

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

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Application of Madison Gas and Electric  
Company for Authority to Change  
Electric and Natural Gas Rates

Docket No. 3270-UR-121

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**BRIEF OF MADISON GAS AND ELECTRIC COMPANY IN  
OPPOSITION TO MOTION TO COMPEL OF INTERVENOR NANCY KORDA**

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On June 23, 2016, Intervenor Nancy Korda submitted a number of discovery requests to Applicant Madison Gas and Electric Company (“MGE” or “Company”).<sup>1</sup> The requests asked about a survey the Company conducted of its customers in 2015; about a Community Energy Workshop the Company held on April 19, 2016; about how the Company took into account public comments filed in its last rate case and how it will take into account public comments in this proceeding; about information the Company has provided to its shareholders and whether the Company has polled or surveyed its shareholders; and, finally, about how the Company’s residential energy charge might change if its Grid Connection and Customer Service charge were lower. The data requests stated that the requested information “has the potential to show that MGE has not listened to or fully educated customers/stockholders in many areas but especially in relation to the increase in customer charge and decrease in energy charge proposed and approved in 3270-UR-120 and proposed to continue in 3270-UR-121.”

MGE served Ms. Korda with its objections and responses on July 14. (PSC REF#: 288855.) On July 18, Ms. Korda discussed her concerns about a handful of MGE’s objections

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<sup>1</sup> A copy of Ms. Korda’s data requests is attached to this brief as Exhibit A.

and responses with MGE’s counsel. On July 19, Ms. Korda filed a “Motion for Order to Compel From Intervenor Nancy Korda Direct to the Administrative Law Judge.” (PSC REF#: 289052.)

In her motion, Ms. Korda seeks to compel MGE to respond to one data request, which seeks copies of “all written comments created by” attendees at MGE’s April 19 Community Energy Workshop, as well as “the distillation done at the ‘themes’ table.”<sup>2</sup>

Ms. Korda’s motion should be denied. The information she seeks is irrelevant to this proceeding, is not reasonably calculated to lead to the discovery of admissible evidence, and granting her motion would establish a dangerous precedent allowing intervenors to investigate an Applicant’s decision process rather than its proposals. Indeed, Ms. Korda’s data requests demonstrate her apparent interest in re-litigating MGE’s previous rate case and not addressing issues relevant to the 2017 test year rate case.

### **BACKGROUND**

All of Ms. Korda’s data requests seek irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence. Nevertheless, in a spirit of cooperation, MGE provided responses to the bulk of Ms. Korda’s requests. (PSC REF#: 288855.) However, the one data request that remains in dispute is so clearly beyond the pale that MGE must continue to object to it.

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<sup>2</sup> In her motion, Ms. Korda also discusses her last data request, which asks in part “If the Rg-1 ‘Grid Connection and Customer Service Charge’ was \$.35512 per day (as it was before the 3270-UR-120 order) what would the resulting Rg-1 ‘Energy Charge’ be for summer and winter using the currently proposed (3270-UR-121) revenue requirement for residential customers?” In its response, MGE directed Ms. Korda to the page of the MGE exhibit that explains how the components of the proposed Rg-1 rate are derived. In her conversation with MGE’s counsel, they discussed how Ms. Korda could use the information in the exhibit to calculate the proposed rate she is interested in. Based on that conversation, MGE now has a clearer understanding of the specific proposed rate Ms. Korda is interested in developing. The Company will provide her with an amended response to Data Request 16 by July 27 that will include the proposed energy charge she is seeking. Ms. Korda indicated in the conversation that she is no longer pursuing her request that MGE prepare a modified Rg-1 tariff sheet.

Some background on the request will assist understanding. MGE filed its Application in this proceeding on April 15, 2016. (PSC REF#: 284357.) The Application stated that “The Company will not be proposing an increase in fixed charges for residential and small business customers.” (PSC REF#: 284357 at 1.)

