

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

December 13, 2006
Jefferson City, Missouri
Volume 3

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

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

2 JUDGE WOODRUFF: Let's come to order, please.

3 Good morning, everyone. Welcome to the hearing this
4 morning. This is Case No. GC-2006-0491, which concerns
5 the Staff of the Missouri Public Service Commission versus
6 Missouri Pipeline Company and Missouri Gas Company.

7 We're going to start off today by taking entries
8 of appearance. We'll begin with Staff.

9 MS. SHEMWELL: Good morning, your Honor, and
10 thank you. Lera Shemwell, Steven Reed, Peggy Whipple and
11 Blane Baker representing the Staff of the Missouri Public
12 Service Commission, Post Office Box 360, Jefferson City,
13 Missouri, 65102. Thank you.

14 JUDGE WOODRUFF: Thank you. And for Office of
15 Public Counsel?

16 MR. POSTON: Good morning. Mark Poston
17 appearing today on behalf of Office of Public Counsel and
18 the public.

19 JUDGE WOODRUFF: Thank you. And for Missouri
20 Pipeline and Missouri Gas?

21 MR. DEFORD: Thank you, your Honor. Paul DeFord
22 and Amy Davenport with the law firm of Lathrop & Gage
23 appearing for Respondents. Our address is 2345 Grand
24 Boulevard, Kansas City, Missouri, 64108.

25 JUDGE WOODRUFF: Thank you, Mr. DeFord. And for

1 AmerenUE?

2 MS. DURLEY: Colly Durley, law firm of Smith
3 Lewis in Columbia. Our address is 111 South 9th Street,
4 Columbia, Missouri.

5 JUDGE WOODRUFF: Thank you. A for Municipal Gas
6 Commission of Missouri?

7 MR. WOODSMALL: Thank you, your Honor. David
8 Woodsmall from Finnegan, Conrad & Peterson, 428 East
9 Capitol, Suite 300, Jefferson City, Missouri, 65101,
10 appearing on behalf of the Municipal Gas Commission of
11 Missouri.

12 JUDGE WOODRUFF: All right. Thank you. Of
13 course, we're going to start out today by taking opening
14 statements, and we'll get to that in a minute.

15 Before we do that, we'll take a short break, and
16 I'll go downstairs and let the Commissioners know that we
17 are ready to start on the opening statements.

18 Before we do that, are there any other matters
19 anyone wants to bring up?

20 MR. DEFORD: Your Honor, we'd like an
21 opportunity to give our exhibits to the court reporter.

22 JUDGE WOODRUFF: Yeah. We'll do that, also.
23 Ms. Shemwell?

24 MS. SHEMWELL: We will need that opportunity as
25 well. And would you like to address the foilation issue

1 before you bring the Commissioners down?

2 JUDGE WOODRUFF: Yes. If you would, tell us
3 what the situation is.

4 MS. SHEMWELL: Well, Judge, we had read your
5 order as indicating that this issue would go first, and
6 Mr. Reed has a brief opening statement particularly for
7 that issue.

8 At least one of the witnesses is not a witness
9 in the rest of the case. And, frankly, we feel that the
10 flow of the rest of the case would go better if we took
11 the foilation issue first. Yes, one of the witnesses does
12 appear twice, but I would point out that that is not an
13 unusual situation.

14 JUDGE WOODRUFF: Mr. DeFord, do you want to be
15 heard upon that?

16 MR. DEFORD: Yes, your Honor. It would be our
17 strong preference that we either take the issues and the
18 witnesses in the order that were listed rather than have
19 witnesses come up and down on the issues. Or if we're
20 going to split this foilation issue out, it's our, again,
21 strong preference that it go at the end of the case rather
22 than at the beginning.

23 I think it's a distraction. I don't think it's
24 an issue that's actually properly before the Commission,
25 and I think to take it first would confuse the issues that

1 are actually properly before the Commission.

2 So if we can't take it in the order that the
3 witnesses are coming up and add the other witnesses in, I
4 would strongly request that we take it at the end of the
5 case where it belongs.

6 JUDGE WOODRUFF: All right. Anybody else want
7 to be heard on that question? Mr. Woodsmall?

8 MR. WOODSMALL: I guess just very briefly. I
9 have no strong preference myself as to which way to go. I
10 understand Staff's concern. And the availability of
11 witnesses is always an important consideration.

12 And I understand Staff has at least one witness
13 that has recently had hip surgery that it may be calling
14 on this issue, and another witness that's a former
15 employee, that is not available at Staff's beck and call.
16 So I -- I think the availability of witnesses may dictate
17 when this issue can go.

18 JUDGE WOODRUFF: Ms. Shemwell, make sure your
19 microphone is on.

20 MS. SHEMWELL: Yes, sir.

21 JUDGE WOODRUFF: Okay.

22 MS. SHEMWELL: Unfortunately, yes, one of our
23 witnesses will be completely unavailable. We will only be
24 calling two witnesses, Bob Schallenberg and Janis Fischer.
25 We, again think that it would be good to just simply get

1 this issue out of the way so that the Commission can hear
2 the case in chief in full and uninterrupted.

3 We think that the end of the case is certainly
4 not the place for this, again, because of witness
5 availability. Thank you.

6 JUDGE WOODRUFF: Which witness would not be
7 available? There's only going to be two, and
8 Mr. Schallenberg, I'm sure, is here. Would Ms. Fischer
9 not be available?

10 MS. SHEMWELL: Oh, no. Ms. Fischer is going to
11 be available. Our first witness, though, this morning if
12 we don't have the foilation issue is not --

13 JUDGE WOODRUFF: Okay.

14 MS. SHEMWELL: -- here yet.

15 JUDGE WOODRUFF: But he would be here around
16 9:00, I believe you indicated?

17 MS. SHEMWELL: I'm thinking that that is the
18 time, yes.

19 JUDGE WOODRUFF: All right. Mr. DeFord,
20 anything else you wanted to add?

21 MR. DEFORD: No. Just that I didn't understand
22 that there would be a witness that would be called other
23 than Mr. Schallenberg and Ms. Fischer.

24 JUDGE WOODRUFF: And apparently there won't be.

25 MS. SHEMWELL: That's right.

1 MR. DEFORD: And I think, again, splitting this
2 up really doesn't make a whole lot of sense. But if we
3 are going to split it up, the way we had prepared for this
4 would be to defend at the end rather than at the
5 beginning.

6 It just doesn't make sense to take up an issue
7 that really hasn't had, you know, prefiled testimony.
8 There are some -- well, there are a lot of things that
9 actually will come out, and I think that we're going to
10 make some objections to. But I think it really belongs at
11 the end, if it belongs anywhere.

12 JUDGE WOODRUFF: All right. Well, I'll -- I'll
13 defer making a ruling on that until I -- after I come back
14 with Commissioners for opening statements.

15 At this time, we'll go off the record, and we
16 can deal with marking exhibits.

17 MS. SHEMWELL: Thank you.

18 (Break in proceedings.)

19 JUDGE WOODRUFF: All right. Welcome back,
20 everyone. We're ready to begin with the proceedings.
21 After considering a moment, I've decided what we're going
22 to do is we're going to start out with the overall opening
23 statements from all parties.

24 Thereafter, we'll allow Staff to present their
25 foilation argument and the testimony on that. When that's

1 finished, then we'll go back into the -- the main case.

2 So at this point, then, we're ready for overall
3 opening statements, beginning with Staff.

4 OPENING STATEMENT

5 BY MS. SHEMWELL:

6 MS. SHEMWELL: Good morning and thank you. May
7 it please the Commission. I'm Lera Shemwell. I represent
8 the Staff of the Missouri Public Service Commission.

9 And this morning I'm going to tell you about a
10 regulated utility company that has run amuck. I'm going
11 to tell you about the schemes Mr. Ries used to enrich
12 himself.

13 Mr. Ries has engaged in a shell game of hiding
14 the ball from this Commission and its Staff. The shell
15 game was not played for fun, but for profit at the expense
16 of Missouri customers.

17 Let's talk about some violations. This utility
18 has systematically violated its own tariffs, this
19 Commission's rules, the company certificates of
20 convenience and necessity, and their commitments to this
21 Commission in GM-2001-585. That's the case in which Mr.
22 Ries and Mr. Langley purchased the system. I believe it
23 was Gateway.

24 In that case, when they were permitted to buy
25 these pipelines, Mr. Langley and Mr. Ries committed to

1 this Commission that they would not seek to become FERC
2 jurisdictional.

3 Recently, they have done precisely that. They
4 have violated numerous of their own tariffs. Initially,
5 Mr. Ries tried to get the Staff to remove from the tariff
6 language of what protects non-affiliates; in other words,
7 the language that addressed affiliate abuse.

8 Staff would not agree with Mr. Ries to do that,
9 and Mr. Ries adopted the tariff language in full and then
10 proceeded to violate the tariffs by giving unfair
11 advantages to their affiliate Omega.

12 And I'm talking about not Omega that serves the
13 Fort, but Omega, the marketing company. He hid these
14 violations by not filing the required reports with the
15 Staff, certain reports are required under his tariffs.

16 He did not report all of his affiliates to the
17 staff as required by his tariffs. And he had secret
18 customers that did not execute transportation agreements.

19 He violated the Commission's affiliate
20 transactions rules because he had shared personnel. He
21 had access to information that was supposed to be kept
22 confidential from all marketers. Yet, he himself was a
23 marketer.

24 Mr. Ries violated his Certificate of Convenience
25 and Necessity by building a lateral line to one of his

1 secret customers without the Commission's permission to do
2 so. This testimony will show that he sold gas to
3 customers he hid from the Staff. Today, I'm going to call
4 these his secrets because their identity has been
5 maintained as highly confidential, and I don't want to go
6 in and out of camera for just a few names.

7 Mr. Ries even set up a secret affiliate to hide
8 the payments that these secret customers made to him, and
9 Staff addresses that further in its testimony.

10 First, let's talk about the unfair competitive
11 advantage on this system. MPC and MGC violated their own
12 tariffs and the Commission's rules by permitting Omega
13 Pipeline to use confidential customer information that was
14 not available to other marketers on the system.

15 Mr. Ries had access to the information that he
16 used to profit Omega Pipeline Company that he did not
17 share that information with marketers as required by his
18 tariffs in the Commission's affiliate transaction rules.

19 How did he get that information? Sharing
20 personnel. Mr. Ries is the President of Missouri Pipeline
21 Company. Mr. Ries is the President of Missouri Gas
22 Company. Mr. Ries is the President of Missouri Interstate
23 Gas, also known as MIG.

24 Mr. Ries was the President of Omega Pipeline
25 Company until approximately June one of this year. He was

1 the President of what I refer to as his secret affiliate,
2 Omega Pipeline Services, until it was dissolved earlier
3 this year.

4 The testimony will show that Mr. David Wallen,
5 who is their primary operations employee, signed contracts
6 and checks on behalf of the pipelines, which would
7 certainly not be considered to be an operational activity.

8 And here's the tariff that was violated. While
9 this is a small company, they may occupy the same office
10 space, they say in their tariffs that they will maintain
11 separate operational facilities and personnel and that
12 they will maintain confidentially operational and
13 accounting information. And that simply wasn't done. So
14 that's the first tariff violation.

15 Staff's testimony will show that, as a marketer,
16 Mr. Ries had access to information about other marketers'
17 sales, their customers' natural gas usage and which
18 customers were in balance and which customers were out of
19 balance. And he milked that advantage for his own
20 enrichment. Staff's testimony will address that further.

21 Additionally, the testimony will show that Mr.
22 Ries discriminated against non-affiliates by requiring
23 non-affiliates to stay in balance on the system. The
24 pipeline has to maintain a system in balance because
25 that's the way they get gas to flow throughout the system.

1 And here's the first tariff that they violated.
2 Their tariff requires that all terms and conditions
3 contained in the tariff shall be applied in a uniform and
4 non-discriminatory manner, regardless of the affiliation
5 to the company.

6 Here's the balancing provision that requires
7 customers to stay in balance. The company's tariffs
8 require regular and uniform delivery of gas into the
9 system. He required Ameren to do that. He required
10 Laclede to do that. He did not require his affiliate,
11 Omega, to stay in balance.

12 He did not require regular and uniform delivery
13 of gas. Omega was tens of thousands of decatherms out of
14 balance. Mr. Schallenberg's testimony will show that days
15 or weeks could go by when he Omega did not put any gas
16 into the system.

17 MPC and MGC are the transporters on the system.
18 So when the tariff refers to transporters, that's --
19 that's who the transporters are. MPC and MGC allowed
20 Omega Pipeline to deliver gas to customers without either
21 nominating, purchasing or delivering into the system an
22 adequate amount of gas.

23 The pipelines, Missouri Pipeline Company and
24 Missouri Gas Company, are not permitted by their CCNs or
25 their tariffs to sell natural gas. The pipelines were

1 collecting lost and unaccounted for gas by non-affiliated
2 shippers.

3 Staff believes that when the pipelines did not
4 even use or lose that gas, Omega sold that gas to its
5 secret customers. Great way to make money, buy gas you
6 didn't -- I mean, sell gas you didn't even buy. Lost and
7 unaccounted for gas -- let me just talk about that a
8 minute.

9 Natural gas is typically used by a pipeline for
10 compression. So that's how it is used by the system to
11 move the gas through the system. But this system doesn't
12 have any compression. It's a fairly new pipeline, so it
13 doesn't actually lose much gas either.

14 So as they're collecting lost and unaccounted
15 for, as there's no way for the pipelines to sell it, then
16 it just keeps increasing on the pipelines. So they had to
17 find a way to get rid of that gas.

18 And what Staff believes is they gave it to Omega
19 to sell to their secret customers. It does become, we
20 believe, property of the pipeline. But -- well, it
21 belongs to the pipelines. So they had a concern about how
22 they were going to get rid of that, how they were going to
23 use what they didn't use or lose.

24 So Staff's testimony will show that they gave
25 that to Omega to sell. To sum up, Mr. Ries had access to

1 gas in balances, annual daily gas commands and information
2 regarding individual shippers that resulted in a
3 competitive advantage over all other marketers on the
4 system.

5 MPC and MGC transported gas to Omega's secret
6 customers without transportation agreements as required by
7 their tariffs. This is important because the
8 transportation agreements show the rate and terms charged
9 to these customers.

10 When these customers are kept secret from the
11 other customers on the system, the other customers, the
12 non-affiliated customers, cannot see what is being charged
13 to these secret customers.

14 And Mr. Ries argues that these secret customers
15 are not shippers. But let me tell you why that's false.
16 First of all, his tariff starts off with, "Any person
17 desiring transportation should execute a transportation
18 agreement."

19 Now, Missouri statute defines person very
20 broadly to include corporate entities, individuals, LLCs,
21 associations. Certainly, the secret customers fall within
22 the definition of persons.

23 Secret shippers were -- secret customers were
24 also shippers under this Commission's definition of
25 shipper. The Commission defined shipper in its affiliate

1 transaction rules to mean, "All current and potential
2 transportation customers on a regulated gas corporation's
3 natural gas distribution system."

4 There's no wiggle room there for anyone
5 receiving gas on this system to claim that they're not a
6 shipper. All potential and current shippers, therefore,
7 under their tariffs are required to execute and deliver
8 transportation agreements to the pipelines.

9 Mr. Ries did not require his secret customers to
10 do that. By not requiring transportation agreements, this
11 scheme had the assistance of these customers who were
12 getting discounts. This kept non-affiliates from finding
13 out about the discounts. Mr. Schallenberg can discuss
14 that with you further.

15 We expect to hear from Ameren, Mr. Massman is
16 here for Ameren today, that they were not permitted to
17 deliver gas to customers without nominating, reserving and
18 putting gas into the system for their customers.

19 Staff's testimony will show that these secret
20 customers actually submitted their payments to what I've
21 referred to as the secret affiliate, Omega Pipeline
22 Services. I call it secret because Mr. Ries did not
23 inform Staff of the existence of this affiliate, despite
24 the fact that they listed a significant number of
25 affiliates.

1 Mr. Ries has -- was President of this secret
2 affiliate, which he kept secret even from his own pipeline
3 companies. The Vice President of Finance, Mr. B.J
4 Lodholz, in his deposition indicated that he had never
5 heard of Omega Pipeline Services.

6 So the process was that these customers, the
7 secret customers, would be built and they would submit
8 their payments to a completely different bank, completely
9 different account that was held by Omega Pipeline
10 Services, which is different from the company.

11 So why set up a secret affiliate to receive
12 these payments? In his deposition, Mr. Ries admitted that
13 he kept a certain percentage of this. He would not admit
14 to how much he kept, but he admitted to keeping some.

15 So why all the secrecy? Because the tariffs
16 require that if Omega offers an affiliate a discounted
17 rate, that then becomes the maximum rate on the system.
18 That then becomes the maximum that he can charge
19 non-affiliates.

20 The tariff specifically provides, "The lowest
21 transportation rate charged to an affiliate shall be the
22 maximum rate that can be charged to non-affiliates." If
23 you don't want to give the discount to non-affiliates,
24 what do you do? You hide that information from this
25 Commission, from the Staff, and from your non-affiliates.

1 Without a transportation agreement on file,
2 these rates are hidden from Staff and the Commission that
3 might be looking for them. That's why the invoices that
4 Mr. Reed is going to discuss with you become so important.
5 It's through those invoices that the level of refunds due
6 to non-affiliates could be determined.

7 For Count IV, or Issue 4, staff's Testimony will
8 show respondents' violated their tariffs by failing to
9 report their offers of discounts which Omega began
10 offering in 2003.

11 Here's what their tariffs require -- that they
12 submit on a quarterly basis -- this is their tariffs --
13 "All bids or offers that the company's quotes for
14 transportation service relating to the pipelines." If
15 those bids are less than the maximum rate, that must be
16 reported. The identity of the customer must be reported.
17 And if it is being offered to an affiliate, that must be
18 explained as well. None were ever reported until 2005.

19 Omega had an agency agreement with the City of
20 Cuba that has been marked as an exhibit that will be
21 entered later, and that agreement should have been
22 disclosed and reported to the Staff in the quarterly
23 report for the second quarter of 2003.

24 It's interesting to note that Omega got a
25 discount under this agreement, but that discount did not

1 flow to the City of Cuba. So the City of Cuba did not
2 reap that benefit. The city of Cuba paid a bundled rate.
3 It was not until April 2005 of this year that the
4 pipelines acknowledged that Omega was providing a
5 discounted service, and that was to Fort Leonard Wood.

6 They'd had the transportation, of course,
7 because they're the only pipeline into the Fort. But
8 omega was delivering the commodity.

9 In April of 2005, Mr. Ries was able to obtain
10 the contract with the Fort to provide the commodity as
11 well, and he reported that to the staff in April of 2005.

12 And the last Count 5 besides this foilation
13 issue, this has to do with the company's violations of
14 their certificates. They receive only line certificates
15 when they came into the Commission initially.

16 And when Utilicorp came into the Commission --
17 and I'll ask the Commission to take note of GM-94-252,
18 which we can certainly provide if the Commission would
19 like. The Commission specifically states and I quote,
20 "Upon review the Commission's order and granting
21 certificates to MPC and MGC seems abundantly clear. The
22 Commission finds that the certificates issued and which
23 will be passed to UCU, which is Utilicorp as a result of
24 this purchase are for the operation of a natural gas
25 pipeline. This does not include the sale of gas, the

1 bypass of LDCs or operation other than that in the
2 designated territory. Should you see UCU engaging in any
3 of these other activities, it must first seek commission
4 approval to do so. Should UCU violate the provisions of
5 its certificate or tariffs by operating outside its
6 defined service area or certificated scope without first
7 obtaining the Commission authorization to do so, any
8 proper party may take up this issue in the complaint
9 process.

10 Omega billed a lateral pipeline, one of its
11 secret customers, and then MPC paid for that construction.
12 Staff's testimony will have exhibits that explain that.
13 It did not seek -- MPC did not seek reimbursement from
14 Omega or from the secret customer, nor did they seek the
15 Commission of the approval, which is required by the
16 certificate.

17 In conclusion, we're here today to discuss
18 regulated utility company that refuses to submit to this
19 Commission's regulation. And Staff's testimony will
20 demonstrate the violations that have resulted from Mr.
21 Ries's refusal to be regulated. Thank you.

22 JUDGE WOODRUFF: Thank you, Ms. Shemwell. Does
23 Public Counsel wish to make an opening?

24 OPENING STATEMENT

25 BY MR. POSTON:

1 MR. POSTON: Good morning. May it please the
2 Commission. My name is Marc Poston. I represent the
3 office of the Public Counsel.

4 The issues in this case generally have a common
5 allegation that the pipeline companies have violated the
6 affiliate requirements. We believe the facts set forth in
7 the Staff's testimony -- testimony clearly indicate
8 violations of the tariffs and the rules.

9 Among the five or six issues that have been
10 identified, I would like to briefly talk about refunds.
11 One issue, and I believe that's Issue 3, Sub Issue A,
12 asked the Commission whether the pipeline company should
13 refund all amounts collected from non-affiliates for
14 transportation over and above the rate charged to the
15 affiliate; in other words, refund all amounts collected
16 unlawfully.

17 We fully support such relief. Unfortunately,
18 case law suggests that the Commission does not have the
19 authority to order monetary relief, such as refunds,
20 because the Commission is not a court of law.

21 And I say unfortunately because it places a
22 larger burden on ratepayers that deserve refunds. The
23 aggrieved customers must take their claim to Circuit Court
24 rather than seek refunds from the Commission.

25 The Commission can direct the General Counsel to

1 seek penalties, but penalties going into a school fund and
2 are not intended to make the injured parties whole.

3 What parties would be entitled to refunds?

4 Mr. Schallenberg's direct testimony includes a list of
5 customers that includes AmerenUE and Laclede Gas Company.
6 And since these LDCs passed their transportation costs on
7 to ratepayers, ratepayers should see the benefit of any
8 monetary relief during the PGA ACA process.

9 But how do we get there? How does the ratepayer
10 get a Court decision ordering the pipeline company to
11 provide refunds? We see it as a two-step process.

12 Penalties aside, the first step is for the
13 Commission to determine that the pipeline companies should
14 have charged non-affiliates no more than the
15 transportation rates charged to the affiliates.

16 And as far as the ratepayers on Laclede and
17 Ameren systems, the second step may require cooperation
18 from these companies, Laclede and Ameren, to pursue a
19 joint claim in court to recover these amounts and pass the
20 benefits along to their customers through the PGA ACA
21 process.

22 If the monetary benefits that could be achieved
23 by the lawsuit outweigh the costs of pursuing litigation,
24 we hope the Commission strongly encourages these companies
25 to join together and go after refunds.

1 I don't believe Mr. Woodsmall's municipal
2 clients will need any encouragement. If Laclede and
3 Ameren are truly interested in serving their customers,
4 which I believe they both claim in one way or another in
5 their pending rate cases, they will step up and do this
6 for their customers.

7 We're pleased to see Ameren here today and
8 pleased that they have been involved in this case since it
9 was filed, and I doubt they will need encouragement.
10 We're not so pleased that Laclede is not here today, but
11 they can certainly send a signal to the Commission that
12 they are interested in providing savings for their
13 customers by joining Ameren in a civil lawsuit.

14 But I don't want to wrongly turn the attention
15 of this case onto the parties and customers that have been
16 aggrieved and away from the unlawful actions of the
17 pipeline company that's brought us here today.

18 When the pipeline company sought authority to
19 operate in Missouri five years or so ago, there was
20 opposition, and, apparently, rightly so.

21 Public Counsel supports the Staff's position,
22 and we believe the Commission should send a strong signal
23 to the industry that Missouri will not tolerate such
24 practices by directing this General Counsel to seek
25 penalties for each unlawful act and to conclude that the

1 non-affiliate customers that have been overcharged are
2 entitled to refunds. Thank you.

3 JUDGE WOODRUFF: Thank you, Mr. Poston.
4 AmerenUE?

5 OPENING STATEMENTS

6 BY MS. DURLEY:

7 MS. DURLEY: Good morning. My name is Colly
8 Durley, and I'm appearing on behalf of AmerenUE, who is an
9 intervenor in this action.

10 And I would support the opening statement of the
11 Public Counsel. If there is a determination by this
12 Commission that the Staff's allegations are well-founded,
13 then Ameren is planning to seek a refund for its customers
14 and hopes that this Commission will support that by its
15 determination in whatever way it is appropriate. Thank
16 you.

17 JUDGE WOODRUFF: Thank you. Municipal Gas
18 Commission of Missouri?

19 OPENING STATEMENT

20 MR. WOODSMALL: Good morning. David Woodsmall
21 representing the Municipal Gas Commission of Missouri.
22 I'll be very, very brief.

23 First, I want to tell you who we are. Municipal
24 Gas Commission of Missouri is a statutorily created
25 governmental entity designed to represent municipal gas

1 companies in the procurement of gas supplies and in
2 enabling the transportation of those gas supplies to the
3 municipalities.

4 In this case -- well, overall, we represent 19
5 to 20 municipal gas companies or municipal gas
6 distributions facilities. In this case, our interests is
7 in three of those, Waynesville, St. Roberts and St. James.
8 All three of those entities take transportation service
9 from the pipelines in question here. That's who we are.

10 Our interests in this case. Our interests in
11 this case is in one particular count of Staff's complaint.
12 Staff initially had six complaints. I believe it's
13 pursuing five here today. But our interest is in the
14 violation of what's called Section 32-B of the pipeline
15 tariffs.

16 That section requires the pipelines to charge
17 non-affiliates the lowest rate charged to affiliates. In
18 this case, staff has made allegations, well-founded
19 allegations, that the pipelines provided a preferential
20 rate to its affiliate marketer, Omega Pipeline.

21 Our interests in this case is ensuring that the
22 Commission enforces that tariff and provides those
23 preferential rates to non-affiliates, like the Municipal
24 Gas commission. That is our interest here today.

25 Where we think this case is going to go. As

1 Mr. Poston mentioned, we believe that once the Commission
2 finds that the Staff's complaint is well-founded, once the
3 Commission finds that there has been preferential rates
4 and that those non-affiliate shippers should have been
5 provided that preferential rate, we will then enter
6 Circuit Court and seek refunds on behalf of our clients.

7 Before we do that, we need a Commission decision
8 telling -- interpreting the tariff, telling the parties,
9 This is the rate that should have been charged for this
10 period of time.

11 Once received, as I said, we'll go into Circuit
12 Court and receive -- seek refunds on behalf of our
13 clients. That's who we are. That's where our interest is
14 in this case, and that's where we see this case going.

15 If you have any questions, I'm always free to
16 answer those. Otherwise, I appreciate your time.

17 JUDGE WOODRUFF: Thank you, Mr. Woodsmall. For
18 the pipeline companies?

19 OPENING STATEMENT

20 BY MR. DEFORD:

21 MR. DEFORD: Thank you, your Honor. May it
22 please the Commission. My name is Paul DeFord, and I'm
23 here today representing the Respondents, Missouri Pipeline
24 Company and Missouri Gas Company.

25 At the outset, I have to tell you that this, for

1 reasons that I can't explain, has been the most
2 contentious case I've ever handled. For that reason, I
3 would ask that when you get down to the business of making
4 a decision in this case that you look beyond the rhetoric
5 and focus only on the evidence.

6 That said, as you know, there are five remaining
7 counts of the Complaint to be addressed. Count 1 alleges
8 that respondents have failed to maintain separate
9 operational facilities and personnel from their former
10 affiliate, Omega, and that contracts between Omega and
11 Respondents gave preferential treatment to Omega over
12 other shippers.

13 The evidence clearly establishes that Staff has
14 been fully aware of the relationship between Respondent
15 and their former affiliate and that there was never
16 anything inappropriate.

17 We have provided a copy of the agreement between
18 Respondents and Omega and demonstrated that Omega has paid
19 the highest rates of any shipper.

20 Count 2 alleges that respondents have provided
21 transportation services to see their former affiliate,
22 Omega, without a proper agreement. Again, the evidence
23 clearly establishes that Respondents have valid agreements
24 with all shippers, including Omega.

25 Count 3 is the hardest in the Complaint. Staff

1 alleges that Respondent provided a discount to ship gas to
2 the former affiliate, Omega, and that all other shippers
3 are, therefore, entitled to the same discount.

4 Staff is absolutely wrong. The evidence
5 demonstrates, again, that Omega paid the highest rate of
6 any shipper on Respondent's systems. Staff reaches its
7 incorrect conclusions by ignoring the fact that Omega acts
8 in two capacities in dealing with Respondents.

9 First, Omega has a contract with Respondents
10 that enables it to ship gas on the system. Second, Omega
11 has a contract with the City of Cuba to act as agent to
12 acquire and manage the delivery of gas.

13 In the second situation, it is the City of Cuba
14 that has the contract with Respondents allowing it to be a
15 shipper of gas on the systems.

16 The City of Cuba, unlike Omega, does have a
17 discounted rate for shipping gas. It is this discount
18 that Staff wrongly attributes to Omega and claims that all
19 shippers on this system are entitled to have.

20 By simply ignoring the significant legal
21 distinction between Omega's activities as an agent for
22 other shippers and as a shipper, Staff reaches what
23 appears to be its forgone conclusion that all shippers on
24 the system are entitled to the same discount as the City
25 of Cuba. This obviously unfounded conclusion would result

1 in the financial ruin of Respondents.

2 The fourth count of the Complaint alleges
3 Respondents have violated their tariffs by not reporting
4 all discounts to shippers. Again, the Staff is wrong.
5 Staff continues to assert that Omega's activities an a
6 agent in gas marketing must be reported as discounts to
7 Omega. There is no law that supports Staff's allegations.

8 The final count in the Complaint alleges that
9 the Respondents extended a pipeline to an Omega customer
10 without requiring reimbursement from either Omega or the
11 customer.

12 The evidence shows that the extension was to a
13 customer that has already increased Respondent's revenues
14 and that the decision to extend the pipeline was, in fact,
15 a good business decision.

16 There is simply no basis for requiring direct
17 reimbursement for all extensions and facilities. The
18 bottom line here is that there's no competent and
19 substantial evidence to support any count of Staff's
20 Complaint and that this case must be dismissed.

21 I'd be happy to answer any questions the
22 Commission may have and look forward to seeing the
23 evidence come in.

24 JUDGE WOODRUFF: Thank you, Mr. DeFord. I
25 believe that's all the openings at this point.

1 Before we get into the overall Staff's
2 complaint, there was also a Motion for Sanctions for
3 destruction of documents that was filed by Staff
4 approximately a month ago. We'll go ahead and take that
5 issue up first, allowing submission of testimony and so
6 forth on that.

7 I believe at least Staff wanted to do a mini
8 opening on that; is that correct?

9 MR. REED: If -- question. With permission,
10 Judge.

11 JUDGE WOODRUFF: That will be fine. And any
12 other party that wants to do a mini opening can do that,
13 also. But we'll begin with Staff.

14 MR. REED: I do have exhibits, which I hadn't
15 given the court reporter. They're 251 through 260.

16 JUDGE WOODRUFF: All right.

17 MR. REED: And I have copies for the Commission
18 and the Bench as well. Do you want those now, Judge?

19 JUDGE WOODRUFF: Yes, please. And we can go off
20 the record for a moment while the reporter marks those
21 documents as she needs to.

22 (Break in proceedings.)

23 JUDGE WOODRUFF: All right. We're back on the
24 record. And, Mr. Reed, you can proceed with your mini
25 opening.

1 MR. REED: Thank you, I'll be brief, Judge.

2 OPENING STATEMENT

3 BY MR. REED:

4 MR. REED: Missouri Gas Company, Missouri
5 Pipeline Company and Omega Pipeline Company have been
6 hiding documents.

7 At Mr. Ries' deposition in July of 2006, he
8 refused to answer questions about Omega Pipeline Company.
9 Ms. Shemwell has described the why about these documents.
10 And my point in this trial is to tell the Commission what
11 they've been hiding.

12 The Staff sought customer invoices from the
13 pipeline companies in January 2006. Mr. Ries responded,
14 Well, they don't exist, we don't keep them. What about
15 last week's invoices or last month's? None were provided.

