

1 BEFORE THE PUBLIC SERVICE COMMISSION

2 STATE OF MISSOURI

3

4 TRANSCRIPT OF PROCEEDINGS

5 HEARING

6 March 8, 2005

7 Jefferson City, Missouri

8 Volume 2

9

10 In the Matter of the Application of)
11 Missouri Gas Energy, a Division of) Case No.
 Southern Union Company, for an) GU-2005-0095
12 Accounting Authority Order Concerning)
 the Kansas Property Tax for Gas in)
13 Storage)

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17 MORRIS L. WOODRUFF, Presiding
 SENIOR REGULATORY LAW JUDGE.
18 JEFF DAVIS, Chairman
 STEVE GAW
19 ROBERT CLAYTON III
 LINWARD "LIN" APPLING,
20 COMMISSIONERS.

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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: All right. Good morning,
3 everyone. Let's go ahead and get started. We're here today
4 in a hearing in Case No. GU-2005-0095, which concerns Missouri
5 Gas Energy's request for an Accounting Authority Order
6 concerning Kansas property tax for gas in storage.

7 We're going to begin today by taking entries of
8 appearance beginning with Staff.

9 MR. SCHWARZ: Tim Schwarz and Bob Berlin, PO
10 Box 360, Jefferson City, Missouri 65102 appearing for Staff.

11 JUDGE WOODRUFF: Public Counsel.

12 MR. MICHEEL: Douglas E. Micheel appearing on
13 behalf of the Office of the Public Counsel and the public, PO
14 Box 2230, Jefferson City, Missouri 65102-2230.

15 JUDGE WOODRUFF: Thank you.

16 And for Missouri Gas Energy.

17 MR. COOPER: Dean L. Cooper from the law firm
18 of Brydon, Swearngen and England, PC, PO Box 456, Jefferson
19 City, Missouri 65102 appearing on behalf of Missouri Gas
20 Energy, a division of Southern Union Company.

21 JUDGE WOODRUFF: Thank you.

22 And Midwest Gas Users' Association is a party
23 in this case as well. I don't see anybody here from that
24 organization.

25 We're going to begin by taking opening

1 statements. We'll go ahead and mark exhibits and so forth
2 before we do that. The pleading file by the parties did not
3 indicate what order they wanted to do the opening statements
4 in, so I'll let you tell me at this point. Who wants to go
5 first?

6 MR. COOPER: I'm more than willing to go first,
7 your Honor.

8 JUDGE WOODRUFF: Followed by Staff and Public
9 Counsel?

10 MR. SCHWARZ: I think that's fine.

11 MR. MICHEEL: Yes, that's fine.

12 JUDGE WOODRUFF: All right. And I believe
13 there was some discussion before we went on the record about
14 the order of cross. Mr. Micheel?

15 MR. MICHEEL: Yes, your Honor. On the list of
16 issues for Mr. Hyneman it shows MGUA, OPC and MGE. And MGE
17 and OPC should be switched because we're the most adverse
18 party. And I think that's okay with other counsel.

19 JUDGE WOODRUFF: All right. I'll show that
20 change on my chart here.

21 Anything else you want to bring up while we're
22 on the record?

23 With that, we're off the record and we'll go
24 ahead and pre-file exhibits and we'll take a short break and
25 I'll go get the Commissioners. I'll take us off the Internet.

1 (A recess was taken.)

2 (Exhibit Nos. 1 through 8 were marked for
3 identification.)

4 JUDGE WOODRUFF: All right. Let's go ahead and
5 get started. There are several Commissioners that will be
6 joining us in a few minutes.

7 MR. COOPER: But we are moving on?

8 JUDGE WOODRUFF: We're moving on, Mr. Cooper.

9 MR. COOPER: Good morning. As you know, my
10 name's Dean Cooper, I represent Missouri Gas Energy, a
11 division of Southern Union Company in this case.

12 The list of issues which was filed prior to the
13 filing of Surrebuttal Testimony identified two issues. First,
14 should the Commission grant an Accounting Authority Order to
15 MGE allowing it to defer property taxes assessed on gas stored
16 underground on MGE's behalf in the state of Kansas; and
17 second, if the Commission grants such an AAO, when should MGE
18 begin to amortize any resulting deferral.

19 Staff's Surrebuttal Testimony has created an
20 additional issue, at least in MGE's opinion, related to the
21 second question. And that is, if the Commission grants an
22 AAO, should the ability to defer these taxes be limited to the
23 2004 and 2005 calendar years.

24 Now, MGE has asked for an AAO allowing it to
25 defer for consideration in its next rate case property taxes

1 assessed by Kansas tax authorities on inventories of gas held
2 on MGE's account for resale and stored in underground
3 formations in the state of Kansas.

4 These taxes resulted from legislation passed by
5 the Kansas legislature that was effective in July of 2004 and
6 created a new property tax associated with the inventories of
7 gas. Legislation was made retroactive to inventories held as
8 of January 1, 2004.

9 MGE has since received tax assessments from
10 various Kansas counties for the year 2004. These assessments
11 total approximately \$1.7 million. This expense is material to
12 MGE as it represents a little over 9 percent of MGE's net
13 income. MGE has appealed the assessment and applied for an
14 exemption in the state of Kansas.

15 Kansas property taxes are extraordinary,
16 unusual and/or unique in that MGE has never before paid
17 property taxes on storage gas in the state of Kansas. The
18 Commission heard about these new taxes in MGE's last rate
19 case, Commission Case No. GR-2004-0209. MGE requested that
20 these new Kansas taxes be included in the cost of service
21 during its true-up testimony in that rate case and the
22 Commission denied, as you are aware, such treatment because
23 the potential tax liability was found to not yet be known and
24 measurable.

25 The unique circumstances that the Commission

1 relied on in finding that the taxes were not known and
2 measurable for purposes of the rate case, that is, that the
3 lawfulness of the taxes is being challenged, also indicates
4 that the taxes are not normal and recurring expenses and would
5 be appropriate for an AAO.

6 If an AAO is granted by the Commission, MGE has
7 suggested limiting language to provide some certainty to the
8 deferral period. That language is as follows: In the event
9 that MGE does not file a rate case by May 31, 2008, MGE will
10 commence amortization of these deferrals beginning June 1,
11 2008 over a five-year period and will cease further deferrals
12 unless the Commission grants a new Accounting Authority Order.

13 Now, this approach differs from the Commission
14 Staff's proposal in two ways. First, the Staff has suggested
15 that an amortization should begin the first day of the month
16 following a final judicial decision authorizing the imposition
17 of the taxes. Second, in his Surrebuttal Testimony, Staff
18 Witness Hyneman proposed that the AAO only allow MGE to defer
19 up to a maximum of two years of the subject property taxes or
20 only those taxes ultimately paid for the years 2004 and 2005.

21 It is estimated that MGE most likely will not
22 have a final decision concerning the legality of the Kansas
23 property taxes until mid-2006. In order to attempt to obtain
24 rates that include these taxes as of the beginning of the
25 Staff proposed amortization period or mid-2006, MGE would have

1 to file another rate case this year. If MGE were to try to
2 obtain rates that include the taxes as of the end of the
3 Staff's proposed accrual period or January 1, 2006, MGE would
4 have had to have filed a rate case last month.

5 Now, the first problem with either of these
6 scenarios is that the Commission very well may determine in
7 either of those cases that the taxes are still not known and
8 measurable because of the fact that the final determination
9 likely will not happen until mid-2006. Additionally, Staff's
10 proposal does not assume a realistic rate case interval by
11 encouraging a rate case less than a year after the effective
12 date of MGE's last rate case.

13 MGE believes that assuming an interval closer
14 to three years would be much more appropriate. Justification
15 for this or support for this approach, MGE believes, is found
16 in both statute and practice. The recently enacted ESRA
17 statute requires that a public utility file a rate case within
18 three years in order to take advantage of that surcharge.
19 Because MGE has recently filed for such an ESRA surcharge, MGE
20 will be required by statute to file a rate case by June of
21 2008.

22 Similarly, MGE's rates were recently set with
23 the idea that a three-year interval is reasonable. In the
24 last rate case, rate case expense was designed to be amortized
25 over a three-year period. On the other hand, filing a rate

1 case on the schedule that would be encouraged by the Staff's
2 conditions is inappropriate. Doing so would unnecessarily
3 exorbitant substantial rate case expense and as stated before,
4 still might result in a decision that the Kansas taxes are not
5 known and measurable.

6 Accordingly, MGE's proposal that a deferral
7 start no later than June of 2008, if MGE has not filed a rate
8 case by May of 2008, is appropriate under the facts of this
9 case. This is particularly so considering that the taxes in
10 question are of the type that would clearly be recoverable
11 from ratepayers if the Kansas statute is deemed to be lawful.
12 Thank you.

13 JUDGE WOODRUFF: Thank you, Mr. Cooper.

14 For Staff?

15 MR. SCHWARZ: I think the parties' positions in
16 these cases really indicates the nature of an Accounting
17 Authority Order. The company is saying regulatory lag is
18 working against the shareholder and we want to capture all of
19 the regulatory lag that would otherwise accrue to the benefit
20 of ratepayers.

21 Ratepayers, represented by the Office of Public
22 Counsel, are saying we don't want to give up any of the
23 regulatory lag that would occur in this instance.

24 Staff's taking a middle position, which concurs
25 basically with the company that some deferral and recognition

1 of this item is appropriate, but Staff does not want and does
2 not believe the Commission should authorize the deferral for
3 such a length of time that would guarantee the company full
4 recovery. That is, the purpose of an AAO is not to guarantee
5 one side or the other of the entirety, but rather to balance
6 the cu-- the import of an extraordinary event.

7 Now, we agree with the company that this
8 attempted imposition of tax by Kansas is both extraordinary
9 and material. We believe that deferral at this --
10 authorization to defer the 2004/2005 taxes is appropriate.
11 The company has indicated that they expect a decision by
12 mid-2006. The 2006 property taxes, if they're due, which we
13 don't think they will be, will be payable half in December of
14 '06 and half in June of '07. So there's that on the
15 timetable.

16 And, finally, the Commission should keep in
17 mind that this is not a rate-making decision. That is, this
18 case would permit the company to defer expenses for possible
19 recovery later. The more that you defer, the greater the
20 import of the rate-making decision.

21 The Commission may recall that earlier MGE had
22 a construction deferral, was permitted to defer carrying costs
23 at 10 percent and then later allowed to recover only at the
24 AFUDC rate of about 6 percent and it was quite an issue at
25 that time because the company had to write off the balance of

1 that deferral. So we think that by keeping those things
2 reasonably limited, the Commission will serve the balance of
3 interest between the ratepayers and the shareholders best.
4 Thank you.

5 JUDGE WOODRUFF: Thank you.

6 For Public Counsel?

7 MR. MICHEEL: Yes, your Honor. May it please
8 the Commission.

9 The request for an Accounting Authority Order
10 is an extraordinary request and the Commission has a clear
11 standard on when it's appropriate for this Commission to grant
12 an Accounting Authority Order, and that's when the costs that
13 are sought to be deferred are extraordinary, unusual, unique
14 and nonrecurring.

15 At the close of evidence in this case, it will
16 be amply demonstrated that the imposition of property taxes on
17 MGE is normal and a recurring expense that is dealt with in
18 every single rate case. In particular, the evidence will
19 demonstrate that this is indeed not the first time that
20 Missouri Gas Energy has been assessed a property tax for its
21 gas held in storage in Kansas.

22 Simply stated, the Commission should not grant
23 this AAO because it is not extraordinary, it is not unusual,
24 it is not unique, and it is not nonrecurring, if I can use a
25 double negative, and I apologize for that. It's recurring.

1 It occurs all the time. Property taxes are a normal expense,
2 we just dealt with those in the last rate case.

3 The Commission ought not grant this AAO because
4 in doing so, it will signal the beginning of the exceptions,
5 i.e., allowing deferred accounting, swallowing the rule.

6 JUDGE WOODRUFF: Thank you, Mr. Micheel.

7 We'll move on then to our first witness, which
8 I believe is Mr. Noack for MGE.

9 (Witness sworn.)

10 JUDGE WOODRUFF: You may be seated.

11 You may inquire.

12 MICHAEL R. NOACK testified as follows:

13 DIRECT EXAMINATION BY MR. COOPER:

14 Q. Please state your name.

15 A. Michael R. Noack, N-o-a-c-k.

16 Q. By whom are you employed and in what capacity?

17 A. I'm the director of pricing and regulatory
18 affairs for Missouri Gas Energy, 3420 Broadway, Kansas City,
19 Missouri.

20 Q. Have you caused to be prepared for the purposes
21 of this proceeding certain Direct, Rebuttal and Surrebuttal
22 Testimony in question and answer form?

23 A. Yes, I have.

24 Q. Is it your understanding that that testimony
25 has been marked as Exhibits 1, 2 and 3 for identification?

1 A. Yes, it has.

2 Q. Do you have any changes that you'd like to make
3 to that testimony at this time?

4 A. Yes. I have one change to my Direct Testimony.
5 And that is I would like to, I guess, remove Schedule MRN-1
6 which consists of nine pages. It's entitled Senate Bill
7 No. 147. It so happened that there were three or four
8 different Senate Bill 147's in and around this period and the
9 one that I copied for my testimony was the wrong one.

10 Q. The one you had in your testimony was from
11 2003; is that correct?

12 A. Right. That's correct.

13 Q. Okay. And I believe that we previously marked
14 House substitute for Senate Bill No. 147 as Exhibit 4. Is
15 that the correct Schedule MRN-1 to your Direct Testimony?

16 A. Yes. That's -- that's the Senate Bill that I
17 intended to be in my testimony, yes.

18 Q. If I were to ask you the questions that are
19 contained in Exhibits 1, 2 and 3 today, would your answers as
20 now amended be the same?

21 A. Yes, they would.

22 Q. Are those answers, as amended, true and correct
23 to the best of your information, knowledge and belief?

24 A. Yes, they are.

25 Q. Okay.

1 MR. COOPER: Your Honor, at this time I would
2 offer Exhibits 1, 2, 3 and 4 into evidence and tender the
3 witness for cross-examination.

4 JUDGE WOODRUFF: Exhibits 1, 2, 3 and 4 have
5 been offered into evidence. Are there any objections to their
6 receipt?

7 MR. MICHEEL: Your Honor, I would just ask that
8 you hold receiving them into evidence until after the
9 cross-examination has been conducted.

10 JUDGE WOODRUFF: All right. We'll do that.
11 Then for cross-examination, we'll begin with
12 Staff.

13 MR. SCHWARZ: I'd like to have an exhibit
14 marked, if I might.

15 JUDGE WOODRUFF: This will be Exhibit No. 9.
16 (Exhibit No. 9 was marked for identification.)

17 CROSS-EXAMINATION BY MR. SCHWARZ:

18 Q. Mr. Noack, I've given you what's been marked as
19 Exhibit 9 and would suggest to you that it's a page 2 of the
20 application -- MGE's application in this case. You
21 recognize --

22 A. I'll take it from what you're telling me that
23 it is page 2 of the application.

24 MR. SCHWARZ: I'd ask the Commission to take
25 official notice that this is page 2 of the application in this

1 case.

2 BY MR. SCHWARZ:

3 Q. Well, it does say to direct correspondence to
4 you, does it not?

5 A. Yes, it does.

6 Q. In paragraph 3 it lists the counties in which
7 MGE provides service; is that correct?

8 A. Yes, it does.

9 Q. To your knowledge, does MGE pay property taxes
10 in those counties?

11 A. Yes, to my knowledge.

12 Q. Does MGE pay property taxes in other Missouri
13 counties, for instance, the City of St. Louis?

14 A. No.

15 Q. Cape Girardeau County?

16 A. No, we do not.

17 Q. Bollinger County?

18 A. No.

19 MR. SCHWARZ: I would offer Exhibit 9 into the
20 record at this time.

21 JUDGE WOODRUFF: Exhibit 9's been offered into
22 evidence. Are there any objections to its receipt?

23 Hearing none, it will be received into
24 evidence.

25 (Exhibit No. 9 was received into evidence.)

1 MR. SCHWARZ: Might I approach the witness?

2 JUDGE WOODRUFF: You may.

3 BY MR. SCHWARZ:

4 Q. Mr. Noack, I'm handing you a copy of Section
5 386.610 of the Missouri statutes. I have the last sentence
6 highlighted. Would you read that into the record, please?

7 A. The provisions of this chapter shall be
8 liberally construed with a view to the public welfare,
9 efficient facilities and substantial justice between patrons
10 and public utilities.

11 Q. Thank you.

12 Mr. Noack, would you agree that regulatory
13 lag -- some aspects of regulatory lag can favor ratepayers and
14 some aspects of regulatory lag can favor the utility?

15 A. I don't know if you'd like -- can you give me
16 some examples of each where one might favor the utility?

17 Q. Well, say a property is retired from service.
18 The company continues to collect in rates the depreciation
19 expense that was allowed in its rate case based on that
20 property, for instance?

21 A. That -- that might happen, but generally when
22 property is retired, it's because it's been replaced with some
23 other property.

24 Q. So there's offsetting regulatory lag perhaps?

25 A. Yes.

1 Q. The company's new investment is not recognized?

2 A. Correct.

3 Q. But there are aspects of regulatory lag that it
4 cuts both ways, doesn't it?

5 A. It may cut a little bit to -- to the favor of
6 the company, but for the most part, it -- it favors the
7 consumer, the ratepayer.

8 Q. And so I take it then your answer is yes, it
9 can cut both ways in individual instances?

10 A. I suppose we could find a way that it cuts to
11 the utility, yes.

12 MR. SCHWARZ: Thank you. That's all I have.

13 JUDGE WOODRUFF: All right. Thank you.

14 And Public Counsel?

15 CROSS-EXAMINATION BY MR. MICHEEL:

16 Q. Mr. Noack, just to follow up on Mr. Schwarz's
17 questioning on how regulatory lag can cut to the company's
18 benefit, let's assume that we have a rate case where there are
19 100 employees in the rate case. Can you make that assumption?

20 A. Yes.

21 Q. And then as soon as rates are set, the company
22 cuts the work force by a fourth, 25 employees. Would
23 regulatory lag work to the benefit of the company there?

24 A. That particular instance of the one expense,
25 yes, it would.

1 Q. Let me give you another example. Let's say
2 that there was a tax built in for recovery in rates in a rate
3 case. Okay? Let's say it's, you know, \$100,000 a year.
4 Okay? Can you make that assumption?

5 A. We have \$100,000 a year tax.

6 Q. A property tax --

7 A. Okay.

8 Q. -- built into rates.

9 A. Yes.

10 Q. And a company challenges that property tax and
11 ultimately never pays it. Can you make that assumption?

12 A. Yes.

13 Q. And rates are in effect for three years. So
14 regulatory lag in that case would be \$300,000 to the benefit
15 of the company; is that correct?

16 A. In that particular isolated incident all by
17 itself, yes.

18 Q. So there are a lot of different instances where
19 regulatory lag can inure to the benefit of the company; isn't
20 that correct?

21 A. Well, those are hypotheticals. I don't know
22 if -- if those have actually happened in, you know, Missouri
23 Gas Energy's case.

24 Q. Okay.

25 A. But, yes, in hypothetical that can happen.

1 Q. Well, we'll see how we go here today.

2 A. Okay.

3 Q. Would you agree with me that an Accounting
4 Authority Order may generally be utilized in situations where
5 the requesting utility has incurred a cost that is
6 extraordinary, unusual and unique?

7 A. Yes.

8 Q. Is it correct that the tax at issue in this
9 proceeding is a property tax associated with the inventories
10 of gas held for resale and stored in underground formations in
11 the state of Kansas?

12 A. Yes.

13 Q. Is it correct that MGE believes that the
14 property tax associated with gas inventories is unusual
15 because it has never been assessed against the gas in storage
16 held in Kansas?

17 A. Yes.

18 Q. And you say that in your Direct Testimony at
19 page 5, lines 22 and 23; is that correct?

20 A. I believe so. Yes.

21 Q. When you used the word "assessed" there on
22 page 5, line 22 in your Direct, Exhibit 1, you mean to make a
23 valuation of property for purposes of taxation. Correct?

24 A. Yes.

25 Q. Would you agree with me, Mr. Noack, that the

1 assessment at issue in this proceeding is not the first time
2 the State of Kansas has assessed a property tax against MGE
3 for gas held in storage in Kansas?

4 A. About three years ago they attempted to assess
5 the same type of tax --

6 Q. Did MGE --

7 A. -- in Kansas.

8 Q. -- get an assessment from a county assessor in
9 Kansas for their gas held in storage in Kansas?

10 A. I have -- I never saw an actual assessment --

11 Q. Okay.

12 A. -- or a tax bill.

13 MR. MICHEEL: Okay. I need to get an exhibit
14 marked, your Honor. I think it will be Exhibit No. 10.

15 JUDGE WOODRUFF: That's correct.

16 MR. MICHEEL: And just for the record, it says
17 here Exhibit 858 at the top of this. This was also an exhibit
18 in the true-up hearing in the last MGE rate case so if there's
19 confusion, that's the reason.

20 JUDGE WOODRUFF: Hopefully we won't have 858
21 exhibits here, so --

22 MR. MICHEEL: I don't have 858, your Honor. I
23 do have more than this, but I certainly don't have 858.

24 (Exhibit No. 10 was marked for identification.)

25 BY MR. MICHEEL:

1 Q. Mr. Noack, I hand you what's been marked for
2 purposes of identification in this proceeding as Exhibit 10.
3 It is MGE's response to Staff Data Request 384 in
4 GR-2004-0209, which was admitted into evidence in that
5 proceeding -- in the true-up portion of that proceeding as
6 Exhibit 858. Do you have that in front of you, sir?

7 A. Yes, I do.

8 Q. And indeed, you authenticated this exhibit in
9 the true-up portion of the hearing in the rate case hearing;
10 isn't that correct?

11 A. If -- if you say so. I'll -- I don't recall
12 it, but I believe you, yes.

13 Q. I mean, I have the transcript if --

14 A. No, that's fine.

15 Q. -- we need to do that, I'll do it, but I -- you
16 know --

17 A. No.

18 Q. Okay. This DR asks six questions regarding
19 Kansas property taxes, does it not?

20 A. Yes, it does.

21 Q. And one of the questions indicates whether or
22 not MGE was ever assessed a property tax on gas held in
23 Kansas; is that correct?

24 A. Yes.

25 Q. And if you could, turn to the fourth page of

1 that exhibit there, sir.

2 A. I have it.

3 Q. Is that the tax bill for the assessment made by
4 the assessor in Kansas for MGE's gas held in storage inventory
5 in Kansas?

6 A. This is -- appears -- it's a property tax
7 statement for Meade County, Kansas. And I would assume it's
8 for storage.

9 Q. Okay. And that was the assessment that MGE
10 received from the Kansas people for your gas held in storage
11 in Meade County; is that correct?

12 A. Yes.

13 MR. MICHEEL: With that, your Honor, I would
14 move the admission of Exhibit 10 just so I don't forget.

15 JUDGE WOODRUFF: Exhibit 10 has been offered
16 into evidence. Any objection to its receipt?

17 Hearing none, it will be received into
18 evidence.

19 (Exhibit No. 10 was received into evidence.)

20 BY MR. MICHEEL:

21 Q. In fact, Mr. Noack, in the true-up hearing in
22 GR-2004-0209 you testified that the assessment of property tax
23 for gas held in storage in Kansas, that this wasn't the first
24 time that this was an issue; isn't that correct?

25 A. That's correct. I mean, it -- yes.

1 Q. And is it correct, Mr. Noack, in GR-2001-292,
2 MGE's rate case that just preceded the 2004 rate case,
3 property taxes for gas held in storage in Kansas was an issue;
4 is that correct?

5 A. It -- it came up at the end of GR-2001, yes,
6 292 at the end of the rate case, yes.

7 Q. And you admitted as much in the 2004 rate case,
8 did you not?

9 A. Yes, I did.

10 Q. Would you agree with me, Mr. Noack, that in the
11 2001 rate case, \$400,000 per year was built into MGE's rates
12 annually to cover property taxes for gas held in storage in
13 Kansas; is that correct?

14 A. Not exactly, no. What -- what we did in -- in
15 that particular case was -- was we agreed to a settlement of
16 \$9.9 million in rates. At the time Staff's EMS run really
17 resulted in justification for about 9.5 million and we agreed
18 to use 400,000 as an estimate of taxes in Kansas to get to the
19 black box settlement of \$9.9 million.

20 Q. And indeed on Exhibit 10, which has been
21 admitted into evidence, question 4 was, Please provide an
22 estimate of the level of property taxes that is included in
23 current rates for payment of property taxes for gas stored in
24 Kansas.

25 And your answer was, \$400,000; is that correct?

1 A. That's correct. And I just explained how -- I
2 mean, how that 400,000 got applied to the case.

3 Q. But, nevertheless, there was \$400,000 built
4 into that settlement for gas held in storage in Kansas
5 property tax; is that correct?

6 A. Yes.

7 Q. And you would agree with me that that was a
8 cost that all parties agreed should be built into rates, even
9 the Office of the Public Counsel agreed. That was a unanimous
10 stipulation, was it not?

11 A. In order to get to the 9.9 million, yes.

12 Q. And is it correct that rates in GR-2001-292
13 went into effect on August 6th, 2001?

14 A. That is correct.

15 Q. Is it correct that rates in GR-2004-0209 went
16 into effect on December 31st, 2004?

17 A. October 2nd, 2004, I believe.

18 Q. I'm sorry. October 2nd, 2004?

19 A. Yes.

20 Q. So would you agree with me that in over a
21 three-year period MGE had built into rates more than
22 \$1.2 million to cover property taxes for gas held in storage
23 in Kansas?

24 A. The -- the 400,000 was -- was a number that was
25 used to -- to help arrive at a black box settlement of

1 \$9.9 million. It was a justification to get there that all
2 parties agreed to.

3 Q. That \$400,000 was built --

4 A. Yes.

5 Q. -- into those rates; is that correct?

6 A. As part of the settlement, yes.

7 Q. So over a three-year period MGE collected --
8 had rates set to collect more than \$1.2 million for property
9 taxes for gas held in inventory in Kansas?

10 A. We had rates set to collect \$9.9 million.

11 Q. And \$400,000 of that 9.9 million, at least
12 according to the parties to that case, was for property taxes
13 held -- or for property taxes for gas in storage in Kansas;
14 isn't that correct?

15 A. It was part of the settlement.

16 Q. And would you agree with me that in the year
17 2000 is when Kansas first passed the law assessing taxes on
18 property -- property tax on gas held in storage in Kansas?

19 A. No -- yes, that's when they first attempted to
20 tax gas in storage.

21 Q. Year 2000. And that was the basis of MGE's
22 request in the 2001 rate case that property taxes for gas held
23 in storage in Kansas be included in rates; isn't that correct?

24 A. Yes. At the time we were -- we were vigorously
25 fighting that particular statute.

1 Q. Is it correct, Mr. Noack, that prior to the
2 time that the courts determined the lawfulness of the 2000
3 legislation requiring MGE to pay property taxes on gas held in
4 storage, MGE on its books and records accrued an expense for
5 property taxes held in storage in Kansas to Account 408.1,
6 Taxes Other Than Income Taxes, to reflect assessments made by
7 Kansas?

8 A. Mr. Micheel, I don't -- I don't recall if that
9 was actually booked or not.

10 Q. Well, you're booking it now, are you not?

11 A. We are booking it now, yes.

12 Q. And that's in accordance to GAAP, is it not?

13 A. It is.

14 Q. And you haven't paid those taxes yet, have you?

15 A. No. Have only been accrued.

16 Q. And you have no reason -- they would have only
17 been accrued in 2000; isn't that correct? Because you didn't
18 pay them, did you? You, MGE?

19 A. I don't -- I don't know if we paid them. I
20 don't know if we -- if we actually put them on the books back
21 in 2000 or 2001. I cannot tell you that. I can tell you that
22 they're on the books right now, the 1.7 million.

23 Q. But you just don't recall whether or not you
24 properly accounted for them in the 2000 time frame?

25 A. Properly accounted, I don't think that's the

1 right term. I don't know if -- if the accounting department
2 have those recorded in year 2000 as -- as part of the property
3 tax accrual.

4 Q. Well, let me ask you this. Is it correct that
5 accounting for the property taxes in Account 408.1 is
6 consistent with the FERC system of accounts and the General
7 Accepted Accounting Principles?

8 A. Yes.

9 Q. And you state that, do you not, in your
10 Surrebuttal Testimony, page 4, lines 8 through 12?

11 A. Yes.

12 Q. And so you have no reason to believe, sitting
13 there today, that your company would not follow the FERC
14 accounting system of accounts and GAAP accounting for the 2000
15 property taxes, do you?

16 A. If in -- in the year 2000 if we felt -- if we
17 got legal opinion that we thought that we would never have to
18 pay this tax, we may not have booked it. I don't know,
19 Mr. Micheel. It's booked now. I just can't answer the
20 question. I'm sorry.

21 Q. Would you agree with me that the FERC system of
22 accounts has a specific accounts to record property taxes?

23 A. It has Account 408 that's Taxes Other Than
24 Income Taxes if -- and it probably says in there that that
25 shall include property taxes.

1 Q. Okay.

2 MR. MICHEEL: Let me get an exhibit marked,
3 your Honor. It will be Exhibit No. 11.

4 (Exhibit No. 11 was marked for identification.)

5 BY MR. MICHEEL:

6 Q. Mr. Noack, I hand you what's been marked for
7 purposes of identification as Exhibit No. 11. It's MGE's
8 response to Public Counsel Data Request 4 in this case. Are
9 you familiar with that?

10 A. Yes, I am.

11 Q. And it's signed by you. Is that a true and
12 correct signature?

13 A. That is -- yes.

14 Q. And that explains, does it not, how MGE is
15 currently accounting for the property taxes?

16 A. Under our chart of accounts, yes, yes.

17 Q. And those would be the same chart of accounts
18 that you were utilizing in 2000?

19 A. I believe so, but we've -- yes.

20 Q. How long have you been with the company?

21 A. I've been with the company since July of 2000.

22 Q. Is it correct, Mr. Noack, that the Kansas
23 Supreme Court ultimately invalidated the Kansas property tax
24 on gas held in storage that was passed in 2000 in the case In
25 the Matter of Central Illinois Public Service?

1 A. I believe so, yes.

2 Q. And that case is attached to Exhibit 10, is it
3 not?

4 A. Yes.

5 Q. So it's correct that even though MGE was
6 assessed the property tax on its gas held in storage in
7 Kansas, it ultimately never paid that tax; isn't that correct?

8 A. That's correct.

9 Q. Now, it's correct that MGE had built into rates
10 \$400,000 annually for the property tax for gas held in storage
11 in Kansas in GR-2001-292 that it ultimately never paid; isn't
12 that correct?

13 A. It's -- it's a number that we used in the
14 settlement that we arrived at, yes.

15 Q. And in your last rate case, the ratepayers
16 didn't ask for that \$1.2 million back, did they, Mr. Noack?

17 A. No.

18 Q. So that would be a concrete example of where
19 regulatory lag favored your company, isn't that correct,
20 Mr. Noack?

21 A. No. Because the actual property taxes that we
22 were assessed was more than what we ever got in rates --

23 Q. So --

24 A. -- in total.

25 Q. -- is it your position, Mr. Noack, that you

1 are -- you, MGE, is required to get dollar for dollar recovery
2 of its property taxes?

3 A. No. We put into rates what -- what we hope is
4 the proper level -- fixed, known and measurable level of
5 property taxes going forward.

6 Q. And in that case you had \$400,000 a year built
7 in for property taxes for gas held in storage in Kansas that
8 was never paid; isn't that correct?

