

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

Staff of the Missouri Public Service Commission,	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. GC-2006-_____
	)	
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.	)	

**STAFF COMPLAINT CONCERNING EXCESSIVE EARNINGS; VIOLATION OF AFFILIATE TRANSACTIONS RULE; CHARGING RATES NOT AUTHORIZED BY TARIFF; AND ASSERTING JURISDICTION OVER GATEWAY PIPELINE COMPANY LLC, OMEGA PIPELINE COMPANY LLC, MOGAS ENERGY LLC, AND UNITED PIPELINE SYSTEMS, INC. LLC.**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the Commission’s General Counsel, pursuant to Sections 386.240 and 386.390, RSMo 2000,<sup>1</sup> and Rule 4 CSR 240-2.070, and for its Complaint in this case states:

**GENERAL ALLEGATIONS**

1. Missouri Pipeline Company, LLC (MPC), and Missouri Gas Company, LLC (MGC), are Delaware Limited Liability Corporations with their principal office and place of business located at 110 Algana Court, St. Peters, Missouri 63376.

2. MPC, MGC, United Pipeline Systems, Inc. (UPSI); Omega Pipeline, LLC (Omega); Gateway Pipeline, LLC (Gateway); and Mogas Energy, LLC (Mogas) (collectively

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<sup>1</sup> All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000, as amended.

Respondents), are affiliated entities as that term is defined in Rule 4 CSR 240-40.015 and as defined in certain of Gateway's financing transactions.

3. MPC and MGC are gas corporations, as defined by §386.020 (18), that provide natural gas transportation service to customers in Missouri under tariffs approved by the Missouri Public Service commission (Commission). MPC and MGC are therefore public utilities as defined by § 386.020 and are subject to the jurisdiction of the Commission, pursuant to § 386.250 and § 393.140.

4. During the course of Staff's investigation, Respondents have delayed, failed or refused to provide Staff with basic records, documents, and information needed and requested by Staff.

5. Section 386.390.1 provides:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission; provided, 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 aldermen 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.

6. Section 386.390.2 provides that “[a]ll matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of causes of action or grievances or misjoinder or nonjoinder of parties . . . .”

7. Commission Rule 4 CSR 240-2.070(1) provides, in part, that the Commission Staff has authority to file a Complaint through the General Counsel in connection with any violation of statute, rule, order or decision within the jurisdiction of the Commission.

8. The Staff sets out its preliminary investigation and audit findings in its Report attached as Attachment A hereto<sup>2</sup>. Staff is filing a motion for a protective order with this complaint.

### **Count I - Excess earnings**

9. Staff hereby incorporates by reference the allegations contained in Paragraphs 1-8, above, as though fully set forth herein.

10. Section 393.130.1 provides in pertinent part that “[a]ll charges made or demanded by any . . . gas corporation . . . shall be just and reasonable and not more than allowed by law or by order or decision of the commission. Every unjust or unreasonable charge made or demanded for gas . . . , or in connection therewith, or in excess of that allowed by law or by order or decision of the commission is prohibited.”

11. Section 393.140(5) provides in pertinent part:

Whenever the commission shall be of the opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such persons or corporations are unjust, unreasonable, unjustly discriminatory or unduly preferential or in any wise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished, notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed[.]

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<sup>2</sup> Staff’s Preliminary Audit Report is being filed as Highly Confidential (HC) in its entirety until the Company has had an opportunity to review the document to determine what information it claims should remain HC. After that review, a public version will be filed.

12. Section 393.270(2) provides in pertinent part:

After a hearing and after such investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of gas . . . service not exceeding that fixed by statute to be charged by such corporation or person, for the service to be furnished[.]

13. Section 393.270 (4) provides in pertinent part:

In determining the price to be charged for gas . . . the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard, among other things, to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies.

14. Staff has audited the current revenues and expenses of MPC and MGC and determined that their rates are not just and reasonable because the revenues generated by Respondents' current tariffs exceed the reasonable cost of providing service, even with an allowance for a reasonable average return upon the capital actually expended.

15. In calculating the reasonable costs incurred by Respondents in providing service, Staff has excluded as unreasonable or inappropriate certain of the expenses found on the books of MPC and MGC, including, but not limited to:

- a. Upstream capacity of 15,000 Dth/day on affiliate Missouri Interstate Gas. MPC's and MGC's tariffs do not authorize resale of bundled upstream capacity and including the costs of this transportation contract in MPC's cost of service improperly requires all downstream shippers to pay for Missouri Interstate capacity without the benefit of using it.
- b. Only a portion of travel charged by Mr. Ries to MPC and MGC is related to the provision of service. Mr. Ries' travel benefited other affiliated and related entities, or Mr. Ries personally.

