

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
MICHIGAN GAS UTILITIES CORPORATION)	Case No. U-15549
for authority to increase retail natural gas rates.)	
_____)	
)	
In the matter of the application of)	
MICHIGAN GAS UTILITIES CORPORATION)	Case No. U-15550
for approval of depreciation rates and practices.)	
_____)	

At the August 26, 2008 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

Procedural History and Positions of the Parties

On May 16, 2008, Michigan Gas Utilities Corporation (MGUC) filed an application with supporting testimony and exhibits requesting authority to increase its rates for the sale and transportation of natural gas, and other relief. The application was filed pursuant to 1939 PA 3, MCL 460.1 *et seq.*, and was docketed as Case No. U-15549. In its application, MGUC requested a rate increase of \$13,947,669 and to increase its charges for miscellaneous services associated with distributing natural gas. MGUC also filed a motion for partial and immediate rate relief seeking an interim rate increase to produce additional annual revenues of approximately \$10,663,572.

On the same date that it filed its rate application, MGUC filed a depreciation study in Case No. U-15550, with a motion to consolidate the two cases. In its application in the depreciation case, MGUC stated that it would file a separate depreciation study by May 1, 2009 to comply with the requirements of the Commission's June 26, 2007 order in Case Nos. U-14292, U-14811, and U-14812 (June 26 order).

On June 11, and June 24, 2008, the Association of Businesses Advocating Tariff Equity (ABATE) and Attorney General Michael A. Cox (Attorney General) filed motions to suspend the proceedings in Case No. U-15550 on grounds that MGUC had failed to comply with the filing requirements set forth in the June 26 order. Specifically, ABATE and the Attorney General argued that the June 26 order required MGUC to use Statement of Financial Accounting Standards (SFAS) No. 143 methods for cost of removal for legal and non-legal retirement obligations in its next depreciation case and that MGUC's depreciation study filed in this case did not use SFAS No. 143 methods as mandated. ABATE also argued that if Case No. U-15550 were consolidated with Case No. U-15549, the hearings in the latter case should be suspended as well because of the need to set the rates in the final order in accordance with the results from the depreciation case.

On June 26, 2008, MGUC filed a response to the motions to suspend the proceedings in which it argued that it had complied with the Commission's August 22, 2006 order in Case No. U-14881 (August 22 order). According to MGUC, the August 22 order required the company to file a depreciation case with its next general rate case. Then, in the June 26 order, the Commission ordered MGUC to file a new depreciation study by May 1, 2009, using actual 2008 removal costs as a basis for its calculations. MGUC argued that the intent of the June 26 order was to make a large amount of depreciation information available to the Commission Staff (Staff) and that the Commission further intended that the case filings be spaced at regular intervals and based on the

most recent available data. MGUC asserted that this intention was confirmed by the Commission's September 25, 2007 order in Case No. U-14292. MGUC argues that the Attorney General and ABATE ignored Paragraph B of the ordering section of the June 26 order, which specified the date MGUC was required to file its SFAS No. 143 depreciation case, and focused solely on the words "next depreciation case[]" in Paragraph C of the ordering section. MGUC maintains that "next depreciation case" refers to the next case filed pursuant to the June 26 order and not to any case filed before that time. MGUC concluded that because its filing was consistent with the August 22 order and because it intended to file another depreciation case on May 1, 2009 as required by the June 26 order, ABATE's and the Attorney General's motions to suspend the proceedings should be denied.

On June 30, 2008, the Staff filed an answer to the motions to suspend the proceedings in which it argued that MGUC had complied fully with the August 22 order and would comply with the June 26 order on May 1, 2009. The Staff claimed that it would be improper for the parties or Administrative Law Judge Daniel E. Nickerson, Jr. (ALJ) to supersede the Commission's orders in these two cases by suspending the proceedings. The Staff indicated that while it shared the apparent concerns of the Attorney General and ABATE, namely that MGUC's filing in Case No. U-14292 may result in a change in depreciation expense, the Staff noted that other remedies are available for the Commission to address this concern, including providing for the results of the case filed by May 1, 2009 to be used to recalculate MGUC's rates.

A prehearing conference for both cases was held on July 1, 2008 before the ALJ. The ALJ granted the petitions to intervene filed by the Attorney General and ABATE and granted MGUC's motion to consolidate the cases. Following oral argument, the ALJ issued a bench ruling in which

he found that Case No. U-15550 should be suspended until MGUC could provide 2007 actual cost of removal data in accordance with the requirements of Case No. U-14292. Tr. 36-38.

On July 14, 2008, ABATE filed an application for leave to appeal the ALJ's ruling. ABATE argued that while the ALJ properly suspended the proceedings in the depreciation case, he nevertheless established a schedule for Case U-15549, which included not only the schedule for the partial and immediate phase of the case but also for the final phase of the case. According to ABATE, the final phase of Case No. U-15549 must also be suspended until the issue of revised depreciation methods and rates is settled in Case No. U-15550, so that the new depreciation rates can be incorporated into the company's final rates. On July 28, 2008, MGUC and the Staff filed responses to ABATE. MGUC and the Staff argue that ABATE's application for leave to appeal is improper because ABATE sought to challenge the continuation of Case No. U-15549, a case in which ABATE is not a party. In addition, MGUC argues that ABATE's request is premature because the hearing on final rate relief is not scheduled until February 2009.

