

application, the tariff sheets were designed to produce an annual increase of \$1.3 million in GMO's Missouri jurisdictional revenues.

On September 12, 2008, the Commission issued notice and set a deadline for intervention requests. The Commission granted the request for intervention of Ag Processing.

On November 20, 2008, the Commission set the procedural schedule. This schedule included an evidentiary hearing scheduled for May 4-7, 2009, and a True-Up hearing scheduled for June 1-2, 2009. On March 18, 2009, the Commission granted a request of GMO to extend all of the True-Up proceedings and the True-Up hearing was reset for July 1-2, 2009.¹

The Commission held local public hearings in Lee's Summit, Sedalia, St. Joseph, Marshall, Carrollton, Nevada, and two separate hearings in Kansas City, Missouri.² The Commission utilized the same locations and times to conduct combined local public hearings for ER-2009-0089, ER-2009-0090, and HR-2009-0092.

The evidentiary hearing commenced on May 4, 2009. Once preliminary matters were complete, the parties requested a recess to engage in settlement negotiations. Following completion of the negotiations, the parties indicated that they had reached an agreement in principle and announced their intention to memorialize a Unanimous Stipulation and Agreement and file it with the Commission. Consequently, the Commission

¹ Order Modifying Procedural Schedules For True-Up Proceedings and Formally Adopting Test Year And Update Period, issued March 18, 2009. See also, Order Rescinding Conditions Imposed in the Commission's Order Modifying Procedural Schedules for True-Up Proceedings, issued April 15, 2009.

² Order Setting Public Comment Hearings, issued January 6, 2009; Order Rescheduling Public Comment Hearings, issued January 16, 2009; Notice Regarding Requests for Additional Local Public Hearings, filed February 25, 2009; Order Expanding Access To Public Comment Hearings, issued February 25, 2009.

suspended the remainder of the evidentiary hearing to allow for the filing of the Agreements and for responses or objections.³

On May 13, 2009, GMO filed the Agreements. Deadlines were set for responses, suggestions supporting the agreements and replies to the suggestions.⁴ No one objected to the Agreement and no party requested that the evidentiary hearing be resumed to hear any issue.

On June 8, 2009, the Commission convened a hearing for the formal presentation of the Agreement and to direct questions about the Agreement to the parties' counsel and subject matter experts.⁵ The Commission did not order briefs and closed the recording of all evidence at the conclusion of the stipulation hearing on June 8, 2009.

II. The Agreement

The Agreement purports to resolve all issues in this matter.⁶ Among other provisions, the Agreement provides that GMO should be authorized to file revised tariff sheets containing new rate schedules for steam heating service designed to produce overall Missouri jurisdictional gross annual steam heating revenues, exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar fees or taxes, in the amount of \$384,000. The Agreement provides that these revenues shall be for steam heating service rendered on and after July 1, 2009, without the necessity for GMO to file any other motion or pleading. The parties further agreed that the exemplar tariffs filed

³ Transcript, Volume 11.

⁴ *Notice and Order Suspending Evidentiary Hearing, Setting Deadlines for Filings, and Setting Deadline For Requesting A Hearing*, issued May 4, 2009.

⁵ Transcript, Volume 12.

⁶ *Unanimous Stipulation and Agreement*, filed on May 13, 2009. The Agreement is attached to this order as Appendix A.

with the Agreement implement the terms of the agreement and resolve all revenue requirement and all rate design issues in this case.⁷

The Agreement also establishes certain modifications to the Fuel Cost Customer/Utility Alignment Mechanism that was originally approved by the Commission in Case No. HR-2005-0450.⁸ In addition, GMO agrees that it will not seek to *implement* another rate increase in base rates for steam service sooner than 14 months following the effective date of the tariffs approved in this proceeding.⁹

Finally, the Agreement includes a contingent waiver of rights indicating that if the Commission approves in whole the Agreement, the signatories agreed to waive their rights to call and cross-examine witnesses,¹⁰ to present oral argument and written briefs,¹¹ and to judicial review.¹²

By submitting the Agreement for consideration by the Commission, the parties jointly recommend that the Commission accept the Agreement as a fair compromise of their respective positions on the issues in this matter.¹³ The parties negotiated the various terms of these provisions and no party has objected or sought a hearing with respect to any of these provisions. There are no disputed issues between the parties with regard to the provisions of the Agreement.

⁷ Agreement, para. 3.

⁸ Agreement, para. 2.

⁹ Agreement, para, 4.

¹⁰ Section 536.070(2).

¹¹ Section 536.080.1.

¹² Section 386.510.

¹³ *Id.*

III. Relevant Legal Standards

A. Jurisdiction

GMO is a “heating company” and a “public utility,” as defined in Sections 386.020(20) and (43), respectively, and is subject to the personal jurisdiction, supervision, and control of the Commission under Chapters 386 and 393 of the Missouri Revised Statutes. GMO filed its application pursuant to Commission Rules 4 CSR 240-2.060, 3.030, and 3.425. These rules outline the minimum filing requirements for GMO to pursue its rate increase request.

