

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

<b>Staff of the Missouri Public Service Commission,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. GC-2006-0378</b>
	)	
<b>Missouri Pipeline Company, LLC; Missouri Gas Company, LLC; Omega Pipeline Company, LLC; Mogas Energy, LLC; United Pipeline Systems, Inc.; and Gateway Pipeline Company, LLC,</b>	)	
	)	
<b>Respondents.</b>	)	

**AMERENUE’S RESPONSE TO ORDER DIRECTING FILING**

COMES NOW Intervenor, AmerenUE, and in response to the June 6, 2007 Commission Order Directing the Parties to Explain the Effect of FERC Order, offers the following:

1. On April 20, 2007 (Order Date), the Federal Energy Regulatory Commission (FERC) entered its Order Denying Motions, Issuing Certificates, Authorizing Abandonment and Terminating Proceeding, in Dockets CP06-407-000, CP06-408-000, CP06-409-000 and RP06-274-000 (Order). In the Order FERC determined that in the event of the mergers of Missouri Interstate Gas, LLC (MIG), an interstate natural gas pipeline, into Missouri Pipeline Company LLC (MPC)<sup>1</sup>, and of MPC into Missouri Gas Company LLC (MGC)<sup>2</sup>, then the MGC facilities would be used to transport natural gas in interstate commerce and would become subject to the Natural Gas Act and the jurisdiction of the FERC.<sup>3</sup> The FERC put these conditions into effect

---

<sup>1</sup> MPC was then a Hinshaw pipeline subject to the jurisdiction of the Commission. Order at ¶1 and ¶2.

<sup>2</sup> MGC was then a Hinshaw pipeline subject to the jurisdiction of the Commission. Order at ¶1 and ¶2.

<sup>3</sup> Order at ¶42.

by issuing to MIG, MPC and MGC certificates of public convenience and necessity and granting authority to abandon and transfer certain facilities, as described in the Order.<sup>4</sup>

2. Because the FERC did not specify otherwise, the FERC's Order, and the FERC's jurisdiction over MPC and MGC, took effect on the Order Date<sup>5</sup>, and the Order has no retroactive effect<sup>6</sup>.

3. The exclusive, *prospective* jurisdiction of the FERC over an interstate pipeline as determined by the FERC in its order finding jurisdiction and issuing a certificate of public convenience and necessity does not strip the Commission of its jurisdiction over the pipeline as to acts occurring when the pipeline was a Hinshaw pipeline not subject to FERC jurisdiction. This is consistent with the purposes of the Natural Gas Act and the separate jurisdictions it creates, as enunciated in *Public Utilities Comm. v. United Fuel Gas Co.*, 317 U. S. 456, 467 (1943):

The Federal Power Commission [now FERC] would exercise jurisdiction over matters in interstate and foreign commerce, to the extent defined in the Act, and *local matters would be left to the state regulatory bodies*. Congress contemplated a harmonious, dual system of regulation of the natural gas industry -- federal and state regulatory bodies operating side by side, each active in its own sphere...The power to fix rates for natural gas transported and sold in interstate commerce has been entrusted solely to the Federal Power Commission [now FERC]. It does not follow, of course, that the Act bars a state commission, in the appropriate exercise of its jurisdiction, from compelling the production of evidence relevant to the proceeding before it.

4. The Commission's jurisdiction over MPC and MGC as to acts occurring and matters pending while the same were Hinshaw pipelines subject to the jurisdiction of the

---

<sup>4</sup> Order at ¶103, and ¶¶(A) through (G), pp 39-40, authorizing the mergers, certain abandonment and transfer of facilities, and issuing certificates of public convenience and necessity to Missouri Pipeline and Missouri Gas.

<sup>5</sup> 18 C.F.R §385.2007(c). Effective date of Commission rules or orders. (1) Unless otherwise ordered by the Commission, rules or orders are effective on the date of issuance.

<sup>6</sup> See *DorchesterGas Producing Company v. FERC* 848 F.2d 634, 636-37 (5<sup>th</sup> Cir. Ct. App. 1988) (jurisdictional determination had no retroactive effect on a party, and the Commission did not err in failing to make determination retroactive, where the Commission applied Rule 2007 of its Rules of Practice and Procedures and the *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) three-prong test—whether decision overrules past precedent, whether retroactivity further's or obstructs operation of the new rule or order, and a balancing of the equities—and found retroactivity would be inequitable).

Commission, and prior to FERC's Order and the Order Date, should continue unaffected by the Order. As to Staff's Complaint Concerning Excessive Earnings; Violation of Affiliate Transaction Rule; Charging Rates Not Authorized by Tariff; and Asserting Jurisdiction Over Gateway Pipeline Company LLC, Omega Pipeline Company LLC, MoGas Energy LLC, and United Pipeline Systems, Inc., LLC (Complaint), filed March 31, 2006, AmerenUE offers that to the extent the relief prayed for relates to historical violations of tariffs or historical violations of Commission regulations, the Commission retains jurisdiction. Notwithstanding, AmerenUE supports Staff's Motion To Dismiss Without Prejudice filed June 19, 2007.

SMITH LEWIS, LLP

/s/ Colly J. Durley

Colly J. Durley, #33800  
111 South Ninth Street, Suite 200  
P.O. Box 918  
Columbia, MO 65205-0918  
(573) 443-3141  
(573) 442-6686 (Facsimile)  
[durley@smithlewis.com](mailto:durley@smithlewis.com)

Attorneys for Union Electric Company d/b/a  
AmerenUE

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing AmerenUE's Response to Order Directing Filing was served to all persons on the official service list in Case No. GC-2006-0378 via electronic filing and electronic mail (e-mail) or via regular mail on this 20<sup>th</sup> day of June, 2007.

/s/ Colly J. Durley

Colly J. Durley