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2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Hearing
6 July 10, 2007
7 Jefferson City, Missouri
8 Volume 9

9 The Staff of the Missouri Public)
Service Commission,)
10)
Complainant,)
11)
v.) Case No. GC-2006-0491
12)
Missouri Pipeline Company, LLC,)
13 and Missouri Gas Company, LLC,)
)
14 Respondent.)

15

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MORRIS L. WOODRUFF, Presiding,
17 SENIOR REGULATORY LAW JUDGE.

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19 JEFF DAVIS, Chairman,
CONNIE MURRAY,
20 STEVE GAW,
ROBERT M. CLAYTON III,
21 LINWARD "LIN" APPLING,
COMMISSIONERS.
22

23

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Good afternoon, everyone.
3 We're here today in Case GC-2006-0491, which is the Staff
4 of the Missouri Public Service Commission against Missouri
5 Pipeline Company and Missouri Gas Company. And we're here
6 today for oral arguments, which was requested by the
7 Commissioners, and I'm sure there will be several
8 Commissioners join us in a few minutes.

9 We can go ahead and get started here. To
10 begin with, let's take entries of appearance so we know
11 who's here, beginning with the Staff.

12 MS. SHEMWELL: Thank you, your Honor. Lera
13 Shemwell representing the Staff of the Missouri Public
14 Service Commission, Post Office Box 360, Jefferson City,
15 Missouri 65102.

16 JUDGE WOODRUFF: Public Counsel?

17 MR. POSTON: Thank you. Marc Poston
18 appearing on behalf of the Office of the Public Counsel
19 and the public, P.O. Box 2230, Jefferson City, Missouri
20 65102.

21 JUDGE WOODRUFF: Municipal Gas Association?

22 MR. WOODSMALL: Thank you, your Honor. Let
23 the record reflect the appearance of David Woodsmall from
24 the firm of Finnegan, Conrad & Peterson, 428 East Capitol,
25 Jefferson City, Missouri 65101, on behalf of Municipal Gas

1 Commission of Missouri.

2 JUDGE WOODRUFF: For AmerenUE?

3 MR. LOWERY: Thank you, your Honor.

4 Appearing for AmerenUE, James B. Lowery of the law firm of
5 Smith Lewis, LLP, 111 South 9th Street, Suite 200,
6 Columbia, Missouri 65201.

7 JUDGE WOODRUFF: And for Missouri Pipeline
8 and --

9 MR. BYRNE: I'm sorry. And also for
10 AmerenUE, Tom Byrne, 1901 Chouteau Avenue, St. Louis,
11 Missouri 63103.

12 JUDGE WOODRUFF: And for Missouri Pipeline
13 and Missouri Gas?

14 MR. DeFORD: Thank you, your Honor. Paul
15 DeFord and David Brown with the law firm of Lathrop &
16 Gage, 2345 Grand Boulevard, Kansas City, Missouri 64108,
17 appearing on behalf of Respondents.

18 JUDGE WOODRUFF: Thank you. Well, as
19 indicated, we're here today for oral arguments, and
20 something that the Commission doesn't usually do, so
21 there's no set procedure for it. What I propose to do is
22 to emulate the Court of Appeals type argument and allow
23 parties to make statements, which may be interrupted by
24 the Commissioners if and when they have questions. We'll
25 certainly allow the Commissioners ample opportunity to ask

1 questions as they'd like.

2 And I propose to take those statements from
3 the parties in the same order that we did the openings at
4 the hearing of this case back in December. So we'll begin
5 with Staff.

6 MS. SHEMWELL: Thank you, your Honor. May
7 it please the Commission?

8 I have placed in front of you another chunk
9 of documents that I would like to go through today and
10 show you particularly where Staff's evidence is in the
11 record. This evidence is a thousand piece puzzle. There
12 is no particular smoking gun, except perhaps Exhibit 21.

13 The owners were masters at creating complex
14 situations to hide what they were doing from the Staff and
15 others. They did it in Kansas and now in Missouri. Staff
16 will show that their activities harmed not only Missouri
17 consumers but the State of Missouri in that the University
18 of Missouri at Rolla paid more than it should have on this
19 pipeline.

20 To connect the dots, we have to look at the
21 sequence of events. The Commission granted Gateway the
22 right to buy this pipeline in Case No. GM-2001-585. In
23 that case, the Commission recognized that sharp tactics
24 might be expected. That's No. 5 in the documents, where
25 the Commission specifically said, sharp tactics or hard

1 negotiation strategies do not present extraordinary
2 concerns. While the interests of consumers and
3 competitors are often harmonized in proceedings before the
4 Commission, win/win situations are not always achieved.
5 I'm afraid that no win/win situation has been achieved.

6 Gateway as a new owner accepted the
7 tariffs, Aquila's tariffs in full. Mr. Ries filed a cover
8 pleading to adopt the tariffs, which are Exhibits 70 and
9 71 in the record, and he made no changes. He did try to
10 make changes and he contacted the Staff, and Exhibits 2
11 through 8 present those. I have not attached those to
12 these documents.

13 He e-mailed Warren Wood trying to change
14 the affiliate transactions or affiliate safeguards
15 contained in the tariffs. Staff would not agree to that
16 because it was concerned with the potential for affiliate
17 abuse.

18 Sometime in July 2003, Omega Pipeline
19 entered into an agency agreement with the City of Cuba,
20 and Staff became aware of that because of an article in
21 the Cuba Free Press, and became aware, due to that
22 article, that a discount had been given to Cuba. I will
23 note that MPC and MGC cannot sell gas. Mr. Massmann noted
24 that in his testimony in the transcript at page 227, that
25 these pipelines are not in the merchant business. They

1 don't provide a merchant function, and they're not
2 permitted to sell gas.

3 Staff was asked by this Commission to
4 investigate the case in the fall of 2005 because of
5 Ameren's high PGA rate out to some of its customers along
6 this pipeline. Staff began that investigation. As Staff
7 got invoices from customers, because Staff could not get
8 invoices from the company, Staff realized that there were
9 three secret customers. We realized that those customers
10 had not been identified, that Mr. Ries had not, as
11 required by his tariff, provided the quarterly reports to
12 the Staff.

13 COMMISSIONER GAW: Excuse me, Ms. Shemwell.

14 MS. SHEMWELL: Yes, sir.

15 COMMISSIONER GAW: I appreciate the fact
16 that everybody editorializes and that's a part of
17 persuasion, but it has become extremely confusing for me
18 when you refer to customers as secret customers, in trying
19 to understand who you're talking about, and the gap in
20 time in this case makes it tough for me to follow.

21 I want you to -- for my benefit, if it's
22 just for my benefit alone, when you talk about these
23 customers, would you please say who they are or designate
24 some letters if it's HC information that makes it
25 difficult so -- with the translation somewhere so that I

1 can follow along as you're discussing it.

2 MS. SHEMWELL: Yes, sir. If you'll look at
3 Attachment 3 -- let me just mention so we can go through
4 them, No. 1 shows that Mr. Ries is president of both MPC,
5 MGC and Omega. That's your No. 1.

6 No. 2 is part of a tariff that Staff
7 believes was violated, and No. 3 should have the
8 customers. They're numbered at the bottom right-hand
9 corner, Commissioner Gaw.

10 COMMISSIONER GAW: Yes. I'm starting to
11 follow that part now. Okay. I'm on No. 3, and then No. 3
12 has certain customers listed. So is that the universe of
13 those customers that you've been referring to as secret
14 customers?

15 MS. SHEMWELL: That's correct. And these
16 are how we referred to them in the hearing.

17 COMMISSIONER GAW: I'm aware of that.

18 MS. SHEMWELL: I just want to mention that
19 if you're looking back.

20 JUDGE STEARLEY: It's just -- it just
21 doesn't help me as I'm trying to track with you. Is it HC
22 information who these individuals are, entities rather?

23 MS. SHEMWELL: I believe that that is the
24 company's position.

25 COMMISSIONER GAW: I've got a nodding head.

1 MR. DeFORD: Yes, your Honor. There are no
2 secret customers. We established that in the hearing.

3 COMMISSIONER GAW: So if it's not secret,
4 then we can say the names?

5 MR. DeFORD: The identity of the customers
6 is highly confidential.

7 COMMISSIONER GAW: Then it is secret but
8 maybe in a different meaning of secret?

9 MR. DeFORD: Correct. If you wish to
10 characterize it that way, but we identified them, I
11 believe at Judge Woodruff's suggestion, as Customers A, B
12 and C.

13 COMMISSIONER GAW: Okay. Thank you. Keep
14 going, Ms. Shemwell. I apologize for interrupting, but I
15 just want to make sure I'm tracking.

16 MS. SHEMWELL: Well, copies of invoices
17 from Cuba that Staff received identified Customer A, and
18 Staff was able from its documents to track the discounts
19 given to Customer A. Staff contacted Customer B and
20 received a copy of the invoice MPC had billed the pipeline
21 to Customer B, and Staff actually contacted Customer B and
22 determined that the company had built that pipeline.

23 COMMISSIONER GAW: Company being which
24 company?

25 MS. SHEMWELL: Transporter, MPC.

1 COMMISSIONER GAW: And is that part of
2 your -- that's one of your complaints, there was no -- is
3 this the one where there's no permission sought or not?

4 MS. SHEMWELL: That's Count 5 in which we
5 claim that they had a line contract only, and that they
6 could not provide retail service to customers under their
7 certificate of convenience and necessity.

8 COMMISSIONER GAW: Okay. Keep going.

9 MS. SHEMWELL: And copies of invoices from
10 all three of these indicated that Omega was providing a
11 bundled service.

12 COMMISSIONER GAW: What do you mean by
13 bundled service?

14 MS. SHEMWELL: Transportation and
15 commodity. Remember, the pipelines were not permitted to
16 sell gas. Under their tariffs, they may not sell gas.

17 COMMISSIONER GAW: Now, to be -- just so I
18 understand, this -- all three of these customers, A B and
19 C, it is Staff's position that they were being provided a
20 bundled service by Omega?

21 MS. SHEMWELL: That's correct.

22 COMMISSIONER GAW: All right. Now, I want
23 to ask this question. Was it Staff's position that Omega,
24 if they were providing a bundled service, should have had
25 a certificate with this Commission?

1 MS. SHEMWELL: Omega's actually an
2 affiliate, and it became a marketing affiliate when it
3 took on these three customers. So Omega is a
4 non-regulated affiliate.

5 COMMISSIONER GAW: That's not my question.
6 My question is just very narrow at this point. Did Staff
7 take a position in this case that Omega should have --

8 MS. SHEMWELL: No.

9 COMMISSIONER GAW: -- had a certificate
10 with this Commission?

11 MS. SHEMWELL: No.

12 COMMISSIONER GAW: Okay. Keep going.

13 MS. SHEMWELL: But it is our position that
14 they should have provided a report to this Commission, and
15 we'll get to that later.

16 COMMISSIONER GAW: All right.

17 MS. SHEMWELL: If there's any document that
18 is actually a smoking gun in this case, it's Exhibit 22,
19 which is your No. 4. Staff got this document by accident
20 from Laclede. Mr. Ries actually provided it to Laclede.
21 It's in his deposition that he actually provided it to
22 Laclede.

23 Here's what this document shows, and I will
24 refer back to this a number of times. This is the
25 information that was available to Mr. Ries about all of

1 the marketing companies on the system. Now, as the
2 president of a marketer, it's our position that he should
3 not have had access to this information because Ameren
4 didn't have access to this information.

5 This also shows us that Omega was not
6 nominating or Omega's customers were not nominating gas
7 regularly, and that they were out of balance. If you will
8 look down under Fort Leonard Wood --

9 COMMISSIONER GAW: Let's slow down for just
10 a moment. Your initial point on this page is that
11 Mr. Ries should not have had access to this information.
12 That's based on what?

13 MS. SHEMWELL: As president of Omega, the
14 marketer.

15 COMMISSIONER GAW: Just based on what
16 legally? Is it a rule or statute?

17 MS. SHEMWELL: Well, the affiliate
18 transactions rules indicate that he shouldn't, and it's
19 also based on his tariff at -- saying that operational
20 facilities shall be maintained separate and information
21 will be maintained confidential.

22 COMMISSIONER GAW: Now, is it Staff's
23 position that he had access to this information because of
24 his position as an officer of more than one corporation,
25 is that the -- is that the crux of it?

1 MS. SHEMWELL: Yes.

2 COMMISSIONER GAW: Okay. So if that's the
3 case, then, is it clear that, from Staff's viewpoint, that
4 this is merely for, at a threshold, that Mr. Ries could
5 not have been, under the rules and the tariff filings, an
6 officer of both Omega and the pipeline companies?

7 MS. SHEMWELL: Well, he wasn't maintaining
8 marketing information confidentially according to his
9 tariff.

10 COMMISSIONER GAW: And what is it that
11 causes that in your -- in the evidence, what is it that
12 causes you to say that? Is it just because he was an
13 officer, or could he have been an officer of both and have
14 complied with the tariff and the --

15 MS. SHEMWELL: Staff explained in its Brief
16 that he could have maintained operational information
17 separately because Mr. Wallen operated the system. So he
18 could have maintained that separately. He had adequate
19 staff to maintain information confidentially from MPC. He
20 could have acted as one or the other, MPC president or
21 Omega president, and kept that information separate.
22 Staff's point is that he did not.

23 COMMISSIONER GAW: Now, did you just say he
24 could have maintained it separately and been an officer of
25 both or that being an officer in both violated? Which is

1 it?

2 MS. SHEMWELL: Since he was an officer of
3 both, it put him in a position to violate it. We believe
4 he had adequate staff or sufficient staff to maintain the
5 information, particularly the operational information,
6 such as balancing, separately. Mr. Wallen could have --

7 COMMISSIONER GAW: I apologize for
8 continuing to ask this question, but I want to make sure
9 I'm following you. Is Staff's position -- and it may not
10 be your only position on this point, but is it your
11 position that he should not have been an officer of both
12 Omega and the Pipeline Company?

13 MS. SHEMWELL: I think he could have been
14 and not shared the information, but I think it would have
15 been preferable had he not been, because that position
16 gave him access.

17 COMMISSIONER GAW: I understand that. But
18 in regard to the Staff's position in this case, is that
19 sufficient or are you suggesting that there -- what I
20 think you're saying is that there is -- there was evidence
21 that he did have access to it and that's what you're
22 relying upon rather than the dual position, but I'm not
23 clear.

24 MS. SHEMWELL: I think that in and of
25 itself it only contributes to Staff's position that he

1 violated his tariffs. He could have changed his tariffs,
2 but he didn't choose to. But he could be an officer, he
3 could still be an officer and not have access to highly
4 confidential information. Staff's point is that he did
5 have access.

6 JUDGE WOODRUFF: Is it -- I'm sorry to
7 interrupt.

8 COMMISSIONER GAW: Please, go ahead.

9 JUDGE WOODRUFF: Is it only the tariff
10 that's violated here by these actions?

11 MS. SHEMWELL: Yes.

12 JUDGE WOODRUFF: You said he could have
13 changed his tariff?

14 MS. SHEMWELL: He could have changed his
15 tariff.

16 JUDGE WOODRUFF: So if the company had put
17 forward tariffs saying this information can be shared
18 across companies, it would have been acceptable?

19 MS. SHEMWELL: Well, he could have proposed
20 to do that, and then everyone else would have had an
21 opportunity to come in and say to the Commission, no,
22 wait, he should not be able to for these reasons, and then
23 the Commission would have made a decision as to whether or
24 not that was reasonable. So he could have approached the
25 Commission to change his tariff, and then the Commission

1 would have heard the evidence.

2 JUDGE WOODRUFF: But there's no regulation
3 or statute that was violated?

4 MS. SHEMWELL: I don't think so. It's the
5 tariff.

6 COMMISSIONER GAW: Well, Ms. Shemwell, just
7 to follow up on that, if it is the tariff itself, if the
8 tariff would have said if we were -- if we had language
9 that would have allowed them to do this, if they had
10 proposed such a tariff, would Staff have said that's
11 acceptable?

12 MS. SHEMWELL: Knowing what we knew at the
13 time, it's possible, because at the time Omega was not a
14 marketing company. If we knew that Omega was a marketing
15 company, we would have opposed the tariff. Okay. Omega
16 did not become a marketing company until 2003.

17 COMMISSIONER GAW: Yes.

18 MS. SHEMWELL: When they bought this
19 company, Omega just provided the service at the Fort. So
20 Omega was just --

21 COMMISSIONER GAW: What would have been the
22 notice given to Omega and MPC or -- and the other --
23 what's the other company?

24 MS. SHEMWELL: MGC.

25 COMMISSIONER GAW: I thought so, but I'm

1 getting too many of these letters together. So what would
2 have been the notice to them that this is not acceptable
3 to have this arrangement of Omega being a marketing
4 company and, if they were indeed a marketing company, and
5 having a common officer with access to records on both?

6 COMMISSIONER GAW: Mr. Ries had obviously
7 read the tariffs because he approached Staff, all of those
8 e-mails in the initial part of the record, trying to get
9 this changed. So he realized that there were affiliate
10 abuse -- there was affiliate abuse language in the tariff
11 that prevented him from benefiting Omega, particularly
12 once it became a marketer.

13 Now, until it became a marketer, he wasn't
14 really going to benefit it at the Fort, because that was
15 the LDC at the Fort. Once they started marketing on
16 system, he could use his information about the system and
17 to the disadvantage of other marketers, Ameren, Oneok,
18 Proliance, Cornerstone. So he would have all of that
19 information.

20 COMMISSIONER GAW: Okay. I'm not sure I'm
21 tracking exactly. But what you're suggesting, I think, to
22 me is that if you get -- if you look at the tariff by
23 itself, the tariff that was filed, there should have
24 been -- Staff would have viewed that as being a sufficient
25 protection if the tariff was being followed?

1 MS. SHEMWELL: That's right. There was
2 concern very early on when Aquila owned this that they
3 might do marketing and be able to --

4 COMMISSIONER GAW: In fact, did Aquila not
5 do marketing?

6 MS. SHEMWELL: Aquila did have marketing.
7 They maintained separate operations, personnel. They
8 maintained information separately.

9 COMMISSIONER GAW: Okay.

10 JUDGE WOODRUFF: To clarify also, the
11 pipelines adopted Aquila's tariff; is that right?

12 MS. SHEMWELL: They did, and the very cover
13 sheet on Exhibit 70 and 71 is the adoption notice, and it
14 was filed January 1st, 2003. So they adopted them in full
15 after that long series of e-mails where they had
16 negotiated with Warren and Tom Imhoff trying to remove
17 these provisions, the affiliate abuse.

18 So Mr. Ries was well aware of provisions in
19 the tariff, and he had tried to remove them, and Staff
20 said no, we didn't want him to remove the affiliate abuse
21 provisions.

22 COMMISSIONER GAW: I think you were moving
23 on to another subpoint of this page, Ms. Shemwell, when I
24 interrupted.

25 MS. SHEMWELL: Do you want to continue to

1 discuss Exhibit 21 and what it tells us?

2 COMMISSIONER GAW: Yes.

3 MS. SHEMWELL: You can see at the very top,
4 there is Laclede. You see the contract number.

5 CHAIRMAN DAVIS: Wait. Where?

6 MS. SHEMWELL: I'm sorry. We're looking at
7 Exhibit 21, which is No. 4 in your packet.

8 CHAIRMAN DAVIS: Okay.

9 MS. SHEMWELL: The 6.5. I'm sorry about
10 that. And you see the various agents, and those are the
11 people against whom Omega would be competing for business.
12 You will notice all of the contract numbers except secret
13 customer C about halfway down. Right above that is Fort
14 Leonard Wood. Omega is the agent. To the right is a
15 contract. Right below that is secret customer C, and you
16 will see that it has no transportation contract. Okay.
17 That's one of Staff's complaints. They should have had a
18 transportation contract.

19 If you look down under Omega Pipeline
20 Company, you will see secret customer B. Again, no
21 transportation agreement, no contract number. That's
22 another of Staff's complaint and how Staff found out the
23 transportation agreements were not signed with all of the
24 shippers on the system.

25 This document also shows the imbalances,

1 and if you will look up under Fort Leonard Wood, you will
2 see a significant imbalance. If you look for Ameren,
3 Cuba, Rolla, Salem, very small imbalances. Then as you
4 get down to Fort Leonard Wood, you will see, looks to me
5 like 49,543 decatherms. That's way out of balance.

6 So we knew they weren't required to be
7 balancing regularly. As you look over for the percentage
8 of imbalance for the day, you will see one very large
9 number, again, secret customer C. So Staff gathered a lot
10 of information from this single document that told us that
11 we needed to look further.

12 COMMISSIONER GAW: Ms. Shemwell, the last
13 bit that you've been discussing, which counts are you
14 referring to?

15 MS. SHEMWELL: The failure to balance is
16 Count 1. The not requiring nominations on a daily basis
17 is Count 1. And that is under No. 6, if you will look, I
18 have provided Missouri Gas Company's tariff sheet,
19 page 39, No. 12A, it says, all terms and conditions shall
20 be applied in a uniform and nondiscriminatory manner
21 without regard to affiliation. And Staff is claiming that
22 that was violated in several ways.

23 CHAIRMAN DAVIS: Ms. Shemwell, I'm sorry.
24 Where are you reading from again?

25 MS. SHEMWELL: No. 6.

1 CHAIRMAN DAVIS: Okay. MGC tariff sheet
2 39.

3 MS. SHEMWELL: 39. And it's No. 6, the
4 bottom right-hand corner, No. 6.

5 CHAIRMAN DAVIS: Hold on. Let me make sure
6 I'm -- okay. Okay. All right. Now, where at?

7 MS. SHEMWELL: Look at No. 12A.

8 CHAIRMAN DAVIS: 12A.

9 MS. SHEMWELL: All terms and conditions
10 shall be applied in a uniform and nondiscriminatory manner
11 without regard to affiliation.

12 CHAIRMAN DAVIS: Okay.

13 MS. SHEMWELL: So everything in the tariffs
14 is to be applied to all of the shippers, all of the
15 customers, Laclede, Ameren, Fidelity, Cuba, on a
16 nondiscriminatory basis.

17 CHAIRMAN DAVIS: Okay.

18 MS. SHEMWELL: That's Count 1.

19 CHAIRMAN DAVIS: All right. And so -- and
20 let me just go back to what you were saying about
21 Exhibit -- I apologize for interrupting, Commissioner Gaw.

22 COMMISSIONER GAW: Actually, we're just
23 kind of having a free for all, Chairman. It doesn't
24 matter.

25 CHAIRMAN DAVIS: So Exhibit 4 --

1 MS. SHEMWELL: It's also at 7.

2 CHAIRMAN DAVIS: Okay. Well, hold on.

3 I'm --

4 MS. SHEMWELL: Which may be a little

5 clearer copy. Yes, sir.

