

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing
August 11, 2008
Jefferson City, Missouri
Volume 2

In the Matter of the Application)
of Missouri Gas Energy, A Division)
of Southern Union Company For An)
Accounting Authority Order) Case No. GU-2007-0480
Concerning Environmental Complaint)
Activities)

KENNARD L. JONES, Presiding,
SENIOR REGULATORY LAW JUDGE.

JEFF DAVIS, Chairman,
CONNIE MURRAY,
ROBERT M. CLAYTON III,
TERRY JARRETT,
KEVIN GUNN,
COMMISSIONERS.

REPORTED BY:
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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 12 WERE MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 JUDGE JONES: We are on the record with
5 Case No. GU-2007-0480. My name is Kennard Jones. I am
6 the presiding judge over this matter.

7 At this time let's go ahead and take
8 entries of appearances, beginning with MGE. You need not
9 state your address, just your name and who you represent.
10 Your address is in the record already.

11 MR. COOPER: Thank you, your Honor.
12 Dean L. Cooper appearing on behalf of Missouri Gas Energy,
13 a division of Southern Union Company.

14 JUDGE JONES: And for the Office of the
15 Public Counsel?

16 MR. POSTON: Thank you. Marc Poston
17 appearing for the Office of the Public Counsel.

18 JUDGE JONES: And for the Staff of the
19 Commission?

20 MR. BERLIN: Robert S. Berlin appearing on
21 behalf of the Staff of the Missouri Public Service
22 Commission.

23 JUDGE JONES: Thank you, Mr. Berlin. I see
24 no other parties present, so let's go ahead and start with
25 opening statements from MGE.

1 MR. COOPER: Thank you, your Honor. Good
2 morning. Do we have the microphone on, this microphone?
3 Can you hear me through the --

4 JUDGE JONES: I can hear you. Commissioner
5 Clayton, can you hear someone speaking?

6 COMMISSIONER CLAYTON: I can hear.

7 MR. COOPER: Good. Good morning. By its
8 application in this case, MGE seeks an Accounting
9 Authority Order from the Commission that will allow MGE to
10 defer expenses associated with remediation of former
11 manufactured gas plant sites in the state of Missouri so
12 that those expenses may be considered for possible
13 recovery in MGE's next rate case.

14 The existence of potential liability
15 associated with this remediation has been known for many
16 years. When Southern Union purchased from Western
17 Resources in 1994 the properties that became Missouri Gas
18 Energy, parties to that transaction executed an
19 Environmental Liability Agreement. The ELA created a
20 tiered process to seek recovery of environmental costs, to
21 include FMGP remediation costs.

22 For approximately 14 years that process has
23 protected MGE's customers from any contribution toward
24 remediation costs. In that respect, it appears that the
25 ELA actually put customers in a better position than they

1 were in before the Southern Union purchase. This is
2 because the potential liability existed before Southern
3 Union's purchase. Absent the purchase, the system would
4 have had the same potential liability for FMGP remediation
5 as it has today.

6 What is different is the fact that,
7 pursuant to the ELA, MGE agreed to bear responsibility for
8 the first \$3 million of unreimbursed costs, and now a
9 non-Missouri utility, Western Resources, or Westar, agreed
10 to bear some responsibility for additional unreimbursed
11 costs incurred before January 31 of 2009.

12 This year the remediation costs have for
13 the first time exceeded recoveries in the first \$3 million
14 of unreimbursed costs for which MGE agreed to take
15 responsibility. They have exceeded those figures in a
16 significant fashion. As of June 30th of this year, the
17 amount was at least \$845,000. It is expected that the
18 unreimbursed remediation expenses will exceed 3.8 million
19 by the end of the calendar year as the remediation of the
20 St. Joseph site progresses.

21 While, as you have probably read in MGE's
22 statement of position, prior Commission decisions have
23 found materiality to not be case dispositive as to the
24 issuance of an AAO, the unreimbursed costs will exceed
25 5 percent of MGE's net operating income by the end of this

1 year.

2 MGE is here today not for recovery of these
3 costs but is asking for the opportunity to defer the costs
4 so they may be considered for recovery in a future rate
5 case. Issues associated with FMGP remediation costs have
6 been previously addressed by many states. MGE's review of
7 these cases reveals that state utility commissions have
8 overwhelmingly provided for the recovery of these costs,
9 be it through a deferral and treatment in a later rate
10 case, surcharge or rider or some other method.

11 I believe this is primarily because the
12 subject costs have been brought about by federal
13 legislation. That legislation, the Comprehensive
14 Environmental Compensation and Liability Act, CERCLA,
15 which is also sometimes known as the Superfund Act, is
16 essentially no-fault legislation focused on the public
17 interest associated with the cleanup of sites, not the
18 assignment of blame or penalties.

19 The impact of CERCLA and the cleanup of
20 specific FMGP sites is not a recurring event, although
21 costs related to compliance may be paid over several
22 years. The requirements at each remediation site differ
23 depending upon state and federal regulatory requirements,
24 agency assessments of work performed, and site-specific
25 characteristics, among other things.

1 The liability associated with these
2 requirements is unusual and infrequent as to MGE and the
3 individual sites. Since 1994, only three sites, the
4 remediation of only three sites has been undertaken by
5 MGE.

6 MGE accordingly asks the Commission to
7 grant it an Accounting Authority Order consistent with its
8 application. MGE further believes it would be reasonable
9 for the Commission to order the following conditions in
10 conjunction with the granting of an Accounting Authority
11 Order in this case:

12 One, that any recoveries from insurance
13 companies, Westar, as Western Resources is now known, or
14 other entities related to FMGP remediation costs be
15 credited to the deferral account as an offset to deferred
16 expenses.

17 Two, that nothing in the Commission's Order
18 shall be considered a finding by the Commission of the
19 reasonableness of the costs and/or expenditures deferred
20 and reserving the Commission's right to consider in a
21 future rate case the ratemaking treatment to be afforded
22 all deferred costs, including the recovery of any carrying
23 costs.

24 Three, that MGE shall maintain detailed
25 supporting records, work papers, invoices and other

1 documents to support the amount of costs deferred under
2 this AAO, including any related deferred taxes recorded as
3 a result of the cost deferral, and provide detailed
4 documentation that includes a complete description of the
5 type of work performed, the specific FMGP site, and amount
6 of time spent for each invoice submitted for all legal
7 expenses deferred under this AAO.

8 And four, that the AAO continue through the
9 end of the Commission ordered test year as updated or
10 true-up period in MGE's next case provided MGE files its
11 rate case within 24 months of the effective date of an
12 Order granting the AAO. In the event MGE fails to file
13 their general rate case within 24 months of the effective
14 date of the Order, MGE would write off the entire amount
15 of previously booked deferrals to income.

16 MGE today plans to present three witnesses
17 in support of its application: First, Mr. Michael Noack,
18 MGE's Director of Pricing and Regulatory Affairs; second,
19 Mr. Dennis Morgan, Southern Union's Senior Vice
20 President - Litigation; and third, Ms. Crystal Callaway,
21 MGE's environmental compliance specialist.

22 Now, I would warn you that I say plans to
23 present today for a specific reason, and that is,
24 unfortunately, Ms. Callaway, who came to Jefferson City
25 last night to prepare for the hearing, has turned up ill

1 and is at St. Marys Hospital this morning having some
2 tests, some possibility of a pulmonary embolism. So it
3 will probably be noon before we know what her availability
4 may or may not be and whether we need to ask the
5 Commission's assistance in working around that issue.

6 Also with me today is Mr. Todd Jacobs, who
7 is Senior Attorney for Missouri Gas Energy, and we thank
8 you for your consideration of this application.

9 JUDGE JONES: Thank you, Mr. Cooper. Now
10 we'll have an opening statement from the Office of Public
11 Counsel.

12 MR. POSTON: Good morning.

13 JUDGE JONES: Good morning.

14 MR. POSTON: My name is Marc Poston. I
15 represent the Office of the Public Counsel and the public,
16 and our primary objection to Southern Union's request in
17 this case is that we believe Southern Union's shareholders
18 should be 100 percent liable for the environmental
19 remediation costs that they have voluntarily assumed.

20 Southern Union agreed to assume
21 environmental liability, and they were compensated for
22 that through the purchase price of the Missouri assets.
23 Southern Union, not consumers, have sole authority over
24 all costs and offset decisions, all decisions on insurance
25 settlements, selection of remediation companies, pursuit

1 of other potentially responsible parties, settlement with
2 other potentially responsible parties and settlement with
3 DNR and EPA.

4 The Commission clearly got it right in
5 rejecting Southern Union's past two attempts to force
6 these costs on consumers. The Commission concluded that a
7 prudency review of expenses is no substitute for the
8 incentive Southern Union will have to keep costs low when
9 shareholders are responsible for the costs.

10 In addition, Southern Union and not
11 consumers agreed to the liability agreement that lets
12 Western Resources off the hook for environmental expenses
13 as of January 31st next year. Consumers have not agreed
14 to that position. That has proven to be a very bad
15 decision as Southern Union predicts the costs will
16 continue with no end date in sight.

17 The costs in question are not used nor
18 useful in provision of gas to current customers, and once
19 each site is fully remediated, Southern Union will benefit
20 from the increased value of the property that no longer
21 has that liability.

22 Accounting Authority Orders violate the
23 traditional rate of return regulation principles. They
24 violate the matching principle, and that is matching and
25 setting of rates with the period in which the expense

1 recovery was incurred.

2 Although Public Counsel has on many
3 occasions agreed and stipulated to Accounting Authority
4 Orders where the event in question was truly
5 extraordinary, in this case we cannot agree to an AAO,
6 first, because it is not appropriate under the
7 circumstances of Southern Union's acquisition to force
8 these costs on to Missouri consumers, as I just mentioned,
9 but also because Southern Union has been incurring
10 expenses for the Missouri gas -- or for the manufactured
11 gas plant remediation since it acquired the property in
12 1994 and expects to continue paying these costs into the
13 future.

14 Sites that were in the early stages of
15 remediation in '94 continue to incur costs 14 years later.
16 We can only expect other sites where remediation has not
17 begun to potentially continue to incur costs for another
18 14 years. These costs are certainly recurring and do not
19 satisfy the AAO standard that they not be recurring.

20 In sum, this application should be denied
21 because shareholders should be solely liable. They
22 assumed this responsibility voluntarily. The event or
23 events that led to these costs are in no way
24 extraordinary. They are recurring and do not satisfy the
25 Commission's standards for AAOs.

1 Public Counsel's accountant Mr. Ted
2 Robertson submitted rebuttal testimony that explains our
3 position in greater detail. We believe his testimony and
4 the additional arguments we will make in our post-hearing
5 brief as this is primarily a legal argument will make it
6 clear that the Commission should again reject Southern
7 Union's third attempt at forcing these costs on Missouri
8 consumers. Thank you.

9 JUDGE JONES: Thank you, Mr. Poston. And
10 for Staff of the Commission?

11 MR. BERLIN: Good morning. May it please
12 the Commission? I'm Bob Berlin representing the Staff.

13 Mr. Cooper just offered reasons why certain
14 environmental compliance costs, those costs related to
15 MGE's former manufactured gas plants should be looked upon
16 and decided as extraordinary, unique and unusual and
17 nonrecurring. Staff disagrees.

18 Section 393.140 gives the Commission broad
19 discretion in prescribing uniform methods of keeping
20 accounts. This particular case, as I've said earlier,
21 involves a fact inquiry by the Commission. The Commission
22 must be satisfied that the environmental compliance costs
23 sought for deferral in this AAO are indeed extraordinary,
24 unique, unusual and nonrecurring.

25 The Commission is further aided and guided

1 by the FERC Uniform System of Accounts for the natural gas
2 industry. And the Commission has adopted the USOA in its
3 Commission rules. The USOA provides a definition for an
4 extraordinary item and whether it is indeed material. The
5 Commission has also been guided not just by the USOA but
6 by the standards it has set for evaluating extraordinary
7 expenses going back as far as its Report and Order in Case
8 Nos. EO-91-358 and EO-91-360. Those were -- that involved
9 cases filed by Missouri Public Service, a division of
10 UtiliCorp United, later known as Aquila.

11 I'd also like to mention that in Missouri
12 American Water case WO-2002-273 the Commission addressed
13 in detail both the process and the standards by which it
14 determined whether the expenses sought for deferral in
15 that AAO were extraordinary and whether they were unique,
16 unusual and nonrecurring.

17 First, I think it's helpful to understand
18 what an AAO does, and it is an accounting mechanism. The
19 AAO would let MGE record the investigation, the
20 assessment, the remediation and associated procurement and
21 the legal costs and litigation costs into a special
22 account set over a period of time. That account becomes a
23 regulatory asset which the company will then seek to
24 amortize as an expense in its next general rate case.

25 Now, of course in a rate case the

1 Commission looks for reasonable expenses prudently
2 incurred. Otherwise, there may be grounds for
3 disallowance of those expenses. But in order to prove up
4 a disallowance, the burden would be on Staff to prove that
5 those expenses were imprudently incurred.

6 Now, the AAOs become controversial, as
7 Mr. Poston indicated, because they permit the company to
8 pull in expenses from outside the test year of a general
9 rate case, and that violates a fundamental principle of
10 ratemaking, the matching principles he mentioned. That is
11 why expenses that are sought to be deferred must be
12 extraordinary, they must be unique and unusual and
13 nonrecurring.

14 Staff further submits these expenses must
15 be ascertainable. They must be known and measurable
16 before they can be deemed extraordinary. Staff believes
17 that MGP expenses that MGE seeks to defer are not at all
18 unique and they are not unusual for the natural gas
19 distribution industry.

20 Expenses associated with environmental
21 compliance activities are a routine part of doing business
22 as a local gas distribution company, and these expenses
23 recur year after year after year after year. Again, Staff
24 believes these expenses are just not extraordinary in the
25 business of natural gas distribution. Indeed, no Missouri

1 utility is currently deferring its MGP or other
2 environmental remediation costs pursuant to a commission
3 authorized AAO.

4 Staff is against the approval of this AAO
5 because, as the testimony will show, MGE incurred costs
6 that are neither extraordinary, unique, unusual or
7 nonrecurring.

8 Now, this AAO case presents a new wrinkle
9 for the Commission to consider in the evidence. That
10 wrinkle, as previously mentioned, is the existence of an
11 Environmental Liability Agreement between Southern Union
12 and Western Resources, and by Western Resources I believe
13 they're currently known as Westar. I will probably refer
14 to them as Western Resources.

15 That liability agreement was executed in
16 1994, and it shows the Commission how Missouri ratepayers
17 are being exposed to what Staff believes to be the
18 unnecessary recovery of costs, and I'll explain. How is
19 it that the ELA may bring about these unnecessary recovery
20 of MGP costs from ratepayers? It's because MGP costs are
21 to be shared on a 50/50 cost sharing arrangement. That is
22 up to \$15 million of costs that are to be shared 50/50
23 between Southern Union and Western Resources. That
24 \$15 million kicks in after Southern Union pays the first
25 \$3 million. We are already there.

