

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of Missouri Gas Energy's)
Tariff Sheets Designed to Increase)
Rates for Gas service in the)
Company's Missouri Service Area)

Case No. GR-2004-0209

**MOTION OF MISSOURI GAS ENERGY TO COMPEL
RESPONSES BY STAFF TO DATA REQUESTS**

COMES NOW Southern Union Company, d/b/a Missouri Gas Energy ("MGE"), pursuant to Missouri Public Service Commission ("Commission") rule 4 CSR 240-2.090(8) and moves the Commission for an order compelling responses to a number of data requests delivered to the Commission's Staff ("Staff") on April 22nd and April 23rd, 2004. Staff has objected to twenty-eight (28) data requests and MGE is seeking an order compelling responses thereto.

1. The questions to which Staff has objected are set forth in a letter by Staff Counsel Robert V. Franson dated May 3, 2004 attached hereto as Exhibit A. The nature of the objections are stated in the letter and are incorporated herein by reference to said letter.

Expert Credentials of Staff Witnesses
Data Request Nos. 2, 10, 19, 30, 31, 37, 40, 51, 70, 71, 72, 73, 118, 131 and 137

2. Staff has lodged objections to MGE data requests numbers 2, 10, 19, 30, 31, 37, 40, 51, 70, 71, 72, 73, 118, 131 and 137. Copies of the data requests objected to are attached hereto, collectively, as Exhibit B.

3. In these data requests, MGE seeks, variously, job descriptions, educational background, professional background, training information and associated

written materials with respect to a number of Staff's witnesses who have filed prepared direct testimony in this case. Staff has objected to providing this information, generally, on the grounds that the information sought is irrelevant, burdensome and not likely to lead to the discovery of admissible evidence. These objections are not valid.

4. MGE believes the information sought is relevant to the case on a very fundamental level. Staff's counsel has previously stated that the witnesses to whom the data requests have been directed are being offered as experts. Under §490.065 RSMo 2000, testimony of an expert witness is admissible only if that individual is qualified by "knowledge, skill, experience, training or education" with respect to scientific, technical or other specialized knowledge. This statute applies to administrative decisions, including decisions of this Commission. *State Board of Registration for the Healing Arts v. McDonough*, 123 S.W. 3d 146 (Mo. banc 2003).

5. Each of the questions promulgated by MGE is designed to elicit information with respect to the responsibilities, knowledge, skill, experience, training and/or education of certain Staff witnesses in this case. These questions go to whether the testimony is admissible at the time of the hearing in this case. This information is clearly central and relevant to the claimed expertise of these individuals. MGE is entitled to inquire into the credentials and experience of these witnesses as may be necessary to make a determination concerning the degree of their expertise.

6. To the extent that the witnesses are being offered as fact witnesses (or combination expert/fact witnesses), their degrees of expertise and experience goes directly to the weight to be given their testimony at the time of hearing. Thus, whether the witnesses are offered as expert or fact witnesses, the information requested by the

company is directly relevant to the admissibility and/or weight of the evidence being proffered. Consequently, Staff objections should be overruled.

7. The information requested is not oppressive or burdensome. It likely resides in the personnel files of the individuals which are readily available. Their job duties should be easy to compile.

Request for Information on Staff Legislative Liaison Responsibilities
Data Request No. 81

8. MGE has submitted to the Staff data request number 81 which requests job descriptions for certain individuals employed by the Commission and identified therein. A copy of that data request is attached hereto as Exhibit C. Although these individuals may not have filed prepared direct testimony in this case, they are subject to being summoned to testify by MGE pursuant to the Commission's general subpoena powers to compel the attendance of witnesses. 4 CSR 240-2.100.

9. Staff has objected to data request number 81 on the grounds that the information sought is not relevant or is not likely to lead to the discovery of relevant information.

10. This objection has no merit. In this case, Staff has proposed to disallow certain internal payroll costs associated with MGE's legislative activities as costs that should not be borne by ratepayers. Consequently, Staff has raised the issue as to the appropriateness of including the cost of such activities in regulated cost of service.

