

PRESIDING OFFICER'S
RULING NO. C2009-1/45

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of GameFly, Inc.

Docket No. C2009-1

PRESIDING OFFICER'S RULING
GRANTING THE OCTOBER 29, 2010 MOTIONS OF
GAMEFLY AND THE PUBLIC REPRESENTATIVE

(Issued November 8, 2010)

I. INTRODUCTION

On October 29, 2010, GameFly, Inc. (GameFly) filed a motion to have the documents bearing certain Bates Numbers admitted into evidence and transcribed into the formal record.¹ On October 29, 2010, the Public Representative also moved to admit into evidence certain spreadsheets underlying the Christensen Report.² The Postal Service opposes both of these motions.³ For the reasons that follow, both motions will be granted.

¹ Motion of GameFly, Inc. to Admit Certain Postal Service Documents into the Record, October 29, 2010 (GameFly Motion). The documents covered by the motion bear the following Bates Numbers: GFL685-704, 732-737, 761-773, 844-845, 849-854, 921- 938 and 1020-1063.

² Motion of the Public Representative to Admit Christensen Spreadsheets into the Evidentiary Record, October 29, 2010 (Public Representative Motion).

³ Reply of the United States Postal Service in Opposition to Motion of GameFly, Inc. to Admit Certain Postal Service Documents into the Record, November 1, 2010 (Postal Service Reply to GameFly); and Reply of the United States Postal Service in Opposition to Motion of the Public Representative to Admit Christensen Spreadsheets into the Evidentiary Record, November 1, 2010 (Postal Service Reply to Public Representative).

II. THE PARTIES' PLEADINGS

A. The GameFly Motion

The documents that GameFly seeks to have admitted into evidence and copied into the transcript fall into three groups:

(1) An unredacted version of the November 8, 2007, Audit Report of the Postal Service's Office of Inspector General ("OIG"), *Review of Postal Service First-Class Permit Reply Mail* (Report No. MS-AR- 08-001) (GFL685-704).

(2) Memoranda and other documents generated by an internal Postal Service working group that considered the appropriate rate and classification treatment of round-trip DVD mailers ("RDM") in 2005- 2007 (GFL732-737, 761-773, 844-845, 849-54).

(3) The August 2006 and November 2006 reports of the Postal Service's consultant, Christensen Associates, on the costs of processing Netflix DVD mail (GFL921-938, 1020-1063).

GameFly Motion at 1-2.

GameFly explains that "[p]ortions of the documents contained in these pages were quoted or cited" earlier in GameFly's Legal Memorandum, filed April 12, 2010,⁴ or the Testimony of Sander Glick filed on the same date (GFL-T-1). *Id.* at 2. GameFly asserts further that on June 16, 2010, many of these pages, or other pages from the same documents, were formally admitted into the record. *Id.* citing Tr. 4/158-652. GameFly also states that the documents "have been the subject of cross-examination by Postal Service counsel, rebuttal by Postal Service witnesses, and comment and questions by members of the Commission during the hearings." *Id.* at 2-3. Finally,

⁴ See Application of GameFly, Inc. for Non-Public Treatment of Two Documents, April 12, 2010, at 1, citing "the Memorandum of GameFly, Inc., Summarizing Documentary Evidence", April 12, 2010 (Under Seal) (Legal Memorandum).

GameFly asserts that the purpose of its motion is “to eliminate any doubt about the evidentiary status of the documents....” *Id.* at 4.

In support of its motion, GameFly anticipates and addresses objections to the admission and transcription of each of the three groups of documents on grounds of relevance, authenticity, hearsay, lack of foundation, and surprise.

The OIG Report. GameFly points out that the hearing transcript already includes several pages of the OIG Report. *Id.* at 5, citing Tr. 4/281-284.⁵ Those pages of the OIG Report and other documents were admitted into the record over Postal Service objections during the June 16, 2010 hearing. Notwithstanding the opportunity provided to the Postal Service by the Presiding Officer to file a motion to strike those documents, the Postal Service never filed such a motion. *Id.* at 5-6.

