

ZACHARY D. KRAVITZ
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August 23, 2012

Betty McCauley
Chief of Docketing
The Public Utilities Commission of Ohio
180 E. Broad Street, 11th Floor
Columbus, Ohio 43215

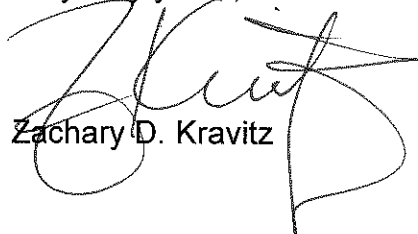
Re: In the Matter of the Complaint of The Office of the Ohio Consumers'
Counsel, et al., v. Interstate Gas Supply d/b/a Columbia Retail Energy
PUCO Case No. 10-2395-GA-CSS

Dear Ms. McCauley:

Pursuant to the Commission's Opinion and Order entered August 15, 2012 in the above-referenced case, please find attached for filing Interstate Gas Supply, Inc.'s new proposed redacted versions of the Confidential Transcripts and Service Mark License Agreement.

Thank you for your assistance. Please do not hesitate to contact me with any questions or concerns.

Very truly yours,



Zachary D. Kravitz

cc: All Parties

SERVICE MARK LICENSE AGREEMENT

This Service Mark License Agreement ("Agreement") is entered into as of July 13, 2010, between NiSource Retail Services, Inc. ("NRS"), a Delaware corporation ("Licensor") and Interstate Gas Supply, Inc. ("IGS"), an Ohio corporation, ("Licensee"), each a "Party" and collectively "the Parties".

RECITALS

WHEREAS Licensor is an affiliate of NiSource Corporate Services ("NCS"), which owns certain common law rights and registrations in various service marks (the "Service Marks" as further defined below);

WHEREAS Licensor is a licensee of the Service Marks and is authorized by NCS to license the Service Marks to IGS;

WHEREAS Licensee intends to provide services to its customers in connection with the sale of IGS natural gas commodity products ("the Services");

WHEREAS Licensee desires to obtain a license to use the Service Marks in connection with providing Services as detailed in this Agreement;

WHEREAS Licensor is willing to grant such license subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated as part of this Agreement, the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

PROVISIONS

1. **Grant of License.** During the term of this Agreement, Licensor grants to Licensee an exclusive license to use the Service Marks in connection with its provision of Services to its customers in connection with the sale of IGS natural gas commodity products ("Licensed Services") in the NDC Territories. Licensee shall not have the right to grant sublicenses under the foregoing license without the prior written permission of Licensor. In providing the Licensed Services, [REDACTED]

2. **Definitions.** In addition to the terms defined below and elsewhere in this Agreement, the term "Service Marks" means the logos, trade marks and service marks identified for use by Licensor in writing from time to time, including those identified in Exhibit A hereto as such Exhibit may be modified by Licensor from time to time.

- 2.1 "Accounts Receivables Purchase Agreement" means each agreement between IGS and the NDC (as defined below) in the applicable state choice program wherein the NDC purchases IGS's accounts receivable created by IGS's sale of gas to end-use customers in the NDC service territory.
- 2.2 "Auction Customers" means customers served via COH's Standard Service Offer ("SSO") or Standard Choice Offer ("SCO"). [REDACTED]
[REDACTED]
- 2.3 "Commodity Products" means the IGS natural gas commodity products made available, to the general public through various IGS marketing channels including, but not limited to, natural gas commodity products posted on IGS' website, offered through IGS' inbound call center or IGS direct mail efforts.
- 2.4 "Effective Date" shall be [REDACTED] from which the initial term shall be calculated for purposes of this Agreement. [REDACTED]
[REDACTED]
- 2.5 "Governmental Aggregation Customers" means customers enrolled with IGS served through a governmental aggregation, whether it is opt-out, opt-in or endorsement. Governmental Aggregations Customers [REDACTED]
[REDACTED]
- 2.6 "Initial Term" means, unless terminated earlier pursuant to the terms hereof, [REDACTED]
[REDACTED]
- 2.7 "Mass Market Choice Customers" means [REDACTED]
[REDACTED]
- 2.8 "Mass Market Eligible Customers" means [REDACTED]
[REDACTED]
- 2.9 "Excluded Customers" means those customers identified in Exhibit C attached hereto and incorporated by reference, which may be revised from time-to-time with agreement from the Parties.
- 2.10 "NDC" means the NiSource Distribution Companies currently operating under the Columbia brand name, specifically Columbia Gas of Ohio, Inc. ("COH"), Columbia Gas of Kentucky, Inc. ("CKY"), Columbia Gas of Maryland, Inc. ("CMD"), Columbia Gas of Virginia, Inc. ("CGV") and Columbia Gas of Pennsylvania, Inc. ("CPA").

- 2.11 "NDC Service Territories" means the service area in which the NDC operates as authorized and approved by the applicable state commission for each respective NDC.
- 2.12 "NOAC" means the Northwest Ohio Aggregation Coalition and primarily comprises communities in the Toledo greater metropolitan area that pursue a supply arrangement collectively to be served by a Governmental Aggregation.
3. **License Limitations.**

3.1 Unless otherwise specified by Licensor in writing, Licensee shall only use the versions of the Service Marks and related artwork in the manner described in Section 3.2 that are provided, or otherwise approved by Licensor. Licensee shall not use the Service Marks in any other medium or format than that provided by Licensor, including in connection with any other goods and services other than the Licensed Services. [REDACTED]

[REDACTED] Licensor reserves the right to modify the Service Marks from time to time upon written notice to Licensee. All proposed uses, including modifications or variations of previously approved uses, of the Service Marks shall be subject to the approval of Licensor as detailed in Section 7. Licensee will submit all such uses for approval in accordance with any procedures set forth by Licensor herein and will not disseminate or otherwise exploit the Service Marks unless approval has been granted. Licensee will not misuse the Service Marks to misrepresent its relationship with Licensor or its affiliates.

3.2 The grant of the license only applies to the use of the Service Marks in the marketing of IGS Commodity Products in the NDC Service Territories, which includes but is not limited to use of the Service Marks on IGS' website, in printed media, public displays, in telemarketing activities, call center, and other marketing areas as such are approved from time to time in accordance with Section 7 herein. [REDACTED]

3.3 [REDACTED]

[REDACTED]

3.4 IGS shall file, and has the right to file documents with the applicable agency or entity, typically the Secretary of State Office located in each state where IGS will use the Service Marks in accordance with this Agreement, to register "Columbia Retail Energy" as a trade name of IGS. NiSource will provide IGS with necessary signatures related to such filings and otherwise assist in such filings if needed, including but not limited to the Ohio Secretary of State's Form 590 - *Consent For Use Similar Name* and such similar forms in other states, as applicable. This provision shall not alter or diminish in any way NiSource's own rights to register any Service Marks with any agency or entity.

4. **Use Inures to Licensor.** Any use of the Service Marks by Licensee shall inure to the benefit of Licensor. Licensee shall not, at any time, do or cause to be done any act or thing that may in any way adversely affect any rights of Licensor in and to the Service Marks. Licensee acknowledges that all rights in the Service Marks belong exclusively to Licensor, and agrees that nothing in this Agreement shall give Licensee any right, title or interest in the Service Marks other than the right to use the Service Marks in accordance with the license granted herein. Licensor shall not combine or join the Service Marks with any other trademark or service mark. Licensee agrees not to adopt, use or register any word, phrases or symbols that are identical to or confusingly similar to the Service Marks, except for use as explicitly permitted herein.

5. **Licensing Fee.** During the Initial Term of this Agreement the Licensing Fee will be based upon the [REDACTED] described in [REDACTED], taking into consideration [REDACTED] described in [REDACTED], which will be paid by IGS to NRS in exchange for the use of the Service Marks. For any renewal Term, the Licensing Fee will be [REDACTED], without regard to [REDACTED], unless otherwise agreed to in writing by the Parties.

5.1 [REDACTED]

i. [REDACTED]

ii. [REDACTED]

iii.

[REDACTED]

iv.

[REDACTED]

5.2

[REDACTED]

i.

[REDACTED]

ii.

iii.

6. Monthly License Fee Calculation and Payment.

[REDACTED]

6.1 Calculation.

[REDACTED]

[REDACTED]

7. Quality Control; Quality Standards.

7.1 Quality Standards. The nature and quality of all Licensed Services, and all of Licensee's advertising and promotional Materials in which the Service Marks appear, shall conform to the standards set by, and be under the control of, Licensor. Licensor shall have the right, upon prior written request, to inspect and review from time to time the services, and related promotional materials, covered by the license in this Agreement for compliance with quality standards. Such inspection and review shall not unreasonably interfere with the business and operations of Licensee. In addition, upon request by Licensor, Licensee will supply Licensor with specimens of all uses of the Service Marks.

7.2 Approval of Marketing Materials. The Parties shall mutually agree on utilization of the Service Marks and to the design and use of marketing campaign materials prior to its initial use. IGS shall not use the Service Marks in any marketing materials or marketing campaigns until NRS has reviewed and approved such marketing materials. IGS shall electronically submit all marketing materials utilizing the Service Marks [REDACTED] designated by NRS for approval before use. NRS shall notify IGS timely of any objection to the use of submitted marketing materials and if IGS receives no objection within [REDACTED] such transmission, the submitted materials [REDACTED]. If responding, NRS shall work diligently with IGS to provide its feedback regarding proposed marketing materials so as not to unduly delay utilization of such materials.

7.3 Compliance with Applicable Laws. Licensee agrees to use the Service Marks with appropriate statutory legends and disclaimers in accordance with the Guidelines. Licensee's use of the Service Marks and all of Licensee's activities relating to the foregoing will comply with all applicable laws and regulations, including without limitation all applicable health and safety laws and regulations.

8. Term and Termination.

8.1 The term of this Agreement will begin on [REDACTED]
[REDACTED]

8.2 Licensor shall have the right to terminate this Agreement as follows:
[REDACTED]

[REDACTED]

8.3 Upon termination of this Agreement for any reason, the license hereunder shall automatically be revoked, and Licensee shall cease all use of the Service Marks and to promote, advertise, or provide Licensed Services using the Service Marks.

8.4 [REDACTED]

8.5 In the event the Agreement is terminated by NRS, the Licensing Fees due under this Agreement shall [REDACTED] of termination. In the event the Agreement is terminated by IGS, the Licensing Fees due under this Agreement [REDACTED] after the effective date of termination

8.6 [REDACTED]

9. **Infringement.** If Licensee becomes aware of any infringement of the Service Marks, it will promptly notify the Licensor. Licensor shall have the sole right to take such action with respect to the infringement, as it deems appropriate, and pay all associated costs with any action taken. At Licensor's reasonable request, Licensee will cooperate with Licensor in any such action. As between Licensor and Licensee, Licensor will be entitled to any monetary recovery resulting from such enforcement.

10. **Representations and Warranties.**

10.1 Licensor represents and warrants to Licensee that: (i) it is the licensee of the Service Marks identified in this Agreement, and it has the right to grant the license in Section 3; (ii) it has the full power and authority to enter into and perform this Agreement; and (iii) as of the effective date of this Agreement, there is no claim, action, or proceeding relating to the Service Marks pending or, to its knowledge, threatened before any court.

10.2 Licensee represents and warrants that: (i) it has the full power and authority to enter into and perform this Agreement; and (ii) it will not knowingly commit any acts or cause others to commit any acts that could adversely affect Licensor's rights in and to the Service Marks.

11. Assignment; Binding Upon Successors. Licensee shall not assign this Agreement or its rights hereunder without the prior written consent of Licensor, which consent may be withheld for any reason. Any transaction pursuant to which legal or equitable title to more than fifty percent of the capital stock (or equity interest) of Licensee is transferred or more than one-half the business or assets of Licensee is sold, shall be deemed an assignment in violation of this Section 8 unless Licensor consented thereto in writing in advance. Licensor may assign this Agreement to a successor, assignee or transferee to Licensor's business, or to that portion of the business to which the Service Mark pertains. This Agreement and each and every covenant, term and condition herein shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

12. Indemnification. IGS shall be liable for all marketing activities performed, and services offered under this Agreement. IGS shall indemnify, defend and hold harmless NRS its parent company, agents, affiliates and employees (collectively, "Indemnitees") from and against all claims, damages, losses, fines, penalties and expenses, including attorneys' fees, arising out of such marketing activities related to the Service Marks, including all forms of customer interaction from such solicitation, the enrollment process through termination of the customer relationship. IGS shall not be liable to NRS or third parties for acts or omissions resulting from any negligent act or omission of NRS or its affiliates in connection with this Agreement. Each Party shall remain independently obligated to defend claims and jointly liable for any liability related to third party claims challenging the validity of the Agreement (e.g. violation of anti-trust law, etc).

13. Confidentiality. All information provided by a disclosing Party that is provided in confidence shall remain confidential unless and until it is made public by the disclosing Party or otherwise becomes generally available to the public. Customer lists, mailing or call lists, customer contracts, marketing materials, plans, drafts, and all related material are deemed confidential unless specifically stated to the contrary, in writing, by the disclosing Party. Other information marked or disclosed as confidential shall be deemed confidential at the time the disclosing Party so states. Confidential information remains the proprietary information of the disclosing Party and nothing in the disclosure shall be deemed to have waived the confidential nature of the information. The receiving Party shall not disclose the disclosing Party's confidential information except (i) to directors, officers, employees, agents and consultants of the receiving Party and its affiliates to the extent reasonably necessary to perform the receiving Party's obligations under this Agreement and who agree to maintain the confidentiality of such confidential information, and (ii) to the extent such disclosure is required in the opinion of the receiving Party's legal counsel by any applicable law, regulation, subpoena or other legal process, or by any regulatory authority having jurisdiction over the receiving Party or its affiliates.

14. Disposition of Customers. [REDACTED]

15. Management Meetings. NRS and IGS will have regular senior management meetings to discuss ongoing progress. Each Party will designate a primary point of contact for

both the senior management meetings as well as marketing material reviews, although the primary point of contact can be different people and may change, with notice from time to time.

16. Compliance. IGS will comply with all applicable state and federal laws, rules and regulations in connection with its solicitation of Mass Market Eligible Customers and service to Mass Market Choice Customers.

16.1 In the event a state commission or regulatory agency or office of the attorney general receives any complaints from Customers or other parties where a NRS NDC is named in the complaint and the subject of the complaint is a IGS product branded with the Service Marks, IGS shall defend, indemnify and hold harmless NRS and its NDC from any and all demands, claims, suits, and judgments including costs and attorneys fees that arise from such complaint. NRS shall provide information and assistance, upon reasonable request, if needed by IGS to resolve a complaint or inquiry.

16.2 If IGS violates any material federal, state or local law, rule or regulation, in the marketing of products using the Service Marks, then after being provided an opportunity to cure and so failing, [REDACTED]
[REDACTED]

17. Commodity Supply. [REDACTED]
[REDACTED]

18. Audit. NRS reserves the right to audit Mass Market Choice Customer contracts as needed. IGS will provide all requested information within 5 business days of such request, so long as the requested information is related to auditing the throughput relevant to the Monthly Licensing Fee calculations. IGS may, at its discretion provide NRS with authorization to obtain relevant information from the NDC directly. For purposes of this paragraph, relevant information shall include, but is not limited to, [REDACTED]
[REDACTED]

19. Regulatory/Legislative Collaboration. NRS and IGS agree to collaborate to develop a unified position on legislative issues and regulatory proceedings, whenever possible, that affect the purpose of the Agreement to the extent necessary; provided, however, that nothing in the Agreement shall be binding on any NDC or other NRS affiliate regulated as a public utility under any state jurisdiction.

20. IGS Activities. IGS is responsible for all Customer acquisition, Customer service and retention activities at IGS' sole cost and expense. NRS shall not be liable for any costs with respect to the development and distribution of marketing materials, Customer acquisition, Customer service or retention activities. IGS will determine in its sole discretion the timing, frequency, amount and type of direct mail and telemarketing activities it will conduct related to its marketing activity.

20.1 IGS will not enter into any contracts with Customers using a Service Mark service for a term [REDACTED] unless agreed to in writing by the Parties. In the event notice of termination of the Agreement is provided, IGS will not offer products that extend more than [REDACTED] past the effective termination date.

21. **Notices.** All notices under this Agreement will be in writing, and will be delivered by hand, by facsimile, or by Fed Ex, DHL or other commercial courier service to the contact points set forth in the signatory block or to such other addresses, fax numbers, and individuals as a Party may designate in writing. Notices will be effective upon receipt.

22. **Miscellaneous.** If any provision of this Agreement is held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions will remain in full force and effect. The waiver by either Party of any breach of any provision of this Agreement will not constitute a waiver of any other breach of that or any other provision. Nothing in this Agreement will be construed as creating a joint venture, partnership, or an agency relationship between Licensor and Licensee. This Agreement, together with its exhibits and the documents referenced herein, all of which are hereby incorporated herein, constitutes the entire agreement between the Parties relating to its subject matter, and may not be modified except in a writing signed by the Parties. This Agreement may be executed in counterparts which may be transmitted via facsimile,

23. **Entire Agreement and Amendment.** This Agreement constitutes the full and entire understanding and agreement between NRS and IGS regarding the subjects described in this Agreement. NRS and IGS entered into this Agreement without reliance on any promises or representations, written or oral, other than those expressly contained in this Agreement, and this Agreement supersedes all other promises, warranties, and representations. This Agreement may not be modified or amended except in a writing signed by both NRS and IGS.

24. **Dispute Resolution and Choice of Law and Venue.**

24.1 Dispute Resolution.

(a) **Step Negotiations.** The Parties shall attempt in good faith to resolve all issues or disputes ("Controversy") arising under this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any Controversy not resolved in the normal course of business. Executives of both Parties at levels at least one level above the personnel who have previously been involved in the Controversy (the "Executives") shall meet at a mutually acceptable time and place within ten days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the Controversy. If the matter has not been resolved within thirty days from the referral of the Controversy to Executives, or if no meeting of Executives has taken place within fifteen days after such referral, either Party may initiate mediation as provided hereinafter. If the Executive intends to be accompanied at a meeting by an attorney, the other Party's Executive shall be given at least three working days notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this provision are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

(b) Mediation. In the event that any Controversy arising out of or relating to this Agreement is not resolved in accordance with the procedures provided above, such Controversy shall be submitted to mediation to mutually agreeable mediators from the American Arbitration Association. The mediation shall be administered at a location in Columbus, Ohio mutually agreeable to both Parties. If the mediation process has not resolved the Controversy within thirty days of the submission of the matter to mediation, or such longer period as the Parties may agree to, the mediation process shall cease.

(c) Arbitration. Provided that the mediation process has not resolved the Controversy within thirty days of the submission of the matter to mediation or a longer time if agreed to by the Parties, all Controversies will be decided by arbitration by the American Arbitration Association or by a mutually agreed upon arbitrator. The arbitration shall be administered at a mutually agreeable location in Columbus, Ohio and be conducted in accordance with a mutually agreed upon set of arbitration rules. This agreement to arbitrate, and any other agreement or consent to arbitrate entered into in accordance herewith, will be specifically enforceable under the prevailing arbitration law of any court having jurisdiction. Notice of demand for arbitration must be filed in writing with the other Parties to this Agreement and with the dispute resolution tribunal. The demand must be made within a reasonable time after the Controversy has arisen. In no event may the demand for arbitration be made after institution of legal or equitable proceedings based on such Controversy would be barred by the applicable statute of limitations. The arbitration award shall be specifically enforceable in any court of competent jurisdiction. No arbitration, arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, any additional person not a party to this Agreement.