On April 19, 2016, MGE hosted a Community Energy Workshop, where a diverse group of about 200 community members were invited to provide feedback on MGE’s Energy 2030 framework. Information on the Workshop can be found on MGE’s website at <https://www.mge.com/community-conversations/workshop.htm>. As this information explains, the Workshop participants watched three short videos on MGE’s Energy 2030 framework, on new products and services, and on community engagement. Copies of the videos are available on the website.

After each video, participants were invited to provide feedback. The feedback was collected and distilled into themes. The themes are presented through illustrative comments that are included on the website. <https://www.mge.com/community-conversations/summary-themes.htm> The Workshop did not address the 2017 test year rate case or rate design issues.

The data request that is the subject of Ms. Korda’s motion seeks “a copy of all written comments created by [Workshop] attendees (about 130 pages) and the distillation done at the ‘themes’ table.” Ms. Korda contends that these documents are “relevant to the preparation of my testimony concerning the issue of MG&E’s ‘Grid Connection and Customer Service Charge’ and the resulting kWh charge.” (Korda Motion at 2.)

### **ARGUMENT**

Discovery requests in this proceeding are governed by ch. 804, Wis. Stats. Wis. Admin. Code § PSC 2.24(1). In general, parties may seek discovery of evidence that is relevant to the

subject matter involved in the proceeding and is admissible or appears reasonably calculated to lead to the discovery of admissible evidence. Wis. Stat. § 804.01(2)(a).

Wis. Stat. § 904.01 defines relevant evidence as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

The Workshop comments that Ms. Korda wants MGE to produce are clearly irrelevant to any of the issues in this proceeding and are not reasonably calculated to lead to the discovery of admissible evidence. Thus, Ms. Korda’s motion to compel should be denied. In a similar case, the Commission upheld an Administrative Law Judge’s denial of a motion to compel discovery filed by TDS Telecom Operating Companies (TDS). *See Application of Charter Fiberlink, LLC to Expand Authorization to Territories Served by TDS Telecom*, Docket Nos. 3355-NC-104 and 5-TI-1317 (November 11, 2005).<sup>3</sup> The ALJ and the Commission both concluded that the information sought by TDS via discovery was irrelevant to the issues identified in both dockets.

As MGE noted in its response to Ms. Korda’s data request, the Company filed its Application before the Workshop was held, and so comments at the Workshop could not have affected the Application. (PSC REF#: 288855 at 4.)

Ms. Korda responds that “MGE can submit supplemental and revised testimony at any point in the process indicating that they have changed their position – as they did in 3270-UR-120. Therefore, what they heard from the public a few days after the initial filing could change their position later in the case.” (Korda Motion at 3-4.)

MGE stated in its Application that it “will not be proposing an increase in fixed charges for residential and small business customers.” (PSC REF#: 284357 at 1.) That remains the

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<sup>3</sup> A copy of the Commission’s decision is attached to this brief as Exhibit B. The docket numbers – but not the documents in the dockets – can be found on the Commission’s website.

Company's position. MGE made this commitment to its customers and has no intention of wavering from its position in this proceeding.

The relevance of the information sought in Ms. Korda's data requests is determined by the issues identified in the Application and not what issues could be identified in the Application. Ms. Korda's arguments in support of disclosure are based on speculation. It is not sufficient for Ms. Korda to assert that maybe the issues will change sometime in the future in a way that makes the information relevant. If the issues change, the analysis may change. But relevance must be determined on the basis of the state of the record as it currently exists. The record shows that the Company is not seeking further rate restructuring in its 2017 test year rate case. (PSC REF#: 284357 at 1.) The Workshop comments are irrelevant to this proceeding.

Ms. Korda apparently seeks to propose in her testimony that the Commission should order MGE to lower the fixed charge component of its residential rates. After what the Commission described as "a vigorous and thorough vetting" of the cost of service issues, as well as extensive consideration of applicable policy considerations, the Commission found the fixed charges and other components of the rates it approved for MGE in its last case to be just and reasonable. (Final Decision in 3270-UR-120, PSC REF#: 226563.) MGE is not proposing any changes to the fixed charge components of its residential and small business rates. (PSC REF#: 284357 at 1.)

