

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
MICHIGAN GAS UTILITIES for a gas cost)	
recovery reconciliation proceeding for the)	Case No. U-11192-R
12-month period ended December 31, 1997.)	
_____)	

At the July 28, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
 Hon. David A. Svanda, Commissioner
 Hon. Robert B. Nelson, Commissioner

ORDER AND NOTICE OF HEARING

On May 4, 1999, the Commission Staff (Staff) filed a petition pursuant to MCL 462.24; MSA 22.43, seeking rescission of the January 6, 1999 order in Case No. U-11192-R (January 6 order), which approved a settlement agreement reconciling the gas cost recovery (GCR) revenues and expenses of Michigan Gas Utilities (MGU), a division of UtiliCorp United Inc., (UtiliCorp), for the 12-month period ended December 31, 1997. On May 17, 1999, MGU filed a response to the Staff's petition. On June 4, 1999, the Staff filed a reply to MGU's response.

In its pleadings, the Staff maintains that the Commission should rescind the January 6 order because the Staff only recently became aware that the information it relied upon in reaching the settlement agreement was incorrect and may have caused MGU's 1997 GCR underrecovery to be overstated by \$7.1 million. Specifically, the Staff attributes the entire misunderstanding to MGU's failure to report

certain purchases and sales of 9.9 billion cubic feet (Bcf) of gas in its 1997 GCR reconciliation report. According to the Staff, had MGU properly reported such transactions, the \$9.2 million GCR underrecovery approved by the January 6 order would have been reduced to a \$2.1 million underrecovery.

The Staff contends that the error is directly attributable to the termination of the separate corporate identity of MG Ventures, Inc., which occurred on December 31, 1996.¹ The Staff insists that at the time of the execution of the settlement agreement in Case No. U-11192-R, it was unaware that UtiliCorp had reorganized its corporate structure to eliminate MG Ventures' separate legal status or that MGU's employees continued to perform the gas brokering services on behalf of certain of its transportation customers.

The Staff submits that by continuing such brokering services under the guise of an accounting designation, MGU is violating the antidiscrimination provisions in MCL 462.16; MSA 22.35, by providing preferential rates to certain transportation customers in the sale of gas. According to the Staff, it is undisputed that MGU is conducting both the brokering services and its own GCR sales activities through use of the same marketers, gas buyers, gas accounting personnel, and facilities.

The Staff also contends that it was misled by MGU's 45-day monthly reports filed pursuant to 1982 PA 304 (Act 304), MCL 460.6h et seq.; MSA 22.13(6h) et seq. According to the Staff, MGU is required by Act 304 to identify any sales of gas without a GCR factor in both its 45-day monthly report

¹MG Ventures was established in January 1990. On December 31, 1996, MG Ventures was merged into UtiliCorp. During its existence as a separate corporate entity, MG Ventures provided gas brokering, appliance repair, storage, and other such nonregulated business activities in MGU's service territory through use of MGU's employees. After MG Ventures ceased to exist, these nonregulated business services continued to be performed by MGU's employees as UtiliCorp Brokering, a mere "accounting designation."

and in its annual reconciliation proceeding. However, despite the requirements of Act 304, the Staff insists that MGU did not report that it had sales in excess of 9.9 Bcf without a GCR factor during the 1997 plan year.

For these reasons, the Staff insists that the Commission should rescind the January 6 order. In the alternative, the Staff requests that the issues raised in its petition be addressed in MGU's 1998 GCR reconciliation proceeding (Case No. U-11542-R).

In response, MGU argues that the Staff's petition should be denied because it is based on misleading allegations and false assertions. According to MGU, at the time that the Staff signed the settlement agreement in Case No. U-11192-R on December 17, 1998, the Staff was well aware that MGU, through its employees and assets, was performing marketing and sales activities for MG Ventures. Moreover, MGU contends that, by September 25, 1998, the Staff was specifically aware that UtiliCorp had eliminated MG Ventures' separate corporate status. Further, MGU insists that the extensive discovery conducted in Case No. U-11192-R, including answers to discovery requests from another party that were served on the Staff on May 5 and June 18, 1998, explains that "MGU itself was acting as an integrated non-regulated marketing unit behind MGU's system." MGU's May 17, 1999 response, p. 3. Additionally, citing the Staff's testimony in Case No. U-11648, which was filed on November 20, 1998, MGU argues that the Staff understood MGU's role in the provision of unregulated services and was aware of the dissolution of MG Ventures. Moreover, as further indications of the Staff's purported knowledge of MGU's activities, MGU cites paragraph 5 of its February 23, 1998 application in Case No. U-11648 regarding its use of MGU employees and assets to provide services to transportation

customers and an exchange of letters between employees of MGU and the Staff regarding its corporate philosophy of acting as an integrated service provider.

