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OF COUNSEL
RICHARD T. CIOTTONI

October 23, 2006

Ms. Colleen Dale
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

FILED³

OCT 23 2006

Missouri Public
Service Commission

RE: Staff v. Missouri Pipeline Company, et al., Case No. GC-2006-0378

Dear Ms. Dale:

Enclosed on behalf of Mr. Terry Matlack and Tortoise Capital Advisors, LLC in the referenced case are an original and eight (8) copies of a Motion to Quash Subpoena Duces Tecum for filing in accordance with Commission Rule 4 CSR 240-2.080(8)(A). I would appreciate it if you would bring this filing to the attention of the appropriate Commission personnel.

I have also caused an additional copy of this pleading to be filed on the Office of Public Counsel this date. All parties of record are being served via electronic mail.

I would appreciate it if you would stamp the extra two copies of this pleading "filed" and return them to the person who is delivering this to you.

Thank you for your attention to this matter.

Sincerely,

Brydon, Swearengen & England, P.C.

By: 

Paul A. Boudreau

PAB:pah
cc: All Parties of Record (w/encl.)
Enclosures

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

OCT 23 2006

Missouri Public
Service Commission

The Staff of the Missouri Public
Service Commission,

Complainant,

v.

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

Respondents.

Case No. GC-2006-0378

MOTION TO QUASH SUBPOENA DUCES TECUM

Terry Matlack and Tortoise Capital Advisors, LLC (together "Tortoise"), and pursuant to 4 CSR 240-2.100(3), 4 CSR 240-2.090, and Missouri Rules of Civil Procedure 57.09, hereby move the Commission for an Order quashing the subpoena *duces tecum* served on them via their counsel on October 13, 2006, and purporting to require that Mr. Matlack appear at an unspecified time on November 7, 2006 with a variety of documents and things for a deposition in the above matter. Tortoise also requests an appropriate protective order pursuant to Rule 56.01(c), and such other relief as the Commission may deem appropriate.

BACKGROUND

This proceeding was originally filed by the Commission Staff on or about March 31, 2006 against the above Respondents, and Omega Pipeline Company, LLC ("Omega"). Omega is a Delaware limited liability company, authorized to conduct business in the state of Missouri. Omega owns and operates a natural gas pipeline

distribution system within the confines of the federal military reservation at Fort Leonard Wood, Missouri. As such, it operates as a Local Distribution Company ("LDC") for the Fort pursuant to a contract with the United States Department of Defense. Additionally, Omega *markets* natural gas to local municipalities and industrial customers. Specifically, it contracts with three customers outside Fort Leonard Wood to obtain gas at a contractually-established price, which is then transported by entities other than Omega to those customers. Omega does not own any regulated assets outside the confines of the Fort, nor does it act as a natural gas LDC off the base. It never has.

On April 4, 2006 the Commission issued its Order Establishing a Protective Order in this matter. The protective order provides that ". . . at the option of the furnishing party . . . highly confidential information may be made available . . . only on the furnishing party's premise and may be reviewed only by attorneys or outside experts who have been retained for the purpose of this case . . . Outside expert witnesses shall not be employees, officers or directors of any of the parties in this proceeding." Protective Order, p. 2.

Staff made a number of allegations in its complaint, including that Missouri Pipeline Company ("MPC") and Missouri Gas Company ("MGC") are overearning and that the Commission should reduce those companies' authorized Missouri jurisdictional annual revenue requirement, that Omega and the other Respondents are subject to Commission jurisdiction, the all Respondents have violated the Commission's affiliated transaction rule, and that MGC has charged and collected rates not authorized by its tariffs. On or about March 23, 2006, Staff issued and served subpoenas *duces tecum*

on all of the Respondents, including Omega. A copy of the Omega subpoena is attached as Exhibit B.

On April 26, 2006, Omega filed a motion requesting that the Commission dismiss the complaint against it and quash the subpoena, asserting among other things that the Commission lacks jurisdiction over its activities as a natural gas LDC at Fort Leonard Wood. In response, Staff admitted that the Commission did not have jurisdiction over Omega's activities on the base, but alleged that the audit report attached to its complaint indicated that Omega's "entanglement" with regulated entities made it subject to regulation as a "gas corporation" under section 386.020(18). The Commission found instead that Staff had not shown anything more than the fact that Omega shared common ownership with regulated companies MPC and MGC.¹ Order dated May 16, 2006, p. 4. The Commission denied Omega's request that it quash the subpoena directed to Omega. Order, pp. 5-7.

In the interim, *Tortoise Capital Resources Corporation*² completed its purchase of Mowood, LLC, which owned Omega, a transaction that closed on June 1, 2006. Prior to June 1, 2006, Mowood was owned by David Ries (16.5 %) and Alpha Pipeline, Ltd. (83.5%). See diagram attached as Exhibit C. After June 1, 2006, Tortoise Capital Resources Corporation owned 100 percent of Mowood. See diagram attached as Exhibit D. Tortoise Capital Resources likewise did not request or receive detailed

¹ As is discussed below, even this circumstance no longer exists.

