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BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

TRANSCRIPT OF PROCEEDINGS

ON-THE-RECORD PRESENTATION

November 23, 2004

Jefferson City, Missouri

Volume 1

In the Matter of the Application of)
Missouri Gas Utility, Inc., for a)
Certificate of Public Convenience and)
Necessity Authorizing It to Construct,)
Install, Own, Operate, Control, Manage,) Case No. GO-2005-0120
and Maintain a Natural Gas Distribution)
System to Provide Natural Gas Service)
in Parts of Harrison, Daviess and)
Caldwell Counties, to Acquire the)
Gallatin and Hamilton, Missouri,)
Natural Gas Systems, and to Encumber)
the Acquired Assets.)

VICKY RUTH,
SENIOR REGULATORY LAW JUDGE
STEVE GAW, Chair
CONNIE MURRAY,
ROBERT M. CLAYTON, III,
JEFF DAVIS,
COMMISSIONERS.

REPORTED BY:
TRACY L. THORPE, CSR, CCR
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1 P R O C E E D I N G S

2 JUDGE RUTH: Okay. We are now on the record.
3 My name is Vicky Ruth and I'm the regulatory law judge
4 assigned to this case.

5 Today is Tuesday, November 23rd and we are here
6 for a hearing in GO-2005-0120 in the matter of the application
7 of Missouri Gas Utility, Incorporated for a certificate of
8 public convenience and necessity authorizing it to construct,
9 install, own, operate, control, manage and maintain a natural
10 gas distribution system to provide natural gas service in
11 parts of Harrison, Daviess and Caldwell Counties and to
12 acquire the Gallatin and Hamilton, Missouri natural gas
13 systems and to encumber the acquired assets.

14 Let's begin with entries of appearance, please.
15 Missouri Gas Utility.

16 MR. COOPER: Dean L. Cooper from the law firm
17 of Brydon, Swearingen and England, PC, PO Box 456, Jefferson
18 City, Missouri 65102 appearing on behalf of Missouri Gas
19 Utility, Inc.

20 JUDGE RUTH: Thank you.

21 And I forgot to remind everyone to adjust your
22 microphones so that it's going to pick up. Even if I can hear
23 you, it's possible it won't stream out if you don't have your
24 microphone adjusted.

25 Public Counsel?

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

4 JUDGE RUTH: Thank you.

5 Staff?

6 MR. FRANSON: Robert Franson and Dan Joyce
7 appearing on behalf of the Staff of the Missouri Public
8 Service Commission, PO Box 360, Jefferson City, Missouri
9 65102.

10 JUDGE RUTH: Thank you.

11 And the City of Gallatin and the City of
12 Hamilton, do you have the same counsel?

13 MR. COWHERD: Yes. Robert -- Robert Cowherd,
14 PO Box 228, Chillicothe, Missouri 64601 representing City of
15 Gallatin and City of Hamilton, Missouri.

16 JUDGE RUTH: Okay. Thank you.

17 I believe I've got everyone then. I'll remind
18 you that today's proceeding was scheduled to give the
19 Commissioners an opportunity to ask questions. It's
20 anticipated that we will begin with brief opening statements
21 and then we'll move to questions from the Bench. We'll start
22 with questions from the Chairman and move our way through the
23 Commissioners.

24 When a Commissioner asks a question of a party,
25 we will attempt to allow the other parties to also give a

1 response, but if anyone is skipped, I will allow time at the
2 end for the parties to catch up on any question they weren't
3 allowed to give an answer to. And as I mentioned, the
4 questions will be directed towards counsel. If counsel is
5 unable to answer a question, we'll address at that time
6 whether counsel has a witness available to be called.

7 Okay. Now, when the question is directed
8 towards counsel, we will start at least by allowing counsel to
9 remain at the tables. I had this question earlier. If it
10 seems that there's a problem in hearing or that it's not
11 streaming well, I'll have to ask you to move on up to the
12 podium.

13 I do not anticipate the need for briefs, but I
14 will mention it again at the end of the proceeding and if any
15 of the parties feel that briefs are necessary, we can discuss
16 it at that time.

17 And as I mentioned earlier, the transcript has
18 been expedited. It will be submitted to the Commission
19 tomorrow, but may not be actually on the EFIS system until
20 Monday; therefore, you may want to talk to the court reporter
21 about getting your own copy of the hard disk.

22 Okay. I think we need to go off the record for
23 just a couple of minutes while we wait for the other
24 Commissioners.

25 (A recess was taken.)

1 JUDGE RUTH: Okay. We're back on the record.
2 I had asked the parties earlier if you had a preference for
3 opening or closing statements. You've had a few minutes to
4 talk. I'll ask Staff. Did you come up with a preference? If
5 not, like I said, I'll pick.

6 MR. FRANSON: No. Actually, we hadn't planned
7 on either one since some of this was procedurally open, but
8 certainly whichever you desire.

9 JUDGE RUTH: Okay. Well, what I propose is
10 we'll allow Missouri Gas Utility to go, then Public Counsel,
11 then Staff and then the Cities of Gallatin and Hamilton.

12 Missouri Gas Energy, you may come up to the
13 podium, if you prefer.

14 MR. COOPER: I have the right to stay at my
15 counsel table, however?

16 JUDGE RUTH: Based on some questions before we
17 started, I said we would attempt that if you can speak loud
18 enough.

19 MR. COOPER: Well, I'll give that a try then,
20 your Honor. I'm not sure my microphone is picking up very
21 well though, is it?

22 JUDGE RUTH: Pardon? I can't hear you.

23 MR. COOPER: Yeah. It's not picking up.

24 JUDGE RUTH: You're going to have to move.

25 MR. COOPER: Short attempt.

1 Your Honor, I think we may slip up more than
2 once today. I think that you said that the applicant was
3 Missouri Gas Energy and, in fact, it's Missouri Gas Utility,
4 Inc. MGU, as we'll try to refer to them today, is the
5 subsidiary of C&G Holdings. C&G Holdings' principal office is
6 in Littleton, Colorado and it also owns an entity by the name
7 of Colorado Natural Gas, Inc., which was founded in May of
8 1996, provides natural gas service to approximately 6,300
9 customers in parts of Park Jefferson, Gilpin, Teller and Clear
10 Creek and Pueblo Counties in the state of Colorado all under
11 the jurisdiction of the Colorado Public Utilities Commission.

12 C&G Holdings is a privately held corporation,
13 has approximately 100 diverse shareholders that includes
14 individuals, family trusts, self-directed IRA-type
15 investments. No individual shareholder owns more than
16 5 percent of the outstanding shares at C&G Holdings, Inc.

17 With me today are two individuals from my
18 client: Mr. James M. Anderson, who is a board member and also
19 essentially is the most well-versed person that my client has
20 in regard to the finances and those sorts of matters. Also
21 with me is Tim Johnston, who is the vice president of
22 engineering. Mr. Johnston, amongst the many duties and
23 responsibilities he has with the company, has responsibilities
24 for gas supply type issues. So both of those persons are with
25 me and available for questions today.

1 As you know, MGU desires to purchase the
2 Gallatin and Hamilton, Missouri natural gas systems and to
3 become a public utility and gas corporation regulated by the
4 Missouri Public Service Commission. Issues as to gas supply
5 as to this particular transaction for Gallatin and the
6 Hamilton systems have been raised through the pleadings along
7 the way.

8 I think it's important to note so that -- as I
9 mentioned, someone -- the Commission and the parties are not
10 like two ships passing in the night at this point in time.
11 I think it's important to note that as of November 15th, to
12 show MGU's good faith, it has begun to purchase and place into
13 storage additional gas for these two systems. MGU intends to
14 continue this process through the month of November.

15 And the result of these actions and the mild
16 weather that has experienced up to this point leads MGU to
17 believe that there will probably be enough storage gas to get
18 through at least the end of December -- or to the end of
19 December, thus, I hope providing some measure of additional
20 time to complete this transaction.

21 You know, that obviously comes with a caveat
22 that weather changes and other things change and sooner is
23 better. And currently we've been benefited by some things in
24 the natural gas market that have been helpful to this
25 transaction and if this transaction is to be approved, the

1 sooner we can do that, the better.

2 The last item I would mention to you and try to
3 do so without stepping out of bounds is that as you're aware,
4 the Staff has filed a recommendation in this matter. My
5 client has responded to that recommendation. Staff this
6 morning as of 11 a.m. filed essentially a reply to my client's
7 position, OPC has filed a pleading as well.

8 Yesterday the parties did have the opportunity
9 to have some discussions as to the remaining issues between
10 them. And I guess at least from my client's perspective, we
11 would like the opportunity to continue those discussions at
12 some point along the way.

13 So I just mention that to you as something that
14 has transpired that's out there. At least from my
15 perspective, I don't know that the issues that are -- that
16 exist between the parties are insurmountable and certainly
17 we'd like the opportunity at some point to be able to further
18 explore the possibility of reaching some sort of agreement
19 amongst the parties as to those issues.

20 JUDGE RUTH: Public Counsel?

21 MR. MICHEEL: I'm here to answer any questions
22 the Commission may have.

23 JUDGE RUTH: Thank you.

24 And Staff?

25 MR. FRANSON: Thank you, your Honor. May it

1 please the Commission.

2 Very briefly, I think we've heard something
3 that Staff has certainly been wanting to hear, and that is
4 maybe there is a little bit of time here. Mr. Cooper has
5 addressed the issue of gas supply, which is certainly the most
6 pressing. However, he did not address the transaction and the
7 sale that is scheduled for November 30th and how this plays
8 into that.

9 But certainly also not wanting to cross the
10 line of entering into saying what negotiations are going on,
11 suffice it to say that in Staff's response that was filed at
12 eleven o'clock today, there are several issues and we -- you
13 can kind of piece it together. There's about three to four
14 issues that are left on the specifics of issues.

15 And it is Staff's belief that we may be able to
16 negotiate those and present a Stipulation and Agreement within
17 a short time, but I'm not sure that this week, given holidays
18 and everyone going every different direction, that that's
19 realistic. But we would certainly like the opportunity. And
20 I think Mr. Cooper's opened that door on gas supply at least
21 for a short time.

22 And Staff has addressed the substance of the
23 issues in its pleadings and is certainly here to answer any
24 questions.

25 JUDGE RUTH: Thank you.

1 And the Cities of Gallatin and Hamilton?

2 MR. COWHERD: Cities are here. We have several
3 individuals here from each city to answer any questions that
4 the Commissioners might have.

5 JUDGE RUTH: Do you mind telling me who those
6 witnesses or potential witnesses are or what their positions
7 are?

8 MR. COWHERD: We have -- they can introduce
9 themselves, in fact, if they want to.

10 MR. DORITY: Toby DORITY (ph. sp.), I'm the
11 city administrator in Gallatin.

12 MS. ALLAN: Debra Alan (ph. sp.), I'm the city
13 clerk of Hamilton.

14 MR. KING: Kenneth King from Gallatin, the gas
15 superintendent.

16 JUDGE RUTH: Is that everyone?

17 MR. COWHERD: We also have the mayor here from
18 Hamilton, John Katern (ph. sp.).

19 JUDGE RUTH: Okay. Thank you.

20 Okay. We will now proceed with Commissioner
21 questions. And we'll start with the Chairman, Mr. Gaw.

22 CHAIR GAW: Thank you, Judge.

23 I have a few questions of a legal nature first.
24 Who owns these two systems? Who owns it? And who can answer
25 that question for me?

1 MR. COWHERD: I think I can answer that, Robert
2 Cowherd for the City of Gallatin.

3 CHAIR GAW: Yes, Mr. Cowherd.

4 MR. COWHERD: These systems were acquired under
5 a lease/purchase arrangement. The ownership of the systems,
6 the city was the lessee under the arrangement and for the
7 Gallatin system, the Bank of New York is now the trustee so
8 they would be the actual legal owner of the system. And on
9 the Hamilton system, UMB Bank is the trustee. They would be
10 the legal owner of the system.

11 CHAIR GAW: Okay. Let me back up with you just
12 a minute. When you say that the trustee -- the trustee --
13 what do you mean by "trustee"? Are we talking about on a deed
14 of trust or are we talking about in bank-- I don't understand
15 what you're talking about.

16 MR. COWHERD: No. We're not talking about
17 either of those sort of trustees.

18 CHAIR GAW: That's what I figured. So tell me
19 what we're talking about.

20 MR. COWHERD: These are bond trustees or
21 actually in this case, lease/purchase -- certificates of
22 participation trustees. What happens basically is that the
23 property is owned by the trustee who then leases it to the
24 city. The trustee then sells certificates of participation to
25 investors and that's how the project is funded in a real

1 straightforward way. It's --

2 CHAIR GAW: Okay.

3 MR. COWHERD: -- obviously more complicated
4 than that, but that's basically how it works.

5 CHAIR GAW: Why was it done that way?

6 MR. COWHERD: That's a financing mechanism
7 used -- prevalent throughout cities in the state of Missouri
8 primarily because of various constitutional restrictions on
9 the incurring of debt.

10 CHAIR GAW: Yes. I'm with you now.

11 Okay. So in both of these -- these were
12 separate transactions by each city. They're not --

13 MR. COWHERD: That's correct

14 CHAIR GAW: -- they were not done jointly?

15 MR. COWHERD: That's correct. And they were
16 approximately two years apart.

17 CHAIR GAW: I was going to ask whether or not
18 there was any applicability of 393.700. And I think what
19 you're telling me is that there is not. I'm not expecting you
20 to know what I'm talking about, Mr. Cowherd. If you do, I
21 give you extra credit, but I would expect Staff or maybe
22 Mr. Cooper to know. I'm assuming now that that's -- those
23 provisions don't apply. That's the provisions on joint
24 municipal utility commissions.

25 MR. COOPER: I would not believe that they

1 would apply.

2 CHAIR GAW: So there was never anything joint
3 between the City of Gallatin and the City of Hamilton?

4 MR. COWHERD: Well, there were some contractual
5 obligations, but nothing joint as such. They were simply
6 acting as individual cities.

7 CHAIR GAW: Okay. Now, if this ownership --
8 I'm going to ask Staff this.

9 If the ownership was with the trustee and there
10 was a lease over to the city, was there ever any requirement
11 during the term of that ownership where there should have been
12 a certificate applied for to -- for these systems to be
13 operated under supervision of the Public Service Commission?

14 MR. FRANSON: No, Mr. Chairman. Staff does not
15 believe that there was.

16 CHAIR GAW: Well, you can -- I'm glad to hear
17 your opinion. Now, tell me why you got it.

18 MR. FRANSON: Well, looking at Section 386.020,
19 the definition of gas corporation, while it is very broad and
20 it includes even trustees and how they get there and what
21 they've got to be doing to the system, they have to be acting
22 under privilege, license or franchise from the state, any
23 political subdivision, county or municipality thereof. They
24 were not. They entered into some type of lease/purchase
25 agreement, not any specific privilege, license or franchise

1 and --

2 CHAIR GAW: Who is "they"? Who is "they"?

3 MR. FRANSON: The city and the trustee and --
4 the investors I believe represented through the trustee based
5 on what Mr. Cowherd has said and what we've seen in the DR
6 responses.

7 So what we had was a particular funding
8 mechanism. So when it was done, the cities had an actual
9 property interest, that being a lease/purchase. And it was,
10 Staff believes, a municipal system there and it continues to
11 be a municipal system in that at the current moment, it is
12 still operated by the City of Gallatin to Staff's best
13 knowledge. There is a --

14 CHAIR GAW: What about Hamilton? Same?

15 MR. FRANSON: I believe it's also --

16 MR. COWHERD: Same thing, your Honor.

17 CHAIR GAW: Thank you, Mr. Cowherd.

18 MR. FRANSON: And we have seen a copy of the
19 operating agreement. And, unfortunately, I have not
20 introduced that into evidence because the only copy I have has
21 handwritten notes by someone I'm not sure whose identity it
22 is, so I didn't think it was appropriate. But certainly I'm
23 sure the cities could provide a clean copy of that because I'm
24 assuming that's a public document and it's been referred to in
25 Staff's pleadings.

1 But the bottom line is Staff believes that this
2 was a municipal system, not only in actual operation but
3 certainly all the way through and continues to be at the
4 current moment. And the actual trustees are not a gas
5 corporation under the definition of 386.020.16.

6 CHAIR GAW: Why?

7 MR. FRANSON: Because they -- under the
8 particular arrangement, they didn't get a privilege, license
9 or franchise from these municipalities. What they had was a
10 different arrangement. That is generally specifically a
11 franchise here --

12 CHAIR GAW: Wait a minute. I'm not trying to
13 get you to a particular conclusion, but I am trying to
14 understand the basis of your analysis. When you get -- when
15 you tell me that they didn't derive their rights from the
16 city, is that what you're trying to say?

17 MR. FRANSON: Not exactly, no, sir.

18 CHAIR GAW: They're the owners. Legally
19 they're the owners of this fran-- of this franchise, this
20 property. Right?

21 MR. FRANSON: I'm suggesting --

22 CHAIR GAW: The trustee, I'm saying.

23 MR. FRANSON: The trustee. But I'm suggesting
24 franchise is the wrong terminology. Franchise, for instance,
25 here in the service territory, there's about four cities that

1 will have to give franchises. And Hamilton and Gallatin are
2 two, Coffey is the third, and I'm sorry, the fourth one
3 doesn't occur to me right now. However, those are specific
4 franchises that are anticipated under 386.020.16.

5 This is a different arrangement. This is a
6 financing arrangement where the city was running, in essence,
7 a municipal utility. It had -- that's what it was supposed to
8 do under the lease/purchase agreement. That's what it was
9 doing and it continues to run it now even though it has
10 defaulted, both cities have. And that's where Missouri Gas
11 Utility enters in seeking a certificate. And they certainly
12 are a gas utility.

13 CHAIR GAW: What's your statute cite again?
14 I'm sorry.

15 MR. FRANSON: 386.020.16, the definition of gas
16 corporation.

17 MR. MICHEEL: Is it 16 or 18?

18 JUDGE RUTH: 18.

19 MR. FRANSON: I'm sorry. It may be 18. I'm
20 looking at -- I was not looking, I apologize, at the pocket
21 part, Mr. Chairman. And I appreciate the correction.

22 CHAIR GAW: I think it's 18.

23 MR. FRANSON: Yes, sir.

24 CHAIR GAW: Well, okay. I'm not sure if I
25 can -- I'm not sure I'm following your logic, but I'm going to

1 ask Public Counsel how they view this issue under that
2 provision.

3 MR. MICHEEL: Commissioner, I think that
4 arguably an argument can be made that indeed that the trustees
5 probably should have come in here and requested a certificate
6 under that particular statutory section and keeping in mind
7 that the Public Service Act should be liberally construed.

8 Now, having said that -- and I know it's
9 important for the Commission to enforce, you know, the
10 statutes and make sure that folks that are subject to Public
11 Service Commission law come in and do that -- I'm not certain
12 how critical that distinction is --

13 CHAIR GAW: Well, maybe --

14 MR. MICHEEL: -- to getting this particular
15 transaction completed.

16 CHAIR GAW: It may be critical from this
17 standpoint: And that is trying to decide whether or not we
18 have jurisdiction over this transfer at all may in some way
19 hinge upon who owns it and whether or not it should have been
20 subject to our jurisdiction to begin with. I'm really asking
21 these questions with that in mind more so than trying to
22 determine whether somebody did something wrong. I mean,
23 that's not what I'm trying to get to here.

