Exhibit No.:	_____
Issues:	Environmental AAO
Witness:	Michael R. Noack
Sponsoring Party:	Missouri Gas Energy
Case No.:	GU-2007-0480
Date Testimony Prepared:	April 10, 2008

MISSOURI PUBLIC SERVICE COMMISSION

MISSOURI GAS ENERGY

CASE NO. GU-2007-0480

DIRECT TESTIMONY OF

MICHAEL R. NOACK

Jefferson City, Missouri

April 2008

DIRECT TESTIMONY OF MICHAEL R. NOACK

CASE NO. GU-2007-0480

APRIL 2008

Q. WOULD YOU PLEASE STATE YOUR NAME AND BUSINESS ADDRESS?

A. My name is Michael R. Noack and my business address is 3420 Broadway, Kansas City, Missouri 64111.

Q. WHO ARE YOU EMPLOYED BY?

A. I am employed by Missouri Gas Energy (MGE), a division of Southern Union Company (Company), as Director of Pricing and Regulatory Affairs.

Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL EXPERIENCE.

A. I received a Bachelor of Science in Business Administration with a major in Accounting from the University of Missouri in Columbia in 1973. Upon graduation, I was employed by Troupe Kehoe Whiteaker & Kent (TKWK), a Certified Public Accounting Firm in Kansas City, Missouri. I spent approximately 20 years working with TKWK or firms that were formed from former TKWK employees or partners. I was involved during that time in public utility consulting and financial accounting, concentrating primarily on rate cases for electric and gas utilities and financial audits of independent telephone companies across the United States. In 1992, I started Carleton B. Fox Co. Inc. of

Kansas City which was an energy consulting company specializing in billing analysis and tariff selection for large commercial and industrial customers. In July of 2000 I started my employment with MGE. Presently I hold in good standing, a Certified Public Accountant certificate in the state of Kansas and am a member of the Kansas Society of Certified Public Accountants.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to support MGE's request for an Accounting Authority Order (AAO) concerning environmental compliance activities related to investigation, assessment and remediation of former manufactured gas plant (FMGP) sites.

Q. WHAT IS AN ACCOUNTING AUTHORITY ORDER (AAO)?

A. An AAO is an Order issued by the Commission which allows the utility company to use an accounting mechanism which permits deferral of costs from one accounting period to another. The costs being deferred are expenses which the utility company is requesting regulatory treatment on but since there is no ongoing rate case, a request for deferral until the next rate case is being made. These costs for which the company is requesting deferral will be booked as a deferred asset instead of an expense in the accounting period in which they are incurred. During a subsequent rate case, the Commission will determine what portion of the

deferred amounts will be recovered through rates and over what period of time they will be recovered.

Q. WHAT ARE THE COMMISSION REQUIREMENTS THAT AN EXPENSE MUST MEET BEFORE AN AAO WILL BE GRANTED?

A. The company must establish for the Commission that the cost or expense for which the company is requesting deferral is extraordinary, unusual or unique.

Q. WHY IS MGE REQUESTING AN AAO FROM THE COMMISSION?

A. MGE has incurred or will incur costs in connection with environmental activities, the majority of which pertain to FMGP sites. These are costs to investigate and/or remediate FMGP-impacted soil and groundwater at the MGP sites located at 1st & Campbell (Station A) and 223 Gillis (Station B) in Kansas City, Missouri, and include, but are not limited to: records and historical maps research; excavation test trenching; installation of soil borings; installation of groundwater monitoring wells; soil and groundwater laboratory analysis; evaluation of field and laboratory data; evaluation of the overall condition of the site; excavation and hauling of impacted soil and debris; landfill disposal; water pumping, storage, treatment and/or disposal; building demolition; report preparation and submittal of completed documentation to the appropriate regulatory agencies.

In addition to the Kansas City sites, MGE's St. Joseph, Missouri FMGP site has been the subject of underground storage tank removal and remediation activities

and, as a result, MGE has recently learned that this site will be the subject of FMGP related investigation, assessment and likely remediation activities in the very near future.

