

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

In the Matter of the Application of Missouri Gas	)	
Energy, a division of Southern Union Company,	)	Case No. GU-2007-0480
for an Accounting Authority Order Concerning	)	
Environmental Compliance Activities.	)	

**MGE’S STATEMENT OF POSITION**

**COMES NOW** Missouri Gas Energy, a division of Southern Union Company (“MGE” or “Company”), and, for its Statement of Position, states the following to the Missouri Public Service Commission (Commission) concerning the issues contained in the Proposed List of Issues, Order of Cross-Examination and Order of Witnesses filed on July 23, 2008, as well as the issue described in MGE’s Response to Order Directing Filing, the Commission Staff’s Response to Order Directing Filing on Issues and the Office of the Public Counsel’s (Public Counsel) Response, filed on August 1, 2008:

**SUMMARY**

MGE should be granted an accounting authority order (AAO) to defer costs it incurs to remediate former manufactured gas plant (FMGP) sites, until such time as those costs may be considered for possible recovery in a general rate case. These costs are extraordinary in nature and non-recurring as to the FMGP sites. Numerous state utility commissions, including this Commission, have previously provided utilities with the ability to defer and/or recover FMGP remediation costs. MGE further describes herein its support for certain Staff proposed conditions related to the issuance of such an AAO, as well as other alternative conditions for the Commission’s consideration.

**BACKGROUND**

The Commission, pursuant to Section 393.140, RSMo, has promulgated Commission

Rule 4 CSR 240-40.040, which prescribes the use of the Uniform System of Accounts (“USOA”) adopted by the Federal Energy Regulatory Commission. The USOA provides for the deferred treatment of extraordinary costs. An application for an AAO contains a single factual issue -- whether the costs, which are asked to be deferred, are extraordinary in nature. *In the matter of the application of Missouri Public Service*, 1 Mo.P.S.C.3d 200, 203-204 (1991).

The Commission has in the past issued AAO’s for costs “caused by unpredictable events, acts of government and other matters outside the control of the utility or the Commission.” *In the matter of St. Louis County Water Company’s Tariff Designed to Increase Rates*, MoPSC Case No. WR-96-263, p. 13 (December 31, 1996) (emphasis added). The Commission has further stated that it “has periodically granted AAOs and subsequent ratemaking treatment for various unusual occurrences such as flood-related costs, changes in accounting standards, and other matters which are unpredictable and cannot adequately or appropriately be addressed within normal budgeting parameters.” *Id.* at p. 14.

There are many examples of AAO’s based upon government actions and regulation. This includes compliance with environmental regulations. *See In the matter of the application of Missouri Public Service*, 1 Mo.P.S.C.3d 200 (1991) (related to compliance with the Clean Air Act). In fact, the Commission has granted AAO’s to natural gas companies in the past related to former manufactured gas plant remediation activities. *See In the Matter of Laclede Gas Company*, Case No. GR-96-193, 5 Mo. P.S.C. 3d 108 (1996); *In the Matter of the Application of United Cities Gas Company, a Division of Atmos Energy Corporation, for an Accounting Authority Order Related to Investigation and Response Actions Associated with Its Former Manufactured Gas Plant Site in Hannibal, Missouri*, Accounting Authority Order, Case GA-98-464 (1999).

In the *Laclede* case, Laclede was given the authority to defer “costs incurred to comply with Environmental Protection Agency regulations and orders in connection with: (1) the investigation, assessment, removal, disposal, storage, remediation or other treatment of residues, substances, materials and/or property that are associated with former manufactured gas operations or located on former manufactured gas sites; (2) the dismantling and/or removal of facilities formerly utilized in manufactured gas operations; (3) efforts to recover such costs from potentially responsible third parties and insurance companies; and, (4) payments received by Laclede as a result of such efforts.

### **MGE ISSUE AND JOINT ISSUES**

#### **Are MGE’s costs associated with Former Manufactured Gas Plant (FMGP) sites extraordinary?**

**MGE Position:** Yes. Remediation actions at FMGP sites are unique events driven by compliance with federal statutes and regulations – primarily compliance with the federal Comprehensive Environment Compensation and Liability Act (CERCLA, also known as the Superfund). The impact of CERCLA and the clean up of specific FMGP sites is not a recurring event, although costs related to compliance may be paid out over several years. The requirements at each remediation site differ depending upon state and federal regulatory requirements, agency assessments of work performed, changes in regulations or laws, and site-specific characteristics, among other things. The liability associated with these requirements is unusual and infrequent as to MGE and the individual sites.

#### **Should the Commission grant MGE an Accounting Authority Order (AAO) to allow it to defer costs associated with the clean-up of Former Manufactured Gas Plant sites?**

**MGE Position:** Yes. The FMGP remediation costs are extraordinary expenses that are not otherwise provided for in MGE’s rates. MGE seeks an accounting authority order so that it

may defer its FMGP costs until such time as they can be considered for possible recovery in a rate proceeding.

Congress' enactment of CERCLA (a statute focused on clean-up, rather than fault) establishes the public interest in these remediation efforts. Numerous state utility commissions, including this Commission, have provided public utilities with deferral and/or recovery of such costs.

