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BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the	:
Complaint of the Office	:
of the Ohio Consumers'	:
Counsel, et al.,	:
	:
Complainants,	:
	:
vs.	: Case No. 10-2395-GA-CSS
	:
Interstate Gas Supply	:
d/b/a Columbia Retail	:
Energy,	:
	:
Respondent.	:

- - -

PROCEEDINGS

before Ms. Katie Stenman, Attorney Examiner, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-C, Columbus, Ohio, called at 10:00 a.m. on Tuesday, November 8, 2011.

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VOLUME II

- - -

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Tuesday Morning Session,
November 8, 2011.

- - -

EXAMINER STENMAN: Let's go back on the record. This is the continuation of case number 10-2395-GA-CSS being In the Matter of the Complaint of the Ohio Consumers' Counsel, et al. v. Interstate Gas Supply.

Just to be clear who's in the room, let's start with a round of appearances. Mr. Serio, if you want to get us started.

MR. SERIO: Thank you, your Honor. On behalf of the residential utility customers of the state of Ohio, Bruce J. Weston, Interim Consumers' Counsel, by Joseph P. Serio, Larry S. Sauer, and Kyle Verrett.

MR. B. McINTOSH: Good morning, your Honor. Brian McIntosh on behalf of Stand Energy, and John Dosker is with me as the corporate representative from Stand.

EXAMINER STENMAN: Thank you.

MR. WARNOCK: Matt Warnock and Sommer Sheely from Bricker & Eckler for Northeast Ohio Public Energy Council.

EXAMINER STENMAN: Thank you.

1 MR. BENTINE: Yes, your Honor. Chester,
 2 Willcox & Saxbe by John W. Bentine, Sarah Morrison,
 3 and Zachary Kravitz on behalf of IGS, and with us is
 4 Vince Parisi who's acting as the company
 5 representative.

6 EXAMINER STENMAN: Thank you.

7 I think Stand's going to call the next
 8 witness.

9 MR. B. McINTOSH: Yes, your Honor. Your
 10 Honor, we'll call Stacey Dover.

11 Do you know what exhibit we were up to on
 12 Stand?

13 EXAMINER STENMAN: The next one is
 14 Exhibit 4.

15 Please raise your right hand.

16 (Witness sworn.)

17 EXAMINER STENMAN: Thank you.

18 - - -

19 STACEE L. DOVER

20 being first duly sworn, as prescribed by law, was
 21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Mr. B. McIntosh:

24 Q. Good morning. Could you please state
 25 your name for the record.

1 A. Stacey Dover.

2 Q. And where are you currently employed?

3 A. Stand Energy Corporation.

4 Q. And what is the address of Stand Energy?

5 A. 1077 Celestial Street, Suite 110,
6 Cincinnati, Ohio 45202-1629.

7 Q. Are you the same Stacey Dover that
8 prefilled testimony in this hearing on or about
9 November 2nd, 2011?

10 A. Yes, I am.

11 MR. B. McINTOSH: If I could mark for
12 Stand for purposes of identification the prefilled
13 testimony of Stacey Dover.

14 EXAMINER STENMAN: It will be so marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 Q. If you could take a minute to review
17 that. Is that your prefilled testimony?

18 A. Yes, it is.

19 Q. And was this testimony prepared by you
20 and/or under your direction and supervision?

21 A. Yes.

22 Q. Do you have any additions or deletions or
23 corrections to the testimony today?

24 A. I do not.

25 Q. If I were to ask you the same questions,

1 would I receive the same answers?

2 A. Yes, you would.

3 MR. B. McINTOSH: We'll tender this
4 witness for cross-examination at this time.

5 EXAMINER STENMAN: Thank you.

6 Mr. Bentine.

7 MR. BENTINE: Thank you, your Honor.

8 - - -

9 CROSS-EXAMINATION

10 By Mr. Bentine:

11 Q. Is it Ms. or --

12 A. Miss.

13 Q. -- Miss? Okay.

14 A. Dover.

15 Q. Thank you. My name's John Bentine. I'll
16 be asking you some questions on behalf of IGS in this
17 matter.

18 First of all, could you tell me who did
19 the first draft of your testimony?

20 A. I did.

21 Q. You did?

22 A. Yes, sir.

23 Q. And what did you consult for that draft?

24 A. The previous filings to this case.

25 Q. Did you review the testimonies of any of

1 the other Stand witnesses prior to drafting your
2 testimony?

3 A. Only Mark Ward's.

4 Q. Now, on page 2 of your testimony in
5 answer to question 5 you indicate that the purpose of
6 your testimony's to state your professional belief.
7 Do you see that?

8 A. Yes, sir, I do.

9 Q. And that professional belief is formed on
10 the basis of your experiences as indicated in your
11 testimony and your attached résumé?

12 A. And my résumé, yes.

13 Q. And you come to the conclusion that
14 Columbia Retail Energy's use, or IGS's use of
15 Columbia Retail Energy is misleading and deceptive.

16 A. Yes.

17 Q. And is that whether or not there are
18 disclaimers associated with the use of that name?

19 A. Yes.

20 Q. So it doesn't matter if the reader or the
21 potential consumer reads and understands that
22 Columbia Retail Energy is not an affiliate of
23 NiSource or Columbia Gas of Ohio in your view.

24 A. Where the client is educated enough to
25 understand what an affiliate is, I believe that it is

1 a little misleading.

2 MR. BENTINE: Perhaps we should have that
3 answer reread.

4 (Record read.)

5 Q. Are you sticking with that answer?

6 A. I am. I'd like to add something to it.

7 Q. Sure.

8 A. I've been in this business for quite some
9 time and I had looked at other affiliated marketing
10 arms' logos over time, and the font size is very
11 small. I've worked with residential customers as
12 well as commercial and industrial customers. I think
13 that I have encountered the question "What is an
14 affiliate?" many times from all classes of customers,
15 and I've had to explain what it is.

16 So I believe that residential customers
17 who don't know what the word is, without further
18 investigation, might have that question "What is an
19 affiliate?" and looking at the logo may just
20 disregard asking the question because they recognize
21 the brand.

22 Q. Let me go back to my question.

23 A. Yes, sir.

24 Q. My question was if the reader reads and
25 understands that they are not an affiliate, okay?

1 A. Okay.

2 Q. Do you still believe it's misleading and
3 deceptive?

4 A. No.

5 Q. Okay. Now, let's go back. Have you done
6 any research, any studies to come to the conclusion
7 that it's misleading and deceptive?

8 A. I have not.

9 Q. So that's your belief.

10 A. Yes, sir.

11 Q. And do you know how many consumers, do
12 you personally know of consumers that have been
13 confused?

14 A. In this case, no.

15 Q. Now, a little further down in answer to
16 question 6 you indicate "Even the most informed
17 commercial or industrial customers, who I deal with
18 every day, could confuse these solicitations as
19 communications from the regulated utility, Columbia
20 Gas of Ohio."

21 A. Yes.

22 Q. Did you ask any of these customers
23 whether or not they would be confused to --

24 A. I did not.

25 Q. You did not. So, again, this is just

1 based on you looking at it and your thoughts based on
2 your experience of what somebody else might think; is
3 that correct?

4 A. Yes, sir. And inclusive of the fact that
5 those solicitations have a note at the bottom
6 left-hand corner that say "Important Natural Gas
7 Information," they might consider that something from
8 the utility.

9 Q. Are you talking about what was on the
10 envelope?

11 A. The envelope.

12 Q. Okay.

13 A. Yes, sir.

14 Q. And do you realize that the insides of
15 that did contain disclaimers?

16 A. Yes, I am aware of that.

17 Q. Do you also realize that after the first
18 mailing of those that the envelope started containing
19 disclaimers?

20 A. Yes, sir, after the first mailing.

21 Q. So it would only be the first mailing,
22 then, that you believe that somebody sophisticated
23 would mistake this as information --

24 A. Somebody unsophisticated would mistake
25 it.

1 Q. No; we're talking about your statement
2 that even industrial customers who are sophisticated
3 would confuse it.

4 A. That first mailing; absolutely.

5 Q. They would.

6 A. They would open it up and question
7 whether or not it was from the utility.

8 Q. And that's based not on any information
9 you have from any industrial or other consumers but
10 your speculation as to what they may think.

11 A. Yes.

12 MR. BENTINE: Your Honor, I'd move to
13 strike the answer to question 5 and the last portion
14 of question 6 beginning "Even the most informed
15 commercial customers" and, going on through the next
16 page, "I conclude that these solicitations have to be
17 confusing to many residential customers." It's
18 speculation. It's based on nothing other than her
19 opinion based on her opinion, so I move to strike
20 that.

21 MR. B. McINTOSH: Your Honor, I think any
22 questions about Ms. Dover's experience with Stand has
23 been with customers, and both consumers and her
24 experience in that gives her an opinion. I think
25 striking it, again, is a strong sanction. I think

1 the court should look at the weight of the evidence
2 and not dismiss the evidence outright.

3 EXAMINER STENMAN: Thank you. In an
4 effort to be consistent with the rulings made
5 yesterday, the motion to strike will be denied. The
6 Commission will give the opinion testimony proper
7 weight.

8 MR. BENTINE: Thank you.

9 MR. SERIO: Your Honor, I'm sorry.
10 You were striking -- you were asking to
11 strike the entire answer to question 5?

12 MR. BENTINE: Yes.

13 MR. SERIO: But not the question itself.

14 MR. BENTINE: That's right.

15 MR. SERIO: And you were starting "Even
16 the most informed." Was that through the end of the
17 answer on page 3?

18 MR. BENTINE: No, that was just the
19 carryover sentence on the top of the page.

20 MR. SERIO: Thank you.

21 Q. (By Mr. Bentine) Let's look at your
22 answer to question 7. The question "Do you believe
23 that IGS has obtained a competitive advantage by the
24 use of the Columbia name and starburst logo? Please
25 Explain." Compound question, but we won't argue

1 about that.

2 You say giving the upper hand to a
3 nonsubsidiary marketer, by extending the right to use
4 a recognized and trusted name, and then you go on to
5 talk about the common brand name and brand related
6 products/services. Do you see that?

7 A. Yes, sir, I do.

8 Q. Okay. Do you believe that if we
9 substitute the "nonsubsidiary marketer" with
10 "affiliated marketer," that that sentence is still
11 true?

12 A. I believe it's true, yes.

13 Q. So you have a problem, then, with the use
14 of the utility's name regardless of whether or not
15 it's an affiliated or nonaffiliated marketer.

16 A. The answer to No. 7 is very textbook with
17 respect to branding, and it would benefit a
18 nonaffiliated marketer as well as an affiliated
19 marketer.

20 Q. Now, in the second line of that answer
21 you talk about "by extending the right to use a
22 recognized and trusted logo, name and brand." Do you
23 see that?

24 A. Yes, sir, I do.

25 Q. What studies or information do you have

1 that indicates the degree of trust that is put in
2 Columbia's logo? Any?

3 A. I have no studies for that.

4 Q. Then you really can't say whether or not
5 this is a trusted logo or not, can you?

6 A. Why would they sell it?

7 Q. Let me ask it again. You really don't
8 know whether or not this is a trusted logo or not, do
9 you?

10 A. I do not have an opinion.

11 Q. Your next sentence says "A distinctive
12 value inherent in a brand can lead people to ignore
13 evidence that they would normally take in to account
14 when making informed buying decisions." Do you see
15 that?

16 A. Yes, sir.

17 Q. What do you base that on?

18 A. It's a marketing principle of branding
19 and logo.

20 Q. It's a marketing principle that if
21 somebody sees a logo, they can ignore evidence they
22 would normally take into account when making informed
23 buying decisions?

24 A. It is a possibility.

25 Q. I didn't ask that.

1 A. Yes, sir.

2 Q. And that's not what you stated. You
3 stated that they would, it can lead people to ignore
4 evidence that they would take into account when
5 making informed buying decisions.

6 A. And I'm answering yes.

7 Q. Okay. And that's based on your general
8 knowledge of marketing.

9 A. Marketing and sales. Yes, sir.

10 Q. Do you have any treatises or scientific
11 backup or anything you can point me to that supports
12 your conclusion here other than your testimony here
13 today?

14 A. From my education, yes, I do. I can
15 point to studies that were offered in marketing
16 classes about Coca-Cola and other brands that are
17 sold or licensed for use and these same principles
18 apply in those marketing studies.

19 Q. But you don't --

20 A. So according to Columbia of Ohio, I have
21 no studies based on Columbia of Ohio's -- or, I'm
22 sorry, Columbia logos.

23 Q. Can I look at your testimony and
24 determine what studies those are?

25 A. No, you can not.

1 Q. Can I ask you here today what studies
2 those are?

3 A. I would -- I could mention Coca-Cola off
4 the top of my head but, no, I do not have the
5 footnoted studies within my testimony.

6 Q. Okay. Can you refer them to me?

7 A. Off the top of my head, no.

8 Q. Then your next statement is "Those
9 customers, who do not require proof with whom they
10 are entering a contract, may equate the 'Columbia'
11 brand and starburst logo to be a less risky option
12 than less recognized gas marketers." Do you see
13 that?

14 A. Yes, sir, I see that sentence.

15 Q. Okay. Now, so, first of all, do you
16 believe that Columbia Gas of Ohio is a more
17 recognized gas marketer than IGS?

18 MR. WARNOCK: Objection. I don't think
19 Columbia Gas is a marketer.

20 MR. BENTINE: I'd let my question stand.

21 MR. WARNOCK: I think it should be
22 stricken.

23 EXAMINER STENMAN: Just give me a minute.

24 MR. BENTINE: If that's the case, she can
25 answer "no."

1 EXAMINER STENMAN: She can answer the
2 question if she knows. The objection's overruled.

3 THE WITNESS: Could you repeat the
4 question, please?

5 MR. BENTINE: Could I have my question
6 reread, please?

7 (Record read.)

8 A. No.

9 Q. Then what's the point of your statement
10 there?

11 A. If I'm understanding the question, you
12 asked me is the Columbia logo more recognized,
13 Columbia name, more recognized than that of IGS. The
14 answer is yes, it is more recognized than IGS.

15 Q. And you base that on what?

16 A. Given the fact that Columbia is the
17 recognized utility and the only utility for natural
18 gas in this market area, that it would be more
19 recognized than IGS.

20 Q. Okay. And other than that's what you
21 think, how do you know that?

22 A. It is fact that it's the only utility
23 that offers natural gas in the Columbia market.

24 Q. It's the only local distribution company.

25 A. Local distribution company, yes.

1 Q. And you believe that to be true.

2 A. In the market area of Columbia Gas of
3 Ohio, yes.

4 Q. Do you know whether or not the market
5 area of Columbia Gas of Ohio overlaps in any
6 places --

7 A. It does.

8 Q. -- with other --

9 A. Yes, it does.

10 Q. -- LDCs?

11 A. Yes, it does. I am fully aware of that.

12 Q. So is it only those areas -- strike that.

13 So going back to my answer, it's only
14 because they're the LDC that -- you conclude from the
15 fact that Columbia's the LDC that they are a more
16 recognized brand than IGS.

17 A. Yes, sir.

18 Q. Now, do you live in the Columbia area?

19 A. I used to. I do not at present.

20 Q. Okay. And when did you?

21 A. When did I?

22 Q. Yes.

23 A. I lived prior to '98, March of '98.

24 Q. And have you kept up with -- well, strike
25 that. Let me ask it this way: Have you looked at

1 any market surveys or anything that would support
2 your opinion?

3 A. I look at many documents and articles
4 that pertain to natural gas choice where it pertains
5 to Columbia of Ohio and all the other LDCs or local
6 distribution companies here which mention choice all
7 the time.

8 Q. Not what I asked you.

9 A. Okay.

10 Q. Have you seen anything that says Columbia
11 Gas is recognized and favored by 96 percent of the
12 people?

13 A. No, sir, I have not.

14 Q. Okay. So you're speculating, then, based
15 on what you think as to whether or not IGS or
16 Columbia Gas may be more recognized.

17 A. Yes.

18 MR. BENTINE: I won't bore you with a
19 motion to strike because I think I know what your
20 ruling would be.

21 Q. Now, do you know the relative level of
22 marketers versus LDC customers in the Columbia of
23 Ohio service territory versus Dominion, versus Duke?

24 A. I look at those reports, yes.

25 Q. Okay. What's the penetration of

1 marketers currently in the Columbia of Ohio service
2 territory?

3 A. Well, I know that there are approximately
4 550,000 customers that have signed with Choice
5 marketers within Columbia Gas of Ohio and it
6 represents probably 20 to 25 active gas marketers
7 that have clients in residential, commercial, and
8 small industrial categories.

9 Q. And what level of penetration is that in
10 the residential market?

11 A. In the residential market? I think
12 there's probably around 340,000 of the 550 that are
13 residential.

14 Q. But in terms of the total universe of
15 customer, is that 40 percent? Is that 20 percent?
16 Eighty percent?

17 A. I don't know off the top of my head.

18 Q. Is Stand a proponent of customer choice?

19 A. Yes.

20 Q. And you indicated there were 25 marketers
21 currently serving Ohio?

22 A. I would say that would be approximate. I
23 look at the report that Columbia produces every
24 month --

25 Q. Okay.

1 A. -- that shows them listed by, by
2 nondescript ID. I think that's about the last count
3 I had.

4 Q. Based on your knowledge do you believe
5 market penetration of marketers is greater in the
6 Dominion Ohio service territory as compared to
7 Columbia? If you know.

8 A. In my opinion I don't believe so, but I
9 do not know for sure without looking at the reports.

10 Q. How about Vectren, do you know that?

11 A. In Vectren, I would think that there's
12 less marketers there in Vectren.

13 Q. In terms of number of marketers or --

14 A. Number of marketers.

15 Q. How about in terms of penetration?

16 A. I do not know the numbers off the top of
17 my head.

18 Q. Now, you indicate -- well, first of all,
19 let me ask you this: Do you know whether or not IGS
20 operating as CRE would provide a different level of
21 service to a customer than if Columbia Gas was
22 operating -- excuse me, NiSource was operating
23 Columbia Retail Energy?

24 A. I do not know. We all have to play under
25 the same rules, so I would expect the level of

1 service would have some level -- level ground of
2 understanding what the rules are and applying those
3 rules internally to your business process.

4 Q. Okay. Then you don't know -- you don't
5 know, do you, back to the answer, the sentence in
6 your answer to question 7, it says "Those customers,
7 who do not require proof," et cetera, "being a less
8 risky option than a less recognized gas marketer,"
9 you don't know whether it's risky or not to be with
10 IGS versus somebody else, correct?

11 A. I do not.

12 Q. Now, you indicate, then, also that no
13 other -- the last sentence of that same question
14 going over to the top of page 4, that "No other
15 marketers were extended this opportunity to lower
16 their marketing and sales budgets to small volume
17 transportation customers on the Columbia Gas of Ohio
18 Choice program." Do you see that?

19 A. Yes, sir, I do.

20 Q. And that stems from your statement that
21 "should lower marketing and sales expenses to create
22 further profit" ending the sentence that just
23 precedes that; is that right? You're building off of
24 that answer, that answer to make this conclusion?

25 A. I'm also building off of my answer in

1 No. 11.

2 Q. Okay. Well, let me ask you, do you know
3 whether or not IGS has lowered or increased its
4 marketing and sales budgets to small volume customers
5 as a result of utilizing the CRE brand?

6 A. I do not know for a fact; however, if I
7 were making an investment into a logo to be used in a
8 certain market area, I would be investing a lot in
9 the beginning and making sure I'm recovering my costs
10 early on.

11 Q. Okay. So you don't know whether this is
12 true or not for IGS and CRE in terms of your
13 conclusion.

14 A. I do not know.

15 Q. Okay. In question 8 you indicate in
16 answer to that question that "It may also harm the
17 profitability of competitors," referring to IGS's use
18 of CRE.

19 A. Uh-huh.

20 Q. Okay. You used the word "may" there, and
21 I think that's admirable, but what do you base that
22 conclusion on?

23 A. Do you mind if I read my testimony real
24 quick?

25 Q. No.

1 A. I base this testimony on -- with respect
2 to my answer in No. 11 as well, marketers that were
3 in this program, heavily invested in this program,
4 they were not offered the same opportunity to take
5 advantage of an offer made by NiSource to purchase
6 this name and logo. This name and logo I believe has
7 a lot of weight in the marketing areas of all the
8 Columbia local distribution companies inclusive of
9 the state of Ohio.

10 Where you're gaining an advantage of a
11 logo and a name brand, especially one of a trusted
12 local distribution company, it does give an upper
13 edge to be able to create sales in a quicker fashion
14 than that of a Stand Energy or an IGS.

15 That sales process may be shortened for
16 IGS in the process of obtaining and using that logo
17 where other marketers will not have the same
18 advantage. We may have to, as marketers, explain who
19 and -- what an affiliate is, who a nonregulated
20 affiliate is of Columbia which may make our sales
21 process longer as well.

22 I think it will take a lot of time to
23 invest in speaking to -- I talk to customers all the
24 time, I've talked to residential customers, and to
25 explain language from other marketers' contracts and

1 explain who they are so they can make competitive or
2 comparative decisions based on the offers they have
3 in front of them, it takes a lot of time, where
4 Columbia Retail Energy may not need to explain who
5 they are simply because they're using the Columbia
6 name.

7 I think that the sales process and the
8 incurred costs will be greater for a nonaffiliated
9 or -- a nonaffiliated marketer.

10 Q. Well, let me segue into something else.
11 How many residential customers does Stand currently
12 serve?

13 A. Currently serve?

14 Q. Currently serve.

15 A. Am I allowed to answer that question?
16 Between -- in Columbia Gas of Ohio?

17 Q. Yes.

18 A. Around 330.

19 Q. 330.

20 A. That number was greatly decreased after
21 2000 -- after 2000-2001.

22 Q. Are you currently actively marketing to
23 residential customers?

24 A. No, but only through -- I want to answer
25 that the right way. We have a commercial customer

1 who we offer residential service to their employees
2 and is not an active marketing process, it is an
3 available service, added-value to that commercial
4 customer.