24 MR. MICHEEL: Can I give you my take on that,
25 Commissioner?

1 CHAIR GAW: You may as long as you don't get
2 ahead of me. If you get ahead of me, I'm going to probably
3 come back to you in a little while.

4 MR. MICHEEL: Well, I mean, I think everybody
5 agrees with respect to the certificate. MGU needs to come in
6 with respect to the encumbrance of assets. Under 393.190, MGU
7 needs to come in. And the only issue is whether or not they
8 need to come in under the sale, assign or transfer.

9 And in my view, it just seems like the
10 company's attorney did a very good job of belt and suspenders
11 legal work here. I mean, this is a matter of first
12 impression. We're not sure if they do or do not. It's an
13 open question. And I think we should -- this Commission
14 should go ahead and look at it expansively again, based on the
15 Public Service Commission law needing to be liberally
16 construed, and go ahead and assert that jurisdiction.

17 And to the extent that any of these particular
18 parties in the room claim you didn't have jurisdiction, you
19 know, it's a question of law and the courts can sort that out
20 for us. I don't anticipate anyone's going to fight that. Of
21 course, I recognize that subject matter jurisdiction is not
22 something you can waive. So somebody down the road could do
23 that. But I just don't -- that's my view.

24 CHAIR GAW: Let me take the issue of ownership
25 off of the plate for the time being and let me just ask you if

1 there were no issue in regard to this lease/purchase agreement
2 and who legally owns the property, if this were a purely
3 municipally owned utility and a regulated utility -- and I'm
4 going to jump around the issue of whether or not this
5 company's certificate for -- certificated for a moment.

6 If this were a regulated utility seeking to
7 purchase this property, would this be in front of this
8 Commission today?

9 MR. MICHEEL: I don't think under 393.190 it
10 would be. But with respect to this certificate, the
11 certificate issue and the encumbrance of asset issue, I think
12 this Commission would properly have that jurisdiction.

13 CHAIR GAW: Well, you're getting ahead of me
14 again, but that's okay. We'll save time later.

15 Let me ask the rest of you that question.
16 Mr. Cooper, do you want to tackle it?

17 MR. COOPER: Yes, Mr. Chairman. I think that
18 the answer to your last question is that were this a normal
19 municipality situation, I would be in here -- as Mr. Micheel
20 said, on the certificate I'd be in here to encumber the assets
21 to be required looking for approval of those two things. I
22 would not have asked for approval of the sale itself.

23 The thing that -- really the event that puts it
24 into more of a gray area for me takes place in about the
25 middle of 2004 when, as I understand it, Gallatin and Hamilton

1 refuse or decide not to appropriate funds to make payment
2 under these lease agreements and essentially turn their
3 ownership rights over to the trustee. It's from about
4 July 1 -- and Mr. Cowherd may have a better date.

5 MR. COWHERD: January 1 on Gallatin, July 1 on
6 Hamilton.

7 MR. COOPER: Okay. It's as of those dates that
8 I start to get into a gray area. And that is the reason that
9 it's plead here where it wouldn't have been pled if it just
10 looked like a traditional municipality sale situation. So
11 those are the events.

12 In terms of my client, ultimately, my client is
13 best said to be indifferent between one and two outcomes.
14 Either the Commission decides it doesn't have jurisdiction,
15 which is fine, or the Commission decides that it does have
16 jurisdiction and hopefully approves the transaction. In
17 either case, we can get the opinions we need to get the
18 financing in place and move forward.

19 So ultimately between those two possible
20 Commission decisions, we're probably indifferent. But it
21 is -- it is that twist where the funds are not appropriated
22 that sets it somewhat apart -- arguably apart from a more
23 traditional municipal situation.

24 CHAIR GAW: Tell me what actually occurred in
25 the -- I don't want to -- hesitate to use the word "default,"

1 but whatever it --

2 MR. COWHERD: Non-appropriation.

3 CHAIR GAW: What does that mean in regard to
4 the agreement between the trustee and the city?

5 MR. COWHERD: The way these instruments are set
6 up, they're set up on basically -- again, to simplify it, a
7 20-year lease, but it's a series of 1-year leases renewable
8 annually.

9 CHAIR GAW: To comply with the
10 constitutional --

11 MR. COWHERD: It has to be subject to annual
12 appropriation. I'm sure you're very familiar with that, know
13 how that works.

14 And so this was subject to annual
15 appropriation. What happened was they simply did not
16 appropriate for the current physical year and, therefore, that
17 is a -- when that happens, of course, the lease terminates at
18 that point.

19 CHAIR GAW: So then what occurred after that in
20 regard to the system and how it was run and --

21 MR. COWHERD: Okay. Let me just kind of walk
22 you through that. What happened was the city, under the terms
23 of the document, gave a notice -- a 90-day notice in advance
24 of that non-appropriation event.

25 Prior to the termination of the lease, during

1 the then current lease term, the city contacted both of the
2 trustees and said, We're going to non-appropriate, we've sent
3 you the notice. And we asked them -- we suggested to them
4 that it made the most sense to preserve the value of the
5 system for the investors that we continue to operate it,
6 because that system would have little, if any, value to any
7 investor if the system was shut down and we simply walked
8 away.

9 So although we did not feel -- financially we'd
10 really have no obligation, but we decided to offer that to the
11 trustee in a way to preserve the value for their investors as
12 best we could under the circumstances. And then we entered
13 into a -- really a very -- couple of page operating agreement
14 that basically said we'll operate under the same way we've
15 been operating under the lease/purchase agreement except we're
16 not obligated to pay any rent payments during the optional
17 period. And that was subject to a 30-day termination by any
18 party, etc.

19 CHAIR GAW: Okay.

20 MR. COWHERD: I would say, Commissioner, that
21 in regard to your question about, you know, ownership, I think
22 it's really a question of beneficial ownership and legal
23 ownership. And when I said who is the owner, I think I was
24 talking about mere legal issues. Kind of like a deed of trust
25 that we're familiar with in Missouri.

1 I mean, in theory, the trustee has legal title
2 if you look at the document, but is actually obviously the
3 owner that's owning and occupying and making the payments is
4 beneficial owner.

5 So I think in this case, truly the municipality
6 is the beneficial owner. I think a ruling otherwise would be
7 surprising, I think, to most municipal lawyers because lots of
8 municipal utilities are financed with lease/purchase, whether
9 it be electric, whether it be sewer, whether it be water,
10 whether it be water, whether it be in this case gas. So
11 that's a very common financing mechanism to do, so --

12 CHAIR GAW: And I'm familiar in general terms
13 with the fact that these purchases are used by municipalities
14 on a variety of things. I guess what I'm trying to understand
15 is how such a lease purchase interrelates to the statutes
16 dealing with public utilities.

17 Let me ask I guess this question. When the
18 event occurred that caused this shift in the status of the
19 cities, did anything else change in regard to the operation
20 other than the fact that no more payments were made --

21 MR. COWHERD: No.

22 CHAIR GAW: -- by the cities?

23 MR. COWHERD: No. The only change in
24 operations were that the cities set up a segregated account to
25 account strictly for any money that occurred before and after

1 that date.

2 CHAIR GAW: Okay.

3 MR. COWHERD: In the case of the City of
4 Hamilton, they did not have adequate funds to continue to
5 operate and so the trustee advanced, I believe in their case,
6 \$15,000 for kind of a start-up cash fund. But we basically
7 have ran a separate set of books since that date.

8 Other than that, the system has remained the
9 same, same employees, everything else has operated the same.

10 CHAIR GAW: Okay. Was there anything in the
11 document that called for something different to occur -- the
12 lease document, the lease purchase documents -- if there was a
13 lack of payment made by the cities?

14 MR. COWHERD: Actually, the documents
15 themselves I don't believe said what happened other than it
16 was an event of default and that they would have their rights
17 under the document to foreclose, etc.

18 CHAIR GAW: Was there any formal foreclosure of
19 some sort?

20 MR. COWHERD: There's lots of lawyers involved
21 here, Commissioner, and so everybody has a lot of opinions as
22 to whether or not that's required or not.

23 CHAIR GAW: Yes.

24 MR. COWHERD: Actually, there is a formal
25 foreclosure proceeding that is occurring. Both the trustees

1 had published notice under Article 9 so they're going to do an
2 Article 9 type sale. And those are both set for November the
3 30th.

4 CHAIR GAW: And that was part of the deadline
5 that everyone was working on in regard to this case; is that
6 correct?

7 MR. COWHERD: That's correct, Judge. Because
8 the cities, of course, are hopeful that if Colorado Natural
9 Gas or Missouri Gas Utility is the successful bidder, they'll
10 be out of the gas business here, which would be -- simplify
11 their operations significantly.

12 CHAIR GAW: I'll go back to Staff. Staff, I'm
13 having difficulty understanding if there's -- is it your
14 position, Staff's position, that there was some change that
15 occurred in -- do you agree with Mr. Cooper's analysis in
16 regard to why we may have jurisdiction over this transfer --

17 MR. FRANSON: Well --

18 CHAIR GAW: -- and that that intervening event
19 has some bearing on our jurisdiction?

20 MR. FRANSON: Commissioner, I'm not sure which
21 intervening event --

22 CHAIR GAW: Well, the default.

23 MR. FRANSON: No. Not really. Because it
24 changes one thing in the sense that it sets a default
25 mechanisms in lease/purchase agreements into place. However,

1 it still leaves a municipal system actually operated by a
2 municipal system and you --

3 CHAIR GAW: Then why do we have jurisdiction
4 over the transfer?

5 MR. FRANSON: Because MGU is coming in here and
6 asking for it. This Commission could grant the CCN and grant
7 the encumbrance and determine it has no jurisdiction over the
8 transfer.

9 CHAIR GAW: But Staff is telling us, if I
10 understand it correctly, you think we have jurisdiction over
11 the transfer.

12 MR. FRANSON: Under 393.190, there's two
13 components, Commissioner. That is the transfer and the
14 encumbrance. I'm --

15 CHAIR GAW: Ignore the encumbrance for me for
16 the time being. That's not what I'm asking about. I'm asking
17 about the transfer, why Staff believes we have jurisdiction
18 whether or not you agree with Mr. Cooper's analysis that the
19 intervening event of default created some gray area in regard
20 to the Commission's jurisdiction or if you have some different
21 analysis.

22 MR. FRANSON: The reason Staff believes that
23 the Commission has jurisdiction is you've got, in essence, a
24 case of first impression and you've got a -- the very first
25 threshold question is -- we don't even get to the transfer at

1 all until you determine the certificate. If you grant the
2 certificate, then you have to deal with can this company
3 purchase assets.

4 And I understand you want to separate the
5 transaction and the encumbrance, but I -- I still come back to
6 and suggest they go hand in hand. But --

7 CHAIR GAW: I'm asking you to separate them
8 because I'm trying to understand your analysis legally. And I
9 can't -- I understand Mr. Cooper's position and I'm not saying
10 I agree with him or disagree with him, but I understand why he
11 would do what he's done here and it's being prudent in
12 approaching the transaction.

13 I'm trying to understand what Staff's position
14 is in regard to the issue of whether or not we have
15 jurisdiction over the transfer. Ignore the other issue for me
16 for the moment.

17 MR. FRANSON: Let me use the analogy of the
18 recent Atmos case when Atmos came in and was asking for a CC--
19 well, they were asking for approval outside of -- for an
20 acquisition outside this state. They were acquiring assets
21 and everything that went with it of THC Gas.

22 What we have here is an analogous situation
23 once a certificate is granted. If MGU is granted a
24 certificate, then out of prudence and caution, MGU is saying,
25 Commission, please approve the transaction or tell us you

1 don't have jurisdiction to do that. The particular -- while
2 this under 393.190 is talking about -- what we're talking
3 about is the encumbrance, but also to even get there -- I'm
4 sorry, Mr. Chairman, the more I try to answer this, I keep
5 running into they're just interrelated.

6 Either you approve the trans-- the certificate
7 and then you come to the transaction. Either the Commission
8 says you have jurisdiction -- Mr. Cooper is suggesting you
9 don't. Staff generally believes that 393.190 should be very
10 broadly interpreted. And under that, the Commission does have
11 jurisdiction over the transfer. And that way you get to it
12 and you approve it and then you go on to the encumbrance
13 issue.

14 But when you look at -- what you're talking
15 about is -- under 393.190.1, you're talking about selling,
16 assigning, leasing, transferring, mortgaging or otherwise
17 disposing of any of the franchise works or system. And they
18 are trying to acquire it. We just have a little bit of a
19 different situation here. I may have -- hope I haven't
20 confused you more than you were before.

21 CHAIR GAW: No comment.

22 MR. FRANSON: Okay. Mr. Chairman, I guess it
23 comes down to the Staff is suggesting a broad interpretation
24 of 393.190. And what we have here is the company has asked
25 for three things, the certificate, approval of the transaction

1 and the encumbrance. And Staff is recommending all three;
2 however, if you decide not to approve the transaction, you
3 still then would go to the encumbrance issue, and that is
4 certainly required under 393.190.

5 CHAIR GAW: Okay. I may come back to this, but
6 maybe others can shed some light on it with their questions
7 better than I've been able to.

8 Let me ask you about a different topic. I'm
9 very concerned about this situation dealing with the amount of
10 gas available to the system coming into the winter. And I
11 need to understand from the cities' standpoint how did we --
12 how did we get here where we've got a situation where
13 there's -- where we're talking about no gas really available
14 in storage after -- I mean, initially we were being told in
15 the next couple of weeks it would be gone. And I'm glad to
16 hear that because of warm weather we may be farther out than
17 that.

18 But the market prices have been very volatile
19 and very high in comparison to where they were a couple of
20 years ago. The city -- those residents who are hooked up to
21 the system could be subject, if we have -- if we have a little
22 cold air come in, to some very volatile times on prices.

23 I'm trying to understand how we got to this
24 point and whether -- and I'd kind of like to know, do city
25 residents know how exposed they may be in this winter without

1 any more hedging then what appears to have taken place?

2 Whoever wants -- I know that's not your field, Mr. Cowherd.

3 MR. COWHERD: I'm going to let Mr. King, who is
4 in charge of the gas system in Gallatin, really speak to that
5 as to where we are, how much gas we have.

6 CHAIR GAW: I'm sure the Judge will want to
7 swear him in.

8 JUDGE RUTH: Yes, I'm sorry. I need to have
9 you move over to this chair by the court reporter. But I need
10 your name again.

11 MR. KING: Kenneth King.

12 JUDGE RUTH: King, thanks. Mr. King, which
13 city --

14 MR. KING: I'm with the City of Gallatin.

15 (Witness sworn.)

16 JUDGE RUTH: Okay. Please be seated.

17 And could you ask the preliminary questions of
18 your witness, Mr. Cowherd, to identify him?

19 MR. COWHERD: Yes.

20 KENNETH KING testified as follows:

21 BY MR. COWHERD:

22 Q. Mr. King, would you please state your full
23 name?

24 A. Kenneth King.

25 Q. And would you state your position currently?

1 A. I'm the natural gas superintendent for the City
2 of Gallatin.

3 Q. And how long have you held that position?

4 A. Since June the 5th of 1995.

5 Q. You have been present here in the hearing room
6 and understood the Commissioner's question regarding the
7 status of gas situation for the City of Gallatin, have you
8 not?

9 A. Yes, I have.

10 Q. Okay. And could you please explain to the
11 Commissioner the current situation and what's being done to
12 ensure a supply of gas?

13 A. Yes. Missouri Gas Energy is in the process of
14 putting 900 decatherms a day down the pipeline. That's all we
15 have to go down the pipeline per day. They started out the
16 16th of November and they've got that scheduled clear through
17 November the 30th.

18 And I have some figures here that will show
19 that if it continues to progress and we have the same kind of
20 weather that we're having right now or just a little bit
21 cooler weather -- supposed to get cooler, I understand and
22 I've got that in consideration -- that we will have enough
23 with this to last until -- until a little after January, right
24 after the first of the year.

25 And then I think you had a question of where we

1 got this way.

2 BY CHAIR GAW:

3 Q. Yes, I do, Mr. King. If you would want to go
4 ahead with that, that would be fine. I'll come back after you
5 finish.

6 A. Okay. So they were -- Missouri Gas Energy was
7 very appreciative to take this over and got some agreement
8 of -- I understand where if they don't get it, someone else
9 will take this and pay for their gas because the city did not
10 have enough money to do this. Even with our gas sales IS the
11 only money we have or revenue coming in monthly. So we did
12 not purchase any gas. And they are buying this gas and going
13 to pay for it.

14 MR. COWHERD: Commissioner, I might just -- one
15 follow-up question there.

16 BY MR. COWHERD:

17 Q. Mr. King, when we turned -- in the case of the
18 City of Gallatin, when the system was, in essence, turned over
19 on January 1, there was a substantial quantity of gas held by
20 the city at that time in the system, was there not?

21 A. Yes, there was. Absolutely.

22 Q. And we've, in fact, operated on that gas from
23 January 1 of 2004 up through really practically now; is that
24 correct?

25 A. That is correct. Because we bought gas from --

1 through November of 2003 through March of 2004. So even after
2 we let it back to them, we have been -- the supply in gas was
3 still coming out of the pipeline. It did not stop on
4 December 31st.

5 BY CHAIR GAW:

6 Q. December 31st of what year?

7 A. 2003 -- January 1st, 2004 when -- the takeover
8 of the other.

9 Q. How did you handle gas purchases prior to that
10 time just in 2000-- December 31st, 2003?

11 A. We went out in August of 2003 and purchased gas
12 for -- started I believe delivery of October, November,
13 December, January and February and March contracted gas for
14 those months.

15 Q. So it was 100 percent hedged, in other words?
16 You knew what the price was for the delivery all the way
17 through then?

18 A. Yes. We've been doing that in the past.

19 Q. How long had you been doing that in your
20 practice?

21 A. When I went on board, they did have some gas
22 that they had purchased but we've been doing it since '95 --
23 '96.

24 Q. So --

25 A. We had been --

1 Q. So it's almost -- well, eight years maybe --

2 A. Right.

3 Q. -- something like that?

4 A. Right. The reason we did that, to go back to
5 that fact, is the city only had money coming in during the
6 coldest parts of the month. So that is when we billed all of
7 our gas so that we had -- you pay the bill after gas is
8 delivered. So we had the money to pay the bills.

9 Then we would buy enough up in the winter
10 months to carry us through the summer months. And then we
11 would start the cycle all over again because there was very
12 little money coming in in the summer because we had very few
13 customers.

14 Q. Sure. Okay. Then this year in 2004, there was
15 no purchase made for gas in the way that you had done it in
16 the past years?

17 A. No. No. There had not been any.

18 Q. And tell me why that was so I'll understand it.

19 A. I think it goes back down to investors and here
20 we were in the -- in the selling point of other companies
21 looking to buy it before Missouri Gas Energy was interested.

22 Q. Let me stop you. I want to make sure that
23 we're -- Mr. Cooper said earlier we'd be doing this and I
24 thought for a while you were referring to Missouri Gas Energy
25 and you really were talking about Missouri Gas Energy. When

1 you say that, are you talking about MGE or MGU?

