

848

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

IN THE MATTER OF MISSOURI GAS ENERGY'S TARIFFS  
TO IMPLEMENT A GENERAL RATE INCREASE FOR  
NATURAL GAS SERVICE

Case No. GR-2004-0209

FILED

JUL 13 2004

Missouri Public  
Service Commission

DEPOSITION OF JOHN QUAIN

May 5, 2004

ORIGINAL

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Exhibit No. 848

Date

Case No.

GR-2004-0209

Reporter

STATE OF MISSOURI

PUBLIC SERVICE

In the Matter of Missouri Gas                 )  
Energy's Tariffs to Implement a                 ) Case No. GR-2004-0209  
General Rate Increase for Natural             )  
Gas Serviced.                                     )

DEPOSITION OF JOHN QUAIN,

a witness, produced, sworn and examined on the 5th day of May, 2004, between the hours of 8:00 a.m. and 6:00 p.m. of that day at the law offices of the Missouri Public Service Commission, 200 Madison Street, Room 810, in the City of Jefferson, County of Cole, State of Missouri, before

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and Notary Public within and for the State of Missouri,  
commissioned in Cole County, Missouri, in the  
above-entitled cause, on the part of the Staff of the  
Missouri Public Service Commission, pursuant to Notice.

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1 SIGNATURE INSTRUCTIONS:

2 Presentment waived; signature requested.

3 EXHIBIT INSTRUCTIONS:

4 Attached to original.

7 I N D E X

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1 JOHN M. QUAIN, being sworn, testified as follows:

2 DIRECT EXAMINATION BY MR. FRANSON:

3 Q. Sir, please state your name.

4 A. John M., as in Michael, Quain, Q-u-a-i-n.

5 Q. Mr. Quain, my name is Robert Franson. I'm  
6 an attorney representing the Staff of the Missouri Public  
7 Service Commission. And I understand you have filed  
8 testimony in MGE case before the Missouri Public Service  
9 Commission, GR-2004-0209; is that correct?

10 A. I'm not sure about the number, but I did  
11 file testimony in this case, yes.

12 Q. On behalf of Missouri Gas Energy?

13 A. Yes, sir.

14 Q. A division of Southern Union?

15 A. Yes, sir.

16 Q. Have you ever had your deposition taken  
17 before?

18 A. Yes, I have.

19 Q. So you're generally familiar with the  
20 process?

21 A. Uh-huh.

22 Q. You're represented by Mr. Hack here today?

23 A. Yep.

24 Q. Okay. A couple things about the deposition  
25 here today. No. 1, I'll be asking you a series of

1 questions, and you'll need to answer verbally for the  
2 court reporter. Have any problem with that?

3 A. No.

4 Q. And also, I may ask a question. As I'm  
5 sure you're well aware, Mr. Hack may find something  
6 objectionable. At that point what I'm asking you to agree  
7 to is you'll wait until the objections have gone back and  
8 forth, and unless Mr. Hack tells you directly not to  
9 answer the question, you'll need to answer the question.  
10 Is that acceptable to you?

11 A. Yeah.

12 Q. Okay. Mr. Quain, you went to law school;  
13 isn't that true?

14 A. Yes, sir, I did.

15 Q. Where was that?

16 A. Temple University in Philadelphia.

17 Q. And after you graduated, you went to work  
18 somewhere. Where was that?

19 A. I originally worked in Norristown,  
20 Pennsylvania, representing the interests of small GPU  
21 shareholders in the wake of the TMI accident.

22 Q. And what did you do after that employment?

23 A. I was offered a position on the staff of  
24 the Pennsylvania Public Utility Commission in what they  
25 called their rates division, which was litigating rate

1 cases.

2 Q. Now, how is that -- what approximate time  
3 period did you work for the Pennsylvania Public Utilities  
4 Commission?

5 A. 1982 to '86, the first time.

6 Q. And did you -- during that 1982 to 1986,  
7 how was -- were you actually employed by Pennsylvania  
8 Public Utilities Commission?

9 A. Yes, sir.

10 Q. And what was your job with the Utilities  
11 Commission?

12 A. I was a staff attorney, doing much the same  
13 as you're doing today, representing the commission's  
14 interest before active rate proceedings. It was almost  
15 exclusively litigating rate cases.

16 Q. And was it natural gas?

17 A. Natural gas, electric, telecommunications,  
18 water.

19 Q. And did you -- was the staff of the  
20 Pennsylvania Public Utilities Commission a party to the  
21 case?

22 A. Yes, they were.

23 Q. Much like Missouri?

24 A. Yeah. At that point in time they handled  
25 it a little bit differently. Change of statute, I think

1 it was in '86, where they bifurcated the staff. At that  
2 time we were just part of the regular law bureau. Later  
3 by statute became a separate division that was strictly  
4 litigation, did no advisory.

5 Q. Okay.

6 A. There was some advisory role that was  
7 played if you were not litigating a case.

8 Q. Okay. Now, after 19-- well, sometime in  
9 1986, did you go do something else?

10 A. Yeah.

11 Q. And what was that?

12 A. I left for the law firm of Tucker,  
13 Arensberg, A-r-e-n-s-b-e-r-g.

14 Q. And what kind of work did you do there?

15 A. Public utility, representation of consumer,  
16 both residential, commercial, industrial and some natural  
17 gas company representation.

18 Q. So --

19 A. And some electric.

20 Q. A little bit of mixture of both company and  
21 consumer interests?

22 A. Uh-huh.

23 Q. And how long were you there?

24 A. I was there until the spring of '93.

25 Q. And what happened in 1993?



1           A.       I was appointed by the governor, nominated  
2 by the governor to fill a vacancy on the Public Utility  
3 Commission. I was eventually confirmed for that position  
4 by the state senate and served my first term starting  
5 April 1, 1993, I believe.

6           Q.       And how many terms did you serve?

7           A.       That was an abbreviated term. I think it's  
8 the same in most states. When the vacancy was there, the  
9 term continued to run because they were sequential. There  
10 was three years left on that term. In the interim, the  
11 current governor's term expired. Tom Race was elected  
12 governor. He made me chairman in the last year of my  
13 first term and reappointed me to a full five-year second  
14 term.

15          Q.       Okay. And at some point you left the  
16 Pennsylvania Public Utilities Commission, and what do you  
17 do now?

18          A.       I left the Pennsylvania Commission in the  
19 summer of '01 and joined the law firm that I'm currently  
20 associated with.

21          Q.       And what -- I believe you stated that law  
22 firm earlier?

23          A.       Klett, Rooney, Lieber & Schorling.

24          Q.       Okay. Now, as part of this case, you have  
25 filed testimony on behalf of Missouri Gas Energy; is that

1 correct?

2 A. That's correct.

3 Q. Is it fair to say that the general subject  
4 matter of your testimony is public policy?

5 A. Yeah, the application of public policy to  
6 rate proceedings.

7 Q. What would your definition of public policy  
8 be?

9 A. The definition of public policy?

10 Q. Yes, to you as you use in your testimony?

11 A. I think the definition would be every state  
12 commission has public policy objectives, trying to create  
13 an environment within the state that's economically  
14 healthy, that has just and reasonable rates, that  
15 contributes to the economy of the state and has utilities  
16 that contributed to the economy of the state as well.

17 Q. Okay.

18 MR. FRANSON: Could you mark that as Quain  
19 Exhibit 1?

20 (QUAIN EXHIBIT NO. 1 WAS MARKED FOR  
21 IDENTIFICATION BY THE REPORTER.)

22 BY MR. FRANSON:

23 Q. Mr. Quain, could you look at what's been  
24 marked as Quain Exhibit No. 1, and when you've had an  
25 opportunity to review that, please --

1 MR. HACK: Can you identify it, Robert?

2 MR. FRANSON: Well, I'm going to ask him to  
3 do it. I'm asking him to look at it first.

4 THE WITNESS: Mr. Franson, I happen to have  
5 a disability where I suffer from low vision.

6 BY MR. FRANSON:

7 Q. I'm sorry, sir. I didn't know that.

8 A. I'm legally blind, so --

9 Q. What this is, I'm --

10 A. -- if you'd describe it to me.

11 Q. Okay. I'm suggesting to you this is your  
12 direct testimony of John M. Quain dated -- well, it's  
13 labeled Jefferson City, Missouri, and it's November 2003.

14 A. Okay.

15 Q. Okay. Mr. Quain, are you able to review  
16 Exhibit No. 1?

17 A. No, but I'm familiar with my testimony.

18 Q. Okay.

19 MR. FRANSON: Then, Mr. Hack, are you able  
20 to agree for purposes of this deposition that Quain  
21 Exhibit No. 1 is Mr. Quain's direct testimony?

22 MR. HACK: I would note that it appears to  
23 be the text of his direct testimony, absent both the  
24 affidavit and schedule JMQ-1, for the record.

25 MR. FRANSON: Thank you.

1 BY MR. FRANSON:

2 Q. Mr. Quain, you've got several things in  
3 your testimony we'll be talking about, but a couple things  
4 I want to ask you about first. Is it fair to say that you  
5 did some preparation for this deposition here today?

6 A. Sure.

7 Q. Okay. Did you review any documents?

8 A. Yeah, I reviewed the test-- my own  
9 testimony.

10 Q. Okay. What else did you review?

11 A. I reviewed the testimony of the OPC rate of  
12 return witness.

13 Q. And do you know the name of that witness?

14 A. I don't recall.

15 Q. It's the OPC witness?

16 A. On rate of return.

17 Q. Could that be Travis Allen?

18 A. Yes.

19 Q. Okay. Did you review anyone else's  
20 testimony?

21 A. I reviewed Mr. Murray's testimony on rate  
22 of return, witness for the Staff.

23 Q. Okay. That's David Murray, the Staff  
24 witness on rate of return?

25 A. Uh-huh.

1 Q. Okay.

2 A. I reviewed Mr. Oglesby's testimony,  
3 president of Missouri Gas Energy.

4 Q. Did you review any other testimony?

5 A. I reviewed Mr. Noack's testimony from  
6 Missouri Gas Energy.

7 Q. Okay. Anyone else?

8 A. Reviewed Mr. Dunn's testimony, rate of  
9 return witness for Missouri Gas Energy. Reviewed some of  
10 the regulations of the Missouri Commission, statute,  
11 Public Utility Code.

12 Q. Okay.

13 A. Certainly the case law associated with my  
14 testimony and surrounding provision of expert testimony.

15 Q. Okay.

16 A. Some documentation from the Regulatory  
17 Research Associates, data responses that I provided to  
18 OPC, I think it was, earlier this year, some of the  
19 general filing information of the company, schedules, that  
20 kind of thing.

21 Q. Now, when you reviewed statutes, how did  
22 you obtain those statutes? Did you do that yourself or  
23 did someone else assist you?

24 A. My associate researched it for me.

25 Q. And what's your associate's name?

1 A. Brian Knipe.

2 Q. Okay. But you actually reviewed that --

3 A. Yes, sir.

4 Q. -- material?

5 And did you have Mr. Knipe or did you  
6 yourself do any research on the subject of how one is  
7 qualified as an expert in the State of Missouri?

8 A. Yes, sir.

9 Q. And what was the result of your research on  
10 that matter?

11 A. In terms of my opinion as to whether I'm an  
12 expert or not, is that your question?

13 Q. Well, let's start with, yes, that.

14 A. Yes.

15 Q. Okay. And how is it that you came to the  
16 conclusion that you are a qualified expert in the State of  
17 Missouri?

18 A. Number of reasons. I've practiced public  
19 utility law since 1982, obviously serving on the  
20 commission for eight and a half years, six and a half as  
21 chairman of the Public Utility Commission. I've offered  
22 public policy recommendations internationally to  
23 governments of Poland, the Czech Republic, Slovak  
24 Republic. I have provided public policy recommendations  
25 and testimony to the government of India. To the

1 government of Singapore, I've done the same.

2 I also have a partnership, did have a  
3 partnership when I was chairman to provide public policy  
4 recommendations to a public utility commission in India  
5 and the state of Hydrobad (phonetic spelling). I've also  
6 provided recommendations to the governments of Chili,  
7 Argentina, Brazil. I also had as chairman of the  
8 commission partnerships with the equivalent of the Federal  
9 Energy Regulatory Commission of Brazil called ANEL.

10 I've also presented recommendations to the  
11 Vice President of the United States in the context of  
12 energy policy -- that's the Bush administration -- and the  
13 development of its energy policy. I have hosted over 71  
14 international delegations at my commission on public  
15 policy discussions, international delegations looking for  
16 advice on development of public utility regulation and  
17 policy.

18 I've provided testimony on a number of  
19 occasions to United States Congress, also to the United  
20 States Senate. Was scheduled also to provide testimony to  
21 the parliament of Hungary. I was called back by the  
22 President of the United States to participate in a bill  
23 signing ceremony. My testimony was given for me to the  
24 parliament of Hungary.

25 I've also testified before the Federal

1 Energy Regulatory Commission, the states of Maine,  
2 Massachusetts, the state of Michigan. I was invited to  
3 give testimony here to the State Senate of Missouri. We  
4 couldn't get the -- all on public policy, all on the  
5 purpose of regulation, appropriate role of regulation. I  
6 served as the chairman, I guess it was the president of  
7 the Mid-Atlantic Regulatory Utility Conference, which is a  
8 division of NERUC consisting of the mid-Atlantic regions.  
9 Served on numerous panels before NERUC talking on the  
10 issue of public policy on a whole range of issues.

