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April 22, 2003

FILED⁴

APR 22 2003

Missouri Public
Service Commission

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

**Re: Staff of the Missouri Public Service Commission v. Southern Union Company
Case No. GC-2003-0348**

Dear Mr. Roberts:

On behalf of Southern Union Company, I deliver herewith an original and eight (8) copies of:

- **Answer of Respondent Southern Union Company;**
- **Motion to Dismiss Complaint and Suggestions in Support Thereof or, Alternatively, for Referral for Voluntary Mediation (HC); and**
- **Motion to Dismiss Complaint and Suggestions in Support Thereof or, Alternatively, for Referral for Voluntary Mediation (Nonproprietary) (original only)**

for filing with the Commission in the referenced matter. I would appreciate it if you would see that the copies are distributed to the appropriate Commission personnel. Service copies have been mailed or hand-delivered this date.

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

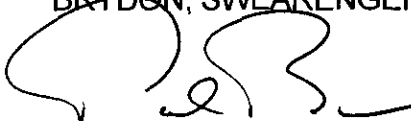
Thank you for your attention in this matter.

Mr. Dale Hardy Roberts
April 22, 2003
Page 2

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:

A handwritten signature in black ink, appearing to be 'PAB', with a long horizontal stroke extending to the right.

Paul A. Boudreau

PAB/ccp
Enclosures
cc: All parties of record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED⁴

APR 22 2003

Missouri Public
Service Commission

Staff of the Missouri Public Service
Commission,

Complainant,

v.

Southern Union Company,

Respondent.

Case No. GC-2003-0348

ANSWER OF RESPONDENT SOUTHERN UNION COMPANY

COMES NOW, Southern Union Company ("Southern Union" or "Respondent") d/b/a Missouri Gas Energy ("MGE"), pursuant to Missouri Public Service Commission ("Commission") Rule 4 CSR 240-2.070, and for its Answer to the Complaint of the Staff of the Missouri Public Service Commission ("Complainant"), states as follows:

1. With respect to the averments contained in paragraph one (1) of the Complaint, Southern Union states that Section 386.390 RSMo 2000 speaks for itself and, consequently, no admission or denial is required.

2. With respect to the averments contained in paragraph two (2) of the Complaint, Southern Union states that Commission Rule 4 CSR 240-2.070 (1) speaks for itself and, consequently, no admission or denial is required.

3. Southern Union admits the averments contained in paragraph three (3) of the Complaint.

4. With respect to the averments contained in paragraph four (4) of the Complaint, Southern Union admits that it provided natural gas service to customers located

in the State of Texas through its Southern Union Gas division and that Southern Union Gas provided certain services to MGE. Southern Union denies each and every other averment set forth in paragraph four (4) of the Complaint.

5. With respect to the averments contained in paragraph five (5) of the Complaint, Southern Union states that Section 393.190.1 RSMo 2000 speaks for itself (as does the expository case law with respect thereto) and, consequently, no admission or denial is required.

6. With respect to the averments contained in paragraph six (6) of the Complaint, Southern Union is without knowledge of what Complainant has concluded with respect to the sale by Southern Union of its Texas operating division, Southern Union Gas, to ONEOK, Inc. and, consequently, the averments are denied.

7. With respect to the averments contained in paragraph seven (7) of the Complaint, Southern Union admits that Complainant was made aware of Southern Union's pending sale of Southern Union Gas to ONEOK, Inc. on or about October 16, 2002. Southern Union denies each and every other averment set forth in paragraph seven (7) of the Complaint.

8. Southern Union denies the averments contained in paragraph eight (8) of the Complaint.

9. With respect to the averments contained in paragraph nine (9) of the Complaint, Southern Union states that Section 386.250 RSMo 2000 speaks for itself and, consequently, no admission or denial is required in response thereto. For further answer and response, Southern Union states that the Commission has no statutory authority under

Section 386.250 RSMo 2000 concerning the sale by Southern Union of Southern Union Gas to ONEOK, Inc.

10. With respect to the averments contained in paragraph ten (10) of the Complaint, Southern Union states that Section 393.190 RSMo 2000 speaks for itself and, consequently, no admission or denial is required.

11. Southern Union denies the averments contained in paragraph eleven (11) of the Complaint.

12. With respect to the averments contained in paragraph twelve (12) of the Complaint, Southern Union states that Section 393.250 RSMo 2000 speaks for itself and, consequently, no admission or denial is required. For further answer and response to the averments contained in paragraph twelve (12) of the Complaint, Southern Union states that its sale to ONEOK, Inc. of Southern Union Gas did not constitute a "reorganization" as that term is used in Section 393.250 RSMo 2000.

13. Southern Union denies the averments contained in paragraph thirteen (13) of the Complaint.

14. With respect to the averments contained in paragraph fourteen (14) of the Complaint, Southern Union states that Section 393.190 RSMo 2000 speaks for itself and, consequently, no admission or denial is required. Southern Union denies each and every other averment contained in paragraph fourteen (14) of the Complaint.

