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PUBLIC SERVICE COMMISSION

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In the Matter of Missouri Gas)
Energy's Tariffs to Implement a) Case No. GR-2004-0209
General Rate Increase for Natural)
Gas Service.)

MORRIS L. WOODRUFF, Presiding,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Good afternoon. We're
3 here for a discovery dispute hearing in Case No.
4 GR-2004-0209, and the dispute is between Staff and
5 Missouri Gas Energy. We'll begin by taking entries of
6 appearance. Let's go with Staff first.

7 MR. FRANSON: Robert Franson on behalf of
8 the Staff of the Missouri Public Service Commission.

9 JUDGE WOODRUFF: Missouri Gas Energy?

10 MR. BOUDREAU: Let the record reflect the
11 appearance of Paul Boudreau, Brydon, Swearngen & England,
12 P.O. Box 456, street address 312 East Capitol Avenue,
13 Jefferson City, Missouri, appearing on behalf of Missouri
14 Gas Energy.

15 JUDGE WOODRUFF: Okay. Let me explain the
16 procedure I intend to use today. MGE has actually filed a
17 Motion to Compel. I'm going to ask MGE counsel to speak
18 first. You don't have to repeat what's in your motion.
19 Of course, I've already read that. But if there's
20 anything you want to add or clarify from that, I'll give
21 you a chance to do so. Then I'll give Staff a chance to
22 respond to that, and then MGE a chance to reply to Staff's
23 response.

24 MR. FRANSON: Judge, may I?

25 JUDGE WOODRUFF: Yes.

1 MR. FRANSON: Are we going to do everything
2 first or can we break this down by various things? That
3 might make it a lot easier for context if you --

4 JUDGE WOODRUFF: I think it would be easier
5 just to go ahead and do it all at once, and then I'll make
6 my ruling after I've heard your arguments.

7 MR. FRANSON: Thank you, Judge.

8 JUDGE WOODRUFF: Mr. Boudreau.

9 MR. BOUDREAU: Thank you. I appreciate the
10 Bench's comments about having the motion in front, and I'd
11 worked up a long, somewhat repetitive list of things, but
12 I won't take up your time. If you've read that, you've
13 read basically what I have to say.

14 The bottom line that I want to emphasize is
15 that the rules of discovery are equally applicable to all
16 parties in the case, and Staff's a party to the case. And
17 those rules of discovery are rather liberal. You have to
18 either show that it's relevant or likely to lead to the
19 discovery of relevant information.

20 Each of the categories that I've
21 identified, and I've broken it down now into four, I
22 think, that I've drawn a direct connection between the
23 information requested and an issue or issues that's in the
24 case, either goes to the admissibility of expert testimony
25 of Staff witnesses or to the weight of testimony of Staff

1 witnesses. That's the first category.

2 As to the other issues, such as the
3 legislative liaison activities and information about other
4 companies, those are doors that have basically been opened
5 by Staff or other parties in the case, and I think that
6 once that sort of comparative analysis starts, once you
7 start saying that this ought to happen because the
8 company's performance isn't as good as company X or that
9 their lag time is different than company Y, then we ought
10 to be able to take a look at that information and at least
11 determine, No. 1, whether it's true, and No. 2, whether
12 there's good business reasons why the period of time or
13 the manner of business is different for those other
14 companies.

15 And I think that's the relevance of those
16 questions. Whether or not it's going to end up being an
17 issue in the case I don't know, but this is the time that
18 the company gets a chance to look at the facts, look at
19 the background facts and determine what it thinks the
20 legitimate rebuttal to Staff's direct testimony is.

21 All of these issues, I think, I've laid out
22 in the motion have some relevance to something that's
23 going on. This is not just a fishing expedition. I've
24 been able to point to specifically what the company's
25 looking at, why it wants to look there. I think they're

1 all legitimate inquiries.

2 Frankly, I don't think that anything that's
3 been asked for is overly complex or burdensome or
4 troublesome, I mean, not any more troublesome than
5 answering any DR, and the company gets hundreds of DRs
6 from various parties in this case and other cases like it.

7 I think as a -- one thing I would like to
8 point out to the Bench is that whatever objections Staff
9 has made Staff has made, and whatever objections they
10 haven't made in this letter in my view are waived. So one
11 of the things that I'm going to be looking to is to see
12 whether or not there's any new objections that are being
13 made today that weren't contained in the letter.

14 One thing I did forget to mention is the
15 statute as to what Staff has pointed to for the objections
16 to what I call the other company information requests the
17 company has submitted. That statute doesn't prohibit
18 providing the information. What that statute prohibits is
19 making that information public. This Commission early on
20 in this case, I think on December 9th, issued a Protective
21 Order which permits parties to designate information at
22 different levels either highly confidential, proprietary
23 or nonproprietary. So that mechanism is already in place.
24 The statute really doesn't have any play in this at all.

25 Staff has said that they have no objection

1 if the Commission wants to issue an Order authorizing it
2 to release this information, and I would suggest to the
3 Bench that if that's the case and if that's what the
4 Commission thinks needs to be done, then the Commission
5 ought to do that, to facilitate the exchange, knowing that
6 if the Commission takes that step, then it is not -- then
7 it does become public information.

