

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of September, 2006.

Respondents.

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On August 28, 2006, the Commission's Staff filed a motion asking the Commission to compel Missouri Pipeline Company, LLC, and Missouri Gas Company, LLC, to respond to a particular data request – DR #5 – submitted to those companies by Staff. The exact language of the data request is highly confidential and thus cannot be repeated in this order. However, it can be said that Staff is seeking copies of contracts between two companies, one of which is an affiliate of Missouri Pipeline and Missouri Gas. Neither company is, however, a party to this case. Missouri Pipeline and Missouri Gas objected to DR#5, contending that the request seeks information that is not relevant to any issue in this case and that it seeks information from entities that are not parties to this proceeding.

Staff's motion to compel argues that the information it seeks is relevant to its complaint against Missouri Pipeline and Missouri Gas because it may show that those companies are using a contract entered into by an affiliate to subsidize the affiliate at the expense of Missouri Pipeline's and Missouri Gas' customers. Again, the exact nature of the alleged subsidization is highly confidential and cannot be repeated in this order. Even though the contract that it seeks to obtain is between two companies that are not parties to this case, Staff argues that the documents it seeks are in the possession and control of a certain corporate officer of Missouri Pipeline and Missouri Gas, who is also an officer in the contracting affiliated company.

Missouri Pipeline and Missouri Gas filed a response to Staff's motion to compel on September 1. In that response, Missouri Pipeline and Missouri Gas argue that the documents that Staff seeks through DR #5 are business records held by companies that are not parties to this case. As such, they are not subject to disclosure through the use of data requests sent to a party. According to Missouri Pipeline and Missouri Gas, the fact that a non-party company shares a corporate officer with the two companies that are parties to this case does not give the Staff authority to compel the parties to disclose the documents of the non-party.

Commission rule 4 CSR 240-2.090(1) provides that discovery in cases before the Commission can be obtained by the same means and under the same conditions as in civil actions in the circuit court. Subsection (2) of that rule also creates the data request, a device that does not exist in circuit court, as the means by which parties may informally obtain discovery from other parties. That rule does not, however, indicate that data requests can be directed to non-parties. Therefore, Staff could not direct a data request to

a non-party, even if the non-party is a company affiliated with Missouri Pipeline and Missouri Gas.

The data request that Staff seeks to compel Missouri Pipeline and Missouri Gas to answer is directed to companies that are parties to this case and in that respect it is a proper data request. However, the data request is asking Missouri Pipeline and Missouri Gas to produce documents belonging to an affiliated company, documents that they contend are not in their possession. Staff points out that a corporate officer of Missouri Pipeline and Missouri Gas is also a corporate officer of the affiliated non-party. From this fact, Staff argues that the legal niceties of separate corporate existences should be ignored in the interest of compelling Missouri Pipeline and Missouri Gas to produce the documents requested by Staff.

Figuratively, Missouri Pipeline and Missouri Gas, as corporations, are standing before Staff offering an empty right hand, denying that they have the documents Staff's seeks, while Staff can clearly see those documents in the corporate left hand. Nevertheless, as separate corporations, Missouri Pipeline, Missouri Gas, and the company affiliated with them, have separate legal existences. Staff has not established any basis for the Commission to look behind those corporate entities to compel Missouri Pipeline and Missouri Gas to produce documents in response to a data request, when those documents are in the legal possession of an affiliated company that is not a party. Staff's motion to compel must be denied.

Although the Commission is denying Staff's motion to compel a response to its data request, it is not precluding Staff from obtaining the documents it seeks. Staff has other tools available to obtain that information. One such tool would be a subpoena duces tecum

directing the non-party company to produce the desired document. Thus, Staff may use a different means for compelling the production of the documents it seeks.

**IT IS ORDERED THAT:**

1. Staff's Motion to Compel Response to Discovery Request is denied.
2. This order shall become effective on September 12, 2006.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur

Woodruff, Deputy Chief Regulatory Law Judge