

**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-2003-0348
its Missouri Consumers To ONEOK.	)	

**STAFF RESPONSE TO  
THE COMMISSION'S ORDER DIRECTING FILING**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) in response to the Commission’s May 12 Order Directing filing. In its Order, the Commission directed Staff to file a verified pleading describing with specificity all property that Southern Union sold that forms the basis of Staff’s complaint. In response Staff states:

1. In this transaction, SU sold a portion of its business operations, and Staff alleges that the sale included property used to serve Missouri customers. The business operations sold were not completely separate from SU’s other operations. To state it another way, the business operations that were sold were not a separate affiliate or entity, but instead, were an integrated part of the company as a whole. SU’s sold, or otherwise transferred to ONEOK, operations that included, but were not limited to, the gas procurement and supply operations that supported more than the Texas distribution operations. These operations also provided gas supply purchasing, scheduling and delivery of natural gas to Missouri customers.

2. Staff’s complaint alleges that any property, tangible or intangible, which was connected to the gas supply part of the business that was sold, was property that was useful and necessary to the provision of service to Missouri customers.

3. In using the term “property” in its complaint, Staff intended to include all forms of property, real and intangible, that supported the gas supply department that was sold to ONEOK. The term property is in the title to §393.190 that reads: “**Transfer of franchise or property to be approved . . .**”

4. The purchase agreement for the SU transaction defines assets to mean: \*\* HC  
HC  
HC \*\* Purchase Agreement at Section 1.1 SU has excluded some assets from the transaction that specifically relate to the Missouri operations, but SU has not been willing to provide, despite Staff’s specific request, a list as to exactly which assets or property were sold and which were excluded. See Attachment A.

5. SU’s answer, which failed to identify any assets, can fairly be described as nonresponsive and evasive. Indicative that MGE’s answer, that the transaction “was not a sale of the Company’s franchise, works, or system necessary or useful in the performance of its duties to the public in Missouri” is equivocal and inaccurate, is the fact that, as a result of the ONEOK sale, SU had to contract with the buyer, ONEOK, for management (control) of its gas supply function for at least a significant portion of the 2002-2003 heating season.

6. As requested, attached is a Verified Statement from Staff concerning the Purchase Agreement (HC Attachment A) that supports Staff’s complaint. This agreement identifies the specific portion of SU’s operations that were used in the provision of service in Missouri. Additionally, the common functions provided to MGE by the Texas portion of the business are identified in the “Transition Services Agreement” that was attached to Staff’s Complaint. All

property and assets related to these functions that were not excluded from the sale/transfer from the basis for Staff's complaint.

7. Staff does not yet have information to list the specific assets or property (e.g. computer serial numbers) that SU sold or transferred to ONEOK beyond the details in the "Purchase Agreement." Discovery in this case will be directed to determine exactly what was sold, so that a more precise response to the Commission's query is possible. Because of MGE's failure to respond to Staff's discovery, at this point in this case, Staff is unable to provide an exact and specific list of property that was sold or transferred or otherwise disposed of.

8. The services identified in the Transition Service Agreement are included at page 8 of Staff's complaint and include: payroll processing, tax services including city franchise and state taxes, gas control, gas control training, gas accounting, and general accounting, all of which required equipment, software, materials, files and supplies to perform and support these functions. Staff asserts that SU sold this property, and that the sale of this property, in addition to other assets, required Commission approval prior to sale or transfer under §393.190. This was not an isolated management decision, involving the sale of a computer or two, but was part and parcel of SU's attempt to secure increased benefits of a higher sale price from ONEOK by including in the sale the portion of its operations that provided essential services (e.g. gas supply) to both SU's Missouri and Texas operations. By denying Commission jurisdiction and ignoring the detriment to its Missouri customers, SU was able to bundle the Texas-only property with the Missouri/Texas property located in Texas to improve its sale price.

9. In completing this transaction, Staff alleges that SU/MGE transferred employees and sold rate base property 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 by operation of law under §393.190.1.

Respectfully Submitted,

DANA K. JOYCE  
General Counsel

**/s/ Lera L. Shemwell**

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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 emailed, mailed or hand-delivered to all counsel of record this 19th day of May, 2003.

**/s/ Lera L. Shemwell**

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**ATTACHMENT A**

**IS**

**HIGHLY CONFIDENTIAL**

**IN ITS**

**ENTIRETY**