² Staff has previously alleged that Tortoise Capital Advisors, LLC purchased Omega. This is incorrect. Tortoise Capital Resources Corporation is a private fund managed by Tortoise Capital Advisors, LLC. Tortoise Capital Resources provides long-term capital for privately-held and microcap midstream and downstream energy companies that gather, process, transport, refine, market and distribute natural gas, crude oil, energy liquids and renewable fuels.

financial or other similar records regarding Omega. The interests of Ries and Alpha (and, consequently, Omega) were purchased as a part of the transaction. As a result, Ries and Alpha have no further involvement in the company. Specifically, Ries ceased being an officer, employee, or otherwise an agent of Omega on June 1. He provided transition services for 30 days after that as an independent contractor

Shortly after this transaction closed, counsel for Tortoise Capital Resources and Omega began having discussions with Staff and the General Counsel's office regarding the nature of Staff's investigation, as well as the production of documents and things that had been requested by Staff in its original subpoena to Omega but had, as yet, not been provided by Omega's prior owners. Tortoise Capital Resources and Omega worked to obtain any responsive documents it could, and produced eight boxes of records to the Commission Staff on or about July 2, 2006. Omega also produced copies of its contracts with the three customers to whom it markets gas outside of Fort Leonard Wood.

Importantly, these records were all produced pursuant to a Memorandum of understanding between Staff and Omega that "Omega will be given a reasonable opportunity to review and determine the appropriate classification of those materials consistent with the terms of the Commission's Protective Order, and that, in the meantime, the materials produced by Omega and obtained by Staff will be treated as highly confidential under the terms of the Commission's Protective Order in Case No. GC-2006-0378." See Memorandum of Understanding dated June 30, 2006, attached as Exhibit E.

Subsequently, Staff expressed frustration with the fact that Tortoise Capital Resources was not in possession of most of the documents demanded as part of the subpoena. It is undeniable that Tortoise Capital Resources did not have in its possession many of the documents set forth in the Omega subpoena. Tortoise Capital Resources' reason for purchasing Omega was, simply put, to have access to the revenue generated by Omega's contract with the Department of Defense. The fact that Omega had marketing contracts with other customers was not the focus of the transaction. Accordingly, Tortoise Capital Resources did not request from Omega's prior owners, nor did it receive, detailed accounts receivable or other records regarding Omega's contracts with those entities. It simply received copies of the contracts themselves, so it could be assured that they existed.

On August 1, 2006, Staff filed a 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. In its Order dated August 8, 2006 denying this Motion, the Commission set the case for a discovery conference. The undersigned counsel for Omega and Tortoise Capital Resources participated in this conference by telephone on August 11, 2006. Although subsequent pleadings obtained by the undersigned indicate that the dispute between Staff and MPC and MGC regarding Mr. Ries's deposition and other discovery issues has continued, Tortoise Capital Resources and Tortoise Capital Advisors heard nothing more from Staff or the General Counsel's office until October 13, when counsel for Tortoise Capital Advisors was served with the attached subpoena *duces tecum*.

On October 12, 2006, the day before counsel for Tortoise Capital Advisors was served, MPC and MGC filed a motion in a related Commission case, Case No. GC-2006-0491, to strike the rebuttal testimony of Eve Lissik filed on behalf of the Missouri Public Utility Alliance ("MPUA"). A copy of this motion is attached as Exhibit F. As the Commission is aware, the MPUA is a group of organizations that, according to the MPUA's website represent "community-owned (municipal) electric, natural gas, and water utilities that work together for the benefit of their customers – customers who, in effect, 'own' the utilities in their community." See, www.mpua.org. There can be no dispute that the MPUA is a direct competitor of Omega.

MPC and MGC's motion raises disturbing allegations, including: (1) that Ms. Lissik, an employee to whom highly confidential information is not to be provided, has not only seen, but relied heavily on confidential business information regarding Omega in her testimony, which suggests that she was provided this information in violation of the provisions of the Commission's Protective Order; and (2) that members of the Commission Staff have previously communicated with Ms. Lissik and other MPUA representatives regarding confidential business information of Omega and, in fact, may have provided this information to her.³

ARGUMENT

4 CSR 240-2.090(1) provides that discovery is available in cases before the Commission on the same basis as in civil cases in circuit court, and that the same

³ Tortoise urges the Commission to diligently investigate the allegations contained in the Motion of MPC and MGC and, if violations have occurred, to take appropriate legal action against the offending party or parties. The Commission can only perform its regulatory responsibilities if the parties strictly comply with the terms of the Commission's customary Protective Order. The integrity of the regulatory process will be seriously damaged if it becomes common knowledge that the Commission's Protective Orders are being violated and commercial competitors are using highly sensitive information for their own financial advantage.

limitations and sanctions provided for in the Rules of Civil Procedure likewise apply. Rule 57.09(c) provides that a non-party commanded to produce documents may serve the party seeking the production with a written objection to producing the materials, which should contain specific reasons why the subpoena should be quashed or modified. If such an objection is made, the objecting party need not comply with the subpoena except upon an order of the court. See also, 4 CSR 240-2.100(3).

