

**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.**

)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Case No. GC-2006-0491**

**STAFF'S POST-HEARING BRIEF**

Respectfully submitted,

/s/ **Lera Shemwell**

Lera Shemwell

Deputy General Counsel

Missouri Bar No. 43792

Steven Reed

Litigation Counsel

Missouri Bar No. 40616

Attorneys for the Staff of the

Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 751-3015 (Telephone)

(573) 751-9285 (Fax)

[steven.reed@psc.mo.gov](mailto:steven.reed@psc.mo.gov)

[lera.shemwell@psc.mo.gov](mailto:lera.shemwell@psc.mo.gov)

February 9, 2007

NP

## TABLE OF CONTENTS

INTRODUCTION .....	1
BACKGROUND .....	4
ARGUMENT .....	6
Count I - Discrimination .....	7
Count II - No Transportation Agreements .....	18
Count III - Discounts to Affiliates Became the Maximum Rate on the Pipelines but were not Charged Properly .....	20
Count IV - Failure to Report.....	26
Count V - MPC Violated its Line Certificate by Building the **Willard** Extension.....	28
Destruction of Documents .....	29
CONCLUSION.....	40

Staff of the Missouri Public Service Commission,  
Complainant,  
v.  
Missouri Pipeline Company, LLC,  
Missouri Gas Company, LLC, et. al.  
Respondents.

Missouri Pipeline Company, LLC, )  
Missouri Gas Company, LLC, et. al. )  
Respondents. )

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel and, for its Post-Hearing Brief, states:

The schemes David Ries has engaged in strike at the very heart of the reasons for regulation of monopoly utilities and the purpose for which this Commission exists. Missouri Pipeline Company, LLC (MPC) and Missouri Gas Company, LLC (MGC) (“pipelines” or “companies” collectively) have not provided equality in rates to similarly situated customers and have discriminated against other marketers on the system.<sup>1</sup> In violation of MPC and MGC’s tariffs, the affiliate Omega Pipeline Company (Omega) paid lower rates than non-affiliates, and received preferential treatment because of the affiliate relationship, and the fact that David Ries was President of all three companies facilitated the preferential treatment. Preventing what Ries has done is the fundamental reason the Public Service Commission Law<sup>2</sup> was adopted by the Legislature<sup>3</sup>.

<sup>3</sup> *Midwest Gas Users' Ass'n v. Public Service Commission*, 976 S.W.2d 470(Mo. App. W.D.,1998). (Because of economies of scale, pipelines have what amounts to a natural monopoly over the transportation of natural gas. In addition, many customers are "captive" in the sense that they are served by only a single pipeline. In order to protect

The Missouri Supreme Court, in the 1937 case *May Department Stores Company v. Union Electric Company*, 341 Mo. 299, 107 S.W.2d 41, addressed the reason for regulation of utility companies, stating the following:

The purpose of providing public utility regulation was to secure equality in service and in rates for all who needed or desired these services and who were similarly situated.

"2. *No . . . gas corporation . . . shall directly or indirectly by any special rate, rebate, drawback or other device or methods, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity . . . or for any service rendered or to be rendered in connection therewith, . . . than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions.*

"3. *No . . . gas corporation, . . . shall make or grant any undue or unreasonable preference or advantage to any person, corporation or locality, or to any particular description of service in any respect whatsoever.*"

Some of the commission's powers to determine these matters and enforce its findings stated in Section 5190, Revised Statutes 1929, are as follows:

"1. Have general supervision of all . . . gas corporations. . . .

"12. Have power *to require every . . . gas corporation, . . . to file with the commission* and to print and keep open to public inspection schedules showing *all rates and charges made*, established or enforced or to be charged or enforced, *all forms of contract or agreement* and all rules and regulations relating to rates, charges or service used or to be used ( all italics ours),

A Commission-regulated utility must operate within certain boundaries, and there are constraints on these state created monopolies to prevent abuse of monopoly power. "The first PSC law regulating utilities was enacted in 1913.<sup>4</sup> The purpose of such regulatory laws is to allow a utility to recover a just and reasonable return while at the same time protecting the consumer from the natural monopoly power that the public utility might otherwise enjoy as the provider of a public necessity. In this case, the companies' Certificates of Convenience and Necessity (CCN) and their tariffs provide

---

consumers from exploitation of the pipelines' monopoly power, the government began regulating the natural gas

parameters within which the company must operate. Section 393.130.2<sup>5</sup> prevents discriminatory conduct, as do the Commission's affiliate transactions rules. MPC and MGC adopted tariffs which contain particularly strong prohibitions against affiliate abuse<sup>6</sup> designed to protect non-affiliates from discrimination and MPC and MGC from abusing their monopoly power.

By following the money trail, the Commission will see the true picture of Ries as President of MPC/MGC taking advantage of the affiliate relationship with Omega to and discriminating against other marketers. The incentive to shift money away from MPC and MGC was to provide more cash to the owners and this incentive drove the owners willingness to violate their tariff requirements. Ries facilitated the revenue shift through the use of unique discounts only offered to the non-regulated affiliate Omega. Omega then contracted with transportation customers of MPC/MGC to provide bundled transportation service in excess of the discounted rate.<sup>7</sup> Ries was able to implement these revenue shifts because he controlled the pipeline billing to Omega.<sup>8</sup>

Ries gave preferential treatment to Omega and discriminated against other marketers on the system including ONEOK, Cornerstone, and ProLiance. (See Attachment A, *Index of Entities Involved in this Case*). The Commission will see how Omega benefited at the expense of Missouri consumers. Ries provided free excess pipeline gas exclusively to Omega to deliver to Omega's customers while Laclede, AmerenUE, and ONEOK were required to buy the gas they needed to have delivered to their customers *and* add a percentage to fulfill their contractual obligation to provide

---

industry. States regulate intrastate pipelines)

<sup>4</sup> Utility Consumers Council, Inc. v. Public Service Comm'n, 585 S.W. 2d 41, 47 (Mo. Banc 1979)

<sup>5</sup> All statutory references are to RSMo 2000 or Supplements, unless otherwise noted.

<sup>6</sup> Exh. 70, Sheet Nos. 6 and 7, Section 3.2b

<sup>7</sup> Cuba contract Exh. 3 (HC)

<sup>8</sup> Exh.19.4 Hawkins Deposition

(Lost and Unaccounted for Gas - L&U).<sup>9</sup> Ries was able to do this because he controlled all aspects both the intrastate pipelines and the marketing affiliate.

Any marketer is entitled by MPC/MGC's tariffs to transport gas to their customers on the pipelines on equal terms.<sup>10</sup> Ries, however, discriminated against non-affiliated marketer in favor of his affiliate marketing company Omega in order to steal customers from these marketers. Non-affiliated marketers could not compete with Mr. Ries' Omega/Omega Services operation because he had full access to confidential pipeline information<sup>11</sup>, advantageous pipeline transportation rates<sup>12</sup> and exclusive access to the pipeline's excess gas supply, at no cost.<sup>13</sup>

### **BACKGROUND**

MPC and MGC are gas corporations and intrastate pipelines regulated by this Commission.<sup>14</sup> Initially Omega only operated the distribution system at Fort Leonard Wood (the Fort) but in the first half of 2003, Omega began marketing bundled services as the pipelines' marketing affiliate.<sup>15</sup> Omega has been sold, specifically to escape the Commission's investigation,<sup>16</sup> but at all times relevant to this investigation, Omega and Omega Services were affiliates of MPC and MGC, but the existence of Omega Services was never reported to the Commission.<sup>17</sup>

A Certificate of Convenience and Necessity (CCN) is the Commission-granted authority which permits a monopoly utility to conduct business in this state. MPC and MGC were granted intrastate line certificates.<sup>18</sup> In Case Nos. GA-89-126 and GA-90-

---

<sup>9</sup> See example Exh. 67H-2 (HC) shows Ameren's delivery of L&U; Exh. 67H-5 (HC) shows Rolla's L&U deliveries

<sup>10</sup> Exhs. 70 and 71, Sheet Nos. 39, para. 12

<sup>11</sup> Cuba Free Press article.

<sup>12</sup> Case No. GM-2001-585, pg.6

<sup>13</sup> See Daily gas control sheets on invoices attached to Schallenberg Surreb. Exh. 67

<sup>14</sup> Case No. GM-2001-585, pg.6

<sup>15</sup> Exh. 19, Schallenberg Dir. Schedule 3, pg. 9.