5 Q. So out of a million residential customers
6 behind Columbia you've got experience with 330?

7 A. I've had experience with way greater than
8 that. At its peak, over 15,000 residential.

9 Q. And was CRE being offered by IGS during
10 any of the time period that you --

11 A. No.

12 Q. -- did all this? Was there an affiliate
13 associated with Columbia Gas marketing during that
14 time?

15 A. Yes, sir.

16 Q. And did you explain what they were?

17 A. Yes, I did.

18 Q. And people were relieved to find out that
19 they were an affiliate?

20 MR. WARNOCK: Objection.

21 MR. BENTINE: I'll withdraw that.

22 Q. Would you look at your answer on page 4
23 to 9, question 9. There's a sentence beginning, the
24 next-to-last line "Also, if Columbia Retail Energy
25 customers perceive value in paying a higher cost for

1 natural gas due to brand value recognition, a higher
2 price across a large market share will only decrease
3 CHOICE Program savings as a whole going forward."

4 First of all, is this anything other than
5 speculation on your part about this perceived value
6 and the willingness to pay a higher price?

7 A. It is a marketing principle that goes
8 along with branding and logo.

9 Q. So it --

10 A. And, in my opinion, it does add value.

11 Q. You have no proof other than your opinion
12 based on some marketing things that you learned some
13 time ago that this is true for Columbia Gas
14 customers, right?

15 A. I have no studies.

16 Q. You have --

17 A. No proof.

18 Q. No proof.

19 Question 10 and the answer Yes, how did
20 you become aware of this proceeding?

21 A. I maintain the storage of documents that
22 Stand Energy stores in various storage cages in
23 Cincinnati and in northern Kentucky and I was asked
24 to participate in pulling the boxes for that case for
25 the time frame of that case that the opposing party,

1 NiSource, could go through the boxes and look for
2 documents pertaining to the issues in that case.

3 Q. Okay.

4 A. That's how I'm aware of it.

5 Q. Have you read the decision of the FERC?

6 A. No, I have not.

7 Q. Do you know that IGS was not a target in
8 that and was not charged by the FERC with any
9 violation?

10 A. I'm not privy to that case outside of
11 being present for pulling those boxes.

12 Q. Do you know whether or not the same
13 information, and you keep looking at your counsel
14 over there --

15 A. Well, I do --

16 MR. WARNOCK: Objection. Can that be
17 stricken from the record? That's a little over the
18 top.

19 EXAMINER STENMAN: Let's strike that from
20 the record. Please continue.

21 Q. Do you know whether or not that
22 information was made available to other marketers
23 besides IGS?

24 A. I'm not privy to that; no.

25 Q. So really what you're saying there is you

1 are aware that there was a case?

2 A. I was aware there was a case.

3 Q. And you're not testifying as to anything
4 else other than you're aware there was a case.

5 A. Absolutely.

6 Q. The next question, 11, you indicate that
7 you've seen no evidence of a public notification or
8 EBB posting from NiSource of the licensing agreement
9 offer. Do you see that?

10 A. Yes, I do.

11 Q. Do you know whether or not NiSource
12 actually offered this or IGS asked for it?

13 A. I do not know.

14 Q. So you don't know whether or not if Stand
15 would have asked for it, it might have been able to
16 get the same deal.

17 A. I do not know.

18 Q. So if that's the case -- from what do you
19 conclude that there is an ongoing and perhaps not
20 fully disclosed business relationship between IGS and
21 NiSource?

22 A. In my opinion, based on standard codes of
23 conduct and the principle behind offering information
24 to all marketers on a level playing field, I felt
25 that this offer might have also been offered in

1 conjunction with that standard.

2 Q. So you didn't know, whether it's an offer
3 or not, and you don't know whether or not it was tied
4 to anything else.

5 A. I do not know.

6 Q. So this is pure speculation on your part.

7 A. I went to look to see if I had found any
8 posting and I found no evidence of a posting. That
9 is what I'm testifying to.

10 Q. But you're also testifying that that was
11 evidence of an ongoing and perhaps other
12 not-fully-disclosed business relationship between IGS
13 and NiSource --

14 A. When Columbia --

15 Q. -- that part is speculation.

16 A. When Columbia offers --

17 Q. Could I finish my question?

18 A. Yes, sir.

19 Q. Okay.

20 EXAMINER STENMAN: We have a court
21 reporter, I need you not to talk over each other so
22 that she can accurately transcribe everything.

23 THE WITNESS: Yes, your Honor.

24 EXAMINER STENMAN: Mr. Bentine.

25 Q. Let me ask you again. I understand you

1 said you didn't find anything, that's a fact, okay.
2 You looked and you didn't find anything. But my
3 question is the balance of this where you're saying
4 that, in answering yes, that it's evidence of an
5 ongoing and perhaps not-fully-disclosed business
6 relationship, that's speculation on your part.

7 A. To support my speculation other data and
8 other lists and other items that Columbia makes
9 available to marketers like customer lists that are
10 paid for, they're made available to all marketers. I
11 assumed that this very same offer would also be made
12 to other marketers given they've allowed other data
13 to be purchased by all marketers.

14 Q. So your --

15 A. They've also made available the ability
16 to put our logos on their invoices and that was just
17 not made to one marketer, it was made across the
18 board. And I assume that this very same offer might
19 have been made available and that's why I went to
20 look for evidence of its posting.

21 Q. Okay. But the answer is yes, it's
22 speculation.

23 MR. B. McINTOSH: Objection, your Honor.
24 I don't think he can state the answer is yes, and
25 asking a direct question would be good.

1 EXAMINER STENMAN: The objection is
2 sustained. You need to ask a question.

3 Q. Other than the fact that you looked at
4 these places and didn't find an offer from NiSource
5 or Columbia Gas to all marketers that they could all
6 serve under CRE if they just signed up for it, that
7 is the only thing upon which you base this evidence
8 of further business relationships, right?

9 A. Yes, I do.

10 Q. Could you tell me specifically, since
11 1999, December of 1999, what specific marketing
12 responsibilities you have had at Stand Energy.

13 A. Since December of 1999.

14 Q. Yes.

15 A. With respect to Choice marketing, it's
16 been very limited. We participated in residential,
17 commercial, and small industrial Choice behind three
18 utilities, Columbia Gas of Ohio, Duke Energy, and
19 Dominion East Ohio. With respect to Choice marketing
20 I helped prepare contract language, I also helped
21 prepare comparative price analysis, I also
22 enrolled -- I did all the basic Choice functions that
23 pertain to electronic data transfer.

24 I also maintained customer service lines
25 as well as the customer concern database issues that

1 were fed by Columbia and all the other marketers
2 along with OCC and PUCO, so I handled all that
3 information as well as collections pertaining to
4 Choice on that end.

5 And I also have worked in the commercial
6 and industrial marketing general transportation
7 marketing side maintaining -- preparing and
8 maintaining contracts, account manager, I produce
9 analysis pertaining to competitive situations of
10 individual commercial and industrial customers, and I
11 also train our sales group.

12 Q. Let me ask it this way --

13 A. Okay.

14 Q. -- since December of 1999 how much of
15 your time is spent on marketing regarding Columbia
16 Choice customers?

17 A. Probably 10 percent of my time.

18 Q. Would you agree with me that you have
19 done really no analysis of IGS's use of the CRE logo
20 trademark?

21 A. Outside of this testimony, no.

22 Q. And you haven't done any independent
23 research on this either.

24 A. No, sir.

25 Q. Have any customers contacted you about

1 confusion regarding CRE and IGS?

2 A. No, sir.

3 Q. Have any customers contacted you that
4 said they mistakenly purchased from CRE thinking they
5 were associated with Columbia?

6 A. No, sir.

7 Q. Now, when Stand offers service to
8 residential customers, back when they were marketing,
9 did they offer both fixed and variable rates?

10 A. Yes, we did.

11 Q. And did some of those marketing materials
12 compare fixed and variable rates?

13 A. They compared our fixed or variable rate
14 formula with the GCR, the gas cost recovery, of the
15 utility in which we were selling gas.

16 Q. And that's a variable rate, the gas cost
17 recovery rate.

18 A. At that time it was a quarterly rate.

19 Q. And by saying "quarterly" it varied every
20 quarter.

21 A. It varied every quarter, yes.

22 Q. Rather than monthly.

23 A. Yes, sir.

24 Q. You agree that it's industry practice to
25 compare a rate that a marketer's going to offer

1 potential customers to a published rate or benchmark?

2 A. Yes, sir.

3 Q. Do you agree that it's industry practice
4 to compare fixed rates to historic rates for
5 residential customers?

6 A. Yes, sir.

7 Q. Now, other than what you have put in your
8 testimony and stated here on the record today in
9 answer to my questions are you aware of any other
10 specific facts or evidence that would support some
11 collusion or other deal or that IGS was being given
12 preference by NiSource?

13 A. No, sir.

14 Q. Have you lost customers to CRE?

15 A. Not that I'm aware of, mainly because we
16 service general transportation customers and I do not
17 believe that the offers of CRE were made to that
18 class of customers.

19 Q. Do you serve any residential customers
20 behind Columbia?

21 A. We do.

22 Q. But you've lost none of those that you're
23 aware of?

24 A. Not that I'm aware of. The attrition
25 rate I don't think is related to CRE.

1 MR. BENTINE: That's all I have. Thank
2 you.

3 THE WITNESS: Thank you.

4 EXAMINER STENMAN: Thank you.

5 Redirect?

6 MR. B. McINTOSH: No redirect, your
7 Honor. We'd just move to admit the testimony into
8 evidence.

9 EXAMINER STENMAN: Any objection to the
10 admission of Stand No. 4?

11 MR. BENTINE: Subject to my overruled
12 motion, no.

13 EXAMINER STENMAN: Stand Exhibit No. 4
14 will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER STENMAN: Thank you, Ms. Dover.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 EXAMINER STENMAN: Stand, you may call
20 your next witness.

21 MR. B. McINTOSH: Could we have Ms. Dover
22 remain in case of re-call?

23 EXAMINER STENMAN: She may remain in 11-D
24 but not in the hearing room.

25 MR. B. McINTOSH: Your Honor, we'll call

1 Mark Ward now.

2 EXAMINER STENMAN: Please raise your
3 right hand.

4 (Witness sworn.)

5 EXAMINER STENMAN: Thank you. Have a
6 seat.

7 MR. B. McINTOSH: Your Honor, could I
8 approach the witness for a second?

9 EXAMINER STENMAN: You may.

10 - - -

11 MARK T. WARD

12 being first duly sworn, as prescribed by law, was
13 examined and testified as follows:

14 DIRECT EXAMINATION

15 By Mr. B. McIntosh:

16 Q. Good morning, sir. Could you please
17 state your name for the record.

18 A. Mark Ward.

19 Q. And where are you currently employed?

20 A. Stand Energy.

21 Q. Are you the same Mark Ward who previously
22 submitted his prefiled testimony in this case?

23 A. Yes, I am.

24 MR. B. McINTOSH: If I could move this as
25 Stand 5.

1 EXAMINER STENMAN: It will be so marked.

2 (EXHIBIT MARKED FOR IDENTIFICATION.)

3 MR. B. McINTOSH: If I could approach the
4 witness, your Honor.

5 EXAMINER STENMAN: You may.

6 Q. If you could review that for a moment.
7 Is that a copy of your prefiled testimony?

8 A. Yes, it is.

9 Q. Was this testimony prepared by you?

10 A. Yes, it was.

11 Q. And it was under your direction and
12 supervision.

13 A. Yes.

14 Q. Do you have any additions, deletions, or
15 corrections to the testimony today?

16 A. No, I don't.

17 Q. If I were to ask you the same questions
18 today, would I receive the same answers?

19 A. Yes.

20 Q. With respect to question No. 12, you
21 mention a document that was prepared and given to you
22 by Mr. Bob Skaggs; is that correct?

23 A. Yes, I did.

24 MR. BENTINE: Your Honor, could I have
25 that question reread, please?

1 MR. B. McINTOSH: What's that?

2 MR. BENTINE: Could I have the question
3 reread?

4 MR. B. McINTOSH: Sure.

5 (Record read.)

6 MR. B. McINTOSH: Your Honor, if I could
7 mark for identification purposes Stand 5.

8 EXAMINER STENMAN: Stand 6.

9 MR. B. McINTOSH: Six, I'm sorry.
10 So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 EXAMINER STENMAN: What is the document?

13 MR. B. McINTOSH: This is the document
14 that was referred to in his deposition testimony.

15 EXAMINER STENMAN: Do you have a copy for
16 the Bench and the court reporter?

17 MR. B. McINTOSH: I do.

18 If I could approach the witness, your
19 Honor.

20 EXAMINER STENMAN: You may.

21 Q. (By Mr. B. McIntosh) Is that the document
22 you mentioned in question 12 to your deposition
23 [verbatim]?

24 A. Yes, it is.

25 Q. Could you explain what that is?

1 A. If I can clarify. This was not handed to
2 me directly by Bob Skaggs. I received it from Scott
3 Phelps, and if I could just read, it says, "The
4 attached ideas were presented to the COH 2000
5 Regulatory Strategy team this morning by Bob Skaggs.
6 The ideas encompass three possible approaches to
7 moving forward in the Choice process past 2002. Jim
8 Lee may be calling a meeting with you to review these
9 concepts and Gas Management Services' important role
10 in this process." And that was given to me April
11 14th, 1999.

12 Q. And how is this document relative to this
13 case?

14 A. Well, it --

15 MR. BENTINE: I'm going to have a
16 continuing objection to questions on this because I'm
17 going to move to strike it, so I don't know when you
18 want to entertain those, but we might want to address
19 that before we go into a lot of questions on it that
20 have to be stricken as well.

21 EXAMINER STENMAN: Do you intend to
22 question him on this document or are you simply
23 trying to lay a foundation?

24 MR. B. McINTOSH: Just lay a foundation,
25 your Honor.

1 EXAMINER STENMAN: Proceed. We'll defer
2 the motion to strike.

3 Q. Go ahead.

4 A. Repeat the question.

5 MR. B. McINTOSH: I'm sorry. Could it be
6 read back?

7 (Record read.)

8 A. Well, it's all about Choice and this is
9 what the program that IGS is marketing in using the
10 Columbia Retail Energy name, it's in the Columbia
11 Choice program, and Mr. Skaggs outlined three
12 different scenarios, one being the percentage
13 participation consumers in the Choice program and how
14 through a ten-year projection --

15 EXAMINER STENMAN: Mr. Ward, let's try to
16 avoid reading the document into evidence at this
17 point.

18 And let's try to lay a foundation as to
19 how he received and knows about this document.

20 Q. When did you receive this document?

21 A. April. What date did I say? April
22 14th, 1999.

23 MR. B. McINTOSH: Your Honor, at this
24 time we would tender the witness for
25 cross-examination.

1 EXAMINER STENMAN: Thank you.

2 Mr. Bentine.

3 MR. BENTINE: Yes, your Honor. I have
4 some motions to strike. I understand the Bench's
5 ruling so I'm not going to press on the speculation
6 piece with maybe one or two exceptions.

7 EXAMINER STENMAN: Okay.

8 MR. BENTINE: I would move to strike, on
9 page 4 of 8 beginning with the sentence beginning on
10 line 23, "My answer is" and going on to the end of
11 the second sentence after that at the end of line 3
12 on page 5 of 8. Clearly this witness doesn't know
13 and there's no foundation for what IGS thinks.

14 I didn't know whether you were going to
15 rule on these one at a time. I'm sorry.

16 EXAMINER STENMAN: Why don't you go
17 through them all at once.

18 MR. BENTINE: Okay. The second motion
19 concerns question 10 and the answer thereto. A
20 couple reasons on that one. First of all, this was
21 an attachment for a motion to file an amended
22 complaint, it was not evidence in that, that motion
23 has been denied.

24 Secondly, it's a magazine article, it is
25 hearsay, and, in fact, with regard to newspaper

1 articles, and magazine articles I think are the same
2 thing, the Ohio Supreme Court has said that newspaper
3 articles cannot be accepted as evidence, it is
4 hearsay of the remotest character, and that is in
5 State, ex rel. Colvin versus Brunner, Secretary of
6 State, Supreme Court of Ohio 120 Ohio State 3d, 110
7 at page 59.

8 Next, question 11, he's recounting what
9 is in the article. Again, clear hearsay.

10 MR. B. McINTOSH: I'm sorry, what was
11 that, 12?

12 MR. BENTINE: Yes, the answer to
13 questions -- excuse me, 11. The answer going on to
14 the end of the quotes on line 2. The rest of that
15 answer standing alone doesn't mean anything so I move
16 to strike it as well.

17 With regard to question 12 and the answer
18 thereto, A) it is an exhibit, which is not evidence,
19 to a motion to amend the complaint which was denied
20 by entry of the Commission. It is, again, hearsay.
21 It's not his notes of a speech, it is 12 years old,
22 and we don't even know exactly who wrote these,
23 whether it was the gentleman that gave them to
24 Mr. Ward or this was Mr. Skaggs. It has no probative
25 value, I believe, in this case.

1 It is one document from 12 years ago
2 about the Choice program and he wasn't there, that is
3 Mr. Ward wasn't there, so it is clearly a hearsay
4 document, and there are no exceptions to hearsay that
5 I'm aware of that would allow this to get in. It
6 certainly can't be used as admission since Columbia
7 Gas of Ohio and NiSource are not here.

8 I'll stop there.

9 EXAMINER STENMAN: Your response?

10 MR. B. McINTOSH: Thank you, your Honor.
11 With respect to page 4, line 23, if that's Mr. Ward's
12 reasonable opinion testimony based upon his
13 experience in the market and in the field, I think
14 that's probative and admissible.

15 With respect to page 5, question No. 10,
16 the magazine in reference was actually a NiSource
17 quarterly report given out to shareholders and
18 employees, not just an average magazine, so I think
19 it was produced by NiSource.

20 With respect to No. 11 which also I guess
21 deals with the same question as 10, we would say that
22 it's not hearsay as he received it as part of his
23 employment at Columbia Gas.

24 And with respect to No. 12, the document
25 was used in the preparation of his testimony. I

1 don't think that the age of the document matters. We
2 have yet to determine his personal knowledge as to
3 the actual document. He said it was given to him
4 directly. The probative value is up to the court and
5 I think it shows the continuing relationship between
6 IGS and NiSource, your Honor.

7 EXAMINER STENMAN: Thank you. Going back
8 to page 4 of 8, line 23 through line 3 on page 5 of
9 8, the motion to strike will be denied. Although he
10 is attempting to speculate what IGS thinks, it's
11 obvious that he's giving his opinion and, as
12 previously stated, the Commission will give due
13 weight to the opinions of the witnesses.

14 Continuing on, page 5 of 8, question 10
15 and 11, with respect to question 10 it's not even
16 something that we have in evidence; that will be
17 stricken. We don't have the magazine article.
18 There's been no testimony that would authenticate the
19 magazine article in any way; that will be stricken.

20 With respect to question 11 going through
21 line 2 on page 6 of 8, that will also be stricken, it
22 basically just quotes a magazine article that is not
23 in our possession. Lines 3, 4, and 5, the motion
24 will be denied with respect to those, again, I
25 believe it's simply more opinion testimony.

1 With respect to question 12 and what's
2 been marked as Stand Exhibit 6, Mr. Ward, were you
3 there when this document was physically prepared?

4 THE WITNESS: Yes, I was.

5 EXAMINER STENMAN: You were in the room
6 when this was prepared?

7 THE WITNESS: No, I was not in the room.
8 It was prepared by Bob Skaggs when he was alone. I
9 don't think anybody was present. But that's his
10 handwriting.

11 EXAMINER STENMAN: It seems to me that
12 what we have here is a 12-year-old document that we
13 have no way of authenticating here in this
14 proceeding. Mr. Ward was not present when it was
15 prepared and there's no way to determine whether or
16 not it's been altered over the last 12 years in
17 addition to a pretty substantial hearsay problem.

18 MR. B. McINTOSH: Your Honor, he does
19 state that this has been in his continuous possession
20 and/or control since he received it personally at an
21 employee meeting. It was distributed as part of his
22 employment and has been in his custody and control
23 for those 12 years.

24 EXAMINER STENMAN: And I understand that,
25 but at the same time there's no way for him to even

1 know if it was altered before he received it so in
2 light of that question 12 and the answer will be
3 stricken.

4 Mr. Bentine, you can proceed when you're
5 ready.

6 MR. BENTINE: Thank you.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Bentine:

10 Q. Good morning, Mr. Ward.

11 A. Good morning.

12 Q. You know who I am and what I'm doing, so
13 I don't --

14 A. Yes, I do.

15 Q. -- have to say that.

16 Would you turn to page 3 of your
17 testimony, Mr. Ward. I take it from your answer
18 there that, but just to make sure, it's regardless of
19 the kind of disclosures that may be used by IGS in
20 marketing under the CRE name, you believe that per se
21 the use of CRE by IGS is unfair, misleading, and
22 deceptive?

23 A. Yes, I do.

24 Q. Do you believe that the use of the
25 Columbia name by a Columbia affiliate, regardless of

1 disclosures, would be unfair, misleading, and
2 deceptive?

3 A. Yes.

4 Q. Now, you also understand, do you not, and
5 know that the rules of this Commission and, in fact,
6 most states that allow Choice do allow affiliates to
7 market with appropriate disclosures?

