

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of August, 2006.

Respondents.

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**ORDER DENYING MOTION TO CONSOLIDATE OR DISMISS AND
DIRECTING THE PARTIES TO FILE A PROPOSED PROCEDURAL
SCHEDULE**

Effective Date: August 8, 2006

This complaint was filed by Staff on June 21. It alleges that Missouri Pipeline and Missouri Gas have violated their tariffs and Commission rules relating to their dealings with affiliated entities. In part, Staff alleges that Missouri Pipeline and Missouri Gas have charged their non-affiliated customers rates that exceed those allowed by their tariffs. Staff

asks the Commission to consider its complaint in an expedited fashion and to schedule an evidentiary hearing on that complaint on October 23-31, 2006.

Missouri Pipeline and Missouri Gas point out that Staff already has another complaint pending against them and several affiliated companies in Case No. GC-2006-0378.¹ That complaint alleges that those two utilities are overearning and asks that the Commission reduce the rates they are allowed to charge their customers. The earlier complaint is set for hearing on February 26 through March 9, 2007. Missouri Pipeline and Missouri Gas contend that Staff's complaint in this case is merely an attempt by Staff to carve out a portion of its earlier complaint and to force those issues onto an inappropriately fast track for a decision.

The Commission will reject the arguments offered by Missouri Pipeline and Missouri Gas. The allegations made by Staff in this complaint differ from the issues that will be presented to the Commission in Case No. GC-2006-0378 in that the earlier complaint alleges that Missouri Pipeline and Missouri Gas are overearning. In order to resolve that complaint, the Commission will need to consider all aspects of the companies' income and expenses in what is essentially a general rate case. Staff's allegations in this case are much more distinct and narrow. They can be resolved separately from the more complex allegations in Case No. GC-2006-0378; and they can be resolved more quickly.

Missouri Pipeline and Missouri Gas argue that Staff's decision to file a new complaint is merely an attempt by Staff to circumvent the procedural schedule that the Commission has already established in Case No. GC-2006-0378. The companies contend that principles of res judicata prohibit Staff from making a second attempt to gain a

¹ The respondents in GC-2006-0378 are Missouri Pipeline Company, LLC; Missouri Gas Company, LLC; Mogas Energy, LLC; United Pipeline Systems, Inc.; and Gateway Pipeline Company, LLC.

procedural schedule contrary to what the Commission has already ordered. This argument is without merit for several reasons. First, res judicata principles apply to final orders, not to an interlocutory procedural order. Second, Staff could not have intended to circumvent the Commission's procedural schedule in Case No. GC-2006-0378 when it filed this complaint, because this complaint was filed six days before the Commission established a procedural schedule in the earlier complaint. In any event, the procedural schedule that the Commission established in Case No. GC-2006-0378 essentially adopted the schedule proposed by Staff. Clearly, there has been no attempt by Staff to circumvent the Commission's previous order.

After considering the arguments put forward by Missouri Pipeline and Missouri Gas, the Commission will decline to consolidate this case with Case No. GC-2006-0378.

Staff has proposed a swift procedural schedule that would lead to a hearing on October 23 through October 31, 2006. Before establishing a procedural schedule, the Commission will give Missouri Pipeline and Missouri Gas, as well as the intervening parties, an opportunity to address the particulars of that schedule. The Commission notes that the week of October 23 is not available on the Commission's hearing calendar. However, the week of October 30 through November 3 is available. Therefore, the Commission will direct the parties to prepare a procedural schedule leading to a hearing on those dates.

Rather than schedule a prehearing conference for the purpose of discussing a proposed procedural schedule, the Commission will direct its Staff to consult with the other parties and to file a proposed procedural schedule by August 14. Any party that is not willing to join in the procedural schedule that Staff will propose may file its own proposal no later than August 14.

IT IS ORDERED THAT:

1. The Motion to Consolidate or Dismiss Case No. GC-2006-0491 filed by Missouri Pipeline Company, LLC, and Missouri Gas Company, LLC, is denied.
2. No later than August 14, 2006, the Commission's Staff shall file a proposed procedural schedule leading to a hearing on October 30 through November 3, 2006.
3. Any other party that wishes to file a proposed procedural schedule shall do so no later than August 14, 2006.
4. This order shall become effective on August 8, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton and Appling, CC., concur
Woodruff, Deputy Chief Regulatory Law Judge