-Income Weatherization program.

7. Natural Gas Conservation

Issue Description: *Should funding for natural gas conservation programs be included in MGE's cost of service?*

Yes. The Commission adopts Staff and MGE's proposal to allocate $705,000 for a water heater rebate program and $45,000 for educating MGE's customers about weather conservation.

8. Environmental Response Fund

Issue Description: *Should the environmental response fund proposed by MGE be adopted and what, if any, level of environmental costs should be used in calculating MGE's cost of service? MGE requests that the amount of the fund be $500,000, annually.*

The Commission rejects the Environmental Response Fund proposed by MGE.

9. Infinium Software

Issue Description: *Should the unrecovered cost associated with MGE's Infinium Software be included in rates through an amortization and, if so, over what period of time?*

The Unrecovered cost associated with MGE's Infinium Software should be included in rates and amortized over 5 years as proposed by Staff and OPC.

10. Rate Case Expense

Issue Description: *What is the appropriate amount and treatment of rate case expense, including amortization of prior rate case expense, in this case?*

MGE shall be allowed to amortize the combined amounts over a three-year period.

11. Emergency Cold Weather Rule AAO Recovery

Issue Description: *What is the proper rate treatment for costs deferred under the Emergency Cold Weather Rule AAO Recovery Mechanism?*

The Commission will grant MGE's request to amortize the deferred cost through an AAO.

12. Seasonal Disconnects

Issue Description: *Should the seasonal disconnect tariff language proposed by MGE be approved?*

No.

13. Kansas Property Tax AAO

Issue Description: *Should the Kansas Property Tax AAO be continued past the expiration date ordered by the Commission in Case No. GU-2005-0095?*

MGE is allowed to continue the Kansas Property Tax AAO beyond the date ordered in Commission Case No. GU-2005-0095 until a final determination is made on this issue by the Kansas courts.

14. Return on Equity

Issue Description: *What is the appropriate return on equity to use in calculating MGE's cost of service?*

The appropriate return on equity is 10.5%.

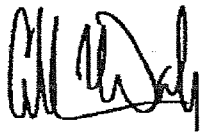
IT IS ORDERED THAT:

1. The tariff sheets filed by Missouri Gas Energy, a division of Southern Union Company, on May 1, 2006, and assigned tariff number YG-2006-0845, are rejected.

2. Missouri Gas Energy, a division of Southern Union Company, is authorized to file a tariff sufficient to recover the revenues as determined by the Commission in this order.

3. This Report and Order shall become effective on March 30, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling, CC., concur;
Gaw, C., dissents, with separate dissenting opinion to follow;
Clayton, C., dissents;
and certify compliance with the provisions of Section 536.080, RSMo.

Dated at Jefferson City, Missouri,
on this 22nd day of March, 2007.

ATTACHMENT D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

THE CITY OF KANSAS CITY, MISSOURI	)	
and	)	
THE KANSAS CITY PORT AUTHORITY	)	Case No. _____
and	)	
THE STATE OF MISSOURI, EX REL. JEREMIAH W. (JAY) NIXON, ATTORNEY GENERAL	)	
Plaintiffs,	)	
vs.	)	
SOUTHERN UNION COMPANY	)	
and	)	
MISSOURI GAS ENERGY,	)	
Defendants.	)	

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into this 17th day of June, 2003 by and between the CITY OF KANSAS CITY, MISSOURI ("CITY"), a constitutionally chartered municipal corporation existing pursuant to the laws of the State of Missouri, the KANSAS CITY PORT AUTHORITY, ("PORT AUTHORITY") a political subdivision of the State of Missouri, the STATE OF MISSOURI, EX REL. JEREMIAH W. (JAY) NIXON, ATTORNEY GENERAL ("STATE"), and SOUTHERN UNION COMPANY, a corporation organized under the laws of Delaware, and its operating division MISSOURI GAS ENERGY (collectively, "SOUTHERN UNION/MGE"). The CITY,

PORT AUTHORITY, STATE and SOUTHERN UNION/MGE are jointly referred to herein as the "PARTIES."

