

Exhibit No.: _____
Issue: Insurance Recoveries, etc.
Witness: Dennis K. Morgan
Type of Exhibit: Surrebuttal Testimony
Sponsoring Party: Missouri Gas Energy
Case No.: GU-2007-0480
Date Testimony Prepared: July 9, 2008

MISSOURI PUBLIC SERVICE COMMISSION

MISSOURI GAS ENERGY

CASE NO. GU-2007-0480

SURREBUTTAL TESTIMONY

OF

DENNIS K. MORGAN

Jefferson City, Missouri

July 2008

**SURREBUTTAL TESTIMONY OF DENNIS K. MORGAN
ON BEHALF OF
MISSOURI GAS ENERGY
GU-2007-0480**

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**SURREBUTTAL TESTIMONY OF DENNIS K. MORGAN
ON BEHALF OF
MISSOURI GAS ENERGY
GU-2007-0480**

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Dennis K. Morgan, and my business address is 5444 Westheimer, Houston,
3 Texas 77056.

4
5 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

6 A. I am employed by Southern Union Company as Senior Vice President - Litigation.
7

8 **Q. WHAT ARE YOUR RESPONSIBILITIES AS SENIOR VICE PRESIDENT -**
9 **LITIGATION?**

10 A. I am responsible for the oversight and direction of litigation or potential litigation in which
11 Southern Union Company and its divisions, subsidiaries and affiliates may become involved.
12

13 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND**
14 **PROFESSIONAL EXPERIENCE.**

15 A. I hold a Bachelor of Journalism and Juris Doctor degrees from the University of Missouri at
16 Columbia and a Master of Laws degree from Washington University in St. Louis. Since
17 1981, I have served in various legal and managerial roles at Southern Union, including vice
18 president of its exploration and production subsidiary, president of its international
19 subsidiary and general counsel and secretary of the corporation. I have served in my current

1 role since 2004. As chief legal officer of the company from 1991 to 2004, and in my current
2 capacity thereafter, I am familiar with the environmental liability agreement ("ELA")
3 negotiated with Western Resources, Inc., in connection with the acquisition of MGE, as well
4 as the company's insurance recovery program.

5
6 **Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY?**

7 A. I will respond to portions of the rebuttal testimony of Office of the Public Counsel ("OPC")
8 witness Ted Robertson.

9
10 **Q. ON PAGE 15 OF HIS REBUTTAL TESTIMONY, OPC WITNESS ROBERTSON**
11 **MENTIONS AN ENVIRONMENTAL LIABILITY AGREEMENT ("ELA")**
12 **ENTERED INTO BETWEEN SOUTHERN UNION AND WESTERN RESOURCES,**
13 **INC. ("WRI") (N/K/A "WESTAR"), AS A PART OF THE TRANSACTION**
14 **PURSUANT TO WHICH SOUTHERN UNION ACQUIRED THE MGE**
15 **PROPERTIES FROM WRI. ARE YOU FAMILIAR WITH THAT AGREEMENT?**

16 A. Yes.

17
18 **Q. PLEASE EXPLAIN HOW THE ELA OPERATES.**

19 A. As a general matter, the ELA sets forth a tiered approach to the allocation of cost
20 responsibility as between Southern Union and Westar for environmental matters covered
21 thereunder, as follows:

- 22 ○ The first line of recovery is insurance.

- The second line of recovery is potentially responsible parties.
- The third line of recovery is regulated rates.
- The fourth line of recovery – which applies to costs in excess of the first three lines of recovery – is Southern Union’s sole liability amount of \$3 million.
- The fifth line of recovery is liability shared between Westar and Southern Union on a 50/50 basis for the cost of matters covered under the ELA which exceed the sum of amounts produced by way of the first four lines of recovery. The total amount to be shared is capped at \$15 million and costs incurred after January 31, 2009 are not eligible for sharing.

Q. ARE THE FORMER MANUFACTURED GAS PLANT (“FMGP”) COSTS MGE SEEKS TO DEFER THROUGH THIS APPLICATION COVERED BY THE ELA?

A. Yes.

Q. ON PAGE 15 OF HIS REBUTTAL TESTIMONY, OPC WITNESS ROBERTSON INDICATES (AT LINES 7-10) THAT THE BULK OF MGE’S FMGP COSTS INCURRED TO DATE HAVE BEEN RECOVERED FROM OTHER ENTITIES OR BORNE BY SHAREHOLDERS AS OPPOSED TO BEING FUNDED THROUGH REGULATED RATES. DO YOU AGREE?

