BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of The Gas Service Company of Kansas City, Missouri, for authority to file interim tariffs increasing rates for gas service provided to customers in the Missouri service area of the Company.	))))))	Case No. GR-83-207

REPLY BRIEF OF THE STAFF OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

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In rendering a decision and issuing a Report And Order respecting the Company's emergency interim filing, the Commission would be well advised to base said decision and Report And Order on matters found in the record in this proceeding and not on extra-record statements found in the Initial Briefs of the Midwest Gas Users Association and Armco, Inc., the Company, and the Office of the Public Counsel. The Commission may find certain arguments in the parties' Initial Briefs to be persuasive, but the Commission should be wary of statements found in the Initial Briefs not supported by appropriate citations to the record, case law, statute, or rule.

Referencing Company witness Harold W. Steenbergen's testimony, the Company in its Initial Brief stated that the safeguard that it would be willing to provide to its customers, if interim relief were authorized by the Commission, would be "a refund of any monies found to have been overcollected after consideration by the Commission of the sales levels and earnings that the Company actually realized during the interim period." (Co. Brief, p. 9; See Ex. 1, Steenbergen, p. 7) There is little explication in the record of this recommendation of the Company:

> [By Mr. Conrad]
> Q. If the Commission in the permanent case awarded instead 10 million dollars, would there be a refund in that situation?
>
> [Mr. Steenbergen]
> A. If the refund provision strictly tied to the amount of increase granted in the permanent case, there would be a refund. If there were other considerations of whether the company had, in fact, earned--whether it's earnings had eroded during that period where it was not earning what the Commission had actually granted, that might be considered also.
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> Q. You're not proposing that the Commission--
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> A. I haven't made a proposal.
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> Q. You're not proposing though by that statement that you just made that the Commission guarantee you a particular level of earnings, are you?
>
> A. No. I'm not proposing anything.

(Tr. 248)

Staff witness Steven C. Carver testified in this proceeding that when a company receives an increase in rates pursuant to a Commission order, the company is given an opportunity, not a

guarantee, to earn a return on common equity equal to that authorized. Furthermore, it should be noted that in the Company's last permanent general rate case that went to hearing, Case No. GR-81-155, the Commission rejected the Company's position that attrition should be considered in the rate of return determination respecting the Company:

> With respect to attrition, the Commission will make no adjustment. As far as the Commission is concerned, there is nothing before it to consider. The Company has simply made general assertions that attrition exists and has made no attempt to quantify its effects.

(Re The Gas Service Company, Case No. GR-81-155, Report And Order at 40 (1981)). Finally, as related in the Staff's Initial Brief, the Court of Appeals, Kansas City District held in State ex rel. Laclede Gas Co. v. Public Service Commission, 535 S.W.2d 561, 570 (Mo. App. 1976) that the majority and better view of courts through the country rejects the argument that any return less than the rate previously set must be deemed prima facie unreasonable.

In the Company's last interim rate case, Case No. GR-81-257, all parties, excepting the Office of the Public Counsel, entered into a Stipulation And Agreement that the Company should be authorized by the Commission to transfer to revenue as interim rate relief $5,618,683 from its gas supplier refund account, representing funds due the Company's customers. (Ex. 4, p. 8) Paragraph II of said Stipulation And Agreement stated in part:

> In the event the Commission grants a rate increase equal to, or in excess of $11,434,904 in the Company's permanent rate case (Case No. GR-81-155), no portion of the $5,618,683 shall be refunded. If less than $11,434,904 is granted in the permanent case, a refund of a portion of said $5,618,683 will be made to the Company's customers. . . .

(Re The Gas Service Company, Case No. GR-81-257, Report And Order (April 13, 1981)) The method for effectuating any refund was set out in great detail in the Stipulation And Agreement.

