

Exhibit No.:
Issues: *Transportation Service-Internal;*
Deferred Carrying Cost Balance;
Gas Supply Realignment Costs
Witness: *Annell G. Bailey*
Sponsoring Party: *MoPSC Staff*
Type of Exhibit: *Rebuttal Testimony*
Case No.: *GR-2001-388*
Date Testimony Prepared: *January 30, 2003*

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY SERVICES DIVISION

REBUTTAL TESTIMONY

OF

ANNELL G. BAILEY

SOUTHERN MISSOURI GAS COMPANY, L.P.

CASE NO. GR-2001-388

Jefferson City, Missouri
January 2003

Exhibit No. 11
Case No(s). GR-2001-388
Date 3-11-03 **Rptr** KF

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

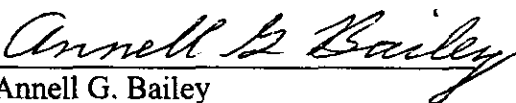
In the Matter of Southern Missouri Gas)
Company, L.P.'s Purchased Gas Adjustment)
Factors to be Reviewed in its 1999-2000 and)
2000-2001 Actual Cost Adjustment)

Case No. GR-2001-388

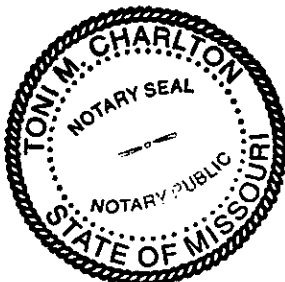
AFFIDAVIT OF ANNELL G. BAILEY

STATE OF MISSOURI)
)
COUNTY OF COLE) ss.

Annell G. Bailey, being of lawful age, on her oath states: that she has participated in the preparation of the following Rebuttal Testimony in question and answer form, consisting of 5 pages to be presented in the above case; that the answers in the following Rebuttal Testimony were given by her; that she has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of her knowledge and belief.


Annell G. Bailey

Subscribed and sworn to before me this 29th day of January 2003.





TONI M. CHARLTON
NOTARY PUBLIC STATE OF MISSOURI
COUNTY OF COLE
My Commission Expires December 28, 2004

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ANNELL G. BAILEY

SOUTHERN MISSOURI GAS COMPANY, L.P.

CASE NO. GR-2001-388

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1 **REBUTTAL TESTIMONY**

2 **OF**

3 **ANNELL G. BAILEY**

4 **SOUTHERN MISSOURI GAS COMPANY, L.P.**

5 **CASE NO. GR-2001-388**

6 Q. Please state your name and business address.

7 A. Annell G. Bailey, P.O. Box 360, Jefferson City, Missouri 65102.

8 Q. By whom are you employed and in what capacity?

9 A. I am a Regulatory Auditor in the Procurement Analysis Department of the
10 Missouri Public Service Commission (Commission).

11 Q. Are you the same Annell G. Bailey who filed direct testimony in this case?

12 A. Yes.

13 Q. What is the purpose of your rebuttal testimony?

14 A. The purpose of my rebuttal testimony is to respond to the direct testimony of
15 Southern Missouri Gas Company (SMGC or Company) witness Scott F. Klemm in the three
16 areas that he discussed: 1) Transportation Service – Internal; 2) Deferred Carrying Cost
17 Balance; and 3) Gas Supply Realignment Costs.

18 **TRANSPORTATION SERVICE – INTERNAL**

19 Q. What was the basis of your recommended adjustment to decrease the firm
20 sales Actual Cost Adjustment (ACA) balance by \$105,809 to include revenues for
21 Transportation Service – Internal at the amount the revenues would have been if the gas had
22 been sold at the authorized Purchased Gas Adjustment (PGA) adjusted rate?

Rebuttal Testimony of
Annell G. Bailey

1 A. The Company sold natural gas in violation of its tariff. Please refer to the
2 rebuttal testimony of Staff witness James M. Russo for details on tariff authorization issues.
3 In the absence of any tariff or rate schedule authorizing "Transportation Service – Internal" it
4 was reasonable to impute the PGA/ACA revenues as if the existing tariff had been followed.
5 Specifically, I used The Southern Missouri Gas Company, L.C. Schedule of Rates for
6 Natural Gas Service, 9th revised Sheet No. 27, effective February 2001 until cancelled
7 October 1, 2001. That sheet is attached to this testimony as Schedule 1.