11 I have done numerous presentations in a  
12 variety of forums throughout the United States on the  
13 issues of public policy, and have testified obviously  
14 before my state senate and my state legislature on several  
15 occasions on the issues of public policy and the form of  
16 regulation and appropriate balancing of the regulatory  
17 interests involved in making regulatory decisions.

18 Q. Did you identify a particular case that you  
19 believe is Missouri law on what it takes to be an expert  
20 in the State of Missouri?

21 A. My understanding is that the Missouri  
22 Supreme Court has developed the Daubert standards.

23 Q. Thank you. You didn't determine whether  
24 Missouri has a particular statute that covers the subject  
25 of expert testimony, did you?



1           A.       I did not -- did not look at the Missouri  
2 statutes for the purposes of determining qualifications  
3 for an expert witness. I do, I know, adopt Federal Rules  
4 of Evidence which, of course, is related to the Daubert  
5 standards, which of course Missouri has adopted.

6           Q.       Okay. Now, what is the Daubert standard?  
7 Where does that come from, if you know?

8           A.       The Daubert standard, as I understand it,  
9 is just qualifications of an expert witness either through  
10 training, skill or experience in the application of expert  
11 opinion in the context of a -- of a proceeding such as  
12 this, any civil proceeding whatsoever.

13          Q.       Okay. Would it be fair to say that you  
14 believe that someone could qualify as an expert witness  
15 before the Missouri Public Service Commission with far  
16 less extensive credentials than you possess?

17          A.       It would depend, I suppose, on what those  
18 credentials would be.

19          Q.       Okay. Now, in order to prepare for today,  
20 in addition to the testimony you reviewed and the legal  
21 research you reviewed, did you -- I believe you said you  
22 read your own testimony?

23          A.       Uh-huh.

24          Q.       Did you have conversations with anyone in  
25 preparation of this deposition?

1           A.       Yep. I've obviously had some dry runs with  
2 counsel in terms of preparation.

3           Q.       And when you did that, who was the counsel  
4 that you spoke to?

5           A.       Mr. Hack today, Mr. Swearngen today, and  
6 yesterday Ms. Dodds.

7           Q.       Okay. What did Mr. Hack tell you?

8           A.       We just went through a couple of questions  
9 that we might anticipate being asked.

10          Q.       Do you remember what those questions were?

11          A.       There was a whole range of questions based  
12 upon my testimony and the data responses and  
13 qualifications for an expert, what the purpose of my  
14 testimony is, and just as importantly what it's not.

15          Q.       Okay. Did you have any conversations with  
16 Mr. Morgan?

17          A.       No. He was sitting in the room when we had  
18 the dry run, but if he asked a question, maybe he asked  
19 one, that was it.

20          Q.       Okay.

21          A.       You mean Mr. Dennis Morgan, correct?

22          Q.       Yes.

23          A.       Yes.

24          Q.       General counsel of Southern Union?

25          A.       Uh-huh.

1 Q. Okay. Who is Jim Oglesby?

2 A. Who is Jim Oglesby?

3 Q. Yes, sir..

4 A. The president of Missouri Gas Energy.

5 Q. And how do you know Mr. Oglesby, if you do  
6 know him?

7 A. I have worked with Mr. Oglesby over the  
8 last two years dealing with rates and regulatory issues.  
9 The company was interested in developing better  
10 relationships with the regulatory commission of Missouri,  
11 was interested in different regulatory models and  
12 alternatives used by the states around the country. I've  
13 known him in that capacity.

14 Q. Now, are you familiar with the testimony of  
15 Mr. Oglesby?

16 A. I've read it, yes.

17 Q. Okay. I'd like to read something to you  
18 from his testimony. Well, let me ask you, do you know  
19 what his, as stated in his testimony, what his fundamental  
20 business strategy is?

21 A. Well, yeah. His fundamental business  
22 strategy is to provide high quality, low cost natural gas  
23 distribution service to his customers. He's got a very  
24 interesting, I think, description there that he balances  
25 the interests and considers the interests of his

1 employees, customers and shareholders, and his  
2 customers -- I'm sorry -- his employees are to act with  
3 the mind of a customer and the pride of an owner, I think  
4 was the quote, which I thought was very well put and was  
5 very indicative of the high quality that gentleman  
6 represents as head of the company.

7 Q. Have you done any independent studies or  
8 any independent research on your own or had it done at  
9 your direction regarding how Mr. Oglesby is doing in his  
10 capacity of providing the high quality customer service  
11 and other things that he states in his testimony?

12 A. Set forth in his testimony and Mr. Noack's  
13 testimony, there's a chart which talks about the O&M  
14 expense level of providing service as being very good, in  
15 fact the lowest of the major natural gas distribution  
16 companies in Missouri, and also where they stand in  
17 relationship with rates with the other major natural gas  
18 distribution companies, and at the same time providing  
19 quality service.

20 Based on those statements, it sounds to me  
21 like he's doing a fine job in comparison to other  
22 regulated natural gas distribution companies in the state.

23 Q. Other than reviewing the testimony of  
24 Mr. Oglesby and Mr. Noack, did you undertake any other  
25 independent research or studies of your own to determine

1 how Mr. Oglesby is doing?

2 A. No, sir, I did not.

3 Q. Okay. So is it fair to say that you are  
4 accepting as absolutely correct the testimony of  
5 Mr. Oglesby?

6 A. I'm relying on the conclusions in  
7 Mr. Oglesby's testimony and the underlying public policy  
8 objectives that I think are important for the Commission  
9 to consider, yes, sir.

10 Q. So if Mr. Oglesby is wrong in some aspect  
11 of his testimony, could that potentially affect your  
12 public policy recommendations?

13 A. It would absolutely depend on whether I  
14 agreed that he's wrong, No. 1, and 2, exactly what he  
15 would be wrong about.

16 Q. Okay. Would it -- assume that Mr. Oglesby  
17 is incorrect that he's providing excellent customer  
18 service. Would that have any impact on your public policy  
19 recommendations in your testimony?

20 A. I don't know that he used the word  
21 excellent. If he did, maybe you could point it out to me.  
22 I think he said high quality, or something to the like of  
23 customer service.

24 Q. Let's assume that he's only providing  
25 average customer service and not high quality. Would

1 that -- not high quality customer service. Would that  
2 impact your public policy recommendations?

3 A. Given the O&M expenses to provide that  
4 customer service and given the level of rates as compared  
5 boat -- as compared to other natural gas distribution  
6 companies, I would have to know also what the quality of  
7 service being provided to those companies at a higher O&M  
8 expense and higher rates before I could draw that  
9 conclusion.

10 Q. Okay. Now, part of Mr. Oglesby's testimony  
11 explains how he's implementing his goals; is that correct?

12 A. Yes, sir.

13 Q. And to you, based on your review of his  
14 testimony and your expert knowledge, how does one go about  
15 determining whether they're providing their utility  
16 services such as MGE at a low cost?

17 A. How do they determine whether -- well, I  
18 think the threshold question is, how do they compare to  
19 other similarly situated companies, particularly in the  
20 same regulatory climate under their rate structure and  
21 their customer base and their O&M expenditures to provide  
22 quality service to those customers? I think that's  
23 probably the most well-accepted way. Obviously there are  
24 other ways of doing it.

25 Q. Okay. Is it fair to say you've talked to

1 various Southern Union officials such as Mr. Hack and  
2 Mr. Noack, MGE officials and then other Southern Union  
3 officials about why this rate case was filed?

4 A. Why it was filed?

5 Q. Yes.

6 A. In a very general manner, yes.

7 Q. Okay. What is your understanding of why  
8 MGE decided to file this case?

9 A. My understanding based on the testimony of  
10 Mr. Noack and Mr. Oglesby is that there is a continuing  
11 difficulty in getting an authorized rate of return that  
12 they feel comfortable with and just as importantly earning  
13 the authorized rate of return allowed.

14 Q. Okay. Now, the authorized rate of return,  
15 when you were in Pennsylvania, both in the '80s and then  
16 subsequently from 1982, I believe, until today --

17 A. Sounds so long ago, doesn't it?

18 Q. Actually, it does. Did you ever see any  
19 studies of how Pennsylvania utilities were doing on  
20 earning their authorized rate of return?

21 A. Yes.

22 Q. And what do you recall about those studies?

23 A. When I sat on the Commission particularly I  
24 can remember. As a commissioner, utilities were required  
25 at least annually, it might have been quarterly, to

1 provide reports to the Commission indicating what their  
2 profitability was, what their authorized rate of return  
3 was in the most recent case, and whether they were  
4 achieving, underachieving or overachieving their rates of  
5 return.

6 Q. And do you recall whether certain ones were  
7 earning their authorized rate of returns, certain ones  
8 were over, certain ones were under?

9 A. It varied from time to time, but I think  
10 the difference between what I saw historically through my  
11 experience and the case at hand is the level of  
12 consistency, for eight years in a row earning  
13 significantly under the authorized rate of return without  
14 seeing something obvious in management inefficiency would  
15 be associated with that result.

16 Q. Is it your understanding that MGE is in  
17 here blaming all of their woes, specifically their alleged  
18 inability to earn their authorized rate of return, on the  
19 Public Service Commission treatment of them in past rate  
20 cases?

21 A. I don't think that I've seen any indication  
22 anywhere either in testimony or discussions that there's  
23 been blame placed on anybody. I think the thrust of the  
24 rate case and the thrust of the discussions, the impact of  
25 discussions that I heard was there needs to be a fresh



1 look at where we are and how do we provide an adequate  
2 rate of return and an adequate opportunity to earn that  
3 rate of return prospectively.

4 So I think the whole thrust of the  
5 argument, certainly the thrust of my testimony is not  
6 looking backwards and saying there's someone to blame,  
7 let's try to point the finger. The whole thrust of the  
8 testimony is how do we address a problem that on its face  
9 looks to be a real and serious one and set rates  
10 prospectively in a manner that allows the Commission to  
11 meet its obligation under Hope and Bluefield and allow the  
12 company to attract adequate capital and set just and  
13 reasonable rates.

14 Q. Let me ask you, do you remember in  
15 Mr. Oglesby's testimony that -- see if this sounds  
16 familiar, and I'm going to read from his testimony,  
17 page 9, lines 15 through 20.

18 Question: Can you provide examples of how  
19 MGE has emphasized shareholder satisfaction?

20 Answer, in addition to the significant  
21 effort toward cost control that we devote every single  
22 day, parens as evidenced by the cost comparisons of  
23 companies in Missouri discussed earlier, parentheses ends,  
24 the filing of this rate case is another example of the  
25 emphasis MGE placed on shareholder satisfaction.

1           Isn't it true that at least in part MGE  
2     filed this rate case to satisfy shareholders?

3           A.     Oh, I would fully expect that that's the  
4     fiduciary obligation that the management of the company  
5     has is to make sure that they provide quality service to  
6     the ratepayers and provide an adequate return to  
7     shareholders. That's the same obligation, frankly, the  
8     Commission has.

9           Q.     Okay. And when I ask who are the  
10    shareholders of MGE, I'm not asking you to identify every  
11    single one of them. I'm asking if you -- what you know  
12    about the demographics or anything else about anyone who  
13    owns stock in MGE, actually Southern Union.

14          A.     I don't know that I have adequate  
15    information to answer that question.

16          Q.     You don't know?

17          A.     I don't know.

18          Q.     Okay. Now, do you know anything about how  
19    many ratepayers of MGE may actually also be shareholders  
20    of Southern Union?

21          A.     I know how many customers MGE serves. I've  
22    not undertaken any determination of how many, if any, are  
23    shareholders as well.

24          Q.     Okay. Now, in Pennsylvania, is it fair to  
25    say that when you started as commissioner in 1993 and when

1 you were on staff as an attorney in the early and middle  
2 '80s, that at that time you were under the rate of return  
3 regulation, much like we have in Missouri?

4 A. When I started, it was basic rate of return  
5 regulation, when I sat on the Commission.

6 Q. I'm sorry to interrupt.

7 A. When I was a Staff attorney, it was  
8 certainly rate base rate of return regulation. We evolved  
9 from that over time as I sat on the Commission first in  
10 the area of telecommunications, later in electricity, and  
11 still later to some degree in natural gas deregulation.

12 Q. Okay. Now, isn't it fair to say that while  
13 you were both an attorney working on the staff of the  
14 Pennsylvania Public Utilities Commission and then later as  
15 a commissioner, you faced a lot of issues that you might,  
16 some of which we may see in the case, MGE's in Missouri  
17 now?

18 A. In that regard, are you talking about  
19 specific issues like revenue requirement, sales  
20 determination, rate?

21 Q. Yes, sir.

22 A. Yes.

23 Q. Do you believe that rates must be  
24 sufficient to guarantee sufficient compensation to  
25 shareholders?

1 A. No.

2 Q. Do you disagree with that statement?

3 A. I disagree with the word guarantee.

4 Q. Okay. What word would you use in place of  
5 guarantee?

6 A. I would use the standard set forth in Hope  
7 and Bluefield gave them rates that are sufficient to allow  
8 them to earn an adequate return on their investment.  
9 That's not a guarantee. That's a fair opportunity.

