

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 1st day of  
June, 2006.

In the Matter of Missouri Gas Energy's	)	
Purchased Gas Adjustment (PGA) Factors	)	
to be Audited in Its 2002-2003 Actual	)	
Cost Adjustment	)	

**Case No. GR-2003-0330 et al.**

**ORDER REGARDING MOTION TO COMPEL RESPONSES TO  
DATA REQUESTS**

Issue Date: June 1, 2006

Effective Date: June 1, 2006

Missouri Gas Energy, a division of Southern Union Company, (MGE) filed a motion on May 11, 2006, asking the Commission to compel its Staff to respond to four data requests. As required by Commission rule 4 CSR 240-2.090(8), MGE and Staff previously met with the presiding officer, but were unable to resolve their discovery dispute. Staff responded to MGE's motion on May 22, and MGE replied to Staff's response on May 24.

The Motion to Compel indicates that Staff has refused to answer four data requests submitted by MGE. The data requests, and Staff's objections to them, are similar, but the Commission will address each in turn.

**DR 180**

The first data request and Staff's written objections to that data request are as follows:

DR 180      Reference: Page 3, lines 15 through 19.<sup>1</sup> “Some LDCs<sup>2</sup> define ‘design day’ as an average normal demand for a month. Some LDCs use ‘design day’ for a specific design condition, a condition that is not demand under ‘extreme conditions.’ In the reliability review or capacity planning process, Staff and the Companies are concerned with ensuring adequate capacity to meet a peak cold day requirement. The definition of adequate capacity and what constitutes peak day requirements can vary by Company.”

a. Please identify by name and location the LDCs that Ms. Jenkins has reference to in this statement.

b. Please explain why an LDC would use average normal demand for a month as a definition of design day and provide a copy of any documents of the LDC which demonstrate that this approach has been implemented.

c. Please confirm that Mr. Reed’s<sup>3</sup> definition of ‘Design Day’ is consistent with the ‘capacity planning process . . . and consistent with the process of ‘ensuring adequate capacity to meet a peak cold day requirement.’

d. If Ms. Jenkins cannot confirm this, please explain why not and provide all supporting documentation.

Staff objected to that data request as follows:

Staff objects to this DR and all subparts to the extent that an answer involves information that is privileged, including providing, comparing, contrasting, or otherwise conveying HC information about or from other LDCs.

In its response to MGE’s motion to compel, Staff explained that its position is based on its interpretation of Section 386.480, RSMo 2000, which provides that information provided to the Commission by a “corporation, person or public utility” shall not be “open to public inspection or made public except on order of the commission, . . . “ According to Staff, this provision means that Staff cannot share information that it receives from one utility with another utility unless ordered to do so by the Commission.

As a general proposition, Staff’s interpretation of the statute is correct. Obviously, Staff has an obligation to protect the confidential information that it receives from the

---

<sup>1</sup> The page references in all of the data requests are to the prefiled rebuttal testimony of Staff witness Lesa Jenkins.

<sup>2</sup> LDC is an acronym for Local Distribution Company, which is a company, such as MGE, that distributes natural gas to residential and business customers within its service area.

<sup>3</sup> Mr. Reed is MGE’s witness, John J. Reed.

utilities that the Commission regulates. It would not be appropriate for Staff to carelessly share such information with other utilities, or any other member of the public. However, in this case, Staff has referenced such information in its testimony and one of the parties has served Staff with a data request requiring Staff to produce that information. What is more, a protective order has been issued in this case that details how such confidential information may be disclosed to the persons that are entitled to review it, while protecting the information from further, inappropriate disclosure. Simply put, Staff can declare the information it has received from other utilities to be highly confidential, thus limiting its disclosure to the attorneys representing MGE and to any outside experts retained by MGE for purposes of this case. Given the existence of the protective order, Staff's concerns about protecting the confidentiality of information obtained from other utilities cannot justify its refusal to answer MGE's data request.

