

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Evidentiary Hearing

October 26, 2009
Jefferson City, Missouri
Volume 8

In the Matter of Missouri Gas)
Energy and its Tariff Filing to)
Implement a General Rate Increase) File No. GR-2009-0355
For Natural Gas Service)

RONALD D. PRIDGIN, Presiding,
SENIOR REGULATORY LAW JUDGE.

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

REPORTED BY:

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1 P R O C E E D I N G S

2 (EXHIBIT NOS. 1 THROUGH 43 AND 45 THROUGH
3 68 WERE MARKED FOR IDENTIFICATION BY THE REPORTER.)

4 JUDGE PRIDGIN: Good morning. We're on the
5 record. This is the first day in hearing for Case No.
6 GR-2009-0355, the Missouri Gas Energy rate case.

7 Let me be sure that I'm on the same page
8 with counsel. What I intend to do is allow counsel to
9 have opening statements, and I understand some counsel
10 have reserved the rights to have mini opening statements,
11 if you will, or many mini opening statements, if you will,
12 for each issue, but what we're interested in is any
13 overall opening statement you may have.

14 When we're done with that, we will go back
15 off the record and continue marking exhibits. We've
16 marked the exhibits for the company and for Staff, and
17 then want to give counsel a chance to mark exhibits before
18 we begin cross-examination.

19 And I would like to get entries of
20 appearance from counsel and then see if there's anything
21 else before we continue. I'm sorry. Mr. Cooper, did you
22 have something?

23 Okay. Let me get entries of appearance
24 from counsel, beginning with MGE, please.

25 MR. COOPER: Thank you, your Honor.

1 Dean L. Cooper, James C. Swearengen and Paul A. Boudreau
2 from the law firm of Brydon, Swearengen & England, P.C.,
3 along with Mr. Todd Jacobs, Senior Attorney for MGE,
4 appearing on behalf of Missouri Gas Energy, a Division of
5 Southern Union Company.

6 JUDGE PRIDGIN: Mr. Cooper, thank you. On
7 behalf of the Staff of the Commission, please.

8 MS. SHEMWELL: Good morning, and thank you,
9 Judge. Lera Shemwell, Kevin Thompson, Robert Berlin, Eric
10 Dearmont, Jamie Ott, and Samuel Ritchie, representing the
11 Staff of the Commission. Thank you, Judge.

12 JUDGE PRIDGIN: Ms. Shemwell, thank you.
13 On behalf of the Office of the Public Counsel, please.

14 MR. POSTON: Thank you. Marc Poston
15 appearing on behalf of Office of the Public Counsel and
16 the public.

17 JUDGE PRIDGIN: Mr. Poston, thank you. On
18 behalf of Constellation, please.

19 MR. STEINMEIER: Thank your, your Honor.
20 Please let the record reflect the appearance of William D.
21 Steinmeier and Mary Ann Garr Young, William Steinmeier, PC
22 of Jefferson City, appearing on behalf of Constellation
23 New Energy - Gas division, LLC.

24 JUDGE PRIDGIN: Mr. Steinmeier, thank you.
25 On behalf of Missouri Department of Natural Resources,

1 please.

2 MS. WOODS: Good morning, your Honor.
3 Shelley Ann Woods and Sarah Mangelsdorf, Assistant
4 Attorneys General, Post Office Box 899, Jefferson City,
5 Missouri 65102, appearing on behalf of the Missouri
6 Department of Natural Resources.

7 JUDGE PRIDGIN: Ms. Woods, thank you. On
8 behalf of UMKC, UCM and Superior Bowen Asphalt, please.

9 MR. FINNEGAN: On behalf of the University
10 of Missouri - Kansas City, University of Central Missouri
11 and Superior Bowen Asphalt Company, Jeremiah Finnegan,
12 Finnegan, Conrad & Peterson, LC, 3100 Broadway, Suite
13 1209, Kansas City, Missouri 64111.

14 JUDGE PRIDGIN: Mr. Finnegan, thank you.
15 On behalf of MGUA, please.

16 MR. CONRAD: Thank you, Judge. On behalf
17 of Missouri Gas -- I'm sorry, Midwest Energy -- I can't
18 even say it -- Midwest Gas Users Association -- too many
19 things happening this morning, I guess -- Stu Conrad, law
20 firm of Finnegan, Conrad & Peterson, same address as
21 Mr. Finnegan previously gave, and I'll try to do it right
22 this time, Midwest Gas Users Association.

23 JUDGE PRIDGIN: Mr. Conrad, thank you. On
24 behalf of ONEOK Marketing, please.

25 MS. HEISINGER: Charles W. Hatfield and

1 Khristine A. Heisinger, Stinson, Morrison & Hecker, on
2 behalf of ONEOK Energy Marketing Company.

3 JUDGE PRIDGIN: Thank you. And on behalf
4 of the City of Kansas City, Missouri, please.

5 MR. COMLEY: For the City of Kansas City,
6 let the record reflect the entry of appearance of Mark W.
7 Comley, Newman, Comley & Ruth, 601 Monroe, Suite 301,
8 Jefferson City, Missouri.

9 JUDGE PRIDGIN: Mr. Comley, thank you.
10 Have I missed anyone?

11 All right. I don't recall anything in the
12 list of issues that stated a specific order for opening
13 statements. I would certainly assume that MGE would go
14 first. Do the parties have any kind of agreement or any
15 kind of preference as to order of opening statements after
16 that?

17 (No response.)

18 JUDGE PRIDGIN: Okay. I'll probably then
19 just simply go in the same order I've asked for entries of
20 appearance and begin -- if there's nothing else from
21 counsel, begin with opening from MGE. All right.
22 Mr. Cooper, thank you.

23 MR. COOPER: Good morning. As was stated
24 earlier, the parties are going to have the opportunity to
25 provide issue by issue openings as this case moves

1 forward. MGE also last Thursday provided a fairly
2 detailed position statement on the various issues that
3 remain in this case. Accordingly, what I'd like to do
4 this morning is to provide to you some background about
5 both MGE and Southern Union Company, as well as sort of a
6 high level review of the issues that are scheduled to be
7 tried this week.

8 An assortment of additional issues are
9 going to be -- are scheduled to be tried next week. Some
10 of those will be familiar to the Commission. Some will be
11 not. The parties, though, continue to discuss those
12 issues, and MGE is going to reserve its opening statements
13 on those second week issues until it becomes necessary for
14 them to be tried.

15 Again, I'd like to start by providing
16 background concerning Southern Union and Missouri Gas
17 Energy. Southern Union is a corporation, the shares of
18 which are publicly traded on the New York Stock Exchange.
19 MGE is merely an operating division of Southern Union.

20 Southern Union is engaged in the
21 transportation, storage, gathering, processing and
22 distribution of natural gas. Southern Union owns and
23 operates one of the nation's largest natural gas pipeline
24 systems with more than 20,000 miles of gathering and
25 transportation pipelines and North America's largest

1 liquefied natural gas import terminal.

2 Through Panhandle Eastern, Southern Union's
3 interstate pipeline interests operate more than 15,000
4 miles of pipeline that transport natural gas from the
5 Anadarko and San Juan Basins, Rocky Mountains, Gulf of
6 Mexico, south Texas and Mobile Bay to major markets in the
7 southeast, midwest and lake regions. Southern Union's
8 natural gas transmission units include Panhandle Eastern
9 Pipeline Company, Trunkline Gas Company, Sea Robin
10 Pipeline Company, Trunkline L&G Company, Southwest Gas
11 Storage, and through a subsidiary Southern Union also owns
12 an interest in and operates Florida Gas Transmission.

13 Another subsidiary, Southern Union Gas
14 Services, with approximately 4,800 miles of pipeline, is
15 engaged in the gathering, transmission, treating,
16 processing and redelivery of natural gas and natural gas
17 liquids in Texas and New Mexico.

18 MGE on the other hand currently provides
19 natural gas distribution service to approximately 500,000
20 customers in parts of 29 Missouri counties, all subject to
21 the jurisdiction of this Commission.

22 MGE witness Frank Hanley will testify that
23 Southern Union derived only 13.39 percent of its operating
24 income from all of its gas distribution operations, and
25 that just over 14 percent of its assets were devoted to

1 its gas distribution operation.

2 MGE's last rate case was filed with the
3 Commission in May of 2006, and was decided by a Report and
4 Order by the Commission on March 22nd of 2007. The rates
5 authorized by that decision were effective as of April 3rd
6 of 2007. Both MGE and Public Counsel sought review of the
7 Commission's decision in the circuit courts. Both the
8 Greene County Circuit Court and the Southern District
9 Court of Appeals have since issued decisions affirming the
10 Commission.

11 I believe an application to the Missouri
12 Supreme Court for transfer of that case was filed by the
13 OPC on October 5th of this year and is still pending.

14 This current case was initiated by the
15 filing of tariff sheets on April 2nd of this year. Tariff
16 sheets were designed to implement an increase in the
17 amount of approximately \$32.4 million or approximately
18 4.7 percent based on MGE's total test year adjusted
19 revenue, excluding gross receipts and sales taxes.

20 The Commission has suspended the tariffs
21 for the maximum period allowed by statute, making the
22 operation of law date February 28th of 2010.

23 MGE believes that the rates in this case
24 should be set so as to provide the utility with a
25 reasonable opportunity to achieve its authorized return.

1 The authorized return itself must be sufficient to
2 compensate shareholders for the risk they bear while
3 enabling the attraction of capital on reasonable terms in
4 a competitive marketplace.

5 The Commission's responsibility is to
6 balance the multitude of sometimes conflicting interests
7 that arise through this process and set rates that are
8 just and reasonable.

9 MGE's focus is to be a low cost local
10 distributor of natural gas with quality customer service.
11 MGE aims to do so while trying to appropriately balance
12 the interests of its primary stakeholder groups, those
13 being customers, employees and shareholders.

14 The record in this case will show that
15 while MGE provides the most cost effective service of any
16 Missouri local distribution company, it has historically
17 not been able to achieve its Commission authorized rate of
18 return. MGE has made the necessary decision to file a
19 rate case principally due to this inability to achieve its
20 Commission authorized rate of return, its need to obtain a
21 sufficient authorized rate of return and the need for a
22 ratemaking solution concerning former manufactured gas
23 plant costs.