10 Q. Okay. And how would MGE be given a fair  
11 opportunity to earn their rates, earn their authorized  
12 rate of return, what would that take in your opinion?

13 A. That's the entire ratemaking process.

14 Q. Okay. You talked about Hope and Bluefield.  
15 On page 3 of your testimony, you have three footnotes,  
16 actually Footnotes 1 and 2. Are you referring to Federal  
17 Power Commission vs. Hope Natural Gas, a United States  
18 Supreme Court case from 1944, specifically 322 United  
19 States beginning at page 591?

20 A. I'll accept that subject to check.  
21 Obviously I can't read the citation, but it is the Federal  
22 U.S. Supreme Court Hope and Bluefield decisions.

23 Q. Okay. One of the -- I believe you used the  
24 word subject to check. Let's see if we can do it a  
25 different way so we avoid you having to go do something

1 and then possibly come back. Is it fair --

2 A. I apologize. It's a standard way of doing  
3 things in other places.

4 Q. Okay. Well, I'm trying to avoid that here.  
5 Do you agree that Federal Power Commission vs. Hope  
6 Natural Gas Company is a case you cited in your testimony?

7 A. Yes, sir.

8 Q. And would you have any reason to doubt that  
9 that's a United States Supreme Court case from 1944?

10 A. No. I believe it's from the '40s. I don't  
11 recall if it's '44 or '45, but yes.

12 Q. And there's one other case, Bluefield  
13 Waterworks and Improvements Company vs. Public Service  
14 Commission, also a United States Supreme Court case?

15 A. Correct.

16 Q. Do you recognize that case?

17 A. I do.

18 Q. And is it cited in your testimony?

19 A. It is.

20 Q. And are you familiar with both of those  
21 cases?

22 A. Yes, sir.

23 Q. And, in fact, you discuss them in your  
24 testimony?

25 A. I do.

1 Q. Are they the leading cases, the seminal  
2 cases on utility regulation in the United States?

3 A. As it relates to rate of return, yes.

4 Q. Okay. Now, do you know whether those two  
5 cases are still good law?

6 A. They are.

7 Q. And have you shepherdized them or had that  
8 done on your behalf any time recently?

9 A. I have not shepherdized them, but I spend  
10 my life in the whole area of public utility law regulation  
11 and public policy and watch very carefully the cases that  
12 come out and watch very carefully the treatises on all  
13 matters and have never heard of anything in the recent  
14 time that would cause me to need to look at other cases  
15 that would distinguish Hope or Bluefield. I spend that  
16 much time in the field, I would know it.

17 Q. Okay. Now, let me ask you, when you were  
18 on the Pennsylvania Commission as a commissioner, is it  
19 fair to say that sometimes matters of collection where  
20 utilities were trying to collect bills came before the  
21 Pennsylvania Public Utility Commission?

22 A. Just to put a little finer point on it, are  
23 you referring to payment trouble customers having  
24 inability to pay their bills?

25 Q. That or any other matters regarding

1 utilities trying to collect bills and their policies  
2 regarding that.

3 A. That's the one that comes to mind. If you  
4 have a different example in mind, I might be able to agree  
5 with you. I'm just not sure what else you're talking  
6 about. That's the one that customarily comes before us.

7 Q. Okay. Just head on down this road. Let's  
8 assume that a landlord owns an apartment building with  
9 eight units. Okay. One tenant in particular obtains gas  
10 service, doesn't pay and leaves town.

11 A. Doesn't pay who, the landlord or the --

12 Q. Doesn't pay Missouri Gas Energy --

13 A. So --

14 Q. -- for service.

15 A. Who's the metered customer? Is it the  
16 landlord?

17 Q. No. It is the individual customer, the  
18 tenant.

19 A. There are both.

20 Q. I'm sorry?

21 A. There are both instances, I mean, that the  
22 landlord is sometimes the metered customer and has tenants  
23 pay as part of their rent to the landlord. The other  
24 scenario is where the customers themselves are  
25 individually metered.

1 Q. Mr. Quain, if you don't understand a  
2 question, please tell me. This will work a lot better if  
3 I ask questions and you provide the answers.

4 A. I'll try, but I need to understand the fact  
5 basis of the questions, but go ahead.

6 Q. Okay. If you don't understand, please tell  
7 me and if I don't have to go through and repeat every  
8 aspect of it, that will help a lot.

9 Let's go back. We have an apartment  
10 building in the Missouri Gas Energy service territory. It  
11 has eight units. There are tenants in each one of these  
12 eight units. Each one is individually metered, each  
13 apartment is. Each one has a tenant as the MGE customer,  
14 and each of these tenants has contacted MGE to become a  
15 customer. And one of them leaves town, leaves the gas on,  
16 doesn't shut it off, and is gone, and MGE does not  
17 discover that for 60 days. So there's some unbilled  
18 usage.

19 Now, do you understand what I've talked  
20 about so far?

21 A. I believe so.

22 Q. Okay. Now, as a matter of public policy,  
23 in your expert opinion, who should be responsible for that  
24 60 days of unbilled usage?

25 A. In order to answer that question, I would



1 need to know the specific state of law in Missouri, the  
2 case law interpreting the statute, how the Commission --  
3 both at the Commission level and appellate level. I would  
4 need to know with greater specificity the Commission's  
5 regulations as well as the tariff provisions in force and  
6 effect at that time and what they say and how they've been  
7 interpreted.

8 Q. Isn't it fair to say, though, as a public  
9 policy expert in all the places you've testified and all  
10 the people you've consulted with, let's use, for instance,  
11 the country of Chili, didn't you mention that you  
12 consulted with the government of the country of Chili?

13 A. I provided public policy recommendations,  
14 yes.

15 Q. As part of that, did you undertake on your  
16 own or direct an assistant or someone else on your behalf  
17 to give you a detailed analysis of the state of law in the  
18 country of Chili?

19 A. We looked at the state of law and  
20 regulation in the country of Chili, sure.

21 Q. Okay. But how detailed were you on that?

22 A. Enough to make my presentation on the broad  
23 public policy recommendations and the formation of  
24 regulatory models that I was asked to do. I didn't look  
25 beyond that because it wasn't the purpose of my testimony,

1 just as this line of questioning isn't the purpose of my  
2 testimony here.

3 Q. I understand. However, you are a public  
4 policy expert, and what I'm asking is, without regard to  
5 what Missouri law may be, as a matter of public policy,  
6 who do you believe should be --

7 A. No. Wait. You can't apply public policy  
8 outside the vacuum of what the law is. Public policy has  
9 to be consistent with the law. If it's inconsistent with  
10 the law, it is not sound public policy. So in order to  
11 reach the conclusion that you're driving towards, you have  
12 to, one, understand the facts, two, understand any  
13 cross-examination of those facts, if there is any.

14 Then you have to understand what the  
15 current application of the statute is as interpreted by  
16 both the Commission and the courts of appellate review and  
17 the tariffs that are related to that. You can't say  
18 public policy administered in a vacuum. That's not sound  
19 public policy.

20 Q. That's your opinion, correct?

21 A. I don't know any commission in the world  
22 that would want to put public policy forward and ignore  
23 the law.

24 Q. Okay.

25 A. Or not understand the facts.

1           Q.       You understand the facts of what I've given  
2 you, correct?

3           A.       But you haven't given me all the facts.  
4 That's the problem. And before I would render a decision,  
5 I have to make sure I'd have all the facts that are  
6 readily available at my disposal, which could point out to  
7 me how the law applies to the facts and what the tariffs  
8 said and what the other side of things was before you  
9 apply and render any decision on it.

10          Q.       Okay. Let's try it another way. Let's  
11 assume that there is a group of people that it's gone to  
12 the United States Congress. Let's also assume for the  
13 purpose of this discussion that the United States Congress  
14 has jurisdiction to do this, and they want it set up so  
15 that all landlords in the entire country are guarantors of  
16 utility bills, including natural gas, for their customers,  
17 for their tenants, whether -- and it doesn't make any  
18 difference whether the landlords have the meters billed  
19 directly to them or whether it is for the purpose of --  
20 just they're guarantors regardless of who it's metered to,  
21 individual customer or landlord.

22                    Would that be good public policy for the  
23 United States Congress to enact such a law?

24          A.       I do not hold myself out as an expert as to  
25 what good public policy is for the United States Congress.

1 I've not served as a Congressman. I've not practiced in  
2 any degree, other than when I've been asked to testify for  
3 Congress. I do not hold myself out as an expert in that  
4 regard.

5 Q. Okay. On behalf of Missouri Gas Energy,  
6 for whom you are a testifying expert, would that be good  
7 public policy?

8 A. The way you've changed -- you're going to  
9 have to rephrase the question. I'm not at all sure what  
10 the foundation of the question is at this point. I'm  
11 sorry.

12 Q. Okay.

13 A. I thought we were talking about federal law  
14 being applied uniformly, and Congress obviously has the  
15 authority to do that. Certainly Missouri Gas Energy  
16 doesn't.

17 Q. However, wouldn't it be true that under  
18 that scenario, that Missouri Gas Energy would benefit from  
19 the enactment of such a law?

20 A. The law -- the law being that the federal  
21 law would allow Missouri Gas Energy to collect a  
22 delinquent bill of an individual customer from the  
23 landlord, is that your question?

24 Q. Yes, that's my question.

25 A. I think that might be a conflicts of law

1 question. I don't know that the United States Congress  
2 has the authority to do that. I think you'd end up in  
3 state court. I really do. How could the United States  
4 Congress direct such a law that is clearly within the  
5 province of the state statute of Missouri?

6 Q. Okay. Mr. Quain, let's move on. What is  
7 identity theft, do you know?

8 A. In what context, please?

9 Q. In the context of -- criminal context, what  
10 is identity theft, to your understanding, if you know?

11 A. I don't know that I know the definition of  
12 identity theft in the criminal context. I probably know  
13 the layman's, but I don't hold myself out as an expert in  
14 criminal law or identity theft.

15 Q. Okay. Let's assume that someone assumes  
16 the identity of Mr. Hack and fraudulently goes out, does a  
17 lot of things, they buy all kind of things in his name,  
18 they establish gas service at a specific residence in his  
19 name, and run up a bill. The real Mr. Hack lives in the  
20 state of Kansas, moves into the MGE service territory.

21 Would it be good policy for Missouri Gas  
22 Energy to have some kind of internal way to handle a  
23 situation like that?

24 A. Again, I don't know. You want me to render  
25 an opinion. I understand why, and I understand that

1 you're driving towards some public policy objective. I  
2 understand that. But again, when I sat as a commissioner  
3 and when I put forth public policy, I made sure that I  
4 studied, analyzed and had available to me the facts, the  
5 law and the circumstances that I had to render a decision  
6 on.

7 If a staff member came to me and gave me  
8 the facts that you just gave me and said,  
9 Mr. Commissioner, can you please render me a decision, I  
10 would send that staff back, that person back to develop a  
11 record and give me more information, because it's  
12 impossible to do it.

13 That's how bad decisions are made and bad  
14 law is made. You've got to think through these things and  
15 have all the facts available, and just picking pieces of  
16 them outside the context of the full story and the  
17 applicable law is bad public policy and I wouldn't do it.

18 Q. Well, your days as a commissioner are over;  
19 isn't that true?

20 A. Uh-huh.

21 Q. Isn't it also true that you are a policy  
22 expert witness on behalf of Missouri Gas Energy?

23 A. That's true.

24 Q. Isn't it also true, based on your picking  
25 and choosing things here, that you want to strictly

1 control what opinions you give?

2 A. No. I think you're the one that's picking  
3 and choosing. I'm trying to give you honest answers and  
4 fair questions. What I'm trying to point out to you is  
5 that the process of making decisions that further good  
6 public policy, sound public policy is a complex one and a  
7 difficult one, and is one that your commissioners have to  
8 deal with on a regular basis and it is not an easy job.

9 And to pick and choose and not provide all  
10 the information to any decisionmakers does them a terrible  
11 disservice, and I wouldn't as a lawyer any more than I  
12 would as a commissioner render an opinion based upon  
13 partial understandings of the facts and law involved. I  
14 just wouldn't do it.

15 Q. Okay. What do you know about MGE's  
16 customer service performance levels?

17 A. I know what was in Mr. Oglesby's testimony  
18 that he believes they provide good service. I've relied  
19 on that fact.

20 Q. And when you say you rely on it, you accept  
21 it as correct?

22 A. Yes, sir, I do.

23 Q. Okay. Now, is it fair to say that in  
24 Pennsylvania that you may have at some time had companies  
25 that didn't have excellent customer service?

1 A. Yes, sir, that's true.

2 Q. Some that only had average customer  
3 service?

4 A. Yes.

5 Q. Some that, in fact, had bad customer  
6 service?

7 A. Some that had excellent customer service,  
8 yes.

9 Q. And some that had average customer service?

10 A. Bad, average and good, yes. Of course you  
11 run the whole range.

12 Q. Now, at any time while you were a  
13 commissioner, do you recall considering the issue of  
14 return on equity, actually reducing it because of bad  
15 customer service?