1 But this MGP cost sharing arrangement is a
2 critical and as of now untapped source of cost recovery.
3 This liability agreement was executed in January 1994. It
4 runs 15 years. Has run since 1994. It is set to expire
5 January, the end of January 2009, less than six months
6 from now.

7 Would Western Resources consider an
8 approval of this AAO to mean the deferred MGP costs are
9 probable for rate recovery? Rate recovery is one of the
10 levels and tiers of recovery in the agreement. Or would
11 Western Resources view the AAO as a means to void the cost
12 sharing provisions of the agreement? We don't know the
13 answer to that.

14 One thing we do know is that approval of
15 this AAO will muddy the waters between Southern Union and
16 Western Resources. Approval of this AAO will give comfort
17 to MGE that it will likely recover its deferred MGP costs
18 from ratepayers. Approval of this AAO will allow MGE to
19 defer all its MGP costs, even those costs that Western
20 Resources is obligated to pay under the cost-sharing
21 provisions of its agreement with Southern Union.

22 Now, I'm going to shift over to talk about
23 Staff's alternative proposal in this case. In the event
24 the Commission should after the presentation of the
25 evidence in these proceedings find for MGE and allow MGE

1 to defer its MGP costs, Staff asks that the Commission
2 impose three conditions on the AAO. First, the Commission
3 should limit the amount of MGE's deferral to 50 percent of
4 its unreimbursed MGP expenditures pursuant to the sharing
5 provisions of MGE's liability agreement with Western
6 Resources.

7 Second, the Commission should order that
8 nothing in its order shall be construed to be a finding by
9 the Commission of the reasonableness of the costs and/or
10 expenditures deferred and explicitly reserving the
11 Commission's right to consider a future rate case -- in a
12 future rate case the ratemaking treatment to be afforded
13 all deferred costs, including the recovery of carry costs
14 if any.

15 And third and finally, the Commission
16 should order MGE to maintain detailed supporting records,
17 work papers, invoices and other documents to support the
18 amount of costs deferred, including any related deferred
19 taxes recorded as a result of the cost deferral, and to
20 provide detailed documentation that includes a complete
21 description of the type of work performed, the specific
22 MGP site and amount of time spent for each invoice
23 submitted for all legal and litigation expenses deferred
24 under the AAO.

25 And additionally, the Commission --

1 additionally, the company and the Staff agree a Commission
2 order approving this AAO should require MGE to file a
3 general rate case within 24 months from the date of such
4 order or forfeit the ability to recover such deferral in
5 rates.

6 Now, having outlined necessary conditions
7 should the Commission approve this AAO, I want to
8 emphasize three points before I close, and points for the
9 Commission to consider why it should not approve this
10 application for an AAO.

11 No. 1, MGE incurs environmental compliance
12 costs related to its MGP plants on an ongoing basis. All
13 LDCs and all utilities incur environmental compliance
14 costs on an ongoing basis. MGP costs are an ongoing
15 expense and should be charged to expenses as occurred and
16 then passed to customers within a test year as
17 appropriate.

18 Secondly, Staff is concerned that even if
19 the Commission approve this AAO, that it may damage the
20 company's ability to recover MGP costs from Western
21 Resources.

22 And third, much of the MGP costs that MGE
23 is seeking to defer are potentially recoverable from
24 Western Resources and other third parties.

25 Today Staff will present one witness, Paul

1 Harrison, Regulatory Auditor IV, and he's prepared to
2 answer any questions you may have about the accounting
3 matters involved in this case, and that concludes my
4 opening statement. Thank you.

5 JUDGE JONES: Thank you, Mr. Berlin. MGE,
6 you can go ahead and call your first witness.

7 MR. COOPER: Your Honor, we would call
8 Mr. Michael Noack.

9 JUDGE JONES: Mr. Noack.
10 (Witness sworn.)

11 JUDGE JONES: Thank you.

12 MICHAEL NOACK testified as follows:

13 DIRECT EXAMINATION BY MR. COOPER:

14 Q. Please state your name for the record,
15 please.

16 A. It's Michael Noack, N-o-a-c-k.

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

19 A. I am the Director of Pricing and Regulatory
20 Affairs for Missouri Gas Energy.

21 Q. You caused to be prepared for the purposes
22 of this proceeding certain direct, supplemental direct and
23 surrebuttal testimony in question and answer form?

24 A. Yes, I have.

25 Q. Is it your understanding that that

1 testimony has been marked as Exhibits 1, 2 and 3 for
2 identification?

3 A. Yes.

4 Q. Do you have any changes that you would like
5 to make to that testimony at this time?

6 A. No, I do not.

7 Q. If I were to ask you the questions which
8 are contained in Exhibits 1, 2 and 3 today, would your
9 answers be the same?

10 A. Yes, they would.

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

13 A. Yes, they are.

14 MR. COOPER: Your Honor, I would at this
15 time offer Exhibits 1, 2 and 3 into evidence and tender
16 Mr. Noack for cross-examination.

17 JUDGE JONES: Exhibit 1 is the direct
18 testimony?

19 MR. COOPER: It is, yes.

20 JUDGE JONES: Exhibit 2 is --

21 MR. COOPER: Supplemental direct.

22 JUDGE JONES: Supplemental direct.

23 MR. COOPER: Exhibit 3 is surrebuttal.

24 JUDGE JONES: Any objections to Exhibits 1,
25 2 and 3?

1 (No response.)

2 JUDGE JONES: Hearing none, Exhibits 1, 2
3 and 3 are admitted into the record.

4 (EXHIBIT NOS. 1, 2 AND 3 WERE RECEIVED INTO
5 EVIDENCE.)

6 JUDGE JONES: Now we'll move on to
7 cross-examination, beginning with MGE -- or I'm sorry,
8 Staff.

9 CROSS-EXAMINATION BY MR. BERLIN:

10 Q. Good morning, Mr. Noack.

11 A. Good morning, Mr. Berlin.

12 Q. Do you consider MGP activity costs to be a
13 type of environmental compliance cost?

14 A. Yes, I do.

15 Q. And does MGE incur other types of
16 environmental compliance costs besides MGP costs?

17 A. Yes. There are other kinds of
18 environmental costs that are incurred, yes.

19 Q. Some examples might be?

20 A. Cleanup of mercury, asbestos-related
21 cleanups. I think we have cleanup associated with the
22 ERTS, the electronic metering that we have.

23 Q. Is MGE seeking authority to defer these
24 other compliance costs in this application?

25 A. No, we are not.

1 Q. And are all environmental compliance costs
2 inherently extraordinary in nature in your opinion?

3 A. Yes, they are.

4 Q. When did MGE begin incurring MGP costs
5 related to Station A site?

6 A. I'll have to look back. The first expense
7 on my listing that I see that involves cleanup of the FMGP
8 at Station I -- or Station A, excuse me, looks to be in
9 1999.

10 Q. Did MGE incur any other costs related to
11 Station A before 1999, environmental compliance activity
12 costs?

13 A. It looks like in 1996 we had some mercury
14 remediation costs that were at the Gillis plant, which I
15 believe is the Station A plant.

16 Q. And how about Station B, when did MGE begin
17 incurring MGP costs?

18 A. Again, it looks like 1999.

19 Q. And did you incur any other environmental
20 compliance activities costs before 1999 at Station B?

21 A. I don't see anything marked between
22 Station A and Station B before 1999. There's cleanup at
23 Gillis, and whether or not that is A or B, I'm not sure.

24 Q. What about at St. Joseph, when did you
25 incur costs at St. Joe?

1 A. Again, in 1996 there was some mercury
2 cleanup at St. Joe. In 1998 there's some underground
3 storage tank cleanup costs.

4 Q. How many MGP sites in total is MGE
5 potentially responsible for, either all or in part, for
6 remediation activity?

7 A. There are, to my understanding, five owned
8 sites which we may be called on to clean up.

9 Q. Those are owned sites, but how many sites
10 is MGE a potentially responsible party for?

11 A. Including the ones that we own, there are
12 probably somewhere around 19 or 20 total where we have
13 been named.

14 Q. Now, has MGE ever recovered actual incurred
15 MGP costs in a Missouri rate proceeding?

16 A. No, we have not.

17 Q. On page 3 of your surrebuttal, you state
18 that the variability of the annual MGE costs is one factor
19 driving the unusual nature of these costs; is that
20 correct, in your words?

21 A. Yes, it is.

22 Q. Can you point to me any past order wherein
23 the Commission found annual variability in expenses to be
24 a valid criterion for deferral?

25 A. Not without looking at all the -- I don't

1 have the language of all the Commission orders on AAOs and
2 extraordinary costs, so, no, I can't.

3 Q. Are you familiar with the Financial
4 Accounting Standard No. 71 which is titled Accounting for
5 the Effects of Certain Types of Regulation?

6 A. In general terms, yes.

7 Q. Now, does FAS 71 provide guidelines in the
8 preparation of financial documents?

9 A. I can't answer that question, Mr. Berlin.

10 Q. Would you know if MGE and Southern Union
11 adhere to FAS 71 in putting together their financial
12 statements?

13 A. I believe they do, yes.

14 Q. Would you agree that FAS 71 only allows MGE
15 to defer costs on its balance sheet that are deemed
16 probable, that the Commission would allow future rate
17 recovery of those deferred amounts?

18 A. I'll accept that as part of the FASB, yes.

19 Q. So if the Commission were to grant this AAO
20 application, does MGE believe it probable the Commission
21 would allow for recovery of all of MGE's deferred MGE
22 costs in future rate case proceedings?

23 A. If those costs were deemed prudent, yes.

24 Q. In this docket, is MGE seeking authority to
25 defer all of its MGP costs?

1 A. Yes, it is.

2 Q. Including those costs that are sought to be
3 recovered from Western Resources under the liability
4 agreement?

5 A. Well, any of those -- the costs that we are
6 incurring we're asking for deferral on. If we receive
7 recovery from Western of any of those costs, we will
8 offset that deferral with those recoveries.

9 Q. So the answer is yes, that -- that you
10 would defer costs that are also being sought for recovery
11 under Western Resources?

12 A. Yes.

13 Q. And so MGE is seeking to defer costs it
14 should under the liability agreement recover from Western
15 Resources, correct?

16 A. We would hope that we would recover them
17 from Western, yes.

18 Q. And you are, of course, familiar with the
19 liability agreement between Southern Union and Western
20 Resources?

21 A. I am.

22 Q. Under the liability agreement, must MGE
23 pursue rate recovery of MGP costs before seeking those
24 costs from Western Resources?

25 A. I believe so, yes.

1 Q. And Mr. Noack, were you involved
2 significantly in MGE's 2004 and 2006 general rate cases?

3 A. Yes, I was.

4 Q. And are you familiar with the environmental
5 response funds that the company had proposed in both rate
6 cases?

7 A. Yes, I was. Yes, I am.

8 Q. Now, if the Commission had approved the
9 environmental response fund, MGE would have been permitted
10 to collect monies from ratepayers to pay the costs of MGP
11 activities; is that right?

12 A. To the extent that there were costs that
13 were not recovered through insurance recoveries or
14 payments from Western, yes.

15 Q. Well, wasn't it a feature of the
16 environmental response fund proposal and incentive
17 mechanism whereby the company would share 50 percent of
18 any insurance proceeds?

19 A. That was part of the proposal that we made,
20 yes, it was.

21 Q. And in 2004 MGE sought \$750,000 for that
22 fund, correct?

23 A. That's correct.

24 Q. And in 2006, MGE sought \$500,000?

25 A. That's correct.

1 Q. And both were rejected by the Commission,
2 correct?

3 A. Yes, they were.

4 Q. Now, would you agree that in the 2006
5 Commission Report and Order, the Commission noted that MGE
6 has not paid any costs associated with environmental
7 cleanup of these sites?

8 A. I don't have the Order in front of me, but
9 I believe that's accurate, yes.

10 Q. Now, in this proceeding, MGE did not
11 propose any similar incentive mechanism to encourage it to
12 maximize third party reimbursements, including the
13 collections from Western Recourses; is that right?

14 A. Repeat that question one more time, please.

15 Q. Well, in your environmental response fund
16 proposals, you have proposed an incentive mechanism that
17 will allow you to share, as I believe you said in your
18 testimony, to share in the proceeds. Has MGE proposed any
19 similar incentive mechanism in this proceeding to
20 encourage MGE to maximize third party reimbursements?

21 A. No. We're just simply asking for the
22 ability to defer the costs.

23 Q. And I believe you are familiar with the
24 FERC Uniform System of Accounts?

25 A. Yes.

1 Q. And are you familiar with the USOA
2 description of an extraordinary item?

3 A. Yes, I am.

4 Q. Would it be general instruction No. 7 of
5 the USOA?

6 A. Correct.

7 Q. And have you seen it in Staff witness
8 Harrison's rebuttal testimony on pages 5 and 6?

9 A. I have that with me. I have that, yes.

10 Q. And would you agree that the USOA defines
11 extraordinary item as unusual in nature?

12 A. Yes.

13 Q. With infrequent occurrence?

14 A. Yes.

15 Q. And would you also agree that
16 USOA definition of extraordinary item also includes the
17 events and transactions are of significant effect?

18 A. Yes.

19 Q. And that these events and transactions are
20 abnormal and significantly different from the ordinary and
21 typical activities of the company?

22 A. That's what the definition says, yes.

23 Q. And which would not reasonably be expected
24 to recur in the foreseeable future?

25 A. Correct.

1 Q. Would you agree that the Commission adopted
2 USOA in its Commission rules?

3 A. Yes, I would.

4 Q. Are you familiar with the Commission's
5 general position and standards for deferral of costs
6 incurred outside of a rate case test year?

7 A. Yes.

8 Q. And are you familiar with those standards
9 as they are referenced in Commission's -- Commission
10 Report and Order EO-91-358 and EO-91-360?

11 A. Is that the Sibley case?

12 Q. That is.

13 A. Yes.

14 Q. And Mr. Noack, I'm going to ask you some
15 questions regarding Mr. Harrison's Schedule 3, and for
16 ease of clarity of asking these questions, I have a copy
17 of Mr. Harrison's Schedule 3.

18 MR. BERLIN: Judge, may I approach?

19 JUDGE JONES: Yes, you may.

20 BY MR. BERLIN:

21 Q. This Schedule 3 has been premarked
22 Exhibit 10 for the record. Now, Mr. Noack, I presume you
23 have reviewed this schedule in Mr. Harrison's rebuttal
24 testimony?

25 A. Yes. We have essentially prepared this

1 schedule together.

2 Q. Now, I'm going to ask some questions about
3 it. Looking at Schedule 3, note that the title is FMGP
4 Expenditures and Recoveries by Year, and the source of
5 that document is noted as from MGE work papers and
6 invoices, would you agree?

