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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

PREHEARING CONFERENCE
March 15, 2001
Jefferson City, Missouri
Volume 1

In the Matter of the Application)
of United Cities Gas Company, a)
Division of Atmos Energy)
Corporation, for an Accounting) Case
Authority Order Related to) No. GA-98-464
Investigation and Response Actions)
Associated With Its Former)
Manufacturing Gas Plant Site in)
Hannibal, Missouri.)

BEFORE:

VICKY RUTH, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:

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14 FOR: Staff of the Missouri Public Service
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1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 JUDGE RUTH: We are here today for the
4 prehearing conference in GA-98-464, in the matter of
5 the application of United Cities Gas Company, a
6 division of Atmos Energy Corporation, for an
7 accounting authority order.

8 My name is Vicky Ruth, and I am the
9 Regulatory Law Judge assigned to this case.

10 I would like to begin by taking entries of
11 appearance.

12 United Cities, we'll begin with you.

13 MR. FISCHER: On behalf of United Cities Gas
14 Company, a division of Atmos Energy Corporation, let
15 the record reflect the appearance of James F. Fischer
16 and Larry W. Dority, Fischer & Dority, P.C.,
17 101 Madison Street, Suite 400, Jefferson City,
18 Missouri, 65101.

19 JUDGE RUTH: Thank you.

20 And Staff?

21 MR. FREY: Representing the Staff of the
22 Missouri Public Service Commission, Dennis L. Frey,
23 Post Office Box 360, Jefferson City, Missouri, 65102.

24 JUDGE RUTH: Thank you.

25 And Public Counsel?

1 MR. MICHEEL: Douglas E. Micheel, appearing
2 on behalf of the Office of the Public Counsel and the
3 Public, P.O. Box 7800, Jefferson City, Missouri,
4 65102-7800.

5 JUDGE RUTH: Thank you.

6 This prehearing conference has been
7 scheduled to give the parties an opportunity to
8 discuss and define the issues.

9 In addition, I would like for the parties to
10 give me a brief overview of what is in dispute. And
11 we'll start with United Cities.

12 MR. FISCHER: Thank you, your Honor.

13 United Cities received an accounting
14 authority order approximately two years ago related to
15 the environmental cleanup of the Hannibal Manufactured
16 Gas Plant in Hannibal, Missouri. It was given a
17 two-year time period, which was to end March of 200--
18 March 9th of 2001, unless the Company filed a rate
19 case.

20 Given the current environment, the Company
21 didn't feel it was -- it was a good idea at this point
22 in time to file a rate case, and, as a result, we
23 asked for a one-year extension of the accounting
24 authority order to give the Commission the opportunity
25 to review those costs at the Hannibal cleanup site and

1 review those in the next rate case.

2 So, therefore, we ask that the deadline for
3 March 9 be extended by one year, unless we file a rate
4 case in that year period.

5 And the Office of the Public Counsel has
6 opposed it, and I believe Staff has. And as I
7 understand, the Commission has now ordered a
8 prehearing conference to talk about it and to
9 establish a procedural schedule for the remainder of
10 the case.

11 JUDGE RUTH: Okay. Thank you.

12 Staff, would you like to add anything?

13 MR. FREY: Well, the Staff's position at
14 this point, your Honor, is that the AAO in question
15 here is, by the terms of the -- of the order, null and
16 void at this point, and our position is that the
17 Company can now file a new case and ask -- request
18 another AAO for costs incurred on an ongoing basis.

19 Our position is that -- as I indicated, that
20 the current AAO is null and void, and it's over.

21 JUDGE RUTH: Can you tell me what Staff's
22 position would be if the Company were to file another
23 AAO application right now?

24 MR. FREY: Your Honor, we would evaluate the
25 evidence and make a recommendation at that time. We

1 would have to look at it.

2 JUDGE RUTH: Okay. And Public Counsel?

3 MR. MICHEEL: I generally agree with the
4 Staff. I mean, simply, it's too late, Judge Ruth.

5 The ordered paragraph of the initial AAO is
6 very clear and unambiguous. It says, "This accounting
7 order shall become null and void in the event United
8 Cities does not file tariff sheets proposing a general
9 rate increase within 24 months from the effective date
10 of the order." And, simply put, that was March 9th of
11 this year, and they didn't do it.

12 So at least with respect to the two years
13 that covered that AAO, those costs are not recoverable
14 anymore. Now, if United Cities chooses to file
15 another AAO on a going-forward basis from this date
16 forward, we'll take a look at it and make our
17 recommendation based on the evidence.

18 JUDGE RUTH: Okay. So can you give me a
19 sense of how Staff and OPC would feel if it -- I
20 realize the request was filed by United Cities back in
21 February. If we were before the March deadline, what
22 would you be saying? If it was just right before the
23 March 9th deadline, what would Staff -- what would
24 your position be? At that point, it would not yet be
25 null and void, but you had -- I believe you had

1 opposed it for other reasons.

