

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2006-0378
	)	
Missouri Pipeline Company, LLC;	)	
Missouri Gas Company, LLC;	)	
	)	
	)	
Respondents.	)	

**RESPONDENTS' RESPONSE TO STAFF'S MOTION FOR ORDER DETERMINING  
RESPONDENTS HAVE FAILED TO COMPLY WITH COMMISSION SUBPOENA  
AND ORDER DIRECTING STAFF TO FILE IN CIRCUIT COURT TO ENFORCE  
SUBPOENA**

COME NOW Respondents Missouri Pipeline Company and Missouri Gas Company (hereafter "MPC" and "MGC") in the above-captioned matter and respond to *Staff's Motion for Order Determining Respondents Have Failed to Comply with Commission Subpoena and Order Directing Staff to File in Circuit Court to Enforce Subpoena* (hereafter "Staff's Motion").

In spite of Mr. Ries' family medical emergency requiring Mr. Ries to be in Iowa for substantial periods in September, Respondents have been willing to schedule Mr. Ries' deposition as soon as practicable. Staff has no basis to obtain relief in circuit court and should not be given authority to pursue this action.

In support of this response, Respondents state as follows:

1. On July 17 and 18, Staff took Mr. Ries' deposition at the Commission's St. Louis office.
2. During this deposition, Staff asked Mr. Ries certain questions related to the business operations of Omega. Omega was at the time of the deposition and is currently today

represented by separate counsel and, at that time of Mr. Ries' deposition in July, Mr. Ries was not authorized to testify on behalf of Omega. Mr. Ries informed Staff of this fact as reflected in the transcript. Mr. Ries' response to Staff's questioning regarding Omega was made in good faith and in no way constitutes a sanctionable offense under Missouri Supreme Court Rule 61.01(g) or § 386.460, RSMo.

3. Respondents have diligently tried to provide Staff with the information it seeks regarding Omega. Subsequent to Mr. Ries' July 17 and 18 deposition, Mr. Ries sought and was given authorization to testify as to Omega's business activities for the period prior to June 2006.

4. Pursuant to 4 CFR § 240-2.090, a discovery conference was held on August 11, 2006 to resolve issues that arose at the July deposition. In its Motion, Staff seems to insinuate that Respondents have acted improperly by not bringing Mr. Ries to the discovery conference. Neither 4 CFR § 240-2.090 or any other provision in the Commission's rules require the officers of a regulated entity to attend discovery conferences. Counsel for MPC and MGC attended the discovery conference and, therefore, have complied with 4 CFR § 240-2.090.

5. After this conference, Mr. Ries voluntarily appeared, along with Dave Wallen and Patty Hawkins, for a deposition to answer questions related to Omega on August 28-29, 2006. The parties mutually agreed that Staff would depose Patty Hawkins and Dave Wallen first. While waiting to be deposed, Mr. Ries was informed of a family medical emergency that required him to immediately travel to Iowa. Staff did not object to Mr. Ries' departure or inform Mr. Ries or his counsel of their intention to seek sanctions in circuit court if such departure took place. Mr. Ries' departure was the result of an unforeseen family circumstance, not lack of cooperation as Staff leads the Commission to believe.

6. Staff also states that certain documents were not provided at the second deposition. *See* Staff Motion, page 2, paragraph 5. Respondents informed Staff at the second

set of depositions that most of the documents Staff requested had already been provided during the course of informal or formal discovery. Staff was also informed and fails to acknowledge that many of the records it requested do not exist. Respondents also point out that the parties went through Staff's request for documents, item by item, at the second depositions. Respondents committed to search for certain requested documents to determine if they existed.

7. Respondents remain ready to schedule Mr. Ries' deposition. But for Mr. Ries' absence to care for his father-in-law, Mr. Ries' deposition would have been taken sometime in September. Unfortunately, this was not possible. Contrary to what Staff indicates to this Commission, Mr. Ries' presence in Iowa and lack of availability during September was not due to a lack of cooperation, but rather a family emergency. As Staff also knows, Respondents' rebuttal testimony in GC 2006-0491 is due October 6, 2006, and any available time for Mr. Ries and counsel for MPC and MGC has been spent answering Staff's data requests and preparing the subject rebuttal testimony.

8. Even under the difficult circumstances, Respondents have been cooperative in working with Staff to reschedule Mr. Ries deposition. In fact, Respondents believe they have an agreement with Staff to schedule the deposition on October 17th. Mr. Ries is working to finish Respondents' rebuttal testimony due Oct. 6, 2006. To allow for the completion of this testimony and time to search for the documents Staff continues to request, Mr. Ries can be available for deposition the week of October 17, 2006.

9. Staff's pursuit of sanctions against Respondents in circuit court is futile and would be a waste of all parties' time and resources. Before sanctions will be imposed, there generally must be a showing of willfulness to avoid discovery. See Zurheide-Hermann, Inc. v. London Square Dev. Corp., 504 S.W.2d 161, 165-66 (Mo.1973). There can be no such showing in this instance. Respondents have answered numerous data requests, delivered thousands of pages of

documents in response to Staff questions, including without limitation, virtually all of MPC/MGC financial records, contracts, volume reports, tax returns, financial statements, transaction and check ledgers, invoices, etc. Respondents have further spent hundreds of hours responding to Staff's data requests and made Mr. Ries and his employees available for depositions on two occasions. The fact that Mr. Ries was not available for his second deposition due to the above-mentioned family medical emergency does not show a lack of cooperation or willfulness to avoid discovery. In fact, Mr. Ries' attendance at his depositions in July and August and his continuing attempts to reschedule his deposition in October evidences Respondents' willingness to work with Staff in rescheduling Mr. Ries' deposition.

WHEREFORE, Respondents request that this Commission order Staff to schedule Mr. Ries deposition on a mutually agreeable date after Respondents' rebuttal testimony in GC-2006-0491 is filed.

Respectfully submitted,

LATHROP & GAGE, L.C.

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Dated: October 4, 2006

***Attorneys for Respondents***

## **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 October, 2006, to:

**\* Case No.**                      GC-2006-0378

<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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<b>Name of Company Name of Party</b>	<b>Email Phone Fax</b>	<b>Street Address</b>	<b>Mailing Address</b>	<b>City</b>	<b>State</b>	<b>Zip</b>
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Union Electric Co Byrne Thomas M	TByrne@Ameren.com 314-554-2514 314-554-4014	1901 Chouteau Avenue	P.O. Box 66149 (MC 1310)	St. Louis	MO	63166- 6149

/s/ Paul S. DeFord  
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