<sup>16</sup> Exh. 216, June 26, 2006, Ries e-mail to Mojica (the regulatory issue was the sole driver for even putting Omega in play)

<sup>17</sup> Exh. Ries Depo.

<sup>18</sup> Case Nos. GA-89-126 and GA-90-280. Tr. pgs. 528-529

280, MPC and MGC received their respective certificate authority to operate an interstate pipeline.

Profitability was a challenge for prior owners of MPC and MGC, but the current owners have found ways to make money through discriminatory conduct and tariff violations.<sup>19</sup> The current owners made much of their additional revenue by reducing or eliminating discounts provided by the prior owners to non-affiliated pipeline customers and giving discounts and other advantages to affiliate Omega Pipeline Company (Omega). When Ries realized he could not implement his scheme to remove non-affiliate protections from his tariffs and permit MGC to market gas without taking the issue to the Commission he chose a different path,<sup>20</sup> violating his tariffs and the Commission's rules and avoiding Commission scrutiny. He decided to use Omega, the LDC at the Fort as the marketing company.

Ries orchestrated his scheme to hide violations of his tariff and the Commission's rules. Ries hid Omega customers,<sup>21</sup> he set up a secret bank account in Colorado,<sup>22</sup> set up a secret affiliate to receive payments from the secret customers,<sup>23</sup> failed to file required reports,<sup>24</sup> and pilfered gas from the pipelines for Omega to sell to secret customers while he overcharged other customers and marketers on the system.<sup>25</sup> These violations provided actual monetary gain to Ries as owner and President of Omega and Omega Services to the detriment of MPC and MGC, their non-affiliated customers, and Missouri rate payers. Mr. Ries made so much money from this scheme

---

<sup>19</sup> GM-2001-585, Report and Order, pg. 19

<sup>20</sup> Tr. pgs. 511-535

<sup>21</sup> Tr. pg. 663.

<sup>22</sup> Exh.19-5 (HC) pg. 182

<sup>23</sup> Tr. pg. 505

<sup>24</sup> Exh. 1. Imhoff Dir. pg. 10

<sup>25</sup> See Count 3

that he did not receive any money when Omega was sold to Tortoise Capital Resources.<sup>26</sup>

Staff urges the Commission to resolve the issues raised in this case, as recommended by Staff, and to use its statutory authority to assure that regulated entities perform under their compact with the Commission and with the public in compliance with their tariffs and the Commission's rules. The Commission should order MPC and MGC to reduce the rates charged to shippers on the system to the levels consistent with P.S.C. MO. No. 2, Sheet No. 4, Paragraph 1.c. (firm transportation); P.S.C. No. 3, Sheet No. 15, Paragraph 1.b. (interruptible transportation) of the transportation rates regarding the provision of both firm and interruptible transportation service. Staff's Initial Brief follows the order of issues established for hearing. The Commission should order the Staff to seek the maximum penalties in Circuit Court.

### **ARGUMENT**

On June 21, 2006, at the direction of the Commission, Staff filed this Complaint alleging MPC and MGC have, among other things, violated their tariffs, their CCN, and this Commission's rules. Prior to the filing of this Complaint, the staff investigated MPC/MGC at the Commission's request as a result of AmerenUE's PGA filing in the fall of 2005. As documented in James Massman's Rebuttal Testimony<sup>27</sup> the transportation rates are high on the MPC/MGC system in comparison to other AmerenUE delivery points.

To resolve the Complaint, the Commission must determine whether MPC, MGC, and David Ries as President of the regulated companies and two affiliates has: violated MPC/MGC's CCN and their tariffs; improperly discriminated against non-affiliated marketers; improperly shared confidential customer information with Omega the

---

<sup>26</sup> Exh. 67 Ries Depo. pg. 589.



marketer; failed to fairly apply the Companies tariff provisions to non-affiliates; wrongly provided discounted service to Omega the marketer when not offered to other marketers or customers; and secreted information from the Commission and its Staff to avoid regulatory oversight and compliance with Commission rules.

The Commission's task in this case is to ensure that the regulated utility companies act in compliance with their own tariffs – their contract with their customers - and with the Commission's rules. In doing so, based on the evidence, the Commission will find David Ries, as President of MPC, MGC and Omega – the marketing company used confidential customer information in a discriminatory manner to provide an advantage for Omega marketing over other marketers and customers, have secreted information from the Commission and its Staff in violation of its tariffs and the Commission's rules and have discriminated against non-affiliates in many ways.

### **COUNT I**

#### **DISCRIMINATION**

Staff's Count 1 pertains to three specific MPC and MGC tariff violations: MPC and MGC failed to 1) apply all their terms and conditions in a uniform and nondiscriminatory manner to non-affiliated shippers as provided to affiliate shippers (Sheet No. 39, Paragraph 12 and Sheet No. 26 Section 2.b); and 2) maintain separate operational facilities and personnel from any marketing affiliate (Sheet No. 39, Paragraph 12.b).

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 separate operational facilities and personnel from their marketing

---

<sup>27</sup> Exh. 700, Massman Rebuttal, pg. 4, l. 14-pg. 5, l.3.

affiliate, Omega; 3) require non-affiliates to balance gas purchases with deliveries when affiliates were not required to balance.

**a. Tariff Violations – Anti-Discrimination Clauses were Violated**

Missouri statutes require monopoly utility companies to file tariffs.<sup>28</sup> Tariffs are in the nature of contract and describe a utility company's relationship with its customers.<sup>29</sup> As an intrastate pipeline, MPC and MGC's tariffs require them to provide service in a non-discriminatory manner in transporting natural gas to captive customers on the system.<sup>30</sup> When Ries couldn't convince Staff to accept his changes to the Companies' tariffs,<sup>31</sup> instead of taking his case to the Commission, he adopted both the MPC and MGC's existing tariffs in full, stating: MPC/MGC "hereby adopts, ratifies, and makes its own, in every respect as if the same had originally been filed by it, all schedules rules, notices filed with the Missouri Public Service Commission by Missouri Pipeline Company prior to the effective date hereof." The notices were effective January 1, 2003. The tariffs require that all terms and conditions be applied to affiliates and non-affiliates alike regardless of the affiliation with MPC or MGC. Sheet No. 39 in Paragraph 12 reads:

Operation of Rate Schedule in Conjunction with Marketing Affiliates.

- a. All terms and conditions contained herein shall be applied in a uniform and nondiscriminatory manner without regard to affiliation of any entity to Transporter.

Exh 70.

The MPC/MGC tariffs are intended protect customers from affiliate abuse by requiring that any discount offered to an affiliate cannot be greater than discounts provided to other non-affiliated customers. In addition, Ries allowed Omega to violate

---

<sup>28</sup> Section 393.140 (11)

<sup>29</sup> Bauer v. Southwestern Bell Tele. Co., 958 S.W. 2d 568 (Mo. App. 1997)

<sup>30</sup> Exh. 70 and 71

<sup>31</sup> Tr. 511-524

tariff provisions by allowing Omega to deliver gas Omega never purchased, then billed Omega gas supply customers for the gas. Providing this preferential treatment to Omega resulted in over \$1 million in additional expenses incurred by MPC/MGC transportation customers. To the extent there was excess gas on the pipeline, all customers, not just Omega, should have been able to reduce deliveries to their customers until the imbalance was resolved.

**b. MPC, MGC, Omega, and Omega Services Shared Facilities and Personnel**

MPC and MGC improperly shared officers and employees with Omega the marketing company and improperly provided Omega, with operational and confidential customer accounting information not available to non-affiliates.

Sheet No. 39, Paragraph 12.b reads:

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.

While President of MPC and MGC and during the period Omega engaged in marketing activities, Mr. Ries would: 1) negotiate bundled transportation and gas supply contracts with customers on behalf of Omega; b) be involved in determining the structure and rates of the transportation arrangements with Omega under which MPC and MGC would serve these customers; c) bill Omega customers for bundled transportation services and gas supply; d) determine the rates MPC and MGC would charge Omega for transportation service to its customers; e) negotiate the discounts granted or reduced the rates previously charged to non-affiliated party on the MPC and MGC pipelines; g) nominate or choose to not nominate the natural gas deliveries into

MPC and MGC on behalf of Omega customers because of his exclusive access to the pipelines' excess gas supply; h) be aware of the nominations of other non-affiliated shippers, and i). review and approve gas purchase invoices for Omega.

