STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

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Jefferson City, Missouri
Volume 1

In the Matter of Missouri Gas Energy's Proposed Tariff Sheets to Administer Natural gas Conservation Initiatives	))))	Case No. GT-2008-0005 Case No. GT-2007-0477

MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.
RONALD D. PRIDGIN, Presiding,
REGULATORY LAW JUDGE.

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P R O C E E D I N G S

JUDGE WOODRUFF: Good morning, everyone. My name is Judge Morris Woodruff. I'm here on behalf of Judge Ron Pridgin, who got tied up in agenda this morning.

We're here for a prehearing conference in the matter of Missouri Gas Energy's proposed tariff sheets to administer natural gas conservation programs. There are actually two cases involved here. The notice of this prehearing conference was, as I understand it, originally issued in GT-2007-0477 after GTE filed a tariff. That tariff was subsequently withdrawn and a new tariff issued, and that new tariff case was given Case No. GT-2008-0005. Rather than allow the opportunity to have this discussion go forward, it was decided to go ahead and proceed in GT-2008-0005 today.

So we'll begin by taking entries of appearance, beginning with MGE.

MR. BOUDREAU: Thank you. Let the record reflect the appearance of Paul A. Boudreau with the law firm of Brydon, Swearengen & England, 312 East Capitol Avenue, Post Office Box 456, appearing on behalf of Missouri Gas Energy.

JUDGE WOODRUFF: And for the Staff of the Commission?

MR. BERLIN: Robert S. Berlin,

P.O. Box 360, Jefferson City, Missouri 65102, appearing on behalf of the Staff of the Missouri Public Service Commission.

JUDGE WOODRUFF: And for the Office of Public Counsel?

MR. POSTON: Thank you. Marc Poston appearing for the Office of the Public Counsel and the public, P.O. Box 2230, Jefferson City, Missouri 65102.

JUDGE WOODRUFF: All right. At this point, it looks like there's been a motion regarding tariff sheets that was filed by MGE and a motion to suspend tariff and motion to take administrative notice by Office of Public Counsel. Can somebody explain to me for the record what's actually going on in this case? Mr. Boudreau?

MR. BOUDREAU: What's -- I'm not sure exactly how to answer that question. The company has filed tariffs with an effective date, I believe, of August 3rd. In the prior docket, the GT-2007-0477 case, the Commission had issued an Order suspending those tariffs until -- I believe until July 31st, 2007. So we have something of a convergence, I think, of those dates at this point.

As I understand, what we did in the -- what the company did in the, for lack of a better term, the

0005 case, is we filed a motion to invite the Commission to allow the program to go in effect by operation of law at the end of the 30-day period. Public Counsel's filed a motion to suspend -- I don't know that it was to a particular date, but to suspend the tariffs, alleging some of the same deficiencies they alleged in the prior case.

They've also asked that the Commission take administrative notice of some filings that they filed in the previous case, the 0477 case, one of which -- well, there's a series of pleadings, but it included an affidavit of Mr. Kind, which we objected to in the prior case. So that's kind of the setup.

I don't believe that Public Counsel has specifically responded to our motion that we filed in this current case, and we haven't filed a response to their motion.

MR. POSTON: We filed a motion to suspend the tariffs.

MR. BOUDREAU: In that sense, it's responsive to our motion that they be allowed to go into effect. I suppose that's properly before the Commission at this point.

As far as their motion to take administrative notice, I haven't decided whether I need to file a response. I'm a little troubled by some aspects of

it, but I might want the opportunity to file a response before the Commission rules on that.

JUDGE WOODRUFF: I'm certainly not going to make any rulings on it today.

MR. BOUDREAU: I don't know if that's helpful to you to understand the context of what has transpired.

JUDGE WOODRUFF: It does. Mr. Poston?

MR. POSTON: If I could add, the Commission had issued an Order in the '07 case that brought us here today, and one of the things they said is they wanted time to evaluate the program proposal, receive evidence and give the parties an opportunity to work things out.

JUDGE WOODRUFF: And the opportunity to work things out I guess is today.

MR. POSTON: Right. So I would assume that same concept would move to the '08 case. That's where we are. The Commission's still wanting evidence and wanting us to try to work it out.

JUDGE WOODRUFF: So at this point the Commission doesn't have to do anything until at the latest August 3rd because the tariff's not going to go into effect until then anyway.

MR. BOUDREAU: I think that's right. I think the key date here is August 3rd. There's just a

couple of days later than what was originally contemplated in the 0477 case.

MR. POSTON: And in that case, I believe we were ordered to file a procedural schedule --

MR. BOUDREAU: Yes.

MR. POSTON: -- this coming Friday.

JUDGE WOODRUFF: Okay. Mr. Berlin, do you have anything to add for Staff?

