

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED⁴

MAY 16 2006

Staff of the Missouri Public Service
Commission

Complainant,

v.

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

Respondents.

Missouri Public
Service Commission

Case No. GC-2006-0378

MOTION TO DISMISS

COMES NOW Missouri Pipeline Company, LLC (hereafter "MPC"), Missouri Gas Company, LLC (hereafter "MGC"), Mogas Energy, LLC (hereafter "Mogas"), United Pipeline Systems, LLC (hereafter "United"), and Gateway Pipeline Company, LLC (hereafter "Gateway") (hereafter collectively referred to as "Respondents"), by and through the undersigned counsel, and respectfully move to dismiss this matter before the Missouri Public Service Commission (hereafter "Commission") for lack of standing, failure to state a claim upon which relief can be granted, and subject matter jurisdiction.

In support of this motion, Respondents state as follows:

1. This matter involves the allegations of the Commission's Staff that Respondents MPC and MGC have excessive earnings; have violated the Affiliate Transactions Rule; have charged rates not authorized by tariff; as well as allegations that the Commission should assert jurisdiction over Respondents Gateway, Omega Pipeline Company, LLC, Mogas, and United. Respondents believe that this matter should be

dismissed for lack of standing, failure to state a claim upon which relief can be granted, and subject matter jurisdiction.

2. On March 23, 2006, the Staff allegedly served subpoenas duces tecum on MPC, MGC, Mr. Lodholz, and a number of affiliates. The subpoenas set depositions for several dates in April 2006.

3. On April 25, 2006, Staff noticed depositions for Mr. Lodholz for May 3, 2006 and MPC for May 4, 2006.

4. On April 25, 2006, the Commission entered its Order Denying Request for Mediation and further extending the answer deadline for Respondents until May 11, 2006.

5. On May 2, 2006, Respondents' filed their Motion to Quash Staff's subpoenas and notices of depositions.

6. On May 10th, the Staff filed its Motion to Compel Discovery and for Expedited Treatment.

7. On May 15th, Respondents filed their Response to Staff's Motion to Compel Discovery and for Expedited Proceedings.

Staff Has No Standing to File the Complaint in This Matter

8. Staff does not have standing to file a complaint challenging the justness and reasonableness of the rates of MPC and MGC. Section 386.390.1, RSMo provides in the pertinent part that "...no complaint shall be entertained by the commission, except *upon its own motion*, as to the reasonableness of any rates or charges of any gas, electrical, water, sewer, or telephone corporation, unless the same be signed by the public counsel or the mayor or the president or chairman of the board of alderman or a majority

of the council, commission or other legislative body of any city, town, village or county, within which the alleged violation occurred, or not less than twenty-five consumers or purchasers, or prospective consumers or purchasers, of such gas, electricity, water, sewer or telephone service."

9. The Staff, through the office of General Counsel, is not among the entities identified in the statute that are authorized to file a complaint regarding the reasonableness of rates and charges.

10. The Staff filed its complaint through the office of General Counsel, without the motion of this Commission or signature of any authorized party under § 386.390.1. Without the motion of this Commission or signature of an authorized party under statute, the Staff has no independent standing to file a complaint of this nature on its own. Therefore, Staff has no standing to file the complaint at issue, and it should be dismissed accordingly.

The Staff Fails to State a Claim Upon Which This Commission Can Grant Relief

11. The Staff's complaint fails to state a claim upon which relief can be granted. Staff fails to allege or in any way demonstrate that either MPC or MGC are earning in excess of the returns or amounts previously authorized by this Commission. Further, Staff has not alleged or in any way demonstrated that MPC or MGC are incurring and passing through to customers amounts exceeding previously authorized costs of service in violation of § 386.266, RSMo. MPC and MGC have in fact never earned up to the revenue requirements authorized by the Commission in Case Nos. GR-92-414 or GA-90-280, respectively. Therefore, Staff's complaint has no basis upon which relief can be granted and should be dismissed accordingly.

**This Commission Lacks Subject Matter Jurisdiction
Over Mogas, United, and Gateway**

12. The Commission lacks jurisdiction to maintain a complaint as to Respondents Mogas, United, and Gateway. The Commission's jurisdiction extends only as far as is explicitly granted by statute. Section 386.250, RSMo, grants jurisdiction to the Commission over public utilities and certain entities that own, lease, operate, or control the manufacture or sale of natural gas by a public utility. Gateway, United, and Mogas are not, as the Staff asserts, "gas corporations" or "public utilities," as defined in §§ 386.020(18) or (42), RSMo. Further, Gateway, United, and Mogas do not own, lease, operate or control the manufacture or sale of natural gas by regulated pipelines, MPC or MGC. These entities, in fact, have no employees, nor do they have any contracts with MPC or MGC customers or the pipelines themselves, and transport no gas. They are limited liability companies with no influence or control over the business of MPC or MGC and maintain books completely separate from MPC or MGC. Staff has not asserted any facts demonstrating that Gateway, United, and Mogas fall under the Commission's statutory jurisdiction for which its complaint is based. Thus, the Commission lacks subject matter jurisdiction to regulate or otherwise supervise or interfere with their activities. Since the Staff has failed to establish any other legal basis for which they fall under the Commission's jurisdiction, the Commission should dismiss Staff's complaint with regard to these entities for lack of subject matter jurisdiction.

WHEREFORE, Respondents respectfully request this Commission to dismiss Staff's complaint for lack of standing, failure to state a claim upon which relief can be granted, and lack of subject matter jurisdiction.

Respectfully submitted,

LATHROP & GAGE, L.C.

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ATTORNEYS FOR RESPONDENTS

Dated: May 16, 2006

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Answer to Complaint has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 16 day of May, 2006, to:

* Case No.

GC-2006-0378

<u>Name of Company</u> <u>Name of Party</u>	<u>Email</u> <u>Phone</u> <u>Fax</u>	<u>Mailing</u> <u>Address</u>	<u>Street</u> <u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
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/s/ Paul S. DeFord

Attorney