

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Joint Application)
of Western Resources, Inc., d/b/a Gas)
Service, a Western Resources Company, a)
Kansas Corporation, and Southern Union)
Company, d/b/a Missouri Gas Energy, a)
Delaware corporation, for an order)
authorizing the sale, transfer and)
assignment of certain assets relating)
to the provision of gas service in Missouri)
from Western Resources, Inc. to Southern)
Union Company, and in connection therewith,)
certain other related transactions.)

Case No. GM-94-40

APPEARANCES: J. Michael Peters, Western Resources, Inc. 818 Kansas Avenue, Topeka, KS 66612, for Western Resources, Inc. d/b/a Gas Service, a Western Resources Company.

James C. Swearngen and Gary W. Duffy, Brydon, Swearngen & England, P.C., 312 E. Capitol Avenue, P.O. Box 456, Jefferson City, MO 65102, for Southern Union Company.

Dennis K. Morgan, Southern Union Company, 504 Lavaca, Suite 900, Austin, TX 78701, for Southern Union Company.

Richard S. Brownlee, Hendren and Andrae, 235 E. High Street, P.O. Box 1069, Jefferson City, MO 65102, for Williams Natural Gas.

Stuart W. Conrad, Lathrop & Norquist, 2345 Grand Avenue, Kansas City, Missouri 64108, for Armco, Inc. and Midwest Gas Users Association.

James P. Zakoura, Smithyman & Zakoura, 650 Commerce Plaza, 7300 W. 110th Street, Overland Park, KS 66210, for Riverside Pipeline Company, L.P.

Paul W. Phillips, Deputy Assistant General Counsel, U.S. Department of Energy, 1000 Independence Ave., S.W., Washington, DC 20585, for United States Department of Energy, Federal Executive Agencies.

Douglas E. Micheel, Office of Public Counsel, P.O. Box 7800, Jefferson City, MO 65102, for Office of the Public Counhsel and the Public.

Patrick A. Baumhoer, Andereck, Evans, Milne, Peace & Baumhoer, P.O. Box 1438, Jefferson City, MO 65102-1438, for Mountain Iron & Supply Company.

William G. Riggins, Staff Attorney, Kansas City Power & Light Company, 1201 Walnut Street, Kansas City, MO 64106, for Kansas City Power & Light Company.

Penny G. Baker, David Woodsmall, and Eugene Mitchell, Jr., Staff Attorneys, Missouri Public Service Commission, P.O. Box 360, Jefferson City, MO 65102, for Staff of the Missouri Public Service Commission.

HEARING

EXAMINER: Joseph A. Derque III

REPORT AND ORDER

Procedural History

On August 5, 1993, Western Resources, Inc., d/b/a Gas Service (WRI) and Southern Union Company, d/b/a Missouri Gas Energy (SU) filed a joint application requesting an order from the Commission authorizing the sale, transfer, and assignment of assets of WRI to SU related to the provision of gas service in the State of Missouri, and, in connection therewith, approval to perform certain other related transactions. After various procedural motions, interventions, and scheduling orders were made, and after the submission of testimony, a unanimous stipulation and agreement was submitted by the parties on December 16, 1993, having been agreed to by WRI, SU, the Staff of the Commission, Office of Public Counsel (OPC), and all intervenors.

A hearing was held on December 20, 1993, for the presentation of that agreement and for the entry of the agreement and testimony of witnesses into evidence.

Findings of Fact

Western Resources is a Kansas corporation in good standing and currently owns and operates a gas distribution system in the western portion of the State of Missouri, which is the subject of this transaction. WRI operates subject to

certificates of convenience and necessity issued by the Commission and subject to the rules, regulations and jurisdiction of the Commission.

Southern Union is a Delaware corporation authorized to do business in Missouri and is in good standing. Should this agreement be approved by the Commission, Southern Union will do business in Missouri as Missouri Gas Energy and will have its principal office in Kansas City, Missouri.

The unanimous stipulation and agreement, filed December 16, 1993, seeks the approval of the Commission for WRI and SU to engage in the proposed sale of assets as set out in the original and amended applications and contract as filed by the joint applicants and per the terms of the stipulation and agreement. As all parties in this matter have reached agreement concerning the issues presented in this case, the Commission finds that an evidentiary hearing is not necessary.

