

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

**Staff of the Missouri Public Service
Commission,**

Complainant,

v.

**Missouri Pipeline Company, LLC,
Missouri Gas Company, LLC, et.al**

Respondents.

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Case No. GC-2006-0491

STAFF'S REPLY BRIEF

Respectfully submitted,

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Respondents.

This is a story about taking advantage of Missouri ratepayers through unlawful actions by Respondents and by the President of MPC/MGC. The foundation of Staff's case is that the violation of MPC/MGC tariffs allowed David Ries' schemes, which resulted in his selling Omega selling MPC/MGC customers approximately 240,000 Dth of excess gas on the system, some of which was paid for by other shippers customers. The value of this gas exceeds a ** _____ **. ⁵ Staff's complaint rests on volumes of evidence that, through Respondent's machinations, in violation of their tariffs, MPC/MGC charged Omega less for transportation on the pipelines than MPC/MGC charged non-affiliates, MPC/MGC gave Omega the excess gas on the system, then Omega charged its customers for gas which belonged to other Missouri consumers. ⁶ Respondents describe this conduct as "assisting small customers." ⁷

The defenses Respondents invent to explain their actions are not credible. Their "assistance" to small cities led to a way for Omega to sell the excess gas. The fiction that Omega was "assisting" the pipelines in balancing the system "free of charge" ⁸ is not convincing. There is a disconnect in Respondents' defense that Omega would provide a service for free when profitability was a problem on this pipeline ⁹ and Ries methodically eliminated discounts to non-affiliated customers to raise transportation revenues. ¹⁰ The claim that adoption of Staff's definition of "shipper" will devastate the industry is unbelievable.

Staff details why each of the Counts in Staff's complaint are fully supported by competent and substantial evidence and why the Commission should assess the

⁵ Exh. 304, Ries Rebuttal, Appendix Z

⁶ Ex. 159, pg.3, Ries answers to questions 3 through 5).

⁷ Resp. Br. pg. 2.

⁸ Resp. Br. pg. 10-11.

⁹ Report and Order Case No. GM-2001-585.

maximum penalties for each tariff violation, for each day the Pipelines violated their tariffs, their CCN and the Commission's rules.

Below Staff will:

- Describe the tariff provision violated, and the penalty the Commission should direct the General Counsel to pursue.
- Detail Respondents distortion of the facts about their communications with Staff and what Staff actually told Respondents.
- Illustrate the falseness of the claim that Omega "consistently" paid the highest rates on the system.
- Explain why Respondent's claims that Staff relied on agency agreements to determine the lowest rate on the system is a red herring. Staff's complaint is not about any discount to the City of Cuba, but is about the *additional* discount Omega received from MGC, that was not given to Cuba.
- Examine the incredible claim that if the Commission adopts its own definition of "shipper" it will have a "devastating effect on the industry."
- Clarify when Omega actually had a contract that permitted it to ship on the pipelines. Omega the marketer had a contract *after February 1, 2005*, but not prior to that date.¹¹ From July 1, 2003 until February 1, 2005, Omega itself did not hold any capacity on the pipeline, nor did Omega have an executed transportation agreement. Omega improperly used Cuba's capacity to ship to the secret customers. The February 1, 2005 Omega contract is not an arms-length contract because Mr. Ries, the pipeline president, drafted the contract on behalf of Omega and then sent the contract to his

¹⁰ Exh. 301, John Surreb. Appx. LL.

¹¹ Exh. 304, Ries Rebuttal, Appendix F-1 and V.

subordinate, David Wallen, to sign on the Pipelines' behalf. Mr. Ries was aware that Mr. Wallen had no knowledge of the pipeline tariff requirements.

- Detail Omega's failure to comply with the pipeline tariff requirements regarding shipper requests for transportation service and contained a discriminatory provision that allowed Omega to deliver to all delivery points on the pipeline that was not contained on any other shipper contract at the time.
- Show why the ** _____ ** extension violated the Pipelines CCN.

ISSUE I **Improper Sharing of Personnel and Information**

MPC/MGC attempt to create confusion by claiming Staff's complaint is about what Staff knew and when. Respondent's arguments are a smoke screen to distract the Commission from the facts. Count I is instead that MPC and MGC improperly discriminated against non-affiliates by failing to: 1) apply their tariff terms, conditions and requirements in a uniform and nondiscriminatory manner to non-affiliated shippers as provided to Omega, their affiliate shipper; 2) maintain confidential information from their marketing affiliate, Omega; 3) require non-affiliates to balance gas purchases with deliveries when affiliates were not required to balance.

Regardless of when and how Staff became aware of Omega, the marketer, the facts remain that MPC/MGC violated their tariffs.

A. Sharing confidential information violated the Pipelines' tariffs

Having a marketing affiliate is not prohibited by MPC/MGC's tariffs or the Commission's Affiliate Transactions Rules at 4 CSR 240-40.016. What is prohibited is

the sharing of confidential information between Omega, the marketing affiliate and MPC/MGC. Omega was given preferential treatment because Ries had access to MPC/MGC's customer's confidential information that was not available to other marketers or shippers on the pipelines. Exhibit 20 to Exhibit 3 of Schallenberg Direct shows that Ries had access to information about all the shippers and that he received this information on a daily basis. This discrimination led to the violations of the MPC/MGC tariffs outlined in Count I. The evidence demonstrates that Staff warned David Ries that if he pursued his plans to sell gas he would need to change his tariffs and would be required to comply with the Commission's affiliate transactions rules.¹²

MPC/MGC are bound by their tariffs until they request and receive Commission authorization to amend them.¹³ Customers should be able to read the tariff and have the whole story. In an untenable defense that Respondents attempt to blame Staff for their unlawful actions.

Operation of Rate Schedule in Conjunction with Marketing Affiliates.

- b. For efficiency purposes, Transporter occupies office space on the same floor as its affiliates, but maintains separate operational facilities and personnel. Operational and accounting information is confidentially maintained by Transporter.¹⁴

The Pipelines never requested Commission authorization to change this section.¹⁵ The Commission's affiliate transactions rules do not require separate employees, but the Pipelines' tariffs specifically require that MPC/MGC maintain confidential information from affiliates. Exhibit 61 HC shows the information that David Ries received on a daily basis that should have been maintained confidentially and not

¹² Exh. 308.

¹³ Associated Natural Gas Co. v. Public Serv. Com'n, 954 S.W.2d 520(Mo. App. 1997).

¹⁴ Exh. 70 and 71, Sheet 39.12.b.

shared with other marketers. The information contained in Exh. 61 which is an example of the daily Pipelines operational information shared with Omega. ** _____

_____**. ** This information was not shared with other marketers.¹⁶

Respondents are bound by their tariffs. Respondents make heroic efforts to blame Staff, suggesting that the Pipelines were told by Staff to use a marketing affiliate. They claim that Staff was fully informed. The idea that the Pipelines were only “assisting” small customers or “assisting” the Pipelines with balancing as a free service is simply unbelievable.¹⁷

Staff repeated reminded David Ries of its concerns with violation of the Commission’s rules, FERC rules and that the Pipelines needed to amend their tariffs so the Commission could consider the affiliate activities.¹⁸

The suggestion that Omega was providing a “free service” to the pipeline to manage the imbalance on the system strains credulity. Not only is it unbelievable that Omega would provide a service free of charge¹⁹, it also violates the Pipelines tariff provisions that receipts and deliveries of gas be scheduled uniformly and that

¹⁵ Tr. pg. 199-201.

¹⁶ Exh. 78HC Wallen Depo. pgs. 58-59 lines 13(this is confidential and sensitive information).

¹⁷ Resp. Br. 10.

¹⁸ Resp. Br. Attach. C, Exh. Jan. 2, 2003 letter.

¹⁹ Resp. Br. 10-11.

imbalances be corrected promptly. Exhibits 70 and 71, Sheet No. 26 section 2.b of the General Terms and Conditions of the Pipelines' tariffs requires:

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

The evidence in this case is that Omega was permitted to continue to deliver gas to its customers even when Omega, as the Agent, was not delivering any gas into the system.²⁰ This resulted in huge imbalances.²¹ Omega did actually deliver gas to its customers, which raises the question of how Omega delivered gas it did not buy or deliver into the system.

