Exhibit No.:
Issue: *All Counts*
Witness: *David J. Ries*
Sponsoring Party: *Missouri Gas Company, LLC and Missouri Pipeline Company, LLC*
Type of Exhibit: *Rebuttal Testimony*
Case No.: *GC-2006-0491*
Date Testimony Prepared: *October 6, 2006*

MISSOURI GAS COMPANY, LLC
MISSOURI PIPELINE COMPANY, LLC

REBUTTAL TESTIMONY

OF

DAVID J. RIES

CASE NO. GC-2006-0491

NP

October 6, 2006

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REBUTTAL TESTIMONY

OF

DAVID J. RIES

MISSOURI GAS COMPANY, LLC

MISSOURI PIPELINE COMPANY, LLC

CASE NO. GC-2006-0491

Q. Please state your name and business address and employer.

A. My name is David J. Ries. I am employed currently by R2 Development, Inc., my consulting company. I serve as President of Missouri Gas Company, LLC ("MGC"), Missouri Pipeline Company, LLC ("MPC") and Missouri Interstate Gas, LLC ("MIG"), whose offices are located at 110 Algana Ct., St. Peters, Missouri 63376.

Q. Please describe your educational background.

A. I am a 1973 graduate of Iowa State University with a degree in Engineering. My major work history is summarized below:

Gateway Pipeline Company, LLC	President, 2001 to present
Missouri Pipeline Company, LLC	President, 2001 to present
Missouri Pipeline Company, LLC	President, 2001 to present
Missouri Interstate Gas, LLC	President, 2002 to present
Omega Pipeline Company, LLC	President, 2002 to June 1, 2006
R2 Development, LLC	President, 1999 to present
Kinder Morgan Inc. (successor to K N Energy, Inc.)	Vice President, Business Development, 1993-1999
	Chief Engineer, 1988-1993
Enron Corporation	Chief Engineer, 1986-1988
	Director of Engineering, 1981-1986
	Manager of Materials, 1977-1981

Project Engineer/Senior Engineer, 1974-1977

Q. Can you please expand on your work experience prior to 2000?

A. While an employee and subsidiary officer with KN Energy, I was involved in numerous purchase/sale transactions over several years. This involved regulated intrastate pipeline companies in the states of Texas, Colorado, Wyoming, plus the interstate pipelines of KN Interstate Gas Transmission, Natural Gas Pipeline Company of America, TransColorado Gas Transmission Company and Stingray Pipeline Company. Most of the transactions were not subject to specific regulatory approval and docket numbers for those that are not readily available. The only transaction of significance affecting the State of Missouri was the acquisition and development by KN Interstate Gas Transmission of the Pony Express Pipeline, which was used to provide additional capacity to the Kansas City market.

Q. Have you submitted testimony before the Missouri Public Service Commission (MPSC) before?

A. Yes. In the Matter of the Application of Gateway Pipeline Company, Inc., Missouri Gas Company, and Missouri Pipeline Company and the Acquisition by Gateway Pipeline Company of the Outstanding Shares of UtiliCorp Pipeline Systems, Inc., Case No. GM-2001-585, I submitted direct and rebuttal testimony in that case. The MPSC permitted Gateway Pipeline Company to acquire the stock of United Pipeline Systems, Inc., which held the stock of MPC and MGC. The case and testimony were filed in 2001.

<u>Executive Summary</u>

Q. Please provide an "executive summary" of your testimony in this case.

A. My testimony will address the unfounded allegations made by the MPSC Staff in this case and correct the MPSC Staff's misunderstanding of several fundamental matters relating to the operations of MPC and MGC (MPC/MGC).

Q. Please summarize your findings.

A. (1) Count One alleges that MPC/MGC failed to comply with tariff provisions that require these Companies to apply all their terms and conditions in a uniform and nondiscriminatory manner to non-affiliated shippers as provided to affiliate shippers; to maintain separate operational facilities and personnel from any marketing affiliate; and, to submit quarterly reports to the Commission's Energy-Rates Staff. My analysis will show that MPC/MGC have not violated their respective tariffs by providing contractual rates or other terms to Omega Pipeline Company LLC (Omega) that were more favorable than to the other parties.

(2) Count Two alleges that MPC/MGC have provided transportation for Omega without an executed Transportation Agreement. I will show that MPSC Staff's claim is unfounded and without merit. MPC/MGC have not provided any transportation service to Omega without a written contract.

(3) Count Three alleges that MPC/MGC charged non-affiliate customers higher rates than the rates charged to an affiliate without the necessary Commission approval. My review will show that MPC/MGC have not violated their respective tariffs by charging non-affiliates for transportation services in excess of the amounts charged to affiliates.

(4) Count Four alleges that MPC/MGC failed to report discounts it had offered to its affiliates. My understanding of the facts indicates that MPC/MGC have not

violated their respective tariffs. MPC/MGC have filed all discount reports as required and reported all discount prices it charged.

(5) Count Five alleges that Omega contracted for, but MGC paid for construction of a meter station to connect to an Omega customer without billing Omega for reimbursement of these expenditures, as required by the MGC Tariff. My review will show that any pipeline constructed by MGC to Willard Asphalt was to promote the growth of business for MGC and, therefore, was properly paid for by MGC and placed on MGC's books as plant in service. Any claim by MPSC Staff that Willard Asphalt or any party should immediately reimburse MGC for pipe owned by MGC is unfounded and without merit.

(6) Count Six alleges that MPC and MGC do not bill Omega on the same basis as MPC/MGC bill non-affiliated shippers. I will show that MPC/MGC did not receive transportation payments from Omega slower than any other shipper. The opposite is true: Omega paid its bills faster than any other party.

<u>Brief History</u>

Q. Please provide a brief history to better understand the issues and relevant facts in this case.

A. In 1989, a portion of Amoco's crude oil pipelines was purchased and converted to a natural gas pipeline and commenced operation as MPC, a Missouri-regulated intrastate pipeline. The original portion of the MPC intrastate pipeline extends from an interconnection with Panhandle Eastern Pipeline Company ("Panhandle") in Pike County, Missouri, southeasterly, and then eastward north of St. Louis to a terminus in St. Charles County near Alton. A southwesterly line was added to MPC in 1992, extending the system to Sullivan, Missouri. MPC delivers gas to Laclede Gas Company ("Laclede") in the greater St. Louis metropolitan area, including the Cities of Washington, Union, Sullivan and St. Clair. MPC also delivers gas to AmerenUE, a Missouri local gas distribution facility; and to MGC, an intrastate natural gas company and wholly-owned subsidiary of UPS.[1]

As of December 31, 2001, the ultimate owner of MPC and MGC was UtiliCorp Pipeline Systems, Inc. In early 2002, Gateway Pipeline Company, Inc. k/n/a Gateway Pipeline Company, LLC ("Gateway") acquired the stock of UtiliCorp Pipeline Systems, Inc. k/n/a United Pipeline System, LLC ("UPS") Inc. from UtiliCorp United, Inc., k/n/a Aquila. UPS currently owns all of the interests in MPC; MGC and MIG. MPC and MGC are currently regulated by the MPSC. MIG has always been regulated by the Federal Energy Regulatory Commission ("FERC").

MPC/MGC jointly own and operate approximately 260 miles of intrastate natural gas pipelines, providing transportation service to entities in and around the St. Louis area, including Laclede, Ameren, and other local gas distribution companies, as identified on the map contained in Appendix Y. MPC was placed into service first and has its own tariff. MGC was constructed thereafter and has its own tariff. MIG was placed into service with existing pipeline assets of 5.6 miles in length that crossed under the Mississippi River and constructed an additional one mile of new pipe to connect with Mississippi River Transmission ("MRT"). MIG went into service at the end of 2002 with its own FERC tariff.

[1] Missouri Gas Company was constructed in 1992, extending for 66 miles from an interconnection at MPC's southern terminus to Fort Leonard Wood, Missouri. MGC delivers gas to Fort Leonard Wood, and to the Missouri cities of St. James, Cuba, Waynesville and St. Robert. MGC also delivers gas to the Cities of Rolla, Salem, and Owensville.

As was explained to the Staff, in 2002 and in 2003 the operational staff of MPC/MGC and MIG was small, currently comprised of about 10 employees (office and field personnel). It was explained that these employees would be employed by MPC, and their costs would be allocated between the three pipelines.

