

**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.)	

**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 legally authorizing Respondents to consolidate their operations into a new, FERC-regulated entity that transports natural gas in interstate commerce. As a result of the Order the Commission is preempted from granting the relief requested by Staff and lacks jurisdiction to further act on this matter.

Staff filed its Motion to Dismiss Without Prejudice (hereafter "Motion") on June 19, 2007. Respondents do not object to Staff's Motion and believe that it renders the

present Response moot. Nevertheless, because this matter is still pending, Respondents submit this Response consistent with the Commission's Order.

Background

On March 31, 2006, Staff filed the Complaint in the present case, 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, the present case). On June 21, 2006, Staff filed another Complaint against Respondents MPC and MGC, alleging violations of the same tariffs based upon the same underlying facts. (*See* Staff Complaint in Case No. GC-2006-0491). The only count remaining in this matter after the filing of Staff's second complaint was Count I, involving excessive earnings. The issuance of FERC order has mooted this remaining count.

On June 1, 2006, before Staff filed the second complaint, 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.

This Controversy is Moot

As a matter of law, the relief sought by Complainant in this case is no longer available because the FERC Order has mooted Complainant's prayer for relief.

A case is moot where an event has occurred which makes the court's decision unnecessary or makes it impossible for the court to grant the effectual relief. *See State ex rel. County of Jackson v. Missouri Public Svc. Com'n.* 985 S.W.2d 400, 403 (Mo.App.1999). Moot cases should generally be dismissed, as the circuit court lacks subject matter jurisdiction. *Id.*; *B.S. v. State*, 966 S.W.2d 343, 344 (Mo.App.1998). To the extent Complainant's petition seeks removal of the tie wall, his case is moot. *See Rosenfeld v. Thoele*, 28 S.W.3d 446, 451, (Mo.App. E.D.,2000). “A cause of action is considered moot when the question presented for decision seeks a judgment upon some matter which, if judgment was rendered, would not have any practical effect upon any then existing controversy.” *Id.* When there is no existing controversy, an appellate court lacks jurisdiction and should dismiss the appeal. *Promotional Consultants, Inc. v. Logsdon*, 25 S.W.3d 501, 506 (Mo.App. E.D.2000). *See Braveheart Real Estate Co. v. Peters*, 157 S.W.3d 231,232 (Mo.App. E.D.,2004).

In the present case, Staff prays that MPC and MGC be ordered to take various future actions. Because the pipelines have been granted interstate authority, it is impossible for effectual relief to be granted against these entities, and even if relief is granted, there will be no practical effect. Simply put, there is no existing controversy

because the Respondents are subject to FERC jurisdiction rather than any intrastate jurisdiction.

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

Because Respondents are now regulated under the Natural Gas Act ("NGA") as an interstate pipeline, the Commission lacks legal authority to establish Respondents' rates of under any state law including §§ 393.130.1 and 393.140(5), 393.270(2), and 393.270(4). Courts have long recognized 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 is now responsible for regulating Respondents' pipeline operations, including the establishment of rates, and thus has preempted the Commission from any further action regulating Respondents' rates. Consequently, as a matter of law, the Commission cannot grant the relief sought by Staff.

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 Response to Commission's Order Directing Parties to Explain the Effect of the Federal Energy Regulatory Commission Order has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 20th day of June, 2007, to:

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