16 Because the Staff couldn't get the invoices from
17 the pipelines, Janis Fischer went straight to the
18 customers of the pipelines.

19 And over the next few weeks in early 2006, she
20 learned that there were customers that apparently the
21 pipelines didn't want the Commission to know about. So
22 subpoenas were issued.

23 In January and March of 2006, subpoenas were
24 issued to Missouri Pipeline Company, to Omega Pipeline
25 Company, but no original customer invoices are provided.

1 Instead, Mr. Ries recreates invoices. They're not
2 accurate. They're not reliable.

3 In July 2006, Ms. Shemwell deposed B.J. Lodholz,
4 the former Chief Financial Officer to the pipelines and
5 Omega. He was there until May 12th, 2006.

6 Now, this is four months after the first
7 subpoena was issued. Mr. Lodholz says under oath in a
8 deposition, yes, I kept summary sheets, copies of the
9 invoices all the way back to 2002.

10 So Staff requested them. The response, Well,
11 these don't exist anymore. So when queried in an October
12 deposition, Mr. Ries says, Well, maybe Mr. Mertz, the new
13 financial officer who replaced Mr. Lodholz, threw them
14 out.

15 In Mr. Ries' deposition, he says -- What
16 happened to all the documents prior to January 2006? They
17 don't exist. Are you suggesting that Mr. Mertz discarded
18 those documents? I don't know who did that, but they're
19 certainly not in B.J.'s files.

20 Well, Mr. Mertz later files an affidavit. He
21 says, I didn't destroy them. Other employees of the
22 pipeline companies file affidavits. They all say, I
23 didn't destroy them.

24 So this is where we are today. Mr. Lodholz says
25 under oath, I kept the invoices all the way back to 2002.

1 And then the pipeline company has their employees give
2 affidavit, and they all say, I didn't destroy the
3 documents.

4 So Staff is still waiting for an explanation.
5 And today, the Commission should demand one from the
6 pipeline companies.

7 JUDGE WOODRUFF: Thank you, Mr. Reed.

8 COMMISSIONER CLAYTON: Can I ask a question?

9 JUDGE WOODRUFF: Sure.

10 COMMISSIONER CLAYTON: Can I? I want to be
11 clear, Mr. Reed, on exactly what we're doing here. This
12 is a Motion for Sanctions. And the records or the
13 documents that you claim have been improperly destroyed or
14 lost or whatever it is, are -- they are customer invoices
15 from whom to whom?

16 MR. REED: These are customer invoices from MPC
17 and MGC to their customers.

18 COMMISSIONER CLAYTON: So they'd be pipeline and
19 -- Missouri Pipeline Company, Missouri Gas Company
20 invoices to its customers?

21 MR. REED: Yes.

22 COMMISSIONER CLAYTON: And it's your testimony
23 that they don't have any invoices or old invoices for any
24 customers in the time period in question?

25 MR. REED: The invoices were recreated and

1 provided in that fashion, as I understand it.

2 COMMISSIONER CLAYTON: So they have some
3 invoices?

4 MR. REED: Yes.

5 COMMISSIONER CLAYTON: But it's your testimony
6 that they're recreated?

7 MR. REED: Recreated and not reliable.

8 COMMISSIONER CLAYTON: What evidence do you have
9 that they're recreated, that they're not originals?

10 MR. REED: Well, I believe that's what Mr. Ries
11 committed that he would do would be to recreate invoices
12 and provide them to Staff.

13 COMMISSIONER CLAYTON: So you're saying that Mr.
14 Ries has admitted that they recreated these invoices?

15 MR. REED: Yes.

16 COMMISSIONER CLAYTON: Okay. What -- and I'll
17 -- I'm trying to avoid asking factual questions because
18 it's my understanding you're putting on witnesses; is that
19 correct?

20 MR. REED: Yes.

21 COMMISSIONER CLAYTON: What -- what exactly are
22 you asking from the Commission? I know it's a Motion for
23 Sanctions, but what -- what are you asking for?

24 MR. REED: I think it would be appropriate that
25 the Commission take into consideration what these

1 documents would prove, and we'll have some testimony on
2 that particular issue, and there should be an adverse
3 inference applied in this particular case. And I think,
4 in particular, it will go to the issue of refunds.

5 And I think that any testimony that the -- the
6 Respondents may have on that particular issue should be
7 disregarded because of the adverse inference -- inference
8 that should apply.

9 COMMISSIONER CLAYTON: What -- what is the
10 inference that you're asking us to -- to take?

11 MR. REED: Well, whatever -- because the
12 invoices are recreated, and we'll have some testimony on
13 this issue, there are difficulties with calculating those
14 refunds.

15 COMMISSIONER CLAYTON: Right.

16 MR. REED: And so we may end up with -- with
17 estimates of sorts.

18 COMMISSIONER CLAYTON: So -- so Staff is going
19 to provide estimates of what Staff believes those invoices
20 would have said, and you want us to infer from the lack of
21 any information of the contrary that that is accurate?

22 MR. REED: That's correct.

23 COMMISSIONER CLAYTON: All right.

24 JUDGE WOODRUFF: Mr. Reed, does Staff believe
25 that the Commission needs to calculate the amount of

1 refund in this proceeding?

2 MR. REED: I think what we contemplated is that
3 upon a finding by the Commission that there are tariff
4 violations and that that Commissions -- and that refunds
5 are in order, we -- what we anticipated was that -- was
6 that the Commission may issue an order at that time
7 directing its Staff to calculate the refunds to the best
8 of its ability.

9 JUDGE WOODRUFF: Okay. So this adverse
10 inference would only go to the amount of the refunds, not
11 to the company's liability for refunds; is that true?

12 MR. REED: I mean, the Commission first has to
13 find that it's a tariff violation.

14 MR. REED: Yes. And I think -- I -- we're
15 asking for the adverse inference with regard to -- to the
16 -- to the calculation in particular. But I -- I think the
17 -- the Commission has the -- would have the authority
18 under the Civil Rules and under case law to go as far as
19 rendering a judgment based upon this foilation of evidence
20 in this case.

21 So there's a spectrum within which the
22 Commission could operate, but it would depend upon the
23 evidence that's presented and the Commission's view of
24 that evidence.

25 So I -- I guess, Judge, I'm saying at minimum

1 that the inference should be applied with regard to the
2 calculation of refunds.

3 JUDGE WOODRUFF: Okay. Thank you. Did Public
4 Counsel wish to make a mini opening on this issue?

5 MR. POSTON: No, thank you.

6 JUDGE WOODRUFF: AmerenUE?

7 MS. DURLEY: No, your Honor.

8 JUDGE WOODRUFF: Municipal Gas Commission?

9 MR. WOODSMALL: Thank you, your Honor.

10 OPENING STATEMENT

11 BY MR. WOODSMALL:

12 MR. WOODSMALL: Again, I'll be very brief. I
13 think it's important for the Commission to understand this
14 issue and how the entire case does not hinge on this
15 issue.

16 The -- the Staff's original complaint had
17 several counts, and it is important to understand that
18 there is evidentiary support for the Commission to find
19 that the pipelines violated their tariff.

20 Those findings do not hinge upon a finding of
21 the foilation doctrine. It's important -- I just want you
22 to understand that you don't need to make that finding in
23 order to find that Staff's complaint is justified, is
24 substantiated by evidence.

25 So I -- I just -- I think what they suggest in

1 their Motion for Sanctions is -- is important. I think it
2 -- it's always of concern when a public utility may
3 destroy documents. So I think Staff was justified in
4 bringing up that issue.

5 But I don't want there to be any belief that
6 their Complaint hinges upon that issue. The Complaint can
7 go forward separate and apart from that.

8 JUDGE WOODRUFF: All right. Thank you.

9 COMMISSIONER CLAYTON: Can I ask a question
10 about that?

11 JUDGE WOODRUFF: Sure.

12 COMMISSIONER CLAYTON: Basically, you're just
13 saying that depending on what Staff's case is, is that
14 there may be sufficient evidence to support their position
15 without making the finding of sanctions being
16 appropriate --

17 MR. WOODSMALL: Exactly.

18 COMMISSIONER CLAYTON: -- is all you're saying?

19 MR. WOODSMALL: Exactly. Thank you.

20 COMMISSIONER CLAYTON: Okay.

21 JUDGE WOODRUFF: For the pipeline companies?

22 MR. DEFORD: Thank you, your Honor.

23 OPENING STATEMENT

24 BY MR. DEFORD:

25 MR. DEFORD: I guess the only thing weaker about

1 Staff's case than their Complaint is this Motion for
2 Sanctions. This is absolutely ridiculous, and we would
3 like to lodge a continuing objection to any testimony
4 going forward on this issue.

5 This is all information that Staff had adequate
6 opportunity to put in either its direct case or certainly
7 in its surrebuttal testimony. We have seen nothing of
8 that. We know nothing of the factual allegations until
9 very, very recently, no opportunity to conduct any
10 discovery, nothing.

11 Of course, Missouri is a fact pleading state,
12 not a notice pleading state, so we had the right to know
13 what the allegations about this particular complaint
14 against the company was.

15 That said, nothing has been destroyed. Nothing
16 was recreated. Invoices were reprinted. The company
17 keeps all of its data in electronic format. Invoices were
18 sent to a very limited number of customers. No paper copy
19 of the invoice was ever kept. There was nothing to be
20 destroyed.

21 When asked by Staff, the company went back and
22 recreated -- or reprinted, actually, from the data in the
23 system daily and monthly documents that were provided to
24 Staff over a period of nearly two months.

25 As to the documents referenced by Mr. Lodholz in

1 his deposition, they, too, have been provided to Staff.
2 We have determined that those documents were complete.
3 They were accurate. There is nothing missing. Nothing
4 has been destroyed. This is all smoke and mirrors. There
5 is nothing to this allegation. Thank you.

6 JUDGE WOODRUFF: All right. Thank you,
7 Mr. DeFord.

8 COMMISSIONER CLAYTON: Judge?

9 JUDGE WOODRUFF: Go ahead. Mr. DeFord, we had a
10 question from the Commission here.

11 COMMISSIONER CLAYTON: I'm sorry. I'm confused
12 just listening to the different sides, and I -- I want to
13 make sure that I'm -- I at least know the parties'
14 positions of as soon as I can get them figured out.

15 It's your testimony that the information has
16 been provided? It's identical to the information that
17 existed prior to the request?

18 MR. DEFORD: Yes.

19 COMMISSIONER CLAYTON: It is?

20 MR. DEFORD: That -- that will be our testimony.
21 Yes.

22 COMMISSIONER CLAYTON: Now, was it -- were the
23 documents that were provided newly compiled documents
24 using data that you say you had, or are they the exact
25 same documents? I mean, did you press -- the invoice was

1 in a PDF in your file, and you pressed F10 and printed it
2 out? Or did you go back to a bunch of spreadsheets and
3 figure out, Well, this customer had this dollar amount,
4 this usage and then try to recreate it in that sense?

5 MR. DEFORD: Closer to the latter, your Honor,
6 and I would let Mr. Ries explain. The data is all there
7 and --

8 COMMISSIONER CLAYTON: So there was a different
9 document than what -- than what you provided? It if -- if
10 it was to the latter that you just inputted the variables
11 to come up with a different document, it sounds like it
12 was a different document. But you're saying the numbers
13 were the same?

14 MR. DEFORD: Correct. The only paper invoice
15 would be in the possession of the customer. The company
16 never retained them.

17 Actually, I -- I say that. That is -- is
18 slightly incorrect because once the Staff raised the
19 issue, the company began keeping paper copies of the
20 invoices that were sent out. And, again, Mr. Ries can
21 tell you the exact date. I believe it may have been in
22 February of this year that the company began retaining an
23 actual paper copy.

24 Prior to that, it never did. It would send the
25 -- the invoice out to the customer. And, again, there was

1 a very limited number of customers. So when the customer
2 either wire transferred in payment or sent a check, there
3 was a -- a -- a sheet that basically matched up to the --
4 to the company's books and records that showed the
5 payment.

6 Deposits were made to the banks. You know,
7 everything matched up. So, no, there was no photocopy.
8 There was no PDF. There was nothing like that. The data
9 was all stored electronically and then reprinted.

10 COMMISSIONER CLAYTON: But when you say the data
11 was -- stored electronically can mean a number of
12 different things, saying that you've just got a
13 spreadsheet somewhere, but you did make an invoice. I
14 mean, you were printing out invoices and sending out
15 invoices on a current basis --

16 MR. DEFORD: Correct.

17 COMMISSIONER CLAYTON: -- correct?

18 MR. DEFORD: Certainly. And I think Mr. -- Mr.
19 Ries can actually -- he can explain the way the software
20 worked and how he --

21 COMMISSIONER CLAYTON: Okay. So they were
22 recreated? That's an accurate statement?

23 MR. DEFORD: I think probably reprinted because
24 the data didn't change.

25 COMMISSIONER CLAYTON: Doesn't sound like that.

1 MR. DEFORD: The data didn't change.

2 COMMISSIONER CLAYTON: Okay.

3 JUDGE WOODRUFF: All right. Thank you,

4 Mr. DeFord.

5 All right. Mr. Reed if you want to call your
6 first witness?

7 MR. REED: Janis Fischer.

8 JUDGE WOODRUFF: Good morning, Ms. Fischer.

9 MS. FISCHER: Good morning.

10 JUDGE WOODRUFF: Please raise your right hand.

11 JANIS FISCHER,

12 being first duly sworn to testify the truth, the whole
13 truth, and nothing but the truth, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. REED:

16 JUDGE WOODRUFF: You maybe seated. And you may
17 inquire when you're ready, Mr. Reed.

18 MR. REED: Thank you.

19 Q (By Mr. Reed) State your name.

20 A Janis, J-a-n-i-s, Fischer, F-i-s-c-h-e-r.

21 Q Your employment, ma'am?

22 A I'm employed by the Missouri Public Service
23 Commission.

24 Q What's your position?

25 A Utility Policy Analyst II.

1 Q How long have you been with the Commission?

2 A A little over ten years.

3 Q What did you do before that?

4 A Before -- immediately before that, I worked for
5 approximately two years with a CPA firm in Kansas City.
6 And prior to that, I worked for a municipal utility for
7 over six years.

8 Q Your current duties, can you give us a nutshell
9 of those?

10 A I manage the Federal Gas Department, which is
11 active in reviewing for filings.

12 Q How long have you done that?

13 A Since July of this year.

14 Q And before that, what did you do with the
15 Commission?

16 A I spent my time prior to that working in the
17 Auditing Department.

18 Q Can you explain to us your initial involvement
19 with Missouri Pipeline and Missouri Gas Companies?

20 A Well, initially, my involvement with the
21 companies was receiving their surveillance reports. As an
22 Auditor IV in the Auditing Department, I was responsible
23 for maintaining surveillance documents.

24 And as the informal investigation related to
25 this case developed in the fall of '05, I was asked to

1 pull together some information based upon surveillance
2 reports to provide to the Commission.

3 Q I want to direct you back to January of 2006.
4 Now, at that point, did you have any contact with Mr.
5 Ries?

6 A Yes, I did. I -- I believe actually in December
7 of '05, Mr. Ries and, I believe, Tino Monaldo (ph.) came
8 to the Commission, and we had a meeting in Room 130 to
9 discuss what information Staff would require from the
10 company in order to continue its informal investigation.

11 Q Okay. January 25th, 2006, what did you do?

12 A I had made arrangements earlier in the month, or
13 probably coming out of that December meeting, to travel to
14 St. Louis in order to review the external auditor work
15 papers of MPC and MGC.

16 Q Okay. The next day, what did you do?

17 A On the 26th, myself, Mark Oligschlaeger and
18 Craig Branum met Mr. Ries at the office in St. Peters to
19 review some documents that we had requested several weeks
20 before that be provided for us to review.

21 Q Had you requested customer invoices of the
22 pipeline companies?

23 A Yes. One -- I had actually provided a list of
24 items that we wanted to look at to Mr. Ries several weeks
25 before that and had phone conversations with him about the

1 availability of that information.

2 He indicated to me that they didn't keep those
3 documents. He was going to put together a summary sheet
4 that would represent the revenues for -- I believe it was
5 for 2005.

6 Q He indicated to you he didn't keep the customer
7 invoices?

8 A Yes. That's what -- well, there were several
9 things that he said. In one instance, he indicated that
10 that information would be voluminous. And then in another
11 instance, he indicated that they didn't maintain copies of
12 customer invoices.

13 MR. REED: One moment. If I could approach,
14 Judge?

15 JUDGE WOODRUFF: Certainly.

16 MR. REED: Can I use these?

17 THE COURT REPORTER: Yes.

18 Q (By Mr. Reed) Could You take a look at Exhibit
19 No. 251?

20 A Yes. I have it.

21 Q Now, you said Mr. Oligschlaeger was with you,
22 correct?

23 A Yes, he was.

24 Q And he served the subpoena on Mr. Lodholz; is
25 that right?

1 A Yes.

2 Q If you take a look at paragraphs 14 and 15 of
3 that subpoena --

4 A Yes.

5 Q -- does that address customer invoices?

6 A Yes. No. 14 states, "Please provide copies of
7 the MPC, MGC bills to Omega Pipeline Company since January
8 1, 2002." And then 15 asks for copies of MPC or MGC bills
9 to customers paying maximum tariff rates in 2004.

10 Q Now, you've indicated you didn't get any
11 customer invoices at that time from the pipelines,
12 correct?

13 A Yes.

14 Q So what did do you next?

15 A Well, I began to review the information that
16 Mr. Ries -- Ries provided in the revenue summary document.
17 I also then, with that information, had a list of
18 customers of MPC and MGC -- or what he represented to be
19 the customers.

20 And so I thought that one way to gain access to
21 some of the original invoices would be to contact a
22 sampling of the customers. And so -- or because of that,
23 I began calling a few.

24 I called the City of Cuba initially. And
25 through talking to them, they were willing to provide

1 copies of invoices going back to the beginning of '04,
2 including the invoices for 2005.

3 And after I received those, I -- in reviewing
4 those, it -- it appeared that there was some information I
5 wasn't quite clear as to what it represented, so I
6 contacted the City of Cuba inquiring about some of that
7 information.

8 And that's when it was first disclosed to me
9 that there was a secret customer, as Ms. Shemwell
10 indicated. And so at that point, I contacted the secret
11 customer and asked for copies of invoices or a sampling of
12 invoices from them, also.

13 Q Did you -- did you continue those efforts to
14 contact customers and obtain other invoices, then?

15 A Yes. As -- as I became aware of other customers
16 on the system -- one of the items that we had requested on
17 January 26 was a review of accounts payable invoices which
18 represented bills from outside vendors that had been paid
19 by MPC.

20 And within those, we identified some invoices
21 for what appeared to be construction of a pipeline on the
22 system. And it identified a location by name. And so
23 that secret customer, I contacted them and asked them if
24 they would send a few invoices, especially after, in
25 talking to them, it became clear that they were receiving

1 gas supply from Omega.

2 Q Now, as -- as -- as the spring of 2006
3 continues, then, was there another customer that you
4 discovered?

5 A Actually, in further discussions with Mr. Ries,
6 there were some things that popped out when you looked at
7 the 2005 revenue summary in that, for one industrial
8 customer, it appeared that after -- I'm not sure if it was
9 February or March of '05 that they no longer were a
10 customer of MPC/MGC, so I -- at one point, I asked Mr.
11 Ries about that.

12 And he indicated that they were no longer a
13 customer of MPC and MGC. And a week or two later, in
14 thinking about that a little more, I decided to contact
15 that customer and find out the status of their gas
16 service, thinking that they probably hadn't left -- you
17 know, closed down the factory and left the area.

18 And when I called them, they indicated that they
19 were buying gas from Omega.

20 Q Now, back in January, 2006, were you
21 investigating Omega?

22 A No. At that time, what we were trying to gather
23 was information between the pipelines and Omega. We knew
24 Omega existed, but we were not clear in our understanding
25 of what activity was actually occurring between the

1 different entities.

2 Q If you'd take a look at exhibit No. 252 you have
3 in front of you.

4 A Yes. I have it.

5 Q That's a subpoena to Omega Pipelines served on
6 Mr. Ries, correct?

7 A Yes, it is.

8 Q And you can see it was served by
9 Mr. Schallenberg. Do you recognize his signature?

10 A Yes.

11 Q Now, this served March 23rd, 2006. Tell us the
12 -- the kind of invoices from MPC/MGC and Omega that have
13 been provided.

14 A The types of invoices at that point that we had
15 received?

16 Q Let's -- let's jump ahead. Did you get invoices
17 from Mr. Ries?

18 A I don't believe in March we would yet have had
19 any of the recreated invoices. I believe that occurred
20 after prehearing discussions in June.

21 Q Why do you say recreated invoices?

22 A Well, during the prehearing discussion, as we
23 had since January asked for this information and we had
24 been told it didn't exist, it was within the computer
25 system, it would be time consuming, take months for them

1 to recreate the bills, it always was implied to us that it
2 would take a lot of time to do that.

3 And I guess with my prior experience with the
4 utility company and being very familiar with customer
5 billing operations, in my mind, if you have a software
6 system that generates customer bills, it's very simple to
7 go back and set up the -- the date parameters in order to
8 generate those bills.

9 So in my mind, it was more than just doing that.
10 It was a recreation of the bills.

11 Q All right. Did Mr. Ries ever say how he was
12 going to get bills -- the customer invoices for you?

13 A That he would have to go into their -- into
14 their software database and recreate.

15 Q Right. Now, you -- you've received some of
16 those invoices from Mr. Ries, I take it --

17 A Yes. I have --

18 Q -- that he had prepared, correct?

19 A Yes. I have looked at some of them.

20 Q And you had also earlier indicated that you had
21 received invoices -- obtained invoices directly from
22 customers, correct?

23 A Yes. That's right.

24 Q For instance, there's one in Cuba and there are
25 others you talked about. You have those directly from the

1 customers as well?

2 A Yes. I -- I had two years worth from Cuba. One
3 of the secret customers provided a number of invoices.
4 The other two secret customers, I -- when I contacted
5 them, I didn't want to be too imposing on them, so I -- I
6 typically would just ask for several or a sample at the
7 beginning, at the middle, at the end.

8 So two of the secret customers, I only had maybe
9 three or four invoices. But I was able to match up the
10 certain time periods with the recreated and the actual
11 Cuba and secret customer bills.

12 Q Now, based upon your comparison of the recreated
13 invoices and the ones that came directly from the
14 customers, what did you learn?

15 A Well, that there's different information
16 recorded on different bills. If you look at the recreated
17 invoices, you only are aware of Cuba.

18 And at some point, you're aware of one of the
19 secret customers because there is an attached sheet, which
20 represents the daily usage of that secret customer. The
21 appearance of that recreated -- on that recreated bill
22 indicates that the total gas usage of Cuba is well in
23 excess of what actually Cuba was receiving.

24 You -- when you go to the actual Cuba bill, you
25 become aware of another secret customer that isn't

1 represented on the recreated bill. And you determine,
2 then, how much of what the recreated bill indicates being
3 Cuba also includes the other secret customer's gas usage.

4 So there's no way that you could determine the
5 Cuba actual usage by looking at the recreated bill.

6 Q All right. Can you -- there's an exhibit in
7 front of you that's No. 259.

8 A Yes. I have it.

9 Q Okay. Can you tell us -- this is a number of
10 documents, correct?

11 A Yes.

12 Q This is -- these are documents that you put
13 together, correct? In terms of assembling them, that is.

14 A Yes.

15 Q All right. Is there a recreated invoice in
16 here?

17 A Yes. The document on the top of Exhibit 259 is
18 the recreated invoice.

19 Q And is there one in here that came directly from
20 that customer?

21 A Let's see. I'm sorry. If you go to the fourth
22 page back -- sorry -- you would see the bill that the City
23 of Cuba provided to me.

24 Q I see there's a fax number at the top that says
25 City of Cuba. Is that how you received it?

1 A Yes.

2 Q Okay. Can you explain the differences that we
3 see in these two invoices?

4 A On the recreated bill --

5 Q That's the top one?

6 A Yes. If you look the fourth column over where
7 it -- the title of the column is Quantity/DTH, it shows --
8 for Commodity, it shows 12,667. And that -- it -- it
9 indicates that that is the volume of gas provided to the
10 City of Cuba in October of '04.

11 When I go to the actual invoice that the City of
12 Cuba provided to Staff, if you go down in that invoice
13 after it says, Bill to, Please Remit To, you go down to
14 the information related to the gas volumes, you see that
15 -- delivery charges, they have quantities there.

16 They -- they start out with 9500 total volumes.
17 Then there's a volume that goes to a secret customer. And
18 then the net number, 4,894, represents the actual volumes
19 that the City of Cuba received, which is considerably less
20 than the 12,000 indicated on the recreated invoice.

21 Q So the -- the top invoice, then, included in
22 there these other secret customers, but it doesn't -- it
23 doesn't specifically say that on the invoice, correct?

24 A That's right.

25 Q All right. You've gone through a number of

1 invoices, I take it, in looking at this case?

2 A Yes, I have.

3 Q Is -- are there other instances where there are
4 discrepancies between the recreated and the -- those
5 directly from the customer?

6 A Well, beyond just the -- the volumes of gas, in
7 my mind, it implies that there's also discrepancies in the
8 rates that are being charged.

9 The -- for example, in Exhibit 259, the
10 recreated bill on top indicates that the rate or the
11 commodity rate for the full 12,000 decatherms is 20 cents.
12 To me, if Cuba is only actually receiving 4,800, then that
13 discount is being applied to someone else's gas usage that
14 does not have a transportation contract with MPC or MGC.

15 Q Is there anything else you want to say about
16 these invoices in 259?

17 A In order for Staff to be able to accurately
18 determine refunds, we would need several components. We
19 would need to know the actual gas delivered to each
20 customer. We would need to know the actual rate being
21 applied to that customer.

22 And in some instances, since the way this was
23 operating at MPC/MGC with Omega, Omega actually received
24 invoices from MPC/MGC. And then Omega would in turn bill
25 at its bundled rate to the secret customer.

1 So you really need every layer of the invoices.
2 It's somewhat like puzzle pieces. You need to be able to
3 put all the puzzle pieces together in order to see the
4 full picture of what you're dealing with and to be able to
5 allocate those refunds.

6 MR. REED: Thank you, Ms. Fischer.

7 JUDGE WOODRUFF: For cross-examination, then,
8 Municipal Gas Commission?

9 MR. WOODSMALL: Yes, real quickly, your Honor.

10 CROSS-EXAMINATION

11 BY MR. WOODSMALL:

12 Q You talked briefly about your past experience
13 with the Commission and going back to Municipal Electric
14 Company in Nebraska; is that correct?

15 A It was a municipal utility that had electric,
16 gas, water and sewer.

17 Q Okay. And how many years total do you have in
18 the utility industry?

19 MR. DEFORD: Your Honor, I object to friendly
20 cross.

21 MR. WOODSMALL: I don't know if that's a proper
22 objection, your Honor.

23 JUDGE WOODRUFF: I'll overrule it at this time.

24 Q (By Mr. Woodsmall) How many years total
25 experience do you have in the utility industry?

1 A About 16 and a half.

2 Q Okay. And you have experience in the customer
3 -- customer billing or auditing customer billing?

4 A Yes. I was the supervisor of the front office
5 at the utility, so I reviewed customer bills, financial
6 statements, reports, routinely.

7 Q And in your duties at the Missouri Commission,
8 have you had the opportunity to audit utilities and
9 request invoices?

10 A I have participated in rate cases at every major
11 utility in the State of Missouri. I have also been
12 involved in some informal rate cases with smaller
13 utilities. And in every instance, we've been able to
14 acquire customer billing information.

15 Q And when you say acquire, do you find it unusual
16 that you were not able to obtain identical customer
17 invoices from this utility?

18 A Yes. I consider that very unusual.

19 Q Okay. And just comparing this utility to the
20 other utilities, how would you compare the relative number
21 of customers of this utility with other utilities in
22 Missouri that you've audited?

23 A This would be similar to some of the smallest
24 water and sewer companies that have 20 or fewer customers.
25 And in all of those instances, we would receive reports

1 and copies of customer bills that were actual.

2 Now, when you get to the large utilities, then
3 we would do sampling and rely on reports of the utility if
4 we found the sample verified that the reports were
5 accurate.

6 Q But even in the case of the large utilities,
7 hundred thousand, millions of customers, when you did the
8 sampling, were those utilities able to provide you
9 identical copies of customer invoices?

10 A Yes. Those would be things that -- I don't know
11 if it would actually be copies of the bills, but we would
12 have access of going into their electronic systems to be
13 able to pull customer billing histories that would
14 represent the actual amounts that had been billed.

15 MR. WOODSMALL: Thank you. Nothing further.

16 JUDGE WOODRUFF: Anything from Ameren?

17 MS. DURLEY: No, your Honor.

18 JUDGE WOODRUFF: Public Counsel?

19 MR. POSTON: No, Judge. I could take a moment
20 to just say that due to other pressing matters, I may not
21 be here throughout this proceeding. And to the extent I'm
22 not here, I understand I waive my right to cross-examine.

23 JUDGE WOODRUFF: All right. Thank you. And
24 then for the pipeline? Mr. DeFord, why don't you come on
25 up to the podium? It just works easier if everyone's at

1 the podium.

2 CROSS-EXAMINATION

3 BY MR. DEFORD:

4 Q Good morning Ms. Fischer.

5 A Good morning.

6 Q I just have a -- a few questions. When was the
7 complaint in this case file, if you recall?

8 A Are you talking the 491?

9 Q That's this case, correct?

10 A I believe it was in June.

11 Q Okay. And I believe you just testified that
12 most of the information you gathered was gathered in
13 January, well before June?

14 A In January, we were still under the informal
15 case procedures.

16 Q But had you adequate opportunity to raise all of
17 the issues that you've discussed here today in Staff's
18 direct testimony in this case; isn't that true?

19 MR. REED: Object, your Honor. It's not
20 relevant. This issue is joined. It's before the
21 Commission. It is relevant. It is relevant, your Honor.

22 JUDGE WOODRUFF: I'm going to overrule the
23 objection. You can go ahead and answer the question.

24 A Could you repeat it please?

25 Q (By Mr. DeFord) In essence, why did Staff not

1 present the issue that you're addressing here today in
2 either its direct case or in its surrebuttal case?

3 I think you -- you would acknowledge that you've
4 had all of the information that forms the factual basis of
5 these allegations well in advance of the time the Staff
6 possibly even filed the complaint, and I would like to
7 know why the Staff did not include that in its complaint.

8 A I'm not actually a witness in the case. I think
9 you probably would need to ask one of the witnesses.

10 Q Well, Ms. Fischer, you are a witness in the case
11 now. You have been testifying for the last half-hour.

12 A I really don't know why. I -- I believe since
13 the beginning, we've been trying to extract this
14 information, and it's been a continuing process.

15 I think every step along the way, we've been
16 under the impression that we would ultimately be able to
17 get the information if it existed.

18 And when Mr. Lodholz in July indicated that
19 there actually were copies, we, in my mind, always -- and,
20 believe me, after July, I didn't have daily interactions
21 with this case because my duties were elsewhere.

22 But my understanding is that we continued to
23 pursue receiving that information that Mr. Lodholz had
24 indicated existed in that, even through my understanding,
25 the -- the deposition of Mr. Ries in October, I believe --

1 Q I don't believe that --

2 A -- we were asking for that.

3 Q I'm sorry. I hate to interrupt. But I don't
4 think that's responsive. I think the answer is there is
5 no reason that you're aware of that Staff didn't comply
6 with the Commission's procedural order and include
7 everything in its prepared case that it should have --
8 prepared case should have contained.

9 MR. REED: I'd object, your Honor. It calls for
10 a legal conclusion.

11 MR. DEFORD: It does not call for a legal
12 conclusion. I'm asking for her opinion.

13 MR. REED: It's obviously an issue for the
14 attorneys to determine, Judge, as to a legal issue calling
15 for a legal conclusion.

16 JUDGE WOODRUFF: I'm going to overrule the
17 objection. But I will tell the witness that if -- if you
18 don't know the answer, you can just say, I don't know the
19 answer.