8 Q. What effect would this adjustment have on the Company's other customers?

9 A. This adjustment would reduce the amount of the ACA balance that the
10 Company could collect from its customers in the future. It would, therefore, prevent other
11 customers from subsidizing the unauthorized low rates that were offered to the two
12 "Transportation Service – Internal" customers.

13 Q. Did you consider the \$39,987 that, according to Mr. Klemm's testimony, was
14 contributed to recovery of the ACA balance by the two "Transportation Service – Internal"
15 customers?

16 A. Yes. That amount is shown on my computation, which was attached as
17 Schedule 1 to my direct testimony filed on January 9, 2003. That schedule also shows that if
18 the gas had been sold to those two customers at tariff-authorized rates, the contribution
19 would have been \$142,825 instead of \$39,987. The difference, adjusted for theoretical
20 refunds of \$2,971, is the amount of my proposed adjustment of \$105,809.

21 Q. Did you make alternative computations to show the impact if these two
22 industrial customers had left the SMGC system or reduced their throughput?

Rebuttal Testimony of
Annell G. Bailey

1 A. I considered such computations but would have had to base them on
2 guesswork and conjecture about an infinite number of imagined actions and reactions on the
3 part of the Company and the two customers. Ultimately, it seemed best to adjust the ACA
4 balance for the known quantity of gas that was actually sold, using the known and
5 documented rates authorized by the tariff.

6 **DEFERRED CARRYING COST BALANCE**

7 Q. Did the Company's original filing include an amount for the Deferred
8 Carrying Cost Balance (DCCB)?

9 A. No. Staff proposed a DCCB adjustment, which proved to be to the
10 Company's benefit. Mr. Klemm's testimony proposed a recalculation to increase the amount
11 that it can collect from its customers beyond the \$2,024 that the Staff proposed.

12 Q. Do you agree with Mr. Klemm's recalculation of the DCCB?

13 A. No. In calculating the Company's average cost of gas, Mr. Klemm eliminated
14 the gas sold to the two "Transportation Service – Internal" customers. This increases the
15 amount of DCCB imputed interest that the Company wants to collect from its other
16 customers. Staff's position is that all customers should share equally in the Company's gas
17 costs and savings, if any. Therefore, all gas should be included in the calculation of the
18 Company's average cost when it computes the DCCB interest that its customers should pay.
19 It could be argued that the imputed billed sales volumes associated with "Transportation
20 Service – Internal" should be included in the revenue side of the DCCB calculation. The
21 Staff's calculation is conservative when viewed in this light. Greater revenues in the DCCB
22 would simply show a greater amount of interest due to the customers.

Rebuttal Testimony of
Annell G. Bailey

1 Q. Mr. Klemm also adjusted for the gas Williams retains as a fuel charge and for
2 the conversion from million British thermal units (MMBtu) to hundred cubic feet (Ccf). Can
3 you comment on those changes?

4 A. Yes. The Staff has included fuel in its calculation of actual gas costs since the
5 Staff has summed all the invoices related to the Company's purchase of gas. Fuel retained
6 by Williams would show up in both the numerator (invoices, in dollars) and the denominator
7 (volumes purchased in MMBtus) of the "actual annualized unit cost of gas." Since
8 Mr. Klemm has not provided the underlying support for his adjustments from MMBtu to Ccf,
9 the Staff has requested this additional information and will review it when it is received.

10 **GAS SUPPLY REALIGNMENT COSTS**

11 Q. Do you agree with Mr. Klemm's statement that the Company should be
12 allowed to recover \$113,512 of Gas Supply Realignment Costs paid to Williams' Pipeline
13 from May 1996 to September 1998?

14 A. No. Those costs are related to prior ACA periods. They were never included
15 in the current or any prior ACA case. The first mention of them was in SMGC's Response to
16 Staff Recommendation, dated November 25, 2002.

