STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
Jefferson City

July 19, 1989

CASE NO. GR-88-31

Gary W. Duffy, Attorney at Law, P. O. Box 456,
Jefferson City, Missouri 65102
C. Benson Dushane, III, President-Chief Executive Officer,
Great River Gas Company, P. O. Box 967, Keokuk, Iowa 52632
Lewis R. Mills, Office of the Public Counsel,
P. O. Box 7800, Jefferson City, Missouri 65102

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

Sincerely,

Harvey G. Hubbs
Secretary

uncertified copy:

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of Great River Gas Company of Keokuk, Iowa, for authority to file tariffs reflecting a change in rates for gas to Missouri customers and the current BTU factor as required by the Purchased Gas Adjustment (PGA) Clause on file for the Company.	)	CASE NO. GR-88-31

APPEARANCES: Gary W. Duffy, Attorney at Law, Hawkins, Brydon, Swearengen & England, P.C., P. O. Box 456, Jefferson City, Missouri 65102, for Great River Gas Company.

Lewis R. Mills, Jr., Assistant Public Counsel, Office of the Public Counsel, P. O. Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Douglas C. Walther, Assistant General Counsel, Missouri Public Service Commission, P. O. Box 360, Jefferson City, Missouri 65102, for the Staff of the Missouri Public Service Commission.

HEARING EXAMINER: Beth O'Donnell

REPORT AND ORDER

Date Issued: July 19, 1989

Date Effective: August 1, 1989

Procedural History

On June 25, 1987, Great River Gas Company (Company)[1] submitted to this Commission a tariff reflecting an increase in rates to its Missouri natural gas customers as a result of a recalculated Actual Cost Adjustment (ACA) factor.

By Authority Order issued June 29, 1987, the Commission allowed Company's proposed ACA tariff to become effective July 1, 1987, on an interim basis. The Commission ordered Staff to submit to the Commission on or before August 31, 1987, the results of its review of the data involving the computation of the ACA factor and its recommendation as to whether the interim tariff should be made permanent.

The deadline for the filing of Staff's review and recommendation was extended and on December 6, 1987, Staff recommended that a hearing be held to determine the appropriate level of contracted demand costs to be used in the development of the ACA factor. Proceedings were scheduled and rescheduled and a hearing was held September 15, 1988. A briefing schedule was established and subsequently extended. The reply brief was filed December 30, 1988. The reading of the transcript was waived pursuant to Section 536.080, RSMo 1986.

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[1] The Commission notes that effective April 20, 1989, United Cities Gas Company was authorized by this Commission in an order issued April 12, 1989 in Case No. GM-89-158, to merge with Great River Gas Company and succeed to Great River Gas Company's facilities, franchise and certificate. As of the date of issuance of this Report and Order, United Cities Gas Company is in the process of adopting Great River Gas Company's tariffs.

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.

I. Introduction

On June 25, 1987, Company submitted a tariff for the Commission's approval reflecting an increase in rates to its Missouri natural gas customers as a result of a recalculation of its ACA factor. This tariff sheet proposed to increase Company's Purchased Gas Adjustment (PGA) factor by 1.92 cents per therm to reflect the annual required computation of a new ACA factor thereby affecting recovery of under-recovered gas costs for the previous year. The Commission's Staff (Staff) recommended that this tariff be approved on an interim basis for bills rendered on and after July 1, 1987, pending completion of Staff's review of certain data.

Upon review, the Staff objected to the ACA factor filed by Company as overstating the gas costs to be charged Company's ratepayers in Missouri. Staff cites two bases for this position. The first basis concerns Company's establishment of contract demand levels for natural gas with its sole pipeline supplier, Panhandle Eastern Pipeline Company (PEPL).

Pursuant to a decision of the Federal Energy Regulatory Commission (FERC), Company was given the opportunity by PEPL to reduce its contract demand for natural gas by ten percent for each of the eight periods that make up its contract year with PEPL. Company chose to reduce its contract demand by less than ten percent in three of the eight contract periods and by ten percent in the remaining five periods. Staff believes that Company was imprudent in not taking the full ten percent reduction in all eight periods given the conditions under which the decision was made. Therefore, Staff believes that Company should refund $33,389 to its Missouri ratepayers to reflect these imprudently incurred costs included in the 1986-1987 ACA period. Further, Staff believes that costs associated with this contract decision should be excluded from future PGA computations to prevent PGA overcollections for

Company in future ACA years. The decision to take less than the full ten percent reduction affects the remaining life of the contract which expires October 31, 1993.

The second basis for Staff's position concerns a gas storage agreement which Company renewed with PEPL on May 29, 1984. This contract ensures the right to buy and store gas during the summer months for use during the winter months. When the commodity costs of gas rapidly rise, storage of off-peak gas for peak use could conceivably save enough in commodity costs to pay for the contract.

