

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
December, 2006.

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	<u>Case No. GC-2006-0491</u>
)	
Missouri Pipeline Company, LLC, and)	
Missouri Gas Company, LLC,)	
)	
Respondents.)	

**ORDER REGARDING MOTION FOR SANCTIONS FOR DESTRUCTION
OF DOCUMENTS**

Issue Date: December 5, 2006

Effective Date: December 5, 2006

On November 14, 2006, the Staff of the Commission filed a motion asking the Commission to impose sanctions against Missouri Pipeline Company, LLC, Missouri Gas Company, LLC, and their President, David Ries, for alleged destruction of documents important to the proof of Staff's complaint against Missouri Pipeline and Missouri Gas. The Respondents filed a reply to that motion on November 20. Staff responded to that reply on November 28.

Staff's motion alleges that it learned from the deposition of David Lodholz, a former officer of Missouri Pipeline and Missouri Gas, that, while he was employed by the Respondents, he kept paper copies of certain billing documents in his office. Staff

maintains that the Respondents have destroyed those documents rather than turn them over in response to Staff's discovery requests. Staff contends that the destruction of the documents constitutes "spoliation" of evidence. Staff asks the Commission to impose sanctions against the Respondents for their actions, including the application of the spoliation of evidence doctrine to create an inference about the missing evidence unfavorable to the spoliator.

The Respondents' reply to the Staff's motion argues that the missing documents are not maintained during the normal course of business. Rather, the Respondents maintain that the paper invoices that Staff seeks are routinely destroyed and the information they contain is maintained in an electronic form that has been disclosed to Staff. They deny that Lodholz maintained the documents that Staff seeks.

In its response to the Respondents' reply, Staff suggests that the Commission take this matter up with the case at the hearing. Staff's suggestion is a good one. Taking up the matter at hearing will allow the parties to present evidence regarding the dispute and will allow the Commission to consider the credibility of the witnesses in a way that examination of paper pleadings does not permit.

The consideration of the question of spoliation at the hearing is especially important because if the Commission determines that spoliation has occurred, it will also need to make a determination of precisely what adverse inference can be drawn from the missing documents. That determination cannot be made based merely on the written arguments of the parties.

Therefore, the Commission will consider the Staff's Motion for Sanctions for Destruction of Documents as part of the evidentiary hearing. Consequently, Commission will allow the parties to offer additional live direct testimony at the hearing on that question.

IT IS ORDERED THAT:

1. Staff's Motion for Sanctions for Destruction of Documents will be taken up at the evidentiary hearing, and the parties will be allowed to present additional live direct testimony on that question.

2. This order shall become effective on December 5, 2006.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw and Clayton, CC., concur
Murray and Appling, CC., absent

Woodruff, Deputy Chief Regulatory Law Judge