24 The first issue to be tried this week will
25 be the cost -- really kind of a package of issues, the

1 cost of capital issues, sort of the traditional part of
2 just about any rate case that's going to come before you.

3 As I described previously, Missouri Gas
4 Energy is an operating division of Southern Union.
5 Consequently, it has no independent capital structure. It
6 does not issue its own debt or equity. So the first
7 question is, what capital structure should be used?
8 Missouri Gas Energy along with the Commission Staff both
9 agree that a hypothetical capital structure should be used
10 in this proceeding for the purpose of determining a fair
11 rate of return for Missouri Gas Energy.

12 While the company and the Staff differ
13 somewhat as to the ratios of the various components of the
14 hypothetical capital structure and their costs, both
15 parties recognize that Missouri Gas Energy as an operating
16 division of Southern Union Company for ratemaking purposes
17 should have a capital structure based on the capital
18 structures of comparable companies and not based on
19 Southern Union's capital structure.

20 Missouri Gas Energy says the structure
21 should be based on 52 percent total debt and 48 percent
22 common equity. The Staff says 49 percent debt and 51
23 percent common equity.

24 The Public Counsel is an outlier on this
25 issue and urges the use of Southern Union Company's

1 capital structure for purposes of setting the rates for
2 the MGE operating division because that's what has been
3 done in the past.

4 With regard to the cost of the common
5 equity component of the capital structure, MGE believes
6 that a 10.5 percent return on equity is necessary. This
7 recommendation is based on the use of four well-tested
8 market-based cost of equity models as applied to a proxy
9 of nine local gas distribution companies.

10 The Staff has an ROE range of 9.25 to 9.75,
11 with 9.5 percent being the midpoint. Public Counsel
12 proposes an ROE range of 9.5 to 10.5, with a 10 percent
13 ROE as the midpoint.

14 With regard to debt costs, the parties are
15 not far apart with one exception, and that is the
16 differing positions between the Staff and company as to
17 short-term debt costs.

18 An additional cost of capital issue
19 concerns whether or not the Commission's continued use of
20 the straight fixed variable rate design in this case will
21 reduce MGE's risk which, in turn, requires the Commission
22 to make a downward adjustment in the company's cost of
23 capital or revenue requirement.

24 Both MGE and the Staff believe that any
25 such risk reduction is already reflected in the

1 calculation of the appropriate return on common equity.
2 For example, MGE's suggested 10.5 ROE is based on a proxy
3 group of gas companies that have rate design or decoupling
4 provisions similar to the SFV rate design, and thus any
5 reduced risk is already accounted for.

6 Public Counsel seems to ignore this fact
7 and insists that if the straight fixed variable rate
8 design is authorized by the Commission, that a further
9 reduction in cost of capital revenue requirement beyond
10 what is already reflected in the ROE calculation is
11 needed.

12 Also to be tried this week are the rate
13 design issues. MGE has proposed the continued use of SFV
14 rate design for its residential class and expansion of
15 this design to a newly defined SGS class.

16 The straight fixed variable rates for MGE's
17 residential class of customers approved by the Commission
18 in 2007 has been a success story. They have aligned the
19 financial interests of MGE with those of its customers.

20 The evidence you will hear will demonstrate
21 that the SFV rate design has resulted in significant
22 savings for MGE's residential customer class and ushered
23 in company sponsored energy efficiency programs that
24 provide incentives for the typical customer to conserve on
25 the 70 percent of their annual bill attributable to the

1 natural gas used for heating and other household uses.

2 This rate design has been particularly
3 beneficial to high use customers, many of which are from
4 low income households, because the price of natural gas is
5 not loaded with distribution costs that are independent of
6 usage and of the actual commodity costs.

7 Continuation of this easy to understand
8 rate design for the residential class, this proposed
9 expansion to the SGS class sends clear and meaningful
10 price signals to customers, eliminates intra-class cross
11 subsidies, encourages further energy conservation efforts,
12 moderates seasonal bill fluctuations, and eliminates the
13 risk of over or under-recovery of fixed distribution
14 network costs due to deviations in actual weather
15 conditions as to whatever is determined to be normal
16 weather.

17 Revenue decoupling mechanisms like SFV
18 rates are a favored regulatory policy on both the state
19 and federal levels. Governor Nixon was a proponent of
20 such an approach in 2001 when he was Attorney General, and
21 several energy task forces sponsored by this Commission
22 have recommended this concept as a necessary ratemaking
23 feature to facilitate energy conservation efforts.

24 MGE has also proposed a reconfiguration of
25 the SGS and LGS classes, an increase in the fixed monthly

1 charge for LGS customers, and increases to all charges for
2 those customers in the LBS class.

3 Finally, the company proposes to eliminate
4 seasonal differential and volumetric delivery charges for
5 the SGS, LGS and LBS customer classes.

6 The final category of issues to be tried
7 this week will be the energy efficiency issues. Energy
8 efficiency in this case is both a rate design and a
9 revenue requirement issue, touching on, one, how to treat
10 the programs if the current residential rate design is
11 changed; two, if continued, how they should be funded; and
12 three, whether the form of the energy efficiency
13 collaborative should be modified.

14 Subject to the approval in the company's
15 last case of the SFV rate design for its residential class
16 of customers, MGE agreed to administer a number of energy
17 efficiency programs. Those programs included
18 communication and education regarding energy efficiency
19 and promotion of a water heater rebate program designed to
20 encourage the installation of energy efficient appliances.

21 Since that time, the program's been
22 expanded to include space heating, natural gas boiler
23 systems, and combination furnace/water heating systems.
24 MGE is willing to expand the programs to include the new
25 SGS customer class if the Commission adopts a rate design

1 for this class that leaves the company financially
2 indifferent to the volumes of gas consumed, as is the case
3 with the SFV rates.

4 MGE proposes that the current funding level
5 of \$750,000 per year be applied proportionately to
6 customer numbers such that the new SGS class receives
7 10 percent of the funding and the RS class receives
8 90 percent.

9 MGE supports the continuation of the energy
10 efficiency collaborative modified such that it acts in an
11 advisory capacity as opposed to its current consensus
12 capacity. This would be similar to the manner in which
13 energy efficiency collaboratives are structured for other
14 Missouri utilities.

15 I'd like to close by reminding you about
16 the principle I described earlier. While you will
17 necessarily hear a lot about past expenses and experiences
18 during the course of this hearing, please remember that
19 the Commission's objective in this case should be to set a
20 prospective rate that will allow MGE to recover the level
21 of costs it will incur during the time the new rates will
22 be in effect.

23 In examining and ultimately deciding the
24 assortment of issues that will come before the Commission
25 over the next two weeks, MGE asks that the Commission

1 reflect on whether the decisions it makes will set MGE's
2 rates in such a way that they will provide MGE with a
3 reasonable opportunity to recover its costs and to achieve
4 its authorized return.

5 Thank you.

6 JUDGE PRIDGIN: Mr. Cooper, thank you. On
7 behalf of the Staff of the Commission, Ms. Shemwell.

8 MS. SHEM WELL: Good morning. May it please
9 the Commission?

10 I'm Lera Shemwell. I represent the Staff.
11 I'll be assisted in this case by Kevin Thompson, who will
12 be addressing the rate of return issues, and Bob Berlin,
13 who will be addressing rate design.

14 I would like to begin by saying that we are
15 in unusual times, difficult times with unemployment and
16 financial uncertainty. Fortunately, natural gas commodity
17 prices have returned to a level that we could not have
18 imagined probably even a year ago. Despite the lower
19 prices or perhaps even because of them, energy efficiency
20 and conservation remain important public policy concerns.

21 I would like to address rate design, cost
22 of capital and energy efficiency. This Commission has a
23 history of placing a real emphasis on energy efficiency
24 and education. After the 2000-2001 winter, Missouri -- in
25 which Missouri experienced a very cold December, when

1 Missouri customers got their heating bills in January,
2 there was pulling of hair and gnashing of teeth. There
3 were investigations by the Attorney General and calls for
4 impeachment of Commissioners.

5 At that time the Commission determined that
6 it would take an important and active role in educating
7 consumers, feeling that the educated consumer was more
8 likely to be prepared for the higher prices, and the
9 Commission has done that since. The Commission today has
10 its BEE, Be Energy Efficient program, regularly promotes
11 energy efficiency and conservation at the Missouri State
12 Fair.

13 Staff has adopted the current rate design
14 of MGE as another step in encouraging customer education
15 and providing funds to encourage energy efficiency.
16 Staff's goal in encouraging this rate design is that it be
17 fair for all customers, not considering just low income or
18 low volume users, but all customers.

19 The Commission divides customers into
20 classes of customers that have a certain homogeneity to
21 design rates because we simply cannot design individual
22 rates for residential customers.

23 Staff is looking at a rate design that is
24 fair to all groups or classes of customers, employing a
25 sensible straightforward approach that aligns the

1 interests of both the company and its customers in
2 increasing energy efficiency. Is this a perfect
3 alignment? Not necessarily, but at least the company is
4 neutral about promoting more and more natural gas usage.
5 Staff can recommend this to the Commission as a just and
6 reasonable rate design.

7 The company provides exactly the same
8 service to all of its customers whether the customer is a
9 large industrial customer, a space heating customer, or
10 they cook or heat their water with gas or they only have a
11 gas fireplace. Access to the local distribution company
12 is the primary service that this company provides, safe
13 and reliable access to natural gas.

14 Staff believes that its rate design strikes
15 the greatest fairness for all of MGE's customers. It's a
16 simple and straightforward approach. First we break out
17 the fixed delivery charges to recover the cost of service,
18 and then separately through the PGA the customer's charged
19 for the natural gas that they actually use. It's a
20 simple, easily understood method, and it's the best rate
21 design for both the company and the customer. It balances
22 the interests of the customer with the shareholder.

23 It's easy to understand that space heating
24 is the primary driver of natural gas consumption. The
25 next driver is water heating, followed by natural gas

1 inserts and then cooking with natural gas.

2 Staff believes that it's good for the
3 Commission to recognize that the times have changed and to
4 recognize that it's time to make a change and stand behind
5 it. It's time to embrace the right thing for energy
6 efficiency and conservation.