6 CHAIRMAN DAVIS: Okay. Well, either way,

7 it's No. 4 in your handout here. I guess it would be

8 marked Exhibit 21 in the case. Okay. So you've got Fort

9 Leonard Wood's imbalance?

10 MS. SHEMWELL: Right.

11 CHAIRMAN DAVIS: Which you're saying -- is

12 that really Fort Leonard Wood's imbalance or is that the,

13 quote, secret -- the three secret customers, is that, you

14 know, them being put under the guise of Fort Leonard Wood?

15 That's what I'm trying to --

16 MS. SHEMWELL: Two of them were under the

17 guise of Fort Leonard Wood, that's correct.

18 CHAIRMAN DAVIS: Okay. Two of them were

19 under -- and what about the third one? And does it

20 matter?

21 MS. SHEMWELL: I think the point that Staff

22 is making is that --

23 CHAIRMAN DAVIS: Okay. So the two were

24 Omega customers?

25 MS. SHEMWELL: That's right. It's Omega

1 customers.

2 CHAIRMAN DAVIS: So they were -- so
3 basically, you know that these customers are there?

4 MS. SHEMWELL: Right.

5 CHAIRMAN DAVIS: So how are -- and how were
6 they being -- I guess how were the other customers being
7 discriminated against in that they weren't getting the
8 same treatment that the two secret Omega customers were
9 getting?

10 MS. SHEMWELL: Because the tariffs require
11 all shippers on the system to deliver in a uniform manner,
12 to deliver daily as close as possible to the system for
13 delivery to their customers. And our point is, so Ameren
14 every day delivers a certain amount for customers. I'm --

15 CHAIRMAN DAVIS: How do we know that this
16 is not uniform?

17 MS. SHEMWELL: How do we know that the
18 delivery isn't uniform? Because of the out-of-balance
19 amount. In other words, they have delivered -- see where
20 it says negative imbalance means gas left on the pipeline,
21 positive imbalance means there is additional gas needed
22 from that customer to meet the shipper's needs. MPC and
23 MGC are delivering more gas under a positive imbalance
24 than the shipper put into the system.

25 Now, it's page 26B of the tariff, page 26,

1 section B of the tariff we're talking about right now. I
2 will go through this in a little more detail later.

3 CHAIRMAN DAVIS: Okay. That's fine. I'm
4 going to --

5 MS. SHEMWELL: You'll see that Laclede
6 keeps very carefully in balance, and so does Ameren. They
7 stay very carefully in balance.

8 CHAIRMAN DAVIS: Well, yeah. And I
9 guess -- okay. How could you distinguish between looking
10 at Exhibit 21, or I guess as you've marked 4 here, why
11 should -- I don't understand how Laclede is any different
12 from either Omega -- yeah, from either of Omega's two,
13 quote, secret customers.

14 MS. SHEMWELL: Look at Cuba, which is
15 Omega's customer, and it's the fourth one down, so that
16 provides a pretty good comparison. If you will over at
17 the imbalance percentage for the gas day.

18 CHAIRMAN DAVIS: Right.

19 MS. SHEMWELL: Are you there?

20 CHAIRMAN DAVIS: Right. Okay. So I can
21 see the big imbalance percentages for the gas.

22 MS. SHEMWELL: For Cuba, uh-huh. They're
23 100 percent out of balance.

24 CHAIRMAN DAVIS: Right.

25 MS. SHEMWELL: Which means that they

1 haven't delivered gas into the system.

2 CHAIRMAN DAVIS: So what about these
3 companies that are -- you've got numbers where people are
4 out of balance negative 2000 and 8000 percent. Okay. So
5 does that -- not requiring them to balance shows that
6 they're getting preferential treatment that other people
7 aren't getting?

8 MS. SHEMWELL: Well, they're not applying
9 the tariffs in a nondiscriminatory manner, because the
10 tariffs at page 26 says receipts and deliveries of gas
11 hereunder shall be at uniform hourly and daily rates of
12 flow as nearly as practicable.

13 CHAIRMAN DAVIS: Okay. All right. Now --
14 okay. All right. No mas. No mas at this time.

15 JUDGE WOODRUFF: I have a question about
16 Exhibit 21. This is for a single day. Is there any
17 indication that there was similar problems in other days
18 as well? Is there evidence of that?

19 MS. SHEMWELL: Yes. We'll get to that
20 later, if that's all right. I would note that those with
21 zeros are interruptible customers on the sheet.

22 JUDGE WOODRUFF: Interruptible customers
23 aren't required to balance, is that the meaning of that?

24 MS. SHEMWELL: Not in the same way as firm
25 customers. This is a monopoly pipeline with captive

1 customers, and so they rely on Mr. Ries to treat them
2 fairly, and we've looked at this one -- one sheet that
3 shows that if you turn on to page 8, or No. 8 in your
4 packet, you will see that Ameren has a contract for
5 every -- or for all of its customers there.

6 Frankly, there are quite a few sheets here,
7 but as you page through them, you will see that University
8 of Missouri has an interruptible contract. That's 67P.
9 This is what we were talking about, the State of Missouri,
10 and at Rolla they have interruptible contract. You see
11 their transportation agreement number.

12 On 67W you will see Missouri Pipeline's
13 contract with the City of Cuba and their transportation
14 contract, MP-1025TAF. F is for firm. So Cuba holds its
15 own capacity on the pipeline.

16 I have -- I've put a chart in at 21, but it
17 seems like it might be a good time to go to that to
18 discuss these customers. Cuba is a firm customer, so it
19 holds transportation. It holds space on the pipeline.
20 Ameren has firm customers, so they hold space on the
21 pipeline.

22 Interruptible customers do not hold any
23 space on the pipeline. Okay. That's why they don't have
24 firm contracts. They don't have any of the space on the
25 pipe reserved. that's how they can be interrupted.

1 Now if you would look at Exhibit 44,
2 please. Schedule 17-1 it says at the bottom. Here we see
3 that -- I think it's secret customer B. You can see which
4 one it is there. Does not have a contract.

5 JUDGE WOODRUFF: Ms. Shemwell, where is
6 this in your packet?

7 MS. SHEMWELL: It says Exhibit 44 at the
8 bottom. It's --

9 COMMISSIONER MURRAY: How's it numbered?

10 CHAIRMAN DAVIS: Okay. Yeah. We don't --
11 my list only goes to 32 here.

12 MS. SHEMWELL: I'm sorry. This says
13 Exhibit 44 at the bottom, but it's right behind --

14 COMMISSIONER GAW: Is it under 5?

15 MS. SHEMWELL: It's part of 5.

16 COMMISSIONER GAW: No, it's not.

17 CHAIRMAN DAVIS: No. 8.

18 MS. SHEMWELL: These are the Fort's
19 contracts there. You will see MP-1103TAF. Those are the
20 Fort's contracts. You'll see that the secret customer
21 does not have a contract, does not have a transportation
22 agreement, which is evidence, we believe, of the fact that
23 Mr. Ries was not buying -- or was not signing
24 transportation agreements as required by his tariff with
25 that customer.

1 If you'll turn to 46, you'll see Emhart
2 Glass when it was served by Ameren, and you will see the
3 contract numbers there. So they had transportation
4 agreements in March of '04.

5 The next page, Exhibit 45, is the contract
6 with Omega, and they disappeared off the pipeline system.
7 No transportation agreements.

8 JUDGE WOODRUFF: And when you say they
9 disappeared off the pipeline system, you're indicating
10 that this was being provided under the Fort's?

11 MS. SHEMWELL: There were no contracts
12 anymore for that customer.

13 JUDGE WOODRUFF: Where was the gas coming
14 from?

15 MS. SHEMWELL: They were using the
16 capacity. They were using the Fort's capacity. And
17 understand, this is a firm customer. If you'll look down
18 at the contract under special provisions, this is a firm
19 contract, which means they should have been holding
20 capacity on the pipeline, because they want delivery every
21 day. They want it assured. But they did not.

22 CHAIRMAN DAVIS: Okay. So the secret
23 customer in Exhibit 45 --

24 MS. SHEMWELL: Remember, under Ameren it
25 wasn't secret, and they had these transportation

1 agreements, we saw that, in '04.

2 CHAIRMAN DAVIS: Right.

3 MS. SHEMWELL: Okay.

4 CHAIRMAN DAVIS: Okay.

5 MS. SHEMWELL: In other words, they had
6 capacity on the system. They had contracts, and they had
7 their own capacity on the system. They had their own
8 space.

9 CHAIRMAN DAVIS: So they had their own
10 space, so they were taking delivery every day. Okay.

11 MS. SHEMWELL: That's right. And they had
12 reserved their piece of that pipeline pie.

13 CHAIRMAN DAVIS: And how do we know they'd
14 reserved their piece of that pipeline pie?

15 MS. SHEMWELL: Because we had the contract
16 numbers.

17 CHAIRMAN DAVIS: The contract? Where
18 are --

19 MS. SHEMWELL: Contract numbers are on
20 Exhibit 46, MP-1020.

21 CHAIRMAN DAVIS: Okay. I'm back to
22 Exhibit 46, and the invoice -- okay.

23 MS. SHEMWELL: See the contract numbers
24 down there in the middle?

25 CHAIRMAN DAVIS: Yes.

1 MS. SHEMWELL: You see the month and to the
2 right of the contract number. Where it says reservation,
3 that's to reserve their space on the pipeline.

4 CHAIRMAN DAVIS: Right.

5 MS. SHEMWELL: Where it says commodity,
6 that is firm decatherms delivered to them.

7 CHAIRMAN DAVIS: And that's on a daily,
8 weekly, monthly?

9 MS. SHEMWELL: Daily basis.

10 CHAIRMAN DAVIS: Daily basis.

11 MS. SHEMWELL: I'm sorry. This is for the
12 month March '04. They're a firm customer.

13 CHAIRMAN DAVIS: I'm sorry. Forgive my
14 ignorance, but how do we know on this invoice what makes
15 them a firm customer?

16 MS. SHEMWELL: TAF, F stands for firm. MP
17 is for Missouri Pipeline. MG for Missouri Gas Pipeline.

18 CHAIRMAN DAVIS: Right.

19 MS. SHEMWELL: So they had 1020 TAF, which
20 is a firm.

21 CHAIRMAN DAVIS: What's TAI.

22 MS. SHEMWELL: Interruptible. And they
23 have it on both MPC and MGC. So you'll see the MP
24 contracts and the MG contracts.

25 CHAIRMAN DAVIS: And so you had Mr. Ries

1 acting as an agent for?

2 MS. SHEMWELL: Not yet.

3 CHAIRMAN DAVIS: Well, it says the shipper
4 and then it's got attention David Ries on Exhibit 46. So
5 was he being an agent there or what was he doing, or what
6 are you alleging that he was doing, if anything?

7 MS. SHEMWELL: He signed this contract
8 November of '04.

9 CHAIRMAN DAVIS: So this is April. So this
10 is --

11 MS. SHEMWELL: This is April.

12 CHAIRMAN DAVIS: So --

13 MS. SHEMWELL: Those are -- he was still
14 being served by Ameren.

15 CHAIRMAN DAVIS: Okay. I'm just trying to
16 figure out here. Okay. Mr. Ries, you got a -- you got an
17 invoice from Missouri Pipeline Company, and what's David
18 Ries' position with Missouri Pipeline Company?

19 MS. SHEMWELL: He's president of Missouri
20 Pipeline Company.

21 CHAIRMAN DAVIS: So his company, he's
22 sending an invoice to this, quote, customer?

23 MS. SHEMWELL: Right.

24 CHAIRMAN DAVIS: And then lo and behold, I
25 look down here and who's the shipper?

1 MS. SHEMWELL: But it says, please remit to
2 Missouri Pipeline Company, and then it's to attention
3 David Ries.

4 CHAIRMAN DAVIS: Right.

5 MS. SHEMWELL: I would also mention, these
6 are recreated bills. We know that he was Ameren's
7 customer still, that Emhart was Ameren's customer still
8 because the contract was not signed 'til November.

9 CHAIRMAN DAVIS: So if they were Ameren's
10 customer, were they buying gas from both?

11 MS. SHEMWELL: No.

12 MR. WOODSMALL: Mr. Chairman, if I can, if
13 it's a free for all, I may be able to help. Otherwise,
14 I'll wait.

15 CHAIRMAN DAVIS: Thank you. Come on in
16 here, Mr. Woodsmall. Come on in here.

17 MR. WOODSMALL: As Mrs. Shemwell started to
18 say, these are recreated invoices. The original invoices
19 were destroyed or not available or what have you.

20 CHAIRMAN DAVIS: Right.

21 MR. WOODSMALL: Because they're recreated,
22 there are a number of discrepancies. So if you look at
23 the front page of Exhibit 46, even though it says March of
24 '04, turn to the next page where it shows the daily gas
25 control, do you have that in your packet?

1 CHAIRMAN DAVIS: No, I apologize, we don't.

2 MR. WOODSMALL: I'll show it to you even
3 though I don't have enough copies. But what you'll see is
4 you will see that it is actually March of '05, even though
5 that was -- so this is after the secret customer has
6 executed the agreement.

7 CHAIRMAN DAVIS: Okay. Now --

8 MR. WOODSMALL: So that's why you see the
9 bill going to Mr. Ries instead of to the customer because
10 he's acting as an agent.

11 CHAIRMAN DAVIS: Okay. Now I get it. Now
12 I get it. And obviously this denotes that every day in
13 March of '05, you know, there was gas being delivered.
14 All right. Thank you, Mr. Woodsmall.

15 MR. WOODSMALL: You're welcome. Did
16 anybody else need to see this?

17 COMMISSIONER GAW: That was helpful.

18 MS. SHEMWELL: If you move on to
19 Exhibit 48 -- are you ready to move on?

20 CHAIRMAN DAVIS: Yes, go.

21 MS. SHEMWELL: You'll see there there are
22 two customers down there who no longer have any
23 transportation agreements, and the 1103 TAF is the Fort's
24 capacity. So they're using the Fort's capacity. The
25 bottom customer is firm. The middle one there, C, I

1 believe, is interruptible. At No. 10 --

2 COMMISSIONER GAW: Ms. Shemwell, when
3 you're going through this, explain what the significance
4 of that is, if you wouldn't mind.

5 MS. SHEMWELL: You'll notice up at the top
6 under 1103 TAF firm, that customer is paying both a
7 reservation rate to reserve the space on the capacity and
8 what they call a commodity rate, which means that they're
9 paying for every decatherm that they deliver. It doesn't
10 have anything to do with the gas. They're paying for both
11 the space -- it's like taking a hotel room. You're paying
12 for the space, and then you pay for however many people.
13 So they also pay for every decatherm that flows through
14 there.

15 Now, the middle customer only pays a
16 commodity rate. They are interruptible, so they only pay
17 for the amount in the pipe. But you'll notice the bottom
18 customer is a firm customer, but they're not paying any
19 reservation rate, because they're using the Fort.

20 COMMISSIONER GAW: What's wrong with that,
21 Ms. Shemwell?

22 MS. SHEMWELL: Well, everybody else has to
23 buy sufficient capacity to serve their customers. Omega
24 didn't have to. Omega used the Fort's capacity.

25 If you will look at No. 10, this is

1 Mr. Massmann testifying. I think we're going to need to
2 go back to 12. Perhaps I can just make this point while
3 we're here. We have indicated that Mr. Ries was not
4 putting sufficient gas into the system and that's why
5 there were the big imbalances, and that's what we saw on
6 the smoking gun was some of these big imbalances, and
7 we'll also see them later. Mr. Massmann's saying that
8 Ameren is required to nominate and put in the volumes that
9 they intend to use every day.

10 Mr. Chairman, you were asking about the
11 discrimination. Omega wasn't required to put in the
12 volumes, but here on 10 Mr. Massmann's saying they're
13 required to nominate the volumes they intend to use in the
14 day. That's at line 7 and 8. He says there may be some
15 imbalances, but they stay within the 10 percent. He
16 didn't require Omega to do that. And on 11 you'll see the
17 section of the tariff that we believe was violated.

18 And then if you go to 12, this is more of
19 Mr. Massmann's testimony on page 267 and 278 of the
20 transcript. If you'll look at page 278, I asked him, do
21 you have sufficient capacity to deliver to each individual
22 customer to meet their needs? He says yes. They have to
23 hold sufficient capacity to deliver to each of their firm
24 customers.

25 Then I asked him at line 5, I'm asking you,

1 do you use one customer's capacity and overlap with
2 another customer? And he says, do you mean counting
3 capacity twice? And I say, okay, yes. And he says, no,
4 they can't do that.

5 We're saying that Ameren had to hold enough
6 capacity, had to purchase enough capacity on the pipelines
7 to serve each of their customers, Owensville, Rolla. They
8 had to buy capacity on the pipeline. But Omega had a firm
9 customer that was not required to buy capacity on the
10 pipeline and only paid the commodity charge.

11 JUDGE WOODRUFF: Was all the capacity on
12 the pipeline sold?

13 MS. SHEMWELL: It's close to full. It's
14 close to full. I don't think that excuses, though,
15 because Fort Leonard Wood and Cuba hold capacity because
16 on certain days of the year, they're going to need it.
17 That's why they buy capacity. They want to know that it's
18 going to be delivered to them. So they buy that space.
19 Now --

20 JUDGE WOODRUFF: Was the pipeline putting
21 itself in a bad position? If they had a really cold day,
22 were they short of capacity?

23 MS. SHEMWELL: In fact, they had to
24 interrupt one of their secret customers that was supposed
25 to be a firm customer, customer A, they had to interrupt

1 customer A because they didn't have enough capacity on a
2 cold day, so yes.

3 JUDGE WOODRUFF: Was that a result of --

4 MS. SHEMWELL: Inadequate capacity. They
5 were using the Fort's or Cuba's capacity to deliver, and
6 there wasn't enough capacity to deliver to all of their
7 firm customers, including secret customer A. So A's not
8 interruptible. Well, it became interruptible. It became
9 an interruptible because it was interrupted.

10 JUDGE WOODRUFF: It became an interruptible
11 after it was interrupted?

12 MS. SHEMWELL: Well, because it was able to
13 be interrupted.

14 JUDGE WOODRUFF: I'm not understanding.

15 COMMISSIONER GAW: I'm not either.

16 JUDGE WOODRUFF: When they interrupted,
17 were they an interruptible customer or were they a firm
18 customer?

19 MS. SHEMWELL: I'm sorry. Customer A's
20 always been interruptible.

21 JUDGE WOODRUFF: You answered my question.

22 MS. SHEMWELL: They actually had to
23 interrupt customers because they didn't have enough
24 capacity.

25 JUDGE WOODRUFF: But they were

1 interruptible customers?

2 MS. SHEMWELL: Yes.

3 COMMISSIONER GAW: Okay. So customer A has
4 always been interruptible since they have been a customer
5 of Omega's? Am I following that correctly?

6 MS. SHEMWELL: Yes.

7 COMMISSIONER GAW: Was either customer B or
8 customer C interrupted?

9 MS. SHEMWELL: Customer B is interruptible.
10 They don't operate in the winter. I'm not aware that
11 (name omitted) was interrupt -- sorry. I'm not aware that
12 C was interrupted.

13 COMMISSIONER GAW: I'm sure the court
14 reporter can take care of that to the extent it needs to
15 be taken care of.

16 I'm trying to follow your port. I thought
17 part of your argument was that they were being treated
18 differently, customers A, B and C were being treated
19 differently than firm customers, and now I understand that
20 customer A and customer B were both interruptible, so they
21 should have been treated differently.

22 MS. SHEMWELL: They're both interruptible,
23 but they should still have had transportation agreements.

24 COMMISSIONER GAW: Let me ask about
25 customer C. Is customer C a firm or interruptible

1 customer?

2 MS. SHEMWELL: Both.

3 COMMISSIONER GAW: Both?

4 MS. SHEMWELL: Yes. They had both
5 contracts. Remember, we looked at when they were an
6 Ameren customer, and they had both TAF and TAI contracts.

7 COMMISSIONER GAW: Let's focus in on the
8 firm portion of their relationship. Is it Staff's
9 position that they were given a preferential price as a
10 firm customer on the firm portion of their contract?

11 MS. SHEMWELL: It's Staff's position that
12 Omega was charged a preferential price.

13 COMMISSIONER GAW: Was charged a
14 preferential price?

15 MS. SHEMWELL: The tariff talks about who's
16 charged, but Omega paid a different price than other
17 interruptible customers. I'm going to get to a comparison
18 of interruptible customers.

19 COMMISSIONER GAW: I'll let you go ahead.

20 MS. SHEMWELL: If you look behind 12,
21 Appendix A, this is Fort Leonard Wood under Oneok. Okay.
22 You will see that they nominated every single day, and
23 they were in balance to 4.4 percent. That's Missouri
24 Pipeline. In February of '04, they were in balance. Then
25 as you look at February of '05, you will notice that

1 despite -- this is after Omega began delivering.
2 Appendix D-2, you will notice that there -- most days of
3 the month Omega did not nominate any gas on the system yet
4 continued to deliver -- this is February -- to Fort
5 Leonard Wood. They delivered every day. The imbalance
6 grew to 75.7 percent.

7 So Oneok was required to deliver every day,
8 but once Omega took over the Fort, they did not nominate
9 every day. They did not put gas into the system every
10 day. I'm saying D2 shows that they did not put gas into
11 the system every day as they were required, while
12 Appendix A6 shows that --

13 CHAIRMAN DAVIS: Okay. Ms. Shemwell, I
14 apologize for interrupting. What requires them to put gas
15 in the system every day?

16 MS. SHEMWELL: Sheet No. 26B requires them
17 to put in gas every day, and C on Sheet 26 requires them
18 to balance.

19 CHAIRMAN DAVIS: Okay.

20 MS. SHEMWELL: And as you look at D2, they
21 weren't balancing. D5, they were not nominating or
22 delivering into the system most days in March, and they
23 were out of balance by 71 percent. I have quite a few
24 examples here. I won't -- but if you look at D8, which is
25 April, you will see that nothing was nominated or

5 So nobody was putting gas into the system.
6 Omega was not putting gas into the system. They were not
7 nominating or delivering to the system. They continued to
8 deliver to the Fort, though, even though they weren't
9 putting any gas into the system, which resulted in an
10 imbalance of 243 percent, while they were requiring Ameren
11 and Laclede to stay within 10 percent, to deliver and
12 balance on the system every day. It's a matter of system
13 integrity.