2 A. I'm sorry. Missouri Gas Utilities. Missouri
3 Gas Utilities. I apologize.

4 Q. And when you made reference to Missouri Gas
5 Energy before in your testimony --

6 A. Yes.

7 Q. -- you meant to say --

8 A. Yes. Missouri Gas Utility. I apologize.

9 Q. That's okay. I just --

10 A. That's a --

11 Q. -- that helps clarify what we're talking about.
12 Now, I interrupted you. Sorry. If you remember where you
13 were --

14 A. No, I don't. I forget.

15 Q. You were explaining to me why there was -- you
16 did not --

17 A. Oh, yes.

18 Q. -- comply with your past practice of purchasing
19 for the year.

20 A. Because the city really didn't have any money
21 going to be coming in. And the investors group or whoever did
22 not come forward and say that we would buy gas and put in
23 storage for you to use for their own revenues coming in,
24 because all the revenues coming in was being sent to them
25 after the bills were paid. So we didn't have any money in the

1 bank to go out and buy gas. We weren't keeping any of that
2 money, it was going directly to the investors.

3 Q. When you say "investors," who are you referring
4 to?

5 A. Bank of New York or --

6 MR. COWHERD: The trustee, your Honor.

7 THE WITNESS: -- trustees.

8 BY CHAIR GAW:

9 Q. Just trying to clarify. So, in essence then,
10 let me ask you to clarify what you said earlier. You said if
11 the weather stays like it is now through December. Do you
12 mean temperatures that we have seen up to this point in time
13 continuing through December or that if the temperatures are
14 warmer than average for the month of December? Do you
15 understand my question?

16 A. I understand. But we're talking about
17 temperatures in the 20s and maybe warming up into the 40s like
18 we've had and even in the past. Because we've had some
19 abnormal warmer weather. We've not had some real extreme cold
20 in the northern part of Missouri.

21 Now, if that was subject to the change -- and I
22 cannot control the weather. I've been in the business for
23 many years and you don't have no control. That would be going
24 down -- the supplies would go faster. But right now with all
25 analysis over a period of years of what I take the average

1 from what we've had in the last eight, nine years, yeah, by
2 the end of December, 1st of January, we'll be back to needing
3 more gas put in storage.

4 Q. If this transaction that's contemplated here
5 isn't completed, what will occur in regard to the customers
6 that you have out there in Gallatin over the next several
7 weeks, if you run out of gas --

8 A. Well --

9 Q. -- that you've got now?

10 A. -- we don't want ever to get to that point
11 where we're going to.

12 Q. I don't want to get there --

13 A. The trustees -- back to the trustees then. The
14 trustees would need to be purchasing some gas if Missouri Gas
15 Utility did not purchase it.

16 CHAIR GAW: Mr. Cowherd, did you have something
17 to add to that?

18 MR. COWHERD: Well, in fact, he did a very good
19 job answering the question. The trustees have a reserve fund.
20 There is a reserve fund because we have been, of course,
21 providing them with the profit off the system for this year,
22 so there is some reserve money there.

23 We would go to them and ask them. We don't
24 have any ability to require that to be paid. They've got to,
25 of course, balance the interest of preserving the system

1 versus not spending good money after bad, I suppose. And so I
2 don't know what their answer would be.

3 In the interim, of course, what we did was
4 reach an agreement with MGU to have them supply the gas on the
5 theory that they would be ultimately receiving the benefit of
6 that because that gas would be sold after -- at a time after
7 the sale and so they would receive the benefit of that.

8 They have not indicated to me that they're not
9 willing to continue to purchase additional gas in the future
10 if that's required so long as this process is moving forward.
11 And, of course, that's the reason we're here today to
12 hopefully move it forward as rapidly as we can.

13 BY CHAIR GAW:

14 Q. Mr. King, do you know what gas prices are
15 currently?

16 A. I think there was some gas purchased -- my
17 understanding, gas was purchased yesterday for today's
18 delivery at \$5.35. That's per decatherm.

19 Q. Right. Have you watched the gas market over
20 the course of the last --

21 A. Yes, I have.

22 Q. -- couple of months?

23 A. Yes.

24 Q. Have prices been higher than that in the last
25 couple months?

1 A. Oh, absolutely.

2 Q. What kind of prices have you seen?

3 A. They've been up 7.85, in that area and dropped.
4 They fluctuate up and down. We're very fortunate that right
5 now is the lower time.

6 Q. In comparison to what it's been the last couple
7 of months anyway.

8 A. That is correct.

9 Q. Gas prices a couple of three years ago were a
10 lot different, weren't they?

11 A. Yes, they were. They were a lot different in
12 '95 and you could get it for \$2, yes.

13 Q. Even three years ago you could get it for under
14 3, couldn't you?

15 A. That's right.

16 CHAIR GAW: Let me see if anyone else has any
17 questions for Mr. King while he's up here. I've got some more
18 questions though, Judge, after that.

19 JUDGE RUTH: While Mr. King is at the stand,
20 Commissioner Murray, do you have any questions for him?

21 COMMISSIONER MURRAY: Perhaps. Thank you.
22 Judge.

23 BY COMMISSIONER MURRAY:

24 Q. Mr. King, are the customers continuing to pay
25 the city for the gas and then the city is passing that along;

1 is that correct?

2 A. Yes, they are.

3 Q. After deduction of expenses, you said?

4 A. That is correct.

5 Q. Why did the cities get into financial trouble
6 with these lease/purchase agreements?

7 A. There was not enough customers that we could
8 get signed up for the City of Gallatin. We went door to door
9 and worked it, but we were not able to persuade them to switch
10 over to natural from LP.

11 And it took about four years before we would
12 could get the nursing home, the three schools on board, which
13 would have been a big help if we'd have got them at the
14 beginning. But then we never could gain. We were supposed to
15 have 900-and-some customers -- 970 customers by 2004. And we
16 have 563 right now.

17 Q. Are the customers, the 563 customers, able to
18 use propane?

19 A. Yes. They would be able to. Not without
20 conversions back to it.

21 Q. And do you know how expensive those conversions
22 would be?

23 A. Probably 350, 400 dollars at the minimum.

24 Q. And given the number of customers that have --
25 the city has gotten versus what they projected --

1 A. Yes.

2 Q. -- are the rates too low?

3 A. No. The rates are competitive with LP. And
4 you've had to stay competitive with LP or you wouldn't have
5 had any customers. They're very competitive; no, they're not
6 too low.

7 Q. Are they too low to support the city's ability
8 to service some people?

9 A. We would never be able to raise the rates
10 enough to support it with 563 customers.

11 Q. Okay.

12 A. I don't care what the rate --

13 Q. So why would it be viable for a company like
14 MGU to take it over?

15 A. Because I think probably talking -- give you my
16 opinion and that's what we're here for. Once you get the city
17 government out of it and you get another company like Missouri
18 Gas Utility in here, we can pick up more customers. I have
19 people that's anxious to change. The -- we have lost a few
20 customers due to the city controlling all of the utilities.
21 Whether that's right or wrong, that's in their mind and that's
22 what they do.

23 Q. Okay. You say "we can pick up more customers".
24 Who is "we"?

25 A. I'm speaking for myself because I'm going to

1 work for Missouri Gas Utility when the sale -- if this sale
2 goes through.

3 MR. COWHERD: Commissioner, this is Robert
4 Cowherd from the City of Gallatin. I might -- the difference,
5 of course, is the City of Gallatin's debt service -- effective
6 debt service is approximately \$4 million. The purchase price
7 of the system --

8 MR. COOPER: Well --

9 MR. COWHERD: -- can't be mentioned, I guess,
10 but it's less. So it's easier to finance less money. I guess
11 that's a -- it's feasible because of the price.

12 MR. COOPER: Yeah, it can be mentioned, your
13 Honor, it's just that it's been identified as highly
14 confidential along the way.

15 JUDGE RUTH: Right. We would need to clear the
16 room first. So if the Commissioner wants the number
17 mentioned, I'd be glad to clear the room.

18 COMMISSIONER MURRAY: I don't need it. Thank
19 you.

20 BY COMMISSIONER MURRAY:

21 Q. Is there anything wrong with the system as it
22 exists? In other words, is it in need of a financial
23 commitment at this time to improve the system?

24 A. Nothing to improve the system. It is one of
25 the finest systems in the state of Missouri. It's all with

1 steel line -- 46 1/2 miles of 6-inch steel. We've got over
2 30-some miles of poly line in place and poly is to last for
3 years and years. State of the art. It has been leak surveyed
4 every year. There's no leaks whatsoever in the system.

5 And one thing I might mention, when I mentioned
6 a while ago as far as conversions, you will take their biggest
7 customers and you would probably be 4,000 to 5,000 dollars to
8 convert. When you get the big schools, you get Premium
9 Standard Farms with all their hog farms that -- you're talking
10 major dollars on those operations. We were talking about
11 residential or small commercial operators when I mentioned
12 that amount of money.

13 Q. So I'm trying to understand what you said
14 earlier about MGU's ability to service these customers at
15 current rates in a financially feasible manner that would
16 compete with propane. And I think I understood you to say
17 that they would be able to do that where the city has not been
18 able to do it because they would get more customers on the
19 system. Is that what you said?

20 A. That is true. And then Mr. Coward make the
21 excellent point of difference in where we had to meet money
22 issue -- there's a difference in the price of what -- that's
23 the major issue that I forgot to mention.

24 We make money every year. We do not lose
25 money, but on the -- as far as the system, but we did not make

1 enough to pay off the indebtedness. Had we not had the
2 indebtedness, we was making money. We paid for the gas out of
3 our own money, just not made enough to make the indebtedness
4 payment.

5 Q. And somebody is obviously losing money here --

6 A. That's true.

7 Q. -- in this transaction; is that correct?

8 A. That's true.

9 Q. And that is going to be taking place at this
10 foreclosure sale; is that correct?

11 MR. COWHERD: That's correct.

12 BY COMMISSIONER MURRAY:

13 Q. And I'm not clear on how a purchase price has
14 been established if there's got to be a bidding process. And
15 I don't know if this is --

16 A. I'd have to have somebody else answer that for
17 you.

18 Q. I'm sorry. You're on the stand, but I keep
19 asking questions that don't really belong to you.

20 MR. COWHERD: Dean, do you want to answer that?

21 MR. COOPER: Well, I think, Commissioner, what
22 has gone on is my client has entered into a negotiation
23 process that was -- involved both the trustee and the city to
24 some extent and an agreed upon price has been reached.

25 And I think when you get to the sale that's

1 been mentioned on November 30th, that's kind of a point that
2 any bidder's going to have to exceed to go anywhere with the
3 transaction. That's the best I can answer that, I suppose.

4 Similar to any other -- or most of the
5 transactions that would come before you, there's been --
6 there's been a negotiated price that's been set between the
7 parties, the parties have negotiated at arm's length and
8 that's the number that's reflected in the agreement as for the
9 Gallatin system and the agreement as to the Hamilton system.

10 JUDGE RUTH: Mr. Cooper, since your microphone
11 is not really working, you're going to have to really speak
12 up. I think we got that, but for the future, you're going to
13 have to talk loud.

14 MR. COWHERD: Commissioner, the transaction
15 really is in -- in bankruptcy parlance, it's a stocking horse
16 type bid in which they made a negotiated bid that they will
17 negotiate an opening bid at the sale and then other bids would
18 come in.

19 The idea, of course, is now you have a viable
20 bidder who is willing to make a price that is a minimal
21 acceptable price, minimum acceptable price to the trustee and
22 then the trustee, of course, then wants to have the sale to
23 see if they can encourage any further bids. I don't know if
24 that will happen or not, but that's the reason you handle it
25 in this manner is to attempt to encourage higher prices or at

1 least that's why the trustees do it in this manner.

2 BY COMMISSIONER MURRAY:

3 Q. Is it Mr. Kelly? Do I didn't have your name
4 right?

5 A. Mr. King.

6 Q. Mr. King. I'm sorry. I had the K right, I
7 guess.

8 If MGU obtains the system but is unable to get
9 the number of customers that you are projecting they would
10 get, would they be in the same situation that the city is in
11 in terms of not being able to sustain the operation?

12 A. If they weren't able to get the customers?

13 Q. Yes.

14 A. I have been with several of their employees
15 these past three months. We have looked at areas that they
16 want to progress to because it takes money to grow. And they
17 assure me that they have some money available to make it grow
18 when we're going into areas that the city was not able to do
19 because the city did not have money to do that. And we can
20 pick up as many customers in a short period of time that we
21 have been working on in the last eight, nine years. The
22 growth area is tremendous there. And I can speak for Hamilton
23 and the growth area is there too.

24 MR. COOPER: Commissioner Murray, Mr. Anderson
25 is with me from Missouri Gas Utility and he might be really

1 the most appropriate person to address that question if you
2 wanted additional information on that point.

3 COMMISSIONER MURRAY: All right. I think I
4 will -- I'm finished asking Mr. King questions. Thank you.

5 JUDGE RUTH: Okay. Then Commissioner Clayton,
6 do you have questions for Mr. King?

7 COMMISSIONER CLAYTON: I have a few questions,
8 very few.

9 BY COMMISSIONER CLAYTON:

10 Q. Mr. King, you live in Gallatin --

11 A. Yes, I do.

12 Q. -- is that correct?

13 And you say you're going to go work for MGU?

14 A. I've been offered a job with them, yes.

15 Q. You weren't part of any of the negotiations,
16 were you?

17 A. I have -- no, none whatsoever.

18 Q. That was between the trustees and the company
19 and --

20 A. Absolutely, yes.

21 Q. You just work at the place. Right?

22 A. I work at the place, I'm the man, yes.

23 Q. Okay. And you're a -- you're the man?

24 A. That's just the title and I'm the man.

25 Q. Did he just say that? Oh, you're the only

1 employee. Okay.

2 A. No, there's one more.

3 Q. Oh, there's one more. Okay. So you're one of
4 the men anyway?

5 A. That's right.

6 Q. And I assume you're also a client of the
7 company?

8 A. Absolutely.

9 Q. All right. Good.

10 A. They know my phone number before they known my
11 partner's phone number.

12 Q. I bet. And I bet they call you at home all the
13 time.

14 Very serious though.

15 A. Yes.

16 Q. And I'm not sure if I was satisfied with the
17 response, so I want to explore it a just a little more. Since
18 you live in Gallatin, you're on the ground there. If this
19 Commission finds problems with the transfer or granting the
20 certificate, making that assumption it does not make the
21 approval, I want to know what's going to happen to the
22 customers next week if the sale does not go through of this
23 system. Can you tell me that? There was talk from
24 Mr. Cowherd about, well, we'll cross our fingers and hope the
25 trustees put in more money, but isn't there a real risk here

1 to the customers, the 500 customers that are receiving this
2 gas service?

3 A. Well, there's always that possibility we'd have
4 to go to some other source. But I guess I don't see your
5 point when we have a person willing to take this over and keep
6 it going. I'm lost. As a citizen of the Gallatin --

7 Q. I understand. And you don't have to understand
8 all the different aspects of the Public Service Act or the --
9 or all the dealings that we have at the Public Service
10 Commission.

11 A. Okay.

12 Q. But I need you to assume that this Commission
13 has some problem with the transfer.

14 A. Okay.

15 Q. Just for this question --

16 A. Okay.

17 Q. -- for purposes of this question. And that the
18 approval from this Commission does not go through. I want to
19 know at what risk are the customers in Gallatin of having cold
20 homes on December 2nd or whatever the day is after that sale.
21 Are they going to receive gas service or not?

22 A. They'll receive gas service as long as there's
23 gas in the line that somebody is supplying to them.

24 Q. Okay. Well, who's going to supply the gas is
25 my question?

1 A. You're asking an awful tough question.

2 Q. Well, it's a serious question.

3 A. I understand.

4 Q. You're assuming that just because someone shows
5 up with a checkbook and is willing to buy the system, that the
6 Public Service Commission will approve it. I'm not saying
7 that this Commission is not, but I want to know what happens
8 if the transfer is not approved?

9 A. Okay. We'll go to the worst scenario.

10 Q. Worst case scenario.

11 A. You want to go to very bad. Okay. The
12 trustees refuse to put any gas in storage, then it goes --
13 then the people have the choice of going back to LP or fuel
14 oil or heating their homes with electricity.

15 Q. Okay. So if the trustees decided -- they would
16 first have to decide that they weren't going to invest any
17 more money in the system. And if that were the case, each of
18 those customers would have to do a conversion to LP, back to
19 propane?

20 A. That's right.

21 Q. Okay. And how long does that take to do a
22 conversion on a typical house?

23 A. You can do three a day in a long day. Because
24 we did that from going from LP to natural.

25 Q. Okay. So it would take quite a few days to get

1 the whole town converted, wouldn't it?

2 A. That's true.

3 Q. So that would be a lot of cold homes?

4 A. Yes.

5 Q. What, 30 days, 45 days?

6 A. Even if you brought in several people and the
7 propane company went in, yes, it would take several days.

8 Q. Is it supposed to snow back home tonight?

9 A. Yes, it is.

10 Q. It's supposed to snow down here.

11 A. It's supposed to snow up in that area, a few
12 miles from us anyway.

13 Q. My next question is, can you just briefly
14 describe how the rates are structured right now? How are the
15 rates compared to other municipalities? And I don't know if
16 there's a way of telling me how gas is priced right now. Does
17 it have a PGA or a commodity price for gas and then a separate
18 distribution cost or are how the rates structured in Gallatin?

19 A. The rates are structured by the cost of gas and
20 then the cost of transportation, but I cannot tell you about
21 any other municipality other than Hamilton because what I keep
22 track of is what the price is compared to propane. Because
23 that's what's the customers are always asking me, What are the
24 price I'm paying compared to propane that's out here.

25 Q. Okay. Okay. So you can't tell me how the

1 rates would compare to other municipalities or other
2 distribution systems?

3 A. No. I have not -- because the public is only
4 interested on what they can get their hands on right there in
5 the community.

6 Q. Okay. You mentioned Premium Standard Farms. I
7 wasn't for sure if they were a customer or a supplier of the
8 gas system.

9 A. They're not -- they're a customer. We
10 transport gas.

11 Q. They are a customer?

12 A. Yes.

13 Q. Okay. Well, they've got quite a few hogs out
14 there?

15 A. Yes, they I do.

16 Q. I didn't know if maybe --

17 COMMISSIONER CLAYTON: I have no other
18 questions. Thank you.

19 JUDGE RUTH: Commissioner Davis, do you have
20 questions for this witness?

21 COMMISSIONER DAVIS: I think my fellow
22 Commissioners have done a fine job of ferreting out all the
23 issues.

24 JUDGE RUTH: Commissioner Gaw, did you have any
25 other questions for this witness?

1 CHAIR GAW: Just a couple. Thank you.

2 BY CHAIR GAW:

3 Q. Mr. King, you may have mentioned this earlier.
4 What are the rates currently?

5 A. 10.65 for residential and small commercial.
6 That's per thousand cubic feet.

7 Q. Okay. And industrial or do you -- is that just
8 one rate?

9 A. No. There's different rates.

10 Q. Do you know what the other rates are?

11 A. For -- let me think. I did not bring that with
12 me. Premium Standard supplies their own gas. It's third
13 party. We charge them \$2.70 per thousand for transporting --

14 Q. Okay.

15 A. -- and that's why we get the transportation fee
16 from them.

17 Q. Yes, sir.

18 A. There's some gas out there higher commercial
19 that pay 9.65.

20 Q. Okay.

21 A. And like churches and schools are in that area
22 below the 10.65 right there. I think they're right around the
23 9.60, somewhere in that area.