In addition, Rule 56.01(c) provides that for good cause, a court may make any order "which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" including:

- (1) that the discovery not be had;
- (2) that it be had only on specified terms and conditions;
- (3) that it be had only by some other method;
- (4) that the scope of the discovery be limited;
- (5) that the discovery be had only with certain persons present;
- (6) that depositions be sealed;
- (7) that confidential information be disclosed in a certain way, or not at all;
- (8) that documents be filed under seal with the court.

The Documents Requested Are Irrelevant To The Issues In This Case

It is clear from a review of the allegations in Staff's Complaint in this matter that the documents requested from Tortoise have nothing to do with the claims made by Staff, or the time periods on which Staff has focused its investigation. Though styled as a Complaint, it is evident from the allegations Staff has made regarding MPC and MGC that this is essentially a rate case in that Staff has filed a Complaint seeking an order

effectively reducing MPC and MGC's rates. In that regard, it is Tortoise's understanding that Staff's Complaint uses year-end 2004 as the test year for this analysis, with no true-up period.

Notwithstanding the relatively limited relevant time period involved in this case, however, Staff's subpoena not only is not limited to this time period, but actually seeks to compel *current* information regarding Omega's business operations and customer relationships. These include:

- *all documents "related to Omega Pipeline Company,"*
- "all documents sent to Lenders of Omega Pipeline; MOGAS, LLC; Mowood, LLC,"
- *"list of all property of Omega,"*
- copies of all contracts entered into *"after Tortoise Capital Resource Corporation assumed effective control of Omega,"*
- all documents "showing quantities of gas to be received by individual point of receipt and delivered by individual point of *delivery since June 1, 2006,*"
- All correspondence *since May 31 (2006)* between Omega and MPC and MGC

Possibly the most glaring example of the overreaching nature of Staff's subpoena to Tortoise is its demand that Tortoise produce copies of all Omega billings to Omega customers "served directly or indirectly from MPC or MGC since June 1, 2006" and copies of all Omega bills to customers "that received transportation services through MPC/MGC from June 1, 2006." Tortoise acknowledges that the rules of discovery allow inquiry into information reasonably calculated to lead to the discovery of admissible evidence, Rule 56.01(a)(1). However, given the clear parameters of Staff's inquiry

regarding the activities of MPC and MGC, there can be no logical reason why Tortoise should be forced to provide any documents that extend beyond the test year of 2004 or, in any event, that post-date the closing of the transaction in which Tortoise Capital Resources purchased Mowood.

There Is No Basis For Staff's Request for Omega's Customer Information

In addition to the irrelevance of this information to Staff's claims, there is no statutory or rule basis for any claim by Staff that, after June 1, 2006, it has the right to examine transactions between Omega and its business dealings with its customers. The only arguable basis for an investigation of the business relationship between Omega and any of its customers is subsection 12 of section 393.140, RSMo but only insofar as the inquiry may be relevant to "an apportionment of capitalization, earnings, debts and expenses" as between a regulated utility and an unregulated line of business. As noted above, there no longer is any affiliation as between Missouri Pipeline Company or Missouri Gas Company and Omega since Omega was acquired by Tortoise. In fact, the Commission's affiliate transaction rules for gas utilities, 4 CSR 240-40.015 and .016, are only applicable if there is common control with the regulated utility. Therefore, there can be no relevance to any information that is sought by Staff beyond the June 1, 2006 closing date of Tortoise Capital Resource's acquisition of Mowood.

Omega's Confidential Information Is At Risk Of Discovery By Competitors

MPC and MGC's motion in Case No. GC-2006-0491 points up another serious issue – specifically, the likelihood that, notwithstanding the existence of virtually identical protective orders in that case and this one, confidential business information of

Omega produced to Staff will make it into the hands of Omega's direct competitors. This information includes the confidential terms of Omega's contracts with customers like the City of Cuba. In addition to the fact, as discussed above, that this information has absolutely nothing to do with the issues before the Commission in this case, Staff has proposed no mechanism by which Tortoise and/or Omega can have any comfort that this information will not be used to their commercial detriment.

CONCLUSION

Possibly frustrated with its inability to obtain what it believes is relevant information from MPC, MGC and/or David Ries, Staff has decided to attempt to force Omega and its new owner into producing documents and information that, from the face of the pleadings in this matter, have nothing to do with the allegations before the Commission. Moreover, the information is not only irrelevant, but sensitive commercial information that it appears has been improperly disclosed and utilized to Omega's detriment. The subpoena to Terry Matlack and Tortoise Capital Advisors should be quashed and the Commission should order such other relief as it deems just and proper.

Respectfully submitted,

BLACKWELL SANDERS PEPER MARTIN, LLP

J. Dale Youngs #36716
Blackwell Sanders Peper Martin, LLP
Plaza Colonnade
4801 Main Street, Suite 1000
Kansas City, MO 64112
(Phone): (816) 983-8260
(Fax): (816) 983-9260
(Mobile): (816) 304-4778
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BRYDON, SWEARENGEN & ENGLAND



Paul A. Boudreau #33155
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312 East Capitol Ave.
Jefferson City, MO 65102
Phone: (573) 635-7166
Fax: (573) 635-0427
paulb@brydon.law.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail, electronic mail or hand delivery, on the 23rd day of October, 2006, to all parties of record.



