

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0491
)	
Missouri Pipeline Company, LLC; and)	
Missouri Gas Company, LLC,)	
)	
Respondents.)	

**MGCM RESPONSE TO
MOTION TO STRIKE**

COMES NOW, the Municipal Gas Commission of Missouri (“MGCM”) and for its Response to the Motion to Strike filed October 12, 2006 by Missouri Pipeline Company (“MPC”) and Missouri Gas Company (“MGC”) (hereinafter referred to as the “pipelines”) respectfully states as follows:

1. In its Motion to Strike, the pipelines ask that the Commission strike the testimony of Eve Lissik filed on behalf of MGCM on October 6, 2006. The pipelines’ Motion to Strike is premised on the mistaken belief that Ms. Lissik’s testimony relies upon Highly Confidential information that the pipelines assert should not have been provided to Ms. Lissik.

2. The pipelines’ Motion to Strike is either shoddily drafted or intended to mislead the Commission. Specifically, the pipelines’ claim that “Ms. Eve A. Lissik filed Rebuttal Testimony in this matter on behalf of MPUA [Missouri Public Utility Alliance].” (Motion to Strike at page 1). This mischaracterization is notable in that the cover page of Ms. Lissik’s testimony specifically indicates that it was filed on behalf of

the “Municipal Gas Commission of Missouri’. The designation of the sponsoring party (MGCM) is repeated at the heading on page 1.

3. While filing testimony on behalf of MGCM, Ms. Lissik is also very clear in her testimony that she is employed as “the Director of Energy Services and Assistant to the General Manager with the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”).”

4. On June 22, 2006, the Commission issued its Protective Order in this docket. As reflected in that Order, highly confidential information “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.

5. Recognizing that Ms. Lissik is not an “employee, officer or director” of MGCM and was retained by MGCM for purposes of this case, she constitutes an “outside expert”. As such, she is permitted to review highly confidential testimony.

6. The lack of merit underlying the pipeline’s contentions is further understood when one recognizes that counsel for the pipelines has been on notice for over two months of the undersigned attorney’s intent to distribute highly confidential information to Ms. Lissik. Section L of the Commission’s Protective Order provides that:

Attorneys of record in this case shall require that the in house or outside expert read this Protective Order and certify in a written nondisclosure agreement that the person has reviewed the Protective order and consented to be bound by its terms. The nondisclosure agreement shall contain the signatory’s full name, permanent address, employer and the name of the party with whom the signatory is associated. Such agreement shall be filed with the Commission. Attached hereto as Appendix “A” and

incorporated by reference herein is a form for use in complying with the terms of this paragraph.

7. Pursuant to Section L of the Protective Order, the undersigned attorney provided a copy of the Protective Order to both Ms. Lissik as well as Mr. Gerald Feller of MJMEUC. After having those individuals read the Protective Order and discussing the requirements of the Protective Order, the undersigned counsel had both of those individuals execute the Nondisclosure Agreement. Then, on August 14, 2006, as required by the Commission's Protective Order, counsel filed the Nondisclosure Agreements with the Commission as well as served the document on counsel for the pipeline. Only after such steps had been taken did counsel distribute highly confidential information. Those Nondisclosure Agreements clearly indicate that those individuals "have requested review of the confidential information produced in Case No. GC-2006-0491 on behalf of the Municipal Gas Commission of Missouri." Furthermore, the Nondisclosure Agreements indicate that both individuals are employed MJMEUC.

8. Given the filing and service of these Nondisclosure Agreements, counsel for the pipelines has been on notice for over two months of the undersigned attorney's intent to distribute highly confidential information to these individuals. At no time in the past two months has counsel for the pipelines expressed, with either the Commission or undersigned counsel, his concern regarding these individuals reviewing such highly confidential information. Counsel for the pipeline has had ample opportunity to raise any concerns regarding the distribution of highly confidential information. It is noticeable that he has only chosen to raise such specious concerns upon the filing of MGCM's rebuttal testimony.

