

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Staff of the Missouri Public Service	)	
Commission,	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2006-0491
	)	
Missouri Pipeline Company, LLC,	)	
Missouri Gas Company, LLC, et al.,	)	
Respondents.	)	

AMERENUE’S RESPONSE TO ORDER DIRECTING FILING

COMES NOW Intervenor, AmerenUE, and in response to the June 6, 2007 Commission Order Directing the Parties to Explain the Effect of FERC Order, offers the following:

1. On April 20, 2007 (Order Date), the Federal Energy Regulatory Commission (FERC) entered its Order Denying Motions, Issuing Certificates, Authorizing Abandonment and Terminating Proceeding, in Dockets CP06-407-000, CP06-408-000, CP06-409-000 and RP06-274-000 (Order). In the Order FERC determined that in the event of the mergers of Missouri Interstate Gas, LLC (MIG), an interstate natural gas pipeline, into Missouri Pipeline Company LLC (MPC)¹, and of MPC into Missouri Gas Company LLC (MGC)², then the MGC facilities would be used to transport natural gas in interstate commerce and would become subject to the Natural Gas Act and the jurisdiction of the FERC.³ The FERC put these conditions into effect by issuing to MIG, MPC and MGC certificates of public convenience and necessity and granting authority to abandon and transfer certain facilities, as described in the Order.⁴

¹ MPC was then a Hinshaw pipeline subject to the jurisdiction of the Commission. Order at ¶1 and ¶2.

² MGC was then a Hinshaw pipeline subject to the jurisdiction of the Commission. Order at ¶1 and ¶2.

³ Order at ¶42.

⁴ Order at ¶103, and ¶¶(A) through (G), pp 39-40, authorizing the mergers, certain abandonment and transfer of facilities, and issuing certificates of public convenience and necessity to Missouri Pipeline and Missouri Gas.

2. Because the FERC did not specify otherwise, the FERC's Order, and the FERC's jurisdiction over MPC and MGC, took effect on the Order Date⁵, and the Order has no retroactive effect⁶.

3. The exclusive, *prospective* jurisdiction of the FERC over an interstate pipeline as determined by the FERC in its order finding jurisdiction and issuing a certificate of public convenience and necessity does not strip the Commission of its jurisdiction over the pipeline as to acts occurring when the pipeline was a Hinshaw pipeline not subject to FERC jurisdiction. This is consistent with the purposes of the Natural Gas Act and the separate jurisdictions it creates, as enunciated in *Public Utilities Comm. v. United Fuel Gas Co.*, 317 U. S. 456, 467 (1943):

The Federal Power Commission [now FERC] would exercise jurisdiction over matters in interstate and foreign commerce, to the extent defined in the Act, and *local matters would be left to the state regulatory bodies*. Congress contemplated a harmonious, dual system of regulation of the natural gas industry -- federal and state regulatory bodies operating side by side, each active in its own sphere...The power to fix rates for natural gas transported and sold in interstate commerce has been entrusted solely to the Federal Power Commission [now FERC]. It does not follow, of course, that the Act bars a state commission, in the appropriate exercise of its jurisdiction, from compelling the production of evidence relevant to the proceeding before it.

4. The Commission's jurisdiction over MPC and MGC as to acts occurring and matters pending while the same were Hinshaw pipelines subject to the jurisdiction of the Commission, and prior to FERC's Order and the Order Date, should continue unaffected by the Order. As to the particular Counts of Staff's Complaint Concerning Tariff Violations And Motion for Expedited Treatment, filed June 21, 2006, AmerenUE offers that:

⁵ 18 C.F.R §385.2007(c). Effective date of Commission rules or orders. (1) Unless otherwise ordered by the Commission, rules or orders are effective on the date of issuance.

⁶ See *DorchesterGas Producing Company v. FERC* 848 F.2d 634, 636-37 (5th Cir. Ct. App. 1988) (jurisdictional determination had no retroactive effect on a party, and the Commission did not err in failing to make determination retroactive, where the Commission applied Rule 2007 of its Rules of Practice and Procedures and the *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) three-prong test—whether decision overrules past precedent, whether retroactivity further's or obstructs operation of the new rule or order, and a balancing of the equities—and found retroactivity would be inequitable).

- a. The Commission retains jurisdiction over Count I to determine whether, prior to the Order Date, MPC and MGC violated the terms of their tariffs and Commission rules as alleged in said Count, and to order the penalties prayed for to the extent they apply to violations occurring prior to the Order Date.
- b. The Commission retains jurisdiction over Count II to determine whether, prior to the Order Date, MGC violated its tariff as alleged in said Count, and to order the penalties prayed for to the extent they apply to violations occurring prior to the Order Date.
- c. The Commission retains jurisdiction over Count III to determine whether MPC and MGC, prior to the Order Date, committed the acts alleged, to find that the acts alleged had the consequences alleged, to order the relief prayed for, and to order the penalties and refunds prayed for to the extent the same apply to violations occurring prior to the Order Date.
- d. The Commission retains jurisdiction over Count IV to determine whether, prior to the Order Date, MPC and MGC violated their tariffs as alleged in said Count, and to order the penalties prayed for to the extent they apply to violations occurring prior to the Order Date.
- e. The Commission retains jurisdiction over Count V to determine whether, prior to the Order Date, MGC committed the acts alleged in said Count, and to order the penalties prayed for to the extent they apply to acts of MGC occurring prior to the Order Date.
- f. The Commission retains jurisdiction over Count VI to determine whether, prior to the Order Date, MGC and MPC violated their tariffs as alleged in said Count and

to order the penalties prayed for to the extent they apply to acts of MGC and MPC occurring prior to the Order Date.

SMITH LEWIS, LLP

/s/ Colly J. Durley

Colly J. Durley, #33800
111 South Ninth Street, Suite 200
P.O. Box 918
Columbia, MO 65205-0918
(573) 443-3141
(573) 442-6686 (Facsimile)
durley@smithlewis.com

Attorneys for Union Electric Company d/b/a
AmerenUE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing AmerenUE's Response to Order Directing Filing was served to all persons on the official service list in Case No. GC-2006-0491 via electronic filing and electronic mail (e-mail) or via regular mail on this 20th day of June, 2007.

/s/ Colly J. Durley

Colly J. Durley