

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Union Electric Company)	
d/b/a Ameren Missouri's Purchased Gas)	Case No. GR-2010-0180
Adjustment (PGA) Factors.)	

In the Matter of Union Electric Company)	
d/b/a AmerenUE's Purchased Gas)	Case No. GR-2009-0337
Adjustment (PGA) Factors.)	

In the Matter of Union Electric Company)	
d/b/a AmerenUE's Purchased Gas)	Case No. GR-2008-0366
Adjustment (PGA) Factors.)	

In the Matter of Union Electric Company)	
d/b/a AmerenUE Pursuant to its)	Case No. GR-2008-0107
Purchased Gas Adjustment Clause.)	

STATUS UPDATE

COMES NOW Union Electric Company, d/b/a Ameren Missouri (Ameren Missouri or Company) and provides the following Status Update:

1. The Missouri Public Service Commission has held open several of the Company's ACA cases pending resolution of the lawsuit Ameren Missouri filed against MOGas Pipeline, LLC (MOGas) for a refund of overcharge payments. Ameren Missouri is filing this update in each of those cases.

2. On September 25, 2012, Judge Nancy Schneider entered an order granting summary judgment in favor of Ameren Missouri and against MOGas in Ameren Missouri's overcharge lawsuit pending in the Circuit Court of Cole County, Missouri. Judge Schneider ordered recovery by Ameren Missouri of \$7,449,885.68 in overcharges, prejudgment interest beginning on the date of payment of each overcharge and through the date of judgment, and post-judgment interest. A copy of the order is attached to this update.

3. The judgment becomes final on October 26, 2012 (absent any post-entry filings by MOGas), and any notice of appeal would need to be filed by November 5, 2012.

WHEREFORE, Ameren Missouri respectfully asks the Commission to accept this Status Update.

Respectfully submitted,

UNION ELECTRIC COMPANY,
d/b/a Ameren Missouri

/s/ Wendy K. Tatro

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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the foregoing have been e-mailed or mailed, via first-class United States Mail, postage pre-paid, to the service list of record this 26th day of September, 2012.

**Missouri Public Service
Commission**

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*/s/ Wendy K. Tatro*_____

Wendy K. Tatro

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

UNION ELECTRIC COMPANY,)
d/b/a Ameren Missouri,)
)
Plaintiff,)
)
v.)
)
MOGAS PIPELINE, LLC,)
)
Defendant.)

Case No. 09AC-CC00398

FILED

SEP 25 2012

JUDY ZERR
CIRCUIT CLERK
ST. CHARLES CO.

JUDGMENT AND ORDER

A party is entitled to summary judgment if it is entitled to judgment as a matter of law based upon uncontroverted material facts. Mo. R. Civ. P. 74.04. Based upon the law and the following uncontroverted material facts and conclusions of law, I find that plaintiff Union Electric Company, d/b/a Ameren Missouri ("Ameren Missouri"), is entitled to judgment as a matter of law on its claim against MoGas Pipeline, LLC ("MoGas") for \$7,449,885.68, and interest on that amount.

Findings of Fact

1. From January 1, 2002, until June 1, 2008, Missouri Pipeline Company LLC ("MPC") and Missouri Gas Company, LLC ("MGC") were under common ownership and owned and operated interconnected intrastate natural gas transmission pipelines in east central Missouri under the authority of the Missouri Public Service Commission (the "Commission").

2. MGC changed its name to MoGas Pipeline, LLC ("MoGas"), on or about May 4, 2007. Pursuant to two Assignment and Assumption Agreements dated June 1, 2008, MPC acquired the assets of Missouri Interstate Gas, LLC ("MIG"), and MoGas, in turn, acquired the assets of MPC.

3. The Assignment and Assumption Agreements, which are identical, contain the following provisions:

1. Assignor does hereby assign to Assignee and Assignee does hereby unconditionally accept, all of Assignor's rights, interests, duties and obligations of any kind arising under any and all Assets of the Assignor, including, but not limited to, those Assets, including real estate and the contract rights set forth on Exhibit A (the "Assets") and any and all obligations of any kind under any and all Liabilities, including debt, but not limited to, those Liabilities (the "Liabilities") set forth on Exhibit B.