MGE estimates that the cost of these investigation, assessment and remediation efforts for the Kansas City and St. Joseph sites will exceed several million dollars.

Q. ARE THERE OTHER SITES OWNED BY MGE/SOUTHERN UNION COMPANY IN MISSOURI WHICH ARE ON THE MISSOURI DEPARTMENT OF NATURAL RESOURCE'S (MDNR) LIST TO INVESTIGATE?

A. Yes, there are. As MGE witness Crystal Callaway has testified, they include a site at East 5th Street in Joplin, Missouri and 23rd and Pleasant Street in Independence, Missouri. It is not known whether, or when, FMGP investigation activities may be undertaken at these sites. However, to the extent that FMGP investigation and remediation activities become necessary at these sites, MGE estimates that significant dollars might have to be spent on each such site in order to obtain MDNR site closure.

In addition, there are other FMGP sites located within MGE's service territory that are not owned by MGE, but for which MGE may have some potential liability.

Q. IS IT POSSIBLE TO PREDICT THE TIMING AND MAGNITUDE OF ANY FMGP INVESTIGATION AT THIS TIME?

A. No. As MGE witness Crystal Callaway has testified, even once the investigative and remedial process has been initiated, the timing and magnitude of any investigative and remedial activity at MGE sites is subject to numerous variables.

Q. BASED ON THE CIRCUMSTANCES UNDER WHICH THE COMMISSION MAY GRANT AN AAO, WHY SHOULD THE EXPENSES ASSOCIATED WITH FMGP REMEDIATION BE ALLOWED DEFERRAL THROUGH AN AAO?

A. First, the expenses associated with FMGP clean-up and remediations are unique in nature. In fact, they are unique to the gas industry. Many, many years ago, manufactured gas plants were the norm and the source of the gas being supplied to customers. Now, almost all jurisdictions have the problem of dealing with clean-up costs related to these long abandoned plants.

Second, the expenses are unusual in nature because of what is involved in cleaning up an FMGP site. In the case of the Station A and Station B sites, in order to complete the clean-up MGE has had to move the operations service center (where nearly 200 field employees reported and including a meter shop, among other things) to an entirely new location. As part of the ongoing clean-up and remediation at the Station A and Station B sites, a meter shop and possibly

other structures will need to be demolished, thus leaving an undepreciated plant balance as a direct result of these environmental activities.

Q. WHAT LEVEL OF ENVIRONMENTAL COSTS HAS MGE EXPERIENCED SINCE IT CAME INTO EXISTENCE IN 1994?

A. Over the period April 28, 1994 through September 30, 2007, MGE's records indicate that it has incurred a total of $10,368,998 in environmental costs, with $9,709,510 specifically related to activities at its former MGP sites and $659,488 related to costs other than MGP sites.

Q. IS MGE REQUESTING DEFERRAL TREATMENT FOR ANY OF THE NON-MGP RELATED ENVIRONMENTAL CLEAN-UP AND REMEDIATION COSTS?

A. No.

Q. HAS MGE RECEIVED ANY PAYMENTS FROM INSURANCE CLAIMS OR OTHER POTENTIALLY RESPONSIBLE PARTIES (PRP)?

A. Yes. As of September 30, 2007, MGE has recovered $8,272,273 in insurance claims. Related to those recoveries, $6,531,378 has been booked as an offset to MGE's incurred MGP costs and the balance of $1,740,895 has been booked as an offset to operating expenses as reimbursement for past MGP environmental costs charged to operating expenses. In addition to the insurance recoveries, at the time MGE was purchased from Western Resources, Southern Union Company entered

into an "Environmental Liability Agreement dated January 31, 1994" (ELA) (which has been attached as Schedule MRN-1) with Western Resources which specified that $3,000,000 would be borne by Southern Union Company before any environmental costs could be shared between Southern Union and Western Resources. This $3,000,000 has also been booked as an offset to MGE's incurred MGP costs.

