

OF THE STATE OF MISSOURI

Case No. GO-97-285

Case No. GA-97-132

Case No. GA-97-133

REPORT AND ORDER

Issue Date: May 15, 1997

Effective Date: May 28, 1997

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri Pipeline Company for Waiver of and Variance From Section 3.1 and 3.2 of the Interruptible Provisional Transportation Services Rate Schedule Found on P.S.C. Mo. No. 3, Sheets No. 16 and 17.)
)
) Case No. GO-97-285
)
)

In the Matter of the Application of UtiliCorp United Inc., d/b/a Missouri Public Service, for Permission, Approval, and a Certificate of Public Convenience and Necessity Authorizing It to Construct, Install, Own, Operate, Control, Manage and Maintain a Gas Distribution System for the Public in the City of Owensville, Missouri, and Certain Other Unincorporated Areas Located in Gasconade County and Crawford County, Missouri.)
)
) Case No. GA-97-132
)
)
)

In the Matter of the Application of Missouri Gas Company for Permission, approval, and a Certificate of Public Convenience and Necessity Authorizing It to Construct, Own, Operate, Control, Manage and Maintain a Natural Gas Transmission Pipeline and Related Facilities and to Transport Natural Gas in Portions of Crawford and Gasconade Counties, Missouri.)
)
) Case No. GA-97-133
)
)
)

APPEARANCES

James C. Swearengen and Dean L. Cooper, Brydon, Swearengen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for: Missouri Gas Company, Missouri Pipeline Company, and UtiliCorp United Inc., d/b/a Missouri Public Service.

Richard S. Brownlee, III, and Donald C. Otto, Hendren and Andrae, 221 Bolivar Street, Post Office Box 1069, Jefferson City, Missouri 65102, for Williams Natural Gas Company.

James M. Fischer, Attorney at Law, 101 West McCarty Street, Suite 215, Jefferson City, Missouri 65101, for Fidelity Natural Gas, Inc.

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 General 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.**

Table of Contents

Procedural History	2
Uncontested Issues	3
Findings of Fact	4
1. Waiver of Condition "C"	7
2. The Size of the Service Area	9
3. Setting a Rate of Return for the Owensville Area	10
4. The Filing of Gas Supply Contracts	11
5. Threshold for PGA Filing	12
Conclusions of Law	13
Ordered Paragraphs	15

REPORT AND ORDER

Procedural History

On September 27, 1996, UtiliCorp United Inc. (UtiliCorp), d/b/a Missouri Public Service (MoPub), filed an application with the Missouri Public Service Commission (Commission) seeking the issuance of a certificate of convenience and necessity authorizing UtiliCorp to construct and operate a gas distribution system for the public in the City of Owensville, Missouri, and in certain other unincorporated areas of Gasconade and Crawford Counties, Missouri.

On the same date, Missouri Gas Company (MoGas) filed its application requesting issuance of a certificate of convenience and necessity to construct and operate a natural gas transportation pipeline from a point on its currently operating pipeline near Cuba, Missouri, to the proposed local distribution area of UtiliCorp at Owensville. MoGas also requested the Commission authorize MoGas to waive a portion of its

transportation tariff, allowing MoGas to serve the proposed local distribution company at Owensville at a discounted rate.

Finally, on January 23, 1997, Missouri Pipeline Company (MoPipe) filed an application seeking Commission authorization to waive a portion of its transportation tariff relating to affiliated transactions to allow MoPipe to serve MoGas at a discounted rate.

All three companies, MoGas, MoPipe and MoPub, are subsidiaries or operating divisions of UtiliCorp, and are therefore affiliated. UtiliCorp is a Delaware corporation with various utility holdings throughout the United States and abroad, and is investor-owned. Within the state of Missouri, MoPub provides natural gas service to approximately 42,000 customers in 28 communities.

After consolidation on February 13, 1997, interventions were granted to Fidelity Natural Gas, Inc. (FNG), a local distribution company and transportation customer of MoPipe, and Williams Natural Gas Company (WNG), an interstate pipeline company. WNG was not an active participant in the evidentiary hearing of this matter, which was held on March 25, 1997. After briefing, this case was finally submitted to the Commission for decision on April 22.

