

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4 TRANSCRIPT OF PROCEEDINGS
5 Hearing
6 July 19, 2004
7 Jefferson City, Missouri
8 Volume 1
9 Roy Smith,)
10 Complainant,)
11 v.) Case No. GC-2004-0281
12 Missouri Gas Energy,)
13 Respondent.)
14
15 NANCY M. DIPPELL, Presiding,
16 SENIOR REGULATORY LAW JUDGE.
17
18 STEVE GAW, Chairman,
19 CONNIE MURRAY,
20 ROBERT M. CLAYTON,
21 LINWARD "LIN" APPLING,
22 COMMISSIONERS.
23
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1 P R O C E E D I N G S

2 JUDGE DIPPELL: My name is Nancy Dippell.

3 I'm the judge assigned to this matter, and this is Case
4 No. GC-2004-0281, Roy Smith vs. Missouri Gas Energy. I,
5 as well as other parties, are present in the hearing room
6 at the Missouri Public Service Commission, but we also
7 have the complainant, Mr. Roy Smith, as well as one of the
8 witnesses, Mr. John Murphy, on the speakerphone remotely.

9 Mr. Smith, can you hear me okay now?

10 MR. SMITH: Yes, ma'am.

11 JUDGE DIPPELL: Very good. I will ask
12 anyone speaking if they would please speak into the
13 microphone and try to speak clearly so that Mr. Smith and
14 Mr. Murphy can understand.

15 I'm going to go ahead and let the other
16 parties present make entries of appearance, and I'll also
17 let you know, Mr. Smith, that I have four of the
18 Commissioners in the room with us; Commissioner Murray,
19 Commissioner Appling, Commissioner Clayton and Chairman
20 Gaw are present, and they will be asking some questions
21 and so forth as we go through this, as well as I.

22 MR. SMITH: Okay.

23 JUDGE DIPPELL: I'm going to go ahead and
24 let everybody make entries of appearance. Mr. Smith, if
25 you would like to begin by telling us your name and your

1 address. And I'm assuming you're not represented by
2 counsel today; is that correct?

3 MR. SMITH: Me?

4 JUDGE DIPPELL: Yes.

5 MR. SMITH: No, I have no counsel.

6 JUDGE DIPPELL: All right. Could you go
7 ahead and state your name and give us your name for the
8 court reporter?

9 MR. SMITH: Roy David T. Smith. T stands
10 for Tom. I live at 5823 East 16th Street. Zip code, I
11 think, is 64126. I'm not sure about that.

12 JUDGE DIPPELL: Thank you. Can I have MGE
13 give their entry of appearance?

14 MR. COOPER: My name is Dean Cooper. I'm
15 from the law firm of Brydon, Swearngen & England, P.C.,
16 P.O. Box 456, Jefferson City, Missouri 65102, appearing on
17 behalf of Missouri Gas Energy, a division of Southern
18 Union Company. Also appearing on behalf of Missouri Gas
19 Energy today is Mr. Herman "Woody" Loepp, who's with the
20 Missouri Gas Energy general counsel's office, address
21 3420 Broadway, Kansas City, Missouri 64111.

22 JUDGE DIPPELL: Thank you. Mr. Smith, were
23 you able to understand that?

24 MR. SMITH: Yes, I heard him.

25 JUDGE DIPPELL: Thank you. Staff, would

1 you like to make an entry of appearance?

2 MS. SHEMWELL: Lera Shemwell, representing
3 the Staff of the Missouri Public Service Commission, P.O.
4 Box 360, Jefferson City, Missouri 65102.

5 JUDGE DIPPELL: All right. And there's no
6 one present from the Office of the Public Counsel today.
7 So those are the parties present.

8 We also have some various witnesses that
9 are present, and they will be introduced as they're called
10 to the witness stand.

11 Mr. Smith, before we begin, I didn't get an
12 opportunity to discuss with you further about your
13 appearance by phone, and I just wanted to make certain
14 that you are aware that, by appearing by phone, you're
15 waiving certain rights to be able to review any documents
16 that may be presented here today because there was no
17 notice in time to forward those documents to you. And
18 also if you have any documents that you want to present,
19 there's no way for anyone here to be able to review those,
20 so you're going to be waiving your right to present any of
21 those documents. Do you understand that?

22 MR. SMITH: I guess I have no choice.

23 JUDGE DIPPELL: All right. I will ask
24 everyone in the hearing room to please speak into a
25 microphone when you talk so that you're understood, and I

1 will ask Mr. Smith and Mr. Murphy to be sure and identify
2 themselves before speaking, so that the court reporter can
3 take down what you say.

4 The procedure is going to be as I directed
5 in the procedural order, and that is that the Commission
6 is going to call their witness, Mr. Murphy, first, and
7 then I will allow the parties to ask questions of that
8 witness. And then Mr. Smith will put on his case and he
9 will be allowed to be cross-examined, and the
10 Commissioners may also have questions for him. And then
11 MGE will be allowed to put on their case, and again,
12 Mr. Smith will be allowed to question their witness, and
13 we'll go forth like that.

14 I'm going to begin with, if you want to
15 make a brief opening statement, I'll allow that at this
16 time. And, Mr. Smith, I'll allow you to go first. This
17 is not an opportunity for you to give full testimony, but
18 an opportunity for you to kind of give a brief opening
19 statement to the Commission to tell them what you would
20 like to prove today. Would you like to make an opening
21 statement, Mr. Smith?

22 MR. SMITH: I didn't live there at the
23 time. I didn't move in 'til June, I believe, of '04.

24 JUDGE DIPPELL: Is that the end of your
25 statement?

1 MR. SMITH: Yeah. That's all I can think
2 of.

3 JUDGE DIPPELL: Okay. Very well.

4 Mr. Cooper, would you like to make an opening statement,
5 or Mr. Herman?

6 MR. COOPER: Yes, your Honor. I assume you
7 still want us to move to the podium?

8 JUDGE DIPPELL: Yes, please come to the
9 podium. Thank you.

10 MR. COOPER: Good morning. As stated
11 previously, my name is Dean Cooper. I'm from the
12 Jefferson City law firm of Brydon, Swearengen & England,
13 P.C. I represent Missouri Gas Energy.

14 JUDGE DIPPELL: Would you pull the
15 microphone just a little closer to you?

16 MR. COOPER: Certainly.

17 JUDGE DIPPELL: Thank you.

18 MR. COOPER: This case concerns natural gas
19 service provided by MGE at 5823 East 16th Street in Kansas
20 City. The dispute begins with an account that was in the
21 name of a Jeffrey Elders. This account was opened and
22 service was initiated in November of 2002. Service was
23 discontinued on July 1, 2003 for nonpayment, and at that
24 time the evidence will show an amount of \$583.43 was owed
25 on that Elders account.

1 Mr. Smith has alleged that he had began to
2 reside at 5823 East 16th Street on -- and I believe he
3 said June 2004, but I believe previously he's indicated
4 June 1 of 2003, making him responsible for natural gas
5 usage after that date to include \$32.99, which were
6 incurred on Mr. Elders' account for usage during the month
7 of June of 2003.

8 MGE believes the evidence will show that
9 Mr. Smith claimed 5823 East 16th Street as his residence
10 prior to June 1, 2003, and that Mr. Elders resided at
11 5823 East 16th Street in and after November of 2003,
12 either of which would allow MGE to transfer the amount
13 owed on Mr. Elders' account to Mr. Smith's account.

14 With me today is Ms. Shirley Bolden, who's
15 the manager of MGE's customer contact center. Ms. Bolden
16 will be MGE's witness. Thank you.

17 JUDGE DIPPELL: Thank you. Did Staff have
18 an opening statement it wished to make?

19 MS. SHEMWELL: Briefly. Thank you. Good
20 morning. May it please the Commission? I'm Lera Shemwell
21 representing the Staff in this case.

22 Staff is often called upon to investigate
23 formal complaints, and in this case Mr. Russo of the Staff
24 spoke with both the complainant and the landlord and
25 received a copy of the lease from the complainant. Staff

1 also requested all pertinent data from the company against
2 whom the complaint is made.

3 Staff formed its opinion based upon its
4 interview with the landlord and the receipt of the copy of
5 the lease. However, subsequent to that, Staff received a
6 copy of the driver's license that MGE had obtained, and as
7 a result of that, Staff reevaluated its position and filed
8 a supplemental report and recommendation.

9 Staff will present witness Mr. Jim Russo
10 and his reports. He would like to adopt those as his
11 testimony in this case if that is suitable. Thank you.

12 JUDGE DIPPELL: And, Ms. Shemwell,
13 previously you had indicated that Mr. Russo is not
14 available today, but he is, in fact, here today?

15 MS. SHEMWELL: Yes. He was excused from
16 jury duty. Unfortunately, Judge Dickerson passed away on
17 Friday, so her docket has been canceled.

18 JUDGE DIPPELL: Thank you. All right.
19 Then I'd like to begin then by calling the Commission's
20 witness, Mr. Murphy. Mr. Murphy, are you still there?

21 COMMISSIONER MURRAY: Yes, I am.

22 JUDGE DIPPELL: Mr. Murphy is going to be
23 appearing by telephone, but I'm going to go ahead,
24 Mr. Murphy, and ask to -- ask you to raise your right hand
25 if you're able.

1 (Witness sworn.)

2 JUDGE DIPPELL: Thank you. Could you

3 please state your name and spell it and give your address

4 for the court reporter, please.

5 THE WITNESS: John, J-o-h-n, Murphy,

6 M-u-r-p-h-y. My address is 8 West Bridlespur Terrace.

7 That's spelled B-r-i-d-l-e-s-p-u-r, Terrace, Kansas City,

8 Missouri 64114.

9 JUDGE DIPPELL: Thank you. Mr. Murphy,

10 we're going to begin by allowing the Commissioners to ask

11 you some questions, and I'm going to start with -- I'm

12 going to start with the Chairman, but he says he has no

13 questions for you.

14 CHAIRMAN GAW: Not at this moment.

15 JUDGE DIPPELL: Thank you. Commissioner

16 Murray, did you have questions that you wanted to ask

17 Mr. Murphy?

18 COMMISSIONER MURRAY: I'd like to pass at

19 this time. Thank you.

20 JUDGE DIPPELL: Commissioner Clayton?

21 COMMISSIONER CLAYTON: Thank you, Judge.

22 Before I start asking Mr. Murphy some questions, I wanted

23 to specifically identify the issues in this case and the

24 numbers, because I want to make sure before I start

25 placing the witnesses on the stand here that I'm talking

1 the right information. We're talking two separate time
2 periods here of prior indebtedness, one for time prior to
3 June 2003 for a bill in the amount of 550.44, and then
4 there was a bill for the month of June 2003 in the amount
5 of 32.99; is that correct?

6 MR. COOPER: That is correct in terms of
7 MGE, your Honor, yes.

8 COMMISSIONER CLAYTON: And, Mr. Smith, do
9 those -- do you agree with those time periods and those
10 amounts?

11 MR. SMITH: I'm not sure. I don't have any
12 paperwork with me like to, you know, verify the date and
13 all that.

14 COMMISSIONER CLAYTON: Okay. I believe the
15 total between the two was \$583.43. Does that sound
16 correct?

17 MR. SMITH: I suppose. You know, I
18 really -- like I said, I don't have the paperwork.

19 COMMISSIONER CLAYTON: Were there any other
20 amounts that were -- that the company tried to place
21 against your bill to require you to pay?

22 MR. SMITH: Actually, before they would
23 turn it on, they tried to say that I owed them almost a
24 grand, and it was because it was in his name, and I had to
25 fight and fight just to get it to turn on, to get it on.

1 It was '03, not '04. My mistake.

2 COMMISSIONER CLAYTON: Okay. Thank you,

3 Judge. If I may go ahead and ask Mr. Murphy.

4 JUDGE DIPPELL: Please.

5 JOHN MURPHY testified as follows:

6 QUESTIONS BY COMMISSIONER CLAYTON:

7 Q. Mr. Murphy, can you hear me okay?

8 A. Yes, I can.

9 Q. First of all, let me identify myself. My

10 name is Robert Clayton. I'm a member of the Missouri

11 Public Service Commission. And you have four of the five

12 Commissioners listening in to your testimony at this time.

13 I first wanted to ask you, are you the

14 owner of real estate located at 5823 East 16th Street,

15 Kansas City, Missouri?

16 A. Yes, that's correct.

17 Q. And how long have you owned that property?

18 A. Well, that's a good question.

19 Q. Thank you.

20 A. I really couldn't give you a specific.

21 I've owned it for several years.

22 Q. Like more than two years, more than five

23 years, more than ten years?

24 A. Perhaps a little over two years, but I

25 couldn't be specific. I don't have that information with

1 me right now.

2 Q. All right. Have you owned it for more than
3 a year, though?

4 A. Yes, I have.

5 Q. When did you first -- when did you first --
6 did you ever live at that residence?

7 A. No, sir.

8 Q. Has it always been landlord/tenant property
9 or rental property?

10 A. Yes. That's correct.

11 Q. Since you have owned it?

12 A. That's correct.

13 Q. Okay. Do you recall the first time that
14 you rented out?

15 A. No. I don't recall that.

16 Q. Okay. How many tenants have resided at
17 this real estate since you've owned it?

18 A. I would be guessing. I couldn't tell you
19 specifically.

20 Q. Well, guess.

21 A. I prefer not to.

22 Q. You prefer not to guess?

23 A. This is a formal hearing. I wouldn't like
24 to guess and be incorrect.

25 Q. Okay. Did you rent the property to

1 Mr. Smith?

2 A. Yes, he currently occupies the property.

3 Q. When did you first rent the property to

4 Mr. Smith?

5 A. I believe it was the summer of '03.

6 Q. Summer of '03. Do you recall the beginning

7 of summer, the end of summer?

8 A. I believe you guys are pretty close, around

9 June of '03.

10 Q. So Mr. Smith started renting the property

11 in June of '03, and would he have -- would he have been

12 required to pay rent upon moving in?

13 A. I believe he did pay rent, yes.

14 Q. What is his rent?

15 A. He pays approximately \$200 a month.

16 Q. Approximately?

17 A. Right. It's \$200 a month.

18 Q. Does it vary from month to month?

19 A. He's been laid up here lately, and he

20 hasn't been able to pay that either, so I'd say

21 approximately. The rent that's owed is 200 a month.

22 Q. Okay. Did he have to pay a security

23 deposit?

24 A. I think there was one for like \$100, but I

25 don't have that lease in front of me. I imagine there was

1 a deposit.

2 Q. Who rented the property prior to Mr. Smith?

3 A. Jeffrey Elders.

4 Q. And do you recall when Jeffrey Elders

5 started renting the property?

6 A. No. I couldn't tell you exactly, and I

7 wouldn't want to guess either.

8 Q. Could you narrow it down to a year?

9 A. I really don't. I've got several

10 properties, and I just don't -- I don't have that

11 information.

12 Q. Do you keep records and books of who rents

13 the property?

14 A. Yes, I do.

15 Q. Do you have that material close by?

16 A. I think that lease was thrown away after he

17 moved out.

18 Q. Okay. Do you keep ledgers of who pays rent

19 and when?

20 A. Yes.

21 Q. And do you have the records associated with

22 who paid rent prior to Mr. Smith moving in to the

23 residence?

24 A. I have -- I have that -- I no longer have

25 information on Mr. Elders.

1 Q. How big is the residence at 5823 East 16th
2 Street?

3 A. It's three bedroom, two bath.

4 Q. Three bedroom, two bath?

5 A. Uh-huh.

6 Q. And do you have in your lease agreements,
7 do you set out standards for the number of people that can
8 reside in a residence or whether it be families or single
9 people or any type of standard language in your lease
10 agreements of who can reside in your property?

11 A. You know, I use a standard form and there
12 may be language like that in there, but as far as I know,
13 there's no specific language addressing the family size
14 and things. But I couldn't say with all certainty without
15 reviewing it with a lawyer. There is something in there
16 that I recall that says if an additional person moves in
17 there's \$100, but that was done kind of like a generic
18 form, and it was never enforced.

19 Q. Okay. Well, that was going to be my next
20 question, whether or not the rent was for as many people
21 as Mr. Elders wanted to live in the residence or is that a
22 per person amount?

23 A. No, it's not per person. It was for just
24 the property and -- I mean, I don't prefer to see a lot of
25 people living in one house, but it happens and there's --

1 there's little that I can do about it short of eviction.

2 Q. Are you aware of whether or not Mr. Elders

3 was married or not?

4 A. You know, I don't -- I don't recall.

5 Q. Did he ever have any significant other

6 living there, whether it be a girlfriend or a life

7 partner?

8 A. Well, I didn't know him that well, but I

9 did know that he had several people living there at the

10 time.

11 Q. So you were aware that Mr. Elders did have

12 at least several other people living at that address?

13 A. Absolutely, yeah.

14 Q. Okay. When you say several other people,

15 you're talking like a family or just a couple of guys, or

16 when you say there were other people living there, what do

17 you mean?

18 A. Well, I don't -- I don't know if they were

19 life partners or not, but there were several people living

20 there. And I didn't get their names or anything, and I

21 didn't ask their family status.

22 Q. Okay. Are you aware or not whether

23 Mr. Smith was living at the address prior to June of 2003?

24 A. Prior to 2003, I don't know he did.

25 Q. Prior to June 2003?

1 A. Right. I don't -- I don't recall him
2 living there. It's quite possible he spent the night
3 there. I wasn't there 24/7, but --

4 Q. How often were you there?

5 A. Not very often. I may be --

6 Q. When you say you were there not very often,
7 what does that mean, once a month, once every other month?

8 A. Oh, probably once a month.

9 Q. Once a month?

10 A. Uh-huh.

11 Q. Is that to stop by and pick up the rent
12 check, something like that, or did you do a monthly
13 organized inspection of the premises?

14 A. Pick up the money if I could, and just, you
15 know, make sure the lawn was cut, things like that.

16 Q. Okay. And when you were there, that's --
17 that one time per month, that's when you saw other people
18 residing on the premises, correct?

19 A. Well, occasionally I would see people, but
20 there was evidence that other people were living there,
21 you know, bed and clothes and things like that.

22 Q. Okay. And did you see those people? I
23 mean, did you see them when they were there or did you
24 just see evidence of other people living in the premises?

25 A. I actually saw people.

1 Q. Do you think you saw all the people that
2 were living at that address?

3 A. Well, it's hard to say. I mean, I saw
4 several people there, and they looked real comfortable
5 like they were living there, so I assumed that they did.

6 Q. Okay. And you say that you did see on
7 occasion Mr. Smith at least at the address when you went
8 by the premises?

9 A. Did I see who? Mr. Smith at the premises?

10 Q. Yes. I think you testified that you saw
11 him there a couple of times, but you weren't sure if he
12 was living there; is that a fair statement?

13 A. Well, he -- he did a lot of work for me,
14 and he'd do some lawn maintenance and things like that, so
15 sure, he was there on occasion, but I don't believe he
16 lived there.

17 Q. Okay. Well, you really don't know whether
18 he was living there, because you didn't know how many
19 people were living at the address and you didn't know
20 them, correct?

21 A. No, I can't say I know everybody that lived
22 there, and I -- and exactly. I can't give you specific
23 names and if they were living there or with whom or
24 anything like that. That would just be speculation on my
25 part.

1 Q. Okay. Was the rent paid in cash or was it
2 paid by check, money order?

3 A. Cash usually.

4 Q. Okay. And it's your testimony that you
5 don't know one way or another whether or not Mr. Smith was
6 a resident at 5823 East 16th Street prior to June of 2003
7 or not, can you?

8 A. If he was a resident, I think I -- if he
9 was a permanent resident there, I think I'd have known
10 that, but now he popped in and out, did work, he and
11 Mr. Elders. If he spent the night there one night, it's
12 quite possible. That could have happened and I wouldn't
13 be aware of it. But as far as I know, Mr. Smith at that
14 time was staying with relatives and sometimes sleeping in
15 his van.

16 Q. When did you -- or did you sign a lease
17 with Mr. Smith eventually?

18 A. Yeah, in June of '03, I believe.

19 Q. And do you still have a copy of that lease?

20 A. I have to look. I may. I may or may not.

21 Q. Was Mr. Smith the only name on that lease
22 in June of 2002?

23 A. I don't -- I don't recall. I believe so,
24 but I don't recall.

25 Q. And does Mr. Smith pay his rent in cash or

1 by check?

2 A. Mr. Smith is unable to pay his rent here

3 lately.

4 Q. So he hasn't been paying his rent. Okay.

5 Is he still an employee of yours?

6 A. He's not an employee. He's done some

7 contracting, such as mowing yards and things like that.

8 Q. And how long have you been contracting with

9 Mr. Smith? When did he first start working for you?

10 A. Gosh, I don't know. A year or so. Maybe a

11 little longer than that.

12 Q. Pretty vague. Was it when he started

13 renting the premises from you, in June of 2003, or was it

14 before that?

15 A. Well, he was -- he was doing some -- he was

16 doing some contracting for me, sure, yeah. In June 2003,

17 he was mowing yards and little upkeep, helping do a little

18 maintenance.

19 Q. Okay. Well, then I'm going to ask you one

20 last question and you answer it as you like. Was

21 Mr. Smith a resident or not of the premises prior to June

22 of 2003 at 5823 East 16th Street, yes or no?

23 A. Again, I don't believe he was, but I

24 can't -- I can't testify that he wasn't.

25 COMMISSIONER CLAYTON: That's pretty firm

1 testimony. Thank you very much.

2 JUDGE DIPPELL: Okay. Commissioner

3 Appling, do you have questions for this witness?

4 COMMISSIONER APPLING: I think one or two

5 questions, your Honor.

6 QUESTIONS BY COMMISSIONER APPLING:

7 Q. Mr. Murphy, this is Commissioner Appling

8 and I have a couple of questions I would like to ask you.

9 The first one is, when Jeffrey Elders moved

10 out and Mr. Smith moved in, was there a time period

11 between the departure of Jeffrey and the entry of

12 Mr. Smith into that rental piece of property that you own?

13 A. When Dave took possession of the property,

14 the property was vacant for a period of time, perhaps a

15 week or two or longer. It was empty when Dave moved in.

16 As a matter of fact, we had to clean a lot of stuff and

17 take it to the curb.

18 Q. Okay. Second question is, what name was

19 the utilities in during that period of vacancy? Was it in

20 your name or was it in Mr. Smith's name or was they in

21 Mr. Jeffrey's name?

22 A. I didn't inquire. I never called and asked

23 anybody, and I don't recall if the utilities were on or

24 off. A lot of times here lately, someone will move out

25 and turn the utilities off out of their name and they

1 remain on, and that's happened here in the last year or so
2 where, say, for example, if I move out of my house and I
3 call and get confirmation to turn off the lights, the
4 lights can be on for weeks after that. They don't
5 automatically come out and turn off the lights.

6 And so given that, I don't know if it the
7 lights were on or off or whose name they were on. Also,
8 the gas, I don't know any of the specifics on that either.
9 I've never called and inquired.