24.2 Choice of Law and Venue. This Agreement will be governed by the applicable laws of the United States and of the State of Ohio, without regard to Ohio's principles of, or conflicts of law. All legal action involving any disputes arising under or relating to this Agreement will be brought only in a court of the State of Ohio sitting in Franklin County, Ohio, or in the United States District Court for the Southern District of Ohio sitting in Columbus, Ohio. NRS and IGS waive a trial by jury with respect to any dispute or controversy under this Agreement. Licensee recognizes that Licensor would suffer irreparable injury by unauthorized use of the Service Marks and agrees that injunctive and other equitable relief is appropriate in the event of a breach of this Agreement by Licensee. Such remedy shall not be exclusive of any other remedies available to Licensor, nor shall it be deemed an election of remedies by Licensor.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by a duly authorized officer as of the date and year written above.

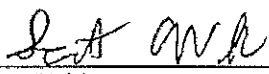
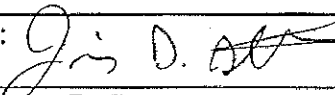
Licensee	Licensor
Interstate Gas Supply, Inc. 6100 Emerald Parkway Dublin, OH 43016	NiSource Retail Services, Inc. 801 East 86 th Avenue Merrillville, IN 46410
Signature: 	Signature: 
Name: Scott White	Name: Jimmy D. Staton
Title: President	Title: Executive VP and Group CEO
Date: 7/13/2010	Date: 7/15/2010

EXHIBIT A
SERVICE MARKS

EXHIBIT A

SERVICE MARKS

COLUMBIA RETAIL ENERGY (Registration application pending)

COLUMBIA RETAIL ENERGY and Design (Registration application pending):


Columbia
Retail
Energy

NOTE:

Set forth below, is the language that IGS must add to any use of the service marks.

"The trademark COLUMBIA RETAIL ENERGY including the starburst design is a trademark of NiSource Corporate Services Company and is used under license by Interstate Gas Supply, Inc. Interstate Gas Supply, Inc., is not an affiliate of NiSource Corporate Services Company or Columbia Gas of _____."

EXHIBIT B

MONTHLY THROUGHPUT SCHEDULE

Exhibit B

Mass Market Choice Customers - Monthly Fee Schedule for [REDACTED]

	Volume
July	[REDACTED]
Aug	
Sep	
Oct	
Nov	
Dec	
Jan	
Feb	
Mar	
Apr	
May	
Jun	
Total	

EXHIBIT C
EXCLUDED CUSTOMERS

Exhibit C

Customer	Annual Volume
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[REDACTED]	
------------	--

Customer	Annual Volume
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[REDACTED]	
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Grand Total: [REDACTED]

EXHIBIT D

PAYMENT CALCULATION

Exhibit D
IGS/NiSource License Agreement
Process for “Licensing Fee Calculation and Payment”

License Fee Summary

Note: capitalized terms have the same meaning as defined in the agreement.

[REDACTED]

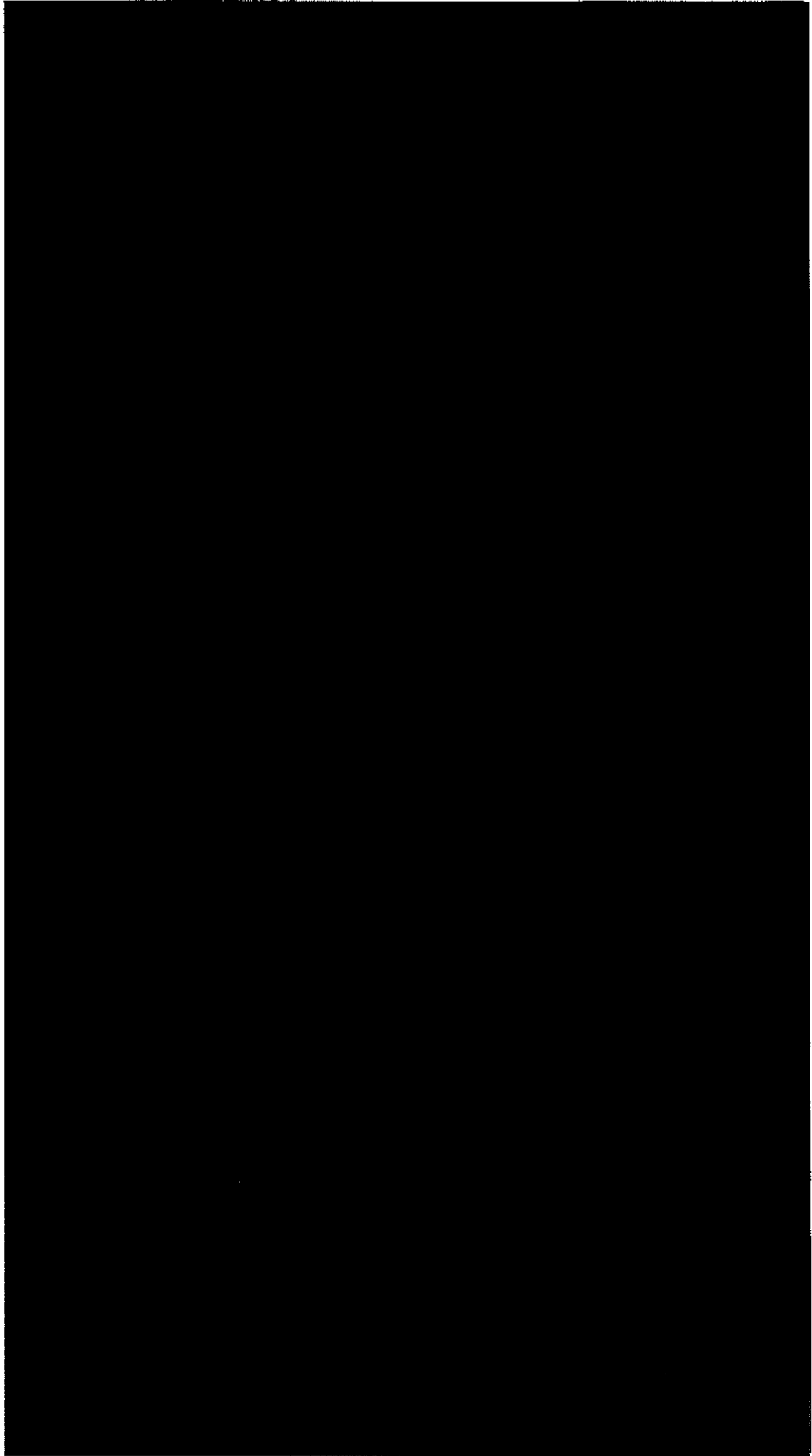
[REDACTED]

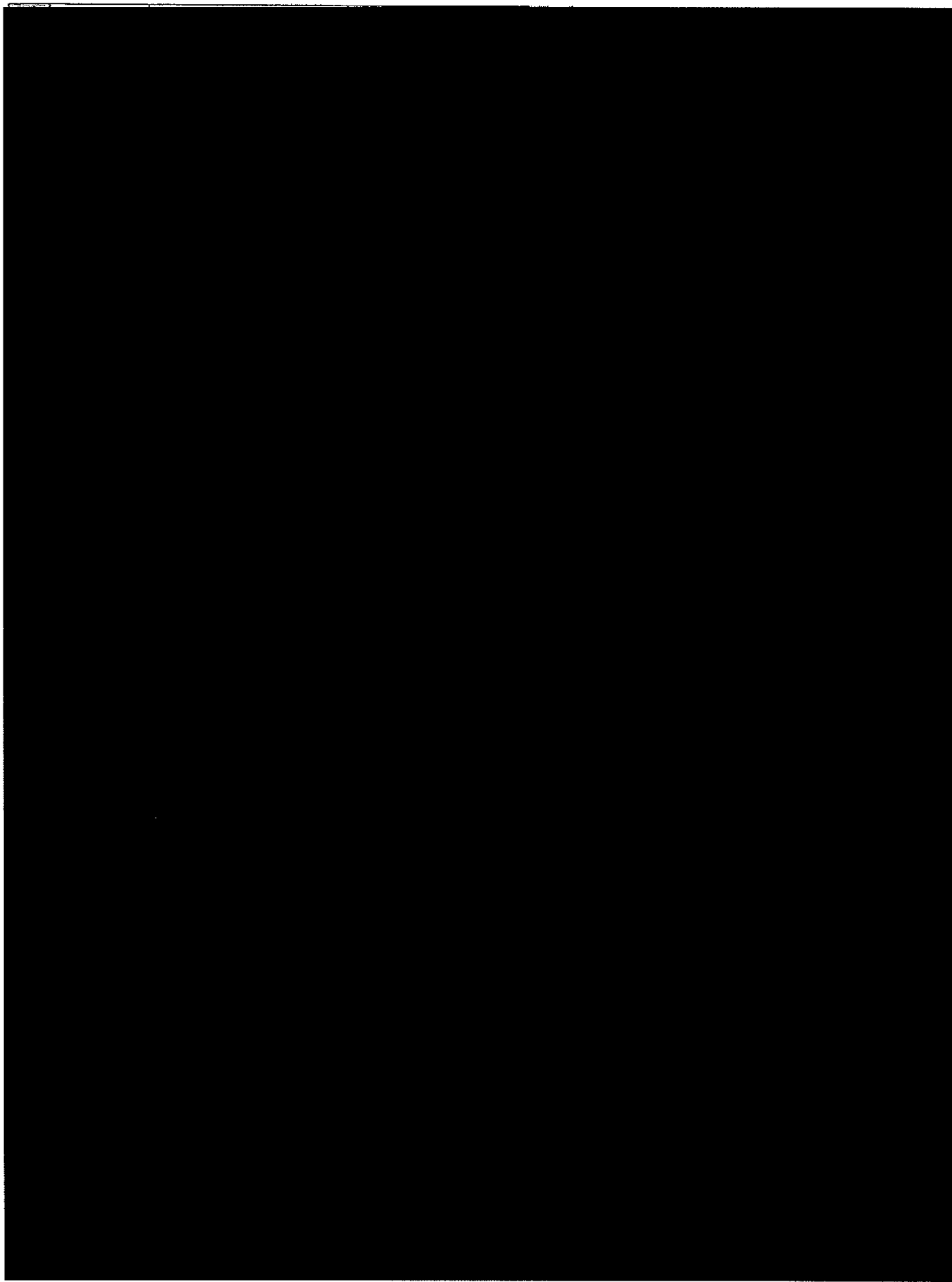
[REDACTED]

[REDACTED]

• • •

License Fee Computation Process Steps:





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 Monday, November 7, 2011.

- - -

VOLUME I - CONFIDENTIAL EXCERPTS

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

- - -

1 APPEARANCES:

2 Bruce J. Weston,
3 Interim Ohio Consumers' Counsel
4 By Mr. Joseph P. Serio
5 Mr. Larry S. Sauer
6 Ms. Kyle Verrett
7 Assistant Consumers' Counsel
8 10 West Broad Street, Suite 1800
9 Columbus, Ohio 43215-3485

10 On behalf of the residential utility
11 customers of the state of Ohio.

12 Chester, Willcox & Saxbe, LLP
13 By Mr. John W. Bentine
14 Ms. Sarah Daggett Morrison
15 Mr. Zachary D. Kravitz
16 65 East State Street, Suite 1000
17 Columbus, Ohio 43215-4213

18 On behalf of Interstate Gas Supply, Inc.

19 Bricker & Eckler, LLP
20 By Mr. Matthew W. Warnock
21 Mr. Thomas J. O'Brien
22 Ms. Sommer L. Sheely
23 100 South Third Street
24 Columbus, Ohio 43215-4291

25 Bricker & Eckler, LLP
By Glenn S. Krassen
1001 Lakeside Avenue East, Suite 1350
Cleveland, Ohio 44114-1142

On behalf of Northeast Ohio Public Energy
Council.

McIntosh & McIntosh
By Mr. Michael Todd McIntosh
Mr. A. Brian McIntosh
1136 Saint Gregory Street, Suite 100
Cincinnati, Ohio 45202

On behalf of Stand Energy Corporation.

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(CONFIDENTIAL PORTION.)

EXAMINER STENMAN: Going back to
Mr. Warnock.

MR. WARNOCK: Yes, your Honor. I have --
what I'm going to start with is the service mark
license agreement and I have -- in discovery we were
provided both a redacted version and an unredacted
version of it. I'm going to provide both to all the
parties and I'm going to mark them separately, as
separate exhibits.

You know, I know that the confidentiality
issues are going to be addressed separately, but I
would ask, and I would like the record to note that
our contention is that the redacted version of this
agreement is public and there's nothing -- all the

1 confidential trade secret information was redacted.

2 We don't see how this is a confidential document.

3 With the unredacted version we would ask
4 that each of the specific redactions be addressed
5 separately because I know that at least some of the
6 redacted material has been in the public record. We
7 acknowledge that the specific, you know, fee amounts
8 are confidential and are to be treated as trade
9 secrets, but the majority of this even unredacted
10 document, it's our position that it's not
11 confidential. I have a feeling that IGS will beg to
12 differ with that but I just wanted to get that on the
13 record before I started my questioning.

14 EXAMINER STENMAN: My preference would be
15 that you mark your exhibits as, for example, 5 and
16 then 5A can be the confidential version. And as I
17 said before, the burden will obviously be on IGS when
18 we get the confidential transcripts to go through and
19 in as limited a fashion as possible redact it and let
20 us know what is confidential and then, obviously,
21 you'll have a chance to respond. So we'll deal with
22 those arguments at that time.

23 You can proceed when you're ready.

24 MR. WARNOCK: The redacted will be 5 and
25 the -- the unredacted will be 5A.

1 EXAMINER STENMAN: Yes.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 MR. WARNOCK: Your Honor, after the lunch
4 hour, I don't have quite enough copies of the
5 unredacted version, I'll make a copy over the lunch
6 hour for the court reporter.

7 EXAMINER STENMAN: That will be fine.

8 MR. WARNOCK: Okay.

9 MR. BENTINE: You said of the unredacted?
10 We've got an extra we can give to the court reporter
11 if she needs to refer to it.

12 EXAMINER STENMAN: Thank you.

13 MR. WARNOCK: Thank you.

14 MR. BENTINE: Anything I can do to
15 accommodate, Matt.

16 MR. WARNOCK: Thank you, Mr. Bentine.

17 - - -

18 DIRECT EXAMINATION (AS ON CROSS) (continued)

19 By Mr. Warnock:

20 Q. Now, before I get to the licensing
21 agreement I'm going go back to a couple of questions
22 we agreed would be asked on the confidential record,
23 and first I'm going to go back to the questions that
24 I was asking about the board of directors. I think
25 we left off that there are four directors on the

1 board at IGS; is that correct?

2 A. Correct.

3 Q. And who are those four directors?

4 A. It's myself -- actually there's five, I
5 apologize. There's five. Laurie Kruppa, Cathy
6 Conner, Steve White, and Doug Austin.