18 MS. SHEMWELL: The Fort's at 243 percent in
19 April of '05 out of balance. 243 percent out of balance.

25 MS. SHEMWELL: There's some of both. You

1 have to have enough gas on the system to move gas through
2 the system. So if you're going to have adequate pressure,
3 you have to have gas coming into the system to generally
4 match what's coming off of the system. So Panhandle has
5 to be delivering on a daily basis enough gas for there to
6 be flow through the system. If there's not enough gas in
7 the system, you have pressure problems and you can't
8 deliver to your customers.

9 So that's a safety concern, and it's also
10 violation of their tariff. They're giving their customer,
11 Omega, benefit because Omega's not having to buy any gas.
12 They're not purchasing any gas in April of '05 from the
13 interstate pipeline, but yet they're delivering to Fort
14 Leonard Wood.

15 COMMISSIONER GAW: Just a real quick
16 intersecting question here. Where does that gas come
17 from?

18 MS. SHEMWELL: We believe that there's a
19 reasonable inference that this is the lost and unaccounted
20 for gas that Ameren and Laclede were putting into the
21 system.

22 COMMISSIONER GAW: Explain what you mean.

23 MS. SHEMWELL: Okay. All customers under
24 contract were required to put more gas in than they
25 delivered to their customers by .4 percent.

1 COMMISSIONER GAW: Okay.

2 MS. SHEMWELL: That's for the pipeline to
3 use, for example, through compression or to lose, leaks,
4 whatever.

5 COMMISSIONER GAW: Right.

6 MS. SHEMWELL: This system was not using or
7 losing gas. So that gas belonged to MPC and MGC. It's
8 under contract. Ameren and Laclede, Omega, they're
9 putting in 4 percent, .4 percent.

10 COMMISSIONER GAW: What determines what
11 that number should be?

12 MS. SHEMWELL: It's by contract in this
13 case, at the FERC on the interstate pipelines. You may
14 remember we had a big case, well, with Southern Star
15 because they claimed they'd lost --

16 COMMISSIONER GAW: Yes. I was thinking of
17 that case, as a matter of fact.

18 MS. SHEMWELL: Very high losses. This
19 system does not actually use or lose any gas, so it's what
20 they call growing gas. Mr. Ries had to do something with
21 that extra gas that was coming into the system that he
22 wasn't using or losing.

23 We believe he started selling it to the
24 secret customers and to Fort Leonard Wood. How else can
25 keep on -- the question is, how can you deliver gas to

1 Fort Leonard Wood every day when you're not bringing
2 anything into the system? You see the noms and receipts
3 and it's zero.

4 JUDGE WOODRUFF: What should he have done
5 with the gas?

6 MS. SHEMWELL: Well, there would be a
7 nondiscriminatory way for him to deal with that. He would
8 just ask the shippers on the system, Ameren and Laclede,
9 Proliance, Cornerstone, to cut back, just don't put in as
10 much gas.

11 JUDGE WOODRUFF: So you're saying he should
12 give away the gas rather than sell it?

13 MS. SHEMWELL: Actually, he gave it to
14 Omega, and we're saying he shouldn't have done that. The
15 pipelines couldn't sell it. Their tariffs didn't permit
16 them to sell it. They're not in the merchant function.
17 So they've got this gas building up. If he wanted to do
18 it in a nondiscriminatory manner, he would have said to
19 every shipper on the system, cut back on your deliveries.

20 JUDGE WOODRUFF: Cut back on the --

21 CHAIRMAN DAVIS: Just don't put any more
22 in?

23 MS. SHEMWELL: Just don't put any extra in,
24 right.

25 JUDGE WOODRUFF: But that's part of the

1 contract, though, right?

2 MS. SHEMWELL: Yes, but he, in order to
3 balance, could have contacted them and said, don't put
4 some in for a day.

5 COMMISSIONER GAW: What I think the judge
6 is asking, maybe I'll rephrase, what requires them to do
7 that? Is there some -- what is it that says -- you've got
8 more gas in the system than what was necessary. What are
9 the rules about dealing with that? Do we have any -- does
10 the contract provide for something where Ameren, for
11 instance, they're paying for that extra -- their customers
12 are paying for that extra amount that's going into the
13 commodity --

14 MS. SHEMWELL: Right.

15 COMMISSIONER GAW: -- that someone else is
16 using.

17 MS. SHEMWELL: Right.

18 COMMISSIONER GAW: Is that something -- if
19 you're correct.

20 MS. SHEMWELL: Right.

21 COMMISSIONER GAW: If that's the case, then
22 does Ameren -- does Ameren have some rights to that? I
23 mean, these are the kinds of things that I don't quite
24 understand.

25 MS. SHEMWELL: It becomes -- actually,

1 under contract the gas that belongs to the pipeline, MPC
2 and MGC.

3 COMMISSIONER GAW: Does Ameren agree with
4 you on that?

5 MS. SHEMWELL: Mr. Lowery can --

6 CHAIRMAN DAVIS: Let's hear from Mr. Lowery
7 and Mr. Byrne.

8 MR. LOWERY: Commissioner, I think the way
9 you've got to look at that is imagine you've got a semi
10 trailer going down the highway and you've got a load of
11 cargo. So I want to ship cargo from Kansas City to
12 St. Louis, and if I want the cargo to be delivered in
13 St. Louis, I've got to put the cargo in in Kansas City.

14 COMMISSIONER GAW: Right.

15 MR. LOWERY: Now, let's say it's a gas or
16 liquid or something that maybe -- let's say it's a gas.
17 You naturally lose a little bit. So the shipping contract
18 says we assume you're going to lose a half a percent, so
19 you put in 100.005 percent. Put that in. But, in fact,
20 the trucking company doesn't lose that half percent.
21 they are --

22 COMMISSIONER GAW: What's supposed to
23 happen?

24 MR. LOWERY: I'm the shipper. I own my
25 cargo.

1 COMMISSIONER GAW: That's what I was trying
2 to get clarified.

3 MR. LOWERY: The contract doesn't say MPC
4 owns the cargo. I own the cargo.

5 COMMISSIONER GAW: Let's say that truck had
6 a bunch of bananas in it and the bananas -- you're going
7 to assume that there may be a certain loss of bananas on
8 the way over.

9 MR. LOWERY: Spoilage.

10 COMMISSIONER GAW: Spoilage. But, in fact,
11 those bananas are all perfect when you get there.

12 MR. LOWERY: MPC can't sell my bananas and
13 keep the money.

14 COMMISSIONER GAW: The trucking company
15 takes the bananas off even though they're enough to meet
16 that percentage difference and they sell them. Are you
17 saying your contract doesn't allow for that to take place?

18 MR. LOWERY: The title.

19 COMMISSIONER GAW: There's nothing in your
20 contract that gives the bananas that might have spoiled
21 but didn't over to the trucking company?

22 MR. LOWERY: The contract with Ameren
23 doesn't transfer the title of gas to the trucking company
24 in your banana example or the pipeline company in the gas
25 example. If they are, in fact, building up all this gas,

1 it belongs pro rata to the shippers on the pipeline. It
2 may be okay for them to build it up if they're using it
3 for an operational reason, but at some point what they
4 can't do is take the bananas and sell them off the side of
5 the road to somebody that wants to buy the bananas, keep
6 the money. They're not their bananas. That is what
7 Ms. Shemwell was describing.

8 COMMISSIONER GAW: That's clarifying at
9 least the positions. What I suspect that MPC should --

10 MS. SHEMWELL: If the driver has eaten the
11 bananas, though, if they're using them, that's okay by
12 contract.

13 COMMISSIONER GAW: Let's not get into -- we
14 can pursue that here in a minute because I don't know what
15 that contract provides for.

16 CHAIRMAN DAVIS: I want to know if
17 Mr. Lane's been eating someone's Chaquitas. I'm sorry.
18 Mr. DeFord. Mr. DeFord, have you been taking someone's
19 Chaquitas?

20 MR. DeFORD: Actually, I don't care for
21 bananas that much.

22 Actually, the inaccuracy here is that the
23 gas that is put in, that percentage of gas is put in is so
24 that the pipeline company can use it as it sees fit. It
25 can use it in production or it can lose it. It can simply

1 lose it. So the example about the bananas is absolutely
2 wrong.

3 CHAIRMAN DAVIS: So you're saying it's your
4 gas?

5 MR. DeFORD: Yes, to use or lose.

6 CHAIRMAN DAVIS: To use or lose. Can you
7 sell it?

8 MR. DeFORD: The pipelines are not
9 authorized to sell gas, no.

10 CHAIRMAN DAVIS: Can you authorize anyone
11 else to sell it?

12 MR. DeFORD: No.

13 CHAIRMAN DAVIS: Did you? Did your client?

14 MR. DeFORD: No. The client required Omega
15 to balance the entire system, which was to the benefit of
16 all customers. If our system in its entirety is not in
17 balance, then the companies -- the pipeline companies
18 would have to pay a penalty to Panhandle Eastern, which in
19 turn would have caused the rates to our customers to
20 increase.

21 COMMISSIONER GAW: So in other words,
22 Mr. DeFord, your client's position was they were doing
23 a -- performing a service for Ameren in selling this gas
24 because -- in making a profit on the proceeds and not
25 telling them?

1 MS. SHEMWELL: In competition with Ameren.

2 MR. DeFORD: Actually, Omegas --

3 COMMISSIONER GAW: Is that the company's
4 position?

5 MR. DeFORD: No. actually, it was to the
6 detriment of Omega. Once Omega was sold, the new owners
7 of Omega have refused to balance the system without the
8 companies paying Omega a fee. Omega was never paid a fee
9 by the pipeline companies to perform the balancing.

10 COMMISSIONER GAW: Where did the money go
11 for the sale of this gas, this excess gas?

12 MR. DeFORD: Well, what we did --

13 COMMISSIONER GAW: Who got the money?

14 MR. DeFORD: In the sale of -- in the sale
15 of Omega, Omega committed to the pipeline companies when
16 it gets authority, if ever, to sell gas, Omega has a
17 commitment to pay the pipeline companies for that gas.

18 CHAIRMAN DAVIS: And, Mr. DeFord, why were
19 individual companies like Laclede and Ameren being
20 required to balance? If Omega was doing the balancing
21 authority functions, then why was the pipeline requiring
22 everyone else to balance?

23 MR. DeFORD: All customers were required to
24 balance. What happened, though, is that essentially Omega
25 absorbed all of what would have been the penalty.

1 CHAIRMAN DAVIS: And Omega was just doing
2 this out of the goodness of their -- out of Mr. --
3 Mr. Ries, he was something in Omega, too, wasn't he?

4 MR. DeFORD: He was president of Omega.

5 CHAIRMAN DAVIS: He was president of Omega,
6 and so it was --

7 MR. DeFORD: It was the way that the
8 companies kept from being in a position where they would
9 have to pay penalties to Panhandle Eastern or another
10 pipeline. It was to the benefit of all of the customers,
11 all of the shippers on the system for the system to remain
12 in balance. So Omega basically just absorbed all of the
13 discrepancy, the loss.

14 CHAIRMAN DAVIS: So why would you shift
15 those costs to Omega? Why wouldn't -- why wouldn't MPC
16 just do this?

17 MR. DeFORD: Omega was the only shipper on
18 the system that Omega -- that MPC could influence.

19 COMMISSIONER GAW: Could influence?

20 MR. DeFORD: That could influence to take
21 that responsibility on. Any other marketer out there
22 would have charged a fee to balance the system.

23 MS. SHEMWELL: So they took the gas for
24 free, they took this free gas and sold it to their
25 customers. That's how they balanced. They took the free

1 gas. They didn't get title to it, but it was MPC and
2 MGC's gas to use or lose.

3 MR. DeFORD: The complete leap that
4 Ms. Shemwell is making here is that it's this percentage,
5 this tiny percentage of gas that we're talking about here.
6 That is not the case. The case would be where the
7 nominations don't match what's coming in to the system.
8 So it may have nothing to do with this lost and
9 unaccounted for, and I don't believe the evidence ever
10 established that that was the source of any imbalance in
11 gas. That's simply false.

12 Which actually brings me to, I think, an
13 objection. We've been here over an hour, and I still
14 haven't heard any argument. I've heard a lot of
15 testimony, but I don't believe I've heard any argument.

16 JUDGE WOODRUFF: Is that a formal
17 objection?

18 MR. DeFORD: I don't think --

19 JUDGE WOODRUFF: Are you looking for a
20 ruling, I guess.

21 MR. DeFORD: This is uncharted territory,
22 so sure, I'll make it a formal objection.

23 JUDGE WOODRUFF: Well, the purpose of today
24 is to get an explanation of the evidence and argument
25 associated with that. Ms. Shemwell has been talking about

1 a lot of evidence Staff believes is important in the case.
2 I'll certainly give the pipeline company a chance to cite
3 other evidence as well. At this point I'll deny the
4 objection.

5 MR. WOODSMALL: Your Honor, that brings me
6 to a question. I don't know how you intend to proceed,
7 whether you intend to get done today or not. Given that
8 we've been going for an hour and 15 minutes and we have a
9 number of other parties, we're going to really have to
10 hustle to get everybody in. At the Supreme Court we limit
11 time.

12 JUDGE WOODRUFF: Yes, I understand. And I
13 don't want to limit time necessarily because I know the
14 Commissioners have a lot of questions. And another
15 complication is we do have a Universal Service Board
16 meeting coming up at four o'clock. We'll have to take a
17 break for that.

18 CHAIRMAN DAVIS: Maybe we could have it
19 here concurrently.

20 JUDGE WOODRUFF: Maybe so. We'll have to
21 ask the chairman of the Universal Services Board about
22 that, I guess.

23 Well, let's go ahead and proceed as much --
24 as expeditiously as possible. I will certainly give
25 everyone a chance to have their say, and if we need to go

1 another day, we'll need to go another day.

2 MS. SHEMWELL: Thank you, Judge. If you
3 will turn to 15, which is a ways back. You've been asking
4 how -- about the fuel reimbursement, and it's part of the
5 contract. This is actually -- the standard contracts are
6 in the tariffs. No. 15, which is Exhibit 40, is actually
7 the Fort's capacity. 1103 TAF is the Fort. Are you
8 there?

9 If you will look at No. 4, it talks about
10 fuel reimbursement, and indicates that the transporter
11 shall retain the percentage, which they agreed to in the
12 contract, of the quantities delivered to the shipper for
13 fuel usage and unaccounted for line loss.

14 Now, I think Mr. DeFord was trying to say
15 they could use this gas any way they wanted, but the
16 contract says for fuel usage and unaccounted for line
17 loss, No. 15. So it doesn't allow them to use it for
18 whatever they would want, however they might want to use
19 it. It allows them to use it for very specific uses.

20 I'll try to jump ahead a little bit. I
21 have Schedule 15-10, which shows Mr. Ries negotiating
22 against the pipelines. I don't know if it will help if I
23 just hold this up. This is a contract that he signed, he
24 negotiated on behalf of Omega with the pipelines. So
25 he's -- he's the president of Omega negotiating with

1 himself as the president of MPC and MGC.

2 We say that gives him a unfair advantage
3 with the pipelines, because he's the president of the
4 pipeline, but he's negotiating on behalf of the affiliate.
5 He didn't negotiate with the pipelines on behalf of Ameren
6 or Cornerstone or Proliance. So he's the president of the
7 company essentially negotiating with himself.

8 CHAIRMAN DAVIS: Okay. But how do we know
9 that -- we don't necessarily know who that gives an
10 advantage to. I guess Ameren or Laclede never asked if
11 Mr. Ries would negotiate on their behalf.

12 MS. SHEMWELL: He couldn't represent them.
13 He wasn't the president of Ameren or Laclede. He wasn't
14 an agent.

15 CHAIRMAN DAVIS: He might be. They were
16 perfectly capable of retaining his services. Maybe they
17 could have signed a secret contract with Mr. Ries.

18 MS. SHEMWELL: Maybe they could have.

19 CHAIRMAN DAVIS: Mr. Lane --

20 JUDGE WOODRUFF: Mr. DeFord.

21 CHAIRMAN DAVIS: Mr. DeFord. I don't know
22 why I keep calling you -- I keep getting you confused with
23 Paul Lane for some reason.

24 MR. DeFORD: I wouldn't mind having his
25 job.

1 MR. WOODSMALL: He's retired.

2 MR. DeFORD: Then I really wouldn't mind
3 having his job.

4 I think the reason that no one wanted to
5 use Mr. Ries' services was because he did such a poor job
6 when he negotiated, in effect, the highest rate on the
7 system for Omega. Omega has always paid the highest rate
8 of any shipper on the system. I don't think any of the
9 other shippers really wanted his negotiation.

10 MS. SHEMWELL: That was only for the Fort.
11 It wasn't for the secret customers. He paid the highest
12 rate on the system for the Fort. It's at the end of the
13 system, and that's true, but he did not pay the highest
14 rate for his other customers, for the secret customers.

15 CHAIRMAN DAVIS: And what -- what rates
16 were the, quote, secret customers getting versus other
17 customers?

18 MS. SHEMWELL: Can we delay just a moment
19 and I'll come to that?

20 CHAIRMAN DAVIS: Okay. Sure. I'm sorry.
21 You go ahead and make your presentation. We'll try not to
22 get ahead.

23 MS. SHEMWELL: 17 says Ameren Energy didn't
24 share customers, No. 17. If you'll look at 19, again,
25 you'll see that one of the secret customers did not have a

1 transportation agreement. Two pages behind that you see
2 Mr. Massmann -- I'm going to try to step this up --
3 Mr. Massmann saying they had to have transportation
4 agreements between AmerenUE and Missouri Pipeline Gas for
5 transportation on the system, but he did not require
6 other -- his own customers. That's our point under
7 Count 1, that he discriminated, and Count 2 about no
8 transportation agreements.

9 The issue with the real meat in it,
10 however, is 3. On 21, we can get back to 21, here I've
11 done a chart to show you the different types of
12 transportation. Ameren purchased capacity for each one of
13 its customers. Cuba purchased capacity. Cuba also paid
14 for the decatherms that it delivered, and interruptible
15 customers only pay for the decatherms that they deliver on
16 the system.

17 Staff makes the point that Omega, other
18 than the Fort, provided a discount to their customers.
19 And under page 6 of the tariff, Sheet No. 6, the lowest
20 transportation rate charged to an affiliate shall be the
21 maximum rate that can be charged to non-affiliates.
22 That's both MPC and MGC.

23 Now, if you look at the next sheet, which
24 is Sheet No. 5, you will see the maximum reservation
25 charge for Missouri Pipeline Company. You also see the

1 commodity charge for Missouri Pipeline Company maximum
2 .1699 per decatherm. This is for firm. That's what firm
3 customers are going to pay for every little piece of the
4 gas that's being delivered to them, every person in the
5 room.

6 Interruptible rates are on Sheet No. 16 for
7 Missouri Pipeline Company, Missouri Gas Company. Sheet
8 No. 5 shows that there are different rates for Fort
9 Leonard Wood. It's the furthest one out. They did have
10 the highest charge per month for reservation and for
11 commodity.

12 If you'll look at 22, please. Okay. On
13 22, March of '06, we show other. They're paying a
14 commodity rate, you see under MGC, 30 cents, the very last
15 line. And how do we know who that is? They have the Fort
16 Leonard Wood contract number on there for reservation and
17 commodity, and you see that \$18.10, but under commodity
18 it's 30 cents, which is lower than the max number. But
19 also under that contract under other is Emhart, C and B --
20 B and C.

21 On Sheet 23 you'll see the invoice to Cuba
22 where they have broken out secret customer 1. This
23 actually is an actual, not a recreated invoice, which is
24 Exhibit 36. And then No. 24 is the actual invoice to
25 secret customer A.

1 Now, if you look at the University of
2 Missouri at Rolla, which is No. 26, they're an
3 interruptible customer. You will notice they have their
4 own contracts. Cornerstone is their agent. Under their
5 interruptible contract, you'll see what they're paying for
6 commodity rate on MGC on 26, March '06, MG 0011 TAI. The
7 commodity rate is a \$1.3765. January '04 they started
8 paying that commodity rate.

9 On Appendix D60, March of '06, on MGC, this
10 is Omega Pipeline. They're paying a commodity rate of
11 30 cents. So Omega was getting a discount and paying
12 30 cents for interruptible while the University of
13 Missouri was paying \$1.37 for interruptible.

14 That's the only example I prepared for
15 Count 3 because there are two others here who would
16 probably like to weigh in on Count 3, both Ameren and the
17 munis.

18 JUDGE WOODRUFF: Anything else,
19 Ms. Shemwell?

20 MS. SHEMWELL: Well, I have a little bit on
21 4 and 5 if we get to it, but I thought we would pass to
22 the others on Count 3 while we're there.

23 JUDGE WOODRUFF: Let's finish with you
24 first. Go ahead and do 4 and 5. Then we'll give you
25 the -- try and keep this in a little bit more of an order.

1 MS. SHEMWELL: Count 4 is the failure to
2 report offers or bids. Under operation of rate schedule,
3 paragraph 12, transporter will submit to the Commission's
4 rate staff every three months all bids or offers
5 transporter quotes for transportation. So it's not just
6 all discounts. They were supposed to report all bids or
7 offers for discounts. And Staff did not get a report of
8 Cuba from the company when they offered a discount to
9 Cuba. We found out about that through the Cuba Press
10 article.

11 In his deposition, Mr. Ries admits that he
12 can't find those reports. There's no indication that they
13 were ever provided to the Staff. This is what permitted
14 the Staff to monitor that discounts were being given to
15 certain customers, and if the discounts were being given
16 to an affiliate, then that would become the lowest rate on
17 the system.

18 We do believe that he could give discounts
19 to other customers, but he couldn't give a discount to an
20 affiliate. And then Count 5 is the extension to (name
21 omitted). I'm so sorry.

22 JUDGE WOODRUFF: If the court reporter when
23 you're preparing the transcript would remove that name.

24 MS. SHEMWELL: When MPC and MGC were
25 granted the line certificate, they extended the line out

1 to this customer. MPC paid for it. And we have
2 Mr. Massmann's testimony that, in fact, Ameren has to pay
3 for those extensions, that the transporter does not pay
4 for the extensions. And then do you want to address
5 exfoliation?

6 JUDGE WOODRUFF: I think that's fairly well
7 explained in the Briefs, unless one of the Commissioners
8 wants to get into that? I don't see anyone jumping in
9 here. Do any of the Commissioners have questions for
10 Ms. Shemwell before we move on to the next attorney?

11 COMMISSIONER GAW: I think I have just
12 briefly. Ms. Shemwell, the argument back and forth about
13 the distinction about which hat Omega was wearing
14 depending upon the entity, would you specifically address
15 that?

16 MS. SHEMWELL: The issue that Mr. Ries was
17 negotiating with himself?

18 COMMISSIONER GAW: No. With some --
19 there's an issue that comes up several times during the
20 hearing about whether or not the entity, the ultimate
21 customer here that was a -- was working with Omega as with
22 Omega being an agent or if Omega was -- I want you -- I
23 want you to explain to me what if -- what, if anything,
24 Staff suggests there is in that distinction, if you recall
25 what that issue is.

