

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of a Proposed )  
Amendment to Commission Rule 4 CSR ) File No. AX-2014-0193  
240-2.090 Regarding Data Requests )

**COMMENTS OF MIDWEST GAS USERS' ASSOCIATION  
AND MIDWEST ENERGY USERS' ASSOCIATION  
REGARDING PROPOSED AMENDMENT**

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Over several years, we have represented industrial users and groups of industrial users before this Commission. That has not often put us in conflict with PSC Staff, but on occasion we have needed discovery from Staff.

In large measure we have no difficulty with the proposed Rule 4 CSR 240 - 2.090. However, we do have concerns or suggestions regarding two of the proposed provisions.

**A. Proposed Rule 4 CSR 240 - 2.070(2)(C).**

Proposed Rule 4 CSR 240 - 2.090(2)(C) directs that parties to whom data requests are presented shall answer the requests within 20 days after receipt unless otherwise agreed by the parties. In recent cases, the Commission has directed that this time be shortened depending the status of the case and the sequence of testimony filings. While this has been accomplished through agreement by the parties at the time of the prehearing conference, to avoid confusion the Commission should retain the ability to shorten a time period independently of agreement upon

appropriate showings. Accordingly, proposed 4 CSR 240 - 2.090(2)(C) should provide that it applies unless it is otherwise agreed by the parties **or is otherwise ordered by the Commission.**

**B. Proposed Rule 4 CSR 240 - 2.090(2)(H).**

We also have concerns on several grounds with proposed 4 CSR 240 - 2.090(2)(H).

*First*, it is unclear as to who has proposed this amendment to procedural rules. Given current events, it is likely from Staff and we consider it somewhat inappropriate that Staff, while it claims to have only party status before the Commission, seeks to amend a rule that would work to its favor.

To be clear: We have no difficulty with utilities responding to or proposing data requests to Staff through EFIS.

EFIS, however marvelous an application it is, does not operate the same **behind** a firewall as it does from the outside. EFIS appears to Staff through an **intranet** -- *i.e.*, **behind** a firewall. Others must access the application from outside through the internet. Neither the appearance nor the responsiveness of the application are the same. The internet is subject to various difficulties and delays, and may be routed through foreign countries and unknown servers. This is recognized by the Missouri Supreme Court requirement that Missouri attorneys use a disclaimer on their email traffic. Email is just a subset of internet traffic. Working on the **inside**, Commission Staff sees none of these difficulties and no delays.

Second, requiring external users to employ EFIS benefits only internal users. Responses to data requests are typically transmitted one at a time through EFIS to external users. This usually presents no major issue as requests and potentially responses are forwarded to consultants (who are also external to EFIS) for their review. If a copy of a response is needed, a data request is sent to the utility, referencing the data request number employed by Staff, thereby avoiding duplication.

The process, however, becomes burdensome to external parties that direct data requests to the Staff. In the case of multiple requests (which is often the case), individual data requests would have to be issued involving multiple invocations of EFIS, stepping through that process as many times as there are requests, then individually issuing the requests to the particular Staff person who is being queried. This compares to simply sending the data request(s) to Staff counsel as PDFs through email. This imposes an entirely different standard on those **outside** the system as it does upon Staff who is **internal** to the system.

This becomes a budget issue for us. Staff is supported by the public; utilities are supported by customers. Neither has manifested deep concern about financial pressures on intervenors. Our activities are time driven and supported by individual companies or customer groups. Consultants and attorneys typically bill on the basis of time. Increasing the time needed to

submit requests increases the cost of intervention and thereby unequally affects external parties.

The Staff, that at various times asserts that it is no more than a party before the Commission, seems here to be given special status. We think simply that Staff (which has multiple powers anyway including surveillance of regulated utilities) should work under the same discovery rules as other parties. There should be no favoritism. Often consultants prepare the data requests, then transmit them to the attorney for submission. Although "cutting and pasting" are available, they require additional steps. We have been and remain willing to accommodate reasonable Staff requests about formatting, sending data requests in PDF or raw form, but going through EFIS one-by-one to accommodate providing Staff a tracking ability is burdensome.

We rely on Commission Staff to perform analysis and are virtually uniformly supportive of those efforts. Often Staff is the only entity that is able to effectively counter the customer-funded efforts of the utility. It is neither our purpose nor in our interest to impede Staff in fulfilling these obligations. But on matters of cost allocation and rate design, Staff is not always right and occasionally needs to be challenged on the assumptions it makes and the conclusions it draws.

The proposal should be put in terms of a **preference** for EFIS rather than requiring its use. Those who wish to accommodate the burdens of EFIS may do so. If the proposal is to be retained as a final rule, we would suggest that the proposal be

reworded as follows: "Any data request issued to or by the Staff of the Commission to or by a public utility shall be submitted and responded to through the Commission's EFIS system. In other cases, EFIS use is preferred but not required."

Respectfully submitted,

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