10 Q. Mr. Murphy, do you check your property when
11 people move in and when it's empty to make sure that gas
12 and the safety of your property is there, or do you
13 just -- are non-concerned about that?

14 A. The safety?

15 Q. Yeah, with the gas on.

16 A. Yeah, sure. When I walk through, of course
17 I have safety concerns, but you're asking about utilities.
18 As far as utilities, I did not call and ask whose name
19 what was in or if they were, in fact, on in somebody's
20 name or not. I did not do that.

21 COMMISSIONER APPLING: Okay. Thank you
22 very much.

23 JUDGE DIPPELL: Chairman Gaw, did you have
24 questions for Mr. Murphy?

25 CHAIRMAN GAW: Just a follow-up. Thank

1 you, Judge.

2 QUESTIONS BY CHAIRMAN GAW:

3 Q. Good morning, Mr. Murphy.

4 A. Good morning.

5 Q. Thank you for joining us this morning.

6 Let me -- I wanted to see if I could clarify something

7 that I'm not sure that I'm clear about. When -- did you

8 have -- did you have any work done by Mr. Smith prior to

9 his moving in to the residence that we've been discussing?

10 Did he work for you at all prior to then?

11 A. I believe he may have. Again, I don't have

12 these records available. I wasn't prepared for this type

13 of question, so --

14 Q. I guess -- I guess what I'm trying to glean

15 here is whether or not you knew Mr. Smith prior to him

16 moving in and renting the residence --

17 A. Yeah. I guess that's a fair statement.

18 Q. -- that we're discussing?

19 A. I'm sure I knew him before he moved in,

20 sure.

21 Q. And how would you have known him?

22 A. Well, just through a network of people that

23 do odd jobs and things, you just run across people, and he

24 was one of the people I ran across.

25 Q. So you think that you had -- that you had

1 had him doing work for you prior to moving in to that
2 residence?

3 A. I really can't -- I really couldn't say.
4 Without doing a little more research, I would hate to
5 speculate and speculate wrong so without being prepared on
6 the specific question, I really can't say at this time.

7 Q. And he -- how often had he -- has he worked
8 for you over the last year in a one or two week or month
9 period?

10 A. Can I ask what this questioning is about?
11 What's this have to do with a gas bill owed by Mr. Elders?

12 Q. First of all, I'm asking the questions,
13 Mr. Murphy, so if you would please answer my question.
14 And I'll tell you, we're trying to -- we're trying to
15 understand and get some information from you in regard to
16 whether or not Mr. Smith was living at this residence
17 prior to that June date, and trying to come up with some
18 understanding of your relationship with him and your
19 knowledge of what his activities were prior to June is
20 important to us. So if you don't know the answer to the
21 question, you can say, I don't know.

22 My question was, how often has he worked
23 for you in the last year?

24 A. In the last year?

25 Q. Yes.

1 A. I would say I see Dave at least once a
2 week.

3 Q. Okay. And like an hour, a week -- or I
4 know that can range and it's not critical that we know the
5 exact amount of time, but I'm trying to understand your
6 familiarity with Mr. Smith in his comings and goings.

7 A. Yeah. That -- that I can say. I would say
8 I would probably know where to find him and, you know,
9 within a year from, you know, a year from now I'm sure I
10 will know where he's at, things like that, sure.

11 Q. Okay. And I guess we've probably beat this
12 dead horse to death for a second time, but you cannot --
13 you cannot tell the Commission whether or not you would
14 have been aware of Mr. Smith's activities, where he lived,
15 where he slept prior to June of '03?

16 A. Prior to June of '03?

17 Q. Yes.

18 A. I would say -- I would say I could probably
19 guess where he would be or I could ask somebody and
20 probably could have found him, because he moved around a
21 lot. And it would just be a matter of asking a couple of
22 people, have you seen Dave, and they would say, for
23 example, yeah, I think he's at his stepsister's house over
24 in such and such neighborhood and I could find him.

25 Q. So would you have been in a position to

1 have known to have asked where he was prior to June of
2 '03? Would you have known him well enough to have been
3 able to make those inquiries prior to June of '03?

4 A. Prior to June of '03, I think so, yeah.

5 Q. Okay. And in that scope of knowledge, if
6 he had been living at your residence, the residence that
7 we've been discussing that you own, would you have known
8 that if he had been living there?

9 A. Would I have known it? Yeah, I think I
10 would have known that.

11 Q. Okay. And is it your belief that he was or
12 was not living in that residence prior to June of '03?

13 A. It's my belief that it is possible that he
14 stayed there a few times, but as far as permanent
15 residence, I really couldn't say.

16 Q. Does that mean you're telling me you
17 believe he was or was not residing at that residence prior
18 to June of '03?

19 A. I guess it depends on what your definition
20 of residence is, but it's my belief that he has quite
21 possibly spent a few nights there prior to June of '03,
22 but as far as a permanent resident or a resident, I really
23 couldn't tell you.

24 CHAIRMAN GAW: All right. Thank you,
25 Mr. Murphy.

1 JUDGE DIPPELL: Commissioner Murray, did
2 you have any questions for Mr. Murphy?

3 COMMISSIONER MURRAY: I have a few. Thank
4 you.

5 QUESTIONS BY COMMISSIONER MURRAY:

6 Q. Good morning. This is Commissioner Murray,
7 and I have a few questions for you.

8 A. Okay.

9 Q. You indicated that you were unprepared for
10 the types of questions that you were being asked, and just
11 out of curiosity, what types of questions were you
12 prepared to be asked this morning?

13 A. Well, I was thinking about the -- you were
14 asking about the work relationship with Dave and I, and I
15 wasn't -- I guess I wasn't prepared for that. I don't
16 know. I -- it's just -- the line of questioning was
17 different than I was expecting.

18 Q. Okay. And I'm just asking, what did you
19 think you were going to be asked? What did you come
20 prepared to answer today?

21 A. Well, if I might answer your question or --

22 Q. You're not answering my question right now.
23 I would like to know what you are prepared to answer for
24 the Commission, because I haven't heard you be able to
25 answer the questions definitively that have been asked

1 today, and I'd just like to know what it is you are
2 prepared to tell us.

3 A. I guess I'm not very prepared this morning.

4 Q. Did you understand what the hearing was
5 about?

6 A. Yes, I do.

7 Q. Did you make any effort to prepare?

8 A. I guess in honesty, I didn't.

9 Q. Who is Dave?

10 A. Pardon me?

11 Q. Who is Dave that you refer to?

12 A. Dave? You mean Roy David Smith?

13 Q. Okay. You call Roy Smith Dave?

14 A. That's correct.

15 Q. That's who you're referencing when you say
16 Dave?

17 All right. And do you know how many other
18 people call him Dave?

19 A. I believe a lot of people call him Dave,
20 his girlfriend and son.

21 Q. Do you know several of his friends
22 personally?

23 A. That's probably correct, yes.

24 Q. And how long did you say you have known
25 Dave?

1 A. Probably several years.

2 Q. Several years. Okay. And you say you see
3 him at least once a week now; is that correct?

4 A. Oh, yeah. That's correct.

5 Q. And what do you see -- for what reason do
6 you see him, is it social or is it work-related or a
7 combination of the two?

8 A. Mostly work-related.

9 Q. And what is that work?

10 A. Well, he does handyman services, like
11 painting and lawn mowing, things like that.

12 Q. And he does that for you?

13 A. For me and other people, sure.

14 Q. And you indicate that he's not been able to
15 pay his rent? How long has he been unable to pay his
16 rent?

17 A. It's been -- it's been several months.

18 Q. And the work that he does for you, are you
19 paying him for that work?

20 A. Yes, I am.

21 Q. So you're not receiving rent payments from
22 him, but you are hiring him to do work for you?

23 A. Well, he hasn't worked for -- he hasn't
24 done anything that I know of for several months. He's
25 been hurt.

1 Q. Okay. But you are still seeing him at
2 least once a week mostly work-related?

3 A. Well, I guess what I meant to say was I see
4 him at least once a week, but here in the last few months
5 he's had surgery on his foot and he's been unable to work
6 for the last few months that I know of. Again, he hasn't
7 done work for me.

8 Q. Okay. Would you like to correct what you
9 said earlier, then, about when you see him once a --
10 usually at least once a week, that it is generally
11 work-related?

12 A. Well, generally, yes, but here in the last
13 three months it's been checking to see how things are
14 going. I've even bought groceries for him just to help
15 him get by.

16 Q. Would you say you and he are pretty good
17 friends?

18 A. Well, I guess we -- I guess you could say
19 that.

20 Q. And have you been friends for several
21 years?

22 A. You know, I don't know. He's done some
23 work for me through the -- through the years and he's done
24 some contracting for me. I've got a 1099 here from last
25 year, and I think he made, like, \$3,000 or so last year,

1 in '03.

2 Q. So you have a 1099 document in front of you
3 right now?

4 A. I don't have it right here in front of me,
5 but I do recall it was around \$3,000.

6 Q. But you don't recall --

7 A. Pardon me?

8 Q. Just a second. I'm trying to formulate my
9 question. You recall the amount that he made by working
10 for you. Do you recall the amount that he has paid you
11 rent?

12 A. No. I don't recall that, no.

13 Q. Do you still -- I think the question was
14 asked earlier if you still had a copy of the lease, and I
15 can't recall what your answer was. Do you?

16 A. I don't know if I do or not. I haven't
17 looked for it, but I do know you guys have a copy of it.
18 It was sent to you.

19 Q. And how many rental properties do you own?

20 A. Approximately 20, 25.

21 Q. Does Mr. Smith do lawn maintenance and
22 other types of maintenance for you for the other rental
23 properties?

24 A. He has, yes.

25 Q. And prior to June of 2003, how did you

1 contact Mr. Smith to do work for you?

2 A. Basically just tried to find him, asked
3 around, or I just knew where he was staying.

4 Q. And where was he staying?

5 A. Staying several places; friends of his,
6 relatives of his. Like I said, for a while there he was
7 sleeping in his van.

8 Q. And he was sometimes at 5823 East 16th
9 Street; is that correct?

10 A. Well, I believe he stayed there a few
11 nights, yes. And yes, I did find him there a couple
12 times.

13 Q. Just one more question. Did you ever find
14 him at any of the other rental properties that you own in
15 terms of staying there?

16 A. As far as staying there, no, but sometimes
17 he parked his van in front of a house that I owned, and he
18 wasn't inside the house, but he was in the van out front
19 or something, and that happened on occasion also.

20 COMMISSIONER MURRAY: Okay. Thank you very
21 much.

22 JUDGE DIPPELL: Thank you. Mr. Murphy,
23 this is Judge Dippell again, and I have just a few more
24 questions for you and then we'll allow some of the parties
25 to ask you some questions.

1 QUESTIONS BY JUDGE DIPPELL:

2 Q. When you were -- when Mr. Smith was working
3 for you, how did you pay him?

4 A. Checks.

5 Q. And did -- how did you deliver his check to
6 him?

7 A. Usually by hand.

8 Q. Did you ever mail those?

9 A. No.

10 Q. At any time, to your knowledge, did
11 Mr. Elders reside in the home with Mr. Smith after June of
12 2003?

13 A. I haven't seen Mr. Elders since this time,
14 and I can't tell you exactly when he left, but it was -- I
15 do believe it was prior to June of '03, and he just, like,
16 disappeared off the map. Nobody's seen him.

17 Q. And you don't have any idea where
18 Mr. Elders currently resides?

19 A. I have no idea.

20 Q. And does Mr. Smith live in the apartment by
21 himself?

22 A. Apartment or house?

23 Q. Well, I'm sorry. Is it a house?

24 A. Yes.

25 Q. Okay. Do you know if he resides there by

1 himself?

2 A. I believe his son stays there on occasion

3 and a girlfriend.

4 Q. How old is this son, approximately?

5 A. Approximately 21.

6 Q. Do you know what his name is?

7 A. David Smith -- or no, excuse me -- David

8 Roach, I think, is his name.

9 JUDGE DIPPELL: Thank you. I don't have

10 any additional questions for you, Mr. Murphy, but I'm

11 going to allow Missouri Gas Energy's attorneys to ask you

12 some questions. Okay?

13 THE WITNESS: Okay.

14 MR. COOPER: You did swear this witness,

15 didn't you, your Honor?

16 JUDGE DIPPELL: Yes, I did.

17 CROSS-EXAMINATION BY MR. COOPER:

18 Q. Mr. Murphy, this is Dean Cooper. I'm an

19 attorney for Missouri Gas Energy.

20 Out of curiosity, is the property at 5823

21 East 16th Street Section 8 housing?

22 A. No, it's not. Well, it was at one time,

23 but it is currently not.

24 Q. At what time was it identified as Section 8

25 housing?

1 A. Oh, gosh. It's been several years, and I
2 couldn't tell you exactly when. At one time it was rented
3 out Section 8.

4 Q. But you don't remember when or how long ago
5 that was?

6 A. No.

7 Q. Now, I believe in response to Commissioner
8 Clayton's questions you said you'd owned this property a
9 couple of years or so, is that correct, or what was your
10 response to that question?

11 A. I said I couldn't give you a specific day
12 when I purchased it. I've owned it several years, and I
13 think he asked me if I owned it more than five or less
14 than five, and I told him I really couldn't tell him. I
15 could have owned it 5 1/2 years, I could have owned it 4
16 1/2 years. I really couldn't say.

17 Q. And I believe you did say you've never
18 lived at 5823 East 16th Street; is that correct?

19 A. That's correct.

20 Q. Do you realize that natural gas service was
21 provided to that address in your name between December 3
22 of 1997 and April 13th of 1998?

23 A. Is that correct? You would know more about
24 that than I would.

25 Q. So you don't have any memory about that?

1 A. No.

2 Q. So --

3 A. Are you sure it wasn't my father?

4 Q. Well, let's try that. John P. Murphy, is

5 that you or is that your father?

6 A. Well, John P. Murphy is me. My father was

7 also John P. Murphy.

8 Q. Did your father own this property prior to

9 you?

10 A. I don't believe he did. I think I've owned

11 it -- I was the original owner and I'm still the owner.

12 Q. Did your father ever live at this property?

13 A. No.

14 Q. Okay. But I suppose since you have no

15 memory of a natural gas account in your name, you'd have

16 no memory of amounts might be still owed on that account;

17 is that correct?

18 A. Do you have a bill there that's owed to

19 me -- that belongs to me?

20 Q. Well, this is kind of like earlier. I

21 think I ask the questions and you get to answer the

22 questions.

23 A. Okay.

24 Q. You --

25 A. Well, I'm not aware of -- I haven't been

1 sent a bill here for natural gas bill from that property.

2 Q. Did Mr. Jeffrey Elders ever work for you?

3 A. No.

4 Q. He never did any work for you?

5 A. Not that I recall, no.

6 MR. COOPER: I think that's all the

7 questions I have right now for Mr. Murphy.

8 JUDGE DIPPELL: Thank you. Mr. Smith, did

9 you have questions that you wanted to ask Mr. Murphy?

10 MR. SMITH: Nothing I can think of.

11 JUDGE DIPPELL: Okay. Ms. Shemwell, did

12 Staff want to ask any questions of this witness?

13 MS. SHEMWELL: We don't have any questions,

14 thank you.

15 JUDGE DIPPELL: Thank you for your

16 testimony, Mr. Murphy. I believe that's all the questions

17 for you. Are you available to stay on the line throughout

18 the hearing or are you needing to be excused?

19 THE WITNESS: I could stay on the line if

20 you like. I may have to get off at some point.

21 JUDGE DIPPELL: I'll go ahead and excuse

22 you, and so you can disconnect at any time.

23 THE WITNESS: Okay. Thank you.

24 JUDGE DIPPELL: You can go ahead and

25 disconnect now if you like. I don't believe there will be

1 any additional questions for you.

2 THE WITNESS: Okay. Thank you.

3 JUDGE DIPPELL: Thank you. Mr. Smith,

4 you're still on the line?

5 MR. SMITH: Yeah. I thought you hung me up

6 when I heard that dial tone.

7 JUDGE DIPPELL: No, I think it was just

8 Mr. Murphy dropping off. All right. Then this will be

9 the opportunity, Mr. Smith, for you to make your case. I

10 guess I'll ask you how you intend to go forward. Do you

11 want to testify on your own behalf?

12 MR. SMITH: Yeah, I have little choice. I

13 don't want to pay something that's not mine.

14 JUDGE DIPPELL: All right, then. I'll go

15 ahead and swear you in as a witness also.

16 (Witness sworn.)

17 JUDGE DIPPELL: Thank you. Mr. Smith, if

18 you'd go ahead and state your name and spell it and give

19 your address for the court reporter, please.

20 MR. SMITH: Roy, R-o-y, David, D-a-v-i-d, T

21 as in Tom, T-o-m, Smith, S-m-i-t-h. I live at 5823 East

22 16th Street, Kansas City, Missouri 64126.

23 JUDGE DIPPELL: All right. Thank you.

24 Well, at this time I'll let you go ahead, Mr. Smith, and

25 you can give testimony. Since this is a bit unusual and

1 you're representing yourself, I'm going to allow you just
2 to give a statement of your testimony.

3 MR. SMITH: All right.

4 JUDGE DIPPELL: I may -- if things get
5 long, I may cut you off, and then after you've finished
6 testifying, the Commissioners may have some questions for
7 you.

8 ROY DAVID T. SMITH testified as follows:

9 MR. SMITH: Okay. As for -- as Mr. Murphy
10 was saying that I may have spent a few nights there, I
11 remember twice I was over there on a weekend and I got
12 drunk with him and I didn't want to drive home drunk, so I
13 left. And I was staying with my stepdaughter, not my
14 stepsister. I've got one real sister, and she's nowhere
15 around. That's pretty much all I can say about that. I
16 was receiving mail there for a very long time, because I
17 did not have an actual address.

18 JUDGE DIPPELL: When you say you were
19 receiving mail there, which address are you referring to?

20 MR. SMITH: Where I'm living now. I got
21 permission from Jeffrey Elders to have my mail sent there,
22 because I had insurance that I had to take care of for my
23 truck. I went and got my license, just things I had to
24 have done, and I didn't have an address. My stepdaughter
25 said that her landlord would have a total fit if I used

1 hers, so I had to find something else.

2 JUDGE DIPPELL: All right. Do you have

3 further testimony you want to give?

4 MR. SMITH: I'm sorry?

5 JUDGE DIPPELL: Do you have some further

6 testimony you want to give?

7 MR. SMITH: That's the only thing I can

8 think of, from what you-all were talking about.

9 JUDGE DIPPELL: Well, is there anything

10 else you want the Commission to know that they hadn't been

11 questioning Mr. Murphy about?

12 MR. SMITH: Nothing I can think of.

13 JUDGE DIPPELL: Okay. I'm going to see,

14 then, if the Commissioners want to ask you some questions.

15 MR. SMITH: All righty.

16 JUDGE DIPPELL: There's a pause, Mr. Smith,

17 because our usual procedure is that I allow

18 cross-examination and then questions from the Bench.

19 Since we had a little bit of an unusual procedure in this

20 case with the phone witness, I thought it might be

21 simplified to do this.

22 Mr. Cooper, do you have an objection to --

23 MR. COOPER: I'm actually going to wait and

24 hear what the Commissioners have to ask, I think, so I

25 apologize for that, but that's our plan.

1 JUDGE DIPPELL: Okay. You wouldn't have an
2 objection to the Commissioners asking their questions
3 before you?

4 MR. COOPER: Absolutely not.

5 JUDGE DIPPELL: All right. I'll let the
6 Commission then go ahead and begin. Mr. Chairman, do you
7 have --

8 CHAIRMAN GAW: I'll pass again.

9 JUDGE DIPPELL: Commissioner Murray, do you
10 have questions for this witness?

11 COMMISSIONER MURRAY: I will pass right
12 now, thank you.

13 JUDGE DIPPELL: Commissioner Clayton, would
14 you like to ask questions?

15 QUESTIONS BY COMMISSIONER CLAYTON:

16 Q. Mr. Smith?

17 A. Yes.

18 Q. Can you hear me? This is Robert Clayton.
19 I'm a member of the Commission, and I first wanted to -- I
20 wanted to thank you for, I guess, making the decision to
21 participate by telephone, because this is a first for us,
22 and I hope you've been able to hear it so far --

23 A. Right.

24 Q. -- and that you're hearing everything
25 that's going on. This is a full-blown hearing and we

1 treat it as such, even though you are not here in person.
2 So I appreciate your willingness to do this. You're a
3 ground-breaking pioneer at the Public Service Commission.
4 A. I have a broken leg. I don't have much
5 choice.
6 Q. Okay. You agree that you are now a
7 resident at 5823 East 16th Street; is that correct?
8 A. Yes.
9 Q. And you moved in on or about June 1st of
10 2003?
11 A. Yeah, it was June. I can't remember
12 exactly, but I know -- I'm pretty sure it was June.
13 Q. Okay. So basically early June of 2003?
14 A. Okay.
15 Q. Is that right?
16 A. Yes.
17 Q. Okay. Before that, where did you live?
18 A. Well, mostly in my truck, but if it got
19 real cold and I didn't have any gas to run my heater, I'd
20 stay at my stepdaughter's. And I've got a friend Joe;
21 I'd, you know, stay over there a couple nights here and
22 there. But for the most part I stayed in my truck with my
23 dog.
24 Q. Your dog stayed in the truck with you, too?
25 A. Yeah.

1 Q. How big of a truck is this?

2 A. It's a van. It's a Chevy one-ton full

3 size.

4 Q. Full-size van, like a conversion van?

5 A. No. It's not -- no, it's a work truck.

6 It's totally empty. I mean, it doesn't have carpet on the

7 walls and all that fun stuff. Doesn't have a

8 refrigerator. It's just strictly a haul truck.

9 Q. How long did you --

10 A. I put a bed in there.

11 Q. How long did you live in your truck, from

12 when to when, do you remember?

13 A. Oh, geez, all the summer and most of the

14 winter, except for when I stayed with friends of '02, I

15 believe.

16 Q. So all summer of 2002?

17 A. Right.

18 Q. Until when?

19 A. And then all winter, and sometime after

20 that is when, you know, I had -- I had to get something,

21 because my son was coming from out of town. He was out in

22 Joplin, so that's when I rented the place from John. And

23 when we walked in there, it was just a huge mess. I mean,

24 we filled up a trailer twice getting all the crap from the

25 last people that lived there.

1 Q. So your son came back from somewhere in
2 roughly May or June of 2003, and that's when you decided
3 that you needed to find a --

4 A. Yeah. I had to have someplace, you know,
5 him and his mother. You know, we're not married or
6 anything, so she'd be more of my girlfriend than anything
7 else.

8 Q. Well, we don't want to force you into
9 anything here. When you went in, you said the place was a
10 mess. When did you go in and inspect the premises?

