

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 June 29, 2004
9 Jefferson City, Missouri
10 Volume 19
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12 In the Matter of Missouri Gas)
13 Energy's Tariffs to Implement a)
14 General Rate Increase for Natural) Case No. GR-2004-0209
15 Gas Service)
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18 MORRIS L. WOODRUFF, Presiding,
19 SENIOR REGULATORY LAW JUDGE.
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22 STEVE GAW, Chairman,
23 CONNIE MURRAY,
24 ROBERT M. CLAYTON,
25 JEFF DAVIS,
26 LINWARD "LIN" APPLING,
27 COMMISSIONERS.
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1 P R O C E E D I N G S

2 JUDGE WOODRUFF: Welcome back to the
3 continuation of the hearing in GR-2004-0209. We'll begin
4 today, I believe, with environmental response fund issues,
5 and I assume we'll want to do mini openings for that.
6 Anything else before we get started with the day's
7 proceedings?

8 (No response.)

9 JUDGE WOODRUFF: All right. Let's begin,
10 then, with mini openings on the environmental response
11 issue, beginning with MGE.

12 MR. SWEARENGEN: Good morning. Thank you,
13 your Honor. This issue concerns a proposal that Missouri
14 Gas Energy has offered in this proceeding. It's a
15 proposal for the creation of a fund for recovery of
16 environmental cleanup costs related to natural -- excuse
17 me -- manufactured gas facilities that were operated by
18 former owners of the company's properties.

19 By this response, the company is attempting
20 to establish a prospective policy regarding these very
21 substantial environmental cleanup expenditures. These are
22 costs which the company has incurred in the past and costs
23 which the company believes it will continue to experience
24 on a going-forward basis.

25 In that regard, MGE has expended

1 approximately \$9.3 million on manufactured gas
2 environmental cleanup activities since February of 1994,
3 and that is an average of something in excess of \$900,000
4 per year. None of these expenses, however, have been
5 included in rates in the past, and MGE is not requesting
6 the Commission in this proceeding to allow recovery of
7 those previously expended funds.

8 However, because the company has incurred
9 similar expenditures in the test year and will continue to
10 incur such costs in the future, the company can no longer
11 continue to pay for these costs without seeking some rate
12 recovery. The problem is because the precise amount of
13 these costs on a going-forward basis cannot be exactly
14 determined, and that's because the costs are site
15 specific, the company is proposing the creation of a fund
16 to cover these costs, and would urge the Commission to
17 consider approving the proposal.

18 Specifically, we're asking that the
19 Commission include in rates \$750,000 on an annual basis.
20 This amount would be included in a per-unit delivery
21 charge in all customer classes as a separate rate element,
22 and segregated in an interest-bearing trust account.
23 The proposal would be that the amount collected can be
24 trued up at some point in the future by comparing the
25 amounts collected through rates with the amounts actually

1 expended by the company on these environmental cleanup
2 costs. Unused amounts could either be refunded to
3 customers with interest or somehow credited to the
4 customers.

5 In essence, what we think MGE is proposing
6 is a vehicle that has characteristics of an Accounting
7 Authority Order, except that it's being funded on the
8 front end with the monies being collected and placed in a
9 segregated trust account. The proposal also has the
10 characteristics of a tracking mechanism designed to ensure
11 that there is no mismatch between the environmental costs
12 included in rates and those that are actually incurred by
13 the company.

14 We believe that approaching the
15 environmental cleanup cost issue in this manner serves the
16 beneficial purpose of mitigating rate shock which might
17 occur in the future in the event of significant cleanup
18 costs, and it also promotes the concept of inter-
19 generational equity by spreading cost recovery over a
20 wider base of customers.

21 The company's proposal is certainly not
22 unique in the regulatory world. The evidence that will be
23 presented today shows that there are similar plans in
24 effect in other jurisdictions and, in fact, an almost
25 identical plan is in place in the state of Massachusetts.

1 We think it is a fair way to deal with these costs, and
2 urge approval of the plan.

3 As indicated, it has a revenue requirement
4 of \$750,000. We have two witnesses on the subject,
5 Mr. Noack and Mr. Fish. Thank you.