8 A. Yes, I do.

9 Q. Now, in answer to question 6 down toward
10 the bottom, lines 22, 23, you talk about concerns
11 that consumers should be protected from gas suppliers
12 that were using deceptive, unfair, misleading,
13 et cetera. Do you see that?

14 A. Yes, I do.

15 Q. And would you agree that this
16 Commission's approval of the LDCs in the state which
17 have Choice, tariffs associated with that and the
18 Commission rules associated with how marketers
19 operate attempt to address the issue that you have
20 raised here at the bottom of page 3 and at the top of
21 page 4 of your testimony?

22 A. Like I said, you know, I was -- at the
23 time I was a director of gas transportation for all
24 the Columbia distribution companies and I worked with
25 consumer advocates, like Mr. Serio, and regulators,

1 consumer groups, and one of our main concerns was
2 that the customer would be taken advantage of.

3 So we had to -- I coauthored the code of
4 conduct which regulates marketers from doing
5 deceitful things to customers and standards of
6 conduct to avoid my company at that time, Columbia,
7 giving favorable treatment to any -- to their
8 affiliate or to any marketer.

9 So I guess the answer is I'm aware of
10 those, but we had to try to put as much things as we
11 could in the tariff to avoid the customer being taken
12 advantage of. And then it was my job as a director
13 of transportation to enforce those with all
14 marketers. Of course, at that time Enron was one of
15 the major marketers and they were using their size
16 and weight to influence regulators and LDCs trying to
17 throw their weight around to get preferential
18 treatment from us as an LDC.

19 Q. Okay. Speaking of your time at Columbia
20 for a moment --

21 A. Sure.

22 Q. -- were you there during Marv White's
23 tenure as president of the LDC?

24 A. Yes, I was.

25 Q. And you were there after his retirement

1 from that position and his affiliation with IGS?

2 A. Yes, I was.

3 Q. During your time there after Marv White
4 had left Columbia and was with IGS did you provide
5 any favoritism to IGS as a result of Marv White's
6 association with IGS?

7 A. Not that I can recall. I would have
8 periodic lunches with Marv and Scott and Doug Austin,
9 they would pay for the lunch so, yes, I did get
10 favorable treatment. I didn't buy their lunch, but
11 they bought my lunch.

12 Q. Okay.

13 A. And they would try to find out what's
14 going on, particularly like the gas cost recovery,
15 every time we make a filing they would try to find
16 out from me what the latest GCR was. I didn't give
17 it to them because I didn't know it, and I wouldn't
18 have given it to them. But other than meeting -- I
19 met with a lot of different -- I had over a hundred
20 marketers that I was, you know, the director of so I
21 dealt with a lot of them. IGS was in town so I'd
22 have lunch every other month maybe.

23 Q. But you didn't discriminate against other
24 marketers and in favor of IGS.

25 A. No.

1 Q. Now, in answer to question 7 at lines 14
2 through 16 you state "Even if customers understood
3 that they were not dealing directly with COH their
4 LDC, they would assume their LDC endorsed their
5 sister company and would be given the same quality of
6 service they were familiar with from Columbia." Do
7 you see that?

8 A. Yes, I do.

9 Q. Is there any evidence that you're aware
10 of that IGS operating as CRE would not provide that
11 same level of service?

12 A. I don't know what type of service they
13 would provide. I'm saying the customers would assume
14 they would get the same service.

15 Q. Is it possible that a marketer could
16 provide, an independent, nonaffiliated marketer could
17 provide a higher level of service than an affiliate
18 would?

19 A. I'm sure it's possible.

20 Q. Mr. Ward, would you look at the answer to
21 question 8 beginning on line 23, the statement "My
22 answer," it starts there in that sentence and then
23 goes on to the next sentence, "I believe IGS."

24 A. Yes.

25 Q. Do you see that? Now, those are --

1 you're speculating there as to what IGS thinks or
2 believes; are you not?

3 A. I'm stating my belief there.

4 Q. But you don't know what they think.

5 A. Obviously, I mean, we wouldn't be here if
6 it wasn't an advantage for IGS to use the Columbia
7 name. That's a given, isn't it? I'm talking about
8 IGS taking advantage of the consumer.

9 Q. Let me ask it this way: Again, Mr. Ward,
10 this is what you think but, again, you don't know
11 IGS's thoughts or motivations or corporate strategies
12 in this regard; isn't that true?

13 A. I can deduce that IGS is paying money to
14 Columbia/NiSource and it would not be doing that if
15 they didn't think there would be an advantage for
16 them.

17 Q. Okay. But what you say in the second
18 sentence is that IGS thinks that there's a segment of
19 natural gas consumers that will be deceived, misled,
20 or confused.

21 A. Yes.

22 Q. So you think that -- you're stating that
23 your belief is that's their corporate intent is to
24 deceive, mislead, or confuse enough to decide to
25 purchase their gas from Columbia Energy.

1 A. Yes.

2 Q. Mr. Ward, do you know whether or not
3 Stand could have approached NiSource prior to IGS to
4 inquire as to whether or not the Columbia Retail name
5 may be available for licensing?

6 A. Is your question did Stand approach or
7 could they have?

8 Q. Could they have. Do you know?

9 A. I don't know if they could have or not.

10 Q. You are aware, are you not, Mr. Ward,
11 that, outside the utility area for a moment, that
12 many companies license their trademarks and names to
13 other companies?

14 A. Yes.

15 Q. When you go to a McDonald's, it may be a
16 franchise McDonald's that is not owned by the
17 corporation but is a franchise.

18 A. If you want to use that example, then I
19 would think the franchise would have the -- have to
20 follow McDonald's criterias or they couldn't be a
21 franchise.

22 Q. And how about Verizon stores where you
23 can go buy your cellular phones, do you know whether
24 or not some of those are operated by independent
25 entities that are not part of Verizon?

1 A. I'm not aware. I don't know anything
2 about Verizon.

3 Q. Do you know whether or not there are any
4 standards to which IGS is held with regard to the use
5 of the CRE name?

6 A. I was not privy to the license agreement,
7 I don't know what conditions are in there.

8 Q. Question 15, Mr. Ward --

9 A. Question 15?

10 Q. Yeah, question 15 and your answer there
11 beginning on line 9, what's the point of that
12 question and answer?

13 A. Well, again, when I was director of gas
14 transportation, I had to enforce the code of conduct
15 and the standard of conduct. At any time if Columbia
16 would have come to me and say "We're going to let
17 Enron use our name, what do you think, Ward? What do
18 you think?" I would as -- it would have been my
19 responsibility to say it doesn't look right and it
20 looks like favoritism through a marketer. I think it
21 would be a ruse that Enron or any marketer would use.

22 And that's why -- I don't know if the
23 person who's taken my place at Columbia now, they may
24 have expressed that concern, I don't know. They
25 should have, but I don't know if they did, I'm not

1 privy to internal Columbia --

2 Q. So really you're saying if you were still
3 there, you would have raised the issue.

4 A. Definitely.

5 Q. And would you --

6 A. I had to do that all the time. I mean,
7 marketers would ask for special treatment. I mean, I
8 had presidents of marketing companies call me and say
9 "We know this is not allowed by the tariff, but can
10 you waive this or do I have to call" -- at that time
11 the executive -- "Jim Lee and have him tell to you
12 waive it?" I'd say, "Well, you might as well get Jim
13 Lee in here because I'm not going to give you that
14 approval." I always had to enforce marketers getting
15 special treatment.

16 Q. Did Mr. Lee usually back you up on those
17 things?

18 A. Yes, he would.

19 Q. I'm going to run through a few things
20 here, hopefully quickly, Mr. Ward. It is true, is it
21 not, that Stand cannot identify any consumers that
22 mistakenly purchased natural gas from CRE?

23 MR. B. McINTOSH: Objection. I don't
24 think he can speak for Stand's perception or
25 knowledge of identification of people. I think he

1 can speak for his own.

2 MR. BENTINE: He's a Stand witness, your
3 Honor, in a senior position.

4 MR. B. McINTOSH: Withdrawn.

5 EXAMINER STENMAN: Okay. Do you need the
6 question read back?

7 MR. BENTINE: I'll repeat it if you need
8 it; it may be quicker.

9 A. Your question is to my knowledge of any
10 individual consumers that were confused or misled
11 by -- I never talked to -- not as vice president of
12 regulatory affairs, but I live here in Columbus,
13 people, my friends and acquaintances, guys I bowled
14 with last night, they all come and say, "Has Columbia
15 gotten back into the marketing business?" I says,
16 "Why do you ask that?" They say, "Well, we got this
17 letter from Columbia." I says, "Read the fine print.
18 It says 'IGS.'" So that is the only direct, just
19 from my personal association with people in Columbia
20 territory.

21 Q. And did that inquiry happen after July
22 26th, 2011?

23 A. I'm not sure when it happened. It
24 happened when they got mailings from Columbia Retail
25 Energy.

1 MR. BENTINE: May I approach, your Honor?

2 EXAMINER STENMAN: You may.

3 MR. BENTINE: I'm going to show the
4 witness page 70 of his deposition.

5 Q. Mr. Ward, I'm going to show you what I
6 will indicate and represent is a copy of your
7 deposition taken by Mr. Kravitz on July 26th of
8 this year. Do you recall that deposition?

9 A. Yes, I do.

10 Q. Okay. I would ask you to look at lines 9
11 through 18 of that deposition.

12 A. Nine through 18?

13 Q. Yes, please.

14 MR. B. McINTOSH: What page?

15 MR. BENTINE: It's on, I'm sorry, 70.

16 Q. We'll give a moment for your counsel to
17 get there, Mr. Ward. You can review it at the same
18 time.

19 A. Right here I'm saying not that I know,
20 but I thought I -- during the deposition I did talk
21 about the same thing I referred to, but I don't know
22 where it is in my deposition.

23 Q. For the record, would you read the
24 questions and answers beginning line 4 and ending at
25 line 18.

1 A. "Question: And this may have been asked
2 in one form or another, but are you aware of any
3 consumers that were confused by IGS's use of the
4 trade name Columbia Retail Energy and purchased
5 Columbia Retail Energy by mistake?

6 "Answer: Other than myself, no.

7 "But you didn't purchase from CRE by
8 mistake, did you?

9 "No.

10 "Okay. So let me just ask the question
11 again. Are you aware of any consumers that were
12 confused by IGS's use of the trade name Columbia
13 Retail Energy and, because of that confusion,
14 purchased Columbia Retail Energy by mistake?

15 "No."

16 Q. Thank you.

17 And would you also agree with me that
18 Stand, to your knowledge, has not performed any
19 independent analysis or investigation into the use of
20 IGS's -- into IGS's use of the trade name CRE,
21 Columbia Retail Energy?

22 A. No, we haven't.

23 Q. Would you agree with me that with regard
24 to the envelopes that are used currently by IGS in
25 mailing CRE material to consumers, that the proximity

1 of CRE and the disclaimer is not confusing?

2 A. I can't agree to that. I guess --

3 THE REPORTER: I'm sorry. Could you
4 repeat the last --

5 THE WITNESS: I guess it's, I mean --
6 he's asking me to speculate whether a customer gets
7 confused or not as far as the placement of the logo.

8 Q. Same deposition, page 37, lines 18 to
9 25 -- excuse me, 24. I'll ask you, again, to look at
10 the question beginning on line 18 and your answer
11 ending on line 24 and ask you to read those into the
12 record, please.

13 A. "Question: Now, do you believe that the
14 proximity of the Columbia Retail Energy to Columbia
15 Gas of Ohio Natural Gas Customer -- do you think if
16 they were an inch farther apart it would be less
17 confusing to the customer?"

18 My answer is: "I guess no. It's not the
19 placement of where it is on the envelope that's
20 confusing."

21 Q. And what we were talking about, what you
22 were talking about with Mr. Kravitz there was the
23 disclaimer, the proximity of the disclaimer to
24 "Columbia Retail Energy," correct?

25 A. Yes, we were.

1 Q. Are you aware personally of any consumer
2 that was misled or deceived by the envelope --

3 A. Besides myself?

4 Q. -- in the solicitation? Besides
5 yourself.

6 A. Again, just the people that I am friends
7 with, they've said they got this envelope from
8 Columbia and they opened it and there was an offer to
9 sell gas, and I had to explain to them it was not
10 Columbia, it was IGS.

11 Q. And the envelope that you're referring to
12 there is the initial solicitation that contained no
13 disclaimer; is that correct?

14 A. I'm not sure which envelope it was.

15 Q. Can you identify any consumers that were
16 confused because the font size was too small?

17 A. No, I can't.

18 Q. Are you aware of any consumers that were
19 subjected to high levels of anxiety as a result of
20 the envelope?

21 A. No.

22 Q. Do you have any evidence that -- are you
23 aware of any evidence that IGS misled or deceived
24 customers into opening its solicitation because of
25 safety issues?

1 A. In fact, again, myself. I received an
2 envelope and I thought it was something to do with my
3 riser that I had gotten correspondence from Columbia
4 on and I opened it and then said oh, it's just IGS.
5 I myself, knowledgeable as I am about these things, I
6 opened it up.

7 Q. But once you opened it, you knew exactly
8 what was going on?

9 A. Yes.

10 Q. Okay.

11 A. Because of my background.

12 Q. Do you agree that Stand constantly
13 evaluates the relative merits of different fixed and
14 variable pricing mechanisms in order to provide the
15 most service options to its customers?

16 A. Yes.

17 Q. And do you believe it's part of Stand and
18 other marketers' standard business practice to make
19 those comparisons between fixed and variable?

20 A. I know it's a practice of Stand Energy,
21 yeah. If other marketers -- I assume they will do
22 the same.

23 Q. Does Stand ever compare its current
24 offers for natural gas service to past rates of local
25 distribution companies like Columbia Gas of Ohio?

1 A. Yes, we have.

2 Q. And natural gas rates in the future can
3 go up or down and nobody can predict perfectly what
4 they're going to do; is that correct?

5 A. That's correct.

6 Q. Would you also agree that customers who
7 choose a fixed rate at least have the comfort of
8 knowing that their price will not go up or down
9 during the period of their contract?

10 A. Yes.

11 Q. And would you also agree with me that
12 Stand plays a role in the delivery of natural gas to
13 its customers?

14 A. Not directly.

15 Q. Who arranges delivery of the gas from
16 whomever Stand purchases that gas from to the city
17 gate?

18 A. From the city gate it's Columbia Gas of
19 Ohio in this case we're talking about, the LDC that
20 delivers the gas to the customer.

21 Q. I'm sorry. Maybe I didn't make myself
22 clear. Who arranges for the gas to get to the city
23 gate?

24 A. That would be the marketers that have the
25 gas.

1 Q. So in some cases that's Stand, correct?

2 A. Yes.

3 Q. And that's part of the delivery of the
4 natural gas to the customer; is it not?

5 A. Yes, it is, it's part of the chain, but
6 it's not direct customer delivery.

7 MR. BENTINE: Excuse me a moment.

8 Q. Page 66 of the deposition, the question
9 beginning line 20 and ending at line 25, the answer.
10 Mr. Ward, I want to show you this deposition again
11 and ask you to look at the question beginning at line
12 20 and ending line 25.

13 A. Do you want me to read that, Counselor?

14 Q. Please.

15 A. "Question: And so the complaint says
16 that the delivery of natural gas is a function that
17 lies exclusively with LDCs such as Columbia. There
18 is a portion of the delivery process of natural gas
19 that, then, is not a function that lies exclusively
20 with the LDC, correct?" And I say "Correct."

21 Q. Now, would you also agree, Mr. Ward, that
22 IGS's use of the trade name Columbia Retail Energy
23 does not affect whether or not you can market your
24 products to customers?

25 A. You're saying "you." Are you referring

1 to Stand Energy?

2 Q. Yes.

3 THE WITNESS: Could I hear that question
4 again?

5 (Record read.)

6 Q. Let me rephrase that. I'll withdraw that
7 and ask you the question IGS's use of the Columbia
8 Retail Energy trade name doesn't in any way affect
9 Stand's ability to market its company and its
10 products.

11 A. Well, I would say it could affect our
12 marketing.

13 Q. Page 71 of the transcript of the
14 deposition, I'll ask you to look at the question
15 beginning on line 5 and ending with your answer on
16 line 9. Would you read that question and answer,
17 please?

18 A. "IGS's use of the Columbia Retail Energy
19 trade name doesn't in any way affect Stand's ability
20 to market its company, does it?" I said "No."

21 Q. Thank you.

22 Would you agree, Mr. Ward, that Stand
23 doesn't have any evidence that you've lost customers
24 as a result of IGS's use of the CRE trade name?

25 A. I don't have any evidence, no.

1 Q. Have you read the licensing agreement,
2 the confidential version with the redactions, between
3 IGS and NiSource?

4 A. No, I haven't.

5 MR. BENTINE: If we could take five
6 minutes now, I have a couple other things to get with
7 this witness but I'd like to review my notes before
8 we do that.

9 EXAMINER STENMAN: That's fine. We'll
10 take five.

11 (Recess taken.)

12 EXAMINER STENMAN: Let's go back on the
13 record. You said you're finished?

14 MR. BENTINE: Yes, I am finished with the
15 witness.

16 Thank you, Mr. Ward.

17 THE WITNESS: You're welcome.

18 EXAMINER STENMAN: Any redirect?

19 MR. B. McINTOSH: No redirect, your
20 Honor. We'd just move the statement be put into the
21 record, admitted into the record.

22 EXAMINER STENMAN: Any objection to the
23 admission of Stand Exhibit 5?

24 MR. BENTINE: No objection except that
25 that's already been excluded, obviously, your Honor.

1 EXAMINER STENMAN: Exhibit 5 will be
2 admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 EXAMINER STENMAN: Thank you, Mr. Ward.

5 THE WITNESS: Do I get to stay?

6 EXAMINER STENMAN: No.

7 MR. B. McINTOSH: Mr. Ward, you can
8 probably stay in the next room just because of the
9 potential we may re-call you as a witness.

10 EXAMINER STENMAN: Thank you.

11 (Witness excused.)

12 MR. B. McINTOSH: Your Honor, we don't
13 have any additional witnesses at this time, but we
14 would reserve the right to call any rebuttal
15 witnesses.

16 EXAMINER STENMAN: We'll cross that
17 bridge when we come to it.

18 Anything on behalf of NOPEC?

19 MR. WARNOCK: No, your Honor.

20 EXAMINER STENMAN: OCC?

21 MR. SERIO: No, your Honor.

22 EXAMINER STENMAN: Yesterday I did defer
23 ruling on the admission of Stand Exhibit No. 3, which
24 is The Columbus Dispatch article; that will not be
25 admitted at this time. I really don't think there

1 was a sufficient foundation for the admission of
2 Stand Exhibit 3 and, also, it's really not relevant.
3 Mr. Burig was questioned on it, that is obviously in
4 evidence, and it will not be admitted.

5 Anything else on behalf of joint
6 complainants?

7 MR. B. McINTOSH: Not subject to our
8 reservation, your Honor.

9 EXAMINER STENMAN: Okay.

10 Mr. Bentine.

11 MR. BENTINE: I understand this is
12 unusual, your Honor, but at this time I would move
13 for, in effect, a directed verdict. The complainants
14 have not established their case and certainly not
15 with a large number of the counts in the complaint,
16 and what we have on this record is no real evidence
17 other than "I think it's misleading because I think
18 it's misleading."

19 There's no evidence of consumer confusion
20 other than in the minds of the witnesses for Stand, a
21 competitor of IGS. So there's no credible evidence
22 here that anything is misleading. Sort of the
23 thought here is, although not necessarily
24 consistently expressed by all the witnesses, the
25 thought here is that somehow it's inherently

1 misleading regardless of disclosures for anybody to
2 use the name, according to Mr. Ward, an issue that
3 has been definitely dealt with by this Commission in
4 enacting rules under which affiliates do use the
5 name. So the sort of per se violation of the use of
6 the name is off the table.

7 And there's no evidence, zero evidence,
8 that in this particular situation that the service
9 that a consumer gets from CRE operated by IGS is any
10 way deficient, less than, worse than would have been
11 provided by an affiliate.

12 So really the sole issue reinvolves
13 around is the use of the name so confusing and so
14 misleading that it shouldn't be allowed. That's been
15 answered by this Commission, as I indicated. And,
16 therefore, with the appropriate disclosures, which we
17 have no evidence that they haven't been followed,
18 there is no rule, no regulation concerning the
19 inability of IGS to use those. So I think the
20 complainants have failed miserably in providing a
21 case to support this complaint.

22 I would point out a couple things with
23 regard to the complaint itself, and I've got this
24 someplace, I need to find it. Count One, the claim
25 was the use was unfair, misleading, deceptive,

1 et cetera, because the certificate is not in CRE's
2 name. There has been nothing to support that
3 particular count.

4 Count Two, the use of the Columbia Gas of
5 Ohio customer [verbatim] and CRE is on its own unfair
6 and that refers to an attachment where Columbia
7 Energy Retail trade name and the Columbia logo on the
8 return address was not on the envelope. There's
9 nothing that, first of all, says that that is unfair,
10 misleading, deceptive; no evidence with regard to
11 this particular count at all, again, other than going
12 back to this overall use is unfair.

13 The third claim is a little bit confusing
14 but basically says that although IGS did include a
15 disclaimer stating that Columbia Retail Energy is not
16 an affiliate of NiSource or Columbia Gas of Ohio, the
17 use of the Columbia trade name and Columbia logo,
18 even with the disclaimer, is unfair, misleading,
19 deceptive, et cetera, because the font size of the
20 disclaimer is smaller than any other font in the
21 letter. No evidence about this count, again, other
22 than this overall patina of you can't use it, period,
23 regardless of disclosures.

24 Fourth claim was the claim about the IGS
25 solicitation letter was confusing customers and

1 causes unnecessary anxiety because it claims it
2 contains important natural gas information. Again,
3 no evidence on that count.