RECITALS:

WHEREAS, the CITY and PORT AUTHORITY are owners of a tract of land known as "The Riverfront Development Site" consisting of approximately 70 acres and located generally on the South bank of the Missouri River, near downtown Kansas City, Missouri, described in more detail on Exhibit A to this Agreement (the "Site"), and which Site was acquired by the CITY and the PORT AUTHORITY for the purposes of facilitating riverfront development; and

WHEREAS, on or about December 18, 1998, the PORT AUTHORITY received approval for inclusion of the Site in the Missouri Department of Economic Development ("MDED") Brownfields Redevelopment Program. This program is directed at property which is known or suspected to have been previously used for industrial or commercial purposes, and that is known or suspected to be contaminated, and therefore, unmarketable. In December, 1998, the Site was accepted by the Missouri Department of Natural Resources ("MDNR") for participation in the Voluntary Cleanup Program ("VCP"), which provides a mechanism for property owners who discover contamination on their land to voluntarily clean up the site under the MDNR's oversight. Through the MDNR VCP, the CITY and PORT AUTHORITY undertook to perform a due diligence assessment of the Site and to voluntarily perform such response actions at the Site as may be indicated by these studies. SOUTHERN UNION/MGE has been identified as a potentially responsible party ("PRP") at the Site by the CITY, PORT AUTHORITY and STATE which have asserted claims against SOUTHERN UNION/MGE ("the Litigation") in which the CITY, PORT AUTHORITY and

STATE have alleged, among other things that SOUTHERN UNION/MGE and others are liable for response costs under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); and,

WHEREAS, the STATE has responsibility for and jurisdiction over voluntary clean up and hazardous waste matters within the STATE and has incurred response costs arising from the Site; and,

WHEREAS, SOUTHERN UNION/MGE has investigated and conducted its own site characterization reports of the areas at, near and around the Site where former manufactured gas operations of alleged predecessors of SOUTHERN UNION/MGE, are alleged to have contributed to the release of certain hazardous substances at, beneath or about the Site (such areas hereinafter referred to as "Stations A and B"). Stations A and B include (1) portions of the Site, (2) certain property currently owned by SOUTHERN UNION/MGE or its affiliates near the Site, and (3) certain property near the Site owned by other parties. While SOUTHERN UNION/MGE denies that it has succeeded to the liability of former owners and operators of Stations A and B, it has independently assessed the presence or potential presence of hazardous substances, pollutants or contaminants from Stations A and B at, within, from, beneath or about the Site; and,

WHEREAS, the CITY, PORT AUTHORITY, STATE and SOUTHERN UNION/MGE desire to resolve claims and potential claims between or among them and claims which may be brought in the future against SOUTHERN UNION/MGE relating to Released Claims as defined below, and the compromise and settlement contained in this Agreement was negotiated at arms-length and made in good faith, and,

WHEREAS, by entering into this Agreement, SOUTHERN UNION/MGE is not admitting that it is liable under CERCLA or under any other federal, state or local law, that it is liable for response costs, or that it is liable for the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances, pollutants or contaminants at, within, from, beneath or about the Site.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CITY, PORT AUTHORITY, STATE and SOUTHERN UNION/MGE agree as follows:

1. DEFINITIONS.

A. Claim. When used in this Agreement, "Claim" shall mean a civil claim, order, demand, liability, action, suit, judgment, expense, including but not limited to attorneys' fees, consultants' and engineers' fees, court costs, and other costs of litigation.

B. Released Claims. When used in this Agreement, "Released Claims" shall mean any and all federal, state and common law claims which the PARTIES have asserted, could assert now or could assert in the future, related to the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances, pollutants or contaminants at, within, from, or beneath the Site and Stations A and B or Response Costs for the Site, whether known or unknown, whether arising from events occurring prior to or following Effective Date, as that term is defined in paragraph 9 below, including but not limited to any claims pursuant to 42 U.S.C. §§ 9606, 9607 and 9613, and any potential claims including but not limited to those asserted by the CITY, PORT AUTHORITY and STATE in the Litigation.

C. Statutory Terms. Unless otherwise defined herein, terms used in this Agreement which are statutorily defined in CERCLA § 101, 42 U.S.C. § 9601, including, without limitation, "Disposal," "Hazardous Substance," "Natural Resources", "Owner or Operator," "Pollutant or Contaminant," "Release," "Response," and "Treatment," shall have the meanings respectively defined therein.

D. Response Costs. When used in this Agreement, "Response Costs" shall mean those costs, expenses or sums which have been incurred or paid, or may be incurred or paid in the future by any person relating in any way to the Site, for "Response" activities.

