

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 20th day
of March, 2008.

In the Matter of the General Rate Increase for) **Case No. GR-2008-0060, et al.**
Natural Gas Service Provided by Missouri Gas) Tariff No. JG-2008-0138
Utility, Inc.)

**ORDER APPROVING UNANIMOUS STIPULATION AND
AGREEMENT AND AUTHORIZING TARIFF FILING**

Issue Date: March 20, 2008

Effective Date: March 24, 2008

Syllabus: This order approves the Unanimous Stipulation and Agreement executed by Missouri Gas Utility, Inc. ("MGU"), the Staff of the Missouri Public Service Commission ("Staff") and the Office of the Public Counsel ("Public Counsel") to resolve all pending issues in consolidated cases GR-2008-0060 and GR-2007-0178. The order also rejects MGU's initial tariff filing, and authorizes MGU to file tariffs in compliance with the Unanimous Stipulation and Agreement.

Procedural History

Tariff Filings

On August 29, 2007, MGU submitted to the Missouri Public Service Commission certain proposed tariff sheets, Tariff File No. JG-2008-0138.¹ The purpose of the filing,

¹ MGU was formed as a wholly owned subsidiary of Colorado Natural Gas Holdings, Inc. ("CNG") in October, 2004. MGU Exh. 1, Johnston Direct, p. 3, lines 13-22; Schedule TRJ-1. Other Subsidiaries of CNG Holdings, Inc. include: Colorado Natural Gas, Inc. (regulated); Colorado Water Utility, Inc. and Wolf Creek Energy, Inc. (non-regulated). MGU Exh. 1, Schedule TRJ-2, p. 1-2. MGU is a "gas corporation," and a "public utility" as those terms are defined in Sections 386.020(18), RSMo 2000 and 386.020(42), RSMo 2000, respectively. Consequently, MGU is subject to the jurisdiction, control and supervision of the Commission. The

according to MGU, was to implement a general rate increase for natural gas service to customers in its Missouri service area.

MGU became the owner of two former municipal natural gas systems in Gallatin and Hamilton, Missouri, with the Commission's approval of a transfer of assets case, Case No. GO-2005-0120, and has been operating these two systems to provide natural gas service to Missouri customers since January 1, 2005.² MGU currently provides natural gas service to approximately 1024 customers located in the cities of Jamison, Gallatin, Hamilton, and Coffey, in Harrison, Caldwell and Daviess Counties, Missouri, as well as the surrounding territory.³

MGU has not received any increase in rates for operational costs over the rates established when it acquired its Certificate of Convenience and Necessity in December 2004 in Case Number GO-2005-0120.⁴ MGU states that the proposed natural gas rates submitted in its application are designed to produce an additional \$443,131 in gross annual revenues, exclusive of applicable gross receipts and sales taxes, or a 28.42% increase over existing natural gas revenues. The tariff sheets attached to MGU's pleading bore an

Commission has jurisdiction over MGU's services, activities, and rates pursuant to Section 386.250 and Chapter 393.

² MGU Exh. 1, Johnston Direct, p. 4, lines 1-22, p. 5, lines 1-12. The original municipal systems which now constitute MGU were constructed in 1995 and 1996. *Id.* See also, *In the Matter of the Application of Missouri Gas Utility, Inc. for a Certificate of Public Convenience and Necessity Authorizing it to Construct, Install, Own, Operate, Control, Manage and Maintain a Natural Gas Distribution System to Provide Natural Gas Service in Parts of Harrison, Daviess and Caldwell Counties, to acquire the Gallatin and Hamilton, Missouri, Natural Gas Systems, and to Encumber the Acquired Assets*, Case Number GO-2005-0120, Order Approving Stipulation and Agreement, effective December 18, 2004.

³ MGU's customer count varies in relation to new connections and disconnections and varying numbers for customer classes were noted throughout the testimony of the parties. It's most current customer count per class is as follows: General Service – 942, Commercial Service – 67, Large Volume – 14, Interruptible – 0, Transportation Service – 5. MGU Exh. 1, Johnston Direct, p. 5, lines 8-10, 21-22, p. 6, line 1, p. 9, lines 12-21, p. 10, lines 1-10, p.11, lines 5-6, p. 12, lines 15-21, p. 13, lines 1-2, p. 15, lines 1-22, p. 16, lines 1-2; Schedules TRJ-2 and TRJ-3; MGU Exh. 2, Taylor Direct, Schedule KDT, Sheet 13, 14; Staff Exh. 6, Class Cost-of-Service, Rate Design, and Miscellaneous Tariff Report, p. 7.

⁴ See Footnote 2, *supra*.

issue date of August 29, 2007, and were proposed to become effective on September 28, 2007. Together with its proposed tariff sheets and other minimum filing requirements, MGU also filed prepared direct testimony in support of its requested rate increase.

Suspension Orders and Interventions

So the Commission would have sufficient time to study the effect of the proposed tariffs and to determine if they were just, reasonable, and in the public interest, the Commission decided that it must suspend MGU's tariff. Consequently, on September 6, 2007, the Commission suspended the effective date of the proposed tariff for 120 days plus an additional six months to allow for a hearing on the matter, or until July 26, 2008.⁵ The Commission also issued notice and set a deadline for intervention requests for no later than September 26, 2007. No requests for intervention were filed.

Local Public Hearings

On October 17, 2007, MGU, on behalf of all of the parties, filed a proposed procedural schedule, which included a recommendation for the time, date and location of a local public hearing. The parties agreed to recommend one local public hearing to give MGU's customers an opportunity to respond to MGU's requested rate increase.⁶ That hearing took place on February 11, 2008, in Gallatin, Missouri. At the hearing, the Commission received the sworn testimony of three witnesses.⁷ No exhibits were offered or admitted into the record. All of the parties were given the opportunity to cross-examine the witnesses.

⁵ See Section 393.150, RSMo 2000.

⁶ See *Proposed Procedural Schedule and Related Matters*, filed October 17, 2007.

⁷ Transcript, Volume 2.

Test Year and True-up

The test year is a central component in the ratemaking process. A historical test year is usually used because the past expenses of a utility can be used as a basis for determining what rate is reasonable to be charged in the future.⁸

The parties agreed to a test year consisting of the 12 month-period that ended March 31, 2007, and further agreed to update this test year to include known and measurable changes through September 30, 2007. The parties did not believe that a true-up would be necessary, however, the Staff and Public Counsel reserved the right to alter their position regarding true-up if the situation so indicated.

The Commission found the proposed test year recommended by parties to be suitable and it was adopted by order.⁹ The Commission also adopted the adjustment or update period through September 30, 2007. Because the parties had not solidified their positions regarding true-up prior to the evidentiary hearing, the Commission reserved dates for a true-up hearing.

Case Consolidation

On November 3, 2006, MGU filed a tariff sheet purporting to reflect scheduled changes in its Purchased Gas Adjustment (“PGA”) factors as the result of an estimated change in the cost of natural gas for the upcoming winter season and changes in the Actual Cost Adjustment (“ACA”) factor. This action was assigned Case No. GR-2007-0178. There was an attempt to settle that case; however, the parties were unable to settle and it became necessary to establish a procedural schedule.

⁸ See *State ex rel. Utility Consumers’ Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 59 (Mo. banc 1979).

⁹ See *Order Adopting Procedural Schedule and Test Year*, issued October 23, 2007, effective November 2, 2007.