Omega was a significant customer of MPC/MGC prior to Gateway's ownership of MPC/MGC, transporting gas to Omega for the 10 years prior to 2002. Omega purchased gas transportation services from MPC and MGC during this period and resold the service and gas commodities on a bundled basis to the U.S. Department of Defense at Fort Leonard Wood. During the period of Aquila's ownership of Omega, Aquila also owned and operated MPC/MGC as well, and all were supervised by one person, Mr. Rick Kruel.

When Omega's 10-year contract with Ft. Leonard Wood expired in September 30, 2002, Omega continued to own and operate the gas distribution facilities on the Fort, but did not sell gas to the Fort from October 1, 2002 through January 31, 2005. From January 1, 2003 to January 31, 2005, MPC/MGC provided gas transportation services to ONEOK Marketing, which, in turn, sold natural gas on a bundled basis to the Fort.

After a lengthy bid or RFP process in which the Fort requested bids for service to the Fort for a ten year term, Omega was the successful bidder. Starting in February of 2005, Omega bought natural gas and transportation services and sold gas to the Fort on a bundled basis and has done so from February 2005 to the current date.

Effective June 1, 2006, Omega was sold to an independent non-affiliated company, Tortoise Capital Resources Corporation, and is no longer affiliated with

MPC/MGC. As of February 1, 2005, Omega had executed transportation contracts with MPC and MGC to provide transportation to the Fort's city gate (see <u>Appendices F-1 and V</u>).

At all relevant times when MPC/MGC were affiliated with Omega, the field operations of Omega were run separately by Omega's staff of 2-3 persons located at the grounds of the Fort. Omega has its own operating personnel, separate payroll, separate checkbook, separate books and records.

Omega pays the highest transportation charges to MPC/MGC of any customer. In essence, the willingness of Omega to pay the highest charges on the MPC/MGC pipelines was a benefit to all the other customers of MPC/MGC who paid lower charges.

Since the acquisition of Omega, and while MPC/MGC were affiliated with Omega, we have operated MPC and MGC fairly, honestly and in compliance with tariff obligations. I have fully disclosed to MPSC Staff that, for efficiency reasons, I act as President of MPC, MGC and MIG. By operating as the top management person for those three pipelines, the cost of hiring two additional fairly compensated executives has been eliminated. As a result of my engineering and management skills, MPC/MGC have been able to operate at a cost lower than under its previous owner, Aquila. As a result, despite inflation, rising property taxes, insurance and payroll, MPC/MGC have not had to request an increase in rates under Gateway's ownership of MPC/MGC.

<u>Count One – Standards of Conduct</u>

Q. What violation does Count One allege?

A. Count One alleges, in part, that MPC/MGC failed to comply with the tariff provisions that require these companies to apply their terms and conditions of service in a uniform and nondiscriminatory manner to non-affiliated and affiliated shippers alike. One allegation is that "MPC/MPC did not require Omega to balance on the system and did not charge Omega any penalty for failing to balance within the tolerance levels contained in their tariffs." (Schallenberg Direct Testimony at page 9)

Imbalances and Omega

Q. Please explain how MPC and MGC balance gas on its systems?

A. MPC can receive gas into its system from two possible interconnects, one north of St. Louis, Missouri, at MPC's interconnect with Panhandle Eastern Pipeline Company (PEPL), which has access to producing gas west to the mid-continent supply areas. The other interconnect is on the east side of MPC's system where MPC interconnects with MIG near the Illinois border and, in turn, MIG interconnects with Mississippi River Transmission (MRT) in Illinois, which has access to natural gas production south of St. Louis with access to Gulf Coast production. MPC has an Operational Balancing Agreement in place with PEPL, and MIG has an Operational Balancing Agreement in place with MRT. Both of these agreements provide an arrangement between the interconnecting pipelines to manage the balance between gas nominations and deliveries. Stated another way, the various imbalances of the shippers are managed by the pipelines at the point of connection.

Q. What do you mean by balancing gas?

A. Each day Shippers or their Agents nominate gas on both the delivering pipeline and the receiving pipeline for their expected gas needs. Every day the actual volumes taken are different from what was nominated for that day so each shipper has an imbalance for that day. Each day the pipelines agree between themselves what the combined imbalance was for all shippers for the previous day, and at that point, it becomes the imbalance between the pipelines. For clarity, PEPL no longer has a delivery imbalance with its shipper, but it now has an imbalance with MPC.

Q. What other factors can have an impact upon the imbalance between the pipelines?

A. Operating conditions can have significant impact on the delivery of volumes. This would include items such as operating pressure on both receiving and delivery pipelines, load profile, temperature, and accumulated line pack. Also MPC retains a small percentage of fuel for all volumes transported to account for losses on the pipeline, measurement error, and gas used by the company in providing the transportation service.

Q. Has managing these imbalances been a problem for MPC/MGC.

A. When MPC and MGC had their tariffs approved (prior to Gateway's ownership), the pipelines did not ask for or receive the right to assess any significant penalty to Shippers who created an imbalance. Subsequently MPC/MGC has never penalized a Shipper for being out of balance. Also neither MPC nor MGC have the authority to buy or sell any quantity of gas off its system to correct an imbalance problem. As a result, MPC/MGC are totally dependant upon the Shippers nominations and actual usage to balance the pipeline systems.

Q. Did you ever consider asking the Commission for such authority?

A. Yes we did. As early as 2002, the year Gateway acquired MPC and MGC, we approached Staff about this issue and several other concerns. I had a number of meetings and calls with Staff regarding penalty assessing rights and the right to buy and sell gas for purposes of resolving imbalances and/or assisting small customers who had no gas purchasing expertise. We prepared draft tariff changes with these proposals. I met at least twice in Jefferson City with Staff to go over these proposals.

Q. Was MPC/MGC proposing to Staff that it be allowed to earn a profit on the gas sales?

A. No. We specifically told Staff any such costs would be a pass through. Our goal was simply to help small customers and avoid penalties with the connecting pipelines for imbalances.

Q. What was Staff's response?

A. They were adamantly against MPC/MGC having any gas buying or selling authority. It was Staff's position that even if we were providing the small sales services to the small customers, MGC would still be considered an LDC and subject to prudence reviews and cost disallowance. They refused to agree to change any of the tariff provisions related to discounts, which would effectively mean that this service could only be provided at maximum tariff rates. They were already aware that most of these customers were also receiving rate discounts. They also told me that the Missouri Public Utility Alliance (MPUA and its affiliated entity, the Municipal Gas Commission of Missouri) was also trying to help small municipal utilities, and that they would probably intervene against such a proposal. They suggested we use Omega as a marketing affiliate to help small customers if we saw fit. It would not require Commission approval for Omega to be a gas marketer. Likewise, they were not in favor of our proposed penalty assessing changes.

Q. So what did you do?

A. First, we did just what Staff suggested in that Omega began to assist small customers where the need was greatest. This, of course, is now exactly why Staff has filed a complaint against MPC/MGC. MPC/MGC continues to manage the imbalances between the pipelines with the same tariff provisions that existed previously, but has required Omega to assist with carrying any extra imbalance for the pipelines.

Q. How does Omega come into play regarding these imbalances?

A. MPC/MGC has requested that Omega provide assistance with managing the imbalance by either nominating more or less gas than was actually being shipped on the MPC/MGC. Based on Staff's apparent lack of knowledge or ability to understand imbalances, Staff now claims that when Omega was taking more gas than they nominated, MPC/MGC "violated section 2.b of the General Term and Conditions." Mr. Schallenberg even quotes the specific paragraph of the tariff, which requires:

> "Receipts and deliveries of gas hereunder shall be a uniform hourly and daily rates of flow as nearly as practicable. If, due to operating conditions, the quantities of gas received are not in balance on any particular day, such imbalance shall be corrected as promptly as is **consistent with operating conditions**."

What Staff is unwilling or unable to understand is that operating conditions do not allow the imbalance to be corrected.

Q. Please explain further.

A. MPC/MGC are without the right to sell gas to eliminate positive imbalances. Staff (including Mr. Imhoff) participated in discussions in 2002 when the dilemma was explained. Staff said they would not support our efforts to solve this imbalance concern. Consequently, we elected to not file to change the tariff.

Q. So, how was the problem solved?

A. It has not been solved. It has just been mitigated.

Q. How has the problem been mitigated?

A. Since FERC Rule 636, nearly all interstate pipelines have the authority to buy and sell gas for operational purposes. Since MPC/MGC does not have this authority, MPC/MGC has had to rely upon Omega to balance MPC/MGC and maintain balance with PEPL and MRT. Omega has done this without compensation from MPC/MGC. To the extent that MPC/MGC had too much gas in its pipelines to be able to receive all Shipper nominations, Omega was asked to reduce its nominations. Conversely, to the extent that MPC/MGC did not have enough gas in its system, Omega was asked to increase its nomination to keep the pipelines in balance.

