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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

HEARING

April 14, 2004

Jefferson City, Missouri

Volume 2

Michael E. McKinzy, Sr.,)	
)	
Complainant,)	
)	Case No. GC-2003-0579
v.)	
)	
Missouri Gas Energy,)	
)	
Respondent.)	

BEFORE:

VICKY RUTH,
SENIOR REGULATORY LAW JUDGE.
ROBERT CLAYTON,
COMMISSIONER.

REPORTED BY:
TRACY L. THORPE, CSR, CCR
MIDWEST LITIGATION SERVICES

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A P P E A R A N C E S

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1 JUDGE RUTH: Good morning. We are here for a
2 hearing in Case No. GC-2003-0579, Michael E. McKinzy, Sr.,
3 Complainant, versus Missouri Gas Energy, Respondent.
4 My name is Vicky Ruth and I'm the regulatory
5 law judge assigned to this case. Today's date is April 14th
6 and it is approximately 8:40 a.m. I'd like to begin with
7 entries of appearance on the record.
8 Now, Mr. McKinzy, it's my understanding that
9 you're representing yourself; is that correct?
10 MR. MCKINZY: Yes. That's correct.
11 JUDGE RUTH: For the record, would you please
12 state your name and address?
13 MR. MCKINZY: Michael McKinzy, address 8004
14 Overton, Raytown, Missouri 64138.
15 JUDGE RUTH: Thank you.
16 And Staff?
17 MR. BERLIN: Robert S. Berlin, attorney for
18 Staff of the Missouri Public Service Commission, Post Office
19 Box 360, Jefferson City, Missouri 65102.
20 JUDGE RUTH: Okay. And MGE?
21 MR. COOPER: Dean L. Cooper from the law firm
22 of Brydon, Swearngen and England, PC, PO Box 456, Jefferson
23 City, Missouri 65102 appearing on behalf of Missouri Gas
24 Energy, a division of Southern Union Company.
25 JUDGE RUTH: Mr. Micheel?

1 MR. MICHEEL: Douglas E. Micheel appearing on
2 behalf of Office of the Public Counsel, PO Box 2230,
3 Jefferson City, Missouri 65102.

4 JUDGE RUTH: Thank you.

5 I want to give you a quick overview of the
6 procedure. And, Mr. McKinzy, if you have any questions on
7 the procedure, feel free to ask or interrupt me.

8 We're going to start by offering the parties
9 an opportunity to give brief opening statements. This would
10 be a brief overview of your position, what you intend to
11 prove today. It's not actually getting into the testimony.

12 After the opening statements, there will be
13 the testimony by the witnesses and that is also where a
14 party can offer the pre-filed written testimony as an
15 exhibit. After a witness gives the direct exam -- or Direct
16 Testimony, then there will be cross-examination by the other
17 parties, possibly some questions from the Bench, maybe then
18 some recross from the attorneys or a party based on those
19 questions from the Bench and then followed up by some
20 redirect. And I'll guide you through that as we go through.

21 After all the parties have offered their
22 witnesses, then the parties will have an opportunity for a
23 brief closing argument. And, again, that will be a brief
24 overview argument for your case.

25 And then at the end of the hearing, we'll

1 discuss whether the parties want written briefs following
2 the hearing. So that's something to be thinking about as we
3 go through. If any of the parties want written briefs, then
4 we will have those. If the parties all agree to do without
5 them, then we'll leave it at that.

6 Mr. McKinzy, do you have any questions?

7 MR. MCKINZY: No.

8 JUDGE RUTH: And the other parties, are there
9 any questions?

10 MR. COOPER: No, your Honor.

11 MR. BERLIN: No.

12 JUDGE RUTH: I'm going to go off the record
13 while we wait just a minute. I request that you not leave
14 the room. I do anticipate that a Commissioner is on his
15 way.

16 (A recess was taken.)

17 JUDGE RUTH: Okay. We are back on the record
18 after a short break. We are ready for opening statements.
19 Mr. McKinzy, I'd like to begin with you. And would you
20 please come up to the podium, adjust the microphone if
21 necessary so that it will pick you up.

22 MR. MCKINZY: Very well. Can you hear me?

23 JUDGE RUTH: Yes. Thank you.

24 MR. MCKINZY: This case that was filed by
25 myself was in regards to denial of gas service from a

1 request due to a transfer of residence. I -- it was filed
2 once. I requested gas service at 8004 Overton, Raytown,
3 Missouri and it's in regards to being denied that service
4 after having been provided service from my previous
5 residence, which I was requesting a transfer.

6 And it was due to MGE attempting to have me
7 responsible for a third party -- or a customer's bill that I
8 did not receive benefit or use from.

9 So the gist of the case is denial of service
10 and turning off the service without giving ample -- without
11 complying to the tariffs of the -- that MGE has on file with
12 the Commission.

13 JUDGE RUTH: Okay. Thank you.

14 COMMISSIONER CLAYTON: Mr. McKinzy, let me ask
15 before we get started -- I want to make sure that I've got
16 my notes before we start taking evidence. Exactly what are
17 you asking for here today?

18 MR. MCKINZY: I'm asking that an order be
19 issued ruling on the allegations that I have set forth in
20 the position statement as far as when my service was denied,
21 that it was, in fact, a violation; that I was -- that there
22 was -- I was not indebted to MGE nor any household member
23 was indebted; and that the debt that they're attempting to
24 collect, all collections be stopped against my account and
25 it be totally removed as if it had never been there; and

1 also a ruling of the allegations as far as notice.

2 The primary is the removal of the debt of \$449

3 that they're attempting to collect from my -- due to my

4 current wife's gas at a previous address that I never

5 resided at. And also an order saying that they are to turn

6 on the gas -- even though it has been turned on currently,

7 but it was turned off voluntarily or on their own initiative

8 and it can be turned off.

9 They've indicated they now choose to -- have

10 chose to renew their pursuit in attempting to have it -- the

11 amount that they initially attempted to have me pay -- now

12 that they have evidence, they are now planning on renewing

13 their effort to have me pay or have the amount transferred

14 to my account.

15 So that's -- the purpose is to have the

16 Conclusions of Law and the Findings of Fact that I was not,

17 have never been liable for the debt that they're attempting

18 to collect from me and that --

19 COMMISSIONER CLAYTON: Let me ask you this.

20 The gas is on?

21 MR. MCKINZY: The gas was turned on

22 September 11th of 2--

23 COMMISSIONER CLAYTON: And it's still on?

24 MR. MCKINZY: Yes, it is.

25 COMMISSIONER CLAYTON: Okay. And I'm confused

1 in exactly the relief that you're requesting, so I want to
2 make sure that I'm clear on that before we get started.

3 MR. MCKINZY: They have indicated in their
4 Rebuttal that now -- in my Direct Rebuttal I've made the
5 fact -- established that as of the 24th of 2003 my wife, who
6 they were attempting to collect, who was indebted to them
7 was going to start residing at my residence. And based on
8 that fact, they've established -- or they've made the
9 statement that they are going to pursue having that amount
10 that she owed transferred --

11 COMMISSIONER CLAYTON: Placed on your bill?

12 MR. MCKINZY: Right.

13 COMMISSIONER CLAYTON: So you want an order
14 saying that they can't do that?

15 MR. MCKINZY: That it's not a debt that is
16 owed by me or on my account, that I am not liable for that.

17 COMMISSIONER CLAYTON: So that's one thing
18 that you're asking for. And is there anything else?

19 MR. MCKINZY: There are allegations or claims
20 that I made in the process of this proceeding as far as when
21 they turned off my service. The tariffs that they're
22 required to give me written notice, that it was not
23 followed, complied with, that I was not the -- the
24 notices -- there's another aspect if I could get -- I have
25 my position statement that outlines the tariffs. I'm

1 alleging that in addition to --

2 COMMISSIONER CLAYTON: I don't want to know
3 what you're alleging. I just want to know what relief
4 you're asking. You want an order saying you don't owe the
5 bill?

6 MR. MCKINZY: Right.

7 COMMISSIONER CLAYTON: And is there anything
8 else?

9 MR. MCKINZY: Well --

10 COMMISSIONER CLAYTON: What are you asking
11 for? What do you want us to do?

12 MR. MCKINZY: -- I'm wanting them to be held
13 accountable for the tariff that they filed. If they have
14 tariffs on file with the Commission saying that once they
15 turn off service or once a customer requests service, that
16 they were required to transfer my service within the next
17 business day. If that did not occur, then I want that --
18 that did, in fact, constitute a violation of their tariffs.
19 I mean --

20 COMMISSIONER CLAYTON: So you just want us to
21 say they violated their tariff?

22 MR. MCKINZY: Right. The violation -- if the
23 violation's occurred, I want that to be established that
24 they did, in fact, violate the tariffs on the occasion if
25 that, in fact, occurred on the occasions that I'm saying

1 that they didn't give me notice, they didn't transfer my
2 service after I requested by the next day, they didn't give
3 me the written notice.

4 COMMISSIONER CLAYTON: Are you asking for
5 monetary damages?

6 MR. MCKINZY: From this Commission, no. I
7 have a legal case that's pending currently in Jackson County
8 I'm pursuing monetary damages through.

9 COMMISSIONER CLAYTON: Anything else that
10 you're asking for?

11 MR. MCKINZY: No.

12 COMMISSIONER CLAYTON: Okay. Thank you very
13 much.

14 JUDGE RUTH: Okay. Staff, would you please
15 give an opening statement?

16 MR. BERLIN: Good morning, your Honor. This
17 is a case, in Staff's view, that is not new to the
18 Commission. Perhaps new to the current Commission, but this
19 type of case is one that has been before past Commissions in
20 which Reports and Orders have been issued.

21 It's Staff's view that this case involves one
22 central issue and that is the interpretation of MGE's
23 tariff, in particular, Section 3.02. And what Staff
24 believes the Commission needs to determine is whether
25 Mr. McKinzy can be held liable as an unnamed person to an

1 account -- the account specifically of a Ms. Tamara Nance.

2 MGE is attempting to collect or has attempted

3 in the past to collect the past due debt of a Ms. Tamara

4 Nance that incurred as a result of gas service taken out in

5 Ms. Tamara Nance's name at 3928 Highland Avenue in Kansas

6 City during the period of December 17th, 1998 through

7 March 30th of 1999, if I am reciting the record correctly.

8 That past due debt is an amount of approximately 449 dollars

9 and some cents.

10 MR. MCKINZY: 96 cents.

11 MR. BERLIN: 96 cents. It's Staff's view that

12 MGE is taking a very aggressive interpretation and

13 application of their tariff by attempting to hold

14 Mr. McKinzy, again, an unnamed person to the account of

15 Ms. Tamara Nance, liable for a service that he neither had

16 use or benefit of.

17 There is well-established decisions that --

18 and I cite them in Staff's report filed on September 8th of

19 2003. The decision of Bowman v. the Gas Service Company,

20 27 PSC NS 44 1984, and Winkelman v. Associated Natural Gas

21 Company, 27 PSC NS 40 1984 in which the Commission was asked

22 to determine whether or not an unnamed person could be held

23 liable for the debt of another in which the unnamed person

24 had no benefit, no use and no connection to the debt that

25 was accrued.

1 Both Commission decisions in those Reports and
2 Orders are based upon very well-established Missouri case
3 laws that hold that a company cannot seek or is not entitled
4 to any relief where it cannot state a claim based upon the
5 theory of an implied contract. That goes to the benefit and
6 use analysis that Staff has pled in its original report,
7 September 8th.

8 And so what Staff would ask the Commission to
9 consider -- and I believe that Mr. McKinzy currently has gas
10 service and so that was the relief that Staff had asked for,
11 but I would ask that the Commission consider issuing an
12 order based upon the facts of this case as Staff believes
13 that the facts show that Mr. McKinzy had no relationship to
14 the past due debt of Tamara Nance during the period of 1998,
15 1999 on Highland Avenue and that Mr. McKinzy is not to be
16 held liable for that past due debt. And that concludes
17 Staff's opening statement. Thank you.

18 COMMISSIONER CLAYTON: May I ask you a couple
19 of questions before we get started?

20 MR. BERLIN: Sure.

21 COMMISSIONER CLAYTON: Does Staff view this
22 case as a discontinuance of service case or a commencement
23 of service case, or does it make any difference?

24 MR. BERLIN: Staff's view is that's pretty
25 much a distinction without a difference. Mr. McKinzy was,

1 in the past at another residence, a customer of MGE. When
2 he moved across town to the Overton address, he made an
3 attempt to transfer service from a landlord.

4 Whether it's a denial of service at that
5 point, I think Mr. McKinzy would view it probably as a
6 discontinuance of service from the time he -- and I would
7 ask you to ask Mr. McKinzy this, but from the time he moved
8 into the property in which he attempted to transfer service
9 over from the landlord.

10 So Staff's view is that that's effectively a
11 denial of an application or transfer of service, but to
12 Mr. McKinzy, who had been a past customer of MGE, it looks
13 more like a discontinuance of gas service.

14 COMMISSIONER CLAYTON: So it's Staff's
15 position that it doesn't make any difference and Staff
16 doesn't take a position on whether it's discontinuance or a
17 failure to commence service?

18 MR. BERLIN: In terms of the relief granted,
19 that is correct. In other words, he's gotten his gas
20 service turned on.

21 COMMISSIONER CLAYTON: You would agree Section
22 3.02 of the tariff only applies to commencing gas service
23 and does not make any reference to discontinuance of
24 service? Do you believe those are two different things or
25 not?

1 MR. BERLIN: Well, they would be, of course,
2 where he is attempting to commence service in his name at
3 the new residence by moving that service out of the name of
4 the landlord to his own account. So I do believe it -- that
5 what is at issue here is 3.02, if I'm answering or
6 understand your question correctly.

7 COMMISSIONER CLAYTON: Well, it's a legal
8 question, I guess whether -- well, so Staff doesn't have --
9 Staff doesn't have a position one way or the other or you
10 just think it doesn't matter. Right?

11 MR. BERLIN: Well, it does matter. At issue
12 is 3.02. He is attempting to commence service in his name.

13 COMMISSIONER CLAYTON: Does Staff believe that
14 changing addresses and making a new application for service
15 at a new address, does Staff believe that that is a
16 continuance of service and simply a transfer or does Staff
17 believe that it's a new application and new commencement of
18 service, I guess is what I'm asking? What has been the
19 tradition that -- the position that Staff has taken over the
20 years? Is there one?

21 MR. BERLIN: Well, I'm not aware of any
22 tradition or position with regard to that specific issue
23 that you bring up.

24 COMMISSIONER CLAYTON: Okay. Are there any
25 issues of facts still in dispute in this case or is this

1 purely a question of law for us to decide?

2 MR. BERLIN: Staff believes it's a question of
3 law for the Commission to decide.

4 COMMISSIONER CLAYTON: So that would mean that
5 there were -- no issues of fact are in dispute?

6 MR. BERLIN: At this point Staff sees no
7 factual issues in dispute. As stated in its Staff report,
8 we believe that it's an interpretation of the law and the
9 tariff.

10 COMMISSIONER CLAYTON: What is your
11 understanding of what relief Mr. McKinzy is requesting of
12 this Commission?

13 MR. BERLIN: Well, my understanding is that --
14 as stated on his original complaint, as stated in his
15 suggestions in support and as stated in his -- I believe
16 there was a response to an issues list, is that he wanted
17 gas service, he needed to have gas service for his family
18 established at his new residence. And that, in fact, I
19 believe that MGE did turn on the gas service some time in
20 September as a result of the filing of Staff's report.

21 COMMISSIONER CLAYTON: Let me stop you there.
22 You made a statement in your opening statement that Staff
23 now supports the concept of this Commission issuing an order
24 stating that Mr. McKinzy is not liable and will never be
25 liable for the prior gas bill of his current spouse; is that

1 correct? You all are supportive of his position now?

2 MR. BERLIN: Staff supports that because

3 Staff -- that is correct.

4 COMMISSIONER CLAYTON: And that is opposite to

5 what you filed in your suggestions in support of MGE's

6 motion for dismissal of the complaint, is it not?

7 MR. BERLIN: It was Staff's view at that point

8 that MGE was not attempting to collect the past debt of

9 Tamara Nance from Mr. McKinzy.

10 COMMISSIONER CLAYTON: Okay. And that's

11 changed?

12 MR. BERLIN: I'm not sure. I don't know

13 whether MGE is attempting to collect that debt or not at

14 this point in time.

15 COMMISSIONER CLAYTON: So has Staff's position

16 changed since these suggestions in support were filed?

17 MR. BERLIN: Well, I have to go back to the

18 original Staff report, but having --

19 JUDGE RUTH: Mr. Berlin --

20 MR. BERLIN: If you could clarify that for me.

21 JUDGE RUTH: -- the original Staff report --

22 and, you know, I don't have it in front of me, I can pull it

23 out in a minute, but it suggested that Staff's position was

24 that Mr. McKinzy should -- at that time the facts were such

25 that Mr. McKinzy's wife was not living in that current

1 residence and Staff stated that Mr. McKinzy was not liable
2 for the 449 dollars and some odd cent debt. Then Staff
3 later filed a motion -- or suggestions in support of the
4 Motion to Dismiss.

5 MR. BERLIN: That is correct.

6 JUDGE RUTH: And I think what the Commission
7 would like is some reconciliation as to the two positions,
8 what has changed, if anything. And then also I would like
9 you to clarify if Mr. McKinzy's wife moves in and is living
10 in that residence, what is Staff's position as to that \$449
11 debt? If she becomes a member of the household, what is
12 Staff's position?

13 MR. BERLIN: Okay. Let me answer your last
14 question first. Staff's position with regard to the debt
15 incurred by Tamara Nance during the 1998/1999 period is not
16 a debt oweable by Mr. McKinzy whether or not Ms. Tamara
17 Nance becomes a member of a household or not. And Staff
18 doesn't know whether Ms. Nance is a member of the household
19 at this point in time.

20 COMMISSIONER CLAYTON: Doesn't make any
21 difference?

22 MR. BERLIN: That is correct.

23 COMMISSIONER CLAYTON: Okay. Do you believe
24 that we can give Mr. McKinzy the relief he is requesting
25 when in your suggestions in support, when you all supported

1 dismissing this complaint, you said we couldn't give him
2 that relief? What I'm trying to get at is can we give him
3 the relief he's requesting? Do we have the legal ability to
4 do that?

5 MR. BERLIN: Yes. If I understand what you're
6 driving at correctly, in that you may make a finding of fact
7 that that debt was not oweable by Mr. McKinzy. It was
8 Staff's understanding at the time of that filing that MGE
9 was not attempting to collect that debt from Mr. McKinzy.

10 JUDGE RUTH: It's not clear from your
11 pleadings. And I am going to ask -- we'll talk about this
12 later, but I need Staff to file a new position statement in
13 writing because I have a Staff rec that clearly says
14 Mr. McKinzy doesn't owe the \$449, in Staff's opinion.

15 Then there is the later suggestions in support
16 of the Motion to Dismiss. And it does not clearly, in my
17 opinion, state that since she's not living there, based on
18 whatever facts it is you're saying, Staff now supports the
19 Motion to Dismiss. And then you come into the hearing today
20 and it looks like you're back to your original position.

21 And I am still not understanding -- especially
22 since, you know, the tariff, Section 3.02, says that company
23 is not required to commence service if the applicant or any
24 member of the applicant's household is indebted to the
25 company. So if Ms. McKinzy moves back into the household,

1 you're saying that Mr. McKinzy still does not owe the debt.
2 Correct?

3 MR. BERLIN: That is -- that's correct.

4 JUDGE RUTH: But are you saying that under the
5 company's tariff, they would be authorized to take some
6 other action such as stopping service because a member of
7 the household owes a debt?

8 MR. BERLIN: Staff is not saying that and
9 didn't -- I don't recall Staff ever saying that.

10 JUDGE RUTH: I'm just trying to clarify. So
11 you're saying that the tariff means what? Those words here,
12 what do they mean if it --

13 MR. BERLIN: Well, what the tariff is
14 attempting to do is to scoop up the debts of members of the
15 household without regard to whether or not the account
16 holder had any benefit or use of service or any relationship
17 in the past to that past due debt of some household member.
18 Staff's view is that tariff goes too far if applied in that
19 manner.

20 JUDGE RUTH: Okay. What I'm trying to
21 understand is tariffs that are approved have the force and
22 effect of law, is my understanding. This tariff seems to
23 have words that say if anyone in the household owes money,
24 the company can commence actions to recoup that money. And
25 you're saying that tariff doesn't say that or it says it,

1 but it shouldn't? Do you understand my difference -- the
2 difference?

3 MR. BERLIN: Staff fully supports the efforts
4 of MGE to collect the debt from Ms. Nance.

5 JUDGE RUTH: And if that debt includes
6 stopping service to wherever she's living, even if
7 Mr. McKinzy is living there too, what would you say?

8 MR. BERLIN: I have to go back to the gravamen
9 of the complaint because we're getting into prospective
10 elements here. But the gravamen of the complaint --

11 JUDGE RUTH: It's important for the Commission
12 to understand and I wish you'd answer my question.

13 MR. BERLIN: Okay. Staff believes that it is
14 not proper to hold Mr. McKinzy liable or to take -- or for
15 the company to take any adverse action as a result of its
16 view that Mr. McKinzy is liable for the past due debt of
17 another person.

18 JUDGE RUTH: Okay. There's a difference
19 though. What if the company is not specifically saying
20 Mr. McKinzy's liable; however, if his wife lives in the
21 residence and they find -- the company finds out and they
22 want to take actions against that account because someone in
23 that household owes money, do you think the company can do
24 that, such as stopping service? They may not -- because
25 it's my understanding they listed her as a member of the

1 household at one point.

2 MR. BERLIN: Staff's view is that MGE cannot
3 do that according to past Commission decisions and
4 established case law.

5 JUDGE RUTH: Okay. Thank you.

6 COMMISSIONER CLAYTON: One other question.
7 Mr. McKinzy is also requesting that we make a finding that
8 MGE violated its tariffs. Are you supportive of that
9 request?

10 MR. BERLIN: Well, that's a rather general
11 question. I support that -- what Staff supports is that MGE
12 has taken an over-aggressive application of tariff Section
13 3.02.

14 COMMISSIONER CLAYTON: I'm going to ask the
15 question again. Is Staff supportive of Mr. McKinzy's prayer
16 that we make a finding that MGE violated its tariff? Are
17 you supportive of that request or not?

18 MR. BERLIN: Staff supports that MGE did go
19 beyond -- or, if you will, violate its tariff.

20 COMMISSIONER CLAYTON: You believe that MGE
21 filed -- or violated its tariff?

22 MR. BERLIN: Staff believes that it violated
23 its tariff by taking the tariff too far against
24 established --

25 COMMISSIONER CLAYTON: Either yes --

1 MR. BERLIN: -- case law.

2 COMMISSIONER CLAYTON: -- yes or no. Yes or

3 no.

4 MR. BERLIN: Yes.

5 COMMISSIONER CLAYTON: Yes. Okay. Thank you.

6 No other questions.

7 JUDGE RUTH: If you'll give me just a minute.

8 Public Counsel, do you have an opening

9 statement?

10 MR. MICHEEL: Well, I figure I should join the

11 fray. As you're well aware, your Honor and Commission, we

12 haven't been very active in this case. We have not filed

13 anything. But let me directly answer some of the questions

14 that we have and let me give you my view on some of the

15 issues.

16 Generally, we are supportive of Mr. McKinzy's

17 claims that MGE did not properly follow its tariff, tariff

18 Section 3.02 on Sheet No. 19. So directly to Commissioner

19 Clayton's questions, yes, we support that.

20 Secondly, I'd like to direct attention to the

21 language of Section 3.02. It says, The company shall not be

22 required to commence, supply gas service if at the time of

23 the application the applicant or any member of the

24 applicant's household who has received benefit from previous

25 gas service is indebted to the company for such gas service

1 previously supplied at the same premises or any former
2 premises until payment of such indebtedness shall have been
3 made.

4 I think that the facts in this case will
5 demonstrate that at the time Mr. McKinzy requested MGE to
6 commence supplying gas service -- to commence supplying gas
7 service at his residence, Ms. Nance, his current wife, was
8 not a member of that household.

9 I believe that the language of that tariff
10 does not say -- it talks about commencing gas service. At
11 the time I think the evidence will show that gas service was
12 commenced at that residence, Ms. Nance was not a member of
13 that residence.

14 Now, the next question becomes is there some
15 other tariff provisions that MGE can look to to seek to
16 perhaps disconnect Mr. McKinzy's gas service because now
17 Ms. Nance, who is admittedly indebted to the company, is a
18 member of that household. What I'm telling you is that
19 section is not Section 3.02 of the tariff. That talks about
20 commencing gas service. And that is a distinction.

21 Now, the second question becomes -- and I
22 don't know enough about the facts about this and Mr. McKinzy
23 should be allowed to develop these facts. He's claimed that
24 they also -- "they" being MGE -- failed to follow their
25 tariffs with regard to the discontinuance and non-payment.

1 And so I think that's also an issue that's been raised and
2 teed up here and we'll just have to see how the evidence
3 comes in on that matter. I mean, I think it's very clear.

4 But on the commencement I think there's a
5 large difference here. And I think the question in 3.02 is
6 when the service was commenced, when Mr. McKinzy sought that
7 transfer. I think the evidence is going to demonstrate at
8 the time Mr. McKinzy sought that service and sought to
9 transfer that service, Ms. Nance was not a member of his
10 household.

11 I'd be happy to answer questions to the extent
12 that I can.

13 COMMISSIONER CLAYTON: Mr. Micheel, I know you
14 haven't participated in this. OPC would agree that there is
15 a significant legal difference between discontinuing service
16 and commencement of service. Correct?

17 MR. MICHEEL: There is a difference.

18 COMMISSIONER CLAYTON: Okay. There is a legal
19 difference.

20 MR. MICHEEL: I think there is a difference in
21 the tariffs. I mean, it's a hard one to pick out in this
22 case because we've got the transfer of service,
23 Commissioner, which is kind of a different animal.

24 COMMISSIONER CLAYTON: I understand. Does OPC
25 have a position on this type of transfer of whether it's

1 commencement or whether it is cancelling one service and --
2 whether it's cancelling one, starting afresh, commencing
3 anew or is it just continuation? Do you all have a position
4 in that context?

5 MR. MICHEEL: This, for me, is a case of first
6 impression so I don't have a position. What I intend to do
7 today is look at the record closely, if I decide to file a
8 brief, read the tariffs and give the Commission our view.

9 COMMISSIONER CLAYTON: Okay. Are you aware of
10 any factual issues in dispute?

11 MR. MICHEEL: I think that there probably are
12 some factual issues in dispute with respect to when
13 Ms. Nance moved in, when she didn't move in.

14 COMMISSIONER CLAYTON: And we'll find that out
15 from the company when they come up.

16 MR. MICHEEL: And I get that just from looking
17 at Mr. McKinzy's responses. You know, I haven't --

18 COMMISSIONER CLAYTON: I understand. I
19 reviewed this material a while back, we had a hearing
20 yesterday, we've had some other things going on so I'm not
21 as fresh on it as I should. That's why I'm asking all these
22 questions. But I want to frame these issues properly before
23 we start taking evidence.

24 Now, do you all -- does OPC -- does OPC have a
25 position on whether or not this Commission has the legal

1 ability to afford the two requests for relief made by
2 Mr. McKinzy? Can we, number one, issue an order that
3 prohibits MGE from ever collecting the past due balance of
4 Ms. Nance from Mr. McKinzy is the first issue?

5 And the second issue is, can we make a finding
6 that MGE violated its tariffs; and if so, what relief does
7 he actually get other than, You're right?

8 MR. MICHEEL: Let me take the second one first
9 because it's the easier one to answer. Yes, you can make a
10 decision, Commissioner, that MGE violated its tariffs.