The issue upon which the parties disagreed in Case No. GR-2008-0178 is the treatment of interest costs MGU has incurred associated with its purchase of gas storage inventory. The alternative to treating the interest costs through the ACA/PGA process is to include those costs in base rates through the working capital adjustment. Consequently, On December 19, 2007, MGU filed a motion to consolidate GR-2007-0178 with this rate case.

Because the parties to both cases were identical (MGU, Staff and Public Counsel), and because the decisions as to these issues needed to be made in both cases with an awareness of the resulting impact, the Commission consolidated these two cases upon a finding there were related questions of law and fact. The consolidation was ordered on December 21, 2007 pursuant to Commission Rule 4 CSR 240-2.110(3). The procedural schedule was adjusted to accommodate the pre-filing of testimony with regard to the ACA/PGA issues.¹⁰

Unanimous Stipulation and Agreement

On March 3, 2008, prior to hearing, the parties jointly filed a Unanimous Stipulation and Agreement (“Unanimous Agreement”) that purports to resolve all issues in these consolidated matters.¹¹ The parties also jointly recommend that the Commission accept the Unanimous Agreement as a fair compromise of their respective positions on the issues in this matter.

Annual Revenue Requirement

The Unanimous Agreement provides that MGU should be authorized to file revised tariff sheets containing new rate schedules for natural gas service designed to produce

¹⁰ See *Order Consolidating Case and Modifying Procedural Schedule*, issued December 21, 2007.

¹¹ MGU Exh. 4, Unanimous Stipulation and Agreement.

overall Missouri jurisdictional gross annual gas revenues, exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar fees or taxes, in the amount of \$878,201. This represents an increase of \$301,000 annually.¹²

Rate Design/Class Cost of Service

The parties agree that the revenue requirement shall be allocated to MGU's various customer classes in accordance with and consistent with the amounts set forth on Appendix B to the Unanimous Stipulation and Agreement as follows:¹³

APPENDIX B						
Calculation of Each Class' Revenue Requirement						
	Total	General Service	Commercial Service	Large Volume	Interruptible Service	Transport
¹ Current Class Rate Revenue	\$588,132	\$278,938	\$40,954	\$122,922	\$0	\$145,318
² Less: Total Other Revenue (as originally filed)	(\$7,917)	(\$7,917)				
³ Adjusted Current Revenue	\$580,215	\$271,021	\$40,954	\$122,922	\$0	\$145,318
⁴ Percentage Share of Sales Revenue per Sales Class	100.0%	62.3%	9.4%	28.3%	0.0%	
⁵ Settlement Transportation Revenue						\$170,000
⁶ Revenue Requirement Increase per Settlement	\$301,000	\$172,197	\$26,021	\$78,100	\$0	\$24,682
⁷ Rev Req Increase to Sales Classes	\$276,318	\$172,197	\$26,021	\$78,100	\$0	
⁸ Less: Incremental Other Revenue	(\$3,014)	(\$3,014)				
⁹ Revenue Target By Class	\$878,201	\$440,204	\$66,975	\$201,022	\$0	\$170,000

¹² Appendix A of the Agreement contains revised specimen tariff sheets designed to implement the rate increase.

¹³ MGU amended the originally filed Appendix B the day of hearing. See MGU Exh. 5, Revised Stipulation Appendix B.

10 Percentage Increase to Company Margin Revenue	51%					
11 Percentage Margin Increase to Classes		61.73%	63.54%	63.54%	63.54%	16.98%
CALCULATION OF RATES						
12 Annual Bills	11,453	10,672	670	131	0	60
13 Annual Ccf Volumes	1,108,783	629,678	100,533	378,572	0	448,334
14 Current Customer Charge		\$8.00	\$15.00	\$50.00	\$125.00	\$125.00
15 Current Commodity Rate/Ccf		\$0.3074	\$0.3074	\$0.3074	\$0.2700	\$0.3074
16 Settlement Customer Charge		\$15.00	\$24.53	\$81.77	\$204.42	\$204.42
17 Percentage Increase in Customer Charge		87.50%	63.54%	63.54%	63.54%	63.54%
18 Class Revenue Target	\$878,201	\$440,204	\$66,975	\$201,022	\$0	\$170,000
19 Less: Customer Charge Revenues		(\$160,080)	(\$16,435)	(\$10,710)	\$0	(\$12,265)
20 Revenue Requirement to Collect in Commodity		\$280,124	\$50,539	\$190,312	\$0	\$157,735
21 Divided by Annual Ccf Volumes = Settlement Commodity Rate		\$0.4449	\$0.5027	\$0.5027	\$0.4415	\$0.5027
22 Percentage Increase in Commodity Rate		44.72%	63.54%	63.54%	63.54%	63.54%

The specimen tariff sheets set forth in Appendix A to the Agreement reflects the parties' agreement as to the various components of the Cost of Service, including: (1) use of transportation revenue in the amount of \$170,000, deducted from the revenue requirement, in order to solve for retail sales rates; (2) an equal percentage increase in all classes' revenues for General Service, Commercial Service and Large Volume Service; (3) volume and customer count determinants per the Staff's case; a customer charge for General Service in the amount of \$15, and an equal percentage increase for all other

classes' rate components; and, (4) the use of the Conception, Missouri weather station for weather normalization.

The Unanimous Agreement contains numerous other provisions to resolve disputed issues between the parties, including:

MGU Prospective Accounting Changes – Capitalization of Costs

No later than April 1, 2008, the beginning of its next fiscal year, MGU will implement more detailed time coding for MGU employees in order to provide the ability to assign time to sales and promotion efforts. All costs incurred by MGU, or allocated to it by CNG Holdings, Inc. (CNG Holdings) or other affiliated entity, in relation to promotional, demonstrating, and selling activities, the object of which is to promote or retain the use of utility services by present and prospective customers of MGU, is to be charged to expense as incurred beginning no later than April 1, 2008. MGU shall fully abide by the provisions of the Uniform System of Accounts (USOA) - Gas Corporations (4 CSR 240- 40.040), including the Gas Plant Instructions included therein. MGU shall not include in its plant in service balances any direct costs not specifically listed in section 20,043 of the USOA as being potentially subject to capitalization and that do not otherwise meet the USOA criteria for capitalization. MGU shall not include in its plant in service balances any overhead costs that do not comply with the USOA criteria for capitalization of overhead costs in section 20,044 of the USOA. These provisions shall apply to MGU's plant accounting whether the costs are directly incurred by MGU or were allocated from CNG Holdings or other affiliated companies.

MGU Prospective Accounting Changes – Corporate Governance

As of April 1, 2008, the beginning of its next fiscal year, MGU will implement more detailed time coding for CNG Holdings employees in order to provide the ability to track corporate governance efforts. "Corporate governance" shall be defined as those activities related to maintenance of CNG Holdings current corporate structure, or those activities related to consideration of or implementation of prospective changes in CNG Holdings' corporate ownership structure. Corporate governance costs shall include any incurred costs related to investigation of or implementation of merger/acquisition/purchase/sale opportunities affecting CNG Holdings or any of its affiliates, including MGU. All corporate governance costs incurred by CNG Holdings employees or its affiliates' employees shall be segregated and separately identified on CNG Holdings or its affiliates' books and records, and shall not be allocated to MGU for inclusion in MGU's financial statements. Any costs incurred directly by MGU employees relating to corporate governance

activities shall likewise be segregated and separately identified on MGU's books and records.

