

**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' MOTION FOR RECONSIDERATION AND
FOR EXPEDITED TREATMENT**

COME NOW Respondents Missouri Pipeline Company and Missouri Gas Company (hereafter "MPC" and "MGC") and request that the Commission reconsider its Order Denying Motion for Continuance. In support of its request, Respondents state as follows:

1. The Commission issued its Order Denying Motion for Continuance on December 9, 2006 (hereafter "Commission's Order").
2. Respondents believe that the Commission has misunderstood the reasons for its request and hereby clarify its Motion.
3. Respondents Motion for Continuance (hereafter "Motion") is not for the purpose of delay, but rather to allow the Commission to correct several Constitutional issues by proceeding as Staff has proposed.
4. Indeed, as the Commission recognizes, one of Respondents' concerns is that Staff will use the depositions of its three new witnesses in a manner that undermines

Staff's obligations to prefile direct and surrebuttal testimony consistent with the Commission Procedural Order. *See* Order, page 2. However, Respondents' principal concern is that by Staff's using the depositions of its new witnesses without attempting to secure the deponents for Respondents' cross-examination, Respondents will be deprived of its fundamental right of confrontation under the Sixth Amendment of the United States Constitution. Further, until Respondents know how Staff plans to use its depositions, Respondents will not know which rebuttal witnesses to secure for rebuttal testimony at trial. This practice is not only inconsistent with every historical proceeding before this Commission, but violates Respondents' fundamental right to cross-examine its accusers. Accordingly, Respondents formally object to Staff's use of deposition testimony without prefiling testimony revealing its purpose. Staff should not be permitted to present these witnesses until such filing is made.

5. The Commission's Order states that Staff does not mention possible criminal penalties in its Motion for Sanctions for Destruction of Documents (hereafter "Staff's Motion"). *See* Order, page 3. To clarify, this statement is incorrect. Staff explicitly threatens criminal liability by citing § 386.560, RSMo, along with a string of several other statutes and regulations in its Motion. *See* Staff's Motion, page 5. Staff reaffirmed its contention at the prehearing by threatening Respondents with felony criminal liability yet again.

6. Staff's felony allegation is not just an "off-hand" remark as the Commission's Order suggests. It is an open threat. Respondents recognize that the Commission does not have jurisdiction to prosecute Staff's felony claim. However, Respondents and its witnesses have no way of knowing whether Staff is or plans to work

with a law enforcement agency with jurisdiction to pursue its felony allegation. Presumably, this Commission is not privy to such information either.

7. While Respondents vehemently deny any criminal liability, since the Commission has no criminal jurisdiction, it cannot prevent a law enforcement agency from exercising its prosecutorial discretion to pursue a criminal claim even after the Commission's evidentiary hearing is complete. At this point, any of Respondents' or its witnesses' testimony in the evidentiary hearing could be used against them in a later proceeding. For these reasons, Respondents' witnesses will need to obtain separate counsel to determine whether to invoke their Constitutional privilege against self-incrimination since they have no way of knowing whether a law enforcement agency will pursue Staff's threatened criminal claim. If they do not have an opportunity to consult with counsel to determine whether to testify to certain matters, they will risk waiving their Fifth Amendment privilege should any future action commence. *See Brown v. United States*, 356 U.S. 148, 154-55 (1958). The Commission should recognize that Staff has made a concrete felony allegation and that it cannot control the prosecutorial discretion of those law enforcement agencies with jurisdiction.

8. Allowing the Motion for Sanctions issue to be heard at the evidentiary hearing in light of Staff's felony allegation further presents a due process defect. The Commission's Order re-affirms that Staff's Motion will be taken up at the evidentiary hearing and that the Commission will allow parties to present evidence on the issue instead of ruling on the pleadings. At the December 6, 2006, Prehearing Conference, Staff indicated it would call four new witnesses to testify against Respondents on the destruction of documents issue. Respondents have had not opportunity to conduct

discovery or depose any of Staff's surprise witnesses. Depriving Respondents a chance to conduct discovery or see the evidence forming the factual basis for Staff's alleged criminal and civil violations will deprive Respondents' ability to effectively cross-examine Staff's four witnesses or know which rebuttal witnesses to call in response. Due process requires that all information presented to the Commission be made available to all parties. *See Chapman v. Board of Probation and Parole*, 813 S.W. 2d 370, 371 (Mo.App. 1991); *Tullock v. St. Charles*, 602 S.W.2d 869, 863 (Mo.App. 1980) (denial of due process when police sergeant did not have opportunity to read report against him and respond to it). Respondents have not seen any of the information Staff plans to use against Respondents. Therefore, due process will blatantly be denied.

9. In addition to depriving Respondents an opportunity to perform discovery on Staff's witnesses or see Staff's evidence against it, hearing evidence on Staff's Motion at the evidentiary hearing will be highly prejudicial to Respondents. Therefore, the Commission should not hear evidence on Staff's Motion during the evidentiary hearing until the proper discovery process has been afforded.

10. For the reasons stated, the Commission should grant Respondents' Motion for Continuance.

WHEREFORE, Respondents respectfully request that the Commission continue the hearing dates in this matter and expedite its ruling on this Motion to allow Respondents to:

A. Conduct discovery in response to the new allegations and testimony, including production of documents, depositions, and data requests, particularly with respect to the new witnesses; and

B. Notify Respondents' employees and allow them to determine whether to seek independent counsel and determine whether to invoke their Fifth Amendment right against self-incrimination.

Respectfully submitted,

LATHROP & GAGE, L.C.

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Attorneys for Respondents

Dated: December 11, 2006

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Respondents' Motion for Reconsideration and For Expedited Treatment has been transmitted by e-mail or mailed, First Class, postage prepaid, this 11th day of December, 2006, to:

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

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