

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

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

**OBJECTION TO AFFIDAVIT**

COMES NOW Municipal Gas Commission of Missouri ("MGCM") and for its Objection to Affidavit respectfully states as follows:

1. On October 19, 2007, respondents filed their Motion to Stay the effectiveness of the Commission's October 11, 2007 Report and Order. On October 22, 2007, the pipelines supplemented their Motion with the affidavit of the respondents' president, David J. Ries.

2. As the Commission is well aware, the evidentiary record in this matter closed with the completion of the evidentiary hearing in December 2006. Nevertheless, in an effort to support their Motion to Stay, the pipelines have sought to introduce new evidence in the form of the affidavit of Mr. Ries.

2. Section 536.070 provides strict procedures to be followed in "any contested case." Missouri Courts have found that the provisions of Chapter 536 are applicable to Commission proceedings.<sup>1</sup>

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<sup>1</sup> See, *State ex rel. Noranda Aluminum v. Public Service Commission*, 24 S.W.3d 243 (Mo.App.W.D. 2000); *Utility Consumers Council v. Public Service Commission*, 562 S.W.2d 688 (Mo.App.E.D. 1978);

3. Section 536.070(12) provides guidance on the introduction of “an affidavit in evidence”. Among other things, that statute provides the parties with the ability to object to the receipt of any affidavit into evidence.

Not later than seven days after such service, or at such later time as may be stipulated, any other party (or, in a proper case, the agency) may serve on the party or the agency who served such affidavit an objection to the use of the affidavit of some designated portion or portions thereof on the ground that it is in the form of an affidavit. . . . If such objection is so served, the affidavit of the part thereof to which objection was made, may not be used except in ways that would have been permissible in the absence of this subdivision.

That statutory section continues to provide that “[n]othing herein contained shall prevent the cross-examination of the affiant.”

4. MGCM, pursuant to the rights guaranteed by Section 536.070(12) hereby objects to the receipt of the affidavit of Mr. Ries. As detailed in its Response to Motion to Stay, filed simultaneous with this pleading, MGCM does not oppose the Commission considering the financial well-being of its regulated entities. That said, however, such consideration should be based upon evidence that is subjected to the scrutiny afforded in a contested case proceeding. By seeking to introduce such information in the form of an affidavit after the close of the evidentiary hearing, the pipelines seek to evade the scrutiny that Mr. Ries’ assertions would obviously invite.

5. In fact, if the Commission’s Report and Order will actually result in the financial harm suggested by Mr. Ries, the proper avenue for the consideration of such assertions is in the context of a rate proceeding with a request for interim / emergency rate relief. Short of the pipelines filing such a request, the Commission should recognize

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*State ex rel. GS Technologies Operating Co. v. Public Service Commission*, 116 S.W.3d 680 (Mo.App.W.D. 2003); *Environmental Utilities, LLC. v. Public Service Commission*, 2007 Mo.App. Lexis 533 (Mo.App.W.D. 2007).

the pipelines pleading and affidavit as nothing more than a last-ditch effort to avoid the remedies set forth in the Commission's Report and Order – remedies that, for all intents and purposes, were self-imposed once the pipelines engaged in conduct designed to eliminate all competition for its marketing affiliate.

WHEREFORE, MGCM respectfully informs the Commission of its objection to the affidavit of David J. Ries.

Respectfully submitted,

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

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**Attorneys for the Municipal Gas  
Commission of Missouri**

**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 positioned above a horizontal line. A vertical red line is located to the right of the signature.

David L. Woodsmall

Dated: October 23, 2007