

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

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)
the Equity Interests of CrossCountry Energy,)
LLC, and to Take All Other Actions)
Reasonably Necessary to Effectuate Said)
Transaction)

Case No. _____

APPLICATION

Comes now Southern Union Company d/b/a Missouri Gas Energy ("Southern Union"), by counsel, pursuant to Section 393.190 RSMo 2000, 4 CSR 240-2.060, and 4 CSR 240-3.125 and as ordered in Case No. GM-2003-0238 and for its Application to the Missouri Public Service Commission ("Commission") states as follows:

Summary

1. Southern Union requests an order (1) dismissing this Application for lack of subject-matter jurisdiction or, in the alternative, (2) authorizing the acquisition by Southern Union, directly or indirectly, of up to and including fifty percent (50%) of the equity interests of CrossCountry Energy, LLC ("Cross Country").

ALLEGATIONS COMMON TO BOTH COUNTS

Applicant

2. Southern Union is a Delaware corporation, in good standing in all respects, with its principal office and place of business at One PEI Center, Wilkes-Barre, Pennsylvania 18711.

3. Southern Union is a public utility engaged in the distribution of natural gas to the public and conducts such business in the State of Missouri through its Missouri Gas Energy ("MGE") operating division in those areas of the state certificated to it by the Commission. Southern Union is a "gas corporation" and a "public utility" as those terms are defined in Section 386.020(18) and (42) RSMo 2000, and, as such, is subject to the jurisdiction of the Commission as provided by law. MGE has no pending or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which have occurred within the three years immediately preceding the filing of this Application. MGE has no overdue Commission Annual Reports or assessment fees.

4. A certified copy of Southern Union's Certificate of Authority to do business in this state as a foreign corporation was filed with the Commission in its Case No. GM-2003-0238 and said documents are incorporated herein by reference in accordance with Commission rule 4 CSR 240-2.060(1)(G). Likewise, a copy of Southern Union's Registration of Fictitious Name of MGE was also filed in Case No. GM-2003-0238 and is incorporated herein by reference in accordance with Commission rule 4 CSR 240-2.060(1)(G).

Other Companies and Entities

5. CCE Holdings, LLC ("CCE") is a joint venture of Southern Union and equity partner GE Commercial Finance Energy Financial Services ("GE"). CCE is the entity through which Southern Union and GE will participate in the acquisition of CrossCountry.

6. GE provides enterprise financial solutions to the energy industry. It is a global, diversified financial services company with assets of more than \$217 billion. It is a

subsidiary of General Electric Corporation, a company operating in more than 100 countries and that employs more than 300,000 people worldwide.

7. CrossCountry is a Delaware limited liability company headquartered in Houston, Texas. It was formed in June 2003 as a holding company for the interests of Enron Corp. ("Enron") in Transwestern Pipeline Company ("Transwestern"), Citrus Corp. ("Citrus"), and Northern Plains Natural Gas Company ("Northern Plains"). Transwestern owns a 2,600 mile natural gas transmission pipeline system extending from West Texas to the California border. Citrus, which is held fifty percent (50%) by a subsidiary of CrossCountry and fifty percent (50%) by Southern Natural, an El Paso affiliate, owns the 5,000-mile Florida Gas Transmission System that runs from South Texas to South Florida. Northern Plains is one of the general partners of Northern Border Partners, LP, which owns interests in Northern Border Pipeline Company, Midwestern Gas Transmission Company, Viking Gas Transmission Company and Guardian Pipeline, LLC. These three businesses (Transwestern, Citrus, and Northern Plains), all of which are regulated by the Federal Energy Regulatory Commission, have approximately 8.5 Bcf/d of capacity and a network of 9,900 miles of natural gas transmission pipeline serving customers in 17 states. The customers of CrossCountry include local distribution companies, producers, marketers, electric power generators, industrial end-users, independent power producers, cogeneration facilities and municipalities. None of the businesses described have any presence, facilities or operations in the State of Missouri.

8. Enron filed for protection under Chapter 11 of the United States Bankruptcy Code in 2001 in the U.S. Bankruptcy Court for the Southern District of New York (the

"Court"). CrossCountry and the entities in which it holds interests were not part of Enron's bankruptcy filing.

