

**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 and Missouri Gas Company, LLC, et al.)	
)	
)	
Respondents.)	

**STAFF’S RESPONSE TO RESPONDENTS’ REQUEST FOR MEDIATION AND
MOTION FOR EXPEDITED TREATMENT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and in Response to Respondents’ Request for Mediation and Request for Expedited Treatment states:

1. The Staff opposes mediation and further delay of the ultimate resolution of this case. The Staff views the Respondents’ request as another attempt to delay resolution of the complaint. Modification of the existing procedural schedule only allows the Respondent to delay: 1) reducing their rates to their non-affiliate shippers to the same rates provided to their affiliate as required under their tariffs; 2) refunds to non-affiliated shippers for the overcharges that Staff asserts were not authorized under the Respondents’ tariffs, while increasing the amount of monies to be refunded; and 3) payment of penalties for deliberate violation of their tariffs. Respondents make no mention of provisions they have made to be able to make refunds to their customers in

the event that the Commission determines that Staff's complaint is valid. Delay increases the amount of potential refunds and only makes this concern greater.

2. The Respondents' request does not mention the impact on the Respondents' customers with further delay of a Commission order in this matter. It is general knowledge that the winter season is the period of greatest natural gas usage in the Respondents' business year. Delay of the Commission order to the time period requested by the Respondents will result in shippers being denied any rate relief this winter in the event that the Commission agrees with Staff assertions. The cost of natural gas to the ultimate customers that must rely on transportation service from the Respondents is a major concern ignored in the Respondents' request. Delay increases the amount of monies that the Respondents would be required to refund to customers from charging customers more than allowed by tariff.

3. Respondents' Request is an attempt to delay the final resolution of this matter. The fact that the Respondents assert otherwise is specious and incredible.

4. This is not an especially complicated case in that Respondents' tariff language is clear regarding: the prohibition that a marketing affiliate is not to receive preferential treatment over non-affiliated shippers; the impact on rates to non-affiliated shippers when an affiliate is charged less than the maximum specified tariff rates; the requirements for the provision of transportation service, and reporting requirements regarding the offers to provide transportation service for less than the maximum specified tariff rates.

5. This matter is not appropriate for mediation. The Respondents' aggressive resistance to discovery, actions taken to leap-frog Commission supervision, the sale of

Omega and the loss/destruction of documents cause the Staff great concern. For a small company, their opposition to discovery has rivaled and exceeded any encountered by Staff in cases involving large companies or the Cass County and New Florence Telephone Companies

6. Delay in this proceeding will not bring about any settlement as long as the parties continue to hold the same positions. Respondents have not recognized any merits in the Staff complaint and therefore have demonstrated no more willingness to accept Staff's position than Staff has been willing to accept the Respondents' position. The Respondents' request does not cite one factor that will change the current status of this case. The Respondents' request is only designed to extend the period respondents overcharge their customers and force Staff to try its case twice.

7. The cost of natural gas to customers affected by matters under the jurisdiction of this Commission is not a trivial matter. Customers are entitled to the service, terms, and rates designated in the tariffs as approved by this Commission. When the Staff becomes aware that a utility is operating outside the parameters of its tariffs, especially in a manner to charge its customers more than authorized by its tariffs, Staff makes no apology for being "impassioned" in seeking resolution of this issue. Staff will continue to approach its work in this manner until the Commission instructs otherwise. The fact that the Staff has had to act in a passionate manner to counter the actions of the Respondents, does not in any way indicate that Staff has lost perspective and objectivity regarding pursuit of this matter. Staff can unequivocally state to the Commission that Staff believes that the Respondents have acted in the manner Staff asserts in its complaint. Staff has conducted an unusual number of

depositions to ensure that its assertions and impressions are correct. Respondents have provided to Staff no terms or grounds for settlement commensurate with Staff's view of the detriments caused to the Respondents' customers and the State of Missouri by their actions.

8. Staff has had to be forceful in order to acquire reliable information to determine an accurate assessment of the Respondents situation. In addition to the unusual level of discovery disputes previously mentioned, Staff has encountered other peculiarities such as false representations from Company officers regarding affiliate activities, restatement of annual reports without provision of support for the changes, and destruction of Company invoices. These obstacles do not demonstrate that Respondents are sincere in seeking settlement through mediation in this case. While it is understandable that the Respondents would like to improve their litigation position with a law professor or law judge not exposed to the Respondent actions in this case, such a reason is no justification for delaying a Commission decision in this matter. Further, Staff views the expenditure of additional time and effort to bring a mediator up to speed regarding Missouri statutes and Respondents' tariff to be inefficient and an unnecessary delay. The time necessary for a mediator to become knowledgeable regarding the basic facts and operation (e.g. Respondents' relationship with Omega Pipeline Company, nature of Respondents' business as intrastate natural gas pipeline) of the Respondents is unnecessary and inefficient.

9. In a similar situation with Cass County and New Florence Company, the Companies were not genuinely interested in settlement until some of their owners and management received adverse rulings in Federal court. Staff has no indication that

Respondents will change their current posture until the Commission renders a decision on this matter. The Respondents have had since July of this year to discuss settlement of this case. The Respondents were free to offer settlement terms that would be attractive to other parties to forego continued discovery. Respondents' request does not state, justifiably so, that Staff has refused to respond to any such gesture by the Respondents in the months leading up to the December hearings. The request for mediation rings hollow when viewed in the context of the Respondents' prior actions in this case.

10. A Commission order is required to move this case to resolution. In the event the Commission determines that Respondents' actions under their tariffs were acceptable, then the Staff will accept such a decision and the matters in this case will end. The Respondents cannot argue such an event would not be acceptable. In the event the Commission makes a decision accepting Staff assertions, then the Respondents will need to explore settlement with more vigor than they have shown to date.

WHEREFORE, Staff requests the Commission deny the Respondents' Request for Mediation to delay the scheduled hearings in this case for the reasons cited above.

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 emailed to all counsel of record on this 30th day of November, 2006.

/s/ Steven C. Reed
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