BEFORE THE PUBLIC SERVICE COMMISSION
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

MOTION TO STRIKE
PORTIONS OF PUBLIC COUNSEL BRIEF

COMES NOW Missouri Gas Energy, a division of Southern Union Company (MGE or Company), and, for its Motion to Strike certain portions of the Office of the Public Counsel's Brief, states as follows to the Missouri Public Service Commission (Commission):

1. MGE, the Staff of the Commission (Staff) and the Office of the Public Counsel (Public Counsel) filed briefs in this case on October 10, 2008.

2. It is many times difficult when reviewing briefs to distinguish between a party's assertions of fact and its argument. A further complication arises when attempting to determine whether a factual allegation that purports to have support in the evidentiary record represents a fair and reasonable interpretation of that evidence.

3. Even acknowledging the difficulty associated with these distinctions, MGE is concerned that certain factual allegations (as opposed to arguments) made by the Public Counsel in its Brief are without basis in the evidentiary record. Accordingly, MGE asks the Commission to review the following provisions and, thereafter, strike the identified portions of the Public Counsel Brief as having no support in the evidentiary record:

A. On page 2 of its Brief, Public Counsel states:

> In addition, the Commission deviated from decades of rate design principles and gave MGE a new straight fixed variable rate design. This rate design eliminated the risk of weather variability and eliminated the risk of customer conservation, essentially guaranteeing that MGE will recover its revenue requirement.

> Moreover, the approved revenue requirement includes a return on equity that factors in business risks such as environmental liability, thus allowing MGE to earn a return that directly correlates with this risk. Despite this very favorable treatment in May, 2007, and before the ink had dried on the Commission's Order, MGE came back in wanting more.

On page 3 of the Public Counsel Brief, Public Counsel similarly alleges as follows:

> This is precisely what MGE seeks since the vast majority of its traditional business risks, weather variability and conservation, have already been eliminated.

This section of Public Counsel's Brief contains no reference to the evidentiary record. This is for good reason, as there is no record evidence discussing the implications of the Commission's decision in Case No. GR-2006-0422, nor any testimony or other evidence analyzing MGE's current financial condition. If such allegations are to be made, they should be made in testimony where parties have the opportunity to review the allegations, object to the relevance of the allegations, if appropriate, and respond, where appropriate. Public Counsel appears to be arguing a different case, a case that has been affirmed by the Greene County Circuit Court and is currently on appeal to the Southern District Court of Appeals. There is no basis for Public Counsel to make these allegations within the context of its Brief and its attempt to do so should be stricken by the Commission.

B. On pages 11 and 12 of the Public Counsel Brief, Public Counsel states as follows:

> However, during the evidentiary hearing, MGE's witness testified *that Station A was fully remediated and that MGE did not need to do much work at Station A.* (Tr. 138-139; 159).

(emphasis added).

The evidentiary record does not support the italicized statement. As to the Station A site, the cited exchange on pages 138-139, between Mr. Poston and the referenced MGE witness, was as follows:

Q. So in your testimony, I thought you said you were the onsite rep for Station A in St. Joe; is that correct?
A. Station A and B and then St. Joseph site.
Q. Okay. So three sites?
A. Actually, Station A and Station B are in close proximity to each other, and Station A, we didn't do a lot of work over there. We had to go over and do some soil erosion repair. So it was more just Station B Gillis location.

The other record site provided for this allegation (Tr. 159) reads as follows:

Q. Ms. Callaway, we were talking a little bit earlier about a no further action letter. Has MGE received any no further action letters, to your knowledge?
A. We have an interim no further action letter for Station A South for soil only.
Q. And what is an interim no further action letter?
A. Actually, that's going to be updated. I just had conversations with MDNR in regards to that, and that will be changed from an interim to simply a no further action for soil on that site.
Q. For soil?
A. For soil only. We still have saturated zone groundwater issues on that site.

Neither portion of the transcript supports a factual allegation that "*that Station A was fully remediated and that MGE did not need to do much work at Station A.*" The first excerpt concerns a description of Ms. Callaway's association with Station A as an on-site representative. The second excerpt shows that while soil work has been completed, some level of groundwater work must still be completed.

C. On page 12 of the Public Counsel Brief, Public Counsel states as follows:

> Two additional sites, the Joplin site and the Independence site, have not even begun remediation *and may never require MGE to incur any expenses*. (Tr. 143-144).

(emphasis added).