Notices

9. Pleadings, notices, orders, and other correspondence and communications concerning this Application should be addressed to:

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The Transaction

10. CCE has entered into a Purchase Agreement (the "Purchase Agreement") to acquire for cash one hundred percent (100%) of the equity interests of CrossCountry from Enron and its affiliates and to assume certain consolidated debt of approximately \$461 million for a total transaction value of approximately \$2.35 billion (hereinafter, the

"Transaction"). A copy of the Purchase Agreement is marked **Appendix 1**, attached hereto and made a part hereof for all purposes.

11. An order entered by the Court on June 24, 2004, established CCE as the "Stalking Horse", or top bidder and outlined certain procedures for a court mandated auction. Third parties will have an opportunity to bid to acquire CrossCountry at an auction to be held on September 1, 2004, so long as the interested third party submits a qualifying offer in accordance with the order entered by the Court on or before August 23, 2004. CCE will be entitled to bid at the auction in the event that a third party submits an offer containing higher or better terms than the offer of CCE.

12. The Transaction has been approved by the Board of Directors of Southern Union and by all necessary Boards of Directors within GE. In accordance with Commission rule 4 CSR 240-3.125(1)(B), Southern Union has attached hereto, marked as **Appendix 2** and made a part hereof for all purposes a certified copy of the resolutions of Southern Union's Board of Directors.

13. The opportunity to invest in CrossCountry furthers Southern Union's stated objective to grow in the regulated natural gas transportation industry. The CrossCountry operations represent stable, regulated cash flows and earnings generated by a well-run, stable business that is committed to providing high quality, safe, efficient and reliable energy transportation services. The acquisition of CrossCountry will contribute to the geographic diversification of Southern Union's business and will make Southern Union one of the five largest pipeline operators in North America.

14. In addition to the issuance of debt by CCE and Transwestern (all of which shall be non-recourse to Southern Union), the Southern Union investment in CrossCountry

through the CCE investment vehicle is expected to be funded with proceeds from the sale of Southern Union common equity securities. Southern Union expects to consummate the sale of its common equity securities prior to or concurrent with the acquisition of CrossCountry. In the event the CrossCountry acquisition closes in advance of the aforementioned sale of Southern Union common equity securities, Southern Union Panhandle LLC ("SUP"), a wholly-owned subsidiary of Southern Union, has arranged for an equity bridge loan from certain lenders to SUP, the proceeds of which will be used by SUP to invest in CrossCountry through CCE. In this regard, Southern Union intends to pledge its partnership interest in PEPL and its membership interests in SUP to secure and guarantee the equity bridge loan.

Jurisdiction of the Commission

15. Because Southern Union is a gas corporation doing business in the State of Missouri, it is subject to the provisions of §393.190 RSMo 2000 to the extent not limited or superseded by contrary law. Section 393.190.2 RSMo states in pertinent part, that "no [gas] corporation shall directly or indirectly acquire the stocks or bonds of any other corporation engaged in the same or similar business ... unless ... authorized so to do by the commission." There is no statutory or judicial case law guidance on the scope of this language. Because CrossCountry is not directly or indirectly engaged in the natural gas distribution business and is not regulated by the Commission as a public utility company, CrossCountry (and its constituent companies) may reasonably be considered not to be engaged in the same or similar business as MGE and, consequently, the Commission may reasonably be considered not to have jurisdiction over the Transaction pursuant to § 393.190 RSMo.

16. Moreover, in 2001, the Missouri General Assembly enacted § 351.608 RSMo (Supp. 2002) which states, in pertinent part, as follows:

Notwithstanding any provision of the law to the contrary in this or any other chapter, no foreign corporation doing business in this state shall be required to obtain prior approval of any state agency to acquire, directly or indirectly, the stock or bond of another foreign corporation incorporated for, or engaged in, the same or a similar business which does not conduct business in this state.

As noted above in paragraph 7, *supra*, CrossCountry does not conduct business in the State of Missouri in that it has no presence, facilities, business or operations here. Consequently, § 351.608 RSMo appears to have superseded § 393.190.2 RSMo to the extent in might otherwise have been construed to apply to Southern Union, a foreign corporation, and the Transaction.

