

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

December 14, 2006  
Jefferson City, Missouri  
Volume 5

THE STAFF OF THE MISSOURI )  
PUBLIC SERVICE COMMISSION, )  
Petitioner, )  
vs. ) Case No. GC-2006-0491  
MISSOURI PIPELINE COMPANY, LLC, )  
and MISSOURI GAS COMPANY, LLC )  
Respondent. )

MORRIS L. WOODRUFF, Presiding  
DEPUTY CHIEF REGULATORY LAW JUDGE

JEFF DAVIS, Chairman,  
STEVE GAW,  
ROBERT CLAYTON, III  
CONNIE MURRAY,  
LINWARD "LIN" APPLING,  
Commissioners

REPORTED BY: Monnie S. VanZant, CCR, CSR, RPR  
Midwest Litigation Services  
3432 W. Truman Boulevard, Suite 207  
Jefferson City, MO 65109  
(573) 636-7551

1                   A P P E A R A N C E S

2   For Staff of the Missouri Public Service Commission:

3                   Ms. Lera Shemwell  
4                   and Mr. Steve Reed  
5                   Staff of the Public Service Commission  
6                   200 Madison Street  
7                   P.O. Box 360  
8                   Jefferson City, MO 65102  
9                   (573) 751-7431

10   For Office of Public Counsel and the Public:

11                   Mr. Marc Poston  
12                   Office of Public Counsel  
13                   200 Madison Street  
14                   P.O. Box 2230  
15                   Jefferson City, MO 65102  
16                   (573) 751-5558

17   For Missouri Pipeline Company and Missouri Gas Company:

18                   Mr. Paul DeFord  
19                   and Ms. Aimee D.G. Davenport  
20                   Lathrop & Gage  
21                   2345 Grand Boulevard  
22                   Kansas City, MO 64108  
23                   (816) 292-2000

24   For Municipal Gas Commission:

25                   Mr. David Woodsmall  
26                   Finnegan, Conrad & Peterson  
27                   428 E. Capitol Avenue, Suite 300  
28                   Jefferson City, 64111  
29                   (573) 893-8079

30   For AmerenUE:

31                   Ms. Colly Durley  
32                   Smith Lewis, LLP  
33                   111 South Ninth Street, Suite 200  
34                   P.O. Box 918  
35                   Columbia, MO 65205  
36                   (573) 443-3141

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

2 JUDGE WOODRUFF: All right. Let's come to  
3 order, please. Good morning, everyone, and welcome back  
4 to Day 2 of the hearing in GC-2006-0491. When we left off  
5 yesterday, Mr. Schallenberg was on the stand, and he is  
6 back there again today. And we're ready to begin with  
7 cross-examination from the pipeline companies.

8 Before we get started, is there anything else anyone  
9 wants to bring up this morning? Ms. Scheme?

10 MS. SHEMWELL: I'd just mention, Judge that  
11 Mr. Imhoff will likely not be available today. We will  
12 notify you tomorrow.

13 JUDGE WOODRUFF: All right. Thank you.

14 MS. SHEMWELL: Thank you.

15 JUDGE WOODRUFF: All right. Anything else?  
16 Then let's go ahead and get started with cross-examination  
17 from the pipeline company.

18 MR. DEFORD: Good morning, Mr. Schallenberg.

19 MR. SCHALLENBERG: Good morning.

20 JUDGE WOODRUFF: If you'd come up to the podium.

21 MR. DEFORD: I don't think there is a need. No  
22 questions. Thank you.

23 JUDGE WOODRUFF: All right. Very good. All  
24 right. And I have no questions from the Bench at this  
25 time, although the Commissioners may have when they're

1 done with agenda. So we may need to re-call you. I  
2 believe there was some cross-examination yesterday, so  
3 I'll give you an opportunity to redirect.

4 MS. SHEMWELL: I don't have any redirect. Thank  
5 you.

6 JUDGE WOODRUFF: All right. Well, then,  
7 Mr. Schallenberg, you can step down, and we -- you may be  
8 re-called later if the Commissioners have questions.

9 MR. SCHALLENBERG: Fine. Thank you.

10 JUDGE WOODRUFF: And I believe that's all the  
11 Staff witnesses at this point. Ameren has a witness,  
12 Mr. Massman. Is he ready to go now or do you want to  
13 wait --

14 MS. DURLEY: Let me confer with him just a  
15 moment.

16 JUDGE WOODRUFF: Okay.

17 MS. DURLEY: Yes, your Honor. He's prepared to  
18 go forward.

19 JUDGE WOODRUFF: Okay. Very good.

20 JUDGE WOODRUFF: Please raise your right hand.

21 JAMES MASSMAN,  
22 being first duly sworn to testify the truth, the whole  
23 truth, and nothing but the truth, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. DURLEY:

1 JUDGE WOODRUFF: You may be seated. You may  
2 inquire.

3 MS. DURLEY: Thank you.

4 Q (By Ms. Durley) Would you please state your  
5 name?

6 A My name is James Massman.

7 Q And, Mr. Massman, are you here on behalf of  
8 Ameren, who is an intervenor in this action?

9 A Yes, I am.

10 Q And have you submitted written testimony  
11 previously?

12 A Yes, I have.

13 Q And do you have any corrections or revisions to  
14 that testimony at this time?

15 A Not that I know of.

16 MS. DURLEY: Your Honor, we would like to move  
17 for the admission of Exhibit No. 700, which is his written  
18 testimony.

19 JUDGE WOODRUFF: All right. Exhibit No. 700 has  
20 been offered into evidence. Are there objection --  
21 objections to its receipt? Hearing none, it will be  
22 received into evidence.

23 (Exhibit No. 700 was admitted into evidence.)

24 JUDGE WOODRUFF: And for cross-examination -- I  
25 don't need a copy of it. Cross-examination, we would

1 start with Public Counsel, and they're not present in the  
2 room right now. Municipal Gas Commission is also not  
3 present right now. So we'll go to Staff.

4 CROSS-EXAMINATION

5 BY MS. SHEMWELL:

6 Q Good morning, Mr. Massman.

7 A Good morning.

8 Q I'm Lera Shemwell. I represent the Staff in  
9 this case, and I have a few questions for you this morning  
10 if that's okay.

11 A Yes.

12 Q Would you tell us your position at Ameren?

13 A I'm the Manager of Gas Supply.

14 Q What does at that mean?

15 A I'm responsible for the -- the oversight of the  
16 intra-gas purchases, negotiation of transportation,  
17 operations of gas supply. And this is for three different  
18 groups. I have the AmerenUE, local distribution company,  
19 the generation, the gas power generation group and then  
20 end user transportation group.

21 Q What does that mean, end user transportation  
22 group?

23 A These are large customers that provide their own  
24 transportation and gas supply. They trans -- also  
25 transport across our pipelines to their facilities.

1           Q     Does that include Missouri Pipeline Company and  
2     Missouri Gas Company as part of that?

3           A     They do have -- there are end user transport --  
4     transporters that are behind Missouri Gas and Missouri  
5     Pipe.

6           Q     Are you familiar with Ameren's Missouri tariffs?

7           A     Yes.

8           Q     When did you find out that Omega served Fort  
9     Leonard Wood?

10          A     I guess as part of the -- the investigation for  
11     this -- this case.

12                   MS. SHEMWELL:  I can't discuss HC with  
13     Mr. Massman; is that right, Judge?

14                   JUDGE WOODRUFF:  Right.

15          Q     (By Ms. Shemwell)  Were you aware that Omega  
16     served any other customers along the pipeline?

17          A     I'm not very familiar with Omega.

18          Q     Okay.  You don't have access to information  
19     about other transporters on the system, then; is that  
20     correct?

21          A     Customers that are transporters on us, they are  
22     required to nominate through our system to let us know how  
23     much gas is going to be transmitted through them.  So we  
24     do have that information.

25          Q     Okay.  My question was -- let me ask it a

1 different way. Transporters that are not customers of  
2 Ameren, are you aware of them?

3 A We don't have that information.

4 Q Do you know about any -- the other marketers,  
5 customers? Let me ask, do you know about who ONEOK's  
6 customers might be?

7 A Whenever an end user has hired someone like  
8 ONEOK to -- to manage their gas supply, that company,  
9 ONEOK, for example, would provide the nominations onto our  
10 system. So we could see who the supplier was and  
11 providing those volumes for this particular customer of  
12 ours. So we -- we would see that information.

13 Q How were they a customer of both Ameren's and  
14 ONEOK?

15 A It -- they're a customer of Ameren through the  
16 transportation through our small -- our short distribution  
17 system. They're customer of, say, ONEOK for the long haul  
18 on the interstate pipeline and for the supply.

19 Q Do you take gas on the system through Panhandle  
20 Eastern only?

21 A I'm sorry?

22 Q Let me be clear. Into the system?

23 A Okay. Into the Missouri Gas, Missouri Pipe  
24 system?

25 Q Yes.



1           A     Yes. We bring in gas from Panhandle Eastern.  
2     We nominate into Missouri Pipe. And the gas that goes  
3     into Missouri Gas is then nominated from Missouri Pipe on  
4     to Missouri Gas.

5           Q     Is Ameren allowed to deliver gas that it doesn't  
6     nominate on Missouri Pipeline?

7           A     No. We are required to nominate the volumes  
8     that we intend to use in the day. There will be  
9     imbalances that occur due to, you know, inaccuracies and  
10    weather forecasting and low forecasting.

11          Q     There's a 10 percent in balance in MPC's tariff;  
12    is that correct?

13          A     That's correct.

14          Q     And has Ameren stayed within that 10 percent  
15    permitted variance for imbalance?

16          A     I believe probably 99 percent of the time, we  
17    have. There may have been once or twice where we may have  
18    exceeded that.

19          Q     On any day that your customers are taking gas,  
20    Ameren's required to put gas into the system; is that  
21    correct?

22          A     Yes.

23          Q     Ameren's not permitted to buy only 50 percent of  
24    what it needs for the day, correct?

25          A     No. If -- if they did, we would have

1 significant in balance penalties because of that.

2 Q Is Ameren allowed to deliver gas only on the  
3 first of the month, say the first three days of the month  
4 into the system?

5 A And not the rest of the month?

6 Q Yes.

7 A No.

8 Q Are you allowed to deliver for just 15 days of  
9 the month?

10 A I -- no. We are -- we are required to balance  
11 daily -- have our -- have our nominations match -- our  
12 daily demand and nominations match, basically, scheduling  
13 what we anticipate to use each day.

14 Q If there's a new delivery point on the MPC or  
15 MGC system, would Ameren expect to find out about that  
16 through MPC's tariffs?

17 A I have not seen any changes to MPC's tariffs in  
18 the last few years.

19 Q The question was, Mr. Massman, if there is a new  
20 delivery point, would you expect to find out about that  
21 through the tariffs?

22 A We typically find out through other pipeline  
23 tariffs or other pipeline bulletin boards if that's the  
24 case.

25 Q Ameren does file transportation fees with the

1 pipeline company, correct? Transportation agreement is  
2 required by MPC's tariff?

3 A Please repeat that question again.

4 Q Ameren is required to provide transportation  
5 agreements to the pipeline companies?

6 A Transportation agreements between us and our end  
7 user transporters or --

8 Q No. Between you and the companies. Have you  
9 filed transportation agreements with them as required by  
10 their tariffs?

11 A Yes. We -- yes. We have transportation  
12 agreements between AmerenUE and Missouri Pipeline and  
13 Missouri Gas.

14 Q Have you negotiated with Mr. Ries concerning  
15 your relationship with the pipeline companies?

16 A We have some contracts, discount agreements that  
17 have recently expired, and we are negotiating with Mr.  
18 Ries on extending those.

19 Q Can you say in public how much the discounts  
20 have been?

21 A No. That would be highly confidential. I'm  
22 sorry.

23 Q Perhaps if we run into something else, we'll go  
24 in-camera at the end.

25 All right. Do you agree with me that often

1 unaccounted for gas is gas that Ameren puts into the  
2 system by the pipeline that it will either lose or use?  
3 Do you have a better definition of lost and unaccounted  
4 for than that?

5 A That's a fair description of lost and  
6 unaccounted for.

7 Q Can you say your percentage of lost and  
8 unaccounted for? Is that public?

9 A For AmerenUE?

10 Q Yes.

11 A Yes. That's about 2 percent.

12 Q That you pay -- that you give to the pipelines?

13 A I'm sorry. I'm thinking of AmerenUE  
14 distribution system.

15 Q Okay. What is your percentage that you put in  
16 for the pipelines?

17 A I believe it's about .43 percent.

18 Q Has it been a different percentage since 2002?

19 A Yes. Recently, it was about .5 percent.

20 Q Do you have an opinion as to whether or not  
21 that's a fairly typical amount?

22 A We -- we don't have any data to -- to make that  
23 assumption. We don't know if it's been audited.

24 Q Do you know if there's compression on the  
25 pipelines, MPC and MGC?

1           A     There's no compression on Missouri Pipe or  
2     Missouri Gas.

3           Q     Do you agree with me that compression is a  
4     common use of the lost and unaccounted for gas?

5           A     Typically, it's the largest use of the lost gas.

6           Q     We discussed Ameren's percentage. Did you get  
7     an explanation -- did Ameren's lost and unaccounted for  
8     percentage increase in October 2004?

9           A     It did increase in the past. I can't remember  
10    the date that it did. It increased from .43 to .5. And  
11    then just recently, it was reduced back to .43.

12          Q     Were you given an explanation for the increase?

13          A     I don't recall what the explanation was.

14          Q     What happens on a pipeline if the pipeline is  
15    receiving lost and unaccounted for gas and it's not using  
16    or losing that gas?

17          A     Then it would have extra gas available to it.

18          Q     And that would continue to accumulate, correct?

19          A     Yes.

20          Q     Is it your -- do you know that -- if that  
21    belongs to the pipelines? Does that become the pipeline's  
22    gas?

23          A     The pipeline will have collected that gas to  
24    recover any that's lost or unaccounted for, so it becomes  
25    theirs.

1           Q     Are you aware of whether or not MPC and MGC is  
2 permitted to sell gas?

3           A     They are -- they are a transporter. They're not  
4 allowed to be in the merchant function of selling natural  
5 gas.

6           Q     So is your answer, no, they can't?

7           A     No.

8                     MR. DEFORD: Your Honor, I'm going to object.  
9 This is very much like direct testimony. We went through  
10 this yesterday, I think with Mr. Woodsmall. There  
11 certainly doesn't seem to be any hostile examination here.  
12 I don't understand.

13                    I mean, this is -- this is information that  
14 could have come in on -- on direct or certainly could have  
15 come in on surrebuttal.

16                   MS. SHEMWELL: I'm being as hostile as I can,  
17 Judge.

18                   MR. DEFORD: To -- to a very friendly witness.  
19 I -- I understand that.

20                   MS. SHEMWELL: Actually, you know, there is no  
21 actual objection, friendly cross. And the -- what would  
22 happen in the court was someone would say, Okay, it's  
23 duplicative. This isn't duplicative.

24                   Staff has the burden to prove its case. Part of  
25 our case and a big part of our case is that affiliates

1     were treated differently than non-affiliates.

2     Mr. Massman is a non-affiliate, and I am getting from him  
3     the differences in the treatment. And I think it's very  
4     important information for this Commission to have.

5                 MR. DEFORD: Your Honor, in Court, there is no  
6     prepared testimony. This -- this is a unique proceeding.  
7     We do this all the time. If -- if we're not going to --  
8     to follow the -- the rules of filing prepared direct  
9     testimony, rebuttal testimony, surrebuttal testimony, then  
10    there's -- there's, frankly, no point.

11                We might as well just conduct this as if it were  
12    in Circuit Court, which, frankly, would in most  
13    circumstances be fine with me. But we've got the rules.  
14    We've lived by the rules.

15                JUDGE WOODRUFF: You're correct. There is a  
16    rule that requires Staff to make its case in direct  
17    testimony. And Staff is also correct that there is no  
18    rule that forbids friendly cross. And that's obviously  
19    what the situation is we're in here.

20                I'm going to go ahead and allow -- allow this  
21    line of questioning.

22                MS. SHEMWELL: Thank you, Judge.

23                Q     (By Ms. Shemwell) Mr. Massman, we were talking  
24    about lost and unaccounted for gas, and I believe that we  
25    had raised the question where if it's not lost or used, it

1 just continues to build up on the system, correct?

2 A That's correct.

3 Q Were you ever asked to reduce the percentage of  
4 lost and unaccounted for gas that you were putting into  
5 the system?

6 A Originally, it was .43. Then it was increased.  
7 We were asked to increase the amount. And recently it was  
8 reduced back to .43. So, yes, we were.

9 Q Have you ever been asked not to put in any lost  
10 and unaccounted for gas for any day?

11 A Not that I'm aware of.

12 Q Operational problems are created by excess gas  
13 on the system; is that correct?

14 A That can cause problems.

15 Q Did you ever become aware of either excess  
16 pressure on the system or inadequate pressure on the  
17 system?

18 A Our Wentzville area is a fast-growing area and  
19 it's critical. We watch the pressures there very closely.  
20 We have not had a situation yet where it has actually  
21 hampered our operation, though.

22 Q Have you been asked to reduce usage of gas -- do  
23 you have interruptible customers? Let me ask that first.

24 A Yes.

25 Q And have you been asked to interrupt those



1 customers?

2 A I don't recall if there was an instance where  
3 we've had to interrupt them as of yet.

4 Q Is -- who does the marketing for the system, for  
5 Ameren looking for customers in this territory?

6 A As far as bundled customers, full --

7 Q Yes.

8 A -- responsibility customers? Our own AmerenUE.

9 Q Marketers?

10 A Well, we have a -- customer service  
11 representatives.

12 Q Who market to industrial customers,  
13 municipalities?

14 A Well, customers that are within our certificated  
15 service area.

16 Q If you get a new customer -- let's just say you  
17 get a new customer and it's an industrial customer. Do  
18 you have to inform the pipelines where you will take that  
19 customer's gas?

20 A If we have a new customer, it now becomes an  
21 addition to our load for the system. Oftentimes, it's  
22 already behind an existing gate station. We'll normally  
23 just pick up the additional load in our forecast, and  
24 we'll make our nominations to the pipelines. It will be  
25 included in that if they are a full responsibility

1 customer of ours.

2 Q What if they are not behind another system?

3 A Are you -- are you saying they're --

4 Q Let me clarify. I'm asking if you get, let's  
5 say, an industrial customer, for example, that's not  
6 behind a city gate and you needed to set up a new delivery  
7 point, how would you deal with that?

8 A If it's -- if it's close enough to the pipeline  
9 where it would be directly connected to the pipeline where  
10 there wouldn't be already existing facilities there, we  
11 would -- AmerenUE would build those facilities.

12 It would be probably a new gate station, new  
13 piping. We would connect the -- the new customer with  
14 that. So that would become the new distribution -- new  
15 portion of our distribution system.

16 Q Does Ameren have an area certificate to build  
17 pipelines to customers like that?

18 A Yes.

19 Q If you add a new meter station on the pipeline,  
20 do you have to inform the pipeline?

21 A Yes. We work with the pipeline to -- to have  
22 that installed.

23 Q Who would you work with at the pipeline?

24 A It would be -- it would be -- if it was Missouri  
25 Pipe or Missouri Gas, it would be Mr. Ries.

1           Q     All right. I have a couple of questions on your  
2     rebuttal testimony. On page 2, like 12, you mentioned  
3     Ameren end user transportation group, correct?

4           A     Page 2, line 12?

5           Q     Yes. Of your rebuttal.

6           A     Okay. That says, "By whom are you employed and  
7     in what capacity?"

8           Q     I'm looking at -- I have, "What are your duties  
9     and responsibilities."

10          A     Oh, I'm sorry. Page -- page 3 for me. Yes.

11          Q     Yes. If you count your cover sheet --

12                   MS. DURLEY: That's it.

13          A     Okay. Thank you.

14          Q     (By Ms. Shemwell) This group just provides  
15     transportation; is that right?

16          A     This group provides more administrative  
17     information on volumes of gas, provides information to our  
18     control group as far as nominations and schedules that are  
19     large shippers that are transporters we will use. And  
20     then they also provide billing.

21          Q     Do any of -- which of your customers pay the  
22     maximum rate on the pipeline system? Do you have any?

23          A     On -- on the AmerenUE system?

24          Q     No. On MPC and MGC, do you pay the maximum  
25     rate?

1           A     Does AmerenUE pay the maximum rate?

2           Q     Yes.   Yes.

3           A     Right now, we are at maximum tariff rates for  
4     several of the contracts.  I believe there's one that has  
5     a small discount on the commodity.

6           Q     And you passed that rate through to your  
7     customers?

8           A     Correct.

9           Q     What's a reservation rate or a reservation  
10    charge?

11          A     It's basically a fixed charge that -- that you  
12    pay each month for the -- the right to have a certain  
13    amount of capacity for transportation.

14          Q     Are you permitted to use a transportation -- do  
15    you hold transportation -- does Ameren hold transportation  
16    on the system?

17          A     On Missouri Pipe and Missouri Gas, yes.

18          Q     And are you permitted to use that transportation  
19    that you hold from one customer to deliver to a different  
20    customer?

21          A     AmerenUE owns it's transportation, cover all of  
22    its -- all of its transportation, or all of its customers  
23    in -- in total.

24          Q     Okay.

25          A     Sort of aggregate all the customers behind these

1 -- these four contracts.

2 Q Do you have sufficient capacity to deliver to  
3 each individual customer to meet their needs?

4 A Yes.

5 Q I'm asking you, would you use one customer's  
6 capacity and overlap with another customer?

7 A Do you mean counting capacity twice?

8 Q Okay. Yes.

9 A No.

10 Q If a marketer -- let's just speak in a --  
11 hypothetically. If a marketer -- you, as a marketer, had  
12 access to the information about every other marketer on  
13 the pipeline, would you have an advantage? The customers,  
14 the prices? The quantities?

15 A Yes.

16 Q Would that be helpful to you in terms of your  
17 marketing?

18 A If -- if I was a marketer, that would be -- that  
19 would be helpful information to understand the market and  
20 what -- what prices I could -- could charge.

21 Q I have one last question for you. We talked  
22 about Ameren building -- or constructing a line to a  
23 particular industrial customer. Does Ameren pay for that,  
24 or does the customer pay for that, the construction of  
25 that line?

1           A     If -- if the customer becomes an Ameren  
2     customer, Ameren will pay for that. There may be some  
3     other negotiations with that customer between Ameren and  
4     the customer. There may be some additional charges that  
5     they have because of other requirements. But Ameren would  
6     pay that to the pipeline.

7           Q     Would pay for the construction of the pipeline  
8     itself?

9           A     Yes, yes.

10          Q     Under your area certificate?

11          A     Correct.

12          Q     Correct.

13                MS. SHEMWELL: That's all I have. Thank you,  
14     Judge.

15                JUDGE WOODRUFF: Thank you, Ms. Shemwell.

16     Cross-examination for the pipeline companies?

17                MR. DEFORD: No questions, your Honor.

18                JUDGE WOODRUFF: All right. We'll come up then  
19     for questions from the Bench. Commissioner Murray?

20                COMMISSIONER MURRAY: Thank you.

21                               CROSS-EXAMINATION

22     BY COMMISSIONER MURRAY:

23           Q     I -- I wish I'd been listening a little more  
24     closely right then with that last question.

25                Regarding that -- the construction of the

1 additional pipeline issue, what -- what was your answer,  
2 that if Ameren constructed -- had made such construction,  
3 Ameren would have paid for it? Is that what you said?

4 A Yeah. Typically, the shipper will pay. I'm  
5 sorry. Typically, the shipper will pay for the  
6 construction of the meter station and the lateral serving  
7 that new load.

8 Q The shipper will?

9 A Yes.

10 Q But in terms of any additional pipeline  
11 construction --

12 A From -- from -- from the pipeline, once -- once  
13 they make the connection into the pipeline, it is our  
14 responsibility from that point.

15 If there's any additional requirements on the  
16 main pipeline, for example, Missouri Pipe and Missouri  
17 Gas, they may require us to pay some additional for that  
18 if they need to put in additional regulation of some sort  
19 for that. They may have some additional requirement that  
20 we would have to pay. But we would be responsible for  
21 making the connection to the pipeline and then the  
22 pipeline back to the customer.

23 JUDGE WOODRUFF: Mr. Massman, you need to stay  
24 closer to the microphone.

25 A Okay.

1           Q     (By Commissioner Murray) Okay. So that's -- I  
2 think what you're telling me it's somewhat of a case by  
3 case scenario of --

4           A     Typically, the shipper will pay for the -- the  
5 interconnection and the facilities from the pipeline to  
6 their -- their customer, the shipper being, in this  
7 example, AmerenUE.

8           COMMISSIONER MURRAY: All right. Thank you. I  
9 think that's all I have.

10          JUDGE WOODRUFF: Commissioner Appling, do you  
11 have any questions?

12          COMMISSIONER APPLING: No questions, Judge.

13          JUDGE WOODRUFF: All right. Then back for  
14 recross. Municipal Gas Commission?

15          MR. WOODSMALL: (Mr. Woodsmall shakes head.)

16          JUDGE WOODRUFF: Public Counsel is not here.  
17 Staff?

18          MS. SHEMWELL: Just very briefly. Yes.

19                        RE CROSS EXAMINATION

20 BY MS. SHEMWELL:

21          Q     Mr. Massman, you told Commissioner Murray that  
22 the shipper pays. Are MPC and MGC shippers on MPC and MGC  
23 lines?

24          A     MPC and MGC are the transporters to the  
25 pipeline.



1 Q They're not the shippers?

2 A We, AmerenUE, is the shipper because we have  
3 contracted the capacity on them and we ship our gas off of  
4 their transporters.

