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5 TRANSCRIPT OF PROCEEDINGS
6 Prehearing Conference

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In the Matter of the Laclede)
Gas Company's Purchased Gas)Case No. GR-2006-0288
Adjustment for 2005-2006.)

KENNARD L. JONES, Presiding,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:
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1 PROCEEDINGS

2 JUDGE JONES: Let's go ahead and go on
3 the record. This is a prehearing conference, Case
4 No. GR-2006-0288, In the Matter of Laclede Gas
5 Company's purchased gas adjustment for 2005/2006.

6 At this time let's take entries of
7 appearances beginning with Laclede.

8 MR. PENDERGAST: Michael C. Pendergast
9 and Rick Zucker representing Laclede Gas Company, 720
10 Olive Street, Room 1520, St. Louis, Missouri 63101.

11 JUDGE JONES: And for the Office of
12 Public Counsel.

13 MR. POSTON: Marc Poston appearing for
14 the Office of the Public Counsel and the public.

15 JUDGE JONES: And Staff of the
16 Commission.

17 MS. SHEMWELL: Good morning. Lera
18 Shemwell representing the Staff of the Missouri
19 Public Service Commission, Post Office Box 360,
20 Jefferson City, Missouri 65102.

21 JUDGE JONES: The only thing I wanted to
22 ask on the record is what you-all particularly
23 disagree about. Is there conditions that Staff is
24 wanting to impose?

25 MR. PENDERGAST: Your Honor, I think on

1 most of the conditions we've already indicated our
2 willingness to implement them, and I think the -- the
3 major issue is a proposed disallowance associated
4 with purchases that Laclede made from its affiliate
5 LER, and we believe that those were made consistent
6 with the requirements of the affiliate transaction
7 rule.

8 I think Staff has a different view. I
9 think that the various arguments, pro and con, have
10 been pretty well reflected in our pleadings. We've
11 worked hard to try and go ahead and see if we can
12 resolve that difference. I think to a degree maybe
13 it's been narrowed, but it hasn't gone away.

14 And I should also let you know that it's
15 similar to an adjustment that we have in the
16 preceding ACA case that has not yet been heard by the
17 Commission. And one of the things we need to do
18 today, I think, is talk about how we process not only
19 this case but the immediately preceding case as well.

20 And whether we can go ahead and take the
21 first one and see if we can get those issues, if we
22 have to go to litigation, resolve it, and then go to
23 this one, but I think that's a matter that we need to
24 go ahead and discuss with the parties today.

25 JUDGE JONES: Okay.

1 MS. SHEMWELL: Would you like to hear
2 Staff's view?

3 JUDGE JONES: Oh, sure. You don't agree
4 with what Mr. Pendergast --

5 MS. SHEMWELL: Not necessarily.

6 JUDGE JONES: Okay.

7 MS. SHEMWELL: We do have two cases
8 open, I would agree. I think we've narrowed some
9 issues, but I don't -- until this morning, I don't
10 know that Laclede had actually agreed to take care of
11 some things that Staff had recommended. They'd said
12 things like we'll talk about them or things like
13 that, so I don't believe we've pinned down any type
14 of firm agreement in terms of what they will actually
15 do.

16 On the affiliate transaction rule, we
17 did agree to engage in some informal discussions.
18 Unfortunately, those were not particularly
19 productive. Staff was permitted to see documents but
20 not copy any documents.

21 But our question really is how could an
22 affiliate of Laclede with limited resources buy gas
23 cheaper than Laclede, the huge natural gas company?
24 And that's our concern with the affiliate is, was it
25 prudent for them to buy from their affiliate when, in

1 fact, their affiliate is a very small company? It's
2 a gas marketing company that Laclede can deal
3 directly with producers like BP, and so why are they
4 going through an affiliate when they could probably
5 do it cheaper themselves and assure that their
6 customers were getting the cheapest gas possible?