7 Q. And Laura Kruppa and Cathy, I didn't
8 catch her last name, are your sisters?

9 A. Laurie Kruppa and Cathy Conner are my
10 sisters.

11 Q. And Steve White is your brother.

12 A. Correct.

13 Q. And what was Doug Austin's position with
14 IGS?

15 A. He's our vice president of sales and
16 marketing.

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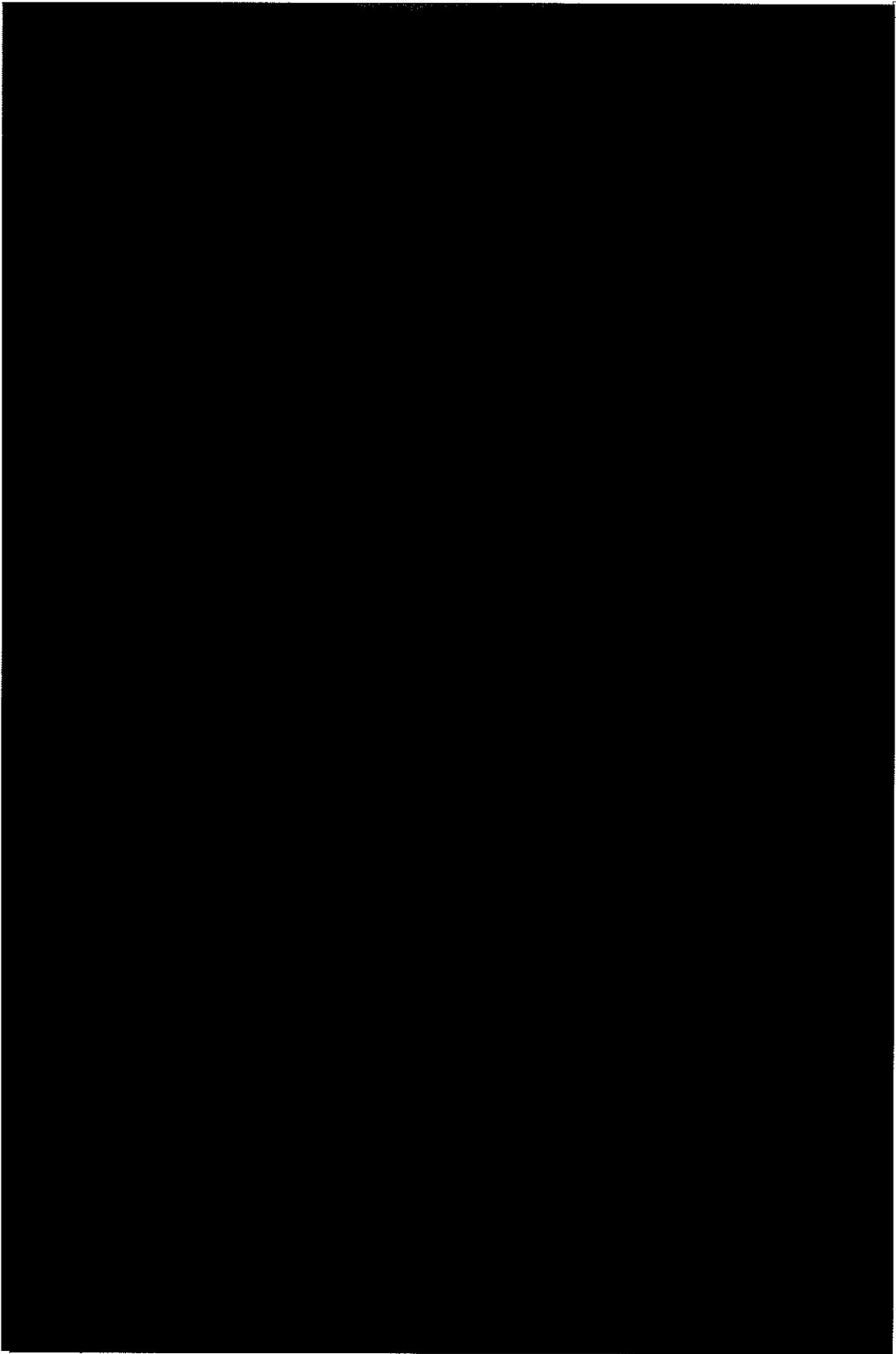
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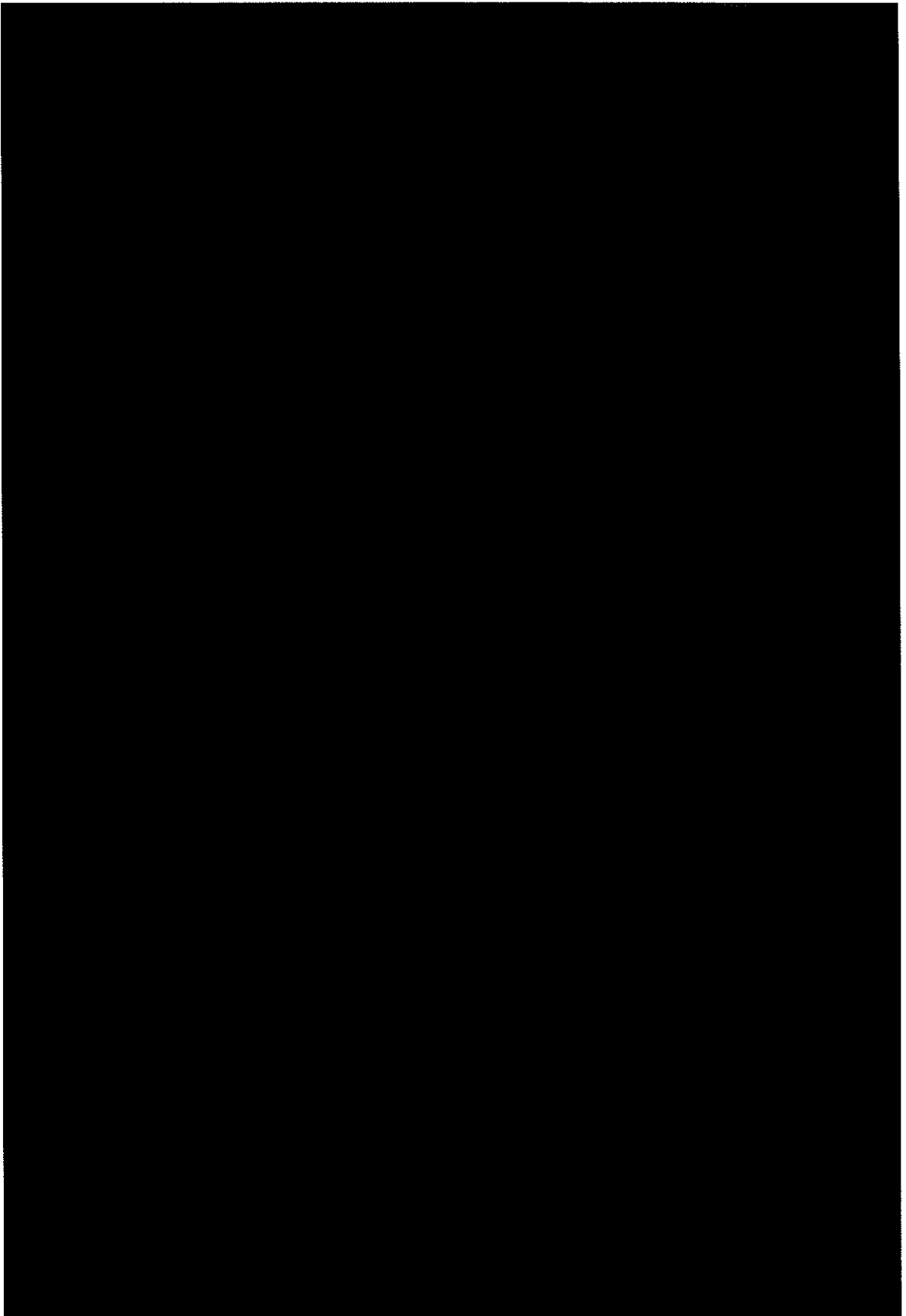
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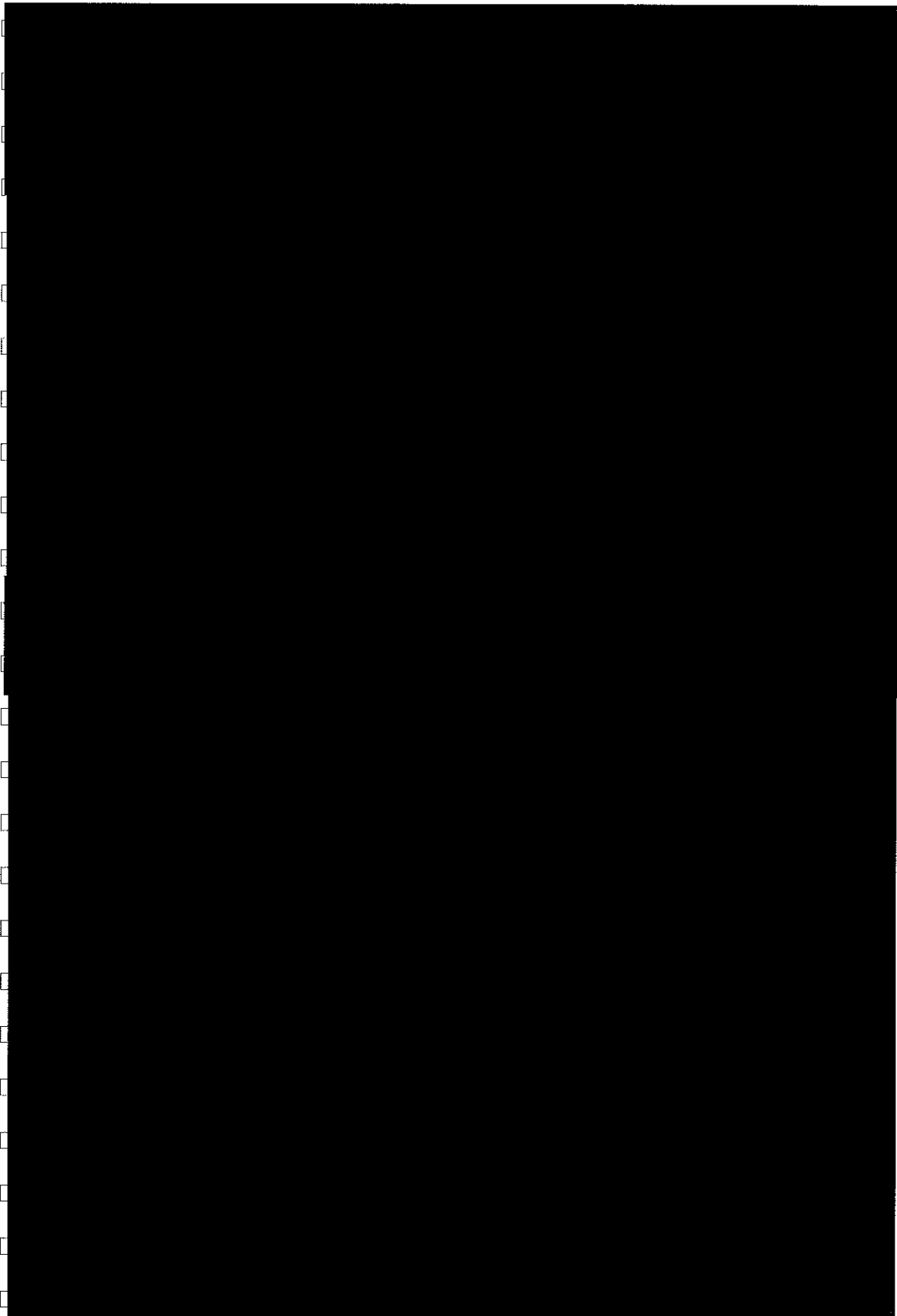
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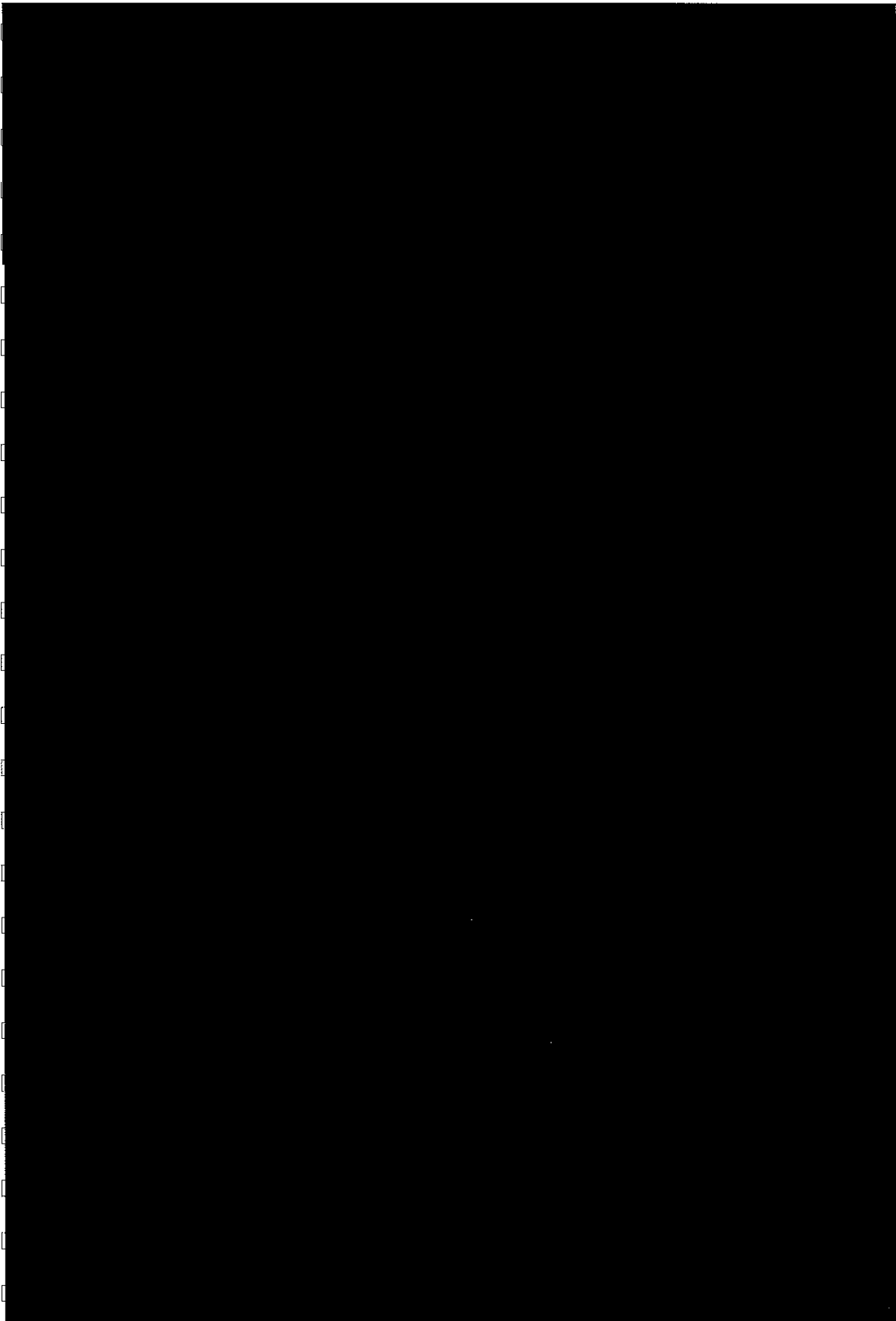
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19 Q. (By Mr. Warnock) All right. Now, turning
20 to the service mark license agreement, there are two
21 documents before you, two versions of the service
22 mark license agreement, the first which has been
23 marked as NOPEC Exhibit 5 is the redacted version
24 which is the one with solid black lines on portions
25 of the agreement. Do you have that in front of you?

1 A. Yes.

2 Q. And the second document is what's been
3 marked as NOPEC Exhibit 5A and this is the same
4 agreement but it is unredacted so any of the
5 previously redacted language is now, it looks like a
6 little gray box around it but you can visualize it.
7 Do you have that in front of you?

8 A. Yes.

9 Q. And I'd note that on the redacted
10 versions, so the one with the black boxes, in the
11 bottom right-hand corner there are Bates stamps. Do
12 you see that? There is a number that says IGS000139?

13 A. Yes.

14 Q. And this document was produced during
15 discovery by IGS, correct?

16 MR. BENTINE: So stipulated.

17 Q. And turning to the other version of the
18 agreement marked IGS000161; do you see that?

19 A. Yes.

20 Q. And this document was also provided
21 during the discovery process.

22 MR. BENTINE: So stipulated.

23 Q. I'm going to turn your attention in the
24 redacted version to page 12, actually, page 12 in
25 both documents. Are you there?

1 A. Yes.

2 Q. And you signed this agreement on behalf
3 of Interstate Gas Supply; is that correct?

4 A. Yes.

5 Q. And this is your signature on page 12?

6 A. Yes.

7 Q. And the date of your signature is July
8 13th, 2010, correct?

9 A. Correct.

10 Q. And who signed the agreement for the
11 licensor, which is NiSource Retail Services, Inc.?

12 A. Jimmy Staton.

13 Q. Do you know Mr. Staton?

14 A. I met him. Yeah.

15 Q. What is his position with NiSource Retail
16 Services, Inc.?

17 A. He was or is the executive VP and group
18 CEO. I think he has had a job change since then.

19 Q. Do you know where he is employed now?

20 A. I believe he is currently the head of the
21 transmission and pipeline system.

22 Q. Still for a NiSource entity?

23 A. For NiSource, yeah.

24 Q. And what was the date of his signature?

25 A. July 15th, 2010.

1 Q. Okay. Now, generally when did
2 discussions about a licensing agreement begin?

3 A. January of 2010.

4 Q. And did you initiate those discussions?

5 A. I believe I did.

6 Q. And who did you initiate those
7 discussions with?

8 A. Jimmy Staton.

9 Q. Was Mr. Staton the only one that you
10 spoke to initially about such an agreement?

11 A. Well, I don't know what you mean,
12 initially. I initially started the conversations
13 with Jimmy Staton, yes.

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1 Q. Do you know if Columbia Gas of Ohio has
2 an unregulated affiliate in Ohio currently?

3 A. For the purpose of selling retail natural
4 gas.

5 Q. Yes.

6 A. They do not.

7 Q. And when you were discussing a licensing
8 agreement with Mr. Staton, who negotiated the
9 ultimate agreement for IGS?

10 A. That would be me.

11 Q. Anyone else?

12 A. No. I was the lead on that.

13 Q. And who negotiated for NiSource?

14 A. Steve Warnick.

15 Q. And who is Mr. Warnick?

16 A. He was their designated negotiator for
17 this agreement. At the time I don't know his exact
18 title. I think he was at a president level or
19 their -- I really don't know.

20 Q. Do you know if Mr. Warnick worked for
21 your father at Columbia Gas of Ohio?

22 A. I do know he did not.

23

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1 [REDACTED]
2 Q. All right. Now I'd ask that you turn to
3 the first page of the unredacted version, so version
4 5A. NiSource Retail Services, Inc. is the licensor,
5 correct?

6 A. Are we on page --

7 Q. The first page of the document.

8 A. 139 or on 161?

9 Q. 161.

10 A. Okay. And the document is with NiSource
11 Retail Services, Inc.

12 Q. Do you know why the agreement is with
13 NiSource Retail Services, Inc. rather than NiSource
14 Retail Services Company?

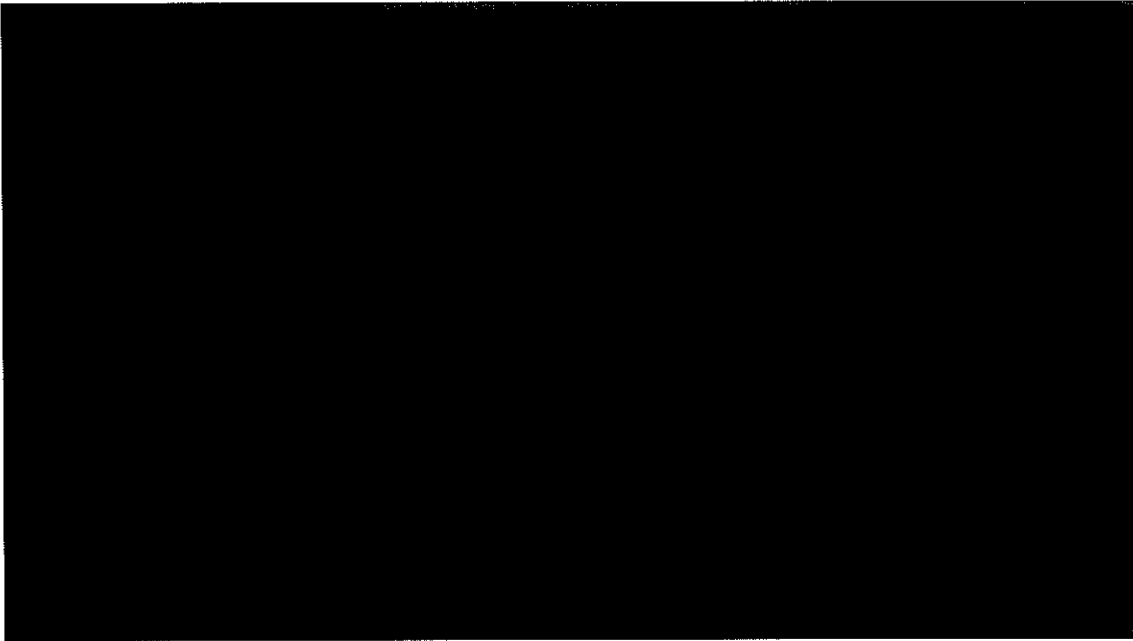
15 A. No, I do not.

16 Q. And on the second line of that document
17 the date of the agreement is July 13th, 2010,
18 correct?

19 A. Correct.

20 Q. And I'll turn you to page 2 of that
21 agreement, IGS000162.

22 A. Yes.
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]



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10 MR. BENTINE: Let me state this, if I
11 might, your Honor, and I am not in any way impugning
12 Mr. Dosker but he also can't take a brain wipe here.
13 He is in house general counsel and I understand and
14 take that he would not talk about --

15 MR. WARNOCK: Mr. Dosker has agreed,
16 he'll leave if that's what you would wish.

17 MR. BENTINE: If we're going to talk
18 about what their strategies were in this document,
19 then yes, I think that would be appropriate.

