BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of United Cities Gas Company's proposed tariffs to increase rates for gas service provided to customers in the Missouri service area of the company.	))))	Case No. GR-93-47

APPEARANCES

Gary W. Duffy, Brydon, Swearengen & England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, for United Cities Gas Company.

Douglas E. Micheel, Senior Public Counsel, Office of Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of Public Counsel and the public.

Jeffrey A. Keevil, Senior Counsel, Thomas H. Luckenbill, Assistant General Counsel, and Eric B. Witte, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

HEARING EXAMINER: Edward C. Graham.

REPORT AND ORDER

Procedural History

On August 20, 1992, United Cities Gas Company (Company) filed proposed tariffs with the Missouri Public Service Commission (Commission) bearing a requested effective date of September 19, 1992. These proposed tariffs were designed to produce an overall Company increase of $1,200,000 in charges for gas service, exclusive of gross receipts and sales tax.

On September 16, 1992 the Commission issued a Suspension Order And Notice Of Proceedings, which suspended the Company's proposed tariffs until July 17, 1993. On October 16, 1992 Company filed its direct testimony and minimum filing requirements. An intervention date was set for October 16, 1992 and there were no intervenors. On November 6, 1992 the Commission issued a Protective Order in this case. On November 20, 1992 the Commission issued an Order establishing a test year of the twelve (12) months ending May 31, 1992 as updated

through October 31, 1992. On February 11, 1993 the Commission's Staff (Staff) filed its direct testimony and the Office of Public Counsel (Public Counsel) filed its direct testimony.

On February 22, 1993 a prehearing conference convened at which all parties appeared and participated. On February 26, 1993 the Commission issued its Order denying a true-up audit. A Hearing Memorandum And Stipulation And Agreement setting forth the issues that were stipulated and agreed to and the issues that were to be contested was filed by the parties on March 8, 1993. On March 12, 1993 Company filed its rebuttal testimony and Staff filed its rebuttal testimony. On March 31, 1993 Company filed its surrebuttal testimony and Staff filed its surrebuttal testimony.

The hearing convened on April 6, 1993 to consider the Stipulation And Agreement and take up five contested issues. Pursuant to the briefing schedule, simultaneous briefs were filed by all parties on May 3, 1993 and simultaneous reply briefs were filed by Company and Staff on May 14, 1993. Public Counsel did not file a reply brief.

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.

United Cities Gas Company (Company) is a gas distribution company serving approximately 274,000 customers in Missouri, Virginia, Tennessee, South Carolina, Georgia, Illinois, Iowa and Kansas. Approximately 14,000 or five percent of these customers are in the Missouri towns of Alexandria, Ashton, Gregory Landing, Kahoka, Luray, Medill, Wayland, Edina, Knox City, Canton, Ewing, LaBelle, LaGrange, Lewistown, Monticello, Hannibal, Taylor, West Quincy, Arbela, Granger, Memphis, Naylor, Neelyville, Qulin and Bowling Green. Company's

principal office is located at 5300 Maryland Way, Brentwood, Tennessee 37027. The southern Missouri properties are managed from a division headquarters located in Franklin, Tennessee. The northern Missouri properties are managed from a division headquarters located in Overland Park, Kansas.

I. Test Year

Company proposed a test year of twelve months ending May 31, 1992. Staff proposed a test year of twelve months ending May 31, 1992 as updated through October 31, 1992. On November 20, 1992 the Commission established the test year to be the twelve months ending May 31, 1992 as updated through October 31, 1992.

II. Revenue Requirement, Rate Design, Nonrevenue Issues and Nonrevenue Tariff Changes

On March 8, 1993 the parties filed a Hearing Memorandum And Stipulation And Agreement. The Stipulation And Agreement, which is Section II of the Hearing Memorandum, with revised Attachment 1, is attached hereto as Appendix A and incorporated herein by reference. The Stipulation And Agreement purports to settle all issues pertaining to revenue requirement, rate design, certain nonrevenue issues and certain nonrevenue tariff changes. There were five (5) nonrevenue tariff issues that were not agreed to and settled by the parties which are decided hereinafter by the Commission.

Company and Staff have agreed to a dollar settlement of the revenue requirement so that Company should be authorized to file revised gas tariffs and rate schedules designed to produce an increase in overall Missouri jurisdictional gross annual revenues of $425,000, exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar fees or taxes. Public

Counsel does not overtly agree to this revenue requirement increase but will not oppose it.

All parties have agreed that the rates necessary to implement the increase provided by the Stipulation And Agreement should be designed as provided on revised Attachment 1 of the Stipulation And Agreement as amended by agreement of the parties and filed on May 19, 1993, also attached hereto and incorporated herein by reference. The parties note that the proposed rates include certain rate design changes intended to bring the rates closer to the cost of rendering service.

The parties also have agreed to certain nonrevenue issues including booking the currently authorized depreciation rates, performing specified payroll studies, implementing its long term project of installing a fixed asset system with the goal of being operational within the next two years, and recording the appropriate state deferred taxes for Missouri by December 31, 1993.

