

FILED³

NOV 13 2001

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Missouri Public
Service Commission

In the matter of the Tariff Filing)
of Missouri Public Service Company,)
a division of UtiliCorp United,)
Inc., to implement a general rate)
increase for retail electric)
service provided to customers in)
its Missouri service area)

ER-2001-672

MOTION TO COMPEL RESPONSES
TO DATA REQUESTS;

MOTION TO SHORTEN TIME TO RESPOND

COMES NOW Intervenor Sedalia Industrial Energy Users' Association (SIEUA) and for its Motion to Compel Responses to Data Requests and Motion to Shorten Time to Respond states:

MOTION TO COMPEL

1. Pursuant to Commission Rule 4 CSR 240-2.090, on October 5, 2001 counsel for SIEUA transmitted to counsel for Applicant Missouri Public Service Company (MoPub) Data Request No. 85 and Data Request No. 86. Copies of each data request are attached hereto as Exhibit A.

2. Under 4 CSR 240-2.090(2), any objection or informal request for extension of time to respond to these data requests was due on or before October 15. No objection was received to either data request and no request for additional time to respond was received.

3. On October 30, 2001, responses were received from MoPub as shown on the attached Exhibit A. No other responses have been received regarding either request.

4. On November 6, 2001, counsel for SIEUA (using facsimile) wrote counsel for MoPub seeking compliance with the requests, a copy of which correspondence is attached as Exhibit B. Counsel also discussed the matter briefly at a prehearing conference at the Commission on November 7, 2001. Counsel for MoPub acknowledged receipt of the "golden rule" letter, and requested that no action to compel be taken until he had an opportunity to discuss the matter with his client.

5. On Thursday, November 8, 2001, counsel for MoPub left a voice-mail message for SIEUA counsel advising that SIEUA should file a motion to compel.

6. The requested data is needed in the preparation of SIEUA's testimony and case. A key issue in this dispute is the calculation of the costs of fuel. This calculation, which employs numerous input factors, requires the use of a computer model that integrates the various inputs and assumptions and produces a "fuel run" or output reflecting the costs that result from those inputs.

7. MoPub used such a computer model, called "RealTime," in the preparation of its original case. There
Witness Stephen L. Ferry stated:

After doing this, the fuel and purchased energy should be dispatched by a reliable and accurate production cost computer model to develop the appropriate generation and purchased energy levels

and the resulting amount of fuel burned. UtiliCorp uses the RealTime computer software for its production cost model.

Q. Did MPS develop its recommended annualized test period fuel and purchased energy expenses for this case using the method your just described?

A. Yes.

Direct Testimony, Stephen L. Ferry, p. 8, line 15 through p. 9, line 2.

8. The new generation equipment is fueled with natural gas. Thus, a key input to any such model is the cost of natural gas. The output, and thus the level of fuel costs to be included, is a function of the cost of natural gas.

9. Evaluation of the validity of the fuel cost assumptions used by MoPub in its case, identification of the sensitivity of MoPub's computer model to variations in the cost of natural gas as an input, and the results of these studies are critical parts of this case. They are key components to develop a record on which the Commission may make informed choices regarding the rates to establish for MoPub as an outcome of this case. These data and the results of various runs are unquestionably relevant and material.

10. The subject requests were designed to develop such data, based on varying the single input of natural gas cost across a range of potential values, as an input to MoPub's fuel model. These results would likely undercut MoPub's claims and its asserted fuel expense numbers. Because this data would have

been prepared with MoPub's RealTime model, the results would be highly probative.

11. Alternative suggestions by counsel for SIEUA to counsel for MoPub to provide a copy of the model subject to the protective order permitting us to perform the runs were rejected.

12. No objection, timely or otherwise, to either request has ever been tendered. The model is asserted by MoPub to be "proprietary." There is no basis on which MoPub can legitimately claim to employ this "proprietary" fuel model to develop its submitted case yet deny other parties access to the model, in a manner that permits protection of its "proprietary" claims, to test the sensitivity and results of the model. Furthermore, there is a protective order in this case.

13. Accordingly, MoPub should be compelled to perform the fuel runs on its model as requested and provide SIEUA with the results of those runs. MoPub's suggestion that SIEUA "may" request the data from Staff has no merit. MoPub is the applicant; not the Staff.

14. The next round of testimony, including testimony on revenue requirement, is now due on December 6, 2001. These requests have already been outstanding more than the twenty days allowed by Commission rule. Accordingly, compliance should be compelled immediately.

MOTION TO SHORTEN TIME FOR RESPONSE

15. Testimony is impending and currently due from these intervenors on all issues on December 6, 2001. Responses

to these requests have been overdue since October 25, 2001, well in excess of the twenty days provided by rule.


16. Counsel for MoPub is aware of the dispute, both by reason of discussion with SIEUA counsel and by reason of the "golden rule" letter attached hereto. There is no reason that a full ten-day response time is needed or should be allowed in the circumstances.

17. This motion is being telecopied to counsel for MoPub simultaneous with its filing with the Commission. Five days is adequate time for a response, given these circumstances. The time for response to this Motion to Compel should be shortened to five days.

WHEREFORE, the time to respond to this motion should be shortened to five days and thereupon MoPub should be compelled to promptly provide responses to the data requests as requested.

Respectfully submitted,

FINNEGAN, CONRAD & PETERSON, L.C.


Stuart W. Conrad MBE #23966
3100 Broadway, Suite 1209
Kansas City, Missouri 64111
(816) 753-1122
Facsimile (816) 756-0373
Internet: stucon@fcplaw.com

ATTORNEYS FOR SEDALIA INDUSTRIAL
ENERGY USERS' ASSOCIATION

November ¹³~~8~~, 2001

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing Application for Leave to Intervene by facsimile upon counsel for MoPub and by electronic or conventional means to the remaining attorneys of record for all parties as provided on the records of the Commission.



