

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

Staff of the Missouri Public Service Commission,)	
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)	
Complainant,)	
)	
v.)	Case No. GC-2006-0378
)	
Missouri Pipeline Company, Missouri Gas Company,LLC, Mogas Energy LLC, United Pipeline Systems, Inc. and Gateway Pipeline Company, LLC,)	
)	
)	
Respondents.)	

RESPONSE TO MOTION TO QUASH SUBPOENA DUCES TECUM

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its response to the Motion to Quash filed by Terry Matlack and Tortoise capital Advisors offers the following argument:

Rule 57.09(c) cited by Terry Matlack and Tortoise requires that a non-party served with a subpoena “shall state specific reasons why the subpoena should be quashed or modified.” Terry Matlack and Tortoise offer a single objection to the Staff’s subpoena – relevance.

Relevant evidence is information that tends to prove or disprove a fact of consequence. Ashby v. Johnson, 792 S.W.2d 7, 8 (Mo. App. 1990). Evidence is relevant if it tends to corroborate other relevant evidence. State v. Weaver, 912 S.W.2d 499, 510 (Mo. 1995). Relevance in the discovery context is “broadly defined to include material ‘reasonably calculated to lead to the discovery of admissible evidence.’”. Unicom v. Campbell, 938 S.W.2d 640, 643 (Mo. App. 1997).

Rule 56.01 provides:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identify and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The Commission should further note that this subpoena is investigatory in nature and is tied to both the GC-2006-0378 case and the GC-2006-0491 case. Its parameters are not limited by the scope of the complaint in the GC-2006-0378. The subpoena seeks information relevant to determine the nature of the sale transaction between Omega and Tortoise, and the change, if any, in the Omega – MPC/MGC operation and determine whether Omega is still affiliated with MPC and MGC and still engaging in operations that may cause it to come under Commission regulation.

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_____**. ** The requested information addresses these circumstances and is properly discoverable relating to a claim or defense of any party. Rule 56.01.

The Commission will recall that when the complaint in GC-2006-0378 was filed, Omega Pipeline Company was included as a respondent due to its affiliate relationship with MGC and MPC. **

_____.**

The results of additional investigation by the Staff led to another complaint alleging tariff violations in GC-2006-0491. As set out in the 491 complaint case, what made these violations possible was the relationship between Omega and MPC and MGC through their common President, who was able to ** _____

_____.**

Though Tortoise claims the affiliate relationship no longer exists, the Staff seeks additional information to corroborate and verify information that Staff has. Staff has not been supplied information to cause the Staff to believe that Omega and MPC/MGC do

not continue to have have common ownership and/or control camouflaged through a complicated chain of ownership and financial arrangements designed to make detection difficult. The requested discovery addresses these issues.

** _____ ** off the Fort leading the Staff to investigate the nature of that business and whether Omega was a “gas corporation” subject to regulation by the Commission. Omega may continue to do so and the manner in which it is done may lead to Commission regulation. This activity is a proper matter for investigation given the Commission’s statutory obligations.

The Staff is attempting to determine whether Omega qualified at the time of the sale and still qualifies as a non-regulated utility because it was not operated substantially separate from MPC and MGC. The purported sale transaction may require Commission approval and be void.

Mr. Matlack and Tortoise will have the information requested in the subpoenas. There is no claim in the motion to quash that they do not possess or have constructive possession or control of them.

The Staff continues to investigate the issues identified above and is seeking information from Terry Matlack and Tortoise regarding Omega’s past and present business operations, the sale transaction and ownership and control issues. The Staff seeks the following information, paraphrased for purposes of this response, in its subpoena:

1. Documents relating to the purchase of Omega Pipeline Co; Omega Pipeline Services, MOGAS, LLC; Mowood, LLC by the Tortoise companies.

These documents are relevant to determine whether a genuine sale transaction occurred on June 1, 2006, removing the affiliation between Omega, MPC and MGC or whether there has only been a shuffling of corporate entity names and new immediate owners to create the impression that the prior affiliation no longer exists. **

_____. Therefore, the possibility exists that the entity that was purchased by Tortoise was not the entity owning Omega.

2. Documents sent to lenders of Omega, MOGAS, and Mowood.

These documents, or lack thereof, will indicate whether a sale transaction occurred to a level requiring notice to any lenders of these entities. This is relevant to the nature of the sale transaction and whether the sale was genuine or just a reshuffling to create the impression that the prior affiliation is gone.

3. A list of all property owned by Omega, including real, personal, tangible and intangible.

These documents, or lack thereof, will indicate whether a genuine sale transaction occurred removing the affiliation between Omega and MPC and MGC or whether there has only been a transfer of Omega's operations to another entity by shuffling corporate entity names and new immediate owners to create the impression that the prior affiliation no longer exists. In addition, Omega has denied having any computers or other property used to serve customers outside of the Fort. This is relevant to the determination of whether Omega is a "gas corporation" and subject to Commission regulation, and whether the sale transaction itself is void.

