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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

March 11, 2003
Jefferson City, Missouri
Volume 1

In the Matter of Southern Missouri)
Gas Company, L.P.'s Purchased Gas)
Adjustment Factors to be Reviewed in) Case No. GR-2001-388
its 1999-2000 and 2000-2001 Actual)
Cost Adjustment.)

BILL HOPKINS, Presiding,
SENIOR REGULATORY LAW JUDGE.

SHEILA LUMPE,
CONNIE MURRAY,
STEVE GAW,
BRYAN FORBIS,
COMMISSIONERS.

REPORTED BY:

KELLENE K. FEDDERSEN, CSR, RPR, CCR
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1 P R O C E E D I N G S

2 JUDGE HOPKINS: We're not on the Internet.

3 For some reason we can't get on.

4 This is Case No. GR-2001-388, In the matter of
5 Southern Missouri Gas Company, L.P.'s purchased gas
6 adjustment factors to be reviewed in its 1999-2000 and
7 2000-2001 actual cost adjustment. Today is March 11th,
8 2003.

9 The parties have asked that we hear opening
10 statements first, before we do all the other things we
11 usually do before we start the hearing. So we have all the
12 Commissioners except for Commissioner Simmons here on the
13 Bench, and if you would like to start the opening
14 statements. How did you have that arranged?

15 MR. FISCHER: Your Honor, I think the
16 company was going to go first on that. And just for
17 purposes of the record, I'd enter my appearance.
18 James M. Fischer and Larry W. Dority, Fischer & Dority, PC,
19 101 Madison Street, Jefferson City, Missouri, appearing on
20 behalf of Southern Missouri Gas Company, L.P.

21 JUDGE HOPKINS: Since Mr. Fischer did that,
22 everybody else go ahead and enter their appearance.

23 Mr. Dority, you want to enter your appearance?

24 MR. DORITY: I think he did for me.

25 JUDGE HOPKINS: Okay. Mr. Franson?

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1 MR. FRANSON: Robert Franson, attorney
2 appearing for the Staff of the Missouri Public Service
3 Commission, P.O. Box 360, Jefferson City, Missouri 65102.

4 MR. MICHEEL: Douglas E. Micheel, appearing
5 on behalf of Office of the Public Counsel and the Public,
6 P.O. Box 7800, Jefferson City, Missouri 65102.

7 JUDGE HOPKINS: Thank you very much. And let
8 me remind everyone, please use your microphone so we can
9 hear you up here, and we hope to get out on the Internet, so
10 that has to go through those microphones also.

11 Go ahead, Mr. Fischer.

12 MR. FISCHER: Thank you, Judge. If it's okay,
13 I'll use your board here a little bit and try to make it so
14 everybody can see.

15 May it please the Commission? My name is
16 Jim Fischer and I represent Southern Missouri Gas Company,
17 L.P. in this proceeding. Southern Missouri is a small
18 local distribution company that serves approximately
19 7,600 customers in 12 communities in southern Missouri.

20 When the company was first certificated by the
21 Commission to provide natural gas service in 1994, Southern
22 Missouri Gas Company had no customers and faced vigorous
23 competition from unregulated propane dealers and electric
24 cooperatives. Ever since the company entered this market,
25 competition from these unregulated propane suppliers has had

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1 a substantial impact upon the rates that the company could
2 charge for its services.

3 In fact, in the company's one and only rate
4 case before the Commission, which was Case No. GR-2000-485,
5 the Staff's audit showed that the company was entitled to a
6 larger rate increase under traditional rate-based rate of
7 return regulation than what the company had asked for.

8 Because the company is operating in a highly
9 competitive market, though, the company's rates are
10 effectively capped at the level of the unregulated propane
11 prices. The company cannot increase its rates above the
12 levels that would be competitive with propane, even though
13 higher rates might be justified by traditional rate-based
14 rate of return regulation.

15 Now, this background is important since in
16 this ACA case what we're really talking about is how the
17 company has responded to this unregulated competition and
18 attempted to meet its customers' needs, both its large
19 customers, its large industrial customers who could easily
20 switch to propane, and its other customers on the company's
21 system whose rates will go up if the company loses a
22 substantial portion of its industrial load to alternative
23 sources of energy.

24 The evidence in this proceeding will
25 demonstrate that the company has assisted its customers in a

1 way that resulted in a win/win solution for all its
2 customers under very difficult market conditions. During
3 the winter of 2000-2001, natural gas wholesale prices
4 skyrocketed to unprecedented levels. I think we all
5 remember that winter. Wholesale natural gas prices
6 skyrocketed from 4.50 per MCF the last week of October to
7 9.98 per MCF the last week of December of 2000.

8 And I think for purposes of illustration I'll
9 just put that on the board. So these prices skyrocketed
10 from October to December of 2000. When Southern Missouri
11 increased its PGA rate on February 1st of 2001 to reflect
12 that dramatic increase in their wholesale prices, including
13 the uncollected ACA balances that occurred from previous
14 years, their total PGA rate was \$8.98.9 per MCF.

15 This was an unprecedented level for Southern
16 Missouri Gas Company, and these wholesale price levels made
17 it very difficult for the company to compete with
18 alternative forms of energy, particularly propane.

19 After three large-volume service customers
20 received their bills that reflected that unprecedented PGA
21 rate, they contacted Southern Missouri Gas Company
22 expressing concerns over the company's natural gas rates.
23 They informed the company that they were going to switch to
24 propane unless the company could do something to make
25 natural gas competitive with propane in the market.

1 Now, the propane dealers were giving bids for
2 propane at 71 cents per gallon. At that price, the propane
3 was substantially less than the rate for natural gas.
4 71 cents per gallon is the equivalent of a natural gas rate
5 of \$7.75 per MCF. So let's put that on here (indicating).
6 So 71 cents per gallon equals \$7.75 per MCF. So that's what
7 we have to beat or at least meet.

8 The company's large volume service rate at
9 that time, though, including that PGA rate, was \$10, and
10 these were large volume service customers at that time. So
11 they had to pay \$10 if they were going to pay the regulated
12 price for large volume service. Together these industrial
13 customers represented 20 percent of the total gas sales of
14 the company.

15 Since this -- the potential loss of this
16 20 percent of the load would negatively impact Southern
17 Missouri Gas and its remaining customers, the company began
18 reviewing its options for keeping these customers on the
19 system.

20 One option that the company seriously
21 considered was encouraging these industrial customers to
22 become transportation customers under the company's existing
23 transportation tariff, to allow them to take advantage of
24 what will shortly become rapidly falling wholesale prices in
25 the spring of that year.

1 However, this was not a viable option for one
2 of three of the industrial customers, since the customer did
3 not meet the minimum usage threshold that was contained in
4 the company's transportation tariff at that time. Since
5 this customer did not qualify for transportation service,
6 the company was not able to provide this customer a
7 transportation service option or do anything else to make
8 natural gas competitive with propane.

9 As a result, that customer, which I'm talking
10 about today as the third customer, left Southern Missouri
11 Gas Company's system and went to propane. It was only
12 after the company modified its minimum threshold for
13 transportation tariffs in late 2001 that this customer came
14 back on to the company's natural gas system as a
15 transportation customer.

16 But at this point, though, I'd like to focus
17 on the two customers that initially qualified for
18 transportation service when those prices skyrocketed to
19 \$9.98. These customers are the subject of the Staff's
20 disallowance in this case and, therefore, they're the most
21 relevant to the proceeding.

22 Although the wholesale prices had spiked to
23 nearly \$10 in December of 2000, the prices began to fall in
24 the unregulated market later in the winter, and by the
25 spring of 2000 they had fallen to less than \$5.

1 So they skyrocketed from October of 2000 from
2 4.50 to 9.98. Our PGA rate changed to capture this
3 increased market price, and then suddenly they're falling
4 like crazy down to \$5, but yet our rates continue to be
5 \$10 for the large volume service.

6 The PGA rate is almost \$9, and our propane
7 folks are down here still charging 7.75. But yet the market
8 price now if you go out on the transportation market and get
9 gas supplies is \$5. But, of course, the PGA rate is still
10 at a level necessary to cover the cost of the winter
11 supplies and the unrecovered ACA.

12 Now, under these circumstances, the
13 transportation option appeared to be the only viable option
14 for these customers. However, when the company discussed
15 the transportation option with these industrial customers,
16 it became apparent that these particular industrial
17 customers were not comfortable dealing with third-party gas
18 marketers to obtain their gas supplies.

19 They were not familiar with third-party gas
20 marketers. They simply didn't trust out-of-state suppliers
21 for their energy needs, nor did they have the in-house
22 expertise to go out and get this \$5 gas that was available
23 on the open market.

24 Now, after hearing their concerns regarding
25 third-party gas marketers, the company looked at these

1 conditions in the marketplace to determine if there was some
2 other solution that would work for these customers. In
3 particular, the company reviewed the possibility that
4 Southern Missouri Gas Company itself could assist these
5 customers to get natural gas supplies at \$5.

6 Since the natural gas prices had fallen so
7 dramatically, the company would be able to acquire the
8 natural gas supplies for these customers at a much lower
9 price than that PGA rate that was inherent in their
10 regulated rates.

11 In order to illustrate how that worked, I'm
12 going to use some hypothetical numbers. The actual numbers
13 are in the HC portion of this record, but just for purposes
14 of a public discussion, I'm going to use hypothetical sales
15 prices and cost of gas.

16 As I said, the regulated price was 8.99 for
17 the PGA, and that's the equivalent of about 8.80 per MMBtu.
18 We'll talk about that as about \$9. Now, hypothetically,
19 let's assume that the wholesale or the wellhead prices were
20 \$5. The company negotiated a sales price for that gas that
21 was competitive with propane and more than covered the cost
22 of gas. And hypothetically let's assume that the large
23 industrial customers agreed to pay \$6. And the cost of --
24 plus in order to get the gas to these folks, we had \$1 for
25 the transportation fee that is required by the

1 transportation tariff.

2 So \$6 for the gas plus \$1 equal \$7. That's
3 still competitive with the propane alternative. And we had
4 to pay \$5 for the cost of gas. So this meant there is a
5 \$1 per MMBtu profit off the gas transaction. Now, that
6 \$1 -- excuse me.

7 COMMISSIONER LUMPE: When you say we, you mean
8 Southern Missouri?

9 MR. FISCHER: I'm talking Southern Missouri
10 Gas, that's right.

11 The \$1 per MMBtu profit or contribution from
12 the sale of the natural gas to these customers was not
13 retained by Southern Missouri Gas Company owners. It didn't
14 benefit the company. Instead -- in fact, the company did
15 not even charge these customers for going out and securing
16 this \$5 gas.

17 Instead, the \$1 per MMBtu profit was used to
18 lower -- lower the ACA rate that is responsible to be paid,
19 or the ACA balance, I guess, that is responsible to be paid
20 for by all the customers of the company, pursuant to the
21 PGA/ACA process.

22 And as Staff Witness Bailey has confirmed in
23 her testimony, this profit or contribution reduced the
24 amount of the ACA balance that the remaining customers would
25 have to pay by 39,987. So this dollar turns into a total of

1 39,987, which goes to benefit remaining ratepayers. Company
2 doesn't make any profit. That profit all goes to the
3 remaining ratepayers by reducing the ACA balance. As a
4 result, the rates for residential, commercial and other
5 industrial customers benefit because of this arrangement.

6 If the company had not been willing to enter
7 into these contractual arrangements with these large
8 industrial customers, then the other ratepayers would
9 have -- would not have received that \$40,000 contribution
10 from the sale of gas. And as a result, the rates for
11 residential, commercial and other customers would have
12 eventually increased.

13 Now, after reviewing their options, these two
14 industrial customers decided to enter into a supply
15 agreement with the company for their natural gas supplies
16 and utilize Southern Missouri Gas Company's transportation
17 service that's authorized by the transportation tariff. In
18 this way, the company was able to keep these industrials on
19 the system, and as a result, the remaining ratepayers
20 directly benefited.

21 Eventually, though, the largest of these two
22 industrial customers still decided that alternative was
23 still better and it left the system and took most of its
24 production load with it and went to an alternative source of
25 energy.

1 Now, finally I'd like to briefly finish the
2 story of that third industrial customer that did not
3 initially qualify for the transportation service. As I
4 indicated, the third customer left the system in favor of a
5 cheaper-priced propane alternative. Now, in November of
6 2001, the company made several changes to the transportation
7 tariff. One of the changes modified the minimum threshold
8 necessary to qualify for transportation service.

9 Under the revised tariff, the third customer,
10 who at that time was off the company system, would now
11 qualify for transportation service. And when the company --
12 when that particular customer approached the company and
13 wanted to get back on natural gas, this transportation --
14 this transportation option was discussed with him, since
15 this transportation service was the only viable option for
16 that customer to return to the natural gas system and still
17 being competitive with propane.

18 As Bill Walker, who happens to be in the
19 audience today, testified in a deposition that the Staff
20 took, he put this customer in contact with a third-party
21 marketing company and explained that the marketing company
22 would secure the gas for the customer and then we would
23 transport it. Southern Missouri would transport it.

24 However, as Bill Walker explained to Staff
25 Counsel in that deposition, and I'll quote it, they later

1 communicated to me that they didn't understand what the
2 marketer was telling them, they weren't comfortable dealing
3 with him, they didn't know him, and they preferred to deal
4 with me, because they could come into my office and ask me
5 direct questions and get direct answers in a language and
6 vernacular that they understood.

7 When this third customer was given the option
8 of having Southern Missouri Gas Company secure the gas
9 supplies to be transported under the company's
10 transportation tariff, the customer agreed and came back on
11 to Southern Missouri's system in July of 2002.

12 Since this third contract was outside the
13 current ACA period, it's not included in the Staff's
14 proposed adjustment, but I expect it will probably be an
15 issue in the next ACA case, depending on how this case is
16 decided by the Commission.

17 Now, in this proceeding, the Staff has argued
18 that the company's assistance to these customers was a
19 violation of its tariffs. However, Staff Witness Jim Russo
20 candidly admits in his testimony that Staff could not point
21 to anything, any specific provision in the company's tariff
22 that's being violated. Instead, Staff has suggested that
23 Southern Missouri Gas is operating outside its tariffs.

24 We, of course, respectfully disagree. The
25 company was not operating outside its tariffs. Rather, we

1 would respectfully suggest that in finding that win/win
2 solution that worked for everybody concerned, the company
3 was operating in what some might characterize as outside the
4 box, clearly not outside its tariffs.

5 In fact, each of -- each of the standard
6 transportation service agreements specifically state that
7 they are subject to the provisions of the company's
8 transportation service tariffs approved by the Missouri
9 Public Service Commission.

10 The transportation rates contained in those
11 transportation service agreements are specifically
12 authorized by the Commission's approved tariffs.

13 Now, with regard to the gas supply agreements
14 where we went out and got the \$5 gas, the company acted
15 under the authority of various FERC orders that restructured
16 the natural gas markets in the 1980s and created an
17 unregulated market for the supply of natural gas for
18 transporters.

19 The FERC orders that restructured the natural
20 gas markets in the '80s created an unregulated market for
21 the supply of natural gas for transporters, and those are
22 discussed at length by the Missouri Court of Appeals in
23 Midwest Gas Users Association vs. the Public Service
24 Commission, the cite to that is 976 SW 2nd 470, which is a
25 1998 case; and also by the United States District -- or

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1 excuse me -- the United States Court of Appeals, the DC
2 District, in United Distribution Companies vs. the Federal
3 Energy Regulatory Commission, 88 Fed 3rd 1105, and it's also
4 cited in the PUR at 170 PUR 4th 425, and that was a '96
5 case.

6 Staff has also argued that the company has
7 created a new class of customers here, and they're calling
8 it transportation service - internal, without Commission
9 approval. Now, unfortunately, I think the company probably
10 created some confusion on this part of the issue when it
11 referred to these two industrial customers in the original
12 work papers submitted to support the PGA filings in this
13 case whenever we had a heading for internal transportation
14 customers.

15 Now, this heading on the company's work papers
16 was merely a shorthand way of aggregating the revenues and
17 the costs associated with these contracts under one heading.
18 It was never intended to convey that the company had created
19 a new class of customers. In fact, as Bill Walker, the
20 company's primary contact with these customers, testified in
21 his deposition, he never used this term himself, he did not
22 know where it originated, and he did not ever indicate to
23 these customers that they were considered by anybody to be
24 internal transport customers.

25 Now, from our perspective, these customers

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1 qualified as transportation customers under the company's
2 tariff. They entered into standard transportation
3 agreements, which all transportation customers do, and, in
4 fact, they were transportation customers and are
5 transportation customers.

6 Staff has also suggested that the company
7 needs to be certified under Section 393.299 RSMo to provide
8 these services to these industrial customers. As we'll
9 explain in our Brief, distributors like Southern Missouri
10 Gas Company are specifically exempted from the provisions of
11 393.299 when it states, and I'll quote it, no person other
12 than a distributor shall provide energy services unless the
13 person is certified by the Commission as a seller.

14 No person other than a distributor, and
15 according to subsection 3 of 393.298, a distributor includes
16 a gas corporation which is authorized by the Commission to
17 provide or distribute energy services. Of course, Southern
18 Missouri Gas Company is a gas corporation and has been
19 authorized to provide natural gas services in its
20 certificated area. Therefore, Section 393.299 does not
21 require that Southern Missouri Gas Company be certified as a
22 seller before it provides these services.

23 Now, based on the Staff's contention that
24 Southern Missouri is violating its tariffs, Staff has
25 proposed a substantial disallowance of more than \$102,000.

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1 There's also about a \$2,000 refund piece to that that may
2 lower that a bit. According to Staff Witness Bailey, this
3 revenue adjustment is designed to compute the PGA revenue
4 that would have been received from these industrial
5 customers if their gas had been sold at the authorized PGA
6 rate for sales of gas.

7 So what she's saying is we're going to assume
8 that they would have paid this PGA rate of \$9 when, in fact,
9 the propane alternative was 7.75, and if they went to
10 transportation they could get their gas at \$5. But for
11 purposes of this case, we're going to assume that they were
12 paying the full \$10 rate, which includes this \$9 for PGA.
13 And whenever you calculate that, the difference is \$102,000.
14 This is in the form of a revenue imputation adjustment.

15 Now, Staff has not refuted the company's
16 testimony that these industrials were poised to leave the
17 Southern Missouri Gas Company system if the company had not
18 assisted the customers with a gas supply agreement. While
19 anyone, I suppose, can assume that customers will pay an
20 unusually high rate of \$10 whenever they have a much lower
21 priced alternative available to them, merely by making that
22 assumption simply doesn't make it so, especially if you have
23 a customer that has a much cheaper priced alternative source
24 of supply available to them.

25 When Mr. Walker, the primary contact with

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1 these customers, was asked in his deposition whether he had
2 an opinion about whether these large industrial customers
3 would have stayed on the company system if the gas company
4 had refused to enter into these supply agreements, he stated
5 emphatically they wouldn't have, in my opinion, no, sir. As
6 I already mentioned, the largest of those two customers did
7 move most of its load to an alternative source of energy
8 when the gas supply agreement expired.

9 The evidence is also clear that that third
10 industrial left the company's system when it was unable to
11 secure a transportation option, but it later returned when
12 the company modified its tariffs and it did qualify for
13 transportation service.

14 Now, based on this evidence, Southern Missouri
15 Gas Company faced a very real competitive threat from
16 alternative sources of energy that could not be ignored
17 without having adverse consequences on the company's
18 remaining ratepayers.

19 In conclusion, the company should not be
20 penalized for finding a win/win solution for a very
21 difficult market problem. It would be particularly
22 inappropriate to adopt the Staff's proposed adjustment
23 and penalize the company an amount that is equivalent to
24 64 percent of their net earnings before you consider taxes
25 or before you consider interest for that year. 64 percent

1 of what they earn will go away or is the equivalent of that
2 \$102,000.

3 Actually, though, the Staff's adjustment seems
4 even more extreme and unreasonable when the company's
5 overall financial situation is considered. According to the
6 company's annual report filed with the Commission, when
7 interest costs are taken into account, and they have to pay
8 interest costs every year, the net income of this company
9 was actually negative. They lost money in 2001. Southern
10 Missouri's net income in the year 2001, including interest
11 cost, was a negative \$1,808,226.

12 Now, as if the Staff's adjustment in this case
13 isn't bad enough, the company was further disappointed on
14 Friday to learn that the Staff has now filed a formal
15 complaint against the company in which it's seeking
16 additional penalties for these activities that benefited all
17 the company's customers. Apparently Staff intends to have
18 another costly proceeding before the Commission seeking
19 to -- an order extracting additional penalties from
20 Missouri's second smallest gas company, followed by another
21 proceeding in Circuit Court to enforce that order.

22 Your Honor, as the Commission considers
23 Staff's position in this matter, I would hope that you'd
24 carefully consider the message that you'll be sending to the
25 regulated companies of this state and the general public if

1 you adopt this. At a recent Energy Bar meeting that
2 Commissioner Murray and I attended in Kansas City, attendees
3 heard --

4 MR. FRANSON: Your Honor, I'm going to have to
5 object at this time. And I regret objecting to an opening
6 statement; however, certainly meetings outside of this
7 proceeding have no bearing and no relevance to this, and I
8 would object and ask --

9 JUDGE HOPKINS: This is an opening statement,
10 and he's not giving evidence. So I'm going to overrule your
11 objection.

12 Go ahead, Mr. Fischer.

13 MR. FISCHER: Thank you, your Honor. I was
14 not going to quote any facts, but I was going to suggest
15 that the FERC Commissioner challenged all of us to find
16 solutions that will benefit our state's consumers. That's
17 not anything that's particularly novel or surprising.

18 But with all due respect to the Staff, this is
19 exactly what the company was trying to do and thought it was
20 pursuing when it agreed to provide a gas supply agreement
21 and a transportation agreement to these customers. However,
22 the adoption of the Staff's adjustment in this proceeding
23 and then the commencement of another complaint proceeding to
24 consider further penalties for pursuing this goal will
25 create an obvious disincentive for Southern Missouri Gas

1 Company or other regulated companies to think outside the
2 box and find creative solutions that benefit their
3 customers. That's what this case is all about.

4 Southern Missouri took steps within its
5 transportation tariff to minimize the loss of its industrial
6 load that directly benefited residential and commercial
7 customers \$40,000. Had Southern Missouri Gas Company not
8 done something, the evidence suggests that all or nearly all
9 of that disputed load would have been lost. That \$40,000
10 profit would not have gone to residential and commercial
11 customers, and in the next ACA case, we would have seen that
12 ACA factor go up and the other customers, the residential
13 and commercial, would have had to pay the additional amount
14 of money.

15 Now, fortunately, the other issues in this
16 case have been settled and we filed a partial stipulation, I
17 think it was on Friday, to deal with that. And if you have
18 any questions about that particular partial stipulation, our
19 witnesses, and I'm sure the Staff witnesses, are here to
20 answer those.

21 But this one issue, this internal
22 transportation issue for this company is quite important,
23 \$102,000, and it's also the principle that they went out and
24 tried to help these customers in a way that didn't put money
25 in the company's pocket other than they got the

1 transportation service fees. But now they're being asked to
2 be penalized \$102,000 and maybe face \$2,000 a day in
3 penalties in the next proceeding. I ask you to seriously
4 consider this position.

5 Thank you.

6 JUDGE HOPKINS: Let me remind you-all again,
7 please, when you speak, you need to speak in the microphone.
8 And if you object or want to speak from your desk, if you'd
9 please speak from your microphone, that's the only way that
10 this is going to go out on the Internet. And we're trying
11 to also record this. I'd appreciate you doing that.

12 Go ahead, Mr. Franson.

13 MR. FRANSON: Thank you, Judge.

14 May it please the Commission, Judge Hopkins?

15 JUDGE HOPKINS: Yes, sir.

16 MR. FRANSON: Let me start by maybe adding a
17 page or two, a little bit different perspective; that is,
18 staff's perspective.

19 Let me start by pointing out there were
20 initially six issues in this case, and as Mr. Fischer
21 pointed out, there was a Unanimous Partial Stipulation &
22 Agreement filed in this case on Friday. Staff filed its
23 Suggestions in Support on Monday. And if there are any
24 questions, Staff -- regarding those four issues or any of
25 the issues, Staff witnesses are here.

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1 Now, that brings us to why are we here today?
2 You've heard Mr. Fischer's perspective. However, let's
3 start with how the issues are phrased. Issue 1, does
4 Southern Missouri Gas Company's provisioning of gas supplies
5 and transportation for its transportation service -
6 internal, consisting of two large customers, constitute a
7 violation of its tariffs? The answer is an emphatic yes.

8 Despite what Mr. Fischer has represented here
9 and all the economic statistics he wants to give, what this
10 was was not something that was simply a company thinking
11 outside the box. On the contrary, it is a company thinking
12 outside the box, a company faced by a problem. That problem
13 is called the PGA. And Mr. Fischer pretty much admitted
14 that to you. We'll go over that in a moment.

15 And he says these are covered by the
16 transportation tariffs. He's just plain wrong.
17 Transportation tariffs consider two entities, the company
18 and a transporter. They are not the same. They are not
19 interchangeable. They are different. What the company did
20 wrong here was, they assumed the role of transporter as well
21 as the company role. The net result was they avoided the
22 PGA.

23 Now, Mr. Fischer talked about \$40,000. That
24 was \$40,000 that the company happened to have and in no way
25 did they have to contribute it. Now, they did, but they

1 didn't have to. What the net effect of this was, that the
2 company avoided the PGA. They, in essence, took large
3 volume system service customers and they left them as large
4 volume service customers, but they didn't have to pay the
5 PGA.

6 Now, the second issue is the adjustment and,
7 in essence, that is proposed because if these customers had
8 stayed as large volume sales customers, this would have been
9 the number. That's been adjusted in Ms. Bailey's
10 surrebuttal to \$102,137.

11 Now, the real starting point of this is
12 Section 393.140(11) of the Revised Statutes gives the
13 Commission authority to set rates, charges, rules,
14 regulations, and all other matters that must be in tariffs.
15 Once these tariffs are approved by this Commission, then the
16 tariffs are the law of this state. The statutes and the
17 case law are very clear on that.

18 Any gas corporation, such as Southern Missouri
19 Gas, must come in for changes. Changes can only be made
20 with express permission of this Commission. That's what
21 Southern Missouri Gas did wrong. They came up with a new
22 idea. They, however, did not come in here and get it done.
23 They have five classes of customers: general service,
24 optional general service, large general service, large
25 volume service, transportation. They do not have anything

1 called transportation service - internal.

2 That was a specific thing invented by Southern
3 Missouri Gas. They knew they had to treat it differently.
4 That's why in their work papers they treated it differently.
5 Reason, it was something different. It is not in any way,
6 shape or form transportation. It is completely and totally
7 different. It is beyond the scope of transportation.

8 So they established this new class of
9 customers. They have the authority under their tariff to
10 provide PGA service or transportation service if certain
11 thresholds are met. Note, PGA sales service or
12 transportation service. They are totally different, totally
13 separate and distinct. Transportation service requires a
14 customer to arrange its own gas supply and interstate
15 pipeline transportation. That was not done here. That is
16 exactly what is contemplated and required by the
17 transportation tariff.

18 The company has chosen to go outside the
19 bounds of its approved tariff services and offer a special
20 service to certain customers. This is the unauthorized sale
21 known within Southern Missouri Gas Company as transportation
22 internal. Make no mistake about it, that is something, that
23 term, this whole thing was created by Southern Missouri Gas.
24 That's why we're here.

25 Now, Mr. Fischer says Staff cannot point to

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1 anywhere in the tariff that says you cannot create
2 transportation service - internal. There is no point in --
3 there is no part of that tariff that says you can't go out
4 and create a new class of customers.

5 It's clear. You have to come in here. If you
6 want a new class of customers, you come in to the
7 Commission, you make your filing, you make your case and you
8 either get it or you don't. If you want a change in your
9 existing tariff, you come in, you ask for it; you either get
10 it or you don't. But that's how you do it when you're a
11 regulated cus-- regulated LDC such as Southern Missouri Gas.

12 Now, these tariffs are not written -- most
13 laws are not written to say that if you dream up a way to
14 violate it, then that's prohibited. That's, in essence,
15 what Mr. Fischer is saying. Their tariffs give them the
16 five classes of customers. They can't go out and invent a
17 new one unless they come in here and get Commission
18 permission.

19 Now, the net effect of this was they took the
20 large volume sales customers, they -- which they receive a
21 bundled service. Then they tried to move them over here
22 (indicating), transportation internal. They claim it's a
23 variation of their transportation tariff. That is
24 absolutely incorrect. What it is, in essence, is the same
25 thing.

1 Over here you have large volume service
2 (indicating). They're selling them the gas, transporting
3 it, getting it right to the premises of the customer. What
4 are they doing in transportation internal? The exact same
5 thing except they've slapped a different label on it, okay,
6 transportation internal. Company goes out, provides the
7 gas, transports it right to the customer's premises. Same
8 service.

9 What is the difference? What is the only
10 difference besides names? The answer to that is the PGA.
11 Certainly if you remove the PGA cost, then what you've done
12 is you have a far more attractive gas price to these
13 customers.

14 Now, one of the questions that Mr. Fischer has
15 not answered is, why wasn't this offered to all these other
16 customers? There were other transportation customers,
17 traditional, correct transportation customers of Southern
18 Missouri Gas. Staff took the deposition of Mr. Bill Walker,
19 who I believe is the gas operations manager at Southern
20 Missouri Gas. Mr. Walker's here in the hearing room.
21 Mr. Walker explained in detail why they did these things.
22 These customers supposedly were not comfortable dealing with
23 someone other than Southern Missouri Gas.

24 Well, this may be all well and good, but it
25 ignores one important fact. This company operates within

1 its tariffs. It cannot do what it did, and what Staff is
2 doing is looking at what is the remedy of this, for a
3 company that has knowingly and at least -- absolutely at the
4 least, had the net effect of avoiding the PGA?

5 The only reasonable remedy is to undo the
6 damage, and that is the number that's advocated by Staff
7 Witness Annell Bailey. This is what Staff's evidence will
8 show.

9 Now, let's look at the sheets created by
10 Mr. Fischer for a moment.

11 JUDGE HOPKINS: Mr. Franson, when you step
12 away from that microphone, you're dead in the water.

13 MR. FRANSON: Thank you, Judge.

14 Let's look at the sheets created by
15 Mr. Fischer for a moment.

16 JUDGE HOPKINS: That's not his.

17 MR. FRANSON: Okay. Go back here to the first
18 one. Mr. Fischer spent a substantial amount of time talking
19 about gas prices. Staff really does not dispute much of
20 that. There were record gas prices.

21 However, what is the net effect, and what is
22 missing here? What was inconvenient to those customers, as
23 admitted in the deposition of Mr. Walker, which will be
24 coming into evidence? What is the net difference? PGA.
25 And then you get a benefit. You avoid it, you get a

1 benefit. So we go to the next page.

2 Now, the disallowance, this disallowance is
3 not a penalty. Mr. Fischer referred to a complaint filed by
4 the Staff. Yes, that is correct. Penalties are allowed
5 under law in a complaint case for certain things, and -- but
6 this Commission has to find that there's been a violation
7 and authorize the General Counsel to seek penalties. That
8 could be the net effect of it.