GameFly asserts that because the Postal Service failed to contest the Presiding Officer’s June 16, 2010 ruling either by filing a motion to strike or by appealing to the full Commission, that ruling is final. *Id.* 5-6. GameFly claims that this conclusion is reinforced by subsequent rulings by the Presiding Officer.⁶ *Id.* at 6-7. Finally, GameFly argues that the admission into evidence of the remaining portions of the OIG Report should not surprise the Postal Service. *Id.* at 7.

The Christensen Report. As with the OIG Report, the GameFly Motion highlights the passages in the record, testimony, and transcript that buttress the central nature of the Christensen Report throughout the proceeding. *Id.* at 7-8. Among other references, it shows the Postal Service’s recurring reliance upon it in discovery answers and testimony. *Id.* at 8. GameFly asserts that Christensen Associates is a reputable economic consulting firm and that because the Postal Service commissioned the report, it cannot challenge the report’s authenticity. *Id.* at 9. In light of these facts, GameFly

⁵ The Bates numbers of those pages are: GFL444-447.

⁶ Presiding Officer Ruling Granting, in Part, Postal Service Motion for Institutional Witness, July 6, 2010 (P.O. Ruling 24); Presiding Officer’s Ruling Granting, in Part, GameFly’s Motion to Compel, October 1, 2010 (P.O. Ruling 40); and Presiding Officer’s Ruling on Objections to Admission of GFL-CX-1, October 18, 2010 (P.O. Ruling 41).

argues that the Christensen Report constitutes an admission by the Postal Service which takes the report outside the scope of the hearsay rule. *Id.*

In addition, GameFly argues that the admissibility of the Christensen Report is further supported by the earlier admission of portions of the report into evidence over Postal Service objections and without a timely challenge of the June 16, 2010 ruling by the Presiding Officer, *see supra*, bars relitigation of the issue of the report's admissibility.⁷ *Id.* Given the prior admission of select pages of the report, GameFly claims that admission of the whole document is warranted. *Id.* Finally, it argues that because the Postal Service has had ample notice of GameFly's reliance on the report and has even cross-examined witness Glick about the Christensen Report on June 16 and October 28, 2010, it cannot feign surprise at the entire report's admission into evidence. *Id.* at 9-10.

Memoranda of Postal Service Working Group. GameFly urges that memoranda and other documents created by members of the Postal Service's working group on round trip DVD mailers (RDM) should be admitted as relevant to the issues in this case. These documents discuss costing, classification, and operational concerns at issue in this proceeding. *Id.* at 10. GameFly asserts that these materials are sufficiently trustworthy and that any authenticity objections are meritless. *Id.* at 10-11.

GameFly frames its request for admission of these documents in terms of the serial nature of the set of documents that the RDM work group generated between 2005 and 2007. *Id.* at 11. GameFly notes that a substantial number of RDM documents have already been admitted into evidence over the Postal Services' objections.⁸ Like the first two sets of documents, this third group has been the subject of extensive

⁷ The pages previously admitted into evidence have the following Bates numbers: GFL264, 934, and 1037.

⁸ *Id.* at 11 citing Tr. 4/353-57, 359; P.O. Ruling C2009-1/24; *accord*, P.O. Ruling C2009-1/40 and P.O. Ruling C2009-1/41. "These documents have been transcribed in the formal record at Tr. 4/158, 185-199, 202-215, 217-234, 288-297, 351-364, 377 and 537-575." See GameFly Motion at 11. The documents previously admitted bear the following Bates numbers: 55-69; 101; 105-114; 125-127; 210-227; 464-473; 733-734; 767; 769; 771; 773; 805; 845; 857; 867-870; 1663; 77696-77698; 77738; 77808; 77814-77836; 77852; 77872-77873; 78009; 78014; 78057-78058; 78090; and 79117-77119.

citation since GameFly filed its April 12, 2010 Legal Memorandum. See, e.g., GameFly Legal Memorandum at paras. 28, 33, 36, 51, 114, 143.

B. Postal Service Reply to the GameFly Motion

The Postal Service opposes the GameFly Motion asserting that “[t]his motion represents the first time that GameFly has formally attempted to secure evidentiary status for these studies and documents.” Postal Service Reply to GameFly at 1. The Postal Service argues that although it produced these documents in discovery, it “has made no representations regarding their significance, accuracy or reliability”; that GameFly “has not met its burden...to authenticate or otherwise demonstrate reliability of documents in accordance with the Federal Rules of Evidence” (footnote omitted); and, with respect to the Christensen Report and OIG Report, “no party has sponsored them by providing necessary authentication...specified by Rule 31(k) [of the Commission’s rules of practice].”⁹ *Id.* at 2-3.