- c. Mr. Ries' entire salary has been improperly charged entirely to MPC and MGC, although much of his time is devoted to affiliates' business. MPC employees located in St. Peters, Missouri, operate MPC and MGC on a day-to-day basis, rather than Mr. Ries.
- d. An excessive amount of Mr. Ries' R2 Development contract salary has been charged to MPC and MGC. Costs to maintain a Colorado office have been eliminated from the MPC and MGC cost of service because the office is not necessary to provide gas service since the day-to-day operations of MPC and MGC occur in the St. Peters, Missouri, office.
- e. Much of Mr. Ries' out-of-pocket business expenses were not allowed as expenses recoverable from MPC and MGC because these costs are already included in his contract salary.

16. Staff's Audit Report documents other examples of adjustments, as will Staff's direct testimony.

### **Prayer for Relief**

WHEREFORE, Staff prays that the Commission will determine the reasonable Missouri jurisdictional annual revenue requirement for Respondent MPC to be \$4,305,593, and for Respondent MGC to be \$2,780,473, and that Respondents' rates to collect those revenues be established as described in Staff's Audit Report; Staff further prays that the Commission will order Respondents MPC and MGC to secure outside audits of their respective financial records for the years 2005 and 2006, pursuant to Commission specification, and that Respondents MPC and MGC be ordered to provide the audit reports and external auditor workpapers to Staff not later than September 1, 2006, for the 2005 financials and May 1, 2007, for the 2006 financials.

**Count II – Respondents, individually and collectively, are subject to Commission regulation**

17. Staff hereby incorporates by reference the allegations contained in Paragraphs 1-8, above, as though fully set forth herein.

18. Staff's Audit Report provides many examples of MPC and MGC transactions that demonstrate that their books and operations are not kept separate and apart from those of the other Respondents.

19. Respondents UPSI, Gateway, and Mogas have asserted control over the property and operations of both MPC and MGC in contracts with lenders and otherwise, such that all of the Respondents' affairs are intermingled.

20. Staff will provide additional additional detail on this issue in its direct testimony.

**Prayer for Relief**

WHEREFORE, Staff prays that the Commission will determine that all of the Respondents are gas corporations and thus public utilities subject to the Commission's regulatory authority because of their common ownership, control and operation.

**Count III - Violation of the Commission's affiliate transactions rules**

21. Staff hereby incorporates by reference the allegations contained in Paragraphs 1-8, above, as though fully set forth herein.

22. Section 393.140(4) provides in pertinent part that the Commission shall "[h]ave power, in its discretion, to prescribe uniform methods of keeping accounts, records and books, to be observed by gas corporations . . . engaged in the manufacture, sale or distribution of gas[.]"

23. Pursuant to §393.140(4), the Commission has duly promulgated its Regulation 4 CSR 240-40.040, which provides in pertinent part:

Beginning January 1, 1994, every gas company subject to the

commission's jurisdiction shall keep all accounts in conformity with the Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act, as prescribed by the Federal Energy Regulatory Commission (FERC) and published at 18 CFR part 201 (1992) and 2 FERC Stat. & Regs. paragraph 20,001 and following (1992), except as otherwise provided in this rule. This uniform system of accounts provides instruction for recording financial information about gas corporations. It contains definitions; general instructions; gas plant instructions; operating expense instructions; accounts that comprise the balance sheet, gas plant, income, operating revenues, and operation and maintenance expenses.

24. Pursuant to statutory authority, the Commission has duly promulgated its Affiliate Transaction Rules for Natural Gas Utilities at 4 CSR 240-40.016, which rules specify the accounting treatment for transactions between natural gas utilities and their affiliates.

25. Respondents' books and records have not been maintained in compliance with the Commission's rules related to affiliated and/or related party transactions.

26. MPC and MGC receive services from a number of affiliated entities, or entities controlled by related parties, and appear to be charged at more than the lower of cost or market. Costs for unregulated affiliates are included in MPC and MGC cost of service that are unrelated to the actual cost of providing utility services.

27. Related entities include, but are not limited to, MPC, MGC, MIG, Omega, Gateway, MRG, R2 Development, and other entities.

28. Expenses associated with the R2 Development consulting agreement with MPC are not related to the provision of service by MPC and MGC. MPC and MGC have neither bids nor other support that these services are priced at the lower of cost or market.