The basic transaction, as set out in the contractual agreement between SU and WRI is as follows:

Section 3.02 Purchase Price for Assets

(a) As consideration for the Assets and subject to the terms, conditions, and limitations set forth in this Agreement, the purchase price ("Purchase Price" payable by Buyer to Seller shall be an amount equal to \$327,940,490 plus (i) to the extent permitted by Section 8.01(f) hereof, any capital expenditures made by Seller (net of third-Person contributions or advances) after March 31, 1993 and relating to the Gas Pipelines and Plants, net of depreciation, amortizations and retirements of all Gas Pipelines and Plants in accordance with applicable regulatory principles, practices and orders; plus (ii) the amounts payable by Buyer for Total Inventory pursuant to Sections 4.01 and 4.02 hereof, plus or minus (iii) changes in the book value of intangible personal property rights and regulatory assets set forth on Schedule 1.01(a) after March 31, 1993, net of depreciation or amortization in accordance with applicable regulatory principles, practices and orders, plus (iv) an amount payable by Buyer for Accounts Receivable net of allowance for uncollectible customer accounts receivable of .96% of the gross amount of the receivable); minus (v) the amount of the Accounts Payable; and minus or plus (vi) amounts payable to or by Buyer under Section 3.04.

In addition, the contract contains various specific matters. In testimony, the Staff of the Commission and the OPC deal with those specifics which they felt might be detrimental to the public interest.

The Staff of the Commission and the OPC present 12 points, 11 by the Staff and one by OPC, that they maintain could be considered detrimental to the public interest. The following is a summary of the concerns expressed by the Staff:

- 1) Western Resources keeps excess pension assets over the related projected benefit obligation.
- 2) Southern Union pays a significant premium for the Missouri property.
- 3) Western Resources transfers the FAS 106 liability (TBO) and keeps COLI assets.
- 4) The sale results in elimination of the deferred income tax offset to rate base.
- 5) The sale results in cost shifts to Missouri. For example, employees in Missouri will be transferred to Southern Union that performed service for Kansas and Oklahoma.
- 6) Western Resources overcharges Southern Union for accounts receivable because of the net allowance for uncollectible accounts.
- 7) Western Resources transfers FAS 106 liability to Missouri related to work performed for other assets.
- 8) Western Resources transfers supplemental retirement contract expense to Missouri related to work performed in other states.
- 9) Southern Union has a lower debt rating and higher cost of capital than Western Resources.
- 10) Western Resources will retain all investment tax credit benefits.
- 11) Western Resources is transferring any employee and retiree obligation related to its Palmyra operations to Southern Union.

In addition, the Office of Public Counsel took the position that the capital structure of Southern Union after the proposed transaction, that being 28% equity and 72% debt, could place SU in a difficult financial position in light of anticipated expense for pipeline replacement and other expenditures for physical

plant necessitated by the aging infrastructure of parts of the WRI system. The OPC was concerned that, as a result of this acquisition, the cash necessary to complete these projects would be obtained by SU from the ratepayers in the form of rate increases.

Finally, both the Staff and OPC were opposed to SU passing on the cost of this acquisition, that being principally the purchase premium, known commonly as an acquisition adjustment, in the form of increased rates.

In the stipulation and agreement some 25 matters were agreed to by the parties and intervenors. Those matters can be summarized as follows:

- 1) SU will not seek recovery on two retirement contracts;
- 2) SU will not seek a rate or complaint case within at least three years (also see # 7 below);
- 3) The acquisition premium will be below the line;
- 4) An AAO will be requested authorizing a plan to offset costs as the result of FAS 106;
- 5) SU agrees to monthly surveillance reporting per the WRI operating procedure;
- 6) SU will obtain \$9 million over the PBO from WRI for pensions and SU will make an additional contribution of \$3 million;
- 7) SU will not request a general rate increase until obtaining a total capital ratio in line with lowest investment grade S&P rating;
- 8) SU agrees to a rate base offset to compensate for rate base deductions eliminated by this transaction;
- 9) SU will follow the gas safety rules as promulgated by the Commission;
- 10) An AAO will be sought for expenses connected with the gas safety program similar to that in place for WRI;
- 11) and 12) All parties reserve the right to various additional adjustments.
- 13) SU will file a cost-of-service study with its first non-gas general rate case;

- 14) WRI will assign all rights to SU from Wyoming Tight Sands litigation;
- 15) SU will file tariffs at least ten days before closing;
- 16) SU will discuss take or pay costs with intervenors;
- 17) SU will reduce regulatory income tax expense in its next rate case.
- 18) - 24) are standard clauses;
- 25) The Staff reserves the right to file a confidential brief with the Commission presenting its rationale for this agreement.