9 A. We had that 400,000 built in along with another
10 7 million of property taxes on Missouri property.

11 Q. Let me ask you this. I don't want to beat that
12 horse anymore. Is it correct that property taxes had been
13 assessed against gas held in storage in Kansas prior to the
14 passage of the new law attached to your new Schedule 1 to your
15 Direct Testimony?

16 A. We've just talked about it.

17 Q. Is it correct they've been assessed?

18 A. Yes.

19 Q. Is it correct that MGE has been aware since
20 2000 that Kansas intended to assess a property tax on gas held
21 in storage in Kansas?

22 A. I'm not going to say -- after we got -- helped
23 get this particular tax in 2000 defeated, I'm not going to say
24 no, we didn't know that Kansas was going to try and change the
25 law to -- to circumvent this opinion, no.

1 Q. And MGE was aware that the legislature and --
2 the tax situation being as it is, the legislature was going to
3 go back and try to correct the deficiencies in the law that
4 the Kansas Supreme Court found; isn't that correct?

5 A. I don't know that we knew that, no.

6 Q. Okay. Do you recall your testimony at the
7 true-up hearing where Mr. Schwarz asked you, And so MGE was
8 aware that that was -- that has been an issue in Kansas and is
9 that correct? And you said, Yes?

10 A. It was an issue in the 2000 rate case, yes.

11 Q. No. He said an issue in Kansas. I mean, do
12 you need to see the transcript? I'd be happy to share it with
13 you, Mr. Noack.

14 A. Yeah, I'd like to see the whole context of that
15 particular Q and A.

16 Q. Okay. Sure. Let me have you --

17 MR. MICHEEL: May I approach the witness?

18 JUDGE WOODRUFF: You may approach.

19 BY MR. MICHEEL:

20 Q. I'm showing you the transcript from the last
21 rate case, July 23rd, '04, held here in lovely Jefferson City.

22 A. I recognize it.

23 Q. You recognize that?

24 A. Yes, I do.

25 Q. And I'm on page 2517 of the transcript. And I

1 ask you to read into the record the Q and A starting at
2 line 14 through line 23, please. And that's questioning by
3 Mr. Schwarz, is it not?

4 A. Yes, it is.

5 Q. Okay. Line --

6 A. Okay.

7 Q. -- 14 through 23, please.

8 A. May I review the before and the after --

9 Q. Certainly.

10 A. -- to get everything in context?

11 Q. Take as much time as you need. We've got two
12 days.

13 A. All right. What lines now? I'm sorry.

14 Q. I believe it's line -- the question starting at
15 line 14 through line 23.

16 A. Okay. The Question: This is not the first
17 time that the State of Kansas has attempted to assess a tax on
18 gas inventory held in storage; is that correct?

19 Answer: That's correct.

20 Question: And MGE was one of the parties that
21 resisted that imposition?

22 Answer: Yes, yes.

23 Question: And so MGE was aware that that
24 was -- has been an issue in Kansas; is that correct?

25 Answer: Yes.

1 Q. Okay. Would you agree with me, Mr. Noack, that
2 the new law that you've attached to your revised Schedule 1 is
3 in response to the Kansas Supreme Court decision In the Matter
4 of Central Illinois Public Service?

5 MR. COOPER: Objection. The basis of my
6 objection is that Mr. Noack has no foundation or knowledge to
7 tell us what the Kansas legislature's motivations may or may
8 not have been for the enactment of the 2004 House substitute
9 for Senate Bill 147.

10 JUDGE WOODRUFF: Response?

11 MR. MICHEEL: That's a good objection, your
12 Honor. I'll just put a new exhibit in and then I'll retry
13 that question --

14 JUDGE WOODRUFF: I'll sustain the objection.

15 MR. MICHEEL: -- and we'll go ahead.

16 I need to mark Exhibit 12, your Honor.

17 JUDGE WOODRUFF: All right.

18 (Exhibit No. 12 was marked for identification.)

19 BY MR. MICHEEL:

20 Q. Mr. Noack, I've handed you what's been marked
21 for purposes of identification as Exhibit 12. And is that
22 MGE's response to Public Counsel Data Request 0005?

23 A. Yes, it is.

24 Q. And is that your signature there, sir?

25 A. Yes, it is.

1 Q. And we asked you for all written correspondence
2 from Morris, Laing concerning the property tax?

3 A. That is correct.

4 Q. And you provided all of that information absent
5 the attorney/client privileged stuff that we weren't
6 interested in and not entitled to?

7 A. Yes.

8 Q. Okay. If you could, sir, turn to -- there's a
9 Petition for Declaratory and Injunctive Relief attached. Do
10 you see that, sir?

11 A. Yes.

12 Q. And if you could, turn to page 5 of that. And
13 I'm focusing on paragraph 15 where -- let me ask you this.
14 These are MGE's attorneys, are they not? This petition is
15 filed on behalf of MGE along with some other plaintiffs?

16 A. Yes.

17 Q. And so these are people that have been engaged
18 by MGE?

19 A. I believe so, yes.

20 Q. And could you read for me the first sentence of
21 paragraph 15 --

22 A. In the --

23 Q. -- of the petition?

24 A. In the wake of the Supreme Court's holding, the
25 Kansas legislature in 2004 undertook to attempt to change the

1 traditional meaning of a public utility.

2 Q. And just finish out that paragraph.

3 A. Senate Bill 147 purported to expand the
4 definition of public utility in KSA 79-5A01 to include every
5 individual company, corporation, association of persons,
6 brokers, lessees or receivers that now or hereafter own,
7 control and hold for resale stored natural gas in an
8 underground formation in this state.

9 Q. Are MGE's attorney in their petition there
10 indicating that Senate Bill 147 was, to use their terms, in
11 the wake of the Supreme Court's holding?

12 A. That's what this petition says, yes.

13 Q. And you have to reason to doubt the
14 representations your attorneys made to a court of law, do you?

15 A. No.

16 Q. And so let me go back to my earlier question.
17 Would you agree with me that the new law attached to your
18 schedule is in response to the Kansas Supreme Court decision?

19 MR. COOPER: I have the same objection to
20 Mr. Noack providing the answer to this question. The document
21 Mr. Micheel has, you know, says what it says and I think we
22 may take different interpretations of what it says.
23 Certainly --

24 JUDGE WOODRUFF: I'll sustain the objection.

25 MR. MICHEEL: I'll move the admission of

1 Exhibit 11 -- or Exhibit 12, your Honor.

2 JUDGE WOODRUFF: Exhibit 12 has been offered
3 into evidence. Are there any objections to its receipt?

4 Hearing none, it will be received into
5 evidence.

6 (Exhibit No. 12 was received into evidence.)

7 BY MR. MICHEEL:

8 Q. If you could, I've got a couple more questions
9 about that exhibit, Exhibit 12. It also attached has Answer
10 and Affirmative Defenses, does it not, of the Department of
11 Revenue, Division of Taxation?

12 A. Yes.

13 Q. And if you could, turn to page 4 of that,
14 Affirmative Defenses.

15 A. I am there.

16 Q. Do you see where it says, See First Amended
17 Petition for Declaratory and Injunctive Relief?

18 A. Yes.

19 Q. And my question is a simple one. Why didn't
20 MGE provide the Office of Public Counsel with a copy of the
21 First Amended Petition for Declaratory and Injunctive Relief?

22 A. I don't have any answer to that, Mr. Micheel.
23 If it -- if we didn't, it was simply an oversight. It wasn't
24 intentional.

25 Q. You're not hiding the ball or anything?

1 A. No.

2 Q. Would you agree with me that the tax at issue
3 is not new in this case, but an attempt to fix the legal
4 deficiencies with the law passed by the Kansas legislature in
5 2000?

6 A. Repeat that one more time, please.

7 Q. Would you agree with me that this tax is not a
8 new tax, but is an attempt to fix the legal deficiencies with
9 the tax passed by the Kansas legislature in 2000?

10 MR. SCHWARZ: I'm going to object to the form
11 of the question. I think it misstates the facts. MGE has
12 never been subject to a lawful property tax in the state of
13 Kansas. The Kansas Supreme Court decision, which is attached
14 to one of the exhibits somewhere, indicates that pursuant to
15 the Kansas Supreme Court's view, MGE and others similarly
16 situated were not subject to property tax in the state of
17 Kansas. Any subsequent imposition of tax, lawful or unlawful,
18 we don't know yet, would constitute a new tax.

19 JUDGE WOODRUFF: I'm going to overrule the
20 objection. You can answer the question if you can.

21 THE WITNESS: Ask it one more time. I'm sorry.

22 MR. MICHEEL: Tracy, could you just read it
23 back, please?

24 THE COURT REPORTER: "Question: Would you
25 agree with me that this tax is not a new tax, but is an

1 attempt to fix the legal deficiencies with the tax passed by
2 the Kansas legislature in 2000?"

3 THE WITNESS: I'll agree that Kansas passed a
4 law and now they're trying to tax us once again on storage gas
5 held in Kansas.

6 BY MR. MICHEEL:

7 Q. And would you agree with me that the goal of
8 the House Bill that you attached -- the new House Bill as
9 MRN-1 is the same goal as the legislation passed in 2000, the
10 assessment of a property tax on gas held in storage inventory?

11 MR. COOPER: Objection. I have the same
12 objection I issued earlier. I don't know that Mr. Noack's in
13 a position to say what the legislature's goal is. Certainly
14 there was an attempt in 2000, there was another attempt in
15 2004 and we can argue I guess in briefs as to what that means
16 and what the consequence is, but --

17 MR. MICHEEL: Your Honor, their goal is to
18 impose a tax. That's what this case is all about. MGE has
19 come in here and said the Kansas legislature has imposed a tax
20 on gas held in storage. And now I ask this witness a question
21 is that their intention and he can't answer that and that's
22 what this case is about and that's why we're here, that's what
23 I heard in opening statements.

24 JUDGE WOODRUFF: It's quite clear that there is
25 a tax being imposed by Kansas. This witness is not qualified

1 to speak to the intent of the Kansas legislature, so I'm going
2 to sustain the objection.

3 MR. MICHEEL: I didn't ask for the intent.

4 BY MR. MICHEEL:

5 Q. Let me put it this way. Has the Kansas
6 legislature passed a tax that taxes property -- or taxes --
7 property tax on gas held in storage inventory?

8 A. The Kansas legislature has passed a law which
9 attempts to change the definition of public utility so that
10 they can -- I guess. I mean, that's -- so they can possibly
11 tax us.

12 Q. And in 2000 the Kansas legislature passed a law
13 attempting to tax gas held in storage inventory; isn't that
14 correct?

15 A. Yeah. I've got a law here, yes.

16 Q. Well, and there was a law passed in 2000; isn't
17 that correct?

18 A. That's what I said, yes.

19 Q. And you brought that to the attention of the
20 Staff and Public Counsel in the 2001 rate case, did you not?

21 A. Yes.

22 Q. Okay.

23 A. I mean, it was the same type of -- it was
24 essentially the same type of thing that we have here. It
25 happened at the very end of the rate case.

1 Q. Would you agree with me that property taxes are
2 normal operating expenses of a utility?

3 A. Yes.

4 Q. Would you agree with me that property taxes
5 were built into rates in GR-2004-0209?

6 A. Property taxes on the property that we hold in
7 Missouri were built into rates in 2004-0209.

8 Q. And any legitimate property taxes that the
9 company paid, isn't that correct, that were known and
10 measurable within the test year?

11 A. Yes.

12 Q. Because there was an allocation, was there not,
13 of some property, for example, in Wilkesbury where the
14 corporate headquarters are? That's in Pennsylvania?

15 A. Right.

16 Q. So there are other property taxes other than
17 just Missouri property taxes; isn't that correct?

18 A. I don't know. I'd have to look at the
19 corporate allocation to see if we were allocated some of those
20 property taxes.

21 Q. If you looked at that, do you think you'd find
22 that the property taxes were allocated, Mr. Noack?

23 A. I honestly couldn't tell you if property taxes
24 were allocated to Missouri for property back in Pennsylvania.

25 Q. Would you agree with me that in the last rate

1 case, \$8,522,776 for property taxes were built into MGE's
2 rates?

3 A. Yes.

4 Q. Would you agree with me that during the 2004
5 tax year, MGE only paid \$8,214,899?

6 A. Yes.

7 Q. And that's another example, is it not,
8 Mr. Noack, a concrete example of regulatory lag working in the
9 favor of the company?

10 A. In this particular case for this one particular
11 year, the 2004 taxes were less than what was built into rates.

12 Q. Would you agree with me, Mr. Noack, that the
13 only reason MGE has never paid property taxes in Kansas on gas
14 held in storage is because of the Kansas Supreme Court
15 decision?

16 A. I guess for the -- that decision I guess
17 overturned the -- the first attempt that they had at -- at
18 doing taxes, yes.

19 Q. And but for that decision, MGE would be paying
20 property taxes on gas held in storage in Kansas; isn't that
21 correct?

22 A. I don't know if we would have had other
23 remedies --

24 MR. SCHWARZ: I'm going to object. I object.
25 It calls for a legal conclusion. There are other courts

1 besides the Kansas Supreme Court that could rule on
2 constitutionality of gas held in storage.

3 JUDGE WOODRUFF: I'll overrule the objection.

4 You can answer the question, if you can.

5 THE WITNESS: I don't -- I don't know if there
6 were other -- if there are other remedies that we could have
7 sought out if that had not been ruled that way.

8 BY MR. MICHEEL:

9 Q. Is it correct that you believe that this
10 property tax is not a recurring property tax?

11 A. We're hoping that it -- it never occurs.

12 Q. Well, let me ask you this. Absent the Kansas
13 court finding the tax unlawful, do you believe Kansas will
14 assess and attempt to collect this tax every year?

15 A. Repeat that one more time. I'm sorry,
16 Mr. Micheel.

17 Q. Absent the Kansas court's finding that the --
18 any court's finding that the tax is unlawful, do you believe
19 that Kansas will assess and attempt to collect this tax every
20 year?

21 A. If -- if when we get to the -- to the end of
22 all of our legal fights and we lose and we ultimately have to
23 pay this tax, then, yes, we'll have to probably pay this tax
24 every year.

25 Q. What's your definition of recurring, Mr. Noack?

1 A. Recurring is something that happens over and
2 over again.

3 Q. Is it correct that the only reason MGE believes
4 this tax is unique is because it's never paid taxes on gas
5 held in storage in Kansas?

6 A. Yes.

7 Q. And the operative word there is "paid," is it
8 not? Because you've been assessed taxes for gas held in
9 storage in Kansas; isn't that correct?

10 A. We have been assessed. The -- the first time
11 they were assessed we got them overturned. So I mean --

12 Q. And you also got them built into rates, did you
13 not?

14 A. We got them included as part of a black box
15 settlement of \$9.9 million.

16 Q. Is it correct that these property taxes were an
17 issue that MGE raised in the true-up hearing of GR-2044-0209?

18 A. We brought these taxes up at the time of the
19 true-up hearing, yes.

20 Q. Would you agree with me that in your Direct
21 Testimony in GR-2004-0209 that MGE requested that property
22 taxes be a true-up item in your Direct Testimony?

23 A. Yes.

24 Q. Would you agree with me that property taxes
25 were not an agreed upon true-up item in GR-2004-0209?

1 A. We agreed to not true-up taxes on the plant
2 additions between December 31st, '03 and April 30th, '04, yes.

3 Q. Would you agree with me that the Commission
4 found that property taxes were not an agreed upon true-up
5 item?

6 A. I don't recall the exact wording of the -- of
7 the order, but yes.

8 Q. Well --

9 A. I don't -- I don't know the exact wording of --
10 of the order.

11 MR. MICHEEL: May I approach the witness, your
12 Honor?

13 JUDGE WOODRUFF: You may.

14 BY MR. MICHEEL:

15 Q. Mr. Noack, I'm handing you a copy of the
16 decision here in the Missouri Gas Energy case. It's found in
17 Public Utility Reports 235 PUR 4th beginning at page 507. And
18 I'm asking you to turn to page 544 and read right there
19 (indicating) where the Commission says --

20 A. Furthermore, property taxes were not included
21 as a true-up issue.

22 Q. And that's one of the findings of the
23 Commission; is that correct?

24 A. Yes.

25 Q. Okay. Why don't you keep that, I'm going to

1 have a couple more questions for you on that.

2 Is it correct that MGE, by its own volition,
3 agreed not to true-up property taxes in that case?

4 A. We agreed to not true-up property taxes on the
5 plant added between December 31st and April 30th --
6 December 31st, '03 and April 30th, 2004, yes. That was the
7 whole purpose of -- of the property tax true-up was to pick up
8 the taxes on the new plant between December 31st, '03 and
9 April 30th, '04, which we trued up.

10 Q. That was your view, but the Office of the
11 Public Counsel and the Staff had a different view, did they
12 not?

13 A. Right. And we --

14 Q. And the Commission found, did it not, in its
15 order explicitly that the true-up had not agreed to true-up
16 property taxes; is that correct?

17 A. We had agreed not to true-up property taxes on
18 the plant added between December 31st, '03 and April 30th of
19 '04.

20 Q. But that agreement just said property taxes,
21 did it not? It didn't say your add-on about plant. It just
22 said, We're not going to true-up property taxes, didn't it?

23 MR. COOPER: I object. I think Mr. Noack's
24 answered the question in terms of his belief. In terms of
25 what the order says, I mean, if we want to take notice of the

1 order and --

2 JUDGE WOODRUFF: I'm going to overrule the
3 objection.

4 If you know, go ahead and answer.

5 THE WITNESS: Yes, the words just say property
6 taxes.

7 BY MR. MICHEEL:

8 Q. Let me approach the witness. I just want to
9 make this clear. I've got a copy of your Direct Testimony in
10 that case.

11 JUDGE WOODRUFF: You may approach.

12 BY MR. MICHEEL:

13 Q. I'm handing you a copy, Mr. Noack, of your
14 Direct Testimony. I think it was Exhibit 3, but I'm not
15 exactly certain. If you want to quibble with me, I can get
16 it.

17 A. No.

18 Q. It's your Direct Testimony. Do you recognize
19 that?

20 A. I do.

21 Q. And here on page 4 is a question, Is MGE
22 requesting a true-up process; is that correct?

23 A. That's correct.

24 Q. And at line 28 it just says, Property taxes,
25 does it not?

1 A. That is correct.

2 Q. And it doesn't have those limiting words that
3 you've been adding in your testimony here, does it?

4 A. No.

5 Q. Okay.

6 MR. MICHEEL: May I approach again, your Honor?

7 JUDGE WOODRUFF: You may.

8 BY MR. MICHEEL:

9 Q. I have here a copy of your corrected Rebuttal
10 Testimony that you filed in GR-2004-0209. And in that
11 corrected Rebuttal Testimony you talk about the agreement and
12 the recommendation for true-up in the rate case. And I would
13 ask you to read that question and answer to yourself and tell
14 me if you find property taxes there anywhere.

15 A. No, I do not.

16 Q. Do you find anything about the limiting time
17 frame on property taxes that you've discussed in your oral
18 testimony today?

19 A. No. But that's just a -- that -- that's a
20 known thing. I mean, that's the property taxes that we're
21 discussing in the true-up was the property taxes on the new
22 plant included in the true-up.

23 Q. And needless to say, in your Rebuttal Testimony
24 where you talk about the agreed items that we're going to
25 true-up, property taxes are not there; isn't that correct?

1 A. Correct.

2 MR. MICHEEL: I need to approach the witness
3 again, your Honor.

4 JUDGE WOODRUFF: You may.

5 BY MR. MICHEEL:

6 Q. I have a copy of your true-up -- corrected
7 true-up testimony in GR-2004-0209. Is that a true copy of
8 your corrected true-up testimony, Mr. Noack?

9 A. Looks to be, yes.

10 Q. Okay. I want to ask you a couple questions
11 about that testimony. If you turn to page 6 of that
12 testimony, on lines 7 and 8 is it correct that you testified
13 there that MGE would have to pay the property taxes for gas
14 held in storage inventory even if MGE challenged those taxes?

15 A. Yes.

16 Q. And is it correct -- you have that -- the
17 Commission's Report and Order there with you still? I'd ask
18 you to --

19 A. Yes.

20 Q. -- hang onto that.

21 A. I have it.

22 Q. And if you could, if you'd turn to page 543 of
23 that Report and Order.

24 A. I'm there.

25 Q. Under the headline Kansas Property Taxes, it

1 said, It will actually have to begin paying the tax in
2 December '04 with a balance of the year's tax payments due in
3 June '05.

4 Do you see that?

5 A. Yes.

6 Q. Would you agree with me that those statements
7 and facts are not correct?

8 A. No. We've gotten -- we've been able to put off
9 the actual payment of those taxes until after our scheduled
10 hearing with the Board of Tax Appeals.

11 Q. So the statements are not correct? They're
12 incorrect?

13 A. I said, no, the statement's not correct. We
14 were able to get the payment deferred until after the hearing
15 with the Board of Tax Appeals.

16 Q. And that's consistent with the way it was
17 handled in 2000; is that correct?

18 A. I don't recall if this -- if -- if all of the
19 inner workings were exactly the same in 2000. This is the way
20 it's working in 2004.

21 Q. Would you agree with me sitting there today
22 that MGE hasn't paid one penny of this tax?

23 A. Yes. I'll agree with you.

24 Q. In your Direct Testimony at page 5, you
25 maintain that -- or excuse me, not -- if you could, turn to

1 page 5 of your Direct Testimony.

2 A. In this case?

3 Q. Yes, sir. I'm sorry.

4 A. That's all right. Yes.

5 Q. Yeah, Exhibit 1. I'm on page 5.

6 A. Yes.

7 Q. And you indicate there that the reason that the
8 Commission denied recovery of the property tax for gas held in
9 storage inventory in GR-2004-0209 was that it was not known
10 and measurable; is that correct?

11 A. Yes.

12 Q. And I guess we've looked at the Report and
13 Order today. And although I agree with you that it's not
14 known and measurable is one of the reasons, but would you
15 agree with me that another reason offered by the Commission is
16 that the property tax at issue was not included as a true-up
17 issue?

18 A. No. This is a different kind of property tax.
19 All of our property taxes that were assessed for the year 2003
20 are included in our rates.

21 MR. MICHEEL: Your Honor, I'm going to ask that
22 that answer be stricken. And my question went to did the
23 Commission, in its Report and Order, offer another
24 justification for rejecting the property tax gas held in
25 storage. And we've been over it and it was a simple question.

1 MR. COOPER: And I object -- I object to the
2 question just because Mr. Noack's not the final authority on
3 this. The order is. We've seen the order. We know what the
4 order says and we can argue about what the order says.

5 MR. MICHEEL: Well, your Honor --

6 JUDGE WOODRUFF: All right. Let me rule on
7 both of them here. The answer was non-responsive, it will be
8 stricken -- or stricken or struck, whatever would do it.

9 As far as the objection, I'm going to overrule
10 the objection.

11 MR. MICHEEL: And I would just say -- I just
12 want to speak to the objection because I need to make my
13 record for appeal, your Honor. This witness, in his Direct
14 Testimony, has offered his view of what the Commission did in
15 that Report and Order. And certainly he can't offer that view
16 in his Direct Testimony and then use it as a shield, for the
17 record.

18 JUDGE WOODRUFF: Let me be clear. I overruled
19 the objection --

20 MR. MICHEEL: I understand.

21 JUDGE WOODRUFF: So you can go ahead and ask
22 your question.

23 BY MR. MICHEEL:

24 Q. Is it true, Mr. Noack, that in its Report and
25 Order, the Commission offered another reason for rejecting

1 inclusion of property taxes for gas held in storage; and that
2 reason was the property taxes were not included as a true-up
3 issue?

4 A. We looked at that portion of the order, yes.

5 Your Honor, if I may and I don't know if I can
6 do this or not, but I'd like to hear the question that he
7 asked me initially.

8 JUDGE WOODRUFF: Which question was that?

9 THE WITNESS: That got objected to.

10 JUDGE WOODRUFF: We've moved on from that.

11 Go ahead with your cross-examination.

12 BY MR. MICHEEL:

13 Q. Is it correct, Mr. Noack, at page 544 of the
14 Report and Order the Commission says, As a result, this
15 entirely new issue cannot be considered in this case?

16 A. Yes.

17 Q. Now, you also testify at page 5 of your Direct
18 that the Commission essentially suggested that MGE could file
19 an application for Accounting Authority Order; is that
20 correct?

21 A. Yes.

22 Q. You're not suggesting in your testimony, are
23 you, sir, that the Commission in its decision in GR-2004-0209
24 prejudged that MGE deserves an AAO for these taxes, are you?

25 A. Mr. Micheel, I testified that the Commission

1 said we could file for an AAO, a request --

2 Q. You're not suggesting they're guaranteeing that
3 you would get one?

4 A. No.

5 Q. Is it correct, Mr. Noack, that there's nothing
6 preventing MGE from filing a rate case today?

7 A. No. Except for cost. I mean -- right.

8 Q. So MGE is making a business decision not to
9 file a rate case; is that correct?

10 A. Correct.

11 Q. Is it correct that it's MGE's position that for
12 every new expense it should be allowed to recover that new
13 expense?

14 A. No. That's not the position that -- that I'm
15 taking here, no.

16 Q. Could you turn, sir, to your Surrebuttal
17 Testimony at page 2? And there you're discussing Ms. Bolin's
18 testimony at the true-up hearing; is that correct? And I'm
19 focusing on lines 3 through 13, if that speeds things up.

20 A. I'm sorry. Did you say -- which testimony?

21 Q. Surrebuttal Testimony of Noack in this case,
22 Exhibit 3, page 2, lines 3 through 13.

23 A. All right. I'm there.

24 Q. And my question was, there you discuss
25 Ms. Bolin's testimony from the true-up hearing; is that

1 correct?

2 A. Yes.

3 Q. And you indicate, in your view, that Public
4 Counsel's taking a diametrically opposed position than the
5 position it took at the true-up hearing; is that correct?

6 A. Yes.

7 Q. Now, you've attached a schedule of a portion of
8 that testimony; is that correct? A Schedule MRN-1?

9 A. Yes.

10 Q. Who was asking Ms. Bolin questions there?

11 A. I believe -- I didn't include that. I believe
12 it might have been you, Mr. Micheel.

13 Q. And were we required in that true-up hearing to
14 give our testimony live regarding that issue because the first
15 time we heard about it was after the testimony was filed?

16 A. Yes.

17 Q. And are you aware that Ms. Bolin in that
18 testimony -- and indeed if you look at the partial testimony
19 of Ms. Bolin that you've attached, that Ms. Bolin clearly says
20 on page 2,559 that she does not think it's appropriate for an
21 Accounting Authority Order to be granted? And I'm looking at
22 the question on lines 14 through line 19.

23 A. Yes. I see that. She says that.

24 Q. And so the Office of the Public Counsel in its
25 testimony at the true-up hearing was explicit in its

1 opposition to an Accounting Authority Order being granted at
2 the true-up hearing; isn't that correct?

3 A. Amongst other things. I mean, she was also
4 explicit in saying that -- we initially asked for the -- for
5 1.2 million in rates and -- and her initial -- and she also
6 testified that that should not be included in rates because
7 they aren't known and measurable. And then she also said the
8 AAO -- AAO should not be included either or should not be
9 granted.

10 Q. And she also testified that property taxes
11 weren't part of our true-up agreement, didn't she, Mr. Noack?

12 A. Yes, she did.

13 Q. But you didn't put that portion of her
14 testimony in, did you, Mr. Noack?

15 A. No, I didn't.

16 Q. So you only used select portions that fit your
17 purposes?

18 A. I used these pages of her testimony, yes.

19 Q. So MGE was aware from the get-go that the
20 Office of the Public Counsel was opposed to the granting of an
21 AAO for property taxes for gas held in storage; isn't that
22 correct?

23 A. If you define "get-go" as the true-up hearing,
24 yes.

25 Q. Well, that's the first time we heard about it,

1 isn't it, Mr. Noack?

2 A. Well, that's -- my answer's yes.

3 Q. So that would be the get-go?

4 A. That's the get-go.

5 Q. Let me ask you this. Does MGE currently own
6 any gas that is being stored in Kansas?

7 A. I don't know who -- who the title of that
8 gas -- whose name the title of that gas is in. I mean, I
9 don't know if that's our gas now, if that's still Southern
10 Star's gas or the producer's gas. I don't know.

11 Q. Let me ask you this. Does MGE hold any
12 contracts for gas storage in Kansas?

13 A. Yes, they do.

14 Q. And they have space to store gas in Kansas, do
15 they not?

16 A. Yes, they do.

17 Q. And that would be for MGE's gas, wouldn't it?
18 Or is MGE in the gas storage business?

19 A. No, we're not.

20 Q. So the gas storage that MGE has contracted for
21 in Kansas is to store MGE's gas; isn't that correct?

22 A. Yes.

23 MR. MICHEEL: If I just could have a moment,
24 your Honor.

25 JUDGE WOODRUFF: Certainly.

1 MR. MICHEEL: If I haven't moved admission of
2 Exhibits I believe 9 through 12, I would do it, your Honor. I
3 think that I have.

4 JUDGE WOODRUFF: I have 9, 10 and 12 and I did
5 not have 11 in.

6 MR. MICHEEL: I'm sorry. I would move the
7 admission of Exhibit 11. That is Data Request 004.

8 JUDGE WOODRUFF: Exhibit 11 has been offered
9 into evidence. Are there any objections to its receipt?

10 Hearing none, it will be received into
11 evidence.

12 (Exhibit No. 11 was received into evidence.)

13 MR. MICHEEL: I would pass the witness at this
14 time, your Honor.

15 JUDGE WOODRUFF: All right. And at this time
16 we will go ahead and take a break before we come up for
17 questions from the Commission. We'll take a break until
18 10:30.

19 (A recess was taken.)

20 JUDGE WOODRUFF: All right. We're back from
21 our break. Mr. Noack is still on the stand.

22 We're now ready for questions from the Bench.
23 As you can see, there are no Commissioners here at the moment.
24 They're still up in their agenda meeting. We're going to go
25 ahead and proceed at this moment, but if Commissioners come in

1 and want to have questions, we may have to recall you.

2 QUESTIONS BY JUDGE WOODRUFF:

3 Q. I do have a few questions of my own from the
4 Bench. First, I want to make sure I understand this tax and
5 the valuation. It's my understanding that as the value -- the
6 value of the gas goes up, if gas prices go up in future years,
7 the tax liability is also going to go up; is that correct?

8 A. That is correct.

9 Q. So it's based on a percentage of the value of
10 the gas?

11 A. Yes, it is.

12 Q. All right. Now, assuming for a moment that the
13 Commission grants the Accounting Authority Order and MGE is
14 successful in overturning the tax, what happens on MGE's
15 books?

16 A. At that time if -- first off, if the Accounting
17 Authority Order is granted, we would take the expense that we
18 have currently booked on our -- on our books and move that to
19 a deferred account. Then at the time that -- if we were to
20 win and prevail and that tax gets overturned, then that
21 deferral would just simply be written off against the payable
22 that's also sitting in the books. So it wouldn't affect
23 earnings or anything in any way, shape or form.

24 Q. All right. Now, I know there's been a lot of
25 battles in Kansas over I think it's called ad valorem taxes.

1 Is that something similar to these property taxes?

2 A. No. I don't believe so. And I'm not -- I've
3 never really been involved in those ad valorem taxes. I think
4 Mr. Schwarz could probably answer that question better than
5 anybody here.