11 A. I really couldn't say the date, but it was
12 at least two weeks before I had moved in. I'd say in
13 between two weeks to a month, because it took us a while
14 to clean that place up. I mean, they busted doors, they
15 tore the place up. It took a while before I was even able
16 to move in.

17 Q. So that was roughly May 2003 is when you
18 found that it was trash all around, broken doors?

19 A. Yeah, that's a good guess, somewhere in
20 May.

21 Q. Were there holes in the walls?

22 A. Holes in the walls, we had doors broken
23 off.

24 Q. Who was residing there immediately prior to
25 you moving in?

1 A. Jeffrey's the only one that I knew of.
2 Now, I seen other people over there when I was cutting the
3 yard, but I couldn't tell you who they was or anything. I
4 didn't know Jeff that well. I mean, I asked him if I
5 could get my mail there, and he said okay. And that's,
6 you know, that was pretty much our relationship there in
7 the beginning.

8 Q. What type of mail did you have to get? You
9 mentioned insurance. Did you have to get anything else?

10 A. Yeah, my insurance for my truck. That's
11 pretty much all the mail that I was getting.

12 Q. So you didn't know Mr. Elders very well,
13 but you entrusted him with your mail?

14 A. He just left it in the box.

15 Q. I see. Did you have an agreement with him?

16 A. Yeah.

17 Q. That he would just leave it?

18 A. If I got any mail just leave it in the box
19 or set it down there on the porch and I'd come by, you
20 know, once or twice a week and pick it up.

21 Q. Were you working full-time --

22 A. No.

23 Q. -- in May 2003?

24 A. No. I haven't worked full-time in years.

25 Q. Other than for Mr. Murphy, were you working

1 for anyone else at the time?

2 A. Yeah, lots of other people, but mostly like

3 he was saying, cutting grass, cleaning gutters, just stuff

4 to get by, buy some food, gas for my truck.

5 Q. Do you know what Mr. Elders did for a

6 living?

7 A. I have no idea.

8 Q. Was Mr. Elders married?

9 A. As far as I know, he never mentioned it,

10 but like I said, you know --

11 Q. Well, who else was living in the house when

12 you were over there?

13 A. I'm sorry?

14 Q. Who else was living in the house? Were

15 there kids running around?

16 A. No.

17 Q. Were there adults?

18 A. Just adults.

19 Q. Just adults?

20 A. Right. And, you know, a couple girls, like

21 three guys at different times, but I didn't get to know

22 them, you know, and I only seen them when I was mowing the

23 grass. They'd come out and ask me what am I doing, that

24 kind of stuff.

25 Q. You'd say I'm cutting the grass?

1 A. I'd say I'm cutting the grass for the
2 landlord, and then they'd go back in the house.

3 Q. But you mentioned that -- I think
4 Mr. Murphy made a statement that you spent the night there
5 and you also agreed that you spent the night there.

6 A. Like I said, there was twice that I sat
7 there and drank a 12-pack with him and got too hammered,
8 and there wasn't no way I was going to drive. You know, I
9 just got my license and things, so I --

10 Q. When did you get your mail switched to that
11 address?

12 A. You know, I really couldn't say. I don't
13 have no idea. Somewhere around when I got my license. I
14 can look at my license and give you a idea.

15 Q. Do you know when that was?

16 A. Well, I'm getting it out right now. Hold
17 on.

18 Q. Okay.

19 A. Okay. I'm good 'til '06. So what would
20 that be, '04 I had to renew it, I guess, because I only
21 get it for two years, and I only had it for one year
22 before that.

23 Q. I don't know the time period for renewal.

24 A. Right. I don't either.

25 Q. Do you recall the address that you had on

1 your license before you used this address?

2 A. It wasn't a Kansas -- shoot. I can't even
3 remember if it was a Kansas City address. You're talking
4 years ago. I haven't had a driver's license in, god, 12,
5 13 years before this one.

6 Q. So you didn't have a driver's license
7 before this license?

8 A. No, no. I got suspended as a young kid and
9 stupid. You know, I'm not real smart. I didn't go try
10 and get it back. I didn't ask around or try and figure it
11 out. I figured I'm suspended, I can't never drive again.
12 Then, you know, when I talked to a friend of mine, he
13 says, oh, well, if you haven't had one in this long, why
14 don't you try and get it? So that's what I did.

15 Q. Other than your insurance company, do you
16 recall any other mail that would have been in your name
17 going to that address?

18 A. No. There was mainly just my insurance and
19 I had to have an address to put on my ID.

20 Q. So just those two things?

21 A. My driver's license.

22 Q. Just those two things?

23 A. Yeah, that's it.

24 Q. Did you ever agree to pay for any of the
25 other utility bills associated with 5823 East 16th Street?

1 A. Well, not exactly. Later on, as I got to
2 know Jeff, he was getting paid from his job say on a
3 Thursday or Friday, and Tuesday he had a bill and he asked
4 me to go pay it once. I think that was a light bill. I'm
5 not real sure. But he paid me right back, so I wasn't
6 worried about it.

7 Q. You paid a light bill once?

8 A. Yeah, for him, and then paid me right back.

9 Q. Was that by check or -- I mean, how would
10 you have paid the light bill?

11 A. Probably cash is my guess.

12 Q. Do you take it to, like, a service center
13 or something?

14 A. Yeah, I take it to the grocery store,
15 something like that, like a penthouse or something like
16 that. I can't remember where, but I know that's where
17 I've been paying my light bill since then. I don't know
18 where the light company is.

19 Q. You would have paid with cash or check?

20 A. Cash usually.

21 Q. Do you have a checking account?

22 A. No.

23 Q. Okay. Have you ever had a checking
24 account?

25 A. No.

1 Q. Have you ever had a savings account?

2 A. No credit cards, no, none of them. Right.

3 Q. Hang on just a second, Mr. Smith.

4 A. Okay.

5 Q. Did you apply for electricity service when

6 you moved in?

7 A. No.

8 Q. Do you have electricity service at this

9 address?

10 A. Yes.

11 Q. And --

12 A. In my name now.

13 Q. It's in --

14 A. But when I moved in, see, I'm not real

15 smart with utilities and that.

16 Q. We're not here to pass judgment on anything

17 like that, so don't worry about it. Just tell us the

18 facts and we'll go from there.

19 A. Right. Okay. I was aware that it was

20 still -- that the electricity was still in his name when I

21 moved in.

22 Q. Whose name?

23 A. Mr. Elders.

24 Q. Okay.

25 A. So I paid the bill of the electricity that

1 I used and part of what he used, because he owed something
2 when I got the bill, and I figured, well, it would be
3 easier just to pay the 50 that he owed and just keep it in
4 his name 'til I could figure out how to get it on my name.
5 And then I did -- the gas was off. I got the water on in
6 my name, and now I've got a huge bill of gas as well as
7 water, and lights. I mean, everything's just backed up
8 because I have -- I've got a broken leg.

9 Q. The water bill was in Mr. Elders' name?

10 A. I don't know whose name the water bill was
11 in. I had it put in my name.

12 Q. Okay. And you had that switched over?

13 A. Right.

14 Q. Okay. How about cable bill or satellite
15 bill, you got anything like that?

16 A. I'm sorry?

17 Q. Do you have a cable bill or satellite bill
18 anything like that?

19 A. No. No. Huh-uh. Those are luxuries. I
20 don't have luxuries.

21 Q. I understand. Okay. Do you see Mr. Elders
22 anymore?

23 A. No, I have not. From what I heard, this
24 was, I don't know, a couple months prior before I moved in
25 or three months, that he went to jail. I don't know

1 where, what city, what town. I don't have no idea, and
2 I've not seen him since.

3 Q. He hasn't come over, he never came back to
4 pick up his stuff that he left?

5 A. No. He left -- I mean, the furniture,
6 everything was left. When they left, they left it as a
7 big mess, clothes everywhere all over the house. I mean,
8 we had to bag it all up. I mean, it was just trashed.

9 Q. Okay. And he's never come back to pick up
10 his stuff or drink a 12-pack or something like that?

11 A. Huh-uh. And my guess is the people that
12 were staying there with him may have stayed there longer.
13 I don't know. But I know that somebody trashed that place
14 before I moved in it.

15 Q. Okay. Are you the only person residing at
16 this house --

17 A. Yes.

18 Q. -- now?

19 A. My family's moved back to Appleton City, or
20 not Appleton, Joplin.

21 Q. That's all right. They're gone, right?

22 A. Yeah, they left. Right. I'm there by
23 myself now, and it's a big house, but there's nothing I
24 can do right now. Like I said, I've got a broken leg.

25 Q. And I guess regarding your driver's

1 license, when you had it, your address on your license
2 placed at this address, did you say you knew when that
3 was? Do you recall?

4 A. No. My driver's license says it expires in
5 '04. I'll look at it again, but I don't think it has a --
6 do they have a date when you get them?

7 Q. Honestly, I don't know.

8 A. Yeah. I'm not sure either.

9 Q. We're a different agency. We don't do the
10 driver's licenses around here.

11 A. I'm looking at it again here.

12 COMMISSIONER CLAYTON: All right. I don't
13 think I have any other questions. Thank you very much,
14 Mr. Smith.

15 THE WITNESS: All right. Thank you.

16 JUDGE DIPPELL: Commissioner Appling, would
17 you like to ask some questions?

18 COMMISSIONER APPLING: No.

19 JUDGE DIPPELL: He's indicating no.
20 Chairman Gaw, did you have any questions?

21 CHAIRMAN GAW: No, thank you.

22 JUDGE DIPPELL: Commissioner Murray, did
23 you want to ask Mr. Smith any questions?

24 COMMISSIONER MURRAY: I have a couple
25 questions. Thank you, Judge.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Good morning, Mr. Smith.

3 A. Good morning. I can barely hear you.

4 Q. Can you hear me better now?

5 A. Yes.

6 Q. All right. You indicated that you had paid

7 one bill for -- I believe you called him Jeff; is that

8 right?

9 A. Right. What he did is he gave me the bill

10 and told me to pay, I guess it was 50-some dollars. I

11 can't even remember the amount. And I told him, well, he

12 better make sure I get my money Friday, because I need the

13 money.

14 Q. And do you recall when that was?

15 A. No. I'm sorry. Yeah, it was so long ago,

16 I couldn't even think of a date or anything.

17 Q. Was that during the time you were living in

18 your van?

19 A. Yes.

20 Q. And why were you living in your van?

21 A. Because I had no money to rent a place,

22 plus utilities and everything else. I mean, I was

23 making -- I don't know. If I was lucky, I was making \$50

24 a week doing odd jobs and stuff, and then you figure 10 of

25 that was going in the gas tank of my trunk or more, and

1 then I would eat. You know, I had to eat. So that's
2 pretty much how that was there for a while.

3 Q. Quite a generous move for you to pay
4 someone else's electric bill at that time, then, wasn't
5 it?

6 A. Actually, he asked to borrow the money.
7 And I told him, well, I can probably lend you the money
8 for two days, but I've got to have it back. And he said
9 okay. And he says, well, I don't have a car, would you
10 run up to the store for me and just pay it for me, and I
11 said okay.

12 Q. Is your natural gas still connected where
13 you live now?

14 A. It's not on. It's -- I'm sure it's
15 connected but it's not on. Like, the meter's out there.

16 Q. Are your electric utilities still
17 connected?

18 A. They was this morning.

19 Q. And are you current on your electric bill?

20 A. That I don't know. I imagine I'm real
21 close to current. If I'm not current, I'm right in that
22 area. I mean, I'm not real deep. Now, my water bill, I'm
23 a couple hundred, or almost 200 backed up. I've had
24 places help me. Like, I had a place pay 100-something on
25 my lights. So far I've had no -- I had a place pay a

1 little on the gas, too, but I can't get no more help. I
2 guess once I used the place once for each bill, they just
3 won't help me no more.

4 Q. Is your telephone still connected?

5 A. Is mine?

6 Q. Yes.

7 A. The one that I borrowed is, yes.

8 Q. Do you have telephone service in your name
9 at your residence?

10 A. No, I don't have -- I don't own no
11 telephone, none of that, no.

12 Q. And do you know how far you are behind in
13 your rent today?

14 A. Oh, god. Probably close to a grand. I
15 mean, I've got it broke out at home, but yeah, it's -- but
16 he's helped me with medicines and food. We had to add all
17 that on, too, because of my broken leg. If it wasn't for
18 Mr. Murphy, shoot, I may have well just laid down and gave
19 up.

20 COMMISSIONER MURRAY: Okay. I think that's
21 all the questions I have. Thank you.

22 JUDGE DIPPELL: Mr. Smith, this is Judge
23 Dippell again. I have just a couple of questions for you.

24 THE WITNESS: Sure.

25 QUESTIONS BY JUDGE DIPPELL:

1 Q. Did you sign the lease with Mr. Murphy?

2 A. In June, I believe I did. I don't

3 remember, but I'm pretty sure I would have had to.

4 Q. Do you have a copy of that lease?

5 A. No. I don't see any sense in keeping that.

6 I figure he would have to have one and that's about it,

7 you know. Doesn't do me any good to have one.

8 Q. Where were you receiving mail prior to the

9 time that you started receiving it at this address?

10 A. I wasn't, because -- see, the reason I

11 wasn't is I didn't -- I didn't have no -- you know, I

12 didn't have any reason for it. When I got my license and

13 I got my truck, I had to get it insured, legalized, you

14 know, go through the whole smear there, and that's when I

15 needed an address, because my insurance company -- the

16 first insurance company I dealt with did not -- I didn't

17 have an address so they didn't give me the paperwork, and

18 I missed it.

19 So then I had to pay \$175 again,

20 reinstatement crap or what do they call that when you

21 first start your insurance and your SR-22, I had to do

22 that twice because I didn't have an address. So after I

23 paid it the second time, I had to get an address.

24 Q. And how long did you know Mr. Elders before

25 you started picking up your mail at his address?

1 A. Actually, not very long. Just very short
2 time, because it all fell together about me needing an
3 address about the same time when I met him.

4 Q. And when you say not very long, can you
5 kind of quantify that?

6 A. I don't know. Week or two maybe. I'm
7 guessing. I only mowed the grass once before I started to
8 get my mail there.

9 Q. And when did you -- when did you switch the
10 electric bill into your name?

11 A. That's a good one. I really -- I don't
12 have the dates or anything like that, but it was, I don't
13 know, a few months after I moved in. I mean, I'm
14 guessing. I don't know for sure. I couldn't give you a
15 date on that.

16 Q. Did you say that the water bill is now in
17 your name?

18 A. Yes.

19 Q. When did you switch that over?

20 A. See, I couldn't give you a date on that one
21 either. Four months ago maybe. I'm guessing. I don't
22 know. And I've not been able to pay a penny on it, like I
23 said, because of my leg.

24 Q. And when did you first put the gas bill in
25 your name?

1 A. We tried when I moved in, but that -- or
2 no, not when we moved in. It was probably just when it
3 was starting to get cold, just before it got cold, would
4 be my guess.

5 Q. And you said you tried. Were you
6 successful?

7 A. No. They said that I owed Mr. Elders'
8 bill, and I went through a whole bunch of up and down with
9 that 'til finally we ended up calling you-all, and then
10 they was accommodating or they was nice enough to turn it
11 on.

12 Q. Okay. And currently you have gas service
13 or has that been --

14 A. No, they have shut it off because I don't
15 have the money to pay them.

16 JUDGE DIPPELL: Okay. That's all the
17 questions I have for you. Were there any additional
18 Commissioner questions?

19 COMMISSIONER MURRAY: I just was looking at
20 my notes. Thank you, Judge. I just wanted to clarify a
21 couple of things that I had put down in my notes here.

22 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

23 Q. Mr. Smith, in regard to your driver's
24 license --

25 A. Right.

1 Q. -- did you say it expired in '04?
2 A. No, I said it expires in '06.
3 Q. Oh, okay. And so you were thinking that
4 you probably got it --
5 A. Got it in '04, yes.
6 Q. All right. And you said that was the first
7 time you'd had a driver's license in many years?
8 A. No. They gave me a two year this time, but
9 my very first one after not having it for 12 or more
10 years, they only give it to you for one year. I've had it
11 somewhere around three years, I'm guessing, because they
12 gave me a license and it was only for one year, and then I
13 had to renew this one in '04.
14 Q. That's where I was coming up with some
15 questions. I believe you testified that in '03 you were
16 sleeping in your van.
17 A. Right.
18 Q. So I assume --
19 A. I think it was in '02. I'm getting the
20 years mixed up. I moved in in '03. Okay. In June, I
21 think is what it was. So it had to be '02 that I was, you
22 know, I was -- well, I mean, I slept at friends'
23 occasionally. I didn't just sleep in the van all the
24 time.
25 Q. How long have you owned your van?

1 A. That's another -- I might have to guess at
2 that. Let me see. Four years maybe or something. I'm
3 guessing; three, three or four years. I didn't know
4 exactly.

5 Q. Have you had a driver's license the entire
6 time you've owned it?

7 A. No. It was parked for a long time and not
8 running, and I had to do some work on it and get it up to
9 par before I could even get it legalized on all that. And
10 like I said, my work was so in and out that there wasn't
11 much I could do about it except let it sit.

12 Q. Do you recall during the time you were
13 getting your mail for your insurance policy at 5823 East
14 16th Street in Kansas City?

15 A. Okay. Do I remember what now?

16 Q. During that time, do you recall what the
17 address was on your driver's license?

18 A. I believe it was that address, because I
19 had to -- I had to ask Mr. Elders if I could get mail
20 there before I could even get my driver's license.

21 COMMISSIONER MURRAY: All right. Thank
22 you.

23 JUDGE DIPPELL: Commissioner Appling, you
24 have a question?

25 QUESTIONS BY COMMISSIONER APPLING:

1 Q. Mr. Smith?

2 A. Yes.

3 Q. Would you pull your driver's license out in
4 front of you, please?

5 A. Sure. Hold on a second. I just had it
6 out. I just put it back. Okay. I've got it.

7 Q. Could you tell me the month that your
8 driver's license expires in '06?

9 A. It's 5/15.

10 Q. So that's April of --

11 A. It's May 15th. It's actually on my
12 birthday.

13 Q. Okay. May the 15th. Okay. I was just
14 checking, and when did you put -- the address that you
15 have on your present license is the address which you're
16 living at at the present time; is that correct?

17 A. Yeah.

18 COMMISSIONER APPLING: Okay. Thank you.

19 JUDGE DIPPELL: Okay. I believe that's all
20 the Commission questions for you, Mr. Smith. I'm going to
21 allow Missouri Gas Energy's counsel to cross-examine you
22 now.

23 THE WITNESS: All right.

24 JUDGE DIPPELL: Do you have questions,
25 Mr. Cooper?

1 MR. COOPER: Very briefly, your Honor.

2 CROSS-EXAMINATION BY MR. COOPER:

3 Q. Mr. Smith, I believe in response to

4 Commission questions earlier you stated that you just

5 didn't remember whether you had a lease or not on this

6 property at 4823 East 16th Street; is that correct?

7 A. No, I'm pretty sure I don't. I didn't see

8 any reason for getting one. He makes them out, and for

9 the gas, I guess he sent you guys one, but I didn't need

10 one. I mean, I don't see what I -- you know, why would I

11 need one?

12 Q. Now, do you recognize this address,

13 8425 Flora, Kansas City, Missouri 64131?

14 A. Yes.

15 Q. Whose address is that?

16 A. I stayed there at that house for a while.

17 Q. Whose house is that?

18 A. The owner?

19 Q. Did you rent that property?

20 A. Yes.

21 Q. What time period did you rent that

22 property?

23 A. See, I don't remember, but I do remember

24 renting that space at 8425 Flora.

25 Q. Now, I believe you were telling us that you

1 had to utilize the 5823 East 16th Street because when you
2 went to get your driver's license for the first time in
3 quite some time in -- and when was that, what time period?

4 A. I don't understand the question.

5 Q. That's because I started with one question
6 and finished with another. Let me break that apart. Did
7 you have a driver's license before you went to obtain the
8 license that contained the 5823 East 16th Street?

9 A. No, I did not.

10 MR. COOPER: I believe that's all the
11 questions I have, your Honor.

12 JUDGE DIPPELL: Thank you. Are there any
13 questions for this witness from Staff?

14 MS. SHEMWELL: Thank you.

15 JUDGE DIPPELL: Mr. Smith, one of our
16 Public Service Commission Staff counsel are going to ask
17 you questions.

18 THE WITNESS: All righty.

19 CROSS-EXAMINATION BY MS. SHEMWELL:

20 Q. Mr. Smith, my name is Lera Shemwell. I
21 represent the Staff in this case. I had understood that
22 Mr. Murphy took phone messages for you; is that correct?

23 A. I'm sorry. What was that question?

24 Q. Mr. Murphy took phone messages for you; is
25 that correct? You gave his phone number for phone

1 messages?

2 A. I mean, he may have took messages for me,
3 but I don't know what do you mean. If my son needed
4 something, he called Mr. Murphy, sure. He would give me
5 the message, if that's your question.

6 Q. Okay. Thank you. Why the East 16th Street
7 address for your address and not one of Mr. Murphy's other
8 rental properties? Why did you choose the East 16th
9 Street address?

10 A. I was right there at the time that I was
11 wanting to get my license, and I was cutting the yard and
12 he come out and I asked him would it be all right and he
13 said okay. I didn't even mention it to Mr. Murphy. He
14 knows about it now, but he didn't know about it then.

15 Q. When you switched electric service with
16 KCPL from Mr. Elders' name to your name, were the two of
17 you in communication at that time?

18 A. No, huh-uh. Like I said, it was two or
19 months before I moved in that I'd actually talked to him
20 and friends that I know that talked to him once in a while
21 said that he went to jail, so I don't -- and I don't know
22 where or what. All I heard is that he went to jail.

23 MS. SHEMWELL: Thank you. That's all I
24 have.

25 JUDGE DIPPELL: Thank you. I believe

1 that's all the questions that we have for you, Mr. Smith.

2 MR. SMITH: All righty.

3 JUDGE DIPPELL: I'm going to allow Missouri

4 Gas Energy to put their witnesses on, and then I'll allow

5 you to cross-examine them. But before we that, we're

6 going to take a short break.

7 Mr. Smith, are you at the -- at phone

8 number 816/942-7433?

9 THE WITNESS: Is this 942-7433? Yeah, I'm

10 at that address, yes, ma'am.

11 JUDGE DIPPELL: Would you prefer just to

12 remain on the line? I'm going to take about a 10-minute

13 break.

14 THE WITNESS: I could remain on the line,

15 but I want to step out and smoke a cigarette.

16 JUDGE DIPPELL: I'll let you go ahead and

17 disconnect, and then I'll call you back at that number in

18 10 minutes. All right?

19 MR. SMITH: Thank you.

20 JUDGE DIPPELL: We can take a break and go

21 off the record.

22 (A BREAK WAS TAKEN.)

23 JUDGE DIPPELL: We're back on the record

24 after our break and, Mr. Cooper, would you like to begin?