As a preliminary matter, the Postal Service argues that there is no basis in law for GameFly’s allegation that a waiver arises against the Postal Service merely because it did not seek reconsideration of earlier Presiding Officer rulings on other documents, which lacked legal analysis or authoritative support. *Id.* at 3, n.5. The Postal Service then presents essentially three reasons why the Presiding Officer should deny GameFly’s motion: (1) GameFly has not met its burden of demonstrating the reliability of the documents; (2) GameFly “has failed to comply with the Commission’s rules governing use of the Christensen Study¹⁰ and the OIG Report as evidence”; and (3) none of the groups of documents are admissible evidence. *Id.* at 3, 9, 10.

With respect to its first argument, the Postal Service objects to what it characterizes as GameFly’s attempt to avoid its obligation to establish the reliability

⁹ In asserting the need for authentication under rule 31(k), the Postal Service presents a list of the matters it claims require such authentication. See *id.* at 2-3.

¹⁰ The Postal Service cites GFL1020-1063 as containing the Christensen Report. *Id.* at 1, n.1; compare GFL 921-938.

and admissibility of the subject documents by improperly placing on the Postal Service an obligation to demonstrate that these documents are unreliable. *Id.* at 3. The Postal Service asserts that this is contrary to established precedent and improper because the Postal Service believes documents such as the Christensen Report are flawed. *Id.* at 3–5.¹¹

The Postal Service cites the testimony of witness Seanor that addresses how and why the Christensen study is unreliable. *Id.* at 4. It argues “no party has established the reliability of the Christensen study” and that it provides no good estimates as to costs of handling DVD mail. *Id.* at 4-5. The Postal Service asserts that under the “laws of evidence” it is axiomatic that GameFly bears the burden of establishing a *prima facie* case. *Id.* at 5.

The Postal Service seeks to buttress its claims on the basis of Commission precedents regarding prior Commission practice regarding the admission of studies, analyses, and other documents, including public records. *Id.* at 5-7. It asserts that GameFly should be held to no “less a standard” that “ensure[s] effectiveness of...procedures to produce reliable evidence and afford all parties due process rights....” *Id.* at 6.

The Postal Service concludes with the following additional contentions: (1) GameFly has failed to comply with rules (*i.e.*, rules 31(k) and 30(e)) that govern the use of the Christensen Study and the OIG Report as evidence; (2) that by deferring this attempt to enter the subject study and report into evidence until hearings have ended, GameFly passed up its opportunity to sponsor the documents as required under the rules; and (3) that the Christensen Study, OIG Report and other documents at issue cannot be entered into evidence without being sponsored, authenticated or otherwise shown to be reliable. *Id.* at 11, citing Fed. R. Evid. 803(6), 901(a), 902(11).

¹¹ The Postal Service cites the alleged unreliability of the Christensen Report as grounds for excluding the OIG Report, which the Postal Service argues is heavily reliant upon the Christensen Report. *Id.* at 4.

The Postal Service asserts that “[t]o a very large degree, ... GameFly offers its arguments and testimony, not as the opinion of its own experts, but rather as summaries of unsponsored conclusions and interpretations.” *Id.* at 8. It argues that a proponent of a finding cannot support it without adducing “substantial evidence.” *Id.*

C. The Public Representative Motion

The Public Representative asserts two principal grounds for the admission of the spreadsheets that support the findings of the Christensen Report. First, he notes that GameFly’s witness Glick has relied upon the Christensen Report and the underlying spreadsheets in both his direct and rebuttal testimony. Public Representative Motion at 1. Second, the Public Representative points out that the Postal Service cross-examined witness Glick on the spreadsheets during the October 28, 2010 hearing thereby demonstrating the importance of the spreadsheets. *Id.*¹² Given the reliance by both GameFly and the Postal Service on these spreadsheets, the Public Representative submits that the spreadsheets should be filed with the Commission and admitted into evidence.

