

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

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

**RESPONSE TO CORRESPONDENCE
REGARDING CONFIDENTIALITY OF INFORMATION**

COMES NOW the Municipal Gas Commission of Missouri (“MGCM”) and for its Response to the August 13 letter from Omega Pipeline Company regarding the continued confidential treatment of certain information respectfully states as follows:

1. On August 7, 2007, the Commission issued its Order Regarding Disclosure of Information Designated as Confidential. (“Order”). In that Order, the Commission notes the difficulty associated with writing a coherent decision in light of the extensive use of the highly confidential designation by the Respondents. The Commission, therefore, proposes to disclose information related to: (1) the identity of customers served by Omega Pipeline Company (“Omega”) during the time that it was affiliated with the Respondents; and (2) the rates that Omega was charged in connection with delivery of gas to those customers.

2. On August 13, 2007, Omega filed a letter in response to the Commission’s Order. In its correspondence Omega states that, while it would oppose the disclosure of

the rates that Omega charged its marketing customers, it does not have a problem with the disclosure of the rates charged by the pipelines to Omega for transportation of natural gas. It is important to note that, as pertains to this case, it is the rates that Omega was charged by the pipeline that is at issue. As Staff's complaint points out, it is alleged that Omega, as an affiliate of the pipelines, received discounted rates that were not made available to other shippers. Therefore, it is these discounted rates that were charged by the pipelines to Omega that are directly relevant to this count. As its correspondence indicates, "Omega does not object to the disclosure by the Commission of the rate Omega was charged by MPC / MGC for gas transportation service during the time it was an affiliate of MPC / MGC."¹

3. That said, however, Omega does oppose any disclosure related to the identity of Omega's customers. Specifically, Omega claims that it "does not believe there is a compelling reason to disclose this information because it would not appear to be relevant to the question of what Omega was paying MPC / MGC for natural gas transportation service." Omega's response misses a fundamental tenet of the stated public policy of the State of Missouri. Specifically, while Omega appears to operate under the erroneous belief that there must be a "compelling reason" for disclosure of information, the Missouri Sunshine Law provides for a contrary approach. That is, contrary to Omega's assumption, the Missouri Sunshine Law provides a presumption that all documents shall be disclosed unless a compelling reason can be found to maintain

¹ MGCM would note that some of the rates charged by Omega to its customers are available through other methods. Specifically, Sunshine Law and Freedom of Information requests would readily reveal the rates charged by Omega to the City of Cuba as well as Fort Leonard Wood.

confidentiality.² In this regard, Omega carries a heavy burden to show that the information should be protected.³ Such a burden cannot be met by mere statements regarding its belief. Rather, Omega should be compelled to support its belief with citations to statutes or case law.

4. Although numerous exceptions exist, the exception seemingly most applicable to the release of the information in question is Section 610.021(14) – records which are protected from disclosure by law. Consistent with this exception, the Commission’s protective order provides for confidential treatment for trade secrets as well as other types of confidential information.

5. As a result of the incomplete nature of Omega’s correspondence, MGCM is unable to deduce what legal basis Omega could ultimately assert for its contention that the list of customers should be treated as confidential. That said, however, it seems that an essential element of any claim of confidentiality should be that the information cannot be readily ascertainable by other means.⁴

6. In the immediate case, the list of Omega marketing customers which are indirectly provided transportation services by the pipelines is readily ascertainable through other means.⁵ On April 4, 2006, the Commission issued its Order Directing Notice and Setting Date for Submission of Intervention Requests. In that Order, the

² See, Section 610.011 (“It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law.”).

³ *Id.* (“Sections 610.010 to 610.028 shall be liberally construed and their **exceptions strictly construed** to promote this public policy.” (emphasis added)).

⁴ As pertains to trade secrets, the requirement that such information not be “ascertainable by proper means” is a necessary requirement to any claimed trade secret. See, Section 417.453(4)(a).

⁵ It is important to recognize that these customers only receive transportation services indirectly from the pipelines. As the evidence clearly indicates, Omega as an affiliate marketer received transportation services from the pipelines, at a discounted rate, for the purpose of providing bundled natural gas service to its customers. These indirect customers do not have transportation arrangements with the pipeline. Therefore, they are not transportation customers of the pipeline.

Commission directed its Data Center to mail copies of the notice to several customers. Specifically identified in the list of customers to receive notice were the three customers heretofore treated as highly confidential.⁶ While Omega may otherwise have had a legal basis for asserting highly confidential treatment for such customers, the names of the customers have been readily ascertainable through proper means for over 15 months. Given the public availability of this information, MGCM maintains that it is late for Omega to now seek to protect this information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is positioned above a horizontal line. To the right of the signature, a vertical red line extends downwards.

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⁶ See, Order Directing Notice and Setting Date for Submission of Intervention Requests, Case No. GC-2006-0378, issued April 4, 2007, at page 3.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing pleading by email, facsimile or First Class United States Mail to all parties by their attorneys of record as provided by the Secretary of the Commission.

A handwritten signature in black ink, appearing to read "David L. Woodsmall", is written over a horizontal line. A vertical red line is positioned to the right of the signature.

David L. Woodsmall

Dated: August 14, 2007