

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 11th
day of April, 1989.

In the matter of the application of Missouri)
Pipeline Company for an order and certificate)
authorizing it to transport natural gas from)
Curryville, Missouri, to natural gas distribu-)
tion companies and others in St. Charles County,)
Missouri.)
)

Case No. GA-89-126

ORDER CONCERNING MOTION TO COMPEL
AND ESTABLISHING PROTECTIVE ORDER

On March 30, 1989, Mississippi River Transmission Corporation (MRT) filed a motion requesting the Commission compel Missouri Pipeline Company (MPC) to answer certain Data Requests (DRs). On April 4, 1989, MRT filed a second motion to compel with regard to other DRs. On April 6, 1989, MPC filed a response and requested the Commission establish a Protective Order for this proceeding.

MRT's first motion to compel involves DRs 3, 4, 5, 8 and 51. MRT's second motion to compel involves DRs 2, 10, 11, 16, 17, 20, 21, 22, 24, 27, 28, 36, 43, 47, 49, 50, 52, 53, 55, 56, 63, 75, 77 and 80. Although MPC provided responses to the DRs involved in the second motion, MRT asserts the responses were not adequate.

MPC's objection to many of the DRs is that they seek information not material to these proceedings and are repetitious and duplicative and designed to delay these proceedings. MPC also objected to two of the instructions accompanying MRT's DRs. These instructions will be addressed later.

MRT claims the information sought by the DRs is relevant to the proceedings and necessary for MRT to prepare its case. MRT asserts in its second motion that MPC's responses to the DRs in question were not complete and that MPC referred MRT to other sources for underlying information. MRT claims MPC has failed to provide any documents to MRT in response to these requests.

The Commission has encountered this type of discovery dispute in telecommunications proceedings. These disputes arise where competitors of a company intervene in the proceeding and propound a substantial number of DRs on the company. By establishing a Protective Order, the Commission has resolved many of these disputes. The Commission has determined the Protective Order attached to this order as Attachment A will provide protection for confidential information and should resolve some of the discovery disputes.

From the pleadings it appears that MPC, although seeking an expedited proceeding and Commission regulation, is unwilling to cooperate with intervenors seeking information to prepare their cases. If MPC wishes to be regulated by the Commission it must be prepared to respond to DRs during Commission proceedings. This means providing relevant information, including documents which support any testimony filed by MPC. If MPC wishes to object to a DR it may do so, but MPC may not merely fail to comply.

Taking into account the foregoing discussion, the Commission makes the following determinations concerning the DRs.

<u>DR. #</u>	<u>Determination</u>
2	Answer is responsive to question. DENIED.
3	This information is relevant to show MPC's ability to provide the service proposed. GRANTED.
4	This information is relevant to show the need for the service. GRANTED.
5	Same as #3. GRANTED.
8	Same as #3. GRANTED.
10	This answer is not responsive. The information upon which Mr. Taylor based his testimony shall be provided. GRANTED.
16	If MPC has studies or documents showing the market demand, they shall be provided. GRANTED.
17	The answer is responsive. DENIED.
20	Same as #17. DENIED.

- 21 MRT is in a better position to determine the accuracy of Mr. Taylor's statements. DENIED.
- 22 Same as #21. DENIED.
- 24 Same as #21. DENIED.
- 27 The answer is not responsive. GRANTED.
- 28 Same as #27. GRANTED.
- 36 MPC has stated it will provide a summary. If the information is not sufficient, additional information may be sought. DENIED.
- 43 Same as #27. GRANTED.
- 47 The annual reports shall be provided if they exist. GRANTED.
- 49 This answer is responsive. DENIED.
- 50 If MPC has studies or documents to support this statement, they shall be provided. GRANTED.
- 51 This information is not relevant. DENIED.
- 52 This answer is responsive. DENIED.
- 53 MPC shall indicate the issue addressed by Mr. Dunn in each case on the list provided. MRT can then request copies of the testimony it requires. GRANTED IN PART.
- 55 This answer is not responsive. GRANTED.
- 56 Same as #55. GRANTED.
- 63 This information is not relevant. DENIED.
- 75 Not responsive. Studies shall be provided. GRANTED.
- 77 Same as #75. GRANTED.
- 80 Same as #75. GRANTED.

Paragraph A of MRT's instructions attached to its DRs is not oppressive and will not be stricken. This is the type of information which must be provided when a party claims a privilege or immunity to prevent discovery of certain documents.

Although Paragraph B(1) is wordy and unnecessarily detailed, it is not objectionable, except that copies of documents may be provided. The Commission does

not expect a company to provide the originals of its records. If a party wants to see the originals, it can view them on a company's premises.

The Commission is not convinced the procedural schedule must be modified. MRT's proposed schedule will not be adopted.

