

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

STATE OF MISSOURI EX REL. PUBLIC SERVICE COMMISSION,

Appellant

v.

MISSOURI GAS COMPANY, LLC, ET AL.,

Respondents

DOCKET NUMBER WD71228

DATE: April 6, 2010

Appeal From:

Circuit Court of Cole County, MO
The Honorable Jon Edward Beetem, Judge

Appellate Judges:

Division Three: James Edward Welsh, P.J., Mark D. Pfeiffer and Karen K. Mitchell, JJ.

Attorneys:

Jennifer L. Heintz, Jefferson City, MO
Samuel Ritchie, Jefferson City, MO,

Counsel for Appellant
Co-Counsel for Appellant

Attorneys:

David G. Brown, Columbia, MO
Leland B. Curtis, St. Louis, MO

Counsel for Respondents
Co-Counsel for Respondents

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**STATE OF MISSOURI EX REL. PUBLIC SERVICE COMMISSION,
Appellant, v. MISSOURI GAS COMPANY, LLC, ET AL., Respondents**

WD71228

Cole County

Before Division Three Judges: James Edward Welsh, P.J., Mark D. Pfeiffer and Karen K. Mitchell, JJ.

The State of Missouri on behalf of the Public Service Commission appeals the circuit court's judgment granting a motion for judgment on the pleadings filed by several pipeline companies, which we refer to collectively as MoGas. In its petition, the Commission contended that MoGas owed penalties due to MoGas's failure to obtain the Commission's authorization to transfer, merge, or consolidate its operations. On appeal, the Commission asserts that the circuit court erred in granting MoGas's motion for judgment on the pleadings because (1) the well-pleaded facts in the petition establish that MoGas violated section 393.190.1, RSMo 2000, and (2) this court's prior opinion in *Missouri Public Service Commission v. Missouri Interstate Gas, LLC*, 266 S.W.3d 881 (Mo. App. 2008), is the law of the case and, pursuant to that case, MoGas was required to comply with Missouri law while under the Commission's jurisdiction.

AFFIRMED.

Division Three holds:

(1) Nothing in section 393.190 requires a gas corporation to obtain an order from the Commission during the period in which the gas corporation may be contemplating or preparing to "sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works or system" or to "merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility[.]" Until MoGas actually transferred, merged, or consolidated its operations, section 393.190's requirement of Commission approval was not implicated.

(2) That MoGas conceded in this court's prior opinion in *Missouri Interstate Gas* that it failed to comply with section 393.190.1 is not an admission by MoGas that it had to comply with section 393.190.1. Further, construction of section 393.190.1 was not necessary to the disposition of the *Missouri Interstate Gas* case as the court determined that the Commission's appeal in that case was moot.

Opinion by: James Edward Welsh, Judge

April 6, 2010

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