Mr. Ries violated the tariff by not keeping separate operational facilities and personnel. Nor did he as President of MPC/MGC keep operational and accounting information from affiliates Omega or Omega Services because he was President of both affiliates and took no steps to delegate responsibilities to others so he could functionally separate operational and accounting information. As long as Omega operated only as the LDC at the Fort,<sup>32</sup> there was no problem, but the minute Omega became a marketer, the tariff violations began.

On or around July 1, 2003, Omega began to expand its activities beyond its traditional local distribution company service to Fort Leonard Wood to provide marketing functions to other entities served by its affiliates, MPC and MGC. Before this happened MGC had engaged in unauthorized marketing overtures that were assumed by Omega, but unknown to Staff. In its attempts to be excused from the GC-2006-0378, case the current management of Omega represented to the Commission that Omega only served the Fort Leonard Wood.<sup>33</sup>

From around mid-2002, through at least May 31, 2006, Omega, the marketer, improperly received all confidential MPC and MGC operational and accounting information, primarily through the use of shared personnel at both the president, controller and chief operations positions.<sup>34</sup> Ries, acting as President of MPC/MGC Omega and Omega Services, received operational and accounting information concerning all customers and marketers on the pipeline's system. David Wallen, the VP

---

<sup>32</sup> Exh. 19, Schallenberg Direct, Schedule 3, pg.8

<sup>33</sup> Case No. GC-2006-0378

<sup>34</sup> Exh. 19, Schallenberg Dir. Schedule 3, pgs.5-8

of Operations, signed checks to pay Omega expenses and signed Omega contracts on behalf of MPC and MGC. David (BJ) Lodholz performed work for MPC, MGC and Omega as well and had access to the financial information of MPC, MGC and Omega.<sup>35</sup> Exhibit 19, Schallenberg Dir., Schedule 3, Schedule 2, demonstrates the extent of confidential information to which Ries had access. He knew all of the marketers on the system, who their customers were, and how much gas each marketer was selling to each customer. As a marketer on the pipelines, Ameren would have found this information useful.<sup>36</sup> (Ameren no longer has a marketing affiliate but when it did the information to which Ries had full access was not shared with the marketing affiliate<sup>37</sup>. This information is not shared with Laclede, except by accident (Ries Depo); it is not shared with AmerenUE (Massman ); nor is it shared with ONEOK or any other customer or marketer. But Ries shared it with his affiliate – of which he is president and used it to give Omega significant financial advantage.

Ries could have applied to the Commission to change the tariff language requiring separate operational facilities and personnel.<sup>38</sup> David Ries did seek a waiver of FERC's affiliate rules – FERC's Standards of Conduct.<sup>39</sup> Instead of applying to the Commission to amend his Missouri tariffs, David Ries proceeded to shared confidential customer information with his affiliate Omega, and he applied the tariff terms and requirements in a discriminatory manner. Notably, the waiver granted by FERC from its standards of conduct rules only applied to Missouri Interstate Gas (MIG), the affiliated small pipeline under the Mississippi River, but did **not** apply to Omega. The FERC's jurisdiction *only* applies to MIG.

---

<sup>35</sup> Exh. 19 Schallenberg Direct ; Lodholz Depo. 19-5

<sup>36</sup> Tr. pg. 278

<sup>37</sup> Tr. pg. 278

<sup>38</sup> 4 CSR 240-3.015(1)

<sup>39</sup> Exh. 300 John Rebuttal Appendix B (TS04-259-000)

The fact that this is a small company does not give MPC or MGC the right to violate their Missouri tariffs by sharing personnel and information with Omega. MPC/MGC had enough employees that it could have maintained separate personnel to deal with information and activities that needed to be separated. For example, David Wallen, MPC/MGC's Vice President of Operations, has years of experience in the pipeline industry and is completely capable of managing the pipelines for operational integrity and handling customer information on a daily basis. In fact, Mr. Wallen did perform these job duties.<sup>40</sup>

David Ries, through his own decisions chose to review customer specific information that gave him, as Omega President, access to information that allowed him an unfair advantage as a gas marketer on the pipelines and violated MPC and MGC's tariffs. The tariff language mandating separate operational facilities and personnel is in place precisely to prevent this unfair advantage, and its violation should not be taken lightly.

MPC and MGC provided Omega detailed information regarding other MPC/MGC pipeline shippers, thus identifying Omega's competitors and their confidential business information.<sup>41</sup> This provided Omega a significant advantage over non-affiliated shippers. Omega had Ries, the MPC and MGC President representing Omega's marketing positions in their negotiations with the pipelines for transportation service terms and conditions. MPC and MGC themselves would have no representation other than an employee who reports to David Ries who was not aware of the pipeline tariff requirements that Omega not be given preferential treatment.<sup>42</sup> No other non-affiliate shipper enjoyed these advantages in requesting and negotiating service with MPC and

---

<sup>40</sup> Exh. 78 Wallen Depo. pg. 11

<sup>41</sup> Exh. 78 Wallen Depo, pgs. 54-59

<sup>42</sup> Exh. 78 Wallen Depo, pgs. 126-115

MGC. Because of the lack of separation of functions, when the MPC and MGC president and controller were provided information, the information was being made available, in violation of the principle of separation of information, to the Omega president and controller as well.<sup>43</sup>

**c. Non-Affiliates were Required to Nominate and Deliver Gas to the Pipelines**

MPC/MGC provide gas transportation service. In order to keep the system operating smoothly, MPC and MGC require non-affiliated shippers to nominate gas daily to meet their gas delivery needs and also to give MPC/MGC schedules showing the quantities of gas to be received and delivered by MPC/MGC to the shippers' customers.<sup>44</sup> MPC/MGC provided its affiliate Omega and Omega's customers transportation services but did not require Omega to nominate or purchase any gas on most days, as other transportation customers were required to do.<sup>45</sup>

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

(Exh. 70 and 71, Sheet No. 28.)

The advantage to Omega occurred when MPC and MGC gave Omega exclusive advantage of the excess gas situation on the system, to deliver and sell to its secret customers and the City of Cuba. The positive gas imbalance was accentuated through charging all other customers for lost and unaccounted for gas, which all non-affiliates were required to provide to the system. Omega was able to avoid this cost since

---

<sup>43</sup> Exh. 19 Schallenberg Dir, pg. 16.

<sup>44</sup> Exh. 70 and 71, Sheet Nos. 26-28.

<sup>45</sup> Exh.67, please see daily gas control sheets attached to invoices 67 G, H, I and J.

Omega was not required to purchase gas to satisfy the majority of its customers requirements.<sup>46</sup> While Omega received a significant portion of its gas at no charge, Omega charged its customers for gas deliveries as if it were actually buying gas.<sup>47</sup> Omega the pocketed the revenue by having it remitted to Omega Services. \*\* \_\_

---

\_\_\_\_\_. \*\* Ries has acknowledged that this excess gas imbalance is worth well in excess of \$1 million.<sup>48</sup>

The evidence shows that David Ries, in violation of MPC and MGC's tariffs, was selling the excess gas on the system that MPC/MGC collected from non-affiliated shippers (.43% and .5%) on the system.<sup>49</sup> Non-affiliated shippers such as AmerenUE are expected to operate in balance. James Massman, the Manager of Gas Supply<sup>50</sup> testified that Ameren is not permitted to deliver gas to its customers if it has not nominated gas. "We (Ameren) are required to nominate the volume that we intend to use in the day."<sup>51</sup> While AmerenUE might be out of balance occasionally, "probably 99 percent of the time (Ameren) has (stayed within the 10% variance for imbalance on the MPC/MGC system).<sup>52</sup> On any day that Ameren's customers were taking gas Ameren was required to put gas into the system.<sup>53</sup> Mr. Massman further testified that if Ameren only nominated 50% of what it needed for a day it would have significant imbalance penalties.<sup>54</sup>

MPC/MGC's affiliate Omega was not held to these standards.<sup>55</sup> David Ries had access to confidential customer information that was unavailable to AmerenUE,

---

<sup>46</sup> Exh.67, please see daily gas control sheets attached to invoices 67 G, H, I and J.

<sup>47</sup> Exh. 259

<sup>48</sup> Exh. 304 Ries Rebuttal Appendix 2

<sup>49</sup> Exh. 304 Ries Rebuttal Appendix 2

<sup>50</sup> Tr. Vol. 5, pg. 263, ln. 13.

<sup>51</sup> Tr. Vol 5, pg. 266. ls. 7-8.

<sup>52</sup> Tr. Vol 5, pg. 266. ls. 16-18.