24 Q. When the system was built, what was the
25 prediction for the number of customers that would be on the

1 Gallatin system?

2 A. 970-some by today's date.

3 Q. And was there an over-- a projection for
4 further down the road in time?

5 A. I think this was where it kind of ended up on
6 the projection so many years down the road.

7 Q. Yes, sir. Okay. And do you adjust your rates
8 as the fuel costs go up and down?

9 A. Yes, they have. The City Council is the one
10 that does that and they adjust to the cost of gas.

11 Q. How often are those generally adjusted?

12 A. Once a year when we contract there and the --
13 like in August when we contract for the whole year, we know
14 what the gas is going to be and it's usually once.

15 Q. All right. And have you had more than one
16 supplier of your gas over the course of your tenure?

17 A. Oh, yes.

18 Q. Who was the last supplier?

19 A. One Oak is the last supplier of gas.

20 Q. Okay. And do you remember who it was the year
21 before?

22 A. Several years before that it was Coastal. And
23 then Coastal sold out to A&R El Paso. We got a call one day,
24 You have 45 days to find you a new supplier because we will
25 not supply you gas anymore.

1 Q. Okay. And One Oak has supplied since when,
2 approximately?

3 A. Three, four years ago.

4 CHAIR GAW: Okay. Mr. Cooper, your client --
5 what do your clients participate in regard to current rates if
6 this transaction is completed?

7 MR. COOPER: We all need to probably turn that
8 over to Mr. Johnston, Chairman Gaw.

9 CHAIR GAW: I'll come back to it if you just
10 make sure that that comes into us at some point.

11 That's all I have now, Judge and Mr. King.
12 Thank you, Mr. King.

13 JUDGE RUTH: Let me double check. That's all
14 the questions from the Bench of this witness?

15 Okay. What I want to do is give the other
16 parties an opportunity to ask any questions of this witness
17 that they feel are necessary. I'm not saying you have to, but
18 I'm giving you the opportunity. And I'll start with Public
19 Counsel?

20 MR. MICHEEL: Thank you, but no.

21 JUDGE RUTH: And Staff?

22 MR. FRANSON: No questions, Judge.

23 JUDGE RUTH: MGU?

24 MR. COOPER: No questions.

25 JUDGE RUTH: And I'll ask counsel if you needed

1 to follow up with any questions for your witness?

2 MR. COWHERD: I don't have any of this witness,
3 Judge. I would suggest that I have another witness that maybe
4 needs to address some of Mr. Clayton's issues that he raised.

5 JUDGE RUTH: Okay. I appreciate that. I'm not
6 sure exactly when we'll pull him up, but thank you.

7 Can you tell me his name?

8 MR. COWHERD: Toby Dority, the city
9 administrator.

10 JUDGE RUTH: Okay. Mr. King, you may step
11 down. Thank you very much.

12 THE WITNESS: Thank you.

13 JUDGE RUTH: Okay. We've actually been on the
14 record for about an hour and a half. I propose we take a very
15 short break. According to the clock in the back, it's two
16 minutes until 3:00. We're only going to break until five
17 minutes after. So we're off the record.

18 (A recess was taken.)

19 JUDGE RUTH: We had a very short break. We
20 finished with Mr. King and we are ready to continue with
21 questions from Commissioner Gaw.

22 CHAIR GAW: Thank you, Judge. I want to spend
23 some time here getting a better understanding of MGU's
24 financial condition. And I'd like to hear Staff and Public
25 Counsel's assessment of that and then hear from the company.

1 MR. FRANSON: Commissioner, in order to answer
2 that, I'd like to bring up Matt Barnes. I believe he can best
3 answer those questions. And I'd call him up if that meets
4 with your approval.

5 JUDGE RUTH: Okay. Let's bring him up to the
6 witness stand, please.

7 (Witness sworn.)

8 JUDGE RUTH: Please be seated.

9 And, Staff, would you ask the introductory
10 questions?

11 MR. FRANSON: Certainly. May I proceed, your
12 Honor?

13 MATT BARNES testified as follows:

14 BY MR. FRANSON:

15 Q. Sir, please state your name.

16 A. Matt Barnes.

17 Q. Mr. Barnes, how are you employed?

18 A. I am employed as a utility regulatory auditor
19 two in the financial analysis department for Staff.

20 Q. Briefly, what is your educational background?

21 A. I graduated December 2002 from Columbia College
22 with a bachelor of science degree in business administration
23 with an emphasis in accounting. And right now I'm currently
24 attending William Woods University obtaining a masters in
25 business administration with an emphasis in accounting.

1 Q. Okay. Let me ask you, you provided some
2 material that appears in Staff's response to MGU's response,
3 Staff pleading and Staff recommendation; is that correct?

4 A. Yes.

5 Q. And that was your analysis of the financial
6 information regarding Missouri Gas Utility; is that correct?

7 A. Yes.

8 Q. Would you summarize that, please?

9 A. After looking at their financials, I determined
10 three ratios, funds from operations to interest coverage,
11 funds from operations to total debt, and total debt to total
12 capital. And what I did was I compared it to a company
13 that -- another company in Missouri that operates a natural
14 gas distribution business, and that company was Laclede. And
15 they have a business profile of a three.

16 Currently C&G Holdings is not rated, so I had
17 to -- I couldn't compare to the credit rating agencies what
18 they -- what their analysis was on them, so what I did is I
19 base it on Laclede's business profile of three and investment
20 grade triple B rating for these ratios, which is shown in the
21 Staff recommendation.

22 Q. Okay. So what is your conclusion regarding the
23 financial situation of C&G Holdings?

24 A. I think -- I think the financials are -- are
25 okay. I think they're right at investment grade rating.

1 Their interest coverage is -- is fairly high compared to what
2 we initially thought because we had a miscommunication with
3 the company on what the funds from operations calculations
4 should be. And after working that out, it actually improved
5 their ratios.

6 The other funds from operation to total debt
7 and total debt to total capital are -- is -- total debt to
8 total capital is right below investment grade. And funds from
9 operation total debt I calculated to be 5 percent, which is
10 below a triple B credit rating.

11 Q. Okay. Just so the record's clear, the document
12 that was filed today, the Staff response to MGU's response to
13 Staff pleading and Staff recommendation, the part entitled
14 Correction to Staff Recommendation of Missouri Gas Utility
15 appearing on pages 7 through 8, that is, in fact, your work
16 and your analysis; is that correct?

17 A. Yes, it is.

18 Q. And to your knowledge, that is true and
19 accurate?

20 A. Yes, it is.

21 MR. FRANSON: I think I hopefully have laid the
22 foundation and certainly would submit the witness for
23 questions from anyone else, your Honor.

24 JUDGE RUTH: Give me just a second.

25 BY CHAIR GAW:

1 Q. Help me out with understanding what those
2 corrections are referring to. They're corrections to your
3 original memo?

4 A. Okay. We asked for a data request from the
5 company giving us what their funds from operations to interest
6 coverage -- the three ratios.

7 Q. Yes.

8 A. When we talked to them yesterday, they
9 disagreed on what our interest coverage ratio was. That was
10 the main one. And we -- Staff and -- we talked to the company
11 and Staff and came to the conclusion that there was a mistake
12 in the calculation on what the company provided us and from
13 what -- the funds from operations that we used.

14 So when talking to the company, we went step by
15 step on the calculation and both -- both of us agreed that
16 that's what the funds from operation should be. So I just
17 redid the calculation and it improved their interest coverage.
18 That was the main one we went over.

19 Q. This is a data request that was given to you
20 verbally?

21 A. No. This was --

22 Q. This new information, is it in writing
23 somewhere from the company?

24 A. That was -- that part was done verbally, yes,
25 over the phone.

1 Q. So you don't have anything to show this
2 Commission?

3 A. Well, I do have the -- their -- the financial
4 statements from March 31st, 2004. What they provided us was
5 the net cash providing operating activities. That included
6 working capital and did not include the interest expense. And
7 that number was on the data request that I used to perform the
8 calculation.

9 And so over the phone when we realized that, we
10 went through the formula to come up with that calculation with
11 Mr. Anderson from C&G Holdings. So, yes, that was done
12 verbally as of yesterday.

13 Q. Is there some -- was there some additional
14 information backing that up given to you after the phone call?

15 A. There is a -- from Standard and Poor's, they
16 have the calculations to calculate those ratios. And that's
17 what we -- both of us -- both parties went -- went off of
18 those calculations.

19 Q. Okay. I'm not sure I'm following that. Maybe
20 you can have somebody explain that to me later --

21 A. Okay.

22 Q. -- from counsel's Bench.

23 In page 8 of 9 of your memo, you make the
24 statement, After review of C&G Holdings on a consolidated pre-
25 and post-acquisition, the company does not have financial

1 ratios consistent for an investment grade rating of triple B
2 and may be rated junk status if the company were rated by a
3 credit agency.

4 Are you telling me that that position has
5 changed?

6 A. Yes.

7 Q. And what is that -- what is it that you would
8 correct in regard to that statement?

9 A. Well, I would remove the part about junk status
10 since I believe that they are right at investment grade. I'm
11 not for sure if I have the copy of that, the first draft.

12 Q. Public Counsel --

13 A. Here we go. I've got it. I've got it here.
14 I'm sorry.

15 I would change the -- well, that first sentence
16 would totally change. I would -- I would rate them as the
17 financials are consistent for an investment grade rating of a
18 triple B company. It would not be rated junk status if the
19 company were rated by a credit agency. That sentence would --
20 would change.

21 Q. Okay. Now, if you look above that in those
22 other statements that were made on page 8 of 9, what portions
23 of those statements would you change, and particularly what
24 numbers would change?

25 A. Okay.

1 Q. And if this is all done in one document that
2 shows those changes, please just point me to that.

3 A. Yes, it is. Staff's response to MGU's response
4 to Staff pleading and Staff recommendation. On page 8 I have
5 the new ratios.

6 When first analyzing this company before
7 knowing what the mistake was in the funds from operations
8 calculation, I believe they -- that they looked pretty poor
9 and -- but after -- after realizing what mistake I made in --

10 Q. What mistake are you referring to again?

11 A. The funds from operations, the -- what that
12 number is to divide into the total -- the interest coverage.

13 Q. And your number you derived was from where in
14 your original calculation?

15 A. Was from a Staff data request and also their
16 financial statements.

17 Q. All right. And now you have a new number?

18 A. Right.

19 Q. Where did you get that number?

20 A. Yesterday when we talked to the company, we
21 came up with the correct calculation for the funds from
22 operations -- for the funds from operations based on Standard
23 and Poor's criteria for the calculation. And we came -- we
24 both came -- both parties came up with that -- with the same
25 number. Sorry if I'm confusing you.

1 Q. I am trying to understand whether or not you
2 got a different base number of some sort from the company than
3 what you had been given earlier or whether your calculation
4 of -- that the calculations that you made were changed because
5 you found a mistake in your calculations?

6 A. Both. The company made a mistake too by
7 providing the wrong funds flow from operations number to us.

8 MR. FRANSON: Commissioner, may I?

9 CHAIR GAW: Yes, sir.

10 BY MR. FRANSON:

11 Q. Mr. Barnes, did you use the same source
12 document for these calculations?

13 A. Originally, yes.

14 Q. Okay. So what you changed, after consultation
15 with the company, was your methodology or the way you did the
16 calculation?

17 A. The -- I wouldn't say it's the methodology.
18 It's just the right number -- the calculation for the funds
19 from operations.

20 MR. COOPER: Commissioner, I think --

21 THE WITNESS: So --

22 JUDGE RUTH: If you can shed some light,
23 Mr. Cooper --

24 MR. COOPER: Yes. Commissioner Gaw, I think
25 it's as simple as the number that the company provided in the

1 first place was based upon one understanding of what was being
2 asked for. And after the parties had the opportunity to
3 discuss what was being asked for, it turned out that what the
4 company had provided was not the right number.

5 And that's what Mr. Barnes is alluding to, that
6 yesterday once the parties had the opportunity for Mr. Barnes
7 to explain what number it was he was requesting, what he
8 wanted that to include, the company was then able to provide
9 him with what he was looking for.

10 JUDGE RUTH: And did you provide that for him
11 in writing as like an amended data request or just verbally?

12 CHAIR GAW: Thank you, Judge.

13 JUDGE RUTH: I'm sorry. What?

14 CHAIR GAW: No. Thank you. That's what I was
15 getting to.

16 MR. COOPER: I expect at this point it has been
17 verbal. It certainly can be in an amended data request as
18 well.

19 JUDGE RUTH: The Commission is indicating a
20 preference for that to be in writing.

21 MR. COOPER: And I think the rest of that is,
22 is that the numbers are a part of the audit that was provided
23 as a part of the data request. So it was not that there's a
24 whole new number that's pulled out. It's that by going back
25 to the audit documents, the financial statements that were

1 already in the Staff's possession and working through what it
2 was the Staff was looking for, they were able to work their
3 way to what is indeed the correct number.

4 JUDGE RUTH: Okay. Thank you.

5 Mr. Chairman, I apologize for interrupting.

6 CHAIR GAW: No. That was helpful. Thank you.

7 I'd like to ask Public Counsel if they've seen
8 those numbers and if they concur in this or not?

9 MR. MICHEEL: With respect to the numbers,
10 Commissioner, we haven't had our financial analyst look at
11 those. He's just too busy and too much short in time frame.
12 He's got some other filing responsibilities; namely, some
13 Surrebuttal Testimony.

14 CHAIR GAW: Yes, sir.

15 MR. MICHEEL: I will say though that we have
16 reviewed generally the data requests and met with the company
17 and listened to their proposals and their plans and their
18 discussions about financing and their commitment. And given
19 the exigent circumstances and the time frame, we're
20 comfortable with it.

21 Now, that's not to say if we dug a little
22 deeper perhaps, crunched a few more numbers we might not have
23 more concerns. But given the exigent circumstances, we're
24 comfortable.

25 CHAIR GAW: You want to describe those

1 circumstances in a little more detail?

2 MR. MICHEEL: And this is my understanding
3 based on representations from the company and some of the
4 testimony that we've heard here today. We've got a system
5 that currently is in receivership for a trustee. There's no
6 indication that the trustee is going to provide gas, the
7 commodity, to the customers of this system. And the
8 applicant, MGU, has come forward to say they wish to purchase
9 the system and to provide safe and adequate service to
10 customers at what they deem just and reasonable rates.

11 And so we're faced with what I view as almost a
12 Hobson's choice. You have customers who may not be getting
13 gas and freezing. That's certainly not something the Office
14 of the Public Counsel wants. And the flip side is we have a
15 quicker recommendation timeline than I would generally like to
16 see and less time, but we have representations from the
17 company -- and they've provided a lot of information quickly,
18 I might add, given the circumstances and they should be -- you
19 know, I should give them a nod for that. And what we've seen
20 to date has not raised issues with us.

21 Now, I reviewed what the Staff indicated and
22 I -- I mean, with the exception -- I was unaware of these
23 corrections, quite frankly, Commissioner, because I didn't see
24 the Commission's filing until I asked Mr. Franson for it
25 during the hearing. But even given that, it's not ideal, but

1 I think it's a better solution than having these customers
2 freeze or the potential of these customers freezing.

3 And if you'll look at what I filed, it was
4 brief, but I did file a response suggesting that perhaps -- I
5 understand that the Commission has concerns and legitimately
6 so, that we could keep a docket open perhaps or keep this case
7 open where we can continue to raise those concerns and work
8 through them, but recognizing maybe perhaps, you know, we need
9 to approve this with the knowledge that we may come back to
10 revisit some of these issues if problems occur.

11 I mean, to me that seems to be the best
12 solution to this rather thorny problem. And so that's kind of
13 our position.

14 CHAIR GAW: Is it fair to say that you would
15 have a different position if we were not faced with these
16 extreme circumstances?

17 MR. MICHEEL: I don't know that. It is fair to
18 say that if we had more time, I would probably be able to
19 enlist the full look from our financial analyst and that he
20 would be able to dig into this deeper and perhaps ask some
21 more questions. And so I'm not suggesting, Commissioner, that
22 if we looked deeper, that the result would change in any way,
23 shape or form. What I'm trying to say to the Commission is we
24 have done a very limited review.

25 CHAIR GAW: I understand. But I am depending

1 on what review you've done.

2 MR. MICHEEL: And I think based on that review,
3 you know, with the conditions that the Staff has set out --
4 and I understand that the company disagrees with some of those
5 and we're willing to sit down with the company and hear their
6 concerns and try to work out a solution, that's -- I hate to
7 use the term, but a win/win for everybody.

8 I mean, I'm concerned that we've had these --
9 and I think Commissioner Murray's questions brought this issue
10 out. That we've had LDCs go into areas where they have
11 competition with propane and we have these grandiose, my term,
12 take-rate projections and they don't come true. And then we
13 have customers who again are put in the position that we can't
14 raise rates, but the companies aren't collecting enough to
15 make the system a go. And that's a hard, hard nut to crack --

16 CHAIR GAW: Mr. Micheel --

17 MR. MICHEEL: -- to get out of.

18 CHAIR GAW: -- this is going to be a difficult
19 nut to crack no matter who's got this issue, I suppose. I
20 mean, if they've had difficulty attracting additional --
21 additional customers at current rates and the rates end up
22 going up after this transaction, I'm having trouble
23 understanding how this is going in the right direction, so --

24 MR. MICHEEL: Well, I will say this. That in
25 the company's presentation that they gave to us, they

1 indicated that they have the business acumen and that their --
2 when they were in Colorado, they brought natural gas to areas
3 that had heretofore been only served by propane.

4 So they indicated to me or in their
5 presentation -- and if I'm saying something wrong, stop me --
6 that they are well aware of this type of competition and that
7 they feel that they have a business model and the business
8 smarts to make a go of it.

9 And at some point, you know, when people look
10 you in the eye and tell you that and they've proven it and
11 I -- you know, I made some calls to the Public Counsel in
12 Colorado and some e-mails to check, you know, just to see
13 about the company and I didn't get any red flags from that, I
14 say loosely, background check and these folks have a business
15 plan to make this work and they've provided us some numbers
16 with respect to that.

17 And I -- and I believe there's probably -- I
18 think Mr. King testified, a little bit of inertia there with
19 the city being the owner as opposed to a private company. And
20 at some point you have to take a little bit of that on faith.
21 And so I've been willing to do that given the fact that it
22 appears to me that some folks may not have natural gas in the
23 winter.

24 And these folks can tell you a little bit, when
25 they get their chance, about their business, but I'm

1 relying -- part of that I'm relying on.

2 BY CHAIR GAW:

3 Q. I want to go back to the witness. Based upon
4 the information that you have now and assuming that the data
5 request information comes through in writing the same way that
6 you got it verbally yesterday, do you believe this company is
7 financially healthy, MGU and its affiliated companies?

