

**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; Omega	)	
Pipeline Company, LLC; Mogas Energy,	)	
LLC; United Pipeline Systems, Inc; and	)	
Gateway Pipeline Company, LLC,	)	
	)	
Respondents.	)	

**RESPONDENTS' SUGGESTIONS IN SUPPORT OF THEIR  
MOTION TO ESTABLISH A PROCEDURAL SCHEDULE**

COME NOW Respondents to the above-captioned matter and provide suggestions in support of their Motion to Establish a Procedural Schedule (hereafter "Motion") in accordance with this Commission's June 16, 2006, Order Directing Parties to File a Proposed Procedural Schedule (hereafter "Order"). Respondents concur with Staff's procedural schedule in part, but propose a more reasonable time frame in which to prepare their rebuttal testimony. Respondents offer the following suggestions in support of their proposed procedural schedule:

Staff proposes to file its direct testimony on October 24, 2006. Respondents do not object with this aspect of Staff's proposed procedural schedule. Likewise, Respondents do not object to the length of time between most of the phases of this matter, with the exception of the short length of time Staff is proposing to give Respondents to prepare and file rebuttal testimony. Staff's proposal allows Respondents only thirty six (36) days, including the Thanksgiving holiday, to prepare and file their rebuttal testimony. This brief time frame is unrealistic and unfair.

Respondents request that this Commission allow a more reasonable time period to allow Respondents to prepare and file their rebuttal testimony. Respondents request that they be allowed 120 days after the filing of the Staff's direct testimony to issue their own discovery requests, take depositions, and any other appropriate discovery of Staff's witnesses, retain appropriate experts to respond to Staff's direct testimony, and prepare and file written rebuttal testimony. Since Respondents employ approximately ten (10) employees, including field personnel, retaining third party experts will be necessary to review all available information before responding to Staff's testimony.

Based on the content of Staff's March 31, 2006, Complaint, Respondents must prepare as much as if they were initiating a rate case to respond to the allegations in the Complaint to demonstrate that (i) their earnings are not excessive, (ii) no violation of the affiliate transaction rule has occurred, and (iii) they are charging rates within the scope of their Commission-approved tariff (*see generally* Complaint). However, unlike a typical rate case where a regulated entity can elect when to file a an application for increased rates and therefore has abundant preparation time before filing its testimony, Respondents in this Complaint case can only respond to the specific allegations, some of which will be novel, in Staff's testimony. It is unfair, unreasonable, and a detriment of due process to allow Respondents only 36 days (including the Thanksgiving Holidays) for this purpose.

The nature of the allegations established in Staff's Complaint will require extensive preparation. After receiving Staff's direct testimony, Respondents must conduct discovery, select expert witnesses and prepare written testimony. This cannot be adequately accomplished in 36 days. Staff will have up to 20 days to respond to Respondents' data requests (*see* 4 CSR § 240-2.090(2)). Even if Respondents read the direct testimony and send such data requests within ten (10) days after receiving Staff's testimony and Staff responds within 20 days, the remaining

six (6) days will not give Respondents sufficient time to work with their expert witnesses to prepare testimony after receiving Staff's responses to discovery requests. Moreover, the limited time to conduct discovery of the witnesses will unfairly limit the quality and detail of Respondents' rebuttal by virtue of the sheer lack of time. By comparison, Staff will have had over seven (7) months since it received the voluntary financial information from Respondents and since the Complaint was filed on March 31, 2006, to prepare its direct testimony. For three (3) to four (4) of those months, Staff will have also had the additional information provided by Respondents in response to Staff's numerous data and discovery requests. Respondents request the same benefit. Due process affords Respondents a reasonable time frame to prepare their case in response to Staff's arguments. Thirty six (36) days is not a reasonable time frame.

Staff may contend that Respondents should have been preparing their case since the inception of the Complaint in March 2006. While working with a small staff just to keep up with the need to produce information in response to Staff's discovery requests, Respondents are preparing to the best of their ability. However, since Staff has the burden of proof in this matter, Respondents cannot fully prepare to respond to allegations or facts not yet revealed in testimony (*see State ex rel. Rice v. Public Service Commission*, 220 S.W.2d 61, 359 Mo. 109 (1949)). The purpose of rebuttal testimony is to respond to specific allegations upon which Staff will attempt to use to meet this burden. Reviewing the Complaint and responding to Staff's specific testimony are simply not the same. In their rebuttal testimony, Respondents will be required to respond specifically to the Staff's direct testimony, not just Staff's Complaint or March 2006 Audit Report. Moreover, Staff has indicated it will be including additional allegations in its direct testimony not included in its original Complaint (*see Complaint at 5*). Staff's positions or factual assertions may further change based on the plethora of discovery it is now conducting.

These facts make it impossible for Respondents to adequately prepare an effective rebuttal in advance of Staff's direct testimony.

Finally, some of Staff's allegations appear to be those of first impression before this Commission, such as whether flow through entities should be allowed to include income taxes as part of its cost of service. Until Respondents review Staff's specific testimony, with specific facts and law applied to those facts, Respondents have no basis upon which to reply to those arguments. To force Respondents to prepare their rebuttal based on speculation of what Staff will put forward in its testimony is unreasonable and simply unfair. Accordingly, Respondents request a reasonable time frame of more than thirty-six (36) days to conduct discovery and prepare rebuttal testimony specific to Staff's direct testimony.

WHEREFORE, Respondents respectfully request that the Commission adopt the foregoing procedural schedule in this matter.

Respectfully submitted,

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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 22nd day of June, 2006, to:

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

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