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In the Matter of Missouri Gas Energy's)
Proposed Modifications to its Facilities) Case No. GT-98-237 ✓
Extension Policy.)

ORDER GRANTING MOTION TO COMPEL DATA REQUESTS
AND FOR EXPEDITED CONSIDERATION

On February 18, 1998, the Staff of the Missouri Public Service Commission (Staff) filed a Motion to Compel Responses to Data Requests and for Expedited Consideration. The Commission issued a notice that any response to Staff's motion should be filed no later than February 23. On February 23 Missouri Gas Energy, a division of Southern Union Company (MGE or Company), filed a Response in Opposition to Motion to Compel Responses to Data Requests and for Expedited Consideration. On February 26 Staff filed a Reply to MGE's response.

A. Information Regarding Southern Union's Divisions and Subsidiaries:

Staff submitted the following data requests (DR) to MGE.

DR No. 247: Please provide the current business and strategic plans for the Southern Union divisions and subsidiaries not already provided in Company's response to Staff Data Request No. 30.

DR No. 329: With reference to Staff Data Request No. 17, please supplement this request with copies of internal audit reports for Southern Union and its subsidiaries (other than those covered in the scope of Staff Data Request No. 17) for the same time period of February 2, 1994 through current.

DR No. 332:

1. Please provide job descriptions, a description of job duties and/or any other related documentation which describes the duties to be performed for Southern Union by its Chief Executive Officer and directors. If new documents are being drafted, please provide the old ones prior to providing the new ones when available.

2. For Mr. Lindemann and Mr. Brennan, please provide the amount of compensation received in 1997 from all associated companies. This includes SUG, companies for which these gentlemen are on the board of directors (for example, Network Event Theater), companies for which these gentlemen are officers and employees (for example, Activated Communications), and any other compensation received for any other service provided to any other organization or company. Please separate this compensation into cash and stock compensation.

3. Please provide a list of the topic and location of all speeches, or other presentations (either technical, professional, civic or business) given by Mr. Brennan and/or Mr. Lindemann in 1997. Please provide the remuneration received for the presentation.

DR No. 347: For Southern Union, its divisions, and its subsidiaries, please provide:

1. The actual amount of incentive compensation paid by year since February, 1994.

2. The actual amount of merit payroll increases paid by year since February, 1994.

3. The budgeted amount of incentive compensation by year since February, 1994.

4. The budgeted amount of merit payroll increases paid by year since February, 1994.

DR No. 349: Please provide the budgets for Southern Union's divisions and subsidiaries for the budget periods 1994 through most recent.

DR No. 350: Please provide the number of employees for each of Southern Union, its divisions, and subsidiaries by function (field operations, customer service, accounting, engineering, etc.) for the period of February, 1994, through December, 1997.

DR No. 352:

A. For Mr. Lindemann and Mr. Brennan

1. Please identify all companies/organizations, that these individuals are associated with, either directly or indirectly, in a management or oversight capacity and/or provide advice and assistance, including consultations.

2. Please provide compensation paid by company/organization of all companies/organizations listed in No. 1 above. Include salary,

stock compensation, incentive compensation, and bonus, or any other payments.

3. Please describe the role or service provided by Mr. Lindemann/Brennan to the companies/organizations listed in No. 1 above. Please include any documentation which describes the association.

4. Please provide all contracts or other agreements between Mr. Lindemann/Brennan and the companies/organizations listed in No. 1 above. If an oral agreement exists, please describe the terms of the oral agreement.

5. For the last 3 years, please provide all annual reports, SEC, FERC, FCC filings for the companies/organizations listed in No. 1 above.

6. Please provide the current strategic and/or business plans of Activated Communications and any other company/organization in No. 1 above where Mr. Lindemann/Brennan exercise control.

B.1. Please provide documentation which describes the firm "Lindemann Capital Partners" including the address and telephone number of the firm.