6 Q. But he's not on the stand at the moment.

7 A. I know. I understand.

8 MR. SCHWARZ: And is not volunteering to go on
9 the stand either. Thank you.

10 THE WITNESS: But I believe that's more of a
11 production tax I think than anything else.

12 BY JUDGE WOODRUFF:

13 Q. It's my understanding that Kansas ad valorem
14 tax was overturned by the United States Supreme Court, or do
15 you know anything about it?

16 A. I don't know anything about it, Judge.

17 Q. Do you know how much it costs MGE to file a new
18 rate case?

19 A. Before this last case, which was a little
20 higher than normal, it generally runs in the neighborhood of
21 probably 6- to 700,000 dollars is what -- what we ask for in
22 rate case expense.

23 Q. And in this last case it was more than that,
24 wasn't it?

25 A. Yes, it was. I believe we were granted

1 amortization of approximately 900,000 over a three-year
2 period.

3 Q. And that was less than what MGE had requested,
4 I believe?

5 A. Yes, it was. We had requested about 1.3, 1.4
6 million.

7 JUDGE WOODRUFF: Okay. Well, that's all the
8 questions I have from the Bench at this time. And as I
9 indicated previously, if the Commissioners come down and have
10 further questions, we may recall you for that purpose. Of
11 course, I'll give you a chance to recross based on those
12 questions.

13 Based on the questions that I've had, is there
14 any recross? Yes, Mr. Micheel.

15 RE-CROSS-EXAMINATION BY MR. MICHEEL:

16 Q. Is it correct, Mr. Noack, that ratepayers are
17 charged for reasonable rate case expenses via rates?

18 A. Yes.

19 Q. And there's a level built into MGE's rates for
20 rate case expense right now; is that correct?

21 A. That's correct.

22 Q. And so if MGE was required to file a rate case
23 to collect these costs and other costs -- I mean, if we filed
24 a rate case, we wouldn't just be looking at these costs, would
25 we?

1 A. No. We'd be looking at everything again.

2 Q. And, again, all that rate case expense would be
3 paid -- reasonable rate case expense by the consumer; is that
4 correct?

5 A. Yes.

6 JUDGE WOODRUFF: Thank you.

7 Redirect?

8 MR. COOPER: Just one moment, your Honor.

9 REDIRECT EXAMINATION BY MR. COOPER:

10 Q. Mr. Noack, you were asked some questions about
11 MGE's last -- well, rate case two cases ago, I believe. It
12 was GR-2001-292 and what items might or might not have been
13 included in MGE's cost of service in that case. Do you
14 remember that?

15 A. Yes, I do.

16 Q. Okay. And I believe that there was reference
17 to a stipulation in that case. Correct?

18 A. That's correct.

19 Q. Okay. Now, I've handed you a document. Do you
20 recognize that document?

21 A. It's the Second Revised Stipulation and
22 Agreement in 2001-292 -- GR-2001-292.

23 Q. Okay. And in approximately the -- it's on the
24 first page of that document, I believe, there's a stipulation
25 as to a rate increase for Missouri Gas Energy; is that

1 correct?

2 A. That's correct.

3 Q. And what is that increase?

4 A. 9,892,228.

5 Q. Is that the -- I think maybe it was referred to
6 as a \$9.9 million increase in your prior testimony. Is that
7 what you were referring to?

8 A. Yes, it is.

9 Q. And you're taking the opportunity to look
10 through that Stipulation and Agreement, as I see. Do you see
11 in that Stipulation and Agreement anywhere that there's a
12 specification as to what individual items of expense are
13 included in the overall rate increase that has been agreed to
14 by the parties?

15 A. No. We don't -- we don't specify any
16 particular individual expenses. On page 13 there's a
17 paragraph that states that Staff, Public Counsel, MGUA,
18 JACOMO/Riverside and MGE further agree and state that this
19 Second Revised Stipulation and Agreement has resulted from
20 extensive negotiations and the terms of this Second Revised
21 Stipulation and Agreement are interdependent.

22 Q. And so earlier when you spoke about a \$400,000
23 figure for Kansas property taxes, did that refer to
24 negotiations amongst the parties as opposed to the Stipulation
25 and Agreement?

1 A. As I recall how -- how it all went down, we
2 agreed on -- on a Stipulation and Agreement of \$9.9 million.
3 And I'm again going to round up. And Staff, when they did
4 their EMS run, based on the information that they were using,
5 came up with 9.5 million. And in order to get their EMS run
6 to tie to the 9.9, Staff used a \$400,000 amount for -- as an
7 estimate of these property taxes in Kansas.

8 MR. MICHEEL: I'm going to object to that
9 answer to the extent that he's talking about what Staff did or
10 didn't do. That's obviously hearsay and I'm going to object.

11 JUDGE WOODRUFF: I'm going to overrule the
12 objection.

13 I do have a question of my own though. You've
14 been using the acronym "EMS run." Can you tell me what an EMS
15 run is just generally.

16 THE WITNESS: It's Staff's revenue requirement
17 run that they -- I'm trying to think what EMS stands for and I
18 can't.

19 JUDGE WOODRUFF: I think you've answered my
20 concern. I just wanted to make it clear on the record what
21 we're talking about.

22 You can go ahead and inquire.

23 BY MR. COOPER:

24 Q. Were you finished with that answer, Mr. Noack?

25 A. Yes.

1 Q. And so in your prior answers and I assume in
2 your data request response that was referred to earlier in
3 your cross-examination concerning 400,000, it was your
4 knowledge of the Staff's process that you were referring to?

5 MR. MICHEEL: I'm going to object to the extent
6 that the DR that has been entered into the record as
7 Exhibit 10 says what it says, your Honor.

8 JUDGE WOODRUFF: Your response, Mr. Cooper?

9 MR. COOPER: Well, I think we have the
10 opportunity for Mr. Noack to explain his answers. That's one
11 answer he's given. He also has had to respond to answers --
12 or respond to questions this morning concerning this issue and
13 I think the purpose of redirect is to allow him to explain
14 those answers.

15 JUDGE WOODRUFF: Go ahead, Mr. Micheel.

16 MR. MICHEEL: Question No. 4 of Exhibit 10 is
17 pretty explicit. It says, Please provide an estimate of the
18 level of property taxes that is included in current rates for
19 the payment of property taxes for gas stored in Kansas.

20 And the answer given by Mr. Noack, I'm assuming
21 truthfully and under oath, is, \$400,000.

22 JUDGE WOODRUFF: All right. If the court
23 reporter could read back what the actual question was, it's
24 been a while back and I've forgotten what it was.

25 THE COURT REPORTER: "Question: And so in your

1 prior answers and I assume in your data request response that
2 was referred to earlier in your cross-examination concerning
3 400,000, it was your knowledge of the Staff's process that you
4 were referring to?"

5 JUDGE WOODRUFF: I don't find anything
6 objectionable about that question. The objection's overruled.

7 THE WITNESS: Yes.

8 BY MR. COOPER:

9 Q. Now, Mr. Micheel asked you some specific
10 questions -- well, both Mr. Schwarz and Mr. Micheel asked you
11 some questions about regulatory lag and whether regulatory lag
12 can favor the company at times. Do you remember that?

13 A. Yes, I do.

14 Q. Okay. Does it also go against the company
15 quite often?

16 A. Yes, it does.

17 Q. Do you have any examples based upon this most
18 recent rate case, GR-2004-0209 -- which I believe we earlier
19 said resulted in effective rates as of October 2nd. Do you
20 have any examples of expenses that already have gone against
21 the company?

22 A. Yes. One that everybody would be pretty
23 familiar with is bad debt expense where in the rate case we
24 arrived -- we included in rates \$7,042,000 of bad debt expense
25 based on an average of past years. For the 12 months ended

1 December 31st, '04, the actual bad debt expense is 8,933,411,
2 or almost \$2 million higher.

3 MR. MICHEEL: Your Honor, for the record, I
4 just want to point out it was my recollection that in that
5 rate case bad debt expense was a settled item.

6 BY MR. COOPER:

7 Q. Do you have any other examples of items?

8 A. Employee benefits included in rates was
9 12,157,706 in total. As of December, we are at 13,395,257.
10 And the majority of that increase of 1.2 million is primarily
11 related to medical claims and dental claims, which just
12 continue to go up and there's nothing that we can do about
13 that.

14 And then, finally, and this is a risk that --
15 that as a gas company we have to live with, for the winter of
16 2003 and 2004, weather has only been 86 percent of normal. So
17 right off the bat we've -- are behind on revenues just because
18 of weather. So I -- I mean, those are things that -- that go
19 against the company as an example.

20 Q. Now, going back to I believe it's Exhibit 10,
21 which is your response to Data Request 0384 in this last rate
22 case, GR-2004-0209, in your answer to Question 4 you refer to
23 the fact that MGE's rates have still been insufficient to
24 enable it to achieve its Commission authorized rate of return.
25 Correct?

1 A. Yes.

2 Q. Okay. Could you explain that for us a little
3 bit?

4 A. Well, immediately upon, you know, when we file
5 a rate case -- and in this case we trued-up -- in the last
6 case we trued up to April 30th, '04, for plant in service.
7 And by the time rates went into effect, which was October 2nd,
8 we had plant put into the ground, which is not included in
9 this rate case.

10 I mean, immediately upon the end of a rate case
11 if there's inflation, if there is non-revenue producing plant
12 increases, then Missouri Gas Energy will be behind -- behind
13 the eight ball or will be under-earning the return that's been
14 authorized.

15 Q. And let me back -- let me go a different
16 direction here. Are you familiar with Mark Oligschlaeger?

17 A. Yes, I am.

18 Q. And he works for the Staff, doesn't he?

19 A. That's correct.

20 Q. Okay. And are you familiar with whether he's
21 had the opportunity to testify on behalf of the Staff from
22 time to time?

23 A. He testified in our -- in our last rate case,
24 in GR-2004-0209.

25 Q. Let me hand you Rebuttal Testimony of

1 Mr. Oligschlaeger from GR-2004-0209. And if you would turn to
2 page 12 for me.

3 A. All right. I'm there.

4 Q. Near the bottom of that page there's a question
5 that starts on line 17. It says, Having made these points
6 concerning MGE's earning analysis, which Mr. Oligschlaeger had
7 done some descriptions regarding MGE's earnings, the question
8 goes on to say, Do you disagree that MGE has had a tendency to
9 under-earn in its short history to date.

10 Do you see that?

11 A. Yes, I do.

12 Q. And what was Mr. Oligschlaeger's answer to
13 that?

14 A. His answer was, No. Given the fact that MGE
15 has added much plant in service to its rate-base in recent
16 years in the nature of the rate-making process in Missouri,
17 that phenomenon is exactly what would be expected to happen.

18 Q. And is that similar to what you were describing
19 for us previously in regard to MGE's experience of
20 under-earning?

21 A. Yes.

22 Q. Now, Mr. Micheel asked you some questions
23 concerning property taxes and, in particular, the amount of
24 property taxes that were included in MGE's rates in
25 GR-2004-0609. Do you remember that? I'm sorry, 0209.

1 A. Yes, I do.

2 Q. Do you have your Surrebuttal Testimony with
3 you?

4 A. Yes, I do.

5 Q. Could you turn to that or pull that out for me?
6 Okay. And while you're there, if you would
7 turn to your Surrebuttal Schedule MRN-2.

8 A. I'm there.

9 Q. Okay. Could you describe for me what you're
10 attempting to do in Schedule MRN-2?

11 A. What I'm showing -- attempting to show in
12 Schedule MRN-2 is a comparison of actual property taxes versus
13 the property taxes that we're collecting through rates between
14 the time that rates went into effect in GR-2001-292 and
15 12/31/04 when the rates from GR-2004-0209 are in effect.

16 And basically, I go through on a year-by-year
17 basis the actual amount of property taxes paid and compare
18 that with the amount of taxes that are in rates.

19 Q. Okay. And what were the results of that
20 analysis?

21 A. The results of that analysis is that over that
22 same period of time, we -- MGE would have under-collected
23 \$3,080,000 and -- over that three-year period -- or I'm sorry,
24 over that almost four-year period.

25 Q. Now, you were also asked some questions by

1 Mr. Micheel in terms of the possibility of MGE paying
2 Pennsylvania property tax. Do you remember that?

3 A. Yes.

4 Q. Does MGE itself receive a tax bill for
5 Pennsylvania property tax?

6 A. No. Southern Union would get any tax bills
7 there.

8 Q. And to the extent any expenses related to that
9 made it to MGE, it would be through a corporate allocation?

10 A. Yes. That's correct.

11 Q. Much was made by Mr. Micheel of whether in the
12 year 2000 MGE was assessed property taxes for gas in storage
13 by the State of Kansas. Do you remember that?

14 A. Yes.

15 Q. Okay. And I believe you ultimately agreed that
16 MGE received an assessment notice in that year. Correct?

17 A. That is correct.

18 Q. Okay. And I believe it was also discussed that
19 ultimately MGE's appeal or request for exemption, however it
20 wants -- however you want to describe it, was successful in
21 regard to those property taxes. Correct?

22 A. That's correct.

23 Q. That being the case, was MGE ever lawfully
24 assessed property taxes for gas in storage in 2000?

25 A. I don't believe so.

1 MR. MICHEEL: I'm going to object. That calls
2 for a legal conclusion, your Honor.

3 JUDGE WOODRUFF: Excuse me. I'll sustain the
4 objection.

5 MR. MICHEEL: I would ask that any answer that
6 he gave while I was making my objection be stricken.

7 JUDGE WOODRUFF: It will be stricken.

8 MR. COOPER: Your Honor, I'd like to mark an
9 exhibit at this time.

10 JUDGE WOODRUFF: All right. We're up to
11 No. 13.

12 MR. COOPER: Why don't we just call it a
13 timeline, if we could.

14 JUDGE WOODRUFF: All right.

15 MR. MICHEEL: Your Honor, I'm assuming that
16 since this is a new exhibit in recross-examination, that I'm
17 going to get an opportunity to the cross-examine this witness
18 regarding this exhibit.

19 JUDGE WOODRUFF: Yes. I think that's fair.

20 (Exhibit No. 13 was marked for identification.)

21 THE WITNESS: Can I have one?

22 MR. COOPER: I didn't give you one? Well, that
23 would be a problem. Hold on just a moment.

24 MR. MICHEEL: We've labeled this timeline,
25 Mr. Cooper?

1 MR. COOPER: Yeah.

2 BY MR. COOPER:

3 Q. Do you have what has now been marked as
4 Exhibit 13 in front of you, Mr. Noack?

5 A. Yes, I do.

6 Q. Okay. Starting on the left side of that
7 document, do you see some dates and then some description of
8 those dates?

9 A. Yes.

10 Q. And the first date is November 4, 2003,
11 describes MGE files rate case. Is that accurate? Is that the
12 date on which MGE filed its rate case that was later
13 identified as GR-2004-0209?

14 A. That's the date in which we filed, that's
15 correct.

16 Q. Okay. And then we've talked about earlier you
17 responded to questions from -- or at least a question from
18 Mr. Micheel, I believe, that the rates from that rate case or
19 that resulted from that rate case were effective on
20 October 2nd of 2004. Correct?

21 A. Yes. Rates -- the tariff sheets are effective
22 October 2nd, 2004.

23 Q. And that date with a description is also on our
24 timeline. Correct?

25 A. Correct.

1 Q. Okay. And there's a statement there, Finding
2 the Kansas taxes to not be known and measurable.

3 Do you see that?

4 A. Yes.

5 Q. Okay. And as you discussed earlier, that was
6 one of the findings of the Commission. Correct?

7 A. That's correct.

8 Q. Okay. What date did the Kansas gas storage tax
9 statute that's at issue in this case become effective?

10 A. It became effective on July 1st of 2004.

11 Q. Okay. And that's described on our -- or is
12 represented on this timeline as well. Correct?

13 A. Yes, it is.

14 Q. Okay. And when that statute became effective,
15 was it effective for gas held in storage as of July 1, 2004 or
16 another date?

17 A. I believe it went back to gas in storage as of
18 December 31st, 2003 --

19 Q. On the timeline --

20 A. -- on January 1, 2004.

21 Q. -- reflected January 1, 2004. Correct?

22 A. Correct.

23 Q. Okay. Now, earlier I believe that in your
24 testimony it was referred to that the first appeal hearing in
25 Kansas that's coming up we think this summer. Correct?

1 A. Yeah. It's anticipated that our appeal will be
2 heard some time in June.

3 Q. Okay. And on our timeline that's reflected by
4 June 1, 2005. Correct?

5 A. Correct.

6 Q. And then, once again, I think it's been
7 discussed earlier that there's an estimated completion of that
8 appeal process of mid-2006. Correct?

9 A. That's correct.

10 Q. And that's represented on the timeline how?

11 A. It says June 1, 2006 estimated completion of
12 Kansas appeal process.

13 Q. Okay. Now, you were asked whether MGE could
14 file a rate case today, weren't you?

15 A. Yes, I was.

16 Q. And what was your answer to that?

17 A. Yes, we could.

18 Q. Yeah. There's no legal prohibition against
19 that. Correct?

20 A. No. I don't believe so.

21 Q. Okay. Let's say you did -- MGE did file a rate
22 case today. When would the rates become effective,
23 approximately?

24 A. It's March 8th today, so they would become
25 effective --

1 MR. MICHEEL: I'm going to object. That calls
2 for speculation.

3 JUDGE WOODRUFF: Overruled.

4 THE WITNESS: Under a full statute, it would be
5 approximately February 8th of 2006.

6 BY MR. COOPER:

7 Q. So, if anything, it couldn't be any later than
8 that. Correct? Couldn't be any further in time? Couldn't be
9 March?

10 A. I don't believe so. Not according to statute.

11 Q. If anything, it could move more quickly, but
12 not any slower than that. Correct?

13 A. Correct.

14 Q. Okay. If you were to file a case today, do you
15 think that -- well, let's back up.

16 What would you know about those Kansas gas
17 storage taxes that are the subject of this hearing?

18 A. We wouldn't know much more than what we know
19 today because our -- our process of appealing and litigating
20 these taxes wouldn't be complete yet.

21 Q. Okay. Do you know anything today that you
22 didn't know at the time of the true-up hearing in
23 GR-2004-0209?

24 A. The only thing we know today that we -- that we
25 didn't know at that time is the amount of the tax based on the

1 gas in storage of 12/31/2003 and that's 1.7 million versus our
2 estimate of 1.2 million.

3 Q. But in terms of your challenge -- or MGE's
4 challenge to the statute, is there anything new in that
5 regard?

6 A. No. No.

7 Q. In your opinion, how long will it be before MGE
8 could file a rate case that would avoid this known and
9 measurable problem that was raised in GR-2004-0209?

10 A. If we -- let me work backwards.

11 MR. MICHEEL: I would just object. It calls
12 for speculation, it assumes that people are going to raise
13 that issue, your Honor.

14 JUDGE WOODRUFF: I'm going to overrule the
15 objection.

16 THE WITNESS: If -- if we filed the rate case
17 with a test year ending December 31st, '05, and that would be
18 filed sometime let's say April '06, and then the Staff uses
19 June 30, '06, to update the numbers like they usually -- they
20 usually go about six months out to update, then we should --
21 we would possibly have all the known information in on the
22 property taxes. So I would guess April of 2006.

23 BY MR. COOPER:

24 Q. Now, as of April 2006, do you believe you'd
25 know whether the Kansas property taxes are going to be paid or

1 not?

2 MR. MICHEEL: I'm going to object. It calls
3 for speculation.

4 JUDGE WOODRUFF: Overruled.

5 THE WITNESS: As of April 2006, no, we
6 wouldn't -- we still wouldn't know whether they're going to be
7 paid or not. But working with the -- with the timeline that
8 we've worked with in the past two cases, assuming that we
9 would go forward another six months to update the test year as
10 of June, we probably would know whether we have to pay those
11 taxes or not.

12 BY MR. COOPER:

13 Q. But at the time of filing you'd have to make an
14 assumption that you were going to have to pay them, wouldn't
15 you?

16 A. Yes.

17 Q. Okay.

18 A. If we wanted to include them in the -- in the
19 case.

20 Q. Now, you asked -- or you answered some
21 questions in terms of how these property taxes are being
22 treated on MGE's books. Correct?

23 A. Yes.

24 Q. In the absence of an AAO -- well, let me back
25 up. And I believe you answered that currently this liability

1 is reflected on MGE's 2004 books. Correct?

2 A. That is correct.

3 Q. And would it be reflected in MGE's 2005 books?

4 A. Assuming that we get property taxes assessed
5 again, and I have no reason to doubt that we wouldn't, yes,
6 then we would have them on the 2005 books also.

7 Q. And in the absence of an AAO, will those
8 liabilities remain on MGE's books?

9 A. The accruals will remain on the books until we
10 pay them and the expense will show up in the period in which
11 they are incurred, 2004 for the first one and 2005 for the
12 second assessment.

13 MR. COOPER: That's all the questions I have at
14 this time, your Honor.

15 JUDGE WOODRUFF: Thank you.

16 Staff or Public Counsel have any questions
17 based on this Exhibit 13?

18 MR. MICHEEL: Are you going to move admission
19 of that exhibit?

20 MR. COOPER: Not yet.

21 MR. MICHEEL: Okay. Then I'll hold my
22 objection.

23 JUDGE WOODRUFF: Okay. Are you going to offer
24 it at some later point or -- I mean, this is the last --
25 excuse me, this is the last crack at this witness.

1 MR. COOPER: My plan right now is to offer it
2 later in the process.

3 JUDGE WOODRUFF: With another witness?

4 MR. COOPER: Perhaps after talking with another
5 witness about it, yes.

6 JUDGE WOODRUFF: We'll let it go at that point
7 then.

8 We'll go back to Exhibits 1, 2, 3 and 4. Those
9 were offered at the beginning. I'll ask at this time if there
10 are any objections to their receipt?

11 Hearing none, they will be received into
12 evidence.

13 (Exhibit Nos. 1, 2, 3 and 4 were received into
14 evidence.)

15 JUDGE WOODRUFF: All right then. Mr. Noack,
16 you can step down. We very well may recall you to get
17 questions from the Commissioners, but for the moment you can
18 step down.

19 And I believe the next witness is Mr. Hyneman
20 for the Staff.

21 (Witness sworn.)

22 JUDGE WOODRUFF: You may be seated.

23 You may inquire.

24 MR. SCHWARZ: Thank you.

25 CHARLES R. HYNEMAN testified as follows:

1 DIRECT EXAMINATION BY MR. SCHWARZ:

2 Q. Would you state your name, please for the
3 record?

4 A. Yes. It's Charles R. Hyneman.

5 Q. And by whom are you employed?

6 A. Missouri Public Service Commission.

7 Q. In what capacity?

8 A. I am a regulatory auditor.

9 Q. And have you caused to be pre-filed in this
10 case what has been marked as Exhibit 5, Hyneman Direct, and
11 Exhibit 6, Hyneman Surrebuttal?

12 A. Yes, I have.

13 Q. Do you have corrections to make to that
14 testimony?

15 A. Yes, I have one correction.

16 Q. Would you proceed, please?

17 A. It's in my Direct Testimony, page 7. On
18 line 10, I'd like to delete the words "consistent with its
19 policy outlined in the Sibley order," that clause I'd like to
20 delete it.

21 Q. Okay. Is that the only correction that you
22 have to make?

23 A. Yes, it is.

24 Q. If I asked you the same questions today as are
25 contained in your pre-filed testimony, would your answers be

1 essentially the same?

2 A. Yes, they would.

3 Q. Are those answers true and correct to the best
4 of your knowledge, information and belief?

5 A. Yes.

6 MR. SCHWARZ: I would offer Exhibits 5 and 6
7 and tender the witness for cross.

8 JUDGE WOODRUFF: Exhibits 5 and 6 have been
9 offered into evidence. Are there any objections to their
10 receipt?

11 MR. MICHEEL: Your Honor, I would ask that you
12 wait until after cross-examination to accept those exhibits.

13 JUDGE WOODRUFF: Okay. And for
14 cross-examination we begin with MGE, didn't we?

15 MR. MICHEEL: Yes, your Honor.

16 MR. COOPER: Yes, your Honor.

17 CROSS-EXAMINATION BY MR. COOPER:

18 Q. Mr. Hyneman, in your Surrebuttal Testimony I
19 believe you describe a concept of indirect rate recovery. Do
20 you remember that?

21 A. Yes, I do.

22 Q. And as I understand what you call indirect rate
23 recovery, it seems to be your assumption that if a utility
24 incurs a new expense -- and in this case I think the example
25 is the amortization of an AAO deferral -- the utility would be

1 deemed to be recovering that expense through the revenues
2 generated from its customers. Is that a fair description?

3 A. Yes, it is.

4 Q. Now, if all other revenues and expenses are
5 equal, won't what you refer to as indirect rate recovery
6 necessarily reduce the utility's return on its investment if
7 there's no additional revenues generated by that expense?

8 A. Assuming hypothetically that there's no change
9 in revenue or expenses, then an increase in expense will drive
10 down an ROE, yes.

11 Q. Now, also in your Surrebuttal in discussing
12 matching principle, you state that, The Staff's position would
13 match the expense -- well, let me back up.

14 In your Surrebuttal Testimony you suggested
15 that while the company, you believe, should receive an
16 Accounting Authority Order, you also suggest that that
17 Accounting Authority Order should be limited to only the
18 property taxes incurred for 2004 and 2005. Correct?

19 A. That's correct.

20 Q. Okay. And in your Surrebuttal again when you
21 start talking about the matching principle, you say, The
22 Staff's position would match the expense incurred in 2004 and
23 2005 with revenues collected from customers as soon as
24 possible.

25 Do you remember that?

1 A. Yes, I do.

2 Q. Now, if an AAO is granted and the resulting
3 amortization starts before the next rate case, are there any
4 revenues to be received by the company that have been
5 specifically collected for that purpose?

6 A. No. I wasn't referencing revenues specifically
7 collected for the AAO.

8 Q. Yeah. Your comment just goes back again to
9 this indirect rate recovery that you referred to before.
10 Right?

11 A. Right.

12 Q. Okay. Now, you also have a discussion in your
13 Surrebuttal Testimony of a recent MGE pipeline acquisition.
14 Correct?

15 A. That's correct.

16 Q. And you speculate that perhaps there may be
17 some impact upon the corporate allocations that MGE would
18 receive in light of that pipeline acquisition. Correct?

19 MR. SCHWARZ: Objection. I'm going to object
20 to the term "speculate." I don't think that anything
21 Mr. Hyneman has done constitutes a speculation.

22 JUDGE WOODRUFF: I'm going to overrule the
23 objection.

24 THE WITNESS: I would not use the term
25 "speculate." Based on my experience and the example I give in

1 my testimony, Southern Union just acquired Panhandle. And I
2 audited the corporate allocation in MGE's last case and saw a
3 decrease in corporate allocations. So based on my experience
4 in that area, I don't have any doubt whatsoever that this
5 recent acquisition will lower the corporate allocations to
6 MGE.

7 BY MR. COOPER:

8 Q. Okay. But you don't know by how much.
9 Correct?

10 A. No, I don't.

11 Q. And, in fact, when you discuss that prior
12 reduction in corporate allocation expenses, you also stated
13 that some of the cost reduction was offset by increases in
14 MGE's direct cost. Correct?

15 A. Yes, that's correct.

16 Q. And one example of that would be information
17 technologies. Correct?

18 A. That's correct.

19 Q. There's about, what, 1.6 million that the
20 company had to pick up in direct costs that previously were
21 allocated to it by corporate?

22 A. I don't recall the number, I'm sorry.

23 Q. But there are examples of those. Correct?

24 A. Yes.

25 Q. Yeah. Now, would MGE's next rate case be the

1 most appropriate place to examine what, if any, reduction
2 there is in corporate allocated overhead costs?

3 A. Yes. MGE's next rate case would be an
4 appropriate forum to discuss anything to do with rate-making
5 as it relates to this AAO.

6 Q. But that's when you'll be able to tell what
7 impact a pipeline acquisition might have on those corporate
8 overheads. Correct?

9 A. It will be difficult if -- under your -- MGE's
10 proposal where we wait until 2008 to go back to 2004 and '5 to
11 determine that, but you theoretically could.

12 Q. And if an AAO is granted by the Commission in
13 this case, the possible recovery of any amounts deferred would
14 be addressed in MGE's next rate case. Correct?

15 A. That's correct.

16 Q. Now, you were here earlier when Mr. Noack was
17 on the stand. Correct?

18 A. That's correct.

19 Q. And did you hear Mr. Noack read from some
20 testimony from Mr. Oligschlaeger from the last MGE rate case?

21 A. Yes, I did.

22 Q. And a part of that testimony was a statement
23 that MGE has had a tendency to under-earn in its short history
24 to date. Correct?

25 A. That's the substance of Mr. Oligschlaeger's

1 testimony, yes.

2 Q. There have been acquisitions pretty much
3 throughout what Mr. Oligschlaeger referred to as MGE's short
4 history, haven't there?

5 A. Are you talking about company acquisitions?

6 Q. Company acquisitions.

7 A. From Southern Union, yes.

8 Q. Yes. So this pipeline acquisition that we just
9 referred to -- that you refer to in your Surrebuttal
10 Testimony, it's not the first acquisition that Southern Union
11 has undertaken. Correct?

12 A. It's not the first acquisition, that's correct.

13 Q. And the short -- what's referred to as the
14 short history of MGE goes back to 1994; is that correct?

15 A. That's correct.

16 Q. And MGE had its first rate case in March of '96
17 or filed for its first rate case in March of '96?

18 A. I don't know the month, but I know it was '96.

19 Q. Now, previously we talked about the fact that
20 your Surrebuttal Testimony has now recommended that MGE be
21 allowed to defer a maximum of two years of property taxes or
22 the actual property taxes ultimately paid for the years 2004
23 and 2005. Correct?

24 A. That's correct.

25 Q. Now, in your Surrebuttal you allege that two

1 years is sufficient for the cost to be classified as
2 extraordinary and state that MGE can file for a rate increase
3 if existing revenues are not sufficient to recover these
4 ongoing expenses, assuming that the Kansas law giving rise to
5 these taxes is upheld, and earn a reasonable rate of return on
6 invested capital.

7 Do you remember that?

8 A. Yes.

9 Q. Now, one of the reasons, as we discussed
10 earlier, that the Commission found in GR-2004-0209 that MGE
11 was unable to include these gas storage property taxes in its
12 cost of service was a finding that the property taxes were not
13 yet known and measurable. Correct?

14 A. That's correct.

15 Q. Okay. In your opinion, are they known and
16 measurable today?

17 A. No.

18 Q. Okay. In your opinion, when will they be known
19 and measurable?

20 A. They are measurable, but they will be known
21 when the final legal determination on the legality of the tax
22 is made. And I think that estimate is in the summer of 2006.

23 Q. Okay. Now, let me --

24 MR. COOPER: Just a moment, your Honor.

25 BY MR. COOPER:

1 Q. Mr. Hyneman, let me hand you Exhibit 13, which
2 was discussed earlier with Mr. Noack.

3 A. Is that the timeline? I have a copy.

4 Q. It is. You have one there with you?

5 A. Uh-huh.

6 Q. And you have that in front of you?

7 A. Yes.

8 Q. Okay. Now, along the bottom of that document
9 and bottom right-hand corner, do you see a December 31, 2005
10 date?

11 A. Yes, I do.

12 Q. And described there below that date is Staff
13 proposed termination of AAO deferrals. Correct?

14 A. That's correct.

15 Q. And that's accurate with your recommendation,
16 correct, that the deferral come to an end at the end of the
17 year 2005?

18 A. Well, the deferral cut-off date would depend on
19 how MGE books it in its books and records, when it last books
20 the costs for the two years of property taxes. I don't know
21 when that would be, but the total of two years deferral, that
22 would be the end of it.

