

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 June 5, 2006
9 Jefferson City, Missouri
Volume 1
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11 Ronald Kitchen,)
12)
Complainant,)
13)
vs.) Case No. GC-2006-0066
14)
Missouri Gas Energy,)
15)
Respondent.)
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20 KENNARD L. JONES, Presiding,
REGULATORY LAW JUDGE
21 STEVE GAW,
LINWARD "LIN" APPLING,
22 COMMISSIONERS.
23
24 REPORTED BY:
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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 8 AND EXHIBITS A
3 THROUGH C WERE MARKED FOR IDENTIFICATION BY THE COURT
4 REPORTER.)

5 JUDGE JONES: Okay. We are on the
6 record with Case No. GC-2006-0066, Ronald Kitchen
7 versus Missouri Gas Energy, a Division of Southern
8 Union Company. I am Kennard Jones, Regulatory Law
9 Judge assigned to this matter. At this time we'll
10 take entries of appearances beginning with
11 Mr. Kitchen.

12 Mr. Kitchen, will you please rise and
13 state your name and that you're representing
14 yourself?

15 MR. KITCHEN: Yes.

16 JUDGE JONES: And use your microphone
17 there.

18 MR. KITCHEN: Ronald Kitchen, and I am
19 representing myself. I was gonna bring an attorney
20 with me, but I think we can do that later, and I
21 won't.

22 JUDGE JONES: Thank you. You may be
23 seated. And for Staff of the Commission?

24 MS. SHEMWELL: Good morning, your Honor.
25 Lera Shemwell representing the Staff of the Missouri

1 Public Service Commission, Post Office Box 360,
2 Jefferson City, Missouri 65102. Thank you.

3 JUDGE JONES: And for Missouri Gas
4 Energy?

5 MR. COOPER: Dean Cooper, P.O. Box 456,
6 Jefferson City, Missouri 65102, appearing on behalf
7 of Missouri Gas Energy, a Division of Southern Union
8 Company.

9 JUDGE JONES: Thank you, all. At this
10 time we'll move on to opening statements beginning
11 with Mr. Kitchen. Mr. Kitchen, will you approach the
12 podium, please, and make your opening statement?

13 MR. KITCHEN: Thank you, your Honor.
14 Well, I don't understand most of this -- this
15 paperwork here and the legal terms.

16 What I know is that on September in
17 2003, I had a call from a representative from -- an
18 employee from Missouri Gas Energy that said that my
19 daughter Jennifer owed a gas bill and that I would
20 have to pay it. And I said, "Well, I don't want to
21 pay that gas bill." I said, "She'll take care of it,
22 she's a responsible person."

23 And they said, "No, we're gonna attach
24 it to your bill and you're gonna pay it or we're
25 gonna turn your gas off." And I said, "Well, I'm not

1 gonna pay it." And she told me it was \$90, and now I
2 find out it was \$241.

3 What I'm trying to say is, your Honor,
4 it was a \$241 gas bill, and all of this today could
5 have been avoided if the gas company had just said
6 "Give me back my money." That's all I wanted. I
7 wanted my \$241 back and they would not give it back
8 to me.

9 So here we are almost three years later
10 and all this paperwork. And I know what they're
11 doing: They're trying to exhaust me with the
12 paperwork, but I'm not gonna be exhausted. I'm gonna
13 take this as far as I have to take it. It was --
14 it's ridiculous.

15 They -- the gas company has distorted
16 the facts. And they have an attorney firm
17 representing them, and they're intelligent men, and
18 you would think that one of these men would tell the
19 gas company that you can't make me pay a bill that
20 belongs to somebody else that I didn't create, I
21 didn't cause it, I had no knowledge of the bill.

22 And it would have been different had I
23 created a bill or caused the problem, but I didn't.
24 And they're gonna insist that I pay it, and I'm not
25 gonna pay it. And so just what I said: Here we are

1 almost three years later with all this paperwork and
2 nothing resolved.

3 JUDGE JONES: Okay. Thank you,
4 Mr. Kitchen. You may be seated. An opening
5 statement from Staff of the Commission, please?

6 MS. SHEMWELL: Thank you and good
7 morning. May it please the Commission. My name is
8 Lera Shemwell. I represent the Staff. We're here on
9 a complaint involving Mr. Kitchen against MGE, and we
10 believe that the evidence will show that Mr. Kitchen
11 was required to pay a bill that he did not owe.

12 Staff's investigation has determined
13 that at all relevant times, Mr. Kitchen lived at
14 10601 (sic) East 20th Street in Independence.
15 Mr. Kitchen never lived at 416 Emery Street in
16 Independence. Mr. Kitchen's daughter Jennifer lived
17 at that address, and at some point Jennifer moved in
18 with Mr. Kitchen at the 20th Street address.

19 Mr. Kitchen never benefited from service
20 at the Emery Street address. Apparently at some time
21 in that 2003, his service became delinquent and he
22 received a disconnection notice. As a result of
23 that, Mr. Kitchen paid a reconnection fee, not a new
24 service fee. He was not an applicant for new service
25 at the time of application.

1 Under -- under its tariffs at the time,
2 MGE could not disconnect a customer for failure to
3 pay a bill from someone who had not benefited from
4 that service. And Staff has concluded that MGE could
5 not disconnect Mr. Kitchen for -- or deny him service
6 for the failure to pay the bill of another. Staff's
7 recommendation is that MGE be required to reimburse
8 Mr. Kitchen for the \$241 bill. Thank you.

9 JUDGE JONES: Thank you, Ms. Shemwell.
10 For MGE, Mr. Cooper?

11 MR. COOPER: Thank you, your Honor.
12 Based upon the Commission's discussion last Thursday,
13 I think it would be a good idea for me to clarify
14 MGE's position in this complaint at this point in
15 time.

16 As you're probably aware from the
17 record, MGE made what it described as an offer of
18 judgment or satisfaction in this case. The substance
19 of that offer was to credit Mr. Kitchen's account in
20 the amount of \$241.71, the amount in dispute, if such
21 action would satisfy the complaint.

22 MGE took that step in an attempt to
23 avoid the expenditure by MGE and Mr. Kitchen and the
24 Commission and the cost and resources required for
25 this hearing, but also because the tariff that's in

1 dispute in this matter has been superseded as a
2 result of the Commission's new denial of service
3 rule.

4 And MGE's revised tariff sheets filed in
5 response to that rule became effective on April 15,
6 2005. Accordingly, from the company's perspective,
7 the Commission's decision in this matter will not
8 have any prospective application for the company.

9 We would acknowledge that the result
10 today under this same set of facts would be different
11 than the result was in 2003 with the tariff as it
12 existed at that point in time.

13 Because MGE's offer was deemed by the
14 complainant to not satisfy his complaint and thus
15 we're required to try this case, I think it would be
16 a mistake to assume that MGE has confessed any
17 wrongdoing in this matter.

18 In fact, I'll argue today that MGE did
19 not violate its tariff revisions as they existed in
20 2003, and therefore should not have to credit
21 Mr. Kitchen's account in the amount of the 241.71.

22 MGE believes that the relevant facts are
23 as follows: Mr. Kitchen has been the named customer
24 and therefore the person responsible for the bill for
25 the 10602 East 20th Street address since 1996.

1 After a period of nonpayment, service at
2 that address was discontinued in September of 2003.
3 Now, that's nonpayment associated with service
4 provided to that address to Mr. Kitchen, not
5 associated -- there was no association with
6 Jennifer's bill at that point in time. In other
7 words, service was discontinued in September of 2003
8 for nonpayment of amounts of gas used at that
9 address.

10 Jennifer Kitchen was previously MGE's
11 customer at 416 North Emery. When the final bill was
12 issued for 416 North Emery, she owed MGE the \$241.71
13 that's in dispute in this matter.

14 Ms. Kitchen later lived at 10602 East
15 20th Street and you'll find in the pleadings that
16 have been filed in this case primarily by Mr. Kitchen
17 that she lived at that address before, during and
18 after the discontinuance of service in September of
19 2003.

20 After service was discontinued and after
21 complainant's daughter requested that service be
22 turned back on, MGE requested payment of the 241.71
23 obligation incurred by Ms. Kitchen at the 416 North
24 Emery address as well as the \$389.36 arrearage for
25 usage associated with the 10602 East 20th Street

1 address. These -- the amounts requested were
2 ultimately paid over time.

3 At the time this dispute arose, Section
4 3.02 of MGE's tariffs stated in relevant part that
5 MGE was not required to commence supplying gas
6 service if at the time of application the applicant
7 or any member of applicant's household who has
8 received benefit from previous gas service is
9 indebted to company for such service, such gas
10 service.

11 MGE believes that this provision allowed
12 it to demand payment of Jennifer Kitchen's debt
13 before MGE was required to commence service to her
14 residence in September of 2003.

15 Although the Staff has taken a different
16 position in this formal complaint case, I think it
17 bears noting that it initially found in a letter to
18 Mr. Kitchen dated September 25th of 2003 that it does
19 not appear that MGE violated their filed and approved
20 tariffs, and that will be one of the exhibits that --
21 that we'll talk about a little later today.

22 All the parties in this matter have
23 stated that Jennifer Kitchen lived at 10602 East 20th
24 Street at the time service was discontinued and at
25 the time reconnection was sought. It's not disputed

1 that Jennifer Kitchen owed MGE 241.71 for service
2 previously provided to her at 416 North Emery.

3 I think it would be contrary to the
4 intent of MGE's tariffs to find that MGE was required
5 to reconnect the service at 10602 East 20th Street to
6 the benefit of Jennifer Kitchen while her bill
7 remained unpaid. I think it's also clear from prior
8 Commission decisions that had this been a brand new
9 service, Jennifer's bill would have to have been paid
10 before service was commenced.

11 Support for that can be found in the
12 Commission's decision in Smith v. MGE, which is Case
13 GC-2004-0281 and decided in August of 2004 where the
14 Commission said under MGE's tariff, Section 3.02,
15 since the Commission has determined that Mr. Elders
16 was the -- was -- the additional party in that case
17 was still living at the home at the time service was
18 commenced to Mr. Smith's account, it was appropriate
19 for MGE to transfer the past due amount of
20 Mr. Elder's account.

21 Support's also found in the MacKenzie v.
22 MGE case where if you'll recall, there was the
23 dispute about whether Mr. MacKenzie's wife was living
24 at the home at the time. Her name was Ms. Nanz
25 (phonetic spelling).

1 Commission said if Ms. Nanz had been a
2 resident of 8004 Overton at the time service was
3 commenced, Section 3.02 would have applied and MGE
4 would have been authorized to transfer Ms. Nanz's
5 past due debt to Mr. MacKenzie's account at that
6 time.

7 The Commission also said if in the
8 future Mr. MacKenzie and Ms. Nanz commenced or
9 transferred service in MGE's service area, and
10 Ms. Nanz still has a past due debt within, the
11 Section 3.02 would apply as would any other relevant
12 Commission rule.

13 MGE believes that the same approach was
14 permitted in the situation at hand and that the
15 Commission should find in favor of MGE and dismiss
16 the complaint. Thank you.

17 JUDGE JONES: Thank you, Mr. Cooper. At
18 this time we'll move on to testimony. Mr. Kitchen,
19 would you please approach the witness stand and be
20 sworn?

21 (Witness sworn.)

22 JUDGE JONES: Thank you, sir. You may
23 be seated and simply give a sworn statement of the
24 facts as you know them to be. Just make sure your
25 microphone's on also.

1 MR. KITCHEN: Well, do you want to say
2 that again? I thought somebody was gonna come up
3 here and ask me questions.

4 JUDGE JONES: Well, because you don't --
5 you don't have anyone -- someone will ask you
6 questions, but their questions will be based on the
7 story that you give. Just tell your story about the
8 bill and --

9 MR. KITCHEN: Oh, okay.

10 JUDGE JONES: Just present the facts,
11 not arguments about right or wrong. Just tell us
12 what the facts are.

13 MR. KITCHEN: Okay. Well, the facts are
14 that on September of 2003, I received a call from one
15 of three people. It was -- there was an Angela that
16 called, there was a Debra that called, there was a
17 David that called. And I -- they would not give me
18 their last names.

19 They was employees of Missouri Gas
20 Energy and they said that my daughter had owed a past
21 bill and that they was gonna attach it to my bill
22 and -- and I said, "No, don't attach that to my
23 bill." I said, "She'll take care of her own bill.
24 She's responsible enough to do that."

25 And they became belligerent and -- and

1 in return I did too, I suppose. And I said, "I'm not
2 paying the bill, don't attach my bill." Well, they
3 did it anyway. She said that they're gonna pay --
4 I'm gonna pay it or they're gonna turn my gas off.

5 And it -- so when I -- I called several
6 other representatives for MGE and they -- they told
7 me that the Missouri legislators had passed a law
8 stating that I would have to pay that bill, that it
9 was the law that I had to pay that bill because my
10 daughter lived there.

11 Well, I called my representative and he
12 said that was not true, that they -- the Missouri
13 legislators never passed a law stating that I was
14 gonna be responsible for somebody else's bill.

15 And I can understand Missouri Gas
16 Energy's position. If my daughter owed a bill and I
17 went up and -- to let -- for someone else to come in
18 and turn -- try and deceive the gas company to
19 benefit, like they told me from the warmth and
20 comfort of the gas, I can understand them wanting me
21 to pay the bill. But nobody was trying to deceive
22 the gas company.

23 I've had the gas on in that house since
24 I bought it and whether I paid the bill on time or
25 every time, that's -- that's immaterial. I've always

1 paid the late charges or whatever I had to do. But
2 nobody was trying to deceive the gas company. My
3 daughter simply got -- lost her job and she needed a
4 place to stay for a while until she could get back on
5 her feet.

6 And, no, we -- when she moved,
7 apparently she had a final bill come and didn't know
8 anything about it. And then she called me one day
9 and said that they was gonna turn the gas off and I
10 said, "Well, go in the drawer and get the money and
11 go up and pay it." Well, they wouldn't let her pay
12 it because it was on in my name.

13 And I had to call them and confirm
14 that -- that the gas was on at that address, 10602
15 East 20th in my name. Then she went back up and paid
16 it.

17 And then two or three days later I got
18 the call that they was -- first they told me it was
19 \$90 and then it went -- then I later discovered it
20 was actually \$241. But I wanted to ask the -- the
21 gas company, I looked at the tariff on there and I
22 don't know about a tariff, but I know that --

23 JUDGE JONES: Before you do that, the
24 question that you want to ask the gas company you may
25 write down because they'll have witnesses and you'll

1 have an opportunity to ask them questions at that
2 time.

3 MR. KITCHEN: Okay. Well, then I guess
4 they can ask me questions, I guess.

5 JUDGE JONES: Okay. Well, now we'll
6 have questions from Staff of the Commission.

7 CROSS-EXAMINATION BY MS. SHEMWELL:

8 Q. Good morning, Mr. Kitchen. I'm Lera
9 Shemwell. We have visited a number of times and I'd
10 like to ask you a few questions this morning.

11 A. Okay.

12 Q. Where do you live?

13 A. 10602 East 20th.

14 Q. Is that Independence?

15 A. Independence, Missouri.

16 Q. How long have you lived there?

17 A. Since we bought the home. I think we
18 bought the home in about '90-something, in the
19 1990's.

20 Q. Early or late?

21 A. Late '90s.

22 Q. Did you ever live at the Emery Street
23 address in Independence?

24 A. No.

25 Q. Did you during this time period that

1 we're talking about, I guess late '90s through 2003,
2 did you ever live anywhere else but the 20th Street
3 address?

4 A. No.

5 Q. Do you own other property in
6 Independence?

7 A. Yes.

8 Q. Who lived there?

9 A. My wife.

10 Q. Are you responsible for the bill there?
11 Is your name on the --

12 A. Yes.

13 Q. Did you live there?

14 A. No, I didn't.

15 Q. Did you and Jennifer move into the 20th
16 Street address at the same time?

17 A. No.

18 Q. Were you -- were you both transferring
19 service at the time from another location?

20 A. No.

21 MS. SHEMWELL: I'd like to, if I may
22 approach, hand Mr. Kitchen a copy of the complaint
23 that he filed.

24 JUDGE JONES: You may.

25 MS. SHEMWELL: I know it's on the

1 record. It's marked as Exhibit 1.

2 COMMISSIONER GAW: Judge, may I ask a
3 quick question for clarification?

4 JUDGE JONES: Yes, you may.

5 COMMISSIONER GAW: Ms. Shemwell, when
6 you refer to Jennifer, I -- you may have said who
7 that is, but --

8 MS. SHEMWELL: I'll ask.

9 COMMISSIONER GAW: -- it wasn't clear to
10 me.

11 MS. SHEMWELL: Okay.

12 COMMISSIONER GAW: Thank you.

13 BY MS. SHEMWELL:

14 Q. Mr. Kitchen, who is Jennifer Kitchen?

15 A. My daughter.

16 Q. And your wife's name?

17 A. It is Sylvia.

18 Q. And she's the one that lived at the
19 other property in Independence; is that right?

20 A. Yes.

21 Q. What is that address?

22 A. 9822 Westport.

23 Q. So we can refer to that as the Westport
24 Road if we need to?

25 A. Yes.

1 Q. And you have another daughter, correct?

2 A. Yes.

3 Q. Her name?

4 A. Well, I have two other daughters.

5 Q. Okay.

6 A. Kim and Kamie.

7 Q. And Kamie is K-a-m-i-e?

8 A. K-a-m-i-e, yes.

9 Q. I've handed you what's been marked as

10 Exhibit 1. Do you recognize that paper, Mr. Kitchen?

11 A. Yes. It's a paper I filled out and I --

12 Q. Could you speak into the microphone,

13 please, sir?

14 A. Yes. It's a paper that I had written

15 out to, I believe Missouri Public Service Commission,

16 and then there's a copy of the original bill dated

17 September the 4th, 2003.

18 Q. If I refer to this as the complaint,

19 does that make sense to you?

20 A. Yes.

21 Q. Would you turn to page 3? It says,

22 "Final Disconnect Notice." Are you there, sir?

23 A. I'm looking for it.

24 Q. Page 3.

25 A. Oh, okay. That's a copy of the bill,

1 yes.

2 Q. Down at the bottom, you see a list of
3 fees. Would you read the second line, please? First
4 is "Overdue Amount."

5 A. "Reconnect Fee, \$35."

6 Q. Thank you. And does this constitute the
7 entire complaint that you filed with the Commission?

8 A. Well, no, I don't think so.

9 Q. Did you file more than this at the time?

10 A. Oh, no. Yeah, it -- the complaint, yes,
11 it does. I was thinking about all the correspondence
12 that we had going back and forth between us.

13 Q. Did you agree that service was
14 disconnected at the 20th Street address?

15 A. Well, I don't -- I don't really know
16 whether it was disconnected or it was threatened to
17 be disconnected. I can't ever really remember it
18 being disconnected.

19 It's possible that it was disconnected
20 and that the same date of payment that after my
21 daughter called me and told me they was gonna
22 disconnect it and she went up and paid it, they may
23 have come out right away and turned it back on before
24 I got home. So it's possible it could have been
25 disconnected, but I don't recall it being

1 disconnected.

2 Q. Thank you. What happened? You
3 testified that they would not accept the payment from
4 Jennifer; is that right?

5 A. Right.

6 Q. So did you have to go in yourself?

7 A. No. I had to verify it over the phone.
8 I verified it over the phone with my -- I think maybe
9 I give them some personal information, Social Security
10 number, something like that, to verify it over the
11 phone. And then Jennifer went back up and paid it
12 again -- or paid the bill, and then they came out, if
13 it had been disconnected, and reconnected it. But
14 this was all done while I was at work, so...

15 Q. Did you fill out an application for
16 service at that time?

17 A. No.

18 Q. Was -- just to be sure, was September
19 2003 the first time you had service at this location?

20 A. Oh, no.

21 Q. But you're not denying that Jennifer
22 lived there at that time, correct?

23 A. No, I'm not.

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

1 JUDGE JONES: Thank you. We'll have
2 cross-examination now from Missouri Gas Energy.

3 CROSS-EXAMINATION BY MR. COOPER:

4 Q. Mr. Kitchen, did you and your daughter
5 ever consider the possibility that she pay MGE the
6 241.71 associated with the North Emery balance due?

7 A. Well, no, I never discussed it with her,
8 no, I didn't. And it wasn't -- and I hate to say
9 this to you, Mr. Cooper, but it wasn't -- originally
10 it was supposed to have been \$90. The gas company
11 told me that she had a \$90 previous bill from the
12 Emery Street address.

13 Q. Yeah. And we'll talk about where that
14 \$90 comes from later.

15 A. Okay.

16 Q. But would you agree with me that had
17 Jennifer paid the bill associated with North Emery
18 that it would have avoided all this?

19 A. True. That's true.

20 Q. Now, I want to hand you -- well, let's
21 go back to that exhibit that Ms. Shemwell spoke to
22 you about, which is Exhibit 1. Do you have that in
23 front of you, by chance? It's your complaint.

24 A. Yes.

25 Q. Okay. And if you would turn to the last

1 two pages of that exhibit. Do you see a letter there
2 addressed to you?

3 A. Yes.

4 Q. Okay. And what is that letter?

5 A. Well, sir, I think I'm looking at the
6 right one. Do you want me to read it to you?

7 Q. Well, tell me what the date is at the
8 top of it.

9 A. September 25th, 2003.

10 Q. That's the one I'm thinking about, yeah.
11 Is that a letter that you received?

12 A. Yes.

13 Q. Okay. And you received that letter in
14 response to an inquiry you made to the Missouri
15 Public Service Commission, correct?

16 A. Yes.

17 Q. Now, if you'll turn to the second page
18 of that document. Do you see the last paragraph that
19 starts, "At this time"?

20 A. Yes.

21 Q. Okay. Now, you'd agree with me that the
22 letter states, "At this time it does not appear that
23 MGE violated their final and approved tariff,"
24 wouldn't you?

25 A. Yes, that's what it says.

1 Q. Do you have any children other than
2 Jennifer?

3 A. Yes, I have two -- three daughters and
4 one son.

5 Q. What are their names?

6 A. Kamie, Kimberly and Jacob.

7 Q. And were they all alive in 2003?

8 A. Yes.

9 Q. Okay. Were any of them living with you
10 during that period in -- excuse me. Yes, were any of
11 them living with you in 2003?

