

At a session of the Public Service Commission held at its office in Jefferson City on the 18th day of May, 2006.

Respondents.

On March 10, 2006, the Commission's Staff filed a motion asking the Commission to compel Missouri Pipeline Company, LLC; Missouri Gas Company, LLC; Omega Pipeline Company, LLC; Mogas Energy, LLC; United Pipeline Systems, Inc.; and Gateway Pipeline Company, LLC, to comply with the discovery demand of Staff. Specifically, Staff asks that the Respondents be required to produce specified documents for Staff's review no later than May 19, produce David Lodholz for deposition on May 23 and 24, and produce David Ries for deposition on May 24, 25, and 26. Staff also asks the Commission to rule on its motion to compel by May 18.

Because of Staff's request for expedited treatment, the Commission directed the Respondents to respond to Staff's motion to compel by May 15. Missouri Pipeline, Missouri Gas, Mogas Energy, United Pipeline Systems, and Gateway Pipeline filed their response on May 15. Omega filed a separate response on the same date.

Staff's motion to compel indicates that it initially served a subpoena duces tecum on the Respondents in January 2006. Staff contends that since that time proposed dates for the taking of depositions have been rescheduled multiple times at the request of the Respondents. Most recently, Staff indicates that on April 25 it re-noticed the depositions for May 3, 4, and 10. Omega filed a motion to quash the Staff's subpoenas on April 26, and the other Respondents filed a separate motion to quash the subpoenas on May 2. All Respondents refused to comply with Staff's subpoenas and the depositions have not yet been conducted. On May 16, the Commission denied both motions to quash.

Staff's motion to compel asks the Commission to require each of the Respondents to comply with the subpoenas at the times demanded by Staff. In their response to that motion, the Respondents argue that the imposition of sanctions would not be appropriate under Supreme Court Rule 61 because they filed motions to quash the subpoenas before the scheduled deposition date. Furthermore, they contend that Staff has failed to comply with Commission Rule 4 CSR 240-2.090(8), which requires counsel for the moving party to confer, or attempt to confer, with the opposing party regarding a discovery dispute before the Commission will issue an order to compel discovery. The Respondents contend that they are willing to discuss all issues with Staff in an attempt to work out their disagreements.

Staff's motion to compel does not formally request that the Commission impose sanctions against the Respondents, so no discussion of Supreme Court Rule 61 is necessary. However, the Respondents' contention that Staff has failed to comply with the informal dispute resolution requirements of 4 CSR 240-2.090(8) merits further consideration.

Staff concedes in its motion that it has not complied with 4 CSR 240.2.090(8) and instead asks the Commission to waive application of that rule. Essentially, Staff argues that the parties are set in their disagreements and that a conference would be fruitless.¹ The Commission is not willing to accept that argument. All parties will likely benefit from further discussions that may lead to a more amicable and more productive resolution of these discovery disputes than would result from simply granting Staff's motion to compel.

In addition, this complaint case is now broader than a simple discovery dispute between Staff and the Respondents. Other parties have been allowed to intervene in this case and they may also have an interest in obtaining discovery from the Respondents. Allowing Staff to proceed with discovery at this point would limit the opportunity of the other parties to participate, and might require the Respondents' witnesses to be deposed a second time. As a result, maximum efficiency can best be obtained by developing a discovery schedule that will apply to all discovery to and from the various parties.

In order to develop such a discovery schedule, as well as a procedural schedule that will lead to a hearing and final resolution of this complaint, the Commission will schedule a

¹ As support for its contention that further discussion would be pointless, Staff incorrectly claims that all Respondents except Omega are in default because they failed to file an answer or other response to Staff's complaint by May 4. In fact, in an order denying request for mediation, issued on April 25, the Commission extended the deadline for the Respondents to answer Staff's complaint to May 11. All the Respondents have now filed answers and are not in default.

prehearing conference. The Commission will decline to compel discovery until after that conference.

IT IS ORDERED THAT:

1. Staff's Motion to Compel Discovery is denied.
2. A prehearing conference will be held on June 6, 2006, at 9:00 a.m., at the Commission's office at the Governor Office Building, Room 305, 200 Madison Street, Jefferson City, Missouri. This building meets accessibility standards required by the Americans with Disabilities Act. If you need additional accommodations to participate in this conference, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or Relay Missouri at 711 before the conference.
3. This order shall become effective on May 18, 2006.

BY THE COMMISSION



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