

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of United Cities Gas Company's)
tariff reflecting rate changes to be reviewed)
in company's 1991-1992 actual cost adjustment)
for its Hannibal and Canton Districts.)
CASE NO. GR-92-21

APPEARANCES: Gary W. Duffy, Attorney at Law, Brydon, Swearingen &
 England, P.C., P. O. Box 456, Jefferson City,
 Missouri 65102, for United Cities Gas Company

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 P. O. Box 7800, Jefferson City, Missouri 65102,
 for the Office of the Public Counsel and the Public

William K. Haas, Assistant General Counsel, P. O. Box
 360, Jefferson City, Missouri 65102, for the Staff
 of the Missouri Public Service Commission.

HEARING
EXAMINER: Mark A. Grothoff

REPORT AND ORDER

On January 21, 1992, United Cities Gas Company (United Cities) filed a tariff reflecting a take-or-pay (TOP) refund from its supplier in its Hannibal-Canton District, Panhandle Eastern Pipeline Company (Panhandle). On January 27, 1992, United Cities filed a motion requesting a variance of its PGA Clause currently on file with the Commission. United Cities had withheld \$26,848 of the refund to which it claimed it was entitled.

On January 31, 1992, the Commission approved United Cities' tariff and denied United Cities' motion. The Commission also ordered United Cities to file a tariff reflecting the refund of the \$26,848 withheld by United Cities. On March 2, 1992, pursuant to the Commission's Order, United Cities filed a tariff reflecting the additional refund of the \$26,848 with an effective date of March 6, 1992. On March 3, 1992, the Commission suspended the tariff from March 6, 1992 to March 20, 1992 and scheduled a hearing on the issue of the additional refund. On March 10, 1992, a hearing was held as scheduled.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

In December, 1991, United Cities received a refund of \$332,866.35 from Panhandle. United Cities refunded the entire amount to its customers, except \$26,848 to which it claimed it was entitled. United Cities subsequently discovered that only \$20,430.91 of the amount it was claiming was actually refunded by Panhandle. United Cities then lowered its claim to \$20,430.91.

Two issues arose during the hearing of this case. The first is whether the \$20,430.91 was actually a portion of the refund received by United Cities in December, 1991. The second issue is whether, if the amount claimed by United Cities is a portion of the refund, United Cities is required to pass it on to its customers.

The refund received by United Cities was made pursuant to several Federal Energy Regulatory Commission (FERC) dockets under FERC Order No. 528 (Order 528). The Staff of the Commission (Staff) and the Office of the Public Counsel (OPC) argued that the money claimed by United Cities was not within Order 528, but rather, was money paid under FERC Order No. 500 (Order 500) which was merely credited to United Cities under Order 528 in settlement of Order 500. Staff and OPC stated that the Order 500 money constituted only a credit, not a refund. According to Staff and OPC, the calculation of United Cities' balance under Order 528, which resulted in a refund in December, 1991, began only after the Order 500 money was credited, and thus, the refund did not include Order 500 money. Staff and OPC argued that, therefore, the money claimed by United Cities was never refunded by Panhandle.

United Cities argued that the Order 500 money was a portion of the refund it received. United Cities stated that the Order 500 money was credited

against a working balance already in place under Order 528. According to United Cities, when the Order 500 money was credited, it became a factor in the progression of that working balance through each month, ultimately resulting in the refund in December, 1991. United Cities pointed out that if the Order 500 money had not been credited against the Order 528 balance, there would have been no refund at all. United Cities argued that, therefore, the Order 500 money, including the amount claimed by United Cities, was a portion of the refund received by United Cities.

Staff and OPC further argued that, even if the refund did include the \$20,430.91 claimed by United Cities, United Cities was not entitled to keep the money, but rather, was required by its tariff to pass it on to its customers. Staff and OPC stated that United Cities was required by the Purchase Gas Adjustment (PGA) Rider in its tariff to pass on any refund from its supplier to its customers. Staff and OPC argued that the PGA Rider encompasses all situations and makes no provisions for a variance.

United Cities stated that Staff did not allow it to recover the \$20,430.91 from the customers when it was paid because it occurred outside the proper time period, and so, the money was paid by United Cities, not its customers. United Cities argued that the PGA Rider was based on the assumption that the customers paid the money and when a refund occurs, they would be made whole. United Cities also argued that since the customers did not in fact pay the \$20,430.91, the PGA Rider did not apply to this situation. United Cities further argued that equity dictated that since United Cities paid the \$20,430.91, it should be made whole and allowed to retain the money.

The Commission has determined that the \$20,430.91 was a portion of the refund received by United Cities in December, 1991. Staff and OPC advocated an accounting theory in arguing that the Order 500 money credited against the Order 528 balance was not a portion of the refund under Order 528. In real terms,

however, the Order 500 money was an integral factor in the Order 528 balance eventually resulting in a refund. Without the Order 500 money being factored in, there would not have been a refund in December, 1991. Thus, the Commission finds that the Order 500 money, including the \$20,430.91 claimed by United Cities, was a portion of the refund received by United Cities in December, 1991.

Additionally, the Commission is of the opinion that the PGA Rider in United Cities' tariff is not applicable to this situation. The underlying basis for the PGA Rider is to make the customers whole after they paid for costs of the company. In this situation, the customers did not pay the money and are not entitled to receive the refund of it. Thus, the Commission finds that United Cities is entitled to retain \$20,430.91 of the refund it received from Panhandle in December, 1991. The remainder of the refund must be passed on to United Cities' customers.

The Commission notes, however, that this decision is limited to the specific facts and evidence of this case. It is not a broad declaration of the Commission's position in other PGA refund cases. Further, this decision does not affect the Commission's position on the recovery of costs which were not requested within the correct time period.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law:

United Cities is a public utility subject to the jurisdiction of the Commission pursuant to Chapters 386 and 393, RSMo 1986, as amended. On March 2, 1992, pursuant to the Commission's Order of January 31, 1992, United Cities filed a tariff reflecting a refund to its customers. The tariff was suspended pursuant to Section 393.150, RSMo 1986.

The standard for approval of the tariff is whether it is just and reasonable. The Commission, after notice and hearing, has determined that United

Cities is entitled to retain \$20,430.91 of the refund and is not required to pass it on to its customers. Thus, the Commission finds that the tariff filed by United Cities on March 2, 1992, is not just and reasonable. The Commission, therefore, concludes that the tariff filed by United Cities on March 2, 1992, should be rejected. The Commission further finds that United Cities should file a tariff in compliance with this Report and Order to be effective on and after March 20, 1992.

IT IS THEREFORE ORDERED:

1. That the tariff filed by United Cities Gas Company on March 2, 1992, is hereby rejected.
2. That United Cities Gas Company shall file a tariff in compliance with this Report and Order to be effective for service on and after March 20, 1992.
3. That this Report and Order shall become effective on March 20, 1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
and Perkins, CC., Concur.
Kincheloe, C., Absent.

Dated at Jefferson City, Missouri,
on this 13th day of March, 1992.