The excess gas on the system resulted from the percentage that "MPC retains. . . for all volumes transported to account for losses on the pipeline, measurement error and gas used by the company."²² In an attempt to excuse his unlawful behavior, David Ries claims that Omega provided a "balancing" service to MPC and MGC. There was no contract or documentation regarding this valuable service being provided by Omega.²³ If balancing were truly a service that Omega was providing, surely David Wallen, the pipelines operations manager would be aware of the level that Omega was

²⁰ Exh. 19 Schallenberg Direct, Sch. 3, Schs. 16-24.

²¹ Exhibits 67-A shows that when ONEOK was supplying the Fort, ONEOK was balancing the Fort's gas deliveries within the tolerance range. In January 2004, the Fort had a 4.4% imbalance and in February 2004, the imbalance percentage was 1.6%, March 2004 – 1.9%, April 2004 – 3.8%.²¹ In contrast, when Omega the marketer assumed the Fort's contract, the Fort was significantly out of balance. Exhibit 67-F shows that in June of 2006, the Fort was 496.3 % out of balance and in July 539% out of balance. Exh, 67-F, pg. 12 and 15.

The City of Cuba, an Omega marketing customer was permitted to operate 1090.6% out of balance in June 2006 (Exh 67-F pg. 5). No non-affiliates were permitted to operate out of balance or to sell gas that they did not deliver into the system. Omega's customers were this far out of balance because Ries was delivering significantly more gas to these Omega customers than he purchased and delivered into the system.

²² Exh. 304 Ries Reb. pg. 9, lines 10-13

²³ Exh. 88, Ries Dep. Vol. IV, pg. 648, lines 10-13.

providing this free service.²⁴ He was not.²⁵ This was a scheme, not a service, otherwise Ries would not need to have hidden it from the employee who is responsible for the functional integrity of the pipeline system.²⁶

Assisting small customers certainly puts a positive spin on the fact that Mr. Ries could assist them by lowering their transportation costs because of this affiliate relationship with MPC/MGC. He would also primarily assist himself by selling them the excess gas on the system which was supplied by other marketers delivering gas to the system for which other Missouri consumers had already been charged.

It was only by taking MPC/MGC's excess gas, that Omega was in a position to compete with the market power of a ONEOK or AmerenUE. It is affiliate abuse that MPC/MGC gave Omega, and no other shipper, the excess system gas, for which Omega to date has paid nothing.

Ries also used the Omega imbalance to over charge the ** _____ ** for natural gas which was never purchased. Such activity was in direct contradiction to the Omega/Cuba contract that stated: ** _____ **
_____. These actions show that Ries was not looking to assist the small cities as much as he was interested in overcharging them for their natural gas.

B. Balancing requirements were not applied uniformly

The Respondents' tariff state regarding the pipeline operation that:

3. Scheduling and Notification.

- a. Shipper shall furnish or cause to be furnished to Transporter schedules showing quantities to be received and delivered by Transporter, by individual Points of Receipt and individual Point of Delivery, as required

²⁴ Exh. 78 HC, Wallen Depo. pg. 11, lines 22-24.

²⁵ See Exh. 78 HC Wallen Depo. pgs. 54-56 for a discussion of the magnitude that the City of Cuba and Omega – the Fort were out of balance.

²⁶ Exh. 78 HC Wallen Dep. Pg. 50, lines 3-6.

below. Such schedules should reflect any imbalance, estimates of imbalance, makeup quantities, scheduled daily variations, and should separately identify the Btu content.

The Respondents did not need any special discriminatory arrangement with Omega to balance the pipelines. The Respondents only needed to follow their tariffs. The Respondents only needed to have Omega comply with Sheet No. 26, 2b of their tariffs in the same manner as all non-affiliated shippers:

Receipts and deliveries of gas hereunder shall be at a uniform hourly and daily rates of flow as nearly as practicable. If, due to operating conditions, the quantities of gas received and delivered are not in balance on any particular day, such imbalance shall be corrected as promptly as is consistent with operating conditions.²⁷

In response to questions posed by Warren Wood Mr. Ries told Mr. Wood that any excess gas on the pipeline belonged to the shippers.²⁸ To the extent excess gas existed on the pipeline, Respondents only needed to instruct **all** shippers, non-affiliated as well as affiliated, to reduce their nominations on a non-discriminatory pro-rata basis.

C. Respondents alone are responsible for their conduct

Respondents cannot blame Staff for violations of their tariffs. David Ries repeatedly tried to get Staff to agree that he could remove the affiliate abuse provisions from his tariff. Staff repeatedly refused.²⁹ It is undeniable that David Ries understood the importance of these provisions or he would not have tried so hard to get them removed. When Staff refused to permit him to remove these provisions he simply proceeded to expand Omega activities to continue MGC unauthorized activities to market gas to customers other than Fort Leonard Wood while increasing the profitability

²⁷ Exh. 70 and 71, Sheet 26.b.

²⁸ Exh. 301, John Surrebuttal, Appendix LL.

²⁹ Exh. 8-11 and 15-18.

of these marketing activities through discriminating against non-affiliates.

Since Ries discussed at length MPC/MGC tariff changes through July of 2003³⁰ with Staff after Mr. Ries had signed a contract with Cuba on behalf of Omega on May 27, 2003, (See Schedule 3-1 of SCHEDULE 3 attached to Schallenberg Direct Testimony) Ries had ample opportunity to inform Staff that Omega had begun marketing activities outside the Fort.

It is interesting to note that Mr. Ries is continuing on June 24, 2003, to insist on Staff removing 3.2 affiliate rate safeguard from the MPC/MGC firm and interruptible tariffs³¹ **after** he had already signed an Omega contract to serve Cuba a month earlier.³² If the arrangement Mr. Ries had struck in May 2003 were consistent with the MGC tariffs and Omega could operate lawfully under those tariffs, why would Ries continue to insist tariff section 3.2 (for firm and interruptible service) needed to be removed? The obvious answer is that the Omega arrangements **were** inconsistent with the MPC/MGC tariff requirements. A filing with the Commission to change the tariffs would have brought attention to Omega's new marketing activities and the discriminatory conduct involved. Instead, Mr. Ries chose to operate in secret and fight disclosure of information that would reveal the true nature of his operations.

D. Respondents hid information

Respondents suggest that "everything" the pipelines did was "precisely and fully disclosed to Staff as early as August of 2002."³³ It is disingenuous for the Pipelines to argue they did not disguise or conceal their activities from Staff when David Ries hid his activities from his own management team. For example David (BJ) Lodholz was

³⁰ Exh. 8-11 and 15-18.

³¹ Tr. Vol. 7, pgs. 511-512.

³² Exh. 300, John Rebuttal, Appendix I.

completely unaware of the existence of Omega Services, and the bank account Ries set up so he and his wife could receive payments from Omega customers.³⁴ Mr. David Wallen, VP of Operations knew that the secret customers ** _____ ** and ** _____ ** were purchasing gas from Omega.³⁵ Mr. Wallen, however, had no idea the extent of the imbalance on the system and had no idea that Omega was providing a “free of charge” balancing service.³⁶ The service to these secret customers was a secret from the management team as was the existence of the secret affiliate, omega Services.

In describing the emails in Exhibit 310 (attached to Respondents Initial Brief) Respondents suggest Staff was **fully informed** as early as August 2002.³⁷ Staff has indicated that it has no record of ever having received these emails. Counsel for staff also has no record. However, the documents on which Respondents rely so heavily prove their lack of credibility.

The Respondents interpretation that August 2002 emails³⁸ and a January 2003 Warren Wood letter³⁹ are not supported by the evidence. The August 2002 emails⁴⁰ indicate that on August 23, 2002, Ries had proposed three options to Staff to consider for providing bundled services to MPC/MGC transportation customers. The three options were: 1) MGC change their tariffs to allow the pipeline to buy or sale gas, 2) Omega could contract for additional capacity over and above the capacity to serve the Fort to serve customers with delivery points before the Fort delivery point on the

³³ Resp. Br. pg. 5.

³⁴ Exh. 88, Ries Depos. Vol. 3, pgs. 333-336.

³⁵ Exh. 78, pg. 16.

³⁶ Exh. 78, pgs. 50 and 150.

³⁷ Resp. Br. 2.

³⁸ Exh. 310.

