

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 14th
day of September, 2000.

In the Matter of Missouri Gas Energy's)	
Tariff Sheets Designed to Increase Rates)	<u>Case No. GR-96-285</u>
for Gas Service in the Company's)	
Service Area)	

**ORDER GRANTING MOTION TO DISMISS
PARTIES PURSUANT TO RULE 4 CSR 240-2.116(3) AND
ORDER DENYING PUBLIC COUNSEL'S MOTION TO DISMISS
CASE AS MOOT AND SUSPEND BRIEFING SCHEDULE**

The Missouri Public Service Commission (Commission) held an evidentiary hearing in this matter on August 8 and 9, 2000. At the commencement of the hearing on August 8, 2000, Missouri Gas Energy (MGE) moved to dismiss all other parties who were not present at the prehearing conference and were not present at hearing on August 8 and 9, 2000, pursuant to Commission Rule 4 CSR 240-2.116(3). There were no objections to MGE's motion. The Commission took the motion under advisement at the time of hearing.

The parties who were present for the prehearing conference on June 29, 2000, were: MGE, Staff of the Commission (Staff), the Office of the Public Counsel (Public Counsel), Missouri Gas Users' Association (MGUA), Central Missouri State University (CMSU) and the University of Missouri-Kansas City (UMKC). The following three parties filed correspondence with the Commission indicating that they would not actively participate in the remand proceeding so long as the

rate design issue was the only matter before the Commission: Home Builders Association of Kansas City, Riverside Pipeline Company, L.P./Mid-Kansas Partnership (Riverside/Mid-Kansas) and Gas Service Retirees Association of Missouri, Inc. Each of these parties requested that they remain a party of record in this proceeding for the purposes of receiving pleadings and Commission orders.

The parties present at the hearing held on August 8 and 9, 2000, were MGE, Staff, Public Counsel, MGUA, CMSU and UMKC. Also appearing were the City of Kansas City (KCMO) and Riverside/Mid-Kansas. Both KCMO and Riverside/Mid-Kansas stated that it was not their intention to participate in this case as long as the issues were only those relating to rate design. KCMO and Riverside/Mid-Kansas requested that they be permitted to remain a party, that they be permitted to file briefs, if they believed it necessary, and that they be excused from the hearing. Both parties were advised that the Commission does not routinely excuse parties from attending hearing and if a party is not present, that party waives any objections to any request or ruling made during the hearing. Both KCMO and Riverside/Mid-Kansas acknowledged that they understood.

The parties who did not attend the prehearing conference and the hearing, and did not otherwise contact the Commission regarding its appearance, are Kansas City Power & Light Company, Williams Natural Gas Company, Mountain Iron & Supply Company, County of Jackson, Missouri, Local 53 of International Brotherhood of Electrical Workers AFL-CIO, St. Joseph Light & Power Company, UtiliCorp Energy Services, and the City of St. Joseph, Missouri.

The Commission finds that those parties who did not attend the prehearing conference and the hearing, and did not otherwise contact the Commission regarding their appearance at the prehearing or hearing, shall be dismissed as parties from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

On August 14, 2000, Public Counsel requested the Commission dismiss this proceeding as moot. Public Counsel stated that the Commission should dismiss this proceeding for good cause because the Commission had held the required hearing and that a decision on the rate design issues of class cost of service and revenue shifts is inappropriate, unnecessary and is not in the interest of the efficient administration of justice. Further, Public Counsel pointed out that the rates set in this proceeding would never become effective rates because the Commission had already established the rates for MGE in Case No. GR-98-140 which superseded the rates that would be established by the Commission issuing an order in this case, and therefore, this case is moot. Public Counsel also requested that the Commission suspend the briefing schedule in this proceeding until this Motion to Dismiss has been ruled upon by the Commission.

On August 23, 2000, MGE and Staff filed their responses to Public Counsel's Motion to Dismiss and Request to Suspend Briefing Schedule. MGE stated that it agrees with Public Counsel that the rates set in Case No. GR-98-140 superseded the rates set in GR-96-285, and that ordinarily such an event would render issues from Case No. GR-96-285 moot. MGE stated that this is not an "ordinary" situation because revenues otherwise due MGE have been impounded in the Circuit Court of

Cole County, Missouri (Circuit Court) as a result of the Commission's failure to hold a hearing in Case No. GR-96-285. MGE noted that the Commission was ordered by the Circuit Court to give the parties a hearing on those issues the Commission rejected in the Stipulation and Agreement regarding the rate design issues of class cost of service and revenue shifts. MGE stated that the proper role of the Commission is to comply with the order of the court, allow the parties due process through the filing of briefs on the evidence, and reach a decision on the merits of the issues presented allowing the case to take its course in the courts.

MGE also pointed out that the Circuit Court remanded this case to the Commission "for action by the Commission." MGE also pointed out that the Western District of Missouri Court of Appeals (Court of Appeals) affirmed the Circuit Court and said "Upon remand, the Commission will determine how much of that aggregate revenue due MGE would be paid by Midwest." State ex rel. Midwest Gas Users' Assn. v. Public Service Commission, 996 S.W.2d 608 (Mo. App. 1999).

In regard to the effect of the Commission's Report and Order in Case No. GR-98-140, MGE stated that both the Court of Appeals and the Circuit Court were aware of the Commission's later ruling but neither the Court of Appeals nor the Circuit Court accepted MGE's suggestions of mootness. MGE alleged that granting Public Counsel's motion would not permit the Commission to reach a conclusion on the merits of the issues presented to it after affording the parties due process. MGE requested that the Commission deny Public Counsel's Motion to Dismiss

and Suggestions in Support Thereof and Request to Suspend Briefing Schedule.

