

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR

PROFESSIONAL CORPORATION
312 EAST CAPITOL AVENUE
P. O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-3847
E-MAIL: DUFFY@BRYDONLAW.COM

DEAN L. COOPER
MARK G. ANDERSON
TIMOTHY T. STEWART
GREGORY C. MITCHELL
BRIAN T. MCCARTNEY
DALE T. SMITH

OF COUNSEL
RICHARD T. CIOTONE

September 8, 2000

Mr. Dale Hardy Roberts
Executive Secretary
Public Service Commission
Governor State Office Building
Jefferson City, MO

FILED²
SEP 8 2000
Missouri Public
Service Commission

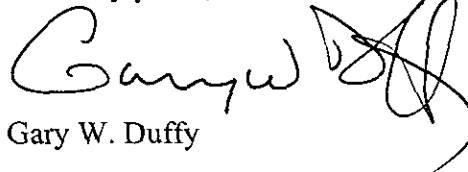
RE: Case No. GR-99-392
Associated Natural Gas Company

Dear Mr. Roberts:

Enclosed for filing in the above-referenced proceeding please find an original and eight copies of "Response to Order Directing Filing."

If you have any questions, please give me a call.

Sincerely yours,


Gary W. Duffy

Enclosures
cc w/encl:

Office of Public Counsel
Office of the General Counsel (Tim Schwarz)
Jeff Dangeau
Ricky Gunter

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

FILED²
SEP 8 2000
Missouri Public
Service Commission

In the matter of Associated Natural Gas)
Company's Purchased Gas Adjustment)
Factors to be Reviewed in its 1998-1999)
Actual Cost Adjustment.)

Case No. GR-99-392

RESPONSE TO ORDER DIRECTING FILING

Comes now Associated Natural Gas Company, a division of Arkansas Western Gas Company, and in response to the "Order Directing Filing" issued on August 9, 2000, respectfully states as follows:

1. It appears there is an error in the August 9 Order in the second paragraph. The Order states that "On June 30, 2000, the Procurement Analysis Department of the Staff of the Commission (Staff) filed a memorandum indicating that the Staff had reviewed the Actual Cost Adjustment (ACA) filing of ANG." ANG received a Staff memorandum dated August 1, 2000. ANG therefore suspects that the date in the order is wrong, and that to be correct, the sentence should read: "On August 1, 2000, the Procurement Analysis Department of the Staff of the Commission (Staff) filed a memorandum indicating that the Staff had reviewed the Actual Cost Adjustment (ACA) filing of ANG."

2. The August 1 Staff memorandum contained the following headings: "Storage Withdrawal Adjustment," "Gathering & Transmission Charges," "Reliability Analysis," "Summary," and "Recommendations." ANG will provide a response to each heading.

3. **Storage Withdrawal Adjustment:** It appears to ANG that Staff has simply quantified the amount of the disallowances the Commission ordered in Case Nos. GR-96-227

and GR-97-191. As the Staff notes, both of these cases are on appeal. ANG is impounding funds in the Circuit Court of Cole County with regard to the review of Case No. GR-96-227, which is now under submission at the Missouri Court of Appeals, Western District, having been argued on August 10, 2000. ANG intends to impound funds in the Circuit Court of Cole County in a similar manner with regard to the review of Case No. GR-97-191, and is awaiting comments from Atmos and the Commission with regard to a draft court order to accomplish that. Further proceedings have not been scheduled in circuit court, awaiting the finalization of that impoundment order. Since the Commission has been stayed from reducing the rates for the amount of the disallowance in GR-96-227, pending a final judicial resolution of the appeal, and ANG expects a similar stay in Case No. GR-97-191, it would be improper for the Commission to order any refunds in the context of this case. Therefore, the Commission should defer any action on this particular aspect of the recommendation until the aforementioned appeals have been completed.

4. **Gathering & Transmission Charges:** In brief, the Commission ordered the "deregulation" of Gathering and Transmission facilities in the most recent ANG rate case, Case No. GR-97-272. That case is on appeal by both Noranda and ANG. The Staff in that rate case said that ANG should charge a market-based rate for those services. ANG appealed that issue, among others, arguing that the Commission was without jurisdiction to take those actions and that the Gathering and Transmission facilities should continue to be treated as rate base as they had for several years. Staff now is asserting in its August 1, 2000, recommendation that the gathering charges ANG made are "excessive by market standards." Apparently Staff is now seeking a total of \$1,031,753 in disallowances on that theory. ANG disputes this Staff assertion. It makes no sense, however, to litigate these latest Staff allegations about whether the charges are