7 A. Yes, I would.

8 Q. And would you agree the schedule lists
9 expenditures of MGP for its former manufactured gas plants
10 from the period beginning in 1994 going through March 31
11 of 2008?

12 A. That's correct.

13 Q. And do these expenditures include
14 inspection activities? And let me broaden that a little.
15 Not just inspection activities, but assessment and
16 monitoring activities.

17 A. I believe so, yes, they do.

18 Q. And remediation activities?

19 A. Yes.

20 Q. In 2003, MGE spent 6.4 million?

21 A. That's correct.

22 Q. Did that include remediation of a site?

23 A. Yes, it did.

24 Q. The entire site?

25 A. Yes. I believe it was the Riverfront Park

1 site, yes.

2 Q. Was that site then closed as a result of
3 the completion of those remediation activities?

4 A. I don't know the standing, I guess, of --
5 of the environmental procedures. I don't know, you
6 know --

7 Q. You don't know if it's been closed?

8 A. No, I don't.

9 Q. So the site could remain open as far as you
10 know?

11 A. I don't know.

12 Q. You don't know?

13 A. I don't know if there's a document we get
14 that says you're all done with this site. I don't know
15 that.

16 Q. So you don't know if remediation of that
17 site -- any further remediation needs to be done?

18 A. No. That's probably a question that
19 Ms. Callaway could answer.

20 Q. Okay. Now, do the expenditures that
21 have -- that are listed over the 14-plus year period also
22 include costs of litigation related to those MGP sites?

23 A. There are legal expenses included in there,
24 yes. Yes.

25 Q. And do those litigation costs and legal

1 expenses also include the costs of litigation with other
2 states?

3 A. I don't know the answer to that.

4 Q. Is it your position that MGP costs incurred
5 at an individual site should be considered nonrecurring?

6 A. Yes. Once those -- that site is cleaned
7 up, we won't have to clean it up again.

8 Q. Would you agree that MGP costs in total
9 have been and will be recurring costs to MGE?

10 A. In the immediate future it looks like these
11 will be costs that we will be forced to incur, yes. We
12 don't know how much those costs are going to be because of
13 the unusual cleanup that takes place at each one of these
14 sites, but it does look -- yes, there will be costs in the
15 immediate future.

16 Q. Those costs are ongoing?

17 A. The costs will be ongoing, but we don't
18 know what they're going to amount to.

19 Q. So there is uncertainty over those costs?

20 A. There is definitely uncertainty, yes.

21 Q. And Mr. Noack, I may have asked a little
22 bit earlier, but a number of MGP sites MGE has been
23 identified as having some responsibility for assisting in
24 cleanup, you said something like 19 or 20; is that right?

25 A. Yes. And whether or not we are going to be

1 forced to clean up, these are sites that are identified
2 within our service territory, is my understanding.
3 Nothing has been decided as to whether or not there needs
4 to be cleanup on these sites yet or anything, but these
5 are the sites that are within our service territory.

6 Q. And the number that MGE is a potentially
7 responsible party?

8 MR. COOPER: I would like to -- I would
9 like to object to the question, because when Mr. Berlin
10 asked whether MGE is a potentially responsible party, he's
11 asking Mr. Noack to make a legal judgment under CERCLA as
12 to whether they have been identified as a, quote/unquote,
13 potentially responsible party. I don't know that
14 Mr. Noack is qualified to make that assessment or to
15 answer that question.

16 MR. BERLIN: Well, let me rephrase.

17 JUDGE JONES: Does that mean you withdraw
18 the question?

19 MR. BERLIN: I withdraw it and rephrase it.

20 BY MR. BERLIN:

21 Q. How many sites has MGE been identified as a
22 potentially responsible party?

23 A. I don't know the answer to that.

24 Q. Now, looking at Schedule 3, what dollar
25 amount had MGE spent on its MGP costs as of March 31,

1 2008?

2 A. The amount spent on MGP costs is
3 \$11,463,917 less \$727,995, which are non-FMGP
4 expenditures.

5 Q. So at the bottom it says MGE's net expense
6 or credit as of March 31, 2008 is a credit of \$609,166?

7 A. That's correct. As of March 31, 2008, our
8 insurance recoveries and the \$3 million that we agreed to
9 in the purchase from Western still exceeded the
10 expenditures by \$609,000.

11 Q. So MGE's running a credit up through
12 March 31 of 2008, correct?

13 A. That's correct. And that credit is no
14 longer a credit as of June 30, 2008.

15 Q. Now, Mr. Noack, I'm going to hand out my
16 second exhibit premarked Exhibit 11, and it's an MGE work
17 paper set Schedule 3. May I approach?

18 JUDGE JONES: Yes, you may. And this is
19 HC?

20 MR. BERLIN: This document is not HC. It
21 was declassified.

22 JUDGE JONES: Okay.

23 THE WITNESS: May I ask a question of my
24 attorney about the HC part of this?

25 JUDGE JONES: Sure. You can just go ahead

1 and go over to his table and ask him.

2 THE WITNESS: Thank you, your Honor.

3 JUDGE JONES: You're welcome.

4 BY MR. BERLIN:

5 Q. Okay. Mr. Noack, of course, the first
6 exhibit, No. 10, is Staff Exhibit 3, which you had
7 identified as a document you had worked on with
8 Mr. Harrison, and Exhibit No. 11 is a work paper set that
9 includes this particular schedule 3 with some of your
10 notes, and I have a few questions that -- regarding both
11 documents as I proceed.

12 Now, going forward from March 31 of this
13 year to the end of June 30th, 2008, is it correct that MGE
14 now shows a final balance of \$845,000 spent on MGP costs?

15 A. The internal accounting records that we
16 had, these are not the expenditures that were submitted to
17 Western, but our internal accounting showed that as of
18 June 30, we had approximately \$845,233 that was a net cost
19 after recoveries, yes.

20 Q. So is that number an estimate?

21 A. It's --

22 Q. The \$845,000?

23 A. It was an estimate as far as it goes to --
24 yes, what we submitted to Western. We had not gone
25 through all the costs. Our accounting gets the invoices

1 in from various parts of the company, they code them,
2 excuse me, trying to put a project description on them,
3 and then for purposes of income, we have an expense.

4 Q. Does the \$845,000 represent costs less
5 recoveries?

6 A. The 845,000 is a net cost after the
7 recoveries, correct.

8 Q. Now, are these MGP costs abnormal and
9 significantly difference from the normal and typical
10 activities of MGE over the past 14 years?

11 A. They are in the fact that each one of these
12 sites is completely different, and what we might have to
13 do at any one site at any one time is kind of basically
14 out of our control. We have to do what we have to do to
15 clean it up. And so we don't know what costs are going to
16 be incurred at any point in time really.

17 Q. And yet even though there's a 14-year
18 history of MGP costs, it is still your testimony that
19 these costs are unusual and infrequent?

20 A. Yes, absolutely. I mean, as you -- if you
21 look at that list, in 1995 we had \$22,000 of expenditures.
22 In 2003 we had \$6.4 million. In 2006 we had \$258,000 in
23 total. In the first quarter of 2008 we had 885,000, and
24 we've got budgeted for the last six months of this year
25 approximately \$3 million. Until we get into a site, we

1 don't know what it's going to cost to do this.

2 Q. Now, you indicated you have budgeted for
3 this activity; is that correct?

4 A. Yes.

5 Q. Now, do many LDCs like MGE incur these same
6 kind of costs?

7 A. I think many LDCs do have the problem of
8 remediation costs, yes.

9 Q. And in your surrebuttal testimony on pages
10 15 and 16, you mention a review of utility commissions
11 that you conducted. Are you familiar with that?

12 A. I am.

13 Q. And you state that over the past 15 years,
14 29 state utility commissions plus the District of Columbia
15 have issued some type of order either allowing MGP
16 remediation cost deferral or allowing the recovery of
17 these costs in rates. Is that testimony still correct?

18 A. That is correct.

19 Q. Now, does the June 30th balance amount
20 include any non-MGP costs?

21 A. This particular cost, the 845 -- the
22 845,233, only includes the cost that we have coded to MGP.

23 Q. And you're not seeking to defer any of the
24 non-MGP costs, correct?

25 A. No.

1 Q. Does the number include any portion of
2 Southern Union's initial liability of \$3 million?

3 A. It has already been deducted from the
4 costs.

5 Q. Given that we've just seen a history of
6 over 14 years of MGP expenditures, you indicated that MGE
7 develops a budget for these costs, correct?

8 A. We have a budget for the last part of 2008,
9 yes.

10 Q. Now, going to your work paper set, in the
11 middle of that document, the work paper set, which is
12 premarked Exhibit 11, you see the middle of the document
13 where it says '08 July to '08 December budget, \$3 million?

14 A. Oh, in my handwritten notes?

15 Q. In your handwritten notes. Those are your
16 handwritten notes?

17 A. Yes. Those are my handwritten notes, yes.

18 Q. Okay. And so does -- does that represent a
19 budgeted number, the \$3 million or the 3.8?

20 A. The \$3 million is the budgeted number, the
21 estimate that I believe it's going to take that we're
22 going to spend at the St. Joe site in the second half
23 of 2008.

24 Q. So is it correct to say that MGE plans a
25 budget for extraordinary expense items that are also

1 unusual, unique and nonrecurring?

2 A. We try and put a place holder in for an
3 expenditure that we know is coming, yes. We know that we
4 have to clean up St. Joe. We've got the orders to clean
5 that up. We don't know how much that's going to cost.
6 Right now we're estimating that we're going to spend
7 \$3 million in the second half of 2008 in cleanup costs.

8 Q. Now I'm going to shift over and ask some
9 questions regarding the environmental liability agreement
10 between Southern Union and Western Resources. And
11 Mr. Noack, you did indicate earlier that you are familiar
12 with that agreement?

13 A. Yes. I have it as an attachment, as a
14 schedule to my direct testimony.

15 Q. Okay. And I think you find that also in
16 Public Counsel's testimony as well, but --

17 A. I believe so, yes.

18 Q. Okay. And for the record, this agreement
19 is no longer classified highly confidential?

20 A. No.

21 Q. And would you agree this agreement provides
22 for five tiers of five separate levels of recovery of MGP
23 costs?

24 A. Yes.

25 Q. And would you please describe the five

1 levels of recovery?

2 A. I'll read the -- basically the -- if I can
3 find one.

4 Q. Is the first level of recovery insurance?

5 A. Yes, insurance, first line of recovery.
6 Second is potentially responsible party, first line
7 recovery.

8 Q. That would be the second line?

9 A. The second.

10 Q. And the third line of recovery is?

11 A. It's recovery of remediation costs through
12 regulated cost of service.

13 Q. Customer rates?

14 A. Yes.

15 Q. And then the fourth line of recovery?

16 A. Buyers's initial sole liability amount.

17 Q. Which was \$3 million?

18 A. Correct.

19 Q. And the fifth line of recovery?

20 A. Is the buyer's/seller's shared liability
21 amount.

22 Q. And that sharing arrangement is a 50/50
23 arrangement with Western Resources?

24 A. Yes, of the \$15 million.

25 JUDGE JONES: Let me interrupt. Mr. Noack,

1 what page of the agreement are you referring to?

2 THE WITNESS: The first -- I can go through
3 this real quick. The first one is on page 3. Page 4 is
4 the second. That's potentially responsible first line of
5 recovery. The third is recovery through regulated cost of
6 services on page 5. The fourth, buyer's initial total
7 liability amount, begins on page 5. And the fifth,
8 buyer's/seller's shared liability amount, begins on page
9 6.

10 JUDGE JONES: Thank you, sir. You may
11 continue.

12 BY MR. BERLIN:

13 Q. Now, how much has MGE collected from the
14 insurance line of recovery?

15 A. \$8,345,000.

16 Q. How much does MGE estimate that it will
17 collect from insurance in the future?

18 A. We don't know.

19 Q. How much has MGE collected from potentially
20 responsible parties?

21 A. I couldn't answer that. I don't know.

22 Q. Do you have an estimate of how much MGE
23 will collect in the future from PRPs?

24 A. No.

25 Q. Have you identified the PRPs?

1 A. I don't know who the P -- if any PRPs have
2 been identified or not. Mr. Morgan might know that, but I
3 don't.

4 Q. Okay. With regard to the rate recovery
5 tier, are any MGP costs presently included in rates that
6 have been established for MGE?

7 A. No.

8 Q. When has MGE sought recovery of the
9 specific costs it is seeking to defer under this
10 application? Would that be in the 2004 and 2006 rate
11 cases?

12 A. Ask that question one more time, please.

13 Q. When has MGE sought rate recovery of the
14 specific costs it's seeking to defer in this application?

15 A. We have not sought recovery of specific
16 costs yet in a rate case. In 2004 and 2006, we asked to
17 set up a fund whereby we would set some funds aside in an
18 interest bearing account for the day that our insurance
19 recoveries ran out. Our sharing mechanism with Western
20 was completed and those costs would have to go through
21 rates.

22 Q. Are you referring to the environmental
23 response fund proposals that were rejected by the
24 Commission?

25 A. That's what I'm referring to, yes. That

1 was the purpose of asking for those funds.

2 Q. Does MGE have to seek recovery of these MGP
3 costs in rates before going to Western Resources for
4 recovery?

5 MR. COOPER: Objection, calls for a legal
6 conclusion.

7 MR. BERLIN: I disagree. He's already
8 named the five levels of recovery, and so I think that
9 he's qualified to answer whether or not they have to go to
10 Western Resources before --

11 JUDGE JONES: You're asking him to
12 interpret the contract, the liability agreement?

13 MR. BERLIN: If it's his understanding.

14 JUDGE JONES: Is that what you're asking
15 him to do?

16 MR. BERLIN: Okay. Let me rephrase.

17 BY MR. BERLIN:

18 Q. My question then is, is it your
19 understanding that MGE must seek recovery of its MGP costs
20 in rates before going to Western Resources?

21 MR. COOPER: I have the same objection,
22 your Honor.

23 JUDGE JONES: Objection sustained.

24 BY MR. BERLIN:

25 Q. Would you know of Western Resources'

1 position on that?

2 A. No.

3 Q. Now, does MGE consider the filing of this
4 application to be seeking of recovery of these costs in
5 rates?

6 A. No. We're simply asking for permission to
7 defer these costs to be considered in our next rate case.

8 Q. And so MGE considers this application as a
9 step towards seeking recovery in rates; is that correct?

10 A. If there are costs -- yes. Yes, it would
11 be a step, yes.

12 Q. You indicated earlier that Southern Union's
13 initial liability was \$3 million. Are you aware whether
14 Southern Union has collected any reimbursements from
15 Western Resources?

16 A. As part -- under the environmental
17 liability agreement?

18 Q. Yes, under the cost sharing provisions of
19 that agreement, are you aware of any collections as of
20 this date from Western Resources?