6 JUDGE WOODRUFF: Thank you. For Staff?

7 MS. SHEMWELL: Good morning. Manufactured
8 gas plants are quite old plants, 50 years or more, that
9 the companies used to manufacture gas before the
10 interstate pipelines came in. Let me say that Staff is
11 not opposed to MGE recovering prudently incurred costs for
12 environmental cleanup, but Staff does believe that all
13 other sources should be exhausted first before ratepayers
14 are turned to to pay for these costs.

15 Other available sources include insurance,
16 other potentially responsible parties, even Western
17 Resources. Not only should ratepayers be the last source
18 to which MGE turns, MGE should only recover prudently
19 incurred actual expenditures.

20 In Briefs to the Commission, Staff will
21 further explain its concerns that setting up such an
22 environmental fund might constitute single issue or
23 retroactive ratemaking. Staff believes that there's also
24 the potential for double recovery, because MGE does have
25 other sources of recovery of these costs.

1 MGE entered into an asset purchase
2 agreement with Western Union (sic) and that asset
3 purchase agreement does not determine rate recoverability,
4 but rather the Commission determines what's recovered in
5 rates. In terms of rate shock, that could only occur if
6 the Commission approved all of MGE's costs as reasonable
7 and prudent.

8 In addition, MGE has a proposal to shift
9 half of its recovery to shareholders, and Staff would
10 oppose that very much. We think all recoveries of any
11 environmental costs from insurance or other parties should
12 go back to ratepayers.

13 I'd like to distinguish the Williams case
14 to which MGE refers. That was a
15 Stipulation & Agreement at the FERC, a heavily litigated
16 case, in which Williams, now known as Southern Star, had
17 already expended money for environmental cleanup, and that
18 was the basis for determining the amounts. There was no
19 future fund involved in that case.

20 MGE could have, if it had expended costs on
21 environmental cleanup or remediation, included it in this
22 rate case, but they chose instead to ask the Commission to
23 take a rather unusual and, in Staff's opinion, unsupported
24 step of approving a fund in which there's essentially
25 preapproval of these costs. The proposal is not

1 reimbursement. It's prepayment.

2 Staff believes that the evidence in this
3 case will convince the Commission that it should determine
4 that an environmental fund is not the appropriate method
5 of dealing with these costs. Thank you, Judge.

6 JUDGE WOODRUFF: Thank you. For Public
7 Counsel?

8 MR. MICHEEL: May it please the Commission?
9 It's Office of the Public Counsel's view that the
10 environmental slush fund should be denied. And I call it
11 a slush fund because the evidence is going to demonstrate,
12 and I think that Mr. Swearngen stated it aptly in his
13 opening, these costs are not known and measurable. We
14 don't know where they -- you know, what the costs are
15 going to be, how much they're going to be, and there's no
16 need to be preapproving recovery of these costs before
17 we've had an opportunity to determine whether they're just
18 and reasonable and prudent.

19 Of course, in the testimony of Ms. Bolin,
20 the testimony will indicate that the Office of the Public
21 Counsel does not believe that there should be any recovery
22 from ratepayers with respect to manufactured gas plant,
23 and the evidence is going to show three basic reasons for
24 that.

25 First is that MGE was well aware of the

1 manufactured gas plant issues when it purchased the assets
2 from Western Resources, Inc. Attached to Ms. Bolin's
3 testimony is that purchase agreement that clearly sets out
4 the requirements and the apportionment of the costs with
5 respect to these environmental matters related to
6 manufactured gas plant.

7 Now, MGE, the evidence will show, is
8 required to seek recovery from this Commission, but
9 they're not required to get recovery from this Commission.
10 It's Public Counsel's position that, in this case, MGE
11 purchased these properties knowing about the liabilities
12 and should have factored that into their purchase price,
13 and their failure to do due diligence on the purchase
14 should not mean that ratepayers should be placed on the
15 hook for these costs.

16 Secondly, again, none of these costs, the
17 evidence will show, are known and measurable.

18 Third, none of the properties related to
19 this are used and useful, I don't believe, or a vast
20 majority of properties are not used and useful in the
21 service for customers.