8 I'm just saying I think the company's
9 approach to this is more targeted and more protected under
10 the terms of the Protective Order and that's the way it
11 ought to play out. That's the way it plays out with all
12 kinds of highly confidential information, not only in the
13 energy business but in the telecom business.

14 With that, I'll conclude my remarks. I
15 would like to reserve the right to reply to any of Staff's
16 comments as the moving party.

17 JUDGE WOODRUFF: I have a question for you
18 concerning your last comment about the other company
19 information.

20 MR. BOUDREAU: Yes.

21 JUDGE WOODRUFF: You indicated that if the
22 Commission were to order Staff to disclose this
23 information, it would become public information?

24 MR. BOUDREAU: Well, that would seem to be
25 the logical conclusion to draw from it, because the

1 statute says that the Staff shall not make this
2 information public other than by order of the Commission.
3 So if the Commission wants to go that route, I mean, it
4 certainly has that discretion.

5 JUDGE WOODRUFF: But if the Commission were
6 to order that information be disclosed in this case only,
7 it would not automatically become public information,
8 would it?

9 MR. BOUDREAU: I think the Commission could
10 tailor the Order to restrict the disclosure of the
11 information in any manner it sees fit. I didn't mean to
12 paint with too broad of a brush. Yes, I think the
13 Commission's got that discretion.

14 JUDGE WOODRUFF: All right. Thank you.
15 Mr. Franson?

16 MR. FRANSON: Judge, Staff has no intention
17 of making new objections. However, on the same side, MGE
18 is bound by what it asked for. It can't tailor its DRs to
19 circumstances as they may develop.

20 What I propose to do is go through as
21 briefly as I can the DR letter. The Motion to Compel,
22 given the circumstances of this case, I haven't had a
23 chance to respond to. But the one part, first of all,
24 Mr. Boudreau said that MGE did not engage in a fishing
25 expedition. Judge, they sent 145 DRs. We objected to the

1 ones that could, in fact, be legitimately described as
2 fishing expedition, and several of them raise all kinds of
3 policy implications that Mr. Boudreau simply did not
4 address either here or in his Motion to Compel, starting
5 with the expert -- what he calls the expert credentials of
6 Staff witnesses.

7 What we're talking about are the list of
8 DRs that are listed in his motion and in my letter, but --
9 so I won't go through all of those, but one of them starts
10 with the job description of a particular Staff member.
11 Judge, Mr. Boudreau neither here nor any other
12 conversations that I've had with him has said there's a
13 particular Staff witness that we believe is unqualified to
14 be an expert under 490.065. Not hearing that. And he
15 hasn't said it here today.

16 What he is, in fact, doing is his client
17 wants a fishing expedition. It's the old adage, if you
18 don't like the message, attack the messenger. That's
19 what's happening here. MGE has picked out certain Staff.
20 Particularly not only for job descriptions, but they're
21 also looking for two other things. One is a list of
22 college courses. While they didn't ask for transcripts,
23 they want a list of college courses, and their DRs say
24 every single college course taken by these individuals.
25 And if he wants to try and rewrite his DRs, that's fine,

1 but that would take another DR. That's what he asked for.

2 He either gets that or he doesn't.

3 He's also picked out about four or five
4 witnesses, Staff witnesses and said, I want to know their
5 prior job duties at these other jobs. Judge, all of that
6 is in their testimony. In the testimony of virtually any
7 witness that comes in here, what you get is, for a Staff
8 witness anyway, I'm with the Staff, my job title is. They
9 give a little bit of information about prior employment, a
10 little information about how long they've been with the
11 Staff and other information that qualifies them as an
12 expert.

13 No Staff witness in this case can
14 reasonably be kept out, have their testimony kept out
15 because they're not experts. It is a fact of life that
16 Staff hires sometimes people straight out of college. MGE
17 or any other entity that hires people sometimes does that.
18 It just happens. Everybody starts somewhere. It is not a
19 requirement as an expert witness that you have some kind
20 of prior job history.

21 And picking and -- starting with the fact
22 that we've got a request for job descriptions, Judge,
23 those are not relevant here. There's nothing in job
24 descriptions, and Mr. Boudreau hasn't said, well, we think
25 there might be this or that. That's not what we've got

1 here. We've got just a plain fishing expedition on job
2 descriptions.

3 Then we've got, on four or five people,
4 want a list of college courses. Judge, to my knowledge,
5 there's no college degree that anyone can get anywhere
6 that specializes in utility regulation before the Missouri
7 Public Service Commission or anywhere else. If that was
8 the case, it might have some relevance.

9 All of these people took appropriate
10 courses at accredited institutions to get their degrees.
11 That should be sufficient.

12 And then prior job duties, Judge, just
13 simply not relevant. The problem Staff is having here is
14 if the company was coming in and saying you've got witness
15 X here and the testimony says witness X went to this
16 place, we don't believe that's an accredited institution
17 to issue a degree in accounting or whatever it -- or
18 economics or engineering or whatever it might be, we have
19 an entirely different thing here.