21 A. No, I'm not.

22 Q. And you currently have a claim in to
23 Western Resources; is that correct?

24 A. Yes, that's correct.

25 Q. And what is the amount of that claim?

1 A. I don't know the specific amount. I know
2 that a letter has been sent. I don't know the amount
3 that's in that letter.

4 Q. Are you referring to the demand letter of
5 July 9 --

6 A. Yes.

7 Q. -- 2008?

8 A. Yes.

9 Q. And that's the first demand letter sent; is
10 that correct?

11 A. I believe so. There's ongoing
12 correspondence between the two companies on a quarterly
13 basis, but I believe that's the first demand.

14 Q. Under the sharing arrangement, could you
15 agree the maximum amount of expenses that could be shared
16 between the companies is \$15 million?

17 A. That's a number in the liability agreement.

18 Q. And when does the sharing agreement expire?

19 A. It's my understanding that it expires
20 January of 2009.

21 Q. If MGE's allowed rate recovery of
22 100 percent of its incurred MGP costs, do you believe that
23 recovery of those costs from Western Resources is
24 unlikely?

25 MR. COOPER: Objection, would call for

1 Mr. Noack to interpret the ELA.

2 JUDGE JONES: I'll sustain the objection.

3 I think it's probably more speculative in nature than
4 interpretation, but the objection is sustained.

5 BY MR. BERLIN:

6 Q. Mr. Noack, do you consider it likely that
7 MGE will obtain some form of some recovery of MGP costs
8 from Western Resources under the terms of the agreement?

9 MR. COOPER: Objection, calls for
10 speculation.

11 JUDGE JONES: Objection sustained.

12 BY MR. BERLIN:

13 Q. Well, considering that the demand letter
14 was first sent July 9th of 2008, would you agree that if
15 MGE doesn't pick up the pace on its MGP site remediation
16 activities, that your company potentially may lose a
17 maximum of seven and a half million dollars of cost
18 reimbursements from Western Resources?

19 MR. COOPER: Objection, speculation.

20 JUDGE JONES: Can you ask that question
21 again, Mr. Berlin? You don't have to rephrase it. Just
22 ask it like you just asked it.

23 MR. BERLIN: Well, my question is, is that
24 if MGE doesn't pick up the pace on its MGP site
25 remediation activities requests for reimbursement, could

1 MGE potentially lose 50 percent of the \$15 million of cost
2 reimbursements from Western Resources, the 7 and a half
3 million? Could MGE lose that?

4 JUDGE JONES: The objection is sustained.
5 Go ahead with your next question.

6 BY MR. BERLIN:

7 Q. Well, you would agree, then, that
8 \$15 million is the amount that MGE and Western Resources
9 may share in cost reimbursements for MGP related
10 activities; would you agree with that?

11 A. That's the number that's in the agreement,
12 yes.

13 Q. Now, if MGE has not submitted claims to
14 Western Resources upon the expiration of the agreement in
15 January of 2009, who pays for those cost reimbursements
16 for cleanup of the MGP sites?

17 MR. COOPER: I object again to this
18 question. I think it requires Mr. Noack to interpret the
19 terms of the ELA and, in fact, I think would disagree with
20 Mr. Berlin's interpretation of the ELA.

21 JUDGE JONES: The objection is sustained.
22 Mr. Berlin, I see where you're trying to go. If you have
23 arguments, legal arguments concerning the environmental
24 liability agreement, make those in post-hearing briefs.

25 MR. BERLIN: What I'm trying to do, judge,

1 is try to find out under these five levels of recovery,
2 which Mr. Noack appears to be quite knowledgeable of,
3 whether -- who picks up these costs.

4 MR. JONES: The agreement says who picks
5 the costs up. Make your arguments for who you think picks
6 them up why? And I'm not real sure then why you're going
7 that way. I'm sure you're trying to show some motivation
8 on MGE's part to try to hurry up and do something about
9 the costs, but, you know, it's still the interpretation of
10 the agreement.

11 MR. BERLIN: Well, you know, Judge, the
12 motivation is that there's seven and a half million
13 dollars that could -- that are obligated to be paid by
14 Western Resources for MGP plant remediation activities.
15 My question was geared to if they don't stand in line to
16 pay those costs for reimbursements for some reason whether
17 they void the agreement, whether they -- time has expired,
18 who pays for it.

19 JUDGE JONES: Right. In order to reach
20 those conclusions, the agreement has to be interpreted.
21 So that's part of your argument in any post-hearing brief
22 that you file.

23 BY MR. BERLIN:

24 Q. Mr. Noack, if the Commission were to allow
25 MGP costs to be deferred in an AAO, would you agree that

1 MGE should be permitted to defer only 50 percent of those
2 costs in view of the fact of this cost-sharing provision
3 with Western Resources?

4 A. No.

5 Q. Do you think it a possibility if the
6 Commission were to approve 100 percent deferral of MGP
7 costs, that Western Resources might void the sharing
8 arrangements?

9 MR. COOPER: Objection, calls for
10 speculation.

11 JUDGE JONES: Objection sustained.

12 BY MR. BERLIN:

13 Q. What happens to the company's MGP deferral
14 if MGE collects money for MGP reimbursements from Western
15 Resources under the liability agreement?

16 A. If we receive a check from Western
17 Resources?

18 Q. Yes.

19 A. It would offset the amount that we've
20 deferred. It would be -- it would be simply like another
21 insurance recovery or other amount received.

22 Q. And so what happens if the company's MGP
23 deferral -- to that company's deferral if MGE does not
24 succeed in collecting money for MGP reimbursements from
25 Western Resources?

1 A. We would not have any amount to offset
2 against the deferred costs.

3 Q. And those costs would be picked up in the
4 next general rate proceeding, correct?

5 A. We would ask for those costs in the next
6 rate case, yes.

7 MR. BERLIN: Thank you, Judge. That
8 concludes my questioning of Mr. Noack. Thank you,
9 Mr. Noack.

10 JUDGE JONES: Mr. Poston, just to let you
11 know, I'm intending to take a break at 10:30, so go ahead
12 and get started. You may have to get cut off.

13 CROSS-EXAMINATION BY MR. POSTON:

14 Q. Good morning, Mr. Noack.

15 A. Good morning.

16 Q. Can you tell me, when did Southern Union
17 first become aware of Western Resources' manufactured gas
18 plant liability?

19 A. No, I can't.

20 Q. Were you an active member in the
21 negotiations for the purchase by Southern Union of
22 Missouri properties from Western Resources?

23 A. No, I was not. I didn't begin my -- I
24 didn't start at MGE until 2000.

25 Q. Are you familiar with Case No. GM-94-40

1 wherein Western Resources and Southern Union filed a joint
2 application for an Order authorizing the sale, transfer
3 and assignment of gas service assets from Western
4 Resources to Southern Union?

5 A. I'm not familiar with the details of that
6 Order, no.

7 MR. POSTON: May I approach?

8 JUDGE JONES: Yes, you may.

9 BY MR. POSTON:

10 Q. Mr. Noack, could you please identify the
11 document that I handed you?

12 A. I have in front of me a Report and Order in
13 Case No. GM-94-40.

14 Q. And I've tabbed that for you. Can you tell
15 me the date that the Commission issued the Order?

16 A. Dated December 29th, 1993.

17 Q. And does this Order include an
18 Attachment A, which is a Stipulation & Agreement between
19 the parties to that case?

20 A. It does.

21 Q. And the stipulation included Southern
22 Union, Western Resources, Staff, as well as Public
23 Counsel; is that correct?

24 A. Yes, it appears to. Yes.

25 Q. And the date on that Stipulation &

1 Agreement is December 16th, 1993; is that correct?

2 A. It was filed December 16th, yes.

3 Q. And what date did Western Resources and
4 Southern Union enter into the Environmental Liability
5 Agreement?

6 A. January 31st, 1994.

7 Q. So that's a full month after the Commission
8 approved the transfer and approved the Stipulation &
9 Agreement; is that correct?

10 A. It appears to be, yes.

11 Q. What are your responsibilities with
12 Southern Union regarding remediation of the former
13 manufactured gas plant sites?

14 A. I don't have any responsibilities for
15 Southern Union. As Director of Regulatory Affairs, I was
16 asked to submit an application to the Commission to
17 request an AAO to defer the costs that we're incurring at
18 the present time.

19 Q. This question may be better posed for
20 Ms. Callaway, but do you know if these manufactured gas
21 plant sites used to provide natural gas to Missouri were
22 used to provide gas to Missouri consumers only or do they
23 also provide gas in Kansas?

24 A. I don't have -- I don't know.

25 Q. Would you agree that generally speaking

1 once a -- each site is fully cleaned, fully remediated and
2 no longer a liability for Southern Union, that the value
3 of the property will increase from its present value?

4 A. It may. That I don't know. The property
5 that we're cleaning up right now is used by the company,
6 so --

7 Q. Assume for -- if you will, that several
8 years down the road, after these sites are fully
9 remediated and no longer an environmental liability for
10 Southern Union, and assume Southern Union sells each site
11 or sells Missouri properties altogether. Would Southern
12 Union be required to share any premium before book value
13 with Missouri consumers?

14 A. I don't know.

15 Q. I'd like to talk with you for a minute
16 about insurance recoveries and the insurance policies that
17 have been reimbursing Southern Union. These were policies
18 that were taken out by a predecessor owner of the gas
19 plant sites; is that correct?

20 A. I don't know who took out these policies.
21 I would assume, yes, they were.

22 Q. And do you know how many different insurers
23 have reimbursed Southern Union?

24 A. I believe four. Well, Southern Union to
25 the benefit of Missouri Gas Energy, I believe it's four.

1 Q. Would you agree that, generally speaking,
2 an insurance policy works so that the party purchasing the
3 insurance policy pays a premium and in return the
4 insurance company assumes the risk of liability?

5 A. Yes.

6 Q. And the party paying that risk premium may
7 benefit when liability incurs because they can turn to the
8 insurer to pay for that liability?

9 A. Yes.

10 Q. Do you know if any of the properties and
11 buildings from Station A/Station B of the St. Joseph site
12 were ever excluded from rate or prohibited from earning a
13 return on value?

14 A. No.

15 Q. Has Southern Union deducted the former
16 manufactured gas plant remediation expenses on its tax
17 return?

18 A. I believe so. I think there is deferred
19 taxes with that. I believe, yes.

20 Q. Isn't it true that in response to a Data
21 Request, you indicated that Southern Union's savings from
22 that tax, from those tax savings have been in the range of
23 37 to 38 percent?

24 A. That's the effective tax rate, so yes, I
25 believe so.

1 Q. And the \$845,000 figure that you claim is
2 unreimbursed, has that been reduced by any tax savings?

3 A. No, it hasn't.

4 MR. POSTON: That's all I have.

5 JUDGE JONES: Okay. At this time it's not
6 quite 10:30, but let's go ahead and take a five-minute
7 break and we'll return with questions from Commissioners.

8 (A BREAK WAS TAKEN.)

9 JUDGE JONES: We'll go back on the record
10 now in Case GU-2007-0480, and we'll start with questions
11 from Commissioner Murray.

12 COMMISSIONER MURRAY: I have no questions,
13 Judge. Thank you.

14 JUDGE JONES: Commissioner Gunn?

15 QUESTIONS BY COMMISSIONER GUNN:

16 Q. I actually just have one question. What
17 are these sites being used for today?

18 A. The Kansas City station, named Station B,
19 was our operations center where we had all of our outside
20 plant people, our big trucks, backhoes, that kind of
21 equipment, and we have since had to move those people and
22 that equipment to a different site while that site is
23 cleaned up.

24 In St. Joe, it's St. Joe Service Center,
25 again, it's the -- it's the operations center in St. Joe,

1 and we have temporarily moved those people while the
2 cleanup is going on.

3 In Independence, it's our fleet center that
4 we own that is on the list of sites. Joplin, I believe
5 it's our office in Joplin and service center that's on the
6 list, and then I believe that covers them all. I think
7 those are the ones. So the five owned sites that are all
8 used by MGE or have been for current operations.

9 Q. Are all of the sites -- you mentioned two
10 that had to be -- or people were moved because of the
11 environmental considerations. Are all of the sites not
12 occupied currently because of the environmental
13 considerations or just those two?

14 A. Just those two. Just those two. The
15 question would be better for Crystal, but -- Callaway, but
16 I don't think that it's been decided, you know, what kind
17 of cleanup has to take place at those other sites yet.

18 COMMISSIONER GUNN: Thank you. That's all
19 the questions I have.

20 JUDGE JONES: Thank you. Chairman Davis,
21 any questions?

22 CHAIRMAN DAVIS: No questions, Mr. Noack.

23 JUDGE JONES: Any recross based on
24 questions from the Bench?

25 MR. BERLIN: No, Judge.

1 MR. POSTON: No, thank you.

2 JUDGE JONES: We'll move on to redirect
3 then. Mr. Cooper.

4 MR. COOPER: Thank you, your Honor.

5 REDIRECT EXAMINATION BY MR. COOPER:

6 Q. Mr. Noack, I think in regard to an early
7 question from Mr. Berlin -- well, let me back up. I think
8 Mr. Berlin asked you in an early question for a number of
9 sites where MGE was listed as a potentially responsible
10 party. Do you remember that?

11 A. Yes.

12 Q. When you answered that question, were you
13 answering it in regard to the phrase potentially
14 responsible party as it may exist under CERCLA?

15 A. No. No. Just sites that are identified.

16 Q. And by identified, you mean they are merely
17 sites -- identified sites within MGE's service territory?

18 A. Yes.

19 Q. Mr. Berlin also asked you whether -- or he
20 pointed out, I believe, that in the prior proposals in
21 earlier rate cases the company proposed an incentive
22 mechanism where third party recoveries or collections
23 would be shared 50/50 between the company and ratepayers
24 essentially. Do you remember that?

25 A. Yes.

1 Q. In the current numbers that are before the
2 Commission, has the company given credit for 100 percent
3 of third-party collections?

4 A. Yes, they have. We have. I have.

5 Q. In response to some questions from
6 Mr. Berlin, you referred to the \$845,233 figure as of
7 June 30 as an estimate. Do you remember that?

8 A. I do.

9 Q. Since that initial estimate, has that
10 number increased or decreased?

11 A. Since I did my surrebuttal testimony, I've
12 gotten an updated schedule from Southern Union which will
13 be sent to Western for the six months ended June, and that
14 number is now \$944,000 as opposed to the 845.

15 Q. Mr. Berlin asked you some questions about
16 what amounts were budgeted for MGP costs for the remainder
17 of this year. Do you remember that?

18 A. Yes.

19 Q. I think you referred to a figure of
20 \$3 million; is that correct?

21 A. That's correct.

22 Q. What is that estimate related to?

23 A. The \$3 million is simply the cost that we
24 think we're going to have to incur the rest of this year
25 at the St. Joe site.

1 Q. Mr. Berlin asked you whether the company
2 would be willing to limit its deferral to 50 percent of
3 its expenses. Do you remember that?