9 However, here we're not talking about
10 penalties. We're talking about undoing damage that was
11 inappropriately done by this company.

12 Now, he uses a number, 102,000 -- actually
13 it's 102,137, and then he goes into this 64 percent of their
14 net operating income. That might all be fine and good, but
15 don't forget, where is the fault in all of this? It is not
16 with Staff. It is not with this Commission. It is not with
17 the Office of Public Counsel or these customers or anyone
18 else. It is solely, completely, 100 percent in the actions
19 of Southern Missouri Gas.

20 Southern Missouri Gas may have to deal with
21 this 102,000; however, keep in mind, it is strictly from
22 their actions. The fact that they faced competition from
23 other fuel sources, customers can convert, that is where
24 they chose to go in and do business. No one said to
25 Southern Missouri Gas, you have to go in there in 1994, as

1 Mr. Fischer gave us the history. They decided to do it.
2 They knew everything that went into that, and they have to
3 bear the consequences and deal with their particular
4 situation. And that's what they're wanting to avoid.

5 Now, the bottom line here is -- Issue 1 is,
6 did they violate their tariffs by creating something that
7 the company called transportation service - internal? In
8 their work papers they create -- they use the term
9 "transportation service - internal." That was -- those work
10 papers were created by Southern Missouri Gas.

11 Why did they have to use a different term?
12 Reason, their transportation tariffs did not cover what they
13 were doing. They were taking a bundled service, exactly
14 like their large volume service, and they were moving it
15 over here to avoid the PGA.

16 And that gave them something that they had to
17 account for. And that's why that's in their work papers,
18 because they knew they had created something differently,
19 and they certainly had created something different.

20 And while we can think it's nice to think
21 outside the box, we still, when a company is a regulated
22 local distribution company, it's a gas corporation, as
23 Southern Missouri Gas, they can think outside the box,
24 that's wonderful. That's to be encouraged. But when you
25 violate your tariff, there comes a day of reckoning.

1 That is why we're here, to correct something
2 that was done wrong by Southern Missouri Gas. And Staff
3 will be asking this Commission to find that this is a direct
4 violation of its tariffs, and that the only remedy is a
5 \$102,137 adjustment as advocated by Staff Witness Annell
6 Bailey and as supported in her testimony.

7 That would conclude my opening statement, your
8 Honor.

9 MR. FRANSON: Thank you, Mr. Franson.
10 Mr. Micheel?

11 MR. MICHEEL: May it please the Commission?
12 Why is this case important? And the reason this case is
13 important is because the Public Service Commission is a
14 commission of rules and laws, and at issue here is whether
15 or not the company was following their tariffs and whether
16 or not the company could provide this service to the
17 customers that it did.

18 Thinking outside of the box is okay, as long
19 as it's within the bounds of the law. I think that the
20 evidence is going to show that the company thought too far
21 outside the box and not within the bounds of their tariffs.
22 Competition does not allow Southern Missouri Gas to ignore
23 its tariffs.

24 And I want to explain a little bit about --
25 you know, you've heard about transportation and bundled --

1 bundled service and unbundled service. And I just want to
2 draw -- so I can talk here and draw. I just want to draw a
3 picture about what we're talking about.

4 I guess this is a handicap being left-handed.
5 I'm going to have to draw across myself. I don't mean to
6 turn my back to you.

7 JUDGE HOPKINS: Go right ahead.

8 MR. MICHEEL: First, we have the production
9 fields. Then at the production fields you have gathering
10 and you have the interstate pipeline. At issue here, the
11 interstate pipeline in question at the time was Williams
12 Natural Gas Pipeline. It's now -- or Williams Central
13 Pipeline. That's now Southern Star Central, but I'm just
14 going to call it Williams.

15 The gas is produced in the field, gathered and
16 put into the interstate pipeline, where it's transported to
17 the company's citygate. At Southern Missouri's citygate,
18 the gas is offloaded on the interstate pipeline into the
19 company's distribution system. That's what we call behind
20 the citygate.

21 This is Southern Missouri's distribution
22 system, and on this distribution system you have various
23 customers and various classes of customers. You'll have
24 transportation customers, you'll have large volume
25 customers, you'll have residential customers.

1 The customers we're talking about today are
2 three transportation customers. So let me just make a big
3 old factory here, little smoke up there (indicating).
4 That's what we'll call the transportation customer.

5 Now, there's a difference in the service
6 between a transportation customer and other
7 non-transportation customers. In this case, that would be
8 the residential, small general, the optional general and the
9 large volume service. And here's the difference and here's
10 the distinction that matters.

11 When I am a residential customer or any
12 customer but a transportation customer, Southern Missouri
13 Gas is responsible for purchasing the gas at the production
14 area, they are responsible for securing a transportation
15 path on the interstate pipeline to the citygate, and then
16 they are responsible for taking at the citygate and putting
17 it through their distribution system to my home. That's
18 what we call a bundled service, and that's what we're
19 talking about when we say a service is a bundled service.

20 Here's the difference between transportation
21 customers and all other customers. For a transportation
22 customer, the customer -- say it's our factory here that
23 wants it -- is responsible on its own for going out to the
24 production area and securing gas supply. So they secure the
25 gas supply. They are responsible for getting their own

1 capacity on the pipeline to transfer that supply to the
2 citygate. They own the gas at that point. They own the
3 transportation at that point.

4 Once the gas gets to the citygate, the LDC,
5 which has got to charge for that, supplies its
6 transportation behind the citygate and is in charge of the
7 gas until it delivers it to the take point of the industrial
8 customer, and then the industrial customer takes it again.
9 This is what a transportation customer would normally do,
10 and that's how a transportation customer would work.

11 This is what the evidence is going to show in
12 this case. What Southern Missouri did is they provided, for
13 lack of a better term, a bundled transportation customer
14 rate. In other words, Southern Missouri Gas -- and this is
15 in the deposition of Mr. Walker that's going to come in.
16 Southern Missouri Gas went out to the production area and
17 secured gas for these customers. Southern Missouri Gas,
18 using its transportation on the interstate pipeline,
19 supplied transportation for the gas to its citygate.
20 Southern Missouri Gas then delivered it to the industrial
21 customer.

22 Now, you're going to hear evidence that, gee
23 whiz, we sent them two bills. That is a distinction without
24 a difference, the evidence is going to show, and what
25 Southern Missouri Gas did in thinking outside the box was

1 provide a bundled transportation service to these customers.

2 Now, we've talked a little bit about the
3 tariffs, and I think, you know, the tariffs are attached, I
4 believe, to Mr. Russo's testimony.

5 But let me just read you Sheet 15 that's
6 currently on file under nominations and it says, Upon mutual
7 written agreement and at no additional charge to the
8 customer, the company will act as customer's agent with
9 regard to nominating transportation volumes. And this is
10 key. In no event will the company in its role as agent
11 purchase transportation volumes on behalf of a customer.

12 The evidence in this case will show that
13 Southern Missouri Gas, on behalf of these two customers, not
14 only purchased transportation volume on this interstate
15 pipeline, they purchased gas for that customer and delivered
16 it in a bundled nature to the company. That's a violation
17 of the tariff.

18 And we can talk about the economics and
19 everything, and the company could have come in and said,
20 look, here's the problem, we need to make some tariff
21 changes. We may have been amenable to that, but they didn't
22 do it. And this is -- we're talking about the rule of law.

23 This tariff further goes on to define the
24 responsibilities during transportation. And, again, this
25 is their Sheet No. 15, and it says clearly, the company

1 shall be deemed to be in control and possession of the
2 transporter-owned gas transported hereunder only after the
3 gas is received at the point of receipt by the company and
4 before it is delivered at the point of delivery to the
5 transporter.

6 That means the company, in this case Southern
7 Missouri Gas, is only responsible for the gas after it's
8 taken off the interstate pipeline behind its citygate until
9 it's delivered to the factory. Transporter shall be deemed
10 to be in control and possession of gas transported at the
11 point of delivery thereafter. The evidence is going to be
12 crystal clear, and I don't think that anybody is going to
13 dispute it.

14 Mr. Walker, the man who set this up, didn't
15 dispute it in his deposition, that they provided a bundled
16 service. And I asked him in his deposition, I said, so my
17 question was, for the three that got the transportation
18 internal from Southern Missouri Gas, was Southern Missouri
19 Gas providing them with a bundled service?

20 Answer: We provided their gas as part of the
21 gas agreement. We provided their gas delivered to our
22 citygate.

23 Question: And was that gas delivered to your
24 citygate, transported to your citygate utilizing Southern
25 Missouri's pipeline capacity?

1 Answer: It was.

2 Question: So the transportation internal
3 customer did not go out and procure their own pipeline
4 capacity to move the gas over the interstate pipeline, in
5 this case Williams or now Central Star Pipeline, to Southern
6 Missouri's citygate; isn't that correct?

7 They didn't.

8 That's the problem here. We can think outside
9 of the box all that we want. We cannot think outside of the
10 law and outside of the company's as-filed tariffs. That's
11 what this company did. That's why this case is important.
12 This Commission ought not condone violations of tariffs
13 because of some competitive threat.

14 JUDGE HOPKINS: Thank you, Mr. Micheel. Let's
15 go off the record a moment.

16 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

17 JUDGE HOPKINS: Thank you. We're back on the
18 record.

19 Is there anything we discussed while we were
20 off the record that needs to be put on the record?

21 MR. FRANSON: Yes. Actually, Judge, I
22 think there was, your request about the drawings made by
23 Mr. Fischer and Mr. Micheel.

24 JUDGE HOPKINS: All right. We are going to
25 enter those three pages, I believe it was, of -- we'll call

1 the first two pages -- you had two pages, did you not,
2 Mr. Fischer?

3 MR. FISCHER: Yes.

4 JUDGE HOPKINS: We will call that Exhibit
5 No. 1, and that's two pages from the opening statement. Any
6 objection to that being entered into evidence?

7 MR. MICHEEL: I don't mind if you mark it, but
8 what was said in opening is certainly not evidence.

9 JUDGE HOPKINS: You're correct. You're
10 absolutely correct. Maybe we're using the wrong term here.
11 Exhibits is not evidence. It's a visual aid to help the
12 people who read the transcript.

13 MR. MICHEEL: If you want to say you're
14 admitting it for illustrative purposes only, I'm all for
15 that, but certainly not evidence.

16 MR. FRANSON: Judge, perhaps the word
17 "evidence" and the word "admitted" are being used in the
18 wrong context.

19 Staff certainly has no objection to them being
20 available for anyone reading the transcript or anyone
21 writing Briefs or anything like that, but as Mr. Micheel
22 said, they're certainly not evidence.

23 JUDGE HOPKINS: I think we all agree on that.
24 But no one has any objections to Mr. Fischer taking those to
25 Kinko's and copying them, and we can have it in the file if

1 anybody needs to look at them when they're reading the
2 transcript?

3 MR. FRANSON: No objection on behalf of Staff.

4 Judge, I would perhaps point out we need to
5 make sure that those are marked as public -- or actually NP,
6 nonproprietary, so that they are certainly available to
7 anyone who might want to look at them.

8 MR. FISCHER: All right. Those will both be
9 marked NP.

10 Anything else?

11 MR. FRANSON: Judge, there was a third page,
12 and that was Mr. Micheel's. Are we going to do the same
13 thing with that?

14 JUDGE HOPKINS: We'll do the same thing with
15 his.

16 MR. FRANSON: It would also be marked NP?

17 JUDGE HOPKINS: Yes, sir.

18 MR. FRANSON: Thank you, Judge.

19 JUDGE HOPKINS: I want to point out for the
20 transcript, we did not discuss this while we were off the
21 record. I just told you-all we would talk about it when we
22 came back on the record. We don't like to have
23 off-the-record discussions.

24 MR. FRANSON: Judge, I certainly concur in
25 that. I did not mean to imply that you suggested anything,

1 just said we would be discussing that when we came back on.

2 JUDGE HOPKINS: Everybody's already made their
3 entry of appearance. Again, let me --

4 MR. MICHEEL: Your Honor, I've just done a
5 smaller to-size version of what I did up there, because I
6 don't really want to go to Kinko's and I don't know that our
7 office has the money. If I could just show this to all the
8 parties and they could agree that it's the same thing as I
9 have up there, and we could give it to the court reporter
10 right now.

11 JUDGE HOPKINS: Mr. Fischer and Mr. Franson,
12 do you want to look at that?

13 MR. FISCHER: That's fine with me. I couldn't
14 see it originally, but that looks fine.

15 JUDGE HOPKINS: I don't think your microphone
16 is on. What did you say, Mr. Fischer?

17 MR. FISCHER: I said I couldn't see the
18 original exhibit, but that looks like good enough.

19 JUDGE HOPKINS: I don't think his art got any
20 better.

21 MR. FRANSON: No, it did not.

22 MR. FISCHER: Would you like for me to try to
23 reproduce mine, too?

24 JUDGE HOPKINS: That would certainly help you,
25 and not go to Kinko's then.

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1 MR. FISCHER: I think I could do that on one
2 page. It was just illustrative.

3 JUDGE HOPKINS: That's all we're going to have
4 it in there for, for illustrative purposes.

5 MR. FISCHER: I will do that over the lunch
6 hour then, and we can put it in the record, if that would
7 work.

8 JUDGE HOPKINS: Thank you. And, again, both
9 those will be NP.

10 MR. MICHEEL: What are we going to call mine?
11 I mean, for No. 1, you have two-page opening statement.

12 JUDGE HOPKINS: Yes, sir.

13 MR. MICHEEL: And then I'm assuming you're
14 marking this as No. 2?

15 JUDGE HOPKINS: Yes, sir. One-page opening
16 statement.

17 MR. MICHEEL: Okay.

18 MR. FRANSON: So, Mr. Micheel, you were not
19 inviting comment about your artwork; is that correct?

20 MR. MICHEEL: You can comment, but I don't
21 care.

22 (EXHIBIT NO. 1 WAS MARKED FOR IDENTIFICATION.)

23 JUDGE HOPKINS: All right. If anybody wants
24 an ASCII disk of this transcript when you order the hard
25 copy, you have to request it today. And is there any other

1 preliminary matters besides marking exhibits?
2 (No response.)
3 JUDGE HOPKINS: Hearing no information to that
4 effect, do you have exhibits you want to mark?
5 MR. FISCHER: Yes, your Honor, I do.
6 JUDGE HOPKINS: Go ahead, Mr. Fischer.
7 MR. FISCHER: I would like to mark -- I would
8 like to have marked the prefiled testimony -- are we doing
9 this on the record?
10 JUDGE HOPKINS: Yes, sir.
11 MR. FISCHER: I would like to have marked the
12 prefiled testimony of Scott F. Klemm. He filed direct
13 testimony on January 9th.
14 JUDGE HOPKINS: All right. That will be
15 Exhibit No. 3.
16 MR. FRANSON: That's the direct of Mr. Klemm,
17 Mr. Fischer?
18 JUDGE HOPKINS: Yes.
19 MR. FISCHER: Yes.
20 MR. FRANSON: Okay. That was an NP version,
21 is that correct?
22 MR. FISCHER: Yes. There's only one
23 confidential version and that's in rebuttal.
24 JUDGE HOPKINS: All right. Say that again in
25 the microphone, Mr. Fischer.

1 MR. FISCHER: I said that is a public version,
2 and the only highly confidential version is found in the
3 rebuttal testimony. All the other testimony is public.
4 JUDGE HOPKINS: All right, sir. Go ahead.
5 MR. FISCHER: The second exhibit would be the
6 supplemental direct testimony of Mr. Scott F. Klemm, which
7 was filed on February 12th.
8 MR. FRANSON: Mr. Fischer, that's also NP?
9 MR. FISCHER: Yes.
10 JUDGE HOPKINS: Give me the date of the direct
11 again, the first direct.
12 MR. FISCHER: January 9, 2003.
13 And then the next exhibit would be the
14 rebuttal testimony of Scott F. Klemm, filed on January 30th,
15 2003. And there is a highly confidential version and an NP
16 version.
17 MR. FRANSON: Which are you going to put in
18 first, the NP or the HC?
19 MR. FISCHER: Judge, do you want to make them
20 separate exhibits?
21 JUDGE HOPKINS: Yes, I do, please.
22 MR. FISCHER: The highly confidential would be
23 the first one.
24 JUDGE HOPKINS: That will be Exhibit No. 5.
25 And then Exhibit No. 6 is the NP version.

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1 MR. FISCHER: Then the last exhibit that I
2 have to have marked is the surrebuttal testimony of Scott F.
3 Klemm, and that's schedule -- or excuse me -- that's -- it
4 was filed on February 20, 2003, and that's also public.

5 JUDGE HOPKINS: Anything else, Mr. Fischer?
6 That was No. 7.

7 MR. FISCHER: That's all I have, your Honor.

8 JUDGE HOPKINS: All right. Thank you.

9 Now I've got 3 is Scott F. Klemm NP direct,
10 4 is Scott F. Klemm supplemental direct NP, 5 is Scott F.
11 Klemm rebuttal HC, 6 is rebuttal NP, and Scott F. Klemm's
12 surrebuttal is No. 7 for NP.

13 (EXHIBIT NOS. 3 THROUGH 7 WERE MARKED FOR
14 IDENTIFICATION.)

15 All right. Mr. Franson?

16 MR. FRANSON: Your Honor, first of all, I
17 would ask that Exhibit No. 8 be the deposition of Mr. Bill
18 Walker, taken on February 27, 2003. And that entire thing,
19 the first version is going to be HC. Then I need to talk
20 to -- Judge, these tabs are where the -- are where the
21 exhibits are, and then I also have the original errata sheet
22 with the signature page from Mr. Walker. And this would
23 be -- the Staff would ask that this be marked as Exhibit
24 No. 8.

25 JUDGE HOPKINS: All right. That is the

1 deposition of Bill Walker, and that is all HC?

2 MR. FRANSON: Bear with me just a moment.

3 JUDGE HOPKINS: Yes, sir.

4 MR. FRANSON: Judge, what we have prepared

5 actually, with the expert assistance of Mr. Fischer, is --

6 if I can find it here momentarily. What we're looking for

7 is the NP version of the transcript of this.

8 Can we go off the record for just a moment,

9 your Honor?

10 JUDGE HOPKINS: No. We'll stay on the record.

11 MR. FRANSON: Okay.

12 At this point, Judge, could we skip No. 9? I

13 will find that momentarily. Go on to No. 10.

14 JUDGE HOPKINS: Okay. What -- was there a

15 No. 9 for Staff?

16 MR. FRANSON: Judge, actually, let me correct

17 that. The NP version is for -- that would be of the

18 transcript of Mr. Walker's deposition, not -- but, however,

19 it does not include the exhibits. The reason for that is

20 with the exception of one, I believe Exhibit No. 9, all of

21 them are -- have been declared as HC. However, various

22 parts of those exhibits are, in fact, public, and they are

23 available in other parts of the record.

24 JUDGE HOPKINS: All right. So No. 9 will be

25 the transcript of the deposition without exhibits?

1 MR. FRANSON: Right. And it is the NP
2 version, your Honor.

3 JUDGE HOPKINS: All right.

4 MR. FRANSON: Judge, I believe Staff's first
5 witness is Annell Bailey, and I want to be sure I'm right on
6 that before -- I don't want to get things necessarily out of
7 order. Exhibit 10 --

8 JUDGE HOPKINS: That's what I have down is
9 Annell Bailey as Staff's first witness.

10 MR. FRANSON: Okay. Your Honor, I'd ask that
11 her direct testimony, which is NP, be marked as Exhibit 10.

12 JUDGE HOPKINS: What's the date on that, or
13 the date it's filed, I should say?

14 MR. FRANSON: I believe that was January 8. I
15 may be mistaken on that date.

16 JUDGE HOPKINS: I'll look on the docket sheet
17 here, Mr. Franson.

18 MR. FRANSON: Actually, your Honor, I believe
19 that was January 9th.

20 JUDGE HOPKINS: That's what I have, direct
21 testimony of Annell G. Bailey on January the 9th.

22 MR. FRANSON: Your Honor, I'd ask that Exhibit
23 No. 11 be the NP version of Ms. Bailey's testimony, her
24 rebuttal testimony that was filed on January 30th, 2003.

25 JUDGE HOPKINS: That was NP also?

1 MR. FRANSON: Yes, your Honor. Exhibit 12
2 would be the surrebuttal of Annell Bailey, which would also
3 be NP, your Honor, that was filed on February 20th, 2003.
4 JUDGE HOPKINS: Go ahead.
5 MR. FRANSON: Your Honor, at this point we
6 would go on to the testimony of James Russo, our other Staff
7 witness. The first one would be his direct, and I believe I
8 would ask that to be Exhibit 13.
9 JUDGE HOPKINS: That's correct.
10 MR. FRANSON: This is NP also, your Honor.
11 Your Honor, also Exhibit 14 --
12 JUDGE HOPKINS: Just a minute, Mr. Franson.
13 Mr. Russo's direct testimony was filed January 9th?
14 MR. FRANSON: I believe so, your Honor.
15 JUDGE HOPKINS: All right. Go ahead.
16 MR. FRANSON: Your Honor, there is -- I would
17 ask that Exhibit 14 be Mr. Russo's, the NP version of his
18 rebuttal. Exhibit 15 would be the HC version of Mr. Russo's
19 rebuttal.
20 JUDGE HOPKINS: Wait a minute. You're talking
21 faster than I can write.
22 MR. FRANSON: And, your Honor, those were both
23 filed on January 30th, 2003.
24 JUDGE HOPKINS: All right. Now you're up to
25 16.

1 MR. FRANSON: Your Honor, No. 16 would be NP
2 version of Mr. Russo's surrebuttal filed on February 20,
3 2003, and that is an NP.

4 JUDGE HOPKINS: All right.

5 (EXHIBIT NOS. 8 THROUGH 16 WERE MARKED FOR
6 IDENTIFICATION.)

7 MR. FRANSON: Your Honor, also, Staff may, as
8 we go through the evidence, have some other exhibits, but
9 they will not be of the nature of prefilled testimony.

10 JUDGE HOPKINS: All right. Is that it for
11 you, Mr. Franson?

12 MR. FRANSON: That will be it.

13 JUDGE HOPKINS: At this point.

14 MR. FRANSON: At this point, yes, your Honor.

15 JUDGE HOPKINS: Mr. Micheel, do you have any
16 exhibits you want marked?

17 MR. MICHEEL: I sure do not, your Honor.

18 JUDGE HOPKINS: All right. Thank you.

19 We've already had the opening statements,
20 obviously. We're going to proceed this way: We're going to
21 have the company's case in chief, company's case in chief,
22 and then the order of cross is -- well, it'll be the way
23 you-all filed it. I'm not going to go through the whole
24 witness list.

25 I need to go through a couple of preliminary

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1 things. First of all, do we have any pending motions or
2 anything else that anybody knows about?

3 (No response.)

4 JUDGE HOPKINS: Hearing nothing, I'm assuming
5 we don't.

6 We need to talk about the complaint case that
7 was filed. I will be asking at the point of the brief that
8 you will include something on how, if at all, that that
9 complaint case may or may not affect this case.

10 We may have some procedural things to do among
11 the judges on these cases. That's assigned to Judge
12 Woodruff at this time. He may or may not keep that case.
13 It may or may not affect this case.

14 I will also want Proposed Conclusions of Law
15 and Proposed Findings of Fact, and I'd like to have a
16 closing statement so we can just do one Brief, rather than
17 have a Reply Brief.

18 Anything else that needs to be brought up
19 before we start?

20 MR. FRANSON: Your Honor, if I may, the nature
21 of what you're looking for on the relationship, if any,
22 between this case and the complaint case, are you asking the
23 parties to discuss the substantive claims in that as part of
24 our Brief, or are you just simply asking any interplay we
25 see between them?

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1 I'm not sure, and I'm a little concerned when
2 we have two cases. In that one, whatever may happen, I
3 don't even think an answer's been filed in that one. I'm
4 not quite sure I understand what you're looking for there.

5 JUDGE HOPKINS: Did you have a comment,
6 Mr. Fischer?

7 MR. FISCHER: Well, I was going to comment
8 that perhaps we could deal with the briefing issues at the
9 end of the case and discuss whether, given the nature of the
10 issue here, principally being in a lot of ways a legal
11 issue, whether it might make sense to actually have two
12 briefs, rather than just a closing and reply, since I think
13 we, as the lawyers, are going to be addressing the legal
14 questions, and it might be helpful to see the others in
15 writing when we try to reply.

16 But that's just a thought that I was going to
17 put on the record at the time we talked about briefing, and
18 at that time we could talk about how the formal complaint
19 should be addressed in this context or whether it's going to
20 be left a separate matter.

21 JUDGE HOPKINS: We can discuss this further,
22 then, at the conclusion of this case, Mr. Franson. It's not
23 a correct term to use in this setting, I understand, but we
24 don't want any double jeopardy going on here. You know what
25 that means.

1 MR. FRANSON: Oh, yes, I'm very well aware of
2 the term double jeopardy, and I would agree with you, it's
3 not appropriate.

4 JUDGE HOPKINS: I am not sure how long the
5 agenda was going to take this morning. It was a teeny, tiny
6 agenda, and they may, in fact, be through with it. So if
7 you would give me five minutes, I will walk upstairs and see
8 if any of the Commissioners want to come back down.

9 Thank you. We'll go off the record.

10 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

11 JUDGE HOPKINS: We're back on the record.

12 Mr. Fischer, call your first witness, please.

13 MR. FISCHER: Your Honor, I would call
14 Scott F. Klemm. I would call Scott F. Klemm to the witness
15 stand.

16 JUDGE HOPKINS: Thank you. Please be seated
17 up here, Mr. Klemm.

18 MR. FRANSON: Your Honor, actually, there is a
19 preliminary matter I'd like to take up. I would like to
20 offer -- it would be Exhibit No. 8, the dep-- and Exhibits 8
21 and 9, the deposition of Mr. Walker, both the HC and the
22 nonproprietary versions because, Judge, I believe these will
23 be referred to in some depth in the cross-examination of
24 Mr. Klemm. And I'd offer them into evidence at this time.

25 JUDGE HOPKINS: Any objection?

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1 (No response.)

2 JUDGE HOPKINS: Hearing no objection from
3 anyone, I will enter into evidence Exhibit No. 8, which is
4 the deposition of Bill Walker, that's the HC version, and
5 also No. 9, which is the transcript of the deposition
6 without the exhibits. That's the NP version.

7 (EXHIBIT NOS. 8 AND 9 WERE RECEIVED INTO
8 EVIDENCE.)

9 MR. FISCHER: Your Honor, could I inquire
10 whether that HC version includes also the attached exhibits
11 that were referred to in that deposition?

12 JUDGE HOPKINS: Yes. That is the one that has
13 the exhibits. The transcript of the deposition is No. 9,
14 and it does not have the exhibits. And Mr. Franson said
15 that there was one exhibit on there that was not HC, but it
16 was available in another area.

17 MR. FISCHER: Yes.

18 MR. FRANSON: Actually, Judge, that's correct,
19 but we went ahead more or less for convenience and marked it
20 all that way. However, all of those exhibits are available
21 in other parts of the testimony. Some have been declared
22 HC, but most of if, I believe, not all of the exhibits are,
23 in fact, available in the premarked testimony.

24 JUDGE HOPKINS: All right. Let me ask the
25 attorneys and the witnesses also, if you think you're going

1 into something HC, please notify me so we can mark that on
2 the record and go off the Internet.

3 All right. Mr. Klemm, please raise your right
4 hand.

5 (Witness sworn.)

6 JUDGE HOPKINS: Please spell your first and
7 last names for the reporter. Thank you.

8 THE WITNESS: Scott, S-c-o-t-t, Klemm,
9 K-l-e-m-m. Middle initial F.

10 JUDGE HOPKINS: Thank you, Mr. Klemm.

11 Go ahead, Mr. Fischer.

12 SCOTT F. KLEMM testified as follows:

13 DIRECT EXAMINATION BY MR. FISCHER:

14 Q. Thank you, Mr. Klemm. Please state your name
15 and address for the record again.

16 A. My name is Scott F. Klemm, and I'm primarily
17 located at 127 North Main Street in Adrian, Michigan 42921.

18 Q. Are you the same Scott F. Klemm that caused to
19 be filed in this proceeding certain direct, supplemental
20 direct, rebuttal, both highly confidential and a
21 nonproprietary version, and surrebuttal testimony?

22 A. Yes, I am.

23 Q. And I believe your direct testimony has been
24 marked as Exhibit 3 in this proceeding. Do you have that in
25 front of you?

1 A. No, I do not.

2 Q. Okay. Well, I will provide one for you here
3 in a minute. And Exhibit 4 was your supplemental direct.
4 Exhibit 5 was the rebuttal testimony, the HC version, and
5 Exhibit 6 was the NP version of your rebuttal testimony, and
6 your Exhibit 7 was your -- or the Exhibit 7 was surrebuttal
7 testimony that you filed; is that correct? Is that your
8 understanding?

9 A. Yes, that is my understanding.

10 Q. Do you have any changes or corrections that
11 you need to make to any of your prefiled testimony in this
12 case?

13 A. No, I do not.

14 Q. If I were to ask you the questions contained
15 in your direct, supplemental direct, rebuttal and
16 surrebuttal testimony, would your answers be the same?

17 A. Yes, they would.

18 Q. Are those answers true and correct to the best
19 of your knowledge, information and belief?

20 A. Yes.

21 Q. And I think a couple of your pieces of
22 testimony may have some schedules. Do the schedules that
23 are attached to your testimony accurately depict what
24 they're designed to show?

25 A. Yes.

1 MR. FISCHER: Your Honor, I would move for the
2 admission of Exhibits 3, 4, 5, 6 and 7, and tender the
3 witness for cross-examination.

4 JUDGE HOPKINS: Any objection to 3, 4, 5, 6
5 and 7 being entered into evidence?

6 MR. FRANSON: No objection for Staff, your
7 Honor.

8 JUDGE HOPKINS: And Mr. Micheel is shaking his
9 head no, he has no objection. Therefore, I will enter into
10 evidence 3, 4, 5, 6 and 7.

11 (EXHIBIT NOS. 3, 4, 5, 6, AND 7 WERE RECEIVED
12 INTO EVIDENCE.)

13 JUDGE HOPKINS: All right. Thank you.
14 Cross-examination, Staff?

15 MR. FRANSON: Thank you, your Honor.
16 May I proceed, your Honor?

17 JUDGE HOPKINS: Go ahead.

18 MR. FISCHER: Your Honor, before we do, could
19 I give my witness his testimony?

20 JUDGE HOPKINS: All right. Mr. Fischer has
21 asked if he could give his witness his testimony.

22 MR. FRANSON: Absolutely. I would encourage
23 that, Judge.

24 JUDGE HOPKINS: You may proceed, Mr. Franson.

25 MR. FRANSON: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. FRANSON:

2 Q. Good morning, Mr. Klemm.

3 A. Good morning.

4 Q. Mr. Klemm, I want to ask you, how are you
5 employed? Who is your employer?

6 A. I am actually employed and paid from Citizens
7 Gas Fuel Company in Adrian, Michigan.

8 Q. And what is the nature of your relationship
9 with Southern Missouri Gas?

10 A. Citizens Gas Fuel Company is wholly owned by
11 DTE Enterprises, which is presently owned 100 percent by DTE
12 Energy Company in Detroit. DTE Enterprises has a
13 substantial partnership interest in Southern Missouri Gas
14 Company, L.P.