5 Q Is your answer that MPC and MGC are not  
6 shippers?

7 A Correct. They are the transporters.

8 MS. SHEMWELL: Okay. That's all I have.

9 JUDGE WOODRUFF: Anything for the pipeline?

10 MR. DEFORD: Just one, your Honor.

11 JUDGE WOODRUFF: Go ahead.

12 CROSS-EXAMINATION

13 BY MR. DEFORD:

14 Q Mr. Massman, if Ameren is expanding its facility  
15 as an LDC to a new customer or new customers, would Ameren  
16 reason pay for that extension?

17 A Yes.

18 MR. DEFORD: Thank you. That's all I have.

19 JUDGE WOODRUFF: Thank you. Any redirect?

20 MS. DURLEY: Yes, your Honor.

21 REDIRECT EXAMINATION

22 BY MS. DURLEY:

23 Q Jim, back here. I just have a few questions to  
24 clarify some testimony that you gave when Ms. Shemwell was  
25 first asking you questions.

1 Does Ameren have a non-regulated marketing  
2 affiliate?

3 A For selling natural gas, no.

4 Q All right. What about Ameren Energy Marketing?  
5 What is that?

6 A Ameren Energy Marketing is for the -- the power  
7 side of the company. We buy and sell electrical power.

8 Q All right. And does Ameren Energy Marketing  
9 market non-regulated gas sales in Missouri?

10 A No.

11 Q Okay. And did Ameren terminate its gas retail  
12 functions several years ago?

13 A Yes, it did.

14 Q All right. And did AME, that's Ameren Energy  
15 Marketing, share employees with AmerenUE?

16 A No.

17 MS. DURLEY: Okay. That's all I have, your  
18 Honor.

19 JUDGE WOODRUFF: Thank you. Then, Mr. Massman,  
20 you can step down.

21 MR. MASSMAN: Thank you.

22 JUDGE WOODRUFF: And I believe that's all  
23 testimony for Ameren. We'd be ready now to go for  
24 evidence -- take evidence from the pipelines.

25 However, we're going to take a short break

1 before we do that. We'll come back at 9:15.

2 MS. SHEMWELL: Judge, before we go off the  
3 record, may I ask if the Commission will have questions  
4 for Mr. Schallenberg?

5 JUDGE WOODRUFF: That's the reason for the  
6 break.

7 MS. SHEMWELL: Thank you, sir.

8 (Break in proceedings.)

9 JUDGE WOODRUFF: All right. Let's come to  
10 order. We're back from our break. Ms. Shemwell, what is  
11 the situation with Staff's case at this point?

12 MS. SHEMWELL: Judge, Mr. Schallenberg is  
13 prepared for Commission questions, if necessary. I would  
14 point out that Mr. DeFord waived cross on Mr. Schallenberg  
15 and didn't challenge his testimony.

16 But he is ready for questions, and that would  
17 seem the natural flow of things if the Commission has  
18 questions.

19 Then we would like to present some evidence from  
20 two of the witnesses whose depositions have been entered  
21 into evidence. And we propose to have certain sections  
22 that we have designated, and we will give to all of the  
23 attorneys read into the record.

24 JUDGE WOODRUFF: All right. Let's go ahead and  
25 deal with Mr. Schallenberg first. I believe there are a

1     few questions.

2                   Mr. John, you can step down. We'll bring you up  
3     in a minute.

4                   Mr. Schallenberg, if you could come back up to  
5     the stand. And, Mr. Schallenberg, you were sworn  
6     yesterday. I think I swore you in twice yesterday, so  
7     you're -- you're doubly obligated.

8                   MR. SCHALLENBERG: I understand.

9                   JUDGE WOODRUFF: All right. Commissioner  
10    Murray, you can go ahead and ask your questions.

11                                   CROSS-EXAMINATION

12    BY COMMISSIONER MURRAY:

13           Q     Good morning, Mr. Schallenberg.

14           A     Good morning.

15           Q     Unfortunately, we've got so much on our plate  
16    right now, it's difficult to be organized. But I will try  
17    not to prolong this too badly.

18                   I'm going to begin with the -- I'm -- I'm just  
19    going to try to go through this systematically so that I  
20    can be clear on exactly what Staff is alleging and exactly  
21    where Staff is presenting evidence to support those  
22    allegations.

23                   So in looking at the issues listed, it's Staff's  
24    position that MPC and MGC violated the terms of their  
25    tariffs and the Commission affiliate transaction rules by

1     permitting Omega Pipeline Company to use confidential  
2     customer information in a discriminatory manner for each  
3     of Omega's contract with customers served by MPC and MGC;  
4     is that correct?

5           A     Yes.

6           Q     All right. Now, can you tell me -- can you  
7     point to the specific terms of their tariffs, the cited  
8     Commission affiliate rules, but specifically which terms  
9     of their tariffs were violated? And what evidence do you  
10    have that shows that they were violated?

11          A     The first part of your question regarding the  
12    tariffs is if you go to -- I know it by section. But I  
13    think I'm supposed to identify it by sheet number.

14          Q     And what -- what would that be in?

15          A     I don't believe the tariffs --

16          Q     It's not filed?

17          A     I don't believe the tariffs were filed as an  
18    exhibit.

19                MS. SHEMWELL: Yes. They're in as 70 and 71.

20                MR. SCHALLENBERG: Okay.

21                MS. SHEMWELL: MGC is 70 and M -- they're on --  
22    Staff, I guess, perhaps has added them to the list. Let  
23    me move for admission of 70 and 71 at this point. I'll  
24    get you copies immediately. Commissioner, thank you.

25                JUDGE WOODRUFF: These are the tariffs, are

1     they?

2                 MS. SHEMWELL:  They are.  MGC --

3                 JUDGE WOODRUFF:  Just wait.  I'll let you get  
4     your documents before I start asking questions.

5                 MS. SHEMWELL:  All right.

6                 MR. SCHALLENBERG:  Do you have an extra pen?

7                 THE COURT REPORTER:  Yeah.  Make sure it works.

8                 MS. SHEMWELL:  Do you have those?  Commissioner  
9     Appling, I'll get yours right away.

10                COMMISSIONER APPLING:  Sure.

11                MS. SHEMWELL:  Mr. Schallenberg, do you have  
12     those in front of you?

13                MR. SCHALLENBERG:  I have my own copies.  I just  
14     need to know which is 70 and which is 71.

15                MS. SHEMWELL:  MGC is 70.  MPC is 71.

16                MR. SCHALLENBERG:  MGC is 70?

17                MS. SHEMWELL:  That's correct.  Okay.

18                A     Okay.  On Exhibit 70, if we're looking --

19                JUDGE WOODRUFF:  Just a moment,  
20     Mr. Schallenberg.  We -- it's been offered.  We need to  
21     deal with that for -- Staff has offered MGC's tariff as  
22     Exhibit 70 and MPC's tariff as 71.  Is there any  
23     objections to their receipt into evidence?  Hearing none,  
24     they will be received into evidence.

25                (Exhibit Nos. 70 and 71 were admitted into

1 evidence.)

2 MS. SHEMWELL: Thank you, Judge.

3 JUDGE WOODRUFF: All right. Now,  
4 Mr. Schallenberg, you can go ahead and answer the  
5 question.

6 MR. SCHALLENBERG: I guess I need one -- does  
7 that have the adoption notice on the front page?

8 JUDGE WOODRUFF: 70 does. Yes.

9 MR. SCHALLENBERG: Okay. Then I'm using the  
10 same --

11 JUDGE WOODRUFF: They both do.

12 MS. SHEMWELL: If I may approach, Judge?

13 A Yes. Okay.

14 Q (By Commissioner Murray) And, Mr. Schallenberg,  
15 the significance of that adoption notice --

16 A That would be the last modification that was  
17 done to the tariffs that are currently effective.

18 Q And that was dated?

19 A It's -- shows January -- it's effective date is  
20 January 1, 2003. Date of issue was May 31st, 2002. And I  
21 think it has -- well, Exhibit 70 has a file stamp of  
22 January 1st, 2003.

23 Q Okay. Go ahead.

24 A It would be on Sheet 39 under Section 12,  
25 operation of rate schedule in conjunction with market

1 affiliates. And the Staff would be alleging that, A, that  
2 all terms and conditions contained shall be applied in a  
3 uniform non-discriminatory manner without regard to  
4 affiliation of any entity or transporter, that that was  
5 not followed.

6 Q Okay. Now, let's -- let's be specific. Which  
7 terms and conditions contained herein were not applied --

8 A Okay.

9 Q -- if you would?

10 A If you -- I think in my direct testimony -- I  
11 think that's been marked as Exhibit 19. Yes. Beginning  
12 on page 9.

13 Q This is under Count 1; is that correct?

14 A Yes. And you'll see a -- the beginning of  
15 discussion in that answer on line 8 -- excuse me -- 7.  
16 Line seven, the answer -- the answer there.

17 Q Yes.

18 A Those items that starts with the, Apply the  
19 terms, maintain separate operational facilities and submit  
20 the quarterly reports all come from this portion of the  
21 tariffs on -- on Sheet 39 of Section 12 of the tariffs for  
22 MGC.

23 Q Okay. I see that. And then you go on to talk  
24 about how the operations were inconsistent with the  
25 requirements of the tariff sheet.



1           A     Right. And I need to make -- there is a -- a  
2     corresponding section in 71 for MPC.

3           Q     All right. Is that the case for every  
4     allegation, that there is a corresponding tariff section?

5           A     In -- in 71, that would be true. The tariff  
6     does in almost -- I'm trying to -- in almost all regards  
7     are the same between 70 and 71.

8           Q     Okay.

9           A     But not all the customers -- but not all the  
10    customers on the pipeline are affected by the tariffs in  
11    70. Some customers are only affected by the tariffs in  
12    71.

13          Q     Okay. On page 23 of -- I'm sorry. Line 23 of  
14    page 9 that you just referenced, you indicate that MPC and  
15    MGC provided its affiliate, Omega, advantages over other  
16    shippers.

17                   Now, this is -- there was another -- another  
18    place in which Staff had indicated that Omega was actually  
19    -- should consider it as two entities or in two different  
20    regards; is that correct?

21          A     Yes.

22          Q     And when you're talking about its affiliate,  
23    Omega, being provided advantages over other shippers, what  
24    are -- are you referring to Omega?

25          A     That would be, generally speaking, to Omega as a

1 -- when it began to market gas.

2 Q So are any of the allegations regarding Omega,  
3 the treatment of Omega concerning its capacity as  
4 transportation provider at all as a marketer?

5 A As a transportation provider. I guess I -- I  
6 would answer the question, the -- the Omega's operations  
7 at the Fort as an LDC, Local Distribution Company, that  
8 portion of Omega is not in dispute.

9 And it's serving of the Fort and the other  
10 customers behind the Fort's city gate is not a subject of  
11 dispute with Staff.

12 Q All right. There's no dispute there?

13 A Right.

14 Q So all of the dispute is concerning Omega acting  
15 as a marketer for other customers?

16 A That would be correct.

17 Q All right?

18 A During a period of -- I think it -- we used a  
19 date of like around -- on or around July 1st of '03  
20 through at least May 31st of '06.

21 Q Okay. And, specifically, the advantages that  
22 were provided to Omega, the marketer, that were not  
23 provided to other marketers are -- would you elaborate?

24 A Those are generally three items. It was  
25 provided information regarding the pipeline's operations.

1 Q And what evidence do you have to show that?

2 A I -- there's a -- probably one -- one document  
3 that shows the extent of it. I think attached to my  
4 direct is -- well, I take it back. They marked those  
5 differently.

6 I think it's Exhibit 21 now. Now I have to find  
7 it.

8 Q You know, I have schedules and appendices. I  
9 don't know that I -- are you saying this was separate?

10 A It's -- it was one of the schedules to my direct  
11 testimony. It would be Schedule 2 to my direct testimony.

12 Q Schedule 2?

13 A Yes.

14 Q Okay. I have it with the direct, then. Thank  
15 you.

16 MS. SHEMWELL: Okay.

17 Q (By Commissioner Murray) Well, I take that  
18 back. My copy of your direct begins with Schedule 6. All  
19 right. Thank you. I've got it.

20 A Now, if you look at that schedule, this is -- in  
21 essence, contains information that would be available to  
22 Omega.

23 Q Where is this -- what is this a part of?

24 A What this is is this is one of the daily reports  
25 of --

1 Q Made by whom?

2 A It's created by the pipeline.

3 Q Which -- by M -- MGC and MPC?

4 A Yes. It would be their combined operations.

5 Q Okay?

6 A And it has the -- the name that it's always been  
7 referred to whenever it is the in balance summary by  
8 contract, just the title.

9 Q Okay.

10 A And I know it's highly confidential, so I'm just  
11 trying to just talk about just general.

12 Q General. Yes.

13 A But you can see in it that it contains  
14 information regarding the shippers, all the shippers on  
15 the pipeline. It identifies their agent or when they're  
16 acting as their own agent. It identifies their contract  
17 number to the extent this is one for its shipments. And  
18 then it tells you what its current status is regarding the  
19 gas that's brought into the system on the day and the in  
20 balance. And then it shows cumulative information.

21 Now, there is one shipper that you have to go  
22 down to the bottom of the report to get more information  
23 regarding -- but other than that shipper, that first --  
24 that first listing has the information on all the other  
25 shippers that -- that the one shipper -- you have to get

1 -- some additional information is in the bottom part of  
2 that.

3           And you can see from looking at Schedule 2 that  
4 that's a fairly comprehensive amount of information  
5 regarding all the shippers.

6           Q     All right.

7           A     And that would be an example of the extent of  
8 information that would flow from the pipelines and had  
9 been available to Omega.

10          Q     And how do you know it was available to Omega?

11          A     Because it was produced to Mr. Ries. And Mr.  
12 Ries was an officer of Omega and was their marketer, the  
13 employee that engaged in setting the -- contacting the --  
14 we talked about the customers yesterday.

15                 Mr. Ries would be the one that would have been  
16 the primary contact with those individuals.

17          Q     So in that there would be confidential  
18 information such as that produced by the pipelines, would  
19 there have been any way in which Mr. Ries could have acted  
20 in the capacity that he did for the pipelines as well as  
21 in the capacity that he did for Omega and not have  
22 produced a -- an improper sharing of information?

23          A     I think I was asked yesterday, and I think  
24 there's always a probability of something. But it would  
25 be virtually impossible. If you're going to provide the

1 information to one individual, it's pretty hard for that  
2 individual not to have that information when they engage  
3 in another -- in other function.

4 Q So then would it be Staff's position that in  
5 order to prove that there was this particular violation of  
6 the tariffs that all you have to show is that Mr. Ries  
7 served in both capacities at the same time?

8 A I think you'd have to show two things. One is  
9 that he served in the capacity, because you could serve in  
10 a position and not get information.

11 I mean, if -- I think we'd have to show that if  
12 he would be in receipt of the information or that the  
13 information is in the control of Omega as well as -- that  
14 the pipeline's information was in the control or available  
15 to Omega.

16 Q And you -- your information -- your evidence  
17 does show, you're telling me -- and I -- I just don't  
18 recall exactly. But you're telling me that your evidence  
19 does show that Mr. Ries was in receipt of the information?

20 A Oh, yes. Now --

21 Q How --

22 A I'm sorry.

23 Q How do you make the link, then, that he  
24 necessarily shared the information with Omega?

25 A When he shares it with Omega, he -- he basically

1 is Omega.

2 Q Well, I mean -- okay. So -- so your testimony  
3 would be that there is no way to separate Mr. Ries's  
4 capacity with Omega, the marketer, from what he personally  
5 has knowledge of?

6 A As the pipeline President? Yes. In fact, that  
7 -- I think that's why the tariffs require that, as a  
8 marketer, you can't be sharing personnel to prevent that  
9 situation.

10 Q Okay. When did Staff first know that Omega was  
11 acting as a marketer?

12 A The first time that I know I knew Staff knew  
13 would have been sometime early in this year.

14 Q In 2006?

15 A Right. Now, I have spent a lot of time --  
16 because Mr. Ries didn't interact with myself or the  
17 Services Division in the 2002 time period when he first  
18 came into control.

19 I have spent considerable time with Ms.  
20 Morrissey while she was still here, Mr. Warren Wood and  
21 Mr. Imhoff.

22 Q So prior to early 2006, what did you think Omega  
23 -- what -- what was your -- or Staff's perception that  
24 Omega was functioning as?

25 A An LDC serving Fort Leonard Wood.

1 Q Only?

2 A Yes. I -- I'm -- the only reason -- there was  
3 an e-mail that came to -- I think it was Mr. Boyce when he  
4 was general counsel, from a former Commissioner Kinsloe  
5 regarding a concern about the City of Cuba.

6 And in that e-mail, I think it refers to MGC as  
7 being involved with the -- some gas transactions. And  
8 from what I can tell, at that time -- or around that time,  
9 offers were being made from MGC to market gas.

10 And it doesn't identify Omega. So I -- I don't  
11 know a hundred percent when the Staff knew -- if anyone on  
12 the Staff knew -- no one I've talked to knew that, that in  
13 '03 that the transition had been moved from MGC offering  
14 to market gas that Omega was now doing.

15 And I could tell when we started this  
16 investigation, it was never represented to us without us  
17 already finding out about it and then inquiring after we  
18 already had prior knowledge that Omega was marketing  
19 because the initial representation made to us in this  
20 investigation was Omega was serving the Fort.

21 Q And -- and what led you to discover that Omega  
22 was marketing?

23 A When we first discovered -- the first discovery  
24 was that the City of Cuba's contract with the pipelines  
25 involved a -- that the gas supplier was Omega.



1           And then, as we discussed yesterday, as the  
2   auditors started looking at revenues in that revenue  
3   summary sheet and started looking for -- trying to match  
4   up invoices to the data, to the volumes, other customers  
5   began to appear.

6           And then I -- the other -- the other item that  
7   -- that led us to the discovery of Omega's customers,  
8   marketing customers, was the building of the lateral.

9           All right. Now, in terms of -- of Omega's role in  
10   this, could -- could Omega have been serving the City of  
11   -- supplying the City of Cuba under its capacity as the  
12   LDC under its CCN for that purpose?

13          A     Was -- first of all, I don't think Omega has a  
14   CCN in -- in Missouri. Its LDC function on the Fort  
15   doesn't have --

16          Q     Require a CCN?

17          A     I think the -- because it's one of the other  
18   items that came up was because we -- we didn't know about  
19   Omega and the Fort, did it need a CCN from this  
20   Commission, and what was the jurisdiction.

21                And I think the resolution of that question was  
22   that as long as Omega was an LDC on federal property --

23          Q     Okay.

24          A     -- it had no need to be regulated by the Public  
25   Service Commission as long as it stayed as an LDC on Fort

1 Leonard Wood.

2 Q Okay. So anything that was not -- that was  
3 serving other than federal property would have taken Omega  
4 out of that status where it would have needed a CCN if it  
5 were going to serve as an LDC; is that correct?

6 A Well, it would open up the question. You could  
7 market -- you can be a reseller of gas and not have a CCN.

8 Q But not an LDC?

9 A Right. If you're going to -- if you want to  
10 have -- there's been discussion about this area  
11 certificate. If you want to have an area certificate, you  
12 want to be a provider to a certain area, within the state  
13 of Missouri other than the federal property question, you  
14 would need an area certificate in order to have that area  
15 designated.

16 There were a lot of those in the history of this  
17 pipeline while it was under ownership of Utilicorp where  
18 utilicorp would open up in different areas, different  
19 towns and come in and get area certificates in order to  
20 serve like Rolla, Salem.

21 Q In what capacity, then, was Aquila then serving  
22 those areas?

23 A They were served under the -- the Utility  
24 Division. I -- I call it MO Pub. I think it's Missouri  
25 Public Service Company.

1 Q But they were serving those areas as an LDC?

2 A Yes. And -- and that was the portion of Aquila  
3 that served those entities. And then the pipeline was  
4 owned by -- the entity that was the pipelines was MPC and  
5 MGC. But they -- they did come in and get area  
6 certificates to serve Rolla, Salem and Owensville. I -- I  
7 specifically recall those cases.

8 Q Okay. So at the time, then, that Staff  
9 discovered that Omega was marketing to the City of Cuba,  
10 that led to the conclusion that Omega was acting as a  
11 marketer. And is there any question that Omega was an  
12 affiliate of the pipelines?

13 A In that period I mentioned earlier, the -- the  
14 July of -- of '03, now, I think I -- I think I recall Mr.  
15 Ries may have mentioned June, so I may be off by a month  
16 of '03 through at least the first of '06. I'm not aware  
17 there's any dispute that Omega was affiliated with MPC and  
18 MGC during that period.

19 Q And state that period again where there's no  
20 dispute, in your mind at least.

21 A June -- June and July of '03 through May 31st of  
22 '06. Yes. And -- and all the testimony and stuff, I've  
23 not -- I've not seen, unless one comes up today, a dispute  
24 that Omega was affiliated with MPC and MGC.

25 Q All right. And the date again that Staff

1 discovered that Omega was serving the City of Cuba?

2 A That would have occurred -- that would have --  
3 the date, I'm sure of is earlier this year.

4 Q And at what point in time can you show that  
5 Omega was -- I mean, can you show a specific period of  
6 time in which Omega was serving the City of Cuba?

7 A You can -- the contract -- I've got to translate  
8 it into schedules. I think if you go to Exhibit 22, which  
9 is a -- I think Schedule 3, in my testimony, my direct  
10 testimony -- I'm sorry.

11 Q Which, again, I don't know if I have -- I only  
12 have Schedule 6 and B attached onto your direct. That's  
13 all right. Why don't you just give me the information  
14 that's on it? I don't have to see it right now.

15 A Well, that is the -- the contract between Omega  
16 Pipeline Company and the City of Cuba.

17 Q All right.

18 A And it, it -- it lists -- it says it's a natural  
19 gas sales and agency agreement. I notice that this is  
20 highly confidential, but I do know you can get it from the  
21 City of Cuba.

22 Q Okay. That is the -- that is the agreement that  
23 shows the time frame?

24 A It -- it identifies the term -- one of the  
25 portions of the contract is the term and it identifies

1 term.

2 Q All right.

3 A And so in terms of giving you that earlier date  
4 of the beginning point, that would have been the -- that  
5 would -- this would have been the document that would have  
6 locked in to July 1st.

7 Now, the Staff is aware that prior to this date  
8 some of the offers to market gas to the City of Cuba were  
9 made on behalf of MGC. And so that's why you always get  
10 the on or around.

11 Q Tell me that beginning date again, please.

12 A July 1st of 2003.

13 Q Okay.

14 A And like I said, it's -- it's Exhibit 22.  
15 Sometime before this date, the offers to the City of Cuba  
16 came under the name of Omega. There were offers to the  
17 City of Cuba under the name of Missouri Gas.

18 So there is a period in '03 that the marketing  
19 offers are coming from MGC. And I -- I don't have the  
20 data to make the exact -- to tell you exactly when in  
21 early '03. Sometime before -- in the first or second  
22 quarter when Omega became substituted in those offers to  
23 MGC.

24 COMMISSIONER CLAYTON: Commissioner Murray, can  
25 I get clarification on the exhibit? I was trying to find

1 it, and I've got a stack of papers here. And I want to  
2 make sure that I'm looking at Exhibit 22, Schedule 3 is --  
3 what appendices would I be -- on what appendix am I  
4 looking? Is it --

5 A Well, this would --

6 COMMISSIONER CLAYTON: And I apologize for  
7 interrupting you.

8 A It's the --

9 COMMISSIONER MURRAY: Can I just say something  
10 first because, Mr. Clayton, yours may have been like mine.  
11 This is supposed to be Schedule 3 attached to  
12 Mr. Schallenberg's direct testimony. But the schedules  
13 that I have attached were only from Schedule 6 and beyond.  
14 I don't know if perhaps you didn't have all of your -- the  
15 schedules attached either.

16 COMMISSIONER CLAYTON: It doesn't matter. Go  
17 head, Bob.

18 MS. SHEMWELL: I think there may be some  
19 concern. Some of it was de-classified, so we refiled HC  
20 and NP versions, but we will get for the Commission full  
21 sets if that helps.

22 COMMISSIONER CLAYTON: We may have them. It's  
23 just we've got appendices. We've got schedules. We've  
24 got exhibit numbers, and it's hard to track. So I just  
25 wanted to make sure I have it. It's not an appendix, but

1 it's --

2 A Appendices are going to be related to my  
3 surrebuttal, which is Exhibit 67. And I don't believe the  
4 appendices were given separate schedule numbers.

5 COMMISSIONER CLAYTON: I don't think I have it,  
6 but that's okay. Sorry for interrupting, Commissioner.

7 A So that's why you get the "on or about" is we  
8 know that Omega is marketing gas to the City of Cuba for a  
9 period beginning July 1st of '03. And we know that  
10 earlier -- we know in '02 and '03, the marketing offers  
11 and stuff were under the name of MGC.

12 We do not know a more exact date of when in '03  
13 Omega began to replace the marketing offers being made by  
14 MGC.

15 Q And the contract, which is the exhibit you've  
16 just referenced, the attachment to your direct testimony,  
17 Schedule 3, is what you're providing as evidence of that  
18 fact?

19 A Yes. That -- that we know that Omega is using  
20 this as -- when I say we know, the evidence that I used to  
21 make that statement that Omega was marketing on the system  
22 by that date --

23 Q Okay.

24 A -- is this disagreement that -- that you see is  
25 in Exhibit 22 or Schedule 3 to my direct.

1           Q     I'm going to move on. Staff also alleges that  
2 MGC and MPC violated their tariffs by transporting natural  
3 gas to -- to secret Omega customers without an executed  
4 transportation agreement.

5                     The evidence that the transportation service was  
6 provided to Omega, were those customers without a written  
7 agreement is based upon -- have you -- well, and I  
8 apologize because this may have -- this may have come out  
9 in prior questioning. It certainly may be clear in the  
10 testimony, but you'll admit there's a lot here.

