

On September 24, 1993, the Commission issued an order giving notice and setting an intervention deadline. No one filed a motion to intervene in this proceeding. On January 27, 1994, the Staff of the Commission filed a memorandum setting forth its recommendation with respect to the joint application. Staff's recommendation was very lengthy and detailed, and in essence recommended that the joint application be denied, unless a lengthy list of conditions was satisfied. On February 4, 1994, a Non-Unanimous Stipulation and Agreement (Stipulation) was filed, which resolved the remaining disputed issues. A copy of the Stipulation is attached hereto as Attachment 1 and incorporated herein by reference. By letter dated February 7, 1994, the Office of the Public Counsel (Public Counsel), which was the sole nonsignatory party, indicated that it did not intend to request a hearing on this matter.

On February 8, 1994 the Commission issued an Order and Notice of Hearing, and on February 15, 1994, a hearing was held, wherein the parties were afforded an opportunity to formally present the Stipulation to the Commission, and respond to questions from the Commissioners and the Hearing Examiner.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

Western Resources is a Kansas corporation which provides natural gas service to customers in the Palmyra District. This service area is relatively small, and at the present time is the only remaining area certificated to Western Resources in the State of Missouri. United Cities is an Illinois and Virginia corporation which provides natural gas service to customers within its certificated areas in the State of Missouri. The Palmyra District is contiguous to existing service territories of United Cities, generally in the Hannibal-Canton area.

The Stipulation, admitted into evidence as Exhibit 1 and attached hereto as Attachment 1 and incorporated herein by reference, purports to settle all issues pertaining to this case. Western Resources, United Cities, and Staff have agreed that the sale of the Palmyra District by Western Resources to United Cities should be approved by the Commission subject to a number of conditions contained in the Stipulation. Public Counsel stated at the hearing in effect that although it is not a signatory to the Stipulation, it is not opposed to the Stipulation. The issues addressed by the Stipulation basically reflect concerns raised by Staff in its memorandum filed on January 27, 1994.

Attached to the joint application were the following exhibits: 1) a Certificate of Corporate Good Standing for a Foreign Corporation in the name of United Cities; 2) a Purchase and Sale Agreement dated July 21, 1993 between Western Resources and United Cities; 3) a resolution of the board of directors of Western Resources; 4) a resolution of the board of directors of United Cities; and 5) a pro forma balance sheet for United Cities. The Stipulation states that United Cities will apply the rules and regulations approved for its Hannibal-Canton District to the Palmyra District, and will adopt the rates of Western Resources on file with the Commission on the date of closing. The Stipulation also provides that United Cities will not implement a general increase in non-gas rates for the Palmyra District for three years from the date of closing the sale transaction.

In its memorandum filed on January 27, 1994, Staff expressed grave reservations concerning the acquisition premium to be paid by United Cities to Western Resources -- the amount of the purchase price above the net book value -- as well as the provisions of a non-competition agreement incorporated as part of the Purchase and Sale Agreement. Pursuant to the non-competition agreement, Western Resources in effect agrees not to compete with United Cities in the Palmyra service area for a period of ten years. Payments by United Cities to

Western Resources under the agreement are calculated by a formula under which the maximum amount to be paid by United Cities is \$720,000. This amount would essentially be paid over a three-year period.

In numbered paragraph 8 on page 4 of the Stipulation, the signatory parties have agreed that the acquisition premium shall be treated below the line for ratemaking purposes, and neither amortization nor inclusion of the premium in rate base shall be sought to be recovered by United Cities. The Stipulation goes on to state: "No effect, including income taxes, of the acquisition premium or the covenant not to compete agreement shall be utilized for ratemaking purposes in any Missouri proceeding." Stipulation at 4. Counsel for United Cities was questioned at the hearing as to his understanding of what this provision means. Based upon the response of counsel for United Cities, and the Commission's understanding that United Cities will never seek rate recovery of any payments required under the non-competition agreement, the Commission is of the opinion that any concerns relating to the non-competition agreement have been ameliorated.

