

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-15990
for authority to increase retail natural gas rates.)	
_____)	

At the October 29, 2009 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

On October 6, 2008, Governor Jennifer M. Granholm signed Public Act 286 of 2008 (Act 286), amending Public Act 3 of 1939; MCL 460.6 *et seq.* Section 6a(1) of the Act sets out certain requirements and procedures for electric utility rate cases. Section 6a(1) provides:

If the commission has not issued an order within 180 days of the filing of a complete application, the utility may implement up to the amount of the proposed annual rate request through equal percentage increases or decreases applied to all base rates. . . . For good cause, the commission may issue a temporary order preventing or delaying a utility from implementing its proposed rates or charges.

Section 6a(1) further provides that such implementation may not take place prior to the commencement of the projected test year (if a projected test year has been used in developing the requested rates and charges), and that, if the implemented rate exceeds the rate authorized in the final order, the excess shall be refunded to customers with interest. MCL 460.6a(1).

On July 1, 2009, Michigan Gas Utilities Corporation (MGUC) filed an application requesting authority to increase its rates by approximately \$8,444,435 annually. In the application, MGUC also stated that, should the opportunity to self-implement occur, it intends “to implement interim rates for service rendered on and after January 1, 2010, up to the amount of the proposed annual rate request, through equal percentage increases applied to all rates.” Application, p. 4. The application relies on a January 1, 2010 to December 31, 2010 projected test year.

A prehearing conference was held before Administrative Law Judge Sharon L. Feldman (ALJ) on August 3, 2009. At the prehearing conference, the ALJ granted petitions to intervene filed by Constellation NewEnergy - Gas Division, LLC (CNE). The Commission Staff (Staff) also participated in the proceedings.

The schedule for the proceedings provides for the filing of testimony by the Staff and intervenors by December 8, 2009, rebuttal testimony by January 5, 2010, cross-examination commencing February 1, 2010, briefing in March 2010, and issuance of a Proposal for Decision on or before April 29, 2010. The Commission must issue a final order by July 1, 2010.

MCL 460.6a(2).

By law, on January 1, 2010, absent an order from the Commission that either prevents or delays self-implementation, MGUC may self-implement up to the full amount of its proposed rate increase. Because Act 286 established extremely short timeframes for concluding rate cases, and despite the aggressive schedule set in this proceeding, as it currently stands, there will be no record evidence available to the Commission on which to base a decision on a temporary order by January 1, 2010. In particular, the Commission finds that a decision on whether there is good cause to prevent or delay the implementation of new rates should not be made in the absence of additional information regarding what the new rates will be.

Prior to the enactment of Act 286, existing rates were conclusively deemed to be just and reasonable, and any unapproved rate increase implemented *ex parte* was conclusively unreasonable and unlawful. *Northern Michigan Water Co v Public Service Comm*, 381 Mich 340, 352-353; 161 NW2d 584 (1968). Act 286 has radically revised the regulatory paradigm. Although the Commission still has an obligation to “hear and pass upon” all matters relating to electric utility regulation under MCL 460.6a, Act 286 appears to have grafted a modified “file and use” approach for proposed rates absent “good cause” for the Commission to either prevent or delay the use of filed rates by the utility.

In order to address these concerns, the Commission directs MGUC to file, by November 23, 2009, tariffs showing the rates that MGUC proposes to self-implement between January 1, 2010 and July 1, 2010. All parties will be able to respond to the tariff filing, if they so choose, in responses to be filed no later than December 3, 2009.

In addition, the Commission finds that the ALJ should conduct a hearing at 1:00 p.m. on December 10, 2009. The hearing must, of necessity, be extremely abbreviated. At the hearing, MGUC is directed to provide one witness to support the reasonableness of the proposed rates and shall provide evidence regarding the effect of the statutory rate design option and reasonable alternatives thereto. Other parties may be prepared to present one witness each, if they so choose. The time allotted to each party will be set by the ALJ at the hearing.

THEREFORE, IT IS ORDERED that:

A. Michigan Gas Utilities Corporation shall file by November 23, 2009, tariffs showing the rates that it proposes to self-implement between January 1, 2010 and July 1, 2010.

B. Parties shall have an opportunity to respond to Michigan Gas Utilities Corporation’s tariff filing by December 3, 2009.

C. A hearing shall be held at 1:00 p.m. on December 10, 2009. At the hearing, Michigan Gas Utilities Corporation shall provide one witness to support the reasonableness of the proposed tariffs and shall provide evidence regarding the effect of the statutory rate design option and reasonable alternatives thereto.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Orjiakor N. Isiogu, Chairman

Monica Martinez, Commissioner

Steven A. Transeth, Commissioner

By its action of October 29, 2009.

Mary Jo Kunkle, Executive Secretary