15 Q. Okay. Is it fair to say your salary's
16 actually paid by DTE Energy, or I believe you mentioned
17 Citizens Gas Fuel Company that actually pays your salary?

18 A. That's correct. Citizens actually pays my
19 salary, but ultimately I'm a DTE employee.

20 Q. Okay. In addition to what you've just
21 described, you are a vice president of Southern Missouri Gas
22 Company; is that correct?

23 A. Yes, that's correct.

24 Q. Are you, in fact, in charge of all aspects and
25 do you supervise all aspects of Southern Missouri Gas'

1 operation?

2 A. Yes, that's a correct assessment.

3 Q. Okay. How long have you been an employee of

4 Citizens Gas Fuel Company?

5 A. Since September of 1988.

6 Q. And when did your relationship with Southern

7 Missouri Gas begin?

8 A. At some point in 1995, but I can't tell you

9 specifically, you know, when. But during that year.

10 Q. And what in -- starting in 1995 or

11 thereabouts, what were you doing in regard to Southern

12 Missouri Gas Company?

13 A. At that time, my predecessor at Citizens Gas

14 Fuel Company was directly involved in the negotiations of at

15 that time MCN Energy, which was a predecessor to DTE

16 Enterprises, of acquiring a 47 1/2 percent interest in

17 Southern Missouri Gas Company. And ultimately he was

18 responsible for looking over MCN Energy and now DTE

19 Enterprises' interest in that company.

20 And eventually I became involved in looking

21 over DTE Enterprises' interest, and ultimately I became

22 responsible for the day-to-day operations on May 1st of

23 2001.

24 Q. Thank you. So on May 1st, 2001, you became

25 the person in charge of day-to-day operations of Southern

1 Missouri Gas?

2 A. That's correct.

3 Q. Okay. Mr. Klemm, you are, in fact, I believe,

4 a CPA also; is that correct?

5 A. Yes, I am a CPA.

6 Q. Now, fair to say that you're familiar with all

7 of the accounting aspects of Southern -- of the functions of

8 Southern Missouri Gas?

9 A. Yes.

10 Q. Includ-- are you also familiar with the ACA

11 process?

12 A. Yes, I am.

13 Q. Could you describe that process, please. I'm

14 sorry. Specifically as it happened in this case and in the

15 State of Missouri.

16 A. The ACA process is a process by which first

17 the anticipated costs for the upcoming ACA period are

18 estimated, and there's a filing with the Commission both to

19 get approval for the total PGA revenues, which would include

20 factors for previous under or over-collections called an ACA

21 factor, as well as any refunds that would be considered to

22 be a refund factor. So you come up with a total PGA rate.

23 Q. Okay. What does the acronym PGA stand for?

24 A. Purchased gas adjustment.

25 Q. And what does the acronym ACA stand for?

1 A. Actual charge adjustment, I believe.

2 Q. If I suggested it might be actual cost

3 adjustment, would you have any reason to disagree with that?

4 A. No, I would not.

5 Q. Okay. Now for Southern Missouri Gas, is there

6 a calendar point for specifically 2000-2001 that the time

7 runs for a PGA year?

8 A. For Southern Missouri, the PGA year is

9 September 1st through the following August 31st.

10 Q. So for this case where we're talking about,

11 the 2000-2001, would we be looking at September 1, 2000

12 through August 31, 2001?

13 A. Yes, that is correct.

14 Q. Okay. Now, let's look at -- let's assume

15 that, going back in time a little bit, the 1999-2000 year is

16 over and we get through the 2000-2001 year, since this case

17 involves both of those, and we are at September 1, 2001.

18 We're now ready to start thinking about the audit process

19 for that 2000-2001 ACA or PGA period.

20 What happens next as part of that process?

21 What's the first step?

22 A. As a part of the ACA process, there would be a

23 Data Request from a Staff person requesting various amounts

24 of information associated with the ACA period for the

25 preceding September 1st through August 31st.

1 Q. Well, let me ask you, wouldn't -- before that
2 Data Request came from Staff, wouldn't there be an ACA
3 filing by the company to the Public Service Commission?
4 A. I know that in September of 2001 that we did
5 file for our upcoming PGA revenues, which included a
6 schedule that showed a forecast of the upcoming gas costs,
7 as well as an estimate of what the undercollection was for
8 that period of September 1st, 2000 through August 31st,
9 2001.
10 Q. Okay. So fair to say the company actually
11 filed something first?
12 A. Yes.
13 Q. Okay. Then you do generally receive some Data
14 Requests from Staff, from the Staff of the Commission, as
15 part of the audit process?
16 A. Yes, that is correct.
17 Q. And then ultimately, besides other Data
18 Requests that might come from Staff, isn't it fair to say
19 that ultimately an audit is done and then Staff issues a
20 Staff recommendation?
21 A. Yes, that is correct.
22 Q. Okay. So that is essentially the process?
23 A. Yes. And also, I would add that during this
24 time there was some additional Data Requests that came about
25 through a consultant that, I believe, was retained from the

1 Missouri Public Service Commission as a part of the large
2 spike in gas prices that occurred during the 2000-2001
3 winter as well.

4 Q. Okay. But wasn't that, in fact, a separate
5 report and really -- that really does not impact this case,
6 does it?

7 A. I would agree with that.

8 Q. Okay. Now, going back to this case, is it
9 safe to say that once the 2000-2001 ACA period was over, the
10 process began and you were, in fact, the direct contact
11 person that Staff would contact if they needed information
12 from the company?

13 A. Yes, that is correct.

14 Q. And, in fact, you are an expert on the PGA/ACA
15 process; is that correct?

16 A. I'm not sure if I would use the word "expert,"
17 but I'm certainly very familiar with the process.

18 Q. Okay. And you are running that part of the
19 operation for Southern Missouri Gas; is that correct?

20 A. Yes, I -- in that I have an accounting
21 individual who puts a lot of the schedules together, but
22 ultimately I am responsible.

23 Q. Okay. Mr. Klemm, let's talk a little bit
24 about the classes of customers that Southern Missouri Gas
25 has in its tariffs. Are you familiar with those classes of

1 customers?

2 A. Yes, I am.

3 Q. What are those classes of customers?

4 A. They are residential, optional general

5 service, general service, large general service, large

6 volume service and transportation service.

7 Q. Okay. Would you agree with me those are the

8 only authorized classes of customers that appear in Southern

9 Missouri Gas tariffs that are currently on file and in

10 effect at the Missouri Public Service Commission?

11 A. Yes.

12 Q. Okay. You would also agree with me that if

13 another class of customers were to be created, if you wanted

14 to do that, you would need to come in to the Commission and

15 get Commission authority to do that?

16 A. I would agree with that.

17 Q. Okay. Now, are you familiar with the term

18 "transportation internal"?

19 A. Yes, I am familiar with the term.

20 Q. What does that mean to you?

21 A. What that means to me is transportation

22 customers in which their gas supply was provided by Southern

23 Missouri Gas Company rather than a third-party transport

24 marketer.

25 Q. Okay. Let me ask you, could you turn to

1 page 3, beginning at page 3, line 14 of your direct
2 testimony, which I believe has been admitted into evidence
3 as Exhibit 4.

4 JUDGE HOPKINS: I have No. 3 as his direct.
5 Are you talking about his direct or supplemental?

6 MR. FRANSON: I apologize, Judge. His direct
7 is Exhibit 3. I apologize.

8 BY MR. FRANSON:

9 Q. Mr. Klemm, could you turn to what's been
10 admitted into evidence as Exhibit 3, your direct testimony.

11 A. I have it in front of me.

12 Q. Now, in there you set out some information
13 about your adjustment; is that correct?

14 A. I'm sorry, Mr. Franson. I'm having
15 difficulty. I believe that you said line 14 on page 3?

16 Q. Yes, sir, of your direct testimony.

17 MR. FISCHER: Your Honor, that appears to be a
18 question. Is that what you're referring to?

19 MR. FRANSON: That's where I'm directing him.

20 JUDGE HOPKINS: Okay. Mr. Fischer, if you
21 make a comment, you're going to have to speak into the
22 microphone.

23 MR. FISCHER: Your Honor, I was just trying to
24 clarify for -- the question relates to a question rather
25 than an answer, and I think it was confusing the witness

1 perhaps.

2 MR. FRANSON: Actually, let's do it a
3 different way. Let's go to your rebuttal testimony. I'm
4 looking at the HC version of that. However, I don't believe
5 that this part has been designated as HC. If you turn to
6 page --

7 JUDGE HOPKINS: Wait just a minute here,
8 Mr. Franson. If you're going to elicit testimony out of an
9 HC testimony, then we need to declare this part of the
10 hearing to be --

11 MR. FRANSON: Your Honor, the part I'm going
12 to refer to, I will just simply go to the NP version of his
13 testimony and direct it, and ask the witness to turn to
14 page 3, line 12, and --

15 JUDGE HOPKINS: Of his rebuttal?

16 MR. FRANSON: Yes, sir. That would be, I
17 believe, Exhibit 4, page 3, line 12.

18 JUDGE HOPKINS: That's his supplemental
19 direct.

20 MR. FRANSON: Well, what I'm asking him to
21 turn to is his rebuttal testimony, and I apologize on the
22 numbers.

23 JUDGE HOPKINS: That would be No. 6.

24 MR. FRANSON: Yes, sir. If he would turn to
25 that, please.

1 BY MR. FRANSON:

2 Q. Mr. Klemm, are you there?

3 A. Yes, I am.

4 Q. Okay. Reading the question, there is --

5 page 3, line 12, could you read that from page 3, line 12

6 through line 23, if you could read that to yourself, please.

7 And then please tell me when you have completed that.

8 A. I have completed my reading.

9 Q. Okay. Are you familiar with this particular

10 question?

11 A. Yes, I am.

12 Q. And could you read starting at page 3,

13 line 15 through 23 into the record, please.

14 A. Quote, transportation service - internal,

15 unquote, is unauthorized service that SMGC began providing

16 to one industrial customer in April 2001 and to a second

17 industrial customer in July 2001. SMGC sells these

18 customers gas at the Williams Pipeline interconnect at a

19 contractually agreed-upon rate. From that point, SMGC

20 provides transportation service.

21 Each month SMGC sends these customers two

22 bills, one bill for transportation service at

23 tariff-authorized rates and a separate bill for the gas

24 commodity at the contractually agreed-upon rate.

25 Q. Is any part of that inaccurate as a

1 description of transportation service - internal as it is
2 offered by Southern Missouri Gas?

3 A. I would disagree with your characterization of
4 transportation service - internal as a separate and dis--
5 separate and distinct customer class. However, what's
6 presented, I would agree in terms of the process, that is
7 certainly accurate.

8 Q. Okay. Let me ask you, Mr. Klemm, this
9 transportation service - internal as described here on page
10 3, lines 15 through 23 is, in fact, offered to two
11 industrial customers of Southern Missouri Gas; is that
12 correct?

13 A. It is correct that we do -- for this ACA
14 period we provide a transportation service, and the gas
15 supply was provided internally by Southern Missouri Gas
16 Company.

17 Q. So whether you call it a service or anything
18 else, whatever is here was, in fact, offered, correct?

19 A. Yes.

20 Q. And only to two particular industrial
21 customers, correct?

22 A. Yes.

23 Q. And it was not offered to residential, general
24 service, large general service or other large volume service
25 customers; is that correct?

1 A. It was only offered to customers who met the
2 eligibility requirements of the transportation tariff, given
3 certain, you know, volumetric thresholds.

4 Q. Okay. The two companies that received this --

5 MR. FRANSON: And, your Honor, at this time I
6 need to go into HC.

7 JUDGE HOPKINS: All right. We are in HC.

8 (REPORTER'S NOTE, at this time an in-camera
9 session was held, which is contained in Volume 2, pages 69
10 through 72 of the transcript.)

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1 JUDGE HOPKINS: Thank you. We're out of HC
2 now, and you may continue, Mr. Franson.
3 MR. FRANSON: Thank you, your Honor.
4 BY MR. FRANSON:
5 Q. Mr. Klemm, prior to each of these customers,
6 the one that came on board in April 2001 with this
7 transportation service - internal and the second one in July
8 of 2001, what -- were they, in fact, prior to that date
9 customers of Southern Missouri Gas?
10 A. They were customers under the large volume
11 service tariff, yes.
12 Q. So they qualified as large volume service
13 customers; is that correct?
14 A. Yes.
15 Q. And then you transferred them over to this
16 transportation service - internal, so that did change their
17 status with the company; is that correct?
18 A. We did transfer them over to transportation
19 service with the gas supply being provided by Southern
20 Missouri Gas Company, and that's where the internal,
21 quote/unquote, came from.
22 Q. Okay. Now, let's talk about transportation
23 service - internal.
24 MR. FRANSON: Your Honor, I'll need to get an
25 exhibit.

1 Your Honor, if I may continue?

2 JUDGE HOPKINS: Please go ahead, Mr. Franson.

3 BY MR. FRANSON:

4 Q. Mr. Klemm, as part of this, isn't it true that

5 you would prepare work papers as part of this audit process?

6 A. Yes, that is correct.

7 Q. And also in that -- those work papers, you, in

8 fact, provided those to the Public Service Commission; is

9 that correct?

10 A. Yes, that is correct.

11 MR. FRANSON: Okay. Now, your Honor, if I may

12 approach the witness?

13 JUDGE HOPKINS: Please do.

14 MR. FRANSON: Okay. I'll need to approach

15 Mr. Fischer and Mr. Micheel first.

16 Your Honor, I've handed that to the court

17 reporter and I would ask that it be marked as Exhibit

18 No. 17.

19 JUDGE HOPKINS: This is Exhibit 17, and what

20 is it you're calling it, Mr. Franson?

21 MR. FRANSON: We'll call it Southern Missouri

22 Gas work paper.

23 JUDGE HOPKINS: Is it NP?

24 MR. FRANSON: I believe it is, your Honor.

25 (EXHIBIT NO. 17 WAS MARKED FOR IDENTIFICATION

1 BY THE REPORTER.)

2 MR. FISCHER: Your Honor, could I take a look
3 at that again?

4 JUDGE HOPKINS: Okay. Mr. Fischer wants to
5 look at the exhibit again.

6 THE WITNESS: Not having seen it, to my
7 recollection, I don't think there's any --

8 JUDGE HOPKINS: Mr. Klemm, you can't say
9 anything until somebody asks you something.

10 THE WITNESS: I'm sorry.

11 JUDGE HOPKINS: That's okay.

12 MR. FISCHER: Your Honor, I don't believe it's
13 proprietary, but I would ask that my witness be allowed to
14 look at it and confirm that there's nothing here that the
15 company cons-- can be considered confidential or
16 proprietary.

17 Looks like it's aggregated load and,
18 therefore, it wouldn't be a problem.

19 MR. FRANSON: Your Honor, that's my very next
20 step to present it to the witness.

21 JUDGE HOPKINS: All right. Please do that.

22 MR. FRANSON: If I may approach the witness?

23 JUDGE HOPKINS: Please do.

24 MR. MICHEEL: Could I ask Mr. Franson to
25 provide me with a copy of that?

1 MR. FRANSON: All right.

2 MR. FRANSON:

3 Q. Mr. Klemm, I've handed you Exhibit No. 17.

4 Could you take an opportunity to review that and certainly,

5 Mr. Micheel, this document will be provided to you

6 forthwith.

7 A. I have reviewed it.

8 Q. Mr. Klemm, what is that?

9 A. This is the summary schedule that was filed as

10 a part of the ACA work papers with the Commission Staff.

11 Q. And who prepared this document?

12 A. This document was prepared, probably part of

13 it, by my accountant. I might have prepared the very final

14 parts of this document, but I certainly approved it and I'm

15 the one who provided it to the Commission Staff.

16 Q. And is this, in fact, a fair and accurate copy

17 of the document?

18 A. Yes, it is.

19 Q. Have you had an opportunity to review this for

20 the concern that there might be any highly confidential or

21 proprietary information? Please do not identify that

22 information if it is, in fact, in there, but if you could

23 review it and see if there is any such information.

24 A. It does not appear there's any information

25 that would be considered confidential and proprietary.

1 MR. FRANSON: Your Honor, at this time --
2 BY MR. FRANSON:
3 Q. Well, first I need to ask specifically,
4 Mr. Klemm, if you could tell us again, what exactly is this,
5 this document?
6 A. This is the summary that shows the P-- total
7 PGA revenues and the total gas costs that was submitted for
8 purposes of just that, the ACA process from the period of
9 September 1st, 2000 to August 31st, 2001.
10 MR. FRANSON: Your Honor, at this time I would
11 offer into evidence Exhibit No. 17.
12 JUDGE HOPKINS: Any objections?
13 MR. FISCHER: No objection, your Honor.
14 JUDGE HOPKINS: Mr. Micheel has no objection
15 either. I'm going to allow this into evidence.
16 (EXHIBIT NO. 17 WAS RECEIVED INTO EVIDENCE.)
17 JUDGE HOPKINS: Go ahead.
18 MR. FRANSON: Thank you, your Honor.
19 BY MR. FRANSON:
20 Q. Mr. Klemm, have you had an opportunity to look
21 at Exhibit 17? Have you had an opportunity to look at that?
22 A. Yes, I have, Mr. Franson.
23 Q. There are, in fact, some items that are
24 circled; is that correct?
25 A. Yes, that is correct.

1 Q. In fact, on all three pages of this document?

2 A. I only have two pages on mine -- in my

3 document, Mr. Franson.

4 Q. Okay. On the two pages that you have,

5 Mr. Klemm, is it, in fact, fair to say that the circled

6 things are -- say charges related to internal transport?

7 A. On the very first page, there is activity that

8 is circled relative to internal transport activity, as we're

9 calling it here.

10 Q. And when was this document prepared under your

11 direction and by you, approximately?

12 A. There was an initial one that was prepared and

13 given to Staff in the September/October time frame, and then

14 a final document, which I believe this would be it, that was

15 given in November of 2001.

16 Q. So here we have the company using the term

17 "internal transport"; is that correct?

18 A. Yes, the company is using the term "internal

19 transport."

20 Q. So, just so there's no mistake, the first use

21 of that term did, in fact, come from Southern Missouri Gas;

22 is that correct?

23 A. Yes, I would say that's correct.

24 Q. Okay. Now, there's not anything on here that

25 talks about the -- about what exactly internal transport is

1 or where the term came from; is that correct?

2 A. That is correct.

3 Q. Okay. Now, let's talk about what is --

4 besides these internal transport customers, isn't it true

5 that Southern Missouri Gas has transport customers, regular

6 transportation customers that don't receive this extra

7 service from Southern Missouri Gas?

8 A. We do have transportation service, and there

9 was at this time two other companies that were transporting

10 their gas utilizing a third-party marketer.

11 Q. Okay. Now, isn't it true that those other

12 transportation customers went out and provisioned their own

13 gas and arranged for its transport to Southern Missouri Gas'

14 citygate?

15 A. Yes.

16 Q. So other than possibly imbalances and taker

17 pay adjustments, isn't it true that these transport

18 internal -- I'm sorry -- those other transportation

19 customers do not pay the -- pay anything under the PGA

20 tariff?

21 A. Yes, that is correct.

22 Q. And the way that you did this transport

23 internal, the net effect of it was essentially to avoid the

24 PGA; isn't that true?

25 A. It was not done intentionally to avoid the PGA

1 rates.

2 Q. But the net effect of what you did here was
3 to -- was to avoid these particular internal transport
4 customers paying the PGA; isn't that correct?

5 A. Yes, that is correct, in order to be
6 competitive with their propane alternative.

7 Q. Okay. So the net effect of what you did, if
8 not the intent, was you lowered these internal transport
9 customers' costs by avoiding the PGA. Isn't that the real
10 difference in their cost when they were large volume service
11 customers and now they are PG-- now they are what you call
12 transportation internal?

13 A. I'm sorry, Mr. Franson. Could you repeat that
14 question for me?

15 Q. Certainly. The net effect of what you did was
16 you lowered the cost to these transportation internal
17 customers by avoiding the PGA. That was the primary
18 difference of what they were paying when they were large
19 volume service customers and then when they went to being
20 this transportation internal. Isn't that the primary
21 difference in their actual cost?

22 A. Yes, I would -- I would agree with that
23 statement.

24 Q. Okay. Mr. Klemm, let's go to when Mr. -- when
25 Southern Missouri Gas was making these decisions, I believe

1 Mr. Walker testified that some of those decisions were made
2 in April -- in March and April of 2001, and then subsequent
3 times after that.

4 Were you ever consulted about those decisions
5 to provide this specific service to these companies?

6 A. Relative to in March and April, not
7 specifically by Mr. Walker, because he was still reporting
8 to the manager at that time.

9 Q. And at some point in May 1 of 2001 you took
10 over the operations of Southern Missouri Gas; is that
11 correct?

12 A. Yes, effective May 1st, I was responsible for
13 the day-to-day operations of Southern Missouri.

14 Q. And were you aware of this particular service
15 being offered in May of 2001?

16 A. Yes, I was.

17 Q. And did you approve of it?

18 A. Yes, I did.

19 Q. Okay. But you never came in to the Public
20 Service Commission and asked about that?

21 A. I did come in, and there was an informal
22 discussion that was held in late May or early June.

23 Q. Okay. Let's go over some of these in May of
24 2001.

25 A. Late May of 2001 and/or early June.

1 Q. And you talked to someone on Staff about what
2 you were doing specifically?

3 A. The purpose of my trip was to come to
4 Jefferson City and to introduce myself to various Staff
5 people and to meet them, and just to talk generally about
6 the company. And to my recollection, there was, albeit
7 brief, but there was a conversation specifically regarding
8 this concern of large volume customers and the ability to
9 compete with alternate fuels.

10 Q. Was there any specific discussion of your
11 solution to this problem in May/June of 2001 when you came
12 to meet the Staff?

13 A. I guess I wouldn't characterize it as a
14 solution. What I shared was, is what the company had done
15 relative to this one particular customer at the time.

16 Q. And did anyone on Staff at that point have any
17 misgivings or concerns about what you'd done?

18 A. My recollection of the -- of the conversation
19 was that the company might consider or should consider
20 asking for a variance relative to this service.

21 Q. Okay. Let's stop now. When we're talking
22 about these conversations, if there were other matters that
23 were discussed that might have been of a settlement nature
24 or anything like that about other cases, we don't want to go
25 into that.

1 But if I understand it, you revealed what you
2 were doing, at least at that point in time in May/June of
3 2001 in regard to this customer; is that correct?

4 A. Yes.

5 MR. FRANSON: Okay. Your Honor, if I could
6 have just a moment, I need to get another exhibit.

7 JUDGE HOPKINS: Let's go off the record and
8 take about a ten-minute break here.

9 (A BREAK WAS TAKEN.)

10 (EXHIBIT NO. 18 WAS MARKED FOR IDENTIFICATION
11 BY THE REPORTER.)

12 JUDGE HOPKINS: We're back on the record.

13 Go ahead, Mr. Franson.

14 MR. FRANSON: Thank you, your Honor.

15 JUDGE HOPKINS: By the way, let me just ask
16 anyone if we talked about anything off the record, while we
17 were off the record that needs to be added to the record?

18 MR. FRANSON: Your Honor, the only thing that
19 I might suggest is that I did have the court reporter mark
20 my next exhibit as No. 18. That was the only thing.

21 JUDGE HOPKINS: All right. Nothing else
22 appears.

23 Go ahead, Mr. Franson.

24 MR. FRANSON: Thank you, your Honor.

25 Your Honor, I need to first of all approach

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1 Mr. Fischer, show him this, and then show it to Mr. Micheel,
2 and then if I may approach the witness after that?
3 JUDGE HOPKINS: Yes, sir. Go right ahead.
4 MR. FRANSON: Thank you.
5 MR. FISCHER: Your Honor, it would be helpful
6 to us if we could get copies, if they're available.
7 JUDGE HOPKINS: I think Mr. Franson handed you
8 a copy there, handed everybody a copy.
9 MR. FRANSON: Yes, your Honor.
10 BY MR. FRANSON:
11 Q. And I would ask Mr. Klemm, who just received
12 Exhibit No. 18, if he could review that, please.
13 A. I have reviewed it.
14 Q. Mr. Klemm, do you recognize that?
15 A. Yes, I do.
16 Q. What is that?
17 A. This is e-mail correspondence that I sent to
18 Mr. Phil Lock of the Commission Staff.
19 Q. Okay. And who is -- Mr. Phil Lock is a member
20 of the Commission Staff?
21 A. I believe that he works in the ACA audit
22 process. I'm not sure what -- if that's an accounting
23 department or what specific department it is here with the
24 Staff.
25 Q. Okay. If I told you Mr. Lock works in our gas

1 procurement department under the supervision of Mr. Dave
2 Sommerer, would you have any reason to doubt that?

3 A. No. I would agree with that.

4 Q. Okay. Now, you were -- you were sending this
5 e-mail to Mr. Lock as part of the review of your 2000-2001
6 PGA/ACA; isn't that correct?

7 A. Yes, relative to that specific audit, that is
8 correct.

9 Q. Okay. And is this, in fact, an e-mail that
10 you sent?

11 A. Yes, it is.

12 Q. Is it a fair and accurate copy of that e-mail?

13 A. Yes, it is.

14 Q. And you do recognize it?

15 A. Yes, I do.

16 MR. FRANSON: Your Honor, at this time I would
17 offer into evidence Exhibit No. 18, and copies have been
18 provided to the other parties.

19 JUDGE HOPKINS: Any objection to No. 18,
20 e-mail correspondence from Klemm to Lock? Any objection to
21 this being entered into evidence?

22 MR. FISCHER: No objection.

23 JUDGE HOPKINS: No one objects. Therefore, we
24 will enter it into evidence.

25 (EXHIBIT NO. 18 WAS RECEIVED INTO EVIDENCE.)

1 JUDGE HOPKINS: And I'm assuming, Mr. Franson,
2 that is also NP?

3 MR. FRANSON: From Staff's perspective it is,
4 your Honor. I would ask Mr. Klemm.

5 BY MR. FRANSON:

6 Q. Mr. Klemm, do you see anything of a highly
7 confidential or proprietary nature in Exhibit No. 18 that's
8 in front of you?

9 A. No, I do not.

10 MR. FRANSON: Your Honor, with that I would
11 offer Exhibit 18 as not proprietary.

12 JUDGE HOPKINS: All right. It will be entered
13 into evidence. Thank you.

14 BY MR. FRANSON:

15 Q. Mr. Klemm, could you read what you wrote to
16 Mr. Lock?

17 A. Phil, I have a question that will impact my
18 final ACA document, as well as my winter rate filing. It
19 relates to the internal transport margins. Should the
20 entire margin be applied to the current year under
21 collection, which is the way the work papers I provided to
22 you do, or should a portion be applied to the ACA and refund
23 component?

24 Q. Okay. Then could you read Mr. Lock's reply,
25 please?

1 A. I'm not quite sure what you mean by internal
2 transport margins. Check back with me and give me more
3 details. Thanks.

4 Q. Okay. Would it be fair to say that this was
5 Staff's first -- the first time you actually used the term
6 "internal transport" and the first time that Staff became
7 aware of -- of even this term and what you were doing with
8 it?

9 A. No.

10 Q. And that is based on your -- your disagreement
11 with that is based on your prior testimony that you revealed
12 this to Staff at an introductory meeting where you met them
13 and discussed this in May or June of 2001?

14 A. I don't recall if I used this at the
15 introductory meeting that you're referring to, but I did
16 have a conversation with Mr. Lock prior to sending this
17 e-mail around this issue.

18 Q. However, wasn't that during part of the ACA
19 audit process for the 2000-2001 ACA period?

20 A. Yes, that would be correct.

21 Q. Now, let's move on. I'd like to direct your
22 attention to page 5 of your direct testimony, if you could
23 turn there, please.

24 Mr. Klemm, if you could refresh my memory,
25 your direct testimony is all, in fact, nonproprietary; is

1 that correct?

2 A. Yes, that is correct.

3 Q. Okay. Now, on page 5, specifically beginning
4 at line 9 and ending on line 20, is it -- actually, let me
5 go back up.

6 Let's go to -- well, let me ask you, up at the
7 top, beginning at page 5, line 1, going through line 7, fair
8 to say you set out the four options that you indicate
9 Southern Missouri Gas had, to deal with the situation
10 presented by this first customer, this industrial customer
11 that came in?

12 A. Yes, that is correct.

13 Q. Okay. Now, you, in fact, were not in charge
14 of this situation at this time; is that correct?

15 A. That is correct. What -- when I answered
16 this question, it was after the -- after the fact and, you
17 know -- and the options that were discussed, to my
18 knowledge, that occurred prior to me being directly
19 responsible effective May 1, 2001.

20 MR. FRANSON: Okay. Your Honor, at this time
21 I need to ask that we go into an HC portion.

22 JUDGE HOPKINS: Okay. We are in HC.

23 (REPORTER'S NOTE: At this point, an in-camera
24 session was held, which is contained in Volume 2, pages 89
25 through 92 of the transcript.)

1 JUDGE HOPKINS: We are now out of the
2 confidential portion of the testimony, and you may proceed,
3 Mr. Franson.

4 MR. FRANSON: Thank you, your Honor.

5 BY MR. FRANSON:

6 Q. Mr. Klemm, Option 1 when Southern Missouri Gas
7 was faced with this situation was do nothing and risk losing
8 the customers. You rejected that option; is that correct?

9 A. When you use the word "you," you mean you
10 personally or you as in Southern Missouri?

11 A. Southern Missouri Gas rejected that option,
12 correct?

13 A. That is correct.

14 Q. And they didn't think they could lower
15 commodity charges enough, so they rejected your second
16 option, or the option that was presented as No. 2, correct?

17 A. Yes, that is correct.

18 Q. No. 3 was put the industrial companies in
19 touch with third-party marketers for the gas supply and
20 Southern Missouri Gas Corporation would provide
21 transportation service only. Was that Option 3?

22 A. Yes, it was.

23 Q. And that is fair to call that, that is the
24 traditional transportation service that would be offered; is
25 that correct?

1 A. Yes. I would call that the traditional or
2 normal --
3 Q. Okay. Normal.
4 A. -- transportation.
5 Q. Normal transportation, but you rejected that?
6 You rejected No. 3, correct?
7 A. We rejected it based upon the facts at that
8 time. Yes, that is correct.
9 Q. Okay. Then you came up with this fourth
10 option, which we've talked about, correct?
11 A. Yes, sir.
12 Q. Okay. Now, is it fair to say that Southern
13 Missouri Gas was offering additional service to these
14 transportation internal, but you still considered them
15 transportation customers?
16 A. I would say that that's an accurate assessment
17 of -- that we considered them transport service customers
18 but we did provide additional service to them, obviously, by
19 providing the gas supply, yes.
20 Q. Okay. Now, would that specific service, that
21 would involve some work on behalf -- on behalf of Southern
22 Missouri Gas, wouldn't it?
23 A. Yes, it would.
24 Q. Okay. And that work would have been provided
25 by Mr. Walker?