Staff believes that the storage contract need not have been renewed given the conditions under which the decision was made. Therefore, Staff believes that Company should refund $19,676 to its Missouri ratepayers to reflect the imprudently incurred cost of the contract accounted for in the June 1, 1986 through May 31, 1987 ACA period. Further, Staff believes that costs associated with this contract decision should be excluded from future PGA computations to prevent PGA overcollections in future ACA years. The storage contract renewed by Company expires March 31, 1991.

Company argues that the decisions questioned by Staff were prudent given the circumstances prevailing at the time the decision was made. Company also argues that it is unlawful to graft a prudency analysis onto the review of an ACA tariff. Company believes that the express terms of its ACA tariff show that it is designed to deal with the actual cost of gas not the most reasonable and prudent cost of gas. Company also asserts that it is legally impermissible to require Company to refund to its customers payments already tendered to the pipeline unless such refunds are pursuant to the terms of the tariff. Company's ACA tariff provides for the reconciliation of the difference, if any, between the revenue collected by Company for gas costs pursuant to its PGA mechanism and the actual cost of gas experienced by Company during the period in question. Therefore, Company states that its ACA tariff contemplates the refund to its customers of overcollection of gas costs. But, Company argues, the ACA tariff does not provide for the refund of imprudently incurred actual costs.

Company also argues that the order approving this ACA tariff on an interim basis does not provide that the tariffs are subject to refund. Finally, Company asserts that it would constitute unlawful retroactive ratemaking and a collateral attack on a decision of the Commission to disapprove the levels of contract demand and the off-peak storage contract questioned by Staff herein. Company argues that they were originally approved by the Commission in Company's last rate case as components of its PGA/ACA tariff. Re: Great River Gas Company, 28 Mo. P.S.C. (NS) 8 (1985).

Staff responds that all of Company's tariffs are subject to the provisions of Section 393.130(1), RSMo 1986, which require all charges made by a gas corporation to be just and reasonable. Staff asserts that this requirement supplies it with the authority for a prudency review. Staff argues further that the ACA review process is the only context in which the Commission can examine whether Company's actual gas costs were prudently incurred. Staff asserts that only the costs associated with a local distribution company's (LDC) distribution of gas are reviewed in a general rate case.

The Commission determines that it has the authority to review the prudency of decisions made by Company which affect the gas costs to be recovered through Company's PGA and reconciled through Company's ACA. Sections 393.140.5, 393.150 and 393.270.4, RSMo 1986. Section 393.140.5 states, in pertinent part, that after a hearing the Commission can determine the just and reasonable rates to be in force. The Missouri Supreme Court has held that the Commission may exclude costs in establishing the just and reasonable rates to be charged. State ex rel. Hotel Continental v. Burton, 334 S.W.2d 75 (Mo. 1960). State ex rel. Laclede Gas Company v. Public Service Commission, 600 S.W.2d 222 (Mo. App. 1980).

In this case Company was given the option, by order of the FERC, to renominate a reduction of up to ten percent in its contract demand for gas. The FERC did not establish the amount of reduction Company could take within these limits. The amount of reduction taken within the ten percent limit was left to the Company's discretion. It is the exercise by Company of this discretion that the Commission is reviewing in this case.

There is a question as to whether the Commission has authority to refund to ratepayers revenue already collected by Company when the tariffs have not been made explicitly subject to refund. State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission, 585 S.W.2d 41 (Mo. en banc 1979). However, this does not prevent the Commission from excluding from future collection, pursuant to Company's PGA mechanism, gas costs which have been imprudently incurred by the Company.

II. The Decision on Contract Demand Levels

Specifically, Staff argues that Company should have taken the full ten percent reduction for the winter period of November, December, January, February and March; the "shoulder" or transitional period of April; and the summer period of July and August.

Staff states that there are three elements which, if they had been considered by Company, would have made it possible for Company to renominate the full ten percent reduction for the winter period. First, Staff states that Company should have considered the total output of its propane air plant in assessing the amount of gas necessary to serve its gas system. The propane air plant was installed to augment the system's supply during peak usage.

Second, Staff contends that Company should have considered interrupting its interruptible customers in establishing the amount of gas necessary to serve the system. Third, Staff argues that Company should have considered taking authorized overrun gas from PEPL as needed on peak days. Overrun gas is gas the Company purchases from its supplier above the demand level established between Company and its supplier. Authorized overrun gas is overrun gas which is not subject to a penalty for use because Company has obtained the permission of its supplier to use it. Unauthorized overrun gas is overrun gas which is subject to a monetary penalty because Company was unable to obtain the pipeline's approval for its use.

