

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

2. Respondents' argument that exhibit 311 is admissible under the legal theory of "fairness" begs citation to some legal authority. Respondents provide none. Rather, Respondents' fairness argument tips the scales in the Staff's favor. Exhibit 311 was first provided to the Complainant at the time it was offered at the hearing on December 13, 2006. Respondents now state it was signed on December 7, 2006, a week earlier. The Commission ordered the parties to file an exhibit list by December 11. Respondents filed no exhibit list and produced the surprise affidavit on the morning of hearing, December 13, 2006. It's clear the strategy employed by the Respondents in the use of exhibit 311 was for the purpose of surprise and prejudice. The interests of "fairness" demand its exclusion.

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3. Next the Respondents argue exhibit 311 was required because of Staff's misunderstanding. The only misunderstanding is the one created by Respondents in their attempt to mislead the Commission. Lodholz testified in his deposition on July 17, 2006, first that he recognized the customer invoices. See page 41 attached. Then he testified that Patty Hawkins creates the invoices and mails them. See page 46 attached. Lodholz testified that "I use the summary page, the front page...I don't look at the detail behind it." When asked about the summary page, the invoice sheet, Lodholz testified "there's an invoice sheet that we've looked at...the summary sheet, the front page." Lodholz kept the invoices since 2002. See page 191 attached. Lodholz testified that he did not even recognize the monthly billing statements that Respondents now declare are the invoice sheets. See page 189 attached.

4. David Ries in his deposition clarified what the invoice sheets that Lodholz identified actually were. In Ries' deposition on October 17, 2006, Ries testified that he brought documents that were in BJ Lodholz' file. They were marked as exhibit 50 to the deposition, and Ries testified "these are copies that were in BJ Lodholz' file that he referred to in his deposition..." See attached Ries deposition page 314-315. Exhibit 50 to the deposition is hearing exhibit 254. Mr. Ries clearly knew what documents Mr. Lodholz referred to in Lodholz' deposition and brought samples from Lodholz' files, which were marked exhibit 50 to Ries' deposition. There is no confusion or misunderstanding on the part of the Staff, nor was there by Mr. Ries or Mr. Lodholz until the Staff sought sanctions for destroying the documents. Finally, the Commission should note that every one of Respondents' witnesses have stated under oath that they did not destroy the original invoices, yet not a single original invoice was produced to Staff. All we have are Mr. Ries' re-created invoices. If no one destroyed them, where are they?

5. Even Patti Hawkins, the receptionist who prepared and mailed the invoices, acknowledged that she knew that Lodholz kept copies of the top sheet of the invoices. See schedule 4-54, line 20 through 4-55, line 2, attached to the direct testimony of Robert Schallenberg.

6. Respondents now proclaim all of their prior statements are not true. Instead, they say that Lodholz' affidavit, exhibit 311, is the truth. Exhibit 311 is classic, self-serving hearsay, and is inadmissible under any legal theory, including Respondents' non-existent "fairness" rule.

7. Because exhibit 311 is inadmissible hearsay and it comports with neither 536.070(12), nor 486.330, the Commission should change its ruling to sustain the Complainant's and MGCM's objections and order that exhibit 311 and its attachments be stricken from the record.

Wherefore, the Staff by Counsel requests that the Commission reconsider its ruling allowing exhibit 311 into evidence at the hearing, order that it be stricken, and prays for such other relief as is just.

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 by electronic mail to all counsel of record on this 8th day of January, 2007.

/s/ Steven C. Reed



MIDWEST  
LITIGATION  
SERVICES

**ORIGINAL**

**PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

**STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**

**vs.**

**MISSOURI PIPELINE COMPANY, et al.**

**Case No. GC-2006-0378**

**VOLUME I**

**DEPOSITION OF DAVID (B.J.) LODHOLZ**

**JULY 17, 2006**

**OFFICES MISSOURI ■ ILLINOIS ■ KANSAS**

**HEADQUARTERS: 711 NORTH ELEVENTH STREET, ST. LOUIS, MISSOURI 63101**

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**EXHIBIT**

**256**

**LODHOLZ' DEPOSITION  
EXCERPT ATTACHMENT  
HIGHLY CONFIDENTIAL  
IN ITS ENTIRETY**



**BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION**

**PUBLIC SERVICE COMMISSION  
VS.  
MISSOURI PIPELINE COMPANY, ET AL.**

**Case No. GC-2006-0491**

**VOLUME III  
CONTINUED DEPOSITION OF DAVID J. RIES**

**OCTOBER 17, 2006**

**ORIGINAL**

**OFFICES MISSOURI ■ ILLINOIS ■ KANSAS**

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**EXHIBIT**

**257**

1 Q. ~~What documents have you brought with you?~~

2 A. ~~Well, I think I have been as responsive to~~  
3 ~~the request for documents in the subpoena. There are~~  
4 ~~numerous, including some documents that I believe were~~  
5 ~~provided yesterday, the transactional documents on the~~  
6 ~~Mowood sale.~~

7 Q. ~~I just asked what you brought with you today.~~

8 A. ~~Documents responsive to the subpoena.~~

9 Q. ~~And let's go through them, shall we?~~

10 A. ~~Okay.~~

11 Q. ~~What's the first one you have there?~~

12 A. ~~First one was a request I believe for~~  
13 ~~documents that were in B.J. Ledholz's file.~~

14 Q. ~~May I ask what specifically you're looking~~  
15 ~~at? Is that Attachment A to --~~

16 A. ~~The subpoena.~~

17 Q. ~~Which one, Missouri Pipeline or Missouri Gas?~~

18 A. ~~Well, it was the one that was --~~

19 Q. ~~Omega?~~

20 A. ~~Actually issued to me and served on Paul~~  
21 ~~DeFord on the 28th of August.~~

22 Q. ~~And Attachment A, what does it read?~~

23 A. ~~It says for all documents listed.~~

24 Q. ~~Attachment A, what's right under that?~~

25 A. ~~Deposition documents.~~



1 Q. I'm just looking at this Omega one. That's  
2 not what you're reading from, is that correct?

3 A. No, no.

4 Q. All right. Go ahead.

5 A. What are you asking me to do?

6 ~~Q. Identify the first document that I'm~~  
7 ~~assuming you're going to hand it to me.~~