11. Staff has thus opened the door to an examination of this issue as a matter of regulatory policy. Consequently, MGE is entitled to inquire as to the degree of legislative activity engaged in by employees by the Commission and, further, whether the fact that such costs are borne by MGE ratepayers through the Commission's

assessment process under §386.370 RSMo 2000 bears on the rate recoverability of similar costs incurred by MGE. If the Commission uses revenues derived from customer charges to fund its own legislative activities by involvement of Staff, there is no principled basis to conclude that it is inappropriate for MGE to be able to do so as well. This argument is a legitimate topic of debate and, regardless of the ultimate outcome, MGE should have available to it the facts necessary to make a complete and coherent evidentiary record with respect to the issue in furtherance of its due process rights.

12. MGE should not be barred from examining background facts associated with this important public policy consideration. Access to this information will ensure the issue can be well and fully developed for the Commission's consideration and for the public record. Sound public policy is not advanced by withholding relevant information concerning this dialog.

Other Company Information
Data Request Nos. 16, 17, 20, 23, 38, 42, 44 and 45

13. Staff has objected to MGE data request numbers 16, 17, 20, 23, 38, 42, 44 and 45. Those data requests are attached hereto, collectively, as Exhibit D. Staff's primary objection to these data requests is that it is prohibited from supplying the information to MGE by the terms of §386.480 RSMo 2000 which prohibits employees of the Commission from making "open to public inspection" information in its possession unless authorized to do so by the Commission. Staff claims that absent an order of the Commission, it simply can not supply this information.

14. This objection has no legitimate basis. MGE is not requesting that the information sought be made open to public inspection. The Commission on December

9, 2003, issued a Protective Order in this case pursuant to which parties in the case, including Staff, may designate information highly confidential or proprietary and thereby protect information against public disclosure. MGE contends that the Commission's Protective Order already fully addresses the stated concerns of Staff. Allowing Staff to hide behind the inapplicable language of the statute would render meaningless the obvious purpose of the Protective Order.

15. The information sought by MGE is appropriate and relevant subject matter for discovery in this case. With respect to data request numbers 16 and 17, the Office of the Public Counsel ("OPC") has asserted that MGE's performance targets regarding customer service levels are "just average." (See, Direct Testimony of OPC witness Bolin at page 15). MGE seeks to examine performance of other natural gas local distribution companies ("LDCs") throughout the state to determine how its performance compares to those other companies. OPC has opened the door to this issue and MGE therefore is entitled to examine the facts so that it can fashion its rebuttal testimony. The other LDCs are not parties to this case and, consequently, they cannot be compelled to provide the information to MGE through discovery requests.

16. With respect to data request numbers 20 and 23, the information sought is necessary to respond to Staff witness Eaves' contention that MGE's billing lag is excessive. Staff witness Eaves has compared MGE's billing lag period to that of Laclede Gas Company ("Laclede") to make his point. If Staff is going to compare MGE's business practices to those other Missouri LDCs, Staff has opened the door to for MGE to explore the facts necessary to fashion its rebuttal testimony. For example, with respect to the issue of billing lag, MGE's policy is to perform bill checks.

Consequently, it issues very few estimated bills. If MGE were to reduce its billing lag period as suggested by Staff, it would be necessary to issue more estimated bills which are not favored by MGE's customers. MGE seeks to understand the business practices of Laclede and other LDC's to compare their relative use of estimate bills and how that impacts each company's respective billing lag. This is an important customer billing issue that MGE is entitled to explore now that Staff has made comparable performance an issue in the case.

17. Likewise, data requests 38, 42, 44 and 45 are calculated to elicit relevant information. Again, Staff witnesses have compared MGE's business and performance practices to that of another Missouri LDC. Mr. Oligschlaeger uses Laclede as a template for his billing lag testimony. With respect to the testimony of Staff witness Jolie, she relies on information of at least one other Missouri LDC in making her recommendation concerning depreciation rates for MGE. Staff has opened the door to comparative analysis to justify its recommendations. MGE now is entitled to obtain the necessary facts to fashion its rebuttal to Staff's argument.