The parties have also agreed to certain nonrevenue tariff changes. There are twenty-four (24) tariff changes that pertain to the Company's operation. One settled issue concerns updating the Company's Purchased Gas Adjustment (PGA) clause to bring base volumes to a current basis and to restate the base wholesale gas costs and relating PGA factors to the wholesale rates. The parties agreed to utilize specified billing determinants for purposes of the PGA rebasing. Other settled issues affect the filing of future revised PGA clauses and concern a threshold level for filing of three percent for both firm and nonfirm customers and the proper notice requirement to the Commission. Also, the parties agreed to specific new language for the Company tariffs pertaining to PGA and Actual Cost Adjustment (ACA) clauses. Other settled issues include the deletion of the Bowling Green "specific" interruptible gas service schedule, the deletion of the curtailment supplemental supply schedule, addition of notice requirements for a transportation customer, the addition of a balancing provision so as to

duplicate the respective upstream supplier, the decrease of the interest rate on customer deposits, the institution of new standards for piping and gas burning equipment, the Company's proposed provision regarding testing of a customer's meter, the charge to a customer for the cost and installation of an automated meter reading device, the charge for processing bad checks, the addition of language regarding residential extensions to require space heating in order to qualify for a free length allowance, the addition of language regarding partial service, the language concerning the computation of the refund adjustment, the increase and consequent necessary language of the minimum qualification standards for Company's former transportation and interruptible customers to 240,000 Ccf per year, an amendment to define "minimum bill" applicable to all rate schedules, an amendment to Company's tariff concerning "character of service" as to transportation customers, and an amendment to specify that the rates upon which the PGA will be based are the most recent FERC-approved rates for FERC-regulated services and most recently available actual costs that it is paying suppliers for nonregulated services.

The Commission, after considering the aforesaid Stipulation And Agreement with the revised Attachment 1 and examining the parties at the hearing, determines that the Stipulation And Agreement with revised Attachment 1 is just and reasonable as to the revenue requirement agreed to by Company and Staff and the rates as agreed to in the rate design. Also, the Commission determines that the nonrevenue issues stipulated and agreed to are appropriate and should be required of the Company by changing its operating accounting procedures as to depreciation, performing payroll studies, implementing a fixed asset system and recording the appropriate state deferred taxes. Furthermore, the Commission determines that the nonrevenue tariff changes stipulated and agreed to by the parties are appropriate and that the Company should make these tariff language changes as specified in the Stipulation And Agreement.

In restating the Stipulation And Agreement with revised Attachment 1, the Commission in no way is changing the language and terms of the Stipulation And Agreement with revised Attachment 1, but adopts it in full as resolving those contested issues therein set out.

III. Time Period for Billing Adjustments

Company has proposed tariff language to set out an appropriate time period in which corrections to billing errors could be acted upon. Company claims this period acts in the same fashion as a "statute of limitations" because any action or correction of the error past the cutoff period would be barred. Staff and Company are in agreement on all but one aspect. Both agree that corrections to billing errors will be made for a maximum period of five years on nonresidential customers. Both agree that the maximum period on overcharges to residential customers will also be five years. The disagreement concerns the period of time for billing residential customers if there is an undercharge. Staff wants to limit that period to one year prior to the date of discovery of the error, inquiry, or actual notification of the Company, whichever occurs first. Company argues for uniformity and wants a five-year limit from the discovery of the error. Company states that Section 516.120(1), R.S.Mo. 1986, grants a five-year period on a contract claim for a party to file an action in Missouri courts:

> **516.120. What actions within five years.--**
> **Within five years:**
>
> (1) All actions upon contracts, obligations or liabilities, express or implied, except those mentioned in section 516.110, except upon judgments or decrees of a court of record, and except where a different time is herein limited;

The Company states that any attempt by the Commission to arbitrarily limit Company's period of recourse against customers who have been undercharged to

twelve billing cycles or one year would violate the statute of limitation period as set out by Missouri statute. The Company also states that to do so would ignore the "open courts" provision of Article I, Section 14 of the Missouri Constitution and as a result would be an act by the Commission in excess of the Commission's administrative powers. Article I, Section 14 of the Missouri Constitution states:

> "[t]hat the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale or delay."

The Company states that to adopt Staff's position would deny Company access to Missouri courts to enforce its contractual rights that the substantive law of this state recognizes. For the Commission to adopt a billing adjustment period as suggested by Staff, Company says, would encroach upon the Missouri General Assembly's exclusive right to impose statutes of limitation upon the right to pursue causes of action in Missouri courts.

Staff states that it is unreasonable for the Company to expect the residential customer to pay for underbills for an extended period of time and that a limitation on the period for rebilling an underpayment will be an incentive to the Company to keep underbills to a minimum. Staff believes that twelve consecutive months prior to the discovery, inquiry or actual notification of the Company, whichever was first, is reasonable. Staff wishes to draw a distinction between a billing adjustment tariff provision and a statute of limitations. Staff states that a billing adjustment tariff provision operates backward in time "from the date of discovery, inquiry or actual notification of the Company, whereas a statute of limitation runs forward in time from the accrual of the cause of action." Staff continues, saying that this raises the question of when the cause of action accrues so as to trigger the running of the statute of limitations. In support of its claim Staff refers to ***DePaul Hospital***

v. Southwestern Bell Telephone Company, 539 S.W.2d 542 (Mo. App. 1976). That case involved an action by a nursing school against a telephone company to recover damages with interest for rate overcharges. The Court in that case stated that the key issue is the time of accrual of the cause of action. The Court found that the cause of action was not barred by any statute of limitations because no overcharges could be brought until the Public Service Commission acted on the complaint filed with it and made a determination as to which of two rates applied. Staff states its position, based on its understanding of the case, that the billing adjustment tariff provision at issue herein runs back in time from the date of discovery by the Company, while a statute of limitations runs forward in time from the date the Commission makes a determination that an incorrect charge had in fact been made. Staff's position, simply stated, is that a billing adjustment tariff is not synonymous with a statute of limitations.

