

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of Associated Natural Gas Company's)
Tariff Sheets to be Reviewed in Its 1992-1993) Case No. GR-93-169
Actual Cost Adjustment.)
)

In the Matter of Associated Natural Gas Company's)
Tariff Sheets to be Reviewed in Its 1993-1994) Case No. GR-94-189
Actual Cost Adjustment.)
)

REPORT AND ORDER

Issue Date: October 15, 1996

Effective Date: October 25, 1996

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APPEARANCES

Jeffrey L. Dangeau, Attorney and Assistant Secretary, Arkansas Western Gas Company, 1083 Sain Street, Post Office Box 1408, Fayetteville, Arkansas 72702-1408,

and

Gary W. Duffy, Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102, for Associated Natural Gas Company.

Douglas E. Micheel, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Cherlyn D. McGowan, Assistant Public Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: Joseph A. Derque, III.

REPORT AND ORDER

Procedural History

These consolidated cases were established for the purpose of receiving Associated Natural Gas Company's (ANG) annual cost adjustment (ACA) filings for the periods 1992-93 (GR-93-169) and 1993-94 (GR-94-189).

On June 20, 1996, the parties filed a Unanimous Stipulation And Agreement purporting to settle all issues in both cases except one of the issues in

Case No. GR-94-189, which involves a proposed Staff adjustment of \$744,000.00 for the 1993-94 period as the result of the imprudent management of the SEECO gas supply contract.

This issue was fully litigated, and the Stipulation And Agreement and litigated issue were finally submitted to the Commission for approval and decision on July 26, 1996.

Stipulation And Agreement

The Stipulation And Agreement, settling all but one issue in this case, was filed on June 20, 1996, and is appended to this Report And Order as Attachment A. All parties, ANG, the Staff of the Commission (Staff), and the Office of the Public Counsel (OPC) are signatories to the agreement. The resolved issues, in the order set out in the agreement, are as follows:

- A. ANG agrees to modify its ACA filing to the extent that ANG's work papers supporting gas costs are revised to indicate the allocation percentages used to divide gas costs between jurisdictions and customer classes.
- B. ANG will be allowed to treat sales or transportation volumes delivered to a transportation customer as transportation volumes for purposes of transition or take-or-pay cost assignment and recovery, but will use annual volumes for allocation purposes. The Staff reserves the right to review the final ANG ACA balances in these two cases, GR-90-38.
- C. ANG will reduce its Southeast Missouri (SEMO) District balances by \$13,599.00 and its Kirksville District balance by \$54,170.00.

D. Should the Commission allow any adjustment in the litigated issue in this case, the adjustment will be allocated to firm and interruptible customer classes based on the monthly commodity "ccf" sales by class during the appropriate ACA period. This section also provides for any adjustment which might result from a previous ACA case, GR-90-38.

E. Federal Energy Regulatory Commission (FERC) Order 636 transition costs in the Butler District will be amortized over a three-year period.

The Commission has reviewed, in detail, the matters resolved in the Stipulation And Agreement. The Commission finds the adjustments and other agreed-upon operational matters to be reasonable and in the public interest. The Commission will approve the Stipulation And Agreement and order ANG to file tariffs in compliance with the agreement.

Findings of Fact

The Missouri Public Service Commission, having considered all competent and substantial evidence, and upon the record as a whole, makes the following findings of fact. The positions and arguments of all parties have been considered by the Commission in making this decision. Failure to reflect a piece of evidence, position or argument of any party to this litigation in this Report And Order in no way indicates that the Commission has failed to consider relevant evidence, but indicates only that the omitted matter was not considered relevant to the decision or outcome. In addition, the Commission will not present each party's version of the facts in this Report And Order, but will make its own, independent findings, on substantial and competent evidence, upon which its decision will be based.

The evidence reflects that certain highly confidential information has been entered into evidence which is necessary to this decision. The Commission will refer to protected information only generally in its decision.

On October 1, 1990, ANG entered into a long term gas supply contract with SEECO, Inc. (SEECO). SEECO is a natural gas production company owning natural gas reserves in northwest Arkansas in a location known as the Arkoma basin. SEECO is an Arkansas corporation and a wholly owned subsidiary of Southwestern Energy Company (Southwestern Energy). Arkansas Western Gas Company (AWG) is also a subsidiary of Southwestern Energy. ANG is an operating division of AWG. Gas purchased under this supply contract is gathered by AWG and transported to the Arkla Energy Resources (AER) pipeline for delivery to the ANG system. The gas supplied under the SEECO contract comprises some 70 percent of the total load for ANG's integrated service territory.

