

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

**Staff of the Missouri Public Service
Commission,**)
)
)
)
 Complainant,)
 v.)
)
 Missouri Pipeline Company, LLC,)
 Missouri Gas Company, LLC, et.al.)
)
 Respondents.)

Case No. GC-2006-0491

STAFF’S REPLY TO COMMISSION ORDER

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel and, in response to the Commission’s June 6, 2007 Order Directing The Parties To Explain Effect of FERC Order, states as follows:

1. If this case has not convinced this Commission of the sort of individuals who have been operating these pipelines, Missouri Pipeline Company, LLC (MPC) and Missouri Gas Company, LLC (MGC) (“pipelines” or “companies” collectively), the fact that the owners are willing to blatantly ignore the Commission’s condition concerning MIG and FERC jurisdiction in Case No. GM-2001-585 should satisfy the Commission that the pipelines are dedicated to avoiding this Commission’s oversight.

2. The MIG (f/k/a Trans Mississippi Pipeline) condition required: “[t]hat if Gateway Pipeline Company, Inc. causes the Trans Mississippi Pipeline to become operational it will be held in a company separate from Missouri Pipeline Company and from Missouri Gas Company and that any interconnection with the system of Missouri Pipeline Company shall be restricted to flow gas only into Missouri in order to assure continued state jurisdiction under the Hinshaw exemption. So long as these conditions

are met the restriction in Missouri Pipeline Company's certificate of authority issued in 1989 shall be waived to allow interconnection.”

3. The owners have operated as an unregulated monopoly with captive Missouri customers by failing to comply with the pipelines’ tariff provisions, the Commission rules,¹ and Missouri statutes.² The owners have not provided equality in rates to similarly situated customers, have discriminated against other marketers on the system,³ have ignored the conditions and their commitments to this Commission in Case No. GM-2001-585 and have charged Missouri consumers, through their affiliate Omega Pipeline Company, for gas that was not theirs to sell.

4. This Commission challenged the initial MIG Certificate in FERC Docket No. CP02-399 because of the fear that cross subsidization of MIG costs would occur at the expense of MPC/MGC customers. This concern was warranted and has now come to fruition to the detriment of Missouri consumers.

5. If FERC’s acceptance of jurisdiction becomes final, MPC/MGC customers will now pay for the MIG costs through the FERC tariff rates, regardless of whether they flow gas through MIG or not. The intrastate MPC/MGC tariff rates were under review by this Commission at the time that the FERC certificate application in Docket Nos. CP06-407 et al. were filed by the pipelines. The same costs of service reviewed by this Commission’s Staff are now included in the FERC tariff rates.

6. This Commission, if it loses jurisdiction of MPC/MGC, will have no further opportunity to correct the inequities that have occurred during the time this Commission

¹ 4 CSR 240-40.016.

² Section 393.140.11.

³ Exh. 19, Schallenberg Dir. pg. 5, ls. 14-19.

had exclusive jurisdiction - to correct the discrimination through the preferential treatment provided by MPC/MGC to its non-regulated affiliate, Omega. The preferential treatment came at a quantifiable cost that was passed on as additional expense to other MPC/MGC customers.

7. The high transportation costs charged by MPC/MGC to its Missouri customers were the initial reason this Commission opened its investigation into the operations of these pipelines in the winter of 2005. The Commission through the current case has the opportunity to make findings to assure that Missouri customers may recover some of the MPC/MGC overcharges that occurred in the past.

8. The Commission also has the opportunity to send a signal to all LDCs in Missouri that tariff provisions enacted to protect customers will be enforced. The Commission can also make a statement that it expects compliance with its own affiliate transactions rules by affirming Staff's findings of violations and by ordering penalties be assessed to MPC/MGC.

9. All violations of which Staff complains took place prior to the FERC's order. On April 20, 2007, the Federal Energy Regulatory Commission ("FERC") issued its Order Denying Motions, Issuing Certificates, Authorizing Abandonment and Terminating Proceeding ("Order") in Docket Nos. CP07-407-00 *et al.* In that Order, which is not final, the FERC authorized MGC to "acquire by transfer" all of the existing facilities of MPC and MIG. The FERC Order allows the combined MIG, MPC and MGC costs of service to be included in tariff rates.

10. As Staff will explain more fully below, Staff is of the opinion that the developments at FERC have no impact on the Commission making a decision in GC-2006-0491.

11. In a separate pleading, however, Staff recommends that the Commission may dismiss, without prejudice, Case No. GC-2006-0378.

12. The initial FERC order grants MGC a certificate of public convenience and necessity to operate the combined facilities as an interstate pipeline subject to FERC regulation. Several parties filed requests for rehearing,⁴ including this Commission, and a decision on those requests is pending. Additionally, any final FERC order is subject to review by the D.C. Circuit Court of Appeals, so a final order at the FERC could be years away.