The Commission determines that Staff's position, which limits the billing adjustment period for an undercharge to one year prior to the date of discovery of the error, inquiry or actual notification of the Company, whichever occurs first, is correct. The business relationship between a public utility and its customers is rooted in contract. ***National Food Stores, Inc. v. Union Electric Co.***, 494 S.W.2d 379, 381 (Mo. App. 1973). The Court stated that an electric power company has "an obligation to provide a patron with adequate and continuous service, arising either from express contract, a regulatory enactment, or implied contract." The Commission in finding for Staff determines that the customer's right to a correctly billed charge is contractual pursuant to tariffs and collections on such charges would be covered by the five-year statute of limitation period as set by the General Assembly. However, an undercharge is an incorrectly billed charge. This instance creates a unique situation that should be the subject matter of regulation. A customer who is incorrectly billed loses the opportunity to curtail the usage of gas should such action become necessary

in order to control the total amount of the monthly bill. The regulated relationship between the company and customer is such that accurate information about the price and total cost is a necessary contractual component. The Commission, therefore, determines that the Staff's billing adjustment proposal addresses this relationship and is an integral provision to the contract between the customer and the company. The regulated company receives a monopoly right; as a result, it may be appropriate for the Commission to require the company to enter into special contractual provisions that delineate and restrict its causes of action. Therefore, the Commission finds that limiting the right of a company to collect on or accrue a cause of action for an undercharge for residential customers is a proper regulatory limitation. This regulation obviously puts a responsibility on the company to eliminate undercharges. In so finding for the Staff, the Commission is not restricting Company from its right to collect for correctly billed charges, or in the case where the undercharge is caused by an act of the customer.

The Commission in so finding herein is not limiting the Company's cause of action in violation of the statute of limitations as set by the General Assembly. The Staff's proposal defines and establishes the Company's cause of action. The Commission determines this to be a proper regulatory function. The Commission differs with Staff, however, as to the date of accrual of the cause of action. The ***DePaul Hospital*** case referred to by Staff involves an overcharge. This case involves the date of accrual of the cause of action of an undercharge to a residential customer. Staff's proposed tariff language sets the date of accrual of the cause of action to be one year prior to the date of discovery of the error, inquiry, or actual notification of the Company, whichever occurs first. From the date of accrual of the cause of action the statute of limitations as set by the General Assembly operates to allow the Company five years forward in which to bring a cause of action in a court to collect. The

Commission in so finding rejects Company's reasoning that a statute of limitation and billing adjustment period are synonymous. The billing adjustment period is found to act as a part of the regulatory contract that establishes and allows for the cause of action. Viewed in this way the billing adjustment period is deemed to have a legal purpose separate and apart from the statute of limitation period as set by the General Assembly.

The Commission, therefore, determines that the Staff's proposal to require a billing adjustment tariff to limit the Company from collecting for an undercharge to a residential customer to a period of one year prior to the date of discovery of the error, inquiry, or actual notification of the Company, whichever occurs first, should be allowed.

Company's position that there be a five-year period for collection on undercharges to residential customers equivalent to the statute of limitation period as set out by Section 516.120(1), R.S.Mo. 1986, is disallowed.

IV. Interest on the Overrecovery of Gas Costs (PGA)

Staff is proposing to add tariff language to the Company's PGA clause which provides that "[i]f there is an over-recovery in the ending balance of the Deferred Gas Cost account that exceeded 5% of total gas costs, the Company shall apply interest at the annual rate of 6% on the over-recovery of gas costs...." Staff states that the reason for this proposal is to provide an incentive for the Company to keep PGA rates as close as possible to the actual cost of gas and not overcollect.

The Company believes that either the present situation, in which there is no interest provision in the PGA, should apply, or that the provision should, in addition to allowing customers interest on overcollections, allow the Company to receive interest on undercollections so that the shareholders are compensated for the use of their funds. Company also believes that the interest rates

applied to overcollections and undercollections should be uniform. The Company argues that it is a mistake for the Staff to argue that Company controls the cost of gas. Company states that the majority of the components of the PGA clause are determined either by the FERC or this Commission and that as much as 95 percent or more of the cost of gas is tied to a market "index" price of gas over which the Company has no control.

The Commission determines that at the present state of reacting to the consequences of FERC Order No. 636, the status quo should be maintained as to whether interest should be charged to overcollections and undercollections of gas costs. The evidence does not disclose that there has been a significant problem as to overcollections by Company in recent years. In utilizing Staff's proposed five percent allowance for a threshold, only the 1991-1992 period exceeded the proposed threshold. That exception was shown to be attributable to factors other than neglect or any intention on the part of Company to run up large overcollections. The 1991-1992 overcollection of $517,621 was largely attributable to take-or-pay billings rather than the cost of gas itself. The actual overcollection of gas costs in that year amounted to $80,407, which was a one percent variance from the actual costs of gas. The remainder of $437,214 was the result of take-or-pay costs imposed by Panhandle Eastern Pipe Line Company. The Commission is of the opinion that the history of the Company in gas cost collections does not justify the need to impose a threshold to serve as an incentive for the Company not to overcollect. The Staff has correctly pointed out that the Company will have more control over the cost of gas in the future as a result of FERC Order No. 636. Some of these areas of control will be the term of supply contract, the reliability and deliverability in the gas contained in the contract, the flexibility in the contract for varying takes or limiting price savings, the choice of supplier, the choice of a transportation path, the choice of whether the gas will be bought at a processing plant, pooling plant or

wellhead, the use of storage, the technique and approach on estimating gas load, and the mix of interstate pipeline services. All of these examples should increase the control that the Company will have over the cost of gas. The Commission does not believe that a threshold should be established until there is some evidence of actual purchasing practices that would justify the imposition of a threshold wherein interest would be charged either to the Company for the benefit of the customers or by the Company for the benefit of the Company's shareholders. Until such time, the Commission determines that the status quo should be maintained.