20 A Could you repeat the question? I'm sorry. I
21 don't even know where we're at at this point.

22 Q (By Mr. DeFord) I -- I think the question
23 boiled down to its simplest is that there's really no
24 reason that you're aware of that the Staff couldn't have
25 included the issue that you've addressed today in its

1 either direct or surrebuttal case?

2 A I'm not aware of the -- the requirements for
3 including that.

4 Q Good answer. Shifting gears a little bit, you
5 talked about secret customers.

6 A Yes.

7 Q Isn't it true that there really aren't any
8 secret customers, it's just that the identity of the
9 customers was classified as highly confidential?

10 A I would consider them secret in the fact that
11 they were not disclosed to Staff.

12 Q You know who they are. They've been in our
13 testimony, our prepared testimony, your prepared
14 testimony. There's really nothing secret about these
15 customers, is there?

16 A I only picked up on that term after Ms. Shemwell
17 used it in her opening. If you want to call them highly
18 confidential customers, that's okay with me.

19 Q Well, now, and I think, being fair, isn't it
20 also true that -- that we can't disclose customers'
21 specific information? We have an obligation not to
22 disclose customers' specific information as a public
23 utility, correct?

24 A I'm trying to think of all -- I -- I guess I've
25 never really come across a situation in a case where we

1 needed to disclose specific customer information, so,
2 therefore, we didn't. I don't know if it's --

3 Q Well, Ms. Fischer --

4 A Technically --

5 Q That probably wasn't a fair question because I
6 think that one actually did call for a legal conclusion.

7 MR. DEFORD: I think that's all I have. Thank
8 you.

9 MS. FISCHER: Uh-huh.

10 JUDGE WOODRUFF: Thank you, Mr. DeFord. We'll
11 come up for questions from the Bench. Commissioner
12 Murray, do you have any questions for this witness?

13 COMMISSIONER MURRAY: I do. Thank you, Judge.

14 CROSS-EXAMINATION

15 BY COMMISSIONER MURRAY:

16 Q Good morning.

17 A Good morning.

18 Q My -- I'll just first ask you, when was Staff
19 aware of all of the highly confidential customers?

20 A We weren't aware of all of them existing at the
21 same point in time. Initially, when I had correspondence
22 back from the City of Cuba in March of '06, I became aware
23 of one of the customers that hadn't been disclosed to
24 Staff.

25 Because of review of the vendor invoices that

1 indicated construction of a pipeline in the St. Robert
2 area, we became aware, probably by March, of there
3 existing another customer that hadn't been disclosed to
4 Staff.

5 The third customer actually had been a customer of
6 MPC/MGC through February or March of '05. So their change
7 in status to where they were receiving gas supply from
8 Omega didn't come to the Staff's attention until, I would
9 say, it was maybe -- probably May time frame of '06.

10 Q Okay. I'm going to go back. You've mentioned
11 three customers, correct?

12 A Yes.

13 Q The first one you became aware of how?

14 A By reviewing the actual invoices that Cuba had
15 sent to Staff at their request.

16 Q And is that the issue you talked about in
17 relation to Exhibit 259 where you saw that the volumes did
18 not -- that -- that were shown by the recreated documents
19 exceeded the volumes that Cuba actually received?

20 A Right.

21 Q Okay. And the second one you became aware of
22 through the construction of the pipe -- invoices regarding
23 the construction of the pipeline?

24 A Yes. And -- and I actually contacted that
25 customer. There -- in reviewing the invoices, there were

1 other -- Fort Leonard Wood is also a customer on the
2 system.

3 And when I took the revenue summary that Mr.
4 Ries had provided in January and started looking at the
5 volumes indicated on the actual invoices and comparing
6 them, I found that the numbers didn't match.

7 And so I actually had to sit down month by month
8 and put the different invoices out on the table to see
9 where customers fit in relationship to the Fort Leonard
10 Wood invoices and Cuba.

11 So it was kind of a process that you couldn't
12 look at one invoice independent and -- and draw the
13 conclusion. You needed to look at several. So by the
14 time May came around and we had all of the different
15 customers accounted for, you could actually lay the
16 invoices side by side and see that the totals when you put
17 them together matched what Mr. -- Mr. Ries had indicated
18 back in January were the volumes.

19 Q Okay. How -- how should you have become aware
20 of those customers? How should you have been made aware
21 of those customers?

22 A When Mr. Ries provided the revenue summary, I
23 would have expected that all of the customers that receive
24 gas through MPC and MGC would have been represented on
25 that revenue summary.

1 Q What requires that, that every customer be
2 represented on the revenue summary to Staff?

3 A Well, my understanding of the tariff is that
4 every customer would be represented there to aggregate
5 some customers under another and then not disclose -- in
6 my mind, as an auditor, I begin to wonder, well, why are
7 you doing that? Why are you not fully disclosing that
8 information? Why are you hiding that?

9 Q Okay. But -- but you personally are not aware
10 of any rule, tariff, law that required that all of those
11 customers be identified separately on that revenue summary
12 that you're speaking about?

13 A Well, more than just listing the customers. I
14 believe that when they represented that the revenues
15 should be X dollars, when -- when we're doing a cost of
16 service study, we expect that the revenues they represent
17 to be the true and accurate revenues.

18 If they're understating the revenues, that that
19 -- that impacts the cost of service. And I guess that
20 wouldn't really be not including every customer's name.
21 But if you're using discounts from one customer to provide
22 service for another, there may be problems with that,
23 especially if you find out the customer that's not
24 represented is actually buying gas and getting a discount
25 from an affiliate.

1 Q Okay. Let's move on to that third customer you
2 said was formerly a customer. This was the third customer
3 that Staff was unaware of.

4 A Yes.

5 Q So you're saying that Staff had been aware that
6 this had been a customer in the past but was unaware that
7 it was a customer at the time that related to this revenue
8 summary that you received?

9 A When Mr. Ries provided the 2005 revenue summary,
10 it listed the customers down the first column. And then
11 across the spreadsheet, it -- it had month by month what
12 each customer had used.

13 Q Do you have that document? Is that submitted?

14 MR. REED: Unless it's connected to 259. Is it>
15 connected to Exhibit 259?

16 A No.

17 Q (By Commissioner Murray) So what is it you're
18 referring to?

19 A It's a spreadsheet that Mr. Ries provided as a
20 surrogate for actually having customer invoices. It
21 showed --

22 Q Okay. Stop. Where did he provide this and to
23 whom?

24 A He provided it to Staff on January 26 when we
25 went to St. Peters.

1 Q And Staff did not keep a copy?

2 A Yes. We have a copy of it.

3 Q But did not submit it into evidence? Is that
4 correct?

5 MR. REED: Not at this point, Judge -- or
6 Commissioner. It may come in later in the case.

7 COMMISSIONER MURRAY: Are there other witnesses
8 that are going to address this document?

9 MR. REED: Maybe in the case in chief. Not in
10 this particular aspect of this case.

11 COMMISSIONER MURRAY: Okay. But this witness is
12 referring to that document to substantiate that Staff was
13 to have been provided evidence or provided names of
14 customers that Staff was not provided.

15 MR. REED: Yes. I understand that. We would
16 like the opportunity to submit that to the Commission at a
17 later time. We do have it and -- and can make it
18 available.

19 Q (By Commissioner Murray) Okay. This
20 spreadsheet -- looking at this spreadsheet that Mr. Ries
21 provided to Staff on -- you say to Staff. Was it to you
22 personally?

23 A Myself and Mr. Oligschlaeger were sitting at the
24 table when he handed it to us. Yes.

25 Q And what did you discover that was a surprise as

1 you looked at that spreadsheet?

2 A This one particular industrial customer, after
3 -- I believe it's March. It may be February. They show
4 usage on the pipelines for January, February, and, I
5 believe, March. And then they're not there for the rest
6 of the months of 2005.

7 Q So it appeared that for the remainder of 2005,
8 there was less usage on the pipeline?

9 A That that customer no longer was receiving
10 transportation service from MPC and MGC.

11 Q Was that same usage accounted for elsewhere?

12 A As I found out in reviewing actual invoices,
13 that -- the usage of that customer was being reflected
14 under the usage of the City of Cuba.

15 Q All right.

16 A Or under the Fort Leonard Wood line.

17 Q And was that usage specifically identified as
18 being used by the City of Cuba?

19 A On the recreated invoices and on the revenue
20 summary, yes, it was.

21 Q And the recreated invoices you are referencing
22 are Exhibit 259?

23 A That's a representation of one month's --
24 because of the time period of this one, which is 11/1/04
25 for the month of October '04, that customer would not be

1 reflected here. They would not have shown up until April
2 of '05 because, prior to that, they did actually receive a
3 bill from MPC/MGC.

4 Q Okay. That customer, you're referring to the
5 third -- what you -- Staff has called secret customer?

6 A Yes.

7 Q And if you compare the recreated -- what Staff
8 is calling the recreated invoice, which is at page 1 of
9 the Exhibit 259, correct --

10 A Yes.

11 Q -- with the invoice at page 4 --

12 A Yes.

13 Q -- I'm having a little difficulty understanding
14 what it is that you stated about that earlier which
15 indicated to you that a customer was not being represented
16 here.

17 A Okay. It is somewhat confusing because there
18 are a lot of numbers on these two documents. If you look
19 at the first page, the recreated invoice and the fourth
20 column over that has Quantity/DTH, which stands for
21 decatherm, that's representing the volume of gas that came
22 through and was billed to, in this case, the City of Cuba.

23 Q On October 4th?

24 A Well, for the month of October, yes.

25 Q In 2004?

1 A Right.

2 Q Okay.

3 A The reservation or RES represents their
4 reservation for firm transportation and really isn't
5 reflective of what went through the system in October.
6 It's the second number, the 12,667, that's identified as
7 COMM, commodity. That is to represent the amount of gas
8 that flowed through MPC/MGC and was delivered to Cuba for
9 the month of October.

10 When I go to the fourth page, which is the
11 actual bill that the City of Cuba received from Omega and
12 I come down on that invoice and I look at delivery
13 charges, it lists quantities there, and it has a number on
14 the first line. It says total volumes delivered to the
15 City Gate Station.

16 Q Uh-huh.

17 A Then it -- which I see that even at the maximum,
18 that number is less than what the recreated bill shows.
19 It was the 12,000 versus the lower number.

20 And then the second line there has another
21 number. It says less volumes delivered. And that
22 designation is to the first secret customer so that when I
23 take away that second volume, it shows that the lesser
24 number, the 4800 number, is what actually Cuba was
25 receiving themselves because I see that they were charged,

1 then, the fixed price that they had agreed to pay Omega.

2 So -- so if I take that number compared to the
3 12,000 and -- and the first page recreated bill shows the
4 12,000 at a rate that has been represented to be the
5 transportation discount of Cuba, I'm wondering why that
6 discount is being applied to volumes that were delivered
7 to other customers because that discount should have only
8 -- if it's a true discount to Cuba, should have only
9 applied to them.

10 So in other words, I can't, from the recreated,
11 identify the volumes that were true for each separate
12 customer.

13 Q Okay. And I -- and just without talking about
14 numbers, but under the column Rate, what are you comparing
15 that to on the other document?

16 A Well, for one thing, the recreated bill has two
17 things going on. The contract number, MP, represents
18 Missouri Pipeline. Contract number MG represents Missouri
19 Gas. The rate there represents the transportation rates
20 to MPC/MGC.

21 When I get to the actual bill, there is an
22 agreement that Omega has with the City of Cuba to provide
23 a bundled service which represents overhead costs of Omega
24 for handling this on behalf of Cuba, also, including
25 transportation charges and so on to which Omega is

1 charging Cuba the flat price, which is identified on the
2 actual invoice if you look down.

3 Q Okay. I see it.

4 A And I believe it's confidential, but --

5 Q I see it.

6 A So within that price, all of the other charges
7 for the transportation are to be included.

8 Q Okay. Just a couple more questions. The -- the
9 contract with Cuba, the City of Cuba, that -- Staff was
10 aware of that contract; is that correct?

11 A The transportation contract that Cuba has with
12 MPC/MGC, we were aware of that. I'm not sure at what
13 point we actually received a copy of that. Actually, it
14 was entered into initially when the system was owned by
15 Utilicorp.

16 The agency agreement between Cuba and Omega was
17 provided to Staff from the City of Cuba. When we
18 requested the actual invoices, they also provided that
19 contract. Because from -- from the beginning, MPC/MGC
20 were insistent upon not providing any information related
21 to the non-regulated affiliate, Omega.

22 So they were not -- were not forthcoming with
23 that document. We received it from the City of Cuba.
24 Later on, we did receive it.

25 Q And is that in evidence, to your knowledge? Or

1 will it be in evidence?

2 MR. REED: It will be, Commissioner.

3 Q (By Commissioner Murray) Okay. And just back
4 to when you were speaking, you spoke personally with
5 Mr. Ries; is that correct?

6 A Yes. Starting in December of '05, infrequently,
7 but, yes, I would communicate by phone and e-mail with
8 him.

9 Q Okay. Specifically, regarding the lack of
10 invoices --

11 A Yes.

12 Q -- did he state -- what did he state to you
13 about availability of invoices if you can remember as
14 exactly as he stated it to you?

15 A My memory is that we provided a list of
16 information to him that we would like to see. And then
17 within that was this customer billing information. He,
18 from the very beginning, indicated that they did not keep
19 customer invoices, that once they mailed them to the
20 customer, there was no copy maintained by the companies.

21 Q Did you ask if that was -- if he was only
22 referring to hard copies or if he was referring to hard
23 copies or electronic copies?

24 A I asked about the availability of customer
25 billing histories electronically, if that was something we

1 might be able to get.

2 At -- at that point, it was an informal
3 investigation, and I was trying to determine what I might
4 be able to use as a surrogate or that source document
5 information.

6 That's when he offered to provide a revenue
7 summary. And I indicated to him that from that revenue
8 summary, Staff would probably pull a sampling of customers
9 that we would want to pursue the customer billing
10 information.

11 We were trying to not be burdensome upon the
12 company. And he indicated that information would be
13 voluminous and time consuming to create, so we were trying
14 to limit it -- yeah -- to be able to verify the accuracy
15 of what he had provided.

16 Q So did you expect the revenue summary to show
17 the same information that would have been in an invoice to
18 each of the customers from whom revenue was received?

19 A I would have expected that, yes.

20 Q And do you think it was -- well, was it your
21 understanding that you made that clear that that's what
22 you were seeking?

23 A I explained to Mr. Ries I know, at least at the
24 January 26th visit to St. Peters, that this was standard
25 procedure in a cost of service review, that we needed to

1 be able to verify the revenues and that that would require
2 customer invoice or customer billing information in order
3 to do that.

4 COMMISSIONER MURRAY: Okay. Okay. Thanks very
5 much. Thank you, Judge.

6 JUDGE WOODRUFF: Thank you. I don't have any
7 questions before from the Bench. But before we proceed
8 further, I've noticed a problem in this case in that we've
9 been referring to secret -- secret customers. And it's --
10 the record is kind of confusing as to exactly who they
11 are. There's at least two or three of them.

12 What I would suggest we do is go in camera for a
13 moment and assign each secret customer a code number, A, B
14 or C. And from then on, the witnesses can refer to
15 Customer A or Customer B. I think we can clear -- is that
16 acceptable to everyone?

17 All right. At this point, then, we will go in
18 camera. Anyone who is not authorized to hear highly
19 confidential information can leave for -- this will take
20 just a couple minutes.

21 REPORTER'S NOTE: At this point, an in-camera
22 session was held, which is contained in Vol. 4, page 83
23 through page 85.

24

25

1 JUDGE WOODRUFF: Okay. We can go back into
2 regular session, then. And if -- somebody can tell the
3 people that just left that they can come back in.

4 All right. For -- for recross, then, Municipal
5 Gas Commission?

6 MR. WOODSMALL: Nothing, your Honor.

7 JUDGE WOODRUFF: Ameren?

8 MS. DURLEY: Nothing.

9 JUDGE WOODRUFF: Public Counsel?

10 MR. POSTON: No.

11 JUDGE WOODRUFF: And the pipeline?

12 MR. DEFORD: None, your Honor.

13 JUDGE WOODRUFF: All right. Any redirect?

14 MR. REED: No, thank you.

15 JUDGE WOODRUFF: All right. Then, Ms. Fischer,
16 you can step down.

17 MS. FISCHER: Okay.

18 JUDGE WOODRUFF: And we're about due for a
19 break. Let's take a break and come back at 11:00.

20 (Break in proceedings.)

21 JUDGE WOODRUFF: All right. Let's come to
22 order, please. All right. Mr. Reed, I believe you're
23 ready to call your next witness.

24 MR. REED: Yes, sir. Bob Schallenberg.

25 JUDGE WOODRUFF: Please raise your right hand.

1 ROBERT SCHALLENBERG,
2 being first duly sworn to testify the truth, the whole
3 truth, and nothing but the truth, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. REED:

6 JUDGE WOODRUFF: You may be seated. And you may
7 inquire.

8 Q (By Mr. Reed) Mr. Schallenberg, tell us your
9 employment and your position, please.

10 A I'm employed by the Missouri Public Service
11 Commission, and my position is Director Of the Utility
12 Services Divisions.

13 Q Tell us what some of your duties are.

14 A I oversee five departments within the technical
15 Staff of the Missouri Public Service Commission. Those
16 departments would be the Procurement -- Gas Procurement
17 Analysis Department, the Engineering and Management
18 Services Department, the Auditing Department, the
19 Financial Analysis Department and the Support Staff
20 Department for the four groups. And, currently, I'm
21 managing the Financial Analysis Department in the
22 manager's absence due to an accident.

23 Q How long have you been with the Public Service
24 Commission?

25 A This -- I was -- I came initially in November of

1 '76, left in May of 1978, worked for the Kansas
2 Corporation Commission until October of '78, and then
3 returned to the Commission in October of '78 and have been
4 here since that time.

5 Q Have you been personally involved in the
6 investigation in the case we're talking about the next
7 three days?

8 A Yes. I -- I was involved in support until one
9 of the primary witnesses took another position. And then
10 I had to assume that role as a resource allocation.

11 Q Mr. Schallenberg, in front of you are a stack of
12 exhibits. I want you to take a look at numbers 251, 252
13 and 253. Previously, I had talked with Ms. Fischer about
14 No. 251. If I could direct your attention to 252 and 253,
15 are those subpoenas that you served?

16 A Yes.

17 Q If you take a look at No. 252 and turn to the
18 paragraphs -- paragraph 22.

19 A Yes.

20 Q That indicates a request for a copy of MPC/MGC
21 bills for Omega since 2002, correct?

22 A Since January 1st of '02, yes.

23 Q And then if we look at Exhibit No. 253 and you
24 look at paragraphs 20 and 21, those are also request
25 bills, invoices or statements to customers, correct?

1 A I'm -- I'm sorry. You said paragraph 23?

2 Q Twenty -- 20 and 21.

3 A On Exhibit 252?

4 Q 253.

5 A Oh, I'm sorry. 20 and 21. 20 refers to the
6 bills, but that's commonly synonymous with invoices. And
7 21 is to -- yes.

8 Q Okay. All right. And I think at the beginning
9 of this invoice -- I mean, of this subpoena, rather, the
10 first page on the Attachment A, it indicates that this
11 subpoena is for all documents listed below for calendar
12 years 2003, 2004 and 2005.

13 A Yes. Unless requested otherwise in the specific
14 paragraph.

15 Q Can you explain to us the -- the -- the invoice
16 -- the customer invoices that you have received to date
17 from MPC/MGC and Omega?

18 A Oh, yes. There is a response to Data Request 11
19 that provides MPC and MGC invoices. And there is invoices
20 to customers for the period January 1st of 2004 through
21 March 31st of 2006. And included in that is some bills to
22 Omega.

23 There's a different heading on it. I think Mr.
24 Ries clarified his position on that, that they really were
25 MPC and MGC invoices, even though it says Omega at the

1 top.

2 Since that date, Staff has received some
3 supplements of recreated invoices past March 31st. I know
4 for the Omega bills, through at least -- through at least
5 May of '06, there may -- and then we have received June,
6 July and August for Omega of '06 as well.

7 Q You -- you -- during your testimony, you talked
8 about recreated invoices. Why did you say that?

9 A Because they're -- they're not the original
10 invoice.

11 Q How do you know?

12 A Because -- well, one is when we had the
13 discovery conference and the company committed on what it
14 was going to do, it talked -- it used the term recreation
15 and discussed that this process of recreation was a very
16 laborious process, very time-consuming.

17 And so we've attempted the -- the name in this
18 -- in this -- in this proceeding of calling it recreation.
19 Now, we did receive in Mrs. -- Mr. Ries' October
20 deposition actual copies of face sheets from Mr. Lodholz'
21 files for January, February and March of '06.

22 Q We're going to talk about those in a minute,
23 too.

24 A Okay.

25 Q When did Staff become aware of Omega's marketing

1 activities to Customers A, B and C?

2 A Well, the City of Cuba was first. And that
3 would have occurred early this year. And then I would say
4 we became -- and I know we became aware of C last.

5 Q And about when was that? Do you recall?

6 A Oh, that would have probably been in the
7 March/April time -- well, it was right -- I -- in fact, I
8 know it's not in March because we didn't know it on March
9 23rd. So it would have been probably in April when we
10 found out about C. So A and B would have been discovered
11 sometime prior to January through April.

12 Q Could you -- were you able to discover those
13 customers based upon the recreated invoices that Mr. Ries
14 provided?

15 A If we would have had them in that time frame,
16 you could identify B and C.

17 Q But not A?

18 A The invoices would not show A in the recreated
19 invoices.

20 Q Have you received any invoices, whether
21 recreated or otherwise, from the calendar year 2003?

22 A No.

23 Q None?

24 A No. Let me see. When you say -- we've received
25 no invoices that are MPC invoices or MGC invoices.

1 Q Yes.

2 A We have received -- I think we may have received
3 from an Omega customer -- there may be some Omega bills to
4 customers in the '03 time frame.

5 Q That you received from who?

6 A Well, let me -- let me step back. Now, for the
7 City of Cuba, they sent to Ms. Fischer a listing of
8 invoices. And now that I think about it, I don't think
9 they gave us actual 2003 invoices.

10 As I recall, they gave us a summary from --
11 something I think the controller referred to from the
12 check register. So it was -- it wasn't the actual
13 invoice. And I don't recall that on B and C that we have
14 all three invoices from those either, so I guess I'd have
15 to correct my testimony regarding having '03 invoices at
16 all.

17 Q So you have some '03 invoices provided by the
18 actual customers? Is that what you're saying?

19 A I -- I'm not sure we do.

20 Q Okay. Any '03 invoices provided by MPC, MGC or
21 Omega?

22 A I know we have none from MPC and MGC.

23 Q All right.

24 A Omega, I don't recall in the material we've
25 gotten from Omega that we have all three either.

1 Q In your experience, do you run into this sort of
2 thing often where customer invoices are not available from
3 the regulated utility?

4 A No. I mean, they're either -- they're either
5 maintained or the customer information is in electronic
6 form and it's easily retrievable.

7 Q You were present at the deposition of B.J.
8 Lodholz, were you not?

9 A No. I wasn't at the deposition.

10 Q You weren't?

11 A No.

12 Q I have a transcript of that deposition that I'd
13 like you to assist me in reading if the Commission would
14 allow me to do so.

15 JUDGE WOODRUFF: You want him to read the
16 responses?

17 MR. REED: Yes. I'll ask the questions, and
18 Mr. Schallenberg will read the responses of Mr. Lodholz.

19 JUDGE WOODRUFF: That will be fine.

20 Q (By Mr. Reed) Mr. Schallenberg, as I said, I'm
21 going to ask the questions, and I'd like you to read
22 Mr. Lodholz' responses, all right? Beginning at page 41,
23 Exhibit 4 was marked for identification by the reporter.
24 By Ms. Shemwell. "Do you recognize this document?"

25 A "Yes."

1 Q "Would you describe it, please

2 A "It's an invoice that we sent out to customers
3 -- a customer invoice."

4 Q Turn to page 40, please. Line 6, Question, "Do
5 you know who creates these invoices?"

6 A "Patty Hawkins, the receptionist."

7 Q "And she would mail them from the St. Peters" --

8 A Correct.

9 Q Okay. Let's turn to page 189, which should be
10 next. Exhibit 12 was marked for identification by the
11 reporter. By Ms. Shemwell, Question, "Do you recognize
12 this document?"

13 A "No."

14 Q "As you look through, do you recognize the
15 information on it?"

16 A "No."

17 Q Turn to page 190, line 16. The question is,
18 "Who produces that spreadsheet?"

19 A "It's produced by either Dave or Patty entering
20 daily information into an Excel spreadsheet."

21 Q Are you familiar with this spreadsheet,
22 Mr. Schallenberg? I'm -- I'm stepping away from the
23 deposition for a second. Are you familiar with this
24 spreadsheet he's referring to?

25 A I -- no.

1 Q Okay. Back to the deposition. Back to line 19.
2 "and that's maintained on Patty's computer and Mr. Ries's
3 computer?"

4 A "Not Mr. Ries."

5 Q "Dave Wallen?"

6 A "Right. That's correct."

7 Q "Do you use that information posting revenues?"

8 A "I use the summary page, the front page, but not
9 -- I don't look at the detail behind it."

10 Q "And when you say the summary page, are you
11 talking about the invoice sheet?"

12 A "Right. This is an invoice sheet that we've
13 looked at. It's just what I call the summary sheet, the
14 front page."

15 Q "Do you know if this document labeled Exhibit 12
16 is something that is regularly produced by anyone in the
17 company?"

18 A "I don't know."

19 Q "Do you main -- maintain the attachments to the
20 invoices in hard copy in your office?"

21 A "Yes."

22 Q "How long are they kept?"

23 A "Forever. I have the ones from when I started."

24 Q "So on the first date of -- were you there the
25 first date of operation of the pipelines?"

1 A "No. I started in July of '02."

2 Q Attached, Mr. Schallenberg, to this deposition
3 is Exhibit 4. Did you see that?

4 A Yes.

5 JUDGE WOODRUFF: Just to be clear, he's no
6 longer reading from deposition.

7 MR. REED: Q That's correct. I'm sorry,
8 Judge.

9 JUDGE WOODRUFF: Okay.

10 Q (By Mr. Reed) Away from the deposition now, you
11 see Exhibit 4 there?

12 A Yes.

13 Q Now, this is an invoice, a customer invoice,
14 correct?

15 A It's an invoice from Omega Pipeline to a
16 customer.

17 Q And at the bottom, do you see where it says, if
18 you have any questions --

19 A Yes.

20 Q -- please contact B.J. Lodholz, correct?

21 A Yes.

22 Q What's your understanding of what Exhibit 4 is?

23 A It's a -- it's an invoice by Omega Pipeline to
24 -- I don't see this marked as HC, so I -- I assume the
25 identity of it isn't HC.

1 Q I think not. Is it?

2 MR. DEFORD: Your Honor, it's not our
3 information, so I think all the invoices were considered
4 HC. It's not the pipeline's information to disclose,
5 so --

6 JUDGE WOODRUFF: Okay. Okay.

7 MR. REED: Well, we want to talk about it
8 without revealing any confidential information at present,
9 so --

10 JUDGE WOODRUFF: Okay.

11 A It's -- it's an Omega Pipeline Company invoice
12 to a customer, but it's not one of the customers you've
13 identified as the secret customer so far in this
14 proceeding.

15 Q (By Mr. Reed) Okay. All right. Have you
16 seen --

17 JUDGE WOODRUFF: Refer to it as Customer D.

18 Q (By Mr. Reed) Customer D?

19 A I can.

20 Q Have you -- all right. Have you seen other
21 invoices where Mr. Lodholz' name is at the bottom?

22 A Yes.

23 Q Do you recall where?

24 A On the recreated invoices for a certain period
25 of time, Mr. Lodholz is -- is referred to as the contact

1 in the event of questions. I don't believe he's on every
2 one, but I believe he's on most of them.

3 Q I want to turn to another deposition with you.
4 It's marked as Exhibit No. 260. I have a highlighted copy
5 for you.

6 A All right.

7 Q We'll use that. Mr. Schallenberg, again, I'd
8 like you to read this deposition with me. You have in
9 front of you Exhibit 260. We looked at page 277 beginning
10 with line 13.

11 The question is, "In B.J.'s deposition, there
12 was a line of questions about posting customer accounts
13 receivable and revenue each month to the MPC/MGC general
14 ledgers. Do you recall that discussion?"

15 A "Generally, yes."

16 Q "He indicated the paper copies of these
17 customers' bills existed from the time he started keeping
18 them I guess until the date he left the company. Are
19 those paper copies still maintained?"

20 A "The paper copies that B.J. talks about does not
21 have the backup information. It only has the top sheet."

22 Q "Are those still maintained?"

23 A "Those have actually been produced."

24 Q "So any -- pardon me. My recollection is that
25 he was talking about a cover sheet, and then several

1 sheets behind that. Is that not your recollection?"

2 A "That's what he said. But that's not what was
3 provided to B.J. He only had the top sheet. And,
4 typically, B.J. would complete all of those top sheets.
5 So he didn't have clean copies, nor did he have a complete
6 copy of the invoice, which is what was requested in a data
7 production by Staff, and has taken time to recreate
8 those."

9 Q All right.

10 JUDGE WOODRUFF: Let me go back and clarify. I
11 don't think you identified whose deposition you're reading
12 from.

13 MR. REED: I'm sorry. I think I realized that
14 as we began. I was going to back up and do that.

15 Q (By Mr. Reed) The deposition we just talked
16 about was the deposition of David Ries was July 21st,
17 2006, is that correct, Mr. Schallenberg?

18 A Yes.

19 Q So that would explain why there are questions in
20 here about B.J. Lodholz' deposition; is that right?

21 A Yes.

22 Q Now, previously -- I'm not -- I'm not in the
23 deposition now. I'm going to ask you a question. The
24 deposition of Mr. Lodholz, there was some discussion of a
25 spreadsheet, correct?

1 A Yes. I think it said Excel spreadsheet.

2 Q And in this deposition of Mr. Ries, there is
3 some discussion of a cover sheet and then several sheets
4 behind that. Are you familiar with those -- with the
5 cover sheet and the sheets behind that Mr. Ries is talking
6 about?

7 A Yes.

8 Q What would -- describe to us what the sheets
9 behind the cover sheet are.

10 A The typical MPC and MGC invoice contains a top
11 sheet that identifies the month that the service was
12 rendered. It identifies the contract number, that the
13 service was rendered. It goes through and identifies
14 type. It identifies the quantity. It identifies rate.

15 And then it applies the rate to the quantity and
16 gives you the amount. And then it totals that up.
17 Customers receive a joint bill from MPC and MGC in the
18 case that's applicable. Not all customers are MGC
19 customers. But if they are, that's all done on one
20 invoice.

21 Behind that is a report that is called the daily
22 gas control/contract balance report MBTU or million BTU.
23 And that report will identify on each day information
24 regarding BTU and MDQ, which is the maximum daily
25 quantity, for each day per the contract.

1 It will identify how much was nominated to be
2 received by MPC. It will show receipts. It shows lost
3 and unaccounted for by day. It shows net receipts. It
4 shows deliveries to the designated delivery points. It
5 shows over-runs. It shows an estimated and balance.

6 It will give you an in balance -- so the -- it
7 will give you an in balance by day. It will go at the
8 bottom and give you the end balance for the last day of
9 the month. It will take the cumulative in balance from
10 the beginning of the month, and it will give you a total.

11 And then it gives you a percentage of what the
12 in balance is in relation to your monthly delivery. And
13 then it has other information at the bottom to tell you
14 whether it's positive or negative, what the in balance
15 information means on the sheet.

16 And then it currently has -- if you have
17 questions, you are to contact somebody else.

18 And you asked me earlier if Mr. Lodholz was on the
19 invoices. He would be on the top sheet. Usually, the
20 second sheet, the daily control sheet, would have
21 identified someone else like Patty Hawkins or Mr. Wallen.

22 Q The -- the invoice that we talked about earlier
23 that was marked as Exhibit 4 attached to the Lodholz
24 deposition, which was Exhibit 256, would that be an
25 example of the top sheet?