7 JUDGE JONES: So what you're saying is
8 they paid more to an affiliate than they would in the
9 market?

10 MS. SHEMWELL: Our concern is that they
11 imprudently purchased from a marketing agent, their
12 affiliate and cost customers more, yes.

13 JUDGE JONES: Would it -- would it make
14 a difference if the company they purchased from
15 wasn't an affiliate but they still paid the same
16 amount?

17 MS. SHEMWELL: Absolutely -- well, you
18 have an arm's-length transaction. In an arm's-length
19 transaction there's a presumption of prudence because
20 you're dealing with someone of bargaining power.
21 With an affiliate it's not arm's-length so there
22 can't be a presumption of prudence because it's
23 between an affiliate.

24 And the Supreme Court in the Atmos case,
25 when they verified the affiliate transaction rule,

1 said the company has not only the opportunity but the
2 incentive to benefit an affiliate, a nonregulated
3 affiliate. And that's why we have the affiliate
4 transaction rule is to prevent that kind of activity.

5 JUDGE JONES: In Staff's view does that
6 rule state that they can't purchase from them?

7 MS. SHEMWELL: Absolutely not.
8 Absolutely not.

9 JUDGE JONES: So it's not a question of
10 whether they can or can't purchase?

11 MS. SHEMWELL: It's a question of how
12 they purchase and the records that they keep and
13 whether or not it's a prudent decision.

14 MR. PENDERGAST: Your Honor, I don't
15 know how much detail you wanted to get into on this,
16 but first of all, this first point of what we agreed
17 to, if you take a look at our response, we list item
18 after item after item where we have gone ahead and
19 agreed with the Staff and what their recommendations
20 have been in various nonmonetary areas.

21 So you know, I mean, if the Staff thinks
22 we haven't agreed even though we said we have, then,
23 you know, I guess that can be the Staff's
24 perspective.

25 JUDGE JONES: What you're saying is

1 you -- you've put a lot of effort into trying to make
2 this work and Staff's not budging?

3 MR. PENDERGAST: Well, yeah, and from
4 our perspective, you know, we think --

5 MS. SHEMWELL: I think that's an unfair
6 characterization.

7 JUDGE JONES: Well, I'm just -- I'm not
8 saying that that's the truth, but that's what he's
9 saying.

10 MR. PENDERGAST: The most frustrating
11 thing for us has been -- contrary to this being an
12 affiliate transaction case, is the complete lack of
13 regard for what the affiliate transaction rule
14 actually requires. That wasn't our rule. We didn't
15 propose it, Staff did.

16 And I think if you look at their
17 adjustment, their adjustment's not grounded in any
18 way in the affiliate transaction rule. It's grounded
19 in whatever Staff's self-imposed standard or
20 self-developed standard may be for what feels right
21 and what feels fair. I mean, we think that the
22 purchases from LER are firmly grounded in the
23 affiliate transaction rule.

24 They've been done for six or seven years
25 in the same way based on competitive prices that were

1 being demanded by other shippers on the same
2 pipeline. No criticism for four or five years, and
3 then suddenly it's a matter that we need to criticize
4 and we need to go ahead and apply an index from an
5 entirely different pipeline in order to price out
6 this deal.

7 I think if you look at the facts, you'll
8 find that we can point to contracts that say this was
9 a competitive market price. We can point to indices
10 that are published publicly that show that this was a
11 reasonable and appropriate market price. We can go
12 ahead and point that this benefited our customers to
13 do this arrangement with LER and we can point to the
14 fact that LER actually lost money on this particular
15 arrangement.

16 And quite frankly, when we see these
17 kind of adjustments being made, despite what
18 Ms. Shemwell says, it gives us the message that you
19 really shouldn't be doing these transactions at all,
20 because, you know, there is no foundation under the
21 rule for proposing this kind of disallowance. It
22 just seems to be if you're gonna do things with your
23 affiliate, we're gonna take money out of your hide.
24 So you know, we'll have a chance to litigate this,
25 but that's our view of it.

