

In the Matter of the Application of Southern )  
Union Company d/b/a Missouri Gas Energy )  
for Authority to Acquire Directly or Indirectly, )  
up to and Including Fifty Percent (50%) of ) Case No. GO-2005-0019  
the Equity Interests of CrossCountry Energy, )  
LLC, and to Take All Other Actions )  
Reasonably Necessary to Effectuate Said )  
Transaction )

COMES NOW Southern Union Company d/b/a Missouri Gas Energy ("Southern Union"), by and through undersigned counsel, and provides the following reply to Staff's Response to the Missouri Public Service Commission's ("Commission") order in this case.

<sup>1</sup> A corrected version of Staff's Response to the Commission's July 20, 2004 Order in this case was filed on July 26, 2004.

2. Southern Union notes that the filing of a recommendation by Staff is based on the assumption that the Commission concludes it has statutory authority over the proposed acquisition of CrossCountry. In that regard, the Response contains the basis for Staff's belief that the proposed transaction is subject to the Commission's review and approval.

3. Southern Union notes that some of the statements in paragraph six (6) of the Response could be read as an assertion by Staff that the transaction proposed by Southern Union would constitute a violation of the Stipulation and Agreement approved and adopted by the Commission in its Case No. GM-2003-0238. Southern Union does not believe that the language used by Staff was intended to convey the view there is a present violation but, rather, the Staff's view that the conditions agreed to in the context of that previous case obligate Southern Union to file an application with the Commission for authority to undertake the proposed CrossCountry acquisition. By the filing of its Application in this case, Southern Union asserts that it has complied with any obligation to seek the Commission's authorization imposed on Southern Union by virtue of the Commission's order in Case No. GM-2003-0238.

4. Also in paragraph six (6) of its Response, Staff recommends that Southern Union be required to notify all parties to Case No. GM-2003-0238 about its filing in this case. Such a notice is not a requirement of the Commission's order in Case No. GM-2003-0238 nor was it a term demanded by any of the parties to that case or agreed to by Southern Union. Presumably, had notice of any subsequent filing been a material concern to the intervening parties in that case, they would have demanded that such a term be included in the stipulation in the course of those negotiations. The proposed

acquisition of CrossCountry by CCE Holding, LLC, is no secret. It has been the subject of a Southern Union press release and the transaction has been reported widely in the financial press. Additionally, constructive notice has been provided to the public by the filing of the Application in this case which is a public document on the Commission's EFIS. Also, information about this case is generally and publicly available by reference on the Commission's web page where orders issued by the Commission are posted and readily available. Finally, the Commission circulates copies of its meeting agendas, minutes and lists of delegation orders by electronic list service to subscribers at no cost. Under the circumstances, Southern Union does not believe that any additional notice to third parties is required or necessary.

5. In paragraph seven (7) of its Response, Staff states that Southern Union intentionally omitted reference to a recent decision of the United States Eighth Circuit Court of Appeals.<sup>2</sup> Staff suggests the decision of the federal Appeals Court contradicts an allegation in the Application. This is not so. Southern Union stands by the statement in its Application that "there is no statutory or judicial case law guidance on the scope of this language" as it relates to the unique facts presented in this case. The blanket authority application to which Staff makes reference in paragraph eight (8) of the Response dealt with the request by Southern Union Company for authority to make non-control investments in natural gas distribution utilities located in states other than the State of Missouri. This case, in contrast, deals with the question of whether the language of §393.190 RSMo 2000 restricts Southern Union's control investment in a FERC-regulated natural gas transportation pipeline. Because of these crucial factual

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<sup>2</sup> *Southern Union Company v. Missouri Public Service Commission*, 289 F. 3d 503 (8<sup>th</sup> Cir. 2002).

differences, Southern Union is of the view that the decision of the Eighth Circuit Court of Appeals sheds little light on the legal question presented, that is, whether the Commission has jurisdiction over the proposed transaction.

6. To the contrary, the decision of the U.S. Eighth Circuit Court of Appeals lends credence to Southern Union's contention that recent legislation of the Missouri General Assembly (i.e. §351.608 RSMo 2000) appears to have superceded the requirements of §393.190 RSMo to the extent otherwise arguably applicable to the proposed transaction. In the course of its opinion, the Eighth Circuit stated that "the plain language of this new statute [§351.608 RSMo] seems to grant Southern Union, a foreign corporation doing business in Missouri, the right to invest in foreign utilities without seeking the Commission's prior approval."(Emphasis added)<sup>3</sup> The Court of Appeals observed that the Cole County Circuit Court originally had stated that §351.608 RSMo did not apply to the Commission but correctly noted that the Circuit Court later vacated that order at the Commission's request. Consequently, the only valid judicial authority would appear to verify Southern Union's contention that §351.608 RSMo exempts the proposed transaction from Commission scrutiny. The Response does not contradict Southern Union's interpretation of the applicability of the new law.

7. Until the Commission decides otherwise, however, Southern Union will conduct itself under the assumption that the Commission ultimately will assert jurisdiction and act to review the proposed transaction to determine whether it is detrimental to the public interest. Southern Union wants to assure the Commission that it will make every reasonable and good faith effort to move this case forward

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<sup>3</sup> 289 F. 3d 503, 506 at ftnt. 2.

expeditiously. Southern Union is aware of its obligation to cooperate and to respond in a prompt fashion to discovery requests received from Staff or the Office of the Public Counsel.

WHEREFORE, Southern Union provides the foregoing Reply to Staff's Response.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 3<sup>rd</sup> day of August 2004 to the following:

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