2 MR. FREY: That's correct, your Honor. In
3 our memo we essentially concurred with what Public
4 Counsel had stated. We believe that the two-year
5 period was acceptable to the Company at the time and
6 that it's a sufficient period in which to grant the
7 AAO. And if -- if at that time it proved to be
8 insufficient, the Company could have simply filed a
9 rate case, that these AAOs are not designed to be
10 extended over a number of years and used as a
11 substitute for the filing of a rate case.

12 JUDGE RUTH: Okay. Now, United Cities had
13 said that they felt that the -- I'll paraphrase.
14 Forgive me -- that the climate was -- this was not a
15 good time to file a general rate case.

16 Does Staff have any response to that?

17 MR. FREY: We don't think the Company was
18 particularly specific and clear as to why -- what its
19 grounds were for not filing a rate case, other than
20 perhaps it felt that, if you want to look at all of
21 the costs, its cost structure and its revenue stream,
22 that overall it might not prove favorable to the
23 Company.

24 JUDGE RUTH: Can you respond to that,
25 Mr. Fischer, with some more specificity as to why this

1 is not a good time to file a rate case?

2 MR. FISCHER: Yes, your Honor.

3 The Company has been, was before the filing
4 of the pleading and during the month that has ensued
5 since, been actively evaluating whether they should
6 file a general rate case.

7 At the time we filed those pleadings, it was
8 felt that having just gone through the very dramatic
9 increases in the cost of gas through the PGAs where we
10 had had the highest rates in our history, it -- and
11 given the publicity and everything, the great impacts
12 on the ratepayers themselves, it was -- it was
13 preferable for the Company and their ratepayers not to
14 ask for another rate increase on top of those very
15 dramatic increases on the cost of gas. That was the
16 specific reason they felt like now is not the right
17 time to file a general rate case.

18 They are continuing to evaluate over the
19 long term here, over the next year, whether they
20 should file a general rate case to review their rates
21 and compare them to their cost of service. But it was
22 specifically the winter experience that we all know
23 has been a very difficult one that caused them to feel
24 that March/February was not a good time to file, even
25 if they were going to -- knowing that the AAO was

1 coming to an end. They felt a better alternative
2 would be to ask that that be extended for a year, and
3 that it could be reviewed during the next rate case.

4 JUDGE RUTH: Okay. Public Counsel, would
5 you like to respond to anything that Staff or --

6 MR. MICHEEL: Certainly. Always.

7 Well, with respect to, you know, it being a
8 bad time for filing a rate case, as I'm sure you're
9 aware, your Honor, that natural gas rates are
10 bifurcated in the state of Missouri, and the problem
11 that he's discussing about the spikes and -- in gas
12 prices were the PGA rates.

13 And, simply put, if the Company needed a
14 non-gas rate increase, they should have come in and
15 asked for that non-gas rate increase. Granted, their
16 gas costs were high, but that should not in any way,
17 shape or form alter their obligations pursuant to the
18 AAO or alter their thinking. I mean, it's a business
19 decision that the Company made not to file a rate
20 case.

21 I also pointed out in my papers that -- and
22 I'm sure you're aware, that November and December in
23 the state of Missouri were the coldest winters (sic)
24 in history, so the Company most likely was making a
25 lot of money at that time, and, therefore, they didn't

1 need, obviously, to come in for a base rate case at
2 that time. And the whole theory behind the AAO is to
3 give -- you know, to defer it saying they need an
4 opportunity, and that opportunity has passed.

5 You know, the Company made a business
6 decision not to file a rate case, and maybe they made
7 a smart business decision not to do it this March.
8 But that was their decision, and they knew what the
9 consequences of that decision were because the
10 Commission's accounting authority order was very
11 explicit in what their obligations were.

12 JUDGE RUTH: Okay. I have a question for
13 each of the parties then. With what you've said, the
14 fact that Staff and Public Counsel indicate that the
15 previous accounting authority order said that it would
16 become null and void if a rate case wasn't filed by
17 March 9th of 2001, the Company filed their request for
18 an extension on February 5th, I believe, and then the
19 Public Counsel and the Company had some exchanges back
20 in early February, but Staff didn't file their
21 suggestions opposing it until March 2nd, which, after
22 March 2nd, the soonest the Commission could schedule
23 the prehearing conference was today, after March 9th.

24 And I just wonder if that affects what Staff
25 or Public Counsel or United Cities feels is the

1 appropriate procedure that should be followed from
2 here on out?

3 Let's see. I think Staff's pleading was
4 filed March 2nd, and then the Commission issued its
5 order March 6th setting a prehearing conference, and
6 I'll start with United Cities.