1 MS. SHEMWELL: Are you talking about 4,
2 that they didn't make reports?

3 COMMISSIONER GAW: I can't tell you which
4 number it is. I can only tell you that this issue kept
5 popping up over and over again when there was a question
6 that -- I'm sure Mr. DeFord will address it in a moment --
7 that at some points Omega was representing the city as an
8 agent. At some points Omega was wearing a different hat,
9 and there was a distinction to be drawn depending on which
10 hat they were wearing. Does that help?

11 MS. SHEMWELL: Okay. Staff does not claim
12 that this Commission has any jurisdiction over the agency
13 agreements. It's a red herring thrown out by the company.
14 We do not claim that the Commission has any jurisdiction
15 over that. They can negotiate with Cuba or with the
16 secret customers and write contracts with them. We do not
17 believe the Commission has jurisdiction over that.

18 Our point is that they were giving Cuba and
19 the secret customers discounts. Omega as the agent was
20 getting discounts. Omega as the affiliate was getting
21 discounts.

22 COMMISSIONER GAW: Maybe Mr. DeFord can
23 address that and help jog my memory a little bit. I'll
24 leave it for now.

25 JUDGE WOODRUFF: All right. Thank you.

1 Next on the list then would be Public Counsel.

2 MR. POSTON: Judge, I don't have any
3 prepared oral argument. We didn't play a very active role
4 in this case and didn't introduce evidence. I'm available
5 for questions, and I'd just as soon pass it to the
6 intervenors who are more versed on this. Thank you.

7 COMMISSIONER CLAYTON: I'm not going to let
8 him off the hook that easily. Office of Public Counsel
9 briefed at least one issue in this case; is that correct?

10 MR. POSTON: That's true.

11 COMMISSIONER CLAYTON: And does Office of
12 Public Counsel still stand by its position, I believe it
13 was on Count 3?

14 MR. POSTON: Yes.

15 COMMISSIONER CLAYTON: And it didn't
16 address -- Public Counsel didn't address any other issues
17 that were outlined in the case; is that correct?

18 MR. POSTON: That's true.

19 COMMISSIONER CLAYTON: Is that because it
20 just doesn't have a position or does Public Counsel see
21 any of these issues interrelated?

22 MR. POSTON: It was essentially we -- it
23 was more of a resource thing at the time, just my
24 availability to look into these issues. It was a very
25 extensive record, and we were juggling several rate cases

1 at the time. So that's why I only focused on what I
2 thought was the most important issue to ratepayers.

3 COMMISSIONER CLAYTON: And what would be
4 the relief -- if we were to grant Count 3, what would be
5 the relief eventually that would be sought? Is it
6 financial penalties? Is it a refund?

7 MR. POSTON: It would be a refund in the
8 sense that an Order from the Commission saying that, yes,
9 in fact, Ameren, for instance, was overcharged. That
10 would allow them to go to circuit court and seek that
11 money, which they committed to flow back to customers
12 through their PGA, I believe.

13 COMMISSIONER CLAYTON: Thank you.

14 COMMISSIONER GAW: Who was it that you
15 would think would flow any resulting refunds back to the
16 customers?

17 MR. POSTON: I believe that was Ameren's
18 position.

19 COMMISSIONER GAW: Is Ameren the only
20 utility that's been impacted, potentially impacted by the
21 allegations that are made in this case?

22 MR. POSTON: I know Laclede is on this
23 pipeline, but I do not know to what extent they would be
24 impacted.

25 COMMISSIONER GAW: And why is that

1 Mr. Poston? Why would you not know how --

2 MR. POSTON: Because they're not here.

3 COMMISSIONER GAW: They're not here. And
4 do you know why they're not here?

5 MR. POSTON: I do not.

6 COMMISSIONER GAW: Is it possible that
7 there's an explanation for why Laclede is not
8 participating in this case?

9 MR. POSTON: Possibly, yes.

10 COMMISSIONER GAW: Do you have any idea?
11 Have you had any communication with them about why that
12 might be?

13 MR. POSTON: I've had some discussions with
14 Mr. Pendergast, but it's not really clear to me why
15 they're not here.

16 COMMISSIONER GAW: If Laclede doesn't
17 participate in this case, is that potentially harmful to
18 their customers?

19 MR. POSTON: I don't think so. I think
20 they would still be able to go to civil court and seek
21 relief there.

22 COMMISSIONER GAW: Have you been given any
23 indication that they are going to do that?

24 MR. POSTON: No.

25 COMMISSIONER GAW: There's certainly no

1 indication in this case that they're going to do it by
2 their lack of being here, is there?

3 MR. POSTON: That's true.

4 COMMISSIONER GAW: Nothing further on that
5 point. Thanks.

6 JUDGE WOODRUFF: All right. Let's move on
7 then to Ameren.

8 MR. WOODSMALL: Was I next?

9 JUDGE WOODRUFF: My list was Ameren first,
10 but if you'd prefer --

11 MR. WOODSMALL: I don't care.

12 MR. LOWERY: I can go ahead. I do have --
13 it's a much smaller packet, but I do have a packet for
14 Commissioners as well. There's probably a little bit of
15 duplication. I've got copies for the parties as well.
16 And I've tried to highlight to cut through the paper to
17 the pertinent part that I'm going to talk about.

18 CHAIRMAN DAVIS: Mr. Lowery, thank you for
19 the tabs. It's a nice touch.

20 MS. SHEMWELL: Sorry.

21 MR. LOWERY: I prepared some of them
22 myself. In part of the argument that I'm going to make
23 this morning, I -- or this afternoon, I intended to talk
24 about the identity of a particular customer, which I think
25 is HC, and also talk about some of the particular rates

1 and charges that have been made. Also, some of these
2 documents are highly confidential. And so we've got some
3 people here with us that I can probably go through a
4 little bit of the argument, but then we're going to have
5 to clear the room so I can talk more specifically about
6 those figures. So, Judge, we can either -- I can --

7 JUDGE WOODRUFF: Let me know when you want
8 to go in-camera, we'll do so.

9 MR. LOWERY: Very well. Simply stated,
10 AmerenUE has an interest in this case because the evidence
11 of record -- I'm just going to focus on two issues, just
12 AmerenUE. I don't have a mastery of the entire record of
13 the case. I can't speak to municipals, Laclede. I can
14 speak to a lot of these other issues, but I'm going to
15 only talk about Counts 1 and 3 and some evidence and some
16 examples of evidence that we think pretty clearly show
17 that those counts can be sustained that pertain to
18 AmerenUE.

19 But we have an interest in this case
20 because we believe the evidence in the case shows that we
21 have been, and ultimately our customers have been charged,
22 overcharged for transportation on MPC and MGC. And I'm
23 just going to call it the pipelines collectively rather
24 than trying to break it out.

25 Moreover, we think that they violated their

1 tariffs in charging AmerenUE, and those charges have been
2 passed through to our customers under the PGA, more than
3 the maximum rate allowed by the tariffs. And we also
4 think that there's a second violation that's taken place,
5 and that is that AmerenUE has been required, as the
6 tariffs do require, to balance on a daily basis and to
7 stay in balance, while the pipeline's affiliate Omega has
8 essentially not put gas into the pipe, many months no gas
9 in the pipe at all, and taken gas out and then very much
10 out of balance, in violation of the tariffs.

11 We think these violations not only violate
12 the tariffs, but they also violate the Commission's
13 affiliate transaction rule. I'm going to talk about that
14 in a minute because preferential treatment is being given
15 to the pipeline's affiliate, Omega, and that same kind of
16 service and treatment is not being given to a
17 non-affiliated shipper like AmerenUE.

18 You'll note that I indicated that it's
19 AmerenUE's customers that have been harmed, and if the
20 Commission -- and we, by the way, believe the Commission
21 would have authority to order refunds that would flow back
22 through our PGA, and I think that's probably an issue for
23 another day, a legal fight that may or may not occur in
24 terms of exactly what the Commission can do.

25 But you'll note that if, in fact, the

1 Commission finds, as we think it should, that these
2 overcharges have taken place and this harm has occurred
3 because of balancing issues and refunds are ordered, that
4 those refunds are going to flow back through our PGA to
5 our customers. It's not going to AmerenUE shareholders.
6 We're not here seeking any money for the shareholders. In
7 fact, there isn't anything in it for the shareholders in
8 that respect. The customers have paid the charges and the
9 customers would benefit from any refunds that the
10 Commission has ordered.

11 My role here today is simply to try to
12 support Staff's complaint, but just to try to hone in, if
13 I can, because this record's huge, and try to look at just
14 Ameren and some specific issues.

15 As I noted, Ameren's customers have been
16 harmed in two ways. First, as Ms. Shemwell's already
17 talked about, the pipeline tariffs set forth the maximum
18 transportation rate, and we believe that an affiliated
19 shipper, Omega, was charged a lower rate than AmerenUE was
20 charged. That means by definition under the tariffs
21 AmerenUE should have been charged that same lower rate.
22 It should have become our maximum rate and, therefore, the
23 tariff was violated and we were harmed.

24 The second violation, as I mentioned, deals
25 with the balancing, that AmerenUE had to balance on a

1 daily basis and stay essentially within balance month to
2 month while Omega did not have to stay in balance.

3 I gave you a package of documents. I've
4 tabbed those. I'm going to try to walk through those if I
5 could at this time. Take a look at Tab 1, and hopefully
6 these are all -- I've highlighted all of these. Tab 1 is
7 the tariff sheets, and it's Exhibit 70 and 71. One is MPC
8 and one is MGC. I think I have MPC's in there. They're
9 the same, so I didn't put them both in here.

10 But if you look at Sheets 5 and 5 behind
11 Tab 1, you see 3.2A, and on the next page you see 3.2B,
12 and that -- those are the tariff provisions that deal with
13 the maximum rate. If you look at 3.2A where I've
14 highlighted, it says, unless otherwise agreed upon in
15 writing between the shipper and the transporter -- the
16 transporter being the pipeline, of course -- or unless
17 otherwise set forth herein -- and we believe it is
18 otherwise set forth herein -- the reservation and
19 commodity charges applicable to the shipper for service
20 hereunder shall be the applicable maximum rate set out
21 above.

22 But then you go to the next page, you go to
23 B2 -- or excuse me, B1, and B1 says that the lowest
24 transportation rate charged to an affiliate, so think
25 Omega on that point, shall be the maximum rate that can be

1 charged to non-affiliates. And so that's the unless
2 otherwise provided herein. If you charge a lower rate to
3 an affiliate, then that's the maximum rate you can charge
4 a non-affiliate.

5 Now, how do we know that Omega was charged
6 less than AmerenUE? Go to Tab 2. And this, your Honor,
7 is where I'm going to have to go in-camera at this point.

8 JUDGE WOODRUFF: All right. We are in
9 camera.

10 (REPORTER'S NOTE: At this point, an
11 in-camera session was held, which is contained in
12 Volume 10, pages 756 through 769 of the transcript.)

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1 COMMISSIONER CLAYTON: I forgot what I
2 asked. May I proceed?

3 JUDGE WOODRUFF: You may proceed.

4 COMMISSIONER CLAYTON: Thank you. On the
5 statement of position, though, that Ameren filed, I don't
6 recall that it stated at the time it was filed that this
7 was Ameren's position. It was more or less a position
8 saying that if the Commission finds that there's a
9 violation, then we seek a refund or we seek the
10 appropriate remedy. That's why I'm just checking on if
11 Ameren's position has changed since the beginning of the
12 evidentiary hearing or if it has been consistent all
13 along.

14 MR. LOWERY: I don't believe so,
15 Commissioner. I think that additional information and
16 invoices have come to light as part of the process. There
17 were a lot of depositions that took place right up to the
18 hearing. A lot of things came out in the hearing. And I
19 think we've been able to get our arms around the specific
20 information about us in a way that we could at least point
21 in our case to evidence that pertains to us that we think
22 demonstrates that the violations occurred.

23 COMMISSIONER CLAYTON: Thank you.

24 JUDGE WOODRUFF: Any other questions from
25 Commissioners?

1 CHAIRMAN DAVIS: Mr. DeFord, do you want to
2 respond to Mr. Lowery's offer here?

3 MR. DeFORD: I'm not sure, Chairman, what
4 you --

5 CHAIRMAN DAVIS: Okay. Well, let's look at
6 Exhibit -- let's look at Exhibit 2 here in Mr. Lowery's
7 packet, which would be Exhibit 67Q, the spreadsheet
8 prepared by Mr. Schallenberg at the 25 percent load
9 factor.

10 MR. DeFORD: Several points, your Honor.
11 First, we don't think that those calculations are
12 accurate, and I think if you go to the testimony that
13 addresses this, you'll see what our expert's response was
14 to that. The calculations were incorrect.

15 The other thing to keep in mind here is the
16 discrepancy between those charges are -- again, this goes
17 back to something that Commissioner Gaw was talking about.
18 Omega wore two hats, one as a shipper on the system, and
19 that was as a shipper on the system for the needs of Fort
20 Leonard Wood. That was the highest rate paid on the
21 system of any customer ever. The second capacity --

22 CHAIRMAN DAVIS: But you had the pancaking
23 of rates there, so it should be the highest, shouldn't it?
24 Because you've got multiple sections of pipe that were
25 built at different times, and so you've got the stacking.

1 So there at the end after each section, they're going to
2 be paying the highest rate. So don't hold your client out
3 like they're some good Samaritan.

4 Now, let's just stop that. Let's ask you
5 another question. Tell me why you haven't violated the
6 affiliate transaction rules.

7 MR. DeFORD: We haven't violated the
8 affiliate transaction rules for several reasons. First of
9 all, all of the discussion about these other customers
10 here, those customers were not shippers on the system.
11 The shipper on the system that had the capacity to serve
12 these customers was the City of Cuba. That contract had
13 been in place since 1999.

14 These customers were customers that
15 contracted with Omega to perform a marketing service.
16 The marketing service that Omega provided for those
17 customers was to obtain gas, arrange and pay for the
18 transportation of gas and deliver gas, and that rate that
19 you see there is part of a layered rate that would have
20 been Cuba's rate. Cuba's discount was applied to those
21 customers, not Omega.

22 CHAIRMAN DAVIS: Okay. So why don't you go
23 back here in Ms. Shemwell's and show me -- so this is --
24 let me go back here. All right. So if I'm looking at
25 Exhibit 21, which is somewhere there in Ms. Shemwell's

1 stack, it's I believe No. 4. Okay. So you're saying
2 that's all in Cuba?

3 MR. DeFORD: That's correct.

4 CHAIRMAN DAVIS: Okay. So --

5 MR. DeFORD: For customers A, B and C.

6 CHAIRMAN DAVIS: For customers A, B and C,
7 that's all in Cuba. So if I'm looking at the right-hand
8 column for Cuba, their current month to date imbalance for
9 imbalance, deliveries month to date. So 1, 2, 3, 4 -- so
10 that 10,000, is that decatherm? 10,331 decatherms, is
11 that -- so you're saying that all three were included in
12 that Cuba number?

13 MR. DeFORD: I believe that's correct.

14 CHAIRMAN DAVIS: You believe that's correct
15 or is that correct? I want an affirmative representation
16 from you.

17 MR. DeFORD: That was the testimony, yes.

18 CHAIRMAN DAVIS: That was the testimony.
19 So you're saying that is -- well, saying that was the
20 testimony. It's a little bit different than saying that's
21 correct. Okay. No further questions at this time, Judge.

22 JUDGE WOODRUFF: All right. Commissioner
23 Gaw?

24 COMMISSIONER GAW: I would like to know if
25 Mr. Lowery can respond to that. This has been a point

1 that I've had some difficulty with, and I'd like to get
2 your perspective.

3 MR. LOWERY: I'll attempt to do so. First
4 of all, in terms of whether or not you want to -- whether
5 or not you think the evidence sustains believing their
6 experts in terms of these calculations or
7 Mr. Schallenberg, that's a question for you to decide, and
8 I can't -- I don't even know what their experts said.

9 But I do know that in the record are
10 calculations that Mr. Schallenberg has proffered that show
11 that there were different rates and they were lower and
12 that AmerenUE didn't get those rates. So I guess that's
13 my only response to that point. That's a decision you'll
14 have to make, I think, perhaps in terms of credibility of
15 witnesses or what have you.

16 In terms of this other issue, and I won't
17 use the name of the customer, but how these customers are
18 somehow under Cuba as Mr. DeFord says, I simply don't
19 understand. It's not in my packet, but it's in
20 Ms. Shemwell's packet, and it is -- well, it's Exhibit 45.
21 I'll try to find what tab it's behind. It's fairly close
22 to the top. I think it's behind Tab 8, a few pages behind
23 Tab 8. Exhibit 45. And there's a natural gas sales
24 agreement. I don't know whether you found it yet or not.

25 COMMISSIONER GAW: I'm in 8. I'm not --

1 MR. LOWERY: It's, you know, in magic
2 marker there's an 8.

3 COMMISSIONER GAW: I see. Yes.

4 MR. LOWERY: Then you go a few more pages.

5 COMMISSIONER GAW: There's a firm provision
6 of transportation service.

7 MR. LOWERY: I think it's ten pages behind
8 where it says 8, Commissioner.

9 COMMISSIONER GAW: Is there some other
10 identification on that page?

11 MR. LOWERY: Says Exhibit 45 at the bottom.

12 COMMISSIONER GAW: Okay. That's what I'm
13 looking for. I've got it now. Thank you.

14 MR. LOWERY: If you look at this contract
15 and you look down at the price provision and you look at
16 the sentence that starts seller will contract. Do you see
17 that? It's down in the fifth box down. It's kind of the
18 big box in the middle, that contract. Second sentence
19 says, seller will contract.

20 COMMISSIONER GAW: Yes, I have that.

21 MR. LOWERY: And if you look above,
22 the seller's Omega Pipeline.

23 COMMISSIONER GAW: Yes.

24 MR. LOWERY: Seller will contract for
25 natural gas. The seller is going to go buy the gas. The

1 seller's going to contract for pipeline transportation.
2 To me, that's telling me that Omega is the shipper. Omega
3 went and contracted with Missouri Pipeline for the
4 transportation. Customer C didn't do it. Omega went out
5 and said, I'm going to go -- you don't have to worry about
6 the gas. You don't have to worry about getting it to your
7 place. I'm going to go be the shipper, and I'm going to
8 deliver the service to you.

9 And then if you look at -- and I don't have
10 this in any of the packets, but I think I can -- but I can
11 tell you where it is in the record. In Exhibit 67D in the
12 record, I've got an invoice, and this is just an
13 illustrative invoice, but I've got an invoice, and these
14 balancing reports that I was showing you before for Omega
15 and for AmerenUE, and actually it's labeled Appendix
16 D-9HC.

17 So it's part of Exhibit 67D. It's labeled
18 at the bottom D-9HC, and it's for April of 05, and it's
19 showing this customer C as being a recipient of gas, but
20 it's on -- it's attached to an invoice for Omega Pipeline
21 Company. And there's nothing about Cuba on this invoice.
22 In fact, there's daily balancing reports attached to this
23 invoice, and Cuba's not one of them.

24 Now, you've got to make decisions obviously
25 about what you believe in the evidence and what you don't

1 believe, but I've got a contract that says Omega is the
2 transporter, and I've got balancing reports and I've got
3 invoices to Omega, and it says shipper, St. Peters office,
4 care of Omega Pipeline, and I've got a balancing report
5 for this particular customer, and it doesn't have anything
6 to do with Cuba.

7 And so I would respectfully submit to you
8 that Omega is the shipper on this pipeline for this
9 customer who's located by an AmerenUE city gate at
10 Owensville, and AmerenUE was paying more at Owensville
11 than Omega was paying. That violates the tariff, simply
12 stated. I don't think it's complex.

13 And unless you discount the calculations,
14 and these are the only things that I have, then I think
15 that tariff violation's been established. And I think the
16 balancing reports clearly show the other tariff violations
17 are established when you see no gas going into the pipe
18 every day and gas coming out of the pipe every day and
19 percentages of imbalances in the hundreds of percent.

20 I hope that responded to your question,
21 Commissioner.

22 COMMISSIONER GAW: It does. Thank you.

23 CHAIRMAN DAVIS: Can we go back to
24 Mr. DeFord here? Okay. Mr. DeFord, so did Cuba sign this
25 contract back in 1999? Is it your position that they were

1 taking more than they needed back in 1999 or that some
2 intervening circumstances happened that they didn't need
3 this firm transportation quality and quantity in
4 decatherms, and so they had this excess capacity and, you
5 know, did somebody from Omega go to them and say, hey, you
6 know, you've got some -- let's make -- I mean, explains to
7 me how all this worked.

8 MR. DeFORD: Your Honor, I'm not sure what
9 the circumstance was in 1999, and Omega was not a marketer
10 for Cuba until --

11 CHAIRMAN DAVIS: So when did Omega become a
12 marketer again?

13 MR. DeFORD: I'm going to get the date
14 wrong probably, but I believe 2003.

15 CHAIRMAN DAVIS: Okay. And so --

16 MR. DeFORD: And I don't believe they
17 contracted with the City of Cuba until sometime slightly
18 after that, and prior --

19 CHAIRMAN DAVIS: Okay. So when did -- was
20 there ever -- is there a written agreement between Cuba
21 and Omega to sell this gas to these three customers, two,
22 three customers?

23 MR. DeFORD: Not between Omega and Cuba
24 itself and its customers. Omega and Cuba contracted for
25 Omega to take over managing the available capacity to Cuba

1 on the pipelines. The pipelines --

2 CHAIRMAN DAVIS: Okay. So Cuba contracted
3 with Omega to take over its management functions?

4 MR. DeFORD: Correct.

5 CHAIRMAN DAVIS: Okay. Then you're telling
6 me that Omega, as Cuba's manager, then contracted to sell
7 to these other -- you know, these two or three, quote,
8 secret parties, correct?

9 MR. DeFORD: Three, I believe. They had
10 separate agency and marketing agreements with each of
11 those three entities.

12 CHAIRMAN DAVIS: Okay. So they had
13 separate marketing -- so they had marketing agreements
14 with these three, quote, secret customers. They had
15 marketing agreements with the City of Cuba, and they're
16 the pipeline's affiliate. How does that not violate the
17 affiliate transaction rules again?

18 MR. DeFORD: I think even as Ms. Shemwell
19 acknowledges, as an agent and a marketer, those agreements
20 are not subject to the jurisdiction of the Commission.
21 What is subject to the jurisdiction of the Commission is
22 the agreement between the pipeline companies and the City
23 of Cuba. The City of Cuba is the shipper. Contrary to
24 Mr. Lowery's conclusion, those entities, those A, B and C
25 do not become shippers nearly because they are buying gas

1 from a marketer.