2. RELEASE AND COVENANT NOT TO SUE.

A. The PORT AUTHORITY and the CITY hereby release, discharge and covenant not to sue SOUTHERN UNION/MGE or its predecessors, successors, parent and affiliate companies, officers, directors, employees, agents, subsidiaries or assigns, as the case may be, with respect to Released Claims.

B. The STATE hereby releases, discharges and covenants not to sue SOUTHERN UNION/MGE or its predecessors, successors, parent and affiliate companies, officers, directors, employees, agents, subsidiaries or assigns, as the case may be, with respect to Released Claims, with the exception of Response Costs incurred or that may be incurred at, within, from or beneath portions of the property described as Stations A and B owned by SOUTHERN UNION/MGE.

C. In addition, and in consideration of the payment by SOUTHERN UNION/MGE of the sum of One Hundred Twenty Thousand dollars ($120,000) as damages for injury to the natural resources of the STATE, the STATE as Trustee for Natural Resources in Missouri, hereby releases, discharges and covenants not to sue SOUTHERN

UNION/MGE, its predecessors, successors, parent or affiliate companies, officers, directors, employees, agents, subsidiaries or assigns with respect to any claims whatsoever arising from or relating to Natural Resources damages at, within, from, beneath or about the Site and in addition the areas described above as Stations A and B.

3. INDEMNIFICATION.

A. Except as specifically limited by the following Subsection (b), CITY and PORT AUTHORITY hereby agree, to the extent permitted by law, to defend, indemnify, and hold harmless SOUTHERN UNION/MGE, and its predecessors, successors, parent and affiliate companies, officers, directors, employees, agents, subsidiaries and assigns, as the case may be, from any and all Released Claims and Natural Resources damages ("Indemnified Claims") which may be asserted or filed by any third parties against SOUTHERN UNION/MGE (including, but not limited to, claims of the United States and/or the State of Missouri) under CERCLA or any comparable federal or state statute or common law.

B. If SOUTHERN UNION/MGE has a claim made against it which is an Indemnified Claim under Paragraph 3(a) of this Agreement, then SOUTHERN UNION/MGE shall provide the CITY, at City Attorney's Office, 414 East 12th Street, Kansas City, Missouri 64106, and PORT AUTHORITY, at Economic Development Corporation, 10 Petticoat Lane, Suite 250, Kansas City, Missouri 64106, with written notice of such claim within thirty (30) business days of receipt by SOUTHERN UNION/MGE. After providing written notice, SOUTHERN UNION/MGE may select its own defense counsel, which shall be subject to approval by the CITY and PORT AUTHORITY, which approval shall not be unreasonably withheld. The CITY and PORT AUTHORITY will

reimburse SOUTHERN UNION/MGE's defense costs, including reasonable attorney fees. SOUTHERN UNION/MGE and selected counsel will reasonably cooperate with the CITY and PORT AUTHORITY in connection with the investigation, defense or litigation of any Indemnified Claim.

4. NON-INDEMNIFIED CLAIMS.

Notwithstanding anything to the contrary contained herein, the duty of the CITY and PORT AUTHORITY to indemnify and defend pursuant to this Agreement shall not extend and shall not be construed to extend to the following (hereinafter collectively, the "Non-Indemnified Claims"):

A. any third-party claims for toxic torts or personal injury, arising from the generation, transportation, disposal, storage, treatment, spill, release or threatened release of hazardous substances by SOUTHERN UNION/MGE or its predecessors (within or upon the Site);

B. any claims made by the United States or the State of Missouri relating to SOUTHERN UNION/MGE's response to requests for information, if any;

C. any claims relating to or arising out of disposal of hazardous substances by SOUTHERN UNION/MGE at any location not affecting or related to the Site;

D. any claims not relating to the Site; or

E. any contractual claims against SOUTHERN UNION/MGE by a third party.

5. CONSIDERATION.

A. SOUTHERN UNION/MGE shall pay to PORT AUTHORITY on behalf of the PORT AUTHORITY and the CITY, the sum of Three Million Four Hundred Thousand Dollars ($3,400,000) (the "Settlement Amount"). An agreement governing the allocation of

funds between the CITY and the PORT AUTHORITY is attached hereto as Exhibit B and incorporated herein. The PORT AUTHORITY shall pay the STATE the amount of One Thousand Dollars ($1000.00) for reimbursement of past response costs; and in addition SOUTHERN UNION/MGE shall pay the STATE One Hundred Twenty Thousand dollars ($120,000) for Natural Resources damages;