16 A. I recall doing both. To me, looking at  
17 return on equity or other penalties and incentives have to  
18 be handled in conjunction with one another. It's not  
19 sound public policy to just have penalties without having  
20 incentives, and I used both when I sat on the chair.

21 Q. Now, when you did that, let's talk about  
22 some -- was there ever a case where you rewarded a company  
23 for having excellent customer service?

24 A. I rewarded customers inside a fair rate of  
25 return range that I thought provided quality service and



1 efficient management. I don't know that I delineated  
2 between the two, but generally companies that provide  
3 quality service to their customers also have good  
4 management.

5 Q. Okay. Now, you were -- who did you reward  
6 when you had a company with good customer service and good  
7 management and you decided they needed a reward? Who was  
8 it you were actually rewarding?

9 A. That was a calculation analysis I went  
10 through all the time, determining what rate of return is  
11 an appropriate rate of return. It came -- it was part of  
12 the analysis we undertook as a general proposition.

13 Q. Now, isn't it true here that as an expert  
14 witness on behalf of Missouri Gas Energy, you're, in fact,  
15 advocating the return on equity sponsored by Mr. Dunn?

16 A. No.

17 Q. Okay. Do you have a number that you are,  
18 in fact, sponsoring on behalf of Missouri Gas Energy?

19 A. No, sir.

20 Q. So if you're in front of the Missouri  
21 Public Service Commission right now, what is it that  
22 you're telling them that they should adopt as an adequate  
23 return on equity?

24 A. If I had an opportunity to speak directly  
25 to the commissioners, what I would tell them is to look at

1 the testimony provided by all the witnesses, to look at  
2 the cross-examination of those witnesses to determine the  
3 veracity, the credibility, the logic, the rationale behind  
4 the recommendations being made.

5 I then would tell them that what -- looking  
6 at that factual evidentiary record, one needs to apply the  
7 law, and the law in this instance is Hope and Bluefield.  
8 And that is absolutely a difficult thing to do, because it  
9 requires you to analyze what on its face seem to be  
10 competing interests, and the end result has to be a  
11 balance between shareholders and ratepayers. That's what  
12 the law says, and that's what good public policy says one  
13 should do.

14 But I am clearly not sitting here telling  
15 the Commission they ought to adopt a specific rate of  
16 return recommendation. There are witnesses who are better  
17 qualified than I that have done the analysis which I have  
18 not done in order to make that recommendation. My  
19 recommendation simply is good public policy requires a  
20 very difficult decision-making process by any commissioner  
21 when you try to apply Hope and Bluefield.

22 And hopefully as I -- when I sat as a  
23 commissioner, I welcomed any advice that I could have from  
24 existing colleagues, former colleagues as to how best I  
25 could do my job because I was interested in making sure

1 that I fulfilled both the spirit of the law as well as the  
2 letter of the law and promoted good public policy.

3 Q. Mr. John Dunn's sitting in this room, isn't  
4 he?

5 A. I believe he is, yes.

6 Q. And Mr. Dunn is the witness that is  
7 advocating a specific return on equity on behalf of  
8 Missouri Gas Energy; isn't that true?

9 A. He is, yes.

10 Q. Okay. Have you met Mr. Dunn?

11 A. I have.

12 Q. Have you talked to Mr. Dunn?

13 A. Sure.

14 Q. Do you believe that his study of a  
15 12 percent return on equity is well reasoned and well  
16 done?

17 A. I have not seen Mr. Dunn subject to  
18 cross-examination. I have not seen his analysis and  
19 studies be tested. So it would be premature for me to  
20 develop any conclusions with regard to that, and I'm not  
21 here to support Mr. Dunn's testimony. He's very capable  
22 of doing that himself, I'm sure.

23 Q. So you don't know at this point in time,  
24 even though you've read Mr. Dunn's testimony, and whether  
25 he's right or wrong, whether his numbers are good or bad;

1 is that a fair statement?

2 A. I think that's fair with regard to all  
3 three rate of return witnesses. I think as we go through  
4 this process and as the matter is briefed and the  
5 decisions are rendered, that will become clear.

6 What I do know is that, regardless of the  
7 recommendation, it has to be -- it has to be consistent  
8 with the legal standards set forth in Hope and Bluefield.

9 Q. Okay. Let's start with Missouri Gas  
10 Energy. Is it your belief that Missouri Gas Energy has  
11 received lower than appropriate returns on equity since  
12 they've been in the state of Missouri?

13 A. My testimony does not speak to that fact,  
14 sir. My testimony speaks to the fact of where rates ought  
15 to be set prospectively. What has happened in the past,  
16 whether you agree with it or you don't agree with it is  
17 really irrelevant as to what the prospective application  
18 of Hope and Bluefield should be. It's not a  
19 backward-looking standard. It's a forward-looking  
20 standard.

21 Q. Okay.

22 A. So the real question before us now is what  
23 should be done in this rate case. No one -- I shouldn't  
24 say no one. I know I'm not placing the blame on anybody,  
25 whether it be the company, the Staff, the ratepayer

1 advocate, the Commission, as to what happened in the past.  
2 All I know is it seems to me that in order to make sure  
3 that good public policy is fulfilled, you have to have  
4 that very careful balance between just and reasonable  
5 rates and attracting new investment into the state of  
6 Missouri. That's what you should want to do, because  
7 you're in competition for those dollars with every other  
8 state in the union.

9 Q. Do you know whether Missouri Gas Energy  
10 has, in fact, received an inadequate return on equity in  
11 the cases in the state of Missouri since they've been in  
12 the state of Missouri?

13 A. I have no opinion with regard to that. My  
14 opinion goes to the application of Hope and Bluefield and  
15 good public policy and what that entails on a prospective  
16 basis.

17 Q. Have you undertaken any analysis or study  
18 of the past rate cases of Missouri Gas Energy in the state  
19 of Missouri?

20 A. I have reviewed some of the orders, but no  
21 more than -- I wouldn't consider that analysis or study,  
22 I've reviewed so many orders just to understand how the --  
23 how the administrative process works here, see if it was  
24 different than Pennsylvania.

25 Q. Is it your belief that the Missouri Public

1 Service Commissioners have some kind of need to be told by  
2 you about how they should apply public policy?

3 A. No, sir. But I don't view it as a need  
4 requirement. I view it as being -- commissioners having  
5 an extraordinarily difficult job to undertake. I've done  
6 it. I know how difficult it is. I also know that when  
7 you sit up at night and worry about promoting the good  
8 public policy of your state, you want to have at your  
9 disposal the ability to ask questions and have the advice  
10 of others who may have been similarly situated to you who  
11 have expert opinions with regard to every element of a  
12 rate proceeding.

13 And this is no different than any other  
14 element of a rate proceeding other than it happens to deal  
15 with the end result application of public policy.

16 Q. So is it fair to say that you do not know  
17 whether Missouri Gas Energy has received an inadequate  
18 return on equity on rate cases in the state of Missouri  
19 since MGE's been here?

20 A. It is fair to conclude that I have  
21 undertaken no analysis or study with regard to that fact.  
22 So I render no opinion with regard to that.

23 Q. That isn't what I asked. I asked, do you  
24 know whether Missouri Gas Energy has, in fact, received an  
25 inadequate return on equity?

1           A.       I stand on my previous answer. I haven't  
2 formulated an opinion one way or the other because I  
3 haven't done the analysis.

4           Q.       So is it fair to say you don't really know?

5           A.       It's fair to say that I've answered the  
6 question, I think.

7           Q.       Okay. Is it fair to say that in addition  
8 to not having any opinion on the adequacy or inadequacy of  
9 the return on equity of Missouri Gas Energy since 1994  
10 when they've been in the state of Missouri, that you  
11 actually don't know whether that's been an adequate or  
12 inadequate return on equity?

13          A.       I've conducted no analysis or studies to  
14 make that determination. I offer no opinion on it.

15          Q.       Is that because you have no opinion on that  
16 matter?

17          A.       In terms of an expert opinion, I offer  
18 none.

19          Q.       Do you have any other opinion other than  
20 expert, a personal opinion?

21          A.       I'm not here to provide personal opinions.  
22 I'm here to provide expert testimony, sir, and that's what  
23 I'm -- that's what I'm going to do.

24          Q.       Do you have a personal opinion on whether  
25 Missouri Gas Energy has received an inadequate return on

1 equity in rate cases in the state of Missouri since 1994?

2 A. I haven't had the analysis done. I haven't  
3 conducted the studies to test the validity of any of them.  
4 I'm not going to offer one.

5 Q. I understand.

6 MR. HACK: I'm going to object on the basis  
7 of the question has been asked and answered at least six  
8 times now.

9 MR. FRANSON: And the witness has  
10 sufficiently and very adeptly avoided the answer. There's  
11 a specific question to the witness. Does he have a  
12 personal opinion? That's either yes, he does, or no, he  
13 doesn't. That's a very simple thing. It's not a matter  
14 of this witness being allowed to limit his opinions.

15 THE WITNESS: It's not a simple --

16 MR. FRANSON: Hold on. Who's representing,  
17 is it you or him? There's no question before him right  
18 now. So are you representing, Mr. Hack, or is he  
19 representing himself in some capacity?

20 MR. HACK: I am the lawyer here, Robert.

21 MR. FRANSON: Thank you.

22 BY MR. FRANSON:

23 Q. Now, Mr. Quain, I'm asking a question, and  
24 the question is, do you have a personal opinion regarding  
25 the adequacy or inadequacy of return on equity in the



1 state of Missouri by MGE that it has received from the  
2 Missouri Public Service Commission? Do you have a  
3 personal opinion regarding that subject?

4 A. The question that you're asking requires a  
5 complex analysis and determination that requires  
6 thoughtful processing of information before a conclusion  
7 can be reached, and I will not offer an opinion on  
8 something that I have not taken adequate underlying  
9 analysis and study in order -- this is serious stuff, sir.  
10 It is very serious stuff. And I am not going to give a  
11 half-cocked answer to a serious question, whether you want  
12 me to or not. That's my answer.

13 Q. Okay. My question remains, do you have a  
14 personal opinion on that subject?

15 A. I've given my answer at least eight times  
16 now.

17 Q. Okay.

18 MR. FRANSON: Mr. Hack, I will be going  
19 with Mr. Boudreau to discuss some DRs tomorrow, and I  
20 would invite you to come along or I would invite you to  
21 have Mr. Boudreau well informed on this matter, because  
22 this is a matter that I am going to certify up to the RLJ.  
23 And when we have our conversations regarding data  
24 requests, I will ask the RLJ to take up this matter and  
25 rule on it, and I will be asking him to direct this

1 witness to answer a specific question.

2 That question is, does he have a personal  
3 opinion regarding whether or not MGE, since they've been  
4 in the state of Missouri, since 1994, that they received  
5 an inadequate or adequate return on equity. The answer to  
6 that question would be simply yes, he does, or no, he  
7 doesn't. I'm not asking whether he's done analysis or  
8 anything else. I asked if he had a personal opinion, and  
9 that this witness has consistently and very adeptly  
10 refused to answer that specific question.

11 He's trying to limit his testimony to suit  
12 his purposes, and I'm suggesting to you that is  
13 inappropriate. And if sometime during a break here he  
14 wanted to answer that question, we'd avoid a problem.

15 MR. HACK: Let me respond to that quickly.  
16 If you feel the need to certify the question, I suggest  
17 you do so. It's my opinion that Mr. Quain has fully  
18 answered the question eight times.

19 MR. FRANSON: I haven't counted, but eight  
20 sounds like as good a number as any, and I will tell you  
21 he's refused to answer my specific question more than  
22 once. But so that we can move on, we will go on for now.

23 BY MR. FRANSON:

24 Q. Mr. Quain, do you know what the term  
25 abandoned call rate means?

1 A. Abandoned call rate?

2 Q. Yes, sir.

3 A. Not by that term, no, I do not. I think I  
4 might know what you're talking about, but I don't know.  
5 Are you talking about customers who are on the line trying  
6 to connect with the company and they eventually don't get  
7 their call completed; is that what you mean?

8 Q. Yes, sir.

9 A. Yes. I don't know it by that term, but I  
10 know the concept.

11 Q. What term do you know that concept by?

12 A. I think we call it disconnected calls or  
13 uncompleted calls, something like that.

14 Q. Okay. Uncompleted calls, let's use that  
15 term. Did you use that, uncompleted calls, did you use  
16 that term to mean anything while you were a Pennsylvania  
17 commissioner?

18 A. How do you mean I use it?

19 Q. Well, was it used as any measure of  
20 customer service?

21 A. There are regulations, I believe, in  
22 Pennsylvania that set a standard for those types of  
23 things, but I don't have the recollection as I sit here as  
24 to what they are.

25 Q. Is it fair to say that was a measure of

1 customer service, at least one type?

2 A. I think it's probably fair to say it's a  
3 measure of customer service.

4 Q. Okay. Now, what does the term management  
5 efficiency mean to you?

6 A. In the legal context or in the lay context?

7 Q. In the context of -- let's start with legal  
8 context.

9 A. In the legal context, I think it means the  
10 ability of management to provide safe and adequate and  
11 reliable service at just and reasonable rates to its  
12 customers.

13 Q. Okay. If a company has high management  
14 efficiency and high customer service, do you believe  
15 Missouri Gas Energy fits that label, high management  
16 efficiency and high quality customer service?

