



DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
901 NORTH STUART STREET
ARLINGTON VA 22202-1837

REPLY TO
ATTENTION OF

Regulatory Law Office
U-4147

18 April 2006

SUBJECT: Staff of the Missouri Public Service Commission v. Missouri Pipeline Company, LLC; Missouri Gas Company, LLC; Omega Pipeline Company, LLC, Mogas Energy, LLC; United Pipeline Systems, Inc., Gateway Pipeline Company, LLC, Missouri PSC Case No. GC 2006-0378

Hon. Colleen M. Dale
Secretary
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, MO 65102

FILED⁴

APR 19 2006

Missouri Public
Service Commission

Dear Ms. Dale:

Enclosed for filing find the original and eight copies of the petition for leave to intervene on behalf of the consumer interest of the United States Department of Defense and other affected Federal Executive Agencies (hereinafter "DOD/FEA") in the above styled proceeding. Also enclosed find the original and eight copies of the statement of visiting attorney and entry of appearance.

Copies of these pleadings are being sent in accord with the Certificate of Service. Inquiries regarding this proceeding should be directed to the undersigned at the address above or at telephone number (703) 696-1646.

Sincerely yours

David A. McCormick
General Attorney

CF: Certificate of Service

FILED⁴

APR 19 2006

STATE OF MISSOURI
BEFORE THE PUBLIC SERVICE COMMISSION

Missouri Public
Service Commission

Staff of the Missouri Public Service Commission)

v.)

Case No. GC 2006-0378

Missouri Pipeline Company, LLC; Missouri Gas)
Company, LLC; Omega Pipeline Company, LLC)
Mogas Energy, LLC; United Pipeline Systems, Inc.)
Gateway Pipeline Company, LLC)
_____)

PETITION FOR LEAVE TO INTERVENE

Robert N. Kittel
Chief
Regulatory Law Office
U.S. Army legal Services Agency
JALS-RL 4147
901 N. Stuart Street, Room 713
Arlington, VA 22203-1837

For

THE DEPARTMENT OF DEFENSE AND
OTHER FEDERAL EXECUTIVE AGENCIES

David A. McCormick
Attorney

Of Counsel

Dated: 18 APRIL 2006

STATE OF MISSOURI
BEFORE THE PUBLIC SERVICE COMMISSION

Staff of the Missouri Public Service Commission)	
)	
v.)	Case No. GC 2006-0378
)	
Missouri Pipeline Company, LLC; Missouri Gas)	
Company, LLC; Omega Pipeline Company, LLC)	
Mogas Energy, LLC; United Pipeline Systems, Inc.)	
Gateway Pipeline Company, LLC)	

PETITION FOR LEAVE TO INTERVENE

In accord with 4 CSR 240-2.075, the Secretary of Defense, through duly authorized counsel, on behalf of the consumer interest of the United States Department of Defense and other affected Federal Executive Agencies (collectively referred to as "DOD/FEA"), requests leave to intervene in the above styled proceeding which has been instituted by the Commission to investigate the Complaint of the Staff of the Missouri Public Service Commission filed on or about 31 March 2006. As grounds for this petition, your petitioner states:

I.

That he is duly authorized by law to make and file this petition. ¹

¹ The Secretary of Defense has been delegated authority by the General Services Administration to represent, through Department of the Army counsel, the consumer interest of all the Federal Executive Agencies in this proceeding under 40 U.S.C.A. 481(a)(4) and 486(d) in this regulatory proceeding. See also: 48 CFR § 41.101 for intervention definition.

II.

That the name, address, telephone and facsimile copier numbers of the person to whom communications in regard to this petition should be addressed are:

David A. McCormick, General Attorney
Regulatory Law Office
U.S. Army Legal Services Agency
JALS-RL 4147
901 N. Stuart Street, Room 713
Arlington, VA 22203-1837

Telephone: (703) 696-1646
FAX: (703) 696-2960
E-mail: David.McCormick@hqda.army.mil

III.

That the interest of DOD/FEA, as a rate paying customer, in this proceeding is manifest:

* The United States maintains military and civilian activities within the State of Missouri.² Some of these federal customers (at least indirectly) procure gas utility service via the respondents: Missouri Gas Company (MGC), and Missouri Pipeline Company (MPC). Fort Leonard Wood is the major federal installation receiving such utility service. Respondent Omega Pipeline Co. LLC (OMEGA) is an Army contractor with gas distribution operations within the federal enclave,³ of Fort Leonard Wood and whose sole customer is the federal government (including various federal non-appropriated fund instrumentalities, federal agencies and other tenants).⁴

* The total attributable intrastate gas utility billings for Fort Leonard Wood, alone,

² For instance, there are federal agencies with offices in Rolla, St. James, Waynesville, Cuba and St. Robert, MO. Of course, the Army, at Fort Leonard Wood, MO, is the primary federal agency herein affected.