7 DNR proposes an aggressive funding program,
8 and Staff supports a move to more aggressive funding, but
9 only upon a showing of well-designed energy efficiency
10 programs. We're not sure that we're to that point yet.
11 Staff is recommending \$750,000 continue in the energy
12 efficiency program, and that the advisory group -- or that
13 the collaborate group turn to be an advisory group only.

14 We know that natural gas is a capital
15 intensive business. We have to have customers who are
16 willing and able to buy natural gas service, and we feel
17 that the straight fixed variable promotes that goal.

18 Staff believes that this rate design
19 represents the operational realities of today and ensures
20 that each customer pay the right price for the gas
21 service, the true price, and that no customer overpays for
22 service and no customer underpays for service.

23 While this is a change, we know that it's
24 important to move forward at this time, and Staff's design
25 again is about fairness so that no customer subsidizes

1 another and each customer pays their fair share.

2 Before I close, I'd like to address how
3 Staff's rate design affects business risk. Staff
4 recognizes that this rate design does reduce business risk
5 and, therefore, is recommending that the Commission adopt
6 Staff's mid proposal for return on equity.

7 Staff's rate design also removes the risk
8 from customers of bad weather, because under today's rate
9 design, as opposed to the old way, if it's a particularly
10 cold winter, customers will pay less. This approach
11 divides the cost of providing the service out among 12
12 months instead of loading the cost into the cold winter,
13 so that when cold winter hits, customers will be pulling
14 less cash out of their pockets.

15 In summary, Staff recommends retention of
16 the straight fixed variable rate design for the
17 residential class. It may move to the small general
18 service class, which we believe is newly designed to
19 include the right customers within the class.

20 I appreciate your attention. That
21 concludes my opening remarks. Thank you very much.

22 JUDGE PRIDGIN: Ms. Shemwell, thank you.
23 On behalf of the Office of the Public Counsel, please,
24 Mr. Poston.

25 MR. POSTON: Good morning. May it please

1 the Commission?

2 My name is Marc Poston. I'm here on behalf
3 of the Office of the Public Counsel and the public, and
4 I'd like to begin by briefly discussing the customer
5 comments received by the Commission in this case. This
6 case was the first case in Missouri, to my knowledge,
7 where ratepayers were given an additional comment option
8 of sending in customer comment cards. We hoped it would
9 give ratepayers a better opportunity to provide comments.

10 I checked on EFIS last night, and over
11 12,000 comments have been filed with the Commission. In
12 MGE's last rate case in 2006, 217 ratepayers submitted
13 comments.

14 I intend to ask the judge to take official
15 notice of these comments, and I ask that, if you haven't
16 already, to please read through them, at least as many as
17 time permits.

18 We can all speculate as to why there were
19 so many comments. I believe a number of factors played
20 into the high number. One factor is the easier method of
21 commenting, but I also believe the poor state of our
22 economy and high unemployment rates had a significant
23 impact on the number of comments, and those issues were
24 raised repeatedly in the comments.

25 Consumers see competitive companies cutting

1 spending to make ends meet while the regulated monopoly
2 just asks for more from its captive customers, and I call
3 them captive because converting to electric heat is just
4 not an option for many.

5 Mr. Cooper talked about the Commission --
6 or the company's inability to earn its approved return.
7 Two years ago the Commission authorized an 8.6 percent
8 return on investment for MGE. The first year, 2007, they
9 earned 8.06, and last year 7.92 percent. I assert that
10 with the state of our economy, they should be grateful
11 they did so well.

12 I believe many Missourians truly are scared
13 every month when they look at their Social Security check
14 and know it's not going to cover all their necessities for
15 the month, especially now that the Federal Government has
16 announced no increases in Social Security for two years.
17 As we heard in the public hearings and in filed comments,
18 people really are making that choice between medicine and
19 heating their home. It's real, and we're all fortunate we
20 don't struggle through that every month.

21 Increasing those rates will only make
22 matters worse and only make those tough choices more
23 widespread. I ask that you keep this in mind when you
24 consider each and every issue in this case.

25 On the issues, I would like to briefly talk

1 about the most contentious issue, which is the issue of
2 rate design, and I'll save my opening remarks on the other
3 issues for when those issues are introduced.

4 Time and time again in the Commission's
5 96-year history, the Commission found that traditional
6 rate design to be just and reasonable. We believe the two
7 Commission decisions in 2007 that diverted from those
8 earlier decisions have resulted in unreasonable rate
9 designs. Now is the chance to get it right again.

10 One of the biggest myths of the straight
11 fixed variable rate design is that it promotes
12 conservation and energy efficiency. The only thing
13 promoting efficiency and conservation under the straight
14 fixed variable are the efficiency programs themselves.
15 These are made possible by the Commission order directing
16 the company to implement them.

17 The truth is the straight fixed variable
18 rate design reduces price signals that encourage consumers
19 to conserve and become more efficient. We should not be
20 taking those price signals away. We should be adding to
21 them. Under a volumetric rate design, consumers can see
22 immediate results from conservation. Use less gas, pay
23 less in rates. Under the traditional rate design,
24 ratepayers can see that reduction in both the gas and the
25 non-gas portions of their bill, which gives them an

1 additional incentive to conserve gas.

2 As you move more and more margin costs into
3 a fixed rate, that incentive reduces. As you move to the
4 straight fixed variable, that incentive disappears on the
5 non-gas part of the customer's bill. The straight fixed
6 variable actually reduces a ratepayer's incentive to
7 become more energy efficient and to conserve energy.

8 MGE and Staff support the straight fixed
9 variable rate design because they say it removes a
10 disincentive for MGE to encourage conservation, but there
11 are other ways to remove that disincentive, ways that
12 remove the disincentive while also maximizing the
13 consumer's incentive to conserve gas by keeping a
14 volumetric rate.

15 One approach was outlined in the testimony
16 of OPC witness Ryan Kind. That approach is to allow MGE
17 to create a regulatory asset account that tracks
18 expenditures on energy efficiency and lost margins caused
19 by such expenditures through a lost margin revenue
20 recovery mechanism. Under this mechanism MGE will be
21 allowed to recover these expenditures and lost margin
22 revenue in MGE's next rate case.

23 This is how MGE's sister company in
24 Massachusetts recovers its energy efficiency spending, I
25 should add not under a straight fixed variable rate

1 design. It should be equally accepting to MGE in
2 Missouri.

3 OPC's rate design proposal would also be
4 consistent with the federal stimulus legislation that
5 prompted Governor Nixon to ask the Commission to, quote,
6 implement appropriate incentives for energy efficiency
7 programs, unquote. The Governor didn't outline how those
8 programs would work, but the stimulus legislation did
9 provide goals that would be satisfied by OPC's proposal.

10 OPC's proposal would allow MGE to recover
11 energy efficiency spending and recover reduced earnings
12 created by those program, while at the same time
13 maintaining those proper price signals for customers as I
14 mentioned before.

15 Under MGE's proposal, consumers are not
16 rewarded for their efficiency efforts on non-gas charges
17 because they pay the same fee regardless, which is
18 contrary to one of the goals of the stimulus legislation.
19 The legislation urges states to make these changes, quote,
20 in a way that sustains or enhances utility consumers'
21 incentive to use more -- use energy more efficiently,
22 unquote.

23 The straight fixed variable fails this
24 goal. We believe the Commission can do much better than
25 the straight fixed variable rate design. Even if the

1 Commission decides to depart from the traditional rate
2 design, the straight fixed variable is not the way to do
3 it. It's on the extreme end of the decoupling spectrum of
4 rate designs because the vast majority of decoupling rate
5 designs do not lump all margin costs into a single fixed
6 charge.

7 If you read the comments submitted by
8 consumers, you'll hear over and over again how many
9 ratepayers oppose this straight fixed variable rate design
10 because of the high fixed charge. We ask that you listen
11 to them and adopt our rate design and energy efficiency
12 proposals because it meets consumer expectations and will
13 satisfy the energy efficiency goals urged by Congress and
14 Governor Nixon.

15 Thank you.

16 JUDGE PRIDGIN: Mr. Poston, thank you. On
17 behalf of Constellation, please, Mr. Steinmeier.

18 MR. STEINMEIER: Thank you, your Honor.
19 May it please the Commission?

20 Constellation New Energy - Gas Division is
21 interested in the transportation issues in this case.
22 These are noted on the list of issues that was filed last
23 week on page 4, section Roman numeral V, capital A and
24 capital B.

25 Constellation supports lowering the

1 eligibility threshold for transportation service and
2 opposes various changes proposed by MGE to its
3 transportation tariffs in this case.

4 Constellation is sponsoring the testimony
5 of Mr. Richard Haubensak, a consultant with many years of
6 experience in the natural gas industry. Mr. Haubensak has
7 filed direct, rebuttal and surrebuttal testimony in this
8 case.

9 With the Commission's leave, I will defer
10 the remainder of our opening statement until the
11 transportation issues are heard. They're currently
12 scheduled for next week, Thursday, November 5th.

13 Thank you.

14 JUDGE PRIDGIN: Mr. Steinmeier, thank you.
15 On behalf of the Missouri Department of Natural Resources,
16 please, Ms. Woods.

17 MS. WOODS: Good morning, Commissioners.

18 May it please the Commission?

19 My name is Shelley Woods. I'm an Assistant
20 Attorney General representing the Missouri Department of
21 Natural Resources, specifically its Energy Center.

22 We are here today once again on the energy
23 efficiency issues, which is section 3 on the list of
24 issues filed last week with the Commission. That
25 particular section has three subissues. The first would

1 be the relationship to rate design, and I will tell you
2 that the Energy Center is only minimally involved in that
3 particular subissue.

4 The second is funding, how and how much
5 should be spent on energy efficiency programs by the
6 company, and then the third is the fate, if you will, of
7 the energy efficiency collaborative established by this
8 Commission in an earlier MGE case.

9 And with the Commission's leave, I will
10 reserve more specific remarks to when we actually reach
11 the energy efficiency issues, currently scheduled for
12 Friday of this week.

13 Thank you.

14 JUDGE PRIDGIN: Ms. Woods, thank you. On
15 behalf of UMKC, UCM, Superior Bowen Asphalt, Mr. Finnegan.

16 MR. FINNEGAN: May it please the
17 Commission?

18 On behalf of my clients, UMKC, University
19 of Central Missouri, and Superior Bowen Asphalt Company,
20 LLC, I'm going to be very brief at this time. We, like
21 all customers -- I'm representing them as they're large
22 volume customers, transporters. We rely on and depend on
23 the Staff and the Office of Public Counsel to take care of
24 the revenue requirement issues and to determine, to help
25 determine what should be a reasonable amount of an

1 increase for this company.