1 JUDGE JONES: What about the documents
2 that -- that Lera mentioned?

3 MR. PENDERGAST: Yeah, the documents
4 that Lera mentioned, we have provided literally boxes
5 full of documents. You know, these are all
6 transactions involving gas supply activities. We
7 have a robust ACA process. And as part of that, we
8 provide documentation for virtually every transaction
9 we do that shows what the volumes were. It shows
10 what the invoices were, shows what the market prices
11 were, what the sales were --

12 JUDGE JONES: Well, I'm not talking
13 about what you've shown and what you've given them.
14 I'm talking about what you've shown but not given
15 them.

16 MR. PENDERGAST: And what we've shown is
17 actually invoices --

18 MS. SHEMWELL: We haven't been given
19 anything. We have copies of nothing.

20 MR. PENDERGAST: Your Honor, they have
21 boxes and boxes of documents that they've --

22 JUDGE JONES: You-all can't possibly
23 disagree on whether they have documents.

24 MR. PENDERGAST: Well, when she's saying
25 we haven't been given anything, she's ignoring all of

1 the information that we have given them as part of
2 the ACA process, much of which relates to purchases
3 we made from LER.

4 The documents she's talking about are
5 invoices of LER, our marketing affiliate and
6 information regarding what their cost basis was.
7 Now, from our perspective, we think we've already
8 justified those purchases from LER based on the
9 market prices that were in effect on that pipeline,
10 and it should be irrelevant what kind of cost basis
11 LER had and what its invoices are.

12 Nonetheless, we have made that
13 information available to them over in our offices
14 here in Jeff City to come in and look at them as long
15 as they want. Their complaint is, well, you let us
16 look at them as long as we wanted but you didn't let
17 us make copies. And you know --

18 JUDGE JONES: Can they make copies? Is
19 it gonna be a discovery issue arising --

20 MS. SHEMWELL: I suspect it will be.

21 MR. PENDERGAST: Well, you know, I
22 suppose if they wanted to make copies, that would be
23 fine, but --

24 MS. SHEMWELL: We asked.

25 MR. PENDERGAST: -- at some point it

1 would be nice to go ahead and find from them what
2 they think the relevance of that is, whether they
3 think there's anything in all those documents that
4 they've reviewed that are relevant to this particular
5 case and also what they think the standard is under
6 the affiliate transaction rule, because I don't see
7 what those invoices are relevant at all if we've
8 already met the market test, and I think we have.

9 So you know, we'll work with them on
10 that, Judge, if -- you know, copies will go. But I
11 guess from our perspective, what we're seeing is,
12 well, I just want more information, I just want to
13 look at more things. But we never reach a meeting of
14 the minds of what does the rule really require
15 because if you don't have the standard, then you
16 don't know what information you need.

17 JUDGE JONES: Well, it's possible that
18 you may never agree on what the rule requires, but
19 that resolution won't come until after all the
20 discovery and hearings and everything happens. So
21 the fact that you disagree on the rule shouldn't have
22 anything to do with what you think is discoverable.
23 You see what I'm saying?

24 MR. PENDERGAST: Well, yeah -- no, I
25 understand what you're saying. And I guess from our

1 perspective, we think much of that information that
2 we had made available for their review is not
3 relevant. And I guess we need to make a
4 determination of whether we're going to go ahead and
5 say we're viewing it which I think we're entitled to
6 go ahead and have them review it and giving you as
7 much time to review it as you want and take notes is
8 sufficient or isn't sufficient or whether we need to
9 go ahead and actually make copies so they can have it
10 in their desk drawer over here.

11 JUDGE JONES: Whose responsibility would
12 it be to bear the cost of making copies? Is that an
13 issue?

14 MR. PENDERGAST: Well, I think --

15 JUDGE JONES: Is that --

16 MR. PENDERGAST: No, that -- that's not
17 an issue.

18 JUDGE JONES: Okay.

19 MR. PENDERGAST: These are -- these are
20 invoices reflecting purchases that LER made from
21 various suppliers. Those were made under terms and
22 conditions where if they were going to disclose that
23 information, LER -- and this isn't a regulated
24 entity -- but if they were to disclose it to other
25 parties, they need to go ahead and get or at least

1 publicly make copies or make copies available. They
2 need to go ahead and get permission from those folks.

