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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Prehearing Conference

February 7, 2001
Jefferson City, Missouri
Volume 1

In the Matter of Missouri Gas)
Energy's Gas Cost Adjustment) Case No.
Tariff Revisions to be Reviewed) GR-96-450
in its 1996-1997 Annual)
Reconciliation Adjustment Account.)

SHELLY A. REGISTER, Presiding,
REGULATORY LAW JUDGE.

REPORTED BY:

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

2 JUDGE REGISTER: Good morning. We're here
3 today on Wednesday, February 7, 2001 at 10 a.m. for
4 a prehearing conference. This is Room 305 of the
5 Governors Office Building. Case No. GR-96-450 In
6 the Matter of Missouri Gas Energy's Gas Cost
7 Adjustment Tariff Revisions to be Reviewed in its
8 1996-1997 Annual Reconciliation Adjustment
9 Account.

10 I'm Judge Shelly Register, and I will ask
11 you-all to go ahead and make your appearances this
12 morning.

13 Would you like to begin, Mr. Schwarz?

14 MR. SCHWARZ: Tim Schwarz, P.O. Box 360,
15 Jefferson City, Missouri 65102, appearing for the
16 Staff of the Public Service Commission.

17 MR. KEEVIL: Jeffrey A. Keevil of the law
18 firm of Stewart and Keevil, L.L.C., 1001 Cherry
19 Street, Suite 302, Columbia, Missouri 65201,
20 appearing on behalf of Riverside Pipeline Company
21 and Mid-Kansas Partnership.

22 JUDGE REGISTER: Mr. Comley?

23 MR. COMLEY: Good morning, Judge
24 Register. Mark W. Comley, Newman, Comley and Ruth,
25 601 Monroe Street, Suite 301, Jefferson City,

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2 Kansas City.

3 MR. FINNEGAN: Jeremiah D. Finnegan with
4 Finnegan, Conrad and Peterson, L.C. 3100 Broadway,
5 Suite 1209, Kansas City, Missouri 64111, appearing
6 on behalf of Midwest Gas Users Association.

7 MR. MICHEEL: Douglas E. Micheel,
8 appearing on behalf of the Office of the Public
9 Counsel and the Public, P.O. Box 7800, Jefferson
10 City, Missouri 65102-7800.

11 MR. DUFFY: Gary W. Duffy, Brydon,
12 Swearengen and England, P.C., P.O. Box 456, 312 E.
13 Capitol, Jefferson City, Missouri 65101, appearing
14 for Missouri Gas Energy.

15 JUDGE REGISTER: Any other appearances to
16 be made? Is there anyone here present on behalf of
17 Williams Natural Gas Company? Has anybody spoken
18 to Mr. Brownlee in relationship to this case?

19 MR. SCHWARZ: No. I spoke to Gary Boyle,
20 who is senior counsel for Williams yesterday. I'm
21 not sure that he was aware of the prehearing or
22 not.

23 JUDGE REGISTER: He indicated he didn't
24 intend to be present?

25 MR. SCHWARZ: Certainly not Mr. Boyle.

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1 JUDGE REGISTER: I believe he's also
2 listed as counsel of record. Well, he may just be
3 on here as a party of record for the --

4 MR. SCHWARZ: Correct.

5 JUDGE REGISTER: -- list. So he should be
6 getting notices.

7 Did Mr. Boyle indicate whether they had
8 any interest in this case any longer?

9 MR. SCHWARZ: I think they probably still
10 do. I don't know that they will necessarily be
11 active in the sense of proffering witnesses, but I
12 think they probably still have an interest. I'll
13 give Richard Brownlee a call afterwards and have
14 him -- or suggest to him if they are still
15 interested or not.

16 JUDGE REGISTER: That would be a good
17 idea. Thank you. Okay.

18 We are here for a prehearing conference.
19 The main reason being to determine that we have
20 actual issues, and if possible, to resolve any of
21 those issues in controversy. It's an opportune
22 time for the parties to be able to discuss
23 resolution if possible. And we have other cases
24 that are pending also in relation to the same
25 issue, if I have this correct.

