

B -
Ro
TS
FB

Case No. GC-97-497

Procedural History

¹Missouri Gas Energy is a division of Southern Union Company, is a public utility regulated by this Commission, and is engaged in providing natural gas service to the general public in Missouri.

specified in the OPC complaint. An on-the-record presentation of that agreement was held by the Commission on August 14, 1997.

Stipulation and Agreement

In pertinent part, the instant Stipulation and Agreement provides for the following:

MGE agreed to:

1. Issue a credit on bills to residential, small general service, and large general service customers of \$15.00 each, making a rough total of \$1.5 million, and, in addition, donate a cash contribution of \$450,000 to a charitable organization to be agreed upon by the parties;
2. Continue to review and correct over billings by use of bill credits;
3. Not seek recovery for under billings occurring from November 1996 through February 1997 which MGE "has not sought to collect by re-billing";
4. Not seek recovery in rates of the expenses it has incurred to correct past billing errors;
and,
5. Being permitted to seek recovery in rates the cost it has incurred to prevent future recurrence of such errors.

In addition to the above-specified provisions, a general provision appears in the proposed Stipulation and Agreement, on Page 3, as follows:

"F. Neither the Office of Public Counsel, the Commission Staff nor the Commission shall initiate, entertain, support, or otherwise assist in complaints or petitions seeking penalties against or damages from MGE, either before the Public Service Commission, the Courts or any body,

regarding billing or meter reading issues arising, or that may arise, out of facts, events and circumstances occurring prior to August 1, 1997, except as required by the Sunshine Law (Chapter 610²)."

Findings of Fact

The Commission takes issue with the following sections contained in the instant Stipulation and Agreement:

1. The attempt to preclude the Commission's involvement in any complaints extending from MGE's purchase of Western Resources from 1993 to August 1, 1997;
and,
2. The donation of \$450,000 to an unspecified charitable organization without noting MGE's current level of charitable giving and without providing the Commission with a detailed implementation plan for distributing the funds.

The Commission cannot agree to relinquish its statutory duties as proposed by the parties. The Commission is essentially a creation of the Legislature and, as such, is empowered by statute to carry out certain functions. Among the various statutory responsibilities incumbent on the Commission to perform are the setting of rates (Section 393.150, RSMo), the provision of safe and adequate service (Section 393.130, RSMo), the proper litigation of complaints (Section 386.400 RSMo), and other general powers (Section 393.150). The Commission cannot proceed in a manner contrary to

²All statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

the terms of a statute and may not follow a practice which results in nullifying the express will of the Legislature³.

It is plain from the language of the agreement and from the evidentiary hearing that the parties desire the Commission to waive all responsibility prior to the August 1, 1997 date for the proper hearing of complaints as well as the investigation of other service-related and rate-related matters. This the Commission cannot do. It is the expectation of the Legislature that the Commission will carry out its statutory responsibilities. For the Commission to abrogate those responsibilities would not be in the public interest.

The amended Stipulation and Agreement must include the details of the implementation plan including the specific organizations which will administer the funding. The Commission requested this information at the on-the-record proceeding and recognizes that the parties are working towards completion of the implementation plan. The Commission needs the specific information about the administration of funds to determine whether the Stipulation and Agreement is just and reasonable and in the public interest.

For the reasons stated, the proposed Stipulation and Agreement is rejected. However, the Commission encourages the parties to amend the agreement to address the Commission's concerns and submit the amended Stipulation and Agreement for consideration.

³State ex rel. Philipp Transit Lines, Inc. v. Public Service Commission, 523 S.W.2d 353 (Mo. App. 1975); State ex rel. Springfield Warehouse and Transfer Co. v. Public Service Commission, 225 S.W.2d 792 (Mo. App. 1950).

Conclusions of Law

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

Missouri Gas Energy is a regulated public utility over which the Commission has jurisdiction in accordance with Chapters 386 and 393, RSMo 1994.