12 A. No, I don't believe so.

13 Q. Only Jennifer?

14 A. Just Jennifer.

15 MR. COOPER: That's all the questions I
16 have at this time.

17 JUDGE JONES: Thank you, Mr. Cooper.

18 Questions from the bench now. Commissioner Gaw?

19 QUESTIONS BY COMMISSIONER GAW:

20 Q. Good morning, Mr. Kitchen. My name is
21 Steve Gaw. I'm a Commissioner.

22 A. Good morning.

23 Q. Let me just see if I can get a better
24 sense of what -- what you're asking for, if you don't
25 mind.

1 A. All right.

2 Q. First of all, tell me what it is that
3 you want this Commission to do. What are you asking
4 for?

5 A. Well, the Commission, as I understand
6 it, is not in a position to ask for any kind of
7 compensation. Their determination is whether I
8 actually owed the bill or whether I was right or
9 wrong in refusing to pay the bill. And they -- true,
10 MGE did offer to give me credit, but it was two and a
11 half years and mounds of paperwork later that they
12 offered to give me back the \$241 in credit.

13 And I -- it was -- I can't explain to
14 the Commission or to Missouri Gas Energy how
15 upsetting this was to me that they just flat told me
16 that I was gonna pay someone else's bill.

17 And so what I was trying to determine
18 here at this hearing, that Missouri Gas Energy had no
19 right to make me pay someone else's bill. That's --
20 and I wanted documentation from this hearing if I
21 may, please --

22 Q. Yes.

23 A. -- stating that I was not -- that I did
24 not have to pay this bill, that I had to -- that I
25 could not have been forced to pay this bill.

1 Q. Okay. So you're looking for this
2 Commission to make a determination on whether or not
3 that was right or wrong?

4 A. Yes.

5 Q. Okay. Now, I know that you and the
6 parties here have been through this many times in
7 discussions.

8 A. Uh-huh.

9 Q. I assume that.

10 A. Uh-huh.

11 Q. For the Commission itself, however, this
12 is not as well known to us today, so what we get from
13 you today is going to have a significant impact on
14 what we have in front of us to make a decision on.

15 So would you first just give me an idea
16 about when this first occurred? In just general
17 time, when did you first have notice of this issue?

18 A. Well, it had -- it was when this notice
19 of -- final disconnect notice came on September the
20 4th in 2003. It was right about that time. So it
21 had to be the month of September 2003. And it was
22 after this bill was -- after I paid a certain amount
23 of this \$367 bill.

24 And then within, I think about three
25 days, so it had to be the 7th or the 8th of September

1 when I received the call from the gas company and was
2 put on notice that I would pay her bill, that I would
3 pay Jennifer's bill too, that it would be attached to
4 my bill.

5 Q. Did you have any document or letter or
6 notice from them prior to that phone call that they
7 were going to attempt to collect your daughter's bill
8 from you?

9 A. No, no, I didn't.

10 Q. Did this phone call come to you?

11 A. Yes, I answered the phone.

12 Q. And do you know who you talked to at the
13 other end?

14 A. Well, I had talked to -- actually, I
15 talked to more than one gas -- Missouri Gas Energy
16 employee, and so it was either -- and it was a woman,
17 so it had to be Debra or Angela because they wouldn't
18 give their last names.

19 Q. Okay. But this was the first contact
20 you had regarding her bill?

21 A. Yes.

22 Q. Jennifer's bill?

23 A. Yes.

24 Q. All right. And can you tell me what was
25 said to you to the best of your recollection?

1 A. Well, yes, I can -- yeah, I can remember
2 it pretty clear. The woman said that she was with
3 Missouri Gas Energy company, MGE, and that my -- was
4 I aware that my daughter had a prior bill at such and
5 such an address and -- for \$90 and that they were
6 going to attach it to my bill.

7 And I said, "No, don't attach that to my
8 bill and I'll -- I'll tell her about it and she'll
9 take care of it." And they said, "No, we're gonna
10 attach it to your bill." And I said, "No, you're not
11 gonna attach it to my bill. I don't want it attached
12 to my bill." And she said, "Well, we will and you'll
13 pay it or we'll turn your gas off."

14 Q. Okay. And was there any other
15 conversation between you of significance subsequent
16 to what you've just -- the conversation that you just
17 told me on that phone call?

18 A. No, I don't believe there was anything
19 else said.

20 Q. Okay. I --

21 A. Because I got so upset I just hung the
22 phone up.

23 Q. I understand. So then what happened
24 next in regard to contact between you and MGE?

25 A. That was a long time ago. I think

1 that --

2 Q. To the best of your recollection.

3 A. I don't think that anything happened
4 after that. I think that they just started -- they
5 just attached that to my gas bill and I went ahead
6 and made the payments. And then until -- it got to
7 the point where I was asking a lot of people, I know
8 people that work for Missouri Gas Energy company and
9 they was telling me that they didn't have the right
10 to do it.

11 And I know people who work for Power and
12 Light and they was telling me they didn't have the
13 right to do it. And it just kept wearing on me until
14 the point that where it -- it has now just escalated
15 to this.

16 Q. All right. It's -- so did you pay
17 any -- any part of -- of Jennifer's bill?

18 A. I paid it all.

19 Q. Paid it all. And over what time frame
20 if you recall?

21 A. I don't really know. It was just -- it
22 just kept coming in -- the bills just kept -- every
23 time the gas bill would come, I'm sure there was a
24 portion of it attached to that bill, so it was all
25 paid.

1 Q. How much of the -- you said that they
2 told you there was about \$90 due. When the bill
3 came, how much was it that was on the bill that was
4 attributable to your daughter Jennifer?

5 A. \$241 and something.

6 Q. Did you have any additional
7 conversations with MGE in regard to that -- the
8 amount that was on that statement?

9 A. Yeah, I'm sure I did.

10 Q. Okay. Do you know if you called them or
11 they called you? Do you have any recollection?

12 A. I -- I probably called them because I
13 talked to several people, and one was a lady named
14 Gay Fred, and then I talked to another woman named
15 Barbara. I can't remember what her name was.
16 Barbara. Actually, Gay Fred was the only one who
17 give me her last name. The rest of them wouldn't
18 even give me their last names.

19 Q. All right. Are you aware of the fact
20 that Gay Fred is actually an employee of the Missouri
21 Public Service Commission?

22 A. No. I thought at the time she was an
23 employee of the gas company in the way she talked to
24 me. And I was -- it was explained that she had to
25 conduct an investigation.

1 And so I thought, well, it was -- she
2 was an employee of the gas company. And no, I didn't
3 know -- I didn't find out that she was with the
4 Missouri Public Service Commission for probably --
5 not until maybe four or five months ago.

6 Q. Okay. Now -- and I think you've already
7 touched on this. At the time that you initially
8 got -- received contact by phone from MGE regarding
9 this issue, your daughter was at that time living
10 with you?

11 A. Yes.

12 Q. All right. And approximately how long
13 had she been living with you at that point?

14 A. Well, I can't remember that.

15 Q. That's okay. More than -- more than a
16 few weeks?

17 A. Oh, yeah, I'm sure.

18 Q. Okay. And how long did she live with
19 you subsequent to that?

20 A. I can't really remember that either. It
21 was quite some time, but, you know, she's a young
22 woman so she ain't gonna stay around and live with
23 Dad too long.

24 Q. And can you tell me, she's not living
25 with you now; is that correct?

1 A. No.

2 Q. Now, is it -- is it accurate to say that
3 the reason that you -- that you paid anything on this
4 bill was because you thought you were going to be
5 disconnected?

6 A. Yes.

7 COMMISSIONER GAW: Judge, are these
8 disconnection notices in the record?

9 JUDGE JONES: That's an exhibit. It
10 hasn't been offered as evidence, but it is the
11 complaint that is part of the record.

12 COMMISSIONER GAW: I guess I'm gonna ask
13 whether it will be offered by some party.

14 MS. SHEMWELL: We don't have disconnect
15 notices, do we? We just have that final bill that is
16 on page 3 of the complaint and it says, "Final
17 Disconnect Notice" at the top. It's part of
18 Exhibit 1.

19 COMMISSIONER GAW: Is that going to be
20 offered by someone?

21 MS. SHEMWELL: It's been offered -- or I
22 will offer it as Exhibit 1. It's been marked, so I
23 will go ahead and offer it.

24 JUDGE JONES: Any objection to
25 Exhibit 1, Mr. Cooper?

1 MR. COOPER: No, your Honor.

2 JUDGE JONES: Exhibit 1 is admitted into
3 the record.

4 (EXHIBIT NO. 1 WAS RECEIVED INTO
5 EVIDENCE AND MADE A PART OF THE RECORD.)

6 BY COMMISSIONER GAW:

7 Q. And Mr. Kitchen, you attached a final
8 disconnect notice to your complaint, is that correct,
9 when you filed it?

10 A. Yes.

11 Q. And that is the final disconnect notice
12 that you received that you referred to earlier in
13 your testimony?

14 A. Yes.

15 COMMISSIONER GAW: I don't -- rather
16 than -- I don't have the ability of showing it to him
17 very easily, but --

18 MS. SHEMWELL: He has it in front of
19 him.

20 BY COMMISSIONER GAW:

21 Q. Is it marked as Exhibit 1 on your copy?

22 A. No.

23 COMMISSIONER GAW: Somebody just provide
24 him a copy of Exhibit 1 so the record is clean.

25 BY COMMISSIONER GAW:

1 Q. Mr. Kitchen, do you have what's been
2 marked as Exhibit 1 in front of you?

3 A. Yes.

4 Q. Is that a copy of the disconnection
5 notice that you referred to earlier?

6 A. Yes.

7 COMMISSIONER GAW: Okay. Thank you.
8 I think that's all I have right now. Thank you,
9 Judge.

10 JUDGE JONES: Thank you. Commissioner
11 Appling?

12 QUESTIONS BY COMMISSIONER APPLING:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. When was your first conversation with
16 Gay Fred? How long was that after you -- or who
17 referred you to Gay Fred?

18 A. I don't think anybody referred me to
19 them. I talked to so many people that I can't
20 remember exactly when. I think I probably called and
21 I was connected to Gay Fred.

22 Q. Okay. How did she assist you?

23 A. Sir?

24 Q. How did Gay Fred assist you? Did she
25 assist you in some way? She completed the

1 investigation?

2 A. No. She was -- she was doing some kind
3 of an investigation and she asked me if I was aware
4 that Jennifer had the gas on in my name over at
5 Emery. And I thought that was kind of funny because
6 she was working for Missouri Gas Energy, I assumed
7 that she was, and she's asking me if -- was I aware
8 that the gas was on in my name.

9 And I know that when you go to apply for
10 gas, you have to show identification and everything.
11 And I'm thinking, well, if she works for Missouri Gas
12 Energy and she can't tell that -- all she had to do
13 was go to the records and see whose name was on the
14 Emery gas bill.

15 Q. But she -- but she was not working for
16 MGE.

17 A. No, she was doing an investigation for
18 Missouri Public Service.

19 Q. Right. Okay. How long was it after
20 September that you talked to Gay Fred? Was that --

21 A. After September of 2003?

22 Q. Yeah.

23 A. Oh, maybe -- I really don't know the
24 time frame, sir, but --

25 Q. Months?

1 A. Months. Months.

2 Q. After that you talked to Gay Fred?

3 A. That was months, yeah.

4 Q. I think you cleared this up with
5 Commissioner Gaw, but I just -- I'm gonna ask the
6 question again so maybe it can clear me up a little
7 bit better here.

8 As of this morning, help me to
9 understand what is you seeking this morning in
10 respond to the three years, in respond to the \$90, in
11 respond to the \$241, what are you seeking this
12 morning? It is my understanding that MGE has offered
13 to return your money. Is that a fact?

14 A. Well, they offered, yes, sir, they did
15 after two and a half years and mounds of paperwork
16 when all they really had to do if they had called and
17 said okay, this was -- a mistake was made, that we'll
18 reimburse you your \$241, but they didn't do that.

19 They drug me through two and a half
20 years of paperwork -- or going on three years now,
21 come September of this year. And then all of a
22 sudden now they want to say yeah, well, we'll credit
23 you back. Well, I didn't pay in credit, I paid in
24 cash. I paid the bill in cash. I didn't pay in
25 credit.

1 And so I'm not the only one that
2 Missouri Gas Energy has done this to. I've talked to
3 other people and they have done this very thing to
4 other people. And I think that somehow Missouri Gas
5 Energy needs to understand that the legislators never
6 passed a law that said I had to pay somebody else's
7 bill or other people had to pay someone else's bill.

8 And they need to understand it and stop
9 forcing people -- I know they lose a lot of money. I
10 know people swindle the gas company out of it, but to
11 make me pay it or someone else be responsible for
12 someone else's bill, that's not the answer. I mean,
13 that's not the answer for -- for them taking my \$241.
14 There must be a better way for them to do it.

15 Q. Okay. Let's get back to the point that
16 I was trying to make. Help clear me up here and I
17 understand exactly what you've said.

18 A. Okay.

19 Q. One, two, three, what are you seeking
20 this -- this morning?

21 A. I need verification from Public Service
22 Commission that Missouri Gas Energy was wrong for
23 taking my money and that I intend to go to court and
24 file suit against Missouri Gas Energy for
25 compensation for two and a half years of aggravation

1 and loss of sleep, and I wrote it in the letter and
2 that's why I'm down here.

3 In fact, I wasn't even gonna get this
4 hearing. I think that they was gonna cancel this
5 whole hearing and I got upset about that. I mean,
6 it's just -- it's been one -- it's like an ongoing
7 nightmare. And all this could have been avoided
8 just at the very beginning if they'd have just give
9 me back my money.

10 And, no, but that wasn't good enough.
11 They make me go through all this stuff. And I
12 know -- just like I said, I know what they're doing.
13 It's called exhaustion, and they just pile paperwork
14 on you and pile paperwork on you until you just throw
15 up your hands and forget it.

16 And that's -- and they've done it --
17 they've been doing it to people for a long time. And
18 they've been doing it under -- I believe they have.
19 I know of other people that they've done it to. I
20 know I have one friend that had to pay a \$2,000 gas
21 bill that didn't belong to him.

22 COMMISSIONER APPLING: That's all the
23 questions I have.

24 JUDGE JONES: Thank you.

25 QUESTIONS BY JUDGE JONES:

1 Q. I just have -- I want to clear some
2 facts up about the disconnection and reconnection and
3 whatnot. It's my understanding that you owed money,
4 you didn't pay, you were disconnected and then your
5 daughter went to get it reconnected at which time the
6 company said, "Oh, you owe us money too, and we will
7 not reconnect unless you pay your delinquent bill and
8 her arrearage."

9 I want to make it -- I want to be sure
10 that that's how it happened because now I'm hearing
11 you say that they're gonna disconnect if you don't
12 pay her bill, but I'm thinking that they won't
13 reconnect until you -- they pay.

14 A. No.

15 Q. Now, I need you to clear that up for me.

16 A. No, your Honor. What happened was
17 she -- my daughter called me and said that the gas
18 company was gonna turn off the gas if --

19 Q. Called you at work?

20 A. At work.

21 Q. Okay.

22 A. And that -- and so I told her to go get
23 the money, go pay it. She went in, got the money
24 from the desk to go pay it, the bill, and they
25 wouldn't accept the money because her name wasn't on

1 the gas bill.

2 Q. Now, the money that you're talking
3 about, is that money that you owe or is that money --

4 A. This was money that I owed --

5 Q. Okay.

6 A. -- on the gas bill.

7 Q. Do you remember how much that was?

8 A. Well, according to this thing, this
9 final disconnect it's an overdue account -- amount of
10 \$367.06.

11 Q. So this \$367.06 does not include the
12 \$241 that she owed?

13 A. Right.

14 Q. Okay. So she went to pay the 367.06 and
15 they said they wouldn't accept that?

16 A. Well, she -- they did let her pay. We
17 just paid I think a couple hundred of it and then they
18 came back and -- if they turned it off -- I don't
19 know if they actually turned it off. If they had
20 turned it off, they reconnected it before I got home.

21 And then it was -- and I have it written
22 down here and I never noticed it, but on 9/17 is when
23 Debra called me, of '03, and that's when she told me
24 that Jennifer had a prior gas bill and that I would
25 have to attach it to my bill and pay it.

1 Q. So you were -- you were getting service
2 at the time you were informed that you would have to
3 pay your daughter's bill?

4 A. Oh, yes, yes.

5 JUDGE JONES: That's all I have. We'll
6 have cross-examination from Staff -- or recross. I'm
7 sorry.

8 MS. SHEMWELL: Thank you, Judge.

9 RE CROSS-EXAMINATION BY MS. SHEMWELL:

10 Q. Mr. Kitchen, are you asking this
11 Commission to make a specific finding that MGE
12 violated its tariff?

13 A. Yes.

14 MS. SHEMWELL: That's all I have. Thank
15 you.

16 JUDGE JONES: Recross from MGE?

17 MR. COOPER: Yes, your Honor.

18 RE CROSS-EXAMINATION BY MR. COOPER:

19 Q. Mr. Kitchen, you talk -- or you
20 mentioned a couple of times this idea that you
21 thought someone told you that the legislature had
22 passed a law, correct?

23 A. Someone at the gas company told me that,
24 yes.

25 Q. Okay.

1 A. And I think it was -- the lady's name
2 was Barbara. But like I said, I talked to several
3 people at the gas company, Angela, Dave, Debra,
4 Barbara and one other woman, I can't remember her
5 name.

6 Q. It --

7 A. And one of them told me that the
8 Missouri legislators had passed a law giving gas
9 companies the right to force me to pay Jennifer's
10 bill.

11 Q. If I were to tell you that the Court of
12 Appeals has found that a utilities tariff that has
13 been approved by the Public Service Commission
14 becomes Missouri law and has the same force and
15 effect as a statute enacted by the legislature, what
16 would you think that means?

17 A. You want to say that one more time?

18 Q. Yeah. A tariff that has been approved
19 by the Public Service Commission becomes Missouri law
20 and has the same force and effect as a statute
21 enacted by the legislature.

22 A. Approved by the -- has the same --
23 enacted by the Missouri legislature. Well, I don't
24 think that the Missouri legislators approved any --
25 any form of a law that said that I -- that someone

1 else could be held responsible for someone else's
2 bill.

3 And I think that when -- if the
4 Commission was in agreement with the legislators, it
5 wasn't the Commission's intention to have the same
6 attitude -- or have an attitude that, yeah, you're
7 gonna have to pay someone else's bill. I don't
8 believe that's -- that was the legislators' or the
9 Commission's intention.

10 Q. But if -- let's say we have a tariff
11 that's been approved by the Commission. Arguably, if
12 what I've told you is true -- and I know I'm asking
13 you to make an assumption there -- but arguably, if
14 what I've told you is true, then that tariff has the
15 same force and effect as a statute, correct?

16 A. Well, I'm really not following you, but
17 let me ask you this, if I may. May I ask you a
18 question, sir?

19 JUDGE JONES: Is your question to
20 clarify his question?

21 MR. KITCHEN: Yes.

22 JUDGE JONES: Okay. You may ask.

23 MR. KITCHEN: Do -- do -- do we have a
24 law or a tariff law that says that I'm responsible
25 for someone else's bill? Do we have a law like that

1 now?

2 BY MR. COOPER:

3 Q. Well, let me back up. Certainly -- and
4 this is kind of out of order, but because we have a
5 pro se litigant, let me -- let me go ahead and answer
6 that just in the case of, it will further the
7 proceeding here.

8 I think that's what we're here to argue
9 about, Mr. Kitchen, and I think that's the issue that
10 we have before us is what MGE's tariff means. So
11 certainly that's something that we're presenting to
12 the Commission and for the Commission's decision.

13 A. Well, I don't know what the difference
14 between tariff and law is, but you're talking about a
15 tariff and I'm talking about a law. Do we have a law
16 that says that I am -- can be held responsible for
17 someone else's bill? And I don't think so.

18 Q. Now, you and I spoke earlier about the
19 letter that you had received from the Commission. Do
20 you remember that? That September 25th --

21 A. Yes.

22 Q. -- 2003 letter?

23 A. Yes, I do.

24 Q. Okay. And you'd agree with me that you
25 received that letter sometime near September 25th of

1 2003, correct?

2 A. Yes.

3 Q. Okay. Now, if we look at the first page
4 of that same exhibit, Exhibit No. 1 that's been
5 admitted into evidence, there's a file stamp in the
6 upper right-hand corner that says that complaint was
7 filed August 8th of 2005; is that correct?

8 A. Yes.

9 Q. Okay. Would you agree with me that
10 that's almost two years after you had received the
11 initial response from the Commission before your
12 formal complaint was filed?

13 A. Well, if that's what it says, yes.

14 Q. Well, let's back up. Does August 8th of
15 2005 seem correct to you or do you think the
16 Commission misstamped your complaint?

17 A. Well, if this says I filed it August the
18 8th of 2005, that's when I filed it.

19 Q. When do you think it might have been
20 instead of August 8th of 2005?

21 A. Well, I don't really know, Mr. Cooper,
22 because like I said, there's so much -- I've had so
23 much paperwork and made so many phone calls that I
24 don't -- this here says that on March -- you see,
25 I -- I may have filed that with them on that date,

1 but I -- I -- this has been going on since --
2 JUDGE JONES: Let me move this along.
3 Look at the second page there --
4 MR. KITCHEN: The second page?
5 JUDGE JONES: -- of that exhibit --
6 MR. KITCHEN: Okay.
7 JUDGE JONES: -- and look at the bottom.
8 MR. KITCHEN: All right.
9 JUDGE JONES: Is that your signature?
10 MR. KITCHEN: Yes.
11 JUDGE JONES: And did you date it
12 8/4/05?
13 MR. KITCHEN: Yes.
14 JUDGE JONES: Okay. That may help
15 things along.
16 MR. KITCHEN: There you go.
17 BY MR. COOPER:
18 Q. So do you think that it was then two
19 years approximately between when you received your
20 response from the Commission to your informal
21 complaint and before you filed your formal complaint
22 with the Commission?
23 A. Possible, yes. According to this, yes.
24 Q. Well, do you have -- do you have any
25 knowledge contrary to that?