1 A. Yes. I would expect that he would provide the
2 vast majority of the work associated with that service, yes.
3 Q. Okay. Now, that would mean that while he's on
4 payroll as a Southern Missouri Gas employee, he was
5 providing this additional service. Would that involve using
6 the phone?
7 A. I'm sure it would, yes.
8 Q. Would it involve using a company computer?
9 A. Probably.
10 Q. Would it involve using an adding machine?
11 A. Probably.
12 Q. Would it involve using any company vehicles if
13 he had to go anywhere to talk to anyone at the pipeline or
14 anyone regarding -- provisioning this gas for these
15 customers?
16 A. Possibly. But as I recall in his deposition,
17 he didn't indicate anything of that sort.
18 Q. Okay. But fair to say that he was providing
19 additional services and the company was not receiving any
20 other income by charging fees to these customers, correct?
21 A. That is correct.
22 Q. Now, let's -- you remember Mr. Walker's
23 deposition? In fact, you were present during that; is that
24 correct?
25 A. Yes, that is correct.

1 MR. FRANSON: Your Honor, if I could step away
2 from the podium for just a moment.

3 JUDGE HOPKINS: Yes.

4 MR. FRANSON: Your Honor, if we could hand the
5 witness Exhibit No. 2, or actually -- I'm sorry. Help me on
6 the numbers here, Judge. I've had a little bit of a problem
7 with that. I'm going to try for -- what I'm after is the NP
8 version of the deposition of Mr. --

9 MR. MICHEEL: Exhibit 9.

10 MR. FRANSON: Your Honor, I would like to ask
11 the court reporter to hand Mr. Klemm Exhibit No. 9.

12 JUDGE HOPKINS: Yes. That's correct.

13 Yes, you may hand him that.

14 BY MR. FRANSON:

15 Q. Mr. Klemm, could you turn to page 32 of this
16 Exhibit No. 9?

17 A. I have located page 32.

18 Q. Okay. Is it fair to say that Mr. Walker was,
19 in fact, using -- was describing transportation internal in
20 his -- in this part of his deposition, this extra service
21 you provide?

22 JUDGE HOPKINS: Tell me what part of the
23 deposition you're in there, Mr. Franson.

24 MR. FRANSON: I'm asking him to review
25 page 32, your Honor.

1 JUDGE HOPKINS: Thank you.

2 BY MR. FRANSON:

3 Q. Actually, Mr. Klemm if you could put that
4 aside, let me ask you, was Southern Missouri Gas when it was
5 offering this extra service, was it acting as an agent of
6 these -- of these industrial customers in order to provision
7 their gas?

8 JUDGE HOPKINS: Mr. Franson, I'm just trying
9 to keep the record clear. You withdrew the first question?

10 MR. FRANSON: Yes, I have, your Honor. I
11 apologize.

12 JUDGE HOPKINS: Thank you, sir. Go ahead.

13 BY MR. FRANSON:

14 Q. Was your company acting as an agent in
15 procuring gas for these industrial customers?

16 A. We were acting as the gas supply. I would not
17 characterize it as acting as their agent.

18 Q. Okay. Mr. Klemm, let's -- okay. In your
19 rebuttal testimony, you talk -- I believe you included the
20 transportation tariffs, is that correct, of Southern
21 Missouri Gas?

22 I'm just asking you if that's attached there
23 as an exhibit to the NP version?

24 A. Yes, I believe that is correct.

25 Q. Okay. Now, could you look at that

1 specifically and tell me where in your transportation
2 tariffs it says that Southern Missouri Gas is authorized to
3 provision gas for transportation customers?

4 A. To my knowledge, it -- I don't think the
5 tariffs say anything relative to the ability or authorized
6 or not authorized of whether we can provide gas supply to
7 transportation service customers.

8 Q. Okay. So my specific question is, can you
9 point to anything specific that says specifically Southern
10 Missouri Gas or any other company is authorized to provide
11 this?

12 A. No, certainly not as relates to specifically
13 Southern Missouri. No, I cannot.

14 Q. Okay. Let me turn your attention to your
15 rebuttal testimony.

16 MR. FRANSON: Your Honor, this will be HC.

17 JUDGE HOPKINS: Okay.

18 (REPORTER'S NOTE: At this point, an in-camera
19 session was held, which is contained in Volume 2, page 99 of
20 the transcript.)

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1 JUDGE HOPKINS: Go ahead, Mr. Franson.
2 MR. FRANSON: Thank you, your Honor.
3 BY MR. FRANSON:
4 Q. Mr. Klemm, during the opening statement of
5 Mr. Fischer and, I believe, in your testimony, there is a
6 claim that the -- that Southern Missouri Gas coming up with
7 this and providing transportation and gas supply benefited
8 customers to the amount of \$39,000-and-some-odd, almost
9 \$40,000.
10 Are you familiar with what I'm talking about?
11 A. Yes, I am.
12 Q. Okay. Now, was that actually a profit or was
13 that just part of the cost of this whole operation?
14 A. That was derived by taking the total revenues
15 less the actual cost associated with that agreement, which
16 would include primarily the wellhead price of the gas and
17 the incremental variable transportation on Williams'
18 pipeline.
19 Q. Okay. But bottom line on that, you had
20 between \$39,000 and \$40,000; is that correct?
21 A. Yes, that's correct.
22 Q. And is there anything that requires Southern
23 Missouri Gas to put that toward the PGA, that you're aware
24 of?
25 A. I'm not an attorney, so I'm not sure whether,

1 you know, legally it was, but from my viewpoint, I think it
2 certainly was morally.

3 Q. Okay. Let's talk about what you just
4 asserted. In your testimony, you also talk about
5 Section 393.299; is that correct?

6 A. Yes, that is correct.

7 Q. Now, do you remember where you talk about that
8 in your testimony?

9 MR. FISCHER: Try your surrebuttal.

10 MR. FRANSON: Okay.

11 THE WITNESS: Yeah, I think that is my
12 surrebuttal.

13 MR. FRANSON: And in your surrebuttal, I
14 believe, on page 4 -- and your Honor, this is NP, so --
15 BY MR. FRANSON:

16 Q. If you could look at page 4, lines 4 through
17 15, if you could review that, Mr. Klemm, and please tell me
18 when you have reviewed that.

19 A. Just to clarify, Mr. Franson, you said page 4,
20 lines --

21 Q. 4 through 15 and then there's footnote No. 1
22 also.

23 A. I have reviewed it.

24 Q. Okay. Now, the question there is, first of
25 all, you're not an attorney, correct?

1 A. Yes, that is correct.

2 Q. You're not licensed to practice law in the
3 State of Missouri?

4 A. That is correct.

5 Q. You refer to your legal counsel. Would that
6 be Mr. Fischer?

7 A. Yes, it would.

8 Q. Okay. So is it really fair to say that the
9 opinions offered here are more those of Mr. Fischer than
10 yourself?

11 A. Yes, I would agree with that.

12 Q. Okay. Now, is Southern Missouri Gas
13 registered as a third-party marketer?

14 A. No.

15 Q. Does Southern Missouri Gas have an affiliate
16 that is registered as a third-party marketer in the State of
17 Missouri?

18 A. Not to my knowledge.

19 Q. Okay. Now, if you're offering a service as a
20 regulated company, would you agree that that service must be
21 allowed by your tariff?

22 MR. FISCHER: Objection, your Honor, I think
23 that calls for a legal conclusion.

24 JUDGE HOPKINS: I think it does, too,
25 Mr. Franson.

1 MR. FRANSON: All right.

2 JUDGE HOPKINS: So I'm going to sustain the

3 objection.

4 BY MR. FRANSON:

5 Q. Mr. Klemm, you are, in fact, familiar with

6 your tariffs, correct?

7 A. Yes, I am.

8 Q. And would you agree with me that the services

9 that Southern Missouri Gas offers must comply with those

10 tariffs?

11 A. Certainly the regulated services, yes.

12 Q. Are you suggesting that Southern Missouri Gas

13 offers unregulated services? I'm not asking you to identify

14 those.

15 Are you suggesting that Southern Missouri Gas

16 does, in fact, offer unregulated services?

17 A. Yes, I would.

18 Q. Could you identify those services, please?

19 A. As it relates to unregulated, the purchase of

20 gas supply for the transportation customers in which we're

21 providing the gas supply for rather than traditionally the

22 third-party marketer.

23 Q. Okay. Now, are you familiar with the rules

24 that require that unregulated businesses, aspects of your

25 business be kept separate from the regulated aspects of your

1 business?

2 A. I'm aware of -- that there's rules regarding,
3 certainly, affiliated transactions. I guess I'm not sure
4 about the unregulated services, because there's also, I
5 guess, the issue within -- within an LDC about above the
6 line and below the line items, for instance, as well as --
7 could you -- I guess I'd ask for you to rephrase or repeat
8 your question --

9 Q. Well, let's go back.

10 A. -- so I'm clear.

11 Q. The unregulated services that you say that
12 Southern Missouri Gas is offering is a provisioning of gas
13 supplies for these internal transport customers; is that
14 correct?

15 A. Yes, I would agree with that.

16 Q. Okay. Now, in order to offer this unregulated
17 business, those have to be kept separate. What I mean by
18 that is you have to have separate accounting for your
19 employee time. You don't do that, do you?

20 A. That wasn't done in this case, to my
21 knowledge.

22 Q. Okay. And you don't do it now, do you?

23 A. No, not to my knowledge.

24 Q. You don't have separate phone usage and keep
25 your phone bills separated for regulated and unregulated, do

1 you?

2 A. Not to my knowledge, no, sir.

3 Q. You don't keep any of that separate, any of

4 the expenses that you might have for your regulated versus

5 your unregulated?

6 A. I would agree with that.

7 Q. So regulated ratepayers are paying for the

8 whole thing, aren't they, both regulated and unregulated;

9 isn't that true?

10 A. I would characterize that the services are

11 very minimal, and certainly our rates have not increased as

12 a result of trying to -- you know, as a result of this

13 activity.

14 Q. But whatever that amount is, specifically the

15 time and effort that Mr. Walker and any other employee of

16 Southern Missouri Gas used to provide this, what you're

17 calling an unregulated service, would you agree that there

18 is some expense there, both in personnel and company

19 equipment?

20 A. Yes, I would.

21 Q. And all of that, no matter what it's used for,

22 regulated or unregulated, is paid for by the regulated

23 ratepayers of Southern Missouri Gas Company?

24 MR. FISCHER: Objection, your Honor. I think

25 that calls for another legal conclusion. The ratepayers pay

1 rates in this state. They don't pay for Mr. Klemm's salary
2 or anybody else's efforts. They pay rates.

3 MR. FRANSON: Your Honor, rates pay for the
4 expenses of this company and for reasonable return thereon.
5 They most certainly do pay for all this --

6 JUDGE HOPKINS: I think that's a fair
7 question, Mr. Fischer, and I'm going to overrule your
8 objection. I think he can answer that. He's a CPA and
9 knows how to split out these costs.

10 Go ahead. Do you need the question repeated?

11 THE WITNESS: Yes, I would appreciate that.

12 JUDGE HOPKINS: Repeat the question.

13 MR. FRANSON: Thank you, your Honor.

14 BY MR. FRANSON:

15 Q. Mr. Klemm, isn't it true that the expenses of
16 what you are calling unregulated, while you call them
17 minimal or low expenses, they, in fact, do exist; is that
18 correct?

19 A. Yes, they do exist.

20 Q. And that is what we've talked about earlier,
21 Mr. Walker's time in providing that, any company property he
22 might use; is that also correct?

23 A. Yes, that is correct.

24 Q. And that would be true for any other Southern
25 Missouri Gas employee that is involved in any way with the

1 providing of this what you've called unregulated service; is
2 that correct?

3 A. That is correct.

4 Q. And isn't it also true that Southern Missouri
5 Gas does not have a separate fee for these services that it
6 charges to these large industrial customers?

7 A. Yes, that is correct as well.

8 Q. So the bottom line is that those expenses,
9 whatever they may be, are, in fact, paid from the regulated
10 ratepayers of Southern Missouri Gas; isn't that correct?

11 A. They would -- in my opinion, they would only
12 be paid if there was an increase in rates to the extent that
13 there is cost associated, you know, unless there's an
14 increase in the rates, then they become a part of the bottom
15 line, which would impact the investors of that, you know,
16 the utility.

17 Q. Well, let me put it this way, Mr. Klemm:
18 Southern Missouri Gas provides an extra service to these
19 specific customers, these industrial customers, under
20 transportation service - internal, correct?

21 A. Yes, I would agree with that.

22 Q. And they have no additional source of income
23 to pay any expenses associated with that; isn't that
24 correct?

25 A. That is correct. There wasn't a separate

1 additional fee included in the sales price that was charged
2 to these customers to cover those specific costs.

3 Q. Okay. So there's -- so any expenses are
4 covered by the income of Southern Missouri Gas, specifically
5 from regulated ratepayers, correct?

6 A. Income or loss, yes, that is correct.

7 Q. Okay. Mr. Klemm, what is a bundled service?

8 A. In my professional opinion, a bundled service
9 is where you provide essentially everything for one -- for
10 one -- for one rate or price.

11 Q. Okay. Let me ask you, would your large volume
12 service be a bundled service?

13 A. Yes. I would -- I would agree with that.

14 Q. Would your transportation, that meaning where
15 the -- what we've called traditional transportation where
16 the customer goes out, provisions their gas, has it
17 transported to the Southern Missouri Gas citygate, and then
18 and only then does Southern Missouri Gas transport it, would
19 that be a bundled service?

20 A. I would characterize that as certainly being
21 unbundled.

22 Q. Okay. Now let's talk about transportation
23 internal. Is that a bundled or unbundled service?

24 A. Well, I think that's what's certainly at issue
25 in this case that -- you know, that we're debating, but in

1 my opinion, no.

2 Q. Okay. Let's talk about -- let's talk about
3 large volume service, transportation internal. Under large
4 volume service, Southern Missouri Gas goes out and
5 provisions the gas; is that correct?

6 A. That is correct.

7 Q. Under transportation internal, Southern
8 Missouri Gas goes out and provisions the gas, correct?

9 A. That's correct.

10 Q. Under large volume service, Southern Missouri
11 Gas arranges for the transport through an interstate
12 pipeline to the Southern Missouri Gas citygate; is that
13 correct?

14 A. That is correct, yes, sir.

15 Q. Under transportation internal, Southern
16 Missouri Gas arranges -- after provisioning gas, arranges
17 for the transport of that gas to the Southern Missouri Gas
18 citygate; is that correct?

19 A. I would agree with that.

20 Q. Then at the citygate, Southern Missouri Gas
21 transports the gas under large volume service from the
22 citygate to the premises of the customer; is that correct?

23 A. Could you repeat that question?

24 Q. Okay. Under large volume service, the gas has
25 reached the Southern Missouri Gas citygate. Isn't it true

1 that, as part of your service you transport the gas from the
2 citygate of Southern Missouri Gas to the premises of the
3 customer?

4 A. Well, when I utilize bundled service, I won't
5 break it up into those different components. Bundled would
6 be all the way from the wellhead all the way to their burner
7 tip.

8 Q. Okay. Let's do it that way. Isn't it true
9 that from -- under both of these, that is exactly what
10 Southern Missouri Gas does, from the -- where the gas comes
11 into the pipeline all the way to the burner tip, from the
12 wellhead to the burner tip, that's the same under both of
13 these; isn't that correct?

14 A. The only difference -- and I think this is the
15 key point -- is that under the transportation service where
16 Southern Missouri was providing the gas supply was that
17 there was separate invoices for the commodity piece and a
18 separate invoice for the transportation rates.

19 Q. Okay. I'm not talking about bills,
20 Mr. Klemm. We're talking about the service. They are the
21 exact same service, correct?

22 A. Essentially I would agree with you that they
23 are the same or very similar service.

24 MR. FRANSON: Your Honor, if I could have just
25 a moment.

1 JUDGE HOPKINS: Go right ahead.

2 MR. FRANSON: No further questions, your
3 Honor.

4 JUDGE HOPKINS: Okay. It is about 14 'til 12.
5 Do you want to take off now and come back at one or do you
6 want to --

7 MR. FISCHER: That's fine with me, your Honor.

8 JUDGE HOPKINS: Now, I'm going to lock this
9 room up. There's too much stuff in here. The good news is
10 your stuff will be protected. The bad news is you can't get
11 back in until after one.

12 Is there any problem with that?

13 MR. FRANSON: Not on behalf of Staff, your
14 Honor.

15 JUDGE HOPKINS: Thank you. We're off the
16 record.

17 (A RECESS WAS TAKEN.)

18 JUDGE HOPKINS: We had stopped with
19 Mr. Franson's cross-examination of Mr. Klemm. And has there
20 been anything over the lunch hour that we discussed off the
21 record that we need to put on the record?

22 (No response.)

23 JUDGE HOPKINS: Hearing nothing, we will
24 proceed. And, Mr. Micheel, please proceed.

25 MR. MICHEEL: Thank you, your Honor.

1 CROSS-EXAMINATION BY MR. MICHEEL:

2 Q. Mr. Klemm, what period of time is this ACA
3 proceeding covering?

4 A. This particular proceeding is covering the
5 time frame of September 1st, 2000 through August 31st, 2001.

6 Q. And is it my understanding that your
7 responsibility for the day-to-day operations of Southern
8 Missouri Gas Company did not begin until May of 2001?

9 A. That is correct, May 1st of 2001.

10 Q. And so is it also correct that at least one of
11 the contracts that was entered into was done prior to you
12 taking control of the day-to-day operations of Southern
13 Missouri Gas?

14 A. Yes, that is correct. I will add that the
15 former partner did contact me and talk to me a little bit
16 about my thoughts as representing MCN Energy.

17 Q. But nonetheless, you weren't involved with the
18 intimate negotiations of the first contract that provided
19 for internal transportation; isn't that correct?

20 A. Yes, that is correct.

21 Q. And at that time your company didn't have what
22 I'll call operational control; isn't that correct?

23 A. Yes, that is correct.

24 Q. I want to talk to you about the ownership and
25 that operational control of Southern Missouri Gas Company.

1 It's my understanding now that MCN Energy Group, I believe,
2 owns 95 percent of Southern Missouri Gas; is that correct?

3 A. Yes, that is correct.

4 Q. And MCN Energy Group, is that a -- that's a
5 wholly owned subsidiary of DTE Enterprises; is that correct?

6 A. MCN Energy Group is the predecessor to DTE
7 Enterprises. When DTE Energy Company purchased MCN Energy
8 effective on May 31st of 2001, then there was a name change
9 essentially.

10 Q. And would you agree with me that DTE
11 Enterprises is an extremely large corporation?

12 A. Yes, I would.

13 Q. And it's got, I guess, two main subsidiaries,
14 Detroit Edison and MichCon Gas; is that correct?

15 A. Just for clarification, DTE Energy has two
16 primary subsidiaries, Detroit Edison and Michigan
17 Consolidated Gas, yes, that would be correct.

18 Q. And it's ultimately DTE Energy that owns
19 95 percent of Southern Missouri Gas Company; isn't that
20 correct?

21 A. At this time, yes, that is correct.

22 Q. And it's correct that the company has recently
23 filed an application to acquire the last 5 percent; isn't
24 that correct?

25 A. Yes, it is.

1 Q. And would you agree with me that in 1992 DTE
2 Energy Company announced earnings of \$632 million?

3 A. I have no relevance to -- I don't have those
4 numbers in front of me or have knowledge as specifically
5 what they might have -- what they would have been.

6 MR. MICHEEL: My I approach the witness, your
7 Honor?

8 JUDGE HOPKINS: Yes.

9 BY MR. MICHEEL:

10 Q. Mr. Klemm, let me hand you a press release
11 that I took from the DTE Energy website, and that purports
12 for 1992 to indicate DTE Energy Company's earnings. And is
13 it correct that it indicates there that for that year they
14 had \$632 million worth of earnings?

15 A. Yes, that does.

16 Q. And that was for the year 2002; is that
17 correct?

18 A. Yes, that is correct. 2002.

19 Q. And so when we talk about Southern Missouri
20 Gas Company being a very small company, you would agree with
21 me that it's a very small company owned by a huge company;
22 isn't that correct?

23 A. That would be correct.

24 Q. And we're talking about here -- let me just
25 flip this page real quick -- a Staff proposed disallowance

1 in this case of, I believe Mr. Franson said 102,137; isn't
2 that correct?

3 A. Yes. Relative to the ACA portion, yes.

4 Q. And that dwarfs in comparison to the
5 632 million that DTE Enterprises earned last year; isn't
6 that correct?

7 A. I would agree with that.

8 JUDGE HOPKINS: Just a moment, Mr. Micheel.

9 Mr. Micheel is referring to the second page of
10 what we call Exhibit No. 1, which really isn't an exhibit,
11 but it was what Mr. Fischer had drawn or, I should say,
12 written during opening statements.

13 That's for the record, Mr. Micheel. Thank
14 you.

15 MR. MICHEEL: Thank you, Judge.

16 BY MR. MICHEEL:

17 Q. So you would agree with me ultimately, if
18 there's any sort of disallowance in this case, that that
19 disallowance would reflect up to DTE Energy; isn't that
20 correct?

21 A. At this point, it would be 95 percent. Yes, I
22 would agree with that.

23 Q. So let's say it would be -- what's 95 percent
24 of 102,000?

25 A. Well, probably 95,000-and-some-odd dollars,

1 almost 96,000.

2 Q. So \$96,000 compared to their \$632 million of
3 earnings last year is really not a big sum, is it?

4 A. Not in comparison to the 632 million that
5 you're referring to, I would agree with that.

6 Q. So if the Commission sees fit to do the
7 disallowance to Southern Missouri Gas, it's really -- it's
8 not even going to be a blip on DTE Energy's balance sheet;
9 isn't that correct?

10 A. I'm not sure if I would use the word "blip,"
11 but -- but certainly from a percentage standpoint, it would
12 be very -- it would be very small.

13 Q. Let me use a term I think you accoun-- and I'm
14 not an accountant -- but wouldn't be a material impact,
15 isn't that correct, Mr. Klemm?

16 A. As I know the word material, it would not be,
17 in terms of the overall DTE earnings.

18 Q. And, in fact, if you were auditing DTE Energy
19 and you saw a discrepancy of \$102,000, that's not something
20 that would raise a red flag in your audit, would it?

21 A. Not in my personal opinion, in my background.

22 Q. And DTE Energy does plan on acquiring the last
23 5 percent of SMGC that it doesn't own; isn't that correct?

24 A. Yes, we are in the process of getting approval
25 for that.

1 Q. I want to talk to you just a little bit about
2 the type of service, the nature of service that we're
3 talking about with these three customers, the internal
4 transportation service. And just for the record, I'm going
5 to refer to what's been marked for purposes of
6 identification as illustrative Exhibit No. 2 here. I just
7 want to understand these transactions better, Mr. Klemm.

8 For the three customers at issue here, what
9 we've been terming "transportation internal," is it -- is it
10 correct that Southern Missouri Gas Company secured the gas
11 supply to supply to these customers?

12 A. Yes, that is correct.

13 Q. And so Southern Missouri Gas went out to the
14 production field there in my diagram, Exhibit 2, and secured
15 the gas that was going to serve these three customers; is
16 that correct?

17 A. Yes, it is.

18 Q. And would you agree with me that Southern
19 Missouri Gas Company currently has transportation capacity
20 at that time, at the time of the ACA, on Williams Central
21 Pipeline?

22 A. Yes.

23 Q. And Southern Missouri Gas already had
24 contracted for that; isn't that correct?

25 A. Yes.

1 Q. And would you agree with me that the
2 ratepayers of Southern Missouri Gas Company have paid for
3 the contracted pipeline capacity on Williams Central; is
4 that correct?

5 A. Yes, I would agree with that. They pay it
6 through the ACA process with those costs.

7 Q. Well, they pay it also as part of a component
8 of the PGA rate, don't they, Mr. Klemm?

9 A. Yes.

10 Q. And it's specifically set out what the
11 transportation costs are going to be for the PGA; isn't that
12 correct?

13 A. I don't believe there's specific rates that's
14 tied to the gas commodity portion versus the transportation
15 component.

16 Q. But you would agree with me, would you not,
17 that the PGA rate that the customer pays has a component
18 that would pay for the interstate transportation on Williams
19 Central Pipeline, isn't that correct, during this ACA
20 period?

21 A. Yes, it is.

22 Q. And is it correct during this ACA period that
23 the gas that SMGC procured for these transportation internal
24 customers were transported over the interstate pipelines
25 utilizing the transportation capacity on Williams Central

1 Pipeline at that time that SMGC had in place?

2 A. Yes, that is correct.

3 Q. And that transportation capacity was paid for

4 by ratepayers, correct?

5 A. Yes.

6 Q. And so these internal transportation customers

7 were not required to get their own transportation capacity

8 on Williams Central Pipeline; isn't that correct?

9 A. That is correct, they were not required to.

10 Q. And during the transportation of this gas, you

11 told me that Southern Missouri Gas procured the gas, so,

12 therefore, Southern Missouri Gas had title to the gas at the

13 wellhead; isn't that correct?

14 A. Yes, they bought the gas at the wellhead.

15 Q. And then they transported it over the

16 interstate pipeline; isn't that correct?

17 A. Yes, that is.

18 Q. And that gas was identified as Southern

19 Missouri Gas Company gas; isn't that correct? I mean, I

20 recognize you can't identify molecules of gas, Mr. Klemm,

21 and that's not what I'm asking you. What I'm ask--

22 MR. MICHEEL: Let me withdraw that question,

23 your Honor, and rephrase it.

24 JUDGE HOPKINS: All right. Go ahead and do

25 that.

1 BY MR. MICHEEL:

2 Q. You would agree with me, would you not,
3 Mr. Klemm, that at no time during the transportation process
4 none of these three customers at issue had title to the gas;
5 isn't that correct?

6 A. I would -- based on agreements, we had title
7 of the gas from the production zone all the way until the --
8 the interconnect with Williams Pipeline, at which point
9 there was a sale of that gas and there was a title transfer
10 of that gas, albeit for a very brief moment, of when we then
11 took possession of that gas and then obviously redelivered
12 it or transported it on our own transmission system from the
13 Williams interconnect to their meter.

14 Q. Okay. Let me unpack that and -- utilizing my
15 Exhibit 2 here. If I understand your answer, Mr. Klemm, and
16 correct me where I'm wrong, at the production field SMGC had
17 title to the gas; is that correct?

18 A. Yes, we bought the gas in the production
19 field.

20 Q. And then you transported the gas on Southern
21 Missouri Gas Company's capacity on the interstate pipeline
22 and you retained title to the gas while it was on the
23 interstate pipeline; is that correct?

24 A. I believe that is correct. I'd have -- just
25 to verify where the sales point is, but I believe the sales

1 point was at the Williams interconnect for the -- for the
2 volumes in question.

3 Q. And when you say the Williams interconnect on
4 this Exhibit 2, I have that labeled as the citygate. Is
5 that one and the same thing, Mr. Klemm?

6 A. Yes, for illustrative purposes, I would agree
7 with that. I mean that the citygate in your diagram is the
8 same as the Williams interconnect as I'm referring to.

9 Q. Okay. And so Southern Missouri Gas, you
10 believe, had title to the gas until it reached your citygate
11 or the Williams interconnect; is that correct?

12 A. Yes. That's my understanding, yes.

13 Q. And then at the citygate the gas was delivered
14 into the citygate, and it's your understanding at that point
15 the gas transferred to one of these three customers, whoever
16 was transporting; is that correct?

17 A. Yes, it is.

18 Q. And then after that transfer, it entered your
19 company's distribution system; is that correct?

20 A. That is correct.

21 Q. And at the time it entered your company's
22 distribution system, SMGC had control of that gas; is that
23 correct?

24 A. Yes, it is.

25 Q. And then it transferred it once again, once it

1 got to the -- one of these three companies' meters on your
2 system, isn't that correct, and then transferred the gas to
3 the company; is that correct?

4 A. Yes, as long as you're referring to the
5 company as being the customers.

6 Q. Yes, one of the three customers. And I don't
7 want to say it because it's HC, and then we have to do all
8 this stuff. I'm not interested in doing that.

9 Is it Southern Missouri Gas Company's position
10 that Southern Missouri Gas can market gas to industrial
11 transportation customers on a non-regulated basis?

12 A. That's not our preference, but we do believe
13 that we do have that -- that right or that option.

14 Q. And you would agree with me, would you not,
15 that in this situation with these three customers, that's
16 what your belief was that Southern Missouri Gas was doing;
17 isn't it correct?

18 A. Yes, it is.

19 Q. And you would agree with me that there's --
20 there's nothing in your tariffs that explicitly gives
21 Southern Missouri Gas that authority; isn't that correct?

22 A. Yes, that is correct.

23 Q. Let me take you through a situation with a
24 third-party marketer and what would happen under what we'll
25 call the normal transportation situation.

1 It's my understanding -- and correct me where
2 I get it wrong here -- if one of your customers, one of
3 these three customers that used transportation internal had
4 negotiated with a third-party marketer, what would have
5 happened is that marketer would have purchased the gas in
6 the production zone; is that correct?

7 A. Certainly that's one option.

8 Q. And that marketer would have arranged for
9 transportation capacity on the interstate pipeline to
10 deliver it to, as you say, the Williams take point, or as I
11 say the citygate; isn't that correct?

12 A. Again, I would say that -- that is one -- yes,
13 that would be an option.

14 Q. What are the other options?

15 A. For instance, one could agree that the
16 delivery point could be the interconnect between Williams
17 and Southern Missouri Gas Company. It's not absolutely
18 positive that you would have to buy the gas, for instance,
19 only at the wellhead. You could buy it at the wellhead or
20 at essentially any point between there and the Williams
21 interconnect.

22 Q. Right. For example, you could get off-system
23 sales gas from another LDC or something like that; isn't
24 that correct?

25 In other words, you could have an LDC that has

1 excess capacity and they've contracted for X gas supply,
2 right? Do you understand that?

3 A. Right.

4 Q. And they're not using that gas supply to serve
5 their native load, so they could sell it to a marketer or to
6 one of these customers; isn't that correct?

7 A. That's correct. They could do an off-system
8 sale or they could release capacity. There's a variety of
9 options.

10 Q. But in any event there, under the traditional
11 transportation, it's the marketer who is acquiring the
12 transportation capacity and the gas supply; isn't that
13 correct?

14 A. Generally, I would agree with that. I mean,
15 it is also possible that the end user itself owns capacity
16 on the pipeline, not necessarily the marketing company.

17 Q. Sure. And the end user could buy that
18 capacity on the pipeline, but they'd have to bid for that;
19 isn't that correct?

20 A. Yes, they would.

21 Q. And they would have to negotiate with the
22 interstate pipeline to do that; isn't it correct?

23 A. Right, unless they purchased it from --
24 release capacity from another provider.

25 Q. So would you agree with me that however, you

1 know, you come up with a third-party marketer idea for
2 traditional transportation, that Southern Missouri Gas only
3 has control of the gas after it's behind its citygate until
4 it delivers it to the transportation customer's meter; isn't
5 that correct?