25 MR. COOPER: I would, your Honor, and MGE

1 would like to call Ms. Shirley Bolden to the stand.

2 (Witness sworn.)

3 JUDGE DIPPELL: Go ahead, Mr. Cooper.

4 SHIRLEY BOLDEN testified as follows:

5 DIRECT EXAMINATION BY MR. COOPER:

6 Q. Would you please state your name and your
7 business address.

8 A. My name is Shirley J. Bolden, last name
9 spelled B-o-l-d-e-n. My address at work is 3420 Broadway,
10 Kansas City, Missouri 64111.

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

13 A. I'm employed with Missouri Gas Energy as a
14 contact center manager.

15 Q. Could you describe for us your professional
16 experience?

17 A. I've been with the company 34 years, and I
18 started as a clerk and have worked my way from collector
19 to customer service rep to as a manager.

20 Q. Now, could you describe for us your -- the
21 nature of your duties as the manager of the customer
22 contact center?

23 A. Yes. I handle -- have 63 employees under
24 me, and they handle the inbound calls for the customer
25 service for our customers, over 500,000 customers with

1 Missouri Gas Energy.

2 Q. And how long have you been in that position
3 as manager of the customer contact center?

4 A. Three years.

5 Q. Have you spent a lot of time in the
6 customer service area?

7 A. Most of my life, yes, with the company.

8 Q. Now, Ms. Bolden, does Missouri Gas Energy
9 have a customer record system?

10 A. Yes, we have a customer service system that
11 handles and holds all of our information and records,
12 addresses, telephone numbers, customers' names. Any
13 account that we touch as far as a representative or
14 consultant is concerned, it is initiated by a number, an
15 ID number, so that we know who is looking at the account.
16 Also there are things that come on the account that are
17 done automatically by the system; for instance,
18 disconnects, bills, notices, billing information, that is
19 done automatically.

20 Q. As manager of the customer contact center,
21 do you have any responsibilities for that customer record
22 system?

23 A. Yes, we do have to make sure that it is
24 accurate and kept up to date. We work quite closely with
25 our IT department to make sure everything is up to date.

1 Q. Now, if you would again -- I think you
2 touched on this a second ago, but information contained in
3 those records, is that information entered by MGE
4 employees?

5 A. There's information entered by MGE
6 employees, as well as information entered automatically by
7 the system itself.

8 Q. The information entered by MGE employees,
9 do they do that during the regular course of performing
10 their duties at the customer contact center?

11 A. Yes. When taking a call from a customer or
12 if they're in the billing or account services department,
13 they enter information as well.

14 Q. And let's take that example you talked
15 about. If they are entering information related to a
16 customer call, does the employee have any personal
17 knowledge relating to that call enter the information into
18 the customer record system?

19 A. Once they talk with the customer and make
20 contact with the customer, their information is entered by
21 looking up the address, telephone number or Social
22 Security number, if that information is there. They will
23 look at that information at that time and they will enter
24 information indicating why they were talking to the
25 customer.

1 Q. Do they enter that information
2 contemporaneously with the time of the call, close to the
3 time of the call, close to the time they receive that
4 information?

5 A. Yes, through the consultant, yes, they
6 would. The telephone consultant would enter it at that
7 time.

8 Q. Has the use of this customer record system
9 been a routine practice of the customer contact center for
10 many years?

11 A. Yes.

12 Q. And why is that system maintained?

13 A. That's the only way we can know who we talk
14 to and when we talk to them.

15 Q. Does it help you serve customers better, do
16 you believe?

17 A. Yes.

18 MR. COOPER: Your Honor, I'd like to mark a
19 document at this time, if I could.

20 JUDGE DIPPELL: Okay. We will begin with
21 Exhibit No. 1.

22 MR. COOPER: And this would be account
23 analysis, Jeffrey Elders, I guess is the way I would style
24 it.

25 JUDGE DIPPELL: Do you have a copy for the

1 court reporter?

2 MR. COOPER: I have lots of copies. I'll

3 hand those out in just one moment.

4 (EXHIBIT NO. 1 WAS MARKED FOR

5 IDENTIFICATION BY THE REPORTER.)

6 MR. COOPER: Your Honor, I believe I've

7 provided copies to everyone who's in the room, as well as

8 to the court reporter and Ms. Bolden.

9 BY MR. COOPER:

10 Q. Ms. Bolden, do you now have what has been

11 marked as Exhibit 1 in front of you?

12 A. I do.

13 Q. Do you recognize that document?

14 A. Yes, this is also a part of our customer

15 service system. It's known as account analysis. It keeps

16 track of payments, billings, late payments, chargeoffs,

17 final bills.

18 Q. And did you access the records system in

19 order to obtain this record?

20 A. I did.

21 Q. While we're looking at that document, at

22 the top of page 1 of the document, is there -- is there an

23 address listed?

24 A. There is.

25 Q. And what is that address?

1 A. 5823 East 16th Street.

2 Q. And that represents the address to which

3 service is being provided; is that correct?

4 A. That is correct.

5 Q. To the right of that, there are two

6 telephone numbers. What is the telephone number listed

7 there?

8 A. Area code 816/210-3162.

9 Q. And that's listed for both work and home,

10 correct?

11 A. That is correct.

12 Q. And what does that telephone number

13 represent?

14 A. That is the number that Mr. Elders gave us

15 to be in contact with him if we needed to.

16 Q. Now, on this document, I think you

17 described it as listing essentially an account history. I

18 see that the most recent date on that document is, I

19 think, 11/26/03. Do you see that?

20 A. That is correct.

21 Q. And if we work down the page, we get

22 farther and farther back in time; is that correct?

23 A. That is correct.

24 Q. And does that continue to be the case

25 through pages 2 and 3, that we continue to move back

1 further and further in time to the beginning of that
2 account?

3 A. Yes, that is correct.

4 Q. When was Mr. Elders' service or service
5 provided in Mr. Elders' name at 5823 East 16th Street?

6 A. Service was opened in Mr. Elders' name in
7 October 17th of 2002.

8 Q. Was it later disconnected?

9 A. Yes, it was.

10 Q. And when was it disconnected?

11 A. July 16, '03.

12 Q. And why was it disconnected?

13 A. Due to nonpayment of the billing.

14 Q. When did Mr. Smith contact Missouri Gas
15 Energy? And I'm switching gears on you here a little bit.
16 When did Mr. Smith contact MGE to initiate service in his
17 name at this address, at 5823 East 16th Street?

18 A. We received a call from Mr. Smith in
19 November of 2003 to initiate service.

20 Q. Was service initiated at that time when he
21 first called?

22 A. No, it was not.

23 Q. Did you ask for any additional information
24 from Mr. Smith at that time?

25 A. Yes, we did ask for a rental agreement, ID

1 and proof of where he had been living for the last year.

2 Q. Why did you ask for that information?

3 A. Because of an outstanding debt that was

4 still outstanding on our records, we needed to know if

5 Mr. Elders was still living there or where Mr. Smith had

6 been living or if Mr. Smith had also been living here at

7 the same address at the same time.

8 Q. So the debt that remained outstanding would

9 be the debt that's reflected on Exhibit 1 for Mr. Elders'

10 account, correct?

11 A. That's correct.

12 Q. Was the additional information that the

13 company requested, was that provided in November of 2003?

14 A. Only the rental agreement, sir.

15 Q. Was gas service eventually initiated in

16 Mr. Smith's name at 5823 East 16th Street?

17 A. Yes, it was November 21st.

18 Q. Of what year?

19 A. 2003. I'm sorry.

20 MR. COOPER: Your Honor, I'd like to mark

21 another exhibit. This would be account analysis for

22 Mr. Smith.

23 JUDGE DIPPELL: Mark that as Exhibit No. 2

24 (EXHIBIT NO. 2 WAS MARKED FOR

25 IDENTIFICATION BY THE REPORTER.)

1 MR. COOPER: Your Honor, I've provided
2 copies of those to the Commissioners, to the court
3 reporter and to Ms. Bolden.
4 BY MR. COOPER:
5 Q. Ms. Bolden, do you have in front of you
6 what has now been marked as Exhibit No. 2?
7 A. I do.
8 Q. Do you recognize that document?
9 A. Again, it is an accounts analysis of Roy D.
10 Smith's account at 5823 East 16th Street.
11 Q. And is that a record that you retrieved
12 from the Missouri Gas Energy customer information system?
13 A. Yes.
14 Q. And again, what is shown on that account
15 analysis?
16 A. Again, it is showing the payments, actual
17 billing, the late charges, any monies that were received
18 by payment for the account. You have a pipeline refund
19 that was given to the customer from the beginning of the
20 time of the service up through July 12th, '04.
21 Q. Up through July 12th of '04?
22 A. Yes.
23 Q. And what happened on July 12th of '04?
24 A. The service was discontinued for nonpayment
25 in the amount of 1,278.70.

1 Q. Now, 1,278.70 that you just referred to,
2 that's reflected on the first page of Exhibit 2, correct?

3 A. That is correct.

4 Q. Now, that -- is that 1,278.70 all
5 attributable to usage during the winter of '03-'04 or does
6 it also contain the 583.43 that was initially transferred
7 to Mr. Smith's account?

8 A. It does contain the 583.43 that was
9 transferred in November of '03 to this account.

10 Q. From November of 2003 when this account was
11 initiated in Mr. Smith's name until it was disconnected in
12 July of 2004, did Mr. Smith ever make any payments on that
13 account?

14 A. Mr. Smith did not make any payments;
15 however, we did receive a payment from Energy Assistance,
16 the LIHEAP program from the State in March -- in April of
17 '04 in the amount of \$257.

18 Q. And that's reflected on the first page of
19 Exhibit 2?

20 A. That is correct.

21 Q. But in terms of payments coming directly
22 from the customer to MGE, were there any payments from
23 Mr. Smith to MGE on this account since it was initiated in
24 November of 2003?

25 A. No, there were no payments by Mr. Smith

1 himself.

2 MR. COOPER: Your Honor, at this time I'd

3 like to mark another exhibit for identification. This

4 would be a customer premise activity report.

5 JUDGE DIPPELL: That will be marked as

6 Exhibit No. 3.

7 (EXHIBIT NO. 3 WAS MARKED FOR

8 IDENTIFICATION BY THE REPORTER.)

9 MR. COOPER: Your Honor, I've handed out

10 copies of what has now been marked as Exhibit No. 3 to the

11 Commission, to the court reporter, to the other parties

12 and to the witness.

13 BY MR. COOPER:

14 Q. Ms. Bolden, do you recognize the document

15 that has been marked as Exhibit 3 for identification?

16 A. Yes, I do.

17 Q. And what is that document?

18 A. It is a copy of what is on our customer

19 service system of the premises at 5823 East 16th Street,

20 all of the activities from the initiation of time back

21 into August of 1993.

22 Q. And when you say activities, what do you

23 mean by that?

24 A. Customers that have asked for gas service

25 at this address, when it was initiated and when it was

1 finalized out.

2 Q. And we see there near the top of the page
3 we have Roy D. Smith, date account opened 11/21/03; is
4 that correct?

5 A. That is correct.

6 Q. And prior to that, it doesn't show a date
7 account finalized. I take it this was printed prior to
8 the disconnection?

9 A. It was printed May 14th of '04.

10 Q. And did you obtain this information from
11 the Missouri Gas Energy customer records system?

12 A. Yes, I did.

13 Q. Now, if we look down through that list of
14 customers, do you see that John P. Murphy is listed?

15 A. Yes.

16 Q. And on what dates was it identified that he
17 was a customer of Missouri Gas Energy at 5823 East 16th
18 Street?

19 A. Our records indicate that he opened service
20 on December 3rd of 1997, the service was finalized on
21 April 13th, 1998.

22 Q. And do you know whether Mr. Murphy
23 continues to owe any monies related to that account?

24 A. He does.

25 Q. How much?

1 A. \$175.70.

2 Q. Does Mr. Murphy have any other accounts
3 currently with Missouri Gas Energy?

4 A. I really can't answer all that for you.

5 Q. Okay.

6 A. I'm sure he may. He has a lot of property.

7 MR. COOPER: Your Honor, I'd like to mark
8 another document for identification. This would be
9 customer application for Jeffrey Elders.

10 JUDGE DIPPELL: It will be marked as
11 Exhibit No. 4.

12 (EXHIBIT NO. 4 WAS MARKED FOR
13 IDENTIFICATION BY THE REPORTER.)

14 MR. COOPER: Again, I've provided copies of
15 what has been marked as Exhibit 4 to the folks in the
16 room, as well as Ms. Bolden.

17 BY MR. COOPER:

18 Q. Ms. Bolden, do you recognize the document
19 that has been marked as Exhibit 4?

20 A. Yes. This is again off the customer
21 service system. It is the customer's application. It's
22 information we take from the customer when we begin to
23 initiate services or we update services.

24 Q. Again, this is a document that you
25 retrieved from the MGE customer service records?

1 A. That is correct, yes, sir.

2 Q. Do you see on that document, oh, maybe a
3 little less than halfway down on the left side, there's a
4 line that says employment?

5 A. Yes.

6 Q. Okay. What does it -- what is reflected in
7 employment for Mr. Elders?

8 A. In employment it says, working for owner,
9 and then gives his date of birth.

10 Q. And then down below, do you see a remarks
11 section?

12 A. Yes.

13 Q. And what is reflected next to remarks?

14 A. Can contact John Murphy, boss.

15 Q. And is E/C, is that emergency contact?

16 A. Yes.

17 Q. Ms. Bolden, I'd like to do one more thing
18 while we're here. Do you still have Exhibits 1 and 2 in
19 front of you?

20 A. Yes.

21 Q. Exhibit 1 would be account analysis for
22 Mr. Elders, and Exhibit 2 would be account analysis for
23 Mr. Smith. Do you have those?

24 A. Yes, I do.

25 Q. Could you compare the telephone numbers for

1 Mr. Elders and Mr. Smith?

2 A. Mr. Elders' number is 816/210-3162, and

3 Mr. Smith's number is the same number, area code

4 816/210-3162.

5 MR. COOPER: Your Honor, while I do have

6 additional evidence to present, I believe that's all I

7 have for Ms. Bolden, so I would tender her for

8 cross-examination and offer at this time Exhibits 1, 2, 3

9 and 4 into evidence.

10 JUDGE DIPPELL: Mr. Smith, are you still

11 with us?

12 MR. SMITH: Yes, ma'am.

13 JUDGE DIPPELL: Okay. Mr. Cooper has

14 offered into evidence the exhibits that he's presented.

15 Exhibit No. 1 is the -- an account analysis of Jeffrey

16 Elders. It's basically a computer printout that you've

17 heard Ms. Bolden testify to.

18 MR. SMITH: Yes, ma'am.

19 JUDGE DIPPELL: Do you have any objection

20 to that document coming into evidence?

21 MR. SMITH: Only one thing, the phone

22 numbers, the 210-3162, that phone number is the owner of

23 the house.

24 JUDGE DIPPELL: Okay.

25 MR. SMITH: And evidently Mr. Elders used

1 the same phone to get his gas turned on as I did.

2 JUDGE DIPPELL: I'll let you -- we may let
3 you have an opportunity to explain that at another time,
4 but as far as this document coming into evidence, do you
5 have any objection to it?

6 MR. SMITH: I guess not, no. I don't
7 understand what I could object to.

8 JUDGE DIPPELL: Okay. Well, I'm going to
9 go ahead and allow that into evidence. You'll have an
10 opportunity to cross-examine the witness about these
11 documents, if you want, at that time.

12 Exhibit No. 2 is the account analysis for
13 Roy D. Smith. Do you have any objection to that document?

14 MR. SMITH: No. I think from what I heard
15 it was all correct.

16 JUDGE DIPPELL: Exhibit No. 3 is also a
17 customer application. It's another computer printout that
18 you heard the -- I'm sorry, Exhibit No. 3 is the customer
19 premise activity, which is a list of customer activity at
20 that address, and you've heard the witness testify to
21 that. Do you have any objection to that document?

22 MR. SMITH: I'm not -- I can't remember
23 which one was which. You're trying to explain it to me,
24 but --

25 JUDGE DIPPELL: This is the list of who has

1 lived at the property and had gas service there.

2 MR. SMITH: I know Jeff did and I know I
3 did, so I guess there would be no questioning.

4 JUDGE DIPPELL: Okay. Well, you'll have an
5 opportunity to question the witness about it later. Right
6 now I'm just wanting to know if you have any objection to
7 the document coming into evidence?

8 MR. SMITH: No.

9 JUDGE DIPPELL: Then I will admit Exhibit
10 No. 3.

11 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

12 JUDGE DIPPELL: And Exhibit No. 4 is
13 customer application. That is for Mr. Elders, and it's
14 another computer printout that the witness has testified
15 about. Would you have any objection to that document
16 coming in?

17 MR. SMITH: No. It's not mine, so --

18 JUDGE DIPPELL: All right. Then I will
19 enter that document into evidence.

20 JUDGE DIPPELL: So that's Exhibits 1, 2, 3
21 and 4 are entered into evidence.

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

24 MS. SHEMWELL: Staff has no objection.

25 JUDGE DIPPELL: Thank you, Ms. Shemwell.

1 MR. SMITH: Your Honor?

2 JUDGE DIPPELL: Yes.

3 MR. SMITH: Mr. Murphy would like to say a
4 few things about the witness or something he asked me.

5 JUDGE DIPPELL: Well, we'll take that under
6 consideration, and if the Commissioners have further
7 questions for Mr. Murphy, we'll call him back, but at this
8 time he's no longer participating.

9 MR. SMITH: Okay. Thank you.

10 JUDGE DIPPELL: Okay. I believe this will
11 be your opportunity, then, Mr. Smith, if you would like to
12 cross-examine Ms. Bolden about her testimony or ask her
13 other questions related to your case, you may do so.

14 MR. SMITH: Okay. The only thing I can
15 think of is that that phone number is Mr. Murphy's, and he
16 must have used the same phone. Other than that, I'd like
17 to call Mr. Murphy as a witness sometime here as soon as
18 we can do that.

19 JUDGE DIPPELL: Okay. I'll give you an
20 opportunity to call a rebuttal witness. I believe I said
21 that that would be allowed. But do you have any questions
22 specifically for Ms. Bolden?

23 MR. SMITH: No. From what I heard, no.

24 JUDGE DIPPELL: All right. Does Staff have
25 any questions for Ms. Bolden?

1 CROSS-EXAMINATION BY MS. SHEMWELL:

2 Q. Ms. Bolden, I'm Lera Shemwell, representing
3 the Staff in this case. I wanted to ask you, what
4 information did you receive in November 2003 that
5 convinced you that Mr. Smith had lived at the 16th Street
6 address prior to June 1?

7 A. We had did our investigation by checking
8 with the light company. We did not receive the picture ID
9 we had requested or any proof of where he had been living,
10 and so we used that information that we had received to
11 determine that Mr. Smith had not made any attempt to get
12 the lights in his name. They were still in Mr. Elders'
13 name, and we could not get any information from Mr. Smith
14 as to where he was living.

15 And we had told him that if we turn the
16 services on, that the service -- the gas bill would
17 possibly be transferred to his address, to his active
18 account as we had no proof where Elders were or where
19 Mr. Smith was prior to.

20 Q. Prior to June 1?

21 A. Prior to June 1, yes.

22 Q. Did you ask Mr. Smith for a deposit on the
23 account?

24 A. No, we did not.

25 Q. And I just want to verify, you said that he

1 has not actually himself made a payment on the account; is
2 that right?

3 A. That is correct.

4 MS. SHEMWELL: Thank you. That's all I
5 have. Thank you.

6 JUDGE DIPPELL: Are there questions from
7 Commissioners for Ms. Bolden? Chairman Gaw?

8 CHAIRMAN GAW: Judge, are these -- I don't
9 know that I have these marked down as exhibit numbers.

10 JUDGE DIPPELL: That one is Exhibit No. 4.

11 CHAIRMAN GAW: Thank you.

12 QUESTIONS BY CHAIRMAN GAW:

13 Q. Do you have Exhibit No. 4 in front of you,
14 ma'am?

15 A. Yes, I do.

16 Q. If you could perhaps explain a few things
17 for me on this document. First of all, the information
18 that's gathered here, who would do that? Who would gather
19 that information?

20 A. Our customer consultant at the time they
21 talk with the customer.

22 Q. All right. And do you know, does this
23 document reflect when that conversation would have taken
24 place?

25 A. If you look down to the user ID, it says

1 April 4 BAP; there's an updated on January 14th of '03.
2 So at that particular time, we had talked to Mr. Elders
3 and we updated information at that time.

4 Q. And that's -- again, where is that located?
5 A. Down below the middle, it says previous
6 address 7523 Oak, and you see password Social Security
7 number over to your right. Are you on No. 4? Date
8 updated, it says UPD.

9 Q. Can you tell me when I'm looking down this
10 list here, there's one category that says VIP customer.
11 What does that mean?
12 A. Very important customer. We have very few.

13 Q. And there's an N beside that. I see that.
14 Does that mean no?
15 A. No.

16 Q. What do you have to be to be a very
17 important customer?
18 A. I couldn't tell you, sir. We have very --
19 I've not seen one in my lifetime at 34 years in the
20 company.

21 Q. You've not seen one. But you don't know
22 what it takes to qualify for that category?
23 A. No, I don't, sir.

24 Q. But that line item appears on papers of
25 this type; is that correct?

1 A. That is correct.

2 Q. What would you do if you saw one of those?

3 A. I'd probably be looking for someone to tell
4 me why they were a very important customer.

5 Q. Would they receive some different treatment
6 than someone else?

7 A. I don't know that they would. I imagine
8 that what would happen with that customer would be there
9 would be some reason why we would look at the bill. It's
10 like a registered customer, in my opinion, if you see
11 where it says registered customer.

12 Q. Yes.

13 A. Okay. If there were a yes in there, that
14 customer would -- their bills, their final bill -- I'm
15 sorry -- their notices would be handled differently than
16 if I were a regular customer. It would not go out to the
17 mail right away. We would look at that for a reason to
18 maybe the customer needed some additional help.

19 A registered customer is a person of
20 elderly age or handicap that we would be sure we'd be
21 making a third-party contact before we would do any
22 disconnect with that customer. The VIP I would assume
23 would be the same thing; we would hold that bill and be
24 talking directly to that customer.

25 Q. You're just not sure what it takes to

1 qualify for that category?

2 A. No, sir.

3 Q. A diversion customer, what is that?

4 A. That customer has done a little something

5 illegal. He's turned the gas service on by either using a

6 hose, stolen a meter, various things like that that would

7 be initiated, and that is carried on our records that we

8 do have customers of that nature and we do watch those.

9 Q. All right. So if that had ever occurred in

10 the past history dealing with that customer, that would

11 show up as a Y there instead of an N?

12 A. Yes.

13 Q. All right. And life support customer,

14 that's what?