The Staff has proposed a total adjustment of \$744,000.00 as the result of the operation of the SEECO contract for the 1993-94 ACA period, from September 1, 1993, through August 31, 1994. Included in the total proposed adjustment are three components: (1) the use of the NYMEX futures strip price to set the annual commodity price; (2) the use of an average basis difference including the price of gas in basins other than the Arkoma basin; and, (3) the use of an inappropriately inflated demand charge in the SEECO contract.

I. The SEECO Contract

This is the second time the Commission has reviewed the SEECO contract. In four consolidated ACA cases, under Case No. GR-90-38, the Commission reviewed four 12-month ACA periods including 1988-89,

1989-90, 1990-91 and 1991-92. *See In re Associated Natural Gas Co. for Authority to File Tariff Reflecting Change in Rates*, 3 Mo. P.S.C. 495 (1995), *rev'd sub nom. Associated Natural Gas Co. v. Public Serv. Comm'n*, No. CV195-1071CC (Cole Co. Cir. Ct. June 13, 1996), *appeal docketed*, No. WD-52973 (Mo. Ct. App. July 10, 1996) (hereinafter referred to as "Case No. GR-90-38").

The SEECO contract governed the purchasing practices during the 1990-91 and 1991-92 ACA periods. The Commission found that ANG's failure to engage in a meaningful bidding process prior to entering into the contract, coupled with its failure to properly document its gas purchasing practices, rendered its purchasing practices for the above two periods imprudent. The Commission, accordingly, ascertained an adjustment amount.

The evidence in this matter reflects that the SEECO contract price for the 1993-94 ACA period under scrutiny was \$2.3395 per MMBtu, plus \$.183 for gathering and transportation charges, making a total delivered price of \$2.5225 per MMBtu. Additional pipeline transportation charges are added by both NOARK Pipeline System and Arkansas Western Gas to bring the gas to ANG.

Put another way, of the total price of the gas as delivered to the ANG transportation receipt point, approximately \$2.385 reflects the commodity charge and additional premiums paid to SEECO, including the contract demand charge component.

The Staff analyzed spot market prices in order to obtain gas prices which could be compared to the SEECO contract price to determine the reasonableness of the delivered price. The Staff used a weighted spot market price of \$2.0185, also referred to as \$2.02 in testimony, to arrive at a premium of \$.504 for the SEECO contract.

The Staff maintained that the \$.504 premium over the spot market is excessive. As a result, the Staff has proposed an adjustment based on the Commission's decision in Case No. GR-90-38, in which the Commission found a range of \$.20 to \$.30 cents to be appropriate for the SEECO contract in 1990-91. The Staff calculated an excessive premium of \$.254. The premium of \$.504 minus \$.25 times the Missouri volume of 2,929,251 MMBtu yielded in Staff's view a total adjustment of \$744,030.00.

In contrast, ANG explained that the SEECO contract was based on the assumption that its price should approximate the price of alternate supplies available to ANG under approximately the same terms and conditions. Prior to the 1993-94 contract price redetermination period, ANG engaged in a bidding process, sending requests for proposals (RFPs) to various suppliers for service to ANG from the Arkoma and Gulf Coast basins and on various pipelines. ANG actually awarded two contracts as a result of this process.

ANG then adjusted the contract prices for load and contract demand factors, and for the basis difference in commodity prices and different gathering factors. ANG's expert witness stated that the resulting contract price, including contract demand charges, to be a reasonable reflection of the current market at the time the contract price was redetermined.

The Staff raised three issues in its argument for an adjustment of \$744,000.00.

II. Adjustments

1. The Use of the NYMEX Futures Strip Price

The Staff maintained that the use of the September 28, 1993 NYMEX futures strip price as the basis for ANG's calculation of the annual commodity price in the SEECO contract was inappropriate. The Staff first

pointed out that while use of an average futures price might be appropriate in an arm's-length transaction, this transaction was done with an affiliate and not at arm's length.