excessive until there is a resolution of the underlying legal question of whether the Commission could lawfully force ANG to charge such a market-based rate for what had been previously considered investment in plant in service (i.e., rate base). Resolution of that legal question must now await the Commission's submission of new findings of fact and conclusions of law in Case No. GR-97-272, as ordered by the Missouri Court of Appeals, Western District, (Case No. WD 57012, May 16, 2000) since the Missouri Supreme Court has refused to hear the case as requested by the Commission (Order Denying Application to Transfer, Case No. SC82806, August 29, 2000). Therefore, it makes no sense to embark on a procedural schedule to test the Staff's latest assertions about "excessive" market prices until there is a resolution of the legal question of whether ANG may lawfully be forced to make the charges in the manner advocated by the Staff in the first place. Absent a settlement, that legal question must await a reformulated Report and Order by the Commission, per the order of the Western District, and the likely appeal of that issue again by ANG, unless the Commission were to reach a different result in the reformulated Report and Order.

5. **Reliability Analysis:** This appears to be a recitation of impressions that the Staff has formed. ANG cannot discern any particular action that the Staff is recommending ANG take that is mentioned under this heading, and therefore ANG does not have any particular response.

6. **Summary:** In the first "bullet point" under this heading, the Staff is requesting that the Commission "approve" the balances in the table it shows in its memorandum. This action is neither necessary nor appropriate. It is not necessary for the Commission to issue an order to "approve" disallowances it has already made in other cases, and it is inappropriate for the Commission to do so in this instance because the disallowance in GR-96-227 has been stayed by the Circuit Court, and the parties expect that the disallowance in GR-97-191 will be similarly

stayed in the near future.

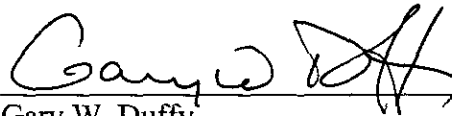
In the second bullet point, Staff states that it will propose disallowances in this and another case to disallow certain costs related to Gathering & Transmission facilities. The Commission should take no action on these proposed disallowances until after there is a determination by the courts as to whether the Commission acted lawfully in deregulating ANG's gathering and transmission facilities in Case No. GR-97-272. That question cannot be resolved until the Commission issues a new Report and Order in Case No. GR-97-272 and appeals therefrom are resolved.

In the third bullet point, the Staff makes some recommendations about what ANG should do regarding demands and capacity and provide some explanations and submit this material with the 1999/2000 ACA filing, which is due between October 15 through November 4, 2000. In one of these (point c) the Staff suggests that ANG should make a filing for "three to five years beyond" the 1999/2000 ACA period. As the Staff noted in paragraph 3 of the pleading entitled "Staff Recommendation," the Missouri properties of ANG have been sold to Atmos Energy Corporation. While ANG has obligations to the Commission it must fulfill with regard to the time when it was operating its facilities within the state of Missouri, it does not appear meaningful for ANG to be required to perform these tasks when ANG has no control over how Atmos will operate the properties. ANG respectfully suggests that the Staff may wish to reconsider the need for ANG to perform any of these tasks in light of the fact that Atmos has owned and operated the former ANG properties since June 1, 2000. If the tasks are appropriate, they are the responsibility of Atmos, not ANG.

7. **Recommendations:** Under this heading, the Staff simply says that this case should "remain open." ANG agrees with that assessment. There are too many underlying and

prior issues remaining unresolved for the Commission to take any action at all in this case, as has been previously explained. It is ANG's position that the Commission should not issue any order either "approving" any balances, setting any procedural schedule, or directing ANG to take any actions in this case, since some or all of those actions could be mooted by the outcome of judicial review proceedings which are now in progress. The ratepayers and ANG are protected by the impoundment of funds. We are in a situation where the parties should wait while the judicial process takes its course in reviewing prior Commission rulings before we embark on litigation on new Staff theories.

Respectfully submitted,



Gary W. Duffy

#24905

BRYDON, SWEARENGEN & ENGLAND P.C.

312 E. Capitol Avenue

P. O. Box 456

Jefferson City, MO 65102

573-635-7166 voice

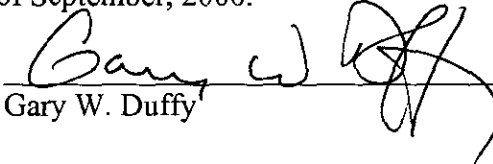
573-635-3847 facsimile

Duffy@Brydonlaw.com

ATTORNEYS FOR ASSOCIATED NATURAL
GAS COMPANY

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was hand delivered to Office of the General Counsel and addressed to Thomas R. Schwarz, Jr., and the Office of the Public Counsel this 8th day of September, 2000.



Gary W. Duffy

ANG99392res/gdmydocs/wp8