³ The undersigned counsel cannot waive federal supremacy, only Congress can do that. Commentary on State regulatory jurisdiction related to on-post (within a federal enclave) utility system privatization contractors is made in discussed Baltimore Gas & Electric Company v. United States, 133 F. Supp. 2d 721 (2001), Baltimore Gas & Electric Co. v. United States, 290 F.3d 734 (CA4 2002). Disputes, grievances and contract interpretations involving federal contracts would be subject to a federal dispute resolution process rather than adjudication before a State tribunal.

⁴ Commentary on State regulatory jurisdiction and utility franchise territory matters within a federal enclave is made in Black Hills Power and Light Co. v. Weinberger, 808 F.2d 665, cert. denied, 108 Sup. Ct. 73, 484 U.S. 818 (1987), and see also West River Electric Association v. Black Hills Power and Light Co., 719 F.Supp. 1489 (1989), 107 P.U.R.4th 558 (1989), aff'd, West River Electric Association v. Black Hills Power and Light Co., 918 F.2d 713, 118 P.U.R. 4th 510 (CA-8 1990).

[not including commodity (gas) cost, or any costs of on-post contractor services] was over \$ 1,770,000, in calendar 2005. The gas services contract applicable to Fort Leonard Wood gas utility service incorporates and is tied to tariff rates of MGC and MPC. The reasonableness of those MGC and MPC tariff rates are a legitimate concern of the consumer interest of DOD/FEA. Total billings for gas service at Fort Leonard Wood in calendar 2005 [including commodity (gas) cost and on-post contractor services] exceeded \$7.5 million.

- * That there are a variety of end uses for such gas utility service, such as: troop and family housing, mess halls, class room and office building heating and cooling, laundry and small amounts of industrial process usage, and use by non-appropriated fund instrumentalities (post exchange, commissary and clubs), federal agency and other tenant offices and uses such as those buying gas services under Army Regulation 420-41.⁵
- * The bulk of the gas commodity procured by Fort Leonard Wood is received at high volumes and high pressures, from MPC for distribution through the gas system on federal property by Army contractor, OMEGA.⁶ As a load on the MPC and MGC systems, Fort Leonard Wood, is similar to the load shape of a municipal utility. Fort Leonard Wood has a lower load factor than most large industrial process customers, but a higher load factor than residential customers. Much of the gas commodity is received from MGC and MPC by transportation service.
- * That the consumer interest of DOD/FEA was a party and presented evidence in past proceedings before this Commission.⁷

IV.

That the interest of DOD/FEA is such that it cannot be adequately protected by any other party. From the viewpoint of DOD/FEA, the bulk of billings herein involved relate to the Army at Fort Leonard Wood. To the extent that the issues raised by the Staff in its complaint and later on the record tend to reduce the "burner-tip" cost of gas to the Army

⁵ Under 10 USCS § 2686, Congress pre-empted certain utility sales contracting to tenant activities on military reservations. Army Regulation (AR) 420-41 is the current regulation implementing that statutory authority. While the pre-emption can apply to sales outside a federal enclave, normally this provision applies within a federal enclave where a State regulator would lack jurisdiction to franchise territory to any utility.

⁶ While Congress has placed limited constraint on the competitive acquisition of electric utility services, no similar constraint is applicable to competitive federal acquisition of gas, telephone, water and sewer utility services. See: 48 CFR § 41.201 (d) (1) and 48 CFR § 52.241-1 (a-c).

⁷ Among prior these proceedings would be: Southwest Bell Telephone Company, Missouri PSC Case No. TC 89-14; Investigation of United Telephone Co. of Missouri proposed increase in rates, Mo. PSC

at Fort Leonard Wood, it is likely that DOD/FEA will be supportive of Commission Staff positions. However, to the extent that positions of the Commission Staff have the effect of increasing the cost of gas service at the "burner tip" to the Army at Fort Leonard Wood, it is possible DOD/FEA might have a different interest to protect in this proceeding than the Commission Staff.⁸ The combination of load factor, load characteristics, and rate schedules upon which the federal installations acquire gas utility service make their usage distinct from the other large customers. The intervention of petitioner will neither unduly broaden the issues nor unduly delay the proceeding.

V.

