

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND

PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
JAMES C. SWEARENGEN
WILLIAM R. ENGLAND, III
JOHNNY K. RICHARDSON
GARY W. DUFFY
PAUL A. BOUDREAU
SONDRA B. MORGAN
CHARLES E. SMARR
DEAN L. COOPER
GREGORY C. MITCHELL

312 EAST CAPITOL AVENUE
P.O. BOX 456
JEFFERSON CITY, MISSOURI 65102-0456
TELEPHONE (573) 635-7166
FACSIMILE (573) 635-0427

BRIAN T. MCCARTNEY
DIANA C. CARTER
JANET E. WHEELER
SCOTT A. HAMBLIN
M. MELISSA MANDA
JAMIE J. COX
L. RUSSELL MITTEN

OF COUNSEL
RICHARD T. CIOTTONE

November 1, 2006

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

FILED³

NOV 1 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 Reply to Staff's Response to 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.

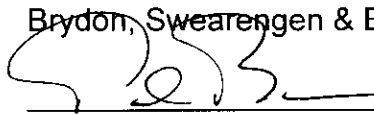
I would appreciate it if you would stamp the extra two copies of this pleading "filed" and return them to the person who is delivering this to you.

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

NOV 1 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

**REPLY TO STAFF'S RESPONSE TO MOTION
TO QUASH SUBPOENA DUCES TECUM**

Far from providing the Commission a basis upon which to overrule the motion of Terry Matlack and Tortoise Capital Advisors (together "Tortoise") for an order quashing the subpoena *duces tecum* served on Tortoise, Staff's response only underscores why the motion should be granted.

The Documents and Information Sought are Irrelevant

Staff's response confirms that the documents sought have absolutely nothing to do with the issues in either this case or those in Case No. GC-2006-0491.¹ A review of the allegations in Staff's Complaint in Case No. GC-2006-0378 clearly shows that they concern events taking place months and, in some cases, years prior to Tortoise's purchase of Mowood and, consequently, Omega in June 2006. Further, reviewing the

¹ Tortoise has not seen the request made pursuant to 4 CSR 240-2.100(1) that prompted the issuance of the subpoena at issue here, so it cannot speak to the veracity of Staff's allegation that the subpoena is "tied to both the GC-2006-0378 case and the GC-2006-0491 case" and is "not limited by the scope of the complaint in the GC-2006-0378 [sic]." For purposes of this reply, Tortoise has no choice but to accept that statement as true.

tariff Complaint filed by Staff on June 21, 2006 in Case No. GC-2006-0491 likewise reveals that it concerns alleged conduct on the part of MPC and MGC going back to July 2003, well prior to Tortoise's acquisition of Mowood and Omega in June.

Faced with these indisputable facts, Staff essentially argues that it does not trust that Alpha Pipeline, Dennis Langley, David Ries, MPC, and/or MGC are not somehow still involved with Mowood and Omega. Further, the argument goes, regardless of the allegations and scope of investigation in those two cases, since Staff has certain lingering, albeit unsubstantiated, concerns about the current relationship among these entities and individuals, the documents are relevant and must be produced, along with Mr. Matlack. Specifically, and without any factual basis whatsoever, Staff wonders:

- Whether the sale transaction effective June 1, 2006 was a "genuine sale transaction," or "whether there has only been a shuffling of corporate entity names and new immediate owners to create the impression that the prior affiliation no longer exists." Response, pp. 5, 6, 7, 8.
- Whether "Mowood, LLC may have changed its name prior to the sale" and whether, as a result, "the entity that was purchased by Tortoise was not the entity owning Omega." Response, p. 5.
- Whether "Omega has entered into contracts that effectively restore the rights of at least the majority owners of MPC and MGC and continue the affiliate relationship with Omega." Response, p. 6.
- Whether "another contractual arrangement was created to restore the prior affiliation." Response, p. 6.

- Whether MPC and MGC have created “new special arrangements with Omega to mirror the special treatment Mr. Ries provided Omega prior to June 1, 2006.”