<sup>53</sup> *Id.* at ls. 19-22.



ONEOK, Laclede or any other marketer on the pipelines. Ries used improperly obtained information for profit. The main abuse of the information occurred when Omega did not nominate gas as required of all other transportation customers. By knowing how much gas in total was nominated and delivered to other transportation customers on a daily basis, Ries was able to under-nominate and physically use other customers gas for Omega customers.<sup>56</sup>

The growth of the positive gas imbalance on the pipeline was a result of allowing non-affiliate shippers to continue to deliver lost and unaccounted for gas that exceeded what MPC and MGC were actually using or losing. At any time, Ries could have ordered the excess gas supply situation addressed by requiring all shippers to reduce their daily receipts into the pipeline until the positive imbalance was addressed. Ries had this authority under his tariffs but chose to take the gas and use it to supply Omega's customers and pocket the revenue himself.

**d. Balancing Requirements were not Applied Uniformly**

MPC/MGC applied the balancing requirements contained in their tariffs on more favorable terms to their affiliate, Omega, than were applied to non-affiliate shippers.

Exhibits 70 and 71, Sheet No. 26 section 2.b of the General Terms and Conditions of their 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.

MPC/MGC required non-affiliated shippers were also required to stay "in balance" on the system. Contrary to requirements placed on non-affiliated shippers,

---

<sup>54</sup> Tr. Vol. 5, pg. 266-267.

<sup>55</sup> Exh. 78 Wallen Deposition Exh. 21.

<sup>56</sup> Exh. 19-4 Hawkins Deposition, attached Exh. 17.

MPC and MGC allowed Omega to transport natural gas to Omega customers during a period when Omega's accumulated difference between the quantities of natural gas received on Omega's behalf, and the quantities of natural gas delivered to Omega's customers, exceeded the MPC and MGC "Tolerance Level" of the greater of 50 Dth. or 10% of the total volume of gas<sup>57</sup> delivered by MPC and MGC to Omega customers.<sup>58</sup> By permitting this to occur, MPC/MGC violated Sheet No. 2.b of the General Terms and Conditions of their tariffs.<sup>59</sup>

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%.<sup>60</sup> 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, p. 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 p. 5). The Omega contract with the City of Cuba did not authorize Omega to operate in this manner. 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. He was selling the L&U gas that was delivered by all non-affiliate shippers on the pipeline system. *Exhibit 16 to Mr. Wallen's deposition* (Exh. 78) shows that Omega only purchased and delivered gas into the system a few days per month. These

---

<sup>57</sup> Exh. 70 and 71 Sheet 26

<sup>58</sup> Exh. 19, Schallenberg Dir, pg. 10 (Tr. Vol. 5, pgs. 266-267)

<sup>59</sup> Exh. 70 and Exh. 71

same exhibits show that other shippers purchased and delivered gas to their customers every day of the month.<sup>61</sup>

In an attempt to excuse his unlawful behavior, David Ries claims that Omega provided a “balancing” service to MPC and MGC. If this were truly a service that Omega was providing, surely David Wallen, the pipelines operations manager would be aware of the level that Omega customers were out of balance and the magnitude of the imbalance level.<sup>62</sup> He was not.<sup>63</sup> In his deposition, Mr. Wallen was astonished and unable to explain how the system could be so significantly out of balance.<sup>64</sup> This was a scheme, not a service, and Ries hid it even from his VP of Operations, David Wallen. Wallen was not concerned with individual customer balancing, Ries oversaw that pipeline operational function.<sup>65</sup> The integrity of the pipeline system relies on the overall premise that gas nominated or delivered at the Panhandle Eastern Pipe Line Company interconnect to MPC by MPC/MGC transportation customers will balance to the gas actually delivered to the transportation customers’ meters. The cumulative nominations must match closely the deliveries to transportation customers.

**e. Other Marketers were Required to Pay for Gas Delivered to their Customers on the System**

In contrast to other transportation customers and marketers who were required to pay MPC and MGC to deliver gas to their customers, Omega customers receiving transportation service on MPC/MGC received a bundled transportation service and gas supply bill from Omega. MPC/MGC charged Omega discounted transportation rates for the transportation service these Omega customers received.

---

<sup>60</sup> Exh. 67-A pgs. 2, 4, 6, 8.)

<sup>61</sup> Exh. 78, pg. 54, ls. 1-20.

<sup>62</sup> Exh. 78 HC, Wallen Depo. pg. 11, ls. 22-24

<sup>63</sup> 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)

<sup>64</sup> Exh. 78 (HC) Wallen Depo. pg. 50, ls. 3-6.

<sup>65</sup> Exh. 78 Wallen Depo., pg. 59

Omega received transportation discounts at rates lower than any other similarly situated customer on the pipelines through the billing process when by MPC/MGC billed Omega for transportation services to Omega's customers. (Exh. 49, 53, 54, 259) Omega did not offer the benefit of the MPC/MGC transportation discounts to its customers who instead paid bundled rates in excess of the maximum tariff rates instead. (Exh. 300 John rebuttal Appendixes I, J, K & L).

In summary, as President of MPC/MGC and affiliate Omega, which became a marketer on the system, Mr. Ries had access to information about all natural gas customers on the MPC and MGC lines that should have been maintained as confidential information from Omegas a marketing affiliate.

## **COUNT II**

### **NO TRANSPORTATION AGREEMENTS**

In or around July 1, 2003, MPC and MGC began transporting gas to Omega customers. "In violation of their tariffs, MPC and MGC have transported natural gas service on their systems without Transportation Agreements. Transportation service on MPC and MGC's is available only to Shippers that have executed Transportation Agreements."<sup>66</sup> Appendix D-17 HC (attached) shows that neither \*\* \_\_\_\_\_ \*\* or \*\* \_\_\_\_\_ \*\* had transportation contracts with MPC or MGC. Both of these secret customers use both pipelines to receive natural gas. Contracts MP-1103-TAF and MG-1103-TAF are for firm service. These are the City of Cuba's contracts.

MPC/MGC's tariffs at Sheet No. 4 (1)(c.), for firm service and Sheet No. 15(1)(c), for interruptible service, state that natural gas transportation service is available to any shipper "which has executed a Transportation Agreement wherein Transporter

---

<sup>66</sup> Exh. 1, Imhoff Dir. pg. 4.

[MPC/MGC] has agreed to transport natural gas for Shipper's account up to a specific maximum daily transportation volume . . . ."<sup>67</sup>

These sections<sup>68</sup> require MPC and MGC to enter into Transportation Agreements with Shippers or transportation service is not available on MPC or MGC.<sup>69</sup> During the time that Omega was an affiliate of the pipelines, it was allowed to transport gas over MPC/MGC lines to \*\* \_\_\_\_\_ \*\* and \*\* \_\_\_\_\_ \*\* without a transportation agreement. This permitted David Ries through Omega Services to hide the existence of interruptible transportation customer \*\* \_\_\_\_\_ \*\* from the books and records of MPC and MGC.

MPC/MGC's tariff defines "shipper" as "any person desiring transportation should execute a transportation agreement." ( Exh. 70 & 71 Sheet 4). The Commission defines a shipper for purposes of its affiliate transactions rules saying: "Shippers means all current and potential transportation customers on regulated gas corporation's natural gas distribution system."<sup>70</sup> \*\* \_\_\_\_\_ \*\* and \*\* \_\_\_\_\_ \*\* or Omega, their natural gas suppliers, were and continue to transport gas across MPC/MGC and are, therefore by this Commission's definition shippers. Both of these customers, or Omega as their agent should have executed Transportation Agreements with MPC and MGC. Instead Omega hid these customers under the Cuba Transportation firm contracts with MPC/MGC in violation of their tariffs (Exh. 53 & 54).

---

<sup>67</sup> Exh. 1, Imhoff Dir. pg. 4-5.

<sup>68</sup> 1. Availability

Such transportation service shall be available for any shipper:

c. which has executed a Transportation Agreement wherein Transporter has agreed to transport natural gas for shipper's account up to a specific maximum daily transportation volume. Such Transportation Agreement shall also be subject to the General Terms and Conditions on file with the MoPSC ." (emphasis added).

<sup>69</sup> Exh. 1, Imhoff Dir, pg. 5, ls. 1-4.

<sup>70</sup> 4 CSR 240-40.016(1)(M). Mo. Code St. Reg.