15 A. Life support is some customer is in need of

16 have to have -- always have gas service on because of, you

17 know, endangerment to their health. There would be a Y

18 there, and again no disconnect would be done until we can

19 make contact with someone personally before we would

20 disconnect service there.

21 Q. Okay. Under the remarks category, I've got

22 E/C John Murphy/boss, 816/941-0938. Do you see that?

23 A. Yes.

24 Q. Tell me what all that means.

25 A. First of all, in the course of our

1 business, we do ask the customer if there is a contact
2 person in case of an emergency.

3 Q. That's what the E/C stands for?

4 A. That's exactly right.

5 Q. Okay.

6 A. And he gave us John Murphy, his boss, and
7 the phone number.

8 Q. All right. And so would any of this
9 information have come from anyone other than Mr. Murphy,
10 or would you be able to tell that from this document? Or
11 excuse me, from Mr. Elders.

12 A. The information would have come from
13 Mr. Elders, I assume, we would have been talking to at the
14 time.

15 Q. And if it had come from anyone else, would
16 that be apparent on this document?

17 A. No, it would not, but we would have asked
18 to identify whom we were talking to, either by Social
19 Security number or where you say -- see where it says
20 password, PSWD, we would ask for that information prior to
21 talking to the customer.

22 Q. All right. If there were other individuals
23 living in this household, would that -- would there have
24 been requests to disclose those individuals at the time
25 from Mr. Elders?

1 A. Yes, where you see where it says spouse's
2 name, and it says single. If there were a roommate, we
3 would ask that information at that time, and we would list
4 those down in the remark area.

5 Q. All right. So there's -- so were those --
6 are those questions -- at that point in time when this
7 information was gathered, would those questions have been
8 asked?

9 A. Yes.

10 Q. All right. And what does this document say
11 to you that the response was from Mr. Elders?

12 A. That Mr. Elders was the only one living at
13 the premises there. He's single. He gave us a phone
14 number, a home and work phone number. He gave us where he
15 was employed and by whom. He gave us a previous address
16 where he lived at. He told us to use his Social Security
17 number as his password. He gave us an emergency contact
18 of John Murphy, his boss, with a phone number of area code
19 816/941-0938.

20 Q. So it doesn't show anyone else living at
21 the address according to Mr. Elders; is that correct?

22 A. That is correct.

23 Q. How often is this information updated
24 that's shown on Exhibit No. 4, as a general policy?

25 A. General policy is when I talk to the

1 customer to update.

2 Q. All right. So would the fact that -- the
3 date that's on this Exhibit No. 4 be the last time that
4 someone from the company had talked to Mr. Elders?

5 A. Yes.

6 Q. And that date again was what date?

7 A. January the 14th, 2003.

8 Q. And the first contact that your records
9 show that you had with Mr. Smith regarding this address
10 was when?

11 A. November the 10th, 2003.

12 Q. And between July 1st and November the 21st
13 of '03, was there any MGE gas service at the service
14 address, 5823 East 16th?

15 A. I'm sorry. The dates again you asked?

16 Q. Between 7/1/03 and 11/21.

17 A. There was no gas there, no, sir.

18 Q. So it would have been -- when it says date
19 account finalized 7/1/03, would that have been the date
20 that it was actually turned -- the gas was turned off?

21 A. Are you looking at Exhibit 1?

22 Q. I'll have to check.

23 JUDGE DIPPELL: Exhibit 3.

24 THE WITNESS: I'm sorry. Here we go.

25 Thank you

1 BY CHAIRMAN GAW:

2 Q. Sorry.

3 A. That's okay. The actual shutoff date is
4 prior to the final date we have to bill it. So it was
5 shut off actually on June the 24th, 2003. The final bill
6 was rendered on July 1st, 2003.

7 Q. Okay. Did you have a conversation with
8 Mr. Smith in regard to this account at 5823 East 16th?

9 A. Yes, I did.

10 Q. And when was that and how many
11 conversations did you have? I should ask you the first
12 question first. How many conversations did you have?

13 A. I had actually two conversations with
14 Mr. Smith.

15 Q. Do you recall when those were?

16 A. The first conversation was done prior to
17 the turnoff. I did not talk with him on the 10th of
18 November. That was a conversation that was held with our
19 consultant. At the time the account was then referred to
20 me to investigate, which I did do. I did talk to
21 Mr. Smith prior to the turn on and asked for information
22 again, rental agreement, ID and proof. We did receive the
23 rental agreement.

24 Q. When was that conversation?

25 A. Close to or before the November 21st

1 turn-on date. Sorry. I couldn't give you an exact date
2 on that.

3 Q. Do you have any -- do you recall the
4 conversation?

5 A. Other than I just asked for the rental
6 agreement and ID and proof of where he had been living.

7 Q. And what was the response that you
8 received?

9 A. I was going to -- he was going to mail --
10 fax that information to me, and I did receive the rental
11 agreement.

12 Q. Anything else that you received from him
13 other than the rental agreement?

14 A. No, I did not receive any additional
15 information.

16 Q. All right. And did you have another
17 conversation with him after that?

18 A. Yes, to initiate the service.

19 Q. And when was that?

20 A. That was done on November the 20th. We did
21 open the service on November 21st.

22 Q. So the first conversation you had would
23 have been prior to November the 20th?

24 A. Yes.

25 Q. Okay. And at the time you had the second

1 conversation, again, what did you tell Mr. Smith and what
2 did he tell you?

3 A. At that time I asked Mr. Smith for the
4 other information. It was not available. We had already
5 done our investigation by looking into the other utilities
6 and made a determination that it was possible that
7 Mr. Smith had also been living at the residence and had
8 benefited from gas service the same time it was in
9 Mr. Elders' name. We initiated the services.

10 Q. So I want to know what the conversation
11 was, though, if you recall.

12 A. Okay. Other than getting the information,
13 I did tell Mr. Smith that the service would be initiated
14 for him in his name and that the bill of Mr. Elders would
15 be transferred.

16 Q. What was his response to that information
17 about the bill being transferred?

18 A. I really can't recall what his conversation
19 or his comment was at the time. He was glad to get his
20 service turned on.

21 Q. You don't remember whether he objected to
22 that transfer?

23 A. I don't recall, sir. Really, I cannot tell
24 you.

25 Q. Did you tell him that it would be

1 transferred or that it might be transferred?

2 A. No, that it would be transferred.

3 Q. And at that point in time, tell me what the
4 basis was for the transfer of that balance of Mr. Elders'
5 to Mr. Smith? What information were you relying on to
6 transfer that?

7 A. The information was the -- information from
8 the other utility, which was Kansas City Power & Light,
9 that the lights were still in Mr. Elders' name and was
10 current.

11 Q. But the lights were still in Mr. Elders'
12 name?

13 A. That is correct.

14 Q. And so based upon the fact that it was in
15 Mr. Elders' name, tell me the thought process of why that
16 caused you to transfer Mr. Elders' bill to Mr. Smith.

17 A. We had no other proof that Mr. Smith or
18 Mr. Elders -- or Mr. Elders had moved from the property.
19 The lights were still in his name. Mr. Smith had not
20 applied for light services in his name at the property, if
21 he was living there. We did know at the time that
22 Mr. Smith did have an outstanding debt with the light
23 company, and that may have been the reason why he did not
24 transfer the services to his name and instead kept it in
25 Mr. Elders' name.

1 Q. Was there an assumption that Mr. Elders and
2 Mr. Smith, at that point in time, were still residing at
3 that house as 5823 East 16th in November?

4 A. Yes, there was that assumption, sir.

5 Q. If you had -- if you had received
6 documentation that Mr. Elders had not resided at that
7 address since prior to June of 2003, would that have
8 changed your analysis of whether or not that bill should
9 have been transferred at the time?

10 A. Yes, if we'd have proof either Mr. Elders
11 had moved or Mr. Smith had proven to us where he had been
12 living.

13 Q. All right. Let's stick with the first
14 initially here.

15 A. Okay.

16 Q. If you had received documentation that
17 Mr. Elders had moved prior to June out of this residence,
18 what would that -- what would have happened in regard to
19 the transfer of this -- of this -- Mr. Elders' bill to
20 Mr. Smith?

21 A. It would not have been done, sir.

22 Q. I want to be -- I want to be fair about
23 this, because the second part of this is still there.
24 This documentation that Mr. Smith had not resided at this
25 residence, that second part that we were talking about a

1 while ago, would he have had to have demonstrated that in
2 some fashion if you were satisfied that Mr. Elders had
3 moved out prior to June?

4 A. Probably not, sir.

5 Q. Okay.

6 A. That would not be necessary.

7 CHAIRMAN GAW: I think that's all I have.
8 Thank you, Judge. Thank you, ma'am.

9 THE WITNESS: Thank you.

10 JUDGE DIPPELL: Okay. I mentioned earlier
11 that we might take a lunch break, and I think this is
12 probably a pretty good time to go ahead and -- okay.
13 Commissioner Clayton doesn't have any questions. Do the
14 other Commissioners have any questions for this witness?

15 COMMISSIONER MURRAY: Just two or three.

16 JUDGE DIPPELL: Maybe we'll go ahead then
17 and see if we can finish this witness. She looks anxious
18 to get off the witness stand.

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Thank you, Ms. Bolden. You indicated that
21 a rental agreement was supplied when you requested it; is
22 that right?

23 A. Yes.

24 Q. And that was supplied by Mr. Smith?

25 A. It was faxed to us by Mr. Murphy actually.

1 Q. Mr. Murphy?

2 A. Uh-huh.

3 Q. Okay. You indicated also that you didn't

4 ask Mr. Smith for a deposit. Why is that?

5 A. Other than all of the confrontation we'd

6 had, they probably just didn't need to add any more fuel

7 to the fire.

8 Q. Is it customary to require a deposit?

9 A. We could request deposits if we have

10 customers who have not worked for a year, have not had --

11 or have had problems with the customer previously with

12 debts, outstanding debts or a diversion customer or a

13 customer who has tried to turn the gas back on themselves

14 and we've got it registered, we will go ahead and request

15 a deposit. Normal process right now, we have not been

16 asking a lot of customers for deposits, the residential

17 customers.

18 Q. Okay. But in a situation like this, you

19 normally would have required a deposit?

20 A. With Mr. Smith telling us he was at that

21 time working for the owner of the property, and that was

22 his normal process of doing business of where he worked, I

23 did not at that time ask for a deposit.

24 Q. And who was the owner of the property at

25 that time?

1 A. John P. Murphy.

2 Q. And I guess I have trouble figuring out
3 what is the rationale that would lead you to think that
4 you did not need to require a deposit.

5 A. I really can't give you any rationale,
6 ma'am. There was a lot of conversation with Mr. Smith,
7 and we were trying to get the gas service on. It was
8 getting cooler and we tried to work our process out as
9 best we could.

10 Q. So you were somewhat accommodating to
11 Mr. Smith by turning it on without a deposit, is that --

12 A. That is correct.

13 Q. And something you said a few minutes ago
14 confused me a little. You said if you had had evidence
15 that Mr. Elders had moved out prior to June 1, and I want
16 to be sure I'm understanding what you're saying. Are you
17 saying you would not have needed to know or not have
18 needed proof of where Mr. Smith had been living?

19 A. If Mr. Elders had moved out and given us a
20 forwarding address or even had transferred service to
21 another address, there would be no reason for us to have
22 to have information from Mr. Smith proving that he was
23 just moving in there. We would have some information
24 showing that Mr. Elders moved, forward to someplace else.
25 Service was disconnected for nonpayment. We had no

1 additional information on Mr. Elders at all.

2 Q. And tell me again, when was service
3 discontinued for nonpayment?

4 A. Service was actually discontinued on
5 June 24th, 2003. It was final in our records July 1, 2003
6 for Mr. Elders.

7 Q. And the amount owing by Mr. Elders was for
8 what period of time?

9 A. If I can look at the exhibit, please, for
10 you. Well, the amount is up through the date of the final
11 bill on July 1 of \$583.43. It was billing back. He was
12 never really ever current with the account with us. He
13 made -- there were payments made on the account, and there
14 was an Energy Assistance payment received on the account
15 as well, but he was never really ever current. He made
16 payments. That's all I can say there.

17 Q. So the delinquent amount was from -- what
18 was the beginning date?

19 Q. His beginning date or his first billing
20 date was October the 30th of 2002, and that bill was
21 22.62, and it continues to go forward.

22 Q. Okay. And when you say if you had had
23 proof that Mr. Elders had moved out, what period of time
24 or what point in time would you have needed to know that
25 Mr. Elders moved out?

1 A. Well, if Mr. Elders can prove to us that he
2 moved out in June, then we would have accepted the fact
3 that his final billing was his final bill of the 583.42 at
4 that time. We did have a lease to show that Mr. Smith
5 moved in in June, so there is a gap of time that Mr. Smith
6 possibly was responsible for the bill of 32.99 that would
7 not have been Mr. Elders' bill.

8 Q. And you did not receive any proof that
9 Mr. Elders had moved out?

10 A. That is correct.

11 Q. Exhibit 3?

12 A. Yes.

13 Q. What does -- what does it mean when an
14 account is finalized? Does that mean the final bill was
15 rendered?

16 A. Yes, that's the final bill rendered date.

17 Q. So if there's some overlap in dates between
18 the final bill and then the date another account is
19 opened; for example, Mr. Murphy, John P. Murphy, date
20 account finalized was 4/13/98, and the date account opened
21 for McClenton is 4/6/98. Is there any way to tell what
22 was the final date of service that Mr. Murphy was billed
23 for on 4/13/98?

24 A. He was actually billed up to the date of
25 4/6/98 when the McClenton services was initiated. That is

1 the final date that we get a final billing on the account,
2 that's on the account finalized.

3 Q. Which is the final date that you get the
4 final reading?

5 A. 4/6/98 was the final reading and we
6 initiated the account for McClenton. I'm sorry. Let me
7 back up that, because she gave a call to us on 4/6/98 to
8 initiate service, and that really -- that should be the
9 date that she did open service with us.

10 Q. Okay. And at that time you would have
11 taken a final reading for the final bill to Mr. Murphy?

12 A. Yes.

13 Q. And that would be the same for if you look
14 at Dunbar date finalized was January 8 of 2001?

15 A. Uh-huh.

16 Q. And Miller, the date account opened was
17 12/29/2000. In that instance, would Dunbar have been
18 billed for service up to 12/29?

19 A. That's right, two days.

20 Q. I'm sorry. Where are you getting two days?

21 A. If you notice, the date opened for Miller
22 was 12/29, and the date opened for Dunbar was 12/27/2000.
23 It was only a couple of days that that service would have
24 been in Ms. Dunbar's name.

25 Q. So Mr. -- so Ms. Dunbar received her final

1 bill, the final bill was rendered on January 8, '01 for
2 service between 12/27 and 12/29/2000?

3 A. That is correct.

4 COMMISSIONER MURRAY: Okay. I think that's
5 all I have. Thank you.

6 JUDGE DIPPELL: Thank you. Commissioner
7 Appling, did you have any questions?

8 COMMISSIONER APPLING: No questions.

9 JUDGE DIPPELL: I have just a couple,
10 Ms. Bolden.

11 FURTHER QUESTIONS BY JUDGE DIPPELL:

12 Q. Do you know Mr. Smith personally at all?

13 A. No.

14 Q. Do you know Mr. Elders personally at all?

15 A. No.

16 Q. Do you know Mr. Murphy personally?

17 A. No, ma'am.

18 JUDGE DIPPELL: That's all the questions I
19 have for you. Mr. Smith?

20 MR. SMITH: Yes.

21 JUDGE DIPPELL: At this time we usually
22 allow the -- we would allow you to ask any questions of
23 Ms. Bolden based on questions that the Commissioners have
24 asked. Do you have any additional questions that you'd
25 like to ask Ms. Bolden?

1 MR. SMITH: I mean, not really. I'd have
2 to say no.

3 JUDGE DIPPELL: Okay. Are there any
4 additional questions from the Staff?

5 MS. SHEMWELL: None, thank you.

6 JUDGE DIPPELL: Is there any redirect from
7 Missouri Gas Energy?

8 MR. COOPER: No, your Honor.

9 JUDGE DIPPELL: All right. I believe
10 that's all the questions then for you, Ms. Bolden, and you
11 may be excused.

12 Mr. Cooper, do you have additional
13 witnesses?

14 MR. COOPER: I have no additional
15 witnesses. I have two additional items, or maybe three, I
16 guess, of evidence that I would like to offer, two of
17 which probably will not require much time. And really I
18 should say the second and third of which wouldn't require
19 much time. The first of which is a deposition in which,
20 after I offer it, I'm going to ask the Commission to be
21 able to read portions of that to the Commission here
22 today, so I guess there is some time associated with that.

23 JUDGE DIPPELL: Okay. Is it going to be
24 lengthy portions that you're reading? Do you have a time
25 estimate?

1 MR. COOPER: No, I don't. It's probably
2 15 minutes or less I would suspect it would take us to
3 read the portions of it.

4 JUDGE DIPPELL: And is that all the other
5 evidence that you're going to be presenting today?

6 MR. COOPER: We may also ask the Commission
7 to take administrative notice of a couple of items.

8 MR. COOPER: And, Mr. Smith, you indicated
9 you'd like to call Mr. Murphy back to the stand; is that
10 correct?

11 MR. SMITH: Yes.

12 JUDGE DIPPELL: Okay. Do you expect that
13 testimony to take very long?

14 MR. SMITH: No.

15 JUDGE DIPPELL: Okay. I think I'm going to
16 just -- if it's agreeable with the Commissioners, I think
17 I'll just go ahead then and we'll just keep proceeding.

18 MR. COOPER: May I ask one question? I
19 guess it probably is directed more towards Ms. Shemwell.
20 Are we expecting Mr. Russo to testify as well today?

21 MS. SHEMWELL: He's available, yes.

22 JUDGE DIPPELL: Were you intending to call
23 him or he's just available for questions, Ms. Shemwell?

24 MS. SHEMWELL: I was going to call him and
25 then mention his reports, go through and ask if he

1 prepared the reports, that sort of thing.

2 JUDGE DIPPELL: It's sounding like it's
3 going to take a little bit longer than I anticipate.
4 We're going to go ahead then and break for lunch. It's --
5 according to the clock here, it's about 20 -- or it's
6 about 18 minutes before 1, so we're going to break and
7 reconvene at 2 o'clock.

8 MR. SMITH: At 2 o'clock?

9 JUDGE DIPPELL: Yes.

10 MR. SMITH: All right.

11 JUDGE DIPPELL: Mr. Smith, I will return a
12 call to you at two o'clock. Okay?

13 MR. COOPER: I'm sorry, your Honor. Is
14 Mr. Smith still on the line?

15 JUDGE DIPPELL: Mr. Smith, are you still
16 available?

17 MR. SMITH: Yeah, I'm still here.

18 MR. COOPER: I don't know what the
19 Commission's preference is. We probably can come back
20 sooner than two if that meets anyone else's needs. But
21 I'll just offer that up.

22 JUDGE DIPPELL: All right. Would 1:30 be
23 agreeable to you, Mr. Smith?

24 MR. SMITH: Yes. I'm good with whatever.

25 JUDGE DIPPELL: Then we'll come back at

1 1:30. That's about 46 minutes from now. All right. We
2 can go off the record.

3 (A BREAK WAS TAKEN.)

4 JUDGE DIPPELL: We've returned from our
5 break. It was mentioned to me during the break that some
6 of the exhibits that MGE presented had Social Security
7 numbers provided on them, and as those numbers are not
8 necessary for this hearing, we're going to redact the
9 Social Security numbers. We're going to take those off of
10 the documents before they're actually filed in the public
11 record. Is there any objection to doing that?

12 MS. SHEMWELL: One more thing that I might
13 mention. I believe that Mr. Smith's Social Security
14 number is on his written complaint, and unless -- oh, I'm
15 sorry -- it's on the lease agreement. We might also --

16 JUDGE DIPPELL: At this point the lease
17 agreement hasn't been offered.

18 MS. SHEMWELL: So that's not a problem.
19 Thank you.

20 MR. COOPER: No objection from the company.

21 JUDGE DIPPELL: Mr. Smith, do you have
22 objection if we remove Social Security numbers from those
23 previous exhibits?

24 MR. SMITH: You mean mine?

25 JUDGE DIPPELL: I believe one of them may

1 be yours.

2 MR. SMITH: Okay. Yes. Please. I don't
3 want anybody having my Social Security number, if that's
4 the question.

5 JUDGE DIPPELL: Right. We'll just black
6 those out on the documents that were presented, and when
7 they go into the record, they'll just show that -- they'll
8 be altered in that manner.

9 So, Mr. Cooper, you had additional evidence
10 you wanted to present?

11 MR. COOPER: I do. It probably would be
12 just as well to go ahead and mark these exhibits first and
13 then we can maybe move on from there.

14 JUDGE DIPPELL: All right.

15 MR. COOPER: I'll have four exhibits, I
16 think, at this time that I would like to mark. The first
17 exhibit is a deposition of Robin Miller, R-o-b-i-n,
18 M-i-l-l-e-r.

19 JUDGE DIPPELL: That can be Exhibit No. 5.

20 MR. COOPER: The next exhibit I would like
21 to mark would be -- let's see, how to describe it -- a
22 certified copy of driver information for Mr. Smith.

23 JUDGE DIPPELL: That's a certified copy of
24 driver information for Mr. Smith?

25 MR. COOPER: Correct.

1 JUDGE DIPPELL: Okay. I'll mark that as
2 Exhibit No. 6.

3 MR. COOPER: The next document would be
4 certified copy of Mr. Smith's driving record.

5 JUDGE DIPPELL: Okay. I'll mark as Exhibit
6 No. 7 the certified copy of Mr. Smith's driving record.

7 MR. COOPER: And then the next document
8 would be the return of subpoena issued to Jeffrey Robert
9 Elders.

10 JUDGE DIPPELL: I'll mark that as Exhibit
11 No. 8, return of subpoena to Jeffrey Robert Elders.

12 MR. COOPER: And at this time, I'll go
13 ahead and pass out copies, if that's acceptable.

14 JUDGE DIPPELL: Yes, please. If you would,
15 just go ahead and give me the Commissioners' copies.

16 MR. COOPER: Okay. And as part of this
17 process, I'll be giving the original of the deposition and
18 of the two certified drivers' documents to the court
19 reporter, if that's how we prefer to do it.

20 JUDGE DIPPELL: That's the way I'd like it.
21 Thank you.

22 (EXHIBIT NO. 5 THROUGH 8 WERE MARKED FOR
23 IDENTIFICATION BY THE REPORTER.)

24 JUDGE DIPPELL: Whenever you're ready to go
25 forward, Mr. Cooper.

1 MR. COOPER: Your Honor, we have provided
2 copies -- or I've provided copies to the Commission, to
3 the other parties that are in the room, to the court
4 reporter. The first document that we've marked was a
5 deposition of Robin Miller. Robin Miller, as can be seen
6 by the text of the deposition, is an employee of Kansas
7 City Power & Light.