11                    Has Staff requested copies of relevant  
12 transportation agreements that should have been executed?

13           A     We have requested transportation agreements  
14 during a certain period of time. We were supplied the  
15 current effective transportation agreements. And we were  
16 able to receive some prior transportation agreements that  
17 weren't currently in effect. So that could be the answer  
18 to that portion of the question.

19                    We have acquired the transportation agreements  
20 that are represented to be the ones used -- maybe the best  
21 way -- if you remember the revenue summary sheets --

22           Q     Uh-huh.

23           A     -- for the Cuba and the Fort transaction, we  
24 have the -- we have the -- we have identified -- or the  
25 company has provided us the transportation contracts



1 themselves that were used to assign the volumes to those  
2 two contracts. So I know we have been provided those two  
3 contracts, which would be the contracts that the volumes  
4 have been assigned to on that revenue sheet that we  
5 discussed yesterday.

6 Q Yes. That was Exhibit 53-HC. Okay. So that  
7 included that revenue summary, I believe. Did that  
8 include the two secret trans -- two secret customers shown  
9 on page 4 of your -- well, I'm sorry. That's not your  
10 testimony. I may be not doing this as efficiently as I  
11 could because I'm not looking at the right document here  
12 setting out Staff's counts, but in Count 2 alleging that  
13 MPC -- MGC and MPC violated their tariffs by transporting  
14 natural gas to certain customers without an executed  
15 transportation agreement.

16 And I believe those customers are what have been  
17 designated as Secret Customers A and B?

18 A That would be correct.

19 Q All right. And the executed transportation  
20 agreement that they should have had is not one of the  
21 transportation agreements that has been provided?

22 A That would be the Staff's assertion. Yes.

23 Q And the pipeline's assertion is that they have  
24 provided you with a valid transportation agreement?

25 A I -- I think, I mean, obviously, they'll speak

1     for what their assertion is. As I understand it, the  
2     pipeline is asserting that they had the right under that  
3     agency agreement to transport to Secret Customer A and  
4     Secret Customer B under the City of Cuba's transportation  
5     contract.

6             And the Staff disputes that assertion and argues  
7     that they should have been -- they -- they were a separate  
8     and distinct customer that should have been served under  
9     separate transportation agreements.

10            Q     And why couldn't they have served them under the  
11     Cuba contract?

12            A     It would be the Staff's assertion that under the  
13     City of Cuba's transportation contracts MPC and MGC had no  
14     authority to transport to Secret Customer A and Secret  
15     Customer B under the City of Cuba's transportation  
16     contract.

17             The only authority under those contracts was to  
18     serve -- was to transport gas on behalf of the City of  
19     Cuba, not -- not that it would not include, nor -- nor did  
20     we find any modifications of the contract -- the contracts  
21     that the use of those facilities to serve Secret Customer  
22     A or B on behalf of Omega.

23            Q     And why is that important?

24            A     What it -- what it -- it becomes important in a  
25     couple matters. One is when you first do that and you

1 list it as -- as serving Secret Customer A and Secret  
2 Customer B of City of Cuba transactions, you first don't  
3 see the transaction. You don't see that Omega's operating  
4 outside the Fort. So you -- you -- you make detection of  
5 -- of the true activity that's taking place on the  
6 pipeline difficult at best.

7           And two is by incrementally moving these  
8 transportation agreements into the City of Cuba's  
9 agreement, you change the rate that's charged for  
10 transportation services.

11           If they held separate transportation agreements,  
12 then the rate called for under the tariff would -- the  
13 maximum rate is much different. And if you would have  
14 served them at the rate they were actually charged to be  
15 delivered to those customers, we would have a -- in both  
16 cases, you would show significant discounts.

17           Q     To Customers A and B?

18           A     Yes. What tariff would have required. And then  
19 you trigger -- if do that, if you use the -- the  
20 agreements, you would trigger the reporting requirements  
21 that are in the tariffs for that kind of a transaction,  
22 which would then have a corresponding impact of triggering  
23 3-2-B, which is the affiliate protection against -- or the  
24 affiliate requirement.

25           I -- I heard it best described that the tariffs

1 really don't allow affiliate discounts because as soon as  
2 you give a discount to an affiliate, you have to provide  
3 -- so there's really -- under these tariffs, there's  
4 really no such thing as a discount because of the maximum  
5 you charge a non-affiliate, so, technically, there is no  
6 discount.

7 Q Okay. And I know you have cited that specific  
8 part of the tariff in your testimony. I recall seeing  
9 that. On Count 3, MPC and MGC provided transportation  
10 service to its affiliate, Omega, at a discounted rate.  
11 How does that differ from what you just explained to me?

12 A I don't -- I don't believe it differs from what  
13 I just explained.

14 Q And you have shown in the evidence that you have  
15 presented, I believe, and you can confirm this or not,  
16 that another marketer in the same position as Omega had  
17 paid even higher rates to MPC and MGC; is that correct?

18 A Yes. In terms of -- you have some examples in  
19 -- that we came up there in the investigation and when you  
20 look at Omega as a marketer serving Secret Customer C.  
21 And I -- I don't know that Secret Customer D is a secret,  
22 so I -- I -- and I would say it's not because there's  
23 public filings that identifies it.

24 But what's -- what's called Secret Customer D.  
25 We have an example of a non-affiliated marketer serving

1 those two customers that, in essence, are transitioned  
2 from a non-affiliated marketer to Omega. And the -- those  
3 non-affiliated marketers were charged the specified  
4 maximum tariff rate.

5           It was the same marketer. They had separate  
6 transportation agreements in those cases.

7           Q     Okay. And the remedy that Staff is seeking for  
8 that violation of charging less to its affiliate than to  
9 other marketers?

10          A     I think -- remedies, I tried to set out on page  
11 8 of my direct testimony that the Staff was seeking.

12          Q     Okay.

13          A     And the one you were just -- there was four that  
14 are listed and Remedy 1 would be --

15          Q     All right. You don't have to go into them  
16 there. They're set up really there in the testimony. I  
17 just -- I just question -- and I suppose this is a legal  
18 question that Counsel can address in briefing, whether we  
19 can require refunds.

20          A     Yeah. I mean, I know that's been discussed with  
21 General Counsel's Office. But the only point, knowledge  
22 or anything I have of it is it's been discussed whether  
23 the Commission with -- whether General Counsel's office  
24 can require services and operations support to go to  
25 Circuit Court to seek those refunds or whether the

1 Commission would choose to just enter its order and leave  
2 that action to the individual customers.

3 Q Okay. I will not pursue that further with you  
4 because that really is a little issue. In Count IV,  
5 failure to report the offer of the discounted  
6 transportation. And you are just citing two specific  
7 orders; is that correct?

8 A Do you have the page?

9 Q No.

10 A Okay.

11 Q I'm going from a list of issues here.

12 A Okay. I'm sorry. Okay. I'll find it.

13 Q I haven't organized myself.

14 MS. SHEMWELL: 16. Direct 16 is part of that.

15 COMMISSIONER CLAYTON: Page 16?

16 MS. SHEMWELL: Page 16 of Mr. Schallenberg's  
17 direct.

18 COMMISSIONER MURRAY: Thank you, Ms. Shemwell.

19 MS. SHEMWELL: Certainly.

20 A Well, I have page 16, but I think I was still on  
21 Count 1 on 16. It may have the same support for Count --

22 Q (By Commissioner Murray) We're -- okay. We're  
23 still talking about Count 1, right? Sorry. All right.  
24 So Count 1 --

25 A In fact, I don't -- I don't have that statement

1 of issues document.

2 MS. SHEMWELL: If I may approach?

3 Q (By Commissioner Murray) That's all right. We  
4 probably should -- should look at your testimony versus  
5 that anyway if I can do that.

6 All right. I'm going to move on because it's  
7 been longer than I intended. But on Count 2 -- let's do  
8 move to Count 2. We're talking about the lack of a  
9 written transportation agreement; is that correct?

10 A Yes.

11 Q All right. And the pipeline indicates that they  
12 have provided -- at least what we've heard so far, that  
13 they have provided valid -- evidence of valid agreements.  
14 And Staff's conclusion is that there are not based upon  
15 what I believe you and I discussed just a few moments ago.  
16 Okay. We've already discussed that.

17 Count 3 is that -- again relates to the discount  
18 given to Omega and the evidence the Staff has presented  
19 that Omega did not pay the highest rate?

20 A The evidence the Staff presented shows -- and  
21 the tariff doesn't -- isn't triggered by the highest rate.  
22 What triggers the tariff is the lowest rate --

23 Q Yes. Yes.

24 A -- charged by the affiliate.

25 Q Yeah. But if -- they didn't pay the highest

1 rate for everyone?

2 A Yeah. We dispute -- we dispute that assertion  
3 that -- obviously, we dispute this. We believe that the  
4 -- in some of their transportation arrangements, they pay  
5 near the lowest, if not the lowest. And I have to qualify  
6 that as of that period I gave you, there have been changes  
7 that I'm aware of after May 31st, '06. And the answer to  
8 that question would be different after that day.

9 Q But before the dates that you're alleging in  
10 your complaint --

11 A During the period -- we don't -- Staff does not  
12 agree that Omega paid the highest rate on the pipeline  
13 system during the period of July 1st of '03 through March  
14 31st of '06.

15 Q And is there a specific --

16 A Excuse me. May 31st of '06.

17 Q Is there one document that shows that most  
18 clearly?

19 A I -- I would refer to the bills, the actual  
20 bills to Omega, which are appendices.

21 Q All right.

22 A I think the actual bills to Omega are in  
23 Appendix D.

24 Q Appendix D?

25 A D to -- and that's to Append -- Schedule 67.



1 But these aren't broken out.

2 MS. SHEMWELL: That's to your surrebuttal?

3 A Yes. And Appendix --

4 Q (By Commissioner Murray) I -- I have a separate  
5 binder that has appendices E and F. Is that --

6 A That would be -- that would be the document.

7 Q All right. And Appendix D is 30 -- let's see.

8 It's longer than that. It's 63 pages long; is that  
9 correct?

10 A Yes.

11 Q Now, these are bills?

12 A These are -- these are the bills, invoices that  
13 relate to the rate that Omega was charged for the  
14 transportation services that they were provided during  
15 various periods of time.

16 For some reason, Appendix D begins in February  
17 of '04. And I know we received January of '04, so why --  
18 I don't know why the January is missing, but it is missing  
19 from a Appendix D.

20 But it -- it -- it still shows the bills. There  
21 may be a missing period, but it shows the Appendix D and E  
22 are all the invoices -- excuse me. And I have it printed  
23 out in either one.

24 Appendix F also has some supplements to invoices  
25 to Omega after March of '06. So those three appendices

1 will show you -- D, E and F will show you the invoices to  
2 Omega for transportation service during that period.

3 Q All right. And how does referencing those  
4 indicate to us that Omega did not pay the highest price  
5 charged?

6 A Okay. If you look at, say, the first page on  
7 Appendix D --

8 Q Yes.

9 A -- you'll see the -- the bills, for the first  
10 two lines where it actually refers to a contract number.

11 A Yes.

12 Q Okay.

13 A Those -- those are the rates that were charged  
14 for transportation service to Secret Customer D.

15 Q Secret customer D?

16 A D, which is --

17 MS. SHEMWELL: Which isn't secret.

18 A Which is no longer a secret.

19 Q (By Commissioner Murray) Okay.

20 A And below that, you'll see a reference to  
21 another customer, which is Secret Customer B. And you see  
22 no contract number, but you do see the rates for what they  
23 were charged for service.

24 Q Okay.

25 A And you see -- so you can look at those rates

1 for the charge for Secret Customer B, and -- and those  
2 would be the rates of what they were charged for service  
3 to Secret Customer B. And then if you go to Appendix E --

4 MS. SHEMWELL: Just for the record, that's  
5 marked 67-E.

6 Q (By Ms. Commissioner Murray) Appendix E?

7 A Right. You'll see the rates that were charged  
8 to Omega for transportation service to the Cuba city gate.

9 Q What page are you on?

10 A Appendix E-1.

11 Q One?

12 A The reason -- the reason it's hard to identify  
13 on the face sheets, until January -- the recreated face  
14 sheets until January of '06, you cannot see the City of  
15 Cuba on the bills.

16 Q Okay.

17 A They were just sent from Omega to Omega.  
18 Beginning in January of '06, the bills will -- the shipper  
19 will be identified as being the City of Cuba. So in this  
20 earlier period, you don't see the City of Cuba on the  
21 bill, but this is for deliveries to the City of Cuba.

22 Q All right. Okay.

23 A And then if you were to take the actual invoices  
24 -- an actual invoice that goes to the City of Cuba from  
25 Omega -- and I'm trying to find an example. I think --

1 Schedule 13. I think it's 35. It's Schedule 13 of my  
2 direct testimony.

3 Q Schedule 13?

4 A Right. To my direct testimony.

5 Q Okay. Go ahead.

6 A What -- what it does is it shows that -- and we  
7 discussed this yesterday. It shows the -- the total  
8 volumes that were delivered to the city gate.

9 Q Uh-huh.

10 A But it identifies that on the City of Cuba's  
11 bill.

12 MS. SHEMWELL: If I may approach, Judge?

13 JUDGE WOODRUFF: You may.

14 MS. SHEMWELL: Commissioner Murray, perhaps --  
15 would this be helpful?

16 COMMISSIONER MURRAY: Was this given to -- to us  
17 separately yesterday?

18 MS. SHEMWELL: It was in his -- the original  
19 file. It was not original testimony. It has not been  
20 declassified. So it would have been with 36.

21 COMMISSIONER CLAYTON: I don't have any  
22 attachments to his testimony.

23 MS. SHEMWELL: We'll get those for you.

24 COMMISSIONER CLAYTON: No. I don't need it.

25 MS. SHEMWELL: All right.

1           Q     (By Commissioner Murray) All right. I'm  
2 looking at a copy of your Schedule 13-1.  
3           A     Okay. If you look --  
4           Q     Of HC.  
5           A     Okay. If you look at that invoice --  
6           Q     Yes.  
7           A     -- you can see that there's a quantity that --  
8 that's delivered to the city gate, which is the Cuba city  
9 gate under Delivery Charges.  
10          A     And I -- do you have -- is yours June? Is yours  
11 for June of '04?  
12          Q     Yes, it is.  
13          A     Okay. You'll see a number there.  
14          Q     Okay. I see -- I see.  
15          A     And then you see the reduction.  
16          Q     Yes.  
17          A     That's the reduction of volumes delivered to  
18 Secret Customer A.  
19          Q     Yes. Okay.  
20          A     That's how you know -- and when you go back to  
21 E, you can then see that with those volumes are combined  
22 on this bill, Omega is being charged to serve Secret  
23 Customer A. I'm not sure that's highly confidential on  
24 Appendix E, but where you see the two commodity rates --  
25          Q     Are we looking -- yes. Okay. We're on page 1

1 of Appendix E again?

2 A Right.

3 Q Uh-huh.

4 A Those two commodity rates -- well, I know the  
5 sixteen ninety-nine is not highly confidential because  
6 it's a tariff rate. And then you'll see the corresponding  
7 one on MGC, which is the lower one. You'll see those two  
8 rates are what Omega is charged to serve Secret Customer  
9 A.

10 Q Yes.

11 A And Secret Customer A is -- if you look at the  
12 contract with Secret Customer A and Omega, which is  
13 Schedule 10 to my direct testimony, it will identify that  
14 Secret Customer A is an interruptible customer and not a  
15 firm customer.

16 And the tariffs have different rates for  
17 interruptible customers. If you look at Exhibit 71, if  
18 you offer or provide interruptible service --

19 Q Exhibit 71 is an interruptible tariff? Is that  
20 what you're saying?

21 A Yeah. If you'll look at Schedule 10 to my  
22 direct, it is the contract between Omega and Secret  
23 Customer A. And under the special provisions of that, it  
24 identifies the -- the type of service that's being  
25 provided.

1 Q And identifies it as interruptible?

2 A Yes. And --

3 Q And the significance of that is?

4 A That the transportation contract that's being

5 used here is one that's referenced on Appendix E. If you

6 look at the con -- contract number, the -- it has MP or

7 MG. That's how you know which pipeline has a number.

8 Q Okay.

9 A Do you see TF.

10 Q Yes.

11 A F is for transportation -- is for firm.

12 Q Okay. Okay.

13 A Some of the contract -- I know the University of

14 Missouri has a transportation contract that's

15 interruptible. And that would be an I.

16 Q Okay.

17 A So you're using a firm contract here, and you

18 have a -- Secret Customer A is interruptible. And we know

19 Secret Customer A was interrupted, so --

20 Q Does that mean Secret Customer A was being

21 billed more than they should have been?

22 A Actually, Secret Customer A is billed a lot

23 less. Because if you look at Exhibit 71, the tariffs --

24 Q Uh-huh.

25 A -- if you went to the interruptible service --

1   excuse me. You could do it -- actually, it's 70 because  
2   it's on MGC where the biggest rate advantage is. The rate  
3   for interruptible --

4           Q     I'm sorry. What page?

5           A     The rates for interruptible service are  
6   identified on Sheets 15 and 16.

7           Q     All right?

8           A     And since Secret Customer A isn't Secret  
9   Customer D, you know that they would be delivery to  
10  Section B of the tariffs on sheet 16.

11          Q     Uh-huh.

12          A     So if you look there, you can see the range of  
13  what an interruptible customer would be charged for  
14  interruptible transportation service to that location and  
15  the -- this isn't secret. The maximum rate is \$1.37.65.

16          Q     Where are -- okay. That's on the next page?

17          A     It's on 16.

18          Q     Sixteen. Okay.

19          A     A rate discussion goes on 15, but the rates are  
20  on 16.

21          Q     All right. And I'm sorry. The maximum --  
22  maximum rate --

23          A     The maximum rate for -- well, there's two --  
24  there's two rates on MGC. Because if you deliver to the  
25  Fort, there's one rate. And if you deliver to other



1 location other than the Fort, there's another rate. And  
2 since -- Secret customer A would be impacted by the rates  
3 in B because we've identified that that's a city -- a Cuba  
4 city gate. The Cuba city gate is not the Fort city gate.  
5 So that would be the maximum rates for an interruptible  
6 customer. So if you look at that compared to --.

7 Q Appendix E-1?

8 A E-1, you can see in lieu of -- where the  
9 commodity, where it says COMM --

10 Q Yes.

11 A -- you can see in there paying a \$1.37.65 -- is  
12 that confidential or --

13 A The \$1.37.65 --

14 Q The tariff on Exhibit 31?

15 A I think that's the discount. But you have the  
16 public tariff rate to compare it to that number.

17 Q Okay. I -- I also see on -- for that -- for  
18 those customers, other than the Fort and the tariff,  
19 should the maximum -- never mind. Scratch that.

20 All right. All right. I really didn't mean to  
21 take this long, but it takes a while. And then your  
22 evidence goes into other secret customers as well, which,  
23 I mean, we don't have to --

24 A If you go later in Appendix D, like if you want  
25 to go to like page 27 of D, as in dog --

1           Q     Yes. I see there are two other secret customers  
2     there.

3           A     Yeah. Secret Customer B and Secret Customer C  
4     are by this period now on this bill. Now, Secret Customer  
5     B actually is billed during a certain period -- part of  
6     the time under Appendix E. And if you go to -- like E-14,  
7     which is the face sheet that shows the -- the billing  
8     rates.

9                     And then if you go to E-16, you can see that  
10    during this period of time, Secret Customer B is being  
11    charged -- charged under these invoices. And that was  
12    continued and it ended up on the invoices in D in February  
13    of '05.

14          Q     And you identified Secret Customer B by --

15          A     If you look at -- on page 16 of E -- in the  
16    section -- of E, which is the second -- second page of  
17    that invoice --

18          Q     Correct.

19          A     -- if you look at the top of the page, you will  
20    see --

21          Q     I see.

22          A     You will see Secret Customer B's name.

23          Q     I see.

24          A     And then that gives you the daily readings  
25    because Secret Customer B is not at the same delivery

1 point as Secret Customer A or the City of Cuba. So you'd  
2 need -- you'd need different measurements.

3 Q All right. And in the -- for Count IV, that's  
4 based on not reporting all of the discounts to the  
5 shippers, and that is a requirement that -- where would  
6 you find that requirement to make that reporting?

7 A As I said, it's in both tariffs. But if you go  
8 to Exhibit 70, Sheet 39.

9 Q I can't find it. Okay. So 39.

10 A Okay. 12-C.

11 Q Every three months, a list of all bids or offers  
12 transported for transportation service routes reports to  
13 the pipeline where the bid is less than the maximum rate  
14 contained in this tariff for transporter's area. And  
15 you're saying those reports were not made?

16 A I think what -- what the allegation is that when  
17 the report was made for the City of Cuba that the  
18 affiliate -- if you'll look further down, it -- it has for  
19 each such bid or offering. I think it's the -- it's the  
20 third sentence from the end.

21 Q I see it.

22 A For each such bid or offering, the transporter,  
23 which, in this case, would be MGC, will completely explain  
24 whether the entity being offered the discount is  
25 affiliated in any way with transporter or -- or with any

1 of affiliates.

2 And I believe -- let me look at this. I think a  
3 copy of the report received -- if you go to -- all right.  
4 It's Schedule 7 to my direct testimony, Exhibit 29.

5 Q And what does it show? I don't have it in front  
6 of me.

7 A It will be the report that we received for the  
8 second quarter of '03, and it has a face sheet. It has a  
9 -- the next page is about the information related to MPC.  
10 And the third page is about the information for discounts  
11 on MGC.

12 Q Okay. And the second quarter of '03 would have  
13 been within the relevant time frame?

14 A Right. Because we -- it just --

15 Q All right. How does it tell you about discounts  
16 being offered?

17 A It lists four discounts of which the City of  
18 Cuba is listed. And if you look at that page, you would  
19 see no information that would identify that the City -- in  
20 this case, the City of Cuba was offered a rate that's  
21 affiliated in any way with the transporter or any of its  
22 affiliates.

23 You will see nothing on -- on that page that  
24 identifies that Omega is the marketing entity providing  
25 natural gas to Cuba at this time.

1           Q     And the fact that Omega was acting as the agent  
2     for Cuba, does that change the requirement that this be  
3     reported as an affiliate discount?

4           A     Well, I think it -- it -- you could -- there's  
5     two parts to that. One is under what you're asking me  
6     about, 12-C. I -- I -- I don't read that 120C excuses you  
7     from identifying that the agent received of the -- of the  
8     -- of the shipper says, Whether the entity being offered  
9     the rate, which in this case is the City of Cuba, is  
10    affiliated in any way with transporter or any of its  
11    affiliates is an -- in fact, if you look at the old  
12    discount that came in under -- this is -- I think it was  
13    Utilicorp.

14                I don't think they became Aquila at the time.  
15    They would identify -- in the case of an agent, they would  
16    identify like the City of Cuba, in care of, and then it  
17    would list the agent. And in this case, it was the  
18    marketing entity. So you would be provided that  
19    information to the extent that your -- that you had a --  
20    that the shipper had an agent. It would identify in the  
21    name that the marketing entity was their affiliate.

22           Q     Okay. The transporter -- and I'm reading from  
23    the tariff -- for each such bid or offering, transporter,  
24    in this case, MGC, will completely explain who the entity  
25    being offered the rate -- the entity being offered the

1 rate is. In this instance, is --

2 A City of Cuba.

3 Q Okay. So MGC will completely explain whether  
4 the City of Cuba is affiliated in any way with  
5 transporter, which is identified as, in this instance,  
6 MGC, whether Cuba is affiliate, the City of Cuba is  
7 affiliated in any way with MGC or with any of its  
8 affiliates. And you are assuming there that they should  
9 have identified Omega as one of MG -- MGC's affiliates?

10 A Correct. Because under the tariff and the  
11 contract, if Omega is to be your agent, you have an  
12 obligation to notify the transporter, MGC so they know who  
13 to send the bill to and who to accept the nominations.

14 Q Who has that obligation?

15 A The -- the shipper if -- when you sign your  
16 contract with pipelines, you designate who is to -- who is  
17 the one that's going to provide the nominations, who is  
18 going to receive the bill, who to contact in the case that  
19 there's a person -- if you have problems.

20 Q Do you know if the shipper did that?

21 A In this case?

22 Q Yes.

23 A Actually, the -- no. Well, yes, I do know. And  
24 MPC and MGC received no written notification. In fact,  
25 there's an appendices to my surrebuttal consistent with

1    what was done in prior times when Cuba had different  
2    agents.  MPC and MGC received no similar documentation  
3    from Omega notifying it that Omega was authorized to be  
4    the City of Cuba's agent.

5                   And the answer to the data request that the  
6    Staff put in, the company identified that the only  
7    information that was available was the Omega contract with  
8    the City of Cuba, which we identified as Schedule 3-1 to  
9    my direct or Schedule 22.

10                   So the only notification that exists that MPC  
11    and MGC knew Omega was authorized to nominate on the City  
12    of Cuba's behalf, receive its bills, is the contract that  
13    Omega signed with the City of Cuba.  There is no formal  
14    notification from the City of Cuba that Omega is  
15    authorized to act on its behalf under its contract.

16                   MS. SHEMWELL:  I'm sorry to interrupt, but may I  
17    make the record clear?  Were you referring to Exhibit 22  
18    when you said Schedule 22?

19                   A    Yes.  It's -- on this sheet.

20                   MS. SHEMWELL:  On the exhibit sheet, you were  
21    referring to Exhibit 22, correct?

22                   A    It's Exhibit 22.  It's Schedule 3.  It's to my  
23    direct testimony, which is the --

24                   MS. SHEMWELL:  Thank you.

25                   Q    (By Commissioner Murray)  All right.  So that

1 notification was to come -- was the obligation of the  
2 shipper, which was Omega, to provide that information to M  
3 -- MGC?