B. Standards for Approving Stipulations and Agreements

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case.¹⁴

In reviewing the Agreement, the Commission notes:

Every decision and order in a contested case shall be in writing, and, except in default cases, or cases disposed of by stipulation, consent order or agreed settlement, the decision, including orders refusing licenses, shall include or be accompanied by findings of fact and conclusions of law.¹⁵

Should the Commission find that the terms of the Agreement are lawful and just and reasonable, the Commission may approve the Agreement as a resolution of all factual issues in this matter.

¹⁴Section 536.060, RSMo; and 4 CSR 240-2.115(1)(B).

¹⁵Section 536.090, RSMo. This provision applies to the Public Service Commission. *State ex rel. Midwest Gas Users' Association v. Public Service Commission of the State of Missouri*, 976 S.W.2d 485, 496 (Mo. App. 1998).

C. Precedential Effect

An administrative body, that performs duties judicial in nature, is not and cannot be a court in the constitutional sense.¹⁶ The legislature cannot create a tribunal and invest it with judicial power or convert an administrative agency into a court by the grant of a power the constitution reserves to the judiciary.¹⁷

An administrative agency is not bound by stare decisis, nor are agency decisions binding precedent on the Missouri courts.¹⁸ “In all events, the adjudication of an administrative body as a quasi-court binds only the parties to the proceeding, determines only the particular facts contested, and as in adjudications by a court, operates retrospectively.”¹⁹

The Commission emphasizes that its decision in this matter is specific to the facts of this case. Evidentiary rulings, findings of fact and conclusions of law are all determined on a case-by-case basis. Consequently, consistent with the Commission’s statutory authority, this decision does not serve as binding precedent for any future determinations by the Commission.

¹⁶ *In re City of Kinloch*, 362 Mo. 434, 242 S.W.2d 59, 63[4-7] (Mo. 1951); *Lederer v. State, Dept. of Social Services, Div. of Aging*, 825 S.W.2d 858, 863 (Mo. App. 1992).

¹⁷ *State Tax Comm’n v. Administrative Hearing Comm’n*, 641 S.W.2d 69, 75 (Mo. banc 1982); *Lederer*, 825 S.W.2d at 863.

¹⁸ *State ex rel. AG Processing, Inc. v. Public Serv. Comm’n*, 120 S.W.3d 732, 736 (Mo. banc 2003); *Fall Creek Const. Co., Inc. v. Director of Revenue*, 109 S.W.3d 165, 172 -173 (Mo. banc 2003); *Shelter Mut. Ins. Co. v. Dir. of Revenue*, 107 S.W.3d 919, 920 (Mo. banc 2003); *Southwestern Bell Yellow Pages, Inc. v. Dir. of Revenue*, 94 S.W.3d 388, 390 (Mo. banc 2002); *Ovid Bell Press, Inc. v. Dir. of Revenue*, 45 S.W.3d 880, 886 (Mo. banc 2001); *McKnight Place Extended Care, L.L.C. v. Missouri Health Facilities Review Committee*, 142 S.W.3d 228, 235 (Mo. App. 2004); *Cent Hardware Co., Inc. v. Dir. of Revenue*, 887 S.W.2d 593, 596 (Mo. banc 1994); *State ex rel. GTE N. Inc. v. Mo. Pub. Serv. Comm’n*, 835 S.W.2d 356, 371 (Mo. App. 1992).

¹⁹ *State ex rel. Gulf Transport Co. v. Public Serv. Comm’n*, 658 S.W.2d 448, 466 (Mo. App. 1983); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759, 765, 89 S. Ct. 1426, 1429, 22 L.Ed.2d 709 (1969); *State ex rel. Summers v. Public Serv. Comm’n*, 366 S.W.2d 738, 741[1-4] (Mo. App. 1963); *State ex rel. Consumers Public Service Co. v. Public Serv. Comm’n*, 352 Mo. 905, 180 S.W.2d 40, 46[6-8] (banc 1944); Sections 386.490 and 386.510.

IV. Discussion

This case illustrates one of the most important public policy questions faced by this Commission: What is the proper balance between keeping rates affordable in order to protect the health and welfare of consumers and ensuring that utilities have the necessary cash flow to operate their business, maintain their infrastructure, and have an opportunity to earn a fair return on investment, which is necessary to encourage development and maintenance of infrastructure?²⁰

The Commission recognizes that the recommended revenue requirement presented in the Agreement is not a trivial amount of money to customers. The increased cost of all utilities along with the recent rise in other costs have had an effect on customers' ability to keep current on their bills. That being said, the Commission also recognizes that the Agreement before the Commission resulted from extensive negotiations between parties with diverse interests and the Commission's neutral Staff.

Subject matter experts, including accountants, economists and engineers, filed extensive testimony outlining their respective analyses and positions prior to the parties reaching a consensus as to the reasonableness of the Agreement and all of its elements. The parties agree to the conclusion that the proposed revenue and rate design set out in the Agreement are just and reasonable.