23 Q. And it would be the end of calendar year 2005
24 though. Correct?

25 A. Well, the property taxes incurred in that year,

1 yes.

2 Q. Yeah. Okay. Now, to the right of that block,
3 July 1, 2006, it says, Start of Staff proposed amortization.
4 The rest of your recommendation I believe as to the AAO is
5 that the company begin to start amortizing the first month
6 after a final judicial determination as to the validity of the
7 tax. Correct?

8 A. Correct.

9 Q. And so if above we assume a June 1, 2006 date
10 for the completion of the appeal process, the amortization
11 would start on July 1, 2006; is that correct?

12 A. Yes.

13 Q. Okay. Now, going back to your earlier
14 statement that MGE can file for a rate increase if existing
15 revenues are not sufficient to recover these property taxes,
16 would you agree with me that in order to ensure that rates
17 would be in effect by the end of the deferral period or the
18 2005, that MGE would have had to have filed a rate case on
19 February 1st of 2005, approximately?

20 A. If MGE wanted the rates to go into effect in
21 December of '05, then they would have to file I think in,
22 what, November of '04 or --

23 Q. No. Let's back up.

24 A. Yes, please.

25 Q. Because we're not on the same wavelength.

1 Under your proposal, MGE can only defer those
2 property taxes incurred for the years 2004 and 2005. Correct?

3 A. Correct.

4 Q. So that as we talked about before, end of
5 2005 -- December 31, 2005 under your proposal, that AAO would
6 cease to provide the opportunity for deferral. Correct?

7 A. Correct.

8 Q. Okay. If MGE were to try to obtain from the
9 Commission authorization for new rates that included amounts
10 associated with these Kansas gas storage taxes so that those
11 rates were effective at the conclusion of this deferral period
12 or in January of 2006, wouldn't they have to file a rate case
13 11 months prior to that?

14 A. Yes.

15 Q. And 11 months prior would be approximately
16 February of 2005. Correct?

17 A. Yes, it would.

18 Q. Okay. Now, again -- and let's go the next
19 step. The other part of the Staff's recommendation is that
20 the amortizations start in -- under our estimates here, a
21 month after the appeal is filed in Kansas. Correct? And if
22 we assume that the appeal is filed in June of 2006, then the
23 amortization would start in July of 2006. Correct?

24 A. That's correct.

25 Q. Would you agree with me that in order to get --

1 or to seek approval of rates that would include gas storage
2 taxes as of the time the amortization would start, that MGE
3 would have to file a rate case 11 months prior to that date?

4 A. If -- if under your plan is to ensure
5 100 percent recovery of these deferrals and try to match it to
6 that, then yes, that would be correct.

7 Q. And because we don't know in the end what date
8 the appeal will be filed, it's a little difficult to backdate
9 the 11 months, isn't it, or to backward plan that 11 months?

10 A. Yes, it is.

11 Q. Okay. So to just say that MGE -- let me get
12 your language -- can file a rate increase of existing revenues
13 are not sufficient to recover these ongoing expenses, ignores
14 the unknowns associated with this process. Correct?

15 A. Once the -- the legality of this tax is known
16 and MGE starts amortizing these deferrals, it can file a rate
17 case and include a request for those amortization in that rate
18 case.

19 Q. So once the legality is known and amortization
20 starts. So under our assumptions, mid-2006. Correct?

21 A. That's your assumption, correct.

22 Q. So mid-2006 really is when MGE could file its
23 rate case. Correct?

24 A. If you wanted to match your filing of the rate
25 case with an attempt to recover 100 percent, yes.

1 Q. Well, let's back up a little bit from that as
2 well. If MGE waits until mid-2006, it waits until it has a
3 final determination on these -- the validity of these gas
4 storage taxes in Kansas and waits until the amortization
5 starts, won't the phenomenon we talked about earlier,
6 regulatory lag, prevent 100 percent recovery?

7 A. No. In fact, it could allow where you would
8 exceed over 100 percent recovery depending on your filing of
9 subsequent rate cases.

10 Q. Well, explain that to me then. Because in my
11 experience, when we set rates, we set rates for future
12 periods.

13 A. That's correct.

14 Q. Now, we look back, don't we, to a test year, to
15 a true-up period, to -- for evidence of what those rates
16 should be in the future. Correct?

17 A. Uh-huh.

18 Q. But we don't go back and recover amounts that
19 have already been expended in the test year. Correct?

20 A. Under this proposal, you would defer as a -- as
21 a -- as a defer on the balance sheet. And if the Commission
22 grants rate recovery, it becomes a regulatory asset that you
23 incurred in 2004/2005 that will be amortized over a five-year
24 period starting in, say, July of '06.

25 Q. But if we make that assumption, the company's

1 also going to have property taxes for 2006. Correct?

2 A. Well, yes.

3 Q. And it will have to pay those because we've
4 assumed that the statute has been determined to be lawful.
5 Correct?

6 A. Correct.

7 Q. And if the company can't come in until 2006 and
8 your AAO stops at the end of 2005, will the company have any
9 opportunity to recover those 2006 property taxes?

10 A. Certainly.

11 Q. How so?

12 A. Well, the annualization of property taxes will
13 include that property tax for Kansas and on a going-forward
14 basis, they'll record that.

15 Q. On a going-forward basis, correct. But the
16 amount actually paid in 2006 is gone at that point, isn't it?

17 A. Well, I mean, that's -- that's part of
18 regulatory lag, yes. Yeah.

19 Q. And that's also true of any amount that is
20 amortized prior to when the new rates go into effect.
21 Correct?

22 A. No. I wouldn't say that. I would say if -- if
23 the amount amortized caused your ROE to go below a reasonable
24 level, then, yes. But if -- if your current revenues, your
25 customer growth is sufficient to absorb that, then no, I mean,

1 you've recovered it.

2 I mean, an example I gave in my testimony for
3 KCPL on the AAO for the ice storm, they would say they're
4 recovering their AAO costs. They haven't filed a rate case to
5 come in and directly recover, but their earnings have been
6 sufficient where they're recovering that cost and still
7 earning a reasonable ROE.

8 Q. When was the last time KCPL filed for a rate
9 increase?

10 A. I know it's been several years.

11 Q. Measured in decades. Right?

12 A. I don't know exactly, but I wouldn't -- I think
13 it's --

14 Q. Been quite a while, hasn't it?

15 A. Been quite a while.

16 Q. And would you suspect that Mr. Oligschlaeger
17 wouldn't make the same statement as to KCPL that he did as to
18 MGE, that -- let me back up.

19 Would you say that KCPL has had a tendency to
20 under-earn in its history?

21 A. I would not agree with that statement.

22 Q. Yeah.

23 A. But I -- if I can clarify, I didn't pick KCPL
24 just because they could be in a well earnings position. I did
25 it to illustrate the phenomenon of indirect rate recovery.

1 Q. Now, you've indicated in your testimony that
2 MGE has generally come in in recent years for a rate case
3 every three years. Correct?

4 A. Yes.

5 Q. Are you aware that the ESRA statute requires a
6 company to file a rate case every three years to take
7 advantage of that surcharge?

8 A. Yes, I am.

9 Q. And would you agree with me that MGE recently
10 filed for an ESRA on February 14th of 2005?

11 A. Yes, I am.

12 Q. Okay. And are you also aware that the
13 Commission has suspended that tariff until June 14th of 2005?

14 A. I don't know the dates, but I am aware of
15 suspension order, yes.

16 Q. Okay. Would you agree with me that MGE will be
17 required by the legislature to file a rate case by some time
18 in 2008 in order to maintain that ESRA?

19 A. Yes.

20 Q. Would you agree with me that the amortization
21 of rate case expense in MGE's last rate was premised on a
22 three-year interval between cases?

23 A. The total rate case expense was amortized over
24 three -- was -- years reflecting a three-year rate filing
25 process, yes.

1 Q. Now, if you would, in your Surrebuttal
2 Testimony -- and specifically within your Surrebuttal
3 Testimony, if you could turn to Schedule 1-1 for me. Now, I
4 think you started to refer to this maybe earlier in response
5 to one of my questions, but this is a schedule that you put
6 together in an attempt to show that there was some possibility
7 that the company could over-earn on the amount that it had
8 deferred. Correct? Or over-recover maybe is --

9 A. My intent was not to show some possibility.
10 The intent was to show that depending on when MGE decides to
11 file a rate case, that will affect the amount of recovery of
12 the deferred asset. Now, I don't -- if we recover more than a
13 deferral or less than, it could -- it all depends on when MGE
14 decides to file a rate case.

15 Q. And this schedule doesn't attempt to include or
16 make provision for either of your recommendations on the AAO,
17 does it, either the fact that you would limit it to 24 and
18 2005 or the fact that you would require amortization to start
19 first month after a final judicial determination as to the
20 legality of the tax?

21 A. No. This -- the schedule just shows what it
22 would be like if MGE filed a rate case consistent with its
23 previous filings every three years.

24 Q. Okay. Now, it also from my review of it -- and
25 if you'll turn with me to the second page, you have in 2009 --

1 I guess month 11 of 2009, MGE files rate case No. 2 and then
2 has resulting rates in effect month 9 of 2010. Correct?

3 A. Correct.

4 Q. You also don't take into account the
5 possibility that in that second rate case the amortization
6 could be modified, do you?

7 A. I know you have the current -- the unamortized
8 balance would be 680,000. I'm not sure -- it would still
9 continue to be amortized. What would be a modification?

10 Q. Well, let me ask you this. Would Staff have
11 the opportunity to review that amortization in your rate case
12 No. 2?

13 A. Yes.

14 Q. Would it be possible for the Staff to recommend
15 and for the Commission to order an adjustment to the
16 amortization to address your concerns?

17 A. To address which concerns?

18 Q. Your concern that perhaps the amortization
19 would be completed prior to rate case No. 3.

20 A. It -- it's possible. I would say realistically
21 though, if the -- if the amortization ends shortly after that,
22 that it would probably, but this -- this would continue
23 several years so I don't think that -- that an adjustment
24 would be made in that case.

25 Q. You don't think an adjustment would be

1 warranted at that point?

2 A. Not -- not in this example.

3 Q. But it's possible that that could happen, isn't
4 it, that an adjustment could be made in that second rate case
5 to modify the amortization?

6 A. It's -- I don't know of any similar adjustment
7 that's been made and -- but it is possible.

8 MR. COOPER: I believe that's all the questions
9 I have at this time.

10 JUDGE WOODRUFF: Thank you.

11 Mr. Micheel?

12 CROSS-EXAMINATION BY MR. MICHEEL:

13 Q. Mr. Hyneman have you ever worked on an AAO case
14 before, before the Commission?

15 A. Yes, I have.

16 Q. And have you testified regarding AAOs before
17 the Commission?

18 A. Yes, I have.

19 Q. When you took the stand today in your Direct
20 Testimony, Exhibit 5 at page 7, lines 10 you deleted
21 "consistent with its policies outlined in the Sibley order,"
22 did you not?

23 A. Yes, I did.

24 Q. And why did you do that?

25 A. The wording on there was not clear. I think

1 the company had a question did -- did the Commission in the
2 Sibley order order immediate amortization. That's how they
3 understood the statement. And I admitted that the statement
4 was unclear, so to clarify that, I agreed to modify it.

5 Q. Would you agree with me that generally the
6 Sibley order is the standard -- or is the order that set out
7 the standard for AAOs in Missouri?

8 A. Yes.

9 Q. In your Direct Testimony, sir, Exhibit 5 at
10 page 6, lines 6 through 22 you set out why in your opinion
11 MGE's request meets the AAO standard; is that correct?

12 A. That's correct.

13 Q. And is it correct that you say, First, the
14 initial imposition of the tax is unusual in nature; is that
15 correct?

16 A. That's correct.

17 Q. And if I understand your testimony there, it's
18 the fact that the State of Kansas is taxing Missouri -- a
19 Missouri business?

20 A. The State of Kansas is taxing Missouri Gas
21 Energy on property taxes.

22 Q. Yes.

23 A. Something that hasn't occurred in history.

24 Q. Is it correct that you testified in GR-2001-292
25 that that was MGE's rate case prior to GR-2004-0209?

1 A. That's correct.

2 Q. And is it correct that you sponsored the
3 Staff's accounting schedules in GR-2001-292?

4 A. I believe I did.

5 MR. MICHEEL: I need to get an exhibit marked,
6 your Honor.

7 JUDGE WOODRUFF: All right. Be No. 14.

8 MR. MICHEEL: Exhibit 14. And these are
9 revised Staff accounting schedules in GR-2001-292.

10 (Exhibit No. 14 was marked for identification.)

11 BY MR. MICHEEL:

12 Q. Mr. Hyneman, I have handed you what's been
13 marked for purposes of identification as Exhibit 14. Are
14 those the revised Staff accounting schedules in Case
15 No. GR-2001-292?

16 A. Yes, they are.

17 Q. And did you sponsor those?

18 A. Yes, I did.

19 Q. Okay. If you could, sir, turn with me to
20 schedule -- accounting Schedule 9-2. And let me know when
21 you're there, sir.

22 A. I am there.

23 Q. On line 66 does that indicate property taxes?

24 A. Yes, it does.

25 Q. And does that indicate that there was an amount

1 of property tax paid in that case or an amount of property
2 taxes built in --

3 A. Yeah.

4 Q. -- to revenues in that case?

5 A. Yes.

6 Q. And it indicates there's an S71. Does that
7 indicate that there was an adjustment made to those property
8 taxes?

9 A. Yes, there was.

10 Q. Okay. Would you turn with me, sir, to Schedule
11 10-27? And I'm looking at the third adjustment under property
12 taxes there, No. 3. Do you see that to include property taxes
13 on gas inventory?

14 A. Yes, I do.

15 Q. And does that indicate that there was a
16 \$400,000 adjustment made?

17 A. Yes, it does.

18 Q. And at the top of that accounting Schedule 10
19 does it indicate Hyneman?

20 A. Yes, it does.

21 Q. Is that you?

22 A. Yes, it is.

23 Q. Okay. Does that indicate that there was an
24 adjustment made for property taxes on gas stored in inventory
25 by Mr. Traxler in that case?

1 A. Yes, it does.

2 Q. And that's for gas in Kansas; is that correct?

3 A. Yes.

4 MR. MICHEEL: Okay. With that, your Honor, I
5 would move the admission of Exhibit 14.

6 JUDGE WOODRUFF: Exhibit 14 has been offered
7 into evidence. Are there any objections to its receipt?

8 Hearing none, it will be received into
9 evidence.

10 (Exhibit No. 14 was received into evidence.)

11 MR. MICHEEL: Excuse me, I've got a cold.

12 I've got another exhibit, your Honor. It's
13 Exhibit 15.

14 (Exhibit No. 15 was marked for identification.)

15 BY MR. MICHEEL:

16 Q. Mr. Hyneman, I have handed you what's been
17 marked for purposes of identification as Exhibit 15. Is that
18 the supplemental testimony in support of revenue requirement
19 of Steve M. Traxler?

20 A. Yes, it is.

21 Q. And, sir, could you turn to page 4 with me of
22 that testimony?

23 A. I'm there.

24 Q. And I'm looking at line 27 there. Does it say
25 property tax on gas inventory, .4?

1 A. Yes, it does.

2 Q. And does that indicate that there was \$400,000
3 for property tax in gas storage inventory in Kansas built into
4 rates in that case?

5 A. Yes. The .4 was included in Staff's overall
6 revenue increase recommendations.

7 Q. Could you turn, sir, to page 6 of that
8 testimony? And could you read into the record there the
9 question starting on line 13 and the answer through line 20?

10 A. Question: Please explain the increase in the
11 Staff's recommended revenue increase for MGE as a result of
12 reflecting the increase in property tax expense related to
13 MGE's investment in gas inventory.

14 The answer: MGE advised the Staff regarding a
15 change in its Kansas property tax assessment. The State of
16 Kansas has notified MGE that its gas inventory investment
17 would be included in the assessment beginning with the year
18 2001. Consistent with the planned true-up of known and -- of
19 known changes through June 30, 2001, the Staff updated its EMS
20 run to reflect additional property tax resulting from this
21 change.

22 Q. So in that case, at least in Staff's view, they
23 included \$400,000 worth of property taxes for gas held in
24 storage in Kansas; is that correct?

25 A. That's Mr. Traxler's testimony.

1 Q. You don't have any reason to doubt that
2 testimony, do you?

3 A. No.

4 Q. And indeed, that adjustment is reflected in the
5 revised accounting schedules that were admitted into evidence
6 as Exhibit 14, were they not?

7 A. Yes.

8 Q. And you have no reason to doubt that you
9 provided the Commission with incorrect information at that
10 time, did you?

11 A. We did not.

12 Q. I didn't think you did.

13 Would you agree with me --

14 MR. MICHEEL: Well, let me move the admission
15 of Exhibit 15.

16 JUDGE WOODRUFF: 15 has been offered into
17 evidence. Are there any objections to its receipt?

18 Hearing none, it will be received into
19 evidence.

20 (Exhibit No. 15 was received into evidence.)

21 BY MR. MICHEEL:

22 Q. Would you agree with me, Mr. Hyneman, that MGE
23 collected \$400,000 in rates for three years for property taxes
24 on gas held in inventory in Kansas?

25 A. It's -- it's getting into a question if the

1 agreement was made part of an overall Stipulation and
2 Agreement or if it was a specified recovery of a dollar
3 amount. I --

4 Q. Let me ask you this and -- did Staff represent
5 to the Commission that \$400,000 was built into rates in that
6 case for recovery of property tax for gas in storage
7 inventory?

8 A. I think the Staff represented to the Commission
9 an explanation of how it got to its overall revenue increase.

10 Q. And how it got there, in Staff's view, was it
11 included \$400,000 in rates for recovery of gas held in storage
12 inventory; isn't that correct?

13 A. I was -- yes, but if I could just add the
14 caveat, I was not privy to any settlements --

15 MR. MICHEEL: Your Honor, it's a simple
16 question. It's yes. I don't need him to add caveats. It's
17 going to go a lot quicker --

18 JUDGE WOODRUFF: Yes. The caveat will be
19 stricken.

20 Ask your next question.

21 BY MR. MICHEEL:

22 Q. Would you agree with me, Mr. Hyneman, that
23 Staff would not agree to build something into rates unless
24 Staff thought it was a normal and recurring expense?

25 A. Yes.

1 Q. Is it correct in GR-2001-292 Staff believed
2 that property taxes for gas held in storage in Kansas was a
3 normal and recurring expense?

4 A. It was my understanding at that time that the
5 Staff believed that that would be a normal, recurring expense
6 on a going-forward basis.

7 Q. Would you agree with me that Kansas had
8 assessed property taxes on gas held in storage in Kansas
9 beginning in the year 2000?

10 A. That's my understanding.

11 Q. Would you agree with me that the only reason
12 Kansas stopped assessing that tax was the Kansas Supreme Court
13 determined the tax was not lawful?

14 A. I did not read the order, but that was my
15 understanding of what happened.

16 Q. Would you agree with me this tax is not the
17 initial imposition of a tax held -- on a tax of gas held in
18 storage in Kansas?

19 A. No, I would not agree with that.

20 Q. So you think this is the first time?

21 A. It -- the legality of the imposition has not
22 been determined. The previous imposition was not legal, so I
23 would not recognize that as an imposition.

24 Q. So would you -- let me ask you this. In 2000
25 were they assessed those taxes?

1 MR. SCHWARZ: Objection. Asked and answered is
2 the first. The second is that Mr. Hyneman has explained that
3 the Kansas courts have not recognized the 2000 imposition. I
4 think that that's probably binding not only on Mr. Hyneman but
5 on Public Counsel as well.

6 JUDGE WOODRUFF: Overrule the objection.

7 You can answer the question.

8 THE WITNESS: Could you repeat, please?

9 BY MR. MICHEEL:

10 Q. I just asked if Kansas had assessed taxes in
11 2000, not whether they collected them or not whether they were
12 lawful. Did they assess taxes?

13 A. My understanding from Mr. Noack's testimony is
14 that they did.

15 Q. And indeed, you asked a data request in the
16 true-up hearing that's been admitted as Exhibit 10 that
17 included the assessment, did you not, Mr. Hyneman?

18 A. It included one sheet from one county maybe, I
19 think that that's what it included.

20 Q. Would you agree with me, Mr. Hyneman, that
21 property taxes and the level of those taxes to be included in
22 rates is an issue in every rate case?

23 A. It's including as an operating expense.
24 Whether it's an issue in a rate case, I don't know.

25 Q. Okay. And has it been an operating expense in

1 every single MGE rate case since they came to the state in
2 1992?

3 A. Missouri property taxes has been, yes.

4 Q. Just property taxes in general; isn't that
5 correct?

6 A. Well, they've only been imposed in Missouri.

7 Q. Well, let me ask you this. MGE does business
8 in the state of Missouri under a fictitious name, do they not?

9 A. I'm not aware of that.

10 Q. Okay. You don't know that MGE is a division of
11 Southern Union Corporation?

12 A. I am -- I do know that, yes.

13 Q. So they're not separate from Southern Union
14 Corporation; isn't that correct?

15 A. They are not separate.

16 Q. And Southern Union Corporation does business in
17 numerous states, does it not?

18 A. Yes, it does.

19 Q. Do you think they pay property taxes in those
20 different states?

21 A. I'm sure in some they do.

22 Q. And Southern Union is one and the same as MGE,
23 is it not?

24 A. It's the same company.

25 Q. Do you think that M-- or Southern Union Company

1 pays property taxes for its headquarters in Wilkesbury?

2 A. I have no idea.

3 Q. You don't -- you don't know?

4 A. No.

5 Q. You've never seen that?

6 A. I don't know the specific type of arrangement
7 they have, whether it's -- it's that they pay property taxes
8 on that. I know -- I don't remember a specific property tax
9 being allocated from corporate to MGE in the last rate case.

10 Q. Would you agree with me that property taxes are
11 a normal recurring expense?

12 A. Yes.

13 Q. Would you agree with me that property taxes
14 were an issue in GR-2004-0209?

15 A. Yes.

16 Q. I think earlier we've talked about the fact
17 that this is not your first AAO testimony before the
18 Commission. Correct?

19 A. That's correct.

20 Q. And would you agree with me that you testified
21 about AAOs in Case No. GO-2002-175, a UtiliCorp United case?

22 A. Yes, I did.

23 MR. MICHEEL: My box is falling apart here. I
24 need to get another exhibit marked, your Honor. It would be
25 Exhibit 16.

1 JUDGE WOODRUFF: That is correct.

2 MR. MICHEEL: And this will be Mr. Hyneman's
3 Rebuttal Testimony in Case No. GO-2002-175.

4 (Exhibit No. 16 marked for identification.)

5 BY MR. MICHEEL:

6 Q. Mr. Hyneman, I've handed you a copy of your
7 Rebuttal Testimony in Case No. GO-2002-175. Did you indeed
8 file Rebuttal Testimony in that case, sir?

9 A. I recall that I did.

10 Q. And is that a true and correct copy of your
11 testimony there, sir?

12 A. With the absence of markings that it has been
13 filed with the Commission, it looks like the testimony I
14 filed.

15 Q. Okay. And the issue in that case was whether
16 or not to grant UtiliCorp United an Accounting Authority Order
17 for I believe it was bad debt expense?

18 A. That's correct.

19 MR. MICHEEL: With that, your Honor, I would
20 move the admission of Exhibit 16.

21 JUDGE WOODRUFF: Exhibit 16 has been offered
22 into evidence. Are there any objections to its receipt?

23 Hearing none, it will be received into
24 evidence.

25 (Exhibit No. 16 was received into evidence.)

1 BY MR. MICHEEL:

2 Q. Mr. Hyneman, looking at Exhibit 16, is it
3 correct that starting on page 7 of that testimony you give a
4 history of extraordinary items?

5 A. Yes, I do.

6 Q. You think that's still an accurate testimony of
7 extraordinary items as the accounting profession has treated
8 them?

9 A. Yes, the history did not change.

10 Q. Do you think it's a pretty comprehensive
11 history?

12 A. It's comprehensive in the context of that
13 proceeding, but not in the overall scheme of accounting it
14 would not be comprehensive.

15 Q. On page 9 of that testimony you cite APB-9 for
16 the definition of extraordinary; is that correct?

17 A. That's correct.

18 Q. And that APB-9 is Accounting Principles Board.
19 And that indicates that events not expected to occur
20 frequently and events not considered as recurring factors in
21 the evaluation of the ordinary operating process of the
22 business. Correct?

23 A. Sir, which line are you referring to?

24 Q. I'm looking on line 14 through 18, sir, where
25 you say, The Board stated.

1 A. That's correct.

2 Q. And you're not aware that the Accounting
3 Principles Board has changed or altered No. 9, are you?

4 A. They have not.

5 Q. Would you agree with me that property tax
6 assessments occur annually?

7 A. They do.

8 Q. Would you agree with me that property tax
9 expense is an ordinary operating expense of MGE?

10 A. Missouri property tax expense is, yes.

11 Q. And why do you limit it to Missouri?

12 A. Because that's the only operating expense that
13 they have incurred in this date.

14 Q. So when the Staff built in property taxes in
15 Kansas that you told me earlier Staff believed were going to
16 be continuing, ongoing, the Staff just got it wrong?

17 A. I would say the Staff got it wrong.

18 Q. Anything else the Staff's done wrong?

19 A. Well, the --

20 MR. SCHWARZ: Objection.

21 JUDGE WOODRUFF: Sustained.

22 THE WITNESS: The information the Staff --

23 JUDGE WOODRUFF: Wait. I sustained the
24 objection. You don't need to answer.

25 You can ask your next question.

1 BY MR. MICHEEL:

2 Q. I want to talk to you a little bit about APB-30
3 that you have there. It's on page 9 of your testimony there
4 on Exhibit 16. Would you agree with me that the Accounting
5 Board noted that an event or transaction should be presumed to
6 be ordinary and -- an ordinary and usual activity of a
7 company?

8 A. Correct.

9 Q. Would you agree with me that the Accounting
10 Board described terms unusual in nature and infrequency in
11 occurrence?

12 A. Yes. And that's -- if you could tell, that's
13 where the FERC adopted its definition in the union system of
14 accounts is from the accounting literature that existed.

15 Q. And this Commission has adopted that
16 definition; is that correct?

17 A. For bookkeeping purposes, yes.

18 Q. And it looks to that definition as part of its
19 determination on whether or not to grant an AAO; is that
20 correct?

21 A. Yes.

22 Q. Would you agree with me according to the Board,
23 that unusual in nature is not established by the fact that the
24 event or transaction is beyond the control of management?

25 A. I would agree.

1 Q. Would you agree with me that an event that
2 occurs frequently cannot be extraordinary regardless of its
3 financial impact?

4 A. I would agree that under this definition, yes.
5 Now, the Commission has made exceptions in the past for --

6 Q. And I'm just talking about the APB.

7 A. The APB, yes.

8 Q. And in this testimony you felt it was important
9 to let the Commission know about all of these accounting
10 standards and the background to inform them on their decision
11 in that case; is that correct?

12 A. Not to inform, but to provide information if
13 they want to use it, yes.

14 Q. Now, on page 11 of your testimony on
15 Exhibit 16, you provide what you claim is the FERC definition
16 of extraordinary item; is that correct?

17 A. That's correct.

18 Q. Okay. You also on page 5 of your Direct
19 Testimony of Exhibit 5 in this case provide what you believe
20 to be the FERC definition of extraordinary, do you not?

21 A. Yes.

22 Q. And I'm puzzled, Mr. Hyneman, in reading those
23 two definitions. They're different. Specifically, the second
24 paragraph of the accordingly, they will be -- in Exhibit 16 it
25 says, Accordingly, they will be events and transactions of

1 significant effect which are abnormally and significantly
2 different from the ordinary and typical activities of the
3 company and which would not be reasonably -- excuse me, and
4 which would not reasonably be expected to occur in the
5 foreseeable future.

6 And in your testimony in this case you have
7 that paragraph stating, and I quote, Accordingly, they will be
8 events and transactions of significant effect which would not
9 be expected to recur frequently and which would not be
10 considered as recurring factors in any evaluation of ordinary
11 operating processes of a business.

12 Can you explain to me why those are different?

13 A. It could be that they're from different
14 versions of the USOA. They change them periodically and
15 slight changes in the wording.

16 Q. I think you're onto something. Do you agree
17 that the Commission has approved for use the 1992 version of
18 the USOA in its rules?

19 A. I don't know.

20 MR. MICHEEL: May I approach the witness? I
21 have the 1974 version of the USOA and I think that's --

22 JUDGE WOODRUFF: You may. Go ahead.

23 BY MR. MICHEEL:

24 Q. Mr. Hyneman, I want to show you the 1974
25 version of the Uniform System of Accounts and direct you to

1 the definition of extraordinary there and ask you to look at
2 your Direct Testimony in this case to tell me if that tracks
3 the '74 language.

4 JUDGE WOODRUFF: Mr. Micheel, while the witness
5 is looking at this, we are getting close to 12:00.

6 MR. MICHEEL: I have just a few more questions,
7 your Honor. I mean --

8 JUDGE WOODRUFF: I'll let you go ahead and
9 finish it then.

10 MR. MICHEEL: It should go quickly.

11 JUDGE WOODRUFF: Okay. Thank you.

12 THE WITNESS: Yes, that's how it tracks that
13 definition.

14 MR. MICHEEL: And may I approach? I have
15 the --

16 JUDGE WOODRUFF: You may.

17 MR. MICHEEL: -- most recent definition.

18 BY MR. MICHEEL:

19 Q. Mr. Hyneman, this is from the Federal Energy
20 Regulatory Commission. You'll see it's 4/1/04. Would you
21 confirm for me that that definition complies with what you had
22 in your UtiliCorp United testimony?

23 A. Yes, it does.

24 Q. And that's the more recent definition and
25 that's probably the definition that you should be using in

1 your Direct Testimony in this case, isn't it?

2 A. Yes.

3 Q. Now, the difference between the '74 definition
4 and the '92 definition is it says, And which would not
5 reasonably be expected to recur in the foreseeable future; is
6 that correct?

7 A. That is in the more recent definition.

8 Q. And the appropriate definition?

9 A. The most current one.

10 Q. Okay. Would you agree with me that it's the
11 intent of -- or that Kansas intends to impose this tax on a
12 recurring basis?

13 A. Not the initial imposition. That's a
14 one-time --

15 Q. But that wasn't my question, Mr. Hyneman. My
16 question was, does Kansas intend to impose this tax on a
17 recurring basis?

18 A. I would assume they do.

19 Q. Okay. Would you agree with me in GR-2004-0209
20 that MGE agreed not to true-up property taxes?

21 A. That's my understanding of the -- the testimony
22 of Mr. Noack.

23 Q. And that was consistent with your testimony in
24 that case, was it not?

25 A. I haven't read that testimony recently, but I

1 have no reason to dispute that.

2 Q. Okay. We'll speed things along then.

3 Would you agree with me that MGE has a right to
4 file a rate case?

5 A. Yes, it does.

6 Q. Would you agree with me whether MGE files a
7 rate case or not is a management decision?

8 A. Yes, it is.

9 Q. Would you agree with me in rate cases property
10 taxes are normalized, they're not collected dollar for dollar?

11 A. They are normalized.

12 Q. So they're not collected dollar for dollar?

13 A. Well, normalization and collected dollar for
14 dollar are different. I mean, I don't see the relation
15 between the two.

16 Q. Right. I'm asking you, are they different? Is
17 a normal -- collecting a normalized level different from
18 collecting a dollar for dollar level?

19 A. You mean the collecting -- when you say dollar
20 for dollar, are you referring to the booked expense in the
21 test year?