4 A Actually, it's not in -- in -- in this case for  
5 the City of Cuba because the City of Cuba holds the  
6 transportation contracts. It is the obligation of the  
7 shipper to notify MGC who is authorized to act on their  
8 behalf, so -- in the event that you -- you want to have an  
9 agent.

10 Q Right. So the City should have notified MGC?

11 A They have an obligation to notify MGC because  
12 MGC is not -- it's supposed to follow the contract to  
13 protect -- it's supposed to know that -- that this person  
14 is authorized to make nominations under that contract, you  
15 know, so that when they hear from this person, they know  
16 that's the authorized person.

17 Q At this period of time, was Mr. Ries serving in  
18 capacity -- both capacities with MGC and Omega?

19 A In terms of nominations? He would be -- he  
20 would be receiving nomination with us. He would be  
21 receiving nominations from the shippers, and he would be  
22 nominating or -- or not nominating for his own customers.

23 Q So would it have been possible for MGC to not  
24 have known what the City had the obligation to tell them  
25 and didn't tell them?



1           A     Well, no. The contract -- in fact, it may help.  
2     Appendix -- I think it's the last appendix. Exhibit 67 is  
3     the City of Cuba's contracts.

4           Q     All right.

5           A     And it -- and it has in it who -- the contract  
6     specifies the designated person for nominations to receive  
7     the bills, who to contact, and it specifies a person. And  
8     if you want to change that, then you send a letter in to  
9     MPC and MGC telling them that we have now switched and  
10    have someone else that is now authorized to do that for  
11    us.

12          Q     And that contract specified Omega?

13          A     The contract does not specify Omega. There's no  
14    notification to MPC and MGC that -- from the City of Cuba  
15    that Omega is authorized to nominate on -- on those  
16    contracts' behalf, receive the bills from MPC and MGC for  
17    their transportation service or to be contacted.

18                The only notification that the Staff received in  
19    this investigation is the Omega contract with the City of  
20    Cuba.

21          Q     Okay. Well, my question to you though, is that  
22    in that the --

23          A     I'm sorry.

24          Q     You indicated that the City had the obligation  
25    to tell MGC and MPC that Omega was authorized to act on

1     their behalf; is that correct?

2             A     Yes.  That's --

3             Q     That's what it specified, and the City did not  
4     do that as far as you can tell?

5             A     Yes.  I mean, in fact, Appendix F -- I mean,  
6     excuse me, W, to my surrebuttal is the -- is the  
7     documentation on that.

8             Q     But my question to you is, does that in any way  
9     relieve MPC and MGC from any reporting that they were  
10    required to do as to their affiliate, Omega?

11                Would that lack of notification from the City  
12    have prevented or could it be possible that MGC and MPC  
13    did not know that Omega was acting on behalf of the City  
14    of Cuba?

15             A     Yes.  In fact, without that notification, MPC  
16    and MGC are not to be interacting with Omega.  They would  
17    be interacting with whoever was the authorized agent or  
18    contact person.  So you're right.  If -- if you never --  
19    if MPC and MGC never received the notice, MPC and MGC  
20    would not report an affiliation because they wouldn't be a  
21    having -- they wouldn't be interacting with the affiliated  
22    entity.

23             Q     Okay.  But they did, in fact, interact with the  
24    affiliated entity; is that correct?

25             A     Yes, they did.

1           Q     Okay. And the last issue is the one on the  
2 extension of the pipeline without reimbursement. Is it  
3 possible that that pipeline could have been extended  
4 without seeking reimbursement, without a violation of any  
5 -- I'm not sure --- what are you -- what are you alleging  
6 that was a violation of?

7           A     That the -- the way the -- the tariff operates  
8 is that to the extent that a shipper -- back to -- the  
9 tariff specifies that it is the shipper's responsibility  
10 to reimburse the pipeline in the extent that it's -- it's  
11 requesting service that requires the pipeline to make any  
12 modifications.

13          Q     And the shipper was Secret Customer No. --  
14 Letter --

15          A     The -- the customer was Secret Customer B.

16          Q     Okay.

17          A     But -- and there's a -- there's a question about  
18 whether the shipper would be the customer or would have  
19 been the -- the marketer because on the pipeline, you see  
20 transportation contracts sometimes in the case of the  
21 customer and sometimes in the case of a marketer. But  
22 whoever that shipper would be, it would have --

23          Q     How does one determine who that should have  
24 been?

25          A     Well, since it could be either one, it -- you

1 know, it could be one or the other, the one -- one way you  
2 do it is look at whose gas -- who has ownership of the gas  
3 being transported.

4 That's another way to determine in this event  
5 who the shipper should be. In -- in case of a Secret  
6 Customer B, Secret Customer B moved from the City of Cuba  
7 transportation contract to the Omega contract. So it --  
8 it's been served -- Secret Customer B has received  
9 transportation service under two -- two different,  
10 distinct bills during its existence.

11 Q Okay. And the tariff provision you're  
12 referencing is -- do you have that handy?

13 A I know in Section 6, which is about billing, it  
14 talks about the billing charge, which is -- it's on Sheet  
15 31. I guess, technically, it's in 32 as well.

16 It starts -- it's Item E, it says E, which is  
17 the reimbursement. And then there's a -- I believe  
18 there's another section of the tariff that talks about  
19 reimbursement. No. I think -- I don't want to say -- you  
20 can get -- if you come in and ask for an extension of your  
21 line certificate -- and I have seen that when -- in the  
22 history of pipeline, you can come in and ask to have the  
23 line certificate extended so that you can build laterals  
24 to connect. And they have been done to serve other  
25 customers.

1           And in -- and in this process, if you came in  
2   and say, I want Commission authority to change my line  
3   certificate so I can -- I can extend the line out -- and  
4   in those cases, you know, to the extent that the  
5   Commission authorizes it, then these would not be  
6   aggravated.

7           Q     And MPC and MGC did not do that; is that  
8   correct, an extension of the line certificate?

9           A     Right. To -- to -- to create the new  
10   intersection and the lateral to serve Secret Customer B.

11          Q     And that would be the only exception to the  
12   tariff language that says the shipper will reimburse the  
13   transporter?

14          A     Well, the other one is to come in and ask the  
15   Commission that I don't agree -- I want a waiver from the  
16   tariffs because of the unique circumstances.

17                 And I want to -- well, I can see you could ask  
18   for the waiver. But then you would still run into a  
19   question of ownership. But if you don't get the  
20   certificate extended or the lateral, then there may be a  
21   question about when the utility can actually own it if it  
22   puts this property outside its line certificate.

23          Q     So who owns this extension that was placed?

24          A     I know where the dollars are. I don't -- I  
25   don't know -- I know the dollars are on MGC's books in

1 it's plat and service. As I said, I haven't explored the  
2 issue since there is no -- the tariffs don't even specify  
3 the delivery point. I -- I don't know.

4 I haven't looked at the question of -- of  
5 whether that ownership can be challenged or who actually  
6 has it. But I do know where the dollars are at.

7 Q Okay. And there was no tariff waiver from the  
8 Commission sought; is that correct?

9 A No. The last tariff revision for these tariffs  
10 were on that adoption notice, that first page.

11 Q I'm sorry. Isn't that correct? Yes or no?

12 A Oh, I'm sorry. Yes.

13 Q Okay. Now, go ahead.

14 A The -- the last modification of the tariff is  
15 that first page on Exhibit 70 or 71. And they haven't  
16 been modified since that day.

17 Q But they didn't even seek -- seek to modify  
18 them, correct?

19 A Right. There's been no other -- no other case  
20 regarding modification of waivers of these tariffs.

21 COMMISSIONER MURRAY: All right. Judge, I'm  
22 just about finished.

23 JUDGE WOODRUFF: That's all right.

24 COMMISSIONER MURRAY: I think I'm finished.

25 Thank you. Thank you, Mr. Schallenberg.

1 JUDGE WOODRUFF: Thank you. Commissioner  
2 Appling, did you have any questions?

3 COMMISSIONER APPLING: Judge, I think I have one  
4 question.

5 CROSS-EXAMINATION  
6 BY COMMISSIONER APPLING:

7 Q Early on, you pointed out to Commissioner Murray  
8 a location where you had listed in your testimony the  
9 restitution which company would have to either pay or  
10 whatnot. Do you remember what you -- can you point me to  
11 that again? I can read it later, but I just wanted to  
12 know again what was the reference on there?

13 A I referenced, as I recall, on page 8 of my  
14 direct testimony, which lists the remedies that Staff was  
15 seeking in this complaint.

16 COMMISSIONER APPLING: Okay. Judge, that's all  
17 I have.

18 JUDGE WOODRUFF: All right. Thank you. At this  
19 time, we're due for a break. We'll take a break and come  
20 back at 11:15.

21 (Break in proceedings.)

22 JUDGE WOODRUFF: Okay. Let's come to order,  
23 please. All right. We're back from our break.  
24 Commissioner Murray, did you have any more questions you  
25 wanted to ask?

1                   COMMISSIONER MURRAY: I'm sorry, but I do have  
2 one or two more, Mr. Schallenberg.

3                   CROSS-EXAMINATION

4 BY COMMISSIONER MURRAY:

5           Q       The allegation that the discount was being  
6 provided to Omega, how has Staff -- or what evidence has  
7 Staff used to prove that the discount was actually to  
8 Omega and not to the City of Cuba?

9           A       It would be the tracing of the -- the -- the  
10 funds that the invoices that I showed you, Appendix --

11          Q       Well, you're saying simply because Omega was  
12 invoiced. But if Omega was acting as the agent of the  
13 City, wouldn't that -- would that necessarily indicate  
14 that that discount was not provided to the principal  
15 rather than to the agent?

16          A       Yes. If you look at the contract between Omega  
17 and the City of Cuba, the contract specifies the payment  
18 that would be made by the City of Cuba to Omega. And it  
19 has no provision in there for passing through of -- of  
20 discounts or any benefits from serving other customers  
21 under -- in fact, it's -- it's in -- it's attached to one  
22 of those exhibits we referred to this morning.

23                   So that would be the -- in answer to your  
24 question, that would be the -- one of the pieces of  
25 evidence that we would use. And then we also saw the



1 bills from Omega to the City of Cuba.

2 Q But the agent/principal relationship provides  
3 that the agent do the billing, does it not?

4 A It -- it provides the -- the contract between  
5 the City of Cuba and Omega allows them to, let's see,  
6 schedule, nominate and administer transportation of the  
7 natural gas and pay monthly invoices for transportation  
8 services provided by MPC and MGC.

9 Q Isn't that just an administrative function  
10 rather than indicating that the agent is actually -- if  
11 there's a discount involved, how does that indicate that  
12 the -- that it's the agent's discount and not the  
13 principal's discount just because the agent is doing the  
14 -- the administrative functions?

15 A Oh, the -- the discount in this case for this --  
16 this -- this contract -- the rate came from a -- a letter  
17 that does not have the required -- I'm going to say --  
18 there are requirements that -- if you want to modify the  
19 contract and one of those is discounts. There's a  
20 requirement --

21 Q Which contract are you talking about?

22 A It would be the City of Cuba's contract that  
23 Omega would be attempting to be the agent for. If you  
24 want to modify those transportation agreements, and rates  
25 is one of the common ones, it -- it -- the contract

1 specifies that modifications have to be done in writing.  
2 And -- and -- and in almost all discount arrangements that  
3 the Staff saw, there would be two signatures consistent  
4 with that requirement.

5           This contract -- this discount that we're  
6 talking about between Omega -- that Omega achieved only  
7 has the signature of Omega. Actually, I think it only has  
8 -- well, Mr. Ries signs it. And now that I think about  
9 it, I think he -- he may have signed it on behalf of the  
10 pipeline. It has no corresponding signature from the  
11 Mayor or anyone on behalf of Cuba.

12         Q     Okay. So is it your position, then, that in  
13 obtaining the discount that Omega was not acting as agent  
14 for the City but was acting on its own behalf?

15         A     Yes.

16         Q     Now, Omega is not a respondent in this  
17 complaint; is that correct?

18         A     Yes. They're -- by -- you mean party?

19         Q     Yes.

20         A     Yes. That's correct. They're not -- they're  
21 not a party in this complaint.

22         Q     And does Staff have the authority to bring a  
23 complaint against Omega?

24         A     Well, not to my knowledge. I mean, General  
25 Counsel may tell me differently, but I -- I'm not aware.

1 I wouldn't -- I wouldn't have that impression.

2 Q Okay. And would there be any way for Staff to  
3 bring a complaint against the City of Cuba?

4 A No. Now, I need to qualify my prior answer  
5 about Omega. I am aware that there is a provision in the  
6 statute that to the extent that you have a non-regulated  
7 operation that isn't operated separate and distinct from  
8 the utilities that the Commission could still have some  
9 jurisdiction in that case.

10 That -- that may be relevant to your -- to that  
11 -- that answer about whether Omega would be under the  
12 jurisdiction of this Commission because it wasn't operated  
13 separate and distinct, I think is the term from the  
14 pipelines.

15 Q But Staff didn't approach bringing a complaint  
16 in that manner?

17 A That's correct.

18 COMMISSIONER MURRAY: Now I think I'm finished,  
19 Judge. Thank you.

20 JUDGE WOODRUFF: Thank you. Commissioner  
21 Appling, did you have anything else?

22 COMMISSIONER APPLING: I don't think so, Judge.

23 JUDGE WOODRUFF: All right. Before he was  
24 called away to another meeting, Commissioner Clayton  
25 indicated he would probably have questions, also. He's

1 not here right now, so we may need to recall you at a  
2 later date to -- or at a later time to allow other  
3 Commissioners to ask questions as well. But at this  
4 point, then, we'll go to re-cross based on the questions  
5 that have been asked at this point beginning with  
6 Municipal Gas.

7 MR. WOODSMALL: AmerenUE.

8 MS. DURLEY: No, your Honor.

9 JUDGE WOODRUFF: Public Counsel is not present.  
10 Does the pipeline have any recross?

11 MR. DEFORD: No, thank you, your Honor.

12 JUDGE WOODRUFF: All right. And for redirect?

13 MS. SHEMWELL: Thank you, Judge. Shall I --

14 JUDGE WOODRUFF: Yes. Go up to the podium.

15 REDIRECT EXAMINATION

16 BY MS. SHEMWELL:

17 Q Mr. Schallenberg, Commissioner Murray was asking  
18 you a line of questions about what Cuba was paying versus  
19 what Omega was paying -- paying for transportation to the  
20 City of Cuba. Do you know what Cuba was paying for gas?

21 A Yes.

22 Q How do you know that?

23 A Their invoices, which show an amount they were  
24 being charged for delivery to the city gate for their  
25 requirements, and it would also show charges for purchases

1 of gas on their behalf.

2 Q What does the contract tell you?

3 A The contract, which -- Exhibit 22, Section II,  
4 addresses what the commodity cost that the City would pay  
5 to Omega for a commodity.

6 Q What is that?

7 REPORTER'S NOTE: At this point, an in-camera  
8 session was held, which is contained in Volume 6, pages  
9 343 through 387.

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1 JUDGE WOODRUFF: Okay. We're out of the  
2 in-camera session. At this time, we're going to break for  
3 lunch. We'll come back at 1:30.

4 MS. SHEMWELL: Thank you.

5 (Break in proceedings.)

6 JUDGE WOODRUFF: Welcome back from lunch. And  
7 before we took our break, Mr. Schallenberg was on the  
8 stand, and, Ms. Shemwell, you're doing redirect.

9 MS. SHEMWELL: Thank you, Judge.

10 Q (By Ms. Shemwell) Mr. Schallenberg, we were  
11 discussing the discount given --

12 MS. SHEMWELL: We'll need to go in-camera,  
13 Judge. We were, and we'll need to continue, I think.

14 JUDGE WOODRUFF: Very well. We'll go back  
15 in-camera again. And the exit from the back of the room  
16 takes place.

17 REPORTER'S NOTE: At this point, an in-camera  
18 session was held, which is contained in Vol. 6, pages 383  
19 through 387.

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1 JUDGE WOODRUFF: Okay.

2 COMMISSIONER CLAYTON: We're back in open  
3 session?

4 JUDGE WOODRUFF: We're back in open session.

5 CROSS-EXAMINATION

6 BY COMMISSIONER CLAYTON:

7 Q I don't have a neat orderly set of questions to  
8 ask. I've basically got a bunch of notes that I'm trying  
9 to fill in some gaps, so if you'd be patient with me.

10 First of all, I want to ask -- and I think you  
11 touched on it with the discussion that you just had with  
12 Ms. Shemwell about the nature of the type of business that  
13 Omega is. The name of the company is Omega Pipeline,  
14 correct?

15 A Omega Pipeline Company. And there's a --  
16 there's two Omegas that we ran into. There is an Omega  
17 Pipeline Services that shows up on some of the invoices  
18 from Omega Pipeline Company to their customers.

19 Q Is that a corp -- are they both corporations? I  
20 mean, was there a review done at the Secretary of State to  
21 find two different corporations, or do you think that was  
22 just a "doing business as" reference?

23 A They are separate entities, and both entities  
24 were registered at the Secretary of State. I think Omega  
25 Pipeline Company is still active. Omega Pipeline Services

1 is no longer active.

2 Q And the transactions which are subject to the  
3 Complaint filed by Staff relate to which entity or both?

4 A It would relate to Omega Pipeline Company and  
5 MPC and MGC.

6 Q But it's Omega Pipeline Company, not Omega  
7 Pipeline Services Company, correct?

8 A Right. Omega Pipeline Services,

9 Q Do I need to worry about them is what I'm trying  
10 to --

11 A I mean --

12 Q Are they part of this complaint?

13 A Not that I know of.

14 Q Okay. Good. I can X them out then. So we're  
15 focusing on -- on the affiliate, the alleged affiliate of  
16 the Respondents, and that would be Omega Pipeline Company?

17 A Correct.

18 Q Okay. And what type of company is Omega  
19 Pipeline? When I say type, is it a -- is it a market or  
20 seller or shipper? What -- what type of company do you  
21 call it, characterize it as?

22 A Well, I would characterize it as an LDC in  
23 regards to it owns the distribution system at Fort Leonard  
24 Wood, and it operates and maintains that system. So in  
25 that regard, I would refer to Omega Pipeline Company as an



1 LDC serving Fort Leonard Wood.

2 Q Okay.

3 A It also sells natural gas as a marketer to -- I  
4 think it's been identified publicly as the City of Cuba  
5 and the Fort. And it has -- we've referred to it as three  
6 secret customers in addition to that, which have been  
7 referred to as A, B and C.

8 Q Why are those companies secret?

9 A I think it was -- is to avoid having to go HC  
10 all the time with their names. We just refer -- they've  
11 been identified in the record.

12 Q Why are they secret? Why can't we open that up?

13 A Yeah. The Staff isn't the one that -- that's  
14 making the issue.

15 Q I understand. Has anyone asked that that  
16 information be revealed or has anyone objected?

17 JUDGE WOODRUFF: Mr. DeFord, you might want to  
18 jump in here.

19 MR. DEFORD: Your Honor, it's -- it's the  
20 proprietary information of a party not to this case. It's  
21 Omega information, and no one here represents Omega.

22 COMMISSIONER CLAYTON: And we're -- forgive me  
23 for asking for this clarification. And I really -- I just  
24 -- listening to the reference to a Secret Company A, B and  
25 C, I didn't understand why that information was secret.

1           MR. DEFORD: Well, your Honor, it's not secret.  
2   That's -- that's a mischaracterization. That's something  
3   I think that came out in Staff's open. It's highly --  
4   they're highly confidential. The names of the customers  
5   -- the customers' specific information is highly  
6   confidential. It's proprietary information of Omega. So  
7   we couldn't disclose it, so we had to classify it in our  
8   testimony, as did Staff, as highly confidential.

9           There's nothing secret about the customers.  
10   We just don't have authority to -- to disclose information  
11   about them.

12           COMMISSIONER CLAYTON: Do we have the authority  
13   to disclose that information?

14           MR. DEFORD: Your Honor, I don't -- I don't  
15   know. I certainly know that we don't.

16           MS. SHEMWELL: I would like to ask if Mr. DeFord  
17   considers even the names of the companies to be highly  
18   confidential as opposed to specific customer information  
19   because he's referring to specific customer information,  
20   and that's quite different than the existence of a  
21   customer, the simple existence of a customer.

22           Staff, however, has been prevented, I guess, from  
23   revealing the names because Mr. DeFord didn't declassify  
24   them. So we've been very careful about that. Or tried to  
25   be.

1           COMMISSIONER CLAYTON: Okay. Well, I -- I just  
2 -- I raised the question because there's certain bits of  
3 information I don't understand why they're confidential.  
4 And I don't know what our duty is to a non-party. No  
5 one's chiming in. So I'm not sure maybe perhaps at one  
6 point we can -- we can open that information just for  
7 clarification in the record. For the record that everyone  
8 can see, anyway.

9           Q     (By Commissioner Clayton) So, Mr. Schallenberg,  
10 let's get back to my ramblings here. So Omega's acting as  
11 an LDC at Fort Leonard Wood. And I think you discussed  
12 with Commissioner Murray that they -- that Omega Pipeline  
13 Company does not hold a Certificate of Convenience and  
14 Necessity with the Commission; is that correct?

15          A     Yes. That's true.

16          Q     Okay. And why is that if it's acting as an LDC?

17          A     My understanding is because it's acting as an  
18 LDC on I think the federal property or federal onclave.

19          Q     Federal onclave?

20          A     That -- that's not within the jurisdiction of  
21 the State and, therefore, there's no certificate that we,  
22 the Public Service Commission, could give them for that.

23          Q     Okay.

24          A     So as long as they stay on the Fort's property  
25 or serve customers on the Fort's property that the Fort

1 allows them to serve, they do not need a -- an area  
2 certificate from the Public Service Commission.

3 Q Did they say they don't need a certificate? Or  
4 does everybody agree that they don't need a certificate?  
5 Is there any question about that?

6 A Well --

7 Q And I don't ask you as a lawyer to make an  
8 interpretation. But just in the general course of  
9 dealings at the Commission, your years of service, what is  
10 -- does everybody just generally agree that --

11 A I would say that question was part of the  
12 investigation. And I think there is a consensus that at  
13 least the Staff has accepted that as long as Omega stays  
14 -- provide -- the LD -- the distribution system stays on  
15 the Fort that they do not need a certificate in order to  
16 do that.

17 Q Okay. Now, how is Omega Pipeline Company acting  
18 as a marketer to Fort Leonard Wood? Is that a secret  
19 customer?

20 A No.

21 Q It's not a secret customer?

22 JUDGE WOODRUFF: Fort Leonard Wood is not a  
23 secret customer.

24 Q (By Commissioner Clayton) Well, now that you've  
25 said it, I can say it. Fort Leonard Wood. How are they

1 acting as a marketer and an LDC to Fort Leonard Wood?

2 A Omega is the gas supplier to Fort Leonard Wood.  
3 At various times while it was an LDC, other entities could  
4 serve the gas supply function to bring gas.

5 Q Does Omega actually own the pipeline? Does it  
6 have pipe in the ground?

7 A It has pipe on the ground within the federal  
8 onclave. It has -- it owns the distrib -- the natural --

9 Q In the -- in the -- in the nature of a  
10 distribution pipe. But does it have a -- does it have a  
11 transmission pipeline from the MGC line or the -- or the  
12 other line?

13 A It -- no. The -- well, there's a break-off  
14 where their distribution system interconnects to MGC. And  
15 where that break takes place, they own -- Omega owns the  
16 pipe up to that interconnection point, the delivery point  
17 per the tariff, and MGC owns the plant on the other side  
18 of that delivery point.

19 Q So -- so, basically, MGC brings the gas up to  
20 the Fort Leonard Wood gate, so to speak, and that's where  
21 Omega Pipeline Company would begin?

22 A That's -- that's --

23 Q At the -- at the Fort gate?

24 A That would be the LDC function. They would --  
25 because they provide bundled service, they provide gas

1 supply under their contract with the Fort, they would  
2 contract -- or have contracts with gas suppliers to, in  
3 essence, bring gas to that delivery point.

4 Currently, Omega is that gas supplier. But in  
5 the past, Omega and the LDC has had other gas suppliers.

6 Q And that is -- that is different than any other  
7 LDC. No other LDC is -- isn't it different with -- with  
8 any other LDC?

9 A No. Generally speaking, most --

10 Q Or is that the same?

11 A Most LDCs would have gas supplies. Now, the  
12 arrangement that you could have with the marketer is  
13 whether the LDC will own or hold transportation on other  
14 pipelines or whether the marketer holds that. And you  
15 could see where some LDCs will hold the transportation  
16 agreement on MGC or MPC and Panhandle.

17 There's -- there's only five pipelines that  
18 would be -- that can impact the service to these  
19 customers. One is MGC. One is MPC. And then there's --  
20 the three interstates are Mid-Missouri Interstate Gas,  
21 MRT, which is -- could -- could bring in gas, and  
22 Panhandle Eastern.

23 And some LDCs will hold transportation on those  
24 and then have a marketer deliver the gas into their  
25 pipeline. And sometimes they will buy the gas and have

1 the marketer bring it to their city gate. And there are  
2 -- they could do either one of those.

3 Q Okay. What makes a marketer different than an  
4 LDC? Is it -- is it the fact that there's no  
5 infrastructure? They don't own the pipe or there's not  
6 infrastructure in the ground, or is it because the  
7 marketer is selling to the wholesale level rather than  
8 retail? What is the -- what is the difference between the  
9 two?

10 A The -- the difference, generally speaking, is  
11 that a marketer will be dealing with the -- the -- the  
12 entity that owns the distribution system. Very seldom --  
13 like an LDC, the municipal, sometimes they'll deal with an  
14 end user, a transportation customer, but it has to be  
15 distributed.