4 Fifth claim, and this is a good one, the
5 IGS solicitation letter that claims Columbia Retail
6 Energy is based in Ohio and is certified by the
7 Public Utilities Commission. The claim is unfair,
8 misleading, deceptive, and unconscionable.

9 Again, IGS is based here, first of all,
10 and is certified. The fact that CRE is not certified
11 as a separate name, no evidence on that here. And
12 there was evidence put in by us in our motion for
13 summary judgment in that regard and, in fact, is, and
14 the Commission can take administrative notice that
15 there are quite a number of marketers that are
16 certified by this Commission that market under
17 d/b/a's that are different than their certificated
18 name.

19 Number Six, that claim is that the IGS
20 solicitation letter is unreasonable, unfair,
21 et cetera, because it claims that had the SSO pricing
22 structure been in place over the last five years, the
23 average price would have been 88 cents, which is
24 17 percent higher. This claim is unfair, misleading,
25 deceptive because it compares the actual IGS fixed

1 rate offer to an SSO rate which is by definition a
2 variable monthly rate.

3 The only evidence here is that other
4 marketers, including Stand Energy, which was the only
5 evidence put forward, also compares fixed and
6 variable rates and that's done all the time in the
7 marketplace. There's some evidence that was put
8 forward I believe by Witness Dover that basically
9 said well there wasn't an SSO rate in effect in those
10 years, you may recall that testimony in her prefiled
11 testimony, but the fact is that what the statement by
12 CRE/IGS said was had the SSO pricing structure been
13 in place. So it's not misleading in any way, shape,
14 or form.

15 Seventh claim, this one basically says
16 because the prices are low now and they've been
17 higher in the past, comparing past rates to the
18 current rates is somehow unfair, misleading,
19 et cetera. Again, no evidence on this at all. The
20 only evidence that is there is that prices go up and
21 down all the time.

22 Claim Eight was that we're misleading
23 customers because we have something in our website
24 that says Columbia Retail Energy is continuously
25 seeking ways to deliver energy more efficiently to

1 make life easier for our customers. Again, the only
2 evidence here is that all marketers play a piece in
3 delivery of this and there certainly is no evidence
4 that somehow that statement is either false or
5 misleads customers in any way, shape, or form.

6 The ninth claim is unfair because
7 consumers can't differentiate the envelopes. First
8 of all, I don't think there's any credible evidence
9 on this point that has been put forward, but to the
10 extent there is, this concerns an envelope on the
11 initial round of solicitations and all envelopes
12 since then have contained the disclaimer on the
13 outside of the envelope and that also is -- you have
14 an affidavit in front of you in that regard from
15 Mr. Parisi in our motion for summary judgment.

16 Item Ten, Count Ten of the complaint,
17 makes an argument that we've engaged in an
18 anticompetitive action, whatever that is, by signing
19 a licensing agreement with NiSource that enables us
20 to use the name. Again, the record in this case so
21 far doesn't show that this is anticompetitive other
22 than in the minds of four Stand witnesses. There's
23 no real evidence of any anticompetitive effect of
24 this, again, other than in the minds of those four
25 witnesses.

1 The eleventh claim is similar because it
2 says that IGS has engaged in anticompetitive action
3 by signing a licensing agreement with NiSource that
4 enables IGS to use the name because Columbia now has
5 a financial incentive that may cause it to favor IGS
6 over other CRNGS customers.

7 There's nothing on this record that
8 provides any credible evidence to this other than
9 this may happen, and I would submit that something
10 that may happen in the future has not been supported
11 by any credible evidence here in this proceeding. If
12 fact, the evidence that you will recall was that at
13 least -- well, strike that. I'm not going to quote
14 that because I don't remember it completely at this
15 point and I don't want to say something that's not on
16 the record.

17 The twelfth claim is that IGS not using
18 the Columbia trade name and Columbia logo in the
19 Dominion Choice program indicates that IGS recognizes
20 that the Columbia trade name and Columbia logo only
21 have value, et cetera. The only evidence in this
22 case, again, is that the licensing agreement does not
23 allow that to happen so no anticompetitive animus can
24 be imputed on this record so there's no credible
25 evidence supporting that claim.

1 And I apologize for taking the Bench's
2 time but it was a 12-count complaint and clearly,
3 your Honor, there has not been the kind of credible
4 evidentiary support needed for these complainants to
5 satisfy the burden of proof that this Commission and
6 the Supreme Court has placed on the complainants
7 under the Grossman case that's been followed by this
8 Commission for longer than even I've been practicing.

9 So with that, your Honor, I'd be happy to
10 answer any questions, but I will move for the
11 dismissal of this complaint for failure to establish
12 any credible evidence in support of the 12 counts of
13 the complaint.

14 MR. WARNOCK: Well, that's a lot to take
15 in. I would ask that, first of all, this in our
16 opinion is very unprecedented before the Commission,
17 we'd ask to have the lunch hour before we respond to
18 this in light of everything that's just been sprung
19 on us.

20 EXAMINER STENMAN: Given that this is
21 very unusual in front of the Commission and given
22 that the practical effect of a directed verdict in
23 this case would be a dismissal, which is something
24 that can only be granted by vote of the Commission,
25 the motion will be denied at this point, it will be

1 treated like a summary judgment motion. It will be
2 considered in the ultimate opinion and order that
3 comes out of the Commission. It's not my belief that
4 it's something an attorney examiner can properly do.

5 MR. BENTINE: I understand, your Honor.

6 EXAMINER STENMAN: In light of that do
7 you still need time to prepare or can we proceed with
8 Mr. Parisi after lunch?

9 MR. WARNOCK: Yeah, I think we can
10 proceed with Mr. Parisi after lunch.

11 EXAMINER STENMAN: Let's take our lunch
12 break, then. Let's come back at about 1:05.

13 (At 12:06 p.m. a lunch recess was taken
14 until 1:05 p.m.)

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Tuesday Afternoon Session,
November 8, 2011.

- - -

EXAMINER STENMAN: Let's go back on the
record. Ms. Morrison.

MS. MORRISON: IGS calls Vince Parisi,
please.

EXAMINER STENMAN: Please raise your
right hand.

(Witness sworn.)

EXAMINER STENMAN: Thank you.

- - -

VINCENT A. PARISI
being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Ms. Morrison:

Q. Mr. Parisi, will you please state your
name for the record.

A. Vincent A. Parisi.

Q. And where are you currently employed?

A. Interstate Gas Supply.

Q. What is your title there?

A. General Counsel and Regulatory Affairs
Officer.

1 Q. And what is your business address?

2 A. 6100 Emerald Parkway, Dublin, Ohio 43016.

3 Q. Before I have you identify your prepared
4 testimony I do want to ask you a few questions. What
5 did IGS do to make sure that its solicitations as CRE
6 were not unfair, misleading, deceptive, or an
7 unconscionable act or practice?

8 A. I talk about it in a number of places in
9 my testimony, but I guess I would really like to draw
10 your attention probably to page 12 and the question
11 asked there. The intent there was to run through,
12 again, a number of the items that we did in
13 preparation working with staff and some of those
14 other things that are listed there to try to go
15 through the steps that we took.

16 Q. And that's on page 12 of your testimony
17 beginning on line 9?

18 A. That's correct.

19 Q. And continuing to line 12 on page 13?

20 A. Yes.

21 Q. Mr. Parisi, are you aware of other
22 examples, whether in Ohio or in other states, of
23 nonaffiliates marketing under a utility related trade
24 name?

25 A. I am. I'm familiar with three different

1 examples. There's an example in Ohio of Cincinnati
2 Bell Energy that is a Viridian company that markets
3 electricity in the, at least in the Cincinnati area
4 under the Cincinnati Bell Energy name.

5 There is also an example in Illinois
6 where Dominion Retail has an arrangement with Nicor
7 and markets electricity under the Nicor name.

8 And it's my understanding that down in
9 Texas when Centrica/Direct Energy purchased the
10 customers from AEP, it markets under the names of the
11 two incumbent utilities, they have since been
12 switched but at the time were CPL and WTU.

13 Q. Any other examples?

14 A. Those were the ones that come to mind.

15 Q. Are you aware that in this case in their
16 motion for interlocutory appeal NOPEC has implied to
17 the Commission that IGS and its counsel were less
18 than forthcoming regarding Mr. White's availability
19 for his deposition last Wednesday, November 3rd?

20 MR. WARNOCK: Objection. I think that
21 the document probably speaks for itself.

22 MS. MORRISON: I'm just asking if he was
23 aware of it.

24 EXAMINER STENMAN: With respect to the
25 interlocutory appeal let's just confine that to a

1 motion practice to be handled outside of this
2 hearing. I believe IGS still has a few days to
3 respond to the interlocutory appeal; they can do so
4 in motion.

5 MS. MORRISON: We can, your Honor.

6 EXAMINER STENMAN: Thank you.

7 Q. (By Ms. Morrison) Do you have before you
8 what was marked yesterday as IGS Exhibit 1?

9 A. Yes, I do.

10 Q. Can you identify that exhibit, please?

11 A. Yes. This is a series of pages, there
12 are several different marketing pieces of marketing
13 material that IGS put into the Columbia Gas of Ohio
14 market beginning late-September of 2011 and I think
15 the final one was our more recent piece. There's
16 also a, the final page is a snapshot of our first
17 page of our Columbia Retail Energy website.

18 MR. SERIO: Excuse me, your Honor.

19 September 2011?

20 THE WITNESS: I'm sorry. September 2010.

21 Q. Just so we're clear and we know the order
22 of the materials, can you identify the first stapled
23 document as part of Exhibit 1?

24 A. I can. The first is the first marketing
25 campaign that we put into the market back in the

1 late-September time frame, it includes the marketing
2 solicitation itself, which is the first page, as well
3 as the bounce-back card. On the reverse side, which
4 is the way it would appear to customers, is the
5 contract that goes with it as well as the back of the
6 bounce-back card.

7 The third page is a copy of frequently
8 asked questions that would have also accompanied the
9 marketing piece. And then the fourth page, which is
10 the second sheet but the last page of the first
11 document, is an example of what the outside of the
12 envelope for this specific piece would have looked
13 like.

14 Q. I'm going to ask you to lift your voice
15 up a little bit so everybody can hear you.

16 A. I'm sorry.

17 Q. The second document then in IGS Exhibit 1
18 is a shorter page; is that correct?

19 A. That's correct.

20 Q. It says "Dear Redacted"?

21 A. That's correct.

22 Q. Can we identify that second document in
23 Exhibit 1, please?

24 A. Yes. This is the same marketing campaign
25 as the first document, so the content of the second

1 document, the first page, is the same as the first
2 document, so it has the marketing piece on the first
3 page, it has the same offer. The second page is,
4 again, a copy of the contract that accompanied that
5 offer. And the third page is a copy of the reply
6 card that would have been with that offer as well.

7 Q. And then the third document in the packet
8 which is now another long sheet of paper but also
9 begins "Dear" and the name is redacted. Can you
10 identify that document, please?

11 A. Yes. This is a copy of one of the
12 marketing pieces that was sent with our second
13 marketing campaign which I believe would have been in
14 the early part of 2011. Probably right at the end of
15 2010/beginning of 2011.

16 The first page is, again, a copy of the
17 solicitation letter that would have gone, a copy of
18 the enrollment card. The second page is the contract
19 that would have been on the back of the solicitation
20 and the back part of the enrollment card. The third
21 page shows a snapshot of the outside of the envelope,
22 and I believe that's it.

23 Q. Looking back at the envelope which is,
24 you said, part of the third page, there's been some
25 testimony regarding where you made an addition, IGS

1 made an addition to the envelope. Is this an example
2 of the change that was made to the envelope?

3 A. It is. Starting with the second
4 marketing campaign and subsequent to that we added
5 the disclosure that we had on the interior of the
6 marketing campaign to the exterior, so it appeared on
7 each envelope.

8 Q. Mr. Parisi, then the fourth document
9 that's part of Exhibit 1 which is, again, a full size
10 page, will you identify that document?

11 A. Yeah. This is the third marketing
12 campaign, the more recent marketing campaign, that we
13 engaged in using the Columbia Retail Energy logo.
14 The first sheet is, again, a copy of the solicitation
15 that ultimately went to the customer, the bottom half
16 would be the enrollment card that would have
17 accompanied that. The second sheet is the contract
18 that would have been on the back of the front sheet
19 as part of the solicitation and the back of the
20 renewal -- the enrollment card. The third sheet is,
21 again, an example of the outside of the envelope.

22 Q. Thank you.

23 And then the last document that's in
24 Exhibit 1 I think you said is the web page?

25 A. It is. This is a snapshot of the web

1 page.

2 Q. Mr. Parisi, you were present during the
3 cross-examination of Mr. Freeman in which he
4 testified that he believed that IGS lured people in
5 with a low price and then did a bait and switch as
6 part of the renewal of the customer. Will you
7 explain how IGS handles the renewal of its existing
8 customers?

9 A. Yes. There are extensive rules in the
10 Ohio Administrative Code that dictate what a
11 certified retail natural gas supplier can do with
12 respect to renewal of residential and small
13 commercial customers. It tells you what you have to
14 have in your contract as well as what the renewal
15 process ultimately can be.

16 When we go to market, as you can see in
17 the contracts, it will not only state what the
18 initial price is going to be but also tells the
19 contractor what the renewal provisions are. We have
20 to renew our customers pursuant to whatever the rules
21 are and if we are going to renew, for example, on a
22 year-to-year basis and raise our price, we would
23 actually have to get affirmative consent from the
24 customer to be able to do that if we have a
25 cancellation fee associated with the contract.

1 So we follow all the applicable rules.
2 We spell out in our contract in fairly significant
3 detail what the renewal is going to be, what the
4 pricing is going to be, and in the event that the
5 customer's contract is going to renew for anything
6 more than six months or greater, they'll get a notice
7 with respect to what that renewal is and an
8 opportunity to cancel.

9 Q. And if they do get the notice that the
10 rates are going to go up, can they cancel and go to
11 another supplier?

12 A. Yes.

13 Q. Are you the same Vincent Parisi that
14 submitted prefiled testimony in this proceeding?

15 A. Yes, I am.

16 Q. I'm going to have you look at what has
17 been marked as IGS Exhibit 2.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 Q. Can you identify that as your testimony
20 and the exhibits thereto?

21 A. Yes, I can.

22 Q. And is it your testimony?

23 A. Yes, it is.

24 Q. Do you want to make any corrections or
25 additions to that testimony?

1 A. Yes, I do.

2 Q. Okay. Where do you want to make those
3 corrections or additions?

4 A. The first correction would be on page 4
5 beginning at line 18, that sentence that begins "In
6 fact." It currently reads, "In fact, the rule
7 requires." I'd like to strike "the rule requires"
8 and insert "the natural gas rules require" for that
9 line.

10 Q. Thank you.

11 And what else would you like to correct?

12 A. On line 19 in the last word, just before
13 the close quote, it says "possible." That should be
14 "practicable."

15 Q. Do you have any other changes or
16 corrections?

17 A. I did notice in reviewing, again, that
18 the exhibit which I believe is marked Exhibit 3, the
19 second page of that exhibit is a copy of the contract
20 that goes with that marketing piece and it looks like
21 the right-hand side wasn't copied correctly. The
22 language that's in that contract is the same language
23 that would be in what we just went through as IGS
24 Exhibit 1, the first page.

25 Q. That's Exhibit 3 to your testimony?

1 A. That's Exhibit 3 to my testimony.

2 And --

3 MR. SERIO: Excuse me, the second page of
4 Exhibit 3?

5 THE WITNESS: The second page of Exhibit
6 3. If you notice, along the right-hand side the
7 copying cut off of the exterior part, the last part
8 of that language.

9 And then I also noticed that on Exhibit 5
10 in the copying it also cut off the bottom portion of
11 what would appear on the first page of the website
12 which includes one of the disclaimers.

13 Q. And is the complete website print part of
14 Exhibit 1 also?

15 A. It is. It's the last page of Exhibit 1.

16 Q. Any other changes or corrections,
17 Mr. Parisi?

18 A. No.

19 Q. With those changes that we just walked
20 through, now that you're here today under oath if I
21 asked you all of these questions today, would your
22 testimony be the same as set forth in your written
23 testimony?

24 A. Yes, it would.

25 MS. MORRISON: I tender the witness for

1 cross-examination.

2 EXAMINER STENMAN: Thank you.

3 Who wants to go first?

4 MR. WARNOCK: I'll go first. I do have
5 two motions to strike and, hopefully, we can do this
6 quickly. The first is on page 16, starts on line 6,
7 it's the question "What is the basis of knowledge
8 this is a common industry practice?"

9 From starting on line 9 with the sentence
10 "On numerous occasions" through line 2 on page 18
11 there are references and citations and quotes from
12 comments and testimony that the OCC had presented in
13 those various proceedings. I'd ask that this be
14 stricken as not only hearsay but most if not all of
15 the parties of this case were not participants in
16 those.

17 OCC has not presented and is not going to
18 present, it sounds like, any evidence in this case,
19 they have no witnesses that we can cross-examine on
20 this, and I believe it's prejudicial to NOPEC to
21 allow this to stay in.

22 And then the second --

23 MR. SERIO: What was the end point of
24 that?

25 MR. WARNOCK: It starts on line 9, page

1 16, through page 18, line 2.

2 MR. SERIO: Okay. The entire answer.

3 MR. WARNOCK: Yeah.

4 MR. SERIO: Thank you.

5 MR. WARNOCK: And then in regards to
6 Exhibit 1, I'd ask that this be for the most part
7 stricken. We're okay with the language on page 3,
8 you know, indicating that this is the initial
9 disclosure, as long as we limit it to just the use of
10 that for that specific fact we don't have a problem
11 with it, but we don't think that the rest of the
12 document is appropriate or the attached affidavit of
13 Mr. Parisi. You know, we'll accept the initial
14 disclaimer but don't believe the rest of the document
15 should be admitted. It's from a separate case
16 altogether and it's a lead-in as opposed to testimony
17 or anything like that.

18 Those are the only two that I have.

19 MR. B. McINTOSH: Stand joins in that
20 objection.

21 MS. MORRISON: With regard, your Honor,
22 to the first motion to strike on page 16, a couple
23 issues with that. First of all, it is an admission
24 against interest by a party, and the other piece of
25 it is that it is -- part of the answer to the

1 question was the basis for his knowledge of the
2 common industry practice, and so the public record
3 and public information certainly is an appropriate
4 basis for knowledge about what's going on in the
5 industry. I think that information is both
6 admissible and probative of the industry practice.

7 And with regard, then, to Exhibit 1 to
8 Mr. Parisi's testimony, the same thing, it's
9 something on which the witness relies for his
10 testimony. The court can attribute the appropriate
11 weight to it. To the extent it makes legal argument
12 your Honor certainly can give that the weight it
13 deserves, but to the extent that there is factual
14 evidence and information including Mr. Parisi's
15 affidavit, we believe that is admissible and they can
16 certainly cross-examine him on those documents.

17 EXAMINER STENMAN: Thank you.

18 MR. WARNOCK: Can I respond just very
19 quickly?

20 EXAMINER STENMAN: You may.

21 MR. WARNOCK: In regard to the first
22 motion to strike the testimony from OCC in other
23 cases, I know that Ms. Morrison talked about a
24 statement against interest, but as far as I know OCC
25 doesn't really have an interest in this case and has

1 kind of stepped away from this case. So, you know,
2 to the extent that it's in the public record, that
3 doesn't just make it admissible for purposes of this
4 case. And I'd emphasize that it's prejudicial.

5 MS. MORRISON: They are a complaining
6 party and under the Rules of Evidence that is an
7 admission by a party opponent.

8 MR. B. McINTOSH: Your Honor, we believe
9 they're a nonparticipating party here.

10 EXAMINER STENMAN: Okay. Given that both
11 motions to strike deal with information that's been
12 filed here at the Commission in our other dockets,
13 the motion to strike will be denied. Inasmuch as
14 what's been filed here at the Commission contains the
15 opinion of RESA or the opinion of OCC, it will be
16 given weight by the Commission accordingly.

17 MR. WARNOCK: Okay.

18 - - -

19 CROSS-EXAMINATION

20 By Mr. Warnock:

21 Q. Good afternoon, Mr. Parisi.

22 A. Good afternoon.

23 Q. Just so I'm clear, I know your counsel
24 went through IGS Exhibit 1. Are these intended to
25 replace the exhibits that were attached to your

1 testimony or are they in addition to those documents?

2 MS. MORRISON: They are in addition to
3 the exhibits to his testimony.

4 MR. WARNOCK: Okay.

5 Q. I'm going to turn you to Exhibit 3, 4,
6 and 5 in your testimony. Just so I'm clear, Exhibit
7 3 is the same as the first stapled document on IGS
8 Exhibit 1?

9 A. It's part of the same marketing campaign.

10 Q. Okay.

11 A. The content should be the same for the
12 first and second exhibits in IGS Exhibit 1 as what's
13 attached to my testimony as Exhibit 3.

14 Q. And then Exhibit 4 to your testimony, is
15 that the same as one of the documents that was
16 provided as part of IGS Exhibit 1?

17 A. Yes. I believe that's the same as the
18 fourth document just before the snapshot of the
19 website, that should be part of the same campaign as
20 what's in my Exhibit 4.

21 Q. And Exhibit 5 is a snapshot from your
22 website and it's the same website represented in the
23 last document of IGS Exhibit 1?

24 A. That's correct.

25 Q. Okay. Now, on direct examination you

1 testified about a number of nonaffiliates that were
2 using the utility name in other states, correct?