1 A That would not be because that's an Omega
2 invoice to an Omega customer.

3 Q All right.

4 A I was describing an MPC or MGC invoice to a
5 customer.

6 Q Okay. Mr. Ries had said in the deposition that
7 we had just read that with regard to the paper copies that
8 B.J. kept that the top sheet invoice -- Mr. Ries testified
9 that those have actually been produced. Is that your
10 understanding?

11 A That's what the deposition says, yes.

12 Q I'm asking you outside the deposition.

13 A No. Well, not -- not what was described by
14 Mr. Lodholz a couple of days prior. What has been
15 produced was in Mr. Ries's October deposition. I'm not --
16 it's -- I -- I know it by its deposition exhibit number.
17 It's 50. There were actual invoices produced for the
18 months of January, February and March of '06. Actually,
19 face sheet copies.

20 Q I want to talk about those next. And I have one
21 more excerpt from a deposition of Mr. Ries that I would
22 like you to help me read from October 17th, 2006. I have
23 a highlighted copy. We'll begin with page 314. Question,
24 "What documents have you brought with you?"

25 A "Well, I think I've been as responsive to the

1 request for documents and the subpoena. There are
2 numerous, including some documents that I believe were
3 provided yesterday, the transactional documents and the
4 MO-WOOD sale."

5 Q "I just asked what you brought with you today."

6 A "Documents responsive to the subpoena."

7 Q "Okay. Let go through them, shall we?"

8 A "Okay."

9 Q "What's the first one you have?"

10 A "First one was a request, I believe, for
11 documents that were in B.J. Lodholz' file."

12 Q May I ask what specifically you're looking at?
13 Is that Attachment A to the" --

14 A "The subpoena."

15 Q "Which one? Missouri Pipeline or Missouri Gas?"

16 A "Well, it was the one that was" --

17 Q "Omega?"

18 A "Actually issued to me and served on Paul DeFord
19 on the 28th of August."

20 Q "And Attachment A, what does it read?"

21 A "It says for all documents listed."

22 Q "Attachment A, that -- what's right under that?"

23 A "Deposition documents."

24 Q Let's jump on page 315 to line 6. "Identify the
25 first document that -- I'm assuming you're going to hand

1 it to me."

2 A "These are copies that were in B.J. Lodholz'
3 file that he referred to in his deposition and was your
4 Request No. 1."

5 Q "And are these his actual documents that were in
6 his file?"

7 A "Those were the documents that were in his file
8 and" --

9 Q "Did you have something more to say about them?"

10 A "Just were copied from what was left there."

11 Q "And tell me what they are."

12 A "They are copies of invoices. And as far as I
13 know, they're copies of invoices that were already
14 produced previously."

15 Q Question, "I'll mark this exhibit. We're
16 starting with 50. No.50. All right?"

17 And that's where we'll end that deposition for
18 right now. Again, Mr. Ries says here that these invoices,
19 which were marked as Exhibit 50 to the deposition, were
20 already produced. Was that your understanding?

21 A I -- I would say no because the only invoices we
22 had previous to the documents that he gave us there were
23 the recreated invoices. Those invoices that he produced
24 were actual copies of the face sheets and actually
25 contained some markings, like checkmarks, like the

1 document was used for some purpose.

2 Q Actually, from B.J. Ludholz' files, correct?

3 A That's what was represented to the Staff, yes.

4 Q Marked as Exhibit 254, I have that stack of
5 documents. I would like you to -- you have one in front
6 of you if you'd take a look at that.

7 A I have Exhibit 254.

8 Q All right. And it's also marked -- there's a
9 separate exhibit Complainant 50 sticker. Do you see that
10 identifying it as Exhibit 50 to the Ries deposition?

11 A Yes. That's how -- that's how I know it.

12 Q I want to turn back to the deposition with you.
13 And we are going to turn to page 700.

14 A Which -- is this 257?

15 Q This is 257. It's the deposition of David Ries,
16 October 18th, 2006.

17 A And which page?

18 Q Page 700.

19 A Okay.

20 Q "Mr. Ries, has Staff asked you for copies of MPC
21 and MGC's invoices for 2003?"

22 A "Yes, they have."

23 Q "Have you provided those?"

24 A "No, I have not."

25 Q "Is there some reason?"

1 A "We don't have any paper copies of them, and it
2 would require an extreme amount of effort and diligence to
3 go back and recreate those."

4 Q "You handed me yesterday morning items indicated
5 as B.J.'s invoices, Exhibit No. 50. Do you remember
6 that?"

7 A "These were the copies of the invoices that were
8 still in his file, yes."

9 Q "My understanding of what B.J. was saying was
10 that he kept these for every day. For every invoice that
11 he sent, he kept."

12 A "B.J. never sent invoices."

13 Q "For every invoice he received, he kept a copy."

14 A "And I'm saying that's what was in B.J.'s file
15 when I went to fulfill that data request."

16 Q "When was that?"

17 A "I asked for that information -- when was our
18 last scheduled deposition with Dave and Patty -- that was
19 late August."

20 Q "The 28th?"

21 A "Would have been about that time."

22 Q "Why didn't you ask for these prior to that?"

23 A "They hadn't been asked for."

24 Q "We hadn't asked for the documents that B.J.
25 indicated he had at his deposition?"

1 A "I didn't receive that request for those
2 documents until just prior to that scheduled deposition."

3 Q "What happened to all the documents prior to
4 January '06?"

5 A "They don't exist."

6 Q "Why?"

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

11 Q "Are you suggesting that Mr. Mertz discarded
12 those documents?"

13 A "I don't know who did that. But they're
14 certainly not in B.J.'s files."

15 Q Now, let's stop for a second. If you take a
16 look at exhibit 50 to the Ries deposition, and it's --
17 it's marked here today as No. 254, what period of time
18 does that cover?

19 A January of '06 through March of '06. And that's
20 the usage period.

21 Q That doesn't go back to 2002, correct?

22 A Yes.

23 Q Mr. Lodholz --

24 A That's correct.

25 Q Mr. Lodholz had indicated he kept them back to

1 2002, correct?

2 A I believe he said July of '02. Yes.

3 Q All right. Let's take a look at Exhibit No.
4 258. It's a number of affidavit. I think they should be
5 in order. Mr. Ries was first, and then Mr. Mertz was
6 second. Do you see that, four affidavits?

7 A Yes.

8 Q All right. Who is Mr. Mertz?

9 A He's the -- my understanding is he's the
10 gentleman that replaced Mr. Lodholz.

11 Q As the Financial Officer? Is that what you call
12 it?

13 A I think they used the term Controller. That's
14 usually -- that -- in a small company, that's usually the
15 same as a financial officer. Big companies may have two
16 different positions.

17 Q Now, if you take a look at Mr. Mertz' affidavit,
18 in particular, paragraph 4, it looks like the very last
19 sentence in paragraph 4, what does Mr. Mertz say about
20 destroying the documents?

21 A Well, the part of 4 that talks about actual
22 destruction is, "Since that date, I have not destroyed or
23 been asked to destroy any documents in the files
24 previously kept by Mr. Lodholz."

25 Q So that's May 12th? Is that what he's referring

1 to?

2 A The -- the prior sentence is that Mr. Lodholz
3 last was employed by MPC on May 12th, 2006.

4 Q Now, if we look back at Mr. Ries' deposition
5 that we just read, would you agree that Mr. Ries has
6 inferred that Mr. Ries (sic) destroyed those documents?
7 Take a look at page 702. That Mr. Mertz destroyed those
8 documents. Isn't that what Mr. Ries is inferring?

9 A Well, you can get that inference in dealing in
10 this case for so long. I can also get the inference that
11 they just moved them to another file. But he said -- he
12 said get rid of them.

13 They could have actually destroyed them, or they
14 could have moved them to another file and -- so -- but you
15 can read -- it depends on how you interpret Mr. Ries's
16 statement, chose to get rid of those prior invoices for
17 the prior year.

18 Q I just want to finish, Mr. Ries' deposition that
19 we were talking about just to get it into the record.
20 Exhibit 257, if we look at page 702. We stopped at line
21 12. Let's go to 13. Are you ready?

22 A I'm sorry. You said Exhibit 257?

23 Q Yes.

24 A And which -- which --

25 Q Page 702, line 13. Okay. Line 13, "Did

1 Mr. DeFord or anyone else indicate to you at the beginning
2 of this complaint that you should not destroy documents?"

3 A "I don't know that we destroyed any documents
4 for the purpose of this complaint. I didn't tell anybody
5 that they couldn't continue to manage their business in
6 the context of getting rid of obsolete, obsolete
7 materials. Secondly, those documents have all been
8 provided previously."

9 Q "So you didn't tell Mr. Mertz or anyone else not
10 to throw away B.J.'s" --

11 A "I did not tell Mr. Mertz not to go in or to
12 retain anything that B.J. had in his files."

13 Q As I understand it, Mr. Lodholz left May 12th,
14 2006, correct? I think it's even in the affidavit that
15 the company provided.

16 A I know he left in May. I know the affidavit
17 that you just asked me to read from Mr. Mertz says May
18 12th. I know it's in May.

19 Q Do you know when Mr. Mertz came on board there
20 at the pipeline?

21 A He says in April of '06 on his affidavit.

22 Q The -- the subpoenas that we had talked about
23 earlier, Exhibit 251, 252, 253, those are dated in January
24 and March of 2006, are they not?

25 A 251, 252 -- I know 252 and 253 are in March

1 because those are the ones that I served. And you're
2 asking me about 251?

3 Q 251 should indicate it was served in January.

4 A 251 was served in January. That's correct.

5 MR. REED: I think that's all I have.

6 JUDGE WOODRUFF: All right. Did you wish to
7 offer these documents into evidence at this point?

8 MR. REED: I do. And those that were
9 identified, I think should be 251 -- can I have your list?
10 251, 252, 253, 254, 256. I have the deposition excerpts
11 available as well. Those are 256, 257. I have the
12 affidavits of the company personnel at 258, invoices
13 identified by Ms. Fischer at 259, and the additional
14 excerpt from Mr. Ries' testimony at 260. I move for
15 admission of all of those.

16 And I have one additional. We can deal with
17 those first, your Honor, and then I'll -- then I'll take
18 care of the additional.

19 JUDGE WOODRUFF: Sure. All right. And I
20 believe some of these are highly confidential, also.
21 They're marked individually, I believe; is that correct?

22 MR. REED: I -- I think the depositions that we
23 read are not highly confidential. But there are some
24 invoices that I need to make sure are marked
25 appropriately, Judge.

1 JUDGE WOODRUFF: Okay.

2 MR. REED: And so I think at this point in time,
3 they should be highly confidential until I can make sure I
4 make that proper designation. For instance --

5 JUDGE WOODRUFF: Would that be 254 and 259?

6 MR. REED: Yes. Okay. And there -- there is --
7 there is attached to Exhibit 256 information that should
8 be highly confidential as well, so at present, I'd like to
9 make 256 -- those portions of 256 HC as well.

10 JUDGE WOODRUFF: And they are stamped on the
11 copies as highly confidential, is that correct, the
12 portions of 256 that you were indicating would be HC?

13 MR. REED: They are not.

14 JUDGE WOODRUFF: And so at this point, 256 will
15 be entirely HC, then?

16 MR. REED: Yes.

17 MR. DEFORD: Your Honor, with respect to
18 Exhibits 256 and 257, which I believe were the excerpts
19 from the deposition, we would like to designate the
20 remainder of the deposition and have the entire deposition
21 offered into evidence so that the record will be complete.

22 JUDGE WOODRUFF: Okay.

23 Mr. REED: And --

24 MR. DEFORD: And we -- we have actually gone
25 through each of the depositions and marked them for which

1 portions of the depositions should remain highly
2 confidential. And I believe that's all been provided to
3 Staff.

4 JUDGE WOODRUFF: And do you have copies of that
5 to put into the record at this point?

6 MR. DEFORD: I do not.

7 JUDGE WOODRUFF: All right. Mr. DeFord, I
8 presume you'll be presenting some testimony, also?

9 MR. DEFORD: Yes, we will.

10 JUDGE WOODRUFF: Do you want to just offer them
11 through your witness, then?

12 MR. DEFORD: I believe the appropriate place to
13 do it is -- is here because I think the excerpts have been
14 designated, and we would like to just simply designate the
15 remainder of the deposition.

16 JUDGE WOODRUFF: All right. Well, at some
17 point, they need to be put into the record is my concern.

18 MR. DEFORD: Sure.

19 JUDGE WOODRUFF: At this point, they're not in
20 the record and the Commission has never seen them.

21 MR. DEFORD: Yeah. We would be happy to just
22 produce copies and just mark the entirety of the
23 depositions as 256 and 257.

24 JUDGE WOODRUFF: All right. Any objection to
25 that by Staff?

1 MS. SHEMWELL: Judge, I just want to note that
2 Staff has redacted it -- the exhibits which you're
3 discussing and has both HC and NP versions. So we can
4 provide, certainly, the redacted version to the Commission
5 in just a few -- we just need to gather them. They've
6 been marked. And we can provide those to the Commission
7 so that the Commission, as it goes through, can see what
8 is HC -- has been determined to be HC by the company

9 JUDGE WOODRUFF: Okay. And that's what you were
10 talking about, also, Mr. DeFord?

11 MR. DEFORD: That's correct.

12 JUDGE WOODRUFF: All right. We'll go ahead and
13 -- and admit the entire depositions then, 256 and 257.
14 That would be the B.J. Lodholz and David Ries's
15 depositions; is that right? All right.

16 Well, let's -- let's go back and do all the
17 exhibits, then that have been offered, 251, 252, 253, 254,
18 256, 257, 258, 259 and 260. Are there any objections to
19 the receipt of any of those documents -- documents?
20 Hearing none, they will all be received into evidence.

21 (Exhibit Nos. 251, 252, 253, 254, 256, 257, 258,
22 259 and 260 were admitted into evidence.)

23 JUDGE WOODRUFF: Do you tender the witness for
24 cross, then?

25 MR. REED: I -- I just have a couple -- I

1 haven't relinquished the podium, Judge, if I could have --

2 JUDGE WOODRUFF: Go right ahead.

3 MR. REED: I have Exhibit 53, which is an HC

4 document which should be responsive to Commissioner

5 Murray's questions about the revenue summary.

6 JUDGE WOODRUFF: Okay.

7 MR. REED: Did you give him a copy?

8 JUDGE WOODRUFF: That will be No. 53. And you

9 called it a revenue summary?

10 MR. REED: I believe that's what I would call

11 it, Judge, a revenue summary.

12 JUDGE WOODRUFF: Is that something that is -- is

13 that in the stack of documents that you've already had

14 marked?

15 MR. REED: I think it is.

16 JUDGE WOODRUFF: Well, I don't think I have

17 those up here.

18 MR. REED: Oh, I have -- okay.

19 MR. DEFORD: In looking at the document, I don't

20 think it's complete. I think the original included a 2004

21 calendar year as well. I think this is just 2005.

22 JUDGE WOODRUFF: Does Staff have anything else

23 as far as this document for earlier calendar years? Or do

24 you --

25 MR. REED: That's all we have at present.

1 MS. SHEMWELL: Staff indicates we only got 2005.

2 JUDGE WOODRUFF: All right.

3 MS. SHEMWELL: We received 2004 later
4 electronically, Judge, and we can produce that later.

5 JUDGE WOODRUFF: Does anyone request that that
6 be produced?

7 MR. DEFORD: I think to make it complete that
8 that would be our preference.

9 JUDGE WOODRUFF: All right.

10 MS. SHEMWELL: We'll mark that at this time -- I
11 think we have a number available at 54, then, Judge.

12 JUDGE WOODRUFF: Okay. That will be the revenue
13 summary?

14 MS. SHEMWELL: 2004 revenue summary.

15 JUDGE WOODRUFF: Okay. That will also be HC.
16 All right. Exhibit -- pardon me.

17 MR. REED: Sorry, Judge.

18 JUDGE WOODRUFF: All right. Exhibits 53 and 54
19 have been offered. Are there any objection to their
20 receipt? Hearing none, they will be received into
21 evidence.

22 (Exhibit Nos. 53 and 54 were admitted into
23 evidence.)

24 JUDGE WOODRUFF: And you'll need to submit a
25 copy of 54, then, to the court reporter.

1 MS. SHEMWELL: We certainly will, Judge. Thank
2 you. This might be a good time to note that the redacted
3 version of Mr. Ries' July 20th deposition has been marked
4 19-6, and the redacted version of Mr. Lodholz's deposition
5 has been marked as 19-5. We can certainly provide those
6 to the --

7 JUDGE WOODRUFF: You're confusing me because
8 Exhibit 19 on your exhibit list is Schallenberg's direct
9 testimony.

10 MS. SHEMWELL: Yes, they're attachments to his
11 direct testimony.

12 JUDGE WOODRUFF: Oh, they're attachments. Okay.

13 MS. SHEMWELL: And that's why they're numbered
14 19-5 and 19-6.

15 JUDGE WOODRUFF: Okay. Anything else, Mr. Reed?

16 MR. REED: I had one other question, Judge.

17 JUDGE WOODRUFF: Go ahead.

18 Q (By Mr. Reed) Mr. Schallenberg, did you have
19 any conversations with Mr. Ries about obtaining these
20 customer invoices that Staff has been trying to get?

21 A He would be one of the people through this
22 process I would have had discussions with.

23 Q Did you -- did you have a discussion -- were you
24 at the October deposition of Mr. Ries?

25 A Yes, I was.

1 Q Did you have any discussions with him there at
2 some point about the customer invoices?

3 A I don't recall any conversation with Mr. Ries
4 off the record, so to speak, or not on the deposition. As
5 I recall, in his October depositions, all of the questions
6 about the invoices were in the deposition itself.

7 Q Were there -- were there any other periods of
8 time -- were there any other discussions you had with Mr.
9 Ries where you discussed the customer invoice -- invoices
10 and he expressed to you whether he would get those to you
11 or not?

12 A There was a discussion in his -- he didn't take
13 it -- he didn't take his deposition at the time. But he
14 was scheduled -- I think it was the afternoon of
15 Mr. Wallen's deposition.

16 And after Mr. Wallen's deposition had been
17 completed, Mr. Ries had a family issue that he needed to
18 leave and was in the process of going and leaving. And
19 before he left, he sat down with me at the table to go
20 through the documents that had been in the subpoena duces
21 tecum.

22 And the -- the -- Mr. B.J.'s -- these invoices
23 were one of those items that we discussed.

24 Q And what did he say about producing those
25 invoices for you?

1 A He said the Staff will never get those invoices.

2 Q Did he say why?

3 A No. And I just responded that he'll either tell
4 us that he destroyed them or we'll continue to pursue it
5 until we get them. So --

6 MR. REED: Thank you, Mr. Schallenberg?

7 JUDGE WOODRUFF: All right. Thank you, Mr.
8 Reed. For cross-examination, then, Municipal Gas
9 Commission?

10 MR. WOODSMALL: Nothing, your Honor.

11 JUDGE WOODRUFF: Ameren?

12 MS. DURLEY: No, your Honor.

13 JUDGE WOODRUFF: Public Counsel?

14 MR. POSTON: No.

15 JUDGE WOODRUFF: For the pipeline?

16 THE COURT REPORTER: Excuse me. I need to go
17 ahead and change paper.

18 JUDGE WOODRUFF: All right. Go ahead and do
19 that. We're off the record for a moment.

20 (Break in proceedings.)

21 JUDGE WOODRUFF: All right. We're back on the
22 record, then.

23 CROSS-EXAMINATION

24 BY MR. DEFORD:

25 JUDGE WOODRUFF: You may inquire.

1 MR. DEFORD: Thank you, your Honor.

2 Q (By Mr. DeFord) Good morning, Mr. Schallenberg.

3 A Good morning.

4 Q Just barely, right?

5 A Yes.

6 Q How are you?

7 A I'm fine.

8 Q I want to be clear exactly on what documents it
9 is that Staff alleges have been destroyed.

10 A If -- if you look at what has been marked as
11 254, Exhibit 254 -- I -- as I mentioned, I continue to
12 call it Exhibit 50.

13 If you were to take these sheets and go back
14 through the periods up through -- Mr. Lodholz says he has
15 them through July of '02. I think our data requests were
16 just for '03. It would be those face sheets from '03 up
17 through December 31st of '05.

18 Q And I guess the -- the next question I would ask
19 is it appears to me that Staff had all of the information
20 that formed the basis of this allegation in the complaint
21 well in advance of filing the complaint in this case or,
22 certainly, well in advance of filing its direct testimony
23 and its surrebuttal testimony.

24 Could you explain why the Staff did not include
25 this issue in the issues that were addressed in its

1 prepared case?

2 A Well, that wouldn't be -- your premise and your
3 question isn't true, so -- we said we had all the data.
4 There's a lot of data that we had disputes with getting
5 that we had to make the decision do you continue to delay
6 processing this case for the incremental pieces of data.

7 In the discussion, we have never gotten 2003
8 data, even though the time when we know that Omega became
9 a marketer is in '03, not '04. So we never got 2003 data.

10 Q Did Staff file a motion to compel production of
11 discovery?

12 A I know -- yes. In fact, in the June 6 meeting
13 when we talked about the invoices, those that got to
14 attend, that was quite a spirited day.

15 Q And -- and how was that resolved? Do you
16 recall?

17 A There was no agreements. In fact, the way it
18 was, the only agreement I recall that came from that was
19 the company was going to give the Staff what it wanted to
20 give it when it wanted to give it to us and that they had
21 made a commitment that they would provide recreated
22 invoices when Mr. Ries had time to get around to doing it.

23 Q And isn't it true that those recreated or
24 reprinted invoices have been provided back through 2004 up
25 through the first quarter of 2006?

1 A That's -- that's true. The company has refused
2 to recreate the invoices for '03.

3 Q And I -- I think we'll let Mr. Ries address the
4 reasons for that. Isn't it also true that the companies
5 have continued to provide documents to the Staff as it
6 discovered them or found them in its files?

7 A I have no doc -- I -- I know we received some --
8 some supplements. Most of the time we would just be given
9 documents. There was -- there was a time in -- it was in
10 response to one of the Commission orders. We would even
11 get documents that had the supplement to that -- you know,
12 to a data request or a supplement to a subpoena item.

13 But after that time, we -- they just handed us
14 documents or send us documents. There has been some. Now
15 whether -- I don't recall a bunch of e-mails or any
16 personal correspondence coming, but I don't want to say
17 they haven't given us some because they have.

18 Now, I have no knowledge whatsoever how
19 comprehensive they've been about finding -- I've been
20 given no indication they've been doing that.

21 Q Isn't it true that within the past couple of
22 weeks the company submitted to Staff documents that we
23 have since confirmed are, in fact, those cover sheets or
24 summary sheets that Mr. Lodholz referenced in his
25 deposition?

1 A That statement would be false. You have given
2 us -- there was a cover letter from your firm, I don't
3 remember whether you signed it or Ms. Davenport signed it,
4 that were some summary reports with the statement on the
5 cover letter that they were given to us on some condition
6 and that you were going to get with Mr. Lodholz and
7 attempt to confirm that.

8 As far as I know, that confirmation -- if it --
9 if you ever got it, I -- I never -- I've never seen any
10 follow-up that there's been a confirmation that -- that
11 those were, in essence, the substantive for what's Exhibit
12 254.

13 And they do not match 254. It's a total -- it's
14 a totally different document.

15 Q So -- so the potential that Mr. Ries was
16 mistaken in what he provided in comparison to what
17 Mr. Lodholz referenced is a distinct possibility, correct?

18 A I -- obviously, there's always the possibility
19 -- I would say it's -- it's as close to zero as possible,
20 but there's always a possibility that happened.

21 Q So I guess it would surprise you to learn that
22 we have indeed confirmed with Mr. Lodholz that the
23 documents we provided to Staff in the past couple weeks
24 were exactly the documents he was referring to in his
25 deposition?

1 A That would -- now, yeah. So I'm clear on your
2 -- to respond, it wouldn't surprise me that you would get
3 Mr. Lodholz to say that the documents that you've also
4 given us were his documents that he produced.

5 It would surprise me that if you asked him the
6 question, you know, straightforward, where are the rest of
7 the 254 documents that were taken from his files that
8 those documents were there up through '03, '04, and '05
9 and all of a sudden then he started keeping these in lieu
10 of that, that would surprise me that you have such a
11 confirmation from Mr. Lodholz.

12 Q I guess I would say prepare to be surprised.

13 A Well --

14 Q Just -- isn't it also true that Staff has
15 continued to supplement its data request responses?

16 A Certainly. As soon as we find -- you know, as
17 soon as we find additional material from other works that
18 had -- we have done that.

19 Q So, in fact, last Friday, Staff supplemented a
20 data request response that was originally responded to
21 back in September, Data Request 15. I believe, Ms.
22 Shemwell had indicated that Mr. Stroud had just found some
23 documents in a file to supplement that?

24 A I think it's 16. I think it's the discount
25 reports on 12-C.

1 Q You're absolutely right. It was 16.

2 A And, actually, I think was our second supplement
3 to 16 because I think there was a prior supplement.

4 Q So it's not unusual not to be able to find all
5 of the documents that are responsive to a request the
6 first time through or even the second time through?

7 A I mean, I can tell you that's true on our case
8 because there are in files in other matters not related to
9 the -- in this case, the pipeline, there are data that are
10 in files or there's retired employees that have files that
11 are disregarded or boxed up that are discovered later.
12 That's true.

13 MR. DEFORD: Thank you, Mr. Schallenberg. I
14 think that's all I have.

15 JUDGE WOODRUFF: Thank you. We'll come up for
16 questions from the Bench. Chairman Davis, do you want to
17 go first?

18 CROSS-EXAMINATION

19 BY CHAIRMAN DAVIS:

20 Q Mr. Schallenberg, would it be fair to
21 characterize the process -- I mean, this is just my mental
22 impression based on what I have seen so far. Would it be
23 fair to characterize the process of obtaining documents
24 from this company as something akin to pulling teeth?

25 A Well, it's been very difficult. I would -- I

1 would put it -- it was -- it is as difficult as it was
2 dealing with Local Exchange Company until the -- they got
3 the judgments against the owners. We have gone through as
4 intensive a discovery dispute as we did at the early
5 stages of that -- that audit.

6 Q Okay. And, you know, for the -- for the record,
7 Local Exchange Company is -- was the parent company of
8 Cass County Telephone; is that correct?

9 A It was.

10 Q Or they were the --

11 A It was the operating entity for Cass Telephone
12 in New Florence.

13 Q Okay.

14 A And was involved in some of the other
15 transactions that were at issue with Mr. Masdorf.

16 CHAIRMAN DAVIS: Judge, I had another question
17 for Mr. Schallenberg, but it escapes me at the present
18 moment. Thank you.

19 JUDGE WOODRUFF: I -- we'll move on to
20 Commissioner Murray, then.

21 CROSS-EXAMINATION

22 BY COMMISSIONER MURRAY:

23 Q Good morning Mr. Schallenberg.

24 A Good morning.

25 Q I think it's still morning by one minute.

1 Exhibit 53-HC, is that the document that Ms. Fischer
2 referred to as the spreadsheet that Mr. Ries had provided
3 to Staff on January 26?

4 A Yes. That would be what we would refer to as a
5 revenue summary.

6 Q Okay.

7 A And I know she had these early in the review.

8 Q And when she was on the stand, she indicated to
9 me that that document was provided to her and to
10 Mr. Oligschlaeger. Is that your recollection?

11 A I was under the impression it was provided to
12 her. But I -- but Mr. Oligschlaeger and Ms. Fischer were
13 working on the area, but I recall Ms. Fischer doing almost
14 all the revenue work at this stage.

15 Q Okay now, I'm assuming you're familiar with the
16 document; is that correct?

17 A Yes.

18 Q And when did you familiarize yourself with it?

19 A Oh, it would have gone through stages. I -- I
20 probably got more attached to the document in May and June
21 than other parts of the year.

22 Q Okay. Now, it was this document that Ms.
23 Fischer said the review of led to the conclusion that the
24 actual usage that -- the usage on the -- the actual
25 invoices that Staff was provided from us customers was

1 different than the usage shown on the recreated document.

2 Is that -- did I understand that correctly?

3 A Yes. That -- what -- what occurred was that
4 when she began -- began to receive some customer
5 information through her contacts with individual
6 customers, she could not match up the -- most of it was
7 the commodity amount that was shown for the Cuba, which I
8 guess is public, and Omega, which I think is public.

9 There were discrepancies between the invoices
10 and what was being shown on this report as the volume.

11 Q And was it rel -- only related to certain
12 months?

13 A Well, it -- it would depend on which one --
14 Cuba, it would have been consistently higher on this
15 document, on 53, than what she could trace.

16 Q What -- okay. The usage shown was consistently
17 higher than what's shown on Exhibit 53-HC?

18 A Right, than what she had shown on the invoices
19 to the City of Cuba for what they were billed for.

20 Q Okay. Which indicated what?

21 A Well, it indicated a discrepancy, that -- that
22 the customer was being billed for one volume, and this
23 report is imputing revenues at a higher volume.

24 Q And the customer you're speaking of was Cuba?

25 A Cuba was the one that -- that she had to do the

1 comparison because she would have looked at the sheet and
2 seen Cuba and contacted them.

3 Q Does that indicate that there was a mis-billing,
4 or does that indicate there was another customer that
5 receiving some of the commodity that was being billed to
6 Cuba?

7 A It -- it indicates that --

8 Q As being billed to Cuba?

9 A Right. On this sheet, it ultimately indicated
10 -- I think it's called Secret Customer A. That's how they
11 found Secret Customer A. And that when you take --

12 Q Were you involved in that -- at that point?

13 A I was involved later. When I began to -- when I
14 took over her -- her position in this investigation, I was
15 aware of it at that time.

16 Q And that secret customer we're referring to is
17 A, B or C?

18 A I believe under the designation, it's A.

19 Q You're correct. Okay. And refresh my memory as
20 to what documentation is available that shows that there
21 was another customer that -- that Customer A was existing.

22 A When -- when Ms. Fischer got from the City of
23 Cuba their actual invoices from Omega, there was an
24 indication of the volume delivered at the city gate, and
25 then there was an assignment from that volume to Customer

1 A. And she then followed up --

2 Q Stop just a minute?

3 A Okay.

4 Q That was what would be in your testimony, I
5 believe, as Appendix A-11-HC?

6 A I don't --

7 Q No. I'm sorry. That's not -- that's not the
8 correct one. It was submitted separately as another
9 document today. It's in Exhibit 254, I believe.

10 A 254 would be the invoice -- if you look at --
11 let's see what page it is. It's the fourth page of 254.
12 And that's the one for January. There's another one of
13 those for February and March of '06.

14 This is the invoice to Omega for the
15 transportation service from MPC and MGC and indicate what
16 was paid. Now, what you were asking me about previously,
17 though --

18 Q Was it an invoice to Omega or to the City of
19 Cuba in care of Omega?

20 A At this time, it -- it will show City of Cuba.
21 In the prior periods, it -- the City of Cuba isn't
22 identified as the shipper on the invoices. But at this
23 time, it says the City of Cuba, in care of Omega Pipeline
24 Company for -- I think it began in -- in fact, I think
25 this is the first invoice that has that change.

1 Q And who supplied this invoice?

2 A This invoice would have come from Mr. Ries in
3 his October deposition when he provided the remaining
4 files of Mr. Lodholz face sheets.

5 Q Okay. So this was not gathered from the company
6 -- from the customer?

7 A This was not what we received from the City of
8 Cuba. No.

9 Q All right.

10 A And the City of Cuba, my understanding, doesn't
11 see this.

12 Q Okay.

13 MR. WOODSMALL: Commissioner, I may -- I believe
14 you may be looking for page 4 of Exhibit 259.

15 COMMISSIONER MURRAY: I think you're right. Let
16 me check that. I've lost 259.

17 Q (By Commissioner Murray) But 259 did include, I
18 believe, an invoice that was received from the customer;
19 is that correct? Thank you.