The Stipulation also contains provisions relating to a number of other issues. The Stipulation provides that United Cities shall be made a party to Case Nos. GR-92-80, GR-93-140, GR-94-101, GR-94-277, and any other dockets which may be created covering the PGA/ACA/TOP revenues and expenses of Western Resources in the Palmyra District prior to the transfer of the assets, and that United Cities agrees to assume responsibility for making adjustments to the ACA balance for customers in the Palmyra District pursuant to its tariffs, resulting from the tariff provisions of Western Resources which were in effect for the time periods covered by the above-referenced cases. With regard to gas safety, the signatory parties have agreed that United Cities will submit a revised Replacement Program for service and yard line replacements relating to the Palmyra District within 60 days of the effective of the order approving the sale

of assets, and will meet with fire, police, and other appropriate public officials in the Palmyra District to plan for the minimization of pipeline safety hazards. With regard to the gas transportation customers served by Western Resources, the signatory parties have agreed that those customers will be grandfathered by United Cities in the event there is a conflict in transportation eligibility requirements, with any conflict with regard to the appropriate level of usage needed by a customer to qualify for transportation service to be addressed in United Cities' next general rate proceeding.

The signatory parties also agree that United Cities shall file a copy of all journal entries consummating the sale with the Commission within 60 days of the closing date. The Stipulation further notes that the agreement of the signatory parties is based upon the understanding that the Commission would issue an order approving the transaction no later than February 18, 1994, to be effective February 28, 1994, in order that Western Resources and United Cities may close the sale by February 28, 1994.

The Commission, after considering the joint application and attachments thereto, Staff's memorandum filed January 27, 1994, and the aforesaid Stipulation, and after examining the parties at the hearing, determines that the Stipulation is just and reasonable with respect to the sale of the Palmyra District by Western Resources to United Cities, and as to the conditions agreed upon in conjunction with the sales transaction.

In restating portions of the Stipulation, the Commission is not changing the language and terms of the Stipulation, but adopts it in full as resolving all issues that were set out therein. The Commission in adopting the Stipulation is satisfied that the negotiated settlement represents a reasoned and fair resolution of the issues in this case and that it would be in the interest of all parties for the Commission to adopt the Stipulation.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

Western Resources and United Cities are public utilities subject to the jurisdiction of the Commission pursuant to Chapters 386 and 393, RSMo 1986, as amended.

Neither Public Counsel nor any other party requested a hearing pursuant to 4 CSR 240-2.115(1), and thus the Commission will treat the Non-Unanimous Stipulation and Agreement as a unanimous stipulation and agreement. Pursuant to Section 536.060, RSMo 1986, the Commission may approve a stipulation and agreement concluded among the parties as to any issues in a contested case. The standard for Commission approval of a stipulation and agreement is whether it is just and reasonable. The Commission, in accordance with its statutory power, has determined that the stipulation and agreement which settles all issues raised in this case is just and reasonable and appropriate and therefore should be approved in full.

The standard review for approval of the sale and transfer of a gas corporation's franchise, works, or system is whether the transfer is not detrimental to the public interest. See, e.g., State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz, 596 S.W.2d 466, 468 (Mo. App. 1980). The Palmyra District is the only area where Western Resources still operates as a public utility within the State of Missouri. The sale of Western Resources' assets relating to the provision of gas service in the Palmyra District to a utility like United Cities, which already operates as a utility within the State of Missouri is familiar with Missouri statutes and regulations pertaining to utilities, and which has contiguous service territories, is not detrimental to the public interest.

Based upon the Commission's Findings of Fact in this case and Conclusions of Law, the Commission determines that United Cities should file tariffs in conformity with the provisions of the Non-Unanimous Stipulation and Agreement.

IT IS THEREFORE ORDERED:

1. That the Missouri Public Service Commission hereby approves and adopts the Non-Unanimous Stipulation and Agreement agreed to and signed by Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, United Cities Gas Company, and the Staff of the Missouri Public Service Commission, which is incorporated herein by reference and attached hereto as Attachment 1.

