

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 6<sup>th</sup> day of April, 2017.

In the Matter of Laclede Gas Company, )  
Missouri Gas Energy’s Purchased Gas ) File No. GR-2014-0324  
Adjustment Tariff Filing )

**ORDER GRANTING INTERVENTION**

Issue Date: April 6, 2017

Effective Date: April 6, 2017

This case addresses filings by Laclede Gas Company, through its Missouri Gas Energy division (“MGE”), that affect a MGE-specific purchased gas adjustment (“PGA”) and actual cost adjustment (“ACA”). The PGA and ACA are tariff provisions that pass wholesale natural gas (“gas”) costs through to a gas company’s retail customers outside of a general rate case. MGE and the Commission’s staff (“Staff”) filed a *Partial Stipulation and Agreement* (“partial settlement”)<sup>1</sup> that is pending before the Commission.

The Missouri School Boards Association (“MSBA”) filed an application to intervene with an objection to the partial settlement (“motion”).<sup>2</sup> The Commission’s staff (“Staff”) filed a response.<sup>3</sup> MSBA filed a reply.<sup>4</sup>

Staff objects to the motion on several grounds.

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<sup>1</sup> EFIS No. 42 (February 22, 2017) *Partial Stipulation and Agreement Laclede Gas Company*.

<sup>2</sup> Electronic Filing Information System (“EFIS”) No. 43 (March 13, 2017) *Missouri School Boards’ Association Application to Intervene and Motion to Suspend Partial Stipulation and Agreement Missouri School Boards’ Association*.

<sup>3</sup> EFIS No. 46 (March 17, 2017) *Response to MSBA Application to Intervene and Motion to Suspend Partial Stipulation and Agreement*.

<sup>4</sup> EFIS No. 47 (March 21, 2017) *Missouri School Boards’ Association Response*.

## A. Interest

The regulation that governs intervention requires MSBA to plead an interest in this case:

(2) A motion to intervene . . . shall include:

\* \* \*

(E) A statement of the proposed intervenor's . . . interest in the case and reasons for seeking intervention [.]

(3) The commission may grant a motion to intervene . . . if—

(A) The proposed intervenor . . . has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest. [<sup>5</sup>]

The interest cited in the motion involves the partial settlement.<sup>6</sup> The partial settlement proposes to raise MGE's rates for the School Transportation Program.

Under that program, MSBA's member schools can pay MGE to transport gas that the schools purchase from a third party. MSBA's member schools' participation in the School Transportation Program constitutes an interest different from the general public's interest. Raising the rates would constitute an adverse effect on that interest. And, because the funds of public schools are at issue, granting the proposed intervention would serve the public interest.

Therefore, MSBA has shown the interest required for intervention.

## B. Time

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<sup>5</sup> 4 CSR 240-2.075.

<sup>6</sup> EFIS No. 42 (February 22, 2017) *Partial Stipulation and Agreement Laclede Gas Company*.

Staff cites the regulation that sets the time for filing an application to intervene:

(1) A motion to intervene . . . shall be filed within thirty (30) days after the commission issues its order giving notice of the case, unless otherwise ordered by the commission. [<sup>7</sup>]

Staff cites no date on which “the commission issue[d] its order giving notice of the case” to start the time for filing. The only notice of this case has been in orders, which the Commission issued only to MGE, Staff, and the Public Counsel. If any of those orders count as “giving notice of the case” generally, the 30-day filing time does not apply if the Commission “otherwise order[s.]”

Staff also cites the regulation that requires good cause for late intervention:

(10) Motions to intervene . . . filed after the intervention date may be granted upon a showing of good cause. [<sup>8</sup>]

Good cause means a good faith request for reasonable relief.<sup>9</sup> Assuming, without deciding, that the motion is late, MSBA has made the required showing because MSBA states that it had no notice of the partial settlement’s proposal to raise Lalclede-MGE’s rates for the School Transportation Program.

Staff argues that MSBA had actual notice that the School Transportation Program was at issue in this case because MSBA representatives attended a meeting at which persons interested in this case discussed the School Transportation Program. But Staff’s recommendation addressed only when MGE should collect on any balance due to or from the schools (“balancing”) not how much the schools should pay. Staff has not shown that

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<sup>7</sup> 4 CSR 240-2.075.

<sup>8</sup> 4 CSR 240-2.075.