MGU Prospective Accounting Changes – Regulatory Costs

Beginning no later than April 1, 2008, MGU shall include all costs incurred by it, or allocated to it by CNG Holdings or other affiliates, in connection with formal cases before the Missouri Public Service Commission in USOA account 928, Regulatory Commission Expenses. These costs shall not be capitalized into MGU's plant in service balances.

MGU Prospective Accounting Changes – Other

Beginning no later than April 1, 2008, MGU will separately record disconnection revenues, reconnection revenues and occurrences of disconnection and reconnection on a going forward basis.

Tariff Changes

The revised specimen tariff sheets attached as Appendix A to the Agreement include the following changes from MGU's existing tariff provisions: a disconnect charge, reconnect charge and trip charge in the amount of \$40 for each event; an insufficient funds charge in the amount of \$30; the removal of language in existing tariff sheet number 82 that provides that labor rates are subject to change without notice; and customer deposit interest language that is consistent with Staff's preference.

Case No. GR-2007-0178

The parties assert that MGU should be ordered to adjust the ACA account balance in its next ACA filing to reflect the following adjustments and to reflect the (over)/under-recovered ACA balance as found in the Staff Recommendation filed in Case No. GR-2007-0178 on August 16, 2007:

Description	Company's ACA Balance Per Filing	Staff Adjustments	Staff Recommended ACA Balance
Beginning Balance 9/1/05	\$(35,355)	\$(3,861)	\$(39,216)
Cost of Gas	\$628,142	\$(12,482)	\$615,660
Recoveries	\$(654,292)	-----	\$(654,292)

Interest on Under- or (Over-)Recovery of ACA Gas Costs	\$370	\$(692)	\$(322)
Company Adjustment Not in Ending Balance	\$17	-----	\$17
Ending Balance 8/31/06	\$(61,118)	\$(17,035)	\$(78,153)

Class Cost of Service Study

At the time it files its next general or small company rate case, MGU will provide to Staff and Public Counsel the items the parties need to perform a class cost of service study as identified in Appendix C of the Unanimous Agreement.

One-Time Contribution of Conservation Funds

Within thirty (30) days after the effective date of new rates resulting from this case, MGU will make a one-time contribution in the amount of \$3,717 to Green Hill Community Action Agency in order to promote conservation of natural gas usage. Public Counsel and Staff agree to not file any pleading seeking the right to pursue penalties against MGU for issues related to non-sufficient funds charges or disconnect and/or reconnect charges as referenced in the Direct Testimony of Public Counsel witness Barbara A. Meisenheimer, submitted January 18, 2008, at pages 3 through 7, line 7, only for the time period referenced (i.e. 2005 through the date of filing the pending rate increase application).

Annual Contribution of Conservation Funds

On an annual basis, MGU will either make a contribution in the amount of \$9,000 to Green Hill Community Action Agency in order to promote conservation of natural gas usage for natural gas space heating customers or spend a like amount through a Commission-approved program for the same purpose.

Rate Case Moratorium

Each of the Parties agrees that before April 1, 2011, it will not file any tariff or pleading with the Commission, or encourage or assist in the filing of any tariff or pleading with the Commission, which tariff or pleading seeks a general increase or decrease in the base rates of MGU unless a significant, unusual event that has a major impact on the Company occurs, including but not limited to: (i) terrorist activity or an act of God; (ii) a significant change in

federal or state tax laws; or, (iii) a significant change in federal or state utility or environmental laws or regulations.

Contingent Waiver of Rights

Unless otherwise explicitly provided herein, none of the Parties to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue-related methodology.

The parties further agreed that if Commission accepts the specific terms of the Agreement without condition or modification, they would waive their respective rights to: (1) present oral argument and written briefs pursuant to Section 536.080.1; (2) the reading of the transcript by the Commission pursuant to RSMo Section 536.080.2; (3) seek rehearing, pursuant to Section 536.500; and, (4) judicial review pursuant to Section 386.510.¹⁴

Stipulation Hearing

On March 19, 2008, the Commission convened a hearing to receive evidence from the parties and their subject matter experts on the Unanimous Agreement. At the hearing, the Commission received into evidence prefiled testimony from eight witnesses, as well as, Staff's Cost of Service Report, Staff's Accounting Schedules, Staff's Class Cost of Service, Rate Design and Miscellaneous Tariff Report, Staff's Errata and Suggestions in Support of the Unanimous Stipulation and Agreement, Staff's Table on Residential Customer Impact, and MGU's Revised Stipulation Appendix B. Additionally, the Commission directed specific questions regarding the Agreement to the parties' counsel and to their subject matter witnesses. The responsive comments and testimony appear in Volume 4 of the official transcript.

¹⁴ All statutory references throughout this order are to RSMo 2000 unless otherwise noted.

Rate Making Standards and Practices

The Commission is vested with the state's police power to set "just and reasonable" rates for public utility services,¹⁵ subject to judicial review of the question of reasonableness.¹⁶ A "just and reasonable" rate is one that is fair to both the utility and its customers;¹⁷ it is no more than is sufficient to "keep public utility plants in proper repair for effective public service, [and] . . . to insure to the investors a reasonable return upon funds invested."¹⁸ In 1925, the Missouri Supreme Court stated:¹⁹

The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon funds invested. The police power of the state demands as much. We can never have efficient service, unless there is a reasonable guaranty of fair returns for capital invested. * * * These instrumentalities are a part of the very life blood of the state, and of its people, and a fair administration of the act is mandatory. When we say "fair," we mean fair to the public, and fair to the investors.

The Commission's guiding purpose in setting rates is to protect the consumer against the natural monopoly of the public utility, generally the sole provider of a public necessity.²⁰ "[T]he dominant thought and purpose of the policy is the protection of the

¹⁵ Section 393.130, in pertinent part, requires a utility's charges to be "just and reasonable" and not in excess of charges allowed by law or by order of the commission. Section 393.140 authorizes the Commission to determine "just and reasonable" rates.

¹⁶ *St. ex rel. City of Harrisonville v. Pub. Serv. Comm'n of Missouri*, 291 Mo. 432, 236 S.W. 852 (1922); *City of Fulton v. Pub. Serv. Comm'n*, 275 Mo. 67, 204 S.W. 386 (1918), *error dis'd*, 251 U.S. 546, 40 S.Ct. 342, 64 L.Ed. 408; *City of St. Louis v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 509, 207 S.W. 799 (1919); *Kansas City v. Pub. Serv. Comm'n of Missouri*, 276 Mo. 539, 210 S.W. 381 (1919), *error dis'd*, 250 U.S. 652, 40 S.Ct. 54, 63 L.Ed. 1190; *Lightfoot v. City of Springfield*, 361 Mo. 659, 236 S.W.2d 348 (1951).

¹⁷ *St. ex rel. Valley Sewage Co. v. Pub. Serv. Comm'n*, 515 S.W.2d 845 (Mo. App., K.C.D. 1974).

¹⁸ *St. ex rel. Washington University et al. v. Pub. Serv. Comm'n*, 308 Mo. 328, 344-45, 272 S.W. 971, 973 (Mo. banc 1925).