20 What we've got is saying it is now
21 appropriate to open this up in all cases, and that's
22 what'll be the net effect here, and we can just go on a
23 fishing expedition any time we want into -- in this case
24 MGE has witnesses. They might very well see the same kind
25 of data requests. MGE's going to come in in the future

1 for some other case. Other companies are going to come
2 in. We're getting into irrelevant materials here.

3 Judge, Staff is just having a big problem
4 seeing how this is relevant unless you tailor it to a
5 particular witness. And there's just no other real
6 legitimate way to interpret this but let's attack the
7 messenger because we don't like what the messenger is
8 saying, in particular on the prior job duties. At least
9 with the job descriptions it's across the board.

10 But there's just a problem with that,
11 Judge, on relevance, and they haven't shown it, and Staff
12 would ask you to deny the Motion to Compel on all of
13 those.

14 Judge, DR 81 poses a different matter, and
15 Mr. Boudreau simply has -- it's a stretch. Judge, DR 81
16 asks for -- and it's got several people listed here, and
17 it's got -- what they are are Commission employees that in
18 the opinion of MGE may have legislative liaison duties.
19 Okay. Let's consider a couple things here.

20 Mr. Boudreau has also written a motion to
21 strike testimony. In that motion to strike testimony he
22 states on behalf of his client what he believes is the
23 appropriate standard in this case, whether MGE's rates are
24 just and reasonable. Well, Judge, right here we've got --
25 let's see. We've got -- we want the job descriptions of

1 all of these other people, Toni Messina, Dan Joyce, Robert
2 Cline, Kevin Kelly, Greg Ochoa and anybody -- and they
3 also want Warren Wood, Dale Johansen and other individuals
4 who may have participated in various things on behalf of
5 the Commission and/or Commission Staff and legislation.

6 Judge, those people are not witnesses.
7 They have not done prefiled testimony. Mr. Boudreau seems
8 to as an afterthought have realized, wait a minute, I've
9 got a problem. At least with the other job descriptions
10 we're talking about people that have already filed
11 testimony. We don't have that nice little nicety here.

12 Judge, there's no other word to describe
13 this but this on -- No. 81 in particular is a fishing
14 expedition. Mr. Boudreau does not seem to have a problem
15 with the idea that whether MGE should have its legislative
16 lobbying activities paid for by ratepayers, that's a
17 legitimate issue in the case. But if the Commission --
18 well, let's say we don't like what Staff's doing here, so
19 let's go and attack Staff and bring in a totally
20 irrelevant issue. That is, here's the Commission, they
21 engage in activity, and if they do it, it must be okay.
22 Wrong as wrong as can be, Judge.

23 The problem here is, this cannot be
24 disguised as anything but muddying up the waters and going
25 on a fishing expedition. What Mr. Boudreau has asked for

1 here has no relevance whatsoever. And he throws in, well,
2 we might subpoena these people. Fine, let him subpoena
3 them. Let him bring them in under the rules and get
4 whatever testimony that he wants. However, that is
5 unusual to do that. Probably not unheard of, but it is a
6 little unusual.

7 But if he does that, fine, at that time,
8 when he's actually brought them in, whatever he wants to
9 ask them about the case is probably appropriate, but their
10 job descriptions would still be irrelevant. So, Judge, 81
11 does pose a little bit different matter.

12 Now, the rest of these, the next group is
13 actually starts -- this is in my letter, Judge. DR No. 16
14 and 17 from the testimony of Debbie Bernsen. Judge, I've
15 gone through the testimony of Debbie Bernsen.
16 Mr. Boudreau's complaint is, well, Staff refers to other
17 companies and this information that Staff might have in
18 its possession regarding these measures of customer
19 service. Ms. Bernsen's testimony is only applicable to
20 MGE. Ms. Bernsen did not go out and bring in comparisons.

21 Now, in some other instances in Staff's
22 testimony that is actually the case, and we'll come to
23 those momentarily. And he may have -- and Mr. Boudreau
24 might actually have a point on those. But the problem is,
25 in Ms. Bernsen's testimony, he simply doesn't, at least

1 not to that.

2 But, Judge, Staff's objection in 16 and 17
3 is not relevance. It's statute, 386.480. Now,
4 Mr. Boudreau is right in the sense that if the Commission
5 simply ordered Staff, turn this over to MGE, it's
6 equivalent of it being public. Could the Commission
7 tailor make an Order? Of course they could.

8 The problem is, Judge, I have read the
9 Protective Order in this case. It's not designed for the
10 situation we have here. What we've got is MGE -- Staff
11 does not disagree on most of these requests that MGE might
12 want that information, not necessarily -- at least in
13 regard to Ms. Bernsen, not necessarily because Staff has
14 brought in something, because we didn't go out and bring
15 in other company comparisons on these specific DRs in
16 regard to Ms. Bernsen.

17 However, we're not arguing it's not
18 relevant. What we are saying is, Judge, we can't simply
19 give this to them without a Commission Order, and
20 hopefully that Commission Order will be tailor made to
21 say, MGE, you can only do the following with it.

