**STATE OF MISSOURI**
**PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 1st day of August, 1995.

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| In the matter of the request by United Cities Gas Company for a waiver of certain provisions of its Purchased Gas Adjustment Rider regarding a Transportation Service Agreement with American Cyanimid Company. | ) | **Case No. GO-95-327** |

## ORDER REGARDING APPLICATION FOR WAIVER OF TARIFF PROVISIONS

On April 20, 1995, United Cities Gas Company (United Cities) filed an application with the Commission requesting waiver of tariff provisions to allow United Cities to perform under a Transportation Service Contract with its customer, American Cyanimid Company.

United Cities states that it has entered into a special contractual agreement with American Cyanimid to provide gas transportation service in an effort to keep American Cyanimid from bypassing the local distribution system. This contract is a relatively long-term agreement of five years, renewable for up to five more years, thus insuring that American Cyanimid will remain a customer of United Cities for a reasonable length of time. In order to retain American Cyanimid it is apparent, from the Staff recommendation, that United Cities has made some major concessions. As a result of these concessions, it is necessary for United Cities to obtain a waiver of applicable tariff provisions to perform under the terms of the contract. American Cyanimid, according to United Cities, uses 90 percent of the throughput on the Palmyra portion of the United Cities system and is one of only two large industrial customers of United Cities in Missouri, the other being Pet, Inc.

On July 5, 1995, the Staff of the Commission filed its recommendation, in which it objects to several matters in the contract and asks the Commission to deny the requested waiver. There are three major objections raised by the Staff.

The first is in regard to the free provision of balancing service to American Cyanimid by United Cities. The Staff maintains that, as the provision of balancing service by the distribution company bears a cost, and as that cost is caused by the transportation customer, it should be paid by the transportation customer. This cost is currently reflected in the applicable tariff provisions, which United Cities seeks to waive.

The second objection involves the status of American Cyanimid as an interruptible customer. The Staff maintains that the contract itself is unclear as to the status of American Cyanimid. Interruptible customers are given a lower rate as the result of the ability of the distribution company to interrupt service should the need arise, rather than providing for the extra capacity to serve the customer during peak periods. This results in less expensive service for the customer. The Staff maintains that the contract contains conflicting language as to the status of American Cyanimid. The Staff is, basically, alleging that American Cyanimid is contracting for interruptible rates and noninterruptible service, contrary to tariff provisions and at a cost to the remainder of the ratepayers.

The final argument of the Staff involves the payment of take-or-pay and transition costs by American Cyanimid. The Staff states that the contract is contradictory as to whether American Cyanimid will be billed and will be required to pay these costs. The Staff states that the Commission has previously taken the position that all transportation customers will be required to assume their share of these costs.

Should the Commission not deny this application outright, the Staff has requested the establishment of a procedural schedule. In response, United Cities alleges that it is essential that it have permission to perform under the terms of the contract no later than August 18, 1995. After that point, United Cities alleges, American Cyanimid will most surely take action to bypass the system.

While the Commission has given serious consideration to the arguments of the Staff, this matter turns on a basic consideration of utility regulation. It has long been the Commission's policy that it is unwise to attempt, through regulation, to manage the business affairs and decisions of the investor-owned utilities which it regulates, so long as the ratepayers are protected from potential abuses by the monopoly provider. In this regard, while United Cities may engage in activity that is detrimental to the ratepayer, as the Staff alleges in this case, no subsidy by the ratepayer will occur until and unless those excess costs are built into the rate structure, either through a rate case or the PGA/ACA process. The Commission will, therefore, allow United Cities to perform under the contract.

The Commission would note that, currently, a similar contract with Pet, Inc., has been challenged by the Staff in United Cities' current rate proceeding, Case No. GR-95-160. The Commission will render a decision in regard to the treatment of that contract in the pending rate case, where such issues are appropriately decided. An essential issue is the same in both cases, that being whether the contracts were prudently entered into and whether, therefore, the resultant costs will be recovered or removed from the rate base and borne by the stockholders.

The Commission makes no finding as to the prudence of the contract, nor to the disposition, in a future rate proceeding, of the costs and charges involved. The Commission is sensitive to the demands of competition present in the post-FERC Order 636 environment. The Commission is aware of the business challenges faced by most if not all local distribution companies in keeping large business and industrial consumers, and particularly customers who have chosen transportation-only service, on the system, while adequately and accurately recovering the costs caused by those customers. The Commission would point out, however, that regulatory laws and Commission policies have not changed in regard to the fact that cost of service standards still apply.

The Commission will, therefore, grant the requested waiver, solely to allow United Cities to perform under the terms of the instant contract. In so doing the Commission wishes to make it clear to United Cities that United Cities acts under the instant contract at its and its shareholders own risk. In allowing this waiver, the Commission makes no finding, express or implied, as to the prudence of the American Cyanimid contract or to the ratemaking treatment the contract may be given by the Commission in a later ratemaking proceeding.

**IT IS THEREFORE ORDERED:**

1. That the application of United Cities Gas Company, requesting a one-time waiver of applicable tariff provisions, enabling it to perform under the terms and conditions of its contract with American Cyanimid Company, which contract is attached to United Cities Gas Company's application and incorporated herein by reference, is hereby granted.

2. That nothing in this order will be considered a finding by the Commission as to the reasonableness or prudence of the American Cyanimid contract. The Commission reserves the right to consider the ratemaking treatment to be afforded the contract in any future ratemaking.

3. That this order shall become effective on August 11, 1995.

BY THE COMMISSION

David L Rauch

David L. Rauch
Executive Secretary

( S E A L )

McClure, Kincheloe, Crumpton,
and Drainer, CC., Concur.
Mueller, Chm., Absent.