¹⁹ *Id.*

²⁰ *May Dep't Stores Co. v. Union Elec. Light & Power Co.*, 341 Mo. 299, 107 S.W.2d 41, 48 (1937).

public . . . [and] the protection given the utility is merely incidental.”²¹ However, the Commission must also afford the utility an opportunity to recover a reasonable return on the assets it has devoted to the public service.²² “There can be no argument but that the Company and its stockholders have a constitutional right to a fair and reasonable return upon their investment.”²³

The Commission has exclusive jurisdiction to establish public utility rates,²⁴ and the rates it sets have the force and effect of law.²⁵ A public utility has no right to fix its own rates and cannot charge or collect rates that have not been approved by the Commission;²⁶ neither can a public utility change its rates without first seeking authority from the Commission.²⁷ A public utility may submit rate schedules or “tariffs,” and thereby suggest to the Commission rates and classifications which it believes are just and reasonable, but the final decision is the Commission’s.²⁸ Thus, “[r]atemaking is a balancing process.”²⁹

Ratemaking involves two successive processes:³⁰ first, the determination of the “revenue requirement,” that is, the amount of revenue the utility must receive to pay the

²¹ *St. ex rel. Crown Coach Co. v. Pub. Serv. Comm’n*, 179 S.W.2d 123, 126 (1944).

²² *St. ex rel. Utility Consumers Council, Inc. v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 49 (Mo. banc 1979).

²³ *St. ex rel. Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882, 886 (Mo. App. 1981).

²⁴ *May Dep’t Stores, supra*, 107 S.W.2d at 57.

²⁵ *Utility Consumers Council, supra*, 585 S.W.2d at 49.

²⁶ *Id.*

²⁷ *Deaconess Manor Ass’n v. Pub. Serv. Comm’n*, 994 S.W.2d 602, 610 (Mo. App. 1999).

²⁸ *May Dep’t Stores, supra*, 107 S.W.2d at 50.

²⁹ *St. ex rel. Union Elec. Co. v. Pub. Serv. Comm’n*, 765 S.W.2d 618, 622 (Mo. App. 1988).

³⁰ It is worth noting here that Missouri recognizes two distinct ratemaking methods: the “file-and-suspend” method and the complaint method. The former is initiated when a utility files a tariff implementing a general rate increase and the second by the filing of a complaint alleging that the subject utility’s rates are not just and reasonable. See *Utility Consumers Council, supra*, 585 S.W.2d at 48-49; *St. ex rel. Jackson County v. Pub. Serv. Comm’n*, 532 S.W.2d 20, 28-29 (Mo. banc 1975), *cert. denied*, 429 U.S. 822, 50 L.Ed.2d 84, 97 S.Ct. 73 (1976).

costs of producing the utility service while yielding a reasonable rate of return to the investors.³¹ The second process is rate design, that is, the construction of tariffs that will collect the necessary revenue requirement from the ratepayers. Revenue requirement is usually established based upon a historical test year which focuses on four factors: (1) the rate of return the utility has an opportunity to earn; (2) the rate base upon which a return may be earned; (3) the depreciation costs of plant and equipment; and (4) allowable operating expenses.³² The calculation of revenue requirement from these four factors is expressed in the following formula:

$$RR = C + (V - D) R$$

where: RR = Revenue Requirement;
 C = Prudent Operating Costs, including Depreciation
 Expense and Taxes;
 V = Gross Value of Utility Plant in Service;
 D = Accumulated Depreciation; and
 R = Overall Rate of Return or Weighted Cost of Capital.

The return on the rate base is calculated by applying a rate of return, that is, the weighted cost of capital, to the original cost of the assets dedicated to public service less accumulated depreciation.³³ The Public Service Commission Act vests the Commission with the necessary authority to perform these functions. Section 393.140(4) authorizes the Commission to prescribe uniform methods of accounting for utilities and Section 393.140(8) authorizes the Commission to examine a utility's books and records and, after hearing, to determine the accounting treatment of any particular transaction. In this way, the Commis-

³¹ *St. ex rel. Capital City Water Co. v. Missouri Pub. Serv. Comm'n*, 850 S.W.2d 903, 916 n. 1 (Mo. App. 1993).

³² *Id.*, citing Colton, "Excess Capacity: Who Gets the Charge From the Power Plant?," 34 Hastings L.J. 1133, 1134 & 1149-50 (1983).

³³ See *St. ex rel. Union Elec. Co. v. Pub. Serv. Comm'n*, *supra*.

sion can determine the utility's prudent operating costs. Section 393.230 authorizes the Commission to value the property of every gas corporation operating in Missouri, that is, to determine the rate base. Section 393.240 authorizes the Commission to set depreciation rates and to adjust a utility's depreciation reserve from time-to-time as may be necessary.

The equation set out above shows that the Revenue Requirement is the sum of two components: first, the utility's prudent operating expenses, and second, an amount calculated by multiplying the value of the utility's depreciated assets by a rate of return. For any utility, its fair rate of return is simply its composite cost of capital.³⁴ The composite cost of capital is the sum of the weighted cost of each component of the utility's capital structure. The weighted cost of each capital component is calculated by multiplying its cost by a percentage expressing its proportion in the capital structure. Where possible, the cost used is the "embedded" or historical cost; however, in the case of Common Equity, the cost used is its estimated cost.

Estimating the cost of common equity capital is a difficult task, as academic commentators have recognized.³⁵ The United States Supreme Court, in two frequently-cited decisions, has established the constitutional parameters that must guide the Commission in its task.³⁶ In the earlier of these cases, *Bluefield Water Works*, the Court stated that:

³⁴ Staff Exh. 4, Cost of Service Report, p. 10. "From a financial viewpoint, a company employs different forms of capital to support or fund the assets of the Company. Each different form of capital has a cost and these costs are weighted proportionately to fund each dollar invested in the assets. Assuming that the various forms of capital are within a reasonable balance and are valued correctly, the resulting total [Weighted Average Cost of Capital] WACC, when applied to rate base, will provide the funds necessary to service the various forms of capital. Thus, the total WACC corresponds to a fair of return for the utility company." *Id.*

³⁵ Phillips, *The Regulation of Public Utilities*, *supra*, 394; Goodman, 1 *The Process of Ratemaking*, *supra*, 606.

³⁶ *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1943); *Bluefield Water Works & Improv. Co. v. Pub. Serv. Comm'n of West Virginia*, 262 U.S. 679, 43 S.Ct. 675, 67 L.Ed.

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the services are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment.³⁷

In the same case, the Court provided the following guidance as to the return due to equity owners:

A public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties; but it has no constitutional right to profits such as are realized or anticipated in highly profitable enterprises or speculative ventures. The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.³⁸

The Court restated these principles in *Hope Natural Gas Company*, the later of the two cases:

‘[R]egulation does not insure that the business shall produce net revenues.’ But such considerations aside, the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated. From the investor or company point of view it is important that there be enough revenue not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard the return to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks. That return, moreover, should be sufficient to assure confidence in the financial integrity of the enterprise, so as to maintain its credit and to attract capital.³⁹

Legal Standard for Approving Stipulations and Agreements

The Commission has the legal authority to accept a Unanimous Stipulation and

1176 (1923).

³⁷ *Bluefield*, *supra*, 262 U.S. at 690, 43 S.Ct. at 678, 67 L.Ed. at 1181.

³⁸ *Id.*, 262 U.S. at 692-93, 43 S.Ct. at 679, 67 L.Ed. at 1182-1183.