3 Maybe we'd just have to go and cry and
4 get permission from them if we don't want to go ahead
5 and -- and fight the proposition that letting them
6 view it isn't enough, I need to have copies.

7 JUDGE JONES: So what you're saying is
8 Staff is asking for information that's too broad, it
9 doesn't have anything to do --

10 MR. PENDERGAST: I think too broad and
11 irrelevant. Nevertheless, in an effort to prove that
12 this arrangement was on the up-and-up and perfectly
13 consistent with not only the affiliate transaction
14 rule but the interest of our customers, we've let
15 them see it. It's not our intention to conceal it.

16 And now the issue is, well, I not only
17 want to see it and review it, but I want to go ahead
18 and have copies of it. Well, I guess we'll just have
19 to go ahead and rethink that a little bit and see if
20 we want to, you know, make copies of it and go and
21 talk to the producers and marketers and get their
22 authority to -- to make it available to another
23 party.

24 JUDGE JONES: Okay.

25 MS. SHEMWELL: Response?

1 JUDGE JONES: I'm sorry?

2 MS. SHEMWELL: Response? May I respond?

3 JUDGE JONES: Sure, that's fine.

4 MS. SHEMWELL: In Atmos -- in the Atmos
5 case which Laclede fought strongly, it's the
6 affiliate transaction rule case the Commission
7 said -- or I mean the Supreme Court said that you may
8 review the documents of an affiliate to assure
9 compliance with the rules.

10 The rule's been in effect for Laclede
11 since about 2003. We see LER's profits growing
12 dramatically. We think that the documents are
13 relevant to our investigation of whether or not they
14 have been prudent in their interactions with LER.

15 If you cannot copy documents, you can't
16 see the writing on the document. I -- I think there
17 are many documents we need to see.

18 Under the affiliate transactions rule,
19 specific things are required. I think every other
20 company has been in to sit down and discuss with
21 Staff exactly what was required. Aquila came in and
22 spent two days with us and we went through everything
23 that was required. I think for Laclede to now say
24 they don't know what's required is a rather
25 extraordinary claim. They have produced a very

1 limited set of documents. Staff has no assurance
2 that they're acting in the best interest of the
3 customers.

4 I don't think that what LER is doing can
5 be considered irrelevant when LER is a gas marketer
6 and Laclede sells gas and it's an affiliate.
7 Whatever they do is relevant to whether or not
8 they're complying. We haven't seen records of any of
9 the transactions that were kept to show whether fair
10 market value -- what the fair market value was on
11 that day.

12 Now, Judge, the rule requires an
13 enormous amount of documents, that's true. But it's
14 the Commission's rule. And the Supreme Court has
15 affirmed it. And they need to be keeping those
16 documents if they're going to do business with an
17 affiliate.

18 Now, they have a choice. We don't care
19 if they do business with an affiliate, just so they
20 do it so that they don't benefit the affiliate at the
21 cost of ratepayers. But if they're benefiting their
22 affiliate -- and he's mentioned indices. But we do
23 not think that the indices necessarily apply. There
24 is no index in the area that he's talking about.

25 So we have a disagreement on what the

1 proof may be to find prudence. But if we can't --
2 they know that information is power. They know that
3 information in the regulators' hands is dangerous.

4 JUDGE JONES: So that means they
5 wouldn't want to give it to you. I wouldn't want to
6 give it to you if I knew something would hurt me.

7 MS. SHEMWELL: That's why they're a
8 regulator. They're a monopoly. They need to give up
9 the information.

10 MR. PENDERGAST: Your Honor,
11 Ms. Shemwell hit the nail right on the head. She
12 said that under the affiliate transaction rule you
13 have an obligation to provide documents from your
14 affiliate to the extent necessary to comply with the
15 standards under the rule.