Also on July 14, 2008, MGUC filed an emergency application for leave to appeal the ALJ's ruling. MGUC claims that the ruling was in error because it contradicted the Commission's directive in the August 22 order and violated the clear purpose of the June 26 order. MGUC argues that the Commission should grant its application before submission of the full case because a Commission decision on this matter will materially advance a timely resolution of the proceeding. MGUC notes that the ALJ's decision results in a suspension of the proceedings in the rate case until MGUC supplements its depreciation case in accordance with the requirements of the June 26 order. MGUC claimed that preparation of the depreciation cost estimates under the various methods cannot be completed for several months, causing a significant delay in the proceedings.

MGUC also argued that the ALJ's ruling may further delay the resolution of the rate case by requiring the parties to litigate the SFAS No.143 and cost of removal issues in this case despite the Commission's previous determination that these issues should be addressed and resolved in a uniform manner following a review of the filings it ordered and scheduled in the June 26 order.

On July 28, 2008, the Attorney General filed a response to ABATE's and MGUC's applications for leave to appeal. The Attorney General stated that because MGUC has calculated new depreciation rates and projected depreciation expense that will significantly affect MGUC's final rates, he agrees with ABATE that the schedule in both cases should be suspended until MGUC provides the alternative depreciation information required by the June 26 order. In response to MGUC, the Attorney General claims that the August 22 and June 26 orders must be read *in pari materia* and that the June 26 order provided only a filing deadline of May 2009 for MGUC to file a new depreciation case. The June 26 order did not indicate that MGUC could not file its depreciation study sooner. In response to MGUC's claim that by delaying the company's request for final rate relief it will suffer irreparable harm, the Attorney General argues that MGUC had sufficient time to prepare a filing that comports with the requirements of the June 26 order and that MGUC's request for partial and immediate rate relief excludes the effects of its proposed depreciation changes. The Commission can therefore complete that part of the case and determine whether MGUC will in fact suffer irreparable harm.

In its response, the Staff urges the Commission to grant MGUC's application for leave to appeal and either reverse the ALJ's ruling or, preferably, amend the August 22 and June 26 orders to require MGUC to file its depreciation case in Case No. U-15550 to contain the information required by the order in Case No. U-14292 using 2007 audited data.

Conclusions of Law

1999 AC, R 460.17337(2) provides:

The commission will grant an application and review the presiding officer's ruling if any of the following provisions apply:

- (a) A decision on the ruling before submission of the full case to the commission for final decision will materially advance a timely resolution of the proceeding.
- (b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large.
- (c) A decision on the ruling before submission of the full case to the commission for final decision is consistent with other criteria that the commission may establish by order.

The Commission finds that MGUC's application for leave to appeal should be granted on grounds that an immediate decision on the ALJ's July 1, 2008 ruling will advance a timely resolution of the proceeding. The Commission further finds that the ruling, suspending the proceedings in Case No. U-15550, should be reversed. The Commission agrees with MGUC that its filing in Case No. U-15550 was in compliance with the August 22 order and that the company is required to file another depreciation case on May 1, 2009 to conform to the June 26 order. As MGUC observed, the purpose of the June 26 order was to make a large amount of depreciation information available to the Staff and that the Commission further intended that the case filings be spaced at regular intervals and based on the most recent available cost of removal data. As the Commission observed, "this case [U-14292] is a generic one instituted for the purpose of acquiring information regarding SFAS No. 143 and related issues." Further, the Commission made clear that its objective was to evaluate the various methods for cost of removal accounting to ultimately arrive at a standard method that accurately reflects actual removal costs and to update ratemaking treatment of these costs accordingly:

While the proposal to adjust historic inflation does not address the time value of money issue in calculating future removal costs, the Commission nevertheless agrees with the Staff that an SFAS No. 143 approach applied to required ARO and other ARO accounts would be informative, even if the Commission determines that SFAS No. 143 should not be used for ratemaking. The Commission therefore directs the large utilities to file new depreciation cases in 2008, using 2007 cost of removal expenses as a basis, and to calculate cost of removal depreciation under: 1) the current method for calculating cost of removal; 2) the current method for calculating cost of removal using the standard retirement units proposed by the Staff; 3) the method proposed by Mr. Czech and using the standard retirement units proposed by the Staff; and 4) an SFAS No. 143 approach that considers the time value of money applied to required AROs and other AROs, with and without the standard retirement units proposed by the Staff.

June 26 order pp. 33-34.

As a result of this order, the application for leave to appeal filed by ABATE is moot.

THEREFORE, IT IS ORDERED that:

- A. The application for leave to appeal filed by Michigan Gas Utilities Corporation is granted and the July 1, 2008 ruling suspending the proceedings in Case No. U-15550 is reversed.
- B. The application for leave to appeal filed by the Association of Businesses Advocating Tariff Equity is denied.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of August 26, 2008.

Mary Jo Kunkle, Executive Secretary