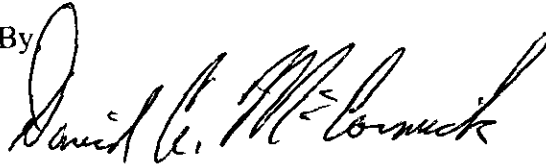
That, at this time, the DOD/FEA has not determined whether it will be necessary to present any expert direct testimony or exhibits in this proceeding. Some prior proceedings were litigated and some may have settled. If this proceeding goes to hearing, DOD/FEA may (**or may not**) present expert testimony and exhibits on overall revenue requirement (including cost of equity capital) and rate design, (including jurisdictional and class cost allocation). Having not seen the Staff Audit Report, it is premature for DOD/FEA to determine the scope (and/or final assignment) of expert witness testimony, if any. If the proceeding goes to hearing, evidence which DOD/FEA may present will

Case TR 93-181; In the Matter of Southwest Bell Telephone Co., Mo. PSC Case No. TT 93-224; In the Matter of Southwest Bell Telephone Co., Mo. PSC Case No. TT 94-218.

⁸ Paragraph 8, and footnote 2 to that paragraph and paragraph 16 of the Complaint of the Staff of the Missouri Public Service Commission filed in this proceeding mention a high confidential Audit Report which has not been seen by this petitioner. Positions taken in the Audit Report and any Staff testimony filed herein could affect or alter the position of this petitioner (DOD/FEA) relative to the Staff position on some issues. Having not seen the Staff Audit Report petitioner is unable at this juncture to fully articulate its support, or lack of support, for the totality of the Staff position in the Complaint. Nevertheless, because of the large consumer interest of DOD/FEA in the level of MGC and MPC tariff rates, petitioner has a substantial interest in the outcome of this proceeding. An April 5, 2006 press report by a Mr. Jeffrey Tomich of the St. Louis Post Dispatch stated as to the relief sought in the Complaint, "the impact as to individual customers has not been determined." The press story apparently arose from an interview by Mr. Tomich with Mr. Robert Schallenberg of the PSC Staff. That press report gives rise to concern and uncertainty as to whether all are proposed by the Complaint to receive lower burner tip costs of gas service.

likely be of value to the Commission in its determination of the issues involved in this proceeding. If DOD/FEA determines that it will offer direct testimony or exhibits, the two most likely witnesses that DOD/FEA would present would be Mr. Kenneth L. Kincel⁹ and/or Mr. Thomas J. Prisco.¹⁰ DOD/FEA will advise all parties of its intent as to offering any expert witnesses in this matter as soon as possible.

WHEREFORE, your petitioner prays for leave to intervene and be treated as a party hereto with right to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard through counsel, upon brief and at oral argument, if oral argument is granted.

By 

David A. McCormick
Attorney
Pennsylvania Attorney ID No. 17357¹¹

Regulatory Law Office
U.S. Army Legal Services Agency
JALS-RL 4147
901 N. Stuart Street, Room 713
Arlington, VA 22203-1837

For

THE DEPARTMENT OF DEFENSE AND
OTHER FEDERAL EXECUTIVE AGENCIES

⁹ Mr. Kincel has participated in a number of pipeline proceedings at the Federal Energy Regulatory Commission (FERC) and in a number of gas and electric utility proceedings in State tribunals.

¹⁰ Mr. Prisco has participated in over 30 regulatory proceedings involving both pipelines at the FERC and gas, electric and other utility proceedings in State tribunals. Mr. Prisco appeared and offered expert testimony as a witness before the Missouri Public Service Commission in: Southwest Bell Telephone Company, Missouri PSC Case No. TC 89-14.

¹¹ In accord with the Rules of Practice, 4 CSR 240-2.040(3)(C), a Statement of Visiting Attorney on admission to practice and entry of appearance, acknowledged by, Mr. Jeffrey H. Rohrer, a sponsoring member of the bar of the State of Missouri is being filed with this intervention request.

STATE OF MISSOURI
BEFORE THE PUBLIC SERVICE COMMISSION

Staff of the Missouri Public Service Commission)

v.)

Case No. GC 2006-0378

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

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the foregoing document to be sent this day, by first class, postage prepaid, properly addressed US Mail (or by private courier) to the all persons listed below:

Mr. Tino M. Monaldo
Attorney at Law
5425 Martindale Street
Shawnee, KS 66218
tmonaldo@mrg-llc.com

Missouri Pipeline Company, LLC
Missouri Gas Company, LLC
110 Algana Court
St. Peters, MO 63376

Ms. Lera Shemwell, Senior Counsel
Office of General Counsel
Missouri Public Service Commission
Governor Office Building, Suite 800
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102-0360

Mr. Paul S. De Ford
Lathrop & Gage, LC
2345 Grand Boulevard, Suite 2800
Kansas City, MO 64108
pdeford@lathropgage.com

Mr. Lewis R. Mills, Jr.
Office of Public Counsel
Governor Office Building, Suite 650
200 Madison Street
P.O. Box 2230
Jefferson City, MO 65102-2230
mopco@ded.mo.gov