13. Additionally, legal actions in Missouri could delay FERC taking jurisdiction. Any appeal of the Cole County Circuit Court's decision concerning MPC/MGC's commitments to this Commission not to seek FERC jurisdiction will raise more questions as to FERC's jurisdiction.⁵

14. The FERC decision specifically states, at page 12, footnote 29: "We will not reach the question of whether Missouri Gas and Missouri Pipeline would remain liable for any refund or fine resulting from the processing of the complaint pending before the MoPSC. Further, the possibility of that liability is not a cause to defer consideration of the application in this proceeding."

15. In so stating, FERC specifically declines to make any determination concerning resolution of this complaint.

16. If and when FERC's decision becomes final, FERC will not take jurisdiction retroactively. Staff's complaint is that, while MPC/MGC were regulated by

⁴ Requests for Rehearing were filed on May 21, 2007 by AmerenUE, the Municipal Gas Commission of Missouri, and this Commission.

⁵ At the time the Commission issued its order in Case No GM-2001-585 granting MPC and MGC the right to purchase these properties, the new owners committed that they would not seek FERC jurisdiction.

this Commission, the Companies, among other things, systematically and knowingly violated their Missouri tariffs, their Commission-granted Certificates of Convenience and Necessity (CCN), discriminated against non-affiliates, and failed to report information to Staff that was required by the Company's tariffs and by this Commission's rules.⁶

17. This Company harmed Missouri ratepayers while under this Commission's jurisdiction and the fact that FERC may take jurisdiction has no impact whatsoever on this Commission's jurisdiction to find misconduct on the part of MPC/MGC in this case. Staff urges this Commission to enter its order finding that MPC and MGC systematically violated their Missouri tariffs and this Commission's rules to the detriment of Missouri citizens.

18. As Staff explained in its briefs in this case, other customers were required to provide MPC/MGC with four percent (4%) more gas than their customers used to replace gas MPC/MGC either used or lost. MPC/MGC did not, however, use or lose the gas. Instead, David Ries, part owner and President of MPC, MGC and Omega, gave this gas to Omega, MPC/MGC's marketing affiliate, to sell to Omega's customers. This conduct was unlawful and discriminatory on at least two levels. First, MPC/MGC were not authorized under their Missouri tariff to sell excess gas, so David Ries, as President of MPC, MGC and Omega, gave it to Omega to sell. Second, this conduct violated the Commission's affiliate transactions rules and Missouri statutes because he discriminated against non-affiliate marketers. Section 393.140(11) prohibits a utility from charging or "extend[ing] to any person or corporation any form of contract or agreement . . . except such as [are] regularly and uniformly extended to all persons and

⁶ Exh. 19, Schallenberg Dir.

corporations . . ."Section 4 CSR 240-40.016(3) ([a] regulated gas corporation shall not provide a financial advantage to an affiliated entity).

19. David Ries gave gas to Omega that was paid for by Ameren's and Laclede's customers, meaning Missouri consumers paid twice for the same gas. This is precisely the type of conduct the Commission was trying to prevent in adopting the affiliate transactions rules.⁷ This may be the Commission's last chance to remedy the harm done to Missouri consumers.

20. In addition to selling gas he had no authority to sell, David Ries, violated the Commission's affiliate transactions rules by using confidential customer information to Omega's advantage.⁸ 4 CSR 240-40.016(2)(E) ([a] regulated gas corporation shall not disclose or cause to be disclosed to its marketing affiliate . . . any information it receives through its processing of requests for the provision of transportation service.)

21. In addition to violating the Commission's affiliate transactions rule MPC and MGC violated their tariff provision that "[o]perational and accounting information is

⁷ Section 393.140(11), which prohibits a utility from charging or "extend[ing] to any person or corporation any form of contract or agreement . . . except such as [are] regularly and uniformly extended to all persons and corporations . . ." *Atmos Energy Corp. v. Public Service Com'n*, 103 S.W.3d 753 (Mo. 2003). (In its brief, the PSC explained that the rules are a reaction to the emergence of a profit-producing scheme among public utilities termed "cross-subsidization," in which utilities abandon their traditional monopoly structure and expand into non-regulated areas. This expansion gives utilities the opportunity and incentive to shift their non-regulated costs to their regulated operations with the effect of unnecessarily increasing the rates charged to the utilities' customers. See *United States v. Western Elec. Co.*, 592 F.Supp. 846, 853 (D.D.C. 1984) ("As long as a [public utility] is engaged in both monopoly and competitive activities, it will have the incentive as well as the ability to 'milk' the rate-of-return regulated monopoly affiliate to subsidize its competitive ventures....") To counter this trend, the new rules . . . prohibit utilities from providing an advantage to their affiliates to the detriment of rate-paying customers.

⁸ Exhibit 20 to Exhibit 3 Schallenberg Direct

confidentially maintained by Transporter.”⁹ It was not. Only this Commission can assess the penalty such violations require.