16 We have provided Staff with documents
17 showing that the price at which Laclede purchased gas
18 from LER was based on competitive market prices at
19 the time it occurred. What we have given them are
20 contracts involving other nonaffiliated marketers who
21 were selling gas at the same price or higher.

22 We have given them information showing
23 what indices were in effect at the time that further
24 demonstrates that that was a reasonable price for
25 purchases made on that pipeline, and Staff has not

1 wanted to go ahead and rely on that. Instead, they
2 want to dig underneath and say, well, what did LER
3 actually go ahead and pay for the gas?

4 I don't think that's a relevant inquiry
5 under the affiliate transaction rule as drafted by
6 the Staff and as approved by the Commission.
7 Nonetheless, in an effort to try and get this
8 resolved, we have made all that information available
9 to the Staff to come in and review at their leisure,
10 take as much time as you want.

11 And the only issue now is whether we
12 also made copies so they can bring it over here to
13 their offices in Jeff City and have it in their desk
14 drawers. And we will go ahead and consider whether
15 or not we ought to go ahead and make those copies for
16 them. But I think we've gone above and beyond what
17 anything is required in the affiliate transaction
18 rules to address Staff's information needs.

19 JUDGE JONES: Now, how much
20 information --

21 MS. SHEMWELL: I think you can see
22 clearly from the reaction --

23 JUDGE JONES: Lera, how much information
24 are you talking about?

25 MS. SHEMWELL: Judge, the affiliate

1 transaction rules requires a lot of information with
2 that.

3 JUDGE JONES: Well, I mean, a box, two
4 boxes --

5 MS. SHEMWELL: No. It will be more than
6 that.

7 JUDGE JONES: -- a truckload or --

8 MS. SHEMWELL: And we haven't seen it.
9 We have not seen it.

10 JUDGE JONES: So --

11 MS. SHEMWELL: We've not -- we're happy
12 to be over there. We --

13 JUDGE JONES: Tens of thousands of pages
14 that you wanted that need to be copied --

15 MS. SHEMWELL: I doubt that it will be
16 anywhere near that much, but it could very well be
17 three or four boxes, maybe more. I don't know
18 exactly. We haven't seen the form of the records
19 that they're keeping. I have -- clearly, we're
20 hitting -- striking a chord, Judge, and we're on to
21 something here, and that's --

22 MR. PENDERGAST: You're -- you're
23 striking a chord because you're misrepresenting the
24 entire situation. You're misrepresenting what kind
25 of information and quality of information and

1 quantity of information we have provided. We have
2 provided box load after box load.

3 JUDGE JONES: Let's not talk about what
4 you have provided. Let's just keep focusing on what
5 they say they want.

6 MR. PENDERGAST: Yeah, and -- and --
7 and, your Honor --

8 MS. SHEMWELL: Judge, we'll make a list
9 of that. We'll make a list of that, we'll share it
10 with you, we will probably do it through subpoena.

11 JUDGE JONES: Okay. Well, now that I've
12 got you-all fired up -- so the affiliate transaction
13 rule is what I'm looking at.

14 MS. SHEMWELL: Actually, we're looking
15 at a prudence issue with an affiliate. Were they
16 prudent to do business with their affiliate and did
17 it harm customers?

18 MR. PENDERGAST: And, your Honor, I'm --
19 I would just say that --

20 JUDGE JONES: Do you have to show harm?

21 MS. SHEMWELL: I believe that we'd need
22 to show harm.

23 MR. PENDERGAST: And in their response I
24 don't think that they have mentioned the word
25 prudence once, or in the recommendation. You know,

1 the purchases we made --

2 MS. SHEMWELL: That's what we do.

3 MR. PENDERGAST: -- on this particular
4 area is consistent with the purchasing practice and
5 pattern that we've had in effect for a good number of
6 years. To the extent that they have raised any
7 prudence concerns in the past, it's been questioned
8 whether we need the kind of upstream capacity that
9 they are now saying they want to price out our
10 purchases from LER on -- that were made on this other
11 pipeline.

