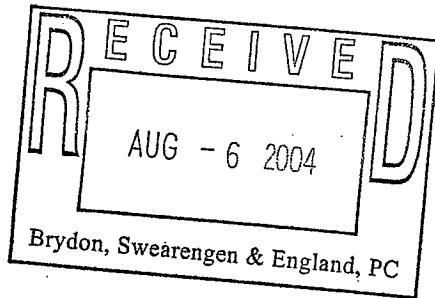


**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**



At a session of the Public Service Commission held at its office in Jefferson City on the 5th day of August, 2004.

In the Matter of the Transfer of Assets,
Including Much of Southern Union's
Gas Supply Department, to EnergyWorx,
a Wholly Owned Subsidiary

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Case No. GO-2003-0354

ORDER CLOSING CASE

Syllabus: The Commission determines that the Staff of the Commission has failed to meet its burden of going forward, and the Commission closes this case.

On March 21, 2003, concurrently with the filing of a related complaint case (GC-2003-0348), Staff filed a request to investigate a transaction in which Southern Union Company sold certain property located in Texas, and transferred certain employees. The request to investigate resulted in this case, Case Number GO-2003-0354. The Commission dismissed the complaint on July 8, 2003, largely on the grounds that it was premature for Staff to allege that the transaction involved a violation of statute while still in the process of investigating that transaction.

After completing its investigation into the transaction, Staff filed its report on January 9, 2004. In its report, Staff alleges two different actions on the part of Southern Union that it believes required Commission approval under Section 393.190, RSMo 2000. First, Staff alleges that Southern Union sold "rate base property." Second, Staff alleges that Southern Union transferred "its assembled experienced and trained gas supply

workforce.” Staff argues that, by completing this transaction without prior Commission approval, Southern Union violated Section 393.190.

The “rate base property” that Staff alleges was sold without Commission approval is not actual gas plant located in Missouri and used directly to serve Missouri customers. Rather, it is an allocation of a portion of the costs associated with property in Texas. Staff’s January 9 report does not describe this allocation very clearly; it appears from Staff’s report that the property at issue (as opposed to the “operations” discussed below) is “approximately \$2 million of assets which were allocated to MGE in MGE’s last rate case and included as a part of the sale of Southern Union....” Staff does not specifically identify these “assets,” but alludes to buildings, computers and furniture located in Austin, Texas.

In its reply to the Staff report, Southern Union explains that only a portion of the \$2 million of overhead was actually allocated to MGE; the MGE portion was \$718,940 in its last rate case. Staff does not dispute this figure.

So, with respect to the corporate allocation, the issue facing the Commission is this: Section 393.190 requires a utility to obtain this Commission’s approval before consummating a transaction in which it sells property used to serve customers. Here, none of the property sold was in Missouri, or directly used to serve Missouri customers, but a very small part (.002) of the transaction consisted of property the costs of which had been allocated to MGE’s Missouri customers.

As the moving party, Staff has the burden of production (also called the burden of going forward).¹ Staff has not met its burden to show that the Commission has jurisdiction over the sale of office equipment in Texas even when the costs of that equipment were allocated for ratemaking purposes to Missouri customers.

Staff's second allegation is that Southern Union transferred "its assembled experienced and trained gas supply workforce." Staff devotes most of its report to this allegation and the related argument that the transfer of personnel invokes the Commission's oversight pursuant to Section 393.190. Staff does not allege that Southern Union did not meet its obligation to procure gas for its customers as a result of the transfer. Southern Union points out, and Staff does not disagree, that all the functions that had been provided by the transferred gas procurement personnel were still performed after the transfer, either by in-house personnel or through other arrangements. Again, Staff has the burden of production, and has failed to meet it.

This is not to say that the transfer of the gas supply department was a good idea, or that the Commission would have approved of it if asked. It may or may not have been wise, and there may or may not be ratemaking consequences. But in this case, Staff has not met its burden of showing that the transfer of personnel invokes the Commission's jurisdiction.

¹ The initial burden of production or going forward is the duty of a litigant to convince the trier of fact that cumulatively, there is legally sufficient evidence to permit a finding in the litigant's favor. Black's Law Dictionary (6th Edition) says that a moving party meets this burden when it "make[s] out a prima facie case, though the cogency of the evidence may fall short of convincing the trier of fact to find for him."

In conclusion, Staff's report does not show any violation of rule or statute, nor does it suggest that further investigation might uncover one. The Commission will therefore close this case.

IT IS THEREFORE ORDERED:

1. That this order shall become effective on August 15, 2004.
2. That this case may be closed on August 15, 2004.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Clayton, Davis and Appling, CC., concur
Murray, C., concurs with concurring opinion attached
Gaw, Ch., dissents with dissenting opinion to follow

Mills, Deputy Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

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Including Much of Southern Union's
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Case No. GO-2003-0354

CONCURRING OPINION OF COMMISSIONER CONNIE MURRAY

I vote with the majority today on the long-overdue order to close this case. The case was opened by Staff over sixteen months ago. The report was filed almost seven months ago. I write separately to express my discontent with the tardiness of the Commission's action.

Furthermore, it is clear that this Commission's jurisdiction was neither invoked by the sale of office equipment in Texas, nor by the transfer of personnel. The fact that Section 393.190 does not apply to the facts of this transaction should have been apparent from the start.

Therefore, I concur that the case should be closed.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 5th day of August, 2004.

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 5th day of August 2004 .



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

MISSOURI PUBLIC SERVICE COMMISSION

August 05, 2004

Case No. GO-2003-0354

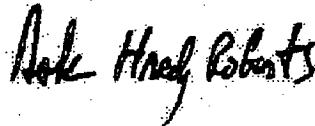
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Jefferson City, MO 65102

Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**