Paul A. Boudreau

SUBPOENA DUCES TECUM

Order to Produce Documents Order to Appear for Deposition



THE STATE OF MISSOURI

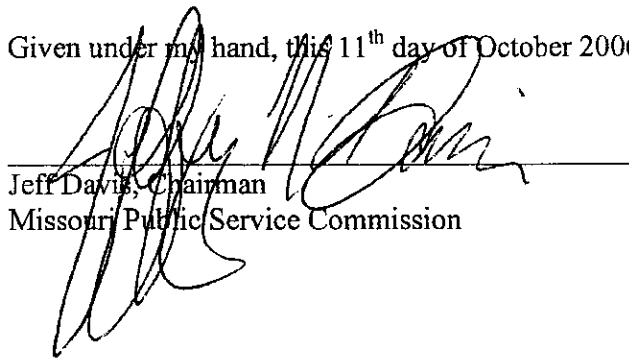
To: Terry C. Matlack
Tortoise Capital Advisors, L.L.C.
10801 Mastin Blvd, Suite 222
Overland Park, KS 66210

SERVE: By agreement
Mr. Dale Youngs
Blackwell Sanders Peper Martin
4801 Main Street
Suite 1000
Kansas City, MO 64112

Pursuant to §§386.440, 393.140 (9) and (10), 4 CSR 240-2.100, and Supreme Court Rule 57.03 (4), you are hereby commanded to appear for deposition on the subject of the business of Missouri Gas Company and as to costs, revenues, and financing thereof, before The Public Service Commission of the State of Missouri at the offices of Mr. Youngs at 4801 Main Street, Kansas City, Mo on November 7, 2006 with

The items listed on ATTACHMENT A.

Given under my hand, this 11th day of October 2006,


Jeff Davis, Chairman
Missouri Public Service Commission

A

ATTACHMENT A
Omega Pipeline LLC, Deposition Documents

1. Copies of documents related to Omega Pipeline Company including but not limited to: notes, emails, letters, contracts, pro forma financial assessments; due diligence documents, investor information, secretary of state filings, real estate documents, and pipeline documents and/or any other documents related in any way to the purchase of Omega Pipeline Co.; Omega Pipeline Services; MOGAS, LLC; Mowood, LLC or any related or associated company, corporation or business by any of the following: Tortoise Capital Advisors, Tortoise Energy Infrastructure Corp., Tortoise Energy Capital Corp., Tortoise North American Energy Corp., Tortoise Capital Resources Corp.
2. Copies of all documents sent to Lenders of Omega Pipeline; MOGAS, LLC; Mowood, LLC
3. A list of all property of Omega, including all real and personal property, tangible and intangible.
5. All contracts executed by Omega which were provided to any of the Tortoise companies or to Mr. Jay Hopper.
6. A complete copy of all documents, including purchase agreements, related to the Tortoise Capital Resource Corporation purchase of Omega Pipeline Company LLC or any of its affiliate companies. The purchase agreement should include a copy of all exhibits, schedules, and other attachments.
7. A complete copy of any contract or agreement entered into either before or after Tortoise Capital Resource Corporation assumed effective control of Omega Pipeline Company LLC between Missouri Pipeline Company, Missouri Gas Company, their officers or employees, to provide services to Omega Pipeline Company or any of its affiliate companies.
8. A copy of all schedules or data in electronic format from Omega Pipeline Company LLC to Missouri Pipeline Company LLC and Missouri Gas Company LLC showing quantities of gas to be received by individual point of receipt and delivered by individual point of delivery since June 1, 2006.
9. A copy of all correspondence since May 31, between Omega Pipeline Company LLC and Missouri Pipeline Company LLC and Missouri Gas Company LLC regarding the matter of the amount of gas that Omega Pipeline Company LLC owes Missouri Pipeline Company LLC and Missouri Gas Company LLC for natural gas delivered in excess of natural gas received.
10. A copy of all Omega billings to Omega customers that are served directly or indirectly from MPC or MGC since June 1, 2006.

11. Copies of all Omega Pipeline Co, or Omega Pipeline Services bills to customers that received transportation services through MPC/MGC from June 1, 2006.

SUBPOENA DUCES TECUM

Order to Produce Documents
Order to Appear for Deposition



THE STATE OF MISSOURI

To: Omega Pipeline LLC
110 Algana Court
St. Peters, MO 63376

SERVE: Mr. David Ries

Pursuant to §§386.440, 393.140 (9) and (10), 4 CSR 240-2.100, and Supreme Court Rule 57.03(b)(4), you are hereby commanded to appear for deposition on the subject of the business of Omega Pipeline Company, LLC and as to costs, revenues, and financing thereof, before The Public Service Commission of the State of Missouri at 1:30 p.m. on the 19th day of April 2006, at the offices of the Commission located on at 1845 Borman Court, Suite 101, St. Louis, Missouri. The deposition will commence at the above-stated time and place and will continue from day-to-day until it is complete.

