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March 22, 2001

Commissioners  
**SHEILA LUMPE**  
Chair  
**M. DIANNE DRAINER**  
Vice Chair  
**CONNIE MURRAY**  
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Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**RE: Case No. GA-98-464**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF'S MOTION TO DISMISS**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Dennis L. Frey  
Associate General Counsel  
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DLF:ccl  
Enclosure  
cc: Counsel of Record

**MAR 22 2001**

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

**FILE COPY**

In the Matter of the Application of United )  
Cities Gas Company, a division of Atmos )  
Energy Corporation, for an Accounting )  
Authority Order Related to Investigation )  
and Response Actions Associated with its )  
Former Manufactured Gas Plant Site in )  
Hannibal, Miss )

Case No. GA-98-464

**STAFF'S MOTION TO DISMISS**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff"), and respectfully states as follows:

1. On April 15, 1998, United Cities Gas Company, a division of Atmos Energy Corporation ("United Cities" or "Company"), filed with the Missouri Public Service Commission ("Commission") an Application for Accounting Authority Order to defer costs associated with the investigation, assessment, and environmental response actions at the Company's former Manufactured Gas Plant ("MGP") site in Hannibal, Missouri.

2. On February 25, 1999, the Commission issued an Accounting Authority Order ("AAO") with respect to "costs incurred or payments received between March 31, 1998 and the effective date of the rates established in United Cities' next general rate case or the beginning of the deferral period of any subsequent accounting authority order for the same costs, whichever is earlier." Ordered paragraph No. 3 states: "That this accounting authority order shall become null and void in the event United Cities does not file tariff sheets proposing a general increase in rates

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within twenty-four (24) months from the effective date of this order.” Ordered paragraph No. 6 states: “This order shall become effective on March 9, 1999.”

3. On February 5, 2001, United Cities filed with the Commission a Motion for Modification of Accounting Authority Order, requesting that the Commission modify the subject AAO by extending the date on which the AAO would become null and void (unless a general rate case is filed) from March 9, 2001 to March 9, 2002. The Company explained that it does not believe it would be desirable to file a rate case before March 9, 2001, and that accordingly, if the time frame of the AAO is not extended, the Company will be required to write off some \$377,000 in costs already incurred, as well as an additional \$123,000, which it expects to incur over the next twelve (12) months.

4. On February 6, 2001, the Office of the Public Counsel (“OPC”) filed a Response opposing United Cities’ request. The Company and the Office of the Public Counsel (“OPC”) then filed further pleadings in response to each other.

5. On March 2, 2001, the Staff filed Suggestions urging that the Commission deny the Company’s request for a one-year extension in the duration of the subject AAO. Staff suggested that the time frame established for deferral of costs is appropriate in this case and in addition to being clear and definite, helps to minimize the required amount of regulatory oversight.

6. On March 6, 2001, the Commission issued an Order setting a prehearing conference for March 15. At the prehearing conference, both the Staff and OPC suggested that because the Commission-ordered time period for the subject AAO had expired, the question whether the Company’s request for an extension of the AAO is essentially moot. The presiding RLJ directed the parties to file pleadings concerning whether the Commission may, at this point,

grant the relief United Cities requests, a directive reiterated in the Commission's March 21, 2001 Notice Regarding Procedural Schedule and Regarding Memorandum.

7. There appears to be no law directly on point regarding this question, which, to the best of Staff's knowledge, has not been raised before with respect to accounting authority orders. Section 386.400.3 RSMo 2000 states, in pertinent part, that every Commission order "shall continue in force either for a period which may be designated therein or until changed or abrogated by the commission..." Section 386.500 RSMo 2000 authorizes a party to seek rehearing of a Commission order prior to the effective date of the order and permits the Commission, following such rehearing, to abrogate, change or modify its order. Failure of a party to do so prevents such party from appealing the Commission's order.