22 And the other problem is, Judge, none of
23 the company -- and I have not done the exhaustive research
24 to see what we might actually have, but it is a fact at
25 least in the case of MGE what we get, and if someone else

1 was asking for MGE specific customer service information,
2 what they would be told is following: One, certain parts
3 of that are available in MGE rate cases, but then the
4 information we get on periodic reporting isn't public.
5 And that's exactly what this statute is designed to cover.

6 So I Would encourage you, if you are going
7 to do an Order that says, Staff, give them whatever you've
8 got, then it needs to, one, to say give it to them, and
9 two, tailor make it to what MGE can and cannot do with it,
10 because even giving to the other parties -- and, Judge,
11 the Protective Order in this particular case, the standard
12 Protective Order deals with designation of HC or
13 proprietary by parties to the case. In other words, that
14 would most likely be MGE specific information. MGE or
15 someone else could designate something as highly
16 confidential or proprietary. That's not the case here
17 when you get other company information.

18 And then some of the other things, Judge,
19 No. 20 actually requests some specific information, same
20 on 23. Judge, again, it's other company information. And
21 there MGE already knows the number. It's a billing lag,
22 Judge. But the trouble is if that -- and this would be
23 No. 38 also. The problem is here what we end up doing is
24 giving company specific information in this case regarding
25 Laclede, and, Judge, from the testimony it's Laclede we're

1 talking about. The actual billing lag number is in the
2 testimony, but they also want all of the supporting
3 documents behind it, and that is going to disclose
4 confidential information regarding Laclede Gas Company.
5 That's why we need an Order here and that's what Staff is
6 saying.

7 And despite what Mr. Boudreau might
8 suggest, either in argument or otherwise, there's no bad
9 intent here. It's just a fact we have to have a
10 Commission Order.

11 Just moving on down the list, Judge, we
12 come to Ms. Mathis, DR No. 42. What that asks for is a
13 copy of some analysis done by Staff Witness Paul Adam in
14 the prior MGE case.

15 First of all, Judge, they should have it,
16 and I was hoping I'd hear today that Mr. Boudreau checked
17 with his client and say, you know, we've got it;
18 therefore, we can dispense with No. 42. I didn't hear
19 that. I didn't hear anything in regard to that. I was
20 hoping that we would. And I would encourage Mr. Boudreau,
21 if he knows anything on that, when he gets back up here,
22 if he does, to say something about his knowledge of
23 No. 42.

24 If Mr. Adam did a study and he referred to
25 things about Laclede Gas Company, or any other company,

1 that should have been made available to MGE in
2 GR-2001-292. So it's a legitimate objection. Wait a
3 minute, we aren't going to give you something you should
4 already have. We shouldn't have to go to that time and
5 trouble.

6 Now, 43 -- or I'm sorry -- 44 and 45 extend
7 that where they're asking about a lot of information about
8 other companies. And while that also may be a legitimate
9 request, Judge, we've still got to have a way that we can
10 give that to them and the information from the other
11 companies, who again have had no notice they -- their
12 information, they expect it to remain confidential. And
13 quite arguably, that would include from MGE.

14 But if MGE's entitled to it and you so
15 determine, there needs to be some kind of protection there
16 so their information is continued to be considered highly
17 confidential.

18 Judge, that brings us to certain other
19 things here. DRs 76, 77, 79, 80 and -- Judge, DR 76 seeks
20 all written policies, procedures or other documents that
21 describe the Staff responsibility in a rate case. That
22 can very reasonably be interpreted as requiring legal
23 research. MGE is perfectly capable, if they so desire, of
24 doing their own legal research, and it's totally
25 unreasonable to expect someone else to do it. The DR

1 actually says, please provide all written policies,
2 procedures or other documents that describe the Staff's
3 responsibility in rate cases.

4 First of all, Judge, if they want to know
5 that, what statutes or state regulations require or
6 provide, they need to go do their own legal research.
7 Next it could be saying, okay, what's the relevance of
8 that, Judge? If -- what does that have to do with whether
9 MGE's proposed rates are just and reasonable?

10 Mr. Boudreau's motion is rather strained.
11 He seems to suggest that there could be something out
12 there that Staff has, some internal document that says
13 something improper about its role, Judge. That is
14 strictly a fishing expedition, besides simply being
15 insulting and totally designed to draw attention away from
16 MGE's issues in this case, whether those -- the issues
17 they present and the issues presented by other parties in
18 the case. That needs to be the focus here.

19 This is irrelevant. It is -- there's
20 simply no reason to be requesting something like this. If
21 you think there -- if they're asking for some internal
22 document, Judge, then he needs to state what it is he's
23 after rather than requesting, well, I want you to go do my
24 legal research for me. And even there, Judge, there's
25 just no relevance to this.

1 77 is even more troubling. Here they want,
2 please provide all written policies, procedures or other
3 documents that describe the Commission's responsibility in
4 setting -- in the rate setting process.

5 Judge, there's a separation in this case.
6 Staff is a party to the case. There's a wall between us.
7 If the Commission -- if the Commission has such documents,
8 then Staff isn't the right one to get them. And how would
9 MGE go about getting them? Well, that's pretty much their
10 problem, but Staff isn't the right one. That's a
11 practical situation, Judge.