You shall make the following documents available for review at or prior to the deposition:

The items listed on ATTACHMENT A.

Given under my hand, this 23rd day of March 2006,


Jeff Davis, Chairman
Public Service Commission

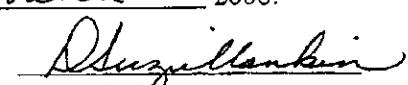
RETURN

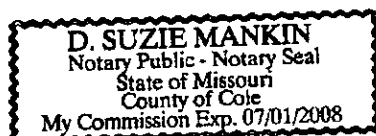
I HEREBY CERTIFY that I served this subpoena by delivering a copy to the person named above,

at 1:00 P.M. CST (time) on the 23rd day of MARCH 2006, at the following location: Lobby of the Governor's Office, in the State of Missouri.

Robert Schellberg Utility Services Division Director
[Name] [Title]

Subscribed and sworn to before me this 23rd day of March 2006.


Notary Public



B

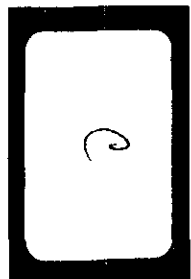
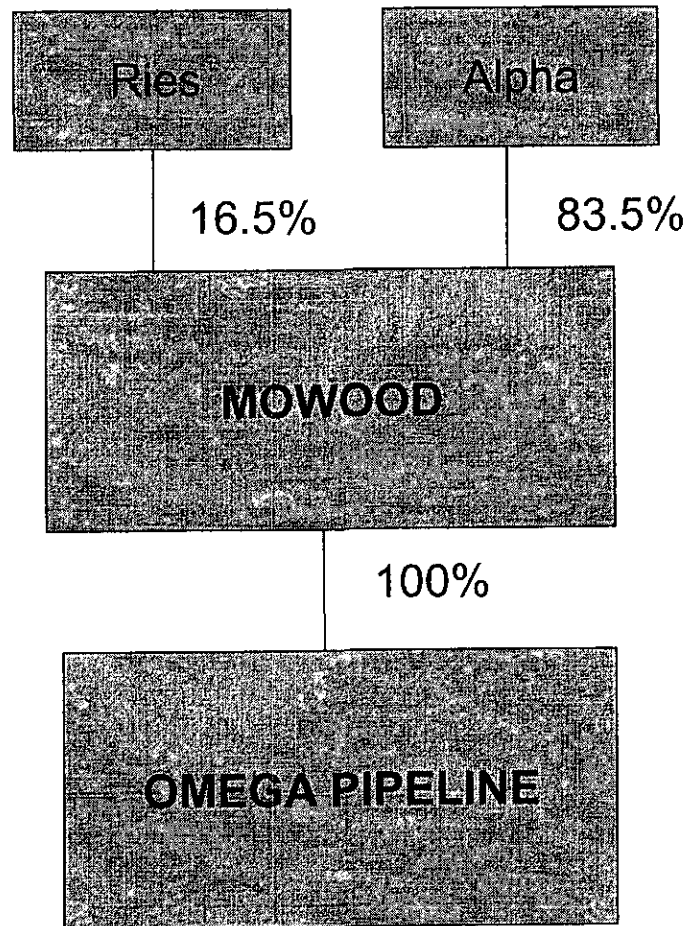
ATTACHMENT A
Omega Pipeline LLC, Deposition Documents

For all documents listed below provide for the calendar years 2003, 2004 and 2005 unless requested otherwise:

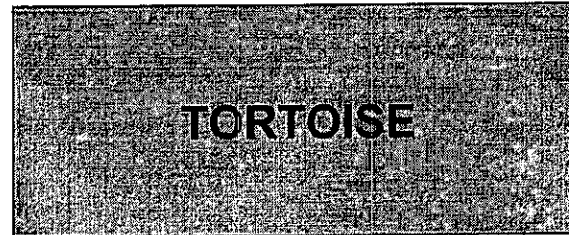
1. Copies of all notes, assignments, and security agreements, or any other indicia of indebtedness, including but not limited to those executed pursuant to the Senior Secured Term Loan Agreement dated March 12, 2002 (hereafter "Agreement").
2. Operating budgets and capital budgets, defined on page 12 of the Agreement, submitted to Lenders or Agents, including Duke Capital Partners as Agent. This includes documentation of the sum, without duplication, of all cash expenditures relating to administration and legal expenses, and State, Local, and Federal tax obligations, excluding Debt Service.
3. Copies of all documents sent to Lenders indicating capital expenditures, including copies of all Loan documents, executed or otherwise, real estate documents, and other company documents.
4. Documentation of intercompany indebtedness defined on page 10 of the Agreement, including indebtedness of any one or more of the Borrowers, or any Pipeline Company, owed directly or indirectly to any Loan Party or its direct or indirect Affiliate, including by way of guarantee.
5. A list of lender banks, benefited lenders, investment funds or assignees pursuant to section 9.7 of the Agreement, and including all other lenders or creditors.
6. Copies of notes, loans, mortgages, including deeds of trust, assignment of leases and rents, security agreements, financing statements or other indicia of debt or the grant of a security interest entered into, or executed by, Omega.
7. Balances of all loans, notes, debts or other obligations of Omega as of December 31, 2003, 2004, and 2005.
8. Copies of Use of Proceeds documents, including retiring existing indebtedness to parent and United Pipeline Systems Inc., working capital, debt service reserve accounts, fund transaction expenses and other fees owed Secured Parties, whether or not provided to Lenders.
9. Bank statements from each financial institution, security agent, agent, or lender for each month of 2003, 2004, and 2005.
10. All Board minutes for Omega for 2002, 2003, 2004, and 2005.
11. All leases treated as capital leases pursuant to GAAP for Omega.
12. A list of all property of Omega, including all real and personal property, tangible and intangible, and the proceeds thereof, subject to the Liens intended created by the Collateral Security Agreements executed under the Agreement.
13. All contracts for services executed by Omega.
14. Monthly summary of all receipts of gas going into the MPC or MGC pipelines, for Omega or its customers or clients, including the MIG receipt point and PEPL/Curryville receipt points, categorized by each receipt point on the MPC, MGC and Omega systems.

