

Appendix 5

Proposed Conditions for the Transaction

CONDITIONS OF APPROVAL

1. CUSTOMER SERVICE

Southern Union, through MGE, will continue its commitment to customer service performance measures and customer service operating procedures as follows:

A. Customer Service Performance Measures

- (1) Average Abandoned Call Rate (ACR) is not to exceed 7.5% on an annual basis plus a 100 basis point variance (a maximum allowable level of 8.5%).
- (2) Average Speed of Answer (ASA) is not to exceed 65 seconds plus a 15 percent variance of 10 seconds annually (a maximum allowable level of 75 seconds).
- (3) The base measurements of 7.5% and 65 seconds represent MGE's average actual performance during a twenty-four month period.

B. Company Response to Customer Service Measures

- (1) The Company shall provide the Commission's Staff ("Staff") and the Office of the Public Counsel ("OPC") quarterly reports (within 45 days of quarter-end) on the Customer Service Measures. Statistics for the measures shall be tracked and displayed monthly, reported to Staff and OPC on a calendar year quarterly basis and assessed for compliance annually. Within ninety (90) days after the end of the calendar year, the Company shall submit a draft report to the Staff and OPC which shall include actual performance measures for the year, explanation of any deviation above the measures, actions to be undertaken to eliminate the deviations above the measures and estimates of the cost of such actions. The Staff and OPC shall provide a response to the Company's draft report within thirty (30) days. The Company shall file a final report with the Commission 150 days after the end of the calendar year.
- (2) If the Customer Service Measures exceed the 24-month averages for the measures identified, MGE will initiate the following responses.

- (a) Should the actual Service Measures exceed, for any calendar year, the 24-month averages identified, MGE shall provide the Staff and OPC a written explanation of why MGE believes these figures have increased.
- (b) Should the actual Service Measures for any calendar year period exceed the maximum allowable levels, the Company shall also provide an estimate of the cost, if any, to improve the applicable measure to the 24-month average Service Measure level. The Company shall expense or invest the appropriate amount in the next year to improve the Measure to the 24-month average Service Measure level. These expenditures may be in whatever form necessary.

C. Customer Complaints/Inquiries to Staff

For purposes of this section, customer complaints/inquiries include contacts the Staff receives from MGE's customers, but are not necessarily the result of MGE's violation of its tariffs or Commission rules. Significant increases in the annual average number of complaints/inquiries of 1.84 per one thousand (1,000) customers (MGE's average actual performance during a 24-month period) will be explained by the Company and/or may prompt an investigation by the Staff and/or OPC. The impact of events beyond the Company's control will be taken into account in the Company's explanation and in any investigation by the Staff and/or OPC.

D. Customer Service Operating Procedures

Southern Union agrees that the present practices of MGE in the following areas will be continued, or improved upon to ensure that customers do not experience a decline in service levels:

- (1) Company will adhere to Commission rules and MGE's approved tariffs.
- (2) Company will, consistent with Commission rules, attempt to collect at customer premises prior to service discontinuance. If payment is not made to a collector, payment can be made at the Company's pay stations or through auto-pay.
- (3) Company will restore service five (5) days a week, subject to exceptions for holidays, consistent with Commission rules, and will at all times make a reasonable effort to restore service on the day requested once

the reason for the discontinuance is remedied and the request for service is made. In no event shall service be restored later than the next business day following the date requested by the customer.

- (4) Company will use bill test procedures to ensure bill accuracy.
- (5) Company will take appropriate steps to maintain the operation of its automated meter reading system.
- (6) Company will notify Staff and OPC of substantive changes in customer service procedures in call center operations and staffing, customer billing, meter reading, customer remittance, credit and collections, and connections and disconnection.
- (7) Company will identify (a) personnel responsible for handling Commission complaints and ensure they have proper authority, (b) after hours contact personnel, and (c) management employee(s) accountable for ensuring MGE employees are trained in and maintain a working knowledge of Missouri customer service rules and regulations. Company will notify Staff and OPC of any changes in these personnel within three (3) business days of the changes.
- (8) Company will continue the following programs: LIHEAP participation, the "Neighbors Helping Neighbors" Program, the "Flexible Due Date Plan", and the availability of "Customer Advisors".
- (9) Company will provide the Staff and OPC quarterly reports (within 45 days of quarter-end) containing: monthly information regarding the number of customer complaints/inquiries referred to MGE by the Commission's Consumer Services Department along with MGE's response time thereto, monthly information regarding abandoned call rate and average speed of answer performance, customer service organization charts, customer service staffing, number of estimated bills (including consecutive estimates), list of customer pay station locations, and actual Missouri jurisdictional bad debt write-off by customer class, including the dollar amount written off, number of accounts written off and revenue by customer class.

