



FILE COPY

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March 22, 2001

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

**RE: United Cities Gas Company,
Case No. GA-98-464**

FILED²
MAR 22 2001
Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above referenced case, please find the original and 8 copies **Public Counsel's Position Statement**. Please "file stamp" the extra enclosed copy and return it to this office. I have on this date mailed, faxed, or hand-delivered the appropriate number of copies to all counsel of record.

Thank you for your attention to this matter.

Sincerely,

Douglas E. Micheel
Senior Public Counsel

DEM:kh

cc: Counsel of Record

Enclosure

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

FILED²
MAR 22 2001

FILE COPY
Missouri Public Service Commission

In the matter of the application of United Cities)
Gas Company, a division of Atmos Energy)
Corporation, for an accounting authority order)
related to investigation and response actions)
associated with its former manufactured gas plant)
site in Hannibal, Missouri.)

Case No. GA-98-464

PUBLIC COUNSEL'S POSITION STATEMENT

COMES NOW the Office of the Public Counsel ("Public Counsel") and pursuant to the Regulatory Law Judge's request states its belief that the Commission does not have authority to extend or modify Ordered paragraph 3 of its Order granting United Cities Gas an accounting authority order on February 25, 1999. In support Public Counsel states as follows:

1. On February 25, 2001, United Cities filed its Motion for Modification of Accounting Authority Order requesting this Commission modify Ordered paragraph 3 of the February 25, 1999 Order changing the date the AAO would become null and void from March 9, 2001 to March 9, 2002.

2. The Commission's original final Order in this proceeding stated at paragraph 3:

That this accounting authority order shall become null and void in the event United Cities does not file tariff sheets proposing a general rate increase in rates within twenty-four (24) months from the effective date of this order.

Nothing in the Order approving the AAO request grants United Cities the ability to seek a "modification" of the Order. The language of the Commission's Order is clear and unambiguous, if United Cities fails to file a rate case within twenty-four months from the effective date of the order (March 8, 1999) the accounting authority order "shall become null and void." The fact that United

Cities filed a request to “modify” the Order prior to March 9, 2001 does not and cannot in any way alter the Commission’s final order in this proceeding.

3. The Commission has no power to reopen a proceeding and modify or set aside an order made by it where the matter has passed out of its control. 73B C.J.S. §92 Public Utilities p. 396. By operation of law the Commission’s decision is final and cannot be altered. Section 386.550 RSMo. 2000 provides:

In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.

United Cities did not seek rehearing pursuant to Section 386.500 nor did United Cities seek review of the Commission’s decision pursuant to Section 386.510. The Commission has no authority to modify its final order over two years after it was entered. See: Nebraska Public Power District v. Huebner, 276 N.W.2d 228, 231 (Neb. 1979).

4. To grant United Cities’ request would undermine the finality of Commission orders and not allow parties such as Public Counsel to reply on the actions of this Commission.

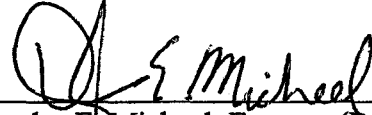
5. Finally, the March 9, 2001 deadline for filing a rate case to seek recovery of the amounts deferred has passed. The Order does not contain any type of relation back language that would allow United Cities’ filing to modify the Order to toll the clear and unambiguous language of this Commission’s original order. The AAO at issue is null and void.

WHEREFORE: Public Counsel requests the Commission deny United Cities’ request to “modify” the accounting authority order issued on February 25, 1999.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:

A handwritten signature in black ink, appearing to read "D. E. Micheel", written over a horizontal line.

Douglas E. Micheel, Esq. (Bar No. 38371)

Senior Public Counsel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been faxed, mailed or hand-delivered to the following counsel of record on this 22nd day of March, 2001:

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