

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

In the Matter of the Southern Union Sale	)	
of Assets and Part of its System Located	)	
in Texas and used in Providing Service to	)	Case No. GC-2003-_____
its Missouri Consumers To ONEOK.	)	

**STAFF COMPLAINT IN THE MATTER OF THE  
SOUTHERN UNION SALE OF PROPERTY AND ASSETS  
LOCATED IN TEXAS AND USED TO PROVIDE SERVICE  
TO ITS MISSOURI CONSUMERS TO ONEOK.**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), pursuant to Section 386.390<sup>1</sup> RSMo 2000 and 4 CSR 240-2.070, and for its Complaint against Southern Union (SU) for selling property and assets that were located in Texas and used to serve Missouri consumers to ONEOK without first seeking Commission authorization, states as follows:

1. Section 386.390(1) establishes, among other things, that parties may present a Complaint before the Missouri Public Service Commission (Commission) regarding any act or omission committed by any person, corporation or public utility. This statute also provides that the Complaint may be based upon any alleged violation of any provision of law or of any rule or decision of the Commission.

2. Commission Rule 4 CSR 240-2.070(1) provides, in part, that the Commission Staff has authority to file a Complaint through the General Counsel in connection with any violation of statute, rule, order or decision within the jurisdiction of the Commission.

---

<sup>1</sup> All references are to the Revised Statutes of Missouri, 2000, unless otherwise noted.

3. SU is a gas corporation, as defined by §386.020 (18), that provides natural gas service to consumers in Missouri under the fictitious name “Missouri Gas Energy” (MGE), a division in the SU corporate entity. SU, operating as MGE, is a public utility as defined by § 386.020 and is subject to the jurisdiction of the Commission, pursuant to § 386.250.

4. SU provided natural gas service to specific areas in Texas under the fictitious name “Southern Union Gas,” also a division of SU corporate entity. The Southern Union Gas (SUG) division provided certain services to MGE that were used and necessary for MGE to provide utility service to its Missouri customers. In particular, SUG provided critical gas-supply functions including: purchasing natural gas, contract management and billing support. In performing these functions, SUG used assets that were included in MGE’s Missouri jurisdictional rate base and that were required to provide safe and reliable service to Missouri consumers.

#### **Sale of Assets**

5. The sale transfer or other disposal of any part of SU/MGE’s franchise, works, or system necessary or useful in the performance of its duties to the public must be authorized by an order of the Commission. § 393.190.1 RSMo; *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466 (Mo.App. 1980).

6. Investigation of the sale and transfer of Texas-based assets that were used to perform service for Missouri consumers has led Staff to conclude that the sale, as implemented, is, by statute, subject to the jurisdiction of this Commission.

7. Although Staff was aware of SU’s press releases announcing the sale of the Texas properties, SU made no formal notification to Staff that it intended to close the sale and dispose of part of its franchise, system or works used or necessary to serve Missouri customers without

Commission authorization to do so. Additionally, SU made no formal notification to Staff that it intended to operate MGE's gas supply function with all new employees.

8. Staff filed this complaint as soon as possible after discovering in its investigation of SU's application for Commission approval to purchase the interstate pipeline assets related to Panhandle Eastern Corporation, that SU has violated §393.190.1 by selling, transferring or otherwise disposing of part of its franchise, system or works used to serve Missouri customers, without the authorization by this Commission. In completing its investigation of the interstate pipeline purchase case, Staff learned of the circumstances involved in the sale and transfer of property and other MGE assets and the effect of that sale and transfer on MGE's customers.

9. The Commission's jurisdiction over SU's sale or transfer of assets, which were used to provide, at a minimum, the ten MGE functions listed below at paragraph 17, to a separate corporation (i.e. ONEOK), is found in several sections of the Commission's enabling statute. First, §386.250(1) provides that the Commission has general supervision of public utilities, like MGE, operating in this state:

The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter:

To the manufacture, sale or distribution of gas, natural and artificial, and electricity for light, heat and power, within the state, and to persons or corporations owning, leasing, operating or controlling the same; and to gas and electric plants, and to persons or corporations owning, leasing, operating or controlling the same . . . . (emphasis supplied)

This extensive grant of general authority to regulate gas corporations is broad enough to encompass both SU and its operating division, MGE.

10. Additionally, the Commission is granted specific authority over gas corporations in §393.190.1, which provides in pertinent part:

No gas corporation, . . . shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person, or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void. (emphasis added).

11. Supplying gas, including all of the functions necessary to both purchase and transport natural gas for space heating, is the essence of SU/MGE's regulated service to its customers. A completely separate company, ONEOK, now has the responsibility to provide essential elements of this function because MGE is unable to perform these critical functions itself. The personnel, and property, that once performed or were used to perform these function for MGE now belong to ONEOK. MGE must now contract with ONEOK until such time as MGE rebuilds this function from the ground up and regains the ability to perform these functions independently from ONEOK.