MR. BERLIN: Yes, Judge, I do, and it goes to the objection to affidavit that MGE filed in the 0477 case. Staff will file an objection to Public Counsel's motion to take administrative notice in that 0005 case.

I'm a little bit confused with these two different cases, but I'd just like to go on record that Staff does object to Public Counsel's motion to take administrative notice of the affidavit of Ryan Kind in the 0477 case, and I will follow that up with a pleading.

JUDGE WOODRUFF: Okay. Mr. Boudreau?

MR. BOUDREAU: Originally I was going to put some questions to you for some clarification of what we were supposed to accomplish because there's a more confused, if you can believe this, a more confused procedural history than even what you've just heard in the sense that the subject matter is a topic that came up in the recently concluded MGE rate case.

But my sense of it is it might be more conducive for the parties to have a discussion about whether or not there's some way to work out the differences that still remain as far as the proposed program, and if it looks like those can't be resolved and it's appropriate to move forward and perhaps propose a procedural schedule, maybe ask if you'll return and maybe give us some guidance, because I have some questions as to what the Commission was expecting us to address in the event that the topic did, in fact, go to hearing.

So I've got some questions probably in the nature of clarification, but it may be a bit premature to put them to you at this point if that's --

JUDGE WOODRUFF: You're suggesting further discussion after you've had your discussion amongst the parties?

MR. BOUDREAU: Yeah, if that's okay with the parties. I just had some questions in the nature of clarification, assuming that we can't manage to work out our substantive differences.

JUDGE WOODRUFF: And I'm assuming those questions would not have to be on the record?

MR. BOUDREAU: That's a tough question.

JUDGE WOODRUFF: I'm just thinking about keeping the court reporter here.

MR. BOUDREAU: It may be that the Commission would prefer them to be on the record, and the other parties may as well. Given that, and in terms -- I hadn't thought about releasing the reporter for the discussion. Maybe I should put them to you now with the idea I'm not sure you may be in a position to necessarily answer them. But would you like me to do that --

JUDGE WOODRUFF: Why don't you go ahead and put them on the record?

MR. BOUDREAU: -- to at least frame the questions?

JUDGE WOODRUFF: Yes.

MR. BOUDREAU: And this goes back to what Mr. Poston observed, is that the parties were directed to propose a procedural schedule, presumably in anticipation of some form of evidentiary hearing on the topic in the case. And my question is, it wasn't clear for me after reading the Commission's Order in the 0477 case as to what the Commission viewed the issue to be.

And the reason for that is that the issue of the natural gas conservation program was one that was proposed by the company in its recent rate case, GR-2006-0422, and the Commission resolved the issue of the natural gas conservation program in the company's favor, for lack of a better way of putting it.

And the issue was or has been appealed by the Office of the Public Counsel. It was a topic of their application for rehearing, one of the topics in their application for rehearing, and was denied by the Commission in an order denying the applications for rehearing, and is currently an issue that's been reserved and taken up on a pending petition for writ of review which is pending in Greene County, Missouri.

So my point is that this appears to be a topic or a subject matter that's currently before a circuit court in Greene County, and I'm not sure that procedurally there's a lot that can be done with revisiting that topic now before the Commission in this case.

But I may not have a clear understanding of what the Commission really wants addressed with respect to this program either. That was going to be my request for some clarification from the Commission is are we going to be relitigating this issue, or is it something more targeted or something quite different?

That would be helpful to me. I just see some procedural complexities in terms of what can be done in terms of hearing this issue, which in my view has already been heard to some extent by the Commission.

With that, I'll leave it to the other

parties. They may have some observations on the same topic.

JUDGE WOODRUFF: Mr. Poston?

MR. POSTON: We look at it a little differently. We're looking at this -- the way we phrased our motion to suspend is that there was a violation of the promotional practice rule, the requirements for what needed to be filed with the Commission with a promotional practice tariff filing, and one of those is a cost effective analysis.

That's essentially the basis of our motion to suspend is that that's a tariff filing requirement that was not met. Regardless of what the Commission held in the rate case, there's been no waiver of the promotional practice rule. There's been no request for a waiver. So those rules are still there and they have not been complied with.

JUDGE WOODRUFF: Staff?

MR. BERLIN: At the risk of confusing this matter any more, I would join in the comments and questions that Mr. Boudreau posed to the Commission. Staff would seek the same clarification.

MR. BOUDREAU: The reason for the confusion is that -- and I agree with what Mr. Poston said in terms of what they've alleged is the deficiency in terms of the

promotional practices rule, but that was one that was presented to the Commission in the rate case, and the Commission specifically found it wasn't a promotional practice.

I guess my question is, is the Commission revisiting that topic, or is it something different that we're doing here? And some guidance on that, I mean, assuming that we're not successful here in talking about substantive differences, I think would be helpful, at least to me.

JUDGE WOODRUFF: What I'll propose to do, then, is take a short recess and allow you to have your discussions. How long do you anticipate it would take?