15. Monthly summary of all deliveries going out of the MPC, MGC and Omega pipelines for the years of 2003, 2004, and 2005, categorized by each delivery point on the MPC, MGC and Omega systems.
16. Documents showing any deliveries made to MIG from MPC, MGC and Omega for ultimate delivery into MRT.
17. On a monthly basis from 2003, 2004, and 2005, a copy of all Omega billings to Omega customers that are served directly or indirectly from MPC or MGC.
18. Balances and terms of any indentures that are held by any affiliates (regulated or nonregulated) of Omega.
19. Supporting work papers for the determination of the Omega federal and other income tax expense reported on the 2002-2004 MPC and MGC annual reports including income tax allocation calculations. Include all K-1s issued by regulated or nonregulated affiliates that include the flow-through of Omega revenues or losses.
20. 2002-2005 Audited Financial Statements of Omega.
21. 2002-2005 Federal and State tax returns with supporting schedules for Omega.
22. Please provide copies of the MPC/MGC bills to Omega since 1/1/02 with any documentation justifying any discounts provided to Omega during this period.
23. Copy of the contract(s) between Omega Pipeline and Fort Leonard Wood in effect for any period since 1/1/02.
24. Copy of any Management Resources Group LLC contract with Omega or any affiliated entity (regulated or nonregulated) effective since 1/1/02.
25. Copies of all entries on Omega books since 1/1/02 related to a Related-Party Receivable or Payable. Please provide the supporting documentation for each entry.
26. Copies of all payments (e.g. checks, debit or credit memos) paid to third-party entities related to amounts recorded as Omega Taxes other than Income Taxes expense in 2004. Please provide copying of any supporting documentation that supports the allocation of these payments to Omega, if any such allocation occurred.
27. All contracts between Omega and parties (regardless of whether they are shippers on MPC or MGC) that are served off of Missouri Pipeline or Missouri Gas Company for calendar year 2004 and 2005.
28. All gas supply contracts held by Omega or their affiliates (regulated or nonregulated) for calendar year 2004 and 2005.
29. Balances and terms of any indentures that are held by any affiliates (regulated or nonregulated) of Omega Pipeline.
30. External auditor workpapers for the 2004 and 2005 audited financial statements shall be provided, including all consolidated Gateway Pipeline Company, Missouri Pipeline Company, Missouri Gas Company and Mogas Energy LLC workpapers and any permanent file maintained by the external auditor used in the audit process.

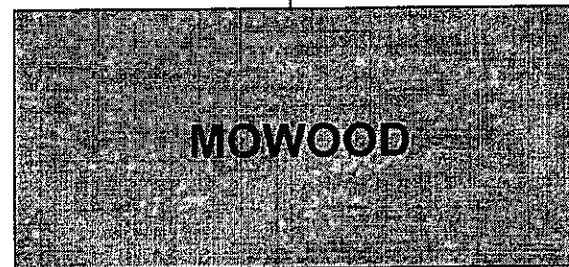
BEFORE JUNE 1, 2006



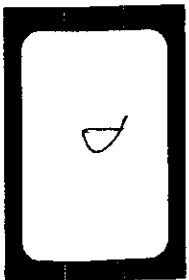
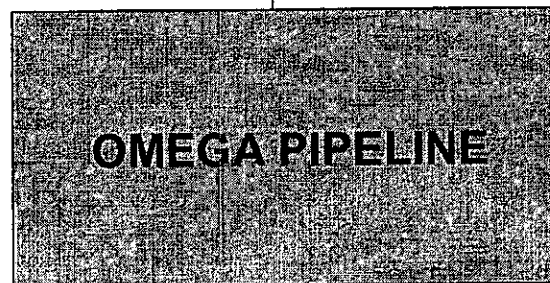
AFTER JUNE 1, 2006