Missouri's support for the recovery of expenses associated with environmental compliance can be gleaned from Section 386.266.2, RSMo, which 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." Unfortunately, while rules to implement this aspect of Section 386.266 have been discussed, they have not yet been promulgated.

**If the Commission should grant MGE an AAO, what conditions, if any, should be ordered?**

**MGE Position:** MGE believes it would be reasonable for the Commission to order the following conditions in conjunction with the granting of an accounting authority order in this case:

- That any recoveries from insurance companies, Westar or other entities related to FMGP remediation costs be credited to the deferral account as an offset to deferred expenses;
- That nothing in the Commission's order shall be considered a finding by the Commission of the reasonableness of the costs and/or expenditures deferred and reserving the Commission's right to consider in a future rate case the ratemaking

treatment to be afforded all deferred costs, including the recovery of carrying costs, if any;

- That MGE shall (1) maintain detailed supporting records, work papers, invoices and other documents to support the amount of costs deferred under this AAO, including any related deferred taxes recorded as a result of the cost deferral and (2) provide detailed documentation that includes a complete description of the type of work performed, the specific FMGP site and amount of time spent for each invoice submitted for all legal expenses deferred under this AAO; and,
- That the AAO continue through the end of the Commission-ordered test year as updated, or true-up period, in MGE's next rate case, provided MGE files its rate case within 24 months of the effective date of this order. In the event MGE fails to file a general rate case within twenty-four months of the effective date of the order the AAO, MGE shall write-off the entire amount of previously booked deferrals to income.

### **STAFF PROPOSED ISSUES**

Staff's Response to Order Directing Filing On Issues contained suggested sub-issues to the original filing. MGE's position/response as to those Staff sub-issues follows:

**a) Are the FMGP costs MGE seeks to defer extraordinary, unusual and unique, and not recurring?**

This sub-issue is very similar to MGE's first issue listed above and MGE's position would be the same as that stated above.

MGE believes that the question is whether the costs are "extraordinary." "Unusual, unique and not recurring" are interpretations of the word extraordinary based upon the Uniform

System of Accounts' statement that extraordinary items will be those items "which are of unusual and infrequent occurrence." USOA, General Instruction No. 7.

**b) Are the FMGP costs material, known and measurable, arising from an extraordinary event?**

Staff cites as support for its proposed sub-issues the Commission's Report and Order in Case Nos. EO-91-358 and EO-91-360 (cited above as *In the matter of the application of Missouri Public Service*, 1 Mo.P.S.C.3d 200 (1991)). However, there is no requirement in either the Commission's Report and Order in Case Nos. EO-91-358 and EO-91-360 or the Uniform System of Accounts that costs must be "material" or "known and measurable" in order to be deferred as extraordinary. The issue of materiality is not case determinative and the question of whether costs are "known and measurable" is an issue for a rate case, not an AAO proceeding.

In the case cited by the Staff, the Commission stated as follows in regard to materiality:

. . . the crux of the criterion is, what is an extraordinary event? This, of course, will be the primary focus of the Commission in any case involving a request for an AAO. The issues of whether the event has a material or substantial effect on a utility's earnings is also important, but not a primary concern. The company, under the USOA, is required to seek Commission approval if the costs to be deferred are less than five percent of the company's income computed before the extraordinary event. This five percent standard is thus relevant to materiality and whether the event is extraordinary but is not case-dispositive.

1 Mo.P.S.C.3d 200, 206.

No requirement that costs be "known and measurable" in order to be deferred (as opposed to recovered) is found in the case cited by the Staff.

## **Conditions**

Staff's proposed list of issues contains questions concerning three proposed conditions. MGE's position as to conditions that would be reasonable to include with a grant of an accounting authority order is found above.

The condition identified in Staff's testimony and Staff's Response to Order Directing Filing that MGE does not agree with is the suggestion that the "the Commission limit the amount of MGE's deferral to 50% of its unreimbursed FMGP expenditures pursuant to the sharing provisions of MGE's Environmental Liability Agreement with Western Resources, Inc." While MGE will seek to recover costs from Western Resources (now Westar) and will credit the deferral account for any recovery received from Westar, those recoveries are not certain until they are received. Because this case only concerns deferral, and not recovery, MGE believes that costs and any recoveries should be examined as a whole when they are considered in a rate case.

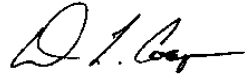
## **PUBLIC COUNSEL PROPOSED ISSUES**

Public Counsel's response does not appear to propose any issues that are different from those identified jointly by the parties or in the Staff and MGE filings.

The Public Counsel instead generally discusses its view of the Uniform System of Accounts and its arguments that the Commission should not authorize the requested deferral, even if the Commission should find that the subject expenses qualify for such deferral. MGE's position regarding these subjects can be found in the above paragraphs.

**WHEREFORE**, MGE prays the Commission consider this Statement of Position.

Respectfully submitted,



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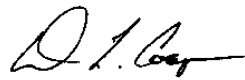
ATTORNEYS FOR MISSOURI GAS ENERGY,  
A DIVISION OF SOUTHERN UNION COMPANY

### **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 August 5, 2008, to the following:

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