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

MGE'S MOTION FOR RECONSIDERATION AND APPLICATION FOR REHEARING

Comes now Missouri Gas Energy, a division of Southern Union Company (MGE or Company), pursuant to Section 386.500 RSMo 2000 and 4 CSR 240-2.160, and, for its Motion for Reconsideration and Application for Rehearing, respectfully states as follows to the Missouri Public Service Commission (Commission):

1. On December 17, 2008, the Commission issued a Report and Order in this case denying MGE's application for an accounting authority order that would have allowed MGE to defer certain costs related to the remediation of former manufactured gas plant (FMGP) sites.

2. MGE moves the Commission to reconsider this Report and Order and applies for a rehearing of this Report and Order for the reasons stated herein.

3. In analyzing whether or not the subject FMGP costs are extraordinary and unusual, the Commission notes that:

> [s]ince being certificated in 1994, MGE has incurred yearly costs associated with the remediation of the FMGP sites. Those costs have been recurring and MGE expects to incur such costs in the future.

Report and Order, p. 10. The Commission further found that "remediation costs have persisted for 14 years" and that "MGE has incurred costs for remediation every year since it was certificated by this Commission." Report and Order, p. 12.

4. What the Commission does not note in this analysis is that these costs did not have any impact on MGE until calendar year 2008 and that as recently as 2004 and 2007 the Commission found that MGE had no FMGP remediation costs. This year, MGE's remediation costs have for the first time exceeded the $8.3 million of insurance recoveries and the first $3 million of unreimbursed costs Southern Union put on its books upon the closing of the acquisition of the MGE properties in 1994. Exh. 3, Noack Sur., p. 6; Exh. 8, Harrison Reb., Schedule 2. As of June 30, 2008, the unreimbursed expenses were at least $845,000. *Id*. It is expected that the unreimbursed remediation expenses will exceed $3.8 million by the end of this calendar year, as the remediation of the St. Joseph site progresses. *Id*. Further, MGE's current rates do not include any consideration of FMGP remediation expenses, nor have any previous MGE rates ever included recovery of FMGP remediation expenses. Tr. 102, Harrison.

5. The Commission previously relied on the recovery status in denying MGE the opportunity to create a fund for the purpose of addressing the FMGP costs and, as a result, deemed FMGP costs not to be known and measurable. The Commission similarly found in 2004 that "Southern Union [had] thus far avoided paying out any unreimbursed costs for manufactured gas plant cleanup costs in Missouri." The Commission went on to conclude that "The cleanup costs for which MGE seeks to establish the Fund are not yet known and measurable. Indeed, there is no certainty that Southern Union or MGE will ever have to pay any costs associated with these cleanup efforts." *In the Matter of Missouri Gas Energy's Tariffs to Implement a General Rate Increase*, Case No. GR-2004-0209, Report and Order, p. 38 (September 21, 2004).

6. As recently as 2007, the Commission similarly found that "MGE has not paid any costs associated with the environmental clean up" and that the fact that "these costs are not known and measurable precludes their inclusion in rates." *In the Matter of Missouri Gas Energy's Tariffs Increasing Rates*, Case No. GR-2006-0422, Report and Order, p. 19 (March 22, 2007).

7. Having found in two prior cases that MGE did not have any FMGP clean up costs and that such costs are not known and measurable, it is an unexplained change in position for the Commission to now find that these costs have been usual and recurring for the past fourteen years.

8. The materiality of these costs to MGE in this calendar year is also noted in the Commission's decision. The Commission indicates its belief that MGE's costs for this year will be approximately eight percent (8%) of MGE's income. Report and Order, p. 13. However, the Commission did not appear to consider this fact in its determination as to whether or not to allow the deferral of expenses.

9. The Commission statement in the Report and Order also underestimates the impact of the FMGP costs. The evidence adduced at the hearing would actually place the impact at a higher percentage of MGE's income than that recited in the Report and Order. In his Rebuttal Testimony, Staff witness Harrison indicated that the Staff's last calculation of the amount of MGE's net operating income on an adjusted basis was $36,123,186. Exh. 8, Harrison Reb., p. 10. Mr. Harrison later performed a similar calculation using the net operating income from MGE's 2007 FERC Form 2 ($36,383,230). Tr. 106-107,

Harrison. Compared to either one of these income figures, the amount of FMGP remediation costs MGE will incur in 2008 (at least $3,845,233 (Exh. 3, Noack Sur., p. 6; Tr. 67, Noack)) will actually exceed ten percent (10%) of MGE's income. The Commission's decision appears to have not given appropriate consideration to the significant and material nature of these costs.

