

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Prehearing Conference
8 July 10, 2007
9 Jefferson City, Missouri
Volume 1

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

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

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22 REPORTED BY:

23 KELLENE K. FEDDERSEN, CSR, RPR, CCR
MIDWEST LITIGATION SERVICES

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25

1 APPEARANCES:

2 PAUL A. BOUDREAU, Attorney at Law
3 Brydon, Swearngen & England, P.C.
4 312 East Capitol
5 P.O. Box 456
6 Jefferson City, MO 65102-0456
7 (573) 635-7166

8 FOR: Missouri Gas Energy.

9 MARC D. POSTON, Senior Public Counsel
10 P.O. Box 2230
11 200 Madison Street, Suite 650
12 Jefferson City, MO 65102-2230
13 (573) 751-4857

14 FOR: Office of the Public Counsel
15 and the Public.

16 ROBERT S. BERLIN, Associate General Counsel
17 P.O. Box 360
18 200 Madison Street
19 Jefferson City, MO 65102
20 (573) 751-3234

21 FOR: Staff of the Missouri Public
22 Service Commission.

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Good morning, everyone.

3 My name is Judge Morris Woodruff. I'm here on behalf of
4 Judge Ron Pridgin, who got tied up in agenda this morning.

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11 tariff was subsequently withdrawn and a new tariff issued,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

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

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

23 JUDGE WOODRUFF: And for the Staff of the
24 Commission?

25 MR. BERLIN: Robert S. Berlin,

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

4 JUDGE WOODRUFF: And for the Office of
5 Public Counsel?

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

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

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

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

1 0005 case, is we filed a motion to invite the Commission
2 to allow the program to go in effect by operation of law
3 at the end of the 30-day period. Public Counsel's filed a
4 motion to suspend -- I don't know that it was to a
5 particular date, but to suspend the tariffs, alleging some
6 of the same deficiencies they alleged in the prior case.

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

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

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

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

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

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

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

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

8 JUDGE WOODRUFF: It does. Mr. Poston?

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

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

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

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

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

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

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

5 MR. BOUDREAU: Yes.

6 MR. POSTON: -- this coming Friday.

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

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

13 I'm a little bit confused with these two
14 different cases, but I'd just like to go on record that
15 Staff does object to Public Counsel's motion to take
16 administrative notice of the affidavit of Ryan Kind in the
17 0477 case, and I will follow that up with a pleading.

18 JUDGE WOODRUFF: Okay. Mr. Boudreau?

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

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

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

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

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

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

23 MR. BOUDREAU: That's a tough question.

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

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

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

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

12 JUDGE WOODRUFF: Yes.

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

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

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

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

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

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

25 With that, I'll leave it to the other

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

3 JUDGE WOODRUFF: Mr. Poston?

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

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

18 JUDGE WOODRUFF: Staff?

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

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

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

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

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

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

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

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

1 point.

2 JUDGE WOODRUFF: We want to try to cover as
3 much as we can. With that, we're off the record until
4 11 o'clock.

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

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

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

22 Mr. Boudreau, is that your understanding?

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

25 JUDGE WOODRUFF: Mr. Berlin, is that

1 correct?

2 MR. BERLIN: That's correct.

3 JUDGE PRIDGIN: Mr. Poston?

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

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

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

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

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

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

6 JUDGE PRIDGIN: Mr. Berlin, any comment?

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

9 MR. POSTON: We concur as well.

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

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

14 JUDGE PRIDGIN: Certainly.

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

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

1 withdrew those tariffs --

2 MR. BOUDREAU: Yes.

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

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

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

17 MR. BOUDREAU: Very good. Thank you.

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

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

25

1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

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

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

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