BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of United Cities Gas Company's filing of certain tariff sheets designed to set out the promotional practices to be followed by the company in all its Missouri service areas.	)))))	Case No. GO-91-265

APPEARANCES: Gary W. Duffy, Brydon, Swearengen & England, P.C., P.O. Box 456, Jefferson City, Missouri 65102-0456, for United Cities Gas Company.

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

Robert J. Hack, 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: Michael F. Pfaff

REPORT AND ORDER

Procedural History

On December 26, 1990, United Cities Gas Company (Company) filed proposed tariffs containing its promotional practices for the State of Missouri. By its order dated January 25, 1991, the Commission suspended Company's tariff filing until the 26th of November, 1991, and provided notice thereof.

On March 1, 1991, Company, Staff, and Public Counsel participated in a prehearing conference, after which Company and Staff submitted direct, rebuttal and surrebuttal testimony. On August 7, 1991, this matter was duly heard at the Commission's hearing room. There were two witnesses and no intervenors. In lieu of briefs, Company, Staff and Public Counsel made oral arguments, commencing at page 19 of the transcript.

Findings of Fact

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

United Cities Gas Company is a regulated Missouri utility by virtue of its acquisition of Osage Natural Gas Company, Bowling Green Gas Company, and Great River Gas Company. Company filed its proposed promotional practices tariff, PSC Mo. No. 2 original sheets Nos. 61 through 64, to comply with Commission Rule 4 CSR 240-14 on promotional practices and, according to Company's witness, to make "the Commission aware of the exact practices followed by United Cities."

Pages 61, 62, 63, and the first paragraph of page 64 of Company's tariff describes its residential promotional practices. The balance of page 64 addresses Company's commercial/industrial practices and concludes with a one-sentence designation titled "General." Given the brevity of Company's proposed tariff, it is attached hereto in its entirety as Appendix A.

Staff claims that two of Company's commercial/industrial practices, described below, are prohibited by 4 CSR 240-14.020.

On page 64, Company's tariff provides as follows regarding its Commercial/Industrial Service.

> Equipment Selection - The Company provides our commercial and industrial customers up-to-date educational information on the latest technical improvements in gas equipment. This information is communicated to the customer through the Company's representatives and through industry publications such as Gas Technology Magazine and Food Service Newsletter. Various educational publications similar to the previously mentioned may also be made available to any and all persons of the commercial/industrial sector within our service area. In addition to information on technological advances, these publications provide pertinent safety and energy conservation information. (Emphasis is in original text.)

Staff claims that this practice violates subsection (4) of 240-14.020, which prohibits the following:

> (4) The furnishing of consideration to any dealer, architect, builder, engineer, subdivider, developer or other person for the sale, installation or use of appliances or equipment is prohibited. (Emphasis supplied).

Staff contends that Company's commercial and industrial customers are "other person(s)" within the meaning of the rule. In addition, Staff apparently concludes that Company's furnishing of the publications is to promote the sale, installation or use of Company's appliances or equipment. The Commission is of the opinion that the phrase "or other person" in the cited rule was not intended to have direct application to Company's customers. In context, the phrase "or other person" seeks only to extend the rule to those who are like or similar in character to dealers, architects, builders, etc. Had the Commission intended this rule to have direct application to customers, the rule would so state. Even if customers are "other persons" under the rule, there is no showing that the magazines in question are or will be furnished in connection with, or to induce the sale, installation or use of Company's "equipment" or "appliances." The Commission therefore finds that the promotional practice set out above does not violate 4 CSR 240-14.020(4).

Staff's next contention is that the following, at page 64 of the attached tariff, constitutes a non-permitted promotional practice.

> Energy Consulting - The Company provides technical information to any customer, prospective customer, supplier or other interested party who may be in need of assistance.

Staff is of the opinion that the above, in conjunction with 4 CSR 240-14.010(5)(G)8[1] violates 4 CSR 240-14.020(2), which provides:

> (2) The furnishing of consideration to any architect, builder, engineer, subdivider, developer or other person for work done or to be done on property not owned or otherwise possessed by the utility or its affiliate is prohibited, except for studies to determine comparative capital costs and expenses to show the desirability or feasibility of selecting one (1) form of energy over another.

Staff has apparently concluded that these two rules, considered together, prohibit Company from providing technical assistance to anyone other than a customer or "prospective" customer. Notwithstanding Staff's view, the Commission finds nothing in the quoted section of Company's proposed tariff which constitutes a violation of 4 CSR 240-14.020(2). Nor does the Commission think that 4 CSR 240-14.010(5)(G)8, somehow creates a "new" unauthorized promotional practice simply by defining what is <u>not</u> a promotional practice.

