

**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;)	
)	
)	
Respondents.)	

RESPONDENTS' REPLY TO STAFF'S RESPONSE

COME NOW Respondents Missouri Pipeline Company and Missouri Gas Company (hereafter "MPC" and "MGC") in the above-captioned matter and reply to *Staff's Response Objecting to Motion to Quash Subpoena Duces Tecum*.

In support of this motion, Respondents state as follows:

1. On March 31, 2006, Staff filed its first complaint, GC-2006-0378, alleging that Respondents have excessive earnings, have violated the Affiliate Transaction rule, have charged rates not authorized by tariff, as well as allegations that the Commission should assert jurisdiction over Gateway Pipeline, LLC, Omega Pipeline Company, Mogas Energy, LLC, and United Pipeline Systems. Omega Pipeline Company, LLC has been dismissed as a respondent to this action. As of June 1, 2006, Omega Pipeline Company, LLC was no longer affiliated with MPC and or MGC, since the ultimate owners of MPC/MGC sold 100% of their interest in Mowood, LLC, the sole (100%) owner of Omega Pipeline Company, LLC. The new owner of

Mowood, LLC is Tortoise Capital Resources Corporation, a Maryland Corporation, which is not affiliated with the owners of MPC and or MGC,

2. On October 23, 2006, Terry Matlack and Tortoise Capital Advisors, LLC, filed a motion asking the Commission to quash a subpoena duces tecum issued by the Commission's staff.

3. Staff has plainly made inaccurate statements in support of its rationale for issuing the Subpoena Duces Tecum of Terry Matlack, an officer of Tortoise. Staff has apparently failed to even review documents provided to them, which clearly identify that Omega Pipeline Company, LLC and MPC/MGC are no longer affiliated. Staff makes certain statements without any support whatsoever, implying that Omega is still affiliated with MPC/MGC. First, Omega and MPC/MGC were affiliated prior to June 1, 2006, only by virtue that Dennis Langley and Dave Ries were ultimately owners of both Omega and MPC/MGC through their ownership of the parent companies of MPC/MGC and Omega. After June 1, 2006, neither Langley nor Ries had any ownership interest in Omega or the parent company of Omega, namely Mowood, LLC. Therefore, as of June 1, 2006, MPC/MGC were not affiliates of Omega Pipeline Company, LLC or Mowood, LLC, its parent.

4. Section 2.1 of the Sales Agreement by and between Mowood, LLC, a Delaware limited liability company, as Seller, and Tortoise Capital Resources Corporation, a Maryland corporation, as Buyer, dated June 1, 2006, (Sales Agreement), indicates that the Buyer was purchasing from the Seller,

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_____** A review of only the first two pages of the Sales Agreement makes clear that 100% of the Interest of Mowood was sold to Tortoise Capital Resources Corporation.

5. Additional evidence of this sale is contained in the Membership Unit Power Certificates (attached to the Sales Agreement provided to Staff) that were issued and executed by Dave Ries transferring to Tortoise Capital Resource Corporation his **_____** in Mowood, LLC. Likewise Alpha Pipeline, Ltd. in a Membership Unit Power Certificate transferred **_____** Mowood, LLC to Tortoise Capital Resources Corporation. The consummation of this transfer is evidenced by the Certificate of Membership Interest dated June 1, 2006, whereby Mowood, LLC in Certificate No. **____**, issues 100% of its membership interest in Mowood, LLC to Tortoise Capital Resources Corporation.

6. Pages three and four of the Sales Agreement, in particular Section 3.2 (b), representations and warranties made by Alpha, Langley and Ries are contained in Schedule 3.2, which clearly identifies that prior to June 1, 2006, Alpha owned **_____** of Mowood and Dave Ries owned **_____** of Mowood. Tortoise Capital Resources Corporation based upon these representations purchased 100% of the LLC interest in Mowood, LLC from Alpha and Ries.