7 MR. FISCHER: Well, your Honor, the Company
8 felt that the Staff's pleading was out of time. We
9 noted in a footnote that the rule would normally
10 request that the Staff respond within ten days. We
11 didn't file a motion to strike because we felt that
12 the Commission would want to know what their Staff had
13 to say about it. We were hoping that based on the
14 information that was presented we would have a
15 decision by March the 9th.

16 However, it's our view that the Commission
17 would have discretion to extend their previous
18 accounting authority order while it was actively
19 considering this matter and that it could go forward
20 as you outlined in your order scheduling a prehearing
21 conference by establishing a procedural schedule in
22 the matter.

23 JUDGE RUTH: Staff, can you respond as to,
24 do you think the Commission would have the authority
25 to extend that deadline of March 9th while it's

1 considering -- since United Cities Gas did file its
2 Motion for Modification more than a month before the
3 expiration of the date?

4 MR. FREY: Your Honor, if a hearing was
5 contemplated in this case, the Staff believes that
6 United Cities should have filed its application far
7 earlier than they did in this particular case.

8 JUDGE RUTH: Was there any discussion prior
9 to the March -- I'm sorry -- February 5th filing of
10 the Motion for Modification? United Cities, had you
11 discussed your plans with Staff?

12 MR. FISCHER: Your Honor, we did not
13 approach the Staff or Public Counsel about an
14 extension prior to the filing of that. We had not.

15 Looking back on it, I wish we had.

16 JUDGE RUTH: Okay. Thank you.

17 Did you have anything else, Staff?

18 MR. FREY: I would just like to say, if I
19 might, your Honor, that we're talking about a two-year
20 AAO here but that it was ordered to be retroactive to
21 March -- I believe March 31st, 1998, which, in effect,
22 allowed the Company to collect costs for almost three
23 years, so I think that needs to be noted as well.

24 JUDGE RUTH: Thank you.

25 Public Counsel?

1 MR. MICHEEL: My answer to your initial
2 question is absolutely not. The Commission -- just
3 because United Cities Gas filed to extend the AAO
4 prior to the null and void deadline of March 9th, it's
5 my view that the Commission absolutely cannot extend
6 the AAO now by its own executed terms, that that case
7 is over.

8 And as I pointed out in my papers, that case
9 has been closed. Nobody appealed the two-year order.
10 United Cities didn't appeal the two-year order. And
11 to that extent, I think the order is self-executing.
12 So I don't think the Commission has authority at this
13 time to extend the March 9th date, irrespective of the
14 fact that United Cities did, indeed, file --

15 I think it was, February 5th, Jim?

16 MR. FISCHER: Yes.

17 MR. MICHEEL: -- February 5th to extend.

18 MR. FISCHER: I believe that's right.

19 JUDGE RUTH: Okay. With that in mind, I
20 have already asked that the parties file a proposed
21 procedural schedule on the 22nd.

22 I would like to, on the 22nd, see some legal
23 analysis, if you can find any basis, for that
24 statement as to whether or not the Commission has the
25 authority then to be considering this after the March

1 9th deadline, and we will postpone the filing of the
2 proposed procedural schedule indefinitely until I see
3 that.

4 But I would like to have that next Tuesday,
5 please. That's -- I don't have a calendar in front of
6 me.

7 MR. MICHEEL: Next Thursday, your Honor?

8 JUDGE RUTH: Today is Thursday. You're
9 right. Next Thursday.

10 MR. MICHEEL: The 22nd, then, your Honor?

11 JUDGE RUTH: Yes. Is that next Thursday?

12 MR. FREY: Yes.

13 JUDGE RUTH: Okay. I have nothing further
14 at this time.

15 I'm sorry. Mr. Micheel?

16 MR. MICHEEL: Could you just -- you want
17 legal analysis about whether or not the Commission has
18 authority to extend the March 9th date?

19 JUDGE RUTH: Yes, while it is -- even
20 considering whether or not it should, before we have a
21 hearing and then decide that we don't have the
22 authority, I'd like some analysis now.

23 MR. MICHEEL: Okay.

24 JUDGE RUTH: And, like I said, I think some
25 factors to be considered are the fact that the Company

1 filed their motion five weeks or so before the ex--
2 the deadline, but due to various factors, all of the
3 pleadings weren't in; Staff's final pleading wasn't in
4 until March 2nd; the Commission attempted to rule on
5 that promptly four days later, decided it needed some
6 additional information, and that's when we scheduled
7 this prehearing conference.

8 And as it's been pointed out, the conference
9 was scheduled for the 15th, a few days after the
10 deadline of the 9th.

11 I have nothing further. Do the parties have
12 anything they want to add on the record?

13 MR. FISCHER: Not for the Company.

14 MR. FREY: No, your Honor.

15 MR. MICHEEL: No, your Honor.

16 JUDGE RUTH: Okay. Then we will conclude
17 the on-the-record portion of the prehearing
18 conference.

19 WHEREUPON, the on-the-record portion of the
20 prehearing conference was concluded.

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