

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

The Staff of the Missouri Public)	
Service Commission,)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0491
)	
Missouri Pipeline Company, LLC; and)	
Missouri Gas Company, LLC,)	
)	
Respondents.)	

**MOTION SEEKING COMMISSION ORDER
REQUIRING RESPONDENTS TO COMPLY
WITH PROTECTIVE ORDER AND
MOTION FOR EXPEDITED TREATMENT**

COMES NOW, the Municipal Gas Commission of Missouri (“MGCM”), pursuant to 4 CSR 240-2.080(16) of the Commission’s Rules of Practice and Procedure, as well as Section (I) of the Commission’s June 22, 2006 Protective Order in the above-captioned proceeding, and for its Motion Seeking Commission Order Requiring Respondents To Comply With Protective Order and Motion For Expedited Treatment, respectfully states as follows:

1. On June 22, 2006, the Commission issued its Order Establishing Protective Order in the above captioned proceeding. In general, that Protective Order is designed to comply with the public policy of the state as expressed in Section 610 RSMo. Specifically, Section 610.011.1 provides that “[i]t is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law.” (emphasis added).

2. Along these lines, the Commission's Protective Order contains a presumption that information should be public unless it can be shown to fall within specific categories of information that are permitted to be protected as either Highly Confidential or Proprietary. Moreover, the Protective Order provides for a party to claim either Highly Confidential or Proprietary treatment for prefiled testimony. That said, however, the party claiming the confidential treatment is required to file a pleading designating the basis for treating such information as confidential. Section I of the Protective Order provides:

Within five days of the filing of designated testimony, the party asserting the claim shall file with the Commission the specific ground or grounds for each claim. Such filing shall show the nature of the information sought to be protected and specifically state the alleged harm of disclosure. Such filing shall be filed under seal only if it contains either PROPRIETARY or HIGHLY CONFIDENTIAL information and shall be served upon all attorneys of record. (emphasis added).

3. On September 6, 2006, the Staff filed its Direct Testimony which contained information which had been designated as Highly Confidential by the Respondents. To date, approximately sixty (60) days following the filing of Staff's testimony, the Respondents have failed to make the required showing for keeping the information contained in Staff's testimony either Proprietary or Highly Confidential. The Respondents' failure is in direct violation of the Commission's Protective Order as well as the public policy of the state as expressed in Chapter 610 RSMo.

4. Further still, on October 6, 2006, the Respondents filed their Rebuttal Testimony which contained information that had been designated as Highly Confidential. To date, approximately thirty (30) days following the filing of Respondents' testimony, the Respondents have failed to make the required showing for keeping the information

contained in Respondents' testimony either Proprietary or Highly Confidential. The Respondents' failure is in direct violation of the Commission's Protective Order as well as the public policy of the state as expressed in Chapter 610 RSMo.

5. Respondents' failure to comply with the Commission's Protective Order is all the more remarkable given Respondents' reliance on the Protective Order in arguing that highly confidential information was improperly disclosed. It seems particularly interesting that Respondents deem it appropriate to unilaterally pick and choose which provisions of the Protective Order it believes should be complied with and enforced. Clearly, the Respondents are familiar with the Protective Order and should be required to comply with that Protective Order, not only the provisions that provide it the benefit of keeping information secret from the public, but also the provisions which requires them to justify such secret information.

6. MGCM seeks expedited treatment of the above captioned Motion under 4 CSR 240-2.080(16). Specifically, MGCM asks that the Commission require the Respondents to respond to the Motion Requiring Respondents to Comply With Protective Order no later than close of business on November 6, 2006. By responding by such date, the Commission will be able to address Respondents' failure to comply with the Protective Order in its next scheduled agenda session on November 7, 2006.

7. The harm associated with Respondents' failure to comply with the Protective Order is abundantly clear. Where Respondents' classification of information as Highly Confidential previously denied such information only to the general public; as a result of the Commission's November 3, 2006 Order Granting Respondents' Motion To Strike Testimony, other parties' experts are now denied the opportunity to review such

information and provide full and complete presentation of their case. In essence, the Respondents' inappropriate use of the highly confidential designation has served to limit MGCM's ability to present its case and respond to the allegations contained in this proceeding. This harm undermines the Commission's proceeding and results in denial of MGCM's due process rights.

8. The immediate Motion For Expedited Treatment was filed as soon as possible. As mentioned in the immediately preceding paragraph, until the Commission's November 3, 2006 Order Granting Respondents' Motion To Strike Testimony, MGCM experts had access to highly confidential information. While the Respondents' misclassification of information violated the fundamental policy of this state as expressed in Chapter 610, it did not significantly harm MGCM. As a result of the Commission's November 3, 2006 Order, however, MGCM is now harmed by the Respondents' misclassification of information. As such, given that this Motion is being filed on the same date as the issuance of the Commission's Order, it is apparent that expedited treatment is being sought as soon as practical. Therefore, relief under 4 CSR 240-2.080(16) is appropriate.

WHEREFORE, the Municipal Gas Commission of Missouri respectfully requests that the Commission: (1) issue its Order granting expedited treatment and requiring Respondents to respond to this Motion by November 6, 2006; and (2) issue its Order requiring Respondents to comply with Section I of the Commission's June 22, 2006 Order Establishing Protective Order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall". The signature is written in a cursive, flowing style. It is positioned above a horizontal line that spans the width of the text block below it.

David L. Woodsmall (MBE #40747)
Stuart W. Conrad (MBE #23966)
FINNEGAN, CONRAD & PETERSON, L.C.
428 East Capitol Avenue, Suite 300
Jefferson City, MO 65102-0148
Voice: 573-635-2700
Fax: 573-635-6998
Email: dwoodsmall@fcplaw.com
stucon@fcplaw.com

AND

Duncan E. Kincheloe (MBE #25497)
Missouri Public Utility Alliance
2407 West Ash Street
Columbia, Missouri 65203
Voice: (573) 445-3279
Fax: (573) 445-0680
Email: dkincheloe@mpua.org

**Attorneys for the Municipal Gas
Commission of Missouri**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the forgoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is written over a horizontal line. A vertical red line is positioned to the right of the signature.

David L. Woodsmall

Dated: November 3, 2006