Q. WHAT OTHER STEPS ARE AVAILABLE TO MGE TO MITIGATE THE EXPOSURE TO MGE'S CUSTOMERS FROM MGP SITE COSTS?

A. In accordance with the terms of the ELA, MGE has a claim against Western Resources for 50% of the environmental costs incurred through January 31, 2009, of which the initial $3,000,000 will be borne by Southern Union, which have not been recovered by: payments from insurance carriers; payments from other potentially responsible parties; or amounts included in customer rates.

Q. IS IT MGE'S AND SOUTHERN UNION'S INTENTION TO MAKE A CLAIM TO WESTERN RESOURCES?

A. Yes, to the extent that there are costs not covered by the initial $3,000,000, or the recoveries from insurance and other potentially responsible parties, MGE and Southern Union intend to make claim to Western Resources for 50% of such costs.

Q. HAS MGE INCURRED ENVIRONMENTAL COSTS EACH AND EVERY YEAR SINCE IT CAME INTO EXISTENCE IN 1994?

A. Yes, but up until the last few months, all of those costs were either reimbursed by insurance carriers or covered by the initial ELA liability of $3,000,000.

Q. DOES MGE CURRENTLY HAVE UNREIMBURSED FMGP RELATED EXPENSES RECORDED ON ITS BOOKS FOR 2007?

A. Yes. As of September 30, 2007 MGE has recorded unreimbursed FMGP related expenses of $178,129.99. More costs were incurred during the fourth quarter of 2007 and the first quarter of 2008.

Q. ARE THE UNREIMBURSED FMGP RELATED EXPENSES NON-RECURRING AND DO THEY MEET THE DEFINITION OF "EXTRAORDINARY ITEMS" PROMULGATED BY THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) IN GENERAL INSTRUCTION NUMBER SEVEN OF THE UNIFORM SYSTEM OF ACCOUNTS (USOA)?

A. The unreimbursed FMGP related expenses are both non-recurring and extraordinary and meet the requirements set out in instruction number seven of the USOA. The instruction states:

> "Those items related to the effects of events and transactions which have occurred during the current period and which are of unusual nature and infrequent occurrence shall be considered extraordinary items. Accordingly, they will be events and transactions of significant effect which are abnormal and significantly different from the ordinary and typical activities of the company, and which

> would not reasonably be expected to recur in the foreseeable future."

These costs that MGE seeks to defer are costs which would not have been incurred absent the need to investigate, assess and remediate these sites. Both MGE and Southern Union Company are devoting substantial financial resources and time to these investigative and remediation projects which are non-revenue producing and outside of normal business activities.

Q. ARE THESE MORE THAN APPROXIMATELY 5 PERCENT OF INCOME, COMPUTED BEFORE EXTRAORDINARY ITEMS?

A. With all of the recoveries taken into consideration, the costs incurred through September 30, 2007 do not exceed 5 percent.

Q. WHAT IS THE SIGNIFICANCE OF THAT FACT?

A. General instruction seven of the USOA contains the following language:

> To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items. **Commission approval must be obtained to treat an item of less than 5 percent, as extraordinary**. [Emphasis added]

Thus, MGE needs an order from the Commission in order to treat as extraordinary an event whose financial impact on the Company is less than 5 percent.

However, I fully expect that 5% threshold to me met when the remaining costs for these sites are taken into consideration.

Q. HAS MGE PREVIOUSLY REQUESTED ASSISTANCE FROM THE COMMISSION IN DEALING WITH THE UNCERTAINTY OF THE FUTURE COSTS ASSOCIATED WITH THE REMEDIATION OF THE FMGP SITES?

A. During MGE's last two rate cases (GR-2004-0209 and GR-2006-0422), MGE requested approval from the Commission to establish an Environmental Response Fund (ERF) of $750,000 and $500,000, respectively, to be included in annual rates for MGP remediation costs. In those requests, the Company recommended that the ERF fund be treated as a "tracking mechanism" by which MGP costs (of unknown future quantity) would be collected from customers through a separate rate element, and later "trued up" by the Company by comparing the amount of the rate collections to the MGP expense actually incurred by MGE.

