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

On April 3, 2000, Missouri Gas Energy (MGE) filed a Motion to Establish Procedural Schedule requesting that the Commission allow supplemental direct and rebuttal testimony and establish the following proposed procedural schedule:

MGE stated that it believes that the Commission should provide the parties with the opportunity to file brief supplemental direct and rebuttal testimony on issues as a means

of documenting events that have occurred subsequent to the Commission's previous decision. MGE noted that the prefiled testimony submitted in 1996 had already been admitted into evidence, and this new testimony is not designed to reargue what has been admitted into the record.

Staff of the Commission (Staff), Office of the Public Counsel (Public Counsel), and Missouri Gas Users' Association (MGUA) filed their responsive pleadings on April 17, 2000. Staff stated that it agreed with the proposed hearing dates. Staff also stated that the Commission has the discretion to authorize the parties to file supplemental direct, rebuttal or surrebuttal testimony pursuant to 4 CSR 240-2.130(8).

Public Counsel stated that it supports MGE's request for a hearing on remand but believes taking additional evidence on "subsequent events" would be irrelevant to the issues presented by this judicial remand. Public Counsel requested that the Commission deny MGE's request to file supplemental direct and rebuttal testimony in this proceeding.

MGUA stated that it does not oppose in general MGE's request for a hearing to comply with the Cole County Circuit Court's (Circuit Court) order remanding this matter for hearing. MGUA does oppose MGE's request to file brief supplemental direct and rebuttal testimony on the basis that the issues that MGE appears to be referring to are outside the test year in GR-96-285.

On April 18, 2000, MGE filed its reply to Public Counsel's response stating that it needed to supplement its testimony because it has changed its position on the issues in the more than three years since the Commission issued its Report and Order on January 22, 1997. MGE also stated that while the prefiled testimony was admitted into evidence, not all evidence that should be considered by the Commission has been presented. MGE's stated that if Public Counsel wanted to challenge MGE's proposed testimony on relevance, it may do so through rebuttal testimony. MGE stated that the Commission is required by law to consider "all relevant factors" in setting rates. State ex rel. Utility Consumers Council of Missouri, Inc. et al. v. Public Service Commission, 585 S.W.2d 41, 56 (Mo. banc 1979).

MGE pointed out that at the hearing on remand, additional testimony will undoubtedly occur. MGE further stated that it is only proposing that some of the testimony be filed in advance to serve the rational purpose of making all parties aware of its content before it is delivered live on the witness stand. MGE noted that relevance of the evidence it offers can be challenged on rebuttal.

On April 19, 2000, MGE filed its reply to MGUA's response stating that the witnesses are likely to be different and MGE's position on the issues has changed in the more than three years since the first hearing memorandum was filed. MGE stated that the procedural schedule proposed would allow other parties to respond to its supplemental testimony.

On April 20, 2000, MGE filed the supplemental Direct Testimony of Brad Lewis as proposed in its Motion to Establish Procedural Schedule filed on April 3, 2000. On April 21, 2000, MGUA confirmed by letter to the Commission that its expert witness would be available on the dates proposed for hearing, May 22 and 23, 2000. On April 18 and April 19, 2000, MGE filed its reply to Public Counsel and MGUA, respectively, explaining its position in support of the filing of supplemental testimony.

On May 5, 2000, MGE filed its Suggestions in Support of the Taking of Additional Testimony on Remand. MGE cited and attached a copy of an order issued by the Commission in Case No. ER-93-37 on August 13, 1996. In this order, the Commission found that it is authorized to open the evidentiary record and take additional evidence. The Commission found that where there is a general remand, "the Commission has the discretion to hold a further hearing as it may deem necessary." *Order Setting Supplemental Hearing*, p. 5, issued August 13, 1996, In Re Missouri Public Service, Case No. ER-93-37.

On May 11, 2000, MGUA filed its response to MGE's Suggestion in Support of Taking Additional Testimony on Remand. MGUA stated that the remand of the Circuit Court is a specific judicial remand and not a general remand for hearing. As a specific remand, MGUA argued that the Commission may only do those things that it stated in its July 18, 1997 brief to the Commission: provide a hearing, allow cross-examination of opposing witnesses, and receive briefs on the issues.

The Circuit Court's Findings of Fact, Conclusions of Law and Judgment granting MGUA's motion issued in Case No. CV197-504CC after hearing on November 26, 1997, found that the

rates fixed by the Commission without a hearing on an essential part of the rate design issue are unlawful. Accordingly, the Court has no choice but to reverse the Commission's order as to the rates of MGE and remand the matter to the Commission for further action.

Despite the statement in the brief of the Commission offering specific detail, the Circuit Court's finding is clearly a general remand. Further, the Circuit Court also remanded another issue relating to the temporary confiscation of transportation customers' natural gas based on Tariff Sheet No. 68 "for action by the Commission."

The Commission must base its decision on competent and substantial evidence relevant to the issue being heard by the Commission. As cited by Staff, no party is permitted to supplement testimony unless ordered by the presiding officer or the Commission. 4 CSR 240-2.130(8). MGE stated that it wishes to change its position on one of the issues and the testimony that it has already filed on April 20, 2000 supports the company's change of position on an issue remaining before the Commission for decision.

MGE's supplemental testimony may be stricken from the record if the Commission does not authorize the filing of any proposed supplemental testimony. Alternately, the Commission may choose to accept MGE's supplemental testimony and give the other parties an opportunity to file supplemental testimony. If the

Commission allows the filing of supplemental testimony, the remaining parties may insert the issue of the relevance of the supplemental testimony when it is offered into evidence.

The Commission wishes to ensure that all parties are afforded their opportunity to be heard, and therefore, the Commission will grant MGE's request for filing of supplemental testimony. Fee Fee Truck Sewer, Inc. v. Public Service Commission, 522 S.W.2d 67, 72 (Mo. App. 1975). The Commission will consider objections as to relevance when the evidence is offered.

As some of the dates proposed in MGE's Motion to Established Procedural Schedule filed in Case No. GR-96-285 are past, and one of the dates proposed for hearing is no longer available, the Commission will require a new proposed procedural schedule be filed. In an effort to reserve a hearing date at the earliest availability on the Commission's calendar, the Commission will set this hearing on August 8 and 9, 2000. All other dates in the procedural schedule should be proposed to meet this hearing date.

IT IS THEREFORE ORDERED:

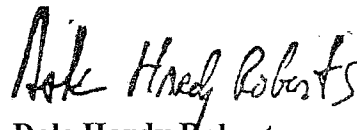
1. That the Commission will schedule a hearing on August 8 and 9, 2000, beginning at 8:30 a.m. each day in the Commission's offices to hear the evidence and consider the issues concerning Missouri Gas Energy's cost of service and related revenue shifts as remanded by the Cole County Circuit Court.

2. That the request filed by Missouri Gas Energy, a division of Southern Union Company, for the parties to be allowed to file supplemental direct and rebuttal testimony is granted. Missouri Gas Energy's Direct Testimony on Remand of Brad Lewis is accepted as filed on April 20, 2000.

3. That the parties shall file a proposed procedural schedule with the Commission no later than May 30, 2000. The proposed procedural schedule should include dates for submission of limited supplemental testimony, statement of issues, list of witnesses, order of cross, position statements, and for a prehearing conference.

4. That this order shall become effective on May 23, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Register, Regulatory Law Judge