8 This deposition concerns the electric
9 account for 5823 East 16th Street in Kansas City,
10 Missouri, and was taken pursuant to a subpoena issued by
11 this Commission. Notice of the request was provided to
12 Mr. Smith at the time that request was made. The Notice
13 of Deposition was filed with the Commission thereafter,
14 and a copy of the notice was provided to Mr. Smith.

15 And accordingly at this time we would offer
16 into evidence Exhibit 5, the deposition of Robin Miller,
17 and utilizing as our basis for that evidentiary offer
18 Missouri Rule of Civil Procedure 5707A, which states that
19 any part of a deposition that is admissible under the
20 rules of evidence applied as though the deponent were
21 testifying in court may be used against any party who is
22 present or represented at the taking of deposition or who
23 had proper notice thereof. Depositions may be used in
24 court for any purpose.

25 JUDGE DIPPELL: Is there any objection to

1 the deposition of Robert -- I'm sorry -- Robin Miller
2 coming into evidence? Mr. Smith, do you have any
3 objection?

4 MR. SMITH: I don't see why I should, no.

5 JUDGE DIPPELL: Staff?

6 MS. SHEMWELL: None, thank you.

7 JUDGE DIPPELL: All right. Then I will
8 allow and enter Exhibit 5 into evidence.

9 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

10 MR. COOPER: At this time, your Honor, and
11 I'm at a little -- I guess I'm plowing new ground for me
12 personally, because we haven't utilized depositions in
13 this fashion many times in the past because we've utilized
14 prefiled testimony much of the time.

15 What I would like to do at this point, if
16 it pleases the Commission, there are what I believe to be
17 significant parts of that deposition that I would like to
18 read to the Commission and into the transcript at this
19 point, and how I would propose to do that is to have
20 Mr. Loepp, who is here with me and who took this
21 deposition, read the questions and I read the answers of
22 Ms. Miller, if that's acceptable to the Commission.

23 JUDGE DIPPELL: That's acceptable. Go
24 ahead.

25 MR. LOEPP: Beginning at page 3, line 9.

1 JUDGE DIPPELL: I need you to speak up just
2 a little bit, Mr. Loepp.

3 MR. LOEPP: Okay. Page 3, beginning at
4 line 9.

5 (PORTIONS OF THE DEPOSITION OF ROBIN MILLER
6 WERE READ INTO THE RECORD, QUESTIONS READ BY MR. LOEPP,
7 ANSWERS READ BY MR. COOPER:

8 Q. Would you state your name, please.

9 A. Robin Miller.

10 Q. Going to page 4, line 15. Would you tell
11 us who your employer is?

12 A. Kansas City Power & Light.

13 Q. Now page 5, line 10. Is the address 5823
14 East 16th Street in Kansas City, Missouri, is that in
15 KCP&L's territory?

16 A. Yes, it is.

17 Q. Continuing on page 5 at line 22. In front
18 of you are Exhibits 1 through 6, each being one page in
19 length. Would you just review these records -- excuse
20 me -- those records and tell us what basically they are.

21 A. Page 1 is the initial request for service
22 on November 21st of '02. The service was requested to be
23 put in Jeffrey Elders' name. That connect was taken at
24 12:39 on the 21st. At that time we determined it had been
25 in there since November 15, and we did a date back connect

1 for Mr. Elders at that time.

2 Q. Continuing now on page 6 at line 7. So

3 Mr. Elders was your customer effective November 15, 2002,

4 5823 East 16th Street?

5 A. Correct.

6 Q. Going to line 18 on page 6. You have

7 identified Exhibit No. 1. Could you identify Exhibit

8 No. 2, please?

9 A. It's a disconnect order. Mr. Elders called

10 in on March 17, 2004, requesting that service be removed

11 out of his name at 1:41 in the afternoon.

12 Q. On page 7, line 5. Now, would you identify

13 Exhibit 3, please?

14 A. This is a connect order called in by Roy

15 Smith on March 17, 2004, at the time of 1:43 p.m. in the

16 afternoon requesting service to be put into his name.

17 Q. Going to page 7, line 14. So by looking at

18 Exhibits 2 and 3, what we see is on March 17th, 2004,

19 within one minute of each other, Jeffrey Elders called to

20 have service taken out of his name and a minute later Roy

21 Smith called to have service put in his name?

22 A. Correct.

23 Q. In front of you is Exhibit 4. Would you

24 identify that record, please, or that exhibit?

25 A. This is the financial account statement

1 under Jeffrey Elders' account showing payments and bills
2 and also shows a transfer of his balance on his account.
3 Shows payments made and the dates of payments.

4 Q. When you're saying his account, are you
5 talking about payments made on the account of Jeffrey
6 Elders?

7 A. Correct.

8 Q. Now, page 8, excuse me, line 6. Now, by
9 reviewing -- by reviewing these records contained in
10 Exhibit 4, are you able to tell whether or not Roy Smith
11 made a payment on behalf of the account of Jeffrey Elders?

12 A. I show a payment of 134.90, which per the
13 memos and the account is a payment that Mr. Smith made
14 under Jeffrey Elders' account number.

15 Q. At line 12, continuing on page 8. Okay. I
16 think what we probably need to do then is to look at
17 Exhibit 7, as you refer to memos on the account.
18 Exhibit 7 is a four-page exhibit and would you look at
19 that record?

20 A. These are memos placed on accounts when a
21 customer calls in in reference to the property. On
22 March 16, 2004, our credit collections department
23 disconnected the service at 5823 East 16th Street for
24 nonpayment of the bill under Jeffrey Elders' name. At
25 that time, Roy Smith called us that day very upset about

1 the disconnect but hung up on the call center prior to any
2 questions we could ask him. Later on that afternoon, and
3 I'm sorry, I don't have the names in front of me on this,
4 Mr. Smith called and said he would pay the disconnect
5 amount and call back for the reconnect order, advised us
6 that he had stayed here and said that once he brought the
7 account current, he would then call back and have the
8 service put in his name.

9 Q. Going to page 11, line 18. Would you
10 identify Exhibit 5, please?

11 A. Exhibit 5 is the account financial
12 statement of Roy Smith. His account opened on 3/17. The
13 first official transfer was \$84.68, which came from an old
14 address that Mr. Smith had with us. Then on 4/29 we
15 transferred the balance of Mr. Elders' account for 52.01
16 to Mr. Smith's account. When he originally called us for
17 a duplicate bill at the time of his -- of his connect
18 order on the 17th, the bill cycles sometimes don't run
19 exactly 30 days on a new account. It will sometimes range
20 between 35 to -- 30 to 35 days, so that's why Mr. Smith
21 had originally not got a bill when he had called us.

22 On 4/19 a bill was issued to him for the
23 usage from 3/17 through 4/28.

24 Q. Continuing at page 12, line 8 --

25 JUDGE DIPPELL: Let me interrupt just a

1 moment. Mr. Cooper, you said 30 to 35 days. Is that --

2 MR. COOPER: My apology. The deposition
3 reads, the sentence beginning on line 3, page 12, it will
4 sometimes range between 30 to 45 days, so that's why
5 Mr. Smith had originally not got a bill when he had called
6 us. On 4/19 a bill was issued to him for the usage from
7 3/17 through 4/28.

8 JUDGE DIPPELL: Go ahead.

9 Q. Page 12, line 8. Is that the information
10 also from Exhibit No. 6, or what's Exhibit No. 6 showing?

11 A. Exhibit No. 6 is what we call a service
12 order query on the property. In other words, it lists
13 every single action the company has taken on that property
14 as far as turn-ons, meter exchanges, disconnects for
15 nonpayment. This shows that on November 15, KCP&L turned
16 on the service at the meter for Jeffrey Elders. It shows
17 on March 16 of 2004, we disconnected Jeffrey Elders at the
18 property for nonpayment.

19 It shows March 17th that we did a turnoff
20 read at meter because the meter was already disconnected
21 for nonpayment. We just went out and took a read to close
22 it out for Mr. Elders. It also shows that on March 17,
23 2004, we went out and did a turn on at meter to turn the
24 service back on for Mr. Smith.

25 MR. COOPER: And that concludes the portion

1 of the deposition that we were hoping to read.

2 JUDGE DIPPELL: Thank you.

3 MR. SMITH: Your Honor?

4 JUDGE DIPPELL: Yes, Mr. Smith.

5 MR. SMITH: Can I say something, or is that

6 all right?

7 JUDGE DIPPELL: Do you have an objection to

8 make?

9 MR. SMITH: Right.

10 JUDGE DIPPELL: If it's just a

11 clarification, I don't really want that. But if you have

12 an objection, you can state that.

13 MR. SMITH: Okay. I object because the

14 person that called that they claim was Jeffrey Elders to

15 turn off the lights was me, and I didn't have a Social

16 Security number so I couldn't give that to them, but

17 Jeffrey Elders never called for the shutoff. I did that.

18 Thank you.

19 JUDGE DIPPELL: Could someone check and see

20 if that mike is on over the phone?

21 Thank you. I was having trouble hearing

22 you a little bit there, Mr. Smith. I could hear you,

23 but --

24 MR. SMITH: I'm sorry.

25 . JUDGE DIPPELL: I could hear you, but I

1 wasn't sure it was being picked up on our transmission,
2 but the microphone had gotten switched off. So it's fine
3 now.

4 All right. Mr. Cooper, would you like to
5 go ahead?

6 MR. COOPER: I would. At this time moving
7 on to Exhibit 6, which is certified copy of Mr. Smith's
8 driver's information as provided by the Department of
9 Revenue. I would like to offer into evidence Exhibit 6 at
10 this time, based upon Section 302.312 of the Missouri
11 Revised Statutes that provides copies of all papers,
12 documents and records lawfully deposited or filed in the
13 offices of the Department of Revenue, the Bureau of Vital
14 Records at the Department of Health and copies of any
15 records properly certified by the appropriate custodian or
16 the director shall be admissible as evidence in all courts
17 of this state and in all administrative proceedings.

18 JUDGE DIPPELL: Okay. Mr. Smith, what we
19 have as Exhibit No. 6 is the certified cover letter from
20 the Department of Revenue stating that these are their
21 official records and copies of your driver's license
22 information. Do you have any objection?

23 MR. SMITH: Yes. I don't think my driving
24 record has anything to do with this.

25 JUDGE DIPPELL: Okay. Is there any

1 objection from Staff?

2 MS. SHEMWELL: No.

3 JUDGE DIPPELL: I'm going to overrule your
4 objection, Mr. Smith. These are certified records from
5 the department, and as Mr. Cooper read earlier, we're
6 allowed to take notice and take notice of such official
7 records. So we're going to go ahead and allow them. I
8 believe --

9 MR. SMITH: All right.

10 JUDGE DIPPELL: -- Mr. Cooper is going to
11 show their relevance.

12 MR. COOPER: And I would point out to the
13 Commission that if you turn to page 2 of Exhibit 6, you
14 see a picture of Mr. Smith, and underneath that picture it
15 shows that as of 01/23/03, Mr. Smith had represented his
16 address to be 5823 East 16th Street, Kansas City, Missouri
17 64114.

18 I would also point out that if you turn to
19 the next page of Exhibit 6, you have, again, a picture of
20 Mr. Smith and which indicates that as of 01/24/00,
21 Mr. Smith represented his address on a driver's license to
22 be 8425 Flora, Kansas City, Missouri 64131.

23 Additionally, you'll see on that page that
24 the license that apparently was issued in the year 2000
25 contained an expiration date of 01/24/2003, which is one

1 day after the 01/23/03 issue date for the license that
2 appears on page 2. I think that the relevance -- I think
3 that the address Mr. Smith reports as of 01/23/03 is
4 relevant to when he may have resided at that address, and
5 I think that the second license record is relevant to the
6 credibility of some of the testimony that Mr. Smith
7 offered this morning as to why he was in to get a license
8 in January of '03.

9 JUDGE DIPPELL: All right. We did have
10 earlier testimony from Mr. Smith about his driver's
11 license, so I'm going to allow those to come into
12 evidence. Those are entered into evidence as Exhibit
13 No. 6.

14 (EXHIBIT NO. 6 WAS RECEIVED INTO EVIDENCE.)

15 MR. COOPER: Exhibit 7 is the -- is
16 actually the driver's record for Roy David T. Smith,
17 5823 East 16th Street, Kansas City, Missouri 64114. It
18 provides additional support for the fact that this license
19 was issued on 1/23/2003, and based upon the same statute
20 that I read from earlier, Section 30.312 Revised Statutes
21 of Missouri, I would offer that exhibit as well into
22 evidence.

23 JUDGE DIPPELL: All right. Mr. Smith, what
24 Exhibit No. 7 is is again another certified cover letter
25 from the Department of Revenue, and then a copy of your

1 driver record. Do you have any objection to those
2 documents?

3 MR. SMITH: No. I mean, not really. I
4 just hadn't thought that I had my license that long. When
5 he said that I had it over at 84-something Flora, that
6 could be, because I stayed there for a few weeks and I
7 paid this guy just weekly rent, and after that he threw me
8 out a week early and I got -- I was shafted on my money,
9 but that's neither here nor there.

10 JUDGE DIPPELL: All right. Staff have any
11 objection?

12 MS. SHEMWELL: We do not, thank you.

13 JUDGE DIPPELL: Then I will enter Exhibit
14 No. 7 into the record.

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

16 MR. COOPER: Your Honor, Exhibit 8 is a
17 copy of a subpoena for witness that was issued by the
18 Commission itself, I believe, to Jeffrey Robert Elders in
19 this case, GC-2004-0281, utilizing the address 5823 East
20 16th Street, Kansas City, Missouri. The document with
21 return is filed in the Commission's records in this case,
22 and can be derived from the electronic filing information
23 system or EFIS, and this document indicates at the bottom
24 that a deputy from the Court Administrator's Office,
25 Circuit Court of Jackson County, reported that in

1 attempting to serve Jeffrey Robert Elders at 5823 East
2 16th Street, that a lady said he hadn't lived there for at
3 least a month, and the date that the deputy attempted to
4 serve was between June 9 of 2004 and July 9 of 2004. And
5 I would ask that the Commission take administrative notice
6 of that document that appears in its official records.

7 JUDGE DIPPELL: Mr. Elders -- I'm sorry.
8 Mr. Smith, Exhibit No. 8 is a copy of a subpoena that the
9 Commission sent to Mr. Elders and was attempted service.

10 MR. SMITH: That was my girlfriend that
11 answered the door.

12 JUDGE DIPPELL: Okay. Would you have any
13 objection to --

14 MR. SMITH: No.

15 JUDGE DIPPELL: Okay. Staff, would you
16 have any objection?

17 MS. SHEMWELL: None, thank you.

18 JUDGE DIPPELL: The Commission will take
19 official notice of this record, Exhibit No. 8.

20 MR. COOPER: Your Honor, at this time I
21 have nothing further.

22 JUDGE DIPPELL: Thank you. Mr. Smith, I
23 believe you wanted to recall Mr. Murphy as a rebuttal
24 witness.

25 MR. SMITH: Yes, I've got a few questions I

1 wanted to ask him.

2 JUDGE DIPPELL: Is Mr. Murphy available?

3 Is he with you now or do I need to call him?

4 MR. SMITH: You'll need to call him.

5 JUDGE DIPPELL: At the previous number, is

6 that where he's available?

7 MR. SMITH: Right.

8 JUDGE DIPPELL: All right. I'm going to --

9 well, we'll just take a moment here. I'm going to go down

10 and make the call and so we'll just stay on the record

11 while I do that.

12 All right. Then, Mr. Murphy, you were

13 previously sworn to tell the truth. Do you recall?

14 THE WITNESS: Yes.

15 JUDGE DIPPELL: All right. You're still

16 under oath. And, Mr. Smith, I'll allow you to ask

17 questions.

18 JOHN MURPHY testified as follows:

19 DIRECT EXAMINATION BY MR. SMITH:

20 Q. I was just kind of curious how come

21 Mr. Elders said that he worked for you?

22 A. My recollection of that is he was having

23 trouble getting his gas turned on, and he told me after

24 the fact that he not only used me as a landlord reference,

25 but also as an employer reference because he didn't have

1 the number -- he was working doing concrete work for his
2 brother-in-law or something. He didn't have his number.
3 And he told me he used me as an employment reference also,
4 and told me that after the fact.

5 Q. And do you have a phone -- phone number
6 210-3162?

7 A. Yes, I do. That is my cellphone number,
8 and I believe Mr. Elders used that phone to get -- or used
9 it as a phone number for -- to -- for future contacts
10 also.

11 Q. I've only got one more question. They
12 mentioned a bill past due in '97. I was kind of curious
13 if you was aware of that.

14 A. Well, I've been able to get gas service on
15 after that, and I have not received a bill on that, to my
16 recollection. There may be an old bill out there, but I
17 have not received one from Missouri Gas Energy, and I'm
18 still a current customer of theirs and, I believe, in good
19 standing.

20 Q. I just didn't want to get stuck with that
21 one.

22 A. Well, let me know if they send you a bill.

23 JUDGE DIPPELL: Do you have any additional
24 questions, Mr. Smith?

25 MR. SMITH: No, that's it.

1 JUDGE DIPPELL: Are there any further
2 Commission questions for Mr. Murphy?

3 (No response.)

4 JUDGE DIPPELL: I don't see any. Is there
5 any further cross-examination for Mr. Murphy, Mr. Cooper?

6 MR. COOPER: Just one follow-up.

7 CROSS-EXAMINATION BY MR. COOPER:

8 Q. Mr. Murphy, when you say you're a current
9 customer of Missouri Gas Energy, are you a customer at
10 your residence or at other pieces of residential property?

11 A. I am a customer at my current residence.
12 I'm not sure if it's in my wife's name or my name or both.
13 When we moved in here, we weren't married. We are now. I
14 couldn't tell you exactly whose name, whether it's John
15 Murphy or Sharon Murphy or whose it might be. My wife
16 handles the bills here at the house. I handle the bills
17 at the rental properties.

18 And I believe I've had gas service on at
19 several different places. We turn the gas on to do --
20 when we're doing renovations, but come to think of it, in
21 the summer I usually turn it off because I don't want to
22 pay a bill to heat a thing that's not being lived in. I
23 am a customer in good standing, meaning I believe I can
24 call and get the gas turned on at any time. I've done it.
25 I do it all the time.

1 Q. But in terms of your residence, you're not
2 sure whether your residence is in your name or not,
3 correct?

4 A. I'm not absolutely sure, no, because I like
5 to keep my residence bills and my business bills separate,
6 and it's quite possible that it's in my wife's name or my
7 name. I couldn't tell you for sure. She pays the bills
8 at the house.

9 Q. But if they wanted to get ahold of you, it
10 would be the address you gave us earlier today, then, I
11 take it?

12 A. 8 West Bridlespur Terrace, Kansas City,
13 Missouri.

14 Q. Did you authorize Mr. Elders to -- are you
15 aware of any location where he might have referred to you
16 as his employer?

17 A. I'm not aware of any, no, but it wouldn't
18 surprise me if he did.

19 Q. So he might have done that?

20 A. It wouldn't surprise me because --

21 Q. Hold on.

22 JUDGE DIPPELL: Mr. Murphy?

23 THE WITNESS: It's quite possible.

24 JUDGE DIPPELL: Mr. Murphy, please allow
25 Mr. Cooper to ask the question.

1 THE WITNESS: Okay. I'm sorry. I did
2 misunderstand the question.

3 BY MR. COOPER:

4 Q. So you would agree with me that it's quite
5 possible that he would have used you as a reference as his
6 employer perhaps on his Kansas City Power & Light electric
7 account as well?

8 A. Yes, I believe that's entirely possible,
9 but I don't have firsthand knowledge of that. I do
10 remember the gas bill in particular, because it was at my
11 insistence that he get that turned on because of the -- I
12 believe it was getting cold out at the time, if memory
13 serves. And that's one thing I insist on is the gas be
14 turned on, you know. Of course, lights, too, but he did
15 not mention anything about the lights.

16 But it is entirely possible he used me as
17 an employment reference on that, without my knowledge or
18 consent. The gas bill was also without my consent, but he
19 told me after the fact. That's what he did.

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

22 JUDGE DIPPELL: All right. Ms. Shemwell,
23 do you have any questions for Mr. Murphy?

24 CROSS-EXAMINATION BY MS. SHEMWELL:

25 Q. Mr. Murphy, did either utility contact you

1 to verify employment by Mr. Elders?

2 A. I don't believe so. I don't recall that
3 happening. I get calls a lot from the utilities for
4 tenants. I get calls for Rent-A-Center, people put me
5 down for references for all kinds of things, used car
6 dealers, all kinds of things. It happens quite
7 frequently. A lot of people they just want to know if
8 they live in the premises, if they pay rent.

9 It's very possible that happened. I don't
10 recall any specifics. I don't -- I don't recall anything
11 like that. I just remember having a conversation with
12 Mr. Elders and he said that he used me as an employment
13 reference because he was having trouble getting his gas
14 on. That's all I remember about the situation.

15 Q. Did Mr. Elders ever do work for you?

16 A. No, never did. He talked about it a couple
17 times, and I basically blew him off. He worked for
18 several different people, doing stone work and sidewalk
19 work, and he worked with his brother, brother-in-law, I
20 think, and didn't really -- didn't do anything for me.

21 Q. Did he pay his rent on time?

22 A. No, huh-uh. He was -- he was delinquent.

23 MS. SHEMWELL: That's all I have. Thank
24 you.

25 JUDGE DIPPELL: Thank you. Mr. Smith, did

1 you have --

2 MR. SMITH: Yes, ma'am.

3 JUDGE DIPPELL: Did you have any what we

4 call redirect questions for Mr. Murphy, and that would be

5 questions based on answers he gave to the

6 cross-examination questions that were just asked of him.

7 MR. SMITH: No.

8 JUDGE DIPPELL: All right. Then,

9 Mr. Murphy, I believe that that is, once again, all the

10 questions for you, so you may be excused again.

11 THE WITNESS: Well, if it's okay, I'd like

12 to stay on the line just to listen in, if I could.

13 JUDGE DIPPELL: You may stay on the line.

14 However, I will ask you not to speak unless you're

15 requested to by myself or one of the Commissioners.

16 THE WITNESS: I understand.

17 JUDGE DIPPELL: Thank you. Did Staff have

18 a witness in this case? I'm sorry. Mr. Cooper?

19 MR. COOPER: Just sort of a point of

20 clarification, I guess. Mr. Murphy's testimony, I take

21 it, was rebuttal testimony; is that correct?

22 JUDGE DIPPELL: It was, and I had intended

23 to ask Staff if they wanted to put their witness on before

24 we recalled Mr. Murphy, but --

25 MR. COOPER: Okay. So to the extent we

1 believe Mr. Smith may have provided additional rebuttal in
2 between our offering of exhibits earlier, we'll have an
3 opportunity later perhaps to cross-examine him after Staff
4 has offered its witness?

