

117

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 15th
day of June, 2000.

In the Matter of Missouri Gas Energy's)	
Tariff Sheets Designed to Increase Rates)	<u>Case No. GR-98-140</u>
for Gas Service in the Company's Missouri)	
Service Area.)	

In the Matter of Missouri Gas Energy's)	
Proposed Modifications to its Facilities)	<u>Case No. GT-98-237</u>
Extension Policy.)	

ORDER GRANTING MOTION FOR CLARIFICATION
AND MOTIONS TO STRIKE

On December 11, 1998, Missouri Gas Energy (MGE), a division of Southern Union Company, filed a motion for clarification of the Commission's Order Granting Reconsideration and Rehearing in Part, Order Denying Reconsideration and Rehearing in Part, and Order Denying Motion to Stay an Alternative Request to Collect Subject to Refund (Rehearing Order). The case was subsequently stayed pending Circuit and Appellate Court review, and on April 27, 2000, MGE notified the Commission that judicial review was final and renewed its motion for clarification.

In its application for rehearing, MGE alleged that the Commission's Report and Order (R&O) had the effect of reversing the Commission's prior decisions which included the unamortized balance of deferrals in the rate base. MGE's application for rehearing stated:

At pages 19 and 20 of the Report and Order, the Commission determined that the unamortized balance of

SLRP deferrals should be excluded from MGE's rate base. Because the bulk of these SLRP deferrals (i.e., those recorded for periods prior to November 1, 1996) have already been included in rate base by the Commission in prior general rate proceedings, section 386.550, RSMo (1994) precludes the Commission from reversing its treatment and disallowing these deferrals from rate base in this case.

The Commission's Rehearing Order stated in relevant part:

In its arguments, MGE apparently assumes that the Commission is directing MGE to reverse treatment authorized by prior orders and that the Commission is now retroactively disallowing inclusion of the SLRP deferral balances previously authorized to be included in the rate base.

The Commission did not order the retroactive application of the exclusion of the unamortized balance of the SLRP deferrals to previous cases where those amounts have already been included in rate base and amounts calculated. If the Company can separate the funds affected under prior decisions which permitted the unamortized balance to be included in the rate base from the SLRP deferral amounts deferred under the authority of the most recent accounting authority order authorized in Case No. GO-97-301, the Commission has no objection to its doing so and continuing to include unamortized balance amounts existing and treated during prior cases in the rate base. However, if the Company cannot separate the funds identified as unamortized balance which would have been in place at the time of the prior order permitting inclusion of the unamortized balance of the SLRP deferrals in rate base, then the entire account currently known as the unamortized balance of SLRP deferrals shall be excluded from the rate base. This order should have a minimal effect on the Company as the prior balance should be greatly reduced. MGE's arguments are not persuasive in regard to this unamortized balance issue and the application for rehearing and motion for reconsideration will be denied.

The Commission interpreted MGE's arguments in its application for rehearing to mean that an issue which was not included as a part of the record in Case Nos. GR-98-140 and GT-98-237 had been affected by the Commission's decision to exclude the **remaining** unamortized balances from the rate base.

The comments in the Commission's Rehearing Order cited above were intended to address that possibility. According to the motion for clarification, the unamortized balances which MGE was referring to in its application for rehearing were issues that were specifically addressed by the parties and were included in the evidence ruled upon by the Commission in the R&O.

Replies to MGE's motion for clarification were filed by the Office of the Public Counsel (Public Counsel) and by the Staff of the Commission (Staff). Both the Public Counsel and Staff requested that MGE's motion be denied.

The Commission's decision denying rehearing or reconsideration on the issue of the exclusion of the unamortized balance of SLRP deferrals in rate base is appropriate and no adjustments should be made based upon the **remaining** unamortized balances of **all** SLRP deferrals. The Commission's finding that the R&O with regard to the issue of the exclusion of unamortized balances in the rate base should not be reheard or reconsidered is not altered. To the extent that clarification is necessary, MGE's motion for clarification and expedited consideration is granted.

On December 28, 1998, the Public Counsel filed a motion to strike portions of the rehearing direct testimony of MGE's witness, Charles B. Hernandez. Public Counsel argued that Mr. Hernandez's testimony related to the exclusion of the unamortized balance of SLRP deferrals is beyond the scope of the order granting partial rehearing. MGE filed a response opposing the motion to strike.