³⁹ Exh. 308.

⁴⁰ Exh. 310.

pipelines or act as agent for cities that hold capacity on the pipeline in the same manner as other agents operated, or 3) a separate marketing affiliate could perform the function. As late as December 10, 2002, in a Data Response to Staff, Ries states "MPC/MGC does not have a marketing affiliate."

While Ries claims that municipal customers had approached him, the evidence shows it is more likely that Ries initiated the topic with the cities. Review of the form letters sent by Mr. Ries lead to the conclusion that Ries contacted the cities.⁴¹ Please see Attachment A to the Pipelines Brief and note in paragraph 1 the sentence "As the new owners of these companies, it is clear to me that I can not afford to be on the sidelines on this issue and must help the cities secure competitive prices for natural gas purchases and upstream transportation."⁴² At no time, do these offers contain any language indicating that the offers were made in response to a request of the small cities. In further support of that conclusion, in December 2002⁴³ on page 2 of No. 4101 Ries states:

**

_____**

What resulted was the scheme that allowed Omega to be charged discounted rates from MGC and later MPC. The record in this case shows that Omega was the only marketer that continued to enjoy discounted rates while other shippers/customers were charged the maximum rate specified in the MPC/MGC tariffs.⁴⁴ Omega was even given

⁴¹ Exh. 301, John Surrebuttal, Appendix LL.

⁴² Resp. Br. Att. A, 4101-C.

⁴³ Exh.301, John Surrebuttal, Appendix LL.

⁴⁴ Exh. 54 and 53.

discounted rates after MPC/MGC had already eliminated discounted transportation service to a non-affiliated marketer **_____** that was previously providing service to the Fort.⁴⁵ The only benefits from these transactions were to Omega, not the other customers on MPC/MGC.

Respondents December 10, 2002 answers to DRs 4102, 4103, 4104⁴⁶ state that MPC/MGC have no marketing affiliates. In August 27, 2002, it was MGC, not Omega that was engaged in unauthorized marketing.⁴⁷ The August 20, 2002 letter to St James' Mayor James Morrison, Ries, on MPC letterhead offered to deliver gas to the City of St. James under a firm contract (MG-1010-TAF) with no reservation rate (a reservation rate of **\$0.00**).

While the Pipelines did tell Staff that Omega had bought and sold gas for over ten years,⁴⁸ that statement is true only to the extent that Omega bought and sold gas as part of its local distribution company (LDC) sales to the Fort. Respondents did not disclose that Omega was marketing bundled service to any other customers.

As late as *November* 20, 2002, David Ries told Staff⁴⁹ MPC and MGC did not have a marketing affiliate. "We believe MPC/MGC is in compliance (with the Commission's affiliate transactions rules) inasmuch as it does not currently have a Marketing affiliate."⁵⁰

Staff agrees that Mr. Wood "and others on staff were made aware of the

⁴⁵ Tr. pg. 553.

⁴⁶ Exh. 301, John Surrebuttal, Appendix LL.

⁴⁷ Exh. 301, John Surrebuttal, Appendix LL.

⁴⁸ Nov. 20,2002 data response labeled No. 4103, says that as Staff is aware, until September 30, 2002, Omega "had engaged in the purchase of natural gas, held transportation capacity on both MPC and MGC and resold natural gas on **Fort Leonard Wood as an unregulated LDC.**" There is no mention of that Omega has begun to market gas outside the confines of the Fort or that Omega might sell natural gas to customers other than the Fort.

⁴⁹ Exh. 301, John Surrebuttal, Appendix LL, Response to DR 4101

⁵⁰ Exh. 301, John Surrebuttal, Appendix LL

potential use of an affiliate, Omega, to provide bundled service . . . ⁵¹ Respondents rely heavily on communications to support the idea that Staff was fully informed. The emails do not support that conclusion. The Warren Wood January 2, 2003 letter is in response to a discussion with Ries a few days prior states:

If any “bundling” arrangements are **eventually** determined to be acceptable, it will be important that the portions of these contracts associated with the intrastate pipelines and interstate pipelines be addressed separately in the contract(s). **It will also be important that the provisions of this service are addressed in tariffs approved by the MoPSC.**⁵²

This quote shows the complete inaccuracy of Respondents’ claim that Staff preferred **MGC not change its tariff.**⁵³ Mr. Wood also indicated his preference for a marketing affiliate or option 3 which Mr. Ries chose to ignore. Even in the Staff investigation relative to this complaint, Mr. Ries would never reveal the true nature of Omega activities or the Respondents’ knowledge of these activities until Staff discovered the information through alternative means.⁵⁴

E. In this correspondence Staff expressed the following concerns:

Respondents statement that “the Pipelines informed Commission Staff that the Pipelines were ***considering*** using its then affiliate, Omega to provide marketing services is correct.”⁵⁵ The fact Staff preferred the Pipelines use a marketer, *instead of the Pipelines selling gas*, may **not** in any way be read to indicate that Staff waived the Commission’s affiliate transactions rules or MPC or MGC’s tariff provisions.

In Mr. Wood’s January 3, 2003 letter to Mr. Ries, Mr. Wood clearly expressed his concerns regarding the “separation between regulated and unregulated operations will

⁵¹ Resp. Br. pg. 10.

⁵² Exh. 310.

⁵³ Resp. Br. pg. 9.

⁵⁴ See Tr. pg. 248, lines 19-25 and Tr. pg 410, lines 6-15.

not exist due to the structure of MPC, MGC, MIG and Omega.” Mr. Wood noted that the Commission’s affiliate transactions rules do not “specifically prohibit shared employees,” FERC does. Mr. Wood went on to note that “Staff views the relationship between MPC, MGC, MIG (regulated entities) and Omega (marketing affiliate) as an affiliate relationship. Mr. Wood attached a copy of the rules to this letter.”⁵⁶

While Mr. Wood refers to Omega as a marketing affiliate at this time, the next paragraph indicates that he was unaware of any bundling arrangements. “If any ‘bundling’ arrangements are eventually determined to be acceptable . . . “Mr. Wood further noted that the Pipeline’s tariffs would require revisions. “It will also be important that he provisions of this service (bundling) are addressed in tariffs approved by the MoPSC. I believe that permission to pull together the scale of ‘bundling’ service you have been describing may best be resolved by a tariff filing requesting approval of such service.”⁵⁷ The next sentences indicate that Staff was in no way “fully informed” as Respondents claim.⁵⁸ Mr. Wood continues to write: “This would provide a mechanism for staff review of your proposal and Commission approval of the provisions you *plan* to offer to customers. *To date, I don’t believe that the structure nor provisions of service you plan to offer have been adequately described and defined for Staff to make an informed recommendation to the Commission.*”⁵⁹

Mr. Wood expressed his concern concerning separation of functions given the current structure, that any bundled service should be addressed in Respondent’s tariffs, that Staff needed to fully review any proposal and that as of January 2003, the plan had

⁵⁵ Respondent’s Brief, pg. 8.

⁵⁶ Exh. 308, Jan. 2, 2003 letter.

⁵⁷ Exh. 308, Jan. 2, 2003 letter.

⁵⁸ Resp. Br. pg 2.

⁵⁹ Exh. 308, Jan. 2, 2003 letter.

not been adequately described to Staff. Mr. Wood also noted that customers were pressured to purchase from Omega in order to avoid being charged maximum rates and that staff had received calls complaining about that happening.

F. FERC waiver does not apply to Omega

The Commission's FERC filing on April 12, 2004, in FERC case no. TS04-259-000 is portrayed as an admission that Staff knew that Omega was a marketing affiliate of MPC/MGC.⁶⁰ To the contrary, there is no reference to Omega, the marketer, in either this Commission's or MIG's pleadings in this case. MIG states that Omega the affiliated LDC, does not hold capacity on MIG, MPC or MGC.⁶¹ The FERC Order and Order on Rehearing only reference Omega as MIG's unregulated local distribution affiliate.