Comparison of the concerns of the Staff and OPC and the resultant conditions in the Stipulation and Agreement indicate that major concerns of the parties were at least partially alleviated. The ratepayer has been, at least for a period of time, protected from any attempt by SU to recoup many of the costs of the transaction through an increase in rates. The acquisition cost itself, called a purchase premium, will clearly not be passed on to the ratepayer. The current WRI pension fund, a concern of various intervenors and other interested parties, was adequately protected. Finally, emphasis was placed on compliance by SU with the regulatory requirements, particularly in the area of the Commission's gas safety and pipeline replacement programs.

The Commission has reviewed the testimony, contractual agreement and stipulation and agreement proposed in this case and will approve the stipulation and agreement and, therefore, the proposed transaction. In approving this agreement, the Commission relies on the testimony of SU and the expertise of both the Staff and OPC in regard to the capabilities of SU to provide safe and adequate service over a period of years without detriment to the ratepayers or the general public.

The Commission would express concern regarding the resultant financial condition of SU subsequent to the sale. In this regard, the Commission is aware that the approximate capital structure of SU immediately following the proposed transaction will be 72% debt and 28% equity. The Commission would note that, in such

a heavily leveraged position, SU has agreed to forego the filing of a general rate case for a period of at least three years from the date the transaction is consummated. Testimony reveals that SU has considered the nature of the financial position in which it will be placed and feels secure that it will have adequate cash resources to provide safe and efficient service over the next three to five years. In addition, SU states that it will be able to comply with the various safety and replacement regulations in this state and will replace aging physical plant in the current system as appropriate.

The Commission, therefore, for the reasons set out above, finds the proposed stipulation and agreement to be reasonable and in the public interest. In addition, the Commission finds the proposed transaction not to be detrimental to the public interest as amended by the stipulation and agreement and will, therefore, approve the proposed transaction as set out in the applications, contractual agreement, and stipulation and agreement.

Conclusions of Law

The principal issue before the Commission, based on substantial and competent evidence contained in the record as a whole, and in accordance with the controlling rule in this case, 4 CSR 240-2.060(7), can be stated as follows: "Is the proposed sale of 100 percent of the Missouri assets of WRI to SU not detrimental to the public interest?" See *State ex rel. City of St. Louis v. Public Service Commission*, 73 S.W.2d 393 (Mo. banc 1934); and *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo. App. 1980).

In Case No. EM-91-290, in the matter of UtiliCorp United and Colorado Transfer Company, the Commission created a supplemental set of standards for acquisitions and mergers, those being:

- "a. All documentation generated relative to the analysis of the merger and acquisition in question must be maintained.

- b. The Company must present an estimate of the impact of the merger on its Missouri jurisdictional operations.
- c. The Company must provide an assessment of the relative risk regarding items that impact its Missouri operations.
- d. The Company must propose assurances or conditions that will address the overall merger components that pose the risk of being detrimental to the Missouri public interest."

In the above-stated case, in Ordered Paragraph 7, the Commission stated, "that future applications involving acquisitions and mergers shall be subject to the four conditions outlined in this order."

Finally, in *State v. PSC*, 73 S.W.2d at 400, the Court states:

"The respondents found that the public would not be affected by the transfer of the stock. The owners of this stock should have something to say as to whether they can sell it or not. To deny them that right would be to deny them an incident important to ownership of property. *City of Ottawa v. Public Service Commission*, 130 Kan. 867, 288, p. 556. A property owner should be allowed to sell his property unless it would be detrimental to the public."

The Commission therefore finds that the stipulation and agreement and transaction to which it applies should not be denied unless good reason exists to do so. The Commission further finds that substantial and competent evidence exists, on the record, to support the Commission's finding that the proposed stipulation and agreement, and purchase proposal is not detrimental to the public interest.

The Commission finds that the additional standards prescribed by the *UtiliCorp* case, *supra*, which apply to acquisitions have been satisfied for purposes of this case.

IT IS THEREFORE ORDERED:

1. That the stipulation and agreement filed in this matter on December 16, 1993, and attached hereto as Attachment A, is hereby approved.
2. That Southern Union and Western Resources are hereby authorized to perform the terms and conditions of the contractual agreement for sale of assets as

amended by the stipulation and agreement approved in #1 above, and do all things necessary or incidental to the performance of those agreements.

