

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

January 26, 1999

CASE NO: GR-96-227

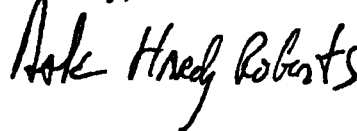
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Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copy:

Mark S. Kidd
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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 2nd
day of March, 1999.

In the Matter of Associated Natural)	
Gas Company's Tariff Revisions to be)	<u>Case No. GR-96-227</u>
Reviewed in its 1995-1996 Actual Cost)	
Adjustment.)	

ORDER DENYING APPLICATION FOR REHEARING

On January 26, 1999, the Commission issued a Report and Order bearing an effective date of February 5. The Report and Order affirmed the proposal of the Staff of the Public Service Commission (Staff) to reduce Arkansas Western Gas Company d/b/a Associated Natural Gas Company's (ANG's) SEMO District gas costs by \$254,476 to eliminate a double recovery. The Report and Order also denied ANG's request to increase its SEMO District gas costs by \$19,522. On February 4, ANG filed an Application for Rehearing. ANG makes numerous arguments in support of its Application and they will be addressed in turn.

I. Rehearing Required Due to Absence of Hearing Officer

ANG points out that the Regulatory Law Judge that presided at the hearing is not the same Regulatory Law Judge that wrote the decision for the Commission. ANG then asserts that this change of judge justifies a rehearing because fundamental fairness requires that the evidence be reheard by someone who can judge the credibility of the witness in person and then participate in the decision making. ANG's assertion

misunderstands the role of the Regulatory Law Judge within the context of the Commission's issuance of a Report and Order. 4 CSR 240-2.120(4) provides that as a presiding officer, a regulatory law judge has a duty to "conduct full, fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of proceedings, to maintain order, and shall possess all powers necessary to that end." By practice of the Commission, the Regulatory Law Judge also writes decisions for the Commission, under the direction of the Commission. However, the Regulatory Law Judge is not a Commissioner and does not have a vote in Commission decisions. The Regulatory Law Judge is not a fact finder entitled to judge the credibility of witnesses who appear before the Commission. The role of fact finder and judge of the credibility of witnesses is instead exercised by the Commissioners. Therefore, ANG was not denied its right to a fair hearing by the fact that the Regulatory Law Judge who presided at the hearing is no longer employed by the Commission and was not available to assist the Commission in the writing of the Report and Order.

ANG also asserts that it is entitled to a rehearing because only two of the five Commissioners who voted on the Report and Order viewed a portion of the hearing. ANG apparently asserts that only Commissioners who attend every minute of every hearing should be entitled to make decisions about those cases. ANG's position is contrary to established Missouri law. Section 536.080.2, RSMo (1994) provides that "[i]n contested cases, each official of an agency who renders or joins in rendering a final decision shall, prior to such final decision, either

hear all the evidence, read the full record including all the evidence, or personally consider the portions of the record cited or referred to in the arguments or briefs." The Commission has complied with the requirements of that statute and has certified that compliance in the Report and Order. Therefore, the Commissioners are entitled to render a decision in this case despite the fact that not all of the Commissioners attended the hearing.

II. Conclusion Regarding Sheet 44 is Contrary to Law and Evidence

ANG argues that the former tariff sheet 44, by its terms, can only produce a recovery of gas costs when gas is sold. As ANG points out, the gas at issue was held in inventory and not sold. ANG also argues that Sheet 44 cannot govern the recovery of storage gas when gas in storage is not even mentioned on the tariff sheet.

ANG's arguments are not persuasive. Although tariff sheet 44 did not specifically list gas injected into storage as a gas cost, gas injected into storage constituted a component of ANG's purchased gas cost that was reflected in the supplier invoices used to establish customer rates. Tariff sheet 44 operated in a pre-FERC Order 636 environment in which all components of gas supply and service were provided by the pipeline and appeared on the pipeline invoices. Fixed and variable storage charges were components of gas supply and service included on pipeline supplier invoices. Thus, the cost of stored gas would have been included in the customer invoices used to establish ANG's rates under tariff sheet 44.

III. No Competent and Substantial Evidence to Support Commission's Conclusion

ANG argues that the Staff failed to produce competent and substantial evidence to support the Commission's conclusion regarding the double recovery. ANG's argument is not persuasive. The Commission found, and continues to find, that the testimony presented by Staff regarding the operation of tariff sheet 44 is sufficient competent and substantial evidence to support the Commission's conclusion that a double recovery has occurred.