2 CHAIRMAN DAVIS: Okay. So --

3 MR. DeFORD: And you see in --

4 CHAIRMAN DAVIS: Okay. How much gas did
5 your three phantom customers ship on a monthly basis in,
6 say, April 2005?

7 MR. DeFORD: Your Honor, I would have no
8 idea. It would be a relatively very, very small amount.

9 CHAIRMAN DAVIS: A relatively very small
10 amount.

11 MR. DeFORD: Yeah. I think if you were to
12 look at, say, a customer such as Laclede or a customer
13 such as Ameren --

14 CHAIRMAN DAVIS: I'm not talking -- you
15 know, forgive me, Mr. DeFord, but you keep talking about
16 relatively small amounts here, but, you know, when you get
17 to talking about basis points in rate cases, then, you
18 know, 10 or 15, 25 basis points can mean a lot. So let's
19 stay away from these -- your representations of small
20 amounts because what might be small to you and what might
21 be small to the customers who have potentially been harmed
22 here, might be two different things.

23 So Cuba's transportation agreement is for
24 1,193 -- firm transportation of 1,193 decatherms a day?

25 MR. DeFORD: I believe that's correct.

1 CHAIRMAN DAVIS: You believe -- you believe
2 that is correct. So are you telling me that between Cuba
3 and these three customers of Cuba, through your, quote,
4 affiliates, that they never took more than 1,193
5 decatherms day?

6 MR. DeFORD: I believe that's correct.

7 CHAIRMAN DAVIS: All right. No further --
8 no further questions at this time.

9 JUDGE WOODRUFF: All right. As I
10 indicated, we will need to break at four o'clock for
11 Universal Service Board meeting. Next on the list is
12 Municipal Gas Association. Mr. Woodsmall, I'll leave it
13 up to you. Do you want to go on now or do you want to go
14 ahead and break?

15 MR. WOODSMALL: I'll go now because I think
16 it segues beautifully. I'll hurry through it. I didn't
17 make small packages, but I'm only going to use small
18 portions out of it, and I do have tabs.

19 MR. LOWERY: I want the record to reflect
20 that my packet was the smallest, for a change.

21 CHAIRMAN DAVIS: But there are only four
22 tabs for a rather large --

23 MR. WOODSMALL: Five tabs, yeah. Like I
24 said, I believe this will segue beautifully. Mr. Lowery
25 mentioned some summaries that were contained in

1 Mr. Schallenberg's testimony, and I'm going to go one step
2 beyond that. Rather than the summaries, I'm actually
3 going to take you into the invoices, because what is the
4 best evidence of what was charged other than the invoices?
5 So we're going to jump in and talk about the invoices.

6 My client only took a position on Count 3
7 of Staff's complaint. This count alleges that the
8 pipelines violated Section 3.2B of the tariffs by
9 providing preferential discount pricing to their marketing
10 affiliate. My client only takes firm service, firm
11 transportation service from the pipelines. So we only
12 focus in here on discounts associated with firm
13 transportation service.

14 Unlike Staff, we haven't focused at all on
15 interruptible service. So we'll only be looking at three
16 discounts. In fact, for the purpose of time, I'm only
17 going to look at two discounts for firm transportation
18 service. The first discount occurred on May 1st -- well,
19 your Honor, I believe we'll probably have to clear the
20 room because I am going to get into highly confidential
21 stuff.

22 JUDGE WOODRUFF: Let's go in-camera, then.
23 And, Mr. Woodsmall, I have a request to make sure you use
24 your microphone. Somebody can't hear you.

25 (REPORTER'S NOTE: At this point, an

1 in-camera session was held, which is contained in
2 Volume 10, pages 784 through 792 of the transcript.)

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1 JUDGE WOODRUFF: It's four o'clock. We
2 need to take a break for the Universal Service Fund Board
3 meeting. We'll come back at 4:30.

4 COMMISSIONER CLAYTON: Judge, I'm going to
5 try to move this meeting along. I can't guarantee we'll
6 be done, but we could be done sooner than that. You may
7 not want to put us off 'til 4:30.

8 JUDGE WOODRUFF: Let's make it 4:20, then.

9 CHAIRMAN DAVIS: Real quick, are invoices
10 for Cuba in the record?

11 MR. WOODSMALL: Cuba -- Cuba received --
12 there were invoices when Cuba received service from the
13 pipelines. After Cuba moved to Omega, it's my
14 understanding that there are no invoices because those are
15 not regulated. The invoices from the pipeline to Omega
16 associated with service to Cuba are in the record, and
17 that is Appendix E, the second tab there. I had another
18 example that I was going to go through, but for purposes
19 of brevity, I didn't, but if you look at the second tab --

20 CHAIRMAN DAVIS: Okay. We'll come back to
21 that here shortly.

22 JUDGE WOODRUFF: We're on break until 4:20.

23 (A BREAK WAS TAKEN.)

24 JUDGE WOODRUFF: The Universal Service
25 Board meeting upstairs is furnished, so we're ready to get

1 started again. I believe we're ready for the pipeline
2 company, Mr. DeFord.

3 MR. BROWN: Good afternoon.

4 JUDGE WOODRUFF: Make sure you use your
5 microphone.

6 MR. BROWN: Good afternoon. This is a case
7 of overreaching the Commission into legitimate business
8 arrangements that the Staff acknowledged and accepted as
9 far back as 2002 but now seeks to penalize. Of the six
10 counts in this case, there's no substantial evidence to
11 support any of the counts. There's a lot of innuendo.
12 There's a lot of speculation. There's been a great tale
13 of intrigue of the investigation and how these things
14 first came to the attention of the Staff, but there's no
15 actual evidence of wrongdoing.

16 Much of the Staff's argument in this case
17 today was speculation about the meaning of exhibits where
18 there's actual sworn testimony on the same topics. We've
19 got attorneys who admit they haven't read the record in
20 the case speculating about what various exhibits mean when
21 there's actual sworn testimony in the case about those
22 same topics.

23 The foundation of the Staff's position in
24 this case is that prior to opening its investigation in
25 2005, it claims that it was not aware that Omega was

1 acting as a gas marketer. It claims that it was not aware
2 that Omega bought and sold gas. The Staff also claims
3 that it was not aware that other third parties were acting
4 as agents for shippers on the pipeline's systems. The
5 Staff claims that these revelations led to the discovery
6 of violations of tariff provisions relating to affiliate
7 transactions and discriminatory pricing.

8 In fact, there's no evidence in this case
9 to support the Staff's position. Quite the contrary, the
10 record proves the opposite.

11 Before discussing each count, it's helpful
12 to have some background first. The first thing that needs
13 to be appreciated is the distinction between the role of a
14 shipper that buys, transports and delivers gas and the
15 role of a sales agent that merely manages capacity for a
16 shipper. You need to understand the roles that Omega
17 assumed as an affiliate of the pipeline companies in this
18 case, and you need to understand the process of balancing
19 nominations and usage.

20 First, the distinction between a shipper
21 and a sales agent. As I -- as you may be well aware, a
22 shipper is an entity that acquires capacity on a pipeline
23 pursuant to a transportation contract. They acquire that
24 from a regulated company such as the pipeline companies.
25 A shipper may or may not own the gas that it ships.

1 A sales agent, on the other hand, is an
2 entity that acts on behalf of a shipper to manage the sale
3 of the shipper's gas, often at bundled sales that include
4 more than just shipping.

5 Staff in this case makes a novel definition
6 of a shipper. It makes the case for the first time kind
7 of incoherently, we believe, that a shipper is any party
8 that owns gas moving through the pipeline system. That
9 position is unsupported by any law, by any rule, by any
10 tariff provision. The Staff literally made up that
11 interpretation for the convenience of pursuing the
12 pipeline companies in this case.

13 Secondly, in terms of Omega's role that it
14 assumed as an affiliate of the pipeline companies, first
15 of all, Omega has been the shipper to Fort Leonard Wood
16 since 1992. Secondly, Omega became the sales agent for
17 the City of Cuba in 2003, replacing another company that
18 was acting as the sales agent on a shipper contract that
19 dated all the way back to 1999.

20 So we've got two distinct roles for Omega.
21 They were the shipper to Fort Leonard Wood and have one
22 legal capacity and one role as the shipper to Fort Leonard
23 Wood. They have a different legal capacity and role as a
24 sales agent for the City of Cuba where they stepped into
25 an existing contract and became the sales agent on an

1 existing contract for the City of Cuba. And as the Staff
2 has conceded, in that role as sales agent they are not
3 subject to the jurisdiction of the Commission.

4 Third, the issue of balancing. As I'm sure
5 the Commission is aware, imbalances result from
6 differences in the amount of gas that a shipper or its
7 agent nominates for the delivering pipeline as compared to
8 the volume of gas actually used by the shipper. But
9 regardless of imbalance, the shipper only actually pays
10 for the gas that they pull off of the system.

11 Since the pipelines in this case, the
12 pipeline companies don't have the authority to buy or sell
13 gas off their system, they don't have any independent
14 ability to correct imbalances in the system. They're
15 entirely dependent on the shippers making correct
16 nominations that match their actual usage to balance the
17 system.

18 Now, with that background, turning to the
19 counts. The first count in this case is did the pipelines
20 violate the terms of their tariffs and Commission
21 affiliate transaction rules by permitting Omega to use
22 confidential customer information in a discriminatory
23 manner?

24 The rule at issue here is the Commission's
25 rule, a regulated gas corporation shall not provide a

1 financial advantage to its affiliate. That's what we're
2 talking about here. That's the heart of the first count.
3 And there is absolutely no evidence in the record that the
4 pipelines ever provided such an advantage and, in fact,
5 they never did. In fact, all the evidence shows that
6 Omega was consistently charged the highest transportation
7 rate under the pipeline's tariffs.

8 Now, be that because they were at the end
9 of the system and there was pancaking of rates, it is
10 still a fact that they charged the highest rate. There
11 was no preference given to them in terms of the rate, and
12 there was no advantage taken.

13 The thrust of the Staff's argument is
14 merely the implication of wrongdoing because the pipelines
15 shared personnel with Omega, that there's an appearance or
16 an implication that there could have been wrongdoing, but
17 there's no evidence that there actually was any
18 wrongdoing. In fact, the evidence in the record --

19 CHAIRMAN DAVIS: Mr. F. Lee Bailey, can I
20 stop you there for a minute? Doesn't the fact that, you
21 know, all of these invoices somehow just all were
22 destroyed or never existed, I mean, isn't that -- I mean,
23 what inference do you expect us to draw from that, that,
24 oh, it's just the normal course of us doing business that
25 we just destroy our records all the time?

1 MR. BROWN: The issue is, in the modern
2 world, we never maintained a paper archive.

3 CHAIRMAN DAVIS: Didn't maintain an
4 electronic archive either, did you?

5 MR. BROWN: Yes, we did.

6 CHAIRMAN DAVIS: Well, then, where is it?
7 I mean, these records that we have that we've been all
8 looking at today are, quote, reconstructed. Where are the
9 records, the real records?

10 MR. DeFORD: Your Honor, I can respond to
11 that. We didn't keep the paper copies. We had all the
12 electronic data and printed from that data the actual
13 invoices. And if you'll look at, I believe it's
14 Exhibit 311 and 312, we've confirmed that those reproduced
15 or reprinted data, the invoices that we have match exactly
16 the invoices that went to customers.

17 And we also matched that to bank statements
18 where we actually made the deposits from those customers.
19 Invoices all matched. The invoices are 100 percent
20 accurate that we produced in discovery to Staff.

21 CHAIRMAN DAVIS: Okay. So how did the '04
22 versus '05 problem come to exist?

23 MR. DeFORD: The '04/'05 problem was simply
24 a table, if you will, on the thing. It printed the date
25 that we printed the thing rather than the original year.

1 CHAIRMAN DAVIS: In the middle of the
2 invoice?

3 MR. DeFORD: That's my understanding, your
4 Honor. I think there were several of those if you go back
5 and look, and it was --

6 CHAIRMAN DAVIS: All right. All right.
7 Sorry, Mr. Bailey. Go ahead.

8 MR. BROWN: Thank you.

9 JUDGE WOODRUFF: It's Mr. Brown, I believe,
10 isn't it?

11 MR. BROWN: That's correct. In fact, the
12 evidence shows that both the Staff and the Commission were
13 fully aware of the relationship between the pipelines and
14 Omega since 2002. The record shows that in August of
15 2002, Mr. Ries informed the Commission Staff that the
16 pipelines were considering using Omega to provide
17 marketing services to other customers along the pipeline's
18 transportation path.

19 In a subsequent letter from Mr. Wood to
20 Mr. Ries, the Staff indicated its preference, the Staff
21 indicated its preference for the pipelines to use Omega as
22 a marketer by stating, quote, Staff has expressed concern
23 over the structure of these transactions and Staff's
24 preference that an affiliate should make any bundling
25 arrangements. The first notice that the Staff's

1 preference had changed was the filing of the present case.

2 Staff's awareness of the fact that the
3 pipelines were sharing employees and office space with
4 Omega is further evidenced by the Staff's support of a
5 FERC waiver allowing the sharing of employees and space to
6 continue. In that FERC proceeding where the pipeline
7 companies were seeking a waiver to allow this practice,
8 Staff intervened in April of 2004.

9 The FERC ultimately granted the request for
10 the waiver in July of 2004, and Staff and the Commission
11 made no objection to that ruling allowing the sharing of
12 staff and space. In fact, Staff responded before the FERC
13 that Staff preferred that a marketing affiliate be used to
14 buy and sell gas for the small towns and that Missouri Gas
15 Company not change its tariff.

16 Staff was advised and acknowledged that it
17 knew that Omega was a marketer of gas as early as August
18 of 2002. To now indicate in this case that the pipeline's
19 usage of Omega as a marketer was somehow a surprise to the
20 Staff discovered through some difficult process of pouring
21 over invoices and somehow deducing this through some great
22 detective work is blatantly against the evidence that
23 exists in this case.

24 Secondly, Staff misunderstands Omega's role
25 in managing the imbalances on the system, and it hasn't

1 been presented accurately to the Commission in this case.
2 Because the pipeline companies do not have the authority
3 to sell gas, they don't have the ability to cure
4 imbalances in the system by selling gas, and they have to
5 rely on someone, some shipper, some other entity to
6 balance their system because they can't do it themselves.

7 In this case, they use their affiliate
8 Omega to do that because they have the ability to cause
9 Omega to do this thing, as opposed to requesting that the
10 other shippers on the system share this burden because
11 there's a risk to being the one that balances the system.

12 JUDGE WOODRUFF: If I can interrupt here
13 with a question. What's the reason why the pipeline
14 companies can't sell gas?

15 MR. BROWN: I think it's simple as they
16 don't have a --

17 MS. SHEMWELL: The tariffs don't permit it.

18 JUDGE WOODRUFF: Okay. So if the pipeline
19 companies had come in and asked to change their tariffs,
20 they could have?

21 MS. SHEMWELL: They could have, and then
22 everyone else would have had the opportunity to weigh in
23 and the Commission would have made a decision.

24 MR. BROWN: That was discussed.

25 MR. WOODSMALL: Your Honor, if you look at

1 MGCM's initial brief, we have a brief chronology of the
2 changes in the natural gas industry, and this all comes
3 about as a result of Order 436 and 636 at the FERC
4 requiring at least on the interstate level for the
5 pipelines to no longer bundle the sales function and the
6 transport function.

7 JUDGE WOODRUFF: Go ahead, Mr. Brown.

8 MR. BROWN: The point being --

9 COMMISSIONER GAW: I have a question.

10 MR. BROWN: Yes.

11 COMMISSIONER GAW: Earlier you were
12 suggesting that the Staff was supportive of the FERC of
13 certain things. Are you representing to the Commission
14 that the Staff was supportive of the -- of there being the
15 same person an officer of both corporations?

16 MR. BROWN: Yes.

17 COMMISSIONER GAW: Show me where that is.

18 MR. BROWN: The pipeline --

19 COMMISSIONER GAW: Show me where that is.
20 Show me in the record.

21 MR. BROWN: Let me see if I have it right
22 here. We're looking for that now. Would it be okay if I
23 proceed while we find that for you, or would you like to
24 wait while we find that?

25 COMMISSIONER GAW: Will it take very long?

1 MR. BROWN: I don't know. It won't take
2 long. We'll wait.

3 COMMISSIONER GAW: You go right ahead. Go
4 ahead with something else and we'll come back. Perhaps
5 another party knows where that is.

6 MR. BROWN: We'll get it as quickly as we
7 can.

8 MS. SHEMWELL: I'd like to say that the
9 Commission, it would have been the Commission at the FERC,
10 not Staff, but the Commission agreed that they could share
11 operating personnel through Omega at the Fort with
12 operating personnel for MPC and MGC. Staff did not
13 realize or did not know at that time that Omega was a
14 marketing entity, and that's not what we agreed to at the
15 FERC, that they could operate as a marketing entity.

16 MR. BROWN: The point being that Staff was
17 aware of the fact and did not object to the fact that the
18 staff and the space be shared. It was not a hidden fact.
19 It was not something that was discovered or that was
20 hidden or that was attempted to be hidden.

21 Exhibit 308, your Honor.

22 COMMISSIONER GAW: I'm sorry?

23 MR. BROWN: Exhibit 308 is the reference.

24 CHAIRMAN DAVIS: Mr. Brown, when did Omega
25 come -- did Omega ever come to Staff and make an

1 affirmative representation, yes, we are marketing gas? I
2 mean, there's a difference between saying we're
3 considering it, what do you think about it, versus we are.
4 So when did Omega affirmatively notify the Staff or anyone
5 else here at the Commission that they were, in fact,
6 marketing their services throughout the territory?

7 MR. BROWN: I don't believe that's included
8 in the record, and I don't believe it was necessary
9 because, as the Staff has indicated, it's not within the
10 Commission's jurisdiction to regulate that marketing
11 function. So there would have been no reason to notify
12 the Commission of something that's not within its
13 jurisdiction.

14 CHAIRMAN DAVIS: But if Omega is an
15 affiliate, then don't they have an obligation to notify us
16 that they are performing those functions?

17 MR. BROWN: That's one of the disputes in
18 the case. The Staff seems to take the position it's
19 nowhere in the regulations or the tariffs, that there's an
20 obligation to report every activity of an affiliate, when
21 that's not required.

22 CHAIRMAN DAVIS: Okay. Every activity is
23 not required, but --

24 MR. BROWN: I don't believe it's in the
25 regs or in the tariff that there's a reporting requirement

1 of that type.

2 CHAIRMAN DAVIS: So anything that's not in
3 there you can do?

4 MR. BROWN: Well, the question, do you have
5 an affirmative reporting requirement? You have to look to
6 the regs to see, do we have an affirmative reporting
7 requirement? Our position would be if the regs don't
8 place an affirmative burden on us to report something,
9 we're not going to feel we have a burden to report it.

10 CHAIRMAN DAVIS: And so because the
11 affiliate wasn't, in fact, acting as an affiliate of MPC,
12 that they were acting as an affiliate of, say, Cuba,
13 they're somehow exempted, is that what you're saying?

14 MR. BROWN: They weren't an affiliate of
15 Cuba. They were an affiliate of the pipeline companies.

16 CHAIRMAN DAVIS: An agent of Cuba?

17 MR. BROWN: And they were an agent of Cuba,
18 that's correct.

19 CHAIRMAN DAVIS: Okay. So the agent of
20 Cuba, because -- because they were able to put on a
21 different hat, that somehow exempts them from the
22 affiliate transaction requirements?

23 MR. BROWN: No. Under no -- two different
24 things. Under no circumstances is anyone required to
25 report to the Commission that they're undertaking a

8 So when they're acting as a shipper, they
9 were, in fact, being charged the highest rate on the
10 system. Whether it was out of the goodness of their
11 hearts or because of pancaking, the fact is they were
12 charged the highest rate on the system when acting as a
13 shipper, as they should, and everyone else got a lower
14 rate than Omega did in Omega's role as a shipper, which is
15 within the jurisdiction of this Commission.

18 CHAIRMAN DAVIS: So what rates were the
19 secret clients paying, then?

25 CHAIRMAN DAVIS: Does Cuba know that they

1 were clients?

2 MR. BROWN: They were clients of Omega, the
3 marketer. Cuba -- I misspoke. Cuba -- Cuba essentially
4 contracted for the management of its capacity with Omega,
5 and they were clients of Omega.

6 CHAIRMAN DAVIS: Right. So Cuba had no
7 idea that this was going on, correct?

8 MR. BROWN: Yes, they did.

9 CHAIRMAN DAVIS: Yes, they did?

10 MR. BROWN: This was their capacity. They
11 were paying the reservation charges. When you look at the
12 invoices and they said, oh, no one's paying a reservation
13 charge, the City of Cuba paid the reservation charge.
14 That was their capacity that was then being used for the
15 clients of Omega.

16 The City of Cuba didn't care. The City of
17 Cuba had excess capacity. It had paid the reservation
18 rates. The City of Cuba has excess capacity. They
19 discovered a way that they could turn that capacity into
20 an asset for them. Good business by the City. They hired
21 Omega to take over this function, privatization of
22 something. It made sense for the City, and at that point
23 when they essentially privatized and say, you take over
24 the management of this, you take care of our gas needs,
25 and if we have excess capacity, you know, see what you can

1 do with it, they really didn't care at that point who was
2 using that capacity.

3 JUDGE WOODRUFF: Did Cuba profit from this
4 arrangement?

5 MR. BROWN: Of course they did.

6 COMMISSIONER GAW: How so?

7 MR. DeFORD: Cuba charged to transport the
8 gas to these customers that were on their system.

9 COMMISSIONER GAW: Cuba charged these
10 customers?

11 MR. DeFORD: Cuba would have charged to
12 deliver the gas.

13 COMMISSIONER GAW: And there's evidence of
14 that somewhere?

15 CHAIRMAN DAVIS: There's no evidence in the
16 record here, is there?

17 MR. LOWERY: Your Honor, I hate to
18 interrupt, but Emhart Glass is behind AmerenUE's
19 Owensville city gate, not City of Cuba, so --

20 COMMISSIONER GAW: It would have been a
21 little difficult for that to have occurred.

22 MR. LOWERY: It would be a little hard for
23 Cuba to transport that gas.

24 MR. DeFORD: Presumably they would have
25 charged their transportation service, so they would have

1 profited as well.

2 COMMISSIONER GAW: Who's that? I'm sorry.

3 MR. LOWERY: But it wasn't Owensville's
4 capacity. I thought it was Cuba's capacity, so --

5 COMMISSIONER GAW: I did, too. I'm
6 confused.

7 MR. LOWERY: I'm confused, too, as to how
8 even Owensville is getting -- by the way, it was
9 AmerenUE's system, but it wasn't our capacity. It was
10 supposedly Cuba's capacity.