Staff further contends that the witness' statements about which MGE seeks more information are merely general introductory observations and are not material to the ultimate facts. As such, Staff argues that MGE is not entitled to inquire about the basis for those statements. In an effort to strengthen its contention that the witness statements are only general observations, Staff proposes to amend the previously submitted testimony of its witness to remove specific observations about practices of other LDCs, and replace those observations with more general statements about the practices of hypothetical LDCs. MGE responds that Staff's proposed amendment of its witness' testimony does not change the fact that MGE is entitled to inquire, through discovery, as to the factual basis for those statements, whether general or specific.

MGE is correct. It may use the discovery process to inquire into the basis for the expert opinions offered by Staff's witness. It may do so whether the offered opinions refer to other specific utilities, or whether they merely refer to general or hypothetical matters. Certainly, as Staff contends in its response to the motion to compel, expert witnesses may make general introductory statements, based on their years of experience, that are not based on any specific studies or analysis. However, an opposing party is entitled to ask that witness about the basis for his or her general statements. If the only basis for the witness' statement is his or her years of experience, then that answer could be an appropriate response to a data request. But a witness is not entitled to a free pass to make general statements in his or her testimony without expecting to be asked about the basis for those statements. Staff will be required to respond to DR 180.

#### **DR 190**

The second data request and Staff's written objections to that data request are as follows:

DR 190      Reference: Page 13, lines 8 through 12. "Mr. Reed states that natural gas demand can be thought of as having two components – a variable portion that is responsive to changes in weather and a more constant baseload component . . . Not all Missouri LDCs define natural gas demand in this manner."

- a. Please list the Missouri LDCs by name that do not define gas demand in this manner.
- b. Please provide the definitions utilized by those LDCs regarding demand
- c. Please provide a copy of the specific documentation utilized to support your response to (b) above.

Staff objected to that data request as follows:

Staff objects to this DR and all subparts to the extent that an answer seeks HC information about or from other LDCs that is privileged. Staff further objects to this DR in that it requires Staff to perform studies based on other LDCs' HC information, which is unduly burdensome.

Again, Staff proposes to amend the testimony of its witness to clarify that the witness is offering only general statements about practices of other LDCs.

In part, Staff's objections have already been addressed in the discussion regarding DR 180. Once again, the confidential nature of information from other LDCs can be protected by designating that information as highly confidential. And again, MGE may inquire into the basis for even general statements made by an expert witness. However, Staff raises an additional objection to this data request.

Staff contends that the data request would require it to perform unduly burdensome studies based on highly confidential information obtained from other LDCs. MGE denies that it is asking Staff to perform any sort of study and an examination of the data request reveals that MGE is correct. The data request merely asks Staff to list Missouri LDCs that do not define natural gas demand as having two components. It also asks Staff to provide the alternative definitions that those LDCs use. Neither request places an undue burden on Staff to perform any study nor compile any information. Staff will be required to respond to DR 190.

### **DR 193**

The third data request and Staff's written objections to that data request are as follows:

DR 193      Reference: Page 14, lines 1 through 3. "Some LDCs serve enough business customers that are not open on weekends, so load drops, and usage estimates must consider weekday versus weekend usage."

a. Please provide the name of each LDC reviewed by Ms. Jenkins that utilizes a weekday/weekend variable in their design day demand forecast.

b. Please provide the explanatory value and associated significance (i.e. the t statistic value) of the weekday/weekend variable in the specific design day forecast(s) referenced by Ms. Jenkins.

Staff objected to that data request as follows:

Staff objects to this DR and all subparts to the extent that it seeks information about the operations of other LDCs that would reveal HC information of those LDCs.

Staff further objects to the extent that the information sought would require staff to perform studies or compile information, which is unduly burdensome.

Again, Staff proposes to amend the testimony of its witness to clarify that the witness is offering only general, hypothetical statements about practices of other LDCs.

Staff's objections have already been addressed in the discussion regarding DR 180 and DR 190. Once again, the confidential nature of information from other LDCs can be protected by designating that information as highly confidential. And again, MGE may inquire into the basis for even general statements made by an expert witness.

As it did in response to DR 190, Staff argues that it should not be required to perform studies or compile information. Once again, the data request merely asks Staff to provide a list of the names of LDCs reviewed by the witness that use a weekday/weekend variable in their design day demand forecast. That request does not place an undue burden on Staff to perform any study or compile any information. Staff will be required to respond to DR 193.