Response, p. 6.

Staff's ultimate contention appears on pages three and four of Staff's response, where it states, “Staff has not been supplied information to cause the Staff to believe that Omega and MPC/MGC do not continue to have common ownership and/or control camouflaged [sic] through a complicated chain of ownership and financial arrangements designed to make detection difficult.” Like its request earlier this year that Omega be ordered to “show cause” why it should not be subject to Commission jurisdiction, a motion properly denied by the Commission on August 8, 2006, Staff's argument wrongly assumes that at the end of the day, it is only obligated to say that it would like to see these materials, without regard to what allegations or issues in these case that they may tend to prove or disprove.

In any event, as the attached affidavit of Terry Matlack shows, Staff's unfounded theories regarding the alleged continued involvement of David Ries, Dennis Langley, and Alpha Pipeline in Mowood or Omega are simply wrong-headed. Among other things, Mr. Matlack confirms that, since June 1, 2006:

- Alpha Pipeline, Dennis Langley, and David Ries do not maintain any ownership interest whatsoever in Mowood or Omega Pipeline Company.
- No companies, or any other entities in which Alpha Pipeline, Dennis Langley, or David Ries may have any interest (including, but not limited to, Missouri Pipeline Company, LLC, Missouri Gas Company, LLC, Mogas Energy, LLC, United

Pipeline Systems, Inc., and Gateway Pipeline Company, LLC) maintain any ownership interest whatsoever in Mowood or Omega Pipeline Company.

- No other agreements have been executed which would change the organizational structure of these companies as set forth above, or which would “effectively restore the rights of at least the majority owners of MPC and MGC” in Omega or Mowood.

Moreover, at no time, either prior to or after June 1, 2006, have Alpha Pipeline, Dennis Langley, David Ries, or any other companies or entities in which they may have any interest (including, but not limited to, Missouri Pipeline Company, LLC, Missouri Gas Company, LLC, Mogas Energy, LLC, United Pipeline Systems, Inc., and Gateway Pipeline Company, LLC) maintained any ownership interest in Tortoise Capital Advisors or Tortoise Capital Resources. Matlack affidavit, paras. 9-10.

Tortoise acknowledges that, generally, courts will enforce an administrative agency’s subpoena if: “(1) the inquiry is within the authority of the agency; (2) the demand is not too indefinite; and (3) the information sought is reasonably relevant.” *Jackson v. Mills*, 142 S.W.3d 237, 240 (Mo. App. W.D. 2004) (quoting *Angoff v. M&M Mgmt. Corp.*, 897 S.W.2d 649 (Mo. App. 1995)). In addition to failing to address Tortoise’s argument that there is no statutory or rule basis for any claim by Staff that it has the right to examine transactions between Omega and its customers after June 1, 2006 (Motion to Quash, p. 9), Staff ignores the fact that “relevance” under Missouri law has two facets – “logical” relevance and “legal” relevance. *Id.* Thus, Staff must show that the requests seek evidence that tends to make the existence of material facts more or less probable, *and* that the probative value of the evidence outweighs the dangers to

Tortoise of "unfair prejudice, confusion of the issues, undue delay, waste of time, cumulativeness, or violations of confidentiality." *Id.* As the Court in *Jackson* noted, Rule 56.01 indicates that these issues are properly considered in the context of pretrial discovery. *Id.*, n. 3.

The most patent example of Staff's inability to show the relevance of this information is its request for current billings to Omega customers. First, Omega's contracts with the customers to which it markets natural gas were provided to Staff by Omega in response to the subpoena issued to Omega Pipeline in March, as were documents reflecting its agreements with the Department of Defense to supply natural gas to Fort Leonard Wood. Its invoices to customers since June 1, 2006 simply have nothing to do with the issues in either this case or the 0491 matter, nor do they have any logical or legal relevance to the Staff's purported concern that there is some nefarious current relationship among Langley, Alpha Pipeline, Ries, Tortoise, Mowood, and Omega.