17 Q. Are ACA cases still open for the period between May 1996 and September
18 1998?

19 A. No. Case No. GR-96-85, for the 1995-1996 ACA period was closed on
20 January 9, 1998. Case No. GR-97-234, for 1996-1997 was closed on February 8, 1999. Case
21 No. GR-99-178, for 1997-1998 was closed on March 27, 2000. Case No. GR-2000-288, for
22 1998-1999 was closed on December 23, 2000.

Rebuttal Testimony of
Annell G. Bailey

1 Q. Is it the policy of the Commission to reopen prior year cases to consider
2 evidence that was not presented at the proper time?

3 A. No. The policy of finality was established in *In the matter of United Cities*
4 *Gas Company's proposed revisions to the purchased gas adjustment clause reflecting*
5 *recovery of take-or-pay costs and determination of purchased gas adjustment proration in*
6 *the Neelyville District*, 30 Mo. P.S.C. (N.S.) 523 (Case No. GR-90-233, April 5, 1991.) A
7 copy of the Report And Order from that case is attached to this rebuttal testimony as
8 Schedule 2.

9 Q. Does this conclude your rebuttal testimony?

10 A. Yes.

FORM NO. 13 P.S.C. No. 1

(original)

Sheet No. 27

Cancelling P.S.C. MO No. 1

9th (revised)

Sheet No. 27

(original)

8th (revised)

Southern Missouri Gas Company, L.P.
Name of Issuing Corporation

All Communities and Rural Areas
For Receiving Natural Gas Service
Community, Town or City

RECEIVED

PURCHASED GAS ADJUSTMENT (cont.)

MISSOURI
Public Service Commission

As provided in this Purchased Gas Adjustment Clause, the following adjustment(s) per Ccf will be made to the basic natural gas service schedules:

| <u>Schedule</u> | <u>Purchased Gas Cost</u> | <u>Actual Cost Adjustment</u> | <u>Refunds</u> | <u>Unscheduled Filing Adjustment (UFA)</u> | <u>TOP Factor</u> | <u>Total PGA</u> |
|-----------------|---------------------------|-------------------------------|----------------|--|-------------------|------------------|
| GS | .7934 | .0634 | (.0079) | .0500 | 0 | .8989 |
| LVS | .7934 | .0634 | (.0079) | .0500 | 0 | .8989 |

CANCELLED

OCT 01 2001

BY 10th RS 27
Public Service Commission
MISSOURI

The TOP Factor and the demand or reservation of the PGC portion factor, as provided in Sheet No. 6 shall also apply to all Ccfs delivered to transportation customers.

FILED

01-739

FEB 01 2001

MISSOURI
Public Service Commission

DATE OF ISSUE January 16, 2001
month day year

DATE EFFECTIVE February 1, 2001
month day year

ISSUE BY Tom M. Taylor
name of officer

President
title

8801 S. Yale, Ste. 385, Tulsa, OK 74137
address

30 Mo. P.S.C.

Mo. P.S.C. (N.S.)

ges had been carried over from the previous month. The Commission is of the opinion that Respondent carried over the late charges incorrectly, that the late charges are not to his previous disputed bill. The Commission is of the opinion that Complainant's allegations are not supported by the record and do not determine why Complainant paid \$293.64 worth of electricity in the month of April. The Commission is of the opinion that the unusually high bill for the malfunctioning heater, were primarily due to Complainant's failure to pay the bill for the month of April. The Commission is of the opinion that Complainant has failed to pay the bill for the month of April, which he did not use, or was charged for the month of April.

Regarding UE's hostility, disrespect, and illegal charge against Respondent, the Commission is of the opinion that it has in excess of 1,000,000 dollars in late charges owing on the bill for the month of April. The Commission is of the opinion that Mr. Margulis has, to some extent, been harassed by the utility, and that the utility has largely vacant and without treatment to terminate his electric services. The Commission is of the opinion that the utility has caused Complainant considerable financial loss, and that the utility's counsel saw fit to file this complaint.