Uncontested Issues

In the Hearing Memorandum, entered into evidence as Exhibit No. 1, the parties stipulate and agree to five uncontested issues. The parties agree to the following matters:

(1) MoPub and MoGas are financially and technically qualified to provide the services they propose;

(2) There is a public need for the service proposed by the applications of MoPub and MoGas;

(3) If certificates are granted to MoPub and MoGas, the Commission should grant MoPub's motion for a variance from the provisions of 4 CSR 240-14.020 to offer no-cost house piping and appliance conversions during the primary construction plans of the project;

(4) MoGas is requesting a "line certificate" in accordance with Section 393.170, RSMo, and 4 CSR 240-2.060(2)(G); and,

(5) If certificates are granted to MoPub and MoGas, and MoGas and MoPipe are granted waivers/variances from Condition "C" of the Report And Order On Rehearing in Case No. GM-94-252 and the resulting tariffs, MoPub shall keep separate records for the Owensville service area.

The Commission agrees that UtiliCorp is financially and technically qualified to provide the proposed services through the three operating companies involved in this matter. The Commission also finds, as evidenced by a public vote in the City of Owensville, that there is a public need for natural gas service in that area. The Commission will accept the stipulation on uncontested issues (1) and (2) as being reasonable and in the public interest.

In regard to the other three uncontested issues, the Commission will deal with those issues later in this Report And Order.

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.

The Commission has reviewed and considered all of the evidence and argument presented by the various parties contesting this matter. Some evidence and positions taken by the parties may not be addressed by the Commission in this Report And Order. The failure of the Commission to mention a piece of evidence or the position of a party indicates that, while the evidence or position was considered, it was not found to be relevant or necessary to the resolution of the case.

UtiliCorp, through its operating divisions, seeks to obtain a certificate of convenience and necessity to provide natural gas service to the City of Owensville and surrounding areas. UtiliCorp currently owns an intrastate transportation pipeline beginning at a point north of St. Louis County, where it connects to the Panhandle Eastern Pipe Line Company's (PEPL's) interstate pipeline. The intrastate transportation pipeline then proceeds south around St. Louis County and down Interstate 44 to a point just southwest of Sullivan, where the pipe narrows. This portion of the intrastate pipeline is operated by MoPipe. MoGas operates the pipeline at the point where it narrows. The line proceeds down Interstate 44, referred to as the "I-44 corridor," to its terminus in Pulaski County, at Fort Leonard Wood, Missouri.

Through the operation of this pipeline, UtiliCorp provides natural gas to various local distribution companies (LDCs), including those operating in St. Louis City and County, Jefferson County, Franklin County, and the cities of Sullivan, Cuba, Rolla, Salem and St. Robert. UtiliCorp, through MoGas, also provides service to Fort Leonard Wood in Pulaski County, at the terminus of the pipeline.

In the instant application, UtiliCorp states that it intends to construct an approximately 20-mile pipeline spur from the MoGas portion of

the line at Cuba, north to the City of Owensville, to serve a proposed LDC operated by MoPub at that location. MoGas would be served by MoPipe, which would, in turn, be served by PEPL.

Testimony of the applicants reveals that in order to allow the project to be economically feasible, various conditions must be approved by the Commission. Several conditions are identical to those approved by the Commission in previous certificate cases, most notably involving the cities of Rolla and Salem. The applicants request a waiver of Commission rule 4 CSR 240-14.020 to authorize MoPub to offer customers no-cost house piping and appliance conversion during the primary construction phase of the project. This issue is uncontested.

It has also been specified that the certificate requested by MoGas to serve MoPub will be a "line certificate," as opposed to an area certificate, in accordance with pertinent rules and statutes. This issue is also uncontested.

Finally, both MoPipe and MoGas are requesting waivers from requirement "C," also called Condition "C," of their respective transportation tariffs in order to serve the proposed LDC at a discount rate. This issue is one of the five which are contested.

The contested issues, in the order in which the Commission will decide those issues, are as follows:

1. Waiver of Condition "C";
2. Determination of the Size of the Service area;
3. Setting a Rate of Return for the Owensville Area;
4. The Filing of Gas Contracts; and,
5. Establishing a Threshold for a PGA Filing.