15. Southern Union denies the averments contained in paragraph fifteen (15) of the Complaint.

16. With respect to the averments contained in paragraph sixteen (16) of the Complaint, Southern Union admits that it entered into a Purchase and Sale Agreement and a Transition Services Agreement in connection with the sale by Southern Union of its Texas operating division, Southern Union Gas, to ONEOK, Inc. and that said agreements speak for themselves. Southern Union denies each and every other averment contained in paragraph sixteen (16) of the Complaint.

17. With respect to paragraph seventeen (17) of the Complaint, Southern Union admits that it has entered into a Transition Services Agreement with ONEOK and that Attachment B to the Complaint is an execution copy of said agreement. Southern Union denies each and every other averment contained in paragraph seventeen (17) of the Complaint.

18. With respect to paragraph eighteen (18) of the Complaint, Southern Union admits that certain of its employees located in the State of Texas provided gas supply services to Southern Union's MGE operating division and that the organization chart of the MGE Gas Supply Department is true and correct as of the date indicated. Southern Union denies each and every other averment contained in paragraph eighteen (18) of the Complaint.

19. With respect to paragraph nineteen (19) of the Complaint, Southern Union states that the organization charts speak for themselves. Southern Union denies each and every other averment contained in paragraph nineteen (19) of the Complaint.

20. Southern Union denies the averments, speculation and conclusory statements contained in the two paragraphs of the "Conclusion" of the Complaint and

further denies that Complainant is entitled to the relief prayed for in the WHEREFORE clause of the Complaint or is entitled to any relief whatsoever in the premises.

21. For further answer and defense, pursuant to Commission Rule 4 CSR 240-2.070(8), Respondent Southern Union provides the following additional grounds of defense, both of law and of fact, in further answer and response to the Complaint:

A. The "Staff" has no legal capacity under Section 386.390 RSMo 2000 to make or file its Complaint against Southern Union. The Commission's "Staff" is apparently comprised of the Commission's employees and has no independent legal status or existence. The Commission has not expressly authorized the "Staff" to file the Complaint as is required by Section 386.240 RSMo 2000, and the Commission is without statutory authority to do so in any event and any Commission rule which purports to so authorize the "Staff," i.e. 4 CSR 240.070(1), is unlawful;

B. The Commission lacks jurisdiction over the subject matter of the Complaint and the Complainant has admitted in pleadings in Case No. GO-2003-0354 that the jurisdiction of the Commission over the subject matter of the Complaint is not certain. The Commission has no statutory authority under Section 393.190 RSMo 2000, or any other provision of the Public Service Commission Law (Chapters 386 and 393 RSMo) to direct, limit, prohibit, condition or otherwise restrict the manner in which Southern Union provides or obtains necessary materials, labor, supplies or services as may be needed to render adequate service to the public in the State of Missouri;

C. The Complaint fails to set forth facts showing that Complainant is entitled to the relief prayed for or any relief whatsoever in the premises, and fails to state a claim upon

which relief can be granted against Southern Union. The Complainant has not identified any specific components of Southern Union's franchise, works or system that are necessary or useful in performance of its duties to the public in the State of Missouri that have been sold, assigned or otherwise transferred in violation of law or otherwise. Section 393.190 RSMo 2000 does not require prior Commission approval for a public utility to hire, fire, promote or transfer employees or to contract with third parties (whether affiliated or otherwise) to supply services or supplies. The Complaint fails to allege that the service to Southern Union's Missouri customers has been interrupted, reduced, halted or impaired by any activity to which reference is made in the Complaint. The events and occurrences described in the Complaint do not evidence a reorganization of Southern Union under §393.250 RSMo 2000. The sale of Southern Union's Texas operating division has not involved a recapitalization of Southern Union;

D. The matters alleged in the Complaint address activities exclusively reserved to the informed management of the Board of Directors and officers of Southern Union. The Commission's authority to regulate Southern Union's operations does not include the authority to manage its day to day affairs;

E. Southern Union's Texas operating division was not a necessary or useful part of Southern Union's franchise, works or system necessary or useful in the performance of its duties to the public in the State of Missouri. Southern Union's Texas operating division and Missouri operating division were geographically remote and were not operationally interconnected in any manner. None of the Texas franchise, works or system had any role to play in providing service to Southern Union's Missouri customers;

F. Southern Union has not sold, assigned or transferred the whole or any part of its franchise, works or system necessary or useful in the performance of its duties to the public in the State of Missouri;

G. Section 393.190 RSMo 2000 is so vague and indefinite as to deprive Southern Union of fair and reasonable notice of what is meant by "the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public" as those terms are used in the statute, and is so vague and indefinite as to deprive Southern Union of fair and reasonable notice of what actions are prohibited by the statute, and said statute, if applied so as to subject Southern Union herein to any of the sanctions, or penalties or consequences proved by §§386.570 and 393.190, RSMo 2000, would deprive Southern Union of its property without due process of law, in violation of Missouri Constitution, article I, §10, and U.S. Constitution Amendment XIV, §1, and would constitute the taking of private property of Southern Union for public use without just compensation, in violation of Missouri Constitution, Article I, §26;