The evidentiary record again does not support the italicized statement. The portion of the transcript cited by the Public Counsel as support (Tr. 143-144, as it continues to 145), states as follows:

Q. And so the other sites, there's a Joplin site, Independence site; is that correct?
A. That's correct.
Q. Has there been any remediation there?
A. There has not. Not to my knowledge.
Q. And when do you expect remediation will be finished on each of the sites?
A. That's hard to predict because, you know, since I started in 2006, we've been through several phases, and it's all regulatory driven, so based on MDNR's responses to reports and documents that we submit to them. As far as when a no further action letter will be sent to us, it could be a couple of years from now.
Q. What still needs to be done at each site, do you know?
A. Station B, we just finished a removal action in April of 2008. So at this point we are generating a report to go in to MDNR. It's scheduled to go in probably next month to MDNR. It's a removal action plan report, to give them some kind of indication on the removal action of the soil that we did out there from January to April. Station A South, we still have groundwater issues to address. Station A North has not been addressed. St. Joe site, we are addressing the soil issues right now. So we'll have to continue to do some groundwater as well.
Q. Then on the Joplin and Independence?
A. Joplin and Independence, nothing has been done.
Q. Or nothing still needs to be done, to your knowledge?
A. No. We will be more than likely required to do something on both of those sites.

Again, the evidence cited by Public Counsel does not support the proposition for which it is cited. When it was suggested by Mr. Poston that "nothing needs to be done" at Joplin and Independence, Ms. Callaway clearly did not agree with that suggestion. The phrase *and may never require MGE to incur any expenses*, should be stricken by the Commission.

D. On page 15 of its Brief, Public Counsel states that "While MGE wants the Commission to believe the 'event' is unpredictable, MGE has contradicted that notion *with its forecasting of FMGP remediation expenses since its 2004 rate case*, and the testimony that MGE has been incurring these expenses annually. (Ex. 10)." (emphasis added).

The cited exhibit (Ex. 10) is a listing of MGE's FMGP expenditures and recoveries since Southern Union acquired the system. It has no information or import in regard to "forecasting"

of expenses.

The only evidence in this case concerning the "forecasting" or budgeting of FMGP remediation expenses is the indication that when faced with the requirement to remediate the St. Joseph site, MGE attempted to used a "place holder" in the 2008 budget for this cost. Tr. 47-48. This does not constitute forecasting, nor does it constitute "forecasting" "since its 2004 rate case." The identified phrase should be stricken.

E. On pages 20 to 21 of its Brief, Public Counsel states as follows:

> Southern Union's shareholders paid less for the system than they would have paid absent the FMGP sites and the potential cleanup liability. (Ex. 12, p. 21).

The "evidence" cited for this proposition was the testimony of Public Counsel witness Robertson, who had nothing to do with the setting of the purchase price for this transaction, and whose testimony exhibited less certainty than that found in Public Counsel's allegation. Mr. Robertson merely identified his belief (Exh. 12, p. 21) and further stated his belief that there was a "likelihood" that FMGP costs was analyzed and that there was "likely" a lower price (Exh. 12, p. 33).

Public Counsel's statement also ignores the testimony of Dennis Morgan, who actually participated in Southern Union's negotiations with Western Resources. Mr. Morgan testified as follows:

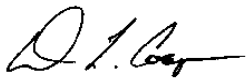
> There is no evidence supporting Mr. Robertson's contention that the purchase price was reduced on account of potential FMGP liability. First, the full extent of that potential liability – in terms of dollars – is not even known today, almost 15 years after the closing of the transaction. It would have been impossible to quantify any reduction in the purchase price on the basis of non-existent information. Second, as indicated in Mr. Noack's surrebuttal testimony, FMGP costs are routinely included in the regulated cost of service of local distribution companies throughout the country. Consistent with this, Southern Union's assumption when undertaking its acquisition of the MGE properties was that FMGP costs would be recoverable through regulated rates, which is readily apparent by examining the ELA itself.

Exh. 4, p. 8.

There is no evidence that the "Southern Union shareholders paid less for the system than they would have paid absent the FMGP sites." At best, there is the statement of a person that did not participate in those negotiations as to his belief as to the "likelihood" of such consideration. The identified statement from the Public Counsel's Brief is not supported by the record and should be stricken.

WHEREFORE, MGE prays the Commission issue its order granting this Motion to Strike as to the identified portions of the Public Counsel Brief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered, or sent by electronic mail, on October 20, 2008, to the following:

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