

**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 RESPONSE  
REGARDING ITS MOTION FOR SANCTIONS**

COME NOW Respondents Missouri Pipeline Company and Missouri Gas Company (hereafter "MPC" and "MGC") and respond to Staff's Reply to Respondents Response to Motion for Sanctions (hereafter "Staff Response"). In support of its Reply, Respondents state as follows:

1. For the past 12 months, Respondents have worked rigorously to provide Staff with all documents requested and to present its employees for several depositions. Along with ensuring the safe operations of the pipelines, fulfilling Staff's discovery requests and preparing for the hearing in this matter have been Respondents priority. Now, based on its incorrect understanding of Mr. Lodholz' deposition testimony, Staff accuses Respondents of an act that did not occur. If Staff would have sought clarification, it would have realized its incorrect inference and could have pursued non-adversarial avenues to obtain further information. There has been no effort by Respondents to avoid production of documents as Staff suggests, rather only

Respondents' concerted effort to provide documents even when such documents were not retained in the course of business. Sanctions are not at all appropriate in this instance and Staff's Motion should be denied.

2. Staff is seeking sanctions for documents it has not subpoenaed. As stated in Staff's response, Staff has requested bills, invoices, or statements actually sent to Omega or Respondents' customers. *See* Subpoena Issued to B.J. Lodholz, January 26, 2006 and Subpoena Issued to Dave Ries, March 23, 2006. In its Response, Staff admits that it understands that the documents it is seeking are not invoices sent to customers, "but none-the-less wants copies of the customer information that was maintained by Mr. Lodholz." *See* Staff Response, page 4. Respondents have complied with these requests and should not be penalized for Staff's after-the-fact request beyond the scope of its subpoena. As stated, Respondents are willing to disclose the summary sheets once compiled. Accordingly, sanctions are not appropriate.

3. There has been no destruction of documents as Staff suggests. In its Motion, Staff ignores the explicit language in Mr. Lodholz' deposition testimony, resting its entire argument on two words taken out of context. Indeed, Mr. Lodholz stated, "There is an invoice sheet that we've looked at" but clarifies his meaning by explaining that it is what "I would call the summary sheet, the front page." *See* Schedule 5 to Direct Testimony of Robert Schellenburg, page 191). The actual front pages of the invoices were not maintained until January 2006, after the start of Staff's investigation. Staff now admits that it understands this distinction. *See* Staff's Response, page 5, paragraph 10 Respondents are in compliance with Staff's discovery requests. Any ambiguity in Mr. Lodholz's testimony has now been clarified and is no basis for sanctions.

4. Mr. Ries has never destroyed or ordered the destruction of any documents. As has been explained verbally to Staff, hard copies of invoices were only retained for a short period of time after which they were only maintained electronically. This mode of operation was to foster efficiency. Mr. Ries' affidavit, which is attached hereto as Exhibit A and incorporated by reference, further elucidates the manner in which the invoices were maintained. *See* Exhibit A. Respondents have never engaged in the destruction of documents or any other sanctionable conduct.

5. Staff has not been prejudiced. In determining whether sanctions are appropriate, courts generally require that a party's conducts result in prejudice to the movant. *See Crompton v. Curtis-Toledo, Inc.* 661 S.W. 2d 645 Mo.App.E.D. 1983) Respondents have provided thousands of records with far more information than is reflected in the summary sheets. Further, Staff states that it has been able to obtain customer invoices from its requests to Respondents' customers. *See* Staff Response, page 5, paragraph 10. The summary sheets do not provide any different or additional data than what has been given to Staff already. Although Respondents are willing to provide the summary sheets that Staff now requests, the summary sheets are duplicative and in no way supplement what Staff already has in its possession. Staff has had all information necessary to proceed in its hearing preparation. Staff has not been prejudiced and therefore, sanctions are not appropriate.

WHEREFORE, Respondents respectfully request that the Commission deny Staff's Motion for Sanctions for Destruction of Documents.

Respectfully submitted,

LATHROP & GAGE, L.C.

/s/ **Paul S. DeFord**

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***Attorneys for Respondents***

Dated: December 5, 2006

## **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Respondents' Reply to Staff's Response Regarding Its Motion For Sanctions has been transmitted by e-mail or mailed, First Class, postage prepaid, this 5th day of December, 2006, to:

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

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**/s/ Paul S. DeFord**

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