Simply providing technical information to a "supplier" or "other interested party" does not constitute the type of "consideration" contemplated by the rule. Nor does providing such information constitute an unauthorized promotional practice. The Commission finds this issue in Company's favor.

Company's filing concludes with a brief section titled "General" which states:

> The Company reserves the right to supplement, replace, or delete specific materials referenced in these Promotional Practices.

Staff characterizes this section as giving Company a "blank check" to supplement its promotional practices at will; Staff opposes it and urges

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[1]4 CSR 240-14.020(5)(G)8 is a definitional section. It states that technical or engineering assistance offered to present or prospective customers is not a promotional practice.

its elimination because "of its arbitrary nature." Company's witness stated that the language only permits Company to supplement, replace or delete those specific materials listed on pages 63 and 64 of its proposed tariff.

The Commission finds merit in Staff's position. If Company wishes to specifically refer to such materials in its filed tariff, then Company should also be willing to change its tariff whenever it chooses to supplement, replace, or delete such materials. The Commission finds this issue in favor of Staff; the language above-cited should be removed from Company's proposed tariff.

Staff also has objected to a substantial portion of Company's residential sector tariff. Staff objects to these tariffs not because they describe practices which are prohibited by 4 CSR 240-14.020, but because they describe activities which are not promotional practices as defined by 4 CSR 240-14.020(5)(G)1-8. Staff feels that Company should not be permitted to file what, to Staff, are its advertising and public relations programs as a "promotional practice." Staff also fears that if other regulated companies make similar non-required filings, that the Commission will endure unnecessary paperwork, recordkeeping, and the need to update said tariff filings.

Having examined the three and one-quarter tariff pages in question, the Commission finds that Staff's objection thereto is without sufficient merit to require Company to refile said tariffs. Having already found that Company's tariff contains no provisions which directly violate Commission rules, the Commission finds that said tariff is acceptable as filed, subject to the removal of the language following "General," referenced above.

Conclusions of Law

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

United Cities Gas Company is a public utility subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 1986, as amended.

Company's tariffs were suspended pursuant to Sections 393.140 and 393.150, RSMo 1986, as amended. The Commission has jurisdiction to approve, suspend, or modify Company's proposed promotional practices tariff by virtue of paragraph 1, Section 393.150, RSMo 1986.

Having found above that Company's proposed promotional practices tariff does not violate this Commission's published rules relating thereto, the Commission concludes that said rules are reasonable and should be permitted to take effect on November 26, 1991.

IT IS THEREFORE ORDERED:

1. That the following tariff sheets of United Cities Gas Company, filed on January 25, 1991, are hereby approved for service rendered on or before November 26, 1991:

PSC Mo. No. 2, 1st Revised Sheet No. 1
PSC Mo. No. 2, Original Sheet No. 59
PSC Mo. No. 2, Original Sheet No. 61
PSC Mo. No. 2, Original Sheet No. 62
PSC Mo. No. 2, Original Sheet No. 63
PSC Mo. No. 2, Original Sheet No. 64 (modified by this Report and Order)

2. That this Report and Order shall be effective October 18, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 8th day of October, 1991.

UNITED CITIES GAS COMPANY

PROMOTIONAL PRACTICES

RESIDENTIAL SECTOR

Builder Program

The intent of the program is to promote the use of natural gas, high-efficiency appliances, and energy conservation measures within the new construction market. The program is implemented by our builder representatives who make personal contact with the builders on a regular basis.

The Company offers the builder and/or the potential homeowner cost comparisons between the utilization of natural gas and alternate energy sources.

The Company makes marketing materials available to the prospective homeowners through the builders. These materials promote the economy of an energy efficient gas home.

Promotion of High-Efficiency Gas Appliances

The Company promotes the use of high efficiency gas appliances by making available educational material. This material explains the advantages of high efficiency natural gas equipment.

The Company merchandises the following gas appliance categories: water heaters, ranges, space heaters, logs, gas lights, clothes dryers, and grills, among various others. The Company offers merchandise financing to our customers, enabling them to make payments on their gas bills. The annual percentage rate of interest will not be on terms more favorable than those generally applicable to sales by non-utility dealers. The pricing structure within our merchandise program is competitive with appliance dealers within the communities we serve.

Dealer Program

The Company may offer builders, heating contractors, etc., upon request, cost comparisons between the use of natural gas and alternate fuels.

The Company may develop and implement various cooperative advertising programs to be made available to builders, developers, heating contractors, etc. Cooperative advertising funds supplied by the Company are limited to one-half of the reasonable cost or value of joint advertising.

(continued on Sheet No. 62)

*Indicates new rate or text.
+Indicates change.