B. PORT AUTHORITY and the CITY agree not to oppose the justness and reasonableness of the recovery through rates of any amount paid pursuant to this Agreement, as well as any past and future Response Costs SOUTHERN UNION/MGE incurs or has incurred, including but not limited to expenditures for legal, engineering and other consulting services. PORT AUTHORITY and the CITY further agree not to oppose or to assist any person or entity in opposing any efforts by SOUTHERN UNION/MGE or its successors, assigns or subsidiaries, to seek regulatory approval for the recovery of such expenditures and costs. It is hereby acknowledged by SOUTHERN UNION/MGE that the PORT AUTHORITY and the CITY have obligations under the Missouri Sunshine Law to provide open records upon request and SOUTHERN UNION/MGE hereby acknowledges that a response to a Sunshine Law request shall not constitute the assistance of any person or entity in opposing any efforts of SOUTHERN UNION/MGE or its successors, assigns, or subsidiaries, to seek regulatory approval. PORT AUTHORITY and the CITY also agree not to oppose any SOUTHERN UNION/MGE or its successors', assigns' or subsidiaries' proposed rate design in any proposed rate adjustment related to such expenditures and costs, as long as such proposed rate design equally adjusts the rates among all SOUTHERN UNION/MGE consumers within the State of Missouri.

C. In consideration of the entry into this Agreement, the PARTIES have agreed to the Release and Covenant Not to Sue provided in paragraph 2, and SOUTHERN UNION/MGE agrees not to assert any claims for Indemnified Claims against any third parties (except for (a) claims relating to insurance coverage and (b) claims against any former owners and operators of Stations A and/or B, or any portion thereof, and their successors, parent corporations, subsidiaries, affiliates, officers, directors, shareholders and insurers), unless and until a claim for such Indemnified Claims is made against SOUTHERN UNION/MGE and it reasonably appears to SOUTHERN UNION/MGE that the CITY and PORT AUTHORITY do not intend to indemnify or defend SOUTHERN UNION/MGE against all or any part of the claim. Except as provided in the preceding sentence, SOUTHERN UNION/MGE hereby assigns to the CITY and PORT AUTHORITY any and all claims it may have (except for (a) claims relating to insurance coverage and (b) claims against any former owners and operators of Stations A and/or B, or any portion thereof, and their successors, parent corporations, subsidiaries, affiliates, officers, directors, shareholders and insurers) for Indemnified Claims against any third parties. All other claims are specifically reserved and are not assigned. Nothing in this paragraph shall be construed to affect or limit SOUTHERN UNION/MGE's rights to assert any defenses, claims or counter-claims in defense of any action.

6. CONTRIBUTION PROTECTION.

A. The PARTIES acknowledge and agree that by entering into this Agreement SOUTHERN UNION/MGE is entitled to protection from contribution actions or claims as provided by 42 U.S.C. § 9613(f)(2) and any applicable state law including but not limited to common law for Released Claims and Natural Resources damages. The consideration paid

by SOUTHERN UNION/MGE pursuant to this Agreement constitutes reimbursement of the Response Costs of the CITY, PORT AUTHORITY and STATE and Natural Resources damages in connection with the Site based on SOUTHERN UNION/MGE's collective proportionate contribution to the overall Site contamination, and the PARTIES agree that the consideration paid by SOUTHERN UNION/MGE is a reasonable and fair portion of the Response Costs and Natural Resources damages expended or expected to be expended by the CITY, PORT AUTHORITY and STATE. Hence this Agreement provides SOUTHERN UNION/MGE contribution protection under 42 U.S.C. § 9613(f)(2) and any applicable state law including but not limited to common law for Released Claims and Natural Resources damages.

B. Promptly after full execution of this Agreement, the PARTIES shall jointly seek and use their best efforts to obtain a final and binding order by the United States District Court for the Western District of Missouri, Western Division granting contribution protection to SOUTHERN UNION/MGE for Released Claims and Natural Resources damages pursuant to 42 U.S.C. § 9613(f)(2) and barring further claims against SOUTHERN UNION/MGE, with each party bearing its own costs.