17 A. I've relied on Mr. Oglesby's testimony in  
18 that regard, and I believe that's the conclusion he's  
19 reached, but I relied on his testimony.

20 Q. By relying on his testimony, you accept his  
21 testimony?

22 A. I accept the conclusions of his testimony.  
23 I've done no independent analysis of them.

24 Q. But you also believe that it is  
25 appropriate -- let's go with the context of MGE. If

1 Mr. Oglesby right, they have high management efficiency,  
2 high customer service, to give them a higher return on  
3 equity; is that correct?

4 A. Mr. Oglesby's testimony, is that what  
5 you're referencing?

6 Q. Yes.

7 A. Yes, I believe at the conclusion he says  
8 that there ought to be an adjustment to the rate of  
9 return.

10 Q. And do you agree with that conclusion and  
11 suggestion by Mr. Oglesby?

12 A. I can tell you that I have done that in the  
13 past when I sat as a commissioner, as we've talked about;  
14 I've used rate of return in that regard. I've adopted his  
15 testimony with regard to the factual underpinnings. I've  
16 not made a determination as whether the rate of return  
17 should be adjusted in that regard.

18 Q. Okay.

19 A. I think it's good public policy to use rate  
20 of return with regard to -- but you've got to use it both  
21 ways. It can't be used just to penalize. If you're going  
22 to use it to penalize, you also have to use it to incent,  
23 to incentivize companies to do better.

24 Q. Now, are you talking about using return on  
25 equity or rate of return?

1 A. Return on equity.

2 Q. Okay. I believe you may have misspoke.

3 A. I'm sorry.

4 Q. Now, let's say we're at the little bit  
5 future date here and the Missouri Public Service  
6 Commission has said the reasonable rate of return on  
7 equity is X, and they're considering this request by  
8 Missouri Gas Energy. They decide, yes, we're going to  
9 give them a quarter point boost in return on equity above  
10 and beyond what we determined to be just and reasonable,  
11 because they have high customer service standards and they  
12 have high management efficiency. Who is rewarded by that  
13 quarter point boost in return on equity?

14 A. I don't think -- maybe you didn't mean it  
15 this way, but embedded in your question is the resulting  
16 rate would be above that that was just and reasonable. I  
17 don't think that's lawful to do. I don't think you could  
18 do that. I think the resulting rate still has to be  
19 within just and reasonable.

20 And if that happens, and if it's based upon  
21 reality, factual reality and it's well documented, I think  
22 everyone benefits by that. Customers want good quality  
23 service. An economically healthy utility is an asset to  
24 both customers and shareholders and to the state's  
25 economy. And if the determination is made by the

1 Commission that this company should be rewarded or any  
2 company should be rewarded or any company should be  
3 penalized, I think that's an appropriate thing to do, but  
4 the result still has to be just reasonable.

5 Q. Is it fair to say that you believe return  
6 on equity, it'll be set at a specific number but is it  
7 fair to say you believe generally there's a range of  
8 acceptable just and reasonable rates that include more  
9 than just a specific number, like 10 percent on return on  
10 equity?

11 A. You said it better than I did. Yes, sir,  
12 that's exactly what I mean.

13 Q. Okay. So whatever that range may be in a  
14 particular case, whether it's the Missouri Commission or  
15 any other commission, they should consider that and high  
16 quality customer service and management efficiency as part  
17 of the return on equity setting?

18 A. Only -- only if that same commission would  
19 penalize a customer. You can't have it either one way or  
20 the other. You can't have just penalties and you can't  
21 just have adjustment within the range of rate of return,  
22 rate of equity return either. If you're going to do one,  
23 you have to do the other. And if you do both together, if  
24 you're willing to do both together, I think it's an  
25 appropriate public policy objective, as long as you're

1 within that range of reasonable rates of return you've  
2 concluded are appropriate in that particular case.

3 Q. As a matter of public policy, and this is  
4 whether it's in Missouri or any other state, do you  
5 believe that ratepayers should pay for lobbying done by  
6 local distribution companies?

7 A. This is outside the scope of my testimony,  
8 but I can tell you that in Pennsylvania we would look at  
9 those expenses and if they were reasonable in terms of  
10 making sure that the public policy objectives of being a  
11 regulated gas distribution company, telephone utility,  
12 electric, whatever, that is not an inappropriate cost, if  
13 it's just and reasonable.

14 Q. Now --

15 A. Doesn't mean all costs get recovered, but  
16 as a matter of theory, that doesn't bother me in the  
17 least. In fact, I think it's -- in today's society, given  
18 a regulated utility, it's absolutely part of doing  
19 business.

20 Q. And does that include no matter -- would  
21 you consider and did you consider in Pennsylvania what the  
22 various activities by a regulated natural gas company  
23 were? Would you consider what they supported, what they  
24 opposed, how much they spent on it? Would that all go  
25 into your consideration?



1           A.       No, not necessarily. This is a democracy.  
2 Not everyone has to agree with me in order to be an  
3 appropriate expenditure. I think that any company, any  
4 citizen has a right to lobby its government, and if there  
5 are costs associated with that when you're an entity that  
6 is so heavily regulated and impacted by the state  
7 legislature and the state public utility commission, you  
8 would be foolish not to have someone protecting the  
9 interests of your shareholders and ratepayers there.

10                   I have seen legislators on numerous  
11 occasions reach out to these exact same lobbyists and ask  
12 for help from a constituent. That's part of their job as  
13 well. They ask them for technical advice and providing  
14 legislative initiatives, is a good idea, is not a good  
15 idea. And having that broad discussion in terms of  
16 drafting legislation or responding to legislative  
17 inquiries is an appropriate and, I think, useful role for  
18 any company to participate in. I mean, I had lobbyists on  
19 my staff at the Public Utility Commission. I would be  
20 surprised if you don't have them here.

21                   There's a saying that in the lobbying world  
22 and participation of legislative activities, if you're not  
23 a participant, you're a victim. And clearly there's a  
24 good public policy objective to be fulfilled in making  
25 sure bad law doesn't get passed just simply because you

1 don't have that particular point of view.

2 Q. Isn't it fair to say, though, what is a bad  
3 law will vary according to who's interpreting whether  
4 something's a good law or bad law?

5 A. That's absolutely true, but again, this is  
6 America and you have a right to try to use your influence  
7 on the legislative process, and I find nothing wrong with  
8 that.

9 Q. Well, isn't there a question, though, of  
10 whether ratepayers should pay for that, though?

11 A. it seems to me any lobbyist involved on  
12 behalf of a local distribution -- on behalf of any utility  
13 provides a multitude of services to the legislature. One  
14 is technical advice, someone providing them ideas for  
15 initiatives, and if they're -- third and most important is  
16 probably most of their job is answering legislators'  
17 questions on behalf of their constituent when they have a  
18 problem, their power shut off or bills or can't get  
19 through to the proper official and they provide that  
20 service as well. It's a very valuable service to provide.

21 Q. So is it fair to say that you look at the  
22 whole spectrum, the scenarios you've set out, but it also  
23 includes specific initiatives that might be proposed by a  
24 particular utility that would particularly benefit the  
25 utility?

1           A.       I think the initiatives that I've seen that  
2 I've seen involved, there were benefits to both utilities  
3 and investors as well as the ratepayers. I'm trying to  
4 think of an example where it was one-sided. If they were,  
5 they didn't get very far. Maybe I never heard about them.

6                   The ones I'm familiar with -- and again,  
7 I'm not sure that that necessarily means it should be  
8 disallowed just because they disagree with the initiative.  
9 I think that's a corporate right, a citizen's right to be  
10 able to ask for initiatives to be considered by their  
11 legislature.

12           Q.       But here we're not really talking about --  
13 is it fair to say we're not talking necessarily about a  
14 company not being allowed to lobby or talk to legislators  
15 as they see fit, it's more a matter of who's paying for  
16 it, whether it's paid for by ratepayers or by  
17 shareholders?

18           A.       Sure.

19           Q.       Let's talk about that.

20           A.       I think it's -- I think it's appropriate  
21 cost of doing business, but I think that doesn't  
22 necessarily mean every dollar expended is recoverable. I  
23 think you look at the justness and reasonableness of that  
24 expense just as you would any other expense.

25           Q.       Okay. Would you look at the justness and

1 reasonableness of the expense or would you also, in  
2 addition to that, consider what the particular initiatives  
3 by the utility company were?

4 A. No, I would not, because I don't think any  
5 legislative session has a lobbyist doing one specific  
6 thing on behalf of. At least they shouldn't. The ones  
7 I've seen are involved in a whole panoply of services to  
8 the members of the General Assembly, including providing  
9 them technical advice on things they have absolutely  
10 nothing to do about.

11 I've seen, for example, legislators talk to  
12 natural gas distribution lobbyists about an electric bill  
13 when they weren't combined companies and getting their  
14 feedback on that. As I've said, I've seen them also go to  
15 them many, many times asking for constituent relief for  
16 one reason or another.

17 Q. Okay. What about charitable donations? As  
18 a matter of public policy, if a company decides as part of  
19 doing their business they want to make charitable  
20 donations, do you believe that should be paid for by  
21 ratepayers?

22 A. Again, this is outside the scope of my  
23 testimony, but I would have to be convinced that the level  
24 of the charitable contribution was just and reasonable. I  
25 would not -- I would have look at the more specific facts.

1 I have allowed some and I have disallowed some.

2 Q. Okay. The ones that you disallowed, what  
3 were some of the reasons you disallowed?

4 A. I don't recall, to be honest with you. I  
5 remember seeing them. I imagine it was the level more  
6 than the fact they were charitable contributions. I just  
7 don't recall. I didn't come prepared to talk about  
8 charitable contributions.

9 Q. Well, but you do have a wealth of  
10 experience, so --

11 A. But you're asking me specific  
12 disallowances. I don't -- I haven't looked at that in a  
13 while.

14 Q. If MGE makes a charitable contribution,  
15 we'll assume it's a just and reasonable amount, how do  
16 ratepayers benefit from that?

17 A. I think ratepayers benefit significantly  
18 from their utility, whether it's MGE or any other utility  
19 in any state, being good corporate citizens. I think they  
20 are -- they are -- if they are good corporate citizens,  
21 they are an asset to the community. If they're an asset  
22 to the community, they are an asset to the state in which  
23 they operate, and everyone benefits from that.

24 Q. Couldn't it also be viewed, though, that  
25 ratepayers are being forced to make a charitable

1 contribution they may or may not agree with?

2 A. I guess if you looked at specific  
3 charitable contribution, any ratepayer could disagree with  
4 any element of the ratemaking process. I don't know that  
5 that's -- that's the threshold that you've got to consider  
6 in terms of looking whether an expense is just and  
7 reasonable. I would venture to say you can look at any  
8 expense of any distribution company and you could find  
9 some ratepayers that didn't agree with some aspect of it,  
10 and I don't think that's the proper way to set rates.  
11 That's the Commission's job to set rates.

12 Q. In the state of Pennsylvania, are there any  
13 specific clauses that you're aware of regarding  
14 advertising done by utility companies?

15 A. I am trying to recall. There are certainly  
16 truth in advertising laws that would apply and have  
17 applied in the past.

18 Q. If I may, let me see if I can rephrase my  
19 question to pare it down a little bit. Regarding whether  
20 utility companies can recover advertising expenses in  
21 rates, are there Pennsylvania laws on that subject?

22 A. I don't recall, to be honest with you. I  
23 know there are -- that that issue has come before the  
24 commission for resolution. I do not believe there was a  
25 law on point.

1 Q. Okay. Let me ask you this: When it --  
2 when the question of advertising came before the  
3 Pennsylvania Public Utilities Commission when you were a  
4 commissioner, is it fair to say one of the -- one of the  
5 things besides the cost of the advertising, wouldn't it be  
6 fair to say you considered the content of that advertising  
7 in whether it should be recovered in rates?

8 A. Again, this is way outside the scope of my  
9 testimony, so I haven't been thinking about these kinds of  
10 very specific issues over the eight and a half years.  
11 You're asking me too search my memory. I certainly -- I  
12 certainly cared when there was an allegation that the  
13 advertising was untruthful or misleading, that I do  
14 remember. Beyond that, I'm sorry, I don't have a specific  
15 recollection.

16 Q. Okay. Isn't it true that high management  
17 efficiency, as the term is used by Mr. Oglesby, is merely  
18 management doing its job well?

19 A. Repeat the question, please.

20 Q. Okay. Do you recall the term?

21 A. Yeah.

22 Q. Mr. Oglesby states, and you rely on, that  
23 MGE has high management efficiency. Isn't it true that  
24 high management efficiency is merely management doing its  
25 job well?

1           A.       No. I think it might be more than that. I  
2 don't think any management exists in a company very long  
3 these days if they don't do their job well. I think  
4 management efficiency may be above and beyond that. It  
5 shows demonstrably that the job that they're doing has  
6 cost savings to both shareholders and ratepayers.

7           Q.       Isn't true that if MGE has high management  
8 efficiency, that ratepayers have benefitted by lower cost  
9 of service?

10          A.       I guess it would depend. That would  
11 absolutely depend on timing. If the management  
12 efficiencies have occurred and those management  
13 efficiencies have occurred in between rate cases, it  
14 wouldn't necessarily be reflected in rates yet.