1. Waiver of Condition "C"

Both MoPipe and MoGas are currently operating with tariffed transportation rates originally ordered filed and approved by the Commission in Case No. GM-94-252. *See In re Joint Application of Missouri Gas Co., Missouri Pipeline Co. and UtiliCorp United Inc.*, 3 Mo. P.S.C. 3d 236, 240-41 (1994). The transportation tariffs originally used by both pipelines are referred to as "flex-rate" tariffs, and are designed to allow minimum and maximum charges for both the reservation of capacity on the pipeline and the delivery of the commodity itself. The flex-rate tariffs allowed the pipelines to negotiate rates with customers based on various market factors, including length of contract, amount of firm volume, and other matters. In the above-cited case, the Commission approved the sale of MoPipe and MoGas to UtiliCorp. However, in order to avoid rate discrimination and unlawful affiliate transactions between the pipelines and LDCs also owned by UtiliCorp, the Commission provided the following language contained in Condition C of Ordered Paragraph 1 of the Report And Order On Rehearing:

"C. For all transportation agreements entered into with any affiliate after the effective date of the tariff sheets referred to above in those instances in which the term of the agreement is greater than three months:

"i. The lowest transportation rate charged to an affiliate shall be the maximum rate that can be charged to non-affiliates."

Id. 15 240.

In addition, in Ordered Paragraph 2 of the same Report And Order On Rehearing, the Commission provided for UtiliCorp to obtain a waiver of Condition C as follows:

"2. . . . UtiliCorp United, Inc. may petition the Commission for a waiver of these conditions in any specific instance should it believe that good cause exists to do so"

Id. at 241.

UtiliCorp maintains that it cannot economically serve the proposed area without the requested waiver allowing it to provide discounted transportation rates through MoPipe and MoGas to its LDC in Owensville. UtiliCorp states in its testimony that the waiver would be in the public interest as it would allow provision of an alternative fuel source to Owensville. UtiliCorp also reaffirms its position that it will be unable to continue with the proposed project without the requested waiver as the project is not economically feasible under current Condition C.

The Staff of the Commission (Staff) is opposed to granting the requested waiver for several reasons. The Staff states that it is not convinced from the evidence provided by UtiliCorp that the project would, in fact, be infeasible without the waiver of Condition C. The Staff points out that the evidence is also lacking in detail as to UtiliCorp's inability to compete with propane on a long-term basis without discounted transportation rates.

Further, the Staff is opposed to allowing UtiliCorp to give discounted rates only to its own affiliates. This having been said, the Staff states that it is not opposed to allowing the UtiliCorp pipelines the ability to offer flex rates on an equal basis to affiliates and nonaffiliates alike.

The Office of the Public Counsel (OPC) supports the Staff position on this issue. FNG, a transportation customer of MoPipe, is not opposed to the Commission granting the requested waiver if FNG has the same

opportunity to obtain a discounted rate upon renegotiation of its contract in the near future.

The Commission will grant the waiver of Condition C provided that the opportunity to obtain flex or discount transportation rates is available to affiliates and nonaffiliates alike. The language of Condition C, in light of the continuing deregulation of the natural gas industry, could be applied in a fashion which would maintain artificially high natural gas transportation rates, resulting in higher consumer prices. This is particularly true in light of the fact that customers such as FNG can now obtain their gas supplies and transportation service on the open market. In short, the language of Condition C may act as an artificial price support, which could have a potentially adverse impact on both UtiliCorp affiliated and nonaffiliated LDCs.

The Commission will, therefore, grant the requested waiver of Condition C as applied to all customers of both MoPipe and MoGas. In addition, in order to monitor transportation rates to ensure fairness between affiliates and nonaffiliates of UtiliCorp, the Commission will order all final contracts between MoPipe or MoGas and transportation customers submitted to the Commission Staff. The Commission will also order the Staff to make those contracts available to the Office of the Public Counsel.