20 A Yes. This would be an invoice that we -- we
21 received from the City of Cuba directly.

22 Q And when -- when was it received from the City
23 -- this received from the City of Cuba?

24 A Ms. Fischer would have gotten that, I would say,
25 late first quarter of '06, maybe early second quarter. I

1 know -- I know we have the e-mail where it was sent to us.
2 I know I -- we have the date, but I don't recall any more
3 specificity to it than what I just said.

4 Q And then in terms of what you received from Mr.
5 Ries regarding that particular invoice, what -- what did
6 you receive from him?

7 A Well, you would have received -- at that time,
8 all we would have received would have been one of these
9 revenue summaries that is Exhibit 53.

10 As I recall, the first time we received the
11 recreated invoices would have been in the late June, early
12 July of this year which had been the first time we would
13 have received invoices from the MPC and MGC.

14 Q Okay. So in order to make the determination
15 that Customer A was, in fact, a customer receiving some of
16 the quantity that were being shown as shipped to Cuba, Ms.
17 Fischer would have made that determination through the
18 invoice?

19 A Yes. If you look at --

20 Q Which invoice?

21 A Yeah. If you look at the -- Exhibit 259 on -- I
22 think it's the fourth page.

23 Q All right.

24 A If you look at where it says delivery charges --
25 in fact, this -- I don't have all four. If you look at

1 quantity, you'll see a -- a beginning number, and then
2 you'll see a second number.

3 Q Yes.

4 A And under it, it has Less Volumes Delivered To.
5 And that's Customer A that's referenced.

6 Q And that is where the -- the customer itself was
7 identified on that document?

8 A Right. That's where -- that's where you can see
9 that from what's on this sheet is actually deliveries to
10 two customers, not just Cuba, as you would get from
11 looking at this sheet. And then she would have gotten
12 that information from that -- that fourth page on Exhibit
13 259.

14 Q All right. You -- were asked a question earlier
15 about did Staff file a Motion to Compel. And I did not
16 follow how you answered that question.

17 A Actually, we didn't file a Motion to Compel. I
18 think we filed a motion to enforce the subpoenas. And the
19 response was that we needed to go through a discovery
20 conference, which I believe was the June 6 meeting.

21 And from the June 6 meeting, the company had
22 indicated that they would recreate invoices, and I know
23 there was a disagreement as to time and -- so we did
24 receive -- as I said, those recreated invoices came in
25 either in late June or early July.

1 Q Now, did I hear you say that you still don't
2 have any recreated invoices for '03?

3 A That's correct.

4 Q Have you requested those?

5 A Yes. In fact, we have renewed that -- well, we
6 had a request for the 2003 invoices from early in the
7 year. We had pursued satisfying that need from trying to
8 get the actual face sheets that Mr. Lodholz kept.

9 And we've asked even I think in Mr. Ries'
10 deposition in October. I think that was covered in one of
11 his exhibit. And he said he -- he wasn't willing to do
12 that.

13 Q Now, it appears that you're saying Mr. Ries'
14 response was not that he didn't have them or they were not
15 -- were not available, but that he was not willing to
16 provide them. Is that what you're saying?

17 A What I'm saying -- I know he said -- I know he
18 said he wasn't going to -- he wasn't going to provide the
19 recreated ones. And when we talked about B.J.'s invoices,
20 he indicated that we would never get those.

21 Now, in hindsight, we did get some. We got the
22 ones that were in Exhibit 254.

23 Q Okay. But are you -- are you telling me that it
24 is your understanding that Mr. Ries is deliberately not
25 providing invoices that he's capable of providing?

1 A It would be my -- my opinion that he has
2 deliberately not provided information during this
3 proceeding that he -- he was capable of providing.

4 Now, I -- I don't know whether the invoices
5 still exist or they have been destroyed. I don't -- I
6 don't -- I don't have that -- that type of knowledge of
7 what the company's files look like.

8 Q But from what you received, you never received
9 from Mr. Ries any original invoices; is that correct?
10 They were recreated?

11 A They were. Except for what is in Exhibit 254,
12 which he produced in his deposition for those three
13 months, every invoice that we received was recreated
14 invoices that he gave us.

15 Q Did, in your discussions, you ever hear it
16 stated that it was not possible to recreate '03 invoices
17 in that same manner?

18 A No. In fact, I think in the deposition, his
19 testimony wasn't that it was impossible, it was just
20 difficult and would be labor intensive, and he wasn't
21 willing to do it.

22 COMMISSIONER MURRAY: Thank you.

23 JUDGE WOODRUFF: Commissioner Clayton?

24 COMMISSIONER CLAYTON: No questions at this
25 time.

1 JUDGE WOODRUFF: Commissioner Davis, anything
2 else?

3 CHAIRMAN DAVIS: No, thank you.

4 JUDGE WOODRUFF: All right. Back for recross,
5 then. Gas Commission?

6 MR. WOODSMALL: (Witness shakes head.)

7 JUDGE WOODRUFF: Ameren?

8 MS. DURLEY: No.

9 JUDGE WOODRUFF: Public Counsel?

10 MR. POSTON: No questions.

11 JUDGE WOODRUFF: The pipelines?

12 MR. DEFORD: Just one, your Honor.

13 RECCROSS EXAMINATION

14 BY MR. DEFORD:

15 Q Mr. Schallenberg, isn't it true that at the June
16 6 discovery conference Staff agreed that if the company
17 could produce 2004 through first quarter 2006 that that
18 would be sufficient?

19 A That's absolutely false. In fact, I anticipated
20 the company would try to do that. So if you look at our
21 complaint, I made sure when we were drafting it, it would
22 note that no agreements came.

23 If you recall, from that meeting, what came is
24 we came to no agreement. And the company came back and
25 said, Well, we'll give you what we're willing to give you

1 in the time periods we're willing to give it to you. And
2 there were no -- there were no agreements on behalf of the
3 Staff that it wouldn't pursue or attempt to get the data
4 it needed.

5 I -- I take that back. There was one agreement
6 that the Fort could receive information if they put a data
7 request in. And from that June 6 meeting, there were no
8 other agreements.

9 And to make sure that the pipeline would not do
10 what you're -- you just brought up, it's in our Complaint.
11 So we note that at the June 6 meeting there were no
12 agreements at that -- that -- that time.

13 Q So our recollections of that meeting are a
14 little different?

15 A Well, I -- put this way. I know I was very
16 emphatic in that meeting at the very end with Mr. Monaldo.
17 And I -- I can recall saying more than once that we have
18 no agreements.

19 So now, how you can get from we have no
20 agreement that we had an agreement -- you know, I see
21 misunderstandings all the time. Maybe -- maybe that's a
22 valid interpretation of my statements. But I don't see a
23 reasonable interpretation of that.

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

25 JUDGE WOODRUFF: All right.

1 CHAIRMAN DAVIS: Judge, can I go back to
2 Mr. Schallenberg for just a second?

3 JUDGE WOODRUFF: Certainly.

4 CROSS-EXAMINATION

5 BY CHAIRMAN DAVIS:

6 Q All right. Mr. Schallenberg, let me -- let me
7 just -- was Rueben, Brown & Gornstein -- were they
8 auditing this company; is that correct?

9 A They -- they are the auditors for the pipelines.
10 that's correct.

11 Q Okay. And you -- and -- in your opinion, I
12 mean, should they have picked up any of these
13 discrepancies? And if -- if -- if there was no way of
14 them -- of them knowing some of these things, could you
15 please explain -- explain that just so I know?

16 A We reviewed portions of the work papers, so I
17 don't want to portray that they didn't note certain
18 internal control problems or data problems because I know
19 in -- and we didn't receive all of the work papers. So I
20 -- I don't know the full extent of what the auditor knew.

21 Q Right.

22 A But I know there were some mention about
23 internal controls and problems. I never saw anything
24 regarding the -- that they used in their audit to try to
25 compare actual invoices to what -- the data that was

1 given.

2 Q Is that a -- is that a common practice for
3 auditors?

4 A Yes. What I will say is, they're -- they're not
5 a publicly traded firm.

6 Q Right.

7 A So most of the time, they're doing an audit only
8 because there's a lender. And, in fact, you -- when we
9 talked earlier, that was the audits that were done of
10 Cass Tel or that -- that nature, just because there was a
11 -- there's a lender. They're not done like --

12 Q All right.

13 A -- like for a big company or SEC type file
14 company. By there was no mention in the sections of the
15 work papers we are were given about a -- doing a test of
16 comparing volumes to actual customer bills, nor was there
17 any question noted about the -- the not maintaining
18 invoices in a retrievable -- I mean, it's common that
19 either you maintain a hard copy or you keep an electronic
20 if you can retrieve it very quickly.

21 Q Right.

22 A That's common. There was no mention of the fact
23 that the -- the invoice retrieval was very complicated and
24 difficult and then not retaining the documents. I don't
25 remember anything that Rueben Brown did about retention of

1 documents.

2 Q And Rueben Brown was paid a substantial sum of
3 money, weren't they?

4 A They were paid -- I mean, for the pipeline, it
5 was -- it was a significant pipeline expense.

6 Q Do you -- do you recall that amount?

7 A I know we have it. I -- I know it's in the tens
8 of thousands. And -- and I say that. Rueben Brown also
9 did tax work for them separate, and it did some financial
10 work.

11 So the bills would actually be for more than
12 just the audit. But the bills were in the tens of
13 thousands.

14 Q Mr. Schallenberg, depending on the outcome of
15 this case, should Staff be making the State Board of
16 Accountancy aware of any of these issues?

17 A This is the first -- I mean, you bring that up.
18 We had not thought of that. I mean, now that you mention
19 it, I guess we will consider that. Whether --

20 Q Well, I mean, obviously, there were accounting
21 irregularities with other utility companies, namely Enron,
22 and, obviously, this is a problem that I think we need to
23 -- to take very seriously and -- and we need to be sure
24 one way or the other.

25 A And you -- this is the first time that thought

1 has come to us. In the Cass Tel situation, the auditor
2 refused.

3 Q To certify the books?

4 A To -- to continue to do their audit upon the --
5 the charge against Mr. Masdorf. And so they had to go and
6 get another auditor. Like I said, you bring up a new
7 matter that we haven't dis -- we haven't considered, but
8 we will now.

9 CHAIRMAN DAVIS: Thank you, Mr. Schallenberg.

10 JUDGE WOODRUFF: Any further recross based on
11 Commissioner Davis' questions? All right. Redirect,
12 then?

13 MR. REED: No.

14 JUDGE WOODRUFF: All right. Mr. Schallenberg,
15 you can step down. Does Staff have any other witnesses on
16 this sub-issue?

17 MR. REED: No, Judge. That's all.

18 JUDGE WOODRUFF: All right. Ms. Shemwell?

19 MS. SHEMWELL: We do have, thank you, Judge,
20 Exhibit 54 available that we will proceed to mark and hand
21 out.

22 JUDGE WOODRUFF: All right.

23 MS. SHEMWELL: Has that been offered? I will
24 offer 53 and 54, if not.

25 JUDGE WOODRUFF: I believe the -- yes. They've

1 both been offered and received.

2 MS. SHEMWELL: Okay. Thank you.

3 JUDGE WOODRUFF: And I -- I assume the pipeline
4 company will be presenting evidence on this, also?

5 MR. DEFORD: Yes, your Honor.

6 JUDGE WOODRUFF: All right. We'll go ahead and
7 take a break for lunch first. We'll take a break now.
8 We'll to come back at, let's say, 1:15.

9 (Lunch recess.)

10 JUDGE WOODRUFF: All right. Let's come to
11 order, please. All right. Welcome back from lunch.
12 We'll go ahead and get started here.

13 When we left off, we had just finished with Bob
14 Schallenberg's testimony on the destruction of documents
15 question. I'm assuming that Public Counsel, Ameren and
16 Municipal Gas Commission do not have any testimony on this
17 issue? So we'll now move to Missouri Pipeline and
18 Missouri Gas. Do you have a witness to call?

19 MR. DEFORD: We'd like to call David Ries,
20 please.

21 JUDGE WOODRUFF: All right. Come forward, Mr.
22 Ries. And if you'd please raise your right hand.

23 DAVID RIES,
24 being first duly sworn to testify the truth, the whole
25 truth, and nothing but the truth, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. DEFORD:

3 JUDGE WOODRUFF: All right. You may be seated.
4 And you can inquire when you're ready.

5 MR. DEFORD: Thank you, your Honor.

6 Q (By Mr. DeFord) Mr. Ries, would you please
7 state and spell your name for the record?

8 A It's David Ries, R-i-e-s.

9 Q Mr. Ries, by whom are you employed and in what
10 capacity?

11 A I own a consulting firm called R-2 Development,
12 Inc., that has a management consulting agreement with
13 Missouri Pipeline and Missouri Gas Company. I act as
14 their President and Chief Executive Officer.

15 Q And what are the scope of your duties with
16 respect to that, briefly?

17 A To manage the business in its development on --
18 on a broad scale basis. The Operations Manager, Financial
19 Manager, report to me as well as the engineering and
20 support folks.

21 Q And I guess now let's kinds of cut to the chase.
22 Mr. Ries, have you destroyed any documents that have been
23 requested for production in the course of this case?

24 A No, I have not.

25 Q Have you instructed or told anyone else to

1 destroy such documents?

2 A No, I have not.

3 Q With that out of the way, I would ask you to
4 explain the billing system that is in place for the
5 pipeline companies.

6 A Well, the -- the -- the billing system in the
7 context of its full meaning is significantly different
8 from that of an LDC. The -- the pipeline companies track
9 and record data on a very frequent time basis, including
10 reporting to the customer on a daily basis the BTU value
11 of the gas that's flowing through the system, confirmation
12 of their nominations, the physical deliveries of that gas
13 and the differences between the nominations and the
14 deliveries.

15 And -- and that is tracked each and every day of
16 the year, 365 days a year. That is the documents that are
17 used then in support of the billing invoice itself.

18 Q And for the record, you said LDC. Local
19 Distribution Company?

20 A That's correct.

21 Q Such as Laclede?

22 A Such as Laclede or the municipalities or Omega
23 as it relates to its business on Fort Leonard Wood or
24 AmerenUE as it relates to any of the delivery points at
25 which we provide service to them.

1 Q Okay. So if you'd explain for me, then,
2 physically each month how is an invoice produced, and what
3 happens after that invoice is produced?

4 A At -- at the front final day of each month --
5 and we bill on a monthly basis. But on the final day, we
6 tally the -- the total volumes delivered and -- and
7 calculate and correct it for BTU on each and every day,
8 along with the nominations and the in balances.

9 Those volumes of delivered volumes are taken
10 forward to, I believe, what we refer to here as a front
11 sheet. In some cases, it's a top sheet. And we multiply
12 the volume times the contracted cost per -- for a -- for a
13 commodity level basis, meaning the -- the rate per unit of
14 through point.

15 That, in conjunction with the reserve capacity;
16 in other words, the reservation quantity for each contract
17 and its reservation rate are billed to each customer based
18 on the amount of gas that was shipped under each
19 contractor -- contract by shipper.

20 In many cases, that involves more than one
21 delivery point. In -- in multiple cases, it involves
22 several delivery points consolidated under -- under one
23 transportation agreement for a shipper.

24 Q So the company produces an invoice, a paper copy
25 of an invoice, at the end of each month for each shipper;

1 is that correct?

2 A That's correct.

3 Q And what happens to that paper copy of the
4 invoice?

5 A It is sent to each shipper of -- of record. Or
6 in the case where a shipper has identified an agent, it's
7 sent to their agent for payment.

8 Q Does the company retain a copy, a paper copy, of
9 monthly invoices?

10 A We have not typically retained copies of
11 invoices, although we -- we started retaining copies after
12 this investigation began in 2006.

13 Historically, we had not had a need to retain
14 copies of invoices and -- and, basically, had never had a
15 -- a request from a customer or a shipper to provide a --
16 a duplicate copy of an invoice.

17 Q So even though the company does not retain paper
18 copies of the invoice, is the data available to go back
19 and --

20 A Data is available. And I think what we heard
21 this morning, that data has been provided in -- in
22 multiple forms.

23 It's fairly easy for us to provide a summary of
24 that billing data, which, early on in the investigation,
25 while it was still in the informal stage, we provided that

1 information in an Excel spreadsheet format, actually in
2 electronic format, for 2004 and 2005.

3 That data was included for each shipper contract
4 by month, volume by month, reservation quantities and
5 contract rate for each shipper by month for those two
6 years.

7 Q And I -- I don't want to side-track you too much
8 here. The -- the document that you just talked about, is
9 that the document that Ms. Fischer was referencing in her
10 testimony this morning?

11 A Yes, it was.

12 Q Could you explain what -- the discrepancy Ms.
13 Fischer noted in her testimony?

14 A Well, the specific discrepancy that I heard her
15 refer to is that she, in effect, compared the invoice
16 amounts and thought that the volumes for deliveries to the
17 City of Cuba in the invoice summary were higher than what
18 the data for the City of Cuba showed, and, in effect, used
19 that as the basis to make contact with the City of Cuba to
20 find out what the difference was.

21 The City of Cuba did not provide a copy of their
22 invoice from Missouri Pipeline Company, Missouri Gas
23 Company. City of Cuba provided an invoice that was sent
24 to them by Omega, who was acting as their agent.

25 So the -- the fact that there was a discrepancy

1 is not that surprising because it was from two different
2 companies.

3 Q Could -- could you explain to me the difference
4 in the relationship between the pipeline companies and
5 this Omega with respect to the City of Cuba?

6 A Well, from the -- from a pipeline standpoint, a
7 shipper is a party who has contracted for capacity and
8 utilizes that capacity on the pipeline system.

9 In the case of the City of Cuba, the Missouri
10 Pipeline and Missouri Gas Company has transportation
11 agreements with the City of Cuba, and the City of Cuba is
12 the shipper under those agreements.

13 The pipeline also allows any shipper to
14 designate another party as their agent. And in some
15 cases, it can be multiple parties. An agent can, in
16 effect, manage the capacity, act on behalf of the shipper
17 to provide nomination even for providing pill paying.

18 And that's the case that Omega was providing for
19 the City of Cuba, and Omega was acting as their agent.
20 City of Cuba is still the shipper in that case, and Omega
21 is their agent.

22 Q Can you give me an example? Are there -- are
23 there other agents out there, ONEOK or are there any other
24 entities --

25 A Certainly, there are. Case in point, here we

1 have Municipal Gas Commission. Municipal Gas Commission
2 acts as agent for three cities, St. James, St. Robert and
3 Waynesville.

4 In the case of Municipal Gas Commission, they
5 contract for capacity or for gas supply and, as an agency
6 relationship, provide a designation of ONEOK Gas Marketing
7 as the agent for those three cities.

8 The -- the case we have here to compare Missouri
9 Pipeline Company's bill to Omega's bill to the City of
10 Cuba would be akin to comparing Missouri Pipeline
11 Company's invoices for shipping to St. James, St. Robert
12 and Waynesville with an invoice to those cities from ONEOK
13 or, as I understand it, ONEOK invoices the Municipal Gas
14 Commission and Municipal Gas Commission turns around and
15 invoices those three cities for a bundled commodity
16 service.

17 There are two different agreements. There are
18 two different types of service. They're not related at
19 all in the end to what the actual bill to those cities
20 would look like because they involve something well beyond
21 just the transportation and the contracts for shipping gas
22 on this pipeline.

23 Q So in the context of the industry, are there
24 relationships between the pipeline companies and Omega and
25 Omega and, for example, the City of Cuba unusual, or are

1 these common?

2 A I think they're -- they're very common. And I
3 would say the -- for the most part, only the very largest
4 shippers on the pipeline, specifically, Missouri Pipeline,
5 Missouri Gas Company, but in -- in most cases, even on the
6 major interstates, only the major LDCs actually manage
7 their own capacity.

8 The smaller customers, whether they're
9 industrials or municipals, very typically use agency
10 agreements with any number of other parties to manage that
11 capacity and to match up the commodity supplies and the
12 administrative services necessary to get the gas delivered
13 on a daily basis and have that all show up at the point of
14 delivery for a given customer.

15 Q So the -- this relationship is common. Would
16 the Omega billing be comparable to the pipeline company's
17 billing?

18 A I would say they've got no relationship to each
19 other, for the most part. The pipeline's billing are
20 certainly covered by tariff.

21 They're covered by very -- the written contracts
22 and the terms and discounts under those agreements remain
23 in place regardless of who the agent for that particular
24 shipper may be.

25 Q In the context of -- of the business as it runs

1 day-to-day, would you change your record retention policy
2 in hindsight?

3 A Well, I -- I think we probably need to keep the
4 -- the way we keep them differently. From what I
5 understand this morning, it would be preferable to keep
6 those in a PDF format as opposed to the format that we're
7 currently keeping them in.

8 I -- I think outside of this investigation, I
9 would still not keep paper copies of them. Certainly,
10 there's -- there's probably better ways that we could keep
11 them, and -- and we'll probably change our -- our way of
12 doing that in the future.

13 Q Shifting gears a bit, I think there was some
14 discussion of the discovery process and how that's gone in
15 the context of -- of this case, and, actually, maybe even
16 before that. Could you tell me, you know, what your
17 perspective on how the discovery process has proceeded?

18 A Well, you know, going back to the -- to the very
19 beginning, you know, I think it was recognized that the --
20 the fundamental reason for looking at these pipelines and
21 their -- their business was because of the high cost of
22 gas subsequent to the hurricanes of 2005 and a need to
23 look at all facets of the components that go into the
24 delivered cost of gas.

25 We met with -- actually with the Commission in

1 agenda meeting as -- as late as December of 2005. I was
2 assured that the burden on the cus -- the companies for
3 completing that investigation would not be extensive and
4 we'd try to make that as reasonable as -- as possible.

5 The first time Staff showed up at the offices of
6 the company, they showed up with a subpoena and a
7 three-page list of documents that was supplementing the
8 request that they'd already made prior to the point that
9 they got there.

10 It included virtually, from -- from my
11 perspective, all -- in every record the company could
12 possibly produce.

13 We -- we provided an extensive amount of
14 information, you know, not just invoices, historical
15 invoices, contracts, ledgers, accounts payable, check --
16 check -- copies of checks and invoices and -- and --
17 anyway, it just goes on and on. Loan documents and
18 financial reports and access to the auditor's work papers
19 and -- I mean, it just -- I mean, for not just the current
20 year, but going back to 2004, 2005 and -- and into the
21 current year.

22 Q Do you have an estimate about how much time
23 you've spent in responding to discovery requests?

24 A Well, it's been a significant amount of my time.
25 I think one of the things that we tend to lose track of in

1 this company is -- is an effort to be as cost conscious
2 and cost efficient as possible. We -- we do not have a
3 large Staff. We're currently down to less than ten people
4 total employees with the company.

5 I can remember a meeting that I had with the
6 Staff of this Commission in March of last year where all
7 of the people that had worked on the investigation for the
8 Staff were in the room. That's without the attorneys.
9 And there was 12 people there. So we had 12 people from
10 Staff investigating a company that's got less than ten
11 employees.

12 Q And has complying with the discovery requests
13 been a burden on the company and yourself?

14 A I -- I think it --

15 MR. REED: Objection. Relevance.

16 JUDGE WOODRUFF: Overruled. You can go ahead
17 and answer.

18 A You know, I -- I have spent a significant
19 portion of my time for this year responding to data
20 requests, subpoenas, spending time for depositions,
21 looking for documents, providing testimony and -- and
22 surrebuttal testimony and reviewing motions and -- and an
23 ongoing process that -- that has certainly preempted in
24 many cases running the company that we're talking about
25 here.

1 Q And shifting gears on you again, in some of the
2 excerpts that I believe Staff read from your deposition,
3 there was an indication that you believed that you had
4 found documents referenced by Mr. Lodholz in his
5 deposition.

6 Is it -- is it the case that what you found you
7 later determined not to be what he was referencing?

8 A Well, if you look closely at -- at the
9 deposition that Mr. Lodholz gave, he -- he kind of jumped
10 around. I mean, he started out that deposition by saying
11 he'd never given a deposition before and he was certainly
12 nervous. So it's a little -- little easy for him to -- to
13 understand that he might be less than specific in terms of
14 what he was referring to.

15 He did talk about top sheets to invoices. Then
16 he talked about a summary sheet. It's easy to understand
17 that there would be confusion on that because the summary
18 sheet, which is the sheet that has now been produced, is
19 the sheet that shows a summary by -- for the month of all
20 revenues by company, by shipper.

21 And it was not a document that had been produced
22 to Staff prior to that deposition. So there was no
23 context and no -- nothing that -- that Staff had that
24 would reference what a summary sheet would look like, even
25 though it was a -- it was a docket -- excuse me -- a term

1 that Mr. Lodholz used in his deposition.

2 What I subsequently received a data request for
3 was for the invoices that Mr. Lodholz referred to in his
4 deposition. I asked for a copy of all invoices that were
5 in Mr. Lodholz' file and produced those in the deposition
6 that -- that was read from this morning, and in the
7 context that I thought I had provided all of the invoices
8 that B.J. had referred to in his file. And the only thing
9 that was in there was from 2006.

10 Q And -- and B.J. is Mr. Lodholz?

11 A Excuse me. Yes. Mr. Lodholz.

12 Q And since the time of that deposition, have you
13 found and produced to Staff the actual documents that
14 Mr. Lodholz was referencing in his deposition?

15 A Well, what Mr. Lodholz was referring to was
16 actually the summary page, which is also a top sheet
17 because it's typically --

18 MR. WOODSMALL: Your Honor, I think at this
19 point I'm going to object. The witness is speculating as
20 to what Mr. Lodholz was referring to in his deposition.
21 There -- there's no -- we haven't established any basis
22 that Mr. Ries knows what he was referring to or has any
23 unique knowledge of that. So this is entirely speculation
24 as to what was being referred to.

25 JUDGE WOODRUFF: Did you have a response?

1 MR. DEFORD: Yes. I have an exhibit.

2 JUDGE WOODRUFF: Okay.

3 MR. REED: Judge, before we begin with this,
4 we're going to need a couple minutes to look at it. It's
5 something brand new.

6 JUDGE WOODRUFF: Okay.

7 MR. REED: Apparently just prepared. Is there a
8 date on this? I don't even see a date.

9 MR. DEFORD: We actually received this
10 affidavit, it's the cover sheet for these documents,
11 Friday.

12 MS. SHEMWELL: It's not dated, though, right?

13 MR. REED: Well, my point is it's -- it hasn't
14 been disclosed before. I just -- we'd just like a minute
15 to take a look at it, Judge, if we could.

16 JUDGE WOODRUFF: Take as long as you need. We
17 can go off the record for a moment.

18 (Pause in proceedings.)

19 JUDGE WOODRUFF: All right. Let's go back on
20 the record. Is Staff ready to proceed at this point?

21 MR. REED: Yes, Judge. And I have an objection
22 to state.

23 JUDGE WOODRUFF: All right. And it hasn't been
24 offered at this point.

25 MR. REED: It has not, but it's not premature,

1 Judge, because I think that Mr. DeFord is eliciting
2 testimony about this affidavit, which is hearsay. So any
3 reference to what's contained in the affidavit or any
4 other out-of-court statement would, of course, be hearsay.

5 And at least at this point, I want to make the
6 objection before the question gets out and -- and an
7 answer is given, Judge.

8 JUDGE WOODRUFF: All right.

9 MR. WOODSMALL: And to amplify on that, your
10 Honor, I agree with what Mr. Reed said. Further, just to
11 amplify the importance of the hearsay rule here, this
12 talks about -- one, the witness isn't here to be
13 cross-examined.

14 This document talks about attached documents.
15 We have no way to know based upon any cross-examination
16 whether the documents that are attached are the ones
17 actually referred to or whether something was changed out.
18 The witness -- the person who allegedly executed this
19 isn't available.

20 Finally, I believe that the best evidence rule
21 would probably apply here, which would require the
22 original of this document.

23 JUDGE WOODRUFF: Go ahead, Mr. DeFord.

24 MR. DEFORD: May I respond? Your Honor, the
25 issues that are now raised are exactly those that required

1 us to last week request a continuous. We had no idea what
2 we were going to have to come up with in order to defend
3 against the allegation of destruction of documents.

4 If we had time, in a perfect world, we would
5 have subpoenaed Mr. Lodholz. We would have had him here
6 with live testimony. The Commission denied our request
7 for a continuance.

8 JUDGE WOODRUFF: Right. I'm going to allow you
9 to go forward with this document. I'm not ruling on its
10 admissibility at this point because it's not been offered
11 yet.

12 And my thinking on that is that this, in fact,
13 is only a portion of the -- of the case, which is the
14 Staff's Motion for Sanctions. I'm going to allow it in in
15 this case, but I might not allow it in for the case in
16 chief, simply because this is a -- it's a -- it's a motion
17 that was filed more recently as Mr. DeFord indicated.

18 And so we're going to allow a little bit more
19 latitude under these circumstances. So you can go ahead
20 and proceed and ask your questions.

21 Q (By Mr. DeFord) Sir, I think we should step
22 back. I think the question that was pending before the
23 objection was whether or not you had located the documents
24 that Mr. Lodholz referenced in his deposition.

25 A We did go back to -- to Mr. Lodholz' files and

1 locate what is generally referred to here as summary pages
2 or summary sheets, also referred to in his deposition as
3 front sheets or front pages.

4 And they are, in fact, the -- the summary of
5 invoices by month of the invoices that were sent out. It
6 is, in fact, the information that was provided monthly to
7 Mr. Lodholz for financial recordkeeping purposes.

8 As far as I know, it's the only thing he
9 actually received and retained in his records.

10 Q And you confirmed with Mr. Lodholz that those
11 were the documents that he had referenced?

12 A I --

13 MR. REED: I'll object, your Honor. I'm going
14 to be protecting the record here. I object to eliciting
15 hearsay because he's asked now what Mr. Lodholz confirmed
16 to him. That's clearly hearsay.

17 JUDGE WOODRUFF: It clearly is hearsay, but I
18 will allow it under these circumstances. You can go -- so
19 your objection is overruled.

20 A After -- after the motion was filed in -- in the
21 destruction of documents issue, I went back to Mr. Lodholz
22 and -- and pointed out to him what he said in his
23 deposition. And he said, Oh, no, that's not what I meant.
24 What I meant was the summary pages.

25 And I just asked him if he would be willing to

1 provide an affidavit to that extent, which is what has
2 been provided here.

3 Q With that regard, do you recognize the document
4 that I've handed you that's been marked for purposes of
5 identification as Exhibit 311?

6 A Yes, I do.

7 Q Could you describe for the record what that
8 document is?

9 A It's an affidavit from B.J. Lodholz describing
10 the difference between what he said in his deposition and
11 what he actually had or thought he was referring to, which
12 are the summary pages.

13 And then attached to that are the summary pages
14 for the invoices, and -- and it appears to be for all
15 three years, 2003, 2004, and 2005.

16 Q And that's a complete and accurate set of the
17 documents that you discovered in the files that
18 Mr. Lodholz had left?

19 A It is -- as far as I know, yes, it is.

20 Q Mr. Ries, have you caused any further analysis
21 of these documents to be performed since their discovery?

22 A Well, to verify their accuracy, I asked
23 Mr. Mertz, who is the current Controller, to go back and
24 do a spot check against these summary pages against the --
25 the invoices that we had previously provided to Staff.

1 And in each and every case, they matched up identically to
2 a -- to the invoices that had been provided to the
3 shippers.

4 Q So they matched the recreated invoices, 2004
5 through first quarter 2006?

6 A That's true.

7 Q Did you cause any additional analysis to be made
8 of these materials?

9 A Well, one of the things that Staff has from time
10 to time complained to me about that they haven't been able
11 to match up the invoices with the financial statements of
12 the company and whether or not -- and if they couldn't do
13 it, how the auditors could do that.

14 I had Mr. Mertz take these summary pages and
15 compare them up with the -- the revenue account for
16 Gateway Pipeline Company, and -- and they matched up
17 beautifully each and every month.

18 Q And -- and do you have copies of those documents
19 that -- that Mr. Mertz performed under your direct
20 supervision and control?

21 A Yes, I do.

22 MR. DEFORD: Your Honor, I'd ask that we late
23 file an exhibit that Mr. Ries will be able to stand cross
24 on at a later time. We don't have copies of those with us
25 at the time.