11 And in the case -- if you determine that MGE
12 violated its tariffs, what the law says is at that point,
13 then the Commission's general counsel needs to make a
14 decision on whether or not they're going to file a case at
15 the circuit court in order to seek some monetary relief for
16 that tariff violation.

17 I think that the law is pretty clear that for
18 each tariff violation I think it's up to -- I can't remember
19 up to a certain amount, but the process would be you would
20 say, you know, the company has violated its tariffs and then
21 you would direct your general counsel, if you thought it was
22 appropriate, to file a case before the circuit court.

23 COMMISSIONER CLAYTON: Okay.

24 MR. MICHEEL: Because this Commission cannot
25 give any sort of monetary damages. So the law is structured

1 if you find a tariff violation, then you direct your general
2 counsel, if you so choose. You may not -- you could find a
3 tariff violation in this case, for example, and say, yes,
4 they violated their tariff, but MGE has hooked Mr. McKinzy
5 up. What I'm saying is that's not an empty act,
6 Commissioner, in my view. I mean, the company may have --

7 COMMISSIONER CLAYTON: Go to the first issue.

8 MR. MICHEEL: The first issue -- I have not
9 closely reviewed the tariffs, but I think you could say
10 because Ms. Nance did -- because at the time Ms. Nance -- my
11 understanding of the facts, because Ms. Nance incurred this
12 bill at a time prior to marrying Mr. McKinzy, I think this
13 Commission has the legal right to say that for Mr. McKinzy,
14 that the company cannot seek to collect this bill from
15 Mr. McKinzy. Yes would -- is my answer.

16 COMMISSIONER CLAYTON: You don't believe that
17 that finding would be in the nature of a declaratory
18 judgment or declaratory ruling as suggested in the company's
19 suggestions to dismiss the complaint summarily? It would
20 basically be a dispute that has not arisen, it would be a
21 clarification or a decision on rights on something that
22 possibly would happen in the future?

23 MR. MICHEEL: It could -- and I guess I
24 haven't read closely -- it could be described as a
25 declaratory judgment. That's not the way Mr. McKinzy has

1 sought his relief, your Honor, in my understanding from
2 reading his papers.

3 COMMISSIONER CLAYTON: Okay. Thank you.

4 JUDGE RUTH: Mr. Micheel, if I can just ask
5 you quickly. You mentioned that you think 3.02 is not
6 applicable here, if you will. Do you think that any of the
7 other sections such as 3.05, continuity of service, or 3.13,
8 refusal to serve, have application in this case?

9 MR. MICHEEL: They may, depending on how the
10 facts come in, your Honor. I mean, there are allegations
11 and I think that it is incumbent upon Mr. McKinzy to provide
12 facts that demonstrate that those tariff provisions are
13 called into issue.

14 I think my looking at the file clearly shows
15 that the facts call into question Section 3.02. And I just
16 wanted to point out in response to Commissioner Clayton that
17 that's talking about commencement of service at the time it
18 commenced. And I think the facts are going to demonstrate
19 at the time -- or the evidence will be I guess at the time
20 the service was commenced, Ms. Nance was not living with
21 Mr. McKinzy.

22 JUDGE RUTH: Well, the reason I ask is, for
23 instance, 3.13 talks about the company may refuse to supply
24 gas service or to discontinue service to any customer who
25 fails or refuses to comply with the provisions of any

1 applicable law, rule of Commission, rate schedule or any
2 provision of these terms and conditions. And so I just
3 wondered if there was something that would call that into
4 play based on your understanding?

5 MR. MICHEEL: Well, I mean, certainly, again,
6 how the facts come in. But, yes, I mean, there are possible
7 ways that MGE, per their tariffs, can discontinue
8 Mr. McKinzy's service, but they have to have follow their
9 tariff to do that. I mean, they have to give him the proper
10 notice, things like that.

11 I'm not suggesting -- I mean, maybe I'm not
12 understanding your question, your Honor, but I'm not
13 suggesting that there's not a point in time where MGE for
14 legitimate reasons, cannot -- can discontinue Mr. McKinzy's
15 service. They certainly can as long as it's in their tariff
16 parameters.

17 JUDGE RUTH: Thank you.

18 MGE, opening statement?

19 MR. COOPER: Good morning. It's MGE's
20 position, it should surprise no one, that it has acted in
21 accordance with its tariffs as to Mr. McKinzy's application
22 to commence gas service at 8004 Overton in Raytown.

23 I think, based upon the discussion that's been
24 had thus far in the opening statements, it probably bears
25 mentioning that according to Mr. McKinzy's testimony, he had

1 not been a customer of MGE's since January of 2002. So it
2 was not as if he was moving from -- immediately from one
3 residence to 8004 Overton.

4 Now, I would take the position that doesn't
5 matter, but as I say, based upon the discussion that's been
6 had thus far, I think it's a factual distinction that at
7 least some persons here would find to be useful.

8 Mr. McKinzy later, in February of 2003,
9 approximately a year later, married Ms. Tamara Nance. And
10 then in April of 2003, approximately a year and three months
11 after he was last a customer, then applied for gas service
12 at 8004 Overton.

13 As we've mentioned before, Section 3.02 of
14 MGE's rules and regulations speaks to the commencement of
15 service. And that's certainly what MGE believes that
16 Mr. McKinzy's application called into question, was the
17 circumstances under which MGE would have to commence service
18 at 8004 Overton to Mr. McKinzy.

19 Now, as a part of the application process,
20 Mr. McKinzy was asked if he was married. He initially said
21 his wife was intending to reside with him. He provided his
22 wife's Social Security number. It was later determined --
23 and I don't think this is in dispute -- that Mrs. McKinzy
24 owed MGE approximately \$449.96 for gas service provided to
25 her previously.

1 Now -- and based upon Section 3.02, MGE then
2 refused to commence service in Mr. McKinzy's name at 8004
3 Overton because of the part of that provision that speaks to
4 a member of an applicant's household being indebted to the
5 company.

6 Now, as you read the testimony, there's
7 another issue that arises here. And that's the fact that
8 service to 8004 Overton was, in April of 2003, being
9 provided in the name of a Mr. Gerald Lee, who is said to be
10 the landlord or was at that time the landlord in those
11 premises. Mr. Lee was MGE's customer.

12 And I look to Section 1.04 of MGE's tariff
13 which say, A customer is a person or legal entity
14 responsible for payment for service except one denoted as a
15 guarantor. Mr. Lee was the customer at 8004 Overton until
16 June 17 when MGE was informed that Mr. Lee no longer wanted
17 that service to be in his name at 8004 Overton. Mr. Lee's
18 service, because he was the customer, was then terminated on
19 June 18, 2003 and a final bill was sent to Mr. Lee.

20 In accordance with MGE's tariffs, this falls
21 within the definition of a termination of service, which is
22 Section 1.37 because it was a cessation of gas service
23 requested by the customer.

24 Going back to the discussion that's been had
25 previously, this is very much both the commencement -- the

1 question of commencement to Mr. McKinzy and then the
2 ultimate June termination of service are very much different
3 from a discontinuation of service, which is defined in the
4 tariffs at 1.10 as a cessation of service by company not
5 requested by the customer.

6 So certainly when service ceased at 8004
7 Overton in June, this was a termination and was not a
8 discontinuance. And for this reason, we believe that the
9 various discussions about discontinuance provisions cited by
10 Mr. McKinzy discussed this morning in opening statements
11 just do not apply to the situation at hand.

12 We also believe that the idea of I guess use
13 and benefit rule, which has been discussed by the Staff, is
14 equally inapplicable in this case because, once again, the
15 idea of use and benefit sort of rule applies, again, to
16 discontinuance of service, not to a termination of service
17 or a failure to commence service.

18 Again, MGE's actions, we believe, are in
19 accordance with its tariffs and believe the Commission
20 should find for MGE in regard to Mr. McKinzy's complaint.

21 COMMISSIONER CLAYTON: Do we have the legal
22 ability to make a finding or issue an order that says that
23 Mr. McKinzy will never, ever be liable for a debt of
24 Ms. Nance?

25 MR. COOPER: I do not believe that you have

1 that authority. As stated in the company's motion for
2 summary determination and really more specifically in that
3 aspect of the motion that was a Motion to Dismiss, company
4 has cited provisions -- has cited case law that indicates an
5 administrative body cannot issue what amounts to a
6 declaratory judgment. And because that's not an issue
7 that's before you, it's not ripe for determination, that
8 such a determination would be a declaratory judgment.

9 COMMISSIONER CLAYTON: Does MGE believe that
10 there are any factual issues in dispute at this point?

11 MR. COOPER: I don't believe that -- well,
12 there's really -- I have to distinguish. I think there
13 certainly are some factual issues in dispute. I don't think
14 there are any of the significant factual issues that are
15 necessary to the Commission's decision in this matter that
16 are in dispute.

17 COMMISSIONER CLAYTON: MGE has hooked up the
18 service for Mr. McKinzy. Correct?

19 MR. COOPER: Yes.

20 COMMISSIONER CLAYTON: Does MGE, in its
21 position, believe now that Ms. Nance was or was not a member
22 of the applicant's household at the time of application?

23 MR. COOPER: MGE continues to believe that she
24 was.

25 COMMISSIONER CLAYTON: That she was.

1 According to the tariff, if we were to, say,
2 dismiss or find for the company in this complaint, if that
3 were to happen, does MGE believe that it could go back to
4 Section 3.02 and say, We will no longer continue the service
5 or we have the ability to not commence, but we did because
6 of this case? Basically if we dismiss this, will the gas be
7 shut off unless he pays the bill?

8 MR. COOPER: No. And the company has
9 addressed that at least in a footnote, I believe, in the
10 motion and suggestions for summary determination. And I
11 would point you to the suggestions in support of motion for
12 summary determination or in the alternative for dismissal of
13 complaint, page 4, footnote 1.

14 And essentially what is stated there is that
15 MGE believes that now that service has been commenced in
16 Mr. McKinzy's name at 8004 Overton, that it would not be
17 authorized to discontinue service pursuant to its tariff
18 because Complainant had not received the substantial benefit
19 and use of the service supplied at Ms. Nance's prior
20 residence.

21 COMMISSIONER CLAYTON: Okay. So you couldn't
22 disconnect it, but you would -- the company would seek to
23 transfer that previous debt to his account?

24 MR. COOPER: Yes. And that footnote does go
25 on to indicate that the company believes that it would be --

1 its tariff would allow it to place Ms. Nance's debt on that
2 bill.

3 COMMISSIONER CLAYTON: Do we have -- is there
4 a section number on Sheet No. R-20 or is it just -- it's the
5 only way to refer to it is Sheet No. R-20. And is that
6 anywhere in the pleadings, a copy of that?

7 MR. COOPER: Of R-20? I don't know that it
8 is, Commissioner. I believe it is certainly a document
9 that's on file with the Commission. It's a public document.
10 The Commission could take notice of that -- administrative
11 notice of that sheet.

12 MR. MICHEEL: Your Honor, Sheet No. R-20 is
13 attached to Staff's report of investigation and
14 recommendation.

15 MR. BERLIN: Your Honor, it's Schedule 2.2.

16 COMMISSIONER CLAYTON: It's attached to which
17 Staff's pleading?

18 MR. BERLIN: Staff's report of September 8th,
19 Schedule 2-2.

20 MR. COOPER: And I believe it's the very top
21 paragraph that does not have a number is what the company is
22 referring to. Company reserves the right to transfer any
23 unpaid amount from prior services to a current service
24 account. A continuation of 3.02, which is actually the
25 bottom of R-19.

1 COMMISSIONER CLAYTON: The company reserves
2 the right to transfer any unpaid amount from prior service
3 to a current service account. It's the position of the
4 company that you all can transfer her bill to his bill
5 according to this?

6 MR. COOPER: If she's a member of the
7 household, yes.

8 COMMISSIONER CLAYTON: Okay. Do we have the
9 legal ability to interpret tariffs and settle disputes
10 relating to tariffs?

11 MR. COOPER: Yes.

12 COMMISSIONER CLAYTON: Wouldn't this be a
13 dispute on this provision here?

14 MR. COOPER: Not at this point in time I don't
15 know that it is, Commissioner.

16 COMMISSIONER CLAYTON: I'm just going to say,
17 isn't this the real issue here? Isn't this provision what
18 really is at issue in this case? Outside of the violation
19 of tariffs, which we'll hear factual testimony on that, but
20 regarding the service and the past due bill, isn't this
21 really what the issue in this case is?

22 MR. COOPER: Certainly this is the only issue
23 on which the Commission has been asked to -- I guess to do
24 something to provide some relief to the Complainant.
25 Because the Complainant has service at 8004 Overton, because

1 the company does not believe that it can discontinue that
2 service under the facts as are known today, that's the only
3 issue that you've been asked to do something about, I think.

4 COMMISSIONER CLAYTON: Well, I apologize to
5 all the parties for all these questions, but I've had
6 difficulty framing this case and identifying exactly what
7 we're being asked to do and whether or not we have that
8 power. But it seems to me that this is really what the case
9 comes down to is whether the account can be transferred.
10 Isn't that -- would you agree with that?

11 MR. COOPER: Well, as I say, certainly that's
12 the only issue where the Commission is being asked to do
13 something, yes.

14 COMMISSIONER CLAYTON: Okay. Thank you.
15 Would any of the other parties like to comment
16 on my last diatribe?

17 MR. MCKINZY: I want to comment, your Honor,
18 or Commissioner.

19 COMMISSIONER CLAYTON: Go ahead.

20 MR. MCKINZY: This is a continuation. I feel
21 that what they are trying to do I would like to first --
22 some statements were made in his -- the motion for dismissal
23 or summary determination was at a time, when we were here in
24 December, when my wife was not, in fact, a member of my
25 household.

1 And it was made -- and that was the ground
2 that the Commission was attempting to make a ruling on facts
3 that were not actuality. And those facts have become an
4 actuality. So the Motion to Dismiss -- the reasons for the
5 Motion to Dismiss becomes moot because they were alleging
6 that she's not a member of a household so how could you rule
7 on a member of a household as if she was to become a member
8 at some later point. She became a member of my household
9 December 24th, 2003.

10 So the grounds for a motion for dismissal
11 become moot because they're alleging you can't give a
12 judgment or order based on facts that are not in reality.
13 So those facts have now become a reality given that she is
14 now a member of my household as of December the 24th, 2003.
15 So --

16 COMMISSIONER CLAYTON: But the issue is not
17 whether or not they're going to turn off your service?

18 MR. MCKINZY: Yes, it is.

19 COMMISSIONER CLAYTON: According to their
20 tariff, they can't turn it off. The question is whether
21 they can transfer the bill to you and then threaten to turn
22 it off. Right?

23 MR. MCKINZY: Right. That's the roundabout
24 issue. Initially discontinuing service and now that the
25 service is on, now threatening to transfer -- they've

1 already made in their Rebuttal that they have intentions to
2 transfer the debt now that they have evidence given my
3 Direct Testimony that they have, in fact, intentions of
4 transferring the bill and pursuing the debt against me.

5 COMMISSIONER CLAYTON: Thank you.

6 Anyone else? Staff? And you don't have to
7 respond. I just want to give everybody a response to --

8 MR. BERLIN: Just, your Honor, to summarize, I
9 think Mr. McKinzy brings up a very valid point that Staff
10 was concerned that Mr. McKinzy got relief, he had his gas
11 turned on. And based upon Staff's initial pleading, Staff
12 was concerned about the past due debt.

13 MGE took certain actions as a result of that.
14 I think they did it for other reasons, but yet Mr. McKinzy
15 achieved relief at that point in time and now the situation
16 has changed. The fact situation I believe has changed which
17 you have brought forward now that she is a member of the
18 household and now it appears we'll address that issue.

19 COMMISSIONER CLAYTON: Does Staff believe that
20 the account can be transferred into his name according to
21 the tariff provisions?

22 MR. BERLIN: Staff believes that the tariff
23 provisions allow that, but that there's some concerns with
24 regard to past due debt that we bring up the legal argument
25 that he should not be held liable for the past due debt.

1 And perhaps it goes to a factual determination which we have
2 not arrived at yet --

3 COMMISSIONER CLAYTON: I understand.

4 MR. BERLIN: -- as to who the applicant really
5 is in this case. Was it merely Mr. McKinzy or did -- and
6 perhaps this will come out in testimony, or did Ms. Nance --
7 was Ms. Nance an applicant in this case?

8 COMMISSIONER CLAYTON: I'm sorry. I am
9 confused. It seems like you said two different things.

10 MR. BERLIN: Yes, I know. And I'm going back
11 to my original motion. Staff would agree that under the
12 tariff provision, they can make that transfer.

13 COMMISSIONER CLAYTON: Okay. So they can make
14 that transfer. Now, according to Staff, Staff's position,
15 in your opening statement you said that Staff supported
16 granting Mr. McKinzy's relief, issuing an order saying that
17 he will never be liable for it. That is completely opposite
18 to what you just said there, is it not? I'm really not
19 trying to be difficult. I just don't understand what
20 Staff's role is here. I mean, that's what I'm trying to get
21 a handle on.

22 MR. BERLIN: Staff's concern was that that
23 debt was never oweable by Mr. McKinzy.

24 COMMISSIONER CLAYTON: I know it was never,
25 but as we look forward, you just said it can be transferred,

1 but you're also saying that he should never be liable for
2 it. So which is it? Can't have it both ways.

3 MR. BERLIN: Well, Staff will agree that it
4 can be transferred.

5 COMMISSIONER CLAYTON: Okay. Thank you.

6 Mr. Micheel, do you have any -- do you want a
7 piece of that action there or do you want to lay low?

8 MR. MICHEEL: No. I'll jump in. I would say,
9 your Honor, in looking at the tariff, it's less than clear
10 what the result should be.

11 COMMISSIONER CLAYTON: Okay. Thank you. I'll
12 be quiet.

13 JUDGE RUTH: This seems like a good time for a
14 10-minute break. We'll go off the record and come back at
15 approximately 10 minutes until 10:00.

16 (A recess was taken.)

17 JUDGE RUTH: Let's go ahead and go back on the
18 record. I believe everyone is present after our break and
19 we are ready to begin with calling our first witness.

20 Mr. McKinzy, I'll ask you to go first. And
21 I'll need you to move up here to the witness stand, take a
22 seat and I'm going to start off by swearing you in. In this
23 case you're going to be acting as your own attorney and as a
24 witness.

25 (Witness sworn.)

1 JUDGE RUTH: Thank you. You may proceed.

2 MICHAEL MCKINZY, SR., testified as follows:

3 MR. MCKINZY: Okay. First, I'd like to start
4 with the complaint that I filed on June 30th, 2003. And it
5 refers to in detail that all of my utilities except my gas
6 account were transferred from my previous residence located
7 at 8006 East 87th Street, Raytown, Missouri to 8004 Overton,
8 Raytown, Missouri in March of 2003.

9 I was divorced November 8th, 2002 and
10 remarried on February the 16th, 2003. My new wife was not
11 living at my new residence located at 8004 Overton in March
12 of 2003 nor is she living there now.

13 After MGE employed --

14 MR. COOPER: Excuse me just a moment, your
15 Honor. I think that -- well, the Direct Testimony and, in
16 fact, Surrebuttal Testimony has been pre-filed in this case
17 and that perhaps it's inappropriate to start with I guess
18 what would really constitute Direct Testimony anew on the
19 stand in this type of proceeding.

20 JUDGE RUTH: Since the witness is not
21 represented by counsel, I am going to allow him some leeway,
22 but I have a question for you. Are you reading directly
23 from your --

24 MR. MCKINZY: Right.

25 JUDGE RUTH: Okay. That --

1 MR. MCKINZY: That's on file?

2 JUDGE RUTH: Yes. It is part of the record,
3 your complaint, and you don't need to read it. In fact, you
4 might want to start with -- I understand you have pre-filed
5 some Direct Testimony.

6 MR. MCKINZY: Right. There is also -- there
7 is aspects in -- regarding as far as actions taken that was
8 not -- I was wanting to put on the record that was not made
9 a part or was not mentioned in the Staff report.

10 And that's regarding when I filed my original
11 complaint in conjunction with my lease, which is -- which
12 was filed on March 30th, I also filed in conjunction to that
13 pay statements which had my current wife, Tamara Nance --
14 and I set forth in the complaint that I had spoken with an
15 MGE spokesperson or employee on June 18th and faxed this
16 information to a Renee, and I gave a number of
17 86--816-360-5509.

18 And that information was never -- was never
19 mentioned that I had, in fact -- and I was wanting to have
20 this admitted as an exhibit as far as what was -- it's in
21 the file, but there was no mention of it. I had provided --
22 was requested to provide residency where Tamara Nance
23 resided and I did so by providing MGE on June 18th pay
24 statements of Tamara Nance with an address of 6107 East 8th
25 Street, Kansas City, Missouri. So this information was made

1 known to MGE at the time that my service was disconnected.

2 JUDGE RUTH: Okay. I want to back up just a

3 little bit. And we'll not forget the document you have in

4 your hand, but let's first look at what you pre-filed as

5 your Direct Testimony.

6 MR. MCKINZY: Okay.

7 JUDGE RUTH: It's my understanding you did

8 bring some copies of that?

9 MR. MCKINZY: Yes.

10 JUDGE RUTH: Okay. Mr. Nance, I have a copy

11 of your Direct Testimony that was pre-filed on

12 December 10th.

13 MR. MCKINZY: Okay. Yes.

14 JUDGE RUTH: And --

15 MR. MCKINZY: It sets out the --

16 JUDGE RUTH: It has attached to it also an

17 Exhibit 1 is my understanding; is that correct?

18 MR. MCKINZY: Yes, that is. And --

19 JUDGE RUTH: Would you like to offer into

20 evidence as Exhibit 1 your Direct Testimony, which would

21 include its attachment? I'll probably -- what I'll do is

22 change the designation on my copy of the Exhibit 1 to

23 Attachment A --

24 MR. MCKINZY: Okay.

25 JUDGE RUTH: -- just so I can keep that clear

1 for my purposes. And I'm marking on my copy of the Direct
2 Testimony marking it as Exhibit 1. Do you have a copy you
3 can hand the court reporter with you?

4 MR. MCKINZY: Yes.

5 JUDGE RUTH: Would you like to offer this into
6 evidence?

7 MR. MCKINZY: Yes. I would at this time like
8 to offer my Direct Testimony that was filed on December 10th
9 as Exhibit 1 into evidence.

10 JUDGE RUTH: Okay. Let me ask the parties
11 then if there are any objections to Exhibit 1 and its
12 Attachment A being offered into the record. Staff?

13 MR. BERLIN: No, your Honor.

14 JUDGE RUTH: Public Counsel?

15 MR. MICHEEL: No.

16 JUDGE RUTH: And MGE?

17 MR. COOPER: No.

18 JUDGE RUTH: Okay. Exhibit 1 is received into
19 the record.

20 (Exhibit No. 1 was received into evidence.)

21 JUDGE RUTH: And I believe you also have
22 Surrebuttal Testimony?

23 MR. MCKINZY: Yes.

24 JUDGE RUTH: Do you have copies of that?

25 MR. MCKINZY: Yes.

1 (Exhibit No. 1 was marked for identification.)

2 MR. MCKINZY: This is Surrebuttal filed on I

3 believe -- I don't know the exact filing with the

4 Commission. And I would like to offer it I guess as

5 Exhibit 2.

6 JUDGE RUTH: Okay. My records indicate that

7 was filed on January 26 of '04. And let's see. My copy has

8 a few pages also attached that I will call Attachment A.

9 There's several pages beginning with, sorry --

10 MR. MCKINZY: It's an affidavit. An affidavit

11 of the --

12 JUDGE RUTH: You've got the testimony and a

13 handwritten letter dated 1/23/04, which is two pages, and

14 then what you call Exhibit 2 at the bottom.

15 MR. MCKINZY: Yes.

16 JUDGE RUTH: Okay. I'm going to mark those as

17 Exhibit 2 and the items on the back will be considered

18 attachments to your Exhibit 2. Are you wanting to offer

19 that at this time then?

20 MR. MCKINZY: Yes. I would like to offer that

21 into evidence as well.

22 JUDGE RUTH: Exhibit 2 has been offered. Are

23 there any objections to it being received into the record?

24 Public Counsel has left the room so I'll ask Staff.

25 MR. BERLIN: No, your Honor.

1 JUDGE RUTH: And MGE?
2 MR. COOPER: No.
3 JUDGE RUTH: Okay. Exhibit 2 is also received
4 into the record.
5 (Exhibit No. 2 was marked for identification
6 and received into evidence.)
7 JUDGE RUTH: Thank you, Mr. Nance.
8 MR. MCKINZY: McKinzy.
9 JUDGE RUTH: I was looking at your wife's
10 name. Sorry.
11 Generally, testimony is offered into the
12 record and then if you have any additional exhibits that you
13 would want to offer, we can look at those, but the
14 Commission does not generally have the actual pleadings
15 admitted as exhibits. They are a part of the file, however.
16 MR. MCKINZY: Okay.
17 JUDGE RUTH: Are there additional documents
18 then --
19 MR. MCKINZY: Yes.
20 JUDGE RUTH: -- that are not pleadings that
21 you would like to offer?
22 MR. MCKINZY: Yes. I would like to offer into
23 evidence the marriage certificate of my wife, Tamara Nance
24 and I, that was designating the date that we were married,
25 February the 16th, into evidence to substantiate the -- or

1 verify the date of marriage.

2 JUDGE RUTH: Okay. Do you have copies of that
3 since that's not been pre-filed?

4 MR. MCKINZY: Yes.

5 JUDGE RUTH: I don't have copies. Would you
6 offer a copy to each of the counsel, the other parties, and
7 bring one up to the Bench too, please? You might go ahead
8 and put one on Mr. Micheel's chair too. I expect he'll be
9 back.

10 MR. MCKINZY: I didn't know how many -- exact
11 number. I'm short of --

12 JUDGE RUTH: After the hearing, I'll ask you
13 to get Mr. Micheel a copy.

14 Okay. I'll mark this as Exhibit 3 for
15 identification purposes. And let me ask the parties if you
16 object to it being admitted into the record. Staff?

17 MR. BERLIN: No objection.

18 JUDGE RUTH: Mr. Micheel's not here, so I'll
19 ask MGE.

20 MR. COOPER: No objection.

21 JUDGE RUTH: Okay. Exhibit 3, the marriage
22 certificate, is also admitted.

23 (Exhibit No. 3 was marked for identification
24 and received into evidence.)

25 JUDGE RUTH: Do you have additional documents?

1 MR. MCKINZY: Okay. Yes. I have an affidavit
2 by -- that is -- was prepared by Gerald Lee, the landlord of
3 the property at 8004 Overton. And it states information
4 regarding him leasing my property -- his property to me on
5 the 2nd and me moving in and stating that he did not
6 request -- contact MGE and request that gas service be
7 disconnected. And it's dated April the 12th of 2004.

8 JUDGE RUTH: And Mr. Lee is not present here
9 today?

10 MR. MCKINZY: No, he is not.

11 JUDGE RUTH: For identification purposes, I'll
12 designate that as Exhibit 4. Would you please pass out
13 copies?

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

15 JUDGE RUTH: Okay. This affidavit of
16 Mr. Gerald Lee has been marked for identification purposes
17 as Exhibit 4. Staff, do you have any objections to it being
18 received into the record?

19 MR. BERLIN: No, your Honor.

20 JUDGE RUTH: Okay. Public Counsel is not in
21 the room, so I will ask MGE if they object?

22 MR. COOPER: Can you give us just a moment,
23 your Honor?

24 JUDGE RUTH: Certainly. Tell me when you're
25 ready.

1 MR. COOPER: Your Honor, we would object to
2 the admission of this exhibit. It's an affidavit, it's
3 hearsay. Mr. Lee is not here to stand cross-examination. I
4 think additionally, it would be an improper supplement -- or
5 supplementation of Mr. McKinzy's pre-filed testimony as well
6 in violation of this Commission's rules.

