

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 25th day of April, 2006.

In the Matter of Missouri Gas Energy's Purchased)
Gas Adjustment (PGA) Factors to be Audited in Its) **Case No. GR-2005-0104**
2003-2004 Actual Cost Adjustment)

ORDER DENYING STAFF'S MOTION TO CONSOLIDATE

Issue Date: April 25, 2006

Effective Date: April 25, 2006

The Staff of the Commission completed its audit of Missouri Gas Energy's 2003-2004 Actual Cost Adjustment filing, and filed its recommendations regarding that audit on December 29, 2005. MGE responded to those recommendations on January 30, 2006. Staff and MGE disagree on several issues. However, those issues are already present in MGE's cases for prior ACA periods, which are currently pending before the Commission in Case Number GR-2003-0330. As a result, Staff and MGE appeared to agree that this case should not proceed to hearing until that earlier case is resolved.

Given the apparent relationship between this case and the earlier ACA case, the Commission, on March 8, ordered the parties to file pleadings indicating whether this case should be consolidated with GR-2003-0330. MGE responded on March 28, indicating that it opposed the consolidation of this case with the prior ACA case. MGE contended that GR-2003-0330 was moving toward a hearing and that attempting to fold the more recent case into that proceeding would inevitably delay the resolution of the earlier case.

Staff also filed a response on March 28. Staff requested that this case be consolidated not only with Case Number GR-2003-0330, but also with an even earlier MGE ACA case, Case Number GR-2001-382. Staff further asked that the newly consolidated case be held in abeyance pending a final appellate decision in Case Number GR-96-450.¹ On March 29, MGE filed a reply opposing Staff's motion to consolidate.

To understand what is going on in MGE's ACA cases, a bit of history is in order. In Case Number GR-96-450, covering the 1996-1997 period, the Commission held that Staff failed to establish that MGE acted imprudently in purchasing natural gas supplies through the Kansas Pipeline under a preexisting contract. In doing so, however, the Commission was unable to reach a decision on the interpretation of a stipulation and agreement that Kansas Pipeline contends resolved, once and for all, the prudence question. On that basis, Kansas Pipeline appealed the Commission's order. That appeal is now back before the Missouri Supreme Court for a second time.

While that appeal is pending, Staff has continued to assert in ACA cases for subsequent years that MGE's purchases of gas under the Kansas Pipeline contract are imprudent. The prudence-of-the-contract issue is present in Case Numbers GR-2001-382, and GR-2003-0330, both of which are consolidations of ACA cases for multiple years.² Because of the pending appeal on that issue, the Commission has been unable to move those cases to conclusion. The Commission has already had a hearing on the other issues in GR-2001-382, but cannot issue a final order until the prudence-of-the-contract issue is resolved. The Commission has also decided to hear the other issues in GR-2003-0330

¹ Staff did not file a motion to consolidate in either GR-2001-382 or GR-2003-0330.

² GR-2003-0330 was consolidated with GR-2002-348. GR-2001-382 was consolidated with GR-2000-425, GR-99-304, and GR-98-167.

while waiting for a decision from the appellate courts on the prudence-of-the-contract issue, but that hearing has been delayed because of the unavailability of a key Staff witness.

After considering the arguments of the parties, the Commission concludes that Staff's motion to consolidate all of MGE's pending ACA cases into a single proceeding should be denied. The Commission has previously decided that it will hear the other issues in the earlier cases so that those cases can be finally resolved as soon as possible after the prudence-of-the-contract issue is decided by the appellate courts. Consolidating this case with the earlier cases, which are at very different procedural stages, could only delay a final resolution of those cases.

MGE also suggests that the Commission could resolve the prudence-of-the-contract issue, despite the lack of a final appellate decision, by sua sponte ordering Staff to drop that issue from this and future ACA cases on the basis of a res judicata or collateral estoppel argument. The Commission will decline to take such an action without any sort of motion before it. If MGE, or any other party, believes that such an action is appropriate, they are free to file a motion for the Commission's consideration.

IT IS ORDERED THAT:

1. Staff's proposal to consolidate Case Number GR-2005-0104 with Case Numbers GR-2003-0330 and GR-2001-382 is denied.

2. This order shall become effective on April 25, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written in a cursive style.

Colleen M. Dale
Secretary

(S E A L)

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

Woodruff, Deputy Chief Regulatory Law Judge