15          Q.       Give me just a moment. Okay. On your --  
16 in your testimony -- by the way, do you need a break at  
17 this point?

18          A.       No. I'm fine.

19          Q.       Okay. Let's go to your testimony, and  
20 page 2, line 6 through 7, allow me to read that.

21 Actually, I'd better go back up to line 5. You state,  
22 question: Please state the purpose of your testimony.

23 Answer: I am presenting this testimony on behalf of  
24 Missouri Gas Energy (MGE) with respect to the general  
25 public policy implications of MGE's pending rate case and



1 the relevance of public policy considerations to the issue  
2 of MGE's rate of return.

3 What are the pending policy issues, public  
4 policy issues in MGE's rate case?

5 A. To me the public policy issue worthy of  
6 consideration by this Commission is the establishment of  
7 just and reasonable rates on the one hand, and on the  
8 other hand providing an adequate rate of return and a  
9 reasonable opportunity to earn that rate of return so that  
10 the long-term financial health of the utility can be  
11 promoted, that the infrastructure of the utility can be  
12 maintained and enhanced, that it can be a contributor to  
13 the state of Missouri for purposes of economic development  
14 and maintaining and attracting new jobs to the state, and  
15 that it attracts adequate capital to the state of Missouri  
16 to fulfill the desirability of having a strong, healthy  
17 corporate citizen promoting the economic development of  
18 the state.

19 Q. How is that different than any other  
20 company that's regulated in the state of Missouri coming  
21 in for a rate case? Is there anything different from what  
22 you've just said that would be applicable to any other  
23 case?

24 A. It would only be -- I haven't looked at any  
25 other case, so I don't know whether there would be a

1 difference or not. But you've got the added complication  
2 here, based upon Mr. Noack's testimony, that the return  
3 authorized has not been achieved for some time, which I  
4 think requires a reexamination and a fresh look at what  
5 your objectives are that you're trying to promote going  
6 forward.

7 Q. Now, that particular issue is assuming that  
8 Mr. Noack's analysis on the -- what he is alleging is the  
9 failure to achieve by MGE its authorized rate of return is  
10 correct; isn't that true?

11 A. I think -- I think the Commission needs to  
12 look at that issue, analyze it carefully, and determine  
13 what they conclude is the proper reason for the fact that  
14 the authorized rate of return has not been earned. And I  
15 am sure that there will be differing opinions on that, but  
16 the simple fact is that they have not.

17 And I think it's good public policy, I  
18 think the Commission ought to be seriously concerned about  
19 rate levels that have been set for some period of time,  
20 absent an allegation of management inefficiency or fraud  
21 or something like that, that are not allowing the  
22 opportunity to earn the authorized rate of return.

23 Q. Isn't it true, though, the first issue is  
24 whether Mr. Noack is, in fact, correct in his assertion  
25 regarding MGE's achieving or not achieving its authorized

1 rate of return?

2 A. There's no doubt that I'm relying on  
3 Mr. Noack's conclusions in this regard. If I were sitting  
4 as a commissioner, and I think your Commissioners would  
5 feel the same way, that if I've got a company that's not  
6 repeatedly over several years earning its authorized rate  
7 of return, I've got to look at that and make a  
8 determination, not just hope it earns it the following  
9 year.

10 Q. Has Mr. Noack offered any specific reasons  
11 that he believes that MGE has not achieved its authorized  
12 rate of return?

13 A. He has, yes.

14 Q. And what are those reasons?

15 A. Mr. Noack talks about the billing  
16 determinant, customer usage was one of the keys, and  
17 recovery of bad debts, I think, uncollectible accounts  
18 allowance.

19 Q. Okay. And again you're relying on  
20 Mr. Noack's analysis as being correct?

21 A. Yes, sir.

22 Q. Okay. On page 4 of your testimony, you  
23 have a footnote and you talk about an article entitled  
24 Major Rate Case Decisions: January through June of 2003  
25 from the Regulatory Research Associates, Incorporated from

1 July 7, 2003. Do you recall that?

2 A. I do.

3 Q. Okay. And in that you -- and in this  
4 question and answer, you cite from that article that the  
5 conclusion was that the average gas equity return  
6 authorization for the first two quarters of 2003 based on  
7 nine major rate cases was 11.37 percent, up from  
8 11.03 percent in 2002; is that correct?

9 A. That's correct.

10 Q. Okay. But it's also true you're not saying  
11 to the Missouri Public Service Commission, I believe that,  
12 based on my analysis of all of the materials here, that  
13 you should set the return on equity at X; isn't that true?

14 A. That's true.

15 Q. Okay. Then do you believe that, other than  
16 whatever the Regulatory Research Associates, whatever nine  
17 cases they used, other than being illustrative from nine  
18 cases, that your cited article has any particular  
19 relevance to your testimony?

20 A. Well, I think the relevance is when you  
21 look at the Hope and Bluefield standards and the ability  
22 to attract capital, you can't -- you can't do that in a  
23 vacuum. Hope and Bluefield says you can't do it in a  
24 vacuum. You have to look at what's going on around you,  
25 and it's an element to take into consideration, because

1 you are competing with other states for investment  
2 dollars.

3 Q. So you believe it's a factor that should be  
4 considered, and the fact that return on equity was set at  
5 11.37 percent in nine cases, whatever those nine cases  
6 are, has some relevance to this rate case?

7 A. I think I've answered the question. I  
8 think that because the reality is there's only so many  
9 investor dollars that are going to be invested in natural  
10 distribution companies by the capital markets, you are in  
11 competition for those investment dollars to attract them,  
12 to make sure that Missouri gets its fair share and  
13 promotes the financial health of its economy by attracting  
14 those dollars here. So by definition you have to take  
15 into consideration what the competition is.

16 Q. Okay.

17 A. It's not the sole determinant, but it is a  
18 determinant. Hope and Bluefield says it's a determinant.

19 Q. Sorry. I didn't mean to interrupt. Are  
20 you finished with your answer?

21 A. I am.

22 Q. Okay. On page 8 of your testimony, you  
23 ask -- lines 10 to 11, you ask a question, can you  
24 elaborate on your policy goal of encouraging healthy  
25 utilities? And then your answer addresses that question;

1 is that correct?

2 A. It does.

3 Q. Okay. What is your definition of a healthy  
4 utility?

5 A. One that contributes to the economy of the  
6 state in which it operates, one that provides safe,  
7 reliable and adequate service at just and reasonable rates  
8 to its customers and provides a fair return to its -- to  
9 its shareholders.

10 Q. At the present time, is MGE a healthy  
11 utility in the definition you give in your testimony?

12 A. I've rendered no opinion with regard to  
13 whether they are a healthy utility at the present time.  
14 My testimony goes towards the considerations that  
15 Commissioners should be encouraged to look at in setting  
16 the rates prospectively.

17 Q. Okay. Is it also fair to say that, since  
18 you have done no analysis, you have no particular opinion  
19 on whether MGE at the present time is a healthy utility?

20 A. I have not rendered any opinion. I've not  
21 done an analysis.

22 Q. So accordingly you have no opinion at the  
23 present time?

24 A. I'm offering no opinion with regard to  
25 that, no.

1 Q. Okay. Assume that MGE received its entire  
2 requested \$44.875 million rate increase on exactly the  
3 terms that MGE asked for. At that point, would MGE be a  
4 healthy utility, as you define it in your testimony  
5 beginning at page 8, line 10?

6 A. Similarly, I've conducted no analysis of  
7 that as well. You'll have to ask other witnesses in that  
8 regard. My testimony simply goes to the application of  
9 the Hope and Bluefield standard setting rates  
10 prospectively and the good public policy reason for doing  
11 that because we all benefit, both customers and  
12 shareholders and the state's economy alike from that.

13 Q. And you are not advocating to the Missouri  
14 Public Service Commission that it would be good public  
15 policy to adopt all of MGE's proposals lock, stock and  
16 barrel, meaning the entire thing, at the present time?

17 A. I've not made that analysis and I've not  
18 offered that as an opinion. Other witnesses can answer  
19 that question for you much better than I can.

20 Q. And you have no opinion on whether those  
21 other witnesses are right or wrong?

22 A. I have offered -- I've told you the  
23 testimony that I've relied on to reach the conclusions  
24 that I based my testimony on and the good public policy  
25 reasons for the Commission to consider those.

1 MR. FRANSON: I'd like to take about a  
2 five-minute break, and I may be relatively close to being  
3 finished.

4 (A BREAK WAS TAKEN.)

5 BY MR. FRANSON:

6 Q. Mr. Quinn --

7 A. Quain.

8 Q. I'm sorry. Mr. Quain. I apologize.

9 Mr. Quain, I'm going to hand you a document and I'm going  
10 to hand that to you and then to Mr. Hack, and all I need  
11 to really know is, do you recognize the name on that  
12 document?

13 MR. HACK: This is a -- looks like a copy  
14 of sheet of something providing a rundown on a Dr. Morin,  
15 M-o-r-i-n.

16 MR. FRANSON: And Mr. Hack, let me add,  
17 that's actually a copy of Murray Exhibit 2 from May 4,  
18 2004.

19 MR. HACK: And I can read it to you and you  
20 can tell me if you've heard of Dr. Morin. Dr. Morin is  
21 professor of finance at the College of Business  
22 Administration, Georgia State University, and professor of  
23 finance for regulated industry at the Center for the Study  
24 of Regulated Industry, also at Georgia State University.  
25 End paragraph.



1 Dr. Morin holds a bachelor of electrical  
2 engineering degree and an MBA in finance from McGill  
3 University in Montreal, Canada. Dr. Morin received his  
4 Ph.D. in finance and econometrics at the Wharton School of  
5 Finance at the University of Pennsylvania. He has taught  
6 at the Wharton School of Finance at the University of  
7 Pennsylvania, Amos Tuck School of Business at Dartmouth  
8 College, Drexel University, University of Montreal's  
9 Hautes Etudes Commerciales, McGill University and Georgia  
10 State University. Dr. Morin has developed and conducted  
11 numerous executive development programs. Dr. Morin was a  
12 faculty member of Advanced Management Research  
13 International and currently a faculty member of EXNET,  
14 L.P. for whom he conducts national executive level  
15 education seminars throughout the United States and  
16 Canada. In the last twelve years Dr. Morin has developed  
17 and conducted ongoing national seminars on, quote, utility  
18 cost of capital, end quote, quote, alternative regulatory  
19 frameworks, end quote, and, quote, utility capital  
20 allocation, end quote, on behalf of EXNET and Public  
21 Utility Reports, Inc. Close paragraph.

22 Dr. Morin has authored several books,  
23 monographs and articles in academic scientific journals on  
24 the subject of finance, some of which have appeared in a  
25 variety of journals, including The Journal of Finance, The

1 Journal of Business Administration, International  
2 Management Review and Public Utilities Fortnightly. He  
3 has published a widely used treatise on cost of capital  
4 entitled Utilities' Cost of Capital (1984). Dr. Morin has  
5 engaged in extensive consulting activities on behalf of  
6 numerous corporations and legal firms in matters of  
7 finance management and corporate litigation. He has  
8 served as a financial consultant and expert witness on  
9 behalf of -- on behalf of both companies and regulatory  
10 commissions before numerous federal and provincial/state  
11 regulatory boards in both Canada and the U.S., including  
12 the Federal Energy Regulatory Commission, the Federal  
13 Communications Commission, the Canadian Radio Television  
14 and Telecommunications Commission, and the National Energy  
15 Board of Canada.

16 And that's three paragraphs.

17 BY MR. FRANSON:

18 Q. Are you familiar with Dr. Morin?

19 A. I'm familiar with him, but that's about it.

20 Q. Have you ever met him?

21 A. Not that I recall.

22 Q. Have you become aware of any plans by  
23 Missouri Gas Energy to retain him as an expert in this  
24 case?

25 A. Not aware of any plans.

1 Q. Okay. Do you know, are you familiar with  
2 the term percentage of income payment program, MIPP, in  
3 the -- as that term might be used in the state of  
4 Pennsylvania?

5 A. As a low income program?

6 Q. Yes, I believe it is.

7 A. We call it something different, yes.

8 Q. What do you call it?

9 A. I think we call it CAP program, customers  
10 assistance program.

11 Q. Okay.

12 A. If it's the same thing. I'm not sure that  
13 it is, but it's essentially you pay less than a full  
14 100 percent of your bill and agreement -- this is the way  
15 it works in Pennsylvania -- an agreement to stay current  
16 on your bills, you can stay in the program. If you fall  
17 in arrears, you're removed from the program.

18 Q. Okay. The CAP program in Pennsylvania, I  
19 believe you said that is customer assistance program?

20 A. I think that's what it stands for, yeah.

21 Q. Does Pennsylvania have such programs at the  
22 present time?

23 A. Does it have what?

24 Q. Does it have CAP programs right now, if you  
25 know?

1           A.       Some of the -- some of the companies have  
2 them. I don't know that I could say that all of them have  
3 them. It's a voluntary program.

