

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

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4 TRANSCRIPT OF PROCEEDINGS

5 Conference

6 November 23, 2011

7 Jefferson City, Missouri

8 Volume 1

9 _____
10 In the Matter of

11 The Application of Missouri)

12 Gas Energy For The Issuance)

13 Of An Accounting Authority) File No. GU-2011-0392

14 Order Relating To Its Natural)

15 Gas Operations And For A)

16 Contingent Waiver Of The)

17 Notice Requirement of)

18 4 CSR 240-4-020(2))

19 _____
20 DANIEL JORDAN, Presiding

 SENIOR REGULATORY LAW JUDGE

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22 _____
23
24 REPORTED BY:

 NANCY L. SILVA, RPR, CCR

25 TIGER COURT REPORTING, LLC

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1 JUDGE JORDAN: Let's go ahead and go on
2 the record.

3 The Commission calls File GU-2011-0392.
4 This relates to the application of Southern Union
5 Company doing business as Missouri Gas Energy for an
6 accounting authority order.

7 We'll begin with entries of appearance.
8 We'll start with the Applicant.

9 MR. BOUDREAU: Let the record reflect the
10 appearance of Paul A. Boudreau and L. Russell Mitten
11 on behalf of Southern Union Company doing business as
12 Missouri Gas Energy.

13 JUDGE JORDAN: Thank you.

14 And next, for Staff.

15 MR. BERLIN: Thank you, Judge. Appearing
16 on behalf of the Staff of the Missouri Public Service
17 Commission are Robert S. Berlin, Goldie Tompkins, and
18 Sarah L. Kliethermes.

19 JUDGE JORDAN: Thank you. And for the
20 Office of Public Counsel.

21 MR. POSTON: Thank you. Marc Poston
22 appearing for the Office of the Public Counsel and
23 the public.

24 JUDGE JORDAN: Thank you. We have some
25 representatives of the parties also?

1 MR. BERLIN: Judge, appearing -- I can at
2 least say who's present for the prehearing is Mark
3 Oligschlaeger for Staff and Amanda McMellen for
4 Staff.

5 JUDGE JORDAN: Thank you. We also have
6 the phone line open in case representatives of the
7 parties call in.

8 Our purpose today is a brief prehearing
9 conference on the application. In communication with
10 parties, I've discussed my concern mostly over the
11 settlement of issues and want to make sure that that
12 is all properly supported. I'll set forth my concern
13 on the record so that there's no misunderstanding.

14 In past Commission practice I've seen
15 that the parties will often settle an issue, which is
16 all to the good since the law favors settlement over
17 litigation, because settlement will serve the parties
18 better because the parties know better what they
19 want.

20 In this action, to resolve these issues
21 requires a decision of the Commission, so I want to
22 make sure that any issue that is settled has support
23 in the record in facts or in stipulation of facts,
24 some substitute for evidence, to get to the relief
25 that the parties want.

1 In a noncontested case that's pretty
2 easy, because you just look at the file, and if
3 something's in the file to support it, then you have
4 support for the decision and that's the end of it,
5 but in a contested case, which is what we have, we
6 need either evidence or some substitute for
7 evidence. I just want to make sure of that.

8 I see that one of our issues listed by
9 the parties as Issue A looks like it's fairly close
10 to settlement, so that being a possibility, I wanted
11 to make sure that there was no misunderstanding as to
12 that matter.

13 Are there any questions where I'm coming
14 from on that?

15 MR. BOUDREAU: No.

16 MR. POSTON: No.

17 JUDGE JORDAN: I'm not seeing any
18 questions.

19 MR. BOUDREAU: (Indicated.)

20 JUDGE JORDAN: Yes.

21 MR. BOUDREAU: Well, I have some
22 observations about it, but I don't --

23 JUDGE JORDAN: Please do.

24 MR. BOUDREAU: -- know if you have
25 something further that you --

1 JUDGE JORDAN: Please do. Sure.

2 MR. BOUDREAU: First of all, I think I'll
3 have to defer to Russ on whether -- you know, I think
4 I know the issue you're referring to, whether we're
5 close to or likely to have a settlement proposal, so
6 I'll have to defer to Russ.

7 One of the things I wanted to bring to
8 your attention is that in 1991, the Commission dealt
9 with the Accounting Authority orders, and pretty
10 clearly held, in my view, the noncontested cases,
11 even if there's a hearing held -- and I brought a
12 copy of that opinion with me. It was the old Sibley
13 Deferral case, and the citation -- well, it's on
14 here. It's 10 PSC 3200, and I brought that, and I
15 flagged the portion of the order that deals with that
16 particular topic.

