

**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.	)	

**SUGGESTIONS IN SUPPORT OF MOTION TO  
QUASH SUBPOENA DUCES TECUM**

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 move to quash the subpoenas issued at the request of by the Staff of the Missouri Public Service Commission (hereafter “Staff” and “Commission” respectively). In support of this motion, respondents state as follows:

**I. The Staff Has Issued Subpoenas for Documents and Testimony Beyond the Commission’s Jurisdiction**

The Commission’s power to issue subpoenas is purely statutory and is limited by the authorizing statute. *State Brd. for Reg. of the Healing Arts v. Vandivort*, 23 S.W.3d 725, 727-28 (Mo. App. W.D. 2000). Actions taken beyond the statutory jurisdiction of the

Commission are void *ab initio* and contrary to law. *Garcia-Huerta v. Garcia*, 108 S.W.3d 684, 686 (Mo. App. W.D. 2003). The Staff has issued subpoenas for both documents and testimony beyond the scope of its statutory jurisdiction.

Section 386.250, R.S.Mo., grants jurisdiction to the Commission over public utilities and certain entities that own, lease, operate, or control the manufacture or sale of natural gas by a public utility. Gateway, United and Mogas are not “gas corporations” or “public utilities” as defined by § 386.020(18) and (42). Further, Gateway, United and Mogas do not own, lease, operate or control the manufacture or sale of natural gas by MPC or MGC’s. Rather, they are limited liability companies with no employees. Mogas owns the limited liability interests in Gateway, Gateway owns the limited liability interests in United, and United owns the limited liability interests in MPC and MGC, but they maintain books separate from MPC or MGC. The subpoenas are not valid merely on the basis that Staff has referred to Gateway, United and Mogas as “affiliates” of regulated entities. As such, Staff has exceeded the Commission’s jurisdiction in issuing subpoenas for Gateway and Mogas. As such, the subpoenas are void.

The Commission’s power to subpoena documents extends only to those subject to the Commission’s jurisdiction. Section 386.320(3), R.S.Mo. establishes “The commission and each commissioner shall have power to examine all books, contracts, records, documents and papers of any person or corporation ***subject to its supervision***, and by subpoena *duces tecum* to compel production thereof.” (Emphasis added). Gateway, United and Mogas are not subject to the Commission’s jurisdiction. Accordingly, the Commission’s authority under § 386.320, R.S.Mo. to examine documents or compel product by subpoena *duces tecum* does not extend to Gateway, United and Mogas. For these reasons, any documents requested and

related questions regarding the business affairs of Gateway, United and Mogas not related to the business between MPC and MGC are beyond the Commission's jurisdiction.

Further, many of the documents requested from MPC and MGC are beyond the Commission's jurisdiction. Through the subpoenas, Staff is attempting to obtain information unrelated to any business transaction of MPC or MGC. Since the Commission only has authority to examine documentation of those entities subject to its jurisdiction, any information unrelated to MPC or MGC transactions are outside the scope of the Commission's jurisdiction and cannot be obtained through subpoenas *duces tecum*. Since Staff is requesting information beyond the Commission's jurisdiction, the subpoenas are invalid.

Even information requested regarding transactions between Gateway, United and Mogas and MPC and MGC are not proper. The Commission may inquire about transactions between a regulated entity and an affiliate only **after** a showing that the regulated entity has failed to maintain books and records "substantially apart" from the affiliate. *State ex. rel. Atmos Energy Corp. v. Public Service Comm'n*, 103 S.W.3d 753, 763-64 (Mo. 2003). No such showing has been made in this instance. Accordingly, questions relating to Gateway, United or Mogas and MPC and MGC are premature and invalid until such showing has been made.

## **II. The Subpoenas Issued by Staff are Void on Their Face**

The subpoenas issued by Staff do not comply with the requirements of 4 CSR § 240-2.100 and Missouri Rule of Civil Procedure 57.09. None of the subpoenas issued by Staff were accompanied by witness or mileage fees in compliance with Mo. R. Civ. P. 57.09. Failure to tender the appropriate fees renders the subpoena void. *Noel v. Bender*, 295 S.W.