Staff also recommended that the Commission deny Public Counsel's motion to dismiss and motion to suspend briefing schedule. Staff stated that the Commission is compelled by the Circuit Court's November 26, 1997 order to hold a hearing and make findings. Staff stated that any issues of mootness must be addressed to the Circuit Court. Staff stated that achieving a final disposition of this case by having this case briefed and decided by the Commission was the result clearly anticipated by both the Circuit Court and the Court of Appeals. Staff also noted that, absent a corpus of funds established by the Circuit Court's Stay Order, this case would be moot. However, Staff stated that this case is now ripe for Commission decision, and should be decided now in order to provide a complete record for the Court of Appeals.

On August 24, 2000, MGUA sent a Motion to Extend Time for Response by One Day by facsimile transmission, which was filed on August 25, 2000. MGUA noted that by Commission Rule 4 CSR 240-2.080(16) response to Public Counsel's motion would be due August 24, 2000. Due to other commitments, MGUA's counsel was unable to complete a response by the end of the day on August 24, 2000. MGUA stated that the requested extension of one day would not delay the Commission processing of the matter. No objections were received. The Commission will grant MGUA the extension of time to August 25, 2000, to file its response to Public Counsel's motions.

On August 25, 2000, MGUA did file its response to Public Counsel's motion to dismiss and to suspend briefing schedule. MGUA stated that the remand hearing was held because it was ordered by the Circuit Court, and that aspect of the remand, subject to pending motions, has been achieved. MGUA pointed out that the Circuit Court declared that the rates fixed by the Commission without a hearing on an essential part of the rate design issue were unlawful. MGUA further noted that MGE did not appeal this judgment of the Circuit Court and therefore, the Circuit Court's finding the rates unlawful was final. MGUA stated that the distribution of the impound fund is solely within the discretion of the Circuit Court despite any suggestions MGE appears to make. MGUA stated that this may be an appropriate time to bring this case to a close and endorsed Public Counsel's motion to suspend the briefing schedule until the more basic matter of mootness is determined by the Commission. MGUA does not clearly state that it supports or opposes Public Counsel's Motion to Dismiss this case as moot.

Several of the parties referred to the Circuit Court's decision rendered on November 26, 1997. In its order entitled Findings of Fact, Conclusions of Law and Judgment on November 26, 1997, the Circuit Court found that the "parties are entitled to decisions on the issues that they bring before the Commission." Exhibit 182, Schedule BL-1, p. 5. The Circuit Court also stated that "Findings of fact on disputed issues are a legal requirement for the Commission to reach its ultimate determination," citing Section 386.420.2 RSMo (1994), Century State Bank v. State Banking Board of Mo., 523 S.W.2d 856, 859

(Mo. App. 1975) and Glasnapp v. State Banking Board, 545 S.W.2d 382, 387 (Mo. App. 1976). Exhibit 182, Schedule BL-1, p. 5. The Circuit Court stated that "By failing or refusing to decide the issue, the Commission permits the tariff to continue, but denies the parties due process and the potential of an appeal or other review as to the basis of the Commission's decision." Exhibit 182, Schedule BL-1, p. 6. The Circuit Court concluded its decision by reversing and remanding the Commission's Orders of January 22, 1997, January 31, 1997, March 18, 1997 and March 20, 1997 to the Commission for further action. Exhibit 182, Schedule BL-1, p. 7.

If the Commission were to grant Public Counsel's Motion to Dismiss, the Commission would again not be deciding all the issues in this case. The Commission would again be denying the parties due process and the potential of an appeal or other review as to the basis of the Commission's decision. The Circuit Court remanded this case to the Commission for further action. Failure to render a decision after holding a hearing would constitute an incomplete action. The Commission does not believe that the Circuit Court would direct the Commission to hold an unnecessary hearing where no decision was expected to be rendered. Therefore, the Commission finds that it should now decide the issues heard on August 8 and 9, 2000, considering the evidence admitted into the record, and provide a complete record for reviewing courts. Public Counsel's Motion to Dismiss and to Suspend the Briefing Schedule will be denied.

IT IS THEREFORE ORDERED:

1. That Kansas City Power & Light Company is dismissed as a party from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

2. That Williams Natural Gas Company is dismissed as a party from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

3. That Mountain Iron & Supply Company is dismissed as a party from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

4. That the County of Jackson, Missouri, is dismissed as a party from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

5. That Local 53 of International Brotherhood of Electrical Workers AFL-CIO is dismissed as a party from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

6. That St. Joseph Light & Power Company is dismissed as a party from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

7. That UtiliCorp Energy Services is dismissed as a party from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

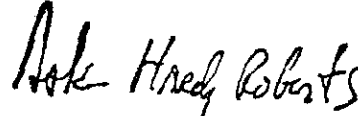
8. That the City of St. Joseph, Missouri, is dismissed as a party from this case pursuant to Commission Rule 4 CSR 240-2.116(3).

9. That Midwest Gas Users' Association's Motion to Extend Time for Response by One Day, filed on August 25, 2000, is granted.

10. That the Office of the Public Counsel's Motion to Dismiss and Suggestions in Support and Request to Suspend Briefing Schedule filed on August 14, 2000, is denied.

11. That this order shall become effective on September 26,
2000.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray, Schemenauer,
and Simmons, CC., concur

Register, Regulatory Law Judge