1 A. No, I don't, unless it would be in that
2 file of papers I have over there. I think I filed an
3 informal complaint long before this.

4 Q. Well, and I believe if we go back to the
5 letter that's also attached to the complaint, that
6 September 25th, 2003 letter, the first line says that
7 that letter is in response to the informal complaint
8 you filed with the Missouri Public Service
9 Commission, correct?

10 A. Oh, okay. Okay. September 25th, 2003.
11 Yes.

12 Q. Okay. Now, the offer that's been
13 referred to here that MGE made to credit your
14 account, it was made in response to your formal
15 complaint filing, correct?

16 A. In response to my formal complaint.
17 Well, it was made sometime after the informal
18 complaint was filed, yes.

19 Q. All right. So sometime after August of
20 2005?

21 A. Yes.

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

24 JUDGE JONES: Thank you. At this time,
25 Mr. Kitchen, in response to everything that's been

1 discussed, are there any points that you want to make
2 clear to the Commission, things that you think may
3 have been swayed one way or another, something -- any
4 points of clarification you want to make?

5 MR. KITCHEN: None that I can think of.

6 JUDGE JONES: That's fine. Okay. You
7 may step down. At this time we'll have Staff present
8 its witness.

9 MS. SHEMWELL: Thank you, Judge. Staff
10 calls Mr. Michael Ensrud to the stand.

11 (Witness sworn.)

12 DIRECT EXAMINATION BY MS. SHEMWELL:

13 Q. Good morning, Mr. Ensrud.

14 A. Good morning.

15 Q. Do you have in front of you Exhibit 1,
16 the complaint?

17 A. Yes.

18 Q. Would you turn to the letter that's the
19 last two pages of the complaint?

20 A. The one from -- from Consumer Services?

21 JUDGE JONES: And Mr. Ensrud, I'll need
22 you to speak into the microphone.

23 THE WITNESS: The one from Consumer
24 Services?

25 BY MS. SHEMWELL:

1 Q. The September 25th, 2003 letter
2 addressed to Mr. Kitchen and signed by Michelle
3 Bocklage?

4 A. Yes.

5 Q. B-o-c-k-l-a-g-e. Is it your
6 understanding that this was a response to an informal
7 complaint?

8 A. That's my understanding.

9 Q. Did you investigate this complaint
10 further?

11 A. I did. I spent probably two or three
12 days reviewing both tariff and -- and rule.

13 Q. Did you reach a different conclusion?

14 A. Yes, I did.

15 MS. SHEMWELL: At this time I would, if
16 I may, approach?

17 JUDGE JONES: You may.

18 MS. SHEMWELL: Thank you.

19 BY MS. SHEMWELL:

20 Q. This has been previously marked as
21 Exhibit 2. Would you please identify the document?

22 A. It's both the Staff memorandum and Staff
23 report in relation to Mr. Kitchen's complaint, formal
24 complaint.

25 Q. Did you prepare this report?

1 A. Yes, I did.

2 Q. What date was this filed with the
3 Commission?

4 A. Yes, it was.

5 Q. And do you know the date?

6 A. October 7th, 2005.

7 Q. Mr. Ensrud, if you were preparing this
8 today, would your report be substantially the same?

9 A. It would.

10 Q. Did you review MGE's tariffs to arrive
11 at your conclusion?

12 A. Yes, I reviewed both what MGE relied
13 upon, and I found a different section that seemed
14 more compelling to me.

15 MS. SHEMWELL: If I may approach?

16 JUDGE JONES: You may.

17 BY MS. SHEMWELL:

18 Q. I'm going to hand you what's been marked
19 as Exhibit 3. If I identified this as sheet R-6 of
20 MGE's tariff of October 8th, 1994, would you agree
21 with that?

22 A. I would.

23 Q. And which -- which section did you rely
24 on in making your report?

25 A. In this -- in this one I believe this

1 was -- came as a response to my report. The section
2 that's most prevalent is a term the customer's also
3 referred to as an applicant for gas service.

4 Q. And is that under Section 1.04 on that
5 page?

6 A. It is.

7 Q. If you would turn to the next page.

8 MS. SHEMWELL: Do your copies have
9 handwriting on them? No?

10 JUDGE JONES: Mine doesn't, no.

11 MS. SHEMWELL: Okay.

12 JUDGE JONES: But the second page is the
13 same as the first.

14 MS. SHEMWELL: Okay. Oh, so you don't
15 have section 110 on the second page?

16 JUDGE JONES: No. We have the
17 definitions on the second page.

18 MS. SHEMWELL: Additional definitions.
19 And is "Discontinuance of Service" one of the
20 definitions?

21 JUDGE JONES: No. The first page is the
22 exact same as the second.

23 MS. SHEMWELL: I will need to get you
24 copies of that then.

25 JUDGE JONES: Okay. We can take care of

1 that after the hearing. Go ahead and proceed.

2 MR. COOPER: Lera, I think the page
3 you're looking for is R-7.

4 MS. SHEMWELL: It is R-7?

5 MR. COOPER: If that's the case, that's
6 one of the pages that I have marked as Exhibit B and
7 I do have copies of that if it will help you.

8 MS. SHEMWELL: Okay. This has been
9 marked as Exhibit B; is that correct? This is marked
10 Exhibit B?

11 JUDGE JONES: The second page that
12 Mr. Cooper's handed out, is that the second page that
13 you intended to be attached to Exhibit 3?

14 MS. SHEMWELL: Yes. It's R-7.

15 JUDGE JONES: Okay.

16 MS. SHEMWELL: And he's marked it
17 Exhibit B.

18 JUDGE JONES: So we have Exhibit 3 and
19 Exhibit B that are intended to be the exact same
20 document?

21 MS. SHEMWELL: No. Exhibit B is R-6 and
22 Exhibit 3 is R-7 of the tariff sheets.

23 JUDGE JONES: Well, let me back up
24 again. Exhibit 3, there's a second page that you
25 intended to be attached to Exhibit 3?

1 MS. SHEMWELL: Which would be R-7.

2 JUDGE JONES: That R-7 is the second
3 page also of Exhibit B.

4 MS. SHEMWELL: That's correct.

5 JUDGE JONES: And the first page of
6 Exhibit B and 3 are the same also.

7 MS. SHEMWELL: Why don't we just use
8 Exhibit B then. That might be easier.

9 JUDGE JONES: Okay. So we're scratching
10 Exhibit 3?

11 MS. SHEMWELL: Correct. And we'll just
12 use Exhibit B since that contains both the sheets. I
13 apologize to the Commission.

14 JUDGE JONES: That's okay.

15 BY MS. SHEMWELL:

16 Q. Mr. Ensrud, will you look at Exhibit B?

17 MS. SHEMWELL: Exhibit B, R-6 and R-7,
18 correct? MGE tariff sheets are R-6 and R-7.

19 BY MS. SHEMWELL:

20 Q. When you look at page R-7, what portion
21 of that tariff sheet did you rely on?

22 A. "Discontinuance of Service, accession of
23 service by company not requested by the customer."

24 Q. And how did that portion reflect in what
25 you wrote in your report?

1 A. One of the considerations with this is
2 that it documents that a discontinuance of service
3 can only be done to a person who already has service
4 established. In other words, the person who is
5 subject to a discontinuance of service is a customer,
6 not an applicant.

7 Q. Thank you. I'm going to hand you what
8 has been marked as Exhibit 4 and Exhibit 6.

9 MS. SHEMWELL: If I may approach?

10 JUDGE JONES: You may.

11 MS. SHEMWELL: Thank you.

12 JUDGE JONES: You said Exhibit 4 and 6?

13 MS. SHEMWELL: Right. This is
14 Exhibit 4. This is Exhibit 6.

15 BY MS. SHEMWELL:

16 Q. Can you explain to the Commission the
17 difference between these two exhibits, please?

18 A. The original page, the prior
19 indebtedness --

20 Q. Are you referring to Exhibit 4 first?

21 A. I believe so. It's -- it's the page
22 that went into effect as -- in '94, the one that was
23 germane to the -- to the complaint. Mine does not
24 have an exhibit number on it, so that is Exhibit 4,
25 correct?

1 Q. Correct.

2 MR. COOPER: No.

3 THE WITNESS: No?

4 BY MS. SHEMWELL:

5 Q. I'm sorry. Exhibit 4 is this one.

6 A. Exhibit 4 is the one that is in place
7 today, the 2005.

8 Q. Correct. And Exhibit 6 is this one.

9 A. All right.

10 Q. So Exhibit 4 is the current tariff
11 sheet; is that correct?

12 A. Correct.

13 Q. And Exhibit 6?

14 A. It was the one that was in effect at the
15 time that Mr. Kitchen was assessed for his daughter's
16 bill from the other location.

17 Q. What portion of the tariff did you rely
18 on when you did your investigation?

19 A. The Exhibit 6.

20 Q. In Exhibit 6, yes?

21 A. Since that was the basis for what MGE
22 had done, the application of the -- of the daughter's
23 bill, I went back and I read the language to see if
24 it was applicable to the situation. My initial
25 conclusion was it is not after finding additional

1 language in review of the rules in place at that
2 time.

3 MS. SHEMWELL: I'm sorry. Is there some
4 confusion?

5 JUDGE JONES: Yeah. Exhibit 6 has
6 sections on the first page, 3.01 and 3.02 and on the
7 second page it's also 3.01 and 3.02. Was that
8 intended or are there other sections that we need to
9 look at? I'm assuming it wasn't intended.

10 MS. SHEMWELL: This is mine. This is
11 what I'm looking at. And Exhibit 6 is the same
12 thing? I apologize. Sharon copied -- just stapled
13 things together.

14 JUDGE JONES: Well, Exhibit -- Exhibit 4
15 looks fine. Exhibit 6 just has two pages.

16 MS. SHEMWELL: Let's just take the first
17 two pages. I'm sorry. I had Sharon copy them this
18 morning and I thought I handed her two sheets.

19 MR. COOPER: The one you handed me has
20 19 on both pages.

21 MS. SHEMWELL: My apologies. We were
22 looking at Exhibit 6, R-19 and R-20, and you don't
23 have --

24 JUDGE JONES: We don't have R-20.

25 MS. SHEMWELL: Okay.

1 JUDGE JONES: You can for now just --
2 you have copies of R-20, Mr. Cooper?

3 MR. COOPER: I do. I've got a stack.

4 JUDGE JONES: And don't tell me you were
5 intending to submit those as exhibits also? The same
6 thing that she's --

7 MR. COOPER: No, no. Well, I was when I
8 showed up today, but once I saw that Ms. Shemwell was
9 marking those, I was not going to.

10 JUDGE JONES: Okay.

11 MR. COOPER: But because of that, I do
12 have copies that can be used if we need copies of 19
13 and 20.

14 JUDGE JONES: Great.

15 (EXHIBIT NO. 6 REVISED WAS MARKED FOR
16 IDENTIFICATION BY THE COURT REPORTER.)

17 BY MS. SHEMWELL:

18 Q. Okay. In R-19 you had relied on
19 Section 3.02, is that correct, of Exhibit 6?

20 A. Correct.

21 Q. And as we turn to R-20, do you have that
22 in front of you?

23 A. Yes, I do.

24 MS. SHEMWELL: Shall we mark this as
25 6 B?

1 JUDGE JONES: What are you marking as
2 6 B?

3 MS. SHEMWELL: R-20. Do you-all have
4 R-20 now?

5 JUDGE JONES: Oh, okay. It's not
6 included -- it was part of --

7 MS. SHEMWELL: We can make it Exhibit 6.

8 JUDGE JONES: It's just the second page.

9 MS. SHEMWELL: R-19 and R-20.

10 JUDGE JONES: Yeah.

11 BY MS. SHEMWELL:

12 Q. What did you rely on on page R-20?

13 A. There are a couple of phrases that are
14 at odds with what MGE contends in this case. For
15 that paragraph to be applicable, it talks about
16 "Commence supplying gas service." Mr. Kitchen had
17 been a customer since 1996. It's pretty hard to
18 commence offering gas service after a customer had
19 been established for six or seven years.

20 The other thing that -- that comes into
21 play is at the time of application. Again, the time
22 of application for Mr. Kitchen was when he initially
23 established service back in 1996. This is not an
24 application. What it is is a disconnect/reconnect
25 which is different. There's also another reference

1 to application farther down. No application took
2 place.

3 Q. And you're referring to Section 3.02
4 that says they shall not begin -- shall not be
5 required to commence?

6 A. Correct.

7 Q. And then later, three from the bottom
8 you're saying an application for service -- "This
9 provision cannot be avoided by substituting an
10 application for service signed by some other member
11 of the former customer's household." Did you
12 determine whether or not that was the situation?

13 A. It's not. Again, there's no
14 commencement of service, and with the
15 disconnect/reconnect there is no true application,
16 simply a suspension of service.

17 Q. So which -- what was your conclusion,
18 then, based upon your interpretation of these tariff
19 sheets?

20 A. After comparing it to Section 3.07 and
21 the rules that were in place at that time, this rule
22 is inappropriate for -- for transferring Jennifer's
23 obligation to Mr. Kitchen.

24 Q. As a result of Mr. Kitchen's testimony
25 here today, tell me, did you understand his testimony

1 to be that after he was reconnected, MGE then
2 threatened to disconnect his service for nonpayment
3 of Jennifer's bill?

4 A. He -- he seemed to be uncertain whether
5 his service was ever disconnected, but MGE shows that
6 he was disconnected, I think it's September 15th and
7 reconnected September 17th. They charged him a
8 reconnection charge. So there's an indication that
9 service was at least interrupted for perhaps a day to
10 three days.

11 Q. Did you understand him to testify that
12 it was after service was started again that they were
13 threatening to disconnect his service for nonpayment?

14 A. That -- that was my understanding of his
15 testimony.

16 MS. SHEMWELL: If I may approach, this
17 is Exhibit 5, and I believe it's R-21 and 22.

18 JUDGE JONES: Okay. You may approach.

19 MS. SHEMWELL: Thank you.

20 BY MS. SHEMWELL:

21 Q. If I described this as MGE's tariff
22 during the relevant time period, would you agree with
23 that description?

24 A. Correct.

25 Q. And did you rely on Section 3.07?

1 clause is when it begins, "None of the following
2 shall constitute cause for company to discontinue
3 service," then you have to flip over to D, "Failure
4 to pay a bill of another customer" -- which is the
5 most relevant part -- "unless the customer's service
6 sought to be discontinued received substantial
7 benefit or use of the service."

8 Mr. Kitchen never benefited from living
9 at the Emery address. So for those reasons, I think
10 that -- oh, there's one other point. When you look
11 at the language about "None of the following
12 constitutes sufficient cause for a company to
13 discontinue service," if you look at the rules that
14 were in place at that time, the rules read, "None of
15 the following shall constitute a sufficient cause for
16 a utility to discontinue service." So the language
17 is literally verbatim where those two -- two words
18 changed.

19 Q. Excuse me, Mr. Ensrud, which rule were
20 you reading?

21 A. The rule that I had compared it to was
22 "Discontinuance of Service" that was in place from
23 12/31/95. And again, it has, "None of the following
24 shall constitute sufficient cause for a utility to
25 discontinue service."

1 And then again the word, "The failure to
2 pay the bill of another customer unless the customer
3 whose service is sought to be discontinued received
4 substantial benefit and use of the service." That
5 didn't -- didn't occur in this case.

6 Q. Was it your understanding that
7 Mr. Kitchen had not lived at the Emery Street
8 address?

9 A. Correct.

10 MS. SHEMWELL: If I may approach, I'd
11 like to hand out what's been marked as Exhibit 8.

12 JUDGE JONES: Thank you.

13 MS. SHEMWELL: If I may at this time
14 move for admission of Exhibit 4, the tariff sheets,
15 R-19 and R-20, which is Exhibit B as well. So we
16 withdrew --

17 JUDGE JONES: I have Exhibit B as R-6
18 and R-7.

19 MS. SHEMWELL: Okay. Let's start with
20 4, Exhibit 4, R-19 and R-20.

21 JUDGE JONES: Any objection -- now,
22 Exhibit 4 I have marked as R-19 dated 2005.
23 Exhibit 6 I have what's been marked as R-19 and R-20
24 of 1994.

25 MS. SHEMWELL: That's Exhibit 6. So

1 they are the ones in effect at the time and then the
2 current, so there are two different --

3 JUDGE JONES: So you're moving to admit
4 Exhibits B, 4 and 6?

5 MS. SHEMWELL: B, 4 and 6, correct.

6 JUDGE JONES: Any objection?

7 MR. COOPER: No, your Honor.

8 JUDGE JONES: No objection? I'll have
9 to ask, why is -- why is Exhibit 4 being offered?
10 That's -- that's what the law was in 2005. How is
11 that relevant?

12 MS. SHEMWELL: It's the current law.

13 JUDGE JONES: How is that relevant?

14 MS. SHEMWELL: I'll ask Mr. Kitchen --
15 or Mr. Ensrud. I think he relied on both of those
16 and he's testified to that.

17 JUDGE JONES: Well, I still don't
18 understand why we care what happened in 2005 when
19 it's two years after the incident. The law is
20 inapplicable, right? How can that help?

21 MS. SHEMWELL: I think we're showing
22 that there has been a change in the tariff sheets
23 between the time to show that the situation -- well,
24 people have testified that the situation will not
25 repeat itself because of a change in the tariff.

1 JUDGE JONES: What difference does that
2 make?

3 MS. SHEMWELL: Okay.

4 JUDGE JONES: Yeah. We'll admit
5 Exhibits B and 6 but not Exhibit 4.

6 (EXHIBIT B AND EXHIBIT NO. 6 WERE RECEIVED
7 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

8 BY MS. SHEMWELL:

9 Q. If we can turn to Exhibit 8. Do you
10 have that in front of you?

11 A. Page -- sheet R-87?

12 Q. Correct.

13 A. Yes.

14 Q. How did you rely on that sheet in
15 forming your opinion?

16 A. Again, it boils down -- this case boils
17 down to whether Mr. Kitchen was an applicant or a
18 customer at the time of reconnection. The -- if he's
19 an applicant, the appropriate charge is 20 bucks. I
20 mean, that's -- that's what they charge for a new
21 customer.

22 The more relevant point is he was
23 charged a \$35 reconnection fee which is exactly the
24 same language and documented on the final
25 disconnection notice. For him to be charged a \$35

1 fee, that meant he was an existing customer who had
2 service discontinued.

3 MS. SHEMWELL: I move admission of
4 Exhibit 8.

5 JUDGE JONES: Any objection to
6 Exhibit 8?

7 MR. COOPER: No.

8 JUDGE JONES: Exhibit 8 is admitted into
9 the record.

10 (EXHIBIT NO. 8 WAS RECEIVED INTO
11 EVIDENCE AND MADE A PART OF THE RECORD.)

12 MS. SHEMWELL: I would like to approach
13 the witness and -- with Exhibit 7.

14 JUDGE JONES: You may approach.

15 MS. SHEMWELL: Thank you.

16 BY MS. SHEMWELL:

17 Q. Would you agree with me that it is a
18 copy of two sheets of the Commission's Rule 13 as of
19 the time of the incident about which Mr. Kitchen is
20 complying (sic)?

21 A. This one went into effect on 2004,
22 9/30/2004, so it would have been after --

23 Q. This is the current?

24 A. This is the current.

25 Q. Did you rely on this in making your

1 opinion? Did you rely on this in any way in forming
2 your opinion?

3 A. The only -- the only way it came into
4 play was it shows that -- that subsequent to the
5 complaint, the Commission did acknowledge or did
6 realize that there was a difference between an
7 applicant and a customer.

8 Both of those terms are defined in
9 the -- it would be my contention that that was well
10 understood even before that it was not -- that at
11 that time by normal -- by the Commission's
12 vernacular, that it's well recognized what a customer
13 is and what -- and what an applicant is. It's sort
14 of like the caterpillar/butterfly relationship that
15 you're an applicant who becomes a customer.

16 Q. What is your recommendation in this
17 case?

18 A. That Mr. Kitchen be refunded the \$241
19 and 70-some cents that he was -- he was charged for
20 his daughter's debt at another location.

21 Q. Have you recommended a penalty?

22 A. No, I have not.

23 Q. And is the sheet, the change in Rule 13
24 one of the reasons that you did not recommend a
25 penalty?

1 of Exhibits 8 -- 7 which is the rule, tariff sheet
2 R-87, which is Exhibit 8.

3 JUDGE JONES: No, 8's already been
4 admitted.

5 MS. SHEMWELL: And 2's been admitted,
6 the Staff report? I would move for admission of that
7 if not.

8 JUDGE JONES: Any objection to Staff's
9 report?

10 MR. COOPER: No.

11 JUDGE JONES: Staff's report is
12 admitted.

13 (EXHIBIT NO. 2 WAS RECEIVED INTO
14 EVIDENCE AND MADE A PART OF THE RECORD.)

15 JUDGE JONES: And this is -- this is the
16 Commission's rules in 2004. Were they different
17 prior to that?

18 MS. SHEMWELL: Yes, they are.

19 JUDGE JONES: So why don't we look at
20 those rules instead of these?

21 MS. SHEMWELL: Well, we were explaining
22 why no penalty was recommended in this case, no fine
23 for MGE, why the Staff recommended just the
24 reimbursement as opposed to a fine for...

25 JUDGE JONES: That may be relevant in a

1 different context. I don't think it's relevant to
2 whether or not the company violated their tariff with
3 regard to this customer though.

4 MS. SHEMWELL: Okay. It was just
5 relevant to Staff's recommendation.

6 JUDGE JONES: Their motive.

7 MS. SHEMWELL: Staff's recommendation.

8 JUDGE JONES: Okay. Any objection to
9 Exhibit 7?

10 MR. COOPER: No.

11 JUDGE JONES: Exhibit 7 is admitted into
12 the record.

13 (EXHIBIT NO. 7 WAS RECEIVED INTO
14 EVIDENCE AND MADE A PART OF THE RECORD.)

15 MS. SHEMWELL: And A, which is the Staff
16 letter, is a part of the complaint. I would just
17 note that. It's attached to the back of the
18 complaint.