3 A. That's correct.

4 Q. And I believe there were three of them.
5 Cincinnati Bell Energy?

6 A. Correct.

7 Q. Dominion Retail.

8 A. Correct.

9 Q. And Direct Energy or Centrica.

10 A. Centrica the parent company to Direct
11 Energy, that's correct.

12 Q. And do you know if those nonaffiliates
13 offer electric or gas or both services?

14 A. I'm not familiar with all their
15 offerings. Cincinnati Bell Energy I believe offers
16 electric, I'm not sure if they offer natural gas.
17 Dominion Retail, offering their products under Nicor
18 Electric, I think only offers electricity. And I
19 believe the two examples in Texas are both electric.

20 Q. So IGS's use of the Columbia name is the
21 first time this has happened in the natural gas
22 context.

23 A. As far as I'm aware.

24 Q. Just so I'm clear, the utilities that are
25 associated with those nonaffiliates in Texas, the

1 utility would be AEP?

2 A. They've since rebranded but it's AEP
3 North in one and AEP Central in the other.

4 Q. And in Illinois the utility would be
5 Nicor?

6 A. The utility in that area for gas would be
7 Nicor and I think for electric would be ComEd.

8 Q. And then for Cincinnati Bell Energy the
9 utility is?

10 A. Presumably Duke, but I'm not certain. I
11 think it's confined to the Duke area but it may be
12 used as well in DPL.

13 Q. And when did you become aware of these
14 three examples?

15 A. Cincinnati Bell was several -- a month
16 ago, maybe two months ago. There's a publication
17 that comes out in our industry called "Energy Choice
18 Matters" and it was an article that was in there. It
19 may have also been -- there may have also been an
20 article in there regarding the Nicor/Dominion Retail,
21 that was several months ago as well. I've been aware
22 of the sale of the customers in Texas, that happened
23 several years ago so I've been aware of that for a
24 while.

25 Q. Now, are you a direct report to Scott

1 White?

2 A. Yes.

3 Q. Does anyone directly report to you?

4 A. Yes.

5 Q. And who are those folks?

6 A. There are several. Tony Cusati is our
7 east coast, director of east coast regulatory; also
8 Helen Sweeney and she is a tariff analyst; Ron
9 Waterman is the assistant general counsel; and Matt
10 White who is our regulatory and legal.

11 Q. And you currently hold two positions with
12 IGS, correct?

13 A. That's correct.

14 Q. You're the general counsel and the
15 regulatory affairs officer?

16 A. Correct.

17 Q. How long have you been -- held the
18 general counsel position?

19 A. Since my initial employment, September of
20 2003.

21 Q. 2003?

22 A. I'm sorry. 2003, that's correct.

23 Q. Okay. So when you started with IGS, you
24 took the position of general counsel.

25 A. I started as general counsel. I was also

1 in charge of credit and collections.

2 Q. And can you kind of, can you generally
3 describe your job responsibilities as general
4 counsel?

5 A. Generally responsible for all legal
6 matters for the company, work with outside counsel,
7 work with the executive team, work with inside
8 counsel managing any issues or items that might come
9 up there. So primarily in a supervisory role and
10 also, obviously, as counsel for the executive team.

11 Q. And for purposes of this case you're
12 testifying as a fact witness, correct?

13 A. That's correct.

14 Q. Now, in your position as regulatory
15 affairs officer, how long have you been in that
16 position?

17 A. Officially the title change happened in
18 2006. Probably starting in 2004, late 2004-2005 I
19 started to take those responsibilities on more
20 full-time.

21 Q. And what are the responsibilities of the
22 regulatory affairs officer?

23 A. Really responsible for any regulatory or
24 legislative activities that occur in any of the
25 states that we're conducting business, either

1 directly or overseeing the work of outside folks.

2 Q. And when you refer to overseeing outside
3 folks, what are you referring to?

4 A. It could be outside counsel. We tend to
5 hire counsel in each of the states that we're in that
6 are familiar with the regulatory arena, so working
7 with them. Working with various groups. For
8 example, in Ohio we're part of the Ohio Gas Marketing
9 group, so I work with counsel there and other
10 marketers, it does also include working with
11 lobbyists in the various states that we're in. And,
12 I'm sorry, we also work with consultants from time to
13 time.

14 Q. And as part of your efforts as regulatory
15 affairs officer are you the primary contact person
16 for public utility commissions in the states where
17 IGS does business?

18 A. At some level that's correct. I try to
19 develop relationships with folks in the various
20 states that we're involved in. We have other folks
21 that also have primary contact responsibility. In
22 the compliance area, for example, there are several
23 folks at different levels that have responsibility,
24 and with respect to anything that's kind of east
25 coast, that's one of my direct reports, Tony Cusati

1 would really have those more direct contacts.

2 Q. Do you have primary responsibility in
3 terms of the Public Utilities Commission of Ohio?

4 A. Yes, I do.

5 Q. And do you have primary responsibility
6 with dealings at FERC?

7 A. Yes, I do.

8 Q. Are you aware of the FERC order that was
9 discussed yesterday in docket number IN04-2-000?

10 A. Yes, I'm aware of it.

11 MR. WARNOCK: Your Honor, I know we had
12 testimony on this yesterday. I'd ask that you take
13 administrative notice of the order dated August
14 2nd, 2004, from the FERC in that case.

15 EXAMINER STENMAN: Administrative notice
16 will be taken.

17 MR. BENTINE: Might I just inquire?

18 EXAMINER STENMAN: You may inquire.

19 MR. BENTINE: There is a -- there's
20 several stipulations that are attached to the order
21 and I'm just inquiring as to whether or not the
22 administrative notice is only to the order, which is
23 like six pages, or all of the material that's
24 attached to the order which is much longer.

25 MR. WARNOCK: I know that all of the

1 materials are quite lengthy. I would just ask that
2 it be applied to the first six pages, which is the
3 actual order, and then the stipulation involving the
4 Columbia entity, which is the last nine pages.

5 EXAMINER STENMAN: Do you have any
6 objection to including the stipulation?

7 MS. MORRISON: No.

8 EXAMINER STENMAN: Administrative notice
9 will be taken.

10 Q. (By Mr. Warnock) And you were here for
11 the testimony of Mr. White yesterday, correct?

12 A. That's correct.

13 Q. Do you recall Mr. White's testimony about
14 the use of the IGS name going forward in terms of the
15 marketing materials?

16 A. Could you be more specific?

17 Q. Well, I'm specifically asking about the
18 use of the IGS name to do, you know, direct mailings
19 and direct solicitations after August 1st of 2010
20 when the Columbia Retail Energy name was acquired.

21 A. I do remember some discussion regarding
22 that, yes. There were several places where that was
23 discussed.

24 Q. And I'll try to be a little more
25 specific. Would you agree that the majority of the

1 marketing activities that IGS is currently doing in
2 the Columbia Gas of Ohio service area are being done
3 under the Columbia Retail Energy name?

4 A. Currently?

5 Q. Currently.

6 A. Yes, I would.

7 Q. Is IGS, as in Interstate Gas Supply,
8 doing any direct solicitations currently?

9 A. Outside of the Columbia Gas of Ohio
10 service territory?

11 Q. Let's start with inside the Columbia Gas
12 of Ohio service territory.

13 A. I think what Mr. White testified to
14 yesterday is that we do have a current group of
15 customers that have been IGS customers for years and
16 to the extent that those customers want to move to a
17 new product or it might be a win-back situation,
18 those customers are contacted with IGS Energy
19 products, but I don't believe there's any outbound
20 mail, for example, that's going into Columbia service
21 territory with the IGS Energy name.

22 Q. So at the current time the IGS Energy
23 name is being used with existing customers of IGS or
24 long-standing customers of IGS?

25 A. That's correct.

1 Q. Now, is there any intention of that
2 changing in 2011?

3 A. "That" being?

4 Q. That IGS Energy would be marketing to
5 customers other than those that are already existing
6 or long-standing customers.

7 A. In the Columbia of Ohio service
8 territory? Not that I'm aware of.

9 Q. So in the Columbia Gas of Ohio service
10 territory with the exception of the existing IGS
11 Energy customers the only mailings or solicitations
12 that those folks would see would be using the
13 Columbia Retail Energy name currently.

14 A. Again, in the Columbia service territory?

15 Q. Right.

16 A. That's correct.

17 Q. Has IGS had any discussions with
18 NiSource, Inc. or any other NiSource entity about
19 being acquired by NiSource?

20 MS. MORRISON: Objection.

21 A. Not to my knowledge.

22 MS. MORRISON: Relevance.

23 EXAMINER STENMAN: He's already,
24 answered, so . . .

25 THE WITNESS: Sorry.

1 MR. WARNOCK: Your Honor, may I
2 approach -- well, actually, do you have NOPEC Exhibit
3 1 that we could hand to the witness?

4 (Discussion off the record.)

5 Q. Mr. Parisi, do you have before you NOPEC
6 Exhibit 1 which Mr. White had identified as the most
7 recent renewal application of Interstate Gas Supply?

8 A. Yes, I do.

9 Q. And I'd ask that you turn to the Dun &
10 Bradstreet report which is Exhibit C-7, it's probably
11 about a little over halfway through the document.
12 Are you there?

13 A. Yes.

14 Q. All right. Page 1 of 1, about halfway
15 down the page it has Sales and then E, and then it
16 has an amount of 1-point -- or \$1,450,000,000. Do
17 you see that?

18 A. Yes, I do.

19 Q. Can you explain to me what that amount
20 represents?

21 MS. MORRISON: Objection. Lack of
22 foundation. This is a Dun & Bradstreet report. This
23 isn't anything prepared by this witness.

24 EXAMINER STENMAN: The objection will be
25 sustained. If you can lay a foundation that he knows

1 and you can ask him, you can do so.

2 Q. Mr. White, have you seen this document
3 that's previously been marked as NOPEC Exhibit 1
4 before?

5 A. I'm sorry. Mr. Parisi?

6 Q. Mr. Parisi. I'm sorry.

7 A. I just don't want to answer for
8 Mr. White.

9 No, I don't remember seeing this specific
10 document.

11 Q. Based on your knowledge as general
12 counsel and the regulatory affairs officer is
13 \$1,450,000,000 a good estimate for sales of
14 Interstate Gas Supply in 2010?

15 MS. MORRISON: Objection. It goes to
16 some of the issues we talked about yesterday in terms
17 of confidential business information. It is a
18 private company. This is not anything that was
19 produced or made public by the company. To the
20 extent he's going to ask questions about sales of
21 this witness, it is confidential information.

22 MR. WARNOCK: This document was, well, I
23 should say it's in the public record. It was in
24 NOPEC Exhibit 1 which was admitted into evidence
25 yesterday. I'm really not going much further than

1 this. I'm just asking if this is a good estimate of
2 sales in 2010.

3 MS. MORRISON: I object to that question.

4 MR. WARNOCK: Dun & Bradstreet is a
5 public, I mean it's a public thing, anyone can get
6 it, and this is a public document. There's a
7 confidential version of the renewal application that
8 is filed with the Commission and it's protected, and
9 you can notice that there are exhibits that have been
10 redacted. And I'm asking in his position as general
11 counsel and regulatory affairs officer whether this
12 is an appropriate estimate, and I think the witness
13 can answer that question.

14 EXAMINER STENMAN: The objection will be
15 overruled. This is a public document filed here at
16 the Commission. And if he doesn't know, he can say
17 that.

18 A. I don't know. Dun & Bradstreet can pick
19 information up from other sources. It can be
20 reported by the company. I haven't been involved in
21 this aspect of the business for a while so I don't
22 know if we reported the numbers. And I just don't
23 have a responsibility in the financial part of our
24 business.

25 Q. Okay. Thank you.

1 Now I'm going to turn to your testimony
2 now, let's start on page 2 of your testimony. I'm
3 specifically going to point you to the sentence that
4 begins on line 22 on page 1 and continues over to the
5 top of page 2, specifically to the words "abundance
6 of caution." Do you see that?

7 A. Yes, I do.

8 Q. And I'd ask that you just read that
9 sentence to yourself just so you can put it into
10 context and I'll have a few questions for you.

11 Now, you mentioned the word "caution."
12 The reason you used "caution" is because you realize
13 the Columbia name and logo could be confusing to
14 customers; is that correct?

15 A. The reason I use the word "caution" is
16 because we did recognize this is something new in the
17 market and it, being something new in the market, it
18 made sense to proceed cautiously.

19 Q. And getting back to my question, and you
20 used that "caution" because you realized that the use
21 of the Columbia name and logo by IGS had the
22 potential to be confusing to customers.

23 A. I disagree. It wasn't really that we
24 thought that the use could be confusing. We knew we
25 would use disclosures with respect to the use of the

1 brand and that we'd have disclosures around the name
2 on the page on marketing materials and believe that
3 with the use of disclosures it wouldn't be confusing.

4 Nonetheless, we recognized that the
5 utility had a chance to meet with Commission staff,
6 for example, and potentially with the OCC to talk
7 through what they thought those disclosures should
8 look like, we should move cautiously.

9 Q. So in terms of the word "caution" there
10 would you agree that "caution" could mean danger or a
11 certain risk associated with it?

12 A. The way that I have it used here I
13 intended to use it to move carefully as that may be
14 another way of using the word.

15 Q. And you'd agree with me that there is no
16 statute in Ohio governing the use of the utility's
17 name and/or logo by a nonaffiliate.

18 A. I think the rule under the Ohio
19 Administrative Code section is intended to be
20 followed when using any similar name by any company.
21 It specifically talks about affiliates, that's
22 correct.

23 Q. And there's no statute governing this.

24 A. The Ohio administrative rule is the only
25 rule I'm aware of.

1 Q. On page 3 of your testimony you reference
2 the service mark license agreement between IGS and
3 NiSource Retail Services. Are you familiar with that
4 document?

5 A. Yes, I am.

6 Q. Do you know if NiSource put the licensing
7 of the Columbia name and logo out to bid to all
8 competitive retail natural gas suppliers in Ohio?

9 A. I don't believe they did. I believe IGS
10 approached NiSource.

11 Q. So this is just, this is a privately
12 negotiated deal between IGS and NiSource.

13 A. That's correct.

14 Q. Was anyone from Columbia Gas of Ohio
15 involved in the negotiations between or discussions
16 between IGS and NiSource?

17 A. I wasn't involved in all the discussions
18 so I can't tell you who was involved in every
19 discussion. The discussions I was involved in were
20 between IGS and NiSource employees.

21 Q. Do you know if Columbia Gas of Ohio was
22 aware of the discussions, ongoing discussions between
23 IGS and NiSource relating to the Columbia Retail
24 Energy name?

25 A. I don't know.

1 Q. Would you agree with me that NiSource
2 could potentially have received more money from
3 another competitive retail natural gas supplier in
4 Ohio if they had bid out the use of the Columbia name
5 and logo?

6 MS. MORRISON: Objection. Foundation.
7 It's totally speculative.

8 MR. WARNOCK: Well, I'm trying to stay
9 out of confidential territory and, you know,
10 Mr. Parisi has indicated that he's familiar with the
11 licensing agreement and this is more of a
12 hypothetical than anything else.

13 EXAMINER STENMAN: It will be overruled.
14 We've allowed a significant amount of speculation
15 into the record already.

16 A. I don't know.

17 Q. I'm sorry?

18 A. I don't know.

19 Q. But you would agree with me that it's
20 possible that NiSource could have received more money
21 from a competitive retail natural gas supplier than
22 it's otherwise receiving from IGS if they had bid out
23 the use of the name and logo.

24 A. It's a short-term agreement. I suppose
25 it's possible.

1 Q. Is it IGS's understanding that the
2 licensing agreement is exclusive?

3 A. Could you define "exclusive" for me?

4 Q. That IGS would be the only competitive
5 retail natural gas supplier in Ohio that's able to
6 use the Columbia name and logo in Columbia Gas of
7 Ohio service territory.

8 MS. MORRISON: Your Honor, if we're going
9 to start getting into terms or what his understanding
10 of the licensing agreement is, we believe that would
11 need to be part of the confidential record.

12 MR. WARNOCK: Is that your --

13 EXAMINER STENMAN: Are you planning to go
14 much further down this road in terms of the terms and
15 conditions of the licensing agreement?

16 MR. WARNOCK: Well, I'm going to get into
17 the agreement a little bit. I was going to save that
18 till the end. This was my, I think my last general
19 question about the agreement.

20 EXAMINER STENMAN: All right. Why don't
21 you just save it till the end and we'll go into a
22 confidential record and, as previously discussed,
23 we'll follow that up with motions and then a properly
24 redacted copy.

25 MR. WARNOCK: Okay.

1 Q. (By Mr. Warnock) Do you know who the --
2 did NiSource have an unregulated natural gas
3 affiliate in the past?

4 A. It's my understanding at one point prior
5 to my being involved in the market there was a
6 Columbia branded company that was part of NiSource
7 that was selling natural gas products.

8 Q. Does Columbia Gas of Ohio currently have
9 an unregulated natural gas affiliate?

10 A. Not that I'm aware.

11 Q. And when we just spoke about the --

12 A. I'm sorry. One exception would be Energy
13 USA I believe is a NiSource company that sells
14 commercial and industrial. I'm not sure of the
15 status of that company, whether it still exists.

16 Q. And so you're not sure whether Energy USA
17 is still operating in Ohio?

18 A. I'm not sure.

19 Q. Do you know -- does IGS believe that
20 there will be -- that it will receive any benefits
21 from the use of the Columbia service marks?

22 A. I'm sorry. Are you asking what I think
23 or on behalf of IGS?

24 Q. Let's start with what you think. What
25 benefits does IGS receive under the licensing

1 agreement?

2 A. I think there could be several. I think
3 one of the hopes was that the recognition of the
4 brand may make Choice generally more acceptable in
5 the market; that folks may open envelopes; I think
6 there's a hope that with a NiSource involvement that
7 generally there would be a greater acceptance of
8 Choice throughout the markets.

9 Q. Now, when you're talking about making
10 Choice more acceptable, is this making Choice as a
11 whole more acceptable or making IGS more acceptable
12 to customers?

13 A. It's making Choice more acceptable. IGS
14 has a long record in the industry I think as a very
15 strong brand and a strong name. The idea I think
16 from my perspective was generally to make Choice more
17 acceptable.

18 Q. Now, in deciding to use the or market
19 under the Columbia Retail Energy name was there
20 something wrong with marketing under IGS or IGS
21 Energy?

22 A. Was there something wrong with IGS
23 marketing under the IGS Energy name?

24 Q. Correct.

25 A. No.

1 Q. Was IGS losing brand recognition in the
2 Columbia Gas of Ohio service territory before
3 entering into the licensing agreement?

4 A. I don't believe so.

5 Q. So if there were no -- if there was
6 nothing wrong with the use of the IGS Energy name by
7 IGS in its market, why risk confusion and use the
8 Columbia name and logo in the Columbia Gas of Ohio
9 service territory?

10 MS. MORRISON: Objection. Lack of
11 foundation. There's no evidence there was any risk.

12 EXAMINER STENMAN: It will be overruled.
13 You can ask the question.

14 MR. WARNOCK: Can you repeat the
15 question, please.

16 (Record read.)

17 A. I think, as I stated before, we didn't
18 enter into this thinking there would be confusion.
19 We knew we'd be using disclosures with respect to
20 every use of the name. We knew the disclosures would
21 properly express what the relationship was. So we
22 didn't think there would be any risk of confusion
23 with appropriate disclosures, it was just a different
24 business opportunity.

25 Q. But you did mention, and I believe one of

1 the benefits that you mentioned was that more
2 envelopes would be opened, correct?

3 A. There was a hope. A possibility that
4 could be the case.

5 Q. And in saying that you had the hope that
6 more envelopes would be opened, you're talking about
7 more envelopes using the Columbia Retail Energy name
8 in the Columbia Gas of Ohio service territory,
9 correct?

10 A. As a possibility, that's correct.

11 Q. And I believe that you mentioned earlier
12 that IGS approached NiSource about entering into the
13 licensing agreement, correct?

14 A. That's my understanding from Mr. White's
15 testimony.

16 Q. Did IGS approach any other natural gas
17 utility about licensing its name?

18 A. Not that I'm aware of.

19 Q. Why not?

20 A. This is the type of thing that ultimately
21 Mr. White would decide to do or not do. Whether or
22 not he's approached other folks about it, I can't
23 testify to that, I don't know. I know I haven't.

24 Q. But to your knowledge IGS only approached
25 one natural gas utility in Ohio and that was the

1 parent company of Columbia Gas of Ohio, NiSource.

2 A. To my knowledge, IGS only approached
3 NiSource with respect to the use in Ohio.

4 MR. WARNOCK: Just a second, your Honor.

5 Q. Now, I'm going to turn to page 3 of your
6 testimony and I'm going to talk to you for a few
7 minutes about the PUCO staff. On page 3 in the
8 answer starting on -- the question on page 3, line
9 12, and the answer starting on line 13, you mentioned
10 having -- that IGS contacted the staff. Correct?

11 A. That's correct.

12 Q. And when did IGS first contact the staff
13 about the use of the Columbia Retail Energy name?

14 A. I don't have a specific date. It would
15 have been almost immediately after signing the
16 agreement, having the full executed agreement. So
17 the end of July, I think, 2010.

18 Q. And when did IGS first start using the
19 Columbia Retail Energy name in the Columbia Gas of
20 Ohio service territory?

21 A. My recollection is, and again I'm not in
22 charge of marketing, but my recollection is it was
23 right at the end of September 2010.

24 Q. Do you know whether IGS's first contact
25 with the staff at the end of July of 2010 was before

1 or after the notice of material change was filed?

2 A. My recollection was I did them fairly
3 contemporaneously. May have met with staff just
4 before and filed subsequent to that.

5 Q. But so at the end of July 2010 would have
6 been the first time that the staff learned of IGS's
7 intention to use the Columbia Retail Energy name?