16 Marketers, I would say, generally do not own or  
17 control the distribution to the end users.

18 Q When you say distribution, you mean the -- you  
19 mean the end user being a retail customer?

20 A Retail customer. Or in the case of an LDC,  
21 where the -- the marketer will sell the gas, like, say, to  
22 Ameren or they would sell it to Laclede or they'd sell it  
23 to the City of Cuba. And then Ameren, the City of Cuba,  
24 and I can't remember the third one I mentioned, would  
25 actually deal with the end user.

1           Q     Okay. Is it possible -- who -- who else could  
2     the Fort buy from, if not -- well, I guess they -- the  
3     Fort buys it from Omega as the LDC. Omega LDC, how many  
4     choices does it have from whom it would buy --

5           A     Well, in its history.

6           Q     -- its gas?

7           A     It's had Utilicorp. I think it was --

8           Q     Well, just -- I don't want any history. I'm  
9     just talking about right now. Omega Pipeline Company, the  
10    LDC, how many choices does it have from whom it buys gas?  
11    I mean, does it have to buy it from itself? Or, I mean,  
12    can it buy it directly in from MGC or MPC?

13          A     MGC and MPC cannot sell gas.

14          Q     Okay.

15          A     So they only can transport gas. So if it wanted  
16    to have gas, it would have to buy from some entity that  
17    would actually be able to buy and hold title to gas.

18                 The number of entities that could do that is --  
19    is fairly broad. The ones that have operated on the  
20    system, that's a much narrower group, but there are  
21    multiple choices.

22          Q     Okay. Is there -- if -- if I say I'm a gas  
23    shipper, who would I -- what type of company would I be  
24    talking about? Would that be Omega, or would that be MGC  
25    or neither?



1           A     If I'm -- if you use the term gas shipper --

2           Q     Uh-huh.

3           A     -- that would be a customer of MGC or MPC

4     because you would need to move your gas through the

5     pipeline in order to get to one of the customers.

6           Q     So you'd be an LDC or, what, a high volume user?

7           A     You could be. I mean, you could be an end user.

8     Some end users hold transportation to get their gas

9     through. Other ones can be LDCs that hold that.

10          Q     Okay. I want to go through just very quickly --

11     Commissioner Murray covered a lot of ground today, and I

12     hope I'm not going to be repeating. I may repeat a

13     little, but I'm going to try to move through these counts

14     quickly.         On Count 1, basically, you're alleging a

15     violation of the company's tariff on Sheet 39. Well,

16     actually, you're alleging three violations. The first is

17     that they applied the rates inappropriately between

18     affiliates and non-affiliates.

19                 Two, they did not maintain separate facilities

20     with an affiliate. Three, they failed to submit quarterly

21     reports. And I believe you're alleging that's a violation

22     of Sheet 3 and various paragraphs on that sheet. Is that

23     correct?

24          A     I would -- the Sheet 3 --

25          Q     Sheet 39.

1           A     Sheet 39.

2           Q     39.

3           A     That sounds more --

4           Q     I would have taken it out of your testimony, so

5     I hope I got it.

6           A     Yeah. The sheet number is 39. Yes.

7           Q     So that would be a violation of their tariff --

8     or failing to follow their tariff and not violating any

9     particular rule of the Commission, correct? Or do we have

10    separate rules that relate to these issues?

11          A     The only rule that I know that have been alleged

12    in this process has been the affiliate transaction rule.

13    So I -- in turn -- other than that, that's the only rule

14    that I know has been in play in this document.

15          Q     Okay. What is the difference between the

16    violation of the Count 1 for failing to offer -- failing

17    to sell gas in a non-discriminatory manner among

18    affiliates and non-affiliates compared to what Count 3

19    alleges, which -- which makes reference to providing the

20    transportation service at a discounted rate for non -- for

21    a non-affiliate? What is the difference between those two

22    provisions in the complaint?

23          A     In terms of Count 1, Count 1 would be a -- a

24    failure to comply -- take actions that -- that are

25    inconsistent with what's required by tariff. Count 3 is

1 not only do you fail to comply with your tariffs, but the  
2 tariffs have -- it has an impact on what rate you can  
3 charge.

4 Count 3 is then you did -- you charged your  
5 customers rates that were inconsistent with what you were  
6 authorized to charge. So one is the action wasn't  
7 consistent with your tariffs, one. And three is after you  
8 engaged in that action, you charged your customers a rate  
9 that was not authorized.

10 Q So it's the same thing. The same allegations in  
11 Count -- basically, Count 1, sub 1 are the same as Count  
12 3, and it's -- you -- and Count 3, you are alleging an  
13 impact on other ratepayers, which I would assume leads to  
14 a different remedy?

15 A Yes. Other than Count 1 has more actions in it  
16 than just the discounts. The preferential treatment was  
17 broader than just the discounts. But that element is in  
18 Count 1 and Count 3.

19 Q Okay. Is there a time period where all of the  
20 allegations in all of the counts occurs? Is that the  
21 June/July '03 through May 31st, 2006? Are those dates  
22 consistent for all the counts and all the activities or  
23 omissions?

24 A Yes.

25 Q Count 4 is not in your testimony. And I'm

1 assuming -- is that in someone else's testimony?

2 A I -- I know one count was addressed by  
3 Mr. Imhoff.

4 Q That must be it.

5 COMMISSIONER CLAYTON: Is that his, Ms.  
6 Shemwell?

7 A And I don't have his testimony in front of -- in  
8 front of me.

9 MR. WOODSMALL: Here you go.

10 Q (By Commissioner Clayton) Your testimony leaves  
11 out Count IV, so that's why I'm --

12 MS. SHEMWELL: That's the failure to report  
13 their offer of discounted services in the second and third  
14 quarter. Yes.

15 JUDGE WOODRUFF: Is that Mr. Imhoff's testimony?

16 MS. SHEMWELL: Yes.

17 MR. SCHALLENBERG: Yes.

18 JUDGE WOODRUFF: Commissioner, you may not be  
19 aware that we've had some discussion about Mr. Imhoff.  
20 His daughter is in the hospital, and he may not be able to  
21 answer any further questions.

22 If you have specific questions about that count,  
23 you might want to direct them to Mr. Schallenberg.

24 COMMISSIONER CLAYTON: Do you want to get him on  
25 the phone or something?

1 JUDGE WOODRUFF: No.

2 COMMISSIONER CLAYTON: I'm just kidding.

3 Q (By Commissioner Clayton) Let me ask you this:  
4 Count 4 is based on No. 4, and you said, Is your answer  
5 the same with regard to the third part of Count 1 being  
6 the same information as part of Count 4, you're just  
7 requesting a different remedy because there was a failure  
8 to report in Count 1 as well?

9 A I'll look exactly at Count 4.

10 Q I have the complaint around here somewhere.

11 A Yes. The answer to the question would be yes.

12 Q So, basically, you're -- you're re-alleging and  
13 then alleging a different level of damage or -- or remedy  
14 or something like that, I'm -- I'm assuming; is that  
15 correct?

16 A Yes. There's -- it's going through the specific  
17 -- the specifics of not only did it just not comply with  
18 the tariff, but there is a consequence beyond just  
19 non-compliance with Count 4.

20 Q Okay. On Count 5, I think it refers to Secret  
21 Customer B. The allegations of Count 5 -- and I -- this  
22 is in your testimony, so I think you're -- you're the man  
23 for this one, too, correct?

24 A Yes.

25 Q The allegations are that -- that someone -- is

1 it either Omega or the pipeline paid to install some  
2 additional infrastructure; is that correct?

3 A The pipeline -- so I -- the pipeline paid for  
4 modifications to the pipeline and an extension of the  
5 pipeline to serve Secret Customer B, which was the  
6 customer of Omega.

7 Q Okay. Has the -- has the Respondent sought to  
8 add that in that investment to its regulated books?

9 A It's recorded on its regulated books.

10 Q It is recorded. But it wouldn't be reflected in  
11 its current rates, correct?

12 A No. The -- the current rates were the rates  
13 that were initially charged when you granted the  
14 certificate.

15 Q So they're -- they're old. They're older  
16 since --

17 A Yeah. There's been no rate case for MGC since  
18 its certificate.

19 Q So there wouldn't -- for Count 5, there would be  
20 no harm to the ratepayer until after -- until after a rate  
21 case that included, perhaps, that additional  
22 infrastructure?

23 A There would be no showing that it's been in  
24 rates. The extent that they record it and show it in  
25 annual reports, it would tend to create the impression

1     that their cost of service is greater than it would be  
2     absent that recording.

3                 So there would be that harm when you -- when you  
4     give us the annual report and you report the higher  
5     investment and you do a calculation, you will -- because  
6     of this action, you will tend to believe their cost of  
7     service is greater than it would be without it.

8                 But there has not been a rate case that has  
9     actually been developed by including that specific cost in  
10    it.

11                Q     Which -- which means that there is no ratepayer  
12    impact as far as what the ratepayer is paying, what the --  
13    what the other customers are paying?

14                A     Yes, sir.

15                Q     Okay.  If -- if the Respondent did not record  
16    that investment in its books, would there still be a  
17    violation of the tariff?  Would that -- would there still  
18    be a Count 5 in this complaint?

19                Does the company have the ability to improve  
20    infrastructure on behalf of a customer, but just not seek  
21    recovery of it?  Do you know?

22                A     I -- the tariffs didn't specify that.  The --  
23    and the trouble with it is they have a line certificate,  
24    and the line certificate doesn't allow them to go outside  
25    the line certificate without the Commission approval.  So

1 your question is -- one is if they went outside the line  
2 certificate and built it but they didn't charge it, will  
3 they still be okay by going outside their line  
4 certificate. And I would probably say no.

5 I mean, I -- I think the -- in terms of dollar  
6 impact, there would be no dollar impact on other shippers  
7 and customers if they did it, but I'm not sure that there  
8 wouldn't be a concern about the pipeline building outside  
9 its line certificate.

10 Q What would have been the -- the proper method of  
11 addressing this circumstance where Secret Customer B needs  
12 improvements on its line? Would they file a tariff sheet  
13 that would make it available for everyone? Is that the  
14 proper way of addressing this type of circumstance, or is  
15 it never allowed?

16 A Oh, no. The -- the way -- the baseline to use  
17 for the conduct that they could have done in this would  
18 have been to file to get the Commission to modify their  
19 line certificate to build this lateral and make whatever  
20 modifications that were necessary to serve this customer  
21 on the basis that -- and then put in the justification  
22 that the -- you know, the economics of this is beneficial,  
23 and it should be done.

24 And then if the Commission finds in such a way,  
25 it will modify its line certificate and the expenditure



1 would be included in its plan of service.

2 Q Okay. What is the relief sought in Count 5?

3 A As I recall, on -- I think it's on page 9. I  
4 think the Staff relief was that it would require Omega to  
5 pay MPC for the Willard -- or Secret Customer B lateral.

6 Q Willful violation of the tariff.

7 A And remove its costs from the books and records  
8 of MGC.

9 COMMISSIONER CLAYTON: Okay. Thank you very  
10 much, Mr. Schallenberg. Judge, I don't think I have any  
11 other questions.

12 JUDGE WOODRUFF: All right. Thank you. Then  
13 any additional re-cross based on those questions?

14 MR. WOODSMALL: Very briefly, your Honor.

15 JUDGE WOODRUFF: Go ahead.

16 RECROSS EXAMINATION

17 BY MR. WOODSMALL:

18 Q Mr. Schallenberg, you were just asked about harm  
19 associated with Count 5. That is the building of the  
20 lateral to Secret Customer B. Do you recall that?

21 A Yes.

22 Q You were -- can you -- if Secret Customer B --  
23 if the pipelines had not built in lateral to Secret  
24 Customer B, would Secret Customer B have been able to  
25 receive gas through alternative methods?

1           A     Secret Customer B could be served from the city  
2     that is near Secret Customer B if the city chose to build  
3     and -- and had the authority to build its distribution  
4     system out to Secret Customer B.

5           Q     Okay. So by building this lateral without a  
6     certificate, the pipeline was able to steal this customer  
7     away from that municipality; is that true?

8           A     Well, steal is a -- if you file -- if you would  
9     have filed for a modification of your line certificate to  
10    do -- to do the service that was there, this -- this  
11    entity that had the alternative would have had the  
12    opportunity to come to the Commission and suggest that  
13    service would be better done or the service would be  
14    better provided to the Secret Customer B through whatever  
15    commitments they were willing to make.

16                   Now, in the history of this pipeline, it -- it  
17    was clear that the pipeline was not to bypass LDCs and  
18    municipals. And -- but you could get a waiver of those  
19    requirements.

20                   So by not having that opportunity and making  
21    that filing, the other -- the City didn't have an  
22    opportunity to present its side, which may not have  
23    prevailed. That's why I'm not agreeing with the stealing.

24           Q     Okay. But at least the municipality was harmed  
25    by not being able to present itself as an alternative for

1 the gas needs of Secret Customer B?

2 A They lost that opportunity arguably that the  
3 municipal could file a complaint as well.

4 MR. WOODSMALL: Okay. Thank you.

5 JUDGE WOODRUFF: Any questions from Ameren?

6 MS. DURLEY: No, your Honor.

7 JUDGE WOODRUFF: All right. Public Counsel is  
8 not present. Pipeline have any questions?

9 MR. DEFORD: None, your Honor.

10 JUDGE WOODRUFF: Any redirect on those questions?

11 MS. SHEMWELL: Briefly. Thank you.

12 REDIRECT EXAMINATION

13 BY MS. SHEMWELL:

14 Q Mr. Schallenberg, Commissioner Clayton asked you  
15 about Omega Pipeline Services. Was Omega Pipeline  
16 Services an affiliate of MPC and MGC?

17 A Yes.

18 Q I was -- do you have an opinion as to why Omega  
19 Pipeline Services was formed or how -- let me ask, how --  
20 do you have an opinion as to how it was used?

21 A Yes.

22 Q What is that?

23 A Certain customers, Secret Customer A and Secret  
24 Customer C, made its payments to Omega Pipeline Services  
25 separate from paying Omega Pipeline Company, which then

1 put those funds in play differently than they would be if  
2 they were given to Omega Pipeline Company.

3 Q Let's talk about what you mean by in play.  
4 Which -- were they paid to a different bank account?

5 A Yes.

6 Q So Secret Customer A and Secret Customer C paid  
7 a different bank account?

8 A Their payments went to a different bank account  
9 than the other bank account for the other Omega Pipeline  
10 Company customers.

11 Q Do you have information as to whether or not the  
12 controller of MPC and MGC knew about Omega Pipeline  
13 Services? Do you have knowledge about that?

14 A Yes.

15 Q What is that?

16 A It's in the deposition of Mr. Lod -- Lodholz.

17 Q Lodholz?

18 A Excuse me.

19 Q And did you attach that to your testimony?

20 A Yes, I did.

21 Q What did he know?

22 A What he didn't know is he wasn't aware of Secret  
23 Customer A. It's in the deposition. And, actually, he  
24 was one that actually alerted us to the distinction  
25 between the two entities. Because when he was shown the

1 invoices from Omega Pipeline Companies, he noted that the  
2 payments were not going to Omega Pipeline Company. They  
3 were going to Omega Pipeline Services.

4 Q At a different bank account?

5 A And a different bank account.

6 Q Did -- you testified earlier today that Staff  
7 did -- or Commissioner Clayton asked you about why we're  
8 calling them secret customers. These customers, it was  
9 your testimony, were kept secret from the Staff; is that  
10 correct?

11 A Well, if you mean by keeping secret that they  
12 didn't tell them -- tell us about it until we found out  
13 about it from alternative means and then they acknowledged  
14 that it was true, I could accept that definition of  
15 secret.

16 Q Commissioner Clayton was asking you about a rate  
17 case, and you indicated no rate case has been filed. Do  
18 you have information to indicate that Missouri Gas Company  
19 was required to file a rate case?

20 A Yes.

21 Q What is that information?

22 A Their certificate required that within their  
23 first 18 months of operation they were to file a -- a rate  
24 case, a general rate case so that -- which is fairly  
25 common, so that the initial rates can be revised based on

1 actual cost of service and operations.

2 Q Did they file that?

3 A No. Not since they've had that -- no. That's  
4 for MGC. But, no, not since they've had their  
5 certificate.

6 Q And when did they get their certificate, just  
7 approximately?

8 A It's -- I think it's in the early 1990s. I know  
9 the pipeline goes into operation by 1992, so --

10 Q Are we well past 18 months?

11 A Yes.

12 Q We had some discussion about Count 5, I believe,  
13 with Commissioner Clayton, and he was asking about a  
14 tariff violation. You made the distinction of a line  
15 certificate.

16 MS. SHEMWELL: Well, strike that. I don't -- I  
17 don't have any more questions. Thank you.

18 JUDGE WOODRUFF: All right. Thank you.  
19 Mr. Schallenberg, you can step down. Does the Staff have  
20 any other evidence?

21 MS. SHEMWELL: We do, Judge. We propose to take  
22 a brief time to present some evidence from Mr. Wallen and  
23 Mr. Simpson.

24 JUDGE WOODRUFF: And this will be by deposition?

25 MS. SHEMWELL: It will be by deposition. And we

1 have Blane Baker who would propose -- I will read the  
2 questions, and he will read in the answers. And we have  
3 the designations available for all of the parties so that  
4 we should be able to get through all of this very quickly.

5 JUDGE WOODRUFF: How long do you estimate that  
6 it would take?

7 MS. SHEMWELL: I'm estimating for Mr. Wallen,  
8 under 20 minutes, maybe 15.

9 JUDGE WOODRUFF: I'll get to you in a second.  
10 And 20 for Mr. Wallen. How long for Mr. Simpson?

11 MS. SHEMWELL: I can only estimate, but I'm  
12 thinking about the same. We intend to move through this  
13 quickly, but we have to, of course, allow for the court  
14 reporter.

15 JUDGE WOODRUFF: Certainly. But is there any  
16 reason why this needs to be done verbally rather than just  
17 handing the Commission the depositions? I'm concerned  
18 about the time.

19 MS. SHEMWELL: This allows us to pinpoint very  
20 specific parts of the deposition.

21 MR. DEFORD: Your Honor --

22 JUDGE WOODRUFF: You couldn't do that by -- by  
23 highlighting on a piece of paper?

24 MS. SHEMWELL: I suppose we could highlight it  
25 on a piece of paper. The entire depositions are in, so we

1     could highlight on a piece of paper, but I'm thinking that  
2     this would not take very long, so it's --

3             MR. DEFORD: Your Honor, I think --

4             JUDGE WOODRUFF: Yes, Mr. DeFord. I know you're  
5     anxious. Go ahead.

6             MR. DEFORD: We're obviously going to object --

7             JUDGE WOODRUFF: I figured you would.

8             MR. DEFORD: -- to the introduction of any of  
9     this in that it should have been in the direct or  
10    surrebuttal case of the Staff. Beyond that, we would  
11    object to reading only portions of the depositions because  
12    we didn't have an opportunity to make a designation, a  
13    counter designation.

14            Staff failed to designate any portions of the  
15    depositions to us so that we could make a counter  
16    deposition -- or counter designation, so we would ask that  
17    the entire depositions be read if they're going to read  
18    them in. If you're going to read any of it, you have to  
19    read all of it.

20            MS. SHEMWELL: Let me say this: Mr. Simpson's  
21    deposition wasn't taken until after Staff filed its  
22    testimony. But we actually think that it would make the  
23    record much shorter if we were permitted to read in  
24    certain sections.

25            If the Commission prefers, however, we can just



1 put the entire things in.

2 JUDGE WOODRUFF: Well, I think it's appropriate  
3 to -- to make designations within the record and -- of  
4 what -- portions of that deposition you think are  
5 important for the commission to see. I would certainly  
6 give the pipeline companies an opportunity after the  
7 hearing to make a similar designation.

8 MS. SHEMWELL: And, certainly, they --

9 JUDGE WOODRUFF: I don't think it's necessary to  
10 read it into the record because that creates confusion  
11 into the transcript. And, plus, it takes up time, time  
12 that may be limited in this case.

13 I'm not sure -- how much time we're going to  
14 need tomorrow, and I don't want to be here at 8:00  
15 tomorrow after -- tomorrow evening unnecessarily.

16 MS. SHEMWELL: I certainly agree. I think that  
17 we have someone coming in for the City of Cuba tomorrow to  
18 testify. And then the pipelines. Would it be helpful if  
19 the pipelines were permitted to do cross designations if  
20 we gave them this and they could do their designations  
21 this evening?

22 JUDGE WOODRUFF: And -- and still reading the  
23 documents in?

24 MS. SHEMWELL: Yes. That was my thought.

25 JUDGE WOODRUFF: Mr. DeFord is shaking his head

1 back there.

2 MR. DEFORD: Absolutely not, your Honor. We'd  
3 object to that. Certainly, we're entitled to more than 12  
4 hours to look at what you're doing and respond.

5 I mean, you've -- you've had -- you've certainly  
6 had Mr. Wallen's deposition for many, many months. So --

7 MS. SHEMWELL: Mr. -- Mr. DeFord certainly  
8 attended and had the opportunity to ask questions. We're  
9 not trying to hide the ball. We're simply trying to  
10 reduce the size of the record, Judge.

11 MR. DEFORD: Neither are we. We think the  
12 entire deposition can go in.

13 MS. SHEMWELL: Right. Then we offer them into  
14 evidence the depositions. I believe they're already in,  
15 but just --

16 JUDGE WOODRUFF: Where are they at, actually?

17 MS. SHEMWELL: But just to make the record clear  
18 -- where is my exhibit list? Perhaps it's going to be  
19 quicker if I simply assign them new numbers and just --

20 JUDGE WOODRUFF: That would be fine. Sure.

21 MS. SHEMWELL: Let's make them 78 and 79, 78  
22 being Mr. Wallen's deposition. And I -- I would like, of  
23 course, the attachments of the exhibits to go in.

24 JUDGE WOODRUFF: Okay.

25 MS. SHEMWELL: And Mr. Simpson's deposition will

1 be 79. And I -- just to make sure, I think we had three  
2 or four exhibits with Simpson.

3 JUDGE WOODRUFF: And they'll all be attached to  
4 it or --

5 MS. SHEMWELL: Yes.

6 JUDGE WOODRUFF: Okay. I mean, they're in the  
7 record now?

8 MS. SHEMWELL: They're in the record.

9 JUDGE WOODRUFF: Attached to the deposition?

10 MS. SHEMWELL: It's my belief that they are.  
11 But if not, I would offer them.

12 JUDGE WOODRUFF: Okay. Were they attached to  
13 somebody else's -- how would they have been in the record  
14 otherwise, I guess?

15 MS. SHEMWELL: Mr. Wallen was attached --  
16 deposition was attached, right, to Mr. Schallenberg's  
17 testimony.

18 JUDGE WOODRUFF: Mr. Simpson's apparently  
19 wouldn't be, right?

20 MS. SHEMWELL: Mr. Simpson's would not be,  
21 that's correct, because it was taken afterward.

22 JUDGE WOODRUFF: I don't want to empha --  
23 emphasize too much that -- I certainly expect the parties  
24 to tell the Commission what's important in these  
25 documents. I just don't want -- don't believe that it's

1     necessary to read them into the record at this point.

2             MS. SHEMWELL:   Okay.

3             JUDGE WOODRUFF:   And the only time limit on  
4     actually doing that, of course, would be in the briefs.

5             MS. SHEMWELL:   Certainly.

6             JUDGE WOODRUFF:   So Exhibit 78 and 79, the  
7     Wallen deposition and the Simpson deposition, have been  
8     offered into evidence.   Are there any objections to their  
9     receipt?

10            MS. SHEMWELL:   I believe they're HC.

11            JUDGE WOODRUFF:   All right.   We'll --

12            MS. SHEMWELL:   Has Wallen been declassified?

13            MR. DEFORD:   I believe we've marked all but  
14     Mr. Simpson's.   We haven't marked his yet.

15            MS. SHEMWELL:   So we will make sure that both  
16     are available.

17            JUDGE WOODRUFF:   All right.   And they're both HC  
18     at this point.   And I didn't hear any objection to them.

19     All right.   They will be received into evidence.

20            (Exhibit Nos. 78 and 79 were admitted into  
21     evidence.)

22            JUDGE WOODRUFF:   Anything further from Staff?

23            MS. SHEMWELL:   We will have Cuba tomorrow.

24            JUDGE WOODRUFF:   Okay.   And --

25            MS. SHEMWELL:   That -- that witness apparently

1 was only available tomorrow.

2 JUDGE WOODRUFF: Okay. And is he part of your  
3 direct testimony or just simply rebuttal, understanding  
4 this is a possible rebuttal witness?

5 MS. SHEMWELL: That is correct.

6 JUDGE WOODRUFF: So he may not be called  
7 depending upon what happens with the direct?

8 MS. SHEMWELL: That's possible. Yes.

9 JUDGE WOODRUFF: Or excuse me. With the  
10 pipeline's testimony.

11 MS. SHEMWELL: Pipeline.

12 JUDGE WOODRUFF: Mr. DeFord, it looks like you  
13 want to say something.

14 MR. DEFORD: We're going to object to any kind  
15 of live rebuttal. Again, we've had prepared direct.  
16 We've had rebuttal. We've had surrebuttal.

17 You know, I don't understand where we're making  
18 up these rules as we go along. And, I mean, if -- if I  
19 knew we were going to play by those kind of rules, I would  
20 have handled this case much differently.

21 JUDGE WOODRUFF: Well, again, if Staff wishes to  
22 offer this testimony tomorrow, they can make a motion at  
23 that time, and I'll make a ruling at that time.