19 JUDGE JONES: Well, that's Exhibit 1,
20 right?

21 MS. SHEMWELL: That's correct.

22 JUDGE JONES: Okay. Mr. Cooper, you
23 have questions of Mr. Ensrud, I'm certain?

24 MR. COOPER: I do.

25 JUDGE JONES: Let me ask Mr. Kitchen, do

1 you have questions of Staff's witness?

2 MR. KITCHEN: No, I don't.

3 JUDGE JONES: You don't? Okay.

4 Mr. Cooper, go ahead and ask questions, but I'll
5 remind you-all we will break at 12 o'clock.

6 MR. COOPER: Okay.

7 JUDGE JONES: So we may have to cut your
8 examination short.

9 MR. COOPER: That's fine, your Honor.

10 JUDGE JONES: Okay.

11 CROSS-EXAMINATION BY MR. COOPER:

12 Q. Mr. Ensrud, just a few points going
13 through to start with going through these tariff
14 sheets. Do you still have in front of you what was
15 marked Exhibit B which is the "Definitions" included
16 on R-6 and R-7?

17 A. The definitions on R-6 and R-7, yes, I
18 do, sir.

19 Q. Okay. I believe you pointed out earlier
20 that in Section 1.04, there's the sentence that the
21 term "customer" is also used to refer to an applicant
22 for gas service, correct?

23 A. For your tariff, that is correct.

24 Q. Okay. And that tariff does not include
25 a definition of applicant, does it?

1 A. Not -- not that I can find.

2 Q. If we turn to the second page, the R-7
3 of that exhibit, and I believe you referenced also
4 Section 1.10, correct?

5 A. Correct.

6 Q. "Discontinuance of Service." Now, that
7 definition is a cessation of service by a company not
8 requested by customer, correct?

9 A. That's the verbiage.

10 Q. Okay. So we assume that in a
11 discontinuance of service, service has ceased,
12 correct?

13 A. Service has interrupted.

14 Q. Is gas flowing?

15 A. No.

16 JUDGE JONES: I'm gonna remind you,
17 Mr. Ensrud, to be sure to speak into the microphone.

18 THE WITNESS: Okay. Sorry.

19 JUDGE JONES: That's okay.

20 BY MR. COOPER:

21 Q. And the definition of discontinuation is
22 a cessation of service, correct?

23 A. Correct.

24 Q. So service has ceased, correct?

25 A. Correct.

1 Q. For a second -- and I believe that it
2 has not been admitted, but Staff previously marked
3 Exhibit 4 which is Section 3.02 of MGE's tariffs that
4 would apply today, correct?

5 A. That would apply today. I believe --
6 yes.

7 Q. The tariff sheets that are in effect
8 beginning April 15 of 2005 and continuing in effect
9 today, correct?

10 A. Correct.

11 Q. Now, let's say this same fact pattern
12 arose in September of this year and this tariff sheet
13 continues to be in effect. What -- what section of
14 MGE's tariff would we look to for an answer on how to
15 proceed?

16 A. To me it would be -- it would be on
17 page R-19.1, "The company may not refuse to commence
18 service to an applicant for any of the following
19 reasons: B, failure to pay the bill of another
20 customer." And I can go ahead and read it all, but I
21 think the exception that sets there is not applicable
22 in this circumstance. Or do you want me to read it?

23 Q. No, that's fine. So you're pointing at
24 2B found on sheet R-19.1, correct?

25 A. Correct. The paragraph 2 and the B up

1 to -- to me the most relevant part is "Failure to pay
2 the bill of another customer."

3 Q. Okay. And in line 2 on that same tariff
4 sheet --

5 A. Line 2, okay.

6 Q. -- or (2), what you're referring to is
7 the intro that says, "The company may not refuse to
8 commence service to an applicant," right?

9 A. Correct.

10 Q. So today if we had a discontinuation of
11 service, the company went back, it was a question of
12 whether to begin service again, we would be talking
13 about whether or not the company could refuse to
14 commence service, right? That word is "commence"?

15 A. Correct.

16 Q. Okay. And if I look back, I'm on
17 Exhibit 6 now, do you still have that in front of
18 you?

19 A. Exhibit 3, 8, 5, it's the old version of
20 3.02, the one that --

21 Q. It's the old version of what we just
22 looked at, correct?

23 A. Correct.

24 Q. Okay. And if we look at the language of
25 the old 3.02 that was in effect at the time of this

1 fact situation, that first sentence says, "Company
2 shall not be required to commence supplying gas
3 service," correct?

4 A. Right.

5 Q. Okay. Now, you would agree with me,
6 wouldn't you, that there was nothing improper about
7 the September 2003 discontinuance of Mr. Kitchen's
8 natural gas service, correct?

9 A. Other than applying his daughter's bill,
10 I have no -- from all that I've -- all the
11 indications are that that was a valid turn-off with
12 that one notable exception.

13 Q. But the turn-off itself was done for a
14 valid reason, correct?

15 A. Yes. Everything was okay until they
16 added the bill.

17 Q. And in fact, your report states, your
18 report that's been admitted into evidence states that
19 service was interrupted for a valid reason, correct?

20 A. Correct.

21 Q. Now, let me ask you a hypothetical.
22 Let's say that we're back in the year 2003 again and
23 let's assume that Mr. Kitchen were coming in to apply
24 for service for the first time.

25 A. Right.

1 Q. He's never been a customer before,
2 okay? And MGE is aware that Jennifer, who has an
3 outstanding bill from North Emery, is going to be
4 residing at that same location where Mr. Kitchen has
5 requested gas service.

6 Under that fact scenario, MGE's tariff
7 would have allowed it to require that Jennifer's bill
8 be paid before service was initiated, correct?

9 MS. SHEMWELL: Objection, relevance.
10 That's not what the facts are showing. The facts
11 show that it wasn't the first time. It wasn't like
12 a connection of service for Mr. Kitchen for the
13 first time. They weren't transferring a bill,
14 they weren't moving it together. He'd already
15 lived there. So the facts do not support the
16 hypothetical.

17 MR. COOPER: Well, I'm trying to -- and
18 I'm not indicating that those are the facts that
19 we're dealing with here, but I want to explore
20 Mr. Ensrud's understanding of Section 3.02 which
21 certainly is important to the question that's before
22 the Commission.

23 JUDGE JONES: I'll sustain -- I'll
24 overrule the objection. Mr. Ensrud, you may answer
25 the question.

1 THE WITNESS: Go ahead and repeat the
2 question, if you would, please.

3 BY MR. COOPER:

4 Q. Okay. We're in the year 2003 so we're
5 talking about the tariff sheet that -- let me get the
6 right reference here, that has been marked as
7 Exhibit 6.

8 A. Exhibit 6.

9 Q. Mr. Kitchen's never been a customer
10 before, he applies for new service. Jennifer, his
11 daughter, who has an outstanding bill at North Emery
12 is going to reside with him. Under that fact
13 scenario, would you agree with me that Section 3.02
14 would allow MGE to refuse to provide service until
15 Jennifer's prior bill were paid?

16 A. That's my understanding under your
17 scenario.

18 Q. Now, I mentioned in my opening statement
19 the Smith v. MGE cases -- or case and the
20 MacKenzie v. MGE case. Are you familiar with those
21 cases?

22 A. I am not.

23 Q. Okay. You haven't read either one of
24 those decisions?

25 A. I have not.

1 Q. Okay. Now, in the Staff report I would
2 note that you have a provision, don't you, or a
3 portion of that report that says, "The rules and
4 MGE's tariffs are silent on the transfer of debt upon
5 reconnection of an existing customer," correct?

6 A. Yeah.

7 Q. Where I'm looking is at the bottom of
8 page 4 of the case file memorandum. Excuse me. Go
9 to page 5. It's the full paragraph on page 5 of the
10 case file memorandum.

11 A. Right. The rules do not address the
12 transfer of debt as a specific issue. It does deal
13 with the discontinuance of service. That's true for
14 both -- for both 3.02 and 3.07. Neither of them are
15 absolutely on point in relation to the transfer of a
16 debt.

17 Q. So even in --

18 A. But they're discontinuances in both
19 cases.

20 Q. Yeah. So even in your opinion, you
21 don't find a tariff provision that you believe
22 directly applies to this situation, correct?

23 A. It applies in that -- that if you -- but
24 it says if you discontinue service, then it's
25 implicit that -- that that debt transfer should

1 follow.

2 But you're right in that -- in that
3 extent that neither clause, neither yours nor mine,
4 talks specifically about the transfer of debt.

5 Q. And so what you have done is you're
6 arguing that 3.07 fits better, in your opinion, than
7 3.02, correct?

8 A. Demonstratively better, yes.

9 Q. But if we back up, 3.07 specifically, at
10 the time of this incident, concerned the
11 discontinuance of service, correct?

12 A. Correct. But it's not much of a leap of
13 faith to say that if it's illegal to discontinue,
14 it's illegal to -- to transfer the debt.

15 Q. But also we talked about that the
16 discontinuance that MGE performed or that took place
17 as relevant to this matter was a valid
18 discontinuance, correct?

19 A. Again, with the caveat of the exception
20 of the transfer of debt. There's no indication to
21 refute that.

22 Q. So your concern happens -- it happens
23 after the discontinuance, correct?

24 A. Right.

25 MR. COOPER: Okay. That's all the

1 questions I have for the time being.

2 JUDGE JONES: Okay. At this time we
3 will break for refreshment and we'll reconvene at
4 quarter after 1:00. I know, Mr. Kitchen, you
5 probably aren't familiar with Jefferson City, so it
6 will give you a little more time to find something to
7 eat around here. With that, we'll go off the record.

8 (THE LUNCH RECESS WAS TAKEN.)

9 JUDGE JONES: Let's go ahead and go on
10 the record. Ms. Shemwell, were you trying to -- are
11 you saying something?

12 MS. SHEMWELL: Just to my witness
13 about...

14 JUDGE JONES: Do you need time to confer
15 with him?

16 MS. SHEMWELL: I do, please.

17 JUDGE JONES: Well, you can't give him
18 answers to questions or anything.

19 MS. SHEMWELL: I understand. I
20 understand.

21 QUESTIONS BY JUDGE JONES:

22 Q. Mr. Ensrud, during your testimony you
23 said you believe Mr. Kitchen's service was actually
24 disconnected?

25 A. That was what -- that was what MGE's

1 records indicate. There's a reconnection charge and
2 you shouldn't have a reconnection charge unless
3 service was actually disconnected.

4 Q. So it's based upon that reconnection
5 charge that you assume he was actually disconnected?

6 A. Correct.

7 Q. Okay.

8 A. I believe -- I believe there was also
9 some of the DRs, there were a number of them. I
10 believe it's indicated in one of them.

11 Q. Data requests that Staff sent to MGE?

12 A. Yes, but I'm not sure which one. Like I
13 said, there were a volume of them. But those were
14 the two that --

15 Q. Okay. And it's your understanding -- is
16 it your understanding, I should ask, that he was --
17 Mr. Kitchen was disconnected because he didn't pay
18 his own bill?

19 A. Correct. That was the initial impetus.

20 Q. And during the period of disconnection,
21 that MGE created the condition that he pay not only
22 his bill, but his daughter's bill in order to be
23 reconnected; is that your understanding?

24 A. Yeah. And that was my understanding,
25 that it was a precondition to having service turned

1 on that he must accept responsibility for his
2 daughter's service for the location that -- at the
3 Emery location.

4 JUDGE JONES: Okay. That's all I have.
5 Now, I'm sure you'll be here for the remainder of the
6 hearing. One or two of the Commissioners may have
7 additional questions for you, in which case I'll have
8 to call you back up to the stand. But at this time
9 we'll go ahead and move to recross from -- from MGE.

10 MR. COOPER: No questions, your Honor.

11 JUDGE JONES: And Mr. Kitchen, do you
12 have questions of Staff's witness, Mr. Ensrud?

13 MR. KITCHEN: No, I don't.

14 JUDGE JONES: And Ms. Shemwell, do you
15 have --

16 MS. SHEMWELL: I do, thank you.

17 REDIRECT EXAMINATION BY MS. SHEMWELL:

18 Q. Mr. Ensrud, you discussed Section 3.02
19 of MGE's tariff with Mr. Cooper; is that correct?

20 A. Yes, I did.

21 Q. Is it your understanding that
22 Mr. Kitchen actually filled out an application to
23 be -- to be reconnected?

24 A. No, he did not.

25 Q. In your opinion was he an applicant for

1 service?

2 A. No, he was not.

3 Q. Who writes MGE's tariffs?

4 A. MGE.

5 Q. Judge Jones was just discussing
6 something with you about it being a precondition for
7 Mr. Kitchen to be hooked up or reconnected, that he
8 pay his daughter's bill. What is your understanding
9 as a result of Mr. Kitchen's testimony here today?

10 A. If I understood Mr. Kitchen right, he
11 indicated that even after service was reconnected,
12 they still pursued collection of the daughter's debt
13 with the threat that if he didn't pay, there would be
14 denial of service.

15 Q. Did you hear him testify that it was a
16 condition to be reconnected?

17 A. It -- my understanding, if I understood
18 him right, that was -- that was, for lack of a better
19 word, a threat before, and that same threat was made
20 even, that he needed to continue to pay or service
21 would be denied.

22 Q. And was that your understanding when you
23 wrote your Staff report?

24 A. No. I based mine on, as I just talked
25 with Judge Jones, that -- that initially I thought

1 that service had been disconnected. And then in the
2 interim between disconnection and reconnection, this
3 issue came to a head.

4 Q. If, in fact, as he testified he had been
5 reconnected, what would your opinion be as to which
6 Commission rule would then apply?

7 A. The same -- the same rule would apply.
8 The discontinuance of service rule.

9 MS. SHEMWELL: Judge, if I could have
10 this exhibit marked, please. This is going to be 9.

11 (EXHIBIT NO. 9 WAS MARKED FOR
12 IDENTIFICATION BY THE COURT REPORTER.)

13 BY MS. SHEMWELL:

14 Q. Would you identify this, please?

15 A. It was the rules that were in place at
16 the time that I found most germane to controlling the
17 disposition of Mr. Kitchen's complaint.

18 Q. And if, as you understood, his service
19 was reconnected and then he was being asked to pay
20 Jennifer's debt as a result -- to continue service,
21 what portion of this tariff would you find applicable
22 to the situation?

23 A. It would be (2) which says, "None of the
24 following constitutes sufficient cause for utility
25 disconnect service." And then it's D, "Failure to

1 pay the bill of another customer unless to customers
2 whose service is sought to be discontinued --
3 discontinued receive substantial benefit and use of
4 the service."

5 Q. So on the exhibit in front of you --
6 that's No. D?

7 A. D, correct.

8 Q. Or Section D. What is your
9 understanding as to whether or not Mr. Kitchen
10 received benefit of the service at Emery?

11 A. I think everyone agrees there was no
12 benefit derived to Mr. Kitchen from having his
13 daughter live at the other location at the Emery
14 address.

15 Q. Do you have an opinion as to which of
16 MGE's tariff provisions would have applied?

17 A. It's a discontinuance of service. It
18 fits title 3.07.

19 Q. Do you have Exhibit 5 in front of you?

20 A. Correct. That's -- that's what I
21 referred to as tariff 3.07.

22 Q. So if, in fact, service was reconnected
23 and they were then indicating that they would
24 disconnect him if he did not pay that bill, what
25 section of Section 3.07 would apply?

1 A. Of 3.07. Again, it would go back to
2 3.07 which is, "None of the following shall
3 constitute sufficient cause for a company to
4 discontinue service."

5 And then one of the reasons given is the
6 D paragraph, "The failure to pay the bill of another
7 customer unless the service of the customer --
8 unless -- unless the customer whose service is sought
9 to be discontinued received substantial benefit and
10 use of the service," which is the one caveat that
11 does not apply. The essence of it is the failure to
12 pay the bill of another customer.

13 MS. SHEMWELL: That's all I have. Thank
14 you.

15 JUDGE JONES: Mr. Ensrud, you may step
16 down.

17 THE WITNESS: All right.

18 JUDGE JONES: Ms. Shemwell?

19 MS. SHEMWELL: Mr. Ensrud has a matter
20 in another file that he needs to take care of. May
21 he be excused to take care of that?

22 JUDGE JONES: Yes.

23 MS. SHEMWELL: And he will return.
24 Thank you.

25 JUDGE JONES: At this time MGE will call

1 your first witness.

2 MR. COOPER: MGE would call Ms. Shirley
3 Bolden.

4 (Witness sworn.)

5 MR. COOPER: Your Honor, I have as a
6 result of the testimony this morning some additional
7 exhibits to mark. Do you prefer that I do that now
8 or as I take Ms. Bolden through her testimony?

9 JUDGE JONES: Do it as you take her
10 testimony.

11 DIRECT EXAMINATION BY MR. COOPER:

12 Q. Ms. Bolden, would you state your name
13 for the record.

14 A. Shirley Jean Bolden.

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

17 A. Missouri Gas Energy as a manager of
18 customer solutions.

19 Q. What is your professional experience as
20 it relates to that position in your employment with
21 Missouri Gas Energy?

22 A. I dealt with the customer service
23 department in handling customer calls and complaints.

24 Q. How long?

25 A. Thirty-five years.

1 Q. How long have you been the manager?

2 A. Manager for customer contact center, was
3 the manager for three years there.

4 Q. And tell me again, is that the same
5 title you have today?

6 A. It's not the same title. It's the same
7 area, though.

8 Q. Okay. Tell me what your current title
9 is.

10 A. Manager of customer solutions.

11 Q. Does MGE have a customer record system?

12 A. Yes, we do.

13 Q. As manager of customer solutions, do you
14 have any responsibility for that system?

15 A. We man that system and make sure that
16 the information that is forwarded on that system is
17 placed by the customer service representatives.

18 Q. And as a follow-up to that, can you
19 explain to us just exactly how information is entered
20 into the record system?

21 A. Yes. We have a computer system called
22 customer service system. Each of the representatives
23 are -- have access to that system. They are -- make
24 notes on a contact page that indicates conversations
25 they have had with individual customers.

1 Q. Are there other types of information
2 that are entered into the system in another fashion?

3 A. Yes. There's some automated system
4 contacts that are made when we make automatic
5 mail-outs on your notices, bills, information
6 concerning a call that's made by our calling system
7 for intervention calls if there is a delinquent
8 amount on a bill. Those are automatically noted by
9 the system.

10 Q. Is it part of the regular duties of your
11 employees to enter information into that system?

12 A. Yes.

13 Q. Who actually does the entry of
14 information? Is it employees that have firsthand
15 knowledge of the events in question?

16 A. Yes, as they talk with the customer they
17 enter their information.

18 Q. Okay. Is that -- that entry made
19 contemporaneously with the conversation with the
20 customer?

21 A. In many instances, yes.

22 Q. How -- if not done at the same time as
23 the contact with the customer, is it done shortly
24 thereafter?

25 A. Yes, they do have wrap-up time after

1 their calls.

2 Q. Has the use of this customer record
3 system been a routine practice for many years?

4 A. For many years, yes.

5 Q. Why does MGE maintain such a system?

6 A. This is our record of knowing what has
7 happened with the customers' accounts and also that
8 we could be able to go back and see what has gone on,
9 just keeping our information in updates as to what's
10 going on with our customers.

11 Q. Do you think it helps you provide better
12 service to your customers?

13 A. Most definitely.

14 MR. COOPER: At this time, your Honor,
15 I'd like to approach the witness and hand her a copy
16 of what was previously marked as Exhibit C.

17 JUDGE JONES: You may approach.

18 BY MR. COOPER:

19 Q. Ms. Bolden, do you have Exhibit C before
20 you?

21 A. Yes, I do.

22 Q. Do you recognize that document?

23 A. Yes. This is our various conversations
24 that have been held with -- or notations that were
25 made on the account under Jennifer Kitchen's name at

1 416 North Emery and it is our customer contact
2 inquiry screen.

3 Q. Is that a part of the customer record
4 system that we described or that you described a few
5 minutes ago?

6 A. Yes, it is.

7 Q. Okay. If we turn to page 3 of that
8 document, I think there's a page that has a title,
9 "Account Analysis." What information is contained in
10 that sheet?

11 A. This page contains all of the financial
12 things that are taken care -- taken place on the
13 account from the billing to the delinquent charges,
14 to final bills. Anything that's done financially we
15 keep a track of that.

16 Q. Okay. And this morning we talked about
17 an amount of 241.71, \$241.71 that was -- remained due
18 as a result of Ms. Kitchen's -- the time she was a
19 customer at 416 North Emery. Is that represented on
20 that sheet?

21 A. Yes, it does.

22 Q. Okay.

23 A. Yes, it is.

24 Q. Where is that?

25 A. It is represented as a final bill,

1 241.71, in an amount that was actually on July of 22
2 of '98 was charged off to what we call our bad debts.

3 MR. COOPER: At this time, your Honor,
4 I'd like to mark a couple of exhibits if I could.

5 JUDGE JONES: That's fine.

6 MR. COOPER: Exhibit D would be customer
7 contact inquiry for 10602 East 20th. And Exhibit E
8 would be account data also for 10206 East 20th.

9 (EXHIBITS D AND E WERE MARKED FOR
10 IDENTIFICATION BY THE COURT REPORTER.)

11 BY MR. COOPER:

12 Q. Ms. Bolden, do you have before you what
13 has been marked as Exhibit D?

14 A. Yes.

15 Q. Could you describe for us what that
16 document is?

17 A. This is a copy of our customer contact
18 inquiry screen for the 10602 East 20th Street South
19 in Independence under the name of Ronald R. Kitchen.

20 Q. And I see on the first page a date of
21 04/03/02. Is that the first entry on this record?

22 A. Well, there's several pages of entries.

23 Q. Chronologically, is that the earliest
24 point in time?

25 A. That we made a copy of, yes.

1 Q. Okay. And so we start with 04/03/02 on
2 that document. How far forward does it go with
3 customer contacts?

4 A. Back to 06/02/04, all the way to the
5 back.

6 Q. And if we continue up to the top of that
7 column, how recent do we go?

8 A. 02/21/06.

9 Q. Okay. Does this customer contact record
10 span the events that are in question in this matter?

11 A. Yes, it -- yes, they do.

12 Q. Okay. Which took place -- what's your
13 understanding as to when the disconnection took place
14 that's associated with this matter?