<sup>9</sup> *American Family Ins. Co. v. Hilden*, 936 S.W.2d 207 (Mo. App. W.D. 1996).

raising the rates was at issue, or that MSBA could have known that raising the rates was at issue, until the filing of the partial settlement.

Staff noted that balancing may affect an ACA.<sup>10</sup> But it is unclear that a discussion on the timing of balancing would naturally lead to the conclusion that some rates would increase. For that reason, MSBA claims surprise. That claim is credible. A better-explained resolution of the balancing issue is more likely with MSBA's participation in this case.

Therefore, MSBA has stated good cause to intervene late.

### C. Record

Staff cites the portion of the regulation that addresses the state of the record in a case:

(10) Motions to intervene . . . filed after the intervention date . . . must include a definitive statement whether or not the entity seeking intervention . . . accepts the record established in that case, including the requirements of any orders of the commission, as of the date the motion is filed. [<sup>11</sup>]

But the Commission has not compiled an evidentiary record,<sup>12</sup> only a file on which it may decide a non-contested case when no party seeks an evidentiary hearing.<sup>13</sup>

### D. Deemed Unanimity

The partial settlement is non-unanimous because the Office of the Public Counsel is a party to every action,<sup>14</sup> but did not sign the partial settlement. Staff cites the regulation that allows the Commission to treat the partial settlement as unanimous after seven days:

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<sup>10</sup> EFIS No. 12 (December 8, 2015) *Staff Recommendation Regarding Missouri Gas Energy's 2013-2014 Actual Cost Adjustment Filing* page 10 through 14.

<sup>11</sup> 4 CSR 240-2.075.

<sup>12</sup> *City of Valley Park v. Armstrong*, 273 S.W.3d 504, 506 (Mo. banc 2009).

<sup>13</sup> *State ex rel. Rex Deffenderfer Ent., Inc. v. Public Serv. Comm'n*, 776 S.W.2d 494, 496 (Mo. App., W.D. 1989).

(B) Each **party** shall have seven (7) days from the filing of a nonunanimous stipulation and agreement to file an objection to the nonunanimous stipulation and agreement. Failure to file a timely objection shall constitute a full waiver of **that party's** right to a hearing.

(C) If no **party** timely objects to a nonunanimous stipulation and agreement, the commission **may** treat the nonunanimous stipulation and agreement as a unanimous stipulation and agreement. [<sup>15</sup>]

(Emphasis added.) But the seven-day response time does not apply to MSBA because, as the filing of the motion suggests, MSBA was not a party when the partial settlement was filed. And, even if the seven-day deadline applied to MSBA, “may” signifies discretion, not a mandate,<sup>16</sup> so the Commission need not treat the partial settlement as unanimous. And finally, the Commission notes that MGE, whose rates are at issue, has not defended the partial settlement against, nor otherwise objected to, the motion.

#### E. Ruling

The Commission will grant the motion, making MSBA a party to this case, so MSBA's objection to the tariff prevents the Commission from treating the partial settlement as unanimous.

#### **THE COMMISSION ORDERS THAT:**

1. *The Missouri School Boards' Association Application to Intervene and Motion to Suspend Partial Stipulation and Agreement Missouri School Boards' Association* is granted and the Missouri School Boards Association is a party to this case.

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<sup>14</sup> 4 CSR 240-2.010(10).

<sup>15</sup> 4 CSR 240-2.115(2).

<sup>16</sup> *S.J.V. ex rel. Blank v. Voshage*, 860 S.W.2d 802, 804 (Mo. App., E.D. 1993).

2. No later than May 20, 2017, Staff shall file a status report that may include proposed dates for a conference, or a proposed procedural schedule, or both.

3. This order shall be effective when issued.

**BY THE COMMISSION**



A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

Hall, Chm., Stoll, Kenney, Rupp, and  
Coleman, CC., concur.

Daniel Jordan, Senior Regulatory Law Judge

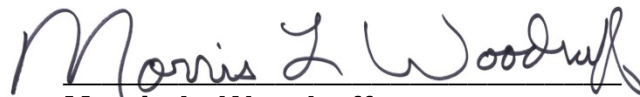
**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

**I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 6<sup>th</sup> day of April 2017.**



  
**Morris L. Woodruff**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**April 6, 2017**

**File/Case No. GR-2014-0324**

**Missouri Public Service Commission**

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**Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).**

*Sincerely,*



**Morris L. Woodruff  
Secretary**

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Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.