12 The fact is, though, again, what is the
13 relevance? What are we doing here? We're going on a
14 fishing expedition. They want to know if the Commission
15 has any internal document that describes their role.
16 Well, No. 1, make your DR say that. What they've actually
17 asked for is, Staff, do our legal research for us, check
18 the statutes, check the state regulations, check the case
19 law, show us. Judge, that's absurd. That's just not a
20 reasonable request.

21 Plus relevance, okay, it's not going to
22 lead to discovery of admissible information or even
23 relevant information, Judge. It's just -- there's just no
24 excuse for turning in such a DR.

25 No. 79. Now, 79 talks about wanting to

1 know any and all conversations that Staff may or may not
2 have ever had with Commissioners since January 1, 2001
3 regarding capital structure, rate of return, return on
4 equity.

5 Well, Judge, first of all, what's the
6 relevance here? Commissioners do talk to other staff.
7 That's a fact of life. But what is the relevance? What
8 we're doing here is attacking the decisionmaker, and it's
9 simply inappropriate, because, Judge there's just no
10 relevance to this. The Commission -- Mr. Boudreau hasn't
11 suggested that there's something improper that's gone on.

12 But Then this is burdensome, Judge, for the
13 simple reason to answer this thing Staff would have to
14 consider, well, let's -- oh, the other problem, Judge, is
15 time frame. Since January 1, 2001, there have been
16 several different Commissioners, several retired
17 Commissioners. To answer this, it would require that
18 Staff go out and poll not only prior Commissioners but
19 current sitting Commissioners.

20 And, Judge, we can't go to current
21 Commissioners and say, have you ever talked to Staff about
22 these issues? And No. 80 poses the same problem, just a
23 different -- just goes to depreciation and net salvage and
24 cost of removal, again, since January 1, 2001.

25 What they're doing here, Judge, is looking

1 for dirt on Commissioners. There's simply no other way to
2 put it. Whether former Commissioners were ever -- ever
3 talked to Staff has absolutely no relevance to anything.
4 Neither one of these DRs have any relevance to anything.
5 But that is exactly what's being sought here.

6 Now, there's other practical problems that
7 would make this burdensome. There's former Staff members.
8 Since January 1, 2001, there's been several Staff members
9 that have retired. We'd have to track down every single
10 one of them and ask them this question. That is not
11 practical.

12 The time frame since January 1, 2001 is
13 simply not appropriate, Judge. If they -- and then if you
14 try to -- if Mr. Boudreau says, well, we can limit it this
15 way or that way, no, his DR is -- he either wins or loses
16 as it's written.

17 But to answer this properly, besides
18 polling all current Staff members, besides polling all
19 current Commissioners, polling all Staff members that were
20 on board since January 1, 2001, it's just not practical,
21 it is burdensome and it is irrelevant as irrelevant can
22 be. And Mr. Boudreau's attempts to make this relevant
23 simply don't fly. These are simply irrelevant.

24 And, Judge, there were a lot of other DRs
25 in this batch. They are in the process of being answered.

1 Reason, they were appropriate DRs. They had to do with
2 issues in the case. Staff did not object to those. We
3 do, however, object to DRs that are irrelevant and/or
4 burdensome or simply to answer them we can't do that
5 without violating the law. And that's what in essence --
6 and Mr. Boudreau seems to have recognized the problem with
7 386.480, and you probably have plenty of room there as
8 long as you tailor make your order.

9 But going on fishing expeditions about
10 qualifications of Staff members without specific
11 information that suggests a Staff member may be
12 unqualified, Judge, is just not proper. And this last
13 batch seeking dirt on Commissioners, just simply not
14 appropriate and should be summarily overruled.

15 And that pretty well concludes my
16 responses.

17 JUDGE WOODRUFF: Mr. Boudreau, your
18 response.

19 MR. BOUDREAU: Yes. I just have a few
20 comments. Let me start from areas where I think we may
21 have agreement, other company information, statutory
22 objection. Seems like Mr. Franson is suggesting that he's
23 okay with the idea if the Commission kicks out an Order
24 narrowly tailored authorizing the Commission to provide
25 this information. I would suggest to you it's not

1 necessary because the Protective Order's already in place.
2 However, I'm okay with an additional Order that would
3 authorize the -- specifically authorize the Staff to
4 provide that information to the company.

5 So maybe there's an agreement there. It
6 seems to be one the few areas of agreement. That seems to
7 me to be something that he finds workable and, frankly,
8 I'm okay with it, too. Seems to me it's duplicative, but
9 nevertheless --

10 JUDGE WOODRUFF: If I can interrupt here.

11 MR. BOUDREAU: Yes.

12 JUDGE WOODRUFF: Since we are dealing with
13 that issue, can you tell me what -- what the company and
14 the Staff can agree upon as far as tailoring such an
15 Order? All I've heard so far is tailor an Order, but I
16 don't know what you think we need.