D. The Postal Service Reply to the Public Representative Motion

In its opposition, the Postal Service argues that it produced the “spreadsheets during discovery, but has made no representations regarding their significance, accuracy or reliability...and [that] no party has sponsored them as required by the Commission rules...[or]...authenticated or otherwise demonstrated their reliability....” Postal Service Reply to Public Representative at 1. More specifically, the Postal Service asserts that the requirements of rule 31(k) of the rules of practice for admitting a study into evidence have not been met and that the spreadsheets constitute

¹² In that connection, the Public Representative states that having used the spreadsheets for cross-examination, the Postal Service should have offered the spreadsheets as cross-examination exhibits. *Id.*

inadmissible hearsay under the Federal Rules of Evidence. *Id.* at 2. In making its hearsay objection, the Postal Service argues that none of the parties have demonstrated that the business records exception to the hearsay rule set forth in Federal Rules of Evidence 803(6) applies. *Id.*

III. ANALYSIS

A. The GameFly Motion is Granted

A common dispute in Federal practice is whether a party may rely upon evidence from documents produced by its own officers or employees. The present controversy concerns GameFly's desire to rely upon documents generated by or for the Postal Service and maintained by the latter. GameFly, which has already introduced many documents of this nature into evidence, seeks the admission into evidence of materials that complete, complement, or place into context similar pages already admitted. As before, GameFly generally justifies its motion on the ground that these documents are admissions against the interests of its opponent. The Postal Service objects on several grounds, including (1) GameFly's failure to satisfy its evidentiary burden under the rules of evidence and cited precedent; (2) the lack of foundation and sponsorship of studies and analysis as required under 39 CFR part 3001, to establish reliability and accuracy; and (3) the inapplicability of the hearsay exception to business records to documents which it asserts are of questionable authenticity.

These questions have been raised previously in this case and the objections as to authenticity and hearsay have been rejected. Proper interpretation of Commission rules is frequently informed by reference to analogous Federal Rules of Evidence, as well as relevant judicial and administrative case law. Each objection to admission must be viewed in light of the particularities of documents at issue.

The OIG Report. The Postal Service's objections based upon lack of foundation, sponsorship, hearsay, authenticity, reliability or accuracy are not persuasive. As a threshold matter, the law of the case supports admission of the OIG Report into

evidence. Portions of the report were admitted into evidence during the June 16, 2010 hearing. The Postal Service was expressly given the opportunity to move to strike the OIG Report as evidence. It chose not to do so. It also chose not to seek Commission review of P.O. Ruling C2009-1/24 as well as P.O. Ruling C2009-1/40 and P.O. Ruling C2009-1/41. The refusal of the Postal Service to accept the consequences of its failure to challenge those earlier rulings does not diminish the fact that they are binding rulings in this proceeding. Absent a showing of special circumstances, which has not been made here, those earlier rulings stand.

In addition, the OIG Report is indisputably a report of a public agency, which is nearly entirely available in the public domain. It was prepared by the government office charged with, and dedicated to, conducting investigations, developing evaluations, and identifying irregularities in processing or delivering mail.¹³ The OIG Report is thus subject to official notice under 39 CFR 3001.31(d).¹⁴ *Compare* Fed. R. Evid. 803(8). The Postal Service's contentions regarding past Commission practice regarding the evidentiary uses of official reports do not preclude admission of the OIG Report. The weight, if any, to be given to the OIG Report can be argued on brief.

The decision to admit this report into evidence is reinforced on a separate basis as well. For present purposes, no party disputes that before the GameFly Motion was filed, the transcript already included several pages of the OIG Audit Report. *Compare* GameFly Motion at 5, citing Tr. 4/281-284. No sound rationale has been raised as to

¹³ Congress established the USPS OIG as an independent and objective unit within the Postal Service to detect and prevent fraud, waste, and misconduct. The role of investigations is to receive and investigate complaints or information concerning the possible existence of any activity constituting a violation of law, rules, or regulations. Under the Inspector General Act, the USPS OIG can assess all USPS records and conduct any investigation which in the Inspector General's judgment is necessary or desirable.

¹⁴ Subpart (d) of the rule states: "(d) *Public document items*. Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economic statistical data issued by any of the Executive Departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offeror thereof to be reasonably available to the public, such document need not be produced or physically marked for identification, but may be offered in evidence as a public document item by clearly identifying the document and the relevant parts thereof." See also http://www.uspsig.gov/FOIA_files/MS-AR-08-001.pdf.

why the remaining pages of the OIG Report, which provide the proper context and ancillary analysis related to the admitted pages, must be excluded from the record.