8 A. I think they are capable of acquiring these
9 operations. Now, they're going to be right at -- I think
10 they're going to be right at investment grade. I think
11 looking at proformas, they will improve. Now, that's based on
12 proforma. There's assumptions in with that. The company is
13 fairly leveraged right now. There's about 66 percent debt. If
14 they could improve that ratio --

15 Q. And that's the debt ratio prior to acquisition
16 or post-acquisition?

17 A. Both actually, prior and post. They're at 66
18 now. They'll be about 65 is the calculation I came up with.

19 Q. After the acquisition?

20 A. After --

21 Q. Their debt ratio actually goes down?

22 A. That's -- yes.

23 Q. And explain that to me. Is that because
24 they're issuing more equity?

25 A. Yes. Yes. They have -- from what I've been

1 told by the company, they plan on issuing I believe around
2 \$10 million in the first quarter of '05. Maybe -- the company
3 can probably explain that a little bit more since that's an
4 assumption.

5 Q. Is this more verbal information you got from
6 the company or is it in data requests?

7 A. I believe that was in data requests. It didn't
8 say -- the amount was not in the data request. The amount was
9 verbally.

10 CHAIR GAW: Okay. Thank you. Commissioner
11 Murray might have questions.

12 JUDGE RUTH: Commissioner Murray, do you have
13 any questions for Mr. Barnes?

14 COMMISSIONER MURRAY: Yes. Thank you.

15 BY COMMISSIONER MURRAY:

16 Q. The funds from operation ratios that improved
17 with the additional information you got, was that because of
18 plugging in a different number of customers? Is that how that
19 number changed?

20 A. No, no. Let's see here. I have -- I have here
21 their financial statement. And what the company provided was
22 the net cash provided by operating activities. And that
23 was -- that includes working capital such as accounts
24 receivable, prepaid expenses.

25 And we don't include those in the calculation.

1 All we include are -- are depreciation, deferred taxes, the
2 interest expense, the net earnings and we subtract the
3 allowance funds used during construction and that comes up
4 with the funds flow from operations. Compared before, it
5 was -- it was everything included. And it did not include the
6 interest expense.

7 COMMISSIONER MURRAY: I don't think I have any
8 other questions for you. Thank you.

9 JUDGE RUTH: Okay. Do you have any other
10 questions for this witness?

11 CHAIR GAW: No.

12 JUDGE RUTH: Then I'm going to allow the other
13 parties opportunity to ask questions of this witness if you
14 wish. And I'll start with Public Counsel.

15 MR. MICHEEL: No questions.

16 JUDGE RUTH: Okay. And the cities?

17 MR. COWHERD: No questions.

18 JUDGE RUTH: And MGU?

19 MR. COOPER: No questions.

20 JUDGE RUTH: Okay. Staff, do you have any
21 follow up?

22 MR. FRANSON: No, your Honor.

23 JUDGE RUTH: Okay. Okay. You may step down.
24 Thank you very much, Mr. Barnes.

25 Okay. Commissioner Gaw, go back to you. Do

1 you have additional questions at this time?

2 CHAIR GAW: I'd like to hear from whoever the
3 company wants to have talk about financial condition and also
4 about how they -- about projected rates.

5 MR. COOPER: Yes, Commissioner. How about we
6 start with -- those will actually be two different folks.

7 CHAIR GAW: I figured that might be.

8 MR. COOPER: How about we start with financial
9 condition, which would be Mr. James Anderson.

10 CHAIR GAW: Okay. Thank you.

11 JUDGE RUTH: It was Mr. Anderson; is that
12 correct?

13 MR. ANDERSON: Yes.

14 (Witness sworn.)

15 JUDGE RUTH: Okay. Thank you. You may be
16 seated.

17 And, Mr. Cooper, would you ask the preliminary
18 questions?

19 JAMES ANDERSON testified as follows:

20 BY MR. COOPER:

21 Q. Mr. Anderson, would you please state your full
22 name?

23 A. James M. Anderson.

24 Q. What is your position with Missouri Gas
25 Utility, Inc.?

1 A. I'm a member of the Board of Directors of C&G
2 Holdings, which is the holding company of MGU.

3 Q. In your position on the Board of Directors,
4 have you come to -- have you become familiar with the finances
5 of both C&G Holdings and ultimately Missouri Gas Utility's
6 Inc.?

7 A. Yes, I have.

8 Q. Okay.

9 MR. COOPER: Commissioner, I would tender
10 Mr. Anderson for questions from the Bench.

11 JUDGE RUTH: Okay. Mr. Chairman?

12 CHAIR GAW: Yeah. Thank you, Judge.

13 BY CHAIR GAW:

14 Q. Mr. Anderson, how long have you been with the
15 holding company of MGU?

16 A. Since 1997.

17 Q. And in what capacity during that time?

18 A. I've acted as the company's investment banker
19 as well as a member of its Board of Directors.

20 Q. All right. And the holding company itself, is
21 it -- does it have very many employees?

22 A. No. It's mainly the employees of Colorado
23 Natural Gas. Holding company has the officers of -- I think
24 there's seven.

25 Q. Okay. Colorado Natural Gas, what does that

1 company do?

2 A. It's a gas distributions company located in
3 central Colorado.

4 Q. All right. And how many customers
5 approximately does it have?

6 A. Approximately 6,500.

7 Q. All right. And how many different communities
8 would it serve?

9 A. It serves only two incorporated communities and
10 then rural areas of incorporated -- of five different
11 unincorporated counties.

12 Q. Is it a regulated utility in Colorado?

13 A. Yes.

14 Q. All right. And how long has it been in
15 business?

16 A. Since 1996.

17 Q. All right. And during that time frame, let me
18 ask you, has it expanded its service territory?

19 A. Yes. It started with no customers when the
20 financing was put in place in 1997 and it's grown to the 6,500
21 customers.

22 Q. All right. And are there any other businesses
23 affiliated with the holding company?

24 A. Yes. It has a HVAC company and --

25 Q. Okay.

1 A. -- it also has a small company that has been
2 bidding on government contracts, but doesn't have any
3 contracts with the government yet.

4 Q. All right. Anything else?

5 A. Yes. It has a small LDC that facilitates a
6 transport customer's purchase of gas.

7 Q. Okay. Where is that located, generally?

8 A. The transport customer's located in Teller
9 County, Colorado.

10 Q. All right. I'm not sure where that is, but
11 that's all right.

12 A. It's west of Colorado Springs.

13 Q. Okay. And MGU at the present time, does it own
14 any assets?

15 A. No.

16 Q. All right. If MGU were to be granted a
17 certificate in Missouri, who would perform the functions of
18 MGU in regard to its day-to-day operation, its oversight?
19 Would it be done with employees that would be shared with
20 other -- with affiliates or the holding company or how would
21 that work?

22 A. Well, day-to-day operations in Missouri would
23 be handled by the two current staff people at Gallatin, as
24 Mr. King had mentioned. And there would probably be one
25 additional employee added.

1 Q. All right.

2 A. There would be an employee of MGU.

3 Q. All right.

4 A. Then there be would oversight by management at
5 the holding company.

6 Q. The gas purchase requirements for the systems
7 in Gallatin and Hamilton, who would handle that?

8 A. Gas purchase?

9 Q. Yes.

10 A. We'd probably outsource that to a company known
11 as KTM Management that handles our current gas acquisitions in
12 Colorado.

13 Q. Okay. Who are they affiliated with if --

14 A. They're an independent company. They represent
15 a number of large industrial clients.

16 Q. All right. And tell me what the current
17 financial status is of MGU itself.

18 A. Well, current financial status is it's to be
19 capitalized --

20 Q. Okay.

21 A. -- at the successful bid of the purchase of the
22 system and approval of this body.

23 Q. All right. And what are you anticipating the
24 amount of debt and equity to be?

25 CHAIR GAW: And if I get into confidential

1 material at all, Judge, or anyone else, let me know.

2 JUDGE RUTH: And I would ask that before you
3 answer, if you think it's confidential, you get my attention.

4 THE WITNESS: Well, I would say that we're
5 anticipating a debt to equity ratio of 50/50.

6 BY CHAIR GAW:

7 Q. 50/50?

8 A. Yes.

9 Q. Okay. And when would the -- when would you
10 anticipate that being issued?

11 A. The company's going to make an offer -- the
12 holdings company is making a private equity offering. From
13 that private equity offering, the first funds from that will
14 be used to capitalize MGU from an equity standpoint and then
15 we'll use bank debt to -- to finance the debt portion.

16 Q. Okay. So there would be -- did you say private
17 equity offering --

18 A. Yes.

19 Q. -- did I hear that correctly?

20 A. But the shareholder of MGU will only be C&G
21 Holdings. The equity will be offered at the C&G Holdings
22 level.

23 Q. Than would be then passed through for MGU to
24 utilize for --

25 A. Right.

1 Q. -- the purchase?

2 A. Right. To purchase and also to provide working
3 capital and then also to provide expansion capital.

4 Q. All right. Do you anticipate any difficulty in
5 finding purchasers for the private equity issuance?

6 A. No.

7 Q. Has that already been arranged?

8 A. It hasn't been finalized, but a number of
9 existing shareholders would -- have indicated that they're
10 interested in making a purchase.

11 Q. All right. Now, there was some reference
12 earlier to current debt equity ratios of the holding company.
13 Can you tell me what that is currently?

14 A. As Mr. Barnes stated, currently it's about
15 67 percent debt and 33 percent equity.

16 Q. All right.

17 A. That improves a little bit by the end of the
18 year due to retained earnings.

19 Q. Okay. How much would you say --

20 A. Goes from 66 to 65. That's the ratio
21 Mr. Barnes was just speaking of.

22 Q. Is that debt equity ratio one that you feel
23 comfortable with or is it something that you'd like to see
24 improve over time?

25 A. Well, when we originally organized Colorado

1 Natural Gas, the Colorado PUC set its rates at a debt to
2 equity ratio of 75 percent debt, 25 percent equity. So in
3 order to earn the full rate of return allowed under the
4 Colorado PUC, you had to approach that debt to equity ratio.

5 We would prefer, and as a result of this next
6 equity offering, to bring that down closer to 50/50. For one
7 reason, to obtain an investment grade credit rating, but also
8 to -- just to bring down that ratio.

9 Q. Is there a credit rating currently for the
10 holding company?

11 A. The holding companies -- or there is no debt at
12 the holding company level. The debt is at the gas
13 distribution level.

14 Q. I see.

15 A. And Colorado Natural Gas's debt is 25 million
16 and it's rated double A minus by S&P by virtue of the fact
17 there's a letter of credit from Harris Bank of Chicago secures
18 the debt.

19 Q. And double A minus, translate that to me in
20 regards to --

21 A. It's upper investment grade.

22 Q. Now, I guess what I'm a little hung up on is
23 what you said in regard to trying to achieve an investment
24 grade rating.

25 A. Yeah.

1 Q. Tell me -- explain what you were getting to, if
2 you would, please.

3 A. Yeah. An investment grade rating on the C&G's
4 debt --

5 Q. Yes.

6 A. -- on its own merits without the letter of
7 credit, the reason to do that is to drive down the letter of
8 credit costs.

9 Q. Currently C&G does not have --

10 A. On its own merit.

11 Q. -- anything on its own merits?

12 A. C&G has credit. Holdings companies doesn't
13 have any debt, but the gas distribution company, Colorado
14 Natural Gas, has debt and it's rated by virtue of a letter of
15 credit, but not on its own merits.

16 Q. But the rating that it has would -- the rate
17 that it's paying for money that it has would not be -- would
18 be improved if it were ranked as investment grade?

19 A. The interest rate it's paying wouldn't change,
20 but it pays a fee to the letter of credit bank and that would
21 improve.

22 Q. Okay. What is the status of the LDC in regard
23 to -- let me strike that.

24 How many individuals actually do the management
25 of the LDC in Colorado?

1 A. Let's see. We have CEO, a company engineer,
2 general -- VP of general management, and then each individual
3 sector has a manager and then service techs. Total of I think
4 right at the current -- currently 36 employees.

5 Q. Can you help me to understand the interest the
6 company has in this property in Missouri and how that ties in
7 with the company's view of the future of the company itself?

8 A. Sure. We see this as a good opportunity for
9 our company. The LDC as it stands right now -- the Gallatin
10 and Hamilton systems as they stand now with the existing
11 customers at the price we're proposing to offer, would be
12 self-supporting at that price based on current interest rates
13 and for a portion of the capital and return -- a reasonable
14 return on equity.

15 Our calculations show that we have slightly
16 less than an 8 percent return on equity based on the
17 regulatory system at the current number of customers and at
18 the current rates.

19 Q. Okay.

20 A. That would go down slightly at the rates we're
21 going to propose --

22 Q. Okay.

23 A. -- because we're going to propose lower rights.
24 But we think that just as it sits right now at the price we're
25 proposing, it makes a profit. Not as much as we'd like, but

1 we think the -- there is plenty of potential that we see about
2 2,100 potential customers. We think they're at approximately
3 a 35 percent market penetration. That penetration could be
4 raised substantially, maybe double.

5 Q. All right. What is your view of the systems in
6 those two cities in regard to the amount of -- the size of the
7 lines, the number of -- or the cap-- well, the capacity in the
8 lines? Was it overbuilt? Was it underbuilt? Was it built
9 about right?

10 A. I'm not an engineer, and we have our engineer
11 with us and he could testify better to that. But I would say
12 it's that definitely larger than it needs to be for the number
13 of customers there or even potential customers. But it's
14 certainly adequate to serve all of those customers there in
15 Daviess and Harrison and Caldwell County.

16 Q. Yes, sir.

17 CHAIR GAW: That's all I have right now. Thank
18 you, Judge.

19 JUDGE RUTH: Commissioner Murray, do you have
20 questions for this witness?

21 COMMISSIONER MURRAY: I thought I did. I'm
22 having trouble remembering what it was right now. Just give
23 me a minute.

24 Yes, I do.

25 BY COMMISSIONER MURRAY:

1 Q. I wanted to ask you about your position on the
2 conditions that Staff has proposed. And it's my understanding
3 that those conditions would apply to your certificate that --
4 and there are certain conditions that you've agreed to and
5 there are certain conditions that you've not found acceptable;
6 is that right?

7 A. That's correct.

8 Q. And I understand those negotiations are
9 continuing between the company and the Staff and the Office of
10 Public Counsel, but if those conditions are not -- if there's
11 not an agreement reached as to those conditions, are you
12 saying that you would not want to be granted the certificate
13 with those conditions?

14 A. I think as -- where we stand at this moment, we
15 would not. But we believe that we can negotiate grounds to
16 where we would be -- where it would be acceptable.

17 COMMISSIONER MURRAY: I don't think I have
18 anything else. Thank you.

19 JUDGE RUTH: Thank you.

20 Commissioner Davis?

21 COMMISSIONER DAVIS: No questions.

22 JUDGE RUTH: Okay. I'll ask the parties if you
23 have any questions for this witness. And I'll start with the
24 cities?

25 MR. COWHERD: No questions.

1 JUDGE RUTH: Public Counsel?

2 MR. MICHEEL: No questions.

3 JUDGE RUTH: And Staff?

4 MR. FRANSON: Briefly, your Honor.

5 BY MR. FRANSON:

6 Q. Mr. Anderson, do you by any chance have Staff's
7 response to MGU's response to Staff pleading and Staff
8 recommendation that was filed today?

9 A. I do.

10 Q. You are well prepared. Thank you.

11 Could you look at pages 7 through 8 of that
12 document, specifically beginning on page 7, correction to
13 Staff recommendation of Missouri Gas Utility and going through
14 page 8 where it starts, Wherefore?

15 A. Yes, sir, I have it.

16 Q. Okay. What I'm asking you about specifically
17 are the calculations done by Mr. Barnes on page 7 going into
18 page 8. Do you agree with those calculations?

19 A. Yes, I do.

20 Q. What's the source document for those
21 calculations?

22 A. The 2003 and 2004 would be the company's
23 audited financial statements. 2005 would be a proforma
24 statement that we provided the company in the -- or provided
25 the PUC in the --

1 Q. Okay.

2 A. -- questions.

3 Q. And that proforma statement, is that in writing
4 or was that verbal?

5 A. No. That was in writing.

6 Q. Okay. And that's been provided to Mr. Barnes?

7 A. Yes.

8 Q. Okay. And your discussions yesterday, that
9 results in an agreement by you and Mr. Barnes that these
10 calculations are correct at the top of page 8?

11 A. My copy doesn't show any calculation on page 8.
12 They're all on the bottom of 7. Maybe I have a different
13 version.

14 Q. Maybe yours printed out a little bit different.
15 But it deals with funds from operations to interest coverage
16 and funds from operations to total debt ratios?

17 A. Right. I have the ratios here. I don't have
18 the actual numbers, but the ratios are correct.

19 Q. Okay. Let me ask you -- let's shift gears a
20 little bit here. Can C&G always raise as much equity as it
21 desires or are there limits on that?

22 A. There's obviously limits to -- the equity can
23 be raised but -- so far, yes, we've been able to raise the
24 equity we've needed for all of our transactions.

25 Q. You may have answered this with Commissioner

1 Gaw, but I'm not sure I caught it. Is C&G stock publicly
2 traded?

3 A. No.

4 Q. Okay. What are some of the limits that you
5 might anticipate or you've actually run into in C&G's ability
6 to raise equity capital?

7 A. Principal limit is to have a purpose to use the
8 equity for. In other words, it's very difficult to raise
9 equity for a blind pool or a blind opportunity. It's much
10 easier to raise the equity for a specific opportunity. So
11 once we have an agreement to go forward with MGU, then we have
12 a specific transaction and that is much easier to raise equity
13 for than if it were just, well, we might be able to do this in
14 the future.

15 Q. Okay. Let me ask you this. Has the Colorado
16 Public Utility Commission designed a capital structure for
17 C&G?

18 A. Not specifically, no. They've set rates based
19 on capital structure.

20 Q. Okay. Isn't it true that that capital
21 structure is 75 percent debt and 25 percent equity?

22 A. Yes.

23 Q. And do you know why the Colorado Public
24 Utilities Commission used that capital structure?

25 A. I was not part of that negotiation, so I don't

1 know.

2 Q. Okay. So your answer is you don't know why
3 that decision --

4 A. Not specifically.

5 MR. FRANSON: Okay. I don't believe I have any
6 further questions.

7 JUDGE RUTH: Okay. Mr. Cooper, do you have
8 follow up?

9 MR. COOPER: Just very briefly, your Honor.

10 BY MR. COOPER:

11 Q. Mr. Anderson, Mr. Franson asked you about the
12 ratios contained in the Staff response that was filed today.
13 And I believe he asked as to 2003 and 2004 ratios. You stated
14 that those ratios are based upon numbers contained in the
15 company's audited financial statements; is that correct?

16 A. Yes.

17 Q. And have the audited financial statements for
18 2003 and 2004 been provided to Staff in writing in response to
19 data requests?

20 A. Yes.

21 MR. COOPER: That's all I have, your Honor.

22 JUDGE RUTH: Okay. Thank you.

23 Are you indicating you have -- okay.

24 Mr. Anderson, you may step down. Thank you
25 very much.

1 Then, Mr. Chairman, we'll return to your
2 questions.

3 CHAIR GAW: Thank you. Mr. Cooper --

4 MR. COOPER: Did you want to move on to rates,
5 Commissioner?

6 CHAIR GAW: Yes.

7 MR. COOPER: We would then call Mr. Tim
8 Johnston.

9 JUDGE RUTH: I apologize.

10 (Witness sworn.)