11 COMMISSIONER GAW: So Cuba's capacity is
12 being utilized onto Ameren's system? That's an
13 interesting thought.

14 MR. LOWERY: Apparently.

15 MR. WOODSMALL: And there's another point.
16 As I mentioned before, there is no basis for capacity
17 release on this pipeline. How anybody is selling Cuba's
18 capacity when no one else can do it is just beyond me.

19 COMMISSIONER GAW: Help me to -- go ahead.

20 CHAIRMAN DAVIS: Yeah. I guess if Ameren
21 wants to sell capacity on this pipeline, how do they do
22 that?

23 MR. DeFORD: I suppose they would have to
24 buy capacity before they could sell it.

25 CHAIRMAN DAVIS: Well, I don't know. Let's

1 say all -- let's say all their customers just move out of
2 Rolla or something. So then what? They're moving out
3 because of the electric rates, Mr. Lane. They're kind of
4 high down there now. So let's say everybody vacates
5 Rolla, hypothetically speaking, so Ameren's got some
6 excess firm capacity. So what does -- so your client's
7 doing it, so they can do it, right?

8 MR. DeFORD: Presumably so. And, your
9 Honor, in the record I think you'll see that there are --
10 there's a city, I believe, the city of -- I'm not sure I
11 can say the name of it -- that doesn't appear as a shipper
12 on the MPC/MGC system. The agent for that entity has
13 capacity, and I believe it's -- I think I can say this --
14 it's Oneok. They do not -- presumably that city, all of
15 the residents of that city are getting gas every day.

16 So it's not -- it's not unusual. I think
17 if you go back and look at the expert testimony that the
18 pipelines have provided, you'll see that both of the
19 pipeline's experts indicated these transactions that we're
20 talking about here today are absolutely normal across the
21 industry.

22 MR. WOODSMALL: Your Honor, there's a great
23 example in the record. When Oneok lost the shipping
24 rights to Fort Leonard Wood, they were not allowed to
25 resell that capacity. They had to just buy out the

1 contract. They were not allowed to do capacity release
2 there.

3 COMMISSIONER GAW: Why was that,
4 Mr. Woodsmall?

5 MR. WOODSMALL: Because there's no
6 provisions in the tariffs or Missouri laws or regulations
7 that provide for capacity release.

8 CHAIRMAN DAVIS: Well, but if there's no
9 provisions one way or the other, Mr. Woodsmall, then can't
10 you follow Mr. DeFord's example and just say let's do it?

11 MR. WOODSMALL: Well, you could, but when
12 Oneok asked to do it, the pipeline told them no, you can't
13 do it.

14 CHAIRMAN DAVIS: Is that in the record?

15 MR. WOODSMALL: Yes, it is. I'll find it
16 for you.

17 MR. DeFORD: Your Honor, I think there's a
18 distinction between capacity release and simply managing
19 the capacity of an entity.

20 CHAIRMAN DAVIS: Okay.

21 MS. SHEMWELL: May I offer a page out of
22 the transcript in which Mr. Ries admitted that Cuba did
23 not know that its capacity was being used?

24 CHAIRMAN DAVIS: Uh-huh.

25 MS. SHEMWELL: This is page 651 of the

1 transcript. Mr. Ries is under questioning. Line 12, did
2 the City of Cuba know its capacity was being used that
3 way?

4 I don't know that they did.

5 Question: Is that a no?

6 It would probably be no.

7 JUDGE WOODRUFF: Let's get back to the
8 pipelines here. Sorry for the interruption.

9 MR. BROWN: The issue being the way that
10 Omega was being used to balance the system. Was it some
11 horrible, evil, nefarious plan to steal bananas from
12 someone or was it -- or was it a necessary way to balance
13 the system?

14 One of the things that happens here is, as
15 was discussed earlier, if the system gets out of balance,
16 there's penalties that roll down through the system, and
17 one of the things about this pipeline is there have never
18 been any penalties. There have never been any penalties
19 on any of the other shippers. There's never been any
20 penalties, and the way that occurred was because --

21 COMMISSIONER GAW: I want to ask a
22 question. If Ameren got out of balance, were they subject
23 to penalties?

24 MR. DeFORD: Apparently, according to
25 Mr. Lowery, they were, but I can't point to anything in

1 the tariff. My understanding was simply that the pipeline
2 companies have been able to avoid penalties itself to
3 Pandhandle Eastern. So long as it wasn't paying any
4 penalties, it wasn't interested if there is a provision
5 which would allow penalties to be imposed on shippers,
6 none were ever enforced.

7 COMMISSIONER GAW: Mr. Lowery, can you find
8 anything in the tariff?

9 MR. LOWERY: If you look at Tab 4 behind --
10 my Tab 4 and look at Sheet No. 26, it says that if you're
11 outside the tolerance level, which is 10 percent, for more
12 than 45 days, then you're charged a penalty.

13 COMMISSIONER GAW: Mr. Lowery, would Ameren
14 have been concerned about having to pay penalties for
15 being out of balance?

16 MR. LOWERY: Well, Mr. Massmann's
17 testimony, and I can't cite you directly to it, but some
18 of it's included in Ms. Shemwell's packet today.
19 Mr. Massmann's testimony said that we were required to
20 maintain that, be within that 10 percent allowance, and
21 that 99 percent of the time we did so. And I would -- I
22 would infer from that that Ameren was certainly concerned
23 that they better comply with the tolerance levels in the
24 tariff or they were going to be subjected to penalty. We
25 weren't because we stayed within that.

1 COMMISSIONER GAW: Right. But let's --
2 would Ameren have preferred to be in a position where they
3 were not subject to paying penalties?

4 MR. LOWERY: Well, of course.

5 COMMISSIONER GAW: And if that had been the
6 case, if that had been offered to you, which evidently it
7 was offered to some others on this pipeline that were
8 affiliates, would that have been something that Ameren
9 would have thought would have been beneficial to have?

10 MR. LOWERY: Well, sure. If we don't have
11 to manage our receipts and deliveries nearly as closely, I
12 think that's going to be beneficial to us. You know, that
13 brings a point that I wanted to make. I'm hearing a lot
14 about Omega somehow balanced this system and, gee, the
15 pipelines, they just didn't have any way to balance. They
16 couldn't buy and sell gas.

17 Well, I don't think that's true. I think
18 all they had to do when they got long and gas essentially
19 is say, you know, that .43 percent or whatever the
20 percentage of lost and unaccounted for we're requiring
21 Ameren and Laclede and Oneok and everybody else, that's
22 too much. We're going to cut that back -- and I'll make
23 this up -- .3 or .2 prospectively and we're going to bring
24 the system back into balance. That's all they had to do.
25 They didn't do it. They just kept taking more gas than

1 they needed, and Omega continued to --

2 COMMISSIONER GAW: Why would they have done
3 that, Mr. Lowery?

4 MR. LOWERY: Well, I think the reason that
5 they did it is so they could benefit their affiliate by
6 having Omega not have to put in enough gas and Omega had
7 gas to deliver to their customers. That's the inference
8 that I think is pretty clear.

9 COMMISSIONER GAW: It is an inference, and
10 whoever wants to answer that with the pipeline company,
11 I'd like to hear why that inference isn't there.

12 MR. DeFORD: It's a great inference. The
13 problem is Omega was deep in the hole on that. Omega
14 would have owed the pipeline companies and frankly did owe
15 the pipeline companies a substantial amount of money for
16 that gas.

17 Now, when Omega was sold in June, the new
18 owners of Omega said, no, thank you, we will not assume
19 the risk of balancing your system absent the payment of a
20 fee. So the new owners of Omega said, we're not beholding
21 to you guys. If you want us to balance your system, we'll
22 do it if you pay us to do it. So it's not this wonderful
23 thing that Omega was doing. I mean, it was something that
24 ended up costing money.

25 CHAIRMAN DAVIS: Mr. DeFord, you're

1 representing that, oh, you're doing these great balancing
2 services so these other transportation customers wouldn't
3 have to pay penalties, but, in fact, you know, if Ameren
4 stays within their 10 percent margin, then are they going
5 to be responsible for penalties because of Omega's actions
6 out here?

7 MR. DeFORD: Again, my understanding is
8 that if the pipelines companies, if MGC and MPC had become
9 subject to penalties from the Panhandle, then according to
10 the provision that Mr. Lowery read, apparently the
11 pipelines could have imposed a penalty on those customers
12 that were out of balance.

13 CHAIRMAN DAVIS: You're saying apparently,
14 but you're not stating that conclusively. I've got
15 Mr. Lowery shaking his head no back there. I find it hard
16 to believe that if they've got a contract with you that
17 says they have to stay within 10 percent, if they stay
18 within 10 percent, you're telling me you've got a
19 provision that says, nope, we're out -- the whole
20 pipeline's out of balance, Ameren pays, Laclede pays,
21 everybody pays?

22 MR. DeFORD: That's not at all what I'm
23 saying. I'm saying that you go back and identify --

24 CHAIRMAN DAVIS: Well, that's what you've
25 been insinuating here is that everybody would pay if the

1 pipeline is out of balance. Is that true or false?

2 MR. DeFORD: Ultimately it would be true.

3 CHAIRMAN DAVIS: Ultimately, well, you
4 might have to raise your raise your rates in your next
5 rate case or whatever. No. No. Would that have been
6 true under these circumstances?

7 MR. DeFORD: For some customers,
8 apparently, yes.

9 CHAIRMAN DAVIS: For some customers. Would
10 that be your, quote, customers that your Cuba affiliates
11 are or is that some other customers? It depends on the
12 contract, I'm assuming?

13 MR. DeFORD: I would assume that it would
14 be based on the tariff. If they don't stay within that --
15 the parameters of the tariff for the period of time that
16 Mr. Lowery's represented, then those customers would be
17 subject to those penalties.

18 MS. SHEMWELL: Mr. Massmann testified that
19 99 percent of the time they were below the 10 percent.

20 CHAIRMAN DAVIS: Right.

21 MR. BROWN: The other thing that's not
22 being fully appreciated here is the risk that the gas
23 imbalance can go either direction. The pipeline companies
24 don't have the ability to control the nominations that are
25 made by the shippers on their system. If the shippers are

1 long, the shippers are long. If the shippers are short,
2 the shippers are short. And it turned out the way it did,
3 but that's not something the pipeline company had the
4 ability to control or manipulate to control, to create
5 whatever the final state was. That was a risk that was
6 borne by Omega, and it turned out the way it turned out,
7 but it was a risk that was borne by the company that the
8 company that acquired them did not want to take going
9 forward. They did not want to gamble on which direction
10 that risk was going to go in the future.

11 JUDGE WOODRUFF: Can you explain that risk
12 more for me?

13 MR. BROWN: I mean, it's a simple matter of
14 you've got the -- the shippers make their nominations.
15 They make their decisions about what the weather's going
16 to be, about what the demand's going to be, about what
17 their needs are going to be, and they make their
18 nominations for how much gas they want to see in the
19 system.

20 JUDGE WOODRUFF: In this situation, what
21 really happened was apparently the shippers nominated more
22 gas than --

23 MR. BROWN: Shippers nominated long. If
24 you go back, I guess we tend to be focusing on January.
25 Apparently there was a January that apparently was warmer

6 So how was it balanced? The pipeline
7 companies call Omega and say, don't nominate any gas,
8 don't nominate any gas today either, don't nominate any
9 gas today either. Then you see on one day when the system
10 was out of balance the other direction they say, you
11 better nominate some gas today. So there's a day when
12 they nominated some gas.

15 MR. BROWN: Then they've got to make up the
16 imbalance the other way.

19 MR. BROWN: Or nominate the gas. That's
20 another thing that needs to be kept clear is the
21 difference between nominating and actually purchasing. If
22 Ameren nominates some gas and doesn't use it, it's not as
23 if they have title to some gas that's then stolen from
24 them that they purchased.

1 actually drew down from the system. It's not as if there
2 was gas that they had title to that they paid for that was
3 stolen from them by Omega. We're talking about nomination
4 of gas, not purchase of gas. So the nomination of gas
5 versus the actual use of gas, the total gas in the system
6 has to be kept in balance.

7 JUDGE WOODRUFF: So you're saying in some
8 circumstances Omega might have had to nominate more gas
9 than they could actually use?

10 MR. BROWN: You can see it on -- you can
11 see -- it would have been -- I don't know the facts of
12 whether they actually did, but if you're going to take --

13 JUDGE WOODRUFF: I'm speaking
14 hypothetically here.

15 MR. BROWN: If you're going to take the
16 risk of balancing the system, yes, you take the risk in
17 both directions. It's an issue of nominating the gas, not
18 buying the gas or using the gas, nominating.

19 JUDGE WOODRUFF: And how was Omega harmed
20 if they nominated too much gas for their own use?

21 MR. BROWN: I --

22 JUDGE WOODRUFF: You said they only had to
23 pay for what they actually purchased, right? I assume
24 that's true for Omega as well.

25 MR. BROWN: Correct.

1 JUDGE WOODRUFF: So if Omega nominates a
2 whole bunch of extra gas but doesn't actually purchase it,
3 how has Omega been harmed?

4 MR. BROWN: What it's going to do is it's
5 going to cause --

6 MR. DeFORD: It doesn't directly harm Omega
7 that way. What happens is, if Omega nominates too much
8 gas, then the imbalance MPC and MGC with Panhandle Eastern
9 with cause MGC and MPC to take penalties. So there would
10 be no reason ever for Omega to nominate too much gas.

11 JUDGE WOODRUFF: Well, isn't that what you
12 were describing as the risk that Omega was taking on, they
13 might have to nominate too much gas? I guess I'm not
14 understanding this.

15 MR. DeFORD: My understanding is it goes
16 both ways. Here you have a situation where there was a
17 positive imbalance that Omega took responsibility for.

18 JUDGE WOODRUFF: That there was other
19 people didn't -- other shippers nominated more gas than
20 was actually used?

21 MR. DeFORD: Than was necessary.

22 MR. WOODSMALL: Your Honor, getting to a
23 question that the Chairman asked right before you took the
24 break, this discussion about it going both ways is really
25 an academic exercise. The Chairman asked about the

1 reports or the invoices to Cuba. If you look on the
2 second tab of the handout I gave you, you will see for
3 January of 2004 an imbalance of 194 percent, February
4 2004, 228 percent, March, 294 percent. It even goes up as
5 much as a thousand percent. The imbalance never goes
6 negatively, if I'm reading that correct.

7 JUDGE WOODRUFF: I'm just trying to
8 understand the hypothetical, what could happen.

9 MR. BROWN: The point being, though, that
10 the pipeline companies didn't control the fact that the
11 shippers were over-nominating. The shippers presumably
12 want to make sure they have enough gas. They're
13 nominating too much, and Omega's balancing that situation.
14 I'm saying it's not some horrible, nefarious, evil plan to
15 steal gas as it's been made out to be.

16 MR. LOWERY: Your Honor, respectfully, I
17 think that statement is just not true to say that the
18 pipelines don't control that. The pipelines require a
19 certain amount of lost and unaccounted for gas. In other
20 words, if our customers need 1,000 MMBtu, we had to put in
21 1,000 MMBtu plus a certain percentage. I believe it was
22 .43 percent one time. It was .5 percent at another time.

23 If consistently that is too much gas and
24 this pipeline is building a balance, all the pipeline has
25 to do is change the lost and unaccounted for gas

1 requirement and they'll bring the pipeline back into
2 balance. Omega wasn't nominating anything most of the
3 time. We were -- we were nominating what the pipeline
4 required us to nominate.

5 We were receiving -- if you look at the
6 invoices I gave you, our nominations and our receipts
7 match. And if we had to nominate a thousand plus that
8 percentage, we paid for it, and ultimately our customers
9 paid for it under the PGA. We paid for every bit of gas
10 that we put in that pipeline. Omega didn't pay for it.

11 So the imbalance that's being built up is
12 being built up from excess gas that all of us are putting
13 into the system. Omega's not nominating any gas, but
14 Omega's delivering gas to customers. You can draw your
15 own conclusions.

16 JUDGE WOODRUFF: Does Ameren pay for gas as
17 it's nominated or as it's used?

18 MR. LOWERY: As it's nominated. So we
19 nominate a certain amount, we pay for that.

20 JUDGE WOODRUFF: I guess we'll have to look
21 at the record for that. Mr. Byrne, did you want to say
22 something?

23 MR. DeFORD: Your Honor, there's certainly
24 no facts in the record to support that statement. I can't
25 imagine that that can possibly be the case.

1 contract. I'm sorry to take up so much time on this. The
2 contracts that the pipeline enters into with the
3 individual shippers, is that regulated by this Commission?

4 MS. SHEMWELL: They're in their tariffs.

5 MR. BROWN: That is precisely what is
6 regulated by the Commission.

7 JUDGE WOODRUFF: So the amount of lost gas,
8 is that in the tariff also?

9 MR. BROWN: Yes.

10 JUDGE WOODRUFF: In order to change that
11 contract provision, then, you have to come back to the
12 Commission for a tariff change?

13 MR. BROWN: Yes.

14 JUDGE WOODRUFF: Thank you. Go ahead.

15 COMMISSIONER GAW: Well, I've got to have a
16 question on that. Were all of the pipeline's customers
17 bound by that tariff provision?

18 MS. SHEMWELL: All of them -- we need to
19 look at the contracts. The contract does not specify an
20 amount in the tariff. It says that they will collect L
21 and U.

22 COMMISSIONER GAW: L and U, which is?

23 MS. SHEMWELL: Lost and unaccounted for
24 gas, fuel loss. The percentage is not actually shown in
25 the tariff, and that can change.

1 COMMISSIONER GAW: Well, what about the
2 affiliate and its L and U?

3 MS. SHEMWELL: They -- Omega also put L and
4 U into the system when they did actually nominate and
5 deliver.

6 COMMISSIONER GAW: But when they didn't
7 nominate?

8 MS. SHEMWELL: They wouldn't put any in.

9 COMMISSIONER GAW: But they were taking gas
10 out even when they weren't nominating?

11 MS. SHEMWELL: Yes.

12 COMMISSIONER GAW: Okay.

13 MR. BROWN: I'm prepared to move on to
14 Count 2. Count 2, did the pipelines violate the tariffs
15 by transporting natural gas to certain Omega customers
16 without an executed transportation agreement? Simple
17 answer, no. The evidence in this case includes invoices
18 for all volume transported on the pipeline systems for
19 2004, for 2005 and for three months of 2006. All volumes
20 shipped were subject to a valid and binding transportation
21 agreement as required by the pipeline's tariffs.

22 There's absolutely no evidence in the
23 record to the contrary. In fact, the gas that's at issue
24 in this count was shipped by the City of Cuba as a shipper
25 pursuant to an existing transportation agreement between

1 Cuba on the pipeline systems have been continuous, and
2 they existed for many, many years before Omega became
3 Cuba's agent.

4 The pipelines themselves are not privy to
5 these contracts between Cuba and Omega. The
6 transportation rights on the pipeline system are held by
7 Cuba, and Cuba, like other towns, exercised its choice to
8 designate Omega as its agent to administer that capacity,
9 and there's nothing in the world wrong with that. It's
10 privatization.

11 The transportation agreements between Cuba
12 and the pipelines do not limit which entities Cuba can
13 conduct business with in managing its transportation
14 capacity. In other words, this is not some sweetheart
15 deal where the pipeline said, we'll give you a
16 transportation contract, but if you want somebody to
17 market for you, it has to be our affiliate.

18 That's not what happened in this case. In
19 fact, Cuba previously had someone else marketing for them,
20 and they weren't required to choose Omega. There are
21 literally hundreds of marketing companies across North
22 America that provide this type of sales agency services
23 such as Omega provided.

24 Cuba was free to choose any one of them.
25 They chose Omega. There's nothing evil about this

1 relationship. Cuba exercised its right to choose Omega as
2 its agent. And as I pointed out several times, in the
3 four years prior to the Omega contract, Cuba used an
4 affiliate of another gas company to do what Omega is now
5 doing for the City of Cuba, and the name of that gas
6 company is in the record.

7 The agency sales agreement between Omega
8 and Cuba clearly states that Omega is Cuba's agent and
9 that Cuba still holds the capacity on the pipeline system.

10 Now, in order to work around this set of
11 facts, the Commission attempts to create a new definition
12 of shipper that has never before existed in the state of
13 Missouri and that has no application to any other shipper.
14 They attempt to redefine shipper, as I said earlier, as
15 anyone who owns gas on the system.

16 If you're going to apply that definition,
17 there's a certain city that's suddenly going to become a
18 shipper that's currently not a shipper. It's going to
19 cause problems throughout the system if you're going to
20 consistently redefine shipper.

21 Furthermore, if you're going to make it a
22 rule of general application, it needs to be promulgated as
23 a rule. It's never been a rule, it's never been the
24 definition, and it's unfair to change the definition of
25 shipper in order to get around this set of facts and this

1 business structure that was quite properly set up in this
2 case.

3 MS. SHEMWELL: Judge, I need to jump in
4 here.

5 CHAIRMAN DAVIS: Let me jump in here to ask
6 Mr. Bailey (sic) something real quick. Okay. Mr. Brown,
7 can you go to Exhibit 14 of Ms. Shemwell's stuff?

8 MR. BROWN: I will. I'll let you know when
9 I get there.

10 CHAIRMAN DAVIS: Get there. Get there for
11 me.

12 MR. BROWN: She's handing it to me. Thank
13 you.

14 CHAIRMAN DAVIS: Okay. You've got the
15 first page of her 14. I believe it's Exhibit 67,
16 Appendix C5 HC. So I'm going to try to -- okay. If you
17 look up at the top square, that's an -- or it's a balance
18 report. It's Missouri Pipeline Company balance report,
19 you know, and that's for one of your, quote, clients.
20 Now, they have their own separate sheet here.

21 MR. BROWN: Yes.

22 CHAIRMAN DAVIS: Okay. And you say -- and
23 then down there at the bottom, you've got the terms
24 negative imbalance means gas left on pipeline. Pipeline
25 owes shipper. Positive imbalance means additional gas

1 needed to ship to meet shipper's requirement. Shipper
2 owes pipeline. Just looking at this document on its face,
3 who is the shipper?

4 MR. BROWN: The way you determine the
5 shipper is there's an identifying number on here,
6 MP-1020-TAF. That is the City of Cuba. You can match
7 that to Exhibit 21, I believe.

