

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

Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0378
)	
Missouri Pipeline Company, LLC and Missouri Gas Company, LLC, et al.)	
)	
)	
Respondents.)	

**MOTION FOR ORDER DETERMINING RESPONDENTS HAVE FAILED TO
COMPLY WITH COMMISSION SUBPOENA AND ORDER DIRECTING STAFF
TO FILE IN CIRCUIT COURT TO ENFORCE SUBPOENA**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and respectfully requests the Commission enter its order determining that David J. Ries, President of Missouri Pipeline Company (MPC) and Missouri Gas Company (MGC) has failed to comply with this Commission’s subpoena and directing Staff to proceed under section 386.460 to enforce the subpoena. In support Staff states:

1. MPC and MGC are gas corporations, as defined by §386.020(18),¹ that provide natural gas transportation service to customers in Missouri under tariffs approved by the Missouri Public Service commission (Commission). MPC and MGC are therefore public utilities as defined by § 386.020 and are subject to the jurisdiction of the Commission, pursuant to § 386.250 and § 393.140.

2. Mr. David J. Ries is the President of MPC and MGC and the past President of Omega Pipeline Company.

¹ All statutory references are to RSMo (2000) and the Cumulative Supplement (2005), unless otherwise indicated.

3. The Commission is specifically authorized by statute to issue subpoenas. Section 386.410.1, RSMo 2000. Pursuant to this authority, the Commission has promulgated its Rule 4 CSR 240-2.090.1, relating to discovery and subpoenas:

4 CSR 240-2.100 Subpoenas

(1) A request for a subpoena or a subpoena *duces tecum* requiring a person to appear and testify at the taking of a deposition or at a hearing, or for production of documents or records shall be filed on the form provided by the commission and shall be directed to the secretary of the commission. A request for a subpoena *duces tecum* shall specify the particular document or record to be produced, and shall state the reasons why the production is believed to be material and relevant.

(3) Objections to a subpoena or subpoena *duces tecum* or motions to quash a subpoena or subpoena *duces tecum* shall be made within ten (10) days from the date the subpoena or subpoena *duces tecum* is served.

(4) Subpoenas or subpoenas *duces tecum* shall be signed and issued by the secretary of the commission, a commissioner or by a law judge pursuant to statutory delegation authority. The name and address of the witness shall be inserted in the original subpoena or subpoena *duces tecum* and a copy of the return shall be filed with the secretary of the commission. Subpoenas or subpoenas *duces tecum* shall show at whose instance the subpoena or subpoena *duces tecum* is issued.

(5) If there is a failure to comply with a subpoena or a subpoena *duces tecum* after objections 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 of the county in which, the hearing has been held, is being held, or is scheduled to be held, or where the witness resides or may be found, for an order enforcing the subpoena or subpoena *duces tecum*. (Emphasis added.)

4. On March 23, 2006, Staff served the initial subpoenas for MPC, MGC, and Omega on Mr. Ries personally.

5. On July 17 and 18, 2006, counsel for the Staff of the Commission took a deposition of David J. Ries, President of MPC and MGC at the Commission's St. Louis

office. Mr. Ries was also the past President of Omega Pipeline Company, an affiliate of MPC and MGC, during the period of time under investigation by the Staff.

6. Due to Mr. Ries' past position with Omega, and his present executive position with MPC and MGC, he holds significant and exclusive knowledge of the Company's business activities that is relevant and admissible in this complaint proceeding.

7. At the aforementioned deposition, Mr. Ries refused, without any objection by his attorney, claiming no recognized privilege, and without just cause, to answer questions about Omega's business activities as they relate to MGC and MPC.

8. Although Staff does not think that the Commission's rules are completely clear that a discovery conference is required before Staff may proceed with a motion to the Commission to compel compliance with a subpoena signed by a Commissioner, in this case, signed by Chairman Davis, the Commission scheduled a discovery conference and ordered counsel for Mr. Ries to appear on August 11, 2006, at 2:00 p.m.

9. Despite being the President of MGC and MPC, neither Mr. Ries nor an attorney representing Omega during the time period prior to June 1, 2006, appeared.

Assuming Commission rule 2.090(8) does require a telephone conference with the presiding officer to compel a witness to respond to a subpoena and to answer questions under oath at a deposition, the Staff has complied with that rule by participating in the August 11 discovery conference.

10. On August 21, 2006, counsel scheduled a second deposition of Mr. Ries for August 28, 2006. By agreement, counsel for MPC and MGC, Mr. Paul DeFord accepted service of the subpoena *duces tecum* on August 22, 2006.

- a. Mr. Ries appeared in person but failed to give deposition testimony due to an alleged sudden family emergency.
- b. While Ms. Patty Hawkins and Mr. David Wallen did appear in response to the Commission's subpoenas issued to them, and did respond to the questions asked, both failed to produce the documents as ordered in the subpoenas.
- c. Thereafter, counsel has contacted counsel for MPC and MGC on September 9, September 11, and September 20, and attempted to reschedule the deposition of Mr. Ries without cooperation or success. Counsel continues its efforts to schedule Mr. Ries for deposition.
- d. Without reasonable excuse, Mr. Ries has objected to answering questions at his deposition in violation of Commission Rule 4 CSR 240-2.100(5) and, further, has ignored the command of this Commission to attend his scheduled deposition and produce the requested documents in violation of Section 386.460, which provides a serious penalty for such action:

If a person subpoenaed to appear before the commission or a commissioner fails to obey the command of such subpoena, without reasonable cause, or if a person in attendance upon the commission or a commissioner shall, without a reasonable cause, refuse to be sworn or to be examined, or answer a question, or to produce a book or paper when ordered to do so by the commission or a commissioner, or to subscribe or swear to his deposition after it has been correctly produced in writing, he shall be deemed guilty of a misdemeanor, and be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment, and may be prosecuted therefor in any court of competent jurisdiction; and in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense.

- e. As noted by the Staff in previous filings, delay harms MPC and MGC customers and the respondents in this case should not be allowed to benefit from Mr. Ries' lack of cooperation.
- f. Upon the Commission's issuance of an order determining Respondent's violation of 4 CSR 240-2.100, Staff intends to proceed to Circuit Court in accord with 4 CSR 240-2.100(5) for an order enforcing the subpoena and Staff also intends to present its information to the court concerning Respondent's violation of Section 386.460.

WHEREFORE, the Staff of the Commission respectfully requests that the Commission issue its order determining that Mr. Ries has violated the Commission's rule 4 CSR 240-2.100 and that the Staff may proceed to Circuit Court.

Respectfully submitted,

/s/ Lera L. Shemwell

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed first-class postage prepaid, hand-delivered, transmitted by facsimile or emailed to all counsel of record this 26th day of September 2006.

/s/ Lera L. Shemwell

Lera L. Shemwell