2. That the sale and transfer of certain assets pertaining to the provision of gas service in Palmyra, Missouri and surrounding areas in Marion County, Missouri by Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, to United Cities Gas Company pursuant to the Purchase and Sale Agreement attached as Attachment 2 to the joint application of Western Resources, Inc. d/b/a Gas Service, a Western Resources Company and United Cities Gas Company be and is hereby approved, subject to the terms and conditions set forth in the Non-Unanimous Stipulation and Agreement and this Report and Order.

3. That Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, and United Cities Gas Company be and are hereby authorized to take any and all other actions necessary to effectuate the sales transaction contemplated by the joint application and this Report and Order.

4. That Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, and United Cities Gas Company be and are hereby authorized to enter into, execute, and perform in accordance with the terms of all other documents reasonably necessary and incidental to the performance of the sales transaction which is the subject of the joint application and this Report and Order.

5. That Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, and United Cities Gas Company be and are hereby ordered to take any action or refrain from taking any action necessary to implement and comply with the provisions of the Non-Unanimous Stipulation and Agreement attached hereto as Attachment 1.

6. With respect to the gas service area in Palmyra, Missouri and surrounding areas in Marion County, Missouri, United Cities Gas Company be and is hereby authorized to charge and apply the same rates as the approved rates of Western Resources, Inc. d/b/a Gas Service, a Western Resources Company which are on file with the Missouri Public Service Commission on the date of the closing of the subject transaction, and to apply the rules and regulations approved for United Cities Gas Company's Hannibal-Canton District.

7. That United Cities Gas Company be and is hereby authorized to file tariffs consistent with the Non-Unanimous Stipulation and Agreement and this Report and Order.

8. That Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, shall file a pleading notifying the Missouri Public Service Commission of the closing date of the sale and transfer of assets within five (5) days after its completion.

9. That contemporaneous with the date closing of the subject transaction actually takes place, the tariffs and certificate of convenience and necessity held by Western Resources, Inc. d/b/a Gas Service, a Western Resources Company with respect to the gas service area of Palmyra, Missouri and surrounding areas in Marion County, Missouri shall be and are hereby cancelled, and its responsibilities as a gas corporation and public utility in the State of Missouri with respect to the assets and service area of the subject transaction shall terminate.

10. That contemporaneous with the date closing of the subject transaction actually takes place, United Cities Gas Company shall be and is hereby granted a certificate of convenience and necessity for the provision of natural gas service in the area which is identical in scope to the area held by Western Resources, Inc. d/b/a Gas Service, a Western Resources Company in Palmyra, Missouri and surrounding areas in Marion County, Missouri.

11. That United Cities Gas Company be and is hereby authorized to own, operate, control, manage, and maintain the assets which are the subject matter of this proceeding, and to provide gas service to the public as a gas corporation and public utility subject to the jurisdiction of the Missouri Public Service Commission in the service area which is the subject matter of the joint application and this Report and Order, commencing upon the date closing of the subject transaction actually takes place.

12. That United Cities Gas Company be and is hereby authorized to be a party in any dockets covering the PGA/ACA/TOP revenues and expenses of Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, in the gas service area of Palmyra, Missouri and surrounding areas in Marion County, Missouri prior to the closing date of the subject transaction, including Case Nos. GR-92-80, GR-93-140, GR-94-101, and GR-94-227. Further, a copy of this Report and Order shall be filed in those dockets.

13. That Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, be and is hereby authorized to transfer to United Cities Gas Company all security deposits held by Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, on the closing date of the subject transaction, which are applicable to accounts for customers located in the gas service area of Palmyra, Missouri and surrounding areas in Marion County, Missouri.

14. That United Cities Gas Company be and is hereby authorized to keep and maintain books and records for the gas service area in Palmyra, Missouri and

surrounding areas in Marion County, Missouri at the principal office of United Cities Gas Company in Brentwood, Tennessee, after the closing date of the subject transaction.