### **Reorganization**

12. An additional source of Commission authority over this transaction is §393.250, that provides: "[r]eorganizations of gas corporations, electrical corporations, water corporations and sewer corporations shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission."

13. SU sold a portion of its business used to provide service to Missouri customers to a third party, ONEOK. Highly Confidential Attachment A, which is a portion of the October 16, 2002 Purchase and Sales Agreement, demonstrates that SU sold or transferred employees and equipment related to, among other things, its gas supply function. It becomes evident reading this Attachment that MGE must completely rebuild its gas purchasing, network support, software

and applications support, and software and hardware used to supply gas to its customers.

14. In completing this transaction, MGE transferred employees and sold rate base property that is useful and necessary in the provision of service to its Missouri consumers. As noted above, such a transaction requires Commission authorization or it is void under Missouri statute, §393.190.1, which provides that “every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing same shall be void.”

15. During the last MGE rate case, Texas-based property including gross plant and Financial General Ledger and Human Resources software valued at \$6,640,177 were maintained in Texas. Approximately 45% of this amount, over \$3.6 million (gross plant) was allocated to and included in MGE’s rate base.

16. The specific services impacted by the Texas sale were identified in the Company’s February 12, 2003 response to Staff Data Request 5011. Below is a list of the services as stated in that response:

**\*\* HC**

HC

HC

HC

HC

HC

HC

HC

HC

**NP**

•HC

HC

HC

HC

•HC

HC

HC

HC

HC

•HC

HC

HC

•HC

HC

HC

HC

•HC

HC

HC

•HC

HC

•HC

**NP**

HC \_\_\_\_\_

HC \_\_\_\_\_

•HC \_\_\_\_\_

HC \_\_\_\_\_

•HC \_\_\_\_\_

HC \_\_\_\_\_

•HC \_\_\_\_\_

HC \_\_\_\_\_ \*\*

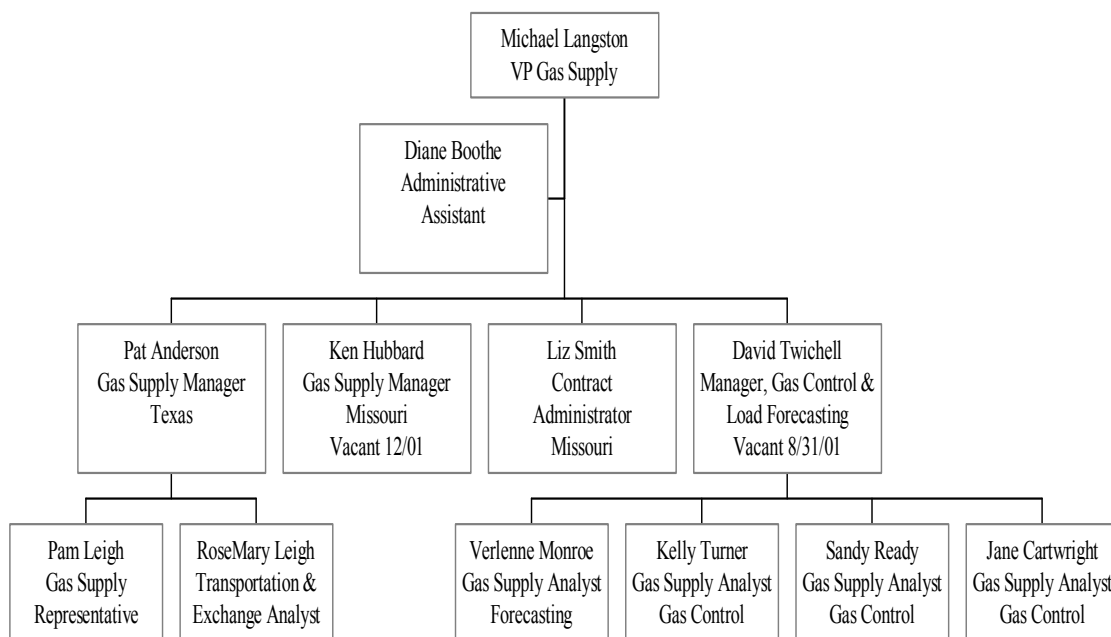
17. In addition as a result of the sale of assets to ONEOK, SU will need ONEOK to provide “General Accounting and Financial Reporting Services” for six months. This service is the provision of assistance for all external regulatory and financial reporting requirements and provision of bank reconciliation services. This service includes training of SU employees for bank reconciliation services.

A copy of the entire Transition Service Agreement as provided by the Company in response to Data Request Number 5011 is attached as (proprietary) Attachment B.