22 Q. I'm saying if we pay \$5 of property tax, we
23 collect \$5 of property tax as opposed to over the last
24 three-year period we've averaged \$6 of property tax.

25 A. In a rate case you could -- you could include

1 the test year level or you could do a five -- you can do any
2 level. So it's not necessarily different.

3 Q. Let me ask you this, Mr. Hyneman. In the last
4 rate case were property taxes normalized?

5 A. I believe they were, yes.

6 Q. Okay. Are property taxes an act of God?

7 A. No.

8 MR. MICHEEL: Just a second and I think I'm
9 finished.

10 Have I moved admission of all my exhibits? If
11 I haven't, I would move the admission of Exhibits 14, 15 and
12 16, your Honor.

13 JUDGE WOODRUFF: I show them as all already
14 admitted.

15 MR. MICHEEL: Okay.

16 BY MR. MICHEEL:

17 Q. One more question. Mr. Hyneman, is the purpose
18 of an AAO to give a company dollar for dollar recovery of
19 costs deferred?

20 A. No.

21 Q. In your view, what's the purpose of an AAO?

22 A. The purpose of an AAO is merely to allow a
23 company to defer an extraordinary cost so as to avoid a
24 one-time charge -- significant charge to earnings.

25 Q. And do you have an opinion as to whether or not

1 if the amortization isn't started when you recommend in your
2 testimony, what result would that -- would be for MGE? I
3 mean, would MGE result in getting dollar for dollar recovery?

4 A. The dollar for dollar recovery is strictly a
5 function of when they file for rate cases. They control that.

6 Q. Okay. And one more thing. Would you agree
7 with me that generally the Commission's policy on AAOs has
8 been that there has to be some time limit on the deferral?

9 A. Yes. In -- in previous AAOs where they did not
10 require an immediate amortization, they assigned like a
11 12-month period where they had to file for a rate case in
12 order to recover in rates the deferral.

13 MR. MICHEEL: Thank you for your time,
14 Mr. Hyneman.

15 JUDGE WOODRUFF: All right. With that, we will
16 break for lunch. We'll come back at 1:15.

17 (A recess was taken.)

18 JUDGE WOODRUFF: And we are back from lunch and
19 Mr. Hyneman's still on the stand and we're ready for questions
20 from the Bench. Commissioner Gaw?

21 COMMISSIONER GAW: Thank you, Judge.

22 QUESTIONS BY COMMISSIONER GAW:

23 Q. Mr. Hyneman, I want to get straight for my
24 purposes some of the things that have occurred on timing
25 first. When was the true-up done in that last rate case for

1 MGE? When was that date?

2 A. The true-up date is through April 30th of 2004.

3 Q. Okay. Now, the new Kansas gas storage tax

4 statute, when was that signed into law?

5 A. Commissioner, I don't have that date.

6 Q. All right. Is it accurate to say that the

7 effective date of the statute was July the 1st of 2004?

8 A. Yes. And I believe it's retroactive back to

9 the beginning of the year.

10 Q. Well, okay. Well, I'd like to hear you say

11 that in a rate case.

12 But let me ask you this question. When was it

13 due? When was it due? When was the tax first to be paid?

14 A. It's December 31st.

15 Q. Of what year?

16 A. Of -- for the 19-- for 1994 [sic]. I think

17 half was due December 31st and half was due the following May,

18 so 50 percent payments would be due.

19 Q. 50 percent was due December 31st of 200--

20 A. '4.

21 Q. -- '4. So no payments were due before that

22 date?

23 A. That's correct.

24 Q. When was the rate case decided for MGE?

25 A. Commission order I believe was in October.

1 Q. In October of what year?

2 A. 2004.

3 Q. Okay. So no payment was due on this tax --
4 property tax in Kansas until after the rate case was decided;
5 is that correct?

6 A. Yes, sir.

7 Q. Okay. Are you aware of any Commission
8 decisions where property tax that was not due was placed in --
9 well, let me strike that.

10 Are you aware of any time when property that
11 was placed in service in a particular year, let's say in a
12 hypothetical 2004, where the tax -- I'm going to have to
13 strike that again.

14 Let's say we're dealing with a property tax in
15 the state of Missouri. Okay? And there was a major plant
16 that was constructed and was completed in -- prior to
17 January 1st of 2004. Okay? Are you following me?

18 A. Yes, sir.

19 Q. All right. Now, when would the tax -- the
20 additional property tax as a result of that plant be due?

21 A. The assessment would be on January 1st of '94
22 [sic] and the payment due in December of '94 [sic].

23 Q. Now, if you were doing a rate case, would you
24 include that additional amount normally in Staff's position
25 when the -- if the rate case were to be decided prior to the

1 date that the tax would be due or just similar to when this
2 rate case for MGE was decided on timing?

3 A. On timing, we normally include the plant -- if
4 there was assessed in January if it was paid recent -- close
5 in proximity to the end of the test year. We won't include
6 plant that's not paid to the following year.

7 Q. I didn't understand what you just told me.
8 Explain that to me again.

9 A. Okay. If -- if the test year ended, say, in
10 November and the payment of property taxes would be in
11 December, we would use the plant that was in January of that
12 year to be paid in December. We would include that, but any
13 plant subsequent to that --

14 Q. All right.

15 A. -- that would not be paid for over a year
16 later, we would not normally include the property taxes on
17 that balance.

18 Q. All right. Now, in this case what was Staff's
19 position in regard to whether or not this property tax from
20 Kansas ought to have been included in the last MGE rate case?

21 A. The Staff position was that it was not known
22 and measurable and, therefore, was not appropriate to be
23 included in the -- in the -- in the rate case.

24 Q. And why was it -- what was Staff's position or
25 rationale for that position?

1 A. Well, mainly it was not known and so,
2 therefore, we don't know if the tax is actually going to be
3 paid. So that's --

4 Q. Well, let's just break it down for me a little
5 better than that. If there had been -- if this had been a new
6 tax that had come on and had no history of being ruled
7 unconstitutional in the past for some similar law, if it had
8 been that -- would Staff have said that it is known and
9 measurable and it should be included in rates?

10 A. If -- if the tax was in effect and we knew the
11 amount or reasonable estimate of amount and it was going to be
12 paid, you know, in rel-- in close proximity to the test year,
13 then, you know, I don't speak for Staff in general, but in my
14 case, I would recommend inclusion.

15 Q. Okay. So your testimony is that the only
16 reason that Staff's position was that it shouldn't have been
17 included in the last rate case is because of some thought that
18 it might be -- this new law might be ruled unconstitutional?

19 A. The fact was that MGE was appealing it and MGE
20 was confident they would be successful, so that left serious
21 room for doubt whether that was a known cost.

22 Q. Do you usually measure the likelihood of
23 success by the degree of MGE's confidence in whether or not
24 the case is going one way or the other?

25 A. No, sir. But when it comes to a liability,

1 the -- the measurement is based on the likelihood of success
2 of winning it -- a court challenge. That's -- you know,
3 that's -- under GAAP, Generally Accepted Accounting
4 Principles, that's one of the criteria for measurement of a
5 liability.

6 Q. All right. So I'm just trying to reduce this
7 down here. So is Staff's position in regard to the rate case
8 from last fall entirely predicated upon the belief that Staff
9 held that it was likely that that statute imposing the tax
10 would be ruled unconstitutional?

11 A. Yes.

12 Q. Is that the only reason?

13 A. I think we had invoices so that the tax was
14 measurable. And -- I'm trying to recall the specifics. I
15 know that was the main reason. I can't remember if there were
16 additional reasons at this time, but I think the fact it was
17 not known was a main reason that Staff said it's not
18 appropriate for the rate case because it will be in rates
19 currently in effect. If you do it under an AAO and it -- and
20 it's ruled unconstitutional, there's no harm.

21 Q. Were you the -- were you a witness in that
22 case?

23 A. Yes, sir.

24 Q. Did you testify in regard to this issue?

25 A. Yes, sir, I did.

1 Q. And so I want to know if this is the only
2 reason that Staff made a recommendation that it not be
3 included in rates, was because of Staff's belief that this tax
4 would likely be ruled unconstitutional? And if you want to
5 look at your testimony, if you need time to refresh your
6 memory, I'm sure the Judge would oblige us or I can come back
7 to this after a while and --

8 A. Commissioner, if I could --

9 Q. I'm just looking for -- I'm not trying to get
10 you to say something that isn't accurate in regard to what you
11 had as your rationale at the time. I just want to know if I
12 have reduced this down to the common denominator.

13 A. If I could just glance at my testimony, if
14 that's available, I could --

15 Q. Somebody has that and can offer it to you.

16 MR. MICHEEL: I have it, but I can tell you
17 that this issue was done live so I have the transcript of
18 that, your Honor, but --

19 COMMISSIONER GAW: I don't have any of it in
20 front of me, so --

21 THE WITNESS: Do you have the transcript?

22 MR. MICHEEL: Yeah.

23 COMMISSIONER GAW: If someone has it and they
24 can share it with him.

25 Judge, would it be easier to come back?

1 JUDGE WOODRUFF: It looks like they're going to
2 be able to find it right away.

3 COMMISSIONER GAW: I don't want to delay the
4 hearing.

5 MR. MICHEEL: Let's see here. You start on
6 page 2,603, Chuck.

7 MR. SCHWARZ: Judge, if I might.

8 JUDGE WOODRUFF: Yes.

9 MR. SCHWARZ: I'd like to call the Commission's
10 attention to page 2,520 of the true-up transcript -- actually
11 I guess beginning on 2,519 where it discusses that at that
12 time MGE had a letter from the Kansas Department of Revenue
13 indicating that the forms for the assessment that is the
14 valuation of the gas and storage were due August the 1st.

15 So at the time of the true-up hearing, the
16 assessment process itself, that is, the first step in
17 ascertaining the value of the property, had not yet been
18 completed. So clearly the tax bill hadn't been calculated at
19 that stage either.

20 And if it would simplify things, I would ask
21 that the Commission take official notice of its records in
22 that hearing between pages 2,519 and, say, 2,522.

23 JUDGE WOODRUFF: All right. So I don't know if
24 that answers the Commissioner's question, but I --

25 BY COMMISSIONER GAW:

1 Q. I'm still trying to make sure that this is the
2 only reason that Staff felt like there was not a -- that this
3 amount shouldn't have been included in rates, this tax.

4 A. Commissioner, I can't find in the record any
5 other stated reason for that. But I know that if it's not
6 known, then I know that is the prime reason why we would not
7 recommend inclusion.

8 Q. If it's not known. If what is not known?

9 A. If the -- the -- the likelihood that the tax
10 will be paid. There was seriously -- serious doubt whether it
11 will be paid.

12 Q. Okay.

13 A. And given that, if it wasn't paid and it's in
14 rates, then it would be detrimental to the ratepayers.

15 Q. All right.

16 A. So that's why I recommended an Accounting
17 Authority Order because it relieves that possibility for
18 detriment.

19 Q. Do you know whether or not MGE did pay the tax
20 for 200-- that was due in December 2004?

21 A. Mr. Noack testified that they have not paid
22 that.

23 Q. So no amount has been paid at this point?

24 A. That's correct.

25 Q. And do you know if under the law of Kansas that

1 that is one way to deal with taxes that you're contesting is
2 to not pay them? And are you familiar with that -- with the
3 process?

4 A. I understand that -- that for MGE, that they
5 got approval to wait until the determination is made by the
6 Kansas taxing authorities until the hearing was made, and I'm
7 not sure of the date of that, before they have to make
8 payment.

9 Q. Are there other companies that are impacted by
10 this law besides MGE?

11 A. I believe there are.

12 Q. Do you know whether those companies have paid
13 those taxes?

14 A. No, sir, I don't.

15 Q. Maybe Mr. Noack will know when he comes back.

16 Okay. Was the amount of the tax that was due
17 in December known at some point in time in 2004, the amount of
18 the assessment?

19 A. I remember reviewing documents in the rate case
20 for the amount of the assessment. I know that the assessment
21 has changed -- or the amount of property tax has been changed,
22 but I remember reviewing invoices or assessments during the
23 end of the true-up of the rate case.

24 Q. Okay. So there was some sort of an assessment
25 that you saw?

1 A. Yes, sir.

2 Q. And you're telling me that that changed
3 afterwards, to your knowledge?

4 A. Yes. I believe the original estimate of
5 property taxes was 1.2 million. I think that's been changed
6 to 1.7 million.

7 Q. Do you know the reason for the change?

8 A. No, sir, I don't.

9 Q. Okay. Now, is that for the year of 2004 or is
10 that for the December payment?

11 A. That's for the -- that's for the year.

12 Q. Year. So does that include that other payment
13 that was supposedly due this spring?

14 A. The December and the May payment, yes, sir.

15 Q. The total of that is now supposed to be
16 1.7 million?

17 A. Yes, sir.

18 Q. Okay. Mr. Hyneman, I think you testified
19 earlier that you had testified in other AAO cases?

20 A. Yes, sir, I have.

21 Q. Have you ever seen an AAO given in a
22 circumstance where a company was recovering for something from
23 their last rate case the expense of which terminated prior to
24 the following rate case in an AAO be given or requested to
25 account for the fact that that expense no longer was

1 occurring?

2 A. AAOs have been granted for one-time expenses.

3 Q. I'm talking about the termination of an expense
4 between rate cases.

5 A. No, sir, I haven't.

6 Q. Let me give you an example. Let's say there
7 was a property tax that was given and put into the last rate
8 case.

9 A. Uh-huh.

10 Q. And we'll say it was the Kansas tax. Okay?
11 That the Commission decided it should be in there. Are you
12 following me?

13 A. Yes, sir.

14 Q. And let's say there was an order this summer
15 that said that tax is unconstitutional. Follow me?

16 A. Yes, sir.

17 Q. And I'm going to speed things up and say it was
18 a final order from the court of highest jurisdiction in
19 Kansas. Following me?

20 A. Yes, sir.

21 Q. Could the Staff or Public Counsel or the
22 company get something like an AAO to track the fact that those
23 expenses no longer occurred to offset that negative expense
24 against expenses in the next rate case in the same way that
25 this AAO would do if it were granted --

1 A. Yes, sir.

2 Q. -- in the other direction?

3 A. Yes, sir, they can. They could file an
4 Accounting Authority Order for an extraordinary revenue,
5 because they would have a revenue stream that existed for
6 which no expense was to match it with. So you could file and
7 require the Commission to defer those extraordinary revenues
8 and flow them back to rates, you know, in a subsequent period
9 or just flow them back in a subsequent period.

10 Q. Have you ever seen that happen in front of this
11 Commission?

12 A. No, sir.

13 Q. So are you saying it could be done because --
14 give me your rationale for why that could occur, first of all.
15 Since we don't have any precedent for it, I'd like to hear
16 your thoughts on why you believe that could happen.

17 A. Well, the -- the concept of an -- in fact, the
18 FERC calls it an extraordinary item. They don't say
19 extraordinary cost, but we've always dealt with extraordinary
20 cost at this Commission. But it's an extraordinary item. It
21 can include as easily a cost as a revenue. If a company had a
22 windfall revenue, then we could ask them to defer that and --
23 and amortize that to future periods. It's the same treatment.
24 There's no distinction between the cost and the revenue. All
25 the treatment is the same.

1 Q. Now, I want to get to just a little bit of
2 discussion about how this fits within the guidelines from the
3 Sibley case without getting into a lot of legal discussion
4 here. Do you believe it is necessary to qualify under Sibley
5 for an expense to be nonrecurring?

6 A. Yes, sir.

7 Q. All right. Now, walk me through your analysis
8 of why this property tax is a non-recurring expense.

9 A. I don't define as -- the property tax as the --
10 the extraordinary event. The extraordinary event is the fact
11 that Kansas is imposing a tax on MGE. It's an extraordinary
12 event, it's a first-time imposition. Once MGE starts
13 experiencing annual costs, it no longer is extraordinary. But
14 when a state imposes a new tax that it never has in the
15 history, that's unusual. And they can never impose a
16 first-time tax again. So that event is nonrecurring.

17 Q. Okay.

18 A. So it meets the Sibley test of nonrecurring and
19 unusual.

20 Q. All right. Now, you said a whole lot there for
21 me so I have to digest this briefly. Let me ask you this.
22 You said that -- let me go back and see if I can -- hold on
23 just a second. Let me look at the quick transcript we have.

24 First of all, you're not telling me that this
25 is the first time that Kansas has tried to impose a tax of

1 this sort on gas storage in Kansas. You're not saying that to
2 me, are you?

3 A. No, sir.

4 Q. Because it's already been pretty well
5 established that this is at least the second attempt.
6 Correct?

7 A. Yes, sir.

8 Q. All right. Now, under your definition if I
9 understood you correctly, what's really important here is that
10 this is a -- this is an expense that didn't occur before a
11 certain date. Is that what you're saying?

12 A. It's -- I'm saying it's an -- by regulatory
13 authority, the State of Kansas, imposed a brand-new cost on a
14 utility and it's the event which is extraordinary, it's not --
15 it has nothing to do with the nature of property taxes. It's
16 just they impose a new cost that's material in amount and will
17 have a significant impact on operations. That I believe is --
18 is consistent with Sibley.

19 Q. Now, you added regulatory authority there and I
20 need to know whether or not that's important to your analysis.
21 Does it matter that it was some regulatory authority that
22 added the expense?

23 A. It plays a role.

24 Q. Okay. Explain that to me.

25 A. Well, it plays a role in that it reduces the

1 amount of leeway that MGE has in dealing with the cost.
2 It's -- it's a cost that's imposed on them and they don't have
3 any choice, they have to pay it. And I could make --

4 Q. Okay. So is it important that it's a
5 regulatory authority or is it important that they don't have
6 any choice about whether to pay it? Which is it that you're
7 telling me is the important portion of this?

8 A. Well, it's both. It's like when the Commission
9 imposes the Service Line Replacement Program. Part of their
10 position was that it's extraordinary because of the size and
11 that the requirement is imposed by the Commission. And that
12 also led into the determination that it was an extraordinary
13 event. And this is related to that in that MGE is being
14 imposed a tax by a regulatory jurisdiction, which it never has
15 incurred in the past.

16 Q. So is it important that there was no aspect of
17 MGE's actions that played a role in whether or not this new
18 expense is now on their books? Is that what you're saying?

19 A. In my opinion, it goes to -- it goes to the
20 determination of extraordinary. If it can be a cost that MGE
21 that could control, then there would be less -- give less
22 weight to the determination of being an extraordinary cost.

23 Q. Okay. So, in other words, it would be
24 different if it were a decision that MGE had made to incur
25 expenses as a result of serving customers or something else?

1 That's a different kind of an expense even if they hadn't
2 incurred it before?

3 A. It goes to the weight of it, Commissioner, the
4 weight of the determination. It's not inclusive. The
5 criteria is unusual and infrequent. And that's the criteria.

6 Q. Okay. If that's the criteria, then what -- and
7 I thought I was -- I thought I was getting to the point where
8 I was following you, but now I'm back on square one again. If
9 it was -- if it's unusual for it to occur and that's the
10 criteria, then anything that's new could meet that definition,
11 couldn't it?

12 A. Yes.

13 Q. Well, if I build a new generation facility in
14 between rate cases that's never been there before, that's
15 something new and it's an expense and under the -- what I hear
16 you saying, I'm not sure that that wouldn't qualify for an
17 AAO. Why is that different than saying that this is something
18 new as an expense?

19 A. It's -- it's unusual given the context of
20 the -- of the environment where MGE operates. That's the big
21 picture. They operate as an LDC company so that kind of cost
22 is not unusual for them. Property taxes is not unusual. But
23 to -- to do business in a state for 10 years and then have a
24 separate cost imposed by an outside entity, which is material
25 in amount, that event is not usual for MGE as an LDC.

1 Q. Well, if the -- okay. So if there is -- if
2 there's something that has to do with their course of
3 business, even if it's a new event, then you don't think it
4 qualifies for an AAO?

5 A. No. If a county in Missouri raised their
6 property taxes, well, that's regulatory lag. They -- they
7 have to work with that within the system. But if a foreign
8 entity imposes a new tax or any new cost, then that -- that
9 cost is not a normal operating expense of the LDC.

10 Q. So --

11 A. It's a completely new cost being imposed.

12 Q. So this has to do with the fact that it's a
13 foreign regulatory jurisdiction that's imposing some new
14 burden?

15 A. Well, in the context of property taxes because
16 MGE only pays property taxes in Missouri. So it's unusual to
17 pay property taxes on another state -- on assets held in
18 another state.

19 Q. Does MGE not have assets in Kansas?

20 A. They have gas stored underground. That's --
21 but they -- but the law was that they didn't -- they weren't
22 required to pay property taxes on that.

23 Q. But they do have property in Kansas?

24 A. Yes, sir.

25 Q. And is that real estate or is it personal

1 property?

2 A. And I -- I don't know the nature of the
3 classification, but I'm -- I don't know if they have any real
4 estate property, I just think it's inventory.

5 Q. But the important thing here from your
6 perspective is that it is a foreign regulatory jurisdiction
7 that has imposed some new burden?

8 A. That -- that goes to the weight. The important
9 thing is that it's not an expense that's usual for MGE -- a
10 type of expense that's usual for them to incur. It's -- I
11 look at it as separate from property taxes. It's an
12 additional cost imposed on them that is not -- paying property
13 taxes in the state of Kansas is not a normal business expense
14 for MGE.

15 Q. If MGE had purchased some real estate over in
16 Kansas since the last rate case and started paying that tax,
17 would that be an unusual event that would allow them to get an
18 AAO?

19 A. No, sir.

20 Q. Why not? What's the difference? It's a
21 foreign regulatory jurisdiction imposing a tax on them that
22 they didn't have since the last rate case.

23 A. If they purchased property in Kansas,
24 presumably to even be relevant to this proceeding, then they
25 would have to use that property to provide gas distribution

1 service.

2 Q. Okay. Go ahead.

3 A. And that -- and that was a decision that MGE
4 made to provide, you know, distribution service to Missouri.

5 Q. All right. Let's go back to your Missouri
6 county property taxes. Any raising of those taxes, that's
7 regulatory lag, it wouldn't -- it would not qualify for an
8 AAO, in your opinion?

9 A. That's correct.

10 Q. Let's assume we didn't have any property taxes
11 in Missouri when you did your last rate case and then suddenly
12 Missouri implemented them.

13 A. That would be an extraordinary event.

14 Q. So that's not a foreign jurisdiction now. So
15 now it's not just foreign jurisdictions, it's Missouri as
16 well. Because a while ago I thought you said it had to be a
17 foreign jurisdiction and now it doesn't have to be a foreign
18 jurisdiction?

19 A. Well, it's the initial imposition of a tax. If
20 MGE had its operations and its rates are set on certain
21 expenses, if there was a new expense completely forced on
22 them, then that event is extraordinary, the initial
23 imposition.

24 Now, once they incur that cost, it transitions
25 to a normal cost, but you can't -- in my understanding of the

1 definition of -- of an extraordinary item, if it's a cost
2 that's infrequent and not -- and unusual and unique, it's
3 infrequent -- Kansas has never imposed a tax on MGE. It's
4 unique in the fact that, you know, it's a brand-new cost. And
5 it's nonrecurring in the fact that it can never recur. The --
6 they -- it cannot impose a property tax on MGE once the tax is
7 imposed.

8 Q. I don't think I'll try to figure that last
9 thing out. I'm having trouble enough as it is.

10 Let me ask you this question. If the tax in
11 Kansas is held to be constitutional, will MGE continue to pay
12 that tax so long as they continue to store gas in Kansas --

13 A. Yes.

14 Q. -- into the foreseeable future?

15 A. Yes.

16 Q. Is that payment of that tax going to be
17 recurring?

18 A. Yes, sir.

19 Q. So if they pay the tax and the tax is uncon--
20 is constitutional, it is a recurring expense --

21 A. Once --

22 Q. -- that's what you just said. Right?

23 A. It -- it will become a re-- a recurring expense
24 after a period of time. The initial --

25 Q. How long a period of time does it go before it

1 becomes recurring? Is there a certain time frame that we
2 should look at?

3 A. The Staff position --

4 Q. Is it six months or two years or five years?

5 A. The Staff position is in this case that it's
6 two years, that --

7 Q. Two years. So the magic date is that if
8 something is going to have to be paid less than two years,
9 it's nonrecurring, but more than two years it's recurring?

10 A. No. It's not a magic date. It's that -- that
11 the Staff felt that two years is a long enough period of time
12 for the -- for MGE management to absorb that cost and
13 incorporate it as a normal cost and -- in running the
14 business.

15 Q. So once something is paid for more than two
16 years, it becomes recurring?

17 A. I'm not prepared to make that distinction.
18 With the circumstances in this case for this AAO, the
19 imposition of a tax that's material to them, we think two
20 years of deferrals is sufficient time for that to be called an
21 extraordinary cost. And after that period, it then
22 transitioned to be a normal recurring cost. That's not
23 arbitrary, but there's no fine set period of time. We just
24 think two years is reasonable.

25 Q. If I give you a different example here, let's

1 suppose that Kansas -- well, let me say Missouri implements a
2 new regulation and MGE claims that it costs them significant
3 money. You following me?

4 A. Yes.

5 Q. Is it Staff's position that that -- and that
6 that is going to continue into the future, that obligation.
7 Is it Staff's position that that would qualify for an AAO?

8 A. The Staff's position is based on the Sibley
9 order, which is, is it unusual in nature and infrequent in
10 occurrence. Those two criteria.

11 Q. Okay.

12 A. So is it -- is it unusual for the Commission to
13 impose a new cost on the company? I would say yes. Does
14 it -- is it infrequent? Yes. So I would think under those
15 two criteria with the information that you provided, there's a
16 good chance to be -- to meet that criteria.

17 Q. So any time there's any new regulatory burden
18 on a company that produces an expense that's of some
19 significance, Staff will support an AAO?

20 A. No, sir, I'm not saying that. I mean --

21 Q. Well, okay. Well, help me out then.

22 A. Well --

23 Q. Help me understand where the line is.

24 A. I think I could give the example -- and the
25 only example I have was -- where the Commission did impose a

1 cost on utilities is the Service Line Replacement Program.
2 The Commission said you will replace all your service lines.
3 And that fact that they ordered that, they have used in orders
4 to justify granting of an AAO. So that's an example that I
5 have of that in the past.

6 Q. When is that -- when was that Service Line
7 Replacement Program implemented?

8 A. In the early '90s is when it was.

9 Q. All right.

10 A. And it's a long program, 10, 20 years.

11 Q. Is there a termination date for it?

12 A. Yes, sir.

13 Q. All right. My hypothetical doesn't have a
14 termination date to it. Does Staff support an AAO when there
15 is a new regulatory burden placed upon it by, in this case,
16 the State of Missouri through the PSC?

17 A. The best answer I can give you if -- under the
18 criteria under Sibley and it's not related to a cost that the
19 company incurs, not related to the -- the cost that they
20 incurred in an environment for MGE, the gas distribution
21 environment, then it would meet the Sibley criteria, in my
22 mind.

23 Q. What do you mean it's not related to the gas
24 distribution?

25 A. Well, for example, if the Commission ordered

1 MGE to hire more customer service personnel, well, that's part
2 of the -- you know, their ongoing cost. They provide customer
3 service in Missouri and the Commission said you need to hire
4 more people, that would be not an extraordinary cost.

5 Q. But it's new.

6 A. It's -- it's an increase in existing cost.

7 Q. It's new. It's a new cost they didn't have
8 before. Correct?

9 A. Well, sir, I think they had it before. They
10 have customer service.

11 Q. They didn't have the same number. Correct?

12 A. Well --

13 Q. In your example --

14 A. Right.

15 Q. -- you increased the number.

16 Do they pay property taxes today?

17 A. Yes, sir.

18 Q. And they're going to pay more property taxes if
19 the Kansas law is ruled constitutional?

20 A. Yes, sir.

21 COMMISSIONER GAW: Okay. I'm going to stop
22 right now. I may come back, but thank you, Judge.

23 JUDGE WOODRUFF: Commissioner Clayton, any
24 questions?

25 COMMISSIONER CLAYTON: No questions.

1 JUDGE WOODRUFF: Commissioner Appling?

2 COMMISSIONER APPLING: Yes.

3 QUESTIONS BY COMMISSIONER APPLING:

4 Q. Charles, how are you doing?

5 A. Pretty good, Commissioner.

6 Q. Okay. Three or four questions please.

7 And the first one is, do you believe that it's
8 premature for this company to ask for an AAO or are they on
9 time with it or is they premature?

10 A. Well, the Commission has said that companies
11 should not seek deferral authority for speculative events.
12 And in this context, the fact that they may not pay the
13 events, you know, could be speculative. But under this
14 context, if the cost is not materialized, then there is no
15 harm, the -- the deferral will be written off. So there will
16 be no harm for MGE to defer at this time.

17 Q. Okay. Second question, MGE has calculated that
18 property tax would be about 9 percent of the net income.

19 A. Yes, sir.

20 Q. Do you agree with that?

21 A. Yes, sir.

22 Q. Okay. Please clarify your position on
23 amortization of this tax. Talk to me a little bit about that.

24 A. In an AAO proceeding, the only focus should be
25 on the accounting treatment.

1 Q. Yes.

2 A. It should be -- you should allow -- if you
3 determine it's an extraordinary cost, you should allow the
4 deferral and specify an amortization period. And under the
5 matching principle, the amortization period should match when
6 the service is provided.

7 So we believe that under most AAOs the
8 amortization should start right after the Commission order,
9 because those costs have been incurred and they're being
10 incurred to provide service, therefore, the revenues that are
11 being paid and expense should match the current customer base.

12 If you defer, as MGE proposes, these costs out
13 to 2008 and then start charging them in rates, the customers
14 now who are receiving the bennett-- benefit from service
15 because the Kansas property tax is going to be a cost of
16 service, then they're not paying for that, they're pushing
17 that out to the future. So it violates a matching principle
18 concept which is referred to as intergenerational customer
19 equity. And that's important to why the amortization should
20 start immediately.

21 Q. And that really is the difference between what
22 you all are thinking and what MGE is thinking on the case?

23 A. Yeah. MGE's whole basis for their proposal is
24 rate recovery. And that -- I don't believe that's appropriate
25 even to discuss in an AAO proceeding.

1 Q. If the Commission had granted an AAO to the
2 company and in the meantime the company's legal challenge
3 succeeds, will Staff move to dismiss with the AAO?

4 A. Well, sir, what would happen at that time, any
5 deferrals that they recorded on their books they would simply
6 write off and there would be --

7 Q. No more?

8 A. -- no more.

9 Q. Okay. Do you believe it's possible to settle
10 this issue?

11 A. The issue of whether the cost is extraordinary
12 or not would have to be settled between the company and OPC.
13 I don't know. The Staff is always willing to talk settlement
14 on other issues. And the only issue that the Staff and the
15 company oppose are the amortization and the Staff is always
16 willing to entertain, you know, discussions.

17 COMMISSIONER APPLING: Thank you, Judge.
18 That's all the questions I have.

19 JUDGE WOODRUFF: All right. I have a couple
20 questions.

21 QUESTIONS BY JUDGE WOODRUFF:

22 Q. First of all, I want to clarify something about
23 the amortization question. It's my understanding that once
24 this amortization takes place, then it can no longer be
25 recovered in rates. Is that right? It's been moved out of

1 the account and can no longer be recovered or am I
2 misunderstanding that?

3 A. Again, once the amortization starts, under
4 general regulatory theory, it -- they will be recovered
5 indirectly if MGE's revenues are sufficient to absorb them.

6 Q. I'm not talking about the indirect. I'm
7 talking about the direct.

8 A. Okay. No, the --

9 Q. Go ahead.

10 A. On the direct, once they start amortizing, they
11 won't be included directly in rates until the rates go in
12 effect from MGE's subsequent -- next rate case.

