

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 1st day of
September, 2010.

In the Matter of Union Electric Company,)
d/b/a AmerenUE, for Authority to File Tariffs)
Increasing Rates for Natural Gas Service)
Provided to Customers in the Company's)
Missouri Service Area)

File No. GR-2010-0363

ORDER GRANTING MOTION FOR RECONSIDERATION

Issue Date: September 1, 2010

Effective Date: September 1, 2010

Background

On July 28, 2010, the Commission issued an order granting MoGas Pipeline LLC's application to intervene. On August 5, Union Electric Company, d/b/a AmerenUE filed a motion requesting that the Commission reconsider its July 28th Order. MoGas then filed a timely response to the motion.

Commission rule 4 CSR 240-2.160 (2) requires that those moving the Commission to reconsider an order, set forth grounds on which the order is unlawful, unjust or unreasonable. AmerenUE points out that MoGas' unconditional participation in all aspects of this case goes beyond any public interest. Further, that MoGas' participation will likely result in increased rate case expense, ultimately borne by AmerenUE's customers.

MoGas sells pipeline capacity to AmerenUE. Its stated interest in this case has nothing to do with its business relationship with AmerenUE, but rather brings into question the veracity of statements made by AmerenUE's witness Emma Cruthis concerning matters at the Federal Energy Regulatory Commission. For this reason, AmerenUE argues that

MoGas need not conduct discovery or participate in any settlement conferences. While continuing to oppose MoGas' participation, AmerenUE offers the alternative that the Commission limit MoGas' participation.

In support of its proposition that the Commission can grant limited intervention, AmerenUE cites *State ex rel. County of Jackson v. Missouri PSC*, 985 S.W.2d 400 (Mo. App. W.D. 1999). In its motion, AmerenUE states:

The courts have further indicated that this Commission also has the power to limit intervention. [citation] ('...the declaratory judgment unlawfully enjoined the PSC from exercising its discretion to grant, deny, or limit intervention under section 386.420 RSMo').

AmerenUE's recitation of the courts holding is misleading. The passage quoted by AmerenUE is not what the court said. Rather, the cited language is the court's quotation of a point relied on set out by the Commission while appealing a lower court's decision.

To better explain, the Commission attempted to grant limited intervention to the County of Jackson Missouri. Jackson County filed a writ in Circuit Court requesting that the Court direct the Commission to grant full intervention to Jackson County. The court issued a preliminary writ preventing the Commission from limiting Jackson County's intervention. Prior to the hearing on the permanent writ, the Commission granted full intervention to Jackson County. With its answer to the writ, the Commission filed a motion to dismiss the petition. The Circuit Court denied the motion to dismiss and, after a hearing, entered a declaratory judgment permanently restraining the Commission from limiting a party's intervention. On appeal, the Appellate Court vacated the Circuit Court's order as moot. The Court reasoned that the Commission's grant of full intervention to Jackson County eliminated any justiciable controversy, rendering the case moot. The issue remained undecided.

MoGas therefore correctly asserts in its response that AmerenUE has not provided precedent to support conditional intervention. Although it contends that the Commission's rule on intervention does not provide for limited intervention, MoGas does not offer any precedent showing that the Commission cannot limit a party's participation. This issue, therefore, remains unsettled.

Discussion

In response to AmerenUE's opposition, MoGas refers to the direct testimony of Emma Cruthis regarding matters before the FERC. MoGas states that it does not know how its interest may be affected but seeks intervention to ensure that the Commission is correctly informed on all aspects of the FERC filings to which Ms. Cruthis refers and any other testimony referring to the FERC filings.

The Commission appreciates MoGas' concern with regard to the veracity of testimony filed in this case. Ms. Cruthis' testimony has been filed as public, not highly confidential, and is therefore available for viewing by nonparties. In either its application or in its response to AmerenUE's opposition to intervention, MoGas could have stated how Ms. Cruthis' testimony was incorrect. Further, the Commission must assume that if her testimony was incorrect, MoGas would have boldly pointed that out. It did not.

Further, the Commission is concerned that MoGas, in its response to AmerenUE's motion for reconsideration, objects to limited intervention when such intervention would seem to allow MoGas to protect its interest. Granting MoGas intervention goes beyond what is necessary for the company to protect its interest. The Commission is persuaded that MoGas' participation will result in increased litigation costs, which will be passed on to the customers. The company's participation as a party cannot possibly serve the public

interest and, as pointed out by AmerenUE, may be contrary to the public interest. Accordingly, having reconsidered its order, the Commission finds that its order granting intervention to MoGas is unreasonable and will grant AmerenUE's motion.

With all of the pleadings filed on this issue, MoGas has failed to show that its interest will be affected by an outcome of this case. If during the course of these proceedings, testimony is filed or offered that does not properly reflect what is occurring at the FERC, then MoGas may file a brief as *amicus curiae* at any time during these proceedings as needed.

THE COMMISSION ORDERS THAT:

1. Union Electric Company d/b/a AmerenUE's Motion for Reconsideration is granted.
2. Upon reconsideration, MoGas Pipeline LLC's application for intervention is denied.
3. MoGas Pipeline LLC may file briefs as described in the body of this order.
4. This order shall become effective upon issuance.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
and Gunn, CC., concur.
Kenney, C., dissents.

Jones, Senior Regulatory Law Judge