2. In addition to the assignment described above, and for good and valuable consideration, the receipt of which is hereby acknowledged, Assignee hereby assumes and agrees to perform, pay and discharge as its obligation, any and all of the terms, covenants, conditions, duties, obligations and Liabilities of the Assignor, including, but not limited to, the Liabilities set forth on Exhibit B from and after the date hereof.

4. While they were regulated by the Commission, MPC and MGC were required to maintain tariffs regarding all rates and charges.

5. Section 3.2(b)(1) of the Commission-approved tariffs for MPC and MGC provided that "the lowest transportation rate charged to an affiliate shall be the maximum rate that can be charged to non-affiliates."

6. On June 21, 2006, Commission staff filed a complaint alleging certain tariff violations by MPC and MGC, which complaint was docketed as

Case No. GC-2006-0491. The complaint alleged that MPC and MGC had violated Section 3.2.(b)(1) of their tariffs by “charg[ing] non-affiliate customers higher rates than the rates charged to an affiliated shipper, without express Commission approval, thereby overcharging non-affiliated shippers for transportation service.”

7. The Commission issued its Revised Report and Order (the “Order”) in Case No. GC-2006-0491 on October 11, 2007. In the Order, the Commission found that MPC and MGC had been providing its affiliate Omega Pipeline Company a discount “for transporting natural gas to Omega’s gas marketing customers.”

8. The Commission found that the rates provided to the affiliate shipper and, accordingly, the maximum rates that could be charged to non-affiliates under their tariffs were as follows:

Transportation Type/Delivery Points	Firm	Firm	Interruptible
	Reservation per MDQ	Commodity Per Dt.	Commodity Per Dt.
MPC Delivery	\$0.00 beginning May 1, 2005	\$.1699	\$.1699 beginning September 1, 2003
MGC Delivery Except the Fort	\$0.00 beginning May 1, 2005	\$.20 beginning July 1, 2003	\$.20 beginning September 1, 2003
MGC Delivery to the Fort	\$18.10	\$.30 beginning February 1, 2005	\$1.15

9. In the Order, the Commission concluded that MPC and MGC had charged their non-affiliate customers rates in excess of the maximum allowed charges.

10. After the issuance of the Order, MPC and MGC never sought a change in the maximum rates set forth in the Order, nor did the Commission ever grant such a change.

11. During the entire period from July 1, 2003, to May 31, 2008, Ameren Missouri (formerly, AmerenUE) was a non-affiliate customer who shipped natural gas on the pipeline systems operated by MPC and MGC pursuant to certain contracts.

12. The contracts between Ameren Missouri and MPC and MGC incorporated the tariff rate schedules on file with the Commission.

13. The affiliate receiving preferential rate treatment from MGC and MPC was sold to an unrelated company as of June 1, 2006.

14. The Federal Energy Regulatory Commission (FERC) granted MPC and MGC's application for authority to operate as an interstate pipeline on April 20, 2007; however, MoGas and its predecessors continued to be regulated by and subject to the jurisdiction of the Commission until June 1, 2008, when FERC assumed exclusive jurisdiction over MoGas and its pipeline.

15. Between July 1, 2003, and May 31, 2008, when the Commission's jurisdiction over MGC and MPC ended, MGC and MPC charged Ameren Missouri natural gas transmission charges in excess of the maximum allowed

tariff rates as set out in the Order in the amount of \$7,449,885.68, and Ameren Missouri paid the aforementioned \$7,449,885.68 to MGC and MPC.

16. After paying each invoice to MGC and MPC, Ameren Missouri passed the charges on to its customers through operation of a Purchased Gas Adjustment rider provision contained in its tariff.

17. Ameren Missouri's tariff, Sheet No. 29, #8, requires that "[a]ny refunds which the Company receives in connection with natural gas services purchased, together with any interest included in such refunds, will be refunded to the Company's applicable customers unless otherwise ordered by the Commission. Such refunds shall be credited to the ACA account in the month received and shall be part of the overall ACA interest calculation."

18. MPC and MGC's tariffs applicable to the service provided to Ameren Missouri include the following provision:

In the event that an error is discovered in the amount billed or paid hereunder, such error shall be adjusted within 30 days of the determination thereof, provided that claim therefore shall have been made within 60 days from the date of discovery of such error, but in any event within 12 months from the date of the applicable statement.