7. The Sales Agreement was provided to Staff on two separate occasions to Staff on behalf of the Respondents. The most recent being shortly before the second set of depositions of Dave Ries on or about October 17, 2006. In paragraph 6 of Staff's Response to Motion to Quash, it implies that **_____**. This statement by Staff is totally out of context and misrepresentative of what Mr. Ries indicated. Staff presented to Mr. Ries what Staff was representing was the entire Sales Agreement. Mr. Ries was merely stating that **_____**. For Staff to now say Mr. Ries meant something else is disingenuous.

8. In paragraph 7 of Staff's Motion to Quash, Staff alleges that **_____**
_____. Again, as stated above, a review of the first

several pages of the Sales Agreement clarifies the facts. The representation and warranty made by Mr. Langley and Mr. Ries was that Mr. Langley was a **_____** owner of Alpha Pipeline, Ltd. which in turn owned **_____** of Mowood, LLC. As described above, the Staff was provided evidence of the transfer of the Certificate of Alpha's **_____** interest in Mowood to Tortoise Capital Resources Corporation. Likewise the unconverted evidence is that Dave Ries represented that he had **_____** of Mowood, LLC and that he (by Certificate transfer) was selling his interest in Mowood, LLC to Tortoise on June 1, 2006.

9. On page three of Staff's Response to Motion to Quash, Staff states **_____**
_____. They go on to say the possibility exists that the entity that was purchased by Tortoise was not the entity owning Omega. Again, Staff is playing with slight of hand. The representation and warranty contained in Schedule 3.2 of the Sales Agreement referenced above clearly identifies that Mr. Ries and Mr. Langley are representing and warranting that Omega Pipeline Company, LLC is owned **_____** by Mowood, LLC. If there was a name change, which there was not, it would not matter, because Mowood by any name would still be 100% owner of Omega Pipeline Company, LLC. Furthermore, if Staff had any doubts after reading the unambiguous Sales Agreement, it could have gone online with Secretary of State of Delaware and would see that Mowood, LLC was formed in November 26, 2001, and since that date has not had its name changed. It could do the same and easily verify that Omega Pipeline Company, LLC has also not changed its name. Staff's allegation that there was a name change appears to be based on a document Staff produced to Mr. Ries at his deposition that shows that a name change perhaps was considered, but never filed. The fact that a name change was considered, but never filed has no impact, in fact or law, on the transfer of **_____** of Mowood, LLC interests to Tortoise Capital Resource Corporation on June 1, 2006.

9. Finally, Staff totally ignores that one of the Exhibits to the Sales Agreement was a “Termination of Interest Agreement” dated June 1, 2006, executed by Tortoise, Mowood, Alpha and Ries which says in paragraph one that the *Parties* agree that ** _____ ** and ** _____ **. How much clearer can it get that Mr. Ries and Alpha, as of June 1, 2006, own nothing of Mowood, LLC and Mowood, LLC owns 100% of Omega.

10. Any allegation by Staff that the Department of Defense or Fort Leonard Wood had to approve the sale of the Mowood interests is patently false. The Department of Defense has been aware of the sale of Mowood interests since June 1, 2006. Neither the Department of Defense nor Fort Leonard Wood has made any allegation that approval of either was required prior to the sale of Mowood’s interests. Staff does not reference any Section of the contract that requires any consent for Mowood to sign any contract. As a matter of fact, Mowood is not even a party to the contract between Omega Pipeline Company, LLC and the Department of Defense. For Staff to try and make the stretch that the Department of Defense has the right to veto sale by Mowood, LLC, a non- party to the Omega transaction, is false, particularly when the Department of Defense and Fort Leonard Wood have not made that argument themselves.

WHEREFORE, Respondents respectfully request that the Commission grant the motion to quash.

Respectfully submitted,

LATHROP & GAGE, L.C.

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Dated: November 2nd, 2006

Attorneys for Respondents

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Respondents' Motion to Establish a Procedural Schedule, transmitted by e-mail or mailed, First Class, postage prepaid, this 2nd day of November, 2006, to:

*** Case No.** GC-2006-0378

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