1 And I just want to make sure, Case No.
2 GR-98-167, Case No. GR-99-304 and Case No. 00-425
3 are also PGA cases, ACA cases. 167 and 304 are on
4 hold pending collection of this case; is that
5 right?

6 MR. SCHWARZ: That's my understanding,
7 yes.

8 MR. KEEVIL: Judge, if I could just
9 interject right there, I think the issues that are
10 in this case will definitely be in those cases you
11 just mentioned. I would just simply add that those
12 cases you mentioned may have an additional issue or
13 issues in them. So I don't know that this case
14 would necessarily be -- just depending on which way
15 this case goes, it may or may not be dispositive of
16 those cases.

17 JUDGE REGISTER: Those cases. Thank you
18 very much, Mr. Keevil. I appreciate that.

19 It's also my understanding in this case
20 that we still have a pending issue, a discovery
21 issue or at least at the time that we had the Stay
22 Order from Cole County that I have before me,
23 Motions to Compel Discovery Responses. Is that
24 still an issue in this case?

25 MR. SCHWARZ: I frankly don't know. I

1 assume so.

2 JUDGE REGISTER: This is Riverside
3 Mid-Kansas's Motion to Compel Staff Responses.

4 MR. KEEVIL: If that was not ruled on,
5 that would still be an issue. Frankly, it's been
6 so long, I didn't remember that it was still out
7 there either.

8 JUDGE REGISTER: Well, that was the last
9 thing, I think, I was getting ready to rule on when
10 the Cole County court told me they were staying the
11 action, and so I have that before me. I would like
12 the parties to discuss whether those can be
13 resolved, those issues can be resolved.

14 I believe that Staff had responded on
15 three issues -- three requests that the request of
16 material was either irrelevant or not calculated to
17 lead to relevant information or that there was a
18 legal opinion involved. And would you be -- I
19 would assume at this point then, Mr. Keevil, if you
20 weren't sure that these were still there, that
21 you-all have not discussed these since this. Is
22 that something you are prepared to discuss today to
23 determine if you can resolve your differences on
24 this Motion to Compel?

25 MR. SCHWARZ: I'm not prepared to discuss

1 it. I mean, I haven't really examined the file in
2 a little over two years.

3 JUDGE REGISTER: That's one thing that we
4 have to resolve. If you would put that on your
5 list of things to --

6 MR. SCHWARZ: To do.

7 JUDGE REGISTER: -- discuss today. I
8 think that if you can discuss your objections, and
9 the requesting party can look at the requests they
10 made, maybe clarifications could be made that would
11 remove objections or, you know, whatever kind of
12 negotiations you can make on that, I would like for
13 you to attempt to resolve that and let me know if
14 you are able to resolve that when you file your
15 proposed procedural schedule. Would that be
16 satisfactory?

17 MR. SCHWARZ: Yes.

18 MR. KEEVIL: That's, what, a little over a
19 week?

20 JUDGE REGISTER: Do you need more? That's
21 the 15th of February.

22 MR. KEEVIL: That should be sufficient, I
23 would think. Part of my concern here, Judge, just
24 so you're aware, my client, being a company, has
25 been sold in the interim. So I have new management

1 personnel that I'm dealing with that was not
2 involved in this two years ago when it was last
3 here before the Commission. So that adds another
4 level of procedural questions in here, so --

5 JUDGE REGISTER: It's really what I like
6 about this jurisdiction is just when you think
7 things are complicated enough, something else
8 happens and it becomes more complicated.

9 MR. KEEVIL: Oh, yeah.

10 MR. SCHWARZ: I would also point out that
11 his client is currently having its first rate case
12 under the FERC jurisdiction. It was submitted, I
13 think, just before Christmas. And typically a
14 decision would be -- I don't know -- expected
15 sometime after the middle of March. Certainly
16 nothing before the middle of March.

17 Additionally, the Court of Appeals for the
18 District of Columbia Circuit has remanded to the
19 FERC. Its order setting the initial rates for -- I
20 don't even know what -- Mid Coast, KPC, Riverside?
21 The entity over which the FERC has jurisdiction,
22 that initial -- those initial rates have been
23 remanded to the FERC for determination. And the
24 outcome of that may affect the dollars at issue
25 here.

