

**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.

**MOTION TO COMPEL RESPONSES TO DATA REQUESTS**

**Comes now** Missouri Gas Energy ("MGE"), a division of Southern Union Company, and for its motion to compel pursuant to 4 CSR 240-2.090(8), respectfully states:

1. This motion seeks an order of the Commission compelling Staff to respond to four data requests propounded to it by MGE in the context of this proceeding.
2. MGE has followed the process outlined in 4 CSR 240-2.090(8). Counsel for MGE contacted counsel for Staff after receipt of the objections and the parties have conferred by telephone about them. Since no mutually acceptable resolution was reached, MGE and Staff arranged for a telephone conference with the presiding officer. That conference was held on May 10, 2006. The undersigned counsel certifies compliance with the procedure specified in 4 CSR 240-2.090(8).
3. There is, in MGE's opinion, a common theme to these objections from Staff. In each instance, a Staff witness has made a statement in prepared testimony that references alleged conduct or positions taken by other natural gas local distribution companies ("LDC's"). MGE has asked for specifics and background on the allegations by the Staff witness and the Staff has refused to provide that information. This action by Staff deprives MGE of due process by unreasonably limiting MGE's ability to check the accuracy of the Staff's allegations or to defend itself by filing testimony that may refute the allegations.

4. The original Staff objections are reproduced below after the data requests themselves. Although not mentioned specifically in the original Staff objections, Staff in the informal conferences has relied upon the text of Section 386.480 RSMo as an additional basis for its objection. The page references in the data requests are to the prepared rebuttal testimony of Staff witness Lesa Jenkins:

**DR 180**      **Reference: Page 3, Lines 15 through 19. "Some LDCs define "design day as an average normal demand for a month." Et. seq.**

- 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 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 objection:** 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.

**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 objection:** 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.

**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 objection:** 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.

**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 objection:** 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.

### General Discussion

5. As indicated above, the common theme in Staff's objections is that the requests seek information and documentation from "other LDCs that may be HC" or Highly Confidential under the terms of the Commission's standard protective order. That is not a sufficient basis for an objection in these circumstances. First, there is a protective order in place in this case that allows the filing of material classified as HC. Second, MGE is not seeking "public disclosure" of the allegedly HC information being withheld by Staff. Section 386.480 RSMo, upon which the Staff now relies, prohibits material supplied by a public utility from being disclosed so that it becomes "open to public inspection or made public" without an order from the Commission. If the Commission grants this motion to compel, and Staff's responses to these data requests contain material that is designated as HC, that material will not be "made public" because it will

be protected from public disclosure by the protective order. Third, from the quoted references to Ms. Jenkins' testimony, the Staff witness is obviously trying to use information allegedly from other unidentified gas companies to support her position in the case. When MGE has asked for further information about this allegation, the Staff has refused to provide it. This is not appropriate. The Staff cannot simultaneously use this "secret" information as both a sword and a shield. In other words, it cannot allege that other unidentified companies do such and such (as a sword designed to damage MGE's case), and then simultaneously refuse to allow discovery (as a shield) as to the factual basis for the statement under the claim that the information is privileged. Such duality was ruled inappropriate in **State ex rel. Arkansas Power & Light Co. v. PSC**, 736 SW2d 457 (Mo.App. W.D. 1987), where the court said:

The PSC may adopt rules as to hearings and investigations. 386.410, RSMo 1986. Commission Rule 4 CSR 240-2.090 allows the use of written interrogatories under the same conditions as in civil cases. **State ex rel. Southwestern Bell Telephone Company v. Public Service Commission**, 645 S.W.2d 44, 49-50 (Mo. App. 1983). Although proprietary interests [\*\*7] may be protected in those kinds of cases, they cannot be unilaterally used to allow the utility to fail to disclose and still carry its burden of proof. **State ex rel. Utility Consumers Council v. Public Service Commission**, 562 S.W.2d 688, 694 (Mo. App. 1978), cert. denied, 439 U.S. 866, 99 S. Ct. 192, 58 L. Ed. 2d 177.

The logic from the quote applies equally to the burden of proof of the Staff as to positions it is taking in this case. Furthermore, there is also precedent in MGE's favor on this point from MGE's last rate case, Case No. GR-2004-0209, where a motion to compel filed by MGE had components that are almost identical to those here. After hearing much the same arguments from Staff, the presiding officer ruled from the bench that Staff would be required to provide responses with the understanding that the responses would not be made public and that the terms of the protective order would apply. See Case No. GR-2004-0209, Transcript Vol. 7, page 52, lines 9-16.

6. Another common theme of these Staff's objections is that being required to provide responses would be "unduly burdensome" or otherwise require Staff to "perform studies" or "compile information." A closer reading of the data requests themselves shows that this is not the case. What they request is that the Staff witness provide the documents or otherwise identify the specific bases for a general statement that the Staff witness herself is making in prepared testimony. It does not require the Staff witness to do anything other than produce the documents or other evidence on which she is presumably relying to make the quoted statement. While that technically does require Staff to "compile information," MGE disputes that it would be unduly burdensome under the circumstances. It is not something that MGE can do on its own with equal effort from any public source because Staff refuses to reveal the identity of the companies.

**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 11<sup>th</sup> day of May, 2006, to:

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**/s/ Brian McCartney**

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