

15

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of 4 CSR 240-40.016 Proposed)
Rule - Gas Utilities, Marketing Affiliate) Case No. GX-99-445
Transactions.)

ORDER AND NOTICE REGARDING MOTIONS TO COMPEL
DATA REQUESTS

On April 26, 1999, the Missouri Public Service Commission (Commission) filed proposed rule 4 CSR 240-40.016 *Marketing Affiliate Transactions* with the Secretary of State. This rulemaking proceeding has been assigned case number GX-99-445. The Proposed Rule was published in the *Missouri Register* on June 1, 1999, and provided a comment period through July 1, 1999, a reply comment period through August 1, 1999 (comments due Monday, August 2), and, scheduled a public hearing for September 15, 1999.

On June 7, 1999, the Office of the Public Counsel (OPC) propounded data requests to several large regulated gas utilities in Missouri in order to obtain information the OPC believed would support its initial and reply comments concerning the proposed rule. On June 14, 1999, UtiliCorp United Inc., d/b/a Missouri Public Service (MPS) filed its motion asking the Commission to issue its standard protective order in this proceeding stating that the OPC's data requests sought information that MPS considered to be highly confidential business information. On June 23, 1999, the OPC requested a blanket standard protective order for this rulemaking

proceeding. On June 26, 1999, the Commission adopted and issued its standard protective order for this rulemaking proceeding effective July 6, 1999. The effective date of the order was later changed to June 30, 1999, so that if any comments referenced highly confidential information those comments containing highly confidential information could be timely filed under seal on July 1, 1999.

In addition to issues concerning protection of confidential and sensitive information, certain utilities have presented the OPC with additional objections, in writing, pursuant to 4 CSR 240-2.090, concerning the data requests. The participants have not been able to resolve all the issues presented. On July 9, 1999, the OPC filed two motions to compel answers to its data requests. One motion concerned compliance by Missouri Gas Energy (MGE); a second similar motion concerned compliance by AmerenUE. Pursuant to 4 CSR 240-2.080(12) these utilities are provided ten days to respond to the respective pleadings filed made by the OPC. Thus, responses, if any will be due with the Commission by July 19, 1999.

A rulemaking proceeding presents certain procedures and constraints that differ from a contested case proceeding. One concern of the Commission is that the rulemaking proceeding adhere to the timing deadlines stated in the Proposed Rule and prescribed by statutes which are intended to provide a workable structure to the rulemaking process. The Commission will act with prudence and diligence to ensure timely and meaningful opportunity for written comments and presentation of comments at the public hearing scheduled for this proceeding. Thus, the Commission will rule on OPC's

respective *Motion[s] to Compel Data Requests* as soon as possible after July 19, 1999. If the Commission's ruling is favorable in any or all respects to the OPC then the Commission's ruling will make provision for the OPC to supplement its comments and reply comments prior to the hearing scheduled for this Proposed Rule.

IT IS THEREFORE ORDERED:

1. That any interested person wishing to respond to the *Motion[s] to Compel Data Requests* filed by the Office of the Public Counsel shall do so by filing responses by July 19, 1999.

2. That this order shall become effective on July 15, 1999.

BY THE COMMISSION



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Keith Thornburg, Regulatory Law
Judge, by delegation of authority
pursuant to 4 CSR 240-2.120(1)
(November 30, 1995) and
Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 15th day of July, 1999.