8 CHAIRMAN DAVIS: Okay. And who's
9 MG-1012-TAF?

10 MR. BROWN: I'm trying to determine that.
11 Just a moment.

12 CHAIRMAN DAVIS: Here, we'll skip to the
13 very next page has Cuba's report. I don't see MP-120-TAF
14 anywhere in here, but I see MP-1025-TAF. Why is the --
15 why is Cuba not designated here on the second page?

16 MR. BROWN: Just a moment. Let me confer.

17 CHAIRMAN DAVIS: Okay.

18 MR. DeFORD: Your Honor, the problem we're
19 having is the dates on the two we're comparing from don't
20 necessarily match depending on the time period that we're
21 looking at.

22 CHAIRMAN DAVIS: These dates on Appendix --
23 Exhibit 67, Appendix C5H and Appendix E33 HC, these dates
24 match on my paper. They're January 1, '05 through
25 January 31st, '05. So these dates match.

1 MR. DeFORD: We're trying to match it with
2 the list of contracts, which is Exhibit 21. Maybe that
3 was --

4 MR. WOODSMALL: Your Honor, maybe I can
5 help here.

6 CHAIRMAN DAVIS: Help me, Mr. Woodsmall.

7 MR. WOODSMALL: Exhibits 23 and 24, I don't
8 know if they've been provided, but they're actually in the
9 record, are the transportation agreements between the
10 pipeline and the City of Cuba. The numbers are
11 MP-1025-TAF for the Missouri Pipeline Company, and the
12 Cuba contract for Missouri Gas Company is MG-1009-TAF. So
13 I believe counsel may have misspoke earlier when he
14 indicated that those were the Cuba contracts.

15 CHAIRMAN DAVIS: Right. What is
16 MP-1020-TAF?

17 MR. DeFORD: That's what we can't find on
18 this document, which means that I think that the time
19 periods don't match up.

20 MR. WOODSMALL: I haven't seen that
21 contract, but it's my understanding from other documents
22 that that is the identification number for Emhart.

23 MR. DeFORD: Might well be.

24 CHAIRMAN DAVIS: What's MG-1012-TAF? Do
25 you want to take a stab at that, Mr. Woodsmall?

1 MR. WOODSMALL: It's the corresponding
2 identification for the Missouri Gas Company. MP is
3 Missouri Pipeline Company, and there's a corresponding one
4 for Missouri Gas Company.

5 CHAIRMAN DAVIS: So is there anything on
6 this sheet of paper right here, on this balancing, this
7 daily gas control/contract balance report that indicates
8 that they are part of Cuba?

9 MR. BROWN: No, but here is what I would
10 say: They may not have been at that time.

11 CHAIRMAN DAVIS: Okay. That was a yes or
12 no question. I wasn't asking for an oratory there.

13 Okay. And then Cuba, at least in January
14 of '05, Cuba had a separate balancing report, correct?

15 MR. BROWN: It appears so, yes.

16 CHAIRMAN DAVIS: It appears so. Okay. So,
17 Mr. Brown, now, explain to me when you think this somehow
18 might have changed.

19 MR. BROWN: I don't know the answer to
20 that. I don't know what the record says about that. I
21 don't know that the record says anything about that. I
22 don't know that that question was asked during the course
23 of the hearing. The best I can do is to, as other people
24 have been doing when looking at these exhibits and
25 pondering questions that weren't asked and records that

1 weren't made during the hearing, is to speculate about it.

2 MR. WOODSMALL: Your Honor, I can answer it
3 straight up. If you turn to the first tab of the binder
4 that I gave you --

5 CHAIRMAN DAVIS: I'm here.

6 MR. WOODSMALL: -- that is all the
7 balancing and invoices for Fort Leonard Wood, Willard and
8 Emhart. The second tab are all Cuba. They have always
9 been separate. The balancing for the other customers have
10 never been rolled into the Cuba.

11 MR. BROWN: The question being, though,
12 what does it mean that there's a balancing report for
13 separate destinations of the gas? Does that mean
14 something? Does that mean something legally? Does that
15 imply something about the contractual status or who was
16 the shipper in a legal sense? I don't believe it does. I
17 think it may simply indicate you've got a piece of
18 software that you use to track end points and balancing
19 and you've got three different end points you want to
20 balance. It might easily be that.

21 I don't think that this is intended as a
22 legal document to indicate legally who is the shipper.
23 It's a balancing report indicating at this end point on
24 the system, are we in balance or are we out of balance.
25 That's what I would speculate.

1 The fact of the matter is there is a legal
2 contract that indicates who is the shipper and who is not
3 the shipper. There's a legal contract that indicates
4 who's the agent and who's not the agent. And I don't
5 think -- I would respectfully suggest that a balancing
6 report generated by a piece of software isn't going to
7 give you the legal answer as to the shipper.

8 CHAIRMAN DAVIS: Well, who was operating
9 that software? Was that your client?

10 MR. BROWN: Sure.

11 CHAIRMAN DAVIS: Okay. Well, is your
12 client responsible for operating that software?

13 MR. BROWN: Sure. But I don't think my
14 client was intending to make an evidentiary declaration
15 about who was the shipper when they were generating a
16 balancing report. They were balancing their system. That
17 was the purpose of generating that report was to balance
18 their system.

19 CHAIRMAN DAVIS: Right. But don't you
20 think this tribunal can draw inferences from the fact --

21 MR. BROWN: Yes.

22 CHAIRMAN DAVIS: -- that your client or one
23 of your -- I don't know. It's a little confusing about
24 who's actually here in this case. I don't know that Omega
25 is your client. But I guess what I'm asking is --

1 MR. BROWN: Yes, you're free to draw an
2 inference that they are the shipper based on that exhibit.
3 However --

4 CHAIRMAN DAVIS: Can you see how the fact
5 that all of the records point from -- appears to point
6 from MPC and MGC to these specific destinations and not to
7 Cuba leads one to draw the inference that it is, in fact,
8 you know, that Cuba's not really a part of this
9 transaction?

10 MR. BROWN: There is a legal definition of
11 what a shipper is that's included in the tariff and I
12 believe also in the regs. At a minimum it's in the
13 tariff. And I believe what the Commission -- would
14 respectfully suggest what the Commission should do is to
15 look to what is the legal definition of a shipper as
16 contained in the tariff and then apply that to the
17 contractual relationships and the entity relationships
18 that actually exist in this case and determine who was a
19 shipper and who was not a shipper and who -- the balancing
20 reports I think certainly should carry much less weight in
21 determining who is a shipper as opposed to the legal
22 relationships, as compared to the legal definition
23 contained in the tariff.

24 I think if you look at the legal definition
25 contained in the tariff and you look at the contractual

1 structure and you look at the roles that people played and
2 who had the transportation contract and who had the
3 capacity on the system, the answer is who had the capacity
4 on the system? It was the City of Cuba. That makes them
5 legally the shipper regardless of what the balancing
6 reports show. That would be our position.

7 CHAIRMAN DAVIS: And if that is true, if
8 the City of Cuba is legally the shipper, then -- let me go
9 back here and look. Okay. If you would look -- do you
10 have a copy of Mr. Woodsmall's binder?

11 MR. BROWN: No, but I believe I'm about to
12 receive one.

13 CHAIRMAN DAVIS: Okay. Well, if you look
14 at Appendix -- very first page, Appendix D1 HC, you've got
15 an invoice that says shipper, St. Peters office, care of
16 Omega Pipeline Company, attention David Ries.

17 MR. BROWN: Yes.

18 CHAIRMAN DAVIS: And then you've got --
19 okay. So is Omega Pipeline Company, in fact, the shipper?

20 MR. BROWN: No. It's going to the shipper
21 in care of Omega Pipeline Company, indicating that Omega
22 is not the shipper but it's going to them in care of.

23 CHAIRMAN DAVIS: Well, no. It doesn't
24 say -- it says St. Peters office. Now, I guess we can
25 have a discussion here about who the St. Peters office

1 actually is, whether that's Missouri Pipeline Company,
2 Missouri Gas Company, Omega Pipeline Company or somebody
3 else, but I'm not aware that the City -- I mean, I know
4 that there is a contract between the City of Cuba and
5 Omega, but I'm not aware that -- I mean, once again, I'm
6 looking at an invoice here that's prepared by your client
7 that doesn't seem to set out that there's this
8 relationship there.

9 It certainly doesn't give one the
10 appearance that they're following the corporate
11 formalities, and I'd like you to respond to that.

12 MR. BROWN: Honestly, I don't believe the
13 record is going to reflect the answer to that question,
14 and I don't know the answer to that question. I could
15 speculate, but I don't know that that does the Commission
16 any good.

17 CHAIRMAN DAVIS: Okay. Once again, we're
18 just drawing inferences here from the record, but here's,
19 you know, looking back, if you look at -- go back to D12,
20 you've got -- you know, here are two of the Omega
21 customers. You know, here's some other invoices for --

22 MR. BROWN: Actually, I think -- I think
23 what you're seeing is an invoice for Fort Leonard Wood,
24 and as to Fort Leonard Wood, Omega was the shipper. So
25 that would be consistent, that Omega should be listed as

1 the shipper on deliveries to Fort Leonard Wood because
2 that was the one instance in which they were in the role
3 as shipper. If you cross reference --

4 CHAIRMAN DAVIS: So was Fort Leonard Wood
5 the shipper for (name omitted) -- I'm sorry.

6 MR. BROWN: No. Fort Leonard Wood is not
7 the shipper for anyone.

8 CHAIRMAN DAVIS: Okay. So then I'm not
9 following what you just said, then.

10 MR. BROWN: Well, the first two numbers,
11 1103 --

12 CHAIRMAN DAVIS: I guess what I'm asking
13 is, why aren't Cuba's numbers designated on one of these
14 invoices as well?

15 MR. BROWN: I think the obvious answer
16 would be because Cuba had contracted with Omega to perform
17 that role. So Omega then is the contact to the pipeline
18 company. So from a business perspective in terms of who
19 are you going to bill, who are you going to deal with,
20 you're going to deal with the agent because the agent is
21 the one that's supposed to be taking care of that. It
22 doesn't change the legal question of who owned the
23 capacity on the system and, therefore, was legally the
24 shipper.

25 CHAIRMAN DAVIS: So Omega's Cuba's agent?

1 MR. BROWN: Yes.

2 CHAIRMAN DAVIS: Okay. Then why isn't Cuba
3 showing up on the invoice with Omega's other clients?

4 MR. BROWN: If you'll refer to Exhibit 21,
5 you'll recall that this particular confidential client
6 doesn't have a contract number --

7 CHAIRMAN DAVIS: Okay.

8 MR. BROWN: -- because they're not a
9 shipper.

10 CHAIRMAN DAVIS: Okay.

11 MR. BROWN: The question again becomes a
12 logistical question for the pipeline, how do they -- how
13 are they going to bill this logistically, who are they
14 going to send the bill, who is going to be listed on the
15 bill. It's a business question.

16 CHAIRMAN DAVIS: Okay. So I assume
17 since -- let me rephrase this another way. Since Cuba has
18 privity of contract with Missouri Pipeline Company --

19 MR. BROWN: Yes, a transportation contract.

20 CHAIRMAN DAVIS: So they get a bill
21 directly from Missouri Pipeline Company. It does not flow
22 through their agent; is that correct?

23 MR. BROWN: It may well go through the
24 agent. I don't know that we know the answer to that.

25 CHAIRMAN DAVIS: We don't.

1 MR. BROWN: But regardless of the flow of
2 the bill, once again, the definition of shipper depends on
3 who owns the capacity on the pipeline, and sending a bill
4 doesn't change who owns the capacity on the pipeline.
5 I can call them a shipper, I can send them a bill, but I
6 can't make them a shipper.

7 If they own the capacity on the pipeline
8 and they have a transportation contract, they are a
9 shipper. If they don't have those things, they're not a
10 shipper. They're either pregnant or they're not pregnant.
11 Whether I bill them or what I put next to their name isn't
12 going to change the legal fact of whether they're a
13 shipper or not.

14 CHAIRMAN DAVIS: Okay.

15 MS. SHEMWELL: Mr. Chairman, under the
16 Commission's definition of shipper in the affiliate
17 transactions rules, these companies would be shippers.

18 MR. BROWN: Again, that's the new novel
19 definition not supported by rule or tariff.

20 MS. SHEMWELL: There's nothing new or novel
21 about the Commission's own definition of shipper in its
22 own affiliate transactions rule.

23 MR. BROWN: The interpretation is new and
24 novel in this case.

25 MS. SHEMWELL: We didn't interpret. We

1 simply adopted the exact language of the affiliate
2 transactions rule.

3 CHAIRMAN DAVIS: All right. Thank you.
4 I'll pass for a while.

5 COMMISSIONER GAW: If I could just real
6 quickly follow up on that. What is the St. Peters office,
7 whoever knows?

8 MS. SHEMWELL: MPC and MGC's office at
9 Algana Court. Omega's also officed there.

10 MR. DeFORD: Omega is not officed there.

11 COMMISSIONER GAW: Omega is not officed
12 there?

13 MR. DeFORD: Omega was sold June 1, 2006.

14 COMMISSIONER GAW: Prior to that date?

15 MR. DeFORD: Prior to that date, that was
16 an accurate statement.

17 COMMISSIONER GAW: I'm sure it's in the
18 record. Somebody refresh my memory. Who was Omega sold
19 to?

20 MR. DeFORD: Tortoise Capital Resources.

21 MS. SHEMWELL: Tortoise Capital is a
22 private equity firm out of Kansas City.

23 COMMISSIONER GAW: A private equity firm?

24 MS. SHEMWELL: That's correct.

25 COMMISSIONER GAW: Is that incorporated?

1 MS. SHEMWELL: Yes.

2 COMMISSIONER GAW: A Missouri corporation?

3 MS. SHEMWELL: I don't believe so. Kansas,
4 I think. It's located in Kansas.

5 COMMISSIONER GAW: Was there information in
6 the record about who the owners of that corporation were?

7 MS. SHEMWELL: I don't believe so.

8 MR. DeFORD: I know that was the subject of
9 extensive discovery in depositions. I don't know if
10 any --

11 COMMISSIONER GAW: But there's not anything
12 in writing?

13 MR. DeFORD: It may have come in. I don't
14 recall whether the deposition transcripts of -- and I'm
15 not going to be able to recall the president, I think is
16 who the Staff deposed. My recollection is that may well
17 have come in.

18 MS. SHEMWELL: Matlack's deposition is
19 entered, Mr. Matlack. He's with Tortoise.

20 COMMISSIONER GAW: Did he describe some of
21 the background of that corp?

22 MS. SHEMWELL: Mr. Matlack is one of the
23 principals of tortoise. That deposition's in the record.

24 COMMISSIONER GAW: Okay. I'll refer to
25 that. Thank you. That's all I have.

1 JUDGE WOODRUFF: Go ahead.

2 MR. BROWN: Moving on then to Count 3. Did
3 the pipelines provide transportation services to their
4 affiliate Omega at a discounted rate, and if so should
5 this rate become the maximum rate which the pipelines
6 could charge for any of their nonaffiliated customers for
7 similar services, and then the issue of what a proper
8 remedy would be if so.

9 On this count, the Staff's entire case
10 rests on the allegation that Omega was charged lower rates
11 for transportation than other shippers who were not
12 affiliated with the pipelines. As we've made clear
13 repeatedly, that allegation is false, without support, and
14 is based on a fundamentally flawed understanding of
15 contract law and agency.

16 Omega, as I've repeatedly said,
17 consistently paid the highest rates of any shipper on the
18 pipeline system in its role as shipper at Fort Leonard
19 Wood. That is an undeniable fact. The question then was,
20 in its other role, acting as an agent for Cuba, can it be
21 said that Omega was acting as a shipper? And the answer
22 is no, because Cuba was the shipper in that case, because
23 Cuba's the one that owned the capacity, Cuba's the one had
24 the transportation contract. And all these other
25 deliveries to the so-called secret but actually not so

1 secret customers, Omega was in the role of an agent. Cuba
2 was the shipper.

3 So the question then is, well, what was the
4 rate that Cuba was charged? And guess what, Cuba's not an
5 affiliate, so it's not a violation of the affiliate
6 transaction rule.

7 Staff attributes the City of Cuba's
8 discount as a shipper to Omega, who is only acting as an
9 agent. In its analysis, the Staff incorrectly compares
10 rates for services regulated under transportation service
11 agreements between the pipeline and shippers, it compares
12 those apples with oranges, which are payment provisions
13 from gas sales and agency agreements between Omega and its
14 customers which were often for bundled sales. So you're
15 comparing bundled sales that include more than just
16 transportation with rates for just transportation.

17 COMMISSIONER GAW: Mr. Brown, pardon me for
18 interrupting. Did your client bring witnesses from the
19 City of Cuba and offer them in this case?

20 MR. BROWN: No, we did not.

21 COMMISSIONER GAW: And, in fact, was there
22 any testimony from representatives from the City of Cuba
23 in this case?

24 MR. DeFORD: No, there wasn't, your Honor.
25 The Staff did subpoena a representative of the City of

1 Cuba but choose not to put that person on the stand.

2 COMMISSIONER GAW: And is there any
3 evidence in the record that refutes the testimony that
4 was -- that was referred to by Ms. Shemwell earlier
5 regarding the knowledge of the City of Cuba and its
6 so-called position as a -- in relationship to Omega and
7 these other entities that your client evidently is
8 suggesting is being -- being that the capacity was being
9 subscribed to through Cuba?

10 MR. DeFORD: Your Honor, there may very
11 well be. I know there was extensive deposition testimony.

12 COMMISSIONER GAW: You can't point to any?

13 MR. DeFORD: Not off the top of my head,
14 sir. It may have actually even come up on
15 cross-examination of Mr. Ries. I simply don't recall.

16 COMMISSIONER GAW: Were there any contracts
17 between the City of Cuba and the other entities that are
18 at issue here as reflecting the position between the City
19 of Cuba and its capacity and those -- and those customers?

20 MR. DeFORD: Not to my knowledge.

21 COMMISSIONER GAW: So you haven't presented
22 any evidence that this relationship exists from a
23 contractual standpoint by putting in documents to that
24 effect?

25 MR. DeFORD: We have the contract between

1 the City of Cuba and the pipeline companies, and we have
2 the contract between the City of Cuba and Omega.

3 COMMISSIONER GAW: But not between the City
4 of Cuba and these other entities that we've been talking
5 about?

6 MR. DeFORD: No. Frankly, I don't know why
7 there would be such a contract.

8 MR. BROWN: The contract between the City
9 of Cuba and Omega would indicate the authority of Omega to
10 make these additional contracts.

11 MS. SHEMWELL: And if I may --

12 MR. BROWN: Or I mean to manage the
13 capacity.

14 MS. SHEMWELL: If I may jump in, we have in
15 your packet, these are Omega contracts. It's Exhibit 9.
16 The contract between Omega and the City of Cuba allows
17 Omega to schedule, nominate and administer the
18 transportation of natural gas and pay the monthly invoices
19 for transportation services provided by MPC and MGC and
20 any third-party transporter.

21 There is no language in here that we
22 believe reflects that Omega is authorized to market Cuba's
23 transportation capacity to any other customer, and that's
24 where Mr. Ries admits that Cuba didn't know. Certainly
25 there was no meeting of the minds. If Cuba didn't know,

1 and Mr. Ries is the one telling us that Cuba didn't know,
2 if he thinks Cuba didn't know, I'm guessing they didn't
3 know that their capacity was being marketed to others.

4 COMMISSIONER GAW: So is there a reflection
5 that capacity that Cuba -- I think this has been asked and
6 answered perhaps, but that Cuba received money for that
7 capacity?

8 MS. SHEMWELL: There's no indication
9 whatsoever that Cuba received any money for that capacity
10 or they surely would have known.

11 MR. BROWN: There's no -- there's nothing
12 in the record that shows what was understood to be meant
13 by you can manage the capacity. That --

14 COMMISSIONER GAW: Well, I guess the
15 question is who's got -- at some point who's got the
16 responsibility to show that? Mr. Lowery, did you have
17 something?

18 MR. LOWERY: Well, I would continue to
19 point you to this company's own documents which indicate
20 that the Cuba transportation contract is MP-1025-TAF, and
21 just customer C, for example, is an entirely different
22 number. So if that transportation to customer C is being
23 provided by Cuba's transportation contract, there's
24 something amiss there.

25 This Commission is free, as you know, as a

1 matter of law to draw reasonable inferences from the
2 evidence, and the standard in this case, I think, is a
3 preponderance of the evidence and that's all. And I think
4 that there is a plethora of evidence here that it would be
5 an extremely reasonable inference to draw that Omega was
6 the shipper and Omega was being charged less.

7 And I think to go to your burden of proof
8 question, Commissioner Gaw, I think that's all the burden
9 Staff has to meet. And perhaps there's -- perhaps the
10 pipeline company will point you to evidence of record that
11 rebuts that inference sufficiently, but I haven't heard
12 anything today that does.

13 MR. BROWN: We're focusing on the wrong
14 thing. I would challenge anyone here to point to the
15 evidence in the record that shows that Omega owned
16 capacity on the pipeline, which is the definition of a
17 shipper. All the evidence shows that Cuba owned the
18 capacity; therefore, Cuba was the shipper. Omega never
19 owned, other than in their role as shipper to Fort Leonard
20 Wood, in which case they did own capacity on the system --

21 MS. SHEMWELL: Mr. Brown should point out
22 where that definition is that they have to have title.
23 That's certainly not the Commission's definition.

24 COMMISSIONER GAW: If you want to answer
25 that --

1 MR. BROWN: They have to have a
2 transportation contract, is what they have to have.

3 COMMISSIONER GAW: I guess my question is,
4 if I have a -- if my neighbor has a car and I don't have
5 one, but when he's gone I go use it and then I take it
6 back, is that -- does that -- does that have anything to
7 do with what we've got right here? It sounds to me like
8 it's sort of similar.

9 MR. BROWN: It's not an issue of common
10 sense. It's an issue of a term of art. It's an issue of
11 a legal definition. It's an issue of --

12 COMMISSIONER GAW: I'm glad to hear you
13 admit that it's not an issue of common sense, Mr. Brown,
14 because there may be some common sense employed in trying
15 to decipher this record, and if it's not helping your
16 case, then I appreciate knowing that.

17 MR. BROWN: Well, now, that's not what I
18 mean. What I mean is there's a definition of the term in
19 the tariff. There's a definition of what a shipper is,
20 and you're required to have a shipping contract, a
21 transportation contract in order to be a shipper. And so
22 an analysis --

23 COMMISSIONER GAW: If you ship without a
24 contract, if you act like a shipper but you don't have a
25 contract, does that mean you're in violation of something

1 else?