22 Fourth, the evidence will show that there's
23 no -- absolutely no reason that ratepayers should pay for
24 the cleanup of these sites. When MGE disposes of the
25 property, the shareholders get all of the benefits of

1 that.

2 Specifically, with respect to the proposed
3 environmental slush fund, I think the most glaring problem
4 with that is the company's request that any insurance
5 recoveries be shared -- if they receive insurance
6 recoveries and the Commission implements the slush fund,
7 that they be shared 50/50 between shareholders and
8 ratepayers, when ratepayers, if the Commission decides to
9 go down this ill-fated road, would be paying all of the
10 costs.

11 Simply put, at the close of the evidence,
12 the Commission should reject any sort of recovery for
13 manufactured gas plant and should specifically reject the
14 environmental slush fund proposed by MGE.

15 JUDGE WOODRUFF: Thank you. Let's see.
16 Midwest Gas and Jackson County are not here. Does Federal
17 Agencies want to make a statement?

18 MR. PAULSON: No, sir.

19 JUDGE WOODRUFF: Kansas City and Joplin are
20 not here either.

21 All right. We'll move on to the first
22 witness then, which I believe is Mr. Noack.

23 MR. SWEARENGEN: That's correct, your
24 Honor.

25 JUDGE WOODRUFF: Good morning, Mr. Noack.

1 Welcome back.

2 THE WITNESS: Thank you. Glad to be here.

3 JUDGE WOODRUFF: You have testified

4 previously. You are still under oath. You may inquire.

5 MR. SWEARENGEN: Thank you.

6 MIKE NOACK testified as follows:

7 DIRECT EXAMINATION BY MR. SWEARENGEN:

8 Q. Mr. Noack, just a couple of questions.

9 This topic, the environmental response fund topic is

10 addressed in your direct testimony, is it not, and also in

11 your surrebuttal testimony?

12 A. Yes, it is.

13 Q. And for the record, am I correct that on

14 page -- beginning on page 22 of your direct testimony, you

15 discuss this issue?

16 A. Yes, on line 18.

17 Q. And then with respect to your surrebuttal

18 testimony, am I correct that you begin discussion of it at

19 page 2?

20 A. That is correct.

21 MR. SWEARENGEN: Thank you. I would tender

22 the witness for cross-examination on this issue. Thank

23 you.

24 JUDGE WOODRUFF: All right. Thank you.

25 For cross-examination, Kansas City and Joplin are not

1 here. Federal Agencies have any questions?

2 MR. PAULSON: No, sir.

3 JUDGE WOODRUFF: All right. Jackson County

4 and Midwest Gas are not here. Public Counsel?

5 MR. MICHEEL: Yes, your Honor.

6 CROSS-EXAMINATION BY MR. MICHEEL:

7 Q. Mr. Noack, at page 2 of your surrebuttal

8 testimony, you allege that Staff and OPC allege that the

9 asset purchase agreement pursuant to which Southern Union

10 acquired the resources of Western Resources somehow

11 disclaims rate recovery of manufactured gas plant costs;

12 is that correct?

13 A. That's what it says.

14 Q. Could you point to me where in Ms. Bolin's

15 rebuttal or direct testimony she makes that statement?

16 And in your surrebuttal testimony, you point to pages 22

17 through -- or page 20 through 22 of Ms. Bolin's rebuttal

18 testimony, do you not?

19 A. Yes. I don't believe, if I'm reading this

20 correctly, that there's anything in there that makes a

21 statement about the rate recovery.

22 Q. So that's an incorrect statement in your

23 testimony, is it not, Mr. Noack?

24 A. Well, I think what I'm saying here is that

25 there is something in the statement that says we will

1 attempt to get rate recovery, and that by keeping this
2 out, they're disclaiming. That's where that comment comes
3 from.

4 Q. And that's your conclusion, is it not?

5 A. Yes.

6 Q. And Ms. Bolin's testimony actually is --
7 well, let me ask you this: Is it correct when Southern
8 Union Company purchased the assets from Western Resources,
9 it was aware of these environmental issues?

