

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

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

STAFF MOTION TO COMPEL RESPONSE TO DISCOVERY REQUEST

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), pursuant to 4 CSR 240-2.090, and for its Motion to Compel Discovery, states to the Missouri Public Service Commission (“Commission”) as follows:

1. MPC and MGC are gas corporations, as defined by §386.020 (18), that provide natural gas transportation service to customers in Missouri under tariffs approved by the Missouri Public Service commission (Commission). MPC and MGC are therefore public utilities as defined by § 386.020 and are subject to the jurisdiction of the Commission, pursuant to § 386.250 and § 393.140.

2. The Commission is specifically authorized by statute to “adopt and prescribe” rules of procedure. Section 386.410.1, RSMo Supp. 1998. Pursuant to this authority, the Commission has promulgated its Rule 4 CSR 240-2.090.1, relating to discovery and prehearings:

Any party, in any proceeding before the commission, may obtain discovery by one (1) or more of the following methods: depositions upon oral examination or written questions, written interrogatories, requests for production of documents or things and requests for admission upon and under the same conditions as in civil actions in the circuit court. Sanctions for abuse of the discovery process or failure to comply with commission

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orders regarding discovery will be the same as those provided for in the rules of civil procedure.

3. The Commission's Rule 4 CSR 240-2.090(2) provides for "data requests." A data request is "an informal written request for documents or information[.]" Data requests need not take any particular form.

Parties may obtain discovery regarding any matter, not privileged, which 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 identity 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.

4. "Relevant" evidence is that which tends to prove or disprove a fact of consequence to the pending matter. W. Schroeder, 22 Missouri Practice—Missouri Evidence, § 401.1(a) (1992). Relevance must be determined by reference to the pleadings. *See St. ex rel. Anheuser v. Nolan*, 692 S.W.2d 325, 327-28 (Mo. App., E.D. 1985).

5. The pleadings concern the Companies' violation of its tariffs and in particular, whether the Companies failed to treat affiliates and non-affiliates in a non-discriminatory manner. Staff has alleged that the Companies treated its affiliate Omega in a preferential manner.

6. Specifically in its complaint Staff stated that ** _____

_____. ** All these actions by MPC and MGC are in violation of their tariffs and have resulted in overcharges to non-affiliated shippers.

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7. Pursuant to its Complaint, Staff propounded a number of data requests including DR #5, which requested which requested ** _____

_____. **

8. Commission rules require prompt answers to data requests. Rule 4 CSR 240-2.090 (2), requires the party to whom data requests are presented to answer the requests within 20 days after receipt unless otherwise agreed by the parties to the data request.

9. On August 21, the Company objected to data request #5, stating: “Respondents object to Data Request No. 5 on the grounds that it seeks information which is not relevant to any issue in this case and that the inquiry seeks information from entities not party to this proceeding.”

10. Pursuant to 4 CSR 240-2.090(8)(B), Staff counsel and Company counsel discussed this discovery dispute in a telephone conference with the Commission’s regulatory law judge on August 23, 2006, but were not able to further completely resolve this discovery dispute beyond clarifying the intent of Data Request No. 1.

11. The information sought by these data requests is relevant or likely to lead to the discovery of relevant information. In support of that statement Staff states:

a. ** _____

_____. **

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c. MIG is connected to Mississippi River Transmission Corporation (MRT), an interstate pipeline transporter of natural gas. The only MIG delivery point is MPC. The natural gas that MIG receives from MRT can only be delivered into MPC for delivery to a MPC or Missouri Gas Company (MGC) delivery. MIG cannot deliver gas without the gas being transported through at least the MPC pipeline.

_____. ** The Staff requested ** _____

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_____**

f. The requested information is relevant to the portion of section 12 a. of the General terms and conditions of the MPC tariffs that all terms and condition are to be applied in a uniform and non- discriminatory manner without affiliation of any entity. MPC, a Commission regulated pipeline, is ** _____

_____. ** MIG, prior to these discounts, was a little used pipeline operating under a FERC condition that MIG is not to be subsidized from existing customers.

g. ** _____

_____**

13. After the discovery conference with judge, the remaining issue was that the documents requested by the data request were not under the control of MPC. These documents are under the control of MIG. Staff submits that the following facts show that MPC does have control of these documents:

- a. ** _____; **
- b. ** _____; **
- c. ** _____; **

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- d. ** _____; **
- e. ** _____
 _____.
 _____, **
- f. ** _____
 _____.
 _____, **
- g. ** _____; **
- h. ** _____
 _____.
 _____, **
- i. ** _____; **
- j. ** _____

 _____. **

WHEREFORE, the Staff requests the Commission to issue an order compelling the Company to promptly answer of the Staff data requests discussed in the meeting with the Judge to which no formal objection had been made and to promptly provide the information requested in Data Request No. 5.

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Respectfully submitted,

/s/ Lera L. Shemwell

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically transmitted to all counsel of record this 28th day of August, 2006.

/s/ Lera L. Shemwell