4           Q.       Okay. Are you familiar with the CAP  
5 program regarding arrearages and forgiveness offered by  
6 Allegheny power? Let me ask --

7           A.       I am. I haven't seen it in a long time.

8           Q.       How about -- help me with this name --  
9 D-u-s-q-u --

10          A.       Dusque (phonetic spelling).

11          Q.       Dusque Light, National Fuel Gas, PG  
12 Energy, MetEd and UGI Utilities, Inc., are you familiar  
13 with CAP programs offered by any or all of those  
14 companies?

15          A.       I know that some of those companies did at  
16 one time, maybe all of them did at one time offer CAP-type  
17 programs. They've morphed into different kinds of  
18 programs. Some of them have been substituted for other  
19 alternatives. I don't know whether they still offer them  
20 or not.

21          Q.       Okay. Do you know whether the Pennsylvania  
22 Public Utilities Commission considered these programs to  
23 be successful or not successful?

24          A.       I think there was a mixed bag on that  
25 depending upon the commissioners. Some of them didn't

1 like them to begin with.

2 Q. Okay. And did -- were they -- were CAP  
3 programs considered in the state of Pennsylvania something  
4 appropriate to consider in a rate case? Could another  
5 party, for instance a consumer advocate, propose such a  
6 program in the context of a rate case?

7 A. Counselor, my recollection of the programs  
8 were the utilities were encouraged at one time, before I  
9 arrived there I might add, to implement such programs.  
10 There was a great deal of surrounding the legality of such  
11 programs, discrimination of rate being the issue. And I  
12 think as a result some companies offered to do it  
13 voluntarily, but I'm -- I'm reaching. It's been a long  
14 time. These programs went into effect in Pennsylvania  
15 late '80s, early '90s.

16 Q. Do you have any recollection of generally  
17 how those programs were funded?

18 A. I don't recall to be honest with you.

19 Q. Okay. Are you familiar with Pay As You  
20 Save, PAYS?

21 A. I am not.

22 Q. Okay. Were you present during the  
23 deposition of Mr. David Murray, witness for Staff,  
24 yesterday?

25 A. I think I was for all of it, if not most of

1 it.

2 Q. Okay. Did you recall questions to  
3 Mr. Murray about using as the basis of his study, I  
4 believe it was the years 1997 to 2002?

5 A. I recall the questions, yes, sir.

6 Q. And do you recall him being asked about the  
7 availability of numbers for 2003?

8 A. I recall the question. I'm not sure I  
9 recall his answer.

10 Q. Okay. But you recall the question?

11 A. I do recall the question.

12 Q. And are you aware of any party, whether  
13 it's MGE or otherwise, preparing any studies that  
14 incorporate 2003 numbers in the context of Mr. Murray's  
15 study?

16 A. If it's -- if it's being undertaken, it's  
17 not with my knowledge.

18 MR. FRANSON: I don't believe I have any  
19 further questions at this time. Before I say no further  
20 questions . . .

21 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

22 MR. FRANSON: If I could ask one more  
23 question, I think I can head off my motion to compel.

24 BY MR. FRANSON:

25 Q. Mr. Quain, all I'm really trying to ask is,

1 I understand you haven't done any analysis. I understand  
2 you haven't undertaken any verification of the return on  
3 equity witnesses. I understand you aren't offering any  
4 specific expert opinion on whether they are right or  
5 wrong. You're just advocating general public policy.

6 All I'm asking is, outside of that context  
7 of a formalized study, have you formed any opinions  
8 regarding the adequacy of rates and specifically return on  
9 equity, whether it's a personal opinion or any other  
10 opinion, that MGE has received a specific -- whether they  
11 received an adequate return on equity in the state of  
12 Missouri or not since they've been here?

13 MR. HACK: Can I just ask that the question  
14 be rephrased? There were a number of subparts that could  
15 be construed as different questions.

16 MR. FRANSON: Okay. As long as the witness  
17 doesn't understand the question, I'll be happy to  
18 rephrase.

19 THE WITNESS: I'm sorry. I didn't  
20 understand your question. I'm not sure I can help you  
21 here. I'm going to try.

22 BY MR. FRANSON:

23 Q. What I'm trying to do, I'm trying to head  
24 off a motion to compel an answer. All I'm asking is,  
25 while I understand you haven't done any formalized studies

1 and you haven't done any formalized research and you're  
2 not advocating a particular return on equity, all I'm  
3 asking is, do you have any opinion, personal or otherwise,  
4 whether or not Missouri Gas Energy has received from the  
5 Missouri Public Service Commission an adequate return on  
6 equity in past rate cases or not?

7 A. Here's the difficulty I have with your  
8 question, and I'm being sincere about this. I'm not  
9 trying to just give you a hard time. When you sit where I  
10 sat and you carry the obligations that I carried, you take  
11 the job very seriously, and you know that when you say  
12 something, whether it's on Wall Street or whether it's  
13 before Congress or whether it's somewhere else, people  
14 attach a certain level of credibility or reliability to a  
15 statement.

16 And as a result, I think people like myself  
17 consider the opinions that they offer very carefully  
18 because they can be considered out of context, and as a  
19 result, I hesitate always in any context to offer opinions  
20 that I haven't thought through well, because I know that  
21 they will be used in one way or another, either to support  
22 or against a particular proposition.

23 And my reputation relies on me offering  
24 statements that are thought out and reasoned as best as I  
25 can do it, and I take my reputation very seriously. So I



1 don't offer opinions lightly that I don't feel comfortable  
2 having thought through the consequences of giving a  
3 flippant response.

4 And so I understand what you're doing, I  
5 understand why you're doing it, but please understand and  
6 respect my reason for giving you the answers that I gave  
7 in the context that I gave them. I've just not done it,  
8 and I don't want to give an answer that's not well thought  
9 out, because I don't think that provides any value to  
10 anybody, least of which to me.

11 MR. FRANSON: I don't have any further  
12 questions. Thank you.

13 CROSS-EXAMINATION BY MR. MICHEEL:

14 Q. Mr. Quain, I'm Doug Micheel. I work for  
15 the Office of the Public Counsel. I just want to ask you  
16 a few questions today.

17 When you were chatting with Mr. Franson,  
18 you indicated that you were brought on board to work with  
19 Mr. Oglesby. Do you remember those answers?

20 A. Yes.

21 Q. To, I think you said, get a better  
22 relationship with the Missouri Commission. And what was  
23 your understanding of MGE's relationship with the Missouri  
24 Commission and why you were brought on board?

25 A. It is in the context, sir, of the

1 relationship I had with a sister division of MGE, and  
2 that's PG Energy, which is the division in Pennsylvania.

3 The relationship I had with PG Energy was  
4 one that, while we disagreed on lots of things, there was  
5 a working relationship where we all tried to get to the  
6 furtherance of public policy goals and objectives like  
7 just and reasonable rates, fair return on equity, and a  
8 healthy and robust economic climate in which PG could  
9 participate in the commonwealth of Pennsylvania.

10 The company and I viewed that -- company  
11 being Southern Union in this instance -- viewed that as a  
12 worthwhile objective. I certainly viewed it as very  
13 worthwhile to have those kinds of relationships with some,  
14 not all, of the utilities in Pennsylvania, and it  
15 furthered the objectives of the Commission, at the same  
16 time it promoted certain objectives of the company.  
17 Didn't agree on everything, that's to be sure.

18 And it was a repetition of that kind of  
19 relationship where we could work together for the  
20 betterment of the state and for the citizens of the state  
21 that we were trying to replicate in Missouri, and we were  
22 just trying to draw on the experiences that I had and  
23 given a perspective sitting on the Commission and having  
24 looked at that company to provide some value as to why  
25 that might be helpful to MGE.

1 Q. And what specific advice did you give  
2 Mr. Oglesby?

3 A. This is going back a couple years. The  
4 specific advice I gave was obviously to be truthful and  
5 honest. Your credibility and reputation is absolutely  
6 paramount. If you say you're going to do something, then  
7 you'd better do it. And this wasn't in the context of any  
8 particular problem. This was just general advice.

9 And by the same token, if you weren't going  
10 to do something, say no. The worst thing you can do is  
11 say you're going to do something with no intent of doing  
12 it. The relationship has to be based on trust, has to be  
13 based on honesty and has to be based on integrity.

14 Beyond that, the companies that I found  
15 that I worked best with as chairman of the Pennsylvania  
16 Commission were those that were problem solvers and helped  
17 me solve public policy problems in the commonwealth of  
18 Pennsylvania; for example, a low-income program that would  
19 be helpful to participate in, for example, a utility that  
20 was troubled and wasn't in compliance with commission or  
21 federal regulations that needed to be bought up and  
22 subsumed and helped with, or providing management services  
23 to small utilities where they had the expertise to do it  
24 and a small utility didn't, helping with the promotion of  
25 legislation in terms of furthering the objectives that I

1 had as chairman and the governor had at the time for the  
2 development of deregulation in Pennsylvania, those kinds  
3 of things.

4 So my advice was it's a give and take  
5 relationship. Don't always go in when you're asking for  
6 something. Go in and just make sure you develop the  
7 relationships. And people will trust people that they  
8 know and have respect for. And I've made no conclusions  
9 whether that was the case here or not, but that's a  
10 relationship that's built over time and one that's tested  
11 severely when you have serious disagreements.

12 Q. Did you -- did you indicate or were you  
13 aware of whether or not before this Commission MGE had a  
14 reputation for truthfulness and honesty or was that a  
15 problem?

16 A. I was not aware that it was a problem, but  
17 it's -- it's a matter of attitude and approach, I think.

18 Q. You said that you developed your  
19 relationship with Southern Union Company and your workings  
20 with PG Energy and that you had numerous disagreements  
21 with PG Energy, and what were those disagreements? What  
22 items did you disagree on?

23 A. You know, I am sure that they came in and  
24 asked for rate levels where I challenged them on it. I'm  
25 sure that there were public policy directives. For

1 example, I was -- the governor gave me the responsibility  
2 of drafting collaborative legislation for the deregulation  
3 of the natural gas industry in Pennsylvania. My  
4 objectives, my marching instructions were that it had to  
5 be a consensus piece of legislation, which means I had to  
6 have low-income advocates on board the same as I had to  
7 have utility executives on board, and trying to find those  
8 middle grounds, what was appropriate to put in the  
9 legislation, what was appropriate -- there were honest  
10 disagreements on it.

11 But this is a tough business, as you know,  
12 and there's lots of room for reasonable people to  
13 disagree. It's the way you handle those disagreements  
14 without impacting your relationship with either the  
15 company or with the government that I think is important.

16 Q. With your work with Mr. Oglesby, did you  
17 provide him any written input, either electronic e-mail,  
18 written paper, anything like that, letters?

19 A. No, not that I recall. And the reason for  
20 that is, and is the reason why I believe it was you that  
21 asked for copies of presentations I made, because I have  
22 low vision, I don't work off a printed piece of paper.  
23 It's of no use to me. So if I had a speech that I was  
24 going to give or a presentation I was going to give,  
25 guarantee something slightly different would come out of

1 my mouth than was actually written on the paper because of  
2 my inability to be able read a printed document. So I  
3 tend to shy away from those kinds of things, and to speak  
4 off an outline or off a philosophical approach that I feel  
5 strongly about is pretty easy for me to do.

6 Q. Did you provide Mr. Oglesby with a written  
7 outline?

8 A. I don't think I did, no.

9 Q. No writings?

10 A. No. I think it was just a conversation  
11 sitting around a table.

12 Q. Mr. Franson asked you a couple questions  
13 about how you determine whether or not a company's  
14 providing good service, and you indicated that the company  
15 had done one looking at similarly situated companies and  
16 looking at operation and maintenance expenses. Do you  
17 recall those questions?

18 A. Yes, I do.

19 Q. And you said there are other ways to look  
20 at that to determine that?

21 A. Yes.

22 Q. My question is, what are the other ways,  
23 sir?

24 A. One of the ways is, when you have -- we  
25 call them public input sessions in Pennsylvania. I don't

1 know what the term is here. In the context of a rate case  
2 oftentimes you will go out into the community that is  
3 served by the utility and hear from the public about what  
4 they thought about the rate increase and what they thought  
5 about the service they were being provided. Sometimes you  
6 would see a whole host of people, very angry, very upset  
7 about the quality of service. Other times you would see  
8 people coming in and saying, you know, the rate increase  
9 was too high.

10 Those kinds of measures were invaluable.  
11 They were people, customers speaking live to you. I  
12 attended a lot of those as a commissioner. In  
13 Pennsylvania the commissioners didn't sit on the rate  
14 cases. The ALJ does it. The commission comes to the  
15 public input sessions. You are free to participate. That  
16 to me was a good measure. If people didn't show up or if  
17 the comments were not well founded in my opinion, you took  
18 that into consideration as well.

19 Q. Are you aware that we do have local public  
20 hearing process here in Missouri?

21 A. I am.

22 Q. And are you aware that we had four local  
23 public hearings in this rate proceeding?

24 A. I'm aware that you had some public input  
25 hearings. I'm not aware of how many there were.

1 Q. Other than the public input hearings, are  
2 there any other ways other than looking at similarly  
3 situated companies and O&M expense?

4 A. I think it's -- I think looking at customer  
5 complaints that come in to the Commission for arbitration  
6 or negotiation, assuming that you have something similar  
7 here, payment troubled customers, trying to negotiate  
8 payment arrangement, customer complaints based upon  
9 quality of service come in through that vehicle.

