

At a session of the Public Service Commission held at its office in Jefferson City on the 8th day of August, 2006.

Respondents.

**ORDER DENYING STAFF'S MOTION FOR ORDER TO SHOW CAUSE,
ENFORCE SUBPOENA AND COMPEL ANSWERS TO DEPOSITION
QUESTIONS AND ORDER SCHEDULING A DISCOVERY
CONFERENCE**

Effective Date: August 8, 2006

On March 31, 2006, the Commission's Staff filed a complaint against Missouri Pipeline Company, LLC; Missouri Gas Company, LLC; Omega Pipeline Company, LLC; Mogas Energy, LLC; United Pipeline Systems, Inc.; and Gateway Pipeline Company, LLC. Staff's complaint alleged that the first two Respondents – Missouri Pipeline and Missouri Gas – are over-earning and asked that the Commission reduce the rates they are allowed to charge their customers. Staff's complaint also alleged that the other named respondent companies – Omega, Mogas Energy, United Pipeline System, and Gateway Pipeline – are

affiliated with Missouri Pipeline and Missouri Gas. Staff contended that the books, records, and operations of those affiliated companies are so intermingled as to make all of the respondent companies gas corporations, and thus, public utilities, subject to the Commission's regulatory authority.

On April 26, Omega, acting separately from the other Respondents, filed a motion asking the Commission to dismiss it from Staff's complaint. In an order issued on May 16, the Commission found that Staff's complaint failed to state a claim against Omega. The Commission dismissed Omega as a party but refused to block Staff's efforts to discover information from Omega. Staff's complaint against the other Respondents has proceeded.

On August 1, Staff filed a pleading entitled *Motion for an Order to Show Cause Why the Commission Should Not Assert Jurisdiction over Omega, Motion for Enforcement of Subpoena and Motion to Compel Answers to Deposition Questions, and Motion for Expedited Treatment*. In the first part of its motion, Staff asserts that the Commission dismissed Omega from this complaint in May because the Commission was led to believe that Omega provided natural gas only on the federal enclave of Fort Leonard Wood and was, therefore, not subject to regulation by this Commission. Staff now claims that it has discovered evidence showing that Omega also serves other customers and on that basis should be subject to regulation by this Commission.

Staff could have asked for leave to amend its complaint to raise the new allegations against Omega, and to once again add Omega as a party to its complaint. But instead, Staff asks the Commission to:

order Omega and David Ries to show cause why Omega should not be regulated by the PSC as a gas corporation and further, explain its lack of disclosure to the Commission regarding its provision of natural gas services outside of the federal enclave at Fort Leonard Wood, and describe how it

serves those other customers without gas plant or billing or payroll records, no contracts, invoices, or other personal property.¹

Staff also indicates that Omega was sold to a new owner, Tortoise Capital Advisors, LLC, effective July 1, 2006. Staff suggests that Tortoise Capital Advisors should be made a party to this complaint and should be “required to answer to the Commission in this matter.” Finally, Staff asks that the Commission set a hearing on an order to show cause on or before August 15.

In other words, Staff now claims that, without presenting any evidence, aside from some invoices attached to its motion, it has proved that Omega is subject to Commission regulation as a public utility.² Staff suggests that the burden has now shifted to Omega and its new owners to prove that it is not a public utility. What is more, Staff suggests that Omega be required to prove its claim at a hearing to be conducted with nearly no prior notice. Staff presents no precedent or other authority for the Commission to conduct such a proceeding and the Commission is not aware of any such authority. Staff’s motion for an “Order to Show Cause” must be denied.

The second part of Staff’s motion indicates that Staff is having difficulties in obtaining discovery from Omega’s current owners, as well as from David Ries, the former president of that company. Staff asks the Commission to compel Omega’s current owners to comply with a subpoena duces tecum and to compel David Ries to answer questions related to Omega that were put to him at his deposition.

The Commission has a rule governing discovery disputes such as those described by Staff. That rule, 4 CSR 240-2.090(8), states that the Commission will not entertain any

¹ Page 4 of Staff’s Motion.

² See, Paragraph 9 of Staff’s Motion.

discovery motions until counsel for the moving party has conferred with counsel for the opposing party regarding the dispute. If the conference between counsels does not resolve the dispute, then the counsel for the moving party must confer with the presiding officer and opposing counsel before filing a discovery motion with the Commission.

Staff's motion states that its counsel has conferred with counsel for Omega, but acknowledges that no conference with the presiding officer has been requested. Instead, Staff asks the Commission to waive that requirement, while offering no reason why that requirement should be waived.

The Commission has a rule requiring discovery dispute conferences for a reason. Experience has shown that bringing the parties together to discuss a discovery dispute can lead to agreements that will avoid the need for a formal order from the Commission. Such an agreement can result in the completion of discovery much sooner than if a formal order from the Commission is required. The Commission is not willing to waive the application of this rule. As a result, Staff's motion to compel discovery is premature and will be denied.

Instead, the Commission will schedule an informal discovery conference with the presiding officer to take place on August 11, at 2:00 p.m. Counsel for David Ries, counsel for Staff, and counsel for Omega will be directed to appear at the conference. Because of the large number of people involved, this conference will be held in Room 305 at the Commission's offices. This will be an informal conference and will not be on the record.

IT IS ORDERED THAT:

1. Staff's Motion for an Order to Show Cause Why the Commission Should Not Assert Jurisdiction Over Omega, Motion for Enforcement of Subpoena and Motion to Compel Answers to Deposition Questions, and Motion for Expedited Treatment is denied.

2. Counsel for David Ries, counsel for Staff, and counsel for Omega Pipeline Company are directed to appear at an informal discovery conference with the presiding officer to take place on August 11, 2006, at 2:00 p.m. This conference will be held in Room 305 at the Commission's offices in Jefferson City, Missouri.

3. This order shall become effective on August 8, 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, Clayton and Appling, CC., concur
Woodruff, Deputy Chief Regulatory Law Judge