3. That Western Resources is authorized to transfer all pertinent certificates of convenience and necessity to Southern Union upon closing of this transaction.

4. That Southern Union is authorized to purchase and acquire the assets of Western Resources as set out in the various approved agreements above and to own, operate, control, manage, and maintain those assets and to provide natural gas service in the State of Missouri subject to the regulations and jurisdiction of the Commission.

5. That Southern Union may encumber the assets acquired in the approved transaction as may be necessary in accordance with the terms and conditions as set out in any of Southern Union's financing agreements.

6. That Southern Union is authorized to adopt the rates, rules, regulations, and tariffs of Western Resources currently on file with the Commission at the time of closing of this transaction.

7. That the joint applicants are ordered to file tariffs consistent with paragraph #15 of the stipulation and agreement, attachment a, within ten (10) days of the date of issuance of this order.

8. That this order shall become effective on January 11, 1994.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

McClure, Perkins, Kincheloe
and Crumpton, CC., Concur.
Mueller, Chm., Absent.

Dated at Jefferson City, Missouri,
on this 29th day of December, 1993.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the joint application)
of Western Resources, Inc., d/b/a/ Gas)
Service, a Western Resources Company,)
a Kansas corporation, and Southern)
Union Company, d/b/a Missouri Gas)
Energy, a Delaware corporation, for an)
order authorizing the sale, transfer)
and assignment of certain assets)
relating to the provision of gas)
service in Missouri from Western)
Resources, Inc. to Southern Union)
Company, and in connection therewith,)
certain other related transactions.)

Case No. GM-94-40

FILED

DEC 16 1993

MISSOURI
PUBLIC SERVICE COMMISSION

UNANIMOUS STIPULATION AND AGREEMENT

On August 5, 1993, Western Resources, Inc. d/b/a Gas Service (Western Resources) and Southern Union Company, d/b/a Missouri Gas Energy (Southern Union) filed a Joint Application for an order authorizing among other things the sale, transfer and assignment of certain assets relating to the provision of gas service in Missouri from Western Resources to Southern Union. On October 19, 1993, a First Amended Application was filed by the applicants. The Joint Application and First Amended Joint Application are referred to herein collectively as "the Application".

Direct testimony was filed September 24, 1993 by the applicants. By order dated October 8, 1993, the Commission established a procedural schedule and granted applications to intervene to Williams Natural Gas, Kansas City Power & Light Company, Mountain Iron and Supply Company, Midwest Gas Users Association and Armco Inc., Riverside Pipeline Company, L. P., and the United States Department of Energy on behalf of Federal Executive Agencies. The City of St. Joseph, Missouri was granted

participation without intervention. The City of Kansas City, Missouri filed its Motion for Intervention on December 6, 1993 and was granted participation without intervention on December 7, 1993.

Staff, Public Counsel and other intervenors filed Rebuttal testimony pursuant to the Commission's order on November 29, 1993. On December 6, 1993, a prehearing conference commenced during which time the parties reached the following stipulations and agreements which are set forth in this Unanimous Stipulation and Agreement and dispose of all the issues in this case.

1. Southern Union agrees not to seek recovery from Missouri ratepayers for the expense related to the retirement contracts of William Johnson and Henry Meyers.

2. Subject to the limitations of paragraph 18, Southern Union will not implement a general increase in non-gas rates for three years from the date of closing of the subject transaction. Subject to the limitations of paragraph 18, no party hereto shall bring a complaint with regard to non-gas rates, or assist anyone else in the instigation or processing of a complaint with regard to non-gas rates, for three years from the date of closing of the subject transaction. This agreement shall not be interpreted to preclude any proper party from bringing a complaint with regard to the terms and conditions upon which service is provided, including promotional practices, (i.e., not related to rates) or fully participating in any other complaint not related to rates.

3. The amount of any acquisition premium (i.e., the amount of the purchase price above net book value) paid by Southern Union

to Western Resources for the gas properties of Western Resources shall be treated below the line for ratemaking purposes in Missouri and neither amortization nor inclusion of the premium in rate base shall be sought to be recovered by Southern Union in rates in any Missouri proceeding.