4 A. I do.

5 Q. And I believe you answered no, correct?

6 A. That's correct.

7 Q. Why is that?

8 A. Well, we don't -- we don't know if we'll
9 receive any money at all from Western, and so we will --
10 we're requesting to defer all of the costs, and then if we
11 receive something, we will offset that deferral with all
12 of that money that we receive.

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

15 JUDGE JONES: Okay. Thank you. You may
16 step down, Mr. Noack. MGE you can call your next witness.

17 MR. COOPER: We call Mr. Dennis Morgan.

18 (Witness sworn.)

19 JUDGE JONES: Thank you, sir. You may be
20 seated.

21 DENNIS MORGAN testified as follows:

22 DIRECT EXAMINATION BY MR. COOPER:

23 Q. Please state your name.

24 A. Dennis Morgan.

25 Q. By whom are you employed and in what

1 capacity?

2 A. Southern Union Company, Senior Vice
3 President - Litigation.

4 Q. Have you caused to be prepared for the
5 purposes of this proceeding certain surrebuttal testimony
6 in question and answer form?

7 A. I have.

8 Q. Is it your understanding that that
9 testimony has been marked as Exhibit 4HC and 4NP for
10 identification?

11 A. Yes.

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

14 A. No.

15 Q. If I were to ask you the questions which
16 are contained in Exhibits 4HC and 4NP today, would your
17 answers be the same?

18 A. Yes.

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

21 A. Yes.

22 MR. COOPER: Your Honor, I would offer
23 Exhibits 4HC and 4NP into evidence and tender the witness
24 for cross-examination.

25 JUDGE JONES: Any objections to Exhibits

1 4HC and 4NP?

2 MR. BERLIN: No objection, Judge.

3 JUDGE JONES: Hearing none, Exhibits 4HC
4 and 4NP are admitted into the record.

5 (EXHIBIT NOS. 4HC AND 4NP WERE RECEIVED
6 INTO EVIDENCE.)

7 JUDGE JONES: And we'll move on to
8 cross-examination from Staff.

9 CROSS-EXAMINATION BY MR. BERLIN:

10 Q. Good morning, Mr. Morgan.

11 A. Good morning.

12 Q. Mr. Morgan, again for the record, could you
13 please state for the Commission your current job title and
14 responsibilities and how long you've been in this
15 position?

16 A. Yes. My current job title is Senior Vice
17 President for Litigation for Southern Union Company. I've
18 been in that position since 2004.

19 Q. And how long have you been employed by
20 Southern Union?

21 A. Since 1981 by Southern Union or its
22 subsidiaries.

23 Q. How long have you performed work related to
24 MGE's MGP matters?

25 A. It would be since I assumed the role of

1 chief legal officer for Southern Union Company in January,
2 I believe, of 1991.

3 Q. Besides MGE, can you name the other
4 Southern Union affiliates for which you have performed
5 work related to MGP matters?

6 A. It would be New England Gas Company,
7 Pennsylvania PGE, our former Pennsylvania subsidiary.
8 Southern Union Gas Company, which was the former division
9 of Southern Union Company that operated in Texas, Oklahoma
10 and prior to that Arizona and New Mexico.

11 Q. From your experience with these MGEP (sic)
12 matters, what has been the average time duration between
13 incurring the MGP costs to when MGE actually receives
14 reimbursement from insurance carriers or other third
15 parties?

16 A. I don't know that I could come up with any
17 kind of an average.

18 Q. Okay. Now, would it be accurate to state
19 that MGP cost reimbursements from insurance carriers that
20 are related to the costs that MGE is seeking to defer
21 could be years down the road?

22 A. Some could be years down the road. I would
23 anticipate that some might be closer in time.

24 Q. And have you received any response to
25 date from Western Resources concerning your July 9th

1 reimbursement demand letter?

2 A. Yes. Shortly after sending the letter to
3 Marty Bregman, I'd received a call from Marty. He told me
4 that he had passed the letter on to those at Western who
5 would be reviewing and making a decision with respect to a
6 response. And then he followed up and asked, by the way,
7 how much more do you plan on -- on spending prior to the
8 expiration of the agreement?

9 Q. Okay. Well, when do you expect to get a
10 decision from them?

11 A. I don't really know when they will be
12 responding.

13 Q. If Western Resources refuses to pay all or
14 part of a claim that MGE has sent to them, what recourse
15 does MGE/Southern Union have?

16 A. Pursuant to the environmental liability
17 agreement, I believe the matter becomes subject to
18 alternative dispute resolution.

19 Q. Now --

20 A. And I might add, MGE/Southern Union has
21 never been shy about -- about pressing its -- what it
22 believes its rights to be.

23 Q. Well, what additional steps could MGE take
24 to collect those monies?

25 A. Besides ADR? I'm sorry.

1 Q. Well, let me back up a second. For
2 reimbursements, what steps or what sources of recovery
3 could MGE pursue for reimbursements?

4 A. Other than -- other than Western Resources?

5 Q. Yes.

6 A. Well, the matter here today, of course.
7 Insurance, which we're already in the process of doing.
8 Those would be the only two available to us right now. If
9 there were any PRPs which have been identified for which
10 we felt it was appropriate to pursue, we would, of course,
11 be doing that as well.

12 Q. Now, you mentioned that the matter here
13 today is a potential source of recovery for these costs?

14 A. It's a deferral and I think, as Mr. Noack
15 indicated, at some point could be the subject of a rate
16 proceeding.

17 Q. Does Southern Union develop a budget plan
18 for its MGP costs?

19 A. I believe they do.

20 Q. In your surrebuttal testimony in this case,
21 it was filed July 9th, 2008; is that correct?

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

23 Q. And isn't that the same date as the demand
24 letter you sent to Western Resources?

25 A. Yes.

1 Q. Now, did you or your management group make
2 a deliberate decision to send the demand letter on the
3 same date that you filed your testimony in this case?

4 A. It was something that needed to be done.
5 You may recall that in the past, of course, we've been
6 denied rate recovery. One of the arguments that I recall
7 that had been made to that extent was, well, you really
8 haven't spent -- you really haven't spent any money.

9 Southern Union has not been about the
10 business of spending money it doesn't think it needs to
11 spend with respect to manufactured gas cleanups. I think
12 we've been prudent in that regard.

13 Q. Well --

14 A. If I can finish my answer? Because it does
15 really -- it really does -- it will explain, I think,
16 why -- why it all is happening now. The St. Joe -- the
17 St. Joe facility is something that needs to be done. It
18 needs to be done now. That in turn has kicked that
19 amount, you know, into now this cost-sharing portion of
20 the Western Resources agreement. So it is the propitious
21 time to send the letter to Western and put them on notice
22 that you are now -- we've now moved into the area where
23 you owe us.

24 Q. Yeah. Your view, I guess, is that five
25 months left remaining on this environmental liability

1 agreement is never too late to try to get recovery?

2 A. Well, we're spending the money when the
3 money needs to be spent. We have budgeted another 3 or so
4 plus million dollars through the end of the year. We
5 intend, of course, to notify Western of those amounts. We
6 expect to get recovery from Western for those amounts.

7 Q. So you expect to get recovery from Western
8 for budgeted amounts that are not ascertainable?

9 A. We expect to get recovery from Western for
10 amounts we spent.

11 Q. So you do budget as part of your plan for
12 MGP costs? You plan a budget for these costs?

13 A. I think I answered that, yes.

14 Q. Now, I have some questions regarding this
15 liability agreement and the five tiers -- or five levels
16 of MGP cost recovery. Has Southern Union identified any
17 potentially responsible parties?

18 A. We've identified a number of potentially
19 responsible parties with respect to a number of sites. We
20 have not at this point determined that there are any PRPs
21 for which we should seek recovery at this time in the
22 areas which either have been or are being set to be
23 remediated.

24 Q. How many PRPs have you identified?

25 A. I can't answer that question without

1 revealing confidential information.

2 Q. Have you sought reimbursement from them?

3 A. We've already received reimbursement from
4 Honeywell in a former cleanup. Other than that, there are
5 none at this time for which costs have been expended for
6 which we believe reimbursement may be appropriate at this
7 time.

8 Q. Now, let's talk about Honeywell. The
9 Honeywell agreement was an agreement, a settlement
10 agreement with the Kansas City Port Authority, was it not?

11 A. Right.

12 Q. So when they settled and had agreement,
13 they fell out of the picture?

14 A. Correct.

15 Q. So they're not today viewed as a
16 potentially responsible party?

17 A. That's correct, but they made a
18 contribution to the cleanup as a PRP, and but for our
19 efforts would not have.

20 Q. And does Southern Union or MGE intend or
21 plan to get more insurance reimbursements now?

22 A. Yes.

23 Q. And do you have an estimate in the future?

24 A. No, I do not. We have a number of claims
25 outstanding to a number of insurers, many of which are in

1 the London market, a process which is exceedingly
2 difficult and extremely expensive and time consuming to
3 pursue. We are about that business. We have been about
4 that business. We'll continue to be about that business.

5 Q. Now, in the event that the Commission
6 approves the company's MGP cost deferral, would you agree
7 that because of this cost sharing arrangement with Western
8 Resources, that 50 percent of these costs should not be
9 deferred?

10 A. No.

11 Q. Now, if all costs are deferred as part of
12 this AAO, presuming that the Commission should approve it,
13 could the 50 percent sharing arrangement by Western
14 Resources under the agreement be voided possibly?

15 A. I don't believe so.

16 Q. Now, would you agree that if the Commission
17 were to approve this AAO, that MGE would then defer MGP
18 costs that are also potentially recoverable from Western
19 Resources?

20 A. Yes.

21 Q. And these costs --

22 A. But I might add, we would continue to go
23 after Western Resources for those costs --

24 Q. I understand.

25 A. -- as I said earlier.

1 Q. And these costs, costs that are shared on a
2 50/50 arrangement with Western Resources, are only
3 recoverable through the end of January '09; is that right?

4 A. No. No. Only costs incurred through the
5 end of January '09 are recoverable. We can continue and
6 will continue if necessary the process of recovering those
7 costs well into the future.

8 Q. Just a minute, Mr. Morgan. I have a couple
9 questions that were left over here.

10 Now, do you consider it likely that MGE
11 will obtain some recovery from Western Resources of these
12 MGP costs under the agreement?

13 A. I think any opinion that I would have with
14 respect to the outcome of potential litigation would be
15 something that I'm not in a position to disclose. All I
16 can tell you is that we will -- we intend to pursue
17 recovery.

18 Q. So what happens, then, if Western Resources
19 disagrees with MGE's currently pending claim for
20 reimbursement of MGP costs?

21 A. Then I would expect that the matter would
22 be taken to the next level of dispute resolution.

23 Q. And you would follow that level pursuant to
24 the terms of the environmental liability agreement?

25 A. We would examine whatever options we think

1 are best available to us. I don't want to rule out any
2 option at this time as I sit here. I only offer that ADR
3 is available under the agreement.

4 Q. And can you disclose any other steps MGE
5 will take if Western Resources refuses the claim?

6 A. I think if I were to disclose anything
7 else, unfortunately, I'd be getting into the area of
8 attorney/client privilege, and so I'm really not able to
9 do that. I can only tell you that we will tenaciously
10 pursue our claims as we have done across the board in
11 virtually every area.

12 Q. And so if MGE doesn't pick up the pace on
13 the submission of these MGP site remediation related
14 expenses, then MGE could potentially lose -- well, seven
15 and a half million dollars or the balance of what you have
16 claimed and what's left on the table; is that right?

17 A. I guess a better way of saying it, if you
18 don't mind, would be that MGE will do what it needs to do,
19 what it regards as being prudent and necessary in the area
20 of manufactured gas plant remediation up to and including
21 the end of January of the coming year. You know, costs
22 that fall within that -- within that time period are
23 allocable to Western Resources and we will claim them, but
24 we will not do -- we will not artificially take actions
25 which we don't deem to be prudent and necessary and in the

1 best interests of our ratepayers.

2 Q. You'd agree with me, though, that as of
3 March 31, 2008, 14-plus years into the environmental
4 liability agreement, that MGE or Southern Union was
5 running a credit on these expenses?

6 A. I don't know that I'd call it that because
7 keep in mind that the same time when you say we're running
8 a credit, we were out collecting no small sum from our
9 insurance carriers and spending no small sum in doing so,
10 some eight-plus million dollars. So Southern Union was
11 collecting money from its insurers to pay for these
12 remediations that were going on during that period of
13 time.

14 Q. But you'd agree, then, as we discussed
15 earlier, that you were \$609,000 to the good as of
16 March 31 --

17 A. Yes.

18 Q. -- 2008?

19 A. That's correct.

20 Q. Okay. So --

21 A. I guess the point -- the point being,
22 though, it seems curious to charge Southern Union with
23 being somehow remiss in managing its affairs so as to
24 minimize the cost of remediation during that -- during
25 that period of time. It seems like we were good stewards.

1 We are not just willy-nilly going about and promiscuously
2 spending money so as to artificially be able to collect
3 it.

4 Q. Now, Mr. Morgan, about this liability
5 agreement, are you required in this agreement to seek
6 recovery from ratepayers before you go to Western
7 Resources for cost reimbursement?

8 A. If I -- I'm afraid I'm not going to be able
9 to give you an answer to that because that would require
10 me to divulge attorney/client -- attorney/client
11 communications that I've had. So I don't think I can give
12 you my opinion on whether I believe we're required to do
13 so or not. I think I'd have to say that I think the
14 agreement speaks for itself and that our position is going
15 to be that we believe that we're entitled to those sums
16 now.

17 Q. So let's fast forward about five months and
18 it's now the end of January of 2009, and let's say going
19 forward from there more MGP environmental compliance
20 activities are required. Where do you go to get those
21 cost reimbursements?

22 A. We continue to -- we will continue to have,
23 I suspect, cases in front of insurers, many of which are,
24 as I think I indicated, in the London markets and we would
25 be adding, therefore, to whatever claims we might have in

1 those areas if we've have real costs as we've expended.
2 Other than that, of course, I think as we've already
3 talked about, at some point I do anticipate that in the
4 rate process we're going to be coming to the ratepayers of
5 Missouri and asking for reimbursement there.

6 Q. What about potentially responsible parties?

7 A. To the extent we believe we have
8 justifiable claims against responsible parties, we'll
9 absolutely pursue them.

10 MR. BERLIN: That concludes my questions.
11 Thank you, Mr. Morgan.

12 THE WITNESS: Thank you.

13 JUDGE JONES: Now we'll have
14 cross-examination from the Office of Public Counsel.

15 MR. POSTON: Thank you.

16 CROSS-EXAMINATION BY MR. POSTON:

17 Q. Good morning.

18 A. Good morning.

19 Q. I just have a few questions. You're an
20 attorney, correct?

21 A. Yes, sir.

22 Q. And one of the areas of law that you've
23 practiced is environmental law; is that correct?

24 A. I've supervised environmental attorneys.
25 I would not characterize myself an environmental

1 specialist, no.