Besides proposing not to tie any refund of interim rate relief to the level of permanent rate relief to be authorized by the Commission in Case No. GR-83-225, the Company's Initial Brief evidently is alluding to the Staff's recommendations when it contends that an interest rate which is a certain percentage of the prime rate is arbitrary and would have a primitive effect upon the Company or its

customers. (Co. Br., pp. 9-10) The Company's offer regarding a refund provision and the interest rate to be paid to customers for the purposes of a refund does not display the same confidence in the Company's budget as the Company exhibited in its budget when setting the level of emergency interim rate relief that it is seeking to be authorized in this proceeding.

Midwest Gas Users Association and Armco, Inc., in particular, appear to indicate a concern that there be a refund, if the rate design adopted by the Commission in the interim case is changed in the Company's permanent case (Case No. GR-83-225). Such a position is contrary to the decision of the Western District, Court of Appeals in State ex rel. Southwestern Bell Telephone Company v. Public Service Commission, WD 32,967 (November 11, 1982 as modified January 4, 1983).

The fact situation in the case State ex rel. Southwestern Bell Telephone Company, supra, is practically identical to the facts herein where a party would want to receive a refund if the permanent tariffs for their rate classification granted in Case No. GR-83-225 are less than the interim tariffs that may be granted in this docket. In State ex rel. Southwestern Bell Telephone Company, supra, the Commission found that the rates for one class of service that had been granted on an interim basis subject to refund were excessive and ordered a refund. There had been no finding that the Company's overall Missouri earnings were excessive. The Court held:

> There is another and even more devastating objection to the refund order. The reduction in future rates accorded to the Kansas City exchange results from: (1) what is in effect a subsidy to all local exchanges from Category one and Category three services; and (2) readjustments in rates between local exchanges in favor of the Kansas City exchange. If this reduction were to be applied retroactively, as the majority of the Commission seeks to do, Bell would not have the benefit of collecting higher rates from Categories one and three, nor the higher rates to be charged from exchange classifications one, two and three, to offset the reductions accorded to the Kansas City exchange. Obviously the amount of the reduction would have to come out of the return to stockholders, thereby reducing Bell's rate of return upon investment, which was already below that which had been allowed by the Commission.
>
> A legitimate basis for ordering a refund would exist if the Kansas City exchange had not in fact reached the level of 550,000 EAAs, or if it could be shown that the collection of the higher Group

> XI tariff in the Kansas City exchange would result in Bell receiving an excessive rate of return. There has never been any contention and there is no contention now that the Kansas City exchange had not reached a number of EAAs in excess of 550,000 by May 13, 1977. Public Counsel did contend that the collection of this higher rate would result in Bell receiving an excessive rate of return,[4] but that contention failed for lack of proof.
>
> The evidence offered by both Bell and the Commission all shows that even after collecting the higher interim rates under TR-77-214, Bell still did not earn as much as the rate of return which had been allowed. This appears both from the testimony submitted by Vrooman on behalf of Bell and also from the data submitted by Shackelford on behalf of the Commission. . . .
>
> Regardless of whether the Kansas City exchange, or any exchange, earned enough under existing tariffs to pay for embedded costs, the fact is clearly established that based on its entire overall operation, Bell did not exceed its allowed rate of return even after commencing collection of the interim tariff increase. In fact, the evidence shows that Bell fell short of earning that allowed rate of return. The evidence in this case fails to show that the interim rate collected in the Kansas City exchange after March 6, 1978, exceeded what was just and reasonable for those services. The determination by the majority of the Commission to the contrary is disapproved and reversed.

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[4] Public Counsel's initial objections against reclassifying the Kansas City exchange into Group XI also included the following: (1) that value of service is not a legitimate design concept, and (2) that the number of EAAs delineating the distinction between Groups X and XI should be 600,000 instead of 550,000.

(Southwestern Bell supra at p. 7-9)

A copy of this unpublished decision is attached. Staff believes the Commission should be aware of this decision when it considers the arguments advanced by the various parties herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE
I hereby certify that copies of the foregoing have been mailed or hand-delivered to all parties of record on this 4th day of February, 1983.
W. A. Henelson