³⁹ *Hope Nat. Gas Co.*, *supra*, 320 U.S. at 603, 64 S.Ct. 288, 88 L.Ed. 345 (citations omitted).

Agreement as offered by the parties as a resolution of issues raised in this case.⁴⁰

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.⁴¹

* * *

Consequently, the Commission need not make either findings of fact or conclusions of law in this order.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.⁴² While there is no question the Commission must comply with its statutory mandates to set just and reasonable rates by determining the appropriate revenue requirement and rate design, since no proper party has requested a hearing in this case, the Commission may make its determination, and if appropriate, grant the relief requested based on the Unanimous Agreement.

As noted, no proper party requested a hearing in this matter; however, the Commission convened a hearing for the purpose of having the parties formally present the Unanimous Agreement to the Commission and for parties' counsel and the parties' subject matter experts to answer the Commission's questions regarding specific terms of the Unanimous Agreement. And while the Commission is not required to make findings of fact

⁴⁰Section 536.060, RSMo Cum. Supp. 2006. See also Commission Rule 4 CSR 240-2.115(1)(B), which states that the Commission "may resolve all or any part of a contested case on the basis of a stipulation and agreement."

⁴¹Section 536.090, RSMo Cum. Supp. 2006. 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).

⁴² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

Discussion

According to Staff's Direct Accounting Schedules and Class Cost of Service Summary, MGU's rate base is calculated to be \$3,282,720.⁴³ Prior to entering into the Unanimous Agreement, Staff's proposed Rate of Return ("ROR") on rate base for MGU, once up-dated through September 30, 2007 ranged as follows: 7.84 (Return on Equity ("ROE") of 8.80), 7.97% (ROE 9.05%) and 8.11% (ROE of 9.30%).⁴⁴ Staff based its recommendation on the common equity cost upon the use of the Discounted Cash Flow ("DCF") Model as its primary methodology, but also used Capital Asset Pricing Model ("CAPM") to test the reasonableness of its DCF results.⁴⁵ Staff began by reviewing 14

market-trade natural gas distribution utility companies monitored by the financial service firm Edward Jones, but eventually applied its methodology to seven of these companies to estimate a proxy group cost of common equity to be applied to MGU's operations.⁴⁶

Staff's calculations utilizing its recommended ROR on their calculated rate base resulted in a recommendation for the Commission to approve a total gross annual increase in revenue requirement for MGU ranging from \$206,838 to \$222,185.⁴⁷ Staff gave the Commission a specific recommendation based upon their midpoint ROR of 7.97%, which produced a total gross annual increase in revenue requirement of \$214, 227.⁴⁸

Utilizing MGU's Adjusted Revenue at Current Rates, as listed in the Unanimous Agreement, i.e., \$580,215, minus incremental other income of \$3,014 yielding a total current class revenue of \$577,201 and adding Staff's initial recommend to approve an increase in MGU's gross revenue requirement ranging from \$206,838 to \$222,185 produced a recommended gross revenue requirement ranging from \$784,039 to 799,386.⁴⁹

where:	k	=	the expected return on equity for a specific security;
	Rf	=	the risk-free rate;
	β	=	beta; and
	Rm - Rf	=	the market risk premium.

Staff Exh. 4, Staff Cost of Service Report, pp. 11-20, Appendix 1, Attachments D and E; See *also In re Missouri American Water Co.* 2007 WL 4386054, Mo.P.S.C., October 4, 2007.

⁴⁶ Staff Exh. 4, Staff Cost of Service Report, pp. 11-20 and accompanying schedules.

⁴⁷ Staff Exh. 8, Errata Sheet for Oligschlaeger Direct, pre-filed March 17, 2008.

⁴⁸ Staff Exh. 5 Direct Accounting Schedules, Accounting Schedule 1; Staff Exh. 4, Staff Cost of Service Report, pp. 11-20 and accompanying schedules (17, 18); Staff Exh. 8, Errata Sheet for Oligschlaeger Direct, pre-filed March 17, 2008 Transcript, Volume 4, Testimony of Mark L. Oligschlaeger.

⁴⁹ Unanimous Stipulation and Agreement filed March 3, 2008, Appendix B; Staff Exh. 4, Staff Cost of Service Report, pp. 21-30 and accompanying schedules.

Staff Exh. 5 Direct Accounting Schedules, Accounting Schedule 2; Staff Exh. 6, Staff Class Cost of Service, Rate Design, and Miscellaneous Tariff Report, Attachment A.

MGU's subject matter experts recommended a return on common equity range of 12.0% to 13.0% based upon the use of one common equity model, the DCF approach, which MGU adjusted for what it believed was the increased risk of holding a private security. MGU applied the results of the DCF equity model to proxy groups of fourteen publicly-traded natural gas service companies to conclude that a range of common equity cost rate should be 9.5% to 10.0% prior to quantifying a business risk adjustment. MGU made a business risk adjustment of 2.5 to 3.0% (250 to 300 basis points) to the range of indicated common equity cost rate of 9.5% to 10.0% resulting in its recommended range of business risk adjusted common equity cost rate of 12.0% to 13.0%. MGU's business risk adjustment was predicated on the belief that the company is subject to more risk because it is not publicly traded.⁵⁰

Ultimately MGU's subject matter experts made a specific request an over-all rate of return on its rate base investment of 9.5%, which corresponds with a return to common equity of 12.00%, producing MGU's recommended annual increase in revenue requirement of \$443,131.⁵¹ MGU's request results in a gross annual revenue requirement of \$1,055,054 based upon its own accounting schedules.⁵²

⁵⁰ MGU Exh. 3, Anderson Direct, p. 3, lines 1-18, p. 4, lines 1-10, p. 18, lines 1-4.; Schedule JMA-1, p. 22.

⁵¹ MGU Exh. 2, Taylor Direct, pp. 10-11.

⁵² MGU Exh. 1, Johnston Direct, p. 15, line 9; MGU Exh. 2, Taylor Direct, and accompanying Schedule 1. It would appear that in order to generate MGU's requested revenue requirement of \$1,055,054 from its requested ROR of 9.5% that MGU would be utilizing a rate base approximately \$4,327,695; however, MGU's pleading indicate that MGU's calculated rate base was \$4,788,670. MGU's Schedules do reveal a calculated rate base of \$3,298,030 for the actual test period adjusted upward by \$1,490,640 to reach the total of \$4,788,670, but it is unclear to the Commission what other adjustments may have been made to reach their final request. MGU Exh. 2, Kent Direct, Schedule KDT-1. Given that the parties have filed a Unanimous Agreement, these differences are not significant. The Commission is merely attempting to establish the factual basis behind the initial proposals of the parties to determine if the Unanimous Agreement will set just and reasonable rates.