Q. Does this mean that Omega is getting preferential treatment?

A. No. Omega is providing a service to MPC/MGC without compensation. While Staff alleges that Omega is being given preferential treatment, just the opposite is true. In fact, since the Sale of Omega on June 1, 2006, Omega has indicated that it no longer wanted to provide this service free of charge. As a result, MPC/MGC entered into an agreement to sell the positive imbalance to Omega once these companies have approval to do so. This agreement is attached as <u>Appendix Z</u>.

Q. Why didn't you have some other Shipper provide this balancing service for MPC/MGC?

A. I don't know of any other Shipper or Agent that would provide this service free of charge. A regulated LDC in Missouri would have this service subject to prudence review and would be fearful of cost disallowance. Marketing companies are willing to provide this type of service but for a fee. Moreover, MPC/MGC does not have authority to pay for these types of services in their tariffs. Ultimately, this is a situation that was not anticipated when these companies were set up and the tariffs were established under predecessor owners.

Q. Does MPC/MGC have a significant imbalance?

A. During the past two years MPC/MGC has focused a significant amount of time and effort into aggressively looking for ways to reduce the amount of lost and unaccounted for gas that was being consumed on the pipelines. As I explained in detail in my deposition, in late 2004 we discovered a potential problem with measurement at the PEPL meter station and began to focus on that station by first replacing a large control valve. During 2005 and into early 2006, we conducted extensive testing to determine what else needed to be done to correct the concerns for accurate measurement. In April of 2006, we replaced a second large control valve, along with other piping modifications. During this period of time from early 2005 through April 2006, MPC/MGC accumulated a positive imbalance. It is this imbalance that MPC/MGC has relied on Omega to assist in managing.

MPC and MGC fully disclosed its affiliate relationship with Omega from January of 2002 to June 1, 2006

Q. Do you agree with Staff's assertions or implications that the affiliation of MPC/MGC to Omega was not disclosed?

A. Absolutely not. First, each and every year under Gateway ownership, MPC and MGC filed an affiliate report. Second, even before the first affiliate report of MPC/MGC was filed in 2003, during 2002, the first year of Gateway's ownership of MPC and MGC, the affiliate relationship was fully disclosed to members of the MPSC Staff. Further discussions were held with the Staff disclosing Omega activities. The details of the disclosures are also addressed in the Rebuttal Testimony of Chris John.

Q. Did you meet with Staff and discuss the matter?

A. Yes. I spoke with the MPSC Staff in discussions starting in 2002 about whether Staff would be willing to allow MPC and MGC to have limited authority to buy and sell gas, so MPC/MGC could respond to requests for such a service from some of the small towns they served. Draft tariffs were prepared and delivered to Staff. I attended at least two meetings in Jefferson City, which included several Staff members, in which these tariff proposals were discussed.

Q. Was it clear to you that in 2002, Staff was fully aware of the MPC/MGC affiliate relationship with Omega?

A. Yes, in my conversations with Staff, they acknowledged their full understanding of that relationship. In fact, during that same time period, MPC and MGC answered DRs sent to them by Staff (see <u>Appendix AA</u>) in which Staff admits the nature of these discussions.

<u>Shared Personnel and Facilities</u>

Q. In your discussions with Staff were they also made aware that you were an officer of MPC, MGC and MIG?

A. Yes. In fact, at about the same time frame, I met with Staff to explain to them that MIG, the six-mile interstate that now connects MPC to MRT, was going to file for a FERC Certificate of Public Convenience. The affiliation between MPC, MGC, MIG, as well as Omega, was fully discussed.

Q. Did your status as President of MPC, MGC, Omega and now MIG come up in those discussions as well?

A. Yes. I explained that Omega had operating employees located at the Fort itself and they physically operated the Fort distribution system separately. I explained that MPC employees operated MPC/MGC assets collectively, and for efficiency reasons the same employees would also operate MIG and then those costs would be allocated.

Q. Were other public disclosures (in addition to your direct statements) made that you as President would supervise operation of MPC, MGC, MIG and Omega?

A. Yes. When MIG filed for its Certificate from FERC, the above operating arrangement was fully disclosed as well as the subject matter of the pleadings between the MPSC and MIG in that proceeding. MIG was requesting certain waivers from FERC, because MIG would be operated physically by one set of employees who also operated MGC and MPC and who worked in the same small office. FERC accepted these operations. During this process, Staff was fully informed that MPC, MGC, MIG and Omega would share management personnel for efficiency reasons (see Appendices B-E of Rebuttal Testimony of Chris John).

<u>MPC/MGC Bills Were Appropriate</u>

Q. How do you respond to Staff witness Schallenberg's allegation that Omega billed itself or that somehow MPC's and MGC's bills were somehow inappropriate?

A. Staff witness Schallenberg is absolutely incorrect in his assertions on this matter. First, each invoice of MPC and MGC were prepared independently from any bill prepared for Omega. Mr. Schallenberg does not cite one Omega bill prepared by MPC or MGC for transportation charges in which he identifies any mathematical or calculation errors reflecting any overcharges or undercharges by MPC or MGC. Second, each invoice was prepared pursuant to a valid binding contract in place with a Shipper. Third, all volumes transported each and every month were billed to the respective Shipper without regard to the business relationship with those shippers. In my view, Mr. Schallenberg is trying to mislead this Commission into believing that something else was transpiring.

Staff's testimony totally ignores the fact that from about 1995 through the end of 2001, Utilicorp owned Omega, MPC/MGC, the three Missouri Public Service towns of Rolla, Salem, Owensville and at least two marketing affiliates. Those affiliated marketing companies conducting nearly all agency relationships with the end users. During that period, MPC/MGC invoiced Omega, the three MPS towns and the marketing affiliates for transportation services on MPC/MGC. Yet, the Staff expressed no concern. In the same period, nearly every transportation rate by MPC/MGC to LDCs owned by Utilicorp was discounted and administered by some affiliate of UtiliCorp. Consequently during the same period, MPC/MGC, affiliates of those towns, transported gas to those towns at a discount and sent invoices to these same towns. Again, Staff expressed no concerns. There simply is no reason for Staff to differ in their treatment of these invoices, especially since after Gateway purchased

MPC/MGC, there no longer was any affiliation between MPC/MGC and these three towns.

Q. So what is the basis for Mr. Schallenberg's allegations?

A. The only thing I can think of is that the monthly paper bill to the City of Cuba has the Omega Pipeline Company at the top of the invoice. This was done about the time that Omega entered into the Agency Agreement with the City of Cuba. It served as a reminder to the clerical person that this was a bill to be sent to Omega. In fact, it was a MPC/MGC bill to Omega with MPC/MGC billing data and monthly volume support requesting that payment be remitted to MPC. If this is the basis for this allegation, the allegation is totally unfounded and should be dropped.

Q. What are your conclusions concerning the possible code of conduct violations by MPC/MGC?

A. First, MPC/MGC was never granted the authority to impose any significant imbalance penalty on Shippers. Second, MPC/MGC has no authority to buy or sell gas off its system to correct for an imbalance problem. Third, MPC/MGC fully disclosed its affiliate relationships with Omega in its annual affiliate reports. Fourth, each invoice of MPC/MGC was prepared independently from any bill prepared for Omega. Staff did not identify a single Omega bill prepared by MPC/MGC that appeared improper or inaccurate.

<u>Count Two – Transportation Agreements</u>

Q. Do you agree with Staff's allegation that MPC/MGC have provided transportation service to Omega without a transportation contract?

A. No. This allegation has no factual basis. MPC/MGC provided Staff with a complete set of invoices for 2004, 2005 and three months of 2006 in response to DR No. 11 in GC-2006-0378 and Responses to Request for Production No. 32 in GC-2006-0378 and DR Nos. 15 and 16 in GC-2006-0491. Those invoices included all volumes transported on the MPC/MGC. All volumes shipped were subject to a valid and binding Transportation Agreement as required per the MPC/MGC tariffs. Staff testimony does not provide any factual evidence that any gas was transported without a Transportation Agreement.

Q. So what is that Staff is alleging?

A. On page 19, line 23 of Mr. Schallenberg's testimony he states that "Non-affiliated entities were not permitted to transport over the pipelines without executed transportation agreements." As alleged, Omega is being allowed to do something that other entities are not allowed to do. This is a false statement.