1 JUDGE WOODRUFF: You'll file them before he
2 testifies in the rest of the case?

3 MR. DEFORD: Correct. Correct.

4 JUDGE WOODRUFF: Do you want to mark it as 312?

5 MR. DEFORD: Do we already have a 312? I just
6 made that mistake with 311.

7 JUDGE WOODRUFF: Not with this case.

8 MS. DAVENPORT: No. We don't have 312.

9 JUDGE WOODRUFF: Okay. What would that be
10 called?

11 Q (By Mr. DeFord) Mr. Ries, how would you best
12 describe that?

13 A Bank -- bank revenue --

14 Q Reconciliation?

15 A -- reconciliation.

16 MR. DEFORD: With the invoice summary sheets.

17 JUDGE WOODRUFF: All right.

18 Q (By Mr. DeFord) Let me shift one more time on
19 you. I think I have one last line for you. There's been
20 some discussion of the -- the company's willingness or
21 refusal to provide the invoices for calendar year 2003.
22 Could you describe what the company's concerns or issues
23 are with respect to producing that material?

24 A In the -- we had a prehearing conference in June
25 where we spent a great deal of time talking about this

1 particular issue, and I think I covered it on at least
2 three different occasions in depositions that I can recall
3 right now.

4 When -- when the company bought -- or Gateway
5 bought these pipeline companies from Utilicorp, we did
6 discover some financial -- actually, not the financial,
7 but the volume tracking system, which is the very core of
8 the invoicing process.

9 We had some difficulties with it. We spent a
10 good deal of the -- of the 2002 and in 2003 actually
11 redesigning and developed a new system. And -- and not
12 until 2004 did we have a great deal of confidence in the
13 accuracy of the data that we were producing through this
14 new volume tracking system, again, keeping in mind that
15 we're tracking BTU and volumes by delivery point in every
16 shipper for every day of the year.

17 The -- I thought we had agreed in that
18 prehearing conference that we would provide the data from
19 2004, 2005 and first quarter of 2006 and that would be
20 sufficient for what Staff's needs were.

21 And in this case, keep in mind, at that point in
22 time, we were still talking about the original complaint
23 case, which was the 0378 case, which is an over-earnings
24 case, and 2004 was supposedly the test year for that
25 proceeding.

1 It wasn't until now that I understand that that
2 was not an actual agreement, that 2004/2005, first quarter
3 of 2006 would be sufficient, although, certainly, Staff
4 has continued to ask for information from prior years.

5 The -- the difficulty is -- and I believe I said
6 is that we could provide it. We have the data. It's just
7 onerous and burdensome to produce that information in the
8 -- in the level of detail that Staff asked for.

9 Q Mr. Ries, is -- is there anything else that --
10 that the Staff witnesses have raised this morning that you
11 believe needs some further explanation from the company?

12 A Well --

13 MR. WOODSMALL: Your Honor, I believe that
14 question may be a little self-serving just to give this
15 witness broad latitude to answer anything he wants to. If
16 the -- if the attorney wants to ask him questions --

17 JUDGE WOODRUFF: I'll sustain the objection.

18 MR. DEFORD: Just a moment, your Honor. I'll
19 look through my notes.

20 JUDGE WOODRUFF: Sure.

21 MR. DEFORD: Mr. Ries, I think that's all I
22 have.

23 JUDGE WOODRUFF: Mr. DeFord, did you wish to
24 offer 311 at this time?

25 MR. DEFORD: Yes. I'd offer 311, and we will

1 submit 312 to the Commission once it's available.

2 JUDGE WOODRUFF: Once 312 is offered, we'll deal
3 with the Commission and objection to that. But right now
4 311 has been offered. Are there any objections to its
5 receipt?

6 MR. REED: Yes.

7 JUDGE WOODRUFF: What's your objection?

8 MR. REED: It's hearsay.

9 MR. WOODSMALL: I would agree with that, your
10 Honor.

11 JUDGE WOODRUFF: Those objections will be
12 overruled, and 311 will be admitted into evidence.

13 (Exhibit No. 311 was admitted into evidence.)

14 MR. WOODSMALL: Point of clarification, your
15 Honor. You mentioned earlier that -- I don't know the
16 exact words you used, but that this issue is somewhat
17 ancillary to the main scope of the complaint.

18 Are you -- are you receiving this into evidence
19 just for this issue --

20 JUDGE WOODRUFF: Yes.

21 MR. WOODSMALL: -- or -- okay.

22 JUDGE WOODRUFF: Thank you. Now that
23 clarification, this is in evidence for the question of the
24 destruction of documents complaint -- or motion. It's not
25 necessarily into evidence -- or not in evidence for the

1 underlying case.

2 If you want to put it in for the underlying
3 case, you'll need to resubmit it at that time. Is that
4 clear? You look confused Mr. DeFord. I'm sorry if I
5 confused you.

6 MR. DEFORD: I'm very confused, but I will offer
7 this again.

8 JUDGE WOODRUFF: All right. We'll -- we'll deal
9 with it again, then, at that point.

10 MR. DEFORD: I mean, will it have a separate
11 exhibit number?

12 JUDGE WOODRUFF: I guess we'll deal with it when
13 -- when that question arises.

14 MR. DEFORD: Thank you, your Honor.

15 JUDGE WOODRUFF: All right. And for
16 cross-examination, we'll begin with AmerenUE.

17 MS. DURLEY: I have no questions.

18 JUDGE WOODRUFF: Okay. Public Counsel is not
19 here at the moment. Municipal Gas Commission?

20 MR. WOODSMALL: Just real briefly, your Honor.

21 CROSS-EXAMINATION

22 BY MR. WOODSMALL:

23 Q Good afternoon, sir. First off, you were --
24 maybe you weren't asked this. But you provided an
25 illustration of what you meant by an agent, and you were

1 talking about MGCM and the ONEOK and -- how do you come by
2 that knowledge regarding how the MGCM agency arrangement
3 works?

4 A Well, we -- we get that from the shippers
5 themselves. In this case, the shippers and the shippers
6 of record are the cities of St. James, St. Robert and
7 Waynesville.

8 Those cities are the ones that -- that give us
9 that information in the context of telling us who they
10 want to act as their agent or who, in effect, represents
11 them or who we need to contact in -- in the case of a --
12 of a discrepancy in the day-to-day operations.

13 Q Okay. Have you seen the transportation and
14 supply agreement between MGCM and the three
15 municipalities?

16 A No, I have not.

17 MR. WOODSMALL: Okay. No further questions,
18 your Honor.

19 JUDGE WOODRUFF: Thank you. And for Staff?

20 MR. REED: Yes. Thank you.

21 CROSS-EXAMINATION

22 BY MR. REED:

23 Q When did you talk to Mr. Lodholz?

24 A Well, it was -- it was after the being, the
25 motion. So it was -- it's been the last two weeks.

1 Q Did you speak with him on the phone?

2 A Yes.

3 Q Did you go see him?

4 A No.

5 Q Where is he?

6 A Well, I used his home telephone number, which is

7 where I -- where I found him.

8 Q And the affidavit was executed in St. Charles.

9 That's where you mailed it, right?

10 A I actually ended up -- in the context of a draft

11 proposal suggested that this is something that would

12 suffice, and I e-mailed it to him. I didn't mail it to

13 him.

14 Q Did you prepare the affidavit?

15 A No, I did not.

16 Q Who prepared the affidavit?

17 A Our attorneys.

18 Q Who? Which attorney?

19 A Probably Tino Monaldo.

20 Q So you e-mailed it. It was executed in St.

21 Charles and returned to you how?

22 A It was dropped off at the St. Peters office.

23 Q Why isn't it dated?

24 A I don't know.

25 Q How do we know if this was actually last week or

1 last month? Based on this document, when we look at it,
2 how do we know?

3 A I don't know.

4 Q I want to ask you about the sale of Omega or
5 MO-WOOD. You were involved in that, correct?

6 A That's correct.

7 Q You dealt with the gentleman from a company
8 called Tordis whose name was Abel Mojica. Do you remember
9 him?

10 A Yes, I do.

11 Q During the course of dealing with regard to the
12 sale transaction, you exchanged e-mails with Mr. Mojica,
13 did you not?

14 A I don't know what I had exchanged with him.
15 Most of my involvement in that transaction was through the
16 attorneys that were working on the transaction.

17 Q Did you or did you not send to -- any e-mails to
18 Abel Mojica?

19 A Right -- I can't say right here. I don't know.

20 MR. DEFORD: Your Honor, I'm going to object to
21 the relevance of this. I'm not sure what this has to do
22 with the destruction of documents.

23 MR. REED: I think you'll see if I can be given
24 a little bit of latitude, Judge. I'll certainly get to
25 that.

1 JUDGE WOODRUFF: All right. I'll allow it. Go
2 ahead.

3 Q (By Mr. Reed) Well, I have an e-mail here you
4 sent to Mr. Mojica. You'll recall some discussion and
5 some e-mails with -- with Tordis regarding their plan to
6 allow the regulators, meaning the Public Service
7 Commission access, to the Omega records. Do you recall
8 that?

9 A I don't know.

10 Q You don't recall?

11 A I -- specifically, what are you referring to?

12 Q I'll hand you what's been marked as Exhibit No.
13 261. I'm going to mark it as HC. It's a deposition --
14 it's a deposition exhibit from a different -- from a -- a
15 deposition of a gentleman named Terry Matlock. I'm going
16 to show you the last page of this exhibit.

17 JUDGE WOODRUFF: Do we need to go in-cam --
18 in-camera?

19 MR. REED: Judge, I don't think so.

20 JUDGE WOODRUFF: Okay.

21 Q (By Mr. Reed) Does that refresh your
22 recollection?

23 A You're talking about this one line that I sent
24 to -- to him?

25 Q Yes. In response to his e-mail.

1 A Okay. Yes.

2 Q It does refresh your recollection?

3 A Yes.

4 Q All right. Mr. Ries, in response to
5 Mr. Mojica's e-mail to you indicating that, On the
6 regulatory issue, we are now planning on allowing the
7 regulators access to our documents, your response was, I
8 can't express my disappointment enough. Correct?

9 A Yes.

10 Q All right. In your e-mail to Mr. Mojica
11 regarding Omega files, you indicate, Don't give them
12 squat. Do you remember that?

13 A No.

14 MR. REED: This is Exhibit 262-HC. I have only
15 one copy right now, Judge, but I'll provide additional
16 copies.

17 JUDGE WOODRUFF: This is also from the Matlock
18 deposition?

19 MR. REED: Yes.

20 Q (By Mr. Reed) Do you remember?

21 A Well, it was kind of an offhanded comment. But
22 it appears to be authentic.

23 Q Mr. Ries, isn't -- isn't the expression, Don't
24 give them squat, pretty much the way you've addressed the
25 Public Service Commission investigation in this case --

1 MR. DEFORD: Objection. Argumentative.

2 Q (By Mr. Reed) -- from the outset?

3 JUDGE WOODRUFF: Sustained.

4 MR. REED: Judge, I'll move for admission of
5 Exhibit 261, I've marked it HC, and 262-HC.

6 JUDGE WOODRUFF: 261 and 262 two have been
7 offered. I assume opposing counsel has seen a copy of
8 that?

9 MR. REED: They have, and I'll provide
10 additional copies.

11 MR. DEFORD: We have, your Honor.

12 JUDGE WOODRUFF: All right. Are there any
13 objections to its receipt? Hearing none, they will be
14 received into evidence.

15 (Exhibit Nos. 261-HC and 262-HC were admitted
16 into evidence.)

17 JUDGE WOODRUFF: Anything else, Mr. Reed?

18 MR. REED: That's all.

19 JUDGE WOODRUFF: Okay. Thank you.

20 MR. REED: That's all. Thank you.

21 JUDGE WOODRUFF: Then we'll go to questions from
22 the Bench. Commissioner Murray?

23 CROSS-EXAMINATION

24 BY COMMISSIONER MURRAY:

25 Q Good afternoon, Mr. Ries.

1 A How are you?

2 Q I just have a few questions for you. Who was
3 the shipper of gas to the City of Cuba?

4 A City of Cuba.

5 Q Was the shipper to --

6 A City of Cuba has been a shipper on the pipeline
7 system since at least 1999 is when the current contract
8 was entered into. They're still the shipper and have, as
9 far as I know, been -- been the shipper of record for all
10 those years. From time to time, the City of Cuba would
11 ask other entities to act as their agent in that process.

12 Q And did you have a direct contract with the City
13 of Cuba?

14 A Again, that's what I was referring to was
15 Missouri Pipeline and Missouri Gas Company have those
16 contracts, and they were originally put in place in 1999.

17 Q With the City?

18 A With the City. And still are in place.

19 Q And does MPC/MGC have a contract with Omega
20 related to shipments to the City of Cuba?

21 A No. Omega does have a contract on the
22 pipelines, Missouri -- MPC and MGC that began in February
23 of 2005.

24 Q And that contracts to do what?

25 A Well, it's to ship gas on the pipelines. And in

1 the case of Omega's agreement, it goes all the way to the
2 end of the pipeline for -- for ultimate delivery to Fort
3 Leonard Wood, but can also include deliveries to any other
4 point along the way.

5 Q And is Omega a -- an affiliate of MPC/MGC?

6 A Omega was an affiliate up until June 1st of this
7 year, and, also, by its contract, pays the highest rate of
8 any other shipper on the pipeline.

9 Q Who invoices the City of Cuba?

10 A Well, there's actually two invoices. And to be
11 very specific, in Ms. Fischer's testimony this morning,
12 she said she compared the invoice from MPC to an invoice
13 that she received from the City of Cuba.

14 There are actually two different invoices. MPC
15 invoices the City of Cuba for transportation on MPC and
16 MGC, the pipeline companies. Omega has been the agent for
17 the City of Cuba since June 1st of 2003.

18 Since that time, Omega has actually paid that
19 invoice. And then Omega invoices the City of Cuba for the
20 services that it provides, not just including the
21 transportation, but also for the commodity in the handling
22 of the actual natural gas that's delivered to the City.

23 Q So it was Omega that remitted payment for those
24 invoices?

25 A To MPC and MGC, yes.

1 Q And did MPC/MGC submit any invoices to Omega?

2 A Well, I -- again, I -- I think what I thought I
3 just said is MPC and MGC, the pipeline companies, billed
4 the City of Cuba as shippers are allowed to do.

5 In this case, the City of Cuba is allowed to
6 designate other parties as their agent, including for the
7 purpose of receiving and paying the invoice for
8 transportation.

9 Q Okay. Let me stop you there. Your answer that
10 MPC billed the City for transportation includes billing
11 Omega as its agent?

12 A Well, we send the bill to Omega as its agent,
13 yes.

14 Q How are the invoices actually generated?

15 A Well, we talked about that a little earlier.
16 The -- the invoices themselves are not that big of an
17 issue. It's the supporting documents that goes with it
18 which is what was included.

19 Q And what I -- and what I'm looking for is how is
20 the physical invoice actually generated?

21 A We use a -- a fairly large database program.
22 Actually, it's run out of Excel. But it -- it includes
23 the volumes for each point of delivery for each day of the
24 calendar year matched up with the BTU value of the gas
25 that's flowing through the system for that -- each and

1 individual day with a daily calculation that subtracts
2 fuel lost and then accounted for.

3 It also includes the nominations and at the end
4 of that calculation process, the in balance that each
5 shipper has on each individual day.

6 Q And this Excel program does all those
7 calculations and then translates that into a preformatted
8 through some kind of software invoice; is that correct?

9 A Yes. Yes. In effect, it takes -- takes the
10 data that occurs at the ends of each month. So it's the
11 total flow volume for that month multiplied times the
12 contracted rate for the shipper, and then generates an
13 invoice off of the -- the volume metric data.

14 Q And that calculation that is done by that Excel
15 program and then transferred into the form of an invoice
16 is nowhere retained within that database?

17 A Well, it -- it's there. I mean, it -- it's
18 there in the -- in the context of what we do is we went
19 back and re -- reprinted it. I mean, we just printed it
20 from the database itself.

21 Q Well, that doesn't sound like that would have
22 been a very complicated or time-consuming process.

23 A Well, except for the fact that what was being
24 asked for was to go back for over two years worth of data.
25 And each and every one of those are done on a calendar

1 year basis. And the -- the inter-relationship from
2 calendar year to calendar year is not as -- as smooth as
3 one might hope. But --

4 Q If this Excel program had already translated --
5 had already made the calculations for each invoice that
6 was submitted and had that in the database somewhere, why
7 couldn't you just go back and re-access those invoices
8 that had been created in the database and just reprint
9 them?

10 A And that is -- I mean, that is what we did. But
11 it -- I mean, it did -- I mean, it did take some time.

12 Q All right. Now, once the invoices are
13 generated, how are they actually sent?

14 A They're sent via U.S. mail.

15 Q So it's a hard copy that's generated --

16 A In most cases, yes.

17 Q -- and mailed? And who, again, is Mr. Mojica?

18 A He is a representative of Tordis Capital
19 Resources who is the buyer of Omega Pipeline Company.

20 Q And what information would he have had that the
21 Staff was seeking?

22 A I -- I think, as I understand it, the
23 information Staff was seeking in -- in infinite detail was
24 whether or not Tordis had actually bought 100 percent of
25 the interest of Omega or whether or not there was still

1 any ongoing affiliate relationship between the pipeline
2 companies and Tordis or Omega or MO-WOOD.

3 Q And what was your reason for not wanting him to
4 release information to the Staff?

5 A Well, what was being asked for was a great deal
6 of information about a non-regulated agreement, being
7 Omega, with their customers, and I had a concern the
8 disclosure of that information.

9 Q Being asked about specific customer information?

10 A It's specific customer information between Omega
11 Pipeline Company as a marketer and its customers.

12 Q And did you not feel that any confidential
13 information that was released would be protected?

14 A I was very much concerned about whether or not
15 the confidentiality of that information was being shared
16 with other customers who were, in fact, in some cases,
17 competitors of Omega and whether or not that information
18 would be inappropriately disclosed.

19 Q And did you have any reason to believe that it
20 was being so shared?

21 A I -- I had reason to believe that going as far
22 back as 2002 as to whether or not there was some
23 inappropriate communication going on between Staff and
24 certain customers.

25 Q And what gave you that reason?

1 A It was based on a set of data requests that I
2 responded to back in 2002.

3 Q Is that in your testimony somewhere?

4 A I think it will probably come in later on. It's
5 -- I think it's -- it's actually somewhere.

6 Q Okay. I'm going to go back to Exhibit No. 53-HC
7 for a moment. Do you have a copy of that?

8 A I do not.

9 Q Perhaps your counsel can share one with you. It
10 is the revenue -- revenue -- let's see what we called it.

11 A Summary, revenue summary?

12 Q Revenue summary that Ms. Fischer referred to as
13 the spreadsheet that you had provided in January.

14 A Yes. On their initial visit, they were asking
15 for invoicing information, and I offered this up as a -- a
16 summary of all charges by shipper, including all of the
17 applicable components that were going -- that goes into
18 calculating an invoice for each shipper.

19 Q Okay. And on that, the City of Cuba is listed
20 as a shipper, correct?

21 A That's correct.

22 Q And as are the other cities that are -- have
23 designated another agent, and I don't have the exact name
24 of the agent, but they've also designated an agent; is
25 that correct?

1 A Yes.

2 Q Now, on the bottom of the first page, the Energy
3 Marketing that's listed there -- that's not a confidential
4 name, is it, very bottom line?

5 A As far as -- as far as I know, no, because it
6 was a shipper on Missouri pipeline and Missouri Gas at the
7 time.

8 Q Okay. And that -- that was ONEOK Energy
9 Marketing, correct?

10 A That's -- that's correct.

11 Q Now, who was ONEOK shipping to?

12 A ONEOK --

13 Q And you don't -- I mean, if it -- if it's
14 indicating confidential information, don't say it. But --

15 A Actually, at the time, ONEOK held a contract on
16 the pipelines and was the commodity supplier to Fort
17 Leonard Wood.

18 Q I think we call that Secret Customer D; is that
19 right?

20 JUDGE WOODRUFF: That's correct.

21 A Okay. Sorry.

22 JUDGE WOODRUFF: Which I guess is no longer
23 secret.

24 Q (By Commissioner Murray) And you also -- or
25 also on page 2, Omega Pipeline Company is shown; is that

1 correct?

2 A Well, since this was printed off of an Excel
3 spreadsheet, what I would point out is that in the listing
4 of customers, ONEOK Energy Marketing was a shipper in
5 January of 2005.

6 And then effective February 1st, which is at the
7 top of the next page, you -- you'll notice Omega Pipeline
8 Company now had a contract. And in the first month of
9 January, it did not. In effect, that was the month in
10 which ONEOK lost the contract to the Fort and Omega became
11 the shipper to the Fort.

12 Q Okay. So everything that is shown on the line
13 for Omega Pipeline Company or previously on the line for
14 ONEOK is for shipments to Fort Leonard Wood?

15 A That's true.

16 COMMISSIONER MURRAY: I think that's all I have.
17 Thank you.

18 JUDGE WOODRUFF: All right. Thank you. I don't
19 have any questions, so we'll go to recross. Ameren?

20 MS. DURLEY: No.

21 JUDGE WOODRUFF: Public Counsel's not here.
22 Municipal Gas Commission?

23 MR. WOODSMALL: Yes, just briefly. And if I get
24 into confidential information, please let me know.

25 RECROSS EXAMINATION

1 BY MR. WOODSMALL:

2 Q You were asked questions about Exhibit 53-HC by
3 Commissioner Murray. If you -- turning to the third and
4 fourth page, the first and second page have to do with MPC
5 charges, Missouri Pipeline Company. An the third and
6 fourth pages have to do with Missouri Gas Company charges;
7 is that correct?

8 A That's correct.

9 Q Okay. And on the fourth page, I believe you
10 were discussing earlier that for January of 2005, ONEOK
11 Energy was the -- was the agent or was the shipper for the
12 Fort; is that correct?

13 A Actually, it was the shipper.

14 Q Okay. The shipper for the Fort. And starting
15 in February 2005 Omega Pipeline took over that role; is
16 that correct?

17 A It became the shipper, yes.

18 Q And can you tell me, if anything, how -- don't
19 give me the numbers, but how did the commodity rate change
20 between January when ONEOK was doing it and February when
21 Omega Pipeline took over that role?

22 A I would say the substantive difference was ONEOK
23 was providing service on a month-to-month basis. And
24 effective February 1st, 2005, Omega entered into a
25 ten-year agreement and committed to shipments for ten

1 years on -- both on MGC, and in -- in regard to that, did
2 receive a small commodity discount.

3 Q When you say small, you mean on a nominal basis,
4 not on a percentage basis?

5 A I -- compared to the total bill, it was probably
6 the least amount of discount that any shipper would
7 otherwise expect.

8 Q It was certainly enough to push ONEOK out of
9 that role, wasn't it?

10 A I think the difference was -- is that ONEOK had
11 not bid on the contract with the Fort that in effect
12 allowed Omega to become the contracted shipper to the
13 Fort.

14 Q Looking at this chart, there is another customer
15 whose contract terminated in April. Do you see that?

16 A Yes.

17 Q Can you tell me --

18 A We -- we refer to that as Secret Customer No. C.

19 Q C. Okay. Can you tell me who took on the role
20 of shipping for that customer?

21 A In this case, this customer had held their own
22 transportation agreement on the pipeline system. They --
23 they were their own shipper and had an agency relationship
24 and elected to discontinue being their own shipper and had
25 the commodity provided to them at the city gate in lieu of

1 providing their own shipping.

2 Q Who -- who had the contract with the pipelines
3 once this contract had terminated -- once this contract
4 terminated in order to provide the commodity to this
5 customer?

6 A Omega Pipeline Company held its own capacity on
7 the pipelines and used that capacity to make deliveries to
8 this point of delivery.

9 MR. WOODSMALL: Okay. I have no further
10 questions. Thank you.

11 JUDGE WOODRUFF: All right. Recross from Staff?

12 MR. REED: No, thank you.

13 JUDGE WOODRUFF: Okay. Any redirect?

14 MR. DEFORD: Thank you, your Honor. Just a
15 couple.

16 REDIRECT EXAMINATION

17 BY MR. DEFORD:

18 Q Mr. Ries, I think you were asked some questions
19 about the e-mail correspondence you had with Mr. Mojica,
20 Exhibits 261 and 262. Do you recall that?

21 A Yes.

22 Q Would you say that your level of frustration was
23 rather high when you sent those e-mail?

24 A I would say it was nearly a crescendo. We had
25 gone through a -- an extensive --

1 MR. REED: Your Honor --

2 A -- prehearing conference --

3 JUDGE WOODRUFF: There's been an objection.

4 MR. REED: I'm objecting to the narrative form
5 of the answer. The question has been answered, and
6 anything beyond the original answer is narrative and
7 should be stricken.

8 JUDGE WOODRUFF: I'll sustain that. If you want
9 to ask another question --

10 MR. DEFORD: Your Honor, it's redirect. I
11 can't --

12 JUDGE WOODRUFF: You can ask questions. It
13 can't be a narrative response.

14 MR. DEFORD: Fair enough.

15 Q (By Mr. DeFord) Would you characterize your
16 e-mail to Mr. Mojica as sarcastic?

17 A Yes.

18 Q Why were you sarcastic in responding to
19 Mr. Mojica?

20 A Because, in my viewpoint, Staff was continuing
21 to ask for extensive discovery on a company that was no
22 longer affiliated with the pipelines and well beyond any
23 reasonable amount of discovery relative to what its
24 affiliation was with the pipeline companies.

25 Q And in spite of your frustration, after Omega

1 consented to you testifying and disclosing information
2 with respect to Omega's business transactions prior to the
3 sale, were you deposed by Staff?

4 A Yes.

5 MR. REED: Your Honor, I object --

6 A Yes, I was.

7 JUDGE WOODRUFF: Wait for the objection. What's
8 your objection?

9 MR. REED: I'll withdraw it. The question's
10 been answered.

11 JUDGE WOODRUFF: All right.

12 Q (By Mr. DeFord) And did you give extensive
13 testimony in those depositions with respect to Omega
14 issues?

15 A Well, I believe last count I had was almost five
16 complete days.

17 Q Thank you, Mr. Ries. You had an exchange with
18 Commissioner Murray about the relationship between the
19 pipeline companies and Omega. Would it be fair to state
20 that the pipeline companies would do all of the same types
21 of things for any other shipper or marketer?

22 A Yes.

23 Q So if ONEOK were to ask the pipeline companies
24 to do the things that Omega was doing, it would do those
25 for ONEOK as well?

1 A Yes. And us.

2 MR. DEFORD: Thank you, your Honor. That's all
3 I have.

4 JUDGE WOODRUFF: All right. Thank you. And you
5 can step down at this point, then. Mr. DeFord, did you
6 have any other evidence on this question?

7 MR. DEFORD: No, your Honor, we don't.

8 JUDGE WOODRUFF: All right. At this point, I
9 believe that concludes the testimony regarding the Motion
10 for Sanctions. Is that everyone's understanding?

11 MR. REED: That's correct. I do have an
12 additional verbal oral motion I'd like to make.

13 JUDGE WOODRUFF: All right. Go ahead.

14 MR. REED: I just wanted to -- in light of the
15 affidavit that came in this afternoon, Judge, I wanted to
16 point out to the Commission that Mr. Lodholz gave a
17 deposition, and he had the ample opportunity to correct
18 that deposition through the errata sheet, which was not
19 done.

20 What we have here is an affidavit that's --
21 that's brought in this morning, that's presented, and even
22 though it's hearsay and it's not disclosed in a timely
23 manner, according to, I think it's 386, the statute
24 dealing with Administrative Hearing Rules, given the
25 circumstance of Mr. Lodholz's testimony coming into

1 evidence today, which is what happened, I would like the
2 Commission to consider this motion that the Respondents be
3 directed to provide to the Staff the address and phone
4 number for Mr. Lodholz because we don't have that
5 information, and that the Commission consider allowing the
6 Staff to subpoena Mr. Lodholz to stand cross-examination
7 regarding his affidavit, his testimony that's been put
8 into evidence and Commission questions as well at a later
9 time.

10 And I don't know when that would be, Judge, but
11 I'd like the Commission to consider that motion. Thank
12 you.

13 JUDGE WOODRUFF: Thank you. Any response to
14 that?

15 MR. DEFORD: Your Honor, we would oppose the
16 motion. This is a problem of the Staff's own making. Had
17 we been given an ample opportunity to prepare, to address
18 this issue, we wouldn't have this problem. So it's the
19 Staff's --

20 JUDGE WOODRUFF: Do you have any objection to
21 providing Staff with the phone number and address of
22 Mr. Lodholz?

23 MR. DEFORD: No. We certainly don't.

24 JUDGE WOODRUFF: Please do so.

25 MR. DEFORD: Your Honor, I do not have copies of

1 Exhibit 312.

2 JUDGE WOODRUFF: Okay.

3 MR. DEFORD: I may -- would it be appropriate
4 for me to re-call Mr. Ries and ask him to identify that
5 document?

6 JUDGE WOODRUFF: You say you have it now at this
7 point?

8 MR. DEFORD: Yes. We have it here.

9 JUDGE WOODRUFF: Let's go ahead and do that.
10 But let's go ahead and deal with the motion Mr. Reed just
11 made. I believe that that is a -- a reasonable request.
12 And I'm not sure when -- when it would happen.

13 And, presumably, you're going to want to contact
14 Mr. Lodholz to find out more information about that. If
15 you want to make a motion later in the hearing once you
16 know more information, the Commission will entertain it at
17 that time.

18 MR. REED: Thank you, Judge.

19 JUDGE WOODRUFF: Does that satisfy your concerns
20 at this point?

21 MR. REED: That does. Thank you.

22 JUDGE WOODRUFF: All right. You want to recall
23 your witness at this point, then? Go ahead.

24 MR. DEFORD: Thank you, your Honor.

25 CONTINUED REDIRECT EXAMINATION

1 BY MR. DEFORD:

2 Q Mr. Ries, can you identify the document that
3 I've just handed to you that's been marked for purposes of
4 identification as Exhibit 312?

5 A Yes, I do. This is what was performed by me --
6 by Mike Mertz, who is the current Controller for the
7 company, in matching up the summary sheets for shippers on
8 -- against the revenue account for the pipeline companies.

9 Q So this is a document that was prepared at your
10 direction by Mr. Mertz who reports to you?

11 A Yes. That's correct.

12 Q And is this true and accurate, to the best of
13 your information and belief?

14 A As far as I know, it is. Yes.

15 Q And this is that document that we talked about
16 earlier that matched up the summary sheets with the bank
17 statements and invoices?

18 A I asked Mr. Mertz to -- to go through and -- and
19 in a fairly simplistic way see if he could match up the
20 revenues that were identified on the summary sheets
21 against the bank statements that were received from the
22 bank on a monthly basis to see whether or not they did, in
23 fact, match up. And they do.

24 MR. DEFORD: Thank you, Mr. Ries. I move the
25 admission of Exhibit 312.

1 JUDGE WOODRUFF: All right.

2 MR. WOODSMALL: Your Honor, I'd like to ask a
3 couple questions about this before --

4 JUDGE WOODRUFF: Go ahead. I was going to ask
5 some myself. I'll let you ask it first.

6 RECROSS EXAMINATION

7 BY MR. WOODSMALL:

8 Q Okay. As I look at this, if you look at Exhibit
9 312 -- and let's just start with the top sheet, August 1,
10 2003, and compare it to the same document from Exhibit
11 311, as I look at those and compare the two for August
12 1st, 2003, they are identical down to the formatting of
13 when a double line is used, when bold is used, everything.

14 So as I look at those, my question is, Exhibit
15 312 is nothing more than another copy of the top portion
16 of the same page in 311; is that correct?

17 A That's correct.

18 Q So --

19 A It is, in fact, the summary sheet that was in
20 B.J.'s file. And -- and as further, what I asked him to
21 do is then take that sheet, apparently the top half of
22 it --

23 Q Okay.

24 A -- and compare that with the bank statement,
25 which was also provided access to Staff --

1 Q But we don't -- that's not in evidence, is it,
2 the bank statement?

3 A No.

4 Q Okay. And there's no way for us looking at
5 Exhibit 312 to determine if that reconciliation was done
6 properly; is that correct?

