

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

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

**STAFF’S RESPONSE TO THE COMMISSION’S  
SEPTEMBER 26 ORDER DIRECTING RESPONSE TO RESPONDENTS’  
MOTION TO DELAY FILING REBUTTAL TESTIMONY**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and in Response to the Commission’s Ordering Staff to respond to Respondent’s Request to Delay Filing Rebuttal testimony states:

1. The Commission issued its Order Establishing Procedural Schedule on September 5, 2006.
2. In accordance with the procedural schedule two Staff witnesses, Mr. Robert Schallenberg and Mr. Thomas Imhoff filed Direct testimony on September 6, 2006.
3. At the outset it is important to note that this is a simple case. The issue is whether Respondents have followed their own tariffs. This is not a rate case in which Mr. Ries might need to construct a cost of service or do a rate design study. The tariffs say what they say. As President of MPC and MGC, Mr. Ries is intimately familiar with

the tariffs on file with this Commission, and all the provisions under which he operates the Companies as well as.

4. Staff alleges that Mr. Ries has violated the provision in his tariff that prohibits affiliate abuse by requiring that the lowest rate he gives an affiliate becomes the lowest rate on the system. Specifically, Staff testifies that Mr. Ries has unlawfully given preference to an affiliated company, Omega, and he has already admitted that Omega was an affiliate during the time period of this complaint. Further, Mr. Ries can scarcely deny that he is the current President of MPC and MGC and was President of Omega until recently.

5. Staff is concerned that if the Commission grants this additional delay, it will result in further requests for delay. Staff is further concerned that Mr. Ries actually has no intention of filing testimony or appearing for completion of his deposition and is hoping that some intervening event, such as the FERC taking jurisdiction, or a sale of the pipelines will permit him to avoid facing questions about his conduct.

6. At the time he announced his family emergency, Mr. Ries indicated he would be available by telephone. While Staff understands family emergencies, Staff questions the timing of this sudden emergency and Staff does not understand why, now that he has “been able to return to business recently” Mr. Ries has not responded to data requests or agreed to reschedule his deposition, despite numerous requests from Staff to his counsel.

7. In response to the idea that Mr. Ries is so engaged in managing construction and maintenance projects that he cannot meet the requirements of the procedural schedule, delay hurts Respondents customers every day that they pay higher

rates than permitted by Respondents' tariffs. Reduction in Respondents' rates prior to the winter heating season is likely to be of significant benefit to customers. Staff questions how maintenance and construction projects could take precedence over Mr. Ries completing his deposition or his testimony in this case when construction and maintenance work is the primary responsibility of Mr. David Wallen, a long-term and capable employee whose primary duties are to handle ongoing maintenance and pipeline operations. (Wallen Deposition, p. 11, ls 20-25.)

8. Staff suggests the Commission view Respondents' request for further delays with the following questions in mind: Who benefits from delays? Are customers harmed by delay? How is it possible that Mr. Ries needs additional time to review his own business records? Is it reasonable to believe that Mr. Ries is not already completely familiar with his own business records including contracts that he signed? or the invoices that the Company sent to its customers? or the invoices that the Companies paid? or the fact that all customers but Omega were required to be in balance on the system?

9. Prior to this filing, Staff had no complaints from Respondents concerning data requests. The unwarranted criticisms concerning Staff's response to data requests further supports Staff's concerns with these delay tactics. Specifically, Respondents' claims that Staff's responses are incomplete, while contrarily claiming that the responses are voluminous, should be viewed with the recognition that Staff's case is based on the Company's own tariffs and on the Company's own business records. Mr. Ries controls all of these business records and has created or "recreated" what he has provided to Staff. The claim that the responses are incomplete is a reflection of the Company's refusal to

respond to data requests in a timely manner despite not having filed objections to the data requests.

10. In its Proposed Procedural schedule filing, Staff indicated that it would respond to “unobjected to” data requests within **five (5) business days**. This was not ordered by the Commission, but was an offer by Staff. It is Staff’s intention to respond to Respondents’ very broad data requests (see sample attached) as quickly as possible and Staff is working to do so.

11. Respondents sent their first set of data requests to Staff on Friday September 8, at 4:36 pm. Since the first set of data requests was not filed until almost 5:00 pm on a Friday, Staff does not consider that the **five (5) business days** began until Monday morning, September 11. On Friday September 15, Staff delivered to Respondents two banking boxes of documents,

12. On Friday September 15, at 4:56 p.m. Respondents sent the second and third set of data requests. These data requests were labeled as submitted in Case No. GC-2006-0378 and addressed Staff’s testimony. Staff did not view this as a typographical error, but a mistake as to the correct case.

13. For Respondents, who have completely disregarded the Commission’s rules concerning response to data requests, ignored the Commission’s subpoena powers, and shown disdain for their commitments to this Commission in Case No. GM-2001-0585 to keep MPC, MGC and MIG separate and to accuse Staff of delay is, in the most generous light possible, hypocritical.

14. Staff has indicated to Respondents that its responses to them are sometimes incomplete because of Respondents’ **own** failure to fully answer Staff’s data

requests, Responses to Staff's data requests 9-14, to which no objection was lodged are more than three months overdue. Additionally, all of the Company's business records are completely under Mr. Ries' control, and Staff has not duplicated that material, but has, where appropriate identified it and listed it as responsive.

15. While Staff opposes the Commission granting any further delays, if the Commission does determine that a delay should be granted, Staff recommends that Respondents be granted no longer than October 16 and that the Commission require the Companies to: 1) immediately respond to any data requests to which they have not objected; and 2) on the same date Respondents' Rebuttal testimony is filed, provide to Staff all documents on which they rely to support that testimony; and 3) require Mr. Ries to guarantee the Commission that he will appear for completion of his deposition on October 17 and will continue his deposition until it is completed.

WHEREFORE, Staff recommends that the Commission deny Respondents' requests for further delays, but if the Commission grants the requested delay that it order Respondents' Rebuttal testimony to be filed on October 16 and that the Commission condition that grant on Respondents' immediate and complete response to all unanswered data requests and subpoena materials, that Respondents be required to provide everything on which it relies in its Rebuttal testimony, at the time of its testimony filing and require Mr. Ries or his counsel to guarantee his attendance at his Commission ordered deposition on October 17, with the deposition to continue thereafter until complete.

Respectfully submitted,

/s/ Lera L. Shemwell

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed first-class postage prepaid, hand-delivered, transmitted by facsimile or electronic email to all counsel of record this 27<sup>th</sup> day of September 2006.

/s/ Lera L. Shemwell

Lera L. Shemwell