

**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 TO RECONSIDER OR IN THE ALTERNATIVE
ESTABLISH A PROCEDURAL SCHEDULE**

COMES NOW Respondents in the above-captioned matter and propose a procedural schedule in accordance with this Commission's August 8, 2006, *Order Denying Motion to Consolidate or Dismiss and Directing Parties to File a Proposed Procedural Schedule* (hereafter "Order"). The Commission's Order directs Staff to consult with the parties before filing a procedural schedule. The Order further allows other parties to file a proposed procedural schedule if they are unable to agree on a single schedule. Staff has circulated its proposed procedural schedule, however, due to the extremely short response time, Respondents have not had an opportunity to discuss the proposal with Staff. Respondents continue to believe that expediting the hearing on this complaint for a late October early November, 2006, hearing is, as a practical matter, unrealistic, because it serves to deny Respondents due process in both this case and in Case No. GC-2006-0378.

The effect of Staff's proposed schedule is to substantively and materially compromise Respondents' right to due process in both this case and in Case No. GC-2006-0378. Staff's

proposed schedule barely allows time for Respondents to conduct a single round of discovery prior to their only opportunity to submit testimony. If even a single objection is lodged, there would not be adequate time to resolve the dispute and complete the testimony necessary to Respondents' defense. Respondents further believe that it will be necessary for them to conduct discovery on entities that are not parties to this proceeding since certain contracts in question by Staff are between parties other than Respondents, which eliminates the ability to utilize data requests and thus lengthens the discovery process.

Preparation of Respondents' testimony and participation in the hearing in this matter will consume much of the already restricted time allowed for discovery and preparation of testimony in Case No. GC-2006-0378. In that case, Respondents already are encumbered with substantial amounts of testimony due December 2006. Respondents are small companies with limited resources and few personnel. Requiring Respondents to participate in a hearing in late October to early November 2006, prepare witnesses for that hearing during October, as well as prepare and respond to discovery requests while preparing for the December 1, 2006, testimony due in Case No. GC 2006-0378, will deny Respondents a fair opportunity to adequately defend their interests and conflicts with the purpose upon which the schedule in the Case No. GC 2006-0378 was established. The schedule in Case No. GC-2006-0378 was established to allow Respondents time to prepare their defense. Requiring Respondents to divide their time and effort to defend these complaints simultaneously and on an expedited schedule denies Respondents due process in both cases. Additionally, expediting the issues in Case No. GC-2006-0491 creates substantially greater costs for Respondents, Interveners and the Commission. Respondents therefore request that the Commission reconsider its Order and consolidate Case No. GC-200-0491 with Case No. GC-2006-0378 or, in the alternative, adopt Respondents' proposed procedural schedule.

There are no legitimate grounds for expediting the instant complaint. The Commission Order indicates that Staff's complaint alleges that Respondents have violated their tariffs and this Commission's rules relating to their dealings with affiliated entities and that Respondents have charged their non-affiliated customers rates that exceed those allowed by their tariffs. On their face, the allegations belie the need for expedited treatment. If it is ultimately determined that customers have been charged more than allowed by tariff, the overcharged amounts would need to be quantified and returned to customers consistent with the "filed-rate doctrine". Conversely, if it were determined that customers had been charged amounts less than required by Respondents' tariffs, customers would be subject to back billing and collection of those undercharged amounts. In either event, expedited proceedings are wholly unnecessary to reach the lawful and equitable result. Neither the Respondents nor their customers will be harmed by hearing this case on the schedule established in Case No GC 2006-0378 since, under the applicable law, all parties will ultimately be made whole.

As to the allegations of past affiliate transaction violations, Respondents point out that even if such violations were established, the only consequence would be the potential imposition of civil penalties on Respondents. Again, there is no ongoing harm that could be addressed or mitigated by processing this complaint on an expedited basis. Respondents submit that when all factors are taken into account, and the interests of all parties are balanced, both pending complaints against Respondents should be heard at the same time.

At a minimum, the hearing in this matter should be delayed until after Respondents' testimony in Case No. GC-2006-0378 is filed. By delaying the hearing in this complaint until after Respondents have filed their testimony in the first complaint, the harm caused to Respondents by requiring participation in parallel proceedings will be slightly mitigated. Respondents concur with Staff's procedural schedule in part, but request a more reasonable

timeframe to prepare and file their rebuttal testimony and hold hearings. Respondents' proposed schedule allows a more reasonable time period between Staff's direct testimony and Respondents' rebuttal testimony and adjusts all later stages of this matter accordingly. Alternatively, if the Respondents' request to consolidate Case Nos. GC-2006-0491 and GC-2006-0378 is not granted, Respondents' proposed procedural schedule in comparison with Staff's proposal is as follows:

EVENT	RESPONDENT DATE	STAFF DATE
Direct Testimony	August 25, 2006	August 18, 2006
Rebuttal Testimony	October 23, 2006	September 22, 2006
Prehearing Conference	November 17, 2006	September 25, 2006
Surrebuttal Testimony	November 28 2006	October 23, 2006
Issues List, Order of Witnesses and Order of Cross Examination	December 5, 2006	October 25, 2006
Prehearing Briefs	December 12, 2006	October 26, 2006
Evidentiary Hearing	January 2-5, 2006	October 30 – November 3, 2006

WHEREFORE, Respondents respectfully request that the Commission reconsider its Order and consolidate Case Nos. GC-2006-0378 and GC-2006-0491 or, in the alternative, adopt the foregoing procedural schedule in this matter.

Respectfully submitted,

LATHROP & GAGE, L.C.

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Dated: August 14, 2006

Attorneys for Respondents

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 14th day of August, 2006, to:

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

<u>Name of Company Name of Party</u>	<u>Email Phone Fax</u>	<u>Street Address</u>	<u>Mailing Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
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<u>Name of Company</u> <u>Name of Party</u>	<u>Email</u> <u>Phone</u> <u>Fax</u>	<u>Street Address</u>	<u>Mailing Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
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