1 JUDGE REGISTER: It won't necessarily
2 affect the issue itself, but the dollars at issue,
3 the amounts?

4 MR. SCHWARZ: Correct. Is that --

5 MR. KEEVIL: Yes, that would probably be
6 true.

7 JUDGE REGISTER: So in negotiating your
8 proposed procedural schedule, you would be taking
9 those FERC issues into consideration as you're
10 establishing what your proposed procedural schedule
11 will be?

12 MR. SCHWARZ: That would be one element
13 from Staff's prospective, I think.

14 JUDGE REGISTER: If you would include that
15 in your proposed procedural schedule, if there
16 needs to be any kind of delay because of those
17 amounts or if we need to go back and have a true-up
18 or some sort of adjustment at the end based upon
19 those numbers, try to be specific in your proposed
20 procedural schedule so that the Commission knows.
21 I'm sure that everybody is aware that concern for
22 getting adjustments done promptly is a high
23 priority at this time given the winter
24 circumstances.

25 And also, Mr. Keevil, if in dealing with

1 your new management staff, that type of thing, if
2 that causes delay or need for any extra time to
3 determine whether they are interested in pursuing
4 this or following through on this, then be sure and
5 let us know that as well so the Commission is fully
6 briefed on the issue that there is a change of
7 management and that may have some impact, but we do
8 need to move forward as quickly as possible.

9 MR. KEEVIL: Okay.

10 JUDGE REGISTER: Okay. So at this
11 point -- excuse me -- is today the opportunity that
12 everyone is expecting to use to discuss how long
13 you're going to need for any additional discovery
14 or that type of thing? Has there been any
15 discussion of that before today?

16 MR. DUFFY: There's been no discussion
17 before today, I think. At least speaking for
18 myself, I intend to explore the possibility of a
19 procedural schedule and would be prepared to submit
20 one pursuant to your schedule on the 15th. But
21 there are a lot of complexities in this case that
22 aren't present in a typical case.

23 MR. KEEVIL: Judge, just to the extent
24 that it might allay any of your concerns on the
25 adjustment issue, I may be speaking out of school

1 here, because I haven't been closely involved in
2 the recent adjustment issues that you referred to a
3 moment ago, but it was my understanding that those
4 were primarily the result of increased spot
5 commodity prices as a result of the winter.

6 The adjustments which are proposed in this
7 case by Staff relate to the transportation,
8 essentially a long-term transportation contract.
9 So it's not -- what you have been seeing in the
10 papers is not the issue in this case.

11 JUDGE REGISTER: Will the adjustment that
12 is being proposed and is it the possibility that it
13 would result in a refund to consumers if adjustment
14 was made?

15 MR. SCHWARZ: There is a possibility that
16 the MGE's ACA balance would be lowered. That is
17 the adjustment that Staff is proposing, yes.

18 JUDGE REGISTER: Mr. Schwarz, let me ask
19 you, and then I'll ask the other parties to follow
20 through, but I would like for you to tell me at
21 this point what you see the issues in this case
22 being as we --

23 MR. SCHWARZ: Well, there's a threshold
24 issue whether an adjustment is permitted at all.
25 Prior MGE ACA cases and I guess KPL ACA cases were

1 settled, and the parties do not agree on the terms
2 of that settlement and agreement. I think MGE and
3 Riverside content -- and feel free to correct me if
4 I'm wrong -- that that earlier settlement precludes
5 any further adjustments based on the contract
6 between Riverside and MGE. The Staff does not feel
7 that that's the case.

8 And that's a preliminary issue the
9 Commission has to decide what was the import of the
10 settlement agreement. The second issue is whether
11 the costs incurred by MGE to secure transportation
12 from Riverside were prudent. Staff's position is
13 that they were not. The costs are excessive.

14 JUDGE REGISTER: Does anybody have
15 anything else to add to that synopsis of the issues
16 in this case?

17 MR. KEEVIL: Let me just say I agree that
18 those are the two main issues that I think
19 Mr. Schwarz indicated correctly, that the
20 interpretation of the previous settlement is sort
21 of a threshold issue that you have to address
22 first. I think there are smaller -- I shouldn't
23 say smaller -- sub issues, perhaps, under the
24 prudence issue that Mr. Schwarz mentioned. And,
25 frankly, I don't even want to attempt to list all

1 of them.