While Public Counsel raised issues with regard to particular amounts to be included in MGU's rate base, Public Counsel did not advocate for, or recommend, any specific ROR, ROE or increase in gross revenue requirement.⁵³ Public Counsel did make specific recommendations regarding MGU's acquisition costs and rate case expenses.⁵⁴

As listed in the Unanimous Agreement, MGU's Adjusted Revenue at Current Rates, i.e., \$580,215, minus incremental other income of \$3,014 yields a total current class revenue of \$577,201.⁵⁵ Utilizing these calculations, the signatory parties to the Unanimous Agreement sought to establish a gross total annual revenue requirement of \$878,201, requiring an increase in MGU's base rates by approximately \$301,000.⁵⁶

Prior to executing the Unanimous Agreement, the parties' subject matter experts collectively established a range for MGU's rate of return to be set in the range of 7.84% to 9.50%, and collectively established a range for MGU's return on equity to be set in the range of 8.80% to 13.00%. In the Unanimous Agreement, the parties did not specifically agree to a rate base, rate of return or return on equity, but rather developed the request for approval of a \$301,000 increase in base rates based upon negotiation, compromise and assessment of the risks of litigation.⁵⁷ The revenue amounts embodied in the Unanimous Agreement are exclusive of any applicable license, occupation, franchise, gross receipts taxes or other similar taxes.⁵⁸

⁵³ OPC Exh. 1, Robertson Direct, pp. 1-22.

⁵⁴ OPC Exh. 1, Robertson Direct, pp. 15-22; Transcript Volume 4.

⁵⁵ MGU Exh. 4, Unanimous Stipulation and Agreement, Appendix B.

⁵⁶ *Id.*

⁵⁷ MGU Exh. 4, Unanimous Stipulation and Agreement; Transcript Volume 4.

⁵⁸ MGU Exh. 4, Unanimous Stipulation and Agreement, p. 1, paragraph 2.

In prior cases, the Commission has recognized a range of reasonableness for the return on equity as being 100 basis points, plus or minus, the national average.⁵⁹ In the present case, Staff, citing to the Regulatory Research Associates (RRA), has provided the following figures reflecting the average authorized ROE for natural gas service.⁶⁰

The average authorized ROE for natural gas distribution companies for 2006 was: **10.43 percent** based on 16 decisions (first quarter – 10.63 percent based on six decisions; second quarter – 10.50 percent based on two decisions; third quarter – 10.45 percent based on three decisions; fourth quarter – 10.14 percent based on five decisions).

The average authorized ROE for 2007 was **10.24 percent** based on 37 decisions (first quarter – 10.44 percent based on ten decisions; second quarter – 10.12 percent based on four decisions; third quarter – 10.03 percent based on eight decisions; and fourth quarter, 10.27 percent based on fifteen decisions).

Staff also provided figures on the average authorized ROR on rate base:⁶¹

The average authorized ROR for natural gas utilities in 2006 was **8.20 percent** based on 16 decisions (first quarter – 8.62 percent based on six decisions; second quarter – 7.98 percent based on one decision; third quarter – 8.15 percent based on three decisions; fourth quarter – 7.83 percent based on six decisions).

The average authorized ROR for natural gas utilities for 2007 was **8.12 percent** based on 32 decisions (first quarter – 8.40 percent based on ten decisions; second quarter – 8.32 percent based on three decisions; third quarter – 7.88 percent based on seven decisions; fourth quarter – 7.97 percent based on 12 decisions).

⁵⁹ *In re Missouri American Water Co.* 2007 WL 4386054, Mo.P.S.C., October 4, 2007; *In re Union Elec. Co.*, 257 P.U.R.4th 259, 2007 WL 1597782, Mo.P.S.C., May 22, 2007, Case No. ER-2007-0002; *In re Aquila, Inc.*, 257 P.U.R.4th 424, 2007 WL 1663103, Mo.P.S.C., May 17, 2007, Case No. ER-2007-0004; *In re Aquila, Inc.*, 2007 WL 2284480, Mo.P.S.C., May 17, 2007, Case No. ER-2007-0004; *In re Kansas City Power & Light Co.*, 2007 WL 750149, Mo.P.S.C., Jan 18, 2007, Case No. ER-2006-0314; *In re Empire Dist. Elec. Co.*, 2006 WL 3848081, Mo.P.S.C., Dec 21, 2006, Case No. ER-2006-0315; *In re Kansas City Power & Light Co.*, 2006 WL 4041675, Mo.P.S.C., Dec 21, 2006, Case No. ER-2006-0314.

⁶⁰ Staff's subject matter expert David Murray provided Staff's analysis on the Cost of Common Equity. Staff Exh. 4 pp. 11-20.

⁶¹ *Id.*

Utilizing the national averages, and the Commission's prior analyses to determine a zone of reasonableness, the Commission determines that a reasonable ROE for MGU should fall between the range of 9.24% and 11.24% with an average midpoint of 10.24%.⁶² This zone is slightly below the collective range advocated by the parties for ROE, prior to executing the Unanimous Agreement.

Rate Design

Based upon the Cost Class of Service Study ("CCOS") it conducted, Staff recommended that the revenue collected from each of MGU's rate classes be increased equally by the overall percentage increase in non-gas revenues coming out of this rate case.⁶³ Public Counsel did not prepare an independent CCOS Study, citing MGU's not having prepared its own CCOS Study.⁶⁴ Public Counsel argued that the status quo should be maintained in regard to rate design and that any change in total company revenue requirement be implemented as an equal percentage change to the current revenues of each customer class.⁶⁵ MGU did not conduct a CCOS Study because "the system still has less than 1,000 customers and the Company believes that although a fully distributed class cost of service study is philosophically appropriate, such an effort should be postponed until the system is larger and better able to enjoy economies of larger scale operation."⁶⁶

⁶² Depending on the Capital Structure utilized, the ROR for MGU theoretically would fall approximately between the range of 8.08% and 9.12%, with a midpoint of 8.60%. See Staff Exh. 4 Cost of Service Report, Schedule 18.

⁶³ Staff Exh. 6, Staff Class Cost of Service, Rate Design, and Miscellaneous Tariff Report, pp. 1-15, and Attachment A; Transcript Volume 4. Staff recommended using the Straight Fixed-Variable mechanism as the appropriate rate design for MGU's General Service Class. *Id.* at p. 8.

⁶⁴ OPC Exh. 2, Meisenheimer Direct, p. 2, lines 13-18.

⁶⁵ OPC Exh. 2, Meisenheimer Direct, pp. 1-4.

⁶⁶ MGU Exh. 2, Taylor Direct, p. 11, lines 5-8.

The signatory parties to the Unanimous Agreement agreed that in terms of rate design the increase in revenue requirement will be reflected as an equal percentage increase in all classes' revenues for General Service, Commercial Service and Large Volume Service.⁶⁷ The signatory parties to the Unanimous Agreement further agreed to using Staff's volume and customer count determinants, a customer charge for General Service in the amount of \$15, an equal percentage increase for all other classes' rate components, and the use of the Conception, Missouri weather stations for weather normalization.⁶⁸

Miscellaneous Issues Addressed by the Unanimous Agreement

The Unanimous Agreement contains several additional items that the Commission must address. These items include the following: (1) MGU Prospective Accounting Changes – Capitalization of Costs; (2) MGU Prospective Accounting Changes – Corporate Governance; (3) MGU Prospective Accounting Changes – Regulatory Costs; (4) MGU Prospective Accounting Changes – Other; (5) Tariff Changes; (6) Case No. GR-2007-0178 – Consolidated PGA/ACA Case; (7) Class Cost of Service Study; (8) One-Time Contribution of Conservation Funds; (9) Annual Contribution of Conservation Funds; (10) Rate Case Moratorium; and (11) Contingent Waiver of Rights.⁶⁹ Staff's Suggestions in Support of the Unanimous Agreement addressed a number of these specific issues, as did

⁶⁷ MGU Exh. 4, Unanimous Stipulation and Agreement, p. 2, paragraph 3. Transcript, Volume 4.