15. That United Cities Gas Company be and is hereby authorized to encumber the assets acquired from Western Resources, Inc. d/b/a Gas Service, a Western Resources Company through the subject transaction, as may be necessary in accordance with the terms and conditions of any financing instruments of United Cities Gas Company, and be and is hereby specifically authorized to extend the lien of its Indenture to the assets acquired under the Purchase and Sale Agreement.

16. That except as specifically provided in the Non-Unanimous Stipulation and Agreement and this Report and Order, nothing in this Report and Order shall be considered a finding of the Commission of the value for ratemaking purposes of the properties herein involved, or as an acquiescence in the value placed upon said properties by Western Resources, Inc. d/b/a Gas Service, a Western Resources Company, or United Cities Gas Company, and the Missouri Public Service Commission reserves the right to consider the ratemaking treatment to be afforded these transactions in any later proceeding.

17. That this Report and Order shall become effective on February 28, 1994.

BY THE COMMISSION

(S E A L)



David L. Rauch
Executive Secretary

Mueller, Chm., McClure and
Kincheloe, CC., Concur.
Perkins and Crumpton, CC.,
Absent.

Dated at Jefferson City, Missouri,
on this 18th day of February, 1994.

FILED

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURIMISSOURI
PUBLIC SERVICE COMMISSION

In the matter of the joint application)
of Western Resources, Inc. d/b/a Gas)
Service, a Western Resources Company,)
and United Cities Gas Company for an)
order authorizing the sale, transfer and)
assignment of certain assets relating)
to the provision of gas service in)
Palmyra, Missouri and surrounding areas)
in Marion County, Missouri to United)
Cities Gas Company.)

Case No. GM-94-87

NON-UNANIMOUS STIPULATION AND AGREEMENT

On September 9, 1993, Western Resources, Inc. d/b/a Gas Service, ("Western Resources") and United Cities Gas Company ("United Cities"), filed a Joint Application for an order authorizing, among other things, the sale, transfer and assignment of certain assets relating to the provision of gas service in Palmyra, Missouri and the surrounding area in Marion County ("the Palmyra district") from Western Resources to United Cities. The application sought approval to effect the transactions contemplated in the Purchase and Sale Agreement dated July 21, 1993 ("the Sale Agreement").

On September 24, 1993, the Public Service Commission issued an order setting an intervention deadline of October 25, 1993. No interventions were filed.

On January 27, 1994, the Staff of the Missouri Public Service Commission ("the Staff") filed a memorandum containing its

observations and recommendations regarding the proposed sale of assets. Subsequent to the filing of that memorandum, the undersigned parties engaged in settlement discussions. As a result of those discussions, the parties have reached the following stipulations and agreements and recommend that the Commission issue an order approving this Stipulation and Agreement which disposes of all of the issues in this case:

1. United Cities shall file with the Commission a copy of all journal entries consummating the sale within 60 days of the closing date.

2. United Cities shall submit a revised Replacement Program for service and yard line replacements relating to the Palmyra district within 60 days of the effective date of the order of the Commission approving the sale of assets.

3. United Cities shall meet with fire, police and other appropriate public officials in the Palmyra district to assess the resources of those organizations and to plan how pipeline safety hazards can be minimized by mutual assistance. United Cities will notify the Gas Safety Staff when liaisons with such public officials are conducted and when, and by what methods, customers and the general public in the Palmyra district are notified of any changes resulting from the sale of the assets.

4. United Cities shall notify all gas transportation customers served by the Western Resources tariffs in the Palmyra district of any changes in the transportation service tariff

provisions which affect the customer and which have been approved by the Commission. All current Western Resources transportation customers shall be "grandfathered" as regards United Cities transportation requirements in the event there is a conflict in eligibility requirements, until such time as there is a general rate proceeding involving the Palmyra district.