#### **Prayer for Relief**

WHEREFORE, the Staff prays that the Commission will order Respondents to amend their tariffs to ensure compliance with the Commission's affiliated transaction rules as follows:

#### **Operation of Rate Schedule in Conjunction with Affiliated Entities.**

- a. All terms and conditions contained herein shall be applied in a uniform and nondiscriminatory manner without regard to affiliation of any entity to Transporter.
- b. Transporter will submit to the Commission's Energy Department Manager once every calendar quarter, a list of all Shippers and for each Shipper showing the following: (i) Shipper's name; (ii) MDQ; (ii) rates (both reservation and commodity); (iv) expiration date of Shipper's contract; and (v) any special provisions with said Shipper. All of the above information shall be submitted as Highly Confidential.
- c. For efficiency purposes, Transporter occupies office space on the same floor as its affiliates, but maintains separate operational facilities and personnel. Transporter will record and maintain operational and accounting information consistent with Commission rules.
- d. Once every three (3) months, Transporter will submit to the Commission's Energy - Rates Staff a list of all bids or offers Transporter quotes for transportation service rates for its pipeline where the bid is less than the Maximum Rate contained in this tariff for Transporter's area. Transporter will provide the bid price quoted, the length of and the dates of all offerings, the name, address and telephone number of the party to whom the bid was given, any other terms of the bid and a rate comparison sheet for all bids and offers for each month. For each such bid or offering, Transporter will completely explain whether the entity being offered the rate is affiliated in any way with Transporter or with any of its affiliates. If the entity is affiliated, Transporter will completely explain such affiliation. Transporter will respond immediately to Staff inquiries concerning discounting.
- e. All shippers holding firm transportation on MPC or MGC must provide evidence of firm transportation held on an interstate pipeline serving MPC.

Staff further prays that the Commission will direct its General Counsel to seek penalties in the amount of \$2,000 per occurrence per day from the Respondents.

**Count IV - MGC has charged, or permitted to be charged, rates to customers that are in excess of those authorized in its tariff**

29. Staff hereby incorporates by reference the allegations contained in Paragraphs 1-8, above, as though fully set forth herein.

30. Respondent MGC is charging the City of St. James, the City of St. Robert, and the

City of Waynesville a commodity rate (\$2.00) in excess of the tariff rate (\$0.9433) in lieu of charging these customers any reservation rate (tariff rate is \$13.1766) for their firm capacity on the MGC pipeline. MGC is unilaterally changing its rate design and implementing a commodity charge rate increase without Commission approval. Such an action is discriminatory against other shippers that are not afforded the same rate and rate design without making the same concessions required from these cities to receive this rate.

31. Staff is not opposed to a discount arrangement on the reservation charge to achieve the intended reduced level of customer charges. Further, examination would be needed to understand what the parties are attempting to achieve by utilizing this rate design to determine whether this is the optimum approach.

#### **Prayer for Relief**

WHEREFORE, Staff prays that the Commission will find that MGC has charged, or has permitted to be charged, or has collected, more than the maximum tariffed rate for service. Staff further prays that the Commission will direct its General Counsel to seek penalties in the amount of \$2,000 per occurrence per day from the Respondents.

#### **Proposed Procedural Schedule**

32. Because Respondents have not provided information sought or provided it in an incomplete fashion, Staff has not completed its investigation and audit. Staff has scheduled additional discovery, and recommends the following procedural schedule.

Event	Date
Staff Files Complaint	3/31/06
Secretary Serves A Copy Of The Complaint Upon MPC/MGC	4/4/06
Commission Sets Intervention Period	4/4/06
MPC/MGC Answers Complaint & Intervention Period Closes	5/10/06
Staff files its Direct Testimony and Schedules	6/1/06
MPC/MGC & Intervenors File Rebuttal Testimony & Schedules	7/11/06
Prehearing Conference	7/17/06
Staff Files Surrebuttal Testimony & Schedules and MPC/MGC and Intervenors File Cross-Surrebuttal	8/8/06
Staff Files List Of Issues & Order Of Issues For Evidentiary Hearing	8/11/06
Parties Submit Prehearing Briefs	8/16/06
Evidentiary Hearings	8/21/06 through 9/1/06

38. Staff will amend this complaint when it files its direct testimony, as may be needed to conform the pleadings to the evidence.

WHEREFORE, the Staff asks the Commission to enter its standard protective order as sought by separate motion; serve a copy of this complaint on each of the Respondents; order each of them to answer the complaint; set an intervention period; set a procedural schedule; grant the relief sought by Staff for each count of the complaint; and to grant such other and further relief as it deems appropriate in the circumstances.

Respectfully submitted,

**/s/ Thomas R. Schwarz, Jr.**

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 31<sup>st</sup> day of March 2006.

**/s/ Thomas R. Schwarz, Jr.**