The Staff also took issue with the notion that this price was only an estimate of what future prices would be, arguing that prices could fluctuate substantially over the course of a 60-day negotiation period for the SEECO contract. The Staff contended that a lower price should have been negotiated, and proposed a NYMEX price for September 16, 1993, as the more appropriate price for this affiliate, long term transaction. This results in an adjustment of -10.4 cents per MMBtu or, on a Missouri allocated volume of 2,929,251 MMBtu for this ACA period, a total proposed adjustment of \$304,642.10.

ANG countered that its negotiated selection of the September 26, 1993 NYMEX strip price was appropriate as an arm's-length transaction and produced evidence showing the September 28, 1993 selected price was several cents below the average for the 60-day NYMEX window. In addition, and more telling, ANG showed that the Staff price for September 16, 1993, was the lowest price available during the same period. ANG pointed out that selecting the lowest price available for the period would not be the likely outcome of any arm's-length negotiation. The more likely outcome would be a price selection the same as, or likely higher than, the September 28, 1993 price selected for the SEECO contract. ANG concluded that no adjustment is warranted here.

The Commission's responsibility in determining reasonable adjustments is not to determine what the cheapest alternative turned out to be. The question is whether the company acted reasonably in making its judgments and taking its action, based upon what it knew or should have known at that time.

In regard to the selection of the September 28, 1993 strip price, the Commission finds ANG's action to be reasonable. There is little argument that the use of a legitimate, nationally recognized, futures market for the estimation of gas cost was a reasonable practice. In a fluctuating commodity market, the NYMEX averages can provide a relatively accurate reflection of the range of prices. The Commission finds the actual price selected, that of September 28, 1993, was reasonable in a negotiated setting and, therefore, reasonable in an affiliated transaction.

In addition, the Staff selection of the lowest price in the 60-day negotiation period would not be what one would expect to find from an arm's-length negotiation. The Commission cannot hold ANG to such a high standard when the actual standard is one of reasonableness, not perfection.

As the selection of the September 28, 1993 standard resulted in a price that was several cents below the 60-day period average, and therefore a price that one would expect from an arm's-length transaction, the Commission finds the use of the NYMEX price for September 28, 1993 to be reasonable. No adjustment will be made as a result of the selection and the use of the September 28, 1993 NYMEX strip price as a basis for determining commodity cost during the instant ACA period.

2. Demand Charge

The Staff objected to the 39-cent demand charge, also referred to as a premium, imposed by the SEECO contract, and sought to apply the premium ordered by the Commission in Case No. GR-90-38. In that case the Commission found that the evidence of record supported a partial disallowance of the demand charge in the contract. The Commission found that the appropriate demand charge was 25 cents above the spot market price, based on testimony that the midpoint in the range of 20 to 30 cents

per MMBtu over spot price was reasonable. In this matter the Staff has used the 25 cents as a reasonable premium over spot market and proposed an adjustment of 14 cents per MMBtu. With a total Missouri jurisdictional volume of 2,929,251 MMBtu for the 1993-94 ACA period, the proposed Staff adjustment is \$410,095.00.

The Staff, in selecting the 25-cent-per-MMBtu benchmark to support its proposed adjustment, submitted no evidence on the record to support its use of this figure, but relied solely on the previous case. The Staff maintained that in the previous case the Commission had set a "standard" for measurement of all annual contract demand charges for the SEECO contract.

The Staff also points out several deficiencies in the functionally equivalent RFP process used by ANG in an attempt to justify its costs under the SEECO contract. The Staff evidence suggested that the lack of comparable contracts, the inaccuracy of the calculations, and the fact that most of the bidders were apparently submitting bids on a theoretical basis shows that the ANG market analysis process is inaccurate.

ANG argues that the SEECO contract provides reliability, largely as a result of the affiliate nature of the transaction. In addition, ANG offered testimony that its virtual RFP process and accompanying market analysis demonstrated that the delivered cost of the commodity was within the range of reasonableness.

As the SEECO contract is an affiliate transaction, the Commission will continue to scrutinize that arrangement, contrary to the opinion of ANG. The commodity price in the SEECO contract continues to be negotiated by ANG with its affiliate on an annual basis. As this price constitutes the principal cost to the ratepayers under the contract, the Commission

finds it appropriate to review the SEECO contract on an annual basis, as a part of the annual ACA adjustment.