8 A. Would have been the first time I
9 contacted them, that's correct.

10 Q. Did you attend meetings with the PUCO
11 staff regarding the use of the Columbia Retail Energy
12 name?

13 A. I did. We had at least one in-person
14 meeting and then telephone calls subsequent to that;
15 e-mail exchanges.

16 Q. So there was about one in-person meeting.

17 A. I can't recall if it was one, two, might
18 have been three. There were several iterations of
19 the disclosures that we were going to use and a
20 couple sets of meetings that ultimately occurred, the
21 first set in that July-August time frame and then a
22 subsequent set later.

23 Q. And can you estimate how many telephone
24 calls you had with the PUCO staff?

25 A. I can't recall the number. Multiple. It

1 was more than two or three. Probably not ten.

2 Q. And in terms of e-mail correspondence,
3 can you estimate the number of e-mails that were sent
4 back and forth with the staff? More than ten?

5 A. For the whole duration with the multiple
6 different I think it was probably more than ten.

7 Q. And were those e-mails, did those e-mails
8 involve different iterations of the disclosure of the
9 marketing materials?

10 A. They did. And some questions back and
11 forth about those disclosures.

12 Q. And what were the staff's initial
13 reactions to you when you presented this to them?

14 A. At the initial meeting or --

15 Q. At the initial meeting.

16 A. There were multiple people in the room,
17 it was me and four or five other folks. They had a
18 lot of questions with respect to it. I can't recall
19 if they asked about the agreement itself, if they
20 asked term or anything of that nature. We focused
21 mostly on the disclosures. I brought with me some
22 examples of disclosures that we proposed to use. And
23 most of the discussion, to my recollection, focused
24 around that.

25 Q. And subsequent to that initial meeting

1 did staff, what type of questions or concerns were
2 raised by staff?

3 A. My recollection was following that
4 initial meeting they had the disclosures and the
5 request was to provide any feedback or comment that
6 they might have. I can't recall if there was a
7 conversation that occurred prior to ultimately
8 what -- it was an e-mail exchange and ultimately
9 staff replied with some criteria that they'd like us
10 to use and some suggested revisions to those
11 disclosures.

12 Q. And when you initially contacted the
13 staff, was it you who contacted the staff?

14 A. Yes.

15 Q. And who on the staff did you contact?

16 A. I think my initial call was to Steve
17 Puican.

18 Q. And would you say that Mr. Puican was the
19 staff member that was the most active in the
20 discussions whether it was in person or by e-mail or
21 by telephone with you?

22 A. No. Actually, Mr. Puican was in the
23 first meeting. He didn't participate after that.

24 Q. And who would you say on the PUCO staff
25 was most actively involved in the discussions that

1 you had?

2 A. It was Jim Drummond and Chris Rhodes,
3 Paula Vogel as well but not quite as active.

4 Q. Who was the last one?

5 A. Paula Vogel.

6 Q. Do you know what Mr. Drummond's position
7 is with the Public Utilities Commission?

8 A. I don't know his title.

9 Q. And do you know what Mr. Rhodes' position
10 is?

11 A. I think Mr. Rhodes is an attorney, but I
12 don't know what his title is.

13 Q. And then Ms. Vogel, do you know what her
14 position is?

15 A. I don't.

16 Q. And to your knowledge do you know if
17 Mr. Drummond is an attorney?

18 A. I don't know. I don't believe he is, but
19 I don't know.

20 Q. And you think Mr. Rhodes is an attorney?

21 A. Supposition. I don't know. I think he
22 is, but I don't know.

23 Q. Was anyone from the Attorney General's
24 office involved in any of your discussions?

25 A. Not to my recollection.

1 Q. And I believe that you had indicated that
2 the staff had some concerns or feedback about the use
3 of the Columbia Retail Energy name by IGS; is that
4 correct?

5 A. The staff had feedback with respect to
6 the disclosures. They didn't really express any
7 concern with respect to the use of the name.

8 Q. And in terms of the disclosures, I'd ask
9 that you turn to IGS Exhibit 1, do you know which, if
10 any, of these documents was provided to -- was the
11 initial version that was provided to staff?

12 A. I'm sorry. IGS Exhibit 1?

13 Q. IGS Exhibit 1. Actually, I'd have you
14 turn to IGS Exhibit 1 and Exhibits 3 and 4 in your
15 testimony.

16 A. Oh, okay.

17 MS. MORRISON: The disclosures.

18 Q. The disclosures.

19 A. And, I'm sorry, your question is how
20 similar --

21 Q. Were any of these documents provided,
22 were any of these the initial documents provided to
23 the PUCO staff?

24 A. No.

25 Q. The documents that were provided to the

1 PUCO staff, how did -- let's start with IGS Exhibit
2 1, that first document. How did the document that
3 was initially provided to the PUCO staff differ from
4 this?

5 A. My recollection was we provided a
6 template that didn't contain, I can't remember if it
7 contained any of the text between, for example,
8 where it says "Sample A Sample or Current Resident,"
9 and down toward the bottom, it continued, the
10 Columbia Retail Energy logo at the top. It contained
11 an example, it was different at that time, but an
12 example of what the disclosure would look like toward
13 the bottom.

14 Q. And what feedback did the staff have on
15 that initial disclosure if you can remember?

16 A. At that initial meeting?

17 Q. At that initial meeting or subsequent to
18 that.

19 A. They didn't really provide feedback at
20 the initial meeting. The feedback came later. My
21 recollection is they took a look at some of the other
22 folks in the market that used similar names like
23 Vectren, Dominion, Duke, they looked at I believe the
24 way their disclosures appeared. I believe they also
25 looked at the rule under the administrative code, and

1 I believe they may have also looked at the settlement
2 agreement between Dominion Retail and staff in a
3 previous case.

4 The feedback that they provided to us was
5 that they wanted us to use a disclosure closer to the
6 brand on the top of the marketing material and then
7 had some changes, I can't remember exactly what they
8 were, but to the wording and the other disclosure.

9 Q. And when you reference they wanted, the
10 staff wanted disclosure closer to the name, you're
11 talking about the name and logo in the upper
12 left-hand corner of the mailings?

13 A. That's correct. They focused on the
14 mailing and the solicitation itself so it would be
15 that disclosure at the upper left-hand corner.

16 Q. And the staff did not have a problem with
17 the font size of the disclosure?

18 A. We discussed using a font size that would
19 be similar in font size to the basic text.

20 Q. The font size to the basic text of the
21 actual letter?

22 A. Of the actual letter.

23 Q. Do you know if any PUCO staff member has
24 seen the licensing service mark agreement between IGS
25 and NiSource?

1 A. Outside of this case?

2 Q. Yes.

3 A. I don't believe so.

4 Q. Has any member of the PUCO staff seen
5 that agreement as part of this case?

6 A. I don't know.

7 Q. So when the staff was in discussions with
8 you and reviewing the disclosures, they would not
9 have had any understanding about the contents of the
10 licensing agreement?

11 MS. MORRISON: Objection. Foundation.

12 EXAMINER STENMAN: It will be overruled.
13 He can answer if he knows.

14 A. We talked generally about the licensing
15 agreement, that it was between us and NiSource. I
16 believe we talked generally about the term. I don't
17 know if we talked about any other specifics. I just
18 can't recall.

19 Q. But they did not see a copy of the
20 document.

21 A. They did not see a copy of the document.

22 Q. Did anyone on the PUCO staff ask to see a
23 copy of the agreement?

24 A. I don't recall any requests.

25 Q. Now, has anyone on the staff of a public

1 utility commission in one of the other states in
2 which IGS is operating seen a copy of the licensing
3 agreement?

4 A. I don't believe so.

5 Q. Do you know if the staff of any other
6 public utilities commission in any other state that
7 IGS is operating has asked to see a copy of it?

8 A. We've had discussions with staff in each
9 state where we're using the brand, either myself
10 directly or it was through Tony Cusati with our
11 office who reports to me, I don't recall any staff
12 having asked for a copy of it. We had more detailed
13 conversations with the staff in Pennsylvania and I
14 believe Maryland, and those are two states that Tony,
15 Mr. Cusati, typically handles. They may have asked
16 him. They didn't ask me.

17 Q. But to the best of your knowledge the
18 staff in Pennsylvania or Maryland never saw a copy of
19 the agreement.

20 A. To my knowledge.

21 Q. Okay. I know in your testimony you
22 reference a settlement agreement with RESA. Are you
23 familiar with that document, I believe it's Exhibit
24 2?

25 A. Yes, I am.

1 Q. Do you know if the attorney for RESA ever
2 saw a copy of the licensing agreement?

3 A. We actually dealt with a couple different
4 attorneys. Are we talking about the attorney for
5 RESA in Ohio?

6 Q. Let's start, well, I'm going to
7 eventually get to all of them, but let's start in
8 Ohio.

9 A. Okay. Dane Stinson was the attorney in
10 Ohio that worked with RESA on this, and I don't
11 believe he ever saw a copy.

12 Q. Did any attorney working for RESA in any
13 other states see the licensing agreement?

14 A. The other attorney was in Pennsylvania,
15 and I don't believe he saw a copy of it.

16 Q. And is it correct that no competitive
17 retail natural gas supplier who's a member of RESA
18 has seen a copy of the licensing agreement?

19 A. I believe that's correct.

20 Q. To the best of your knowledge has any
21 other natural gas utility in Ohio seen a copy of the
22 licensing agreement?

23 A. I'm sorry. Could you repeat the
24 question?

25 Q. To the best of your knowledge, has any

1 natural gas utility other than, obviously, NiSource
2 seen a copy of the licensing agreement?

3 A. I don't believe so.

4 Q. Other than the attorneys in this case has
5 anyone outside of this case or IGS's organization
6 seen a copy of the licensing agreement?

7 A. Not to my knowledge.

8 Q. Has the Public Utilities Commission of
9 Ohio, as in the five commissioners, approved the use
10 of the Columbia Retail Energy name by IGS?

11 A. Has any commission in any state approved
12 the use of the name?

13 Q. In Ohio. Has the Public Utilities
14 Commission of Ohio approved the use of the name by
15 IGS.

16 A. We filed in our certification docket
17 update that provided that we would be doing business
18 under the Columbia Retail Energy name and in the
19 entry dealing with the interventions the Commission
20 said both that it was appropriate for us to use
21 disclosures and that it was appropriate for us to
22 follow staff's direction with respect to those
23 disclosures, so in my mind the Commission has said
24 that if we're going to use the Columbia Retail Energy
25 name, then we should be using disclosures.

1 Q. In the certification docket I think you
2 referred to an entry. That was an entry denying the
3 intervention motions in that docket. Is that what
4 you're referring to?

5 A. I believe that's correct.

6 Q. Other than that entry is there any
7 opinion or an order or a finding or entry from the
8 Public Utilities Commission of Ohio approving the use
9 of the Columbia Retail Energy name by IGS?

10 A. I don't believe so.

11 Q. And I believe in your testimony you
12 referenced that the Public Utilities Commission of
13 Ohio staff approved the use of the Columbia Retail
14 Energy obviously with disclosures; is that correct?

15 A. I think my testimony says that the staff
16 approved the disclosures. I don't recall having said
17 that they approved the use of the name.

18 Q. Did the staff indicate that they had any
19 problems with IGS using the Columbia Retail name
20 generally?

21 A. Not to me.

22 Q. And in terms of approving the
23 disclosures, how did the PUCO approve those
24 disclosures? In writing? Verbally?

25 A. I'm sorry. The PUCO staff?

1 Q. Yes.

2 A. We communicated frequently between e-mail
3 and -- I think for the most part it was all done
4 through e-mail. There may have been some discussions
5 with RESA where we made changes that we did over the
6 telephone; I can't recall if Dane Stinson was
7 involved in some of those discussions.

8 Q. On page 5 of your testimony on lines 5
9 through 7 you mention that staff acknowledged the
10 disclosures comported with the Ohio rule. Who on the
11 PUCO staff made this acknowledgment?

12 A. Well, the communications with respect to
13 the first set of communications was really between
14 Jim Drummond, Chris Rhodes, and Paula Vogel, the
15 communication came from I believe Mr. Drummond, but I
16 think the other two were also included on the e-mail.

17 Q. And so the approval, the e-mail from
18 Mr. Drummond acknowledging that the disclosures
19 comported with the Ohio rules, you said that you --
20 and that e-mail was opining on whether the use of the
21 Columbia Retail Energy name comported with Ohio, the
22 Ohio affiliate rule that we discussed earlier?

23 A. The e-mail, the communication dealt with
24 the disclosures that we use and whether or not they
25 comported with the Ohio Administrative Code section

1 dealing with affidavits, that's correct.

2 Q. All right. Now I'm going to turn your
3 attention back a page to page 4, lines 11 through 23
4 where you talk about the corporate separation rules
5 in the electric market. Do you see that?

6 A. Yes, I do.

7 Q. And the concept of corporate separation
8 that you're referencing here has to do with the
9 electric industry and specifically electric utilities
10 and their affiliates, correct?

11 A. The first portion of that does, yes, deal
12 with electric.

13 Q. And there are certain rules in the Ohio
14 Administrative Code that specifically talk about
15 corporate separation in the electric industry in
16 Ohio?

17 A. That's my understanding, yes.

18 Q. The final couple sentences of, I guess
19 starting on line 15 on page 4, it's your belief that
20 there's even greater separation in this case than
21 there would be, you know, between an affiliate and
22 the utility in the electric industry?

23 A. The last couple lines -- I think that's
24 correct, but the last couple lines are dealing even
25 more specifically with separation on the gas side,

1 although I don't know of the same rules on the gas,
2 there are code of conduct responsibilities I think in
3 4929.04, they talk about that, and it talks about
4 separation to the maximum extent practicable.

5 Q. And is it your -- it is your contention
6 that there is maximum separation between IGS and
7 NiSource or Columbia Gas of Ohio in terms of using
8 the Columbia name and logo?

9 A. I think that our relationship as two
10 separate companies between us and the utility and
11 obviously us and NiSource couldn't be more separate.
12 We're a completely separate company. We have
13 separate employees, separate systems, separate
14 assets, separate financing. Really in every material
15 way we're completely separate, so yes.

16 Q. But on the one thing that customers
17 actually see, which are the mailings or the
18 solicitations, there's little if any separation.

19 A. I would disagree. I think that the name
20 is very different. Columbia Gas of Ohio, for
21 example, is the name of the utility. Columbia Retail
22 Energy is not the same name. After the first part of
23 the name it's not the same at all. And there are
24 significant disclosures. So they're very different.

25 Q. But you'd agree with me that the Columbia

1 name is used.

2 A. That's correct.

3 Q. And the blue Columbia coloring is used.

4 A. I don't know if the color's exactly the
5 same. I don't know.

6 Q. It's a shade of blue, though.

7 A. It is a shade of blue, absolutely.

8 Q. And it's essentially the same font that
9 Columbia uses.

10 A. It may be.

11 Q. And it's the same starburst logo Columbia
12 uses.

13 A. Yes.

14 Q. And that starburst has the same or very
15 close to the similar red coloring as the Columbia
16 starburst logo.

17 A. I don't know if it's the same. I think
18 it's similar.

19 Q. And, Mr. Parisi, are you personally, do
20 you take gas service within the Columbia Gas of Ohio
21 service territory?

22 A. Yes, I do.

23 Q. From a consumer's perspective would you
24 agree that the way that IGS is using the Columbia
25 name and logo is actually about as close as a

1 nonaffiliate can get to being an affiliate of the
2 utility?

3 A. I guess I'd have to understand a little
4 better what "close" is, but no, actually I think for
5 a while Dominion branded its products under Dominion
6 East Ohio Retail, or Dominion East Ohio Energy and,
7 you know, you have to get to the fourth word in that
8 example to get to a different name.

9 Q. Yesterday during the testimony of
10 Mr. White NOPEC had an exhibit that, I can't remember
11 what it was marked but it was the notice of material
12 change, I think it was NOPEC Exhibit 2 or 3.

13 EXAMINER STENMAN: Three.

14 MR. WARNOCK: Could I ask the court
15 reporter to hand that to Mr. Parisi.

16 Do you guys need a copy of this?

17 MS. MORRISON: If you've got one handy.

18 MR. WARNOCK: I've got one more.

19 MR. BENTINE: Thank you.

20 Q. (By Mr. Warnock) Do you have NOPEC
21 Exhibit 3 in front of you, Mr. Parisi?

22 A. Yes, I do.

23 Q. And are you familiar with this document?

24 A. Yes, I am.

25 Q. And that is a, I guess two-page document

1 that indicates that IGS's new trade name will be
2 Columbia Retail Energy; is that correct?

3 A. This is a notice of material change to
4 our certification, yes, that would provide the
5 Commission with notice of the new d/b/a.

6 Q. And you would agree with me that there's
7 nothing in this document that explains how or why IGS
8 obtained the use of the Columbia name and logo?

9 A. I would agree.

10 Q. I'm going to turn your attention to page
11 6 of your testimony, and specifically lines 17
12 through 21 or, I'm sorry, 15 through 21 where there's
13 a discussion about how IGS drafted and revised per
14 staff's suggestions certain language in the
15 disclosures. Do you see that?

16 A. Yes, I do.

17 Q. Did anyone on the PUCO staff indicate a
18 concern that a customer might not understand what the
19 word "affiliate" meant?

20 A. I don't recall anyone on staff bringing
21 that issue up.

22 Q. Do you recall if anyone on the PUCO staff
23 raised a concern that a customer might not know what
24 a trademark is?

25 A. The staff suggested some wording changes,

1 without having them in front of me I can't tell
2 whether or not -- I don't recall whether or not that
3 was a specific change that they made. I don't recall
4 any discussion around that.

5 Q. Was there any discussion with the PUCO
6 staff that the disclosure should not only indicate
7 that Columbia Retail Energy is not an affiliate of
8 NiSource or Columbia Gas, but explain the
9 relationship between Columbia Retail Energy, IGS,
10 NiSource, and Columbia Gas of Ohio in the same place?

11 A. I believe that some of the revisions the
12 staff suggested went to that. I think that they
13 wanted to see not only disclosure that the brand
14 wasn't associated with the utility, but I think some
15 kind of disclosure with respect to the relationship
16 with NiSource.

17 Q. I'm going to turn your attention to page
18 8, the question beginning on line 11. Would you
19 agree with me that -- I think previously you
20 indicated that IGS did not start using the CRE name
21 until the end of September. Is September 10th,
22 2010, the correct date that it started using the
23 Columbia Retail Energy name?

24 A. I think we had our website on prior to
25 doing any affirmative marketing. It may have been

1 around that time frame. I don't believe we sent any
2 marketing materials out until the end of the month.

3 Q. But the website might have been earlier
4 in September?

5 A. It may have been.

6 Q. And you'd agree with me that the
7 disclosures that were used on the marketing materials
8 that were first I guess sent out at the end of
9 September 2010 are different from the current
10 marketing materials.

11 A. With respect to the disclosures?

12 Q. Yes.

13 A. That's correct.

14 Q. All right. I am going to turn you to --
15 I'm going to use IGS Exhibit 1 and go through these
16 first. IGS Exhibit 1, the first document, I believe
17 you indicated during your direct examination that
18 this was, the "first marketing campaign" I think is
19 the words that were used that IGS used in terms of
20 the Columbia Retail Energy name; is that correct?

21 A. I believe that's correct, yes.

22 Q. Do you have any idea when that marketing
23 campaign began?

24 A. I believe that this would have been in
25 that end of September 2010 time frame.

1 Q. And how long would that initial campaign
2 have lasted?

3 A. I don't know.

4 Q. Into 2011?

5 A. Not typically.

6 Q. Before we get into the substance can you
7 turn to the next stapled document, I believe you
8 indicated this was part of the second marketing
9 campaign; is that correct?

10 A. No. This was part of still the first
11 marketing campaign. Typically there will be some
12 slight differences, not to the content of the
13 material but maybe in the way that we present it, a
14 different envelope, that type of thing. So this was
15 still part, I believe, of the first campaign.

16 Q. So the first two stapled documents are
17 part of the first campaign.

18 A. Correct.

19 Q. All right. The third document, I believe
20 this document was part of the second marketing
21 campaign; is that correct?

22 A. Yes, I believe that's correct.

23 Q. And I believe that you testified that the
24 second marketing campaign began sometime at the end
25 of 2011 [verbatim] and the beginning of 2011,

1 correct?

2 A. I believe it was toward the end of 2010
3 and beginning of 2011, I can't say specifically.

4 Q. Do you know when the second marketing
5 campaign ended?

6 A. I don't.

7 Q. How long do the marketing campaigns
8 generally last?

9 A. It's going to depend on a number of
10 factors, you know, how many customers we're
11 ultimately soliciting, how many drops we have,
12 whether we send them all out at once or break them
13 into up into multiple, it could be anywhere from four
14 to six weeks.

15 Q. And I'd point you to about halfway down
16 that document we were just talking about, that second
17 marketing campaign, those materials. Do you see
18 where it says, "This offer is available for a limited
19 time only. Please enroll no later than February
20 25th"?

21 A. That's not jumping out at me but --

22 Q. It's right above where it says Phone,
23 Mail, Internet and it's got the little symbols.

24 A. Yes, I see it.

25 Q. Right above that, would that be an

1 approximation of when this marketing campaign might
2 have ended?

3 A. Could have ended, you know, right at that
4 date or it could have ended prior to that depending
5 on how many enrollments we received.

6 Q. And now I'm going to ask you to put side
7 by side that first marketing document and the -- from
8 the first marketing campaign and the second document
9 from the second marketing campaign. The disclosures
10 are different in these documents. Let's start at the
11 top underneath the Columbia Retail Energy name and
12 logo. Do you see that, top left corner?

13 A. Yes. And we're talking about the first
14 document of the two from the first campaign and the
15 one document from the second campaign.