12 They've -- they've in the past said I'm
13 not sure you need this kind of upstream capacity
14 right here. But now they're saying let's use an
15 index as if you were getting capacity up there from
16 LER as opposed to using the one down here.

17 So to the extent that prudence has
18 anything to do with it, they certainly haven't gone
19 ahead and raised it, and their past recommendations
20 to the Commission have suggested something that's
21 absolutely contrary to what they're proposing by way
22 of response now.

23 MS. SHEMWELL: Judge, we have to reserve
24 the right to learn and grow as a regulator. The
25 company that hides information from Staff, we've got

1 to learn as we go. We've sometimes got to drag
2 information out of them. The profits of LER have
3 grown enormously. But as we see things develop --
4 and gas supply is extraordinary complex. We try to
5 understand it, we try to understand it well.

6 The fact that this may not have been
7 raised in the past does not mean that it is not a
8 valid issue, especially when LER's profits have grown
9 dramatically. And their CEO has indicated to
10 shareholders that's how they intend to continue
11 profits for the company.

12 So the fact that we may not have looked
13 at it in the past does not mean it's not a valid
14 issue now and the customers have not been harmed in
15 the past and are not being harmed now.

16 JUDGE JONES: You're saying they haven't
17 been harmed in the past and they're not being --

18 MS. SHEMWELL: I said it doesn't mean
19 that they haven't been harmed in the past --

20 JUDGE JONES: Oh.

21 MS. SHEMWELL: -- that we haven't raised
22 it. So we have not caught it, have not raised it.
23 It's the level of harm that we're looking at. They
24 may have been harmed in the past. We don't have the
25 information. We are looking at prudence. This is

1 always a prudence case.

2 MR. PENDERGAST: Your Honor, if we'd
3 made the same identical purchase under the same
4 identical terms, only it'd been BP Amoco on the
5 contract rather than LER on the contract, because
6 BP Amoco has a similar contract in effect, no issue
7 would have ever been raised. It's not --

8 MS. SHEMWELL: Because it's an
9 arm's-length transaction.

10 MR. PENDERGAST: You know, but the
11 same --

12 JUDGE JONES: But it's still the same
13 amount of money that's been spent.

14 MS. SHEMWELL: But there's no
15 presumption of prudence with -- and a transaction
16 that's not arm's-length because you don't have equal
17 people on either side negotiating. You have Ken
18 Neises as president of LER and Laclede. Who's gonna
19 benefit?

20 JUDGE JONES: I understand -- I
21 understand -- I understand what you're saying,
22 Ms. Shemwell, but if the same price is paid, then who
23 cares where the money went? What difference does it
24 make to the customer?

25 MS. SHEMWELL: It's fair market --

1 because it's lesser of fair market value or cost.

2 MR. SUMMER: That's what the affiliate
3 transaction rules require.

4 MS. SHEMWELL: The transaction rules
5 require. The affiliate transaction rules require a
6 fairly high standard of proof to show that they're
7 not benefiting their affiliate.

8 JUDGE JONES: So the issue is whether
9 they benefit the affiliate or whether they harm the
10 ratepayer?

11 MS. SHEMWELL: Both.

12 JUDGE JONES: Does the transaction --
13 the affiliate transaction rule adjust to ratepayers
14 at all, their interests? Does it -- does it do
15 anything with the ratepayers' interest?

16 MS. SHEMWELL: It's entirely to protect
17 the ratepayers.

18 JUDGE JONES: But does it -- does it
19 talk about the ratepayer in the rule?

20 MS. SHEMWELL: The rule says it's to
21 keep them from giving a financial advantage to their
22 affiliate. And in this case we believe that we have
23 to show harm in order to prevail.

24 JUDGE JONES: So then the focus is on
25 giving an advantage to the affiliate?

1 MS. SHEMWELL: If they have given -- the
2 affiliate transaction rule says they cannot give a
3 financial advantage to their affiliate and they are
4 held to a certain level of proof that they didn't do
5 that. This rule is intended to prevent regulated
6 utilities from subsidizing their nonregulated
7 operations. In order to accomplish this objective,
8 the rule sets forth financial standards.

