

**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

In re: FERC Docket No. CP07-450, )  
MoGas Request for Authorization ) Case No. GO-2009-0094  
under Blanket Certificate )

**APPLICANT MoGAS PIPELINE LLC's APPLICATION FOR REHEARING**

COMES NOW Applicant, MoGas Pipeline LLC (“MoGas”), pursuant to § 386.500 RSMo., and 4 CSR 240-2.160, and submits this Application for Rehearing on the grounds that the Order Denying Application to Terminate the Commission’s Intervention Before the FERC issued in this cause on July 15, 2009, (the “order”) is unlawful as set forth more fully below.

## Legal Principles That Govern Applications for Rehearing

1. Commission decisions must be lawful. *State ex rel. Atmos Energy Corp. v. Pub. Serv. Comm’n*, 103 S.W.3d 753, 759 (Mo. banc 2003); *State ex rel. Alma Tele. Co. v. Pub. Serv. Comm’n*, 40 S.W.3d 381, 387 (Mo. App. W.D. 2001). The parties agreed and the Commission correctly found that there are no facts in dispute in this matter and that the issues at stake are purely questions of law. The Commission is a creature of statute and it has only the powers conferred on it by the Legislature. *State ex rel. City of St. Louis v. Pub. Serv. Comm’n*, 73 S.W.2d 393, 399 (Mo. Banc 1934). Because it has no power to declare or enforce principles of law or equity (*State ex rel. Utility Consumers Council v. Pub. Serv. Comm’n*, 585 S.W.2d 41, 47 (Mo. Banc 1979)), its statutory interpretations and application of legal principles, which are legal questions, will be reviewed by the courts *de novo*. *Id.*

2. The Commission’s Order mischaracterizes the thrust of Appellant MoGas’ argument regarding the Commission’s authority to intervene, sua sponte, in FERC proceedings by suggesting that MoGas claims that Section 386.030 RSMo. and Section 386.210.7 RSMo. “forbid” or “prevent” the Commission from intervening in FERC proceedings (pp. 4-6 Order.)

MoGas' argument is that the MoPSC "is a creature of statute and can function only in accordance with the statutes." *State ex rel. Monsanto Co. v. Pub. Serv. Comm'n*, 716 S.W.2d 791, 796 (Mo. banc 1986). The MoPSC "is a body of limited jurisdiction." *State ex rel. and to Use of Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 168 S.W.2d 1044, 1046 (Mo. banc 1943). The MoPSC "has only such powers as are expressly conferred upon it by the statutes and powers reasonably incidental thereto." *Id.* Such incidental powers must be "conferred by clear implication as necessary to carry out the powers specifically granted." *State ex rel. Util. Consumers Council of Mo., Inc. v. Pub. Serv. Comm'n*, 585 S.W.2d 41, 49 (Mo. banc 1979). Neither convenience, expediency, or necessity are proper matters for consideration in the determination of whether or not an act of the commission is authorized by statute. *State ex rel. Mo. Cable Telecomms. Ass'n v. Mo. Pub. Serv. Comm'n*, 929 S.W.2d 768, 772 (Mo.App. 1996). Accordingly, this Commission must look to state statutes to determine the authority of the MoPSC to act in relation to the FERC.

The Missouri Public Service Commission Law expressly confers upon the MoPSC certain limited powers in relation to the FERC. These powers involve joint regulatory action taken as an agent of the FERC:

The commission may make joint investigations, hold joint hearings within or without the state, and issue joint or concurrent orders in conjunction or concurrence with. . . the United States of America, or any official, agency or any instrumentality thereof, except that in the holding of such investigations or hearings, or in the making of such orders, the commission shall function. . . as an agent of the United States of America, or any official, agency or instrumentality thereof . . . .§ 386.210.7, RSMo.

Nothing in the Missouri Public Service Commission Law empowers the Commission to appear, sua sponte before the FERC as a party or as an intervenor or to participate in any manner as a litigant in a FERC action. Quite the contrary, the MoPSC may participate only as an agent of the decision maker. The statute does not authorize the MoPSC to intervene as an advocate in FERC regulatory actions but instead contemplates that the MoPSC may, in some instances, assist the FERC in conducting regulatory actions, and that the MoPSC may, at the FERC's request and only when designated as an agent of the FERC, conduct investigations or hearings jointly with the FERC, which may result in the issuance of joint state and federal orders.

3. There is no provision of the Missouri Public Service Commission Law that confers by "clear implication" the power to litigate before the FERC, and there is no power specifically granted to the MoPSC that necessitates that it intervene in MoGas' FERC actions. The Commission erroneously and unlawfully opined that it had authority by clear implication to intervene in FERC proceedings.

4. The Commission's reliance on Section 386.250(1) RSMo. as authority to intervene at FERC in case involving interstate natural gas pipelines is erroneous and unlawful.

5. The Commission's reliance on Section 386.030 as authority to intervene in FERC cases involving interstate commerce is erroneous and unlawful. The Commission's opinion that a FERC regulation (18 CFR Section 385.214(a)(1) gives it the permission to intervene contemplated by Section 386.030 RSMo. is erroneous and unlawful. The FERC regulation cited by the Commission is a procedural rule which instructs state agencies on filing interventions in FERC cases; it cannot empower the Missouri Commission to intervene because the FERC procedural rule is not an act of Congress or a United States Constitutional provision as contemplated by Section 386.030 RSMo.

6. The Commission's reliance on Section 386.120.4 RSMo. as authority for it to intervene in FERC case is erroneous and unlawful because this statute governs the MoPSC's capacity to sue in its own name and does not expand the otherwise limited jurisdiction of the MoPSC.

7. The Commission's reliance on Section 386.071 RSMo. as authority for it to intervene in FERC cases is erroneous and unlawful because this statute regulates the duties owed to the MoPSC by its General Counsel and does expand the otherwise limited jurisdiction of the MoPSC.

8. The Commission's opinion that it need not issue an order directing its General Counsel to intervene in a FERC case is erroneous and unlawful, as is its reliance on the Missouri Sunshine Law as providing an exemption for the Commission to issue such order.

9. The Commission claims that Section 386.210.7 RSMo. does not limit the Commission's authority to intervene in cases before FERC. This claim is erroneous and unlawful. Section 386.210.7 RSMo. expressly confers upon the MoPSC certain limited powers in relation to the FERC. These powers involve joint regulatory action taken as an agent of the FERC.

10. The Commission cites 218 CFR Section 385.214(a)(1), the FERC regulation regarding interventions, as authority for it to intervene. A FERC procedural regulation is insufficient authority for the Missouri Commission to intervene in FERC cases and it is erroneous and unlawful for the Commission to rely on a FERC regulation as its authority to intervene.

11. The Commission's reliance on Section 620.10.6 RSMo. as authority to expend public funds to retain outside private counsel to intervene at FERC is erroneous and unlawful

because this statute does not authorize the MoPSC to hire a private law firm to represent the MoPSC in federal litigation.

12. The Commission's reliance on Section 386.040 RSMo. as authority to intervene at FERC is erroneous and unlawful.

13. The Commission's reliance on Section 386.250(1) RSMo. as authority to intervene at FERD is erroneous and unlawful because this statute defines the jurisdiction of the MoPSC to be limited to the distribution of natural gas "within the state".

For the foregoing reasons, Applicant MoGas respectfully requests the Commission rehear, reconsider and reverse its Order.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

A true and correct copy of the foregoing documents with either faxed, emailed, or mailed by U.S. Mail postage paid this 24th day of July, 2009, to the following:

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/s/ Carl J. Lumley

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