#### **DR 200**

The fourth data request and Staff's written objections to that data request are as follows:

DR 200      Reference: Page 23, lines 8 through 9. ". . . and considering alternative methodologies of estimating peak day requirements."

a. Please list and describe the alternative methodologies utilized by Staff for estimating peak day requirements.

b. For each alternative methodology listed in response to part (a), please identify which Missouri LDCs utilize that specific methodology.

c. Please provide documentation to support the representation that the identified LDC currently uses the methodology listed and attributed to it.

d. Please confirm that the various methodologies listed in the direct testimony of Ms. Jenkins were similar but for the data set. If that cannot be confirmed, please provide supporting documentation.

Staff objected to that data request as follows:

Staff objects to subparts (b) and (c) of this DR to the extent that the information sought would require Staff to perform studies or compile information, which is unduly burdensome, whether based on LDCs privileged information or other information.

Staff further objects to this DR and subparts (b) and (c) to the extent that it seeks information and documentation from or about other LDCs that may be HC.

Staff did not object to subparts a and d of this data request and has provided an answer to those subparts.

With regard to the information requested in subparts b and c, Staff argues that the requested information concerns other LDCs and should be protected from disclosure. The Commission has rejected that argument with regard to the previously considered data requests and will do so again.

For its other argument supporting its refusal to answer subparts b and c, Staff once again contends that MGE is asking it to conduct studies or compile information, which Staff argues would be unduly burdensome. The Commission rejected that argument as it related to the other data requests, but this data request is somewhat different.

In context, the testimony of Staff's witness that MGE is questioning concerns a chart that purports to show the variability of usage at any heating degree day in the Kansas City service area. Staff's witness testified that she attempted to assure that her estimates were reasonable by conducting several regression analyses and considering alternative methodologies of estimating peak day requirements. In subparts a and d, MGE, quite

reasonably, asked Staff to explain the nature of those alternative methodologies, and Staff complied. Subparts b and c, however, go farther, and would require Staff to identify which Missouri LDCs use that specified methodology.

Staff's witness never represented, either generally, or specifically, that any other Missouri LDCs used any of the alternative methodologies for estimating peak day requirements. Staff may, or may not, currently know whether such methodologies are used by any other Missouri LDC. Therefore, to the extent that it does not already have that information, the data request is asking Staff to compile such information. The question then become whether that request is unduly burdensome.

Rule 56.01(b) of the Missouri Rule of Civil Procedure provides that "parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, . . ." One party's interest in obtaining discovery, even of relevant information, must, however, be weighed against the other party's burden in providing that information.<sup>4</sup>

MGE requests that Staff compile information about the methodologies used by other Missouri LDC's to estimate peak day requirements. That request is seeking information that is relevant to determine whether the alternative methodologies espoused by Staff's witness are reasonable. If no other Missouri LDC uses such methods, then the reasonableness of those methods may be called into question. MGE does not have direct access to information about the methodologies used by other LDCs and must rely on Staff to produce that information.

---

<sup>4</sup> State ex rel Anheuser v. Nolan, 692 S.W.2d 325, 328 (Mo App. E.D. 1985)



Balanced against that request for relevant information, Staff contends that it would be unreasonably burdensome on its Staff to compile such information. Staff does not, however, offer any details about what it would have to do to obtain the requested information. Given the lack of specific representations from Staff about the burden it would face, and considering that there are only a handful of other LDCs in Missouri, the effort that the Staff would need to make to obtain the requested information is not likely to be unduly burdensome. Staff will be required to respond to DR 200 subparts b and c.

**IT IS ORDERED THAT:**

1. Missouri Gas Energy's Motion to Compel Responses to Data Requests is granted.
2. The Staff of the Commission shall respond to Missouri Gas Energy's DR 180, DR 190, DR 193, and DR 200 (b) and (c) no later than June 12, 2006.
3. The Commission's Data Center shall mail a copy of this order to each natural gas local distribution company operating in Missouri.
4. This order shall become effective on June 1, 2006.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

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

Woodruff, Deputy Chief Regulatory Law Judge