13 Q. Okay. So if in this case the company were
14 required to start amortizing, say, July 1st of 2006 and they
15 weren't able to file a rate case until a year later, that
16 first year of amortized expenses would no longer be
17 recoverable in that rate case?

18 A. Well, and that's how regulatory lag falls.
19 Under that context, they may not get these, but when rates are
20 set and the amortization are in rates, they'll continue in
21 perpetuity forever until they file another case.

22 MR. MICHEEL: Your Honor, I'm sorry. I'm just
23 not feeling well. I need to go to the restroom.

24 JUDGE WOODRUFF: Let's take a break. We'll
25 take a break and we'll come back in about 15 minutes.

1 (A recess was taken.)

2 JUDGE WOODRUFF: All right. We're back from
3 break and Mr. Hyneman's still on the stand and I don't
4 remember what my last question was or if you'd answered it,
5 but could the court reporter read back the last question?

6 THE COURT REPORTER: "Question: Okay. So if
7 in this case the company were required to start amortizing,
8 say, July 1st of 2006 and they weren't able to file a rate
9 case until a year later, that first year of amortized expenses
10 would no longer be recoverable in that rate case?

11 "Answer: Well, and that's how regulatory lag
12 falls. Under that context, they may not get these, but when
13 rates are set and the amortization are in rates, they'll
14 continue in perpetuity forever until they file another case."

15 JUDGE WOODRUFF: All right. I think that
16 answered my question.

17 BY JUDGE WOODRUFF:

18 Q. When Commissioner Gaw was asking you some
19 questions about previous AAOs, it occurred to me something and
20 I just want to check with you on this. The Commission ordered
21 changes to the cold weather rule. Did they allow an AAO to
22 the companies that were affected by that change?

23 A. My recollection was that there were some AAOs
24 involved, but I wasn't involved in those cases so I can't
25 answer specifically.

1 Q. Okay. Thank you.

2 I had asked Mr. Noack some questions about the
3 Kansas ad valorem taxes. Were you involved in that case at
4 all?

5 A. No, sir.

6 JUDGE WOODRUFF: I believe that's all the
7 questions I have then. We'll move down to recross beginning
8 with MGE.

9 RECROSS-EXAMINATION BY MR. COOPER:

10 Q. Just a few things Mr. Hyneman. Commissioner
11 Gaw asked you about -- oh, I think he was asking you about the
12 situation where there is plant in service that is at one day
13 at the end of the test year and then perhaps that plant in
14 service increases between the end of the test year and during
15 the true-up period. Correct? And I believe that he -- well,
16 let me back up.

17 Do you remember that question from Commissioner
18 Gaw or that subject being discussed by Commissioner Gaw?

19 A. Yes, I do.

20 Q. Okay. And I believe you differentiated this
21 situation from the situation I just described where new plant
22 comes in after the end of the test year. Correct?

23 A. Yes.

24 Q. Okay. And in this case, the Kansas storage tax
25 that was enacted in 2004, it applied to property that MGE

1 owned at the end of the test year, didn't it?

2 A. Yes.

3 Q. So there wasn't any new property, it was merely
4 the new tax being imposed on the property that existed at the
5 end of the test year. Correct?

6 A. That is correct.

7 Q. Okay. Now, I believe you also answered in
8 response to questions from Commissioner Gaw that Staff's
9 primary concern at the time of the true-up hearing in MGE's
10 last rate case, GR-2004-0209, that the Staff's primary concern
11 was the fact that the Kansas storage tax at issue was being
12 challenged by MGE. Correct?

13 A. Well, basically. The prime -- the likelihood
14 that the tax will not be determined to be legal, yes.

15 Q. Okay. So kind of creates a bit of a perverse
16 situation to me I guess in my mind, because MGE's challenge of
17 the Kansas gas storage tax, would you agree with me that that
18 is in the customer's interest?

19 A. Yes.

20 Q. In the best interest of MGE's customers?

21 A. Yes, it is.

22 Q. Okay. Now, on the other hand, in terms of your
23 position in the last rate case, if MGE had not been in a
24 position or had decided not to challenge these Kansas gas
25 storage taxes, MGE actually would have minimized its exposure

1 to these expenses, wouldn't it?

2 A. Well, you know, you're asking a hypothetical
3 would the Staff, you know, had concerns the fact that MGE did
4 not attempt to challenge it? That's a likely scenario also.
5 So I think it was expected for MGE to challenge it.

6 Q. But setting that aside, I mean, the prudence of
7 challenging or not challenging, if there's no challenge to
8 those Kansas gas storage taxes, those taxes are of the sort of
9 expenses that would be a part of cost of service, aren't they?

10 A. If they're known and measurable at that time,
11 yes.

12 Q. So in a strange way, the fact that there are
13 some attacks to be made on these taxes and the fact that MGE
14 has chosen to go ahead and challenge those taxes has really
15 created some exposure for it that it might not have otherwise
16 had?

17 A. If MGE decided not to challenge it, I don't
18 know at that point in time of the last rate case if it would
19 have been a known and measurable item properly included. So I
20 know the fact that they did challenge it and felt like they
21 would win it definitely made it not a known and measurable
22 event.

23 MR. COOPER: Okay. That's all I have, your
24 Honor.

25 JUDGE WOODRUFF: All right. Thank you.

1 For Public Counsel?

2 MR. MICHEEL: Yes, your Honor. Let me retrieve
3 my file copy of the transcript.

4 RECROSS-EXAMINATION BY MR. MICHEEL:

5 Q. Mr. Hyneman, do you know if -- well, let me ask
6 you this. Mr. Cooper just asked you some questions about the
7 challenge that MGE did to the property taxes. Do you recall
8 those questions?

9 A. Yes.

10 Q. And is it correct that the outside services for
11 that tax challenge were included in rates in their last rate
12 case?

13 A. I don't recall if they were specifically
14 included or not.

15 Q. Okay. Is that something that would typically
16 be included in a rate case?

17 A. Yes, it would.

18 Q. Now, Chairman -- or Commissioner Gaw asked you
19 if there's ever been what I call a negative AAO. Do you
20 recall those questions?

21 A. Yes, I do.

22 Q. Is the Staff contemplating filing an AAO to
23 recover the \$1.2 million in property taxes that were built
24 into rates in GR-91-292 that were never paid?

25 A. Do you mean GR-2001-292?

1 Q. Yes, sir.

2 A. No, there is no contemplation of that.

3 Q. And so even though they didn't pay those
4 property taxes that were built into rates, at least in Staff's
5 view, the company gets to keep that money?

6 MR. COOPER: I object to this question because
7 I think it assumes facts that aren't in the record. I think
8 what has been -- what is in the record is that in Staff's
9 opinion, there was some concession made related to those
10 property taxes in that last rate case. That does not show up
11 in the stipulation. There is no agreement amongst the parties
12 that that is the case and to continually refer to it as
13 amounts that were included in rates I think is inaccurate.

14 MR. MICHEEL: I completely disagree, your
15 Honor. I've admitted into evidence Exhibit 10, which was the
16 company's response to a question that specifically asked how
17 much money was built into rates in the GR-91-292 [sic] case
18 that represented property taxes for gas held in storage in
19 Kansas and the company answered \$400,000.

20 I've also admitted evidence into the record
21 Mr. Traxler's Surrebuttal Testimony, I think it's Exhibit 15,
22 that indicates the Staff believed that there was \$400,000
23 built in in that case. And I'm here to tell you that the
24 Office of the Public Counsel believes that too. And I don't
25 know --

1 overall settlement in that case of \$9.9 million. And to
2 justify that position, the Staff quantified certain issues in
3 the case in Mr. Traxler's testimony to quantify the
4 reasonableness of the overall settlement.

5 Now, if you -- you could say that those
6 \$400,000 were tied to that number and those -- those property
7 taxes were never paid, but MGE makes the counter-argument that
8 it did not reach its authorized ROE that year so, therefore,
9 the revenues were not sufficient to recover that cost.

10 BY MR. MICHEEL:

11 Q. Let me just move on to speed things along.

12 Commissioner Gaw asked you some questions about
13 whether this was unusual in nature. Do you recall those
14 questions?

15 A. Yes, I do.

16 Q. And we talked about your testimony in a
17 UtiliCorp case that's been admitted into evidence as
18 Exhibit 16, did we not?

19 A. Yes, we did.

20 Q. And in there you included the board of -- some
21 accounting board's description of what unusual in nature is,
22 did you not?

23 A. Yes, I did.

24 Q. And I believe I asked you if you agreed with me
25 on page 10 at line 7 where the board was saying -- defining

1 unusual in nature where they said that unusual in nature is
2 not established by the fact that the event or transaction is
3 beyond the control of management.

4 A. And I think it's important in my testimony to
5 put that in context. The board was writing rules for
6 financial statements, what needs to appear in financial
7 statements, in this case an income statement. It wasn't
8 writing rules on what's appropriate costs to be classified as
9 extraordinary in a regular -- regulatory proceeding.

10 Q. And yet in that same testimony you indicate,
11 and I quote, These terms are included verbatim in FERC's
12 definition of extraordinary items --

13 A. Yes.

14 Q. -- is that correct?

15 A. Yes. And the purpose -- the FERC did adopt
16 that language and use it.

17 Q. And you testified earlier today that that
18 history of extraordinary was still important and still
19 correct --

20 A. Yes.

21 Q. -- did you not?

22 A. It is. But when I answered Commissioner Gaw's
23 question, I said the fact that management has no control is
24 not an overriding concern under the determination of
25 extraordinary, but it does go to the weight to the

1 determination.

2 Q. Commissioner Gaw gave you several hypotheticals
3 and let me give you a hypothetical. Do you recall those
4 hypotheticals that he gave you?

5 A. Yes.

6 Q. I want you to assume that the legislature -- in
7 this case, let's say the Missouri legislature has got some --
8 a new law where they're going to change the definition of an
9 injury for Workers' Compensation. Can you make that
10 assumption?

11 A. That the Commission is going to change?

12 Q. No. That the legislature is going to change
13 the definition.

14 A. Yes, I can make that assumption.

15 Q. And you would agree with me that Workers'
16 Compensation insurance premium is something that we include in
17 rates?

18 A. Yes, it is.

19 Q. And I want you to assume that as a direct
20 result of those changes in the definition of injury in the
21 Workers' Compensation law in Missouri, that insurance premiums
22 are going to go down 6 percent. Can you make that assumption?

23 A. Yes.

24 Q. In your view, based on your theory as you
25 outlined it in response to Commissioner Gaw, would it be

1 appropriate for the Staff or the Public Counsel to seek an AAO
2 due to that new law change?

3 A. If you do an analysis of that change under the
4 Commission standard in the Sibley order and determine that
5 it's an extraordinary event, then you should pursue it.

6 Q. Well, it's a new law, is it not, Mr. Hyneman?

7 A. It's a law to change an existing practice, yes.

8 Q. Well, it's a whole new law defining my -- my
9 example was a whole new law defining what injury is in the
10 Workers' Compensation statute.

11 A. Right. It doesn't create a whole new tax, but
12 it changes an existing tax. A new law that changes an
13 existing tax.

14 Q. Well, it created a whole new definition of
15 injury in Workers' Compensation law.

16 A. Okay.

17 Q. So it's the first time in the history of the
18 state of Missouri that we've had a Workers' Compensation -- in
19 the 80-year history of Workers' Compensation law that we've
20 had a new definition of injury. Would that be appropriate for
21 a negative AAO, in your opinion?

22 A. Again, the standard under Sibley is, is it
23 unusual in nature and frequent in occurrence? And is it a
24 customary cost in operation of that utility? If it meets
25 those criteria, then it is appropriate to seek a deferral of

1 the -- of the excess revenues.

2 Q. Let me ask you this. Is the storage of natural
3 gas in Kansas related to the provision of gas service in
4 Missouri?

5 A. The -- the act of storing gas, yes.

6 Q. And so the gas storage fields that MGE has
7 contracted for in Kansas and the gas that they store in
8 Kansas, that's property that is used in MGE's LDC business in
9 Missouri; is that correct?

10 A. Yes, it is.

11 MR. MICHEEL: Thank you, Mr. Hyneman.

12 JUDGE WOODRUFF: Redirect?

13 REDIRECT EXAMINATION BY MR. SCHWARZ:

14 Q. Mr. Hyneman, Mr. Micheel pointed out a
15 discrepancy in definitions in the USOA. Do you recall that?

16 A. Yes, I do.

17 Q. Over the lunch hour and on our most recent
18 break have you had an opportunity to determine how you came to
19 have those two disparate descriptions?

20 A. Yes, I was. I was quite concerned that I would
21 use an outdated definition in my testimony as Mr. Micheel
22 pointed out. But then when I did research it, the test -- the
23 definition that I used in there for extraordinary as you see
24 above, I was talking about the Sibley decision. That
25 definition was used by that Commission in its determination

1 under Sibley and that's the context as I included that in the
2 testimony.

3 Q. Okay. So that it was picked up from the
4 Sibley --

5 A. Yes. And it's in the section of testimony
6 that's explaining the Sibley decision. If I had the new --
7 the new definition, that information was not available at the
8 time the Sibley decision was issued.

9 Q. I'm going to hand you a copy of what's been
10 marked as Exhibit 9. And among other things, that has a list
11 of the counties where MGE operates within Missouri and pays
12 property tax; is that correct?

13 A. That's correct.

14 Q. In the last MGE rate case, the property tax
15 expense would have been set with reference to the property
16 taxes imposed by those counties; is that correct?

17 A. That's correct.

18 Q. And Jackson County's listed among those, is it
19 not?

20 A. Yes, it is.

21 Q. If Jackson County adds additional property or
22 purchases additional property that's kept in Jackson County,
23 it would be normal and expected for the property taxes in
24 Jackson County to increase to reflect that additional
25 property, all other things being equal?

1 A. If MGE purchased the property?

2 Q. Yes.

3 A. Yes. Yes, that's true.

4 Q. Do you know in the last rate case if any party,
5 Public Counsel or Jackson County or the company, proposed to
6 determine MGE's property taxes for Missouri with reference to
7 some kind of allocated share of the divisions that operate in
8 Massachusetts or Pennsylvania?

9 A. They do not.

10 Q. So it is Missouri-specific property that was
11 the basis for setting property tax rates in MGE's last rate
12 case; is that correct?

13 A. Yes.

14 Q. And the basis in the case before that; is
15 that --

16 A. Right.

17 Q. With the exception of this \$400,000 that we'll
18 get to later?

19 A. Yes.

20 Q. And in the case before that?

21 A. Yes.

22 Q. And MGE's first Missouri rate case was
23 GR-96-285. All of the property tax expense in that case
24 referenced the Missouri counties in which MGE operates; is
25 that correct?

1 A. That is correct.

2 Q. In your opinion, if MGE got a property tax bill
3 from the City of Cape Girardeau, would that be unusual?

4 A. Yes.

5 Q. If it got a property tax bill from Perry
6 County, Missouri, would that be unusual?

7 A. Yes.

8 Q. If it got a property tax bill from Des Moines,
9 Iowa, would that be unusual?

10 A. Yes, it would.

11 Q. To your knowledge, has MGE held gas in storage
12 with respect to its Missouri operations in Kansas since it
13 first started operating the Missouri properties?

14 A. Yes, it has.

15 Q. Has it ever to this date, some 11 years later,
16 ever had to actually pay property tax on that gas held in
17 storage in Kansas?

18 A. No, it hasn't.

19 Q. Do you have a copy of Exhibit 10 with you?

20 MR. SCHWARZ: May I approach?

21 JUDGE WOODRUFF: You may.

22 BY MR. SCHWARZ:

23 Q. I'm handing you a copy of Exhibit 10 and I am
24 looking at page 4 of 9 of the Kansas court opinion. Would
25 you, to yourself, read that first paragraph on that page?

1 A. Yes.

2 Q. Is it your understanding from reading this that
3 the Kansas legislature had attempted to tax storage gas prior
4 to the 2000 attempt?

5 A. I'll have to read that again. When you said
6 prior to -- what's the date on here?

7 Q. It says 1990.

8 A. Yes.

9 Q. I think Mr. Cooper on cross-examination asked
10 you about Mr. Oligschlaeger's testimony in an earlier MGE
11 proceeding where he talked about MGE under-earning. Do you
12 recall --

13 A. Yes, I do.

14 Q. -- that?

15 Did Mr. Olig-- did that testimony take place
16 prior to MGE's implementation of the ISRA (ph.) statutes?

17 A. I think the testimony was in the last rate
18 case. That testimony? That was during the implementation of
19 the first ISRA case.

20 Q. So the history of MGE under-earnings would not
21 have considered the effect of the ISRA?

22 A. That's correct.

23 Q. I think that you testified and were questioned
24 about Accounting Authority Orders that have been amortized
25 without any direct rate recovery. Do you recall those

1 discussions?

2 A. Yes.

3 Q. Is it safe to say that there have been a
4 significant number -- significant portion of the AAOs where
5 the amortization -- the beginning of the amortization was not
6 tied to full direct rate case recovery?

7 A. I don't know about a significant portion. I
8 know there were several.

9 Q. I think in answer to a question from
10 Mr. Micheel, you indicated that Staff's suggestion to the
11 Commission of \$400,000 for Kansas property taxes in
12 GR-2001-292 was a mistake. Do you recall that?

13 A. I don't know if I used the term "mistake,"
14 but --

15 Q. Do you recall that question?

16 A. Yeah. In hindsight, it probably was not the
17 right thing to do.

18 Q. Is that an illustration of the dangers of
19 including in rates expenses that are not known?

20 A. Yes. If -- in the context if you're going to
21 say those dollars in a rate case. Again, it was under a
22 stipulation to reach an overall settlement to the case.

23 Q. Well, let me follow up a moment. Anywhere in
24 the GR-2001-292 proceedings, to your memory, did Public
25 Counsel suggest that \$9.9 million settlement included \$400,000

1 for Kansas property taxes?

2 A. No. And I have no understanding of how the
3 Office of Public Counsel reached that decision that that
4 number was reasonable.

5 Q. In that case is there any indication that MGE
6 included \$400,000 in that \$9.9 million settlement?

7 A. No.

8 Q. I think in your discussions with Commissioner
9 Gaw, you got to talking about the posture of GR-2004-0209
10 during the true-up hearing. Do you recall those questions?

11 A. Yes, I do.

12 Q. And I think that you were pretty clear that
13 with respect to inclusion in rates that Staff did not believe
14 that the Kansas property tax was a known expense; is that
15 correct?

16 A. That's correct.

17 Q. I'm not sure that you were as clear on whether
18 it was measurable. And I had asked the Commission to take
19 official notice of pages 2,519 to 2,521 of the transcript in
20 that case. And I'd ask you to review that now beginning
21 on line 21 of page 2,519 and just do that for a moment.

22 A. Okay.

23 Q. Having read that, does it refresh your memory
24 that at that time neither the assessment nor the tax that MGE
25 might face was known?

1 A. Yes. MG-- and I mentioned earlier with
2 discussions with Commissioner Gaw about reviewing documents,
3 assessment documents. What those documents were that I
4 reviewed was MGE's calculation of an estimated tax, I'm
5 recalling, not the actual document from the taxing authority.
6 But MGE worked out schedules based on its knowledge of the
7 Kansas tax what the cost would be. So those estimates did
8 raise some measurable questions, but they were their best
9 estimates at that time.

10 Q. Okay. Again, there was a series of questions
11 from Commissioner Gaw and he seemed to be -- from his line of
12 questions, it would seem to be that he thought that there was
13 a bright line or a set predetermined number of years for
14 amortization, dollar amount for significance, that sort of
15 thing.

16 Let me ask you, does Staff look at the criteria
17 for whether -- determining whether an AAO is appropriate on a
18 case-by-case basis?

19 A. Yes. Under direction from the Commission. The
20 Commission -- the Staff has proposed criteria in the past, at
21 least two separate occasions to, you know, put more structure
22 into an AAO proceeding. And the Commission said, The only
23 thing we're going to look at is, is it extraordinary. That's
24 the determination. And we're going to look at each case on a
25 case-by-case basis.

1 evidence.

2 (Exhibit Nos. 5 and 6 were received into
3 evidence.)

4 JUDGE WOODRUFF: And, Mr. Hyneman, then you can
5 step down.

6 Mr. Micheel?

7 MR. MICHEEL: I was going to call my witness,
8 your Honor.

9 JUDGE WOODRUFF: Before we do that, let's bring
10 Mr. Noack back up to take questions from the Bench.

11 MR. MICHEEL: I'm sorry.

12 JUDGE WOODRUFF: That's all right.

13 Welcome back, Mr. Noack. And you are still
14 under oath.

15 THE WITNESS: Thank you, your Honor.

16 JUDGE WOODRUFF: Commissioner Gaw, do you have
17 any questions for Mr. Noack?

18 COMMISSIONER GAW: Thank you, Judge.

19 MICHAEL R. NOACK, having been previously sworn, testified as
20 follows:

21 QUESTIONS BY COMMISSIONER GAW:

22 Q. Mr. Noack, do you know when the bill was signed
23 in Kansas on the property tax provision that we're discussing?

24 A. No. I -- I have got a date on a -- on
25 something from the Kansas legislature that's dated June 17th

1 of 2004, which shows then that the Senate Bill 147 becomes
2 effective on 7/1 of '04, but I'm not sure IF that was actually
3 when it was signed or not.

4 Q. Okay. So the only thing we have in regard to
5 the effective date then is just that document that you have
6 read from some portion of the bill?

7 A. Well, what I did was -- before the hearing was
8 I went to the Kansas -- State of Kansas website and I
9 downloaded the effective dates of all of those bills. And the
10 date of the amended and repealed statutes document is
11 June 17th. Now, that doesn't tell me that that's when it was
12 signed, but -- so I don't know exactly when it was signed.

13 Q. Okay. How many -- how many companies are
14 impacted by this bill, do you know?

15 A. No, Mr. Commissioner. I know Kansas Gas
16 Service would be impacted by it, maybe Atmos, I'm not sure if
17 Aquila is or not. I don't know if they have storage in there
18 or not.

19 Q. Okay.

20 A. I think the majority of the storage is probably
21 Missouri Gas Energy and Kansas Gas Service.

22 Q. Where is your storage located again?

23 A. It's -- it's in various counties in Kansas and
24 a couple of counties I believe in Oklahoma. It -- it
25 stretches down a little bit into Oklahoma, but primarily in

1 Kansas.

2 Q. Okay. Do you have any tax of that sort in
3 Oklahoma?

4 A. We're doing the same kind of legal challenges
5 in Oklahoma as we are in Kansas.

6 Q. So there is a tax assessed in Oklahoma?

7 A. They're attempting to assess a tax in Oklahoma,
8 yes.

9 Q. When was that statute passed?

10 A. I don't know the date of that.

11 Q. Do you know the year?

12 A. It's -- I believe it's -- it's just in the past
13 year.

14 Q. In 2004?

15 A. I believe so.

16 Q. And do you know -- do you know the effective
17 date of that statute?

18 A. It's -- no, I do not.

19 Q. Are you asking for any of those taxes to show
20 up on the AAO in this case?

21 A. No, we're not.

22 Q. Why not?

23 A. Those are substantially less in -- in amount.

24 And while I don't know the complete nature of all the
25 litigation down in Oklahoma, I think it's -- it's somewhat

1 different and it's -- it's around \$100,000 I believe of tax
2 down there. It's -- it's not nearly as large. And we're just
3 concentrating on the Kansas side of this.

4 Q. Is there any reason why you wouldn't have
5 requested the Oklahoma tax to be added into the AAO other than
6 the amount?

7 A. I believe down in Oklahoma we have actually had
8 to pay that tax. Again, it's -- it's -- I don't have the
9 actual listing of counties and the taxes with me. Ms. Bolin
10 might have it. It was in response to a data request. And
11 whether or not, you know, we will actually get this repealed,
12 I'm not sure.

13 Q. Had Oklahoma attempted to pass a similar tax
14 previous to the one that you think was implemented in 2004?

15 A. I believe Oklahoma did it first, yes. And that
16 may have been going on a while, but I -- I just don't know all
17 of the details.

18 Q. Mr. Noack, I'm just a little uncertain about
19 whether I'm following you on the Oklahoma provision in regard
20 to when it came into effect. Is there some document or
21 something you might have access to that would clear that up?

22 A. I don't have anything right here with me, no, I
23 do not, Mr. Commissioner.

24 Q. Was there a previous tax in Oklahoma on your
25 gas storage that was ruled unconstitutional?

1 A. I do not believe it has been ruled
2 unconstitutional yet. We are still in the process of
3 litigating that tax.

4 Q. I'm talking about a previous tax. Like in
5 Kansas you had the previous tax that was ruled
6 unconstitutional. Did that happen in Oklahoma or is this the
7 first law of its kind that you know of in Oklahoma that you're
8 currently litigating?

9 A. I think it's the first one.

10 Q. All right.

11 A. I don't think we've had this come up before in
12 Oklahoma.

13 Q. All right. And you believe you may have paid
14 the taxes in Oklahoma?

15 A. I believe what the tax department told me is
16 down there we actually had to pay that tax in to keep from
17 incurring penalties and interest and stuff.

18 Q. Something like a payment under protest?

19 A. Yes. Exactly.

20 Q. All right. And do you know -- do you believe
21 that 2004 was the first year you had to pay the Oklahoma tax?

22 A. I believe so, but I'm not for sure.

23 Q. Okay.

24 A. I do not -- I just -- I can't tell you if we
25 had to do it.

1 Q. Were the Oklahoma taxes built in or not built
2 in to the last rate case in the rates that were adopted?

3 A. I do not believe -- I don't believe they're in
4 the \$8.3 million that we have in rates right now.

5 Q. Okay. And did you request that they go in
6 there? You, MGE I mean.

7 A. No. I think the only thing that we
8 concentrated on was the Kansas portion of the statute.

9 Q. Why wouldn't you have requested that that
10 amount in Oklahoma go into your rates in your MGE rate case if
11 you were making that request for the Kansas taxes?

12 A. Mr. Commissioner, I think it just fell through
13 the cracks. I think it was just an oversight and we probably
14 should have, but the Kansas is so -- so much bigger than
15 Oklahoma that -- that that's where we were concentrating on
16 looking.

17 Q. Do you know when you paid -- and I may have
18 already asked you this, I apologize. Do you know when you
19 actually paid the Oklahoma tax?

20 A. No, I do not.

21 Q. Do you know when it's due?

22 A. No, I do not. I have to -- that's why I was --
23 I need -- I don't have a bill with me, Commissioner.

24 Q. All right. Maybe someone will find that for me
25 before the end of the day. If not --

1 A. Well, I can tell you, it's in response to -- if
2 Ms. Bolin has it, it was in response to DR -- tell you here in
3 a minute. Was it 6? Okay. 6.

4 Q. All right. Well, maybe someone can let me know
5 later on because that's -- at this point I don't think that's
6 in evidence.

7 Now, the Kansas tax was paid -- has not been
8 paid. Correct?

9 A. Correct.

10 Q. But it was due some time in December for the
11 2004 year, at least a portion of it was due?

12 A. Correct. Half -- half was due on December 20th
13 of '04, the other half is due on May 10th of '05.

14 Q. Is that a one-time deferral in this statute or
15 does that continue into the future in regard to when the
16 payments occur?

17 A. Kansas I believe on all their property taxes,
18 even on -- like on my property tax on a car, will offer me a
19 half due now and a half due later. Now, we've booked as an
20 expense all of the property taxes in 2004 because it pertains
21 to the year 2004, but the actual cash does not have to be
22 expended if we were paying it according to the tax bill until
23 half December 20th, half May 10th.

24 Q. So you're showing the expense on an accrual
25 basis?

1 A. Correct.

2 Q. And if I understood you correctly in what you
3 were saying, you believe that for 2005's taxes, you could do
4 the same thing if you were going to pay it, pay half in
5 December of 2005 and the other half of the 2005 tax in May of
6 2006?

7 A. I believe if we get -- if we get tax bills in
8 2005, they will show first half due December, second half due
9 May.

10 Q. Okay. And there is no ending date sunset in
11 this legislation that was passed in Kansas; is that correct?

12 A. I don't believe so, no.

13 Q. So it continues into the future unless the
14 court says it's unconstitutional or the legislature repeals it
15 at some point in time?

16 A. I believe so.

17 Q. All right. Mr. Noack, what is MGE's position
18 on the allowance of negative AAOs?

19 A. Well, if -- if some-- if something like that
20 were to occur -- I don't know of anything in the time that
21 I've been there which would give rise to a negative AAO for
22 MGE. But if something like that were to occur and Staff or
23 Office of Public Counsel were to file such an AAO, we would
24 certainly take a look at it and we would deal with it.

25 Q. Well, in the event -- I'll give you a similar

1 question to what one of the questions I had given earlier to
2 Staff witness. If you had a situation where the Commission
3 had built the taxes that you are paying into rates for the
4 last rate case for the Kansas property taxes and then there
5 was a declaration by the Supreme Court in Kansas that these --
6 these taxes are unconstitutional this summer, I know that's
7 probably unrealistic, but would MGE object -- would MGE object
8 in that hypothetical situation to a negative AAO if Public
9 Counsel made that motion or brought that action here?

10 A. We would take a look at it, but we would also
11 take a look at it in the context of whether or not all of our
12 expenses have gone up to where this decrease isn't, in fact,
13 been eaten up by all of our other increases so that we're
14 still hopefully maybe status quo on earning our authorized
15 return. But, you know, we would take a look at that.

16 Q. So you look at it in the context of what it
17 would look like in a rate case itself?

18 A. I believe so, yes.

19 Q. Should this Commission do the same thing in
20 analyzing this request for an AAO?

21 A. Well, I think, yes, probably to a certain
22 extent, yes. I mean, this is a cost that -- that came to
23 bear, unfortunately, immediately preceding the true-up
24 hearing. And -- and while we are litigating this to the best
25 of our ability, if, in fact, we have to pay these taxes, we

1 will immediately be unable to earn our authorized rate of
2 return. I mean, from day one it can't happen. And it won't
3 happen until -- until we get these costs in rates in some way,
4 shape or form. So I think in that context, yes.

5 And that's why we brought it to the
6 Commission's attention at the true-up hearing. It was not at
7 that time an attempt to break our agreement with Staff and OPC
8 on truing up property taxes. Because, in my opinion, what
9 that agreement had to do with was the property taxes on our
10 trued-up plant.

11 If we -- if we put plant in from January 1 to
12 April 30th of '04 and we trued up property taxes on that
13 plant, those property taxes wouldn't even be due until '05.
14 If I -- yes, that would be December 31st, '04, they would be
15 payable the end of '05. And that's where that particular
16 true-up language originated from.

17 These particular taxes are on plant in service
18 storage as of December 31st, '03 similar to property taxes on
19 all our other plant in service, '03. And all those property
20 taxes are in our rates and were agreed to.

21 Q. Well, if this Commission is to analyze the
22 impact of this added expense in light of everything else going
23 on with the company such as what you suggested with a negative
24 AAO would be the appropriate evaluation, wouldn't we need all
25 of the other expenses and revenues of the company updated to

1 this time frame that we're hearing this case or something
2 similar?

3 A. Well, again, I mean --

4 Q. And I don't think we had that evidence in front
5 of us and if that's -- if that's something we need in order to
6 evaluate the case, then I'd like to know it.

7 A. Well, at the time we brought it to the
8 Commission's attention, we had all of that information. I
9 mean, it was there. It was part of the December 31st test
10 year. It's now on our books as an expense.