Further, several documents demanded by the subpoena should be obtained from MPC and MGC which, unlike Tortoise, Mowood, and Omega, are regulated entities and parties to these cases. (Attachment A, paras. 7, 8, and 9). Rule 57.09(c) requires that a party responsible for issuing and serving a subpoena "shall take reasonable steps to avoid imposing undue burden or expense on a non-party subject to the subpoena." In reviewing similar obligations in the context of Rule 56.01, courts have concluded this includes taking steps to obtain the information from other sources first. *Jackson*, 142 S.W.3d at 241.

The fact that, on October 30, 2006, Staff asked this Commission to stay this case pending a resolution of the 0491 case only further supports Tortoise's motion. Staff cannot articulate *any* issue in the 0491 case, as framed by its Complaint, on which any of these documents has any bearing. Simply put, the documents and information demanded by Staff in the subpoena are not logically or legally relevant to the issues in this case or in the 0491 matter. In any event, many of them should be sought from MGC and MPC. Further, Terry Matlack's affidavit disposes of the issues Staff raises regarding the current relationship among Langley, Alpha Pipeline, Ries, Tortoise, Mowood, and Omega. A subpoena demanding a time-consuming deposition and the production of documents and commercially sensitive information must be based on more than the speculation Staff offers in response to Tortoise's motion.

Confidential Information of Omega is Not Adequately Protected from Disclosure

Contrary to Staff's response, relevance is not the only basis upon which Tortoise objects to producing the documents demanded by Staff. The question of whether confidential business information contained in the documents and information this subpoena seeks will be accessible to Omega's competitors is a significant one that is not even addressed by Staff. This is especially so since Staff asserts in its response that it intends to utilize these documents in the 0491 matter, in which there is currently pending a motion to strike testimony asserting violations of the Commission's protective order in that case. Response, p. 2.

The fact that there exists a similar protective order in this case does not offer Tortoise much comfort. As noted in Tortoise's motion to quash, direct competitors of Omega are parties to both proceedings, and Staff has offered no response to Tortoise's

valid, stated concern that confidential information contained in the documents and information subpoenaed previously may have been or will be made available to unauthorized officers or employees of its competitors (even inadvertently) at potentially great harm to Omega and Tortoise.

For these reasons, Terry Matlack and Tortoise Capital Advisors respectfully restate their request that the subpoena *duces tecum* dated October 11, 2006 be quashed. Movants request such further relief, including an appropriate protective order under Rule 56.01(c), as the Commission 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
dyoungs@blackwellsanders.com


BRYDON, SWEARENGEN & ENGLAND



Paul A. Boudreau #33155
Brydon, Swearngen & England, P.C.
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 1st day of November, 2006, to all parties of record.



Paul A. Boudreau

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

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

AFFIDAVIT OF TERRY MATLACK

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

Terry Matlack, being first duly sworn upon his oath, hereby states as follows:

1. I am a Managing Director of Tortoise Capital Advisors, LLC. Tortoise Capital Advisors was founded in 2002 to provide energy infrastructure investment management services to individual and institutional investors. Tortoise Capital Advisors manages three public funds, and one private fund – Tortoise Capital Resources Corp.

2. Tortoise Capital Resources Corp. 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. I serve as the Chief Financial Officer of Tortoise Capital Resources Corp. and am also a member of the company's board of directors and investment committee.

3. As a result of a Sales Agreement entered into between Tortoise Capital Resources Corp. and Mowood, LLC and effective June 1, 2006, Tortoise Capital Resources owns 100 percent of the limited liability interests of Mowood which, in turn, owns 100 percent of the limited liability interests of Omega Pipeline Company, LLC.