4. Staff will agree to recommend approval of an Accounting Authority Order (AAO) for Southern Union for FAS 106 and a Company Owned Life Insurance Program (COLI) program similar to that previously granted to Western Resources in Case No. GO-93-201. Southern Union agrees to a COLI similar to the one currently employed by Western Resources. No other party to this agreement shall oppose a request for an AAO for purposes of FAS 106 and the COLI program pursuant to this agreement.

5. Southern Union agrees to continue monthly surveillance reporting in the same format currently used by Western Resources.

6. Western Resources agrees to transfer (or cause the plan administrators and trustees of Western Resources' defined benefit plan to transfer) to Southern Union's defined benefit plan for Missouri employees, as defined in the Agreement for Purchase of Assets between Western Resources Inc. and Southern Union Company dated July 9, 1993 ("the July 9 Agreement), an additional \$9,000,000 in pension assets or other funds in excess of the Projected Benefit Obligation (PBO) as of January 31, 1994.

Southern Union agrees to make certain additional contributions as specified below to Southern Union's defined benefit plan for Missouri Gas Energy employees in excess of the minimum required

contribution under Internal Revenue Code Section 412 as determined by the plan's Enrolled Actuary. For 1994 such additional contributions will be equal to the lesser of: (a) \$3,000,000 or (b) the difference between the maximum deductible contribution under Internal Revenue Code Section 404 and the minimum required contribution under Internal Revenue Code Section 412, each as determined for the plan year by the plan's Enrolled Actuary.

If, as a result of the limitation in (b) above, the contribution for 1994 is less than \$3,000,000, then Southern Union will agree to make additional contributions in succeeding years, subject to the limitation in (b) above applicable to such year. Such subsequent year contributions shall continue to be made until the sum of the present value of each contribution equals \$3,000,000. For purposes of the preceding sentence, the present value of each contribution shall be determined using an interest rate which is equal to the composite net investment return on the Missouri Gas Energy pension plan assets from the date of the transfer of such assets to the Missouri Gas Energy pension plan to the date such contribution is made to the Missouri Gas Energy pension plan.

In the event that Southern Union files for a general increase in non-gas rates prior to contributing the full \$3,000,000 to the pension fund, Southern Union agrees that pension expense under FAS 87 or the Employee Retirement Income Security Act of 1974 (ERISA) minimum will be calculated as if the full \$3,000,000 (plus any related earnings that would have been realized had the full

\$3,000,000 been transferred on the date of closing of the subject transaction) in assets were in the fund for purposes of determining pension expense for cost of service in a rate case.

7. Southern Union agrees not to implement a general increase in non-gas rates until Southern Union has attained a total debt to total capital ratio which does not exceed Standard and Poor's Corporation's Utility Financial Benchmark ratio for the lowest investment grade investor-owned natural gas distribution company at the time a general rate increase case is filed. Southern Union agrees to attain this total debt to total capital ratio within three years of the closing date of the subject transaction in order to be in compliance with this Unanimous Stipulation and Agreement.¹

¹ Public Counsel's position on capital structure is that Missouri ratepayers should not be required to bear the cost of increased financial risk associated with extremely low equity levels resulting from this sale. Public Counsel's concern is that projected post-acquisition equity levels are well below the range of the optimum capital structure necessary to minimize costs paid by the ratepayer while also providing for financial stability for the utility. The agreement to use Standard & Poor's total debt to total capital investment grade benchmark for bonds has the practical effect of raising the equity level of Southern Union. Standard & Poor's bond investment benchmark for debt to total capital currently is less than Southern Union's proposed level of debt immediately after the sale. Since equity ratios are inversely related to debt ratios, requiring Southern Union to decrease its debt ratio will cause the equity ratio to increase.

The signing of this Stipulation & Agreement does not mean that Public Counsel agrees that Standard & Poor's current bond investment benchmark represents the optimum capital structure so as to provide the ratepayer the lowest possible cost while meeting other Commission determined standards of a utility's performance. Neither does Public Counsel agree that some future unknown Standard & Poor's benchmark or method of calculating that benchmark would do so. Standard & Poor's publication Corporate Finance Criteria underscores the limits of its ratings when it states that "A rating is not a general purpose evaluation of an issuer" and "The rating performs the isolated function of credit risk evaluation, which is one element of the entire investment decision-making process."

The ratio calculations will be performed according to the definitions found in the Standard and Poor's Corporation's publication which contains the previously mentioned Utility Financial Benchmark. Additionally, the definition of "investment grade" for purposes of this Unanimous Stipulation and Agreement will be that definition as found in the Standard and Poor's Corporation's publication used to determine the benchmark.