2. The Size of the Service Area

In its application in Case No. GA-97-132, UtiliCorp has asked to be certified to serve an area substantially larger than the City of Owensville itself. This area is reflected in Attachment A, appended to this Report And Order. The proposed area, from Rosebud to Bland, is

approximately 17 miles long. In testimony, it was clear to the Commission that UtiliCorp has no present plans or intention to provide service to those areas outside the City of Owensville and several adjacent areas. Testimony revealed that UtiliCorp found the area to be one of potential growth and wishes to serve the Bland and Rosebud areas in the future, when such growth makes those areas economical to serve.

The Staff objected to the issuance of the certificate to those areas which UtiliCorp has no present plan to serve. The Staff maintains that issuance of the certificate as requested would lock out other competitors while not necessarily providing gas service to the public.

The Commission agrees with the Staff that it would not be in the public interest to grant a certificate of convenience to a utility for an area that the utility does not presently intend to serve. It is a fundamental concept of utility regulation that the monopoly provider will actually provide safe, efficient and economical service. It is clear from UtiliCorp's own witnesses that no plans or present intention exists to provide service to any area designated in Attachment A, save the City of Owensville itself and several immediately adjacent areas.

Therefore, the Commission finds that the certificate of convenience and necessity will be limited to the city limits of Owensville and only those areas immediately adjacent to the city limits which are now included in the construction plans for this proposed project.

3. Setting a Rate of Return for the Owensville Area

The parties presented evidence that UtiliCorp wishes to apply a different capital structure to the Owensville area than that preferred by the Staff. Apparently UtiliCorp would prefer to use the capital structure

established in a previous rate case, ER-93-37, while the Staff seeks to use the capital structure established in a later proceeding, Case No. GR-93-172.

The Commission would first note that use of the correct capital structure seems important to the parties in determining the feasibility of the proposed project. While this may be an important issue, the Commission will reaffirm its current policy regarding certificates of this type and require the UtiliCorp stockholders to bear the financial risk associated with the proposed project.

Second, UtiliCorp states in the Hearing Memorandum that it is willing to use the presently authorized and approved rate of return for MoPub's natural gas distribution service. Even though MoPub currently has three districts, the rate of return and return on equity for MoPub is applied statewide.

The Commission finds that the appropriate rate of return and return on equity to be applied in this case is the one currently in effect. This rate of return and return on equity, as well as underlying capital structure, were established in MoPub's most recent natural gas rate case. This is the rate which should be used. The Commission also notes that it would be inappropriate to establish a rate of return or return on equity outside a general rate proceeding.

4. The Filing of Gas Supply Contracts

In this application UtiliCorp has, according to the Staff, failed to file contracts or other agreements providing for the additional gas supply necessary to serve the proposed area. It is unclear whether this includes contracts for both the commodity itself and the transportation of

the additional gas supply or not. Regardless, the Staff seeks a provision from the Commission that UtiliCorp, if granted the certificate, be required to file contracts, letters of intent, or other valid agreements providing for gas supply to Owensville before the effective date of the certificate.

For its part, UtiliCorp states in testimony that it made contact with various natural gas suppliers and with Panhandle Eastern Pipe Line Co., and determined that "supplies were available."

The Commission, as previously stated, will place the financial risk for the proposed project on the stockholders of UtiliCorp. Should UtiliCorp fail to supply the necessary gas to provide service, the penalty will be borne by those stockholders.

However, to facilitate future review of this project, the Commission will order UtiliCorp to submit to the Staff all contracts and other agreements pertaining to the transportation and supply of the commodity to the Owensville area, prior to commencing service.

5. Threshold for PGA Filing

The Staff maintains that UtiliCorp should file, as part of its ongoing tariffs for gas service, tariff sheets requiring MoPub to file for a change in the Purchased Gas Adjustment (PGA) rate when gas costs change by 10 percent or more.

The Staff points out that it is common in this state for gas LDCs to have thresholds built into their PGA tariffs requiring the filing of a PGA adjustment at some threshold level of increased commodity cost. It was also noted in testimony that UtiliCorp currently has no such threshold levels in any of its three districts.

UtiliCorp maintains that a threshold requirement for the Owensville area would result in only one out of three of its districts having a threshold filing requirement. UtiliCorp states that this would cause uneven rates, rate increases, and rate reductions between the districts. In addition, UtiliCorp presents the general argument that application of the threshold levels in a relatively volatile gas commodity market can cause dramatic shifts in short-term rates. UtiliCorp prefers to maintain level rates and avoid sharp seasonal price swings by not using a PGA threshold.