Q. Are there examples of arrangements for non-affiliates to transport across MPC/MGC without separate transportation agreements?

A. Yes. You need look no further than the intervention of the Municipal Gas Commission of Missouri (MGCM and MPUA) in this proceeding. The MGCM states that they represent the Cities of St. James, St. Robert, Waynesville and Richland. This is the same statement made by MGCM during the 2001 proceeding before this Commission (Case No. GM-2001-585). In both proceedings, the Staff was provided a listing of all Shippers. The City of Richland has never been a Shipper on the MPC/MGC pipelines. Yet, this is an entire City that has received all of its gas transported on MPC/MGC without ever having a transportation agreement.

Q. Are you aware of any other examples?

A. Yes. There are end-use customers behind the City Gate stations of Rolla and Owensville that receive transported volumes but are not Shippers on MPC/MGC. Representatives from AmerenUE have told me that Mr. Schallenberg is fully aware of these arrangements, and these arrangements have been reviewed and deemed prudent. Aquila also told me prior to the sale to AmerenUE that they had discussed these arrangements with Staff through the annual ACA proceeding and that Staff was fully aware of the arrangements being provided to transport across MPC/MGC without separate transportation agreements.

Q. Why would Mr. Schallenberg not disclose that these non-affiliated entities have been permitted to transport volumes without a separate transportation agreement and still claim that Omega was given preferential treatment?

A. To do so would completely undermine and erode the foundation of this Complaint Case. Until such time as Staff decided that transportation of gas owned by Omega must be transported under a separate transportation agreement, there was no tariff violation. What Staff has concluded is that MPC/MGC must discriminate against any Shipper, gas consumer or gas buyer that does business in any way with Omega. Not only is this discrimination prohibited by the MPC/MGC tariffs, it would effectively prohibit Omega from being a gas marketer.

<u>**Agency Agreements**</u>

Q. Is there any other reason that may explain why Staff alleges MPC/MGC shipped gas for Omega without a Transportation Contract?

A. As mentioned elsewhere, Staff wants to conclude that because Omega had an Agency and Sales Agreement with Cuba, and that therefore the ownership of the preexisting contracts to transport gas held by Cuba on MPC/MGC somehow (they do not say how) must be terminated and the transportation should be attributed to gas transportation on behalf of Omega as an affiliated transaction.

Q. Do you agree?

A. No. The contracts for transportation held by Cuba on MPC/MGC have been continuous and were in existence for years before Omega became Cuba's agent. Those contracts spell out the rights of Cuba to ship on MPC/MGC and do not limit with whom the City of Cuba can conduct business in managing their capacity.

Q. Does the Agency and Sales Agreement between Cuba and Omega specifically state Omega is Cuba's agent?

A. Yes. The Omega Agency and Sales agreement with Cuba (<u>Appendix I</u>) clearly states Omega is Cuba's agent, and Cuba still holds capacity on MPC/MGC. As its agent, Cuba is allowing Omega to use the Cuba transportation capacity held by Cuba on MPC/MGC. Cuba is not an affiliate of MPC/MGC.

Q. Is this unusual?

A. No. As Mr. Clark C. Smith states in his testimony, this agency role played by marketers is normal, especially when small LDCs are involved. Mr. Smith will discuss these types of business agreements in his testimony.

Q. Do any other shippers on MPC/MGC use these types of agency agreements?

A. There are several shippers that use an agent. ONEOK has an agency relationship with the cities of St. James, St. Robert and Waynesville. MPC/MGC invoices these cities by mailing the month-end invoice to those cities in care of ONEOK Marketing (See Appendix X for several examples).

The same agency relationship that Staff alleges is a problem is the same one that was previously held by Ameren Energy Marketing as a marketer for Cuba for several years prior to 2003. Pursuant to Appendix M, Ameren Energy Marketing sold gas to Cuba using Cuba's capacity on MPC/MGC. Yet, Staff makes no allegation that Ameren needed its own transportation agreement to provide gas service the city of Cuba.

The Ameren/Cuba agency relationship in effect for years is similar to the relationship between ONEOK and the cities of St. James, St. Robert and Waynesville. Again, Staff makes no allegation that ONEOK is shipping gas without a contract. Similarly, Staff has no basis to disregard the Cuba contract with MPC/MGC when Omega is marketing gas to Cuba.

Q. Do you have any other examples of a MPC/MGC shipper using an agent?

A. Yes, Cornerstone Energy acts as an agent for several of the industrial customers that they serve. The industrials hold their own capacity, which is managed by Cornerstone as their Agent. Yet, Staff makes no allegation that Cornerstone needs to hold their own capacity to serve in this agency role and sell them gas. This is also quite consistent with the Agency role that ProLiance provides to Laclede to serve the town of Sullivan. Likewise, Staff makes no allegation that ProLiance must subscribe to its own capacity to serve this town even though they have provided this service for several years.

Q. Is Mr. Schallenberg aware of this latter agency relationship?

A. Yes, he should be. Mr. Schallenberg was involved in the regulatory review of the sale of the distribution system from Fidelity to Laclede earlier this year.

Q. In summary, what is the fatal flaw with Staff's position?

A. Staff is imposing a double standard against Omega. For Staff to make this allegation now, after years of practice and experience to the contrary, is clearly unreasonable and unjustified. Shippers must be allowed to use and manage their contracted capacity as allowed by tariff and to purchase gas supplies from a vendor of their choice, whether affiliated or not.

Q. How do you weigh the evidence on this allegation?

A. The invoices for 2004, 2005, and the first quarter of 2006 clearly show that MPC/MGC did not provide transportation services without a transportation contract. Shippers on MPC/MGC have for years allowed other parties to act as their agent in managing their contracted capacity without the assumptions or positions now being suggested by Staff. There are several examples in which non-affiliates transported gas across MPC/MGC without separate transportation agreements. There is fundamentally no foundation for this allegation. It flies in the face of industry practice.

<u>Count Three – Rates and Discounts</u>

Q. Do you agree with Staff's assertions that Omega received improper discounts for transportation on MPC/MGC?

A. No. In fact, Omega, under ownership by Gateway, pays the maximum Reservation rates on MPC and pays the highest rates on MGC of any Shipper on MGC.

Q. Did MPC or MGC offer a discount to Omega?

A. For the Transportation Agreements that Omega was a signatory party, MPC did not provide a discount to Omega, but charged its full rate. However, from February 1, 2005 to January 30, 2006, MGC provided a discounted firm transportation rate to Omega as follows:

** ____________

____

____________ ____________ ____________

____

____

____**

As you can see from the above table, the maximum tariff rate that any shipper can pay (and calculated as required by Paragraph 3.2b of the MGC tariff) to a location other than FLW is **______**. Omega is paying the highest rate of ** _________** which is a rate that is currently higher than the rate that any other Shipper pays. Any other shipper requesting transportation capacity to Fort Leonard Wood would pay no more than the rate charged to Omega.

Q. It appears so obvious that Omega, while an affiliate of MPC/MGC, did not receive favorable rate treatment. On what basis does Staff hold the opposite view?

A. First, Staff's position presumes that any agreement that Omega enters into to provide gas sales is, in fact, an agreement with MPC/MGC even though MPC/MGC are not a party to those agreements. Then Staff appears to misstate the facts. Only by assuming that MPC/MGC is party to an Omega gas sales agreement, when it is not a signature party, can Staff then allege that Omega received an improper discount.

Q. How can Staff make that assumption?

A. Staff simply assumes it without any legal basis to do so. Elsewhere in my testimony, I explain in detail why the Omega transportation contracts with MPC/MGC are independent of any sales agreement between Omega and Cuba. In fact, Cuba, a third party, acknowledges that its agreement with Omega is an independent contract. In addition to Respondents' witness Clark C. Smith, I also explain the normal and customary nature of Omega's agency and sales arrangement with Cuba, which severely undercuts Staff's allegations.

MPC and MGC Transportation Agreements with Cuba were distinct from Omega's Sales Agreement with Cuba, and Omega did not control Cuba's Distribution System

Q. Please explain the sales contract between Omega and the City of Cuba and the transportation contracts between MPC/MGC and Cuba.