Ms. Korda's desire to reopen this issue would effectively amount to an untimely motion for reconsideration of the Final Decision in 3270-UR-120. Her apparent interest in re-litigating the last rate case only underscores the irrelevancy to this proceeding of her attempts to find statements of MGE customers who may agree with her.

Finally, and most significantly, Ms. Korda's motion should be denied in order to avoid setting a dangerous precedent regarding the scope of discovery in rate cases. As her data requests and motion make clear, Ms. Korda is interested in investigating MGE rather than in investigating the rates that MGE proposes in this proceeding.

Ms. Korda is not asking for information that is relevant to the Applicant's proposal. Ms. Korda is seeking information that she claims is relevant to her belief that "MGE has not listened to or fully educated customers/stockholders in many areas." Ms. Korda wants to explore why MGE proposed what it did, or, more precisely, why it did not propose what she prefers with respect to the fixed charges.

In a rate case, the Commission has no reason to consider the Applicant's decision process, let alone what kind of a job an Applicant has done in "listen[ing] to or fully educat[ing] customers/stockholders." Instead, the Commission must decide whether the rates the Applicant proposes are just and reasonable, based on the cost-based and policy-based considerations that the Commission typically considers. Wis. Stat. §§ 196.03, 196.20 and 196.37. What third-parties may have suggested to the Applicant utility and what consideration the Applicant utility may have given to those suggestions are irrelevant to this inquiry.

Further, it would be unprecedented to allow discovery on the Applicant's decision-making process rather than on the basis for the Applicant's proposal. If this type of inquiry were to be countenanced, there would be no logical stopping point. Depositions of utility executives could be noticed to inquire into who said what to whom about rate proposals, and what sort of suggestions had been received and accepted or rejected from the wide range of stakeholders interested in utility rates. Such a sweeping expansion of the range of relevant rate case issues

should not be adopted in order to provide Ms. Korda with access to participant feedback at an MGE workshop that had nothing to do with its rate case.

**CONCLUSION**

For the foregoing reasons, Ms. Korda's motion to compel MGE to provide the documents sought in her Data Request 5(b) should be denied. MGE will provide Ms. Korda with an amended response to her Data Request 16 that provides the proposed energy charge that she seeks.

Dated at Madison, Wisconsin, this 22nd day of July, 2016.

STAFFORD ROSENBAUM LLP

*/s/ Edwin J. Hughes*

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## DATA REQUESTS for MG&E

FROM: Nancy Korda

NOTE: Most of the information requested below was provided to MGE by members of the public, is an analysis of information provided by the public, or shows how public opinion was incorporated into decision making. I am not asking that any of the information be identified to individuals. Since this information was provided by the public and is not identified to individuals it is not confidential. This information is relevant to this case because it has the potential to show that MGE has not listened to or fully educated customers/stockholders in many areas but especially in relation to the increase in customer charge and decrease in energy charge proposed and approved in 3270-UR-120 and proposed to continue in 3270-UR-121.

1. Did the results of the independent survey (done in addition to the Community Energy Conversations and as described on the company's website), where MGE enlisted the expertise of a Wisconsin-based professional market research firm to survey a statistically valid random sample of customers in 2015, influence the Company's filing regarding electric energy costs, rate design, or energy policy in Docket 3270-UR-121?
2. If yes: (a) Please provide a detailed description of how the survey influenced the Company's filing in Docket 3270-UR-121; (b) Please provide documents that identify the questions asked in the survey, the answers provided, and the process selected for choosing participants in the survey; (c) Please provide a copy of any reports prepared by MGE, and any entity acting on behalf of MGE, that describe the results of the survey.
3. If the survey did not influence the Company's filing in Docket 3270-UR-121, please provide a detailed description of why it did not.
4. Will the opinions expressed by attendees to the April 19, 2016, Community Energy Workshop (CEW) influence the Company's position regarding electric energy costs, rate design, or energy policy in Docket 3270-UR-121?
5. If yes: (a) Please provide a list of the April 19, 2016 attendees and the organizations they represented, if any; (b) Please provide a copy of all written comments created by CEW attendees (about 130 pages), and the distillation done at the 'themes' table.
6. If the opinions expressed by attendees to the April 19, 2016, CEW have not influenced the Company's position regarding electric energy costs, rate design, or energy policy in Docket 3270-UR-121, please explain why not.