17 JUDGE JORDAN: Thank you.

18 MR. BOUDREAU: I thought that would be
19 useful to bring that to your attention. I think the
20 gist of it is that -- it's anchored in Chapter 536
21 where it talks about contested versus noncontested,
22 and the Commission found that under the applicable
23 statute that there was no requirement for a
24 hearing --

25 JUDGE JORDAN: Uh-huh. Uh-huh.

1 MR. BOUDREAU: -- and therefore it was an
2 uncontested case, even if a hearing was held, so it
3 wasn't the hearing that defined it. It was whether
4 or not the hearing was required by law --

5 JUDGE JORDAN: And I think you're right.

6 MR. BOUDREAU: -- and I think you're
7 familiar with that file.

8 JUDGE JORDAN: Right.

9 MR. BOUDREAU: So anyway, I wanted to -- I
10 just wanted to bring that to your attention, that
11 I've been looking at this case from a somewhat
12 different context and that it is, in fact, a
13 uncontested case, but since various parties want to
14 have a hearing about the aspects of the request, that
15 the Commission holds a hearing on it, the discretion
16 to hold this hearing.

17 JUDGE JORDAN: And certainly nothing
18 prevents, in a noncontested case, conduct of some
19 kind of hearing --

20 MR. BOUDREAU: Yes.

21 JUDGE JORDAN: -- which could range from
22 an informal give-and-take to something --

23 MR. BOUDREAU: -- more formal.

24 JUDGE JORDAN: Yes.

25 MR. BOUDREAU: I wouldn't dispute that.

1 JUDGE JORDAN: Now, are you saying that
2 the -- are you saying that the Applicant's position
3 is as follows: That there's -- that the Applicant
4 has no right to a hearing before the Commission
5 decides this application?

6 MR. BOUDREAU: Well, I think it's a little
7 bit different. I think that the Commission has no
8 obligation to hold a hearing, is the way that I would
9 characterize it; that having a hearing is
10 discretionary with the Commission, and usually if a
11 party has clearly indicated that they want to have a
12 hearing over the issues, they tend -- they typically
13 use that to, maybe, swear down the facts in the law.

14 JUDGE JORDAN: Well, it sounds like --

15 MR. BOUDREAU: But I'm not saying that
16 we've got a right to it, that we, as the Applicant,
17 have a right to a hearing, nor am I saying that any
18 other party in the room has a right to a hearing in a
19 noncontested case.

20 JUDGE JORDAN: Okay. Well, in a
21 noncontested case, that's certainly true. That's
22 kind of the definition of a noncontested case,
23 really.

24 MR. BOUDREAU: Yes. Excuse me.

25 (Mr. Boudreau's cell phone rang.)

1 JUDGE JORDAN: Take a second.

2 THE COURT REPORTER: Can I turn this down
3 a little now that --

4 JUDGE JORDAN: I'm going to go ahead and
5 hang up this line since it's seven minutes past
6 10:00.

7 THE COURT REPORTER: Thanks.

8 MR. BOUDREAU: You know, I better take
9 this call. This can actually be something I need to
10 take, so I'll step out. Excuse me.

11 (Mr. Boudreau left the room.)

12 JUDGE JORDAN: Okay. Well, I'll just move
13 on then, unless someone else has something that they
14 want to add to that discussion. Okay.

15 MR. POSTON: Well, just that, I mean, it
16 seems to be a pretty contested case, in my opinion,
17 just -- we're contesting the application and what
18 they're requesting -- that's contested -- but I need
19 to look back at the Sibley case, and I don't know if
20 it really even matters at this point. There is a
21 hearing scheduled --

22 JUDGE JORDAN: Right.

23 MR. POSTON: -- and it seems like that's
24 what we're doing.

25 MR. MITTEN: Well, I think the only thing

1 that would matter is if we would enter into a
2 stipulation on any of the issues, what exactly you
3 would expect to have in that stipulation.

4 JUDGE JORDAN: Okay.

5 MR. MITTEN: If you need to have facts
6 because you believe it's a contested case, I think we
7 need to get that issue resolved. If it's a
8 noncontested case as the Company contends, then I
9 think the simple black-box settlement reference to
10 the record, the kind of thing that we normally enter
11 into for settlement purposes, ought to be sufficient.

12 JUDGE JORDAN: I'm glad you raise that
13 point, and I do want to be clear on that. I agree
14 that the idea of a black-box settlement is enough for
15 a noncontested case in that if you have something in
16 the file that will get you to that result, that's
17 pretty much all you need.

18 If this were something like a complaint
19 where no Commission order is really needed to dispose
20 of the case, then we wouldn't even need that. If
21 this is a noncontested case and we need something
22 from the Commission, we need some support for a
23 noncontested case, it doesn't have to be a record of
24 evidence. It doesn't have to be evidence on the
25 record, nor a substitute for that.