The Commission is of the opinion that the utility has caused Complainant considerable financial loss, and that the utility's counsel saw fit to file this complaint. The Commission is of the opinion that the utility has caused Complainant considerable financial loss, and that the utility's counsel saw fit to file this complaint. The Commission is of the opinion that the utility has caused Complainant considerable financial loss, and that the utility's counsel saw fit to file this complaint.

aw
s arrived at the following conclusions:

tain this complaint by virtue of the fact that the Commission is of the opinion that the utility has caused Complainant considerable financial loss, and that the utility's counsel saw fit to file this complaint. The Commission is of the opinion that the utility has caused Complainant considerable financial loss, and that the utility's counsel saw fit to file this complaint.

In instances wherein a complainant alleges that a regulated utility is violating the law, its own tariff, or is otherwise engaging in unjust or unreasonable actions, the burden of proof at hearing rests with complainant. See: *Michaelson v. Wolf*, 261 S.W.2d 918, 924 (Mo. 1953) and *Farnham v. Boone*, 431 S.W.2d 154 (Mo. 1968).

The Commission concludes that Complainant Sheldon Margulis has not, for the reasons stated in the Findings of Fact, successfully discharged his burden of proof against Respondent Union Electric Company.

It is, therefore,

ORDERED: 1. That the complaint filed by Sheldon Margulis on September 21, 1990, against the Union Electric Company be hereby dismissed.

ORDERED: 2. That Union Electric Company's demand for \$50.17 in late charges owing on the unpaid electric bills referenced above, or for any additional late charges accruing therefrom, be waived pursuant to this Report and Order.

ORDERED: 3. That this Report and Order shall become effective on April 26, 1991.

Steinmeier, Chm., Mueller, Rauch, McClure and Letsch-Roderique, CC.,
Concur.

In the matter of United Cities Gas Company's proposed revisions to the purchased gas adjustment clause reflecting recovery of take-or-pay costs and determination of purchased gas adjustment proration in the Neelyville District.*

Case No. GR-90-233
Decided April 5, 1991

Gas §22. Rates §§63, 113. Tariffs which have been superseded by subsequent tariffs become moot.

Gas §22. Rates §§63, 113. Where no live issue remains as to the propriety of a tariff it is beyond the Commission's power to make a pure declaration of law as to the possible propriety of the language in the superseded tariff.

Accounting §47. Gas §22. Rates §§71, 101, 113. Recovery of a specific cost in a previous period due to the mismatch of costs and revenue constitutes retroactive ratemaking. Therefore, a company is not permitted to recover a specific gas cost incurred in a given period after the ACA factor for that period has been made permanent.

*The Commission, in an order issued April 23, 1991 denied a rehearing in this case. This case has been appealed. See Court Cases page.

APPEARANCES:

Gary W. Duffy, Attorney at Law, Brydon, Swearingen & England, P.C., P.O. Box 456, Jefferson City, Missouri 65102-0456, for United Cities Gas Company.

Lewis R. Mills, Jr., First Assistant Public Counsel, Office of the Public Counsel, P.O. Box 7800, Jefferson City, Missouri 65102, for Office of the Public Counsel and the Public.

William M. Shansey, Assistant General Counsel, Missouri Public Service Commission, P.O. Box 360, Jefferson City, Missouri 65102, for Staff of the Missouri Public Service Commission.

HEARING EXAMINER: Beth O'Donnell

REPORT AND ORDER

Procedural History

On March 12, 1990, United Cities Gas Company (United or Company) filed tariff sheets with a requested effective date of May 1, 1990, which proposed to allow Company to include take-or-pay (TOP) costs in their actual cost adjustment (ACA) computation which were invoiced and paid during periods prior to the Commission's decision allowing recovery of TOP costs through the purchased gas adjustment (PGA) and ACA mechanism. Company extended the effective date of the proposed tariff several times finally extending it to June 30, 1990.

On April 11, 1990, the Office of the Public Counsel (Public Counsel) filed a motion to suspend the proposed tariff. On June 19, 1990, the Commission's Staff (Staff) filed a memorandum in this case recommending that the Commission suspend this tariff.

