

**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 STRIKE

Respondents Missouri Pipeline Company (hereafter "MPC") and Missouri Gas Company (hereafter "MGC") move that the Commission strike the Rebuttal Testimony of Eve A. Lissik filed October 6, 2006, on behalf of the Missouri Public Utility Alliance (hereafter "MPUA"). In support of this motion, Respondents state as follows:

1. On June 22, 2006, the Commission issued its Order Establishing a Protective Order (hereafter "Protective Order") in this matter.
2. On October 6, 2006, Ms. Eve A. Lissik filed Rebuttal Testimony in this matter on behalf of the MPUA (hereafter "MPUA Rebuttal Testimony").
3. The Commission's Protective Order provides that "...at the option of the furnishing party..." highly confidential information may be made available "...*only* on the furnishing party's premise and may be reviewed *only by attorneys or outside experts* who have been retained for the purpose of this case...". Outside expert witnesses *shall not be employees*, officers or directors of any of the parties in this proceeding." Protective Order, Case No. GC-2006-0491, page 2 (emphasis added).

4. MPUA's Rebuttal Testimony contains highly confidential information. *See* MPUA Rebuttal Testimony, pages 3-6. Ms. Lissik relies heavily on highly confidential information to make calculations regarding potential customer refunds. *See* MGCM Rebuttal Testimony, page 5.

5. By allowing Ms. Lissik to review and use highly confidential information to make certain calculations regarding potential customer refunds, MPUA has violated the Commission's Protective Order. The Order is clear in stating that highly confidential information may be made available and may be reviewed *only by attorneys or outside experts* who have been retained for the purpose of this case..." *See* Protective Order, page 2. Ms. Lissik is not an attorney or an outside expert in this proceeding. According to her sworn testimony, she is employed as Director of Energy Services and Assistant to the General Manager of the Missouri Joint Municipal Electric Utility Commission, which is part of the MPUA. Ms. Lissik is not authorized to view highly confidential information or use such information in her testimony on behalf of MGCM. MGCM has violated the Commission's Protective Order in giving Ms. Lissik, a non-attorney or outside expert, access to highly confidential information in this matter. Therefore, MGCM's Rebuttal Testimony should be stricken.

6. Respondents' original concern that highly confidential information would be unlawfully released has come to pass. As the Commission recognized in issuing its Protective Order, it is critical to protect highly confidential information so that regulated entities and their employees are not made vulnerable to unfair competitive advantages and breaches of privacy. MPUA's breach of the Commission's Protective Order is a serious offense and should be addressed accordingly.

7. Respondents' concern over the inappropriate use of confidential information is further substantiated by documents provided by Staff not marked "HC" in response to Respondents' data requests (see Appendix AA to Rebuttal testimony of David Ries.) The emails contained in said Appendix AA clearly evidence other improper communications between Staff and the MPUA which in turn appear to have been provided to other non-Staff parties. Mr. Ries' Rebuttal Testimony explains these communications in detail. *See* Rebuttal Testimony of Mr. Dave Ries on behalf of MPC and MGC, pages 32-35, October 6, 2006.

8. In short Mr. Ries stated:

"Based on these emails, it appears that discussions were taking place between MPSC Staff members and representatives of the MPUA regarding Omega's efforts in 2002/2003 to develop a gas marketing business by offering various customers better supply prices than they had with the MPUA. For example, in an email dated October 23, 2002 at 1:11 pm, from Eve Lissik of the MPUA to Carmen Morrissey of the MPSC Staff, it appears Eve Lissik spoke with a "contact" at ONEOK that has our [MPUAs] contract with St. James. Before St. James can be released from our contract, our gas commission board members are going to want the details of Gateway's deal with St. James. "Thanks for your help on this." The "thanks for your help on this" more than suggests the MPSC Staff was supplying information of confidential matters to a competitor of Omega and another entity seeking St. James' business in favor of one entity over the other, i.e., to the exclusive benefit of the MPUA. "

9. Due to the seriousness of this possible violation, Respondents request that the Commission investigate (i) which party shared the highly confidential information in this case with Ms. Lissik and allowed her to use it in her testimony in violation of the Protective Order; (ii) whether the sharing of highly confidential information by Staff with MPUA in 2002/2003, cited in Mr. Ries' Rebuttal Testimony, violated § 386.570; and, if so (iii) is such communication in violation of the statute continuing; and (iv) should any person made aware of any such communications, either previously or currently, be prohibited from participating in this case and/or subject to sanctions.

WHEREFORE, Respondents respectfully request:

1. That the Rebuttal Testimony of Eve Lissik for the MPUA be stricken and that she no longer be permitted to participate in this case since she was given access and used highly confidential information in violation of the Protective Order and § 386.570.
2. That the Commission conduct an investigation in this matter consistent with that described in this motion; and
3. That the Commission reiterate that all attorneys for Interveners must abide by the existing Protective Order and refrain from making highly confidential information, revealed in documents or depositions, available to any party not specifically permitted in the protective order, specifically excluding any representative of any Intervener other than third party experts or legal counsel from any deposition where such highly confidential information is discussed.

Respectfully submitted,

LATHROP & GAGE, L.C.

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Attorneys for Respondents

Dated: October 12, 2006

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Respondents' Response to Staff's Proposed Procedural Schedule, has been transmitted by e-mail or mailed, First Class, postage prepaid, this 12th day of October, 2006, to:

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

Name of Company Name of Party	Email Phone Fax	<u>Street Address</u>	<u>Mailing Address</u>	City	State	Zip
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Name of Company Name of Party	Email Phone Fax	Street Address	Mailing Address	City	State	Zip
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Laclede Gas Co Pendergast C Michael	mpendergast@lacledegas.com 314-342-0532 314-421-1979	720 Olive Suite 1520		St. Louis	MO	63101
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Muni Gas Commission Conrad Stuart	stucon@fcplaw.com 816-753-1122 816-756-0373	3100 Broadway Suite 1209		Kansas City	MO	64111
Muni Gas Commission Kincheloe E Duncan	dkincheloe@mpua.org 573-445-3279 573-445-0680	2407 W Ash		Columbia	MO	65203
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/s/ Paul S. DeFord
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