### COUNT III

#### **DISCOUNTS TO AFFILIATES BECAME THE MAXIMUM RATE ON THE PIPELINES BUT WERE NOT CHARGED PROPERLY**

MPC/MGC failed to reduce transportation rates to non-affiliates when it gave discount rates to its affiliate Omega and provided Omega service under terms not made available to non-affiliated shippers. Omega received pipeline discounts for transportation to Cuba and its secret customers \*\* \_\_\_\_\_ \*\* and \*\* \_\_\_\_\_ \*\*. (Exh. 259). These actions violate the nondiscrimination provisions of MPC/MGC's tariffs and activate the provisions of 3.2(b) of the tariffs.

##### **A. 3.2 Range of Rates.**

b. For all Transportation Agreements entered into by Transporter with any affiliate of Transporter after the effective date of tariff sheets having a Date of Issue of January 18, 1995, in those instances in which the term of the Agreement is greater than three (3) months:

*(1) The lowest transportation rate charged to an affiliate shall be the maximum rate that can be charged to non-affiliates. Any renegotiation or other type of modification to the rates of any then-effective Transportation Agreement is to be considered an applicable Transportation Agreement for the purpose of setting this maximum rate for non-affiliates.*

*(2) Transporter will submit each such Transportation Agreement for Commission approval in those instances in which the rate offered to a non-affiliate is proposed to be greater than any rate offered to any affiliate.*

By its own tariff, the lower affiliate discount rate automatically becomes the highest rate that may be charged on the system to any customer. This language provides non-affiliate shippers protection from special pricing arrangements provided to MPC and MGC affiliates. In accord with MPC/MGC's tariff, the rate charged to Omega

became the maximum rate that MPC and MGC could charge any of its non-affiliated interruptible or firm transportation customers for similar services.<sup>71</sup>

MGC provides Omega some form of discount rate for firm or interruptible transportation service to deliver natural gas to the City of Cuba, \*\* \_\_\_\_\_ \*\*, to \*\* \_\_\_\_\_ \*\*, to \*\* \_\_\_\_\_ \*\* and to the Fort Leonard Wood City Gate on the MGC pipeline system. (Attachment B describes examples of the discounts provided).

Prior to the July 2003 agency agreement between Cuba and Omega, all municipals on MPC/MGC were receiving the same rate treatment (MGC-no reservation and \$2.00 commodity).<sup>72</sup> After the Cuba agency agreement became effective Ries writes himself a letter setting the Cuba rate back to the full MGC reservation rate with the commodity based transportation rate discounted to \*\* \_\_\_\_\_ \*\*. (Exh. 300 John Rebuttal Appendix H, last page). 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 \*\* \_\_\_\_\_ \*\* discount - only Omega received the benefit because Cuba had a bundled transportation rate of \$3.50/Dth. (Exh. 300, John Rebuttal Appendix I). Omega was charged the \*\* \_\_\_\_\_ \*\* discount rate for Cuba, \*\* \_\_\_\_\_ \*\* and \*\* \_\_\_\_\_ \*\* gas deliveries. No non-affiliate received such a benefit.

Ries admitted that all similarly situated customers should be treated equally. (Tr. p. 645.) Although Ries made this statement while attempting to explain the Omega discount received by MGC through its use of the Cuba transportation agreement with MGC, it also applies to all interruptible customers. The interruptible customers are all

---

<sup>71</sup> Exh. 67, Schallenberg Rebuttal, pg. 13

similarly situated on the MPC/MGC system. Therefore, the discounts that Omega received by virtue of being invoiced by MPC/MGC for transportation service to \*\* \_\_\_\_\_ \*\*, \*\* \_\_\_\_\_ \*\* and \*\* \_\_\_\_\_ \*\* also apply to all other interruptible customers because they are similarly situated.

For example, Ries negotiated the MPC/MGC contract with Omega and made the determination of the commodity rate MGC would impute on its books for firm transportation service to Fort Leonard Wood. This arrangement by Mr. Ries allowed Ries to profit because he imputed \*\* \_\_\_\_\_ \*\* (Exh. 47) per Dt. commodity revenue from Omega to MGC **but** Omega actually collected \*\* \_\_\_\_\_ \*\* per Dt. from the Fort. (Exh. 79 Simpson Depo. Pg. 54 and Exh. 19 Schallenberg Direct, Schedule 23). The fact that personnel were shared and no one represented the pipelines' interest in this deal allowed Ries to benefit the affiliate Omega by charging \*\* \_\_\_\_\_ \*\* more than he paid the pipelines.

On or around September 1, 2003, the pipelines began shipping gas to \*\* \_\_\_\_\_ \*\*, which was supposedly a firm customer. Firm customers of a pipeline are typically LDCs or other end-use customers who require their deliveries of natural gas to be assured (i.e. firm). To assure delivery, firm customers pay reservation charges to reserve space or capacity on the pipeline. However, \*\* \_\_\_\_\_ \*\* was misclassified because as a firm customer it did not pay any reservation charge and was actually interrupted several times. (Exh. 54) and Exh. 19 Schallenberg Direct, Schedule 3). By charging \*\* \_\_\_\_\_ \*\* per decatherm on MPC and \*\* \_\_\_\_\_ \*\* on MGC, MPC/MGC established a new maximum rate for interruptible service on the pipeline. Non-affiliated interruptible transportation customers/shippers continued to pay the maximum rate for their transportation service on MPG/MPC.

---

<sup>72</sup> Exh. 54



Beginning July 1, 2003, based on MPC/MGC's treatment of \*\* \_\_\_\_\_ \*\* non-affiliates receiving interruptible transportation service on MPC should have been charged no more than the new maximum rate of \*\* \_\_\_\_\_ \*\* per Dt compared to the previous maximum of \$0.3036 per Dt. Beginning July 1, 2003, all non-affiliates receiving interruptible transportation service on MGC should have been charged no more than the new maximum rate of \*\* \_\_\_\_\_ \*\* per Dt. compared to the previous maximum rate of \$1.3765 per Dt. (Exh. 259 and Exh. 304 Ries Rebuttal Appendixes I & U).

Beginning July 1, 2003, MGC's tariff requires that its non-affiliated firm transportation customers be charged a commodity rate no greater than \*\* \_\_\_\_\_ \*\* per Dt to all service points (excluding Fort Leonard Wood) compared to the previously effective maximum commodity rate of \$0.9433 per Dt. (Exh. 71 Sheet No. 5, Paragraph 3.2B(1)).

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 \*\* \_\_\_\_\_ \*\*.

MPC and MGC never received the required documentation to treat Omega as the agent for the City of Cuba contrary to the documentation required of and provided by non-affiliate marketers in the past.

There are other examples of affiliate transactions that reduced the Companies' maximum rates. On or about February 1, 2005, MGC discounted its commodity rate to Omega for service to \*\* \_\_\_\_\_ \*\* to \*\* \_\_\_\_\_ \*\* (Exh. 53) per Dt. Omega actually charged \*\* \_\_\_\_\_ \*\* \$0.55 per Dt, charged to the Fort's previous gas supplier, \*\* \_\_\_\_\_ \*\*. Omega had entered into a contract with \*\* \_\_\_\_\_ \*\*.

---

---

\_\_\_\_\_.<sup>73</sup> Omega paid MPC/MGC  
less than Omega charged the Fort for transportation service.<sup>73</sup>

In violation of its tariffs and the Commissions rules, no MPC/MGC affiliate paid the maximum tariff rates for transportation on the MPC/MGC system. Omega only paid a commodity rate of \_\_\_\_\_ for transportation to the Fort. Even though Ries claims Omega pays the maximum rates, Omega receives a \_\_\_\_\_ discount and Omega received a \_\_\_\_\_ discount from the pipelines. When ONEOK was providing gas to Omega there was no discount, but when David Ries contracted on behalf of Omega to supply Omega the Fort's LDC, he gave the Omega \_\_\_\_\_ a \_\_\_\_\_ discount. That discount was never offered to ONEOK, a competing marketer.

During the period October 1, 2002 through January 31, 2005, Omega was not the natural gas supplier to Fort Leonard Wood.<sup>74</sup> Omega still provided the Fort distribution services but ONEOK provided natural gas supply to the Fort's delivery point. Mr. Ries charged ONEOK the maximum firm reservation and commodity MPC/MGC tariff rate for delivery to the Fort.<sup>75</sup> When Omega became the Fort's natural gas supplier, the MGC firm commodity rate charged to Omega was reduced by \$0.25 per Dth. Omega in turn, only passed on \_\_\_\_\_<sup>76</sup> of the discount to the Fort itself and kept the balance. This transaction was only possible because of Ries' control of the pipelines and Omega.