2 Q. Are you familiar with CERCLA?

3 A. Somewhat, yes.

4 Q. Do you know when CERCLA became law?

5 A. I don't recall, no.

6 Q. Does 1980 sound about right?

7 A. I was going to guess '81, but okay.

8 Q. Okay. And are you familiar with the
9 amendment which is SARA, the 1996 amendment to CERCLA?

10 A. SARA, I've heard it referred to, yes.

11 Q. And under CERCLA and the amendments to
12 CERCLA, can you tell me what entities are potentially
13 liable for site cleanup, Superfund site cleanup?

14 A. You mean owners, occupants, that sort of
15 thing?

16 Q. Right.

17 A. Yes.

18 Q. And are all former owners of a Superfund
19 site potentially liable under CERCLA?

20 A. Yes.

21 Q. So that liability doesn't go away if that
22 former owner sells the property, they're still liable
23 under CERCLA?

24 A. That's correct.

25 MR. POSTON: Thank you. That's all I have.

1 JUDGE JONES: Commissioner Murray any
2 questions?

3 COMMISSIONER MURRAY: Yes. Thank you.

4 QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Good morning.

6 A. Good morning. Can you tell me if your
7 Schedule DKM-1 is totally highly confidential? It's
8 marked as highly confidential, and I wonder, is the entire
9 document highly confidential?

10 A. That's a good question, Commissioner.
11 Obviously the first two pages are, but Report -- but
12 certainly a Report and Order per se from the Commission
13 would not be in and of itself, only as an appendage to the
14 letter that -- that I had sent.

15 Q. And why is the letter highly confidential?

16 A. Because it's the subject of negotiations
17 between -- sensitive negotiations between us and Western
18 Resources on this subject.

19 COMMISSIONER MURRAY: All right. Then,
20 Judge, I'd like to go into closed session, please.

21 JUDGE JONES: Okay.

22 (REPORTER'S NOTE: At this point an
23 in-camera session was held, which is contained in
24 Volume 3, pages 85 through 88 of the transcript.)

25

1 JUDGE JONES: Okay. Commissioner Jarrett,
2 do you have any questions?

3 COMMISSIONER JARRETT: I have no questions.

4 JUDGE JONES: Commissioner Gunn?

5 COMMISSIONER GUNN: Nothing from me.

6 JUDGE JONES: Mr. Chairman?

7 CHAIRMAN DAVIS: No questions.

8 JUDGE JONES: Any recross based on
9 questions from the Bench?

10 (No response.)

11 JUDGE JONES: Seeing none, we'll move to
12 redirect.

13 MR. COOPER: Thank you, your Honor.

14 REDIRECT EXAMINATION BY MR. COOPER:

15 Q. Mr. Morgan, you were asked early on for
16 other affiliates that you do or have done MGP work for.
17 Do you remember that?

18 A. Yes.

19 Q. And you listed several states?

20 A. Yes.

21 Q. Can you tell us how commissions in those
22 states treat recovery?

23 A. Yes. They allow recovery in the
24 jurisdictions. That is -- I think I listed Texas and
25 Oklahoma and Arizona. I can't speak to them because we

1 haven't sought recovery there. But with respect to Rhode
2 Island and Massachusetts and Pennsylvania, the answer
3 would be yes, that the commissions there do allow
4 recovery.

5 Q. I believe in answer to one of Mr. Berlin's
6 questions you also stated that you expect to get recovery
7 from Western Resources. Do you remember that?

8 A. Yes.

9 Q. When will you know whether you received
10 recovery or not?

11 A. It could be well into the future. I'd
12 certainly expect that we're going to have before the end
13 of this period, January 31st, '09, some response from
14 Western to my letter of July 9. If I don't get a
15 response, then certainly I will follow up in a timely
16 manner and ask for one.

17 MR. COOPER: That's all the questions I
18 have, your honor.

19 JUDGE JONES: Thank you. Mr. Morgan, you
20 may step down.

21 THE WITNESS: Thank you.

22 JUDGE JONES: Staff call its first witness,
23 please.

24 MR. BERLIN: Staff calls Mr. Paul Harrison.

25 (Witness sworn.)

1 JUDGE JONES: Thank you, sir. You may be
2 seated.

3 PAUL HARRISON testified as follows:

4 DIRECT EXAMINATION BY MR. BERLIN:

5 Q. Mr. Harrison, would you state for the
6 Commission your job title and how long you've been
7 employed for the Commission?

8 A. I'm a regulatory auditor with the Missouri
9 Public Service Commission.

10 Q. And how long have you been employed by the
11 Commission?

12 A. Approximately eight and a half years.

13 Q. Did you cause to be prepared rebuttal
14 testimony in question and answer format for these
15 proceedings premarked as Exhibit No. 7?

16 A. I did.

17 Q. And that is the declassified version, the
18 NP declassified version, is it not?

19 A. It is.

20 Q. And item -- Exhibit Item No. 8 is the HC
21 version of Harrison rebuttal testimony declassified?

22 A. That's correct.

23 Q. Now, Mr. Harrison, if I were to ask you the
24 same questions today as were asked in your rebuttal
25 testimony, would your answers be the same?

1 A. It would.

2 Q. And are your answers in your testimony true
3 and correct based upon your best knowledge, information
4 and belief?

5 A. It is.

6 MR. BERLIN: Judge, I would move to admit
7 premarked Exhibit Nos. 7 and No. 8 into evidence,
8 Mr. Harrison's rebuttal testimony, both the NP and HC
9 versions.

10 JUDGE JONES: Any objection to Exhibits 7
11 and 8?

12 MR. COOPER: No objection, your Honor.

13 JUDGE JONES: Hearing none, Exhibits 7 and
14 8 are admitted into the record.

15 (EXHIBIT NOS. 7 AND 8 WERE RECEIVED INTO
16 EVIDENCE.)

17 JUDGE JONES: And is that all the questions
18 you have?

19 MR. BERLIN: I have no more questions, and
20 I tender Mr. Harrison for cross-examination.

21 JUDGE JONES: Move to cross-examination
22 from the Office of the Public Counsel.

23 MR. POSTON: No questions.

24 JUDGE JONES: Cross-examination from
25 Missouri Gas Energy?

1 MR. COOPER: Yes, your Honor.

2 CROSS-EXAMINATION BY MR. COOPER:

3 Q. Mr. Harrison, you have -- or what version
4 of your testimony do you have in front of you, the first
5 filed version or the declassified version?

6 A. I have the declassified.

7 Q. I just wanted to ask, I think a couple
8 places there's just a small difference in line numbers and
9 how it lays out, so I just wanted to be sure that I made
10 the right reference if I needed to.

11 A. Okay.

12 Q. Are you surprised that MGE is asking the
13 Commission to consider the issuance of an Accounting
14 Authority Order in regard to these former manufactured gas
15 plant sites?

16 A. Surprised? No.

17 Q. In fact, you'd agree with me, wouldn't you,
18 that in your rebuttal testimony in MGE's last rate case,
19 GR-2006-0422, you stated that, and I quote, if MGE's MGP
20 costs meets the Commission's requirements for Accounting
21 Authority Orders or AAOs, MGE is free to seek a Commission
22 AAO for those costs?

23 A. Can you refer me to where you're addressing
24 that?

25 Q. Absolutely. I take it that you do have

1 with you your rebuttal testimony from GR-2006-0422?

2 A. I do.

3 Q. If you would turn to page 7 of that
4 testimony and take a look at lines 6 and 7.

5 A. Okay.

6 Q. Do you agree with me that your testimony in
7 that case stated that if MGE's MGP costs meet the
8 Commission's requirements for Accounting Authority Orders,
9 MGE is free to seek a Commission AAO for these costs?

10 A. I agree that it does say that.

11 Q. That rebuttal testimony concerned MGE's
12 request for an environmental response fund in that rate
13 case, correct?

14 A. That is correct.

15 Q. And an environmental response fund related
16 to manufactured gas plant remediation costs, correct?

17 A. That is correct.

18 Q. Now, if you would, in your -- and I guess
19 it's declassified rebuttal testimony in this case, if you
20 could turn to page 14 of that testimony.

21 A. I'm there.

22 Q. And I believe on lines 12 through 14, you
23 propose a condition with a time limit, correct?

24 A. That is correct.

25 Q. And as a part of that time limit, I think

1 that you say that any Accounting Authority Order should
2 only continue through the earlier of 24 months from the
3 effective date of this Order or the end of the Commission
4 ordered test year as updated or true-up period in MGE's
5 next rate case; is that correct?

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

7 Q. Now, did you answer a Data Request from MGE
8 in regard to that part of your condition and whether you
9 would agree with a rephrasing of that condition?

10 A. We did agree with the rephrasing.

11 MR. COOPER: Your Honor, I'd like to mark
12 an exhibit if I could.

13 JUDGE JONES: Yes, you may.

14 MR. COOPER: And I believe that will be
15 Exhibit 13; is that correct? This would be Staff Response
16 to Data Request 22.

17 (EXHIBIT NO. 13 WAS MARKED FOR
18 IDENTIFICATION BY THE REPORTER.)

19 BY MR. COOPER:

20 Q. Mr. Harrison, I've handed you what's been
21 marked as Exhibit 13. Do you recognize that to be the
22 Data Request response that you referred to previously?

23 A. I do.

24 Q. Are you still in agreement with the
25 rephrasing that's identified in that Data Request

1 Response?

2 A. The Staff is, yes.

3 MR. COOPER: Your Honor, I would offer
4 Exhibit 13 into evidence.

5 JUDGE JONES: Any objection?

6 MR. BERLIN: No objections.

7 JUDGE JONES: Exhibit 13 is admitted into
8 the record.

9 (EXHIBIT NO. 13 WAS RECEIVED INTO
10 EVIDENCE.)

11 BY MR. COOPER:

12 Q. Now, I believe on page 6 of your rebuttal
13 testimony you state that many natural gas distribution and
14 electric utilities throughout the United States are
15 incurring MGP related costs, including LDCs owned and
16 operated by Southern Union in other states; is that
17 correct?

18 A. Lines 24 through 26?

19 Q. Correct.

20 A. That's what it says.

21 Q. Have you researched what regulatory rate
22 treatment is being provided to the MGP related costs being
23 experienced by those many natural gas distribution and
24 electric utilities throughout the United States?

25 A. Through Data Requests from the company and

1 through my last -- through the last two rate cases there
2 were data requests and information that was provided from
3 the company. We used that data.

4 Q. So the only information you would have as
5 to rate treatment being given those costs is what -- what
6 the company provided to you then, correct?

7 A. Well, no. We had also the rate treatment
8 for the Laclede Gas case, did some research on that, and
9 also United Cities.

10 Q. But those would be Missouri cases, correct?

11 A. Missouri cases, but --

12 Q. And not any cases that are outside of the
13 state?

14 A. From outside of the state, that's right.
15 Only what I've received from the company.

16 Q. On pages 4 and 5 of your rebuttal
17 testimony, you discuss a Commission decision in Cases No.
18 EO-91-358 and EO 91-360, don't you?

19 A. That's correct.

20 Q. And even though there's two cases listed
21 there, it's really one decision, correct?

22 A. Correct.

23 Q. The Order in those cases concerned expenses
24 incurred related to a Clean Air Act driven rebuild at the
25 Sibley generating station, correct?

1 A. I believe that's correct.

2 Q. And I believe in your testimony you
3 indicate that in the standards for deferral section of
4 that order one of the criteria for allowing companies to
5 defer costs is that the costs associated with the material
6 event are material; is that correct?

7 A. That's correct.

8 Q. If I were to give you a copy of that Sibley
9 decision, could you point me to the section that you're
10 referring to that establishes that criteria?

11 A. The Report and Order I think was talking
12 about material, the materiality. If you give me a copy,
13 I'll look through it and see what I can find.

14 Q. Do you recognize the document that I handed
15 you to be the Commission's decision in Cases No.
16 EO-91-358 and EO-91-360?

17 A. Yes, as of December 30th -- or
18 December 20th, 1991.

19 Q. And if you were to turn over to, I guess,
20 what's marked in that version as page 204, would you agree
21 with me that that's the beginning of the standards for
22 deferral section?

23 A. It is. On page 206, where it starts on
24 line 4 with the issues of whether the event has a material
25 or substantial effect on a utility's earnings is also

1 important but not primary concern, and then it goes into
2 detail under the USOA is required to seek Commission
3 approval if the costs to be deferred are less than
4 5 percent of the company's income computed before the
5 extraordinary event. The 5 percent standard is not
6 relevant to materiality and whether the event is
7 extraordinary but is not case dispositive.

8 Q. So you agree with me that whether it is
9 below or above 5 percent does not determine whether the
10 Commission can issue or not issue an Accounting Order?

11 MR. POSTON: Object. It's asking him to
12 make a legal conclusion.

13 JUDGE JONES: I agree with you, Mr. Poston.
14 The problem with this is that he's made a legal conclusion
15 in his prefiled testimony, so I'll have to allow.

16 MR. POSTON: That doesn't mean he should
17 continue making more legal conclusions.

18 JUDGE JONES: It means that
19 cross-examination in all fairness should be allowed to
20 proceed.

21 THE WITNESS: Could you repeat your
22 question, please?

23 BY MR. COOPER:

24 Q. Well, let's just -- let's just stop at this
25 point. You'd agree with me that the case indicates that

1 the 5 percent standard is not case dispositive?

2 A. I'd agree with that.

3 Q. Are you familiar with the Commission
4 Staff's response to Order Directing Filing on Issues that
5 was filed with the Commission on August the 1st of 2008?

6 A. I'm sure I reviewed it.

7 Q. I believe one of the issues proposed by the
8 Staff in that document was as follows: Are FMGP costs
9 material, known and measurable, arising from an
10 extraordinary event? Do you remember that language?

11 A. I do.

12 Q. Do you see in the Sibley case that's before
13 you any requirement that all expenses be known and
14 measurable at the time an Accounting Authority Order is
15 issued?

16 A. I don't believe it would state that in
17 there.

18 Q. And would you agree with me that the Sibley
19 order was issued in December of 1991?

20 A. It was.

21 Q. And would you also agree with me that it
22 was designed to allow deferral of projected costs to be
23 incurred in the year 1992?

24 A. Could you ask the question again, please?

25 Q. Well, we've established that the order was

1 actually issued in December of 1991, correct?

2 A. That's correct.

3 Q. Okay. If you look to the ordered section,
4 and there's different ways to do this, but if you look at
5 the first paragraph of the ordered section on page 213.

6 A. Okay. I'm there.

7 Q. Would you agree with me that what is going
8 to be deferred in accordance with that Accounting
9 Authority Order are costs incurred beginning in -- on
10 January 1, 1992 and presumably running through the rest of
11 1992?

12 A. From January 1992 through December 31st,
13 1992.

14 Q. In the situation at hand, MGE's
15 application, would you agree with me that individual FMGP
16 remediation expenses will be known and measurable at such
17 time as they're recorded as a deferral on MGE's books?