2 Our concern more directly is with the class
3 cost of service and rate design, and we have -- we're
4 interested in the transportation issues, obviously. Our
5 major concern is that there's no subsidization between
6 classes, nor within the classes, and that the rates be
7 cost based, and we will -- I will discuss this further
8 when it comes to the issues.

9 Thank you very much.

10 JUDGE PRIDGIN: Mr. Finnegan, thank you.

11 On behalf of MGUA, please, Mr. Conrad.

12 MR. CONRAD: Thank you, Judge, and may it
13 please the Commission?

14 I, too, will be brief. Midwest represents
15 a fairly substantial size group of transportation
16 customers, and like Mr. Finnegan's group, we are sharing
17 the load of a consultant with his folks.

18 I actually had not intended to say
19 anything, but I -- at least at this point, but I'm
20 motivated by my esteemed colleague at the bar for Staff
21 and her statement that Staff seeks the true cost. It
22 reminds me of an old Missourian, native of, as I recall,
23 Hannibal, by the name of Mark Twain, who said, man is the
24 only animal that has the true religion, several of them.
25 He also said in the same context that man is the only

1 animal that blushes or needs to.

2 If we could come up with a true cost, it
3 would shorten things up quite a bit, but there is some
4 controversy about that, as you will hear further when we
5 get into the class cost of service issue.

6 Our additional concern is the
7 transportation areas and changes that are proposed in
8 that -- in that field. And on that, too, my colleague,
9 Ms. Shemwell, seemed to suggest, and I thought I would at
10 least clarify this, that MGE does not provide the same
11 service for all its customers. It has a group of
12 customers that we call system supply customers, they call
13 firm customers. It has another group of customers for
14 whom it provides only transportation services, and that's
15 our group.

16 One of the major differences, MGE buys gas
17 for the system supply customers. Our folks buy their own
18 and transport it through interstate pipelines to the city
19 gates of MGE, and from there on MGE takes it pursuant to
20 its tariffs and delivers it to their burner tip or meter
21 flames as the case may be. And that is a major area of
22 our concern.

23 The last thing I would address today is you
24 have already heard, and we are not taking a major role in
25 the controversy about straight fixed variable. If you

1 become a student, and perish the thought that you would,
2 in this area, I have wandered through various
3 methodologies that the federal folks have used for
4 something close to 30 years now, all the way from
5 something called Seaboard, modified Seaboard, tilted
6 Seaboard. You will hear that term, but if you go to the
7 federal level and you will see straight fixed variable
8 used, it is not the same. So do not -- even though the
9 terminology that is being used here is identical, it is a
10 different approach.

11 Straight fixed variable at FERC, when they
12 talk about that, they talk about variable cost recovery
13 and return and taxes, and that's the only thing that goes
14 into their commodity rate at that level.

15 There's a reason for that which differs
16 from MGE. The FERC approach is to encourage the pipelines
17 to move as much gas as they can. MGE's approach endorsed
18 by this Commission is different, and understandably so.
19 Their approach at the FERC level is therefore to hook the
20 return of the company to how much gas gets moved through
21 that pipe. That's encouragement for them to keep the pipe
22 full and the gas flowing.

23 So that's -- when you hear those terms, not
24 quarreling about either one, but understand when you hear
25 them that they're talking about apples and oranges, two

1 different things.

2 And with that, your Honors, I would defer
3 to the times that we have the class cost of service issue
4 and transportation issues to go into those two areas
5 further.

6 COMMISSIONER DAVIS: Can I inquire of
7 Mr. Conrad really quick?

8 JUDGE PRIDGIN: Certainly.

9 COMMISSIONER DAVIS: You've intrigued me,
10 Mr. Conrad. Okay. Now, and let me just follow up. Is it
11 your impression that the premise of the FERC straight
12 fixed variable rate design is they tie the return of the
13 company to the volume of gas being moved through the pipe
14 because they want the pipeline to be fully subscribed
15 because wholesale transportation customers like yours that
16 will, in effect, lower their transportation costs; is that
17 correct?

18 MR. CONRAD: As a general statement, I
19 would agree, because that improves the load factor, if you
20 will, on the pipeline. And they do other schemes, too,
21 including but not limited to encouraging capacity release.
22 So that I always think of it, Judge, in terms of, and it's
23 kind of crude, I know, because the pipeline is a long
24 thing.

25 COMMISSIONER DAVIS: Right.

1 MR. CONRAD: But if you have just -- if you
2 were thinking about somebody who does a firm
3 transportation deal on the pipeline, in effect they're
4 taking like a slice of that -- of that pipeline capacity.
5 And so the pipe wants to see that used, so they encourage
6 people who have FT, firm transportation on pipe, if
7 they're not going to use it, to get it released out to
8 somebody who is for a period of time to keep the pipeline
9 moving.

10 And that -- underlying all that I think,
11 Judge, you put your finger on it in the sense of a load
12 factor, because that lowers the unit cost for everybody.
13 But it's a different --

14 COMMISSIONER DAVIS: Right.

15 MR. CONRAD: -- different type of
16 philosophy.

17 COMMISSIONER DAVIS: It is -- it is a -- it
18 is a different type of philosophy. Okay. Thank you,
19 Mr. Conrad.

20 MR. CONRAD: Sure.

21 JUDGE PRIDGIN: Mr. Conrad, thank you. On
22 behalf of ONEOK Marketing, please. I'm sorry. Is it
23 Ms. Heisinger?

24 MS. HEISINGER: Heisinger.

25 JUDGE PRIDGIN: Heisinger. I'm sorry.

1 MS. HEISINGER: May it please the
2 Commission?

3 We are here on behalf of ONEOK. As
4 Mr. Steinmeier said, our interest is in the transportation
5 issues that will be taken up next week, unless those are
6 resolved before then, and as such, with the Commission's
7 leave, we'd like to defer our statements until next week.

8 JUDGE PRIDGIN: Thank you. On behalf of
9 the City of Kansas City, please, Mr. Comley.

10 MR. COMLEY: City has no opening remarks.
11 Thank you.

12 JUDGE PRIDGIN: Mr. Comley, thank you. Did
13 I miss anyone?

14 (No response.)

15 JUDGE PRIDGIN: All right. What I'd like
16 to do, I discussed this with counsel, is take a brief
17 recess, continue marking exhibits, and then we will go
18 back on the record and begin with the policy witnesses. I
19 believe we have Mr. Hack, Mr. Oligschlaeger and Mr. Imhoff
20 scheduled for today.

21 Is there anything from counsel before we go
22 off record? Ms. Shemwell.

23 MS. SHEMWELL: We would be calling our
24 policy witnesses only if the Commission has questions.
25 It's typical to put the case coordinators on for policy.

1 So if the Commission has questions, we will offer them.

2 Otherwise, they didn't file testimony. Thank you.

3 JUDGE PRIDGIN: Thank you. All right.

4 Anything further before we stand in recess to continue
5 marking exhibits?

6 (No response.)

7 JUDGE PRIDGIN: All right. We will go off
8 the record.

9 (A BREAK WAS TAKEN.)

10 (EXHIBIT NOS. 69 THROUGH 93 WERE MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)

12 JUDGE PRIDGIN: Good afternoon. We are
13 back on the record. I understand from counsel that we
14 would move on to MGE's policy witness, Mr. Hack, and then
15 have Staff's policy witnesses, Mr. Oligschlaeger,
16 Mr. Imhoff, available for cross. Is there anything
17 further from counsel -- I see Mr. Hack's already on the
18 witness stand -- before he is sworn?

19 MS. SHEMWELL: Judge, we have understood
20 that there are no questions from this group for
21 Mr. Imhoff.

22 JUDGE PRIDGIN: So Mr. Imhoff will not
23 be --

24 MS. SHEMWELL: He will be available if the
25 Commission has questions.

1 JUDGE PRIDGIN: I see. But no questions
2 from the parties?

3 MS. SHEMWELL: That's my understanding.

4 JUDGE PRIDGIN: All right. Anything
5 further before Mr. Hack is sworn?

6 COMMISSIONER DAVIS: Judge, can I inquire
7 of Mr. Poston?

8 JUDGE PRIDGIN: Certainly.

9 COMMISSIONER DAVIS: Mr. Poston, after
10 listening to your opening argument, I had a couple of
11 questions.

12 MR. POSTON: Okay.

13 COMMISSIONER DAVIS: Do Hope and Bluefield
14 still apply?

15 MR. POSTON: Yes, I believe they do.

16 COMMISSIONER DAVIS: You believe they do.

17 And is the burden of proof in this case on MGE?

18 MR. POSTON: Yes.

19 COMMISSIONER DAVIS: And the burden of
20 proof is to show that those rates are just and reasonable?

21 MR. POSTON: Their proposed rates you're
22 saying?

23 COMMISSIONER DAVIS: Yes.

24 MR. POSTON: Yes.

25 COMMISSIONER DAVIS: And the burden of

1 proof is by the a preponderance of the evidence?

2 MR. POSTON: I'm not sure on --

3 COMMISSIONER DAVIS: You're not sure on the
4 evidentiary standard?

5 MR. POSTON: Well, preponderance of the
6 evidence, that's --

7 COMMISSIONER DAVIS: It's not clear and
8 convincing, is it?

9 MR. POSTON: I don't know. I'd be happy to
10 research it.

11 COMMISSIONER DAVIS: You don't know.
12 Ms. Shemwell, do you want to chime in there? Do you have
13 any suggestions?

14 MS. SHEMWELL: Preponderance of the
15 evidence.

16 COMMISSIONER DAVIS: Preponderance of the
17 evidence. Mr. Boudreau?

18 MR. BOUDREAU: The standard?

19 COMMISSIONER DAVIS: The standard.

20 MR. BOUDREAU: I think I'd agree with Staff
21 on its assessment.

22 COMMISSIONER DAVIS: Mr. Finnegan?

23 MR. FINNEGAN: I would have to agree with
24 that.

25 COMMISSIONER DAVIS: Okay. So I just want

1 to make sure that in that argument you weren't -- were you
2 arguing for some sort of jury nullification or something
3 like that? Or I'm just trying to figure out --

4 MR. POSTON: No, and I'm not understanding
5 where you're coming from, to be honest.

6 COMMISSIONER DAVIS: Okay. Well, I mean, I
7 guess I'm just trying to -- I'm just trying to understand
8 what the purpose of urging us to take into account the
9 fact that 12,000 people wrote in and didn't like a rate
10 increase is.

