

ARMSTRONG, TEASDALE, KRAMER, VAUGHAN & SCHLAFLY

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ROBERT F. SCHLAFLY
AUGUST L. GRIESDIECK
JOHN J. COLE, P.C.
BOURNE DEAN, P.C.
CHARLES E. D. FROM
WALTER M. CLARK, P.C.
JOHN S. ENDS, P.C.
EDWIN S. BALDWIN, P.C.
DONALD U. BEIMDEK, P.C.
THOMAS R. REMINGTON, P.C.
BRUCE E. WOODRUFF, P.C.
D. JEFF. LANGE, P.C.
FREDERICK H. MAYER, P.C.
JOHN R. BARSANTI, JR., P.C.
KENNETH F. TEASDALE, P.C.
FRED LEIGHT, JR., P.C.
FRANK W. GUNDLACH, P.C.
MARTIN J. TOFT, P.C.
ROBERT LEWIS JACKSON, P.C.
JUSTIN C. CORDONNIER, P.C.
FRANCIS X. DUDA
JOHN L. GILLIS, JR., P.C.
FREDERICK O. HANSEN, P.C.
JAMES J. VITTEL
JOSEPH S. VON KAENEL, P.C.
THOMAS CUMMINGS, P.C.

LARRY M. SEWELL, P.C.
RICHARD B. SCHERRER, P.C.
PETER L. CLARK, P.C.
JAY A. SUMMERVILLE
EDWIN L. NOEL, P.C.
THEODORE H. HELLMUTH, P.C.
BYRON E. FRANCIS, P.C.
JOSEPH W. MOONEY, P.C.
JEFFREY D. FISHER, P.C.
JOHN H. QUINN, P.C.
JOSEPH R. NIEMANN, P.C.
RICHARD A. GERTLI, P.C.
JONATHAN W. IGGE
TIMOTHY K. KELLETT, P.C.
THOMAS R. VANDIVER, P.C.
THOMAS B. WEAVER, P.C.
LAWRENCE G. CRAMAH
JOHN L. SULLIVAN
DANIEL R. WOFSEY, P.C.
WILBUR L. TONLINSON, P.C.
CHARLES A. REDD, P.C.
CATHERINE D. PERRY
CLARK H. COLE
DANIEL J. GODAR
STEVEN M. COUSINS
STEPHEN C. JONES

ATTORNEYS AND COUNSELORS

**611 OLIVE STREET SUITE 1900
ST. LOUIS, MISSOURI 63101-1782**

(314) 621-5070

**NIGHT TELECOPIER (314) 621-5065
TWX 910 701-2246 CABLE ATEV-LAW**

**888 SEVENTEENTH STREET, N.W.
SUITE 950
WASHINGTON, D.C. 20006
(202) 293-5070**

**CORNELIUS B. KENNEDY
OF COUNSEL**

ANN E. SUCKLEY
DOUGLAS A. RUSH
JORDAN B. CHERNICK
TIMOTHY J. TRYNIECKI
JOHN F. COWLING
DIANE E. FELIX
MORELLA V. HUGGINS
JOHN WARSZAWSKY
GLENN E. DAVIS
ERIC M. SCHMITZ
FRANCINE I. KATZ
MICHAEL A. CHIVELL
DAVID L. GOING
GEORGE H. VON STAMWITZ
SALLY J. MCKER

CAROLYN PORTO JOHNSON
A.J. CHIVETTA
LAURA GERINGER GROSS
MARY C. RICHMAN
CRAIG N. SCHMID
DONALD G. MUELLER, JR.
PHILIP S. LOUIS, JR.
FRANK C. BROWN
SUSAN BRADLEY BUSE
RANDALL L. SOUDEN
JOHN TALBOT SOUT, JR.
MARK D. SOPHIR
CARL E. MILLENHANN III
MICHAEL J. MARSHALL
DEIRDRE C. GALLAGHER

February 27, 1987

Mr. Harvey Hubbs
Secretary
Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Dear Mr. Hubbs:

RE: Effect of the Tax Reform Act on Associated
Natural Gas Company - Case No. AO-87-48

We enclose an original and 14 copies of Associated Natural
Gas Company's comments with respect to Staff's Interim Tariff Proposal.