532 (Mo. Banc 1927). Since the subpoenas are not accompanied by the requisite witness and mileage fees, they are invalid.

Further, Missouri Rule of Civil Procedure 56.01 mandates that all requests for discovery in any matter are relevant to the subject matter involved in the pending action. State regulation 4 CSR § 240-2.100 establishes, “A request for a subpoena *duces tecum* shall specify the particular document or record to be produced, and shall state the reasons why the production is believed to be material and relevant.” The subpoenas issued by Staff do not state the reasons for why the documents sought are believed to be material or relevant nor do they specify a particular document or record to be produced in compliance with these requirements. Rather, in many instances, they refer to “all” documents in a broad category. These references are vague, imprecise, and overly broad and clearly do not comply with the explicit requirements of 4 CSR § 240-2.100. For these reasons, the subpoenas issued by Staff are void on their face.

### **III. The Subpoenas Issued By Staff Are Not Relevant to This Proceeding**

Missouri Rule of Civil Procedure 56.01 provides, “Parties may obtain discovery regarding any matter, not privileged, that is *relevant* to the subject matter involved in the pending action... the party seeking discovery shall bear the burden of establishing relevance.” (Emphasis added). Much of the information sought by Staff in the subpoenas, not already provided, consists of information irrelevant to this matter. Likewise, all other documents requested of Gateway, United or Mogas, non-regulated entities, in transactions that do not involve transaction with MPC or MGC have no relevance to any matter that could lead to relevant information in this proceeding. Thus, the subpoenas are void as irrelevant to this proceeding.

#### **IV. The Subpoenas Issued by Staff are Oppressive and Burdensome**

A subpoena that is so broad in its request as to be oppressive, burdensome, and intrusive may be quashed upon the filing of a motion to quash. *State ex. rel. Whitacre v. Ladd*, 701 S.W.2d 796 (Mo. App. E.D. 1985). The subpoenas issued by Staff are oppressive, burdensome and intrusive. The subpoenas call for Respondents' records and testimony on nearly the same date the Respondents' answer in this matter is due. Respondents need sufficient time to prepare an adequate answer, compile and search for responsive records, and prepare for deposition testimony. The dates named in Staff's subpoenas do not allow enough time to accomplish these all undertaking adequately. Further, the subpoenas are excessive in reach, requiring documents from 2002 to present in many instances. Four years worth of records from many different categories is undoubtedly excessive and overly broad. *See Johnson v. Johnson*, 628 S.W.2d 709 (Mo. App. W.D. 1982). Moreover, the MPC/MGC representatives who would be responsible for testifying under the subpoenas and gather the documentation are the very individuals working directly with legal counsel to prepare the answer at the same time. MPC/MGC are small companies and the subpoenas intentionally scheduled by Staff to coincide with answer dates only a couple of weeks after local counsel was hired was intended to be and is excessively burdensome and oppressive, particularly inasmuch as legal counsel of MPC/MGC was not contacted prior to the Notices for Depositions regarding availability. For these reasons, the subpoenas issued by Staff are oppressive, burdensome and intrusive and should be quashed accordingly.

WHEREFORE, Respondents respectfully request that the Commission quash all subpoenas issued to Respondents by Staff in this matter. Staff's subpoenas are deficient for failing to comply with the requirements of applicable statutes, regulations and Missouri

Rules of Civil Procedure. Further, this Commission lacks subject matter jurisdiction over Gateway, United and Mogas since they are not regulated utilities. Since the Commission's subpoena power is dependent upon its subject matter jurisdiction, and since the subpoenas do not comply with applicable laws and rules of Missouri, they are void and, therefore, should be quashed.

Respectfully submitted,

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Dated: May 2, 2006

*Attorneys for Respondents*

## **CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Suggestions in Support of Motion to Quash Subpoena Duces Tecum has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 2nd 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>
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