7 A I don't know what reconciliation we're talking
8 about. All we're doing --

9 Q This --

10 A All we're doing -- all we're saying here is --

11 Q Excuse me, sir. This was called a bank revenue
12 reconciliation. So it's a reconciliation between what was
13 in Exhibit 311 and some bank statement?

14 A Well --

15 MR. DEFORD: Your Honor, I --

16 A Regardless of the name you call it --

17 MR. DEFORD: -- I'm going to object. The bank
18 statement is in evidence, and Mr. Ries can certainly
19 confirm the accuracy of the bank statement.

20 MR. WOODSMALL: Where is the bank -- that's what
21 I'm trying to --

22 MR. DEFORD: Right here.

23 MR. WOODSMALL: Which one is that?

24 MR. DEFORD: It's the second sheet. You'll find
25 -- it's 312. It's the cover sheet to follow --

1 MR. WOODSMALL: Okay. I see. That's what I was
2 trying to get to.

3 A Maybe a little explanation?

4 Q (By Mr. Woodsmall) Okay. Go ahead, please.

5 A The front page says it's the -- that the invoice
6 date was August 1st. The second page is the bank
7 statement for the end of August. Theoretically, the
8 invoices were sent out on August 1st and everybody paid
9 within the month, each and every payment would show up on
10 the bank statements as being received, the -- the issue
11 being is whether or not they actually show up from each
12 individual customer and the customer is identified.

13 Well, the bank doesn't care where the money came
14 from in most cases. They just understand that the money
15 got in the door and was now in the hands of the company.
16 So what we're doing here is identifying the fact that when
17 the bills went out, the bills got paid and the bank
18 received it.

19 And each set is the set of invoices and a bank
20 statement for each month -- not for every month in the --
21 in the three years but a sampling that shows that it's
22 relatively easy to track money flow through the company.

23 Q When -- and you say Mr. Mertz did this
24 reconciliation?

25 A Well, he's the one that put the -- identified

1 the -- the payment in the form of identifying a letter.
2 In some cases, you'll see where a letter was used multiple
3 times. That was because billings were going to the same
4 party as either -- as the shipper or as the agent for
5 multiple shippers.

6 And -- and when that payment came in the door,
7 it would also come in the door -- especially from an agent
8 as a consolidated payment. So in the front case, if a
9 party was acting in the case of -- there's several
10 payments there identified circled as E. Well, those would
11 come in as one payment because they're all the same agent.

12 Q Where did Mr. Mertz -- who gave Mr. Mertz the
13 document on which he then wrote?

14 A This was the same document that was provided in
15 311 as the --

16 Q Right.

17 A -- summary, invoice summaries that were in
18 B.J.'s files.

19 Q Who gave that to him?

20 A It was in B.J.'s files. It was -- they're still
21 there. I mean --

22 Q So --

23 A Mr. Mertz replaced B.J. Lodholz as the
24 Controller for the company, so all of documents that were
25 there before are still there. And -- and that's where

1 this came from.

2 Q Okay. Let me -- okay. As I look at -- let's go
3 to Exhibit 312. Exhibit 312, November 4th, 2003 --

4 A Okay.

5 Q -- compared to the same document for November
6 4th, 2003, in Exhibit 311.

7 A I don't have 311 here.

8 Q Before we get to that, you say that Mr. Lodholz
9 claims that Exhibit 311 were the documents that were in
10 his files; is that correct?

11 A That's true.

12 Q And Mr. Mertz then just went into those files
13 and pulled those and used those for reconciling; is that
14 correct?

15 A Well, again, reconciliation may not be the
16 correct word. It's a matter of whether or not those
17 summaries matched the bank statements.

18 Q Okay. But when he did that, he presumably went
19 in and copied it, but he didn't copy the whole thing. He,
20 for some reason, cut off the bottom of that?

21 A Well, the only thing I asked him to do was to
22 reconcile revenues for the pipeline companies.

23 Q But instead of just doing that on the document
24 as it existed, he made a conscious effort, apparently, to
25 cut off the bottom of that; is that correct?

1 A Well, again, I don't have a copy of 311. But to
2 the extent that there was other printing on the lower half
3 of the page, I would have to say, yeah, he did that
4 consciously.

5 MR. WOODSMALL: Okay. I guess I have no further
6 questions, your Honor.

7 JUDGE WOODRUFF: All right. 312 has been
8 offered into evidence. Are there any objections to its
9 receipt? Hearing none, it will be received into evidence.

10 (Exhibit No. 312 was admitted into evidence.)

11 JUDGE WOODRUFF: All right. Anything further
12 for this witness at this time?

13 MR. DEFORD: None, your Honor.

14 JUDGE WOODRUFF: You can step down again. We're
15 due for a break. We will -- when we come back, I believe
16 we'll start with Mr. Imhoff in the case in chief.

17 MS. SHEMWELL: That's correct.

18 JUDGE WOODRUFF: All right. Let's take a break.
19 We'll come back at 3:00.

20 (Break in proceedings.)

21 JUDGE WOODRUFF: All right. Well, we're back
22 from -- from our break. Mr. Imhoff is on the stand, and I
23 assume that's who Staff will be calling first.

24 MS. SHEMWELL: That's correct, your Honor.

25 Thank you.

1 JUDGE WOODRUFF: Mr. Imhoff, please raise your
2 right hand.

3 THOMAS MICHAEL IMHOFF,
4 being first duly sworn to testify the truth, the whole
5 truth, and nothing but the truth, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SHEMWELL:

8 JUDGE WOODRUFF: Okay. You may inquire.

9 MS. SHEMWELL: Thank you.

10 Q (By Ms. Shemwell) Mr. Imhoff, will you please
11 state your full name for the record?

12 A Yes. My full name is Thomas Michael Imhoff.

13 Q Mr. Imhoff, did you prepare testimony for this
14 case?

15 A Yes, I did.

16 Q Did you prepare direct testimony that has been
17 marked as Exhibit 1?

18 A Yes, I did.

19 Q And I believe your surrebuttal has been marked
20 as 66? 66. Do you have any corrections to your testimony
21 today, Mr. Imhoff?

22 A Not that I'm aware of at this time, no.

23 Q Mr. Imhoff, if asked the same questions today as
24 in your testimony, would your answers be the same?

25 A Yes, they would.

1 Q Is your testimony true and correct to the best
2 of your knowledge and belief?

3 A Yes, it is.

4 MS. SHEMWELL: Thank you. I tender the witness
5 for cross.

6 JUDGE WOODRUFF: All right. Did you want to
7 offer -- offer your exhibits?

8 MS. SHEMWELL: I move for the admission of 1 and
9 66.

10 JUDGE WOODRUFF: 66 and 1 have been offered into
11 evidence. Are there any objections to the receipt?
12 Hearing none, they will be received into evidence.

13 (Exhibit Nos. 1 and 66 were admitted into
14 evidence.)

15 JUDGE WOODRUFF: All right. For
16 cross-examination, then, we can -- beginning with
17 Municipal Gas Companies.

18 MR. WOODSMALL: And I'll be short. Thank you,
19 your Honor.

20 CROSS-EXAMINATION

21 BY MR. WOODSMALL:

22 Q Good afternoon, sir. In your role with the PSC,
23 can you tell me what your position is?

24 A I am the Supervisor of the Rate Design/Tariff
25 Department for -- in the -- in the Energy Section.

1 Q Okay. And in your position, you would be
2 responsible or it would be within your supervision to
3 review any tariff changes from gas and electric utilities;
4 is that correct?

5 A Yes, it is.

6 Q Okay. So if the pipelines that are the subject
7 of this case wanted a tariff changed, that would come
8 under your supervision; is that correct?

9 A Yes, it would.

10 Q Okay. I believe you reference in your testimony
11 that the pipelines sought to -- they carried on a dialogue
12 with your department regarding some tariff changes; is
13 that correct?

14 A Yes. That is. Along with the then manager of
15 the Energy Section, Warren T. Wood.

16 Q Okay. And when did these conversations take
17 place?

18 A Oh, around August of '02, 2002, up through -- I
19 believe their last correspondence was right around the end
20 of July 2003.

21 Q And can you tell me when the pipelines were
22 acquired by Gateway? Was that 2001? Do you know?

23 A I would say probably around there.

24 Q Okay.

25 A I don't know the exact date. No.

1 Q But under any circumstance, within approximately
2 a year, the pipelines approached you about making
3 modifications to their tariff; is that correct?

4 A They had approached Warren Wood. And then
5 that's when I got involved, yes.

6 Q Okay. And what was the nature of the tariff
7 change that the pipelines wanted to make to their tariff?

8 A When they first came in, they talked about
9 wanting to take care of the imbalance -- balancing
10 problems on the pipeline. So Warren had enlisted the help
11 of Carmen Morrissey and Craig Branum to take a look at
12 Panhandle Eastern Pipelines' tariff language that they
13 had.

14 Q And at this same point in time, approximately
15 the same point in time, did the pipelines seek to make
16 changes to their tariff to remove what is Section 32-B
17 regarding affiliate discounts?

18 A When we received a red line strike out version
19 of the tariff that was taken out of their -- their
20 proposed tariff. Yes, sir.

21 Q So when the pipelines bought -- or excuse me.
22 When Gateway bought the pipelines from Utilicorp, the
23 affiliate discount provision, Sections 32-B was a part of
24 the tariff at that time; is that correct?

25 A Yes, it was.

1 Q Okay. And within approximately a year of
2 acquiring the pipelines, they sought to remove that; is
3 that correct?

4 A Yes.

5 Q And I gather since they're still -- that is
6 still part of their tariff that Staff and the Commission
7 did not accede to that request; is that correct?

8 A That is correct.

9 MR. WOODSMALL: Okay. I don't believe I have
10 any further questions. Thank you, sir.

11 A Thank you.

12 JUDGE WOODRUFF: Thank you. For Ameren?

13 MS. DURLEY: No questions.

14 JUDGE WOODRUFF: Public Counsel is not present.
15 For the pipeline companies?

16 MS. DAVENPORT: Yes, your Honor.

17 CROSS-EXAMINATION

18 BY MS. DAVENPORT:

19 Q Good afternoon, Mr. Imhoff. I'm Aimee Davenport
20 representing the pipeline companies. I only have a few
21 questions before you before you need to get off.

22 In follow up to Mr. Woodsmall's question, are
23 you aware that around January 2002 the -- that Gateway, of
24 course, acquired the pipelines from Utilicorp?

25 A Around that time frame, yes.

1 Q And --

2 A I --

3 Q And is it --

4 A Right around that time frame.

5 Q And isn't it true that the negotiations
6 regarding the tariff language and including the provision
7 Mr. Woodsmall was just discussing ensued shortly after
8 that January 2002 time frame?

9 A Well, I would classify -- well, when we were
10 first approached, I believe it was the August 2002 time
11 frame.

12 Q Okay.

13 A So about eight months, something like that, I
14 was -- you know, eight, nine months somewhere in there,
15 yes.

16 Q Somewhere around there?

17 A Yes.

18 Q Is it at all atypical for -- to relook at
19 provisions of the tariff, specific provisions, when an
20 acquisition of that nature occurs?

21 A Most of the time, when we have a utility come in
22 and when they acquire an existing company that has tariffs
23 already established, the only time that they would make a
24 change to those tariffs would be inside the context of a
25 rate case itself.

1 So -- so I -- and I'm trying to think. Admiral
2 had those acquired several utilities, but they kept the
3 tariff language for each individual company and they have
4 just come -- they just filed their first rate case. So
5 that was a five-year time frame from their most recent
6 purchase of the old Associated Natural Gas. So that was a
7 five year-time frame. I can't --

8 Q That's -- that's fine. I don't, I don't need
9 any more detail on that.

10 A Okay.

11 Q I'll move on. I'll go along the same lines.
12 Are you aware, though, that with the acquisition, of
13 course, the relationship between Gateway and the Local
14 Distributing Companies changed as it had been with
15 Utilicorp and the Local Distributing Companies?

16 And by that change, I mean they went from
17 Utilicorp being affiliated with those LDCs to Gateway
18 becoming non-affiliated with those LDCs.

19 A I would agree with that.

20 Q And in light of that, would it be at all
21 atypical, I guess, to review the provisions that have to
22 -- relate to affiliates under the tariff if that
23 relationship changes in that -- in that way?

24 A The Staff will always look at any type of a
25 proposal that a company may have. Even if they do not

1 have an affiliate, the Staff would still prefer to have at
2 that particular type of language in the tariff itself
3 because there is always that possibility of the utility
4 forming an affiliate to market gas or whatever that could
5 be. So we -- we would not change the language.

6 Q Thank you, Mr. Imhoff. Moving on, in your
7 testimony on page 9 of your surrebuttal, I believe -- did
8 you have that with you? Okay. Page 9. It would be lines
9 7 through 9.

10 A Okay. I'm there.

11 Q Would you -- I'm sorry. 7 through 10. Would
12 you please read the first -- starting on page -- or -- I'm
13 sorry. Eight through -- 8 through 10, lines 8 through 10.
14 Please read the first full sentence.

15 A Okay. "I have no recollection of ever receiving
16 these data requests responses from Mr. Ries and was
17 surprised when I read them in his rebuttal testimony."

18 Q Mr. Imhoff, are you aware of an -- an e-mail
19 from Warren Wood to Mr. Dave Ries attaching -- and copying
20 you as well as several other Staff members attaching
21 various e-mails?

22 The e-mail would be November 20th, 2002, and the
23 data request numbers would be 4101 through 4104.

24 MS. SHEMWELL: Has that been marked?

25 MS. DAVENPORT: I am getting ready to.

1 Q (By Ms. Davenport) And if you don't have it, I
2 would be glad to provide you a copy.

3 A Let me just look and see. But -- well, if you
4 have a copy, I'd like to look at it.

5 MS. DAVENPORT: I've marked that e-mail as
6 Exhibit 306.

7 JUDGE WOODRUFF: E-mail, 11/20/02?

8 MS. DAVENPORT: Yes.

9 JUDGE WOODRUFF: Thank you.

10 A Yes. I see it. I have it here.

11 Q (By Ms. Davenport) And are those data requests
12 -- do they indicate that -- that the information is
13 requested by you?

14 A Yes, they do.

15 Q Now, I'd like to return -- or recall -- for you
16 to recall an e-mail that was -- or I'm sorry. It was a
17 letter transmitted from Mr. Keevil to Lera Shemwell, and
18 it is actually in the surrebuttal testimony of Chris John.
19 I have marked it as Exhibit 307. I'd just like to hand it
20 to you to see if you've seen it before.

21 A Okay. I don't have that, so -- okay. So --

22 Q Essentially --

23 A And the question is --

24 Q Now, does that letter state that it was
25 hand-delivered on -- on the top of the letter?

1 A Yes, it does.

2 Q And transmitted with that letter, are there
3 responses to the data requests that were indicated you
4 requested in the previous -- in my previous question?

5 A Those are attached. Yes.

6 Q Okay.

7 A I -- I just might add, though, that, you know --
8 well, I'll -- go ahead.

9 Q Is it -- is it still your testimony that you
10 don't recall ever seeing those responses?

11 A What I stated in my testimony was that I had no
12 recollection of seeing those. Now, one of the practices
13 that I always perform is that when I receive written data
14 request responses, I keep them in -- in the files.

15 And when I went back to research the files, I
16 didn't see any of these responses. Now, I'm not stating
17 that the Staff did not receive them. It's just that I do
18 not recollect seeing these.

19 Q Would it be typical for the Staff to distribute
20 responses to data requests directly to who -- whom they
21 were requested by?

22 A Normally, yes.

23 Q And that -- or probably wasn't done in this
24 case?

25 A I'm -- what I'm stating is that I don't have

1 them in my files, and I do not recollect seeing them. I
2 always make it a practice, you know. I can't tell you
3 anything other than that.

4 Q Is it possible that this sort of situation could
5 have happened in this case?

6 A Anything's possible.

7 Q Okay. Mr. Imhoff, one -- couple of final
8 questions here. On your -- in your surrebuttal
9 testimony --

10 A Yes.

11 Q -- page 3 --

12 A Excuse me a minute.

13 Q Surrebuttal.

14 A Is this my copy or -- or would you like this
15 back?

16 Q If you would like to keep it, that's fine or --

17 A Okay.

18 Q If you have no need for it, I'll take it back?

19 A Okay. Page 3 of my surrebuttal?

20 Q Yes.

21 A Okay.

22 Q Starting on line 19 -- well, you can start from
23 the first full sentence, lines 17 through 21. Would you
24 please read that segment?

25 A "It is my recollection that Mr. Ries may have

1 indicated that Omega was very small and would likely share
2 some services. But it is not my recollection Mr. Ries
3 stole -- told Staff of his plans to use Omega to do
4 marketing. I do not believe that Staff ever recommended
5 that Omega be used to do marketing activities."

6 Q Thank you. Are you aware, after having looked
7 at the DR -- or Data Request Responses that Mr. -- well,
8 let me -- let me back up for a moment.

9 I'd like to introduce what is -- has also
10 already, I believe, been introduced by Staff. I'm not
11 quite sure which -- which exhibit number, but it is an
12 e-mail from Warren Wood to a number of people, including
13 you, Mr. Imhoff.

14 A What's the date?

15 Q Dated August 29th, 2002.

16 JUDGE WOODRUFF: Is that attached to someone's
17 testimony? Is that --

18 MS. DAVENPORT: No. I'm just grabbing some --
19 no. It was in Staff's list of exhibits, but I don't know
20 the exact number. I'm -- so I'm -- I'm going to
21 reintroduce it as Exhibit 310.

22 JUDGE WOODRUFF: Okay?

23 A What was that date again? I'm sorry.

24 Q (By Ms. Davenport) August 29th.

25 A I don't have August 29th.

1 Q (By Ms. Davenport) And within that string is
2 another -- it's a string of e-mails that were produced to
3 us is an August 27th e-mail, also, from David Sommerer to
4 yourself and the other Staff members on the project --

5 A Okay. Yes.

6 Q -- as well as an August 23rd, 2002, e-mail from
7 David Ries to Warren wood. And this e-mail was the
8 subject that being forwarded in all subsequent e-mails.

9 A Did you say August 23rd?

10 Q August 23rd, 2002.

11 A Was that attached to this?

12 Q Yes. It's -- it --

13 A I don't see it.

14 Q It's on the back page.

15 A Okay.

16 Q And on --

17 A I apologize.

18 Q And on -- and on that back page, Mr. Imhoff, if
19 you would just -- just look at the middle full paragraph?

20 A Okay.

21 Q And if you'd take just a -- a little -- one
22 moment to -- to read the paragraph starting, Another.

23 A Okay.

24 Q Mr. Imhoff --

25 A Okay.

1 Q -- do you agree that that is Mr. Ries telling
2 and disclosing that they are considering using Omega as a
3 marketer?

4 A That is one of three alternatives for Mr. Ries
5 to Mr. Wood.

6 Q Okay. Thank you. And lastly, I'd like to call
7 your attention to -- it is in a January 3rd, 2003, e-mail
8 with a letter attachment. The e-mail is from Warren Wood
9 to the project -- or the Staff team on this matter,
10 including Mr. Imhoff. I've marked it Exhibit 308.

11 A Thank you.

12 Q And, Mr. Imhoff, if you could, just please read
13 the sentence starting, In previous conversations.

14 A Okay. In -- okay. "In previous conversations,
15 Staff has expressed concern over the structure of these
16 transactions and Staff's preference that and -- okay.
17 That -- and Staff's preference that an affiliate should
18 make any bundling arrangements, even if an affiliate" --

19 Q That's -- that's fine. I mean, you can go on if
20 you'd like, but I don't need any more.

21 A Okay.

22 Q My -- my --

23 A I was just going by what you had highlighted.

24 So --

25 Q Oh, I'm sorry. I gave you my -- I meant to give

1 you the clean copy, and I'll replace that after I'm done.
2 But my -- my question, then, is, are you -- are you aware
3 that Staff never sent any follow-up correspondence to the
4 pipelines changing that their preference for an affiliate
5 to do bundling transactions during that time period until
6 the timing of the complaint?

7 A Could you please repeat the question? I'm
8 sorry. I was looking at that. I'm sorry. I apologize.

9 Q Are you aware that the pipelines never received
10 any official correspondence from Staff changing their
11 original preference, as you read there in that letter,
12 that an affiliate was handling the bundling transactions?

13 A Just a minute. I don't believe that -- I do not
14 believe that the Staff made any commitments one way or the
15 other as it related to that.

16 Q Thank you. But do you -- are you aware that the
17 pipeline has never received any official correspondence
18 following up, then, on that?

19 A I don't know.

20 MS. DAVENPORT: Okay. Thank you very much.

21 MR. IMHOFF: Thank you.

22 JUDGE WOODRUFF: Ms. Davenport, did you want to
23 offer these exhibits you marked 306, 307, 308 and 310?

24 MS. DAVENPORT: Yes. I move that 306, 307, 308
25 and 310 be admitted into evidence.

1 JUDGE WOODRUFF: Those have been offered into
2 evidence. Are there any objections to its receipt?

3 MR. WOODSMALL: Your Honor, at least in regard
4 to 308 and 310, I don't believe a proper foundation has
5 been laid for the admission of those.

6 There -- there was no authentication. There was
7 no evidence that this witness had ever seen those
8 documents before. I don't think a proper foundation to
9 accept those has been laid.

10 MS. DAVENPORT: Okay. I will certainly lay a
11 foundation with Mr. -- Mr. Ries. But as far as the e-mail
12 and attached documents, Mr. Imhoff himself received it.

13 Q (By Ms. Davenport) And I guess I'm asking
14 Mr. Imhoff on Exhibit 308, do you agree -- do you
15 recognize the document and do you agree that it was an
16 e-mail with an attachment e-mailed to you at that date?

17 A Yes.

18 MS. SHEMWELL: I believe I need to note,
19 however, that Mr. Imhoff has not agreed that he has seen
20 the attachments to 307.

21 MS. DAVENPORT: The attachments will be -- is
22 that --

23 Q (By Ms. Davenport) Is that true, Mr. Imhoff?
24 Have you not seen those before?

25 MS. SHEMWELL: What he said was he didn't

1 receive them, I believe.

2 MS. DAVENPORT: Okay. Well, we will be
3 admitting those into evidence as they are schedules in
4 Mr. John's surrebuttal testimony.

5 JUDGE WOODRUFF: Can we just wait until then to
6 offer them?

7 MS. DAVENPORT: For that particular one, that's
8 fine. But I'd like to offer 308 still in addition to 306
9 and 307.

10 JUDGE WOODRUFF: No. I'm sorry. Which one are
11 you waiting on? Waiting on 310?

12 MS. DAVENPORT: 310.

13 JUDGE WOODRUFF: I'm sorry.

14 MS. DAVENPORT: 306, 308 and 310 will be offered
15 at this time.

16 JUDGE WOODRUFF: Okay.

17 MR. WOODSMALL: And, again, your Honor -- excuse
18 me. I -- I don't believe -- while he may have been copied
19 on the e-mail, again, there's no authentication, that he
20 actually saw the letter in 308 eight.

21 The letter was from Mr. Woods to Mr. Ries.
22 There's just no foundation. He was asked about it, but
23 there's no foundation that he's ever seen this before or
24 it is a letter that was actually sent out or anything.

25 MS. DAVENPORT: Well, these -- these documents

1 were produced to us by Staff. Presumably, Mr. Imhoff has
2 seen it. And if -- if we can -- we can wait and offer
3 that one into evidence with Mr. Ries's testimony at a
4 later time.

5 MR. WOODSMALL: And if -- if they were provided
6 by Staff, it would seem that there should be a DR cover
7 page on it indicating who provided it or some basis to
8 authenticate the document. We just don't have it yet, any
9 authentication.

10 JUDGE WOODRUFF: All right. I'm kind of
11 confused now as to which documents are being offered and
12 which are -- are not. Can you -- Ms. Davenport, can you
13 go through it again which are being offered at this point?

14 MS. DAVENPORT: 306, 310, 308.

15 JUDGE WOODRUFF: The only one you're not
16 offering at this point is 307?

17 MS. DAVENPORT: Yes. We will introduce that at
18 the time of Mr. John's testimony.

19 JUDGE WOODRUFF: Okay.

20 MS. SHEMWELL: If the letter to Mr. Ries was a
21 DR response from Staff, the DR to which it was a response
22 should be available.

23 JUDGE WOODRUFF: Okay. So for -- Mr. Imhoff was
24 -- was -- these were all -- the three that you're
25 offering, though, were e-mails that were at least cc'd to

1 Mr. Imhoff; is that correct?

2 MS. DAVENPORT: Yes. And they were provided by
3 Staff in DR in a supplemental response to DR-11. No cover
4 sheet was received with -- with that response.

5 MS. SHEMWELL: You didn't receive a signed data
6 request from Mr. Schallenberg, is that what you're saying,
7 when we responded?

8 MS. DAVENPORT: When you -- when you provided
9 the information, no. I -- I do not have one of those.

10 JUDGE WOODRUFF: All right. Well, I'm going to
11 go ahead and admit 306, 308 and 310. The objections to
12 those documents were overruled.

13 (Exhibit Nos. 306, 308 and 310 were admitted
14 into evidence.)

15 MS. DAVENPORT: Okay. Thank you.

16 JUDGE WOODRUFF: Do you have anything else for
17 this witness?

18 MS. DAVENPORT: No. Thank you, Mr. Imhoff.
19 Thank you, your Honor.

20 JUDGE WOODRUFF: All right, then. We'll come up
21 for questions from the Bench. Commissioner Murray, any
22 questions for Mr. Imhoff?

23 COMMISSIONER MURRAY: Yes, I do. Thank you,
24 Judge.

25 CROSS-EXAMINATION

1 BY COMMISSIONER MURRAY:

2 Q Good afternoon, Mr. Imhoff.

3 A Good afternoon, Commissioner.

4 Q I'd like to go to your direct testimony and go
5 over these counts with you, if I might. In Count 1, it
6 appears that Staff is making several allegations in Count
7 1, and I'm having a little bit of trouble narrowing it
8 down to one.

9 But it appears that a part of what Staff is
10 alleging is that MPC/MGC are providing retail natural gas
11 service to certain customers. Is that a part of your
12 allegation?

13 And I'm looking at -- particularly, I'm looking
14 at lines 11 -- 11 and 12 on page 4 of your direct
15 testimony.

16 A Okay. No. I do not believe that that reference
17 is -- or that MGC was performing any type of a Local
18 Distribution Company.

19 Q Well, what is the purpose of that statement?
20 Because it's very confusing. It sounds as if they were
21 doing that. I --

22 A Okay. Well -- well, basically, what that says
23 is that MGC failed to file with the Commission Staff
24 reports of discounts offered to customers and
25 intentionally misreported these activities to the

1 Commission Staff. Pursuant to Section 12 --

2 Q Okay. I'm sorry. Let me stop you because I've
3 read through Count -- the things that have been stated in
4 Count 1, and there are a lot of things that are stated
5 there that make it very confusing to me, at least, to
6 figure out what it is that you're actually saying is a
7 violation under Count 1, that you end it two sentences
8 from the bottom with that statement that I referenced you
9 to speaking about providing retail natural gas service
10 where they don't have line certificates under their CCNs
11 permitting them to do so.

12 And then your next sentence -- sentence in which
13 you end Count 1 is -- it says, Moreover, all of these
14 actions by MPC and MGC are in violation of their tariffs
15 and have resulted in over-charges.

16 Now, my question to you specifically at this
17 time, and I have more related to Count 1, but what does
18 that sentence there regarding retail natural gas service
19 have to do with a violation of the tariffs that Staff is
20 alleging?

21 And if it doesn't have anything to do with it,
22 why is it thrown in there in the mix?

23 MS. SHEMWELL: May I -- I'm sorry. Mr. Imhoff
24 has an executive summary, but he specifically addresses
25 Count 2.

1 A Count 2.

2 MS. SHEMWELL: Count 2 and Count 5.

3 COMMISSIONER MURRAY: Okay. Well I'm looking at
4 his executive summary. Why -- who should I ask about
5 this? I -- if Mr. Imhoff was just summarizing what
6 someone else said about Count 1, who should I question
7 about that?

8 A No. I -- no. I --

9 MS. SHEMWELL: I think he was discussing --

10 A I was just doing Counts 2, 3 and 4.

11 Q (By Commissioner Murray) Okay. Who should I
12 question about Count 1?

13 A Mr. Schallenberg.

14 Q Okay. Now, as you did your executive summary,
15 you must have taken this from, what, Mr. Schallenberg's
16 testimony?

17 A There are -- there are a couple references to
18 Mr. Schallenberg's testimony in my executive summary, yes.

19 Q But this executive summary was your -- your --

20 A Testimony, yes.

21 Q And it was based upon what you thought
22 constituted the actions by MPC and MGC that violate their
23 tariffs?

24 A For those three counts, yes. I mean, you
25 know --

1 Q Okay. So you're not actually referring to Count
2 1 in your executive summary?

3 A Correct.

4 Q Is that what you're saying?

5 A Correct.

6 Q All right. Thank you for clarifying that.

7 Where, then, are -- are you -- where does the relevance of
8 that sentence come into what you're testifying to, that
9 they are not permitted to provide retail natural gas
10 service?

11 Are you saying they are providing retail natural
12 gas service in violation of their tariff?

13 A No. No. I -- what that -- as it relates to
14 this Secret Company B.

15 Q Okay. And yet you're not alleging that they
16 were providing retail natural gas service to Secret
17 Company B, are you? Or are you?

18 A I would re -- I would refer you to Staff witness
19 Schallenberg for that type of detail. What I was
20 basically stating is that -- is that I was just making the
21 comparison to the tariff itself, Sheet No. 39, paragraph
22 12.A.

23 Q Okay. Would you agree with me that it might be
24 a little misleading to throw in everything that's included
25 in the tariff and then say that all of these actions are

1 in violation of their tariffs? I mean, don't you draw a
2 little bit of a broader conclusion than maybe you're
3 actually trying to make there when you read that?

4 And a broader conclusion, I mean a broader
5 conclusion about the number and extent of violations that
6 you're trying to allege? Just let me ask you one more
7 time.

8 A I'm sorry.

9 Q Are you saying that they are providing retail
10 natural gas service to any customer?

11 A MPC and MGC, no.

12 Q Okay. And you are not alleging that Secret
13 Company -- Secret Customer B was anything other than a
14 transportation customer; is that correct?

15 A I'm not alleging anything as it relates to the
16 actual specifics of that particular piece. I would refer
17 you to Staff witness Schallenberg. I think I stated up
18 there, As stated in the testimony of Staff witness
19 Schallenberg, MPC/MGC paid for the construction of a
20 lateral line to -- to serve Omega's customer. And then
21 it's --

22 Q All right. I -- I will pursue that more with
23 Mr. Schallenberg.

24 A Okay.

25 Q Let's go to Count 2. You don't dispute the fact

1 that MPC and MGC have a transportation agreement with
2 Omega, do you?

3 A During this time frame, we never have seen an
4 executed transportation contract with MPC/MGC.

5 Q So you are -- you are saying that you have never
6 seen an executed contract for Omega to be a transportation
7 provider -- and -- and I'm -- I'm specifically trying to
8 ask you if you are aware or if you have seen or can
9 confirm what Mr. Ries said earlier, that MG -- MPC/MGC has
10 a tariff with Omega for transportation to -- and although
11 it was referred to as highly confidential earlier, the one
12 customer, I don't believe it's confidential because I see
13 it listed -- I see it shown in non-confidential parts of
14 the testimony.

15 But -- but I won't say it here just in case it
16 is.

17 MS. SHEMWELL: I think it's certainly out of bag
18 now, Commissioner, so --

19 Q (By Commissioner Murray) All right. The Fort
20 Leonard Wood customer and anything in between. Are you
21 aware of that contract?

