

# **BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI**

In the Matter of Proposed Amendments to Commission )  
Rule 4 CSR 240-13.055 )

**Case No. GX-2006-0434**

## **CONCURRING OPINION OF COMMISSIONERS ROBERT M. CLAYTON III AND STEVE GAW**

We are disappointed that the majority did not adopt beneficial substitute language we offered to further change the initially proposed amendment to the Cold Weather Rule and advance long term affordability plans for financially vulnerable Missourians. The enacted language incrementally increases protections offered to low and fixed-income customers under threat of losing heat for their homes in the winter months. While the authorized amendments are an improvement, incremental change is not enough to keep pace with rapidly increasing gas prices and other states' aggressive responses.<sup>1</sup> We opposed the revision's cost recovery language (supported by industry) that allows utilities an inappropriate return on alleged costs through hidden charges. In addition, this Rule resolves in the utility's favor, issues in pending litigation on the collection of past costs by making them recoverable under this amendment. Finally, we are concerned with the enacted provisions establishment of a lifetime ban on our most financially burdened citizens by denying access to the Cold Weather Rule provisions.

These Commissioners advocated for language supported by the Office of the

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<sup>1</sup> See Howat, John and Devanthary, Julia. *Public Service Commission Consumer Protection Rules and Regulations: A Resource Guide*. National Energy Assistance Directors' Association. July 2006; see also Fisher, Sheehan & Colton Public Finance and General Economics Belmont, Massachusetts, *On the Brink: 2005, The Home Energy Affordability Gap*. April 2006.

Public Counsel (OPC), AARP, and Jacqueline A. Hutchinson<sup>2</sup>, allowing qualified consumers to pay the lesser of 50% of their arrearages or \$250 in order to have gas service reconnected or retained once every two years, with a higher minimum payment thereafter. Our proposal is a more reasonable level to pay up front than the final draft's required amount, particularly for working families who are stressed financially but do not qualify for heating assistance. The National Energy Assistance Directors' Association published, *Public Service Commission Consumer Protection Rules and Regulations: A Resource Guide*, in July 2006, which illustrates that Missouri offers fewer protections than a significant number of states.<sup>3</sup> Consumer protections, along with affordable payment assistance programs<sup>4</sup>, workable payment plans and timeframes, need continual monitoring and adjustment to help protect vulnerable customers from losing utility service. This also includes continuing to protect costs passed-through to ratepayers.

We proposed language that limited gas utilities' cost recovery to the net costs actually incurred by that utility, rather than recovery of gross costs. Under this language, gas utility companies would offset revenues with benefits received through customer payments made as a result of customer payment plans in the provisions of the Cold Weather Rule. By netting benefits against costs, this more specific accounting method also protected individuals from utilities passing through costs not incurred to ratepayers and prevented utilities from pocketing subsequent revenues.

This "net-costs" language, along with the required examination of cost and

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<sup>2</sup> Jacqueline A. Hutchinson is Director of Crisis Assistance Programs, Human Development Corporation, St. Louis and a long time advocate for improvement to the Cold Weather Rule. Ms. Hutchinson's filed recommendation supported service restoration at the lesser payment of 50% or \$500 for those below 185% of the poverty level, but she preferred adopting payments of the lesser of 25% or \$250.

<sup>3</sup>Howart, *supra* note 1.

<sup>4</sup> While higher heating costs seem to have become the norm, federal assistance for citizens that are most at risk has not kept pace. In fact, the Low Income Home Energy Assistance Program (LIHEAP) is funded at nearly the same levels as it was over 20 years ago, unadjusted for inflation.

benefits, was deemed an acceptable compromise by the OPC and AARP because it delineates the payments a gas utility company receives as a result of customer payment plans and other provisions in the Cold Weather Rule. Without this "net-costs" language, all ratepayers are at risk of absorbing additional costs in their gas bills because there is no method to ensure the benefits a gas utility receives are evaluated during a rate case. These Commissioners, the OPC, and AARP are very concerned about this recovery method having the effect of a hidden cost on all ratepayers' gas bills.

This incomplete accounting method was also extended to recovery of costs for the Emergency Cold Weather Rule in effect for the last winter season of 2005-2006. We opposed this change because it will allow gas utilities to collect the gross costs versus just net costs of last season's Emergency Cold Weather Rule. This change could prevent the Court of Appeals from determining whether the more balanced mechanism for assessing costs in that Emergency Cold Weather Rule was appropriate. Rather than allowing the appeal to run its normal course and await the court's decision, this issue may now be moot, and the court's judgment unnecessary.

For the first time to our knowledge, this Commission has adopted self-imposed timing restrictions with penalties to consumers if the Commission fails to act. While it is good policy and procedure to process cases in the most efficient manner, it is unacceptable to limit the Commission's ability to review the reasonableness of the costs a utility submits for recovery. It is wrong to punish consumers if the Commission fails to meet these self-imposed deadlines.

After our version was defeated, we chose to support the majority's amendment to the Cold Weather Rule because low and fixed-income Missourians will receive some

benefits—more than would exist in the amendment's absence. However, these Commissioners are disappointed that the majority did not go further to assist Missourians in obtaining heat in the winter. Additional protections would have allowed those who are financially vulnerable, including our seniors and disabled, to continue to have access to heat during this era of expensive utility bills and higher transportation costs. We are troubled that all ratepayers will be without the protection of a cost recovery system that clearly accounts for the benefits gas utility companies receive through the collection of arrearages as a result of the Cold Weather Rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Clayton III", written over a horizontal line.

Robert M. Clayton III  
Commissioner

A large, stylized handwritten signature in black ink, appearing to read "Steve Gaw", written over a horizontal line.

Steve Gaw  
Commissioner

Dated at Jefferson City, Missouri,  
on this 18th day of August, 2006.