Ries discriminated against ONEOK. When ONEOK was the natural gas supplier for Emhart Glass, Emhart had both firm and interruptible contracts with MPC/MGC.

---

<sup>73</sup> Exh. 303, Smith Rebuttal F and I and Exh. 79, Simpson Depo. pg. 27

<sup>74</sup> Exh. 79, Simpson Depo. pg. 15

<sup>75</sup> Exh. 53

MPC and MGC charged Emhart the maximum firm reservation tariff rate for gas delivery to Owensville's city gate,<sup>77</sup> (Emhart is located behind AmerenUE's Owensville City Gate) the MGC delivery point for Emhart Glass, and the maximum tariff rate for interruptible transportation service to Emhart Glass. 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 Emhart became an Omega customers, MPC/ MGC stopped charging **any** reservation charge for firm transportation service to the Owensville City Gate for gas delivered to Emhart Glass.<sup>78</sup> MGC reduced its firm commodity rate to \*\* \_\_\_\_\_ \*\* per Dth. in the following month.<sup>79</sup> These discounts were charged to Omega as Emhart 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 Emhart had a firm MDQ of 250 Dth. per day.<sup>80</sup>

MPC's and MGC's tariff requirement that their current 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 \*\* \_\_\_\_\_ \*\* for MGC commodity only since Omega has been charged this discount for firm transportation service to \*\* \_\_\_\_\_ \*\*. Interruptible MGC transportation customers would also be discounted to \*\* \_\_\_\_\_ \*\* for the commodity since Omega was charged this rate for \*\* \_\_\_\_\_ \*\* and \*\* \_\_\_\_\_ \*\*, interruptible transportation customers.

The MPC and MGC tariffs state that the lowest rate charged to an affiliate is the maximum rate that can be charged to a non-affiliate. To state it another way, no non-

---

<sup>76</sup> Exh. 79, Simpson Depo. pg. 54

<sup>77</sup> Exh. 53 and 54

<sup>78</sup> Exh. 48

<sup>79</sup> Exh. 49

<sup>80</sup> Exh. 303, Smith Rebuttal, Appendix C and Exhibit 47

affiliated customer shall be charged more than the lowest rate charged to Omega without express Commission approval.

#### **COUNT IV**

#### **FAILURE TO REPORT**

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.<sup>81</sup> This process was established to assure non-discriminatory conduct by the pipelines. 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 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 tariff clearly requires that discount information should have been provided in detail to Staff, including: who requested the discount, their address, the bid price quoted, and the length of the contract.<sup>82</sup> MPC/MGC failed to report information about its affiliate deals to the Staff. Additionally, quarterly reports were not provided to Staff and

---

<sup>81</sup> Exh. 1, Imhoff Dir., pg. 10

<sup>82</sup> Exh. 1, Imhoff Dir., pg. 10-11

Mr. Ries admitted during deposition that he does not have the missing reports in his possession.<sup>83</sup>

The Companies offered and invoiced Omega discounted transportation service, but failed to report it to Staff.<sup>84</sup> MPC and MGC finally reported an affiliate transportation service agreement on April 12, 2005 for the first quarter 2005, which coincided with the transportation service agreement with which Omega replaced ONEOK as the gas supplier to the Fort.<sup>85</sup> These reports did not disclose that Omega was provided any discounted transportation service before February 1, 2005. MPC and MGC never disclosed that they had been delivering gas to Omega's secret customers prior to February 1, 2005 or the first quarter of 2005.

There was no mention in the second quarter 2005 that MPC and MGC were providing discounted firm transportation to Omega on behalf of \*\* \_\_\_\_\_ \*\*, which is a firm service customer.<sup>86</sup> Appendix D-17 HC shows that Omega on behalf of \*\* \_\_\_\_\_ \*\* was not paying **any** reservation charges. This effectively reduced MPC's and MGC's tariff reservation charges to \*\* \_\_\_\_\_ \*\*. Since MPC and MGC charged Omega zero (\$0.00) reservation charge, for firm service, and a reduced commodity charge of \*\* \_\_\_\_\_ \*\* Dth. and \*\* \_\_\_\_\_ \*\* per Dth., respectively, for transportation service to \*\* \_\_\_\_\_ \*\* these charges became the maximum tariff charge firm service to non-affiliates.<sup>87</sup>

By failing to report transactions as required by section 12.c of their tariffs, MPC and MGC hid these transactions from regulatory oversight. Omega could have filed a

---

<sup>83</sup> Exh. 88 Ries Depo., Vol. 5, pgs. 2034-2036)

<sup>84</sup> Exh. 1, Imhoff Dir. pg.10.

<sup>85</sup> Exh. 19, Schallenberg Dir. pg. 17.

<sup>86</sup> Exhs. 47, 48, 49

<sup>87</sup> Exh. 19, Schallenberg Dir, pgs. 16-17. Appendix D-17 (HC) is attached.

request to modify their tariffs but, instead simply violated these provisions. (Exh. 19, Schallenberg Dir, p. 16-17.)

MPC and MGC failed to include in the third quarter 2003 report to staff information regarding: 1) OmegaPC'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 \*\* \_\_\_\_\_ \*\*. <sup>88</sup> The failure to report hid the fact that Omega, not Cuba, was the beneficiary of the reported discount arrangements.

### **COUNT V**

#### **MPC VIOLATED ITS LINE CERTIFICATE BY BUILDING THE \*\*WILLARD\*\* EXTENSION**

MGC has a line certificate only and lacks authority to build this lateral outside the boundaries of its certificated area. MGC was authorized under its tariffs to modify its facilities only in the event that MGC was reimbursed by \*\* \_\_\_\_\_ \*\* or the end-user \*\* \_\_\_\_\_ \*\*. <sup>89</sup> On or around June 1, 2004, MPC and MGC provided interruptible transportation service to Omega at a new delivery point for \*\* \_\_\_\_\_ \*\*. <sup>90</sup> MPC paid for the line (MGC does not have a checking account) and did not seek nor receive reimbursement from Omega or \*\* \_\_\_\_\_ \*\* for all costs and expenses in constructing, establishing or modifying the facilities required for receipt and/or delivery of gas to this location. MPC and MGC provided interruptible transportation service to satisfy Omega gas supply obligations to this customer at rates lower than the rates charged to other interruptible MPC and MGC transportation customers. <sup>91</sup> This contrasts with how line extensions are funded from Ameren's

---

<sup>88</sup> Exh. 19, Schallenberg Dir., pg. 16-17

<sup>89</sup> Exh. 70 and 71, Sheet 31, pg. 6e

<sup>90</sup> Exh. 303, Smith Rebuttal Appendix J

<sup>91</sup> Exh. 259, Exh. 70 and 71, Sheet 16

perspective as testified by Ameren's witness James Massman.<sup>92</sup> Typically the shipper will pay for the lateral to customer because they benefit from the sales. (Tr 280) With regard to \*\* \_\_\_\_\_ \*\*, Omega was actually the shipper, yet MGC paid for the lateral.<sup>93</sup> This was preferential treatment that no other shipper smaller than Laclede Gas ever received. It also is in violation of MGC's line certificate.

The correct way to do this would have been for MGC to come to the Commission to seek authorization to extend their line certificate to Willard. The question of who was to pay for the line would have been presented to the Commission and approved or not for inclusion in MGC's rate base so that the next rate case would have properly recognized/not recognized the lateral. Respondents during the hearing asked Mr. Massman about Ameren LDCs paying for line extensions to customers and he said yes, because the LDC benefits from the gas sales. (Tr 282) Compared with \*\* \_\_\_\_\_ \*\*, then Omega, the entity that benefited from the bundled transportation and gas supply agreement with Willard,<sup>94</sup> should have paid for the line extension, not MGC.

How could it be a sound business decision, a good economic decision,<sup>95</sup> 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? In fact in the GC-2006-0378 complaint, Omega continued to insist that the LDC at the Fort was Omega's only customer.

### **Destruction of Documents**

The Staff of the Missouri Public Service Commission sought by special motion the imposition of sanctions against MPC, MGC and David Ries, and authorization for

---

<sup>92</sup> Exh. 303 Smith Rebuttal Appendix J

<sup>93</sup> Exh. 304 Ries Rebuttal, pg. 41, ls. 4-9

<sup>94</sup> Exh. 303 Smith Rebuttal, Appendix J

the General Counsel to seek penalties in Circuit Court against MPC, MGC and Mr. David Ries for destruction (spoliation) of documents necessary for Staff's investigation of Missouri Pipeline Company and Missouri Gas Company. This issue was heard through live testimony at the hearing on the complaint case.