Mr. Tim Schwarz
Deputy General Counsel
Office of General Counsel
Missouri Public Service Commission
Governor Office Building Suite 800
200 Madison Street
P.O. Box 360
Jefferson City, MO 65102-0360
Tim.Schwarz@psc.mo.gov

Mr. David J. Ries
6137 6137 Colorow Drive
Morrison, CO 80465
riesdj@msn.com

Ms. Janet L. Inman
Dent County Commission
Dent County Courthouse
400 N. Main Street
Salem, MO 65560

Ms. Lesa Lietzow
Gasconade County Commission
119 E. First Street, Suite 2
Hermann, MO 65041

Ms. Carol Bennett
Phelps County Courthouse
200 N. Main Street, Suite 102
Rolla, MO 65401
carol.bennett@phelpscounty.org

Mr. Jeffrey H. Rohrer
Office of the Staff Judge Advocate
HQ, US Army Engineer Center
125 8th Street
Fort Leonard Wood, MO 65473-8942
jeffrey.h.rohrer@us.army.mil

Ms. Janet McMillan
Jefferson County Commission
729 Maple
P.O. Box 100
Hillsboro, MO 63050
igoff@jeffco.mo.org

Ms. Connie Smith
Crawford County Commission
203 Main Street
P.O. Box AS
Steelville, MO 65565
ccrawford@sospublicmail.state.mo.us

Mr. Tyce S. Smith
City of St. Robert
P.O. Box 494
Waynesville, MO 65583-0494

Legal Department
Fidelity Natural Gas, Inc.
64 North Clark Street
P.O. Box 669
Sullivan, MO 63080

Legal Department
Laclede Gas Company
720 Olive Street
St. Louis, MO 63101

Ms. Diana Linnenberger
Pulaski County Courthouse
301 Historic Route 66, Suite 101
Waynesville, MO 65583

Mr. Bob Kirkpatrick
Pike County Commission
115 W. Main Street
Bowling Green, MO 63334

Ms. Debbie Door
Franklin County Commission
300 Main Street, Room 201
Union, MO 63084
frcoclerk@yhti.net

Mr. Joseph Ortwerth
St. Charles County Commission
100 N. Third Street
St. Charles, MO 63301

Mr. B. J. Loholz
Vice President & Controller
Missouri Interstate Gas Co. LLC
110 Algana Court
St. Peters, MO 63376

Ms. Suzanne Pratl
St. Louis County Commission
Lawrence K. Roos County Government Center
41 S. Central Avenue
Clayton, MO 63105
[spratl@stlouisco.com](mailto:sprat1@stlouisco.com)

Mr. David A. McCormick
Regulatory Law Office (JALS-RL)
US Army Legal Services Agency
901 N. Stuart Street, Room 713
Arlington, VA 22203-8137
E-mail: David.Mccormick@hqda.army.mil

Ms. Elaine Luck
Lincoln County Commission
201 Main Street
Troy, MO 63379

City of Cuba
Legal Department
202 N. Smith Street
Cuba, MO 65453

Von Hoffman Corporation Offices
Legal Department
1000 Camera Avenue
St. Louis, MO 63126

Von Hoffman- Owensville
Legal Department
1005 Commercial Drive
Owensville, MO 65066

Hon. Colleen M. Dale
Secretary
Missouri Public Service Commission
Governor Office Building
200 Madison Street
Jefferson City, MO 65102

Mr. Thomas M. Byrne
Managing Associate General Counsel
Ameren Services Company
1901 Chouteau Avenue
P.O. Box 66149 (MC-1310)
St. Louis, MO 63166-6149

Georgia Pacific
Legal Department
G-P Gypsum Corporation
18 Highway E
Steelville, MO 65565-4522

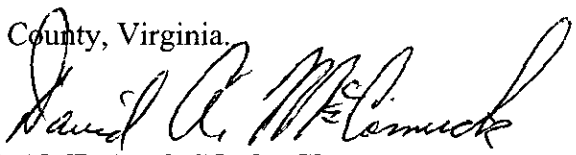
Busy Bee Laundry & Linen Rental
Legal Department
103 E. 14th Street
Rolla, MO 65401

City of St. James
Legal Department
P.O. Box 426
200 N. Bourbeuse
St. James, MO 65559

Willard Asphalt Paving
Legal Department
14160 Highway Z
St. Robert, MO 65584

Royal Canin USA, Inc.
Legal Department
500 Fountain Lakes Blvd. Suite 100
St. Charles, MO 63301

Dated this 18th day of APRIL, 2006 at Arlington County, Virginia.


DAVID A. McCORMICK