7 MR. MCKINZY: I would like to say that Mr. Lee
8 was unable -- he's a doctor and was unable to transfer -- or
9 travel with me today and that he made every effort to make
10 it known that his -- he did not request termination of
11 service and has done so by affidavit.

12 I do not know any other way that he could
13 have -- other than traveling here -- made it known that his
14 desire -- that it was not his desire to disconnect service
15 at my residence, which directly goes to the issue of who
16 requested the termination of service at my residence.

17 JUDGE RUTH: Mr. McKinzy, your response to the
18 objection is noted for the record. However, I am going to
19 sustain the objection. The document was marked for
20 identification purposes, but it is not going to be admitted
21 into the record. It is hearsay. The gentleman's not
22 present, it's been offered at the last minute without
23 opportunity for the opposing counsel to have an adequate
24 response. So it is not going to be admitted into the record
25 today.

1 Now, if you have any other documents you
2 want --

3 MR. MCKINZY: Yes.

4 JUDGE RUTH: -- to discuss, we'll do that;
5 otherwise, we can also move on to --

6 MR. MCKINZY: Okay. I have -- well, I guess
7 this is hearsay too. These are documents that I was able to
8 ascertain after I visited Jackson County Courthouse in
9 Jackson County where I reside and was able to find out that
10 there were -- at the property that the bill in question
11 was -- that I was attempting -- that I was being made to pay
12 at 3928 Highland, that the landlord had filed suit for due
13 rent.

14 And it lists the occupants of the property at
15 that location starting from September the 5th, '98. And
16 this was filed in the court March the 31st, which covers the
17 period that the service was being attempted to be collected
18 from me and it shows the occupants that were renting the
19 property from her.

20 JUDGE RUTH: I'm not sure I quite followed
21 you. This document that you have, may I look at a copy of
22 it? And would you tell me again what it is, what you --

23 MR. MCKINZY: It's a complaint from Jackson
24 County Court and it -- she filed a lawsuit that --

25 JUDGE RUTH: So this is a landlord's

1 complaint, Bonita Ferguson, against -- it has premises at
2 3928 Highland and that it was rented to Tamara Nance. Is
3 that what it's saying?

4 MR. MCKINZY: Yes.

5 JUDGE RUTH: It's handwritten. I'm having a
6 little bit of difficulty --

7 MR. MCKINZY: Okay. Tamara Nance, Julius M.
8 Tinsley and Daryl A. Singleton, which is the property from
9 the overdue gas bill was made at. It shows the renters --
10 when she sought to collect rent from the renters at the
11 property that began from September the 5th and it identifies
12 the occupants or who was actually renting the property at
13 3928 Highland from September 5th, '98 and that the gas
14 service bill that's being attempted to be collected from me,
15 which was attempted to be collected from me, was from
16 November of '98 to March of '99.

17 So it overlaps the period showing that they
18 were actually the renters of the property and, therefore,
19 responsible for the gas bill there.

20 JUDGE RUTH: I'm sorry. I'm still not quite
21 following. You're saying that this shows that Ms. Nance
22 did --

23 MR. MCKINZY: Right.

24 JUDGE RUTH: -- lives at -- what are you
25 offering this to show?

1 MR. MCKINZY: Show that the occupants other
2 than myself was responsible. The landlord was suing these
3 individuals for back rent and it shows -- it covers the
4 period that MGE was attempting to cover -- make me pay gas
5 at this residence.

6 MR. COOPER: Your Honor, I don't know that --
7 and I'll see if this is helpful at all, but the company
8 certainly does not allege that Mr. McKinzy lived at that
9 Highland address. I don't think there's any dispute as to
10 that issue in this case.

11 JUDGE RUTH: Do you understand what the
12 company's saying?

13 MR. MCKINZY: Yes. But it identifies who, in
14 fact, did live at the address in question during the time
15 period that MGE was attempting to collect the gas bill from
16 me. It goes to show who the responsible parties are, who
17 was leasing the residence at 3929 -- 3928 Highland from
18 September '98 to March 30th.

19 JUDGE RUTH: Do you have the original document
20 with you here today?

21 MR. MCKINZY: No, I do not.

22 JUDGE RUTH: And you're wanting to offer this
23 as Exhibit 5?

24 MR. MCKINZY: Yes.

25 JUDGE RUTH: And you did hand copies out.

1 That's correct?

2 After you've had a chance to look at it,
3 Staff, would you tell me if you object to this document
4 being received into the record?

5 MR. BERLIN: Your Honor, Staff has no
6 objections.

7 JUDGE RUTH: And Public Counsel is not
8 present, so MGE do you object to this document being
9 received?

10 MR. COOPER: No.

11 JUDGE RUTH: No objection?

12 MR. COOPER: No.

13 JUDGE RUTH: Then the document is received and
14 it's marked as Exhibit 5.

15 (Exhibit No. 5 was marked for identification
16 and received into evidence.)

17 JUDGE RUTH: Did you give the court reporter a
18 copy?

19 MR. MCKINZY: Yes.

20 JUDGE RUTH: Okay. Thank you. Mr. McKinzy,
21 do you have additional documents?

22 MR. MCKINZY: Yes. I have my cell phone bill
23 which lists the number I included in my complaint, the
24 360-5509, which I was contacted by a Renee from MGE. And it
25 lists -- I was initially contacted on June 19th of 2003,

1 which was the first attempt after my service was
2 discontinued that MGE attempted to contact me regarding
3 service.

4 JUDGE RUTH: So the relevance of this document
5 is what?

6 MR. MCKINZY: It coincides with the
7 documentation -- the number I included in my original
8 complaint, which I stated that I was contacted by a Renee at
9 305-- 306-5509 and this substantiates or goes to
10 substantiate --

11 JUDGE RUTH: So it's a cell phone bill showing
12 a call from MGE to you?

13 MR. MCKINZY: Right.

14 JUDGE RUTH: And the bill is for what period?

15 MR. MCKINZY: From June 18th, which shows on
16 this -- it goes from June 18th to June 20th. It's a page of
17 my cell phone bill.

18 JUDGE RUTH: And can you clarify for my behalf
19 if there's any dispute among the parties as to whether or
20 not MGE contacted you on that date?

21 MR. MCKINZY: They've never -- it was never
22 made mention of. It was never -- this contact by MGE to me
23 was never made mention. And me faxing information to MGE
24 on -- I would like to also -- I would like to clarify at
25 this time that I had mistakenly thought that my service was

1 originally discontinued on the 17th, when, in fact, it was
2 the 18th in my pleadings. And I would like -- if I could
3 correct it, it was on the 18th that I was -- that the
4 service initially was discontinued.

5 JUDGE RUTH: So is there an error in your
6 Direct Testimony?

7 MR. MCKINZY: Right.

8 JUDGE RUTH: Can you point me to -- I'm sorry.
9 On page 3, paragraph 21 it says, My gas service was
10 discontinued on June 17th, 2003?

11 MR. MCKINZY: Right.

12 JUDGE RUTH: And you're saying now it was
13 June 18th?

14 MR. MCKINZY: Right. Which is also the date
15 that I contacted the Public Service Commission, which is
16 also listed on this.

17 JUDGE RUTH: So you're wanting your testimony
18 to actually be amended or corrected to substitute 18 for
19 17 --

20 MR. MCKINZY: True. Yes.

21 JUDGE RUTH: -- on that page?

22 I've already admitted this document without
23 the correction, so let me ask Staff. Do you object to a
24 strike-out on this document and the date of the 18th being
25 substituted for the 17th?

1 MR. BERLIN: No objection, your Honor.

2 JUDGE RUTH: Public Counsel?

3 MR. MICHEEL: No, your Honor.

4 JUDGE RUTH: And MGE?

5 MR. COOPER: No.

6 JUDGE RUTH: I've amended the copy. After the
7 hearing, we'll need to get together with the court reporter
8 and you may strike out the 17th and substitute June 18th on
9 that page. Are there additional places in your testimony
10 where the date --

11 MR. MCKINZY: I think it was consistent.

12 JUDGE RUTH: So throughout. On page 37, for
13 instance, it also will need to be switched. That will be
14 noted for the record, that you are correcting the date from
15 the 17th of June to the 18th.

16 MR. MCKINZY: Yes. As far as the --

17 JUDGE RUTH: And so the cell phone -- it's
18 actually not the bill, just a page of the bill?

19 MR. MCKINZY: True. It's several pages, but
20 it contains the phone numbers that was incoming on the 19th.

21 JUDGE RUTH: Can you pass copies of that out,
22 please? For identification purposes, I'll note that as
23 Exhibit 6.

24 (Exhibit No. 6 was marked for identification.)

25 JUDGE RUTH: So, Mr. McKinzy, you're wanting

1 to offer this at this time?

2 MR. MCKINZY: Yes.

3 JUDGE RUTH: Exhibit 6 has been marked for
4 identification. It is page 15 out of 18 pages of a cell
5 phone bill on the account for Michael McKinzy.

6 Staff, do you object to this being admitted
7 into the record?

8 MR. BERLIN: No objection, your Honor.

9 JUDGE RUTH: Public Counsel has stepped away.
10 MGE?

11 MR. COOPER: No, your Honor.

12 JUDGE RUTH: Exhibit 6 is admitted.
13 (Exhibit No. 6 was received into evidence.)

14 JUDGE RUTH: Mr. McKinzy, do you have
15 additional documents?

16 MR. MCKINZY: Yes. I have service
17 verification that I requested from MGE after my service was
18 established at 8004 Overton specifying or setting the date
19 that service was, in fact, started.

20 JUDGE RUTH: Do you want to pass that out?

21 MR. MCKINZY: Yes. It's in error by one day.
22 They contacted me on September the 10th and the service was
23 commenced on September the 11th.

24 JUDGE RUTH: Okay. Would you pass copies of
25 that out, please?

1 Staff, after you've had an opportunity to look
2 at the document, would you tell me if you object to
3 Exhibit 7 being received?

4 MR. BERLIN: No objection, your Honor.

5 JUDGE RUTH: Public Counsel is not here.

6 MGE, have you had an opportunity to look --

7 MR. COOPER: I guess I would object on the
8 basis of relevance. Mr. McKinzy believes that his service
9 was, in fact, initiated on September the 11th. I believe
10 our testimony says September the 11th. We agree it's
11 September the 11th. I don't know what the purpose of the
12 document is.

13 JUDGE RUTH: Would you like to respond,
14 Mr. McKinzy?

15 MR. MCKINZY: It verifies, sets forth when
16 service was actually commenced at 8004 Overton in my name.

17 JUDGE RUTH: Okay. The objection is noted and
18 Exhibit 7 is received into the record.

19 (Exhibit No. 7 was marked for identification
20 and received into evidence.)

21 JUDGE RUTH: Mr. McKinzy, do you have
22 additional documents?

23 MR. MCKINZY: Yes. I have a document from MGE
24 that I received verifying service at my previous address,
25 8607 East 87th Street -- 8609 East 87th Street, which was my

1 previous address of residency prior to moving to 8004
2 Overton.

3 JUDGE RUTH: Could you pass copies of that
4 out, please? And how many more documents do you anticipate
5 offering?

6 MR. MCKINZY: I think one more.

7 JUDGE RUTH: Would you go ahead and hand out
8 your next document too so the parties may be looking at it?
9 (Exhibit No. 8 was marked for identification.)

10 JUDGE RUTH: Thank you.

11 Okay. Mr. McKinzy, we're looking first at
12 what's been marked Exhibit 9 [sic], the account history
13 verification. You're wanting to offer this --

14 MR. MCKINZY: As the address that my service
15 was being transferred from, that it was, in fact, an account
16 previously in my name and I was requesting a transfer of
17 service from 8609 East 87th Street and service had been in
18 my name there as my most immediate residency.

19 JUDGE RUTH: It says it was started -- service
20 started --

21 MR. MCKINZY: It's -- the document itself is
22 somewhat ambiguous or somewhat confusing, but it's what I
23 received from MGE once I requested verification of service
24 for my residency at 8609 East 87th Street.

25 JUDGE RUTH: The reason I ask, it says service

1 started August 14th, '03.

2 MR. MCKINZY: Right. That's what --

3 JUDGE RUTH: And it says ended January 28 of

4 '02?

5 MR. MCKINZY: That's the document that I

6 received in that condition from MGE.

7 JUDGE RUTH: Okay. Staff, do you have any

8 objections to Exhibit 9 [sic] being received?

9 MR. BERLIN: No objections, your Honor.

10 JUDGE RUTH: Public Counsel is away from the

11 room. So I will ask MGE, do you have objections?

12 MR. COOPER: And this is Exhibit 8 you said?

13 JUDGE RUTH: Yes. You're right. This is

14 Exhibit 8. I may have misspoken.

15 MR. COOPER: And this is the service history

16 document?

17 JUDGE RUTH: Yes. It says September 16, 2003

18 is the date at the top. As per your request, the following

19 is an account history verification, that document.

20 MR. COOPER: We have no objection to that

21 document.

22 JUDGE RUTH: Exhibit 8 is received into the

23 record.

24 (Exhibit No. 8 was received into evidence.)

25 JUDGE RUTH: Mr. McKinzy, you also handed out

1 a disconnect -- it says at the top Disconnect Notice and
2 then on the right side it says Final Disconnect Notice.
3 You're wanting to offer that into the record?

4 MR. MCKINZY: Yes. This is also in reference
5 to my residence at 8609 East 87th Street. I was residing
6 there until January of 2002 and I no longer continued to
7 reside there, but my ex-wife and my four children continued
8 there. And the service was transferred from her name
9 into -- from my name into her name.

10 And they continued -- so it just shows that
11 the -- in the explanation as to how the service was from one
12 point of time to another from my name and once I no longer
13 lived there, it was transferred into my ex-wife's name.

14 JUDGE RUTH: Staff, do you have any objections
15 to this document being received?

16 MR. BERLIN: No, your Honor.

17 JUDGE RUTH: Public Counsel is away;
18 therefore, I'll ask MGE, do you have any objections?

19 MR. COOPER: No, your Honor.

20 JUDGE RUTH: Exhibit 9 is received into the
21 record.

22 (Exhibit No. 9 was marked for identification
23 and received into evidence.)

24 JUDGE RUTH: Mr. McKinzy, I understood you to
25 say that that is the last --

1 MR. MCKINZY: Yes. Yes, it is.

2 JUDGE RUTH: Okay. Now, Mr. McKinzy, as I

3 stated, your testimony has been received into the record;

4 therefore, it's not necessary for you to read your

5 testimony. However, if there's something you want to

6 clarify, you may do so.

7 MR. MCKINZY: Okay. I would like to clarify

8 that I was contacted by an employee on June 18th and I was

9 given opportunity to have my service restored on June 18th

10 if I provided documents, which I did provide on June 18th of

11 2003. I faxed documents to -- and that was never brought

12 out in the Staff report, so I was wanting to make mention of

13 that.

14 Also, the pending motion for dismissal or

15 summary determination is based on the basis of declaratory

16 judgment based on if whether or not my wife was at some

17 further -- future date was to move into my residency. That

18 became a moot issue, in my opinion, by the fact that she

19 began residing at my residence on December the 24th, 2003.

20 JUDGE RUTH: Okay. We're going to move then

21 to the cross-examination of Mr. McKinzy. Staff, would you

22 like to start?

23 MR. BERLIN: Yes, your Honor.

24 CROSS-EXAMINATION BY MR. BERLIN:

25 Q. Good morning, Mr. McKinzy.

1 A. Good morning.

2 Q. Mr. McKinzy, I'd like to ask you some
3 questions regarding gas service on Highland Avenue. Did you
4 have any connection at all with the property on Highland
5 Avenue at 3928 Highland Avenue?

6 A. I have never been to that residence, I know no
7 one who resides at that residence.

8 Q. Then I guess I can safely presume that you had
9 no connection or use of any gas service at that residence?

10 A. That is true. I've never resided there or
11 never visited there at any time.

12 Q. Okay. Thank you.

13 Mr. McKinzy, just to clarify in my own mind,
14 you had gas service in your name at your previous residence;
15 is that correct?

16 A. That is correct. And it was transferred from
17 a previous residence from there that dates back to 1993 that
18 I've had gas service with MGE in my name for my family.

19 Q. Okay. And then you made the move over to
20 Overton Drive to a new residence some time in March; is that
21 correct?

22 A. Yes. March of 2003.

23 Q. Could you tell me about your connection with
24 MGE at that point in time? Did you request gas service at
25 8004 Overton from them or --

1 A. Yes. I requested -- I called the gas number
2 that's provided I think the 471-- I can't remember. And I
3 requested gas service on April the 9th of 2003. I had
4 transferred all my other utilities, water and the lights to
5 that residence in my name as well. I moved in on March the
6 15th of 2003.

7 Q. Do you recall who you talked with at MGE at
8 that time?

9 A. No. It was one of the customer service
10 representatives that spoke and that particular person's name
11 was not given to me.

12 Q. If you could, please, just describe for me
13 some of that conversation. I'm interested in understanding
14 what questions the MGE customer service representative asked
15 you at the time.

16 A. Okay. I can give somewhat of as close to a
17 verbatim to the conversation I had, if that would be
18 beneficial somewhat. I called --

19 Q. Sure.

20 A. -- MGE on April the 9th of 2003 and I
21 requested transfer of gas service to my residence at 8004
22 Overton. And I told them that it was a transfer from a
23 previous residence and I was requesting to provide that
24 residence address. And I gave 8609 East 87th Street in
25 Raytown, Missouri also.

1 And I was told that there would be a
2 \$5 transfer fee and that the gas would be turned on the
3 following day, the next day. And that was pretty much it.
4 And then the service representative began to go over a
5 review of how the gas service was to be listed. And as she
6 proceeded to, she stated it as being listed as Michael and
7 Carletha McKinzy, 8004 Overton, Raytown, Missouri 64138.

8 And I then made the correction that I had been
9 divorced from my ex-wife and, in fact, had been remarried.
10 And that's when the onslaught of all this that's transpiring
11 today began. Because I was then instructed that I had to
12 provide the Social Security number and name of my new wife.

13 And I informed the representative for MGE that
14 she did not reside here and I didn't know why I would have
15 to give someone's Social Security number when she was not
16 going to be living with me, that she resided at another
17 residence. And then because she insisted, I refused to give
18 the number and hung up.

19 And then I called back and they still had that
20 same -- they had given that I had been remarried -- I had
21 given my new wife's name and -- or name and she stated that
22 she did a credit check and it came back outstanding bill.
23 And based on that, they stated that the outstanding bill had
24 to be paid prior to me having my service transferred from my
25 old residence.

1 Q. Was it your understanding when you made that
2 call, that you were taking out an account in your name?

3 A. Yes. I was -- I was not taking an account, I
4 was transferring my service that I knew I had at my previous
5 residence and I was no longer living at and I wanted the gas
6 service to be transferred where I was residing currently at
7 8004 Overton.

8 Q. Did the customer service rep ask you any other
9 questions with regard to members of the household?

10 A. No. They -- I was requested to provide the
11 name and Social Security number of my current wife and from
12 that information, they were able to uncover an unpaid bill.
13 And I informed them that she -- that my new wife was not
14 residing with me. I had given them the address at 6-- 6701
15 East 8th Street in Kansas City, Missouri as to the residence
16 of my current wife.

17 Q. Did MGE at that -- the customer service rep at
18 that time indicate to you the reason why they wanted the
19 Social -- apparently they -- did they indicate a reason why
20 they wanted that Social Security number?

21 A. No. What I -- in the process -- I didn't want
22 my new gas service being listed with my ex-wife's name. And
23 that was the correction I was -- I didn't want my new wife
24 added, but I didn't want my old wife to remain. But they
25 didn't just take my old wife's name, they wanted to replace

1 my ex-wife with my new wife's name and I wasn't requesting
2 that.

3 I was requesting them to remove my ex-wife's
4 name from the account because she was not going to reside
5 there either. And I just wanted gas service in my name
6 because I was going to be the only one residing there, me
7 and my children.

8 MR. BERLIN: All right. Thank you,
9 Mr. McKinzy. I don't have any further questions.

10 JUDGE RUTH: Okay. I'd like to state for the
11 record that Public Counsel is not present so we will move to
12 cross from MGE.

13 CROSS-EXAMINATION BY MR. COOPER:

14 Q. Mr. McKinzy, I'd like to speak with you just
15 for a minute about one of your exhibits that was admitted
16 here a few minutes ago. That's what was marked as
17 Exhibit 8, it's a document which carries the date
18 September 16, 2003 and it is addressed to you and purports
19 to be from MGE. Do you have that in front of you?

20 A. I was short of one of the documents. Yes, I
21 do now.

22 Q. Okay. I've also been looking at I guess your
23 Direct Testimony. And if I -- do you have that with you as
24 well, your Direct Testimony?

25 A. Yes.

1 Q. Okay. Could you turn to what you've marked as
2 page 1 of 7? Do you see that?

3 A. Okay. Yes.

4 Q. Now, I believe on Exhibit 8 -- well, first
5 off, that document addresses service address 8609 East 87th
6 Street. Correct?

7 A. Yes, it does.

8 Q. Okay. And it purports to say the service
9 started on 08/14/03. Correct?

10 A. Yes.

11 Q. Now, if I look at page 1 of your Direct
12 Testimony, I believe in paragraph 7, what you've identified
13 as paragraph 7, you say that on or about August 15, 2000 MGE
14 transferred your gas service account to your new residence
15 at 8609 East 87th Street; is that correct?

16 A. Yes. That's what it states.

17 Q. Okay. Would it be your belief that your
18 service started at 8609 East 87th Street perhaps August 14
19 of the year 2000?

20 A. It's -- it's as it states on August -- on or
21 about August 15 of 2000.

22 Q. Okay. So on Exhibit 8 where it reflects the
23 year '03, probably year 2000. Correct?

24 A. Yes.

25 Q. Okay. Now, Exhibit 8 also says that service

1 ended January 28 the year 2002. If I turn over to the next
2 page of your Direct Testimony, page 2 of 7, paragraph 11,
3 you have a statement that says, On or about January 29, 2002
4 the gas service account at 8609 East -- and there's nothing
5 between East and Street, but I assume you mean 87th Street;
6 is that correct?

7 A. That's correct.

8 Q. Was transferred to Carletha -- is that the way
9 you pronounce it?

10 A. Yes, Carletha.

11 Q. -- R. McKinzy. I take it from that that you
12 would agree with exhibit -- generally with Exhibit 8's
13 statement that your service at 8609 East 87th Street ended
14 January 28th, 2002. Correct?

15 A. On or about January 29th, 2002.

16 Q. So give or take a day --

17 A. True.

18 Q. -- you're okay with that statement on
19 Exhibit 8. Correct?

20 A. Yes, I am.

21 Q. Okay. And if I understand your testimony
22 correctly, it was that account at 8609 East 87th Street that
23 you believe you were asking MGE to transfer to the 8004
24 Overton address. Correct?

25 A. That is correct.

1 Q. Okay. Now, you offered up and I think it's
2 been stated several times in the testimony thus far that you
3 were married to Ms. Nance on about February 16th, 2003.
4 Correct?

5 A. Yes. That's also verified by one of the
6 exhibits I submitted the marriage license or certificate
7 certifying the date.

8 Q. Okay. And you signed an agreement to lease
9 the residence at 8004 Overton Drive in Raytown on or about
10 March 2nd of 2003. Correct?

11 A. Right. That's correct.

12 Q. Okay. You moved into that residence on or
13 about March 15th of 2003. Correct?

14 A. That's correct.

15 Q. Okay. And you stated that your wife did not
16 move into the residence at 8004 Overton until about
17 December 24th of 2003. Correct?

18 A. That's correct.

19 Q. Did she move into 8004 Overton on
20 December 24th, 2003?

21 A. I just stated she moved in on December 24th,
22 2003.

23 Q. And is she still living at 8004 Overton?

24 A. Yes. She's still living at 8004 Overton as my
25 wife, residing there as such.

1 Q. Now, I assume you had a chance to view the
2 Rebuttal Testimony that was filed by Ms. Lambert in this
3 proceeding. Correct?

4 A. Yes. I think I have it before me.

5 Q. And as a part of that testimony, I believe as
6 Schedule KL-4 there was a newspaper article from The Call
7 that was attached to Ms. Lambert's Rebuttal Testimony. Do
8 you remember that?

9 A. Yes.

10 Q. Do you have that schedule in front of you now?

11 A. I have the article.

12 Q. Okay. Had you seen that article before it was
13 provided with Ms. Lambert's testimony?

14 A. Yes.

15 Q. Did you speak to someone from this newspaper
16 when that story was being written?

17 A. Yes.

18 Q. Okay. Who did you speak to?

19 A. I believe her name is Tracy.

20 Q. So the article is represented as being written
21 by Tracy Allen. Is that the person you would have spoken
22 to?

23 A. I believe that is her name.

24 Q. Now, in the -- I guess it would be the third
25 paragraph of that article, there's a sentence that states,

1 For about a month, McKinzy and his new bride, Tamara, along
2 with McKinzy's four children from a previous marriage were
3 forced to live without gas because of a prior gas service
4 situation involving his new wife.

5 Was your wife forced to live without gas at
6 8004 Overton for about a month?

7 A. That's a statement by her and this article is
8 poorly written. If you can look at several incidents, they
9 also state that I won a lawsuit against the Public Service
10 Commission as well.

11 Q. So that was the reporter's mistake? You never
12 told the reporter that your wife was living at --

13 A. No, I didn't.

14 Q. -- 8004 Overton?

15 How would she have gotten that idea, do you
16 think?

17 A. I -- I have no idea. I don't purport to know
18 why she would write something as far as a lot of other
19 mistaken facts that she's made in this article as well.

20 Q. Do you know of any reason a person would
21 believe that perhaps Tamara Nance, Tamara McKinzy was living
22 at 8004 Overton prior to December 24th of 2003?

23 A. No.

24 Q. How about the fact that she was your wife?
25 Would that perhaps give --

1 A. No.

2 Q. -- someone that idea?

3 A. I was -- I had given the address during the
4 article that she was residing at 6107 East 8th Street,
5 Kansas City, Missouri.

6 Q. And apparently it was just ignored then by the
7 reporter?

8 A. I guess so.

9 Q. Did your wife take any steps prior to
10 December 24th, 2003 that would indicate that she was going
11 to live at 8004 Overton with you?

12 A. I'm not sure what you're asking.

13 Q. Well, are you aware of anything she might have
14 done, any representations she might have made that would
15 lead one to believe that she was going to live at 8004
16 Overton?

17 A. I don't know.

18 Q. Don't know of anything?

19 A. I don't know of anything.

20 MR. COOPER: Okay. At this time, your Honor,
21 I'd like to have a couple of exhibits marked, if I could.

22 JUDGE RUTH: I believe the next number is 10.
23 Yes, the next number would be 10. So for identification
24 purposes, you have a 10 and an 11?

25 MR. COOPER: That's correct. Exhibit 10 would

1 be a certified document from the Department of Revenue dated
2 March 3rd of 2003. And Exhibit 11 would be also a certified
3 document from the Department of Revenue but this one dated
4 March 25th, 2003.

5 (Exhibit Nos. 10 and 11 were marked for
6 identification.)

7 MR. COOPER: Your Honor, what I have provided
8 are copies of certified documents. I do have the originals
9 of those certified documents should it be necessary or
10 should the Commission be interested.

11 And I would go ahead and offer both those
12 exhibits at this time citing the Commission to statute -- or
13 Section 302.312 which provides that copies of all papers,
14 documents, records lawfully deposited or filed in the
15 offices of Department of Revenue, properly certified by the
16 custodian shall be admissible as evidence by all courts of
17 this state and in all administrative proceedings.

18 JUDGE RUTH: I'd like you to --

19 MR. MCKINZY: I would object.

20 JUDGE RUTH: I'd like you to offer the
21 original. You said you had the original certified document?

22 MR. COOPER: I do, your Honor.

23 JUDGE RUTH: And that will be the one that the
24 court reporter gets for the official file.

25 MR. COOPER: That's not the one I handed her

1 the first time, but it certainly can be.