ANG's testimony, augmented by cross-examination, shows that ANG made a good faith effort to comply with the Commission's requirements for appropriate affiliate transactions, as specified in Case No. GR-90-38. ANG initiated an RFP process and adjusted the SEECO contract price after comparing it with other supply contracts. Taken together with the fact that the commodity price negotiated between ANG and SEECO was several cents below the 60-day spot market price average, the evidence supports the contention of ANG that the ultimate delivered price under the SEECO contract was reasonable, even though the market analysis process is far from perfect.

The Commission finds that Staff has failed to present sufficient evidence to justify an adjustment based on the proposed 25-cent benchmark in the 1993-94 ACA period. It is clear from the Report And Order in Case No. GR-90-38 that while sufficient evidence existed on the record to find the 25-cent benchmark to be appropriate in that case, there was no intention to establish the 25-cent benchmark as an automatic standard for any subsequent ACA period.

The Commission finds, therefore, that no adjustment is appropriate in this ACA period for contract demand charges.

3. Average Basis Difference

The Staff argued that an adjustment is appropriate in that the SEECO contract artificially inflated its gas price by using an average in adjusting the basis differences between the spot index and NYMEX futures price. The Staff objected to the use of the price of gas from not only the Arkoma basin but from the Gulf Coast basin as well.

The Staff explained that in order to arrive at a delivered price for gas under the SEECO contract, ANG used not only comparative prices from Mississippi River Transmission Corporation (MRT) for gas from the Arkoma basin, but an average of prices from Texas Eastern Transmission Corporation (TETCO) for gas delivered from the Gulf Coast basin to adjust the difference between the NYMEX price and the spot index price. The Staff claimed that using the cheaper price adjustment from TETCO caused an artificially inflated contract price of \$2.365 per MMBtu. Staff believed that the averaging of a Gulf Coast adjustment to set the annual contract price under the SEECO contract was inappropriate since the SEECO contract involved gas taken exclusively from the Arkoma basin.

The Staff maintained that had ANG used only prices of gas from the Arkoma basin, the \$2.365 price would have been reduced by 4 cents. Therefore, the Staff sought an adjustment of 4 cents per MMBtu, or a total of \$117,120.04.

In contrast, ANG stated that the use of the cheaper TETCO proposal in establishing a delivered price actually resulted in a reduction of the SEECO contract price, not an increase. ANG used a composite of prices from Texas Eastern, a supplier from the Gulf Coast basin, and averaged those with Arkoma proposals. ANG concluded that the exclusive Arkoma price was substantially higher than the averaged Gulf Coast price, and that eliminating the Gulf Coast gas would have actually driven the price higher by 6.5 cents.

In exercising its judgment regarding expenditures, the Commission must determine whether the utility acted reasonably on the information available to it at the time the decision was made. This is not to imply that the utility is responsible for obtaining the cheapest possible supply,

or that only one method of economic analysis to determine price is appropriate.

During the 1993-94 period, ANG accepted gas from as many as three transporters and from at least two basins, the Arkoma and the Gulf Coast. At the time the annual contract negotiation took place, ANG's decision to average gas prices from both basins to obtain a fair price was reasonable. This is especially true in light of the fact that use of the additional Gulf Coast basin price actually lowered the average and therefore lowered the contract price.

The Commission finds that ANG acted reasonably in using multiple basins for its average basis difference and declines to make an adjustment on this issue.

III. Offsetting Adjustments

ANG maintains that any adjustments made by the Commission in the 1993-94 ACA period should be offset against any savings to the ratepayers in the prior 1992-93 ACA period. ANG argues that the performance of a long term contract such as the SEECO contract should be evaluated over the entire course of the contract to provide the most accurate picture of the benefits of the agreement.

The Staff disagrees, stating that recovery of amounts through the regulatory ACA process can only be done in the context of the ACA audit for the period of time to which the charges apply. The Staff maintains that netting the adjustments for two periods would allow ANG to retroactively bill its customers, recover gas costs which it did not incur during the period, and thereby violate the filed rate doctrine, as well as engage in impermissible retroactive ratemaking.

In *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 858 S.W.2d 41, 59 (Mo. banc 1979), the Missouri Supreme Court defined retroactive ratemaking as:

"the setting of rates which permit a utility to recover past losses or which require it to refund past excess profits collected under a rate that did not perfectly match expenses plus rate-of-return with the rate actually established."

The proposed action of ANG to offset any 1993-94 adjustments by applying the 25-cent standard to previous ACA periods clearly violates the balance of expenses and revenue with rates as set out by the Supreme Court. In effect, ANG is asking to charge the 1992-93 ACA period with costs not actually incurred during that period.