5. United Cities agrees to address the appropriate level of usage needed by a customer to qualify for transportation service in its next general rate proceeding.

6. United Cities agrees to assume responsibility for making adjustments to the ACA balance for customers in the Palmyra district pursuant to its tariffs resulting from the tariff provisions of Western Resources which were in effect for the time periods covered by Case Nos. GR-92-80, GR-93-140, GR-94-101 and GR-94-227. United Cities shall be made a party to Case Nos. GR-92-80, GR-93-140, GR-94-101 and GR-94-227, and any other dockets which may be created covering Western Resources' PGA/ACA/TOP revenues and expenses in the Palmyra district prior to the transfer of the assets. Western Resources will provide access to the information needed to support its gas purchase practices conducted prior to closing. This includes access to all invoices, billed revenue support and all other necessary information and knowledgeable personnel to verify the appropriate ACA factors.

7. United Cities agrees to file proposed tariff sheets for the Palmyra district at least ten days prior to the scheduled

closing of the Sale Agreement. The proposed effective date of such tariffs shall be the day after the closing date.

8. The amount of any acquisition premium (i.e., the amount of the purchase price above net book value, excluding amounts paid for the covenant not to compete) paid by United Cities for the gas properties of Western Resources subject to the Sale Agreement shall be treated below the line for ratemaking purposes in Missouri. Neither amortization nor inclusion of the premium in rate base shall be sought to be recovered by United Cities. No effect, including income taxes, of the acquisition premium or the covenant not to compete agreement shall be utilized for ratemaking purposes in any Missouri proceeding.

9. Subject to the limitations of paragraph 10, United Cities will not implement a general increase in non-gas rates for the Palmyra district for three years from the date of closing of the subject transaction. Subject to the same limitations of paragraph 10, no party hereto shall bring a complaint with regard to non-gas rates, or assist anyone else in the instigation or processing of a complaint with regard to non-gas rates for the Palmyra district, for three years from the date of closing of the subject transaction. This agreement shall not be interpreted to preclude any proper party from bringing a complaint with regard to the terms and conditions upon which service is provided to the Palmyra properties (i.e. not related to rates) or fully participating in any other complaint not related to rates.

10. The provisions above relating to a moratorium on United Cities filing a general non-gas rate increase for the Palmyra district and the prohibition on the filing of complaints shall not apply if any unusual event or events which would have a significant impact on the Missouri gas business of United Cities occurs, such as (a) an act of God (b) a significant change in current federal or state laws or (c) a significant change in current federal or Missouri regulatory policies.

11. The parties agree that this Stipulation and Agreement is based upon the understanding that the Commission shall issue an order approving the transaction which is the subject of this case no later than February 18, 1994, effective February 28, 1994, to allow for closing by February 28, 1994.

12. This Stipulation and Agreement represents a negotiated settlement for the sole purpose of disposing of the issues addressed herein, and none of the signatories to this Stipulation and Agreement shall be prejudiced or bound in any manner by the terms of the Stipulation and Agreement, and this Stipulation and Agreement shall be inadmissible in and shall not be cited or referred to as precedent in any other proceeding, except as otherwise specified herein.

13. None of the signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination or cost allocation underlying or allegedly underlying this Stipulation and Agreement.

14. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the signatories waive, with respect to the issues resolved herein, their respective rights to cross-examine witnesses, their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo 1986; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1986; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1986.

15. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not approve and adopt this Stipulation and Agreement in total, or in the event the Commission does not issue a final order approving the subject transaction, effective no later than February 28, 1994, in accordance with the provisions contained herein, this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

16. At the Commission's request, the Staff shall have the right to submit to the Commission, in confidential memorandum or oral briefing form, an explanation of its rationale for entering into this Stipulation and Agreement, and to provide to the Commission whatever further explanation the Commission requests. The Staff's confidential memorandum or briefing shall not become part of the record of this proceeding and shall not bind or

prejudice the Staff in any further proceeding. In the event the Commission does not approve this Stipulation and Agreement, the Staff's confidential memorandum or briefing shall not bind or prejudice the Staff in this proceeding. Any rationales advanced by the Staff in such a confidential memorandum or briefing are its own and are not acquiesced in or otherwise adopted by the other signatories.