MPC/MGC also misrepresent MIG's filing at FERC in TS04-259-000. Only MIG sought the waiver:

Pursuant to Section 358.1(d) of the Commission's Regulations, 18 C.F.R. 358.1(d), Missouri Interstate Gas LLC (Missouri Interstate) hereby petitions for waiver of the Standards of Conduct for Transmission Providers (the Standards) adopted by the Commission in Order No. 2004, to the extent those standards would apply to Missouri Interstate and its affiliates given their current relationships...Missouri Interstate's intrastate affiliates, MPC and MGC, fall within the Order No. 2004 definition of Energy Affiliate, because of their status as intrastate pipelines. Missouri Interstate requests a waiver to exempt MPC and MGC from the Energy Affiliate definition.⁶²

Order No. 2004 was not about Marketing Affiliates, but about Transmission Providers and extending the FERC Standards of Conduct beyond Marketing Affiliates to Energy Affiliates. MIG did not direct its waiver specifically to Section 18 CFR 358.4(a) which reads:

Except in emergency circumstances affecting system reliability, the

⁶⁰ Exh. 300 John Rebuttal, Appendix C.

⁶¹ Exh. 300 John Rebuttal, Appendix B.

⁶² Exh. 300, John Rebuttal, Appendix B

transmission function employees of the Transmission Provider must function independently of the Transmission Provider's Marketing or Energy Affiliates' employees...However, Transmission Providers are permitted to share support employees and field and maintenance employees with their marketing and Energy Affiliates.⁶³

MPC/MGC also mischaracterizes the FERC Order, "FERC granted MIG's request for waiver on July 7, 2004" and Staff's position in the case, "Staff and the Commission made no objection to the ruling at that time". The initial FERC Order stated in part:

The Commission is denying Missouri Interstate's request to exempt MPC and MGC from the definition of Energy Affiliate. However, based on the statements in Missouri Interstate's request concerning its small size, lack of staff and limited operations, the Commission is granting Missouri Interstate a partial waiver...Specifically, the Commission is waiving Missouri Interstate's obligation to comply with the independent functioning requirements of section 358.4 and is waiving the information disclosure prohibitions of section 358.5(a) and (b) (1), (2) and (3) **with respect to MPC and MGC.**⁶⁴

The Commission Staff did have objections to the July 7, 2004 FERC ruling and requested a rehearing. FERC on April 19, 2005 issued an Order on Rehearing which stated:

The Commission grants MoPSC's request for rehearing and is requiring Missouri Interstate to comply with the requirements of sections 358.4 (b), (c), (d) and (e).

In addition, this Commission's request for Rehearing included a request for reconsideration of the waiver of 18 CFR 358.5 (a) by stating:

The Commission erred in granting MIG a waiver from non-discriminatory access to information. (18 CFR 358.5(a)) As detailed above, the very nature of MIG's system, its relationship to its affiliates, and that an affiliate's employees manage MIG's day-to-day operations, make it unreasonable to grant MIG a waiver from this requirement. **This requirement ensures that any energy affiliate employee may only**

⁶³ Exh. 300, John Rebuttal, Appendix C

⁶⁴ Exh. 300, John Rebuttal, Appendix D.

have access to information that is publicly available to all of the pipeline's potential and existing customers...MIG's small size does not prevent harm to these potential shippers caused by denying those potential shippers the information that the affiliates have. **MIG's small size does not mean that it should be permitted to engage in discriminatory conduct.** Since the employees managing MIG's day-to-day operations are privy to pertinent information regarding MIG's system and operations, that same information should be made available to all potential customers of MIG.⁶⁵

It is unfathomable that, if the Commission had known Omega was marketing gas in July 2004, the Commission would not have raised issues of Omega's marketing activities in the TS04-259-000 FERC case. Raising the Omega marketing activities as an affiliate of MIG, MPC and MGC would have eliminated any possibility the FERC would have granted a waiver from the FERC Standards of Conduct. FERC Order 2004-A addresses intrastate and Hinshaw pipelines and the sharing of senior officers specifically in the Final Rule:

Intrastate and Hinshaw pipelines are included in the definition of Energy Affiliate to the extent that they engage or are involved in transmission transactions in U.S. energy markets or participate in the other activities described in 358.3(d). **Allowing such intrastate pipeline or Hinshaw pipeline to have preferential access to a transmission system or information would be inconsistent with the prohibitions against undue preferences or discrimination in section 4 of the NGA in the provision of interstate transportation service.**

In the Final Rule, the Commission stated that it would allow senior officers and directors **who do not** engage in transmission functions, or have day-to-day duties and responsibilities for planning, directing, organizing or carrying out transmission-related operations to maintain such positions with the Transmission Provider and its Marketing or Energy Affiliates. **The Commission, however, cautioned that shared executives may not serve as conduits for sharing transmission, customer or market information with a marketing or Energy Affiliate.**

Importantly, the waiver only applies to MIG, not to Omega in either the initial Order, or the Order on Rehearing. (See reference to Exhibit 300, Appendix D above.)

⁶⁵ Exh. 300, John Rebuttal, Appendix E.

While FERC does not have jurisdiction over MPC or MGC, the prohibitions in FERC's Standards of Conduct (18 CFR 358) are exactly the same type of conduct prohibited by MPC and MGC's tariffs and in the Commission's Affiliate Transactions Rules.

Respondents attempt further obfuscation concerning the definition of shipper. Despite the fact that the Staff uses the Commission's own definition of shipper from the Commission's definition in the affiliate transactions rules at 4 CSR 240-40.016(M), Respondents make the bizarre suggestion that Staff's definition of shipper is created out of "thin air" and if the Commission's adopts Staff's definition, it will have a "devastating effect on the industry." What industry could be devastated by a definition? The Commission only regulates these two pipelines.

ISSUE II

No transportation agreements

MPC and MGC transported natural gas to Omega's secret customers ** _____
_____ ** by using Cuba's capacity. The Pipelines attempt to excuse their improper use of Cuba's capacity to serve the secret customers by claiming that "Omega has a contract with the Pipelines that enable it to ship gas on the system."⁶⁶ This is only true for the period after February 1, 2005. Staff has already noted some of the many infirmities of this contract in this brief. Prior to that time Omega did not hold capacity on the pipelines, but attempts to now assert that Omega used its Agency arrangement with Cuba to deliver gas to the secret customers using Cuba's contracts with the Pipelines. Cuba's contract, however does not permit the pipelines to use their capacity to serve others nor did Cuba **ever submit any documentation** notifying the Respondents that Omega was authorized to act as their agent regarding

⁶⁶ Resp. Br., pg. 6.

the Cuba contracts with the pipelines or the scope of the authority Omega was allowed to use.

MPC and MGC permitted Omega to release Cuba's capacity to serve other customers when the pipelines had no tariff authority to do so. But when ONEOK had excess capacity on the Pipelines as a result of losing its contract with the Fort, Ries refused to permit ONEOK to release its capacity to serve other customers and threaten ONEOK's separate and distinct agency arrangement with the small cities if ONEOK continued to refuse to pay the disputed charge. The ONEOK treatment shows MPC and MGC discriminated in favor of Omega. ONEOK was held to strict enforcement of its contract terms with the Respondents while Omega was allowed to operate continuing without meeting the pipeline tariff and contract requirements.

Again, on page 15 of its brief MPC/MGC attempts to side step the true issues in this case:

The transportation agreements between Cuba and the Pipelines do not limit which entity(ies) Cuba can conduct business with in managing its own transportation capacity on the Pipelines' capacity.

The above statement is misleading. As David Ries noted in his cross examination, MPC/MGC tariffs **do not provide** for capacity release.⁶⁷ MPC/MGC never were authorized to allow Omega to act as agent for the City of Cuba's contracts with MPC/MGC.

Even the Omega contract with the City of Cuba does not authorize Omega to use its contracts to operate outside the scope of serving ** _____
_____. The Omega contract with Cuba specifically limits Omega authority to ** _____

_____ ** There is no language in the Omega contract with Cuba that states that Omega is authorized to manage Cuba's transportation capacity on MPC and MGC. There is no language in the Omega contract with Cuba that states that Omega is authorized to market Cuba's transportation capacity on MPC and MGC pipelines. The MPC/MGC tariffs do not allow such activity.⁶⁸

Staff has never challenged any of MPC/MGC's customers/shippers ability to contract with a marketer, supplier or agent for gas supply, nor legally can it. What Staff has challenged is the ability of MPC/MGC to allow Omega's unauthorized use of the Cuba transportation contracts in violation of the MPC/MGC tariffs and the Affiliate Transactions Rules as well as operate outside the contract and tariff requirement imposed on non-affiliated marketers.