6 A. Based upon, as you said, with traditional,
7 yes, I would agree with that.

8 Q. And indeed, you have some traditional
9 transportation customers currently on SMGC's system; isn't
10 that correct?

11 A. Yes, it is.

12 Q. And that's the way it works for those
13 customers; isn't that correct?

14 A. Yes, it is. That's correct.

15 MR. MICHEEL: I have nothing further. Thank
16 you for your time, Mr. Klemm.

17 JUDGE HOPKINS: All right. Thank you.

18 We will be having a drill in about seven
19 minutes, so we go out this way (indicating), down the --

20 MR. MICHEEL: Go out to the back and down the
21 steps to the records room.

22 JUDGE HOPKINS: Out the back? Pardon?

23 MR. MICHEEL: Out the back of the hearing
24 room, your Honor.

25 We can go off the record.

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1 JUDGE HOPKINS: Let's go off the record.
2 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)
3 JUDGE HOPKINS: We have -- I will ask if
4 there's any questions from the Bench.
5 Commissioner Murray?
6 COMMISSIONER MURRAY: I may just have one or
7 two, your Honor. Thank you.
8 QUESTIONS BY COMMISSIONER MURRAY:
9 Q. Good afternoon, Mr. Klemm.
10 Can you tell me when these transportation
11 contracts were being considered, whether there was any
12 thought or discussion as to coming to the Commission for
13 approval?
14 A. I took over the day-to-day operations on
15 May 1st of 2001. I was not -- and that very first customer,
16 the situation arose in March and in April of 2001. And in
17 that regards, I am not aware in that time frame of the
18 company having any discussions about the need to go to the
19 Commission relative to this issue.
20 Q. In that you came in kind of after the fact, in
21 terms of the first customer at least, if you had been there
22 at the time that the first customer was being considered for
23 this contractual arrangement, knowing what you know now,
24 would you have thought that there was a need to come to the
25 Commission for approval?

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1 A. Certainly. I mean, my philosophy is to keep
2 open communications with the Commission and the Commission
3 Staff. And, in fact, shortly -- when I took over in May, I
4 did, you know, come down to meet with the Staff, to
5 introduce myself to a number of people who I didn't know
6 and -- and just talk to them about a variety of things.

7 My recollection was, is that I actually did
8 have some limited conversation regarding the competitive
9 nature that, you know, that we were facing and -- relative
10 to propane, and of, you know, what the company had done
11 relative to, at that time, the very first customer in
12 question.

13 Q. Were you advised as to the need to go forward
14 and seek Commission approval?

15 A. My recollection of the conversation,
16 Commissioner Murray, was that in talking about this, was
17 that I was -- it was suggested that I should certainly
18 consider getting a variance, you know, relative to this --
19 to this issue, but it was never impressed upon me that, for
20 instance, like, this is a direct violation or that you
21 really need to do this. And then, obviously, based upon
22 things, as things have evolved and certainly what we know
23 now, hindsight is certainly 20/20.

24 Q. Would you explain which tariff you think these
25 customers fall under?

1 A. I believe that these customers do fall under
2 our transportation service as provided in our tariffs. The
3 only difference -- and this is unique, and I acknowledge
4 that it's not the traditional or normal approach -- is that
5 in this case -- in these cases, with these particular
6 customers, that Southern Missouri actually also provided the
7 gas supply, rather than a traditional third-party marketing
8 company.

9 Q. So do you also think they fall under the other
10 tariff?

11 A. I assume the other tariff meaning the large
12 volume?

13 Q. Yes.

14 A. No, I do not.

15 Q. You think they are only transportation tariff
16 customers?

17 A. Yes, that is correct.

18 Q. But the company is supplying bundled service,
19 is it not, to those customers?

20 A. I certainly understand and appreciate the
21 characterization that it's, you know, that it's bundled,
22 because from a physical standpoint, you know, not much has
23 changed from where before they were a large volume service
24 customer and now they're being traded as a transportation
25 customer. I do understand the viewpoint that that is a

1 bundled service in terms of the physical gas. I'm not so
2 sure that it's bundled service in terms of a legal sense.

3 JUDGE HOPKINS: Let's go off the record.

4 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

5 JUDGE HOPKINS: We'll continue the hearing
6 through the tornado drill. Go ahead. I'm sorry to
7 interrupt you.

8 Go ahead, Commissioner Murray.

9 COMMISSIONER MURRAY: That's all right.

10 BY COMMISSIONER MURRAY:

11 Q. If the Commission were to find that there was
12 a violation of the tariffs and that we have the duty to make
13 you comply with the tariffs, is there a method other than
14 what has been proposed here that the Commission could use to
15 determine either a penalty -- and I realize this is not a
16 penalty proceeding -- but either a penalty in some
17 proceeding or a disallowance in this proceeding that would
18 be reasonable in terms of looking at what might have
19 happened had the tariff provisions been followed?

20 Is there any middle ground in this?

21 A. One option -- and this was actually discussed
22 at one of our meetings between the company, the Staff and
23 the Office of the Public Counsel.

24 MR. MICHEEL: I'm going to object to the
25 extent that I think this witness is about ready to go into

1 any settlement nego-- I hate to object to your question,
2 Commissioner, but I don't believe this witness should be
3 talking about what we talked about in settlement
4 negotiations.

5 COMMISSIONER MURRAY: I would not disagree
6 with that. I'm -- maybe I can phrase my question
7 differently or maybe --

8 COMMISSIONER GAW: Judge, could I intercede
9 just quickly?

10 I don't believe that the objection was to the
11 question. It was to the response that he thought --

12 MR. FISCHER: Your Honor, I think my witness
13 can withdraw any comments related to settlement discussions
14 and still answer your question.

15 JUDGE HOPKINS: All right. Do you need the
16 question repeated, Mr. Klemm?

17 THE WITNESS: No, I do not.

18 JUDGE HOPKINS: We'll have your lawyer
19 explain. He can explain to you later, but we don't like to
20 talk about settlement negotiations.

21 Go ahead and answer the question.

22 THE WITNESS: One option would be, is that
23 based upon our large volume service tariff, there is flexing
24 capabilities, and there's a minimum rate under the large
25 volume service.

1 And I guess one option would be, is that we
2 look at what was the rate the company actually earned on
3 these volumes that were sold versus what is the minimum
4 allowed rate under the large volume tariff, compute what
5 that variance is on a per-unit basis for these customers in
6 question, and then multiply it by their respective volumes.
7 BY COMMISSIONER MURRAY:
8 Q. In order to do that, would that be assuming
9 that those customers remained on the system?
10 A. Yes. I mean, that would be assuming that they
11 did it and we had flexed down to the very minimum amounts
12 that we were allowed under our large volume service tariff.
13 COMMISSIONER MURRAY: Okay. I think that's
14 all I have. Thank you.
15 JUDGE HOPKINS: Thank you, Commissioner
16 Murray.
17 Commissioner Gaw?
18 COMMISSIONER GAW: May I defer to Commissioner
19 Forbis, since I walked down just a moment ago?
20 JUDGE HOPKINS: All right. Commissioner
21 Forbis?
22 COMMISSIONER FORBIS: I wasn't counting on
23 deferral. Now I have to get my act together. I thought I
24 had another 20, 30 minutes. You're going to get about three
25 minutes to get ready.

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1 QUESTIONS BY COMMISSIONER FORBIS:

2 Q. Okay. Maybe just -- this has been kind of
3 confusing to me trying to sort through all this. Maybe I
4 can just get it squared away.

5 And you talked about this, Mr. Klemm, in your
6 rebuttal on page 13, that you believe you -- the company
7 believed it already had approval from the Commission to
8 enter into these agreements under the transportation tariff.
9 I think you've been through that before.

10 The fact that you could make these companies
11 transportation customers and the other part, the purchasing
12 of the gas and so on, all falls -- because it wasn't
13 expressly prohibited, it was acceptable. Would that be
14 correct in how you're interpreting it?

15 A. Yes. I think that's a very accurate
16 characterization, yes.

17 Q. Okay. And you also talked on page 15 about
18 the special contract provisions, and I think maybe
19 Commissioner Murray sort of touched on that, that you'd be
20 willing to consider alternative provisions and maybe get
21 into the question we had earlier, but you don't believe it's
22 appropriate in this case because after the fact?

23 A. You know, given all of the events that have
24 transpired, it's certainly my hope that no matter what the
25 outcome of this particular case may be, that the company and

1 the Staff and the Commission might be able to come up with,
2 you know, an appropriate tariff or clearly define our
3 existing tariff so that there would be opportunities for us
4 for win/win situations as is what we've characterized.

5 In these particular situations, as the
6 testimony indicates, we were facing some very competitive
7 propane prices. And clearly, as is outlined with the
8 options, one of the things we could have done was to do
9 nothing and to take that risk. We thought that, you know,
10 by doing nothing was not in the best interests of our -- of
11 all of our ratepayers.

12 Another option was to actually provide
13 transportation service utilizing the traditional third-party
14 marketer. And, you know, this was discussed with -- by
15 Mr. Walker, who has the direct contact with these customers,
16 and found out that, you know, this was all new to them, they
17 didn't know how to go about and do it. And what I found in
18 my experience, both in Missouri as well as Michigan, with
19 working with small communities and, you know, and customers
20 is that they want to be able to go, you know, directly to
21 you and relationships are extremely important.

22 And so when they were uncomfortable with going
23 to a third-party marketer, even if that meant us releasing
24 capacity and just getting, you know, a few fractions of a
25 penny, because releasing capacity wasn't worth and still

1 isn't worth much, that we said, you know, is there a better
2 way that would mutually benefit, you know, all -- all of the
3 parties?

4 And it was only, you know, under coming to
5 that conclusion that we arrived at doing this transportation
6 service, with Southern Missouri providing the actual
7 third-party -- excuse me -- with Southern Missouri actually
8 providing the gas supply where normally it would be through
9 a third-party marketer.

10 But we felt that wasn't the best way to keep
11 this customer. We could take the profits from the sale of
12 that gas and then give it to the benefit of our ratepayers,
13 because had we lost those customers, or if they would have
14 went to a third-party marketer, the amount that we would
15 have been able to recoup and to give credit through the ACA
16 process would have been zero or at least certainly a very
17 minimal amount for the amount of capacity that would have
18 been released.

19 Q. Do you -- are there other, I guess, large
20 volume customers that this would be an option for, assuming
21 that we weren't sitting in a hearing today?

22 I mean, there are these three that we've been
23 talking about. Are there others that just didn't ask for
24 it, for example, or would this be the sole universe of
25 potential transportation?

1 JUDGE HOPKINS: Let me just say, Mr. Klemm, we
2 don't need a highly confidential answer here.

3 COMMISSIONER FORBIS: I didn't want names.

4 THE WITNESS: There is certainly one other
5 company that would clearly be eligible for transportation
6 service, and there's another company that they've increased
7 their load that I believe that now they would qualify under
8 the present transportation tariff to -- you know, for that
9 service.

10 Again, we've had that transportation tariff
11 language in there since the very beginning of the company.
12 It's only, you know, more recently that, you know, we've
13 sort of expanded it to provide internal -- internal service
14 or gas supply from Southern Missouri.

15 So let me, if I may, just go back and, I
16 think, more directly answer your question if I may, is that,
17 yes, there is at least one, probably two other customers
18 that would qualify for transportation service, and we did
19 not initiate any conversations with them to determine if
20 they would be interested in this.

21 Had we proceeded down that path, I would have
22 certainly expected them to say absolutely, because they
23 would have been able to reduce their cost, but at the same
24 time that would have meant that the cost would have then
25 been absorbed by the other firm ratepayers, primarily

1 residential and small commercial customers.

2 BY COMMISSIONER FORBIS:

3 Q. But your practice or policy, then, is to wait
4 for someone to approach you and ask for this arrangement, as
5 opposed to doing sort of outreach?

6 A. Yes, that is correct.

7 Q. Okay. I had one other question. Do you have
8 a copy of the tariff with you handy?

9 A. I think it is attached in one.

10 Q. It's in Mr. Russo's --

11 MR. FRANSON: It is in Mr. Russo's.

12 COMMISSIONER FORBIS: -- rebuttal.

13 MR. FRANSON: Yes. The entire tariff is in
14 his NP version, as well as his HC version.

15 COMMISSIONER FORBIS: The whole thing's in
16 either version.

17 MR. FISCHER: Your Honor, it's also in
18 Mr. Klemm's testimony in the rebuttal version, both the NP
19 and highly confidential.

20 MR. FRANSON: And, your Honor, if I may, that
21 is strictly the transportation tariff. The entire tariff is
22 available.

23 BY COMMISSIONER FORBIS:

24 Q. I want to go back to a question that -- a
25 point, and maybe it was covered. If it was already, I

1 apologize. I got here a little late.

2 Mr. Micheel raised this in his opening
3 statement this morning on Sheet 15 of the transportation
4 service tariff, under the nominations section, which is
5 Schedule 1-29.

6 Do you find that?

7 A. Yes, I'm there, Commissioner Forbis.

8 Q. Could you comment on his point that says in no
9 event will the company in its role as agent purchase
10 transportation volumes on behalf of a customer?

11 A. Yes. The first thing that I would say is that
12 this language, I think, is relatively standard, and it's, I
13 think, under the premise, under traditional transportation
14 service.

15 Q. Okay.

16 A. And under traditional transportation service,
17 the company, that being Southern Missouri or another
18 LDC, d-- may have an agency agreement with the -- with that
19 transport customer for nomination purposes, but what this --
20 how I interpret this is, for instance, if, say, it's colder
21 than normal and there's an operational flow order, and
22 while we might be -- have an agency agreement with that
23 third-party transporter, if we ask them to say that, you
24 know, you need to put additional gas onto the system because
25 your takes are high, you know, we tell them, and then they

1 have to go out and do that.

2 We would not be able to go and try to contract
3 gas on their behalf to buy it on their behalf and put it
4 into our system.

5 Q. Okay.

6 A. And so I would view that as, again, as I
7 indicated, language for an agent as it relates to a
8 third-party transport customer, and not necessarily acting
9 as an -- as an agent with respect to the gas supply contract
10 that Southern Missouri, in fact, contracted with these three
11 particular customers in question through these proceedings.

12 Q. Okay. So SMGC's interpretation is that this
13 is a very specific paragraph dealing with a certain instance
14 in a certain case. Is that fair to say it that way?

15 MR. MICHEEL: Before he answers, I just want
16 to lodge an objection for the record that the tariffs, once
17 they're approved, become the law, and this witness is not an
18 attorney. So I just want to say I object if he's giving
19 some legal opinion. He can certainly say what he thinks it
20 says.

21 COMMISSIONER FORBIS: Should he go ahead and
22 answer that, Judge?

23 JUDGE HOPKINS: Your objection is noted and
24 overruled. Go ahead and answer the question, if you know
25 the answer.

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1 THE WITNESS: In my opinion, since I am --
2 since I am not an attorney, is that in these particular
3 cases -- and I would just phrase it under these particular
4 being traditional transport, which is the vast majority of
5 the situation, I'm sure, in Missouri, as well as throughout
6 the entire country, yes, I would agree with your statement,
7 Commissioner Forbis.

8 COMMISSIONER FORBIS: I'm not sure it was a
9 statement, but got you.

10 I think that will be it. Thank you very much.

11 JUDGE HOPKINS: Commissioner Gaw?

12 COMMISSIONER GAW: I don't need to ask any
13 questions. Thank you, Judge.

14 JUDGE HOPKINS: Mr. Klemm, I just want to ask
15 you just a couple questions. And I apologize if some of
16 these are repetitious, but they're some things that I'd like
17 to know that I can always go in the transcript and look
18 where I asked questions.

19 QUESTIONS BY JUDGE HOPKINS:

20 Q. First of all, Mr. Franson asked you about your
21 direct testimony where you say you reviewed the following
22 options, and then you listed four different options. That's
23 on page 5, lines 1 through 7 of your answer in the direct
24 testimony, starting at, we reviewed the following options.
25 Do you see that, sir?

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1 A. Yes, I do, Judge Hopkins.

2 Q. Thank you. I want to ask about No. 3. You
3 said that was the normal choice; is that correct? Is that a
4 correct statement of what you said?

5 A. Yes, that's the normal or the traditional
6 method of transportation by securing gas supply through a
7 third-party marketer.

8 Q. And I believe I just heard you say that some
9 of these industrial companies didn't like talking to the
10 third-party marketers; is that correct?

11 A. They didn't like or they didn't understand the
12 process. They didn't have the area of expertise. Again,
13 this is based upon information that was provided to me and
14 from dialog with Mr. -- with Mr. Walker, primarily.

15 And because of that, they said, well, this
16 isn't going to work for us. And so the impression that we
17 were left with as a company was that, you know, the propane
18 choice looks, you know, much better because we don't want to
19 go through those hassles of having to deal with a
20 third-party marketer. We don't know what to do.

21 And also, I think, during the time frame there
22 was things going on within the industry of whether, you
23 know, certain people could actually deliver gas and things
24 of that nature. So I can't -- I know that there was some
25 issues exactly, although specific issues were, you know,

1 would be somewhat speculative on my -- you know, on my part.

2 Q. And that's basically the reason why you-all
3 didn't take that choice; is that correct?

4 A. From our viewpoint, that wasn't the choice
5 that our customers were interested in. So given that, that
6 narrowed our options.

7 Q. All right. Tell me what your definition of
8 internal transport is.

9 A. My definition of internal transport is
10 transportation service according to our tariffs, but in
11 which Southern Missouri Gas Company provided the gas supply
12 rather than a third-party marketer, which is traditionally
13 how it's done.

14 Q. So does that term encompass from the wellhead
15 to the citygate or from the wellhead to the burner tip or
16 what? What does that mean?

17 A. I think it, you know, perhaps depends. There
18 might be a differing legal viewpoint versus from a physical
19 flowing gas viewpoint. And I can certainly give you, you
20 know, my interpretation, I guess, of both, although, as I
21 indicated, I'm not an attorney, if you would like me to
22 proceed.

23 Q. Tell me what your working definition is or --
24 I'm not interested in a legal viewpoint. I just want to
25 know what your working definition is.

1 A. My working definition is the fact that we sold
2 them gas at a certain point, that being the Williams
3 interconnect, and we had a sales agreement for that. From
4 that point, they took title very briefly, and then as the
5 gas entered our distribution or our transmission system
6 after that point, we had physical control of that gas until
7 it ultimately got delivered at their meter.

8 Q. Okay. So included in that definition you used
9 the term "transportation service." Now, what's your working
10 definition of that?

11 A. Transportation service would be just that.
12 It would be an agreement to transport the customer, the
13 transport customer's gas from the interconnect between
14 Williams and Southern Missouri to their meter, which is
15 where they would consume the gas. And so from my viewpoint,
16 I don't view this arrangement as a bundled service.

17 Q. You said also -- in the answer that you just
18 gave me before that answer, you said that they briefly take
19 title to the gas. I'm assuming you mean the customers take
20 title?

21 A. Those customers that we had this arrangement
22 with, the three customers in question, yes. We sold them
23 gas at our Williams interconnect at a price that's been
24 outlined in the various agreements that are under highly
25 confidential.

1 Q. That's where you say that they took title, and
2 you're using that Williams term as practically synonymous
3 with citygate; is that correct?

4 A. That's right.

5 Q. Okay.

6 A. So that's where they have title to the gas,
7 and then we had physical possession of their gas while it
8 was on our pipe. And then it, obviously, ultimately was
9 consumed at -- at their meter.

10 Q. Okay. Give me your definition of taker pay.

11 A. Taker pay is that costs that are going to be
12 incurred whether you take the gas or not.

13 Q. I know you're not a lawyer, and I'm not asking
14 for your legal opinion, but if you know, where in your
15 tariff does it say that you can do what you did concerning
16 these two customers?

17 A. To my knowledge, there is nothing in the
18 tariff that specifically authorizes or specifically says
19 that this service cannot be provided, in Southern Missouri's
20 tariffs.

21 Q. Southern Missouri wrote the tariffs, did they
22 not?

23 A. Yes, the company did --

24 Q. The company did?

25 A. -- write tariffs, yes.

1 JUDGE HOPKINS: That's all the questions I
2 have. Any further questions from the Bench?

3 (No response.)

4 JUDGE HOPKINS: Recross based on questions
5 from the Bench. Staff, Mr. Franson?

6 MR. FRANSON: Yes, briefly, your Honor.

7 RECROSS-EXAMINATION BY MR. FRANSON:

8 Q. Mr. Klemm, you were asked some questions by
9 Commissioner Murray. Those questions dealt with the
10 situation of --

11 MR. FRANSON: If I may, your Honor.

12 JUDGE HOPKINS: Go right ahead.

13 BY MR. FRANSON:

14 Q. -- what were the possibilities of what you
15 could do if the Commission said you violated your tariffs.
16 That was as an alternative to Staff's proposed disallowance
17 of \$102,137. You mentioned a flex tariff; is that correct?
18 I believe that was from your large volume service tariff.

19 A. Yes, that language is in our existing large
20 volume service.

21 Q. Okay. I'm going to need to ask you -- because
22 I need you to look at your large volume service tariff. I'm
23 going to ask if the court reporter could hand you what's
24 been marked as the -- I'm looking for the number here --
25 Mr. Russo's nonproprietary. I believe it would be

1 Exhibit 14, which I believe is being handed to you by
2 Mr. Micheel.

3 Could you, in fact, look at the front of that,
4 Mr. Klemm. Is this, in fact, marked NP?

5 A. No. I've got the HC.

6 MR. FRANSON: Okay. Well, if I may approach
7 the witness, your Honor?

8 JUDGE HOPKINS: Yes, sir.

9 MR. FRANSON: Well, actually, your Honor, if I
10 could ask the court reporter to hand him Exhibit 14.

11 BY MR. FRANSON:

12 Q. Okay. Mr. Klemm, could you look at the front
13 of what you've got there. Has that been previously marked
14 as Exhibit 14?

15 A. Yes, it has, Mr. Franson.

16 Q. Okay. Could you look at the tariff sheets,
17 which is marked as Schedules -- specifically Schedule 1-16,
18 and I believe that's Tariff Sheet No. 2.

19 A. Yes, I've located it.

20 Q. Okay. In fact, the date of issue of that was
21 November 17, 2000; is that correct?

22 A. Yes, it is.

23 Q. So it was in effect during this PGA period
24 we're talking about?

25 A. That is correct.

1 Q. Okay. Now, there's a maximum commodity charge
2 and a minimum commodity charge. Is that what you're
3 referring to as a flex tariff on the commodity price?

4 A. Yes, it is.

5 Q. Now, is there anywhere in this tariff, though,
6 that says -- in your large volume that says you can do
7 anything to vary your PGA costs?

8 A. No, it does not.

9 Q. Okay. Let me ask you to turn to Sheet No. 27,
10 which is part of your PGA tariff, Schedule 1-43 to
11 Mr. Russo's rebuttal testimony.

12 Could you look at that, please?

13 A. Yes, I have located Sheet No. 27.

14 Q. Okay. Now, there are some costs for the PGA;
15 is that correct?

16 A. Yes, that is correct.

17 Q. Is there any flex rates or margins there that
18 you can work within?

19 A. No, there's not.

20 Q. They are, in fact, fixed costs?

21 A. They are fixed rates.

22 Q. Fixed rates. Okay. So you -- if you were
23 looking for another option, you could only do the commodity
24 margin, you couldn't do anything with PGA costs; is that
25 correct?

1 A. Yes, that is correct.

2 Q. Okay. Now, Commissioner Murray asked you if

3 there were other options. Assuming that the Commission

4 comes to the conclusion you violated your tariffs, what

5 other options are there?

6 You did not speci-- even though you have some

7 testimony that you did not agree with Ms. Bailey's proposed

8 disallowance that Staff has presented, you did not offer any

9 specific number yourself, did you, or any other option for

10 this Commission?

11 A. That is correct. I just offered an option.

12 MR. FRANSON: I don't believe I have any

13 further questions, your Honor.

14 JUDGE HOPKINS: All right. Thank you,

15 Mr. Franson.

16 Public Counsel?

17 RECROSS-EXAMINATION BY MR. MICHEEL:

18 Q. Mr. Klemm, keep Exhibit 14 handy there and

19 open to that page, if you will. Sorry about that. The

20 Sheet No. 2 there, which is, I guess, Sheet No. 1-16.

21 A. I've located it again.

22 Q. And I believe that Commissioner Murray asked

23 you some questions about whether or not you thought these

24 customers were large volume customers. Do you recall that

25 question?

1 A. Yes. And if I may clarify, they were
2 certainly large volume customers up un-- certainly up until
3 the point where we classified them as, so to speak, as
4 transportation service with the company providing gas
5 supply.

6 Q. And you would agree with me, would you not,
7 that they qualify currently as large volume service
8 customers, isn't that correct, because they meet the
9 availability of Tariff Sheet No. 2?

10 A. Yes, I would agree with that.

11 Q. So if those customers came to you today and
12 said, gee whiz, we feel like paying a lot more money, we'd
13 like to be large volume service customers, you'd say, you
14 can be large volume service customers, would you not?

15 A. That is correct.

16 Q. So they meet all of the requirements for large
17 volume service customers?

18 A. That is correct.

19 Q. So a transportation customer can always be a
20 large volume service customer. A large volume service
21 customer cannot always be a transportation customer; isn't
22 that correct?

23 A. Yes, that is correct.

24 Q. Commissioner Murray asked you some questions
25 about whether or not you were alerted to the problems with

1 respect to your tariff. Do you recall those questions?

2 A. I do.

3 Q. And do you recall that I was involved in a
4 meeting, the first meeting that I was involved in with
5 respect to this issue?

6 Do you recall that meeting?

7 A. I'm trying to recall the very first meeting.
8 We've had numerous ones over the last several months.

9 Q. Let me ask you this: Do you recall a meeting
10 where I told you directly that I felt that my view, our
11 office's view, that transportation internal was a violation
12 of your tariffs?

13 A. Yes, I do recall that.

14 Q. And it's my recollection that was the first
15 time I had a chance to even meet you in a meeting with
16 respect to this issue; isn't that correct?

17 A. Yes, I would agree with that.

18 Q. And so I just wanted -- for the record, I
19 wasn't shy about saying what the Office of the Public
20 Counsel's view was, was I?

21 A. No.

22 Q. Commissioner Forbis asked you some questions
23 about transport customers and I think you answered, well,
24 these are not traditional transport customers.

25 Do you remember those answers?

1 A. Yes, I do.

2 Q. Are you aware of any other Missouri company
3 that allows transportation internal?

4 A. Not that I am aware of, no, sir.

5 Q. Are you aware of any companies that trans--
6 you know, that procure the gas, transport it over their
7 capacity on the interstate pipeline and deliver it to
8 customers like Southern Missouri Gas did?

9 A. Yes, I am.

10 Q. And what customers would -- what companies
11 would those be?

12 A. I know that it is done at Citizens Gas Fuel
13 Company, which is the company that I operate in in Michigan.

14 Q. And is that a tariffed item?

15 A. Actually, no, it is not tariffed.

16 Q. Is it unregulated?

17 A. Yes.

18 Q. And what company or what customers are those
19 that do that, if you can tell me, or is that HC?

20 A. The specific names, is that what you're
21 looking for?

22 Q. Yes. Let me ask you this: Is that something,
23 contracts that you -- that Citizens Fuel has contracts for
24 with these customers?

25 A. Yeah, we actually have gas supply contracts

1 and transportation contracts, very similar to what's been
2 presented in these proceedings.

3 Q. You were talking with Judge Hopkins about your
4 definition of an internal transportation. Do you recall
5 those questions?

6 A. I do.

7 Q. And you indicated that the difference was, you
8 guys, Southern Missouri Gas Company, procures the gas
9 supply. Do you recall that answer?

10 A. Yes, I do.

11 Q. Would you also agree with me in that situation
12 that Southern Missouri Gas Company is procuring the
13 interstate transportation pathway to the citygate or the
14 take point, as you term it?

15 A. I would agree with that, yes.

16 Q. So within that, your definition is getting the
17 gas at the wellhead and securing the transportation path to
18 the citygate; isn't that correct?

19 A. Yes. In this par-- in this instance, that's
20 how -- Southern Missouri sold the gas at the Williams
21 interconnect, and we were responsible for buying it in the
22 field and transporting it on Williams pipeline through our
23 own transportation agreement.

24 Q. And your own transportation agreement, I think
25 we established earlier, is included in PGA rates that all

1 customers pay; isn't that correct?

2 A. Yes, that is correct.

3 MR. MICHEEL: Thank you, Mr. Klemm.

4 JUDGE HOPKINS: Before we get to redirect by
5 Southern Missouri, let's go off the record and take about a
6 five-minute break.

7 (A BREAK WAS TAKEN.)

8 JUDGE HOPKINS: We're back on the record, and
9 let me interrupt you, Mr. Fischer. Commissioner Murray
10 wants to ask a couple more questions.

11 COMMISSIONER MURRAY: Thank you. I apologize
12 for doing this out of order, but I do want to get this --
13 get the answers to these.

14 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

15 Q. I'd like to take you back to the Tariff Sheet
16 No. 2, Schedule 1-16 that you referred to in one of your
17 answers to me.

18 A. I've located it, Commissioner Murray.

19 Q. And I'd like to get some clarification of what
20 would have happened if you had actually used that clause in
21 the tariff.

22 As I read it, and correct me if I'm wrong, but
23 it appears to me that the company could have adjusted the
24 commodity charge down to an amount which would have been
25 equivalent to what those same customers would have paid if

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1 they'd gone to propane, is that correct, the competitors?

2 A. Based upon their actual commodity charge
3 that's in the highly confidential testimony, had we reduced
4 it down to the minimum thresholds in Sheet No. 2, which is
5 essentially 50 cents on an MCF basis, is that -- in my
6 opinion is that that reduction would not have been enough to
7 be able to compete with the propane prices that were -- that
8 were offered.

9 Q. I'm sorry. Where are you looking at 50 cents?

10 A. The minimum commodity charge is .050.

11 That's on a CCF basis. I apologize. I was
12 just using it as 50 cents on an MCF basis or 5 cents on a
13 CCF. I'm sorry for my confusion.

14 Q. Okay. And that would have not made the
15 commodity charge equivalent to what the competitors would
16 have offered it for; is that correct?

17 A. Right. At the -- at the time that we
18 increased our PGA, it was increased to, on a CCF basis,
19 .8989, which was -- so it's approximately, you know,
20 90 -- 90 cents on a CCF. That was an -- that was an
21 increase of 23 cents on a CCF basis.

22 So that was a -- that would have been a
23 substantial increase to these customers. And we wouldn't
24 get anywhere close to reducing our flexibility on the large
25 volume service tariff to offset that increase in the total

1 PGA rate.

2 Q. All right. Well, let me just take this a
3 little bit further for a different kind of clarification.

4 If you had used this minimum monthly charge,
5 then, at the time of the ACA adjustment, wouldn't the other
6 customers have paid higher rates?

7 Am I looking at that -- am I not interpreting
8 that correctly?

9 A. Could you repeat your question, just to make
10 sure I understand?

11 Q. I'm sorry. During the ACA adjustment, the
12 fact that you had not recovered the full commodity cost,
13 would that have been in the ACA adjustment?

14 A. I guess I need further clarification, because
15 I get confused in Missouri because we use the commodity
16 charge as it relates to, like, the -- what I consider to be
17 the equivalent of the distri-- like, distribution charges.
18 You know, that's the amount that you can make on your -- on
19 your profit, versus the PGA, which is the combination of the
20 actual commodity gas and the transportation cost.

21 Q. So we're not talking about adjusting the
22 actual gas cost down to those customers?

23 A. Right. If we would have tried to -- under
24 that large volume service tariff, you know, we could not
25 adjust our PGA rate. You know, that is provided for in

1 Sheet No. 27. The only flexibility that we had was to
2 reduce the -- the charges as provided in Sheet No. 2, which
3 gives us a minimum amount of the 5 cents per -- per CCF for
4 the commodity charge.

