

LAW OFFICES  
**BRYDON, SWEARENGEN & ENGLAND**  
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON  
JAMES C. SWEARENGEN  
WILLIAM R. ENGLAND, III  
JOHNNY K. RICHARDSON  
GARY W. DUFFY  
PAUL A. BOUDREAU  
SONDRA B. MORGAN  
CHARLES E. SMARR

312 EAST CAPITOL AVENUE  
P.O. BOX 456  
JEFFERSON CITY, MISSOURI 65102-0456  
TELEPHONE (573) 635-7166  
FACSIMILE (573) 636-8450 OR 635-0427  
E-MAIL: PBODREAU@MAIL.ULTRAWEB.NET

DEAN L. COOPER  
MARK G. ANDERSON  
TIMOTHY T. STEWART  
GREGORY C. MITCHELL  
RACHEL M. CRAIG  
BRIAN T. MCCARTNEY  
DALE T. SMITH

July 29, 1999

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**FILED**

JUL 30 1999

**Re: In the Matter of the application of Southern Union  
Case No. GM-2000-49**

Missouri Public  
Service Commission

Dear Mr. Roberts:

On behalf of Southern Union Company, I deliver herewith an original and fourteen (14) copies of an Application for Reconsideration, or, in the Alternative, Rehearing for filing with the Commission in the referenced matter.

I have enclosed an extra copy of each document which I request that you stamp "Filed" and return to the person delivering them to you.

Thank you for your attention in this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

Paul A. Boudreau

PAB/aw  
Enclosures  
cc: Office of Public Counsel

**RECEIVED**

JUL 29 1999

Records  
Public Service Commission

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

In the Matter of the Application of                     )  
Southern Union Company for Authority                )  
to Acquire up to and Including Five                   )  
Percent (5%) of the Common Stock of                )  
Pennsylvania Enterprises, Inc.                         )

Case No. GM-2000-49

**FILED**

JUL 30 1999

Missouri Public  
Service Commission

**APPLICATION FOR RECONSIDERATION, OR,  
IN THE ALTERNATIVE, REHEARING**

COMES NOW Southern Union Company ("Southern Union") by counsel, and for it's Application for Reconsideration and/or Rehearing pursuant to Section 386.500 RSMo. 1994, states as follows:

1. On July 29, 1999, the Commission issued an **Order Approving Application with Additional Conditions** ("Order") in the reference case. In that Order, the Commission approved Southern Union's Application subject to the conditions it proposed and, also, subject to additional conditions recommended by its staff and set forth in the Commission's Order.

2. Southern Union respectfully requests that the Commission remove the condition contained in paragraph ordered 8 on pages 5 and 6 of the Order. 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. Southern Union acknowledges that the rate-making treatment to be given a utility's capital structure is always an appropriate area of inquiry in a rate case. However, the question of the use of TOPrs as an equity component of Southern Union's capital structure was a litigated issue resolved in Case No. GR-96-285 wherein the Commission acknowledged that Southern Union's use of TOPrs as an equity component in its capital structure is appropriate. (See Attachment A.)

WHEREFORE, for the reasons set forth above, Southern Union requests that the Commission reconsider its Order and delete paragraph ordered 8. In the alternative, Southern Union requests that the matter be reheard.

Respectfully submitted,



James C. Swearengen #21510  
Paul A. Boudreau #33155  
BRYDON, SWEARENGEN & ENGLAND P.C.  
P.O. Box 456  
Jefferson City, MO 65102-0456  
(573) 635-7166

Attorneys for Southern Union Company

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered, on this 24<sup>th</sup> day of July, 1999, to:

The Office of the Public Counsel  
Truman Building, Room 250  
P.O. Box 7800  
Jefferson City, MO 65102-7800



proportionate share of MGE's revenue requirement borne by residential customers in the face of poor service complaints heard in public testimony. See, *infra*, IV.5.