⁶⁸ *Id.*

⁶⁹ MGU Exh. 4, Unanimous Stipulation and Agreement and the section of this order outlining these provisions for the full text of these provisions. Note: The parties may have had differing positions on these issues with their initial filing of testimony, however, the issues as presented in the Unanimous Agreement reflect the parties' terms of settlement on these issues. See MGU Exh. 2, Taylor Direct; Staff Exh. 1, Oligschaeger Direct; Staff Exh. 2, Direct Testimony of Thomas M. Imhoff; OPC Exh. 3, Direct Testimony of Barbara S. Meisenheimer, filed January 18, 2008. See Staff Exh. 3, Sommerer Direct, articulating Staff's position on Case No. GR-2007-0178, the PGA/ACA issues.

the testimony of the parties at the Stipulation Hearing.

Staff's Suggestions in Support of the Unanimous Agreement

On March 17, 2008, Staff filed suggestions in support of the Unanimous Agreement. In its suggestions, Staff noted that MGU appeared to be deviating from the requirements of the Uniform System of Accounts ("USOA") in some of its books, records and accounting methods.⁷⁰ Staff stated that MGU's accounting practices had the overall effect of overstating MGU's plant in service balances, and hence its rate base, and understating its operating expenses, hence overstating its book net income. Staff's adjustments, however, had the effect of increasing MGU's overall revenue requirement compared to the level produced under MGU's accounting practices. Staff further represented that prior to executing the Unanimous Agreement, MGU's accounting practices would be fully consistent with the USOA and that the language used in the Unanimous Agreement accomplishes this to Staff's satisfaction.

Staff stated that it was willing to negotiate on MGU's revenue requirement related to its perception of the litigation risk inherent in the taking the issues in this matter to the hearing process and that the revenue requirement agreed to in the Unanimous Agreement is based upon a proper accounting of MGU's capital costs and operating costs. And, finally, with regard to other issues resolved by the Unanimous Agreement, Staff asserts that: (1) MGU's gas storage inventory issues from consolidated case No. GR-2007-0178 were resolved by adoption of the Staff's position in this case; (2) Staff supports the rate case moratorium adopted; (3) Staff supports the rate design advocated as well as the miscellaneous tariff revisions; and, (4) the annual conservation contribution from MGU will

⁷⁰ Commission Rule 4 CSR 240-40.040 requires all gas companies under the Commission's jurisdiction to keep all accounts in conformity with the USOA.

help low-income/high-use customers.

Conclusions

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, especially those with fixed or low incomes, 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?⁷¹ As already noted, both of these objectives are statutory duties of this Commission.

In this case, the record reflects that MGU has not received any increase in rates for operational costs over the rates established when it acquired its Certificate of Convenience and Necessity in December 2004 in Case Number GO-2005-0120. As part of the order approving the Stipulation and Agreement in that case, the Commission's Staff was directed to perform an audit of the company. The results from that audit were filed with the Commission on February 15, 2006. Significantly, the Staff audit found:

4. Staff's audit of MGU shows that the Company is under-earning by approximately \$60,000 based upon a rate base of approximately \$2.57 million and a rate of return of 5.66% (return on equity of 10.50%). Staff's audit results are based upon the capital structure and debt cost rates of total company CNG. If MGU specific information was used to develop the rate of return in this revenue requirement calculation, then the indicated amount of MGU's under-earnings would be significantly greater than \$60,000.

Furthermore, the record shows that MGU has experienced increases in net utility investments of approximately \$1.7 million.⁷²

⁷¹ See *generally*, Section 386.610, RSMo 2000.

⁷² Transcript, Volume 4, Testimony of Timothy R. Johnson.

The record further reflects that the proposed settlement in this case would reduce MGU's original request substantially. The new revenues contemplated by the settlement would result in the average residential bill increasing as follows:⁷³

Residential Customer Impact on total Bill at Various Usage Levels Includes Gas Costs at Current PGA				
	Current	Proposed	Change	Percentage Increase
Customer Charge	\$8.00	\$15.00	\$7.00	87.5%
Commodity Rate/Ccf	\$0.3074	\$0.4449	\$0.01375	44.7%
Purchased Gas (PGA)/Ccf	\$0.7039	\$0.7039	\$0	0.0%
Annual Usage	Annual Total Bill		Dollar Increase	Percentage Increase
	Current	Proposed		
0	\$96.00	\$180.00	\$84.00	87.5%
100	\$197.13	\$292.88	\$97.75	49.6%
200	\$298.26	\$409.76	\$111.50	37.4%
300	\$399.39	\$524.64	\$125.25	31.4%
400	\$500.52	\$639.52	\$139.00	27.8%
500	\$601.65	\$754.40	\$152.75	25.4%
600	\$702.78	\$869.28	\$166.50	23.7%
700	\$803.91	\$984.16	\$180.25	22.4%
800	\$905.04	\$1,099.04	\$194.00	21.4%
900	\$1,006.17	\$1,213.92	\$207.75	20.6%
1000	\$1,107.30	\$1,328.80	\$221.50	20.0%
1100	\$1,208.43	\$1,443.68	\$235.25	19.5%
1200	\$1,309.56	\$1,558.56	\$249.00	19.0%
1300	\$1,410.69	\$1,673.44	\$262.75	18.6%
Current Tariff Effective December 30, 2004 / Current PGA Effective November 20, 2007				

The Commission recognizes that this is not a trivial amount of money to customers like those who testified at the public hearings. The increased cost of all utilities along with the rise in recent years of natural gas prices, gasoline prices, and healthcare costs have had an effect on those customers' ability to keep current on their bills.

⁷³ Staff Exh. 10. The General Services class includes all residential customers and non residential customers who use less than 3,000 Ccf annually. The average annual usage/GS customer is 697 Ccf. After normalization for customer growth and weather, the GS class has 889 customers and current revenues of \$278,938. This means an average customer in this class is currently paying \$314.00 annually for MGU's natural gas service. Staff Exh. 6, Class Cost-of-Service, Rate Design, and Miscellaneous Tariff Report, p. 7.

The Unanimous Agreement resulted from extensive negotiations between parties with diverse interests and the Commission's neutral Staff. A Local Public Hearing was held to receive public comment on the proposed rate increases.⁷⁴ Subject matter experts testified as to the reasonableness of the Unanimous Agreement and all of its elements.⁷⁵ The parties agreed that the rates set out in the specimen tariff sheets attached to the Unanimous Agreement are just and reasonable.⁷⁶

The Commission further notes that no party to this action has objected to the annual revenue requirement, or to any component of any calculations, negotiations or compromise resulting in the annual revenue requirement as set forth in the Unanimous Agreement.⁷⁷ No party has objected to the use of Staff's volume and customer count determinants or to any Class Cost of Service allocation factors or any other billing determinants utilized for the purpose of determining rate design in the Unanimous Agreement.⁷⁸ No party objected to any component of any calculations, negotiations or compromise resulting in determining the rate design as set forth in the Unanimous Agreement. No party has objected to the miscellaneous tariff provisions, or to any component of any calculations, negotiations or compromise resulting in determining the miscellaneous tariff provisions as set forth in the Unanimous Agreement.

Additionally, no party requested a hearing on any issue related to the determination of the annual revenue requirement, rate design, or the miscellaneous tariff provisions as set forth in the Unanimous Agreement.