The Commission, therefore, determines that the Staff's proposal to add tariff language to the Company's PGA clause which provides for interest chargeable to the Company when there is an overrecovery of gas costs that exceeds five percent of total gas costs should be disallowed.

The Commission determines that the present procedure wherein there is no interest on either overcollections or undercollections of gas costs by the Company should be retained.

V. Establishment of a Ceiling Price for the Company's Gas Charge Adjustment (GCA)

Staff is proposing that specific language be added to the Company's tariffs in the Company's PGA clause which states that the Gas Charge Adjustment (GCA) of the Company be allowed to go no higher than $5.00/Mcf. Historically, the Company's GCA was restrained by the FERC-regulated price charged by the Company's interstate supplier. This provision effectively acted as a ceiling to the current recovery factor and is intended to provide some assurance that the estimated gas rate charged to customers had an upper bound which was overseen by the FERC. Due to the effect of FERC Order No. 636, there will no longer be a FERC-approved pipeline rate to serve as a ceiling. Staff states that the Com-

pany's PGA will have no limit, and will result in automatic pass-through of unregulated and unaudited costs until the annual true-up audit which occurs many months later.

The Company believes that an artificial cap on the PGA is not needed. The Company states that the Commission will continue to maintain control over PGAs by having the Staff review the filings. The Company also states that the only thing missing will be a tariff price for the cost of the commodity itself, which will be replaced with free market contracts with producers. The Company further states that the prices in those contracts can be compared with industry publications to determine if they deviate significantly from index prices, and, also, whether the deviation is justified on the basis of delivery conditions or other matters. The Company believes that an artificial cap would force it to file, when it deems necessary, a separate tariff to modify the cap.

The Commission determines that any artificial price cap on the GCA is not justified at the present. As stated by Staff, the proposed ceiling of $5.00/Mcf is well above the Company's highest current GCA of approximately $4.00/Mcf and is higher than the GCA has been historically. The Commission is of the opinion that until there is evidence to justify the imposition of an artificial price cap, it would be inappropriate to order its implementation. The effects of FERC Order No. 636 on the Company and other similar local gas distribution companies are not fully understood as of the date of this order. It would be preferable to have some actual practice data available before the Commission sets a policy that may be inappropriate. The Commission is of the opinion that the current PGA mechanism provides adequate price signals to the Company's customers with adequate Staff supervision. The Commission is concerned with the protection of the customers from automatic pass-through of unregulated and unaudited supplier costs. However, artificial price caps may simply be unnecessary under present gas industry conditions. This is not to say that gas

industry conditions might change so as to justify the imposition of such an artificial price cap. The Commission at the present would encourage the Staff to fully explore all the implications of the effects of FERC Order No. 636 on the PGA mechanism. An alternative may prove to be preferable over the current mechanism. However, with this Company and with the evidence at the present, the Commission must find that there is no need to alter the Company's PGA clause.

In so finding, the Commission does not intend to imply that Staff's proposed changes to the PGA mechanism are totally inappropriate. Price caps and thresholds may be appropriate at some point. The Commission herein is solely making the determination that a change in the PGA mechanism is not necessary at the present time for this company. The Commission encourages a broad scale investigation into the operation of the PGA mechanism in light of the industry changes due to FERC Order No. 636.

The Commission, however, is of the opinion that the present PGA mechanism creates severe monitoring problems for the Staff. The Company's proposal to extend the notice period for a PGA tariff from the current 10 days to 30 days to allow Staff more time to study and confirm the material supplied with the filing is a small step in the right direction.

The Commission, therefore, determines that Staff's proposal to add language to the Company's PGA clause which would state that the GCA of the Company be allowed to go no higher than $5.00/Mcf is disallowed.

The Commission further determines that the Company's notice period for a PGA tariff change should be extended from the current 10 days to 30 days.

VI. Removal of R2 Factor From Company's Refund Adjustment Provision

Staff has proposed to remove the R2 factor from the Company's Refund Adjustment provision contained in its PGA Rider due to the ambiguous nature of the definition of the R2 factor. Staff states that the Company's tariffs define

the factor as "[a] surcharge from a supplier not includable in the Gas Charge Adjustment, and not included in a currently effective Refund Adjustment." Staff states that exactly what types of "surcharges" would be included by the Company in this factor is left open-ended.

The Company states that the R2 factor is applicable in situations where a refund from a supplier is subsequently corrected with a surcharge.

The Commission determines that the R2 factor should be allowed to remain in the Company's tariffs. In the first place, the R2 factor has not been utilized by the Company. Staff's position that it is a vague, "catch-all" provision which may lead to the application of currently unknown surcharges against Company's customers at some unspecified time in the future does not seem justified. The Company has pointed out a possible application of the factor that Staff concurs would be appropriate. There may be other justified applications. The tariff has been approved for use in Illinois and Tennessee, where Company also operates. The R2 factor does not allow charges to escape the Commission's scrutiny. It does provide a procedure to deal with a situation that can potentially exist and that is not otherwise covered explicitly by the current tariff. If Staff disagrees with a filing under the R2 factor, it can recommend to the Commission that the filing be suspended and a hearing held to determine if it is appropriate. Also, the PGA mechanism is generally approved on a interim basis subject to refund based upon a later true-up audit.

