

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

Staff of the Missouri Public Service  
Commission,

Complainant,

v.

Missouri Pipeline Company, LLC,  
Missouri Gas Company, LLC,

Respondents.

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**Case No. GC-2006-0491**

**MOTION FOR RECONSIDERATION**

COMES NOW the Staff of the Missouri Public Service Commission, through counsel, and moves the Commission for its reconsideration of ruling made at hearing on December 13, 2006, as follows:

1. On December 13, 2006, during the contested hearing in this matter involving the issue of Respondents' destruction of documents and customer invoices, the Regulatory Law Judge allowed Exhibit 311, offered by Respondents, into evidence over the Complainants' objections.

2. Exhibit 311 is an Affidavit allegedly executed by BJ Lodholz, the former controller and financial officer for the Respondents, wherein Mr. Lodholz contradicts his previous sworn testimony set forth in a deposition given on July 17, 2006.

3. The Affidavit of Lodholz, exhibit 311, was first provided to the Complainant at the time it was offered at the hearing on December 13, 2006.

4. Exhibit 311 is undated. This is a clear violation of Section 486.330 requiring that acknowledgements be dated with the day and year of execution in the presence of a notary

public. Because exhibit 311 is not properly acknowledged, it is not appropriately considered sworn testimony and is an unauthenticated document lacking foundation, is hearsay, and inadmissible in any venue.

5. Exhibit 311 was provided to the Complainant on December 13, 2006, at the time of hearing. This is a clear violation of Section 536.070(12), which provides that when an affidavit is served less than eight days before the hearing, an objection may be made orally at the hearing. When an objection is made based on hearsay or best evidence, such an affidavit “may not be used....” The Commission will recall the Complainant’s objections based on hearsay, counsel’s attempt to invoke the administrative procedure act found at Chapter 536, particularly 536.070, and the objection lodged by Mr. Woodsmall for the MGCM based on best evidence because the affidavit was not an original.

6. Mr. Lodholz and his former employer, the Respondents, had every opportunity to correct Lodholz’ deposition testimony by use of an errata sheet and signature during the five months since his July 17, 2006 deposition. The attempt by the pipelines to contradict Lodholz’ prior sworn testimony five months after his deposition and then to surprise the Complainant with an undated affidavit on the day of hearing is unconscionable and should be rejected as prejudicial and a violation of the State and Federal Constitutions’ guarantee of the right to confront and cross-examine witnesses.

7. Because exhibit 311 is inadmissible hearsay and it comports with neither 536.070(12), nor 486.330, the Commission should change its ruling to sustain the Complainant’s and MGCM’s objections and order that exhibit 311 and its attachments be stricken from the record.

Wherefore, the Staff by Counsel requests that the Commission reconsider its ruling allowing exhibit 311 into evidence at the hearing, order that it be stricken, and prays for such other relief as is just.

Respectfully submitted,

/s/ Steven C. Reed

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#### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or by electronic mail to all counsel of record on this 20th day of December, 2006.

/s/ Steven C. Reed