The Postal Service seeks to preclude the admission into evidence of the OIG Report on the ground that it relies upon the Christensen Report, which the Postal Service argues is itself seriously flawed. This argument is also rejected. For the reasons set forth below, the Christensen Report is admitted into evidence. Any alleged shortcomings of that report can be argued on brief and will be duly considered in determining what weight, if any, should be attached to the Christensen Report.

The Christensen Report. Christensen Associates produced two main documents: the “Final Report and Recommendation” (GFL921-938) and the associated “Survey Instruments, Methodologies, and Results” (GFL1020-1063) (collectively referred to herein as the Christensen Report). The Postal Service is correct that not all documents that appear to be studies commissioned by the Postal Service are exempt from the rules of evidence which place the initial burden on the proponent of the evidence to show authenticity and reliability. However, the record in this case supports the admission of the Christensen Report.

First, the admission of the Christensen Report is consistent with the law of the case under P.O. Rulings 24, 40, and 41, and consistent with the standards of Federal practice. For the reasons given above in the discussion of the OIG Report, the failure of the Postal Service to challenge the June 16, 2010 rulings admitting portions of the Christensen Report into evidence became the law of the case.

Second, the Postal Service’s argument that it “has made no representations regarding...[the]...significance, accuracy, or reliability [of the Christensen Report]” is contradicted in this record. Postal Service Reply to GameFly at 1. As GameFly points out:¹⁵

¹⁵ Motion of GameFly, Inc. to Admit Certain Postal Service Documents into the Record, October 29, 2010.

The Postal Service has also invoked the Christensen report. USPS answers to GFL/USPS-17, 18 (admitting that the Postal Service used the Christensen Report to estimate manual culling); USPS response to GFL/USPS-202 (using the Christensen report to make the point that the handling of Netflix mail is not identical at all facilities); Tr. 10/17889 [sic], 1792-93, 1795 (USPS witness Seanor) (citing Christensen report as support for his position on the efficiency of culling Netflix mail at the point of collection).

Id. at 8.

Having chosen to rely upon the Christensen Report, the Postal Service cannot successfully interpose a blanket objection to the admission of the report into evidence.¹⁶

As an adoptive admission by the Postal Service, a party opponent, the report does not constitute hearsay evidence under Federal Rules of Evidence 801(d)(2)(B). This negates the Postal Service's objection that these documents have not been authenticated, and therefore are not qualified as business records excepted from the hearsay rule in Federal Rules of Evidence 803(6).

By relying upon the Christensen Report, the Postal Service has for evidentiary purposes adopted the report and the spreadsheets as a party admission. The admission of the Christensen Report into evidence does not preclude the Postal Service from arguing in its brief that limitations on the probative value of the report undercut GameFly's attempts to rely on the report to support its case. In other words, admission of the report does not preclude the Postal Service from presenting arguments regarding the appropriate weight to be accorded to the report.

The Postal Service's reliance upon rule 31(k) of the rules of practice to bar admission of the Christensen Report is also misplaced. The Postal Service cites this rule to bar admission of the report on the grounds that no party has attempted to provide the foundation for admission that rule 31(k) requires. What the Postal Service

¹⁶ Notwithstanding its reliance upon the Christensen Report, the Postal Service could, and did, introduce evidence during the course of the hearing witness Seanor's testimony that calls into question the reliability of specific aspects of the report in order to place limits on the evidentiary uses to which the report can be put.

fails to note is that the foundational requirements that it demands be satisfied are foundational requirements that it, and no other party, is qualified to provide. In essence, the Postal Service has sought to rely upon the Christensen Report and the underlying spreadsheets supporting it without satisfying the foundational requirements of rule 31(k), and now seeks to bar reliance by other parties. Under these circumstances, it would be inappropriate to deny the admission into evidence of the report or the spreadsheets.¹⁷ The adoptive admission of the Postal Service bars the Postal Service from invoking the requirements of rule 31(k).