C. This Agreement shall be final and binding upon all PARTIES upon full execution, however a final and binding order by the United States District Court for the Western District of Missouri, Western Division, in the form of Exhibit C attached hereto, granting SOUTHERN UNION/MGE contribution protection for Released Claims and Natural Resources damages, and other relief further described in Exhibit C, or such other form of order which is acceptable to SOUTHERN UNION/MGE, will be sought by all PARTIES.

D. Upon full execution of the Agreement by all PARTIES to be bound by such Agreement and approval by the Court, SOUTHERN UNION/MGE shall within forty-five (45) days pay the PORT AUTHORITY the entirety of the Settlement Amount, payable to "PORT AUTHORITY and the CITY" and delivered in a form and manner reasonably requested by the PORT AUTHORITY and the CITY.

7. APPLICATION OF SETTLEMENT PROCEEDS.

The Settlement Amounts payable to the PORT AUTHORITY shall be first applied to the recovery of Response Costs incurred in connection with the investigation and assessment of the nature and extent of contamination resulting from the release or alleged release of certain hazardous substances at and upon portions of the Site for which SOUTHERN UNION/MGE's alleged predecessors are alleged to have been responsible. After all Response Costs have been recovered by the PORT AUTHORITY and the CITY, the remainder of the Settlement Amounts payable to the PORT AUTHORITY shall be expended for the identification and implementation of remedial actions at the Site as may be approved by the MDNR in connection with the acceptance and participation of the Site in the VCP.

8. NO ADMISSION OF LIABILITY.

The execution of this Agreement shall not, under any circumstances, be construed as an admission by the CITY, PORT AUTHORITY, STATE or SOUTHERN UNION/MGE of any liability with respect to the Site or with respect to any hazardous substances, pollutants or contaminants at, within, from, beneath or about the Site. This Agreement shall not constitute or be used as evidence or an admission of any liability or fact or a concession of any question of law by the CITY, PORT AUTHORITY, STATE or SOUTHERN UNION/MGE.

9. EFFECTIVE DATE.

This Agreement shall be effective upon receipt by SOUTHERN UNION/MGE of a final and binding order by the United States District Court for the Western District of Missouri, Western Division in the form of Exhibit C attached hereto, or such other form of order which is acceptable to SOUTHERN UNION/MGE.

10. NOTICES.

All notices required or desired to be given under this Agreement shall be in writing and shall be delivered in person or mailed by registered or certified mail or overnight mail as follows: With respect to KANSAS CITY to Galen Beaufort, City Attorney, 414 East 12th Street, Suite 2800, Kansas City, Missouri 64106. With respect to the PORT AUTHORITY to Patrick Sterrett, Assistant Director of the Port Authority of Kansas City, Missouri, 10 Petticoat Lane, Suite 250, Kansas City, Missouri, 64106 or William Session, The Session Law Firm, 2600 Grand, Suite 440, Kansas City, Missouri, 64108. With respect to the STATE, Shelley A. Woods, Assistant Attorney General, P.O. Box 899, Jefferson City, Missouri 65102. With respect to SOUTHERN UNION/MGE to: Manager of Safety and Security, Missouri Gas Energy, 3420 Broadway, Kansas City, Missouri 64111; Rob Hack, Vice President Legal, Missouri Gas Energy, 3420 Broadway, Kansas City, Missouri 64111; and Dennis Morgan, General Counsel, Southern Union Company, 1 PEI Center, Wilkes-Barre, Pennsylvania 18711.

11. MISCELLANEOUS PROVISIONS.

A. Governing Law and Venue. This Agreement shall be construed according to the laws of the State of Missouri. The CITY, PORT AUTHORITY, STATE and SOUTHERN UNION/MGE agree that any and all actions at law or in equity, which may be

brought by any of the PARTIES to enforce or interpret this Agreement, shall be brought only in the State of Missouri.

B. Severability. In the event that any provision of this Agreement is determined by a court to be invalid, the remainder of this Agreement shall not be affected thereby and shall remain in force.

C. Modification of the Agreement. Neither this Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the PARTY against whom enforcement of the change, waiver, discharge or termination is sought.

D. Rule of Construction. The judicial rule of construction requiring or allowing an instrument to be construed to the detriment of or against the interests of the maker thereof shall not apply to this Agreement.