19. On October 19, 2007, MPC and MGC filed an Application for Rehearing and Motion for Stay concerning the Revised Report and Order, which was denied by the Commission on October 23, 2007.

20. MPC and MGC applied for a writ of review of the Revised Report and Order in the Circuit Court of Cole County, Missouri, pursuant to Section

386.510, RSMo., and appealed the Circuit Court's affirmation of the Revised Report and Order to the Court of Appeals for the Western District of Missouri. The Western District held that the Order was "lawful and reasonable in all respects." MPC and MGC applied for transfer to the Supreme Court of Missouri; the application was denied on April 20, 2010.

21. Ameren Missouri filed this action on July 21, 2009.

22. MoGas has asserted a counterclaim against Ameren Missouri in this action, seeking late payment interest charges it assessed against Ameren Missouri when Ameren Missouri temporarily withheld payments of shipping charges in excess of those maximum allowed charges set forth in the Order during the period from October 1, 2007, to June 1, 2008.

Conclusions of Law

Based on the foregoing findings of fact, the Court makes the following conclusions of law:

1. The Commission has exclusive jurisdiction to determine which rates apply to a customer of a regulated utility; however, any refund of overcharged rates must be ordered by a court of competent jurisdiction. ***State ex rel. Kansas City Power & Light Co. v. Buzard***, 168 S.W.2d 1044 (Mo. banc 1993).

2. An overcharge cause of action filed with the circuit court has two elements: first, plaintiff must demonstrate the lawfully established rate applicable to the service, and second, plaintiff must prove that more than the lawful rate has been collected—in other words, it must prove the amount by which it has been

damaged. ***DeMaranville v. Fee Fee Trunk Sewer***, 573 S.W.2d 674 (Mo. App. St.L. 1978). In this case, the facts material to these two elements are not genuinely in dispute. ***ITT Comm'l Fin. Corp. v. Mid-Am. Marine Supp. Corp.***, 854 S.W.2d 371 (Mo. *banc* 1993).

3. A controversy is ripe “when the parties’ dispute is developed sufficiently to allow the court to make an accurate determination of the facts, to resolve a presently existing conflict, and to grant specific relief of a conclusive nature.” ***Foster v. State***, 352 S.W.3d 357 (Mo. *banc* 2011). This case is now ripe for judicial determination.

4. Section 386.510, RSMo. provides the exclusive procedure for judicial review of all Commission orders. ***State ex rel. Public Counsel v. Public Service Comm’n***, 210 S.W.3d 344 (Mo. App. W.D. 2006). Section 386.510 further provides: “No court in this state, except the circuit courts to the extent herein specified and the supreme court or the court of appeals on appeal, shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the executing or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties.”

5. Section 386.550, RSMo. provides: “In all collateral actions or proceedings the orders and decisions of the commission which have become final shall be conclusive.” If statutory review of a Commission order is unsuccessful, “the order is final and cannot be attacked in a collateral

proceeding.” ***State ex rel. Mid-Missouri Telephone Co. v. Pub. Serv. Comm’n***, 867 S.W.2d 561 (Mo. App. W.D. 1993).

6. Once fixed by the Commission, rate schedules have the same force and effect as if set by the legislature. ***State ex rel. Utility Consumers Council, Inc. v. Pub. Serv. Comm’n***, 585 S.W.2d 41 (Mo. banc 1979).

7. MPC and MGC exhausted their avenues of judicial review of the Order under Chapter 386, and the Order is now final. See ***State ex rel. Missouri Pipeline Co., L.L.C., et al. v. Pub. Serv. Comm’n***, 307 S.W.3d 162 (Mo. App. W.D. 2009). Further, it is binding and conclusive in this proceeding, and its lawfulness and reasonableness cannot be further disputed in this action. Section 386.550, RSMo.; ***A.C. Jacobs and Co., Inc. v. Union Elec. Co.***, 17 S.W.3d 579 (Mo. App. W.D. 2000).