20 MR. WARNOCK: That's fine.

21 MR. DOSKER: Okay.

22 EXAMINER STENMAN: Thank you, Mr. Dosker.
23 As I said earlier, 11-D next door is open.

24 MR. DOSKER: Thank you.

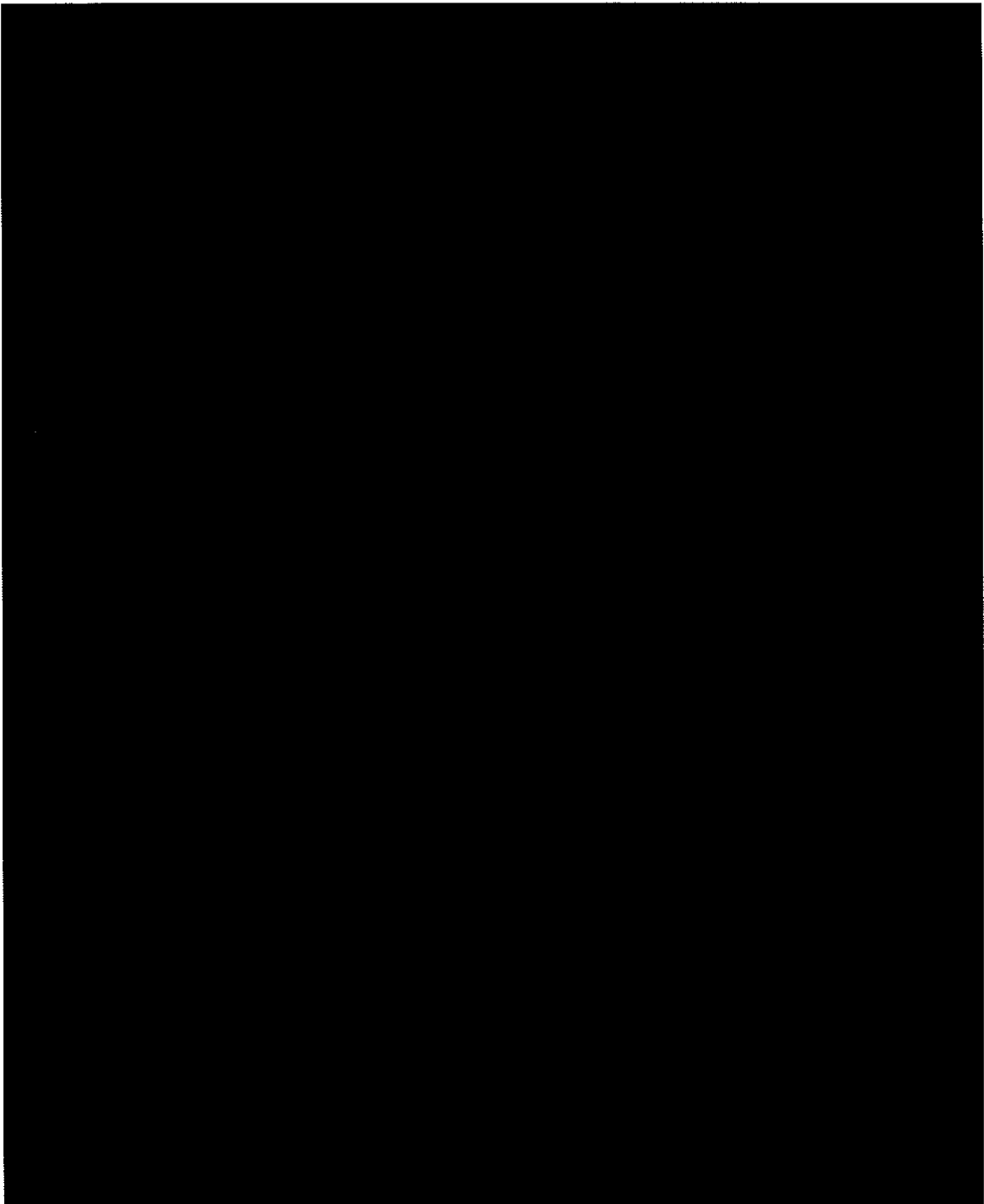
25 MR. BENTINE: Thank you, your Honor.

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EXAMINER STENMAN: Thank you.

MR. WARNOCK: Can you repeat the
question, please?

(Record read.)



1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 Q. And in your research did you find that
5 any public utility commission rules either --
6 prohibited your use of a utility name by a
7 nonaffiliate?

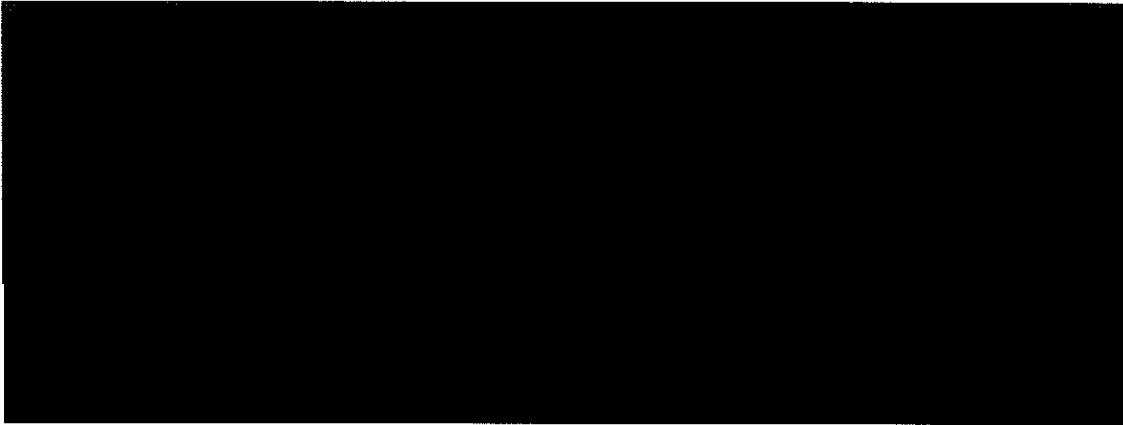
8 A. No. We didn't find any prohibition. We
9 found a lack of, really a lack of rules regarding the
10 use of a nonaffiliate. We found lots of rules
11 regarding the use of an affiliate using the name.

12 We decided that the best thing for us to
13 do would be to comply with the rules that would be of
14 an affiliate in terms of providing similar
15 disclosures.

16 Q. And in paragraph 1 which is on page, this
17 is on 161 of the unredacted version, paragraph 1, the
18 Grant of License, is it your understanding that this
19 agreement limits IGS's use of service marks to the
20 Columbia Gas service territories defined in this
21 agreement as NDC Territories?

22 A. Yes.
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

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A. No.

Q. And then in the definition of NDC on page 2, section 2.10, it specifically defines NDC to mean NiSource distribution companies and specifically Columbia Gas of Ohio, Columbia Gas of Kentucky, Columbia Gas of Maryland, Columbia Gas of Virginia, and Columbia Gas of Pennsylvania. Do you see that? Page 2, section 2.10.

A. I see as defined below on my version. It's my understanding that that's what the agreement says.

Q. And do you know if the natural gas markets in, well, let's start with Kentucky. Does Kentucky have a competitive natural gas market?

A. Yes, they have a Choice program.

Q. Does Maryland?

A. Yes.

Q. Virginia?

A. Yes.

1 Q. Pennsylvania?

2 A. Yes.

3 Q. I'm going to turn your attention to page
4 3, section 3.2, and toward the bottom of that section
5 there's a sentence that starts [REDACTED]

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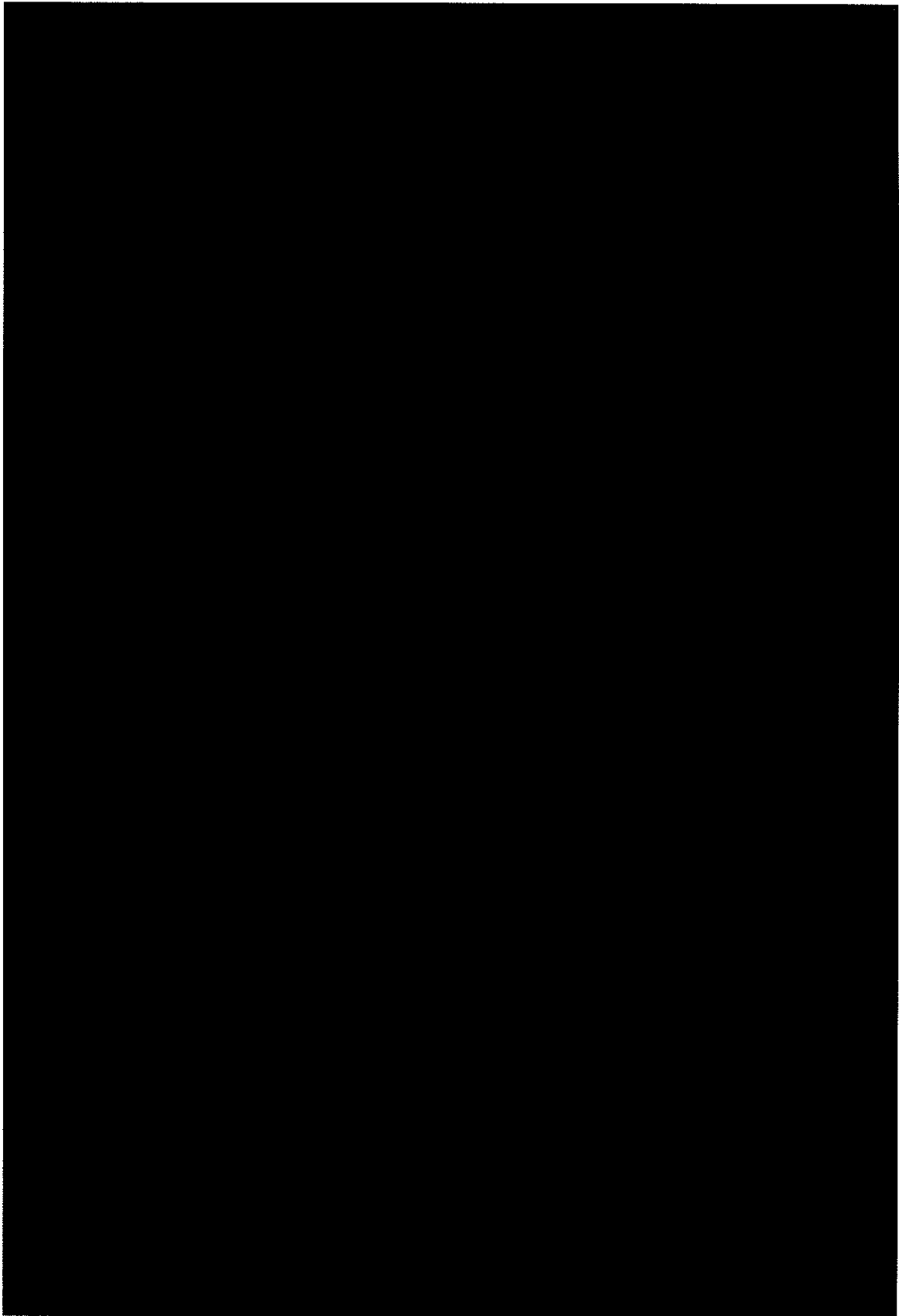
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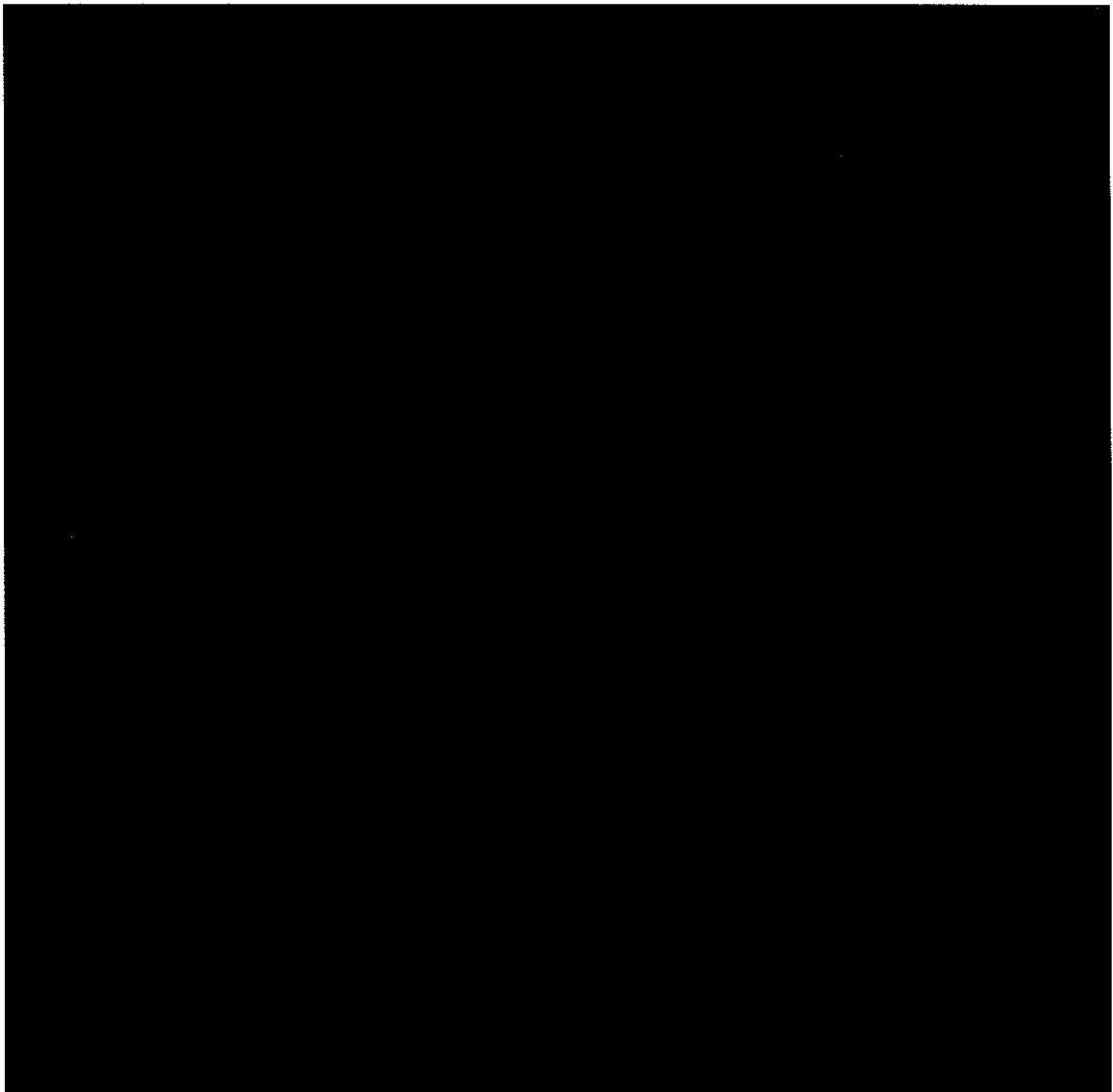
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18 Q. And under this agreement there are two
19 categories of customer, mass market Choice customers
20 and governmental aggregation customers, correct?

21 A. Correct.

22 Q. Can you kind of explain to me the
23 difference between those two categories?

24 A. Mass market Choice customers would be
25 those who have individually signed up for one of our

1 products. A government aggregation would be
2 customers we serve through the government aggregation
3 process.

4 Q. Now, in terms of these categories of
5 customer, how would customers assigned to IGS or
6 Columbia Retail Energy under Columbia's SCO program,
7 how would they fall in these categories?

8 MR. BENTINE: Could I have that question
9 reread, please.

10 (Record read.)

11 MR. BENTINE: I'm going to object.
12 Customers aren't assigned to IGS or CRE. They sign
13 up for it, but they're not assigned.

14 EXAMINER STENMAN: Mr. Warnock.

15 Q. Mr. White, are you familiar with
16 Columbia's standard service offer program?

17 A. Yes.

18 Q. Are you familiar with Columbia's standard
19 choice offer program that's designed to go into
20 effect sometime soon?

21 A. Yes.

22 Q. What's the difference between the SSO and
23 the SCO programs?

24 A. One's a wholesale auction and one's a
25 retail auction.

1 Q. And is it your understanding that as part
2 of the SCO process that customers would be assigned
3 to a retail supplier by Columbia Gas?

4 A. If they were a winning auction -- if they
5 won the tranche in the auction, yes.

6 Q. So, you know, in the event IGS or
7 Columbia Retail Energy was successful in the auction
8 and customers were assigned to IGS or Columbia Retail
9 Energy, how would those customers be treated under
10 this agreement?

11 A. They wouldn't be. They're neither
12 government aggregation nor the customers that chose
13 to be supplied by IGS.

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[REDACTED]

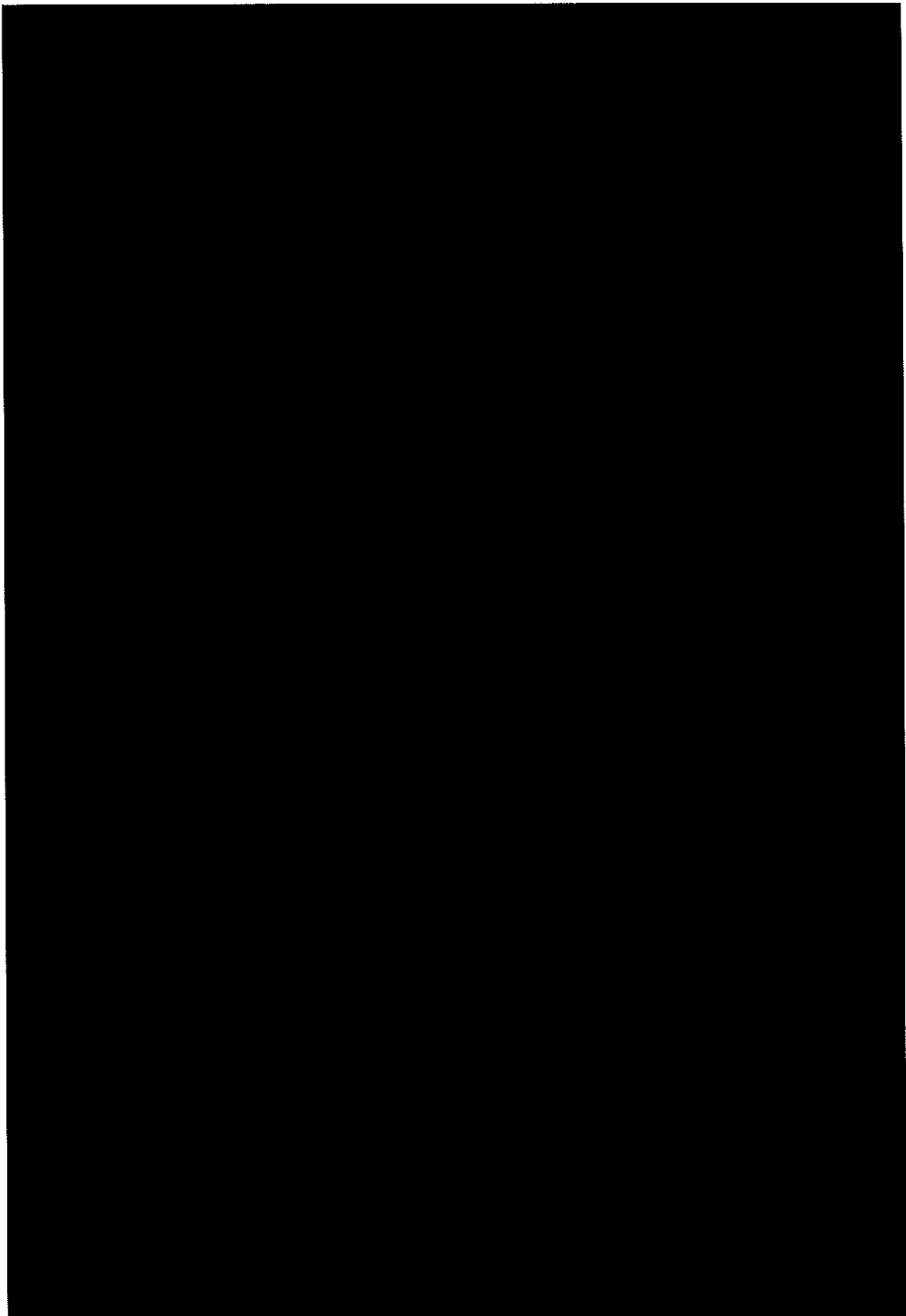
Q. What is throughput?

A. Throughput is the measurement of the volume for the month that the customers who are mass market or government aggregation customers consume.