The standard for Commission approval of a stipulation and agreement is whether the agreement is just, reasonable, and in the public interest.

For the reasons set out in this Report and Order, the Commission finds the agreement to be unlawful and not in the public interest and therefore rejects the agreement.

IT IS THEREFORE ORDERED:

1. That the proposed Stipulation and Agreement, filed by the parties on July 24, 1997, is hereby rejected for the reasons set out above.
2. That this Report And Order shall become effective on September 9, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur.

ALJ: Derque

FILED

PUBLIC SERVICE COMMISSION

V.

Case No. GC-97-497

UNANIMOUS STIPULATION AND AGREEMENT

Procedural History

2. A Protective Order was issued on May 15, 1997. On June 25, 1997, the Commission issued an Order directing the Staff to file a report of the results of its investigation by July 25, 1997.

Agreed Upon Terms and Conditions

ATTACHMENT A

Commission's order approving this Stipulation and Agreement becomes final and non-appealable--

A. MGE shall:

i. issue a bill credit in the amount of \$15.00 to each customer (residential, small general service and large general service) who experienced an overbilling during November 1996 through February 1997 due either to PGA/COG billing errors during this time period or the erroneous implementation of the residential energy charge increase that was authorized to become effective February 1, 1997. For customers affected by such an overbilling during this time period who are no longer on MGE's system, MGE shall send the former customer a check for \$15.00. MGE will send a notice along with the \$15.00 bill credit stating, "The \$15.00 bill credit included on your bill this month resulted from the Missouri Public Service Commission's approval of the settlement of a complaint brought by the Missouri Office of the Public Counsel." MGE shall not seek to recover in rates the amounts represented by these bill credits in any proceeding. 104,981 customers will receive \$15.00 bill credits or checks. MGE will provide to Public Counsel and the Staff a list of such customers.

ii. make a cash contribution of \$450,000 to a charitable organization or social service agency, mutually agreeable, for the specific purpose of assisting customers in MGE's service territory who have difficulty paying their gas bills.

B. MGE shall continue to review billings and will correct by bill credit overbillings, if any, that have not already been corrected. Specifically, MGE will examine PGA/COG charges from July 1, 1996, to the present, and application of the customer charge from October 1, 1995, through March 20, 1997.

C. MGE shall not seek to recover through the operation of the PGA/EGCIM (Experimental Gas Cost Incentive Mechanism) clause or in any other way underbillings of the PGA/COG charge occurring from November 1996 through February 1997 which MGE has not sought to collect by re-billing.

D. MGE shall not seek to recover in rates the expenses it has incurred to correct past billing errors through the provision of refunds, bill credits and information to customers including, but not limited to, interest paid on overbillings, non-payroll BASIC Team costs (including the cost of special mailings) and Coopers & Lybrand audit fees, to the extent the foregoing costs and fees relate solely to such correction of past billing errors.

E. MGE shall be permitted to seek recovery in rates of the costs it has incurred to prevent future recurrence of such errors including, but not limited to, the addition of meter reading resources and customer service representatives, the upgrade of the call center network and the retention of Theodore Barry & Associates. The foregoing shall not operate as a limitation upon any party's ability to contest recovery of said expenses.

F. Neither the Office of the Public Counsel, the Commission Staff nor the Commission shall initiate, entertain, support or otherwise assist in complaints or petitions seeking penalties against or damages from MGE, either before the Public Service Commission, the Courts or any other body, regarding billing or meter reading issues arising, or that may arise, out of facts, events and circumstances occurring prior to August 1, 1997, except as required by the Sunshine Law (Chapter 610 RSMo). The signatories agree to notify MGE promptly should such requests be made under the Sunshine Law. This provision is intended as an absolute period of repose for the time period covered and requires dismissal with prejudice of Case No. GC-97-497 after the Stipulation and Agreement is approved by the Commission, but does not preclude action to enforce other terms of this agreement.