Stuart W. Conrad

Dated: November ¹³~~9~~, 2001

EXHIBIT

consistent with the low price forecast for purchased power and the gas prices stated above.

The attached or above information provided to the requesting party or parties in response to this data or information request is accurate and complete and contains no material misrepresentations or omissions, based upon present facts to the best of the knowledge, information or belief of the undersigned. The undersigned agrees to immediately inform the requesting party or parties if during the pendency of this case any matters are discovered which would materially affect the accuracy or completeness of the attached information and agrees to regard this as a continuing data request.

As used in this request the term "document" includes publications in any format, work papers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data recordings, transcriptions and printer, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to the party to whom this request is tendered and named above and includes its employees, contractors, agents or others employed by or acting in its behalf.

Signed: Gary L. Clemens

Date: _____

EXHIBIT APage 2 of 5

UTILICORP UNITED
CASE NO. ER-01-672
DATA REQUEST NO. SIE-85

DATE OF REQUEST: October 5, 2001

DATE RECEIVED: October 8, 2001

DATE DUE: October 28, 2001

REQUESTOR: Stu Conrad

QUESTION:

Please run the Real Time production costing model and provide copies of the output reports assuming each of the NYMEX Henry Hub prices listed below. Please add appropriate transportation and other costs, specifying the amounts added for each:

Month	NYMEX Henry Hub Price
Jan	\$2.90
Feb	2.90
Mar	2.85
Apr	2.75
May	2.80
Jun	2.80
Jul	2.90
Aug	2.90
Sep	2.90
Oct	2.90
Nov	3.10
Dec	3.25

For the "market purchase" please use prices consistent with the "low fuel" price assumptions contained in the April 9, 2001 price forecast furnished in response to Request No. MPSC-2905. Please make any other corresponding adjustments to the assumptions to be consistent with the low price forecast for purchased power and the gas prices stated above.

RESPONSE: This run is not available, the MPSC Staff uses Realtime and may be able to make a run for these assumptions.

ATTACHMENTS: None

ANSWERED BY: Gary Clemens

EXHIBIT

A

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UTILICORP UNITED INC.
ER-2001-672
Data Request
of
Sedalia Industrial Energy Users Association
to
UtiliCorp United
October 5, 2001

<u>Item No.</u>	<u>Description</u>
26.	Please provide the same information requested in the immediately preceding question, except utilize a natural gas price that is \$1 per million Btu higher.

SEE ATTACHED

The attached or above information provided to the requesting party or parties in response to this data or information request is accurate and complete and contains no material misrepresentations or omissions, based upon present facts to the best of the knowledge, information or belief of the undersigned. The undersigned agrees to immediately inform the requesting party or parties if during the pendency of this case any matters are discovered which would materially affect the accuracy or completeness of the attached information and agrees to regard this as a continuing data request.

As used in this request the term "document" includes publications in any format, work papers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data recordings, transcriptions and printer, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to the party to whom this request is tendered and named above and includes its employees, contractors, agents or others employed by or acting in its behalf.

Signed: Larry L. Clemens-Hose

Date: _____

EXHIBIT A

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**UTILICORP UNITED
CASE NO. ER-01-672
DATA REQUEST NO. SIE-86**

DATE OF REQUEST: October 5, 2001
DATE RECEIVED: October 8, 2001
DATE DUE: October 28, 2001
REQUESTOR: Stu Conrad

QUESTION:

Please provide the same information requested in the immediately preceding question, except utilize a natural gas price that is \$1 per million BTU higher.

RESPONSE: See DR 85

ATTACHMENTS: None

ANSWERED BY: Gary Clemens

FINNEGAN, CONRAD & PETERSON, L.C.

ATTORNEYS AND COUNSELORS AT LAW

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JEREMIAH FINNEGAN, P.C.
STUART W. CONRAD
C. EDWARD PETERSON*

*ALSO ADMITTED IN
KANSAS AND MASSACHUSETTS

Writer's 24-Hour Number:
(888)266-7934

November 6, 2001

VIA FACSIMILE

Mr. James C. Swearengen
Brydon, Swearengen & England, P.C.
312 East Capitol Avenue
Jefferson City, MO 65101

Re: UtiliCorp United/MoPub
PSC Case No. ER-2001-672

Dear Jim:

This "golden rule" letter concerns our data requests 85 and 86. Copies are attached.

These were sent on October 5 and no objection was made to either data request. However, the only response is shown on the attached which amounts to a refusal to provide the information requested.

We do not have the software which, I understand, is claimed to be "proprietary." Thus, running the model with other values seems the only way to develop the data on the fuel issue at the price levels we believe are reasonable and consistent with our view of the case. The bulk of this case is about fuel. MoPub utilized the model in developing its case. Given the dependence on computer models that is so frequently a part of this case, it is not reasonable to deny other parties both access to the model while refusing to employ the model to run the values that we request.

I will have to file a motion to compel joined with a motion to shorten response time unless we either have the data requested

EXHIBIT B
Page 1 of 2

FINNEGAN, CONRAD & PETERSON, L.C.

Mr. James C. Swearengen

November 6, 2001

Page 2

or the software is made available to us so that we can make the runs. Either must be prompt.

Sincerely yours,

FINNEGAN, CONRAD & PETERSON, L.C.

By: 

Stuart W. Conrad

SWC:s

Enclosures

EXHIBIT B

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