11 JUDGE RUTH: Thank you. And you may be seated.
12 And be sure to adjust your microphone so we can hear you.

13 And, Mr. Cooper, would you ask the introductory
14 questions?

15 MR. COOPER: Yes, your Honor.

16 TIMOTHY JOHNSTON testified as follows:

17 BY MR. COOPER:

18 Q. Would you please state your full name for us?

19 A. Timothy Ray Johnston.

20 Q. Mr. Johnston, by whom are you employed and in
21 what capacity?

22 A. I'm the vice president of engineering for C&G
23 Holdings, Incorporated.

24 Q. And C&G Holdings, Incorporated is the parent of
25 Missouri Gas Utilities, Inc.; is that correct?

1 A. That's correct.

2 Q. In your position as vice president of
3 engineering, what responsibilities do you have?

4 A. I'm responsible for the sales and engineering
5 efforts in all of our territories. I'm also responsible for
6 coordinating with the -- with KTM, the company that does our
7 gas purchases in Colorado.

8 Q. More simply stated, are you responsible for
9 both the rates that are charged by the company and the
10 purchasing of gas supply for the company?

11 A. Yes. I'm the person that -- primarily at the
12 company that deals with the Colorado Public Utilities
13 Commission. Understand that we've not had a rate case there
14 in a number of years so as far as setting the rates, that's
15 not been something we've done in a while. But I am the person
16 responsible for the -- in Colorado it's called the gas cost
17 adjustment, which is similar to the PGA in the state of
18 Missouri.

19 Q. Are you familiar with the rates that MGU
20 proposes to charge here in the state of Missouri?

21 A. I am.

22 Q. Are you familiar with the gas purchasing that
23 has been performed for the benefit of the Gallatin and
24 Hamilton systems here in Missouri?

25 A. I am.

1 MR. COOPER: Okay. At this time, Commissioner,
2 I would -- and, Commission, I would tender Mr. Johnston for
3 questions from the Bench.

4 CHAIR GAW: Thank you, Mr. Cooper.

5 BY CHAIR GAW:

6 Q. Mr. Johnston, first of all, give me your
7 perspective on what the company would be proposing on rates if
8 the acquisition is completed as contemplated currently by the
9 company?

10 A. The rate in Missouri, of course, is split into
11 commodity rate and a PGA rate. The PGA rate's going to be
12 whatever it is based on the gas. I have an estimate for you
13 based on current conditions, but as far as --

14 Q. We'll come back to the PGA in a moment, if you
15 want.

16 A. Okay.

17 Q. Give me --

18 A. The commodity rates -- the commodity rates that
19 we're proposing -- and I'm currently working on that section
20 of our proposed tariff for submission to this body -- what
21 we're proposing is a commodity rate of \$3 per decatherm for
22 residential, commercial -- residential, small commercial and
23 large commercial. We're proposing a transportation rate of
24 \$2.70 a decatherm for regular transportation and then we're
25 proposing a special -- Missouri has a special rate for schools

1 and we're proposing that that be \$2.20.

2 The last two, the transportation and the
3 special rate for the school match what the Gallatin current
4 rates are. The \$3 for the rest of the customers is somewhat
5 below what the residential and small commercial and large
6 commercial rates are. It is slightly above the rates that are
7 currently being paid by some of the customers, the
8 institutions and government customers.

9 Q. Okay. Now, the rates I heard quoted earlier I
10 think by Mr. King were not split up into --

11 A. Yes.

12 Q. -- into gas costs and delivery charges except
13 in reference to I think PSF, perhaps. I think maybe you were
14 here. I think he said something about residential and some
15 other groups paying about 10.65?

16 A. That's correct. The current rate in Gallatin
17 for residential, small commercial is \$10.65.

18 Q. Right.

19 A. That includes \$3.70 that would be equivalent to
20 the commodity rate.

21 Q. Yes.

22 A. And \$6.95 that would be equivalent to a PGA
23 rate.

24 Q. And what is it in Hamilton?

25 A. I'm not sure about Hamilton. I think the last

1 thing I heard was it was about 10.90, but I'm not sure how
2 much of that was PGA and how much was commodity.

3 CHAIR GAW: Mr. Cowherd, do you know?

4 MR. COWHERD: 10.90, Commissioner.

5 CHAIR GAW: Thank you.

6 BY CHAIR GAW:

7 Q. All right. Of course, part of the concern that
8 I have in regard to what we're dealing with on the
9 circumstances here has to do with no available gas on storage
10 currently -- in storage. Tell me what you all are planning to
11 do about that and -- and give me an idea, to the extent that
12 you can, about what you're going to have to pay to get there
13 that's going to be moved into the PGA --

14 A. Okay.

15 Q. -- at some point.

16 A. Let me just kind of walk you through a history.

17 Q. Be helpful.

18 A. On the 15th of -- of November, the gas and
19 storage was 12,367 decatherms. Since then, we've initiated a
20 process where we buy 900 decatherms per day to be delivered
21 into A&R Pipeline from One Oak. That gas gets split into the
22 daily usage on the system and then the remainder of the 900
23 goes into storage. The 900 is a contractual limitation on A&R
24 into the current transportation contract between the City of
25 Gallatin and A&R.

1 Q. Okay.

2 A. And up to this point there has been some
3 limitations on doing any overruns because A&R's pipeline
4 system and storage system are very full because it's this time
5 of the year and because of the fairly mild weather we've had.

6 Q. Right.

7 A. But contractually they do have to take the 900,
8 so we've put that much in. Currently that storage amount has
9 been built up then to 16,057. If we would continue to do
10 that, and we're anticipating continuing to do that up until
11 the 30th of November, based on what's been happening lately,
12 we anticipate having about 22,660, somewhere in that range, in
13 storage December 1st.

14 The usage last year for the month of December
15 for the Gallatin and Hamilton system was 11,800 decatherms,
16 but there is a peak day out there that was in December of
17 2000, which is almost 1,300 decatherms. Standard industry
18 calculation is to take a peak day and multiply by 18 to get to
19 a peak month.

20 And that would indicate a peak month somewhere
21 in the neighborhood of 23,000 -- 2,300 -- I'm sorry, 23,000
22 decatherms, which would -- so that's what leads us to the
23 conclusion that -- prudence would say don't plan on anything
24 after the first of the year because we'll have 22,6 and we'll
25 be needing about 23 if we had a peak month. If we had a month

1 like last year, there may be some left.

2 Q. You're talking about a peak month for December?

3 A. For December.

4 Q. All right.

5 A. That's correct.

6 Q. So after December, does it look pretty much
7 like you're going to be riding the market or --

8 A. No. I --

9 Q. -- do you have other ideas?

10 A. If things went the way I'd like them to go,
11 the -- once there's a significant amount of gas used out of
12 the storage on A&R, I've had contact with the A&R folks -- in
13 fact, I'm now a licensed agent with A&R to be able to put gas
14 under their system. Once they've gotten to get some gas out
15 of storage, they would let do us an overrun purchase and put
16 more gas into storage than the 900 a day. If gas rates are
17 where they are currently, I would anticipate doing that and
18 bringing the storage up to something close to the 55,000
19 maximum storage.

20 Q. Okay.

21 A. We would need to do a calculation to make sure
22 we didn't overrun, because the contract with A&R also requires
23 that the storage be down below 20 percent of capacity by the
24 1st of April. So we'd need to make sure we didn't get too
25 much in. But that would be my intent, would be to pick a day

1 when gas prices are down and try to fill storage. And
2 hopefully that will keep -- that would be preferable than to a
3 situation where we would buy a NYMEX strip for the rest of the
4 year less a discount.

5 Q. The gas prices today are about what,
6 approximately?

7 A. Spot market gas today is running -- I believe
8 we bought today at \$5.35, if I remember right.

9 Q. Okay.

10 A. We have seen it actually below \$5 over the
11 weekend last weekend, but we also -- at the start of last
12 week, it was up around 6 something. So it's pretty volatile.

13 Q. It's been fairly volatile for several months,
14 hasn't it?

15 A. It has. In fact, we -- when we initially
16 filled out -- when I filled out the PGA portion of our
17 application, we were actually looking at a PGA number at that
18 time of about \$8.75, so --

19 Q. Of course, that would -- when we're talking
20 about total rates, what does the PGA have to break for
21 residential customers to get over the 10.65? That's easy
22 math, but I didn't do it.

23 A. That would be 7.65. And if I were to do a PGA
24 today based on the gas that's in storage and the weighted
25 average cost of gas in storage and based on the quotes that

1 we've gotten for NYMEX Futures less a discount -- and that
2 discount's about \$.50 discount for the A&R system -- we'd be
3 looking at a PGA today of about \$7.

4 Q. Okay. Now, if we get into a situation where it
5 starts getting colder than average, what kind of bad case
6 scenarios could we be looking at? And I understand that's not
7 necessarily predictable, but --

8 A. Well, I mean, my best hope would be that the
9 company and the Staff could come to some kind of a negotiated
10 stipulation in plenty of time for me to go out and buy the gas
11 in storage. Or alternatively, if gas prices come up to where
12 that doesn't look like a prudent thing to do, then we would
13 enter into some kind of a strip arrangement -- a NYMEX strip
14 less a discount.

15 Q. Tell me what you mean when you say NYMEX strip
16 arrangement, so it's clear?

17 A. Basically what you do is go to a company like
18 One Oak -- we would actually go to a minimum of three
19 companies -- we actually did that at one point already this
20 year. KTM, Incorporated went -- acting as our agent, went out
21 for some rough quotations for what we anticipated our future
22 gas supplies being. We just matched them up to last year's
23 usage.

24 And the numbers that came back was that we
25 could buy that gas going out into the future out through

1 April -- and selected April because that's the next PGA
2 adjustment period. And that they would sell us gas over that
3 time period for whatever the NYMEX strip was on whatever day
4 we locked in less 50.5 cents.

5 Based on that and the NYMEX Futures, you can
6 calculate what your numbers would be on a day-by-day basis or
7 a month-by-month basis, which is how those contracts are
8 usually done if they're futures like that.

9 Q. Did you get any approximations run if you had
10 to do it for the Gallatin and Hamilton systems?

11 A. The last time I did that was about three or
12 four weeks ago when we were looking at the application
13 initially. And at that time it was 8.75. Today it would be
14 considerably less than that.

15 Q. That was the current gas price, so that was the
16 figure that you got off the average?

17 A. That was the figure that we calculated based on
18 the NYMEX strip and the discount. If we did that today -- in
19 fact, I figured that as part of this -- this PGA rough
20 calculation and --

21 Q. Okay. Good.

22 A. -- we'd be looking at about \$7.46 today.

23 Q. Okay.

24 A. That's including the 96 cents transportation on
25 A&R.

1 Q. It is?

2 A. Yeah. That -- it would actually be about 6.50
3 today and then you've got 96 cents on A&R for a total of 7.46.
4 But the WACOG on the gas that's in storage right now is only
5 about 6.30, so it's going to tend to bring that down somewhat.

6 Q. If you're starting next year and you had the
7 system preparing for the next winter, 2005/2006, how much
8 would you likely be trying to hedge with storage and other
9 mechanisms going into the winter? What's your normal
10 practice?

11 A. Normally -- well, in Colorado we don't have the
12 luxury of the storage situation that you have here.

13 Q. I see.

14 A. There aren't any large storage fields in
15 Colorado except -- well, there's some up in Wyoming, but the
16 costs are considerably higher for storage than they are in
17 Missouri. What we're anticipating and what's actually in my
18 draft PGA filing that I'm working on is that we would take --
19 we would have storage essentially full by the winter PGA
20 filing. And that we would set a PGA rate based on using
21 80 percent of the gas that's in storage at whatever the WACOG
22 was and then filling out the rest of the usage with a NYMEX
23 strip as I described.

24 Q. So basically 100 percent hedged with that
25 mechanism?

1 A. Yes.

2 Q. Okay.

3 A. That's -- in Colorado we do 100 percent hedge.
4 We just have to do it all on the NYMEX strip.

5 Q. I see.

6 CHAIR GAW: I don't know if Commissioner Murray
7 has questions.

8 COMMISSIONER MURRAY: I don't.

9 CHAIR GAW: Let me just double check.

10 I think I'm done. I think that's all I have.
11 Thank you, Judge.

12 JUDGE RUTH: I'll ask the City of Gallatin and
13 City of Hamilton if you have questions for this witness?

14 MR. COWHERD: No questions.

15 JUDGE RUTH: Public Counsel?

16 MR. MICHEEL: Yes. I have a couple questions.

17 BY MR. MICHEEL:

18 Q. Mr. Johnston, could you tell me about your
19 company's experience with converting customers from propane to
20 natural gas and about your company's plans to market natural
21 gas if you are the successful bidder for the properties up for
22 sale?

23 A. Yes. As Mr. Anderson noted earlier, we began
24 operations in '97 with zero customers. We now have
25 approximately 6,500 people contracted for gas. We currently

1 have about 5,200 or 5,300 of those actually on gas. The
2 remaining folks are people that we will be converting between
3 now and probably mid-February of this year as a result of our
4 latest expansion in the state of Colorado.

5 We -- when we go into an area, we go in and we
6 look at the number of homes, we figure out about -- you know,
7 70 percent of those folks about what the income would be off
8 of those at our current rate structure for the areas that are
9 most adjacent to it from the company. And then we sit down
10 and work out, you know, what an income would be and based off
11 that income and our allowed rate of return, we figure out what
12 our maximum capital investment would be.

13 And then if that -- if those numbers all match,
14 indicating that that's a reasonable project to do to maintain
15 a rate of return close to our existing system, we'll go in and
16 we'll market that area. We won't build anything into that
17 area until we reach a number of customers that would pay the
18 interest on a construction loan to build that system.

19 Once we get enough customers committed to
20 taking natural gas to meet that commitment, then we start
21 buying materials and getting ready for construction. Of
22 course, all of that is contingent upon getting the CPCM from
23 the State of Colorado, which normally would have happened, you
24 know, the year previous to that.

25 And so then at that point we'll start

1 marketing. Our experience is that in the last five years,
2 we've not had any areas that we went into that we've not been
3 able to convert 80 percent of the people in the area from
4 propane to natural gas.

5 We also generally get about 25 percent of the
6 people that are all electric to convert. That's actually up
7 from when we first started the company. When we started off,
8 we were at about 70 percent. We've learned some things since
9 then about marketing natural gas.

10 Don't know if we will be able to duplicate that
11 in the state of Missouri. There are different market forces
12 here than there are in Colorado, but as Mr. Anderson pointed
13 out, we have looked at this project as just the existing
14 customers and it does work and does meet our criteria just the
15 way it is.

16 At the same time, the system as-built has
17 mainline in front of approximately 2,100 people. And only
18 about 720 of those are on natural gas. So the -- it would
19 appear that there is considerable room for expansion without
20 putting in any additional mains.

21 MR. MICHEEL: That's all the questions that I
22 have. Well, let me ask one more.

23 BY MR. MICHEEL:

24 Q. If MGU is successful, are you planning on
25 aggressively marketing natural gas in your certificated areas?

1 A. Depends on what you mean by "aggressively
2 marketing". You know, Mr. King pointed out in his testimony
3 that they've done door to door already. We would probably go
4 back and re-do that at some point in the future.

5 At the present time, I think, you know, what
6 we'd like to do is acquire the systems and operate them, you
7 know, for the next six to eight months and just kind of let
8 everybody become aware that there's a new company that's taken
9 over the system and see what happens.

10 We have reason to believe from some things that
11 have happened that there are a number of people who would like
12 to hook up to natural gas. There's also been a capital
13 constraint on the system for the last couple of years that
14 folks who wanted to hook up to gas were not able to because
15 the city didn't want to put any more money in for additional
16 lines and neither did the trustee. So we'll bring some
17 additional capital to the table for running those service
18 lines and getting more people hooked up.

19 MR. MICHEEL: Thank you.

20 JUDGE RUTH: And Staff?

21 MR. FRANSON: No questions, your Honor.

22 JUDGE RUTH: Okay then. Any follow up from
23 MGU, Mr. Cooper?

24 MR. COOPER: No, thank you, your Honor.

25 JUDGE RUTH: Okay. Then, Mr. Johnston, you may

1 step down. Thank you very much.

2 And I'll return to you, Mr. Chairman. Do you
3 have additional questions?

4 CHAIR GAW: Just a few.

5 And I want parties to tell me what questions
6 the Commission needs to answer. And, in particular, if we
7 conclude that we do have jurisdiction over the approval of the
8 transfer, what questions do we need to answer? And if we
9 conclude that we do not, but we're merely looking at whether
10 or not to approve certification and encumbrance issue on the
11 assets, what questions do we need to answer? Whoever wants to
12 go. I wasn't especially trying to go to you, Mr. Cooper,
13 but --

14 MR. COOPER: I'll take a first shot, if that's
15 all right.

16 CHAIR GAW: Feel free. Feel free. Yes, sir.

17 MR. COOPER: In terms of the questions that MGU
18 would like the Commission to answer, I think the easiest place
19 to look would be to the wherefore clause of our initial
20 application in this matter. And I think those items are
21 listed there.

22 In specific answer to your hypothetical, the
23 simplest way to say it I think is that we obviously would like
24 the Commission to grant a certificate of public convenience
25 and necessity. I think that based upon the -- and I need to

1 do some final checks on this, but based upon the section
2 numbers that were provided by the Staff in its pleading today,
3 I think the company and the Staff are probably in agreement on
4 what that area should look like. So that's item No. 1.

5 Item No. 2 is permission to encumber the assets
6 to be acquired and that approval being granted in accordance
7 with 393.190. So that's item No. 2.

8 The hypothetical situation, if the Commission
9 believes that under 393.190 that the sale, transfer,
10 assignment of these assets needs Commission approval, we would
11 like that approval. On the other hand, if the Commission
12 determines that it does not have jurisdiction over the sale,
13 assignment, transfer of those assets, we believe we need a
14 statement to that effect from the Commission, a
15 straightforward statement that the Commission, for whatever
16 reasons, believes it doesn't have jurisdiction and, therefore,
17 does not need to -- does not need to approve the sale,
18 assignment, transfer of those assets.

19 CHAIR GAW: Okay. And I might follow up just
20 briefly on the question. If we determine that we do have
21 jurisdiction for the approval under the Ag Processing case
22 that was over -- what, if anything, do we need to analyze in
23 regard to the acquisition costs in this matter?

24 MR. COOPER: Well, we're in a little different
25 situation here. We're --

1 CHAIR GAW: Well, I know. But I'm asking it
2 for that reason.

3 MR. COOPER: We have no acquisition premium.
4 The purchase price should not be a mystery to anyone, is less
5 than --

6 CHAIR GAW: Less than book. Right?

7 MR. COOPER: Less than book. Less than the
8 original cost net depreciation. So we do not have an
9 acquisition premium. We would have an acquisition discount
10 situation.

11 CHAIR GAW: So what is that issue and how does
12 it develop and when?

13 MR. COOPER: There are many smiles because
14 that's a part of some of the negotiations that have taken
15 place thus far.

16 CHAIR GAW: I assumed that.

17 MR. COOPER: The company has suggested -- well,
18 let's back up.

19 The company did not suggest how to treat that
20 issue one way or the other in its initial application. The
21 Staff in its original recommendation indicated that it
22 believed that rate-base should be set at the purchase price,
23 equal to the purchase price.