15 A. The disconnection took place on
16 September the 15th of 2003.

17 Q. Now, do you also have before you
18 Exhibit E, what has been marked for identification
19 purposes as Exhibit E?

20 A. Yes.

21 Q. Do you recognize that document?

22 A. This too is the history of the current
23 account data on the account for the 10602 East 20th
24 Street South in Independence underneath the Ronald R.
25 Kitchen's name.

1 Q. Now, how does this document differ from
2 the customer contact information that's been marked
3 as Exhibit D for identification?

4 A. This is a document that indicates when
5 the services was open, our reading dates, current
6 billing due dates, nonpay shut-off time, previous
7 time, and it also gives the credit history for the
8 past 24 months.

9 Q. Now, if we turn to the next page of this
10 document, I believe it's titled "Account Analysis,"
11 what would be represented on the account analysis?

12 A. Again, this would be representative of
13 the gas billings and payments and delinquent amounts
14 on the account at 10602 East 20th Street South under
15 Ronald Kitchen's name.

16 Q. Where do these documents come from, both
17 Exhibit D and Exhibit E?

18 A. They come off of our customer service
19 system.

20 Q. Okay. The system that you described
21 previously?

22 A. That is correct.

23 Q. Okay. Now, if you'll go back to
24 Exhibit D for me for a minute, and will you turn to
25 the sixth page of that exhibit?

1 A. I'm there.

2 Q. Does that have a date at the top of that

3 column that's 09/18/03?

4 A. That is correct.

5 Q. Okay. And if we go down that line of

6 dates, you get into the time period that is addressed

7 by this complaint, correct?

8 A. That is correct.

9 Q. Okay. Tell me, do you see the entry for

10 09/15/03?

11 A. Yes.

12 Q. Okay. And out to the right there's an

13 SOMT, correct?

14 A. Yes.

15 Q. Tell me what that means.

16 A. We shut the gas off at the meter.

17 JUDGE JONES: Just a moment. Where are

18 we now? Are we at Exhibit D?

19 MR. COOPER: We're on Exhibit D.

20 JUDGE JONES: What page?

21 MR. COOPER: The sixth page.

22 JUDGE JONES: Okay.

23 BY MR. COOPER:

24 Q. So that SOMT stands for what again?

25 A. Shut service off at the meter.

1 MR. COOPER: Your Honor, I'd like to
2 mark one other exhibit.

3 JUDGE JONES: Okay. That's fine.

4 MR. COOPER: This will be Exhibit F and
5 we'll just title it "Pay Agreement" if that's all
6 right.

7 (EXHIBIT F WAS MARKED FOR IDENTIFICATION
8 BY THE COURT REPORTER.)

9 BY MR. COOPER:

10 Q. Ms. Bolden, do you have in front of you
11 what's marked for identification purposes as
12 Exhibit F?

13 A. Yes.

14 Q. Do you recognize that document?

15 A. Yes. This is a copy of our pay
16 agreement page that when we enter our pay agreement,
17 we -- it comes across to our system letting us know
18 what type of agreement was set up and that the
19 agreement was set up at 10602 East 20th Street South
20 under the name of Ronald R. Kitchen by Jennifer.

21 Q. Does that also come from the customer
22 service record system that you described previously?

23 A. That is correct.

24 Q. Ms. Bolden, did you have any direct
25 contact with Mr. Kitchen during the course of this

1 matter?

2 A. No, I did not.

3 Q. Do we have anyone with us today that did
4 have some direct contact with Mr. Kitchen?

5 A. Yes.

6 Q. Who would that be?

7 A. David Curry.

8 Q. Let me ask you this: There's been some
9 discussion today about an application and what
10 constitutes an application. When an initial service,
11 residential service is initiated by a customer, is
12 there an initial application form that goes with
13 that?

14 A. There's not a written application,
15 there's an application that's done on our system.

16 Q. Okay. How do you go about taking that
17 information that's utilized in your system?

18 A. We ask the customer if they give us the
19 address, we start with that. We put up the
20 application screen for customer application screen
21 which indicates your name, middle initial, last name,
22 Social Security number, driver's license information,
23 date of birth, previous address.

24 Q. And is this all information that's taken
25 over the telephone?

1 A. Yes, sir.

2 Q. Now, let's assume that a person's
3 natural gas service has been discontinued for
4 nonpayment and they seek to have service reconnected.
5 Take us through the process that your customer
6 service representative would go through to work that
7 possible reconnection.

8 A. The customer would give us, of course,
9 the address that they were at, we would discuss the
10 payment agreement or payments that need to be made,
11 we will update application at that time which means
12 that we will update phone numbers, married, single,
13 roommates. Any information that we don't have on
14 record we try to go ahead and update on a regular
15 basis with all of our customers.

16 Q. And when you say you're updating
17 information, are you going through the same screen
18 that you go through for an initial application?

19 A. Yes. It's the same screen.

20 Q. So you're asking the same questions that
21 were asked when a person came in brand new to apply
22 for natural gas service for the first time, correct?

23 A. That is correct.

24 Q. Okay. And in neither case is there a
25 written application that's completed by the customer,

1 correct, when we're talking about a residential
2 service?

3 A. Yes.

4 MR. COOPER: Your Honor, that's all I
5 have at this time for this witness, and I would offer
6 Exhibits D, E and F.

7 JUDGE JONES: Any objection to Exhibits
8 D, E and F?

9 (NO RESPONSE.)

10 JUDGE JONES: Hearing none, Exhibits D,
11 E and F are admitted into the record.

12 MR. COOPER: I would also like to offer
13 C. I'm sorry, your Honor.

14 JUDGE JONES: Any objection to
15 Exhibit C?

16 (NO RESPONSE.)

17 JUDGE JONES: Exhibit C is entered into
18 the record.

19 (EXHIBITS C, D, E AND F WERE RECEIVED
20 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

21 JUDGE JONES: Now we have
22 cross-examination beginning with Staff of the
23 Commission.

24 CROSS-EXAMINATION BY MS. SHEMWELL:

25 Q. Good afternoon, Ms. Bolden.

1 A. Good afternoon.

2 Q. So how does customer solutions differ
3 from customer service?

4 A. Not much. Just get more of the
5 complaints.

6 Q. The customer service representative who
7 visits with the customer is the one who enters the
8 information into the system; is that correct?

9 A. That is correct.

10 Q. And am I using -- are they considered
11 customer service representatives? Is that a term
12 that you use?

13 A. We use customer consultant.

14 Q. What are -- is there any way to know
15 what is entered is correct? Is there --

16 A. Well, we hope that the representative
17 represents what they're writing is the correct
18 information.

19 Q. Is there any way to know that it is
20 accurate?

21 A. Our representatives or our consultants
22 are asked to be as accurate as possible to get the
23 facts as possible. Again, it's our records.

24 Q. Do you make any electronic recordings of
25 these conversations?

1 A. We do.

2 Q. Did you at the time of this complaint?

3 A. We would have had a different system at
4 that time. We have now since changed systems.

5 Q. Is there any way for you to know for
6 sure if the entries into the exhibits that you've
7 brought with you today were made contemporaneously
8 with the events?

9 A. They were done at the time that the
10 representative was talking to the customer or shortly
11 thereafter.

12 Q. And how do you know that for sure?

13 A. Because they continue to take other
14 calls, so they continue to talk to other customers.
15 So we're trying -- you wrap up that customer so that
16 you can move on to the next customer.

17 Q. There's not a record actually in here,
18 though, as to the time it was entered as opposed
19 to --

20 A. The time that it's entered is the time
21 that's on the customer contact inquiry. If you'll
22 look at the different times, it says 11:58, 11:41,
23 you'll see one lady had the call if you're looking on
24 page 6.

25 Q. Of Exhibit?

1 A. Of Exhibit -- hold on. Sorry. Exhibit D.

2 Q. There is a D.

3 A. Yes. And page 6 of that D. On 9/17
4 you'll see 11:29 that person started with that call
5 and she still was talking to that person at 11:41.
6 She was making notes each time that she had a
7 conversation of an incident, or inquiry was made, as
8 you would say.

9 Q. Ms. Bolden, if we look again at the
10 nine -- September 15th, '03 entry at 15:17 which is
11 3:17 in the afternoon, right?

12 A. Uh-huh.

13 Q. How do you know for sure if the meter
14 was actually disconnected?

15 A. This comes off of our FleetCor system.
16 It's done by the computer through our service
17 personnel and it automatically feeds into our
18 customer service records so we know immediately if
19 the gas service has been discontinued.

20 Q. Let me ask just a little bit about that.
21 Are you saying that they fill out a card that then
22 feeds into your computer system?

23 A. It's an automatic feed in through the
24 computer system.

25 Q. So how do you --

1 A. It's a connection.

2 Q. -- how are they notified?

3 A. They have a computer in their trucks,
4 they fill out and complete their order, it
5 automatically feeds into our customer service system.

6 Q. Thank you. I guess you assume that if
7 they say it's been done, it's been done?

8 A. That's all we can do. We're all human.

9 Q. Do your customer consultants have what I
10 will refer to as talking points regarding the
11 application of tariffs and whether or not the tariffs
12 have the force and effect of a statute?

13 A. Yes, they have the tariffs and they have
14 talking points.

15 Q. And when we say "talking points," we are
16 saying specific things that they tell the customer in
17 response to a particular question; is that accurate?

18 A. I would say that would be accurate, yes.

19 Q. Ms. Bolden, if Mr. Kitchen had not had
20 an application on file with you, you couldn't update
21 that information, could you?

22 A. No, we would have started a new
23 application.

24 Q. Could we look at the payment agreement
25 which is F? If this is by Jennifer, does this mean

1 that the payment agreement was entered into with
2 Jennifer?

3 A. That is correct.

4 Q. And the date on that is what?

5 A. September the 19th, 2003.

6 Q. Was Mr. Kitchen's service back on, on
7 September 19th, 2003?

8 A. His service was back on, on September
9 the 18th.

10 MS. SHEMWELL: That's all I have. Thank
11 you.

12 JUDGE JONES: Mr. Kitchen, do you have
13 questions of Ms. Bolden?

14 MR. KITCHEN: If I may, please.

15 JUDGE JONES: You may. And be sure your
16 microphone is on so we can hear you.

17 CROSS-EXAMINATION BY MR. KITCHEN:

18 Q. Mrs. Bolden, I was looking at these
19 records and I don't know exactly what record I'm
20 referring to here. It's on -- it's the customer
21 contact record and on -- shows here that on 7/25 of
22 '03 at 15:31 the gas service company had a
23 conversation with Tammy, and it says, "I advised
24 Tammy that Ronald will need to call." Do you know
25 who Tammy is?

1 A. Well, that's understanding the person
2 understood the name to be Tammy, and that's why the
3 conversation ended with her saying that you would
4 need to call, that Ronald would need to call. We had
5 no one on record named Tammy on that account at that
6 time that we would be able to talk to.

7 Q. Well, if they had mistaken my daughter
8 Kamie for Tammy, that's possible, isn't it?

9 A. That's highly possible.

10 Q. Well, and I was also looking through
11 this -- rest of this record and I don't see where it
12 makes any mention that I gave to Missouri Gas Energy
13 my daughter Jennifer's Social Security number, and
14 wouldn't you think that if I would give out
15 somebody's personal information such as Social
16 Security number that they would -- the gas company
17 would have made a record of that?

18 A. That record would have been made on your
19 application screen, sir.

20 Q. No.

21 A. It would not have been made on our
22 contact screen, it would have been made on our
23 application screen.

24 Q. They didn't -- they didn't ask this on
25 my application screen. They asked me on the

1 telephone number and that's what this record is that
2 I had in here; indicates that during the phone
3 conversation I gave my daughter Jennifer's Social
4 Security number to the Missouri Gas Energy.

5 And I don't see anyplace on this
6 customer service contact inquiry or customer contact
7 inquiry where it says that I gave that number to any
8 employee of Missouri Gas Energy.

9 A. Okay. And again, I'm gonna say that if
10 that information was taken from you, it would have
11 gone on our customer application screen, it would not
12 have gone on our customer contact screen. This is an
13 inquiry information only. We're gonna update your
14 application screen with that information.

15 Q. Can I get a copy of that, that customer
16 application screen to see if --

17 MR. COOPER: Excuse me.

18 JUDGE JONES: Mr. Cooper?

19 MR. COOPER: Certainly -- well,
20 certainly as part of the discovery process, we could
21 provide that kind of information. I don't know
22 that -- I don't think we have that screen with us
23 here today.

24 JUDGE JONES: Just -- just provide it to
25 him as a customer service, or a solution.

1 MR. COOPER: We'll certainly be willing
2 to do that. I also would point out that I guess,
3 certainly in the company's opinion that the Social
4 Security issue is, I guess, we would argue it's not
5 relevant to the facts that go towards whether this --
6 what happened is within or not within the tariffs of
7 MGE.

8 JUDGE JONES: Mr. Kitchen, do you
9 understand that objection?

10 MR. KITCHEN: I understand what he's
11 saying, your Honor, but the point that I was trying
12 to make is that if they can make a mistake on this
13 with the Social Security number, then -- and also
14 make a mistake on this, Tammy for Kamie, then they
15 could have made other mistakes in this.

16 And I see a lot of things in here
17 that -- that I -- should have been in here during my
18 phone conversation with employees of -- that are not
19 in here. And --

20 JUDGE JONES: Your point is well taken.
21 And Commissioner Gaw? Do you have any other
22 questions or you just wanted to make that point?

23 MR. KITCHEN: Well, yes, I would like to
24 have one other question.

25 JUDGE JONES: Sure. Go right ahead. Be

1 sure you speak into the microphone.

2 BY MR. KITCHEN:

3 Q. Mrs. Bolden, if you have all the records
4 about the gas service, haven't I always paid
5 regardless of whether my gas was disconnected,
6 whether it was late, haven't I always paid my gas
7 bills whether I've had to pay late charges, reconnect
8 fees? I mean, my bill has always been paid and
9 doesn't that say anything about any kind of good
10 credit towards myself? I mean, in an attempt to pay
11 my bills, they've always been paid. I've always paid
12 them.

13 A. Mr. Kitchen, I'm sure that you have paid
14 your billings. I do not study your whole account as
15 far as from the time you started with us until up to
16 date now. What I see is a credit history of you have
17 a current -- an account data that shows on Exhibit E,
18 the first page there. And it tells you your 24-month
19 credit history and I do show that there have been
20 lates.

21 Q. Yes.

22 A. And there have been reminder notices
23 which meant it was less than our disconnect amount
24 and I show dots which show that you've been paid on
25 time. So we have a pretty good history here of what

1 your record is.

2 Q. Okay. But it's always -- my history is
3 that I do pay my bill regardless of whether it's late
4 or on time or I have to pay late charges, I do pay my
5 bills?

6 A. Somewhere down the road, yes, sir, you
7 do pay your bill.

8 JUDGE JONES: Commissioner Gaw, do you
9 have questions?

10 COMMISSIONER GAW: Well, maybe a couple.

11 QUESTIONS BY COMMISSIONER GAW:

12 Q. How are you, ma'am?

13 A. I'm fine, thank you, sir.

14 Q. Real quick, just run through this
15 critical time frame with me on the initial -- the
16 initial sending of the notice of disconnection. When
17 was that?

18 A. Okay. If you will start with --

19 Q. Just tell me.

20 A. Okay. In August we started sending out
21 a disconnect notice that --

22 Q. Okay.

23 A. -- for the billing at 10602 East 20th,
24 okay? Another notice was sent to Mr. Kitchen again,
25 the final disconnect notice was sent to him.

1 Q. What's the date?

2 A. Hold on. Got to get there. On

3 September the 5th.

4 Q. That was when it was mailed?

5 A. That's -- we note our calendar and

6 that's when it's mailed, yes, sir.

7 Q. All right. Next, go ahead.

8 A. The next --

9 Q. And at the time that was sent, what was

10 the amount showed -- shown?

11 A. 367, the billing at that address at the

12 10602 East 20th.

13 Q. Okay.

14 A. Okay?

15 Q. And that had nothing to do with his

16 daughter's bill on that final notice?

17 A. That is correct.

18 Q. All right. Then -- then what was the

19 next --

20 A. The next --

21 Q. -- thing that occurred?

22 A. On September the 8th there was a message

23 left by our center that calls the customers when

24 there's a type of disconnect.

25 Q. All right. And that was left where?

1 A. It was left at the phone number 8 --
2 area code (816) 833-2453.

3 Q. Okay. Then what happened next?

4 A. On September the 15th the service was
5 discontinued.

6 Q. What time?

7 A. For nonpayment. At 15:17.

8 Q. Was there any contact in between
9 September the 8th and September the 15th?

10 A. Not according to our records, sir, no,
11 sir.

12 Q. And that's -- that is what I'm asking
13 you about, your records.

14 A. Uh-huh.

15 Q. And then what was the next event that
16 occurred?

17 A. On September the 17th, there was a
18 payment made of \$200.

19 Q. And tell me about that payment.

20 A. It looks like the payment was paid at
21 one of our pay stations because the receipt
22 information was given to us over the phone. At that
23 time the person did enter -- was getting ready to
24 enter a turn-on for the services to be restored.

25 Q. And tell me why that turn-on would have

1 occurred with the payment of \$200.

2 A. At that time a percentage of the amount
3 that was outstanding was asked by the company to be
4 paid.

5 Q. How much was the percentage that was
6 requested?

7 A. Looks like about 65 percent of the bill
8 was paid, something in that area.

9 Q. Does the \$200 match the amount that was
10 requested to be paid to have service reconnected?

11 A. It does match the amount, sir.

12 Q. Thank you. Okay. And then what occurred?
13 well, let me ask you this: Who made that payment, if
14 you know? Was it a cash payment, was it --

15 A. It went to our pay station, one of our
16 pay stations. This describes it went to the City of
17 Independence where they could take our payments. I
18 would not have known who made the payment.

19 Q. Or whether it was by check or otherwise?

20 A. That is correct.

21 Q. Okay. What happened next?

22 A. The lady -- the consultant gets ready to
23 enter the information to get the services turned on,
24 now realizes that she is not talking to Sylvia --
25 she's not talking to Ronald, she's not talking to

1 Sylvia who is the spouse of Ronald.

2 In looking at the application, now we're
3 noting that this person is not on the record and we
4 ask Ronald to call us because --

5 Q. What's the date of that?

6 A. The 17th, the same time at 11:41.

7 Q. Okay. What time is the payment made on
8 the 17th?

9 A. The payment -- we get notification of
10 the payment at 11:29 when she first -- when the
11 person first calls in.

12 Q. All right. And the other time when the
13 consultant was talking to someone else as you
14 referred to it?

15 A. Yeah, she's still on -- with the same
16 consultant and she's realizing she's not talking to
17 anyone -- either of the two persons that are the
18 persons of record.

19 Q. Okay. Then what occurs according to
20 your record?

21 A. According to our records she asks the
22 lady to have Mr. Kitchen call himself as she's
23 wanting to get the service back in that same name.

24 Q. Okay. Then was there any notation of
25 who she was talking to?

1 A. She said just a young lady.

2 Q. Okay. Then what occurred according to
3 your record?

4 A. Then Mr. Kitchen calls at 11:58.

5 Q. All right. And what's your record say
6 about that?

7 A. They go ahead and enter the information
8 to go ahead and get the services turned back on.

9 Q. All right. Then what occurs?

10 A. In that conversation it looks like he
11 has been informed that there is an outstanding debt
12 in his daughter's name.

13 Q. Okay. How would they have come up with
14 that information from what you can see in that
15 record, that there was a daughter that had an
16 outstanding bill?

17 A. There is additional information that
18 goes onto this record here that if you'll see over
19 to -- it says in the memo pad "Y." That means we
20 have more information on that line of notation. He
21 has told us that he does not live there, his daughter
22 does, Jennifer lives there.

23 Q. Which address is this?

24 A. 10602 East 20th Street South.

25 Q. Ma'am, you're telling me that your

1 record indicates that Mr. Kitchen has told MGE that
2 he is not living at this address, 10602 East 20th?

3 A. Yes, that is what he has told the lady
4 at 11:58.

5 Q. And who is this person that he told this
6 to?

7 A. Customer consultant.

8 Q. Who, what's her name?

9 A. Ms. Hood, Debra Hood.

10 Q. And is she available?

11 A. No, she's not here, no, sir.

12 Q. Do you have any information indicating
13 that -- of your own knowledge or through some other
14 records that Mr. Kitchen was not living at that
15 address?

16 A. No, I do not, sir.

17 Q. What else is shown in that regard
18 regarding that conversation?

19 A. Well, it goes up, he calls -- he has
20 called back again.

21 Q. What time?

22 A. Looks like 12:29. He talks with another
23 representative. It looks like he said he hung up.
24 Then at 12:37 he is on the phone again on the same
25 day and he's -- oh, he is upset over the transfer of

1 the bill.

2 Q. And what would that transfer of the bill
3 be, please?

4 A. The 241.71 that is Jennifer's bill.

5 Q. As being transferred where?

6 A. To the 10602 East 20th Street South.

7 Q. And who is shown there on the record at
8 that point in time as the person who is responsible
9 for paying that bill at that address?

10 A. Ronald Kitchen.

11 Q. And at that point in the entry does it
12 still indicate that the MGE is relying on
13 Mr. Kitchen's statement under your records that he's
14 not living at that address?

15 A. That is correct. He's telling us that
16 Jennifer is living there.

17 Q. According to your records from a
18 Ms. Hood who is not here?

19 A. That is correct.

20 Q. Okay. Then what occurs?

21 A. He files a Commission complaint, an
22 informal complaint.

23 Q. When?

24 A. On -- looks like it's entered on
25 September the 18th at 17:05.

1 Q. Of the same year, right?

2 A. Yes, 2003, yes, sir.

3 Q. Is it your understanding that

4 Mr. Kitchen is not living at that address, 10602 East
5 20th currently?

6 MR. COOPER: Commissioner, MGE filed a
7 statement of position in this -- in this case and it
8 does not take a position as to where Mr. Kitchen is
9 living or isn't living.

10 I think our pleading which was filed on,
11 looks like March 1st of this year, I think fairly
12 clearly states that MGE just doesn't take a position
13 as to that fact one way or the other and does not
14 believe that, certainly as to its argument, that it
15 makes any difference, that it's where Jennifer was
16 living is the key -- key fact.