A. Yes. Southern Union has for many years been actively engaged in an insurance recovery project on behalf of all affected Southern Union business units, including MGE. Through June 30, 2008, this insurance recovery project has yielded \$8,344,733 in recoveries on behalf

1 of the MGE properties. Adding this to the \$3 million accrued liability placed on the
2 Company's books upon the closing of Southern Union's acquisition of the MGE properties
3 produces a sum of \$11,344,733. Because MGE's FMGP expenditures have only recently, as
4 of June 30, 2008, exceeded this sum, as a practical matter there have been no unrecovered
5 costs to be included in the rate setting process in previous rate cases. In saying this, however,
6 I should also point out that in its two most recent rate cases (Case Nos. GR-2004-0209 and
7 GR-2006-0422), MGE has requested recovery of FMGP costs through regulated rates by way
8 of a mechanism called an Environmental Response Fund. The Commission rejected MGE's
9 request in both of those cases.

10
11 **Q. PLEASE DESCRIBE THE INSURANCE RECOVERY PROJECT YOU JUST**
12 **MENTIONED, PARTICULARLY AS IT RELATES TO MGE.**

13 **A.** The project has been ongoing for many years – since approximately 1988 which is a number
14 of years before MGE was acquired by Southern Union. The first step involves insurance
15 archeology; that is obtaining, investigating and analyzing historical insurance policies that
16 may apply to any of the business units in the Southern Union family of companies. Because
17 the events giving rise to the claims generally occurred many decades ago and are
18 characterized as pollution, the majority of the applicable insurance coverage is pre-1984.
19 Therefore, even determining whether insurance coverage exists may be difficult. The second
20 step is to identify if the insurer still exists and to evaluate its condition and status. The third
21 step is to evaluate the potential environmental conditions that may exist. This involves
22 identifying the possible universe of such environmental conditions and collecting past

1 expenditures on such sites and estimating possible liability exposures regarding those sites.
2 The fourth step is to merge the insurance policy information and the exposure information to
3 be in a position to make a cogent demand on the insurer in order to settle out any potential
4 claims under the policies. The fifth and final step is to attempt to settle what will be treated
5 as a disputed claim under these policies. This process may take the form of direct
6 negotiations with insurer(s) or in many cases it may take the form of submittals through an
7 insolvency process somewhat akin to bankruptcy where all submittals under all policies of
8 the underwriter are evaluated by those responsible for the insolvency process and recoveries
9 are allocated based on factors such as magnitude of the claim, magnitude of past costs versus
10 future potential liability, supporting documentation, limits of the policy, point of attachment
11 of the policy, etc. At the end of the process the insurer may or may not pay any amounts
12 and where payments are made they may be contingent on factors such as the amount of
13 unresolved claims under the policies of the insurer. The entire process is complicated, time
14 consuming and expensive.

15
16 **Q. WILL SOUTHERN UNION OBTAIN ADDITIONAL INSURANCE RECOVERIES**
17 **ON BEHALF OF MGE?**

18 A. I do not know. Any further recovery is uncertain.

19
20 **Q. HAS SOUTHERN UNION PURSUED COST RECOVERY AGAINST ANY**
21 **POTENTIALLY RESPONSIBLE PARTIES ("PRPs")?**

1 A. Not directly to date. We have focused our efforts primarily on insurance recovery which was
2 an ongoing program when MGE was acquired. Seeking recovery against PRPs often
3 involves protracted litigation particularly regarding sites that are very old and the chain of
4 ownership or control is complex. Nevertheless, in the course of our negotiations with the
5 Port Authority of Kansas City, we made the Port Authority aware of Honeywell, Inc.'s
6 potential liability and Honeywell ultimately made a settlement with the Port Authority.
7 Absent that settlement payment by Honeywell, it is likely that the Port Authority would have
8 demanded a higher settlement payment from Southern Union in those negotiations.

9
10 **Q. WILL SOUTHERN UNION OBTAIN COST RECOVERY FROM ANY PRPs?**

11 A. I do not know. Assuming we are able to develop the necessary historical information on
12 ownership and operation, any recovery would likely be dependent on the ability of Southern
13 Union to prevail in litigation against such PRPs. Litigation is always uncertain.