A. Omega had an Agency and Sales Agreement with the City of Cuba (dated July 1, 2003, see Appendix I). Cuba had a preexisting transportation contract with each of MPC and MGC since at least 1999, prior to the agency and sales agreement, and well before Gateway's ownership of MPC/MGC. As stated elsewhere in my testimony in more detail, Omega's status as a marketer and agent for the City of Cuba is no different than Ameren Energy Marketing, the affiliated marketing entity of Ameren, when it provided the same agency and marketing services to the City of Cuba for a number of years (see Appendix M). In neither instance was Ameren Energy Marketing or Omega providing distribution services to the City of Cuba. In the case of Ameren, like Omega, both entities, under their respective agreements with Cuba, were responsible for purchasing natural gas and making arrangements on interstate pipelines to get the gas to MPC. When the gas reached MPC, it was then transported on MPC/MGC to Cuba, utilizing the preexisting MPC/MGC Transportation Agreements with the City of Cuba. In all cases, the transporting party was Cuba and either Ameren or Omega as the agent.

Q. Does the natural gas sales and agency agreement between Omega and Cuba specifically state that Omega is an agent?

A. Yes. I direct your attention to the first page of that Sales Agreement under the paragraph titled "Special Provisions." In that section, it says that "**___________ ______________**" In addition, I direct your attention to paragraph 4 the "Terms and Conditions" entitled "Transportation." In the body of that paragraph, it says that:

> "**____
> ____
> ____
> __________________**"

Q. Does the Sales Agreement between Omega and Cuba specifically discuss the transportation agreements that Omega holds with MPC/MGC?

A. Yes, it does. I direct your attention to paragraph 4 of the "Terms and Conditions" behind the first page of the agreement which reads:

> "**____
> ____
> ____
> ______**"

What this clearly means is that the City of Cuba, as the Buyer, is still responsible for transportation after the gas reaches the Delivery Point at the city gate of Cuba.

Q. Did Buyer request that Omega act as its agent?

A. Yes, it did. I direct your attention to paragraph 16 of the "Terms and Conditions" entitled "Independent Contracts." In that section it states:

“**____
____
____
____
____
______________________________________**”

Q. Was Buyer under any obligation to buy gas from Omega as a result of Omega’s affiliated relationship with MPC/MGC?

A. Absolutely not. Again, I direct your attention to that same paragraph 16 in the Sales Agreement referenced above where it states:

“**____
____
____
____
____
____**”

Q. Is there any merit to Staff’s allegation or implication that Omega was taking control of Cuba’s distribution system by selling gas or transporting gas to G-P Gypsum Corporation under a transportation agreement?

A. No. Staff continues to ignore the plain meaning of the contract.

Q. Please explain.

A. On June 17, 2003, Omega executed a transportation agreement with Cuba (Cuba LDC Transport Agreement, see Appendix U) whereby Cuba agrees to a transportation rate to Omega at a price of **__________** per Dth so that Omega, as a shipper, can transport gas through the City owned distribution system to the natural gas meter with G-P Gypsum Corporation. Nothing in the Cuba LDC Transport Agreement gives Omega control over Cuba’s distribution system.

Q. Is Staff really asserting that Cuba independently gave up control of its LDC system?

A. I doubt that Cuba would be allowed to do that even if it wanted to. Although Staff alleges that control of the Cuba distribution system was transferred, they cannot point to a single contract provision that supports their position. At no time did Omega (or Ameren Energy Marketing for that matter) take control of the Cuba distribution system.

Q. Is there anything inherently wrong with Omega arranging for a transportation agreement on Cuba's Distribution System?

A. Absolutely not. The City of Cuba is a municipally owned local distribution system. The City of Cuba has the right to sell transportation services on the distribution system if it so chooses. I do not understand how Staff can take the position that such a sale would give Omega control over Cuba's distribution system.

Q. Staff alleges that the invoices that Omega sent to Cuba and to G-P Gypsum showed distribution charges on the bills. Do you agree?

A. No, Omega did not charge a separate distribution charge. As a matter of billing convenience, Omega would collect from G-P the **________** per Dth cost of the Cuba municipal transportation charges to transport the G-P volumes from the MGC/Cuba city gate meter to the Cuba/G-P delivery meter. Omega would then credit the same charges paid by G-P to the agency and gas purchases charged to the City of Cuba. This is intended to be nothing more than an accounting for payment of the transportation fee paid by G-P to the City of Cuba for their LDC transportation. The point of sale for G-P was always the MGC/Cuba city gate station. Therefore, G-P was responsible for paying the Cuba distribution charge.

MPC and MGC treated the four City own municipalities of Cuba, St. James, St. Robert and Waynesville on a similar basis.

Q. Please explain the facts and circumstances surrounding the cities of Cuba, St. James, St. Robert and Waynesville?

A. From the time of the Gateway acquisition on early 2002, the four municipal owned systems have been treated equally. Each of the cities have separate transportation agreements. When the discounted rates were changed for one city, they were changed for the others in close proximity depending upon contract renewal date. In 2002, two of these cities were using interruptible transportation agreements to serve residential customers. They expressed a preference for the interruptible rate because it was 100% commodity based (i.e., only charged with the throughput).

Q. Please explain further.

A. MGC has a two-part rate, a reservation rate of **______________** and a commodity rate of **_____________**. The reservation charge is paid monthly without regard to throughput. While these cities wanted the firm service, they asked if the rates could continue to be based upon a commodity throughput so that the cost of transportation would follow the volume of gas sold. Based upon their request and as an accommodation to the cities, the reservation charges for MGC were spread over the year as a commodity charge. These types of discounts were offered to the cities as early as 2002. Although the reservation rate was being discounted to zero, the commodity rate was higher than that posted in the tariff. The MPC/MGC tariffs specifically allow the pipeline to discount their rates without regard to methodology.

Q. Can you be more specific?

A. Yes. The MGC firm transportation rates offered to the cities in late 2002 and early 2003 was a reservation rate of **______** and a commodity rate of ** ____**. All four of the cities accepted this discount rate. In the second quarter of 2003, MGC changed the rates to a reservation rate of **_________** and a commodity charge of **____**. At that time, three of the cities accepted the discounted offer and the City of Cuba preferred to return to the two- part rate. At that time, the City of Cuba had a capacity utilization rate of **________**, so the equivalent rate to the **_______** commodity charge was a reservation rate of **________** and a commodity rate of **_____**. These rates were in place until the time when Staff filed their complaint stating that the pipelines were charging rates above their tariff rates. The Rebuttal Testimony of Chris John sets forth the contracts and contract rates for these cites and also verifies that these cities paid equivalent rates during the relevant time period.

Q. So, each city was treated on an equal basis?

A. Yes. Each of the four cities paid equivalent prices for their transportation services and was offered the alternative of using either a one-part or a two-part rate. We were simply trying to assist the cities in maintaining their customer base and provide them their preferred billing method.

<u>The Commodity Charge and Discounted Rates</u>

Q. Are you charging rates in excess of your authorized tariff rates?

A. Absolutely not. Even the work papers (<u>Appendix BB</u>) produced by Staff in this case confirm that the rates being charged these cities have been discounted and are significant discounts to the maximum tariff rates.

To take the overly narrow view that the commodity charge can only be the commodity charge without regard to the discounted reservation rate is wrong and misleading. This is nothing more than a way to bill a discounted rate for firm service. Further, this method of calculation for billing purposes has been done by MPC for Waynesville prior to Gateway's ownership dating back to 1994. Yet, Staff raised no objections to that billing methodology. The assertion by Staff that MPC/MGC have violated their tariff and charged certain Shippers (St. Robert, St. James, Waynesville and Cuba) in excess of the maximum tariff permitted rates is unfounded and misleading to this Commission.

Q. When Staff issued its report attached to its Complaint in GC-2006-0378 and said this billing method was not allowed even if it was at the request of these cities, what did you do?

A. We sent new discount letters to each city, Appendix CC, explaining that we could not continue to bill them as before because of MPSC Staff's position. We started billing the cities with calculations at the **____________________** reservation rate and a **_________________** commodity rate. While we do not believe the Staff is correct on this matter, the cost of litigating this issue is too costly to MPC and MGC.

Q. You said the Staff filed no complaint against MPC when under prior ownership it had charged Waynesville using the same billing methodology they are now complaining about. Is this correct?

A. Yes. Attached as Appendix DD is a contract between Waynesville and MPC dated December 1, 1994, prior to Gateway's ownership of MPC/MGC. Under this contract in paragraph 3, it specifically states that the rates applicable are the tariff rates but the charge shall be calculated using a commodity calculation. Specifically, Paragraph 3(a) of the MPC/Waynesville contract states that the rates to be charged are the applicable rates and charges on file with the MPSC. Under paragraph 3(b) MPC agreed to invoice Waynesville at “** ______** per dekatherm based on full rates at December 1, 1994, at a ** * load factor.” This one-part billing calculation was used by Waynesville and MPC despite MPC’s maximum commodity rate of 16.99 cents per dekatherm. It is unclear how long MPC used this billing methodology for Waynesville, but it appears they used it until 2002.