8. Southern Union agrees to use an additional offset to rate base in any Southern Union filing for a general increase in non-gas rates in Missouri completed in the next ten years to compensate for rate base deductions that have been eliminated by this transaction. The amount of the offset for the first year shall be \$30.0 million. The amount shall reduce by \$3.0 million per year on each anniversary date of the closing of the subject transaction.

9. Southern Union agrees to the following conditions:

a. Southern Union must follow the pipeline safety regulations as contained in 4 CSR 240-40.020, 240-40.030, and anti-drug regulations contained in 4 CSR 240-40.080;

b. Southern Union must comply with the meter change-out intervals and record-retention requirements for historic meter accuracy, as required by order in Case No. GO-91-353;

Standard & Poor's goes on to state that "S&P questions whether linkage of a company's long-term financial strategy to a specific rating category makes sense" and "The more appropriate approach is to operate for the good of the business as management sees it, and to let the rating follow." Public Counsel believes that the Missouri Public Service Commission has the obligation to determine the appropriate capital structure for a Missouri utility after consideration of all relevant factors.

- c. Southern Union must adhere to the unprotected steel service and yard line replacement program contained in Case No. GO-91-239, as modified by waiver in Case No. GO-92-295;
- d. Southern Union must adhere to the unprotected steel main protection/replacement program and the cast iron main replacement program contained in Case No. GO-91-277;
- e. Southern Union must follow the schedule of replacements in the St. Joseph and Joplin distribution systems, as described to the Staff and as contained in Case No. GO-94-130, that permits Gas Service more than five (5) years to repair Class 3 Leaks in the two noted distribution systems;
- f. Southern Union must follow the schedule agreed to between the Gas Safety Staff and Gas Service personnel addressing the upgrading of regulator stations that, due to consideration of the maximum allowable operating pressure, are identified as having deficient over-pressure protection;
- g. Southern Union must follow the replacement and leakage survey schedules, agreed to between the Gas Safety Staff and Gas Service personnel during revisions to the tariffs for master-metered mobile home courts; and,
- h. Southern Union should follow all other Commission orders addressing pipeline safety and informal agreements/commitments between the Commission's Gas Safety Staff and Gas Service that are not specifically noted in this Unanimous Stipulation and Agreement but which have been presented by Staff to and

discussed with Southern Union or those contained in correspondence between Staff and Gas Service.

i. Southern Union must follow the Commission's promotional practices rules.

j. During any major Commission proceeding involving Southern Union, Southern Union will make its books and records, or a true copy thereof, available for audit by Staff in Southern Union's Kansas City, Missouri offices.

10. Staff will agree to recommend approval of an AAO for gas safety purposes for Southern Union similar to that previously granted to Western Resources in Case No. GO-92-185 for a period equal to the rate moratorium described in paragraph 2. herein. No other party to this agreement shall oppose a request for an AAO for gas safety expenditures pursuant to this agreement.

11. The parties reserve the right to propose adjustments in any future proceedings for all alleged detrimental aspects relating to the acquisition other than those specifically addressed in this Unanimous Stipulation and Agreement. These adjustments include, but are not limited to, concerns related to the Wyoming Tight Sands gas supplies, recovery of environmental costs by Southern Union, and transfer of FAS 106 liabilities related to work performed for other states. The foregoing shall not operate as a limitation upon Southern Union's ability to contest such proposed adjustments or to pursue any remedy it may have under the July 9 Agreement, or otherwise.

12. Southern Union reserves the right to propose adjustments in any future proceedings to recognize any alleged benefits resulting from the acquisition which is the subject of this case. The foregoing shall not operate as a limitation upon any other signatory's ability to contest such proposed adjustments.

13. Southern Union confirms that it is committed to cost-based rates for its Missouri service territory. Southern Union agrees to file a fully-distributed cost of service study contemporaneously with the filing of tariffs in Southern Union's first Missouri general non-gas rate increase case, and to base its proposed rates therein upon such study. This shall not be construed to require a filing of such a study with any rate filing made pursuant to paragraph 18 of this Unanimous Stipulation and Agreement, but Southern Union will provide such a study within six months of such a filing.