5 JUDGE DIPPELL: I'll contemplate that one
6 while we discuss with Staff.

7 MS. SHEMWELL: Mr. Jim Russo prepared a
8 report in this case on behalf of Staff at the direction of
9 the Commission, and his reports have been filed with the
10 Commission. Mr. Russo is available today to answer
11 questions, and if there are questions, I would propose to
12 do the introduction as we usually do with a witness.

13 JUDGE DIPPELL: All right. I believe Staff
14 actually has a pending motion for the Commission to accept
15 Mr. Russo's amended report.

16 MS. SHEMWELL: That's correct.

17 JUDGE DIPPELL: And I did not rule on that
18 earlier. Would there be any objection -- Mr. Smith, I
19 don't know if you've received a copy of that amended
20 report.

21 MR. SMITH: I don't -- I don't believe I've
22 seen that report that you're talking about, so I guess I'd
23 have to object. I mean, I don't --

24 JUDGE DIPPELL: All right. I'm not going
25 to rule on that motion at this time, because it was just

1 filed a few days prior to this hearing. So I'm not sure
2 that the service companies had a chance to --

3 MR. SMITH: Get it out or something?

4 JUDGE DIPPELL: -- to be served.

5 Did the Commissioners have any questions
6 that they wanted to ask of Mr. Russo? Commissioner
7 Clayton?

8 Ms. Shemwell, is Staff's position the same
9 as of this motion that was filed last week?

10 MS. SHEMWELL: The July 14th date, that's
11 correct.

12 JUDGE DIPPELL: Is that what you needed to
13 know, Commissioner Clayton?

14 COMMISSIONER CLAYTON: I'd like -- has he
15 been sworn in?

16 JUDGE DIPPELL: No.

17 COMMISSIONER CLAYTON: I'd like to ask him
18 a few questions.

19 JUDGE DIPPELL: Okay. Mr. Russo, if you'd
20 like to go ahead and come to the witness stand.

21 MS. SHEMWELL: Judge, before we move on to
22 that, I would like to note for the record that our service
23 list shows that Mr. Smith was sent a copy of this on
24 July 14th at the East 16th Street address, Staff's revised
25 report and recommendation.

1 JUDGE DIPPELL: All right. Mr. Russo,
2 would you please raise your right hand?
3 (Witness sworn.)
4 JUDGE DIPPELL: Thank you. Ms. Shemwell,
5 I'll let you do the preliminaries.
6 JAMES RUSSO testified as follows:
7 DIRECT EXAMINATION BY MS. SHEMWELL:
8 Q. Mr. Russo, would you spell your last name
9 for the court reporter, please.
10 A. Yes. R-u-s-s-o.
11 Q. Where do you work, Mr. Russo?
12 A. I'm employed by the Missouri Public Service
13 Commission. I work in the energy department as a
14 regulatory auditor.
15 Q. Did you, as a result of a Commission order,
16 file in this case a report in the complaint case of Roy
17 Smith vs. Missouri Gas Energy?
18 A. Yes.
19 Q. Did you file that report on March 8th,
20 2004?
21 A. Yes.
22 Q. Did you ask to be filed on July 14th a
23 supplemental report?
24 A. Yes.
25 Q. Did you change your recommendation as a

1 result of the supplemental or in the supplemental report?

2 A. Yes, I did.

3 Q. As a result of what information?

4 A. At -- I'm thinking it was probably

5 July 13th, we became aware that MGE had received

6 additional information in this case and we received a copy

7 of that information, and upon further review I recommended

8 that we change Staff's position.

9 Q. Had you initially asked MGE for all

10 pertinent or relevant information that they had concerning

11 Mr. Smith in this complaint?

12 A. Yes.

13 Q. And at that time did you receive the

14 information that you later received on July 13th?

15 A. No.

16 Q. When did you first become aware of the

17 supplemental information?

18 A. I believe it was on July 13th when MGE made

19 a filing.

20 Q. Do you have any changes to the report and

21 supplemental report as filed?

22 A. Well, there's a 10-cent error in the way I

23 prorated the bill on the supplemental report on July 14th.

24 It should be 550.44, and I have it as 550.54, but that

25 10 cents was due to a proration rounding that I did.

1 Q. Is that all?

2 A. Yes.

3 MS. SHEMWELL: These have already been

4 filed in the case, Judge. We can mark them as exhibits or

5 the Commission can just take notice that they're already a

6 part of its file in the case.

7 JUDGE DIPPELL: I think I'd like to go

8 ahead and mark those two reports as exhibits.

9 MS. SHEMWELL: So Staff's report will be

10 Exhibit 9?

11 JUDGE DIPPELL: Yes.

12 MS. SHEMWELL: And Staff's supplemental

13 report then will be Exhibit 10.

14 JUDGE DIPPELL: And are you offering those

15 at this time, Ms. Shemwell?

16 MS. SHEMWELL: I am.

17 (EXHIBIT NO. 9 AND 10 WERE MARKED FOR

18 IDENTIFICATION BY THE REPORTER.)

19 JUDGE DIPPELL: Mr. Smith, Staff has

20 offered as evidence in this case Exhibits 9 and 10.

21 Exhibit 9 is their original Staff report which was filed

22 in this case; the report itself is dated March 8th. I'm

23 not exactly sure what day it was filed. But do you have

24 any objection to that report coming into evidence?

25 MR. SMITH: Well, what exactly is it?

1 JUDGE DIPPELL: It's Staff's original
2 report that they did when they did an investigation in
3 this matter.

4 MR. SMITH: No, I have no objection.

5 JUDGE DIPPELL: All right. Then I will
6 enter Exhibit No. 9 into evidence.

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

8 JUDGE DIPPELL: And Exhibit No. 10 is
9 Staff's supplemental report, which has a date of
10 July 14th, and I believe was filed on that same day in
11 these case papers.

12 MS. SHEMWELL: That's correct.

13 JUDGE DIPPELL: Would you have any
14 objection to Exhibit No. 10?

15 MR. SMITH: No.

16 JUDGE DIPPELL: Then I will enter Exhibit
17 No. 10 into evidence.

18 (EXHIBIT NO. 10 WAS RECEIVED INTO
19 EVIDENCE.)

20 JUDGE DIPPELL: Mr. Cooper, I'm sorry. I
21 didn't ask if you had any objection to Staff's reports.

22 MR. COOPER: I do not.

23 JUDGE DIPPELL: All right. Exhibits 9 and
24 10 are entered into evidence.

25 MS. SHEMWELL: With that, Mr. Russo's

1 available for cross. Thank you.

2 JUDGE DIPPELL: Mr. Smith, do you have any
3 questions that you would like to ask Mr. Russo of our
4 Staff?

5 MR. SMITH: Which one's Mr. Russo?

6 JUDGE DIPPELL: Mr. Russo is the gentleman
7 who just testified, and he is ready.

8 MR. SMITH: He's the gas?

9 JUDGE DIPPELL: Yes.

10 CROSS-EXAMINATION BY MR. SMITH:

11 Q. I have -- I was just kind of curious, has
12 any bills come to my address in Mr. Murphy's name?

13 A. I would not have any idea on that. I don't
14 know.

15 Q. Okay. Well, I'm just kind of thinking
16 about that because of that last '97 deal.

17 JUDGE DIPPELL: Mr. Russo is actually a
18 member of the Public Service Commission Staff, Mr. Smith.
19 He's not an employee of MGE. I'm sorry.

20 MR. SMITH: Okay. Then I have no
21 questions.

22 JUDGE DIPPELL: All right. Mr. Cooper, did
23 you have questions for Mr. Russo?

24 MR. COOPER: I do, yes, your Honor.

25 CROSS-EXAMINATION BY MR. COOPER:

1 Q. Mr. Russo, just a couple items. First I'd
2 like to ask you essentially a hypothetical, but I think
3 it's one of the items that's perhaps contained in your
4 supplemental Staff report. And that is, if Mr. Smith
5 began to reside at 5823 East 16th Street as of January 23
6 of the year 2003, how much of Mr. Elders' bill would you
7 believe it is appropriate for MGE to transfer to
8 Mr. Smith?

9 A. It would be the entire amount, which was, I
10 believe \$583.43.

11 Q. And is that based on two steps; is that
12 based on the first step being that Mr. Smith has indicated
13 that he did indeed live at 5823 East 16th Street as of
14 June 1, 2003, is that the first step of that, and thus
15 would be liable for the amount of services provided for
16 that address in June of 2003?

17 A. Correct. That month was 32.99, which is
18 part of that total.

19 Q. And then the remainder of that amount would
20 be represented by your computation on the first page of
21 the supplemental Staff report, correct?

22 A. Yes.

23 Q. Do you have with you the residential lease
24 agreement that was provided to you during your
25 investigation?

1 A. I believe it's over at counsel's table, but
2 yes.

3 Q. I believe Mr. Imhoff's going to hand you a
4 copy of that lease agreement. Do you have it in front of
5 you now?

6 A. Yes, I do.

7 Q. How did you obtain that residential lease
8 agreement?

9 A. It was faxed to me back in February. I
10 thought Mr. Smith did it, but it's possible that
11 Mr. Murphy did. I don't recall which party did.

12 Q. One other item, just out of curiosity. I
13 believe Mr. Murphy earlier today said that he rents --
14 well, let me back up.

15 Have you been here for this proceeding
16 since we began at approximately 10 a.m. this morning?

17 A. Yes.

18 Q. You've been in the room for all the
19 testimony, correct?

20 A. Yes.

21 Q. And do you remember that Mr. Murphy
22 indicated that the rental amount for 5823 East 16th Street
23 is \$200 a month?

24 A. Yes, sir.

25 Q. And if you were to look at that residential

1 lease agreement that you were provided, what does it
2 reflect the monthly rent to be?

3 A. \$300.

4 MR. COOPER: Thank you. That's all the
5 questions I have at this time.

6 JUDGE DIPPELL: All right. Are there
7 Commission questions for Mr. Russo, Commissioner Clayton?
8 I'm sorry. Commissioner Murray?

9 COMMISSIONER MURRAY: If Commissioner
10 Clayton would like to go first, that's fine.

11 QUESTIONS BY COMMISSIONER CLAYTON:

12 Q. Good afternoon, Mr. Russo.

13 A. Good afternoon.

14 Q. Now, you filed two reports in this case; is
15 that correct?

16 A. Yes, sir.

17 Q. First report you sided with the complainant
18 and felt that he should not be responsible for the debt of
19 the prior tenant; is that a fair statement?

20 A. Yes, sir.

21 Q. Your position changed and you filed a
22 supplemental report where you switched your position and
23 found that the company's position is a correct position
24 under the tariffs and the law; is that correct?

25 A. Yes, sir.

1 Q. Is the sole reason for that change based on
2 the Department of Revenue document?

3 A. I would say that's the majority of it,
4 Commissioner.

5 Q. Okay.

6 A. Yes.

7 Q. Go ahead. And tell me. You say majority.
8 Tell me what else.

9 A. I'm trying to think if there would be
10 anything else that came in.

11 Q. Do you need to see your report to refresh
12 your memory?

13 A. No. I'm trying to think of other
14 conversations I had with other Staff members. I did
15 discuss the additional document with the division director
16 and counsel, and yeah, I would -- yes, I would say that is
17 the reason, sir.

18 Q. So the sole reason for the change in your
19 position is that Department of Revenue document?

20 A. Yes, sir.

21 Q. Now, once you got that Department of
22 Revenue document showing that the complainant's address
23 was that on East 16th Street, did you attempt to contact
24 Mr. Smith to discuss that document with him?

25 A. No, sir.

1 Q. So you didn't even try to talk to him about
2 that document?

3 A. No, sir.

4 Q. Okay. You've been sitting in the hearing
5 room today, and do you recall hearing his explanation for
6 that document?

7 A. Yeah.

8 Q. Does that cause you to question the
9 position that you stated in your supplemental report or
10 not?

11 A. No, sir, it does not.

12 Q. And why is that? Do you not believe him,
13 do you not buy the argument, think he's making it up?
14 Obviously you are in a position in drafting this report to
15 assess credibility.

16 A. I think that based on everything I've heard
17 today, that I would not change that recommendation, sir.

18 Q. There's nothing else that you received that
19 would cause you to change your position?

20 A. Nothing that I'm aware of, sir.

21 Q. How many complaint cases on behalf of Staff
22 have you testified in? I don't need an exact figure.

23 A. Let's say less than five.

24 Q. Less than five. And you've had several
25 cases this year alone dealing with complaint cases; is

1 that a fair statement?

2 A. Very fair.

3 Q. Do you recall in another case in which you

4 testified where a Department of Revenue document was

5 offered, do you recall that case?

6 A. Yes, sir.

7 Q. Is that the McKenzie case?

8 A. Yes, sir, it was.

9 Q. It was. And as I recall, did you accept

10 the Department of Revenue record as being good evidence or

11 conclusive evidence as to where someone was residing or

12 not?

13 A. We're going to have to go by memory here,

14 Commissioner. The first time I saw those documents was

15 here on the stand, and if I remember correctly, I said

16 something that those documents would definitely cause me

17 to have further review of the situation. I don't recall

18 specifically committing to them in themselves changing the

19 case. I just don't recall.

20 Q. As I recall, in that case it involved a

21 spouse and whether or not that spouse resided in a

22 household at the time application was made for gas

23 service?

24 A. Yes, sir.

25 Q. Does that sound accurate?

1 A. Yes, sir.

2 Q. And as I recall, the company put on a
3 Department of Revenue record which showed that the spouse
4 was a resident at that address at the time application was
5 made; do you recall that?

6 A. Yes, sir.

7 Q. And as I recall your position, your
8 position was to discount the value of that Department of
9 Revenue record and that you still held that she was not a
10 member of the household; is that accurate?

11 A. I don't think I discounted it completely,
12 Commissioner, I just don't recall.

13 Q. But you sided for the complainant in that
14 case?

15 A. I believe I did, yes.

16 Q. So basically your use of Department of
17 Revenue records is fairly inconsistent, wouldn't you say?

18 A. That case had different facts and
19 circumstances in it, Commissioner. I'd have to go back
20 and look. I just don't recall what the questions were and
21 what the answer was.

22 COMMISSIONER CLAYTON: Thank you.

23 THE WITNESS: You're welcome.

24 JUDGE DIPPELL: Commissioner Murray, did
25 you have questions?

1 COMMISSIONER MURRAY: The Chair has come
2 in.
3 CHAIRMAN GAW: Go ahead. Thank you,
4 though.
5 QUESTIONS BY COMMISSIONER MURRAY:
6 Q. Good afternoon, Mr. Russo.
7 A. Good afternoon, Commissioner.
8 Q. I just have a few questions about your
9 report and your supplemental report. In the initial
10 report that you filed, you reviewed the complaint and
11 documentation provided by Commission's consumer staff and
12 MGE, and you spoke with the complainant and MGE; is that
13 correct?
14 A. And I also spoke with the landlord,
15 Mr. Murphy. Yes, that's correct.
16 Q. Okay. And that was the same Mr. Murphy who
17 has been here -- or was on the record testifying on behalf
18 of Mr. Smith today; is that right?
19 A. Yes.
20 Q. And in your initial report which was filed
21 as an Attachment A to a document called Staff Report
22 Concerning Complaint, on page 2 of Attachment A, do you
23 have that in front of you?
24 A. Yes, I do.
25 Q. You said Mr. Smith contacted MGE on

1 November 19, 2003 to say he faxed the rental agreement.
2 MGE has no record of receiving the rental agreement. Were
3 you here today when that rental agreement was discussed?
4 A. Yes.
5 Q. And what is your understanding of was that
6 agreement faxed to MGE?
7 A. My understanding was MGE received it, and I
8 don't know if it was faxed or not, but I got the
9 impression it was faxed, but yes, they did receive it.
10 Q. Is it your understanding that Mr. Smith did
11 not send it to them, that it was sent by Mr. Murphy?
12 A. Yes.
13 Q. And in your report you say that Mr. Smith
14 told you he faxed the rental agreement; is that correct?
15 A. Yes, it is.
16 Q. The report also says that MGE has no record
17 of receiving the rental agreement. Did you -- is that
18 what you were told by MGE?
19 A. I believe, Commissioner, that statement was
20 taken out of one of MGE's filings on this case, one of the
21 early filings.
22 Q. Okay. So do you know if it was prior to
23 the time that they received the rental agreement or that
24 was just a misstatement?
25 A. I don't know.

1 Q. And you don't recall where you actually
2 picked that up?

3 A. I can find it for you. It was in one of
4 the early filings. I'm sure I have it here somewhere.

5 Q. Then further down on page 2, second from
6 the bottom paragraph, second sentence, the complainant
7 stated that -- stated he did not know Mr. Elders. Do you
8 see that?

9 A. Yes, I do.

10 Q. Is that what Mr. Smith told you?

11 A. Yes, he did.

12 Q. And the sentence goes on to say, and
13 Mr. Elders never resided with you. Is that also what he
14 told you?

15 A. Yes, he did.

16 Q. And Mr. Smith told you that personally?

17 A. Yes. It was back on February 16th, I
18 believe, in a telephone conversation that we had.

19 Q. And you also state that the complainant
20 faxed a copy of his rental agreement to staff; is that
21 accurate?

22 A. Yes.

23 Q. So was that actually faxed to you by
24 Mr. Smith, or do you know?

25 A. I don't know. Mr. Smith don't have a

1 phone, so I don't know if he did it if or somebody else
2 did it for him.

3 Q. And you go on on page 7 of Attachment A to
4 say that Staff does not believe that MGE has demonstrated
5 that Mr. Elders was a member of the complainant's
6 household. Do you see that?

7 A. Yes, I do.

8 Q. And then further down in your
9 recommendations, your first recommendation is that the
10 Commission issue an Order stating that, one, evidence
11 indicates and the Commission finds that Mr. Elders was not
12 a member of complainant's household.

13 What evidence were you referencing when you
14 said the Commission should make a finding on evidence that
15 Mr. Elders was not a member of the complainant's
16 household? Was there any actual evidence or was it just
17 an absence of evidence?

18 A. I think it's an absence of evidence rather
19 than actual documentation.

20 Q. When Staff makes a recommendation and -- a
21 recommendation that the Commission base its findings on
22 something, perhaps Staff should keep in mind that there's
23 a difference between evidence and just no evidence.

24 A. Duly noted, Commissioner.

25 Q. Okay. Then on your review, prior to your

1 supplemental Staff report, at that time MGE had obtained
2 Department of Revenue documents; is that correct?

3 A. Are we talking about after the March 8th
4 date, after this report and prior to this July 14th one,
5 Commissioner?

6 Q. Yes.

7 A. Yes. It's my understanding that it was
8 very recent that they obtained these records.

9 Q. And in looking at those documents on file
10 with the Missouri Department of Revenue, the address
11 listed for Mr. Smith was 5823 East 16th Street in Kansas
12 City; is that correct?

13 A. That is correct.

14 Q. And when a person applies for a driver's
15 license, is it the individual applying that provides the
16 information to the Department of Revenue?

17 A. As far as I know, yes.

18 Q. So would you assume from looking at that
19 that Mr. Smith told the Department of Revenue that that's
20 where he lived?

21 A. Yes.

22 Q. So if it is not, in fact, where he lived,
23 he was making a misrepresentation to the Department of
24 Revenue; is that accurate?

25 A. Yes.

1 MR. SMITH: Your Honor?

2 JUDGE DIPPELL: Yes, Mr. Smith.

3 MR. SMITH: Can I object to what I just
4 heard?

5 JUDGE DIPPELL: Do you have an objection to
6 the question?

7 MR. SMITH: I just -- I don't understand.

8 COMMISSIONER MURRAY: Mr. Smith, this is
9 Commissioner Murray, and I am asking the witness
10 questions. And if you want to ask the witness questions
11 based upon my questions, you will have that opportunity.
12 I am allowed to ask the witness whatever I think is
13 relevant, and I think that is relevant to this case.

14 The address that you gave to this
15 Commission, the address you gave to MGE and the address
16 you gave to the Missouri Department of Revenue, they are
17 not consistent, and at one place or the other it appears
18 that you were not telling the truth. So I think that's
19 very relevant, but you will be allowed to ask questions of
20 the witness.

21 MR. SMITH: All right.

22 JUDGE DIPPELL: I will give you an
23 opportunity after the Commission questions, Mr. Smith, to
24 ask additional questions.

25 MR. SMITH: Thank you.

1 BY COMMISSIONER MURRAY:

2 Q. So, Mr. Russo, it's your recommendation
3 today that, based upon the evidence that has been placed
4 before this Commission -- and there is actually evidence
5 today is there not?

6 A. Yes, there is.

7 Q. As to an address for Mr. Smith?

8 A. Yes.

9 Q. And that evidence shows that Mr. Smith had
10 an address of -- I keep losing this address -- 5823 East
11 16th Street, Kansas City, Missouri on January 21st, 2003?

12 A. I have January 23rd, 2003.

13 Q. You're correct. January 23rd, 2003; is
14 that correct?

15 A. Yes, it is.

16 COMMISSIONER MURRAY: Thank you. That's
17 all the questions I have.

18 JUDGE DIPPELL: Thank you. Chairman Gaw,
19 do you have questions for Mr. Russo?

20 CHAIRMAN GAW: Hopefully very briefly,
21 Judge. Thank you.

22 QUESTIONS BY CHAIRMAN GAW:

23 Q. Mr. Russo, is there some level that you --
24 of documentation that you think is required of Mr. Smith
25 to demonstrate that he was not living at this address at

1 5823 East 16th Street prior to June of '03 to satisfy your
2 criteria?

3 A. Yes.

4 Q. What is that?

5 A. Well, as of now, we don't have any
6 documentation of any kind, Commissioner. It could be a
7 variety of things from a person; it could be more than one
8 thing. For instance, a former rental lease agreement
9 would be probably one of the better type items.

10 Q. Mr. Russo, if someone is residing in their
11 van, what would you suggest the documentation for
12 establishing that might be?

13 A. Well, that's completely different from -- I
14 don't know, Commissioner. That makes it extremely
15 difficult --

16 Q. Does that mean --

17 A. -- for the individual.

18 Q. Does that mean that there's no
19 documentation that you can think of that this individual
20 would be able to supply to, I suppose the term would be
21 rebut this that's listed on this driver's record?

22 A. I guess it gets into if a person had other
23 credible witnesses where they were living, more than one
24 possibly. It's -- it would be very difficult for the
25 complainant, Commissioner, to have that burden of proof on

1 them. It would be very difficult in light of some of the
2 things that we heard today.

3 Q. You're going to have to tell me, since
4 you're the one doing the assessing of this as a witness.
5 In your opinion, what are you talking about what you heard
6 today? What are you referring to?

7 A. Well, we've heard -- we have the Department
8 of Revenue record -- excuse me. I sometimes refer to them
9 as DMV. Old habit. We have Mr. Smith at least saying he
10 has been there on several nights, which that in itself
11 does not justify residence. I realize that. We have the
12 deposition of the KCPL employee that was entered into
13 evidence, I believe. I think some of the things
14 separately in themselves may not have much meaning, but
15 taken together as a whole, they add credence.

