

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

Staff of the Missouri Public Service
Commission,

Complainant,

v.

Missouri Pipeline Company, Missouri
Gas Company, Omega Pipeline Company,
LLC, Mogas Energy LLC, United Pipeline
Systems, Inc. and Gateway Pipeline
Company, LLC,

Respondents.

Case No. GC-2006-0378

**MOTION FOR AN ORDER TO SHOW CAUSE WHY THE COMMISSION
SHOULD NOT ASSERT JURISDICTION OVER OMEGA,
MOTION FOR ENFORCEMENT OF SUBPOENA
AND TO COMPEL ANSWERS TO DEPOSITION QUESTIONS,
AND MOTION FOR EXPEDITED TREATMENT**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and respectfully requests the Commission issue a Show-Cause order directing David Ries, past President of Omega, and Omega Pipeline Company and its successor to appear and show cause why the Commission should not assert jurisdiction over Omega Pipeline Company. Additionally Staff requests that the Commission issue orders compelling Omega and David Ries to comply with discovery obligations, and orders directing the General Counsel to seek circuit court orders compelling Omega and David Ries to respond to subpoenas and deposition questions. Staff also seeks expedited treatment. In support of these requests, Staff states:

I. Motion for Order to Show Cause

1. Staff filed its complaint against Missouri Pipeline Company, LLC (MPC);

Missouri Gas Company, LLC (MGC); United Pipeline Systems, LLC (UPSI); Gateway Pipeline, LLC (Gateway); MogasEnergy, LLC (Mogas) and Omega Pipeline, LLC (Omega) on March 31, 2006.

2. Omega filed a Motion to Dismiss Staff's Complaint on April 26, 2006. The Commission granted Omega's Motion to Dismiss on May 16, 2006 but did not dismiss Omega from discovery obligations.

3. The Commission's decision to dismiss Omega from this case was based on representations that Omega provides gas service only on the grounds of the federal military reservation at Fort Leonard Wood.

4. Through all of Omega's carefully worded pleadings and many criticisms of Staff, Omega intentionally led the Commission to conclude that Omega serves only the "federal enclave" and does not have any other customers

5. In its May 16, 2006 Order Granting Motion to Dismiss Omega Pipeline Company as a Party but Denying Motion to Quash Subpoenas, the Commission concluded that "[i]n its role as a Local Distribution Company, it does not serve any customers aside from the Department of Defense." The Commission's conclusion was based on Omega's misleading pleadings. Even after the Commission issued its May 16 Order, Omega stood silent in the face of the Commission's erroneous conclusions.

6. Omega does serve customers aside from the Department of Defense. Specifically, Staff's investigations of discrepancies in MPC/MGC's data revealed that the**

_____.**and perhaps others, are Omega customers that are not located on the "federal enclave." All of these customers receive gas through

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MPC and/or MGC pipelines.

7. In fact, these customers are billed by Omega and Staff has attached a copy of an Omega bill to each entity identified above to show the inaccuracy of Omega's representations relied upon by the Commission. It is Staff's belief, based on its investigation, that three of the above customers are end-use customers receiving gas service from Omega. See Exhibits A-1 to A-4.

8. Further, Omega contracted for construction of a lateral pipeline for the sole purpose of selling gas to** _____ **a project for which MGC subsequently paid and placed in its rate base. MGC expenditures are paid from a common banking account under MPC's name. A copy of an invoice from Omega to MPC for this construction project is attached. See Exhibits B-1 and B-2.

9. The Staff has met its burden to establish Commission jurisdiction over Omega under Section 393.140(12) by showing that Omega is an affiliate of MPC and MGC and that its affairs are not kept apart and separate from the regulated entities and, further, that it is engaged in the distribution of gas service outside of the federal enclave.

10. Omega has been less than forthright in describing its business operations to the Commission. In fact, Omega is actively trying to prevent the Commission from discovering the true nature of its business operations. Omega's failure to respond to the Commission's subpoena duces tecum and David Ries' refusal to answer deposition questions, described later in this motion, clearly demonstrate Omega's intentions.

11. The Commission should require Omega and its past president, David Ries, to explain, under oath, why it should not be made a party to this case when it apparently provided and continues to provide bundled service to customers off the federal enclave.

12. Staff does **not** assert that the gas plant that Omega owns on the "federal enclave" subjects it to Commission jurisdiction, however, Omega should be required to show why it is not either a gas marketing company or a regulated gas corporation with regard to its other activities.

13. Omega Pipeline Company was sold to Tortoise Capital Advisors, LLC, a foreign corporation, whose registered agent is BSMWL, Inc., 4801 Main Street, Suite 2000, Kansas City, MO 64112, effective July 1, 2006. Tortoise is now the successor in interest to Omega having assumed all rights, responsibilities and duties of Omega. Tortoise should be made a party to this case as the successor to Omega and be required to answer to the Commission in this matter.