Q. WHAT WERE THE RESULTS OF THESE PROPOSALS?

A. Both proposals were denied by the Commission. However, in the last general rate case, GR-2006-0422, the Commission Staff testified that "...if MGE's MGP costs meet the Commission's requirements for accounting authority orders (AAOs), MGE is free to seek a Commission AAO for these costs" Case No. GR-2006-0422, Ex. 120, Harrison Reb., p. 7.

Q. DOES THAT CONCLUDE YOUR DIRECT TESTIMONY?

A. Yes, it does.

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 MICHAEL R. NOACK

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

Michael R. Noack, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Direct Testimony in question and answer form, to be presented in the above case; that the answers in the foregoing Direct 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.

MICHAEL R. NOACK

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

Notary Public

My Commission Expires: 2-3-11

KIM W. HENZI
Notary Public – Notary Seal
STATE OF MISSOURI
Jackson County
Commission Number 07424654
My commission expires February 3, 2011

ENVIRONMENTAL LIABILITY AGREEMENT

ENVIRONMENTAL LIABILITY AGREEMENT (the "Agreement"), dated as of January 31, 1994 between WESTERN RESOURCES, INC., a Kansas corporation ("Seller") and SOUTHERN UNION COMPANY, a Delaware corporation ("Buyer").

WHEREAS, Seller and Buyer have entered into an Agreement for Purchase of Assets dated as of July 9, 1993, (the "Asset Purchase Agreement"), in which this Agreement is incorporated by reference pursuant to Article XIII of the Asset Purchase Agreement; and

WHEREAS, Buyer and Seller desire to provide a framework for the liability of the parties for Environmental Claims and for the sharing of Environmental Costs;

NOW, THEREFORE, in consideration thereof and of the respective covenants, representations and warranties herein contained, the parties agree as follows:

Article 1. ASSUMPTION OF LIABILITY. Except as hereinafter provided, Buyer hereby (a) assumes and agrees to be responsible for all Environmental Claims now pending or that may hereafter arise with respect to the Assets and the Business and (b) agrees to pay, perform and discharge, as and when due and payable, all Environmental Costs with respect to such Environmental Claims. Buyer hereby agrees, except as herein provided, to indemnify and hold Seller harmless from and against all Environmental Claims and Environmental Costs which Buyer has assumed or agreed to be responsible for pursuant to this Article 1. The procedures set

forth in Section 12.02 of the Asset Purchase Agreement concerning recovery of costs for matters subject to indemnification are incorporated herein by reference and made a part hereof, and Seller and Buyer agree to comply with the procedures set forth in said Section 12.02 in making any claim relating to indemnification. For the purposes of Buyer's assumption of liability, agreement to pay, perform and discharge and to indemnify set forth in this Article 1, Article 2(c)(v) and Article 2(d) only, the term "Environmental Claim" shall include, in addition to those claims which are included within such term as defined in the Asset Purchase Agreement, any and all such claims and other matters hereafter arising which are based in whole or in part upon (A) any amendment or modification which occurs after the Closing Date of any Environmental Law which is extant on the Closing Date; (B) any law, statute, ordinance, rule, regulation, order or determination of any governmental authority or agency enacted or adopted after the Closing Date which would, if such law, statute, ordinance, rule, regulation, order or determination were in effect on the Closing Date, be an Environmental Law; or (C) any change in interpretation of any Environmental Law after the Closing Date by any court or by any governmental agencies having authority to enforce such Environmental Law.

Article 2. DEFINITION OF COVERED MATTERS. (a) Definition. As used herein, the term "Covered Matters" shall mean and refer to all Environmental Claims and Environmental Costs related to the Assets or the Business which (i) arise out of or are based upon

Environmental Laws, and (ii) are not included in Assumed Liabilities.

(b) Newly Discovered Matters. Covered Matters that are discovered by Buyer prior to the date which is two (2) years following the date of this Agreement shall be subject to the cost sharing provisions contained herein. All Covered Matters discovered by Buyer more than two (2) years following the date of this Agreement shall be the sole responsibility of Buyer.