14
15 **Q. HAS SOUTHERN UNION SOUGHT TO RECOVER FMGP COSTS THROUGH**
16 **REGULATED COST OF SERVICE?**

17 A. Yes, but the Commission has denied cost recovery in MGE's two most recent general rate
18 cases (Case Nos. GR-2004-0209 and GR-2006-0422).

19
20 **Q. HAS SOUTHERN UNION MADE A CLAIM AGAINST WESTAR UNDER THE**
21 **ELA?**

1 A. Yes. Please see Schedule DKM-1. Similar to the situation regarding rate recovery of MGE's
2 FMGP costs, because the sum of insurance recoveries obtained by Southern Union on
3 MGE's behalf plus the \$3 million accrued liability placed on the Company's books upon
4 Southern Union's acquisition of MGE exceeded MGE's FMGP expenditures until only
5 recently (i.e., June 30, 2008), Southern Union did not have a claim to make under the ELA.

6
7 **Q. DOES SOUTHERN UNION EXPECT TO MAKE ADDITIONAL CLAIMS AGAINST**
8 **WESTAR UNDER THE ELA?**

9 A. Yes. FMGP costs that continue to be incurred at MGE's St. Joseph site will be included in
10 claims to be made in the future. In addition, if other costs covered by the ELA are incurred
11 prior to January 31, 2009, they will be included in claims to be made against Westar also.

12
13 **Q. DO YOU KNOW WHETHER WESTAR WILL PAY THE CLAIMS SOUTHERN**
14 **UNION MAKES UNDER THE ELA?**

15 A. I do not know.

16
17 **Q. ON PAGE 33 OF HIS REBUTTAL TESTMONY (LINES 1-8), OPC WITNESS**
18 **ROBERTSON STATES HIS BELIEF THAT THE PURCHASE PRICE**
19 **NEGOTIATED BY SOUTHERN UNION FOR ITS ACQUISITION OF THE MGE**
20 **PROPERTIES WAS LIKELY ADJUSTED DOWNWARD ON ACCOUNT OF THE**
21 **POTENTIAL MGP LIABILITY ASSOCIATED WITH THE MGE PROPERTIES**
22 **AND, THEREFORE, THAT EXCLUSION OF MGE'S FMGP COSTS FROM**

1 **CUSTOMER RATES (AND DENIAL OF THE AAO REQUESTED HEREIN)**
2 **WOULD BE FAIR TO (i.e., WOULD NOT PENALIZE) SOUTHERN UNION'S**
3 **SHAREHOLDERS. DO YOU AGREE?**

4 A. No. There is no evidence supporting Mr. Robertson's contention that the purchase price was
5 reduced on account of potential FMGP liability. First, the full extent of that potential
6 liability – in terms of dollars – is not even known today, almost 15 years after the closing of
7 the transaction. It would have been impossible to quantify any reduction in the purchase
8 price on the basis of non-existent information. Second, as indicated in Mr. Noack's
9 surrebuttal testimony, FMGP costs are routinely included in the regulated cost of service of
10 local distribution companies throughout the country. Consistent with this, Southern Union's
11 assumption when undertaking its acquisition of the MGE properties was that FMGP costs
12 would be recoverable through regulated rates, which is readily apparent by examining the
13 ELA itself. Southern Union has diligently pursued FMGP cost recovery from other sources
14 before seeking to recover these costs through customer rates. Southern Union's successful
15 pursuit of these cost recovery efforts has benefited MGE customers and does not serve as any
16 reasonable basis to deny the Company the ability to defer and recover excess costs (i.e., those
17 above and beyond recoveries) through customer rates.

18
19 **Q. DOES THIS CONCLUDE YOUR SURREBUTTAL TESTIMONY?**

20 A. Yes, at this time.
21
22

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI


In the Matter of the Application of)
Missouri Gas Energy, a Division of)
Southern Union Company, for an)
Accounting Authority Order Concerning)
Environmental Compliance Activities)

Case No. GU-2007-0480


AFFIDAVIT OF DENNIS K. MORGAN

STATE OF Texas)
COUNTY OF Harris) ss.

Dennis K. Morgan, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Surrebuttal Testimony in question and answer form, to be presented in the above case; that the answers in the foregoing Surrebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.


DENNIS K. MORGAN

Subscribed and sworn to before me this 9th day of July 2008.


Notary Public

My Commission Expires: _____