On June 26, 1990, the Commission suspended the proposed tariff for 120 days to October 28, 1990. On October 17, 1990, the Commission issued an order establishing a procedural schedule. Testimony was prefiled by the parties and a hearing was held January 8, 1991, at which prefiled testimony was received. At the hearing the parties agreed that there remained no factual issues in the case and proposed that the parties brief the Commission as to the legal questions at issue. Briefs were subsequently filed pursuant to the schedule as amended.

Findings of Fact

The Missouri Public Service Commission, having considered all the competent and substantial evidence upon the whole record, makes the following findings of fact.

The language to which Staff and Public Counsel object in this case is contained in a tariff filed by Company on March 12, 1990, and subsequently suspended by the Commission on June 26, 1990. On June 11, 1990, Company filed an alternative tariff sheet omitting the language to which Staff and Public Counsel objected. On June 29, 1990, the Commission approved this alternate tariff which omitted the language objected to by Staff and Public Counsel.

From these facts, on June 26, 1990, which the Commission had objected and about the Commission, had approved, and subsequently, before the Commission, the propriety of which

Company filed to recover in rates \$16 had paid to interstate 1988-1989 ACA payments made by the Commission had not been able in the rates of

The Commission May 30, 1989, that on an interim basis subject to GC-89-85, et al. The GC-89-85, et al. effective rates of local distribution

Company states refund and, therefore, ACA period on June subsequently closed the Commission made Company's Staff. On

be at issue in this proceeding. In the alternative, approve this tariff \$16,099.58. Company proposed this tariff argues that the Company's expenditure before the ACA and supposed failure is to

Company further prior to the close of permitted to recover unfamiliar and Commission circumstances.

Company also as reflected in rates, the costs incurred pursuant to Commission (FERC) such trapping is illegal

30 Mo. P.S.C. (N.S.)

30 Mo. P.S.C. (N.S.)

From these facts the Commission determines that the tariff suspended on June 26, 1990, which contained the language to which Staff and Public Counsel objected and about which the parties to this case prefiled testimony and briefed the Commission, has been superseded by the tariff filed by Company on June 11, 1990, and subsequently approved by the Commission on June 29, 1990. Therefore, the Commission finds that there is no tariff remaining at issue in this case the propriety of which the Commission must determine.

Company filed the tariff which purports to be at issue in this case in order to recover in rates \$16,099.58 in TOP costs through its ACA factor which Company had paid to interstate pipelines pursuant to federally-approved tariffs during the 1988-1989 ACA period. Company states that it did not include these TOP payments made before July 1, 1989, in the 1988-1989 ACA period because the Commission had not yet decided at that time whether TOP costs were recoverable in the rates of Missouri local distribution companies.

The Commission had indicated by an order issued in Case No. GR-89-237, on May 30, 1989, that tariffs proposing to recover TOP costs would go into effect on an interim basis subject to refund pending the outcome of its decision in Case No. GC-89-85, et al. The Commission would ultimately issue a decision in Case No. GC-89-85, et al. effective October 31, 1989, finding TOP costs recoverable in the rates of local distribution companies through the PGA mechanism.

Company states that it had a policy of not placing rates into effect subject to refund and, therefore, did not file these costs before the close of its 1988-1989 ACA period on June 30, 1989. The audit of Company's 1988-1989 ACA period subsequently closed March 30, 1990 when, in Case No. GR-90-21, the Commission made Company's 1988-1989 ACA factor permanent upon the recommendation of its Staff. On March 12, 1990, United had filed the tariff which purports to be at issue in this proceeding.

In the alternative, Company argues that, if the Commission decides not to approve this tariff, it nonetheless should allow Company to recover the \$16,099.58. Company states that recovery of this money is the reason it originally proposed this tariff language. In support of this alternative position Company argues that the Commission should find that Staff, since it knew about Company's expenditure of this amount, should have warned Company to include it before the ACA audit was closed. Company argues that the remedy for Staff's supposed failure is the recovery by Company of the \$16,099.58.