2 (Exhibit Nos. 10 and 11 were remarked for
3 identification.)

4 JUDGE RUTH: We're going to take a five-minute
5 recess while we look at this.

6 (A recess was taken.)

7 JUDGE RUTH: Yes, you were going to make an
8 objection.

9 MR. MCKINZY: Yes. Based on grounds I
10 haven't, prior to this hearing, had opportunity to
11 research -- or the admission of my affidavit was also duly
12 notarized and it was not able to be admitted into the
13 record. And I feel that it's -- if this was something that
14 they wanted to have in the file, it should have been in the
15 file -- produced with the pleadings like all the documents
16 that I was pleading.

17 JUDGE RUTH: Are you saying Exhibits 3, 4, 5,
18 6, 7, 8, 9 of yours had been previously --

19 MR. MCKINZY: Not a certified -- you're saying
20 certified --

21 JUDGE RUTH: No. I just wanted to make sure.
22 You said that you had submitted all your documents ahead of
23 time?

24 MR. MCKINZY: No. I'm saying that my
25 affidavit was certified and was not being able to be

1 admitted. It was notarized by a notary public and it was
2 not -- the affidavit of Gerald Lee based on the same
3 certification, that it was attempted to be notarized by a
4 notary public of the State of Missouri and it has been not
5 allowed to be admitted into the record.

6 JUDGE RUTH: You may respond.

7 MR. COOPER: I think there's a clear
8 difference in the law between an affidavit such as the one
9 Mr. McKinzy attempted to offer from an individual which was
10 also offered during the direct part of his case from a
11 certified document from the Department of Revenue which, in
12 fact, has a statute that provides for its admission in any
13 court, in any administrative proceeding.

14 I think they're two separate things under the
15 law and that the Revenue documents in accordance with
16 302.312 are admissible.

17 JUDGE RUTH: Can you clarify again how these
18 documents should come in as an exception to the hearsay
19 rule --

20 MR. COOPER: Well, I think --

21 JUDGE RUTH: -- or otherwise?

22 MR. COOPER: I think the exception to the
23 hearsay rule is provided by Missouri statute that's been
24 enacted by the legislature.

25 MR. MCKINZY: I don't have privy to the

1 statute, but I was under the impression that an affidavit
2 was also evidentiary material admissible to any court of law
3 in the state of Missouri as well duly notarized by a person
4 submitting the affidavit.

5 JUDGE RUTH: Mr. McKinzy, you indicated you
6 didn't have a copy of the statute that was referred to.
7 It's Section 302.312. Did you want to look at a copy? If
8 you do, I'll hand it to you. If you don't need to see a
9 copy, that's fine too.

10 We're going to take a five-minute break and
11 here's the book if you want to look at it. So we're off the
12 record.

13 (A recess was taken.)

14 JUDGE RUTH: I want to note we are back on the
15 record after a five-minute break. Before we left,
16 Mr. Cooper had offered Exhibits 10 and 11, I believe.
17 Correct?

18 MR. COOPER: That's correct, yes.

19 JUDGE RUTH: And Mr. McKinzy had objected to
20 those documents. I'm sorry. I want to grab my book back.

21 Mr. McKinzy, your objection is noted for the
22 record. However, the documents are going to come in.
23 Section -- Revised Statutes of Missouri, Section 302.312
24 does provide for the admissibility. They are admitted into
25 the record.

1 (Exhibit Nos. 10 and 11 were received into
2 evidence.)

3 JUDGE RUTH: You may continue, Mr. Cooper.

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

6 JUDGE RUTH: Okay. Commissioner Clayton, do
7 you have any questions?

8 COMMISSIONER CLAYTON: Yes.

9 QUESTIONS BY COMMISSIONER CLAYTON:

10 Q. Mr. McKinzy, have you had an opportunity to
11 look at the Department of Revenue documents that were just
12 recently admitted into evidence?

13 A. Yes.

14 Q. Is that, in fact, your wife, Tamara -- is it
15 Tamra or Tamara?

16 A. Tamara.

17 Q. Is that your wife, Tamara L. McKinzy?

18 A. Yes.

19 Q. And would have been your, I assume, fiance,
20 Tamara L. Nance that's on the other document. Correct?

21 A. Yes.

22 Q. Okay. Do you have an explanation for that
23 change in address?

24 A. No. I have no idea. I don't purport to read
25 a person's actions or why a person does anything. It's -- I

1 mean, they have a right -- she was my wife, she had a right
2 to, by the fact being my wife, change her name to reflect
3 that she was, in fact, married.

4 Q. Is it up to her or up to you to determine
5 where she is a resident?

6 A. It's up to her. And she resided at 6107 East
7 8th Street. Whether or not she wanted to use my address for
8 whatever reason, she had that right as my wife as well. I
9 have for years used my parents' address that I -- 3743
10 Flora. I still get mail there, but I do not reside there
11 but mail constantly continues to go there. That's a
12 permanent address.

13 And maybe that was the purpose of her wanting
14 somewhere where she could consider a permanent address for
15 the mailing of important documents or correspondence.

16 Q. Have you seen a copy of -- have you seen a
17 copy of Tariff Sheet No. R-20 that was referenced earlier
18 today, General Terms and Conditions for Gas Service?

19 A. Yes.

20 Q. You have reviewed that sheet?

21 A. Yes. I do have that sheet.

22 Q. That tariff sheet allows a company to transfer
23 unpaid bills to a current service account. Do you disagree
24 with that assertion that the bill could be transferred
25 according to that tariff sheet?

1 A. I disagree in the fact that if that was, in
2 fact, the customer's bill. This was not my bill. That had
3 there been an example as the difference between this
4 instance and where I would agree that this rule would apply
5 is that if I had a bill at 8609 East 87th Street and it was
6 remained unpaid and I wanted gas service at 8004 Overton.

7 I resided at 8609 East 87th Street and if I
8 failed to pay the bill prior to moving, that remaining bill
9 that I accrued by my residency there could, in fact, and
10 should, in fact, be transferred to my new residence because
11 it was, in fact, my bill that I obtained or used the gas
12 service at the previous residence. I've never resided at
13 3928 Highland so there could never be a bill of mine
14 transferred from that address.

15 Q. I'm sorry. I apologize for taking so much
16 time. I wanted to clarify the relief that you are
17 requesting that we discussed at the beginning with opening
18 statements.

19 A. Okay. They're set out in my position
20 statements or issues.

21 Q. Well, I've got your Complainant's issue list.
22 Is that what you're talking about?

23 A. Yes.

24 Q. Okay. Do you still contend that MGE violated
25 its tariffs?

1 A. Yes. In every aspect of my account in my
2 issues list. I still hold that all of those violations I
3 alleged did, in fact, occur, in my opinion.

4 Q. Okay. So the first issue is that they just
5 failed to place the gas service or move the gas service when
6 you requested it in April 2003? That's number one.
7 Correct?

8 A. Right. That's based on Tariff 3.12.

9 Q. You also claim that they didn't give you
10 10 days prior notice of the gas being discontinued; is that
11 correct?

12 A. Yes. That's 3.08.

13 Q. You also contend that you didn't get 24 hours
14 notice before the gas was turned off?

15 A. Right. That's Tariff 3.09.

16 Q. When was your gas originally turned on for the
17 first time?

18 A. At 8004 Overton?

19 Q. Yes.

20 A. September the 11th. I requested it to be
21 turned -- transferred April the 9th.

22 Q. September 11, 2002?

23 A. September 11th, 2003.

24 Q. 2003. So that was the first time it was
25 turned on?

1 A. True. In my name.

2 Q. Okay. That's right. The gas was in Mr. Lee's

3 name?

4 A. Initially when I moved in on March 15th, the

5 gas was already on in Mr. Lee's name.

6 Q. Okay. When did you make application again?

7 What was that date?

8 A. April the 9th, 2003.

9 Q. Okay. Okay. So you made application

10 April 9th. When was the gas turned off?

11 A. June the 18th, 2003.

12 Q. 2003. So between -- and you moved into that

13 apartment in January --

14 A. No.

15 Q. -- 2003?

16 A. March 15th, 2003.

17 Q. March 15th. Okay. And you moved into your

18 parents' house after -- I guess in January?

19 A. Once -- once I left 8609 East 87th Street I

20 returned to my parents' house at 3743 Flora, Kansas City,

21 Missouri and resided there until I relocated to 8004 Overton

22 on March 15th, 2003.

23 Q. Okay. But when did you leave the other

24 address again?

25 A. January of 2002.

1 Q. January. So you had two months where you
2 didn't have a gas bill. Correct?

3 A. More like three. From March -- from -- from
4 June 18th to September the 11th.

5 Q. Okay.

6 JUDGE RUTH: What about at the in between
7 residences?

8 MR. MCKINZY: The gas --

9 JUDGE RUTH: In other words, you left one
10 residence, moved into your parents' house?

11 MR. MCKINZY: Right.

12 JUDGE RUTH: And then moved into 8004?

13 MR. MCKINZY: Right.

14 JUDGE RUTH: How many months in between those
15 two where you had a bill in your name at the old place, 87th
16 Street, I think?

17 MR. MCKINZY: Right, 87th Street.

18 JUDGE RUTH: How long between a bill in 87th
19 Street to moving into 8004?

20 MR. MCKINZY: A little over a year I would
21 calculate. From January of 2002 to March 15th of 2003.

22 BY COMMISSIONER CLAYTON:

23 Q. So it was over a year. So you went over a
24 year without a gas bill?

25 A. In my name?

1 Q. Correct.

2 A. Right. That it was active or in service,
3 right, that I was utilizing gas at any place in my name,
4 right.

5 Q. Okay.

6 A. The service was still on. They -- I -- MGE
7 would still hold me liable had there been a bill. In fact,
8 I paid the last bill at 8609 East 87th Street because I was
9 still on the account as Carletha McKinzy's husband.

10 Q. But the fact remains that you didn't get a gas
11 bill in your name and you weren't paying a gas bill for a
12 little over a year?

13 A. That's right. I was not utilizing gas in my
14 name for a little over a year.

15 Q. And you still contend that even though there's
16 a year lapse, that that's just a transfer of service?

17 A. It's a transfer of service in the sense that
18 the alternative is initiating service. It's a transfer of
19 service if you've ever had an existing bill -- prior
20 service. If you've never had an existing service, then it's
21 a new service.

22 When they ask you have you ever had service
23 before, they'll go back five or six years and they'll see
24 the last service to see if -- where you last resided if
25 there was an outstanding bill. Just take an example, Tamara

1 Nance's bill was nearly five years old and by them knowing
2 that she was requesting service, they went back to the last
3 residency that she had.

4 Q. I understand.

5 A. Okay.

6 Q. I understand. But I lived in Kansas City when
7 I went to law school and that was about 10 years ago, more
8 than 10 years ago. And I had a gas bill in my name. If I
9 were to move back to Kansas City and apply for gas service,
10 would you consider that simply a transfer of service or
11 would you consider that a commencement of new service?

12 A. I would consider that transfer of service,
13 because they would transfer any outstanding bill to that new
14 account.

15 Q. Okay. Okay.

16 A. And, in fact, by the fact I was told I was
17 going to be paid -- have to pay a \$5 transfer fee led me to
18 believe that they were, in effect, trying to transfer the
19 service and not initiate service.

20 JUDGE RUTH: Do you know if that transfer fee
21 was related to transferring the account -- your account or
22 transferring the account from Mr. Lee who the name was in at
23 that residence in Overton?

24 MR. MCKINZY: They requested my last
25 residency. And once they ascertained that, they was

1 transferring that account to my new residency. And I was
2 told that that would occur the next day, that it would be
3 my -- my account would then be transferred from --
4 COMMISSIONER CLAYTON: I want to stop you
5 right there.
6 And, Judge, if I may, I'd like to ask counsel
7 for MGE if you could explain to me what the transfer fee
8 applies to.
9 MR. COOPER: Yes. The transfer fee really
10 refers to the transfer of the service at, in this case, 8004
11 Overton from an account in Mr. Lee's name to an account in
12 Mr. McKinzy's name, not a transfer from one McKinzy account
13 to another McKinzy account.
14 And the difference between the \$20 and the \$5
15 that's been referenced throughout is the fact that a \$5 fee
16 is charged when the MGE personnel do not have to physically
17 go out and turn on the gas again. And the \$20 fee is what
18 applies when they have to physically go out and turn on the
19 gas.
20 COMMISSIONER CLAYTON: Can you reference the
21 tariff section number?
22 MR. COOPER: I can given a little bit of time.
23 COMMISSIONER CLAYTON: I don't need it right
24 now, but I'd like that perhaps.
25 MR. MCKINZY: I would like to --

1 COMMISSIONER CLAYTON: Excuse me, Mr. McKinzy.
2 If you all could get that for me at some time, whether over
3 the break or not.
4 BY COMMISSIONER CLAYTON:
5 Q. Now, Mr. McKinzy, did you have something you
6 wanted to offer on that subject?
7 A. Yes. On the tariffs, 3.03, which is also the
8 basis of one of my allegations of MGE's violation. It
9 states that by charging a \$20 transfer connection fee --
10 okay, the tariff states -- okay. That I was -- it reflects
11 a continuing applicant -- the 3.03 refers to a continuing
12 applicant, which is the basis of the transfer application.
13 It's not a transfer from an existing account
14 to a new resident. It's a person who's continuing from a
15 previous account to a new location that the \$5 transfer fee
16 applies.
17 Q. Mr. McKinzy, the way I read Section 3.03, I'll
18 just read it straight up, The company shall charge a
19 transfer fee as set forth in Section 14 herein to service
20 applicants when natural gas service is not being initiated
21 or reinstated but is continuing from a prior customer.
22 Now, wouldn't that prior customer be Mr. Lee?
23 A. No. The prior customer would be me because
24 Mr. Lee is not requesting service. I'm requesting it. I'm
25 the continuing applicant.

1 Q. I understand your position.

2 COMMISSIONER CLAYTON: I don't think I have

3 any other questions. Thank you.

4 JUDGE RUTH: Okay. We'll move to recross.

5 Staff, do you have any questions based on questions from the

6 Bench?

7 MR. BERLIN: No questions, your Honor.

8 JUDGE RUTH: Public Counsel is still

9 unavailable.

10 So MGE, do you have recross?

11 MR. COOPER: No, your Honor.

12 JUDGE RUTH: Okay. Now, Mr. McKinzy if there

13 is something you want to clarify regarding the questions

14 that have been asked from you, you have a moment to do so.

15 This is not really the time to bring in new information,

16 it's the time to clarify based on questions that were asked.

17 MR. MCKINZY: No. I think I've stated as

18 clearly as possible as capable as I'm able to any

19 information I would like to put on the record.

20 JUDGE RUTH: Okay. Then at this time you may

21 step down. It's possible that the Commission will have some

22 more questions for you and need to bring you back up.

23 You're under oath for the duration of the hearing. But you

24 may step down at this time.

25 Okay. Staff, do you have a witness that you

1 would like to put on the stand at this time?

2 MR. BERLIN: No, your Honor.

3 JUDGE RUTH: Let me ask then -- the Commission
4 does have some questions for Staff. They are questions that
5 might be more appropriate for a witness and I believe you
6 indicated you have a witness available?

7 MR. BERLIN: Yes, I do.

8 JUDGE RUTH: And that witness is?

9 MR. BERLIN: Mr. James Russo.

10 JUDGE RUTH: Mr. Russo, would you please move
11 forward to the witness stand and raise your right hand?

12 (Witness sworn.)

13 JUDGE RUTH: And would you state your name for
14 the record again?

15 THE WITNESS: James M., as in Michael, Russo,
16 R-u-s-s-o.

17 JUDGE RUTH: And would you remind me of your
18 position?

19 THE WITNESS: I'm a regulatory auditor. I
20 work in the energy department with tariffs.

21 JUDGE RUTH: Commissioner, did you have some
22 questions?

23 COMMISSIONER CLAYTON: I do.

24 JAMES M. RUSSO testified as follows:

25 QUESTIONS BY COMMISSIONER CLAYTON:

1 Q. Does Staff believe that Mr. McKinzy initiated
2 or commenced service when he applied in April of 2003, or
3 does Staff believe that Mr. McKinzy simply transferred his
4 prior service which terminated in January of 2002?

5 A. Initiated or commenced.

6 Q. Okay. So according to you, Section 3.02 would
7 be applicable here?

8 A. Yes, sir.

9 Q. Okay. Has Staff performed an assessment or
10 investigation with regard to whether or not Tamara Nance or
11 Tamara McKinzy was a member of the household when an
12 application for service was made on April 9, 2003?

13 A. Yes.

14 Q. And what is Staff's position on that issue?

15 A. Staff's position was there was no evidence
16 that Ms. Nance was a member of the household. Staff talked
17 to Mr. McKinzy, Staff talked to the landlord of the
18 property. The landlord of the property stated that there
19 was not a female living there and --

20 MR. COOPER: Objection, your Honor. I think
21 this is hearsay in terms of what Mr. Russo may have heard
22 from the landlord, and I would object to that.

23 JUDGE RUTH: Do you have a response,
24 Mr. Berlin, as counsel for the witness?

25 MR. BERLIN: Yes, your Honor. I think that

1 Mr. Russo's response goes to the heart of his investigation
2 in determining the facts of this case, so --

3 COMMISSIONER CLAYTON: It was my question. Do
4 I get to respond?

5 JUDGE RUTH: I'm going to allow the response
6 in. The objection is noted for the record. And if it's
7 hearsay, that will go to the weight of the evidence
8 obviously, but you may continue your answer.

9 THE WITNESS: Well, that's probably the meat
10 of it right there, your Honor.

11 BY COMMISSIONER CLAYTON:

12 Q. Have you had an opportunity to review -- I
13 believe they're Exhibits 8 and 9 or 9 and 10, the exhibits
14 that were tendered by Mr. Cooper on cross-examination? Have
15 you had a chance to review those exhibits?

16 A. Yes, sir.

17 Q. Exhibits 10 and 11. Does that change Staff's
18 position in conducting an investigation of whether or not
19 she was a resident at the time of the application?

20 A. I don't -- can I grab those again, please?

21 Q. Sure.

22 A. If this was available to Staff at that point
23 in time, I think it would raise questions and it possibly
24 could change Staff's opinion. Just looking at them, on the
25 date printed, I don't know what that means necessarily, but

1 it says 3/3/03 that Exhibit 10 was printed showing the 6107
2 East 8th address and then on Exhibit 11 it shows the Overton
3 address on 3/25/03.

4 And that would have raised more questions than
5 where the person was living at that point in time that the
6 complaint was filed going back to the commencement of
7 service. That's the problem I would have just looking at
8 it. I'd have to have more information.

9 Q. Okay. Fair enough answer. But you would
10 agree that since the company's gone ahead and turned on the
11 gas, that really that's a moot issue. Would you agree with
12 that?

13 A. Yes, sir.

14 Q. Would you agree with the statement that now
15 that the gas is turned on, we're dealing with a
16 discontinuance -- possible discontinuance of service rather
17 than a commencement issue?

18 A. Yes. I think now from a Staff person -- and
19 it's not to -- from a legal person, so -- but as a Staff
20 person, I think this flows over to section -- to tariff
21 Section 3.07, which I don't know if anybody has a copy of
22 that or not. I don't, but --

23 Q. Tell me what 3.07 is.

24 A. I believe my attorney has it. It is entitled
25 Discontinuance of Service, I believe.

1 JUDGE RUTH: Mr. Berlin, is that attached to
2 any of the pleadings? I'm just asking so that I can find a
3 copy of 3.07.

4 MR. BERLIN: Your Honor, I have to go to
5 Staff's report filed in September. There are some tariff
6 sheets.

7 JUDGE RUTH: I don't think 3.07 is part of
8 Staff's -- the attachments. It skips that.

9 MR. BERLIN: You're correct.

10 JUDGE RUTH: I just wanted to have it in front
11 of me.

12 THE WITNESS: It is entitled Discontinuation
13 of Service.

14 BY COMMISSIONER CLAYTON:

15 Q. And tell me what the gist of 3.07 is.

16 A. In this situation what's -- what's happened,
17 it sounds like, Mrs. McKinzy is now a resident of the
18 property and then the issue becomes she did have a prior
19 bill, she's now receiving benefit from service, so it
20 becomes something that I believe the company could transfer
21 the bill to the account now and then if it was not paid, it
22 would become a 3.07 issue, which would be --

23 JUDGE RUTH: Do you mind if we look at a copy
24 briefly? Anyone object to us looking at a copy of this
25 tariff? For the record, no one indicated an objection.

1 BY COMMISSIONER CLAYTON:

2 Q. Okay. Okay. 3.07, Discontinuance of Service,
3 Company shall have the right to discontinue gas service to a
4 customer and remove its facilities or any portion thereof
5 from customer's premises upon default by customer of any
6 provision of the service agreement. Company reserves the
7 right to refuse to reconnect gas service to any customer
8 until such default shall have been remedied.

9 Then it lists what the defaults would be.
10 Non-payment of an undisputed delinquent charge. This is
11 certainly disputed, so A wouldn't apply. Correct?

12 A. Correct.

13 Q. Failure to post a security deposit or
14 guarantee acceptable to the company. That's not applicable.
15 Correct?

16 A. No.

17 Q. Correct?

18 A. Correct.

19 Q. Unauthorized interference, diversion or use of
20 the gas service situated or delivered on or about the
21 customer's premises. That's not applicable. Correct?

22 A. Correct.

23 Q. D is failure to comply with the terms and
24 conditions of a settlement agreement. That's not
25 applicable?

1 A. Correct.

2 Q. Refusal after notice to permit inspection,
3 maintenance or replacement of a meter. That's not
4 applicable?

5 A. Correct.

6 Q. I mean, there are a bunch of these and I'm
7 having difficulty --

8 MR. MCKINZY: I would ask the Commission to
9 look at 3.07 D.

10 COMMISSIONER CLAYTON: There we go. Thank
11 you, Mr. McKinzy. The failure to pay the bill of another
12 customer unless the customer whose services sought to be
13 discontinued received substantial benefit, use of the
14 service.

15 MR. COOPER: And you have to go back to the
16 introductory sentence that says, The following -- none of
17 the following shall constitute sufficient cause for the
18 company to discontinue. So that's the perspective that
19 you're coming from.

20 BY COMMISSIONER CLAYTON:

21 Q. Okay. So how would 3.07 apply in this
22 instance --

23 A. It calculate --

24 Q. -- that would allow for the discontinuance of
25 service? It's in the pleadings somewhere. I know I've

1 looked at that.

2 A. See, I believe the company would transfer the
3 bill and at that point under -- Section D would then kick in
4 and then the company could at that point disconnect. That's
5 what I believe.

6 Q. So basically it has to be -- in your opinion,
7 it would have to be a combination of Section 3.02 where
8 there would be a right to transfer service --

9 A. Let me just --

10 Q. -- and 3.07?

11 A. Just give me a second, Commissioner, please.
12 Can I have a second, please?

13 Q. We'll give you just a second.

14 A. Maybe a minute.

15 Commissioner, no, that's not correct. I
16 misspoke. Let me back up. What I think would happen is the
17 company, when they discover that the person is living in the
18 residence, they received prior service that has a previous
19 bill, they would go ahead and transfer that bill at that
20 point.

21 If the bill was not paid, I believe the
22 company would use 3.07. However, what usually happens at
23 that point, it becomes a 3.07 A. And the other party on the
24 bill comes forward and starts a complaint process which
25 stops that discontinuance at that point until the complaint

1 process works through. But I do believe the company would
2 use this section.

3 Q. Have you done an investigation to determine
4 whether or not MGE has violated its tariffs on the issues
5 alleged by the Complainant? Have you done investigation?

6 A. We haven't done a complete investigation.
7 We've looked at the -- Mr. McKinzy's -- what's he -- this
8 issue list and I think I can answer those questions.

9 Q. Well, let's start -- number one kind of goes
10 to the heart of the case so I'm going to leave that one
11 alone and go to number two. Were you able to determine
12 whether or not the Complainant received 10 days written
13 notice prior to the proposed discontinuance?

14 A. I don't think it's applicable.

15 Q. You say that is not applicable?

16 A. Because it's not a discontinuance of service,
17 it's a commencement of service.

18 Q. Okay. Okay. Do you believe that MGE violated
19 its tariffs without giving 24 hours notice prior to the
20 proposed discontinuance?

21 A. I don't think that's applicable either,
22 Commissioner.

23 Q. Number four, do you believe MGE violated its
24 tariffs on Issue No. 4 relating to -- well, that goes to the
25 heart of the matter so number four doesn't really apply.

1 I guess Issue No. 5 relates to the \$5 transfer
2 fee. Do you believe MGE violated its tariff on the \$5
3 transfer fee?

4 A. If they charged \$5, that -- that would be the
5 correct fee to charge. And I --

6 Q. Or did they charge him \$20?

7 A. I don't know.

8 Q. Would charging either fee be a violation?

9 A. No. I think the \$5 fee would be applicable
10 since it's going from a prior customer, Mr. Lee, to a new
11 customer in the same building, same residence, Mr. McKinzy.

12 Q. Do you believe that MGE violated its tariffs
13 by discontinuing gas service to Complainant's residence from
14 June 18, 2003 to September 10, 2003?

15 A. I think that's related to 4. And in the sense
16 that they're -- because of the prior indebtedness of a
17 customer and since Staff took the position that at that
18 point in time based on Staff's information, Ms. Nance was
19 not living there, then I'd have to say yes, they did violate
20 it.

21 Q. Actually, it wouldn't be because we're not
22 talking about a discontinuance. The actual question should
23 be whether MGE violated its tariffs by failing to commence
24 service --

25 A. Thank you, yes.

1 Q. -- on June 18th, 2003. Correct?

2 A. Yes. With the word "discontinue" in there,
3 no, it's not applicable because it's not a discontinuance.

4 Q. So it would be a failure to commence?

5 JUDGE RUTH: I didn't follow that. So the
6 failure to commence, was that a violation of their --

7 THE WITNESS: Yes. I would say yes.

8 BY COMMISSIONER CLAYTON:

9 Q. And seven I think is just a -- there are three
10 or four of these that kind of say the same thing. So six is
11 a possible violation?

12 A. Yes, sir.

13 Q. And what is Staff's position in terms of
14 dealing with a company that supposedly -- or if we make the
15 assumption that MGE violated its tariff, what would Staff's
16 position be in how to deal with that company on such an
17 offense or violation?

18 A. In this situation they've turned on the gas
19 service. I -- I -- I don't know, Commissioner. I haven't
20 dealt with these before. I don't know.

21 Q. Has anyone on Staff dealt with one of --
22 something like this before?

23 A. I imagine they have, but I -- I wouldn't know
24 where to direct you to.

25 Q. Does the tariff actually contain any penalties

1 that the company would have to pay or things that they'd
2 have to do if they violate their own tariff?

3 A. The tariff -- nothing that I am aware of in
4 the tariff, sir, no.

5 Q. Are there any Commission rules or are there
6 any state statutes which set out penalties or types of
7 relief that are available to someone that has been affected
8 due to a violation of a tariff?

9 A. I think counsel would probably be a better
10 person to answer that. It's my understanding there are
11 things in statutes, but I wouldn't have any ideas what they
12 are or where they are, sir.

13 Q. So to summarize, on the two issues that I
14 tried to nail down when we had opening statements, the first
15 issue relates to whether or not this Commission should or
16 could issue an order stating that Mr. McKinzy can never be
17 held responsible for the bill of Tamara Nance. The position
18 of Staff is that we shouldn't do that because you believe
19 Section 3.02 allows for that transfer. Correct?

20 A. I don't think so. Maybe I misunderstood what
21 you said, but my impression's no. Maybe you could reword
22 that.

23 Q. I'll reword it. The first issue, the first
24 thing that Mr. McKinzy wants is an order stating that he
25 will never be held responsible for Ms. Nance's bill. You

1 understand that statement?