Wherefore, 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 these other customers without gas plant or billing or payroll records, no contracts, invoices, or other personal property.

II. Motion to Compel Omega to Respond to the Commission's Subpoena

14. On March 23, 2006, the Commission issued a subpoena duces tecum to Omega Pipeline Company seeking discovery of documents and records pertaining to Omega's business operations.

15. Omega complied with the subpoena only to the extent of supplying records up to the the mid-1990's with information generally related to the installation of gas plant on the Fort and material related only to its contracts with its customers and

board materials regarding its previous owner, MoWood, LLC. Omega has failed to respond meaningfully to all 30 requests, however, the Staff insists that Omega respond to request numbers 9 to 29 in a timely fashion. See Attachment A to the subpoena duces tecum attached hereto as Exhibit C-1.

16. Omega's letter refusing to comply with the Commission's subpoena, attached as Exhibit C-2, denies the existence of information necessary to manage common, everyday business affairs such as customer invoices, general ledgers, payroll information and gas supply contracts.

17. Staff counsel has conferred with counsel for Omega and determined, as stated in counsel for Omega's letter Exhibit C-2, that Omega will produce no additional information required by the Commission's subpoena. Omega asserts that the Commission has limited Staff's discovery to only Omega's contract with the Department of Defense. Such a limitation would defeat the Commission's authority to investigate the serious matters that have come to light outside of that contract. Further requirements under Commission rule 2.090 should be waived.

18. Omega was sold to Tortoise Capital Advisors, LLC, effective July 1, 2006. Tortoise, as the successor in interest to Omega assumes all rights, responsibilities and duties of Omega including responding to the Commission's subpoena duces tecum.

Wherefore, Staff requests that the Commission issue an order waiving further requirements under rule 2.090 and compelling Omega and its successor to fully comply with the subpoena duces tecum; further, Staff seeks authorization from the Commission to proceed to circuit court for enforcement and for sanctions.

III. Motion to Compel David Ries to Respond to Deposition Questions

19. In its May 16, 2006 Order dismissing Omega from this case, the Commission determined that discovery should proceed with Omega. Mr. David (BJ) Lodholz, former comptroller of Omega, was deposed on July 17 and 18. Mr. David Ries was deposed on July 20 and 21 but refused to answer questions, among other things, about “the business of Omega” despite being the immediate past President of the company during the period of time under investigation by the Commission.

20. Mr. Ries stated that he refused to answer questions concerning Omega because he is no longer an officer with the company and that he is not “comfortable” answering questions about Omega. Mr. Ries did not assert any privilege with respect to his testimony, nor did he seek a protective order limiting questions about Omega. See attached deposition pages 250-252 and 274-280 marked as Exhibit D.

21. The Commission has broad subpoena powers so that it can perform its statutory duties. Those statutory duties include determining whether Omega has violated Missouri law and Commission rules, and whether Omega should be subject to Commission regulation as a gas corporation. This type of information is clearly known by Mr. Ries but he has failed and refused to provide such information.

Wherefore, the Staff requests the Commission issue its order compelling Mr. Ries to answer deposition questions relating to Omega’s business operations, and seeks authority to proceed to Circuit Court to compel Mr. Ries to answer questions at deposition. The Staff further requests the Commission to order its General Counsel to seek penalties, under section 386.570 RSMo, of \$2,000 per day for every day that Mr. Ries refuses to respond to questions at deposition.

IV. Motion for Expedited Treatment

There will be no negative effect upon any party's customers by ordering Omega and David Ries to comply with valid discovery requests. In fact, expediting compliance with standard discovery requests does substantial justice between the parties and prevents parties from using delay and recalcitrance to their advantage.

The Staff requests that the Commission set this matter on an expedited timeline, setting the hearing on an order to show cause on or before August 15, 2006. Staff further requests that the Commission order Omega and Tortoise to provide the requested documents on or before August 15, 2006. Finally, the Staff requests that the Commission order David Ries to sit for deposition questions regarding Omega on or before August 15, 2006. The Staff suggests that if Omega, Tortoise and David Ries fail to comply with the Commission's orders by August 15, that thereafter the General Counsel is authorized to proceed to circuit court for enforcement and sanctions.

Respectfully submitted,

/s/ Steven C. Reed

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent certified mail, return receipt requested, or delivered by electronic mail to all counsel of record as shown on the attached service list this 1st day of August 2006, and:

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/s/ Steven C. Reed
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EXHIBITS A – D

**HAVE BEEN DEEMED HIGHLY
CONFIDENTIAL IN THEIR ENTIRETY**

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