On January 12, 1999, the Public Counsel filed a motion to strike portions of the rehearing rebuttal testimony of Staff's witnesses,

Charles R. Hyneman and Phillip K. Williams. Public Counsel argued that portions of the rebuttal testimony of Mr. Hyneman also relate to the exclusion of the unamortized balance of SLRP deferrals and are therefore, beyond the scope of the Rehearing Order. Public Counsel further argued that portions of the testimony of Mr. Williams that relate to three errors which Staff asserts need to be corrected are beyond the scope of the Rehearing Order.

The Commission was prohibited from proceeding with the rehearing by order of the Cole County Circuit Court. On May 2, 2000, after judicial review became final and the Commission resumed jurisdiction of this matter, Public Counsel renewed its motions to strike.

The Rehearing Order at ordered paragraph 7 stated in part that:

The affidavit and testimony prefiled shall specifically and clearly explain the individual amounts and updated calculations relating to (a) the Stipulation and Agreement Section Income Statement, Item s. Gross-up of revenue deficiency related to uncollectible expense and gross-down of revenue deficiency related to late payment charge revenues and (b) the correction of the associated deferred taxes related to the inclusion of the unamortized balance of SLRP deferrals.

These were the only two issues for which rehearing was granted. Furthermore, the issue of the exclusion of Unamortized Balance of SLRP Deferrals was specifically denied in the Rehearing Order. The Commission determines that the testimony of Mr. Hernandez¹ and Mr. Hyneman related to the exclusion of the unamortized balance of SLRP deferrals and the

¹ On May 20, 2000, MGE notified the Commission and the other parties that it intends to substitute the testimony of Ms. June Dively for the testimony of Mr. Charles B. Hernandez due to the fact that Mr. Hernandez is no longer an employee of MGE.

testimony of Mr. Williams related to errors as listed below is outside the scope of the Rehearing Order and should not be considered. Therefore, the motions to strike will be granted. The Commission further determines that the testimony of Mr. Hernandez and Mr. Hyneman to be stricken shall not be preserved in the record, nor cross-examination of that evidence be allowed, under Section 536.070(7), RSMo 1994, and 4 CSR 240-2.130(3), as that evidence is wholly repetitious in that the Rehearing Order specifically denied rehearing on this issue.

IT IS THEREFORE ORDERED:

1. That Missouri Gas Energy's Motion for Clarification and Request for Expedited Consideration is granted.

2. That Missouri Gas Energy's request for rehearing or reconsideration on the issue of the exclusion of the unamortized balance of the SLRP deferrals continues to be denied and no adjustments should be made to the revenue requirement based upon the specific evidence that was ruled upon by this Commission in its Report and Order.

3. That the Office of the Public Counsel's motion to strike portions of the direct rehearing testimony of Charles B. Hernandez related to the exclusion of the unamortized balance of SLRP deferrals is granted. The portions of the direct rehearing testimony to be stricken are as follows:

Page 1 line 12 "...and CBH-2..."

Page 2 line 2 "...and (c)" through page 2, line 5
"...to Case No. GO-97-301)."

Page 9 lines 9-21

Pages 10 through 12 all

Page 13 lines 16-22

Page 14 lines 4 "...And although..." through line 7

Page 14 line 18 "Column 4 ..." through line 21

Page 15 line 3 "Second..." through line 11 "...of \$15,519,978."

Schedule CBH-2 all

Schedule CBH-3 all

Schedule CBH-5 all

Schedule CBH-6 all

Schedule CBH-7 all

Schedule CBH-8 column 4

4. That the Office of the Public Counsel's motion to strike portions of the rehearing rebuttal testimony of Charles R. Hyneman related to the exclusion of the unamortized balance of SLRP deferrals and portions of the rehearing rebuttal testimony of Phillip K. Williams related to errors in the case is granted. The portions of the rehearing rebuttal testimony to be stricken are as follows:

Charles R. Hyneman Rehearing Rebuttal Testimony
pages 10 through 23

Phillip K. Williams Rehearing Rebuttal Testimony
page 5, lines 12-23, and page 6, lines 1-14

5. This order shall become effective on June 27, 2000.

BY THE COMMISSION

A handwritten signature in dark 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 and
Schemenauer, CC., concur.
Murray and Simmons, CC.,
not participating.

Dippell, Senior Regulatory Law Judge