24 The company, not surprisingly, took the
25 position that, you know, wait a minute, that's contrary to

1 some things that the Commission has said this year in terms of
2 reliance upon original cost, pointed out a couple of those and
3 indicated at least in its response to Staff that it thinks
4 there's grounds that rate-base should, in fact, equal the
5 original cost and not the purchase price of these assets.
6 Today the Staff in its reply has probably equally said
7 strongly that it really means purchase price. So certainly
8 there's some disagreement there.

9 I probably have to -- you know, that being the
10 case, I'd have to talk to my client about where we come out in
11 the end on that. My personal opinion is that that there's
12 some things in between those two extremes that perhaps are
13 acceptable to us and perhaps would certainly address some of
14 the other parties' concerns, but we have to work through
15 those.

16 CHAIR GAW: I'm not trying to get into your
17 settlement discussions, but I am interested in knowing if this
18 Commission has to make some determination, if we were to
19 assume jurisdiction in regard to how that impacts, if at all,
20 the public interest or not detrimental to the public interest
21 standard on an acquisition or sale of the property. And I
22 don't know that there is an answer that's clear to that, but
23 if you have guidance, I'm looking for it.

24 MR. COOPER: It is a tough question because I'm
25 not always sure that I understand exactly what the court was

1 saying in that Ag Processing case that you refer to. I've
2 read it several times since then --

3 CHAIR GAW: Yes, sir.

4 MR. COOPER: -- and there's a lot in there that
5 can be read several different ways.

6 Certainly we do not have the situation that was
7 present in that transaction, which is a purchase price that
8 exceeded the original cost -- a purchase price that exceeded
9 the original cost and, thus, some sort of need for the
10 Commission to make a determination as to whether utilization
11 or recovery of that acquisition premium was in the public
12 interest or not.

13 CHAIR GAW: Yes, sir.

14 MR. COOPER: Because we have a price that is
15 less than original cost, I certainly would argue that
16 maintaining original cost just doesn't beg that question, I
17 guess, for lack of a better way to put it.

18 CHAIR GAW: And I guess I'll throw this to you
19 as a -- sort of as a question. Isn't the question in this
20 case where the system was built without regulatory oversight
21 one where you, after the fact, have to do some sort of a
22 prudence review to determine what the appropriate costs should
23 have been to build a system for these two cities? And isn't
24 that what you're really talking about when you're looking
25 toward determining what the appropriate amount is to put in

1 rate-base when you get the system into a regulated
2 environment?

3 MR. COOPER: Well, it certainly points out the
4 fact that where -- where the rubber meets the road on this
5 question is a rate case some day. That's really where the
6 rubber meets the road. What is the prudent investment that
7 the company should earn a return on. So again, I think that's
8 where it meets the road.

9 I mean, that doesn't mean, in my mind, that the
10 answer is, well, you should write off all -- everything above
11 the purchase price and only put into rate-base the purchase
12 price. I don't think that any better answers the question
13 that you've posed.

14 CHAIR GAW: And I'm not agreeing or disagreeing
15 with you, but it strikes me that if you make the assumption
16 that the premise for my question is accurate, that there may
17 still be some question that's somewhat along the same vein as
18 what Ag Processing raised about if we have authority over the
19 approval of this transaction, whether or not we should be
20 making some determination in regard to how that impacts
21 rate-base now and not later.

22 And so I guess what I'm somewhat struggling
23 with here is if we assume jurisdiction over the transaction,
24 are we going to have to make some determination along that
25 line? And I think I heard your position that we could wait

1 until the rate case, but I guess I'm suggesting to you that
2 I'm struggling about whether or not that's a black and white
3 answer. And I don't -- I'm not suggesting that I know the
4 answer either, but --

5 MR. COOPER: Well, and the practical side of it
6 is that my client wants to know, needs to know some of those
7 answers to know whether it should invest the dollars that are
8 involved in this transaction. And, again, that's not the
9 legal side of it, but from my client's standpoint, that's a
10 practical side of whether they invest or don't invest.

11 CHAIR GAW: Yes, sir. Okay. I might -- thank
12 you, Mr. Cooper.

13 I might see whether or not the other -- Public
14 Counsel or Staff wants to tackle that set of questions that I
15 had.

16 MR. FRANSON: Well, Mr. Chairman, the Staff
17 certainly has -- and the other parties have laid out the
18 standard for the certificate of convenience and necessity.
19 And obviously if we get past that threshold, then the next
20 question is the transaction.

21 And Staff has actually dealt with the question
22 of Commission jurisdiction in the pleading -- Staff's pleading
23 and Staff's recommendation specifically on the pleading part
24 beginning at page 2 -- I'm sorry, page 3 through 5. And
25 that's based on Section 393.190.2.

1 evidence before this Commission, I would agree at this point.
2 However, there is a specific number, and we cannot mention
3 that number at this point in time, but the proforma financial
4 information is based on that. And the company's asked for
5 something specific. Staff has responded to that.

6 And I would suggest that putting those
7 documents into evidence would give the Commission a starting
8 point. Both the company -- it would give us something. But
9 is there any specific evidence from witnesses at this point in
10 time on that issue? No, sir, there's not.

11 CHAIR GAW: Okay.

12 MR. FRANSON: And that's due to the expedited
13 nature of this entire thing.

14 CHAIR GAW: I understand. I just wanted to
15 clarify.

16 Public Counsel?

17 MR. MICHEEL: As I said before, Commissioner, I
18 think there are three issues that need to be decided, the
19 certificate issue, the encumbrance issue and the sale and
20 assignment of transfer issue, and I think we've kind of hashed
21 through those.

22 With respect to the last issue that you brought
23 up, I think I agree with your proposition of the question,
24 what we have here is a negative acquisition adjustment. And
25 what I think -- my interpretation of the Ag Processing case is

1 saying the Commission has to be aware of -- in that case it
2 was a positive acquisition adjustment; in this case it's a
3 negative acquisition adjustment.

4 But the Commission has to be aware what impact
5 either that positive or negative acquisition adjustment is
6 going to have down the road on setting just and reasonable
7 rates and make at least some basic a priori determination that
8 either we need to say no up front, that acquisition adjustment
9 is too big, or in this case, no, if you have a original cost
10 rate-base, you're not going to be able to charge customers the
11 rates necessary to collect that so you have to take -- so you
12 can make this a going concern.

13 Now, I fully -- you know, we're going to meet
14 with the company and try to work through this issue, but, you
15 know, to the extent that we can't, again, I agree with you --
16 to the extent that we can't come to an agreement on issues and
17 we have outstanding issues where the parties take different
18 views, we're going to need to come back and have a hearing and
19 put on some evidence as to, for example, why, you know, we
20 believe the original cost should be X and why they believe the
21 cost should be Y and do that.

22 It's my hope we don't have to do that, but that
23 would be my belief of what the process would be and that would
24 be my interpretation of what Ag Processing says. Now, I don't
25 think that Ag Processing stands for necessarily the

1 proposition that you have to say in cement that the cost is
2 going to be Y.

3 CHAIR GAW: Mr. Micheel, would you agree with
4 me that Ag Processing would allow this Commission to say in
5 this worst case scenario, the Commission still taking that
6 into account would approve the transaction as not detrimental
7 to the public? And I'm not talking about this case, but in
8 general that that can be a way to address the Ag Processing --

9 MR. MICHEEL: Yes. And I think when you look
10 at the facts of what happened in Ag Processing, essentially
11 what the Commission did was punt. They didn't opine in any
12 way, shape or form. And I think what you're saying is we're
13 going to opine in some way other than we're just sticking our
14 head in the sand and not doing anything. And I think they
15 might feed the bulldog up the street and over in Kansas City.

16 CHAIR GAW: Well, to the extent that you all
17 are able to work through your issues, I think that provides
18 some more certainty in regard to how we might be able to
19 handle it. Without knowing what that would be, I couldn't
20 assess it, but we think that would be helpful.

21 One more question. I didn't clarify this,
22 although I think it's probably crystal clear, Mr. Cowherd.
23 You represent both City of Gallatin and City of Hamilton.
24 Correct?

25 MR. COWHERD: That's correct.

1 CHAIR GAW: And the City of Hamilton and City
2 of Gallatin, two of my very favorite places in Missouri, both
3 of them are here on record telling this Commission that they
4 think that this sale is in the best interest of the city and
5 the residents that are served by -- served by and potentially
6 served by this line?

7 MR. COWHERD: That's correct, your Honor.

8 CHAIR GAW: Okay. That's very important to me
9 to know that. And I think it was -- it's easy to assume that,
10 but I wanted to make sure.

11 MR. COWHERD: Yeah. I think our position would
12 be that, you know, the customer base, the citizens of both
13 respective cities would be best served by the -- in one manner
14 or another, whether you have jurisdiction or don't have
15 jurisdiction, of this sale being permitted to proceed.

16 It will add -- as has been testified to here
17 today, it will add a level of capital that is currently not in
18 the current system. It will allow customers who want natural
19 gas to be served because there will be money to extend lines.
20 It would allow purchasing of gas adequately and in a timely
21 fashion that we're not able to now.

22 And it relieves -- frankly, from the
23 governmental standpoint it relieves a burden that we now have
24 of operating a system which we're really doing for free.
25 We're doing really at -- we receive nothing other than just

1 reimbursement of expenses. So it relieves a governmental
2 burden.

3 So I think from both standpoints it's -- we
4 think it's very important that this go through. I would also
5 note -- and I don't think this history was out there. You
6 know, Gallatin actually turned back their system in January of
7 '04. We have been marketing or attempted to market the
8 system, including the hiring of investment bankers, since
9 early in the spring.

10 And it's been a very, very difficult process to
11 find a company, although we've had a lot of inquiries, who
12 would be interested in taking over this particular system. It
13 has to be a company that wants to go out in the rural area,
14 that's not interested in an urban area or rapidly growing
15 communities. And so it has to be someone that's kind of
16 familiar with that.

17 And we think in this case, based on our
18 conversation -- and Mr. King alluded to that -- that we found
19 a pretty good match for the area. They're used to dealing in
20 rural areas, you know, they're a small enough company that I
21 think the people there are comfortable with them and they've
22 indicated that they're willing to make some capital
23 investments in the system that we think would make it work.
24 So that's the reason we would urge the Commission to take some
25 action as soon as possible. Certainly we would like it before

1 the 30th.

2 CHAIR GAW: And, Mr. Cowherd, I want to say
3 that we scheduled this on-the-record very quickly, and you all
4 know that, to try to address some of the Commissioners'
5 questions. We appreciate the fact that on short notice you
6 are here. And I think it's very helpful.

7 And I know the company brought people in from
8 Colorado. We really didn't expect you to be able to do that,
9 Mr. Cooper, but it was helpful from my standpoint to hear from
10 the individuals that you brought in. Regardless of what we do
11 one way or the other, I just want to express my appreciation
12 for the fact that you all were here for us to have some of
13 those questions answered. We are trying to address this as
14 quickly as we can. We had this delivered to us just on very
15 short notice ourselves.

16 MR. COWHERD: We understand that, Commissioner.
17 And we appreciate, you know, the Commission's efforts and also
18 the Staff's efforts because we understand they've really kind
19 of moved this up the chain to try to get something done, so we
20 appreciate that.

21 CHAIR GAW: And, Commissioner Murray, I'm
22 finished.

23 COMMISSIONER MURRAY: Thank you. I'd just like
24 to ask the city -- and I don't know if you want to put your
25 witness on or, Mr. Cowherd, if you'd like to attempt to try to

1 answer my questions, but the municipality held themselves out
2 as suppliers of gas -- natural gas to the citizens. Right?

3 MR. COWHERD: Right. Operators of the system,
4 that's correct.

5 COMMISSIONER MURRAY: Doesn't the municipality
6 have the ability to subsidize its operations out of its
7 general revenue?

8 MR. COWHERD: Yes. And we have done that.
9 Each of the cities subsidized -- in the case of the City of
10 Hamilton, they spent approximately \$97,000 in subsidies out of
11 the general funds and they've --

12 COMMISSIONER MURRAY: When was that and for
13 what period of time are we --

14 MR. COWHERD: That was from the beginning of
15 their operation. That was from 19-- let's see, 199-- 1998
16 through current.

17 The City of Gallatin has expended approximately
18 \$1.6 million from their revenues.

19 COMMISSIONER MURRAY: Since?

20 MR. COWHERD: Since 1996. The problem,
21 Commissioner, is that the cities are small and they have
22 limited funds and that's a rather substantial -- for these
23 size cities, that's a rather substantial subsidy to -- and
24 they simply ran out of money to continue to do this.

25 COMMISSIONER MURRAY: Has that become an issue,

1 a political issue at all in those cities?

2 MR. COWHERD: Well, I think if you would ask
3 the administrative people that are here, they would say yes,
4 it obviously has become a question because the ability of them
5 to provide other services such as streets, electrical
6 services, in the case of the City of Gallatin, sewer and water
7 are obviously impacted if you're using all your funding to
8 subsidize one department. And so that's a reason they took
9 the decision each of the -- each of the Board of Aldermen took
10 the decision to not appropriate again on the lease.

11 COMMISSIONER MURRAY: Did the city hold any
12 kind of -- either of the cities hold any kind of public
13 hearings to get input from the citizens about these issues?

14 MR. COWHERD: Well, they had -- each of them
15 took action at City Council meetings. Of course, under the
16 Sunshine Law, they're required to give notice of those
17 meetings. I know I received some newspaper clippings of those
18 meetings, so there was quite a bit of publicity over this at
19 the public -- they didn't have a specific public hearing other
20 than the City Council meetings.

21 COMMISSIONER MURRAY: So do you know or do you
22 have any way of knowing how the citizens that would be served
23 by MGU view this transfer or this potential transfer?

24 MR. COWHERD: I would say they're indifferent
25 as to who serves them as long as the gas is provided in a

1 economical and a steady manner so that they're assured that
2 they're going to be served. I don't think they're going to be
3 tremendously upset that they're no longer being served by the
4 city if they know that their gas prices are going to be
5 similar to what they have been and the level of service will
6 be the same or similar.

7 One of the things that we're pleased about is
8 that M-- Missouri Gas Utilities has agreed to hire the
9 existing employees of the system, including Mr. King, as part
10 of the transition. In other words, they would take those
11 people over, they would pay them similar benefits, similar
12 salary and things. So we think it will be a very smooth
13 transition over to the private ownership.

14 COMMISSIONER MURRAY: And if there are service
15 problems today, what recourse do the customers have? Where do
16 they go?

17 MR. COWHERD: Well, as with any municipal power
18 system, the ultimate recourse is to the city -- or Board of
19 Aldermen in this case, City Council. That's the Public
20 Service Commission for a public utility is the elected
21 officials.

22 COMMISSIONER MURRAY: And if they have billing
23 problems, where do they go?

24 MR. COWHERD: Same place. They go to the City
25 Hall, of course, first and deal with the people that have been

1 assigned, but ultimately their recourse is to the City
2 Council.

3 COMMISSIONER MURRAY: And it's your desire that
4 those customers no longer be able to come to the city, but
5 that they have to come to the Public Service Commission; is
6 that correct?

7 MR. COWHERD: I don't know that it's our
8 desire, but I think it's a -- just a function of being very
9 practical. We can no longer -- we reached the decision we can
10 no longer afford to subsidize the system.

11 In fact, we had -- we were required -- actually
12 Hamilton was required to do -- have a study done in 2002 in
13 which, you know, the problem was obviously they weren't making
14 money, they were losing money, they were having to subsidize
15 the system. The trustee required a study be made. The
16 trustee's options were sell the system, shut the system down,
17 continue to subsidize it. That was the three options given to
18 them.

19 The -- shutting the system down and abandoning
20 it really seemed a little harsh and we wanted to avoid. We
21 were -- no longer had the ability to subsidize it because we'd
22 used up most of the available reserves and that was impacting
23 other operations of the city. Selling it was -- was feasible,
24 but we didn't -- you know, although we attempted several
25 different things, including refinancing, trying to stretch the

1 terms, you know, we simply weren't able to do it because you
2 had a system that was not a profitable system. Like selling
3 any business, it's hard to sell a business that doesn't make
4 money. It's very hard.

5 So are we glad that they can't come to the City
6 Hall and raise their complaints? No. That they would have to
7 come down here? No. But I think in this case it's a
8 practical solution and probably the only solution is to bring
9 them in.

10 We are glad that they would be able to -- when
11 they call up, we can -- they can call up MGU, they -- and they
12 say they want to be extended, they can say, We can do it,
13 rather than saying, Sorry, we don't have any money right now
14 to extend the lines to your house. So, yeah, we think
15 that's -- I think that's a good thing. And I think overall,
16 you know, the fact that MGU will be much better capitalized
17 and are willing to raise -- have the ability to raise some
18 money is probably a good thing in the long run. So like
19 everything else, there's tradeoffs.

20 COMMISSIONER MURRAY: Okay. I'm never real
21 pleased when I see what appears to be a problem being passed
22 to another -- passed on to another jurisdiction without every
23 effort made to solve that problem. And I don't know -- I
24 can't tell from what we've heard here whether the city's
25 really made every effort to solve the problem. But that's

1 just an aside and it's not going to have a bearing on what
2 happens here, but that's just something --

3 MR. COWHERD: Commissioner, I certainly could
4 have brought -- and again, very short notice and not clear
5 exactly about what our purpose was in coming down here. I
6 certainly could have brought evidence that the city -- I mean,
7 we have basically been operating the system since 1996 in
8 Gallatin's case and subsidizing it, that we have made numerous
9 efforts to try to, quote, solve our own problem.

10 And sometimes you just reach a solution that,
11 you know, you don't necessarily like it, but sometimes walking
12 away from a deal is the answer to the solution. And we're not
13 trying to dump anything in your lap. That's only occurring
14 because of the fact that they're a regulated utility and they
15 need to be down here.

16 But, you know, as far as our system, you know,
17 we've attempted to refinance, we've attempted to do all those
18 things. Honestly, the city has consulted with numerous
19 advisors and simply run into a dead end. In fact, the
20 trustees -- and I'm sorry they're not here today -- but the
21 trustees themselves have brought in advisors. Once we
22 non-appropriated, they brought in advisors and looked at the
23 system.

24 And very experienced ones -- one of them had
25 had a lot of experience with El Paso Gas, was an executive

1 with them for a number of years. His conclusion was, at least
2 in Hamilton's case, there's no hope, it won't work. So, you
3 know, again, we're delighted we found a buyer.

4 COMMISSIONER MURRAY: Okay. Well, there was
5 language somewhere in the -- I don't have it in front of me,
6 that the city chose not to continue its payments.

7 MR. COWHERD: That's -- I mean, it's
8 voluntarily. It was a vote. They vote to approve the budget,
9 they don't vote to approve the budget. It's voluntarily but
10 it's no different then if you have a house payment and have no
11 money in your pocket, I guess you voluntarily elect not to
12 make it but you couldn't make it if you wanted to. So it was
13 simply business. Simply a business decision at that point.

