

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

Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	
v.)	Case No. GC-2006-0491
)	
Missouri Pipeline Company, LLC;)	
Missouri Gas Company, LLC;)	
)	
Respondents.)	

**RESPONDENTS' RESPONSE TO COMMISSION'S ORDER DIRECTING
PARTIES TO EXPLAIN THE EFFECT OF THE FEDERAL ENERGY
REGULATORY COMMISSION ORDER**

The Commission has ordered the named Respondents in this action, Missouri Pipeline Company, LLC (hereafter "MPC") and Missouri Gas Company, LLC (hereafter "MGC"), to explain the effect of a Federal Energy Regulatory Commission ("FERC") Order issued on April, 20, 2007 (hereafter "Order" or the "FERC Order"). The Order granted a *Certificate of Public Convenience and Necessity*, the effect of which was to legally authorize Respondents to consolidate their operations into a new, FERC-regulated entity and to transport natural gas in interstate commerce. A collateral result of the Order is that the Commission's jurisdiction over this matter is now preempted by the FERC's regulation of Respondents pursuant to the Natural Gas Act, 15 U.S.C. § 717 *et seq.* (the "NGA"). Accordingly, the Commission no longer has legal authority to grant the relief requested by Staff in this matter.

Background

On March 31, 2006, Staff filed an initial Complaint alleging that Respondents and several named affiliates had excessive earnings; had violated the Affiliate Transactions Rule; had charged rates not authorized by tariff; as well as allegations that the Commission should assert jurisdiction over certain named affiliates (*see* Staff Complaint in Case No. GC-2006-0378). On June 21, 2006, Staff filed the Complaint in the present case alleging violations of the same tariffs and based upon the same underlying facts. (*see* Staff Complaint in Case No. GC-2006-0491, the present case).

On June 1, 2006, before Staff filed the present action, Tortoise Capital Resources Corporation acquired Omega from Respondents. On June 28, 2006, Missouri Interstate Gas, LLC; Missouri Pipeline Company, LLC; and Missouri Gas Company, LLC filed an application with the FERC for a Certificate of Public Convenience and Necessity to allow MIG, MPC, and MGC to consolidate their operations into a single interstate pipeline. On April, 20, 2007, the FERC issued its Order granting Respondents' application in Docket No. CP06-407 *et al.* The Order granted Respondents a Certificate of Public Convenience and Necessity that has legally authorized Respondents to transport natural gas in interstate commerce pursuant to Section 7(c) of the NGA (*see, e.g.*, FERC Order at ¶¶ 30, 103, 104.)

FERC's Order has placed the pipelines at issue under the exclusive jurisdiction of the NGA and the FERC, preempting further action by this Commission in this matter.

The Natural Gas Act Preempts the Commission From Any Ongoing Regulation of Respondents

Even if Staff's claims had merit, the claims fail because as a result of the FERC Order, Respondents are now regulated by FERC as an interstate pipeline pursuant to the

NGA. As a result, the Commission's jurisdiction over this matter has been preempted, and the Commission no longer has any legal authority to establish Respondents' prospective rates or to impose refunds under any state law, including §§ 393.130.1 and 393.140(5), 393.270(2), and 393.270(4).

It is beyond question that by enacting the NGA, “Congress occupied the field of matters relating to wholesale sales and transportation of natural gas in interstate commerce.” *Schneidewind*, 485 U.S. at 305; *Nat’l Fuel Gas Supply Corp. v. Pub. Serv. Comm’n of N.Y.*, 894 F.2d 571 (2d Cir. 1990), *cert. denied*, 497 U.S. 1004 (1990); *Pub. Utilities Comm’n v. FERC*, 900 F.2d 269, 274 (D.C. Cir. 1990); *Michigan Consol. Gas Co. v. Panhandle Eastern Pipe Line*, 887 F.2d 1295, 1299 (6th Cir. 1989); *Tennessee Gas Pipeline Co. v. Mass. Bay Transp. Auth.*, 2 F. Supp. 2d 106, 111 (D. Mass. 1998). The Eighth Circuit has held that the NGA gives FERC “exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce,” including the authority to regulate the acquisition of natural-gas facilities. *See Northern Nat. Gas Co. v. Iowa Utilities Bd.*, 377 F.3d 817, 819-23 (8th Cir. 2004).

Courts have repeatedly rebuffed previous efforts by states to prevent pipelines from transforming intrastate operations into interstate operations. *See, e.g., Pub. Serv. Comm’n v. Fed. Power Comm’n*, 437 F.2d 1234, 1238-39 (4th Cir. 1971) (“the right to acquire and right to operate an interstate pipeline . . . cannot be made dependent upon approval by a state regulatory commission”); *Cabot Corp. v. Pub. Serv. Comm’n*, 332 F. Supp 370, 373 (S.D. W. Va. 1971) (enjoining enforcement of a state public-utility commission’s order purporting to prohibit a proposed transfer of pipeline facilities filed under the NGA.).

Because NGA and its implementing regulations “empower FERC to consider those same issues,” Congress has “plac[ed] those issues beyond concurrent state review.” *Northern Nat. Gas Co. v. Munns*, 254 F. Supp. 2d 1103, 1112 (S.D. Iowa 2003), *aff’d* 388 F.3d 817 (8th Cir. 2004). The Supreme Court has held that a state public-utility commission’s orders invalidly intruded on the federal regulation of natural gas in interstate commerce in *Northern Natural Gas v. State Corporation Commission of Kansas*, 372 U.S. 84 (1963). The Court stated that the regulatory scheme established by the NGA:

. . . leaves no room either for direct state regulation of the prices of interstate wholesales of natural gas, or for state regulations which would indirectly achieve the same result. These state orders necessarily deal with matters which directly affect the ability of the Federal Power Commission to regulate comprehensively and effectively the transportation and sale of natural gas, and to achieve the uniformity of regulation which was an objective of the Natural Gas Act. They therefore invalidly invade the federal agency's exclusive domain.

Northern Nat. Gas v. State Corp. Comm’n of Kan., 372 U.S. 84, 91-92 (1963) (citations omitted).

In the present case, the FERC Order has authorized Respondents to become an interstate pipeline operating in interstate commerce pursuant to the NGA. FERC now has exclusive jurisdiction over Respondents' pipeline operations, including the establishment of rates, and the Commission is preempted from further action regulating Respondents' rates. Consequently, as a matter of law, the Commission cannot grant the relief sought by Staff. The appropriate forum for this Commission to continue to participate in these matters is through the established FERC process and related remedies. The Commission in fact acknowledged the situation and the effect on its jurisdiction by filing an Application for Rehearing with FERC.

Respectfully submitted,

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Attorneys for Respondents

Dated: June 20, 2007

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Respondents' Response to Commission's Order Directing Parties to Explain the Effect of the Federal Energy Regulatory Commission Order has been transmitted by e-mail or mailed, First Class, postage prepaid, this 20th day of June, 2007, to:

*** Case No. GC-2006-0491**

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