

**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' RESPONSE REGARDING STAFF'S  
REQUEST FOR RECONSIDERATION**

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

1. Staff attempts to confuse the Commission with inaccurate statements regarding the documents at issue and the bases for which the affidavit should remain in evidence. This issue is simple. Staff has accused Respondents of destroying documents based on misreading of Mr. Lodholz' deposition testimony. Even though Mr. Lodholz explicitly referred to "summary sheets" by stating,, "that it is what I would call the summary sheet, the front page." *See* Schedule 5 to Direct Testimony of Robert Schallenburg, page 191). Mr. Lodholz clarified his testimony by executing his affidavit, Exhibit 311. In his affidavit, Mr. Lodholz clearly explains that he was referring to summary sheets, not invoices, in his deposition testimony. He further states that he has

never destroyed documents outside the normal course of business (*see* Lodholz Affidavit, Exhibit 311).

2. In an effort to salvage its meritless claim for sanctions, Staff points to Mr. Ries' deposition Exhibit 50 (hearing Exhibit 254), attempting to use Mr. Ries' statement to show that the documents he produced at his deposition, Exhibit 50 (hearing Exhibit 254) were the ones Mr. Lodholz referred to in his deposition. For clarification, Exhibit 50 (hearing Exhibit 254) are invoices from the pipeline companies to its various shippers from February 2006 through April 2006.

3. Staff's reliance on Mr. Ries' deposition and Exhibit 50 (hearing Exhibit 254) is erroneous. Mr. Lodholz himself is the best authority to explain which document he was referring to in his deposition. Staff's pasting together bits of deposition testimony out of context does not change Mr. Lodholz' own explanation as reflected in his sworn affidavit. Staff is blatantly wrong in its position. Respondents hope that the Commission will not be swayed by Staff's stubborn disregard of the clear facts showing that there has been no destruction of documents.

4. Staff continues to dwell on the pipeline's production of electronic invoices as evidence to support its destruction of documents claim. Representatives of the pipelines have explained that the companies kept their invoice data in electronic form only and that hard copies of invoices were not retained for business efficiency reasons until the beginning of 2006. In this day and age, this data retention policy is common and entirely lawful. Staff points to no authority prohibiting this manner of document retention. The accuracy of the pipelines' electronically produced invoices was validated

Staff has utterly failed to produce any evidence of any destruction of documents.

5. Again, Mr. Lodholz' affidavit is properly sworn testimony despite its omission of a date. *See Baskowitz v. Guthrie*, 73 S.W. 227, 228 (Mo.App. 1903); *see also Cook v. Delucia*, 62 S.W.3d 97 (Mo.App. 2001). Accordingly, the affidavit should remain in evidence in GC-2006-0491 and be given the appropriate weight as determined by the Commission in its final ruling.

WHEREFORE, Respondents respectfully request that the Commission deny Staff's Motion for Reconsideration.

Respectfully submitted,

LATHROP & GAGE, L.C.

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### *Attorneys for Respondents*

Dated: January 10, 2007

## **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Respondents' Response Regarding Staff's Request for Reconsideration has been transmitted by e-mail or mailed, First Class, postage prepaid, this 10th day of January, 2007, to:

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

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