17 MR. BOUDREAU: Well, like I -- my point is
18 that the Protective Order, I think, is adequate to do it.
19 All it would -- an additional Order from the Commission
20 would authorize the Staff to provide the requested
21 information to the company, but to direct the company to
22 not make it publicly available outside the context of this
23 case.

24 I think that mechanism's already there, but
25 if an Order along those lines would be satisfactory to

1 Mr. Franson, I'm okay with that as well.

2 JUDGE WOODRUFF: Mr. Franson, do you want
3 to respond on that issue?

4 MR. FRANSON: Judge, I don't have the
5 specific DRs in front of me, but specific ones, with the
6 exception of, I believe it was 42, that would -- and I'd
7 have to look at the others to be sure we had no other
8 specific objections contained in the letter, and Judge,
9 I'm sure as you go through any rulings you make you'll
10 address those. I didn't necessarily touch on everything.

11 But there are several where Staff's primary
12 objection is this statute, and we differ with Mr. Boudreau
13 on how this is interpreted. There's certain information
14 the Commission Staff gets, and it regards other companies.
15 And that can be -- this statute seems to say it can be
16 made public by order of the Commission.

17 And the Staff would also believe that it
18 could be made available in this case to MGE, but that
19 would require a specific tailor-made Order on what MGE can
20 do with it, and --

21 JUDGE WOODRUFF: What kind of restrictions
22 would you put on MGE?

23 MR. FRANSON: Well, Judge, I don't know
24 that I have the answer to that. The problem is the
25 statute trumps any Commission Protective Order, and the

1 Protective Order is really designed to protect exclusively
2 MGE information, and that's the problem we're having here.
3 It's not so much that MGE shouldn't have it; it's how we
4 get there. And I had not really given that specific
5 thought.

6 It would seem that if MGE gets information
7 about other companies, that maybe they need to -- if they
8 use it in their testimony, maybe they need to say other
9 LDCs and use the information as they see fit but not
10 specifically identify that Laclede this, Ameren that,
11 Aquila whatever. That's one possibility.

12 But this is an area, Judge, that MGE, one,
13 by asking the DRs and, two, seeking this other
14 information, it just poses some unique challenges. But
15 certainly protecting the information from -- about other
16 companies that the Commission Staff is in possession of,
17 those companies have had no notice of it that it's in
18 here. It's possible that one or more of them are all fine
19 with it, whether it's protected or not.

20 But it's just that -- I don't know that I
21 have the specific answer to that one, Judge, on how you
22 make the Order, but I believe it is necessary.

23 JUDGE WOODRUFF: Thank you. I'm sorry to
24 interrupt you before, Mr. Boudreau. Please continue.

25 MR. BOUDREAU: I guess my observation there

1 is that the -- you know, you've heard what the Staff's
2 concerns are about, that it doesn't think that the statute
3 applies, and that only by directed order of the Commission
4 directing it to make this information available to the
5 company are they inclined to do so.

6 I think -- I think the Commission could
7 direct the Staff to provide the information and direct the
8 company to treat the information as highly confidential
9 and to treat it as they would highly confidential
10 information under the Protective Order, not make it
11 publicly available. We're comfortable with that approach,
12 because we treat it the same way under the Protective
13 Order. To me, I'm not sure that it -- it's six of one and
14 a half dozen of the other as far as we're concerned.

15 Mr. Franson mentioned Data Request No. 42
16 as information the company probably already has.
17 I think we discussed this during informal conference. The
18 fact of the matter is I did talk with my client even
19 before the informal conference. They don't believe that
20 they have all this information. Some information was
21 provided in the rate case.

22 There was an outstanding data request for
23 some of the backup information Staff had objected to
24 basically on the same grounds, the statutory grounds. The
25 company didn't pursue that at that time in the rate case

1 because the rate case was ultimately settled and it became
2 a moot point. We've got the same basic issue bubbling up
3 again in this rate case. The company's pursuing the same
4 information.

5 Staff is pointing to basically what
6 happened in the last rate case. We're looking for that
7 backup information and basically getting the same
8 objection. So we're back to where we started. We don't
9 feel we have it.

10 The other area, let me move on to expert
11 credentials. Mr. Franson says, basically, that if we've
12 got a problem with the credentials of any of the Staff
13 witnesses, we ought to say so now. We're not in a
14 position to say whether we have a problem. We may not end
15 up having a problem.

16 We don't have the information to make a
17 determination one way or the other. That's why we're
18 asking these questions is to find out what sort of
19 background these individuals have. We think it goes
20 directly to admissibility.

21 And the idea that it's irrelevant to me is
22 strange because the statute that I've directed the
23 Commission to states what characteristics an expert
24 witness must have in order to allow the testimony in as
25 expert testimony. And I think it -- the questions that

1 we've asked, I think, go directly to the statutory basis,
2 which also under the case law is applicable in an
3 administrative proceeding.

4 So I don't think relevance is an
5 appropriate objection, and frankly, saying that we should
6 make an objection to credentials before we even know what
7 these credentials are puts the cart before the horse. We
8 just need to get those facts. It may not be an issue that
9 goes anywhere, but we're entitled as a matter of discovery
10 to have the basic facts to develop whatever issues we
11 think we want to develop at the time of the hearing.

