

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

The Staff of the Missouri Public)	
Service Commission,)	
)	
Petitioner,)	
)	
vs.)	Case No. GC-2006-0491
)	
Missouri Pipeline Company, LLC)	
and Missouri Gas Company, LLC.)	
)	
Respondent.)	

**INITIAL BRIEF OF THE
OFFICE OF THE PUBLIC COUNSEL**

The evidence before the Commission demonstrates that Respondents Missouri Pipeline Company, LLC (“MPC”) and Missouri Gas Company, LLC (“MGC”) violated the Commission’s rules and Respondents’ tariffs by overcharging non-affiliate transportation customers and by providing certain unlawful advantages to an affiliate, Omega Pipeline Company (“Omega”). A Commission order reaching similar findings and conclusions will assist the aggrieved non-affiliate customers in seeking refunds in Circuit Court. The Office of the Public Counsel (“Public Counsel”) urges the Commission to order Respondents to cease these unlawful practices and to direct its General Counsel to pursue penalties against Respondents in Circuit Court. Pursuing penalties will send a message to all utilities that the Commission will not take deliberate violations of the Commission’s affiliate transaction rules lightly.

A. Background

In April 2001, Gateway Pipeline Company, Inc. (“Gateway”) sought the authority to acquire all shares of Utilicorp Pipeline Systems, including the control and indirect ownership of MPC and MGC in Case No. GM-2001-585. Gateway is wholly owned by Mogas Energy, LLC, which in turn is owned jointly by Mr. Dennis Langley, Mr. David Ries and TCW Group. The Commission’s Staff, Public Counsel, and Laclede Gas Company all opposed the transaction due to financial and management concerns. AmerenUE expressed the same concerns with the transaction. Public Counsel and Laclede specifically questioned the management under an ownership structure with Mr. Langley as a principal. Despite the red flag warnings raised by the parties, the Commission approved the acquisition in a *Report and Order* issued October 9, 2001. The Commission acknowledged the concerns regarding Mr. Langley and concluded:

Sharp tactics or hard negotiation strategies do not present extraordinary concerns. While the interests of consumers and competitors are often harmonized in proceedings before the Commission, win-win situations are not always achieved. The evidence presented in this proceeding serves as forewarning to all the parties and the Commission that MPC and MGC may take a more aggressive competitive and regulatory posture in the future.

The Commission noted that Mr. David Ries “rather than Mr. Langley will have day-to-day charge of the business affairs, management and contracting for MPC and MGC” and that Mr. Ries “demonstrated willingness in his testimony to negotiate fairly with any customer.” Mr. Ries has not lived up to his “demonstrated willingness” to act fairly, despite the Commission’s generosity in allowing Mr. Ries and Mr. Langley to operate a Missouri pipeline. As a result, Respondents have violated the Commission’s trust, the

Commission's rules, and the Commission's Orders, and should be penalized to the full extent of the law.

B. Argument

The common theme among the issues identified in the List of Issues highlight the central reason for this complaint case – to address the flagrant rule and tariff violations carried out by Respondents that purposefully benefited Respondent's affiliate at the expense of consumers and at the expense of competition. The comprehensive evidence presented by the Staff in this case was necessary to carefully set forth the Respondents' rule and tariff violations. Staff witness Mr. Tom Imhoff's Direct Testimony provides the Commission with a concise overview of the Staff's allegations and Mr. Robert Schallenberg's testimony provides the detailed evidence necessary to support the Staff's allegations. The evidence presented by Staff in Surrebuttal Testimony rebuts each false claim and misleading excuse raised in Respondents rebuttal testimony. Of the five related issues, Public Counsel will briefly address Issue 3 – whether Respondents violated the Commission's rules and company tariffs by charging a discounted rate for an affiliate that was not made available to non-affiliates.

Issue 3: Did MPC and MGC provide transportation service to its affiliate, Omega, at a discounted rate and if so, should this rate become the maximum rate that MPC and MGC could charge for any of its non-affiliated customers for similar services?

Respondents are gas corporations, as that term is defined in Section 386.020(18) RSMo (Cum. Supp. 2005) because Respondents are corporations owning, operating, controlling and managing gas plant used for distribution. Accordingly, Respondents are subject to the Commission's affiliate transaction rules 4 CSR 240-40.016(2)(B), (C), (D), and (L) and 4 CSR 240-40.016(3)(B) and (D), prohibiting gas corporations from offering

preferential rates to an affiliate without offering the same rates to a non-affiliate. These rules state:

(2) Nondiscrimination Standards.

(B) A regulated gas corporation shall apply all tariff provisions relating to transportation in the same manner to customers similarly situated whether they use affiliated or nonaffiliated marketers or brokers.

(C) A regulated gas corporation shall uniformly enforce its tariff provisions for all shippers.

(D) A regulated gas corporation shall not, through a tariff provision or otherwise, give its marketing affiliate and/or its customers any preference over a customer using a nonaffiliated marketer in matters relating to transportation or curtailment priority.

...