The destruction of this material was important for one reason. As long as Staff never obtains the actual MPC and MGC invoices from 2003, Staff will be unable to show that Omega, their affiliate, was charged even less for transportation service during this period than is shown on the recreated invoices beginning in 2004. The actual invoices destroyed by the Company would show not only what MPC and MGC charged non-affiliated shippers for transportation service, but also the actual invoices would show what MPC and MGC charged their affiliate Omega for transportation service. While it is true that Staff may be able to obtain copies of the invoices from non-affiliated shippers by contacting each individually and requesting copies of their invoices, the same is not true regarding Omega. MPC and MGC are the only source for the invoice charges to Omega since Mr. Ries was in control of MPC, MGC, and Omega. The MPC and MGC tariffs specify that the maximum rate that can be charged to non-affiliates is the lowest rate charged to Omega. This tariff provision shows the motive behind the destruction of the copies of the original invoices and the failure to provide recreated 2003 invoices.

These invoice copies will show that Omega was charged less for transportation service, if charged anything at all, than non-affiliated customers in violation of their tariffs.

MPC and MGC are required by Commission rules to maintain records such as customer invoices under 4 CSR 240-10.010 and section 393.140 RSMo. The

---

<sup>95</sup> Tr. pg. 616



destruction of such records is a violation of Commission rules and Sections 386.460, 386.560, and 386.570 RSMo. MPC, MGC and Mr. Ries are subject to penalties and potential criminal sanction. Every day that the requested records are not produced is a separate and distinct offense allowing a penalty up to \$2,000 per day.

“Spoliation is the destruction or significant alteration of evidence. A party who intentionally spoliates evidence is subject to an adverse evidentiary inference.” *Degraffenreid v. R.L. Hannah Trucking*, 80 S.W.3d 866, 873 (Mo. App. 2002). Destruction or alteration of evidence without a satisfactory explanation gives rise to an inference unfavorable to the spoliator. *Brown v. Hamid*, 856 S.W.2d 51, 57 (Mo. 1993). The law is well settled that the destruction of written evidence without a satisfactory explanation gives rise to an inference unfavorable to the spoliator. *Weir v. Baker*, 357 Mo. 507, 209 S.W.2d 253; *Griffith v. Gardner*, 358 Mo. 859, 217 S.W.2d 519.

David Ries, the President of MPC and MGC, testified that the companies do not retain the records required by law to be kept: “We have not typically retained copies of invoices...” Transcript, p. 145, line 24 - p. 146, line 12. The Respondents have also admitted that any invoices provided to the Staff were re-created. Mr. DeFord, attorney for the respondents, demonstrated the razor’s edge the Respondents have tried to balance on when responding to a Commissioner’s questions:

Commissioner Clayton: “So they were recreated? That’s an accurate statement?” Mr.

DeFord: “I think probably reprinted because the data didn’t change.” Commissioner

Clayton: “Doesn’t sound like that.” (Transcript, p. 47, lines 21–25)

But we know that characterizing the re-created invoices as “reprinted” without changing the data is inaccurate. Janis Fischer, witness for the Staff, testified that she obtained customer invoices directly from customers and compared them to the re-

created invoices made by Mr. Ries. Fischer testified regarding the comparison of the two invoices:

...there's different information recorded on different bills. If you look at the recreated invoices, you only are aware of Cuba....

When you go to the actual Cuba bill, you become aware of another secret customer that isn't represented on the recreated bill. And you determine then how much of what the recreated bill indicates being Cuba also includes the other secret customer's gas usage. So there's no way that you could determine the Cuba actual usage by looking at the recreated bill. (Transcript, p. 57, line 15 – p. 58, line 5)

Fischer's testimony establishes that the invoices are different - different to such an extent that the re-created invoices *significantly alter* the truth of the Respondents' activities by hiding the existence of secret customers. See *Degraffenreid, supra*. Such alteration is spoliation of evidence because its design is to mislead and betray the party seeking the evidence. The pipelines have from the beginning of Staff's investigation tried to hide the secret customers from the Staff. Missing invoices, arguably required by law to be kept, later re-created, have advanced the Respondents plans to conceal evidence.

Respondents offer no satisfactory explanation for their destruction and alteration of the evidence in this case. The Commission should note that when Janis Fischer traveled to the Respondents offices in January, 2006, seeking customer invoices among other things, not a single copy of a customer invoice was provided to her. (Transcript, p. 51, lines 2-12) And since January, 2006, the only real customer invoices provided to Staff were copies from January to March, 2006, that were kept in BJ Lodholz files. (Transcript, p. 90, lines 17-21).

BJ Lodholz testified that he kept the face sheets, the top sheets of customer invoices in his office since July, 2002. (Transcript, p. 95, lines 8-25). David Ries

testified that he brought these documents to his October, 2006 deposition: “These are documents that were in BJ Lodholz’ file that he referred to in his deposition...” Transcript, p. 104, lines 2-8). These documents were marked as Exhibit 254 at the hearing. Exhibit 254 is invoice sheets showing charges broken down into reservation and commodity charges. Note that these are necessary, both reservation and commodity charges, in order to post the accounts receivable and revenue transactions on the general ledger, identified in Lodholz’ deposition as exhibit 6, a copy of which is attached hereto. Lodholz testified he kept these invoices since 2002. Ries testified that Exhibit 254 documents were taken directly from Lodholz file; they cover January to March, 2006. Respondents have failed to provide a satisfactory explanation of where the invoices are that Lodholz testified he kept since 2002. The affidavits filed by Respondents’ employees and Mr. Ries assert that NO ONE destroyed the documents. If no one destroyed them, where are they?

Lodholz’s affidavit, hearing exhibit 311, does not explain his testimony at his deposition, it muddies it. In the same way it is easier to tell the truth than to fabricate a story and retell it consistently, the Respondents’ efforts to complicate and confuse the Commission have introduced greater inconsistency. Staff specifically asked Lodholz at deposition and he acknowledged that he was referring to the invoice sheets (Transcript, p. 95, and see page 191 of Lodholz deposition below). Paragraph 5 to Lodholz’s affidavit, exhibit 311, contradicts what Lodholz says in his deposition. Paragraph 5 to Lodholz affidavit proclaims an impossibility. In paragraph 5 Lodholz says he used the summary sheets attached to exhibit 311 to set up the accounts receivables on the ledger. Copies of the ledger are attached hereto. They were exhibit 6 to Lodholz deposition. (see pages 138 et seq. of Lodholz deposition below. Lodholz deposition

was admitted into evidence as Schedule 5 to the Direct testimony of Robert Schallenberg). Beginning at page 138 of Lodholz's deposition he refers to deposition exhibit 6, a four page document attached hereto, which was a collection of pages from the MPC general ledger. The posting of the accounts receivable and revenue transactions can't be done from the information provided on the summary sheets attached to BJ's affidavit as he alleges in paragraph 5 of his affidavit, exhibit 311. By looking at the general ledger revenue account 489 (third page of deposition exhibit 6) one can see that the transaction revenue posting is broken out between the reservation charge and the commodity charge. This information is not provided on the summary sheets attached to exhibit 311. An additional document, the face sheet of the invoice, described in Lodholz deposition, would be required to post the transaction. Only the information found in hearing exhibit 254 provides the information needed to post the transactions, both commodity and reservation, to the ledger.

From an accounting perspective, the retention of the customer invoices as source documents to support the revenues included in the general ledger and financial statements of MPC/MGC would be important. Lodholz, as a CPA would know the value of maintaining the source documents (customer invoices) for possible review by the external auditor or for income tax purposes if audited by the IRS. The MPC and MGC tariffs specify a 12 month period to correct errors in the customer bills. It is likely and logical that Lodholz received the customer invoice cover sheets from Hawkins in order to post the accounts receivable and revenue transactions. Mr. Lodholz name was on the bills to call in event the customer had a question. Mr. Lodholz would keep these copies for reference in the event a customer called regarding their invoice. It is also likely and logical that Lodholz would create a summary sheet compiling all customer

revenues to use in reconciling bank deposits to the general ledger. The hand written notes on the summary sheets attached to the Lodholz affidavit support this assumption. This summary sheet would then be placed on top of the customer invoice cover sheets for the month and filed as source documents supporting the MPC/MGC revenues.

