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STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 3rd  
day of June, 1999.

In the Matter of the Application of Missouri )  
Gas Energy, a Division of Southern Union Company, ) Case No. GO-99-258  
for the Issuance of an Accounting Authority Order )  
Relating to Year 2000 Compliance Projects. )

ORDER REGARDING MOTION TO REJECT PLEADING,  
APPLICATION FOR REHEARING, AND REQUEST FOR RECONSIDERATION

On December 8, 1998, Missouri Gas Energy, a Division of Southern Union Company (MGE), filed an application for an accounting authority order relating to its Year 2000 (Y2K) compliance projects. On March 3, 1999, the Staff of the Commission (Staff) filed its memorandum in which it recommended that the Commission require MGE to submit to certain conditions. On April 19, MGE filed its response in which it objected to these conditions. On May 5, the Office of the Public Counsel (Public Counsel) filed a motion to dismiss, or in the alternative, to establish a procedural schedule.

Because it was clear from the pleadings that MGE, Staff, and Public Counsel had very different views on the appropriate treatment of MGE's Y2K compliance costs, on May 21, the Commission issued an order scheduling a prehearing conference and setting a date for the filing of a proposed procedural schedule.

On May 7, MGE filed a pleading in which it requests that the Commission reject or disregard Public Counsel's May 5 pleading as

untimely. MGE cites 4 CSR 240-2.080(12) which states: "Parties shall be allowed ten (10) days from the date of filing in which to respond to any motion or other pleading unless otherwise ordered by the Commission." Public Counsel's pleading was filed more than ten days after the pleading to which it was responding, so was, in fact, untimely under the Commission's rules. However, MGE's contention, that it must be rejected or disregarded because it was untimely, is invalid. The Commission's rule describes when a pleading is untimely, but does not impose as a penalty the rejection of an untimely pleading. Although the Commission certainly has the discretion to reject an untimely response, it is not required to, and will not do so now.

The Commission set a prehearing conference and ordered a proposed procedural schedule to be filed because it appeared from the pleadings that a disagreement existed as to the appropriate treatment of these costs. This disagreement existed between Staff and MGE even before Public Counsel made its position known. Even if the Commission were to reject Public Counsel's May 5 pleading, a prehearing conference and proposed procedural schedule would still be the appropriate course of action, and Public Counsel would have the opportunity during the course of the proceedings to make its position known.

In addition, MGE takes exception to the Commission's statement in its May 21 order that it "will not rule on the motion to dismiss until it has record evidence on whether the expenses are extraordinary and material." MGE asserts that this statement misstates the standard used by the Commission to determine whether deferral authority is appropriate

and asks the Commission to rehear or reconsider it. MGE cites *Re: Missouri Public Service*, 1 MoPSC 3d 200 (1991), for the proposition that the Commission should not consider the materiality of the expenses sought to be deferred. MGE misconstrues the Missouri Public Service case. The Commission clearly stated in that case that: "The issues [sic] of whether the event has a material or substantial effect on a utility's earnings is also important, but not a primary concern." (*Id.*, at 206). The Commission will not rehear or reconsider its statement that materiality is an issue that may be considered when determining whether to allow deferral of expenses. However, a finding of materiality is not necessary to allow deferral, and the Commission's May 21 order should not be read as requiring such a finding.

MGE asks that the Commission grant its application on the basis of its verified pleadings. The Commission will not do so; it would be inappropriate to resolve the many issues of fact, law, and policy raised in the pleadings in this case without the benefit of an evidentiary hearing and a full record.

Public Counsel filed a response to MGE's May 17 pleading in which it opposes the relief sought by MGE and contests the allegations made by MGE.

**IT IS THEREFORE ORDERED:**

1. That the motion to reject pleading, application for rehearing, request for reconsideration, and request to grant application on the basis of verified pleadings filed on May 17, 1999, by Missouri Gas Energy, a Division of Southern Union Company is denied.

2. That this order shall become effective on June 15, 1999.

BY THE COMMISSION

*Dale Hardy Roberts*

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray and Drainer, CC., concur  
Schemenauer, C., absent

Mills, Deputy Chief Regulatory Law Judge

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION