

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

In the matter of Missouri Gas Energy's)
Purchased Gas Cost Adjustment tariff)
Revisions to be reviewed in its 2002-)
2003 Actual Cost Adjustment.)

Case No. GR-2003-0330 et al.

REPLY TO STAFF'S RESPONSE TO MOTION TO COMPEL

Comes now Missouri Gas Energy ("MGE"), a division of Southern Union Company, and for its reply to the Staff's Response to MGE's motion to compel, respectfully states:

1. MGE filed its Motion to Compel on May 11, 2006. Staff filed its Response on May 22, 2006. On May 23, 2006, an order was issued directing MGE to reply by May 26, 2006. This reply addresses claims made in the Staff's response and answers the Commission's question as to whether the amendments made to Staff's testimony eliminate the need for Staff to respond to the data requests. As explained herein, the Staff's Response does not eliminate the need for it to respond to the data requests. The Commission should issue the order compelling responses.

2. In paragraph 2 of its Response, Staff claims that MGE has "challenged statements" made by Staff's witness and further claims that the Staff's statements "are not material to the ultimate facts." That is not an accurate summary. MGE has not yet "challenged" these statements of Staff in the sense of MGE making allegations about the statements. MGE has only submitted data requests asking for further information and details regarding the references that allege certain conduct by *unnamed* local gas distribution companies. MGE at this point is simply trying to discover the factual basis of the Staff's allegations to determine if

there is any basis to challenge the assertions or the credibility of the witness making the allegations. The credibility of a witness is always an issue.

3. Staff also claims in paragraph 2 that MGE is asking questions about “immaterial general statements” made by the Staff witness, citing its belief that an expert witness may make “general, introductory observations” based on “their general knowledge as an expert.” While that may be true in a general sense, Staff has not cited any authority that prohibits a party from asking for further details in order to discover the factual basis for an expert’s “general statements.” Section 536.070 RSMo allows witnesses to make general statements, but it clearly requires them to be subject to cross-examination on the underlying subject matter. Nowhere is it written in Missouri law that we must take the general statements of an expert witness at face value without further inquiry. Were that the case, we would face the prospect of a Staff expert telling us that “Some LDC’s believe the Earth is flat” and then we would be prohibited from asking for details.

4. In paragraphs 3, 4 and 5, the Staff purports to amend the pre-filed testimony of its witness. While a witness is entitled to change her testimony, that does not mean the prior statements vanish. They can certainly be considered as “prior inconsistent statements.” Furthermore, this tactic by Staff is merely an attempt to persuade the Commission that by rephrasing certain statements, the witness should continue to enjoy immunity from further inquiry as to their factual basis. Contrary to the Staff’s allegations, this new testimony emphatically does not remove the basis for MGE’s data requests. All it does is create a moving target because it invites *more questions* as to the factual basis for these new general statements. The revised testimony contains phrases such as “Some LDC’s ...” without identifying them. Therefore, the revised testimony does not resolve the core issue of whether

the Staff can make a general factual allegation, and then claim immunity from disclosing any further details. As cited in MGE's motion to compel, ***State ex rel. Arkansas Power & Light Co. v. PSC***, 736 SW2d 457 (Mo. App. W.D. 1987), says that is not allowed.

5. In making its original objections to the data requests, the Staff did not cite to Section 386.480 RSMo. In paragraphs 7 and 8 of its Response, Staff alleges without any supporting detail that the information it seeks to shield from disclosure pursuant to 386.480 RSMo should be held in strictest confidence due to "the competitive nature" of the natural gas industry. Natural gas companies disclose all sorts of information. The Commission's protective order recognizes that some information, due to competitive or other interests, should not be made public. Staff has not made any showing in its Response that the particular information sought in MGE's data requests is of a competitively sensitive nature. Nevertheless, MGE is not seeking "public disclosure" of the allegedly HC information being withheld by Staff. The law prohibits material supplied to the Commission by a public utility from being disclosed in a manner that it becomes "open to public inspection or made public" without an order from the Commission. So the protection is not absolute. The Commission from time to time enters such orders authorizing disclosure. If the Commission grants this motion to compel, and Staff's responses to these data requests contain material that has been designated as HC by the utility involved, that material will not be "made public" because it will be protected from public disclosure by the protective order already in place. Therefore, there will be no harm or violation of the statute if the Commission directs Staff to respond to the data requests and to simultaneously take steps to protect any information deemed proprietary or highly confidential.

6. In paragraph 7, Staff makes a totally new allegation regarding MGE's data request number 200. As stated in the Response, MGE asked for further information relating to a

statement made on page 23 at lines 8 and 9 of Ms. Jenkins' rebuttal testimony. Staff objected to parts b. and c. of the data request on the basis reprinted in the Staff response. Staff did provide a response to parts a. and d. as it represents. No response has been provided to parts b. and c. Part b. essentially asks whether there are any Missouri LDCs that use any of the alternative methodologies employed by the Staff witness and part c. asked for documentation of that. Staff now claims in its Response that because Ms. Jenkins "made no reference to other LDCs within the referenced lines of testimony it is unreasonable and irrelevant for MGE to request other LDC HC information." This is a totally new basis for objection by Staff. It comes long after ten days from receipt of the request, and therefore was waived by Staff by not being timely raised. Nevertheless, it is relevant whether any other Missouri LDCs actually employ the methods considered or utilized by the Staff. MGE is entitled to inquire as to whether that is the case, or not, in this situation.

7. In paragraph 8, Staff claims it was not trying to use information it obtained from other LDCs as both a sword and a shield. MGE will let the facts speak for themselves. MGE will point out that the Staff "opened the door" on this topic by affirmatively representing in testimony that it was aware of the methods of other LDCs and then, when MGE inquired as to the factual basis for these allegations, the Staff refused to provide the information.

8. The Staff in paragraph 6 "urges the Commission" not to issue an order authorizing the disclosure of the information allegedly in the possession of Staff and the Commission. Such a result is exactly the type of conduct recognized as impermissible in ***State ex rel. Arkansas Power & Light Co. v. PSC***. Because the Staff opened the door on this topic, it should be compelled to respond to these and other legitimate inquiries as to the bases for its allegations.

WHEREFORE, MGE respectfully requests that the Commission issue an order compelling the Staff to fully answer the four referenced data requests by no later than June 1, 2006.

Respectfully submitted,

/s/ Gary W. Duffy

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Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was either mailed or hand delivered this 24th day of May, 2006, to:

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