

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 27th day of
September, 2005.

In the Matter of an Investigation into the Status of)
Missouri's Natural Gas Local Distribution Companies')
Compliance with Commission Rule 4 CSR 240-40.018.) **Case No. GW-2006-0110**

ORDER ESTABLISHING CASE

Issue Date: September 27, 2005

Effective Date: September 27, 2005

Procedural History and Positions of the Parties:

On September 12, 2005, the Public Counsel filed his Motion to Open a New Case, wherein he prayed that the Commission would "open a case for the purpose of investigating the status of natural gas utilities' compliance with 4 CSR 240-40.018, and that it take evidence on the record concerning that compliance."

In support of his Motion, Public Counsel stated that in 2003, the Commission promulgated Rule 4 CSR 240-40.018, which requires natural gas utilities to "structure their portfolios of contracts with various supply and pricing provisions in an effort to mitigate upward natural gas price spikes, and provide a level of stability of delivered natural gas prices." Public Counsel further stated that "all indications point to wholesale natural gas prices for the upcoming winter reaching record highs." Even if the winter proves to be a mild one, Public Counsel opined that "high end-user gas prices will create serious hardship to many customers" and that "[a] harsh winter coupled with record-high prices will cause untoward human suffering and severe economic disruption." Under these circumstances,

Public Counsel asserted, "It is incumbent on the Commission to ensure that natural gas utilities have done everything in their power to mitigate price spikes and keep rates stable."

Public Counsel noted that, in its Agenda meeting on September 6, 2005, the Commission discussed beginning a process in which natural gas utilities would make presentations on their efforts to comply with 4 CSR 240-40.018. Public Counsel urged the Commission to structure its investigation as a formal one in a docketed case. The benefit, in Public Counsel's view, is that a docketed case will allow the Commission to take evidence and create a record that documents the natural gas utilities' efforts to keep the delivered price of natural gas stable. Before the winter heating season begins, and before utilities raise their rates through the Purchased Gas Adjustment (PGA) process, Public Counsel stated that they should be required to demonstrate their compliance with the rule.

Public Counsel further stated that, while some information about specific contracts, prices, and hedging strategies may not be public information, this should not dissuade the Commission from opening a case and taking evidence on the record. The Commission can issue its standard protective order to protect such information.

Public Counsel suggested that the Commission docket this case with a "GW" designation. This type of investigation case does not typically culminate in a Commission order, but rather in a report from the participants in the investigation. This type of case is not considered contested, so that the Commission may confer with members of its Staff.¹ Creating an investigation case, Public Counsel stated, "strikes a balance between a free flow of information and the need to create a record documenting compliance."

¹ The Commission does not necessarily endorse or concur with the Public Counsel's opinion regarding the application of the *ex parte* rule to this proceeding.

Public Counsel also suggested that if, during the course of the investigation case, it appears that a utility has not fully complied with Rule 4 CSR 240-40.018, the Commission should immediately institute a complaint against that utility. Furthermore, if the investigation, or the events of the upcoming winter, shows that the current rule did not prompt utilities to undertake adequate actions to mitigate price spikes and keep prices stable, the Commission "should revise the currently toothless rule to provide significant penalties (such as imputed lower gas costs) for noncompliance."

On September 14, the Commission directed notice to Missouri local distribution companies and gas corporations and gave them an opportunity to respond to Public Counsel's motion by October 4. The Commission also directed its Staff to file a Recommendation and Memorandum by the same date. On September 20, the response deadline was shortened to Noon on September 26.

The Commission received timely responses from the Missouri Gas Utilities and Aquila, Inc., as well as Staff's Memorandum and Recommendation.

The Missouri Gas Utilities include Laclede Gas Company, Missouri Gas Energy, a division of Southern Union Company, Atmos Energy Corporation, Fidelity Natural Gas, Inc., and Southern Missouri Gas Company, L.P. These companies oppose Public Counsel's motion for several reasons. First, on the grounds that "there is no good reason why the Commission should cast aside this long-standing procedure [i.e., the PGA/ACA process with its prudence review] in favor of a hasty 'investigation' of practices and activities that are still underway and not yet completed." Second, they complain that Public Counsel's motion creates the misimpression that looming high gas prices are somehow the fault of the Missouri LDCs rather than a number of factors outside their control, including two recent hurricanes. Third, the investigation would place an unnecessary and distracting

burden on the very company personnel who are charged with attempting to ameliorate the threatening gas price situation. Finally, the Missouri LDCs are already in the process of making informal presentations to the Commission on this very topic. They state that they will be happy to make the same presentations to the Public Counsel.

