

Exhibit No.: \_\_\_\_\_  
Issue: Environmental Costs and  
Insurance Recoveries  
Witness: Dennis K. Morgan  
Type of Exhibit: Rebuttal Testimony  
Sponsoring Party: Missouri Gas Energy  
Case No.: GR-2009-0355  
Date Testimony Prepared: September 28, 2009

MISSOURI PUBLIC SERVICE COMMISSION

MISSOURI GAS ENERGY

CASE NO. GR-2009-0355

REBUTTAL TESTIMONY

OF

DENNIS K. MORGAN

Jefferson City, Missouri

September 2009

**REBUTTAL TESTIMONY OF DENNIS K. MORGAN  
ON BEHALF OF  
MISSOURI GAS ENERGY  
GR-2009-0355**

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**REBUTTAL TESTIMONY OF DENNIS K. MORGAN  
ON BEHALF OF  
MISSOURI GAS ENERGY  
GR-2009-0355**

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  
11           which Southern Union Company and its divisions, subsidiaries and affiliates may become  
12           involved.

13

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

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

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

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

7 A. I will respond to portions of the Staff Report – Cost of Service concerning recovery of  
8 environmental remediation costs, particularly those incurred in relation to former  
9 manufactured gas plant sites.

10  
11 **Q. ON PAGE 109 OF THE STAFF REPORT- COST OF SERVICE, MENTION IS**  
12 **MADE OF AN ENVIRONMENTAL LIABILITY AGREEMENT (“ELA”)**  
13 **ENTERED INTO BETWEEN SOUTHERN UNION AND WESTERN**  
14 **RESOURCES, INC. (“WRI”) (N/K/A “WESTAR”), AS A PART OF THE**  
15 **TRANSACTION PURSUANT TO WHICH SOUTHERN UNION ACQUIRED**  
16 **THE MGE PROPERTIES FROM WRI IS DESCRIBED. ARE YOU FAMILIAR**  
17 **WITH THAT AGREEMENT?**

18 A. Yes.

19  
20 **Q. PLEASE EXPLAIN HOW THE ELA OPERATES.**

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

- 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 COSTS ASSOCIATED WITH FORMER MANUFACTURED GAS PLANT (“FMGP”) SITES THAT MGE SEEKS TO RECOVER THROUGH THIS APPLICATION COVERED BY THE ELA?**

**A. No.**

**Q. WHY NOT?**

**A. The ELA only applies to costs incurred by MGE prior to January 31, 2009. This case is for the purpose of setting rates on a prospective basis.**

1 Q. HAS SOUTHERN UNION MADE A CLAIM AGAINST WESTAR UNDER THE  
2 ELA?

3 A. Yes. MGE made a claim for applicable costs that were incurred prior to January 31,  
4 2009.

5  
6 Q. WHAT IS THE CURRENT STATUS OF THAT CLAIM?

7 A. Westar has engaged an expert to review invoices from MGE's environmental remediation  
8 projects. MGE worked with Westar's expert over the summer to facilitate the document  
9 review. MGE has been informed that Westar is reviewing the expert's findings and will  
10 provide a response to MGE's claim in the near future.

11  
12 Q. DO YOU KNOW WHETHER WESTAR WILL PAY THE CLAIMS SOUTHERN  
13 UNION MAKES UNDER THE ELA?

14 A. I do not know.

15  
16 Q. THAT STAFF REPORT – COST OF SERVICE ALSO INDICATES THAT MGE  
17 HAS RECEIVED ALMOST \$10 MILLION IN INSURANCE RECOVERIES  
18 ASSOCIATED WITH ENVIRONMENTAL REMEDIATION COSTS SINCE 2001.  
19 IS THAT CORRECT?

20 A. Yes.

1   **Q.    PLEASE DESCRIBE THE INSURANCE RECOVERY PROJECT YOU JUST**  
2   **MENTIONED, PARTICULARLY AS IT RELATES TO MGE.**

3   A.    The project has been ongoing for many years. I have supervised this project since  
4   Southern Union's acquisition of MGE.

5  
6        The first step involves insurance archeology; that is obtaining, investigating and  
7        analyzing historical insurance policies that may apply to any of the business units in the  
8        Southern Union family of companies. Because the events giving rise to the claims  
9        generally occurred many decades ago and are characterized as pollution, the majority of  
10       the applicable insurance coverage is pre-1984. Therefore, even determining whether  
11       insurance coverage exists may be difficult.

12  
13       The second step is to identify if the insurer still exists and to evaluate its condition and  
14       status.

15  
16       The third step is to evaluate the potential environmental conditions that may exist. This  
17       involves identifying the possible universe of such environmental conditions and  
18       collecting past expenditures on such sites and estimating possible liability exposures  
19       regarding those sites.

20  
21       The fourth step is to merge the insurance policy information and the exposure  
22       information to be in a position to make a cogent demand on the insurer in order to settle  
23       out any potential claims under the policies.

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

12  
13 The entire process is complicated, time consuming, uncertain and expensive.  
14

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

17 A. I do not know. Any further recovery is uncertain. I can say that while we have no  
18 guarantee of future recovery, we will continue to pursue the insurance recovery process  
19 as long as there is the potential for cost-effective recovery. The insurance recovery  
20 project is presently ongoing because we believe that there continues to be reasonable  
21 prospects of obtaining recoveries on a cost-effective basis. At some point, however, it  
22 will no longer be cost-effective to continue pursuit of insurance recoveries.  
23



1    **Q.     WHAT AMOUNT OF FUTURE RECOVERIES CAN YOU EXPECT?**

2    A.     I do not know.

3

4    **Q.     DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

5    A.     Yes, at this time.