5. All contracts executed by Omega that were provided to Tortoise or **
 **

These documents are relevant to determine whether Omega has entered into contracts that effectively restore the rights of at least the majority owners of MPC and MGC and continue the affiliate relationship with Omega.

6. Documents and purchase agreements related to Tortoise's purchase of Omega or its affiliates including all exhibits, schedules, and attachments.

These documents are relevant to determine the affiliate issues and determine whether there was a genuine sale transaction. They will also verify whether the limited documents provided by Mr. Ries are genuine documents or documents created to convey the impression of a sale. Staff has received some information but many schedules and exhibits appear to be missing according to a table of contents. **

 ** Staff is entitled to corroborate and verify other relevant evidence it has. Weaver, 912 S.W.2d 499.

7. Any contracts or agreements, entered into before or after Tortoise assumed control of Omega, between MPC, MGC or their agents, to provide services to Omega or its affiliates.

These documents are relevant to determine whether a genuine sale transaction took place or whether another contractual arrangement was created to restore the prior affiliation. MPC and MGC can create new special arrangements with Omega to mirror the special treatment Mr. Ries provided Omega prior to June 1, 2006. This information will evidence whether Omega is allowed to continue to

operate in a manner consistent with its prior admitted affiliate status or whether Omega is treated similarly to all other non-affiliated shippers. Omega is not the largest shipper on the pipeline; Ameren and Laclede are the largest. A comparison of the treatment afforded Ameren compared to Omega as shown by the contracts is relevant to detect the existence of any preferential treatment consistent with an affiliated relationship. ** _____

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8. All schedules and data in electronic format from Omega to MPC and MGC showing quantities of gas to be received by individual point of receipt and delivered by individual point of delivery since June 1, 2006.

These documents, or lack thereof, will indicate whether a genuine sale transaction occurred by determining whether Omega is operating as an independent shipper consistent with MPC and MGC tariff requirements, free of control from Mr. Ries, and consistent with the manner of non-affiliated shippers. ** _____

_____** This information will show whether Omega continues to be allowed to operate in a manner consistent with prior admitted affiliated relationship or is now operating consistent with the MPC and MGC tariffs and other non-affiliated shippers.

9. All correspondence since May 31, 2006, between Omega and MPC and MGC regarding the amount of gas that Omega owes MPC and MGC for

natural gas delivered in excess of natural gas received.

This information is relevant to determine whether a genuine sale transaction took place by determining if Omega is operating as an independent shipper consistent with MPC and MGC tariff requirements, free of control from Mr. Ries, and consistent with the manner of non-affiliated shippers. **

_____.** The requested information is relevant to determine whether Omega is being required to address its imbalance levels on the system consistent with company tariffs and other non-affiliated shippers.

10. A copy of Omega billings to Omega customers that are served from MPC or MGC since June 1, 2006.

These bills will indicate whether the relationship between **Omega Pipeline Services**, ** _____ **, still exists or whether the relationship was altered in some way. Also relevant is that the investigation of whether Omega's activities outside the Fort make it a gas corporation subject to Commission regulation. These documents are relevant to determine whether a genuine sale transaction occurred by determining whether Omega is operating as an independent shipper consistent with MPC and MGC tariff requirements, free of control from Mr. Ries and consistent with the manner of non-affiliated shippers.

11. Omega Pipeline Co. and Omega Pipeline Services bills to customers that received transportation services since June 1, 2006.

These documents are relevant to determine whether a genuine sale transaction occurred by determining whether Omega is operating as an independent shipper consistent with MPC and MGC tariff requirements, free of control from Mr. Ries and consistent with the manner of non-affiliated shippers. **

_____**. ** This information will show what relationship, if any, continues after June 1, 2006, regarding Omega Pipeline Services or another entity under the control of the owners of MPC and MGC..

The allegation that the Staff lacks statutory or rule authority to examine Omega’s business dealings is likewise a relevance objection and lacks merit. As the Commission has recognized previously in this very case, the Commission has broad authority to investigate, subpoena witnesses and take testimony regarding any matter under sections 393.110 to 393.285 RSMo. The Commission’s authority to depose witnesses is not limited only to companies under its supervision. The Commission has broad authority “to inquire into matters beyond the strict confines of entities directly subject to the Commission’s regulation.” Order Granting Motion to Dismiss..., Staff v. MPC, et al, GC-2006-0378, p. 6 (May 16, 2006).

Mr. Matlack and Tortoise have objected only on the ground of relevance. That is the only legal basis for Commission determination. Should the Commission decide to go beyond the pleadings to resolve this motion, or allow Mr. Matlack and Tortoise additional argument to this response, the Staff respectfully objects and asks that it be allowed to

surreply.

Wherefore, having established relevance, the Staff requests that the Commission overrule the motion to quash and allow the deposition to proceed.

Respectfully submitted,

/s/ Steven C. Reed

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record on this 30th day of October, 2006.

/s/ Steven C. Reed

Steven C. Reed