

PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Madison Gas and Electric Company for Authority to Change Electric Rates
Gas Rates

ORDER ON MOTION TO STRIKE

This Order, pursuant to Wis. Admin. Code § [PSC 2.04\(1\)](#), denies the Motion of Madison Gas and Electric Company (MGE) to Strike Portions of Testimony of Nancy Korda (Motion). ([PSC REF#: 291264](#).) In this proceeding, MGE favors, and Ms. Korda opposes, maintaining the electric rate design ordered by the Commission in docket 3270-UR-120.¹ Ms. Korda advocates for a return to the rate design in place prior to that decision. To support her position, Ms. Korda presents an analysis of the public comments filed in docket 3270-UR-120, and testifies to her experience with respect to MGE's rate design collaborative and community-wide conversation that occurred after the close of that docket. Specifically the testimony at issue: (1) "concerns," why MGE should have proposed a different rate structure, and (2) proposes alternative methods for designing rates that involve a different analysis of public comments, and the possibility of a statewide investigation on rate design policy. (Motion at 2.) MGE moves to strike this testimony, as "irrelevant to the Application." (Motion at 2.)²

But, MGE's Application does not define relevancy in this proceeding. The Scheduling Order clearly sets forth the rate design issue in this proceeding as "[w]hat is the appropriate rate design . . .?" (Scheduling Order, at 1 ([PSC REF#: 286734](#))). MGE's position in favor of

¹ Final Decision in docket 3270-UR-120 at 57. ([PSC REF#: 226563](#).)

² MGE also enters an objection to Ms. Korda's statements that, in addition to herself, she is testifying on behalf of other MGE customers. (Direct-Korda-5 ([PSC REF#: 290661](#))). The Commission will receive these statements without modification, but upon the common sense understanding that Ms. Korda only means to state that she believes that other MGE customers share her views, not that she claims to have legal authorization to represent anyone other than herself. If further clarification is required, it can be made at hearing.

maintaining the rate design ordered by the Commission in docket 3270-UR-120, provides one answer to that question, but does not define the scope of the question.

To determine the appropriate rate design, the Commission, under its general authority to supervise utilities,³ and its specific power to “inquire into the management of the business of all public utilities,”⁴ may question the methods by which MGE prepared its rate design proposal, and inquire about alternatives to the method MGE employed. An intervenor, “to promote the proper disposition of the issues to be determined in the proceeding . . .” may offer evidence to bear on those questions. Wis. Admin. Code § PSC 2.21(2). Ms. Korda’s testimony speaks directly to this matter, and is therefore relevant and has probative value.

The scope of a rate proceeding may be limited by express wording in the issues list. This would apply to any issue, parties and staff agree to exclude (a cost deferred, for example), including an issue that was recently litigated and decided in a prior case. Getting a particular issue expressly exempted from the issues list is an important part of our rate case process because ratemaking triggers much of the Commission’s expressed and implied powers and implicates practically all aspects of a utility’s business.

Expressly limiting the rate case issue list is a long-standing part of the Commission’s pre-hearing process. The latest instance of such practice occurred in May. Northern State Power Company of Wisconsin sought changes to its rates on the basis of specific and limited issues. It applied for a docket on that basis, and offered a specific list of expressly limited issues to conform the scope of the processing to the limited scope of the application. The Commission

³ Wisconsin Stat. § 196.02(1) states, “The commission has jurisdiction to supervise and regulate every public utility in this state and to do all things necessary and convenient to its jurisdiction.”

⁴ Wisconsin Stat. § 196.02(4)(a).

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adopted this list and the hearing proceeded without incident. (Scheduling Order, docket 4220-UR-122 ([PSC REF#: 286167](#)).)

MGE applied this practice in two past dockets. In docket 3270-UR-119, MGE applied for a limited issue rate proceeding. The docket proceeded on that limited basis in an orderly fashion. (Final Decision, docket 3270-UR-119 ([PSC REF#: 187928](#)).) In docket 3270-UR-117, MGE requested a limited reopener to update rates. The Commission adopted MGE's proposed issues, and the limited scope of the proceeding was maintained over several attempts at expansion by intervenors. (Prehearing Conference Memorandum, docket 3270-UR-117 ([PSC REF#: 151316](#)).)

