

The Staff of the Missouri Public
Service Commission,

Complainant,

v.

Missouri Pipeline Company, LLC,
and Missouri Gas Company, LLC,

Respondent.

Case No. GC-2006-0491

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

I must dissent from the majority's decision to adopt this Report and Order. In my opinion, the majority of the Commission engaged in a highly unusual procedural practice that removed fairness from the process and may have violated principles of due process.

Following the completion of the evidentiary hearing and submission of briefs, the Commission discussed the case in Agenda. During that Agenda meeting, the majority of the Commissioners indicated that they did not have the necessary information to move forward and requested an on-the-record presentation so that they could obtain more information. At the time, I stated my concern that such a presentation would establish a bad precedent and may create grounds for appeal.

The requested presentation occurred on July 10, 2007 and was nothing more than an opportunity for Staff to bolster a weak case. At that presentation,

the attorneys for Staff and intervenors made numerous assertions and basically testified, all of which was not subject to cross-examination. Mr. Brown, Counsel for Respondents, summarized the on-the-record presentation best in his opening statement: "Much of the Staff's argument in this case today was speculation about the meaning of exhibits where there's actual sworn testimony on the same topics. We've got attorneys who admit they haven't read the record in the case speculating about what various exhibits mean when there is actual sworn testimony in the case about those same topics."

Following the on-the-record presentation, a majority of the Commission found a violation in regard to Counts I, III and IV. Clearly some information or inference not existing previously has swayed a majority of the Commission to adopt the Report and Order.

I believe the Commission should decide cases from the established record, rather than attempt to strengthen a weak case after the evidentiary hearing has concluded and briefs have been submitted. If a proceeding such as the one in this case is not technically a violation of due process, it certainly gives the appearance that the Commission is more interested in obtaining a desired result than in being an impartial administrative tribunal.

Furthermore, the Commission has erred in disclosing some information in the Report and Order adopted today that was previously designated as confidential. The disclosure of the identity of customers served by Omega while it was operating as an affiliated marketing company, that are not in the public record, does not serve a governmental interest and sets a dangerous

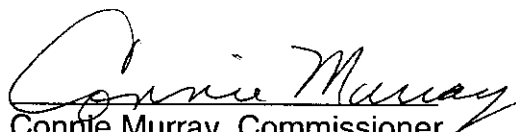
Commission precedent of disclosing confidential information of regulated entities at our whim.

On June 22, 2006, the Commission issued a Protective Order at the request of Staff. The Commission at that time found legal justification in protecting the confidential information to be presented in the course of the case. Until the Report and Order, all information considered confidential in this case has been protected from disclosure to the public by means of in-camera proceedings and closed filings.

Following the Commission's August 7, 2007 Order regarding disclosure of the confidential information, Omega correctly pointed out in its August 13, 2007 letter to Judge Woodruff "there is [not] a compelling reason to disclose this information because it would not appear to be relevant to the question of what Omega was paying MPC/MGC for natural gas transportation service." Staff in its Response, agrees that "actual names of the customers may not be particularly relevant to the issue. The letters A, B, and C were used during portions of the hearing to distinguish the customers that had been designated by MPC/MGC as highly confidential. This approach would still provide enough detail for the public to differentiate between the customers without disclosing the actual names."

For these reasons, I do not support today's vote to adopt the Report and Order.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri
on this 28th day of August 2007.