

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

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

**STAFF’S MOTION FOR WAIVER OF RULE 4 CSR 240-2.100, FOR ISSUANCE  
OF A SUBPOENA, AND FOR EXPEDITED TREATMENT**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and moves the Commission for a waiver of 4 CSR 240-2.100 requiring that a subpoena for hearing be issued at least 20 days before the hearing and requests expedited treatment:

1. The Staff anticipates that witnesses for the Respondents will claim that a written contract between Omega and the City of Cuba was modified or amended by verbal agreement or through course of dealing. The Staff addressed this issue in its surrebuttal filed by witness Schallenberg. But the City of Cuba is not a party to this case and it has not filed testimony to rebut the anticipated assertion of the pipelines.
2. In order to rebut any such assertion by the Respondents, the Staff requires the testimony of the Public Works Director Bob Baldwin, or Tanya Farace, who is prepared to testify for the City of Cuba on this limited issue.
3. In preparing for the trial of this case, counsel has determined that based on the Respondents’ attempts to explain their business activities during depositions

November 14 and 15, 2006, that the Respondents may take this course of action. Although the Staff cannot be certain that the Respondents will actually claim a verbal amendment to the contract, it remains a possibility and the Staff should be allowed to rebut any such assertion with a competent witness who has actual knowledge of Cuba's business activities with Omega.

4. Good cause exists to waive the 20 day rule for issuance of subpoenas. In this instance, the 20 day rule hamstrings the Staff's efforts to rebut assertions by the Respondents that cannot be rebutted by Staff witnesses who were not parties to the Omega/Cuba contract. The interests of justice require that the Staff be allowed to rebut any assertions made that have no basis in fact.

5. The Commission should note that the disclosure of rebuttal witnesses is not required in civil or criminal cases in the Circuit Courts. See State v. Miner, 639 S.W.2d 569 (Mo. 1982), State v. Slater, 193 S.W.3d 800 (Mo. App. 2006). The very nature of the rule instructs us that there is no prejudice to the opposing party when rebuttal witnesses are not disclosed. But in order to obtain the necessary subpoena and to provide notice to the Respondents that a witness from Cuba will be called, counsel has chosen to reveal this witness and with this disclosure, part of our litigation strategy that would never have been necessary in another venue.

6. The Commission has an obligation to seek the truth about the Respondents' and Omega's business activities in the State of Missouri. Authorizing issuance of a subpoena to Mr. Baldwin from the City of Cuba and waiver of the 20 day rule furthers the Commission's efforts to discover the truth.

7. The rule providing that rebuttal witnesses need not be disclosed in and of itself leads to the conclusion that the Respondents will not be prejudiced by authorizing this subpoena. Nonetheless, Counsel for the Respondents is by this pleading given an opportunity to discuss this issue with the witness from the City of Cuba, Mr. Baldwin at 573-885-6453 or Tanya Farace at the City of Cuba, 573-885-7432. Counsel for Respondents should do so immediately, or he may choose to enter an agreement that Respondents will not claim verbal amendment of the Omega/Cuba contract.

8. Expedition of this motion is appropriate as the hearing begins on December 13, 2006, and the Staff anticipates presenting the Cuba witness on Friday, December 15, 2006, after the witnesses for the Respondents testify.

WHEREFORE, Staff requests the Commission waive rule 2.100, execute and issue the attached subpoena, and expedite consideration of this motion.

Respectfully submitted,

/s/ Steven C. Reed

Steven C. Reed  
Litigation Counsel  
Missouri Bar No. 40616

Lera L. Shemwell  
Senior Counsel  
Missouri Bar No. 43792

Attorneys for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-3015 (Telephone)  
(573) 751-9285 (Fax)  
[steven.reed@psc.mo.gov](mailto:steven.reed@psc.mo.gov)  
[lera.shemwell@psc.mo.gov](mailto:lera.shemwell@psc.mo.gov)

#### **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 8<sup>th</sup> day of December, 2006.

/s/ Steven C. Reed  
Steven C. Reed

**SUBPOENA**  
**Order to Appear for Hearing**



THE STATE OF MISSOURI

To: Bob Baldwin  
Public Works Director  
or Tanya Farace  
City of Cuba  
Cuba, MO 65453

Re: Staff v. MPC/MGC, GC-2006-0491

Pursuant to §§386.440, 393.140 (9) and (10), 4 CSR 240-2.100, and Supreme Court Rule 57.03 (4), you are hereby commanded to appear for the hearing in this matter to testify on the subject of the business of Missouri Pipeline Company, Missouri Gas Company and Omega Pipeline Company, before The Public Service Commission of the State of Missouri at **10:00 a.m.** on Friday the **15th** day of **December**, 2006, at the offices of the Commission located at Room 310, 200 Madison Street, Jefferson City, Missouri.

Given under my hand, this 8th day of December, 2006.

\_\_\_\_\_, Commissioner  
Public Service Commission

**RETURN**

I HEREBY CERTIFY that I served this subpoena by delivering a copy to the person named above,

at \_\_\_\_\_ (time) on the \_\_\_\_\_ day of \_\_\_\_\_ 2006, at the following location: \_\_\_\_\_, in the State of Missouri.

\_\_\_\_\_  
[Name] [Title]

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2006.

\_\_\_\_\_  
Notary Public