

**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 and)	
Missouri Gas Company, LLC)	
)	
Respondents.)	

**STAFF RESPONSE TO
RESPONDENT’S MOTION TO CONSOLIDATE OR DISMISS
CASE NO. GC-2006-0491 AND
RESPONSE TO STAFF’S MOTION FOR EXPEDITED TREATMENT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and in Response to Respondents’ Motion to Consolidate or Dismiss Case No. GC-2006-0491 and Response to Staff’s Motion for Expedited Treatment states:

1. In this Complaint Staff alleges, among other things, that Missouri Pipeline Company, LLC (MPC) and Missouri Gas Company, LLC (MGC) (collectively “the Companies”) have excess earnings due to tariff violations and improper affiliate transactions resulting in preferential treatment to affiliates.

2. Respondents urge the Commission to join all issues in one hearing. While under its rules 4 CSR 240-2.070 the Commission **may** join all matters in one (1) hearing, and the Commission may order a joint hearing of any or all matters, and there is nothing that requires the Commission to do so. Either consolidating these cases or permitting separate complaints is within the Commission’s discretion.

3. While the same facts alleged in GC-2006-0378 do generally underlie this complaint, Staff seeks expedited treatment of these issues because a finding by the Commission that the Companies have violated their tariffs and the Commission's affiliate transactions rules will result in rate reductions to customers more quickly than if the Commission proceeds with the currently ordered schedule in Case No. GC-2006-0378, which is generally a rate case schedule.

4. Staff recommends that the Commission either permit this case to proceed on an expedited basis or, if the Commission determines that consolidation is the approach it prefers, that these issues be bifurcated and permitted to proceed on an expedited basis because, if the Companies are overcharging as Staff alleges, delay in proceeding on the issues in this Complaint harms the Companies' customers.

5. In their Motion to Consolidate or Dismiss, the Companies allege that "keeping the matters separate will not provide any benefit." (Companies' Motion to Consolidate or Dismiss p. 2, para. 7.) Staff disagrees with this conclusion and expects that a hearing on the issues of tariff and affiliate transactions violations, which are the specific subject of this case, will result in the Commission ordering the Companies to reduce their rates.

6. Since none of the issues in this case require the same level of detail and analysis as the issues in Case No. GC-2006-0378, separate consideration, whether through a separate case or bifurcation of issues in Case No. GC-2006-0378 will result in quicker resolution of these matters to the benefit of Missouri natural gas consumers served by the Companies. The issues raised in GC-2006-0491 are fact based and the preparation for hearing may be completed quickly in comparison to preparation of a general rate case. If the Commission orders lower rates in time for the winter heating season, that is of real value and benefit to the Companies' ratepayers.

7. Moreover, if, as Staff expects, hearing of the tariff and affiliate transactions violations results in the Commission ordering lower rates, this may eliminate the need to proceed with the issues in the GC-2006-0378 case. This should result in lower case preparation costs for all parties to the case.

8. However the Commission decides to proceed, the fact that a procedural schedule has been set in the GC-2006-0378 case is no bar to expedited hearing of the issues raised in GC-2006-0491. Staff's Complaint was filed on June 21, 2006 before the Commission issued its procedural schedule decision in the GC-2006-0378 case on June 27, 2006. An order for a procedural schedule is not a final order that is binding on the Commission and, in fact, procedural schedules are regularly revised depending on the development of circumstances in a particular case. In this case as Staff's investigation has developed, Staff has determined that certain issues may be heard more quickly and that doing so may result in benefits to the Companies' customers.

9. Additionally issues in cases are regularly bifurcated in Commission proceedings in a number of ways, including partial settlements and separate hearings on a select set of issues.

10. Moreover, Respondents claims that to allow the case(s) to proceed by expediting the hearing of some issues will raise a "dangerous precedent" are not well founded. (Respondent's Motion to Dismiss or Deny Consolidation, p. 4, para. 12.) The Commission determines its own processes and does not set precedent and is not bound by stare decisis. *McKnight Place Extended Care, L.L.C. v. Missouri Health Facilities Review Committee*, 142 S.W.3d 228, (Mo.App. W.D. 2004).

11. Furthermore, the Commission's Order of a procedural schedule in GC-2006-0378 is not a final order and is not binding on the Commission or the parties to this case. *City of Park*

Hills v. Public Service Comm'n of State of Mo., 26 S.W.3d 401, (Mo.App. W.D. 2000). There are no “[p]rinciples of res judicata” which prohibit the Commission, Staff, or Intervenors from requesting changes to that schedule. In fact, the initial procedural schedules ordered by the Commission are often altered due to changing circumstances.

12. If the Commission determines that the cases should be consolidated, Staff recommends that these issues be bifurcated and ordered to proceed on an expedited schedule. This will accomplish the goals of: 1) determining what rates are just and reasonable prior to the winter heating season, 2) reducing costs to all parties if the decision on the tariff and affiliate violations results in elimination of the need to proceed in GC-2006-0378. In addition it will promote judicial economy if an entire rate case proceeding becomes unnecessary. With this in mind, Staff recommends the following procedural schedule:

Event	Date
Staff Files Complaint	June 21, 2006
Secretary Serves A Copy Of The Complaint Upon MPC/MGC	June 22, 2006
Commission Sets Intervention Period and Orders the Company Response to Staff’s Complaint	June 22, 2006
MPC/MGC Answers Complaint & Intervention Period Closes	July 21, 2006
Deposition of BJ Lodholz	July 5, 6, 7, 2006
Staff files its Direct Testimony and Schedules	August 8, 2006
MPC, MGC & Intervenors File Rebuttal Testimony & Schedules	September 15, 2006
Prehearing Conference	September 21-22, 2006
Staff Files Surrebuttal Testimony & Schedules and MPC, MGC and Intervenors File Cross-Surrebuttal	October 13, 2006
Staff Files List Of Issues & Order Of Issues For Evidentiary Hearing	October 16, 2006
Parties Submit Prehearing Briefs	October 20, 2006
Evidentiary Hearings	October 23-31, 2006

WHEREFORE, the Staff requests the Commission act in the interest of the Companies’ customers and determine the issues raised in this Complaint on an expedited basis, either in this

case or in the consolidated case through a bifurcated process; order the procedural schedule proposed above; and grant such other and further relief as the Commission deems appropriate under the circumstances.

Respectfully submitted,

/s/ Lera Shemwell

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 31st day of July 2006.

/s/ Lera Shemwell