22. The pipelines required all other shippers to balance deliveries to their customers with deliveries into the pipelines’ system. Ries did not require the same of Omega. Omega delivered more gas to its customers than it put into the system. Not only did this discriminate against other marketers in violation of 4 CSR 240-40.016(C) ([a] regulated gas corporation shall apply all tariff provisions relating to transportation in the same manner to customers similarly situated whether they use affiliated or nonaffiliated marketers), it also violated MPC/MGC’s tariffs.¹⁰ This could be this Commission’s last chance to address these flagrant violations.

23. Balancing the system is a matter of system integrity. The fact that David Ries was engaged in an illicit scheme is evidenced by the fact that Ries hid his bad acts from the very employee who is responsible for the functional integrity of the pipeline system.¹¹ Mr. Wallen, Vice President of Operations, had no idea the extent of the imbalance on the system and had no idea that Omega was not delivering sufficient gas to the system to cover its deliveries.¹² Only this Commission can hold the pipelines accountable for violating their Commission-approved Missouri tariffs.

24. Additionally by permitting Omega to sell the gas MPC/MGC received for lost and unaccounted for gas, Ries “milked the rate-of-return regulated monopoly to

⁹ Exh. 70 and 71, Sheet 39.12.b.

¹⁰ Sheet No. 26 section 2.b of the General Terms and Conditions of the Pipelines’ tariffs requires: Receipts and deliveries of gas hereunder shall be at a uniform hourly and daily rates of flow as nearly as practicable. If, due to operating conditions, the quantities of gas received and delivered are not in balance on any particular day, such imbalance shall be corrected as promptly as is consistent with operating conditions.

¹¹ Exh. 78 HC Wallen Dep. Pg. 50, lines 3-6.

¹² Exh. 78, pgs. 50 and 150.

subsidize its competitive ventures.” The non-regulated Omega, unlike any other shipper on the system, was given the excess system gas to sell.

25. MPC/MGC further favored affiliate Omega by giving Omega a discounted transportation rate at the same time other shippers/customers were charged the maximum tariffed rate.¹³ Dave Ries did not pass these discounts to Omega’s customers, instead, he pocketed the money. Only this Commission can hold MPC and MGC accountable for this misconduct.

26. MPC/MGC permitted Omega to use the City of Cuba’s capacity to serve other customers, without the knowledge of the ** _____ ** and in violation of their tariffs. MPC/MGC tariffs **do not provide** for capacity release.¹⁴

27. Additionally Omega’s contract with the City of Cuba does not permit Omega to use its contracts to operate outside the scope of serving ** _____
_____ **.

28. Unlike other shippers, and in violation of Sheet No. 34, 9 of the Pipelines’ tariffs, Omega was never required to deliver a Request for Transportation to MPC or MGC.¹⁵ Other Shippers were required to provide this information in Transportation agreements.¹⁶

29. Another example of MPC/MGC’s violation of this Commission’s rules is that MPC/MGC billed affiliate Omega the **lowest** firm transportation rate on the MGC

¹³ Exh. 54 and 53.

¹⁴ Tr. pg 650, lines 12-18.

¹⁵ Tr. 477-478.

¹⁶ Exh. Wallen Depo, pg. 112, line 11; Tr.268.

system. The charts¹⁷ in Staff's direct case demonstrate the discounts Omega received for both firm and interruptible transportation service that no other marketer received.¹⁸

30. Omega's municipal customers received greater discounts than municipal customers of competitors.¹⁹ Omega was charged \$.20/Dth - a discounted rate - for Cuba's firm deliveries, as well as for **_____** and **_____** interruptible gas deliveries. No non-affiliate received such a benefit. Only this Commission can remedy MPC/ MGC's violations of their Missouri tariffs.

31. MPC and MGC further violated their tariffs by failing to report to this Commission their offers of discounted transportation service to Omega. These reports were required to assure that MPC/MGC were not discriminating against non-affiliated marketers and shippers on their system.²⁰ The Pipelines did not report offers made to Omega for gas deliveries to **_____**, **_____**, and **_____**. ²¹ The tariffs are very clear in requiring MPC and MGC to report information about all offers and provide information regarding the involvement of affiliates. Omega structured its contracts to circumvent these requirements, avoiding regulatory scrutiny.

32. This Commission only granted MGC a line certificate which does not authorize MGC to act as though it has an area certificate and serve customers in the same way an LDC serves customers.

WHEREFORE, the Staff suggests that the FERC Order has no impact on the Commission's decision in this case and that the Commission should issue its order as recommended in Staff's Proposed Order in this case.

¹⁷ Exh. 67, attachments Q-U.

¹⁸ Exh. 67, attachments Q-U.

¹⁹ Resp. Br. pgs. 6 and 23.

²⁰ Sheet No. 39, paragraph 12.c.

²¹ Exh. 19, Schallenberg Dir., pgs. 16-17.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record on this 21st day of June, 2007.

/s/ Lera Shemwell