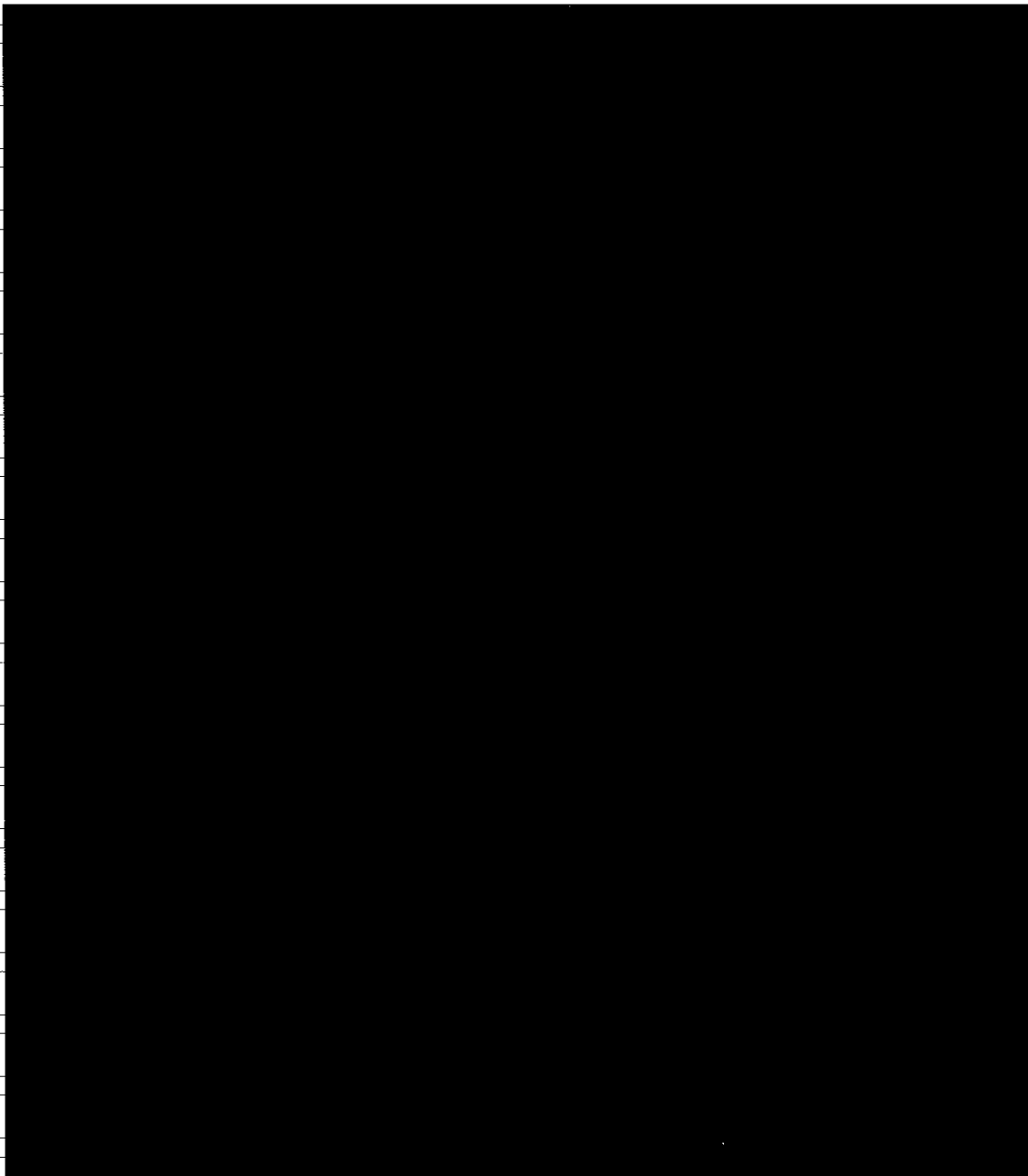
Q. And I believe you -- well, strike that.

[REDACTED]

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20 Q. And you'd agree that there's an incentive
21 for NiSource to encourage customers to contract with
22 IGS?

23 A. You would think so.

24 Q. Is that a "yes"?

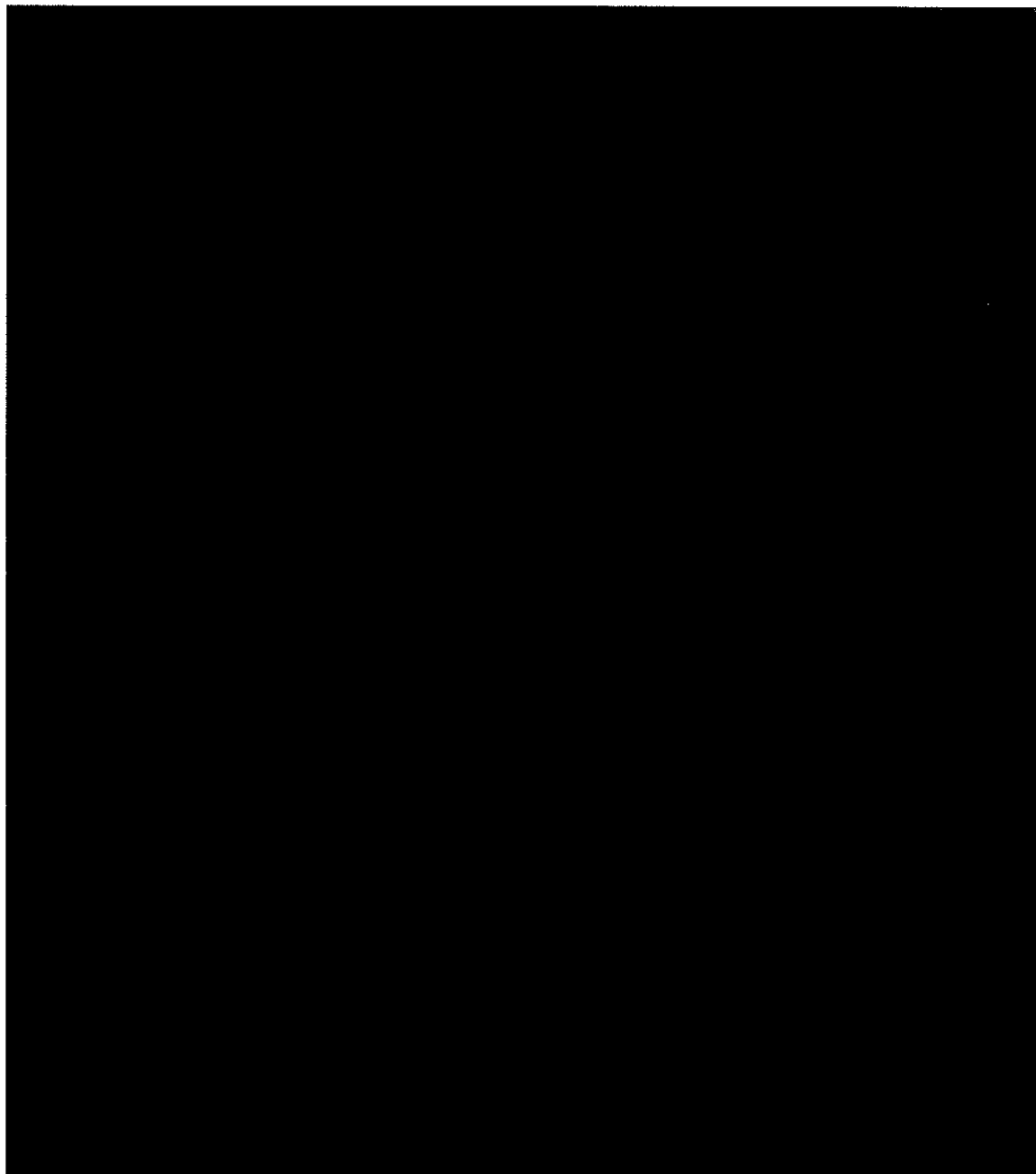
25 A. I would think so, yes.

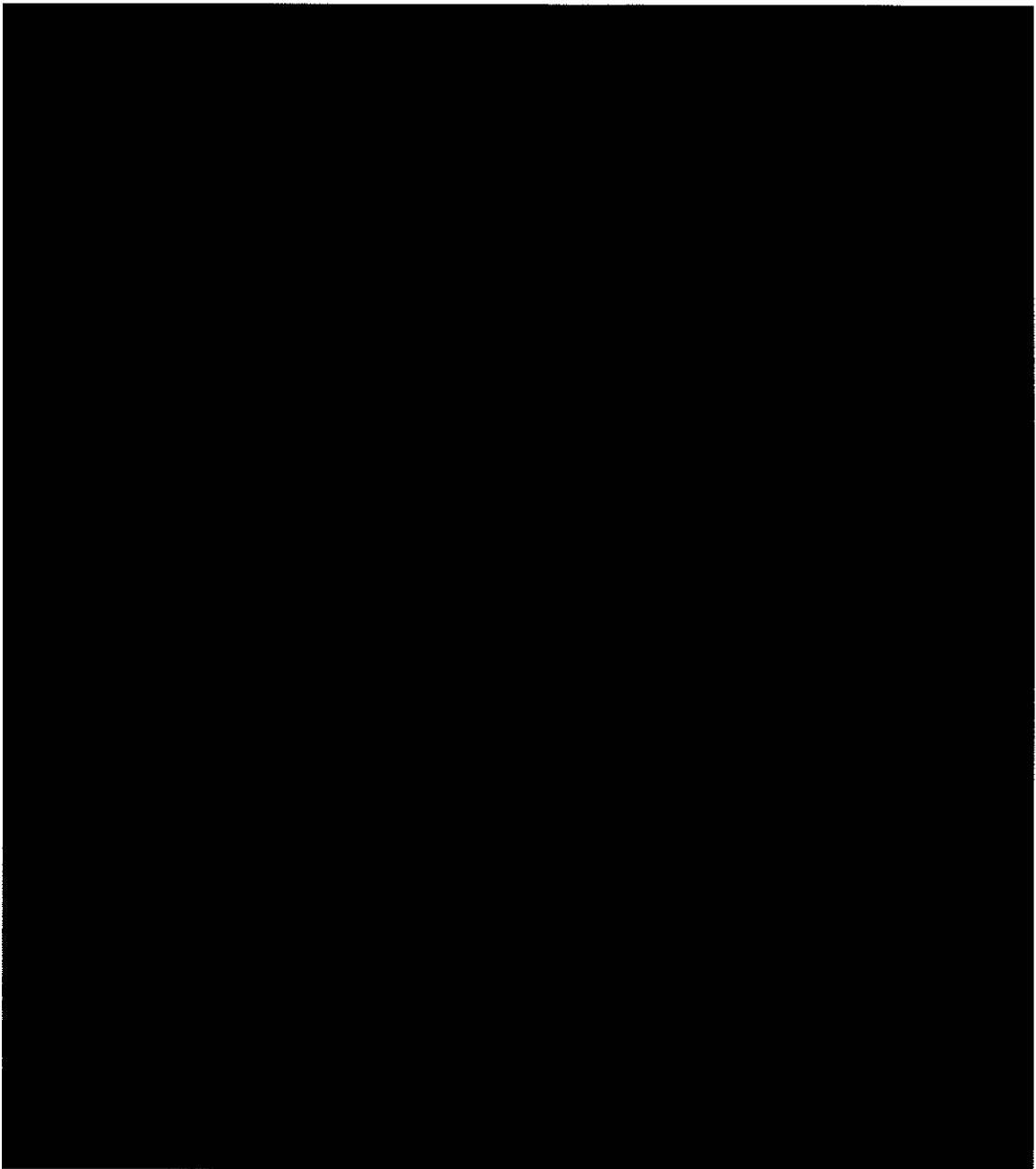
1 Q. Do you know what, if any, steps NiSource
2 has taken to encourage customers to contract with
3 IGS?

4 A. None.

5 Q. You know of none or --

6 A. I don't know of any.





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Q. Did NiSource or, I'm sorry, did IGS have any expectation that NiSource would take any steps to encourage customers to go to IGS during the term of this agreement?

A. No.



[REDACTED]

Q. Is there a reason that -- is there a reason that the agreement is for a term of [REDACTED]

[REDACTED]

A. I believe it was, this type of arrangement was new to both companies and we wanted to see if it made sense for a [REDACTED] period before determining whether or not to continue.

[REDACTED]

1 [REDACTED] What benefits is IGS receiving from
2 NiSource under this agreement?

3 A. Well, we get to use -- we get to put the
4 name Columbia Retail Energy out into the marketplace.
5 It's our hope that having that name out there,
6 because it was not out there prior to this, that will
7 help the Choice program be more accepted, and we hope
8 that the utility will be of the mind-set of trying to
9 create a better marketplace in their choice -- in the
10 Choice program.

11 MR. WARNOCK: Can I have that answer
12 reread, please.

13 (Record read.)

14 Q. And when you say that you're hoping that
15 it encourages acceptance of the Choice program, what
16 do you mean by that?

17 A. I mean we compared the Columbia program
18 migration rates compared to the Dominion migration
19 rates and the Vectren migration rates and noticed
20 that the Dominion migration rates were far in excess
21 of Columbia migration rates. We also knew that
22 having -- the utility itself is very proactive in
23 promoting the program in Cleveland under the --
24 Dominion was very proactive in educating and
25 promoting the program where Columbia was less active.

1 Q. All right. Now I'm going to turn you to
2 section 8.4 of this agreement. This paragraph
3 contemplates or -- I'm sorry. Strike that. This
4 paragraph addresses the situation where there's a
5 potential adverse ruling by a legislative or
6 regulatory body, correct?

7 A. Correct.

8 Q. And specifically it contemplates what
9 would happen if there's a material adverse action
10 regarding the use of the service marks under this
11 agreement, correct?

12 A. Correct.

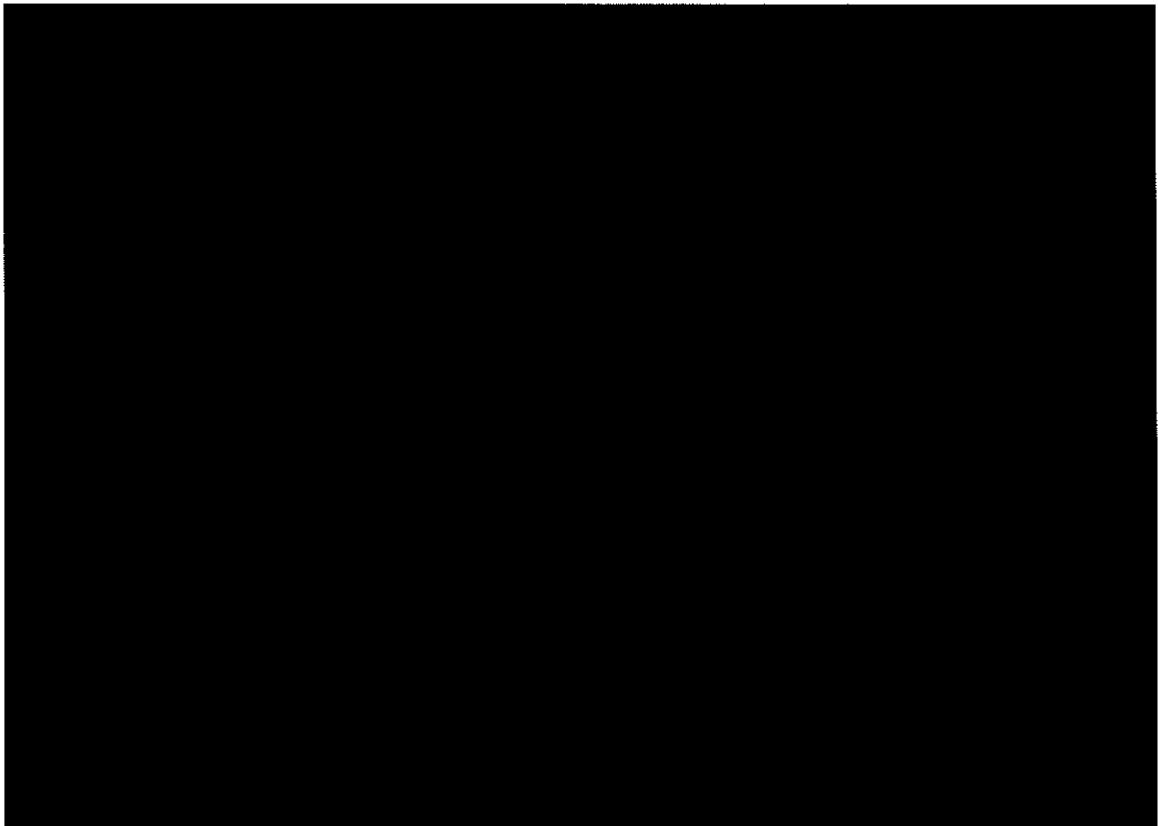
13 Q. And, in your opinion, would a material
14 adverse action include a ruling by the PUCO that IGS
15 could no longer use the Columbia Retail Energy name?

16 MR. BENTINE: I assume that's being asked
17 as a lay question.

18 MR. WARNOCK: That's being asked as a lay
19 question.

20 A. Yes.

21 Q. I'm going to turn your attention to
22 section 8.5. I'm sorry. 8.6. Can you please read
23 section 8.6?



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13 Q. Do you know if NiSource Retail Services
14 is currently certified by the PUCO as a competitive
15 retail natural gas supplier?

16 A. I highly doubt that. I do not think they
17 are.

18 Q. I'm going to turn your attention to
19 paragraph 15. This is on page 8 of the agreement.

20 A. Yes.

21 Q. This paragraph has to do with management
22 meetings. Do NiSource and IGS have regular senior
23 management meetings?

24 A. Well, we have regular meetings. I now
25 have -- I guess it depends on what "senior

1 management" would be defined as. We have
2 specifically Larry Friedeman, who is one of my direct
3 reports, engaged in this process from a
4 communications standpoint and meeting standpoint with
5 Dean Bruno. To the extent that constitutes regular
6 senior management, then yes.

7 Q. But you'd agree that IGS and NiSource do
8 have regular meetings about this agreement?

9 A. Well, there's regular communications.
10 Yeah, there are meetings. There's three, four a year
11 with, specifically from our standpoint, Larry
12 Friedeman as our representative.

13 Q. And so for purposes of this paragraph
14 Larry Friedeman would be designated what's,
15 quote/unquote, the primary point of contact?