8. The statutes and case law do not appear to contemplate a situation such as that now before the Commission. Other jurisdictions have remarked on the need for finality not only in judicial decisions, but in administrative decisions as well. In *People's Gas System v. Mason*, 187 So.2d 335, 339 (1966), for example, the Florida Supreme Court stated that "orders of administrative agencies must eventually pass out of the agency's control and become final and no longer subject to modification. This rule assures that there will be a terminal point in every proceeding at which the parties and the public may rely on a decision of such an agency as being final and dispositive of the rights and issues involved therein. This is, of course, the same rule that governs the finality of decisions of courts. It is as essential with respect to orders of administrative bodies as with those of courts." The court went on to acknowledge that the role of the administrative body is somewhat different from that of the courts because of the former's ongoing concern for the public interest.

9. In the instant case, it seems clear that a denial of the Company's request will not adversely affect the public interest. More important, however, is the fact that in the above-referenced Florida case, as in other cases in which the question of finality has been raised, the order before the court was still in existence. This is not true of the accounting authority order that is the subject of the instant case. The Staff takes the position that the AAO, by its very terms, is null and void, and that as a consequence, it does not make sense for the Commission now to order its extension. This situation is not like one involving a statute of limitations, which is tolled by the timely filing of a pleading. Regardless of the fact that United Cities filed its motion for an extension during the life of the AAO, and irrespective of whether Staff filed its Suggestions out of time (without objection from the Company), the AAO was self-extinguishing, and the Commission may not now extend something that does not exist. Indeed, even as courts struggle with the question of when an administrative order should be considered final, can it not at least be asserted with great confidence that an order is final after it has expired? The Commission should dismiss this case.

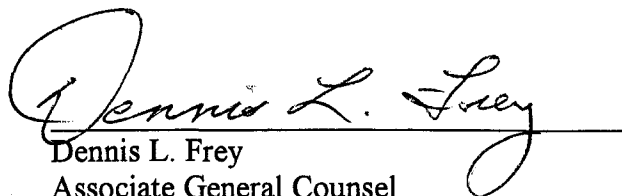
10. With regard to the factual circumstances of the case, it is to be noted that United Cities did not seek rehearing of the Commission's AAO, and is thus barred from appealing it. Moreover, the Company's eleventh-hour filing of a request for a one-year extension of its AAO on February 5th of this year was barely a month before the AAO was to expire. Clearly, there was nothing to preclude the Company from filing its motion much earlier, and it should have done so in order to permit the Commission a sufficient amount of time for the process to unfold, for the matter to be fully argued, and for the Commission to render its decision.

11. Furthermore, as pointed out by both Staff and OPC in earlier pleadings, the Company had every right to file a rate case at any time during the twenty-four month life of the AAO. Indeed, the very purpose of an accounting authority order is to permit deferral of unusual and extraordinary costs for a period of time in order to allow consideration of them in the utility's next rate case. The purpose is not simply to permit utilities to pile up costs year after year until it should happen to decide to file a rate case. In this connection, it should be noted that, as of March 9 of this year, United Cities had been permitted to defer almost three years' worth of AAO eligible costs (i.e., starting with costs incurred on March 31, 1998). For the Commission to allow United Cities to defer a fourth year of costs under an AAO would, to the Staff's knowledge, be unprecedented. Clearly, United Cities made a business decision not to file a rate case by March 9, 2001, a decision made with full knowledge of the potential expiration of its AAO. Accordingly, it is very difficult to resist the inference that the Company simply deemed that its revenue and earnings picture was satisfactory. Under such circumstances, a utility must expect to absorb the costs deferred under an accounting authority order upon its expiration.

WHEREFORE, the Staff moves that the Commission dismiss this case based on a finding of mootness.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

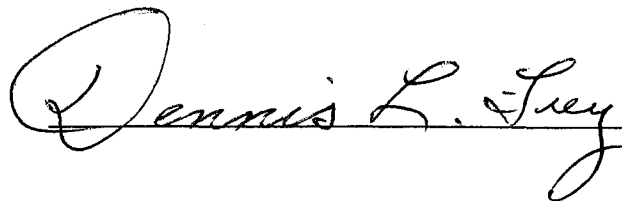
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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 22nd day of March 2001.

A handwritten signature in cursive script, reading "Dennis L. Frey", written over a horizontal line.

**Service List for  
Case No. GA-98-464  
Verified: March 22, 2001 (ccl)**

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