

**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. _____
for an Accounting Authority Order Concerning)
Kansas Property Tax for Gas in Storage.)

**APPLICATION FOR AN
ACCOUNTING AUTHORITY ORDER**

Comes now Missouri Gas Energy, a division of Southern Union Company (“MGE” or “Company”), and for its application for an accounting authority order (“AAO”), respectfully states as follows to the Missouri Public Service Commission (“Commission”):

SUMMARY

This application requests an order which authorizes deferred accounting treatment for new Kansas property taxes related to the storage of natural gas incurred pursuant to a statute enacted this year and signed into law on April 21, 2009.

APPLICANT

1. MGE is a division of Southern Union Company, which is duly incorporated under the laws of the State of Delaware and conducts business in Missouri under the fictitious name of “Missouri Gas Energy.” MGE’s principal office and place of business is located at 3420 Broadway, Kansas City, Missouri 64111. A copy of a certificate from the Missouri Secretary of State that Southern Union Company is authorized to do business in Missouri as a foreign corporation is attached hereto as **Appendix A**. A copy of a certificate from the Missouri Secretary of State that Missouri Gas Energy is a registered fictitious name of Southern Union Company is attached hereto as **Appendix B**.

2. Other than cases that have been docketed at the Commission, MGE has no pending action or final unsatisfied judgments against it from any state or federal agency or court within the past three (3) years that involve customer service. MGE has no annual report or assessment fees that are overdue. MGE currently conducts business as a “gas corporation” and provides natural gas service to approximately 500,000 customers in the Missouri counties of Andrew, Barry, Barton, Bates, Buchanan, Carroll, Cass, Cedar, Christian, Clay, Clinton, Dade, Dekalb, Greene, Henry, Howard, Jackson, Jasper, Johnson, Lafayette, Lawrence, McDonald, Moniteau, Pettis, Platte, Ray, Saline, Stone, and Vernon, subject to the jurisdiction of the Missouri Public Service Commission as provided by law.

3. Communications in regard to this Application should be addressed to the undersigned counsel and:

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KANSAS PROPERTY TAX FOR GAS IN STORAGE

4. As a part of its routine operations, MGE ‘s natural gas storage balance volume is partially allocated by Panhandle Eastern Pipe Line and Southern Star Central Gas Pipeline to underground formations in the state of Kansas. Kansas has previously attempted to tax natural gas held in storage in that state on two previous occasions.

5. One previous attempt at taxation was thwarted when the Kansas Supreme Court issued a decision, in an appeal brought by MGE and other companies, in which it held that out-

of-state natural gas distributors, such as MGE, were entitled to a merchant's inventory exemption from the property tax by the terms of the Kansas constitution.

6. In its 2009 session, the Kansas legislature again enacted legislation that permits Kansas counties to assess property taxes against the value of natural gas held in storage in that county. The legislation in question is known as House Substitute for Senate Bill No. 98 (2009 Property Tax). This bill was signed into law by the Kansas Governor on April 17, 2009 (**Appendix C**). The legislation was made retroactive to inventories held as of January 1, 2009.

7. The amount of taxes assessed to MGE by Kansas is based on the value of the gas in storage as of December 31 for each year. Because it is based on the value of the stored gas, the amount of tax owed will fluctuate in future years as the value of the gas goes up and down.

8. Based upon the December 31, 2008 level of natural gas held in storage by MGE in Meade County, Kansas and other Kansas counties, MGE believes that it will pay property taxes associated with this new Kansas tax in the amount of \$1,745,560, in 2009.

9. The amount of taxes that Kansas seeks to impose on MGE is substantial in relation to MGE's annual income. The amount assessed for taxes in 2009 represents 8.1% of MGE's net income for 2008. This new tax, which is being applied retroactively, is an unpredictable event that could not be adequately or appropriately addressed through the ratemaking process.

10. MGE plans to again challenge the lawfulness of this new tax. However, under Kansas law, the tax will still have to be paid in 2009.

PREVIOUS COMMISSION ACTION

11. The Commission previously addressed the 2004 legislation in Case No. GU-

2005-0095. In that Case, the Commission granted MGE an AAO concerning the 2004 Kansas property tax legislation and, in doing so, found as follows:

The Kansas property tax on gas held in storage in that state is unusual in that MGE, which does not serve customers in Kansas, has never before had to pay property tax in Kansas. However, if the Kansas taxes are found to be legal in the ongoing court challenge, and MGE is required to pay the tax, it should be able to recover those tax payments for future years through its rates when it includes those taxes in its cost of service in a future rate case.

FUTURE ACTIONS

12. The Company is evaluating an appeal to the Kansas Board of Tax Appeals, as well as to the Kansas courts, of the recent Kansas legislation imposing property taxes on the value of gas held in storage facilities in Kansas beginning in 2009. The Company has participated in 2 prior appeals of similar legislation, both of which appeals were successful in overturning the taxing initiative.

13. If the Commission grants the AAO that MGE requests, MGE would move the Kansas taxes that are currently booked as expenses into a deferred account. If MGE is successful in overturning the Kansas tax, then the deferred amounts would simply be written off against the payable that is also booked, with no effect on the Company's earnings. If, on the other hand, the legality and constitutionality of the Kansas tax is upheld, MGE would be able to ask the Commission to allow it to recover those deferred costs in its next rate case. Of course, if the Kansas property taxes are upheld, MGE would also be responsible for paying those taxes in future years.

COMMISSION AUTHORITY

14. 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). "By seeking a Commission decision [regarding the issuance of an AAO] the utility would be removing the issue of whether the item is extraordinary from the next rate case. All other issues would still remain, including, but not limited to, the prudence of any expenditures, the amount of recovery, if any, whether carrying costs should be recovered, and if there are any offsets to recovery." *Id.*

AAO

15. As a consequence of the enactment of Kansas House Substitute for Senate Bill No. 98, the Company requests a Commission order granting an AAO containing the following language:

That Missouri Gas Energy, a division of Southern Union Company, ("MGE") is granted an Accounting Authority Order whereby the company is authorized to record on its books a regulatory asset, which represents the expenses associated with the property tax to be paid to the state of Kansas pursuant to House Substitute for Senate Bill No. 98. MGE may maintain this regulatory asset on its books until the effective date of the Report and Order in MGE's general rate proceeding immediately subsequent to Case No. GR-2009-0355.

CONCLUSION

16. The following Commission conclusion as to Commission Case No. GU-2005-0095 is equally applicable to this Application:

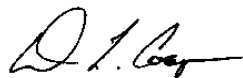
The amount of taxes that MGE might have to pay in Kansas is significant, both to MGE and to its ratepayers. It would not be appropriate to allow MGE to recover millions of dollars from its ratepayers for taxes that it might never have to pay. On the other hand, these taxes are a legitimate cost of doing business for which the ratepayers should be responsible. It would not be fair to MGE's shareholders to shift that burden on to them if those taxes ultimately must be paid.

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 July 13, 2009, to the following:

General Counsel
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AFFIDAVIT

STATE OF MISSOURI)
)
COUNTY OF Jackson) ss

I, Michael R. Noack, having been duly sworn upon my oath, state that I am Director of Pricing and Regulatory Affairs of Missouri Gas Energy, that I am duly authorized to make this affidavit on behalf of Missouri Gas Energy, and that the matters and things stated in the foregoing application are true and correct to the best of my information, knowledge and belief.

Michael R. Noack

Subscribed and sworn to before me this 13th day of July, 2009.

Kim W. Henzi
Notary Public

My Commission Expires:

Feb. 3, 2011