9 JUDGE JONES: Well, it almost sounds
10 like the rule precludes any business with an
11 affiliate.

12 MS. SHEMWELL: Not at all.

13 JUDGE JONES: Because the affiliate's
14 not benefiting. Even if they pay below market value
15 to the affiliate, the affiliate still gets paid.

16 MS. SHEMWELL: The affiliate does get
17 paid.

18 JUDGE JONES: So how can they not -- why
19 wouldn't you want to benefit the affiliate?

20 MS. SHEMWELL: They do want to benefit
21 the affiliate.

22 JUDGE JONES: But why -- they should
23 want to --

24 MS. SHEMWELL: Why have an affiliate, is
25 that your question?

1 JUDGE JONES: Well, if they're gonna
2 have affiliates and if you have an affiliate, why
3 wouldn't you want to benefit the affiliate?

4 MS. SHEMWELL: As far as I know, they're
5 the only gas company in the state that has a
6 marketing affiliate now.

7 JUDGE JONES: That being true, why
8 wouldn't they want to benefit the affiliate?

9 MS. SHEMWELL: They do.

10 JUDGE JONES: So why would we not want
11 them to?

12 MS. SHEMWELL: Because it's potentially
13 harmful to the ratepayer when they do it at the -- at
14 the disadvantage -- LER --

15 JUDGE JONES: Would it -- would it be at
16 a disadvantage if they, like you said, bought -- did
17 the same exact terms, same terms, bought gas from BP?

18 MS. SHEMWELL: If they prove to us that
19 they -- the transaction benefited ratepayers, that's
20 okay with us.

21 JUDGE JONES: Well, as you said, if they
22 had under the same terms purchased from BP, we would
23 not be here. What I'm saying, it doesn't -- what
24 they -- how -- where the money goes, they spend,
25 shouldn't be relevant to whether the ratepayers

1 benefit --

2 MS. SHEMWELL: If they've made a prudent
3 decision --

4 JUDGE JONES: -- the amount --

5 MS. SHEMWELL: If they have made a
6 prudent decision, that's right.

7 JUDGE JONES: So if they have contracts
8 with BP, then, that -- that reflect the same terms
9 that they've had with their affiliate, then how could
10 they say it's imprudent?

11 MS. SHEMWELL: That would be one of
12 the --

13 JUDGE JONES: It would be -- it would be
14 imprudent not to purchase from the affiliate.

15 MS. SHEMWELL: We haven't seen that. We
16 haven't seen that.

17 MR. PENDERGAST: Your Honor, we've given
18 them the BP contracts.

19 MS. SHEMWELL: But we haven't seen the
20 LER stuff.

21 MR. PENDERGAST: Well, we've given you
22 all the invoices from LER. Dave has gone over and
23 he's looked at them, I think and --

24 MS. SHEMWELL: It's not the same terms.

25 MR. PENDERGAST: He has gone over and

1 looked at them, and you know --

2 JUDGE JONES: So you-all have seen both
3 terms or the same terms? Well, the issue is -- you
4 know, we don't have to get into the factual issues
5 now, but I'm just trying to make you-all understand.

6 MS. SHEMWELL: Judge, the terms are not
7 the same.

8 MR. PENDERGAST: The pricing is the
9 same, Judge.

10 JUDGE JONES: So you have --

11 MS. SHEMWELL: The terms --

12 JUDGE JONES: -- you have seen the
13 information, is what I'm asking.

14 MS. SHEMWELL: Dave has seen some of the
15 information, but the terms are not the same.

16 JUDGE JONES: That's an issue for a
17 hearing.

18 MS. SHEMWELL: I agree. I agree.

19 JUDGE JONES: I just want to know that
20 you have seen both of them.

21 MS. SHEMWELL: But I don't think we've
22 seen what we need to see.

23 JUDGE JONES: Do you know what you need
24 to see?

25 MS. SHEMWELL: Mr. Sommerer will be

1 happy to put together a list of what we need to see.

