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May 28, 2004

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, Missouri 65102

**FILED<sup>2</sup>**  
MAY 28 2004  
Missouri Public  
Service Commission

RE: *James Dudley v. Missouri Gas Energy*  
Case No. GC-2004-0216

Mr. Roberts:

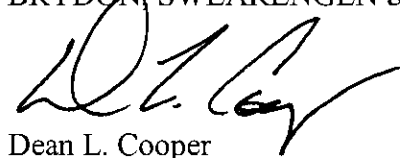
Enclosed for filing in the above-referenced matter are the original and eight (8) copies of MGE's Motion in Limine.

If you have any questions concerning this matter, then please do not hesitate to contact me. Thank you very much for your attention to this matter.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Dean L. Cooper

DLC/jar  
Enclosures

cc: Office of the General Counsel  
Office of the Public Counsel  
James Dudley

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>  
MAY 28 2004

Missouri Public  
Service Commission

James Dudley,

Complainant,

v.

Missouri Gas Energy,

Respondent.

Case No. GC-2004-0216

**MOTION IN LIMINE**

COMES NOW Missouri Gas Energy, a division of Southern Union Company ("MGE"), to object to the offering of certain testimony by Complainant during the hearing of this matter and to move the Missouri Public Service Commission ("Commission") to bar the testimony of Jennifer Ersery and Andrea Pearson at the hearing of this case, as stated herein:

1. Complainant has filed pleadings with the Commission entitled "Order of Opening Statement, Witness and Cross-Examination" and "Order to Amend Witness List." The first of these pleadings indicates that Complainant intends to call a "Jennifer Ersery" as a witness and the second pleading indicates that Complainant desires to call as a witness an "Andrea Pearson."

2. Complainant has previously filed the Direct Testimony of James Dudley and the Surrebuttal Testimony of James Dudley. No other prefiled testimony has been provided by Complainant

3. The Commission's April 16, 2004 Order Adopting Procedural Schedule specifically states that the "Commission will require the prefiling of testimony as defined in 4 CSR 240-2.130. *All parties shall comply with this rule. . .*" (Emphasis added).

4. The Commission further explains this requirement for prefiled testimony in the same Order stating that -- “The practice of prefiling testimony is designed to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.”

5. The prefiling of testimony is a condition of the Commission’s Order, and is therefore a limitation on the presentation of testimony in this matter.

6. Additionally, Commission Rule 4 CSR 240-2.130(8) states as follows:

No party shall be permitted to supplement prefiled prepared direct, rebuttal or surrebuttal testimony unless ordered by the presiding officer or the commission. A party shall not be precluded from having a reasonable opportunity to address matters not previously disclosed which arise at the hearing.

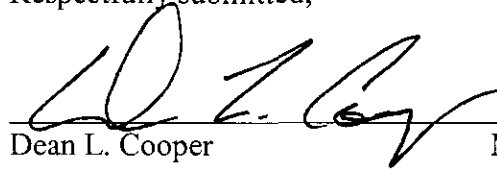
7. As stated above, the purpose of providing prefiled testimony is “to give parties notice of the claims, contentions and evidence in issue and to avoid unnecessary objections and delays caused by allegations of unfair surprise at the hearing.” MGE is unaware of the identity of Jennifer Ersery or Andrea Pearson. MGE is equally unaware of what their connection may be to this matter as they have not been identified in the complainant, testimony or the Staff report in this case.

8. Because the Complainant has not filed any testimony for either Jennifer Ersery or Andrea Pearson, it would violate both the cited Commission order and the above Commission rule for Complainant to call either of the persons as witnesses at the hearing.

9. Accordingly, MGE requests that the Commission issue an order granting this motion in limine and issue an order to bar Complainant from presenting the testimony of Andrea Pearson and Jennifer Ersery.

WHEREFORE, Respondent, Missouri Gas Energy, for the reasons set forth above requests that the Commission grant MGE's Motion in Limine as stated herein and bar Complainant from presenting the testimony of Andrea Pearson and Jennifer Ersery.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI GAS ENERGY

#### CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was hand-delivered or sent by U.S. Mail, postage prepaid, on May 28 2004, to the following:

Office of the General Counsel  
Governor Office Building  
Jefferson City, MO 65101

Office of the Public Counsel  
Governor Office Building  
Jefferson City, MO 65101

James Dudley  
4247 Agnes  
Kansas City, MO 64130