In a separate transmittal, we have also filed the Company's work
papers relating to the impact of the Tax Reform Act as previously
directed by the Commission.

Sincerely,

Francis X. Duda
Francis X. Duda

Enclosures

cc: Ernest L. McKenzie
Ricki Gunter
August L. Griesedieck
n Byron E. Francis

FILED

MAR 2 1987

PUBLIC SERVICE COMMISSION

In the matter of the investigation)
of the revenue effects upon) Case No. AO-87-48
Missouri utilities of the Tax)
Reform Act of 1986)

Pursuant to the Order of the Commission dated January 30, 1987, other parties have been requested to file responses to Staff's interim tariff proposal contained in its Comments of January 9, 1987. In those Comments, Staff concluded that the only appropriate method to address the effects of the Tax Reform Act of 1986 was to file complaints against individual companies. The Staff stated that when extreme disadvantage of the complaint process is that all potentially justifiable rate decreases could not be implemented concurrent with the reduction in revenue requirement resulting from the Tax Reform Act, but that the inequity of that situation could be rectified by the Commission ordering all companies to file new superceding tariffs which would be designated interim and subject to refund.

FILED
MAR 2 1987
PUBLIC SERVICE COMMISSION

Two methods of initiating rate proceedings have been recognized in Missouri. The traditional "file and suspend" method of rate-making is authorized by Sections 393.140 and 393.150 RSMo 1978. State ex rel. Jackson County v. Public Service Commission, 532 S.W.2d 20 (Mo. en banc 1975), cert. denied 97 S.Ct. 73, 429 U.S. 822, 50 L.Ed. 2d 84. The other method is the complaint procedure authorized by Sections 386.390, 393.260 and 393.270 RSMo 1978. These sections authorize the Commission, on its own motion, or other persons or entities under certain circumstances, to entertain complaints with respect to the reasonableness of rates or charges.

Obviously, any of the companies under the jurisdiction of the Commission could, at any time, file new tariff schedules with the Commission reflecting new rates and charges and the Commission could then proceed under the "file and suspend" method. Assuming for the moment that such tariff schedules are not filed, the "complaint" method is the only procedure by which the Commission could implement any new rates and charges for a particular utility.

In the event that a Complaint is filed with respect to the rates and charges of a particular company, the Commission is mandated to consider all relevant factors bearing upon the rates to be charged by the utility. Section 393.270(4) RSMo 1978. State ex rel. Missouri Water Company v. Public Service Commission, 308 S.W. 2d 704 (Mo. 1957); State ex rel. Utility Consumers Council of Missouri v. Public Service Commission, 585 S.W.2d 41

(Mo. en banc 1979). Thus, in any rate proceeding, the Commission may not isolate the impact of the Tax Reform Act, but must give consideration to all other expenses of the Company with due regard to the rate of return which should be allowed to the Company.

While Associated agrees with the Staff that such "full-blown" rate cases will be time-consuming and will place a strain on the Staff's resources, these factors would not support an order requiring all companies to file interim rates subject to refund. Associated believes that such a requirement would not only be illegal, it would be ill-advised and, in fact, unnecessary until the Staff gets some reading from each individual company as to the impact of the TRA.

In the Utility Consumers Council case, the Supreme Court was faced with substantially the same issue which the Commission is now facing with respect to the TRA. In its analysis of the of the fuel adjustment clause involved in that case, the Supreme Court reviewed the rate-making procedures discussed above and stated that such a system of regulation is necessary "despite the expense and time required to investigate utility costs, hold hearings and fix rates." 585 S.W.2d at 48. The Supreme Court cited the long-held rule that the Public Service Commission's powers are limited to those conferred by its statutes, either expressly or by clear implication as necessary to carry out the powers specifically granted. 585 S.W.2d at 49, citing State ex rel. City of West Plains v. Public Service Commission, 310 S.W.2d 925 (Mo. en banc 1958). After reviewing the statutory authority, the Supreme Court reversed the order of the Commission allowing fuel adjustment clauses.