17 COMMISSIONER GAW: Well, I'm still
18 asking her the question, but thank you for the input.

19 THE WITNESS: I don't know where he
20 lives.

21 BY COMMISSIONER GAW:

22 Q. Have you ever done any checking to see
23 where he has lived in the last several years?

24 A. Have I?

25 Q. Yourself.

1 A. No, I have not, no.

2 Q. Do you know as a result of the records
3 that you have there, whether anyone else has?

4 A. Well, I do believe that when we got the
5 informal complaint, we do know of another address
6 that was under the name of Ronald R. Kitchen.

7 Q. What is that address?

8 A. 98 something.

9 MS. SHEMWELL: Westport Road.

10 THE WITNESS: Westport Road,
11 Independence.

12 BY COMMISSIONER GAW:

13 Q. And what is the time frame when that
14 address was in the name of Ronald R. Kitchen?

15 A. I can't go all the way back for you. I
16 know that it is still currently in his name at this
17 time, sir. I believe he started that one in 1998,
18 somewhere in that area.

19 Q. Is that a residential listing?

20 A. Yes, it is.

21 Q. And do you know if this is the same
22 Ronald R. Kitchen that's in this case?

23 A. Yes, it is.

24 Q. Has there ever been a change in MGE's
25 records regarding the name of the individual who

1 is -- who's on the account for the 10602 East 20th
2 Street address during the time frame in question here
3 leading back through the initial matters in 2003?

4 A. No, it's still in the name of Ronald
5 Kitchen.

6 Q. All right. And how far back does that
7 account go in his name at that address according to
8 MGE's records?

9 A. According to our records he opened the
10 account originally July 31 of 1996.

11 COMMISSIONER GAW: Thank you.

12 QUESTIONS BY JUDGE JONES:

13 Q. I'll try not to be redundant, but I just
14 wanted to be clear on something. According to
15 this -- I'm looking at Exhibit D in September of
16 2003, I guess that's page 6, I believe, Mr. Kitchen
17 had not paid an amount that was due.

18 You left a message on 9/8, and on 9/15,
19 I suppose because he hadn't responded or something,
20 the meter was shut off. Between 9/15 and 9/17 he was
21 given a reason to pay \$200 by someone and you say
22 that was 65 percent of the outstanding bill, right?

23 A. 65 percent, somewhere in that area.

24 Q. Okay.

25 A. It's about the amount we were asking for

1 at that particular time.

2 Q. Now, the 65 percent is -- that's -- the
3 \$200 is 65 percent of the 300-some-odd dollars that
4 he owed and he was told that his service would be cut
5 back on if he paid that 65 percent, I'm assuming; is
6 that correct?

7 A. That is correct.

8 Q. Okay. So he paid it but the service
9 wasn't turned back on because it was made at the
10 request of his daughter?

11 A. The request was made at the time that
12 the payment was given to us. She called --

13 Q. Okay.

14 A. -- to initiate the service back into
15 Ronald's name.

16 Q. So she made payment at some satellite
17 office somewhere to Schnuck's or something, right?

18 A. Yeah. City of Independence.

19 Q. I'm sorry?

20 A. City of Independence. That's the public
21 service area there. They can go and make payments
22 for the gas bills, light bills, what have you.

23 Q. Okay. So she made that and then she
24 called you after that and just -- and said, "I just
25 made a \$200 payment," and you said, "Who are you?"

1 A. Yes.

2 Q. She said, "I'm Jennifer Kitchen."

3 "Well, you're not Ronald R.'s wife."

4 A. That's right.

5 Q. "So we can't cut it back on"?

6 A. We don't -- we won't take the turn-on
7 for Ronald R. Kitchen if Shirley Bolden is calling
8 because I don't know that Ronald wants the gas
9 service back in his name. So we asked Ronald to call
10 us. The payment is made, but wanted to talk with
11 Ronald direct to make sure he wanted the gas service
12 back in his name at this address.

13 Q. Okay. So it's possible then that he
14 could have paid his \$200 and then thought, I don't
15 want it in my name, I'd rather have it in Jennifer's
16 name is what you're saying?

17 A. But Jennifer would have said she wanted
18 it in her name.

19 Q. She didn't -- she didn't say that,
20 though. You mean --

21 A. No, that is correct.

22 Q. Okay.

23 A. Okay.

24 Q. So he called, apparently Jennifer called
25 and said, "Dad, they won't turn it on, you've got to

1 call them"?

2 A. That's correct.

3 Q. We can only assume that?

4 A. Yes.

5 Q. But he called though, you do know that?

6 A. Yes.

7 Q. And he said, "Okay, I'm calling now and
8 I want it back on in my name." And then what was he
9 told?

10 A. We took an -- we updated his application
11 and we took the order to turn the gas service back on
12 in his name the next day, the 18th.

13 Q. So -- so it wasn't required that he pay
14 his daughter's past due balance before service was
15 reconnected?

16 A. That is correct, it was not required.

17 Q. He only paid the \$200. He was
18 reconnected and when you say "updated the
19 application," what do you mean by that?

20 A. By going in and looking at Mr. Kitchen's
21 application, I'm gonna update telephone number, name,
22 if the spouse's name was on the account, sometimes
23 they end up being divorced or separated. They give
24 us that updated information.

25 We ask for date of birth, we ask for

1 passwords so we don't have to ask Social Security
2 number and we also -- at that time he told us
3 Jennifer was living there, so Jennifer's name was
4 added to the application that she is a person that is
5 a resident at that location now.

6 Q. Okay. And with her name that's when
7 you-all -- I take it if someone adds a person, then
8 you-all have some way of seeing what's up with that
9 person if they have some past history or whatnot?

10 A. That is correct.

11 Q. And is it at that time when he was told
12 that he'd have to pay his daughter's past due?

13 A. He was told at that time she had an
14 outstanding debt and that that debt would be
15 transferred and an arrangement would be made on that
16 debt but it did not hold his turn-off -- turn-on off
17 from getting his gas turned back on.

18 Q. Okay. So he has service -- now, I don't
19 know how -- I don't know how much you interpret
20 tariffs. Do you interpret tariffs at all? Do you
21 ever look at the company's tariffs?

22 A. Oh, yes.

23 Q. What would have happened if -- well, let
24 me back up again. When you-all transferred her bill
25 to his account, when he received his bill, is her

1 portion differentiated or is it all included in one
2 lump sum?

3 A. It's all-inclusive.

4 Q. So he has no way of knowing what portion
5 is her bill and what portion he needs to pay?

6 A. That is correct.

7 Q. Is that information available through
8 you-all?

9 A. We had made an arrangement with her to
10 make her payment.

11 Q. With her or with him?

12 A. With her.

13 Q. So you have a separate arrangement with
14 her?

15 A. At that particular time for the
16 settlement of the resolution to the Commission
17 complaint, we did make an arrangement with her to
18 handle her debt. He still had an outstanding amount
19 also.

20 Q. Which included -- but it didn't include
21 her debt?

22 A. That is correct.

23 Q. So at what point was her debt
24 transferred over to his account?

25 A. Upon the turn -- after the turn-on we

1 transferred the debt.

2 Q. So the arrangement you had with her was
3 prior to the turn-on?

4 A. After the turn-on.

5 Q. Okay. I'm trying to -- after her amount
6 was transferred to his, did you make a separate
7 agreement with her to pay her arrearage or did you
8 make that agreement prior to it being added to his?

9 A. Mr. Curry talked with Jennifer and he
10 can answer that as to what transpired with their
11 conversation.

12 Q. Okay.

13 A. Okay.

14 Q. Now, if -- if he wanted to know after
15 this money was transferred to his bill what portion
16 of it is attributable to his daughter's arrearage, is
17 that information available? Well, say his bill was
18 \$150 and if -- but for her arrearage, it would only
19 be \$100. Is there a way you can know what portion of
20 the bill is accounted towards her arrearage and what
21 is his current due?

22 A. He could see his current amount and he
23 could see the past due amount. He would have to do
24 the subtraction.

25 Q. Okay. Now, the past due amount, is that

1 going to include the arrearage -- the delinquent
2 amount that he already had plus what she had?

3 A. That is correct.

4 Q. But there is no way to break that down
5 further to know which is attributable to her and him?

6 A. That's correct.

7 Q. What if he just guessed at that amount
8 and said, "Well, maybe half of this is my arrearage
9 and half of it is hers. I'm only sending you-all
10 half of what -- what that arrearage is which is what
11 I owe and I'm not gonna pay you for hers." What
12 would the result have been had he done that for a
13 period of time?

14 A. He would still be subject for
15 disconnection, sir.

16 JUDGE JONES: All right. I don't have
17 any other questions. All right. Let's see. Recross
18 by Staff?

19 MS. SHEMWELL: Thank you.

20 JUDGE JONES: Oh, just a minute. Go
21 ahead, Ms. Shemwell. We're gonna stop at 2:30 -- I
22 just want you-all to know that -- for the court
23 reporter's sake.

24 RECROSS-EXAMINATION BY MS. SHEMWELL:

25 Q. Ms. Bolden, as you were talking to

1 Commissioner Gaw, I believe you said the service was
2 to be restored. In fact, Mr. Kitchen had service
3 prior to this disconnect, right?

4 A. He had service in his name at this
5 address prior to the disconnect.

6 Q. And then he had service in his name at
7 this address after --

8 A. That is correct, uh-huh.

9 Q. -- the service was restored?

10 A. Yes.

11 Q. Did you hear Mr. Kitchen testify this
12 morning that his wife Sylvia lived at the Westport
13 Road location?

14 A. Yes, I did.

15 Q. And that he never lived there; did you
16 hear him testify to that?

17 A. I did hear that.

18 Q. In your experience, can a customer be
19 the customer of record at more than one location?

20 A. Yes, they can.

21 Q. And they can be the customer of record
22 at a location where they do not live; is that
23 correct?

24 A. That is correct.

25 Q. Do you have -- or did you take any

1 records of whether or not any of Mr. Kitchen's other
2 children were living there besides Jennifer?

3 A. I did not take that. I've -- my
4 understanding is that that information was given to
5 one of the consultants.

6 Q. And do you have any way of knowing if
7 that was a result of his volunteering that
8 information or is that a question that MGE would
9 typically ask who was living in the home when you're
10 reconnecting service?

11 A. We will ask who is living in the
12 residence as well, but often the person will
13 volunteer that information to us.

14 Q. Do you have a copy of the complaint with
15 you? We were talking about how he would know, Judge
16 Jones was asking questions. Do you have a copy of
17 the complaint?

18 A. I do now.

19 Q. Now, at this point you didn't know about
20 Jennifer, right?

21 A. That is correct.

22 Q. Okay. So this would -- the overdue
23 amount would only be his overdue amount; is that
24 correct?

25 A. Yes.

1 Q. So the \$200 is approximately 60 percent
2 of this amount, the 367?

3 A. That is correct.

4 Q. Did he pay a security deposit as well?

5 A. No, he did not.

6 MS. SHEMWELL: Thank you. That's all I
7 have.

8 JUDGE JONES: Recross, Mr. Kitchen? Do
9 you have any questions for Ms. Bolden?

10 MR. KITCHEN: No.

11 JUDGE JONES: Okay. And direct --
12 redirect? I'm sorry.

13 MR. COOPER: Yes, your Honor.

14 REDIRECT EXAMINATION BY MR. COOPER:

15 Q. Ms. Bolden, would you turn to Exhibit E?
16 Do you still have that before you?

17 A. Yes.

18 Q. Okay. And on Exhibit E, could you turn
19 over to, I think it's the third page, and the first
20 date on that page I believe is 10/28/03. Do you see
21 that?

22 A. Yes.

23 Q. Now, about halfway down that column, do
24 you see an 09/17/03 date?

25 A. Yes.

1 Q. Okay. And there's actually two of
2 those, aren't there?

3 A. Yes.

4 Q. Okay. And the first one of those, it's
5 lower on the page but the first time says "direct
6 transfer to"; do you see that?

7 A. Yes.

8 Q. And what is the amount that's been
9 transferred to the account?

10 A. 241.71.

11 Q. Okay. Is that when the transfer from
12 Jennifer's Emery account would have taken place on
13 Mr. Kitchen's account?

14 A. That is correct.

15 Q. Okay. And then above that, or after
16 that transfer, do you see the regular payment
17 description?

18 A. Yes.

19 Q. And what would that represent?

20 A. That represents the payment that was
21 requested to be paid in order to get the services
22 restored.

23 Q. So your records would represent that
24 both of those things happened on September 17th of
25 '03, correct?

1 A. That is correct.

2 Q. You were asked some questions by
3 Commissioner Gaw, I believe, about where Mr. Kitchen
4 may or may not have lived. Do you remember those?

5 A. Yes.

6 Q. Okay. Now, in September of 2003 when
7 this issue arose, was MGE aware that Mr. Kitchen had
8 service in his name both at 10602 East 20th and at
9 9822 Westport Road?

10 A. When this incident occurred you mean?

11 Q. Yes.

12 A. Yes.

13 Q. Had MGE been told that Mr. Kitchen's
14 wife resided at 9822 Westport Road?

15 A. I would not know at that time. I'd have
16 to refer that to Mr. Curry.

17 Q. Okay. How about the fact that
18 Mr. Kitchen's adult daughter was residing at 10602
19 East 20th, would MGE have been aware of that fact?

20 A. Not until we were told.

21 Q. But that happened in the September 2003
22 time frame; is that correct?

23 A. That is correct.

24 Q. Do you still have in front of you

25 Exhibit D --

1 A. Yes.

2 Q. -- which is the customer contact

3 inquiry, correct?

4 A. That is correct.

5 Q. Okay. Now, if we're looking at the

6 contact description, what you get is what will fit

7 in, in that block, correct? For example, well, let's

8 turn over to 09/17/03, which I think is on page 6 of

9 that document.

10 A. Okay.

11 Q. Are you there?

12 A. Yes.

13 Q. And, oh, about one, two, three, four,

14 fifth entry down there is an 09/17/03 at 11:58; do

15 you see that?

16 A. Yes.

17 Q. And it starts off, it says, "Per Ronald

18 Kitchen, he does not..."; do you see that?

19 A. Yes.

20 Q. Does that contact description on this

21 form, on this report contain the full entry that's

22 made into your system?

23 A. No. If you'll see -- look over on the

24 right-hand side, it says, "Memo" and a "Y" will

25 indicate that we have additional information on the

1 screen.

2 Q. Okay. And that would be -- you refer to
3 that additional screen as the memo scratch pad inquiry?

4 A. Yes. It just continues into "remarks."
5 It gives you several lines down on that same page in
6 order to continue to make your comments.

7 MR. COOPER: May I approach the witness,
8 your Honor?

9 JUDGE JONES: Yes, you may.

10 BY MR. COOPER:

11 Q. Would you take a second to look at that
12 document that I've handed you?

13 A. Okay. Uh-huh, yes.

14 Q. Do you recognize that document?

15 A. Yes.

16 Q. What is it?

17 A. It is the continuation of the
18 information that was given to us by Ms. Hood on
19 September the 17th.

20 Q. Okay. And I assume that it starts with
21 that same description that was reflected on the
22 customer contact inquiry; is that correct?

23 A. That is correct.

24 Q. Would you read for us the complete
25 entry?

1 A. Yes.

2 Q. And let me pause just for a second.

3 MR. COOPER: Part of this entry is a
4 Social Security number and so I don't know how we
5 want to handle that. I don't -- the number to me
6 doesn't make any difference. So if it's all right,
7 I'll just ask Ms. Bolden to just say that a Social
8 Security number appears and move on.

9 JUDGE JONES: That's fine.

10 BY MR. COOPER:

11 Q. So if you would do that, Ms. Bolden.
12 When you get to that -- that number that's there,
13 just say "a Social Security number."

14 A. Okay.

15 MS. SHEMWELL: And Judge, may I note for
16 the record that Commissioner Gaw has already
17 established that Ms. Hood who made these notes is not
18 here to testify as to the accuracy of these notes.
19 I'd just like to get that into the record, please.

20 JUDGE JONES: Okay. Thank you.

21 BY MR. COOPER:

22 Q. Go ahead.

23 A. "Per Ronald Kitchen, he does not live
24 here. His daughter Jennifer lives here, Social
25 Security number. I've advised her she owes us money

1 and will be adding bill to this address. He then
2 started to deny it."

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

5 JUDGE JONES: Thank you, Mr. Cooper.

6 MS. SHEMWELL: Judge, if I could be
7 permitted to make -- just note something for the
8 record. Had that been entered earlier, then
9 Mr. Kitchen's comments about the Social Security
10 number and how could he have given MGE his daughter's
11 Social Security number might actually have made more
12 sense. I believe that that was what he was talking
13 about, okay?

14 JUDGE JONES: Thank you for clarifying
15 that. Mr. Kitchen? Speak into the microphone.

16 MR. KITCHEN: I guess, your Honor, it's
17 too late for me to ask Mrs. -- I'm sorry. I forgot
18 your name.

19 THE WITNESS: Bolden.

20 MR. KITCHEN: Bolden?

21 THE WITNESS: Uh-huh.

22 MR. KITCHEN: I can't ask her any
23 questions?

24 JUDGE JONES: Well, you know --

25 MR. KITCHEN: That's okay if I can't.

1 JUDGE JONES: I tell you what, why don't
2 we take a five-minute break and I will allow you to
3 ask her a question.

4 MS. SHEMWELL: Before we leave --

5 MR. KITCHEN: I really don't want to ask
6 it to her. I want to ask it to Mr. Cooper but --

7 JUDGE JONES: You want to ask Mr. Cooper
8 a question? He's an attorney and it's not good to
9 ask attorneys questions.

10 MR. KITCHEN: Okay.

11 JUDGE JONES: Ms. Shemwell, is there
12 something you would like to say for the record?

13 MS. SHEMWELL: I would like to offer
14 Exhibit 9 into the record.

15 JUDGE JONES: Exhibit 9, what is that?
16 I don't have it.

17 MS. SHEMWELL: The tariff sheet,
18 Rule 13.

19 MR. COOPER: I think that's part of the
20 Commission's rule.

21 JUDGE JONES: You're saying tariff sheet
22 but you mean Commission's rules?

23 MS. SHEMWELL: I'm sorry.

24 JUDGE JONES: Right, I've got that. Any
25 objection to Exhibit 9?

1 MR. COOPER: No.

2 JUDGE JONES: Exhibit 9 is admitted into
3 the record.

4 (EXHIBIT NO. 9 WAS RECEIVED INTO
5 EVIDENCE AND MADE A PART OF THE RECORD.)

6 JUDGE JONES: We'll stop now and
7 continue at 20 minutes until 2:00. With that, we're
8 off the record. I'm sorry, until 3:00.

9 (A RECESS WAS TAKEN.)

10 JUDGE JONES: I think we were on
11 redirect.

12 MS. SHEMWELL: Mr. Kitchen asked to
13 recross.

14 JUDGE JONES: Mr. Kitchen, you were
15 wanting to ask a question of Ms. Bolden. Do you
16 still want to ask that question?

17 MR. KITCHEN: Well, actually, I didn't
18 want to ask it of Mr. Bolden. I wanted to ask it of
19 Mr. Cooper.

20 JUDGE JONES: Yeah. That's not
21 appropriate.

22 QUESTIONS BY JUDGE JONES:

23 Q. I hate to go back over this again, but
24 it's still not clear actually what happened in the
25 time line with regard to his service being cut back

1 on and his daughter's past bill being transferred to
2 his account.

3 A. When we made contact with Mr. Kitchen or
4 Mr. Kitchen made contact with us, the payment of \$200
5 was made more than likely the day before because it
6 takes a day for it to post to our records. When they
7 call it in, we initiate it, get his gas service on,
8 it is a 24-hour turnaround for us to get the gas back
9 on, to get the order filled and out.

10 The same time we're talking to him, he's
11 letting us -- we're telling him at that time that
12 bill will be transferred over and we will make
13 arrangements on that balance. His balance and her
14 balance have to have arrangements on it. He still
15 owes us.

16 Q. And this conversation happened before
17 the gas was actually turned back on?

18 A. Well, yes. The conversation -- the
19 conversation with him happened -- the arrangements
20 were not made until afterwards.

21 Q. Until after the gas was cut on?

22 A. That's correct.

23 Q. So he pays his \$200, then you-all enter
24 into arrangements to pay all of these arrearages
25 which includes his daughter's arrearage and -- or no,

1 you get the information about that. Then the gas is
2 cut back on, he -- I guess he promises to call you
3 back and make arrangements?

4 A. He'll talk with his daughter.

5 Q. Okay. So the gas is cut back on and
6 then the arrangements for repayment is made?

7 A. That is correct.

8 JUDGE JONES: Okay.

9 COMMISSIONER GAW: Sorry, Judge. I may
10 have -- may be repetitive here, but --

11 JUDGE JONES: Okay.

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. Just in this sequence, ma'am, the
14 original final notice, that had to do only with
15 Mr. Kitchen's arrearage, correct?

16 A. That is correct.

17 Q. And then on the day that the \$200
18 payment was made, at what point in time on that day
19 was -- does your records show that reconnection was
20 established, what time?

21 A. If you go to Exhibit D, Ms. Hood talks
22 to him at 11:58.

23 Q. Talks to who?

24 A. Mr. Kitchen.

25 Q. Okay.

1 A. And tells us at that time according to
2 her notes he does not live there. We go ahead and
3 reestablish the service, he still wants the gas in
4 his name there.

5 Q. Okay. Now, what time -- my question is
6 what time is the gas reestablished at that residence
7 or that address?

8 A. It's not on this listing here. We would
9 have a copy of the order that states that it was
10 turned back on on the 18th.

11 Q. Would it --

12 A. It would not be on the contact inquiry,
13 it's gonna be on our FleetCor which is our service
14 order completion as to what time we were there, and
15 when they turned the gas service back on.

16 Q. Okay. And the date that you're talking
17 about when you discuss the 11:58 a.m. discussion,
18 that was the 18th?

19 A. The 11:58 time is the 9/17 and that's
20 when we put in the order to go for the 18th.

21 Q. Okay.

22 A. Okay?

23 Q. And the actual reconnection was on the
24 18th?

25 A. That is correct.

1 Q. And was there any written agreement in
2 regard to paying either Mr. Kitchen's or his
3 daughter's arrearage?

4 A. There -- the exhibit that you have, that
5 is Exhibit F, is the agreement that we made on
6 portions of Jennifer's bill. We did not have an
7 agreement with Mr. Kitchen.