(c) Shared Liability. (i) Insurance First Line of Recovery. Seller shall undertake, at its sole expense, to conduct an Environmental Insurance Archaeology Survey ("Survey") for all Plants and other locations identified on Schedule 6.18 of the Asset Purchase Agreement within thirty (30) days of the Closing Date and promptly thereafter provide Buyer with the results of the Survey. To the extent that Seller may lawfully do so without adversely affecting the insurance coverage disclosed by the Survey, Seller hereby agrees that the insurance coverage disclosed by that Survey shall constitute the first line of recovery. For any Covered Matter discovered by Buyer after Closing, Buyer shall as promptly as possible after the discovery of such Covered Matter provide notice of such discovery, together with all factual information and copies of all notices, environmental assessments, reports and other information, to Seller's Environmental Services Department so as to allow Seller to provide prompt and timely notice to the appropriate insurance carrier or carriers identified in the Survey. The parties thereafter agree to cooperate in the filing and prosecution of

claims with the appropriate insurance carrier(s) in a manner that the parties mutually agree so as to expeditiously prosecute such claims. Amounts recovered from such insurance carrier(s) from the prosecution of such claims shall, after allowance for Seller's post closing outside legal fees and other reasonable out of pocket expenses, be paid to Buyer. In the event insurance recovery is protracted, the parties shall accelerate the shared cost provisions of subparagraphs (c)(ii) through (v), crediting subsequent insurance or PRP contributions to the parties as their interests appear in subparagraphs (iv) and (v).

(ii) Potentially Responsible Party First Line of Recovery. In those instances where other Potentially Responsible Parties (PRPs) are identified for purposes of cost sharing in the remediation of any site, amounts recovered from such PRPs shall, after allowance for Buyer and Seller's post closing outside legal fees and other reasonable out of pocket expenses, be paid to Buyer and credited against the cost incurred with respect to such required remediation. In the event PRP recovery is protracted, the parties shall accelerate the sharing of cost as provided for in subparagraphs (c)(iii) through (v) hereof, crediting subsequent insurance or PRP contributions to the parties as their interests appear in subparagraphs (iv) and (v).. If Seller and Buyer agree to so accelerate the sharing of costs, then Seller shall, prior to the application of any subsequent insurance proceeds or PRP contributions, be entitled to receive reimbursement of amounts advanced under subparagraph (c)(v) for post-closing costs incurred

in connection with Covered Matters as provided herein pursuant to said subparagraph.

(iii) Recovery of Remediation Costs through Regulated Cost of Service. In addition to seeking the relief contemplated under subparagraphs (c)(i) or (ii), Buyer shall request from the appropriate regulatory agency having jurisdiction in the state where any remediation site is located for authority to include the cost incurred by Buyer in connection with the remediation of such site, above that recovered under subparagraphs (c)(i) or (ii), in its applicable rates or other charges for service. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall retain complete discretion as to the timing of any filings with the appropriate regulatory agencies and may seek to recover such amount in rates either before or after the recovery of any amounts pursuant to any other provision of this agreement. Buyer shall be deemed to have recovered in its applicable rates or other charges for service an amount equal to the greater of (A) the amount actually authorized for inclusion in Buyer's applicable rate or other charges for service reflected in tariffs, or (B) the amount which would be recovered if Buyer would have been authorized to include in its applicable rate or other charges for service reflected in tariffs an amount which would have been authorized for such inclusion if Buyer's request for inclusion had been accorded the treatment accorded similar expenditures under similar facts and circumstances by the applicable regulatory agency.

(iv) Buyer's Initial Sole Liability Amount. Upon exhaustion

of relief contemplated under subparagraphs (c)(i), (ii) and (iii), Buyer shall thereafter be solely liable (as between Seller and Buyer) for the payment of costs incurred by Buyer or Seller in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i), (ii) and (iii) in the aggregate amount of Three Million Dollars ($3,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount.