17. Notwithstanding the foregoing discussion in paragraphs 15 and 16, Southern Union submits its Application to the Commission pursuant to Southern Union's commitment in Commission Case No. GM-2003-0238. In the context of its acquisition of PEPL in early 2003, Southern Union filed an application with this Commission. By virtue of an order dated March 27, 2003, the Commission approved a Stipulation and Agreement submitted on March 25, 2003 by Southern Union, the Commission's Staff and the Office of the Public Counsel (the "Stipulation"). Among other things, Southern Union agreed to a number of conditions the stated purpose of which was to "Insulate Southern Union's MGE Operating Division from Panhandle Business." See, § 2. As is relevant to the filing of this Application, Southern Union agreed as follows:

Southern Union Panhandle Corporation ("SUPC") and successor entities or any direct or indirect subsidiary of Southern Union that acquires or owns any equity interest in Panhandle will be owned and operated as a separate subsidiary of Southern Union. Southern Union and MGE will not, directly or indirectly, allow any

Panhandle debt to be recourse to them; pledge Southern Union or MGE equity as collateral or security for the debt of any Panhandle entity; give, transfer, invest, contribute or loan to any Panhandle entity, any equities or cash without Commission approval. **Southern Union will not, enter, directly or indirectly, into any “make-well” agreements, or guarantee the notes, debentures, debt obligations or other securities of any Panhandle entity without Commission approval.** (Emphasis added.)

While the Commission could reasonably conclude that Southern Union’s pledge of certain of its interests in PEPL and SUP does not constitute a guarantee by Southern Union of the issuance of additional or new “notes, debentures, debt obligations or other securities” by a PEPL subsidiary as was contemplated by the language of the Stipulation, Southern Union nevertheless has filed this Application with the Commission to give it the opportunity in the first instance to determine its jurisdiction over the Transaction and, if appropriate, to issue an order authorizing the Transaction.

Related Events and Undertakings

18. Approval for the Transaction is required from the public utility commission of the State of Massachusetts.

19. The Transaction is subject to the reporting and waiting requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, codified at 15 U.S.C. §18a. The parties filed the required forms with the U.S. Department of Justice and the U.S. Federal Trade Commission on July 12, 2004.

20. As noted above, the Transaction is subject to a Court-approved auction process. Under this process, the Court will conduct an auction in which other potential acquirers will be afforded an opportunity to submit competing bids. The auction will take place on September 1, 2004. It is anticipated that CCE will be actively involved in this Court-supervised auction.

21. The Transaction is expected to close no later than December 17, 2004. If CCE is the prevailing party at the auction, a copy of the final U.S. Bankruptcy order approving the Purchase Agreement will be late-filed as **Appendix 3** hereto.

COUNT I: DISMISS THE APPLICATION FOR LACK OF JURISDICTION

22. For the reasons stated in the preceding paragraphs, and, more particularly in paragraphs 15, 16 and 17, *supra*, the Commission should dismiss this Application for lack of statutory authority over the subject matter of the Transaction. In the event the Commission dismisses this Application for the reasons aforesaid, Southern Union will insulate the customers of its MGE operating division from any possible adverse consequences associated with the Transaction by voluntary compliance with the terms set forth in paragraph 26, *infra*.

ADDITIONAL ALLEGATIONS SPECIFIC TO COUNT II

Timing Considerations

23. Contemporaneously herewith, Southern Union has caused to be filed a Motion for Expedited Treatment (the "Motion") requesting that the Commission issue an order approving this Application bearing an effective date of no later than August 31, 2004. This date will occur shortly before the Court-supervised auction commences. The background circumstances are set forth in more detail in the Motion but, summarily, it is necessary that Southern Union be on an equal footing with other potential bidders during the auction because Enron and the Committee may view unfavorably offers conditioned on obtaining regulatory approvals. Consequently, Southern Union must have obtained all necessary regulatory approvals by the time the auction commences. Otherwise, Southern

Union may be at a disadvantage at the conclusion of the Court-supervised auction vis-à-vis other competing bidders. Given the unique circumstances presented, Southern Union is requesting approval from the Commission of the Transaction by the end of August 2004. The Commission previously has accommodated similar timing considerations in its Case No. GM-98-531¹.

No Detriment to the Public Interest

24. The Transaction will not be detrimental to the public interest in that there will be no adverse effect on the Missouri customers of Southern Union. CrossCountry will be operated as a separate entity from Southern Union. As noted in paragraph 7, *supra*, CrossCountry has no presence, facilities, business or operations in the State of Missouri. MGE's utility assets will not be mortgaged or encumbered to secure any obligations of Southern Union, PEPL or CrossCountry incurred as a consequence of the Transaction. MGE's customers will see no change in their day to day utility service or rates and said customers will continue to be served effectively and efficiently. Further, the Transaction will have no impact on the tax revenues of the Missouri political subdivisions in which any structures, facilities or equipment of MGE are located.