8 ~~A. These are copies that were in B.J. Lodholz's,~~  
9 ~~file that he referred to in his deposition and was your~~  
10 ~~request number one.~~

11 ~~Q. And are these his actual documents that were~~  
12 ~~in his file?~~

13 A. ~~Those are the documents that were in his file~~  
14 ~~and --~~

15 Q. ~~Did you have something more to say about~~  
16 ~~them?~~

17 A. ~~Just were copied from what was left there.~~

18 Q. ~~And tell me what they are.~~

19 A. ~~They are copies of invoices, and as far as I~~  
20 ~~know, they're copies of invoices that were already~~  
21 ~~produced previously.~~

22 ~~Q. I'll mark this exhibit, we're starting with~~  
23 ~~50, No. 50. All right. The court reporter will need~~  
24 ~~copies. Do you have anything else to say about what we~~  
25 ~~have marked as Exhibit 50?~~



MIDWEST  
LITIGATION  
SERVICES

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

PUBLIC SERVICE COMMISSION  
VS.  
MISSOURI PIPELINE COMPANY, ET AL.

Case No. GC-2006-0491

~~VOLUME IV~~  
~~CONTINUED DEPOSITION OF DAVID J. RIES~~

~~OCTOBER 18, 2006~~

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COUNSEL

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1 ever been any volumes transported under a verbal  
2 agreement.

3 Q. Could transportation agreements be verbal as  
4 well as written?

5 A. I don't believe so.

6 Q. You believe they have to be in writing?

7 A. I believe so.

8 Q. As a matter of fact, your tariff under  
9 Section 9 of the general terms and conditions requires  
10 certain information be supplied in a transportation  
11 report, is that right?

12 A. In a transportation report?

13 Q. A request for transportation.

14 A. That section we talked about previously?

15 Q. Yes.

16 A. Okay.

17 ~~Q. Mr. Ries, has staff asked you for copies of~~  
18 ~~MPC and MGC's invoices for 2003?~~

19 ~~A. Yes, they have.~~

20 ~~Q. Have you provided those?~~

21 ~~A. No, I have not.~~

22 ~~Q. Is there some reason?~~

23 ~~A. We don't have any paper copies of them and it~~  
24 ~~would require an extreme amount of effort and diligence~~  
25 ~~to go back and recreate those.~~

1 Q. ~~You handed me yesterday morning items~~  
2 ~~indicated as B.J.'s invoices, Exhibit No. 50, do you~~  
3 ~~remember that?~~

4 A. ~~These were the copies of the invoices that~~  
5 ~~were still in his file, yes.~~

6 Q. ~~My understanding of what B.J. was saying was~~  
7 ~~that he kept these for every day --- for every invoice.~~  
8 ~~that he sent, he kept.~~

9 A. ~~B.J. never sent invoices.~~

10 Q. ~~For every invoice he received, he kept a~~  
11 ~~copy.~~

12 A. ~~And I'm saying that's what was in B.J.'s file,~~  
13 ~~when I went to fulfill that data request.~~

14 Q. ~~When was that?~~

15 A. ~~I asked for that information --- when was our~~  
16 ~~last scheduled deposition when Dave and Patty --- that was~~  
17 ~~late August.~~

18 Q. ~~28th?~~

19 A. ~~Would have been about that time.~~

20 Q. ~~Why didn't you ask for these prior to that?~~

21 A. ~~They hadn't been asked for.~~

22 Q. ~~We hadn't asked for the documents that B.J.~~  
23 ~~indicated he had at his deposition?~~

24 A. ~~I didn't receive that request for those~~  
25 ~~documents until just prior to that scheduled deposition.~~

1 ~~Q. What happened to all of the documents prior~~  
2 ~~to January '06?~~

3 ~~A. They don't exist.~~

4 ~~Q. Why?~~

5 ~~A. Obviously you've got --- there's a new person~~  
6 ~~shows up, makes decisions about what he really needs to~~  
7 ~~keep in the files and chose to get rid of those prior~~  
8 ~~invoices for the prior year.~~

9 ~~Q. Are you suggesting that Mr. Mertz discarded~~  
10 ~~those documents?~~

11 ~~A. I don't know who did that, but they're~~  
12 ~~certainly not in B.J.'s files.~~

13 ~~Q. Did Mr. DeFord or anyone else indicate to you~~  
14 ~~at the beginning of this complaint that you should not~~  
15 ~~destroy documents?~~

16 ~~A. I don't know that we destroyed any documents,~~  
17 ~~for the purposes of this complaint. I didn't tell~~  
18 ~~anybody that they couldn't continue to manage their~~  
19 ~~business in context of getting rid of obsolete materials.~~  
20 ~~Secondly, those documents have all been provided~~  
21 ~~previously.~~

22 ~~Q. So you didn't tell Mr. Mertz or anyone not to~~  
23 ~~throw away B.J.'s --~~

24 ~~A. I did not tell Mr. Mertz not to go in or to~~  
25 ~~retain everything that B.J. had in his files.~~