2 JUDGE JONES: Okay. Why don't you-all
3 focus on that at least --

4 MS. SHEMWELL: Okay.

5 JUDGE JONES: -- so we can maybe resolve
6 a discovery issue before it becomes -- before I have
7 to resolve it.

8 Also, you-all might want to think
9 about -- if we -- if this is gonna go to a hearing,
10 you might want to think of the statement of facts,
11 the facts that you-all can certainly agree on.

12 MR. PENDERGAST: I think that's a --
13 that's a good idea. I think that, quite frankly,
14 we've gone through enough back-and-forth now and
15 enough discovery where I'm not sure that there is
16 really that much of a factual dispute anymore.

17 I think we ought to be able to reach
18 agreement on a variety -- a wide variety of the facts
19 that are associated with this case. And then I think
20 the important thing is to -- if we can't reach an
21 agreement, is to get some indication from the
22 Commission as to how it views the affiliate
23 transaction rule as applying to these particular
24 kinds of situations.

25 As I said, you know, from our

1 perspective, Staff's adjustment was never really
2 grounded in that rule. You won't see much of a
3 discussion about it. They don't go and say, well,
4 here's section so and so of the affiliate transaction
5 rule and here's what happened and here's why this
6 isn't consistent with the affiliate transaction rule.

7 In fact, the reference to the affiliate
8 transaction rule is almost an aside. There may be
9 a concern with the affiliate transaction rule. And
10 we think the rule is there, the rules in the game
11 were in place, and we think that what we did with
12 LER and the purchases that were made were absolutely
13 100 percent consistent with what that rule requires.

14 MS. SHEMWELL: And he can try to
15 convince you of that, Judge, but we don't -- we don't
16 believe it and we haven't seen it.

17 JUDGE JONES: That's the issue.

18 MR. PENDERGAST: That's fine.

19 MS. SHEMWELL: We haven't seen it.

20 And --

21 JUDGE JONES: One of you two don't know
22 what you're talking about. One of the two of you
23 don't know, one of the two of you is wrong, one of
24 the two of you is right. Mr. Poston, did you want to
25 add anything?

1 MR. POSTON: We haven't taken a
2 position. We're still conducting discovery. We're
3 very concerned with the claim Staff has raised, but
4 we haven't taken a formal position yet.

5 JUDGE JONES: Okay.

6 MS. SHEMWELL: You're concerned that
7 Staff is right?

8 MR. POSTON: Yeah. If Staff is correct,
9 right, that is our concern. And we're also concerned
10 with the discovery that, you know, we think Staff
11 needs to see what they need to see.

12 JUDGE JONES: Okay. Well, aside from
13 the statement of facts and a list of items that you
14 need to see, what else do you-all intend to get out
15 of today's discussion?

16 MR. PENDERGAST: Well, as I indicated
17 earlier, we've got the preceding case that also
18 involved a purchase from LER. It's got similar
19 issues not necessarily identical.

20 JUDGE JONES: What stage is that case
21 in, do you know?

22 MR. PENDERGAST: You know, it's just
23 been kind of sitting out there.

24 MS. SHEMWELL: I think we'd recommend
25 consolidation. That makes sense.

1 they're talking about.

2 MS. SHEMWELL: I think we know exactly
3 what we're talking about.

4 MR. PENDERGAST: I wholeheartedly agree
5 that we're not both right.

6 JUDGE JONES: All right. Well, I'll
7 leave you-all to discuss things, and if you need me,
8 I'll be in my office.

9 MR. PENDERGAST: Great. Thank you,
10 Judge.

11 MS. SHEMWELL: Thank you, Judge.

12 MR. PENDERGAST: Appreciate it.

13 JUDGE JONES: With that, we're off the
14 record.

15 (WHEREUPON, the recorded portion of the
16 prehearing conference was concluded.)

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