10 A. It was aware that there were possibly some
11 environmental issues, yes.

12 Q. And indeed, portion -- I mean, there
13 were -- there was a specific portion of the asset sale
14 contract that dealt with the environmental issues; isn't
15 that correct?

16 A. That's correct.

17 Q. And that portion of the contract only
18 required MGE to seek recovery from this Commission; isn't
19 that correct?

20 A. That's correct.

21 Q. It didn't contemplate that this Commission
22 was required to give MGE recovery of those costs; isn't
23 that correct?

24 A. No, it did not.

25 Q. And isn't it correct that Southern Union

1 Company and MGE negotiated a cost-sharing mechanism with
2 respect to environmental cleanup costs at the time of the
3 asset purchase?

4 A. They put language in the contract, yes,
5 dealing with environmental liabilities.

6 Q. So MGE was well aware when it purchased the
7 property that there were manufactured gas plant sites; is
8 that correct?

9 A. I believe so.

10 Q. And do you think that's something that MGE
11 or Southern Union Company should have taken into account
12 in the purchase price, those outstanding liabilities?

13 A. Well, I was not part of the negotiations of
14 this. I wasn't there yet. But in looking at the
15 information included in Ms. Bolin's testimony and from
16 what I've seen, they attempted to negotiate some relief in
17 there.

18 Q. And that's something that a reasonable
19 company would do, is it not?

20 A. Yes.

21 MR. MICHEEL: I need to get an exhibit
22 marked, your Honor. I think it's going to be 230 by my
23 calculations.

24 JUDGE WOODRUFF: That is correct, 230.

25 MR. MICHEEL: And it's going to be MGE's

1 response to Staff Data Request 9.

2 (EXHIBIT NO. 230 WAS MARKED FOR

3 IDENTIFICATION BY THE REPORTER.)

4 BY MR. MICHEEL:

5 Q. Mr. Noack, I have handed you what's been

6 marked for purposes of identification as Exhibit 230. Is

7 that Staff's response -- or excuse me -- the company's

8 response to Staff Data Request No. 9?

9 A. Yes, it is.

10 Q. And does that Data Request seek the costs

11 associated with cleanup of manufactured gas plant expensed

12 during 2001, 2002 and 2003?

13 A. Yes, it does.

14 Q. And does the response say the company has

15 not expensed any costs associated with the cleanup of

16 manufactured gas plants in Missouri during the fiscal

17 years 2001, 2002 and 2003?

18 A. That's what the data response reads, yes.

19 MR. MICHEEL: With that, your Honor, I

20 would move the admission of Exhibit 230.

21 JUDGE WOODRUFF: 230 has been offered into

22 evidence. Are there any objections to its receipt?

23 (No response.)

24 JUDGE WOODRUFF: Hearing none, it will be

25 received into evidence.

1 (EXHIBIT NO. 230 WAS RECEIVED INTO
2 EVIDENCE.)
3 BY MR. MICHEEL:
4 Q. Is it correct, Mr. Noack, that MGE no
5 longer operates any manufactured gas plants?
6 A. That's correct.
7 Q. Is it correct that MGE hasn't operated a
8 manufactured gas plant for well over 50 years?
9 A. Probably at least, yes.
10 Q. 50 years or more?
11 A. Correct.
12 Q. Is it correct that many of the sites that
13 are alleged gas plant sites are not currently owned by the
14 company?
15 A. That's correct also.
16 Q. And so they're not used to service
17 customers; is that correct?
18 A. No, they're not.
19 MR. MICHEEL: That's all I have, your
20 Honor.
21 JUDGE WOODRUFF: Thank you. Staff then?
22 MR. SWEARENGEN: Your Honor, before we go
23 to the Staff, I have a question on the exhibit.
24 Exhibit 230 Mr. Micheel said was a response to Staff Data
25 Request 9, I believe.

1 JUDGE WOODRUFF: Yes.

2 MR. SWEARENGEN: And the document that he
3 handed me consists of two pages. Is that correct?

4 THE WITNESS: You've included 9.1 also,
5 Mr. Micheel.

6 MR. MICHEEL: Oh, I'm sorry. It should
7 have just been -- why don't we rip that second page off?
8 I don't even know what that is. Photocopying glitch.