Therefore, for the reasons as set out above, no proposed offsets to the ACA balance as adjusted in this Report And Order will be approved.

Conclusions of Law

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

ANG is a public utility subject to the jurisdiction of the Commission pursuant to Chapters 386 and 393, R.S.Mo. 1994.

The Commission has the authority, under Sections 393.130 and 393.150, R.S.Mo. 1994, to set just and reasonable rates for the provision of natural gas service in the state of Missouri.

The above-stated sections also provide for the parties to challenge the prudence of decisions underlying commodity-related gas costs.

The standard adopted by the Commission for determining the prudence of an action by a regulated utility is one of reasonable care.

In Re Union Electric Co., 27 Mo. P.S.C. (N.S.) 183, 194 (1985), states:

"... the company's conduct should be judged by asking whether the conduct was reasonable at the time, under all the circumstances, considering the company had to solve its problems prospectively rather than in hindsight." . . . [quoting *In re Consolidated Edison Company of New York, Inc.*, 45 P.U.R.4th (N.Y. P.S.C. 1982)].

"The Commission will assess management decisions at the time they are made and ask the question, 'Given all the surrounding circumstances existing at the time, did management use due diligence to address all relevant factors and information known or available to it when it assessed the situation?'"

Orders of the Commission must be based on substantial and competent evidence, taken on the record as a whole, and must be reasonable and not arbitrary, capricious, or contrary to law. In this regard, in making its determinations as to adjustments to the ACA balance which are just and reasonable, the Commission has considered all relevant evidence and determines, as set out in the findings of fact, the following:

The standard to be used in reviewing ANG's past gas purchasing practices and the gas costs it seeks to pass on to ratepayers is whether the actions taken by ANG were reasonable at the time those decisions were made. See *In re Union Electric Co.*, 27 Mo. P.S.C. (N.S.) 183, 193-194 (1985).

The SEECO contract remains imprudent, but the Commission finds that the costs incurred for the 1993-94 ACA period were reasonable and finds that no adjustments are appropriate.

The Commission concludes that charges for gas service may not be collected unless a tariff authorizing the charge was in effect at the time the gas service was rendered, based on the provisions of Section 393.140(11), R.S.Mo. 1994, and the analysis of the Missouri Supreme

Court in *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Serv. Comm'n*, 585 S.W.2d 41, 58-60 (Mo. banc 1979).


IT IS THEREFORE ORDERED:

1. That the Stipulation And Agreement, incorporated herein as Attachment A, is hereby approved.

2. That Associated Natural Gas Company, a division of Arkansas Western Gas Company, is hereby ordered to file tariffs in full compliance with the attached Stipulation And Agreement and with the Commission's findings in this Report And Order within ten (10) days of the effective date of this order.

3. That this Report And Order shall become effective on the 25th day of October, 1996.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., McClure, Crumpton
and Drainer, CC., concur;
Kincheloe, C., concurs, with
concurring opinion to follow;
certify compliance with the
provisions of Section 536.080,
R.S.Mo. 1994.

Dated at Jefferson City, Missouri,
on this 15th day of October, 1996.

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

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Company's tariff sheets to be reviewed in) Case No. GR-93-169
its 1992-1993 actual cost adjustment.)

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its 1993-1994 actual cost adjustment.)

PUBLIC SERVICE COMMISSION
MISSOURI

JUN 20 1996

FILED

UNANIMOUS STIPULATION AND AGREEMENT

Comes now the Staff of the Missouri Public Service Commission ("Staff"), the Office of the Public Counsel ("OPC") and Associated Natural Gas Company ("ANG"), by and through their respective counsel, and respectfully state as follows:

1. As reflected in the Hearing Memorandum executed by the Staff and ANG in this proceeding, certain issues in these dockets have been resolved by mutual agreement. During the hearing of the remaining contested issues in this proceeding, the Administrative Law Judge suggested that it would be appropriate for the parties to present the resolved issues in a formal Stipulation and Agreement. These resolved issues are as follows:

A. The modifications which were made by ANG to its ACA filing in Case No. GR-94-189 comply with Staff Recommendation No. 2 in Case No. GR-93-169.