Staff admits that the actual taking of overrun gas must be an economic decision made at the time of need. However, Staff asserts that Company should have considered it in establishing its demand needs for purposes of making the decision on renomination. Staff argues that, had Company taken these three elements into consideration, it would have seen that it was possible to renominate the full ten percent discount for the winter period and still adequately serve its customers.

The evidence indicates that Company's interruptible customers pay the same contract demand charges as its firm customers. Company's tariffs provide no choice to Company's customers as to whether they are classified as interruptible or not. If the customer's equipment is designed to take gas at the level of one Mcf or more, the customer is deemed interruptible. The evidence indicates that these customers are not viewed by Company as strictly interruptible on a peak day. Rather, Company views them as customers which could be called upon to curtail their demand by switching to an alternative fuel when Company's total usage in a given month is approaching its allocation from PEPL.

Company's tariffs do not foreclose interrupting these customers on peak days. However, since these customers pay the same rate as firm customers, the Commission is of the opinion that it is not imprudent to exclude consideration of these interruptible customers in establishing a multi-year demand level.

The evidence indicates that Company did consider the taking of authorized overrun gas in establishing the demand level for the reduction opportunity. However, Company decided not to include it in its final calculations. Company argues that it would be imprudent to consider authorized overrun gas in setting a multi-year demand level since authorized overrun gas can be used only if available on the day needed. There is no contractual right to it. If unavailable on the day needed, unauthorized gas can be purchased only with payment of a $10.00 per Mcf penalty beyond the cost of the gas itself.

The Commission is of the opinion that Company's argument is reasonable and finds no imprudence in its decision to exclude consideration of authorized overrun gas in establishing a multi-year demand level.

The evidence indicates that Company did consider its propane air plant in establishing demand levels for consideration of the ten percent reduction in the winter period. The evidence shows that, if Company did not include in its calculations authorized overrun gas or interruption of interruptible customers, Company would need to use the total output of its propane air plant in order to take the full ten percent reduction in the winter period. Company argues that it was reluctant to elect a full ten percent reduction that depended on the total output of its propane air plant since there is no guarantee that this plant would function without any failure during future periods of peak need over the life of the contract.

The Commission does not find that Company was imprudent in this regard. Company elected a reduction which depended on the use of one-half of the output of its propane air plant. The Commission believes that this approach is a reasonable compromise between no reliance and total reliance on one fallible source.

The Commission has found no imprudence in Company's decision on the three elements questioned by Staff in regard to the reduction renominated for the winter period. Based on these findings, the Commission finds no imprudence by Company in its decision to renominate less than the full ten percent reduction in the winter period.

Staff states that Company was imprudent in deciding to renominate less than the full ten percent for the summer period of July and August. Staff points out that Company's maximum daily volume of gas taken for July and August, 1980-1983, was 2,219 Mcf. Company's peak actual use for the period was 2,589 Mcf. Company renominated a demand level of 6,000 Mcf when it could have renominated at the level of 5,490 Mcf.

Company explains that it renominated less than the full reduction because of its projection that there would be growth in gas sales to industrial customers. This projection was based upon information garnered from an industrial contact program. This program apparently involved some discussions with a few of Company's industrial customers in an effort to assess their existing operations and future needs. Company also based its projected demand level on the assumption that some of the factories shut down at the time of the assessment might open and use Company's gas services. Company states that it could not have foreseen that these industrial customers might switch to transportation of their own gas since the decision of the FERC permitting such transportation was not yet issued.

The Commission determines that Company's decision in this instance was imprudent. The information on which Company relied is scant and speculative. Company admits its contact program involved only a few customers. Company showed no basis for the conclusion that the closed factories would reopen.

The Commission has determined that it will not require Company to refund to its ratepayers the gas costs imprudently incurred. The Commission has also determined that it may exclude items of expense incurred by a utility in determining the just and reasonable rates to be charged. Therefore, the Commission determines that the effect of this decision on Company's gas costs should be eliminated hereinafter from Company's PGA tariffs to prevent overcollections in future ACA years.

Staff states that Company was imprudent in deciding to renominate less than the full ten percent for the period of April. Staff points out that Company's maximum daily volume for April during the period 1980 through 1983 was 13,380 Mcf. This figure did not include any injections from Company's propane air plant which has a capacity of 2,400 Mcf per day. A full ten percent renomination would have provided Company with 15,120 Mcf per day for April. Instead, Company renominated 16,720 Mcf per day.

Company explains that it renominated less than the full ten percent reduction because it subscribed to the principle that a greater cushion is necessary in April than in winter months because April has unpredictable weather. Company states that most gas companies operate with a bigger cushion in April.

