

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 4th day of
October, 2007.

The Staff of the Missouri Public
Service Commission,

Complainant,

v.

Missouri Pipeline Company, LLC, and
Missouri Gas Company, LLC,

Respondents.

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Case No. GC-2006-0491

**ORDER DENYING RESPONDENTS' APPLICATION FOR REHEARING,
MODIFYING REPORT AND ORDER IN RESPONSE TO APPLICATIONS
FOR REHEARING FILED BY THE MUNICIPAL GAS ASSOCIATION
AND AMERENUE, AND GRANTING CLARIFICATION**

Issue Date: October 4, 2007

Effective Date: October 4, 2007

On August 28, 2007, the Commission issued a Report and Order regarding Staff's complaint against Missouri Pipeline Company, LLC, and Missouri Gas Company, LLC. That Report and Order became effective on September 7. On September 6, the Respondents, Missouri Pipeline and Missouri Gas, filed an application for rehearing. On the same date, two intervening parties, the Municipal Gas Commission of Missouri and Union Electric Company d/b/a AmerenUE, filed their own applications for rehearing. In addition, the Commission's Staff filed a request for clarification. Staff filed a response to the applications for rehearing on September 17. No other party filed a response.

Missouri Pipeline and Missouri Gas raise many of the same arguments in their application for rehearing that the Commission rejected in its Report and Order. The Commission will not revisit those arguments. However, Missouri Pipeline and Missouri Gas also contend they were denied an impartial decision maker, in violation of their due process rights, because the Commission scheduled an oral argument after having reviewed the briefs submitted by the parties.

After beginning its deliberations at its public agenda meeting on June 26, 2007, the Commission was overwhelmed by the massive amount of evidence submitted into the record in this case. Seeking clarity, the Commission ordered the parties to present oral arguments on July 10, 2007. The Commission's June 26 order scheduling the oral argument explained:

The arguments will allow the attorneys representing the parties an opportunity to explain the evidence and the positions of their clients. The Commissioners also intend to question the attorneys about those matters. No new evidence will be taken.

Oral arguments were received on July 10. The entire proceeding occurred on the record and a transcript of the arguments is included in the record. Contrary to the insinuations of Missouri Pipeline and Missouri Gas, absolutely no new evidence or testimony was offered or received at the oral arguments. After gaining a better understanding of the record evidence from the arguments of the parties, the Commission voted, again at a public agenda meeting, to issue its Report and Order.

The Commission's rules allow the Commission to direct the parties to submit oral arguments as well as written briefs.¹ In ordering the parties to further explain their cases through the presentation of oral arguments, the Commission did nothing improper and did

¹ Commission Rule 4 CSR 240-2.140(1)

not display any bias against the Respondents. The Respondents have not been denied an impartial decision maker and their due process rights have been respected.

Section 386.500.1, RSMo (2000), indicates the Commission shall grant an application for rehearing if “in its judgment sufficient reason therefore be made to appear.” Missouri Pipeline and Missouri Gas’ application for rehearing fails to provide sufficient reason to grant rehearing and it will be denied.

The intervening parties, the Municipal Gas Association and AmerenUE, request rehearing regarding only one aspect of the Commission’s decision. In its Conclusions of Law regarding Count III of Staff’s complaint, the Commission interpreted Section 3.2b and c of Missouri Pipeline and Missouri Gas’ tariffs as limiting the maximum transportation rate charged to a non-affiliated shipper to the lowest rate charged to an affiliated shipper. The Municipal Gas Association and AmerenUE disagree with the Commission’s conclusion that Section 3.2c automatically changes the tariff provision to allow those lower rates to go into effect only after the Commission’s Staff gives notice of the lower rate to the Commission. Instead, they argue that Section 3.2b requires those lower rates to take effect immediately upon the offering of a lower rate to an affiliated shipper.

The Municipal Gas Association and AmerenUE interpret section 3.2b (1) of the tariff as establishing that the lowest rate charged to an affiliated shipper is the highest rate that can be charged to non-affiliated shippers. Subsections (2)-(5) of that section then establish a procedure by which Missouri Pipeline or Missouri Gas could obtain an exception to that rule by requesting Commission approval of specific agreements that would allow for the charging of a lower rate to an affiliated shipper. According to their interpretation, the purpose of section 3.2c is to allow Staff to eliminate the possibility that Missouri Pipeline or

Missouri Gas could obtain an exception to the general rule by eliminating subsections (2)-(5). Therefore, if Staff brings section 3.2c into effect by giving notice to the Commission, the requirement that the lowest rate charged to an affiliated shipper becomes the highest rate that can be charged to a non-affiliated shipper becomes absolute, with no possible exceptions.

The Commission finds this interpretation of the tariff to be more reasonable than the interpretation described in its Report and Order in that it allows all provisions of the tariff to be given a reasonable effect. The Commission will modify its previously issued Report and Order to be consistent with this interpretation of the tariff.

The Commission emphasizes that its interpretation of the tariff is based entirely on its reading of the language of the tariff. No evidence was presented by any party that would allow the Commission to make any finding of fact regarding the appropriate interpretation of the tariff.

Staff did not request rehearing, but did file a request for clarification regarding the Commission's decision on Count V of Staff's complaint. Regarding that count, the Commission found that Staff failed to prove that Missouri Gas violated its certificate of convenience and necessity by constructing a new lateral line to serve an industrial customer. However, the Commission found that Missouri Gas violated its tariff by failing to demand reimbursement from the shipper for constructing that lateral line. The Commission then went on to explain that penalties were not appropriate for that tariff violation because Missouri Gas' failure to seek reimbursement did not have an impact on rates and therefore had not harmed Missouri Gas' other customers.

Staff pointed out that ordered paragraph 5 of the Report and Order simply states,

“Staff failed to prove the allegations contained in Count V of its complaint and relief on that Count is denied.” Staff asks the Commission to clarify that ordered paragraph to indicate that Staff did prove part of that Count.

Staff is correct. Ordered paragraph 5 of the Report and Order is clarified to provide that Staff failed to prove that Missouri Gas violated its certificate of convenience and necessity. Staff proved that Missouri Gas violated its tariff, but relief for that violation is denied.

IT IS ORDERED THAT:

1. The Application for Rehearing filed by Missouri Pipeline Company, LLC., and Missouri Gas Company, LLC., is denied.

2. In response to the Applications for Rehearing filed by the Municipal Gas Commission of Missouri and by Union Electric Company d/b/a AmerenUE, the Commission’s Report and Order issued on August 28, 2007, is withdrawn and a revised Report and Order shall be issued.

3. This order shall become effective on October 4, 2007.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Clayton, Appling, Jarrett, CC., concur.
Murray, C., not participating.

Woodruff, Deputy Chief Regulatory Law Judge