The Commission, therefore, determines that the Staff's proposal to eliminate the R2 factor from Company's Refund Adjustment provision is disallowed.

VII. Change in Disconnect/Reconnect Fee

Staff has proposed to increase the fee provided in the Company's tariffs for a disconnection of service and subsequent reconnection of service to $50.00 from the current reconnection charge of $30.00. Staff states that its

audit has indicated that Company's actual cost of performing a disconnect and subsequent reconnect is approximately $60.00. Staff believes that the fee for performing such a service should fairly reflect the cost to the Company. However, Staff states, due to the substantial difference between the present fee and the actual cost, that the increase should only be two-thirds. Company agrees with Staff.

Public Counsel opposes Staff's increase, pointing out the failure of Staff to produce any evidence in support of the actual costs. Public Counsel states that accepting Staff's proposal would make Company's disconnection/reconnection charge the highest residential charge in Missouri. Public Counsel believes that any increase of this charge would have a disproportionate detrimental impact on the low income, elderly and disadvantaged customers of Company.

The Commission determines that the position of Staff and Company to increase the disconnect/reconnect fees should be approved. The uncontroverted evidence is that the actual cost for the Company for the disconnect/reconnect fee is $60.00. Staff, however, does not wish to move that far in this increase. The Commission is of the opinion that even Staff's suggested increase would be substantial and inappropriate. When specific costs increase dramatically, it is preferable to lessen the impact on disconnected customers if possible and still be fair to the company and other customers. The Company has not even proposed to increase this fee. The Commission is of the opinion that the fee increase should be less than Staff's proposal to soften the impact on ratepayers. The Commission determines that an appropriate disconnect/reconnect fee should be $40.00.

The Commission, therefore, determines that Staff's and Company's proposal to increase the disconnect/reconnect fee charged by Company should be allowed and that $40.00 is an appropriate fee.

The Commission determines that Public Counsel's proposal to not increase the disconnect/reconnect fee at all should be disallowed.

Conclusions of Law

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

Company is a public utility company subject to the jurisdiction of the Commission pursuant to Chapters 386 and 393, R.S.Mo. 1986, as amended.

Pursuant to Section 536.060, R.S.Mo. 1986, the Commission may approve a stipulation and agreement concluded between the parties to any issues in a contested case. The Commission has determined that the Stipulation And Agreement with revised Attachment 1 as to issues concerning revenue requirement, rate design, nonrevenue issues and nonrevenue tariff changes is just and reasonable and appropriate and therefore should be approved.

In the case of ***National Food Stores, Inc. v. Union Electric Co.***, 494 S.W.2d 379, 381 (Mo. App. 1973), the Court set out the basis of the relationship between a public utility and its customers when it said:

> "Generally speaking, an electric power company which undertakes to supply current, although not an insurer of service, has an obligation to provide a patron with adequate and continuous service, arising either from express contract, a regulatory enactment, or implied contract and the supplier is, ordinarily at least, subject to a duty to exercise reasonable care to fulfill such obligation."

The Commission has determined that Section 516.120(1), R.S.Mo. 1986, is the general statute of limitations provision that should be applied to undercharges in residential bills by the Company as established by the Company's tariffs including the tariff setting the billing adjustment period. This statute is as follows:

> **516.120. What actions within five years.--**
> Within five years:

> (1) All actions upon contracts, obligations or liabilities, express or implied, except those mentioned in section 516.110, except upon judgments or decrees of a court of record, and except where a different time is herein limited;

The Commission has determined that the date when the cause of action shall have accrued for a residential undercharge by a public utility company is the date set out in the Company's billing adjustment period tariff. ***DePaul Hospital v. Southwestern Bell Telephone Company***, 539 S.W.2d 542 (Mo. App. 1976), and ***Follmer's Market v. Comp. Accounting Service***, 608 S.W.2d 457 (Mo. App. 1980), refer to an action concerning a public utility company's overcharge and is not controlling as to undercharges.

The Commission refers to the following language in ***DePaul Hospital School of Nursing***:

> It is the clear intent of the public service commission law that utilities shall, without the supervision of their customers, provide adequate service at only the correct rate, and no more. This is a duty imposed by law. It was, we believe, the purpose of the legislature, not that customers be required to employ experts to verify the correctness of rates charged, but rather that they might rely on the telephone company for proper adherence to its approved rate tariffs. Further, the policies behind statutes of limitations, to encourage repose and stability,[5] would not be frustrated by permitting a consumer who has been overcharged for utility service to recover the full amount of the overcharge.
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> 5. "As numerous cases point out, statutes of limitations promote repose by giving security and stability to human affairs; they stimulate promptness and punish negligence; their object is to suppress fraudulent and stale claims from being asserted after long lapses of time when perhaps the necessary vouchers and evidence are lost, or when the facts have become obscure, or the memory of witnesses defective, or when witnesses may no longer be available either by reason of death or because their whereabouts have become unknown." ***Bisesi v. Farm & Home Savings & Loan Ass'n of Missouri***, 231 Mo.App. 897, 78 S.W.2d 871, 873[2]

(1935); *National Credit Associates, Inc. v. Tinker*, 401 S.W.2d 954, 956[1] (Mo.App. 1966); 53 C.J.S. Limitations of Actions § 1, pp. 902-3.

