

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

5. MoGas' proposed federal tariff sheets are a matter of interstate commerce.
6. There is no express provision of Missouri law by which the legislature has conferred upon the Commission the power to intervene in the FERC Rate Case.
7. The Commission's intervention in the FERC Rate Case is not by clear implication necessary to carry out any power specifically granted to the Commission.
8. The Commission's intervention in the FERC Rate Case is expressly prohibited by § 386.030, RSMo., which forbids the Commission from interference with matters of interstate commerce.
9. General Counsel for the Commission is authorized to represent and appear for the Commission but only "if directed to do so by the commission." § 386.071, RSMo.
10. It does not appear in any public record known to Applicant that the Commission directed its General Counsel to intervene in the FERC Rate Case. In any event, it is a private law firm that is representing and appearing for the Commission in the FERC Rate Case, not the Commission's General Counsel.
11. The Commission is expending public funds to retain the private law firm Stinson, Morrison, Hecker LLP to represent and appear for the Commission in the FERC Rate Case.
12. There is no provision of Missouri law by which the legislature has expressly conferred upon the Commission the power to retain a private law firm to represent and appear for the Commission, the power to retain a private law firm to intervene in a FERC case, or the power to retain a private law firm to litigate matters relating to interstate commerce. Likewise, none of these actions are by clear implication necessary to carry out any power specifically granted to the Commission.

13. The expenditure by a state agency of public funds to retain a private law firm, if not contemplated by the agency's enabling legislation, is illegal and subject to injunction. *State ex rel. Nixon v. American Tobacco Co.*, 34 S.W.3d 122, 133 (Mo. banc 2000).

14. An affidavit of the President of MoGas was attached to the original Application in this action. Said affidavit is incorporated herein by reference.

WHEREFORE, MoGas moves that the Commission:

- (A) Withdraw its Intervention and Protest in the FERC Rate Case;
- (B) Terminate permanently its involvement in all FERC matters related to MoGas;
- (C) Instruct Staff, General Counsel, and outside counsel to refrain from further interfering with MoGas's operation as a FERC-regulated entity engaged in interstate commerce; and
- (D) Decide the issues of general public importance raised by the pleadings in this action, as set forth in Applicant's Motion for Determination on the Pleadings.

Respectfully submitted,

LATHROP & GAGE, L.C.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been hand-delivered, transmitted by e-mail or mailed, First Class, postage prepaid, this 5th day of February, 2009, to:

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/s/David Brown