- (10) The customer service measures are subject to renegotiations by the parties in the event of natural gas restructuring.

2. INSULATION OF SOUTHERN UNION'S MGE OPERATING DIVISION FROM ENERGY TRANSFER EQUITY, L.P. (ETE) BUSINESS

To insulate MGE from the Transaction, Southern Union agrees that:

- A. Southern Union will be owned and operated as a separate subsidiary of ETE, unless otherwise approved by the Commission.
- B. Southern Union shall not transfer to ETE or any subsidiary thereof, directly or indirectly, assets necessary and useful in providing service to MGE's Missouri customers without Commission approval.
- C. Southern Union will diligently exercise its best efforts to insulate MGE from any adverse consequences from its other operations or the activities of any of its affiliates.
- D. Southern Union will submit reports certifying its compliance with this paragraph on a quarterly basis to the Staff electronically through the Commission's Electronic Filing and Information System ("EFIS") and to OPC, and other interested parties that are permitted to receive proprietary or confidential information as contemplated by applicable Commission rules or orders until the Commission determines that MGE is insulated from Southern Union's other operations and the activities of any of its affiliates or that the requirement is no longer needed.

3. FURTHER INSULATING CONDITIONS

To further insulate MGE from the Transaction, Southern Union agrees that:

- A. Southern Union will ensure that the Transaction shall have no adverse effect on MGE's budget and funds to meet MGE's capital needs, including but not limited to service line and main replacement programs. Southern Union remains committed to the safety line replacement program schedules for MGE currently in effect and approved by the Commission in its Case No. GO-2002-0050.

- B. The amount of any asserted acquisition premium (i.e. the amount of the total purchase price and transaction above net book value) paid for Southern Union in connection with the transaction shall be treated below the line for ratemaking purposes in Missouri and not recovered in retail distribution rates. Southern Union shall not seek either direct or indirect rate recovery or recognition of any acquisition premium, including transaction costs, through any purported acquisition savings adjustment (or similar adjustment) in any future general ratemaking proceeding in Missouri. Southern Union reserves the right to seek Missouri rate recovery for internal payroll costs and outside service costs (including legal fees) necessary to obtain Missouri regulatory approval of the Transaction, to the extent it can be clearly demonstrated that the savings achieved and allocated to MGE as a result of the Transaction are equal to or in excess of such costs. Other parties to any such proceeding shall not be precluded from opposing rate recovery of such costs, regardless of any asserted acquisition savings. In addition, Southern Union shall not seek to recover in Missouri the amount of any asserted acquisition premium in the Transaction as being a "stranded cost" regardless of the terms of any legislation permitting the recovery of stranded cost from Missouri ratepayers.
- C. Total joint and common costs allocated to Missouri for purposes of setting retail distribution rates will not increase as a result of the Transaction above the levels authorized by the Commission in Case No. GR-2009-0355 and proposed in the Surrebuttal Testimony of Michael R. Noack, dated October 14, 2009. Schedule H-8 – Corporate Allocation, of Mr. Noack's testimony reflects pro forma joint and common costs before application of the Expense Capital Rates of \$5,087,099. Net corporate plant allocated to MGE is \$669,314 per Schedule C, page 1 of 2, column e, line 35.
- D. Southern Union shall retain all documentation relative to the analysis of the Transaction. This documentation will include a list of: (1) all Southern Union and MGE personnel, consultants, legal and financial and accounting advisers; (2) the time (in hours) spent by those individuals on related work; (3) other expenses, costs or expenditures incurred or recognized by Southern Union

that are related to the Transaction; (4) business entity (corporate, subsidiary and division) where the costs were booked, including account number, account description and amount; and (5) description of the nature of the work performed and costs incurred.