UNITED CITIES GAS COMPANY

PROMOTIONAL PRACTICES
(continued from Sheet No. 61)

Real Estate Program

This program is used to educate real estate agents and brokers through periodic meetings with individual realty companies or realty associations. During the meetings the Company exhibits photographs of various applications for natural gas equipment, makes verbal presentations on how to better serve real estate agents and brokers, and demonstrates the benefits of using natural gas in the home. Educational hand-out materials are also available for each participant.

Promotion of Gas On Main

Through the Company's on-main conversion program, we communicate the advantages and benefits available to prospective customers who convert to natural gas heating equipment.

This program is targeted toward each prospective customer who has a gas main accessible to their property. Supporting media advertising and awareness materials, such as brochures, can also be utilized.

Energy Conservation

The Company promotes the conservation of energy. Upon request, the Company will supply to anyone interested a cost comparison showing the energy savings possible through the use of high-efficiency equipment.

The School Range Loan Program

In an effort to familiarize the public with the features and benefits of gas cooking and to provide support to our community schools, the Company offers the School Range Loan Program. We provide and install a modern, high efficiency natural gas range for the purpose of instructing students on the mechanics and economics of gas cooking. The school pays for any gas that is consumed through the use of the range.

Educational Programs

The Company engages in an educational process to familiarize the communities we serve with the benefits of natural gas. We provide educational materials, literature, and programs to our community schools, civic groups and other community organizations.

(continued on Sheet No. 63)

*Indicates new rate or text.
+Indicates change.

P.S.C. MO. NO. 2 ____ (Original) (Revised) Sheet No. 63

Cancelling P.S.C. MO. NO 2 ____ (Original) (Revised) Sheet No. ____

UNITED CITIES GAS COMPANY

PROMOTIONAL PRACTICES
(continued from Sheet No. 62)

1. The following is a list of programs which are provided:

   A. A catalog of AGA Natural Gas Teaching Materials is sent to all schools in our service territory. Any printed material may be ordered free of charge by the schools. The charge for this material is paid by the Company.

   B. The Balancing Act: How Utility Rates Are Decided

   This program is designed to give high school students a basic understanding of how utility rates are set. It teaches how regulators, utilities, and utility customers interact to ensure efficient and dependable utility services at fair and reasonable rates.

   C. Power Switch (taught by the classroom teacher)--an energy curriculum kit (for fifth grade level), provides important energy, safety, and conservation information.

   D. Hypothermia (video)

   This program is used in meetings with the elderly as well as school groups. It teaches awareness of the dangers associated with exposure to cold weather. It teaches the proper way to dress indoors and outdoors, how to recognize hypothermia, and what to do to prevent it.

2. Other videos are available on a loan basis for use in the schools:

   A. "An Astounding Adventure" (video) - takes viewers on an adventure through time and space to learn about natural gas.

   B. "Rappin' With Gas" (video) - teaches the efficient use of gas in the home, the proper and safe operation of the gas range.

   C. "Gone With The Wash" (video) - explains how to properly do laundry through an exciting detective theme.

   D. "Smart House" (video) - explains what future housing will look like.

(continued on Sheet No. 64)

*Indicates new rate or text.
+Indicates change.

Issued: December 26, 1990 Date Effective: January 26, 1991
Issued by: Gene C. Koonce, President and Chief Executive Officer
5300 Maryland Way, Brentwood, TN 37027

UNITED CITIES GAS COMPANY

PROMOTIONAL PRACTICES
(continued from Sheet No. 63)

3. A live theater production, "The Clue That Burns Blue," is also used and is available. It covers the origin, as well as the safe and wise use of natural gas.

Various other similar educational programs may be offered in the future as supplement or replacement to any of the Company's existing programs.

COMMERCIAL/INDUSTRIAL SECTOR

The Company offers the following services:

Fuel Cost Comparisons - Through the use of fuel cost comparisons, the Company can evaluate the optimal energy to be used for any particular commercial or industrial application.

Equipment Selection - The Company provides our commercial and industrial customers up-to-date educational information on the latest technical improvements in gas equipment. This information is communicated to the customer through the Company's representatives and through industry publications such as Gas Technology Magazine and Food Service Newsletter. Various educational publications similar to the previously mentioned may also be made available to any and all persons of the commercial/industrial sector within our service area. In addition to information on technological advances, these publications provide pertinent safety and energy conservation information.

Energy Consulting - The Company provides technical information to any customer, prospective customer, supplier or other interested party who may be in need of assistance.

GENERAL

The Company reserves the right to supplement, replace, or delete specific materials referenced in these Promotional Practices.

*Indicates new rate or text.
+Indicates change.