10. The Commission should find persuasive the reasoned decision of the Superior Court of Delaware, which found as follows in regard to the extraordinary nature of FMGP clean-up costs:

> Extraordinary expenses, on the other hand, are generally defined as "an expense characterized by its unusual nature and infrequency of occurrence; *e.g.* plant abandonment, goodwill write-off, large product liability judgment." BLACK'S LAW DICTIONARY at 587 (6th ed. 1990).
>
> Based on these general definitions, the Court finds that the Commission's decision that the environmental remediation costs incurred and to be incurred by Chesapeake are extraordinary expenses is supported by substantial evidence. The event which occasioned these expenses, the imposition of liability under CERCLA, is not itself a recurring event, regardless of the fact that costs related to complying with orders issued under CERCLA may be paid out over several years. While it is not uncommon for utility companies, particularly gas utilities, to be held liable for such cleanups, this realization does not alter the fact that such liability probably is unusual and infrequent (or nonrecurring) with respect to the individual utility. The utility cannot predict with any accuracy for the future how often it will be found liable for environmental remediation, or whether it will be found liable at all. These considerations demonstrate that imposition of liability by federal law is suddenly creating costs for companies where such costs did not previously exist.

Chesapeake Utilities Corporation v. Delaware Public Service Commission, 705 A.2d 1059, 1068 (Del. Super. Ct. 1997). Presented with similar facts, the Commission has reached the opposite result.

11. This result is also contrary to the extraordinary treatment the Missouri General Assembly has provided for such environmental costs. Very limited types of

expenses have been given special statutory treatment by the General Assembly. However, environmental cost is one such expense. Section 386.266.2, RSMo, provides for a mechanism by which a gas corporation may make "periodic adjustments outside of general rate proceedings to reflect increases and decreases in its prudently incurred costs, whether capital or expense, to comply with any federal, state or local environmental law, regulation, or rule." This statute represents a legislative recognition that environmental costs, by nature, are extraordinary and beyond the bounds of normal budgeting and planning.

12. In regard to budgeting, the Commission makes an uncited finding on page 11 of its Report and Order that the "company has a budget of a certain amount for remediation costs, not costs at certain sites and for certain activities." Contrary to this finding, the estimate and budget referenced at the evidentiary hearing was for activities associated specifically with the St. Joseph site, the only FMGP site where there is active remediation under way. Exh. 6, Callaway Sur., p. 2 (". . . costs associated with remediation activities in St. Joseph are currently estimated to be $3,258,237."); see also Tr. 148, Callaway.

13. The Commission further makes a finding in support of its decision that there is "no evidence treating the remediation costs as separate sites and activities" as the "schedule of expenditures shows yearly costs." Report and Order, p. 11. This conclusion assumes that the expenses represented by Schedule 3 to the Rebuttal Testimony of Staff witness Harrison (Exh. 7HC, Sch. 3; Exh. 10; and, Exh. 11) are in the form they are maintained by MGE. The document found at Exh. 7HC, Sch. 3, Exh. 10 and Exh. 11 is in reality a compilation of information created by Staff witness Harrison

(Exh. 7, Harrison Reb., p. 7). While the document is generally an accurate calculation of the information represented, it is erroneous to assume that the information is maintained in precisely that format, and only that format, by MGE. In fact, a review of pages 2 and 3 of Exh. 11 reveals that MGE's expenses are recorded with specific reference to separate site and activity. Each of the "MGP related" expenses found on those pages contains a reference to the remediation site where it was incurred.

SUMMARY

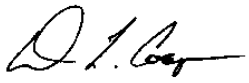
14. The Commission's use of the history of MGE's FMGP expenditures as a reason to deny the requested accounting authority order ignores the fact that this is the first calendar year in which those expenditures have not been balanced by insurance proceeds and other considerations. It is undisputed that these costs have not been previously included in MGE's rates.

15. The imposition of liability associated with FMGP sites is not a recurring event as to those sites. While it is true that it is not uncommon for local distribution companies to have costs related to those sites, this realization does not alter the fact that such costs are unusual and infrequent (or nonrecurring) with respect to the individual utility and the individual sites. The base cause of these costs is liability imposed by federal law and the application of that law by governmental entities – something over which MGE has no control. In this situation and for all of the reasons stated herein the Commission's Report and Order is unjust and/or unreasonable.

WHEREFORE, MGE asks that the Commission reconsider and/or rehear this

matter and issue an order that addresses the concerns expressed herein.

Respectfully submitted,



Dean L. Cooper MBE#36592
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-3847 facsimile
dcooper@brydonlaw.com

ATTORNEYS FOR MISSOURI GAS ENERGY,
A DIVISION OF SOUTHERN UNION COMPANY

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 December 19, 2008, to the following:

Robert S. Berlin
Missouri Public Service Commission
Jefferson City, MO 65102
bob.berlin@psc.state.mo.us

Marc Poston
Office of the Public Counsel
Jefferson City, MO 65102
marc.poston@ded.mo.gov