

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

In the matter of Missouri Gas Energy's        )  
tariff revision designed to implement        ) CASE NO. GT-95-429  
a weather normalization clause.            )

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**REPORT AND ORDER**

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**Issue Date:**        October 17, 1995

**Effective Date:**   October 27, 1995

OF THE STATE OF MISSOURI

In the matter of Missouri Gas Energy's )  
tariff revision designed to implement a ) CASE NO. GT-95-429  
weather normalization clause. )

APPEARANCES: James C. Swearingen, Attorney at Law, and  
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For: Missouri Gas Energy.

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For: Office of the Public Counsel and the public.

Penny G. Baker, Deputy General Counsel,  
P. O. Box 360, Jefferson City, Missouri 65102,  
For: Staff of the Missouri Public Service Commission.

Administrative  
Law Judge: Anne Wickliffe Freeman

## REPORT AND ORDER

### Procedural History

Missouri Gas Energy, a division of Southern Union Company, (MGE or company) submitted tariff sheets to the Missouri Public Service Commission on April 17, 1995, designed to institute a Weather Normalization Clause (WNC) for most of its gas customer classes, to become effective July 17, 1995. The proposed WNC would adjust the volumes billed to residential service, small general service, and large general service customers to reflect the effect on volume that normal weather conditions would produce. The result would be to reduce customer bills in abnormally cold weather and increase customer bills in abnormally warm weather.

The Office of the Public Counsel (OPC) filed a Motion to Dismiss Tariff on June 26, 1995, arguing that the proposed tariff should be rejected as unlawful. The Staff of the Missouri Public Service Commission (Staff) filed its response on July 7, 1995, concurring with OPC's motion. MGE filed Suggestions in Opposition to Office of Public Counsel's Motion to Dismiss Tariff on July 7, 1995. Staff filed a memorandum on July 7, 1995, setting out numerous concerns about the WNC proposal and recommending that the tariff sheets be rejected or, in the alternative, suspended and a procedural schedule set.

The Commission issued an order on July 14, 1995, suspending the proposed weather normalization tariff until November 14, 1995, and setting the case for oral argument on the threshold legal questions raised by OPC's motion. MGE filed Affidavits on August 8, 1995. Staff and OPC objected to receipt of the affidavits in a joint motion on August 10, 1995, which was granted by a Commission order issued on August 11, 1995.

On August 16, 1995, the parties presented oral arguments on the following issues: a) whether approval of the tariff sheets would constitute single issue ratemaking; b) whether approval of the tariff sheets would constitute retroactive ratemaking; c) whether the tariff's billing provisions, by their complexity, amount to a violation of the open inspection statute, § 393.140(11)<sup>1</sup>; d) whether the proposed WNC violates the rule which provides that a public utility must be compensated for the full amount due it under its Commission approved tariff, *Laclede v. Solon Gershman, Inc.*, 539 S.W.2d 574, 577 (Mo.App. 1976); and e) whether the tariff provisions violate the prohibition against discriminatory pricing found in § 393.140 (5).

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<sup>1</sup>All statutory references are to the Revised States of Missouri 1994.

### 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. Rate of Return/Single Issue Ratemaking**

The Office of the Public Counsel and Staff oppose the weather normalization tariff, taking the position that approval of the tariff would constitute single issue ratemaking, i.e. making a change in charges or rates without considering all the relevant factors. MGE has asked the Commission to authorize changes in its customer charges solely on the basis of fluctuations from normal weather as defined in the company's last rate case, GR-93-240. OPC and Staff argue that the WNC tariff is a de facto rate change in part because it would affect MGE's rate of return and unavoidably change the balance between revenue and expenses. OPC and Staff rely on § 393.270 and Missouri case law. In particular, OPC cites to *State ex rel. Utility Consumer Counsel of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo. banc 1979), in which the Missouri Supreme Court found that a fuel adjustment clause for electric utilities was single issue ratemaking and thus prohibited.

MGE argues that the WNC does not represent a change in rates but is a rate design issue. The underlying rate per unit of gas would not change. MGE argues that the WNC tariff would be revenue neutral.

The Commission agrees with OPC and Staff that the institution of the WNC tariff could affect the company's rate of return by reducing its risk. If the rate of return were to change, the matching of revenues and expenses approved by the Commission in the company's last rate case would be abrogated and the effective rate structure changed without a

reconsideration of all relevant factors. In determining rates the Commission is required by statute to give due regard to "a reasonable average return upon capital." § 393.270.4. The Commission is of the opinion that such a determination should be made in the context of a full rate proceeding and that the Commission should avoid piecemeal litigation of issues affecting a utility's proper return on equity.