A. Respondents required transportation agreements with non-affiliates

In violation of Sheet No. 34, 9 of the Pipelines', Omega was never required to deliver a Request for Transportation to Transporter.⁶⁹ The transportation request would have included the type of service desired, the proposed Point(s) of Receipt, the proposed Point(s) of Delivery, the date on which service is requested, and any other additional information necessary for Mr. Wallen to manage the operation of the Pipelines.⁷⁰ Other Shippers were required to provide this information in Transportation agreements.⁷¹ No such information was provided by or for the City of Cuba authorizing

⁶⁷ Tr. pg 650, lines 12-18.

⁶⁸ Exh. 70 and 71.

⁶⁹ Tr. 477-478.

⁷⁰ Exh. 70, Sheet Nos. 34-35.

⁷¹ Exh. Wallen Depo, pg. 112, line 11; Tr.268.

Omega to act on their behalf.⁷²

ISSUE III

The Discounts Became the Lowest Rate on the System

MPC and MGC provide both firm and interruptible transportation on the system and there are different charges for each type.⁷³ Respondent's claim that Omega has consistently paid the highest rates of any Shipper⁷⁴ is a half-truth designed to hide the fact that Omega the marketer paid MPC and MGC the lowest rates on the system. It is

the discounts that MPC/MGC billed Omega for transportation to its *other* customers for delivery to locations other than the Fort on which Staff based its complaint regarding violations of tariff provision 3.2(b).⁷⁵ The discounted rates for service to Cuba (firm transportation customer), ** _____ ** (interruptible transportation customers) and ** _____ ** (firm transportation customer) created the new maximum rates for non-affiliate customers/shippers.

The graphs in John's Rebuttal⁷⁶ in Appendices N-Q are used to support the half truth that Omega paid maximum rates. But, note that the time period John uses to illustrate his point, February 2005 through March 2006, *excludes* the time period (July 2003-January 2005) during which MPC/MGC billed Omega for transportation service to Cuba. This is no coincidence. During this period (July 2003-January 2005), Mr. John's statement that Omega paid the highest rates on MPC/MGC is not true under *any* circumstances.

Appendix N and O detail the 25 percent load factor rate calculation for select customers on MPC. Mr. John admitted during hearing that it was inappropriate to

⁷² Exh. Wallen Depo, pg. 88, lines. 7-8.

⁷³ Exh. 70, Sheet Nos. 5 and 16 show MGC's rates, Exh 71 Sheet Nos. 5 and 16 show MPCs rates.

⁷⁴ Exh. 300, John Rebuttal.

⁷⁵ Exh. 70, Sheet No. 6.

include the University of Missouri-Rolla in the chart because it is an interruptible customer.⁷⁷ Yet, at no time, does John compare the rates the pipelines charged Omega for interruptible service to the rates charged to non-affiliated shippers for this type of service. The reason this comparison is not presented is that at **no** time did Omega pay the highest interruptible rates on the pipelines.

Appendix P and Q to Mr. John's testimony actually support Staff's position that MPC/MGC billed Omega (by a now admitted use of the Cuba and MGC transportation contract⁷⁸) the **lowest** firm transportation rate on the MGC system. Appendix P shows the 25 percent load factor calculation for Cuba (billed by Omega to itself) to be below \$2.00. Appendix Q shows no applicable firm transportation customer/shipper rate below \$2.00.

Staff calculated the firm transportation rates to Omega based upon a 25 percent load factor (required by Respondent's tariff) in rate comparison charts attached to witness Schallenberg's Surrebuttal⁷⁹. The 25 percent load analysis is not applicable to the University of Missouri-Rolla as it is an interruptible customer similar to Omega interruptible customers **** _____ **** that were charged lower transportation rates than the University of Missouri-Rolla and other non-affiliated customers.

Witness Schallenberg's charts⁸⁰ plainly illustrate the rates being charged to all MPC/MGC customers/shippers (January 2004 through March 2006) as calculated using a 25 percent load factor. These charts demonstrate the discounts billed by MPC/MGC

⁷⁶ Exh. 300, Appendix N through Q.

⁷⁷ Tr. 453.

⁷⁸ Exh. 300, John Rebuttal, Appendix P and Q.

⁷⁹ Exh. 67, HC (Q through U).

⁸⁰ Exh. 67, attachments Q–U.

to Omega for both firm and interruptible transportation service were *lower* than rates charged to non-affiliates.⁸¹

Omega charged the Fort the ** _____
_____ ** Omega was never charged the full maximum rates specified in the Respondents tariffs.⁸² This is yet another example of Omega receiving concessions that non-affiliates were not given. Ries' failure to follow that policy was the major cause for Staff's complaint in this case.

B. Interruptible rates

MPC/MGC's interruptible customers are all similarly situated, therefore, the discounts that Omega received for transportation service to ** _____ **, ** _____ ** and ** _____ ** also apply to all other interruptible customers. ** _____
_____. **

After the Cuba agency agreement became effective Ries wrote himself a letter⁸³ setting the Cuba rate back to the full MGC reservation rate with the commodity based transportation rate discounted to ** _____ **. The billings issued by MPC/MGC to Omega are based upon alleged discounts provided in transportation service agreements between Cuba and MPC/MGC effective July 2003. Staff describes the discounts as alleged because the letter that Dave Ries sent to the City of Cuba is

⁸¹ Exh. 67, attachments Q–U.

⁸² Exh. 67 HC (F through H).

⁸³ Exh. 300, John Rebuttal, Appendix H.

completely inconsistent with all other discount documents in which agreements were made with Cuba or other non-affiliated shippers.⁸⁴

At that point the other similarly situated municipals no longer were receiving the same discount, in violation of the requirement that the lower affiliate discount rate automatically becomes the highest rate that may be charged on the system to any customer. The ** _____ ** discount was put in place to benefit Omega only. Cuba itself never received the benefit of the \$.20/Dth discount - only Omega received the benefit because Cuba had a bundled transportation rate of \$3.50/Dth.⁸⁵ Omega was charged the \$.20/Dth discount rate for Cuba's firm deliveries, as well as ** _____ ** and ** _____ ** interruptible gas deliveries. No non-affiliate received such a benefit.

In violation of Section 12.c. of the General Terms and Conditions of its tariff, MGC did not report or explain the relationship between its then affiliate Omega and the discounted firm transportation commodity rate imputed to the ** _____ ** or ** _____ ** as well as its interruptible discount arrangements with ** _____ **.

C. Discrimination against other marketer

Ries discriminated against ONEOK. When ONEOK was the natural gas supplier for ** _____ **, ** _____ ** had both firm and interruptible contracts with MPC/MGC.⁸⁶ MPC and MGC charged ** _____ ** the maximum firm reservation tariff rate for gas delivery to Owensville's city gate.⁸⁷ (** _____ ** is located behind AmerenUE's Owensville city gate) the MGC delivery point for ** _____ **, and

⁸⁴ Exh. 26, Ltr. To Cuba compare Exh. 27 which has signature line for acceptance.

⁸⁵ Resp. Br. pgs. 6 and 23.

⁸⁶ Exh. 1, Imhoff Dir., pg. 10.

⁸⁷ Exh. 1, Imhoff Dir., pg. 10-11.

the maximum tariff rate for interruptible transportation service to Emhart Glass.⁸⁸ As noted above, customers with firm transportation needs pay reservation charges for space on a pipeline, to reserve capacity to meet its needs. Five to six months after ** _____ ** became an Omega customers, MPC/MGC stopped charging **any** reservation charge for firm transportation service to the Owensville City Gate for gas delivered to ** _____ **. ⁸⁹ MGC reduced its firm commodity rate to \$0.30 per Dth. in the following month.⁹⁰ These discounts were charged to Omega because ** _____ ** volumes were included at the discounted commodity rate under the Omega firm transportation contract for service to the Fort. No additional firm transportation capacity was billed *even though* ** _____ ** had a *firm* MDQ of 250 Dth per day.

