

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Missouri Gas Energy and)	
Its Tariff Filing to Implement a General)	Case No. GR-2009-0355
Rate Increase for Natural Gas Service)	

STAFF'S MOTION

TO COMPEL PRODUCTION OF DOCUMENTS

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and requests that the Missouri Public Service Commission (Commission) issue its Order directing Missouri Gas Energy, (MGE) a division of Southern Union Company (SU) to provide Staff, or make available to Staff, copies of SU's Board of Directors' minutes. In support thereof Staff states:

1. On April 2, 2009, MGE filed tariff sheets to increase its Missouri jurisdictional rates by \$32,416,997, in Case No. GR-2009-0355. MGE's proposed rates include various allocated costs from its parent company, Southern Union.
2. As is its usual practice as part of a rate case audit, on May 13, 2009, the Staff submitted Data Request (DR) No. 30 to MGE, requesting copies of all approved Southern Union Company (SUC) Board of Directors (Board) meeting minutes for the period June 30, 2006 to present. DR No. 30 specifically requested: "Please provide a copy or make available (in electronic format, if possible) for Staff review: a) the minutes of the Board of Directors meetings for Southern Union and MGE (if applicable) held between June 30, 2006 and the present; b) any handouts and/or financial analysis used at the meetings; c) any available Board Committee meetings minutes."

3. The Staff requested SU Board minutes because MGE as a division of SU (its parent company), does not have a separate corporate governing body.

4. In rate cases, the Staff routinely asks for, and receives, Board meeting minutes in its audits of Missouri jurisdictional utilities, and/or Board meeting minutes for parent companies of the regulated utilities. This DR was no surprise to MGE.

5. Because it acts in the public interest under the police powers of the state, the Commission has broad discovery powers. Commission Rule 4 CSR 240-2.090(1) provides as follows: “Discovery may be obtained by the same means and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission orders regarding discovery shall be the same as those provided for in the rules of civil procedure.”

6. Missouri Supreme Court Rule of Civil Procedure 58.01(c)(3) Objections and Privileges provides as follows:

If information is withheld because of an objection, then each reason for the objection shall be stated. If a privilege or the work product doctrine is asserted as a reason for the objection, then without revealing the protected information, the objecting party shall state information that will permit others to assess the applicability of the privilege or work product doctrine.

7. Commission Rule 4 CSR 240-2.090(2) requires MGE to object to answering DRs within 10 days of receipt:

Parties may use data requests as a means for discovery. The party to whom data requests are presented shall answer the requests within twenty (20) days after receipt unless otherwise agreed by the parties to the data requests. If the recipient objects to data requests or is unable to answer within twenty (20) days, the recipient shall serve all of its objections or reasons for its inability to answer in writing upon the requesting party within ten (10) days after receipt of the data requests, unless otherwise ordered by the commission.

MGE failed to object to DR 30's request. In fact, on June 1, 2009 SU responded to Staff DR No. 30, stating that SU Board minutes approved prior to July 2008 were available to Staff via previous DR responses in MGE PGA/ACA case filings. MGE included copies of Board minutes for meetings from July 2008 on in its response, with no indication that any requested Board minutes had been withheld. Again, no timely objection was made.

8. As is the pattern of MGE's responses in past cases, certain portions of the June 30 Board minutes were redacted by MGE for attorney/client privilege and other reasons. Staff is not challenging SU's redaction of these documents. There was no indication in MGE's response to Staff DR No. 30 that the Staff's request for Board minutes had not been fully complied with.

9. However, while reviewing the only Board minutes provided in response to Staff DR No. 30, the Staff noted that these minutes, in turn, referenced approval actions for Board minutes taken during other SU Board meetings, which had occurred during the requested time period. These minutes were not provided to Staff.

10. Importantly, MGE did not timely raise any objection to responding to DR 30. Instead, MGE simply did not respond fully. In an attempt to obtain all of the requested information, on June 23, 2009, Staff submitted Staff DR No. 30.3, requesting copies of all other SU Board meeting minutes from June 30, 2006 to current that had not been provided in the initial response to Staff DR No. 30.

11. MGE refused to answer. On July 13, 2009, MGE responded to Staff Data Request No. 30.3 by stating that the requested meeting minutes would not be provided. Instead, MGE attached an affidavit by Mr. Robert Kerrigan, an SU vice-president and assistant general counsel attesting that the minutes requested in Staff DR No. 30.3 neither

directly mentioned nor directly involved MGE, and it would require 8-10 hours of work by SU corporate employees to copy and redact such materials.

12. MGE's response of simply attaching an affidavit, with an untimely objection, only serves to deepen Staff's concern over MGE's lack of response to DR 30. While Staff does not question Mr. Kerrigan's attestation, an affidavit does not meet Staff's need for adequate information to determine just and reasonable allocations of corporate costs. Even though MGE may not be mentioned directly in the Board's discussions, the discussion may still affect allocations to MGE.

13. In regard to the matter of the time and effort spent by SU employees responding to Staff DR No. 30.3, the Staff notes that the costs spent by corporate employees in responding to regulatory requests is subject to allocation to SU's divisions, including MGE, and would be presumptively recoverable in rates by the divisions. In short, any reasonable SU costs incurred to answer discovery is generally recoverable in rates through SU's corporate cost allocation process.

14. As required by 4 CSR 240-2.090(8)(B) parties participated in a discovery conference with the assigned ALJ; however, resolution was not reached.

15. Staff has also complied with subsection (A) of the Commission's rule on discovery, requiring: "(A) Counsel for the moving party [to] in good faith confer . . . confer by telephone or in person with opposing counsel concerning the matter prior to the filing of the motion. Merely writing a demand letter is not sufficient. Counsel for the moving party shall certify compliance with this rule in any discovery motion." Certification is made below.

WHEREFORE the Staff respectfully requests, pursuant to the Commission's broad powers of discovery to protect the public interest, and in light of the fact that MGE did not make a timely objection to answering DR 30, that (a) MGE be directed to fully respond to DR 30; (b) MGE be directed to comply with Missouri Supreme Court Rule of Civil Procedure 58.01(c)(3) as related above; (c) MGE be directed to promptly produce or make available all requested Board minutes, in their entirety, with only attorney-client privilege and/or attorney work product immunity sections redacted.

Respectfully submitted,

/s/ Lera L. Shemwell

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 20th day of August, 2009.

/s/ Lera L. Shemwell