MR. BOUDREAU: I don't know. There were some discussions that were going on prior to going on the record, and it appears to me that there's a good beginning dialog going on. My sense of it is -- what do we need, maybe an hour to kind of hash through this? Half an hour.

JUDGE WOODRUFF: All right. Let's take a break and come back at 11 o'clock, then, for going on the record to discuss this question. And it may be that Judge Pridgin will be free by then, and he certainly has more knowledge of the case than I do at this point.

MR. BOUDREAU: And I understand that. That's why I was a little hesitant to pursue it at this

point.

JUDGE WOODRUFF: We want to try to cover as much as we can. With that, we're off the record until 11 o'clock.

(AN OFF-THE-RECORD DISCUSSION WAS HELD.)

JUDGE PRIDGIN: We're back on the record. This is the prehearing conference that is resuming in Case No. GT-2008-0005. I'm Ron Pridgin. I'm the Regulatory Law Judge assigned over this case. I believe Judge Woodruff began this prehearing conference at 10 and we recessed. It is now roughly 11 o'clock.

And I would like to let the parties comment to make sure that the record is clean. I discussed with the parties off the record the purpose of going off the record and letting the parties discuss what issues, if any, they would like clarity on from the Commission, and the parties inform me they would like to go back on the record at 11 to let me know what issues they are wondering the Commission might bring up. And that is the purpose for us going back on the record, at least as I understand it.

Mr. Boudreau, is that your understanding?

MR. BOUDREAU: I believe that's correct, yes. Thank you.

JUDGE WOODRUFF: Mr. Berlin, is that

correct?

MR. BERLIN: That's correct.

JUDGE PRIDGIN: Mr. Poston?

MR. POSTON: I believe that's what was requested.

JUDGE PRIDGIN: The reason I did that, I just want to make sure we're clear on the record what we discussed off the record and be sure to give the parties a chance to comment on that.

Now that we are back on the record, Mr. Boudreau, do you have an announcement for the Bench?

MR. BOUDREAU: Well, just in the sense that I think that in terms of discussing the substantive issues that the parties have with the program as proposed, the discussions have been good, and I am optimistic that we'll be able to put something together that at least the parties are agreeable to and to present that to the Commission in some fashion.

I don't know that it's necessary at this point to get any specific guidance from the Commission in terms of what it may be expecting in terms of an evidentiary proceeding in terms of the issues that the Commission would like -- would prefer be addressed. It may still come to that, but it sounds to me like we may be able to avoid that necessity altogether.

And with that, I'll leave it to the Commission's discretion as to whether or not they want to give any further guidance at this point or hold off until the parties have resolved -- hopefully resolved their differences.

JUDGE PRIDGIN: Mr. Berlin, any comment?

MR. BERLIN: I concur with Mr. Boudreau's assessment of the situation.

MR. POSTON: We concur as well.

JUDGE PRIDGIN: Is there anything else that the parties need from me while we're still on the record?

MR. BOUDREAU: Just bear with me for one moment.

JUDGE PRIDGIN: Certainly.

MR. BOUDREAU: The only thing I would point out is that, although the Order was issued in a different case, I think there was some expectation that the parties would be filing a proposed procedural schedule. The Order in the 0477 case specified July 13th. Is it fair to assume that we have some flexibility from the Commission as to that date? I mean, is that set in stone or is this something we can work around?

JUDGE PRIDGIN: You can work around it. I issued that Order because of the 30-day suspension order in the 0477 case, and if I'm correct, Mr. Boudreau, you

withdrew those tariffs --

MR. BOUDREAU: Yes.

JUDGE WOODRUFF: -- and filed a different tariff in this 2008 case.

MR. BOUDREAU: So technically speaking, we don't have an Order in the 0005 case directing us to file anything at this point?

JUDGE PRIDGIN: That's correct. And I realize that Public Counsel has filed a motion to suspend that is still pending. I have not brought that to the Commission's attention yet. And I will give the parties some time to keep talking, negotiating and see if you can come to an agreement on a tariff. But if you do not, I eventually will have to take this motion to agenda and get an up or down vote, and obviously depending on their vote, we will move forward from there.

MR. BOUDREAU: Very good. Thank you.

JUDGE PRIDGIN: You're quite welcome. Anything else from the parties? If there's nothing further, that will conclude the prehearing conference in Case No. GT-2008-0005. Thank you very much. We're off the record.

WHEREUPON, the recorded portion of the prehearing conference was concluded.

C E R T I F I C A T E

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

I, Kellene K. Feddersen, Certified Shorthand Reporter with the firm of Midwest Litigation Services, and Notary Public within and for the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place set forth in the caption sheet thereof; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

Given at my office in the City of Jefferson, County of Cole, State of Missouri.

_____
Kellene K. Feddersen, RPR, CSR, CCR
Notary Public (County of Cole)
My commission expires March 28, 2009.