2 I think there was an issue which while we
3 certainly would not agree that there was any
4 imprudence on the part of MGE in entering into the
5 contract, I think there is also an issue regarding
6 even if Staff was correct, the calculation of the
7 adjustment, and then as I mentioned, there are
8 certain sub issues under the overall issue of
9 prudent.

10 JUDGE REGISTER: Is anyone asking for a
11 hearing on the threshold issue separate from the
12 overall issue?

13 MR. KEEVIL: Well, that was actually one
14 thing that I was -- we have asked for that, and
15 have not received it, I think, would be a fair
16 characterization of that. And that was one thing
17 that I was going to pursue here this morning with
18 the other parties to see whether or not they
19 would -- how they would feel about that.

20 Judge, do you have any feeling on that one
21 way or the other?

22 JUDGE REGISTER: I don't at this time. I
23 would have review -- I know that we have had
24 earlier decisions. I'm not sure at this point. I
25 would have to simply stand by those decisions, but

1 nothing new at this time is before me.

2 MR. KEEVIL: As I recall it wasn't
3 officially put forward to you before. It arose in
4 the context of the judicial proceedings and the
5 Commission's actions in relation to previous
6 judicial proceedings. Is that --

7 MR. SCHWARZ: Well, I mean, Riverside
8 filed a Motion to Dismiss, and the Commission
9 denied those. Riverside sought review. Actually,
10 first they sought a Writ of Prohibition. That was
11 denied. They then sought review of the denial of
12 the Motion to Dismiss, and the Court of Appeals
13 said that that was premature, is my vague
14 recollection of the course of the --

15 MR. KEEVIL: And I think it was in the
16 order -- Mr. Schwarz mentioned the prohibition.
17 There was a temporary prohibition granted and the
18 permanent was not. And I think it was in the order
19 denying the permanent that the Court, we believe,
20 indicated that it would be best -- I don't know
21 whether I want to come right out and say ordered
22 the Commission to -- but certainly indicated that
23 the Court thought it would be preferable for the
24 Commission to take evidence on the issue of the
25 stipulation and address that issue first before it

1 got into all of the other prudence-related issues.
2 I think it was in one of those prohibition orders
3 that that was in there.

4 But, again, I -- because it came down in
5 an order denying -- I think it was an order denying
6 the prohibition. So I don't know that could
7 actually be said direct the Commission, you know,
8 so I just know --

9 MR. SCHWARZ: I will tell you that --

10 MR. KEEVIL: -- it was one of the factors
11 here.

12 MR. SCHWARZ: -- at this time I would not
13 particularly be enthusiastic about it. I'm
14 certainly willing to discuss it. But my view is
15 that -- I mean, we filed direct and rebuttal
16 testimony. Still have some discovery and
17 surrebuttal testimony to do, and much of the
18 testimony that's already been filed deals with or
19 has materials that would be used to determine the
20 threshold question and after. But it doesn't seem
21 to me to make much sense to bifurcate this thing,
22 take it up again. I mean, it's already had one
23 appellate review. And the possibility of two or
24 three more appellate reviews does not particularly
25 appeal to me.

1 JUDGE REGISTER: If through your
2 discussions you don't reach an agreement on that,
3 and Riverside/Mid-Kansas wishes to pursue that
4 request, please be sure to put those in writing and
5 a specific request for a hearing, a bifurcated
6 hearing, so that the Staff and the other parties
7 can have an opportunity to respond to that. And
8 then we would be able to pursue that.

9 Is there anything else that anyone
10 believes that we need to handle today? Okay. Then
11 we are still set for procedural schedule due on
12 February 15, 2001. And if there is a need for
13 additional time, you will let me know that.
14 Otherwise, I'll expect to receive either one or
15 multiple filings on that date.

16 And hearing no further issues that the
17 parties need to address now, this prehearing
18 conference is concluded, and the parties are
19 encouraged to continue their discussion off the
20 record.

21 WHEREUPON, the on-the-record portion of
22 the prehearing conference was concluded.

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