E. Entire Agreement. This Agreement, consisting of Paragraphs 1 through 11, inclusive, constitutes the entire understanding of the CITY, PORT AUTHORITY, STATE and SOUTHERN UNION/MGE and supersedes all prior contemporaneous agreements, discussions or representations, oral or written, with respect to the subject matter hereof, and each of the PARTIES hereto states that it has read each of the provisions of the Agreement and understands the same.

F. Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute but one original document.

E. Signatories. Each undersigned representative of a PARTY to the Agreement certifies that he or she is fully authorized to enter into each term and condition of this Agreement and to execute and legally bind such PARTY to this Agreement.

F. The PORT AUTHORITY will continue to participate in the MDNR VCP until such time as the Site satisfies VCP requirements for issuance of a No Further Action Letter for the Site relating to remediation or cleanup of contamination at the Site arising from alleged disposal by SOUTHERN UNION/MGE's alleged predecessors of hazardous substances at or related to the Site.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first written above.

CITY OF KANSAS CITY, MISSOURI

Wayne Cauthen, City Manager
414 East 12th Street
Kansas City, Missouri 64106

PORT AUTHORITY

William R. Johnson
Port Authority of Kansas City, MO
Economic Development Corporation
10 Petticoat Lane, Suite 250
Kansas City, Missouri 64106

STATE of MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL, STATE OF MISSOURI
Shelley A. Woods, Asst. Attorney General
Office of the Attorney General
P.O. Box 899
MBE 33525
Jefferson City, Missouri 65102

F. The PORT AUTHORITY will continue to participate in the MDNR VCP until such time as the Site satisfies VCP requirements for issuance of a No Further Action Letter for the Site relating to remediation or cleanup of contamination at the Site arising from alleged disposal by SOUTHERN UNION/MGE's alleged predecessors of hazardous substances at or related to the Site.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first written above.

CITY OF KANSAS CITY, MISSOURI

Wayne Cauthen, City Manager
414 East 12th Street
Kansas City, Missouri 64106

PORT AUTHORITY

William R. Johnson
Port Authority of Kansas City, MO
Economic Development Corporation
10 Petticoat Lane, Suite 250
Kansas City, Missouri 64106

STATE of MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL, STATE OF MISSOURI
Shelley A. Woods, Asst. Attorney General
Office of the Attorney General
P.O. Box 899
MBE 33525
Jefferson City, Missouri 65102

F. The PORT AUTHORITY will continue to participate in the MDNR VCP until such time as the Site satisfies VCP requirements for issuance of a No Further Action Letter for the Site relating to remediation or cleanup of contamination at the Site arising from alleged disposal by SOUTHERN UNION/MGE's alleged predecessors of hazardous substances at or related to the Site.

IN WITNESS WHEREOF, this Agreement has been executed the day and year first written above.

CITY OF KANSAS CITY, MISSOURI

Wayne Cauthen, City Manager
414 East 12th Street
Kansas City, Missouri 64106

PORT AUTHORITY

William R. Johnson
Port Authority of Kansas City, MO
Economic Development Corporation
10 Petticoat Lane, Suite 250
Kansas City, Missouri 64106

STATE of MISSOURI

JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL, STATE OF MISSOURI
Shelley A. Woods, Asst. Attorney General
Office of the Attorney General
P.O. Box 899
MBE 33525
Jefferson City, Missouri 65102

SOUTHERN UNION COMPANY

James H. Oglesby
President & Chief Operating Officer
Missouri Gas Energy Division
3420 Broadway
Kansas City, Missouri 64111