Aquila also opposes Public Counsel's motion. Aquila notes that it has already provided this information to the Commission in several forms. Aquila echoes the Missouri Gas Utilities in noting that the opening of such a case now would interfere with the efforts of the personnel who are busy trying to obtain gas at reasonable prices for the coming winter. Finally, Aquila notes that the LDCs' plans are already made at this point, merely five weeks prior to the start of the winter heating season. An investigation now, Aquila asserts, can have no beneficial result.

Staff, on the other hand, supports Public Counsel's motion. In its Recommendation, Staff states "The Staff agrees with OPC that such an investigation may prove helpful to the Commission. As a first step, the Staff suggests that the Commission incorporate into the record in this case all the presentations that the natural gas LDCs under the Commission's rate jurisdiction have or will make to the Commission in its agenda sessions." Staff further offers both some guidance as to the scope of the investigation and some cautions:

I. Things That the Investigation Should Consider

1. An investigation of the LDCs' hedging activities this year will provide the Commission the ability to consider what might be an appropriate time cycle for hedging natural gas prices and the factors that influence this decision.
2. The investigation will give the Commission the opportunity to review and evaluate the instrumentalities available to Missouri utilities to hedge.

3. The investigation will give the Commission the opportunity to review and consider the costs of the different hedging vehicles available to Missouri utilities. These include, but are not limited to: storage, fixed price contracts, swaps, call options, futures contracts, and other financial instruments.

4. The investigation might provide an opportunity for the Commission to develop some common hedging elements that could be incorporated into its hedging rule.

5. Unlike OPC, Staff does not believe that this case should result in the Commission ordering Staff to file complaint cases. The Staff, and OPC if it wishes to do so, will audit each of the LDCs for prudence of its gas purchasing practices, and can recommend or file complaints after that review.

6. The investigation will provide the Commission with the opportunity to advise, if it deems appropriate, the participants in the current SB 179 Roundtable to explicitly consider appropriate fuel cost hedging practices in light of these proceedings.

7. The investigation will also permit the Commission to direct additional customer notifications concerning the price of natural gas if the Commission determines that additional notice is necessary.

II. Some Cautions

1. The Staff notes that purchased-gas factors are calculated in accord with each utility's tariffed Purchased Gas Adjustment (PGA) clause. Missouri LDCs plan to meet cashflow needs, particularly the cost of buying natural gas, in conformity with their approved tariffs. If properly calculated natural gas costs are not timely billed financial disruptions might ensue.

2. The prudence evaluation of each LDC's purchasing practice is undertaken in the ACA audit at the end of each LDC's ACA period. To attempt such a review before the end of the ACA period would be premature.

3. Past task force, working group and case related reviews of LDC hedging practices has shown that rigid specifications for utility hedging practices or actions in a rule is fraught with problems. Market and utility specific conditions can change rapidly and these, as well as other factors, can change what the reasonable or appropriate course of action would be at any given point in time. While the Commission can offer guidance to utilities' making these decisions through past orders and rules, utility management has the obligation to act prudently in light of customer needs and changing conditions.

Discussion:

Having considered Public Counsel's motion, the responses of the LDCs and Staff's Recommendation, the Commission hereby establishes a case in order to investigate "the status of natural gas utilities' compliance with 4 CSR 240-40.018." The Commission agrees with Public Counsel that the ratepaying public faces a winter season of unprecedented natural gas prices. While the factors causing these prices may be outside of the control of the gas utilities, it is nonetheless more important than ever that the LDCs pursue gas acquisition strategies that will ameliorate price spikes. The Commission will take evidence on this issue as requested by Public Counsel. At this time, there is no allegation of any imprudence by any Missouri LDC. However, should the record demonstrate the need, Staff may seek authority from the Commission to file and pursue complaints.

IT IS THEREFORE ORDERED:

1. That the Motion to Open a New Case filed by the Public Counsel on September 12, 2005, is granted.
2. That all Missouri certificated gas corporations are made parties to this case. The Data Center shall add them to the Service List maintained in this matter.
3. That a prehearing conference will be held at 10:00 a.m. on October 5, 2005, in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri, a building that meets accessibility standards required by the Americans with Disabilities Act. If any person needs additional accommodations to participate in the prehearing conference, please call the Missouri Public Service Commission's Hotline at 800-392-4211 (voice) or Relay Missouri at 711 prior to the hearing.

4. That this order shall become effective on September 27, 2005.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge