

**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.	)	

**RESPONSE TO STAFF’S MOTION TO COMPEL DISCOVERY  
AND FOR EXPEDITED PROCEEDINGS**

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 respond to the Staff’s Motion to Compel Discovery and for Expedited Treatment. There is no basis for the Staff’s Motion to compel discovery or for expedited treatment in this matter. There can be no grounds to compel discovery of the Respondents when Staff has failed to comply with even the most basic of procedures required of it by applicable statute and regulations. Therefore, the Missouri Public Service Commission (hereafter “Commission”) should deny Staff’s motion accordingly. In support of this motion, respondents state as follows:

1. On May 31st, the Staff filed a complaint, alleging 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.

2. On March 23, 2006, the Staff allegedly served subpoenas duces tecum on MPC, MGC, Mr. Lodholz, and a number of affiliates. The subpoenas set depositions for several dates in April 2006.

3. On April 25, 2006, Staff noticed depositions for Mr. Lodholz for May 3, 2006 and MPC for May 4, 2006.

4. On April 25, 2006, the Commission entered its Order Denying Request for Mediation and further extending the answer deadline for Respondents until May 11, 2006.

5. On May 2, 2006, Respondents filed their Motion to Quash Staff's subpoenas and notices of depositions.

6. On May 10th, the Staff filed its Motion to Compel Discovery and for Expedited Treatment.

7. Respondents are not in default. Staff is incorrect in its argument for default, as it has ignored this Commission's previous order. This Commission extended the timeframe for Respondents' answer in its April 25, 2006 order until May 11, 2006. Respondents filed their answer on May 11, 2006. Respondents' filed a timely answer. Therefore, this Commission should not enter a default judgment as Staff has requested.

8. Supreme Court Rule 61.01(a), in addition to the Commission's regulations, establishes the basis to compel discovery. The Rule provides that "Any failure to act

described in this Rule may not be excused on the ground that the discovery sought is objectionable *unless the party failing to act has filed timely objections to the discovery request...*” Staff noticed its depositions for May 3 and 4, 2006. Respondents filed its Motion to Quash Staff’s subpoenas on several grounds on May 2, 2006. Respondents’ objections to Staff subpoenas and notices of deposition were timely made. Accordingly, the Commission should not grant Staff’s motion to compel discovery in accordance with Rule 61.01(a).

9. Additionally, the Commission’s rule 4 CSR 240-2.090(8) requires that counsel for the moving party confer or attempt to confer with the opposing party concerning the issues before the Commission will issue an order to compel discovery, unless otherwise ordered by the Commission. If issues remain after conferencing with opposing party, section 4 CSR 240-2.090(8)(B) requires the moving party to arrange an immediate teleconference with the regulatory law judge and opposing counsel. Finally, the rule directs the moving party to certify compliance with the rule in its motion.

10. The Staff has not fulfilled any element of section 4 CSR 240-2.090(8) nor has Staff provided any compelling reason for the Commission to waive its requirement. Staff has made no attempt to confer with counsel for Respondent to resolve scheduling conflicts or any other issue raised in its motion. Staff’s only basis for requesting a waiver of this important requirement is that it “believes that the pending motions demonstrate that the Respondents are not willing to produce material...” (*See Staff’s Motion to Compel Discovery and For Expedited Treatment*, paragraph 9). Staff’s belief is unfounded. Until Staff exhausts the minimal effort to confer with opposing counsel in attempt to resolve these issues, no belief can be formed. Respondents remain willing to work cooperatively with Staff to resolve as many issues as possible. As described below in Paragraph 10, Respondents’ willingness to sit

down and discuss open discovery issues has not been reciprocated. Therefore, Respondents should not be deprived of their due process as contemplated by section 4 CSR 240-2.090(8) for merely raising legitimate objections to the Staff's discovery requests. Since this Commission has not issued an order relieving Staff from complying with 4 CSR 240-2.090(8) and since there is no compelling reason to waive these requirements, Staff's motion should be denied.

11. Respondents have offered, prior to Staff's Motion to Compel, to sit down and review the document request on several occasions, to work with Staff, to explain to them which documents they are requesting that they already have, are not part of the Respondents' records or which may be objectionable for a variety of reasons. Notwithstanding Respondents' requests, the Staff has not accepted this offer to work with Respondents. Respondents are still willing to work through the above stated discovery issues before the presiding regulatory law judge or a designee.

12. Having stated their willingness to work through discovery issues, Respondents' counsel will be unavailable until after the first week of June to devote substantial time to the effort. This unavailability is due to deadlines and scheduling in three separate matters pending before the Commission.