5 I apologize if I'm not making sense.

6 Q. That's all right. It's just that I'm probably
7 not reading this as it should be read. And that's why I
8 wanted clarification from you as to what this would actually
9 be doing if you had gone that provision in the tariff.

10 A. Let me try one more time. When our PGA
11 increased to the .8989, I believe, on a CCF basis, that's
12 what all of our firm ratepayers would have been charged,
13 whether they be a residential customer, a large volume
14 service customer, a general service customer or an optional
15 general customer. So that would have been the rate for all
16 of those customers.

17 If you're large enough and you meet the
18 availability for the large volume service, then there is
19 some flexibility that the company has regarding the minimum
20 and the maximum rates that it can charge, and hopefully that
21 gives sufficient amount of flexibility for Southern
22 Missouri, and other LDCs that have similar tariffs, the
23 flexibility -- flexibility it needs in order to effectively
24 compete.

25 And what -- and what I'm saying is that the

1 increase in the total PGA was significant, and there wasn't
2 enough flexibility to go from what their actual commodity
3 charge was, according to Sheet No. 2, to the minimum amount
4 to offset that significant increase in the -- in the PGA
5 rate. In fact, it would only be about 25 percent is the --
6 is approximately the flexibility, you know, that we had.
7 So . . .

8 Q. All right. And then one last question. Is
9 there a way or a method to calculate what the company would
10 have actually recovered had you taken that direction and
11 used that minimum monthly charge provision in the contract,
12 in the tariff?

13 A. Yes, I think there is, you know, a sound, you
14 know, methodology that can be used to arrive at -- to arrive
15 at that number.

16 Q. And has that calculation been made, to your
17 knowledge?

18 A. Again, just to clarify, in terms of the --
19 what the actual rate was charged to the customer, that was
20 reflected in Southern Missouri Company's bottom line,
21 compared to this minimum rate, that difference multiplied by
22 the volumes. I -- I have done that computation and have a
23 rough idea of what that amount would be, yes.

24 Q. And is that in the record anywhere?

25 A. No, it is not.

1 Q. Is there a reason you would not want to share
2 that at this point?

3 A. No. I have no reservations about sharing that
4 number. That number would be -- when I did my computation,
5 I looked for not only this ACA period but the following ACA
6 period. And that's the number that I can recall off of the
7 top of my head, so I --

8 MR. FRANSON: I need to object, just to be
9 sure on this. I have no objection, certainly, to this ACA
10 period, but I would object on the relevance ground if he's
11 going to talk about the next ACA period. So I would ask
12 that you instruct him that his answer be limited to this ACA
13 period, that being 2000-2001.

14 JUDGE HOPKINS: Okay. You want to restrict
15 your answer to just this case.

16 THE WITNESS: Yes, I will.

17 JUDGE HOPKINS: Thank you.

18 THE WITNESS: And this is going from the best
19 of my memory, but I believe that number is around \$30,000.
20 BY COMMISSIONER MURRAY:

21 Q. And when you say that number, are you talking
22 about the difference? Define what you mean by that number.

23 A. For instance, with the -- may I refer to
24 opening dialog?

25 MR. FISCHER: That one (indicating).

1 THE WITNESS: Right.

2 JUDGE HOPKINS: Excuse me. We're referring
3 to -- did you say you were going to put these both on one
4 sheet, Mr. Fischer?

5 MR. FISCHER: Your Honor, because I was locked
6 out at lunch, I have not done that, but we'll get that done
7 before the record closes.

8 JUDGE HOPKINS: Now, I warned you you were
9 going to be locked out at lunch.

10 MR. FISCHER: You did.

11 JUDGE HOPKINS: All right. This, for purposes
12 of this hearing, we called Exhibit No. 1, which is really an
13 illustrative exhibit. And Mr. Klemm is testifying from
14 looking at that exhibit.

15 Thank you, Mr. Klemm. Go ahead.

16 THE WITNESS: Thank you, your Honor.

17 If we look at the rate that was charged the
18 customer, and on the sheet it's called the transportation
19 rate, which is -- it's the -- which we use for illustrative
20 purposes was \$1, and again that represents the rate from the
21 Williams interconnect all the way to the end user. And
22 that, I might add, is that the rates that we were charging
23 under the LVS when they were an LVS was the same dollar rate
24 that was used when they converted over to transportation
25 tariff.

1 So for illustrative purposes, if you take, for
2 instance, that dollar and then compare it to -- and that's
3 on an MMBtu basis -- and then compare it to the 5 cents per
4 CCF, according to Sheet 2, that would convert essentially
5 over to 50 cents, say, on an MM-- on an MCF basis. And
6 essentially you take the dollar minus the 50, you get
7 50 cents. And then you would multiply that by the volumes
8 in question that were actually consumed by these two
9 customers during this ACA period.

10 BY COMMISSIONER MURRAY:

11 Q. And that would have been the amount actually
12 recovered?

13 A. The amount actually recovered, and that's a
14 part of the proceedings, is where we show the \$6, the sales
15 price at the interconnect versus the \$5 in cost, that dollar
16 profit is, when you multiply that by the volumes, would give
17 you the 39,987 number, I believe, that's in the various
18 testimonies. And that was the amount that was credited back
19 to the firm ratepayers through the ACA recovery process that
20 was submitted by the company.

21 Q. Okay. That was the amount credited back,
22 but -- and that was calculated from the dollar
23 transportation?

24 A. Right. Actually, those -- those amounts are
25 based on those individual customer's actual, you know, rates

1 that were charged. Yes, that is correct. I was just trying
2 to avoid having to go into HC testimony for illustrative
3 purposes.

4 Q. So, in effect, you would have been reducing
5 that amount. Is that not --

6 A. Let me, I guess just perhaps to help clarify,
7 is that in my initial comments with your original questions,
8 Commissioner Murray, relative to what are some options that
9 we could possibly get to in terms of a middle ground, is
10 that, you know, had the company reduced their transportation
11 rate to the minimum amount allowed according to LVS, large
12 volume service tariff, versus what they actually charged,
13 then -- then there would be, say, for instance, an
14 incremental \$30,000.

15 That's what I was referring to in arriving at
16 that amount, and actually it might be closer to 25,000.

17 COMMISSIONER MURRAY: Okay. Well, there's
18 definitely something I'm missing on this, so I'm going to
19 quit.

20 Thank you.

21 JUDGE HOPKINS: Commissioner Lumpe?

22 COMMISSIONER LUMPE: No.

23 JUDGE HOPKINS: Any other further questions
24 from the Bench?

25 (No response.)

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1 JUDGE HOPKINS: Recross based on Commissioner
2 Murray's questions, Mr. Franson?

3 MR. FRANSON: Staff has no questions in that
4 regard, your Honor.

5 JUDGE HOPKINS: Mr. Micheel?

6 MR. MICHEEL: I think I'm going to say no. No
7 questions.

8 JUDGE HOPKINS: Now, Mr. Fischer, redirect.

9 MR. FISCHER: Thank you, your Honor.

10 REDIRECT EXAMINATION BY MR. FISCHER:

11 Q. Mr. Klemm, I'm always hesitant to know where
12 to begin, but I think I'd like to begin with the last series
13 of questions from Commissioner Murray, just so we can kind
14 of get -- while we're on the same wavelength on that.

15 As I understood what you were saying,
16 Commissioner Murray was asking what would the effect have
17 been had you flexed down on the large volume service tariff
18 to the very minimum rate. Was that your understanding of
19 the question?

20 A. Yes, it was.

21 Q. Would you explain to me how much of that large
22 volume service \$10 rate per MCF would have been reduced had
23 you flexed down to the minimum? In other words, what would
24 have been the rate that you would have been charging those
25 customers had you done that?

1 A. That would have been 5 cents on a CCF basis,
2 50 cents on an MCF basis. That would have been the -- the
3 minimum. But in regards to the total amount of the \$10,
4 then you back out essentially \$9 for the PGA. That leaves,
5 you know, \$1 that we were actually essentially earning, and
6 if we would have reduced that to the minimum amount in the
7 large volume tariff, it would have been essentially cut in
8 half.

9 Q. What I'm asking is, if you flex down to the
10 minimum rate, you still would have had to charge the PGA
11 rate, isn't that correct, under your large volume service?

12 A. Yes, that is correct.

13 Q. And because that had increased from 5.50 to
14 \$9.98, wasn't that your problem?

15 A. Just for clarification, I believe the 9.98
16 represented the actual cost of the gas in December. Our PGA
17 rate that we -- was approved by the Commission effective
18 February 1st was the 8.989 on an MCF basis, as reflected on
19 that Exhibit 1.

20 Q. I stand corrected. Can you give me the
21 calculation that this large volume service rate would have
22 gone down to, including the PGA rate, had you flexed down to
23 the minimum?

24 A. That would have been approximately \$9.50.

25 Q. \$9.50 would have been considerably above the

1 7.75 that propane was selling at; is that correct?

2 A. Yes, that is correct.

3 Q. Okay. Now, assuming that you did that, would

4 you have expected those three customers would stay on the

5 Southern Missouri Gas Company system?

6 A. No, I would not have expected them to stay.

7 In fact, as has been pointed out earlier today, one of them

8 definitely left.

9 Q. And if they left the system, as you expected

10 they would have had you chosen Option 3 as it's been

11 discussed, what would have been the impact on other

12 ratepayers on Southern Missouri Gas Company's system?

13 A. They would have picked up an additional cost

14 of essentially \$40,000, which is the contribution two of

15 those customers made by switching over to the transportation

16 service, with gas supply being provided by Southern

17 Missouri.

18 Q. So other than going out and providing the gas

19 supply agreement and transporting that pursuant to your

20 transportation tariff, was there any option that you

21 believed would have kept those customers on the system and

22 accrued a benefit to other ratepayers?

23 A. No, sir.

24 Q. And as I understand your testimony to one of

25 the Commissioners, did you say that you are familiar with

1 other companies that are doing things like this in the
2 unregulated market?

3 A. Yes.

4 Q. And did you indicate you were at least
5 familiar with one?

6 A. With -- yes, I am familiar with one. I don't
7 think it's a -- it's a general approach or a common used,
8 you know, approach.

9 Q. Is that a preferred approach for Southern
10 Missouri Gas Company?

11 A. No, it is not.

12 Q. Why is it not?

13 A. Because we always told these customers that
14 this was going to be a -- you know, a short-term, what we
15 viewed as a short-term solution to this large, this larger
16 issue of competitiveness. And clearly the traditional
17 approach is that you would secure your gas supplies through
18 a third-party provider.

19 We only went down that path really as a last
20 resort to really protect the interests of all of our
21 ratepayers and try to make this a win/win/win situation.
22 Otherwise --

23 Q. In the event that you did suggest that they go
24 to a third-party marketer, as you did, what would have been
25 the impact on other customers under that option?

1 A. It is feasible that we could have released
2 some of our capacity. However, the value of released
3 capacity was just maybe -- maybe 4 cents. It was -- it was
4 very, very small.

5 Q. And so does that suggest that the firm
6 capacity costs would have still been borne by the other
7 ratepayers had you chosen that option, with the exception of
8 whatever, 4 cents you might have gotten if you released it?

9 A. Yes, that is correct.

10 Q. And we were talking about what percentage of
11 your load overall?

12 A. Almost 20 percent from these three customers.

13 Q. Commissioner Murray also asked you whether you
14 talked with the Staff, and I believe you indicated that you
15 did have some conversations initially, and someone may have
16 suggested that you might want to consider a variance; is
17 that correct?

18 A. Yeah, that -- that is my recollection.

19 Q. Can you tell me when that conversation
20 occurred and with whom on Staff you were talking with?

21 A. That occurred either late in May or possibly
22 early June, but I suspect it was when I was in Jefferson
23 City late in May of 2001. And I initially met Warren Wood,
24 and then when we got to this particular topic, he went and
25 got Mr. Thomas Imhoff and we had some conversation, albeit,

1 I would say, very minimal conversation on this topic.

2 Q. Would you explain why you believe that this
3 supply -- this gas supply function is not something that's
4 reflected in your tariffs?

5 A. In my opinion, it's not reflected in the
6 tariffs because it's outside of the regulated environment of
7 the LDC.

8 Q. Do third-party marketers have to come to
9 commissions to get approval to do those functions, that you
10 know of?

11 A. Not as it relates to the procurement and
12 transaction of selling the gas to a third-party transport
13 customer, no.

14 Q. Okay. Now, I think there was also some
15 discussions about when you learned that someone considered
16 this to be a violation of your tariff. Do you recall that?

17 A. Yes, I do.

18 Q. When did you first learn that anyone at the
19 Missouri Commission or the Public Counsel or anybody else
20 considered this activity that you were trying to do to
21 benefit your customers to be a, quote, direct violation of a
22 tariff?

23 A. My first recollection of it, that it was --
24 that the Staff or the Public Counsel was, you know, emphatic
25 about being a violation was at the same meeting of which

1 Mr. Micheel participated in and voiced his opinions on the
2 matter.

3 Q. And when did you first learn that anybody in
4 this room had any concerns about Sheet 15?

5 A. Today.

6 Q. Let's talk about Sheet 15 for a minute. I
7 believe Commissioner Murray or Commissioner Forbis asked you
8 a question regarding the paragraph on Sheet 15 which is
9 marked in several places, but one place is Schedule 1-29 in
10 the rebuttal testimony of Mr. Russo.

11 A. Yes, I have located that tariff sheet.

12 Q. And I believe it's also in your rebuttal
13 Schedule No. 1 on Sheet 15. There the sentence was quoted,
14 in no event will the company, in its role as agent, purchase
15 transportation volumes on behalf of a customer.

16 Mr. Klemm, do you consider yourself, Southern
17 Missouri Gas Company, as acting in this internal transport
18 environment as an agent for anyone?

19 I'm not asking a legal question, but I'm
20 asking from your perspective as an operational person, that
21 you were acting on behalf of those customers as an agent.

22 A. In my opinion, we were not acting in the
23 capacity as an agent.

24 Q. I'd like to refer you to a copy of the -- one
25 of the three gas supply agreements that are attached to your

1 testimony.

2 MR. FISCHER: And, Judge, although this is
3 highly confidential, unless you want me to, I'll try to ask
4 these questions in a way that doesn't get into any highly
5 confidential material. Although if you want to go
6 in-camera, I don't object to that either.

7 JUDGE HOPKINS: It's your witness and your
8 testimony. So I'm assuming you'll protect it.

9 MR. FISCHER: Okay. Thank you.

10 MR. MICHEEL: Your Honor, I'm going to object
11 at this point. There was absolutely no questions about any
12 of these gas supply agreements here, and this is -- this is
13 recross-examination. I'm not going to have a chance to do
14 any cross-examination on this. So I object. It's improper
15 and outside the scope of any cross-examination that was had
16 here today.

17 MR. FISCHER: Your Honor, there was a lot of
18 discussion about supply agreements, transportation
19 agreements and how they related, how they were different
20 from large volume service, how they were different from
21 transitional transportation service, and I think this is
22 certainly a legitimate area for inquiry.

23 JUDGE HOPKINS: I'll overrule your objection,
24 Mr. Micheel.

25 You may proceed, Mr. Fischer.

1 BY MR. FISCHER:

2 Q. Mr. Klemm, I'd like to refer you to the --
3 let's just go to the first supply agreement that is
4 contained in rebuttal Schedule No. 2.

5 MR. FRANSON: Mr. Fischer, what rebuttal
6 schedule in No. 2 are you talking about?

7 MR. FISCHER: This is Exhibit No. 5, the
8 rebuttal testimony of Scott Klemm, and this happens to be
9 the highly confidential version.

10 THE WITNESS: I have located the document.

11 BY MR. FISCHER:

12 Q. And this was --

13 MR. FRANSON: Judge, before we proceed, are we
14 in highly confidential material here? It sort of sounds
15 like it.

16 JUDGE HOPKINS: No, we're not. Are you asking
17 that we be put in that?

18 MR. FRANSON: Well, if Mr. Fischer's reading
19 from a highly confidential document, yes, I am.

20 MR. FISCHER: Your Honor, why don't we go into
21 in-camera just so that nobody has any concerns about it. I
22 was going to avoid any customer-specific information, but --

23 JUDGE HOPKINS: We'll go into highly
24 confidential.

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

1 session was held, which is contained in Volume 2, pages 171
2 through 178 of the transcript.)

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1 BY MR. FISCHER:

2 Q. I'd like to refer you to your Exhibit 5, the
3 rebuttal testimony, and would you return to --

4 JUDGE HOPKINS: We're out of HC now.

5 BY MR. FISCHER:

6 Q. Would you turn to your rebuttal Schedule
7 No. 4.

8 A. Yes, I've located it.

9 Q. What is that? Can you describe that for me?

10 A. That was a draft of a special contract service
11 that I prepared to try to address the concerns that have
12 been raised by Commission Staff and the Office of Public
13 Counsel during ongoing discussions.

14 Q. Mr. Klemm, when you entered into this contract
15 in a way that would benefit the other ratepayers and the
16 industrials to keep them on the system without earning
17 additional profit for the company, did you have any idea
18 that this would result in a proceeding in front of the
19 Commission asking for disallowance of the discounted value
20 of \$102,000?

21 A. No, sir.

22 Q. Did you expect to have a formal complaint
23 filed at you for trying to do what was in the interest of
24 your customers?

25 A. No.

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1 Q. I believe you indicated that you've been down
2 here several times. How many times have you been down to
3 meet with Staff on this issue?

4 A. Five or six, maybe seven.

5 Q. And, of course, you hired me to help you, I
6 guess?

7 A. Yes, that's correct.

8 Q. If you had it to do over again, would you do
9 it differently?

10 A. I would have probably just not offered the
11 service, and if they would have went to propane, then they
12 would have went to propane and so be it with the impact on
13 our residential and small commercial customers.

14 Q. So are you saying that that \$40,000 would have
15 gone away?

16 A. Yes.

17 Q. And is that what you'll have to do in the
18 future if the other three options don't keep you competitive
19 with propane?

20 A. Yes.

21 Q. Is that in the best interests of the other
22 ratepayers on your system?

23 A. Not in my opinion.

24 MR. FISCHER: Your Honor, I think that's all I
25 have. Thank you.

1 JUDGE HOPKINS: All right. May this witness
2 be excused?

3 MR. FRANSON: No, sir. I have some recross in
4 response to that.

5 MR. FISCHER: Your Honor, traditionally under
6 your rules of practice, you don't do recross after redirect.
7 We can reopen it if it's going to be an exception, but . . .

8 JUDGE HOPKINS: What is the exception?

9 MR. FRANSON: That's fine, Judge. I'll
10 withdraw my request.

11 JUDGE HOPKINS: Can we take a break until
12 3:10? It's about 2 after. Thank you.

13 (A BREAK WAS TAKEN.)

14 JUDGE HOPKINS: We're back on the record.
15 We did have a short discussion about some
16 procedural matters. It is 3:13 p.m. I told the parties
17 that we have this room reserved for tomorrow and we can
18 begin at 8:30 again tomorrow. We'll quit at five today.

19 And also, Mr. Franson told me that
20 Mr. Walker's deposition is in evidence, and if the
21 Commission wants to ask him any questions, that Staff will
22 agree to that.

23 So go ahead, Mr. Franson.

24 MR. FRANSON: Your Honor, I just offered that
25 as an option. If that's -- if there's any question about

1 that, we are not planning -- Staff is not planning to call
2 Mr. Walker.

3 JUDGE HOPKINS: Thank you.

4 MR. FRANSON: I would call Annell Bailey, your
5 Honor.

6 JUDGE HOPKINS: Is your microphone on?

7 MR. FRANSON: Yes, it is, your Honor. I don't
8 think I was speaking into it. I apologize for that.

9 JUDGE HOPKINS: Thank you.

10 MR. FRANSON: Staff would call Annell Bailey.
11 (Witness sworn.)

12 JUDGE HOPKINS: Please state and spell your
13 first and last name for the reporter.

14 THE WITNESS: Annell Bailey. That's
15 A-n-n-e-l-l, B-a-i-l-e-y.

16 JUDGE HOPKINS: Go ahead, Mr. Franson.

17 MR. FRANSON: Thank you, your Honor.

18 ANNELL BAILEY testified as follows:
19 DIRECT EXAMINATION BY MR. FRANSON:

20 Q. Ma'am, please state your name.

21 A. Annell Bailey.

22 Q. Ma'am, how are you employed?

23 A. I am a utility regulatory auditor on the Staff
24 of the Public Service Commission.

25 Q. Ms. Bailey, are you the same Annell Bailey

1 that filed prefiled testimony in this case?

2 A. Yes, I am.

3 Q. In fact, you filed direct testimony, rebuttal
4 and surrebuttal; is that correct?

5 A. That's correct.

6 Q. And I believe those have been marked,
7 premarked as Exhibits 10, 11 and 12. I think --

8 MR. FRANSON: Thank you, Judge. I believe
9 that's correct.

10 JUDGE HOPKINS: That is correct.

11 MR. FRANSON: Okay. Thank you, Judge.

12 BY MR. FRANSON:

13 Q. Ms. Bailey, do you, in fact, have copies of
14 your testimony in front of you?

15 A. Yes, I do.

16 Q. Have you had an opportunity today to review
17 your testimony to determine whether or not you have any
18 additions or deletions or corrections to your testimony?

19 A. I have not reviewed them today. I'm certainly
20 familiar with them.

21 Q. And do you have any changes in your testimony
22 that --

23 A. No.

24 Q. -- need to be made?

25 And if you were asked the same questions that

1 appear in your testimony today, would your answers be
2 substantially the same?

3 A. Yes.

4 MR. FRANSON: And, your Honor, at this time
5 Staff would offer into evidence Exhibits 10, 11 and 12.

6 JUDGE HOPKINS: Is there any objection to
7 those three exhibits, 10, 11 and 12, being offered into
8 evidence?

9 MR. FISCHER: No objection.

10 JUDGE HOPKINS: And Mr. Micheel has no
11 objections. Those will be entered into evidence.

12 (EXHIBIT NOS. 10, 11, AND 12 WERE RECEIVED
13 INTO EVIDENCE.)

14 MR. FRANSON: With that being done and said,
15 your Honor, Staff would tender this witness for
16 cross-examination.

17 JUDGE HOPKINS: Public Counsel?

18 MR. MICHEEL: No questions of this witness,
19 your Honor.

20 JUDGE HOPKINS: Southern Missouri?

21 CROSS-EXAMINATION BY MR. FISCHER:

22 Q. Good afternoon. Good afternoon, Ms. Bailey.

23 A. Good afternoon, Mr. Fischer.

24 Q. As you know, I represent Southern Missouri Gas
25 Company in this proceeding. And do I understand that this

1 is your first opportunity to testify live in front of the
2 Commission?

3 A. That's correct.

4 Q. Well, let's try to make it as painless as
5 possible, if that's all right with you.

6 A. No problem with that.

7 Q. I'd like to refer you first to your
8 surrebuttal testimony on page 2, line 13.

9 A. Yes, I see it.

10 Q. As I understand your testimony, Staff has
11 modified its proposed adjustment somewhat at least regarding
12 the revenue imputation adjustment, and now Staff is
13 suggesting a disallowance or revenue imputation of 102,137,
14 and there's a refund adjustment in the amount of \$2,938; is
15 that correct?

16 A. Yes, that is correct.

17 Q. And as a result, the total Staff proposed net
18 disallowance is 99,199 instead of that 105,809 that you
19 originally had in your direct testimony?

20 A. That is correct.

21 Q. Now, let's turn to page 3 of your surrebuttal
22 testimony, at line 23, where you say that, based upon my
23 audit work, the profit from gas sales to the two
24 transportation internal customer was used to reduce the ACA
25 balance by 39,987. This contribution would not have been

1 made if the customers had left the system and the gas had
2 not been sold. Is that correct?

3 A. That is correct.

4 Q. Would it be correct to conclude from your
5 testimony that -- then that you agree that the ACA balance
6 was reduced by nearly -- by nearly \$40,000 as a result of
7 the arrangement made with the two large industrial
8 customers?

9 A. Yes, I would agree with that.

10 Q. And would you also agree that if that \$40,000
11 reduction of the ACA balance had not occurred, the rates of
12 the company's remaining ratepayers would increase by nearly
13 \$40,000 to recover that ACA balance?

14 A. Not necessarily, because that contribution
15 would have been offset by other factors, other related
16 costs.

17 Q. And what would those other related costs have
18 been?

19 A. For instance, it might have been the cost of
20 the telephone, the cost of the computer, the kind of costs
21 that we did not separate out.

22 Q. Would you agree with me that the cost of the
23 computer and the cost of Mr. Walker, those are the kind of
24 things that would be included in a rate case rather than an
25 ACA?

1 A. This is true.

2 Q. So if we didn't reduce the ACA balance by
3 \$40,000, that would have -- that would have gone up by
4 40,000; is that correct?

5 A. Would you restate the question, please?

6 Q. Yes. If we had not reduced that ACA balance
7 by nearly \$40,000, doesn't it follow that the ACA balance
8 would have been higher by \$40,000?

9 A. That is correct.

10 Q. Would you agree that the company's remaining
11 customers directly benefited from the fact that Southern
12 Missouri Gas Company was able to keep these two industrial
13 customers on the system during the ACA period?

14 A. In that the ACA balance was reduced by the
15 39,900, yes, they benefited.

16 Q. And would you also agree that if these
17 customers had not stayed on the system, there would have
18 been other fixed costs, like fixed transportation costs,
19 that would have been spread over the remaining customers?

20 A. Yes, that is true.

21 Q. I understand from your surrebuttal there on
22 page 3 that you essentially agree with Mr. Klemm's statement
23 that you quote on lines 8 through 22; is that right?

24 A. Give me a moment to --

25 Q. Certainly.

1 A. -- review this.

2 Yes, this is true.

3 Q. Okay. Would you also agree that it's correct

4 to say that Southern Missouri Gas Company did not increase

5 its own profits that would go to its owners as a direct

6 result of the gas sales to these industrial customers?

7 A. As I understand it, yes, they did not increase

8 their profits.

9 Q. The profit from the gas sales went directly to

10 the benefit of the company's remaining ratepayers since it

11 reduced the ACA balance; is that right?

12 A. That is my understanding, yes.

13 Q. Would you also agree that both the large

14 industrial customers are better off and so -- and so were

15 the company's remaining ratepayers as a result of the fact

16 that Southern Missouri was able to sell gas to these

17 industrial customers under the contracts that are contained

18 in Mr. Russo's schedules?

19 A. In terms of the ACA balance, I believe so.

20 Q. And, of course, these customers stayed on the

21 system because they were able to get a competitive natural

22 gas alternative; is that right?

23 A. That's right.

24 Q. Now, let's refer to your rebuttal testimony at

25 line 18, which I guess is Exhibit No. 11. Let's see. I

1 didn't give you a page number, did I? Page 2, lines 18 and
2 19.

3 There you indicate that if the gas had been
4 sold to those customers at tariff-authorized rates, the
5 contribution would have been 1,400 and -- excuse me.
6 \$142,825 instead of \$39,987; is that correct?

7 A. That is correct.

8 Q. Would you agree with me, Ms. Bailey, that your
9 statement on those lines contains an assumption when it
10 states that, if the gas had been sold to those customers at
11 tariff authorized rates?

12 A. I would not say that is an assumption. I
13 would say that is a -- one condition that may have happened.
14 I would not say that I was assuming that would happen.

15 Q. Okay. You had no reason to assume that it
16 would have; is that right?

17 A. That's right.

18 Q. And you haven't included in your testimony any
19 evidence that's designed to show that these large industrial
20 customers would have paid those unusually high natural gas
21 rates; is that right?

22 A. I have no way of knowing what people might
23 have done.

24 Q. Did you or anyone on the Staff contact these
25 customers to determine if they would have paid these

1 tariff-authorized rates when they had lower priced bids
2 available to them?

3 A. I don't know about other staff. I did not.

4 Q. Okay. Ms. Bailey, would you expect prudent
5 management of typical corporations to look for the most
6 reasonably priced sources of energy for their businesses?

7 A. That seems prudent, yes.

8 Q. I mean, that's the type of behavior we
9 generally expect of our utilities; is that right?

10 A. That's right.

11 Q. On page 4 of your surrebuttal testimony, you
12 disagree with Mr. Klemm when he testified that the Staff's
13 proposed adjustment is a very substantial penalty for a
14 small company of Southern Missouri Gas' size; is that right?

15 A. Yes.

16 Q. In fact, you state the \$105,809 is not a
17 penalty; is that right?

18 A. That's right.

19 Q. Now, if the Commission adopts the Staff's
20 proposed adjustment in this case, is it correct that the ACA
21 balance will be reduced by the amount of the adjustment?

22 A. Yes, that's correct.

23 Q. And the company will not be permitted to
24 recover the amount of the Staff's adjustment from any other
25 company customers; is that right?

1 A. That's right.

2 Q. So would you agree that the company's ACA

3 revenues will go down by the amount of the adjustment if the

4 Staff wins in this case?

5 A. Yes.

6 Q. And then with the refund included, I think

7 your total adjustment would be the 99,199; is that right?

8 A. That's right.

9 Q. Would you agree that if the Commission adopts

10 the Staff's proposed adjustment in this case, the company's

11 owners will be worse off from a financial perspective than

12 if the company wins this case?

13 A. That's reasonable to assume, yes.

14 Q. It will be the owners of the company that will

15 be affected or impacted by the adoption of the adjustment,

16 correct?

17 A. Correct.

18 Q. If the company had not entered into these

19 contracts, Staff would not be proposing this adjustment in

20 this case; is that correct?

21 A. That's correct.

22 Q. If the company had not entered into these

23 contracts and the industrial customers left the company's

24 system, as I understand your testimony, the remaining

25 customers would have had to have absorbed the entire

1 remaining uncollected ACA balance from previous periods; is
2 that correct?

3 A. That's correct.

4 Q. Now, under that scenario, if the company had
5 not entered into these contracts and the industrial
6 customers left the system, leaving other customers to absorb
7 the additional \$40,000 of the ACA balance, would Staff be
8 recommending an adjustment in this case that would insulate
9 the remaining customers from that adverse impact?

10 A. I don't believe so, no.

11 Q. So it's okay -- it would be okay with the
12 Staff if the company says, we can't help these customers,
13 and the remaining customers' ACA balance should go up by
14 \$40,000, we won't have to face another adjustment like this
15 case?

16 A. I don't believe I'd put it that way. It's not
17 a matter of being okay. This is about a tariff violation.

18 Q. Okay. Well, let me state it again. Under
19 that scenario, let's assume that the company loses this
20 case. Well, let me withdraw it.

21 Would Staff be recommending that the company's
22 owners absorb that \$40,000 since this adverse impact on the
23 remaining ratepayers could have been avoided if the company
24 hadn't entered into these contracts with the industrials?

25 A. Could you repeat the question?

1 Q. Yes. I'm suggesting that if the company had
2 not entered into these contracts and the industrials left
3 the system, you've testified the remaining ratepayers would
4 have to absorb the remaining uncollected ACA balance of
5 \$40,000; is that right?