7. Did the comments and opinions of persons participating in the Community Energy Conversations (CEC), during the summer and fall of 2015, influence the company's filing in 3270-UR-121 regarding electric energy costs, rate design, or energy policy? If so, how did it affect the company's filing?
8. Persons involved in the (CEC), were asked to rate the Discussion Paper, provided by MG&E to help them prepare for the meetings (Question 2 in the JSA report). The Discussion Paper was provided to participants to educate them before attending the Conversations and is still offered on the MGE website. Many CEC participants did not read the document but still provided a rating. Please provide the average rating of those who said they read the document (218) separately from the average rating of those who said they did not read the document (168) (Question 6 in the JSA report).
9. Did the public comments that were filed in Docket 3270-UR-120 (over 1,000) influence the Company's filing in Docket 3270-UR-121 regarding electric energy costs, rate design, or energy policy?
10. If yes, please describe how MGE's filing in Docket 3270-UR-121 responds to the reaction of its customers' comments filed in Docket 3270-UR-120.
11. What process will be used to review the public comments in this rate case (3270-UR-121)? How will public comments affect any future decisions made by MGE?
12. Please provide copies of all documents MGE, and/or its holding company, has provided to its shareholders, since January 1, 2013, to date, regarding: (a) residential electric fixed monthly charges; (b) changes to the residential charge for kWh usage; and (c) distributed energy generation.
13. Please specify whether MGE has polled or surveyed its shareholders since January 1, 2013, to date, regarding their opinions on (a) residential electric fixed monthly charges; (b) changes to the residential charge for kWh usage; and (c) distributed energy generation.
14. If yes, please provide the results of all such polling or surveying.
15. If no, please explain why MGE did not poll or survey its shareholders regarding these issues.

And Finally:

16. If the Rg-1 "Grid Connection and Customer Service Charge" was \$.35512 per day (as it was before the 3270-UR-120 order) what would the resulting Rg-1 "Energy Charge" be for summer and winter using the currently proposed (3270-UR-121) revenue requirement for residential customers? Provide the resulting Rg-1 tariff sheet.

2005 WL 3389088 (Wis.P.S.C.)  
Slip Copy

Application of Charter Fiberlink, LLC to Expand Authorization to Territories Served by TDS Telecom

3355-NC-104

Request of Charter Fiberlink, LLC to Terminate the Rural Telephone  
Company Exemption of Certain Operating Companies of TDS Telecom

5-TI-1317

Wisconsin Public Service Commission

Date Mailed November 11, 2005

**ORDER**

BY THE COMMISSION:Christy L. Zehner, Secretary to the Commission

**Background**

\*1 The Commission opened the consolidated above-captioned dockets with a Notice of Investigation and Prehearing Conference (Notice) on August 22, 2005. Docket 3355-NC-104 is the request of Charter Fiberlink, LLC (Charter) to expand its current alternative telecommunications certificate to include the service territories of 16 TDS Telecom Operating Companies (TDS) specifically identified in the Notice. Docket 5-TI-1317 covers the concurrent request of Charter to terminate the rural telephone company exemption (RTCE) (47 U.S.C. § 251(f)(1)) of 7 of those 16 TDS companies.