18 A. At the point of deferral?

19 Q. Yes.

20 A. It's depending upon the Order that comes
21 out of this case, I would suppose.

22 Q. Are you familiar with anyone deferring
23 costs before they're incurred?

24 A. No.

25 Q. Now, on page 6 of your rebuttal testimony,

1 I believe it is lines 22 through 24, you state that it
2 should not be considered unusual and/or unique for MGE to
3 experience environmental remediation costs such as costs
4 to clean up former MGP sites, correct?

5 A. Could you refer to the line numbers again,
6 please?

7 Q. Yes. And let me confirm that I'm giving
8 you the right line numbers. Lines 22 to 24.

9 A. And could you repeat your question, please?

10 Q. Yes. You would agree with me, wouldn't
11 you, that your rebuttal testimony says it should not be
12 considered unusual and/or unique for MGE to experience
13 environmental remediation costs such as costs to clean up
14 former MGP sites?

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

16 Q. Does MGE's current rate include any
17 consideration of FMGP remediation expenses as a part of
18 its rate?

19 A. Not to my knowledge.

20 Q. Is it Staff's position that MGP cleanup
21 costs incurred in a test year should be treated as a
22 normal operating expense and included in rates?

23 A. Yes.

24 Q. At the test year level?

25 A. It would be some level put in there,

1 whether it be normalized or -- there will be some type --
2 normally some type of expense that will be normalized if
3 it it's incurred during the test year. It will be looked
4 upon and decided whether to include portions or all of.

5 Q. So not necessarily the test year amount,
6 correct?

7 A. Not necessarily, no.

8 Q. You point out in your rebuttal testimony
9 that MGE has been experiencing MGP costs each and every
10 year since it came into existence in 1994, correct?

11 A. That's correct.

12 Q. However, you'd agree with me, wouldn't you,
13 that there is a fairly wide swing in MGE's remediation
14 costs from year to year?

15 A. There is one year, 2003, that they got an
16 extremely large cost. The rest of the costs are pretty
17 close. Some go up. Some go down. But they could be --
18 they could be normalized.

19 Q. What you're looking at is, I assume,
20 Schedule 3 to your rebuttal testimony?

21 A. I am.

22 Q. And it's also been marked as Exhibit 11
23 here today, correct?

24 A. That's correct.

25 Q. Same document. You'd agree with me,

1 wouldn't you, that on the low end, in 1994, there's a
2 \$4,000 expenditure for that year?

3 A. I concur with that.

4 Q. And on the upper end I think what you
5 referred to in 2003 was a \$6.4 million year, correct?

6 A. That's correct.

7 Q. And in between those, you have years at
8 885,000, correct?

9 A. That's correct.

10 Q. And --

11 A. Well, actually the 885 I think is
12 associated with -- as of 3/31/08 --

13 Q. Right.

14 A. -- just for three months there, not for an
15 entire year.

16 Q. We expect 2008 to be greater than 885,000,
17 correct?

18 A. With the projections.

19 Q. Even without the projections through June,
20 it would be greater than that, wouldn't it?

21 A. The Staff has not been able to audit the
22 invoices, so I'm not sure what amount the company had as
23 of June 30th. I can -- we were able to look at the
24 invoices. We were able to tie back the company's
25 documents and in reviewing all of their work papers and

1 were able to tie back the March 31st, '08. We have not
2 been able to tie to the 6/30/08 number at this point in
3 time.

4 Q. Some of the other years in there, the year
5 before the 6.4 million, you'd agree with me that there
6 were \$931,000?

7 A. 2002?

8 Q. Correct.

9 A. And there was also a \$7,529,000 credit in
10 2001 for insurance recoveries.

11 Q. Right. And there's various other levels of
12 expenses from year to year, correct?

13 A. There is. But any one of these years you
14 look at when you compare that with what the recoveries and
15 the non-MGP expenditures are, that's -- on any year given
16 there, there's -- you could -- it would be minimum. I
17 don't even think the company started incurring costs until
18 their projected numbers that they got between March 31st
19 and June 30th of this year, over the last 14 years or so.

20 Q. Now, on page 3 of your rebuttal testimony,
21 you describe the 1986 amendments to and reauthorization of
22 CERCLA, correct?

23 A. What lines are we on now?

24 Q. I think we're on lines 12 through 20 on
25 page 3.

1 A. Okay.

2 Q. And as a part of that testimony, I believe
3 you state that CERCLA imposes strict joint and several
4 liability on present or former owners and that potential
5 responsible parties include owners of contaminated land
6 from point of contamination to date regardless of whether
7 they directly release such substances into the
8 environment; is that correct?

9 A. That's correct.

10 Q. Based on that, would you agree with me that
11 CERCLA does not impose liability based on fault but rather
12 on status? In other words, you don't have to have
13 violated any environmental laws to have liability?

14 MR. BERLIN: I object, your Honor. That
15 calls for a legal conclusion.

16 JUDGE JONES: Objection sustained.

17 BY MR. COOPER:

18 Q. Now, in your testimony on page 10, I
19 believe you discuss materiality; is that correct?

20 A. That's correct.

21 Q. And you would -- you point out that in
22 MGE's last rate case, GR-2006-0422, the Staff's last
23 calculation of the amount of MGE's net operating income on
24 an adjusted basis was \$36,123,186, correct?

25 A. That's correct.

1 Q. Do you agree with me that 5 percent of that
2 net operating income number is \$1,806,159?

3 A. It'd be pretty close.

4 Q. Now, I think in answer to a company Data
5 Request, you also made a similar computation based upon
6 net operating income from MGE's 2007 FERC Form 2; is that
7 correct?

8 A. That's correct.

9 Q. And when you did that you used as your base
10 number 36,383,230, correct?

11 A. That's correct.

12 Q. And you would agree with me, wouldn't you,
13 that 5 percent of that number is \$1,819,162?

14 A. Thereabout.

15 Q. And your Data Request Response would say
16 right on top of that number, right?

17 A. Pretty close.

18 Q. Where am I off?

19 A. I don't know without looking at it. I
20 don't have it with me.

21 MR. COOPER: That's all the questions I
22 have for now, your Honor.

23 JUDGE JONES: Commissioner Murray, any
24 questions for Mr. Harrison?

25 COMMISSIONER MURRAY: Just one.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Good morning still. In the last rate case
3 where you indicated that the company could file an
4 application for an AAO -- and I apologize, I kind of faded
5 out when you were being asked about this earlier -- what
6 was your reason for putting that in the -- the Staff
7 recommendation?

8 A. Because the company had not incurred any
9 costs up to that point in time, and also when you were --
10 when we were looking at to be included in rates, the costs
11 had to be known and measurable to be included in rates,
12 and that's when we made the recommendation that they could
13 seek an AAO if -- if it met the requirement.

14 Q. But you had not made any previous analysis
15 as to whether these costs would meet the requirement for
16 an AAO?

17 A. I had not at that point in time, no. No,
18 ma'am.

19 Q. All right. So would it be fair to say it
20 was kind of a gratuitous statement, if -- if something
21 fits, you can try it?

22 A. It was another way that the company could
23 seek to try to recover rates if they could not be included
24 in that. That was just a recommendation if it met the
25 requirement. In the 2004 case and the 2006 case, there

1 was no expenditures at all up to that point in time, and
2 the company was predicting that they would have millions
3 of dollars worth of expenditures on a going-forward basis.
4 And the recommendation was, is when they start to incur
5 these expenditures, if they didn't get included in that
6 rate case, there was an opportunity or way that they could
7 seek recovery at a later date when they did start to incur
8 the costs and if they did.

9 COMMISSIONER MURRAY: All right. Thank
10 you.

11 JUDGE JONES: Commissioner Jarrett?

12 COMMISSIONER JARRETT: No questions. Thank
13 you.

14 JUDGE JONES: Commissioner Gunn?

15 COMMISSIONER GUNN: I don't have anything.

16 JUDGE JONES: Recross based on questions
17 from the Bench?

18 MR. POSTON: Just one.

19 RE CROSS-EXAMINATION BY MR. POSTON:

20 Q. Commissioner Murray was asking you about
21 what she referred to as potentially a gratuitous statement
22 about what you'd stated in your last testimony?

23 A. Right.

24 Q. And you weren't making any type of a legal
25 conclusion in that, were you --

1 A. No.

2 Q. -- about whether or not an AAO would meet
3 the legal --

4 A. No, it was just --

5 Q. -- standard in this case?

6 A. It was just stating the fact that they were
7 free to seek an AAO if it met the requirement for an AAO.

8 MR. POSTON: Thank you. That's all.

9 JUDGE JONES: Mr. Cooper, any recross based
10 on questions from the Bench?

11 MR. COOPER: Yes, your honor.

12 RECROSS-EXAMINATION BY MR. COOPER:

13 Q. Mr. Harrison, I believe in response to a
14 question from Commissioner Murray, you said that as of the
15 last rate case there had been no expenditures. Do you
16 really mean no expenditures or no expenditures that
17 exceeded the recoveries plus the \$3 million that MGE's
18 shareholders had agreed?

19 A. That is correct.

20 MR. COOPER: That's all the questions I
21 have.

22 JUDGE JONES: Redirect?

23 REDIRECT EXAMINATION BY MR. BERLIN:

24 Q. Mr. Harrison, Commissioner Murray had asked
25 you some questions, and I know that Mr. Cooper had also

1 asked you some questions regarding the testimony in the
2 last rate case in your rebuttal testimony that's on
3 page 7. Do you have that before you?

4 A. I do.

5 Q. Put this in proper context. Would you
6 please read the question and then the answer so that we
7 can have the entire context of your reply?

8 A. On page 7, starting on line 3, MGP costs
9 specifically attributable to MGE may be charged to expense
10 and MGE can seek recovery of these costs at an appropriate
11 time. MGE should be prepared to demonstrate that it has
12 maximized recovery from third parties of MGP costs before
13 seeking recovery from the customers. In addition, if
14 MGE's MGP costs meets the Commission's requirements for
15 Accounting Authority Order, MGE is free to seek a
16 Commission AAO for these costs.

17 Q. Okay. Thank you.

18 Mr. Harrison, Mr. Cooper asked you some
19 questions about the Report and Order in Case No.
20 EO-91-358. Do you recall those questions?

21 A. I do.

22 Q. Does the Order in case EO-91-358 contain
23 language regarding deferral of costs relating to
24 speculative events?

25 A. I believe it does.

1 Q. And so what does the Order state in regard
2 to those costs?

3 A. It says on page 206, beginning of the first
4 paragraph -- actually second paragraph, it says the
5 Commission agrees with Staff that whether the event has
6 occurred or is certain to occur in the near future is a
7 relevant factor. Utilities should not seek deferral of
8 speculative events since it is hard to determine whether
9 an event is extraordinary or material unless there is a
10 highly probability of its occurring within the near
11 future.

12 Q. And are costs that are associated with a
13 speculative event, are they known and measurable?

14 A. They are not.

15 Q. Are costs that may be incurred by MGE
16 regarding its St. Joe site in the last half of 2008
17 speculative at this point in time?

18 A. It is.

19 Q. Thank you, Mr. Harrison.

20 MR. BERLIN: Judge, I have no further
21 questions.

22 JUDGE JONES: Thank you. Mr. Harrison,
23 you may step down.

24 Why don't we go ahead and put Mr. Robertson
25 on the stand and take the last 15 minutes.

1 (Witness sworn.)

2 JUDGE JONES: Thank you, sir. You may be
3 seated.

4 TED ROBERTSON testified as follows:

5 DIRECT EXAMINATION BY MR. POSTON:

6 Q. Thank you. Please state your name and your
7 current position.

8 A. My name is Ted Robertson. I'm a Public
9 Utility Accountant III with the Missouri Office of the
10 Public Counsel.

11 Q. Are you the same Ted Robertson that caused
12 to be prepared and filed rebuttal testimony that has been
13 labeled -- marked and labeled Exhibit No. 12?

14 A. Yes.

15 Q. Do you have any changes to your testimony?

16 A. I do not.

17 Q. If I ask you the same questions today,
18 would your answers be the same?

19 A. Yes, they would.

20 MR. POSTON: Your Honor, I move to enter
21 Exhibit 12 into the record.

22 JUDGE JONES: Any objection?

23 (No response.)

24 JUDGE JONES: Hearing none, Exhibit 12 is
25 admitted into the record.

1 (EXHIBIT NO. 12 WAS RECEIVED INTO
2 EVIDENCE.)

3 MR. POSTON: I tender Mr. Robertson then
4 for cross-examination.

5 JUDGE JONES: Cross-examination from the
6 Staff of the Commission?

7 MR. BERLIN: Yes, Judge. I have just a few
8 questions.

9 CROSS-EXAMINATION BY MR. BERLIN:

10 Q. Mr. Robertson, in your rebuttal testimony
11 on page 8, you state that Public Counsel generally
12 supports the Staff's recommendation and memorandum
13 previously filed in this case. Is that still a correct
14 reflection of Public Counsel's position?

15 A. That's what I state in the testimony, that
16 I -- that we generally support the recommendation. I did
17 qualify to the effect that even though they made an
18 alternative to where if the Commission does accept to
19 allow the AAO, they had some criteria that they thought
20 should be fulfilled. Generally accepted those, but
21 qualified the whole thing with the fact that we didn't
22 think the AAO should be allowed at all.

23 Q. And don't you further refer to explanations
24 in Staff's memorandum when you state that Public Counsel
25 also does not believe that the utility's request for an

1 AAO is appropriate because it did not meet the standards
2 for deferral authorization? Is that an accurate
3 reflection?

4 A. Oh, yes. That's very correct. We -- the
5 standards set up for AAO allowance in this state, we don't
6 believe they've been met at all.

7 Q. And you also refer to Staff's Memorandum,
8 do you not, when you state the estimated costs are not
9 extraordinary, unusual, unique, nonrecurring or material?

10 A. That's correct.

11 Q. So Staff's Memorandum and the explanations
12 and reasons contained in it that you have used in your
13 testimony are a significant part of Public Counsel's
14 position in this case?

15 A. It's my understanding that's what the
16 company filed for. They filed for an AAO. There's
17 certain standards regarding the Commission has in the past
18 utilized to determine when an AAO will be allowed, and we
19 believe those standards have not been met. I mean, we
20 have other testimony regarding the conditions and what's
21 occurring with the remediation costs and environmental
22 remediation and so on, but they filed for the AAO
23 specifically.

24 MR. BERLIN: Thank you, Mr. Robertson.

25 Judge, at this time Staff would like to

1 move to admit into evidence Mr. Harrison's Staff
2 Memorandum Declassified premarked as Exhibit No. 9.

3 JUDGE JONES: Any objections?

4 MR. COOPER: No objection, your Honor.

5 JUDGE JONES: Exhibit 9 is admitted into
6 the record.

7 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE.)