The Commission determines that Company was imprudent in failing to renominate the entire ten percent reduction for the April period. With a full ten percent reduction, Company would have had a cushion of 1,740 Mcf over the peak usage in the previous four years without considering the capacity of 2,400 Mcf provided by Company's propane air plant. Even allowing for only one-half of the capacity of the propane air plant would provide Company with a cushion of nearly 3,000 Mcf. This is compared to a cushion for January of about 1,200 Mcf. This January cushion comes solely from Company's propane air plant.

Since Company has been found to be imprudent in establishing the renomination level for April, the Commission determines that the effect of this decision should be eliminated hereinafter from Company's PGA tariffs to prevent overcollection in future ACA years.

III. <u>The Decision on Renewing the Gas Storage Contract</u>

Staff states that Company was imprudent in deciding to renew its storage contract with PEPL in 1984. Staff contends that the storage capacity purchased via the contract was unnecessary to meet the needs of Company's Missouri customers. Staff asserts that Company should have been aware that renewing the contract was unnecessary since Company had already completed its renomination of contract demand levels with PEPL. Staff admits that Company was able to save on gas costs in 1982 by use of gas stored pursuant to contract. However, Staff argues that occurrence does not make it prudent to renew the contract in 1984 when circumstances were different. Staff notes that Company did not use the storage service in 1983. Given this fact, Staff contends that it is unlikely that Company renewed the contract in 1984 because it feared an increase in gas prices.

Company explains that traditionally gas storage contracts were used to ensure adequate quantities due to monthly curtailments sometimes placed on gas from its pipeline supplier, PEPL. Company further explains that a similar contract was used in 1982 to store gas prior to an increase in the commodity cost for gas from PEPL. Company thereby saved money on gas costs. Company points out that just prior to the 1982 use of stored gas there had been a dramatic and continuing rise in gas commodity costs.

Company states that just prior to concluding the 1984 renewal of the storage contract, the commodity cost of gas had risen from \$3.6945 to \$3.8590 per dekatherm. Therefore, Company thought it wise to renew the contract. Company states that subsequent unforeseen events, including falling commodity prices and the rapid advent of gas transportation, made it uneconomical for Company to use the contract until 1988.

In May, 1988, Company did make use of the contract to avoid increased commodity costs and was able to save money thereby. Company argues that it had the choice of either contracting through 1991 for this gas storage or having no such option. Company asserts that its choice was prudent under the circumstances. Company further contends that it is unfair to flow through to ratepayers the savings from storage taken pursuant to this contract in 1988 but make Company absorb the costs when unforeseen events made storage impractical during the early years of the storage contract.

The Commission determines that renewal of the storage contract was not imprudent. The evidence on this record indicates that Company could not have foreseen the rapid advent of gas transportation by its large customers or the fall of gas prices following renewal of the contract. In 1988, Company realized savings on the contract, buying gas at off-peak prices for use later when prices had risen. The evidence on this record indicates that Company did not have the option to renew the contract whenever conditions seemed optimal. In 1984, Company's choices were either to forego the contract entirely or renew it for a seven-year period.

<u>Conclusions of Law</u>

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

Company is a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 1986, as amended. Company has filed the tariff which is the subject of this case pursuant to Section 393.140.11, RSMo 1986. The Commission has the authority to review the prudency of decisions made by Company which affect the gas costs to be recovered through Company's PGA and reconciled through Company's ACA pursuant to Sections 393.140.5, 393.150 and 393.270.4, RSMo 1986.

The Commission has determined that some of Company's decisions affecting its gas costs to be recovered pursuant to Company's PGA/ACA tariffs were not prudently incurred. Therefore, the Commission concludes that the costs imprudently incurred should not be reflected hereinafter in Company's PGA tariffs to prevent overcollection in future ACA years.

It is, therefore,

ORDERED: 1. That Great River Gas Company, and its successor, United Cities Gas Company, are directed hereby to file for the Commission's approval on or before August 18, 1989, any tariff changes necessary to implement the decision made herein.

ORDERED: 2. That the tariff submitted to the Commission on June 25, 1987, by Great River Gas Company reflecting a recalculated Actual Cost Adjustment (ACA) factor is made permanent hereby.

ORDERED: 3. That any objections not heretofore ruled upon are overruled hereby and any outstanding motions are denied hereby.

ORDERED: 4. That this Report and Order shall become effective on the 1st day of August, 1989.

BY THE COMMISSION

Harvey G. Hubbs

Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller,
Fischer and Rauch, CC., Concur.

Dated at Jefferson City, Missouri,
on this 19th day of July, 1989.

O'Donnell - Riley

CASE NO. GR-88-31

Chairman

Absent: ~~Rat~~

Commissioner

Commissioner

Commissioner

Commissioner

A. A.

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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 19th day of July, , 1989.

Harvey G. Hubbs
Secretary