(v). Buyer/Seller Shared Liability Amount. Upon exhaustion of relief contemplated under subparagraphs (c)(i) through (iv), Buyer and Seller shall share equally in payment of costs incurred by Buyer in connection with Covered Matters in excess of the amounts received by Buyer under subparagraphs (c)(i) through (iii) (or paid by Buyer under subparagraph (c)(iv)) to a maximum aggregate amount of Fifteen Million Dollars ($15,000,000.00), without regard to the number of claims concerning Covered Matters required to reach said amount. Notwithstanding anything to the contrary herein, Seller's total liability for Covered Matters shall be limited to the amount of Seven Million Five Hundred Thousand Dollars ($7,500,000.00), and Buyer shall indemnify and hold Seller harmless with respect to all claims, costs, demands and liabilities with respect to all other Covered Matters.

(d) Limitation on Seller's Liability. Seller's liability under Subparagraph (c) above shall terminate upon that date (the "Termination Date") which is fifteen (15) years after the Closing Date. From and after the Termination Date, Seller shall have no

further obligations or responsibilities with respect to all other Covered Matters.

(e) Costs Incurred by Buyer and Seller. For the purposes of this Agreement, Seller and Buyer agree that the costs incurred by Buyer or Seller with respect to Covered Matters for which the other party is liable pursuant to Subparagraph (c) above shall include only costs and expenses actually paid to unrelated third parties, and in no event shall Buyer or Seller be responsible for nor shall either party receive credit for (i) pre-closing costs or expenses, or (ii) any costs or expenses paid with respect to any of either party's employees or any of either party's overhead. Each party hereby agrees to use its best reasonable efforts to control costs incurred for which the other party may be responsible and shall provide such other party with quarterly reports of costs incurred.

(f) Duty to Consult. Buyer and Seller shall at all times consult with and keep each other apprised of all activities and costs incurred in connection with Covered Matters, and Buyer and Seller shall indemnify and hold the other party harmless from any unreasonable expense incurred. Each party shall apprise the other party of those respective activities on a quarterly interval on all active Covered Matters.

(g) Standstill Agreement. In the event either Buyer or Seller is notified that they or either of them is asked to respond as a Potentially Responsible Party ("PRP") under any federal, state or local law or regulation with regard to a Covered Matter, the party receiving such notice shall notify the other party of the receipt

of such notice, and shall deliver a copy of all notices and documents received, within ten (10) business days after receipt. With regard to Covered Matters, Buyer and Seller each covenant and agree not to sue the other or attempt in any manner to avoid responsibility as a PRP by seeking or attempting to shift or allocate responsibility to the other. Buyer and Seller agree to cooperate in the identification of all other PRPs for purposes of participation, remediation cost sharing and liability to regulatory agencies.

Article 3. MISCELLANEOUS. (a) Dispute Resolution. No party to this Agreement shall be entitled to take legal action with respect to any dispute relating hereto until it has complied in good faith with the following alternative dispute resolution procedures, provided however, this Article shall not apply to the extent it is deemed necessary to take legal action immediately to preserve a party's adequate remedy.

(i) Negotiation. The parties shall attempt promptly and in good faith to resolve any dispute arising out of or relating to this Agreement, through negotiations between representatives who have authority to settle the controversy. Any party may give the other party written notice of any such dispute not resolved in the normal course of such negotiations. Within twenty (20) days after delivery of the notice, representatives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange information and to attempt to resolve the dispute, until the parties conclude that the

dispute cannot be resolved through unassisted negotiation. Negotiations extending sixty (60) days after notice shall be deemed at an impasse, unless otherwise agreed by the parties.

If a negotiator for a party hereto intends to be accompanied at a meeting by an attorney, the other negotiator(s) shall be given at least ten (10) business days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Article are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal and state Rules of Evidence.