WHEREFORE, the parties hereto respectfully request that the Commission issue its order:

(a) Authorizing Western Resources and United Cities to perform in accordance with the terms and conditions of the Sale Agreement;

(b) Authorizing Western Resources to sell, transfer and assign the assets described in the Sale Agreement to United Cities;

(c) Authorizing the transfer of Western Resources' pertinent certificates of convenience and necessity to United Cities;

(d) Authorizing United Cities to purchase and acquire the assets, as more particularly described in the Sale Agreement, upon the terms and conditions set out therein;

(e) Authorizing United Cities to own, operate, control, manage and maintain the assets and to provide gas service to the public as a gas corporation and public utility subject to the jurisdiction of the Commission in those areas in which Western Resources now operates in Missouri which are the subject of the Sale Agreement;

(f) Authorizing United Cities to encumber the assets to be acquired from Western Resources in the subject transaction as may be necessary in accordance with the terms and conditions of any of United Cities' financing instruments, and specifically authorizing United Cities to extend the lien of its Indenture to the assets to be acquired under the Sale Agreement;

(g) Authorizing United Cities to adopt the rates (i.e. customer charges and commodity charges) of Western Resources as may be on file with and approved by the Commission on the date of closing of the subject transaction, and to apply the rules and regulations approved for United Cities' Hannibal-Canton district to the Palmyra district, and to operate under the same as they may be changed from time to time as provided by law;

(h) Authorizing the transfer from Western Resources to United Cities of all security deposits held by Western Resources on the date of closing of the subject transaction which are applicable to accounts for customers located in the Palmyra district;

(i) Authorizing United Cities to keep and maintain certain books and records for the Palmyra district at United Cities' principal office in Brentwood, Tennessee after the closing of the subject transaction;

(j) Authorizing Western Resources and United Cities to enter into, execute and perform in accordance with the terms of, all other documents which may be reasonably necessary and incidental to

the performance of the transactions which are the subject of the Sale Agreement and joint application;

(k) Authorizing Western Resources, effective upon the closing of the involved transactions, to terminate its responsibilities as a gas corporation and a public utility in Missouri with respect to the assets and areas covered by the Sale Agreement, except as provided in the Stipulation and Agreement;

(l) Authorizing United Cities to file tariffs consistent with this Stipulation and Agreement;

(m) Canceling Western Resources' tariffs, to be effective the day after closing; and

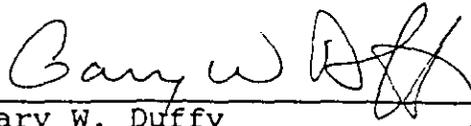
(n) Authorizing United Cities to be a party to Case Nos. GR-92-80, GR-93-140, GR-94-101, and GR-94-227, and any other dockets which may be created covering Western Resources' PGA/ACA/TOP revenues and expenses in the Palmyra district prior to the transfer of the assets.

Respectfully submitted,



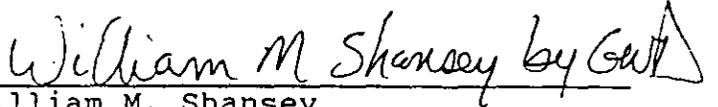
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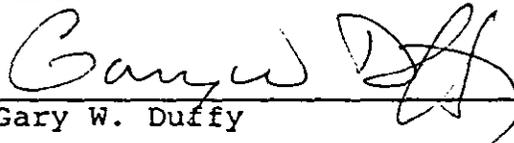
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Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing document was served on all parties of record in this proceeding this 4th day of February 1994, by placing a copy of same in the United States Mail, first class postage prepaid and properly addressed, or hand delivering same.



Gary W. Duffy