2 A. Yes, sir.

3 Q. That is what he is requesting. Staff's
4 position on that issue is that we shouldn't do that because
5 according to the tariff, he will be held responsible. Is
6 that your position according to Section 3.02?

7 A. We should not -- Staff does not agree with
8 Mr. McKinzy's statement. Is that answering your --

9 JUDGE RUTH: Mr. McKinzy has indicated his
10 wife is now living with him.

11 THE WITNESS: Correct.

12 JUDGE RUTH: So based on that, does Staff
13 believe the Commission should say that --

14 THE WITNESS: No.

15 BY COMMISSIONER CLAYTON:

16 Q. Let me ask the simple question. Staff
17 believes that Mr. McKinzy is going to be liable for the debt
18 because she now lives with him. Correct?

19 A. It's possible. We have a new denial of
20 service rule that's going to be taking effect here shortly.
21 There's a lot of things, Commissioner, that are in there.

22 And the facts that I looked at, I think at
23 this point if the company transferred the bill to
24 Mr. McKinzy's residence based on the fact that she's living
25 there and he filed a new complaint based on that, I'm not

1 sure Staff would recommend that that bill be forgiven at
2 this point.

3 Q. Forgiven is a --

4 A. Well --

5 Q. -- is a different issue. Ms. Nance is always
6 going to be responsible so --

7 A. Okay. I -- wrong word.

8 Q. -- the question is --

9 THE COURT REPORTER: I can only get one of you
10 at a time.

11 BY COMMISSIONER CLAYTON:

12 Q. Does Staff believe that Mr. McKinzy will be
13 liable for the bill because it can be transferred?

14 A. That is possible, yes. If she is living in
15 the household with the use and benefit rule, it's possible,
16 sir.

17 Q. He has admitted she's living there. So is it
18 still possible or is it the fact that -- it can and will be
19 transferred?

20 A. It will be transferred, yes, I believe it will
21 be.

22 Q. Okay. Okay. So Staff would be opposed to
23 Mr. McKinzy on that first issue?

24 A. Yes.

25 Q. And Staff supports the position of MGE on that

1 issue?

2 A. Yes.

3 Q. Okay. Now, on the Issue 2, whether or not MGE
4 violated its own tariff, Staff would support that issue --
5 would support Mr. McKinzy relating only to Issue No. 6 on
6 the Complainant's issue list, correct, the failure to
7 commence service?

8 A. Yes.

9 Q. Okay. And is Staff in a position to recommend
10 penalty or punishment at all for such a violation?

11 A. I'm not, no, sir.

12 Q. Who is? Who would make that assessment?

13 A. I think that that would be the attorney with
14 the division director reviewing it.

15 COMMISSIONER CLAYTON: Okay. Thank you.

16 QUESTIONS BY JUDGE RUTH:

17 Q. I had a couple of questions relating to your
18 answer for the part number six where you said that MGE did
19 violate its tariffs for the failure to commence issue.

20 A. Yes.

21 Q. I want to know what Staff based -- or bases
22 that opinion on in that some of the pleadings indicate and
23 some of the testimony has been that when service was
24 requested, asked to be commenced, Ms. Nance's name was
25 provided as a household member. If that were true under

1 3.02, it looks like they could have failed to commence.

2 A. I don't believe her name was necessarily

3 provided as a household member. I saw nothing that said

4 that. Now, if that was indeed shown or if I saw that, then

5 I tend to agree with you, but I never saw that.

6 Q. So, in your opinion, MGE just assumed that the

7 wife would be living there and that was a faulty assumption

8 and --

9 A. Correct.

10 JUDGE RUTH: I don't have any other questions.

11 Okay. The parties will have an opportunity

12 then to cross-examine Staff's witness based on these

13 questions from the Bench. Public Counsel is still not

14 present; is that correct?

15 Mr. McKinzy, would you like to come forward?

16 And if you have questions for Mr. Russo, I'll ask that you

17 use the podium, bend the microphone.

18 CROSS-EXAMINATION BY MR. MCKINZY:

19 Q. In regards to 3.07 D, to clarify the benefit

20 and use, is it -- would you say that the benefit and use is

21 referring to the fact that she -- that Mrs. Nance is

22 benefiting and using the current service that is being paid

23 for by the Complainant or is it in reference to the prior

24 debt that was being attempted to be collected from 3929

25 Highland -- 3928 Highland?

1 A. I didn't say it's -- the way I would interpret
2 it is that she's now a resident of the 8004 place where she
3 is receiving benefit. The bill in question is for the
4 address that you stated and that is why they've transferred
5 it. And I think the key there is the word "unless." So
6 it's a failure to pay the bill of another customer unless
7 the customer whose service is sought to be discontinued
8 received the substantial benefit and use of the service.

9 Q. Right.

10 A. So I think the key -- the way I look at the
11 word "unless," it means, yes, that that's acceptable then.
12 It's no longer -- it's no longer the none up there where it
13 says, None of the following shall constitute. The unless
14 puts it back where it's okay to do that.

15 Q. Okay. So isn't it saying, in fact, that the
16 unless is that if I, being the Complainant, was residing at
17 3928 Highland and was receiving the benefit and use of that
18 service that this bill was secured at, then I would be then
19 responsible for that bill at my new residence that
20 Ms. Tamara Nance now resides at also?

21 A. No, I don't agree with that. Ms. Nance has
22 become a customer. If you look at the definition of
23 customer, she's part of the definition of customer when
24 she's residing at 8004. She's a member of the household and
25 she's receiving the benefit. So I -- I don't agree with

1 you, sir.

2 Q. So the statement is that the old bill that's
3 being -- that would be discontinued had they found -- if
4 Ms. Nance was continuing to reside at 6107 East 8th Street?

5 A. Could you repeat that, please?

6 Q. If Ms. Nance's residence was at -- continuing
7 to be 6107 East 8th Street in Kansas, City Missouri and she
8 requested service in her name at that residence, by virtue
9 of me being her husband, would I be liable for that bill
10 with her by being a customer?

11 A. If you were not residing with each other, no.

12 Q. No. I just said if she was residing at 6107
13 East 8th Street in Kansas City, Missouri and she requested
14 service in her name at that address and I was residing there
15 as well, I, by definition, would be considered a customer.
16 Right?

17 A. Yes.

18 Q. Would I then also be responsible for that bill
19 that was secured at 3928 Highland by virtue of benefiting
20 use?

21 A. There's a lot of what-ifs in your question.
22 I'm having trouble following them.

23 Q. It's not a what-if. It's a straight-forth
24 question. If she was the responsible party at 3928
25 Highland --

1 A. Okay.

2 Q. -- and she relocated to 6107 East 8th

3 Street --

4 A. Okay.

5 Q. -- which is an address given by the documents

6 submitted by MGE, during her residency there if I began

7 residing there with her, I then would be considered a

8 customer of MGE. Right?

9 A. Uh-huh.

10 Q. An unnamed customer. Is that the --

11 A. You're receiving the benefit. Okay.

12 Q. I would be considered an unnamed customer,

13 right, on that account?

14 A. That I can't answer. I don't know how they

15 would do their accounts. I can't answer.

16 Q. I'm saying you're saying by receiving benefit,

17 you're a customer by definition?

18 A. Okay.

19 Q. Okay. By being a customer there, residing

20 there, would I then also be responsible for the debt that

21 would be transferred from 3928 Highland?

22 A. If your name is not on the account, at that

23 point you personally would not be. However, if you're a

24 member of that household and MGE is aware of that, it may be

25 that if you moved at a later date --

1 Q. We're not speaking at a later date. We're
2 speaking at one location. You're putting factors that's not
3 being presented by me.

4 A. If your name's not on that account -- you are
5 not the account holder; is that correct?

6 Q. I'm a customer by your definition.

7 A. Are you -- again, sir, if your name's not on
8 that account, then I would say no. At that point, no.

9 Q. Okay. Given that stance, Tamara Nance is
10 residing at 8004 Overton, her name is not on that account.
11 Why then are you supporting the proposition that she -- that
12 I am responsible for her bill?

13 A. She is residing at that address at this point
14 in time.

15 Q. Right. But her name is not on the account.

16 A. She is responsible for that bill and at that
17 point being a member of the household known to MGE, they can
18 transfer that past due to that account and at that point
19 then they can make an effort to collect that bill.

20 Q. So you don't see the contradictory of your
21 scenarios?

22 A. I don't think I am contradictory. I think on
23 your scenario they would still transfer that bill to that
24 account and they would still follow their proced-- whatever
25 their procedure is to collect that money. In both

1 situations, they would transfer the money. In both
2 situations, they would attempt to collect the money from
3 that account.

4 Q. So would you be surprised to learn that Tamara
5 Nance -- if she was residing at 6107 East 8th Street from
6 the time we were married to December the 24th and no effort
7 was done, would that be a surprise in your application of
8 the tariff as you are stating? You're saying that they
9 would have transferred the account to that account by her
10 being a resident there. If no such effort was done, would
11 you be surprised of that?

12 A. I'm not sure I understand your question, sir.

13 Q. Okay. She was a resident at 6107 East 8th
14 Street from the time that we were married on February the
15 16th to December the 24th of 2003.

16 A. Okay.

17 Q. Would it surprise you that no effort was made
18 by MGE after ascertaining that she was a resident at 6107
19 East 8th Street, Kansas City, Missouri, that they did not
20 attempt to transfer that account to her residence?

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

22 Q. I'm saying given the application of what you
23 just said of the tariff, that they would transfer --

24 A. I can't speak on what MGE did or didn't do.

25 Q. No. I'm not asking what they did.

1 A. I have no opinion.

2 Q. I'm asking you the application of the tariff.

3 Given the 307 application, she would be benefiting from gas

4 from MGE and there would be an outstanding account. By

5 being a customer of MGE, the tariff would allow them to

6 transfer that account to her current residence, which was at

7 6107 East 8th Street if there was an account there in her

8 name. Would that be correct?

9 A. If I understand you, yes, that would be

10 correct. If they knew she was at another address, they

11 would have the authority to transfer a delinquent bill to

12 that address, that is correct --

13 Q. Okay.

14 A. -- to that account.

15 Q. Given the fact that the account wouldn't have

16 to be in her name, they would just have to ascertain that

17 she was residing there and receiving benefit and use of

18 current service?

19 A. That's possible, yes.

20 Q. No. I'm not asking --

21 A. Well, I don't have -- you have things I

22 haven't ever seen before.

23 Q. Well, I'm asking application of tariff. Is it

24 your interpretation of the tariff that if a customer has an

25 outstanding bill with MGE and they ascertain her

1 residency -- not that she has an account in her name, but
2 that she's residing at a particular residence, it's your
3 understanding that they can transfer any outstanding account
4 in her name to where she's currently residing?

5 A. Yes. They can --

6 Q. Without -- without --

7 A. They can make the attempt to do that, yes.

8 Q. Without the account being in her name?

9 A. Yes. If she's getting -- she's a member of
10 that household, they can make that effort, yes.

11 Q. So if there was an existing account -- say,
12 when I moved back home to my parents' at 3743 Flora and I
13 had an outstanding account with MGE and I went to reside
14 with them from January 2002 until I obtained my own
15 residence at 8004 Overton March the 15th, they could
16 transfer that outstanding account to my parents' residence
17 by virtue of the fact I was a member of their household?

18 A. They could attempt to do that, yes, sir.

19 Q. And you're saying that the tariffs support
20 that?

21 A. They -- it very well may support that.

22 Q. I'm saying --

23 A. There's a lot more factors we'd have to
24 consider on anything, whether or not a person came forward
25 and filed a complaint and what the facts of that complaint

1 were. But based upon the generic scenario that you're
2 presenting, yes.

3 Q. Okay. In regards to the continuing applicant
4 interpretation of the tariffs, your position is that
5 continuing applicant applies to the fact of the relationship
6 of having an existing service being transferred into a new
7 person's name at a residence?

8 A. I would define a continuing applicant -- for
9 instance, if I had service today at Residence A and I moved
10 to Residence B, say, tomorrow or very shortly thereafter,
11 maybe in a couple days, a week and started service there, I
12 would consider that continuing service.

13 I do not consider continuing service where I
14 have service at Residence A, discontinue it, temporarily
15 live in Residence B and then at a later date, say, three,
16 four months later, a year later move into Residence C and
17 start service. At that point I would consider that a new
18 application.

19 Q. Okay. And if there was an outstanding bill at
20 Residence A, would there be a transfer or -- based on the
21 new residence, it wouldn't be a transfer in the fact that he
22 was transferring from A to B to C and now there is still an
23 outstanding account at the A location? You wouldn't -- you
24 wouldn't associate the two that you're transferring the
25 account from A to C?

1 A. That could happen. I -- I could see that
2 happening. I could see them taking a customer that had a
3 delinquent account at A and having that bill eventually be
4 transferred to property C. That's possible that that could
5 happen.

6 Q. And the applicant, you're saying, would still
7 be considered a new -- initiating applicant, not a
8 transferring applicant?

9 A. Yeah. That's a new applicant. They're
10 re-applying for service, yes.

11 Q. Okay. So your interpretation of new applicant
12 is someone who isn't, in fact, for the first time applying
13 for service?

14 A. No.

15 Q. Okay.

16 A. It's -- well, wait. First time applying for
17 service, well, obviously you're a new applicant. It's --
18 it's the events -- the subsequent times that could determine
19 whether or not it's a continuing or considered new service.
20 I don't know if the word "new applicant" would be correct.
21 I think it's new service.

22 Q. New service. But the applicant would be
23 considered a new applicant or a transferring applicant with
24 new service?

25 A. It's not a transfer of service at that point.

1 Q. You mean if they refer to an old address
2 and --
3 A. I don't -- I don't interpret it that way, sir.
4 MR. MCKINZY: Okay. That's all at this time.
5 JUDGE RUTH: Thank you.
6 Mr. Cooper, are you going to have questions
7 for this witness?
8 MR. COOPER: I have questions. They will not
9 be lengthy.
10 JUDGE RUTH: I'm sorry. They will not be
11 lengthy?
12 MR. COOPER: They will not be.
13 JUDGE RUTH: Let's go ahead and move to your
14 questions then.
15 Were you about to say something, Mr. Berlin?
16 No?
17 MR. BERLIN: No, your Honor.
18 JUDGE RUTH: I'm sorry. I thought I
19 interrupted you.
20 CROSS-EXAMINATION BY MR. COOPER:
21 Q. Mr. Russo, do you still have in front of you
22 Sheet No. R-20?
23 A. Yes.
24 Q. Okay. And that has the Section 3.03 that was
25 referred to in relation to the connection fee, transfer fee

1 issue. Correct?

2 A. Yes, sir.

3 Q. Okay. And I believe earlier -- and I can't

4 remember whether it was question from the Bench or question

5 from Mr. McKinzy, but I think you said that you believe that

6 when Mr. McKinzy's service was turned on in September of

7 2003, that a transfer fee would have been the appropriate

8 fee; is that correct?

9 A. Well, I'm not -- not -- no.

10 Q. Okay.

11 A. What I -- the scenario I was saying to that --

12 and maybe I mis-answered whoever asked the question, I don't

13 know. I think where Mist-- in Mr. Lee's case where the

14 service was -- he requested apparently the service to be

15 discontinued and then if it would have started the next day

16 in Mr. McKinzy's name, I think in that situation, definitely

17 a transfer fee would be applicable.

18 Q. Okay. But if we read the second sentence of

19 3.03, would you agree with me that it says, The company

20 shall charge a connection fee as set forth in Section 14

21 herein to service applicants when natural gas service is

22 being initiated for the first time or had been previously

23 terminated at the location. Correct?

24 A. Yes. I do agree with that.

25 Q. So at least facially if the gas had been

1 turned off previously, then when it's re-initiated, it would
2 be a connection fee rather than a transfer fee. Correct?

3 A. Yes.

4 MR. COOPER: That's all the questions I have,
5 your Honor.

6 JUDGE RUTH: Okay. And redirect from Staff?

7 MR. BERLIN: Yes, your Honor.

8 REDIRECT EXAMINATION BY MR. BERLIN:

9 Q. Mr. Russo, with regard to the application of
10 MGE's tariff, I want to ask you some questions. Just so I
11 can clarify in my own mind the application of this
12 particular tariff, is it your understanding that according
13 to the tariff, MGE may begin collection from an account
14 holder of any -- of a debt that is owed by any member of the
15 household?

16 And let me perhaps add a little bit of flesh
17 to that. In the event that someone joins his household and
18 has a past debt owed to the company, does the tariff allow
19 MGE to collect against that individual?

20 A. The tariff allows MGE to transfer that amount
21 to that account.

22 Q. Okay. The tariff then would allow -- a
23 hypothetical. In the event that Judge Ruth, if she were to
24 become a member of Mr. McKinzy's household at any point in
25 time, but if Judge Ruth under the hypothetical had a big,

1 bad debt in her past history with MGE, upon MGE's knowledge
2 of her becoming a member of his household, then it is your
3 understanding that MGE would be empowered under their tariff
4 to collect her hypothetical bad debt from the account holder
5 or the customer, which would be, say, Mr. McKinzy in this
6 hypothetical?

7 A. Yes.

8 MR. BERLIN: Thank you. No more questions.

9 JUDGE RUTH: Okay. Mr. Russo, thank you very
10 much. And you may step down. However, I'll ask that you
11 remain available for the day. It's possible that you'll be
12 recalled.

13 I want to go off the record for just five
14 minutes.

15 (A recess was taken.)

16 JUDGE RUTH: Okay. We are back on the record.
17 While we were off the record, I mentioned to the parties my
18 intention to take a short break of perhaps 10 or 15 minutes,
19 then come back on the record and continue with the hearing.
20 I indicated that if the hearing continued on for more than
21 an hour or so, hour and a half, I would probably then take a
22 longer break for lunch. And the parties indicated that they
23 did not object to this proposal.

24 Is that correct, Mr. McKinzy?

25 MR. MCKINZY: That's correct.

1 JUDGE RUTH: And, Mr. Cooper?

2 MR. COOPER: That is correct.

3 JUDGE RUTH: And, Mr. Berlin?

4 MR. BERLIN: Correct.

5 JUDGE RUTH: Then it is now five minutes until

6 12:00. We will break until 10 minutes after 12:00. We'll

7 come back on and continue at that time. Thank you.

8 (A RECESS WAS TAKEN.)

9 JUDGE RUTH: Okay. We are back on the record

10 from a 15-minute break. We had finished with the

11 questioning for Staff's witness, Mr. Russo, before we broke.

12 So we are now ready for MGE.

13 MR. COOPER: Yes, your Honor. And we could

14 call Ms. Kim Lambert.

15 Your Honor, Ms. Lambert has a single piece of

16 testimony that is her Rebuttal Testimony and would it be

17 marked as Exhibit 12?

18 JUDGE RUTH: Yes. And it's Lambert with a

19 "t." Right?

20 THE WITNESS: Yes.

21 JUDGE RUTH: And this is your Rebuttal

22 Testimony, mark it Exhibit 12.

23 JUDGE RUTH: Please proceed.

24 MR. COOPER: I'm going to provide a copy of

25 that testimony to the court reporter.

1 (Exhibit No. 12 was marked for
2 identification.)
3 MR. COOPER: Have we sworn in the witness,
4 your Honor?
5 JUDGE RUTH: No. Not yet. Could you hold on
6 just a moment?
7 (Witness sworn.)
8 JUDGE RUTH: Okay. Thank you. Please
9 proceed.
10 KIMBERLY LAMBERT testified as follows:
11 DIRECT EXAMINATION BY MR. COOPER:
12 Q. Would you please state your name?
13 A. Kimberly Lambert.
14 Q. Could you spell that for us?
15 A. K-i-m-b-e-r-l-y, Lambert, L-a-m-b-e-r-t.
16 Q. By whom are you employed and in what capacity?
17 A. I am the credit manager for Missouri Gas
18 Energy.
19 Q. Have you caused to be prepared for purposes of
20 this proceeding certain Rebuttal Testimony in question and
21 answer form?
22 A. Yes, I have.
23 Q. Is it your understanding that that testimony
24 has been marked for Exhibit 12 as identification?
25 A. Yes.

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

3 A. No.

4 Q. If I were to ask you the questions which are
5 contained in Exhibit 12 today, would your answers be the
6 same?

7 A. They would.

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

10 A. They are.

11 MR. COOPER: Your Honor, I would offer
12 Exhibit 12 into evidence and tender the witness for
13 cross-examination.

14 JUDGE RUTH: Okay. Exhibit 12 has been
15 offered. Let me ask the parties, I'll begin with Staff, if
16 you have any objections to this document being admitted?

17 MR. BERLIN: No, your Honor.

18 JUDGE RUTH: Okay. And Public Counsel is
19 still not present.

20 So, Mr. McKinzy, do you have any objections to
21 Exhibit 12?

22 MR. MCKINZY: No, your Honor.

23 JUDGE RUTH: Exhibit 12 is received into the
24 record. Thank you.

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

1 JUDGE RUTH: Staff, do you have
2 cross-examination questions for the witness?
3 MR. BERLIN: Yes, your Honor.
4 JUDGE RUTH: Please proceed.
5 CROSS-EXAMINATION BY MR. BERLIN:
6 Q. Good afternoon, Ms. Lambert.
7 A. Just now afternoon.
8 Q. Ms. Lambert, in your role at MGE, do you talk
9 with customers directly?
10 A. I do occasionally talk with customers
11 directly.
12 Q. Okay. Did you have any conversations with
13 Mr. McKinzy when he made his application for transfer of
14 service?
15 A. No, I did not.
16 Q. In going over your testimony, I had a question
17 regarding one of your attachments. See if I can name it
18 properly here. It's the one on -- it's on -- it may be
19 Schedule KL-1, but it's the second page.
20 A. Okay.
21 Q. I just have a question under the remarks.
22 What does CE mean?
23 A. Are you talking about the first line right
24 next to remarks?
25 Q. Correct.

1 A. The CE is actually the end of the previous
2 word and the line above it, service.

3 Q. Oh, okay. Thanks. I thought it might be a
4 code or something.

5 A. No.

6 Q. Okay. Ms. Lambert, who today is the customer
7 at 8004 Overton?

8 A. Mr. McKinzy.

9 Q. Okay. Ms. Lambert, are you sufficiently
10 knowledgeable of the process, if you will, perhaps it's the
11 application process or that interface between a customer and
12 your customer service rep as to what goes on?

13 A. Yes.

14 Q. When a prospective customer or even a current
15 customer calls in, what are the questions that are asked?

16 A. Typically, of course we're going to ask who
17 they are, their name, what address is involved, whether it's
18 a turn on, a shut off or a service call that's needed.
19 We're going to ask in the case of the service application,
20 you know, who else is residing there, are you married, what
21 is your spouse's name, their Social Security number, place
22 of employment and previous addresses.

23 Q. You asked -- or you just indicated that you
24 ask if there's anybody else residing there. Is that a
25 standard question?

1 A. Yes, it is.

2 Q. In the event an applicant called in and you
3 asked that question, what other questions do you ask? Do
4 you ask for that particular individual's Social Security
5 number?

6 A. Yes, we do.

7 Q. So you would ask for the Social Security
8 number of any individual that the applicant identifies to be
9 a member of the household?

10 A. We typically ask for the account holder's
11 name, how it will be spelled, their Social Security number.
12 Then we ask if they are married. If they are married, they
13 respond in the affirmative or the negative, we ask for that
14 person's name, their Social Security number. Many times
15 customers will indicate they're not married, they're
16 separated or that this is a roommate, etc., and we'll make a
17 notation to that effect as well.

18 Q. Okay. What I'd like to understand better is
19 the household members. You indicated -- you just indicated
20 that you ask, are there other household members. Do you
21 require the names of those household members?

22 A. If we believe that there is a credit issue, we
23 may ask for all household members' names. We do have a
24 number of customers, a small segment of our population, that
25 uses other names, including those of children, to avoid bill

1 payment.

2 Q. And then you would ask for the Social Security
3 number as well of that household member?

4 A. Yes.

5 Q. Okay. Ms. Lambert, where we are today is --
6 has any bill of Ms. Tamara Nance be transferred over to
7 Mr. McKinzy?

8 A. No, it has not.

9 Q. Now, is it your understanding then that any
10 identified member of the household who has a past due debt,
11 that it is your practice to take that past due debt of a
12 household member and to apply it to the account holder?

13 A. That would be correct.

14 Q. Okay. That, I understand, is just a practice
15 that you do; is that correct?

16 A. According to our tariff.

17 Q. Okay. There is no investigation as to -- or
18 let me ask you this. If that household member had had a
19 past debt, it really doesn't matter how that debt was
20 incurred or when it was incurred, it would just be applied
21 to the account holder's bill?

22 A. No, sir. Many things can come into play. And
23 it's when we are talking with the customer usually on the
24 telephone that we are getting information from them that
25 help us to make that business decision on a daily basis.

1 We are also able to run credit checks. Like
2 in the instance of a child, that would tell us if someone is
3 a certain age and so then we know if there is someone in the
4 account holder's home that may owe us a debt from another
5 address.

6 Q. Okay. So what you're telling me is there are
7 situations where there's an indebted household member where
8 you do not transfer that indebted household member's past
9 debt over to the account holder?

10 A. If we cannot validate that that customer and
11 that indebted person live together or are applying for
12 service together or are going to be benefiting from service
13 together at the same address, then we have no alternative
14 but to leave it where it is.

15 Q. Okay. I am just trying to draw some
16 distinctions here. Is it your view that if an individual is
17 identified as a household member, that you can take that
18 household member's past debt and then transfer it over to
19 the account holder?

20 A. In the very simplest of terms, yes.

21 Q. So could you cite for me an example when you
22 would not take a household member's past debt and apply it
23 to the account holder?

24 A. If we had a situation where the two parties
25 were living separately and, of course, the bill is incurred

1 at one address, they are now coming together and then they
2 decide they're not getting together, and we have this
3 frequently, we may choose not to transfer it. We also have
4 situations where we have minors involved and sometimes we
5 are not able to transfer those.

6 Q. So what you're saying -- if I understand the
7 minor situation, the minor was a customer who had incurred a
8 past debt at some point in time?

9 A. Typically in that situation, the parent has
10 used the child's name to gain service.

11 Q. Okay. With regard to the period of time which
12 I believe is December 1998 through March of 1999 at the
13 Highland Avenue address of Ms. Tamara Nance, who was the
14 customer at that particular address? And I can cite the --
15 I think we know that it is -- if I can cite the address,
16 it's --

17 MR. MCKINZY: 3928.

18 BY MR. BERLIN:

19 Q. -- 3928 Highland.

20 A. The customer at that time was Tamara Latrice
21 Nance.

22 Q. Okay. And at that time she incurred a debt
23 with MGE; is that correct?

24 A. Yes, she did.

25 Q. Okay. Based on your records, is she the only

1 person that incurred that debt --

2 A. I don't have any --

3 Q. -- or that is responsible for that debt?

4 A. I don't have any information about anyone else

5 at that address.

6 Q. Was Mr. McKinzy, to your knowledge, a member

7 of Tamara Nance's household at the Highland Avenue address

8 in 1998 and 1999?

9 A. Not to my knowledge.

10 Q. So Mr. McKinzy was not the customer at the

11 Highland Avenue address in 1998, 1999 --

12 A. Correct.

13 Q. -- Correct?

14 A. Uh-huh.

15 Q. Okay. So, Ms. Lambert, let me run the

16 hypothetical that I used earlier. In the event that it came

17 to your attention that, say, Judge Ruth became a member of

18 Mr. McKinzy's household and in the hypothetical event that

19 the Judge happened to have a past due debt that you were

20 aware of, that under your current practice of this tariff,

21 you could take that past due debt and apply it to the

22 account holder's name, Mr. McKinzy?

23 A. That's correct.

24 Q. Does that not seem somewhat of an unfortunate

25 result for the account holder, in your mind?