The Commission further finds that approval of the WNC tariff would result in a de facto change in MGE's rates. Under the weather normalization clause a customer would pay for more gas than he actually used in an unusually warm month. In that month, the customer would have paid an effective per unit rate for his actual usage greater than MGE's current tariffed rate. In an unusually cold month the customer would pay for less gas than he actually used. In that month, the customer would have paid a lower per unit rate for his actual usage than MGE's current tariffed rate.

Missouri's Supreme Court found that the Commission is "required to consider all factors relevant to the proper maximum price to be charged." *U.C.C.M. v. P.S.C.*, 56. The price fixed by the Commission in the last rate case is the maximum rate a utility may charge for its services. § 393.270.3. The Commission finds that approval of the proposed WNC tariff would result in a change, uncertain in amount, to the maximum rate approved for MGE's services in its last rate case. This change would have been approved without inquiry into the factors normally considered relevant to a change in rates as required by § 393.270.4. Therefore, the Commission finds that approval of the proposed WNC tariff outside the context of a rate case would result in single issue ratemaking.

Finally, the Commission notes that MGE is under a rate moratorium established in Case No. GM-94-40 that would prevent any rate

increase for MGE until at least 1997. That rate moratorium would be violated by approval of the proposed WNC tariff.

### III. Remaining Issues

Because the Commission finds that the proposed WNC tariff constitutes prohibited single issue ratemaking the Commission need not reach the other issues argued on August 16, 1995, namely: whether approval of the tariff sheets would constitute retroactive ratemaking; whether the tariff's billing provisions, by their complexity, amount to a violation of the open inspection statute, § 393.140(11); whether the tariff provisions constitute discriminatory pricing; and whether the proposed WNC tariff violates the rule which provides that a public utility must be compensated for the full amount due it under its Commission approved tariff (*Laclede v. Solon Gershman, Inc.*, 539 S.W.2d 574, 577 (Mo.App. 1976)).

### IV. Summary

The Commission finds that the weather normalization clause tariff, as proposed, is unjust, unreasonable, and contrary to law and should be rejected. MGE has requested that, should the Commission have reservations about implementing the WNC tariff on a permanent basis, the Commission should consider approval on an experimental basis. Because the Commission has found the proposed WNC tariff to be unlawful, the weather normalization clause cannot be approved on an experimental basis.

### Conclusions of Law

The Missouri Public Service Commission has jurisdiction over Missouri Gas Energy, a gas corporation and public utility, by virtue of §§ 386.250. The Commission has jurisdiction over Missouri Gas Energy's rates under §§ 393.130, 393.140, 393.150, and 393.270. All charges by a regulated gas corporation must be just and reasonable and not more than

allowed by law or Commission order; charges that do not meet these criteria are prohibited. § 393.130.1.

Single issue ratemaking is prohibited by the Commission's enabling statute that requires the Commission to consider all relevant factors in considering whether a utility charge is just and reasonable. § 393.270; *State ex rel. Utility Consumer Counsel of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41 (Mo. banc 1979). The burden of proof to show that a rate or charge is just and reasonable lies with the utility proposing it. § 393.150.2. MGE has failed to meet its burden of proof to show that its proposed weather normalization clause tariff is not unjust, unreasonable, or contrary to law or Commission order. Based on the its findings of fact, the Commission concludes that the proposed weather normalization tariff is prohibited as a matter of law.

**IT IS THEREFORE ORDERED:**

1. That the following tariff sheets, submitted on April 17, 1995, by Missouri Gas Energy are rejected. The tariff sheets rejected are:

P.S.C. Mo. No. 1

First Revised Sheet No. 12, Cancelling Original Sheet No. 12  
First Revised Sheet No. 29, Cancelling Original Sheet No. 29  
First Revised Sheet No. 31, Cancelling Original Sheet No. 31.

2. That this Report and Order shall become effective on  
October 27, 1995.

BY THE COMMISSION

A handwritten signature in cursive script, reading "David L. Rauch".

David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., Crumpton and  
Drainer, CC., Concur and certify  
compliance with the provisions of  
Section 536.080, RSMo 1994.  
McClure and Kincheloe, CC., Absent.

Dated at Jefferson City, Missouri,  
on this 17th day of October, 1995.