

**BEFORE THE PUBLIC SERVICE COMMISSION  
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.	)	

**REPLY TO STAFF RESPONSE TO  
RESPONDENTS' REQUEST FOR MEDIATION**

COME NOW Respondents Missouri Pipeline Company, LLC, Missouri Gas Company, LLC, Mogas Energy, LLC, United Pipeline Systems, Inc. and Gateway Pipeline Company, and for their reply to Staff response to Respondents request for mediation state as follows:

1. In its response to the request for mediation Staff alleges that:

“Discovery problems and Respondents’ refusal to timely provide even routine information has delayed the proceedings in this case. For example, Respondents have not provided Staff with information that would permit Staff to verify gas volumes received into the pipelines with volumes delivered to customers, nor have Respondents provided invoices sent to customers and other information to reconcile amounts billed for those volumes. Since Respondents have not provided Staff the information it needs through informal discovery, Staff has begun the process of formal discovery. Suspension of discovery efforts at this time will deprive Staff of access to information needed to develop and reach its final position on the issues raised in its complaint.”

Staff concludes that it cannot engage in meaningful mediation until Respondents provide further information so that it can complete its investigation.

2. Contrary to Staff's assertions, Respondents have fully cooperated in the informal discovery process and have provided voluminous data to Staff. In fact, Staff has had access to or is in possession of literally thousands of pages of information and documents, including without limitation, the following:

- 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 and MGC
- 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 bulk of the documents and information were provided within approximately a 45-day period that included holidays. In addition to the data, key personnel were made available and were extensively interviewed by Staff. The President of MPC/MGC (during the winter months -- the busiest time of the year for MGC/MPC) regularly took the time to answer questions from Staff by phone and by e-mail. The above-described list of materials, documents and data is not exhaustive but representative of the

information provided voluntarily (these documents were provided voluntarily by MPC/MGC over a very short period of time considering -- (i) the bulk of the data and the need to review it and mark it “Highly Confidential” prior to providing it to Staff; (ii) MPC/MGC were also in the middle of year-end independent audit by an outside accounting firm; (iii) MPC/MGC was trying to close out its books for the calendar year 2005; and (iv) MPC/MGC was working with its very small administrative staff trying to handle the requests made by Staff.

4. Respondents believe that one of the primary benefits of mediation is to save the time and expense of litigation before engaging in formal discovery and becoming entrenched in positions based upon litigation strategy. Properly structured and supervised mediation could at a minimum narrow the scope of disputed issues and may lead to the ultimate resolution of this case.

5. In any event, a tremendous amount of data (the overwhelming majority of what has been requested has been provided) has been produced and that limited material requested that has not been provided is in large part subject to valid objections (such as the request for personal tax returns or documents from entities not subject to regulation by the Commission) or simply does not exist.

6. Staff apparently has been provided enough information to support its “good faith” filing of an over earnings complaint and thus presumably should therefore have enough information to support its “good faith” participation in mediation.

7. If the parties to an action were always to hold the belief that they were correct and there was no merit to the position of the other party, then there would be no room ever for mediation. Presuming though that this Commission sees wisdom in its policy to have a mediation process in the first place as good public policy, then ordering mediation early on makes sense.

8. Respondents continue to believe that ordering mediation at the early stage of this case will save time and resources of the Commission and all parties. Mediation after expensive and time-consuming discovery and extensive pleadings with parties entrenched in their positions would defeat a critical goal of mediation, *i.e.*, to avoid needless costly litigation through third party mediation efforts.

9. Staff's implication that Respondents are stalling is without merit as the information provided to date was voluntary, quick and voluminous. If Respondents were inclined to delay, then protracted discovery proceedings would have been a better strategy. In fact, by Staff's own admission, the voluntary rate review that MPC/MGC agreed to in December 2005 was to be limited to 2004 data. When Staff on its own decided to ask for 2005 data as well, MPC/MGC continued its voluntary compliance with Staff's request for double the information -- hardly the strategy of a dilatory or stalling party.

WHEREFORE, Respondents renew their request that the Commission grant the Request for Mediation and stay all other action in this case, including without limitation, interventions, answers, formal discovery, etc., until the mediation process is complete.

Respectfully submitted,

LATHROP & GAGE, L.C.

By: /s/ Paul S. DeFord  
Paul S. DeFord #29509  
Suite 2800  
2345 Grand Boulevard  
Kansas City, MO 64108  
Phone: (816) 292-2000  
FAX: (816) 292-2001  
E-mail: [pdeford@lathropgage.com](mailto:pdeford@lathropgage.com)

ATTORNEYS FOR RESPONDENTS

Dated: April 20, 2006

## **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Request for Mediation has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 20th day of April, 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>
Missouri Public Service Commission Thompson Kevin	GenCounsel@psc.mo.gov 573-751-1248 573-751-1928	200 Madison Street, Suite 800	P.O. Box 360	Jefferson City	MO	65102
Office Of The Public Counsel Mills R Lewis	opcservice@ded.mo.gov 573-751-1130 573-751-1556	200 Madison Street, Suite 650	P.O. Box 2230	Jefferson City	MO	65102
Missouri Public Service Commission Schwarz Tim	Tim. Schwarz@psc.mo.gov	200 Madison Street, Suite 800	P.O. Box 360	Jefferson City	MO	65102
Missouri Public Service Commission Shemwell Lera	Lera.Shemwell@psc.mo.gov	200 Madison Street, Suite 800	P.O. Box 360	Jefferson City	MO	65102

*/s/ Paul S. DeFord*