11 MR. POSTON: Well, I think it's important
12 for the reasons I stressed, that in today's economy,
13 people are struggling. I think that's an issue among all
14 the issues that you should take into account, and the
15 number of people that wrote in just tells me that it's a
16 bigger issue now, and I think it's also reflective of the
17 straight fixed variable rate design that people oppose.

18 COMMISSIONER DAVIS: Okay. If -- if their
19 bills were 10 percent higher last winter, do you think
20 they would have equally still wrote -- wrote in?

21 MR. POSTON: I don't know.

22 COMMISSIONER DAVIS: You don't know. Do
23 you think if we surveyed the people who attended the
24 University of Missouri football game on Saturday night and
25 asked them if they felt like they should be entitled to a

1 refund for at least all or part of their ticket price, do
2 you think a significant portion of them would say they
3 wanted a refund?

4 MR. POSTON: No, and I didn't say look at
5 the number of people that oppose this rate increase. I
6 was asking you to look at the reasons they're opposing the
7 rate increase.

8 COMMISSIONER DAVIS: All right. Thank you,
9 Mr. Poston.

10 JUDGE PRIDGIN: Commissioner Davis, thank
11 you.

12 Anything further from counsel or the Bench
13 before Mr. Hack is sworn? All right.

14 MR. BOUDREAU: I might -- excuse me. I
15 might, on the point that Commissioner Davis brought up,
16 just defer to my partner, Mr. Swearengen, to the issues of
17 burden of proof. It really goes to his issue, and I would
18 defer to him on that.

19 JUDGE PRIDGIN: Okay. Thank you. All
20 right. Mr. Hack, if you would please raise your right
21 hand to be sworn.

22 (Witness sworn.)

23 JUDGE PRIDGIN: Thank you very much, sir.
24 And Mr. Boudreau, any questions before he's tendered for
25 cross?

1 MR. BOUDREAU: Yes. Thank you.

2 ROBERT J. HACK testified as follows:

3 DIRECT EXAMINATION BY MR. BOUDREAU:

4 Q. Would you state your name for the record,
5 please, sir?

6 A. Robert J. Hack, H-a-c-k.

7 Q. By whom are you employed and in what
8 capacity?

9 A. Missouri Gas Energy, a Division of Southern
10 Union Company, as chief operating officer.

11 Q. Are you the same Robert J. Hack that caused
12 to be filed in this case prepared testimony in the form of
13 direct, rebuttal and surrebuttal which has been marked for
14 identification as Exhibit Nos. 10, 11 and 12 respectively?

15 A. Yes.

16 Q. Was that testimony prepared by you or under
17 your direct supervision?

18 A. Yes.

19 Q. Do you have any corrections you'd like to
20 make at this point to your direct testimony, Exhibit 10?

21 A. No.

22 Q. Do you have any corrections you'd like to
23 make at this time to your rebuttal testimony, Exhibit
24 No. 11?

25 A. Yes. On page 2, line No. 16, 1-6, between

1 the word programs and that, insert the following: Comma,
2 energy efficiency education and home improvement with
3 Energy Star Program.

4 MS. SHEMWELL: One more time, please.

5 THE WITNESS: Comma, energy efficiency
6 education and home improvement with Energy Star Program.

7 BY MR. BOUDREAU:

8 Q. Is that all of the corrections to your
9 rebuttal testimony?

10 A. Yes.

11 Q. Do you have any corrections you'd like to
12 make at this time to your surrebuttal testimony?

13 A. No.

14 Q. With those corrections, if I were to ask
15 you the same questions as are contained in the testimony
16 today, would your answers as corrected be substantially
17 the same?

18 A. Yes.

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

21 A. Yes.

22 MR. BOUDREAU: With that, I would offer
23 into the record Exhibits 10, 11 and 12, and tender the
24 witness for cross-examination.

25 JUDGE PRIDGIN: Mr. Boudreau, thank you.

1 10, 11 and 12 have been offered. Any objections?

2 MS. SHEMWELL: None.

3 JUDGE PRIDGIN: Hearing none, 10, 11 and 12
4 are admitted.

5 (EXHIBIT NOS. 10, 11 AND 12 WERE RECEIVED
6 INTO EVIDENCE.)

7 JUDGE PRIDGIN: And just for the sake to
8 try to speed things up, I do see a long list of -- I'm
9 sorry, Mr. Boudreau. You can have a seat if you'd like.
10 I was just going to see who would have cross.
11 Ms. Shemwell, cross for this witness?

12 MS. SHEMWELL: Yes.

13 JUDGE PRIDGIN: Mr. Poston?

14 MR. POSTON: Yes.

15 JUDGE PRIDGIN: Other counsel wish cross?
16 I'm sorry. Mr. Finnegan, you may.

17 MR. FINNEGAN: I've got a question.

18 JUDGE PRIDGIN: Okay. Mr. Finnegan, when
19 you're ready, sir.

20 MR. FINNEGAN: From here?

21 JUDGE PRIDGIN: Wherever you're
22 comfortable, yes, sir.

23 CROSS-EXAMINATION BY MR. FINNEGAN:

24 Q. Mr. Hack, in the last rate case, which I
25 believe the decision was issued in April of 2007, or at

1 least the rates went into effect April 2007; is that
2 correct?

3 A. Yes.

4 Q. Do you recall that when you proposed the
5 single fixed variable rate change, that one of the
6 promises made was that we were going to have less rate
7 cases as a result? And I believe the case before that
8 was -- in October 2004 the decision came down, the one
9 before that came down in August 2001, and now it's October
10 2009, and I assume that the operation of law in this one
11 is December of this year, or no, in January.

12 A. February 28, I believe is the operation of
13 law date here.

14 Q. Okay. So that's not a whole lot of
15 difference in time. I thought we were going to be three
16 or five years, four or five years out?

17 A. Consistent with my testimony in this case,
18 our hope is that -- that we get rates that will be able --
19 able to withstand the test of time longer than two or
20 three years, but ultimately this is a prospective process
21 and the rates are going to produce the earnings that they
22 produce, and if we feel like it's necessary to come in and
23 adjust rates to keep earnings at a level that we can
24 attract the capital, then we'll need to do that, and
25 that's what we did here.

1 We're disappointed that we had to come in
2 as soon as we did, but I think the positions of the
3 parties show that a rate case of some magnitude is
4 warranted. So really the rates have not proven adequate
5 for, you know, a long enough period of time.

6 Q. The fact that you went to straight fixed
7 variable didn't change that either, though, did it?

8 A. The fact that we went to straight fixed
9 variable really helped the situation in the meantime, but
10 it did not keep pace, allow our rates to keep pace with
11 cost, you're correct.

12 MR. FINNEGAN: Okay. That's all.

13 JUDGE PRIDGIN: Mr. Finnegan, thank you.
14 Mr. Poston.

15 MR. POSTON: Thank you.

16 CROSS-EXAMINATION BY MR. POSTON:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Are you a Southern Union employee?

20 A. Yes.

21 Q. And Southern Union is the corporate entity
22 regulated by this Commission, correct?

23 A. Yes.

24 Q. And at Southern Union, who is your boss?

25 A. Eric Herschmann.

1 Q. And what is Eric Herschmann's position?

2 A. He is the president and chief operating
3 officer of Southern Union Company.

4 Q. I'd like to ask you a question about your
5 rebuttal testimony, and you state that MGE will stop
6 offering energy efficiency programs to residential
7 customers if the Commission approves the volumetric
8 reliant rate design; is that correct?

9 A. Can you give me a reference?

10 Q. I think it's page 2, line 14.

11 A. I think what I testified there is that MGE
12 would be unwilling to administer the energy efficiency
13 programs in the absence of a rate design that allowed --
14 that doesn't insulate us from volumetric revenue
15 reductions.

16 Q. Okay. So if the rate design were to
17 insulate you from volumetric revenue reductions, you would
18 be willing to offer those programs?

19 A. Just like the SFV, correct.

20 Q. If you were to stop offering energy
21 efficiency programs because the Commission does not
22 approve a -- the rate design that you want, will you
23 return the unspent surplus funds of \$1 million that
24 Mr. Kind identifies in his testimony?

25 A. Certainly.

1 Q. And do you have any reason to believe the
2 figure cited by Mr. Kind is not accurate?

3 A. What figure would that be?

4 Q. The 1 million unspent funds, roughly
5 1 million.

6 A. I don't think we've quarreled with that
7 figure. I mean, it will have changed over time because we
8 continue to grant incentives, and so it would have to be,
9 you know, assessed as of a point in time, but I don't
10 think it was inaccurate as of the time he wrote it.

11 Q. Okay. If these -- this money would be
12 returned, would it -- should the Commission just reduce
13 your revenue requirement deficiency by \$1 million?

14 A. No.

15 Q. How would they do that?

16 A. There would have to be a -- a mechanism to
17 figure out how the refund goes. There's -- that million
18 dollars would be a one-time amount. The rates we hope
19 that are set here would last for longer than a year.

20 I'm sure that the parties could put
21 together their heads and figure out how to do that. We
22 don't intend to be enriched in any way by those dollars.
23 They certainly have an express purpose, and that express
24 purpose is not to go into our own coffers.

25 Q. Is it your position that MGE is lowering

1 its revenue, its revenues whenever it has programs to
2 increase the efficiency of appliances used by your
3 customers?

4 A. Not necessarily, no. No.

5 Q. Is it your position MGE is lowering its
6 revenues whenever it has programs to increase the
7 insulation in the homes of your customers that use natural
8 gas to heat their homes?

9 A. Again, not necessarily, no.

10 Q. And isn't it true that the low-income
11 weatherization programs such as those administered by Bob
12 Jackson from the City of Kansas City will lower MGE's
13 revenues by increasing insulation in residential
14 dwellings?