(3) Standards.

(B) Except as necessary to provide corporate support functions, the regulated gas corporation shall conduct its business in such a way as not to provide any preferential service, information or treatment to an affiliated entity over another party at any time.

...

(D) The regulated gas corporation shall not participate in any affiliated transactions which are not in compliance with this rule, except as otherwise provided in section (11) of this rule.

In addition to the above rule restrictions, Respondents' tariffs require that the "lowest transportation rate charged to an affiliate shall be the maximum rate that can be charged to non-affiliates." P.S.C. MO. No. 2, Sheet 6, Paragraph 3.2 (Ex. 70 and 71). Invoices obtained by the Staff clearly show that Respondents did not follow these requirements. The evidence presented by the Staff demonstrates that Respondents charged discounted rates to Omega for transportation service that it did not allow for any of its non-affiliate customers. Comparing the rate charged to Omega with the invoices attached to Mr. Schallenberg's Surrebuttal testimony shows that a higher rate was

charged to non-affiliates (Schallenberg Surrebuttal, p. 6-10, Appendices A through F). This is sufficient support for the Commission to reach the conclusion that Respondents violated the tariff and violated the Commission's rules. Public Counsel has reviewed the Staff's initial brief and concurs with the Staff's analysis of the evidentiary support for Count III of the Staff's Complaint, and concurs with the Staff's conclusion that Respondents transportation customers should have been charged no more than the rate charged to Omega as identified by Staff. Once Respondents provided service to Omega under the reduced rate, it effectively altered the maximum rate that should have been charged going forward to non-affiliates.

C. Conclusion

As a result of Respondents' unlawful actions, ratepayers paid higher rates than what Respondents were lawfully entitled to charge. Public Counsel believes refunds for these overpayments should flow back to non-affiliates ratepayers including Laclede Gas Company and Ameren. Ameren concurs with this request and commits to "pass on any such refunds to its respective ratepayers through its PGA mechanism." (Massmann Rebuttal, p. 7). Public Counsel supports Ameren's efforts in pursuing refunds through this Complaint and their commitment to flow any such refunds back to consumers through the PGA mechanism. For reasons not clear to Public Counsel, Laclede Gas Company has not participated in this case. Without Laclede's assistance in achieving refunds for its customers, the chance that Laclede customers would see any refunds after such overpayments is remote. Laclede should join Ameren in seeking refunds in Circuit Court, or file an explanation with the Commission explaining why Laclede is not seeking refunds.

The Commission's Staff has met its burden of proof and should be commended for the work put into this investigation. Public Counsel's decision to address only one of the issues raised by the Staff's complaint is no indication of the Public Counsel's position on the other issues or on the weight the Commission should give those issues. The evidence presented by the parties identifies a clear pattern of illegal and dishonest practices. Public Counsel urges the Commission to direct its General Counsel to seek penalties as permitted under Section 386.600 RSMo 2000.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: /s/ Marc D. Poston

Marc D. Poston (#45722)

Senior Public Counsel

P. O. Box 2230

Jefferson City MO 65102

(573) 751-5558

(573) 751-5562 FAX

marc.poston@ded.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been sent via email on this 9th day of February 2007:

Durley J Colly
AmerenUE
111 S. Ninth St., Suite 200
P.O. Box 918
Columbia, MO 65205-0918
Durley@smithlewis.com

Lowery B James
AmerenUE
111 South Ninth St., Suite 200
P.O. Box 918
Columbia, MO 65202-0918
lowery@smithlewis.com

Byrne M Thomas
AmerenUE
1901 Chouteau Avenue
P.O. Box 66149 (MC 1310)
St. Louis, MO 63166-6149
tbyrne@ameren.com

Davenport Aimee
Missouri Gas Company, LLC
314 East High Street
Jefferson City, MO 65101
adavenport@lathropgage.com

DeFord S Paul
Missouri Gas Company, LLC
2345 Grand Blvd
Kansas City, MO 64106-2684
pdeford@lathropgage.com

Davenport Aimee
Missouri Pipeline Company,
LLC
314 East High Street
Jefferson City, MO 65101
adavenport@lathropgage.com

DeFord S Paul
Missouri Pipeline Company,
LLC
2345 Grand Blvd
Kansas City, MO 64106-2684
pdeford@lathropgage.com

Woodsmall David
Municipal Gas Commission of
Missouri
428 E. Capitol Ave., Suite 300
Jefferson City, MO 65102
dwoodsmall@fcplaw.com

Conrad Stuart
Municipal Gas Commission of
Missouri
3100 Broadway, Suite 1209
Kansas City, MO 64111
stucon@fcplaw.com

Kincheloe E Duncan
Municipal Gas Commission of
Missouri
2407 W. Ash
Columbia, MO 65203
dkincheloe@mpua.org

Shemwell Lera
Missouri Public Service
Commission
200 Madison Street, Suite 800
P.O. Box 360
Jefferson City, MO 65102
Lera.Shemwell@psc.mo.gov

/s/ Marc D. Poston