In summary, MPC's and MGC's tariffs require that current maximum charges be reduced so that the rates charged to non-affiliated shippers for transportation is the same as the rates charged to Omega the marketing affiliate. This would be \$.20/Dth for MGC commodity only since Omega has been charged this discount for firm transportation service to ** _____ **. Interruptible transportation customers would also be discounted to ** _____ ** for the commodity since Omega was charged this rate for **Georgia-Pacific** and ** _____ **, interruptible transportation customers.

D. Agency agreements

In its Initial Post-Hearing Brief, MPC/MGC has repeatedly and wrongly claimed:

Staff incorrectly compares rates for service under transportation service agreements between the Pipelines and Shippers with payment provisions from gas sales and agency agreements between Omega and Omega's customers.⁹¹

⁸⁸ Exh. 88, Ries Depo. Vol. 4 pg. 596

⁸⁹

⁹⁰ Exh. 300, John Rebuttal, Appendix F-1.

⁹¹ Resp. Br. 29.

To the extent Respondents' produced information, or *recreated* information, Staff's case is based, not on agency agreements, but on recreated invoices to Omega's customers, as well as information in Respondents' transportation contract. Contrary to Respondent's allegations, the Staff has **not** included any of the bundled rates contracted in the gas sales and agency agreements between Omega and its customers.

Staff has not confused the rates charged under agency agreements with MPC/MGC's transportation rates. Staff has calculated the maximum rates under the tariff by the rates MPC and MGC charged their affiliate Omega for service. This is separate and apart from the rates charged under any agency agreements.

ISSUE IV **Failure to File Required Reports**

MPC and MGC violated their tariffs by failing to report their offers of discounted transportation service to Omega. These discounts should have been submitted to the Commission's Energy Staff in second quarter and third quarter 2003 reports.⁹² The Pipelines err in making the statement that their "tariffs require the reporting of all discounts to any affiliate."⁹³ As is shown below the tariff requires the reporting of **all** discount **offers**. MGC's tariff sheet No. 39, paragraph 12.c requires MPC and MGC to report:

12. Operation of Rate Schedule in Conjunction with Marketing Affiliates.

c. Transporter will submit to the Commission's Energy – Rates Staff once every three months, a list of all **bids or offers Transporter quotes for transportation service rates for its pipeline where the bid is less than the Maximum Rate** contained in this tariff for transporter's area. Transporter will provide the bid price quoted, the length of and the dates of all offerings, the name, address and telephone number of the party to

⁹² Exh. 79, Simpson Depo. pg. 54.

⁹³ Exh. 19, Schallenberg Dir., pgs. 16-17.

whom the bid was given, any other terms of the bid and rate comparison sheet for all bids and offers for each month. **For each such bid or offering, the Transporter will completely explain whether the entity being offered the rate is affiliated in any way with Transporter. If the entity is affiliated, transporter will completely explain such affiliation.** Transporter will respond immediately to Staff inquiries concerning discounting.

The Pipelines did not report offers made to Omega for gas deliveries to ** _____ **, ** _____ **, and ** _____ **. ⁹⁴ The tariff are very clear in requiring MPC and MGC to report information about all offers and provide information regarding the involvement of affiliates. It is the **tariff** and not Staff that detail what is to be included: who requested the discount, their address, the bid price quoted, and the length of the contract. ⁹⁵ MPC/MGC failed to report information about its affiliate deals to the Staff. Staff was not “fully informed” about these activities.

Quarterly reports were not provided to Staff and Mr. Ries does not deny that these reports do not exist. ⁹⁶ MPC and MGC did report an affiliate transportation discount on April 12, 2005 for the first quarter 2005, which coincided with the transportation service agreement in which Omega replaced ONEOK as the gas supplier to the Fort. ⁹⁷ The Pipelines admit that Omega received a “slight discount”. ⁹⁸

Omega improperly required the Fort to purchase its gas from Omega in return for the “slight” discount on MPC and MGC. Allen Simpson, gas buyer for the Fort explained “Question-Did you have to buy your gas from Omega to get that discount? Answer-Yeah. Yes.” ⁹⁹ This is another example of the discriminatory practice conducted by the Respondents in showing favorable treatment, (i.e.reduced transportation rates),

⁹⁴ Exh. 19, Schallenberg Dir., pgs. 16-17.

⁹⁵ Tr. 280.

⁹⁶ Tr. 282.

⁹⁷ Exh. 300 John Rebuttal, Appendix F-1.

⁹⁸ Resp. Br. 29.

to Omega not provided to non-affiliated entities such as **_____. To avoid detection of the Respondent violation of their tariffs, the Pipelines hid these transactions from regulatory oversight.¹⁰⁰

MPC and MGC failed to include in the third quarter 2003 report to staff information regarding: 1) Omega's agency and natural gas sales agreement with Cuba, or 2) the terms related to the provision of transportation service for Omega's gas to the Cuba City Gate for **_____.¹⁰¹ The failure to report hid the fact that Omega, not Cuba, was the beneficiary of the reported discount arrangements.

Issue V
MPC Violated its Line Certificate by Building the **Willard Extension**

MGC only has a line certificate and needed Commission authorization to construct a lateral line to **_____. Respondents claim that "The construction was a business decision for the benefit of MGC, not Omega" does not save them and, further, is not true. It is Omega that saved paying the costs to build the lateral, another discriminatory practice showing favorable treatment, to an affiliate not provided to non-affiliated entities such as AmerenUE who had to pay these costs in similar situations. MGC has a line certificate only, and no authority to provide retail service.

The Commission order in Case Number specifically prohibits MPC/MGC from bypassing LDC or Municipal systems. MGC has violated its CCN since around June 1, 2004, when MPC and MGC provided interruptible transportation service to Omega at a new delivery point for **_____. Regulated monopolies are not permitted to

⁹⁹ Exh. 79, Simpson Depo pg. 54.

¹⁰⁰ Exh. 19, Schallenberg Dir, pgs. 16-17.

¹⁰¹ Exh. 19, Schallenberg Dir, pgs. 16-17.

operate outside their CCNs but must instead seek Commission authorization to change or their certificates.

While the Respondents describe the arrangement as allowing “MGC to add throughput without impacting existing customers’ needs”, the Respondents fail to mention that MGC had **no contract** with Omega or **** _____ **** to build this lateral **or for transportation service**. The only contract that existed was between Omega and **** _____ ****.

The Pipelines claim this extension was a “prudent” business decision. Prudence is not the criteria for the pipeline violating its CCN or its tariffs. Performing a cost-benefit analysis does not save the Pipelines from the fact that the construction was not authorized by either their line certificates or their tariffs. Omega should have paid for the lateral because it actually benefited from the sale of gas. As Mr. Massman explained, it is typically the shipper who will pay for the lateral to customer because the shipper benefits from the sales.¹⁰² Omega was actually the shipper, to **** _____ **** yet MGC paid for the lateral.

How could it be a sound business decision, a good economic decision, for the pipelines to pay for this lateral when **** _____ **** has no contract with the pipelines to provide transportation service? If this was a good business decision, why did David Ries violate his CCN and hide the extension from the Staff and the Commission rather than seek approval?

Destruction of Documents

In its initial brief, the Staff challenged the Respondents to explain how Mr. Lodholz posts revenue transactions including both commodity charges and reservation

charges to the general ledger with the information from the “summary sheets” marked as exhibits 311 and 312. It can’t be done. Actual customer invoices breaking down commodity and reservation charges like the kind marked as exhibit 254 are required. These are the invoices that Mr. Ries testified he took directly from Lodholz files.¹⁰³ Without this information Lodholz can’t perform his job of posting both commodity and transportation transactions to the general ledger. Lodholz had to have information beyond the summary sheets, exhibits 311 and 312, such as the invoice cover sheets he described in his deposition.

Lodholz kept these invoices “forever”, since he started in July 2002.¹⁰⁴ Lodholz did not testify that he threw out old invoices occasionally or that there was any business practice of disposing of them in the normal course of business. The claim there was a business practice disposing of customer invoices arose first in the affidavit, exhibit 311, prepared by Mr. Monaldo, attorney for the Respondents.¹⁰⁵ It was this contrived affidavit that first asserted a practice of document destruction in the normal course of business by implication. Exhibit 311 says Mr. Lodholz “never destroyed documents outside the normal course of business” implying that he did destroy documents in the normal course of business. But any destruction of invoices would be contrary to his sworn deposition testimony stating in no uncertain terms that he kept them “forever”, meaning since he started in 2002.