13. The Commission's rule 4 CSR 240-2.080 requires any party seeking expedited treatment in any matter to specifically establish the harm that will be avoided or the benefit that will accrue to the regulated entity's customers or the general public if the Commission acts by the requested dates. The rule further requires that the moving party filing its request for expedited treatment as soon as possible or provide an explanation for why it was not filed.

14. Staff has not fulfilled the minimum requirements of section 4 CSR 240-2.080 nor has it provided justification warranting the Commission's variance from these requirements. Staff has not presented an explanation that there will be any harm or benefit in the absence or presence of expedited proceedings. In fact there is no prejudice to Staff to have to follow procedure relating to discovery, because Respondents have previously voluntarily provided Staff with thousands of pages of information including virtually all of its financial records, checks, check ledgers, bank statements, billing and volume data and contracts for 2004 and 2005 and for some data all the way back to 2002. Further, Staff did not file its request for expedited proceedings until almost six weeks after its complaint was filed, further evidencing the lack of need for expedited proceedings. Allowing the Staff to disregard the requirements of the Commission's rule would be unfair and inconsistent with this Commission's past practices and, therefore, should not be permitted.

15. Expedited treatment of this matter is not warranted. The allegations in Staff's complaint do not necessitate speedy proceedings. The Staff has not articulated any reason the regulated entities consumers or members of the general public would be harmed or benefited in the absence or presence of speedy proceeding if they were ordered by this Commission. Because there is no reason to expedite this matter and because Staff has failed to follow the basic requirements of 4 CSR 240-2.080, Staff motion should be denied.

16. Further, expedited proceedings would be oppressive and burdensome for Respondents. The regulated entities subject to Staff's complaint have few employees. Responding to all document requests and appearing in person for depositions without adequate travel and preparation time would be highly disruptive to the companies' operations. Accordingly, Staff's motion should be denied.

17. Many of Staff's discovery requests are unnecessary and beyond this Commission's jurisdiction. Staff has failed to acknowledge Respondents' cooperation in responding to numerous document requests since Staff's investigation began and continues to mischaracterize Respondents' prior conduct. Since Staff's investigation began, Respondents have produced many of the documents Staff continues to request. Also, many of the documents requested by Staff are not within the control of Respondents and are either not related to any regulated activity or difficult to obtain. Staff ignores these facts and continues to claim lack of cooperation by Respondents, when in fact, there are legitimate, practical and legal reasons for not producing certain documents. Respondents remain willing to meet with Staff and the regulatory law judge to work through discovery issues raised by Staff. Therefore, Staff's motion to compel discovery should be denied.

18. Additionally, until the pending Motion to Dismiss by another Respondent Omega Pipeline Company, LLC (Omega) is ruled upon, it is premature to conduct discovery of Mr. Ries and Mr. Lodholz, because Staff has stated its intentions to inquire about Omega's business even outside of any transactions with MPC and MGC, the regulated pipelines. If Omega's Motion to Dismiss is granted (and Staff now admits it is not trying to make Omega subject to MPSC jurisdiction in violation of the United States Constitution and Federal law) then the underlying basis for their inquiry of Omega being dismissed, would thus alleviate the need to question Mr. Ries and Mr. Lodholz on matters relating to only to Omega and not related to MPC and MGC.

19. Respondents suggest that the Commission follow its normal well-established procedures and set an early prehearing conference for the purpose of requiring the parties to discuss a procedural schedule including time for addressing discovery issues. Respondents

further suggest that the assistance of the RLJ in addressing these issues with all parties present may serve to expedite matters and avoid unnecessary, burdensome motions practice.

20. Respondents will be filing a motion to dismiss on several grounds on or about May 16, 2006. Accordingly, Respondents suggest that the Commission may wish to refrain from ruling on Omega's motion to dismiss until Respondents' motion is received.

WHEREFORE, Respondents respectfully request this Commission to deny Staff's Motion to Compel Discovery and for Expedited Proceedings.

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: May 15, 2006

## **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Response to Staff's Motion to Compel Discovery and For Expedited Proceedings has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 15th 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>
Missouri Public Service Commission General Counsel	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
Omega Pipeline Young Daniel R	DRY@EdgarLawFirm.com 816-531-0033 816-531-3322	4520 Main, Suite 1650		Kansas City	MO	64111
Union Electric Co Byrne Thomas M	TByrne@Ameren.com 314-554-2514 314-554-4014	1901 Chouteau Avenue	P.O. Box 66149 (MC 1310)	St. Louis	MO	63166-6149
Federal Executives Agencies Rohrer Jeffrey H	Jeffrey.H.Rohrer@US.Army.Mil 573-596-0626 573-596-0632	125 E 8th St		Ft Leonard Wood	MO	65473-8942

**/s/ Paul S. DeFord**

Attorney