MGU also insists that the Staff's reliance on MCL 462.24; MSA 22.43, is devoid of merit. According to MGU, the relief requested by the Staff--rescission of the January 6 order--is inappropriate for several reasons. First, MGU maintains that the Commission's orders operate only on a prospective basis. Because MGU has rolled the \$9.9 million underrecovery for 1997 into its current GCR plan, MGU maintains that the rescission, if granted, would have no operative effect because only prospective relief is available pursuant to MCL 462.24; MSA 22.43. Second, MGU argues that the Commission's jurisdiction to review GCR revenues and expenses is limited to the annual period covered by the GCR plan. Consequently, MGU insists that the Commission may not properly consider an issue pertinent to the 1997 GCR plan in the context of its 1998 GCR reconciliation, which is the alternative relief requested in the Staff's May 4, 1999 petition to rescind. Third, MGU contends that even if the Staff were legitimately mistaken regarding the status of MG Ventures at the time that the settlement agreement in Case No. U-11192-R was executed, the settlement agreement is voidable only if the Staff was completely free of blame for the mistake. However, given all of the information that was available to the Staff before it signed the settlement agreement, MGU insists that the Staff should bear all consequences of its alleged misunderstanding regarding MG Ventures' corporate status.

MGU also disavows any notion that it was under an obligation to identify the disputed sales of gas in either its 45-day reports or in its prefiled testimony and exhibits in its 1997 GCR reconciliation. According to MGU, because the gas that was sold to its transportation customers was never purchased for or intended to benefit its GCR customers, there was simply no reason to report such purchases and

sales as part of the GCR process. MGU argues that the Commission's jurisdiction pursuant to Act 304 is limited to GCR sales and revenues and does not extend to MGU's nonregulated activities, regardless of its corporate structure. Indeed, MGU insists that the absence of a separate corporate entity for making unregulated sales to transportation customers does not transform an unregulated sale of gas to a transportation customer into a regulated transaction. Citing the June 26, 1998 order in Case No. U-11210, MGU insists that the Commission has recognized that its jurisdiction does not extend to every activity of a regulated utility. MGU contends that the sale of gas by UtiliCorp to customers transporting such gas for use in Michigan is a sale that the Commission has no jurisdiction to regulate. Accordingly, MGU argues that the Staff's petition should be rejected.

MCL 462.24; MSA 22.43, provides:

The commission may, at any time upon application of any person or any common carrier, and upon at least 10 days' notice to the parties interested, including the common carrier, and after opportunity to be heard as provided in section 22, rescind, alter or amend any order fixing any rate or rates, fares, charges or classifications, or any other order made by the commission, and certified copies shall be served and take effect as herein provided for original orders.

Because the clear language of MCL 462.24; MSA 22.43, empowers the Commission to rescind any of its orders on application of any person, MGU's arguments that the Commission lacks authority to grant the relief requested by the Staff have no merit. However, the Commission notes that MCL 462.24; MSA 22.43, also very clearly provides that the Commission shall provide all interested parties with at least 10 days' notice and an opportunity to be heard. Accordingly, the Commission concludes that before considering the merits of the Staff's petition to rescind, this matter should be remanded to an administrative law judge (ALJ) for further proceedings, which will give the parties an opportunity not only to present evidence in support of their positions on the Staff's petition, but also to develop a record that will allow

the Commission to address any disputed substantive issues necessary to bring MGU's 1997 GCR reconciliation proceeding to a conclusion if the Commission concludes that the prior order should be rescinded.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1909 PA 300, as amended, MCL 462.2 et seq.; MSA 22.21 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; 1982 PA 304, as amended, MCL 460.6h et seq.; MSA 22.13(6h) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. The Staff's petition to rescind should be set for hearing before an ALJ.

THEREFORE, IT IS ORDERED that a prehearing conference shall be scheduled for 9:00 a.m. on September 14, 1999 before an administrative law judge at the Commission's offices, 6545 Mercantile Way, Lansing, Michigan.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

(S E A L)

/s/ John G. Strand
Chairman

By its action of July 28, 1999.

/s/ David A. Svanda
Commissioner

/s/ Dorothy Wideman
Executive Secretary

/s/ Robert B. Nelson Its
Commissioner, abstaining.

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Suggested Minute:

“Adopt and issue order dated July 28, 1999 setting the Commission Staff’s petition to rescind the January 6, 1999 order in Case No. U-11192-R, which approved a settlement agreement reconciling Michigan Gas Utilities’ gas cost recovery revenues and expenses for the 12-month period ended December 31, 1997, for hearing before an administrative law judge, as set forth in the order.”