- E. Southern Union shall maintain its books and records so that all acquisition costs related to the Transaction are segregated and recorded separately. Subject to the protections found in 4 CSR 240-2.135 and/or 4 CSR-240-2.085, during MGE's next general rate proceeding, Southern Union agrees to disclose to the Staff, OPC, and other interested and authorized parties the acquisition, merger, transition, and transaction costs recorded in Southern Union's books and records in the appropriate test year. This condition does not restrict Southern Union's right to seek rate recovery of merger and acquisition costs related to future transactions. Other parties may oppose recovery of merger and acquisition costs related to future transactions.
- F. Southern Union agrees to create and maintain records listing the names of Southern Union employees whose costs are allocable to Missouri jurisdictional operations, number of hours worked, type of work performed and travel and other expenses incurred for all work related to all merger and acquisition activities and specifically to the Transaction through the end of the test year, updated test year or true-up test year in MGE's next general rate case.
- G. Southern Union will submit to the Commission's Staff electronically in EFIS as a filing to this case and to OPC verified journal entries reflecting the recording of the Transaction on Southern Union's books and records within forty-five (45) days of closing.
- H. Southern Union shall not recommend an increase to the cost of capital for MGE as a result of the Transaction. Any increases in cost of capital Southern Union seeks for MGE will be supported by documented proof: (1) that the increases are a result of factors not associated with the Transaction; (2) that the increases are not a result of changes in business, market, economic or other conditions for MGE caused by the Transaction; or (3) that the increases

are not a result of changes in the risk profile of MGE caused by the Transaction. Southern Union will ensure that the retail distribution rates for MGE ratepayers will not increase as a result of the Transaction.

- I. Within six (6) months of the closing of the Transaction, Southern Union will perform, provide, and discuss with all interested and authorized parties a study of the impact of the acquisition of Southern Union by ETE on Southern Union's structure, organization, and costs. Southern Union will verify the accuracy of corporate administrative and general ("A&G") allocations to MGE, including the specific impacts of the acquisition of Southern Union by ETE on Southern Union's A&G expense and cost allocation methodology and identify the process used to allocate A&G costs and expenses to its regulated, merger and acquisition, sale and non-regulated functions of its regulated divisions as well as its non-regulated subsidiaries.

4. INTERSTATE AND INTRASTATE TRANSPORTATION AND STORAGE COSTS

- A. In making decisions regarding interstate or intrastate pipeline transportation and storage capacity, MGE will continue to evaluate alternatives with the objective of minimizing cost while obtaining adequate assurances of reliability without regard to whether such services are being provided by an interstate or intrastate pipeline that is an affiliate of MGE or by an interstate or intrastate pipeline that has a management agreement in effect with an affiliate of MGE. MGE will formally conduct a comprehensive evaluation as deemed necessary by MGE but no less frequently than every three years. This evaluation will be submitted and presented to Staff, OPC, and other interested parties subject to the protections found in 4 CSR 240-2.135 and/or 4 CSR 240-2.085. The evaluation provisions in the last two sentences of this paragraph 4.A shall apply for only so long as MGE is an affiliate of an interstate or intrastate pipeline from which it may take natural gas transportation services.
- B. MGE will notify OPC, Staff, and other interested parties subject to the protections found in 4 CSR 240-2.135 and/or 4 CSR 240-2.085 when MGE is

considering the addition of new pipeline capacity or a switch in the current mix of pipeline capacity and will keep and provide OPC and Staff, appropriate documentation regarding inquiries made to various pipelines. This documentation will include, but not be limited to, all proposed terms, including rates (and any discounts), amount of capacity, delivery and take points, any storage capabilities, maximum storage quantities, maximum daily withdrawal quantities, maximum daily injection quantities, whether the capacity is firm, interruptible, etc., capacity release and off-system sales opportunities, the reason for the additional capacity or switch. This information will be provided upon request within the time normally provided for discovery under the Commission's rules. However, in no event will the providing of this data constitute preapproval by OPC or Staff or any other proper party. In addition, it is understood that MGE's agreement to provide documentation regarding such negotiations is not to be construed as an agreement to permit participation in, or interference with, such negotiations; it is expressly understood that the MGE's ability to undertake such negotiations most effectively is of primary importance and that provision of documentation regarding such negotiations is subordinate thereto.