4. I have reviewed the response of the Staff of the Missouri Public Service Commission to the recent motion filed asking the Commission to quash a subpoena duces tecum issued to Tortoise Capital Advisors and me in this matter. In that response, Staff purports to have several primary concerns regarding that transaction, including:

- "Staff has not been supplied information to cause the Staff to believe that Omega and MPC (Missouri Pipeline Company, LLC)/MGC (Missouri Gas Company, LLC) do not continue to have common ownership and/or control camouflaged [sic] through a complicated chain of ownership and financial arrangements designed to make detection difficult." Response, pp. 3-4.
- Whether the sale transaction effective June 1, 2006 was a "genuine sale transaction," or "whether there has only been a shuffling of corporate entity names and new immediate owners to create the impression that the prior affiliation no longer exists." Response, pp. 5, 6, 7, 8.
- Whether "Mowood, LLC may have changed its name prior to the sale" and whether, as a result, "the entity that was purchased by Tortoise was not the entity owning Omega." Response, p. 5.

- Whether "Omega has entered into contracts that effectively restore the rights of at least the majority owners of MPC and MGC and continue the affiliate relationship with Omega." Response, p. 6.
- Whether "another contractual arrangement was created to restore the prior affiliation." Response, p. 6.
- Whether MPC and MGC have created "new special arrangements with Omega to mirror the special treatment Mr. Ries provided Omega prior to June 1, 2006." Response, p. 6.¹

5. It is my understanding based on representations made by the seller in the above transaction that, prior to June 1, 2006, 83.5 percent of the limited liability interests in Mowood were owned by Alpha Pipeline, Ltd. Dennis M. Langley was the president and 100 percent shareholder of Alpha Pipeline. The remaining 16.5 percent of Mowood was owned by David J. Ries.

6. As a part of the above transaction, in addition to executing the Sales Agreement, Alpha Pipeline and David Ries executed a Termination of Interest Agreement dated June 1, 2006 in favor of Tortoise Capital Resources Corporation in which they clearly and unambiguously acknowledged that their interests in Mowood had been redeemed, that they have no further ownership interest in Mowood, and that they have no further rights or obligations with regard to Mowood.

7. Mowood did not change its name prior to its sale to Tortoise Capital Resources Corp.

¹ Tortoise Capital Advisors, Tortoise Capital Resources, Mowood, and Omega Pipeline Company do not, by reciting these allegations, intend to admit that prior to June 1, 2006, these entities were in any way "affiliates" of MPC or MGC as Staff alleges.

8. Tortoise Capital Resources owns 100 percent of the limited liability interests of Mowood which, in turn, owns 100 percent of the limited liability interests of Omega Pipeline Company, LLC. No other entity or individual maintains any ownership interest in these entities.


9. Specifically, since June 1, 2006:

- Alpha Pipeline, Dennis Langley, and David Ries do not maintain any ownership interest whatsoever in Mowood or Omega Pipeline Company.
- No companies, or any other entities in which Alpha Pipeline, Dennis Langley, or David Ries may have any interest (including, but not limited to, Missouri Pipeline Company, LLC, Missouri Gas Company, LLC, Mogas Energy, LLC, United Pipeline Systems, Inc., and Gateway Pipeline Company, LLC) maintain any ownership interest whatsoever in Mowood or Omega Pipeline Company.
- No other agreements have been executed which would change the organizational structure of these companies as set forth above, or which would "effectively restore the rights of at least the majority owners of MPC and MGC" in Omega or Mowood.

10. At no time, either prior to or after June 1, 2006, have Alpha Pipeline, Dennis Langley, David Ries, or any other companies or entities in which they may have any interest (including, but not limited to, Missouri Pipeline Company, LLC, Missouri Gas Company, LLC, Mogas Energy, LLC, United Pipeline Systems, Inc., and Gateway Pipeline Company, LLC) maintained any ownership interest in Tortoise Capital Advisors or Tortoise Capital Resources.

I have read the above and foregoing and it is true and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NAUGHT.


TERRY MATLACK

Subscribed and sworn to before me this 1 day of Nov, 2006.


Notary Public

My Commission Expires:

7/12/09

[SEAL]