2. Please list the name of the employees/officers of "Lindemann Capital Partners."

3. Please provide all financial reports of "Lindemann Capital Partners" for the last 3 years.

Staff states it is entitled to this information because the Commission has authority to ensure proper allocations of revenues, expenses and investment between Southern Union's regulated enterprise, MGE, and its unregulated enterprises pursuant to Section 393.140(12), RSMo 1994.¹ Staff states that the Commission has authority to obtain documents from Southern Union divisions and subsidiaries to ensure that costs and expenses are not being improperly allocated to MGE pursuant to Sections 393.140(1); 393.130(5); 386.040 and 386.250(7). Staff points out that the Commission's authority to regulate affiliated transactions was judicially recognized in State ex rel. General Telephone Co. v. Public Serv. Comm'n, 537 S.W.2d 655,

¹All statutory references are to the Missouri Revised Statutes, 1994, unless otherwise indicated.

659 (Mo. App. 1976). Staff requests that the Commission order MGE to respond to DR Nos. 247, 329, 332, 347, 349, 350 and 352.

MGE states that Staff is attempting to expand the scope of its investigation far beyond matters of relevance to this proceeding and that Staff has not confined these requests to information related to costs or expenses that are included in MGE's revenue requirement. MGE argues that DR Nos. 247, 329 and 349 have no bearing on the charges for specific services from Lavaca Realty and KellAir and have no bearing on the corporate costs allocated to MGE through the corporate allocations model. MGE asserts that information sought in sub-parts 2 and 3 of DR No. 332 which relates to compensation paid to Mr. Brennan and Mr. Lindemann by entities other than Southern Union Company and presentations they made to non-Southern Union entities bears absolutely no relationship to this proceeding. With respect to DR No. 347, MGE states it is not seeking rate recovery of non-Missouri jurisdictional affiliate incentive compensation in MGE customer rates, and, as a result, historical and budgeted incentive compensation to non-Missouri jurisdictional affiliate employees is not relevant. MGE states it has already provided to Staff the historical incentive compensation payments to MGE employees and Southern Union corporate employees as well as the 1998 incentive compensation plan.

With reference to DR No. 350, MGE asserts it has provided total employees for each division and subsidiary (through response to DR No. 34) because the total employee count by division/subsidiary is used in the corporate allocation model as a basis for allocating costs. MGE states that further breakdown by department of non-MGE, non-corporate/division employees sought in DR No. 350 is irrelevant for determining the allocation of overhead costs to MGE. MGE states that the litany of information regarding entities which are neither Missouri jurisdictional nor divisions

or subsidiaries of Southern Union sought in DR No. 352 will not provide any assistance to the Commission's determination of just and reasonable rates for MGE's Missouri customers.

MGE points out that the statutes cited in Staff's motion establish that the Commission's responsibility is to determine matters related to the setting of customer rates for regulated gas service in Missouri and not to investigate broadly matters not specifically related to that responsibility. MGE states that contrary to Staff's assertion, General Telephone does not stand for the "Commission's authority to regulate affiliated transactions" but for the notion that the Commission determines what is or is not appropriate for inclusion in customer rates. MGE states that the mere existence of a regulated utility's non-Missouri regulated affiliates does not confer jurisdiction to the Commission over those non-jurisdictional affiliates. Staff's review of Southern Union's divisions and subsidiaries, according to MGE, should be limited to those affiliates with which MGE has transactions. MGE points out that it has already provided Staff, as well as other parties, substantial amounts of information by which Staff and the Commission can determine the reasonableness of allocated corporate costs and costs of affiliated transactions that are included in MGE's revenue requirement in this case.

The Commission determines that Staff is entitled to information sought in DR Nos. 247, 329, 332, 347, 349, 350 and 352 because the information pertains to the allocations of revenues, expenses and investment between Southern Union's regulated enterprise, MGE, and its unregulated enterprises, and because this information involves questions of whether costs are being properly allocated to MGE. DR Nos. 352 and 332 involve questions of whether costs regarding corporate officers and employees are being properly attributed to MGE. The Commission will grant

Staff's motion to compel responses to DR Nos. 247, 329, 332, 347, 349, 350 and 352.