539 S.W.2d at 547.

Based upon the Commission's findings of fact in this case and conclusions of law, the Commission determines that just and reasonable revised tariffs should be filed by Company designed to increase its total revenues exclusive of gross receipts and sales tax by $425,000 or 8.47 percent on an annual basis. The Commission further determines that tariffs in compliance with the Stipulation And Agreement with revised Attachment 1, as submitted with revised Attachment 2 thereto which was filed on May 19, 1993, should be filed by Company. Any of those tariffs that are set out in revised Attachment 2 to the Stipulation And Agreement that conflict with this Report And Order should be additionally revised so as to comply with this Report And Order. Specifically Staff's proposed billing adjustment period tariff provision pertaining to residential customer undercharges should be adopted by the Company.

The Commission further concludes that since the rate increase approved herein exceeds seven percent, the provisions of Section 393.275, R.S.Mo. 1986, apply.

IT IS THEREFORE ORDERED:

1. That the Missouri Public Service Commission hereby approves and adopts the Stipulation And Agreement with revised Attachment 1 thereto, all of which are incorporated herein by reference, for gas service by United Cities Gas Company.

2. That pursuant to the findings and conclusions of law in this Report And Order approving the Stipulation And Agreement with revised Attachment 1, the proposed tariffs filed by United Cities Gas Company in this case are hereby rejected; and that United Cities Gas Company be authorized hereby to file

in lieu thereof, for approval of the Commission, tariffs designed to increase gross revenues, exclusive of gross receipts and sales tax, by the amount of $425,000 as to gas operations on an annual basis over the current revenues.

3. That the proposed tariff sheets attached to the Stipulation And Agreement as revised Attachment 2 shall be filed with the Commission and revised, where necessary, to comply with any contrary decision of this Report And Order, within five (5) days of this Report And Order.

4. That the tariffs to be filed pursuant to this Report And Order shall become effective for gas service on and after July 17, 1993.

5. That United Cities Gas Company, pursuant to Section 393.275, R.S.Mo. 1986, shall file with the Commission a list of the city(s) and/or county(s) that impose a business license tax on it and shall therein estimate the annual increase in gross receipts resulting to the city(s) and/or county(s) from the revenue increase herein authorized. Tariffs will not be approved until all the information is received.

6. That any objection not heretofore ruled upon be hereby overruled and any outstanding motions be hereby denied.

7. That this Report And Order shall become effective on the 17th day of July, 1993.

BY THE COMMISSION

(S E A L)

Brent Stewart

Brent Stewart
Executive Secretary

Mueller, Chm., McClure, Perkins and Kincheloe, CC., concur and certify compliance with the provisions of Section 536.080, R.S.Mo. 1986.
Crumpton C., absent.

Dated at Jefferson City, Missouri,
on this 2nd day of July, 1993.

II. Stipulation and Agreement

Except as otherwise noted herein, all parties agree that this document delineates the areas of agreement and areas of disagreement which exist among some or all of the parties as of the date of the filing of this Hearing Memorandum. All parties further agree that except as otherwise specifically stated herein, all issues settled during the prehearing conference or thereafter were settled on the basis of dollar amounts only and that, unless otherwise provided herein, none of the signatories to this Hearing Memorandum and Stipulation and Agreement shall be prejudiced or bound in any manner by the terms of this Hearing Memorandum and Stipulation and Agreement in any other proceeding or in this proceeding should the Stipulation and Agreement provisions set out herein not be accepted by the Commission in their entirety. Furthermore, except as otherwise provided herein, none of the parties to this Hearing Memorandum 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 Hearing Memorandum and the rates provided for herein. All parties reserve the right to inquire into and establish a position concerning any issue which is pertinent to the proceeding and which arises during the course of the proceeding as a new issue based upon matters which could not reasonably have been contemplated based on the filings and pleadings herein as of the date hereof.

Rebuttal and surrebuttal testimony are to be filed with the Commission on or before March 12, 1993, and March 31, 1993,

respectively. As a consequence, this Hearing Memorandum does not necessarily list rebuttal and surrebuttal witnesses.

1. Rate Increase - Company and Staff agree that Company should be authorized to file revised gas tariffs and rate schedules designed to produce an increase in overall Missouri jurisdictional gross annual revenues of $425,000, exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar fees or taxes.[1]

2. Rate Design - Company, Staff and Public Counsel agree that the rates necessary to implement the increase provided above should be designed as provided on Attachment 1 hereto. The parties would also note that the rates attached hereto include certain rate design changes intended to bring the rates closer to the cost of rendering service.

3. Non-Revenue Issues - The Company agrees:

(a) to book the currently authorized Missouri depreciation rates;

(b) to perform payroll studies as follows: on or before January 1, 1994, Company shall implement improved timekeeping procedures to better document allocated labor costs between individual states and subsidiary operations. It shall be the responsibility of management to assure that each employee

[1] Public Counsel cannot overtly agree to this revenue requirement increase; however, for purposes of settling all revenue and rate design issues in this case, Public Counsel will not oppose this revenue requirement increase.

maintains sufficient reporting records to be able to respond to questions raised related to time recorded. Such documentation will be retained for a minimum period of three years.

(c) to continue to implement its long term project of installing a fixed asset system with the goal of being operational within the next two years. As a result of this project, individual plant and reserve accounts will be defined and included in the fixed asset system which will tie to the total control account in the general ledger.

(d) to record the appropriate state deferred taxes for Missouri by December 31, 1993.