The Commission further notes that no party has objected to the proposed annual revenue requirement, or to any component of any calculations, allocations, negotiations or compromise resulting in the proposed annual revenue requirement as set forth in the Agreement. No party has objected to the use of any determinants utilized for the purpose

²⁰ See *generally*, Section 386.610, RSMo 2000.

of determining rate design in the Agreement. And finally, no party requested a hearing on any issue related to the determination of the proposed annual revenue requirement, rate design, or any other provision set forth in the Agreement.

GMO has compromised on its requested revenue requirement by entering into the Agreement and recommending to the Commission that its authorized revenue requirement in this case represents an increase in revenues associated with its steam heating service of \$384,000. All the parties agree to this revenue requirement.

The Reconciliation filed in this case reveals that the parties initially had differing positions on rate base, revenue, expenses, depreciation, and taxes, as well as the many components and allocations that determine these factors. Indeed, as the Commission has recognized many times, the complexity of the issues and the number of parties often involved in rate cases can be staggering. Parties regularly engage in settlement negotiations, sometimes, as in this case, resolving their disputes with “black box” settlements. That is to say, the many parties arrive at, for example, a final revenue requirement number that they all find acceptable. But that settlement does not reveal how the parties arrived at that number, who moved how many dollars on what issue, etc.

Regardless, the Commission determines that the proposed increase in overall Missouri gross annual steam heating revenues, exclusive of any applicable license, occupation, franchise, gross receipts taxes, or similar fees or taxes, of \$384,000, effective for steam heating services rendered on and after July 1, 2009, is just and reasonable.

This revenue requirement is no more than is sufficient to keep GMO’s utility plants in proper repair for effective public service, and insure to GMO’s investors a reasonable return upon funds invested. The Commission further concludes that none of

the adjunct provisions to the Agreement are contrary to any statute or rule, or in any way violate the public interest. The Commission shall approve all of the provisions encompassed the Agreement.

Furthermore, because the exemplar tariffs have been on file at the Commission since May 13, 2009, and all parties agree to those tariffs becoming effective on July 1, 2009, the Commission finds that good cause exists to approve revised tariffs without the need for those tariffs having been filed for an additional 30 days.

V. Decision

By submitting the Agreement for consideration by the Commission, the parties jointly recommend that the Commission accept the Agreement as a fair compromise of their respective positions on the issues in this matter. Based on the Agreement and the testimony, comments, and positions presented at the stipulation hearing, the Commission finds that the parties have reached a just and reasonable settlement in this case. Rate increases are necessary from time to time to ensure utilities have the cash flow to maintain safe and adequate service. Accordingly, the Commission shall authorize GMO to file tariffs in compliance with the Agreement. The parties shall be directed to comply with the terms of the Agreement.

The Commission shall, as agreed to by the parties, admit, without modification or condition, the prefiled testimony (including all exhibits, appendices, schedules, etc. attached thereto) of all the witnesses.

THE COMMISSION ORDERS THAT:

1. The Unanimous Stipulation and Agreement filed on May 13, 2009, is hereby approved as the resolution of all factual issues encompassed within that Agreement in case

number HR-2009-0092. A copy of the Unanimous Stipulation and Agreement is attached to this order as Appendix A.

2. The signatories to the Unanimous Stipulation and Agreement are ordered to comply with the terms of the Agreement.

3. The proposed steam heating service tariff sheets (YH-2009-0195) submitted on September 5, 2008, by KCP&L Greater Missouri Operations Company for the purpose of increasing rates for steam heating service to retail customers are hereby rejected.

4. The specific tariff sheets rejected are:

P.S.C. MO. No. 1

2nd Revised Sheet No. 1, Canceling 1st Revised Sheet No. 1

2nd Revised Sheet No. 2, Canceling 1st Revised Sheet No. 2

2nd Revised Sheet No. 3, Canceling 1st Revised Sheet No. 3

2nd Revised Sheet No. 4, Canceling 1st Revised Sheet No. 4

2nd Revised Sheet No. 5, Canceling 1st Revised Sheet No. 5

1st Revised Sheet No. 6.1, Canceling Original Sheet No. 6.1

Original Sheet No. 6.6

Original Sheet No. 6.7

Original Sheet No. 6.8

Original Sheet No. 6.9

5. KCP&L Greater Missouri Operations Company is authorized to file tariffs in compliance with the terms of the Unanimous Stipulation and Agreement.

6. Tariffs filed in accordance with Ordered Paragraph No. 5 shall be filed with an effective date of July 1, 2009.

7. The prefiled testimony of the witnesses, including all attachments thereto, are received into the case file pursuant to the Unanimous Stipulation and Agreement. A copy of the exhibits list is attached to this order as Appendix B.

8. The remainder of the procedural schedule adopted by the Commission on November 20, 2008, and subsequently modified on March 18, 2009, including the evidentiary hearing is canceled.

9. This order shall become effective on June 23, 2009.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Clayton, Chm., Davis and Jarrett, CC.,
concur, with separate concurring opinions
to follow;
Gunn, C., concurs.

Dippell, Deputy Chief Regulatory Law Judge