14 COMMISSIONER MURRAY: Okay. Thank you.

15 That's all I have, Judge.

16 CHAIR GAW: I do have a couple of follow ups
17 and then I think I'm completely done. First of all, Public
18 Counsel, have you all had input from -- I realize time has
19 been short. Have you had input from the public in Hamilton or
20 Gallatin in regard to whether or not this is something that
21 the public would view positively to follow up on Commissioner
22 Murray's question?

23 MR. MICHEEL: I have received one call from a
24 customer. And it was a question about the franchise agreement
25 with respect to the city. And I indicated to them that that

1 was not something that was within our purview here. And I
2 passed that customer's concern on to Mr. Cooper and I'm
3 assuming he passed that concern on to the folks at MGU. And
4 that was -- that's the only customer contact that the Office
5 of Public Counsel has had.

6 CHAIR GAW: Public Counsel is not asking for
7 any kind of a public hearing in Gallatin or Hamilton in regard
8 to this transaction?

9 MR. MICHEEL: We have not at this point,
10 Commissioner, no.

11 CHAIR GAW: Do you intend to?

12 MR. MICHEEL: I don't think we intend to given
13 the time frames.

14 CHAIR GAW: All right.

15 MR. MICHEEL: And given the fact that the city
16 was here today and has said their peace and indicated on the
17 record today that this is what the city wants to do.

18 CHAIR GAW: I guess I'm looking for -- I mean,
19 I recognize the city has elected officials to represent the
20 public and --

21 MR. MICHEEL: I believe in representative
22 government.

23 CHAIR GAW: -- and the transfer -- you're also
24 there to represent the public. Sometimes the interest of --
25 sometimes those interests are the same, sometimes they're not

1 necessarily.

2 MR. MICHEEL: I have not heard enough from the
3 folks and I have not contemplated asking for local public
4 hearings.

5 CHAIR GAW: All right. And, Mr. Cowherd, if
6 you don't want to name names, fine, but how did the City of
7 Hamilton and City of Gallatin get into this deal to begin
8 with?

9 MR. COWHERD: Like all public projects or a lot
10 of them, Judge, I think they start with a feasibility study
11 that, unfortunately, turned out to be inaccurate.

12 CHAIR GAW: Is that something that's still
13 doing business in --

14 MR. COWHERD: Yeah. We think they are.

15 CHAIR GAW: They are?

16 MR. COWHERD: Yeah.

17 CHAIR GAW: And has any action been taken in
18 regard to that entity?

19 MR. COWHERD: No.

20 CHAIR GAW: Okay.

21 MR. COWHERD: Unfortunately, litigation costs
22 money too, so -- we have problems.

23 CHAIR GAW: That is true. It does cost money.

24 MR. COWHERD: It's not free.

25 CHAIR GAW: Is there any repercussion

1 financially for Hamilton or Gallatin after this sale, whatever
2 it is, takes place under the Article 9 provision that you
3 referred to for any deficiency?

4 MR. COWHERD: There's no deficiency, Judge --
5 or Commissioner. There's -- because of the fact it was a
6 termination of a lease and, therefore, there's not a
7 deficiency, can't be a debt under constitutional laws so,
8 therefore, there would be no possibility of deficiency.

9 I don't want to say there's no financial
10 repercussions though. That would probably be a misstatement
11 because if the cities in the future -- and I discussed this
12 with both of them before they took the action. In the future
13 if they apply for bonds or anything else, they'll have to
14 disclose the fact that they non-appropriated. That could have
15 an impact on interest costs that they pay in the future on --
16 in future issues.

17 It may not. Depends on the market at that time
18 depends upon competition for their -- who's wanting to loan
19 them money. But, you I, know think they have to know there is
20 some possibility and I think they do know that, because I
21 discussed that issue with both groups of the city.

22 CHAIR GAW: Do you know whether or not those
23 cities had a rating for purposes of issuance of debt?

24 MR. COWHERD: I would guess they're unrated. I
25 believe they're unrated, Judge.

1 CHAIR GAW: Okay. So we don't know what the
2 consequence of this might be then?

3 MR. COWHERD: No.

4 CHAIR GAW: Refresh my memory. Population --
5 Hamilton population and Gallatin?

6 MR. COWHERD: About 1,800 each.

7 CHAIR GAW: About 1,800 each. And are there
8 any lines outside of the city limits on either one of these
9 systems?

10 MR. COWHERD: Well, there certainly is on
11 Gallatin. The line comes down from Harrison County and
12 there's some branches off of it. Premium Standard Farms is a
13 very, very large user of the system and that's outside the
14 city limits obviously.

15 CHAIR GAW: What part of PSF is served by this
16 line?

17 MR. COWHERD: Nursery, I believe. Feed mill,
18 nurseries and some hog facilities, hog confinement facilities.

19 CHAIR GAW: Okay. Thank you.

20 Thank you, Judge.

21 JUDGE RUTH: Any additional questions from the
22 Bench?

23 Okay. I have a few things that I need to
24 clean-up or clarify. After I do that, I'll give the parties
25 an opportunity to follow up on any question where they feel

1 they weren't asked to answer and someone else got an
2 opportunity. There may not be any of those. And you'll have
3 the opportunity for a closing statement if you wish.

4 But I wanted to clarify. One of the pleadings
5 indicated that the company has not yet received a final
6 franchise agreement from Coffey. Has that been taken care of
7 or is it on schedule?

8 MR. COWHERD: I'm not meaning to sound like I
9 represent everybody up there, but I represent the City of
10 Coffey, however, which is not too much to put on your resume
11 probably. But they have not met yet. The City Council has
12 not met on that.

13 They've asked me to come up and talk to them.
14 I decided that since the City of Coffey is only a few hundred
15 people, maybe I'll wait to see what you all are going to do
16 before I spent their time and their money to go up there and
17 talk to them and explain that to them. So the answer is no,
18 that's not been obtained. I don't think it will be a problem.
19 I'm not sure why it would be, but it has not been obtained.

20 JUDGE RUTH: Does anyone else feel the need to
21 comment on that? It answers my question, but if you want to
22 comment, you may.

23 Mr. Cooper -- I have a question for Staff. I
24 just want to clarify. In your recommendation, the list of
25 conditions --

1 MR. FRANSON: Yes, ma'am.

2 JUDGE RUTH: -- do all of those conditions
3 pertain only to the certificate of convenience and necessity
4 or are some of them -- in other words, one of Commissioner
5 Gaw's questions was earlier what do we need to do if we decide
6 we don't have jurisdiction over the transfer? I wanted to
7 make sure I understood if any of those conditions apply to the
8 transfer as opposed to the certificate of convenience and
9 necessity. And if you don't know, you can file something to
10 follow up, but I do need to know that at some point.

11 MR. FRANSON: I believe that the certificate of
12 convenience and necessity and the standards that go with it,
13 those conditions are contemplated as a condition of all of it.
14 But certainly as a condition on the certificate of convenience
15 and necessity.

16 And I guess Staff is looking at it as overall
17 for this thing to be approved, you would have the certificate,
18 the transaction and the encumbrance. But when it's all said
19 and done, those conditions need to be there and Staff would
20 attach those to their certificate of convenience and
21 necessity.

22 JUDGE RUTH: Okay. I'm not sure I'm getting my
23 question answered. If the Commission -- following Chair Gaw's
24 hypothetical, if the Commission decides it does not have
25 jurisdiction over the transfer, are there any of those

1 conditions then which the Commission would not need to impose?
2 Does that make sense? And you don't have to answer this now
3 if you need to review it, but I'll need to know that.

4 MR. FRANSON: I'll probably need to review it,
5 because what's coming to mind is the original cost issue. If
6 the -- if the Commission said we approve the certificate, but
7 we don't have jurisdiction over the transfer but we improve
8 the encumbrance, then the original cost I believe in that
9 analysis may go away. However, that is something that we need
10 to consider, but --

11 JUDGE RUTH: Let me just ask then that you
12 consider the question. I'm not going to impose a deadline,
13 but at some point in the near future would you follow up with
14 a pleading, either you or MGU. I don't care. Somebody.

15 MR. FRANSON: Before we do that, can we -- is
16 the question what conditions go away if the Commission says we
17 do not have jurisdiction over the transfer but was considering
18 approving the certificate and the encumbrance?

19 JUDGE RUTH: Yes.

20 MR. FRANSON: Thank you.

21 JUDGE RUTH: That's it absolutely.

22 MR. COOPER: Your Honor, I think that is --
23 they're Staff's conditions. I think Staff's going to have to
24 answer that question. I don't think --

25 MR. FRANSON: We will answer that as soon as we

1 can, but I may say it may be Monday before we can do that.

2 JUDGE RUTH: That's fine.

3 MR. FRANSON: Okay.

4 JUDGE RUTH: Okay. That brings me to the next
5 question, the timetable expectations. Staff, you started out
6 in your opening statement and I believe MGU also made a
7 comment that there's a little bit of leeway that you -- the
8 parties plan on negotiating further, the Commission may not
9 have to issue a decision before November 30th, the date of the
10 sale.

11 And I would like some further guidance on that.
12 What happens if the Commission issues no order before the date
13 of the sale? Because if the parties are continuing and you
14 can't do anything before Monday, the Commission can't do
15 anything before the sale. Did you follow that?

16 MR. COOPER: Not all of it, but this is
17 something I think I wanted to close with anyway, which is from
18 MGU's perspective -- and obviously the Commission sets its own
19 agenda and I have absolutely nothing to do with that. But the
20 way this matter had been working, it appeared that the
21 Commission was willing and there was the potential that the
22 Commission might have this matter on its agenda as soon as
23 next Tuesday, November 30th. I believe --

24 JUDGE RUTH: Or Monday.

25 MR. COOPER: Or Monday, whenever it might be.

1 It's MGU's belief that because of the gas storage situation
2 that was described by Mr. Johnston, that there is -- there's a
3 little more breathing room than there was initially when the
4 application was filed.

5 And because of the situation that the parties
6 have now been able to at least stake out their positions,
7 clarify what the final issues are and would like -- I think
8 all the parties are at least willing and would like to have
9 some discussions around those issues that remain differences
10 between the parties, my client would ask the Commission that
11 it -- and I don't remember whether you meet on the 2nd of
12 December or not, but if you do, that the Commission put this
13 matter back until the 2nd of December to give us the little
14 bit of breathing room that would allow us to have some more
15 discussions and see where that leads us by December 2nd.

16 JUDGE RUTH: Okay. I just --

17 CHAIR GAW: May I follow that real quick,
18 Judge?

19 JUDGE RUTH: Yes.

20 CHAIR GAW: There's a piece that you all may
21 have stated earlier that I just need to see if this is the
22 case. The sale is scheduled for Tuesday?

23 MR. COWHERD: Tuesday.

24 CHAIR GAW: If we wait until Thursday, then I
25 would have to assume that you all can put a condition in the

1 bid on Tuesday that would be -- would say it's subject to
2 Commission approval or that it is -- that you get your
3 certificate or whatever is necessary in order to complete the
4 transaction. Is that a good assumption or --

5 MR. COOPER: Well, Mr. Cowherd may have another
6 answer in addition to mine, but you have to keep in mind that
7 there are signed agreements already between MGU and the
8 trustees as to both the Gallatin system and the Hamilton
9 system, two separate agreements that have been executed
10 amongst the parties that do contain regulatory type provisions
11 such as you're describing.

12 CHAIR GAW: I would think that anyone else who
13 might come in -- most everyone else that might come in would
14 have a similar issue if they wanted to place a bid in excess
15 of what has already been placed. So I would think that would
16 not be a problem to the trustees --

17 MR. COWHERD: It would be on the same terms and
18 conditions, different price.

19 CHAIR GAW: Bottom line is it shouldn't be a
20 problem?

21 MR. COWHERD: Shouldn't be a problem.

22 CHAIR GAW: I'm sorry to interrupt.

23 JUDGE RUTH: If the Commission puts off making
24 a decision or issuing an order until December 2nd, when would
25 the parties propose to have something in writing to me so that

1 I can start drafting that order?

2 MR. FRANSON: As soon as reasonably practical.

3 JUDGE RUTH: I'll tell you that getting it to
4 me Wednesday doesn't make it reasonably practical for me to
5 have it done when the Commissioners have to have it read for
6 Thursday.

7 MR. COOPER: But I would suggest that it would
8 give you an indication as to the level of urgency and what
9 might be left in this proceeding by Thursday, December 2nd. I
10 realize that you might not be able to turn around and -- and I
11 have no idea to your first question, when we might be able to
12 provide you a stipulation, if we can provide you with a
13 stipulation.

14 But it would seem to me that if the parties
15 provide you with a stipulation on Wednesday, even if the
16 Commission is not familiar enough with that stipulation to
17 vote out an order on Thursday, it's certainly -- depending on
18 the conditions -- gives you an indication that either you're
19 closer or farther away from a decision than you thought. And
20 hopefully that would allow us -- the Commission to then give
21 itself sufficient time to be familiar with and comfortable
22 with whatever stipulation might be filed and voted out and an
23 order if not December 2nd some time not too far in the distant
24 future.

25 MR. FRANSON: Your Honor, an alternative may be

1 that perhaps at some point late Tuesday or even early
2 Wednesday morning if nothing has been filed, perhaps the
3 parties need to have some kind of contact with you via phone
4 conference of where we stand. That may give you some
5 indication. If that -- that would be a possible alternative
6 at least to give you some sense of where the parties are on
7 reaching an overall agreement.

8 JUDGE RUTH: Well, I'm not sure I understand.
9 Are you proposing that nothing be filed until December 2nd or
10 that the Commission not discuss any -- or make a decision
11 until December 2nd; therefore, you'd file something by
12 December 1st?

13 MR. COOPER: The latter, your Honor.

14 JUDGE RUTH: Okay. I don't make that decision,
15 but I would imagine that the Commissioners would consider that
16 suggestion.

17 MR. COOPER: As I said, that's merely a request
18 from my client. And obviously the Commission will have to do
19 with it what it sees fit.

20 CHAIR GAW: Judge, just to partially respond
21 that, I mean, the Commission is willing to work with the
22 parties on this. And we need all the information that's
23 necessary to make this decision.

24 I will -- I will also recall the markets have
25 been very volatile. And I don't -- I don't want to see us

1 moving when -- when tomorrow it's snowing and if it's snowing
2 in other places around, I don't want to see us start seeing
3 those prices bounce back up and then be in a position where
4 everyone's telling me the prices are going up a buck or two
5 and -- and all of these things that we were discussing today
6 are really no longer reality.

7 So, I mean, we're all having to deal with a
8 balancing act here, but please bear that in mind as you're
9 talking to one another and how that could impact the consumers
10 down the road.

11 MR. COOPER: Yeah. And certainly that impacts,
12 Commissioner, my client as well. I mean, they have no
13 interest in finding themselves in a situation where higher price
14 gas is all they can obtain. It doesn't further their interest
15 in the long run to get into that position, so --

16 JUDGE RUTH: Then I will leave it with I will
17 hear something from the parties, preferably in writing but if
18 not in writing, then a joint telephone conference by
19 December 1st. Is that your understanding? I mean, unless --

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

21 JUDGE RUTH: -- the Commission orders
22 otherwise, I can tell them we'll hear something by
23 December 1st unless the Commission orders otherwise.

24 Okay. Did anyone else have a comment?

25 I have discussed this with one of the

1 Commissioners and we realize that this question might be
2 jumping ahead a little bit, but I'll ask. Can you tell me if
3 and when it comes time for a rate case, what procedure would
4 be used? Would this company be eligible for a small company
5 rate case? Staff?

6 MR. FRANSON: I don't think we've contemplated
7 that. Mr. Oligschlaeger?

8 I don't know if there is a small rate --

9 JUDGE RUTH: There is.

10 MR. FRANSON: There is. Okay. For gas?

11 JUDGE RUTH: There is. It's 4 CSR 240-3.240.

12 And, like I said, there's been a discussion between myself and
13 at least one other Commissioner and I wanted to know if you
14 all had thought about this.

15 MR. COOPER: I have not worked through that,
16 your Honor.

17 JUDGE RUTH: Okay. That may be something you
18 wish to address. I realize time is a constraint, but it has
19 been discussed.

20 MR. COOPER: And, of course, even if it's
21 available, there are tradeoffs to be made and the company
22 wouldn't necessarily make use of that small company case
23 procedure even if it could, so --

24 JUDGE RUTH: But at this time you're not saying
25 whether or not the company could, in your opinion?

1 MR. COOPER: I'm not, no.

2 JUDGE RUTH: That's fair.

3 Staff, you had mentioned a couple of documents
4 that perhaps could be admitted into the record.

5 MR. FRANSON: Well, given the way this has
6 evolved, we -- I was initially thinking that some of Staff's
7 pleadings could be offered into evidence. However, I'm not
8 sure that that would be of any particular value unless we had
9 a lot of witnesses here to articulate that. So at this
10 point -- now, unless some other party starts offering
11 pleadings, I don't plan to do that at this point.

12 JUDGE RUTH: That's fine. I just wanted to
13 follow up on that. I made a note of it.

14 Okay. I wanted to offer the parties an
15 opportunity to follow up on any question that they feel they
16 were not given a chance to respond to. And I thought perhaps
17 you could tie that in with closing statements.

18 And that's what we'll move to now. I propose
19 to do it in the order of Public Counsel, Staff, the cities and
20 MGU unless somebody strongly objects to my suggestion.

21 Seeing no objection, we'll start with Public
22 Counsel.

23 MR. MICHEEL: I've had my say, your Honor.

24 JUDGE RUTH: Thank you.

25 Staff?

1 MR. FRANSON: I think the materials have been
2 pretty well summed up, the issues. And Staff will file as
3 quickly as it can the one question that's been asked about if
4 any conditions go away if the CCN was approved, but no
5 jurisdiction over the transfer and the encumbrance.

6 And that is really the only thing that Staff
7 could address at this point. And we'll be doing that in
8 writing as quickly as possible. We will also be working with
9 MGU to try and negotiate this and we'll certainly keep you
10 advised as quickly as we can. Other than that, I don't
11 believe I have anything to add. Thank you, your Honor.

12 JUDGE RUTH: Thank you.

13 And City of Hamilton and City of Gallatin?

14 MR. COWHERD: Nothing further, Judge.

15 JUDGE RUTH: MGU?

16 MR. COOPER: Very briefly. MGU realizes that
17 it has brought to you a difficult situation on a very fast
18 timeline. The cooperation that's been provided by the Staff
19 has been extraordinary, the cooperation that Mr. Micheel and
20 his folks have provided have been extraordinary and we also
21 would like -- we'd like to thank both those parties as well as
22 the Cities of Gallatin and Hamilton, who I believe really have
23 gone kind of -- to a certain extent, above and beyond to get
24 themselves here today on very short order and to provide, I
25 think, information that was helpful to the overall process.

1 So I want to thank all those parties.

2 The Commission as well. We realize that this
3 timeline is out of the ordinary. I think there are very real
4 situations that drive that and we would merely ask for your
5 continued attention as we try to work through the remaining
6 issues in these matters.

7 JUDGE RUTH: Thank you.

8 Then I will mention that I told you before the
9 hearing started that I did not think briefs were necessary. I
10 still don't think briefs are appropriate at this time based on
11 what we've heard. If anyone disagrees with me, this is your
12 chance to tell me that briefs are necessary. Do I see any
13 disagreement or objection?

14 No. Then we will adjourn the hearing. Thank
15 you very much.

16 WHEREUPON, the hearing was adjourned.

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