100%



100%



MEMORANDUM OF UNDERSTANDING

WHEREAS, the Staff of the Missouri Public Service Commission ("Staff") has commenced an earnings complaint against Missouri Pipeline Company ("MPC") and Missouri Gas Company ("MGC"); and

WHEREAS, said Complaint has been docketed by the Missouri Public Service Commission ("Commission") as Case No. GC-2006-0378; and

WHEREAS, the Commission has caused to be served upon Omega Pipeline Company ("Omega") a subpoena to produce records to be examined by Staff; and

WHEREAS, Omega has arranged to make the records in its possession available to Staff at the offices of Brydon, Swearingen & England, P.C., in Jefferson City, Missouri; and

WHEREAS, Omega has an interest to insure that records that are confidential or proprietary not be made part of the public record,

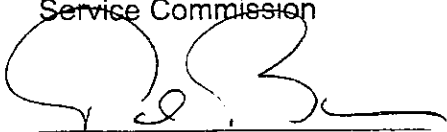
NOW, THEREFORE, Staff and Omega agree that Omega will be given a reasonable opportunity to review and determine the appropriate classification of those materials consistent with the terms of the Commission's Protective Order, and that, in the meantime, the materials produced by Omega and obtained by Staff will be treated as highly confidential under the terms of the Commission's Protective Order in Case No. GC-2006-0378.



Lera Shemwell

Attorney for Staff of the Missouri Public
Service Commission

Date: 6-30-06



Paul A. Boudreau

Attorney for Omega Pipeline Company

Date: 6/30/06

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

Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0491
)	
Missouri Pipeline Company, LLC;)	
Missouri Gas Company, LLC;)	
)	
Respondents.)	

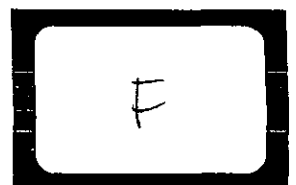
RESPONDENTS' MOTION TO STRIKE

Respondents Missouri Pipeline Company (hereafter "MPC") and Missouri Gas Company (hereafter "MGC") move that the Commission strike the Rebuttal Testimony of Eve A. Lissik filed October 6, 2006, on behalf of the Missouri Public Utility Alliance (hereafter "MPUA"). In support of this motion, Respondents state as follows:

1. On June 22, 2006, the Commission issued its Order Establishing a Protective Order (hereafter "Protective Order") in this matter.

2. On October 6, 2006, Ms. Eve A. Lissik filed Rebuttal Testimony in this matter on behalf of the MPUA (hereafter "MPUA Rebuttal Testimony").

3. The Commission's Protective Order provides that "...at the option of the furnishing party..." highly confidential information may be made available "...*only* on the furnishing party's premise and may be reviewed *only by attorneys or outside experts* who have been retained for the purpose of this case...". Outside expert witnesses *shall not be employees*, officers or directors of any of the parties in this proceeding." Protective Order, Case No. GC-2006-0491, page 2 (emphasis added).



4. MPUA's Rebuttal Testimony contains highly confidential information. See MPUA Rebuttal Testimony, pages 3-6. Ms. Lissik relies heavily on highly confidential information to make calculations regarding potential customer refunds. See MGCM Rebuttal Testimony, page 5.

5. By allowing Ms. Lissik to review and use highly confidential information to make certain calculations regarding potential customer refunds, MPUA has violated the Commission's Protective Order. The Order is clear in stating that highly confidential information may be made available and may be reviewed *only by attorneys or outside experts* who have been retained for the purpose of this case..." See Protective Order, page 2. Ms. Lissik is not an attorney or an outside expert in this proceeding. According to her sworn testimony, she is employed as Director of Energy Services and Assistant to the General Manager of the Missouri Joint Municipal Electric Utility Commission, which is part of the MPUA. Ms. Lissik is not authorized to view highly confidential information or use such information in her testimony on behalf of MGCM. MGCM has violated the Commission's Protective Order in giving Ms. Lissik, a non-attorney or outside expert, access to highly confidential information in this matter. Therefore, MGCM's Rebuttal Testimony should be stricken.

6. Respondents' original concern that highly confidential information would be unlawfully released has come to pass. As the Commission recognized in issuing its Protective Order, it is critical to protect highly confidential information so that regulated entities and their employees are not made vulnerable to unfair competitive advantages and breaches of privacy. MPUA's breach of the Commission's Protective Order is a serious offense and should be addressed accordingly.

7. Respondents' concern over the inappropriate use of confidential information is further substantiated by documents provided by Staff not marked "HC" in response to Respondents' data requests (see Appendix AA to Rebuttal testimony of David Ries.) The emails contained in said Appendix AA clearly evidence other improper communications between Staff and the MPUA which in turn appear to have been provided to other non-Staff parties. Mr. Ries' Rebuttal Testimony explains these communications in detail. See Rebuttal Testimony of Mr. Dave Ries on behalf of MPC and MGC, pages 32-35, October 6, 2006.