6 A. That's right.

7 Q. I'm merely asking you if we reversed the
8 assumptions, if the company had not entered into these
9 contracts and the industrial customers left the system, and
10 as a result the \$40,000 was gone and other ratepayers had to
11 absorb that amount, under those set of circumstances, would
12 the Staff be suggesting that the company was imprudent in
13 not doing something to make sure the \$40,000 didn't
14 adversely impact residential, commercial and other
15 industrial customers?

16 MR. FRANSON: Your Honor, I'm going to have to
17 object. This is getting far afield into the realm of
18 speculation, pure, plain and simple. And I would object on
19 that basis.

20 MR. FISCHER: I'll withdraw the question, your
21 Honor.

22 JUDGE HOPKINS: Thank you.

23 BY MR. FISCHER:

24 Q. Let's assume the Commission does adopt the
25 Staff's adjustment on this issue, Ms. Bailey. Under that

1 assumption, wouldn't you agree that the owners of the
2 company would have been better off if the company had told
3 these industrial customers that Southern Missouri Gas would
4 not enter into these contracts?

5 A. I think probably so.

6 Q. And if we hadn't entered into these contracts,
7 then we wouldn't be spending the time and the money in this
8 hearing to defend our actions before the Commission; is that
9 right?

10 A. That's right.

11 Q. If the company had not entered into these
12 contracts and the industrial customers had switched to
13 alternative fuels, isn't it correct that the other
14 ratepayers' rates would increase by nearly \$40,000 to pay
15 for the increased ACA balance?

16 A. That's correct.

17 Q. Now, I'd just like to show you a copy of the
18 company's annual report.

19 MR. FISCHER: And actually, Judge, I've got --
20 perhaps I should make an exhibit, or I could ask the
21 Commission to take official notice of it, since it's filed
22 here, but it's two pages I'd like to show her, whatever your
23 preference would be.

24 JUDGE HOPKINS: Just for purposes of the
25 record, I'd like to give it an exhibit number. Although I

1 will officially notice it, we'll call this another
2 illustrative exhibit.

3 MR. FRANSON: Judge, I would suggest it's more
4 than an illustrative exhibit. This is an official document
5 and it should be into evidence.

6 JUDGE HOPKINS: All right. We can do that.
7 I will take official notice of this.

8 MR. FISCHER: Your Honor, for purposes of the
9 record, I would ask the Commission to take official notice
10 of the annual report of Southern Missouri Gas Company, L.P.
11 to the Missouri Public Service Commission for the year ended
12 December 31, 2001, page Nos. 114 and 116.

13 JUDGE HOPKINS: Yes, sir, I will do that, and
14 we'll mark this Exhibit 19.

15 (EXHIBIT NO. 19 WAS MARKED FOR IDENTIFICATION
16 BY THE REPORTER.)

17 MR. MICHEEL: May I inquire, your Honor, am I
18 to understand that this is not the full annual report?

19 MR. FISCHER: I didn't want to pay for the
20 file, Doug. It's available back here if you would like to
21 look at it.

22 MR. MICHEEL: I just wanted to make sure this
23 wasn't it.

24 MR. FISCHER: No, no. Just two pages. I just
25 want Ms. Bailey to confirm two numbers for me.

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1 BY MR. FISCHER:

2 Q. And that would be on the bottom of page 114,
3 would you agree that for the year the net utility operating
4 income of this company was 155,703?

5 A. That is what the report says, yes, sir.

6 Q. And would you turn to the second page, and it
7 indicates that the net income after you take into account
8 the interest charges is a negative 1,808,226?

9 A. Yes, that's what the report says.

10 Q. And would you agree with me that the \$99,000
11 adjustment that Staff's proposing is roughly 64 percent of
12 the company's utility net operating income for the year
13 2001?

14 A. Yes, roughly. I would compute it that way.

15 Q. And whenever we look at the net income, I'm
16 not an accountant, but the net income that looks at the
17 interest charges, does that mean to you that Southern
18 Missouri lost nearly \$2 million in the year 2001?

19 A. That certainly seems to be what it says.

20 Q. Given the fact that the company lost nearly
21 \$2 million in 2001, Ms. Bailey, can you appreciate why the
22 company would take steps to try to keep their industrial
23 load on the system?

24 MR. FRANSON: Your Honor, I'm going to have to
25 object. This witness is not in any way qualified to explain

1 or interpret or state whether a company's actions are good
2 or bad. That's beyond the scope of this witness' knowledge,
3 and I would object on that basis.

4 JUDGE HOPKINS: I will sustain that objection.

5 BY MR. FISCHER:

6 Q. Ms. Bailey, do you understand that the company
7 would be concerned about losing money and also losing load?

8 MR. FRANSON: Same objection, your Honor.

9 JUDGE HOPKINS: I'll sustain that objection.

10 BY MR. FISCHER:

11 Q. Is it your understanding that on Friday of
12 last week, Staff filed a formal complaint against the
13 company involving this issue?

14 A. Yes.

15 Q. And in that formal complaint, the Staff has
16 requested authority to seek additional penalties from the
17 Commission; is that correct?

18 A. That's correct.

19 Q. Has counsel informed you that the complaint
20 proceeding is a separate proceeding from the ACA case?

21 MR. FRANSON: Your Honor, I will object. Any
22 communications between this witness and counsel are
23 privileged and not subject to disclosure.

24 MR. FISCHER: I'll withdraw it.

25 BY MR. FISCHER:

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1 Q. Do you know whether this is a -- whether the
2 formal complaint proceeding is a separate proceeding from
3 this case?

4 A. I understand that it is, yes.

5 Q. As a staffperson, do you expect that there
6 will be additional hearings in that complaint case?

7 A. I have not seen that process before, but I
8 believe that is implied in the situation.

9 Q. Would you expect, therefore, that we will get
10 to go through this hearing process again in the future in a
11 complaint case?

12 A. Probably.

13 MR. FISCHER: That's all I have, your Honor.
14 Thank you very much.

15 JUDGE HOPKINS: Questions from the Bench,
16 Commissioner Murray?

17 COMMISSIONER MURRAY: Thank you, your Honor.
18 QUESTIONS BY COMMISSIONER MURRAY:

19 Q. Ms. Bailey, is it Staff's position that the
20 company violated its tariffs?

21 A. Yes, that is our position.

22 Q. Is it also Staff's position that the
23 customers -- and I'm talking about the customers other than
24 the three customers who entered into special contracts. Is
25 it also Staff's position that the other customers are better

1 off than they would have been if the company had not
2 violated its tariffs?

3 A. You mean the other customers, not the internal
4 transport customers?

5 Q. Correct.

6 A. Is that what you're saying?

7 I really would have a hard time conjecturing
8 that. It calls for speculation about what people might have
9 done in other circumstances, and I really don't know.

10 Q. Okay. So you don't have an opinion as to
11 whether the special contract customers would have stayed on
12 the system?

13 A. I don't know one way or the other.

14 Q. All right. Now, when you figured --
15 when you did your calculations, assuming that the gas had
16 been sold to the two special -- to the two customers at
17 tariff-authorized rates, which tariff-authorized rates were
18 you using?

19 A. I was using the large volume service rates
20 which we have discussed earlier.

21 Q. Were you applying the minimum monthly charge
22 or were you assuming that the minimum monthly charge was
23 not --

24 A. Actually, I was not using that minimum charge
25 at all. I was using only the PGA and ACA part of that,

1 which was the only part that this audit concerned.

2 Q. Okay. And is it your understanding that this
3 audit is designed to or should be looking at whether the
4 company acted prudently in incurring the costs that it's
5 seeking to recover? Is that --

6 A. That is one of our major goals, yes.

7 Q. Do you think the company acted imprudently?

8 A. No.

9 Q. And do you have an opinion as to a situation
10 wherein a company -- let's just make an assumption here.
11 Assume a company violates the terms of its tariffs but the
12 result of that violation is financially beneficial to its
13 customers.

14 Would it be wise for the Commission to seek
15 both an adjustment and penalties?

16 A. I believe that when they violate their
17 tariffs, that we certainly should not let that be rewarded.

18 Q. Do you think that if there is a violation,
19 that it might be reasonable to look at one or the other,
20 either a penalty or an adjustment?

21 A. I think that might be reasonable.

22 COMMISSIONER MURRAY: I think that's all the
23 questions I have.

24 Thank you.

25 JUDGE HOPKINS: Commissioner Gaw?

1 COMMISSIONER GAW: Thank you, Judge.

2 QUESTIONS BY COMMISSIONER GAW:

3 Q. Good afternoon, Ms. Bailey.

4 A. Good afternoon, Commissioner.

5 Q. If I understand this correctly, the

6 calculation that you've made in this case is based upon the

7 assumption, first of all, that there was a noncompliance

8 with the company's tariffs?

9 A. Yes, that is the basic situation.

10 Q. All right. And is it Staff's position that

11 once there is noncompliance with a tariff, that there is

12 a -- that there's a particular solution that Staff would

13 propose in an ACA proceeding such as this that is -- that is

14 similar to what you have proposed in this case, that that's

15 the only alternative is to do a calculation similar to what

16 you have done?

17 A. No, I would not say that's the only

18 alternative.

19 Q. Okay. What other possible alternative would

20 Staff suggest might exist in such a case?

21 A. Well, that again calls for speculation.

22 Q. Go ahead and speculate away, Ms. Bailey.

23 A. The customers might have left the system. I

24 don't know how probable that is. I wouldn't know how to

25 calculate the impact of that. The customers might have

1 stayed for a while and then left. They might have converted
2 to a different rate structure, a different arrangement.

3 From my point of view, it was just getting
4 into shaky ground to try to predict which of those things
5 might have happened, and it seemed most reasonable to go
6 with the gas that we know was sold at the rate that is
7 authorized for it to be sold at.

8 Q. All right. So you began with an assumption in
9 your calculation that the customers' reaction would be the
10 same regardless of this change in circumstance of the price
11 that they were being charged?

12 A. I wouldn't say I assumed that's what they
13 would do. I simply was trying to make amends for a
14 violation that had taken place and restore the customers and
15 the ACA balance to where they would have been if this
16 violation had not taken place and if the gas had been sold.

17 Q. But that has -- but your calculation has a
18 built-in assumption, does it not, that the customer, the two
19 customers, the two industrial customers would have behaved
20 exactly the same even though their price that they were
21 charged was different?

22 A. Yes, it is -- that is the basis.

23 Q. And what you're saying, if I understand you
24 correctly, is that that is the only mathematical calculation
25 that you felt was really practical to make?

1 A. Yes.

2 Q. Is that accurate?

3 A. That's accurate.

4 Q. Because while you acknowledge the assumption,
5 if you go to another assumption, and that is they might have
6 left, would it not be true that you'd have to also factor in
7 and speculate about when they left, which one left and what
8 day?

9 A. Yes.

10 Q. And if you had -- is that yes to both of those
11 questions that I asked in a row?

12 A. That is yes. I would have to have answers to
13 all those before I could make a calculation.

14 Q. You'd have to speculate about whether they
15 might have returned at some point in time, if they left; is
16 that --

17 A. Yes.

18 Q. -- true?

19 And so if you engage in that kind of
20 speculation, it becomes very difficult to come up with a
21 figure, does it not?

22 A. Yes, it does.

23 Q. Let me ask you this: If we're looking at a
24 violation of a tariff on an -- in an ACA case, another
25 remedy for -- and I hate to use the word "wrongdoing" -- but

1 another remedy for not complying with a tariff is a penalty
2 case, is it not?

3 A. Yes, it is.

4 Q. Is it Staff's position that it is necessary to
5 do this ACA adjustment calculation and a penalty and have a
6 penalty assessed in this case in order to address the
7 noncompliance with the tariff?

8 A. It's Staff's position that that is really for
9 the Commission to decide when presented them both.

10 Q. And is there -- and I'm not sure that I'm
11 asking the right person, Ms. Bailey, so just tell me if
12 you'd rather defer on this question.

13 But is there -- we just saw, as I understand
14 it, there's just been a filing of a case asking for
15 penalties that deals with this same period of time and the
16 same alleged noncompliance with the tariff just in the last
17 few days?

18 A. Yes.

19 Q. And is there a reason why that timing is
20 different on that case than when this case was initially
21 filed, if you know?

22 A. I really don't know, Commissioner.

23 Q. And I understand. That's probably more
24 appropriately addressed to counsel.

25 Earlier there was some discussion with another

1 witness and Commissioner Murray involving what kind of
2 factor -- dollars would have resulted if this had been -- if
3 there had been a calculation based upon an assumption that
4 the figure charged -- the amount charged, excuse me, to the
5 two industrial customers had been the lowest possible
6 tariffed rate. And I'm not sure if I'm describing that
7 correctly.

8 Do you recall that?

9 A. Yes, I recall that question.

10 Q. And did you do any calculation in that regard?

11 A. No, because what that was describing was the
12 commodity rate which is added on to the PGA and ACA rate, so
13 that it comes up with a total cost. I was only concerned
14 with the PGA and ACA part of that. So it was irrelevant to
15 my calculation.

16 Q. All right. So would the PGA/ACA portion have
17 been unaffected by that, if you looked at it under that
18 theory?

19 A. Yes, completely unaffected.

20 Q. But it might have affected the bottom line
21 numbers as far as the industrial customers were concerned?

22 A. Yes, it would have affected the total price
23 that the industrial customers paid, but that would still
24 have included the PGA.

25 Q. And that figure and the adjustment on the PGA

1 would not have changed?

2 A. No.

3 COMMISSIONER GAW: All right. I think that's
4 all I have, Ms. Bailey. Thank you.

5 JUDGE HOPKINS: Commissioner Forbis?

6 QUESTIONS BY COMMISSIONER FORBIS:

7 Q. Hi, how you doing? Good afternoon.

8 A. Great.

9 Q. All right.

10 A. Good afternoon, Commissioner.

11 Q. I think I have one question, and maybe
12 it's some more speculation perhaps, but in Mr. Klemm's
13 testimony -- and during the day we've talked about options
14 that the company thought it had available to it to try to
15 keep these two companies from leaving or what they could do.

16 And I could just kind of -- I'll just kind of
17 quickly run through them. It's do nothing and risk losing
18 them, lower their commodity charges but declassify them as
19 customers, put them in touch with third-party marketer, or
20 provide them with this transport service and the gas supply.

21 Are you aware of any other possible options
22 that might have been open to the company besides those four?

23 A. Well, I wasn't there. I'm not aware, no, of
24 any.

25 Q. Okay. There's -- have they tried to

1 contact -- do you think there's other options available?

2 A. I don't know of any.

3 Q. Okay. And let me think here. You've visited

4 on why you picked that number, and you think it's -- it's

5 the most -- let's see. Any other number you might use -- I

6 believe your word again -- would require a level of

7 speculation that you were unwilling to engage in; is that

8 correct?

9 A. That's correct.

10 Q. And in cases like this in the past, if there

11 have been any, have used this same approach?

12 A. I have not had anything like this in the past.

13 COMMISSIONER FORBIS: Okay. That will be it.

14 Thank you very much.

15 JUDGE HOPKINS: I have no questions. Any

16 further questions from the Bench?

17 (No response.)

18 JUDGE HOPKINS: Recross, Public Counsel?

19 MR. MICHEEL: I have no questions, your Honor.

20 JUDGE HOPKINS: Southern Missouri?

21 MR. FISCHER: No, your Honor.

22 JUDGE HOPKINS: I guess that means you have no

23 redirect.

24 MR. FRANSON: Judge, I wouldn't agree with

25 that. I do have some redirect.

1 Thank you.

2 JUDGE HOPKINS: All right. Go ahead, sir.

3 MR. FRANSON: May I proceed, Judge?

4 JUDGE HOPKINS: Yes, sir, thank you.

5 REDIRECT EXAMINATION BY MR. FRANSON:

6 Q. Ms. Bailey, there were some questions from

7 Mr. Fischer about how -- the low -- what the income is of

8 Southern Missouri Gas.

9 Now, isn't it true that Southern Missouri Gas

10 is actually owned by DTE Energy, that is a huge energy

11 company?

12 A. Yes, this is true.

13 Q. Now, there's also been serious discussion

14 about the options that were available to the company.

15 Mr. Klemm, in his testimony, offered four options.

16 Isn't it true that there was a fifth option;

17 that was, come into the Commission and talk to the Staff

18 about this situation? Wasn't that an option available to

19 the company?

20 MR. FISCHER: Your Honor, I'm going to object

21 as to the leading nature of that.

22 JUDGE HOPKINS: Well, I'm going to overrule

23 that.

24 Go ahead, Mr. Franson.

25 BY MR. FRANSON:

1 Q. Do you understand my question, Ms. Bailey?

2 A. I believe you're asking if their fifth option

3 was not to come in and discuss it with the Staff, and I

4 believe, yes, that was a fifth option.

5 Q. And there was certainly the possibility that

6 Staff would have worked with them and maybe reached some

7 other solution. That was a possibility, correct?

8 A. Correct.

9 Q. And, in fact, in Mr. Klemm's testimony, he

10 discussed one of the things that would have worked or might

11 have worked anyway, a special contract; is that correct?

12 A. That's correct.

13 Q. However, that was not done?

14 A. Not to my knowledge.

15 Q. Okay. Now, let's talk about this \$39,987.

16 Now, one of the options Mr. Klemm offered was that these

17 folks could have gone out and become transportation

18 customers in the traditional sense, paid no PGA/ACA cost; is

19 that correct?

20 A. That's correct.

21 Q. Now, under transportation internal, the way

22 they've set it up, is there anything that you're aware of

23 that requires them to take this 39,987 and put it to the PGA

24 cost, anything that would require that?

25 A. No.

1 Q. So they could take that 39,987 and pocket it
2 if they wanted to, if the company wanted to do that?

3 A. They could.

4 Q. Okay. Now, there was some discussion about a
5 penalty case. You're aware that a penalty case is, in fact,
6 going on or has been filed, correct?

7 A. Correct.

8 Q. Is it also true that this practice of
9 transportation internal is going on to this day?

10 A. To my knowledge, yes.

11 MR. FRANSON: No further questions, your
12 Honor.

13 JUDGE HOPKINS: May the witness be excused?
14 (No response.)

15 JUDGE HOPKINS: No objections. You may step
16 down, ma'am.

17 THE WITNESS: Thank you.

18 JUDGE HOPKINS: Mr. Franson, call your next
19 witness, please.

20 MR. FRANSON: Your Honor, the Staff would call
21 Mr. James Russo.

22 (Witness sworn.)

23 JUDGE HOPKINS: Thank you. Please state and
24 spell your name for the court reporter.

25 THE WITNESS: James M. Russo. J-a-m-e-s, M.

1 as in Michael, R-u-s-s-o.

2 JUDGE HOPKINS: Direct examination,
3 Mr. Franson?

4 MR. FRANSON: Thank you, your Honor. I may
5 need a little help on the exhibit numbers here very shortly,
6 your Honor.

7 JAMES M. RUSSO testified as follows:

8 DIRECT EXAMINATION BY MR. FRANSON:

9 Q. Sir, please state your name.

10 A. James M. Russo.

11 Q. Mr. Russo, how are you employed?

12 A. I'm employed as a regulatory utility --
13 regulatory auditor with the Staff of the Missouri Public
14 Service Commission.

15 Q. Mr. Russo, are you, in fact, the same James
16 Russo that caused prefiled testimony to be filed in this
17 case?

18 A. Yes.

19 MR. FRANSON: Your Honor, I believe there's
20 four here, and I think we're starting with -- and I
21 apologize. I misplaced my list of the exhibits.

22 JUDGE HOPKINS: 13 is Mr. Russo's direct.
23 14 is his rebuttal. Both of those are NP. 15 is his
24 rebuttal HC, and 16 is his surrebuttal NP.

25 BY MR. FRANSON:

1 Q. Mr. Russo, what's been previously marked as
2 Exhibits 13 through 16, do you have those with you here
3 today?

4 A. Yes.

5 Q. And since you prepared this testimony, have
6 there been any changes to your testimony?

7 A. No.

8 Q. And if you were asked the -- substantially the
9 same questions today -- if you were asked the same questions
10 today, would your answers be substantially similar?

11 A. Yes, they would.

12 MR. FRANSON: Your Honor, at this time I offer
13 into evidence Exhibits 13, 14, 15 and 16, and I would, once
14 that is done, tender the witness for cross-examination.

15 JUDGE HOPKINS: Are there any objections to
16 these Exhibits 13, 14, 15 and 16?

17 MR. FISCHER: No objection.

18 JUDGE HOPKINS: Hearing no objection from
19 anyone, I will allow all these into evidence.

20 (EXHIBIT NOS. 13, 14, 15 AND 16 WERE RECEIVED
21 INTO EVIDENCE.)

22 JUDGE HOPKINS: Tendered the witness.
23 Public Counsel, cross-examination?

24 MR. MICHEEL: I have no questions for
25 Mr. Russo today.

1 JUDGE HOPKINS: Southern Missouri?
2 MR. FISCHER: I've got a couple, your Honor.
3 JUDGE HOPKINS: Go ahead, sir.
4 MR. FISCHER: Thank you.
5 CROSS-EXAMINATION BY MR. FISCHER:
6 Q. Good afternoon, Mr. Russo.
7 A. Good afternoon.
8 Q. Jim Fischer representing Southern Missouri.
9 I've just got a few questions here. I'm going to try to
10 shorten it, given the hour, if I can.
11 I'd like to ask you to turn to your
12 surrebuttal testimony on page 3.
13 A. Okay, sir.
14 Q. There on line 2 -- or line 1 and 2, you say
15 that Staff believes and the evidence supports the fact that
16 the company was caught in the act of providing unauthorized
17 service; is that correct?
18 A. Yes, sir.
19 Q. You understand the company has a disagreement
20 with your statement on that?
21 A. Yes, sir.
22 Q. I'd like to explore that with you just for a
23 minute. When you state that Southern Missouri Gas Company
24 was caught in the act, are you suggesting that the company
25 was trying to hide something from Staff or the Commission?

1 A. No, sir.

2 Q. When you state that they were caught in the
3 act -- well, let me withdraw that.

4 Mr. Russo, are you aware that the company, in
5 its very first set of work papers that it filed with this
6 PGA, referred to internal transportation on that work sheet?

7 A. I am now, sir, yes.

8 MR. FISCHER: Your Honor, I'd like to have an
9 exhibit marked.

10 JUDGE HOPKINS: Yes, sir. This will be
11 Exhibit No. 20.

12 (EXHIBIT NO. 20 WAS MARKED FOR IDENTIFICATION
13 BY THE REPORTER.)

14 BY MR. FISCHER:

15 Q. Mr. Russo, does this appear to be the
16 September 17, 2001 letter that was filed in this case that
17 includes the PGA work sheet and the company's work papers?

18 A. Yes.

19 Q. I'd ask you to turn to the third page of the
20 work papers.

21 A. Okay.

22 Q. And you see about halfway down on the
23 left-hand column there's a column entitled Internal
24 Transportation Activity?

25 MR. FRANSON: Your Honor, just for point of --

1 if the witness is about to testify from this document, I
2 think it should be in evidence.

3 MR. FISCHER: Your Honor, I'd move for
4 admission of the document.

5 MR. FRANSON: I have no objection to that.

6 JUDGE HOPKINS: Any objection, Mr. Micheel?

7 MR. MICHEEL: It seems to me it's in the
8 record already. It was filed in this case.

9 MR. FISCHER: Well, I'm not sure if the
10 pleadings are part of the record or not formally.

11 BY MR. FISCHER:

12 Q. But, Mr. Russo, does that reflect internal
13 transport activity designated in that left-hand column?

14 A. Yes, it does.

15 Q. If you go to the far right-hand column under
16 the total column, does that reflect the 39,986 margin
17 between the total PGA revenues and the gas costs?

18 A. I apologize. I just don't see it,
19 Mr. Fischer.

20 Q. I should have marked it in yellow. If you go
21 to the left-hand column under the total -- excuse me -- the
22 right-hand column under total, and you go -- there's three
23 lines, and you go right below the third line, there's a
24 39,986.49.

25 MR. FISCHER: I knew I was better prepared

1 than that, Judge.

2 THE WITNESS: Thank you. Yes.

3 MR. FISCHER: Okay. And that's --

4 MR. FRANSON: Your Honor, what's going on
5 here? I don't know what that is. Is that the same Exhibit
6 No. 20 --

7 JUDGE HOPKINS: That's the copy that was
8 marked in yellow.

9 MR. FISCHER: Counsel, I had marked one that
10 would be helpful to move this process along in yellow so he
11 could find it. And I unfortunately gave it to Commissioner
12 Gaw instead of the witness. I'm sorry.

13 MR. FRANSON: Okay. We found it. Thank you,
14 Judge. Now we understand.

15 JUDGE HOPKINS: Could Commissioner Gaw have
16 the witness' now?

17 MR. FISCHER: He can have mine.

18 BY MR. FISCHER:

19 Q. Mr. Russo, that's the same figure, isn't it,
20 that we talked about in the opening statement and it's
21 included in Ms. Bailey's testimony, 39,987 roughly?

22 A. Yes.

23 Q. So would you agree that from the very
24 beginning filing of this case, the company identified that
25 margin and that internal transportation activity?

1 A. Yes.

2 Q. So when you say that we were caught in the act
3 of providing an unauthorized service, you weren't suggesting
4 we were trying to pull the wool over the Staff's eyes?

5 A. No.

6 Q. Thank you. You understand why I get a little
7 concerned about that.

8 Let's go on here. I believe already in the
9 record is Exhibit 17, which is another set of ACA work
10 papers that identifies the same margin. Unfortunately, I
11 didn't get a copy of that from your counsel, but I believe
12 that is in the record now.

13 Did you take a look at that?

14 A. I haven't seen that.

15 Q. Okay. Well, that record will speak for
16 itself, I think. Let's just move on.

17 MR. FRANSON: Judge, if Mr. Fischer -- and I
18 apologize for not getting Mr. Fischer a copy of that. But
19 Exhibit 17 is certainly available if he wants to ask the
20 witness to review it or has any specific questions about
21 that.

22 MR. FISCHER: Your Honor, let's move along. I
23 think that that's in the record.

24 BY MR. FISCHER:

25 Q. On pages 3, lines 14 through 16 of your

1 testimony --

2 MR. FRANSON: Which one, Mr. Fischer?

3 BY MR. FISCHER:

4 Q. I believe that is surrebuttal, which is
5 page 3, lines 14 through 16.

6 A. Yes.

7 Q. There you say the Staff could not identify a
8 specific tariff section that is being violated by Southern
9 Missouri Gas because the company is operating outside the
10 approved tariff; is that right?

11 A. That is correct.

12 Q. So is it correct to say the Staff has not
13 suggested a specific tariff section that's being violated?

14 A. Could you repeat that, please?

15 Q. Is it correct to conclude from your statement
16 that Staff has not identified a specific tariff section
17 that's being violated by Southern Missouri Gas Company?

18 A. That is correct.

19 Q. There is no specific tariff provision that
20 you're aware of that, for example, would prohibit Southern
21 Missouri Gas from procuring gas for a transportation
22 customer?

23 A. I don't think I agree with that statement
24 100 percent. The --

25 Q. It's just not addressed in the tariff; is that

1 correct?

2 A. I think it's a matter of how the
3 transportation section of the tariff may be interpreted. I
4 think that gets back to probably this difference of opinion
5 between Staff and the company. I believe that, from what I
6 heard earlier today, I heard, I believe, company Witness
7 Klemm at one point state he was acting as an agent or the
8 company was an acting as a agent. And then I heard
9 something that was contrary to that later.

10 But when you look at that one section of
11 nominations, I believe it's on Sheet 15, that one sentence,
12 I believe that in itself would not allow this type of
13 service.

14 Q. And, Mr. Russo, you didn't point that out in
15 your direct, rebuttal or surrebuttal testimony either, did
16 you?

17 A. That is correct, sir.

18 Q. Is the first time you heard that this morning
19 in the opening statement by Public Counsel?

20 A. No, it is not.

21 Q. Okay. That's the first time I heard it.

22 A. Well, last Friday is when I realized that
23 section was there, sir.

24 Q. You say that -- on page 2 of your surrebuttal
25 testimony, at line 20, you state, first, Staff does not

1 believe Southern Missouri Gas Company was providing service
2 to these industrial customers under the transportation
3 service provisions of Southern Missouri Gas Company's
4 tariff. Staff is of the opinion that Southern Missouri Gas
5 was serving these customers under a newly created class
6 called transportation service - internal; is that correct?

7 A. Yes, sir.

8 Q. Now, if the Commission finds that the
9 company's contracts with these two large industrial
10 customers are being provided pursuant to the company's
11 transportation tariff, would you agree that the Staff's
12 proposed disallowance in this case should not be adopted?

13 A. I really don't have an opinion on that part of
14 the case, sir. I didn't look at that part of the case. I
15 don't know. I haven't given that any thought.

16 Q. So you don't have an opinion about whether the
17 Commission should make this adopt -- adopt the Staff's
18 position on the adjustment if they find there's no violation
19 of the tariff?

20 A. If there's no violation, I would -- I guess
21 logically then there would be no disallowance.

22 MR. FISCHER: Your Honor, I'd like to go into
23 HC just to expedite the next part of the cross.

24 JUDGE HOPKINS: We'll go into HC.

25 REPORTER'S NOTE: At this point, an in-camera

1 session was held, which is contained in Volume 2, pages 222
2 through 228 of the transcript.)

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1 BY MR. FISCHER:

2 Q. On page 4 at line 3 of your surrebuttal, you
3 answer the question, Does Southern Missouri Gas Company's
4 transportation tariff provide for the purchased price of
5 gas? And you answer, No, all local distribution company
6 LDC transportation tariffs on file with the Commission only
7 provide for the transportation of the commodity.

8 Transportation tariffs are not for the
9 proposed price of gas; is that right?

10 A. Yes.

11 Q. Would it be correct to conclude from your
12 testimony that none of the local distribution companies in
13 Missouri would have transportation tariffs on file with the
14 Commission that would include a specific commodity price for
15 gas being transported?

16 A. I am not aware of any.

17 Q. The Missouri Public Service Commission does
18 not regulate or otherwise determine the price of gas that
19 is transported using an LDC's transportation service; is
20 that correct?

21 A. That's correct.

22 Q. Would you agree that the price of gas is
23 determined by the negotiation between the customer and the
24 supplier of natural gas that's being transported?

25 A. Yes.

1 Q. Would you agree that the commodity price for
2 the natural gas that is transported is based upon an
3 unregulated market price and not by the Missouri Public
4 Service Commission?

5 A. Yes.

6 Q. So you would not expect the price of natural
7 gas that's transported to show up in any LDC tariffs; is
8 that right?

9 A. That is correct.

10 Q. If someone were interested in reviewing the
11 prices of natural gas that are being transported using the
12 LDC's tariff transportation rates, he would look somewhere
13 else outside the current approved tariff of the LDC; is that
14 right?

15 A. The way the transportation -- normal
16 transportation customer, the LDC typically isn't purchasing
17 the gas. Of course, they would not look there.

18 Q. They would look for it in the supply
19 agreement; is that correct?

20 A. They would -- they would try to find the
21 person supplying the gas, if that's through a supply
22 agreement, sure.

23 Q. Okay. Typically the price of natural gas
24 that's transported is typically stated in the supply
25 agreement. Is that your understanding?

1 A. That's my understanding.

2 Q. Now, I'd quickly like to refer you to your

3 rebuttal testimony, Schedule 2-8.