2 MR. BROWN: That's a whole different
3 question, isn't it? I don't know.

4 COMMISSIONER GAW: It might be. I don't
5 know if we asked that question in this case.

6 MR. BROWN: It's not a case against Omega.
7 It's a case against the pipeline company.

8 MR. LOWERY: Commissioner, the argument
9 that's being made here is that these two affiliates can
10 decide not to sign a transportation contract to extricate
11 themselves from the definition of shipper so that they can
12 act like a shipper in all respects and do as a matter of
13 fact everything that a shipper does and then say, whoops,
14 we didn't have a contract, therefore we can't be a
15 shipper. That's the argument that's being made.

16 MR. BROWN: The City of Cuba is involved in
17 this as well, though. This is not something that -- some
18 slight of hand that the pipeline company engages in. The
19 City --

20 COMMISSIONER GAW: That's the --

21 CHAIRMAN DAVIS: But wait. Mr. Brown, show
22 me the evidence in the record that Cuba is actually the
23 shipper to these customers.

24 MR. BROWN: Cuba holds the transportation
25 contract under which the gas was delivered to these

1 customers, legally making them the shipper.

2 MS. SHEMWELL: I would note that --

3 CHAIRMAN DAVIS: No. No. That doesn't --
4 I mean, that's your legal argument, but I don't think
5 there's -- I don't think that constitutes evidence in the
6 record that proves it, that Cuba is, in fact, the shipper.
7 So do you want to take another -- you know, show me one
8 piece of paper in this record that says Cuba is the
9 shipper.

10 MR. BROWN: The real question is, was Omega
11 acting -- in what role was Omega acting in the
12 transactions at issue? They were acting as an agent of
13 the City of Cuba.

14 MS. SHEMWELL: Mr. Ries did not testify to
15 that, Judge. Pardon me.

16 CHAIRMAN DAVIS: Once again, you're saying
17 that -- Mr. Brown, you're saying that Cuba is the shipper,
18 correct?

19 MR. BROWN: The questions is --

20 CHAIRMAN DAVIS: No.

21 MR. BROWN: -- who is the shipper?

22 CHAIRMAN DAVIS: I'm asking you -- okay.
23 Who is the shipper?

24 MR. BROWN: The shipper to the three
25 customers at issue is the City of Cuba. City of Cuba owns

1 the capacity.

2 CHAIRMAN DAVIS: Show me a document in the
3 record that says Cuba is shipping to those three
4 customers. Show me any piece of paper in the record to
5 support that claim.

6 MR. DeFORD: Your Honor, I think if you'll
7 look at the testimony of Dave Ries and the company's two
8 experts who examined all of the documents, you'll be able
9 to pars through and find probably exactly what you're
10 looking for. I can't think off the top of my head where
11 those documents would be, but it certainly would be in the
12 sworn testimony of one of the three if not two of the
13 three of those witnesses.

14 CHAIRMAN DAVIS: Let me ask you this: I
15 was wanting to call you Mr. Lane again, but it's
16 Mr. DeFord. There is no paper trail, there is no written
17 invoice anywhere in this record that says Cuba is the
18 shipper to any one of these three customers, correct?

19 MR. DeFORD: Between Cuba and those
20 customers, I think that's correct.

21 CHAIRMAN DAVIS: Right. There is no
22 evidence in the record that says Cuba is, in fact, the
23 shipper?

24 MR. DeFORD: I believe there is testimony
25 to that effect.

1 CHAIRMAN DAVIS: Okay. You're saying that
2 there's testimony, but there's no written invoice, there's
3 no bill, there's no balancing statement, there's no
4 nothing else, correct?

5 MR. DeFORD: I don't know why there would
6 be, your Honor.

7 CHAIRMAN DAVIS: I'm sorry. Thank you.

8 MS. SHEMWELL: May I add something?

9 MR. BROWN: The legal issue being, if Omega
10 was acting as both an affiliate and a shipper, it can't be
11 given a preferential rate. If Omega was acting as an
12 affiliate and an agent of the City of Cuba, and the City
13 of Cuba has a preferential rate and that preferential rate
14 is passed on to -- is passed on, that being the issue.

15 JUDGE WOODRUFF: Passed on to who?

16 MR. BROWN: Passed on to the ultimate
17 recipient.

18 JUDGE WOODRUFF: Who would that be?

19 MR. BROWN: It would be the three customers
20 in this case.

21 JUDGE WOODRUFF: So the three customers got
22 the discount, is that --

23 MR. BROWN: Yes. I mean, it's -- I mean,
24 obviously there's profits being made along the way. But
25 the accusation is that Omega was given -- Omega was given

1 preferential treatment in the rate at which its shipping
2 contract existed. Omega only has one shipping contract
3 for Fort Leonard Wood. It's the highest rate on the
4 system. The City of Cuba has a preferential rate that it
5 uses as a shipper for its own gas that it consumes, and
6 using its excess capacity and privatizing the management
7 of that through the use of an agent, that capacity was
8 used to ship to these three customers. And Omega --

9 CHAIRMAN DAVIS: But wait. How can we be
10 sure it is, in fact, Cuba's capacity?

11 MR. BROWN: The question is --

12 CHAIRMAN DAVIS: No. I asked you a
13 question, Mr. Brown. Answer the question that was asked.

14 MR. BROWN: By reading the testimony that's
15 been cited to you of the witness Mr. Ries and the experts.

16 CHAIRMAN DAVIS: I believe we've had
17 testimony here previously, are you aware that one
18 Mr. Dennis Langley once repudiated, I believe it was some
19 of Mr. Ries' testimony? Do you know who Mr. Langley is.

20 MS. SHEMWELL: Mr. Monaldo's testimony.

21 CHAIRMAN DAVIS: Oh, it was Mr. Monaldo's
22 testimony. I apologize.

23 MS. SHEMWELL: May I point out something on
24 that?

25 CHAIRMAN DAVIS: Absolutely.

1 MS. SHEMWELL: Thank you. At the City of
2 Cuba, the point of delivery is the Cuba city gate. Secret
3 customer B is west of the Cuba city gate. So Cuba would
4 not have had any capacity beyond the Cuba city gate, so it
5 could not have delivered past that point.

6 MR. BROWN: The accusation is that the
7 pipeline gave a preferential rate to its affiliate as a
8 shipper. It did not. In its role as a shipper, its
9 affiliate paid the highest rate on the system.

10 The preferential rate or the good rate was
11 given to the City of Cuba in 1999, a longstanding contract
12 under which the City of Cuba consumed at a favorable rate
13 gas for itself and then contracted with first another
14 third party to manage its excess capacity and then later
15 contracted with Omega who happened to be an affiliate of
16 the pipeline.

17 CHAIRMAN DAVIS: Okay. So Cuba's contract
18 is to deliver gas to Cuba, correct?

19 MR. BROWN: Cuba has a -- I'm not trying to
20 dodge the question. I'm just trying to answer. Cuba has
21 a transportation contract with the pipeline company as a
22 shipper allowing it to ship, transport gas on the
23 pipeline.

24 CHAIRMAN DAVIS: Okay. On the pipeline to
25 Fort Leonard Wood?

1 MR. BROWN: We believe they can pick any
2 delivery point.

3 CHAIRMAN DAVIS: Okay. So you're saying
4 that Cuba can pick any delivery point that they want, that
5 they can ship it up -- I don't have the map in front of me
6 that denotes the three pipelines that sort of make this
7 up. So you're saying that, under the contract, that Cuba
8 could, in fact, deliver that gas anywhere it wanted to on
9 the pipeline?

10 MR. BROWN: I haven't reviewed that portion
11 of the contract. I don't know that there was expert
12 testimony on that. I don't know the answer to that as I
13 sit here. I don't know the answer. I wish I could be
14 helpful, but I don't know the answer.

15 MR. WOODSMALL: Your Honor, to answer your
16 question, Exhibit 24, the Cuba contract with Missouri Gas
17 Company specifically talks about points of delivery. Last
18 page, point of delivery is delivered to Cuba's city gate.
19 Doesn't mention anything about delivery to any other point
20 on the pipeline.

21 CHAIRMAN DAVIS: Okay.

22 MR. LOWERY: Your Honor, I might be able to
23 help on this point as well. I'm looking at the City of
24 contract Mr. Brown was referring to, and the delivery
25 point is shown as Franklin County, Missouri. That's the

1 only delivery point shown on this transportation
2 agreement, and Owensville is in Gasconade County.

3 CHAIRMAN DAVIS: Okay. Mr. Brown, do you
4 want to respond to those allegations?

5 MR. BROWN: I'm not -- as I sit here, I'm
6 not certain how they impact on the elements of the count.
7 As I sit here, I'm not clear on that. I'm trying to
8 understand that myself. What are the elements of this
9 count and how does that prove the elements of the count?

10 CHAIRMAN DAVIS: Okay. Well, if Cuba is
11 being allowed to deliver gas further on the pipeline than
12 what they've contracted for, then is that discrimination
13 that all the other parties aren't being allowed to deliver
14 gas elsewhere on the pipeline without being charged extra
15 for it?

16 MR. BROWN: The point being Cuba is not an
17 affiliate of the pipeline company, so it wouldn't be a
18 violation of the affiliate rule, which is what's charged
19 in the count.

20 CHAIRMAN DAVIS: Right. But Cuba's agent
21 is an affiliate of the pipeline company?

22 MR. BROWN: Correct. And our legal
23 position being, acting in a role as an agent, that doesn't
24 meet the elements of the count. Acting as a role of a
25 shipper, they'd be -- they'd be subject to violating the

1 elements of that count. The charge doesn't match the
2 facts. It's an interesting point, but it doesn't match
3 what was alleged in the case, and it doesn't prove what
4 was alleged in that count.

5 MR. WOODSMALL: Count No. 3 alleges a
6 tariff violation. That tariff provision does not swing on
7 the definition of shipper. The tariff says, the lowest
8 transportation rate charged to an affiliate shall be the
9 maximum rate that can be charged to non-affiliates. It
10 doesn't say affiliate shipper. It says affiliate.

11 CHAIRMAN DAVIS: If the affiliate is acting
12 as an agent for someone else, it doesn't matter. I mean,
13 they're still --

14 MR. WOODSMALL: This is all a red herring.

15 CHAIRMAN DAVIS: They're still an
16 affiliate.

17 MR. WOODSMALL: What essentially is
18 happening is they're trying to tie this to Cuba's
19 contract. Cuba's contract does not allow them to deliver
20 any place else on the pipeline. So it can't be tied to
21 this. So where's it coming from? It's coming from a
22 non-written transportation agreement with an affiliate.

23 That is all that's needed under this count.
24 It is a transportation rate charged to an affiliate.
25 Trying to tie it to Cuba's contract that doesn't allow

1 deliveries any place else is completely false. How can
2 you tie it to something that doesn't even allow that?

3 This is a non-written contract with an
4 affiliate for a discount rate, and that is all that's
5 needed under the provision, the lowest transportation rate
6 charged to an affiliate. Forget the Cuba contract.

7 MS. SHEMWELL: And the affiliate was
8 charged the lowest rate, but Cuba was not because they
9 have a bundled rate. So Mr. Ries --

10 CHAIRMAN DAVIS: If the affiliate is an
11 agent for someone else, doesn't that make -- they're still
12 an affiliate.

13 MS. SHEMWELL: Omega is an affiliate.

14 CHAIRMAN DAVIS: Right. And if Omega is an
15 affiliate, you can go act as an agent for anyone else, but
16 you're still an affiliate, correct?

17 MS. SHEMWELL: Absolutely.

18 MR. BROWN: The question is to the
19 principal. Rate is being charged to the principal.

20 MS. SHEMWELL: But the rate charged --

21 CHAIRMAN DAVIS: The question is, there's
22 still the eight --

23 MR. BROWN: The question is --

24 CHAIRMAN DAVIS: If the agent is taking on
25 the role as the principal, which, I mean, they certainly

1 are operating like it, because nobody in Cuba knows what's
2 going on --

3 MR. BROWN: An agent always acts for the
4 principal.

5 CHAIRMAN DAVIS: But if the affiliate is
6 acting as an agent, they're still an affiliate, are they
7 not?

8 MR. BROWN: But they're not the principal.
9 In order to violate the -- the question is, who is getting
10 the rate? The principal is the one that receives the
11 rate. An agent doesn't receive anything. An agent acts
12 for the principal, on the principal's behalf, and the
13 principal receives.

14 That's the nature of the fiduciary
15 relationship. That's the nature of the agency
16 relationship. The rate does not flow to the agent. The
17 rate flows to the principal. The agent is an
18 intermediary, but the agent is not the recipient of the
19 rate.

20 CHAIRMAN DAVIS: Okay. You just -- you're
21 saying that the agent is the, quote, intermediary, but
22 that's -- Omega's role here is a little bit more than an
23 intermediary here, isn't it, Mr. Brown?

24 MR. BROWN: They may --

25 CHAIRMAN DAVIS: I mean, aren't they

1 managing everything for --

2 MR. BROWN: Intermediary was a poor choice
3 of words. They are an agent who is managing the capacity.
4 Intermediary is a poor choice of words.

5 The question is, what are the elements of
6 this offense? What are the elements of this charge?

7 CHAIRMAN DAVIS: Right.

8 MR. BROWN: It is a preferential rate given
9 to who? Given to someone acting as an agent? We would
10 say no, that is not the element of this -- of this
11 offense. It is a preferential rate given to the
12 principal. That's what we believe the elements of this
13 charge are.

14 MR. WOODSMALL: Again, this all a red
15 herring. They are trying to make you believe that this is
16 all tied to some agency contract. How can it be tied to
17 that when the underlying transportation agreement doesn't
18 allow for deliveries anyplace else? The underlying
19 transportation agreement doesn't allow for any other
20 deliveries. It can't be tied to that.

21 So what do we have? We have Omega, who is
22 an agent for Cuba, also doing the side thing, an unwritten
23 transportation agreement with the pipelines for a discount
24 rate. Just because they're also an agent for Cuba doesn't
25 mean that they are not an affiliate shipper on the

1 pipeline without a transportation agreement. Don't -- the
2 agency --

3 CHAIRMAN DAVIS: Mr. Woodsmall, would you
4 agree that Mr. Ries would have strong reason to say, oh,
5 yes, this is Cuba's gas?

6 MR. WOODSMALL: He would have strong reason
7 to, yes.

8 MR. BROWN: The transportation contract --
9 it's an issue of capacity. The transportation contracts
10 which mete out the capacity on the pipeline have to match
11 up with the capacity on the pipeline. So, I mean, the
12 question whose capacity on the pipeline was being used?
13 And the answer is, it's the City of Cuba. The City of
14 Cuba was the shipper. It was their capacity.

15 MR. WOODSMALL: It is capacity on the
16 pipeline that is not being contracted out. They are using
17 excess capacity on the pipeline without a transportation
18 agreement. It is not -- you may want to think it's Cuba's
19 capacity, but it is --

20 CHAIRMAN DAVIS: Right. I guess,
21 Mr. Brown, this would be real easy for you to show that
22 the pipeline is fully subscribed and that, you know,
23 there's no possible way, I mean, if the pipeline's fully
24 subscribed.

25 MR. BROWN: Well, I don't believe the

1 burden here is we have to show there's no possible way.

2 CHAIRMAN DAVIS: Right. Maybe it's not
3 your burden, but certainly it's --

4 MR. BROWN: The question is, what are the
5 elements and did the Staff prove the elements by a
6 preponderance of evidence? We don't believe they have. I
7 believe we're working very hard around the edges to try to
8 see what's there, but our position is they have not shown
9 by the preponderance of the evidence the elements of this
10 count.

11 MS. SHEMWELL: Judge, may I approach?

12 CHAIRMAN DAVIS: Certainly.

13 MS. SHEMWELL: I'm going to show you
14 Exhibits 131 and 121. Cuba paid a bundled rate, 3.50,
15 under contract, 3.50. Here's what Omega was charged.

16 JUDGE WOODRUFF: You need to get to a
17 microphone.

18 MS. SHEMWELL: And here is an invoice from
19 Omega to Omega, and you can see here what Omega was
20 charged. This is Schedule 12-1, and that's Schedule 13-1.
21 So Cuba paid a bundled rate of 3.50, so they didn't get
22 any discount, but here's the discount off of the maximum
23 rate that Omega, billing Omega, got. This is 20 cents.
24 So Omega got this discount as the affiliate. Cuba never
25 got the discount, because they're paying a bundled rate.

1 CHAIRMAN DAVIS: Let me just make sure that
2 the court reporter gets that this is highly confidential
3 Schedule 13-1.

4 MS. SHEMWELL: And highly schedule
5 Schedule 12-1.

6 JUDGE WOODRUFF: Was that a schedule to one
7 of the depositions?

8 MS. SHEMWELL: I believe this is a schedule
9 to 67. 35 and 36.

10 JUDGE WOODRUFF: Exhibit 35 and 36 from the
11 hearing.

12 CHAIRMAN DAVIS: All right. Thank you,
13 Ms. Shemwell.

14 JUDGE WOODRUFF: Let's go back to
15 Mr. Brown, then. You may continue.

16 MR. BROWN: Thank you. I'm trying to
17 determine what question of my prepared argument is worth
18 making at this point.

19 Our bottom line position is the Staff is
20 assuming that the Cuba transportation rate should be
21 assumed to be an affiliate transportation rate when, in
22 fact, Cuba is not an affiliate of the pipeline companies.
23 It's a very simple analysis. It doesn't require a lot of
24 gymnastics to understand it. It's not an affiliate rate.
25 It was a rate negotiated, charged to Cuba.

1 Additionally, some of the rate comparisons
2 that have been made in the evidence in this case are
3 apples and oranges. As I mentioned earlier, you're
4 comparing a rate for service under a transportation
5 service agreement between the pipeline and the shipper
6 with a rate under a gas and sales agency agreement between
7 Omega and an Omega customer.

8 The Omega charges include bundled charges
9 for gas supply, transportation charges on other pipelines,
10 in addition to charges for transportation provided by
11 these pipelines. They can include a variety of other
12 services from Omega to its customers performing gas supply
13 function as well as charges for transportation.

14 It's not an apples to oranges comparison
15 when you say what's the rate under this contract. It's
16 not up to the jurisdiction of the Commission and can
17 include other things in addition to transportation. Let's
18 compare that apple to this orange, which is a shipper rate
19 and a contract between the shipper and the pipeline. It's
20 just not appropriate to compare those things.

21 Finally, any rate adjustment -- and we're
22 talking about the remedies that are requested here. Any
23 rate adjustment request is impermissible by law. The
24 Missouri Supreme Court has affirmed that in determining
25 rate changes and suspensions the Commission must consider

1 all relevant factors, including operating expenses and the
2 utility's rate of return.

3 The Commission has not heard all of the
4 relevant evidence to determine those issues in the course
5 of hearing this complaint. So the remedy of a -- the
6 remedy of a rate adjustment is not permissible in this
7 particular hearing based on the record that's been made.

8 Moving on to Count 4, did the pipeline
9 violate their tariffs by failing to report their offer of
10 discounted transportation services to their affiliate
11 Omega in their second quarter and third quarter 2003
12 reports? In fact, the pipelines did not charge Omega
13 lower rates than any non-affiliates, as we've repeatedly
14 gone over, but instead charged them rates higher than any
15 other shipper on the pipeline system.

16 This is just another version of the same
17 issue that we've seen previously, and it's going to
18 involve many of the same arguments. The pipeline's
19 tariffs require the reporting of all discounts to any
20 affiliate. The pipelines have complied with that
21 condition.

22 For instance, Missouri Gas Company reported
23 the only discount ever provided to Omega. There was a
24 discount provided. It was effective February 1 of 2005.
25 The Staff acknowledged this, that it received this report

6 The facts here are that because Omega had a
7 long-term ten-year contract with Fort Leonard Wood in
8 2005, they received a slight discount on the usage or
9 commodity rate. Even with that slight discount, the
10 uncontroverted fact is that based on the total rates
11 charged by the pipelines, Omega's combined rate was still
12 the highest rate charged to any customer on the pipeline
13 system.

22 The Staff fails to point to any specific
23 discount that was given to any shipper and not reported.
24 The evidence just simply fails on that count.

1 construct a lateral line for a certain customer to benefit
2 its affiliate Omega without demanding reimbursement from
3 either Omega or the customer in violation of its tariff?

4 The pipelines did not improperly build or
5 pay for a new delivery meter stationed on the Missouri Gas
6 Company's system. Line construction was a business
7 decision that was made for the benefit of Missouri Gas
8 Company. It was not made for the benefit of its affiliate
9 Omega. The line was extended to a customer that has
10 already increased the pipeline's revenues as a result of
11 extending that line, benefiting who? Benefiting the
12 pipeline.

13 Prior to extending the line, the pipeline
14 met with Staff to discuss what size and scope of project
15 would constitute an extension of the system versus simply
16 adding a delivery point off of the existing meter. This
17 is reflected in the record. The evidence shows that
18 during those discussions it was indicated to the pipelines
19 that if an extension was plus or minus a mile, a mile
20 either side of the pipeline, it was in reality a part of
21 the existing pipeline certificate.

22 The extension at issue in this count was a
23 meter situation for a new delivery point in an uncertified
24 area that had no utility franchise. It was all within the
25 existing right of way, so all on the same property that

1 the delivery was being made to. There was not even any
2 new right of way that had to be acquired in order for this
3 project to be completed. It was a tap and a short lateral
4 of about 1,400 feet and then a meter station. That is the
5 subject of this count.

6 Under the circumstances, there is no reason
7 to believe that it was necessary to seek any additional
8 authority prior to constructing the line at issue.
9 Further, no other shipper incurred any expense from the
10 construction of the line. Missouri Gas Company's not
11 filed a rate increase since the facility was put into
12 service. None of the costs of these facilities are
13 included in any currently effective rates. There's been
14 no violation of any law or tariff.

15 This is an issue of the prudence of the
16 pipeline's business judgment to seek additional business
17 by paying for, at its own shareholders' expense,
18 additional pipeline facilities based on a cost/benefit
19 analysis that it conducted for its shareholders. It's
20 really not a proper subject for scrutiny of this
21 Commission. It's simply a business decision.

22 That leads us to Count 6. Did the
23 pipelines violate the respective tariffs by providing
24 preferential terms? The Staff's witness Schallenberg
25 indicated that that count had been dropped. So unless --

1 assuming that the Commission will accept that, I have
2 nothing further to say on that count. And I think as was
3 indicated earlier, the exfoliation issue is well briefed
4 probably not worth additional argument.

5 JUDGE WOODRUFF: Commissioner Gaw or
6 Chairman, do you have any further questions?

7 COMMISSIONER GAW: I don't think I do.

8 JUDGE WOODRUFF: Well, thank you all very
9 much for your time today. It's been a long evening, and
10 with that, we are adjourned. Thank you very much.

11 WHEREUPON, the hearing of this case was
12 concluded.

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
19 My commission expires March 28, 2009.
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