Q. Is this calculation similar to the commodity calculation used by MGC for Waynesville, St. Robert, St. James and Cuba for a period of time?

A. Yes, it is.

Q. Are you aware of any complaint filed by the Staff regarding this billing methodology used by MPC while it was owned by Utilicorp?

A. No.

Q. Was it your intention to violate any tariff provisions?

A. No, certainly not. This methodology was used by MPC under prior ownership with no problems and is a significant discount to the tariff rates that are allowed under the tariff. Also, the rate schedules for MPC/MGC in their tariffs allow MPC/MGC "the right to flex its rate schedules in its sole and complete discretion." (See Section 3.5 of each of MPC/MGC rate schedules).

<u>The Omega and City of Cuba Agency and Sales Agreement</u>

Q. How do you respond to Mr. Schallenberg’s claim that effective July 1, 2003 (p. 19 of his testimony) that Omega violated the MPC/MGC tariffs?

A. In my view, the claim is totally without merit. July 1, 2003, was the date in which Omega entered into an Agency and Sales Agreement with the City of Cuba. This is an independent agreement between two non-regulated entities. Cuba already had Transportation Agreements in place with MPC/MGC and had been a Shipper in MPC/MGC since at least 1999. Cuba is not an affiliate of MPC/MGC. Staff, however, concludes that this single event should therefore allow all shippers to receive the same transportation rates provided to the City of Cuba. Yet, there is nothing in the tariffs that makes this distinction.

Q. Why shouldn't MPC/MGC charge the City of Cuba the maximum rates since this is Omega's gas being sold to Cuba?

A. Since all four of the cities were receiving approximately the same discounted transportation rates, Staff is proposing because Omega is now selling gas to one city, Cuba's rate must now be the maximum rate of any shipper, or in this case, the rate to Cuba must be increased to the maximum tariff rate. Thus, the City of Cuba would be charged a higher rate than the other three cities. This type of rate discrimination is prohibited by the tariffs of MPC/MGC.

Q. What do you conclude from the Staff allegations?

A. Staff apparently believes that once the City of Cuba enters into an Agency and Sales Agreement with Omega, Cuba should be charged the maximum tariff rate applicable. This would be discrimination and in violation of Section 12.a of the MPC/MGC tariffs.

Q. Why would Staff propose that the City of Cuba pay a higher rate than the other cities?

A. I can't really be sure why Staff would want to promote this type of rate discrimination. I do know that the City of Cuba told me that the MPUA was also attempting to recruit the City of Cuba as a member of their alliance. I find it very interesting and concerning that based on emails produced by Staff in response to DRs (Appendix EE) in this case, that Staff may be intentionally working with the MPUA to undercut the benefits of competition between separate third-party sellers of gas, which has the potential effect of causing customers to pay higher prices for gas supplies.

Q. Can you be more specific about your concerns?

A. At the same time that Omega was providing a gas supply proposal to Cuba, Omega had also made a proposal to the City of St. James to provide an Agency and Gas Sales Agreement. At the time, St. James was a member of the MPUA. St. James told me they intended to drop out of the MPUA (MGCM) before they could enter into an agreement with Omega. The MPUA acts as an agent for various municipalities just like many other marketers but for a fixed fee. Based on these emails, it appears that discussions were taking place between MPSC Staff members and representatives of the MPUA regarding Omega's efforts in 2002/2003 to develop a gas marketing business by offering various customers better supply prices than they had with the MPUA. For example, in an email dated October 23, 2002 at 1:11 pm, from Eve Lissik of the MPUA to Carmen Morrisey of the MPSC Staff, it appears Eve Lissik spoke with a "contact" at ONEOK that has our **[MPUAs]** contract with St. James. Before St. James can be released from our contract, our gas commission board members are going to want the details of Gateway's deal with St. James. "Thanks for your help on this." The "thanks for your help on this" more than suggests the MPSC Staff is supplying information of confidential matters to a competitor of Omega and another entity seeking St. James' business in favor of one entity over the other, i.e., to the exclusive benefit of the MPUA. As another example, in an email from Carmen Morrisey dated October 30, 2002, at 9:15 am, to Eve Lissik of the MPUA, Ms. Morrisey says that the MPSC intends to "send data request Ries" in regard to Staff's belief that MPC/MGC is tying its discounts to customers using Omega as a gas supplier. Morrisey goes on to say that "someone from here, probably Warren Wood will likely be calling you…"

Q. Did you ever receive data requests as the email suggests?

A. Yes, we did. In a data request response, we provided the specific pricing proposals that Omega had provided at that time to the City of St. James. (<u>Appendix AA</u>)

<u>MPUA and MPSC Staff</u>

Q. What concerns do you have about the apparent relationship between the MPUA and MPSC Staff?

A. While I cannot address (i) the technical legal propriety of Staff sharing confidential information with one gas supplier in an attempt to assist that supplier in its competition for business with specific customers; or (ii) the legality of MPSC Staff sharing confidential information regarding its discussions with MPC/MGC with persons not on MPSC Staff, these emails do strongly suggest an appearance of impropriety. Forget for the moment, Omega's competition with MPUA for business, it is wholly inappropriate for Staff to favor the MPUA over other marketing companies seeking the business of St. James, Cuba, St. Robert, Waynesville or any other customers or potential customer.

Q. Do you have any other concerns regarding the MPSC relationship with the MPUA?

A. Yes. Their obvious favoritism toward the MPUA over Omega raises the question about the objectivity of any conclusions reached by Staff in face of the overwhelming evidence that the contract between MPC/MGC and Cuba for transportation services were not tied to Cuba doing business with Omega. For example, Staff ignores the fact that Cuba states in its contract that Cuba's Transportation Agreements with MPC/MGC were not tied to Cuba doing business with Omega. I am very concerned that the favoritism displayed to the MPUA, a competitor of Omega, reflects the loss of objectivity by the MPSC Staff to conduct an unbiased inquiry. It may also explain the vigorous support that the MPUA has provided in their intervention in these complaint cases. They have an incentive to reduce or eliminate competitors to their fee based services.

<u>**Omega's Other Customers**</u>

Q. In your opinion, are Staff's allegations concerning Cuba the same allegation that Staff makes against Omega's other customers.

A. Yes. Each time Omega enters into a commodity sales agreement with a customer, Staff then independently determines that that customer must pay the maximum tariff rates independent of how the gas is shipped to that customer. Respondents' witness Clark C. Smith also explains why Staff's position is not appropriate from an industry practice.

Q. Can you explain why, in the case of G-P Gypsum, it becomes even more egregious?

A. Yes. G-P Gypsum is a gas consumer located on the Cuba municipal distribution system. For years the City of Cuba has provided intermittent gas service to the G-P plant as a direct sales customer. Therefore, the Cuba Transportation Agreements with MPC/MGC included capacity for service to the G-P plant. However, the City had reached a point with their current gas supplier where it could no longer effectively compete with propane to provide gas to the plant. At the time Omega entered into the Agency and Gas Sales Agreement with the City of Cuba, G-P had been using propane for some time. This loss of a major customer to a small municipal distribution system represented a significant revenue loss to the City. As a result, the City of Cuba asked for help to get this major customer back on gas.

Omega committed to do something the previous gas supplier was either unaware of or unable to do: namely, to get the G-P plant back on gas and to transport the G-P volumes across the Cuba distribution system. The City of Cuba granted Omega a transportation rate to transport gas across the Cuba distribution system to the G-P plant. This arrangement was being developed at the same time that the MPC/MGC contracted transportation rate to Cuba was being increased.

Q. Was Omega successful in getting G-P to switch back to gas as their fuel source?

A. Yes, within a few months, Omega was able to get G-P to switch back to gas and to pay the Cuba distribution charges. This was only possible because of the Agency and Sales Agreement that Omega had with the City of Cuba enabled Omega to ship gas to

Cuba using the Cuba Transportation Agreements in the same manner that the City had done previously.

Q. Is there something wrong with transporting gas this way?

A. No, it is fairly standard within the industry. Such arrangements promote efficiency throughout the industry, including more efficient utilization of pipeline capacity.

Q. So has G-P continued to take gas?

A. Yes, they have consistently used gas except when interrupted during periods of very cold weather, which makes them an interruptible customer.