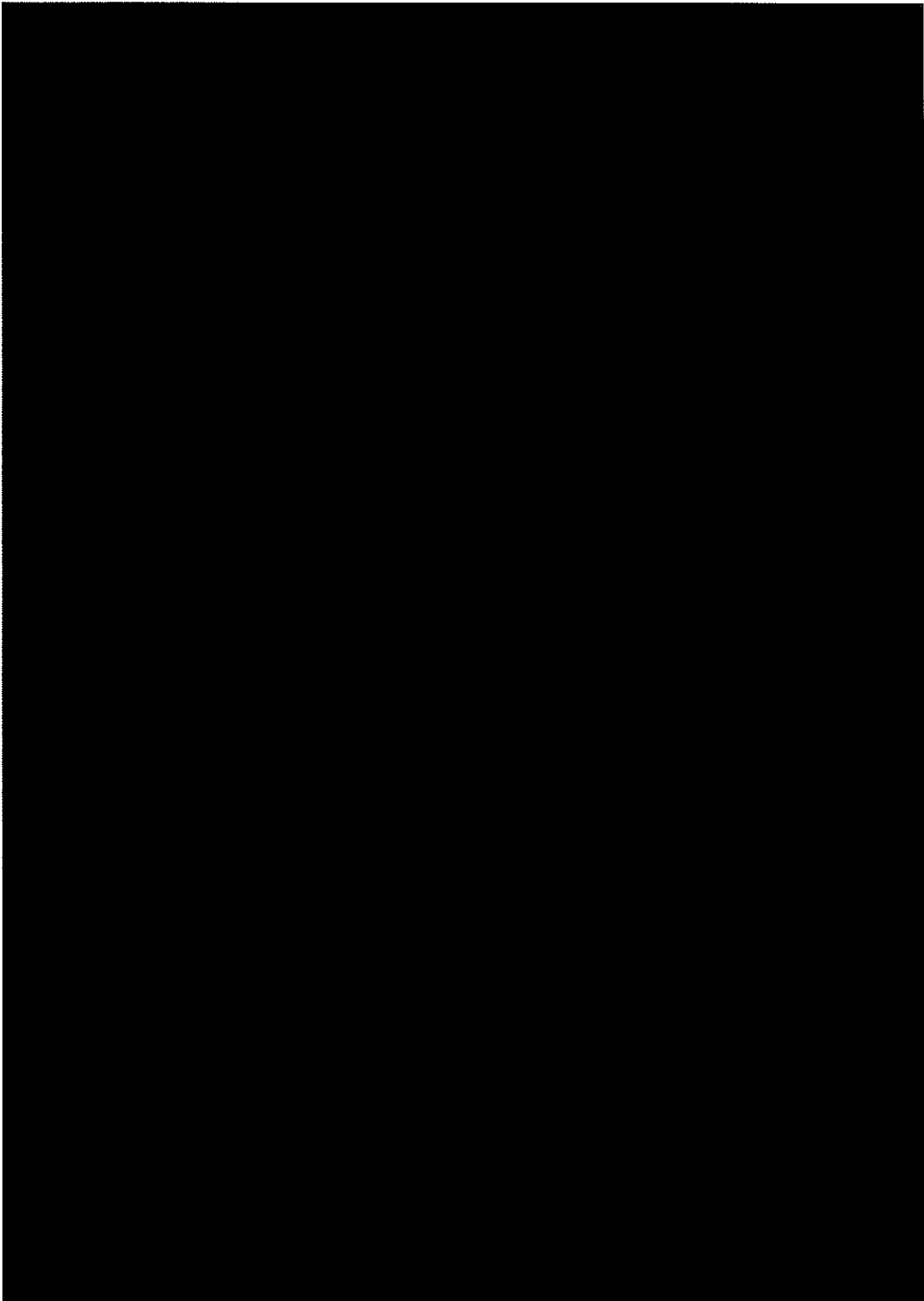
16 A. Yes.

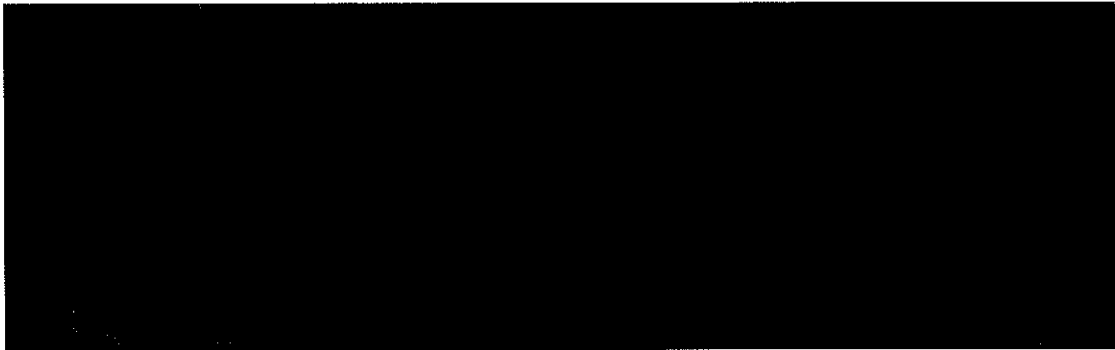
17 Q. And do you know who the primary point of
18 contact would be at NiSource?

19 A. Dean Bruno.

20 Q. All right. I'm going to turn your
21 attention to Paragraph 19. This is entitled
22 Regulatory/Legislative Collaboration. You'd agree
23 that this provision discusses NiSource and IGS
24 agreeing to collaborate on various regulatory and
25 legislative issues, correct?

A. Correct.





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6 Q. Does IGS have registered lobbyists in
7 Ohio?

8 A. Yes.

9 Q. And who are those registered lobbyists?

10 MR. BENTINE: Objection. I don't know
11 what this has to do with anything.

12 MR. WARNOCK: Well, this ties directly in
13 with legislative collaboration and the fact that at
14 least one registered lobbyist, I believe, works for
15 both Columbia and IGS, and I'm just trying to
16 understand, you know, how they're working together on
17 the legislative aspect of it.

18 MR. BENTINE: While that may be
19 interesting for Mr. Warnock to understand, it's not
20 relevant to this proceeding.

21 MR. WARNOCK: It's directly relevant to
22 this proceeding which contemplates collaboration on
23 legislative issues between NiSource and IGS.

24 EXAMINER STENMAN: The objection is
25 sustained.

1 MR. WARNOCK: Your Honor, can we make a
2 proffer of evidence relating to that topic for which
3 the objection was just sustained?

4 EXAMINER STENMAN: You may.

5 MR. WARNOCK: May I approach?

6 EXAMINER STENMAN: You may.

7 MR. WARNOCK: Do you want me to mark this
8 as an exhibit kind of temporarily, or how do you want
9 to do this?

10 EXAMINER STENMAN: Let's mark it as an
11 exhibit just for clarity of the record.

12 MR. WARNOCK: Is this Exhibit 6?

13 EXAMINER STENMAN: Yes. It will be
14 marked as NOPEC 6.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 MR. WARNOCK: Under this proffer I'm
17 going to ask Mr. White if he can identify this
18 document.

19 THE WITNESS: Yeah, it's agents for
20 IGS --

21 MR. BENTINE: Objection. Just because
22 he's proffering doesn't mean he can continue to ask
23 questions. He proffered an exhibit.

24 MR. WARNOCK: Well, I'm going to also
25 proffer some of the questions that I would have asked

1 Mr. White as part of this exhibit.

2 MR. BENTINE: And you may proffer the
3 questions, but he doesn't answer the questions on a
4 proffer.

5 MR. WARNOCK: Well, I would have,
6 although we think that's a little bit unusual, I
7 would have asked some foundational questions about
8 this document which is --

9 EXAMINER STENMAN: Let me stop you there.
10 It's 12:30. I think this is an excellent time to
11 take a break and to actually take a lunch break
12 because it looks like we're going to go well into the
13 afternoon with Mr. White. So let's go off the record
14 and take a lunch break for an hour, we'll be back at
15 1:30.

16 (At 12:28 p.m. a lunch recess was taken
17 until 1:30 p.m.)

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1 Monday Afternoon Session,
2 November 7, 2011.

3 - - -

4 EXAMINER STENMAN: Let's go back on the
5 record.

6 MR. WARNOCK: I would like to make a
7 proffer relating to the questions pertaining to IGS's
8 lobbying activities, and I would note that a proffer
9 with just questions is really not offering any
10 evidence in the event that the objection is
11 ultimately overruled. So I would ask that the Bench
12 allow me to ask Mr. White questions and hear his
13 answers, otherwise, you know, we don't have the
14 luxury of a deposition transcript to proffer as
15 evidence for these questions and my questions alone
16 aren't going to do anything. There's going to be no
17 actual evidence in the record.

18 EXAMINER STENMAN: Mr. Warnock, typically
19 a proffer is -- there would be no difference in a
20 proffer, between a proffer and actual questioning, if
21 you were allowed to ask the witness questions;
22 however, you are allowed to tell us what you would
23 hope to present from those questions. For example,
24 if you asked the question and you believe you would
25 get X as a response, you're allowed to say that "I

1 believe this would show X" and then "I would ask this
2 question, and that would show Y" and such a format.

3 MR. WARNOCK: Okay. Then I am happy to
4 proceed that way. One thing I would note is I don't
5 believe that these questions that I'm going to ask,
6 and I'm not going to refer to the agreement
7 themselves, I don't think anything relating to the
8 lobbying activities is confidential so I would note
9 that for the record.

10 EXAMINER STENMAN: Thank you.

11 MR. WARNOCK: Well, to start this
12 proffer, I had handed the witness what had been
13 marked as NOPEC Exhibit 6 which was a page of public
14 document from the Joint Legislative Ethics Commission
15 related to the agents or lobbyists for Interstate Gas
16 Supply, Inc.

17 I was going to walk through this document
18 and identify that there are seven agents or lobbyists
19 identified working on behalf of Interstate Gas
20 Supply, Inc. including Donald Thibaut. I was going
21 to ask what each of these individual lobbyists did
22 for Interstate Gas Supply or IGS and specifically
23 what Mr. Thibaut did. I was going to ask about
24 Mr. White's dealings with Mr. Thibaut, his
25 familiarity with Mr. Thibaut, and what Mr. Thibaut

1 did in terms of lobbying for IGS.

2 I was also going to ask Mr. White whether
3 he knew that Mr. Thibaut was also the lobbyist for
4 Columbia Gas of Ohio. I was also going to ask
5 questions about, and actually I will also proffer
6 what's going to be marked as NOPEC Exhibit 7 which is
7 an article from The Columbus Dispatch dated May
8 23rd.

9 EXAMINER STENMAN: That will be marked as
10 NOPEC 7.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MR. WARNOCK: In particular, I was going
13 to ask about Mr. White's familiarity with this
14 article, whether it's true that IGS hired Mr. Thibaut
15 in response to the filing of this complaint case, and
16 then I guess Mr. White and IGS's interactions with
17 Mr. Thibaut as it pertains to this case and the
18 Office of the Ohio Consumers' Counsel.

19 And then in terms of what we expected
20 this to show is that there is a direct link between
21 Interstate Gas Supply and Columbia Gas of Ohio in the
22 form of its lobbyist, specifically Mr. Thibaut; that
23 Mr. Thibaut was hired to address and deal with issues
24 in this case specifically relating to the Ohio
25 Consumers' Counsel; and that there were efforts to

1 cut the budget of the Ohio Consumers' Counsel because
2 of the filing of this complaint case.

3 EXAMINER STENMAN: Does that conclude
4 your proffer?

5 MR. WARNOCK: Yes, your Honor.

6 MR. BENTINE: We have no objection to the
7 proffer, your Honor, however, reserve objections with
8 regard to relevancy, hearsay, all the other
9 appropriate objections.

10 EXAMINER STENMAN: Of course.

11 Do you want to continue with your
12 questioning, Mr. Warnock?

13 MR. WARNOCK: Yes, your Honor. I have a
14 few more confidential questions and then I would like
15 to go back on the public record.

16 EXAMINER STENMAN: Just to be clear that
17 we're still in the confidential portion of the
18 transcript.

19 - - -

20 DIRECT EXAMINATION (AS ON CROSS) (continued)

21 By Mr. Warnock:

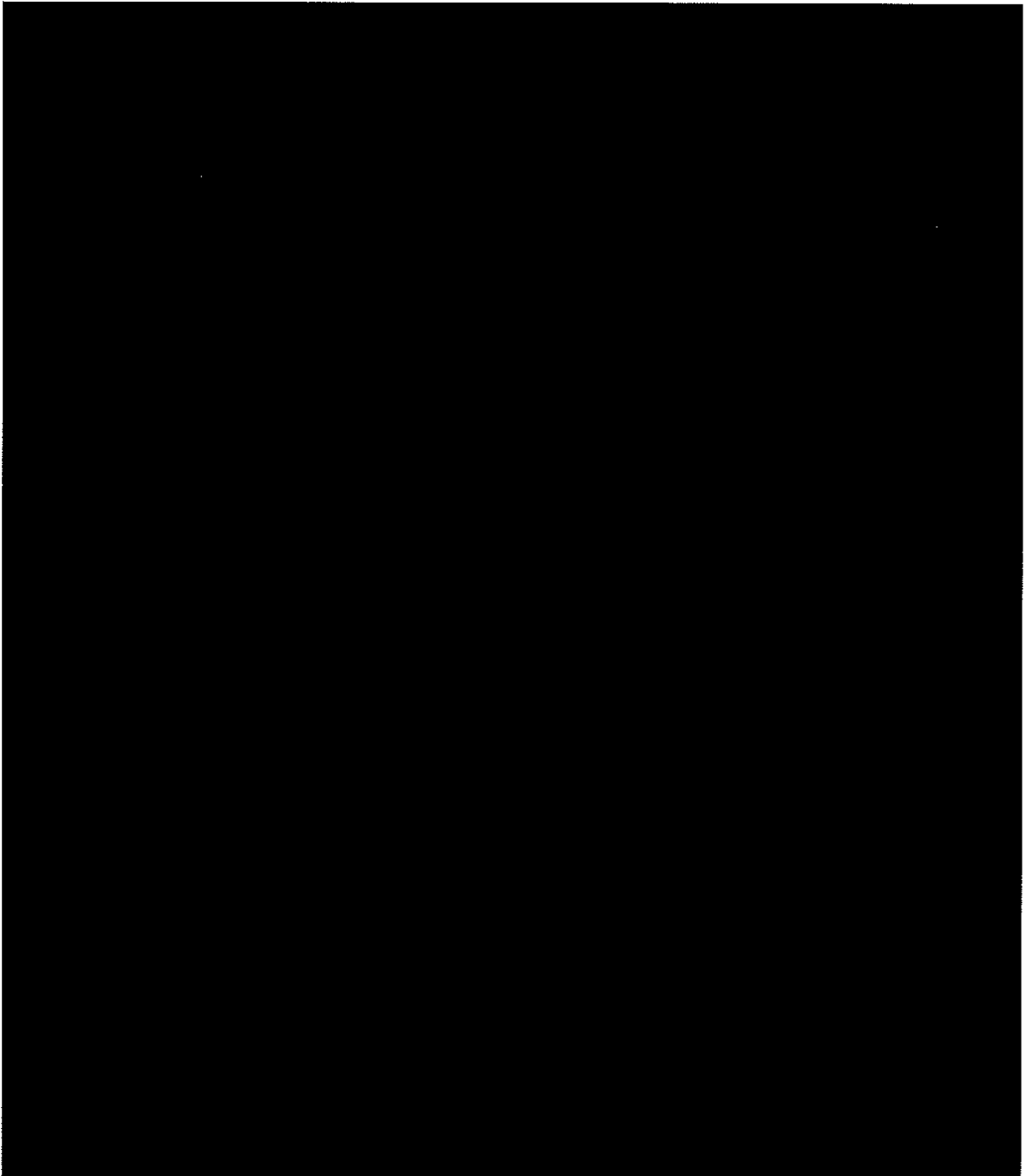
22 Q. Mr. White, do you still have in front of
23 you the service mark license agreement which is the
24 unredacted version?

25 A. Yes.

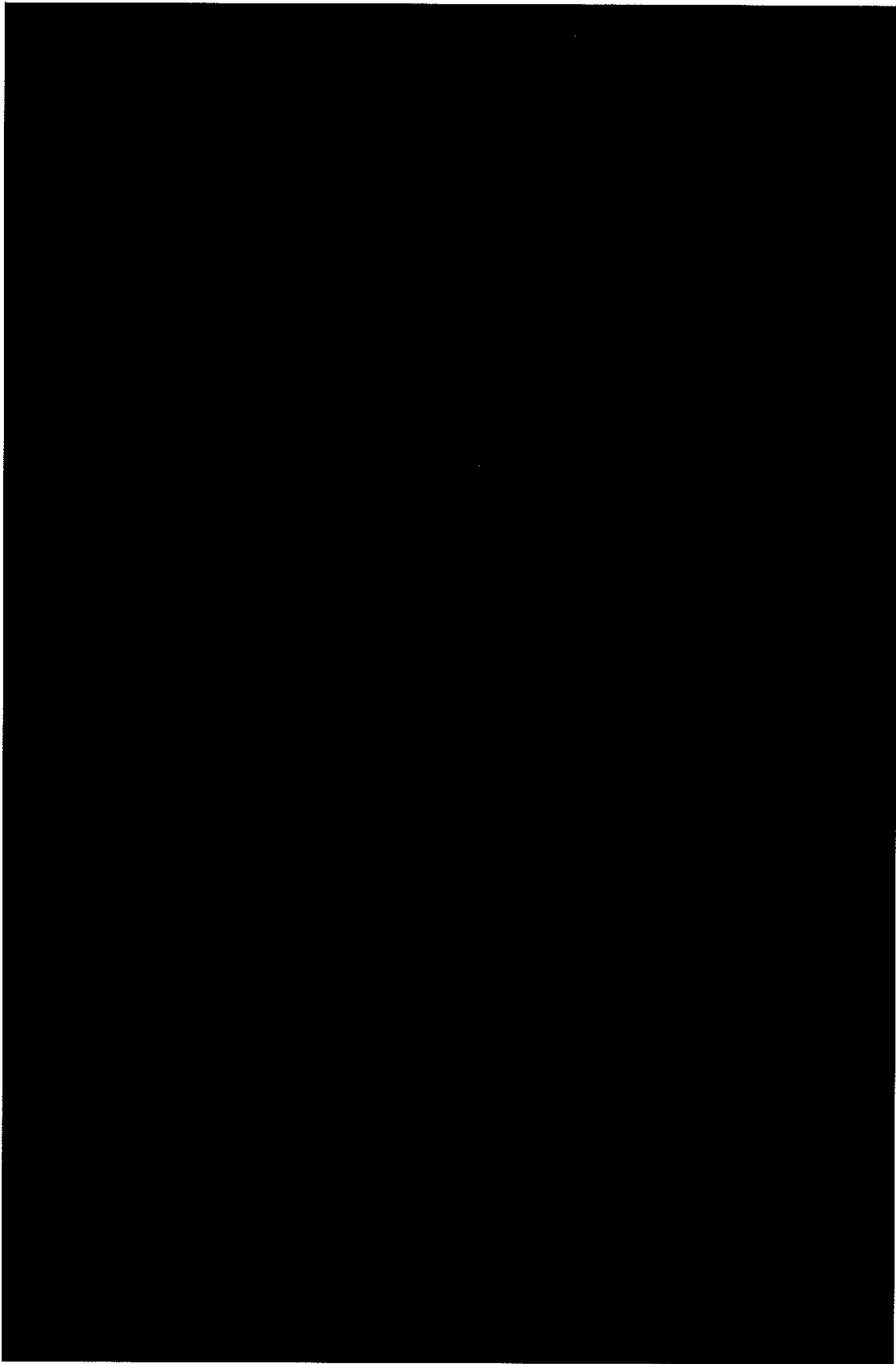
1 Q. Can you please turn to Exhibit B which is
2 on page IGS000176.