⁷⁴ See Procedural History section of this Order. See also Transcript, Volume 2.

⁷⁵ Transcript, Volume 4.

⁷⁶ Transcript, Volume 4.

⁷⁷ Unanimous Stipulation and Agreement filed March 3, 2008; Transcript, Volume 4.

⁷⁸ Transcript, Volume 4.

Revenue Requirement

MGU has compromised on its requested revenue requirement by entering into the Unanimous Agreement and recommending to the Commission that its authorized revenue requirement in this case represents an increase of \$301,000 in revenues associated with its natural gas service. This recommendation is joined by Staff, and Public Counsel. No party has contested this revenue requirement or demonstrated any inefficiency or improvidence on the part of MGU to challenge the justification of this increase in its revenue requirement.⁷⁹ MGU has also agreed to a rate increase moratorium for three years.

The Commission concludes that the total revenue requirement of \$878,201 increasing MGU's base rates by \$301,000, is a just and reasonable revenue requirement for MGU that is fair to both the utility and its customers. While the parties to the Agreement have not articulated, or specifically agreed upon a rate base, rate of return or return on equity, it is clear that the annual revenue requirement agreed to by all of the parties could only be derived by use of a rate of return on a rate base that would fall squarely within the zone of reasonableness as previously determined by the Commission.

This revenue requirement is concluded to be no more than is sufficient to keep MGU's utility plants in proper repair for effective public service, and insure to MGU's investors a reasonable return upon funds invested. The Commission shall approve the Unanimous Agreement as to MGU's annual revenue requirement, in all respects, as encompassed in the Unanimous Agreement.

⁷⁹ As noted earlier in this order, any parties challenging the conduct, decision, transaction, or expenditures of a utility have the initial burden of showing inefficiency or improvidence, thereby defeating the presumption of prudence accorded the utility. The utility then has the burden of showing that the challenged items were indeed prudent.

Rate Design

No party opposed the rate design as articulated in Unanimous Agreement. The parties' unanimous agreement to, Class Cost of Service volume and customer count determinants and all other allocation factors and billing determinants demonstrates to the Commission that this portion of rate design is just and reasonable. The Commission shall approve the Unanimous Agreement as to rate design, in all respects, as encompassed in the Unanimous Agreement.

Miscellaneous Tariff Provisions

After reviewing the remainder of the items encompassed in the Unanimous Agreement, as outlined above, and the parties' and public's positions on, or lack of position on, those items, the Commission finds the proposed items to be reasonable as adjunctive provisions of the Unanimous Agreement. These remaining items proposed in the Unanimous Agreement, as previously outlined, are acceptable to all concerned parties as evidenced by these parties being signatories to the Unanimous Agreement and having not objected to these items.⁸⁰ The Commission shall approve all of the miscellaneous tariff provisions as encompassed in the Unanimous Agreement.

Final Decision

Based on the agreement of the parties, the testimony received at the local public hearing, the testimony of the parties, and the 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. In addition,

⁸⁰ MGU Exh. 4, Unanimous Stipulation and Agreement.

MGU's contributions to promote the conservation of natural gas enhance MGU's current programs, which the Commission believes is also in the public interest. Accordingly, the revisions set out in the specimen tariff sheets attached to the Unanimous Stipulation and Agreement, as amended, are just and reasonable. The Commission shall authorize MGU to file tariffs in compliance with the Unanimous Agreement. The parties shall be directed to comply with the terms of the Unanimous Agreement.

At the Stipulation Hearing the parties agreed that if the Commission found it appropriate to issue an order approving the Unanimous Agreement, it could be issued with an effective date of March 24, 2008 without objection. The parties also echoed the request in the Unanimous Agreement that MGU's rate increase be implemented on an expedited basis. Good cause exists for expedited action because the company was under-earning from its inception, and continues to under-earn.

The revised tariff sheets to be filed shall be marked with an effective date which is at least 30 days past the issue date. However, MGU has already moved for expedited treatment of its compliance tariffs and the Commission finds good cause to make an expeditious determination on those tariffs because of MGU's under-earnings. Consequently, if the tariffs are found to be in compliance when they are filed, the Commission will approve those tariffs setting an effective date as soon as practical without the need for a further motion for expedited treatment.

IT IS ORDERED THAT:

1. The Unanimous Stipulation and Agreement filed on March 3, 2008, is hereby approved as the resolution of all issues in consolidated cases GR-2007-0178 and

GR-2008-0060. A copy of the Unanimous Stipulation and Agreement is attached to this order.

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

3. The proposed gas service tariff sheets (JG-2008-0138) submitted on August 29, 2007, by Missouri Gas Utility, Inc. for the purpose of increasing rates for gas service to retail customers are hereby rejected.

4. The specific tariff sheets rejected are:

P.S.C. Mo. No. 1

First Revised Sheet No. 5, Cancelling Original Sheet No. 5

First Revised Sheet No. 9, Cancelling Original Sheet No. 9

First Revised Sheet No. 10, Cancelling Original Sheet No. 10

First Revised Sheet No. 11, Cancelling Original Sheet No. 11

First Revised Sheet No. 12, Cancelling Original Sheet No. 12

First Revised Sheet No. 13, Cancelling Original Sheet No. 13

First Revised Sheet No. 15, Cancelling Original Sheet No. 15

First Revised Sheet No. 16, Cancelling Original Sheet No. 16

First Revised Sheet No. 17, Cancelling Original Sheet No. 17

First Revised Sheet No. 19, Cancelling Original Sheet No. 19

First Revised Sheet No. 20, Cancelling Original Sheet No. 20

First Revised Sheet No. 21, Cancelling Original Sheet No. 21

First Revised Sheet No. 24, Cancelling Original Sheet No. 24

Third Revised Sheet No. 51, Cancelling Second Revised Sheet No. 51

First Revised Sheet No. 53, Cancelling Original Sheet No. 53

Original Sheet No. 53A

First Revised Sheet No. 54, Cancelling Original Sheet No. 54

First Revised Sheet No. 55, Cancelling Original Sheet No. 55

First Revised Sheet No. 82, Cancelling Original Sheet No. 82

5. Missouri Gas Utility, Inc. is authorized to file tariffs in compliance with the terms of the Unanimous Stipulation and Agreement.

6. Tariffs filed in accordance with Ordered Paragraph #5 shall be filed with an effective date which is at least 30 days after its issue date; however, if such tariffs are in compliance with the Unanimous Stipulation and Agreement, the Commission will approve

those tariffs setting an effective date as soon as practical without the need for a further motion for expedited treatment.

7. MGU shall adjust the Actual Cost Adjustment account balance in its next Actual Cost Adjustment filing to reflect the adjustments embodied in the Unanimous Stipulation and Agreement and reflect the (over)/under-recovered Actual Cost Adjustment balance as found in the Staff Recommendation filed in Case No. GR-2007-0178 on August 16, 2007.

8. The procedural schedule adopted by the Commission on October 23, 2007, and subsequently modified on December 21, 2007 and February 20, 2008, that was suspended on March 4, 2008, is hereby canceled.

9. Based upon the parties' agreement, this order shall become effective on March 24, 2008.

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)

Davis, Chm., Murray, Clayton, Appling,
and Jarrett, CC., concur.

Stearley, Regulatory Law Judge