Insulation of MGE

25. Southern Union has no objection to the Commission conditioning its approval of the Transaction to the effect that its approval will not be binding on the Commission for ratemaking purposes in any future MGE rate or rate complaint case as has been the Commission's customary practice.

¹ *In the Matter of the Application of UtiliCorp United, Inc., for Authority to Acquire, Indirectly, an Ownership Interest in Natural Gas Businesses to be Privatized by the State of Victoria, Australia, and to Take All Other Actions Reasonably Necessary to Effectuate said Transaction.*

26. Southern Union offers additional proposed conditions to insulate MGE from Southern Union's investment in CrossCountry and, also, to insulate MGE's customers from any potential adverse consequences of Southern Union's investment in CrossCountry.

These proposed conditions are set forth in a document that has been marked **Appendix 4**, attached hereto and made a part hereof for all purposes. Generally, however, Southern Union is proposing insulating conditions similar to those approved by the Commission in the context of its Order Approving Stipulation and Agreement and Approving Application in Case No. GM-2003-0238, pursuant to which the Commission approved Southern Union's acquisition of PEPL, excepting those conditions which do not apply under the circumstances here presented.

27. The following additional appendices are attached hereto and made a part hereof for all purposes:

Appendix 5: Map of Transwestern Pipeline service region

Appendix 6: Map of Florida Gas Transmission service region

Appendix 7: Map of Northern Border Partners service region

COUNT II (ALTERNATIVE): APPROVE THE APPLICATION WITH CONDITIONS

28. In the alternative, Southern Union requests a determination that the Transaction is not detrimental to the public interest for the reasons set forth in paragraphs 24, 25 and 26, *infra*, and that such order be issued on an expedited basis for the reasons stated in paragraph 23 and as explained in more detail in the accompanying Motion for Expedited Treatment.

29. In the event the Commission decides to assert jurisdiction, Southern Union does not object to the Commission's review of the Transaction pursuant to the standards

and procedures that would otherwise apply under § 393.190.2 RSMo. The act of filing the Application should not, however, be construed as an admission on the part of Southern Union in this or any other proceeding that the Commission's authority is required for the Transaction under the provisions of § 393.190.2 RSMo or the Stipulation.

WHEREFORE, Southern Union respectfully requests that the Commission issue an order dismissing this Application for lack of jurisdiction or, in the alternative, issue an order bearing an effective date of no later than August 31, 2004:

- (1) Authorizing Southern Union, through a subsidiary or subsidiaries, to acquire up to and including fifty percent (50%) of the common equity interests of CrossCountry;
- (2) Authorizing Southern Union to execute and perform in accordance with the Purchase Agreement, Appendix 1 hereto, and/or any and all other documents and to take or cause to be taken any and all other actions reasonably necessary to effectuate the Transaction described herein;
- (3) Finding that the Transaction is not detrimental to the public interest; and
- (4) Granting such other relief deemed by the Commission to be just and proper in the circumstances.

Respectfully submitted,

Dennis K. Morgan MO #24278
Executive Vice President, General Counsel
and Secretary
Southern Union Company
One PEI Center
Wilkes-Barre, Pennsylvania 18711-0601
Tel: (570) 820-2420

Southern Union Company


VERIFICATION

STATE OF Missouri)
) ss.
COUNTY OF Cole)

I, Dennis K. Morgan having been duly sworn upon my oath, state that I am the Executive Vice President, General Counsel and Secretary of Southern Union Company, that I am authorized to make this affidavit on behalf of Southern Union Company, and that the matters and things stated in the foregoing Application and Appendices thereto are true and correct to the best of my information, knowledge and belief.



Signed and sworn to before me, the undersigned notary public, on this 9th day of July, 2004.



Notary Public

My Commission Expires:



CHERA C. PAULL
Cole County
My Commission Expires
December 30, 2006

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 14th day of July 2004 to the following:

Mr. Dana K. Joyce, General Counsel
Missouri Public Service Commission
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Jefferson City, MO 65102-0360

Mr. John B. Coffman, Public Counsel
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/s/ Paul A. Boudreau