

**BEFORE THE PUBLIC SERVICE COMMISSION  
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.	)	

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

COMES NOW Respondents Missouri Pipeline Company (hereafter "MPC") and Missouri Gas Company (hereafter "MGC") and for their Reply to Staff's Response state as follows:

1. On March 31, 2006, Staff filed a Complaint alleging that Respondents and several named affiliates have excessive earnings; have violated the Affiliate Transactions Rule; have charged rates not authorized by tariff; as well as allegations that the Commission should assert jurisdiction over certain named affiliates. *See* Staff Complaint Concerning Excessive Earnings; Violations of Affiliate Transactions Rule; Charging Rates Not Authorized By Tariff; and Asserting Jurisdiction Over Gateway Pipeline Company LLC, Omega Pipeline Company LLC, Mogas Energy LLC, and United Pipeline Systems, Inc.

2. On June 21, 2006, Staff filed a second Complaint against Respondents MPC and MGC, alleging violations of the same tariffs and using the same underlying

facts at issue in Case No. GC-2006-0398. Staff also seeks expedited treatment of the second Complaint. (*See* Staff Complaint Concerning Tariff Violations and Motion for Expedited Treatment, Case No. GC-2006-0491).

3. Staff's second complaint filed in Case No. GC-2006-0491 is already a part of the first complaint. Staff has merely "cherry picked" existing claims from Case No. GC-2006-0378 and turned them into a new complaint in the form of Case No. GC-2006-0491. In fact, Staff admits that it is merely bringing related claims in the second complaint to expedite the handling of them. (*See* Staff Complaint, GC-2006-0491, p. 13, para. 38). This maneuver flies in the face of what the Commission has already ordered after much discussion and review of several motions. Staff provides no compelling reason to bifurcate Case No. GC-2006-0378 and, in fact, proposes an improper means for the Commission to determine rate related issues in the second complaint. Accordingly, Case No. GC-2006-0491 should be dismissed, allowing all the issues to be resolved through Case No. GC-2006-0378.

4. Alternatively, if the matters are consolidated, they should proceed under the existing procedural schedule ordered by the Commission. These complaints clearly involve common issues of facts and law. Claims in both complaints arise from the same tariffs and the same set of facts as in the first Complaint. Respondents recognize that it is this Commission's discretion to join matters into one hearing pursuant to § 386.390.2, 4 RSMo., 4 CSR § 240-2.070, and 4 CSR § 240-2.110(3). Respondents further point out that the purpose of consolidating matters is to avoid piece-meal litigation stemming from a single occurrence. *See Furlow v. Campbell*, 459 S.W.2d 284 (Mo. banc. 1970). As reflected in this Commission's rules, matters based upon the same set of facts may be

joined to avoid unnecessary expenses. *See* 4 CSR § 240-2.110(3). If both complaints proceed on different schedules, all parties, including interveners, will be forced to waste resources and time by filing duplicative pleadings, attending multiple conferences, and conducting duplicative discovery in two separate proceedings. Because both complaints stem from allegations concerning application of Respondents' tariffs, they are appropriate for consolidation into Case No. GC-2006-0378.

5. Staff requests this Commission to place Case No. GC-2006-0491 on an expedited schedule to obtain, among other things, a rate reduction. *See* Staff Complaint, Case No. GC-2006-0491, p. 10, para 23. Staff's request is impermissible under applicable law. The Missouri Supreme Court has affirmed that in determining rate changes and suspensions, the Commission must consider all relevant factors, including operating expenses and the utility's rate of return. *See State ex. rel. Utility Consumers Council of Missouri, Inc. v. Public Service Commission*, 585 S.W.2d 41, 49 (Mo. banc. 1979) and *State ex. rel. Missouri Water Co. v. Public Service Commission*, 308 S.W.2d 704, 718-19 (Mo. 1957). Staff's second complaint cannot proceed on an isolated track. The Commission will not have all relevant evidence to determine rate reduction issues during the expedited schedule Staff proposes. Evidence relating to Respondents' operating expenses, rate of return, and other relevant factors will be examined through the course of Case No. GC-2006-0398. Without such evidence, this Commission will not be able to evaluate all of the facts necessary to determine whether to grant Staff's requested relief. As it is, the procedural schedule in Case No. GC-2006-0378 is compressed, leaving Respondents little time to develop what amounts to a full rate case. In Staff's relentless pursuit to expedite these proceedings despite the ordered procedural

schedule, Staff has proposed an improper, impermissible avenue for the Commission to decide rate issues. Accordingly, Case No. GC-2006-0491 should not be heard on an expedited basis, but rather dismissed and the duplicative issues determined through GC-2006-0378. Otherwise, if the cases are consolidated into Case No. GC-2006-0378, it would be improper to bifurcate the rate reduction issues and handle them through an expedited schedule. Issues raised in the second complaint should be addressed under the existing procedural schedule as established in Case No. GC-200-0378.

