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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 24th
day of August, 1999.

In the Matter of the Application of)	
Southern Union Company for Authority)	
to Acquire up to and Including Five)	<u>Case No. GM-2000-49</u>
Percent (5%) of the Common Stock of)	
Pennsylvania Enterprises, Inc.)	

ORDER GRANTING APPLICATION FOR RECONSIDERATION

On July 20, 1999, Southern Union Company (Southern Union) filed an application with the Commission requesting authority to acquire up to and including five percent of the common stock of Pennsylvania Enterprises, Inc. (PNT). In a companion case, case number GM-2000-43, Southern Union requested authority to complete a merger with PNT. In this case, Southern Union sought authority to immediately purchase a portion of the stock of PNT for the purpose of mitigating the pricing effect of possible arbitrage trading in PNT shares prior to the time of closing of the merger. Along with its Application, Southern Union filed a motion requesting expedited consideration of this application to permit the proposed transactions to occur no later than July 31. Southern Union requested that the Commission issue its order approving its application no later than July 30, bearing an effective date of the date of issuance.

On July 29, the Commission's Staff filed a recommendation regarding the application of Southern Union. Staff recommended that the Commission reject the application as submitted, but indicated that if the Commission

should choose to approve the application it do so with several conditions attached. On July 29, the Commission issued an Order that approved Southern Union's application and granted it the authority it sought to purchase up to and including five percent of PNT's outstanding stock. The Commission's Order included the eight additional conditions recommended by Staff.

On July 30, Southern Union filed an Application for Reconsideration, or, in the Alternative, Rehearing. In this application, Southern Union asked the Commission to remove the condition contained in ordered paragraph eight of the Order issued on July 29. That condition is as follows:

That for purposes of determining the appropriate level of equity balances, the term ownership equity shall be defined as those funds or securities, which have the most subordinate claim against the assets of Southern Union Company as compared to all other securities or claims upon the assets of Southern Union Company. Owner's equity does not include securities such as long-term debt instruments, hybrid equity securities such as SUC's trust originated preferred securities, preferred stock, or short-term debt.

Southern Union's Application for Rehearing argues that "The question of appropriate levels of 'equity balances' is not a relevant consideration in this Application, inasmuch as Southern Union is not seeking rate-making treatment with respect to its existing or any proposed capital structure." In particular, Southern Union argues that its use of trust originated preferred stock securities (TOPrs) as an equity component of its capital structure was a litigated issue resolved in Southern Union's favor by the Commission in a previous case. As an alternative to

reconsideration, Southern Union asks that the Commission rehear this matter.

On August 5, the Commission issued an Order directing Staff to respond to Southern Union's Application for Reconsideration or Rehearing. Staff filed its Response to Application for Reconsideration or Rehearing on August 12. In its response, Staff argues that the appropriate level of equity balances is a very relevant factor for the Commission to examine when considering the merger transaction proposed by Southern Union. Staff asserts that the level of equity balance is important in measuring the financial stability of a company before and after a proposed merger. Staff also takes the position that Southern Union's TOPrs are properly treated as a debt obligation rather than as an equity vehicle. Staff suggests that the condition in question not be removed from the order. Southern Union filed a reply to Staff's response on August 17.

The Commission's Order of July 29 approved Southern Union's request to purchase up to five percent of the outstanding shares of PNT. The other conditions requested by Staff, and imposed by the Commission's order, require Southern Union to take various actions necessary to ensure that information is available to Staff regarding the effects of this stock purchase and to ensure that the stock purchase does not harm Southern Union's customers. Southern Union does not challenge any of these conditions.

The condition that Southern Union does challenge is simply a definition clause. It seeks to define as debt, rather than equity, the

TOPrs issued by Southern Union. The appropriate treatment of Southern Union's TOPrs may well be an important issue in Case No. GM-2000-43, in which the Commission will be called upon to approve or disapprove Southern Union's merger with PNT. However, that does not mean that this definition may appropriately be imposed upon Southern Union as a condition of the approval of its request to purchase a small portion of the stock of PNT in order to ensure the continued viability of the merger.

The Commission's Order of July 29 already approves the requested stock purchase so there is no need to define ownership equity for purposes of making that decision. Nothing in the Order or any of the other conditions requires that ownership equity be defined in this order. The Condition challenged by Southern Union has the effect of imposing a definition of ownership equity upon Southern Union in a case where no such definition is necessary and no evidence has been offered regarding its appropriateness. The Commission can best determine an appropriate definition of ownership equity when this issue arises in a proper case and the Commission is able to collect competent and substantial evidence to support such a definition.

This order should not be taken to express any position on the appropriateness of the definition of ownership equity proposed by Staff. If Staff is concerned about equity ratios in the merger case, it may raise those concerns at that time. If the definition of ownership equity becomes a contested issue in that case, the Commission will decide the issue based upon the evidence and arguments of the parties. It will not

seek to impose such a definition as a condition for its approval of the limited stock purchase plan proposed and approved in this case.

IT IS THEREFORE ORDERED:

1. That the Application for Reconsideration filed by Southern Union Company is granted.

2. That ordered paragraph eight of the Commission's Order Approving Application with Additional Conditions is deleted from that Order.

3. That this order shall become effective on August 24, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, Schemenauer,
and Drainer, CC., concur
Crumpton, C. not participating

Woodruff, Regulatory Law Judge

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AUG 25 1999

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION