

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 1st  
day of November, 1994.

In the matter of the Application for )  
the release of documents by the )  
Missouri Public Service Commission ) Case No. GO-95-37  
to Dean Tuttle. )

**ORDER DIRECTING RELEASE OF DOCUMENTS**

On August 3, 1994, Dean Tuttle, (Applicant) submitted his application for the release of documents by the Commission. On August 5, 1994, the application was filed with the above-referenced case number. The application requests "copies of the reports compiled by the Missouri Public Service Commission pertaining to the incident at Tuttle's Garage on January 21, 1993" and makes this request pursuant to Chapter 610 and §386.480. On August 22, 1994, the Staff of the Public Service Commission (Staff) filed its response to the application in which it stated that it is prohibited from releasing the requested information absent an order from the Commission pursuant to §386.480 RSMo (1986). Staff's response also stated that the requested information does not exist in a report form but consists of internal Staff workpapers and memoranda which were compiled from information obtained through Western Resources and which are not on file as a public record. It should be noted that the work product of the Staff is not made into a formal report unless a specific case is docketed for the incident in question. The Commission has specific standards as to when an incident becomes a formal docketed case and this incident did not meet those requirements. Therefore, there is no formal "report" which has been issued by the Commission regarding the incident of January 21, 1993.

However, it would appear that the Staff investigation of this incident was culminated in a Staff Memorandum.

On August 10, 1994, the Commission issued a Notice which was directed to the parties herein as well as to the Office of Public Counsel and to Gas Service, A Western Resources Company and its successor in the Tipton, Missouri area, Missouri Gas Energy (Company). The Notice stated that "Parties wishing to respond to the application for release of documents shall do so on or before August 22, 1994." With the exception of the Staff, no responsive pleadings or motions were filed.

On August 29, 1994, the Applicant submitted a Supplemental Request stating that the Applicant had already received from the Company a copy of the "report" which was being sought herein. The document referred to by the Applicant as the "report" is, and will hereinafter be referred to as, the Memorandum. The Applicant attached a copy of the Memorandum to the Supplemental Request and further stated that the Applicant seeks the Commission copy of the Memorandum to verify the veracity and authenticity of the Memorandum supplied. The Applicant further argued that if there were any privilege afforded Missouri Gas Energy in this Memorandum it was waived by the fact that Missouri Gas Energy had provided a copy to the Applicant. For reasons not set out in the file, the Supplemental Request was mailed directly, and only, to the Staff attorney assigned to this case.<sup>1</sup> It was not until the Commission issued its Notice on October 12, 1994, stating that any supplemental filings, pleadings or evidence in this case must be filed by October 21, 1994, that the Supplemental Request was brought to the attention of the Hearing Examiner. At that point, it was directed that the Supplemental

---

<sup>1</sup> 4 CSR 240-2.080(2) requires that fourteen (14) copies of all pleadings be provided and that all pleadings be filed with the Secretary of the Commission.

Request which had been inadvertently held in the General Counsel's office be filed with the Commission's Records Clerk and distributed and this was accomplished on October 13, 1994.

On October 20, 1994, the Staff filed its response to the supplemental request in which it stated that Staff was unable to clearly ascertain exactly what documents were being requested by this Applicant. However, Staff did review the document provided by the Applicant with his Supplemental Request and the Staff has determined that that document is a copy of the Memorandum which the Staff provided to the Company on April 20, 1993.

The Commission has reviewed the entirety of the file herein and has conducted an *in-camera* examination of the Staff Memorandum as discussed in the pleadings of the parties. After having examined the contents of this file, the Commission makes the following findings of fact. The Commission finds that Staff's files do contain a Memorandum which appears the same as the Memorandum supplied by the Applicant attached to his Supplemental Request. The Commission finds that the Applicant's request for ". . . copies of the reports compiled by the Missouri Public Service Commission pertaining to the incident at Tuttle's Garage on January 21, 1993" appears to relate only to the above-referenced Memorandum and not to any other document, papers or work product.

The Staff cited the Commission not only to the applicable statutes but also to the Commission case of *Staff of the Missouri Public Service Commission v. Laclede Gas Company*, GC-85-124, 28 Mo. P.S.C. (N.S.) 129, (1986). (Hereafter the Laclede Case.) Based upon the holding within that case, Staff has argued the three (3) factor balancing test which the Commission has used in the past regarding a decision to release information

under these circumstances. The Commission finds that it may dispose of this case without the necessity to reach or engage in that three (3) part test.

The Commission finds that the Applicant is only requesting a copy of the Memorandum which is already in its possession. Therefore, the Commission finds the Applicant's argument that Missouri Gas Energy has waived its privilege by furnishing a copy directly to the Applicant is persuasive. The Commission also notes that although notice was issued directly to both Gas Service, A Western Resources Company and to Missouri Gas Energy and neither of these companies has made any responsive filing or entry whatsoever in this case. For that reason, the Commission finds that these companies have waived any standing which they may have to object to the requested release and, they have acquiesced to the requested release. For these reasons, the Commission will grant the Applicant's request.

**IT IS THEREFORE ORDERED:**

1. That Dean Tuttle's request for a copy of the Commission's Memorandum pertaining to the gas incident which occurred on January 21, 1993, at Tuttle's Garage in Tipton, Missouri, is hereby granted. Staff shall supply a copy of the Memorandum, pages 1-7, with the two pages of attachments to the Applicant.

2. That this order shall become effective on the date hereof.

BY THE COMMISSION

  
David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins  
and Crumpton, CC., Concur.  
Kincheloe, C., Absent.