Respondents’ latest effort to convince the Commission that it really had some kind of document retention policy followed by its employees is not credible. No written policy was ever produced. The fact that Respondents did not retain information to

¹⁰² Tr. 280.

¹⁰³ Transcript, p. 104, lines 2-8.

¹⁰⁴ Lodholz deposition, p. 191, Sch. 5 of Schallenberg Direct.

support compliance with their tariffs as well as the Commission's affiliate transaction Rule 4 CSR 240-40.016(5)(C)(2) justifies a ruling from the Commission that Respondents are not in compliance with these requirements. General Counsel should be authorized to seek penalties.

Recall that Janis Fischer visited the Respondents' office in January 2006 seeking customer invoices that she had requested in December, 2005.¹⁰⁶ In fact, in December 2005, several weeks before the January 26, 2006 visit, Ms. Fischer had a meeting regarding these documents with Mr. Monaldo in Room 130 of the PSC building.¹⁰⁷ Ms. Fischer also had phone conversations with Mr. Ries "several weeks" before the January 26, 2006, meeting regarding requested documents and invoices.¹⁰⁸ "In one instance, [Mr. Ries] indicated that the information would be voluminous. And then in another instance, he indicated that they didn't maintain copies of customer invoices."¹⁰⁹

It's notable that even genuine invoices generated January 1, 2006, well after the December 2005 meetings and telephone calls were had, were not made available to Ms. Fischer at her January visit. Instead, like Rumpelstiltskin spinning straw into gold, the Pipelines began re-creating customer invoices¹¹⁰ to reveal only what they wanted to reveal. Then, in July 2006 when the Staff learned of Mr. Lodholz retention of copies of customer invoices since 2002, it began to pressure the Pipelines to produce Mr. Lodholz' documents.¹¹¹ The Respondents' response to that pressure has been to fabricate its "document retention policy" repeated again in the Respondents initial Brief: "Hard copies of the invoices in question were not maintained beyond one year as a

¹⁰⁵ Transcript, p. 168, lines 16-19.

¹⁰⁶ Transcript, pg. 50, lines 6-10.

¹⁰⁷ Id.

¹⁰⁸ Transcript, pg. 50, line 17, to pg. 51, line 1.

¹⁰⁹ Transcript, pg. 51, lines 8-12.

matter of the Pipelines' internal records retention policy.”¹¹² If this were really the policy, why didn't Mr. Lodholz know about this policy in July, 2006, when he testified he kept the invoices since 2002? Fischer contacted the Respondents in December 2005 to request documents she would need for her January 2006 visit. If the policy were as stated in the affidavits marked as exhibit 258, asserting “hard copies of invoices...have not been retained...beyond the calendar year in which they were issued...”, why was the policy not followed and the actual 2005 invoices requested in calendar year 2005 produced for Ms. Fischer? If this were really the policy, why would Mr. Ries testify in October, 2006, as follows regarding document retention:

Q. What happened to all of the documents prior to January 06?

A. They don't exist.

Q. Why?

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

Q. Are you suggesting that Mr. Mertz discarded those documents?¹¹³

Mr. Ries does not describe a one-year or calendar year document retention policy in his deposition, he describes an employee making a personal choice to “get rid” of invoices. But contrary to Mr. Ries sworn testimony, Mr. Mertz affidavit, exhibit 258, swears that Mertz did not destroy the documents. Therefore, Lodholz documents should still be in Lodholz' files, unless they were destroyed or moved.

The Respondents did not provide Staff any customer invoice data in electronic format. In fact, no customer invoices for 2003, re-created or otherwise, were provided by the Respondents.¹¹⁴ The customer invoices for 2004 and 2005 were re-created by

¹¹⁰ Transcript, pg. 56, lines 11-14.

¹¹¹ See Lodholz depo, pg. 191 and testimony of Janis Fischer, Transcript, pg. 65, lines 18-25.

¹¹² Resp. Brief, pg. 37.

Mr. Ries and given to Staff. As explained by Janis Fischer in her testimony recounted in Staff's initial Brief, the re-created invoices were inaccurate and unreliable.¹¹⁵ Respondents have provided no credible information regarding customer invoices.

Mr. Ries' philosophy on document retention and disclosure is best expressed in exhibit 262 and in the transcript at page 143. Regarding the Commission Staff's efforts to procure documents, Mr. Ries advises Tortoise "don't give them squat." Two weeks later Mr. Ries efforts to persuade Tortoise to withhold and secret documents from the Commission are again revealed. When Mr. Mojica of Tortoise advises Ries that Tortoise had decided to cooperate with the Commission's investigation, Mr. Ries states he "can't express my disappointment enough. You put me in a position of just dropping any future involvement with Tortoise." (Exhibit 261). Mr. Ries also told Mr. Schallenberg that "Staff will never get those invoices."¹¹⁶

Respondents' argument in its Brief that revenue summaries such as exhibits 311 and 312 are used to reconcile bank statements is irrelevant to this issue. This is another attempt by the Respondents to avoid the real issue at bar. To post the commodity and reservation charges to the general ledger (copies of the general ledger are attached to Staff's initial Brief as Lodholz' Deposition Exhibit 6) actual customer invoices like the ones Mr. Lodholz testified that he kept are required.

The Respondents claim on page 34 of their initial brief that they "have provided all invoice data for the period beginning January 2004 through March 2006 to Staff in accordance with Staff requests. Despite having access to all of that data, as well as invoices obtained directly from customers, Staff has failed to present any evidence to

¹¹³ Ries deposition, pgs. 701-702, Sch. 5.

¹¹⁴ Transcript, pg. 91, lines 20-25.

¹¹⁵ Tr. pg. 57, line 12 to pg. 61, line 5.

show that the Pipeline's invoices to any Shippers were inaccurate or excessive." These statements are not cited to the record for a good reason: they are inaccurate.

First, Respondents did not provide actual invoice data, in paper or electronic format, for any period except for the few copies of invoices from Mr. Lodholz files produced at Mr. Ries' deposition in October, 2006 (See Exhibit 215). All the invoices produced were re-created by Respondents. Invoices were **not** produced for 2003 in any form, re-created or actual. The period of Staff's complaint begins on or around July 1, 2003 yet invoice information was only produced beginning January 1, 2004. The Commission should find that all elements of Staff's complaint relevant to the period July 1, 2003 through December 31, 2003 are found in Staff's favor by virtue of the destruction of the actual invoices from this period and the Respondent failure to re-create invoices as a substitute regarding the documents destroyed.¹¹⁷

Second, Staff had no alternative to acquire the most important invoices of all relative to this complaint, Respondents' bills or lack of bills, for transportation service on behalf of Omega. Mr. Ries controls both sides of these transactions. Staff did not have the option to contact the customer to acquire the bills in the case of Omega as a substitute to the invoices being produced by the Respondents. These bills contain important information in addition to the all important identity of the rate charged, if any, to the affiliate for transportation service. These bills contain information regarding who was actually the shipper (i.e. Omega or someone else with Omega as Agent), whether an executed contract was being used, and whether the billing was consistent with tariff requirements.

¹¹⁶ Tr. pg. 118, line 24 to pg. 119, line 5; pg. 134, lines 19-20.

¹¹⁷ See Tr. pg. 134, lines 1 through 19 and pg. 135, lines 15 through 21.

Third, while the Respondents assert that Staff failed to present any evidence to show that the Pipelines' invoices to any Shippers were incorrect or excessive the record will show that the re-created invoices were riddled with inaccuracies. The face sheets were not always accurate.¹¹⁸ A person needs to spend a significant amount of time with a re-created invoice in order to know the time period actually addressed by the re-created bill.¹¹⁹ The bills were clearly excessive in regards to the non-affiliated shippers that were charged more for transportation service than affiliate, Omega. The attached charts from Mr. Schallenberg's Surrebuttal Testimony illustrate the overcharges on these bills.

The Respondents have put forth several claims regarding customer invoices and now ask the Commission to find one of them credible and deny the motion for sanctions. Respondents' inconsistencies and fabrications defeat any notion of credibility. The Commission should find that the Respondents have failed in their effort to transform straw into gold and give a satisfactory explanation of their failure to produce evidence. Allowing Respondents to refuse to provide basic, accurate documentation of their business activities without repercussion will invite every public utility in the State to do the same.

