

**BEFORE THE PUBLIC SERVICE COMMISSION
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.)	

**MOTION TO CONSOLIDATE OR DISMISS CASE NO. GC-2006-0491 AND
RESPONSE TO STAFF'S MOTION FOR EXPEDITED TREATMENT**

COMES NOW, Respondents Missouri Pipeline Company (hereafter "MPC") and Missouri Gas Company (hereafter "MGC") and, pursuant to § 386.390.2, Revised Statutes of Missouri and 4 CSR § 240-2.110(3), move the Commission to consolidate Case No. GC-2006-0491 and Case No. GC-2006-0378. In support of this motion, Respondents state as follows:

1. On March 31, 2006, Staff filed a Complaint alleging that Respondents and several named affiliates have excessive earnings; have violated the Affiliate Transactions Rule; have charged rates not authorized by tariff; as well as allegations that the Commission should assert jurisdiction over certain named affiliates (*see Staff Complaint Concerning Excessive Earnings; Violations of Affiliate Transactions Rule; Charging Rates Not Authorized By Tariff; And Asserting Jurisdiction Over Gateway Pipeline Company LLC, Omega Pipeline Company LLC, Mogas Energy LLC, AND United Pipeline Systems, Inc LLC* (hereafter "Staff Complaint"), Case No. GC-2006-0378).

2. On June 21, 2006, Staff filed another Complaint against Respondents MPC and MGC, alleging violations of the same tariffs using the same underlying facts. Staff also seeks expedited treatment of the second Complaint. (*see* Staff Complaint Concerning Tariff Violations and Motion for Expedited Treatment, Case No. GC-2006-0491).

3. This Commission entered a procedural schedule in Case No. GC-2006-0378 on June 27, 2006. (*see* Order Adopting Procedural Schedule, Case No. GC-2006-0378).

4. Staff uses Respondent's existing tariffs as the basis for claims in both Complaints. (*see* Staff Complaint Concerning Tariff Violations and Motion for Expedited Treatment, Case No. GC-2006-0491 and Staff Complaint, Case No. GC-2006-0378).

5. Section 386.390.2, RSMo and Commission regulation 4 CSR § 240-2.070 provide, "[all] matters upon which a complaint may be founded may be joined into one hearing." Commission regulation 4 CSR § 240-2.110(3) further provides "When pending actions involve related questions of law or fact, the commission may order a joint hearing of any or all the matters at issue, and may make other orders concerning cases before it to avoid unnecessary costs."

7. These cases clearly involve common issues of facts and law. Claims in both complaints arise from the same tariffs, and the same set of facts as in the first Complaint. Keeping these matters separate would not provide any benefit and would create duplicative discovery, pleadings, briefs, pre-hearing conferences, testimony and hearings, resulting in unnecessary costs for Respondents, Interveners and the

Commission. Judicial economy requires that claims arising out of the same occurrence be heard in the same proceeding.

8. Staff does not withhold the fact that this second Complaint is part of the first Complaint. In fact, in Staff's second Complaint, Staff admits that it desires to bring certain matters in a second Complaint on a different timetable than the first Complaint (*see* Staff Complaint at paragraph 38). If Staff desired a different procedural schedule to address additional claims after it was ordered, Staff should have moved for reconsideration of the schedule instead of filing a duplicative complaint. Staff did not file such motion.

9. Staff's request for expedited treatment in Case No. GC-2006-0491 should be denied. This request is an effort to circumvent this Commission's Procedural Order in GC-2006-0378. After much discussion at the June 6, 2006 pre-hearing conference and the filing of competing motions, this Commission established a Procedural Schedule. Staff should be compelled to abide by that schedule even though it does not allow Respondents sufficient time for discovery and preparation of rebuttal testimony.

10. Discovery in both matters will overlap. Respondents have already produced huge amounts of material in response to Staff's requests and are relying on the scheduled outlined in this Commission's Order to prepare for the remaining phases of the proceeding. A competing procedural schedule will adversely impact Respondents ability to prepare for the remaining phases.

11. Staff is precluded by law and should be stopped from requesting a procedural schedule that conflicts with the Commission's final Order establishing a procedural schedule in the first complaint. Principles of res judicata prohibit Staff from

having a second attempt to gain a procedural schedule contrary to what this Commission has already ordered.

12. Staff should not be allowed to “cherry pick” which facts it would like heard first by the Commission after the Commission has already ordered a procedural schedule on those issues. Allowing the second, related Complaint to proceed would set a dangerous precedent, whereby in the future parties could file separate proceedings to attempt to have certain pending issues in Commission proceedings selectively adjudicated.

13. Finally, Staff admits that it will amend its Complaint in Case No. GC-2006-0378 at the time of its testimony. (*see* Staff Complaint at 10). Staff's testimony is forthcoming. In the interest of judicial economy, Staff should be required to amend its original complaint and abide by the existing procedural schedule instead of initiating a new, overlapping matter.

14. Recently, this Commission exercised its authority under 4 CSR § 240-2.110(3) to consolidate matters involving related facts and law (*see* Order Consolidating Cases, Case No. GC-2006-0318, GC 2006-0431 and Order Consolidated Cases, Case No. WA-2006-0480). Among the matters consolidated were two complaints filed against the same entity for related violations. To remain consistent with past orders, maximize time and efficiency, and avoid unnecessary costs for Respondents and Interveners, Case No. GC-2006-0491 should be consolidated into Case No. GC-2006-0378 or alternatively, dismissed since it is simply Staff's request to bifurcate certain issues already pending in Case No. GC-2006-0378 into two proceedings in effort to gain a different procedural schedule than has been ordered by the Commission.

WHEREFORE, for reasons stated above, Respondents respectfully request that this Commission consolidate Case No. GC-2006-0491 with Case No. GC-2006-0378 or, in the alternative, dismiss Case No. GC-2006-0491 and deny Staff's request for expedited treatment.

Respectfully submitted,

LATHROP & GAGE, L.C.

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CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Respondents' Motion to Establish a Procedural Schedule, transmitted by e-mail or mailed, First Class, postage prepaid, this 21st day of July, 2006, to:

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

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