

**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;)	
Missouri Gas Company, LLC;)	
)	
Respondents.)	

**RESPONDENTS' REQUEST FOR MEDIATION AND
REQUEST FOR EXPEDITED TREATMENT**

COME NOW Respondents Missouri Pipeline Company (hereafter "MPC") and Missouri Gas Company (hereafter "MGC") and pursuant to 4 C.S.R. 240-2.125(2) hereby file their written request that this Complaint be referred to a different presiding officer or a neutral third-party mediator for the purpose of mediating the complaint and for expedited treatment of this request.

This request is not an attempt to delay the final resolution of this matter. To the contrary, Respondents' request seeks a more expeditious avenue to reach a final resolution that will not be appealed. Mediation is appropriate for several additional reasons. The issues in GC-2006-0491 are extremely complex. Many of the remaining claims in this matter are highly dependent upon Staff's independent assumptions and innovative interpretations of Respondents' contracts, certain tariff language, and the impact of contracts between certain non-regulated entities. The litigation process is not the most efficient manner in which to resolve these issues as the parties themselves have the greatest comprehension of these issues and, with the assistance of a qualified

mediator, will be able to address them in the most expedited fashion. Until now, the adversarial nature of these proceedings has not afforded the parties a meaningful time to resolve matters outside of litigation. Mediation offers the parties the best forum available to dispassionately evaluate their positions and reach a mutually agreeable resolution. Finally, the current three-day hearing schedule in December 2006 is likely insufficient to present all the evidence in the matter and, therefore, would require additional hearing days in 2007. Mediation in December will not prejudice any party, but will create the opportunity for an efficient and prompt resolution in December of 2006.

In support of their request, Respondents state as follows:

1. On March 31, 2006, Staff filed its first complaint, GC-2006-0378, alleging that Respondents: (1) have excessive earnings; (2) have violated the Affiliate Transaction rule; (3) have charged rates not authorized by tariff, and (4) alleging that the Commission should assert jurisdiction over Gateway Pipeline, LLC, Omega Pipeline Company, Mogas Energy, LLC, and United Pipeline Systems.

2. On June 21, 2006, Staff filed this matter, which arises from GC-2006-0378. Although related to GC-2006-0378, issues in this matter have been separated from GC-2006-0378 to allow certain issues to proceed on an expedited procedural schedule.

3. On April 14, 2006, Respondents filed their Request for Mediation in GC-2006-0378 (hereafter "Respondents' Request").

4. On April 18, 2006, Staff responded to Respondents' Request for Mediation (hereafter "Staff's Response"). Staff opposed Respondents' Request, in part, because parties had not completed formal discovery. *See* Staff's Response, page. 2. Staff further recommended that the Commission hold Respondents' Request in abeyance until the

completion of discovery and to reconsider Respondents' Request after discovery had concluded. *Id.*

5. The Commission denied Respondents' Request on April 25, 2006, based, in part, because Staff was not willing to engage in mediation during that stage in litigation and since all requests for interventions had not been decided. *See Order Denying Request for Mediation*, April 25, 2006, page 2. The Commission further explained that mediation would need to include all intervening parties.

6. On November 9, 2006, the Commission ordered that GC-2006-0378 be placed in abeyance and suspended until after the complete disposition of GC-2006-0491.

7. Subsequently, Staff reduced its complaint in GC 2006-0491 from six counts to five counts. *See Surrebuttal Testimony of Robert E. Schallenberg*, filed November 17, 2006.

8. This matter is ripe for mediation, as all circumstances in Staff's Response and the Commission's Order have been met. In its Response, Staff indicated that mediation might be appropriate after the completion of its investigation and that the Commission should reconsider Respondents' Request after the completion of discovery. *See Staff Response*, page 2. Formal discovery is near completion. Direct, Rebuttal and Surrebuttal testimony have been filed. The deposition of Mr. Ries, the President of Respondents, has taken place over five days. Additionally, the depositions of three other employees, two experts for Respondents, and two other third-parties will have been taken by November 28, 2006. The amount of documents produced by Respondents has been enormous, including, but not limited to, loan documents, tax returns, audited financial statements, Form 2s, general ledgers, check ledgers, third-party vendor invoices,

Respondent's invoices to customers, affiliates' invoices to customers, volume information, correspondence, operating data, engineering information, and the like. While Respondents still await answers on data requests and requests for production issues to AmerenUE, Staff and the MPUA (MGCM), and while Respondents suspect that all parties would instinctively desire to keep asking questions, there is no doubt that discovery has been extensive to date.

9. Parties have had the opportunity to narrow the issues and formulate their positions. Unlike when Respondents filed their first Request in GC-2006-0378, the parties will have the benefit of knowing relevant evidence during the mediation which will enable them to make informed decisions in attempting to resolve this matter without the need for extensive, costly evidentiary hearings. At a minimum, the parties may be able to agree on some issues and, therefore narrow the number of issues the Commission will need to address at an evidentiary hearing.

10. Likewise, the Commission's concerns as reflected in its Order Denying Mediation should be alleviated. Since discovery is nearly complete, Staff should be agreeable to mediation at this stage in the proceedings. Also, the intervention period has closed and all parties have been identified, allowing all interested parties the opportunity to participate in mediation.