8 MR. BERLIN: Judge, I have no further
9 questions for Mr. Robertson. Thank you.

10 JUDGE JONES: Cross-examination by MGE?

11 MR. COOPER: Thank you, your Honor.

12 CROSS-EXAMINATION BY MR. COOPER:

13 Q. Mr. Robertson, under what circumstances
14 would you recommend that a public utility be allowed to
15 defer and ultimately recover remediation costs associated
16 with former manufactured gas plant sites?

17 A. That's a very good question. We talked
18 that over many times ourself. The only answer I can
19 really give you to that is that we would look at it on a
20 case specific and see what the situation was that
21 surrounds the request. I don't -- I can't give you a
22 blanket answer that would cover all cases.

23 Q. In you were convinced that MGE's
24 unreimbursed remediation costs were greater than 5 percent
25 of the company's net income, would you still be opposed to

1 deferral in this case?

2 A. Well, as the FERC plan instruction states,
3 the materiality aspect is greater than 5 percent. The
4 less than 5 percent, they have to ask the Commission for
5 authority to do the deferral. That's just one of the
6 factors. We would still be opposed to the deferral in
7 this case, though.

8 Q. On page 8 of your rebuttal testimony, you
9 make a statement that MGP costs Southern Union incurs are
10 associated with the remediation of contamination created
11 by gas manufacturing plants that, to my knowledge -- or to
12 your knowledge ceased operation prior to the Missouri
13 Public Service Commission being established in 1913. Is
14 that an accurate statement?

15 A. Based on documents that I reviewed in the
16 company's possession, I believe that to be correct.

17 Q. Now, MGE asked you a Data Request for the
18 basis of your belief that all these sites were associated
19 with plants that ceased operating prior to 1913, didn't
20 it?

21 A. That is correct.

22 Q. And in response to that Data Request, I
23 believe you replied that you were relying on a company
24 response to an OPC Data Request, correct?

25 A. I don't have it with me, but I believe the

1 response was to a company response to OPC Data Request
2 1010, I believe, in which I asked for documentation
3 regarding the remediation efforts at the individual sites.
4 The company responded to that Data Request that they would
5 have the information available onsite, come up and review
6 it, set a time, which I did.

7 Q. And in your response to the company's Data
8 Request, you specifically listed, I think, five documents,
9 correct, that you said formed the basis for your belief?

10 A. As I said, I don't have it in front of me,
11 but I believe that's correct.

12 Q. Would it help you refresh your memory if I
13 were to hand you a copy of that?

14 A. If you would give me a list of documents I
15 cited, yes.

16 Q. Yes. In that you had listed five documents
17 that you relied on?

18 A. That is correct.

19 Q. And one of the documents you referenced in
20 your Data Request Response was a document entitled Terra
21 Tech report dated April 6, 2007, correct?

22 A. I believe that's correct, yes. You said
23 July 2007, right? That's what you're referring to, No. 2?

24 Q. Yes. I may have misspoken, but yes, 2007.

25 A. That's correct, yes.

1 Q. I'm going to hand you a document here,
2 Mr. Robertson. If you'd take a look at that and tell me
3 whether that is the substance of the Terra Tech report
4 that you referred to in your Data Request Response?

5 A. Okay. What you've given me I believe is
6 where I subsequently requested copies -- I didn't bring
7 all copies of all documents back. I asked the company for
8 various copies. I think this was one of them where I did
9 not initially request it. This was provided to me in hard
10 copy. I sent you another Data Request, 1036, is what this
11 is, and you subsequently provided me this, right? Okay.

12 Q. Turn to the second page and take a look at
13 that. Is that the Terra Tech report that you're referring
14 to in your response to Data Request 1?

15 A. If it compares to the one you provided me,
16 I'm going to say yes. Of course, this is not the one you
17 gave me, but I don't think you'd give me something
18 different, would you?

19 Q. I wouldn't. Does it look right? Do you
20 see any differences?

21 A. It says Terra Tech.

22 Q. Okay. Can you turn over to the page where
23 there's a Post-It there, Mr. Robertson?

24 A. Absolutely.

25 Q. Can you read to yourself here initially --

1 A. I know what you're going to. Go ahead.

2 Q. Would you agree with me that that Terra
3 Tech report seems to indicate that at the St. Joe site
4 there was a manufactured gas plant operating perhaps as
5 late as 1935 and certainly there are records that
6 indicated it was producing manufactured gas through 1930?

7 A. There is some discrepancy here. And what
8 the document stated is they relied on investigations into
9 what they call Sandborg Business Directories and several
10 other comprehensive directories, and in that directory
11 they found where it says the site quit producing
12 manufactured gas on or about 1911. There's also
13 conflicting information that says that gas may have been
14 produced from -- even though it says 1920 to 1930 here, I
15 believe in other places I saw where it said maybe as far
16 up as 1935. So there is some conflicting information.

17 Q. But you agree with me that this report that
18 you relied on would indicate at least through 1930 and
19 perhaps as recent as 1935, correct?

20 A. I would respond that there's the
21 possibility that manufactured gas was produced and then
22 again there's the possibility it's natural gas they're
23 talking about.

24 Q. So the bottom line is you don't know, do
25 you, when these plants quit producing manufactured gas?

1 A. Based on the documents the company provided
2 me in addition to that one and four others, there's good
3 indication that they ceased prior to 1913. There's also a
4 possibility that at least one of them or more may have
5 done some gas -- manufactured gas operations up to 1930,
6 1935.

7 Q. If the sale of Western Resources' Missouri
8 gas properties to Southern Union had never taken place and
9 Western Resources applied for an Accounting Authority
10 Order, would you still be opposed to the grant of an AAO
11 for deferral of FMGP remediation costs?

12 A. Actually, I see that as a continuation of
13 your earlier questions. We would have -- as far as I
14 know, Western Resources never did ask for such an
15 Accounting Authority Order, so we would have to look at
16 that on a case specific basis. So my answer is I don't
17 know.

18 Q. Would you agree with me that the FMGP sites
19 now owned by Southern Union were previously owned by
20 Western Resources?

21 A. My understanding is that of the 18, 20,
22 whatever it is, they -- Southern Union did not necessarily
23 own all of them.

24 Q. Are there 18 to 20 owned sites?

25 A. No. I think the owned sites are somewhere

1 in the range of eight, I believe, somewhere in there. I
2 may be -- I may be off a little bit as far as the owned.

3 Q. I was going to say, maybe five, would that
4 sound like it might be right, too?

5 A. Okay. I'll go with you on that, and as far
6 as the owned sites, I believe you're correct, yes.

7 Q. So as to the owned sites, you'd agree with
8 me that those sites now owned by Southern Union were
9 previously owned by Western Resources, correct?

10 A. Yes.

11 Q. And at the time Western Resources owned
12 those sites, it was a Missouri public utility providing
13 service to Missouri customers, correct?

14 A. That's correct.

15 Q. Would you agree with me that before the
16 sale of those properties to Southern Union, Western
17 Resources had potential responsibility for remediations
18 costs associated with FMGP sites?

19 A. Yes.

20 Q. Would you agree with me that after the sale
21 of those properties to Southern Union, Western Resources
22 still had some potential responsibility for remediation
23 costs associated with the FMGP sites, at least until
24 January 31 of 2009?

25 MR. POSTON: Your Honor, I'm going to

1 object. He's asking for legal conclusions.

2 JUDGE JONES: Objection sustained.

3 BY MR. COOPER:

4 Q. To your knowledge, before the sale, had
5 Western Resources made any commitment for its shareholders
6 to fund the first \$3 million of unreimbursed remediation
7 costs?

8 A. Prior to the sale?

9 Q. Prior to the sale.

10 A. Had Western Resources? Not that I'm aware
11 of.

12 Q. Does the grant of an Accounting Authority
13 Order mean that deferred costs will necessarily be
14 included in the cost of service after a rate case?

15 A. That's an interesting question, too. As
16 far as I know in this state whenever costs are being
17 deferred, the companies have always received, if not all,
18 at least some. So the question, is it guaranteed? Not in
19 ratemaking theory. In fact, I'd say yes.

20 Q. How about -- are you familiar with a
21 Missouri Gas Energy case from a few years ago that
22 concerned their safety line replacement program that may
23 have gone to the Court of Appeals?

24 A. I am aware of the safety line replacement
25 program. The Court of Appeals part of it I'm --

1 Q. Little hazy on that?

2 A. I'm not even sure I was really involved
3 with it, to be honest with you. I do recall it somewhat,
4 but being involved, I don't remember that.

5 Q. If an Accounting Authority Order is issued,
6 are there additional steps that have to be taken before
7 any of those deferred costs ultimately are included in a
8 company's rates?

9 A. Absolutely.

10 Q. What are those steps?

11 A. They would have to file a rate case. There
12 would probably be an audit investigation as to the
13 prudence of the costs, the actual occurrence of them, and
14 parties would take their positions, and then would present
15 them to the Commission if they couldn't reach some kind of
16 negotiated settlement, which would then also be presented
17 to the Commission.

18 Q. Now, in spite of your earlier statement, I
19 have the impression from some of your testimony that
20 you've spent at least some time looking at Commission
21 Accounting Authority Orders; is that correct?

22 A. I have looked at one or two, yes.

23 Q. And you've participated in several AAO
24 proceedings as well, haven't you?

25 A. I have.

1 Q. Would you agree with me that this
2 Commission has previously granted Accounting Authority
3 Orders that have allowed deferral of costs related to
4 floods, ice storms, accounting changes such as FAS 106,
5 compliance with the Clean Air Act, regulatory changes
6 associated with the Safety Line Replacement Program, year
7 2000 compliance projects and Cold Weather Rule compliance?

8 A. I would agree with you, yes.

9 Q. Why would the Commission have issued those
10 Accounting Authority Orders if, as you allege in your
11 rebuttal, the rate of return provided Missouri regulated
12 utilities has always incorporated a percentage above the
13 risk free rate of return in order to compensate
14 shareholders for the business and financial risk
15 associated with actions such as implementation of both
16 existing and new laws and regulations mandated by
17 government?

18 MR. POSTON: Objection. He's asking for
19 speculation. Those orders speak for themselves.

20 JUDGE JONES: I have no idea. Sustained.
21 I don't even know what the question was. It just went on
22 and on and on. Sustained.

23 MR. COOPER: That's all the questions I
24 have.

25 JUDGE JONES: Any questions, Commissioner

1 Murray, do you have any questions for Mr. Robertson?

2 COMMISSIONER MURRAY: Just briefly.

3 THE WITNESS: Yes, ma'am.

4 QUESTIONS BY COMMISSIONER MURRAY:

5 Q. Good afternoon.

6 A. How are you?

7 Q. Fine. I just wanted to clarify, it's not

8 OPC's position, is it, that remediation costs of this

9 nature should never be recovered from ratepayers?

10 A. I cannot say that it is, no. I can't tell

11 you that it's our position that they should never be.

12 What I can tell you, you and I have had this discussion

13 before, is that we would look at it on a case specific

14 basis and then make our recommendation there rather than

15 go into it with a closed mind.

16 I can tell you in this case we think there

17 was an additional factor in that when they bought -- even

18 though Western Resources had that liability because they

19 were the owner, when Southern Union went into this case,

20 they bought that liability. They negotiated the purchase

21 price. They knew the liabilities existed. They even put

22 out documentation in their FCC reports of a certain amount

23 they thought it was going to reach based on their known

24 circumstances at that time, which is the way it always is

25 in any prudence review, you base it on the circumstances

1 at the time it occurred.

2 Q. So that position that these costs should
3 not be recovered from ratepayers either through a normal
4 ratemaking process or by means of an AAO is unique to this
5 situation?

6 A. I think from our perspective, yes. Of
7 course, the normal procedure where there's cleanup cost,
8 remediation costs associated with a site is always there,
9 but we think there's an additional layer, the important
10 layer that they bought the liability in the purchase.
11 Therefore, they took it on theirself. Therefore, we
12 shouldn't protect the shareholders because their
13 management made a bad deal.

14 COMMISSIONER MURRAY: Thank you.

15 JUDGE JONES: Commissioner Jarrett?

16 COMMISSIONER JARRETT: No questions.

17 JUDGE JONES: Commissioner Gunn?

18 COMMISSIONER GUNN: Nothing.

19 JUDGE JONES: Recross based on questions
20 from the Bench, starting with Staff. Do you have
21 questions?

22 MR. BERLIN: No questions.

23 JUDGE JONES: MGE? You do have questions?

24 MR. COOPER: No, Judge. Just a moment,
25 your Honor. No questions, your Honor.

1 JUDGE JONES: Redirect?

2 MR. POSTON: I have no redirect. Thank
3 you.

4 JUDGE JONES: You may step down,
5 Mr. Robertson.

6 THE WITNESS: Thank you.

7 JUDGE JONES: You-all don't need to make
8 closing arguments, do you?

9 MR. COOPER: No. We will definitely brief
10 the case.

11 MR. BERLIN: Judge, I would like to take a
12 matter of housekeeping up here in that I had premarked
13 Exhibits 10 and 11. Exhibit 10 is Harrison Schedule 3,
14 and Exhibit 11 is the MGE work paper set regarding
15 Schedule 3. I would like to make sure I move those into
16 evidence at this time.

17 JUDGE JONES: Any objection?

18 (No response.)

19 JUDGE JONES: Seeing none, Exhibits 10 and
20 11 are admitted into the record.

21 (EXHIBIT NOS. 10 AND 11 WERE RECEIVED INTO
22 EVIDENCE.)

23 MR. COOPER: Your Honor, we still have the
24 question of Ms. Callaway, I guess, and how to deal with
25 that. We did not have any update other than she was still

1 at the hospital when we took the earlier break. I guess
2 it's possible that over lunch we could find out more one
3 way or the other, I guess, on her availability. Do we
4 want to meet back, I guess, at --

5 JUDGE JONES: Sure. Just come back after
6 lunch. Let us know what you know. We'll go from there.

7 MR. COOPER: 1:15 or so, would that work?

8 JUDGE JONES: Yes, sir. With that, then,
9 we're off the record.

10 (A BREAK WAS TAKEN.)

11 (REPORTER'S NOTE: During the break, the
12 hearing was adjourned to a future date.)

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1 C E R T I F I C A T E

2 STATE OF MISSOURI)
3) ss.
4 COUNTY OF COLE)

5 I, Kellene K. Feddersen, Certified
6 Shorthand Reporter with the firm of Midwest Litigation
7 Services, and Notary Public within and for the State of
8 Missouri, do hereby certify that I was personally present
9 at the proceedings had in the above-entitled cause at the
10 time and place set forth in the caption sheet thereof;
11 that I then and there took down in Stenotype the
12 proceedings had; and that the foregoing is a full, true
13 and correct transcript of such Stenotype notes so made at
14 such time and place.

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 _____
18 Kellene K. Feddersen, RPR, CSR, CCR
19 Notary Public (County of Cole)
20 My commission expires March 28, 2009.
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