24 I'm not at this time saying whether the  
25 Commission will allow that or will not. Okay? All right.

1 Then at this point, we will move on to testimony from the  
2 pipeline companies. You can call your first witness.

3 MR. DEFORD: Call Chris John.

4 JUDGE WOODRUFF: Hello, Mr. John. Please raise  
5 your right hand.

6 CHRIS JOHN,  
7 being first duly sworn to testify the truth, the whole  
8 truth, and nothing but the truth, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. DEFORD:

11 JUDGE WOODRUFF: You may be seated. And you may  
12 inquire.

13 MR. DEFORD: Thank you, your Honor.

14 Q (By Mr. DeFord) Mr. John, would you state and  
15 spell your name for the record, please?

16 A My name is Christopher A. John, and my last name  
17 is spelled J-o-h-n.

18 Q And by whom are you employed and in what  
19 capacity?

20 A I'm employed by the energy consulting firm of  
21 Brown, Williams, Moorehead & Quinn, and I'm the Vice  
22 President.

23 Q And have you caused to be prepared rebuttal and  
24 surrebuttal testimony that have been marked for  
25 identification as Exhibits 300 and 301?

1           A     Yes.

2           Q     Do you have any corrections to those exhibits?

3           A     No.

4           Q     And if I were to ask you the same questions set  
5     forth therein here today, would your answers be  
6     substantially the same?

7           A     Yes, they would.

8           Q     And would those answers be true and correct to  
9     the best of your information and belief?

10          A     Yes.

11               MR. DEFORD:  I'd offer Exhibits 300 and 301 and  
12     tender Mr. John for cross.

13               JUDGE WOODRUFF:  All right.  Thank you.  
14     Exhibits 300 and 301 have been offered into evidence.  Are  
15     there any objections to their receipt?  Hearing none, they  
16     will be received into evidence.

17               (Exhibit Nos. 300 and 301 were admitted into  
18     evidence.)

19               JUDGE WOODRUFF:  And for cross-examination,  
20     we'll begin with Ameren.

21               MS. DURLEY:  No questions, your Honor.

22               JUDGE WOODRUFF:  Thank you.  And Public Counsel  
23     is not present.  Municipal Gas Commission?

24               MR. WOODSMALL:  No questions, your Honor.

25               JUDGE WOODRUFF:  Staff?

1 CROSS-EXAMINATION

2 BY MR. REED:

3 Q Mr. John, good afternoon.

4 A Good afternoon.

5 Q Mr. John, your -- your deposition in this case  
6 was taken on November 15th, 2006. You were in Washington  
7 D.C. at that time, were you not?

8 A Yes, I was.

9 Q And you were -- I think present with you was  
10 Tino Monaldo; was that correct?

11 A That's correct.

12 Q What is Mr. Monaldo's role with Missouri  
13 Pipeline and Missouri Gas Company?

14 A I'm not exactly sure what his exact title is. I  
15 know he's -- does work for those companies.

16 Q Can you explain to me why he was with you?

17 A I didn't ask him that question.

18 Q Did you talk about anything before the  
19 deposition?

20 A No, we did not.

21 Q So it was --

22 A Not -- not related to my testimony.

23 Q All right. So Mr. Monaldo came to your office  
24 in Washington D.C. where you were deposed, but you didn't  
25 talk about the substance of this case before the



1 deposition?

2 A No, we didn't.

3 Q You didn't. All right. What about during the  
4 deposition?

5 A Did we talk about the substance of the case  
6 during the deposition itself?

7 Q Right.

8 A No.

9 Q After the deposition?

10 A To tell you the truth, I had to leave right  
11 after the deposition, so I didn't really have a chance to  
12 talk to Mr. Monaldo after that.

13 Q All right. How about -- how about in the time  
14 since the deposition up to today? Today, you're  
15 testifying?

16 A Yes.

17 Q So have you spoken with Mr. Monaldo about this  
18 case, about your deposition, about anything related to  
19 your testimony?

20 MR. DEFORD: I'm going to object, your Honor.

21 This is getting into attorney/client privilege.

22 Mr. Monaldo is outside counsel for the companies. And to  
23 the extent he's had any discussions of any sort with the  
24 client, it would be attorney/client privilege.

25 MR. REED: Who is the client?

1           MR. DEFORD: The pipeline companies,  
2 Respondents. Mr. Monaldo is outside counsel for both.

3           MR. REED: All right. And you're saying that  
4 this hired expert is the client?

5           MR. DEFORD: To the extent Mr. Monaldo was  
6 speaking on behalf of the pipeline company, certainly.

7           MR. REED: Well, this gentleman is a hired  
8 expert, Judge. He is not employed by the pipeline  
9 companies, so attorney/client privilege does not apply.

10          MR. DEFORD: It -- it certainly does, your  
11 Honor. I mean, it's work product. It's preparation for  
12 -- for trial. I don't know how much more clear that could  
13 be.

14          JUDGE WOODRUFF: Would you agree it would be  
15 work product if --

16          MR. REED: It is not. Once the expert is  
17 designated to testify, the work product rule does not  
18 apply.

19          JUDGE WOODRUFF: What's -- what's the relevance  
20 of this inquiry?

21          MR. REED: well, I want -- I want to know what  
22 the discussions were between this witness and anyone from  
23 the pipeline company because this is a hired expert.  
24 There is no attorney/client privilege, and I want to know  
25 if there was any -- any suggestions or influence with

1 regard to the prefiled testimony or anything that he's  
2 going to say today at the hearing.

3 JUDGE WOODRUFF: Well, it's apparently not  
4 attorney/client, as you indicated. He's not -- not the  
5 client of the attorney. It might be work product, and I'm  
6 not sure where that would be going.

7 MR. REED: Well, so far -- I'm sorry.

8 JUDGE WOODRUFF: I'll allow you to go forward  
9 with this for a while. And if -- if it gets into anything  
10 that you believe is protected, Mr. DeFord, pipe up again.

11 MR. DEFORD: Fair -- fair enough.

12 MR. REED: well, I think so far he's indicated  
13 that he really hasn't had any discussions.

14 JUDGE WOODRUFF: That's right. That's why I'm  
15 letting it go forward for a while.

16 MR. REED: so I may be looking for something  
17 that's not there.

18 Q (By Mr. Reed) Your prefiled testimony, the  
19 written testimony, you filed rebuttal and surrebuttal.  
20 Did anyone offer edits or comments to that testimony? In  
21 other words, did you prepare testimony, circulate a draft  
22 and then receive any sort of comments or edits?

23 A Yes, I did.

24 Q From whom?

25 A I received comments from Mr. Monaldo and Mr.

1 Ries.

2 Q Did -- do you recall how that changed the  
3 prefiled testimony in any way?

4 A In any substantial way?

5 Q Yes.

6 A It did not.

7 Q What about for any particular issue that you  
8 recall?

9 A No, it didn't. There were no significant  
10 additions or subtractions from my testimony.

11 Q All right. I have noticed that in the pre -- in  
12 the prefiled testimony that you have here that there's not  
13 much analysis of the contracts or the business activities  
14 with Secret Customer No. 3. Do you know which one that  
15 is?

16 A It's Secret -- you mean Customer No. C or --

17 Q Customer No. C. I'm sorry. Not 3. C.

18 A There's not much analysis of that?

19 Q Right.

20 A No. I didn't think I needed to do that analysis  
21 with the -- what I was presenting in the basis for what I  
22 was presenting.

23 Q All right. Since -- let's see. Since your  
24 testimony has been filed and your deposition was taken in  
25 November, have you reviewed any additional documentation,

1 had any additional discussions with anyone in order to  
2 prepare for the hearing?

3 A I basically reviewed Staff's testimony that was  
4 filed after my deposition was taken. I have not had  
5 conversations or discussions with Mr. Monaldo on those --  
6 on that point, no.

7 Q Well, let me -- let me be a little more  
8 specific. What about have you reviewed anything like  
9 additional e-mails between the Staff and Mr. Ries that may  
10 have come about back in 2002?

11 A I had already looked at those.

12 Q You had already looked at those. All right.  
13 Any additional payment records from Omega to MPC or MGC?

14 A No. I had the same set of invoices that was  
15 provided to Staff for January -- starting January 2004  
16 through March 2006.

17 Q Have you -- have you had any discussions or have  
18 you reviewed any reports regarding the system in balance?

19 A No, I haven't.

20 Q And what about investigating the difference  
21 between line certificates and area certificates?

22 A Have I done any further --

23 Q Since your testimony was filed.

24 A No, I haven't.

25 Q Have you looked into who Omega Pipeline Services

1 is?

2 A No.

3 Q All right. Before you were hired in this case,  
4 it appears from your -- I think from your deposition that  
5 you were previously hired to work on a case involving  
6 Missouri Interstate Gas; is that right?

7 A That's correct.

8 Q That's the one we call MIG. That's currently  
9 FERC regulated, is it not?

10 A Yes, it is.

11 Q It's a six-mile pipeline under the river near  
12 St. Louis?

13 A That's correct.

14 Q Now, MIG is connected to MPC and MGC, and those  
15 three are affiliates, are they not?

16 A Yes, they are.

17 Q And previously, these three, MIG, MPC, MGC were  
18 connected to Omega, and those all three were affiliates as  
19 well?

20 A When you say they were connected to Omega I  
21 don't know what you mean by that.

22 Q I mean, I guess what I'm getting at is all four  
23 of those entities were at one time affiliates?

24 A Omega Pipeline Company, MPC, MGC and MIG were  
25 affiliates, yes.

1           Q     The work that you're doing on that FERC  
2     petition, does that have to do with the tariffs?

3           A     Yes.

4           Q     Now, is the plan for MIG, MPC, MGC to somehow  
5     come under FERC jurisdiction so that the pipelines, MPC  
6     and MGC, won't have to deal with the State Commission  
7     anymore? Is that the plan?

8           A     I don't know if that's -- that's not how it was  
9     characterized to me. I was just told that they would like  
10    to move to FERC jurisdiction.

11          Q     How -- that was it? They just told you they  
12    want to move to FERC jurisdiction?

13          A     Well, I don't even know that they told me. I  
14    knew -- I was asked to look at the tariff and -- that MIG  
15    had and to see what modifications would be necessary to  
16    bring MPC and MGC under that.

17          Q     Well, this case, GC-2006-0491, was filed June  
18    21st, 2006. The FERC application was filed -- was that  
19    June 28th, 2006?

20          A     It was around that time period. I don't know  
21    the exact time. I wasn't involved with drafting the  
22    transmittal letter or the submittal itself.

23          Q     Now, you worked -- you worked with FERC for a  
24    number of years?

25          A     Yes. I was at FERC for 23 or 24 years.

1           Q     Now, is it -- in your experience there, is it  
2     common for utility companies who come under the gun, so to  
3     speak, by state regulators to somehow reach out for FERC  
4     jurisdiction to avoid those kind of problems? Do you see  
5     that -- did you see that often there at the FERC?

6           A     I -- I know that there were entities that moved  
7     from intrastate status as to interstate status during that  
8     time period, but I don't know that I was aware of exactly  
9     why they were doing that.

10          Q     Can you give me an example of where a person who  
11     sets transportation rates on a pipeline is also a shipper  
12     on the pipeline?

13          A     A person who sets transportation rate on the  
14     pipeline is also a shipper on the pipeline?

15          Q     Yes.

16          A     Well, the setting of the -- the rates on the  
17     pipeline are proposed by the pipeline company itself, and  
18     then they'll go through a review of Commission. And then  
19     it will be decided whether those rates are just and  
20     reasonable.

21                 Typically, there's no reason that a pipeline  
22     itself, like MGC, would need to hold capacity on the  
23     pipeline itself. They're in the business of selling that  
24     capacity.

25          Q     If -- if transportation rates are set but you



1 have a shipper who is able to -- to change those  
2 transportation rates for itself, that would be unusual,  
3 would it not?

4 A If you -- the shipper would not be able to  
5 change those transportation rates.

6 Q Don't -- isn't that what we have here? Don't we  
7 have Omega negotiating different transportation rates on  
8 the MPC and MGC pipelines?

9 A Not at all. What you have here is Omega, the  
10 marketer, acting under an agency agreement providing  
11 services as a marketer to certain end users and to an LDC.  
12 And you have the pipeline company offering its  
13 transportation services, and one of its customers is --  
14 was an affiliate.

15 Q But the affiliate is negotiating the rates,  
16 which reduced transportation charges, correct?

17 A I don't agree with that.

18 Q All right. I want to look at some of the FERC  
19 filings that you had attached to your rebuttal testimony  
20 here, Appendices A, B, C, D?

21 A Okay.

22 Q At least those in particular at present. Those  
23 -- these are filings before the FERC -- between March  
24 31st, 2004, and August 3rd, 2004. This is a point in time  
25 where MIG, MPC, MGC and Omega are all affiliates, and

1 they're seeking a waiver of certain standards of conduct?

2 A That's correct.

3 Q This is 2004, correct?

4 A That's correct. FERC, in 2004, issued a rule  
5 that changed the standards of conduct, and all regulated  
6 entities were required to make compliance filings to  
7 comply with those.

8 Q These -- these appendices that you've attached,  
9 if we look at No. B, the petition of MIG for the waiver,  
10 when you look through that petition, what you see is that  
11 Omega Pipeline Company is described as an unregulated  
12 local distribution affiliate which distributes gas on Fort  
13 Leonard Wood, Missouri.

14 You can see that on page -- I think it says page  
15 2 of -- of the Petition itself. And also page 5?

16 A I see that on page 5.

17 Q There's no mention in this petition of Omega  
18 Pipeline Company acting as a marketing affiliate? It's a  
19 yes or no question.

20 A No.

21 Q Now, this is 2004, but at that point in time,  
22 Omega was engaging in marketing activities off of Fort  
23 Leonard Wood?

24 A Yes.

25 Q While this petition was pending at the FERC for

1 waiver of standards of conduct, Omega was doing deals with  
2 all three of these secret customers that we had talked  
3 about, correct, A, B and C?

4 A Was doing deals? I think for the most part,  
5 those -- a couple of those agency agreements, there's none  
6 regulated non-jurisdictional agency agreements that were  
7 already in place.

8 Q Now, the pipelines -- I mean, MIG never did  
9 amend that FERC petition to say anything about Omega's  
10 marketing activities off of the Fort, did they?

11 A No. And as I said in my deposition, it really  
12 didn't matter in the context of -- what FERC was doing in  
13 this new rule was they had broadened their definition of  
14 what fell under that standards of conduct rule to  
15 encompass all energy affiliates.

16 Therefore, Omega would have fallen under the  
17 requirements of the order of 2004, which is the standards  
18 of conduct order.

19 Q I understand that.

20 A Okay.

21 Q But I -- but I looked back at this petition, and  
22 what I see is -- is a representation that Omega is a  
23 distribution system on Fort Leonard Wood. That's all it  
24 said in this petition.

25 A Yes. That's what it says.

1           Q     Okay. Now, you look at Staff's protest. By  
2     Staff, I mean the Missouri Public Service Commission,  
3     through its Staff, filed a protest and Notice of  
4     Intervention. This is Appendix C.

5           A     Okay.

6           Q     When you look through this protest, nowhere do  
7     you see any reference by the Staff, the Public Service  
8     Commission, to Omega a market affil -- marketing affiliate  
9     off of Fort Leonard Wood?

10          A     In this petition, they did not say that. But  
11     Staff did have that view as far back as at least 2003.

12          Q     There's no mention in this appendix, though, in  
13     this protest about Omega being a marketing affiliate?  
14     That's my question. Yes or no?

15          A     No.

16          Q     Now, are you aware that in 2006 Omega Pipeline  
17     Services -- Omega Pipeline Company itself again  
18     represented that Omega owns and operates a gas pipeline  
19     distribution system within the confines of Fort Leonard  
20     Wood?

21          A     And you're referencing what for that statement?

22          Q     I'm asking your -- I'm asking you if you are  
23     aware of that representation by Omega as late as 2006.

24          A     I -- I don't know what you're referring to, but  
25     I -- I'm -- so I really couldn't answer that.

1           Q     Are you aware that in 2006 the Commission itself  
2     issued an order making a finding, based upon  
3     representations by Omega Pipeline Company, that Omega had  
4     no customers off of the Fort?

5           A     That this Commission did?

6           Q     Yes.

7           A     I'm not aware of that.

8           MR. REED: Your Honor, at this point, I would  
9     ask the Commission to take judicial notice of Case No.  
10    GC-2006-0378 in the Order that was issued by this  
11    Commission on May 16th, 2006. It's an order granting  
12    motion to dismiss Omega Pipeline Company as a party to  
13    that case.

14           JUDGE WOODRUFF: Yes. I remember it well. The  
15    Commission -- any objection to the Commission taking  
16    notice of that document from another case? The Commission  
17    will take notice of that document.

18           Q     (By Mr. Reed) Now, you've indicated that you  
19    believe that the Staff was aware of this marketing  
20    activity off of Fort Leonard Wood, and I just wanted to  
21    bring to your attention this order from May of 2006  
22    wherein this Commission made a finding based upon  
23    representations by Omega that in its role as a local  
24    distribution company, it, meaning Omega, does not serve  
25    any customers aside from the Department of Defense. Now

1     you're aware of that, correct?

2             A     Now that you said that, yes.

3             Q     All right. Do you know -- let me withdraw that.

4     I want to ask you about the fees that you've charged in

5     this case, Mr. John.

6             A     Okay.

7             Q     I have a copy of your -- I think one of your

8     invoices dated October 11th, 2006. Do you recall giving

9     this to Mr. DeFord --

10            A     Yes.

11            Q     -- who then gave it to us? Had your testimony

12     been filed, all of it, by that time?

13            A     What -- what was the date of that?

14            Q     October 11th, 2006. I think if the surrebuttal

15     was probably filed -- no. Surrebuttal was filed November

16     17th?

17            A     November 17th, right.

18            Q     Now, what I have -- what I have, at least as of

19     October 11th, 2006, is that at \$500 an hour, you were up

20     to \$35,893. Sound about right?

21            A     That's not what I charge. No.

22            Q     Oh, okay. What you had charged up to that point

23     in time was \$29,500?

24            A     My hourly rate is \$250. No.

25            Q     I have -- let me make sure I have the right one.

1 Your hourly rate is \$250 an hour. Okay. Now, how much  
2 time have you put into this case since this bill was  
3 rendered October 11th?

4 A A considerable amount of time.

5 Q Quite a bit of time. What do you think your  
6 bill is up to now?

7 A I don't really know.

8 Q Do you think we're going to reach 100,000?

9 MR. DEFORD: Your Honor, I'm going to object to  
10 the relevance of this. I don't think it matters how much  
11 we spent on expert testimony.

12 JUDGE WOODRUFF: Do you want to respond?

13 MR. REED: I don't know that I need to. It goes  
14 to bias. It goes to credibility.

15 JUDGE WOODRUFF: I'll overrule the objection.

16 MR. REED: Maybe it just matters to me, that I  
17 want to know.

18 MR. DEFORD: And I think he's answered the  
19 question, so --

20 JUDGE WOODRUFF: What was -- what was the  
21 answer?

22 MR. REED: I think I asked him it was going to  
23 reach 100,000, and he said he didn't know.

24 A That's --

25 JUDGE WOODRUFF: Okay.

1           Q     (By Mr. Reed) Now, this is a separate bill from  
2 what you're billing for the MIG, FERC work, correct?

3           A     Yes.

4           Q     How far -- how high are you up -- how much have  
5 you been paid on that one?

6           A     I would have to go back and review my records.  
7 I've only worked on one aspect of that file.

8           Q     The tariffs, right?

9           A     Yes.

10          Q     All right. I noticed that in your testimony you  
11 don't address the in balance on the system.

12          A     That's correct.

13          Q     Now, did anyone tell you not to bother with  
14 that, that somebody else would take care of that?

15          A     No. Actually, in the time frame that I had to  
16 prepare for this case, it was an issue that I didn't have  
17 time to adequately look at. And, therefore, I -- I didn't  
18 take up that issue.

19                 And it was something that Mr. Ries had more  
20 day-to-day, you know, ability to answer questions on the  
21 in balances and the factors that go into those in  
22 balances.

23          Q     Okay. I just have a few more questions,  
24 actually. If an affiliate of MPC/MGC is allowed to stay  
25 out of balance while other -- other customers are not,



1 does that discriminate against those other customers?

2 A You know, I think that's a question you're  
3 really going to have to -- I think you have to look at a  
4 lot of factors that are involved and why those factors are  
5 there and why Omega was taking that position of basically  
6 correcting all the system in balances.

7 I think that's a question that Mr. Ries probably  
8 would be able to answer better. And I -- I will tell you  
9 that there were no over-run or in balance penalties  
10 imposed by the pipeline, so --

11 Q There were no in balance penalties imposed by  
12 MPC or MGC against Omega?

13 A Against any customer, to my knowledge.

14 Q Do you know how big the in balance?

15 A As I said, I really don't know --

16 Q Do you know how big the in balance is with  
17 Omega?

18 A As I said, I didn't look at that issue or my  
19 bill would have been higher.

20 Q Okay. You -- I would think that in your  
21 experience you do have -- you have looked at some in  
22 balances and you would have some idea of how -- I don't  
23 know. Is there -- how far out of balance do you have to  
24 get before a penalty might apply, I mean, hypothetically?

25 A I think each pipeline sets their in balances

1 differently. There's usually a tolerance range where  
2 customers are allowed to flex above and below what their  
3 nominations are. Sometimes that's 5 percent. Sometimes  
4 it's 10 percent.

5 Q So it might be a hundred decatherms, a thousand  
6 decatherms?

7 A It -- it could be, depending on the pipeline  
8 itself decides the customer --

9 Q Could it be 10,000 decatherms?

10 A Could it be 10,000 decatherms? You know,  
11 without knowing what you're talking about, I really -- you  
12 know, if you're talking hypothetically.

13 Q Yes, hypothetically.

14 A Could an in balance reach that amount on MGC?

15 Q Yes.

16 A I really don't know.

17 Q What about a couple hundred thousand decatherms?  
18 Is it that possible? And no penalties be applied?

19 A Mr. Reed, obviously you know that there were --  
20 you know, you're getting into what was actually on the  
21 invoices. I don't know that -- I don't have that  
22 knowledge as to what the in balance actually reached, no.

23 Q In -- in your -- in your testimony, I think it's  
24 your rebuttal at page 4, you had testified that MPC and  
25 MGC have transportation agreements with all shippers?

1           A     That's correct.

2           Q     But you are aware that -- let's see. Secret

3 Customers A and B do not have signed transportation

4 agreements?

5           A     Customers A and B are not shippers on the

6 system.

7           Q     They're not shippers?

8           A     That's correct.

9           Q     Have you looked at the Missouri rules, Missouri

10 CSR, defining shipper?

11          A     I don't know that I have looked at that, no.

12          Q     So when you say they're not a shipper, are you

13 implying FERC definitions?

14          A     No. I'm implying that they have transportation

15 agreements with -- to be a shipper on the system, you

16 would have to have an effected transportation agreement in

17 place to be considered one.

18          Q     Okay. Now, Customers A and B don't have

19 transportation agreements. You say they're not shippers.

20 So you're saying they don't need one?

21          A     I'm saying that they are moving that gas under

22 currently effective transportation agreements on MGC and

23 MPC.

24          Q     Okay. Let's look at Customer B.

25          A     Okay.

1           Q     Are you saying that Customer B is moving gas  
2     using Cuba's transportation agreement?

3           A     Customer B currently -- the transportation  
4     portion of that bundled service between Omega and Customer  
5     B is provided under the Omega contract with MGC and MPC.

6           Q     Okay. And you're saying it's moved under  
7     Omega's transportation agreement?

8           A     Yes. And that's where it's reflected on the  
9     bills.

10          Q     And what about Customer A? They don't have a  
11     transportation agreement. You say they're not a shipper,  
12     but they're -- are you saying that their -- their gas is  
13     moved under Cuba's transportation agreement? Is that what  
14     you're saying?

15          A     I'm saying -- that's exactly what I'm saying.  
16     Customer A has an agency agreement with Omega, and Omega  
17     provides the transportation portion of that through their  
18     -- through the Cuba transportation agreement.

19          Q     I want you to -- I want to turn your attention  
20     to page 17 of your rebuttal.

21          A     I have that.

22          Q     If you look at lines 7 through 9, you'll see  
23     that it says MPC/MGC are providing its services to  
24     Customer --

25          A     B.

1           Q     -- B. Thank you. Under a valid and binding  
2     firm transportation service agreement with the City of  
3     Cuba through the City's agent.

4           A     Yes.

5           Q     All right. I -- I thought you just told me a  
6     moment ago that they were not using Cuba's transportation  
7     agreement, they were using Omega's transportation  
8     agreement.

9           A     The transportation service provided to Customer  
10    B was originally or in the early part of the time period  
11    we're talking about here provided under the Cuba  
12    transportation. It was moving -- the transportation  
13    portion was moving under the Cuba transportation  
14    agreement.

15          Q     Okay.

16          A     Subsequent to that, Omega Pipeline Company  
17    entered into a transportation agreement with the  
18    pipelines. And the transportation portion of the agency  
19    agreement with that customer is now moving under the Omega  
20    agreement.

21          Q     The --

22          A     So that's the difference.

23          Q     Okay. The -- Cuba's transportation agreement  
24    was signed the -- was it 1999?

25          A     I think that's the --

1 Q Right?

2 A -- the date, yes.

3 Q And then the agency agreement with Omega was  
4 entered in 2003?

5 A Yes.

6 Q Is there anything in those contracts that  
7 mentions Customer B?

8 A No.

9 Q Have you spoken with anyone at Cuba who knew  
10 about Customer B?

11 A No.

12 MR. REED: That's all. Thank you.

13 JUDGE WOODRUFF: All right. Thank you,  
14 Mr. Reed. And then we'll come up for questions from the  
15 Bench. Commissioner Murray?

16 CROSS-EXAMINATION

17 BY COMMISSIONER MURRAY:

18 Q Good afternoon.

19 A Good afternoon, Commissioner.

20 Q Mr. John, I think you just stated in your  
21 answers that the customer referred to on page 17 of your  
22 rebuttal testimony was provided services under an Omega --  
23 Omega agreement. Is that what you said?

24 A Presently, the transportation services provided  
25 to Customer B are moving on the MGC/MPC system onto the

1 currently effective Omega contract.