1 A. I follow our tariff and our tariff tells me
2 what to do in these circumstances.

3 MR. BERLIN: No further questions, your Honor.

4 JUDGE RUTH: I don't see Public Counsel in the
5 room. We'll move to cross from Mr. McKinzy.

6 CROSS-EXAMINATION BY MR. MCKINZY:

7 Q. Good afternoon, Ms. Lambert.

8 A. Hello.

9 Q. I'll probably pick up where Staff left off.
10 You were stating that in the occasions where you have a
11 customer who acquires a bill at one residence --

12 A. Uh-huh.

13 Q. -- and after acquiring that bill, finds
14 residence at another customer who has also an account with
15 MGE and it is your practice or MGE's practice to transfer
16 the outstanding debt of that customer who becomes a
17 household member of another customer's to the account holder
18 where the customer's residing currently. Right?

19 A. That is correct.

20 Q. Okay. Could you explain what occurs if -- in
21 the cases where, like myself, I've resided at three
22 locations so there are three addresses. If I -- if a
23 customer continues to jump around, is it MGE's practice to
24 duplicate and add these account -- outstanding debts to
25 wherever that particular owing customer continues to reside?

1 So if you have a \$200 account and he resides
2 at Residence A and you transfer it there, and after residing
3 there, the owing customer moves to Residence B, then you
4 transfer it there as well, and if he moves to Residence C,
5 you transfer it there as well?

6 A. That is true.

7 Q. So that's a \$600 total on a \$200 account; is
8 that correct?

9 A. That's not accurate.

10 Q. Okay.

11 A. At some point in all of this shifting around
12 that you've mentioned, as was the case with your situation,
13 we do ask you to pay for a portion of that, whether that be
14 half, whether that be 80 percent. You know, it changes
15 somewhat depending upon the nature of the instance and more
16 specifically the weather.

17 So we are not going to let people incur debt
18 and just move around and transfer it with them, if that's
19 how I'm understanding your question.

20 Q. Right. So how would you -- if the -- if
21 you're asking the account holders where the owing customer
22 temporarily resides for whatever period of time and then
23 that person acquires part of the debt, even though he or she
24 did not benefit or use any of the service that the owing
25 customer acquired, then he becomes liable for whatever

1 percentage.

2 And then so pretty much by that policy, a
3 person could just continue to move and eventually his
4 account would be paid by the account holders where he
5 resides?

6 A. Well, no. I would disagree with that. Again,
7 that is why -- and let's go back to a simple transfer as you
8 were stating. At Address A, you owe a bill, run up a bill
9 of \$200.

10 Q. Okay.

11 A. And we don't, for whatever the reason, get it
12 collected from you. You move out. You surface over at
13 Address B. We transfer the --

14 Q. When you say "surface," what do you --

15 A. You re-apply for service, your name comes up,
16 sure.

17 Q. It would have to be the person --

18 A. So -- so we would then transfer that debt but
19 at the same time before we supply service to Address No. B,
20 we're going to request that a portion, if not the full
21 amount, of that \$200 final bill from Address A is paid. We
22 would then make a payment arrangement on any balance that
23 was left from that.

24 So then we would expect whoever's living at
25 Address B understands that there is a debt, you have entered

1 into a payment agreement to pay the balance, that's what we
2 expect you to do. But should you fail to do that and you
3 run up additional bills and your service is either
4 terminated for non-payment or you elect to move and you move
5 over here to Address No. C, then whatever final bill is at
6 B, which may include some of A's address will follow you to
7 C as well.

8 And at that point we are, once again, going to
9 ask you for payment. And we are going to be able to look at
10 the fact that you didn't pay us at A, you didn't pay us at B
11 and now we're working on C.

12 So there are collection strategies involved in
13 all of those different scenarios. It's not quite as simple
14 as you can run up a bill and run around and leave it unpaid,
15 although I'm sure that there are many instances where that
16 does happen.

17 Q. Okay. And how does MGE address that where a
18 person may at one time have an account in their name and ran
19 up an unpaid bill but chooses for that reason to just live
20 with individuals, family members or whoever they come in
21 contact with without getting additional service in their
22 name but they're just residing there?

23 A. Sure. I think if I understand your question,
24 what you're asking me is if that person doesn't show up in
25 our data again, they've just moved around and lived with

1 other people, we have a means for outside collection, we
2 will turn it to a bad debt collection service.

3 You know, part of the reason that we have such
4 a problem trying to collect debt, above the obvious that
5 there are economic factors and there are employment factors
6 and all these kinds of things, you know, part of the reason
7 that we are aggressive in collecting our debt is because
8 there's a lot of debt out there.

9 We're looking after the good paying rate
10 customer and we're also looking at, you know, what we are
11 allowed to recoup on bad debt expense. And, frankly, every
12 year for the last six to seven years we have fallen
13 approximately 1.6 to 1.7 million behind in that allowance.
14 So it is a business decision and we do collect aggressively.

15 Q. Okay. So in the process of collecting this
16 outstanding debt, you do admit that individuals who have no
17 direct responsibility directly by using gas service from MGE
18 ultimately are required and are sometimes -- are ultimately
19 made to pay debt due to individuals temporarily residing in
20 their residence?

21 A. No. I don't believe that's what I said at
22 all. I've tried to explain to you that I believe you're
23 asking me two questions. The first being if someone hops
24 around from residence to residence, doesn't put it in their
25 name and we don't know about them, what do we do to pursue

1 that collection activity. And we are very aggressive with
2 that. We turn it to an outside collection source for the
3 very reasons I just explained.

4 If, on the other hand, we do know where that
5 person is and we can collect internally, that's exactly what
6 we do. And we do transfer it and make collection before
7 service is turned on at the next address.

8 Q. Okay. So an instance where the person owing
9 the bill moves in after the service where he is moving to is
10 on and MGE becomes aware that the service was on prior to
11 that person residing or moving into that residence and now
12 MGE has knowledge that that person is residing there and in
13 instances of duplicating instances, those individuals are
14 still given some mandate of paying the owing customer's
15 debt?

16 A. I think that that is where we stand today with
17 your situation. The debt can be transferred and it becomes
18 truly an issue within your own household as to who owes it.

19 I think that you have perhaps the idea that we
20 want you personally, Mr. McKinzy, to pay this debt. And
21 that's not at all what we're saying to you today or in the
22 past. We just want to have our debt paid. The debt that
23 was run up by your wife at a previous address.

24 We are not attempting to, you know, make you
25 reach into your pocket and it's not about you. It is simply

1 about a debt that's been incurred and we would like to have
2 payment on that debt, I believe we even offered to do it for
3 half initially, before we supply more service.

4 Q. Okay. In the instance where -- say just as a
5 parallel scenario to somewhat probably get more at what I'm
6 trying to bring to the forefront, do you own a car?

7 A. Pardon me?

8 Q. Do you own a vehicle?

9 A. Yes.

10 Q. Are you making payments or do you own it
11 outright?

12 A. I make payments.

13 Q. Okay. In the process of you owning your
14 vehicle, if you do not pay your payment, what normally
15 happens to that debt normally? What happens to the credit?
16 What does the credit usually do if you refuse to pay your
17 debt? What options would you think a creditor would have?

18 A. Well, specifically as a credit manager, I
19 would assume that first there would be a penalty phase where
20 penalties would be applied. Eventually I would assume I
21 would lose that car.

22 Q. And --

23 A. That would be the ultimate.

24 Q. And the outstanding debt, who do you think the
25 creditor would look for to get their payment from?

1 A. The creditor is going to look first to me.
2 However, if it's repossessed -- and under retail credit,
3 that's a little bit different -- the bank gets involved too.

4 Q. Right. But, I mean, the ultimate obligation
5 to pay that debt -- say you had friends that drove around in
6 it or whatever, but who would be the ultimate obligation as
7 far as creditworthiness as far as trying to attach assets,
8 credit reports? Who all would -- do you think --

9 A. That would certainly be me and my husband.
10 And I think that I understand what you're saying. It does
11 go to an issue, sir, of responsibility. And that's all
12 we're asking is that the person in your household be
13 responsible, step up, pay the debt that they've already
14 incurred with us before we, in good faith, supply more
15 service to your household.

16 Q. Okay. Could you explain if the tariffs allow
17 service to be terminated, why was their -- the process -- if
18 a debt was to be paid by a household member or does the
19 tariff require written presentation of the debt so that the
20 person that you're expecting a debt or whose account is
21 affected has a written statement stating that this isn't a
22 bill to be sent to the person's address where service is
23 currently being provided, in effect, transferring? How do
24 you go about transferring if that's, in effect, what MGE
25 chooses to do in a case?

1 A. I want to make sure I understand your
2 question.
3 Q. Okay.
4 A. Are you asking me specifically about what type
5 of notification perhaps should have been due you --
6 Q. True.
7 A. -- for the service having been shut off on
8 Overton?
9 Q. Yes. That's -- that's --
10 A. Okay. In that sense then, let me attempt to
11 answer. Our customer of record at Overton during this time
12 period was Mr. Lee. Mr. Lee and his wife contacted us a
13 couple of different times. In fact, I have the dates if
14 you'd like to go over those.
15 Q. Yes. If you could give the dates.
16 A. Sure. Just a moment here.
17 In fact, I'll be glad to run down the entire
18 chronology, if you'd like.
19 Q. That would be --
20 A. That might help everybody in the room.
21 Q. The date will be fine.
22 A. On the 9th of April you called for service,
23 you stated that you were married and you would call us back
24 with your wife's Social Security number. That same day, you
25 admitted to us that your wife had already moved in and when

1 we asked to you pay Tamara's bill from Highland --

2 Q. Okay.

3 A. -- you said that she was not living there.

4 Q. That's -- that's enough.

5 A. Okay.

6 Q. As far as on the date of September 9th -- what

7 page are you referring to?

8 A. Pardon me?

9 Q. Which page of your Rebuttal Testimony?

10 A. This is just a quick chronology --

11 Q. Okay.

12 A. -- that I've gone through.

13 Q. Okay. On the date of September -- on April

14 the 9th --

15 A. Yes.

16 Q. -- were you the particular individual who I

17 supposedly admitted that my wife was residing in the

18 residence?

19 A. No, I was not.

20 Q. Do you know who that individual is?

21 A. Yes, I do.

22 Q. Who is that individual, if you could state for

23 the record?

24 A. Her name is Mrs. Revel (ph.)

25 Q. Okay. So the statements presented in your

1 Direct Testimony amounts to hearsay as far as what you were
2 told by Ms. Revel about what I said on April the 9th, isn't
3 it?

4 A. Well, I will tell you that during the course
5 of our normal and regular business not only do we talk to a
6 lot of customers, in fact, 165,000 customers just in the
7 last month that we've had phone contact with.

8 And during all of those contacts, excuse me,
9 we routinely make notations that are date and time stamped
10 by our computer system to an individual's account or the
11 account that they're calling about. In this case it would
12 have been Mr. Lee's account that you were calling about.
13 And I do have, of course, those notes.

14 Q. Right. But I'm saying the direct assertion
15 that I made supposedly to Mrs. Revel --

16 A. Revel.

17 Q. Revel?

18 A. Uh-huh.

19 Q. You do not -- she's not here to state that
20 that's what I stated to her on April the 9th of 2003?

21 A. No.

22 Q. You do not have her today?

23 A. No, she is not here. However, I would ask you
24 to consider how would we ever put Tamara Nance with Michael
25 McKinzy without somebody having told us about that?

1 Q. Well, I'm saying the circumstances around it
2 are hearsay as far as what you were told by Mrs. Revel about
3 the conversation that was had on April the 9th when I
4 called?

5 A. Certainly it is something that she has
6 directly told me and it is written in our notes on the
7 system.

8 Q. Right. But she was relaying to you --

9 A. Yes.

10 Q. -- the conversation that supposedly occurred
11 between her and I?

12 A. Yes.

13 Q. Okay. So wouldn't that, in your opinion, be
14 classified as hearsay?

15 A. I'm not an attorney.

16 JUDGE RUTH: You seem to be objecting to part
17 of her testimony --

18 MR. MCKINZY: Right.

19 JUDGE RUTH: -- as hearsay, so I'm going to
20 allow MGE to respond to your objection of hearsay.

21 MR. MCKINZY: Okay. I would --

22 JUDGE RUTH: Can I let them go ahead and
23 respond? Mr. Cooper.

24 MR. COOPER: Your Honor, the only thing I'd
25 say at this point is that -- and it's very similar to what

1 Ms. Lambert said. I don't know that she's an attorney, I
2 don't know that she's the proper person to answer whether
3 something is hearsay or not hearsay.

4 I'm not sure it's relevant at this point
5 whether it's hearsay or not, and in particular -- in
6 particular, because Mr. McKinzy is asking the questions of
7 her. It's not something that MGE is pulling out of
8 Ms. Lambert on the stand through its questioning or its
9 case. It's something that Mr. McKinzy himself is asking her
10 about.

11 JUDGE RUTH: And, Mr. McKinzy, what Mr. Cooper
12 has said is true, which means I'm going to allow the
13 witness's answers to stand. And she is not going to answer
14 the question as to whether or not something is hearsay. She
15 is not an attorney and we've addressed it.

16 MR. MCKINZY: Okay. What I'm referring to in
17 her Rebuttal Testimony, I believe the statements --

18 JUDGE RUTH: Where in her Rebuttal? Can you
19 tell me and I'll follow.

20 MR. MCKINZY: I believe it's KL-- the second
21 page, it's the exhibit at the back, Schedule KL-1.

22 JUDGE RUTH: Okay. I have Schedule KL-1.

23 MR. MCKINZY: Yeah. The second page.

24 BY MR. MCKINZY:

25 Q. It states the remarks that were -- these are

1 direct remarks that I guess the user ID on this page, is
2 that who identifies --

3 A. Yes, it is.

4 Q. -- F04 MAC identified, could you tell who that
5 person --

6 A. I truly cannot. We have a number of employees
7 and I don't have all of their initials memorized.

8 Q. Okay.

9 A. What I did do, however, is if you'll look at
10 the very last line where it says that you did ask for a
11 supervisor -- that's what that s-u-p means -- I did go to
12 that supervisor, who is Ms. Revel, and get that information.

13 Q. So, in fact, the information you're testifying
14 today or Direct Rebuttal is, in essence, somewhat of a third
15 generation? It's not from the direct person that had the
16 conversation with me, but from the supervisor of the person
17 who had the conversation with me on April the 9th; is that
18 correct?

19 A. I'm not sure I follow all that logic, but I'll
20 say I'm the manager of the department and the custodian of
21 record. We typically note things like this on people's
22 accounts. It's there, I can read it first hand. I've
23 talked to the supervisor. I -- you know, I firmly believe
24 that what's in the record is what's in the record.

25 Q. And I state --

1 JUDGE RUTH: You seem to be objecting to the
2 reference to these documents.

3 MR. MCKINZY: Right. I'm objecting that --

4 JUDGE RUTH: Since it's an objection, what I
5 will do is allow Mr. Cooper to respond to your objection.

6 MR. COOPER: Yeah. And, in fact -- well, I
7 guess, first off, the particular sections that Ms. Lambert
8 referred to I believe are already in evidence.

9 But that being the case, I think that these
10 screen prints and the information that Ms. Lambert is
11 providing clearly falls into an exception to the hearsay
12 rule, which is that business entries are business records
13 exception.

14 Ms. Lambert has testified today that she has
15 responsibility for these records, that these records are
16 generated contemporaneous with conversations had by MGE
17 employees, that it is part of their job to make these
18 entries contemporaneous with conversations they have with
19 customers. I think these -- these factors provide the
20 foundation for the business records exception to the hearsay
21 rule and for that reason, they -- they are admissible.

22 MR. MCKINZY: And I object given that I'm
23 accounted to making a direct statement and I do not have the
24 person who I'm supposed to have made that statement to
25 cross-examine at this hearing.

1 JUDGE RUTH: Mr. McKinzy, your objection is
2 noted for the record. But as Mr. Cooper stated, there is a
3 well-recognized exception to the hearsay rule which allows
4 these records to come in as a business record and they have
5 already been admitted.

6 However, the record will be seen in full. It
7 will be your testimony, which says one thing, MGE has
8 evidence which says another and it will be the job of the
9 Commissioners to make a determination. So they will have
10 evidence from both sides and they will determine what is
11 credible or what is correct and make their decision.

12 MR. MCKINZY: Okay.

13 BY MR. MCKINZY:

14 Q. So in returning back to -- so you do not have
15 any direct information or knowledge of any direct or
16 indirect involvement of this case involving my request of
17 transfer of service or discontinuance of service or the
18 commencement of service at 8004 Overton? You do not have
19 any direct personal knowledge? You did not receive any
20 calls from me or communicate directly with me on any of
21 these matters; is that correct?

22 A. That's true, Mr. McKinzy. I've not spoken
23 with you about this.

24 Q. And all the information that's contained in
25 your Rebuttal is based on information received from other

1 individuals who work for MGE?

2 A. It is information received from other
3 individuals as well as our business records.

4 MR. MCKINZY: Okay. And that's pretty much
5 it.

6 JUDGE RUTH: Does that conclude your questions
7 for the witness?

8 MR. MCKINZY: Yes, it does.

9 JUDGE RUTH: Thank you. I've had questions
10 left for me from both Commissioner Clayton and Commissioner
11 Gaw, some for this witness and then some I'll need to recall
12 actually some other witnesses. I'm going to direct the
13 question to the witness, however -- as instructed by
14 Commissioner Clayton, however, I think it may be questions
15 actually properly for the attorney.

16 QUESTIONS BY JUDGE RUTH:

17 Q. The first one then from Commissioner Clayton,
18 Ms. Lambert, are you aware of whether or not MGE has filed
19 suit to collect the debt from Ms. Nance at any point in the
20 past? In other words, when she accrued the 449 dollars and
21 some odd cents debt, did MGE attempt to collect by either
22 collection agency or filing suit?

23 A. Two-part question. I don't think that we ever
24 got to a point, due to the size of the debt, that we were
25 seeking suit. We did, however, turn it to an outside

1 collection agent and they were pursuing that debt.

2 JUDGE RUTH: And Commissioner Clayton also
3 would like counsel to go over again 3.02 and 3.03 -- and I
4 mean counsel for MGE -- and how they apply to this case.
5 Particularly Commissioner Clayton is interested in the last
6 part of Section 3.02 of the tariff that says, Company
7 reserves the right to transfer any unpaid amount. He would
8 just like for you to go through again how 3.02 applies or
9 does not apply to the current situation for Mr. McKinzy.

10 MR. COOPER: Okay. I think that it applies in
11 two -- probably in two time periods. As we've discussed
12 this morning, I guess at some length, the first sentence of
13 3.02 which is found on Sheet R-19, is the sentence that MGE
14 relied upon when it refused to commence service at 8004
15 Overton in April -- initially in April of 2003.

16 That's the sentence that says that the company
17 shall not be required to commence supplying gas service if
18 at the time of application the applicant or any member of
19 the applicant's household who has received benefit from
20 previous gas service is indebted to company for such gas
21 service previously supplied at the same premises or any
22 former premises until payment of such indebtedness had been
23 made.

24 So that was the provision I believe was key to
25 the company's initial refusal to commence service.

1 The latter part of 3.02, which is found on
2 Sheet R-20 I think really is a looking forward or has a
3 looking forward sort of applicability. That is the company
4 believes, and in past practice has I believe, operated in
5 this fashion.

6 That if Tamara Nance, now Tamara McKinzy
7 becomes a member of Mr. McKinzy's household, which we're
8 told she has at this point, that the company believes -- the
9 sentence, Company reserves the right to transfer any unpaid
10 amount from prior services to a current service account
11 provides the company the ability to transfer Ms. Nance, now
12 McKinzy's, prior debt to Mr. McKinzy's account for 8004
13 Overton. So I think that is how I guess I would view the
14 applicability of the second part of that sentence.

15 And I think I'll reiterate something that I
16 think Commissioner Clayton asked me in the opening
17 statement -- in my opening statement. I think he asked
18 whether the company believed that it could then go back and
19 discontinue service to Mr. McKinzy based on 3.02.

20 And I think my answer this morning was and
21 continues to be that the company does not believe that it
22 can discontinue service to Mr. McKinzy based upon
23 Ms. McKinzy having become a member of his household.

24 That is -- I believe I referred you back to
25 that footnote in our earlier pleading, but once we had

1 commenced service, I think we moved beyond the first
2 sentence of 3.02. And at which point the question of
3 whether service can be discontinued does then rely upon
4 3.07, the discontinuance of service rule.

5 Now, 3.03, which I believe you also asked
6 about --

7 JUDGE RUTH: Before we move there, can I ask
8 you a follow-up question? I'm pretty sure you stated this
9 on the record, but I want to make sure.

10 For the first time period, the first sentence
11 of 3.02, Company shall not be required to commence service
12 at the time of the application or the applicant or a member
13 of the applicant's household is indebted, it is -- I want to
14 make sure, is it still MGE's position that when MGE refused
15 to commence service, that MGE acted properly under its
16 tariff because in your belief Ms. Nance was living there?

17 MR. COOPER: That is the case, yes, your
18 Honor. MGE believes that it did operate in accordance with
19 its tariff.

20 JUDGE RUTH: Okay. Thank you. And now you
21 may go ahead with the 3.03.

22 MR. COOPER: 3.03 -- I think the applicability
23 of 3.03 is really just a question of when should a transfer
24 fee apply or when should a connection fee apply. And
25 looking at the first sentence of 3.03, we certainly believe

1 that a transfer fee, and that is the \$5 fee that was
2 referred to earlier today, that the \$5 fee applies when gas
3 is never shut off from one customer to the next customer.

4 So if I can provide a hypothetical, if at the
5 end of Mr. Lee's term as a customer, gas would have never
6 been shut off, if instead Mr. McKinzy would have just --
7 that would have become his account the next day, that's what
8 we believe the transfer fee is applicable to. And that is
9 the transfer that's being referred to there, the transfer
10 from one customer to another customer.

11 On the other hand, and this is the second
12 sentence of 3.03, there's a connection fee and that's the
13 \$20 fee that we referred to earlier. And that applies, at
14 least from our reading of the tariff and our application of
15 the tariff, to a situation where service is actually -- the
16 first customer's service is terminated, the gas is not -- no
17 longer flowing for whatever reason to that residence and
18 then at a later date the -- the new customer moves in.

19 And it is a higher fee because the company has
20 to take steps to go out and -- and make the gas flow again.
21 And that's the difference between the \$5 and the \$20. It
22 relates back to the actions that are required on behalf of
23 the company.

24 Now, that all having been said, there's -- I
25 don't know how much that whole issue really plays into this

1 matter anymore, because I think initially Mr. McKinzy was
2 charged the \$20 connection fee, I believe his account was
3 later credited for that \$20 and I don't believe he, in the
4 end, has been charged either the \$20 or the \$5.

5 JUDGE RUTH: I want to clarify then what MGE's
6 position is. Part of the allegations were not following the
7 tariff. If the company followed its tariff, do you think
8 they should have charged Mr. McKinzy a \$5 fee or \$20 fee? I
9 understand they could choose to waive it, but which one, if
10 either, did the tariff authorize?

11 MR. COOPER: I think that under the facts we
12 have, which is Mr. Lee's service was -- it ceased in June
13 and Mr. McKinzy's service was later turned on in September,
14 the tariff would have authorized the \$20 connection fee.

15 JUDGE RUTH: So the company believes it was
16 authorized to charge the \$20 connection fee, but for
17 whatever reason has waived that fee; is that --

18 MR. COOPER: I think that's an accurate
19 statement.

20 JUDGE RUTH: So, Mr. Cooper, I believe Staff
21 Witness Mr. Russo had earlier testified that looking at
22 Complainant's issue list, that Staff believes that MGE
23 violated the one that's designated as six, if you change six
24 from discontinuing to failure to commence.

25 Could you please respond to the charge that

1 MGE failed to commence? In other words, I'm changing the
2 issue from discontinuing to fail to commence. Staff has
3 responded and I'm just asking a clarification as to MGE's
4 position.

5 MR. COOPER: Right. Let me turn to that issue
6 real quickly.

7 MGE believes that -- well, as we stated
8 earlier, MGE believes that initially Ms. Nance, now
9 Ms. McKinzy, was living at 8004 Overton, intended to live at
10 8004 Overton and that the company had a reasonable basis to
11 reach that conclusion. And for that reason, they believe
12 that the failure to commence service during that time period
13 was not a violation of its tariff.

14 JUDGE RUTH: So it's the company's position
15 that if they had a reasonable basis for believing that she
16 was there, it's not a violation, or is it the company's
17 position that she was there and it's not a violation?

18 MR. COOPER: Well, I think -- I think both in
19 the end. And probably this is something that Ms. Lambert's
20 more appropriate to address than me, but --

21 JUDGE RUTH: I can pose the question --

22 MR. COOPER: -- you have to understand the
23 company -- as Ms. Lambert spoke before, in the month of
24 March gets 165,000 calls. And they have to operate from
25 some perspective or some basis of operation on these types

1 of issues.

2 And it's the company's position that when it
3 gets an application for service, the applicant reports they
4 are married, the name and Social Security number is provided
5 as a part of that process, that it's a reasonable assumption
6 that that spouse is going to reside at that address. And
7 until there is something stronger to overcome that
8 assumption, that position, that the company is within its
9 rights to refuse to commence service.

10 BY JUDGE RUTH:

11 Q. I have a question for MGE's witness from
12 Chairman Gaw. If the question isn't appropriately addressed
13 to you, we'll go from there.

14 But Commissioner Gaw wants to know, are you
15 familiar with the pending case AX-2003-0574? I believe
16 that's the case number. It's a rule-making case that
17 addresses some of the issues that are touched on here.

18 A. I am not familiar with that case number.
19 However, I am familiar with some rule-making around the
20 denial of service. I don't know if that's the same one or
21 not.

22 Q. I believe so, yes.

23 A. Okay.

24 Q. That rule is not -- it's my understanding that
25 rule is not in effect --

1 A. Correct.

2 Q. -- at this point. It's still under
3 consideration.

4 However, hypothetically, if that rule were in
5 effect, can you tell me how it would change the outcome of
6 this case, if it were already in effect?

7 A. Yes. We'd have to go all the way back to the
8 beginning when Mr. McKinzy applied for service. And we
9 questioned him and he told us his wife was living in the
10 home. We found the debt under Ms. Nance, his now wife.

11 At that point our focus would have been
12 somewhat different. We would have been, under the new rule,
13 seeking to understand whether Mr. McKinzy had lived at the
14 Highland address where the bill was incurred originally
15 before either granting service at this new address or
16 requesting some kind of bill payment option, that sort of
17 thing.

18 Q. Okay. If your review determined that
19 Mr. Nance -- I'm sorry, Mr. McKinzy had not lived at that
20 address, what would be the next course of action?

21 A. We would be turning it on for Mr. McKinzy at
22 the Overton address and we would be pursuing collection of
23 Ms. Nance, now Ms. McKinzy, at that same address through our
24 outside collection efforts.

25 Q. And, on the other hand, if your investigation

1 found that Mr. McKinzy had lived at that address with
2 Ms. Nance when the bill was incurred, the reaction would be?

3 A. Well, again, of the almost \$450, we would be
4 asking them, as we did originally, to pay at least half to
5 initiate the service at the new address on Overton. We
6 would have worked out a payment arrangement with them if
7 that could have been something mutually agreed to and they
8 would have been provided service at that time.

9 JUDGE RUTH: Thank you. That's all the
10 questions from the Commissioners for you and I don't have
11 any questions for you, so we will do recross -- let me make
12 a couple of notes here real quick.

13 Staff, do you have any recross based on
14 questions from the Bench?

15 MR. BERLIN: Yes, your Honor, I do.

16 JUDGE RUTH: Please proceed.

17 RECROSS-EXAMINATION BY MR. BERLIN:

18 Q. Ms. Lambert, you had indicated upon questions
19 from the Bench that the past due debt of Tamara Nance had
20 been referred to an outside collection agent; is that
21 correct?