9 JUDGE WOODRUFF: It's Data Request No. 9.1.
10 Is it something you want to be part of this attachment or
11 not?

12 MR. MICHEEL: Let me just consult with my
13 witness. I'm sorry about that.

14 JUDGE WOODRUFF: Very well.

15 MR. MICHEEL: Thank you, Mr. Swearingen.
16 I'm sorry. I should not have stapled that together. So
17 it should just be a one-page document, and that would be
18 Exhibit 9 -- or 230, response to Data Request No. 9.

19 I apologize for any confusion that's
20 caused.

21 JUDGE WOODRUFF: All right. Thank you.
22 For Staff then, you may proceed.

23 MS. SHEMWELL: Thank you.

24 CROSS-EXAMINATION BY MS. SHEMWELL:

25 Q. Mr. Noack, you've agreed with Mr. Micheel

1 the gas plants have been out of service for 50 or more
2 years, so you're not manufacturing gas anymore; is that
3 right?

4 A. That's correct.

5 Q. And you don't expect to again?

6 A. No.

7 Q. You now receive it through interstate
8 pipelines?

9 A. That's correct.

10 Q. And in your testimony, you propose setting
11 up a separate fund specifically for environmental costs
12 related just to these manufactured gas plants, right?

13 A. That's correct.

14 Q. Staff has not indicated in its testimony
15 that it would be opposed to MGE recovering prudently
16 incurred environmental response costs, right?

17 A. I believe that's true, yes.

18 Q. And when we say environmental response or
19 remediation cost, we're talking about things like cleanup,
20 remediation onsite, litigation costs, would you agree?

21 A. Yes.

22 Q. You propose \$750,000 as the initial funding
23 amount. How did you choose that amount?

24 A. It was just a number picked. We've
25 expended approximately \$9 million over the 10 years, last

1 10 years, and that would be roughly \$900,000 a year. We
2 just picked 750.

3 Q. When you say you've expended, does that
4 mean that you have not recovered anything from other
5 parties?

6 A. No. In fact, it's quite the opposite.
7 MGE -- or Southern Union -- excuse me -- has expended that
8 money, and through the \$3 million that was set aside at
9 the time of purchase from Western and insurance proceeds
10 to date, we have not had to pay out anything out of our
11 own pocket, except for that \$3 million.

12 Q. I'm sorry. Except for what \$3 million?

13 A. The \$3 million that was set aside at the
14 purchase.

15 Q. Set aside by Western Resources?

16 A. Set aside by Southern Union as part of the
17 purchase agreement.

18 Q. Did Western Resources also contribute?

19 A. I don't believe so.

20 Q. Your environmental expenses are not
21 recorded on MGE's books, right?

22 A. No. Everything is recorded at the
23 corporate level.

24 Q. And no amount for environmental remediation
25 has been included in this rate case, right?

1 A. That's correct.

2 Q. How much manufactured gas plant remediation
3 cost does Southern Union expect to expend, or does MGE
4 expect to expend in 2004?

5 A. I don't -- I don't have any idea.

6 Q. And would your response be the same for
7 2005?

8 A. Yes, and '06 and '07, yes.

9 MS. SHEMWELL: I would like to have an
10 exhibit marked, please, Judge.

11 JUDGE WOODRUFF: All right. Staff's next
12 number is 855.

13 (EXHIBIT NO. 855HC WAS MARKED FOR
14 IDENTIFICATION BY THE REPORTER.)

15 BY MS. SHEMWELL:

16 Q. Mr. Noack, can you identify this document?
17 Would you agree with me that it's your response to Staff
18 Data Request 9.5?

19 A. I'd better look through it to make sure you
20 don't have any attached pages.

21 MS. SHEMWELL: Judge, I need to note that
22 this is highly confidential and all of this is marked
23 highly confidential. If we get into numbers, we will
24 probably need to go into closed session. I'll let MGE
25 make the determination about that.