## II. Pending Motions

### A. Motion to Dismiss on Basis that MGE Failed to Comply With Capital Structure Condition in Case No. GM-94-40

On September 27, 1996, Public Counsel filed a motion to dismiss this case on the basis that Southern Union failed to comply with a capital structure requirement to which it had agreed in Case No. GM-94-40. In that case, this Commission approved the acquisition by Southern Union of all Missouri properties previously owned by Western Resources, Inc. (WRI) except for that portion of WRI's system in and around Palmyra, Missouri. The stipulation and agreement entered into by the parties was approved by the Commission and provided:

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.

The dispositive issue is whether the trust-originated preferred securities ("TOPRS") issued by Southern Union Financing Company I (SUFI) is to be considered debt or equity. The TOPRS issued by SUFI is backed by a note that Southern Union issued to SUFI. The dividends on the TOPRS can be deferred for a period up to five years. If the dividends are not paid at the end of five years, then the trustee can call the note against Southern Union. The interest paid by Southern Union to SUFI on the note is tax deductible to Southern Union.

The Commission finds that the TOPRS issued by Southern Union Financing Company I constitutes the creation of equity, not debt, with respect to Southern Union. Therefore, Southern Union has demonstrated compliance with the Stipulation And Agreement in GM-94-40, and it is entitled to implement a general rate increase in this case. The Commission finds the Staff's testimony, as well as MGE's testimony, persuasive which shows that Southern Union complied with the intent of the capital structure requirement from GM-94-40. (Ex. 76, p. 28, l. 14; p. 29, l. 10).

By its order issued January 7, 1997, the Commission has taken official notice of a press release issued October 21, 1996 by the Federal Reserve Board and the public contents of an internal Federal Reserve Board memorandum dealing with preferred shares of this type. (Attachment D). The press release announced that the Federal Reserve Board has allowed bank holding companies to treat these kinds of preferred securities as equity, and the memorandum sets forth the technical reasons supporting the decision.

On January 14, 1997, OPC filed an Objection And Response To Order Taking Official Notice Of Documents, arguing that the Commission erred by taking official notice of the press release and the memorandum. On January 17, 1997, MGE filed a reply to OPC's objection.

The Commission did not err by taking official notice of the Federal Reserve Board documents. First, these are public records. Second, the treatment of the TOPRS securities as debt or equity is a technical matter within the Commission's specialized knowledge, and the Commission is empowered by statute to determine financial issues of the companies it regulates. See Section 393.200, R.S.Mo. (1994). Third, the Commission gave parties a reasonable opportunity to show that taking notice of the documents would not be proper. Even without

considering the Federal Reserve documents, the Commission would have reached the same conclusion based on Staff's and MGE's testimony in this proceeding.

**B. MGE's Motion For Variance From Protective Order**

On October 17, 1996 MGE filed a Motion For Variance From Protective Order. MGE states that certain requests were made of MGE at the local public hearings in this proceeding to provide additional information regarding some of the customers who testified at the local public hearings. MGE states that it does not wish to send customer-specific highly confidential information to other parties, since the customers involved did not indicate that they wanted the details of their bills distributed to other parties. MGE requests a waiver from the terms of the protective order which would allow it to refrain from providing copies of the highly confidential portion of the summary report to the other parties in this proceeding. The Commission finds that MGE's motion is reasonable and will grant it.

**C. MGE's Motion For Admission of Supplement to Exhibit**

On January 3, 1997, MGE filed a motion for admission of a Supplement to Exhibit 111. The Supplement relates to testimony given at local public hearings. No party has filed a response to the motion.

The Commission finds that the motion is reasonable and will order that the Supplement to Exhibit 111 be received into the record.

**D. MGE's Motion For Admission of Revised True-Up Reconciliation**

On January 6, 1997, MGE filed a Motion For Admission Of Late-Filed Exhibit. MGE attached a revised reconciliation dated January 3, 1997 to the