It is, therefore,

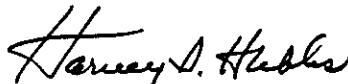
ORDERED: 1. That the Protective Order attached as Attachment A is hereby established for this proceeding.

ORDERED: 2. That the proposed modification of the procedural schedule in this matter is denied.

ORDERED: 3. That the motions to compel of Mississippi River Transmission Corporation are granted in part and denied in part as discussed in this order.

ORDERED: 4. That this order shall become effective on the date hereof.

BY THE COMMISSION



Harvey G. Hubbs
Secretary

(S E A L)

Steinmeier, Chm., Mueller,
Hendren, Fischer and Rauch,
CC., Concur.

PROTECTIVE ORDER

- A. The following definitions shall apply to information which a party claims should not be made public.

HIGHLY CONFIDENTIAL: Information concerning (1) material or documents that contain information relating directly to specific customers; (2) employee-sensitive information; (3) marketing analyses or other market-specific information relating to services offered in competition with others; (4) reports, work papers or other documentation related to work produced by internal or external auditors or consultants; (5) strategies employed, to be employed, or under consideration in contract negotiations.

PROPRIETARY: Information concerning trade secrets, as well as confidential or private technical, financial and business information.

- B. During the course of discovery a party may designate information as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated information") and shall make such designated information available to the party seeking discovery, if such information is not objectionable on any other ground, under the restrictions set out in paragraphs C and D. The party designating the information as HIGHLY CONFIDENTIAL or PROPRIETARY shall provide to counsel for the requesting party, at the time the designation is made, the ground or grounds for the designation. The requesting party may then file a motion challenging the designation. The party designating the information confidential shall have five (5) days after the filing of the challenge to file a response. No other filings are authorized.
- C. Materials or information designated as HIGHLY CONFIDENTIAL may at the option of the furnishing party, be made available only on the furnishing

party's premises and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case, unless good cause can be shown for disclosure of the information off-premises and the designated information is delivered to the custody of the requesting party's attorney. Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding. No copies of such material or information shall be made and only limited notes may be taken, and such notes shall be treated as the HIGHLY CONFIDENTIAL information from which notes were taken.

- D. Disclosure of PROPRIETARY information shall be made only to attorneys, and to such employees who are working as consultants to such attorney or intend to file testimony in these proceedings, or to persons designated by a party as outside experts. Employees to whom such disclosure is to be made must be identified to the other party by name, title and job classification prior to disclosure. Information designated as PROPRIETARY shall be served on the attorney(s) for the requesting party. On-premises inspection shall not be required for PROPRIETARY information, except in the case of voluminous documents (see paragraph K). Any employees of the party who wish to review such PROPRIETARY materials shall first read this order and certify in writing that (s)he has reviewed same and consented to its terms. The acknowledgement so executed shall contain the signatory's full name, permanent address, title or position, date signed, and an affirmation that the signer is acting on behalf of his/her employer. Such acknowledgement shall be delivered to counsel for the party furnishing the information or documents before disclosure is made.
- E. Attorneys, in-house experts or outside experts who have been provided access to material or information designated HIGHLY CONFIDENTIAL or

PROPRIETARY shall be subject to the nondisclosure requirements set forth in paragraphs C or D, whichever is applicable, and S.

- F. If material or information to be disclosed in response to a data request contains material or information concerning another party which the other party has indicated is confidential, the furnishing party shall notify the other party of the intent to disclose the information. The other party may then choose to designate the material or information as HIGHLY CONFIDENTIAL or PROPRIETARY under the provisions of this Protective Order.
- G. If any party intends to use material or information designated as HIGHLY CONFIDENTIAL or PROPRIETARY in prefiled or oral testimony at a hearing, the party shall notify the party that provided the designated information of such intent at least five (5) days in advance of filing in the case of prefiled written testimony, and in the case of oral testimony, sufficiently in advance of its intended public disclosure to allow the party claiming protection to seek continued protection via an in camera proceeding or other appropriate method. It is the responsibility of the party designating the information HIGHLY CONFIDENTIAL or PROPRIETARY to provide the party filing written testimony or presenting oral testimony the designation prior to the filing dates for written testimony or dates scheduled for oral testimony.
- H. A party may designate prefiled or live testimony, or portions thereof, submitted in this case as HIGHLY CONFIDENTIAL or PROPRIETARY (hereinafter, "designated testimony"). Prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY shall be filed under seal and served upon all attorneys of record. Only those portions of the prefiled testimony designated as HIGHLY CONFIDENTIAL or PROPRIETARY should be filed under seal, and should be marked in a manner which clearly indicates which

materials are considered HIGHLY CONFIDENTIAL and which are considered PROPRIETARY.