Q. Is Cuba satisfied with this arrangement?

A. Yes. Omega has been the Agent and gas supplier to Cuba for over three years. Cuba has indicated that they are finally making money for all of their investment in the distribution system and are actively connecting new customers.

Q. So what does Staff allege?

A. Staff believes that as soon as Omega entered into a commodity sales agreement with G-P, that G-P should be charged the maximum interruptible rate even through neither G-P nor Omega is the Shipper. The Shipper is the same as it has always been, the City of Cuba. Thus, not only does Staff propose that MPC/MGC discriminate against the City of Cuba, they now also propose that MPC/MGC must police each molecule of gas to determine who receives it and when it was sold and by whom.

Staff further alleges that if Omega sells the gas, then MPC/MGC can not allow that gas to be shipped under a valid binding Transportation Agreement with the City of Cuba but must now charge the maximum interruptible rate for the gas delivered to the Cuba City gate on behalf of the G-P plant. This would not only deny

Cuba the right to use its own capacity, it would also deny G-P the right to select its own gas supplier. I believe that this is discrimination and a clear violation of the MPC/MGC tariffs.

Q. Why would Staff propose that MPC/MGC discriminate in this manner?

A. Perhaps this is why Staff originally asked for this Commission to assert jurisdiction over Omega, so that Omega's business activities could then be subject to regulatory oversight by the Staff. While this Commission has appropriately dismissed Omega from these proceedings, Staff is still attempting to exert control over Omega business activities in any way they can even if it would require MPC/MGC to violate their own tariffs.

<u>Omega Transportation Agreements</u>

Q. Does Omega hold Transportation Agreements on MPC/MGC?

A. Yes, Omega holds Transportation Agreements on MPC/MGC. Furthermore, Omega paid the highest rates of any shipper while it was an affiliate of MPC/MGC.

Q. Can you describe these contracts?

A. Attached as <u>Appendices</u> F-1 and V are the Transportation Agreements MPC/MGC entered into with Omega effective February 1, 2005. The MPC agreement is at MPC's maximum reservation and commodity rates with no discount. The MGC agreement is a 10 year agreement with the highest **______** rate of any shipper and a **____________** commodity rate. The effective transportation rate for this contract (as described in section 3.2b of the MGC tariff) is the highest rate of any shipper on MGC. During all relevant time periods, MGC charged Omega a reservation rate of **______** and a commodity rate of ** ____** per Dth.

Q. Have you provided all these contracts to Staff?

A. Yes. The contracts clearly indicate that no Shipper pays more than Omega. In addition, no other Shipper has entered into a 10 year agreement without significantly larger discounts than those provided to Omega. In Staff's Direct Testimony in this case, I find no evidence that any Shipper pays more than the charges Omega pays as described above.

Q. Can you be more specific?

A. Yes. If you look at Appendices N-Q of the Rebuttal Testimony of Chris John of Brown Williams Morehead & Quinn, it shows Omega's charges compared to other MGC shippers, and Omega's charges are the highest of all shippers. I also discuss these rates elsewhere in my testimony.

Q. In summary, does the evidence support the allegation that MPC/MGC provided Omega with improper discounts or favorable rate treatment?

A. No, it does not. Omega, while an affiliate, paid the maximum Reservation rates on MPC and the highest rates on MGC. Staff's concern is unfounded because it is based on a faulty assumption that MPC/MGC is a party to an Omega gas sales agreement, when, in fact, it not even a signature party.

Count Four – Accuracy of Discount Reports

MPC and MGC filed accurate discount reports.

Q. Please respond to Staff's allegations that MPC and MGC did not file or did not accurately file discount reports quarterly.

A. Staff is taking the position that is clearly outside the requirements of the tariff for MPC/MGC. Mr. Schallenberg repeats the specific language contained in the tariffs for reporting discounts, but then proceeds to independently supplement those requirements he now believes should have been included in the tariff for reporting discounts.

Q. What additional provisions is he proposing?

A. Mr. Schallenberg is now proposing that MPC/MGC be responsible for reporting all business activities of its affiliates including gas marketing activities and explaining in detail how Omega conducts its business as an Agent for any Shipper holding capacity on the MPC/MGC.

Q. What is your response to the allegation that the discount reports were inaccurate?

A. Again, I believe that the Staff is incorrect. Staff does not point to any specific discount that was provided to a Shipper and yet not reported. Each shipper receiving transportation services from MPC/MGC which receives a discount off maximum rates is reported. There is no tariff language that even remotely refers to MPC/MGC reporting agency agreements whether affiliated or not of its Shippers. There is no requirement that implies that MPC/MGC report gas sales agreements for its affiliates.

Q. Did you report discounts to Omega for transportation services?

A. Yes. When MGC provided a discount to Omega effective February 1, 2005, it was reported. Staff acknowledges that they received this report and the report included the rate comparison as required by Paragraph 3.2b confirming that this discounted rate exceeded the maximum rate for all other Shippers. (See Appendix FF).

Count Five – Willard Facilities

MGC properly paid for and owns a pipeline laid from MGC's existing line to Willard Asphalt

Q. Can you explain Staff's allegation that MGC paid for construction of a lateral for Omega to Willard Asphalt interconnecting with MGC's existing line?

A. No, I cannot because again Staff's position is both inaccurate and has fundamentally changed from its original position. First, in a Motion to Compel discovery filed in this case, Staff alleged that Omega paid an invoice to construct a pipeline to Willard Asphalt. We responded to the Motion to Compel that:

(i) Nowhere on the invoice did Omega's name appear as the vendor;
(ii) MGC was the vendor and paid the invoice;
(iii) MGC has placed these assets in service as an asset.

Without any supporting evidence, Mr. Schallenberg continues to assert (on page 35 of his testimony) that MGC paid Omega invoices in conjunction with building this lateral and meter station. This is simply not true.

Q. How has Staff fundamentally changed its position?

A. Now, Staff in its testimony apparently understands that MGC paid for the pipeline and meter station, but now it alleges that MGC should be reimbursed for the cost of the project by Omega or Willard Asphalt.

Q. On page 35 of Mr. Schallenberg's testimony, doesn't he state that Omega or Willard is required by section 6.e of MGC's tariff to reimburse MGC for the cost of this line?

A. Yes.

Q. Do you agree with Mr. Schallenberg's interpretation of section 6.e of the tariff?

A. No. I think that Mr. Schallenberg is misinterpreting paragraph 6.e. His interpretation is incorrect, and it could mislead the Commission. Paragraph 6 of the MGC Tariff applies only to Billings and Statements, so section 6.e is only intended to cover billings or statements for reimbursement of facilities. Nowhere in the tariff is MGC required to demand a shipper to reimburse MGC for the cost of installing facilities. If this were the case, as Mr. Schallenberg testifies, then MGC would have no rate base investment because all of its costs would have been reimbursed by each individual shipper at the time capacity was contracted. This is clearly not the case. To now require that Omega or Willard reimburse the installation cost of the Willard meter station would be to discriminate against Omega or Willard.

Q. So why did MGC elect to build and pay for the lateral and meter station to Willard?

A. In the area between St. Robert's municipal gas system and Willard Asphalt, there are a number of potential gas users and commercial enterprises, including a motel, a concrete mixing plant, other businesses and residential developments. St. Robert has an interest in establishing a second meter station from MGC to allow it to expand its municipal gas distribution system.

Without this second delivery point, the existing delivery system for St. Robert does not have the extra capacity to provide service to these potential customers. MGC saw an opportunity to increase its business by establishing a connection with Willard Asphalt and providing a second delivery point to St. Robert. In fact, at the Willard meter station, MGC has already installed an addition flanged connection point to install a meter for an additional St. Robert meter station. MGC has an open offer to St. Robert to install a meter station (without reimbursement) whenever they decide to extend their distribution system to the Willard meter site. The City has indicated that they will commit the financial resources to expand their distribution system once they have commitments from enough customers to convert to natural gas. Therefore, it was a business decision for MGC to install the lateral to establish a new delivery point to Willard and a potential second delivery point to St. Robert. Had MGC required either entity to fully reimburse it for the facilities, it is unlikely that the project would have ever been completed.

Q. Was it a sound investment of MGC's resources to install a pipeline and meter to Willard Asphalt?

A. Yes. During the first 18 months of operation, the Willard deliveries generated approximately **__________** of additional revenue for MPC/MGC. Willard is now considering the replacement of their Asphalt plant with a larger unit and, more importantly, MGC has extended its system to the growth area near St. Robert. MGC is now poised to benefit from the growth of St. Robert's LDC system in the near future. The MGC line to Willard Asphalt creates an incentive for St. Robert to eventually extend its system because MGC's extension is now just outside the City limits and has made their distribution extension less costly to complete, i.e. they will have to lay less distribution pipeline to reach the area given MGC's extension. In short, the decision for MGC to spend approximately **__________** to extend its system makes sense in both the short run and long run.