IV. Legally Insufficient Findings of Fact

ANG argues that the Findings of Fact included in the Commission's decision are merely conclusions and are not legally sufficient to show how the Commission decided the controlling issues. Again, ANG's argument is not persuasive. The Commission decided that tariff sheet 44 allowed ANG to recover the costs of gas injected into storage prior to July 8, 1982. To allow ANG to recover those costs and include them in its rates a second time would result in double recovery. ANG disagrees with that conclusion and ANG is free to argue to the reviewing court that the Findings of Fact are incorrect. However, a reviewing court will have no need to speculate about how a controlling issue was decided. The Findings of Fact are legally sufficient.

V. Commission Conclusion is Unconstitutionally Retrospective in Operation.

ANG argues that the Commission's Report and Order retroactively changes the provisions of tariff sheet 44, in violation of Article 1, section 13 of the Missouri Constitution. The Commission's Report and Order merely interprets tariff sheet 44 as it existed seventeen years

ago. It does not purport to change any aspect of the operation of that tariff. Therefore, there is no constitutional violation.

VI. The Commission Has Misapplied the Law Concerning FERC Order 636

ANG argues that there is no relevant difference between pre-Order 636 and post-Order 636 services as far as sheet 44 is concerned. ANG argues that tariff sheet 44 did not allow for the recovery of storage costs until the stored gas was withdrawn and consumed no matter how costs may have been bundled in the pre-Order 636 environment. Of course, the fact that storage costs were bundled into the supplier invoices before Order 636 does not by itself mean that ANG has recovered those costs. Rather, the fact that storage costs were bundled into supplier invoices for gas purchased means that the cost of gas injected into storage was included as part of the supplier invoices that were used by ANG in establishing its rates under tariff sheet 44. It was the rates established under tariff sheet 44 that permitted ANG to recover the value of the gas injected into storage prior to July 8, 1982.

VII. Due to the Passage of Time and the Numerous Instances in Which ANG's Books and Records Have Been Examined by the Commission, the Commission is Barred by the Doctrine of Laches and Estoppel from Making this Disallowance

ANG mischaracterizes the Commission's decision as holding that the gas inventory storage balance shown on ANG's books "doesn't exist to begin with." ANG moves from that premise to an argument that because the Commission has recognized the existence of a gas inventory storage balance for rate base purposes in numerous rate cases since 1982, the Commission should be barred from denying the existence of the balance for

purposes of this case. In fact, the Commission's decision does not deny the existence of a gas inventory storage balance for purposes of determining ANG's rate base in a rate case. Clearly that gas does exist and does have value to the Company. No one expects that ANG will give away the gas that it has in storage. It will be sold to consumers and ANG will recover its value at that time. However, the Commission's decision does hold that the cost of acquiring that gas was recognized for purposes of the Purchased Gas Adjustment during the time that ANG operated under the provisions of tariff sheet 44. Those costs were reflected in the rates established for ANG at that time. To allow ANG to again include those costs in the rate that will result from its 1995/1996 Actual Cost Adjustment would result in a double recovery. The holding of the Commission is designed to avoid that double recovery.

Conclusion

Section 386.500, RSMO (1994) provides that the Commission shall grant an application for rehearing if "in its judgment sufficient reason therefor be made to appear." ANG has, in the judgment of the Commission, failed to establish sufficient reason to grant its application for rehearing. The Application for Rehearing will be denied.

IT IS THEREFORE ORDERED:

1. That the Application for Rehearing filed by Arkansas Western Gas Company d/b/a Associated Natural Gas Company is denied.

2. That this order shall become effective on March 2, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton and Schemenauer, CC., concur
Murray and Drainer, CC., dissent

Woodruff, Regulatory Law Judge

ALJ/Sec'y:

Woodruff/Boys

2-23

Date Circulated

CR-96-227

CASE NO.

[Signature]
Lumpe, Chair

[Signature]
Crump, Commissioner

CM NO

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

228 - NO
Drainer, Vice-Chair

3-2

Agenda Date

Action taken: 3-2 AS

Must Vote Not Later Than

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

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson
City,

Missouri, this 2ND day of MARCH, 1999.

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**