22 A. Yes.

23 Q. Approximately how long had the collection
24 agent been working to collect that debt from Ms. Nance, if
25 you know that?

1 A. I don't actually have dates, but I know that
2 it was charged off somewhere in the year of 1999.

3 Q. So I presume that you charged the debt off
4 because you couldn't collect from her or you couldn't -- for
5 some reason you couldn't find her or collect; is that
6 correct?

7 A. Correct.

8 Q. Okay.

9 JUDGE RUTH: What does charged off mean? Can
10 you clarify that?

11 THE WITNESS: Yes. Written off to a bad debt
12 and turned over to an outside collection company to pursue
13 collections.

14 JUDGE RUTH: Thank you. I'm sorry for
15 interrupting.

16 MR. BERLIN: That's fine, your Honor.

17 BY MR. BERLIN:

18 Q. Is there anything preventing you today from
19 redirecting an outside collection agent to collect that debt
20 from Ms. Nance, wherever she may be residing if --

21 A. No. There's nothing preventing me from doing
22 that.

23 Q. Okay.

24 MR. BERLIN: That's all I have, your Honor.

25 JUDGE RUTH: Thank you, Mr. Berlin.

1 Public Counsel is not present. Mr. McKinzy,
2 would you like recross-examination?

3 MR. MCKINZY: You had conversations with him
4 that touched on information about the transfer fee?

5 JUDGE RUTH: And you are entitled to ask
6 questions, yes. If I could get you to be sure to use the
7 microphone.

8 MR. MCKINZY: Do I give it to you?

9 JUDGE RUTH: The court reporter needs one
10 first and if you have another copy, I need one; otherwise, I
11 need to look at someone's for a minute and I'll give it
12 back. The court reporter needs one that she can keep.

13 MR. MCKINZY: I guess you need one.

14 JUDGE RUTH: I need one to look at at least
15 for a few moments. I can look at the court reporter's and
16 I'll do my best not to write on them.

17 For identification purposes, I'm going to mark
18 this packet as Exhibit 13.

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

21 RE CROSS-EXAMINATION BY MR. MCKINZY:

22 Q. Ms. Lambert --

23 A. Yes.

24 Q. -- at the commencement of service of my
25 service at 8004 Overton, the first statement or bill that I

1 received, do you have that before you?

2 A. Yes.

3 MR. MCKINZY: Do you want to mark them

4 individually? Because I'm going to be referring to them --

5 JUDGE RUTH: Yes. That was my next question.

6 Are you intending to offer that as one packet?

7 MR. MCKINZY: No. Individual.

8 JUDGE RUTH: Then the first page, which is the

9 October statement --

10 BY MR. MCKINZY:

11 Q. Do you see where it reflects the service

12 charge of \$20?

13 A. I do.

14 JUDGE RUTH: I want to clarify. I'm sorry.

15 So I have marked for identification purposes Exhibit 13, the

16 statement from October 9, 2003.

17 MR. MCKINZY: Yes. For residence -- residence

18 at 8004 Overton.

19 BY MR. MCKINZY:

20 Q. Do you know the history of the service charge

21 in question here?

22 A. In your particular --

23 Q. Yes.

24 A. -- instance or as it refers to tariff or --

25 Q. As it refers to how I was charged and any

1 subsequent events surrounding it.

2 A. I do know that initially you were charged the
3 \$20 transfer fee, which I believe you're trying to indicate
4 with this copy.

5 Q. Yes.

6 A. And that would be accurate. After having
7 received that, my indication is that you called our call
8 center, talked to someone about it and then later submitted
9 this letter that --

10 MR. MCKINZY: We can mark that as exhibit.

11 JUDGE RUTH: The next number is 14 and this is
12 the October 22 --

13 MR. MCKINZY: October 20th.

14 JUDGE RUTH: I'm sorry. Mine are all out of
15 order. So the October 20th letter will be marked as Exhibit
16 14. This one?

17 MR. MCKINZY: Yes.

18 (Exhibit No. 14 was marked for
19 identification.)

20 THE WITNESS: And at that time, you know, in
21 this letter you were basically stating your case and why you
22 felt that this should be corrected and so forth.

23 Somewhere in the midst of all that, my
24 understanding is that you actually filed a Commission
25 complaint. And it was at that point in time that we looked

1 at your case and I believe then this letter was generated --
2 BY MR. MCKINZY:
3 Q. Yes. We can mark that --
4 A. -- stating that --
5 Q. -- corresponding --
6 A. -- that we will give you --
7 Q. -- correspondence.
8 JUDGE RUTH: So that would be marked as
9 Exhibit 15. Is that what you want?
10 MR. MCKINZY: Yes.
11 (Exhibit No. 15 was marked for
12 identification.)
13 THE WITNESS: -- stating that we would give
14 you a \$15 credit, which would be the difference then between
15 the 20 and the 5. It didn't indicate necessarily that we
16 agreed with that, but that we did value you as a customer,
17 sir, and we were glad for something that trivial to go ahead
18 and take care of that for you.
19 BY MR. MCKINZY:
20 Q. So coming to the amount of \$5 was in no way
21 indicating that it was -- MGE was attempting to charge the
22 \$5 transfer fee?
23 A. No. And I think the letter actually goes on
24 to say that.
25 Q. Okay. So it was just an arbitrary

1 determination of charging \$5 instead of \$20? There's no
2 other connection?

3 A. None whatsoever, sir. You were then and you
4 still are a good customer.

5 Q. Okay. You also stated in conversation that
6 you ascertained -- you indicated the process that you go
7 through when someone calls and requests service, gas
8 service, MGE?

9 A. Uh-huh.

10 Q. That you request all members of the household
11 who are going to be residing there, you request that
12 information. Is that the policy?

13 A. Typically what we ask for is the name of the
14 person who's calling and then the spouse.

15 Q. Okay.

16 A. And then how that account is going to be
17 listed. If we have reason -- you know, some kind of red
18 flag is thrown up that would indicate to us that we need to
19 dig a little deeper and ask some more questions about others
20 living in the household, then we would do that.

21 Q. Okay. So if someone asks you a question or
22 asks information, would you consider in the -- that in a
23 manner -- that person you're asking listing the information
24 or is it providing the information that's being asked of
25 them?

1 A. I'm not sure I understand the distinction.

2 Q. Okay. If you call -- if a person calls and
3 say, I want gas service and you say, Okay, what's your name,
4 okay, and they give you a name, is that -- and then you say,
5 Well, who's living at the residence and are you married?
6 And they say, Yes, and you say, Well, we need to know your
7 wife's or your husband's name, would you consider that
8 listing or is that providing information being requested?

9 A. I think it's both. We are listing on your
10 credit application, which is what this is, is an application
11 for credit, the information that you're giving us. And the
12 information that you're giving us is what is provided by
13 you.

14 Q. Okay. So, in essence, how can that
15 information then be used as a basis to determine who's
16 residing -- if you're asking for the spouse's name and not
17 who's residing, but if you're needing to know the name of
18 the spouse to put on record and they provide that
19 information, how do you distinguish also in the cases where
20 the spouse's information is given, but is not residing in
21 the residence that the service is being requested at?

22 A. I suppose that I would have to counter that in
23 normal circumstances, customers who are asked that question
24 about spousal information provide that information. And
25 unless they indicate that the spouse is not in the home, we

1 assume that they are. I think that's logical and
2 reasonable.

3 Q. Okay. And that comes to the basis of this
4 whole -- is that an assumption was made in my case that the
5 spouse or my wife would, in fact, be residing there. No
6 evidence or no investigation were done to ascertain facts or
7 evidence to that effect, it was just an assumption based on
8 spousal information being given on the spot on the phone
9 conversation that it would normally be listed as also a
10 household member?

11 A. I would disagree with that.

12 Q. Well, you just said that you make an
13 assumption. I'm just --

14 A. I was talking very generally. If you want to
15 talk about your situation in particular, you know, what I
16 would tell you is that initially we did do that. You
17 called, we requested information, we listed it. But you
18 also indicated to us that you didn't have your wife's Social
19 Security number so you would be calling back with that
20 information and we told you that would be fine.

21 And you did then call back with that
22 information. We added it to the account and once we did
23 that and ran a check against our own internal database, we
24 found a bill. It was at that point that you told us, She
25 won't be living here.

1 Q. Okay.

2 A. But prior to that, you had indicated she was
3 in the household. Not just an assumption, sir, but you
4 actually said she was living there.

5 Q. And that's based on?

6 A. Information that my trained professional
7 consultants take.

8 Q. And you don't know the person who received
9 that information on that particular day?

10 A. I do know -- I can't identify those initials
11 for you.

12 Q. Okay. But you know --

13 A. If I had the list, I could.

14 Q. Would you know what those initials are?

15 A. Yes, I do.

16 Q. Could you provide those?

17 A. F04 MAC.

18 Q. Okay. At some later date you could ascertain
19 who those initials belong to?

20 A. Yes.

21 Q. Okay. And that person, if requested, could
22 provide testimony stating that she did, in fact, receive
23 that information to that effect under oath?

24 A. Absolutely. She wrote it down just as you
25 said, sir.

1 Q. Okay. Also, coming to the statement you made
2 that the information that was provided by me, once it was
3 provided, it was added to the account, my wife's
4 information?

5 A. Uh-huh.

6 Q. Is that not, in fact, making that person now,
7 by adding that information to my account, a household member
8 by that effect? If you add this information of a spouse to
9 my account that was transferred that did not contain that
10 information prior to the transfer and now you're adding
11 additional information, are you not, in effect -- given the
12 fact that I was previously married and had that information
13 on my account prior to transfer that you were switching out,
14 therefore, updating and making an assumption that that would
15 be also a household member?

16 It was -- could that be an argument that
17 that's how Tamara Nance's name was also made a household
18 member to my residence, that it was added as a household
19 member once it was given?

20 A. Let me try to break that down and answer what
21 I think I hear you asking. When you were married to
22 Carletha -- was that the right name?

23 Q. Yes.

24 A. -- you and she were a customer at another
25 address. You severed your marriage and you also severed

1 service. You took it out of your name, you updated the
2 account -- or she did by putting it in her name only. Okay?
3 Records do require update. I'm sure I would agree with
4 that, just as in that instance, we needed to update and get
5 you off that application.

6 When you called -- and I feel like I'm
7 answering three questions here, but when you called and
8 asked for a service at Overton, you indicated to us that you
9 did have a spouse, she was living in the home and this is
10 her name.

11 We would never have been able to pick out of
12 the air the name Tamara Nance and put it together with
13 Michael McKinzy at two totally separate addresses now coming
14 together at a third unless you had supplied that
15 information.

16 Q. The argument -- there's no argument that the
17 information was supplied. It was -- the statement was made
18 that it was given after being requested and that it was
19 added to my account after that request was provided.

20 A. Well, just as any creditor does, be it, you
21 know, a retailer or a utility, when we take a credit
22 application -- and understand that is what we're taking, we
23 take that information so that we know who our customer is
24 and we know who is responsible for paying bills, of course,
25 but also emergency information. A lot of things go into

1 that sir, and we do not bill you until after you've used our
2 service.

3 So this is a credit application. We
4 constantly update those just like any other creditor would.
5 And if you have new information, we are going to ask you for
6 it and we are going to document it.

7 MR. MCKINZY: Okay. I would at this time like
8 to add into evidence Exhibit 17.

9 JUDGE RUTH: Okay. Let's back up. I have 13,
10 14 and 15. Okay. Do you want to mark this as Exhibit 16,
11 the newspaper?

12 MR. MCKINZY: It's actually two.

13 JUDGE RUTH: And there's a problem with my
14 copy of the second one in that it's a poor copy and I cannot
15 read at least a word on each line and I wondered if you had
16 a better copy?

17 MR. MCKINZY: I copied it all --

18 JUDGE RUTH: That copy I don't think is going
19 to be acceptable. What we can do is separate the two
20 newspaper articles and you can file the second one as a
21 late-filed exhibit. We'll talk about, I'll mark it;
22 however, I want you to provide a copy that can be read after
23 the hearing. Okay?

24 MR. MCKINZY: Okay.

25 JUDGE RUTH: Now, Mr. McKinzy, do you realize

1 we have not admitted Exhibits 13, 14 and 15? I've only
2 marked them for identification purposes. Before we go
3 further, did you want to actually offer those?
4 MR. MCKINZY: Yes.
5 JUDGE RUTH: We'll do 13 first. Okay. 13 is
6 the bill from MGE.
7 MR. MCKINZY: Okay.
8 JUDGE RUTH: Are there any objections to
9 Exhibit 13 being admitted into the record, Staff?
10 MR. BERLIN: No, your Honor.
11 JUDGE RUTH: Public Counsel's not here.
12 MGE?
13 MR. COOPER: No.
14 JUDGE RUTH: Okay. Exhibit 13 is admitted.
15 (Exhibit No. 13 was received into evidence.)
16 JUDGE RUTH: Exhibit 14 is the letter from
17 Mr. McKinzy dated October 20th, 2003, two-page letter. Are
18 there any objections to Exhibit 14 being received, Staff?
19 MR. BERLIN: No, your Honor.
20 JUDGE RUTH: Public Counsel's not here.
21 MGE?
22 MR. COOPER: No.
23 JUDGE RUTH: Exhibit 14 is received.
24 (Exhibit No. 14 was received into evidence.)
25 JUDGE RUTH: Exhibit 15 is the letter from MGE

1 to Mr. McKinzy dated October 22, 2003. Are there any
2 objections to it being admitted, Staff?

3 MR. BERLIN: No, your Honor.

4 JUDGE RUTH: And Public Counsel's not here.
5 MGE?

6 MR. COOPER: No, your Honor.

7 JUDGE RUTH: Exhibit 15 is also admitted then,
8 Mr. McKinzy.

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

10 JUDGE RUTH: Now, Exhibit 16 I'll mark for
11 identification purposes the first article, that's The Kansas
12 City Star, Saturday, September 13, 2003 and the title, State
13 Finds MGE -- that's the one?

14 MR. MCKINZY: Yes.

15 JUDGE RUTH: Are you wanting to offer it into
16 evidence also?

17 MR. MCKINZY: Yes, I would like to.

18 JUDGE RUTH: Parties, I assume you all have a
19 copy of Exhibit 16, the first newspaper article from
20 September 13, 2003. Are there any objections to it being
21 received into the record, Staff?

22 MR. BERLIN: Your Honor, I have no objection.
23 I just do need to get copies of these exhibits.

24 JUDGE RUTH: After the hearing, we will take
25 some time to talk about who doesn't have a copy of what.

1 Exhibit 16 then, Staff, you said no objection?
2 MR. BERLIN: No objection.
3 JUDGE RUTH: Do you have a copy to look at?
4 I'm sorry.
5 MR. BERLIN: No, I do not.
6 JUDGE RUTH: Here. Okay. Staff, any
7 objections?
8 MR. BERLIN: No objections.
9 JUDGE RUTH: Public Counsel's not here.
10 MGE, do you object to Exhibit 16 being
11 admitted?
12 MR. COOPER: No.
13 JUDGE RUTH: Exhibit 16 is admitted into the
14 record.
15 (Exhibit No. 16 was marked for identification
16 and received into evidence.)
17 JUDGE RUTH: Exhibit 17 is a copy of an
18 article from The Kansas City Star from January 28, 2004.
19 It's my understanding that the only copies available today
20 have several letters, perhaps up to a word, on the left-hand
21 margin that is not copied.
22 We will mark this document for identification
23 purposes and we will address admitting it. If the parties
24 don't object, it can be admitted but a clean copy submitted
25 following the hearing. If the parties are not comfortable

1 with that, then it will be treated as a late-filed exhibit
2 and there will be time for objections after it's submitted.

3 Staff, let me ask you now, do you object to
4 admitting this document with the clean copy filed later?

5 MR. BERLIN: No objection, your Honor.

6 JUDGE RUTH: Public Counsel is not here.

7 MGE?

8 MR. COOPER: That's fine, your Honor.

9 (Exhibit No. 17 was marked for identification
10 and received into evidence.)

11 JUDGE RUTH: Let me stress, Mr. McKinzy, I'll
12 need you to submit a copy that has all the letters within
13 seven days.

14 MR. MCKINZY: Okay.

15 JUDGE RUTH: That would be next Wednesday
16 then.

17 MR. MCKINZY: Okay.

18 JUDGE RUTH: It's just difficult to decipher
19 what some of the words might be on the left margin.

20 MR. MCKINZY: That's understandable.

21 JUDGE RUTH: So Exhibits 13 through 17 have
22 been admitted now, Mr. McKinzy.

23 BY MR. MCKINZY:

24 Q. I would like to call your attention to the
25 second column over, second complete paragraph down starts

1 with Paul Snider.

2 MR. MCKINZY: Everyone find it?

3 JUDGE RUTH: Are you on Exhibit 16?

4 MR. MCKINZY: Yes.

5 BY MR. MCKINZY:

6 Q. Have you had a chance to read that?

7 A. Yes.

8 Q. It states that, A spokesman for the utility

9 said the utility assumed that the married couple lived

10 together, but evidently that was not the case.

11 Is that an accurate description of MGE's

12 experience in this matter, is that it assumed something that

13 was not the case -- evidently not the case after the

14 evidence was brought to light?

15 A. Well, no, Mr. McKinzy, I don't think that's

16 accurate. And I really don't know in what context

17 Mr. Snider may have said this.

18 Q. Okay. But he is -- are you familiar with Paul

19 Snider personally?

20 A. Yes.

21 Q. Okay. But he is the official authorized

22 spokesperson for MGE?

23 A. He is one of them.

24 Q. Okay. So a statement of this would be -- have

25 been cleared or authorized from some management or someone

1 with authority to authorize him to make the comment to a
2 newspaper?

3 A. I don't believe that to be the case.

4 Q. No, he can --

5 A. He is a spokesperson.

6 Q. Okay.

7 A. So he writes his own copy.

8 Q. So he doesn't have to see if what he's saying
9 is consistent with the policies of MGE prior to making
10 statements to the press; is that --

11 A. Of course he checks things out before he goes
12 to press. But I don't have any personal knowledge of this
13 one.

14 Q. Okay. But in routine he would normally check
15 things out to make sure that what he's saying is consistent
16 to MGE's policy?

17 A. That's true.

18 Q. Okay. I'd like to call your attention to
19 Exhibit 17.

20 JUDGE RUTH: This article is referring to the
21 other case?

22 MR. MCKINZY: Yes. The new rule controls
23 denial of service.

24 BY MR. MCKINZY:

25 Q. Briefly, in the section that can be I guess

1 hopefully read by everyone, you had mentioned that given
2 this new rule that this article pertains to -- are you
3 familiar with it?

4 A. I am familiar with the new rule.

5 JUDGE RUTH: Let me clarify. When I said it
6 pertains to a new rule, it's not a rule in effect, it's a
7 proposed rule.

8 MR. MCKINZY: No, proposed rule. It goes into
9 effect in November or something like that.

10 JUDGE RUTH: Pardon?

11 MR. MCKINZY: It's supposed to take effect in
12 November.

13 JUDGE RUTH: I can't speak to that. I do know
14 the rule is not in effect at this point.

15 BY MR. MCKINZY:

16 Q. And you were asked given the scenario of the
17 circumstances of my case that my service would have not been
18 denied commencement. Is that what your previous testimony
19 was? If this new rule was in effect today, that --

20 A. I believe that what I said was if this new
21 proposed rule were in effect, it would have changed what we
22 would have done on the front end. We would have been
23 looking to see if we could have placed you and Tamara at the
24 Highland address together.

25 It -- the newly proposed rule switches where

1 benefit and use occurs. If you had both benefited from the
2 use at Highland, then, yes, we would have held the service
3 up on Overton.

4 Q. So is it then your understanding of MGE's
5 position is the current application of their tariffs is that
6 they do not have a policy of looking at the application of
7 what the new rule -- as far as looking at the service at the
8 Highland address and that being the controlling issue as to
9 whether or not my residence would be allowed to commence
10 service even given the fact that Tamara Nance was
11 residing -- a residing household member?

12 A. Well, again, this is a proposed rule. It is
13 not in our tariff currently. It's not a guideline that we
14 operate under now.

15 Q. Right.

16 A. So all I can do is refer to the tariff that is
17 filed and that is the one that we followed. And I believe
18 we've spoken several times today about Section 3.02.

19 Q. So to better clarify in my mind what you're
20 saying, is that currently without the new rule is that the
21 old use and benefit, as far as where the debt was occurred,
22 does not currently -- MGE does not use that as determining
23 whether or not the account holder is held responsible?

24 A. What we would be looking at is who at the new
25 address will be benefiting from service together. And at

1 8004 Overton, there's you and there's Tamara. If either of
2 the two of you or both of the two of you from separate
3 addresses coming together owed us a debt that was unpaid, we
4 would be holding up service on the Overton address.

5 Q. Okay. And the new rule also, the 3.02, it
6 states that at the time of service, that that standard
7 applies is when I -- on the date that I was requesting
8 service, that whether or not any household member was
9 indebted to MGE. That was the only time that was taken into
10 consideration with indebtedness of residence at that
11 residence; isn't that right?

12 A. I'd like to respond, but honestly I'm not that
13 well versed on the new proposed rule.

14 Q. No. I'm not referring to the proposed rule.

15 MR. COOPER: I think you said the new 3.02. I
16 think that's where the confusion lies.

17 BY MR. MCKINZY:

18 Q. Okay. The current tariff, 3.02 --

19 A. Okay.

20 Q. -- it states that at the time of service as in
21 my case, April the 9th, 2003, that if at the time of
22 application, the applicant or any member of the household of
23 the applicant is indebted, that in itself restricts the
24 application of that rule solely to at the time of service --
25 application of service. Is that not true?

1 A. I'm not sure if you're asking me am I limited
2 then to one day of April 9th?

3 Q. When the application of service -- yes, that's
4 what I'm asking.

5 A. No. I'm not limited to one day.

6 Q. That rule does not specify -- your
7 understanding of that rule is not a limitation of the day of
8 application of service --

9 A. No, it is not.

10 Q. -- as far as determining whether or not anyone
11 at that residence is indebted?

12 A. No, it is not.

13 Q. Okay. As far as the continuing sections of
14 3.02, when it refers to the previous customer's account --
15 I'm probably misspeaking. I'm trying to get to -- that the
16 previous debt that's transferred has to be the customer's
17 who incurred the debt. Is that not true? That it can't be
18 a debt attempted to be transferred from some other source as
19 to the tariff is written; is that --

20 A. No. I am not following you on that. I'm
21 sorry.

22 Q. Okay. Let me get the tariff.

23 A. You may have to share it with me.

24 Q. Oh, I'm sorry.

25 MR. COOPER: Do you want to put 3.02 --

1 THE WITNESS: I just want to refer to exactly
2 what he's speaking of.
3 BY MR. MCKINZY:
4 Q. Do you have both pages of 3.02?
5 A. I do.
6 Q. Okay. Where it states in the first section
7 where it says, Prior indebtedness of customer -- do you see
8 that?
9 A. No.
10 Q. 3.02, prior indebtedness of customer it's on
11 R-19. Do you have R-19?
12 A. I do. Oh, yes, uh-huh.
13 Q. Okay. Where it states, Company shall not be
14 required to commence supplying gas services if at the time
15 of service -- at the time of application, I'm sorry. What
16 do you understand that to mean, at the time of application?
17 What is that referring to? What is your understanding of
18 that?
19 A. My understanding is when you, let's say, are
20 attempting to apply --
21 Q. Okay.
22 A. -- for service to be turned on in your name
23 and we have an issue such as this, we are not required to
24 commence supplying gas service.
25 Q. If the applicant, which would be me or any

1 household member?

2 A. Right.

3 Q. Okay. Would you -- in cases where, like you

4 say, there is a question of who is residing at a

5 residence --

6 A. Uh-huh.

7 Q. -- and you need to -- I think you used the

8 word "validate residency" or validate -- I believe I

9 remember you using that word. I say verify, but I think you

10 used the word "validate." They pretty much mean the same.

11 When you're attempting to -- let's use the

12 word "verify," because that's -- I know what that means more

13 so, but I'm trying to use your own words so we can hopefully

14 be on the same page.

15 But if you're wanting to verify residency of

16 an applicant or the members of a household, if you suspect

17 someone is residing at a particular location or residence or

18 someone is stating that a particular person is not residing

19 there, could you state what type of documents, process is

20 used to help ascertain a residency or a non-residency where

21 the person is living at a particular place or whether a

22 person is not -- would that be something like -- would a

23 lease agreement be utilized to establish the residency of an

24 applicant or the non-residency of someone who you believe to

25 be a household member?

1 A. I think I understand your question. It
2 depends upon the circumstance naturally. What we would be
3 looking for would be something that would be dated for the
4 appropriate times involved.

5 Q. What would that be? Some examples that --

6 A. Well, for instance, did you have a lease that
7 was appropriately dated or did it go back three years or,
8 you know, have you been living at this address and you've
9 claimed you've been living at this address but you only have
10 a lease dated today? So we would be looking at documents
11 appropriately dated.

12 Naturally we would also be looking for names.
13 However, these are not, by any stretch of the imagination,
14 concrete evidence one way or another, frankly. We do take
15 all those things into consideration, but again, they really
16 have to be appropriately dated for the time or the questions
17 of time involved.

18 Q. And are you aware of the lease involved in
19 this particular case, the dating?

20 A. I am aware that you supplied a lease.

21 Q. Do you know the date as far as when it was
22 signed?

23 A. No, I don't.

24 Q. I think that's in the record. Can we refer to
25 it?

1 JUDGE RUTH: Do you remember which exhibit?
2 MR. MCKINZY: It's attached to the complaint.
3 MR. COOPER: Your Honor, while we have a
4 break, I guess are we on recross based upon questions from
5 the Bench?
6 JUDGE RUTH: Yes, it is supposed to be limited
7 to that.
8 MR. COOPER: That being the case, I guess I
9 would object to this line of questioning as being outside
10 those questions that were asked by the Bench.
11 JUDGE RUTH: Mr. McKinzy, I'm going to ask you
12 to try and tie this into the questions that were asked by
13 Commissioner or myself. And I'm not certain where you're
14 going and if you're trying to do that.
15 MR. MCKINZY: Well, he was referring -- okay.
16 The question was asked as to whether or not the new rule
17 which uses the residency -- prior residency -- that they
18 have to use where the debt was accrued as a basis for --
19 JUDGE RUTH: The new proposed rule.
20 MR. MCKINZY: Okay.
21 JUDGE RUTH: I think I see where you're going.
22 Go ahead and proceed, but try to keep it limited to the
23 questions from -- follow up to questions from the Bench.
24 MR. MCKINZY: Okay.
25 JUDGE RUTH: And you're right, there is a copy

1 of the lease attached to your June 30th, '03 complaint.
2 BY MR. MCKINZY:
3 Q. Do you have it?
4 A. No, I don't. But I'll be glad to look at your
5 copy.
6 Q. Yeah. I have more than one copy.
7 A. Okay.
8 MR. COOPER: I'd be willing to stipulate as
9 well that the lease that Mr. McKinzy signed was -- stated
10 that it was entered into on March the 2nd of '03 and that it
11 was for a lease to begin or commence on March 15th of 2003,
12 if that helps move us along a little bit.
13 JUDGE RUTH: Okay. Mr. McKinzy, have you
14 heard --
15 MR. MCKINZY: Yes.
16 BY MR. MCKINZY:
17 Q. So based on that stipulation, would that give
18 you assistance in ascertaining whether or not a lease with
19 these dates would help ascertain whether or not the person
20 requesting service was, in fact, living there?
21 If everyone -- if the person requesting
22 service is listed and someone you suspect is not listed,
23 would that go toward disproving that that particular person
24 was not, in fact, living there?
25 A. This would be of help if I were questioning

1 your identification. It is not of any consequence regarding
2 your wife and her whereabouts.

