

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

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0491
)	
Missouri Pipeline Company, LLC; and)	
Missouri Gas Company, LLC,)	
)	
Respondents.)	

APPLICATION FOR REHEARING

COMES NOW, the Municipal Gas Commission of Missouri (“MGCM”), pursuant to Section 386.500 RSMo and 4 CSR 240-2.160 of the Commission’s Rules of Practice and Procedure, and for its Application for Rehearing, respectfully states as follows:

1. On August 28, 2007, the Commission issued its Report and Order (“Order”) in the above-captioned docket. In that Order, the Commission found that Staff had prevailed in regards to Counts 1, 3 and 4 of its Complaint. MGCM only seeks rehearing with regard to a single point on Count 3: the Commission’s determination that the provisions of Section 3.2(b)(1), whereby the maximum rate to non-affiliate shippers are reduced to the same level as provided to an affiliate, are only triggered upon the filing of a Staff notification to the Commission. In this Application, MGCM points out that the Commission’s determination: (1) fails to read the tariff provisions in a manner which gives effect to each provision of the pipeline tariff; and (2) is contrary to the provisions of the Public Service Commission Act.

A. Section 3.2 should be Interpreted in a Manner that Gives Effect to the Entirety of the Tariff.

2. In its Report and Order the Commission found that protections against non-affiliate discrimination, contained in Section 3.2(b)(1), are only triggered upon the Staff filing a “notification” with the Commission. The Commission reaches this erroneous conclusion by attempting to read the provisions of Section 3.2(b) and 3.2(c) as if they are simultaneously applicable. As explained, *infra*, the Commission’s interpretation is erroneous and effectively renders Section 3.2(b)(1) moot.

3. Section 3.2 contains three provisions that are separate and distinct from each other.

► Section 3.2(a) establishes maximum rates that may be charged by the pipeline. That said, however, Section 3.2(a) also recognizes that the pipeline may provide discounts from those maximum rates.

► Section 3.2(b)(1) provides a mechanism by which the maximum rate to non-affiliate shippers is to be tied to the discounts provided to an affiliated shipper. That linkage between affiliate and non-affiliate rates is not absolute, however, because Section 3.2(b) also provides a means by which the pipeline may ask to deviate from those maximum rate provisions [Sections 3.2(b)(2)-(4)]. In order to avail itself of this relief the pipeline is required to submit the Transportation Agreement for Commission approval. In the absence of such Commission approval, the maximum rate provisions contained in Section 3.2(b)(1) remain applicable and limit the rates charged to non-affiliates.

► Section 3.2(c) contains a procedure by which the Staff may seek to eliminate the Section 3.2(b) mechanism used by the pipeline to request relief from 3.2(b)(1). Specifically, if the Staff determines that the mechanism contained in Section 3.2(b)(2)-(4)

is “not effective in preventing rate discrimination to non-affiliates,” Staff may file a notification which has the effect of eliminating those relief provisions.

4. Clearly, Sections 3.2(b) and (c) are separate and distinct. While Section 3.2(b) has current effect, that section may be replaced at some point in the future by the terms of Section 3.2(c). That replacement does not happen, however, until Staff makes the requisite notification. Absent such notification, Section 3.2(c) remains dormant and the terms of Section 3.2(b)(1) remain applicable

5. Contrary to this interpretation which gives effect to each provision by recognizing that Section 3.2(b) and (c) are effective at different points in time, the Commission’s interpretation attempts to interpret these provisions as if they are simultaneously applicable and thus renders Section 3.2(b)(1) irrelevant. If the non-affiliate protections against discrimination can only be triggered by the Staff notification, as the Commission concludes, why was Section 3.2(b)(1) included in the tariff? Section 3.2(b)(1) must be read in a manner that gives effect to this provision.

6. In addition to rendering Section 3.2(b)(1) irrelevant, the Commission’s interpretation also has the unintended consequence of rewarding the pipeline for its past anticompetitive behavior. Specifically, the Commission’s interpretation purports to free the pipeline from any liability associated with the overcharges made to non-affiliate shippers. Given this interpretation, this pipeline would be left with little to deter it from future tariff violations involving affiliate discounts.

B. The Commission’s Interpretation is Contrary to the Intent and Provisions of the Public Service Commission Act.

7. In addition to its failure to read the tariff provisions in a manner that gives effect to each of those provisions, the Commission’s interpretation also violates several

sections of the Public Service Commission Act. Specifically, the Commission's interpretation is inconsistent with Section 393.130.1, 393.130.3 and 393.140(11).

1. SECTION 393.130.1

The Commission's decision to limit non-affiliate shipper's ability to seek refunds for past overcharges is contrary to the provisions of Sections 393.130.1. That section provides:

All charges made or demanded by any such gas corporation, electrical corporation, water corporation or sewer corporation for gas, electricity, water, sewer or any service rendered or to be rendered shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas, electricity, water, sewer or any such service, or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited. (emphasis added).

Nowhere did the General Assembly attempt to limit consumer's ability to seek redress for past unjust and unreasonable charges made by the utility.

2. SECTION 393.130.3

The Commission's decision to limit non-affiliate shipper's ability to seek refunds for past overcharges is contrary to the provisions of Section 393.190.3. That section provides the prohibition against undue discrimination.

No gas corporation, electrical corporation, water corporation or sewer corporation shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 3.2(b) provides the assurance that non-affiliate shippers will not be subjected to "undue or unreasonable prejudice or disadvantage" relative to the transportation service provided to affiliate shippers. The Commission's interpretation,

however, removes the assurance provided by Section 3.2(b), and countenances the pipelines' past anticompetitive behavior. Such an interpretation, by allowing the pipeline to charge affiliate and non-affiliate shippers different rates, is clearly contrary to the express provisions of Section 393.130.3.

3. SECTION 393.140(11)

The Commission's decision to limit non-affiliate shipper's ability to seek refunds for past overcharges is contrary to the provisions of Sections 393.140.11. That section provides:

No corporation shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered that the rates and charges applicable to such services as specified in its schedule filed and in effect at the time.

By limiting the pipelines' liability for past overcharges, the Commission has condoned its practice of charging non-affiliate shippers an amount greater than that charged to the pipelines' affiliate. The Commission's interpretation is contrary to express intent of the tariffs and Section 393.140(11).

WHEREFORE, the Municipal Gas Commission of Missouri respectfully requests that the Commission issue its Order Granting Rehearing of its August 28, 2007 Report and Order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the forgoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.



David L. Woodsmall

Dated: September 6, 2006