4. Non-Revenue Tariff Changes - The parties agree:

(a) Company's PGA Clause should be updated to bring base volumes to a current basis and to restate the base wholesale gas costs and related PGA factors to the wholesale rates in effect as of the effective date of the Commission order which decides the issues in Section III below.

(b) That for purposes of rebasing the PGA as agreed, the parties agree that the following billing determinants (including transported volumes) shall be utilized:

Hannibal/Canton Firm Sales	18,309,962 Ccf
Neelyville Firm Sales	600,004 Ccf
Bowling Green Firm Sales	2,031,469 Ccf
Hannibal/Canton Total Sales	20,293,597 Ccf
Neelyville Total Sales	600,004 Ccf
Bowling Green Total Sales	2,031,469 Ccf
TOTAL SALES	22,925,070 Ccf

Hannibal/Canton Commodity Purchases	20,576,146 Ccf
Neelyville Commodity Purchases	612,003 Ccf
Bowling Green Commodity Purchases	2,099,301 Ccf
TOTAL PURCHASES	23,287,450 Ccf

(c) That the Company's tariff should be revised to provide a 3% threshold level for both firm and non-firm customers that controls when the Company must file for a PGA change.

(d) Unless otherwise ordered by the Commission as a result of one of the issues to be litigated in this proceeding, the notice requirement contained in the Company's current PGA Clause should be extended from ten to twenty days.

(e) Company's tariffs should incorporate the Commission-approved refund language from United Cities Gas Company's Case No. GR-92-21.

(f) The following language should be deleted from Sheet No. 60 and 61 of the Company's current tariffs as no longer needed: "4. The Company will file ACAs for Bowling Green and Neelyville Districts so as to insure that each month will be included in an ACA filing. This provision is intended to insure that as a result of the new May 31 ACA period all unaudited months are included in an ACA filing."

(g) The following language should be included in the Company's tariffs, Sheet 52 Section O, to clarify how the avoided gas cost credit is calculated: "Avoided Gas Cost Credit - The avoided gas cost credit shall be the Commodity Charge in the Company's Purchased Gas Adjustment Factor (P)."

(h) Company's tariffs should include language to require an audit of the Company's refund account concurrent with the ACA audit.

(i) The Bowling Green "specific" Interruptible Gas Service schedule should be deleted from Company's tariffs.

(j) The Curtailment Supplemental Supply schedule should be deleted from the Company's tariffs.

(k) The Company may add a provision to its tariffs for a transportation customer to give ten working days' notice for nominating volumes.

(l) Company may add a balancing provision to be the same as the respective upstream supplier.

(m) Company may change the interest rate on customer deposits from 9% to 6%.[2]

(n) The Company's proposal for new standards for piping and gas burning equipment may be instituted.

(o) Company's proposed provision regarding testing of a customer's meter may be implemented.

(p) Company's proposed 1st Revised Sheet No. 36, paragraph (xv) shall be adopted, as amended, to read as follows: "Customers served under this Rate Schedule shall be required to pay $3,000 (includes applicable income taxes) for the cost and installation of an Automated Meter Reading Device (AMRD).

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[2] Public Counsel cannot overtly agree to this reduction in interest rate; however, for purposes of settling all revenue and rate design issues in this case, Public Counsel will not oppose this tariff change.

Customers shall also be required to pay the cost of installation, maintenance and any monthly usage charge associated with telephone, power or other utilities or energy sources required for the operation of the AMRD. Customers shall also be required to provide adequate space in new or existing facilities for the installation of the AMRD. This equipment is necessary because of the Company's enforcement of the balancing provisions of the respective upstream pipeline supplier."

(q) Company may increase the charge for processing bad checks to $10, inclusive of bank charges.

(r) Company may add wording to its tariffs regarding residential extensions to require space heating in order to qualify for a free length allowance.

(s) Company may add the following provision to its tariff regarding partial service: "12.6 Partial Service: A customer applying for or receiving gas service who also obtains a portion of its gas requirements from a source other than the Company is deemed to have partial service. The customer shall, at its own expense, install and maintain at or after the Point of Delivery in a manner acceptable to the Company, adequate valves, switches or other equipment to segregate the delivery of Company provided or transported gas. This is necessary to preclude any commingling of gas from other sources with the natural gas delivered by the Company. This provision does not apply to pipeline quality natural gas purchased by the customer from a

source other than the Company and transported through the Company system."

(t) Sheet 58, Section 3, of Company's tariffs shall be amended to begin as follows: "The computation of the Refund Adjustment shall be filed, on a quarterly basis, in accordance with [remainder unchanged]." Also, the definition of "R1" on Sheet 57 shall be amended to read as follows: "R1 = Refund, including interest received by the Company from pipelines or suppliers, not included in a currently effective Refund Adjustment [remainder unchanged]."

(u) That the minimum qualification standards for Company's former transportation and interruptible customers shall be changed to 240,000 Ccf per year. Also, the following language shall be inserted in Company's tariffs whenever this 240,000 Ccf per year is referred to: "A customer's eligibility under any of the Company's rate schedules shall be determined in the Company's most recent rate proceeding. However, existing customers requesting service under another rate schedule due to a change in circumstances will be allowed to change rate schedules if eligibility criteria is met. Any new customer's eligibility is estimated through discussions between the customer and the Company's commercial/industrial marketing staff considering connected load, number of operating shifts, type of process and consumption by facilities with similar operating characteristics."