4 MR. FISCHER: And, your Honor, I'm afraid this

5 is another highly confidential. Can I deal with it without

6 going into in-camera?

7 JUDGE HOPKINS: Let's just go on to

8 confidential and then we won't have to worry about any of

9 it.

10 MR. FISCHER: Okay. Thank you.

11 (REPORTER'S NOTE: At this point, an in-camera

12 session was held, which is contained in Volume 2, pages 232

13 through 249 of the transcript.)

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1 MR. FISCHER: Your Honor, I think actually
2 with one question I can be done.

3 JUDGE HOPKINS: All right.

4 BY MR. FISCHER:

5 Q. If we set aside our difference, Mr. Russo,
6 about what is authorized and what's not, wouldn't you agree
7 that both the large industrials that entered into these
8 contracts as well as the remaining ratepayers that would
9 have to absorb the additional fixed costs if those
10 industrials left are in a win/win situation as a result of
11 the arrangement made by Southern Missouri Gas to keep the
12 industrials on the Southern Missouri Gas system?

13 A. Not 100 percent, no.

14 Q. Would you like to explain why you don't think
15 that that's a benefit to everybody?

16 A. You have to look at -- at least I feel the
17 whole picture has to be looked at. And in this situation,
18 we see one -- we're only looking at one side. Yes, we're
19 keeping these customers on and, yes, there may be some money
20 that was given to this ACA process.

21 From the tariff side, I have to look at the
22 whole picture. One, Staff doesn't believe it is in the
23 approved tariff. Staff believes it's a bundled service. If
24 that was not the case, Staff believes that there's offsets
25 to that \$39,000 that would have to be looked at. And --

1 Q. You're referring to the telephone service and
2 the time that Mr. Walker spent on --

3 A. I'm referring to all those type items. There
4 would have to be some type of corporate allocations coming
5 down, and who knows?

6 Q. And would you agree that the revenues from
7 those contracts are for any regulated company just like the
8 costs are?

9 A. Yes, that's my understanding.

10 Q. And the benefits to that contract went to the
11 other remaining ratepayers and not the company; is that
12 correct?

13 A. The benefits as described here did, yes.

14 Q. And the -- and the three customers were
15 competitive with propane when they would have otherwise
16 perhaps left the system; is that correct?

17 A. That is correct.

18 Q. But that's not a win/win situation in your
19 opinion?

20 A. I won't concede that is a win/win. I believe
21 there's more to it.

22 MR. FISCHER: Your Honor, I think that's all
23 the questions I have. Thank you.

24 JUDGE HOPKINS: Thank you.

25 MR. FISCHER: I apologize for taking so long.

1 JUDGE HOPKINS: That's all right. That's what
2 we're here for.

3 Questions from the Bench?

4 COMMISSIONER MURRAY: I just have a couple of
5 questions, your Honor.

6 JUDGE HOPKINS: All right, Commissioner
7 Murray.

8 QUESTIONS BY COMMISSIONER MURRAY:

9 Q. Mr. Russo, do you think it's possible for
10 reasonable minds to differ as to the meaning of the tariffs
11 in question here?

12 A. Yes, I do.

13 Q. And do you think it is possible that the
14 company believes that it is not in violation of its tariffs?

15 A. Yes, I do think that's possible, Commissioner.

16 Q. And if the Commission were to come down on the
17 side of saying that the company was in violation of its
18 tariffs, why would it be necessary to punish the company for
19 having made a different interpretation, even if it were
20 later -- even if the Commission later said we disagree?

21 A. I don't know if punish is a good word. To me
22 it's -- I don't know if that's -- that and the term -- the
23 way I look at punish is necessary. I think that there has
24 to be some type of a remedy, and whether the remedy is as
25 Staff Witness Bailey put forth in her testimony or something

1 different, that would be for the Commission to decide, I
2 think.

3 But I think the tariffs are in effect, the
4 tariffs need to be followed. And if they're not, there has
5 to be some type of remedy so that other companies, whether
6 it's an LDC or company in a different industry, doesn't also
7 start just interpreting tariffs every which way.

8 Q. Well, you just said that reasonable minds
9 could differ as to the interpretation of the tariff?

10 A. That's correct.

11 Q. You're not suggesting that it was an
12 intentional misinterpretation?

13 A. I believe that when this started -- and this
14 is my opinion, Commissioner -- I believe the company had a
15 situation they were going to lose some customers and they
16 found a way to resolve that.

17 Based on some of the testimony I've seen
18 either, even with Mr. Klemm's four options that were listed
19 in his testimony, I don't know if -- they're the company's
20 options, not Mr. Klemm's. Even when they looked at No. 3,
21 they -- they decided that that transportation tariff, they
22 weren't going to follow that one.

23 So I believe that the company provided this
24 bundled service under this new class, and I think it's been
25 clear and I think other people have said it here today,

1 other witnesses, just to avoid the PGA.

2 And even though there's all these other issues
3 and we've heard some economic issues, and that's fine, but
4 that's not what we're here for. We're here for -- we're
5 looking at the tariff. We're looking at what is my
6 understanding is law, and that's what we have to -- well,
7 that's what the Commission has to decide, I should say.

8 And from that standpoint, even though
9 intentions are good, something -- there has to be a remedy,
10 is all I'm saying. And that's why I'm saying I don't think
11 somebody should be punished or anything. We don't want to
12 take somebody out behind the wood shack, but we need to --
13 something needs to be done.

14 COMMISSIONER MURRAY: That's all the questions
15 I have. Thank you.

16 JUDGE HOPKINS: Commissioner Gaw?

17 QUESTIONS BY COMMISSIONER GAW:

18 Q. Mr. Russo, I'm a little confused about what
19 your testimony is at this point. Are you suggesting that
20 you don't think that the tariffs are clear in regard to this
21 case?

22 A. I think the tariffs are clear from my point of
23 view, sir. The way I interpreted Commissioner Murray's
24 question was, is it possible that a different person could
25 interpret them differently? Sure, that's always possible,

1 yes.

2 Q. Are you saying that as a matter of the
3 particular language in this tariff or are you saying that
4 about language that appears in any document? I don't
5 understand what you're saying.

6 A. It could be -- it could be any document, sure.

7 Q. Do you find something particularly ambiguous
8 or unclear about the tariffs that are in front of this
9 Commission?

10 A. I do not, sir. I personally do not. I think
11 it's very clear.

12 Q. The benefit that would have been derived by
13 the other customers of this company, if the assumption is
14 made that the industrial customers would have remained
15 customers and would have continued to, as other customers
16 had to do, pay the PGA, how would that benefit have compared
17 to the so-called benefit that is derived to those customers
18 under the scenario that was actually done in the facts in
19 this case?

20 A. The additional benefit would be Staff Witness
21 Bailey's, that adjustment, roughly \$100,000 more would have
22 been collected, and that \$100,000 would have been applied
23 toward these balances, so it would be a benefit to all
24 customer classes. It would reduce things owed in the
25 future.

1 Q. Mr. Russo, if I assume that that was the
2 scenario, but instead the customers received \$39,000, more
3 or less, would you call that \$39,000 a benefit if they would
4 have received a lot more than that under the assumptions
5 that Staff has made in this case in their numbers that
6 they've given to this Commission?

7 A. It's a small benefit, Commissioner. It's --
8 it's not a --

9 Q. Let me ask you this --

10 A. It's not a full benefit.

11 Q. If you -- if you tell me that the cus-- that
12 I'm supposed to receive \$10 under a theory, hypothetically,
13 and instead I receive a dollar, but I'm supposed to receive
14 10, am I supposed to be thankful for the one?

15 A. In most cases, no, sir.

16 Q. Well, I'm just trying to understand. You're
17 throwing this term "benefit" around a lot today. It's
18 confusing to me.

19 All right. So what I really want to
20 understand at this point is, how does -- does Staff believe
21 that it is appropriate for this Commission to assume that
22 those customers would have continued to be customers of the
23 company if the original -- if they had complied with the
24 tariff as the Staff has assumed in its figures?

25 A. I would say yes, Commissioner. I have no

1 reason to dispute or disagree or change the testimony of
2 Staff Witness Annell Bailey earlier.

3 The other -- the only other option could be if
4 the Commission wanted Staff to look at some other
5 conditions, if they directed Staff to, say -- well, let's
6 assume they were here half the time or something, and then
7 maybe Staff could compute some type of
8 a -- do some type of computation.

9 But based on the facts that the Staff had, I
10 think that's the best available number.

11 Q. So is Staff representing -- if you don't know,
12 Mr. Russo, it's okay. But is the Staff representing that
13 the Commission is -- if the Commission concludes that there
14 is no compliance with this tariff, that the Commission's
15 remedy is either Staff's position or no adjustment? Is that
16 what we're confronted with here, based upon what's in the
17 record? If you don't know --

18 A. I truly don't know, Commissioner. I truly
19 don't know.

20 Q. I may address that to someone else. I think
21 all these other things I have are for counsel. Thank you,
22 Mr. Russo.

23 A. You're welcome, sir.

24 JUDGE HOPKINS: Commissioner Forbis?

25 COMMISSIONER FORBIS: Thank you, Judge.

1 QUESTIONS BY COMMISSIONER FORBIS:

2 Q. Hi, Mr. Russo. Just one question.

3 A. Commissioner.

4 Q. In your direct testimony on page 3, line 13,
5 you say SMG should have filed proposed tariff sheets or
6 proposed special contracts for Staff review and Commission
7 approval before any contracts went into effect.

8 A. Yes, sir.

9 Q. Could you just kind of briefly explain for me
10 how that process would work, and is it something we've used
11 before, the Commission has used before?

12 A. I believe the Commission has used before. The
13 way the process would work, of course, the company would
14 come in, they would file the proposed tariff sheets, they
15 would file this proposed special contract language, and
16 hopefully Staff and the company could come to an agreement
17 and then come before the Commission with a recommendation
18 for, I guess, maybe that's -- I don't know the legalese
19 there, so I'll have to apologize. I don't know if that's a
20 stipulation or what that is, sir, but hopefully it could be
21 worked out and the Commission could be presented in a normal
22 case proceeding that this is what both parties and hopefully
23 OPC and everybody else will be on board with.

24 Q. And so how long might that process take from
25 start to finish? Could you venture a guess? Do you feel

1 that's appropriate to venture a guess?

2 A. It's hard to say. If things went smoothly,
3 who knows, 60 days.

4 Q. Okay.

5 A. I think that probably would be reasonable.
6 That could be on the -- on the high end. I don't know.

7 Q. You don't recall, though, which -- where --
8 you think it has been used before, but you don't remember?

9 A. I -- I thought there was a KCPL case,
10 Commissioner. I don't have it in front of me, and I'd
11 rather not go on the record with something that's not
12 correct.

13 COMMISSIONER FORBIS: I appreciate that.

14 Okay. Thank you. That's it for me.

15 JUDGE HOPKINS: Recross, Public Counsel?

16 MR. MICHEEL: I have no questions, your Honor.

17 JUDGE HOPKINS: Southern Missouri?

18 MR. FISCHER: Just one, your Honor. I'll be
19 brief.

20 RECROSS-EXAMINATION BY MR. FISCHER:

21 Q. Mr. Russo, in answer to Commissioner Gaw, you
22 indicated you didn't have any real -- you didn't think the
23 tariffs were ambiguous, you thought it was crystal clear
24 about this violation; is that correct?

25 A. I feel that way, yes, sir.

1 Q. But you didn't specifically point out anything
2 in your testimony regarding what that specific violation
3 was, and I believe you testified that only Friday you
4 learned about Sheet 15 might even be an issue; is that
5 right?

6 A. Partly. Our -- the contention was it was
7 never addressed in the tariffs, and -- and just by not
8 having this customer class, that in itself is a violation.

9 Q. So if Sheet 15, for example, had been so
10 crystal clear to you, why wouldn't you have put that in your
11 direct, rebuttal or surrebuttal testimony?

12 A. I don't know why, sir.

13 Q. It was ambiguous to you, was it not?

14 A. No, I don't think so. I probably didn't
15 clearly read it the first time I read it. I probably
16 just -- I think it's more me not reading it the first time I
17 went through the tariffs.

18 Q. And is that not -- it is not cited in the
19 complaint case either; is that correct?

20 A. I don't know that, sir.

21 MR. FISCHER: Thank you very much.

22 JUDGE HOPKINS: Redirect by Staff?

23 MR. FRANSON: Judge, at this point I do have
24 brief redirect. However, it is after five o'clock, and I
25 was hoping I could --

1 JUDGE HOPKINS: Joann has locked us in. If
2 you want to get out, you can go out this way in the back,
3 but we're all set to go.

4 MR. FRANSON: Judge, my problem is I have a
5 four-year-old boy that is waiting on me, and if I'm late, I
6 incur significant penalties for that.

7 JUDGE HOPKINS: All right. We can start again
8 in the morning at 8:30. See you-all then.

9 MR. FISCHER: Your Honor, before we go off the
10 record, could I ask whether Mr. Walker would be excused? He
11 wasn't presented as a witness, but he did have a deposition
12 in the record. And he has a father who just went through
13 surgery this morning and he'd like to get back to his home
14 if that would be possible.

15 If you have questions, your Honor, we'll make
16 sure he's available.

17 COMMISSIONER GAW: Judge, my -- thank you for
18 raising that because I was going to raise it myself, because
19 to my -- I think we just received this deposition today. If
20 that's not correct, please tell me. And I have not seen the
21 deposition yet, so I don't know -- my suspicion is that
22 there will not be any questions, but I can't say until I've
23 had a chance to look at it.

24 So is there a way that we can, if it becomes
25 necessary -- I don't want to keep him away from his father's

1 surgery. Is there a way, Judge, if that gets to be a
2 problem we can do that another day?

3 JUDGE HOPKINS: Here's what we can do. We can
4 certainly either have him come back or perhaps send him a
5 written list of questions. Doesn't he live down in Mountain
6 Grove?

7 MR. FISCHER: Yes, your Honor. We can make
8 him available at the convenience of the Commission. We
9 certainly don't want to keep any information out of the
10 record, but if he's not needed tomorrow, then I'll let him
11 go home. Otherwise --

12 JUDGE HOPKINS: We'll let him go home.

13 COMMISSIONER GAW: From my perspective, I
14 would rather do some other thing than keep him here. He
15 needs to see his father.

16 JUDGE HOPKINS: We'll see you-all in the
17 morning at 8:30.

18 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

19 JUDGE HOPKINS: It is still March the 11th.
20 We had a change in plans, and we think we can finish this
21 yet this evening.

22 We are on redirect by Staff of Mr. Russo, and
23 other than a change in the schedule for this hearing
24 finishing up this evening, did we discuss anything else off
25 the record that we need to discuss here?

1 MR. FRANSON: Not that Staff is aware of, your
2 Honor.

3 JUDGE HOPKINS: No one knows of anything else,
4 so go ahead, Mr. Franson, and you can start your redirect.

5 MR. FRANSON: Thank you, your Honor.

6 REDIRECT EXAMINATION BY MR. FRANSON:

7 Q. Mr. Russo, I would like for you to -- on
8 these tariffs that are -- that you've had a lot of questions
9 on and that are in your rebuttal, both the HC and the
10 nonproprietary part, those are, in fact, public documents,
11 correct?

12 A. Yes, sir.

13 Q. And if anyone wanted to go see them and look
14 at them and interpret them, they are readily available for
15 that purpose, correct?

16 A. Yes.

17 Q. Okay. Now, in various parts of these
18 contracts the --

19 MR. FRANSON: Your Honor, I believe this is
20 going to be HC.

21 JUDGE HOPKINS: We're not on the Internet
22 anymore, but this part of the transcript will be HC.

23 (REPORTER'S NOTE: At this point, an in-camera
24 session was held, which is contained in Volume 2, pages 264
25 through 267 of the transcript.)

1 JUDGE HOPKINS: Let me briefly go over the
2 exhibit list. I'm going to read through this quickly, make
3 sure that everybody agrees on this.

4 No. 1 is two pages from the opening statement
5 by Fischer. No. 2, one page from opening statement by
6 Micheel. No. 3, Scott Klemm's direct. No. 4, Scott Klemm's
7 supplemental direct. No. 5 is Scott Klemm's rebuttal HC.
8 No. 6 is Scott Klemm's rebuttal NP. No. 7, Scott Klemm's
9 surrebuttal. No. 8, deposition of Bill Walker. That's HC?

10 MR. MICHEEL: With exhibits.

11 JUDGE HOPKINS: No. 9 is transcript of the
12 deposition without the exhibits, which is NP. 10 is Bailey
13 direct. 11, Bailey rebuttal. 12, Bailey surrebuttal.
14 13, Russo direct. 14, Russo rebuttal. 15, Russo rebuttal
15 HC. 16, Russo surrebuttal. No. 17 is Southern's work
16 pages. 18 is e-mail from Klemm to Lock.

17 19, annual report. 20, part of pleading in
18 this case. 21, G0-85-246. 22, GR-2001-388. 23 is statutes
19 393.297 through 302. 24 is GA-94-127. And 25 is 240 -- all
20 right -- 4 CSR 240-40.015 through 16. No. 26 is the
21 affiliate transaction information letter.

22 MR. FRANSON: Your Honor, I certainly have no
23 discrepancy with that. However, I would ask, with the
24 exception of No. 1 and 2, which were in for illustrative
25 purposes or from opening statement, everything else was

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1 offered and received into evidence; is that right?

2 JUDGE HOPKINS: Yes, sir. I took official
3 notice of 19, 20, 21, 23, 24, 25 and 26. That was either he
4 Commission's own records or statutes or CSRs.

5 MR. FRANSON: Thank you. Thank you, your
6 Honor.

7 JUDGE HOPKINS: Now, let's talk about
8 transcripts and Briefs. When can you have the -- we'll do a
9 Brief and Reply Brief. I believe that was the consensus.

10 MR. FRANSON: Your Honor, before I can answer
11 that, I need to know when we'll have a transcript.

12 JUDGE HOPKINS: You should be able to do a
13 Brief without a transcript.

14 So when would you-all like the initial Brief
15 to be filed?

16 MR. FISCHER: Was it 30 and 20 normally in the
17 rules? That would be acceptable.

18 JUDGE HOPKINS: 30 days from today.

19 MR. FISCHER: 30 days from the time the
20 transcript's available.

21 JUDGE HOPKINS: And then 20 for reply?

22 MR. FRANSON: Yes, sir.

23 JUDGE HOPKINS: I would like Proposed Findings
24 of Fact and Conclusions of Law. And could you supply those
25 with the Reply Brief? Does that give you enough time?

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1 MR. FISCHER: Yes.

2 JUDGE HOPKINS: Tell me if anybody has any
3 idea on how you would want to include the information on
4 how, if at all, this complaint case will affect this case.

5 MR. FRANSON: Judge, if I may, I am very
6 troubled by that. That is a totally separate proceeding,
7 and while when we're actually over in that proceeding this
8 proceeding may have some bearing on it if there is a
9 violation found by the Commission, the fact is this case
10 stands alone. And I'm troubled that there's already been
11 far too much reference to that.

12 The idea that that would have any bearing
13 on -- I guess the best way to think of it is, Judge, we have
14 alleged law violation, and whatever the remedy might be has
15 no bearing on whether this company violated the law or not.
16 If they violated the law in Issue 1, then we get to Issue 2
17 in this case. However, there are actually in that complaint
18 case three separate allegations of specific statutory
19 violations, and it's primarily geared toward the ongoing
20 nature of this, not only the fact that it started and was
21 going, but it's an ongoing matter. That is the clear
22 distinction, and plus the remedies being sought are --
23 they're just totally different.

24 This is an ACA proceeding. Any remedy would
25 be within the context of this. And in the penalty case, it

1 would be in the context of whatever the statutes might allow
2 if there was, in fact, a violation found there. But that
3 certainly has no bearing on this case at this point in time,
4 your Honor.

5 MR. FISCHER: Your Honor, if I could, the
6 company, of course, has not had an opportunity to answer
7 that complaint. We just received it Friday. But I would
8 suspect that the company would file a motion for an abeyance
9 or stay pending the outcome of this case in that complaint
10 case. And I don't think it is a matter of judicial economy
11 and makes a lot of sense to be going forward in the
12 complaint case until we get a decision or some resolution in
13 this matter.

14 JUDGE HOPKINS: Mr. Micheel, what thoughts do
15 you have, if any?

16 MR. MICHEEL: Haven't thought about it. I'm
17 going to have to take the latter. I don't have any.

18 JUDGE HOPKINS: So basically what I'm hearing
19 you-all tell me is you don't really want to talk about the
20 complaint case here; is that correct?

21 Is that a correct assumption?

22 MR. FRANSON: Well, I'm not sure I'd phrase it
23 that we don't want to talk about it.

24 JUDGE HOPKINS: In this case.

25 MR. FRANSON: In this case. Staff would

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1 suggest it's not an appropriate subject as far as on
2 Issue 1 or Issue 2. As Mr. Fischer suggested, the
3 resolution of this case will certainly have some relevance
4 to that case, to the complaint case, but the complaint case
5 does not bear on this one, as I explained.

6 I agree with Mr. Fischer. I get there for
7 different reasons, but I would suggest that there should be
8 no mention of the complaint case in our Briefs or anything
9 else, simply because it's already been done, so people
10 mention it if they deem appropriate.

11 But I -- but as far as whether there is a
12 tariff violation, Judge, the fact there's a complaint case
13 really has no bearing on it. It only comes into play if
14 there is a tariff violation and if there's a law violation
15 as alleged here and in that complaint case.

16 JUDGE HOPKINS: Let's just leave the complaint
17 case out of this case, and you-all can fight that battle if
18 necessary.

19 MR. FISCHER: Your Honor, you're not directing
20 that I shouldn't address the fact that this has been filed?
21 I had planned to at least mention that it's been filed, and
22 we don't think it should be piling on, so to speak, on this
23 matter.

24 JUDGE HOPKINS: I don't think that's a
25 problem. People testified on that case all over the place

1 here today. So it's not like a secret. It's just that we
2 can't fight the complaint case here. This is an ACA/PGA
3 case.

4 MR. FRANSON: In an ideal word, Judge, that
5 matter would have never come up today, and -- but the fact
6 is it did. It came up in, I believe, Mr. Fischer's opening
7 statement and then it came up in other places during the
8 course of the hearing. So there's certainly no denying it
9 is in evidence. But I'm still suggesting that the
10 resolution of this matter on No. -- on Issue 1, certainly
11 the complaint case has absolutely no bearing on that.

12 The only place it would come in at all, and I
13 would suggest it shouldn't come in at all, but if it does,
14 it would only come in on a random here. But again, just
15 admitting that it's out there, it is, and that's already in
16 the record, so I don't know.

17 JUDGE HOPKINS: Well, I think enough has been
18 said about the complaint case. We don't really need to hear
19 any more about it in this case, although as Mr. Fischer
20 says, he's going to mention it in the Brief, which is okay.

21 Those Conclusions of Law and Findings of Fact,
22 I'd like you to address all the issues in those, even though
23 you've agreed on four, I believe it was. All but two, let's
24 say.

25 MR. FRANSON: Yes, sir.

1 JUDGE HOPKINS: Just for the record, there
2 have been no motions that have not been ruled on? Anything
3 further from any party?

4 MR. DORITY: Judge, did you want to go ahead
5 and look at some dates specific for the Briefs?

6 JUDGE HOPKINS: I'll send you out a briefing
7 schedule, because I'm not sure when the tariff -- I mean,
8 when the transcript will get here.

9 If you're asking me to base the briefing
10 schedule on when the transcript gets here, I can wait and do
11 that. If you want to go ahead and set the date now and hope
12 the transcript gets here --

13 MR. FISCHER: Either way's fine with the
14 company.

15 JUDGE HOPKINS: All right. 10 days from today
16 is Friday, March 21st. 30 days from that date is Sunday,
17 April 20th.

18 So we'll make it April 21st for the --

19 MR. MICHEEL: Your Honor, I need to pipe up
20 here. My support staff really frowns on me filing Briefs on
21 Monday because, unfortunately, I fail to do them in a timely
22 manner generally, and then they get angry with me. So could
23 we just make that Tuesday just so they're not angry, more
24 angry with me I should say.

25 JUDGE HOPKINS: Tuesday the 23rd of April.

1 MR. FRANSON: And, Judge, I'm going to --
2 hopefully not to the wrath of other attorneys, I'm going to
3 suggest a date of May 9th. I know that's a little bit --
4 that's, like, 17 days, but I'm planning to be away actually
5 before the 9th. But I think I can have my materials ready
6 to be filed. So I was hoping there'd be no objection to
7 either May 9th or else kick it out two weeks to the 23rd.
8 JUDGE HOPKINS: You're going to be gone. What
9 date do you want?
10 MR. FRANSON: I'm asking that these things be
11 due May 9th, the Reply Brief and the proposed findings, or
12 that we find a date out after --
13 JUDGE HOPKINS: Well, the way I've got it here
14 is ten days from April 23rd is May 3rd, Saturday. So if no
15 one had any objections, we could do that.
16 MR. FRANSON: May 3rd is fine.
17 JUDGE HOPKINS: No. We'll make that
18 May 3rd, 4th, 5th, 6th. We'll make it another Tuesday for
19 Mr. Micheel.
20 MR. MICHEEL: Thank you, your Honor.
21 MR. FRANSON: And we'll hope Mr. Micheel does
22 things in a timely manner.
23 JUDGE HOPKINS: I doubt he'll change his
24 habits before then, so --
25 MR. DORITY: Judge, my calendar's showing

1 Tuesday, April 22nd, rather than 23rd.

2 JUDGE HOPKINS: Tuesday -- I'm sorry, what did
3 I say? April 23rd is a Wednesday.

4 MR. DORITY: Whichever day.

5 JUDGE HOPKINS: I'm sorry. Let's do this
6 again. I can't read my own handwriting. I'm sorry.

7 Tuesday, April 22nd, is when the initial Brief
8 will be due. The Findings of Fact and Conclusions of Law
9 will be done, then, on May 6th, which is a Tuesday.

10 Everyone set on that now?

11 MR. DORITY: Thank you, Judge.

12 JUDGE HOPKINS: If nothing further, I'm going
13 to adjourn this.

14 COMMISSIONER GAW: Wait. Wait. Do you have
15 anything, Commissioner?

16 COMMISSIONER MURRAY: Well, just briefly. I
17 guess I would just like to see addressed in the Briefs --
18 and you may be planning to do it anyway -- but specifically
19 what -- what disallowances are permitted in the ACA review
20 process, for what reasons are we permitted to make
21 disallowances.

22 That's all.

23 COMMISSIONER GAW: And, Judge, if I could
24 follow up with that, I'd like to know whether there is a
25 burden of proof or burden of persuasion regarding

1 disallowances in the ACA, and if so, who has it?

2 I'd also like to know -- and I'm going to
3 violate your rule here, Judge -- if there is a rationale for
4 Staff filing the penalty case in the last few days, I'm
5 curious about the timing of it.

6 MR. FRANSON: May I respond to that?

7 COMMISSIONER GAW: Yes.

8 MR. FRANSON: The primary reason that was
9 filed was, quite frankly, we did a deposition of Mr. Bill
10 Walker and we became aware of the, well, quite frankly, the
11 more intimate details of this whole thing, and it is an
12 ongoing matter. That is why it was filed very recently.

13 I don't remember the exact date of the
14 deposition of Mr. Walker, but it was certainly after all the
15 testimony was in. So that is the primary reason, and the
16 fact that in the deposition of Mr. Walker, the specific
17 question is put to him, is this going to continue? And his
18 answer is, if for business reasons it is deemed appropriate,
19 yeah, it will, but he doesn't know for sure at this point,
20 because he doesn't know what gas prices will be and other
21 things.

22 But because it is an ongoing matter and
23 because it does, in fact, go to three different ACA periods,
24 it is a matter of continuing concern.

25 COMMISSIONER GAW: And the penalty -- the

1 request for the penalty case was filed on last Friday; is
2 that correct?

3 MR. FRANSON: Yes, Commissioner, it was.

4 COMMISSIONER GAW: Was that before or after
5 the partial stip was filed?

6 MR. FRANSON: Same day. Mr. Fischer was made
7 aware of it one day before that we were going to do it.

8 COMMISSIONER GAW: Before the stip was filed?

9 MR. FRANSON: Yes, sir. Mr. Fischer was
10 informed specifically by me about that.

11 MR. FISCHER: Yes, your Honor, I was aware and
12 I went ahead and stipulated other issues. I didn't think it
13 made any sense to go ahead and try those.

14 JUDGE HOPKINS: All right.

15 MR. FISCHER: I will also state, your Honor,
16 for the record that the deposition will speak for itself.
17 My memory of that deposition is that Mr. Walker indicated
18 that we might continue depending on the outcome of this
19 case, and that certainly economics were important, but
20 certainly we were going to -- it would depend upon the
21 outcome of this case.

22 COMMISSIONER GAW: And the reason for my
23 question was not to delve into the particulars of what was
24 said in a deposition, merely to understand the timing of the
25 filing of that.

1 All right. And the other thing, and you can
2 address this in the Brief if you'd like, and that is the
3 question of whether or not there is any other adjustment
4 supported by the record, other than what Staff has proposed
5 here. And you can address it in the Brief if you'd like or
6 if the parties want to address it to me now, it's whatever
7 you prefer.

8 MR. FISCHER: Your Honor, I'd be glad to say
9 from the company's standpoint that we don't see any other
10 middle ground in the record, but certainly if this
11 Commission would suggest that this was not an appropriate
12 activity, we're not going to continue. We'll indicate that,
13 from now on, those customers have to find their own gas
14 supply and, unfortunately, there may be a negative impact on
15 other customers.

16 MR. FRANSON: Staff would agree, Commissioner
17 Gaw, that the only clearly stated evidence on this subject
18 is the adjustment put forth by Ms. Bailey. There -- there
19 isn't any other number. Now, Mr. Klemm did mention a
20 \$30,000 figure, but that was in regard to and in reply to a
21 question from Commissioner Murray. But there's not anything
22 specifically, and I believe Commissioner Murray specifically
23 asked him.

24 That's not in the record anywhere, other than
25 him mentioning it in response to Commissioner Murray's

1 questions. So the only clearly supported one is what
2 Ms. Bailey put forth.

3 COMMISSIONER GAW: Anything from Public
4 Counsel?

5 MR. MICHEEL: I don't disagree with that. I'd
6 like to look at the trans-- I need the transcript. Because,
7 I mean, there was some talk, but I think in the record in
8 terms of what Mr. Klemm presented, he didn't present another
9 calculation, in my recollection, and then you have Ms.
10 Bailey's calculation.

11 COMMISSIONER GAW: And my question was based
12 upon a presumption that if the Commission were to find that
13 what was done was not in compliance with the tariff.

14 All right. Well, if there's anything else on
15 that that you-all discover while you're reviewing the
16 transcript or think of something, I'd like to hear it.

17 And that's all I have, Judge. I apologize for
18 the delay. Thank you.

19 JUDGE HOPKINS: That's quite all right.
20 Anything further, Commissioner Murray?

21 COMMISSIONER MURRAY: I don't think so.

22 JUDGE HOPKINS: All right. Nothing further,
23 we will adjourn the hearing. Thank you.

24 WHEREUPON, the hearing of this case was
25 concluded.

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