15 A. That is correct, and that program has been
16 justified, cost justified due to its impact on bad debt
17 expense.

18 Q. And does MGE provide funding for
19 Mr. Jackson's weatherization programs?

20 A. Through rates, yes.

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

22 JUDGE PRIDGIN: Mr. Poston, thank you.

23 Ms. Shemwell?

24 MS.SHEMWELL: Thank you.

25 CROSS-EXAMINATION BY MS. SHEMWELL:

1 Q. Good afternoon, Mr. Hack.

2 A. Hello.

3 Q. Does Mr. Herschmann work exclusively for

4 Southern Union?

5 A. I don't believe so.

6 Q. Where else does he work?

7 A. He is a lawyer with a law firm in New York

8 city called Kasowitz Benson.

9 Q. Say that again, please.

10 A. Kasowitz Benson. There's a couple other

11 names, too.

12 Q. I'm looking at page 14 of your direct

13 testimony, and you indicate generally on that page, if I

14 may generalize, that MGE has not been able to earn its

15 authorized rate of return. Would you agree that that's an

16 accurate representation of your testimony?

17 A. Page 14?

18 Q. Yes. Might look at the bottom lines.

19 A. Yes. Correct.

20 Q. Do you have -- and you urge us in this

21 testimony, you urge the Commission to rely on Mr. Noack's

22 testimony; is that correct? Page 13 and 14.

23 A. For purpose of the historical earnings

24 analysis, that is correct.

25 Q. Do you have his testimony with you?

1 A. I do not.

2 Q. I'm going to hand you his Schedule G4 from
3 his updated test year direct testimony.

4 MS. SHEMWELL: Judge, if I may?

5 JUDGE PRIDGIN: You may.

6 BY MS. SHEMWELL:

7 Q. Mr. Hack, if you'd look at the first line
8 of G4.

9 A. Yes.

10 Q. Net sales margin; is that correct?

11 A. Yes.

12 Q. On the latest two years, does that number
13 include MGE's share of off-system sales under the sharing
14 grid?

15 A. I don't know.

16 Q. So you don't know, then, what effect MGE's
17 share of earnings from the sharing grid might affect your
18 ability to earn your return on equity, rate of return?

19 A. The greater those revenues are, the better
20 help they will be. But those revenues are not included in
21 the -- the calculation of rates and earnings in the rate
22 setting process.

23 Q. But those are direct earnings to MGE?

24 A. To the extent they exist, they are.

25 Q. If I tell you that they existed in the last

1 two years, will you accept that?

2 A. Oh, they have existed, no question. I just
3 don't know if they are in these numbers.

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

6 JUDGE PRIDGIN: Ms. Shemwell, thank you.
7 See if we have any questions from the Bench. Commissioner
8 Davis?

9 QUESTIONS BY COMMISSIONER DAVIS:

10 Q. Good afternoon, Mr. Hack.

11 A. Good afternoon.

12 Q. Mr. Hack, you filed rebuttal and
13 surrebuttal testimony at least in part to respond to some
14 of the comments made by Mr. Oligschlaeger on behalf of
15 Staff; is that correct?

16 A. Yes.

17 Q. So you did review his testimony, correct?

18 A. I did.

19 Q. Okay. Now, you did not file any rebuttal
20 or surrebuttal testimony responding to Mr. Oligschlaeger's
21 complaints about how MGE was not properly accounting for
22 Financial Accounting Standard No. 106?

23 A. I did not.

24 Q. Mr. Noack didn't either, did he?

25 A. I think our controller did, Mr. Davis.

1 Q. And you're a lawyer, Mr. Hack, are you not?

2 A. I call myself a reformed lawyer.

3 Q. Okay.

4 A. But yes.

5 Q. You still -- okay. If I understand
6 Mr. Oligschlaeger's arguments correctly, I mean, he's
7 saying that MGE is supposed to be following financial
8 accounting standard No. 106, and pursuant to Section
9 386.315, subsection 2, you're required to use an
10 independent external funding mechanism that restricts
11 disbursements for qualified retiree benefits, that MGE
12 hasn't been doing that since at least 2003, and that you
13 need to correct this problem by having the shareholders
14 put in another \$16 million to one of those three DEBs or
15 whatever. Is that a -- is that a correct summation of
16 Mr. Oligschlaeger's arguments?

17 A. I think my understanding of the position
18 the Staff and OPC has taken is not that MGE has not
19 followed FAS 106, FAS 106 is simply an accrual form of
20 accounting, what goes on the books.

21 Q. Okay.

22 A. Nor do I believe the Staff is alleging or
23 OPC is alleging that we don't have external funding
24 mechanisms in place, because we do. That's what those
25 VEBAs are. VEBAs are rabbi trusts.

1 I believe what Staff and OPC are alleging
2 through their testimony is that MGE has not funded since,
3 I'm going to use the year '03, at the level of FAS 106
4 expense included in rates, and further that that funding
5 level is required by not FAS 106 but by Section 386. --

6 Q. 386.315.

7 A. -- 315. And what we have done is look at
8 their analysis, and we have, I think, forthrightly agreed
9 in the testimony that we have not funded at the level
10 included in rates since roughly when they have alleged,
11 and our belief is that Section 386.315 as it applies to
12 MGE does not specify any particular funding level.

13 And I will also tell you, and I'm trying
14 not to violate any confidential settlement discussions,
15 that we're close to reaching accommodation on the issue.
16 We believe we're close. Let's say it that way.

17 Q. All right. So MGE operates on an accrual
18 method of accounting, correct?

19 A. Correct. Our books reflect our FAS 106
20 expense.

21 Q. So -- and what Mr. Oligschlaeger is saying
22 is that you're not putting the money in the fund like
23 that, that you're actually putting it into the fund on a
24 cost basis?

25 A. If -- essentially, yes.

1 Q. Okay.

2 A. And if you look at Section 386.315, in
3 particular sub 3, my recollection is that's the only
4 provision of 386.315 that speaks to funding levels, and
5 that funding level provision only applies to those
6 companies that made single issue FAS 106 rate filings back
7 in the 1994 time period.

8 Q. Right. Right. And it was a transition
9 period?

10 A. It was -- it was a negotiated item to deal
11 with Southwestern Bell after a Southwestern Bell rate
12 proceeding.

13 Q. Right. Okay. But the statute applies to
14 all utilities equally, correct?

15 A. All utilities in subsection 3 who made
16 single-issue ratemaking filings between those periods in
17 early 1994, which we're not one of them.

18 Q. Okay. Well, I was aware of that. Okay.
19 So basically you're saying that the -- it's Mr. Davis'
20 position and it's your position, it's the MGE position
21 currently that the statute doesn't require fully funding,
22 so therefore you're not fully funding it?

23 A. The -- our practice had been until 2003 to
24 fund at the level included in rates.

25 Q. Okay.

1 A. At some point that funding practice
2 stopped. We've had rate cases in between that period of
3 time. It either -- I wasn't aware really that we had the
4 funding practice or that it stopped. It apparently eluded
5 detection until this rate case.

6 When I look at it from a legal perspective,
7 I read the words in the statute and I see that there's no
8 specific level of funding required. I look at some of the
9 other companies who have FAS 106 trackers, which we do not
10 have as of today, that seems -- there seems to be a quid
11 pro quo in those trackers, funding in an amount equivalent
12 to rates for the ability to track FAS 106 costs on a
13 prospective basis, and I see distinctions between what
14 other companies have and how they've funded and what we
15 have and how we've funded.

16 All that being said, we're trying to reach
17 an accommodation on that issue that brings us --

18 Q. All right.

19 A. -- into the mainstream.

20 Q. Okay. Were there any other significant
21 events that occurred in 2003 in the history of MGE?

22 A. Well, there was a -- there was an
23 acquisition that occurred in 2003 by Southern Union
24 Company.

25 Q. And so basically, it's -- although I can't

1 determine the dates, I mean, it's my mental impression
2 that basically this change in accounting practice started
3 with the Southern Union acquisition of MGE. Is that a
4 correct mental impression?

5 A. I mean, there is some relationship of time
6 to those things. Whether that was the driver or not, I'd
7 be surprised. I would be -- and I can't for the life of
8 me recall this right now. I would bet that the change was
9 driven more by a change in personnel in the chief
10 financial office of the corporation rather than an
11 acquisition, but I'm speculating as to that, too,
12 Commissioner.

13 COMMISSIONER DAVIS: Okay. Is Mr. Hack
14 going to be back or is this it for Mr. Hack?

15 MS. SHEMWELL: This is it.

16 COMMISSIONER DAVIS: This is it.

17 THE WITNESS: And I would tell you that
18 this is the intent that it be it, but if I need to come
19 back, I'll come back.

20 COMMISSIONER DAVIS: All right. I don't
21 think I've got anything else for you, Mr. Hack. Thank
22 you.

23 THE WITNESS: Thank you.

24 JUDGE PRIDGIN: Commissioner Davis, thank
25 you. Commissioner Jarrett?

1 QUESTIONS BY COMMISSIONER JARRETT:

2 Q. Good afternoon, Mr. Hack.

3 A. Hello.

4 Q. Did you attend any of the local public
5 hearings?

6 A. I did.

7 Q. And would I be incorrect if I said that
8 there's a number of people that don't like the straight
9 fixed variable rate design, a number of your customers?

10 A. I went to the one in Kansas City. I read
11 all the transcripts, and my recollection is that there
12 were 7 people out of the roughly 35 who testified that
13 mentioned the straight fixed variable rate design.

14 Q. Can you tell me -- I know this has been
15 maybe some in your testimony and some in the other
16 testimonies. can you tell me from MGE's position, what
17 are the -- what are the -- what are the advantages of the
18 SFV rate design to the company?

19 A. To the company, it means our revenue
20 streams from the residential class are more certain, so we
21 are not subject to the vagaries of weather. And as an
22 example, in 2006 we missed our revenue budget. We fell
23 short of our revenue budget by almost \$16 million due
24 primarily to the effects of weather.

25 The straight fixed variable rate design

1 also insulates us from the impact of conservation, whether
2 it's affirmative conscious conservation on the part of
3 customers or conservation that just occurs naturally by
4 the change out of appliances or the advances in
5 construction techniques. There have been studies over the
6 past 15, 20 years that show that per customer average
7 consumption per residential customer has dropped 1 to 2
8 percent a year since 1990. And those -- those reductions,
9 if we have a volumetric based rate design, have a very
10 real impact on our bottom line.