Company further argues that even if it failed to take steps to recover this sum prior to the close of the case considering its 1988-1989 ACA period, it should be permitted to recover this sum because recovery of such TOP costs was new and unfamiliar and Company should not be held to such a strict standard under those circumstances.

Company also argues that, if the Commission does not allow this sum to be reflected in rates, the Commission will have engaged in the illegal "trapping" of costs incurred pursuant to tariffs approved by the Federal Energy Regulatory Commission (FERC). Company contends, absent a finding of imprudence, that such trapping is illegal under the decision of the United States Supreme Court in

Mississippi Power & Light v. Mississippi ex rel. Moore, 487 U.S. 345 (1988). In addition, Company argues that recovery of this amount would not constitute a collateral attack on the ACA case which reviewed Company's 1988-1989 ACA period (GR-90-21) nor a violation of the finality of closed ACA periods because this cost was not addressed at all either during that ACA period, or during the audit of that ACA period or in the case reviewing that ACA period.

Finally, Company contends that Staff's argument is specious that including this amount in Company's ACA factor would reduce Company's incentive to find and include all appropriate gas costs on a timely basis because Company's failure to include this amount until later lost Company the time value of the money.

Staff warns that, if the Commission permits recovery of this sum, it will have the effect of placing upon Staff a duty to warn companies of possible filing errors and oversights thereby, in the future, shifting the responsibility for the recovery of their costs from the companies where it now lies to the Staff. Staff further argues that the close of United's 1988-1989 ACA audit case did not represent a Staff imposed deadline for seeking the recovery of gas costs during that period but rather represented part of the carefully crafted PGA/ACA mechanism which permits companies to recover actual gas costs without engaging in impermissible retroactive ratemaking and without experiencing regulatory lag.

Staff points out that Company had the opportunity to amend its ACA factor between the time in October of 1989 when the Commission decided that TOP costs may be recovered by local distribution companies and the close of Company's 1988-1989 ACA audit case in March of 1990. Finally, Staff points out that the case cited by Company to support its argument that it should be permitted to recover the amount because the procedure was new and unfamiliar is not persuasive since that case (Case No. GR-89-48) dealt with a question of prudence while this case concerns the finality of a closed ACA period.

Public Counsel responds to Company's arguments by pointing out that the Supreme Court case dealing with the trapping of federally-approved costs by a state commission, *Mississippi Power & Light, op. cit.*, did not deal with previously incurred costs but rather dealt with a projected test year and current FERC-approved rates.

The Commission determines that the Company should not be permitted to recover the \$16,099.58 in a subsequent ACA period. Company had ample time after the Commission's decision allowing recovery of TOP costs to include the \$16,099.58 in the costs reviewed during the 1988-1989 ACA audit period. The Commission's decision on recovery of TOP costs became effective on October 31, 1989, and the review of the ACA audit of Company's gas costs for the period 1988-1989 ended with the closing of Case No. GR-90-21 on March 30, 1990.

Company will not be permitted to recover these costs after the ACA factor for a given period is made permanent. This approach is necessary so that actual cost adjustments become final. Such factors should not be indefinitely readjusted for costs Company later finds it wishes to recover. The termination of that period

does not represent an a date necessary to effect

Whether the \$16,0 ACA period is not the costs later discovered to in future ACA factors

Nor can Staff's fail end or forego their rec it is not Staff's respons responsibility rests wit period does not rest i involving equity law. N costs be the basis for fo is not a question of pr imprudence.

The Commission instance of unlawful wholesale rate. *Missis* dence, the Commission in the audit figures bef issue in this case is no submit gas costs in a t

The Missouri Publ ions of law.

Company is subje Chapters 386 and 393,

The Commission case has been superseded by the Commission. T become moot. *State* S.W.2d 882, 884-885 (

that there is no tariff i Commission must dete five issue remains as to powers to make a pur language in the superse *Public Service Commu*

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30 Mo. P.S.C. (N.S.)