Sanctions in the form of inferences adverse to the Respondents' evidence and arguments are appropriate and the Commission should find that:

1. Respondents' evidence regarding retention and destruction of customer invoices is not credible;

¹¹⁸ See Tr. pg.360, line 1 through line 3.

¹¹⁹ See Tr. pg.359, line 12 through pg.363, line 15.

2. Respondent's re-created invoices for 2004 and 2005 were the best evidence available to the Staff and support Staff's claims that discounts were provided to affiliate Omega;

3. Staff's evidence regarding the offering of discounts to Omega and the calculation of the Respondents' discounts to its affiliate Omega for 2004 and 2005 is credible, and deemed clear and convincing in light of Respondents' spoliation of the actual evidence regarding Respondents' billing during the time period in Staff's complaint;

4. The resolution of the actual refunds to customers and the magnitude of penalties associated with the period prior to 2004 shall be deemed to be the same as the similar period in 2004 unless a customer can produce their actual invoice showing that their refund should be greater;

5. A determination can be made by the Commission regarding the extent of discounts to Omega for the time prior to 2004 shall be the rates Staff developed from alternative sources of evidence; and

6. The General Counsel is authorized to seek the maximum amount of penalties related to Respondents' failure to produce and/or destroy documents.

CONCLUSION

There is ample evidence for the Commission to conclude that MPC, MGC, and David Ries as President of the regulated companies and the two affiliates Omega Pipeline Company and Omega Pipeline Services have violated MPC's and MGC's CCN and their tariffs; improperly discriminated against non-affiliated marketers; improperly shared confidential customer information with Omega the marketer; failed to fairly apply the Companies tariff provisions to non-affiliates; wrongly provided discounted service to

Omega; hidden information from the Commission and its Staff; and in doing so have harmed Missouri consumers. There is also sufficient information to determine that MPC and MGC destroyed documents, and the Commission should order the General Counsel to proceed to seek penalties as a result of the destruction of documents.

Additionally, the Commission should order MPC and MGC to immediately come into full compliance with their tariff provisions and lower rates to the level of discounts given to MPC and MGC affiliate Omega. The Commission should order refunds to customers who paid rates in excess of the discounted rates.

Respondents' repeatedly call Omega a former affiliate. The Commission should not make any determination at this time concerning the status of Omega as an affiliate. There is insufficient information in this record to make such a determination, and it is possible the Commission might determine that the matter requires further investigation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronic mail to all counsel of record on this 20th day of February, 2007.

/s/ Lera Shemwell

Missouri Pipeline Company/Missouri Gas Company
GC-2006-0491
Schallenberg Surrebuttal Spreadsheets and charts

MPC-Firm Transportation Rates Based on 25% Load Factor
January 2004 thru March 2006 with Selected Information Through November 2006

<u>Customer</u>	<u>Rate at 25% Load Factor</u>
MAXIMUM	0.7378
Busy Bee Laundry-Cornerstone	0.7378
Royal Canin-Cornerstone	0.7378
Phelps Medical-Cornerstone	0.7378
Emhart Glass-Oneok	0.7378
Emhart Glass-Omega 12/04	0.7378
Emhart Glass-Omega 05/05	0.1699
Emhart Glass-Omega 07/06	0.0200
FLW-Oneok	0.7378
FLW-Omega 02/05	0.7378
FLW-Omega 07/06	0.5879
Fidelity-Proliance	0.7378
Waynesville (LDC)-Oneok	0.7378
St. Robert (LDC)-Oneok	0.7378
St. James (LDC)-Oneok	0.7378
Cuba-Omega	0.7378
Owensville-Aquila*	0.7378
Owensville-Ameren* 10/04	0.6403
Rolla-Aquila*	0.7378
Rolla-Ameren* 10/04	0.6403
Salem-Aquila*	0.2801
Salem-Ameren* 10/04	0.6403
AmerenUE at Wentzville	0.6479
AmerenUE at Wentzville 10/04	0.6403
Laclede	0.6660
Laclede (>7.5 Bcf)	0.5510
Laclede 11/05	0.7079
Laclede (>7.5 Bcf) 11/05	0.5929
Laclede 11/06	0.5879

MPC-Interruptible Transportation Rates

January 2004 thru March 2006 with Selective Information Thru November 2006

<u>Customer/Effective Date</u>	<u>Interruptible Rate</u>
MAXIMUM	0.3036
Busy Bee Laundry-Cornerstone	0.3036
Royal Canin-Cornerstone	0.3036
Phelps Medical-Cornerstone	0.3036
UMR-Cornerstone	0.3036
Emhart Glass-Oneok	0.3036
Emhart Glass-Omega 12/04	0.3036
Emhart Glass-Omega 05/05	0.1699
G-P-Omega	0.1699
Willard-Omega 06/04	0.1699
Emhart/Willard-Omega 07/06	0.0200

MGC Firm Transportation Rate Other than FLW at 25% Load Factor
January 2004 thru March 2006 with Selective Information thru November 2006

<u>Customer</u>	<u>Firm Transportation Rate</u>
MAXIMUM	2.6761
Busy Bee Laundry-Cornerstone	2.6761
Royal Canin-Cornerstone	2.6761
Phelps Medical-Cornerstone	2.6761
Emhart Glass-Oneok	2.6761
Emhart Glass-Omega 12/04	2.6761
Emhart Glass-Omega 05/05	0.9433
Emhart Glass-Omega 06/05	0.3000
Emhart Glass-Omega 07/06	0.0200
Waynesville (LDC)-Oneok	2.0000
Waynesville (LDC)-Oneok 05/06	1.9300
St. Robert (LDC)-Oneok	2.0000
St. Robert (LDC)-Oneok 05/06	1.9300
St. James (LDC)-Oneok	2.0000
St. James (LDC)-Oneok 05/06	1.9300
Cuba-Omega	1.9300
Owensville-Ameren* 10/04	2.6761
Rolla-Aquila* 11/03	1.6000
Rolla-Ameren* 11/04	1.7500
Rolla-Ameren 11/05	1.9000
Salem-Aquila* 11/03	2.3500
Salem-Ameren* 11/04	2.4500
Salem-Ameren* 11/05	2.5500

MGC-Interruptible Transportation Rates

January 2004 thru March 2006 with Selective Information Thru November 2006

<u>Customer/Effective Date</u>	<u>Interruptible Rate</u>
MAXIMUM	1.3765
Busy Bee Laundry-Cornerstone	1.3765
Royal Canin-Cornerstone	1.3765
Phelps Medical-Cornerstone	1.3765
UMR-Cornerstone	1.3765
Emhart Glass-Oneok	1.3765
Emhart Glass-Omega 12/01	1.3765
Emhart Glass-Omega 05/05	0.8433
Emhart Glass-Omega 06/05	0.3000
Emhart Glass-Omega 07/06	0.0200
G-P-Omega	0.2000
Willard-Omega 06/04	0.2000
Willard-Omega 02/05	0.3000
Emhart/Willard 07/06	0.0200

MGC Firm Transportation

January 2004 thru March :

<u>Customer/Effective Date</u>
MAXIMUM
Oneok
Omega 02/05
Omega 07/06

Rates at 25% Load Factor for Delivery to FLW
2006 with Selective Information thru November 2006

<u>Firm Rate</u>
2.93
2.93
2.68
2.40

Marketer Firm Rates on MPC at 25% Load Factor
January 2004 thru March 2006 with Selective Information

<u>Customer/Effective Date</u>	<u>Firm Rate</u>
MAXIMUM	0.7378
Proliance-Fidelity	0.7378
Oneok-Waynesville	0.7378
Oneok-St. James	0.7378
Oneok-St. Robert	0.7378
Cornerstone-Royal Canin	0.7378
Cornerstone-Busy Bee Laundry	0.7378
Cornerstone-Phelps Medical	0.7378
Omega-Cuba	0.7378
Oneok-Emhart Glass	0.7378
Omega-Emhart Glass 12/04	0.7378
Omega-Emhart Glass 04/05	0.1698
Omega-Emhart Glass 07/06	0.0200
Oneok-FLW	0.7378
Omega-FLW 02/05	0.7378
Omega-FLW 07/06	0.5879

1 thru November 2006