1 The reason I'm thinking of this as a
2 contested case is that what the Applicant is asking
3 for is an order that will preserve certain items,
4 events, for a future rate case. If the Commission
5 doesn't grant that, if I understand correctly under
6 the accounting of the law governing accountancy here,
7 those items are lost for the next rate case. Am I
8 right?

9 MR. MITTEN: I think it depends on the
10 timing of the rate case --

11 JUDGE JORDAN: Correct.

12 MR. MITTEN: -- but for all practical
13 purposes, I believe you're correct.

14 JUDGE JORDAN: Unless the Commission picks
15 the year that's -- that year, they're gone.

16 MR. MITTEN: Yes.

17 JUDGE JORDAN: Okay. It seemed to me that
18 before the Commission eliminated these allegedly
19 significant costs -- well, it seems to me a
20 significant property right, hence my thinking of this
21 as a contested case, but I don't think that's really
22 the issue here.

23 What you're getting to is, Should the
24 parties come to a settlement and want an order from
25 the Commission giving them the relief that they agree

1 to, what will the parties need in that stipulation?

2 MR. MITTEN: Yes.

3 JUDGE JORDAN: And here's what I'm saying
4 as to that: Something more than an agreement as to
5 what the relief should be. I mean, certainly if you
6 want to describe the order for us, that's good, but
7 also looking at the law that supports such relief,
8 the law will tell you what facts are relevant under
9 that, so if you have some -- so what you'll want to
10 stipulate will be more in the nature of evidentiary
11 facts, basic facts, as described by the law that
12 supports the relief, that authorizes the relief, so
13 something more than conclusory, something more than
14 ultimate facts, a little -- that's what I'm saying.

15 Go ahead, counsel.

16 (Mr. Boudreau entered the room.)

17 MR. BOUDREAU: And I missed some of the
18 discussion, and I apologize to my colleagues and
19 everybody present. I'll have an explanation for you
20 when we go off the record.

21 Are you saying that the facts that are in
22 the testimony wouldn't support, assuming -- assuming
23 that we go -- we go to hearing --

24 JUDGE JORDAN: Uh-huh. Uh-huh.

25 MR. BOUDREAU: -- and the testimony is

1 offered into evidence and it's received into
2 evidence, you'll have Staff's witnesses, you'll have
3 Public Counsel's -- actually, Public Counsel doesn't
4 have a witness, I guess. Well --

5 MR. POSTON: One witness.

6 MR. BOUDREAU: That's right. I'm --

7 JUDGE JORDAN: Well, they -- they filed
8 testimony.

9 MR. BOUDREAU: I've worked on so many
10 cases, I'm losing track. I apologize.

11 JUDGE JORDAN: I understand.

12 MR. BOUDREAU: -- Public Counsel's
13 witness, the Company's witnesses, and -- in the
14 record, and I think there would be evidentiary
15 support, presumably, for whatever issue we're
16 proposing to settle in that context, so you're
17 looking for something more. You want the settlement
18 proposal or the settlement that's filed to be self-
19 contained?

20 JUDGE JORDAN: Let me clarify. We don't
21 have a record as of now.

22 MR. BOUDREAU: Yes. That's true.

23 JUDGE JORDAN: We have a file --

24 MR. BOUDREAU: That's true.

25 JUDGE JORDAN: -- and it has prefiled

1 testimony that's not in the record yet.

2 MR. BOUDREAU: Yes.

3 JUDGE JORDAN: I want to make sure that if
4 you have a stipulation, though, saying that you don't
5 need that evidence and you stipulate to facts --

6 MR. BOUDREAU: Okay.

7 JUDGE JORDAN: -- that substitutes for
8 evidence.

9 MR. BOUDREAU: Okay.

10 JUDGE JORDAN: I just want to make sure
11 that a stipulation supports the relief that you
12 seek --

13 MR. BOUDREAU: Okay.

14 JUDGE JORDAN: -- however you do it.

15 MR. BOUDREAU: But let me proceed.

16 JUDGE JORDAN: Please do.

17 MR. BOUDREAU: And I understand what
18 you're saying, but we would presumably submit a
19 stipulation, the Commission would take that
20 stipulation along with the other issues that have
21 been involved in the case, issue its decision --

22 JUDGE JORDAN: Uh-huh.

23 MR. BOUDREAU: -- one of which would be --
24 you know, assuming that they're favorably disposed
25 toward the stipulation, that we approve the

1 stipulations, but by that time you would have all of
2 the other stuff in the record. I guess that's my
3 point. It seems to me that you're looking for
4 something somewhat self-contained on any issue that
5 we separate out and settle. Am I making sense? I'm
6 sorry if I'm not.