16 Q. Correct.

17 A. Yes, I do.

18 Q. And the disclosures in the top left
19 corner are different on these two documents, correct?

20 A. Yes, that's correct.

21 Q. And why were these disclosures, why did
22 the disclosure change from the first marketing
23 campaign to the second marketing campaign?

24 A. The first marketing campaign we discussed
25 the disclosures as I talked about earlier with the

1 staff and, ultimately, these were the disclosures
2 that the staff said they felt met the rules.

3 Subsequent to that we filed the update,
4 folks filed in our certification docket including
5 RESA, and RESA and IGS got involved in some
6 discussions with respect to what their concerns were
7 with respect to the disclosures. What you see on the
8 second campaign is a result of those discussions.

9 Q. So the disclosure in the first campaign
10 is what staff and IGS originally agreed upon?

11 A. Correct.

12 Q. And then the disclosure in the second
13 marketing campaign is what IGS and RESA agreed upon
14 and I'm presuming the staff approved?

15 A. Part of the understanding with RESA was
16 that before we would make any changes to the
17 disclosures we would get an okay from the PUCO staff,
18 so that also included PUCO staff involvement.

19 Q. And in the first marketing campaign, the
20 first disclosure, the disclosure reads "Columbia
21 Retail Energy is not an affiliate of NiSource or
22 Columbia Gas of Ohio." Correct?

23 A. That's correct.

24 Q. And was there any concern that there's no
25 reference to Columbia Retail Energy being I guess

1 part of IGS in this disclosure?

2 A. There were two disclosures that were part
3 of all of the affirmative marketing which included
4 the disclosure at the bottom which does have the
5 reference to Interstate Gas Supply. So as to our
6 initial discussions with staff, they believed that
7 this set of disclosures on our marketing was
8 sufficient.

9 Q. And the other disclosure that you're
10 referencing is in footnote 1, correct?

11 A. That's correct.

12 Q. When a customer would get this document,
13 would this be the actual document that they would
14 get, it would be an 8-1/2 by 14 sheet of paper with
15 all of this information, or would the enrollment card
16 at the bottom be a separate document?

17 A. It would be an 8-1/2 by 14 sheet of
18 paper, it would be in color, there would be multiple
19 different colors on it, certain things would be in
20 bold, and the fold would occur just above the
21 enrollment card so when it would come out of the
22 envelope, that would be still attached but folded.

23 Q. And the disclaimer that's in footnote 1
24 is in a font size that's smaller than most of the
25 rest of the text in the document, correct?

1 MR. BENTINE: Excuse me. You're talking
2 about the first?

3 MR. WARNOCK: I'm talking about the
4 footnote.

5 MR. BENTINE: In the first one.

6 MR. WARNOCK: Yes, in the first one.

7 MR. BENTINE: Thank you.

8 A. In the first document it does appear to
9 be smaller than some of the other text.

10 Q. And I believe in your testimony -- is it
11 correct that to date approximately 3.4 million direct
12 solicitations have been made under the trade name
13 Columbia Retail Energy in the Columbia Gas of Ohio
14 service territory?

15 A. That's right.

16 Q. Do you have any idea how many of those
17 3.4 million solicitations were this first document
18 from the first marketing campaign?

19 A. I don't have the exact number. It would
20 probably have been something around 700,000.

21 Q. And in this document from the first
22 marketing campaign there are a number of bolded or
23 larger font sizes; would you agree with me?

24 A. That they may appear in different colors,
25 some may be in bold, but there are, yeah, multiple

1 font sizes, that's correct.

2 Q. And do you have any idea, let's look for
3 example, it says "Dear Sample A Sample," two lines
4 down it says "Columbia Retail Energy is currently
5 offering," that font size and -- would that be in
6 color? If this was a color copy, would that be in a
7 color?

8 A. I don't recall. It would either be in
9 color or dark, a dark black, but I don't recall.

10 Q. You would agree that the disclosure in
11 footnote 1 is not only smaller but not in bold or in
12 a separate color other than black?

13 A. My recollection is that other than the
14 caps with respect to the Columbia Retail Energy it
15 was not in bold. I don't recall if it was in a
16 different color.

17 Q. All right. Now I'll turn your attention
18 to -- actually, the next document that was the second
19 document that's a part of the first mailing, it's the
20 like almost six pages, it's 8-1/2 by 11. We're still
21 talking first marketing campaign.

22 A. Okay.

23 Q. Are the disclosures on the first page of
24 this document in the upper left-hand corner and then
25 in footnote 1, those disclosures would be the same as

1 the disclosures in the 8-1/2 by 14 document.

2 A. The first --

3 Q. The first marketing campaign.

4 A. Part of the first marketing campaign.

5 Q. Yeah.

6 A. They should be, yes.

7 Q. And why, in terms of the second document,
8 the 8-1/2 by 11 document, why does that document have
9 the enrollment card as a separate page as opposed to
10 the first document which is the 8-1/2 by 14 which has
11 the enrollment card at the bottom?

12 A. One of the things I think our marketing
13 folks will sample at times is envelope size. They
14 may have come in different envelope sizes and
15 depending on the envelope size it may have been a
16 separate document as opposed to the same.

17 Q. Do you know if -- I know that you
18 estimated that approximately 700,000 solicitations
19 went out in that first marketing campaign. Do you
20 know how many of those would have had the enrollment
21 card attached to the letter versus a separate
22 document?

23 A. I don't.

24 Q. And I'd turn your attention to the
25 enrollment card which is a separate document on the

1 second stapled page of the 8-1/2 by 11 document in
2 the first marketing campaign. Is there any
3 disclosure on this enrollment card?

4 A. I don't believe so.

5 Q. I'm going to turn your attention to the
6 next document in Exhibit 1 which is from the second
7 marketing campaign. Now, again, I'm going to start
8 at the upper left-hand corner, the disclosure
9 underneath the Columbia Retail Energy name and logo.
10 Do you see that?

11 A. Yes, I do.

12 Q. And you said that the disclosure here is
13 different from the disclosure in the first marketing
14 campaign because of a settlement agreement that was
15 entered into with RESA, correct?

16 A. That's correct.

17 Q. Now, in looking at the disclosure in the
18 first marketing campaign versus the disclosure in the
19 second marketing campaign why, you know, in IGS's
20 opinion is the disclosure in the second marketing
21 campaign better than the first one?

22 A. I don't know that we would characterize
23 it as "better." It was a request made by RESA that
24 we specifically identify who was providing the
25 service. We didn't have any issue with that, and as

1 long as staff was comfortable with making a change
2 from what it initially said, which was that IGS is
3 not affiliated with NiSource or Columbia Gas, and
4 instead said "Service is provided by IGS Energy under
5 the trade name Columbia Retail," we were fine with
6 either disclosure.

7 Q. And is there a reason that the language
8 that "Columbia Retail Energy is not an affiliate of
9 NiSource or Columbia Gas of Ohio" was removed from
10 that disclosure?

11 A. In the second piece?

12 Q. In the second marketing campaign.

13 A. Just ultimately that was the language
14 that RESA wanted to see and staff was okay with it.

15 Q. Is there any additional cost to IGS to
16 add additional language to a disclosure like this or
17 a disclaimer?

18 A. There's additional space requirements,
19 you know, when you actually put the mailing
20 information in at the top, which would include the
21 name or current resident, the address, those types of
22 things, it does start to take up quite a bit of
23 space. So it's limited other than shrinking
24 everything.

25 Q. I mean, assuming that you can get past

1 the spacing requirements, there's no additional cost
2 to IGS to add additional language to this disclaimer
3 or disclosure.

4 A. I don't know.

5 Q. And now looking at just above the dotted
6 line above the enrollment card, would you agree that
7 this is another disclosure in the second marketing
8 campaign document?

9 A. Yeah, this is one of two disclosures that
10 we agreed to put on the front page of any of our
11 solicitation materials, the disclosure at the top and
12 the disclosure at the bottom.

13 Q. And was this language also the suggestion
14 of RESA?

15 A. They did have some suggested changes to
16 this and, again, worked with staff to make sure they
17 were comfortable with those changes, yes.

18 Q. Now, in that second disclosure just above
19 the enrollment card is there any indication of, I
20 mean -- strike that.

21 When you read this disclosure just above
22 the enrollment card, is there anything that connects
23 the dots between Columbia Retail Energy and IGS and
24 NiSource Retail Services and NiSource, Inc. and
25 Columbia Gas?

1 A. The disclosure says Columbia Retail
2 Energy is not a utility, not a Columbia Retail Energy
3 nor Interstate Gas Supply, Inc. IGS Energy is an
4 affiliate of NiSource Retail Services or the utility
5 Columbia Gas of Ohio. The Columbia Energy Retail
6 name and starburst design are used by Interstate Gas
7 Supply, Inc. under a licensing agreement with
8 NiSource Retail.

9 The first disclosure that's up by the
10 name says "Service is provided by IGS Energy under
11 the trade name Columbia Retail Energy," all of which
12 appears on the first page. So I think so. I think
13 the answer that question is it pretty clearly spells
14 out who is providing the service and who IGS isn't.

15 Q. Now I'm going to ask you to turn to the,
16 same document, second marketing campaign, the
17 envelope which I think is the last page of it.

18 A. Yes.

19 Q. And I'm going to ask you to turn to the
20 envelope from the first marketing campaign which is
21 the last page of that first document. Again, you'd
22 agree with me that the initial, the first marketing
23 campaign, there was no disclosure on the envelope
24 underneath the Columbia Retail Energy name, correct?

25 A. That's correct.

1 Q. And approximately -- so approximately
2 700,000 potential customers or existing customers
3 would have received the first marketing materials in
4 the first marketing campaign without a disclosure on
5 the envelope, correct?

6 A. That's correct.

7 Q. And also in the first marketing campaign
8 that envelope references Columbia Gas of Ohio Natural
9 Gas Customer, correct?

10 A. It says, yes, "Columbia Gas of Ohio
11 Natural Gas Customer," that's correct.

12 Q. And you'd agree with me that the envelope
13 is going to be the first thing that a customer would
14 see when they receive a solicitation, correct?

15 A. I would agree.

16 Q. And would you agree with me that not only
17 does the Columbia name and logo appear, but it also
18 references Columbia Gas of Ohio Natural Gas Customer"
19 on this document.

20 A. The Columbia Retail Energy name and logo
21 appears, that's correct, and it says "Columbia Gas of
22 Ohio Natural Gas Customer," that's correct.

23 Q. And you don't think there would be any
24 risk of confusion based on the fact that the Columbia
25 Retail Energy name appears very close to Columbia Gas

1 of Ohio Natural Gas Customer on this envelope.

2 A. I don't think that there's any risk with
3 respect to it because the customer has to open the
4 envelope up to do anything with it.

5 Q. And that's the goal of the solicitations
6 is that the customer opens the envelope and reads the
7 offer, correct?

8 A. That's correct.

9 Q. And remind me, was the envelope, the
10 issue of whether there was a disclaimer or a
11 disclosure on the envelope, discussed with staff?

12 A. No, it wasn't. We talked about
13 disclosures on the letters with respect to the
14 marketing materials where we're affirmatively asking
15 the customer to do something.

16 Q. And I'm going to now turn you to the
17 document from the second marketing campaign and the
18 document from the third marketing campaign. Do you
19 know approximately when the third marketing campaign
20 began?

21 A. I don't.

22 Q. Presumably it was sometime after February
23 of 2011?

24 A. It would have been after February and
25 before October, but probably more recently.

1 Q. So probably sometime late summer/early
2 fall of 2011?

3 A. I think that's correct.

4 Q. Taking you back to the second marketing
5 campaign, do you know approximately how many of the
6 3.4 million solicitations would have gone out under
7 the second marketing campaign?

8 A. I don't know.

9 Q. And for the third marketing campaign, do
10 you know how many documents would have gone out?

11 A. I don't.

12 Q. And when you look at the first page of
13 both marketing materials from both the second and
14 third marketing campaigns, is there any difference
15 between the disclosures on these documents?

16 A. I don't believe so. I believe they're
17 the same, both the top and the bottom.

18 Q. Is the font size the same? Let's start
19 at the top in the upper left corner underneath the
20 Columbia Retail Energy name and logo.

21 A. And we're looking at the second and third
22 campaign, correct?

23 Q. That's correct.

24 A. Yeah, I believe they're the same font
25 size.

1 Q. So to me it looks like the -- would you
2 agree that the disclosure on the third marketing
3 campaign materials looks a little bit larger than the
4 font size on the second marketing campaign materials?

5 A. They look the same to me, but --

6 Q. And then I'd ask that you look at the
7 envelope on both the second and third marketing
8 documents or campaign documents. And these, the
9 disclaimer on the envelope remains the same between
10 the second and third marketing campaign.

11 A. That's correct.

12 Q. And then one last reference, keep those
13 two documents in front of you, can you turn to the
14 envelope from the first marketing campaign. The
15 phrase "Columbia Gas of Ohio Natural Gas Customer" is
16 omitted from the envelopes in the second and third
17 marketing campaigns [verbatim], correct?

18 A. That's correct.

19 Q. Why was that done?

20 A. My recollection was somebody, and I can't
21 remember who, it may have been RESA, it may have been
22 Stand in our certification docket, it may have been
23 OCC, expressed concern with that so we took it off.

24 Q. Was the concern that it would be
25 confusing to customers?

1 A. I don't recall if that was the concern.
2 It probably was.

3 Q. Now I'd turn to the last page of IGS
4 Exhibit 1 which is the website. Has the -- and I'm
5 going to specifically refer you to the upper
6 left-hand corner to the Columbia Energy Retail name
7 and logo. You'd agree that there's a small
8 disclosure underneath that, correct?

9 A. I would agree there's a disclosure
10 underneath the Columbia Retail Energy logo; that's
11 correct.

12 Q. And you would agree that the font size is
13 significantly smaller than the Columbia Retail Energy
14 name?

15 A. I would agree it's smaller, yes.

16 Q. And you would agree that the disclaimer
17 is smaller than what appears to be all the other text
18 on the website?

19 A. No. Actually, I think it's the same size
20 as some of the other text. For example, under Enroll
21 Now, Education, Customer Service up in the upper
22 right-hand corner under Energy Conservation Tips,
23 Promo Code, they look to be about the same.

24 Q. And you would agree with me that the
25 disclaimer underneath the Columbia Retail Energy name

1 and logo is about the same size as what appears to be
2 the other disclaimer just above the Enroll Now,
3 Education, and Customer Service portions of the
4 website?

5 A. I think that's a little bit larger, but
6 approximately the same.

7 Q. Have these two disclaimers always been
8 the same on the website?

9 A. No. It's my recollection that we
10 initially -- the website was not intended just for
11 Ohio, it's intended for all the jurisdictions that we
12 operate in, so we initially had disclosures that
13 didn't have the specific utility. We changed the
14 disclosures given some responses from folks including
15 Commission staff who asked to take a look at the
16 website at the very initial phases. So it was a time
17 when disclosures were probably a little different and
18 then as the disclosures changed through the recent
19 negotiations, those changed as well.

20 Q. And you'd agree that all of the
21 disclaimers or disclosures were designed to prevent
22 customer confusion; is that correct?

23 A. The idea was to provide customers with
24 information so they knew who was providing the
25 service, who IGS was, and who Columbia Retail Energy

1 was.

2 Q. But the disclaimers or disclosures were
3 designed to prevent the customers from being
4 confused.

5 A. They were designed to comport with the
6 rule, the rule that is in 4901 of the code that says
7 we need to disclose certain things.

8 Q. And that rule that you're referencing
9 deals with affiliates of utilities, correct?

10 A. Well, again, I think, as I talked before,
11 I think the intent is that anyone using a similar
12 name would follow the rule and I think that is what
13 the Commission told us in our certification docket.

14 Q. But that rule only addresses utility
15 affiliate -- the relationship in the disclaimer
16 between utilities and their affiliates?

17 A. It specifically mentions affiliates,
18 that's correct.

19 Q. But beyond the language in that rule you
20 don't know what the intent of the General Assembly
21 was or, I'm sorry, you don't know what the intent of
22 the PUCO was in promulgating that rule.

23 A. I think the rule was created around 2001
24 and I wasn't working for IGS at the time.

25 Q. And just kind of generally, the marketing

1 materials that have been sent out by Columbia Retail
2 Energy in the Columbia Gas of Ohio service territory,
3 those documents would only have gone to people who
4 are familiar with the Columbia name and logo,
5 correct?

6 A. The marketing solicitations that we sent
7 out in the Columbia Retail area should have gone to
8 folks that are on the Columbia Gas of Ohio system.

9 Q. And would you agree that the Columbia
10 name and logo have been around for quite a while?

11 A. My understanding is the Columbia name has
12 been around for a while. The logo I think changed
13 beginning of 2000, I think.

14 Q. So the name's been around for a long
15 time, the logo's been changed within the last, a
16 little over a decade ago.

17 A. Within the last ten years, I think that's
18 correct.

19 Q. But there really wouldn't be a point in
20 sending the solicitations to people who were unable
21 to make the association between Columbia and Columbia
22 Retail Energy.

23 A. We were precluded from --

24 MR. BENTINE: Can I have that question
25 reread? I'm sorry.

1 EXAMINER STENMAN: Sure.

2 (Record read.)

3 MR. BENTINE: Thank you.

4 A. The agreement between us and NiSource
5 allowed us to use it in certain places and not
6 others. The only place we could use it in Ohio is in
7 Columbia Gas of Ohio.

8 MR. WARNOCK: Your Honor, may we take a
9 five-minute break so I can sort through my notes. I
10 think I'm done with the marketing material, but I
11 just want to make sure.

12 EXAMINER STENMAN: Yes. Let's take a
13 break. Let's go off the record.

14 (Recess taken.)

15 EXAMINER STENMAN: Let's go back on the
16 record.

17 Q. On page 9 of your testimony you begin
18 talking about a settlement with RESA and some
19 disclosures that were proposed by RESA and sounds
20 like ultimately made it onto Columbia Retail Energy's
21 marketing materials; is that correct?

22 A. That's correct.

23 Q. And as part of this case did any of the
24 parties -- I'm sorry. Strike that.

25 As part of this case NOPEC provided you

1 with some comments regarding the disclosures,
2 correct?

3 MS. MORRISON: Objection. This is
4 settlement discussions.

5 MR. WARNOCK: Well, this is a document
6 that was provided. Just because it was part of
7 settlement does not necessarily mean that they have
8 to be excluded. The rule specifically says that the
9 rule does not require the exclusion of any evidence
10 otherwise discoverable merely because it is presented
11 in the course of compromised negotiations.

12 MS. MORRISON: Evidence of whatever
13 proposal from NOPEC is absolutely not something
14 otherwise discoverable. It's their proposal and
15 settlement which, under Evidence Rule 408, is
16 excluded.

17 EXAMINER STENMAN: And we're talking
18 about in the context of this case or the certificate
19 case?

20 MR. WARNOCK: In the context of this
21 case. And I would point out that both staff and RESA
22 have provided potential disclosures to IGS, which IGS
23 has either accepted or denied, NOPEC has done the
24 same. I'm just going to run through the document and
25 just ask a few questions about it specifically, were

1 there any inaccuracies or, you know, any information
2 that was improper in NOPEC's proposal.

3 MS. MORRISON: We'll withdraw the
4 objection.

5 EXAMINER STENMAN: Okay.

6 MR. WARNOCK: May I approach, your Honor?

7 EXAMINER STENMAN: You may.

8 That was easy.

9 MR. BENTINE: Could we have a five-minute
10 break?

11 EXAMINER STENMAN: Sure.

12 (Recess taken.)

13 EXAMINER STENMAN: Let's go back on the
14 record.

15 Q. (By Mr. Warnock) On page 11 of your
16 testimony, Mr. Parisi, I'm going to point you to
17 lines 22 through 23. Do you see that?

18 A. Yes.

19 Q. And you indicate that IGS is aware of two
20 consumers that allegedly contacted the OCC. Do you
21 see that?

22 A. Continuing over to page 12, yes.

23 Q. Yes, sir.

24 And you indicate that -- and what is this
25 based upon? I'm sorry. Strike that. This is based

1 upon discovery responses provided by OCC in this
2 case; is that correct?

3 MR. WARNOCK: Your Honor, may I approach?

4 EXAMINER STENMAN: You may.

5 MR. WARNOCK: I believe this has been
6 marked as NOPEC Exhibit 9.

7 EXAMINER STENMAN: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 Q. Have you seen this document before,
10 Mr. Parisi?

11 A. Yes.

12 Q. And this is the office of the Ohio
13 Consumers' Counsel's responses and objections to
14 IGS's first set of discovery requests in this
15 proceeding; is that correct?

16 A. That's my understanding, yes.

17 Q. And this was the basis for the statement
18 that IGS was aware of two consumers that allegedly
19 contacted the OCC about mistakenly purchasing gas
20 from CRE?

21 A. Yeah. The question was whether I was
22 aware of anything, and from reviewing the discovery I
23 was aware of two. It is what it is in the document.

24 Q. Do you have any reason to believe that
25 any of the information in this document is not true?

1 A. I have no basis to speculate as to
2 whether it's true or not. I can only accept it for
3 what it is. I don't know the people that inputted
4 the information, I haven't talked to any of them, I
5 didn't talk to the folks that called, so I can't
6 testify to the veracity of it, just its existence.

7 Q. But this was the basis of your testimony?

8 MS. MORRISON: Are you talking about the
9 whole document or just a particular answer?

10 MR. WARNOCK: Well, I'm asking if this
11 document was the basis of his statement. I'm going
12 to get to specific points in here that I can
13 reference.

14 A. Again, I'm aware that this came from the
15 OCC and my understanding is this information is
16 pulled from the Consumers' Counsel's system so I have
17 no reason to believe it wasn't or that it was altered
18 in any way.

19 Q. And in your testimony you make a
20 statement that two consumers allegedly contacted the
21 OCC. And are you familiar with whether the OCC has a
22 call center? If you have a question, I will refer
23 you to response No. 18 on page 17 of this document.