6. Staff asserts that the issues in the second complaint do not require the same level of detail and analysis as those issues in Case No. GC-2006-0378. *See* Staff Response, p. 2, para. 6. This is misleading. As explained, the Commission must consider all relevant factors, including rate of return and operating expenses, in determining a change in Respondents' rates. *See State Utility Consumers Council of Missouri* 585 S.W.2d at 49. Evaluating evidence pertinent to this decision will require extensive analysis and such evidence will not be available at the time Staff proposes for the procedural schedule in Case No. GC-2006-0491. The Commission has already ordered a procedural schedule which will allow for the evaluation of all relevant factors. The Commission will not be able to evaluate all relevant evidence by adopting the expedited schedule Staff proposes. To allow the opportunity for the Commission's fair consideration of all relevant factors, the issues in Case No. GC-2006-0491 should be resolved under the existing procedural schedule.

7. Staff's request to keep Case No. GC-2006-0491 as a separate matter or to consolidate and bifurcate the allegations in the complaint filed in Case No. GC-2006-0378 is overly burdensome. Respondents need at least the time ordered in the existing procedural schedule in Case No. GC-2006-0378 to fully respond to the allegations in that complaint. Because Respondents have only a few employees, Respondents will already be pressed to respond timely and adequately to Staff's first complaint under the existing procedural schedule. Forcing Respondents to prepare testimony, pre-trial briefs, and participate in discovery for a second complaint on a new schedule while trying to prepare its case for the complaint filed in Case No. GC-2006-0378 will undoubtedly prejudice Respondents' ability to prepare either case.

8. Staff further explains that if this Commission orders a rate reduction, it "may eliminate the need to proceed with the issues in GC-2006-0378." Staff Response, p. 3, para. 7. These presumptions are speculative. Initially, it is troubling that Staff presumes that the Commission will rule in its favor before the Commission has reviewed any evidence. Further, Respondents cannot rely on Staff's unsubstantiated statements that a favorable ruling from the Commission in Case No. GC-2006-0491 may lead to the elimination of issues in the complaint filed in Case No. GC-2006-0378. Respondents must prepare responses for both complaints if they proceed. By carving out issues in the first complaint and filing them in Case No. GC-2006-0491, Staff is attempting to deprive Respondents of the due process they deserve. Due process requires that Respondents have adequate opportunity to prepare their defenses for issues raised in both complaints. Respondents cannot do this if they are responding to the allegations in Case No. GC-2006-0491 on an expedited basis. Due process will be better served if the issues raised in

Case Nos. GC-2006-0491 and GC-2006-0378 proceed under the existing procedural schedule as ordered in Case No. GC-2006-0378.

9. Respondents recognize that this Commission may alter the procedural schedule where circumstances warrant. Circumstances in this instance do not warrant expediting the procedural schedule. Rather, the instant situation lends itself to resolving all issues through Case No. GC-2006-0378 under the existing procedural schedule.

WHEREFORE, for reasons stated above, Respondents respectfully request that this Commission dismiss Case No. GC-2006-0491 and proceed with determining all issues through the ordered schedule in Case No. GC-2006-0378. Alternatively, Respondents request that the matter be consolidated into Case No. GC-2006-0378 and that the Commission deny Staff's request to bifurcate and expedite the issues in Case No. GC-2006-0491.

Respectfully submitted,

LATHROP & GAGE, L.C.

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## **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Respondents' Motion to Establish a Procedural Schedule, transmitted by e-mail or mailed, First Class, postage prepaid, this 4th day of August, 2006, to:

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

<b>Name of Company Name of Party</b>	<b>Email Phone Fax</b>	<b><u>Street Address</u></b>	<b><u>Mailing Address</u></b>	<b>City</b>	<b>State</b>	<b>Zip</b>
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