B. ANG shall be allowed to treat any sales or transportation volumes, delivered to a customer which has been a transportation customer, as transportation volumes for purposes of transition cost or Take-or-Pay (TOP) cost assignment and recovery, so long as annual volumes are used to allocate the transition and TOP costs between the various customer

classes. This methodology with regard to transportation customers will effectively resolve Staff Recommendations Nos. 3, 4, 5 and 6 filed in Case No. GR-93-169 and Staff Recommendation No. 3 filed in Case No. GR-94-189. Staff will be allowed to review ANG's version of the final adjusted ACA balances with regard to Case No. GR-93-169 and GR-94-189 and GR-90-38 et al.

C. ANG will reduce the ACA balance in the SEMO District and Kirksville District by \$13,599 and \$54,170, respectively, to reflect the disallowance of agency fees paid by ANG to Mississippi River Transmission Energy Services and ANR Pipeline Company Gas Supply.

D. The SEECO adjustment in this proceeding, if allowed, shall be allocated to the firm and interruptible sales customer classes based on the monthly commodity CCF sales by class during the ACA period in which the cost disallowance occurs. The \$1.5 million SEECO adjustment decided in Case No. GR-90-38 which is on appeal in the circuit court, if upheld, shall also be allocated to the firm and interruptible customers for the ACA periods covered by that order in the same manner.

E. Order 636 transition costs for ANG's Butler District will be amortized over a three year period to lessen the impact on the ratepayers of absorbing the full amount in a single ACA period. ANG will recover its full 636 transition costs over the three year period.

2. If the Commission accepts the terms of this Stipulation and Agreement and adopts it as a part of its final Report and Order in this proceeding, with respect only to the issues identified specifically above as being resolved herein, the signatories will waive their rights--

A. to call, examine or cross examine witnesses, pursuant to §536.070(2) RSMo 1995;

B. to present oral argument and written briefs, pursuant to §536.080.1 RSMo

1995; and

C. to judicial review pursuant to §386.510 RSMo 1995.

3. Except as specifically provided herein, no party shall be bound by any of the agreements or provisions hereof in any future proceeding, or in any proceeding currently pending under a separate docket number. None of the signatories to this Stipulation and Agreement shall be deemed to have approved or acquiesced in any ratemaking principle or any method of cost determination, rate design, or cost allocation underlying or allegedly underlying this Stipulation and Agreement. This Stipulation and Agreement represents a negotiated settlement for the sole purpose of disposing of this case, and shall not be cited or referred to as precedent in any proceeding.

4. The provisions of this Stipulation and Agreement have resulted from negotiations among the signatories and are interdependent. If the Commission does not approve this Stipulation and Agreement in total, it shall be void and no party shall be bound by any of the agreements or provisions hereof.

5. At the Commission's request, the Staff may give the Commission a written explanation of its rationale for entering into this Stipulation and Agreement, if the Staff also gives a copy of its explanation to each signatory to this Stipulation and Agreement. In that event, each signatory may give the Commission a responsive written explanation within five (5) business days of receipt of the Staff's explanation, if the responding signatory contemporaneously gives a copy of such responsive written explanation to all other signatories. Each signatory agrees to keep the Staff's and other signatories' explanation confidential, and to treat them as privileged to the same extent as settlement negotiations under the Commission's rules. No signatory acquiesces in or

adopts the explanations of another signatory. Such explanations shall not become a part of this proceeding's record, nor bind or prejudice any signatory in any proceeding.

6. The Staff may provide whatever oral explanation the Commission requests at any agenda meeting, if the Commission has given notice that it may consider this Stipulation and Agreement at the meeting. The Staff shall inform the other signatories as soon as practicable when the Staff learns that the Commission will request such explanation. The Staff's explanation in agenda shall be subject to public disclosure, except to the extent it pertains to matters protected from disclosure.

WHEREFORE, the parties ask the Commission to approve the terms of this Stipulation and Agreement and incorporate its provisions in a Report and Order.

Cherlyn McGowan by GWT

Cherlyn D. McGowan MBE # 42044
Assistant General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-751-3966

Attorney for the Staff of the Missouri
Public Service Commission

Gary W. Duffy

Gary W. Duffy MBE# 24908
Brydon, Swearngen & England, P.C.
P.O. Box 456
312 East Capitol Avenue
Jefferson City, MO 65102
573-635-7166

Attorney for Associated Natural Gas

Douglas Micheel by GWT

Douglas Micheel MBE #38371
Senior Public Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
573-751-4857

Attorney for the Office of the Public Counsel