18. Simply stated, Staff should not be allowed to make their recommendations to the Commission based on a comparison of MGE and one or more other LDC's and then refuse to provide comparative information for MGE to fairly and fully respond to that testimony. This would represent an abject denial of due process to MGE. See, *State ex rel. Fischer v. Public Service Commission*, 645 S.W.2d 39, 43 (Mo. App. 1982).

Staff/Commission Ratemaking Policies and Procedures
Data Request Nos. 76, 77, 79 and 80

19. Staff has objected to MGE data request numbers 76, 77, 79 and 80. Copies of those data requests are attached hereto collectively as Exhibit E.

20. MGE data request numbers 76 and 77 ask for all written policies, procedures or other documents that describe the Staff's or the Commission's responsibility in rate cases. To the extent that such written policies exist, they are relevant to the core issue in this case, that is, how the Commission and its employees (Staff) view their official responsibilities in a rate case. There is a well-developed body of law in Missouri stating that it is the Commission's rate-setting responsibility to balance fairly the interests of investors and ratepayers. MGE is exploring whether any internal policies (to the extent such policies exist) are at variance or inconsistent with the statutory obligations of the Commission. This is a central issue in any rate case and the questions asked are directly pertinent.

21. The final two MGE data requests to which Staff has objected are numbers 79 and 80 which request information about briefings Staff members may have provided to the Commission concerning the issues of rate of return, return on equity, capital structure, depreciation rates, depreciation studies and/or treatment of net salvage within the past several years outside of a rate case. These are all issues presented in MGE's rate case and MGE seeks to know if there have been any policy or guidance briefings concerning any of these topics and, if so, what the tenor and purpose of those briefings have been. MGE is entitled to know if there is an institutional policy predisposition or propensity on the part of Staff or the Commission with respect to any of these important issues. Staff is a party to this case. Its communications with the Commission are not privileged. The information sought should be available under the liberal rules of discovery before the Commission and before the civil courts to which the Commission defers in furtherance of its obligation to provide a fair proceeding. *See, Hagely v. Board*

of Education, 841 S.W.2d 663, 668 (Mo banc 1992). With respect to the Commission, the issue is relevant to whether there has been any prejudgment, predisposition or bias on the part of the decision makers. Policy or subject matter bias on the part of the decision maker in a case is always a relevant inquiry. See, *State ex rel. Union Electric Company v. Public Service Commission*, 591 S.W.2d 134, 139 (Mo. App. 1980).

Concluding Remarks

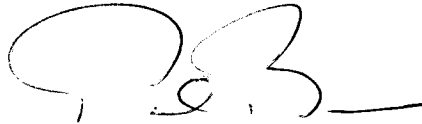
22. All of the matters set forth above are relevant to issues presented in this case, in most cases issues that have been raised by the Staff. The Staff should not be permitted to offer expert testimony or recommend cost-of-service disallowances or adjustments and then refuse to allow MGE to inquire into the facts concerning the matters that they have put at issue. As the Commission is well aware, the rules of discovery in this state are quite liberal. The requesting party does not have to prove that the information provided actually is to be used at the time of hearing. The standard is whether or not the information is relevant or likely to lead to the discovery of relevant information. In each circumstance above, there is either direct relevance to the questions or they are calculated to lead to the discovery of relevant information.

23. Staff's tactic of delay in responding to these data requests has placed MGE in a difficult position of meeting the now imminent May 20, 2004 deadline for filing rebuttal testimony. Consequently, MGE requests that the Commission act without further delay and compel the Staff to provide the information requested by MGE.

24. MGE reserves the right to request an extension of time within which to file its rebuttal testimony in the event the information requested by MGE is not provided by Staff expeditiously.

WHEREFORE, for the reasons aforesaid, MGE requests that the Commission issue an order compelling its Staff to respond to MGE data request nos. 2, 10, 16, 17, 19, 20, 23, 30, 31, 37, 38, 40, 42, 44, 45, 51, 70, 71, 72, 73, 76, 77, 79, 80, 81, 118, 131 and 137.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'P. B.', with a horizontal line extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 10th day of May 2004 to the following:

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