B. Information Regarding Activated Communications:

Staff requests that the Commission order MGE to respond to DR No. 291 which provides:

1. Please provide a copy of all financial reports created/issued by Activated Communications for the past 2 years.
2. Please provide a copy of all documents filed by Activated Communications with the Internal Revenue Service (including income tax returns) and the Securities Exchange Commission for the last 2 years.

Staff seeks information concerning Southern Union Chief Executive Officer, George Lindemann. Staff seeks to determine the nature of Mr Lindemann's relationship with Activated Communications, how much time Mr. Lindemann devotes to Activated Communications, and whether Mr. Lindemann is a full-time Southern Union employee.

MGE argues that the Commission should deny Staff's motion to compel a response to DR No. 291. MGE states it has already provided substantial information on the nature of Mr. Lindemann's relationship to Activated Communications and the amount of time he spends on Southern Union activities which is relevant to the Commission's responsibility in this proceeding. MGE states it is at a loss to understand how tax returns and SEC filings will produce probative evidence on the amount of time Mr. Lindemann spends on a variety of matters, including those related to Activated Communications and Southern Union. MGE states it has already provided to Staff stock option information regarding Mr. Lindemann, information regarding meetings attended by Mr. Lindemann, and other information attached to MGE's response which addresses time spent on Southern Union activities.

The Commission determines that DR No. 291 is reasonably related to information concerning the relationship of the Company's Chief Executive Officer to Activated Communications. This DR pertains to whether costs regarding the corporate officer are being properly attributed to MGE. Therefore, the Commission will grant Staff's motion to compel a response to DR No. 291.

C. Information Regarding Lawsuits and Terminations:

Staff requests that the Commission order MGE to respond to DR No. 286 which states:

Please provide all documents provided by Company or its outside counsel to the outside auditors in regard to liability/risk assessment of claims/lawsuits against MGE and/or Southern Union.

Staff states that it seeks information regarding claims/lawsuits against MGE and Southern Union because Staff is looking for possible costs that should not be the responsibility of Missouri ratepayers. Staff asserts that MGE's claim of attorney/client or accountant/client privilege cannot insulate MGE from Staff's inquiries as to the existence of claims and lawsuits. Staff points out that any privilege is MGE's privilege which can be waived by MGE. Staff states that Staff routinely examines privileged information from other Missouri utilities, and that Staff is bound by Section 386.480 not to divulge any information provided by MGE.

MGE asserts that the attorney-client privilege has long been recognized as essential to the full and frank discussions necessary to obtain effective legal services and, therefore, material which is classified under the attorney-client privilege is absolutely immune from discovery pursuant to Board of Registration for Healing Arts v. Spinden, 789 S.W.2d 472 (Mo. App. 1990). MGE states that MGE has already provided Staff with substantial information regarding pending claims and lawsuits,

and that the existence and nature of litigation are matters of public record. MGE argues that the risk or liability assessment regarding such claims or lawsuits is an entirely different matter and falls squarely within matters subject to the attorney-client privilege.

The Commission determines that Staff should be able to review the documents pertaining to the liability/risk assessment of claims and lawsuits which MGE has provided to outside auditors. Staff is bound by Section 386.480 not to divulge any information provided by MGE. Therefore, the Commission will grant Staff's motion to compel a response to DR No. 286.

Staff requests that the Commission order MGE to respond to DR No. 285 which states:

Please provide a copy of all severance packages and agreements signed by employees who left the employment of Company from January 1, 1996 through present.

Staff contends that it is attempting to identify the root causes and reasons for the substantial turnover at the Company. Staff states that MGE's confidentiality concerns can be addressed by the Protective Order and by Section 386.480 which prohibits Staff from divulging information provided by a utility. Staff states that this information was provided by MGE in the last case when MGE was attempting to recover the severance costs. Staff indicates that MGE did not object to a similar data request in this case submitted by the Office of the Public Counsel.

MGE states that it has not included the costs of any severance agreements in its revenue requirement in this case and does not seek recovery thereof through customer rates. Therefore, MGE argues that Staff is attempting to expand its investigation beyond the purpose of this proceeding and beyond the Commission's statutory responsibilities. MGE states it is bound by contract not to disclose the contents of the

severance agreements. MGE requests that the Commission deny Staff's motion to compel a response to DR No. 285 because the information is not relevant and is likely to result in breach of contract claims.