11 On the customer side, the straight fixed
12 variable rate design eliminates the likelihood that
13 they're going to have spiked bill increases when it's cold
14 in the wintertime. It also reduces, even if it's normal
15 wintertime, reduces the distribution costs that are
16 recovered in the winter months when customers are already
17 using more gas and their bills are going to be higher
18 otherwise.

19 So, you know, our view, and I'm probably
20 going beyond the question you asked, is that the
21 transition was a smooth one, it happened really in the
22 summertime of 2007 when you would expect people to notice,
23 and really there was -- there was no significant, you
24 know, outcry by customers that summer or the summers
25 thereafter.

1 So compared to the \$16 million revenue
2 shortfall, which is really catastrophic when you're trying
3 to run a business, make hiring decisions, invest in
4 facilities necessary to provide service to customers, I
5 really think it's in all parties' best interests.

6 Q. Now, as your position as the chief
7 operating officer of the company, are you familiar with
8 what other states are doing as far as --

9 A. Yes.

10 Q. -- companies in your position, gas
11 distribution companies as far as rate design, is the
12 straight fixed variable something that is becoming more
13 common nationwide?

14 A. This Commission was a leader in straight
15 fixed variable, but it is becoming more common. I think
16 Atlanta Gas Light has a straight fixed variable rate
17 design. There's a company in North Dakota that has
18 straight fixed variable. Other companies have adopted it
19 since MGE got it in 2007. That's one approach.

20 Another approach is to use what's called
21 customer utilization tracker, which essentially trues up
22 average per customer volumes from the rate case amount to
23 actual in subsequent periods. That is something that we
24 actually proposed in connection with the weather clause in
25 our last case, and it's -- it is authorized by Missouri

1 statute, but that -- that -- and that's a volumetric based
2 rate design, and it attracted all kinds of opposition from
3 Staff, from the Public Counsel, and the straight fixed
4 variable was adopted as an alternative.

5 There are other approaches. We use 30-year
6 weather updated only once a decade here in Missouri to
7 measure weather, and at least for us that regulatory
8 assumed weather has been, you know, well out of whack with
9 what the actual weather is. And when you have that
10 mismatch, it's kind of -- when it's weather in Missouri --
11 or when it's winter in Missouri, it's not always winter,
12 and you can't count on -- on -- on that weather to
13 generate the revenues that are assumed for the ratemaking
14 process.

15 COMMISSIONER JARRETT: Thank you, Mr. Hack.
16 I have no further questions, Judge.

17 JUDGE PRIDGIN: Commissioner Jarrett, thank
18 you. Commissioner Kenney?

19 COMMISSIONER KENNEY: No questions, thank
20 you.

21 JUDGE PRIDGIN: I have none. See if we
22 have recross. Ms. Shemwell? Anyone else?

23 MR. POSTON: Yes.

24 JUDGE PRIDGIN: All right. Mr. Poston.

25 RE-CROSS-EXAMINATION BY MR. POSTON:

1 Q. You stated that the straight fixed variable
2 makes revenue recovery more certain and that reduces your
3 business risk, right?

4 A. It also eliminates our upside exposure,
5 which -- which to me -- or our upside potential when
6 weather is colder than normal, so those to me are
7 symmetrical and cancel each other out, which means there's
8 no business risk reduction.

9 Q. You said that 7 of the 35 comments opposed
10 the straight fixed variable?

11 A. Yes.

12 Q. How did you determine whether a comment was
13 opposing that rate design? Did they have to mention that
14 rate design or just the rate itself?

15 A. I read it and comprehended the testimony.

16 Q. And did you read any of the 12,000 comments
17 that have been received?

18 A. I have not.

19 Q. So you wouldn't know how many of those
20 people opposed this fixed rate variable rate design?

21 A. No.

22 MR. POSTON: I had one more, but I didn't
23 write it down fast enough. That's all. Thank you.

24 JUDGE PRIDGIN: Mr. Poston, thank you.

25 Ms. Shemwell.

1 further questions. Thank you.

2 JUDGE PRIDGIN: Mr. Boudreau, thank you.

3 Mr. Hack, thank you very much, sir. You may step down.

4 THE WITNESS: Thank you.

5 JUDGE PRIDGIN: And I believe

6 Mr. Oligschlaeger or --

7 THE WITNESS: Oligschlaeger.

8 JUDGE PRIDGIN: Okay. Mr. Oligschlaeger.

9 (Witness sworn.)

10 JUDGE PRIDGIN: Thank you very much, sir.

11 Please have a seat. Ms. Shemwell, when you're ready.

12 MARK OLIGSCHLAEGER testified as follows:

13 DIRECT EXAMINATION BY MS. SHEMWELL:

14 Q. Mr. Oligschlaeger, would you spell your

15 last name for the court reporter, please.

16 A. Sure. O-l-i-g-s-c-h-l-a-e-g-e-r.

17 Q. For whom do you work?

18 A. I work for the Missouri Public Service

19 Commission.

20 Q. What is your position?

21 A. I'm Regulatory Auditor 5.

22 Q. Were you a case coordinator in this case?

23 A. I was designated as co-case coordinator for

24 the services division of the Commission.

25 Q. What testimony did you file in this case?

1 A. I filed direct, rebuttal and surrebuttal
2 testimony.

3 Q. Do you have any corrections to that
4 testimony?

5 A. Yes, I have one correction. On page 10 of
6 my direct testimony, line 10, third word, that word Empire
7 should be replaced with the acronym MGE.

8 Q. Any other corrections?

9 A. No, there is not.

10 Q. If I were to ask you the same questions
11 today, would your answers be substantially the same?

12 A. Yes, they would.

13 Q. Is your testimony true and correct to the
14 best of your knowledge and belief?

15 A. It is.

16 MS. SHEMWELL: Thank you. I tender the
17 witness for cross.

18 JUDGE PRIDGIN: Ms. Shemwell, thank you.
19 See if we have questions for this witness. Mr. Poston,
20 you have questions?

21 MR. POSTON: No questions.

22 JUDGE PRIDGIN: Anyone have cross for this
23 witness?

24 MR. BOUDREAU: I may have a few questions.

25 JUDGE PRIDGIN: Anyone else? All right.

1 Mr. Boudreau.

2 CROSS-EXAMINATION BY MR. BOUDREAU:

3 Q. Is it all right if I ask -- all right if I
4 ask questions from here?

5 JUDGE PRIDGIN: Yes, sir.

6 MR. BOUDREAU: Thank you.

7 BY MR. BOUDREAU:

8 Q. Good afternoon.

9 A. Good afternoon.

10 Q. I just have a few questions for you. I
11 want to direct your attention to your rebuttal testimony,
12 and in particular if you would turn to page 22. Are you
13 there, sir?

14 A. Yes, I am.

15 Q. At lines 8 -- looking at lines 18 and 19,
16 and you have a statement there, again, a utility's ability
17 to control its cost is key to its decisions regarding rate
18 case timing. Do you see that?

19 A. Yes, I do.

20 Q. What I want to ask you, based on your
21 experience as regulatory auditor, is it your expectation
22 that payroll expense for MGE will be higher or lower from
23 about a year from now?

24 A. In most cases, I would expect payroll
25 expense to increase over time.

1 Q. Would your answer be the same in regards to
2 plant in service?

3 A. Yes, it would.

4 Q. So that would also carry with it an
5 increased depreciation expense?

6 A. Yes, it would. The impact on total rate
7 base depends on how much plant is being added relative to
8 the amount of existing depreciation on your plants.

9 Q. What about medical costs, would you expect
10 those to go up?

11 A. I hate to prognosticate in the future. Up
12 to now, they have been generally increasing, sir.

13 Q. And would your answer also be the same with
14 respect to 401K pension type expense?

15 A. Pension expense in particular can be a
16 little bit volatile and go up and down over time. I would
17 expect in the next few years pensions expense to generally
18 increase.

19 Q. And counteracting those expenses, do you
20 know of any offsetting revenue opportunities that are
21 available to the company?

22 A. Just the general opportunity of customer
23 growth.

24 Q. Would you expect, based on your experience
25 generally and with this company specifically, that

1 customer growth would generate revenues enough to offset
2 those increased expenses?

3 A. The experience has been that over time
4 MGE's customer growth has not been sufficient in and of
5 itself to offset those increases.

6 Q. And it's not likely there's any big
7 technology advances that are available to a local
8 distribution company like MGE?

9 A. Certainly not that I'm aware of.

10 Q. I want to turn your attention now to page
11 23 -- well, it's the following page, and at the top you
12 have a statement that -- that the use of single-issue
13 ratemaking practices makes it more important not less
14 important to periodically review the utility's rate levels
15 for reasonableness; do you see that?

16 A. Yes.

17 Q. And are you suggesting that rate cases -- I
18 mean, is the suggestion that rate cases are more necessary
19 now than before?

20 A. What I am suggesting if you have -- allow a
21 company the significant opportunity to use single issue
22 ratemaking mechanisms, it is important periodically to do
23 a general examination of their rate levels and their
24 overall earnings levels.

25 Q. How long have you worked for the

1 Commission, sir?

2 A. Since 1981.

3 Q. During that time, how many occasions that
4 you can recall have there been where there's been a filing
5 of an earnings complaint case against a Missouri natural
6 gas local distribution company?

7 A. I don't recall any for MGE. I can't say I
8 have done any particular research for the other gas LDCs
9 in this state.

10 MR. BOUDREAU: I don't think I have any
11 further questions for this witness. Thank you.

12 JUDGE PRIDGIN: Mr. Boudreau, thank you.
13 See if we have questions from the Bench. Mr. Davis?

14 COMMISSIONER DAVIS: Thank you.

15 QUESTIONS BY COMMISSIONER DAVIS:

16 Q. Good afternoon, Mr. Oligschlaeger.

17 A. Good afternoon.

18 Q. Okay. In your direct testimony, you cited
19 that there were pretty much four major differences between
20 SUG and Staff; one, cost of capital, rate of return,
21 capital structure and all the issues underneath?

22 A. Yes.

23 Q. That was one. Environmental remediation?

24 A. Yes.

25 Q. Cost allocation?

1 A. Yes.

2 Q. And the FAS 106, the OPEB issues, correct?

3 A. Yes.

4 Q. Now, am I correct to understand that cost
5 allocation has gone away?

6 A. Yeah. We have reached basically a
7 resolution of that issue with the company.

8 Q. Okay. Now, I quite frankly was trying to
9 read the testimony and did not understand the whole JCC
10 Massachusetts method, plan. What do you call that?

