

**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.	)	

**MGCM FURTHER RESPONSE TO  
RESPONDENT’S MOTION TO STRIKE**

COMES NOW, the Municipal Gas Commission of Missouri (“MGCM”) and for its Further Response to the Respondent’s Reply to Staff’s and MGCM’s Response to Respondent’s Motion to Strike filed November 1, 2006 respectfully states as follows:

1. As an initial matter, it is imperative that the Commission see through the red herring argument that Missouri Gas Company (“MGC”) and Missouri Pipeline Company (“MPC”) (hereinafter referred to as the “pipelines”) have attempted to raise in order to distract the Commission from the more immediate and compelling issue at hand – the pipelines’ blatant violation of their tariffs. Specifically, the pipelines, based upon a misrepresentation of facts in its pleadings, raise an argument concerning the distribution of highly confidential information to MGCM’s outside expert. Again, this is merely a guise to distract the Commission from the real issue in this case – pipeline tariff violations that justify refunds of millions of dollars for past overcharges. Given its inability to refute the substance of MGCM’s testimony, the pipelines instead have sought to avoid the need to rebut such testimony by seeking to strike this testimony. As will be

shown, the pipelines' argument is based upon a misrepresentation of facts and failure to properly research and understand the formation and nature of the governmental entity (MGCM) involved in this matter.

2. In its November 1 pleading, the pipelines make several misrepresentations. Foremost, the pipelines inaccurately claim that:

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. . . . Since there is no legally recognizable independence between each division, employees of one division are all employees of the same organization, MPUA.<sup>1</sup>

3. In support of its bold claims, the pipelines do not rely upon any discovery that it has conducted or legal research that it has undertaken. Instead, the pipelines rely upon a single page taken from the Missouri Secretary of State website. As will be shown, that information derived from the Secretary of State website and relied upon by the pipelines does not support the pipelines' reckless allegations.

4. Section 393.700 et seq. allows for the creation of Joint Municipal Utility Commissions. Specifically, Section 393.710 provides that:

[M]unicipalities. . . may, by joint contract, establish a governmental entity to be known as a joint municipal utility commission, to effect the joint development of a project or projects in whole or in part for the benefit of the inhabitants of such municipalities. (emphasis added).

The same statutory section provides for the creation of a board of directors "in which all powers of the commission are vested."

5. MGCM was created under the statutory authority provided in Section 393.700 et seq. As such, MGCM constitutes "a body public and corporate of the state,

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<sup>1</sup> *Respondent's Reply to Staff's and MGCM's Response to Respondents' Motion to Strike*, filed November 1, 2006 at ¶5.

exercising public powers for the benefit of its contracting members”.<sup>2</sup> MGCM is ***not*** a “division” of any other organization and, as a public governmental body, is not subject in any fashion to ownership by a private entity. It is an independent legal entity with its own board of directors. Similarly, the Missouri Joint Municipal Electric Utility Commission was also created as a ***separate and distinct entity*** under the Joint Municipal Utility Commission Act. Again, it is ***not*** a “division” of any other organization and is not subject to ownership by a private entity. It is also an independent legal entity with an entirely distinct board of directors.

6. On the other hand, the Missouri Public Utility Alliance (“MPUA”) is not a legal entity. Rather, pursuant to the authority provided in Section 417.200 et seq., MPUA is a registered trade name under which MGCM, MJMEUC and the Missouri Association of Municipal Utilities (“MAMU”) carry out a variety of joint activities. This fact is reflected on the Secretary of State webpage referenced by the pipelines and provided as Attachment 1 to this pleading. The Secretary of State site readily indicates that “Missouri Public Utility Alliance” is a “***fictitious registration***”. The trade name was created in 1999 and is owned by three separate and distinct entities, MGCM, MJMEUC, and MAMU, and was registered with the Secretary of State to protect its use by other entities. The registration of a fictitious name, however, does not result in the creation of a separate legal entity. As such, the pipelines’ claim that “MGCM, MJMEUC, and a third division, Missouri Association of Municipal Utilities, are all divisions of the MPUA” is blatantly erroneous.

7. As an employee of MJMEUC, Ms. Lissik is an “outside expert” retained by MGCM “for the purpose of this case.” Given the dictates of the Commission’s

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<sup>2</sup> Section 393.720 RSMo.

Protective Order (Section C), Ms. Lissik is entitled to review Highly Confidential information.

8. To review: (1) MGCM and MJMEUC are separate governmental entities created under Section 393.700; (2) Ms. Lissik is an employee of MJMEUC; (3) Ms. Lissik's services were retained by MGCM for purposes of this case; (4) as an "outside expert who has been retained for purpose of this case", Ms. Lissik is entitled, under Section C of the Commission's Protective Order, to review highly confidential information.

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

Respectfully submitted,

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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 written over a horizontal line. A vertical red line is positioned to the right of the signature.

David L. Woodsmall

Dated: November 2, 2006