6/12/03

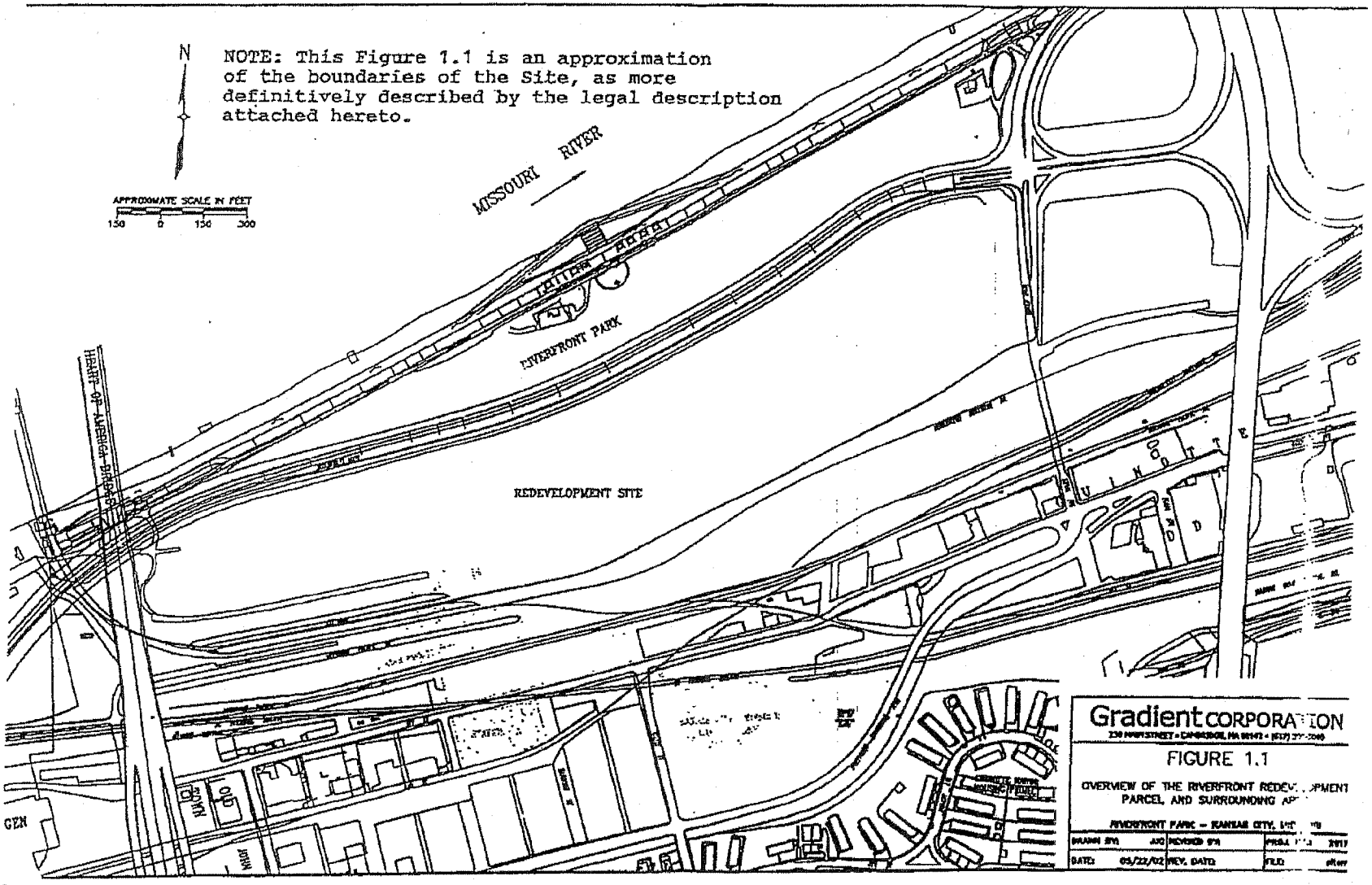

N
NOTE: This Figure 1.1 is an approximation of the boundaries of the Site, as more definitively described by the legal description attached hereto.
APPROXIMATE SCALE IN FEET
150 0 150 300
MISSOURI RIVER
RIVERFRONT PARK
REDEVELOPMENT SITE
Gradient CORPORATION
FIGURE 1.1
OVERVIEW OF THE RIVERFRONT REDEV. . .PMENT PARCEL AND SURROUNDING AR
RIVERFRONT PARK – KANSAS CITY,
DRAWN BY: AND REVISED BY:
DATE: 05/22/02 REV. DATE:
FILE:

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CITY OF KANSAS CITY, MISSOURI and THE KANSAS CITY PORT AUTHORITY and THE STATE OF MISSOURI, EX REL. JEREMIAH (JAY) NIXON, ATTORNEY GENERAL Plaintiffs vs. SOUTHERN UNION COMPANY and MISSOURI GAS ENERGY, a Division of Southern Union Company Defendants.	)	Case No. 03-0513-CV-W-NKL

ORDER APPROVING SETTLEMENT, GRANTING CONTRIBUTION PROTECTION TO DEFENDANT FOR MATTERS ADDRESSED IN SETTLEMENT AGREEMENT AND BARRING FUTURE CLAIMS AGAINST DEFENDANT