Q. Does the Omega/Willard Sales Agreement give Omega control of any pipeline segment or delivery meter?

A. No. Omega entered into a customary Natural Gas Sales Agreement dated August 1, 2003 (Omega/Willard Sales Agreement) (<u>Appendix J</u>). The language in the Omega/Willard Sales Agreement reads:

“**____**”

This language does not say that Omega, as the Seller, will own any pipeline or delivery meter. Typically what happens in a situation where a marketing company is trying to develop new business and encourage propane users to switch to natural gas usage, the marketer may make arrangements with the applicable pipeline company to reimburse the pipeline company for the cost of construction.

In this particular case, even though Omega had protection in its contract with Willard to be reimbursed for any costs Omega incurred, Omega never incurred any such costs. All bills or invoices received with respect to the installation of any pipe from MGC to Willard Asphalt were paid for by MGC.

Q. Why does Staff insist that MGC seek reimbursement from Omega or Willard Asphalt?

A. This is consistent with the position that Staff has taken in the past. In the early 1990s, Staff wanted Laclede to reimburse MPC for all meter stations installed by MPC and not allow the cost of the meter stations to be included in the Cost of Service for MPC. The Commission ultimately concluded that those meter station costs could be included in the MPC Cost of Service. However, it does not appear that the Commission’s decision will change the position of Staff. MGC certainly does not want to transfer the line to Willard Asphalt or to any other party because MGC would not be in a position to use the line to establish the second delivery point to St. Robert.

Q. Have you recently expanded your system in other areas without seeking reimbursement from the customer?

A. Yes. MPC is currently adding a meter station near St. Paul, MO to help grow transportation business with Laclede. That meter station will cost about **______ ______** and will be completed by the end of 2006. The intention was to give Laclede another take off point in an area with significant growth potential so that, in the long run, MPC will be positioned to earn greater revenues from Laclede as its MDQ increases through the connection of additional distribution customers.

Q. Will Laclede reimburse you for the cost of the meter station?

A. No, Laclede will not reimburse MPC. In addition, absent the pending Staff complaint, MPC had no intention of filing a rate case to recover the added cost of this meter station and considered that decision (as well as the decision to install the Willard meter station) a prudent business decision intended to grow the pipeline's overall business.

Q. Please summarize your evaluation of the evidence concerning the allegation that MGC paid for a lateral for Omega?

A. Contrary to Mr. Schallenberg's view, there is no evidence that MGC paid Omega invoices in conjunction with building the Willard meter station. MGC paid for the lateral. No reimbursement of costs from Omega or Willard Asphalt is appropriate. It was a business decision for MGC to build the lateral to benefit from the expected growth in demand in the near future.

Count Six - Billing

Q. Can you please explain the facts surrounding the allegation by Staff that MPC/MGC granted more favorable billing terms to Omega as Shipper such as allowing Omega to pay its bills to MPC/MGC slower than any other Shipper?

A. I disagree with Staff's allegation that Omega received more favorable treatment than other Shippers on MPC/MGC. Based on my review, Omega paid its bills to MPC/MGC faster than any other Shipper or any other agent for a Shipper. Staff was provided a complete set of invoices for all shippers for 2004, 2005 and three months of 2006. Staff was also provided a complete general ledger of MPC and MGC for years 2004 and 2005 showing when payments were received, so the facts were readily available. Each month, on or about the first business day of each month for the preceding month, MPC/MGC billed each Shipper or their Agent, mailing the invoices on the same day.

Q. When you reviewed the records of MPC/MGC including 2004-2005 billing data and the dates that payments were received, what did you find?

A. As shown in Appendix GG attached, Omega paid its bills faster than any other Shipper or their agent. Omega took an average of 5.5 days after the mailing date of the bills to make its payments, while the average for all others was more than double that time, 15.7 days. The facts clearly show that Omega consistently paid its invoices faster than other Shippers.

Q. Did you provide Staff with sufficient information on this issue before Staff raised this claim?

A. Yes. Staff received a general Ledger for MPC/MGC so they could have determined receipt dates of payments for invoices. Staff also was provided with a complete set of invoices for years 2004 and 2005. With this information, Staff had all the necessary information to determine the time interval between invoice being sent and the date payment arrived to be able to reach the same conclusion as contained in Appendix GG.

Q. What do you conclude from the your examination of the facts?

A. MPC/MGC did not grant Omega more favorable billing terms than any other Shipper. The evidence clearly shows that Omega paid its bills faster than any other Shipper.

Conclusions

Q. Will you please summarize your conclusions?

A. In summary, based upon the Rebuttal Testimony filed by MPC and MGC, the following is clear:

1. Staff has not adequately supported or justified the allegations against MPC/MGC on any of the six counts, which I addressed in my testimony. More specifically, MPC and MGC did not provide rate or other contract terms to Omega that discriminated in favor of Omega and against any other Shipper. Quite to the contrary, Omega, while an affiliate of MPC and MGC and transporting on MGC from February of 2005 to June 1, 2006, paid the highest transportation rates of all Shippers on MGC. Moreover, without compensation, Omega has assisted MPC and MGC in the balancing of its pipeline system so that MPC and MGC and all of its Shippers could avoid penalties for imbalances. Finally, Omega has paid its bills faster than any other Shipper on MPC/MGC.

2. Staff simply does not understand or is ignoring the fact that the transportation contacts between MPC and MGC with Cuba were long-standing contracts in place before Omega entered into an Agency and Gas Sales Agreement with

the City of Cuba. Staff has provided no evidence whatsoever or legal justification that would support disregarding the distinct and separate nature of the transportation agreements between MPC and MGC with Cuba and the Agency and Sales Agreement between Omega and Cuba. Moreover Staff has applied a double standard in which gas marketing companies of Ameren, ONEOK, ProLiance, Cornerstone and others in Missouri are allowed to serve as agents for shippers, selling them gas while using transportation capacity those customers hold on other pipelines. Those activities are of no concern to Staff, yet when Omega serves as an agent for Cuba, the very same activity that Ameren's marketing affiliate was providing prior to 2003, and that ONEOK is providing today for three other towns, Staff now decides that there is a problem and that the transportation rates for all other shippers should be dramatically reduced. This is not supported by the facts or testimony.

3. I am concerned that the evidence produced by Staff in response to DRs submitted by MPC and MGC has revealed a relationship that is too cozy between Staff of the MPSC and representatives of MPUA. E-mails between MPSC Staff members and representatives of MPUA appear to indicate the sharing of confidential information regarding Omega and/or MPC/MGC in dealings related to Shippers that could provide MPUA with a competitive advantage. Such activity, if not in violation of Commission Rules certainly is improper, and should cease immediately.

4. Finally, it appears that Staff is ignoring or bypassing a prior Commission Order. In GC-2006-0378, Staff sought to assert jurisdiction over Omega

Pipeline Company. However, this Commission, and rightly so, dismissed Omega from that action indicating that no case had been made for asserting jurisdiction over Omega Pipeline Company. Having failed to achieve jurisdiction over Omega through the front door, MPSC Staff has filed its complaint in GC-2006-0491, in an attempt to achieve its goal through the back door. If Staff is allowed to micromanage the decisions made by the City of Cuba (or any other entity) that independently contracts for transportation capacity from MPC and MGC and/or chooses to use Omega as its independent agent for gas supply, then Staff is again attempting to assert jurisdiction over Omega, as well as demanding discriminatory action against any customer (including G-P, Willard and Emhart) of Omega which ships on MPC/MGC.

5. MPC and MGC request that the Commission, for all the reasons contained in Respondents' Rebuttal Testimony, dismiss this action.

Q. Does that conclude your Rebuttal Testimony in this proceeding?

A. Yes it does.

BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION

Staff of the Missouri Public Service Commission Complainant,	)	
v.	)	Case No. GC-2006-0491
Missouri Pipeline Company, LLC and Missouri Gas Company, LLC Respondents.	)	

AFFIDAVIT OF DAVID J. RIES

STATE OF COLORADO)
) ss.
COUNTY OF ________)

David J. Ries, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of ___ pages of testimony to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

____
David J. Ries

Subscribed and sworn to before me this _______ day of October, 2006.

____
Notary Public

My Commission expires: