

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

Staff of the Missouri Public Service Commission	)	
	)	
	)	
Complainant,	)	
	)	
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.; and	)	
Gateway Pipeline Company, LLC	)	
	)	
Respondents.	)	

**MOTION TO QUASH SUBPOENA DUCES TECUM**

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 quash the subpoenas issued at the request of the Staff of the Missouri Public Service Commission (hereafter “Staff” and “Commission” respectively). 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 all six subpoenas issued at the request of the Staff are void and should be quashed.

2. Prior to the filing of this complaint by Staff, MPC and MGC, the two Respondents that are regulated by the Commission, in response to a non-docketed informal rate review, voluntarily delivered to Staff virtually all of its financial documents including audited financial statements for 2002-2005, complete check registers for 2004 and 2005, gas flow information by customer, by month, by volumes and by tariff charge for 2004 and 2005, as well as thousands of pages of other documents including, but not limited to, those described below:

- Audited financials of the regulated pipelines for calendar years 2002, 2003, 2004 and 2005
- Affiliate transaction reports for each year
- Form 2s for each year, except for 2005 which is in progress
- Work papers from independent auditors for 2004
- Access to every invoice of the regulated pipelines and copies of those invoices as requested
- All transportation contracts of MPC and MGC, including those with Omega and MIG (interstate pipeline)
- Contracts between the regulated pipelines and Dave Ries (R2 Development) for management services
- The Gateway Senior Secured Loan Documents from 2002
- The allocation methodology for accessing costs between MPC, MGC and MIG (interstate pipeline)
- Insurance policies

- General ledgers and transaction ledgers for 2004 and 2005 recording thousands of entries, including check registers showing each check for calendar years 2004 and 2005 for the regulated pipelines and copies of those checks requested (note these ledgers were reformatted at the time and expense of MPC/MGC to suit the request of the Staff)
- Electronic files providing replication of billing data, including contracted for MDQ and monthly gas volumes for 2004 and 2005 for both MPC and MGC by customer, by month, with tariff charges which a Staff representative told Mr. Ries was sufficient and acceptable.
- Bank statements for both 2004 and 2005 for MPC
- Principal and interest payments and balances for the Gateway Senior Secured Loan which is allocated to MPC and MGC current to December 31, 2005
- Payroll records for MPC and MGC by employee for 2004 and 2005
- Identity of banks holding the debt of MPC and MGC
- Other documents have been requested by Staff that were either not in existence or are wholly inapplicable to MGC/MPC, including without limitation, gas supply contracts and derivative contracts. Please note that since MPC/MGC only transport gas, they do not and cannot enter into those kinds of commodity contracts. The same has been explained to Staff, but nonetheless they requested those documents, which cannot be provided, but explanation was given as why those requests were inapplicable to MPC/MGC.

3. The Staff issued five (5) subpoenas duces tecum to David J. Ries for MPC, MGC, Mogas, Gateway and Omega Pipeline Company, LLC (“Omega”) on March 23, 2006 to appear on five (5) different dates for five (5) separate entities. On January 26, 2006, to David Lodholz, purportedly for all of the above-described entities as well, including Respondent Omega. Omega is represented by other legal counsel in this action and has already filed a motion to quash the subpoenas to Mr. Ries and Mr. Lodholz as they apply to Omega.

4. The Staff then issued a Notice of Deposition for Mr. Lodholz on April 25, 2006, to be taken on May 3, 2006.

5. The Staff then filed a Notice of Deposition for MPC on April 26, 2006 for a deposition to be taken on May 4, 2006, but the Notice did not specify a representative of MPC.

6. The Staff then filed Notices of Deposition for MGC and Gateway on May 1, 2006 for depositions to be taken on May 11, 2006 but the notices did not specify representatives of either entity.

7. None of the subpoenas described above were issued with any witness fee, nor were any of the subpoenas issued with any authorization. Further, each of the subpoenas were totally devoid of any purported language to establish any relevancy or materiality. The subpoenas were merely issued with the requested documents (most of which had already been provided voluntarily by MPC).

8. The Staff filed its Complaint with this Commission on March 31, 2006, but the first faxed copy of the complaint was not sent to Respondents until on or about April 4, 2006.

9. Gateway, United and Mogas are not, as the Staff asserts, “gas corporations” or “public utilities” as defined in R.S.Mo §§ 386.020(18) or (42). Neither Mogas nor Gateway have any employees or conduct any business. Mogas merely owns Gateway; Gateway owns United and United owns MPC and MGC, the two regulated entities in Missouri. As such, none of Mogas, United or Gateway are regulated by the Commission and cannot be as they are not “gas corporations” as that term is defined in Missouri statutes. The non-regulated status of these entities held under Mogas was acknowledged by Staff and the Commission in the acquisition case when Gateway acquired the stock of United in 2001 in Case No. GM-2001-585. The Staff has failed to establish any other legal basis for which they fall under the Commission’s jurisdiction. In fact, no facts have been alleged that would make Gateway, United or Mogas a “gas corporation,” much less prove those facts.

10. Section 386.320(2), RSMo empowers the Commission to issue subpoenas *only* with respect to entities “subject to its supervision”. Gateway and Mogas are not regulated by the Commission, as acknowledged by the Staff and Commission in Case No. GM-2001-585, and, therefore, they are not subject to the subpoenas issued by the Staff. Further, certain documents requested are outside of the jurisdiction of the Commission since they relate solely to the business of non-regulated entities with third parties and not to transactions with any regulated entity. In fact, virtually all of the documents allegedly subpoenaed have already been provided but Staff has not taken the time or made the effort to inventory what it has been provided. What is left that was not provided yet for the most part are items requested of the non-regulated entities which in no way relate to the business of MPC or MGC, the regulated entities. Accordingly, these documents are not subject to the Commission’s subpoena authority under § 386.320(2), RSMo.

11. Missouri Supreme Court Rule 57.03 permits parties to request depositions after an action has been filed. Missouri Supreme Court Rule 57.02 requires parties seeking deposition testimony before an action is filed to request an order authorizing the taking of depositions for the perpetuating such testimony before the action is filed. The Staff has filed no such request in this matter. Since the subpoenas were issued before the Complaint was filed and since no request has been made pursuant to Rule 57.02, the subpoenas are invalid and should be quashed.

12. State regulation 4 CSR 240-2.100 requires that a subpoena duces tecum state the reasons why the production of documents is relevant. Such reasons were not stated in any subpoena issued by the Staff and, therefore, are invalid and should be quashed.

13. Missouri Supreme Court Rules prohibit any subpoenas for depositions from being unreasonable or oppressive. The Staff's subpoenas require Respondents' appearance at or near the date Respondents' answers are due in this matter. Preparing to adequately answer the Staff's complaint by Missouri counsel not hired until April 13, 2006, and preparing for multiple depositions concurrently, is unduly burdensome and, therefore, the subpoenas are invalid and should be quashed.

14. This Commission has received Motions to Intervene in this matter from additional parties. The Commission has yet to rule on all such motions before it. Therefore, Respondents may have to be produced as witnesses multiple times, first by Staff and then by the Intervenors, which would be overly burdensome. It would be a much more reasonable use of time and expense of all parties--Staff, Intervenors and Respondents--for there not to be multiple depositions of the same person. For this reason, the Staff's depositions should be invalidated and quashed.

15. Missouri Supreme Court Rules limit the scope of what information can be obtained from subpoenas duces tecum to relevant information. Certain documents requested by the Staff are not relevant to this proceeding and therefore are not subject to the Commission's subpoena power.

16. Missouri Supreme Court Rule 57.09 requires that all subpoenas be tendered with mileage and witness fees as a witness would be entitled to receive for attending court. The subpoenas issued by the Staff to Respondents were not tendered with any fees and are, therefore, invalid on their face and should be quashed.

WHEREFORE, Respondents respectfully request that the Commission quash all subpoenas issued to Respondents by the Staff in this matter. The Staff's subpoenas are deficient for failing to comply with the requirements of applicable statutes, regulations and Missouri Supreme Court Rules. Further, this Commission lacks subject matter jurisdiction over Gateway, United and Mogas, since they are not regulated utilities. Since the Commission's subpoena power is dependent upon its subject matter jurisdiction, and since the subpoenas do not comply with applicable Supreme Court Rules, they are void and therefore should be quashed.

Respectfully submitted,

LATHROP & GAGE, L.C.

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Dated: May 2, 2006

*Attorneys for Respondents*

## **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Motion to Quash Subpoena Duces Tecum has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 2nd day of May, 2006, to:

**\* Case No.**

**GC-2006-0378**

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

Attorney