8. In short Mr. Ries stated:

"Based on these emails, it appears that discussions were taking place between MPSC Staff members and representatives of the MPUA regarding Omega's efforts in 2002/2003 to develop a gas marketing business by offering various customers better supply prices than they had with the MPUA. For example, in an email dated October 23, 2002 at 1:11 pm, from Eve Lissik of the MPUA to Carmen Morrissey of the MPSC Staff, it appears Eve Lissik spoke with a "contact" at ONEOK that has our [MPUAs] contract with St. James. Before St. James can be released from our contract, our gas commission board members are going to want the details of Gateway's deal with St. James. "Thanks for your help on this." The "thanks for your help on this" more than suggests the MPSC Staff was supplying information of confidential matters to a competitor of Omega and another entity seeking St. James' business in favor of one entity over the other, i.e., to the exclusive benefit of the MPUA. "

9. Due to the seriousness of this possible violation, Respondents request that the Commission investigate (i) which party shared the highly confidential information in this case with Ms. Lissik and allowed her to use it in her testimony in violation of the Protective Order; (ii) whether the sharing of highly confidential information by Staff with MPUA in 2002/2003, cited in Mr. Ries' Rebuttal Testimony, violated § 386.570; and, if so (iii) is such communication in violation of the statute continuing; and (iv) should any person made aware of any such communications, either previously or currently, be prohibited from participating in this case and/or subject to sanctions.

WHEREFORE, Respondents respectfully request:

1. That the Rebuttal Testimony of Eve Lissik for the MPUA be stricken and that she no longer be permitted to participate in this case since she was given access and used highly confidential information in violation of the Protective Order and § 386.570.

2. That the Commission conduct an investigation in this matter consistent with that described in this motion; and

3. That the Commission reiterate that all attorneys for Interveners must abide by the existing Protective Order and refrain from making highly confidential information, revealed in documents or depositions, available to any party not specifically permitted in the protective order, specifically excluding any representative of any Intervener other than third party experts or legal counsel from any deposition where such highly confidential information is discussed.

Respectfully submitted,

LATHROP & GAGE, L.C.

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Attorneys for Respondents

Dated: October 12, 2006

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Respondents' Response to Staff's Proposed Procedural Schedule, has been transmitted by e-mail or mailed, First Class, postage prepaid, this 12th day of October, 2006, to:

* Case No. GC-2006-0491

Name of Company Name of Party	E-mail Phone Fax	Street Address	Mailing Address	City	State	Zip
Missouri Public Service Commission General Counsel	GenCounsel@psc.mo.gov 573-751-2481 573-751-9285	200 Madison Street, Suite 800	P.O. Box 360	Jefferson City	MO	65102
Office Of The Public Counsel Mills R Lewis	opcservice@dad.mo.gov 573-751-1130 573-751-1556	200 Madison Street, Suite 650	P.O. Box 2230	Jefferson City	MO	65102
Missouri Public Service Commission Schwarz Tim	Tim.Schwarz@psc.mo.gov	200 Madison Street, Suite 800	P.O. Box 360	Jefferson City	MO	65102
Missouri Public Service Commission Shemwell Lera	Lera.Shemwell@psc.mo.gov	200 Madison Street, Suite 800	P.O. Box 360	Jefferson City	MO	65102
AmerenUE Kurtz M David	Kurtz@smithlewis.com 573-443-3141 - Ext 237 573-442-6686	111 S. Ninth St., Suite 200	PO Box 918	Columbia	MO	65205-0918
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Federal Executives Agencies Rohrer Jeffrey H	Jeffrey.H.Rohrer@US.Army.Mil 573-596-0626 573-596-0632	125 E 8th St	Ft Leonard Wood	MO	65473-8942	
Federal Executives Agencies	David.McCormick@US.Army.Mil 703-696-1646 703-696-2960	901 N Stuart St Room 4147	JALS RL	Arlington	VA	22203-1837

Name of Company Name of Party	Email Phone Fax	Street Address	Mailing Address	City	State	Zip
McCormick A David		713				
Laclede Gas Co	mpendergast@lacledegas.com 314-342-0532	720 Olive		St. Louis	MO	63101
Pendergast C Michael	314-421-1979	Suite 1520				
Muni Gas Commission Woodsmall David	dwoodsmall@fcplaw.com 573-635-2700 573-635-6998	428 E Capital Suite 300		Jefferson City	MO	65102
Muni Gas Commission Conrad Stuart	stucon@fcplaw.com 816-753-1122 816-756-0373	3100 Broadway Suite 1209		Kansas City	MO	64111
Muni Gas Commission Kincheloe E Duncan	dkincheloe@mpua.org 573-445-3279 573-445-0680	2407 W Ash		Columbia	MO	65203
Southern MO Natural Gas Fischer James	jfischerpc@aol.com 573-636-6758 573-636-0383	101 Madison Suite 400		Jefferson City	MO	65101
Union Electric Co Byrne Thomas M	TByrne@Ameren.com 314-554-2514 314-554-4014	1901 Chouteau Avenue	P.O. Box 66149 (MC 1310)	St. Louis	MO	63166- 6149

/s/ Paul S. DeFord
Attorney for Respondents