- C. MGE shall create a written or electronic log that documents the date, time, seller, and terms of all offers received (where such offer includes price, delivery dates, delivery location, and delivery specifications), and indicates the selected proposal(s); and MGE shall prepare a written analysis explaining how any winning proposal by an affiliated interstate or intrastate pipeline satisfies the needs of MGE's natural gas transportation and storage portfolio when measured against other comparable proposals.
- D. Whenever an affiliated interstate or intrastate pipeline with which MGE has an agreement applies to the Federal Energy Regulatory Commission for a rate increase, MGE will provide OPC and Staff, and any other proper party, any documents filed by MGE that show MGE's opposition to the rate case. Further, MGE will provide OPC and Staff with any documents MGE possesses, that are not otherwise privileged or immune from discovery,

discussing any potential settlement of the rate case. MGE will provide a privilege log listing such documents. This paragraph 4.D shall apply for only so long as MGE is an affiliate of an interstate or intrastate pipeline from which it takes natural gas transportation services.

- E. Southern Union agrees that MGE will exercise its best efforts in any FERC proceeding involving an interstate pipeline that is owned, operated, or managed by Southern Union, successor entity, or an affiliate to protect the interest of its customers in a manner consistent with the actions of a local gas distribution company that was not associated with an entity that had a financial interests in an interstate pipeline.

5. **ASSUMPTION OF EXECUTION RISK**

Southern Union will not include in its retail distribution rates charged to Missouri consumers any costs related to its execution risk associated with the Transaction.

6. **ADHERENCE TO MISSOURI RULES**

Southern Union shall comply with all Missouri Commission rules, including the Affiliated Transactions Rule, 4 CSR 240-40.015, reporting requirements and other practices, and its filed and approved tariffs. This paragraph 6 shall not be construed as a waiver of any rights or remedies available to Southern Union under the law. No conditions or agreements entered into between parties to this case shall restrict or limit Southern Union's compliance with Missouri Commission rules.

7. **NO DETRIMENTAL IMPACT**

Southern Union acknowledges that this transaction will not have any detrimental effect on MGE's utility customers, including, but not limited to: increased rates or any effect on quality of service, but agrees that, should such detrimental effects nevertheless occur, nothing in the approval or implementation of the proposed acquisition shall impair the Commission's ability to protect such customers from such detrimental effects.

8. **COMMISSION AUTHORITY**

Southern Union acknowledges that the Commission has, and will continue to have, the authority after the proposed acquisition to regulate, through the lawful exercise of its statutory powers, and ensure the provision of service, instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable and not jeopardize the ability of Southern Union or MGE to meet its Missouri utility obligations, including MGE's service line replacement program. Southern Union also agrees that the Commission has the authority, through the lawful exercise of its ratemaking powers, to ensure that the rates charged by MGE for regulated utility service are not increased as a result of the unregulated and/or non-jurisdictional activities of Southern Union's affiliates and Southern Union agrees, consistent with such standard, that rates should not be increased due to such activities.

9. **ACCESS TO INFORMATION**

Southern Union will provide the Staff and OPC with access, upon reasonable written notice during normal working hours and subject to appropriate confidentiality and discovery procedures, to all written information provided to common stock, bond, or bond rating analysts, that directly or indirectly pertains to Southern Union or any affiliate that has affiliate transactions with MGE or with Southern Union to the extent such transaction(s) with Southern Union affect the allocation of costs to MGE. Such information includes, but is not limited to: reports provided to, and presentations made to, common stock analysts and bond rating analysts. For purposes of this condition, "written" information includes but is not limited to: any written and printed material, audio and videotapes, computer disks and electronically stored information. Nothing in this condition shall be deemed to be a waiver of Southern Union's or MGE's right to seek protection of the information or to object, for purposes of submitting such information as evidence in any evidentiary proceeding, to the relevancy or use of such information by any party.

10. **COMMITMENTS ARE MISSOURI JURISDICTIONAL**

The conditions set forth herein are intended to apply only in the context of Missouri jurisdictional regulatory activities and are not intended to restrict in any way the ability of Southern Union to take any position whatsoever regarding matters covered herein in proceedings before the Federal Energy Regulatory Commission or any other non-Missouri jurisdictional regulatory authority.