14. Southern Union confirms that pursuant to the July 9 Agreement, Southern Union and Western Resources have agreed that procedures have been established and approved by the Commission in Case No. GR-91-286 for the distribution to Western Resources' customers of certain proceeds resulting from the settlement of the Wyoming Tight Sands antitrust litigation; that pursuant to that July 9 Agreement, Western Resources will use its best efforts to assign or otherwise transfer to Southern Union all legal rights and authority Western Resources has to fulfill Western Resource's obligations under such procedures so as to ensure, to the fullest extent possible, that such proceeds will continue to be distributed

to such customers or customer classes in the manner and to the extent contemplated by previous order of the Commission; and that Western Resources has agreed to seek any regulatory approvals that may be required to complete such assignment or transfer.

As agreements to be assumed under the July 9 Agreement, the Wyoming Tight Sands agreements, the grantor trust agreement, and related agreements (Item 4 on Schedule 6.07(a) of the July 9 Agreement), and subject to the terms and conditions of the July 9 Agreement, Southern Union has agreed to perform and discharge said agreements. Midwest Gas Users Association and Armco Inc. confirm that the pricing and other terms of the gas and related services that are procured pursuant to and in accord with said agreements and in compliance with the Commission's order in Case No. GR-91-286, are fair, reasonable and prudent.

15. Southern Union expressly assumes those rights and obligations of Western Resources contained in the current tariffs of Western Resources filed with and approved by the Commission, except as such tariffs apply to the properties addressed in Case No. GM-94-87. If authorized by the Commission, Southern Union agrees to file for Commission approval a complete set of tariff sheets applicable to the Missouri properties (excluding Palmyra) at least ten days prior to the closing date of the subject transaction. The effective date will be the day after the closing date. Western Resources agrees to reconfigure its tariff sheets and file such for Commission approval consistent with the testimony of Staff witness Craig Jones to apply only to the Palmyra

properties at least ten days prior to the closing date of the subject transaction unless the Palmyra properties have been transferred prior to that time. Additionally, Southern Union expressly assumes those rights and obligations of Western Resources set out in the Unanimous Stipulation and Agreement filed September 28, 1993 in Case No. GR-93-240, particularly those in Paragraph 4.B. thereof.

16. Southern Union agrees that, prior to the filing of a tariff seeking to recover transition costs under FERC Order 636, or the recovery of any remaining take or pay costs, it will meet with Midwest Gas Users' Association and Armco Inc. and discuss the proposed method and treatment of recovery of any such costs.

17. Southern Union agrees to reduce regulatory income tax expense by \$296,363 in any Southern Union general non-gas rate increase case completed within ten years of the date of closing of the subject transaction.

18. The provisions above relating to a moratorium on Southern Union filing a general non-gas rate increase and the prohibition on the filing of complaints shall not apply if an unusual event or events which would have a significant impact on the Missouri gas business of Southern Union occurs, such as (a) an act of God (b) a significant change in federal or state laws or (c) a significant change in Missouri regulatory law or policies.

19. The parties agree that this Unanimous Stipulation and Agreement is based upon the understanding that the Commission will issue a final order approving the transaction which is the subject

of this case effective no later than January 9, 1994, to allow for closing by January 31, 1994.

20. This Unanimous Stipulation and Agreement represents a negotiated settlement for the sole purpose of disposing of the issues addressed herein, and none of the signatories to this Unanimous Stipulation and Agreement shall be prejudiced or bound in any manner by the terms of the Unanimous Stipulation and Agreement, and this Unanimous Stipulation and Agreement shall be inadmissible in and shall not be cited or referred to as precedent in any other proceeding, except as otherwise specified herein.

21. None of the signatories to this Unanimous Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation underlying or allegedly underlying this Unanimous Stipulation and Agreement.

22. In the event the Commission accepts the specific terms of this Unanimous Stipulation and Agreement, the signatories waive, with respect to the issues resolved herein, their respective rights to cross-examine witnesses, their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 1986; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1986; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1986.

23. This Unanimous Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms

hereof are interdependent. In the event the Commission does not approve and adopt this Unanimous Stipulation and Agreement in total, or in the event the Commission does not issue a final order approving the subject transaction, effective no later than January 9, 1994, in accordance with the provisions contained herein, this Unanimous Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

24. The parties agree that all prefiled testimony, schedules and exhibits submitted by Western Resources, Southern Union, Staff, Office of Public Counsel, Midwest Gas Users' Association, Armco Inc., and Mountain Iron & Supply Company shall be received into evidence without the necessity of their respective witnesses taking the stand.