G. The Office of the Public Counsel shall make the following statement in a press release: "Public Counsel believes MGE is taking significant steps to ensure that such overbillings do not occur in the future."

General Provisions

4. The parties further agree that none of them shall have been deemed to have approved or acquiesced in any ratemaking or procedural principle, any method of cost determination or cost allocation, or any service or payment standard, as a result of entering into

this document, and none of the parties shall be prejudiced or bound in any manner by the terms of this Stipulation and Agreement in this or any other proceeding, except as otherwise expressly specified herein.

5. The parties further agree that this Stipulation and Agreement has resulted from extensive negotiations among the parties. The terms of this Stipulation and Agreement are interdependent. In the event the Commission does not approve and adopt the entirety of this Stipulation and Agreement, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof.

6. To the extent the Commission approves and adopts this Stipulation and Agreement, the parties waive their respective rights pursuant to Section 536.080.1 RSMo 1994 to present testimony, to cross-examine witnesses, and to present oral argument and written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo 1994; and their respective rights to judicial review pursuant to Section 386.510 RSMo 1994.

7. The parties agree that the Staff may submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties. All memoranda submitted by the parties shall be considered privileged in the same manner as are settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in this or any future proceeding, whether or not the Commission approves this Stipulation and Agreement.

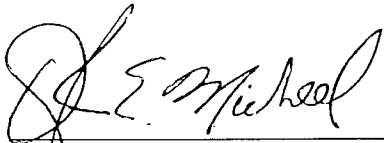
8. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, promptly provide other parties with advance notice of when the Staff shall respond

to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to the Protective Order issued in this case.

9. To assist the Commission in its review of this Stipulation and Agreement, the parties also request that the Commission advise them of any additional information that the Commission may desire from the parties relating to the matters addressed in the Stipulation and Agreement, including any procedures for furnishing such information to the Commission.

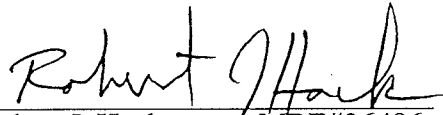
WHEREFORE, the undersigned parties respectfully request that the Commission issue its Order approving all of the terms and conditions of this Unanimous Stipulation and Agreement.

Respectfully submitted,



Douglas E. Micheel MBE#38371
P.O. Box 7800
Jefferson City, MO 65102
(573)751-5560
FAX: (573)751-5562

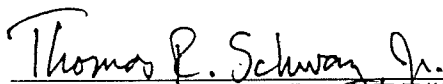
Attorney for the Office of the
Public Counsel



Robert J. Hack MBE#36496
3420 Broadway
Kansas City, MO 64111
(816) 360-5755
FAX: (816) 360-5554

Gary W. Duffy MBE#24905
312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102-0456
(573)635-7166
FAX: (573)635-3847

Attorneys for Missouri Gas Energy



Thomas R. Schwarz, Jr. MBE#29645
P. O. Box 360
Jefferson City, MO 65102
(573)751-5239
FAX: (573)751-9285

Attorney for the Staff of the
Missouri Public Service Commission

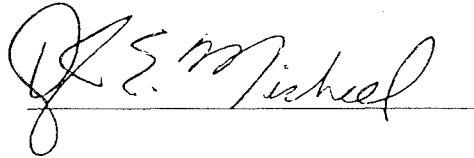
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was either mailed or hand delivered to all counsel of record this 24th day of July 1997.

Rober J. Hack
Missouri Gas Energy
3420 Broadway
Kansas City, MO 64111-2404

Thomas R. Schwarz, Jr.
Deputy General Counsel
P.O. Box 360
Jefferson City, MO 65102-0360

Gary W. Duffy
Brydon, Swearngen & England
P.O. Box 456
Jefferson City, MO 65102

A handwritten signature in cursive script, appearing to read "J.E. Michael", is written over a horizontal line.