At the prehearing conference held on September 1, 2005, Charter assumed the burden of proof with respect to the limited issues<sup>1</sup> in both dockets. With the approval of the ALJ, the parties further agreed to conduct discovery in both dockets pursuant to Wis. Stat. ch. 804, which provides for depositions, interrogatories, and requests for production of documents. *See* Wis. Admin. Code §§ PSC 2.04 and 2.24(1).

Because of an apparent impasse, TDS moved on October 4, 2005, to compel Charter responses to certain interrogatories and document requests. Charter responded with further supplementation and objections on October 17, 2005. TDS replied, and immediately thereafter the ALJ held a motion hearing on October 21, 2005. The ALJ issued an Order Granting in Part and Denying in Part Motion to Compel Discovery (ALJ Order), dated and effective October 27, 2005.

On October 28, 2005, TDS filed its motion and supporting brief for interlocutory review pursuant to Wis. Admin. Code § PSC 2.27. TDS limited its motion to discovery of certain retail costs of Charter (Interrogatory 10(a)), and a request for the business plans of Charter's parent. (Document Request No. 1.) Charter replied on November 3, 2005.

The Commission has reviewed the pleadings and briefing materials submitted by the parties and the staff memorandum. The Commission discussed the motion at its open meeting of November 10, 2005.

**Discussion**

The ALJ denied TDS' October 4 motion as to both the interrogatory and the document request in both dockets on the grounds that the sought information was "irrelevant and unlikely to lead to admissible evidence." As to the business plans, the ALJ further ruled that any possible relevance of such highly confidential information as to the technical,

managerial, or financial capabilities of Charter or, to the public interest, was “so attenuated that a protective order would be warranted.” ALJ Order, p. 3.

The Commission hereby affirms the ALJ's ruling in all respects for the reasons cited by the ALJ. TDS has simply failed to demonstrate any legal or rational basis for relief. Cost data of Charter is simply irrelevant to the issues in both dockets. Business plans of Charter's parent have no material relevance to demonstrations of technical, managerial or financial capabilities that the Commission reviews in certification proceedings. Even if considered potentially relevant to certification fitness, the relevance of the business plans would be, as stated by the ALJ, so attenuated as to warrant a protective order for such highly proprietary information. In docket 5-TI-1317, TDS has failed to demonstrate a cogent legal or factual basis for securing the business plans, especially at this point in the proceedings before Charter—which assumed the burden of proof—has even presented its direct case.

\*2 In addition, the ALJ was correct to deny discovery of the business plans in docket 5-TI-1317 because of the practical effect of consolidation of dockets that discovery in one docket discloses responses to all dockets. In the future, in consolidated dockets where discovery is had and a motion is made to compel discovery responses, the moving party normally should initially submit to the ALJ as to all dockets all then-available grounds for relief, both factual and legal. For purposes of administrative efficiency, the ALJ may presume—even if not stated explicitly—that a motion to compel relates to all the dockets consolidated in a proceeding, and may rule accordingly. This approach prevents inefficiency resolution of discovery disputes, in particular, piecemeal presentation of discovery issues to the ALJ and the possible presentation to the Commission of arguments that the ALJ has not previously ruled on.

The Commission has jurisdiction to issue this order under Wis. Stat. §§ 196.02, 196.199, 196.203, 196.219, 196.26, 196.28, 196.37, 227.45, other provisions of Wis. Stat. chs. 196 and 227 as may be pertinent hereto, 47 U.S.C. §§ 251(f)(1) and 253, and Wis. Admin. Code §§ PSC 1.02 and 2.27.

### Order

1. This order shall be effective upon mailing.
2. The October 27, 2005, rulings of the ALJ denying TDS' motion to compel responses by Charter to TDS' Interrogatory 10(a) and Document Request No. 1, be, and are hereby, affirmed in their entirety.

Dated at Madison, Wisconsin, November 11, 2005

### Footnotes

- 1 The issues list appears at p. 8 in Response of Charter Fiberlink, LLC to the TDS Telecom Companies' Motion for Interlocutory Review and Order Compelling Discovery, dated November 3, 2005.