10 Again, clearly there's always going to be  
11 complaints. We know that, and that's understandable, and  
12 that's a part of this business is how you measure them  
13 against other companies and how you view the validity of  
14 those complaints given the kind of objectives you're  
15 trying to achieve for a company.

16 Q. Anything else, sir?

17 A. I don't -- nothing comes to mind. That's  
18 not say that there's not others. I know some companies do  
19 customer satisfaction surveys. I know some companies, you  
20 know, after there's customer contact follow up and say,  
21 how is the level of treatment you received? That's not  
22 done by all companies in all instances. There are  
23 obviously other measures by which to do it. They're the  
24 standard ways.

25 Q. And why is comparing O&M expense an



1 appropriate way to do it?

2 A. Well, I think it's the value of the quality  
3 of service that you provide to the customer at the most  
4 efficient cost that's a value to customers.

5 Q. But are companies' cost structures  
6 different in between different companies?

7 A. Some are.

8 Q. And I'm trying to understand why, I mean,  
9 if -- if a cost structure of one company is different than  
10 the cost structure of another company, why is that a valid  
11 indicator?

12 A. Well, I think any company wants to provide  
13 quality service on a per-customer basis at the least  
14 possible cost without sacrificing the quality of service.

15 Q. In response to one of Mr. Franson's  
16 questions, you said that in order to decide, a commission  
17 should look at the testimony of all witnesses, listen to  
18 the cross-examination, read the briefs and then apply  
19 those facts as let into the record to the law. Do you  
20 recall saying that?

21 A. Uh-huh.

22 Q. Do you have any reason to believe that  
23 that's not what the Missouri Public Service Commission  
24 does in deciding rate cases today?

25 A. I've not suggested to the contrary.

1 Q. And indeed that's their statutory  
2 requirement, isn't it?

3 A. It's a requirement of the law, yes, sir.  
4 And then if you recall, I also added at the end, then,  
5 once you've looked at the facts and the law, you apply  
6 your public policy objectives.

7 Q. Certainly. And those public policy  
8 objective were just and reasonable rates?

9 A. And proper return and opportunity to earn  
10 that return to meet the Hope and Bluefield standards.

11 Q. You indicated in response to Mr. Franson  
12 that you had reviewed some Missouri Gas Energy rate  
13 orders; is that correct?

14 A. I think I reviewed -- yes, I did. I'm  
15 trying to remember. I think I reviewed the last litigated  
16 rate order. I must have -- I can't recall when the last  
17 settled case, I believe I reviewed that as well.

18 Q. GR-2001-292? You don't remember the  
19 numbers?

20 A. I do not remember numbers.

21 Q. Mr. Franson asked you some questions about  
22 CAP programs.

23 A. Uh-huh.

24 Q. And you indicated that some commissioners  
25 supported CAP programs, some commissioners didn't support

1 CAP programs. What camp were you when in when you were a  
2 commissioner?

3 A. I supported them if they were voluntary. I  
4 thought it would be illegal to impose them because of the  
5 considerations for rate discrimination.

6 Q. And that's discrimination intra-class?

7 A. Correct.

8 Q. In other words, within the residential  
9 class?

10 A. Well, some companies proposed it that way.  
11 Other companies proposed to receive the subsidy from  
12 another rate class, and that obviously is even more  
13 problematic to me.

14 Q. Are you aware of any court challenges to  
15 CAP programs that have taken place in Pennsylvania, in the  
16 keystone state?

17 A. None recently that I can think of. I  
18 couldn't offer an opinion because I'm just not sure. I'm  
19 just not sure.

20 Q. So you don't --

21 A. I don't recall.

22 Q. You don't recall?

23 A. I just don't recall.

24 Q. That's fair enough.

25 A. These programs, as I said, went int -- my

1 recollection, they went into place in the first instance  
2 in the late '80s. Before I returned to the commission and  
3 then into the early '90s, and then they morphed into  
4 different kinds of programs during the time I was there.

5 Q. Now, you're the chair of the energy and  
6 utility law practice at Klett, Rooney, Lieber & Schorling;  
7 is that my understanding?

8 A. Yes.

9 Q. What type of clients do you have?

10 A. A whole variety of clients. They're mostly  
11 clients that have operations of multi-jurisdictions, the  
12 theory being that in Pennsylvania we took some pretty  
13 progressive initiatives on the way that clients may be  
14 interested in in other jurisdictions.

15 Q. Other than Southern Union Company, which  
16 large rate investor-owned utilities do you represent?

17 A. American Water. I represent PG  
18 Interchange. I represent Reliant Energy, Exelon  
19 Corporation. I do some work for Miriant Sempra. They're  
20 probably the --- on the gas side I also do work for  
21 Nisource (phonetic spelling).

22 Q. And is that nitty-gritty rate case, trying  
23 rate cases for them or is that high level policy  
24 representation or a little of both?

25 A. Mostly the latter.

1 Q. Okay. And how much are you being paid for  
2 this particular engagement?

3 A. My recollection is, and I'll double check,  
4 like 320 an hour.

5 Q. And do you have a not to exceed or is it  
6 just a per hour?

7 A. It's a per hour.

8 Q. And how much time have you spent on this  
9 engagement to date?

10 A. I'd have to go back and check. I really  
11 don't recall.

12 Q. And do you have any associates working with  
13 you on this engagement?

14 A. I have Mr. Knipe with me here today. I  
15 have had others help me during different times of the  
16 proceeding, preparing testimony, answering  
17 interrogatories, that type of thing.

18 Q. And in response to Mr. Franson, you  
19 indicated that -- and I guess in your testimony, too --  
20 that you've practiced public utility law at the state and  
21 regional levels, I guess since 1982?

22 A. When I wasn't in public service, yes.

23 Q. When you weren't a commissioner?

24 A. Right.

25 Q. How many non-gas -- and you understand when

1 I say non-gas, not a PGA or a base rate case. How many  
2 non-gas natural have you litigated?

3 A. When you say non-gas, you're talking about  
4 non-gas being base rate cases?

5 Q. Base rate cases, like this case, sir.

6 A. I've never thought about it that way. I  
7 would say 20 or 30.

8 Q. And most of those were when you were with  
9 the PUC?

10 A. With the PUC and my years in private  
11 practice immediately following that.

12 Q. How about electric rate cases?

13 A. Probably a few more el-- well, there were  
14 fewer electric. I did some over in New Jersey as well.  
15 Probably less. Larger cases to be sure. A lot of the  
16 nuclear power plants were coming online back in those  
17 days, and there were some huge cases. In the range of  
18 10 or 12, maybe 15.

19 Q. And was your representation both at the  
20 commission level and at the appellate level?

21 A. Yes, but certainly more -- certainly more  
22 at the litigation level. I've done some appellate work.

23 Q. Which ones stand out for you?

24 A. Which rate cases stand out for me?

25 Q. Yes, sir.

1           A.       The PP&L rate case that brought online  
2   Susquani Unit 1.

3           Q.       And what time frame was that in, sir?

4           A.       The early '80s; '83, '84.

5           Q.       Okay. And that's Pennsylvania Power &  
6   Light?

7           A.       Pennsylvania Power & Light, yes. You want  
8   more?

9           Q.       Any other ones?

10          A.       They all were interesting in their own  
11   right. They all had some novel issues and all had  
12   interesting things to talk about, but I enjoyed it. I  
13   enjoyed the litigation of rate cases immensely, and I did  
14   an awful lot of them. There were telephone cases that  
15   were going through all kinds of different iterations.

16                 There were electric cases, of course, with  
17   nuclear power and the whole argument as to whether nuclear  
18   power was more important than coal generation. They were  
19   very interesting cases. The whole concept of the taker  
20   pay problems with regard to local distribution companies  
21   was very interesting cases. I don't know that -- does  
22   that help?

23          Q.       That's good enough. I'll do a search. Has  
24   Southern Union Company, to your knowledge, had any  
25   problems attracting equity capital in the last five years?

1 A. Repeat the question, please.

2 Q. Has Southern Union Company, to your  
3 knowledge, had any problems with attracting equity capital  
4 in the last five years?

5 A. I've done no analysis on that.

6 Q. Has Southern Union Company had any problems  
7 attracting debt financing in the last five years?

8 A. Again, I've done no analysis for that.

9 Q. So you're unaware of whether or not  
10 Southern Union Company has been able to do any debt or  
11 equity financing; is that correct?

12 A. I've not done any analysis for that.

13 Q. If I told you -- well, Rob, I guess I'll  
14 hand you the annual report, and it's the 2003 Southern  
15 Union annual report. Looking at page 9, could you read  
16 that to him, Rob, the item that I have highlighted?

17 MR. HACK: This is a paragraph from page 9  
18 of the Southern Union Company 2003 annual report. It  
19 actually begins in the middle of the paragraph,  
20 highlighted portion. Reads as follows: In addition to  
21 using proceeds from its Texas assets sale to fund the  
22 Panhandle acquisition in May 2003, Southern Union  
23 initiated concurrent common stock and equity linked units  
24 offering. After successful road show presentations to  
25 major sectors of the investment community, Southern Union



1 issued nearly 11 million new shares of common stock at  
2 \$16 per share, 2.5 million equity units at \$50 per unit.  
3 The equity units pay a cash coupon of 5.75 percent and  
4 were issued with a maximum conversion premium of  
5 22 percent over the company's stock price of \$16 per  
6 share.

7 BY MR. MICHEEL:

8 Q. Does that indicate to you in their annual  
9 report that Southern Union has recently issued 11 million  
10 new shares of common equity?

11 A. Based upon what was just read to me, that  
12 would seem accurate, but I don't know anything more about  
13 it than what was just read to me.

14 Q. And you're aware that the annual report has  
15 to comply with SEC regulations?

16 A. Certainly.

17 Q. So you have no reason to doubt --

18 A. No.

19 Q. -- the veracity of --

20 A. I didn't mean to suggest that.

21 Q. Okay.

22 A. My comment was more limited to I've not  
23 done any independent review of it other than what was just  
24 read to me.

25 Q. Do you believe that when the Missouri

1 Commission set MGE's rates in the past, it was not mindful  
2 of the impact their actions would have on MGE's ability to  
3 attract capital?

4 A. I've not -- I've not analyzed that. The  
5 purpose of my testimony is to look at setting of rates  
6 prospectively and the need to apply the Hope and Bluefield  
7 standards in a way that's consistent with standard  
8 interpretation of those cases in order to allow the  
9 attraction of capital prospectively.

10 Q. Do you have any reason to believe in the  
11 past that the Missouri Public Service Commission did not  
12 appropriately apply the Hope and Bluefield standard?

13 A. I've not done any analysis in that  
14 regard. Again, my testimony is as a former regulator to  
15 former colleagues recognizing the difficult job that they  
16 have in balancing all these competing interests and how  
17 important it is to be mindful of not just a short-term  
18 setting of rates and keeping the rate increases to a  
19 minimum, but also how the perception of the investment  
20 community is when a commission order comes out.

21 It goes back to the discussion I had with  
22 Mr. Franson. When you sit in those positions, people read  
23 what you say and attach significant weight to your words  
24 and what signals you're sending and the perception of the  
25 climate that you're setting in a regulatory community. So

1 it's important to be mindful of that.

2 Q. Are you aware that in Case No. GR-96-285, a  
3 Missouri Gas Energy case decided before this Commission on  
4 January 22nd, 1997, the Missouri Public Service Commission  
5 authorized Southern Union Company, doing business as  
6 Missouri Gas Energy, to earn an 11.30 percent return on  
7 equity?

8 A. '97 case?

9 Q. It was -- it was entitled GR-96-285. It  
10 was decided January 22nd, 1997.

11 A. I think I saw that in the Regulatory  
12 Research Associates report, yes.

13 Q. So you're aware of that?

14 A. Yes.

15 Q. You were on the Pennsylvania Commission in  
16 '96-'97, were you not, sir?

17 A. Yes, I was.

18 Q. What kind of returns on equity was your  
19 Commission granting for local distribution companies in  
20 that time frame?

21 A. I don't recall.

22 Q. Should have been in the ballpark of what  
23 the Missouri Public Service commission was issuing in that  
24 time frame?

25 A. It would -- it would depend on the

1 circumstances of the individual case, the credibility of  
2 the testimony, the effectiveness of the cross-examination  
3 of that testimony, lots of things.

4 Q. So the return on equity granted to an  
5 individual company is very case specific?

6 A. Well, it is. It is based upon the record  
7 of evidence. You obviously can't ignore the record  
8 evidence. It's also necessary to look at it in terms of  
9 attracting capital and making sure that the evidence put  
10 before you is credible and reliable. That certainly goes  
11 into the determination.

12 Q. Is it appropriate as a regulator to decide  
13 the return on equity or any other matter using anything  
14 but the record evidence?

15 A. The record evidence plus applicable law and  
16 public policy objectives.

17 Q. Other than that?

18 A. No.

19 Q. So if a commission sets a public policy  
20 objective to have a 20 percent return on equity, is it  
21 appropriate if every other witness in the case and all the  
22 cross-examination indicates that the return on equity  
23 should be 10 percent for a commission, because they've  
24 just got a public policy objective allows 20 percent?

25 A. No. As we discussed, you obviously have to