30 Mo. P.S.C. (N.S.)

487 U.S. 345 (1988). It would not constitute a company's 1988-1989 ACA period, or during the ACA period.

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of this sum, it will have of possible filing errors bility for the recovery of aff. Staff further argues d not represent a Staff during that period but CA mechanism which gaging in impermissible ory lag.

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ld not be permitted to npany had ample time OP costs to include the CA audit period. The ffective on October 31, is costs for the period on March 30, 1990. ter the ACA factor for ary so that actual cost finitely readjusted for ination of that period

does not represent an artificial deadline imposed by the whim of Staff but rather a date necessary to effectuate finality.

Whether the \$16,099.58 was considered during the review of the 1988-1989 ACA period is not the aspect of finality that is pertinent. The question is whether costs later discovered to have been incurred during that period should be included in future ACA factors ad infinitum. The Commission believes they should not.

Nor can Staff's failure to warn Company to recover all costs by the period's end or forego their recovery, be a reason to impair this principle of finality. First, it is not Staff's responsibility to see to the recovery of Company's gas costs. This responsibility rests with Company. Second, the finality of the end of an ACA period does not rest upon the good conduct of Staff. This is not a situation involving equity law. Nor can Company's inexperience with the recovery of TOP costs be the basis for forgiving the oversight and allowing the recovery. The issue is not a question of prudence where circumstances might leaven a judgment of imprudence.

The Commission does not view the disallowance of this \$16,099.58 as an instance of unlawful trapping by a state commission of a FERC-mandated wholesale rate. *Mississippi Power & Light, op. cit.* Absent a showing of imprudence, the Commission would have allowed these costs if they had been included in the audit figures before the fixing of the 1988-1989 ACA factor. The matter at issue in this case is not the recoverability of the \$16,099.58 but the necessity to submit gas costs in a timely fashion.

Conclusions of Law

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

Company is subject to the jurisdiction of this Commission pursuant to Chapters 386 and 393, RSMo 1986, as amended.

The Commission has found that the tariff which the parties address in this case has been superseded by a subsequent tariff filed by Company and approved by the Commission. Tariffs which have been superseded by subsequent tariffs become moot. *State ex rel. Missouri Public Service Company v. Fraas*, 627 S.W.2d 882, 884-885 (Mo. App. 1981). Therefore, the Commission concludes that there is no tariff remaining at issue in this case the propriety of which the Commission must determine. The Commission further concludes that, where no live issue remains as to the propriety of this tariff, it is beyond the Commission's powers to make a pure declaration of law as to the possible propriety of the language in the superseded tariff. *State ex rel. Kansas Power & Light Company v. Public Service Commission*, 770 S.W.2d 740, 742 (Mo. App. 1989).

In addition to the Commission's findings as to the impropriety of permitting recovery of the sum Company seeks in this case, the Commission concludes that allowing recovery of this sum would constitute impermissible retroactive ratemaking. Recovery of a specific cost in a previous period due to the mismatch of costs and revenue constitutes retroactive ratemaking. *State ex rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41,

30 Mo. P.S.C. (N.S.)

Incorporated, Miss
Company, d/b/a (a)
William H. Ke
Indiana 46074, for
Katherine C. S
630, St. Louis, Miss
Randy Bakewe
Missouri 65102, fo
Robert J. Hack
Missouri 65102, fo
Hearing Exami

On June 13, 1991, the Commission filed tariffs proposing a tariff to include labor market applicable to combines to provide and by order dated and by order dated order issued August 1991.

Similar tariffs were filed by the Company, Choctaw MoKan Dial, Inc., Company. On August 1, 1990, the Company filed a similar tariff for a similar interconnection arrangement. By Order of the Commission issued on October 12, 1990, the Commission's ratification of the COS tariff was sometimes referred to as the "Timely application" tariff. The phone Company, Eastern Bell Telephone Company, Contel of California, State Telephone Company, Southwestern Bell Company, Incorporated (sometimes referred to as SBC), Southwestern Bell Company of Missouri, Company, New Long Beach Company, and Stoutland Company, as ALLTEL, et al. A hearing was held on the Commission Staff's reply briefs have been

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Schedule 2-6