Ries has never provided any 2003 information to Staff to determine the MPC/MGC revenues even though it has been established that \*\* \_\_\_\_\_  
\_\_\_\_\_ \*\* was effective beginning July 2003. The invoice cover sheets maintained by Lodholz since his employment by MPC/MGC in 2002 would provide this information. It leads Staff to believe that while it has been able to uncover tariff and affiliate transactions rule violations there may be additional violations that occurred during 2003 that Staff cannot investigate without the 2003 invoices.

Ries' deposition answers on page 701-702 support Lodholz's initial deposition comments that what he maintained was in fact the customer invoice cover sheets (see below). Hawkins also confirms in her deposition pages 54-55 that Lodholz maintained copies of the invoices.

The Respondents and Mr. Ries had a legal duty to preserve the evidence of what they charged affiliates and non-affiliates for natural gas and transportation services. Their explanation for their failure to produce the very invoices that tend to prove violations of their tariffs and the amount of damages due to those violations is not satisfactory.

**Page 191 of Lodholz Deposition**

Q. Do you use that information posting revenues?

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

Q. And when you say the summary page, are you talking about the invoice sheet?

- A. Right. There's an invoice sheet that we've looked at. It's just what I would call the summary sheet, the front page.
- Q. Do you know if this document, labeled Exhibit 12, is something that is regularly produced by anyone in the company?
- A. I don't know.
- Q. Did you maintain the attachments to the invoices in hard copy in your office?
- A. Yes.
- Q. And how long are they kept?
- A. Forever. I had the ones from when I started.

**Page 138 of Lodholz Deposition**

- 15 Mr. Lodholz, I'm going to hand you Missouri
- 16 Pipeline Company's general ledger. It is stamped highly
- 17 confidential, and a copy of the bank statement.
- 18 Paul, since this occurred during the time
- 19 that Mr. Lodholz was employed, I have assumed no problem
- 20 with highly confidential information with him seeing that,
- 21 since he's no longer employed, but he is being paid by
- 22 them today, right?
- 23 MR. DeFORD: Right. The highly
- 24 confidential should be no problem here.
- 25 BY MS. SHEMWELL:

138

- 1 Q. Okay. Are you familiar with these
- 2 documents, Mr. Lodholz?
- 3 A. Yes.
- 4 Q. And the first sheet in what I handed you is
- 5 a copy of your checking account transactions; is that
- 6 correct?
- 7 A. Correct. The second sheet I'm not familiar
- 8 with. I shouldn't say I'm familiar with everything. The
- 9 rest I've seen.
- 10 Q. The second page is a summary of the revenue
- 11 for 2005 that Mr. Ries had provided us, and then the last
- 12 is a copy of the general ledger, several pages there. I
- 13 think six -- no, there's more than six pages. Can we look
- 14 at the page 5 of 6, please?
- 15 MR. DeFORD: Lera, did you want to mark
- 16 this?

17 MS. SHEMWELL: I'm sorry. I did want to  
18 mark this, and this will be 6.  
19 (EXHIBIT NO. 6 WAS MARKED FOR  
20 IDENTIFICATION BY THE REPORTER.)  
21 BY MS. SHEMWELL:  
22 Q. Do you see page 5 of 6?  
23 A. Yes. Yes.  
24 Q. It says, as of December 31st, 2005, and the  
25 top -- well, they're all invoices. Let's look at the top

139

1 half of that page. Okay. This is the October 2005  
2 labeled invoices, right?  
3 A. At the top says -- or yeah. At the top it  
4 says general ledger as of December 31st. And your  
5 question is?  
6 Q. It says invoices on the left?  
7 A. Right. There's invoices for October and  
8 November, it looks like, on there.  
9 Q. Let's look at the October ones. When is  
10 that entry made into the general ledger?  
11 A. On the first or second of the following  
12 month.  
13 Q. So the invoices represent bills sent to  
14 customers; is that right?  
15 A. Correct.  
16 Q. Or invoices sent to customers?  
17 A. Correct. For the previous month, that's  
18 correct.  
19 Q. So that would be for October or for  
20 September?  
21 A. The ones that say October 31st in the date  
22 column would be for October.  
23 Q. Okay.  
24 A. That's when they'd be recognized on an  
25 accrual basis.

140

1 Q. And do you recognize these as MPC  
2 customers?  
3 A. Yes.  
4 Q. Or are these Omega customers?  
5 A. MPC customers.  
6 Q. We will go on to page 4 of 5. Okay. So  
7 we're going back to Account 142, which is later in the set  
8 of documents that I sent you. I'm sorry. It's in front  
9 of. So the section that says payment on that sheet.

10 A. I'm sorry, which?  
 11 Q. I'm sorry. On page 4 of 5.  
 12 A. Page 4 of 5.  
 13 Q. At the bottom where it starts invoice  
 14 10/31/2005, are you there?  
 15 A. Yes. On page 4 of 5?  
 16 Q. Yes.  
 17 A. Yes.  
 18 Q. What do those represent? I believe there  
 19 are about ten of them that say invoice?  
 20 A. They represent invoices for the month of  
 21 October.  
 22 Q. And how does that list correlate to the  
 23 list that we looked at earlier, in terms of your general  
 24 ledger and your bookkeeping, is what I'm asking?  
 25 A. Well, it's invoiced and it's done once a

141

1 month. I'm not sure what the difference is between these  
 2 two -- these two reports. Looks like they're pretty much  
 3 the same information.  
 4 Q. Are they different accounts? Have you  
 5 listed these into different accounts? I believe on the  
 6 very first page 1 of 5, the third page of the documents  
 7 that I handed you, it identifies, the top left, 142,  
 8 customer accounts receivable?  
 9 A. Oh, this is by account. That's why. It's  
 10 by account. I thought this was a GLD. So what is your  
 11 question? The first set of documents is showing  
 12 transactions in the -- on the receivable side. The second  
 13 document is showing transactions on the revenue side.  
 14 Q. And then the second set of documents listed  
 15 page 1 of 6, it starts there, I believe in the upper  
 16 left-hand corner it's labeled 489, revenues from  
 17 transportation?  
 18 A. Correct.  
 19 Q. And so how do the -- how does the listing  
 20 in 142 customer accounts receivable relate to the 489  
 21 list?  
 22 A. The 142 represents the postings to AR, and  
 23 the 489 is the revenue side of the transactions.  
 24 Q. In the 142 -- the 142 documents, page 4 of 5,  
 25 at the bottom we see a listing, the bottom two, and then go into the next page,  
 26 it says payment. How do those relate to the list above?

On the 142s, you have both the invoice, the debit that's caused by the actual invoicing, with the credit going to the 489. On the -- on the 142 account, when the payment comes in, what that reflects is the receivable, receivable being relieved, which



would be a credit to accounts receivable and a debit to cash. That's why there's two sides of an entry on the 142 and only one side on the 489. Does that make sense?

**Page 701-702 Ries Deposition**

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

They don't exist.

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?

A. I don't know who did that, but they're certainly not in B.J.'s files.

**Page 54-55 Hawkins Deposition**

Q Mr. Lodholz described for us a document that he kept that was a copy of -- I think it was the face sheet of the monthly invoices; do you know what I'm talking about?

A Yes.

Q Do you know where those are?

A We don't retain them.

Q Because he had indicated that he kept them for --

A He does. I don't keep a copy of them.

Q I'm going to ask for you to say I, I don't keep, as opposed to we?

A Okay.

Q So I understand.

A Okay

## **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; failed to file quarterly discount reports with the Commission Staff notifying Staff that Omega had received discounts; hid 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 tariff violations and 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's and MGC's affiliate Omega. The Commission should order refunds to customers who paid excess rates.

Respectfully submitted,

**/s/ Lera Shemwell**

Lera Shemwell  
Deputy General Counsel  
Missouri Bar No. 43792

Steven Reed  
Litigation Counsel  
Missouri Bar No. 40616  
Attorneys for the Staff of the  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102  
(573) 751-3015 (Telephone)  
(573) 751-9285 (Fax)  
[steven.reed@psc.mo.gov](mailto:steven.reed@psc.mo.gov)  
[lera.shemwell@psc.mo.gov](mailto:lera.shemwell@psc.mo.gov)

### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or emailed to all counsel of record on this 9<sup>th</sup> day of February, 2007.

**/s/ Lera Shemwell**

**ATTACHMENTS**

**A, B AND C**

**ARE DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS ENTIRETY**