8 Q. So Jennifer signed an agreement?

9 A. She stated an agreement over the phone
10 with us as what she would do.

11 Q. Okay. So there was no signed agreement
12 but there was -- there was some memo that you say is
13 Exhibit F that indicates what your records say
14 Jennifer agreed to do?

15 A. That is correct.

16 Q. You don't have a similar memo in regard
17 to Mr. Kitchen?

18 A. That is correct.

19 Q. And was Mr. Kitchen told, according to
20 the records, that he would not be reconnected unless
21 he agreed to do something in regard to Jennifer's
22 bill?

23 A. His services was gonna be turned on. We
24 said we would transfer that bill to his address so he
25 was not stopped of being reconnected. The bill was

1 gonna go there.

2 Q. Was he told of a consequence in the
3 event that he didn't pay that portion that was
4 attributable to Jennifer, his daughter?

5 A. I couldn't answer that for you, sir. I
6 didn't talk to him direct.

7 Q. Would there have been a consequence if
8 he had not paid -- or if the amount that Jennifer
9 owed would not have been paid?

10 A. Yes, eventually it would be a
11 disconnect. A notice would be going out for
12 disconnect.

13 Q. All right. On that address at -- that's
14 in issue here?

15 A. Yes, the 10602 East 20th.

16 Q. Okay. And what provision of the tariff
17 allows that?

18 A. The past due amounts that are
19 outstanding.

20 Q. Past due from another -- another
21 individual who is not the one shown as the customer,
22 what provision of the tariff allows that
23 disconnection?

24 A. Well, the 3.02 that we use put the bill
25 there. After that it's -- it's combined, so

1 therefore, the disconnects will be for the Ronald
2 Kitchen, for Ronald Kitchen.

3 Q. And this was a bill at a different
4 address, correct?

5 A. That is correct, uh-huh.

6 Q. If Mr. Kitchen had a bill at a different
7 address other than the one that's in issue, could MGE
8 at the time have disconnected the address in issue
9 here because of the owing of monies on a separate
10 address in his name?

11 A. The disconnect would have been for only
12 that address at that time. However, when services
13 was ready to be restored by him, if he had an
14 outstanding debt, we could request that debt be paid.

15 Q. Prior to reconnection?

16 A. That is correct.

17 Q. But in this case there was no
18 requirement that Mr. Kitchen pay this debt of his
19 daughter's prior to reconnection?

20 A. That is correct, only the debt that was
21 outstanding at the 10602 East 20th.

22 Q. While Commissioner Gaw is pondering
23 another question, is there a provision in the tariff
24 that you know of that allows the transfer of her debt
25 to his account? Is there any provision that allows

1 you-all to transfer her debt to his account?

2 A. I would have to look at all our tariffs,
3 sir.

4 Q. Nothing that you know of offhand?

5 A. I can't do it offhand, sir.

6 JUDGE JONES: Okay.

7 COMMISSIONER GAW: That's all I have.

8 JUDGE JONES: Do we have any recross,

9 Ms. Shemwell?

10 RE CROSS-EXAMINATION BY MS. SHEMWELL:

11 Q. Ms. Bolden, if you look at Exhibit 9, do
12 you have that up there?

13 A. I'm looking. Would be Exhibit 9, I'm
14 sorry.

15 Q. Are you familiar with the Commission's
16 rules?

17 A. Just a minute, I don't have it.

18 Q. Oh, I'm sorry.

19 A. Oh, okay. Thank you.

20 MS. SHEMWELL: I'll mark this
21 Exhibit 10.

22 (EXHIBIT NO. 10 WAS MARKED FOR
23 IDENTIFICATION BY THE COURT REPORTER.)

24 BY MS. SHEMWELL:

25 Q. If you'll look on the first page of

1 what's been marked Exhibit 10 under 4 CSR 240-13.050,
2 it says "Discontinuance of Service"; are you there?

3 A. Yes.

4 Q. And under No. 1 are the reasons that
5 service may be discontinued; is that correct? Did
6 you find that?

7 A. Yes.

8 Q. And then if you'll turn to the next page
9 under 2, the very first column there's H and then
10 there's No. 2, "And none of the following shall
11 constitute sufficient cause for discontinuance of
12 service."

13 And under D it reads, "A failure to pay
14 the bill of another customer," right, "unless the
15 customer whose service is sought to be discontinued
16 received substantial benefit and use of the service."
17 Have I read that correctly?

18 A. That is correct, yes.

19 Q. And you're not claiming, are you, that
20 Mr. Kitchen ever received benefit of service at the
21 Emery address?

22 A. No, we're not claiming that.

23 MS. SHEMWELL: Thank you.

24 THE WITNESS: Uh-huh.

25 JUDGE JONES: Mr. Kitchen, you still

1 don't have questions of Ms. Bolden or do you?

2 MR. KITCHEN: Well, the Commissioner
3 already asked her, but he said it in bigger words
4 than I could understand, so there is one question I
5 would like to ask her concerning Mrs. Hood.

6 JUDGE JONES: Go right ahead.

7 RECROSS-EXAMINATION BY MR. KITCHEN:

8 Q. Ms. Bolden, if I supposedly told
9 Mrs. Hood and provided my daughter's Social Security
10 number and told Mrs. Hood that I did not live at
11 10602 and taking everything in consideration that
12 you're down here in behalf of Missouri Gas Energy to
13 say that Missouri Gas Energy has followed the letter
14 of the law or the letter of their tariffs, why would
15 not the most credible witness for -- and I would
16 think would be for Missouri Gas Energy would be
17 Mrs. Debra Hood, why was she not here or why was
18 documentation not presented to the statement that I
19 give her about not living there and providing -- why
20 wouldn't that be done? Why wasn't that done?

21 MR. COOPER: I object to the question.
22 I think it goes to hearing strategy, something within
23 the purview of the company, and it's privileged and
24 certainly not anything that's within Ms. Bolden's
25 knowledge to answer.

1 JUDGE JONES: I don't necessary agree
2 that it's privileged. It may be strategy, but if
3 Ms. Bolden can answer the question, though, then she
4 can. And if she can't, then she can say she can't
5 answer it. Can you answer that question, Ms. Bolden,
6 why Mrs. Hood isn't here?

7 MR. KITCHEN: Or the documentation,
8 statement that I give to Mrs. Hood, that would be
9 critical to MGE's --

10 MR. COOPER: Well, that misstates the
11 facts as well, because I think the statement that MGE
12 did have was read into the record by Ms. Bolden
13 previously.

14 JUDGE JONES: That is true, the records
15 are here. It's just that Ms. Hood isn't here. Can
16 you answer that question, Ms. Bolden?

17 THE WITNESS: I was requested to be
18 here, sir. That's all I can say.

19 JUDGE JONES: Okay. I guess the
20 objection is overruled. She can't answer that
21 question, Mr. Kitchen.

22 MR. KITCHEN: Okay.

23 JUDGE JONES: And now we'll have
24 redirect from MGE.

25 FURTHER REDIRECT EXAMINATION BY MR. COOPER:

1 Actually, he went to use the facilities, your Honor.

2 Actually, it will be Mr. David Curry.

3 JUDGE JONES: While we're waiting, I
4 want to make sure that I understand the position of
5 Staff and the position of MGE. Staff's position is
6 that Section 3.07 applies to this case?

7 MS. SHEMWELL: Yes. And I think Staff
8 has refined its position based on the testimony that
9 we heard today. I believe it had been Staff's
10 understanding that Mr. Kitchen was required to pay
11 Jennifer's bill before his service would be
12 reconnected, but -- and we felt a discontinuance of
13 service rule under 3.07 -- or I'm sorry, under their
14 tariff was more applicable.

15 But if, in fact, they -- service was
16 connected and they were threatening to cut it off,
17 then that would be clearly under the discontinuance
18 of service section of the tariff.

19 JUDGE JONES: And it's MGE's position
20 that 3.02 applies?

21 MR. COOPER: Correct, your Honor. And
22 that factually, the arrangements and the discussions
23 in regard to Jennifer Kitchen's outstanding amount
24 took place part and parcel of the events surrounding
25 the disconnection at 10602 East 20th Street related

1 to the nonpayment of Mr. Kitchen's bill and how we
2 were going to work things on a going-forward basis to
3 reconnect or to initiate service again at that
4 location.

5 JUDGE JONES: Ms. Shemwell?

6 MS. SHEMWELL: I think that -- I don't
7 want to put words in MGE's mouth, but their point was
8 that this was an applicant for service whose service
9 had been cut off. I mean, that is the situation for
10 3.02.

11 And now their position is that it was a
12 disruption or interruption of service and that
13 service was reconnected or reestablished, not
14 commenced.

15 MR. COOPER: Which we can continue on
16 down the line, I suppose. Earlier we pointed out
17 that the new rule that the Commission promulgated
18 that Mr. Ensrud talked about that he believes would
19 apply to this fact scenario, talks about the
20 commencement of service.

21 JUDGE JONES: Well --

22 MR. COOPER: And we can argue that this
23 was the commencement of service.

24 JUDGE JONES: It seems from the facts
25 that -- up to this point that's irrelevant because

1 service was commenced, right?

2 MR. COOPER: As a part of working out
3 how we were going to deal with the various amounts
4 that were due.

5 JUDGE JONES: Well, this says, "Company
6 shall not be required to commence supplying gas
7 service if..." Well, that -- that doesn't apply
8 because service was commenced, right?

9 MS. SHEMWELL: That's Staff's position.

10 MR. COOPER: After -- well --

11 JUDGE JONES: Go ahead.

12 MR. COOPER: -- after arrangements were
13 made to deal with the past due amounts. I mean, both
14 Mr. Kitchen's past due amounts and his daughter's
15 past due amounts.

16 JUDGE JONES: So are you arguing then
17 that those arrangements were necessary before
18 commencement was made?

19 MR. COOPER: Certainly that it was a
20 part of that same process. Now, you have to
21 remember, and I think Mr. Curry will testify to this,
22 but you have to remember that the company is trying
23 to work with people to get their service turned back
24 on.

25 I mean, the tariffs clearly would have

1 allowed the company to demand payment of 100 percent,
2 I think, of the past due amount that Mr. Kitchen owed
3 before it commenced service on 9/18. It did not
4 demand that, it works with folks. It demanded an
5 amount less than that in an effort to assist the
6 customer.

7 Now, if the company's actions in that
8 regard start to get it in trouble with the
9 Commission, I don't know that we're in a better, you
10 know, better spot here.

11 MS. SHEMWELL: Well, now, wait a minute.
12 That's not really relevant what they're gonna do
13 going forward, but Staff's position is that they
14 weren't commencing service at that address. It was
15 not an applicant -- at the time of applicant --

16 JUDGE JONES: I understand that
17 position. I'm trying to understand MGE's position
18 better and MGE's position is that --

19 MR. COOPER: Service had been
20 discontinued. The definition of discontinuance of
21 service talks about a cessation of service. If
22 service has been ceased, it must be commenced to
23 start again. Therefore --

24 JUDGE JONES: I understand that you-all
25 don't agree on what commenced means and I understand

1 about his daughter's past due balance?

2 MR. COOPER: Correct.

3 JUDGE JONES: And does that mean her
4 past -- that that discussion was a condition of
5 reconnection, is what I'm trying to understand? Are
6 we gonna have any evidence on that at all? Or maybe
7 I overlooked it?

8 MR. COOPER: I don't know that we are,
9 and I think that one way or the other I think that
10 it's something that the customer service
11 representatives are working through at the time this
12 is going on.

13 And because they're working through,
14 they're trying to help the customer, they're trying
15 to get service reestablished. I don't know that
16 you're ever going to find a point or be able to
17 reconstruct this to the point where, you know,
18 there's a written document or anything that says --

19 JUDGE JONES: Or any evidence that says
20 he would not have been reconnected had he not
21 promised to pay his daughter's past due amount.

22 MR. COOPER: I think -- I think the only
23 evidence you're going to find is going to be
24 circumstantial based upon the timing of those
25 discussions.

1 JUDGE JONES: Circumstantial are better
2 than none. People go to jail for murder for
3 circumstantial evidence. So you're saying that there
4 will be circumstantial evidence. I'm gonna have to
5 have facts, I know that, in order to write an order.

6 MR. COOPER: Well, and that's what, your
7 Honor, that I'm referring to. The circumstantial
8 evidence is when we look at the customer inquiry the
9 discussion of Jennifer Kitchen's past due debt is
10 taking place prior to the commencement of service
11 again, on September 18th. I think that's
12 circumstantial evidence that it was part and parcel
13 of this disconnection and how are we gonna start
14 service again.

15 JUDGE JONES: Not part of the
16 disconnection --

17 MR. COOPER: Not part of the
18 disconnection.

19 JUDGE JONES: -- but part of the
20 reconnection.

21 MR. COOPER: But how to go from
22 disconnection -- or discontinuation, I guess to
23 reinitiate -- or the initiation of the service again
24 on --

25 JUDGE JONES: I understand.

1 MR. COOPER: -- the 18th.

2 JUDGE JONES: Mr. Kitchen?

3 MR. KITCHEN: Yes.

4 JUDGE JONES: You had something you
5 wanted to add?

6 MR. KITCHEN: Well, if they had brought
7 down the documented conversation with Debra Hood,
8 then the attorney for Missouri Gas Energy would have
9 known that part of the agreement to get my gas back
10 on was that I would pay her bill. Because she told
11 me that if I didn't pay the bill that they would
12 not -- that they would shut my gas off.

13 And so she was holding the \$241 -- at
14 that time she told me it was \$90 -- over my head as
15 you either pay it or we're gonna shut the gas off.
16 And if they had brought those documentations down
17 here, that would have -- then the Commission would
18 have known that. I mean, they could have looked at
19 those documents.

20 So I was -- my feet was being held to
21 the fire whether I paid that bill, if I paid that
22 bill, everything was okay and if I didn't pay it,
23 they would shut my gas off.

24 JUDGE JONES: Okay. Mr. Cooper, I have
25 a sense you want to respond to that?

1 MR. COOPER: I would only make the point
2 that I think now you have the evidence you were
3 wanting.

4 JUDGE JONES: Okay.

5 MS. SHEMWELL: I would like to make the
6 point that MGE is wanting to work with customers to
7 get their gas back on, but threatening them with
8 having to pay a bill that Staff does not believe that
9 they owed under the tariff, is not actually working
10 with them to get their gas turned back on. It's MGE
11 trying to collect the debt of someone who was living
12 at a location that Mr. Kitchen never benefited from
13 that service.

14 JUDGE JONES: Well, let me ask you this,
15 Ms. Shemwell: If his daughter had an arrearage, she
16 moved into his house, other than attaching it to his
17 bill, how would they collect their money?

18 MS. SHEMWELL: They can try to collect
19 from her any other way besides disconnecting her
20 service. They cannot deny -- if they move, if they
21 moved together to a new location, that would be a
22 different situation. But they cannot discontinue or
23 disconnect Mr. Kitchen because his daughter moves in
24 with him owing a bill from a location where he did
25 not benefit from that service.

1 JUDGE JONES: I think I understand that.
2 And Mr. Cooper, one more question, and I think it
3 probably moves this along to just do it like this
4 before you call this last witness, but his service
5 was disconnected.

6 And I know that you-all are going back
7 and forth about this commencement and applicant, but
8 after disconnection, if service is cut back on to the
9 same person, isn't that reconnection, or would you
10 still argue that that's commencement?

11 MR. COOPER: I would argue that it's
12 commencing service.

13 JUDGE JONES: It's not a reconnection.

14 MR. COOPER: I believe it's also a
15 reconnection as well.

16 MS. SHEMWELL: He paid a reconnection
17 fee and they specifically labeled it as that as
18 opposed to the fee for new service.

19 JUDGE JONES: I understand. Do you have
20 a fee for new service other than a deposit?

21 MR. COOPER: Yes.

22 JUDGE JONES: There is a fee for new
23 service?

24 MR. COOPER: For new service, yes. But
25 you'll find that the connection/reconnection language

1 doesn't show up in 3.02.

2 JUDGE JONES: It shows up in 3.11.

3 MR. COOPER: Right, right.

4 JUDGE JONES: Okay.

5 MR. COOPER: So, I mean, there's no
6 direct connection to those back to 3.02 and the
7 interpretation of 3.02.

8 JUDGE JONES: It bears a direct
9 connection with 3.11. If reconnection of gas
10 service -- you need a copy of that? None of you have
11 copies of this.

12 (EXHIBIT Z WAS MARKED FOR IDENTIFICATION
13 BY THE COURT REPORTER.)

14 JUDGE JONES: Oh, and to explain, there
15 are three pages. I included all three of those
16 pages, '94, 2001 and 2004 to show that that provision
17 in the tariff has not changed over that period of
18 time. Mr. Cooper, I take it you would like to
19 respond first to that document?

20 MR. COOPER: I suppose. I mean, I
21 don't -- this obviously is another piece of MGE's
22 tariff, and I don't know that it answers the question
23 that's been posed.

24 JUDGE JONES: Okay.

25 MR. COOPER: If you'll recall when

1 Mr. Ensrud was on the stand, we talked about the
2 current 3.02 and in that section of MGE's tariff
3 which comes from, I believe a Commission rule, we
4 talked about a commencement in the context of
5 restarting service after a discontinuation. So I
6 think there is still tariff language, there is
7 still --

8 JUDGE JONES: Now, when you have -- when
9 you have service commenced -- now that I'm finding
10 out you have an application fee also, what is it
11 called on the bill, do you know? Is it called an
12 application fee?

13 MR. COOPER: I do not know, no.

14 MS. SHEMWELL: We believe it's called
15 connection charge and it should be on the Exhibit
16 R-87, which is 8.

17 JUDGE JONES: You said Exhibit what, 8?

18 MS. SHEMWELL: 8.

19 MR. COOPER: Which is the R-87.

20 MS. SHEMWELL: There's a connection
21 charge and a reconnection charge and they're
22 different amounts as the Commission will note.

23 JUDGE JONES: Okay. Let's go ahead and
24 call your next witness.

25 MR. COOPER: We would call Mr. David

1 Curry.

2 (Witness sworn.)

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

5 DIRECT EXAMINATION BY MR. COOPER:

6 Q. Would you please state your name for us.

7 A. David Curry.

8 Q. And by whom are you employed and in what
9 capacity?

10 A. Missouri Gas Energy. I am the customer
11 service analyst.

12 Q. And what's the nature of your duties as
13 customer service analyst?

14 A. Primarily I'm the statistician for all
15 of the phone calls and call flow forecasting.
16 Secondarily, I back Ms. Bolden up with the handling
17 of Commission complaints and elevated complaints.

18 Q. Did you have direct connection with the
19 matter that we're here to discuss today,
20 Mr. Kitchen's complaint?

21 A. Yes, sir.

22 Q. What was your connection to that?

23 A. I was the one who handled the complaint,
24 the informal complaint that was sent over by Michelle
25 Bocklage.

1 Q. Would you take us through your
2 involvement with Mr. Kitchen and this matter?

3 A. Well, at the time that I received, most
4 of the information that you-all have gone over
5 had -- had already transpired. As I received the
6 understanding, Mr. Kitchen was not residing as
7 primary, I guess, in the -- at the East 20th Street
8 address.

9 And when I had spoken with him, because
10 again, all this other had transpired, it was not my
11 understanding that he was advised that he must pay
12 his daughter's bill in order to have the service
13 reconnected. My understanding of the situation was
14 we are reconnecting your service. However, please
15 know that we are transferring your daughter's bill.

16 I had no other knowledge of him being
17 informed, you must pay the bill or you'll be
18 disconnected. I won't say that that did not occur, I
19 just have no knowledge of that and there's no record
20 of that occurring. But --

21 Q. Did --

22 A. I'm sorry, go ahead.

23 Q. Did you work with Mr. Kitchen or with
24 Jennifer Kitchen to arrange for payment of the past
25 due amount connected to Jennifer Kitchen at the Emery

1 Street address?

2 A. I worked with Jennifer as far as a
3 payment arrangement on the bill. I encouraged
4 Mr. Kitchen because again, my understanding at the
5 time that when we had spoken, Jennifer and his other
6 daughter were living there. And so I encouraged him,
7 you know, to have the service put in her name and I
8 can make arrangements with her.

9 How it was left with him was that he
10 would discuss that with her. Jennifer did contact me
11 and I started to make a payment arrangement. It was
12 not on the full balance of the account, but we
13 entered into what I would say is a beginning payment
14 arrangement which I'm not sure what exhibit it is,
15 but --

16 Q. Yeah. Let's -- do you have before you
17 Exhibit F by chance?

18 A. Yes, single sheet? Yes, I do.

19 Q. And that represents the payment
20 agreement that you were talking about?

21 A. Yes, sir.

22 Q. Okay. Now, that's still connected to
23 Mr. Kitchen's account at 10602 East 20th Street?

24 A. Yes, sir, at the time it was all one.

25 Q. Okay. Now, what were the terms of that

1 payment agreement?

2 A. At initiating this agreement, as it
3 states there in the remarks, that Ms. Kitchen was to
4 pay 41.71 on the 22nd of September and then to pay
5 \$50 every two weeks starting October the 1st.

6 I did not make that arrangement or
7 stretch it out indefinitely because when these
8 arrangements are asked for by customers, they are
9 generally not kept. So I don't extend them for an
10 extended period of time. That way if the payments
11 are not made, the agreement terminates.

12 Q. If we had to gather that initial 41.71
13 plus the \$50, do we get an amount that's pretty close
14 to the \$90 that was talked about earlier?

15 A. It would be 91.71, yes, sir.

16 Q. Was that payment agreement completed?

17 A. According to our records, no, sir, it
18 was not.

19 MS. SHEMWELL: Judge, relevance.

20 JUDGE JONES: I'll overrule that.

21 BY MR. COOPER:

22 Q. And you answered that it was not
23 completed, correct?

24 A. No, sir.

25 Q. Okay.

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

3 JUDGE JONES: Cross-examination by
4 Staff?

5 MS. SHEMWELL: None, thank you.

6 JUDGE JONES: Mr. Kitchen, do you have
7 questions for Mr. Curry?

8 MR. KITCHEN: Just a moment, please.

9 JUDGE JONES: Okay.

10 CROSS-EXAMINATION BY MR. KITCHEN:

11 Q. Yeah, I would like to ask Mr. Curry
12 that, how this -- oh, I guess the bill went from \$90
13 to 241. How do we get from 90 to 241?