24 A. I'm sorry, the OCC's discovery responses?

25 Q. Yes.

1 A. And is your question whether or not they
2 currently have a call center or have they had a call
3 center?

4 Q. Well, I asked if they had a call center.

5 MS. MORRISON: The question is are you
6 aware that they had a call center.

7 A. I am aware that they had a call center,
8 yes.

9 Q. Do you know if they currently have a call
10 center?

11 A. It's my understanding that they don't.

12 Q. And I'm going to specifically reference
13 you to -- I'm sorry. I'm going to have to count
14 pages. It's about, maybe 15 pages from the back,
15 it's a document Activity Logs and it's dated
16 11/1/2010.

17 A. Mr. Warnock, are we counting both sides
18 of the pages?

19 Q. I was just counting actual pages.

20 A. Actual pages?

21 Q. Yes.

22 A. Could we count from Attachment 2 which is
23 right after page 29?

24 Q. Absolutely. It's about the twelfth page
25 from Attachment 2.

1 A. I might be there.

2 Q. It's specifically, it says at the top, it
3 says "11/1/2010 9:56 a.m., Matthew Jones Preparing
4 Initial Complaint."

5 A. Yes.

6 Q. And I'm going to refer you to the page
7 just before that. I think we're there. Do you have
8 any -- can you please review the Issue Summary, Issue
9 ID 150280528, it's about three pages, the pages we
10 just referenced, the first page looks kind of like an
11 intake sheet, the second one is a one-paragraph
12 statement, and the third page is the activity log I
13 referenced dated 11/1/2010.

14 A. I'm sorry. Does it start with Issue
15 Summary at the top and it's the issue ID 150280528?

16 Q. Yeah, it's that page, the back side of
17 it, and then the third page.

18 A. Okay.

19 Q. Please take a minute to review that.

20 A. Just the three pages?

21 Q. That's correct. Have you reviewed the
22 document?

23 A. Yes, I have.

24 Q. You'd agree with me that at least
25 Mr. Davis contacted the Office of the Ohio Consumers'

1 Counsel about mistakenly signing up for service with
2 Columbia Retail Energy thinking it was Columbia Gas,
3 correct?

4 MS. MORRISON: Objection. The document
5 is hearsay. It is -- he's trying to use the document
6 for the truth of what it reflects. It is absolutely
7 hearsay under Rule 801 and there's no applicable
8 exception to the document.

9 MR. WARNOCK: I believe it's both a
10 business record and a public record and it's, you
11 know, I think we've established that at least
12 Mr. Parisi is familiar with the document and at least
13 based part of his testimony on it.

14 MS. MORRISON: If I may respond. A
15 public record does not make it an exception to
16 hearsay; while a business record might, to identify
17 it as a business record he has to have somebody from
18 OCC here and go through the steps of the rule to make
19 it qualify as a business record; he's done neither --
20 none of that. If he wants to ask Mr. Parisi if that
21 was the basis for his statement, that would be one
22 thing, but he's trying to get this in through the
23 back door when it's hearsay evidence.

24 EXAMINER STENMAN: I can't help but agree
25 with Ms. Morrison that this is hearsay evidence.

1 It's one thing if you're asking Mr. Parisi if this is
2 what he's basing his testimony on, but there's no
3 witness here to lay a foundation for this as a
4 business record. There's no witness here to testify
5 to the veracity of the information. And to simply
6 question him on a document that he didn't create and
7 perhaps didn't supervise the creation of is -- the
8 objection's sustained.

9 MS. MORRISON: Thank you.

10 Q. (By Mr. Warnock) I'm moving on from this
11 document. Would IGS expect all customers who are
12 confused by the use of the CRE name to call the OCC?

13 A. I would expect any customer that had a
14 question with respect to it to call IGS, call us,
15 call -- they could call the Commission staff, they
16 could call OCC.

17 Q. But would all customers necessarily call
18 the OCC, the PUCO, or IGS if they were confused?

19 A. Typically I think that's what happens,
20 yes.

21 Q. So is it your testimony that anytime a
22 customer's confused, they would contact the OCC, the
23 PUCO, or IGS to resolve that confusion?

24 A. Typically we take thousands of calls a
25 day and questions about all sorts of things, products

1 we offer, and certainly customers call us with
2 questions about the program.

3 Q. But isn't it true that many people might
4 not even realize that they're confused if they've
5 signed up with Columbia Retail Energy?

6 A. I don't think that's correct. I think,
7 again, with the disclosures that we provide, ample
8 disclosures, we can go back and look at the marketing
9 materials we talked about before, we touched on a
10 few, but certainly there are not only disclosures on
11 the first page after the first marketing piece, there
12 are also disclosures on the envelope, disclosures in
13 the contract, disclosures on the bounce-back card,
14 disclosures on the website, a lot of opportunity for
15 customers to understand.

16 Q. Right. But isn't it -- but it's true
17 that some people might not even know that they're
18 confused even in light of those disclosures.

19 A. I don't see how. With the disclosure
20 right next to the use of the name, right underneath
21 the name, it seems to me that it's fairly clearly
22 spelled out.

23 Q. So everyone who signed up with Columbia
24 Retail Energy did so not being confused in any manner
25 whatsoever.

1 A. I'm not aware of any customer confusion
2 with respect to it that wasn't resolved with a phone
3 call.

4 Q. Are you aware that the OCC or anyone else
5 received calls about customer confusion regarding the
6 use of the CRE name?

7 A. I have looked at the discovery, I know
8 what it says in there. Again, I can't testify to the
9 veracity of what's in there. I'm not aware of any
10 significant customer calls regarding confusion.

11 Q. When the OCC or the PUCO -- I'm sorry.
12 Let me strike that.

13 If the OCC or the PUCO gets a complaint
14 or a question about Columbia Retail Energy, would IGS
15 be notified?

16 A. If either the OCC or the PUCO staff had a
17 question that they couldn't resolve or for whatever
18 reason wanted our involvement, then I think "yes" is
19 the answer.

20 Q. And with respect to at least the two
21 instances of consumers contacting the OCC that you
22 reference in your testimony, was IGS notified of
23 that?

24 A. I don't know.

25 Q. On page 14 of your testimony, the

1 question beginning on line 11, you discuss the
2 training that call center employees receive. Do you
3 see that?

4 A. Yes.

5 Q. What type of training do the call center
6 employees receive?

7 A. Beyond just the general training with
8 respect to Choice in general, the products that we're
9 offering specific to the Columbia Retail Energy name?

10 Q. Yes, specifically to Columbia Retail
11 Energy.

12 A. There's a series of questions and
13 answers, frequently asked questions and answer type
14 of thing, a lot of it, some of it specific to the
15 disclosures that explains the fact that we're in a
16 licensing agreement with NiSource, for example,
17 explains that we're not the utility, Columbia Retail
18 Energy is not Columbia Gas of Ohio, other questions
19 kind of along the same lines.

20 Q. Is there a script or set of documents
21 that a call center employee would review relating to
22 the use of the Columbia Retail Energy name?

23 A. There was an initial training that was
24 put together between, well, IGS and, again,
25 everything that we had to do we vetted that with

1 NiSource, so they looked at the documents as well and
2 I believe -- I believe that there is some documents
3 related to that, yes. Not scripting necessarily, we
4 don't use scripts, but we do have questions and
5 answers.

6 Q. Are there certain ways that a call center
7 employee would describe the difference between an
8 affiliate and a nonaffiliate?

9 A. I think that is one of the questions.

10 Q. Do you know how that would be
11 distinguished, how they would describe an affiliate
12 versus a nonaffiliate?

13 A. I don't have it specifically in front of
14 me, so I'd have to review the document.

15 Q. Do you know approximately how long each
16 of the call center employees is trained and
17 specifically in the context of the use of the CRE
18 name?

19 A. I don't know the actual time, how much
20 time they spend. I know there's training and
21 retraining, there's periodic updates.

22 Q. In terms of the, just generally, the
23 marketing materials that we reviewed that were part
24 of IGS Exhibit 1, if a customer could not read or had
25 trouble reading, do you think that there would be any

1 risk of customer confusion?

2 A. I think that if someone had trouble
3 reading the document, they'd have trouble reading the
4 entire document. I don't think it's going to be
5 limited to disclosures or -- if they had a difficult
6 time, they're going to have a difficult time with the
7 entire piece. So I think the answer is no, if they
8 can't read it, they can't read it.

9 Q. But a person who couldn't read or was not
10 able to read very well might associate the Columbia
11 Retail Energy name and logo with the Columbia name
12 and logo.

13 A. I think that if they can't read, they
14 couldn't do anything with the document. It wouldn't
15 be meaningful to them.

16 Q. But a person that couldn't read could
17 visualize and see the name and logo even if it's just
18 the colors and the logo and the starburst.

19 A. They couldn't do anything with it. If
20 they get a marketing material from us, it's written
21 out, if they can't read, I don't know how they could
22 do anything with it. If they can't read the logo, if
23 they can't read -- if they couldn't read the logo,
24 they couldn't read the disclosure, they couldn't read
25 the solicitation, they certainly couldn't read the

1 instructions with what to do with the information.

2 Q. And I believe early on in your testimony
3 you agreed that neither NiSource or Columbia Gas of
4 Ohio currently have an unregulated affiliate, at
5 least to the best of your knowledge.

6 A. Other than potentially Energy USA, I
7 think that's correct.

8 Q. And to the best of your knowledge Energy
9 USA is an unregulated affiliate of Columbia Gas of
10 Ohio or NiSource?

11 A. I don't know the corporate structure. It
12 could be an affiliate of the utility. If it's part
13 of the NiSource family, I think that would be the
14 case. But I don't think it has any direct
15 relationship other than affiliation under the
16 NiSource family.

17 Q. On page 21 of your testimony, lines 11
18 through 14, you discuss that there's a risk that
19 consumers will confuse affiliates with an affiliated
20 utility, correct?

21 A. Yes, without disclosures, that's
22 possible.

23 Q. But that same risk exists for an
24 unregulated nonaffiliate as it does for an affiliate,
25 correct?

1 A. I think that's correct.

2 Q. And you mention on page 21, line 23, that
3 if only affiliates could use the trade name of a
4 utility, they would have a competitive advantage; is
5 that correct?

6 A. I think anything that an affiliated
7 company can do should be available to an nonaffiliate
8 company.

9 Q. And so for as long as natural gas
10 utilities have had affiliates operating in Ohio's
11 competitive natural gas market they've had a
12 competitive advantage; is that correct? Is that your
13 testimony?

14 A. Well, I think different companies have
15 different competitive advantages of different things.
16 There's a difference between a competitive advantage
17 and an unfair competitive advantage. I don't know if
18 it's a competitive advantage. What I do know is that
19 in the service territories where there's an affiliate
20 that markets, that the whole Choice program seems to
21 be more robust.

22 Dominion East Ohio's a good example of
23 that where we have close to 90 percent migration and
24 some of it NOPEC, some of it not, so it could be
25 between 70 and 90. You know, Dominion is a great

1 example where we have an affiliate and the Choice
2 program itself is more robust, there's more migration
3 and more customers participating, so . . .

4 Q. So in your testimony when you say that
5 the affiliates would arguably have a competitive
6 advantage, is that just a competitive advantage or an
7 unfair competitive advantage?

8 A. I think it's potentially a competitive
9 advantage. I don't think it's an unfair competitive
10 advantage.

11 Q. And IGS has never raised that issue about
12 it being an unfair competitive advantage before the
13 PUCO or any other regulatory body.

14 A. I don't know. I've been with IGS for
15 about eight years. It's possible we brought that
16 issue up.

17 MR. WARNOCK: I believe all I have left
18 is stuff that's going to need to be on the
19 confidential. I don't have a whole lot of material
20 left, but let me just check through this before we go
21 on the confidential.

22 EXAMINER STENMAN: Okay.

23 MR. WARNOCK: I just have a couple more
24 questions on the public record before I go into the
25 confidential.

1 EXAMINER STENMAN: Okay, we're still on
2 the public record.

3 Q. Mr. Parisi, when we were talking about
4 your job responsibilities as the regulatory affairs
5 officer, I remember you mentioning that you had some
6 dealings on the legislative side; is that correct?

7 A. That's correct.

8 Q. And specifically you have interactions
9 with lobbyists for IGS; is that correct?

10 MS. MORRISON: Your Honor, I'm going to
11 object here. We covered this yesterday and your
12 Honor ruled that lobbying and lobbying efforts and
13 issues are not relevant to the case, and so I'll stop
14 this before we get too far down it for the same
15 reasons of yesterday, this line of questioning is not
16 relevant.

17 MR. WARNOCK: I would disagree.
18 Mr. Parisi has testified that he's in charge of the
19 lobbying efforts of IGS and I'm just trying to get a
20 little bit more information on those lobbying
21 efforts.

22 EXAMINER STENMAN: As I ruled yesterday,
23 we're not going to get into lobbying in this
24 proceeding. If you would like to make another
25 proffer, you're welcome to do so. But the objection

1 will be sustained.

2 MR. WARNOCK: I would like to make a
3 proffer and my proffer is going to be very similar to
4 the line of questioning yesterday. I was going to
5 ask the witness, Mr. Parisi, about the lobbyist that
6 Interstate Gas Supply has hired and uses,
7 specifically I was going to provide the same document
8 that I was going to provide to Mr. White yesterday, I
9 believe it was marked as NOPEC Exhibit 6, it was a
10 one-page document from the Joint Legislative Ethics
11 Commission listing agents or lobbyists for Interstate
12 Gas Supply.

13 One of the lobbyists listed is somebody
14 named Donald Thibaut, and I was going to ask
15 questions of Mr. Parisi about Mr. Thibaut's role in
16 lobbying efforts specifically during the budget
17 period relating to the OCC and the OCC's budget cuts.
18 Also I was going to ask and expected to receive
19 testimony that Mr. Parisi knew that Don Thibaut was
20 also the lobbyist with Columbia Gas of Ohio.

21 And with that I just have some
22 confidential questions to ask.

23 EXAMINER STENMAN: Let's move into the
24 confidential portion of the transcript.

25 (CONFIDENTIAL PORTION EXCERPTED.)

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(OPEN RECORD.)

MS. MORRISON: I'm not going to have any
redirect on the confidential record, so if we want to
go back on the public record that's fine.

1 Q. (By Mr. Warnock) Mr. Parisi, did you have
2 discussions with anyone at OCC regarding customer
3 complaints about the use of the Columbia Retail
4 Energy name?

5 A. I don't recall any discussions with
6 respect to customer complaints. I did contact the
7 OCC prior to utilizing -- prior to filing our
8 certification about the same time I contacted the
9 Commission staff to talk with them about the
10 disclosures and ask for feedback, those types of
11 things.

12 Q. Do you know if anyone at IGS other than
13 yourself had discussions with anyone at OCC about
14 customer complaints relating to the use of the
15 Columbia Retail Energy name?

16 A. I don't know.

17 Q. Did you have discussions with anyone at
18 the PUCO about customer complaints relating to the
19 use of the Columbia Retail Energy name?

20 A. Not that I can recall.

21 MR. WARNOCK: I don't have any further
22 questions, your Honor.

23 EXAMINER STENMAN: Redirect?

24 MS. MORRISON:

25 - - -

REDIRECT EXAMINATION

1
2 By Ms. Morrison:

3 Q. Mr. Parisi, I'll start at the end. Are
4 you aware as to whether the PUCO received any
5 complaints about the CRE solicitations?

6 A. I'm not aware of any complaints received
7 by the PUCO staff.

8 Q. Earlier in his cross-examination
9 Mr. Warnock asked whether -- a question along the
10 lines of whether there was a statute governing the
11 use of trade names by a nonaffiliate. Are you aware
12 of any rule or statute prohibiting the use of the
13 trade name of a utility by a nonaffiliate?

14 A. I'm not aware of any such statute. There
15 are statutes in Ohio that deal with the use of a
16 similar name and those are, frankly, governed by the
17 rules associated with what you need to file at the
18 Secretary of State's office, for example, to provide
19 if you're going to use any trade name or service
20 mark, you've got to file it with the Secretary of
21 State.

22 The law requires the Secretary of State
23 to look at it, their office, to determine whether
24 they think it's too similar to something else, and in
25 the event that it is, there is an additional document

1 that needs to be executed by another party, the party
2 who has the similar trade name. We did follow that
3 process.

4 Q. In your dealings with the PUCO staff did
5 any of them tell you that there was a rule or statute
6 prohibiting IGS's use of the CRE trade name?

7 A. No.

8 Q. You were also asked on cross whether IGS
9 approached NiSource to use the Columbia trade name.
10 In the other districts, the other service areas of
11 Ohio, are there other utility companies that have
12 affiliated gas marketers?

13 A. Yes. In Vectren, Vectren Source, Vectren
14 Retail is an affiliate of the incumbent Vectren
15 Energy Delivery of Ohio. In Dominion East Ohio
16 Dominion Retail is an affiliated company. Duke
17 Retail I think is the name that operates in the Duke
18 service territory. AEP has AEP Retail that operates
19 in the AEP service territory, they have done gas at
20 times, they do electric I think currently. I feel
21 like I'm missing one.

22 Q. Do you know in those other market areas
23 what the penetration rate is for the Choice program?

24 A. Dominion East Ohio has the highest
25 penetration rate. It's, depending on how you

1 estimate it, it's close to 90 percent of the
2 customers affirmatively selected or through a
3 government aggregation selected a Choice supplier. I
4 believe Vectren and Columbia's migration rates are
5 about the same but in Vectren they have increased
6 over the last several years to get up to about where
7 they are in Columbia. Duke is probably a little bit
8 less.

9 Q. There were also a lot of questions of you
10 with regard to IGS Exhibit 1. Without walking
11 through all of them again just the question
12 Mr. Warnock asked you about some of the disclosures
13 and he walked you through some of the specific
14 disclosures. Are there disclosures in those
15 solicitations other than the ones that he pointed out
16 to you in your cross-examination?

17 A. There are. There's several. Everywhere
18 we use the service mark Columbia Retail Energy we
19 include the disclosure "Columbia Retail Energy is not
20 an affiliate of NiSource or Columbia Gas" so that
21 appears several places. In the contract itself there
22 is a bold disclosure that talks about the
23 relationship. There is I believe also on that, as we
24 talked about, the outside of the envelope, so several
25 places.

1 MS. MORRISON: I don't have any further
2 questions for Mr. Parisi.

3 EXAMINER STENMAN: Thank you.
4 Any recross?

5 MR. WARNOCK: Just a second, your Honor.

6 EXAMINER STENMAN: Okay.

7 MR. WARNOCK: Nothing further, your
8 Honor.

9 EXAMINER STENMAN: Thank you.

10 MS. MORRISON: Thank you. At this time
11 then I would move for the admission of IGS Exhibit 1,
12 which is the packet of marketing materials, the
13 solicitation, and IGS Exhibit 2, which is
14 Mr. Parisi's prefiled testimony.

15 EXAMINER STENMAN: Any objection to the
16 admission of IGS Exhibits 1 and 2?

17 MR. SERIO: No.

18 MR. WARNOCK: Subject to our motions to
19 strike, no.

20 EXAMINER STENMAN: IGS Exhibits 1 and 2
21 will be admitted.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 EXAMINER STENMAN: Thank you, Mr. Parisi.

24 (Witness excused.)

25 MR. B. McINTOSH: Your Honor, would you

1 like the administrative, copies of the
2 administrative, or will you get that yourself?

3 EXAMINER STENMAN: I can get that.

4 MR. B. McINTOSH: Okay.

5 EXAMINER STENMAN: Does that conclude
6 IGS's portion?

7 MS. MORRISON: It does.

8 EXAMINER STENMAN: I know that Stand and
9 NOPEC had briefly mentioned the potential for some
10 rebuttal. Is that --

11 MR. B. McINTOSH: No. We'll waive any
12 rebuttal.

13 EXAMINER STENMAN: All right. Let's go
14 off the record.

15 (Discussion off the record.)

16 EXAMINER STENMAN: Let's go back on the
17 record. After a discussion with the parties, initial
18 briefs will be due on November 29th by the
19 co-complainants; IGS will file its initial brief on
20 December 13th; and co-complainants will have an
21 opportunity for a reply brief by December 20th.

22 A similar schedule will be followed in
23 terms of addressing the protective treatment of the
24 confidential transcript as well as the confidential
25 exhibits. IGS will be expected to file its motion

1 for a protective order as well as appropriately
2 redacted copies of NOPEC Exhibit 5 and 5A and the
3 redacted portion of the transcript by November
4 29th; co-complainants will have an opportunity to
5 file a reply by December 13th; and by December
6 20th IGS will have an opportunity to reply to that.

7 Just to be clear, IGS will be the only
8 party directly receiving the confidential transcript
9 from the court reporter and they will then be
10 responsible for distributing that to the parties,
11 including OCC, as it's all of our only means of
12 getting access to the confidential portion of the
13 transcript.

14 Off the record briefly.

15 (Discussion off the record.)

16 EXAMINER STENMAN: Back on the record.

17 Given that there are portions of this
18 complaint that have not been resolved yet, including
19 OCC's dispute with IGS and our potential treatment of
20 the confidential information, this hearing will be
21 recessed for today, however, the record will remain
22 open at this time. Thank you.

23 (The hearing adjourned at 4:15 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, November 8, 2011, and carefully compared with my original stenographic notes.

Maria DiPaolo Jones, Registered
Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

My commission expires June 19, 2016.

(MDJ-3924)

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in

Case No(s). 10-2395-GA-CSS

Summary: Transcript Transcript of The Office of the Ohio Consumers' Counsel and Interstate Gas Supply hearing held on 11/08/11 - Volume II electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Jones, Maria DiPaolo Mrs.