18. MGE’s gas supply function was activity performed by Texas employees using MGE rate base property located in Texas. The gas supply organization before the sale is shown below:

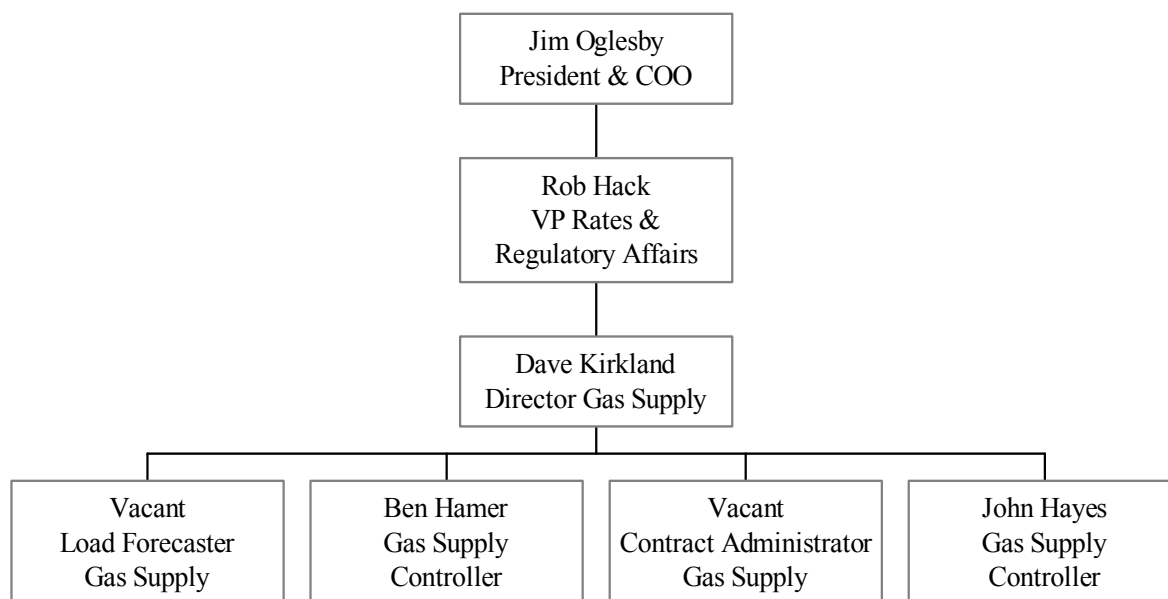
**NP**

### Texas/Missouri Gas Supply Department @ 12/12/02



The organization of MGE's gas supply department after the sale or transfer is shown below:

### Missouri Gas Supply Department @ 2/3/03





19. These charts demonstrate that none of the former employees that were involved in MGE's gas supply function are currently performing that function. This is the result of the sale of the Texas assets to ONEOK and the transfer of resources to EnergyWorx, an affiliated corporation.

### **III. CONCLUSION**

In investigating MGE's proposed purchase of an interstate gas pipeline, Staff discovered the extent of the reorganization and sale of property, assets and functions that were used to provide service to Missouri customers when SU/MGE reorganized and sold its Texas properties to ONEOK. Staff is filing this complaint against MGE because it failed to obtain Commission authority prior to completing this transaction. Since MGE sold, assigned and/or transferred a part of its franchise, works and system necessary and useful in the performance of its duties to the public without having first secured from the Commission an order authorizing it to do so, the transaction(s) is void under statute. Section 393.190.1.

Since the transaction has been completed but is void by application of Missouri statute, Staff is recommending that the Commission authorize the General Counsel to seek penalties in Circuit Court pursuant to §386.600 RSMo, in an amount of \$2000 per day for each day from the date the transaction was consummated until the date SU receives Commission authorization.

WHEREFORE Staff requests that the Commission issue its Order: finding that SU violated Section 393.190.1, authorizing the General Counsel to seek penalties of \$2,000 per day and granting any other and further relief as the Commission may consider appropriate.

Respectfully Submitted,

DANA K. JOYCE  
General Counsel

**/s/ Lera L. Shemwell**

Lera L. Shemwell  
Senior Counsel  
Missouri Bar No. 43792  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-7431  
(573) 751-9285 (Fax)  
lerashemwell@psc.state.mo.us

Attorney for the Staff of the Missouri  
Public Service Commission

**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 21<sup>st</sup> day of March 2003.

**/s/ Lera L. Shemwell**

**ATTACHMENT A**  
**HAS BEEN DEEMED**  
**HIGHLY CONFIDENTIAL**  
**IN ITS ENTIRETY**

**ATTACHMENT B**  
**HAS BEEN DEEMED**  
**PROPRIETARY IN ITS ENTIRETY**

**TRANSITION SERVICES AGREEMENT**  
**BETWEEN**  
**ONEOK, INC.**  
**AND**  
**SOUTHERN UNION COMPANY**  
**DATED AS OF JANUARY 1, 2003**