3 A. Yes.

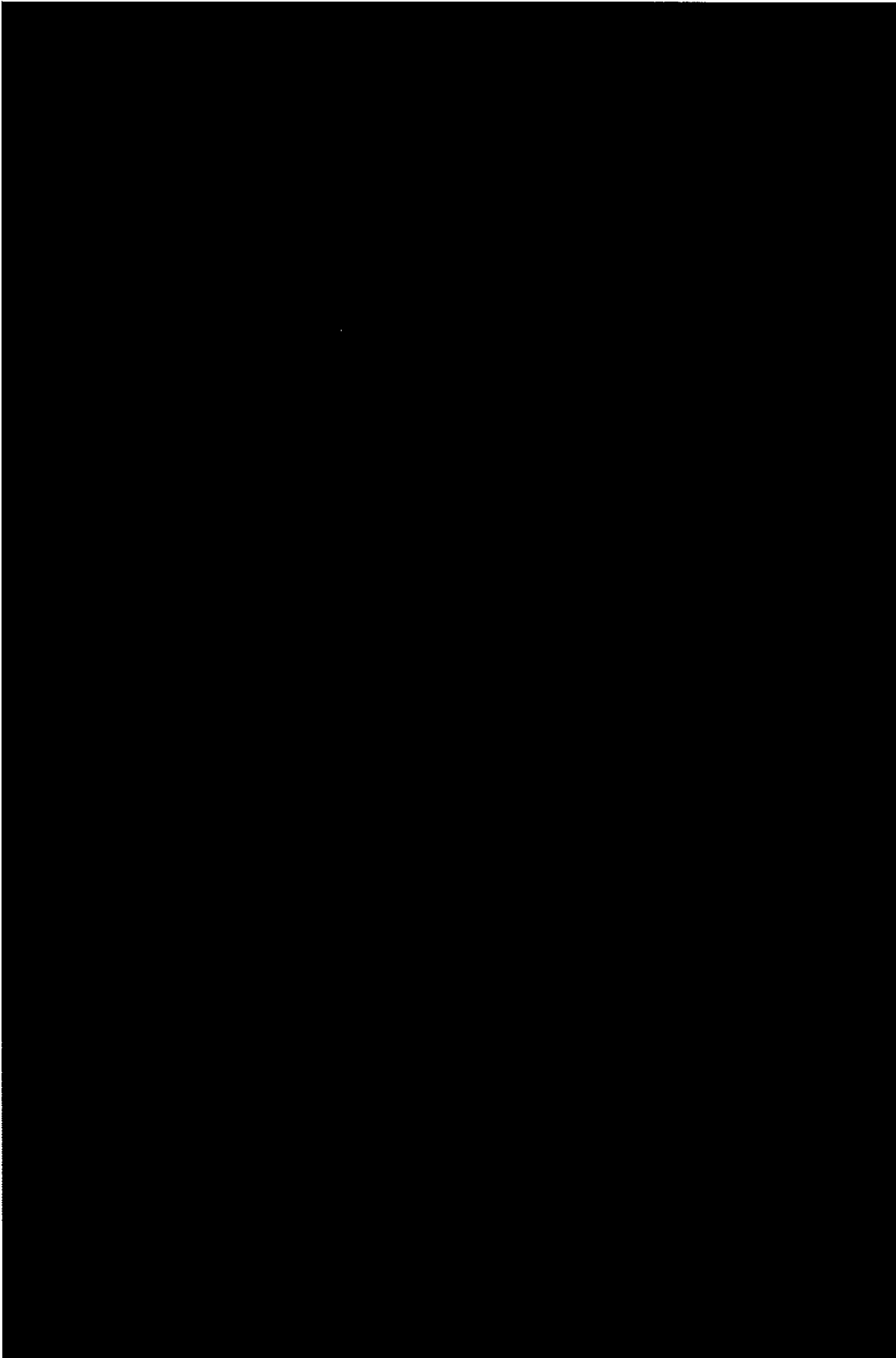
4 Q. Can you explain to me what this exhibit
5 shows?



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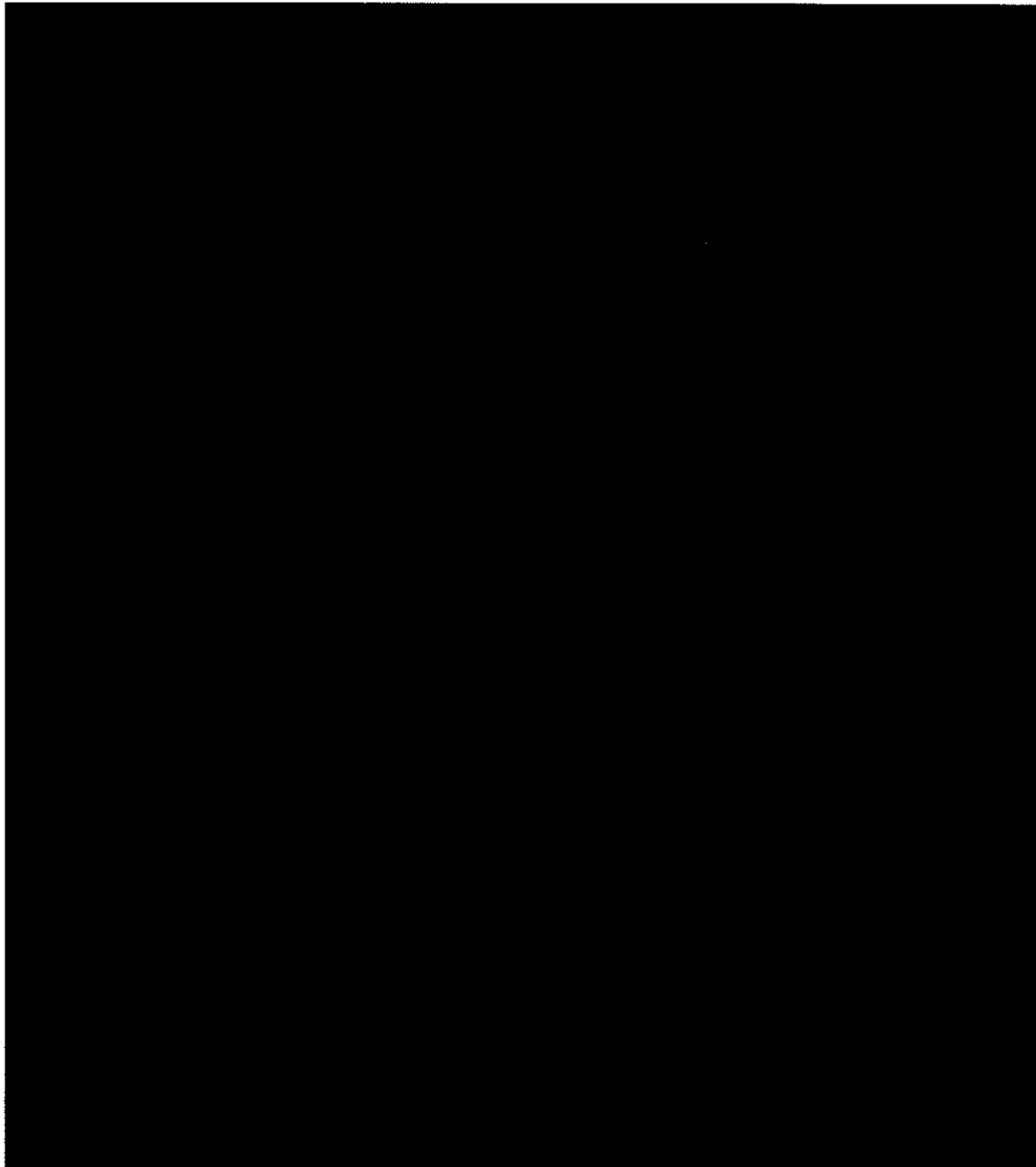


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1 Q. But you do have a marketing budget that
2 you have invested in the name?

3 A. Yeah, we have a marketing budget.



23 MR. WARNOCK: I think that's the end of
24 my confidential questions. I do have a few more to
25 pursue on the public record if that's okay with you.

1 EXAMINER STENMAN: Let's go out of the
2 confidential portion of the transcript back into the
3 public portion.

4 (OPEN RECORD.)
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(CONFIDENTIAL PORTION.)

Q. (By Mr. Bentine) Mr. White, first --

MR. BENTINE: I guess John could have stayed for this one.

Q. But it was brought up in the -- if you would look at NOPEC 4, which is Exhibits 3, 4, and 5 from Mr. Parisi's testimony, I believe.

A. Okay.

Q. I believe you indicated -- in response to questions from counsel from NOPEC you had read and referred to the disclaimer at the top of the first page of NOPEC 4 and at the bottom of that page.

A. Yes.

MR. BENTINE: If I could approach the witness and give him my highlighted copy, this will go faster.

EXAMINER STENMAN: Okay.

Q. Would you turn to the next page of NOPEC 4, please. And would you, referring to the highlighted sections for speed, would you tell me if there are also then disclaimers at the heading of that second page and also buried within the body of that first paragraph.

1 A. Yes. At the very top, the heading of the
2 whole page, it says "My Natural Gas Supply Contract
3 with Columbia Retail Energy," and then in parentheses
4 "(Interstate Gas Supply, Inc.)".

5 Q. And then further down in that paragraph.

6 A. Under the first section, Term, it talks
7 about Interstate Gas Supply doing business as
8 Columbia Retail Energy and at the end of the
9 paragraph it says "The trademark COLUMBIA RETAIL
10 ENERGY including the starburst design is a trademark
11 of NiSource Corporate Services Company and is used
12 under license by Interstate Gas Supply. Interstate
13 Gas Supply is not an affiliate of NiSource Corporate
14 Services Company or Columbia Gas of Ohio."

15 Q. Thank you.

16 Now would you turn to the page that has
17 the sticker Exhibit 4 that and would you tell us the
18 disclaimers on that page as well?

19 A. Yeah. There's two disclaimers, both
20 underneath the -- the trademark appears twice, one as
21 a header to the letter and one as a part of the
22 enrollment card itself, and under both of those
23 there's the language "Service is provided by IGS
24 Energy under the trade name Columbia Retail Energy."

25 Q. Okay. And then finally the final two

1 pages of this exhibit, would you tell me what those
2 two pages are, then, and read the disclaimers there?

3 A. This refers to the envelope itself where
4 the Columbia Retail Energy logo is displayed and it
5 says "Service is provided by IGS Energy under the
6 trade name Columbia Retail Energy." And the last is
7 a snapshot from our website where, again, the logo
8 Columbia Retail Energy is displayed and the words
9 "Service is provided by IGS Energy under the trade
10 name Columbia Retail Energy."

11 Q. Thank you. And it's been pointed out I
12 even missed another one, that is -- I just found it,
13 it's back on the one marked Exhibit 4 on the back,
14 and there's a disclaimer just above the enrollment
15 card is there not?

16 A. Yeah, in the body of the letter, the
17 bottom of the body of the letter. It says "Columbia
18 Retail Energy is not the utility and neither Columbia
19 Retail Energy nor Interstate Gas Supply, Inc. (IGS
20 Energy) is an affiliate of NiSource Retail Services
21 or the utility, Columbia Gas of Ohio. The Columbia
22 Retail Energy name and starburst design are used by
23 Interstate Gas Supply, Inc. under a license agreement
24 with NiSource Retail Services."

25 Q. Thank you.

1 Referring now to what was marked as NOPEC
2 5A, Mr. White.

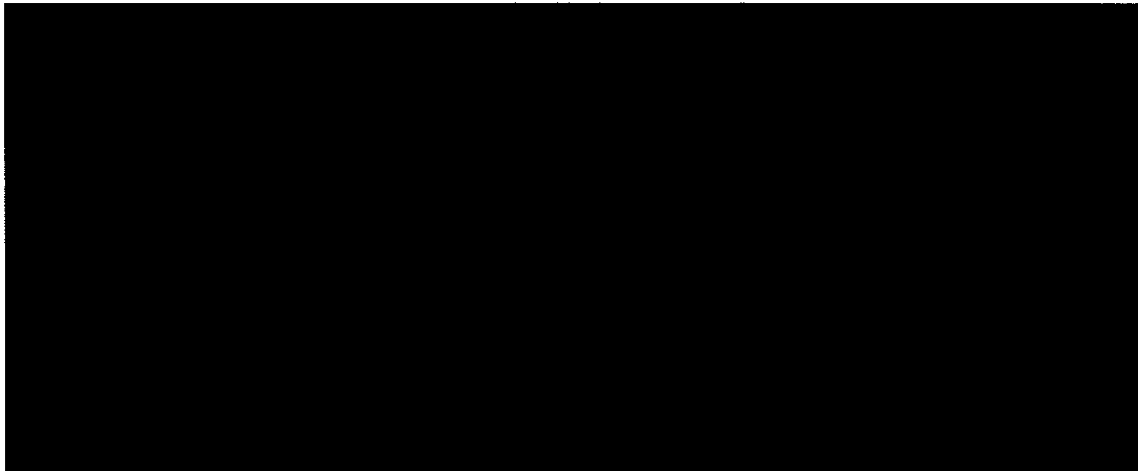
3 A. Yes.

4 Q. And turning to page 9 of that document,
5 Bates stamped IGS000169, would you look at paragraph
6 19.

7 A. Yes.

8 Q. You'll recall some questions by counsel
9 for NOPEC regarding that paragraph; do you not?

10 A. Yes.



18 Q. Now, I believe in answer to a number of
19 questions by counsel for NOPEC you indicated that the
20 Columbia name was also being used in four other
21 jurisdictions: Kentucky, Maryland, Virginia, and
22 Pennsylvania.

23 A. Yes.

24 Q. Can you tell me, are there proceedings
25 like this going on in those other states?

1 A. No. There was initially some objection
2 to our use of the name in Pennsylvania by RESA and
3 potentially by a group I think -- I don't know the
4 name of the group, it's a group that would be the
5 counterpart to the OCC, I think they may be called
6 the POCA, they originally objected or were concerned
7 about the way that we would use the name.

8 We met with them and we resolved that and
9 by agreeing to the disclosures that they would like
10 to see we settled that case and they withdrew it.
11 But they did not protest our right to use the
12 Columbia name, just they were concerned about the
13 disclosures and how we were to use it.

14 Q. And are those programs going forward
15 today without a complaint or without --

16 A. Yes.

17 Q. -- legal question?

18 A. Yes, they're active.

19 Q. And are those disclaimers used in those
20 states similar to the disclaimers that are contained
21 in the RESA agreement that is attached to
22 Mr. Parisi's testimony that was entered into for the
23 state of Ohio?

24 A. Yes.

25 Q. And are they similar to that which are

1 currently being used by IGS in its Columbia CRE
2 program?

3 A. Yes.

4 Q. Counsel for NOPEC also asked you some
5 questions about NiSource's incentive, [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 Q. In terms of that incentive, Mr. White,
10 did you or IGS ever contemplate that that incentive
11 would cause Columbia Gas to discriminate in IGS's
12 favor, Columbia Retail Energy's favor, or violate any
13 rules or regulations or laws in their conduct after
14 you signed the agreement?

15 A. No.

16 MR. BENTINE: That's all I have for
17 Mr. White.

18 EXAMINER STENMAN: Thank you.

19 MR. WARNOCK: I just have a couple of
20 questions.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Warnock:

24 Q. First I'm going to turn you back to NOPEC
25 Exhibit 4 which is the marketing materials and

1 specifically the page that's got kind of a cutout of
2 a, it looks like an envelope on it, looks like the
3 second-to-the-last page.

4 EXAMINER STENMAN: Do we need to be in
5 the confidential portion of the transcript for your
6 questions?

7 MR. WARNOCK: No.

8 EXAMINER STENMAN: Go forward. Let's
9 make sure that we're in the open record.

10 (OPEN RECORD.)
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1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Monday, November 7, 2011, and
5 carefully compared with my original stenographic
6 notes.

7
8 Maria DiPaolo Jones, Registered
9 Diplomat Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2016.

11 (MDJ-3923A)

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1 APPEARANCES:

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(CONFIDENTIAL PORTION.)

1 EXAMINER STENMAN: Mr. Warnock.

2 MR. WARNOCK: Am I okay to go?

3 EXAMINER STENMAN: Go forward.

4 Q. (By Mr. Warnock) Mr. Parisi, I'm going to
5 ask that the court reporter hand you what had
6 previously been marked as NOPEC's Exhibit 5 and 5A
7 which were the redacted and unredacted versions of
8 the licensing agreement.

9 Do you have those documents, Mr. Parisi?

10 A. NOPEC Exhibit 5 and NOPEC Exhibit 5A,
11 yes.

12 Q. That's correct. And I believe Exhibit 5
13 is the redacted version and Exhibit 5A is the
14 unredacted version.

15 A. Yes.

16 Q. Now, is it IGS's contention that the
17 unredacted version of the agreement is confidential?

18 A. Yes.

19 Q. And it's not specifically just the
20 redacted -- I'm sorry. I think I misspoke. Is it
21 IGS's position that the redacted version of the
22 service mark licensing agreement is confidential?

23 A. Yes.

24 Q. So it's not just the redacted portions of
25 the agreement that are confidential, it's the

1 document as a whole.

2 A. That's correct.

3 Q. And you would agree with me that the fact
4 that the licensing agreement exists is not
5 confidential. That's in the public domain.

6 A. I believe that's correct, yes.

7 Q. And the fact that NiSource Retail
8 Services is the counterparty to the licensing
9 agreement is not confidential and it's in the public
10 domain. I'd specifically point you to page 3 of your
11 testimony if you're looking for one place. Line 1.

12 A. That's correct.

13 Q. And I believe you testified earlier that
14 the fact that IGS can only use the Columbia name and
15 logo in the Columbia Gas of Ohio service territory is
16 also public information.

17 A. I think I testified to that earlier in
18 the nonconfidential portion of this. I don't know if
19 it's been revealed anywhere else.

20 Q. Were you here for the testimony of
21 Mr. White yesterday?

22 A. Yes, I was.

23 Q. I strike that question.

24 And I point you to Exhibit 5A which is
25 the unredacted version of the licensing agreement.

1 A. Yes.

2 Q. And if you put the documents side by
3 side, I just want to point out a couple of things.
4 First, in line 2 there's a redaction of NiSource
5 Retail Services, Inc. Do you see that?

6 A. Yes, I do.

7 Q. And I think that you've agreed with me
8 that the fact that NiSource Retail Services, Inc. as
9 the counterparty to this agreement is public.

10 A. It's in my testimony, that's correct.

11 Q. And I think you also agreed that in the
12 public portion of your testimony that IGS can only
13 use the Columbia name and logo in Columbia Gas of
14 Ohio service territory is also public information,
15 correct?

16 A. Yes. I think I testified to that
17 earlier.

18 Q. And I know we only went through a few
19 examples, but you'd at least acknowledge that there
20 are some portions of even the redacted version that
21 are public.

22 MS. MORRISON: Objection. 5A, the
23 redacted portions, are not public.

24 MR. WARNOCK: Well, whether you look at
25 it as the redacted or the unredacted, there are

1 versions even in the unredacted copy in 5A that are
2 in the public domain and that's what I'm asking.

3 MS. MORRISON: The document is not in the
4 public domain.

5 MR. WARNOCK: But there is information in
6 there.

7 EXAMINER STENMAN: That's enough. The
8 document right now is not in the public domain. Any
9 decisions about whether or not 5 or 5A will be
10 released will be made subsequent to this proceeding.
11 If you want to continue to ask the witness about his
12 interpretation of the protected status of this
13 document, that's fine, but we're not making any
14 decisions here today regarding the protected nature
15 of 5 or 5A.

16 MR. WARNOCK: Okay. Thank you, your
17 Honor.

18 Q. (By Mr. Warnock) I'm going to turn you to
19 provision No. 1 in the agreement, it says "Grant of
20 License." In line 2 the word "exclusive" is used. I
21 know we touched on this earlier and I think we agreed
22 to hold those questions.