22 A No.

23 Q You've never seen that contract, that
24 transportation contract?

25 A I personally have not.

1 Q Do you -- do you believe it doesn't exist?

2 A I'm not sure whether or not it had existed at
3 that particular point in time.

4 Q Was it a part of your data request?

5 A I'm sure that this was probably part of the
6 Staff's DRs to the company.

7 Q Okay. And I -- I -- I'm sorry. I just see an
8 e-mail here that indicates that you need to get out of
9 here fairly quickly, so I'll try not to delay.

10 MS. SHEMWELL: Could we say that certainly after
11 Mr. Imhoff resolves that situation, if he needs to come
12 back on Friday, we can certainly do that.

13 COMMISSIONER MURRAY: And I didn't know that
14 until just now until the Judge sent me an e-mail, and I
15 appreciate knowing that. I'm sorry to -- let me see if
16 there's anything else that I have to ask you right now. I
17 can let you go. Thank you, Mr. Imhoff.

18 MR. IMHOFF: All right.

19 JUDGE WOODRUFF: Any recross for Mr. Imhoff
20 based on those questions from the Commissioner? All
21 right. Any redirect?

22 MS. SHEMWELL: Thank you.

23 REDIRECT EXAMINATION

24 BY MS. SHEMWELL:

25 Q Mr. Imhoff, you were asked by Ms. Davenport

1 about companies typically changing their tariffs.

2 A Yes.

3 Q Was it your -- did you say that the companies
4 don't typically change their tariffs?

5 A They do not change any type of tariff
6 implications outside the context of a filed rate case,
7 normally.

8 Q You were asked about e-mails between the Staff
9 and Mr. Ries in terms of trying to change -- I believe by
10 Mr. Woodsmall. I'm going to hand you some documents.

11 A Okay.

12 Q This has been premarked Exhibit 2. Are you
13 aware of that?

14 A Yes.

15 Q Do you have that with you?

16 A Let me see. Actually, I don't.

17 Q Okay.

18 A Sorry.

19 Q What is the date on this?

20 A The date is July 10th, 2002.

21 Q Who sent this e-mail?

22 A Warren Wood.

23 Q What's significant about this e-mail?

24 A Mr. Wood indicated that he had spoke with Mr.
25 Ries on that afternoon and that he wanted to -- to discuss

1 about the possibility of a bundled transportation offer to
2 customers on their system.

3 Q Do you know to whom he wanted to speak? Can you
4 tell from that?

5 A Oh, as far as who Mr. Wood wanted to -- to speak
6 to?

7 Q Yes.

8 A That would have been Carmen Morrissey and myself.

9 Q What is Ms. Morrissey's role here at the
10 Commission?

11 A She was the manager of the Federal Gas
12 Department to the Commission, so her primary role was to
13 look at the in-state pipelines, how they did things at the
14 -- at the FERC.

15 MS. SHEMWELL: If I may approach, Judge. I've
16 premarked this as Exhibit 3.

17 JUDGE WOODRUFF: Sure.

18 Q (By Ms. Shemwell) Do you have this one?

19 A I do. Yes. I believe so.

20 Q I'll give this to the court reporter.

21 A Make sure -- I have a couple -- yeah.

22 Q You write on the exhibit.

23 A Yeah.

24 Q The date on this is August 27, 2002, right, from
25 you to Jim Russo?

1 A Yes.

2 Q And then right below that, it says -- a note
3 from Warren Wood to Carmen Morrissey, Dave Sommerer and
4 you, correct?

5 A Yes.

6 Q What's important about this e-mail?

7 A Basically, Mr. Wood stated that -- well, it
8 states, Dave and I spoke on Friday, and it was determined
9 that Dave's group can't bundle their transportation
10 service (with PETL, their interstate capacity and gas).
11 Dave had some other creative, which is in quotes, ideas
12 that -- that I made no commitments on. I asked him to
13 send an e-mail with his ideas, and that is what prompted
14 the e-mail below. Please take a look at this and forward
15 any thoughts on which approach is preferable --

16 Q And who --

17 A -- if any.

18 Q I'm sorry. I didn't mean to interrupt you. As
19 we look at the e-mail below, it's where -- it's the
20 discussion of the basically three alternatives, correct?

21 A Yes, it is.

22 Q And you this had that exhibit. What was that
23 exhibit?

24 MS. DAVENPORT: 310. 310.

25 Q (By Ms. Shemwell) And as we look back at 310,

1 we see that same e-mail, is that correct, the last two
2 pages of 310?

3 A Yes.

4 Q To try to move things along, I'm going to read
5 some portions and ask if you've read it -- if I've read it
6 correctly. Okay?

7 A Okay.

8 Q Ms. Davenport had you read something and out of
9 the -- from the last page. And Mr. Ries is saying, My
10 concern is, and it says weather instead of whether, just a
11 typo, this action would somehow change the regulated
12 status of Omega. Omega currently holds transportation
13 capacity on MPC and MGC to serve FLW, that I believe we
14 can agree means Fort Leonard Wood.

15 So you knew at that point what, they -- that
16 they serve what customer?

17 A The Fort.

18 Q And he says it could contract for additional
19 capacity. What was your understanding from that? Could
20 you tell from that what their course of action was going
21 to be?

22 A No.

23 Q Down a few more lines, it says, Omega could
24 continue to serve the Fort and act as agent.

25 Did that tell you what their course of action

1 was going to be?

2 A No.

3 Q It says, The last Option B to form a new
4 marketing affiliate to perform this same function. Have I
5 read that correctly?

6 A Yes.

7 Q Could you tell from that what their choice of
8 action would be?

9 A No.

10 Q Did you know from this that Omega was going to
11 become a marketing company?

12 A No.

13 Q I would like to refer to you Exhibit 307 that
14 you discussed with Ms. Davenport. On top of that -- do
15 you have 307 with you, sir?

16 A Yes, I do.

17 Q On top of that is a letter addressed to me,
18 correct?

19 A Yes.

20 Q The date's December 10th, 2002.

21 A Yes.

22 Q And the first paragraph says, Enclosed, you will
23 find responses from Missouri Pipeline Company and Missouri
24 Gas Company to certain data information requests received
25 from Staff. And then he's asked me to convey them to the

1 appropriate personnel. He doesn't actually indicate which
2 numbers, specifically which data request he's referring
3 to, does he?

4 A No, he doesn't.

5 Q Has it been your experience, Mr. Imhoff, that
6 when I receive data requests, I deliver them to the Staff?

7 A Yes.

8 Q And then what is your procedure after you
9 receive a data request?

10 A I always mark them Received. And -- and if it
11 comes in through -- through the mail, we -- we have -- our
12 division will mark it Received with a stamp on the date
13 that it's received.

14 Q And then what do you do with those?

15 A And -- and then they are given to the
16 appropriate Staff personnel.

17 Q And if you're the appropriate Staff, what do you
18 do with them?

19 A Review them and keep them.

20 Q How long do you keep them?

21 A Well, I normally keep responses -- I hate to say
22 forever because there's no such thing as forever. But any
23 type of a -- any type of a written DR response that I
24 personally receive, I keep in a file. And I had a fairly
25 large paper stack file with MO Pipe and MO Gas.

1 Q So you searched that file?

2 A Yes, I did.

3 Q Did you search Ms. Morrissey's file?

4 A No, I did not.

5 Q Did you ask someone to search Ms. Morrissey's

6 file?

7 A Yes.

8 Q Who?

9 A Ms. Fischer.

10 Q Did Ms. Fischer find those?

11 A No.

12 Q Did you ask Mr. Wood to search his?

13 A Yes. Yes, I did.

14 Q You searched his files?

15 A Yes, I did.

16 Q And what was his response to that request?

17 A He didn't have them.

18 Q Do you have knowledge as to Mr. Woods' practice

19 of keeping DRs, responses to DRs?

20 A I don't -- I'm not sure what Mr. Woods'

21 procedure is, so I really can't comment on his.

22 Q As we look at Exhibit 308, I believe this has

23 been identified as a letter from Warren to Mr. Ries dated

24 January 2nd, 2003. Is that your recollection?

25 A Yes.

1 Q And in the paragraph that you read, and I'm
2 going to read it, Even if an affiliate engages in these
3 transactions, however, Staff has concerns that separation
4 between regulated and unregulated operations will not
5 exist due to the structure of MPC/MGC, MIG and Omega.
6 Have I read that correctly?

7 A Yes, you have.

8 Q So Staff expressed its concerns?

9 A Yes.

10 Q At the bottom, I'd note, The Commission
11 affiliate rules also allow waivers to be granted if the
12 Commission approves. Have I read that correctly?

13 A Yes.

14 Q Is that your understanding?

15 A Yes, it is.

16 Q Are you familiar with the Commission's affiliate
17 rules?

18 A Somewhat. Yes.

19 Q The -- were you the Staff witness for the
20 Missouri's affiliate transactions rules for gas marketing
21 companies?

22 A I was one of the witnesses, yes.

23 Q On the next paragraph, Staff used the
24 relationship between MPC, MGC, MIG (regulated entities)
25 and Omega (marketing affiliate) as an affiliate

1 relationship. Does that indicate to you that you knew at
2 that time that Omega was a marketing affiliate?

3 A At that particular time, yes.

4 Q You knew that Omega was a marketer in January of
5 2003?

6 A Based off of this letter, yes.

7 Q So to --

8 A I mean -- to Mr. Ries from Mr. Wood. Yes.

9 Q And point out the affiliate transactions rule?

10 A They are 4 CSR 240-40.015. That is the regular
11 affiliated transaction rule. And then you have the
12 marketing affiliated transaction rule, which would be 4
13 CSR 2400-40.016.

14 Q Can we turn to the second page of that letter,
15 please? Now, I'm going to read from the second paragraph.
16 Staff has previously expressed a strong concern that
17 customers served by MPC/MGC and/or MIG have been exposed
18 to negotiations where natural gas purchases from Omega are
19 necessary to avoid being charged maximum intrastate
20 transportation rates. Have I read that correctly?

21 A Yes, you have.

22 Q So at that point, Staff was expressing its
23 concern with the affiliate relationship?

24 A Yes, they were.

25 Ms. SHEMWELL: Okay. If I may approach?

1 JUDGE WOODRUFF: You may.

2 Q (By Ms. Shemwell) I'm going to hand you what
3 has been marked as Exhibit 4. Do you have that?

4 A Okay.

5 Q And as we look down to Option 2, this is from
6 Dave Sommerer, the original message, Tuesday, August 27,
7 2002, correct?

8 A Yes, it is.

9 Q And you're one of the recipients?

10 A Yes, I am.

11 Q And you have noted above at 8:39 a.m, a few
12 minutes after Mr. Sommerer sent his e-mail that you
13 concur, correct?

14 A Yes.

15 Q And I would like to read Option 2 in, and then
16 ask you to say if I've read it correctly. Option 2, No.
17 2, as described is confusing.

18 I don't think Omega is a non-regulated LDC. I
19 thought Fort Leonard Wood owned the distribution system
20 (making it "operator" for all the safety requirements and,
21 therefore, was similar to "city municipal.") I thought
22 Omega was a marketer serving Fort Leonard Wood in that
23 function.

24 Then the question was, If Omega is a marketer,
25 why can't it serve cities along I-44 already?

1 A Yes.

2 Q So your understanding at that point was that
3 Omega was a marketer serving Fort Leonard Wood, correct?

4 A Yes.

5 MS. SHEMWELL: If I may approach?

6 JUDGE WOODRUFF: Certainly.

7 Q (By Ms Shemwell) I'm going to hand the witness
8 what has been marked as Exhibit 5. What's significant
9 about this e-mail, Mr. Imhoff?

10 A We were going to discuss bundled transactions
11 with Mr. Ries in a face-to-face meeting, it looks like.

12 Q Were you at that meeting?

13 A Yes.

14 Q What did you discuss? Do you have a
15 recollection as to what you discussed?

16 A We discussed a number of things. But, you
17 know --

18 Q Do you have a recollection about bundling
19 services?

20 A We did. One of the things I think -- the way
21 that we viewed that is that if they would -- if they would
22 offer a bundled service, they could be -- they could
23 almost be like a Local Distribution Company because they
24 would be performing that function.

25 Q Do MPC and MGC -- what kind of certificates do

1 they have?

2 A Line certificates.

3 Q What does that mean that they can do?

4 MS. DAVENPORT: Your Honor, I'd like to make an
5 objection as beyond the scope of cross-examination. I
6 don't think anybody's gone into the specifics of the
7 options and the certificate as Ms. Shemwell is about to
8 bring up.

9 JUDGE WOODRUFF: Your response?

10 MS. SHEMWELL: Well, I think Commissioner Murray
11 was trying to ask Mr. Imhoff in the discussion on his
12 testimony, and he's discussing the line certificate there,
13 and I'm trying to ask him the difference between that and
14 an area certificate. An area certificate would allow for
15 provision of retail service. So I'm trying to distinguish
16 between those.

17 JUDGE WOODRUFF: All right. I'll overrule the
18 objection.

19 Q (By Ms. Shemwell) What's a line certificate?

20 A That's just what it is. They have the
21 certificate to operate the line itself, the pipeline
22 itself.

23 Q Just the pipeline?

24 A Just the pipeline.

25 Q And so when you talk about retail service, how

1 does that tie in with the idea of an area certificate?

2 A That's what it -- that is what it normally leads
3 to. When you have an area certificate, it's normally for
4 a Local Distribution Company.

5 Q Tell me who has an area certificate in the
6 state, just an example.

7 A Laclede Gas, AmerenUE.

8 Q And they provide retail service, correct?

9 A Yes, they do.

10 Q Okay. I'm going to try to wrap this up a little
11 more quickly, Mr. Imhoff. Did the Staff indicate that Mr.
12 Ries should provide bundled service through the marketing
13 affiliate Omega?

14 A No.

15 Q Did Staff express its concerns with potential
16 violations of the affiliate transactions rules?

17 A Yes.

18 Q Did Staff express concerns with potential
19 violations of the line certificates?

20 A I'm not sure.

21 Q There was considerable discussion about whether
22 or not the pipelines try to change their tariffs when they
23 first came in. I'm going to hand you, if I may approach,
24 Judge, what I've marked as Exhibit 8.

25 JUDGE WOODRUFF: Fine.

1 Q (By Ms. Shemwell) Do you have this?

2 A Yeah. March 27th.

3 Q And do you have the attached tariff?

4 Mr. Imhoff, on the top of this is the notation with your

5 name, correct, that you were sending an e-mail --

6 A Yes.

7 Q -- to Jim Russo?

8 A Yes.

9 Q On Thursday, March 27, 2003, correct?

10 A Yes.

11 Q And lower on that, we see a note from Mr. Ries

12 to Mr. Wood, correct, with the subject Tariff Red Line?

13 A Yes.

14 Q And he has noted the items that he would like

15 changed, correct?

16 A Yes.

17 Q And I will just list them. Updating and

18 expanding in balance penalties is No. 1, correct?

19 A Yes.

20 Q No. 2, inclusion of language for OFO compliance.

21 A Yes.

22 Q Does OFO stand for Operational Flow of Order?

23 A Yes.

24 Q Three, set up a new rate schedule for bundled

25 services, correct?

1 A Yes.

2 Q For the addition of authorized over-run for FT

3 agreements?

4 A Yes.

5 Q Does FT stand for Firm Transportation?

6 A Yes.

7 Q Deleting or changing all parts referring to

8 Aquila or Utilicorp?

9 A Yes.

10 Q And as we look at the attachment, if I describe

11 that as a red line version, would you agree with that?

12 A Yes.

13 Q And can you say in general what provisions Mr.

14 Ries would like to have had deleted?

15 A Yes. It was the affiliated transaction

16 safeguard tariff language, 3.2B12, Sections 1, 2, 3, 4, 5,

17 3.2C in its entirety, and then -- yeah. And -- and if you

18 go to the interruptible portion --

19 Q Do you have a page there for me --

20 A Just a second.

21 Q -- or a sheet number?

22 A For the -- what I just gave you was for the firm

23 transportation. Now, this is for the interruptible

24 transportation, which would be on Sheet No. 18 3.2B,

25 Sections 1, 2, 3, 4, 3.2C in its entirety. All of that

1 was taken out, which pertains to the affiliate safeguard.

2 Q Mr. Imhoff, let's look down under balancing
3 charges. Was there an addition?

4 A Yes, there was.

5 Q And I'm going to read that and ask you if I've
6 read it correctly. Each month in in balances in excess of
7 the MMIQ may be purchased and sold by transporter
8 according to said Section 2. Have I read that correctly?

9 A Not quite.

10 MS. DAVENPORT: Your Honor, I'm going to have to
11 make another objection as being beyond the scope of -- of
12 cross-examination. Nobody was asking about the specifics
13 of the affiliate language and what the negotiations and
14 why -- why things were left in or deleted. And I don't
15 believe I heard any other party counsel ask or
16 Commissioner ask about that either.

17 JUDGE WOODRUFF: Your response?

18 MS. DAVENPORT: And he has already said that
19 there is no -- there was no tariff violation -- I'm sorry
20 -- tariff filing.

21 JUDGE WOODRUFF: Okay.

22 MS. SHEMWELL: Well, there certainly were
23 questions asked of Mr. Imhoff about the exchange between
24 him and Mr. Ries and that Mr. Ries wanted the tariffs
25 changed. So I believe that's responsive to those

1 questions. I think Ms. Davenport asked about whether or
2 not there was an exchange and was it common. And
3 Mr. Imhoff was saying, no, there isn't typically.

4 And I don't remember. I think Mr. Woodsmall was
5 asking about what changes they wanted to be made. So I
6 think it is responsive to questions.

7 MS. DAVENPORT: Mr. -- your Honor, Ms. Shemwell
8 just appears to be putting on an entire direct examination
9 here during cross. And I -- I believe she's going far --
10 in far more detail than was ever brought up on
11 cross-examination.

12 JUDGE WOODRUFF: I'm going to sustain the
13 objection.

14 MS. SHEMWELL: Okay. Would you like me to then
15 stop discussing this particular --

16 JUDGE WOODRUFF: Yes. Actually, we're all aware
17 of the situation with Mr. Imhoff's daughter's medical
18 problems. Would it be agreeable to the parties to let
19 Mr. Imhoff go now, and if we need to recall him for
20 further examination, we can do so?

21 MS. SHEMWELL: That's certainly fine with Staff.

22 JUDGE WOODRUFF: I think that's advisable. And
23 I -- I think, Tom, you need to go to your daughter.

24 MS. SHEMWELL: Thank you. We appreciate your
25 consideration, Judge.

1 JUDGE WOODRUFF: With that, then, we'll -- we'll
2 allow Mr. Imhoff to step down. And if we need to recall
3 him tomorrow or Friday, we'll do that. Ms. Shemwell, you
4 mentioned several exhibit numbers, 2, 3, 4, 5 8. Did you
5 want to offer them at this time?

6 MS. SHEMWELL: I do.

7 JUDGE WOODRUFF: All right. Exhibits 2, 3, 4, 5
8 and 8 have been offered into evidence. Are there any
9 objections to their receipt? Hearing none, they will be
10 received into evidence.

11 (Exhibit Nos. 2, 3, 4, and 5 were admitted into
12 evidence.)

13 THE COURT REPORTER: I need to change paper real
14 quick.

15 JUDGE WOODRUFF: All right. Go ahead.

16 (Break in proceedings.)

17 JUDGE WOODRUFF: If the court reporter can
18 refresh my memory, did we -- were you on the record when
19 we admitted those documents, or was I doing That while you
20 were changing your tape?

21 THE COURT REPORTER: No. I was on the record.

22 JUDGE WOODRUFF: All right. Well, we were off
23 the record for a moment. Mr. Schallenberg has taken the
24 stand, so please raise your right hand.

25 ROBERT SCHALLENBERG,

1 being first duly sworn to testify the truth, the whole
2 truth, and nothing but the truth, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. SCHALLENGER:

5 JUDGE WOODRUFF: All right. Thank you. You may
6 inquire.

7 MS. SHERWELL: Thank you, Judge.

8 Q (By Ms. Sherwell) Good afternoon,
9 Mr. Schallenberg.

10 A Good afternoon.

11 Q Would you spell your last name for the court
12 reporter, please?

13 A S-c-h-a-l-l-e-n-b-e-r-g.

14 Q Where do you work, Mr. Schallenberg?

15 A The Missouri Public Service Commission.

16 Q And you described earlier what you did, but
17 would you very briefly say what you do here?

18 A I'm the Division Director of the Utility
19 Services Division, which has the Auditing Department,
20 Procurement Analysis Department, Financial Analysis
21 Department and Engineering and Management Services Group
22 with the Support Department as well.

23 Q Mr. Schallenberg, have you prepared testimony to
24 be filed in this case?

25 A Yes, I have.

1 Q Your direct testimony has been marked as Exhibit
2 19 and your surrebuttal as 67. And the attachments to
3 your direct have been marked, I'm thinking through 52,
4 Mr. Schallenberg. Do you have an exhibit list?

5 A Yes, I do.

6 Q Does that look right to you? Through 52?

7 A 19 through 52 would be the direct and the
8 schedules.

9 Q And the surrebuttal is 67?

10 A Right.

11 Q And attached schedules, right?

12 A Right. 67 has a lot of attached schedules to
13 it, but yes.

14 JUDGE WOODRUFF: So you're marking the -- you've
15 marked the exhibit to his direct testimony separately? Is
16 that --

17 MS. SHEMWELL: That's correct.

18 JUDGE WOODRUFF: Okay.

19 MS. SHEMWELL: We just thought with the number
20 of them, it might be helpful.

21 JUDGE WOODRUFF: All right. And that went
22 through 52?

23 MS. SHEMWELL: That's correct. And then 67 is
24 surrebuttal.

25 JUDGE WOODRUFF: And 67 also has attached

1 scheduled, but they're not marked separate?

2 MS. SHEMWELL: They're not separately marked.

3 We can certainly do that.

4 JUDGE WOODRUFF: I don't know that that's
5 necessary. I just want to make sure what we're talking
6 about.

7 MS. SHEMWELL: We've left room for specific ones
8 we want to mark.

9 Q (By Ms. Shemwell) Did you prepare this
10 testimony, Mr. Schallenberg?

11 A Yes.

12 Q Do you have any corrections or additions?

13 A The only one I've noted is in the reprinting in
14 Exhibit 67 of a couple of the attachments of the invoices.
15 There has been a -- an organizational -- I think the
16 documents are all there, but in the -- and I'll get the
17 exact attachment.

18 If you -- if you look at Attachment G -- and I
19 don't know if the company is -- is secret, but there's a
20 comingling of one company and another company in
21 Attachment G.

22 Q Of the invoices?

23 A Yes. So there's two companies that are inter --
24 are interspersed. And the company on the first page of --
25 of Appendix G, that's the company that was tended. All

1 they have is invoices in Appendix G.

2 And then in Appendix O, that company, I noticed
3 that the face sheet and the daily control report behind
4 the face sheets, the first several pages only show the
5 daily control and don't have the related face sheet
6 invoice with them.

7 Q So you can make the corrections to those this
8 evening, and we'll be able to hand out substitute exhibits
9 or revised exhibits tomorrow?

10 A I'll need to find out who organized this.

11 Q Okay.

12 A And I'll -- I'll -- I'll do everything to get it
13 corrected as soon as possible. I don't -- I don't know
14 that I can do it just by myself. But I will get this done
15 as soon as possible.

16 Q Thank you. Any other corrections or additions?

17 A Not that I'm aware of at this time.

18 Q If I ask you the same questions today as in your
19 direct and surrebuttal, would your answers be generally
20 the same?

21 A Yes.

22 Q Is your testimony true and correct to the best
23 of your knowledge and belief?

24 A Yes, it is.

25 MS. SHEMWELL: I tender the witness for cross.

1 Thank you.

2 JUDGE WOODRUFF: Do you wish to offer the
3 testimony?

4 MS. SHEMWELL: I do wish to offer the testimony,
5 yes, and we will make corrections to the surrebuttal.

6 JUDGE WOODRUFF: All right. The direct
7 testimony, that's 19. And then, also, 20 through 52 were
8 the attachments, right?

9 MS. SHEMWELL: Correct.

10 JUDGE WOODRUFF: And 67 is the surrebuttal with
11 the attachments. And the corrections you were talking
12 about were just the attachments to the surrebuttal?

13 MS. SHEMWELL: Yes. G and O.

14 JUDGE WOODRUFF: Okay. All right. Those
15 documents have been offered into evidence. Are there any
16 objections to their receipt? Hearing none, they will all
17 be received.

18 (Exhibit Nos. 19 and 67 were admitted into
19 evidence.)

20 JUDGE WOODRUFF: All right. And for
21 cross-examination beginning with Municipal Gas Commission?
22 And -- and before you get started, Mr. Woodsmall, I will
23 tell you that I anticipate stopping for the day at about
24 20 minutes till five, so --

25 MR. WOODSMALL: I'll be done by then.

1 JUDGE WOODRUFF: Okay.

2 CROSS-EXAMINATION

3 BY MR. WOODSMALL:

4 Q Good afternoon, sir.

5 A Good afternoon.

6 Q I just want to briefly go through a history of
7 how we got to where we are today, and I'm certain that you
8 can help me with that.

9 As you may recall, I believe it was sometime
10 last fall when the LDCs were filing PGAs that a concern
11 came up regarding the PGA rates for those LDCs that were
12 taking service off of the pipelines. Are you familiar
13 with that?

14 A I -- I heard of the concern, yes.

15 Q Okay. And out of those stated concerns of the
16 Commission when they were approving those PGAs, what
17 action did Staff take?

18 A Well, when you say the Staff, the beginning of
19 this proceeding came from a instruction from the
20 Commission in agenda to begin to examine the rates being
21 charged by MPC and MGC to shippers because my
22 understanding is that in the presentation made by Ameren
23 that Ameren had an attractive gas purchase cost, but that
24 the overall PGA rate was, in essence, consistent with the
25 other LDCs that had not had the advantage of prior year

1 edges and that from that, the Commission was concerned
2 about the transportation rate that was elevating the
3 Ameren PGA.

4 And from that, they requested the Staff begin an
5 investigation as to the legitimacy of those charges. And
6 as I recall, it was to be done on an informal basis. I
7 take that back. I think the Commission told us to do it.
8 And I think they wanted to have an a initial report before
9 the end of last year.

10 Q Okay. So, initially, out of the stated concerns
11 in agenda session, Staff was directed to do an informal
12 investigation into the reasonableness of the rates of the
13 pipeline; is that correct?

14 A Yes.

15 Q Okay. And that case -- ultimately, a complaint
16 was filed regarding the reasonableness of the rates, and
17 that was docketed as Case No. GC-2006-0378; is that
18 correct?

19 A That's -- that's correct. To make sure it's
20 clear, we had to leave the informal status because of the
21 discovery disputes. Because we had so many discovery
22 disputes, informal cases don't allow for all the motions
23 to compel and all the other things.

24 So part of the timing and the filing of the 0378
25 case was caused by the -- the need to get discovery

1 matters resolved on a more formal basis.

2 Q Okay. And -- and originally, we were in just a
3 single docket, the 378 case, that was looking at the
4 reasonableness of rates. I know now that we're in a 491
5 case. Can you tell me how we got from the 378 case to
6 this -- this immediate proceeding?

7 A Well, when we first started the investigation,
8 the investigation started in looking at a cost of service
9 compared to the revenues generated by the current rates.

10 And in that initial stage, most of all the
11 Staff's work was being done to correct the cost -- to
12 construct the cost of service.

13 At the same time, when you do that, you have to
14 also look at how much revenue the present rates will
15 generate. And I think it was discussed this morning.
16 There was a lot of work being done to look at billing
17 determinants and what the rates would generate and what
18 were the proper level of billing determinants.

19 As that continued to evolve and the Staff became
20 aware that Omega was involved in transactions other than
21 serving Fort Leonard Wood, which was the initial premise
22 that we started with, it then became aware that with the
23 condition in the tariffs of 32-B that what the actual
24 tariffs would mandate under their operation then became an
25 item we -- we began to look at.

1 As I recall, the catalyst for this case probably
2 stemmed from that meeting we talked about earlier this
3 morning in June 6th, the discovery. And in that, there
4 was a discussion on how we proceed in 378, but there was a
5 -- there was some discussion regarding how to address
6 allegations of tariff violations and that.

7 And as I mentioned, there was no agreement. And
8 before the end of the month, it was decided that the --
9 the Omega transactions were so significant that a separate
10 case needed to be pursued in order to get a determination
11 before you could do a cost of service case.

12 Q So out of the -- as a result of the discovery
13 that was taking place in the 378 case, you became aware of
14 the existence of Omega, the magnitude of its operations
15 and the possibility that those operations con --
16 constituted tariff violations; is that correct?

17 A Not -- not -- not --

18 Q Or constituted violations of the pipeline's
19 tariffs?

20 A We were aware wear of Omega from Day 1. We were
21 told, and at the time when we started, brought into the
22 deal that Omega was the LDC serving Fort Leonard Wood.
23 And I think there was some initial inquiries and some
24 scope work done about is Omega a regulated LDC.

25 What happened is, as we began to do more work,

1 we found that premise not to be true, that Omega was much
2 more than a LDC serving the Fort Leonard Wood complex.
3 And each one of those transactions brought in to play the
4 rate structure that was supporting those transactions.

5 And as we got to -- what are we -- those secret
6 customers, especially that last one, Secret Customer --

7 Q C?

8 A -- C, the significance of the rates being
9 charged to serve that customer, in essence, began to be so
10 much different than the rates charged to other customers
11 that -- that that one count probably drove us into the
12 separate complaint.

13 Q What was the document -- or what was the smoking
14 gun, in your mind, that tipped you off as to the existence
15 of these discounts and caused the current complaint
16 proceeding?

17 Was there a single document that you remember
18 looking at? Or what documents were there that --

19 MR. DEFORD: Your Honor, I'm going to object.
20 This isn't cross-examination. This is direct.

21 JUDGE WOODRUFF: It's what's frequently referred
22 to at the Commission as friendly cross.

23 MR. DEFORD: Which is --

24 JUDGE WOODRUFF: It certainly appears to be.

25 MR. DEFORD: As a practice, it's not allowed.

1 MR. WOODSMALL: Allowed by rule or evidentiary
2 rule or what?

3 MR. DEFORD: It's not allowed by Commission
4 practice.

5 JUDGE WOODRUFF: It is certainly frowned upon by
6 Commission practice.

7 MR. WOODSMALL: I'll finish up in two minutes.
8 I --

9 JUDGE WOODRUFF: All right.

10 Q (By Mr. Woodsmall) I just -- I want to know
11 what the document -- there is allegations that they did
12 not submit their transportation tariffs, much to the
13 detriment of my client because we didn't know about these
14 discounts.

15 So I want to know what was the document -- what
16 was it that tipped Staff off finally that these discounts
17 existed?

18 JUDGE WOODRUFF: I'll let you go forward
19 and --

20 MR. WOODSMALL: That will be my last question.

21 JUDGE WOODRUFF: All right. Go ahead.

22 A I -- I don't recall that there was one document.
23 As I recall, it was the finding out about Secret Customer
24 C reappearing as a real customer and being served through
25 the pipeline after it -- it had disappeared off the

1 revenue summary schedules that were discussed earlier
2 today.

3 MR. WOODSMALL: Okay. I don't have anything
4 further. Thank you, sir.

5 JUDGE WOODRUFF: All right. Thank you. Did
6 Ameren have any cross-examination?

7 MS. DURLEY: No, your Honor.

8 JUDGE WOODRUFF: And Public Counsel isn't here.
9 And before the pipeline gets started, we're going to stop
10 for the day. We'll -- we'll resume at 8:30 tomorrow
11 morning with the pipeline's cross-examination of
12 Mr. Schallenberg.

13 MS. SHEMWELL: Thank you.

14 JUDGE WOODRUFF: And, Ms. Shemwell, if you do
15 want to continue your redirect of Mr. Imhoff, we'll deal
16 with that as long as we need to.

17 MS. SHEMWELL: Thank you, Judge. And if other
18 Commissioners have questions, we will keep you up to date
19 on his situation.

20 JUDGE WOODRUFF: Thank you very much.

21 MS. SHEMWELL: Thank you.

22 JUDGE WOODRUFF: All right. With that, then we
23 are adjourned until 8:30 tomorrow morning.

24

25

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