11 A. The Massachusetts formula for allocation of
12 costs.

13 Q. Formula. Are there any textbooks or are
14 there any papers or anything out there that basically
15 explains that that you can cite to where if we ever have
16 that issue again, that the Commissioners could look at?

17 A. I'm sure there is. I can't really give you
18 anything definitive right now, but we would certainly be
19 happy to look into that.

20 Q. If you could find anything before the end
21 of the case, that would be great if you can just file it.

22 COMMISSIONER DAVIS: I'm going to pass for
23 right now, Judge. That's all I have.

24 JUDGE PRIDGIN: Okay. Thank You.

25 Commissioner Jarrett?

1 QUESTIONS BY COMMISSIONER JARRETT:

2 Q. Mr. Oligschlaeger, good afternoon.

3 A. Good afternoon.

4 Q. I want to make sure I understood you
5 correctly. Is that FAS 106 issue settled?

6 MS. SHEMWELL: I want to caution that
7 settlement discussions are ongoing, so that he might give
8 some indication, but they're ongoing.

9 COMMISSIONER JARRETT: All right.

10 THE WITNESS: It is not settled yet, sir.
11 I will tell you there are still discussions among the
12 parties on that and other topics.

13 BY COMMISSIONER JARRETT:

14 Q. All right. Will Staff be filing a revised
15 reconciliation if that gets -- if that gets settled, just
16 so we can keep it straight?

17 A. We'd be happy to do that, sir.

18 COMMISSIONER JARRETT: Thank you. I have
19 no further questions.

20 JUDGE PRIDGIN: Commissioner Jarrett, thank
21 you. Commissioner Kenney?

22 COMMISSIONER KENNEY: No questions. Thank
23 you.

24 JUDGE PRIDGIN: I don't have any questions.
25 Commissioner Davis?

1 FURTHER QUESTIONS BY COMMISSIONER DAVIS:

2 Q. Okay. You said you were co-case manager?

3 A. Yes, I am.

4 Q. Who's the other co-case manager?

5 A. Not to be picky, co-case coordinator, and
6 the other one is Mr. Imhoff.

7 Q. Okay. Okay. So -- so what are your
8 responsibilities?

9 A. My responsibilities as coordinator were
10 basically to be the Staff person for the services
11 division, be more or less in day-to-day charge of the
12 case, monitor the progress and report any questions or
13 problems up the chain to ultimately I think the division
14 director, Mr. Schallenberg.

15 Q. Okay. So when you say services, I'm going
16 to be picky here, is that financial services division?

17 A. No. It's the utility services division.

18 Q. Utility services division?

19 A. Yeah, auditing, financial analysis,
20 procurement analysis.

21 Q. Okay. All right. So you, in essence, are
22 responsible for the cost of service report and appendices,
23 correct? And you -- are you in charge of all that or is
24 it you and Mr. Imhoff together or --

25 A. I'm the -- predominantly I am.

1 Mr. Imhoff's group does have some say there in the
2 revenues area and maybe some other stray parts of that
3 report.

4 Q. So did you review the -- did you review the
5 report before it was filed? Did you review the entire
6 report?

7 A. Yes.

8 Q. Did anyone else on Staff review the entire
9 report before it was filed?

10 A. I believe probably Ms. Shemwell did.

11 Q. Did Mr. Schallenberg review the entire
12 report?

13 A. I don't know. I don't think -- well, I'll
14 just say I don't know.

15 Q. You don't know?

16 A. Yes.

17 COMMISSIONER DAVIS: Okay. All right.

18 Thank you, Mr. Oligschlaeger.

19 JUDGE PRIDGIN: Any further Commission
20 questions? Any recross? Redirect?

21 MS. SHEMWELL: Thank you.

22 REDIRECT EXAMINATION BY MS. SHEMWELL:

23 Q. Mr. Oligschlaeger, are there circumstances
24 under which any of MGE's expenses could be reduced in the
25 coming years?

1 A. I'm sure there are, yes.

2 Q. Does MGE's off-system sales and capacity
3 release give an opportunity to offset expenses?

4 A. My understanding, the current grid system
5 that's in place allows the utility an opportunity to
6 obtain some additional earnings if it does well in
7 achieving those types of transactions.

8 Q. Mr. Oligschlaeger, recognizing that you're
9 an expert in a number of areas, are you an expert in
10 natural gas technology developments?

11 A. No, I don't believe I am.

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

14 JUDGE PRIDGIN: Ms. Shemwell, thank you.
15 Mr. Oligschlaeger, thank you very much. You may step
16 down, sir. And Mr. Imhoff is the next?

17 MS. SHEMWELL: We will call him if you need
18 him to be here.

19 JUDGE PRIDGIN: Do I understand the parties
20 have no cross-examination for Mr. Imhoff; is that correct?

21 MR. POSTON: That's correct.

22 JUDGE PRIDGIN: Would the Bench like
23 questions for Mr. Imhoff? If so, we can certainly get him
24 here.

25 COMMISSIONER DAVIS: Will he be testifying

1 on other issues? I don't have anything for him right now.

2 JUDGE PRIDGIN: I'll defer to --

3 COMMISSIONER DAVIS: He's in the building
4 if we want him at a later date?

5 MS. SHEMWELL: He is in the building and we
6 can go get him.

7 COMMISSIONER DAVIS: Well, I'm just saying,
8 he's in the building, though, every day, correct?

9 MS. SHEMWELL: Yes.

10 COMMISSIONER DAVIS: I don't have anything
11 for him at this time.

12 COMMISSIONER JARRETT: I have nothing.

13 JUDGE PRIDGIN: All right. There are no --
14 it appears there's no cross-examination for Mr. Imhoff, at
15 least right now.

16 MS. SHEMWELL: Yes.

17 JUDGE PRIDGIN: All right. We appear to
18 have gone through today's witnesses, if I'm not mistaken.
19 We have at least one cost of capital witness traveling
20 today and unavailable, and I hate to break at such an
21 early time, but I'm not sure what else that we can cover.
22 Do the parties have any alternative suggestions?

23 MS. SHEMWELL: We will try to use this time
24 effectively, Judge, the parties will.

25 JUDGE PRIDGIN: Message received. Is there

1 anything further from counsel? What I intend to do, then,
2 is, unless I hear different from parties, is we'll begin
3 with cost of capital at 8:30 in the morning, and I show
4 Mr. Hanley being the first witness, then Mr. Murray and
5 Mr. Lawson, and that cost of capital is all we have
6 scheduled for tomorrow. Okay. Is there --

7 MR. POSTON: Judge?

8 JUDGE PRIDGIN: Yes.

9 MR. POSTON: I did have one more thing to
10 mention. We had discussed those customer comments. I
11 just wanted to ask the Commission to take official notice
12 of those.

13 JUDGE PRIDGIN: Those have been filed in
14 EFIS?

15 MR. POSTON: They are not filed in the
16 Commission records, but they are on EFIS.

17 JUDGE PRIDGIN: We'll certainly take
18 official notice of those.

19 MR. BOUDREAU: I would like to weigh in on
20 that. I have an objection to the Commission doing so on a
21 number of different grounds. The -- the statute that
22 controls taking official notice is controlled by 536.070,
23 the Missouri Administrative Procedure Act. It allows
24 agencies to take official notice of things that a court
25 could take judicial notice of.

1 And I would suggest to you that there's no
2 facts that I've heard of that are of the type that a court
3 could take judicial notice of. Missouri follows, I
4 believe it's Federal Rule 201, if my memory serves me
5 right. And what you have to have is you have to have
6 facts that are not reasonably in dispute or generally
7 known to a trier of fact or capable of accurate and ready
8 determination without resort to sources -- or with resort
9 to sources whose accuracy cannot reasonably be questioned.
10 So that's the standard that has to be met.

11 Procedurally, the agency, this Commission,
12 needs to tell the parties ahead of time that it intends to
13 take official notice of certain facts, identify what those
14 facts are, and give the parties a chance to challenge
15 them, object to them, whatever.

16 So I would say just based on the statute
17 that allows for this, none of those hurdles have been met.
18 I have a number of other concerns about it. That there's
19 really no foundation that's been laid for the admission of
20 these. There's no proper authentication related to them.
21 It's a denial of due process in the sense that 536.070
22 subsection 2 gives parties the right to cross-examine and
23 impeach witnesses. And if these cards are being entered
24 for presumably what they say, we don't have a chance to
25 question anybody about what they said.

1 I also think that if that's the purpose of
2 offering them, that it's just clear out and out hearsay,
3 and that's an objection that's not a technical rule of
4 evidence. It's a substantive rule of evidence. It means
5 it's just simply not admissible. It can't be allowed in
6 for the weight the Commission wants to give to it. It's
7 not competent and substantial evidence under the Missouri
8 Constitution. So on those grounds, I object.

9 JUDGE PRIDGIN: Well, in light of the
10 numerous objections, I do want to give the parties a
11 chance to respond to those, and -- and if you want,
12 Mr. Boudreau, I mean, you're certainly allowed to file
13 written objections, but you certainly have written
14 objections on other pieces of evidence, and I'd want Staff
15 and OPC the chance to respond to those. I don't see any
16 reason for any kind of eminent ruling. Those comment
17 cards aren't going anywhere. So I'd certainly like to
18 give Mr. Poston, Ms. Shemwell, and any other party a
19 chance to respond to your objections and also give you a
20 chance if you wanted to state those in writing.

21 MR. BOUDREAU: Yes, I may want to elaborate
22 on those concepts. As I understand it, you'd like us to
23 put something in writing and submit it to the Commission?

24 JUDGE PRIDGIN: Please.

25 MR. BOUDREAU: Okay.

1 JUDGE PRIDGIN: All right. Is there
2 anything further before we go off the record for the day?
3 All right. We will stand in recess until 8:30 in the
4 morning. Thank you very much. We are off the record.

5 WHEREUPON, the hearing of this case was
6 adjourned until October 27, 2009.

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

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

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

13 Given at my office in the City of
14 Jefferson, County of Cole, State of Missouri.

15

16 Kellene K. Feddersen, RPR, CSR, CCR

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