12 The other category is legislative activity.
13 Mr. Franson points out that the individuals there aren't
14 witnesses that have filed prefiled testimony. They can be
15 subpoenaed, and if that's the approach that the Bench
16 wants us to take, maybe we can do that, subpoena them and
17 then basically do our discovery in live testimony at the
18 time of hearing. It seems wasteful.

19 The other thing is we may not want or may
20 not necessarily need those individuals on the Staff to
21 testify. It may just be that we need the facts so that a
22 witness for the company can present the opposite side of
23 the argument in rebuttal testimony. So the fact that
24 they're not witnesses, you know, one way or the other, I
25 mean, we -- the company ought to be able to take a look at

1 these facts and decide how best to develop the case. And
2 they don't seem like they're particularly intrusive
3 questions.

4 As far as Commission policies, I've said
5 this before. I'll say it again. We're not asking the
6 Staff to create anything that doesn't already exist. If
7 there's written policies out there, we'd like to see them.
8 Whether or not they become issues in the case remains to
9 be seen. If the answer to the Data Request is there are
10 no written policies for either of those Data Requests
11 other than what's in the statutes and the regulations,
12 then say so.

13 Frankly, the way -- the reaction the Staff
14 has had to this makes me begin to believe that there's
15 something out there. I'm even more curious than I was.
16 In any event, it just seems that those are things that are
17 relevant to the role that the parties, the Commission and
18 the Staff see themselves as playing in rate cases, and
19 that's an important role. This is an important thing that
20 the Commission does.

21 Is it a fair and objectively balanced view?
22 Does it balance the interests of ratepayers and
23 shareholders or does the Commission and/or the Staff view
24 itself as basically an advocate for the public?
25 I don't know. Maybe there's nothing out there that says

1 that. But I think these are things that the company's
2 entitled to know, because these are crucial issues in any
3 rate case. There's a lot of revenue requirement, a lot of
4 financial consequences that result from these sorts of
5 decisions. I would assume that whatever internal policies
6 there are, if there are any, are consistent with what the
7 law says they ought to be. But we'd like to take a look
8 at them to the extent they exist and examine them and see
9 where it goes.

10 I don't think that's a fishing expedition.
11 It's just looking into information that may be relevant to
12 a rate case. Not every question that gets promulgated
13 either by the Staff or by the company to any other party
14 necessarily gets used in a rate case. It's just a way
15 that the parties figure out what the lay of the land is so
16 they can figure out what points they want to make in the
17 case. That's all discovery is.

18 I'll conclude my remarks by just saying I
19 think all the things we've asked for are either directly
20 relevant to a particular issue in a rate case or likely to
21 lead to the discovery of relevant information. We think
22 they're relatively narrow in scope. We don't think
23 they're burdensome.

24 I'm not saying it's always easy to do this,
25 but the company fields and responds to hundreds of Data

1 information on Staff legislative liaison responsibilities,
2 and that would be Data Request No. 81.

3 MR. FRANSON: Judge, if I may, I think on
4 the list you just read, you may have already included 81.
5 Did you not intend to do that?

6 JUDGE WOODRUFF: If I included 81, I didn't
7 intend to.

8 MR. BOUDREAU: I don't believe it was
9 included.

10 JUDGE WOODRUFF: I was reading off of what
11 was on the motion here. Okay. This concerns the request
12 for information on the Staff legislative liaison
13 responsibilities. As has been pointed out, these people
14 are not listed as witnesses for the Staff. So the
15 relevance is different here.

16 However, I think that there is relevance,
17 enough to justify answering the Data Request. As the
18 company pointed out in their motion, there is a question
19 as to the appropriateness of using ratepayer funds to
20 lobby the Legislature. They have shown an interest in or
21 a relevance as to what Staff is doing in that area. They
22 have an interest in inquiring into that to see what
23 possible relevant information may be developed from that.

24 That's sufficient to justify Staff
25 answering Data Request 81. So again, the motion to compel

1 on Data Request 81 will be granted.

2 The other company information problem, I'm
3 not really sure what the statute means. It certainly
4 forbids disclosure of public -- information to the public
5 unless by specific order of the Commission. And Staff
6 agreed that the information is relevant. It's simply a
7 matter of protecting the availability of the -- protecting
8 the other companies' interest in this information.

9 I will order the Staff to respond to the
10 DRs with the understanding that any information that's
11 disclosed to MGE is not to be made available to the
12 public. There's been some discussion about possibly
13 specifically tailoring this order to make that more clear.
14 I don't know that that's necessary. I believe that the
15 information would be protected by the standard Protective
16 Order.

17 It's similar to the situation that we face
18 all the time with competitive teleco companies where
19 information from one competitor is made available to other
20 competitors. I believe that will sufficiently protect
21 this information. So Staff will be directed to comply
22 with Data Request Nos. 16, 17, 20, 23, 38, 42, 44 and 45.
23 Again, that's reading the list of Data Requests off of
24 MGE's motion.

25 MR. FRANSON: Judge, if I may?

1 JUDGE WOODRUFF: You may.

2 MR. FRANSON: Some of those DRs,
3 specifically 42, 44 and 45, have other Staff objections
4 besides the statute 386.480.