25. At the Commission's request, the Staff shall have the right to submit to the Commission, in confidential memorandum or oral briefing form, an explanation of its rationale for entering into this Unanimous Stipulation and Agreement, and to provide to the Commission whatever further explanation the Commission requests. The Staff's confidential memorandum or briefing shall not become part of the record of this proceeding and shall not bind or prejudice the Staff in any further proceeding. In the event the Commission does not approve this Unanimous Stipulation and Agreement, the Staff's confidential memorandum or briefing shall not bind or prejudice the Staff in this proceeding. Any rationales advanced by the Staff in such a confidential memorandum or briefing

are its own and are not acquiesced in or otherwise adopted by the other signatories.

26. Because of Southern Union's commitment as expressed in paragraph 9 i., KCPL does not oppose paragraphs 1 through 18 of this Unanimous Stipulation and Agreement. KCPL does support paragraphs 9 i., and 19 through 26.

WHEREFORE, the parties hereto respectfully request that the Commission issue its order:

(a) Authorizing Western Resources and Southern Union to perform in accordance with the terms and conditions of the July 9 Agreement to the extent that it is not in conflict with the terms and conditions of this Unanimous Stipulation and Agreement;

(b) Authorizing Western Resources to sell, transfer and assign the assets described in the July 9 Agreement to Southern Union;

(c) Authorizing the transfer of Western Resources' pertinent certificates of convenience and necessity to Southern Union or granting a new certificate to Southern Union which is identical in scope;

(d) Authorizing Southern Union to purchase and acquire the assets and to undertake the related transactions all as more particularly described in the July 9 Agreement, upon the terms and conditions set out therein;

(e) Authorizing Southern Union to own, operate, control, manage and maintain the assets and to provide gas service to the public as a gas corporation and public utility subject to the

jurisdiction of the Commission in those areas in which Western Resources now operates in Missouri which are subject to the Agreement;

(f) Authorizing Southern Union to encumber the assets to be acquired from Western Resources in the subject transaction as may be necessary in accordance with the terms and conditions of any of Southern Union's financing instruments. Specifically, in this regard, authorizing Southern Union to encumber, pursuant to terms and conditions consistent with the Bank's Security Agreement, Schedule 6 to the First Amended Joint Application, and the Notes' Security Terms, Schedule 7 to the First Amended Joint Application, the assets to be acquired from Western Resources in the subject transaction, as well as any assets that may thereafter be acquired by Southern Union and which are necessary or useful in the performance of Southern Union's duties to the public in Missouri;

(g) Authorizing Southern Union to adopt the rates, rules and regulations and other tariffs of Western Resources as may be on file with and approved by the Commission on the date of closing of the subject transaction under the July 9 Agreement, and to operate under the same as they may be changed from time to time as provided by law;

(h) Authorizing the transfer from Western Resources to Southern Union of all security deposits held by Western Resources on the date of closing of the subject transaction which are applicable to accounts for customers located in the affected service areas;

(i) Authorizing Southern Union to keep and maintain certain books and records for Southern Union's Missouri operations at Southern Union's principal office in Austin, Texas on and after the closing of the subject transaction;

(j) Authorizing Western Resources and Southern Union to enter into, execute and perform in accordance with the terms of, all other documents which may be reasonably necessary and incidental to the performance of the transactions which are the subject of the July 9 Agreement and joint application; and

(k) Authorizing Western Resources, effective upon the closing of the involved transactions, to terminate its responsibilities as a gas corporation and a public utility in Missouri with respect to the assets and areas covered by the July 9 Agreement.

(l) Authorizing Western Resources and Southern Union to file tariffs consistent with paragraph 15 of the Unanimous Stipulation and Agreement in this case.

Respectfully submitted,

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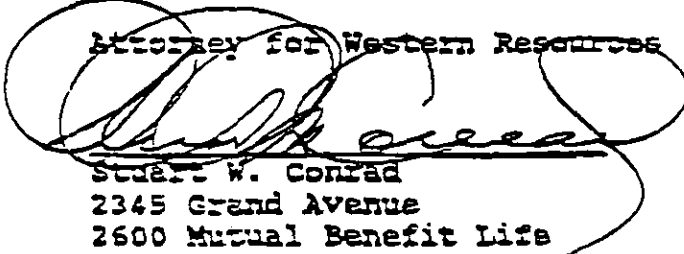
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