9. The pipelines' motivation for asking the Commission to strike MGCM's rebuttal testimony is apparent from the information contained in Ms. Lissik's testimony. Ms. Lissik's testimony provides direct evidence of the damages suffered by non-affiliate shippers associated with the discriminatory treatment provided by the pipelines to its marketing affiliate – Omega Pipeline. As such, Ms. Lissik's testimony provides the Commission with the first quantification of the damages that resulted from the tariff violations discussed in Mr. Schallenberg's direct testimony. Essentially, Ms. Lissik's testimony elevated this case from a mere allegation of a tariff violation to a matter that could involve millions in dollars of refunds. As reflected on page 3 of that testimony, in the course of only one year, the municipalities included in MGCM were grossly overcharged for the transportation of natural gas on the pipelines.

10. Furthermore, one must wonder on whose behalf the Motion to Strike was actually filed; that is, which entity is actually concerned about the release of the confidential information. In the course of preparing her testimony, Ms. Lissik relied upon highly confidential information contained in the Direct Testimony of Robert Schallenberg regarding discounted rates provided by the pipeline *to its affiliate Omega Pipeline*. It is well recognized that the rates charged by public utilities, including the Respondent pipelines, are to be open for public inspection. Specifically, Section 393.140(11) provides that the commission shall:

Have power to require every gas corporation, electrical corporation, water corporation, and sewer corporation to file with the commission and to print and keep open to public inspection schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used (emphasis added).

11. Consistent with the requirement to keep all rates and charges “open to public inspection”, Section 3.2(b)(1) of the pipelines’ tariff provides that “the lowest transportation rate charged to an affiliate shall be the maximum rate that can be charged to non-affiliates.” As such, any discount provided to an affiliate, such as Omega Pipeline, should be instantaneously known by and made available to non-affiliates. Given its obligation under its tariff to automatically make the affiliate rate applicable to non-affiliates, one must necessarily question why the pipelines are now objecting to non-affiliates even seeing such rates. In fact, one must question the legitimacy of the pipelines’ classification of the affiliate rate as highly confidential.

12. One would expect that the clarification provided in the previous paragraphs would be all that is necessary to address the substance of the pipelines’ Motion to Strike. That said MGCM finds itself compelled to address other allegations contained in the pipelines’ pleading. Sadly, in an underhanded attack on the character of respected individuals with both the Staff and MJMEUC, the pipelines attempt to paint a picture of a broad conspiracy involving alleged “improper communications between Staff and the MPUA.” The pipelines base their weak allegations on certain emails between Ms. Lissik and members of the Staff.

13. As the attached affidavit of Ms. Lissik indicates, Ms. Lissik had initiated communications in October 2002 with certain Staff members arising out of concerns expressed by certain municipalities that their gas transportation services would be disrupted or their transportation discounts withdrawn if they did not agree to take natural gas service from the pipelines. Given the prohibition against pipelines selling or offering to sell natural gas service, Ms. Lissik was concerned that the pipelines may have been

engaging in inappropriate activities. Moreover, as expressed in Ms. Lissik's affidavit the pipelines' activities also raised concerns regarding violations of the Commission's affiliate transactions rule.

14. The concerns expressed by Ms. Lissik in her October 2002 email were reiterated approximately nine months later as a result of a newspaper article out of the City of Cuba. As the article and Ms. Lissik's affidavit indicates, it appears that the pipelines, in violation of the prohibition against pipelines selling natural gas services, had agreed to provide natural gas service to Cuba. Again, this raised a concern of inappropriate activity or the possibility of discriminatory transportation rates.

15. As attested to by Ms. Lissik in her affidavit, no inappropriate communications were undertaken. As a former employee of the Commission Staff, Ms. Lissik is acutely aware of the prohibition against the disclosure of confidential information by Staff members. At no time did Ms. Lissik request or receive confidential information or preferential treatment by Staff members. The allegations contained in the pipelines' Motion are irresponsible and utterly baseless.

WHEREFORE, MGCM respectfully requests that the Commission issue its Order denying the pipelines' Motion to Strike.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is written in a cursive, flowing style. It is positioned above a horizontal line that spans the width of the text block below it.

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**Attorneys for the Municipal Gas
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the forgoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is written over a horizontal line. A vertical red line is positioned to the right of the signature.

David L. Woodsmall

Dated: October 27, 2006