2 Q And that is an Omega contract with whom?

3 A That is an Omega contract with MPC and MGC. The  
4 contract with MGC is Contract No. MG-1103-TAF. And with  
5 MPC, it's Contract No. MP-1103-TAF.

6 Q Okay. And do you think that the agreement  
7 between Omega and MGC, MPC, the agreements provided a  
8 discount to Omega?

9 A The agreements between MPC and M -- let me just  
10 split it up, actually. The agreement between MPC and  
11 Omega is at a maximum rate. The --

12 Q MPC?

13 A MPC is at the tariff or maximum rates. The  
14 contracts that Omega has with MGC does provide a -- a  
15 little bit of a discount on the commodity portion of the  
16 charge, yes.

17 But as I said, if you look at a contract, it is  
18 still that Omega contract is paying the highest rate on  
19 this system.

20 Q And didn't Staff take the position that another  
21 marketer paid a higher rate?

22 A There was another marketer before the Omega  
23 contract that paid a different rate, yes. And I think  
24 there's reasons for that.

25 Q Would you state what you think those reasons

1     might be?

2             A     I think the contract that was in existence prior  
3     to the Omega/MGC/MPC contracts was a short-term contract  
4     that could be terminated within three months notice, I  
5     believe.

6             The contract that Omega committed to with MGC  
7     and MPC was a ten-year contract. So that's -- that's one  
8     factor. The -- the length of the contracts was something  
9     that gave the pipeline some certainty.

10            The contract was obviously entered into at a  
11   different point in time than the prior contract. The  
12   economic circumstances could have changed since then as  
13   far as competitive nature of what MGC and MPC had to do.

14            Q     How much later in time was it?

15            A     I don't know exactly. I haven't -- I don't  
16   think that I've seen the contracts that pre-existed the  
17   Omega contracts to when that -- when the effective date of  
18   that was.

19            Q     Okay. Are there any other reasons that you  
20   noted that the -- that would warrant a different -- a  
21   higher price to the previous contract?

22            A     I don't know about the competitive nature. You  
23   know, that was -- who was competing with both entities  
24   when they entered into these contracts. That is another  
25   thing I think would come into play as far as what the



1 pipeline decided to do as far as a discount.

2 Q Now, were there any other marketers during the  
3 same time period that Omega provided service under these  
4 contracts who paid a higher rate?

5 A Omega -- you mean Omega's contracts. Omega is  
6 the marketing affiliate. MGC and MPC would have been the  
7 ones that entered into the transportation agreements.

8 Q Did --

9 A To my knowledge, I don't think there were other  
10 marketers that held capacity on those systems, no.

11 Q During that same time period?

12 A Yes. I'm sorry.

13 Q So are you saying there's really no other  
14 marketer that we can actually compare as oranges and  
15 oranges that -- that the other comparison would involve a  
16 different time period?

17 A As -- to my knowledge, that's correct. Yes.

18 Q Forgive me, but I can't recall whether you  
19 addressed this in your testimony. But the allegation by  
20 the Staff that Omega was receiving -- Omega had a contract  
21 for a certain price, but it charged the City of Cuba a  
22 higher price, did you review that allegation?

23 A To -- to be honest, I think the path to that  
24 just came to light to me today as -- as direct testimony  
25 by Mr. Schallenberg here today.

1           I did review the agreements that underlie the --  
2   the transportation part of this. And there is only one  
3   set of affiliate contracts in place on the pipeline, and  
4   that's between MGC and MPC and Omega Pipeline that was  
5   entered into under those contracts that I cited earlier,  
6   the 1103 contracts. There's no other affiliate contracts  
7   on the system, the MPC system.

8           Q     And in your opinion, did -- should there have  
9   been other contracts?

10          A     No. What Staff is basically saying is that  
11   Omega entered into agency agreements, a -- which provided  
12   for a bundled service to certain end users and to LDC and  
13   that the transportation component that they've developed  
14   from looking at different things, which is different --  
15   from what is in the agency agreement itself, dictates that  
16   -- you know, there's a discount provided there.

17                I think you're really comparing some -- two  
18   things that are not comparable. You're comparing terms  
19   and conditions of service under a regulated agreement, the  
20   transportation agreements that were in place, with a  
21   non-regulated, non-jurisdictional agency agreement and  
22   plucking from those agency agreements, to my mind, for the  
23   first time, some transportation rates saying that those  
24   transportation rates require that transportation  
25   agreements be in place, and that from their formulation

1     that there was discounts provided under those created  
2     transportation agreements.

3             The volumes that were moved under the agency  
4     agreements were moving under valid existing transportation  
5     -- firm transportation agreements on the MGC and MPC  
6     system. And I think the simplest way for me to show you  
7     that -- I could show you on a chart exactly what I am  
8     talking about.

9             Q     Is that chart in evidence?

10            A     No.

11            Q     Are you suggesting that you draw it for us or --

12            A     Yes.

13            Q     I think anything that could be helpful would be  
14     appreciated.

15            A     Okay. If I could get the flip chart?

16                   JUDGE WOODRUFF: Certainly. I'll ask, does  
17     anyone know how to use the Smart Board to do this? I'm  
18     technologically challenged myself, but -- I don't hear  
19     anybody jumping up and down saying they know how, so we'll  
20     -- we'll go back to the paper.

21                   MR. DEFORD: I'm not sure I know how to use  
22     this.

23                   JUDGE WOODRUFF: Go on up. If you -- if you  
24     could move the microphone over to you as near as possible  
25     so we --

1           A     Okay. I think the charges with the discounts  
2     relate to really three agency agreements and those have  
3     been designated as Customers A, B and C. And the Customer  
4     A, Customer B and Customer C entered into a non-regulated,  
5     non-jurisdictional agency agreement with Omega.

6                     Omega provided a bundled service for those  
7     customers to their benefit. That's what they sought  
8     because, a lot of times, smaller customers use agents in  
9     order to provide -- get the service that they need. Thank  
10    you.

11          Q     All right.

12          A     And this -- these are --

13          Q     Explain -- excuse me -- what went into the  
14     bundled service. What did that include?

15          A     For the most part, it included the -- doing  
16     nominations and scheduling of volumes moving on the  
17     pipeline systems. They took care of the bills for those  
18     customers, and they also provided bundled -- sales  
19     service. So it's a bundled service that is being provided  
20     there.

21                    And the contracts themselves had rates for the  
22     services. And these are non-jurisdictional agreements.  
23     None of them -- none of these -- none of these agreements  
24     are between affiliates. So these are between Omega and  
25     end users. Or, in this instance, all these customers are

1 end users.

2           How they did that is they -- they moved the  
3 volumes needed for the agency agreements under these  
4 currently effective firm contracts on MGC and MPC. The --  
5 the contract with Omega, I think, is 1103. And I think  
6 the contract with Cuba is MG-1025-TAF. And I'm not sure  
7 of the MPC number.

8           So these are the currently effective  
9 transportation agreements that are -- you know, these  
10 services are being provided on the transportation portion.  
11 The only affiliate transaction that exists between MGC and  
12 others is between MGC and Omega. Cuba's not an affiliate.  
13 None of these are affiliates. This contract pays the  
14 highest rate on the system.

15         Q     Why do you have -- I think I missed something  
16 there. You have two --

17         A     Two Omega/MPC.

18         Q     Oh, two Omega --

19         A     They both go under that agreement. Omega has  
20 contracted with the pipelines for a maximum daily quantity  
21 as Mr. Schallenberg stated. And within that maximum daily  
22 quantity, they're providing, as a marketer, certain, you  
23 know, transportation services to these customers and using  
24 that Omega contract to do so.

25           And it's -- certainly, on the interstate system,

1 that's a common practice and that's a common practice to  
2 have agents even on the -- with regard to the customers on  
3 these systems.

4 Most of these LDCs have agents that do their  
5 service, you know, do a lot of their -- certain of the  
6 functions for them. This is -- these are regulated  
7 contracts that require them to, you know, be provided  
8 under the tariff.

9 These are non-regulated, non-jurisdictional that  
10 aren't subject to the MPC and MGC tariff. And what Staff  
11 is seeking to do is to say, Hey, these guys violated a  
12 part of the tariff. And I just think that they're two  
13 distinct things. And one of them is a non-jurisdictional  
14 agreement, and the other is a jurisdictional agreement  
15 that must abide by the tariff.

16 So to go and require these people to now have  
17 the transportation agreement, I think, would be a  
18 significant change in what has been allowed in the past.  
19 And you're dealing -- and, basically, say, I want to do  
20 that retroactively.

21 Q Now, Omega has the transportation agreements --

22 A Yes.

23 Q -- under the jurisdictional agreements?

24 A Yes.

25 Q And you're saying that Staff's complaint with --

1 if -- if accurate, would require there to be additional  
2 transportation contracts?

3 A Well, that's what they are saying is necessary.  
4 I -- you know, my understanding -- and this is something  
5 that -- Mr. Clark Smith is -- would be the next witness  
6 and has a lot of actual experience in negotiating these  
7 contracts.

8 I have more experience on a regulatory basis as  
9 to the agency agreements themselves. But they are being  
10 provided. And if you look at the bill, all these volumes  
11 are moving -- that are moving under these contracts are  
12 reflected on those invoices.

13 Q So you believe that the invoices reflect that  
14 the tariff rates were the rates that were actually charged  
15 in each instance?

16 A The invoices reflect the charges for the  
17 reservation units that Cuba or Omega had paid and that is  
18 paid by either Cuba or Omega. And the commodity rate is  
19 reflected on those bills, too, for each of those  
20 customers.

21 I think our basic disagreement is how we view  
22 these agency agreements and whether they are  
23 jurisdictional or could become jurisdictional because of  
24 Staff's views. And I think that that's a big departure  
25 from past practice, as far as I'm concerned, as to what

1     you know about the -- what's happened in the past as far  
2     as agency agreements.

3           Q     Have you testified in any cases in Missouri  
4     before?

5           A     No, ma'am.

6           Q     Okay. And you take the position that Omega is  
7     paying the highest rates on either system, is that  
8     correct, the highest -- the highest rates at the time in  
9     question?

10          A     Yes, I do. If you look at my rebuttal testimony  
11     at page 26, I believe -- and on that page -- I'm sorry.

12          Q     Okay.

13          A     Do you have that? On that page, I have provided  
14     a chart that shows the MGC shippers compared on a 25  
15     percent load factor basis as it's required by the tariff  
16     itself. And when you do that conversion to the 25 percent  
17     load factor as I show here, Omega is paying the highest  
18     rate on the system.

19                 Now, Mr. Schallenberg did have a good criticism  
20     of this chart and of my testimony when he said that the  
21     last customer I have on here, UM Rolla, is an  
22     interruptible customer. And he's right on that.

23                 And -- and I -- that's the -- the reason I put  
24     it in there is because it was one of the customers that he  
25     claimed refunds were due, and it was the only



1 interruptible customer that wasn't receiving firm service,  
2 also.

3           So if you took Rolla out of there, what you're  
4 doing is comparing FT contracts to FT contracts, which is  
5 what I believe the correct comparison should be, not FT  
6 contracts to rates that are derived from agency agreements  
7 themselves.

8           Q     And on the other hand --

9           JUDGE WOODRUFF: Commissioner Murray, would you  
10 check that your microphone is on?

11           COMMISSIONER MURRAY: Thank you.

12           Q     (By Commissioner Murray) On the other hand, Mr.  
13 Schallenberg was comparing between firm transportation and  
14 interruptible transportation.

15           A     He was comparing some transportation rates that  
16 he derived from these agency agreements. He wasn't  
17 comparing actual interruptible to firm. No. He didn't do  
18 that. And, you know, his criticism was right. You should  
19 only be comparing FT to FT.

20           Q     Look at page 27 of Mr. Schallenberg's -- I'm not  
21 sure if that was his direct or -- it must have been his  
22 direct testimony. There are two charts there.

23           A     I don't have it.

24           Q     You don't have it?

25           A     No.

1 Q Oh.

2 MR. DEFORD: May I approach, your Honor?

3 Q (By Commissioner Murray) I'm looking on page 27  
4 of your testimony.

5 A My testimony.

6 Q Yes. Where you --

7 A Oh, I see that. Yes.

8 Q Well, it is page 27 of your testimony. It's  
9 also page 27 of Mr. Schallenberg's.

10 A Page 27.

11 Q And your statement there that the rate levels  
12 reflected -- am I on the right --

13 A Yes. Yes.

14 Q As far as the right page?

15 A As far as my testimony, yes.

16 Q But, I mean, am I on the right page as far as  
17 the testimony of Mr. Schallenberg you were referring to?

18 A Yes.

19 Q Okay. And those rate levels reflected in -- you  
20 say chart. Which chart? Are you speaking of both charts?

21 A Well, it's -- he makes cumulative adjustments to  
22 the charts. I think there's a series of five charts, and  
23 each one has a different adjustment based upon agency  
24 agreements.

25 And this is, I believe, the last chart that sort

1 of brings all those adjustments to -- into one. And what  
2 I'm saying on page 27 is if you're not going to allow MGC  
3 and MPC -- if you're going to require them to charge zero  
4 rates for reservation charges on MGC, zero rates for  
5 reservation charges on MPC and to reduce the firm rates  
6 down to significant reduction from the tariff rates,  
7 you're not going to allow the pipelines the opportunity to  
8 recover prudently incurred costs.

9           They won't be able to recover their fixed costs  
10 and probably not some of their operating costs.

11       Q     So that is if the adjustments are made as a -- a  
12 remedy that the Staff is requesting --

13       A     Yes.

14       Q     -- in this case?

15       A     Yes, ma'am.

16       Q     But is that something we should even take into  
17 consideration if there were, in fact, over-charges?

18       A     I think you would have to take into  
19 consideration what the impact is going to be because it  
20 could ultimately be to the detriment of the -- the  
21 shippers if this happens.

22           If the pipeline is not allowed to recover its  
23 prudently incurred costs, including fixed costs, it would  
24 be very hard for them to continue operations in that  
25 manner for a long time. So I -- I think in that regard I

1 think you would -- it's a factor that I believe should be  
2 considered.

3 Is it the primary factor? No. I -- I think you  
4 have to look at the facts and -- of what was presented by  
5 Staff and what we had presented. And I think we have a  
6 totally different view of what is appropriate and all the  
7 discounts that he's referring to in this chart and the  
8 previous charts are derived from non-affiliated  
9 agreements.

10 He -- you know, on this page, he refers to the  
11 (Name was removed due to being Highly Confidential as  
12 instructed by Judge Woodruff) agreement. That's not an  
13 affiliate contract.

14 Q I think maybe we better not --

15 A Oh, I'm sorry.

16 Q Better be careful about which names are --

17 A Excuse me.

18 JUDGE WOODRUFF: Actually, if the court reporter  
19 when she's preparing the transcript could remove that last  
20 name.

21 THE COURT REPORTER: Okay.

22 COMMISSIONER MURRAY: Just -- Judge, I'm sorry.  
23 I'm just trying to make sure --

24 JUDGE WOODRUFF: That's all right.

25 COMMISSIONER MURRAY: Make sure I've covered

1     what I need to.

2           Q     (By Commissioner Murray)   In your discussion of  
3     the ability to use multiple delivery points for -- thank  
4     you.  For a shipper to be able to use multiple delivery  
5     points, are you referring there to Omega being able to  
6     deliver to Customers A, B and C?

7           A     Yes.  And there's other customers that deliver  
8     to multiple points.

9           Q     And some of the deliveries to A, B and C were  
10    through -- were billed to the City of Cuba, were they not?

11          A     Could you just -- could you ask that again?

12          Q     Some of the deliveries to A, B and C were billed  
13    by Omega to the City of Cuba; is that correct?

14          A     No.  They were billed by MGC and MPC to Omega.  
15    And Omega -- I don't -- I don't know that I've seen the  
16    Omega bills themselves, so I -- I don't know how the  
17    adjustment was made on the bill that went from Omega to  
18    the end users or the City of Cuba.

19          Q     Do you think it would make a difference if Omega  
20    were billing City of Cuba for one or all of those  
21    Customers A, B and C?  Would -- would that make a  
22    difference to you?

23          A     I think that customer A certainly -- there was a  
24    benefit derived from the City of Cuba from that agency  
25    agreement being in place because they were recovering

1     their -- the distribution charges on the City of Cuba  
2     itself because Customer A is behind that city gate. So  
3     there was a benefit derived through that agency agreement  
4     for the City of Cuba.

5           Q     All right. And what about Customers B and C?  
6     Were they behind the city gate?

7           A     To -- to my knowledge, no. Customer B was not  
8     behind the city gate. And Customer C was -- and that is  
9     not tied to the Cuba contract.

10          Q     Okay. On page 16 of your surrebuttal testimony,  
11     lines 11 and 12 -- actually, 10, 11 and 12, you say,  
12     Rather than assess a penalty, MPC/MGC could be required,  
13     which it is not currently, to identify which parties are  
14     acting as agents on their system to the Commission.

15          Why do you say -- are you saying it's not current --  
16     currently required to identify which parties are acting as  
17     agents?

18          A     I think that the pipeline itself is aware of  
19     that. I don't know that that information presently needs  
20     to be submitted to the Commission in any form.

21          Q     Did you hear Mr. Schallenberg's testimony this  
22     morning regarding -- I believe it's the tariff language or  
23     contract language concerning the duty to report to the  
24     Commission anyone who's -- with whom they have an agency  
25     relationship?

1           A     I think he was saying that under the  
2     transportation agreement itself, the City of Cuba had an  
3     obligation to inform the pipeline itself, not the  
4     Commission.

5                     And I know that the invoices reflect that the  
6     bills are being charged and sent to Omega. So I -- I  
7     don't know that there was written notification in the form  
8     that Mr. Schallenberg would like. But I think there was  
9     certainly notification to the pipelines that there was an  
10    agency agreement in place.

11          Q     Okay. But you don't agree that the pipeline has  
12    a current obligation to report -- to identify those  
13    parties to the Commission?

14          A     I'm not aware of that, Commissioner.

15          Q     You raised the point that -- and I'm looking at  
16    page 22 of your surrebuttal testimony -- that many of the  
17    issues and allegations raised by Staff are not new, that  
18    they're now raising allegations that -- regarding issues  
19    that have been known to them for several years, including  
20    Mr. Ries's positions at Omega and MPC and MGC.

21          A     Yes.

22          Q     What are you trying to indicate there by  
23    pointing out that Staff may have known these things for  
24    several years?

25          A     I -- I think that there was sort of a reliance

1 on Staff's knowledge of the -- that Omega was an  
2 affiliate, that Mr. Ries was the president of MGC/MPC and  
3 Omega.

4 Certainly, there was a letter from Warren Wood  
5 that basically even stated that the Commission considered  
6 Omega to be a marketing affiliate, and that was in 2003.

7 You know, I think that the Omega situation was  
8 brought to Staff's attention in meetings and through  
9 e-mails and letters. And MGC/MPC sought the advice and  
10 Counsel of Staff as to whether they could use Omega as a  
11 marketing affiliate as far back as 2002.

12 And to my knowledge, they never got a response  
13 that they couldn't. And, in fact, it was -- I think it  
14 was Staff's present -- preference in one of the letters  
15 that the MPC and MGC use a marketing affiliate to do those  
16 bundled transactions.

17 Q What is your understanding of the harm that  
18 Staff is alleging has occurred as a result of what Staff  
19 claims are violations of the tariffs for Commission rules?

20 A I -- my view is that the counts that have been  
21 brought up by Staff, I totally disagree with, and I think  
22 it would be a big departure from the way the Commission  
23 has treated agency agreements in the past.

24 I think you would be, in effect, regulating now  
25 what was considered non-regulated, non-jurisdictional



1 contracts and bringing them under the -- you know, the  
2 Commission's requirements to file a tariff, basically,  
3 because they're alleging that, you know, they're --  
4 they've violated tariff provisions.

5 The agency agreements themselves aren't -- don't  
6 have a tariff attached to them and aren't, to my mind,  
7 subject to tariff of MGC or MPC.

8 COMMISSIONER MURRAY: I think I'll stop now.  
9 Thank you.

10 MR. JOHN: Thank you.

11 JUDGE WOODRUFF: Commissioner Appling.

12 CROSS-EXAMINATION

13 BY COMMISSIONER APPLING:

14 Q Mr. John, how are you doing?

15 A I'm doing fine. Thank you.

16 Q You're living in Washington D.C. now?

17 A I live in Washington half the time, and I live  
18 in western Maryland half the time.

19 Q Okay. Well, I'm going to ask you a question to  
20 try to put 10 pounds in a 5-pound sack. They usually do  
21 that in Washington D.C. a lot, so -- would you go to your  
22 rebuttal testimony, please, and go to page 4 and 5?

23 A Yes.

24 Q And these are in your own words and all this.

25 You'll see on there on line 4, 14, 18 --

1           A     Right.

2           Q     -- all of the six counts, right?

3           A     Yes.

4           Q     I would also like to say that I consider  
5     Mr. Schallenberg a very knowledgeable and probably one of  
6     the most credible witnesses that is around. I'd  
7     appreciate it if you didn't tell him that, though. But,  
8     you know, so it -- his head don't get too big there.

9                     But anyway, in that, in your analysis, did the  
10    Missouri Gas Company -- from your own analysis, did they  
11    violate any of these six counts? Give me your -- give me  
12    your thoughts on it.

13                    I'm asking you to -- to cover a lot of ground  
14    here in a very short period of time, and you can take your  
15    time and take each one of those counts one by one, or you  
16    can just give me your thoughts on all six of them.

17           A     I think I'll go through count by count,  
18    Commissioner, if --

19           Q     Okay.

20           A     If that's okay. Count 1 is -- basically has a  
21    number of elements under it. I -- I addressed the  
22    separation of personnel issue and the discrimination issue  
23    as far as the transportation agreements.

24                    As far as the sharing of personnel, with an  
25    entity the size of MGC and MPC, it's not unusual for them

1 to have a limited number of personnel and to have shared  
2 officers than do multiple functions. The -- I -- I also  
3 know that, you know, from looking at e-mails and -- and  
4 letters from Staff that as far back as 2002 and early 2003  
5 that the Commission Staff -- and I'm not saying  
6 Mr. Schallenberg. He said this morning he didn't know  
7 till 2006. And that could be very well. I don't disagree  
8 with that.

9 But I know that somebody at the Commission knew  
10 that. And Mr. Wood, basically, you know, acknowledged  
11 that in the letter of 2003. So -- and when they went in  
12 -- what you have to do there is, you know, ask for, you  
13 know, some sort of waiver, at least at the FERC level if  
14 you're going to -- to have shared personnel.

15 Q Okay.

16 A And when you have shared personnel, I think one  
17 of the big issues is, yeah, the President will have  
18 knowledge. But how does he use that knowledge? Is he  
19 using it in a discriminatory fashion or in a way that, you  
20 know, benefits him or the system?

21 And to my mind, that didn't happen. The only  
22 affiliate transaction that -- set of affiliate  
23 transactions that took place were the Omega contracts that  
24 were in -- entered into in 2005.

25 And as I showed on page 26, I believe, that my

1 view is that they were paying the highest rate. And I  
2 know Mr. Schallenberg has a different view of that. And I  
3 dis -- I totally disagree with that.

4 So I -- on Count 1, I don't think that the  
5 failure to maintain separate operational personnel is  
6 something that they didn't know. And I think that Staff  
7 -- MGC and MPC relied on, you know, their explaining to  
8 Staff in several meetings and e-mails that they did have  
9 those shared personnel.

10 Q Okay.

11 A So to bring that up in 2006 I think is a little  
12 late or disingenuous. And as far as the contract, as I  
13 said, I think -- my view is that they were paying the  
14 highest rate on system. So I don't believe there was  
15 preference given to them.

16 On Count 2, it's -- this goes back to my view  
17 of, you know, what the difference is between a  
18 non-jurisdictional, non-regulated agency agreement and the  
19 actual firm transportation agreements that were in place  
20 on MGC and MPC.

21 And my view is that the Staff is trying to bring  
22 in elements from these non-regulated agency agreements  
23 which provides a bundled service, and try to compare those  
24 to a transportation agreement which is just that. It just  
25 provides for one function. And they've called out certain

1 portions of the invoices to try to, you know, justify  
2 that.

3 I -- I really think that it's a non-regulated  
4 agreement and that -- that they're not comparable. So as  
5 far as that, the only -- to my mind, the only agreements  
6 that are affiliate transactions were those two agreements  
7 that I talked about on -- with Omega and MGC and MPC.

8 Count 3 deals with the discount issue. And once  
9 again, it -- a number of these issues are inter-related  
10 and basically go to the same, you know -- are based off of  
11 the same belief by Staff.

12 I do not believe that MGC and MPC provided  
13 discounts to affiliates. As I showed on the chart there,  
14 the agency agreements are between Omega and end users.  
15 Those are not affiliate transactions. The only affiliate  
16 transaction that MGC and MPC has entered into is the one  
17 with Omega.

18 Count 4 deals with the discount reports, and --  
19 and Mr. Ries basically addresses that. But what Staff is  
20 saying, not -- you know, we believe you should have had  
21 these transportation agreements, and because you didn't  
22 have these transportation agreements, you're in violation  
23 of the requirement to file discount reports.

24 So it's sort of saying, at this point in time,  
25 you know, we're changing our view of what these are and

1 applying that back retroactively, which I -- I have a  
2 problem with that.

3 On Count 5, I understand Staff's view in reading  
4 of the tariff. And my view is that the company made a  
5 business decision to extend the lateral to Willard based  
6 upon what it believed it -- you know, the economics were  
7 of that, and that there was a sufficient pay-back period  
8 for -- to recoup -- for them to recoup the cost of that  
9 lateral.