MGE failed to properly request the fixed rate charge be exempted from the issue of appropriate rate design during the pre-hearing process. No motion to strike may now be used to limit the issues so that the scope of a proceeding conforms to the scope of its Application.

MGE highlights its efforts to seek public input as important elements of its rate development process. Direct-Korda-6 ([PSC REF#: 290661](#)). MGE's efforts to involve the community, as well as, an intervenor request for a state-wide investigation on rate design, were part of the record in docket 3270-UR-120. After considering the state of the record in that docket, the Commission found it unnecessary to open a separate investigation on rate design, or provide, "*at this time,*" any specific guidance on the community involvement efforts to which MGE was committed. (Final Decision at 57 ([PSC REF#: 226563](#)) (emphasis added).)

Ms. Korda testifies to her experience with respect to the rate design collaborative and community-wide conversation. This testimony is relevant and has probative value because the Commission may choose to provide MGE with guidance on these efforts at this time.

Furthermore, despite what Ms. Korda's testimony may "concern," in substance, the evidence she presents does no more than support an alternative rate design. And in principle, MGE concedes to the relevancy of such testimony. (Motion, at 2 ("MGE has no objection to Ms. Korda's testimony supporting her proposed rate structure.").)

Ms. Korda's testimony with respect to the treatment of public comments is part of this relevant evidence. Public comments play a vital role in the determination of the appropriate rate design. "In designing rates, the Commission exercises a legislative function . . . [and] the Commission has wide discretion in determining the factors upon which it may base its rate decisions." (Final Decision at 37 ([PSC REF#: 226563](#)).) One of the factors which routinely weighs in this process is "public acceptability."⁵ Public comments allow the Commission to gauge the general mood of the public with respect to a rate increase proposal, and provide a means to receive specific feedback from individual utility customers with respect to that utility's performance of its duties under Wis. Stat § 196.03(1).⁶

For MGE rate proceedings, the Commission has a recorded practice of soliciting and receiving public comments since at least 1974. *See, Re Madison Gas & Elec. Co.*, 5 P.U.R.4th 28, 1974 WL 393610 (Aug. 8, 1974), and, *Re Madison Gas & Elec. Co.*, 10 P.U.R.4th 185,


⁵ "Public acceptability" of a rate design is part of one of the attributes of a good rate design referenced so routinely by Commission staff it requires no citation. But in this proceeding, *see*, Direct-PSC-Singletary-8 ([PSC REF#: 290708](#)).

⁶ Wisconsin Stat. § 196.03(1) states, ". . . a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility for any heat, light, water, telecommunications service or power produced, transmitted, delivered or furnished or for any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful."

1975 WL 412841 (June 16, 1975) (testimony and comments were introduced into the record by approximately 39 individuals indicating their interest in the proceedings); *Wisconsin's Envtl. Decade, Inc. v. Pub. Serv. Comm'n*, 84 Wis. 2d 504, 519–20, 267 N.W.2d 609, 618, 1978 WL 391842 (1978) (143 individuals entered their names on sign-up sheets). Because public comments have been an essential element of the rate case process for so long, a proposal to improve the way the Commission treats public comments is an acceptable issue in this proceeding. Therefore, Ms. Korda's testimony is relevant and has probative value.

MGE cites as a bar to Ms. Korda's testimony that she raises issues that were litigated in the last proceeding. (Motion at 4.) But while Ms. Korda makes reference to the existence of public comments and a few other filings from the last proceeding, the evidence she presents for Commission consideration was not available at the time of the last proceeding and never before the Commission. MGE, having failed to seek an expressed exception of the customer charge from the issues list, cannot shield against an offer of new information that supports an alternative customer charge, or investigation into the best method for developing that charge.

For the above stated reasons, this Order denies the Motion.⁷


Michael E. Newmark
Administrative Law Judge

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⁷ While this Order denies the Motion on the grounds advanced by MGE, certain parts of the testimony are objectionable for the reasons set forth on the record at the hearing on September 20, 2016, and are stricken, and Ms. Korda is directed to re-file her direct testimony omitting the stricken material.