14 A. I have no record of there being a \$90
15 bill. The bill that was overdue or delinquent in
16 Jennifer's name was 241.71. So I'm not sure where
17 the \$90 as a bill as you had spoken of.

18 Now, the beginning of a payment
19 arrangement, those first two payments would have
20 consisted of 91.71, but that was not the full balance
21 of the bill.

22 Q. Okay. And I know you probably can't
23 answer this question, but I'm gonna ask it again
24 because Mrs. Bolden couldn't answer it. Why could
25 not Mrs. Hood who would be the most credible witness

1 from Missouri Gas Energy, why -- and had documented
2 phone conversations, why was that not available to
3 the Commission and to myself today? I haven't seen
4 it. I want to see it. I want to see it.

5 A. Any written documentation that we would
6 have concerning phone calls would be what you have
7 here in the customer contact inquiry screen. The
8 archiving of our recorded phone calls are only kept
9 for so long, and since we're talking about nearly
10 three years ago, this would not still be in our
11 records.

12 Q. Well, we have all these other ones that
13 go back to 2003.

14 A. But again, these are written -- this is
15 written documentation. The phone calls, they're not
16 written, those are sound recordings and they are not
17 kept for that length of time.

18 COMMISSIONER APPLING: No questions.

19 QUESTIONS BY JUDGE JONES:

20 Q. I just need to know, do you remember
21 when you had the conversation with Jennifer Kitchen?

22 A. If I'll go by the day that I
23 instituted -- or initiated, excuse me, the payment
24 agreement, it would have been the 19th of September.

25 Q. Which was after --

1 A. Of 2003.

2 Q. Now, was that after reconnection or
3 before?

4 A. This was after the service was
5 reconnected. The service was restored on the 18th of
6 September. I spoke to her the following day.

7 Q. Did you speak at all with Mr. Kitchen?

8 A. That's who I spoke with primarily and
9 when -- again, the understanding was -- that I had
10 with him was that, "If it's your daughter that's
11 living here, have her to either put the service in
12 her name or call in to make arrangements." So that's
13 when she called and made arrangements. Prior to
14 that, I had no conversations with Jennifer.

15 Q. Now, when did you speak with
16 Mr. Kitchen?

17 A. It would have been probably the 18th or
18 the 19th, maybe the morning of the 19th because as I
19 can see my note in here, was late in the evening on
20 the 18th of September. So it is very well possible
21 that I may have talked with him because I don't have
22 the full note here in front of me. If I did not talk
23 to him that evening, it was probably early the next
24 morning or sometime during the day on the 19th. But
25 it was prior to speaking with Jennifer.

1 Q. Which exhibit are you looking at,
2 Mr. Curry?

3 A. This one doesn't have a number.

4 Q. Just hold it up.

5 A. It's probably Exhibit D it looks like.

6 Q. And what page are you on? I guess it
7 would be about page 6 maybe?

8 A. Let's see, yeah, I guess it would be,
9 yes, sir, page 6. And if I did have a complete
10 conversation with him at that time, it would be after
11 the preview note that says, "Commission complaint
12 9/17/03."

13 Q. Okay. That's when you said you would
14 have talked to him, it looks like five minutes after
15 5:00?

16 A. Yes.

17 Q. You work late or what's your hours?

18 A. Well, I worked anywhere from 9:00 to
19 7:00 some days.

20 Q. Okay.

21 A. And see again, this was not my primary
22 duty so --

23 Q. I understand.

24 A. Yeah.

25 Q. So this where it says, "Commission

1 complaint" on that first entry of 9/18, is that where
2 you're getting that you had the conversation with
3 him?

4 A. Yes, sir, that's where I would say that
5 that's when it started because the minute we get -- I
6 won't say the minute we get, but we receive the
7 e-mail or notification through EFIS from Consumer
8 Services, the minute that we're ready to start
9 handling the actual informal complaint, we will put a
10 note like this on the contact screen so that even if
11 the customer contacts the phone center or call
12 center, they will know that the customer has
13 contacted the Commission and that all calls should
14 then be forwarded to either myself or Mrs. Bolden.

15 Q. Oh, which is why you say you know you
16 would have talked to him then because talking to you
17 is in response to a complaint being filed?

18 A. Yes, elevated complaints, yes, sir.

19 Q. Okay. Now, on the next page it says --
20 is that "supervisor"?

21 A. Yes.

22 Q. That's not until almost seven o'clock
23 the next day?

24 A. Uh-huh.

25 Q. "Due to con -- due to e-mails from

1 rep" -- is that rep from the Public Service
2 Commission?

3 A. Probably from the rep that's -- I noted
4 before with the initials of J.A.C.

5 Q. And then on the 19th that's when you
6 spoke with Jennifer?

7 A. Uh-huh.

8 Q. And service was connected on the 18th;
9 is that right?

10 A. Yes, sir.

11 Q. Now, is that somewhere in this Exhibit D
12 or is it in a different exhibit?

13 A. It would have to be in a different
14 exhibit.

15 JUDGE JONES: Which exhibit is that in?
16 Does anybody know offhand?

17 MR. COOPER: I don't think we have
18 offered a document that contains that information,
19 although we could.

20 JUDGE JONES: So right now I do not
21 have, in fact, other than through testimony, the date
22 on which service was reconnected or restored or
23 commenced?

24 MR. COOPER: You do have testimony, yes,
25 your Honor, but you do not have a document that

1 reflects that.

2 JUDGE JONES: Well, I want a document
3 that says when it was.

4 MR. COOPER: Okay. How do you want to
5 go about this, your Honor? We --

6 JUDGE JONES: Mark it as -- what's --

7 MR. COOPER: I don't have copies of it
8 right here, but we certainly could provide copies.

9 JUDGE JONES: Well, tell me what it says
10 or actually present it to the witness. Can you read
11 that document that he has?

12 THE WITNESS: Yes, yes, sir.

13 JUDGE JONES: Present it to him. Is
14 that the only copy you have?

15 MR. COOPER: Yes, your Honor.

16 JUDGE JONES: We'll have to make a copy
17 but I know the court reporter will need a copy.
18 We'll take care of that after the hearing, but for
19 now just -- just want him to be able to refer to it
20 to tell me.

21 MS. SHEMWELL: Judge, would you like to
22 mark it as ZZ?

23 JUDGE JONES: ZZ Top, how about that?

24 (EXHIBIT Z1 WAS MARKED FOR
25 IDENTIFICATION BY THE COURT REPORTER.)

1 MR. COOPER: Mr. Curry, I'm gonna --

2 How do you want to go about this, your
3 Honor? Do you want me to ask him?

4 JUDGE JONES: I'll ask him the questions
5 since I'm the one who already asked it.

6 BY JUDGE JONES:

7 Q. Okay. Sir, you've been handed an
8 exhibit that's been marked as Exhibit Z1. Can you
9 describe that for me, please?

10 A. This is a copy and this is in our
11 customer service system, or CSS system, the actual
12 completion of the service order that was worked in
13 the field. And basically what this shows is that --
14 well, there are actually two pages actually in
15 reference here.

16 The first one's showing when the
17 services were disrupted on the 15th of September '03,
18 showing that when the serviceman reached the premise
19 or the address, he found the service active and left
20 it inactive meaning that the service had been
21 disconnected. And that was as of the 15th of
22 September 2003.

23 Q. I'm sorry. You said that when he went
24 there on the 15th he found the service inactive --

25 A. He found it active.

1 Q. Oh, he found it active?

2 A. He found it active. And when he left
3 after shutting the service off, his status then shows
4 inactive. So active/inactive means when I got there
5 it was on, when I left it was off.

6 Q. Okay.

7 A. Then the second page is the service
8 order completion when the service was recommenced,
9 restored. And it says that when he arrived at the
10 property then on the 18th, and the time here shows
11 that he arrived at 8:29 a.m. on the 18th. It says he
12 found the service inactive. When he left at 8:51
13 a.m. the service was active, meaning that it had been
14 resumed.

15 JUDGE JONES: All righty. We'll admit
16 that as Exhibit Z1 and make copies after the hearing.

17 (EXHIBIT Z1 WAS RECEIVED INTO EVIDENCE
18 AND MADE A PART OF THE RECORD.)

19 JUDGE JONES: I don't have any other
20 questions. Mr. Cooper, is there something you wanted
21 to add?

22 MR. COOPER: Just to clarify -- are we
23 going to mark both those sheets as one exhibit, is
24 that what you're intending to do?

25 JUDGE JONES: Yes. Yes, I'll staple

1 them together. They'll be one. Do you have recross
2 from Staff of the Commission?

3 REXCROSS EXAMINATION BY MS. SHEMWELL:

4 Q. I just have one question. We were
5 looking at Exhibit D and you were looking at pages 6
6 and 7, I believe?

7 A. Okay.

8 Q. And on September 30th another disconnect
9 notice was mailed. Is that another disconnect notice
10 or was that the disconnect notice of -- yes, it says
11 September 30th, 2003. Do you know why another
12 disconnect notice was mailed?

13 A. Okay. That would be what we call an
14 agreement disconnect notice that is issued -- that if
15 a payment agreement that has been made with the
16 customer, if that payment agreement is not kept, a
17 disconnect notice goes out. That way, if the
18 customer breaks the agreement and we end up
19 disrupting the service, they have been properly
20 noticed.

21 Q. All of our discussion today I think
22 you've prefaced with the idea that you did not know
23 that Mr. Kitchen actually lived at that location; is
24 that correct?

25 A. Uh-huh.

1 Q. But you heard today that MGE is not
2 challenging the fact, I believe I'm saying that
3 correctly, that --

4 MR. COOPER: I object to this line of
5 questions. I don't believe it's connected to the
6 questions from the bench.

7 JUDGE JONES: It's not connected to
8 questions from the bench.

9 MS. SHEMWELL: Okay.

10 JUDGE JONES: The objection is
11 sustained.

12 MS. SHEMWELL: That's all I have then.

13 JUDGE JONES: Mr. Kitchen, do you have
14 further questions?

15 MR. KITCHEN: No, I don't, your Honor.

16 JUDGE JONES: Okay. I don't have any
17 further questions either. Mr. Curry, you may be
18 seated.

19 MR. COOPER: I think we have some
20 redirect, your Honor.

21 JUDGE JONES: Redirect, I'm sorry. Go
22 right ahead, Mr. Cooper.

23 REDIRECT EXAMINATION BY MR. COOPER:

24 Q. Mr. Curry, you referred to on Exhibit D
25 some contacts you had with Mr. Kitchen. Do you

1 remember that?

2 A. That I had spoken to him either on the
3 18th or the 19th of September, yes.

4 Q. Okay. And then I think you also talked
5 about earlier it was represented that you talked to
6 him on the 1st of October as well?

7 A. Yes, actually I did, up there at the
8 note, yes.

9 MR. COOPER: Your Honor, I'd like
10 permission to approach the witness.

11 JUDGE JONES: You may.

12 BY MR. COOPER:

13 Q. Now, Mr. Curry, I've handed you a
14 document. Do you recognize that document?

15 A. Yes. It is a copy of the full contact
16 description of my conversation with Mr. Kitchen on
17 the 18th of September.

18 Q. Okay. And earlier we talked to
19 Ms. Bolden about the fact that when we do -- when you
20 do the customer contact inquiry, there's a memo
21 scratch sheet that backs that it up, correct?

22 A. Uh-huh, yes.

23 Q. And is that what you have before you for
24 September 18th?

25 A. Yes, sir.

1 Q. Okay. Tell me what the entry was, what
2 your entry was on September 18th?

3 A. Okay. Of course, the first line being
4 "Commission complaint 09/17/03," and I noted that,
5 "Ronald has complained about MGE transferring
6 daughter's BDR," or bad debt, "to his account. I
7 spoke to Mr. Kitchen and advised him that according
8 to tariff, we would not allow him to keep service in
9 his name just to avoid paying -- avoid Jennifer
10 paying her bill.

11 "Also advised since she has been living
12 here and paying the bills, we would hold her equally
13 responsible for this billing here. He says will
14 verify with Commission if what I advised is true" and
15 I signed with my name.

16 Q. Okay. Will you turn forward, I think
17 there's another sheet there a couple pages that also
18 has a Post-It on it perhaps. Is that a similar memo
19 pad entry for October 1st?

20 A. Let me go a little further. I'm sorry.
21 Okay. It's the last page. Okay.

22 Q. Do you have the October 1st memo in
23 front of you?

24 A. Yes, sir, I do.

25 Q. Okay. Is that your entry?

1 A. Yes, sir, it is.

2 Q. Okay. What was your entry?

3 A. Okay. "October 1, '03, I talked with
4 Ronald again today. He says that Jennifer" -- and as
5 I understood the name was Tammy so I have noted here
6 Tammy -- "Jennifer and Tammy are living here. He
7 says he does not want to get stuck paying their bill.
8 I again advised him that since they are the ones
9 paying the bill here, that they should put it into
10 their names. I also told him we would not assess a
11 deposit but would just transfer the balance to their
12 account. He says will talk it over with his
13 daughters."

14 MR. COOPER: That is all the questions I
15 have, your Honor.

16 JUDGE JONES: Okay. With that,
17 Mr. Curry, you may be seated. Any other witnesses
18 from MGE?

19 MR. COOPER: No, your Honor.

20 JUDGE JONES: Would you-all like to make
21 closing statements?

22 MS. SHEMWELL: (Shook head.)

23 JUDGE JONES: Ms. Shemwell indicates no.
24 Mr. Cooper?

25 MS. SHEMWELL: I'll reserve my decision

1 while he decides.

2 JUDGE JONES: Mr. Kitchen, you indicated
3 you would like to make a closing statement?

4 MR. KITCHEN: If I may.

5 JUDGE JONES: Go ahead and approach the
6 podium and make your statement, sir.

7 MR. KITCHEN: I don't know if this is
8 appropriate or not, but in my closing statement I
9 want to say that I never told Mr. Curry that my
10 daughter Jennifer and Kamie was living there. I
11 never said anything of the kind because they wasn't
12 living there. The only one living there then was my
13 daughter Jennifer and myself.

14 And the reason I know that I lived there
15 because when I purchased the other home in 1998 after
16 closing, my wife told me I had to go back and live
17 over there and she kept the other house, so I know I
18 was living there.

19 But I didn't know how to -- how to --
20 they have this documentation that says I said this
21 and I said that, this and that, but I didn't say
22 that. I didn't say anything to Mr. Curry about my
23 daughter Jennifer or Kamie living there.

24 Anyway, I want to thank the Commission
25 and Mrs. Lera and Mr. Ensrud and this gentleman here

1 and Mr. Cooper and everybody for taking the time for
2 this hearing, and this lady here typing too, because
3 I know her fingers are hurting. And that's all I got
4 to say and thank you, I appreciate it. And can I get
5 a copy of this?

6 JUDGE JONES: You will get a copy of the
7 transcript, yes, sir.

8 MR. KITCHEN: Okay. Thank you.

9 JUDGE JONES: Mr. Cooper?

10 MR. COOPER: Well, I want to go last, I
11 guess, if Ms. Shemwell is going to go.

12 JUDGE JONES: Ms. Shemwell, this is a
13 moment of truth. Do you want to make a closing or
14 not?

15 MS. SHEMWELL: I'll just make a few
16 comments that Staff believes that this was not a new
17 connection of service, that this was a reconnection.
18 Therefore, MGE was not permitted to make it a
19 condition of reconnection that Mr. Kitchen pay the
20 bill of someone else.

21 I don't think actually, despite the
22 discussion, MGE is challenging where Mr. Kitchen
23 lived during the time. They've indicated that
24 they're not questioning that. So I think that the
25 assumption should be that he lived at the 20th Street

1 address. I think that's all. Thank you.

2 JUDGE JONES: And Mr. Cooper?

3 MR. COOPER: Yes, your Honor. And I
4 will make it brief because I think our argument is in
5 regard to these tariffs as laid out in pleadings that
6 have been filed previously and in the case.

7 3.02, as you know we argue, governs this
8 situation because it says that MGE is not required to
9 commence supplying gas service if at the time of the
10 application the applicant or any member of the
11 applicant's household who has received benefit from
12 previous gas service has indebted the company for
13 such gas service.

14 We do not believe that 3.07 applies as
15 the Commission's Staff suggests. I think it's pretty
16 clear that discontinuance in this case took place
17 based upon service that was provided to 10602 East
18 20th Street to Mr. Kitchen while he was the customer.
19 So I don't think that discontinuance provision
20 applies.

21 Obviously, there's an argument as to
22 whether the dispute arose at the time of application
23 and we provide evidence that we believe that it was
24 the time of application based upon the steps that the
25 company goes through at that time.

1 You'll find that MGE's tariffs do not
2 make a distinction between applicant and customer.
3 There's no definition of applicant included in those
4 tariffs. The definition of a customer says it also
5 refers to an applicant for gas service. So I think
6 that the distinction between those two words is
7 not -- or there is no distinction based upon the
8 language of the tariff.

9 Staff and Mr. Ensrud in particular
10 admits that he doesn't really believe that 3.07 is
11 directly on point, but he believes that it's closer
12 in his mind than 3.02. We obviously believe 3.02 is
13 closer and that 3.07 is not -- is not applicable.

14 Again, as I mentioned earlier, time --
15 well, time of application is not defined by the
16 tariff. However, I think if you look at the
17 substance of 3.02, it's a situation that that tariff
18 provision was designed to prevent.

19 It was provided -- it was set out in
20 order to provide the company a tool to collect past
21 due amounts. Doing so reduces rates on an ongoing
22 basis and is in the interest of other customers to
23 collect those amounts from the customers as opposed
24 to having them continually left as bad debts and
25 rolled into rates on a going-forward basis. That's

1 all I have to say, your Honor.

2 JUDGE JONES: Thank you. Well, thank
3 you all for taking the time out -- or for the
4 patience of going almost a whole day. To those of
5 you who traveled, have a safe trip home. And with
6 that, we're adjourned.

7 (WHEREUPON, the hearing in this case was
8 concluded.)

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1 I N D E X

2	Opening Statement by Mr. Kitchen	4
3	Opening Statement by Ms. Shemwell	6
	Opening Statement by Mr. Cooper	7
4	Closing Statement by Mr. Kitchen	179
	Closing Statement by Ms. Shemwell	180
5	Closing Statement by Mr. Cooper	181

6

7

8

9 COMPLAINANT'S EVIDENCE

10	TESTIMONY OF RONALD KITCHEN	13
11	Cross-Examination by Ms. Shemwell	16
	Cross-Examination by Mr. Cooper	22
12	Questions by Commissioner Gaw	24
	Questions by Commissioner Appling	34
13	Questions by Judge Jones	38
	Recross-Examination by Ms. Shemwell	41
14	Recross-Examination by Mr. Cooper	41

15

16

17

18 PUBLIC SERVICE COMMISSION'S EVIDENCE

19	MICHAEL ENSRUD	
20	Direct Examination by Ms. Shemwell	48
	Cross-Examination by Mr. Cooper	71
21	Questions by Judge Jones	80
	Redirect Examination by Ms. Shemwell	82

22

23

24

25

1	MISSOURI GAS ENERGY'S EVIDENCE	
2		
	SHIRLEY BOLDEN	
3	Direct Examination by Mr. Cooper	87
	Cross-Examination by Ms. Shemwell	99
4	Cross-Examination by Mr. Kitchen	104
	Questions by Commissioner Gaw	109
5	Questions by Judge Jones	119
	Recross-Examination by Ms. Shemwell	126
6	Redirect Examination by Mr. Cooper	129
	Questions by Judge Jones	137
7	Questions by Commissioner Gaw	139
	Recross-Examination by Ms. Shemwell	144
8	Recross-Examination by Mr. Kitchen	146
	Further Redirect Examination By Mr. Cooper	147
9		
10	DAVID CURRY	
11	Direct Examination by Mr. Cooper	160
	Cross-Examination by Mr. Kitchen	165
12	Questions by Judge Jones	166
	Recross-Examination by Ms. Shemwell	174
13	Redirect Examination by Mr. Cooper	175
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS INDEX	MARKED	REC'D
2			
3	Exhibit No. 1 Complaint	3	33
4			
5	Exhibit No. 2 Staff memorandum	3	69
6	Exhibit No. 3 Sheet No. R-6	3	*
7			
8	Exhibit No. 4 Sheet No. R-19, R-19.1 and R-19.2	3	**
9			
10	Exhibit No. 5 Sheet No. R-21, R-22 and R-23	3	***
11			
12	Exhibit No. 6 Sheet No. R-19	3	65
13	Exhibit No. 6 (Revised) Sheet No. R-19 and R-20	57	***
14			
15	Exhibit No. 7 Rules of Department of Economic Development -		
16	Division 240 - Chapter 13	3	70
17	Exhibit No. 8 Sheet No. R-87	3	66
18			
19	Exhibit No. 9 4 CSR 240-13	84	137
20	Exhibit No. 10 4 CSR 240-13		
21	(Disputes and Discontinuance of		
22	Service	144	148
23	Exhibit Z Sheet No. R-30	159	***
24			
25	Exhibit No. Z1 Service Order Completion History	171	173

1	EXHIBITS INDEX		
2		MARKED	REC'D
3			
4	Exhibit A		
5	September 25, 2003 letter to Mr. Kitchen from Michelle Bocklage	3	***
6	Exhibit B (Revised)		
7	Sheet No. R-6 and R-7	3	65
8	Exhibit C		
9	Customer Contact Inquiry for Jennifer Kitchen	3	99
10	Exhibit D		
11	Customer Contact Inquiry for Ronald Kitchen	92	99
12	Exhibit E		
13	Current Account Data for Ronald Kitchen	92	99
14	Exhibit F		
15	Pay Agreement for Ronald Kitchen	96	99
16			
17	* Withdrawn		
18	** Denied		
19	*** Neither offered nor received into evidence.		
20			
21			
22			
23			
24			
25			