The Commission determines that DR No. 285 appears reasonably calculated to lead to the discovery of admissible evidence. MGE's confidentiality concerns can be addressed by the Protective Order and by Section 386.480 which prohibits Staff from divulging information. The Commission will grant Staff's motion to compel a response to DR No. 285.

D. Information Regarding Community Relations Department:

Staff requests that the Commission order MGE to respond to DR Nos. 292 and 293:

DR No. 292: Please provide the following information:

1. All performance expectations and appraisals for the members of the Community Relations and Public Affairs Department and/or any other departments that handle community relations for the last three years.
2. Please provide copies of all job descriptions for the members of the Community Leadership Department and/or any other departments that handle community relations.

Please consider this a continuous data request and update as information becomes available (i.e., as performance appraisals are done, job descriptions change, etc.).

DR No. 293: Per our meeting on January 22, 1998, Darrek Porter informed Staff members that "annual plans" (as requested in Data Request No. 213) were replaced by the Customer Outreach Program plans. Please provide copies of this plan and/or any other documents (weekly, monthly, seasonal, etc.) relating to the responsibilities and expectations of the department. Additionally, please consider this a continuous data request and provide the above mentioned documents as they become available.

Staff states this information is needed to determine whether the expense of the Community Relations Department should be included in MGE's cost of service. Staff states that this issue was contested in MGE's last

rate case and that Staff seeks to determine the functions of the Community Relations Department with these data requests.

MGE argues that the Commission should deny Staff's motion to compel a response to DR No. 292 because of the sensitive and personal nature of the information in personnel files and the fact that Staff has stated no need for the requested information. MGE states that private sector personnel files are only discoverable when clearly relevant to the subject matter of the litigation, and even then only under restrictive procedures pursuant to Missouri National Education Association v. New Madrid County R-1 Enlarged School District, 810 F.2d 164 (8th Cir. 1987).

MGE does not understand why Staff has moved to compel a response to DR No. 293. MGE states that it did not object to this data request on the grounds that it sought sensitive and confidential personnel files, but because Staff had already sought the information twice before, in DR Nos. 211 and 213, and that MGE had already provided the information. MGE therefore believes that the Commission should deny Staff motion to compel responses to DR No. 293.

Although MGE appears to have objected to DR No. 293 on the grounds that MGE already provided the information, the Commission is unable to determine that MGE actually provided the information. Therefore, the Commission will grant Staff's motion to compel a response to DR. No. 293.

The Commission determines that performance expectations and appraisals for the members of the Community Relations and Public Affairs Department and other departments that handle community relations are relevant and discoverable for determining whether costs related to these departments should be included in MGE's cost of service. Any concerns about the sensitivity of the information can be addressed under the

protective order. Therefore the Commission will grant Staff's motion to compel a response to DR. No. 292.

E. Motion for Expedited Consideration:

Staff asserts that the refusal of MGE to respond to Staff's relevant data requests will harm Staff in its ability to prepare and file its direct testimony in a timely manner on March 13 unless the Commission grants expedited consideration of this motion. Therefore, Staff requests that the Commission shorten the time to respond to the motion and order MGE to respond fully to the data requests by February 27.

The Commission will expedite this order; however, expediting to the extent requested by Staff is not possible because it is necessary to allow sufficient time for MGE to file its response and sufficient time for the Commission to prepare the order. Therefore, MGE will be ordered to respond to the data requests as provided herein on the effective date of this order.

IT IS THEREFORE ORDERED:

1. That the Motion to Compel Responses to Data Requests and for Expedited Consideration filed by the Staff of the Commission on February 18, 1998, is granted.

2. That Missouri Gas Energy, a division of Southern Union Company, shall provide responses to Data Request Nos. 247, 329, 332, 347, 349, 350, 352, 291, 285, 286, 292 and 293 no later than March 5, 1998.

3. That this order shall become effective on March 5, 1998.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, and Drainer, CC., concur.
Crompton, C., absent.

G. George, Regulatory Law Judge