

132 FERC ¶ 61,161  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Missouri Interstate Gas, LLC  
Missouri Gas Company, LLC  
Missouri Pipeline Company, LLC

Docket No. CP06-407-006

ORDER ON REMAND ESTABLISHING SETTLEMENT PROCEDURES

(Issued August 24, 2010)

1. On April 13, 2010, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the Commission's decision allowing MoGas Pipeline LLC (MoGas) to continue to include the full purchase price of certain pipeline facilities in its initial rates following a merger and remanded the issue to the Commission for a prompt resolution.<sup>1</sup> This order refers this proceeding to a settlement judge to determine whether the parties can reach a settlement on this issue.

**Background**

2. The extensive background of this proceeding is set forth in prior Commission orders and in the opinion of the court of appeals, and will be repeated here only to the extent necessary to understand the issue. In the orders on review, the Commission approved, subject to conditions, the merger of two state-regulated pipelines, Missouri Pipeline Company, LLC and Missouri Gas Company, LLC, with one Commission-regulated interstate pipeline, Missouri Interstate Gas, LLC (Missouri Interstate).<sup>2</sup> In approving the merger and issuing a certificate of public convenience and necessity under section 7 of the Natural Gas Act (NGA), the Commission authorized initial rates for service on the combined facilities of the new Commission-regulated interstate pipeline, MoGas. The Commission dismissed the protest of the Missouri Public Service Commission (Missouri Commission) alleging that the Commission's approved rate base

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<sup>1</sup> *Mo. Pub. Serv. Comm'n v. FERC*, 601 F.3d 581 (D.C. Cir. 2010) (*Mo. PSC*).

<sup>2</sup> *Missouri Interstate Gas, LLC*, 119 FERC ¶ 61,074 (2007), *order on reh'g*, 122 FERC ¶ 61,136 (2008), *reh'g denied*, 127 FERC ¶ 61,011 (2009).

established for the purpose of determining MoGas's initial rates included an unlawful acquisition premium for Missouri Interstate, an amount above the depreciated value of the underlying assets, carried over from a prior sale of those assets, before their acquisition by Missouri Interstate.<sup>3</sup> The Commission declined to change its previous decision<sup>4</sup> granting Missouri Interstate its original NGA section 7 certificate, which permitted Missouri Interstate to include the full purchase price of its facilities in rate base. The Commission explained that it would be a more efficient use of its administrative resources to address the issue in detail in the rate proceeding MoGas would be filing within 18 months of commencing operations.<sup>5</sup>

3. In its opinion, the D.C. Circuit held that the Commission erred by deferring consideration of the disputed acquisition premium to an NGA section 4 proceeding.<sup>6</sup> The court found that the Commission's action was inconsistent with its own precedent which establishes that such premiums are disallowed unless the Commission applies the so-called "benefits exception."<sup>7</sup> The court also found that the Commission's action was inconsistent with its rejection of the acquisition premiums included in the costs associated with the two state-regulated pipelines' facilities.<sup>8</sup>

#### **Additional Pleadings in Response to the D.C. Circuit's Remand**

4. On June 22, 2010, MoGas filed a supplemental filing in response to the D.C. Circuit's opinion that provides additional information regarding the acquisition premium issue and requests that the Commission find that MoGas's initial rates properly included the full purchase price of facilities acquired by Missouri Interstate in 2002.<sup>9</sup> On July 7, 2010, the Missouri Commission filed an answer to MoGas's supplemental filing and a

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<sup>3</sup> *Missouri Interstate Gas, LLC*, 122 FERC ¶ 61,136, at P 55 (2008).

<sup>4</sup> *Missouri Interstate Gas, LLC*, 100 FERC ¶ 61,312, at P 24-26 (2002)

<sup>5</sup> *Missouri Interstate Gas, LLC*, 122 FERC ¶ 61,126, at P 53 (2008).

<sup>6</sup> *Mo. PSC*, 601 F.3d at 586.

<sup>7</sup> *Id.* at 582, citing *RioGrande Pipeline Co. v. FERC*, 178 F.3d 533, 536-37 (D.C. Cir. 1999); *Kansas Pipeline Co.*, 81 FERC ¶ 61,005 (1997).

<sup>8</sup> *Mo. PSC* at 586-587.

<sup>9</sup> The Commission will treat MoGas's supplemental filing as a motion under Rule 212 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.212 (2010).

motion requesting procedures.<sup>10</sup> The Missouri Commission disagrees that MoGas has met its burden of showing a benefits exception to justify the inclusion of an acquisition adjustment in rate base consistent with Commission precedent. Accordingly, the Missouri Commission requests that this Commission establish additional procedures in order to develop a record upon which a decision on remand can be issued. The Municipal Intervenors<sup>11</sup> and Union Electric Company filed answers in support of the Missouri Commission's July 7, 2010 motion; MoGas filed an answer opposing the motion. The Missouri Commission filed leave to answer and an answer to MoGas's answer. Unless otherwise ordered by a decisional authority, Commission regulations do not permit the filing of answers to answers.<sup>12</sup> We do not find good cause to waive this provision and reject the Missouri Commission's answer.

5. As discussed below, the Commission finds that additional procedures are warranted in order to address the issue on remand.

### **Discussion**

6. Since the issuance of the Commission's prior decisions in this proceeding, MoGas filed an NGA section 4 rate case in Docket No. RP09-791-000 in compliance with the order issuing MoGas's certificate. By order issued on July 29, 2009, the Commission accepted the tariff sheets effective January 1, 2010, subject to refund and established hearing procedures.<sup>13</sup> After the opportunity for discovery, an uncontested Stipulation and Agreement of Settlement (Settlement) was reached by the parties resolving all issues in the proceeding. Article X of the Settlement provides that the Settlement will not affect the instant proceeding involving the appropriateness of an acquisition premium that was pending on appeal when the Settlement was filed. It also provides that in the event the case is remanded to the Commission, a final Commission order shall not affect the Settlement Rates. By order issued July 30, 2010, the Commission approved the Settlement effective on January 1, 2010.<sup>14</sup> Thus, resolution of the issue on remand only

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<sup>10</sup> On July 28, 2010, the Missouri Commission submitted an attachment that was referenced in its July 7, 2010 motion that it states was inadvertently omitted from this filing.

<sup>11</sup> The Municipal Intervenors consist of the Municipal Gas Commission of Missouri and the Cities of St. James, St. Robert, Richland, and Waynesville, Missouri.

<sup>12</sup> 18 C.F.R. § 385.213(a)(2) (2010).

<sup>13</sup> *MoGas Pipeline LLC*, 128 FERC ¶ 61,101 (2009).

<sup>14</sup> *MoGas Pipeline LLC*, 132 FERC ¶ 61,092 (2010).

will impact the rates for a locked-in period from June 1, 2008, the date MoGas commenced jurisdictional interstate service, to January 1, 2010, the effective date of the Settlement Rates.

7. Based on these circumstances, the Commission believes that the parties should be given an opportunity to settle the issues related to the appropriate rate base to use to calculate MoGas's initial rates for the locked-in period. The Commission encourages parties to resolve disputes through settlement, and believes that the circumstances here make the issue on remand appropriate for settlement. If a settlement of this issue cannot be reached, the Commission will establish additional procedures to address the acquisition premium issue consistent with Commission precedent.

8. To aid the parties in their settlement efforts, we will direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. The Commission also directs that its litigation staff participate in the settlement discussion. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

The Commission orders:

(A) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(B) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or, if appropriate, refer the matter back to the Commission for further action. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(C) The Missouri Commission's answer to MoGas's answer is rejected.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.