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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 30th
day of December, 1997.

In the Matter of Missouri Gas Energy's) Case No. GO-96-243
Cost Incentive Mechanism.)

ORDER SETTING PREHEARING CONFERENCE

On January 31, 1996, the Commission issued its Report and Order in Case No. GO-94-318, Phase II, and approved an experimental gas cost incentive mechanism (EGCIM) under a three-year experimental program for Missouri Gas Energy, a division of Southern Union Company (MGE). In that order the Commission directed MGE to file tariff sheets to implement the program and established Case No. GO-96-243 for the receipt of MGE's gas supply reliability data and monitoring reports. The order directed MGE to file, in GO-96-243, the first monitoring report no later than August 1, 1997 for the then immediately preceding twelve-month ACA period. The order provided that the Staff of the Commission (Staff) shall and other parties may file a response to MGE's monitoring report no later than September 1, 1997, indicating whether the filing party is in agreement with MGE. The order further provided that areas of disagreement shall be identified and party positions provided for Commission determination.

On August 1, 1997, MGE filed its Experimental Gas Cost Incentive Mechanism Monitoring Report. An extension to September 12, 1997 was granted for the filing of Staff's 1997 response. Staff's response stated that the incentive mechanism is flawed and recommended an early

prehearing conference for the purpose of setting an expedited procedural schedule for a hearing to remove the incentive plan from MGE's tariff.

On September 19 MGE filed its response to Staff's recommendation. MGE requests that the Commission deny Staff's request for the scheduling of an early prehearing conference because the plan should not be terminated prior to its scheduled conclusion in 1999. From a procedural standpoint, MGE believes that the legal and proper method to challenge the approved tariff is through the filing of a complaint.

On October 1 Staff filed a reply to MGE's response. Staff states that under the plain terms of the Commission's Report and Order in Case No. GO-94-318, the Commission is not precluded from considering MGE's tariff in this docket. Staff renews its recommendation for an early prehearing conference to set an expedited procedural schedule in this docket to consider removing the incentive plan from MGE's tariff.

On October 1 Public Counsel filed a reply to MGE's response. Public Counsel did not file a response to MGE's monitoring report but supports the recommendation filed by Staff on September 12. Public Counsel believes the experimental program resulted in unintended behavior and unwarranted "savings" to MGE to the detriment of ratepayers. Public Counsel states that the Commission obviously contemplated that this experimental program could be terminated because it required Staff to file reports regarding the operation of the program. Public Counsel requests that the Commission order an early prehearing conference to get an expedited procedural schedule in this case to consider removing the incentive plan from MGE's tariff.

On October 6 MGE filed a response to the replies of Staff and Public Counsel. MGE states that if the Staff wants to challenge the approved tariff, it should consider the complaint process under

Section 386.390, RSMo 1994¹, and Section 386.330, RSMo Supp. 1996, which is a separate issue from the Commission acting upon its own motion. According to MGE, if the Commission unilaterally takes action against the tariff it recently approved, a question of impartiality would arise.

On November 13 the Commission issued an Order Scheduling Briefs and Setting On-the-Record Presentation of Monitoring Report. The Commission found that Staff's responses to MGE's monitoring report identified areas of disagreement and provided the parties' positions for Commission determination. The Commission therefore ordered an on-the-record presentation to convene on December 2, 1997, relating to the monitoring report.

The November 13 order identified a preliminary issue as whether the Commission's jurisdiction in this proceeding is limited to a determination of MGE's compliance with the terms of the incentive mechanism program established by the Report and Order in Case No. GO-97-318, or whether it is appropriate for the Commission to consider early termination of the incentive plan and return MGE to full prudence review through the PGA/ACA process as Staff and Public Counsel request. The Commission further requested the parties to provide their interpretation of sheet No. 24.2, Section IX, of Missouri Gas Energy's tariff which states, "This Section IX (Sheet Nos. 24.2 - 24.5) shall remain in effect until the Commission orders an end to this experimental procedure at some point after June 30, 1999 or the Commission removes the experimental aspect, or changes to the sheets become effective pursuant to law." Pursuant to the Commission's order, the parties filed preliminary briefs on November 25,

¹All statutory references are to the Revised Statutes of Missouri, 1996, unless otherwise indicated.

the on-the-record presentation was held on December 2, and the parties filed post-hearing briefs on December 12.

Staff argued in the briefs filed on November 25 and December 12 that this case is an appropriate vehicle for consideration of change to MGE's EGCIM and that such consideration is consistent with the cited provisions of MGE's tariff. Staff relies on Section 393.140(5), which provides that the Commission shall determine and prescribe just and reasonable rates if, after hearing had upon its own motion or on complaint, it finds that the rates or charges or acts or regulations of utilities are unjust and unreasonable. Staff notes that the Commission opened this case on its own motion and the Commission directed MGE to file a reliability report and a monitoring report annually and permitted other filings pertaining to the EGCIM. Therefore, Staff asserts that the Commission signified its own continuing interest, independent of the interest of any party, in a continuing analysis of whether or not the incentive plan produced just and reasonable rates. Staff argues that the tariff language at issue merely reflects the expectation that the EGCIM will be in effect for three years; however, the import of the tariff language is that the Commission has continuing power under law to ensure just and reasonable rates. Therefore, according to Staff, the Commission has on its own motion, by establishing this case, provided itself for a vehicle to monitor, modify or eliminate any aspect of the EGCIM. Staff adds that the Commission can change the policy announced in Case No. GO-94-318 because administrative agencies are not bound by prior decisions of the agency. Staff renews its suggestion that the Commission set an early prehearing conference in this matter to set an expedited procedural schedule to consider the terms of MGE's EGCIM.

