BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri Gas Energy for the Issuance of an Accounting Authority Order Relating to its Natural Gas Operations and for a Contingent Waiver of the Notice Requirement of 4 CSR 240-4.020(2)	))))))	Case No. GU-2011-0392

RESPONSE IN OPPOSTION TO STAFF'S MOTION TO STRIKE
AND FOR LEAVE TO FILE OUT OF TIME

The Missouri Gas Energy division of Southern Union Company ("MGE" or the "Company") hereby files its response in opposition to "Staff's Motion to Strike and Leave to File Out of Time," which was filed by the Commission Staff ("Staff") on January 4, 2012.

1. As part of its argument that five years is the appropriate amortization period for any items the Commission authorizes the Company to defer in this case, MGE, at page 25 of its post-hearing brief, cited a statement in the prepared surrebuttal testimony by its witness, Michael Noack, that "in the findings of the Commission's recent Report and Order in Case No. ER-2011-0028, five years generally has been the period chosen by the Commission to recover accumulated deferred storm costs."[1] Based on Mr. Noack's testimony and the Report and Order he referenced in that testimony MGE argued in its brief that "utilities generally are allowed to recover storm-related deferrals – both O&M expenses and capital-related costs – over a five year period."[2] To allow the Commission to fully evaluate the accuracy of Mr. Noack's testimony and the Company's argument, MGE provided a footnote citation to the portion of the Report and Order in Case No. ER-2011-0028 that Mr. Noack referenced in his testimony.[3]

2. The footnote citation referenced in the preceding paragraph cited page 20 of the Commission's Report and Order in Case No. ER-2011-0028, where the following finding of fact appears:

> 12. In the past, the Commission has dealt with storm costs by allowing the utility to recover an amount in rates based on a historic average of the storm costs incurred. For

[1] Applicant's Exhibit No. 2, p. 22, lns. 4-7.
[2] MGE's Post-Hearing Brief, p. 25.
[3] *Id.*, footnote 77.

> costs that exceed the average level of costs recovered through rates, the utility is generally allowed to accumulate and defer those costs through an accounting authority order, an AAO. The accumulated and deferred costs are then considered in a utility's next rate case. Generally, the Commission allows the utility to recover those costs amortized over a five-year period. [footnote omitted] Using those practices, the Commission has allowed Ameren Missouri to recovery every single dollar expensed for storms since April 1, 2007. [footnote omitted]

Throughout this portion of its Report and Order the Commission refers to "storm costs" generally, and there is no language anywhere in the excerpt quoted above that states or suggests that the sentence "[g]enerally, the Commission allows the utility to recover those [storm] costs over a five-year period" applies to certain types of storm costs but not to others.

3. Staff's motion contends that because the words "capital-related costs" do not specifically appear in this finding, MGE's interpretation of the finding to include such costs is incorrect. But no such conclusion can be drawn based on the language that appears in the Commission's Report and Order. As noted in the preceding paragraph, the order refers to "storm costs" generally and doesn't distinguish between capital-related and non capital-related costs. Although Staff may disagree with MGE's broader interpretation of one of the Commission's findings in Case No. ER-2011-0028, that disagreement, alone, does not make the Company's interpretation – and its argument base on that interpretation –incorrect.

4. Staff's disagreement with MGE's interpretation also does not provide a legally-sufficient basis to strike from the Company's brief the argument put at issue in Staff's motion. As the Missouri Supreme Court held in *Zurheide-Herman, Inc. v. London Square Dev. Corp*, 504 S.W.2d 161, 164 (1973), even where the argumentative portion of a brief contains demonstrable inaccuracies, a motion to strike should not be granted where a tribunal is still able, without difficulty, to decide the case on the merits with reasonable certainty and effort. No different result is warranted in this case where there are no demonstrable inaccuracies just differences in interpretation.

5. As it has done in its motion, Staff is free to argue its own interpretation of the Commission's finding in Case No. ER-2011-0028 and also to argue that MGE's interpretation should not be given any weight. But those arguments do not constitute a legally-sufficient basis to strike a portion of the

Company's post-hearing brief. MGE made its argument regarding the nature and import of the Commission's finding in Case No. ER-2011-0028 in good faith and in a completely transparent manner that will allow the Commission, regardless of whether it ultimately agrees with that argument, to reach its decision on the merits of the Company's application with reasonable certainty and effort. Granting Staff's motion, however, will deny the Commission the opportunity to even consider MGE's argument that based on past practice involving other Missouri utilities the appropriate period for amortizing items deferred in this case is five years

WHEREFORE, for all of the reasons in this response, the Commission should issue an order denying Staff's Motion to Strike and Leave to File Out of Time.

Respectfully submitted

/s/ L. Russell Mitten
L. Russell Mitten MBE #27881
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
Phone: (573) 635-7166
Fax: (573) 634-3847
rmitten@brydonlaw.com

ATTORNEYS FOR MISSOURI GAS ENERGY
DIVISION OF SOUTHERN UNION COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail to the following counsel this 5th day of January, 2012:

Robert A. Berlin
Sarah L. Kliethermes
Goldie Thompkins
Missouri Public Service Commission
Governor's Office Building
Jefferson City, Missouri 65102
gencounsel@psc.mo.gov
bob.berlin@psc.mo.gov
sarah.kliethermes@psc.mo.gov
goldie.thompkins@psc.mo.gov

Marc Poston
Governor's Office Building
200 Madison Street
Jefferson City, Missouri 65102
marc.poston@ded.mo.gov
opcservice@ded.mo.gov

/s/ L. Russell Mitten