

**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' REPLY TO STAFF'S AND MGCM'S RESPONSE TO
RESPONDENTS' MOTION TO STRIKE**

COME NOW Respondents Missouri Pipeline Company (hereafter "MPC") and Missouri Gas Company (hereafter "MGC") and respond to Staff and Municipal Gas Commission of Missouri's Response to Respondents' Motion to Strike (hereafter "MGCM"). In support of this reply, Respondents state as follows:

1. Staff filed its complaint in this matter, which is arises from GC-2006-0378, on June 21, 2006. Although related to GC-2006-0378, issues in this matter have been separated from GC-2006-0378 to allow certain issues to proceed on a separate procedural schedule.

2. On June 22, 2006, the Commission issued its Order Establishing a Protective Order (hereafter "Protective Order") in this matter.

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. At the outset, Respondents did not intend to mislead the Commission by stating that Ms. Lissik's testimony was filed on behalf of the Missouri Public Utility Alliance (hereafter "MPUA"). Respondents mistakenly transposed "MPUA" in place of "MGCM" because MGCM is a part of MPUA. Respondents recognize that Ms. Lissik's testimony was filed on behalf of MGCM as the cover indicates. Nonetheless, this correction does not change the fact that Ms. Lissik is not an authorized party to view highly confidential information per the Commission's Protective Order.

5. MGCM has mislead the Commission by its characterization of Ms. Lissik. Ms. Lissik cannot, by any stretch, be categorized as an outside expert. In its Response, MGCM argues that there has been no violation of the Protective Order's prohibition against using "employees, officers or directors" as outside experts since Ms. Lissik is an employee of Missouri Joint Municipal Electric Utility Commission (MJMUC) and not MGCM. *See* MGCM Response to Motion to Strike, page 2. MGCM misleads the Commission by omitting the fact that MGCM, MJMEUC, and a third division, Missouri Association of Municipal Utilities, are all divisions of the MPUA. The divisions within the MPUA have no separate and distinct legal organizational status and are all listed as "owners" of the MPUA. *See* Missouri Secretary of State Webpage, <https://www.sos.mo.gov/BusinessEntity/soskb/Corp.asp?1094452> (last visited October 30, 2006). Since there is no legally recognizable independence between each division, employees of one division are all employees of the same organization, MPUA. As such, MGCM cannot claim that Ms. Lissik is an *outside* expert and should not have given Ms.

Lissik access to highly confidential information. The resulting conclusion is clear. MGCM has given an employee of its organization access to highly confidential information in violation of the Commission's Protective Order.

6. MGCM attempts to defend its actions by using the timing of Respondents' objection as a shield. MGCM argues that Respondents have known about its intention to distribute highly confidential information to Ms. Lissik since the Nondisclosure Agreements were signed and have had ample time to raise an objection. *See* MGCM Response, page 3. This argument is flawed. The Commission's Protective Order covers both proprietary and highly confidential information. Under the Protective Order, propriety information may be disclosed to "...such employees who are working as consultants to such attorney or intend to file testimony in these proceedings." *See* Protective Order, Attachment A, page 2. To the contrary, highly confidential information may only be given to attorneys or outside experts. *Id.* Persons who receive highly confidential information or proprietary information sign the same Nondisclosure Agreement. As such, Respondents would have had no way of knowing whether MGCM intended to distribute highly confidential information to Ms. Lissik by receiving the Nondisclosure Agreement. In fact, since Ms. Lissik is an employee of the same organization, Respondents presumed that the Nondisclosure Agreement could only be for the distribution of proprietary information since it is the only type of information authorized to be disclosed to an employee under the Protective Order. Respondents were not made aware that MGCM violated the Protective Order until the filing of Ms. Lissik's testimony.

7. If MGCM is taking the position that, by virtue of signing a Nondisclosure Agreement, one is eligible to view highly confidential information even if they are an employee, the Commission should order this activity to cease immediately as it is highly improper and must be halted before sensitive information is used to achieve an unfair competitive advantage. In this light, Respondents are concerned with the information distributed to Mr. Gerald Feller. It is understood that part of Mr. Feller's role with MPUA is related to Member Relations for MGCM. It is highly improper for MGCM to allow Mr. Feller access to highly confidential information because of Mr. Feller's ability to use that information to the unfair advantage over competing service providers. If this access has indeed been given, the Commission should immediately order the retraction of the highly confidential information and other measures as appropriate.

8. MGCM has created an artificial deadline for objections to Nondisclosure Agreements in effort to relieve it from obeying the Protective Order. Nothing bars Respondents from raising an objection at the time the rebuttal testimony is filed. The fact that Respondents did not to object at or near the time MGCM violated the Protective Order is of no consequence. Respondents could not have known that Ms. Lissik was given highly confidential information instead of proprietary material until after they had an opportunity to review her Rebuttal testimony. Respondents' objection to MGCM's violation is timely, and MGCM should not be relieved of its duty to comply with the Protective Order based on the timing of Respondents' objection. MGCM has individual responsibility to comply with the Commission's Protective Order. It is not the responsibility of the Respondents to inform MGCM of its lack of compliance or how to comply. The MGCM should not be allowed to avoid its responsibility to comply with the

Protective Order, because no other party pointed out the violation before the Rebuttal Testimony of Ms. Lissik was filed.

9. Neither Staff nor MGCM have adequately accounted for the content of the email exchange between Ms. Lissik and Ms. Morrissey. While providing affidavits generally denying any release of confidential information, there is no true explanation resolving what appears to be Ms. Lissik's reliance on Ms. Morrissey to get back with her with specific confidential information. *See* Email from Eve Lissik to Carmen Morrissey, October 23, 2002. For example, neither the Response nor the Affidavit by either Staff or Ms. Lissik explains what information was given in response to Ms. Lissik's statement that her "board members are going to want the details of Gateway's deal with St. James," subsequently thanking Ms. Morrissey for her help *Id.* It is evident that a breach of confidentiality has occurred. Likewise, the email of October 30, 2002 from Ms. Morrissey to Ms Lissik provides Ms Lissik with information that Staff was planning to issue data requests to Respondents and that another Staff member would be getting back in touch with her. *See* Email from Eve Lissik to Carmen Morrissey, October 30, 2002. Staff's communication of discovery strategies to the MGCM is disturbing. Logically, Ms. Morrissey would not have informed Ms. Lissik that another Staff member would be contacting her unless more information was going to be exchanged. The Response and Affidavit filed do not explain what information was provided by Staff when this subsequent follow-up communication by Staff to Ms. Lissik occurred after the October 30, 2002 e-mail. At a minimum, Staff should have to give a comprehensive account for what transpired.

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; and
2. That the Commission reiterate that all parties 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: November 1, 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 1st day of November, 2006, to:

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

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