Memoranda of Postal Service Working Group. The GameFly Motion seeks to admit into evidence certain documents of the internal working group of the Postal Service which addressed the treatment of RDM from 2005 to 2007. GameFly points out that many of documents from the RDM appear to be versions of earlier documents or redrafts. GameFly Motion at 2. These documents were also Postal Service documents provided to GameFly during discovery. GameFly now seeks admission of these documents as additional admissions against interest by a party opponent.

GameFly correctly explains that “[b]ecause the Postal Service employees created the documents in the course of their employment, they constitute admissions by the Postal Service....” *Id.* at 11. What is more, a considerable volume of the pages from the series of RDM memorandum and documents were previously admitted into evidence over Postal Service objections. The GameFly Motion reflects that:

For these reasons, the Presiding Officer admitted a substantial number of RDM working group documents into evidence over the Postal Service’s objections. Tr. 4/353-57, 359; Presiding Officer’s Ruling No. C2009-1/24; *accord*, Presiding Officer’s Ruling No. C2009-1/40 and 41. These documents have been transcribed in the formal record at Tr.

¹⁷ The Postal Service’s reliance upon the Christensen Report distinguishes this case from the proceedings in Docket No. R87-1 that it has cited. Postal Service Reply to GameFly at 6; *compare* Fed. R. Evid. 801(d)(2)(D).

4/158, 185-199, 202-215, 217-234, 288-297, 351-364, 377
and 537-575.

Id.

The Postal Service again asserts that GameFly has not satisfied its burden, the documents do not meet the “business records” exception to hearsay, and that the documents have not been adequately authenticated with the requisite sponsorship. Postal Service Reply to GameFly at 11.

The Postal Service relies on case law on the “business records” exception. The cases cited reflect application of the general standard that the record must have been made at or near the time of the transaction and kept in the course of a regularly conducted business activity, as well as it must be the regular practice of that business activity to make the record. Unlike most Federal cases where the exception pertains to documents from non-parties, in the present case, the documents instead are moved into evidence as admission of a party opponent or statements against interest by the party’s employees. Thus, rule 803(6) on business records does not equate to the governing test or criteria for exclusion of the RDM documents.

Under 39 CFR 3001.31(b), “[d]ocuments and detailed data and information shall be presented as exhibits. Exhibits should be self-explanatory....Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made.” This language underscores that when a series of documents like the RDM group’s memoranda entail a series of reports that reflect a continuing course of conduct by the internal employees of a party opponent, admission of selective pages of the materials may not be sufficient to place the course of conduct in its full or correct context. To ensure that the materials from the serial set of reports are not placed in an unduly limited context that distorts the evolution of the developments that were considered, and the range of alternative approaches discussed, the full set of documents should be admitted into evidence as well, absent a showing of good cause. See, e.g., Fed. R. Evid. 801(d)(2)(D). The Postal Service invokes several precedents issued by the Commission in earlier dockets, but they are distinguishable, and thus do not require an outcome that precludes admitting the

periodic RDM memoranda. Accordingly, the RDM documents with Bates stamps GFL732-737, 761-773, 844-845, and 849-54 are admitted, subject to earlier requirements that they remain under seal to the extent previously ordered.

B. Analysis and Ruling on Public Representative Motion

The Public Representative Motion seeks to admit the spreadsheets used by Christensen Associates. With respect to the issue of authenticity, the Postal Service states that the spreadsheets were produced during discovery. Postal Service Reply to Public Representative at 1.

Having determined that the Christensen Report should be admitted into evidence, it is both necessary and appropriate to admit the spreadsheets underlying the report. Both are properly admitted as adoptive admissions by a party opponent. See 39 CFR 3001.30(e)(3). As adoptive admissions, the hearsay rule does not apply. The Postal Service remains free to critique the spreadsheets on brief. If it chooses to do so, its arguments will be considered in determining the weight to be accorded to the spreadsheets.

For the reasons set forth above, the motion of the Public Representative to Admit Christensen Spreadsheets into the Evidentiary Record will be granted.

RULING

1. The Motion of GameFly, Inc. to Admit Certain Postal Service Documents into the Record, filed October 29, 2010, is granted.
2. The Motion of the Public Representative to Admit Christensen Spreadsheets into the Evidence, filed October 29, 2010, is granted.

Dan G. Blair
Presiding Officer