5 JUDGE WOODRUFF: I know 42 was talking
6 about Mr. Adam's previous testimony. Were there others as
7 well?

8 MR. FRANSON: Yes. 44 is Staff objects to
9 providing public information for rate cases or other cases
10 equally available to MGE. Then there's the 386.480 which
11 you've now overruled. But yes, it is, Judge. Some of
12 that information is particularly available in rate cases
13 that are public, and Staff objected on that basis also to
14 providing things that are equally available to MGE.

15 JUDGE WOODRUFF: Well, let me deal with
16 Paul Adam's documents first. Staff has indicated that
17 perhaps this information is already available from the
18 last rate case. The company explained that it's not
19 available to them for whatever reason. Perhaps they
20 should have it. Perhaps they shouldn't. I don't know of
21 anything in the Commission's rules that protect from
22 discovering information that the company should have but
23 doesn't have. That portion of the Staff's objection is
24 also overruled.

25 Again, same ruling on the basis of the

1 information that's available through a previous rate case.
2 I don't know of any basis for a -- that would protect
3 Staff from disclosing it again, and that will also be
4 overruled.

5 All right, then. Moving on to the
6 ratemaking policies and procedures issues, and we're going
7 to divide those -- we've got two sets of DRs there, 76 and
8 77 first, and those are asking for written policies and
9 procedures and other documents that describes Staff
10 responsibility in the rate setting process. That would be
11 76. I'll talk about that one first.

12 I believe this information that the company
13 is requesting is relevant. Staff has indicated that it's
14 concerned that it's being asked to provide legal research
15 for the company. My interpretation of the DR does not
16 support that concern. Clearly the company is not asking
17 Staff to go out and do research into the cases and so
18 forth as to what various sources and so forth have said
19 about the policies insofar as the Commission.

20 What they're looking for is written
21 policies, procedures and other documents that are
22 available to the Staff, and I'm certainly not going to
23 direct you to go out and to do legal research beyond what
24 is available to the Staff. So Staff will be ordered to
25 comply with Data Request No. 76.

16 79 and 80 concern conversations with
17 Commissioners. I think that these DRs, if they were more
18 narrowly tailored may be acceptable, but as they're
19 written, I believe that they are overly broad and they
20 would require Staff to inquire more deeply than would be
21 reasonably practical into possible conversations that
22 Staff may have had with a Commissioner. If somebody got
23 on the elevator with the Chair two years ago, they would
24 have to explain what they talked about.

25 I believe that is improper. It might be

1 possible to more narrowly tailor a DR to try and get at
2 that sort of information, but that's not the DR that's in
3 front of me. The Commission will deny the information to
4 respond to compel Staff to respond to DRs 79 and 80.

5 I believe that covers everything.

6 MR. BOUDREAU: I believe it does. Thank
7 you, your Honor.

8 MR. FRANSON: Judge, will we have a copy of
9 this transcript expedited so we actually have your rulings
10 so we can review it as we begin the process?

11 JUDGE WOODRUFF: Yes. I'm going to ask
12 that the transcript be available within two days.
13 Anything further while we're on the record?

14 MR. FRANSON: What time frame do we have,
15 Judge?

16 JUDGE WOODRUFF: To answer the DRs?

17 MR. FRANSON: Yes, sir.

18 JUDGE WOODRUFF: Mr. Boudreau, what is your
19 request?

20 MR. BOUDREAU: I guess yesterday is too
21 early? All I can say is as soon as possible. The
22 practical problem the company's looking at is the time
23 frame for putting together its rebuttal testimony, and I
24 think what -- testimony is due on the 20th. Today is
25 Tuesday.

1 MR. FRANSON: Judge, as Mr. Boudreau is
2 struggling to think of a time frame, I might suggest
3 4 p.m. on Friday, which is, I believe, the 14th. Staff
4 believes they will be able to comply with these at that
5 time, and I would hope that Mr. Boudreau will be as good
6 as his motion that we won't be seeing a motion to extend
7 time for filing of rebuttal, but I guess that will play
8 out as it plays out.

9 JUDGE WOODRUFF: 4 p.m. on Friday?

10 MR. BOUDREAU: 4 p.m. on Friday is, I
11 think, more than reasonable. I'm not sure I can make any
12 commitments because I haven't talked with my client in
13 terms of what their requirements are in terms of
14 fashioning rebuttal testimony. But that's about all I can
15 say about that topic at this time.

16 MR. FRANSON: If there's any problems, we
17 will, of course, be in contact with Mr. Boudreau.

18 JUDGE WOODRUFF: All right. Then Staff
19 will be ordered to comply with the instructions of the
20 Commission by 4 p.m. on Friday, May 14th I believe it is.

21 MR. FRANSON: Yes, your Honor.

22 JUDGE WOODRUFF: Anything further?

23 MR. FRANSON: No, your Honor.

24 MR. BOUDREAU: I don't believe,

25 JUDGE WOODRUFF: Then we're adjourned.

1 Thank you.

2 WHEREUPON, the on-the-record presentation
3 was concluded.

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