Public Counsel argued in its briefs that the Commission clearly has statutory authority to act on its own motion to consider early termination of the incentive mechanism pursuant to Section 393.140(1) and (5). Public Counsel points out that the Report and Order in Case No. GO-94-138, Phase II, required its Staff to file a response to MGE's monitoring report and clearly stated that areas of disagreement shall be identified and party positions provided for Commission determination. The same Report and Order on page 5 provides that the last date for recommendations on whether the EGCIM should be retained, modified or eliminated is January 4, 1999. Public Counsel notes that the Report and Order does not state an initial date upon which such recommendations shall be filed.

Public Counsel further asserts that the Commission is not prohibited from additional inquiry into MGE's gas cost incentive mechanism because the determination of just and reasonable rates is essentially a legislative function. Public Counsel states that changing and unforeseen circumstances exist in this proceeding such as the construction and operation of the Pony Express pipeline project in Kansas City, as delineated in Staff's September 12 recommendation, which require this Commission to terminate the EGCIM.

In the opinion of Public Counsel, the tariff language at issue provides three alternatives to the Commission: (1) the Commission could allow these tariffs to remain in effect until June 30, 1999; (2) the Commission could remove the experimental aspect of these tariffs and either make the incentive mechanism non-experimental or do away with the incentive mechanism altogether; or (3) the Commission could determine that these tariffs are unjust and unreasonable resulting in a change to these tariffs pursuant to law. Public Counsel requests that the Commission, on its own

motion, set a procedural schedule to consider early termination of the incentive mechanism.

MGE argues in its briefs that the Commission should not use an on-the-record-presentation as a surrogate for an evidentiary hearing as the basis for ordering changes to the incentive mechanism tariffs. At the on-the-record presentation, the Commission stated that it did not intend to use that presentation as a surrogate for an evidentiary hearing. MGE argues that the final ruling in Case No. GO-94-318 clearly established the incentive mechanism as a three year experiment and constitutes a final ruling which is not subject to collateral attack. In addition, MGE argues that the Commission does not have subject matter jurisdiction to alter any holdings in Case No. GO-94-318 because that case is currently on appeal in the Missouri Court of Appeals, Western District.

MGE claims that Case No. GO-96-243 is limited in scope to monitoring and reliability reports and clearly contemplates that recommendations regarding termination or modification of the incentive mechanism would not be made until after August 1, 1998. With regard to the monitoring report, MGE states it has fully complied with applicable orders of the Commission. MGE believes that the complaint procedure is the proper avenue if any party other than MGE believes that the incentive tariff is unreasonable.

With respect to the tariff language at issue, MGE believes that the language simply reflects what the law is regarding tariff sheets, that tariff sheets can be changed by two methods: (1) the "file and suspend" method where a utility proposes a change through a tariff filing; or (2) the complaint process whereby a complaint is filed pursuant to the statutory conditions. MGE argues there are not changed circumstances which compel a change to the structure of the incentive mechanism and there is

no basis for any type of an emergency proceeding. MGE points out that because the Pony Express Pipeline was not even connected to MGE's system until September of 1997, it played no part whatsoever in the gas cost savings reflected in the monitoring report which were achieved from July 1, 1996 through June 30, 1997.

MGE states that in the first year of the experiment, MGE achieved 94.6 percent of the benchmark and therefore can generate only an additional .6 percent for its shareholders before 100 percent of all the benefits flow to the ratepayers because of the maximum or "cap" established for the plan. MGE argues that any expedited proceeding will have to provide reasonable time for preparing and filing prepared testimony, for completing discovery, and for an evidentiary hearing to allow due process.

The Commission has reviewed MGE's monitoring report, the parties' recommendations and responses regarding the monitoring report, and the briefs filed by the parties. The Commission determines that pursuant to Section 393.140(1) and (5), the Commission has authority in this case to consider appropriate changes to MGE's EGCIM on the Commission's own motion in order to prescribe just and reasonable rates and that such consideration is consistent with the provisions of MGE's tariff. The Commission determines that it is appropriate to schedule a prehearing conference, so the parties can identify the issues in dispute and develop a proposal for an expedited procedural schedule. The parties should be prepared to discuss the facts and stipulate to those facts which are not in dispute. The parties shall then file a recommended procedural schedule for expedited consideration of this case or a stipulation and agreement no later than January 21, 1998. The Commission agrees with MGE that an

expedited procedural schedule will have to provide reasonable time for preparing and filing prepared testimony, for completing discovery, and for an evidentiary hearing to allow due process.

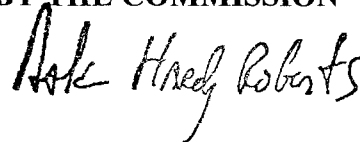
IT IS THEREFORE ORDERED:

1. That a prehearing conference is now set in this matter for January 14, 1997, at 10:00 a.m. in the Commission's hearing room on the fifth floor of the Harry S. Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Any persons with special needs as addressed by the Americans With Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days prior to the hearing at one of the following numbers: Consumer Services Hotline -- 1-800-392-4211, or TDD Hotline -- 1-800-829-7541.

2. That the parties shall file a proposed procedural schedule for expedited consideration of this case no later than January 21, 1998.

3. That this order shall become effective on January 9, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

G. George, Regulatory Law Judge