The Commission has considered the argument of the Staff but declines to impose a threshold filing requirement on UtiliCorp's Eastern District alone. While the Commission agrees that the matter requires further study, perhaps in a general rate proceeding or the Commission's special docket on frequency and proration of PGA filings, it is not appropriate to place this requirement on only one of UtiliCorp's three districts in light of the fact that UtiliCorp's rates are uniform among its districts.

Conclusions of Law

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

The Commission has the authority under Sections 393.130 and 393.150¹ to set just and reasonable rates for the provision of natural gas service in the state of Missouri.

¹ All statutory references are to the Revised Statutes of Missouri 1994 or 1996 Supplement.

UtiliCorp United Inc., d/b/a Missouri Public Service, is a public utility engaged in the provision of natural gas and electric service in the state of Missouri and, therefore, subject to the general jurisdiction of the Commission pursuant to Chapters 386 and 393.

The Commission has authority under Section 393.170.3 to grant permission and approval to construct and operate a franchised service area, should the Commission find, after hearing, that the "franchise is necessary or convenient for the public service."

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, the Commission has considered all substantial, competent and relevant evidence in this matter and determines that the granting of the application of Missouri Public Service, as modified herein, is necessary and convenient for the public service and is in the best interest of the public.

Missouri Gas Company is a public utility engaged in the transportation of natural gas in the State of Missouri and, therefore, subject to the general jurisdiction of the Commission pursuant to Chapters 386 and 393.

The Commission has authority under Section 393.170.3 to grant permission and approval to construct and operate a franchised service area, should the Commission find, after hearing, that "the franchise is necessary or convenient for the public service."

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, the Commission has considered all substantial, competent, and relevant evidence

in this matter, and determines that the granting of a line certificate to Missouri Gas Company, as set out herein, is necessary and convenient for the public service and is in the best interest of the public.

IT IS THEREFORE ORDERED:

1. That the application of UtiliCorp United Inc., d/b/a Missouri Public Service, for a certificate of convenience and necessity to construct, install, own, operate, control and manage a gas distribution system is hereby granted to the extent that the certificate is limited to the corporate limits of the City of Owensville and those areas immediately adjacent to the city limits of Owensville which UtiliCorp United Inc., d/b/a Missouri Public Service, has present plans and intentions of serving as part of the Owensville construction project.

2. That the application of Missouri Gas Company for a certificate of convenience and necessity to construct, install, own, operate, control and manage a gas transmission pipeline is hereby granted to the extent that this certificate is a line certificate only and for transmission only from a point at or around Cuba, Missouri, to a point of delivery at or around Owensville, Missouri.

3. That Missouri Pipeline Company and Missouri Gas Company are hereby granted a waiver of "Condition C" of their respective tariffs, as originally approved in Case No. GM-94-252, as applied to both affiliated and nonaffiliated customers alike, on an ongoing basis.

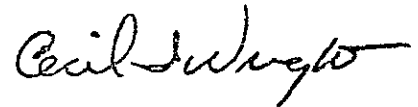
4. That Missouri Gas Company and Missouri Pipeline Company are hereby ordered to submit all future transportation contracts by and between the pipelines and both affiliated and nonaffiliated customers to the Commission Staff upon execution.

5. That prior to commencing service, UtiliCorp United Inc. will obtain all appropriate gas commodity and supply contracts pertaining to the Owensville service area and file those with the Staff of the Commission. The Staff will make those contracts available to the Office of the Public Counsel upon request.

6. That the Commission makes no finding as to the prudence or ratemaking treatment to be given any costs or expenses incurred as the result of the granting of this certificate, and reserves the right to make any disposition of the remainder of those costs and expenses it deems reasonable, including charging those costs and expenses to the stockholders of UtiliCorp United Inc., d/b/a Missouri Public Service, in any future ratemaking proceeding.

7. That this Report And Order shall become effective on May 28, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., Crumpton and Drainer, CC., concur and certify compliance with the provisions of Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 15th day of May, 1997.