H. The construction and interpretation of §393.190, RSMo 2000, which Complainant seeks to apply in this action:

(1.) constitutes an unreasonable, irrational, inconsistent and arbitrary construction and interpretation of the statute;

(2.) constitutes an unreasonable, irrational, inconsistent and arbitrary application of the statute;

(3.) constitutes an action based upon a statement of general applicability which should have been promulgated as a rule as required by §§ 536.010 to

536.050 RSMo 2000.

(4.) constitutes rulemaking by the Commission without notice or hearing, in violation of 4 CSR 240-2.180, and in violation of the Missouri Administrative Procedure and Review Act, Chapter 536, RSMo 2000, and in particular, §536.021, RSMo 2000, and the construction, interpretation and application of §393.190 RSMo 2000 as proposed herein would deprive Southern Union of its property without due process of law, in violation of Missouri Constitution, Article I, §10, and U.S. Constitution, Amendment XIV, §1, and the construction, interpretation and application of §393.190 RSMo 2000 as proposed herein would constitute the taking of Southern Union private property for public use without just compensation, in violation of Missouri Constitution, Article I, §26.

(5.) exceeds the statutory authority, powers and jurisdiction of the Commission;

(6.) constitutes the making of a law in violation of the authority, powers and jurisdiction of the Commission as limited by the Constitution of Missouri, Article III, §§1 and 49, and by Chapters 386 and 393, RSMo 2000;

(7.) constitutes the exercise of an unlawful delegation of legislative power to the Commission in §393.135, RSMo 2000, in violation of Missouri Constitution, Article III, §§1 and 49, and in excess of the statutory authority, powers and jurisdiction of the Commission. Such construction, interpretation and application of the statute as proposed herein would deprive Southern Union of its property without

due process of law in violation of Missouri Constitution, Article I, §10, and U.S. Constitution, Amendment XIV, §1;

I. Any alleged determination by the Commission of whether Southern Union violated §393.190, RSMo 2000 would be in the nature of a declaratory judgment proceeding which constitutes an unlawful invasion into the exclusive jurisdiction of circuit courts of the State of Missouri in violation of Missouri Constitution, Article V, §1; consequently, any statute requiring the Commission to make such declarations constitutes an unlawful delegation of judicial authority and is thus null and void and any determinations thereunder are null and void;

J. Any proceeding before the Commission in which the Commission's counsel assumes the role of prosecutor, and in which the Commission's employees are its chief witnesses, forecloses any opportunity for a fair and impartial hearing, effectively precluding judicial review because of the requirement that the Commission's decision stands unless the same is not supported by competent and substantial evidence upon the whole record;

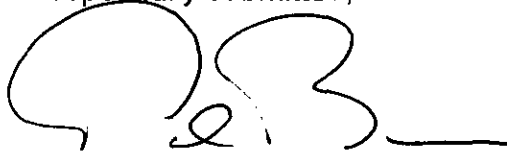
K. The Complaint is in violation of the dormant commerce clause of the United States Constitution. U.S. Const., §8, cl. 3. Consequently, the Commission has no statutory authority with respect to the subject matter of the Complaint as is specifically set forth in Section 386.030 RSMo 2000;

L. The statutory authority of the Commission to regulate the reorganization of a public utility under §393.250 RSMo 2000 has been preempted by the Congress of the United States by the enactment of the federal Bankruptcy Code; and

M. The Complaint is barred by the equitable principles of estoppel and laches because the Commission was notified in October of 2002 of the Purchase and Sale agreement by and between Southern Union and that Commission approval would not be sought prior to closing of said transaction. It was known to the Complainant that Southern Union's Texas division provided certain services to MGE yet it was not until after the transaction was completed that any concerns were stated by Complainant, to the detriment of Southern Union.

WHEREFORE, having fully answered the Complaint, Respondent requests that the Complaint be dismissed for failure to state a claim with respect to which relief can be granted and for lack of statutory authority for the Commission to authorize the General Counsel to seek statutory penalties for the involved conduct and for such other relief as may be appropriate in the circumstances.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. A. Boudreau', with a horizontal line extending to the right.

Paul A. Boudreau MO #33155
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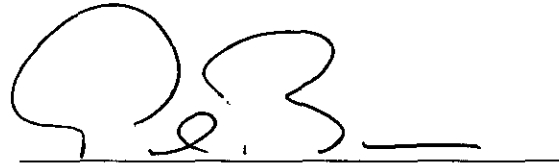
Attorneys for Respondent Southern Union
Company d/b/a Missouri Gas Energy

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 22nd day of April 2003 to the following:

Ms. Lera L. Shemwell
Office of the General Counsel
Missouri Public Service Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102-0360

Mr. Douglas Micheel
Deputy Public Counsel
Office of the Public Counsel
200 Madison Street, Suite 650
P.O. Box 7800
Jefferson City, MO 65102

A handwritten signature in black ink, appearing to read "D. Micheel", is written over a horizontal line.