23 Is it IGS's belief that IGS is the only
24 competitive retail natural gas supplier in Ohio
25 that's able to use the Columbia name and logo in the

1 Columbia Gas of Ohio service territory?

2 A. It's my understanding, I think there's
3 one of the exhibits to the contract that actually
4 provides the Columbia Retail Energy, Exhibit A,
5 service mark. My understanding of the agreement is
6 that with respect to Columbia Retail Energy, that
7 appearance, those words, obviously with the
8 appropriate disclosures, that for the term of the
9 agreement that, yes, IGS is the only one allowed to
10 use that.

11 Q. So IGS is the exclusive licensee under
12 this agreement.

13 A. Exclusive licensee of Columbia Retail
14 Energy. We're not an exclusive licensee of Columbia,
15 for example.

16 Q. And you would agree that any competitive
17 retail natural gas supplier could have approached
18 NiSource about licensing the Columbia name and logo
19 in 2010.

20 A. I think that's correct.

21 Q. And to the best of your knowledge IGS is
22 the only competitive retail natural gas supplier that
23 did so.

24 A. I don't know. I'm not aware of any other
25 companies that have.

1 Q. And IGS is the only competitive retail
2 natural gas supplier in Ohio that has obtained the
3 use of the Columbia name and logo under a licensing
4 agreement.

5 A. The use of Columbia Retail Energy, that's
6 correct.

7 Q. And would the use of the Columbia name
8 and logo for a competitive retail natural gas
9 supplier be exclusive to IGS?

10 A. I think under the agreement we are the
11 exclusive licensor of Columbia Retail Energy. I
12 don't think we have any rights to "Columbia" by
13 itself.

14 Q. But nobody else, no other competitive
15 retail natural gas supplier has the rights to use the
16 Columbia Retail Energy name.

17 A. For the term of this agreement, that's
18 correct.

19 Q. And do you know if it -- strike that.

20 Do you know if NiSource intends to have
21 an unregulated natural gas affiliate provide retail
22 natural gas services during the term of this
23 agreement?

24 A. I don't know what NiSource's plans are.
25 I don't think there's anything in the agreement that

1 would preclude them from having a company doing it.
2 They just couldn't use Columbia Retail Energy.

3 Q. And in the agreement when, and I know
4 that you've mentioned the licensing of the Columbia
5 Retail Energy name, is Exhibit A the specific service
6 marks that are licensed under this agreement?

7 MS. MORRISON: Can you reread that
8 question.

9 (Record read.)

10 A. That's my understanding.

11 Q. And am I correct that when the agreement
12 refers to service marks, a defined term, that it's
13 referring to the service marks on Exhibit A?

14 A. That's correct. That's my understanding.

15 Q. So if NiSource wanted to license the name
16 Columbia Retail Energy Supplier, they would be free
17 to do so under agreement or, I mean, separate from
18 this agreement?

19 A. There's nothing in this agreement that
20 would preclude NiSource from licensing Columbia with
21 another party. They can't license Columbia Retail
22 Energy during the term of this agreement.

23 Q. If you turn to section 2.2 of the
24 agreement on page 2, and were you here for the -- I
25 mean, you were here yesterday for the testimony of

1 Mr. White, correct?

2 A. Correct.

3 Q. And did you hear him testify about that
4 the Columbia Gas of Ohio standard choice offer, the
5 SCO program, would have no impact on this agreement?

6 A. I remember Mr. White testifying related
7 to the SCO agreement [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q. I'm going to ask you just a couple
19 questions about -- I'm going to have you take a look
20 at section 2.2, section 2.7, and section 2.8, these
21 are the definition of Auction Customers, Mass Market
22 Choice Customers, and Mass Market Eligible Customers.
23 Do you see those three?

24 A. 2.2, 2.7 --

25 Q. 2.7 --

1 A. -- and 2.8.

2 Q. -- 2.8.

3 A. Yes, I see those.

4 Q. Could you please review those three and
5 let me know when you're ready.

6 A. Okay.

7 Q. Ready?

8 A. Yes.

9 Q. Now, in the definition of auction
10 customers, "Auction Customers" means customers served
11 via Columbia Gas of Ohio's SSO or SCO offer, correct?

12 A. That's what it says, yes.

13 Q. And it also says that "Auction Customers
14 also are Mass Market Eligible Customers, but are not
15 Mass Market Choice Customers unless and until they
16 are converted as such," correct?

17 A. Except you flipped the "are" and the
18 "also," but yes, that's what it says.

19 Q. Fair enough.

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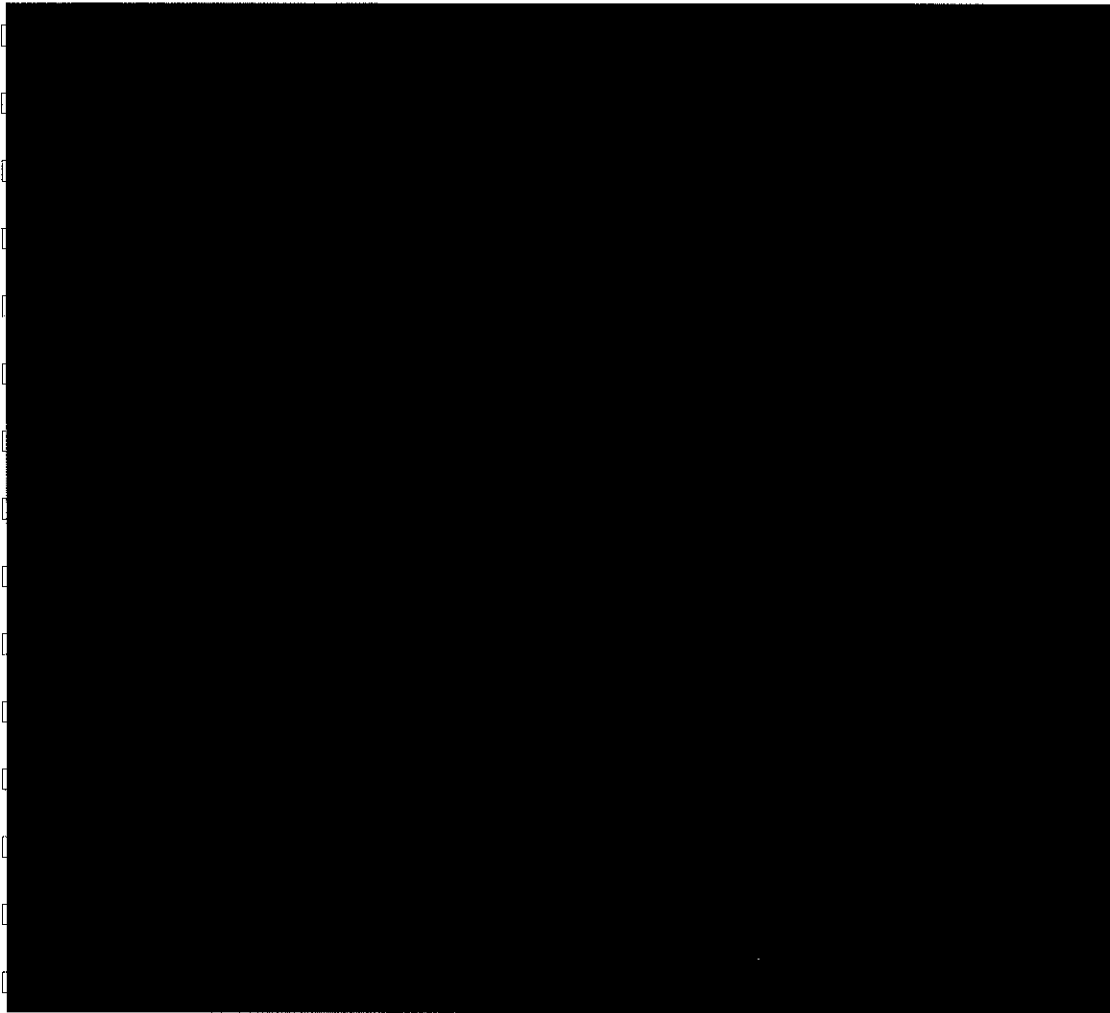
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16 Q. Okay. And so I'm just trying to
17 understand the conversion from mass market eligible
18 customer to mass market Choice customer. So if
19 you're the winning bidder in the auction under the
20 SCO, customers would be assigned to Columbia Retail
21 Energy, correct?

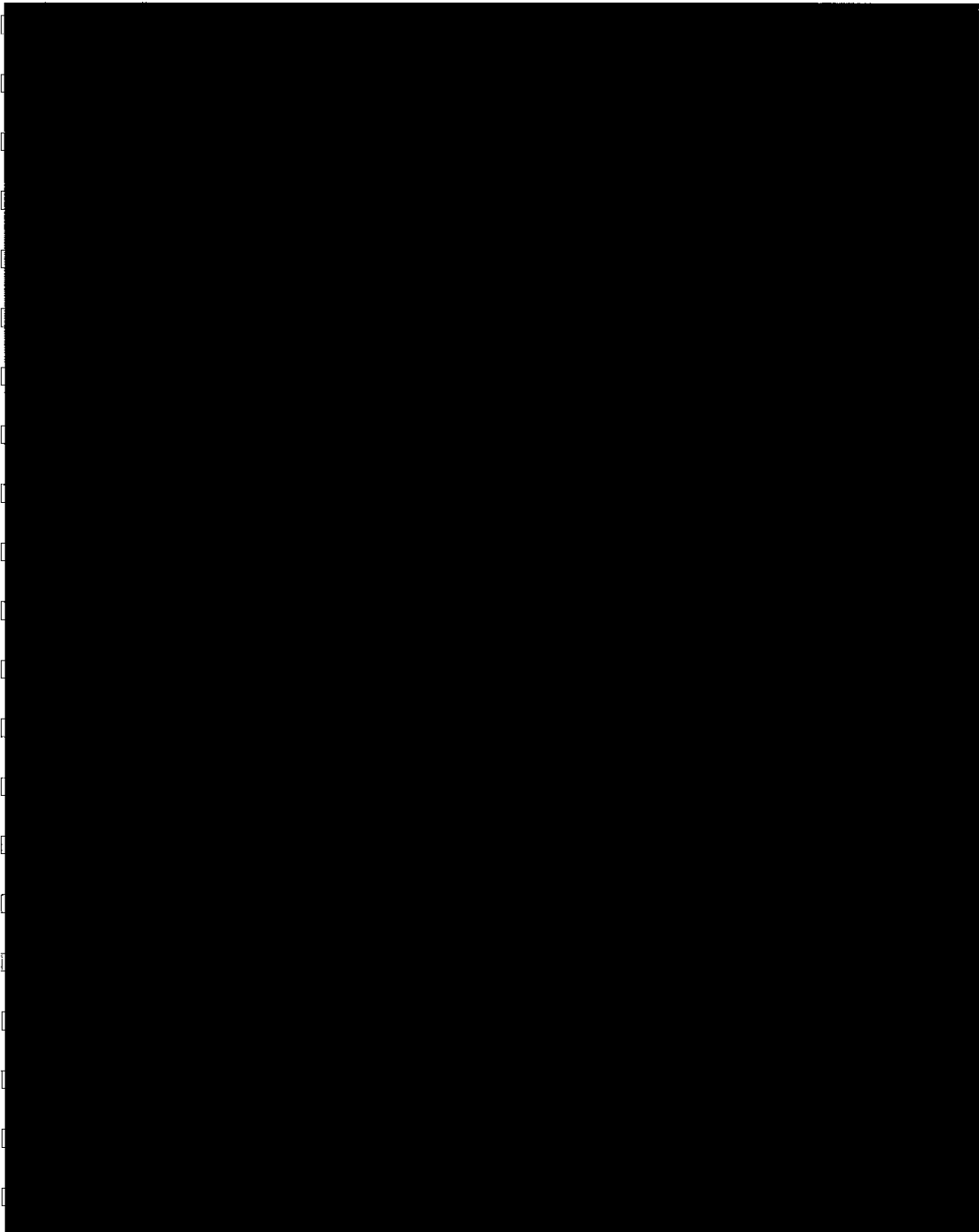
22 A. If we're a winning bidder in the SCO
23 auction, then for whatever number of tranches that we
24 ultimately are successful those customers would be
25 associated with us. I guess I take a little bit of

1 issue with "assigned."

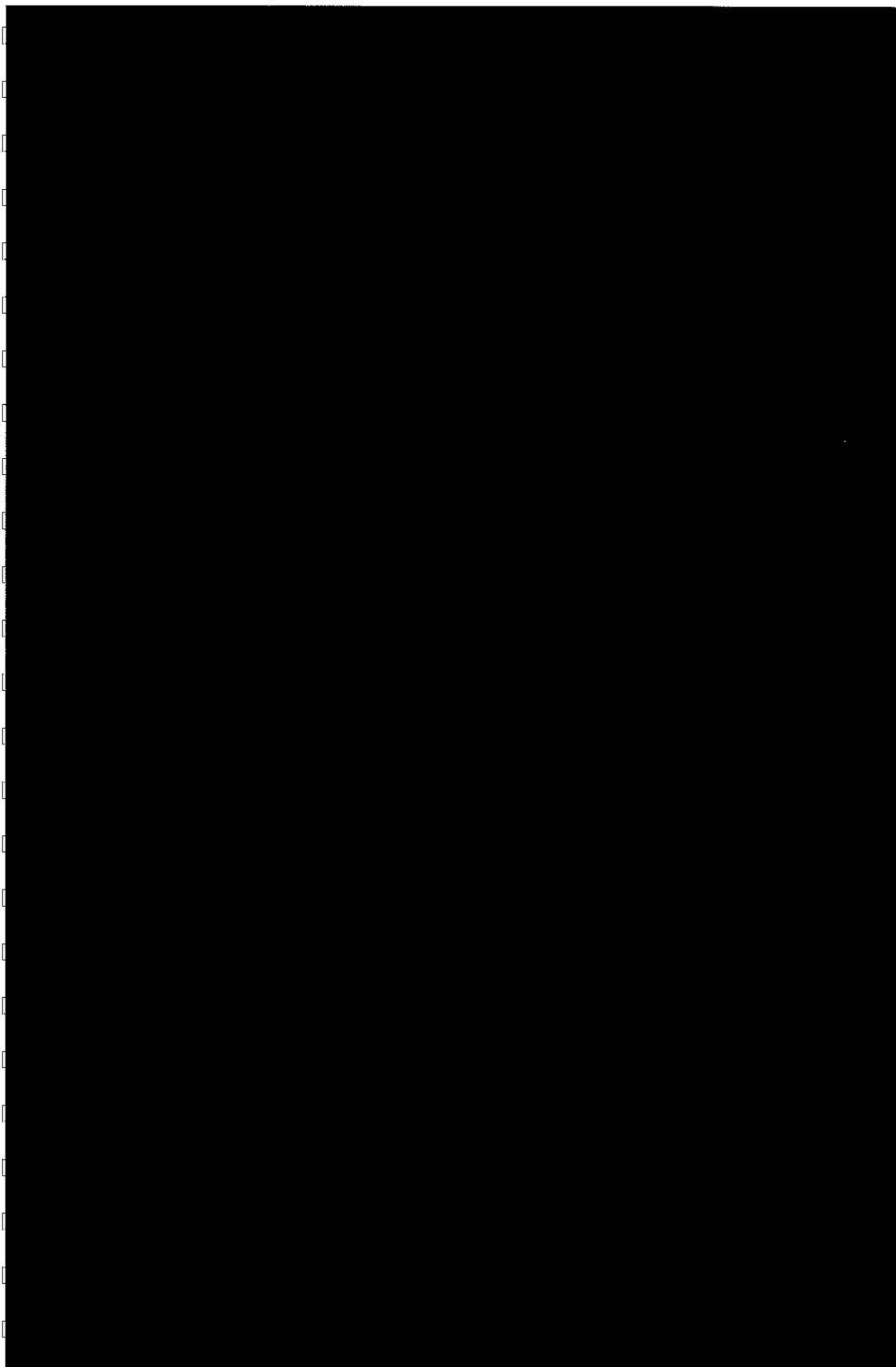
2 Q. With your explanation in mind, those
3 tranches would be groups of customers?

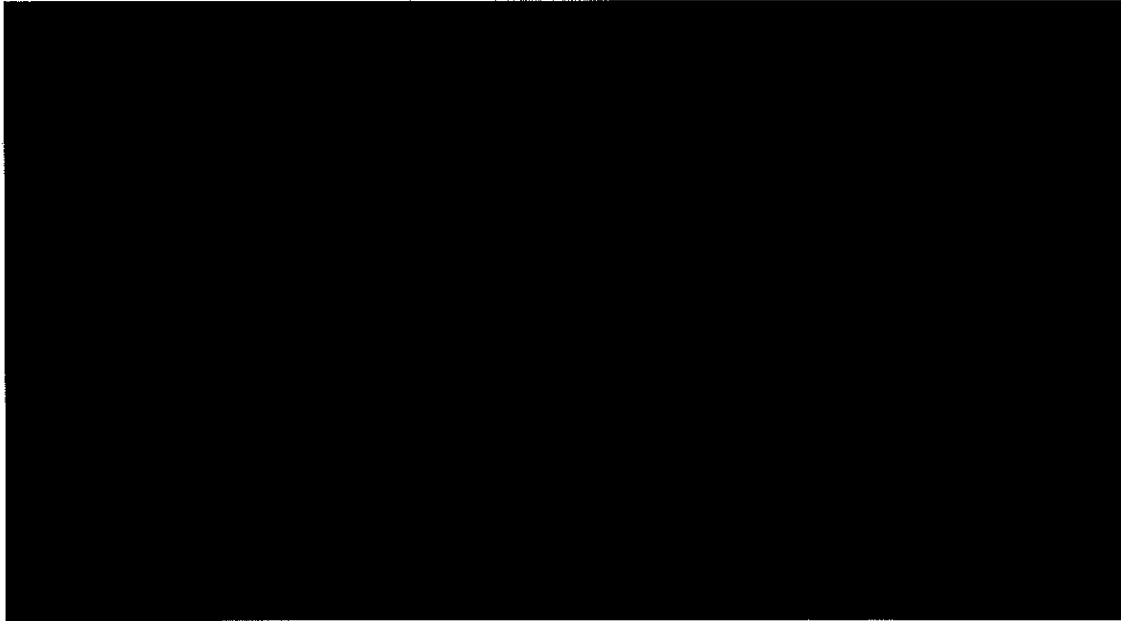
4 A. Yes. Correct.

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EXAMINER STENMAN: Okay. Ms. Morrison, while he's wrapping up, I would ask that you do any potential redirect first on the confidential issues so that then we can have everyone come back into the room and finish redirect and recross and hopefully wrap up.

MR. WARNOCK: Just two questions, these are public questions not about the agreement or anything.

EXAMINER STENMAN: Okay. Let's go back into the public portion of the record, then, just for these two questions.

(OPEN RECORD.)

1 CERTIFICATE

2 I do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by me in this matter on Tuesday, November 8, 2011,
5 and carefully compared with my original stenographic
6 notes.

7
8 Maria DiPaolo Jones, Registered
9 Diplomate Reporter and CRR and
Notary Public in and for the
State of Ohio.

10 My commission expires June 19, 2016.

11 (MDJ-3924A)

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/23/2012 3:31:22 PM

in

Case No(s). 10-2395-GA-CSS

Summary: Transcript Interstate Gas Supply, Inc.'s new proposed redacted versions of the Confidential Transcripts and Service Mark License Agreement electronically filed by Mr. Zachary D. Kravitz on behalf of Interstate Gas Supply, Inc.