7 JUDGE JORDAN: You are making sense. I
8 think we're talking about pretty much the same thing.

9 MR. BOUDREAU: Okay.

10 JUDGE JORDAN: What I don't want to happen
11 is for an issue to be broken out, the parties say, We
12 agree to this resolution of the issue, and leave it
13 at that; in other words, if you agree to a resolution
14 of that issue, that's great. The Commission needs
15 some evidence or a substitute for evidence, like
16 stipulations or admissions, on which to base that
17 relief.

18 MR. MITTEN: If we would enter into a
19 stipulation on one of the issues in this case --

20 JUDGE JORDAN: Uh-huh.

21 MR. MITTEN: -- and we are not able to
22 reach agreement on the others, we went forward with
23 the hearing and all the prefiled testimony in the
24 case was entered into the record, do you still need a
25 stipulation of facts, because I think at least all of

1 the witnesses in this case testified on all of the
2 issues?

3 JUDGE JORDAN: Okay. What I'm addressing
4 is the scenario where the parties agree to a
5 resolution, okay? If you have evidence in the
6 record, you won't need a stipulation.

7 MR. MITTEN: Which you can still stipulate
8 even if you have evidence.

9 JUDGE JORDAN: You can. You can. So I
10 don't -- what you're talking about there, I don't
11 think I need more. You can tell the Commission what
12 you want, but it would be helpful to cite to the bits
13 in the record, rather than a stipulation. Then you
14 cite to the evidence in the record that everyone
15 agrees and supports to Staff, really. Okay?

16 MR. MITTEN: All right.

17 JUDGE JORDAN: Okay. Good.

18 Anything else on that before we proceed?
19 I just didn't want anyone to get confused between a
20 contested case and noncontested case procedure,
21 because it happens all the time, and the Commission
22 has not always been helpful in guiding the parties in
23 that direction.

24 MR. POSTON: You said it.

25 JUDGE JORDAN: That's part of why I'm

1 here.

2 Well, then I'll move on.

3 I just -- having -- having said that, I
4 just want to remind the parties of a few other
5 things. Remember -- I'm acutely aware of this --
6 I'll be the least informed person in the room. I am
7 not an accountant, and I don't have a whole lot of
8 experience with these accounting issues, in
9 particular, so if you will have your witnesses speak
10 slowly and in words of one syllable, that will help
11 me to understand your case.

12 I may ask some very stupid, basic
13 questions. I hope you'll be patient with me, but if
14 you'll remember that I don't necessarily speak your
15 language, that I'm on a somewhat lower level of
16 understanding than everyone else involved in this
17 case, that will be helpful to me.

18 And when doing so, it will also help me
19 if you relate the evidence to the element of a claim
20 or defense that's at issue here, just to keep me on
21 track. It also helps reading the transcript much
22 easier.

23 I think that's all that I have for the
24 parties. Do parties have any procedural matters for
25 me? Is there anything else that I can help you with

1 this morning?

2 (No response.)

3 JUDGE JORDAN: Not seeing anything from
4 the parties. This room -- yes.

5 MR. OLIGSCHLAEGER: There was some
6 discussion, I believe, in the agenda yesterday about
7 the time the hearings might start. Is there
8 anything --

9 JUDGE JORDAN: There's no change from how
10 they're scheduled. No change.

11 MR. OLIGSCHLAEGER: Okay.

12 JUDGE JORDAN: Anything else?

13 (No response.)

14 JUDGE JORDAN: Okay. We have this room
15 available for the rest of the day, as far as I know,
16 and I'm here for most of the day. I'll be out
17 briefly this morning, but I'll be back in case
18 there's anything else I can do for the parties, but
19 this room is available for the parties to discuss the
20 issues for hearing.

21 Commission encourages such discussion
22 with the hope of a settlement among the parties, as
23 we've discussed.

24 Anything else before we go off the
25 record?

1 (No response.)

2 JUDGE JORDAN: Okay. Well, thank you very
3 much for your attention and your hard work on this
4 case as well. We'll adjourn this conference and go
5 off the record.

6 (The hearing concluded.)

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1 CERTIFICATE

2 I, Nancy L. Silva, RPR, a Certified
3 Court Reporter, CCR No. 890, the officer before
4 whom the foregoing hearing was taken, do hereby
5 certify that the witness whose testimony appears
6 in the foregoing hearing was duly sworn; that
7 the testimony of said witness was taken by me to
8 the best of my ability and thereafter reduced to
9 typewriting under my direction; that I am
10 neither counsel for, related to, nor employed by
11 any of the parties to the action in which this
12 hearing was taken, and further, that I am not a
13 relative or employee of any attorney or counsel
14 employed by the parties thereto, nor financially
15 or otherwise interested in the outcome of the
16 action.

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19 Nancy L. Silva, RPR, CCR
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