16 Q. Are you saying now, Mr. Russo, that you are
17 relying on the deposition?

18 A. Well, you've asked for other things that
19 we've heard today, Commissioner. No. My supplemental
20 Staff report was based on the Department of Revenue
21 vehicles. You asked what I've heard today, I thought was
22 your question. Maybe I misunderstood.

23 Q. I asked what it is that is influencing your
24 opinion to come to the conclusion that you've stated for
25 us?

1 A. I apologize, Commissioner. I misunderstood
2 your question.

3 Q. That's all right. It may not have been
4 clear.

5 A. My change in position was based on the
6 additional information, which was the Department of
7 Revenue records that I -- that I received and that I guess
8 it was a withdrawal of waiver that MGE filed on July 13th.
9 In reviewing these records is what based my decision here.

10 Q. Do you know, Mr. Russo, what a driver's
11 license applicant is supposed to do -- of your own
12 knowledge, what they're required to do if they do not have
13 a fixed residence?

14 A. No, sir, I do not.

15 CHAIRMAN GAW: One minute, Judge. I'm
16 finished, Judge. Thank you.

17 JUDGE DIPPELL: Thank you. Commissioner
18 Applling, did you want to ask Mr. Russo any questions?

19 COMMISSIONER APPLING: Judge, I think my
20 colleagues have covered the questions, but I would like to
21 ask Mr. Smith a final question, if I could.

22 JUDGE DIPPELL: Okay. We're going to get
23 back to Mr. Smith eventually.

24 COMMISSIONER APPLING: Okay.

25 JUDGE DIPPELL: Commissioner Murray, do you

1 have another question?

2 COMMISSIONER MURRAY: Yes, thank you.

3 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Mr. Russo, when you're doing an
5 investigation where you're interviewing a complainant and
6 you're interviewing witnesses, do you necessarily have to
7 apply some judgment to that in order to determine, for
8 example, whether something passes the smell test?

9 A. Yes.

10 Q. And you have to give some weight to the
11 credibility that you see in what is being told to you; is
12 that correct?

13 A. Yes, it is.

14 Q. So all of those things are factors that you
15 weigh before you make your recommendation I would assume;
16 is that correct?

17 A. That's correct, Commissioner.

18 COMMISSIONER MURRAY: Thank you.

19 JUDGE DIPPELL: All right. I believe
20 that's all the Commission questions for you, Mr. Russo.

21 Mr. Smith, at this time if you'd like to
22 ask additional questions of Mr. Russo based on questions
23 that the Commissioners have asked, you may do so.

24 MR. SMITH: I can't think of any. I just
25 didn't understand how, you know, with what I told them my

1 address to get my driver's license, what that had to do
2 with all this. I mean, whether I fibbed to them a little
3 or not, I don't understand how that affects this court.

4 JUDGE DIPPELL: All right. Are there any
5 MGE questions based on questions from the Bench?

6 MR. COOPER: No, your Honor.

7 JUDGE DIPPELL: Staff, do you have any
8 redirect?

9 REDIRECT EXAMINATION BY MS. SHEMWELL:

10 Q. Mr. Russo, based on questions from the
11 Bench and the testimony that you've heard today, would you
12 change your supplemental recommendation?

13 A. No, I would not.

14 MS. SHEMWELL: Thank you.

15 JUDGE DIPPELL: All right. That's all the
16 questions for you then, Mr. Russo. Thank you very much.
17 You may step down.

18 Does Staff have any other witnesses they
19 want to present?

20 MS. SHEMWELL: No. Thank you, Judge.

21 JUDGE DIPPELL: All right. Mr. Smith?

22 MR. SMITH: Yes, ma'am.

23 JUDGE DIPPELL: I've sort of allowed you to
24 give some additional testimony during your objections to
25 some of the documents earlier, and Mr. Cooper has asked

1 for the opportunity to ask some cross-examination
2 questions based on that testimony. So I'm going to allow
3 him to do that at this time.

4 MR. SMITH: All right.

5 MR. COOPER: I'm still contemplating that
6 option. Are we otherwise through with the evidence in
7 this case?

8 JUDGE DIPPELL: I believe we are, except
9 that Commissioner Appling had an additional question for
10 Mr. Smith.

11 MR. COOPER: Why don't we hold off and
12 allow the Commission to go forward with its additional
13 questions for Mr. Smith?

14 JUDGE DIPPELL: Commissioner Appling, you
15 wanted to ask a question of Mr. Smith?

16 ROY SMITH testified as follows:

17 QUESTIONS BY COMMISSIONER APPLING:

18 Q. Mr. Smith?

19 A. Yes.

20 Q. This is Commissioner Appling. Remember
21 this morning I asked you to pull your driving license
22 out --

23 A. Right.

24 Q. -- and talk to me about the expiration
25 date?

1 Was it your testimony, am I right or wrong,
2 your testimony this morning that you say previous to
3 issuing of this last driving license that you have in your
4 possession at the present time, that you had no license
5 for several years?

6 A. No. I mean, I said that, but I had my
7 first -- see, I didn't have a license for years, like, I
8 don't know, over ten years. Then when I did get it back,
9 I got it for one year is all. And then I expected to get,
10 like, a six-year license, and I had this -- or two or
11 three-year deal now. And I just realized, I guess I've
12 had it longer than I thought because they -- somebody said
13 there at the courts that I had one when I stayed over
14 there on Flora, see, and I don't remember that, but like I
15 said --

16 COMMISSIONER APPLING: Okay. Thank you.

17 JUDGE DIPPELL: There was an additional
18 question from Commissioner Clayton.

19 QUESTIONS BY COMMISSIONER CLAYTON:

20 Q. Mr. Smith, can you hear me?

21 A. Yes.

22 Q. When did you begin working for Mr. Murphy?

23 A. Oh, off and on for years. I couldn't
24 exactly pinpoint it. He's helped me out a lot. Recently
25 within, like, the last year or so become somewhat friends

1 instead of just employee, you know. I'd cut his yard
2 here, do something like that there. Then I broke my leg
3 working on my truck, and he's helped me out immensely with
4 that. I'm pretty much over a grand in debt with him with
5 it with rent and everything else, but I --

6 Q. If I asked you when you started working,
7 would you say 2 years, 5 years, 10 years ago?

8 A. Oh, geez.

9 Q. Man, I'm sorry to be asking these tough
10 questions.

11 A. Right. I just can't remember that. I'd
12 say at least 3 or 4. I mean, I can't pinpoint it, you
13 know, like I said.

14 Q. When did you -- this Flora address, is that
15 a -- is that a house or apartment, or is that a -- is that
16 your sister's -- stepsister's place or stepdaughter's?

17 A. No. The Flora place, some guy and some
18 girl was staying there, and I stayed in the basement for a
19 couple, 3 weeks and then he burned me on some money
20 because I paid him 2 weeks in advance. But my sister,
21 she's not around, hasn't been around for years.

22 Q. I think you said stepdaughter; is that what
23 it was?

24 A. Yeah, it was my stepdaughter.

25 Q. Where does the stepdaughter live?

1 A. She lives over -- well, she was at 86th and
2 Highland, you know, when I was getting help from her, but
3 since she's moved down here off Independence Avenue, her
4 new landlord is -- I don't know. She's kind of a
5 real -- you know, I could spend the night there maybe once
6 in a while but that's about it, and I couldn't use her
7 address or anything.

8 Q. When did she move into that address?

9 A. That I don't -- I don't know. A year or so
10 or something.

11 Q. Ago?

12 A. Might be two. I really couldn't -- I don't
13 know. I don't keep track of that. But she was over 86th
14 and Highland. She lived on one side of the street, then
15 she crossed the street to her new husband's mother's
16 house, but that's when they were living out in Marlboro
17 out this way.

18 Q. In June of 2003, was she living on
19 Highland?

20 A. I think so, but I can't -- I think they
21 were with Phillip's mom then, because that was after the
22 wedding. And they stayed with her for a long time.

23 Q. Whose wedding was that?

24 A. Phillip Agnew and Andrea Roach.

25 Q. Now, are you related to them?

1 A. Just Andrea is my stepdaughter.

2 Q. Oh, that's your stepdaughter?

3 A. Right. But they let me stay in their

4 basement off and on, because that's where they lived was

5 the basement. Phillip's mom had the whole upstairs and

6 she was renting out rooms and this kind of stuff. It was

7 too packed up there to even get a bunk for the night, but

8 I spent, I don't know, here or there in the wintertime

9 down in the basement with them.

10 Q. And that was in 2003?

11 A. Yeah. Well, no. That was 2002, I think.

12 Q. 2002. When did you move into your van?

13 A. I'd have to say the summer of -- well, I've

14 had two vans, but the van in the time you're talking about

15 was the van that I own now, and that's probably 2001 and

16 the end of 2001 or somewhere in there, and all of 2002. I

17 mean, off and on. I try and get out of the heat

18 occasionally and get out of the cold once in a while.

19 Q. Well, I'm talking about the van in early,

20 you know, like, January 2003 through May of 2000 -- or

21 June of 2003. Is that the van that you have right now?

22 A. Yes.

23 Q. The one-ton?

24 A. Right, Chevy one-ton.

25 Q. Is that a Vandura? No. Okay.

1 A. But, yeah, I spent -- I spent more -- I'd
2 say more than a year and a half, you know, just in and out
3 with friends with that van. And the van I had before
4 that, my family was with me, and we ended up staying in
5 the van for a month once.

6 Q. Your entire family?

7 A. Huh?

8 Q. Your entire family?

9 A. Well, yeah, my son and his mother, all
10 three of us bunked in the same bed there.

11 Q. In the van?

12 A. In the van, yes, we had to. We got evicted
13 for the first time in my life. And my job, you know, it
14 was starting to get cold, there was no work. So we spent
15 a month in there 'til it got real cold, and then we all
16 three split up. And then we get back together once in a
17 while, like just recently, and then they just took off
18 again. It's kind of a hit and miss thing with them. Of
19 course, I'm not the best person. You know, I don't have a
20 regular job, if you know what I mean.

21 COMMISSIONER CLAYTON: I think that's all
22 that I have. Thank you very much, Mr. Smith.

23 JUDGE DIPPELL: Commissioner Murray, you
24 had an additional question for Mr. Smith?

25 COMMISSIONER MURRAY: Yes.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Mr. Smith, I just wanted to ask you, do you
3 have any concern that you are about to be evicted again?

4 A. Yes, but I've talked to him and here --
5 I've got to go back to the doctor the 23rd, and hopefully
6 I can get back to work after that. But right now, like
7 walking with a cane, just trying to just step around and
8 get my foot used to trying to do some real work. But
9 until the doctor give me the okay that I can go back to
10 work, you know, there's just nothing I can do. If I do
11 get evicted, I guess I'll be sleeping in my truck again.

12 Q. I was going to ask, do you still have one?

13 A. Yes, I still have a van. It costs an arm
14 and a leg to drive it, but I still have it.

15 Q. Okay. And how many months behind are you
16 in your rent?

17 A. Just the rent alone it's fixing to be, it's
18 close to four months and he lowered my rent to 200, which
19 was nice of him, so what would that be, 800 of that,
20 little over 1,000 is rent. And then he give me, like, \$10
21 here to buy food, a little gas. You know, he helped a
22 little bit, but he couldn't help much. He didn't want to
23 go in -- I mean, over a period of four months, I haven't
24 even borrowed probably a couple hundred dollars from him.

25 Q. Not your typical landlord, is it?

1 A. No. Like I said, we've become friends
2 somewhat since I got hurt. He kind of feels sorry for me,
3 I think, more than anything.

4 Q. How far behind are you in your electric
5 bill?

6 A. I believe I owe them \$58, something like
7 that.

8 Q. So you're fairly current on that?

9 A. Yes.

10 Q. And your water bill?

11 A. Like 170 something.

12 Q. So you're fairly far behind on that one?

13 A. Right. Right. Well, like I said, most of
14 that is because I haven't been able to work. If I get
15 \$10, I can't send it to the utility company. I buy some
16 food.

17 COMMISSIONER MURRAY: Okay. That's all I
18 have. Thank you.

19 THE WITNESS: Thank you.

20 JUDGE DIPPELL: Mr. Chairman, did you have
21 an additional question?

22 CHAIRMAN GAW: I apologize, Judge.

23 QUESTIONS BY CHAIRMAN GAW:

24 Q. Mr. Smith, this is Steve Gaw again.

25 A. Yes, sir.

1 Q. Sorry to keep belaboring some of these
2 things.
3 A. That's all right.
4 Q. I'm going -- I'm back to the driver's
5 license address.
6 A. Okay.
7 Q. One last time, I hope, here. That document
8 that we have I think's probably been explained to you,
9 seems to have a date of January the 23rd of '03.
10 A. January of '03. I don't remember. I know
11 that I had to renew it on my birthday, so that's the 15th
12 of May. So -- and I only had it I'm pretty sure a year
13 before that, because they only gave me one for a year,
14 then I finally get the three-year thing.
15 Q. Okay. So is there -- do you have -- this
16 document that's shown as printed January 23rd of '03 is
17 the one that shows your address at 5823 East 16th Street.
18 A. That could be. I was getting mail there.
19 I mean, I really couldn't say.
20 Q. Even that early in January of '03, you were
21 getting mail there then?
22 A. Yes.
23 Q. Can you tell me -- you may have already
24 said this, but when did that start, if you recall?
25 A. I don't -- I don't recall. I just -- I

1 asked Mr. Elders if it was all right with him, and he said
2 yes, and right there was the mailman going by, so I got
3 one of them little cards from him and filled it out.

4 Q. Okay. So somewhere there's probably a
5 little card that was filled out in the U.S. Post Office, I
6 suppose?

7 A. Yes. I'm sure. Well, unless they threw it
8 away. I mean, I don't know how the post office does
9 things.

10 Q. Well, we're probably beyond that right now.
11 Let me ask you how long -- so have you received mail at
12 that address, 5823 16th Street all the way up to the
13 present date?

14 A. Right.

15 Q. Was that true even during the couple of
16 week period when no one was living in the house in May or
17 June of '03?

18 A. Probably, but I wasn't receiving any mail.
19 Like I was saying, it was just my insurance that I was
20 only getting, and I'd get it once a month.

21 Q. Your insurance for your vehicle?

22 A. For my van, and that would come, I guess,
23 around -- I had to pay on the 10th, so I'd probably
24 receive it the 26th or 28th of every month. And then I'd
25 only stop in just to pick that up, because there wasn't

1 any other mail to get.

2 Q. Do you know if you supplied this address,
3 5823 East 16th Street to the Department of Revenue
4 directly?

5 A. You mean like a tax man?

6 Q. Well, when you got your driver's license
7 perhaps?

8 A. Yes. Yes.

9 Q. And did you pick your driver's license --
10 did you get your driver's license the day that you had
11 your picture taken?

12 A. Yeah, I got it right there at the place.

13 Q. So they had nothing further to send to you?

14 A. No. Right.

15 Q. But this was the same address that you gave
16 to your insurance carrier?

17 A. Yes, and that was the only -- that was the
18 only mail that I got.

19 Q. Yes, sir.

20 A. So I'd check once a week, and then I got
21 tired of checking because there was no point in it, and
22 there toward the end of the month I would just go get my
23 insurance if I needed it. If I didn't need it, I'd just
24 leave it there.

25 Q. Mr. Smith, did you -- just fairly briefly

1 if you could, did you have -- describe for me how you were
2 able to stay in your van during the winter months when it
3 was very cold.

4 A. Well, I had a mattress in there. No box
5 springs or anything, just a mattress, and I wouldn't even
6 go in there 'til it was time to sleep, you know, go watch
7 TV at a friend's or my daughter's, and then when it's time
8 to go to sleep, just walk out there, turn the heat on,
9 heat it up, let it run for about 20, 30 minutes, turn it
10 off and go to sleep. And I'd wake up cold, but it wasn't
11 that bad.

12 Q. Okay. During this time frame in the first
13 six months of -- well, the first five months of '03, did
14 you stay at your stepdaughter's during that time frame
15 from time to time?

16 A. I've been, you know, visiting and maybe
17 spending the night there, like, I don't know, for years.

18 Q. Okay.

19 A. It's only when I really needed it, though,
20 that I would bother them, because they've got five kids.
21 And trust me, I raised my son and that's enough for me. I
22 couldn't live around five kids 24 hours a day.

23 Q. And prior to January -- excuse me. Prior
24 to June of '03, how many times did you stay overnight in
25 the house at 5823 16th Street?

1 A. Prior to that time, there was only two I
2 can remember, and it was because I got drunk.

3 Q. And those are the only two times?

4 A. Those are the only times, right. And I had
5 to -- you know, I looked at him and he was drinking, too.
6 And I said, look, you know, I just got my license back, I
7 don't want to lose it, I hope you don't mind if I crash
8 out on the floor or something. And he said, yeah, that's
9 okay.

10 Q. And I guess that begs the question about
11 why you didn't go out and get into the van?

12 A. Well, it was more comfortable inside.

13 CHAIRMAN GAW: All right. Thank you,
14 Mr. Smith.

15 JUDGE DIPPELL: I believe that's all the
16 Commission questions for you, Mr. Smith. I'm going to
17 allow Mr. Cooper to ask any further questions.

18 MR. COOPER: We have no questions, your
19 Honor.

20 JUDGE DIPPELL: Ms. Shemwell, did you have
21 any?

22 MS. SHEMWELL: No, thank you, your Honor.

23 JUDGE DIPPELL: All right. I believe,
24 then, that is the conclusion of the evidence in this
25 testimony or in this hearing. Is there anything further

1 from any of the parties? Well, let's see. I did say that
2 we were going to allow closing statements in lieu of
3 Briefs, and I will allow Mr. -- well, I'll allow Staff to
4 start, and then Mr. Cooper and then Mr. Smith, if you have
5 a closing statement.

6 So, Ms. Shemwell, did you have anything you
7 wanted to state as a closing statement?

8 MS. SHEMWELL: I do not, thank you.

9 JUDGE DIPPELL: Mr. Cooper?

10 MR. COOPER: Just thinking to myself, is it
11 appropriate for the complainant, who I assume has the
12 burden in this matter, to go first or not?

13 JUDGE DIPPELL: I believe at this point, it
14 doesn't matter, but are you saying you'd prefer to go
15 last, Mr. Cooper?

16 MR. COOPER: I would prefer to go last.

17 JUDGE DIPPELL: Mr. Smith, do you have any
18 objection to Mr. Cooper going last?

19 MR. SMITH: No.

20 JUDGE DIPPELL: Mr. Smith, do you have a
21 closing statement you'd like to make?

22 MR. SMITH: I've said pretty much all I can
23 think of.

24 JUDGE DIPPELL: All right. Mr. Cooper?

25 MR. COOPER: Commissioners, I believe that

1 the evidence in this case indicates that Mr. Smith began
2 to reside and benefit from gas usage at 5823 East 16th
3 Street as early as January of 2003. On that date, as
4 we've gone through several times, Mr. Smith reported to
5 the Missouri Department of Revenue that he resided at the
6 same address.

7 Mr. Murphy, while he does not state that
8 Mr. Smith was there that entire time, also confirms that
9 he saw Mr. Smith staying at the property prior to June 1,
10 2003 more than once. Mr. Smith indicates that he stayed
11 at the property more than once.

12 It was asked earlier, I believe, of
13 Mr. Russo what more it would take in this situation or in
14 a situation where a person did not have an address, where
15 a person might have stayed in their van prior to entering
16 into a lease agreement, what it would take. I think what
17 it takes is consistency of the story of the facts that are
18 presented. The story about staying in the van did not
19 arise until today in the hearing. That was not something
20 that was a part of the Staff's report, it was not
21 something that was a part of the notes taken by MGE.

22 I think that has to be kept in mind.
23 There's no consistency to the story. Many other things
24 don't add up as we've gone through this, many items in
25 terms of Mr. Murphy's testimony. Mr. Murphy's had a hard

1 time remembering whether he was or wasn't a customer of
2 MGE; if so, whether he owed money, what the rental amount
3 may have been on this piece of property, any number of
4 things. Mr. Smith tells us that he utilized the address
5 at 5823 East 16th Street in January of 2003 because he was
6 over there cutting grass at Mr. Elders' place and thought
7 to ask him. I don't know that there's much grass cut in
8 January in Kansas City, Missouri.

9 There are numerous, numerous items and
10 inconsistencies. It also appears that the evidence would
11 support that Mr. Elders continued to reside at 5823 East
12 16th Street after June 1 of 2003. The natural gas service
13 stayed in Mr. Elders' name in July 1, 2003, when it was
14 disconnected for nonpayment. There was no attempt as of
15 June 1 to ever put that into Mr. Smith's name.

16 The electric service stayed on in
17 Mr. Elders' name until March 17 of 2004, almost
18 approaching a full year after Mr. Smith took up residence
19 at 5823 East 16th Street. The evidence indicates that a
20 person representing himself as Jeffrey Elders contacted
21 KCPL in November of 2003, several months after June of
22 2003, to make arrangements concerning the payment of the
23 electric bill at 5823 East 16th Street.

24 Again, the evidence indicates that someone
25 representing themselves as Mr. Elders contacted KCPL in

1 March of 2004 to request that his name be removed from the
2 electric account. Now, Mr. Smith has indicated to us that
3 indeed it was him calling and using Mr. Elders' name.
4 Now, that's one explanation, but it leaves you with two
5 choices; either, one, Mr. Elders really was there and made
6 the call to KCPL or, two, Mr. Smith thinks nothing of
7 fraudulently representing himself as someone else in the
8 dealings with the utility companies.

9 Lastly and much smaller amount, but the
10 evidence shows that Mr. Elders and Mr. Smith have shared a
11 telephone number. This telephone number has remained
12 consistent from Mr. Elders' account to Mr. Smith's
13 account. Mr. Smith also indicated that it was his
14 girlfriend that told the subpoena process server on the
15 Commission subpoena that Mr. Elders had been gone
16 approximately a month. Now, that subpoena was attempted
17 to be served from June of this year until a date in July
18 of this year.

19 MGE believes that all this evidence today,
20 and granted it's circumstantial; I don't think you're
21 going to have an easy decision in this where you can say,
22 oh, yes, Mr. Smith said this and that's what I'm doing. I
23 think all this evidence, the inconsistencies of the
24 evidence, the inconsistencies of Mr. Smith's stories add
25 up to support MGE's transfer of the outstanding Elders

1 balance to Mr. Smith. Thank you.

2 JUDGE DIPPELL: Thank you. I believe that
3 concludes this hearing, then. And I appreciate all your
4 patience in dealing with the telephone testimony and so
5 forth.

6 Thank you, Mr. Smith, for your patience in
7 dealing with that as well, and I appreciate you-all
8 attending. We can go off the record. Thank you.

9 WHEREUPON, the hearing of this case was
10 concluded.

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