

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

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

**STAFF’S RESPONSE TO MOTION FOR DETERMINATION
ON THE PLEADINGS**

COMES NOW the Staff of the Missouri Public Service Commission (“PSC”), by and through the Commission’s General Counsel, and for its response to the Motion for Determination on the Pleadings filed by MoGas Pipeline, LLC (“MoGas”), on January 15, 2009, states as follows:

1. In its Motion filed on January 15, 2009, MoGas admits that FERC Docket No. CP07-450 – the subject matter of this action -- has already been resolved in its favor. Nonetheless, MoGas urges the Commission to make a “declaration . . . for future guidance.”¹

2. MoGas relies in its Motion upon a decision of the Missouri Court of Appeals, Western District, to-wit:

The question of whether to exercise this discretionary jurisdiction [i.e., to adjudicate a moot issue under the exception for recurring questions of general interest] comes down to whether there is some legal principle at stake not previously ruled as to which a **judicial** declaration can and should be made for future guidance.²

3. The PSC is not a court and thus cannot make “judicial declarations”

¹ *In the Matter of FERC Docket No. CP07-450, MoGas Request for Authorization under Blanket Certificate*, Case No. GO-2009-0094 (Motion for Determination on the Pleadings, filed January 15, 2009) at ¶ 12.

² *State ex rel. Missouri Public Service Co. v. Fraas*, 627 S.W.2d 882, 885 (Mo. App., W.D. 1981) (emphasis added).

for future guidance. The PSC is, instead, an administrative agency, charged with implementing and enforcing certain statutes relating to public utilities and manufactured and modular homes. As the Missouri Supreme Court has held,

This Court has recognized that executive agencies may exercise “quasi judicial powers” that are “incidental and necessary to the proper discharge” of their administrative functions, even though by doing so they at times determine questions of a “purely legal nature.” Agency adjudicative authority, however, is not plenary. “[A]n administrative body or even a quasi-judicial body is not and cannot be a court in a Constitutional sense.” “[U]nder our Constitution the lawmakers cannot vest purely judicial functions in” an administrative agency. Agency adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise.³

4. The Court went on to hold in ***State Tax Commission*** that a statute purporting to authorize the Administrative Hearing Commission to “declare” administrative rules of other agencies to be valid or invalid was unconstitutional because “[t]he declaration of the validity or invalidity of statutes and administrative rules . . . is purely a judicial function.”⁴

5. In an earlier case, the Court held, “The Public Service Commission has no power to declare or enforce any principle of law or equity.”⁵

6. Therefore, it is already well-established that the PSC cannot give MoGas the relief it now seeks, namely, a declaration for future guidance. Therefore, this case must be dismissed.

³ ***State Tax Commission v. Administrative Hearing Commission***, 641 S.W.2d 69, 75 (Mo. banc 1982).

⁴ *Id.*

⁵ ***Lightfoot v. City of Springfield***, 361 Mo. 659, 669, 236 S.W.2d 348, 352 (Mo.1951).

WHEREFORE, Staff prays that the Commission will dismiss this case for the reasons set out above.

Respectfully submitted,

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served, either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on this **27th day of January, 2009**, on the parties of record as set out on the official Service List maintained by the Data Center of the Missouri Public Service Commission for this case.

s/ Kevin A. Thompson