8. Because Section 386.550, RSMo., renders the Order conclusive in this collateral action, Ameren Missouri need not plead and prove the elements of common law collateral estoppel in order to establish MoGas’ liability to Ameren Missouri for the overcharges. ***Dudley v. Southern Union Co.***, 261 S.W.3d 598 (Mo. App. W.D. 2008); ***A.C. Jacobs and Co., Inc. v. Union Elec. Co.***, 17 S.W.3d 579 (Mo. App. W.D. 2000).

9. Where a transferee of corporate assets expressly assumes a transferor’s liability for debts and other obligations in a written agreement, the transferee becomes liable for those debts and obligations. ***Ernst v. Ford Motor Co.***, 813 S.W.2d 910 (Mo. App. W.D. 1991).

10. MoGas is liable for the debts and obligations of MPC under the terms of the Assignment and Assumption Agreement between MoGas and MPC. MoGas is liable for the debts of MGC because it is the same company, merely operating under a different name.

11. As the company who directly purchased and paid for natural gas shipping services from MGC and MPC, Ameren Missouri has standing to bring this overcharge action. ***Southern Pac. Co. v. Darnell-Taenzer Lumber Co.***, 245 U.S. 531 (1918); ***Adams v. Mills***, 286 U.S. 397 (1932).

12. MPC and MGC's tariff limitation on adjustments for billing errors does not apply to this overcharge action, which does not involve a billing error.

13. The statute of limitations period applicable to Ameren Missouri's claim is five years. Section 516.120, RSMo. Ameren Missouri's claim accrued and the limitations period began to run on October 21, 2007, the date the Order became effective. ***De Paul Hosp. School of Nursing, Inc. v. Southwestern Bell Tel. Co.***, 539 S.W.2d 542 (Mo. App. E.D. 1976). Ameren Missouri's claim is not barred by the statute of limitations.

14. Section 393.140(11), RSMo., provides that "[u]nless the commission otherwise orders, no change shall be made in any rate or charge . . . which shall have been filed and published by a gas corporation . . . in compliance with an order or decision of the commission, except after thirty days' notice to the commission and publication for thirty days as required by order of the

commission, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect.”

15. Because MPC and MGC never sought and the Commission never authorized a change in the rates set forth in the Order, those rates continued to apply to MPC and MGC’s transportation services to non-affiliate customers until the Commission’s jurisdiction over MPC and MGC ended on June 1, 2008.

16. Ameren Missouri is entitled to judgment against MoGas in the amount of \$7,449,885.68 for the shipping charges it paid MGC and MPC between July 1, 2003 and May 31, 2008, in excess of those maximum rates set forth in the Order.

17. Ameren Missouri is entitled to pre-judgment interest beginning on the date of payment of each overcharge and through the date of judgment at the lawful rate of nine percent per annum as set forth in Section 408.020, RSMo. **Call v. Heard**, 925 S.W.2d 840 (Mo. 1996).

18. Ameren Missouri is entitled to post-judgment interest at the lawful rate of nine percent per annum as set forth in Section 408.040.1, RSMo.

19. MoGas is not entitled to recovery on its counterclaim against Ameren Missouri, which seeks late payment interest charges on overcharge amounts temporarily withheld by Ameren Missouri because MoGas was never entitled to recover the overcharges from Ameren Missouri in the first instance.

Judgment and Order

WHEREFORE, the Court orders that:

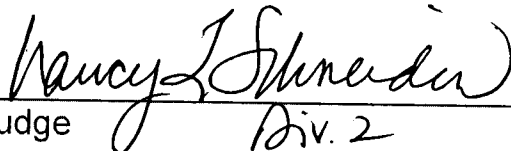
Plaintiff Union Electric Company, d/b/a Ameren Missouri, shall recover \$7,449,885.68 from MoGas Pipeline, LLC; and

Plaintiff Union Electric Company, d/b/a Ameren Missouri, is awarded prejudgment interest at the statutory rate from and against defendant MoGas Pipeline, LLC beginning on the date of payment of each overcharge and through the date of judgment;

Plaintiff Union Electric Company, d/b/a Ameren Missouri, is awarded post-judgment interest at the statutory rate from and against defendant MoGas Pipeline, LLC from and after the date of this Judgment and Order; and

Defendant MoGas Pipeline, LLC shall not recover on its counterclaim against plaintiff Union Electric Company, d/b/a Ameren Missouri.

So ordered on the 25th day of September 2012.


Judge Div. 2