



**FILE COPY**

Martha S. Hogerty  
Public Counsel

State of Missouri

Bob Holden  
Governor

**Office of the Public Counsel**  
Governor Office Bldg. Suite 650  
P.O. Box 7800  
Jefferson City, Missouri 65102

Telephone: 573-751-4857  
Facsimile: 573-751-5562  
Relay Missouri  
1-800-735-2966 TDD  
1-800-735-2466 Voice

August 10, 2001

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**FILED**<sup>3</sup>

AUG 10 2001

Missouri Public  
Service Commission

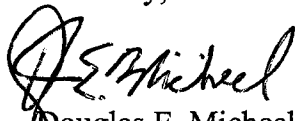
**RE: United Cities Gas Company,  
Case No. GA-98-464**

Dear Mr. Roberts:

Enclosed for filing in the above referenced case, please find the original and 8 copies of **Public Counsel's Supplemental Suggestions in Opposition to United Cities' Motion for Modification of Accounting Authority Order**. Please "file stamp" the extra-enclosed copy and return it to this office. I have on this date mailed, faxed, or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Sincerely,

  
Douglas E. Micheel  
Senior Public Counsel

DEM:kh

cc: Counsel of record

Enclosure

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

**FILE COPY**

**FILED<sup>3</sup>**

AUG 10 2001

Missouri Public  
Service Commission

Case No. GA-98-464

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, Missouri. )

**PUBLIC COUNSEL'S SUPPLEMENTAL SUGGESTIONS IN  
OPPOSITION TO UNITED CITIES' MOTION FOR  
MODIFICATION OF ACCOUNTING AUTHORITY ORDER**

COMES NOW the Office of the Public Counsel ("Public Counsel") and for its Supplemental Suggestions in Opposition to United Cities' Motion for Modification of Accounting Authority Order ("AAO") states as follows:

1. On July 11, 2001 a Second Prehearing Conference was held in this proceeding. At the conclusion of the prehearing conference, the Regulatory Law Judge ("RLJ") set August 10, 2001 as the deadline for Supplemental Suggestions to be filed in this matter. Public Counsel's supplemental suggestions will relate to the Commission's lack of authority to modify the final order issued in this proceeding that was effective on March 9, 1999 and will respond to United Cities' request that the Commission reauthorize a new AAO for United Cities encompassing the manufactured gas plant costs included in the March 9, 1999 final order and any other costs incurred by United Cities do date.

2. The Commission's February 25, 1999 Order that granted United Cities an AAO is a final unappealable order that cannot now be modified by changing a material term of the order and extending the term of the accounting authority from two years to three years as requested by United

Cities. United Cities' ability to seek modification of the February 25, 1999 Order ceased by operation of law when United Cities failed to seek rehearing of the Order prior to the effective date pursuant to 386.500 RSMo. 2000.

3. The Commission's decision with respect to the AAO regarding United Cities' deferral of expenses related to its manufactured gas plant is undoubtedly a final order. Finality is found when the agency arrives at a terminal, complete resolution of the case before it. State ex rel. Riverside Pipeline Company, L.P. v. Public Service Commission, 26 S.W.3d 396, 400 (citations omitted).<sup>1</sup> The Commission arrived at a terminal decision that United Cities should be allowed to defer the costs incurred and payments received related to manufactured gas plant clean up for twenty-four months. If United Cities failed to file tariff sheets proposing a general increase in rates within twenty-four (24) months from the March 9, 1999 effective date of the AAO Order the deferred accounting authorization granted in the order "shall become null and void." (Ordered ¶ 3). United Cities failed to file tariffs requesting a general increase within the twenty-four month period.

4. Because the Commission order granting an AAO to United Cities became effective on March 9, 1999, it is a final order that United Cities cannot seek to modify and that this Commission lacks authority to modify. Decisions of the Commission are conclusive in all collateral actions. §386.500 RSMo. 2000. In this proceeding, United Cities seeks to alter the Commission's determination that a twenty-four month period is the appropriate period to allow the deferrals at issue to exist before United Cities must file a general rate case. United Cities should not be allowed to relitigate the time period related to the deferrals in this proceeding. That issue

---

<sup>1</sup> Orders granting AAOs are undoubtedly "final orders." The appellate courts have reviewed cases regarding AAOs. See: State ex rel. Office of the Public Counsel v. Public Service Commission, 858 S.W.2d 807 (Mo. App. 1993); Missouri Gas Energy v. Public Service Commission, 978 S.W.2d 437 (Mo. App. 1998).

was finally decided when the Commission issued its order on February 25, 1999 and United Cities failed to seek rehearing regarding the twenty-four month time period.

5. United Cities also has requested in the alternative that this Commission issue subsequent accounting authority order to authorize United Cities to defer in Account 182.3 all costs incurred in connection with the investigation, assessment and environmental response actions at the Hannibal MGP. Public Counsel understands this alternative request encompasses the amounts currently deferred (March 31, 1998 – March 9, 2001) pursuant to the null and void AAO.

6. Public Counsel opposes granting a further AAO to United Cities regarding its MGP costs at Hannibal. Pursuant to 393.140(8) RSMo. 2000 Public Counsel requests a hearing be held on this request. However, Public Counsel believes United Cities' request for a new AAO is inappropriate in this proceeding and Public Counsel objects to inclusion of the costs from March 1998 to March 9, 2001 in any subsequent AAO.

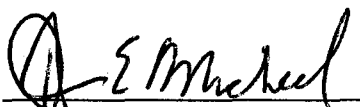
7. Public Counsel believes if United Cities desires a new AAO covering the MGP site at Hannibal it should file a separate request for this new AAO. As discussed in paragraphs 4 and 5 of these suggestions, the AAO in this proceeding is a final order that cannot be modified. Thus, a new and separate proceeding should be established for United Cities' request for a new AAO.

8. Public Counsel also believes it would be wholly inappropriate to allow United Cities to include the amounts deferred from March 1998 to March 9, 2001 in any subsequent AAO that may be requested by United Cities. Simply put, the amounts deferred from March 1998 to March 9, 2001 should be written-off United Cities' books. The Commission allowed United Cities twenty-four months to seek recovery of those deferrals. Absent filing a rate case, it is reasonable to assume United Cities was earning a reasonable return on its investment.

WHEREFORE, the Commission should deny United Cities' request to modify the current AAO and order United Cities to file a new request for an AAO relating to the manufactured gas plant clean up in Hannibal.

Respectfully submitted,

**OFFICE OF THE PUBLIC COUNSEL**

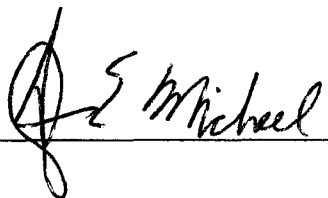
BY:   
Douglas E. Micheel, Esq. (Bar No. 38371)  
Senior Public Counsel  
P. O. Box 7800, Suite 650  
Jefferson City, MO 65102  
Telephone : (573) 751-5560  
Fax: (573) 751-5562  
dmicheel@mail.state.mo.us

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been faxed, mailed or hand-delivered to the following counsel of record on this 10th day of August, 2001:

Dennis Frey  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City MO 65102

James M. Fischer, Esq.  
Fischer & Dority, P.C.  
101 Madison Street, Suite 400  
Jefferson City MO 65101

  
\_\_\_\_\_