(v) Company's tariffs shall be amended to define "minimum bill" applicable to all rate schedules as follows: "The

Minimum monthly bill shall be the customer charge per meter but subject to the Company's proration rule 5.10."

(w) Company's tariff sheet 31, section B, "Character of Service", shall be amended by adding the following sentence at the end thereof: "The providing of capacity for transportation customers to the city-gate is implicit with their contract." Also, sheet 31, section B.1, "Term of Contract," shall be amended to read as follows: "Customer shall contract for service hereunder for a term of not less than one (1) year. Customer shall not be allowed to receive service under the Company's sales rate schedules except as provided for in Section D. part (v) of this schedule."

(x) The parties agree Company's tariffs should be amended by adding the following language to specify the rates upon which the PGA will be based: "The Company shall use the most recent FERC approved rates for FERC regulated services and the most recently available actual costs that it is paying suppliers for non-regulated services."

5. The parties agree that the prefiled direct testimony, schedules, exhibits and minimum filing requirements of Company witnesses Gene Koonce, Donald Murray, Richard Wrench, and Hugh Gower; Staff witnesses Jim Gray, Eve Lissik, Phil Lock, William Meyer, Scott Moore, Mike Proctor, Anne Ross, Angelin Shoemaker, and Anne Weddle; and Public Counsel witnesses Philip B. Thompson, Ryan Kind, Ted Robertson, and John Tuck shall be received into evidence without the necessity of their taking the witness

stand. Furthermore, the parties to this Hearing Memorandum waive their respective rights to cross-examine the foregoing witnesses as to matters raised in their direct testimony.

6. Except as to the issues raised in Section III below, and in the event the Commission accepts the terms of this Section II, the parties waive their respective rights to cross-examine witnesses, their respective rights to present oral argument and written briefs pursuant to Section 536.080.1 RSMo; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo; and their respective rights to judicial review pursuant to Section 386.510 RSMo.

7. The form of tariffs and rate schedules reflecting the rate increase, rate design, and tariff changes (with language reflecting the agreed-upon tariff changes) set forth in this Section II will be filed prior to the hearing as Attachment 2 to this Hearing Memorandum. The parties request that the Commission approve and adopt the provisions of this Section II in the Commission's final order, after hearing, which decides the issues remaining for hearing set forth in Section III below. Such order should also direct Company to file tariffs in compliance therewith, sufficiently far enough in advance of the effective date of the order to allow for a meaningful review of such tariffs to ensure their compliance with such order.

Respectfully submitted,

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UNITED CITIES GAS COMPANY

CASE NO. GR 93 – 47

SETTLEMENT RATES

REVISED
ATTACHMENT 1
May 19, 1993

	Annual Sales Ccf	Annual Bills	Commodity Rates $/Ccf	Customer Charges $/Bill	Commodity Revenues	Customer Revenues	Total Rate Revenues
Residential							
Hannibal	7,328,591	76,417	$0.2105	$7.00	$1,542,668	$534,919	$2,077,587
Canton	4,647,420	52,750	$0.2105	$7.00	$978,282	$369,250	$1,347,532
Neelyville	438,395	6,936	$0.2105	$7.00	$92,282	$48,552	$140,834
Bowling Green	1,300,652	13,519	$0.1200	$5.50	$156,078	$74,355	$230,433
Total	13,715,058	149,622	$0.2019	$6.86	$2,769,311	$1,027,076	$3,796,386

	Annual Sales Ccf	Annual Bills	Commodity Rates $/Ccf	Customer Charges $/Bill	Commodity Revenues	Customer Revenues	Total Rate Revenues
Comm/Ind Firm							
Hannibal(C)	3,082,540	8,150	$0.2029	$12.00	$625,447	$97,800	$723,247
Hann(I)	97,158	36	$0.2029	$50.00	$19,713	$1,800	$21,513
Canton(C)	2,248,234	7,394	$0.2029	$12.00	$456,167	$88,728	$544,895
Canton(I)	5,150	12	$0.2029	$50.00	$1,045	$600	$1,645
Neelyville	161,609	1,032	$0.2029	$12.00	$32,790	$12,384	$45,174
Bowling Green	730,817	3,356	$0.1088	$9.00	$79,513	$30,204	$109,717
Total	6,325,508	19,980	$0.1920	$11.59	$1,214,676	$231,516	$1,446,192

	Annual Sales Ccf	Annual Bills	Commodity Rates $/Ccf	Customer Charges $/Bill	Commodity Revenues	Customer Revenues	Total Rate Revenues
Large Use							
Comm & Int	435,593	72	$0.0657	$25.00	$28,618	$1,800	$30,418
Ind Firm	797,423	48	$0.0657	$50.00	$52,391	$2,400	$54,791
Ind Int & T	1,651,488	72	$0.0657	$50.00	$108,503	$3,600	$112,103
Total	2,884,504	192	$0.0657	$40.63	$189,512	$7,800	$197,312

Total Company	Annual Sales Ccf	Annual Bills	Commodity Rates $/Ccf	Customer Charges $/Bill	Commodity Revenues	Customer Revenues	Total Rate Revenues
	22,925,070	169,794	$0.1820	$7.46	$4,173,498	$1,266,392	$5,439,890
						Current Margin Revenues	$5,015,015
						Increase	$424,875
						% Increase	8.47%

Grandfathered into Interruptible:
Dadant & Sons, Scotland Co. Nursing Home, Hannibal
Regional Health Care Center, Scotland Co. Hospital, Hannibal Jr. High,
Memphis Generating Plant