11 And -- and I'm not saying that if OPC or Staff
12 were to bring an AAO to you -- a negative AAO, that we should
13 start a rate case to look at everything else. I'm just saying
14 MGE would look at that in the context with everything else and
15 issue a response to their filing probably based on -- on where
16 we stood or we thought we stood with everything. And then it
17 would be up to the Commission to decide whether or not those
18 revenues should be deferred and looked at at the time of the
19 next rate case.

20 Q. But you see the evaluation as being the same
21 from the Commission's standpoint whether we're talking about a
22 negative AAO or an AAO like the one that's requested today in
23 regard to whether or not one ought to be authorized or not?

24 A. I'm sure -- yeah, it can work both ways, yes.
25 I just -- as I said before, I can't in -- in my history with

1 Missouri Gas Energy, I can't think of anything that has ever
2 occurred from an extraordinary, you know, basis that would
3 give rise to such an AAO.

4 Q. My hypothetical would you think would fall
5 under that category though of something that you would see as
6 meeting the appropriate guidelines for an AAO?

7 A. If -- if, in fact, the Commission -- if, in
8 fact, you had allowed let's say 1.7 million in our rates and
9 then subsequently due to our diligence we were able to get
10 these taxes removed from us, yes, I think that Mr. Micheel and
11 Mr. Schwarz could file something, yes.

12 Q. And your company would say that meets the
13 guidelines?

14 A. I don't -- I'm not going to exactly say what
15 Mr. Hack would say in a response, but we --

16 Q. I'd like to know what he would say if he were
17 listening right now. He may be.

18 A. He's in his car and unless he's got some kind
19 of new contraption I don't know about, I don't think he's
20 hearing this.

21 Q. But do you see any reason why there would be
22 any difference in the scenario I gave you and the one that's
23 in front of us in regard to the company's position?

24 A. All things being equal, no, I don't think so.

25 Q. Okay. Now, I want to go into this issue of

1 this recurring portion of this Sibley test, which comes up
2 from time to time in these cases. Help me to understand your
3 position in regard to why the imposition of this property tax
4 is nonrecurring.

5 A. Right now while there is a law that's saying
6 they want to tax us, to date we have never had to pay such a
7 tax. And, again, hopefully that will continue to be the case
8 and they'll have to try a new law to pass to get it done.

9 But it's -- I think I look at it more in the
10 context of unique, unusual and -- and probably looking at the
11 5 percent test extraordinary as opposed to trying to say it's
12 recurring or nonrecurring because right now it's nonrecurring.
13 I mean, it's -- it's there and we're fighting it and we've got
14 it set aside at least until we get done with our Board of Tax
15 Appeals.

16 Q. When you say it's nonrecurring, do you mean
17 it's just not recurring because you're not paying it?

18 A. Right. We've had to book it, Kansas is trying
19 to -- to enforce it and we're fighting it.

20 Q. Okay.

21 A. And it's never happened before.

22 Q. If you lose -- well, first of all, if you win,
23 you never pay anything other than your legal fees. Right?

24 A. Correct.

25 Q. So there's no expense there to book as far as

1 the actual payment of the tax is concerned. That would be
2 correct, wouldn't it?

3 A. We would -- we would immediately write off
4 everything that we've put on our books to date. Exactly.

5 Q. Yeah. Now, but if it is determined to be
6 constitutional and legal, then it does continue, correct, that
7 obligation to pay? It continues into the future?

8 A. It will.

9 Q. It's recurring in that sense, is it not?

10 A. It -- it -- it -- at that point in time, yes,
11 it becomes a recurring tax that -- that in looking at it
12 through MGE's eyes we've never had to pay before but now we
13 have to pay.

14 Q. Yes. And in the next rate case if you -- if by
15 that time the Supreme Court of Kansas said it's a legal
16 obligation, you got to pay it, you're going to request it go
17 into rates?

18 A. We will request -- yes, the normal
19 going-forward property tax on storage, yes.

20 Q. And do you have any reason to believe that
21 Staff or OPC at that point would be resistant to it going into
22 rates?

23 A. They won't be resistant to the --

24 Q. Resist the --

25 A. -- tax itself --

1 Q. -- resist -- resist the open-ended nature of
2 that question, if you can. I'm sorry. Go ahead.

3 A. But I can visualize where our bone of
4 contention will -- will arise.

5 Q. Okay.

6 A. But, no, they will allow a tax on gas in
7 storage at some level.

8 Q. In general?

9 A. Yes.

10 Q. In general?

11 COMMISSIONER GAW: Okay. Okay. I think that's
12 all I have. Thank you, Mr. Noack.

13 JUDGE WOODRUFF: Commissioner Clayton, do you
14 have any questions? Commissioner Appling?

15 QUESTIONS BY COMMISSIONER APPLING:

16 Q. One question. Sir, do you have any Kansas
17 customers?

18 A. No, Commissioner.

19 Q. No Kansas?

20 A. No.

21 Q. So there's nobody over there to be harmed if
22 you lost this case, the ratepayers?

23 A. All of our ratepayers that would be harmed
24 would be here.

25 Q. Would be here in the state of Missouri?

1 A. Yes. If we have to pay tax, yes, they'll be
2 the ones paying it

3 COMMISSIONER APPLING: Thank you. That's the
4 only question I had.

5 JUDGE WOODRUFF: All right. Thank you.

6 With that then, we'll move to questions on
7 recross beginning with Staff.

8 RE CROSS-EXAMINATION BY MR. SCHWARZ:

9 Q. I want to talk about nonrecurring in the
10 context of a rate case, see if we can approach it from that
11 way. At the time of the last MGE rate case, were the 2004
12 Kansas property taxes on gas stored underground known?

13 A. In which case?

14 Q. In the last -- in the rate case that concluded
15 last year, 2009.

16 A. No. The exact amount of them were not known at
17 that time.

18 Q. But let me ask you this. You don't know today
19 if you're going to have to pay the 2004 property taxes, do
20 you?

21 A. No. It's what we keep saying, we hope we
22 don't.

23 Q. So that it's not a known expense?

24 A. Not yet.

25 Q. And the same for the 2005 property taxes?

1 A. Correct.

2 Q. So that to that extent, they haven't really
3 occurred yet, have they?

4 A. They have only been assessed. And, again,
5 we're fighting the legality -- excuse me, the legality of
6 those taxes.

7 Q. Correct.

8 A. So they have not -- no, our appeals process is
9 not over yet and so it's still kind of in limbo.

10 Q. The first time that anyone will really know if
11 these taxes are recurring is when the final judicial
12 authority, be it the Kansas Supreme Court or the US Supreme
13 Court, says that the State of Kansas has the power to impose
14 the tax; isn't that correct?

15 A. Right. And our estimate of that is sometime in
16 mid-2006.

17 MR. SCHWARZ: Okay. I think that's --

18 JUDGE WOODRUFF: All right. Mr. Micheel?

19 RECROSS-EXAMINATION BY MR. MICHEEL:

20 Q. Mr. Noack, Commissioner Gaw asked you certain
21 questions about the Oklahoma tax and why that wasn't included
22 in the case -- the GR-2004-0209 case. Do you recall those
23 questions?

24 A. I -- sure. And I said I don't -- I just don't
25 know --

1 Q. Well, let me --

2 A. -- is how I answered it.

3 Q. Let me refresh your recollection.

4 A. Thank you.

5 MR. MICHEEL: May I approach the witness?

6 JUDGE WOODRUFF: You may.

7 BY MR. MICHEEL:

8 Q. I have your corrected true-up testimony of
9 Michael R. Noack in that case and I'm focusing on page 6 of
10 that testimony.

11 A. Okay.

12 Q. And I would just ask you -- and you can look at
13 the question that starts on page 5, but I would ask you to
14 read into the record starting on line 7 through line 12 for
15 me.

16 A. This is pretty close to what I said.

17 Q. Well --

18 A. The amount of the tax is expected to be
19 1,262,059, which MGE understands will have to be paid even
20 though MGE plans to challenge the lawfulness of this new law.

21 Q. Let's stop right there. That's talking about
22 the Kansas tax, isn't it?

23 A. Correct. Yes.

24 Q. Okay. Go on.

25 A. MGE has not included any property taxes

1 associated with the gas stored in Oklahoma even though
2 Oklahoma assessing authorities are seeking to tax such -- such
3 gas because, unlike in Kansas, MGE will only have to pay such
4 Oklahoma taxes in the event its ongoing litigation efforts are
5 not successful.

6 Q. Okay. Now, in response to Commissioner Gaw,
7 you said in Oklahoma you paid the taxes under protest so
8 you've already paid. Right? And your true-up testimony says
9 you didn't have to pay the taxes in Oklahoma and that's why
10 you didn't include them?

11 A. Thank you for -- for refreshing my memory.
12 I -- if I recall, Commissioner Gaw, I don't recall, you know,
13 what we really had to do in Oklahoma. This says we did not
14 have to pay them.

15 Q. And in the true-up proceeding your testimony
16 was in Kansas you all had to pay the taxes under protest so
17 you'd already -- you were going to have to pay them --

18 A. Right.

19 Q. -- and so that's the reason why they should be
20 in the rates.

21 But point of fact, your testimony in this case
22 says we didn't have to pay the taxes in Kansas because we're
23 protesting them?

24 A. No. No.

25 Q. No?

1 A. That's not -- no.

2 Q. Okay. What --

3 A. I said we have not to pay the tax yet until our
4 hearing with the Kansas Board of Tax Appeals is concluded. At
5 that point in time, we will probably have to pay the tax.

6 Q. And that's not what you said in your true-up
7 testimony, is it, Mr. Noack? In your true-up testimony you
8 testified that you'd have to pay the taxes under protest?

9 A. Well, please -- please be aware, Mr. Micheel,
10 that at the time this true-up testimony was written, this --
11 let's see. It's dated July 19th. This law had just been
12 passed and all of the things that have come to pass since
13 July 1st are just now becoming evident. This was -- this is
14 what we thought was going to have to happen in Kansas.

15 Q. Let me stop you there. MGE challenged the 2000
16 tax, did they not?

17 A. Yes.

18 Q. They didn't have to pay that, did they?

19 A. As -- I don't know if we ever paid anything and
20 got it back or not.

21 Q. Okay. But in any event, the reason you gave in
22 the rate case for not including the Oklahoma tax in the
23 true-up or requesting it was because you all didn't have to
24 pay it there. Is your testimony -- that's what your testimony
25 said. Right?

1 A. That's what it -- yes, that's what it says, but
2 also, as I explained to Commissioner Gaw, that's a
3 considerably less amount of tax than Kansas. It's -- it's,
4 you know, 1/17th of what Kansas is.

5 Q. Let me retrieve that document.

6 A. Sure.

7 Q. Commissioner Gaw asked you some questions
8 regarding other companies that were challenging or other
9 companies that were being imposed the tax in Kansas. Do you
10 recall those questions?

11 A. Yes, I do.

12 MR. MICHEEL: May I approach the witness, your
13 Honor?

14 JUDGE WOODRUFF: You may.

15 BY MR. MICHEEL:

16 Q. And I'm handing you Exhibit 12, which has
17 already been admitted into evidence in this case. And it's
18 the Petition for Declaratory and Injunctive Relief that MGE
19 and some of its buddies have filed over in Topeka, I guess
20 Shawnee County, that's Topeka in Kansas. Does that indicate
21 also that Central Illinois Public Service Company, d/b/a
22 Ameren SIPS, Union Electric Company, d/b/a -- which stands for
23 doing business as -- AmerenUE are also challenging that tax?

24 A. Yes, it does.

25 Q. And does AmerenUE operate in the state of

1 Missouri gas properties?

2 A. I believe so.

3 Q. Okay. And so at least there are some other
4 folks along with you in your tax challenge; is that correct?

5 A. Yes.

6 Q. Commissioner Gaw asked you some questions about
7 the negative AAO. Do you recall those?

8 A. Yes. Yes.

9 Q. Did you recall at the true-up hearing
10 Mr. Finnegan asked you some questions about whether or not MGE
11 would be amenable to refunding money if it were built into
12 rates? Do you recall those questions?

13 A. No, I don't.

14 MR. MICHEEL: May I approach the witness?

15 JUDGE WOODRUFF: You may.

16 BY MR. MICHEEL:

17 Q. It's the transcript volume 23 from the true-up
18 proceeding. And you can see there, Mr. Noack, there are
19 questions by Mr. Finnegan of you. And if you could, sir, read
20 in the question starting on page 14 -- or starting on line 14
21 of page 2,524 and ending on line 6, 2,525.

22 A. But wouldn't it be fair to refund the -- if you
23 did receive this and it didn't have an AAO, wouldn't it be
24 fair to refund it to the customer since you didn't have to pay
25 it?

1 Well, I mean, every cost we have in a rate case
2 to a certain extent that we are normalizing going forward, you
3 know, we either may exceed, we may be below that cost, we
4 usually exceed that cost and we don't get to go back and say,
5 Can we have the extra expense that we incurred. And it would
6 be the same thing here. We believe it's there, it's sitting
7 there. Kansas passed a law that they, in their opinion, feel
8 is adequate to get this tax collected and so I put it into the
9 case. But it's like any other cost. I mean, no, I wouldn't
10 recommend that we refund it.

11 Q. And has your position changed today on that or
12 would you recommend there be a refund or a negative AAO
13 granted?

14 A. Well, if --

15 MR. SCHWARZ: I'm going to object. I object.
16 It's a compound question. He can ask them one at a time
17 because I object to the materiality of the first question that
18 is if --

19 JUDGE WOODRUFF: I'll sustain the objection.
20 It is compound. If you want to go ahead and re-ask it.
21 BY MR. MICHEEL:

22 Q. With respect to the refund, has your position
23 changed?

24 MR. SCHWARZ: I object. It's not material to
25 anything at issue here. That question as was read by

1 Mr. Noack and proposed by Mr. Finnegan went to the finality of
2 rates that are determined in a rate case, has nothing to do
3 with whether a change subsequent to a rate case is an
4 appropriate subject for an AAO. It's just not material.

5 JUDGE WOODRUFF: I'm going to overrule the
6 objection.

7 You can go ahead and answer.

8 MR. COOPER: Can we have the question restated,
9 your Honor?

10 JUDGE WOODRUFF: Yes.

11 BY MR. MICHEEL:

12 Q. Is your position on the refund the same,
13 Mr. Noack?

14 A. Well, it's -- I guess it's -- it's kind of like
15 the question that Commissioner Gaw asked as far as a negative
16 AAO goes. Would we be opposed? We would take a look at that
17 negative AAO and we would probably look at all of the other
18 costs in connection with that and see if we are over-earning
19 or earning our return. And if we still aren't achieving our
20 return, no, we probably wouldn't request a refund.

21 Q. And so for granting a negative AAO, you would
22 want to look at all of the costs to determine whether or not
23 you were earning your authorized return or not?

24 A. MGE would look at it and then we would respond
25 to your request for a negative AAO.

1 MR. MICHEEL: Thank you very much, Mr. Noack.

2 JUDGE WOODRUFF: Thank you.

3 Any redirect?

4 REDIRECT EXAMINATION BY MR. COOPER:

5 Q. Do you still have that portion of the
6 transcript in front of you, Mr. Noack?

7 A. No, I do not.

8 Thank you.

9 Q. Could you turn to page 2,524 again?

10 A. It's -- I have it.

11 Q. Do you have that in front of you?

12 aND the question that Mr. Micheel had you read
13 started on line 14. Correct?

14 A. That's correct.

15 Q. And that question assumes that there is no AAO,
16 doesn't it?

17 A. That's correct.

18 Q. Okay. And if you would, on 2,525, on line 7,
19 there's a following question and answer -- actually two
20 questions and answers also from Mr. Finnegan. Could you read
21 those for us? It starts, If the Commission.

22 A. If the Commission ordered you to do so, meaning
23 refund, would you be willing, would you do so?

24 If the Commission ordered us to refund this?

25 Yes.

1 We would follow the Commission orders, yes.

2 Q. And I assume that if there were such a thing, a
3 negative AAO, it would be a Commission order. Correct?

4 A. Yes.

5 Q. Would have to be a Commission order?

6 A. Yes, it would.

7 Q. You received some questions concerning the
8 possibility of 2005 Kansas gas storage property taxes. And I
9 believe you stated that potentially they would have to be paid
10 one half in December of 2005 and one half in May of 2006. Do
11 you remember that?

12 A. Yes, I do.

13 Q. When would those property taxes be reflected in
14 MGE's financial statements?

15 A. In 2005.

16 Q. There was a question as to whether rate case
17 ramifications figure into an AAO case application. In this
18 case -- well, let me back up. Does the USOA provide for
19 consideration of materiality when examining a request for --
20 well, an Accounting Authority Order or examining whether an
21 item is extraordinary or not?

22 A. Yeah. USOA has a 5 percent threshold that --
23 that they use as measuring whether something is extraordinary
24 or not.

25 Q. Essentially, if it exceeds 5 percent, it's

1 assumed to be extraordinary, if it's less than 5 percent --

2 A. It's not.

3 Q. -- USOA actually says you need to ask the
4 Commission; is that correct?

5 A. That's correct.

6 Q. Okay. In this case, do the Kansas gas storage
7 property taxes in question exceed 5 percent of MGE's net
8 income?

9 A. Yes. They're over 9 percent.

10 MR. COOPER: Okay. That's all the questions I
11 have.

12 JUDGE WOODRUFF: All right. Thank you.

13 Then, Mr. Noack, you can step down.

14 THE WITNESS: Thank you.

15 JUDGE WOODRUFF: Now we'll call Kim Bolin.

16 MR. MICHEEL: Public Counsel would call Kim
17 Bolin to the stand, your Honor.

18 (Witness sworn.)

19 JUDGE WOODRUFF: Thank you.

20 You may inquire.

21 KIMBERLY K. BOLIN testified as follows:

22 Q. Would you state your name and tell us how
23 you're employed?

24 A. My name is Kimberly K. Bolin. I'm employed
25 with the Missouri Office of the Public Counsel as a utility

1 auditor.

2 Q. And have you caused to be filed your Rebuttal
3 Testimony in this proceeding which has been marked for
4 purposes of identification as Exhibit 7?

5 A. Yes, I have.

6 Q. Do you have any corrections or additions you
7 need to make to that?

8 A. Yes, I have two corrections.

9 Q. Okay. And why don't you just tell us where
10 those are and what those corrections are?

11 A. Okay. The first correction is on page 6, line
12 19. It should read, No. As a natural gas distribution
13 company, MGE buys gas contracts and stores gas in Kansas. And
14 then.

15 Q. So you added "contracts" --

16 A. Yes.

17 Q. -- and --

18 A. Yes.

19 Q. Okay. And you said you had another change --

20 A. Yes.

21 Q. -- or addition?

22 A. And that is on page 7, line 3. The word "fat"
23 should be "at."

24 Q. With that, if I asked you the same questions
25 contained in your Rebuttal Testimony, would your answers be

1 the same or substantially similar?

2 A. Yes, they would.

3 Q. Have you also caused to be filed your
4 Surrebuttal Testimony in this case, which has been marked for
5 purposes of identification as Exhibit 8?

6 A. Yes, I have.

7 Q. Do you have any corrections or additions to
8 that?

9 A. No, I do not.

10 Q. And if I asked you those questions, would your
11 answers be the same or similar?

12 A. Yes, they would.

13 MR. MICHEEL: With that, your Honor, I would
14 offer Exhibit 7 and Exhibit 8 and tender Ms. Bolin for cross.

15 JUDGE WOODRUFF: 7 and 8 have been offered into
16 evidence. Are there any objections to their receipt?

17 Hearing none, they will be received into
18 evidence.

19 (Exhibit Nos. 7 and 8 were received into
20 evidence.)

21 JUDGE WOODRUFF: And for cross-examination, I
22 believe we'll start with Staff.

23 CROSS-EXAMINATION BY MR. SCHWARZ:

24 Q. Ms. Bolin, what is a property tax?

25 A. It is a tax on property.

1 Q. How is it measured?

2 A. How is it measured? The value of the property
3 is assessed at a certain rate.

4 Q. And who can impose a property tax?

5 A. I know counties and cities do through -- and
6 states through legislation, law.

7 Q. Can any municipality or political subdivision
8 or state tax any property?

9 A. If they have the law to do it, they can.

10 Q. So --

11 A. If they have the law.

12 Q. -- there has to be a nexis between the taxing
13 jurisdiction and the property though. Would you agree? For
14 example, could Jefferson City impose a property tax on
15 property that's located in Des Moines, Iowa?

16 A. I don't believe there would be a law out there
17 that would say that.

18 MR. SCHWARZ: May I approach the witness?

19 JUDGE WOODRUFF: You may.

20 BY MR. SCHWARZ:

21 Q. I've handed you a copy of what's been admitted
22 as Exhibit 9. And paragraph 3 there lists the counties in
23 which MGE operates and which it pays property taxes. Are you
24 there?

25 A. Yes, I am.

1 Q. If MGE got a property tax bill from the City of
2 St. Louis, would that be something unusual or extraordinary?

3 A. If they did not own any property in the county.

4 Q. Well, so that there -- the property has to be
5 within the jurisdiction?

6 A. I would assume that's how most property tax
7 laws are written.

8 Q. Well, don't be assuming though. I mean, do you
9 know?

10 A. Could you repeat that again?

11 Q. Do you know if the City of St. Louis, for
12 instance, where MGE does not operate, if they sent MGE a
13 property tax bill, would that be something unusual?

14 A. If they didn't have any property in that
15 county, yes.

16 Q. Let me ask you this. Is all property within a
17 county or jurisdiction taxed?

18 A. Well, gas held in storage wasn't taxed in
19 Kansas until recently.

20 Q. But my question is, is all property within a
21 taxing jurisdiction taxed? For instance, property that's used
22 for charitable purposes, hospitals or schools?

23 A. I would assume not.

24 Q. Do you know if, for instance, federal property
25 is subject to tax?

1 A. I would assume not. I would have to read the
2 law regarding that tax to know for sure.

3 Q. Assume for a moment that MGE does not, in fact,
4 own any property in Des Moines, Iowa.

5 A. Okay.

6 Q. And the City of Des Moines, Iowa sends MGE a
7 property tax bill. Would that be something unusual, do you
8 think?

9 A. If they didn't own any property in that -- in
10 Des Moines, Iowa, yes, that would be very unusual. I don't
11 know what basis they would have.

12 Q. In Case GR-2001-292 did the Public Counsel
13 include \$400,000 in property taxes in the \$9.9 million
14 settlement?

15 A. We believed \$400,000 included because it is
16 listed in Staff's accounting run. And Mr. Traxler specified
17 that that's what that was included for and Mr. Noack has also
18 stated that in his data request.

19 Q. But my question was does OPC -- did OPC sponsor
20 anything in that case to show that \$400,000 was included in
21 the 9.9 million settlement that OPC agreed to?

22 A. We agreed to the Unanimous Stipulation and
23 Agreement. And part of our agreement on that was based on
24 Staff's accounting runs.

25 Q. Let me ask you again. Did OPC file anything in

1 Case No. GR-2001-292 to indicate that OPC was providing
2 \$400,000 of that \$9.9 million for property taxes?

3 A. We did not have any testimony written
4 concerning that issue.

5 Q. Okay. And you didn't file anything in support
6 of the Stipulation and Agreement to that effect, did you?

7 A. I'm not sure what we filed in support of the
8 Stipulation and Agreement.

9 Q. To your knowledge, did the company file
10 anything specifically saying that \$400,000 in that case was
11 attributable to property -- Kansas property taxes?

12 A. The only thing I've seen is the data request
13 that Mr. Noack answered from the last case stating that amount
14 was in there for property tax.

15 Q. Has the Office of the Public Counsel ever filed
16 for a negative Accounting Authority Order?

17 A. Not that I'm aware of.

18 Q. Why not?

19 A. I don't know that the circumstances have
20 warranted one. Regulatory lag works both ways.

21 Q. If circumstances warranted, would Public
22 Counsel file such a negative AAO?

23 A. We might.

24 Q. And if you did -- strike that.

25 To your knowledge, has MGE ever actually

1 finally had to pay property tax on gas stored in Kansas?

2 A. To my knowledge, they've not had to pay
3 anything.

4 MR. SCHWARZ: Thank you.

5 JUDGE WOODRUFF: For MGE?

6 CROSS-EXAMINATION BY MR. COOPER:

7 Q. Mr. Schwarz was just asking you some questions,
8 among others, about the GR-2001-292 rate case. Do you
9 remember that?

10 A. Yes, I do.

11 Q. And you made mention that the Public Counsel
12 was a party to the Stipulation and Agreement in that case,
13 didn't you?

14 A. Yes, we were.

15 MR. COOPER: Your Honor, at this time I would
16 like to mark the Second Revised Stipulation and Agreement in
17 Case GR-2001-292.

18 JUDGE WOODRUFF: All right. That will be 17.

19 (Exhibit No. 17 was marked for identification.)

20 BY MR. COOPER:

21 Q. Do you have before you what's been marked as
22 Exhibit 17?

23 A. Yes, I do.

24 Q. Okay. Are you familiar with the Stipulation
25 and Agreement in GR-2001-292?

1 A. I have read it some time ago.

2 Q. Okay. And that's what this document appears to
3 be. Correct?

4 A. That's what it appears to be, yes.

5 Q. Okay. Can you point me to any -- well, first
6 off, what is the revenue requirement increase that's
7 identified by this Stipulation and Agreement?

8 A. \$9,892,228.

9 Q. Okay. Can you point to me -- or point me to
10 any itemization as to what expenses specifically are included
11 in the company's cost of service to arrive at that revenue
12 requirement increase?

13 A. I see something on some weatherization program.

14 Q. Okay.

15 A. And some revenue for off-system sales and
16 capacity release. That's the only other cost I see
17 identified.

18 Q. So you don't see anything mentioned in the
19 Stipulation and Agreement about any Kansas gas storage taxes,
20 do you?

21 A. There is no specific line item for Kansas gas
22 storage tax.

23 Q. Now, if you would, would you turn over to
24 page 13 of that document?

25 A. Okay.

1 Q. Do you see paragraph 17?

2 A. Yes.

3 Q. Would you read that for us?

4 A. The Staff, Public Counsel, MGUA,
5 JACOMO/Riverside and MGE further agree and state that none of
6 them, as a result of entering into this document, shall have
7 been deemed to have approved or acquiesced in any rate-making
8 or procedural principle any method of cost determination or
9 cost allocation or any service or payment standard. And none
10 of the signatories shall be prejudiced or bound in any manner
11 by the terms of the Second Revised Stipulation and Agreement
12 in this and in any other proceeding except as otherwise
13 expressly specified in paragraphs 3, 9 and 13 herein upon
14 the Commission's approval of the Second Revised Stipulation
15 and Agreement.

16 MR. COOPER: Okay. your Honor, I would offer
17 Exhibit 17 at this time.

18 JUDGE WOODRUFF: 17 has been offered into
19 evidence. Are there any objections to its receipt?

20 Hearing none, it will be received into
21 evidence.

22 (Exhibit No. 17 was received into evidence.)

23 BY MR. COOPER:

24 Q. Ms. Bolin, am I correct that a part of your
25 argument against or in opposition to this AAO request is that

1 you believe property taxes generally are normal and recurring
2 expenses?

3 A. That's correct.

4 Q. Now, would you agree with me that the
5 Commission has in the past granted Accounting Authority Orders
6 for things such as gas safety line replacements?

7 A. Yes, they've granted AAOs for Safety Line
8 Replacement Programs.

9 Q. Would you agree with me that the Commission has
10 in the past granted AAOs related to the implementation of
11 FAS-87 for pension expense?

12 A. Yes, they have.

13 Q. Would you agree with me that the Commission has
14 in the past granted AAOs for implementation of FAS-106 for
15 OPEBs?

16 A. I am aware of one case where they didn't issue
17 an AAO and I can't remember if it was for FAS-87 or FAS-106
18 where the company failed to have the cost included in the
19 true-up.

20 JUDGE WOODRUFF: And we've been talking about
21 FAS and OPEBs and you might want to explain for the benefit of
22 the transcript what you're talking about.

23 THE WITNESS: FAS is Financial Accounting
24 Standards, and OPEBs are Other Pension Post -- or Post --
25 BY MR. COOPER:

1 Q. Post Employment Benefits?

2 A. Yes, I'm sorry.

3 JUDGE WOODRUFF: Thank you. Sorry to
4 interrupt.

5 BY MR. COOPER:

6 Q. But the one situation you're talking about was
7 a timing issue. Correct?

8 A. The company -- the Commission ruled the company
9 should have asked for that in the rate case proceeding.

10 Q. And we could find several examples of both
11 where AAOs were granted for FAS-87 and FAS-106 when those
12 standards were first implemented. Correct?

13 A. Yeah. And the one I mentioned.

14 Q. And would you agree with me that the actual
15 expenses being deferred in all those examples are, if looked
16 at individually, types of expenses that a utility might have
17 on a day-to-day basis? And let me expand on that. What types
18 of expenses would you believe would be deferred under a gas
19 safety line replacement AAO?

20 A. What is normally deferred are the property
21 taxes on the new plant and the plant that is being -- that is
22 the replacement plant. Depreciation, accumulated depreciation
23 and carrying costs.

24 Q. And all those things are normally a part of a
25 utility's cost of service. Correct?

1 A. That is correct.

2 Q. Okay. But for whatever reason, the Commission
3 has seen fit to grant AAOs in the gas safety line replacement
4 situation. Correct?

5 A. That is correct.

6 Q. Let's turn our attention to the FAS-87 example.
7 What types of expenses would you expect to see deferred as a
8 result of an AAO relating to a FAS-87?

9 A. That it was the cost the company incurred to
10 change the procedures.

11 Q. Well, by the cost related to changing of the
12 procedures, do you mean the change in how pension --

13 A. How they --

14 Q. -- expense was going to be reflected on the
15 financial statements?

16 A. Yes, how they recorded it.

17 Q. But it was still underlying that pension
18 expense. Correct?

19 A. Right.

20 Q. Something that the company would have had prior
21 to FAS-87 and had after FAS-87?

22 A. A pension expense is something they'd have
23 before and after.

24 Q. And the same thing would be true of the AAOs
25 related to FAS-106 and the OPEBs. Correct?

1 A. That's correct.

2 Q. Okay. How about an act of God AAO? And I
3 think the most common one that we talk about are ice storms.
4 Okay?

5 A. Uh-huh.

6 Q. And I think there have been several AAOs
7 granted for ice storms. Correct?

8 A. I believe there's been a few.

9 Q. Okay. What types of expenses would you expect
10 to have deferred as a result of an ice storm AAO?

11 A. Any overtime costs incurred to restore power,
12 restore service to the company. Any capital costs I'm sure,
13 the depreciation property tax and that.

14 Q. Okay. So labor expenses, perhaps some outside
15 contractors --

16 A. Yes.

17 Q. -- property tax, depreciation, those items.
18 Correct?

19 A. Yes. That's correct.

20 Q. Again, all items that when looked at
21 individually, are the types of items that a utility would
22 incur most every year in some amount. Correct?

23 A. If it wouldn't have been for this major event,
24 the ice storm, yes.

25 Q. But because of the major event, those were

1 deemed to be appropriate to be deferred under an Accounting
2 Authority Order. Correct?

3 A. That's correct.

4 Q. Now, you testified in GR-2004-0209, the last
5 MGE rate case, in regard to MGE's request to recover amounts
6 associated with the Kansas gas storage property tax, didn't
7 you?

8 A. Yes, I did.

9 Q. Okay. And in that case your position was
10 based, at least in part, upon the allegation that the subject
11 taxes were not known and measurable. Correct?

12 A. And that we had not agreed to true-up this
13 item.

14 Q. Right. Now, in this case, as we talked about
15 before, I believe your testimony indicates that those same
16 property taxes are normal and recurring. Correct?