11. Mediation will help to expedite the final resolution of issues in this matter. The outcome of this case hinges on several critical matters of law and contract and tariff interpretation. Depending on which interpretation the Commission bases its ultimate findings, Respondents' judicial appeal is likely. Respondents' appeal would be extremely time consuming and would only delay the final outcome of this matter for many months

or years. Resolution of these issues through mediation will eliminate the probability of an appeal by any party by ensuring that issues are resolved to the satisfaction of the parties. An impartial third-party mediator, such as a law professor or other qualified administrative law judge, may assist the parties in making sound interpretations of law and in better assessing the merits of their respective positions. This assistance will undoubtedly lead the parties to more informed and credible settlement opportunities. Also, the parties have spent an enormous amount of time and resources in the proceedings thus far. Respondents are small companies with only a few full-time employees. Respondents' resources are most prudently spent on the safe operations of the pipelines rather than continuing intense litigation. Mediation will help all parties direct their resources cost efficiently towards permanent settlement.

12. In addition to allowing a quicker resolution and a more cost-efficient use of resources, mediation will help to alleviate the tension between parties in finding common ground. Thus far, parties in this matter have been impassioned and so entrenched in their positions that settlement opportunities have not been able to emerge. A neutral third-party will help parties detach themselves from their positions and recognize the possibilities for any viable settlement. Respondents hope that the Commission will recognize that it is good public policy to allow the parties to exhaust all settlement opportunities before proceeding further in litigation.

13. Respondents have asked Staff about pursuing mediation, but have not yet agreed on a course of action. Due to the quickly approaching hearing beginning on December 13, 2006, and upcoming procedural deadlines, this motion requires expedited treatment. Respondents file this motion and request that the Commission:

A. issue an order for expedited treatment, requiring parties to respond to this Motion by November 29, 2006;

B. appoint a law professor or law judge, other than the law judge appointed to this matter so as to preserve his ability to hear the case in the event mediation does not resolve all of the issues, with experience in dispute resolution to mediate this matter;

C. set the dates for mediation for December 13-15, 2006, or such other time as the Commission deems appropriate; and

D. if mediation does not resolve the issues, set the hearing date for GC-2006-0491 for either week of February 26, 2007 or March 5, 2007, which weeks are reserved for GC-2006-0378 which has been placed in abeyance or at an earlier date in 2007 so the parties can give mediation a meaningful effort without the distraction of having to prepare for the hearing near the time of mediation.

If mediation does not resolve matters, the parties can complete their trial preparation in January 2007 and proceed with the hearing and all remaining phases thereafter. The parties would not be prejudiced by this proposed schedule as it will allow parties to proceed with all phases of the procedural schedule in a timely matter while making a final attempt to resolve this matter before the end of the 2006.

WHEREFORE, Respondents request that the Commission grant this Request for Mediation, issue an order for expedited treatment, appoint a qualified law professor as a

third-party mediator, and reset the hearing date in this case as described above to allow for the completion of mediation.

Respectfully submitted,

LATHROP & GAGE, L.C.

/s/ **Paul S. DeFord**

Paul S. DeFord Mo. #29509
Suite 2800
2345 Grand Boulevard
Kansas City, MO 64108-2612
Telephone: (816) 292-2000
Facsimile: (816) 292-2001

Aimee D.G. Davenport Mo. #50989
314 E. High Street
Jefferson City, MO 65101
Phone: (573) 893-4336
FAX: (573) 893-5398
Email: adavenport@lathropgage.com

Attorneys for Respondents

Dated: November 27, 2006

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Respondents' Request for Mediation and Request for Expedited Treatment has been transmitted by e-mail or mailed, First Class, postage prepaid, this 27th day of November, 2006, to:

*** Case No.**

GC-2006-0491

Name of Company Name of Party	Email Phone Fax	Mailing Address	Street Address	City	State	Zip
Missouri Public Service Commission General Counsel Office	GenCounsel@psc.mo.gov 573-751-2690 573-751-9285	P.O. Box 360	200 Madison Street, Suite 800	Jefferson City	MO	65102
Office of Public Counsel Mills Lewis	opcservice@ded.mo.gov 573-751-1304 573-751-5562	P.O. Box 2230	200 Madison Street, Suite 650	Jefferson City	MO	65102
AmerenUE Durley J Colly	Durley@smithlewis.com 573-443-3141 Ext 234 573-442-6686	P.O. Box 918	111 S. Ninth St., Suite 200	Columbia	MO	65205-0918
AmerenUE Lowery B James	lowery@smithlewis.com 573-443-3141 573-448-6686	P.O. Box 918	111 S. Ninth St., Suite 200	Columbia	MO	65205-0918
AmerenUE Byrne M Thomas	tbyrne@ameren.com 314.554.2514 314.554.4014	P.O. Box 66149 (MC 1310)	1901 Chouteau Avenue	St. Louis	MO	63166-6149
Missouri Public Service Commission Shemwell Lera	Lera.Shemwell@psc.mo.gov	P.O. Box 360	200 Madison Street, Suite 800	Jefferson City	MO	65102
Municipal Gas Commission of Missouri Woodsmall David	dwoodsmall@fcplaw.com 573-635-2700 573-635-6998		428 E. Capitol Ave., Suite 300	Jefferson City	MO	65102
Municipal Gas Commission of Missouri Conrad Stuart	stucon@fcplaw.com 816-753-1122 816-756-0373		3100 Broadway, Suite 1209	Kansas City	MO	64111

Municipal Gas Commission of Missouri Kincheloe E Duncan	dkincheloe@mpua.org 573-445-3279 573-445-0680		2407 W. Ash	Columbia	MO	65203

/s/ Paul S. DeFord

Attorney for Respondents