10 And as Commissioner Clayton, you know, pointed  
11 out, there hasn't been a rate case, so the ratepayers are  
12 not subject to that -- those costs at this point in time.  
13 And, in fact, if that shipper -- I mean, if that -- those  
14 volumes contribute -- continue to be on the system when  
15 they would file a rate case, it would benefit everybody  
16 because you would have more volume to spread the cost  
17 over.

18 Okay. So that's -- that's my view of the -- and  
19 Count 6 has now been dropped.

20 Q So -- so you're telling me that this Staff and  
21 other Missouri Public Service Commission has this wrong?

22 A They have their view, Commissioner, and I think  
23 we have a different view of that. And I do believe that  
24 they're wrong on this, yes. I'm not saying that they  
25 don't have the right to bring those views before you, no.

1                   COMMISSIONER APPLING: Okay. Thank you very  
2 much.

3                   JUDGE WOODRUFF: I have a couple of clarifying  
4 questions that confused me.

5                               CROSS-EXAMINATION

6 BY JUDGE WOODRUFF:

7           Q     I believe you testified that Customer B recently  
8 was moving gas under the Cuba contract with the pipelines,  
9 and then subsequently it started moving gas under the  
10 Omega contract?

11          A     Yes.

12          Q     When -- when was that change made?

13          A     I think it was when Omega effected a  
14 transportation agreement in 2005 with the pipelines.

15          Q     Okay.

16          A     Early February, I think, 2005 is when that  
17 contract -- those contracts were entered into.

18          Q     Okay. And is that the same Omega contract they  
19 used to provide gas to the Fort?

20          A     Yes.

21          Q     Okay. Is that when they got the contract back  
22 for the Fort?

23          A     I believe so.

24          Q     Okay. Do you know if that's the reason why they  
25 negotiated that contract with the pipeline?

1           A     I really don't know --

2           Q     Okay.

3           A     -- the answer to that.

4                   JUDGE WOODRUFF:  That's all the questions I had.  
5   Before we go to re-cross, we're due for a break, so we'll  
6   take a break at this time.  We'll come back at ten minutes  
7   till 4.

8                   (Break in proceedings.)

9                   JUDGE WOODRUFF:  All right.  Let's come to  
10  order, please.  All right.  Welcome back, everyone.  Looks  
11  like everyone is back.  We've finished up questions from  
12  the bench for Mr. John, so now we'll go to re-cross  
13  beginning with Municipal Gas.

14                  MR. WOODSMALL:  No, your Honor.

15                  JUDGE WOODRUFF:  AmerenUE?

16                  MS. DURLEY:  No, your Honor.

17                  JUDGE WOODRUFF:  Public Counsel is not present.  
18  The pipeline?  Oh, I'm -- I'm sorry.  Not the pipeline.  
19  Staff?

20                  MR. REED:  Yes.

21                               RE-CROSS EXAMINATION

22  BY MR. REED:

23           Q     Just a couple follow-up questions, Mr. John.  I  
24  wanted to -- in response to questions from Commissioner  
25  Appling, in particular, you had run through the counts,



1 and you were asked whether there was a violation of any of  
2 the tariffs, and I think you said even including Count 5  
3 regarding the line extension. Is that -- is that the one?  
4 You indicated that that would not be a violation of the  
5 tariff?

6 A I didn't give any opinion, I think, on that,  
7 whether it was a tariff violation or not. I just  
8 explained that, as far as a business decision, why I  
9 thought that was an appropriate expenditure for the  
10 MGC/MPC.

11 Q Is it a violation of the tariff or not?

12 A The tariff in itself requires that there be  
13 reimbursement. And as Mr. Schallenberg explained, there's  
14 -- there has -- there can be waivers. They can request  
15 waivers.

16 And to my knowledge, I think in a previous case,  
17 there was a similar issue that came up and -- with Laclede  
18 laterals, and I think that they were allowed to remain in  
19 rate base.

20 Q Is that as close as I'm going to get you to a  
21 yes or no?

22 A It is not in compliance with the tariff as  
23 written.

24 Q Do the tariffs allow capacity release?

25 A I don't think that there -- there's a capacity

1 release provision in the tariff.

2 Q And with regard to the -- the chart that you had  
3 drawn -- and under agency agreements, you have Omega A, et  
4 cetera. I think you would agree with me that between  
5 Omega and A, there is no agency agreement?

6 A Omega and A? No. There is an agency agreement  
7 between Omega and A. And I attached to that as Appendix K  
8 as my testimony.

9 Q Appendix K would be natural gas sales agreement,  
10 right?

11 A That is what it says. But it -- Omega is acting  
12 in an agency role for them, yes.

13 Q And then what about Omega? And I think it's C,  
14 Customer C. That one is also denominated a natural gas  
15 sales agreement with no mention of agency.

16 A That is how it's entitled, yes.

17 MR. REED: All right. Thank you.

18 JUDGE WOODRUFF: Thank you, Mr. Reed. Any  
19 redirect?

20 MR. DEFORD: Your Honor, I have no redirect, but  
21 I would like to preserve the diagram or the chart somehow  
22 for the record and --

23 JUDGE WOODRUFF: Okay.

24 MR. DEFORD: I would love any advice on how you  
25 think to best do that.

1 JUDGE WOODRUFF: Well, somebody can copy it down  
2 into -- on a smaller form. If you noticed, also, I had it  
3 on the camera, which is preserved on a disk. But it's not  
4 marked as an exhibit or anything. It is on the disk if  
5 somebody wanted to see it.

6 MR. DEFORD: Yeah. Maybe if we just mark it as  
7 an exhibit and, then we can figure out at a later date.  
8 Maybe we can reduce it and --

9 JUDGE WOODRUFF: Is that acceptable to Staff and  
10 other parties?

11 MR. WOODSMALL: As long as he figures out a way  
12 to distribute it to the parties so we have it on the  
13 record going forward.

14 JUDGE WOODRUFF: It needs to be in evidence at  
15 some point. Of course, we've got all day tomorrow to  
16 figure that out, I guess. Let's go ahead and mark it.  
17 Let's see. You're up to number -- 313 would be your next  
18 number, I believe.

19 I'm just going to describe it's a flip chart  
20 demo. And it's been offered into evidence. Any objection  
21 to its receipt? Hearing none, it will be received into  
22 evidence.

23 (Exhibit No. 313 was admitted into evidence.)

24 JUDGE WOODRUFF: And, Mr. DeFord, I'll leave it  
25 to you to get it into a form where we can preserve it in

1 the record.

2 MR. DEFORD: I think what I may ask is -- is  
3 that Mr. John copy is down on a -- on a normal size sheet  
4 of paper.

5 JUDGE WOODRUFF: That's fine. And if you'd  
6 share with the other parties, and we'll deal with it --  
7 submit it at the time when you get that done.

8 MR. DEFORD: Sure. Thank you.

9 JUDGE WOODRUFF: Okay. Mr. John, you can step  
10 down. Thank you. You can call your next witness.

11 MR. DEFORD: Call Clark Smith.

12 JUDGE WOODRUFF: Please raise your right hand.

13 CLARK SMITH,  
14 being first duly sworn to testify the truth, the whole  
15 truth, and nothing but the truth, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. DEFORD:

18 JUDGE WOODRUFF: You may be seated.

19 Q (By Mr. DeFord) Mr. Smith, would you please  
20 state your name and spell your name for the record?

21 A My name is Clark Cummings Smith, C-l-a-r-k.  
22 Middle name is C-u-m-m-i-n-g-s.

23 Q And, Mr. Smith, by whom are you employed and in  
24 what capacity?

25 A I'm the Managing Director of a private company

1     called Engage, E-n-g-a-g-e, Investments, LP.

2           Q     And have you caused to be prepared and filed in  
3     this docket rebuttal testimony that's been marked for  
4     purpose of identification as Exhibit 303?

5           A     Yes, I have.

6           Q     Do you have any corrections to that testimony?

7           A     No, I don't.

8           Q     Mr. Smith, if I were to ask you the questions  
9     set forth therein, would your answers be substantially the  
10    same?

11          A     Yes, they would.

12          Q     And would those answers be true and correct to  
13    the best of your information and belief?

14          A     Yes.

15                MR. DEFORD: I would offer Exhibit 303 and  
16    tender Mr. Smith for cross.

17                JUDGE WOODRUFF: You just have the one exhibit,  
18    303?

19                MR. DEFORD: Correct.

20                JUDGE WOODRUFF: All right. Exhibit 303 has  
21    been offered into evidence. Any objections to its  
22    receipt? Hearing none, it will be received into evidence.

23                (Exhibit No. 303 was admitted into evidence.)

24                JUDGE WOODRUFF: For cross-examination, we'll  
25    begin with Ameren.

1 MS. DURLEY: I have none.

2 JUDGE WOODRUFF: Public Counsel is not present.  
3 Municipal Gas Commission?

4 MR. WOODSMALL: No, thank you, your Honor.

5 JUDGE WOODRUFF: Staff.

6 CROSS-EXAMINATION

7 BY MR. REED:

8 Q Good afternoon, Mr. Smith.

9 A Good afternoon, Mr. Reed.

10 Q Where are you from?

11 A Houston.

12 Q Now, your rate is 500 per hour?

13 A Yes, it is.

14 Q All right. What -- what's the total up to now?

15 A I billed -- I gave you all a copy of the bill  
16 from September, which covered preparation of the rebuttal  
17 testimony, and I believe that was -- I believe there was  
18 20 hours involved.

19 I don't -- I don't recall. I'd have to go back  
20 and look at it. And then there will be a bill for the  
21 deposition that occurred in November. Then there will be  
22 a bill for this activity.

23 Q 20,000?

24 A I believe it's around 20,000.

25 Q I figured we might as well know, just get it out

1     there, so --

2             A     The total wouldn't be anywhere close to 100,000,  
3     by the way.

4             Q     Okay. Your testimony, you filed rebuttal,  
5     correct?

6             A     Yes, sir.

7             Q     Thirteen pages of testimony, correct?

8             A     Correct.

9             Q     The point of that testimony is, as I understand  
10    it, and you can correct me if I'm wrong, but you looked at  
11    the sales and agency agreements and concluded that -- that  
12    they are independent, valid and binding?

13            A     Correct.

14            Q     Right?

15            A     That's correct.

16            Q     Now, you're not a lawyer?

17            A     I'm not a lawyer.

18            Q     Up -- you were part of El Paso Merchant Energy  
19    when they were investigated by the FERC?

20            A     That's correct.

21            Q     Were you a part of that?

22            A     I -- I came to El Paso -- this is in my  
23    deposition with Ms. Shemwell. I came to El Paso through a  
24    merger with the Costal Corporation. And the investigation  
25    was underway after I -- or before I got there. I did

1 participate in negotiating a settlement.

2 Q All right. How much was paid by El Paso in that  
3 case?

4 A I think the net present value, it covered all  
5 parties, and it was about \$900 million.

6 Q Net present value?

7 A Yeah. It was paid out over 20 years.

8 Q What total was paid out over 20 years?

9 A It would have been \$1.5 billion.

10 Q Okay. Do you know if any of the contracts that  
11 you've looked at have been amended verbally?

12 A Which contracts? The ones that --

13 Q Any -- any of the contracts that you've looked  
14 at.

15 A Like the natural gas sales and agency agreement  
16 between City of Cuba and Omega.

17 Q Yeah.

18 A These -- okay. I don't have knowledge that  
19 they've been amended verbally, other than the fact that  
20 you can tell from the activities -- the marketing  
21 activities and transportation activities that there has  
22 been deliveries at receipt points -- excuse me --  
23 deliveries to delivery points in -- and there may have  
24 been some change in billing. So there's things that have  
25 probably been verbally agreed to, but I'm not knowledge --



1 I don't have knowledge of them.

2 Q You don't have knowledge of any written change  
3 in the contracts. You're saying there may have been  
4 verbal changes, correct?

5 A There may have been verbal.

6 Q You mentioned delivery points. Can you give me  
7 an example?

8 A Well, there's -- oftentimes in transportation  
9 agreements, parties will seek to transport gas to  
10 different delivery points, and the original agreements may  
11 have some base -- I would call base language in there in  
12 terms of identifying what those points are. Those points  
13 can change, and it's often done verbally.

14 Q Are you talking about like a different customer?  
15 is that what you mean by a different delivery point?

16 A Could be a different customer, different  
17 delivery point.

18 Q For instance, using the Cuba contract to serve  
19 Customer B?

20 A Correct.

21 Q Is that what you're talking about?

22 A I'm talking about it could be any of the  
23 Customers A, B, C or anywhere on the system.

24 Q And you -- you would -- you would think that  
25 Cuba would have some knowledge of Customer A, B or C and

1 have agreed verbally?

2 A Well, not necessarily.

3 Q Not necessarily. Why not?

4 A No. Because there would be -- Omega Pipeline  
5 Company was acting as agent. And to the extent they're  
6 acting as an agent and administering that transport, it  
7 may have been used with or without their knowledge.

8 Q With or without Cuba's knowledge?

9 A Yeah. I don't know if Cuba had knowledge or  
10 not. I haven't talked to them.

11 Q In your experience, have you -- have you seen a  
12 case where the person who sets transportation rates is  
13 also a shipper on the system?

14 A Well, this gets back to something I think  
15 Mr. John alluded to. This is a very small pipeline  
16 company, a very, very small marketing company. And you  
17 would typically see a company like that have personnel  
18 that are involved on both sides of those businesses  
19 because it's so small.

20 And I -- and I would want to point out even in  
21 the larger companies, ultimately, the unregulated, which  
22 is your marketing, and your regulated, which is your pipe,  
23 would come together at some common point.

24 So it -- in any organization, regardless of  
25 size, that happens. So it doesn't surprise me that there

1 would be activities inside MPC and MGC that would involve  
2 a common management group.

3 Q Have you answered my question?

4 A Your question was does one person set rates and  
5 negotiate?

6 Q Sole shipper.

7 A I think so.

8 Q Have you seen that?

9 A Yeah. I think I've seen that in the past.

10 Q Can you give me an example?

11 A No. But it goes back to the 1980s and '90s when  
12 these companies were evolving. There were situations  
13 where that would have happened.

14 Q Haven't seen it since then?

15 A Well, I have -- no. I haven't been involved in  
16 companies that -- this is a very small operation, and I  
17 haven't been involved in something this small.

18 Q Is it appropriate for Omega, the affiliate of  
19 the pipelines, the two pipelines, to negotiate  
20 transportation discounts on the pipelines for Omega's  
21 customers?

22 A You're asking could Omega, as agent, negotiate  
23 the transport on the pipelines? Yeah. I think they could  
24 do that.

25 Q Transportation discounts?

1           A     Yeah. I think that could happen.

2           Q     For themselves?

3           A     For the -- no. For the -- for the shipper.  
4     With the shipper, City of Cuba, here.

5           Q     So Omega would negotiate the discount with  
6     themselves, basically, correct?

7           A     No. With the pipelines.

8           Q     But Mr. Ries would be negotiating with the  
9     pipelines, and Mr. Ries is also President of the  
10    pipelines, correct?

11          A     Well, I don't know who was involved in a meeting  
12    that determines those rates. But you're asking me -- the  
13    first question you asked me was, Could Omega, as a  
14    marketing company, unregulated marketing company, act on  
15    behalf of shipper that they're acting as agent for and  
16    negotiate transport rates. The answer is yes.

17          Q     I think what I was trying to get to was whether  
18    Mr. Ries could negotiate with himself for rates on behalf  
19    of the principal?

20          A     I don't know if he did that. I mean, I don't  
21    have knowledge of that. But the first question the answer  
22    is, I think, yes.

23               MR. REED: That's all. Thank you.

24               JUDGE WOODRUFF: All right. Thank you.

25    Questions from the Bench. Commissioner Murray?

1 CROSS-EXAMINATION

2 BY COMMISSIONER MURRAY:

3 Q Hello.

4 A Hi.

5 Q Good afternoon. It's your understanding -- or  
6 it's your -- it's getting late. I'm getting tired. It's  
7 my understanding that your testimony is that the  
8 discounts, the transportation discounts provided by MGC  
9 were to Cuba, City of Cuba and not to Omega --

10 A Correct.

11 Q -- is that correct? And you're basing that  
12 solely upon the fact that Omega was acting as an agent for  
13 the City of Cuba?

14 A Correct.

15 Q So any -- any deliveries that were -- were made  
16 with Omega's -- this -- this discounted rate, let's put it  
17 that way, where they all -- were they all made on behalf  
18 of the City of Cuba?

19 A Unless otherwise transported by Omega at a later  
20 point in time. I think at some point in time, some of  
21 these customers, Omega became the shipper itself. But  
22 during the time period I think in question, yeah, the City  
23 of Cuba was the shipper. And this is not -- I might add,  
24 not uncommon in the industry at all.

25 Q So during the time period relevant to this

1 complaint, the City of Cuba was the sole beneficiary of  
2 the discounted rate that had been achieved by -- by Omega  
3 on behalf of Cuba? Is that what you're saying?

4 A The transportation rate was for the City of  
5 Cuba. Omega was acting as their agent.

6 Q I was going to reference one of your  
7 attachments, but I've forgotten which one it was.

8 A It was an agreement?

9 Q Yes. It was one of the agreements. I can't  
10 tell how your attachments to your testimony are numbered.  
11 It's --

12 A Do you want me to give you a list of -- the City  
13 of Cuba sales and agency agreement is Appendix I. The  
14 direct sales agreement by Omega to Customer A is Appendix  
15 K.

16 Q Okay. I do -- I think I'm looking at Appendix  
17 I.

18 A Okay.

19 Q Because the page labeled Appendix I is blank.  
20 So I'm assuming that next page that begins with the  
21 agreement dated November 27, '03, 5/17/03 with one  
22 signature, so --

23 A That's correct.

24 Q And my mic isn't on again. Sorry. Were you in  
25 the room earlier when Mr. Schallenberg was being

1 questioned about the difference in what Omega paid for  
2 delivery of gas to the City of Cuba versus what the City  
3 of Cuba was being billed by Omega?

4 A Going in and out, I believe.

5 Q This contract that we're looking at on  
6 Appendices -- I think these aren't -- I'm not getting into  
7 highly confidential stuff, right?

8 A No. This is not one of the confidential ones.

9 Q I'm a little gun-shy. Okay. The fixed fee of  
10 3.50. Now, if certain customers were delivered gas for a  
11 lesser amount under this contract, can you -- can you  
12 figure out how that could happen or why that would happen?

13 A Well, it could happen. This is a sales and  
14 agency agreement. This is not a transport agreement. So  
15 if you were to look at this and then look at, let's say, a  
16 sale to Customer A or B or C, all of them are going to  
17 have individual pricing terms.

18 Some are sold by a an agency agreement. Some  
19 are sold bundled all the way up to the city gate. So  
20 every one of them has a different pricing provision, so  
21 it's hard to compare them. It would be kind of apples and  
22 oranges.

23 COMMISSIONER MURRAY: I think that's all the  
24 questions I have. Thank you.

25 JUDGE WOODRUFF: Thank you, Commissioner Murray.

1 I -- I have a couple questions for you.

2 MR. SMITH: All right.

3 CROSS-EXAMINATION

4 BY JUDGE WOODRUFF:

5 Q Your -- your rebuttal was filed on October 6, I  
6 believe?

7 A Correct.

8 Q When did Staff take your deposition?

9 A November -- I think it was the second week in  
10 November.

11 Q Okay. And I -- you testified that Cuba -- that  
12 it could have been verbal, certain verbal changes to the  
13 contract with Cuba about delivery points, I believe. And  
14 you indicated Cuba might not have knowledge of that.

15 Is there something in the contract that would  
16 allow that kind of change to be made without Cuba being  
17 aware of that?

18 A Well, this goes to the heart of -- most of the  
19 contracts will say in standard boiler plate that you will  
20 do everything on a written basis. I'm just -- it's my  
21 opinion, based on my 28 years in the business, that an  
22 incredible amount of business is done verbally in terms of  
23 adjusting transport agreements in particular because the  
24 commercial people are often moving gas different  
25 directions. And so it doesn't -- it's not unusual for



1    them to call in and change a receipt point.  It gets  
2    documented through the billing process.  It will be  
3    documented that the gas moved to a different point.

4           Q     So -- so when City of Cuba got a bill from  
5    Omega, they would have -- they would have gotten the bill  
6    from Omega, right?

7           A     Had they'd gotten a bill, they would have seen  
8    that.  I don't know if they got a bill.  But if there was  
9    a communication -- well, for example, I think there was an  
10   issue where the agency -- there wasn't a formal agency  
11   explain -- or document sent to the pipelines when the  
12   Ameren agreement ended and Omega began this -- this new  
13   agreement.

14                  Well, it's pretty obvious at the pipeline level  
15   that Omega has -- has become the agent.

16          Q     Okay.

17          A     They were sending the bills in care of Omega.

18          Q     Now --

19          A     So there was a paper trail generally afterwards  
20   that even if there isn't perfect written instructions,  
21   there's -- there's understanding that there is going to be  
22   -- there are going to be verbal deals that are there  
23   from that standpoint.

24          Q     Before Omega got this contract with the City,  
25   you indicated Ameren had the contract of MPC --

1           A     I believe.

2           Q     -- or an affiliate of Ameren or something?

3           A     It was -- I think back when they were in the  
4     retail gas business, they had a sales and agency agreement  
5     very similar to what Omega did.

6           Q     Do you know if -- when Ameren had that contract,  
7     did they get similar deals with transporting for other  
8     customers?

9           A     I don't know.

10          Q     But you've seen that with other agency contracts  
11     around the country?

12          A     Yeah. Agency agreements generally give --  
13     they're -- part of the reason you do them is it gives you  
14     latitude in terms of use of the assets. That's kind of  
15     part of the bargaining.

16                     So this is not uncommon around the country for  
17     companies that are acting as agent have the leeway to do  
18     things like that.

19          Q     Is there any harm to the City of Cuba by this  
20     activity?

21          A     I'm not aware of any. Now, I would point out  
22     not only is the City of Cuba agreement, but one thing that  
23     stood out to me in all the direct sales agreements,  
24     regulated agreements, all of them are short term. City of  
25     Cuba and all these customers have the right with a very

1 short period of notice to terminate if they thought there  
2 was any problems with the service or that they were being  
3 treated unfairly. And I thought that was kind of  
4 important all the way through this. They weren't locked  
5 in ten years. Most of them were short, one year or less,  
6 and 90 days notice they could terminate.

7 Q Okay. So the harm to Cuba would be -- would  
8 there be any benefit to Cuba by them doing this?

9 A I don't know. I mean, I'm not in --

10 Q There could be --

11 A There could have been, but I'm not --

12 Q What kind of benefit could there be?

13 A Well, there may have been a benefit where  
14 there's a -- a chance, for example on customer, this could  
15 kind of get into the -- the palliative value of this  
16 situation. Do you want to go in-camera, and I could  
17 explain something to you?

18 JUDGE WOODRUFF: All right. We'll go in-camera.

19 MR. SMITH: Okay.

20 JUDGE WOODRUFF: Anyone who needs to go ahead  
21 and leave --

22 REPORTER'S NOTE: At this point, an in-camera  
23 session was held, which is contained in Vol. 6, pages 489  
24 through 492.

25

1 JUDGE WOODRUFF: All right. We're back in open  
2 session again.

3 COMMISSIONER MURRAY: Judge, can I just ask the  
4 witness to identify which part --

5 JUDGE WOODRUFF: Sure.

6 COMMISSIONER MURRAY: Which exhibit he referred  
7 to as the letter?

8 A The letter. Okay. Let me see if I can -- make  
9 sure that's right.

10 MR. DEFORD: Your Honor, I believe it's Appendix  
11 U.

12 A Thank you. Got it.

13 COMMISSIONER MURRAY: Is that the letter you  
14 were referencing? Thank you.

15 JUDGE WOODRUFF: Did you want to ask any other  
16 questions about that, Commissioner? Okay. For re-cross,  
17 then, the, not necessarily confidential, Ameren?

18 MS. DURLEY: None, your Honor.

19 JUDGE WOODRUFF: Public Counsel is not here.  
20 Municipal Gas Commission?

21 MR. WOODSMALL: No, your Honor.

22 JUDGE WOODRUFF: Staff?

23 MR. REED: No, thanks.

24 JUDGE WOODRUFF: Any redirect?

25 MR. DEFORD: None, your Honor.

1 JUDGE WOODRUFF: All right. Then you can step  
2 down. And we had some discussions off the record earlier  
3 indicating that we would wait till tomorrow to do Mr.  
4 Ries. Is that everyone's understanding? All right.

5 Mr. Reed, you also indicated you might have a  
6 rebuttal witness from the City of Cuba. Do you know if  
7 you're going to actually call that witness?

8 MR. REED: Judge, my plan is to have that  
9 witness here available, Bob Baldwin, by 1:00 tomorrow  
10 afternoon.

11 JUDGE WOODRUFF: Okay.

12 MR. REED: That's what I've relayed to him.

13 JUDGE WOODRUFF: And did the testimony of  
14 Mr. Smith trigger your desire to call that witness, or is  
15 this something that's --

16 MR. REED: I think it's still up in the air a  
17 bit, Judge.

18 JUDGE WOODRUFF: Okay.

19 MR. REED: We'll see what tomorrow's testimony  
20 brings.

21 JUDGE WOODRUFF: All right. Well, it's up in  
22 the air, then, as far as the Commission's ruling as well.  
23 So anything anyone else wants to bring up while we're  
24 still on the record?

25 MR. WOODSMALL: We have those two tomorrow. Is

1 Imhoff done, or where did we leave things with him?

2 JUDGE WOODRUFF: I believe Ms. Shemwell

3 indicated she did not intend to call him back.

4 MR. WOODSMALL: So just the two tomorrow?

5 JUDGE WOODRUFF: I believe it will be just the

6 two. Anything else?

7 All right. With that, then, we are adjourned

8 until 8:30 tomorrow morning. Thank you all.

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15 (Exhibits were returned to the Public Service  
16 Commission, Ms. Lonnell Boyce.)

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