Plaintiffs, the City of Kansas City, Missouri ("City"), the Port Authority of Kansas City ("Port Authority"), and the State of Missouri, ex rel. Jeremiah W. (Jay) Nixon, Attorney General ("State") (collectively referred to herein as "Plaintiffs") have settled the above-captioned case with potentially responsible party Southern Union Company and its operating division Missouri Gas Energy ("Southern Union/MGE" a/k/a "Settlor") arising from alleged historic releases or threatened releases of hazardous substances or contaminants at or from a facility once located upon or adjacent to what has been described as the Riverfront Development Site ("the Site") located in Kansas City, Missouri. The City and Port Authority own or operate the Site. The State has responsibility for and jurisdiction over voluntary clean up and hazardous waste matters within the State

of Missouri and the State delegates this oversight authority to the Missouri Department of Natural Resources ("MDNR"). The State through MDNR, as represented by the State Attorney General, has incurred response costs arising from the Site. To obtain approval of the Settlement Agreement between the Plaintiffs and Southern Union/MGE, the Plaintiffs and Southern Union/MGE have jointly moved for entry of an order:

1. Dismissing with prejudice all claims of the Plaintiffs against Southern Union/MGE and any deemed-filed counterclaims by Southern Union/MGE against the Plaintiffs, with the Plaintiffs and Southern Union/MGE to each bear their own costs;

2. Approving an agreement to settle the aforementioned claims and counter-claims between the Plaintiffs and Southern Union/MGE (the "Settlement Agreement");

3. Dismissing with prejudice any deemed-filed cross-claims against Southern Union/MGE;

4. Barring any and all claims by any entity against Southern Union/MGE, including but not limited to claims for contribution or response costs (including natural resources damages) pursuant to 42 U.S.C. § 9613(f)(2), or other applicable federal or state law, related to the release or threatened release of hazardous substances or contaminants at or from the Site, except to the extent such claims are reserved between the Plaintiffs and Southern Union/MGE pursuant to the Settlement Agreement; and

5. Declaring that, pursuant to Section 6 of the Uniform Comparative Fault Act, the share of liability for any non-settling persons ("Non-Settlors") are and shall be reduced by the amount of Southern Union/MGE's equitable share of the response cost obligations.

After reviewing the joint motion, the Court finds that it is appropriate, in accordance with the consent pleading filed by Southern Union/MGE, that this Court has jurisdiction over Southern Union/MGE and that venue is appropriate in this Court. The Court further finds, after reviewing the Settlement Agreement and considering the issues in this matter, that the Settlement Agreement will protect the public interests and further the resolution of this litigation. The Court also finds that reducing the share of liability for response costs for any Non-Settlors by the amount of Southern Union/MGE's equitable share under the provisions of Section 6

of the Uniform Comparative Fault Act is the appropriate means of allocating any liability for response costs, as it promotes the purposes of the Comprehensive Environmental Response, Compensation and Liability Act and serves the public interests.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. This Court has jurisdiction over Southern Union/MGE and venue is appropriate in this Court.

2. All claims by the Plaintiffs against Southern Union/MGE and all deemed-filed counterclaims by Southern Union/MGE against the Plaintiffs are dismissed with prejudice, with the Plaintiffs and Southern Union/MGE to each bear their own costs.

3. The Settlement Agreement between the Plaintiffs and Southern Union/MGE is approved.

4. Any and all deemed-filed cross-claims against Southern Union/MGE related to the release or threatened release of hazardous substances or contaminants at the Site, including but not limited to claims for contribution or response costs are dismissed.

5. Any and all future claims by any entity against Southern Union/MGE, including but not limited to claims for contribution or response costs (including natural resources damages), pursuant to 42 U.S.C. § 9613(f)(2), or other applicable federal or state law, arising out of or related to the release or threatened release of hazardous substances or contaminants at or from the Site, are barred, subject to the rights of the Plaintiffs and Southern Union/MGE under the Settlement Agreement.

6. Pursuant to Section 6 of the Uniform Comparative Fault Act, it is declared that the share of liability for any Non-Settlors is reduced by the amount of Southern Union/MGE's equitable share of the response cost obligations.

Dated: June 24, 2003

s/ NANETTE K. LAUGHREY
NANETTE K. LAUGHREY

U.S. District Judge