

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

In the Matter of the Application of Missouri Gas)
Energy, a division of Southern Union Company) Case No. GU-2005-0095
for an Accounting Authority Order Concerning the)
Kansas Property Tax for Gas in Storage.)

MGE'S PROPOSED FINDINGS OF FACT

COMES NOW Missouri Gas Energy, a division of Southern Union Company (MGE or Company), and, in response to the Missouri Public Service Commission's (Commission) request for proposed findings of fact, provides the following proposed findings of fact:

The Commission finds that:

1. Missouri Gas Energy is a division of Southern Union Company, a Delaware corporation (MGE). *Application for an Accounting Authority Order* (October 12, 2004). MGE's principal office is located at 3420 Broadway, Kansas City, Missouri 64111. *Id.* MGE is a "gas corporation," as defined in Section 386.020(18), RSMo, and provides natural gas service in various Missouri counties subject to the jurisdiction of the Missouri Public Service Commission. *Id.*

2. During its 2004 session, the Kansas Legislature passed Senate Bill 147. Exh. 1, Noack Dir., p. 2; Exh. 4. This bill created a new property tax associated with the inventories of gas held for resale and stored in underground formations in the state of Kansas. *Id.* The legislation was made retroactive to inventories held as of January 1, 2004. *Id.* MGE has never before paid property taxes on storage gas in the State of Kansas. Exh. 1, Noack Dir., p. 5.

3. The amount of tax associated with Kansas Senate Bill 147 due for the 2004 tax year is \$1,721,830. Exh. 1, Noack Dir., p. 3. This amount will be recorded on MGE's books as an expense in the absence of an accounting authority order. Tr. 83 (Noack); Exh. 3, Noack Surr., p. 4.

4. MGE filed proposed tariff sheets initiating a general rate case on November 4, 2003. Exh. 1, Noack Dir., p. 3. This rate case was identified by the Commission as Case No. GR-2004-0209. *Id.* Because Kansas Senate Bill 147 was not enacted until 2004, there was no adjustment made with respect to the taxes associated with that legislation in either the original rate case filing or in the update (made in January 2004). *Id.* at p. 4.

5. MGE later sought to address the Kansas gas storage tax in Case No. GR-2004-0209 by requesting recovery of the estimated expense during the true-up hearing (July 2004). Exh. 1, Noack Dir., p. 4. In its decision issued on September 21, 2004, effective October 2, 2004, the Commission found in part that this “potential tax liability is not currently known or measurable and on that basis it cannot be included in MGE’s cost of service.” *In the Matter of Missouri Gas Energy’s Tariffs*, Report and Order, Case No. GR-2004-0209, p. 79. Exh. 1, Noack Dir., p. 5.

6. Based on the final rate case model in GR-2004-0209, including the authorized increase, the property taxes on gas in storage would amount to 9.03% of MGE’s annual net income. Exh. 1, Noack Dir., p. 6. This cost is material to MGE’s annual income. Exh. 5, Hyneman Dir., p. 6. If an accounting authority order is not granted, MGE will not be afforded a reasonable opportunity to earn the return authorized in Case No. GR-2004-0209. *Id.* at p. 7.

7. MGE has challenged the legality of Kansas Senate Bill 147 by appealing the assessments and applying for an exemption. Exh. 12. It is estimated that MGE’s hearing before the Kansas Board of Tax Appeals will take place in June of 2005. Tr. 78-79 (Noack). It is estimated that the appeal associated with the Board decision will not be complete until mid-2006. Exh. 2, Noack Reb., p. 3.

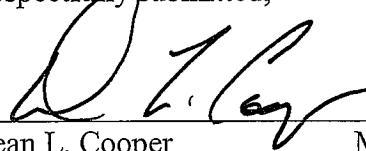
8. The recently enacted ISRS statute requires that a public utility file a rate case within three years in order to use the ISRS mechanism. Tr. 100 (Hyneman). Because MGE has recently

filed for to use the ISRS mechanism, MGE will be required by statute to file a rate case by June, 2008, if not earlier. Tr. 100 (Hyneman).

9. Similarly, MGE's rates were recently set with the assumption that a three year rate case interval is reasonable, as rate case expense in Case No. GR-2004-0209 was designed to be amortized over three years. Tr. 100 (Hyneman).

WHEREFORE, MGE respectfully requests that the Commission consider these proposed findings of fact.

Respectfully submitted,



Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-3847 facsimile
dcooper@brydonlaw.com

ATTORNEYS FOR MISSOURI GAS ENERGY,
A DIVISION OF SOUTHERN UNION
COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail, on April 26, 2005, to the following:

Mr. Thomas Schwarz
Office of the General Counsel
Governor Office Building, 8th Floor
Jefferson City, Mo 65101

Mr. Douglas Micheel
Office of the Public Counsel
Governor Office Building, 6th Floor
Jefferson City, MO 65101

Mr. Stuart Conrad
Finnegan, Conrad & Peterson, L.C.
1209 Penntower Office Center
3100 Broadway
Kansas City, Missouri 64111