In the same proceeding, the Public Council argued that the case should be remanded to the Commission for a determination of the excessive charges recovered by the fuel adjustment clause and that such charges, after being determined, should be ordered to be refunded to the customers. In refusing to so remand the case, the Supreme Court held that this would, in effect, be retroactive rate-making and that the Commission has the authority only to determine the rate "to be charged" under Section 393.270. 585 S.W.2d at 58. The Court went on to state:

It may not, however, redetermine rates already established and paid without depriving the utility (or the consumer if the rates were originally too low) of his property without due process. 585 S.W.2d at 58.

The Commission should note that there is no specific statutory authority for the allowance of interim rates. However, the Courts of this state have inferred the power to impose interim rate increases from the inherent statutory authority given to the Commission under the "file and suspend" method. State ex rel. Laclede Gas Co. v. Public Service Commission, 535 S.W.2d 561 (Mo. App. 1976); State ex rel. Fischer v. Public Service Commission, 670 S.W.2d 24 (Mo. App. 1984). There are no cases dealing with the issue which the Staff has raised concerning the authority to require companies to file new interim rates superceding all other filed tariffs and schedules and designating such rates subject to refund. The UCCM case cited above indicates that such a requirement would be retroactive rate-making. Moreover, the Laclede Gas case indicates that the interim rate increase authority is only derived

from the "file and suspend" procedure. In so holding, the Court stated:

The Commission and the trial court treated this case on the assumption that Laclede was proceeding within the general scope of the file and suspend procedures provided by §§393.140 and 393.150. This treatment was favorable to Laclede, since otherwise its entire proceeding for interim rate increase in this case would have been a very doubtful effectiveness. 535 S.W.3d at 568 (emphasis supplied).

Furthermore, the rationale behind the authority to issue interim rates is that such interim rate requests are merely ancillary to a permanent rate request. State ex rel. Laclede Gas Co. v. Public Service Commission, 535 S.W.2d 561 at 565; State ex rel. Fischer v. Public Service Commission, 670 S.W.2d 24 at 26-27.

Assuming for the moment that the Laclede Gas and Fischer cases provide support for the procedure proposed by Staff, interim rate requests have only been allowed where an emergency need exists. State ex rel. Laclede Gas Co. v. Public Service Commission, 535 S.W.2d 561, 568; State ex rel. Utility Consumers Council v. Public Service Commission, 585 S.W.2d 41, 48. The test, as quoted in the Laclede Gas opinion, is whether the rate of return being earned is so unreasonably low as to show a deteriorating financial condition impairing the utility's ability to render adequate service or maintain its financial integrity. 535 S.W.2d at 568-569. This test was upheld by the Western District Court of Appeals in Laclede Gas despite Laclede's argument that such a requirement was too burdensome.

Turning to the Staff's proposal herein, there has been no showing of any emergency situation which has been brought about by the enactment of the TRA. On the contrary, it is Staff's position that such enactment has enhanced rather than impaired, the utility's ability to render adequate service and to maintain their financial integrity. The Commission should not, on the hunch that the TRA may be reducing the income tax expenditures of the utilities within its jurisdiction, neglect the requirements which it has established for the imposition of interim rates in the past. Such a break with its requirement would be unauthorized particularly where there has been no showing of any necessity for such a break with past practice. Moreover, and most importantly, the procedure proposed would effectively allow the Commission to engage in retro-active rate-making, an activity to which the Commission has been prohibited from engaging on numerous occasions.

For the foregoing reasons, Associated respectfully requests the Commission to deny the Staff's proposal to require all utilities to file interim rates subject to refund and that all further proceedings in this matter be held in abeyance until the Staff has conducted all informal meetings with the utilities under this Commission's jurisdiction.

Respectfully submitted,

ARMSTRONG, TEASDALE, KRAMER,
VAUGHAN & SCHLAFLY

By

Francis X. Duda
August L. Griesedieck, #11598
Francis X. Duda, #20110
Byron E. Francis, #23982
611 Olive Street, Suite 1900
St. Louis, Missouri 63101
(314) 621-5070
Attorneys for Associated
Natural Gas Company

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing was mailed to all parties of record this 27th day of February, 1987.


Byron E. Francis