

At a session of the Public Service Commission held at its office in Jefferson City on the 12th day of October, 2006.

Respondents.

On September 20, 2006, the Commission's Staff filed a motion asking the Commission to temporarily suspend the procedural schedule to allow Staff more time to prepare its direct testimony. Staff explained that the suspension was necessary because Staff has been unable to secure the deposition testimony of David J. Ries, president of Missouri Pipeline Company, LLC, and Missouri Gas Company, LLC. Staff indicates until it has an opportunity to obtain this deposition it will be unable to complete its direct testimony. On September 26, Staff filed a separate motion asking the Commission for an order finding

that David J. Ries has failed to comply with a Commission subpoena to take his deposition. Staff asks that the Commission direct it to file in circuit court to enforce that subpoena. Because these two motions from Staff are interrelated around the question of Mr. Ries' deposition, the Commission will address them in a single order.

Missouri Pipeline and Missouri Gas responded to Staff's Motion to Suspend Procedural Schedule on September 27. They responded to Staff's motion to enforce the subpoena on October 4. In both responses, Missouri Pipeline and Missouri Gas deny that Mr. Ries has failed to comply with the Commission's subpoena. They explain that Staff took Mr. Ries' deposition on July 17 and 18, 2006. At that time, Mr. Ries refused to answer questions about the business operations of Omega Pipeline Company, LLC, a former affiliate of Missouri Pipeline and Missouri Gas, of which Mr. Ries was also president. Missouri Pipeline and Missouri Gas indicate that Mr. Ries is now willing to answer questions about Omega. A deposition for that purpose was scheduled for August 28 and 29. However, before Mr. Ries could be questioned, he was called away to deal with a family emergency. Mr. Ries was unable to give a deposition for several weeks due to the family emergency, but Missouri Pipeline and Missouri Gas now claim that they will make Mr. Ries available to be deposed by Staff during the week of October 16. On October 11, Missouri Pipeline and Missouri Gas filed a further response specifying that Mr. Ries may be deposed on October 17, 2006, at 9:00 a.m. at the Commission's offices in St. Louis.

Missouri Pipeline and Missouri Gas argue that Mr. Ries has not refused to comply with the Commission's subpoena and that therefore there is no need for Staff to proceed to circuit court to enforce that subpoena. They also indicate that they do not object to Staff's request for more time to file its direct testimony. However, Missouri Pipeline and Missouri

Gas ask that if Staff is given more time to file its direct testimony, they be allowed until January 15, 2007, to file their rebuttal testimony.

At the direction of the Commission, Staff filed a pleading on October 10, confirming that Missouri Pipeline and Missouri Gas have offered to make Mr. Ries available for a deposition. However, Staff continues to fear that Mr. Ries will not actually appear, produce all of the documents listed in the subpoena, or answer questions. Staff renewed its request that the Commission directly order Mr. Ries to appear for his deposition and produce all requested documents, or that it be authorized to proceed to circuit court to enforce the Commission's subpoena.

Section 386.420.2, RSMo 2000, specifically authorizes the Commission, any commissioner, or any party in any hearing before the Commission to take the deposition of a witness, "in the manner prescribed by law for like depositions in civil actions in the circuit courts of this state." That statute also authorizes the Commission to compel the attendance of witnesses and the production of documents. Section 386.440, RSMo 2000, prescribes how such subpoenas are to be issued.

The Commission has issued a subpoena, in proper form, directing Mr. Ries to appear for a deposition. During his initial deposition, Mr. Ries refused to answer questions about the business affairs of Omega Pipeline. Missouri Pipeline and Missouri Gas now offer assurances that he will answer questions about Omega Pipeline at a second deposition, a deposition that has not yet been firmly scheduled. Staff believes that this situation constitutes a failure by Mr. Ries to comply with the Commission's subpoena.

Staff suggests that the Commission issue a specific order requiring Mr. Ries to appear for his deposition, produce documents, and answer Staff's questions. The

Commission does not believe that such an order would be necessary or useful. An unchallenged subpoena requiring everything Staff asks for has already been issued. A new order could add nothing to what is already ordered in that subpoena. What, then, is to be done if the Commission's order, in the form of a subpoena, is not obeyed?

The Commission has a regulation regarding subpoenas issued by the Commission. 4 CSR 240-2.100.5 sets forth what may happen if someone fails to comply with a Commission subpoena. That section provides:

If there is a failure to comply with a subpoena or a subpoena *duces tecum* after objection or a motion to quash have been determined by the commission, the commission by its counsel or the party seeking enforcement may apply to a judge of the circuit court . . . for an order enforcing the subpoena or subpoena *duces tecum*.

Neither Mr. Ries, Missouri Pipeline, nor Missouri Gas have raised an objection, or filed a motion to quash the subpoena. Therefore, there is nothing that the Commission must determine before Staff, under the provisions of the regulation, may seek enforcement in the circuit court.

In other words, in filing a motion asking the Commission for authority to enforce its subpoena in circuit court, Staff is seeking authority to take an action that the regulation authorizes it to take without any further order of the Commission. If Staff believes that it needs to go to circuit court to enforce the Commission's subpoena, it is free to do so at any time.¹

¹ The Commission has the authority to enforce its subpoena without resort to the circuit court. Section 536.073.2 grants an administrative agency the authority to "enforce discovery by the same methods, terms and conditions as provided by supreme court rule in civil actions in the circuit court." The statute however provides that agency discovery orders cannot hold a person in contempt except by seeking enforcement by application to the circuit court. The Supreme Court's rule regarding the imposition of sanctions for discovery violations is Civil Rule 61.01.

The Commission must also take up Staff's motion to suspend the procedural schedule. This matter is set for two weeks of hearing beginning on February 26, 2007. Given the crowded state of the Commission's hearing calendar, any change in those hearing dates would necessitate a lengthy delay of the resolution of this case. Fortunately, assuming that the deposition of Mr. Ries takes place on October 17, it is possible to reconfigure the procedural schedule to give Staff the two weeks it requests after deposing Mr. Ries to file its direct testimony, while preserving the existing hearing dates. If the deposition does not take place on October 17, Staff may request a further modification of the procedural schedule.

IT IS ORDERED THAT:

1. Staff is authorized by 4 CSR 240-2.100(5) to apply to a judge of the circuit court for an order enforcing the Commission's subpoena duces tecum directed to David J. Ries.
2. The procedural schedule previously adopted for this case is modified as follows:

Direct Testimony by Staff	- November 1, 2006
Rebuttal Testimony by Respondents, and Intervenors	- January 8, 2007
Prehearing Conference	- January 12, 2007 1:00 p.m., Room 305
Surrebuttal Testimony by Staff Cross-Surrebuttal by Respondents and Intervenors	- January 29, 2007
Issues List, Order of Issues, Order of Witnesses, and Order of Cross	- February 16, 2007

**Prehearing Briefs and Statements of
Position**

- **February 21, 2007**

Hearing

- **February 26 through
March 9, 2007, beginning
at 8:30 a.m.**

3. This order shall become effective on October 12, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw and Appling, CC., concur
Clayton, C., absent

Woodruff, Deputy Chief Regulatory Law Judge