(ii) ADR Procedure. If a dispute with more than $100,000.00 at issue has not been resolved within sixty (60) days of the disputing party's notice, a party wishing resolution of the dispute ("Claimant") shall initiate assisted Alternative Dispute Resolution (ADR) proceedings as described in this Article. Once the Claimant has notified the other ("Respondent") of a desire to initiate ADR proceedings, the proceedings shall be governed as follows: By mutual agreement, the parties shall select the ADR method they wish to use. That ADR method may include arbitration, mediation, mini-trial, or any other method which best suits the circumstances of the dispute. The parties shall agree in writing to the chosen ADR method and the procedural rules to be followed within thirty (30) days after receipt of notice of intent to initiate ADR proceedings. To the extent the parties are unable to agree on procedural rules in whole or in part, the current Center for Public Resources (CPR) Model Procedure for Mediation of Business Disputes, CPR Model Mini-

trial Procedure, or CPR Commercial Arbitration Rules--whichever applies to the chosen ADR method--shall control, to the extent such rules are consistent with the provisions of this Article. If the parties are unable to agree on an ADR method, the method shall be arbitration.

The parties shall select a single neutral third party (a "Neutral") to preside over the ADR proceedings, by the following procedure: Within fifteen (15) days after an ADR method is established, the Claimant shall submit a list of five (5) acceptable Neutrals to the Respondent. Each Neutral listed shall be sufficiently qualified, including demonstrated neutrality, experience and competence regarding the subject matter of the dispute. A Neutral shall be deemed to have adequate experience if an attorney or former judge. None of the Neutrals may be present or former employees, attorneys, or agents of either party. The list shall supply information about each Neutral, including address, and relevant background and experience (including education, employment history and prior ADR assignments). Within fifteen (15) days after receiving the Claimant's list of Neutrals, the Respondent shall select one Neutral from the list, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Respondent, the Respondent shall submit a list of five (5) Neutrals, together with the above background information, to the Claimant. Each of the Neutrals shall meet the conditions stated above regarding the Claimant's Neutrals. Within fifteen (15) days after receiving the

Respondent's list of Neutrals, the Claimant shall select one Neutral, if at least one individual on the list is acceptable to the Respondent. If none on the list are acceptable to the Claimant, then the parties shall request assistance from the Center for Public Resources, Inc., to select a Neutral.

The ADR proceeding shall take place within thirty (30) days after the Neutral has been selected. The Neutral shall issue a written decision within thirty (30) days after the ADR proceeding is complete. Each party shall be responsible for an equal share of the costs of the ADR proceeding. The parties agree that any applicable statute of limitations shall be tolled during the pendency of the ADR proceedings, and no legal action may be brought in connection with this agreement during the pendency of an ADR proceeding.

The Neutral's written decision shall become final and binding on the parties, unless a party objects in writing within thirty (30) days of receipt of the decision. The objecting party may then file a lawsuit in any court allowed by this Contract. The Neutral's written decision and the record of the proceeding shall be admissible in the objecting party's lawsuit.

(b) Incorporation By Reference. This Agreement constitutes a part of the Asset Purchase Agreement dated July 9, 1993 between the parties.

(c) Savings Provision. This Agreement, and the terms, provisions, covenants and agreements contained herein, shall

survive the Closing.

(d) Defined Terms. All terms used herein as defined terms and not defined herein shall have the meaning set forth in the Asset Purchase Agreement.

Article 4. WARRANTIES AND REPRESENTATIONS CONTAINED IN THE ASSET PURCHASE AGREEMENT. Notwithstanding any provision that may be contained in this Agreement or the Asset Purchase Agreement to the contrary, the terms and the conditions of this Agreement shall not affect, or in any way limit, any claim for an Indemnifiable Loss that Buyer may have arising out of any breach of the Seller's warranties and representations contained in the Asset Purchase Agreement, including, but not limited to Section 6.18 thereof, and not withstanding the provisions of Article XII, Loss in the event of a breach of the warranties and representations contained in Section 6.18 in the same manner as provided for other Indemnifiable Losses under Article XII of the Asset Purchase Agreement.

IN WITNESS WHEREOF, The parties hereto have duly executed this Agreement as of the date first above written.

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

SOUTHERN UNION COMPANY

By: _____
Name: R. S. Endow
Title: Sr. V.P.

WESTERN RESOURCES, INC.

By: _____
Name: JOHN C. ROSENBERG
Title: EXEC. VICE-PRESIDENT & GENERAL COUNSEL