3 Q. So what would MGE utilize to ascertain that?

4 A. We may have asked you for her current address
5 and some sort of documentation from that current address.

6 Q. Right. And that was -- that's also attached,
7 I believe, to the af-- complaint? Pay statements.

8 JUDGE RUTH: I'm not sure what you're asking
9 me.

10 MR. MCKINZY: It's pay statements that should
11 have been -- those are pay statements.

12 JUDGE RUTH: Okay. What about them? Okay.
13 I've not marked them.

14 MR. MCKINZY: This is already in.

15 JUDGE RUTH: You'll need to show my copies to
16 the attorneys so they'll understand I've not marked on it in
17 any way.

18 And, Mr. McKinzy, I am going to ask you in
19 just a few minutes to give me an estimate of how many more
20 questions you have because if this is going to go much
21 longer, I am going to take a lunch break, so you can be
22 thinking of that.

23 MR. MCKINZY: Probably no more than four more
24 questions.

25 BY MR. MCKINZY:

1 Q. If provided pay statements listing the name of
2 the individual -- maiden name of the individual you're
3 seeking to collect from and address where that particular
4 pay statement was mailed to, would that go toward
5 establishing -- and giving the dates surrounding the
6 relatively short date --

7 A. It might have helped, except that the pay
8 stubs are still in her maiden name, they have not been
9 changed. Many people do not change the address on their
10 paycheck stub. And the dates involved are only a week to a
11 week and a half after you signed the lease, not an
12 unreasonable amount of time to expect that perhaps she had
13 not changed all of this information.

14 What we would need, sir, would be something
15 dated, you know, in April or May, something like this. Or
16 something dated -- that was a little further back than this
17 at her previous address. And we were not able to tie her to
18 this previous address so that presented some problems as
19 well.

20 Q. When you say "tie," what do you mean as far as
21 "tie"?

22 A. We were not able to locate her.

23 Q. Locate by what means?

24 A. In our records.

25 Q. You hadn't been able to locate her for

1 approximately five years, so was it surprising that you
2 wouldn't have records locating her there?

3 A. I'm trying to verify for you --

4 Q. Right.

5 A. -- and answer your question --

6 Q. Okay.

7 A. -- as to why we wouldn't have pursued her at
8 this address. We didn't have her at that address.

9 Q. You had just been, okay, provided her -- given
10 you stated that the lease was signed on March the 2nd, it
11 was April the 9th, and the residency did not take effect
12 until March the 15th. Would the relativeness of how soon
13 the lease had been signed and the moving in dates, that
14 didn't have any type of persuading factor as far as the
15 closeness of time of the events occurring?

16 A. These documents did not help us given the fact
17 that we believed you had already told us she was living
18 there. Once we determined that there was an outstanding
19 bill, you then reneged on that statement and claimed she was
20 not living there. So we would have needed something a
21 little more substantial, which I believe is what you were
22 told at the time.

23 Q. Can you state what would have been appropriate
24 in this particular case?

25 A. I would have had to been involved in it at

1 that time, sir, and had the conversation back and forth to
2 know what you had been asked, what you had supplied already,
3 that sort of thing.

4 Q. Okay. There's one more question --

5 JUDGE RUTH: I'm sorry, I couldn't hear you,
6 sir.

7 MR. MCKINZY: One more question.

8 JUDGE RUTH: And may I have my document back?

9 Thank you. You may proceed.

10 BY MR. MCKINZY:

11 Q. If the new proposed rule controlling denial of
12 service does in effect -- goes in effect -- does, in fact,
13 go into effect, would that have a direct effect on the
14 handling of this particular case?

15 A. On this particular case? I would think not
16 given that if it goes into effect -- and we don't know
17 when -- you know, what may or may not be changed, it
18 wouldn't be until November.

19 Q. Okay. But if it's in effect and this case is
20 still pending, you would speculate that it would have some
21 effect altering the circumstances of this case?

22 MR. COOPER: I'd object to that question. I
23 think that's a legal question --

24 THE WITNESS: Yeah.

25 MR. COOPER: -- and not one that Ms. Lambert

1 is appropriately suited to answer.

2 JUDGE RUTH: Objection sustained.

3 MR. MCKINZY: That was my final question.

4 JUDGE RUTH: Thank you.

5 Okay. Will there be redirect, Mr. Cooper?

6 MR. COOPER: There will, but I don't think it
7 will take very long.

8 JUDGE RUTH: You don't think?

9 MR. COOPER: I don't think it will take very
10 long.

11 JUDGE RUTH: With that assurance, we will
12 proceed. But I truly believe our court reporter deserves a
13 break if we're not finished in the next few minutes. And
14 that's not to cut you off. It just means we'll take a break
15 if we're going to keep going.

16 REDIRECT EXAMINATION BY MR. COOPER:

17 Q. Ms. Lambert, when -- in Mr. McKinzy's initial
18 cross-examination, he asked you about what contacts the
19 company had had or the company's records reflected in regard
20 to the lease and I don't believe you eventually had the
21 opportunity to provide that answer. Could you tell us what
22 the company's records reflect in terms of contacts with
23 either Mr. or Mrs. Gerald Lee in the May to June time frame
24 of 2003?

25 A. Certainly. Again, after his initial contact

1 with us on April 9th, we heard from Mrs. Lee, Marilyn Lee,
2 on May 15th. She called inquiring why the service was not
3 transferred into Mr. McKinzy's name at that point. However,
4 she did not want the service shut off. She was very
5 explicit and told us that and so the service remained on in
6 the Lees' name.

7 June 17th, a shut-off request was made by
8 Mr. Lee. And he stated that he had a tenant there who had
9 been there for the last three months and he did not want to
10 be responsible for the bills any longer, he wanted the
11 service off.

12 On the 18th, we then went to the field, to the
13 address on Overton where Mr. McKinzy held our service person
14 up for just a little bit while attempting to contact our
15 call center to see exactly why the service was being shut
16 off. And, of course, subsequently we did tell him that
17 Mr. Lee had requested the service shut off. We did then go
18 ahead and authorize our service person to shut the service.

19 Q. Mr. Berlin, I believe, asked you a question --
20 and I'm paraphrasing here a little bit, but I believe he
21 closed his cross-examination by essentially asking you
22 whether you thought it was fair that in a situation such as
23 this Ms. Nance's debt may be transferred to Mr. McKinzy's
24 account. Do you remember that?

25 A. I do.

1 Q. Is the ability to do that, to transfer that
2 prior debt of a member of the household to the current
3 customer, an important debt collection tool for the company?

4 A. It is an extremely important collection tool.
5 I cannot stress enough -- again, as the credit manager, I
6 see lots of debt cross my desk. We work with people daily
7 on payment agreements. It is to our advantage to keep
8 people on and using our service.

9 However, I referenced back and I think we've
10 talked about this a couple times today, 165,000 phone calls
11 in a one-month period, that's a lot of customers, that's a
12 lot of negotiating, that's a lot of bad debt out there.
13 And, frankly, over the past six to seven years, we have not
14 been given an allowance that would cover our entire bad
15 debt. In fact, it's approximately 1.6 to 1.7 million short
16 every year.

17 Q. How long have you been in the customer
18 services field in the utility industry?

19 A. Oh, 27 years.

20 Q. In your opinion, what would happen to the
21 company's bad debt generally if this tool were no longer
22 available to the company?

23 A. There is absolutely no doubt that bad debt
24 will increase and it will be by millions. This is not a
25 small thing.

1 MR. COOPER: That's all the questions I have,
2 your Honor.

3 JUDGE RUTH: Thank you.

4 Thank you, Ms. Lambert and you may step down.

5 However, Commissioner Clayton has requested
6 that I ask Mr. McKinzy one or two follow-up questions, so
7 I'm going to recall him to come up to the stand and I'll
8 remind you that you're still under oath. Thank you,
9 Mr. McKinzy.

10 MICHAEL MCKINZY, SR., having been recalled, testified as
11 follows:

12 QUESTIONS BY JUDGE RUTH:

13 Q. Let me ask you then, do you know why Ms. Nance
14 has not paid her debt of approximately \$449?

15 A. She is a housewife, she was not employed when
16 we met. And from the previous marriage that I was married
17 approximately 12 years, I do not want -- one of the things
18 that I insist on is my wife not work, stay a housewife. And
19 she is that since she's moved in.

20 And I do not have a personal reason because it
21 is not my debt and I do not know the reasons behind. I know
22 that there were two other male individuals residing at the
23 residence that the debt was incurred and maybe one of the
24 possibilities is that they are, in effect, responsible given
25 an agreement between the parties to pay the debt and she may

1 feel that she is not responsible. But I do not have any
2 direct knowledge of that, just possibility.

3 JUDGE RUTH: Okay. Thank you. Based on this
4 question from the Bench, Staff, do you have recross?

5 MR. BERLIN: No, your Honor.

6 JUDGE RUTH: OPC is not present.

7 MGE, do you have recross?

8 MR. COOPER: No, your Honor.

9 JUDGE RUTH: Okay. Do you feel the need to
10 make a statement to clarify what you just said? I think it
11 was clear, but here you're acting as your witness and
12 your -- as the attorney.

13 MR. MCKINZY: Right. Just given the fact that
14 there were a number of individuals in addition to Tamara
15 Nance residing at the residence, adult male individuals,
16 that there may be -- despite the fact that she's the
17 customer of record, that some other party may have been
18 responsible for paying the gas bill at that residence.

19 JUDGE RUTH: Okay. Thank you. You may step
20 down.

21 Let me ask first if the parties wish to make
22 closing arguments or if you are willing to offer written
23 briefs one round only instead? The Commission's going to
24 give you the opportunity to follow up and it's optional
25 except for Staff.

1 The Commission would like for Staff to clarify
2 Staff's position in that there was some confusion on the
3 part of the Bench perhaps as to what Staff's position is in
4 this case. So Staff will need to file a written brief. The
5 other parties may if they wish.

6 With this in mind, let me ask the parties then
7 if you want to also make closing argument. Staff?

8 MR. BERLIN: Yes, your Honor. Staff would
9 like to make a closing argument, but Staff would also like
10 to call Mr. Russo back to the stand so he may clarify some
11 of his previous testimony.

12 JUDGE RUTH: Okay. I'm just asking then -- so
13 Staff wants closing argument, some recall. Mr. McKinzy,
14 will you want to make some closing argument?

15 MR. MCKINZY: Yes.

16 JUDGE RUTH: And, Mr. Cooper?

17 MR. COOPER: Your Honor, we would be
18 comfortable just briefing it. I mean, that would be the
19 company's preference since that opportunity apparently is
20 going to exist any way that the Commission desires a written
21 response from the Staff, I believe that the company would
22 find that to be sufficient.

23 JUDGE RUTH: Okay. Would Staff be willing to
24 forego arguments then? I just want to make sure I
25 understand.

1 MR. BERLIN: No, your Honor. Staff would like
2 to make an argument.

3 JUDGE RUTH: Since we are going to have oral
4 arguments and recall a witness, we are going to take a lunch
5 break. I'll ask the parties if 20 minutes is sufficient?
6 If not, we'll go for 30.

7 MR. COOPER: I think the shorter, the better
8 from the company's perspective.

9 JUDGE RUTH: Mr. McKinzy, your opinion,
10 please?

11 MR. MCKINZY: That's acceptable.

12 JUDGE RUTH: Twenty minutes is acceptable. We
13 will break then until -- actually it will be 18 after. And
14 I will start back up at 18 after. We're off the record now.
15 Thank you.

16 (A recess was taken.)

17 JUDGE RUTH: We are back on the record. Let
18 me make sure this is up. Thank you.

19 Before we took a break for lunch, we had
20 finished with MGE's witness, however, Staff indicated they
21 wanted to recall a witness and he's not here. Do you think
22 he perhaps is in the hallway?

23 MR. BERLIN: Yes, your Honor, I think that may
24 be.

25 JUDGE RUTH: Could you step out and find him?

1 According to the clock in the back, it is 18 after and
2 that's when I said I'd start, so -- Staff had indicated
3 they'd like to recall you to the witness stand. Would you
4 please step up and I'll remind you that you are still under
5 oath?

6 THE WITNESS: Thank you.

7 JUDGE RUTH: So Staff, you may proceed.

8 MR. BERLIN: Thank you, your Honor.

9 JAMES M. RUSSO, having been recalled, testified as follows:

10 REDIRECT EXAMINATION BY MR. BERLIN:

11 Q. Mr. Russo, earlier today you were asked a
12 series of questions I believe from the Bench concerning
13 tariff provision 3.05. And after you've had some time to
14 recollect your testimony, do you wish to make some
15 corrections to your earlier testimony on the line of
16 questions concerning that section of the tariff?

17 A. Yes, I would. I believe Commissioner Clayton
18 was asking me some questions at that time about the
19 Complainant's issue list and we went through the different
20 items on the list. And when he asked me specifically about
21 number six, we changed the word "discontinuing" to I think
22 "commencing."

23 And I wasn't -- when I was looking at it, I --
24 when I saw in parenthesis Section 3.05, I was thinking of
25 Section 3.02. When you look at Section 3.05 -- I'd like to

1 change that answer to when I look at it now to the fact that
2 I do not believe it's a tariff violation. I don't think
3 that that section even applies to this case. And I'd like
4 to clarify that. That number six I do not believe --

5 JUDGE RUTH: All right. However, it was my
6 assumption that when the question was changed from
7 disconnect to failed to commence, that the tariff section
8 would be 3.02. So can you answer the question --

9 THE WITNESS: If it became 3.02, then I would
10 stay with what I originally stated.

11 JUDGE RUTH: Because I think when Commissioner
12 Clayton and I were asking those questions, we were changing
13 number six -- Issue 6 from a disconnect issue to a failure
14 to commence issue. And the failure to commence issue is
15 3.02. So can you clarify what your answer is? Failure to
16 commence, is it a violation of 3.02?

17 THE WITNESS: I believe, yes, in that case, if
18 it's under 3.02, yes, Judge.

19 JUDGE RUTH: Thank you for letting me
20 interrupt. You may proceed.

21 BY MR. BERLIN:

22 Q. All right. Okay, Mr. Russo, just so I'm
23 clear, would you please just restate your correction then?

24 A. Okay. On number six on the Complainant's
25 issue list, if Section 3.02 is substituted there because of

1 the word "commencing," then yes, number six would be a -- it
2 would be my opinion, a violation of the tariff. However, if
3 it had to do with what 3.05 is, which is just continuity of
4 service, then I would say no.

5 MR. BERLIN: All right. Thank you.

6 JUDGE RUTH: Would you give us just a moment,
7 please?

8 THE WITNESS: Yes.

9 JUDGE RUTH: Public Counsel is not here.

10 Mr. McKinzy, do you have some recross based on
11 this limited amount of direct, the line of questioning we've
12 just now had?

13 MR. MCKINZY: Yes.

14 JUDGE RUTH: Okay. Please come forward then.

15 RECROSS-EXAMINATION BY MR. MCKINZY:

16 Q. Mr. Russo, that is your name? So you're
17 saying that you do, in fact, agree that there was a
18 violation of MGE's tariff in regards to 4?

19 MR. COOPER: May I ask 4 -- what 4?

20 MR. MCKINZY: Complainants's list, I'm sorry.
21 Complainant's list.

22 THE WITNESS: Yes.

23 BY MR. MCKINZY:

24 Q. That you do believe there is a violation?

25 A. That is my personal belief, yes.

1 Q. Okay. And in regards to 3.05, I think you had
2 stated that you wanted to clarify or --
3 A. I don't believe 3.05 is applicable.
4 Q. Based on?
5 A. Based on this case filing.
6 Q. Okay.
7 MR. MCKINZY: Thank you.
8 JUDGE RUTH: Mr. Cooper?
9 MR. COOPER: No questions.
10 JUDGE RUTH: Commissioner Clayton?
11 COMMISSIONER CLAYTON: Cut him loose.
12 JUDGE RUTH: Then redirect? Do you have any
13 redirect?
14 MR. BERLIN: Staff has no redirect, your
15 Honor.
16 JUDGE RUTH: All right. You may step down.
17 Thank you.
18 Then we will move to closing arguments. MGE
19 would you go first, please?
20 MR. COOPER: I guess I would have expected to
21 go in the same order we went with opening statements.
22 JUDGE RUTH: I thought of doing that. I take
23 it you would prefer to go in the traditional order?
24 MR. COOPER: Yes, your Honor.
25 JUDGE RUTH: I'll note then that Public

1 Counsel is not here, we'll move to Staff and then
2 Mr. McKinzy, follow up with MGE last. So you may proceed.

3 MR. BERLIN: Yes, your Honor. Thank you.

4 In this hearing today we've been focused
5 around the narrow tariff language of particularly Section
6 3.02. I would like to state for the record, however, that
7 this complaint has involved the analysis of not simply an
8 isolated tariff provision.

9 Staff attempts to reconcile all pieces of the
10 tariff, all sections of the tariff along with the Commission
11 practice rules and along with the State statutes, as well as
12 with previous Reports and Orders of the Commission on the
13 same topic and Missouri case law.

14 When we go to analyzing the debt of Ms. Tamara
15 Nance in the 1998 to 1999 time period at the 3928 Highland
16 Avenue Highland address, you have heard from testimony
17 provided today and in filings that Ms. Tamara Nance was the
18 customer of record at that address at that point in time.

19 Ms. Tamara Nance was chargeable for the
20 service at that address at that point in time by both the
21 definition of the MGE tariff as to what constitutes a
22 customer as well as by the Commission practice rules as to
23 the definition of a responsible customer.

24 And indeed, as I pointed out earlier, with
25 regard to that debt, the Commission has made Findings of

1 Fact with regard in the past to what constitutes a
2 chargeable debt. With the cases that I cited -- or rather
3 the Report and Order in the PSC cases that I had cited in
4 the initial Staff report, Bowman complaint as well as the
5 Winkelman complaint, the Commission had determined that a
6 chargeable debt -- or that for a debt to be chargeable to an
7 individual, that individual had to have the benefit and/or
8 use of that service.

9 And, indeed, when we go to look to see what
10 constitutes a just and reasonable charge for gas service as
11 is required of us by State statute, specifically 393.130,
12 all ratepayers are required or are protected by the statute
13 in that all charges demanded of them must be just and
14 reasonable.

15 It has been Staff's position with regard to
16 that debt that was incurred in 1998, 1999, that, as I
17 indicated before, Mr. McKinzy was not the responsible
18 customer, Mr. McKinzy had no benefit or use of the service
19 and certainly to tack that charge onto Mr. McKinzy would not
20 be a just or reasonable charge to Mr. McKinzy.

21 We learned today from testimony from MGE that
22 MGE had indeed attempted collection of the debt from Tamara
23 Nance through the use of a debt collection agency and that
24 there's nothing preventing from MGE from continuing their
25 efforts to collect their debt from Ms. Tamara Nance.

1 It's Staff's position that the tariff that
2 allows the company to scoop up the past debts of any member
3 of a household just purely by black letter in and by itself
4 is volitive of past Commission orders, particularly in the
5 cases that I cited, and certainly would create a situation
6 whereby to lay the past debt not -- that would, by all
7 arguments, not be chargeable to Mr. McKinzy in any civil
8 court, but to lay it onto Mr. McKinzy goes above and beyond
9 the application of the tariff.

10 Staff further believes that it is well within
11 the purview of the Commission to make a finding of fact as
12 to whether or not the Commission believes that the 1998,
13 1999 past due debt of Ms. Tamara Nance is indeed just and
14 reasonable or is properly chargeable to Mr. McKinzy given
15 the testimony that we've had and the filings presented here
16 today.

17 We understand there's a new customer denial of
18 service rule that may address -- certainly addresses this
19 issue in the future. And we believe that it's very
20 important that the right person be charged with the right
21 debt and that it is indeed an improper application of even
22 the Commission rules, the statutes, even existing case law
23 to hold an individual responsible for another person's debt
24 where that individual had no benefit, no use, no
25 relationship to that debt.

1 Thank you, Mr. McKinzy, for making an
2 appearance today and for expressing your point of view and
3 that is the last of my comments. Thank you.

4 JUDGE RUTH: Okay. Thank you, Mr. Berlin.

5 Mr. McKinzy, would you please come forward?
6 You may proceed.

7 MR. MCKINZY: The issues addressed in this
8 case goes to the very essence of every resident of the state
9 of Missouri because every resident of the state of Missouri
10 has an essential need to provide a suitable housing
11 situation for their family.

12 Like such, by me having four children that
13 have that need and to have that denied by my inability to
14 provide that, by no fault of my own, is an undue and harsh
15 punishment to contribute to anyone when they have had a
16 consistent -- as testified by MGE of my past pay history.
17 And to have that altered, marred, distorted by no fault of
18 my own is a true injustice for every citizen of the state of
19 Missouri.

20 If we are going to begin allowing debts that
21 are not owed by individuals to be collected from other
22 individuals by sole grounds of association, where will it
23 stop? If a person can come after family members by the fact
24 of that being the only relationship or friends by the fact
25 that that individual may at some time resided with you and

1 now you have the hardship -- financial hardship of having to
2 pay that person's financial obligation is not founded in
3 case law or statutes of the state of Missouri.

4 And that is the essence which has motivated me
5 to pursue this is that I have four children, and for them to
6 be encountered with such a debt and have to go -- forego the
7 benefit and luxury of the simple necessity of lights, water
8 or gas -- I currently have a brother that is without gas
9 service due to him and his fiance, who is pregnant at the
10 current time -- are going without gas service currently
11 because of my brother's fiance had previously resided where
12 they currently reside now and she is pregnant and she
13 currently is without service and that too is an injustice.

14 So the application, if this is to take hold
15 and is to be implemented as a policy or rule of this
16 Commission, would, in essence, say if we find where you are,
17 whoever you are with will pay for you being there. And that
18 is something that cannot be allowed to take root in this
19 state or in this country.

20 JUDGE RUTH: Thank you, Mr. McKinzy.

21 Mr. Cooper?

22 MR. COOPER: Very briefly. MGE would thank
23 you very much for your time today, your Honor and
24 Commissioner Clayton.

25 It's our belief that through the opening

1 statement, the questions from the Bench and testimony that
2 has been presented to you today, that the company's very
3 comfortable that it has had adequate opportunity to present
4 its position and hopefully adequate opportunity to present
5 information that will be helpful to you and the Commission
6 as a decision is made.

7 I would say that as a practical matter, the
8 company needs to be able to depend upon the ability to apply
9 its tariffs as written. There are debt collection tools
10 that are present in those tariffs. These are important
11 tools for collection.

12 MGE's rates are based upon the assumption that
13 it will have the benefit of these tools that are contained
14 within its tariffs and in a global policy sense, we
15 certainly would want you to remember that and take that into
16 account as you assess this case and the ultimate result.

17 Mr. Berlin has mentioned again the benefit of
18 use arguments. The company would argue that the benefit of
19 use question and argument in cases that are cited go to
20 discontinuance of service.

21 In April of '03 what we had was a refusal to
22 commence service. We had a termination of service in June
23 of '03, both specifically described within MGE's tariffs.
24 As of this point, we have not had a discontinuation of
25 service in regard to Mr. McKinzy nor is one threatened. And

1 because of that, I don't believe that the benefit of use
2 rules really play into this case. MGE again believes that
3 it has operated in accordance with its tariffs.

4 Your Honor, you mentioned previously that the
5 Commission was likely going to ask Staff to provide a
6 written response and the other parties the opportunity --
7 the opportunity to provide a written brief -- short brief at
8 the conclusion of this hearing. At this point I believe MGE
9 will likely take advantage of that if so offered and provide
10 a more complete statement of its position. But, once again,
11 we thank you for your time today.

12 JUDGE RUTH: Thank you. So that concludes the
13 closing --

14 COMMISSIONER CLAYTON: It's rather odd for a
15 Commissioner to give his own closing statement -- it's not
16 really a closing statement so I'm not going to try to
17 convince you all of anything, but I wanted to make a couple
18 comments. Being the only Commissioner here today, I have
19 the ability to do that. So I'm going to bore you with a few
20 comments.

21 This case has, I think, spurred a number of
22 things here at the Commission, not the least of which would
23 be the creation of this denial of service rule which has
24 been discussed here at public hearing as well as discussion
25 about whether or not we should change our procedures at the

1 Commission for these types of complaints.

2 And when I say "change our procedures," it's
3 evaluating whether or not we should have a more informal or
4 kind of a small claims type of process that is more
5 layperson friendly where you don't have to hire a lawyer and
6 the company doesn't necessarily have to retain counsel and
7 perhaps some of these things can be conducted by phone so it
8 spares people the expense of traveling to Jefferson City,
9 because I know that's been an issue in this case for the
10 Complainant.

11 So I wanted to let the parties know that the
12 Commission is mindful of the burdens that everyone has to go
13 through in dealing with cases like this. And we're going to
14 try to find ways to make it cheaper, make it faster, make it
15 more efficient, make it easier for everyone to use. And
16 that's not going to happen overnight, but we are hopeful
17 that we will find a process that will take care of
18 situations like this.

19 Now, beyond that, I also wanted to -- while
20 not making any ruling on the merits, I wanted to
21 congratulate Mr. McKinzy for your organization in this case
22 and your filing of Direct Testimony and Surrebuttal
23 Testimony. Most lay people will not go through that effort.
24 And you have done that and I appreciate your organization
25 and all your work in that regard. Hopefully the next person

1 who has this problem isn't going to have to go through that,
2 but you've kind of blazed that trail.

3 Also, I wanted to let Mr. McKinzy know that I
4 ran into Representative Sager, who had written us a letter
5 on your behalf, and advised him that you were having this
6 hearing today so he was glad to hear about that.

7 I also wanted to point out that even though I
8 know the lawyers are aware of this, but also to make you
9 aware, Mr. McKinzy, that the other Commissioners who could
10 not be here, one had surgery and one was out of town at an
11 electrical utility meeting, they could not be here but we've
12 tried to develop this transcript so they'd have a full
13 record to review upon their return so we can make a
14 decision.

15 Beyond that, I wanted to say thanks to the
16 parties. I know this went much longer than we anticipated,
17 but hopefully the Commission will be able to render a rather
18 timely decision in the upcoming weeks. So thank you.

19 JUDGE RUTH: Thank you.

20 I just wanted to remind the parties that
21 Exhibits 1 through 3 and 5 through 17 have been admitted
22 into the record. Exhibit 4 was not admitted. And I want to
23 remind Mr. McKinzy that you're going to provide a clear copy
24 of Exhibit 17 by April 21st, one week from today.

25 MR. MCKINZY: Is the -- I think 4 is the one

1 that was admitted? Which one is --

2 JUDGE RUTH: That's the affidavit.

3 MR. MCKINZY: Is it preserved for the record

4 for court review?

5 JUDGE RUTH: Yes, it is.

6 Are there any other questions about those

7 exhibit numbers? Okay. The transcript for this case is set

8 for the regular 10 business days, which would make the

9 transcript available April 28th.

10 As I indicated earlier, I'd like Staff to file

11 a brief in which they clarify their position simply because

12 there was some confusion as to what Staff's position is or

13 has been. And they can include whatever else in that brief

14 that they need. The other parties also have an option of

15 filing a brief statement if they want. This would be one

16 round of briefing, no reply briefs.

17 If I set the deadline for May 10th, that will

18 give the parties not quite two weeks after the transcript

19 comes in for the filing and I think that's adequate. If a

20 party disagrees, file a written motion for extension and

21 we'll address it at that time. Otherwise, the briefs will

22 be due on Monday, May 10th. Are there any other matters

23 that need to be addressed before we adjourn?

24 MR. COOPER: No, your Honor.

25 MR. BERLIN: No, your Honor.

1 MR. MCKINZY: No.

2 JUDGE RUTH: Seeing nothing else, that will
3 conclude the hearing. We're off the record.

4 WHEREUPON, the hearing was adjourned.

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