17 A. They will be normal and recurring if the --
18 if -- if MGE is not successful in challenging this law.

19 Q. Okay. And normal and recurring expenses, if
20 reasonably incurred, would usually find a place in the
21 utility's cost of service, wouldn't they?

22 A. If they are in the test year and known and
23 measurable.

24 Q. Now, you also indicate in your Rebuttal
25 Testimony in this case that if MGE is unable to earn its

1 authorized rate of return, then it should file for a rate
2 increase. Correct?

3 A. It has the ability to do so if MGE would want
4 to.

5 Q. Now, if we were trying a rate case today, would
6 you be able to recommend that the Commission include the
7 Kansas gas storage property taxes and MGE's cost of service?

8 A. No, I would not, because they've not paid it
9 and there's a question of if they will have to pay it in the
10 future.

11 Q. So even as of today, it sounds like you --
12 well, let's back up.

13 Does that mean as of today you still believe
14 them to be not known and measurable?

15 A. It is measurable. They have received bills,
16 assessments, but they have not paid anything yet and there's
17 question if they will ever have to pay.

18 Q. So your objection still goes to whether they
19 are --

20 A. Known.

21 Q. -- known. Correct?

22 A. That's correct. And this is an item they have
23 not paid.

24 Q. Okay. When do you believe that MGE would be in
25 a position to file for a rate increase that would include the

1 Kansas property taxes at issue in this case?

2 A. Whenever the legality of this law -- whenever
3 the challenges are through, if they have to pay it.

4 Q. Okay. So if we work with the estimate that
5 that challenge will not be completed until the middle of 2006,
6 it's your belief that they couldn't file a rate case that
7 would include those costs until mid-2006. Correct?

8 A. They could try to include the costs. We would
9 probably fight it because they have not paid it. This is all
10 on their books, paper entries. None of it has been paid out.

11 Q. But it is on their books. Correct?

12 A. They are recording it on their books.

13 Q. And it's on their books for 2004 and we
14 anticipate it will be on their books for 2005?

15 A. That is correct.

16 Q. Now, going back to your earlier statement that
17 if MGE is unable to earn its authorized rate of return, it
18 should file for a rate increase, when you make that statement,
19 what you really mean is if they're unable to make their rate
20 of return as a result of these taxes, they should file a rate
21 increase some day in the future, or in other words, maybe
22 mid-2006. Correct?

23 A. I don't know if I would characterize it as a
24 result of these taxes. Expenses fluctuate. If MGE can't --
25 is not earning the return they wish to earn, they can come in

1 and file for a rate increase.

2 Q. But would they be able to include these Kansas
3 gas storage property taxes?

4 A. If they were known and measurable, they would
5 be able to.

6 Q. But from what we know, they're not known and
7 measurable today. Correct?

8 A. They're measurable, but they're not known.
9 They've not paid any of them out.

10 Q. Not known. Okay.

11 Now, with Mr. Hyneman, and I had asked him some
12 similar questions earlier, but you would agree with me that
13 MGE's challenge of these Kansas gas storage property taxes is
14 in MGE's customers' best interest?

15 A. MGE and -- MGE's interest and the customers'
16 interest.

17 Q. Right. Ultimately in their customers' interest
18 because if the law becomes permanent, it's on the books -- as
19 far as you know, these are the types of costs that would be
20 rolled into MGE's cost of service pretty regularly in a rate
21 case?

22 A. These would be recurring costs, yes.

23 Q. Yeah. Now, the reason that MGE is unable to
24 file a rate case today, the reason that you would still say
25 today these costs are unknown, is I believe you said two-fold.

1 One, MGE hasn't actually made the payments; two, the legality
2 of the statute itself is still up in the air. Correct?

3 A. That's correct.

4 Q. Wouldn't MGE be in a position to reduce its
5 exposure if it went ahead and made payment and ceased its
6 challenge of these taxes? Wouldn't that enable it then to
7 file a rate case?

8 A. I think that would be something we would look
9 in the rate case as to why MGE did not fight that. In the
10 last rate case outside services was an item that was looked at
11 and I know there were some bills from the firm that fought the
12 last assessment of this tax included.

13 Q. Yeah.

14 A. So these are the -- you know, the attorney fees
15 would be recovered through the ratepayers if it falls within
16 the test year.

17 Q. Maybe. You include in a rate case some sort of
18 ongoing level of expense related to outside legal services.
19 Correct?

20 A. Yes, you do. You look at --

21 Q. Okay. And it's not necessarily itemized
22 case-by-case, is it?

23 A. What do you mean by "itemized"?

24 Q. Well, I mean, ultimately when you roll up the
25 cost of service, you don't say, well, we're going to give you

1 \$100 so that you can challenge X?

2 A. Right. You look at things that would -- you're
3 setting rates for the future.

4 Q. Setting rates for the future. You come up with
5 some sort of normal level --

6 A. Ongoing level.

7 Q. -- of those types of expenses. Right?

8 A. Yes.

9 Q. Okay. I assume that the Office of the Public
10 Counsel would encourage MGE to continue its challenge of this
11 statute. Correct?

12 A. We would be -- we believe that would be a
13 prudent management decision.

14 MR. COOPER: Okay. That's all the questions I
15 have.

16 JUDGE WOODRUFF: Thank you. It's now time for
17 questions from the Bench, but we're also for due for a break.
18 So let's take a break and come back at 10 after 4:00.

19 (A recess was taken.)

20 JUDGE WOODRUFF: All right. We're back live on
21 the Internet and Ms. Bolin is still on the stand. We're going
22 to come up for questions from the Bench. I believe
23 Commissioner Gaw was planning on coming back but is not here
24 yet so we'll go to Commissioner Appling. Do you have any
25 questions?

1 QUESTIONS BY COMMISSIONER APPLING:

2 Q. Kim, how are you doing?

3 A. Fine.

4 Q. Two or three questions.

5 The first one, in just a few words please tell
6 me why this AAO is a bad -- is bad for the taxpayers -- or
7 ratepayers. Why is it bad for them?

8 A. Because this is the type of expense that is a
9 normal, recurring expense that should be considered in the
10 context of a rate case along with all the other expenses and
11 revenues.

12 Q. Okay. Second question, to your knowledge, have
13 Missouri ratepayers ever been damaged by an AAO?

14 A. We have opposed AAOs. AAOs if they are
15 accepted -- or the amortization is included in rate cases, the
16 expense is increased and customers have to pay more.

17 Q. But that would occur also if we went through a
18 rate hearing and you gave the company credit for it. So would
19 that be a wash or would it be the same?

20 A. When it comes time for the rate-making, that's
21 when it will hurt the customers.

22 Q. So if they lose their case with the Supreme
23 Court in Kansas, then we can expect an increase anyway if they
24 file a rate case?

25 A. That is correct.

1 Q. Okay.

2 A. You'll see a normalized level for that tax
3 included in their rates.

4 Q. Okay. Knowing what you've heard here today and
5 heard in this room here today, is there a possibility to
6 settle this case or this issue?

7 A. We're always open for settlement, but I'm not
8 sure right now.

9 COMMISSIONER APPLING: Thank you.

10 QUESTIONS BY JUDGE WOODRUFF:

11 Q. All right. Ms. Bolin, I have a couple
12 questions about the Kansas ad valorem tax. I've asked the
13 other two witnesses and they said they didn't have much
14 information about it, so I'll ask you.

15 A. I have no information either on it.

16 MR. MICHEEL: I think we need to swear
17 Mr. Schwarz.

18 THE WITNESS: Yes. He seems to have the
19 knowledge of it.

20 MR. COOPER: Or just questions of counsel, I
21 think, particularly Counsel Schwarz.

22 MR. SCHWARZ: I think the Judge needs to get to
23 finish his question before she gives the answer.

24 JUDGE WOODRUFF: Well, thank you, Ms. Bolin.
25 We'll go back to Commissioner Gaw then.

1 COMMISSIONER GAW: I didn't get to hear your
2 question.

3 JUDGE WOODRUFF: It was about the Kansas ad
4 valorem tax. And the only person in the room who knows
5 anything about it is Mr. Schwarz, but he's not a witness so
6 we'll have to leave questions unanswered at this time.

7 COMMISSIONER GAW: Put him on the stand.

8 JUDGE WOODRUFF: That was the one suggestion,
9 but he wasn't too keen on it.

10 COMMISSIONER GAW: Okay.

11 QUESTIONS BY COMMISSIONER GAW:

12 Q. Ms. Bolin, if the company had paid the taxes to
13 Kansas under protest, and I don't even know if that's
14 possible, but let's assume that that's possible and they did
15 it. Would that change your position in this case?

16 A. I don't believe it would.

17 Q. Okay. And tell me why.

18 A. Because it is still not known with certainty
19 that these taxes will have to be paid. Even if they went
20 ahead and paid these taxes, they could receive a refund if the
21 Kansas Board of Tax rules in MGE's favor.

22 Q. So is your position in regard -- let me back
23 up.

24 Was your position in the rate case itself as to
25 whether or not to include these premised upon -- to include

1 these rates premised upon the concept that the law was being
2 challenged rather than whether or not the money was paid in to
3 Kansas?

4 A. I had two reasons in the rate case. One, is it
5 was an item that was not agreed to be trued up.

6 Q. Okay.

7 A. And, two, it was not known and measurable.
8 They did not even have an assessment yet from the authorities.
9 They were in the process of completing an assessment form.

10 Q. As of when would that have been?

11 A. I believe that was in -- don't remember when
12 the true-up hearing was. It was in the summer sometime, I'm
13 not sure what month. The true-up -- they didn't receive their
14 bills as of that date.

15 Q. Okay. So let's say that the first issue was
16 taken care of in regard to whether or not it was supposed to
17 be in the true-up or not. I'm giving you another
18 hypothetical. And then let's say they had their assessment.

19 A. Okay.

20 Q. Would that change -- would that have changed
21 your position?

22 A. If it -- if they -- property tax would have
23 been a true-up item -- considered to be a true-up item?

24 Q. Let's say that that issue is gone away, it was
25 considered --

1 A. We agreed --

2 Q. -- it was considered to be a true-up item,

3 yeah.

4 A. And they had an assessment?

5 Q. Yes.

6 A. We would have probably included it.

7 Q. Okay. Now, help me to understand why that is.

8 A. Because it was a measurable item. There might

9 have been some consideration on the known factor if they were

10 fighting this. They had fought this property tax assessment

11 before and had been successful in it.

12 Q. Okay. And how would that have played into your

13 position?

14 A. Since they've had success in it and we built in

15 \$400,000 -- or \$400,000 was supposedly built into rates and

16 they never paid it, that was money that wasn't spent for that

17 purpose. To be included in rates, something has to be known

18 and measurable.

19 Q. So is your answer that you don't know what your

20 position would have been or that you're -- I'm trying to

21 understand what your -- if you know what your position would

22 have been --

23 A. We would have included --

24 Q. -- to make those assumptions.

25 A. -- it if it was measurable. The known would

1 have given me a little difficulty. If they were paying it
2 under protest, I don't know that we would have included it.

3 Q. So it would make a difference if they were
4 paying it under protest or not paying it and challenging it?

5 A. Right.

6 Q. All right.

7 A. Either way would -- I would have a hard time
8 including it in rates.

9 Q. Okay. Which is where we are today in regard to
10 your position --

11 A. That's correct.

12 Q. -- in regard to the rate case?

13 A. They're not -- they haven't paid any of the
14 taxes yet.

15 Q. But that's different than the position at least
16 that I think you took, from what I was hearing earlier, in
17 regard to what you believe you were agreeing to on the rate
18 case previous to that that included \$400,000 --

19 A. That's correct.

20 Q. -- in your opinion --

21 A. That's correct.

22 Q. -- in the settlement?

23 A. That is correct.

24 Q. Okay. Is this fool me once, fool me twice kind
25 of thing or is it --

1 A. We were not aware that they were fighting this
2 tax in that case. Mr. Traxler's testimony does not indicate
3 anything to that nature.

4 Q. Okay.

5 A. And we would have relied on Mr. Traxler's
6 testimony accepting the stipulation.

7 Q. All right. Skip forward for a moment to this
8 AAO request. How much of your position in regard to whether
9 or not this AAO should be allowed is based upon this expense
10 being recurring in nature?

11 A. That is the majority of this. Property taxes
12 are a recurring item and we do not -- I do not believe that
13 anything that is a recurring item should be given AAO
14 consideration.

15 Q. Okay. Now, a while ago I flipped around a
16 scenario on a negative AAO on the company and Staff. I'm
17 going to do the same thing to you. If the Kansas taxes had
18 been allowed in rates in the last rate case and the Supreme
19 Court of Kansas in the summer of this coming year had said
20 these taxes are unconstitutional and someone, maybe Public
21 Counsel, maybe Staff filed a request for a negative AAO, under
22 the analysis of whether or not the expense is recurring or
23 nonrecurring, would that request be appropriate under your
24 analysis?

25 A. That would be something you would have to look

1 at on a recurring basis. Property taxes in general are a
2 recurring expense and we would have to take that into
3 consideration.

4 Q. In this case the scenario -- the hypothetical
5 that I'm giving you, the property taxes have gone away.

6 A. That part of the property taxes has gone
7 away --

8 Q. Yes.

9 A. -- in total?

10 Q. It's gone away. And what I'm asking you is
11 whether or not that is a recurring or nonrecurring event.

12 A. Those expenses, the Kansas property tax, will
13 no longer occur, it's -- it will be a nonrecurring tax that
14 the company will never have to pay again. So you won't be
15 including it in the rates in the future.

16 Q. All right. But the fact that it's gone away
17 and is no longer a tax, at least until the legislature
18 re-implemented another one, if they chose to do that, is sort
19 of recurring, isn't it? You have to think in the negative
20 with me for a the moment since we're dealing with a negative
21 request for an AAO in my example.

22 A. The tax --

23 Q. And not -- the fact that it's no longer a tax
24 is recurring, isn't it?

25 A. They wouldn't be included in the rates in the

1 future, so it would not be an item that would be recurring in
2 the future.

3 Q. So would it be appropriate for a negative AAO
4 under your analysis?

5 A. The item would not be recurring, that would
6 be -- it would meet one standard.

7 Q. Okay. I'm not sure if I agree with you. I'm
8 not sure how much value this discussion is either.

9 All right. So in regard to your position in
10 the current AAO request, what else is there in your objection
11 other than your belief that this is -- this is an expenditure
12 for something that is recurring if it at some point in time is
13 being paid by MGE?

14 A. It's recurring, it was also included in rates
15 in GR-2001-299. Property taxes are not something that's
16 unusual. Companies have to pay property taxes all the time.

17 Q. All right. Do you know if this is a personal
18 property tax or a real estate tax? I apologize for not asking
19 the company witness that. That might have been more --

20 A. I'm not sure how they classify that. I'm not
21 sure.

22 Q. I don't know how important that is, but
23 sometimes it makes a difference when taxes are due and when
24 they're assessed.

25 A. I'm not sure how they classify that.

1 Q. Is it a tax on the -- is this a tax on the gas
2 itself or the storage capacity where the gas is stored?

3 A. I believe it's on the gas because they use the
4 valuation of what gas costs are to determine this tax.

5 Q. Does it matter whether there's gas in the
6 storage or not as to how much tax you owe?

7 A. Oh, I'm -- yes, how much -- how much gas they
8 believe that is allocated for your purposes, what you've
9 contracted for.

10 Q. How do they measure that? How do they come up
11 with that amount?

12 A. MGE supplies them with that -- that
13 information.

14 Q. Is it as of a certain day? Is it an average
15 over a year, do you know?

16 A. I believe it was as of January 1st, 2004.

17 Q. Okay. So if they don't have any gas on that
18 day in that storage facility, they pay no tax?

19 A. I believe that's right. I'm not for certain on
20 that. I would have to examine that a little more.

21 Q. Okay. All right. I think I was going down
22 that question with you about what other than the recurring
23 nature of this is it that you believe makes it inappropriate
24 for an AAO? What else besides that?

25 A. The recurring standard is the standard that --

1 and the fact that property taxes are not an unusual event and
2 that this is not the first time the company has been assessed
3 property taxes for gas held in storage.

4 Q. All right. If the expense that we were talking
5 about here was more along the lines of what we see with
6 electric companies sometimes in an ice storm with a lot of
7 damage, is that concept one that Public Counsel generally
8 agrees with in general as a principle?

9 A. Ice storms, tornadoes, the flood of '93 was an
10 event that we agreed with. Something that's extraordinary,
11 that causes extensive damage, the company has to spend money
12 to restore service --

13 Q. Okay.

14 A. -- to customers.

15 Q. Now, what if we go to something where
16 there's -- where there's an event such as a natural disaster
17 like an earthquake in southeast Missouri. And there's a lot
18 of expense to bring the -- I guess if we had gas lines, maybe
19 it would be gas lines, maybe if it was an electric company, it
20 might be transmission facilities, maybe it might even be
21 generation facilities. That would be something that generally
22 fits in if you were repairing or putting those things back in
23 service?

24 A. Due to a major act or sometimes an act of God
25 is sometimes how they refer to that.

1 Q. Yes.

2 A. Yes.

3 Q. All right. Now, what about expenses that
4 might -- you might incur in that situation where it becomes a
5 policy of the company to say, We now believe that these
6 earthquakes may be more of a problem than we thought before,
7 we need to incur expenses and put in additional things to
8 strengthen our infrastructure so that the damage to our
9 generation plant might not be as likely with an earthquake in
10 that region and we're going to -- we're going to put in to --
11 we're going to put in some additional expenses in
12 strengthening that infrastructure so that if it occurs again,
13 we're not as likely to get as much damage. Is that something
14 that Public Counsel feels is appropriate for an AAO, if you
15 know?

16 A. It would be something we would look at, the
17 prudence of it. If it was a very prudent decision, yes. I
18 know that for sure would be included in a rate -- rate case, I
19 mean, if it's a prudent, management decision.

20 Q. Okay. Now, if there were additional personnel
21 hired to help monitor the likelihood of that earthquake, and
22 I'm getting a little far fetched here, okay, but if that
23 occurred and those expenses were something that the company
24 intended to continue to incur as a result of what they now
25 believe is a more serious problem with regard to that

1 earthquake, would that be appropriate for an AAO?

2 A. I'm not sure it would be with -- payroll
3 fluctuates from year to year and there would be a recurring
4 expense that would be something they would incur in the
5 future. It would be -- put into rates on a going-forward
6 basis.

7 Q. Okay. And are we again sticking on the issue
8 of whether or not something is recurring?

9 A. Yes. I -- I mean, that's one of my backbones
10 to this argument is property taxes are a recurring expense.

11 Q. Does Public Counsel believe that it is the
12 event causing the expenditure that must be nonrecurring or the
13 expenditure itself that must be nonrecurring?

14 A. That's something you'd have to look at on a
15 case-to-case basis. In this case, the Kansas legislation
16 passing this law is not an event that would trigger
17 extraordinary, in our view.

18 Q. Okay. Now, you went to the word
19 "extraordinary" and away from the word "recurring." Is the
20 word "extraordinary" something that you believe includes that
21 word "recurring" or is that a different part of the
22 examination for this Commission?

23 A. It includes it. Extraordinary means something
24 that would not be -- reasonably be expected to recur in the
25 foreseeable future.

1 Q. Okay. Now, is it likely that the Kansas
2 legislature will pass an additional property tax after it has
3 passed this one if the court rules it constitutional?

4 A. It may. I'm not sure. I mean, based on past
5 history --

6 Q. If the court says this is constitutional.

7 A. Oh, if they say it's constitutional.

8 Q. Yes.

9 A. I'm not sure.

10 Q. Okay. And my question again revolves around
11 whether or not it is the event that is, in Public Counsel's
12 view, necessary to be nonrecurring or the expenditure?

13 A. The event would take some -- you would have to
14 look at the event and the expenditure both and weigh them.

15 Q. We had a case not too long ago in dealing with
16 Missouri-American. And in that case the Commission had to
17 examine some of the issues regarding whether or not that event
18 of 9/11 was a recurring or nonrecurring event or whether the
19 expenditures were recurring or nonrecurring. And it strikes
20 me that we're not very clear at this point about what that
21 word is intended to apply to.

22 And I'm looking for Public Counsel's opinion on
23 that. And some of that needs to be left to briefs, probably
24 most of it. But in this regard, what I'm trying to figure out
25 is where Public Counsel is in regard to how you sort out what

1 is appropriate for an AAO and what is not. Do you remember
2 what Public Counsel's position was in that case?

3 A. We opposed that. I remember that much, that we
4 opposed the AAO. We didn't see that event trigger would cause
5 Missouri-American to incur the expenses like they did.

6 Q. Right.

7 A. We didn't see that they were necessary.

8 Q. Okay. Did you see -- do you recall whether
9 Public Counsel just took the position that none of the
10 expenses should be allowed because this was not something that
11 should qualify as an event or whether or not the expenses
12 themselves were different depending upon what kind of an
13 expense we were looking at?

14 A. Well, we opposed the AAO in the
15 Missouri-American case. We've opposed Safety Line Replacement
16 Program AAOs. We've also opposed FAS-106 AAOs.

17 Q. Okay. Is your position in this case predicated
18 on anything different than it was in those cases in arenas
19 that you just mentioned?

20 A. We believe that none of these were
21 extraordinary recurring -- they were recurring expenses.

22 Q. Okay. All right. Okay. I'm trying to ask you
23 a question that really ought to be reserved for counsel. I
24 apologize for that.

25 We haven't talked a lot today about this issue

1 of if something were allowed here, when the start-up date
2 should be. And just so I'm clear on Public Counsel's
3 position, could you run through that for me?

4 A. We believe that the start-up of the
5 amortization period --

6 Q. Yes.

7 A. -- should begin the month after the finality of
8 this law is discovered --

9 Q. Okay.

10 A. -- is determined.

11 Q. And the rationale for that is?

12 A. They -- AAOs should not be meant to sit out
13 there forever and ever and ever and collect money and collect
14 money. They are for an unusual, extraordinary event that
15 supposedly is hurting the company's rate of return. And so we
16 believe that if it is such a detriment to the company, this
17 cost, that they should be in for a rate case so all the other
18 items can be examined.

19 Q. Okay. And when should the pick-up date be on
20 when the money should begin being accounted for when you're
21 talking about -- does everyone agree on that, that it picks up
22 from the beginning or picks up from some other date?

23 A. When the tax is actually paid I think is what
24 everybody has agreed to for the start-up on collecting.

25 COMMISSIONER GAW: All right. Okay. I'm going

1 to stop. Thank you, Judge.

2 JUDGE WOODRUFF: Thank you.

3 For recross then from Staff?

4 MR. SCHWARZ: I don't think I have anything.

5 JUDGE WOODRUFF: Thank you then.

6 For MGE?

7 MR. COOPER: Nothing, your Honor.

8 JUDGE WOODRUFF: Redirect?

9 MR. MICHEEL: I have some, your Honor.

10 REDIRECT EXAMINATION BY MR. MICHEEL:

11 Q. Mr. Cooper asked you some questions about
12 Exhibit 17, the Second Amended Stipulation and Agreement. Do
13 you recall those questions?

14 A. Yes, I do.

15 Q. Are you aware of if Staff provided an
16 itemization of its belief on how they got to the number in
17 that Stipulation and Agreement?

18 A. Yes, they did.

19 Q. And is that in the testimony of Steve Traxler,
20 which has been admitted into evidence as Exhibit 15 in this
21 case?

22 A. Yes. Mr. Traxler indicated that \$400,000 had
23 been included for property tax for gas on storage in Kansas.

24 Q. And then in the subsequent rate case, not that
25 rate case, but a subsequent rate case, GR-2004-0292, did MGE

1 also offer its view of what was included in rates in that case
2 and that's in response to Staff Data Request 384, which has
3 been admitted as Exhibit 10?

4 A. Yes, they did.

5 Q. And did the company indicate its belief that
6 there was a specific number built into rates in that case?

7 A. Yes. The company indicated 400,000 was
8 included in the case for property tax.

9 Q. And do you have any reason to believe that that
10 money was not built into rates in GR-2001-292?

11 A. No, I do not.

12 Q. Mr. Cooper asked you some questions about AAOs
13 for gas safety line and FAS-87, which is Financial Accounting
14 Standard 87 and Financial Accounting Standard 106. Do you
15 recall those questions?

16 A. Yes, I do.

17 Q. Did Public Counsel oppose those AAOs?

18 A. Yes, we did.

19 Q. You also indicated in response to Mr. Cooper
20 that one of those AAOs, I believe it was a FAS-106 AAO, was
21 rejected due to a timing issue. Do you recall that answer?

22 A. Yes, I do.

23 Q. And do you have an opinion about whether or not
24 there's a timing issue at work in this case?

25 A. Yes, there is.

1 Q. And could you expound on that?

2 A. The company was in for a rate case, these
3 property taxes were not known and measurable as of the true-up
4 rate and were not an item that was included in the -- agreed
5 to be trued up.

6 Q. And so it's really the timing that we're
7 talking about in terms of the test year and when they filed?

8 A. That's correct.

9 Q. And so in your Rebuttal Testimony in this case
10 you talk about that also, do you not?

11 A. Yes, I do.

12 Q. Do you know whether or not the Commission, as a
13 policy, has looked at AAOs on a case-by-case basis?

14 A. Yes. They look at them on a case-by-case
15 basis.

16 Q. So what the Commission does, in your opinion,
17 is look at the facts and circumstances of each case and makes
18 a decision on whether or not it's appropriate?

19 A. Yes.

20 Q. And do you have an opinion based on the facts
21 and circumstances of this case as to whether it's appropriate?

22 A. Do not believe this is an appropriate item.

23 Q. Mr. Cooper asked you some questions about
24 whether or not the ratepayers benefit by MGE's challenging
25 these taxes. Do you recall those questions?

1 A. Yes, I do.

2 MR. MICHEEL: May I approach the witness, your
3 Honor?

4 JUDGE WOODRUFF: You may.

5 BY MR. MICHEEL:

6 Q. I'm handing you a data request response to
7 Public Counsel Data Request 1046. Could you read to me what
8 the information is requested there?

9 A. Please provide a copy of all invoices paid
10 during the test year by Missouri Gas Energy to Morris, Laing,
11 Evans and Brock.

12 Q. And that was a question that you asked the
13 company in their last rate case. Is that your understanding?

14 A. Yes. In GR-2004.

15 Q. And is Morris, Laing, Brock, et al., are those
16 the attorneys that prosecuted the tax appeal?

17 A. Yes, they are. And they're doing it for the
18 current one too.

19 Q. And did you review those costs?

20 A. Yes, I did.

21 Q. And did Public Counsel recommend that those
22 costs be excluded in outside services?

23 A. No, we did not.

24 Q. And did Public Counsel believe that those were
25 appropriate costs to be built -- or at least some amount of

1 the costs built into outside services?

2 A. Yes, we --

3 Q. And is it your belief that some costs for
4 Morris, Laing have been built into outside services?

5 A. That is my belief.

6 Q. And are those costs that MGE is going to be
7 collecting on a going-forward basis?

8 A. Yes. They will collect them on a going-forward
9 basis.

10 Q. And will those costs also help defray the cost
11 of MGE right now with respect to this current tax appeal?

12 A. Yes, they would.

13 Q. And the ratepayers are going to be paying for
14 that. Is that your understanding?

15 A. The ratepayers are paying for it.

16 Q. Commissioner Appling asked you some questions
17 as to whether or not ratepayers would be damaged by an AAO.
18 Do you recall that?

19 A. Yes, I do.

20 Q. Is it your understanding that if the company is
21 not given an AAO, they would have to account for these costs
22 in the current period?

23 A. They record them on their books, but they have
24 not paid those.

25 Q. But they would have to record them on the

1 books?

2 A. Right. And they're currently doing that.

3 Q. And is it your understanding what an AAO does
4 is take an out of period cost and allow a company to bring
5 that forward to an accounting period that it normally, but for
6 the AAO, those costs would not be in that accounting period?

7 A. That is the way it works, yes.

8 Q. And so do you have a view about whether or not
9 all things remaining equal, if an AAO is granted, that rates
10 would be higher absent the A-- higher with the AAO but for
11 having the AAO?

12 A. That's correct, yes.

13 Q. So by allowing the company to defer costs from
14 out of period, all things remaining the same, rates would be
15 higher for customers?

16 A. In the future, yes.

17 Q. And under normal -- if we were just having no
18 deferral, MGE wouldn't even be able to ask for those costs
19 because they were out of period?

20 A. They would -- that would be retroactive.

21 Q. Commissioner Gaw asked you a series of
22 questions. Do you recall those?

23 A. Yes.

24 Q. Do you know whether or not storage of gas is a
25 normal operation of an LDC?

1 A. I believe it is, yes. They store gas in the
2 summertime, in the winter.

3 Q. Do you know whether the payment of property
4 taxes is something normal that an LDC does?

5 A. Yes, it is. We built -- build it into every
6 rate case.

7 Q. Do you know whether or not the payment of
8 property taxes is something that recurs in every case?

9 A. Yes, it does.

10 Q. Now, those costs fluctuate up and down, do they
11 not?

12 A. Oh, yes.

13 Q. But, nonetheless, that's the same with every
14 cost, isn't it?

15 A. That's correct.

16 Q. So to that extent, do you have an opinion about
17 whether or not the costs requested here are extraordinary or
18 unique?

19 A. They are not. They are normal recurring costs.
20 They are property tax.

21 Q. And your Rebuttal Testimony indicates that,
22 does it not?

23 A. Yes, it does.

24 Q. And you've already testified, I believe, that
25 you believe property taxes are recurring?

1 A. Yes, they are.

2 MR. MICHEEL: That's all I have, your Honor.

3 Thank you very much.

4 JUDGE WOODRUFF: Thank you.

5 Mr. Schwarz?

6 MR. SCHWARZ: Could I see that last data
7 request?

8 THE WITNESS: Yeah.

9 JUDGE WOODRUFF: You may step down, Ms. Bolin.

10 Looking at my chart, I indicate that
11 Exhibit 13, which was a timeline, has not been offered. Do
12 you wish to offer it at this time?

13 MR. COOPER: No, your Honor.

14 JUDGE WOODRUFF: You do not.

15 Okay. All right. Then we need to talk about
16 the briefing schedule. I'm looking at April 25th for initial
17 briefs, that's a Monday. And then May 10, that's a Tuesday
18 after holiday, for reply briefs. Does that sound okay?

19 MR. MICHEEL: Could we get that initial brief
20 moved to Tuesday because I'm usually tardy and then my support
21 staff is angry at me, not that they're not always generally a
22 little upset at me.

23 JUDGE WOODRUFF: Make it April 26th, Tuesday.

24 And I'd like to try something new or at least a
25 little bit different in this case. I'm going to ask for

1 proposed Findings of Fact at the same time you file the
2 initial briefs. And the difference is that we've done this in
3 the past, but what I want to try to do different this time is
4 I want numbered Findings of Fact. Findings of Fact only. I'm
5 not even concerned about conclusions of law.

6 I want to make clear that this is not a
7 proposed decision, simply a listing -- I want a listing
8 numbered of the facts that you think are important in the case
9 that you've proved. So we're going to try that as an
10 experiment.

11 Mr. Cooper, did you have a question?

12 MR. COOPER: Yeah. Your Honor, could you tell
13 me again the reply date that --

14 JUDGE WOODRUFF: May 10.

15 MR. COOPER: May 10.

16 JUDGE WOODRUFF: That's the day after Truman
17 Day.

18 Any other matters anyone wants to bring up
19 while we're on the record?

20 All right. With that then, we are adjourned.
21 Thank you.

22 WHEREUPON, the hearing was adjourned.

23

24

25

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