- I. Within five (5) days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing should be specific enough to allow other parties a reasonable understanding of the claim. Such filing shall be filed under seal only if it contains either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record.
- J. Attorneys upon whom prefiled testimony designated HIGHLY CONFIDENTIAL or PROPRIETARY has been served shall make such testimony available only to those persons authorized to review such testimony under the restrictions in Paragraphs C or D, whichever is applicable.
- K. If a response to a discovery request requires the duplication of voluminous material or material not easily copied because of its binding or size, the furnishing party may require the voluminous material be reviewed on its own premises. Voluminous material shall mean a single document, book or paper which consists of more than 150 pages.
- L. Attorneys of record in this case shall require that the in-house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective Order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory's full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix "A" and incorporated by reference herein is a form for use in complying with the terms of this paragraph.

- M. In the event a witnesses discloses the contents of designated prefiled testimony in his or her own prefiled testimony, such testimony shall also be designated in the same manner as the designated prefiled testimony and handled in accordance with this order.
- N. Unless good cause is shown, challenges to the confidential nature of prefiled designated testimony shall be filed with the Commission no later than ten (10) days after the grounds supporting the designations are filed or at the hearing, whichever occurs first. The party making the designation shall have five (5) days to respond to the challenge or may respond at the hearing, whichever occurs first.
- O. The Commission or hearing examiner may rule on the challenge to the designations prior to the hearing, or at the hearings.
- P. In the event no party challenges prefiled designated testimony, or in the event the Commission or its hearing examiner rules that testimony was properly designated, then such testimony shall be received into evidence, subject to any other objections being made and ruled upon, and kept under seal.
- Q. In addition, all live testimony, including cross-examination and oral argument which reveals the content of prefiled designated testimony or which is otherwise held to be confidential, including any argument as to whether certain testimony is properly designated, shall be made only after the hearing room is cleared of all persons besides the Commission, its hearing examiners, court reporters, attorneys of record and witnesses to whom the designated information is available pursuant to the terms of this Protective Order. The transcript of such live testimony or oral argument shall be kept under seal and copies shall only be provided to the Commission, its hearing examiners, and attorneys of record. Such attorneys shall not disclose the contents of such transcripts to anyone

other than those who may have access to the designated information under the terms of this Protective Order. Persons who have access to the designated information under the terms of this Protective Order shall treat the contents of such transcript as any other designated information under the terms of this Protective Order.

- R. References to designated testimony, whether prefiled or live and transcribed, in any pleadings before the Commission, shall be by citation only and not by quotation. Subject to the jurisdiction of any reviewing court, references to designated testimony in pleadings or oral arguments made to such reviewing court shall also be by citation only.
- S. All persons who are afforded access to information under the terms of this Protective Order shall neither use nor disclose such information for purposes of business or competition or any other purpose other than the purpose of preparation for and conduct of this proceeding and then solely as contemplated herein, and shall keep the information secure and in accordance with the purposes and intent of this order.
- T. Subject to the jurisdiction of any reviewing court, designated testimony constituting part of the record before the Commission shall be delivered to any reviewing court under seal upon service of the appropriate writ of review.
- U. The Commission may modify this order on motion of a party or on its own motion upon reasonable notice to the parties and opportunity for hearing.
- V. Within ninety (90) days after the completion of this proceeding, including judicial review thereof, all designated information, testimony, exhibits, transcripts or briefs in the possession of any party other than Staff or the Public Counsel shall be returned to the party claiming a confidential interest in such information and any notes pertaining to such information shall be destroyed.

- W. The provisions of paragraph C, D, J and L of this Protective Order do not apply to Staff or Public Counsel. Staff and Public Counsel are subject to the nondisclosure provisions of Section 386.480, R.S.Mo. 1986. Staff and Public Counsel shall provide a list of the names of their employees who will have access to the designated information.
- X. Outside experts of Staff or Public Counsel who have been contracted to be witnesses in this proceeding shall have access to designated information and testimony on the same basis as Staff and Public Counsel except the outside expert shall read this order and sign the nondisclosure agreement attached as Appendix "A" hereto.
- Y. Outside experts of Staff and Public Counsel who have not been contracted to be witnesses in this proceeding are subject to the provisions of this Protective Order.

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

NONDISCLOSURE AGREEMENT

I, _____, have been
presented a copy of this Protective Order issued in Case No. _____
on the _____ day of _____, 1988.

I have requested review of the confidential information
produced in Case No. _____ on behalf of _____
_____.

I hereby certify that I have read the above-mentioned
Protective Order and agree to abide by its terms and conditions.

Dated this _____ day of _____, 1988.

Signature and Title

Employer

Party

Address

Telephone