1 JUDGE WOODRUFF: I'll go ahead and mark it
2 as 855HC, then.

3 BY MS. SHEMWELL:

4 Q. Is this your response to Staff Data Request
5 9.5, Mr. Noack?

6 A. Yes, it is.

7 Q. I actually just wanted to look at the last
8 page. At the very bottom -- I think we'll stay out of
9 numbers so we can stay out of closed session, if that's
10 all right with you, away from specific numbers. What's
11 the A-E-G-I-S, Aegis refunds, what is that?

12 A. I believe it's insurance proceeds.

13 Q. Western Resources sale agreement, that
14 dollar amount we've already talked about, right?

15 A. That's correct. That's the money that was
16 set aside.

17 Q. So we refer to it as the \$3 million?

18 A. Yes.

19 Q. So that was money that was set aside. What
20 is National Indemnity?

21 A. Again, that's insurance recoveries.

22 Q. So at the bottom it shows a balance
23 remaining as of December 31st?

24 A. That's correct.

25 Q. And that's a balance remaining in a fund

1 for environmental cleanup of these manufactured gas
2 plants; is that correct?

3 A. That's correct.

4 MS. SHEMWELL: Okay. I would move for the
5 admission of Exhibit 855HC.

6 JUDGE WOODRUFF: 855HC has been offered
7 into evidence. Are there any objections to its receipt?

8 (No response.)

9 JUDGE WOODRUFF: Hearing none, it will be
10 received into evidence.

11 (EXHIBIT NO. 855HC WAS RECEIVED INTO
12 EVIDENCE.)

13 BY MS. SHEMWELL:

14 Q. You're proposing a tracker or a tracking
15 mechanism for this fund; is that right?

16 A. That's correct.

17 Q. And a tracker works by putting in money up
18 front; would you agree with that?

19 A. In this case, yes, that's what I'm
20 requesting.

21 Q. And then certain expenses would be deducted
22 from that fund?

23 A. That is correct.

24 Q. And MGE or Southern Union -- let's just
25 refer to MGE since it's the rate case here -- decides what

1 to deduct from the fund; is that correct?

2 A. I'm sorry?

3 Q. MGE makes a decision what to deduct from
4 that fund?

5 A. What expenditures would get paid out of
6 that fund, yes.

7 Q. And when those funds would be deducted,
8 right?

9 A. Yes.

10 Q. How would the Commission assure that only
11 prudently incurred costs were deducted from the fund?

12 A. I would assume they would audit that fund,
13 like they audit --

14 Q. At a rate case?

15 A. -- at a rate case, at an ACA period similar
16 to how they audit our gas costs.

17 Q. Are you suggesting they would do it in an
18 ACA case?

19 A. No. Similar to. Similar to.

20 Q. You refer to the environmental liability
21 agreement that you signed with Western Resources, and
22 that's attached to Paul Harrison's testimony at
23 Schedule 1.3 on page 3; is that right?

24 A. I don't have Mr. Harrison's testimony up
25 here with me. I'm sorry.

1 MS. SHEMWELL: If I may approach, Judge,
2 I'm going to hand Mr. Noack a copy of the environmental
3 agreement that's attached to Mr. Harrison's highly
4 confidential rebuttal testimony.

5 JUDGE WOODRUFF: Okay.

6 MR. MICHEEL: I would just note for the
7 record, your Honor, that the environmental -- this portion
8 is not an HC document. It's attached in public to
9 Ms. Bolin's rebuttal testimony, KKB, as Schedule KKB-16.
10 So it's not highly confidential.

11 THE WITNESS: That's true, your Honor. I
12 believe Mr. Micheel called the company up, and we
13 discussed it and decided that this really isn't highly
14 confidential after all. So we can remove that.

15 JUDGE WOODRUFF: Okay.

16 BY MS. SHEMWELL:

17 Q. On page 3 of this schedule it reviews the
18 process for insurance recovery; is that right?

19 A. Under C, I believe is what you're referring
20 to?

21 Q. Yes, there with the small "I" in
22 parentheses, insurance first line of recovery.

23 A. All right.

24 Q. Did the seller, in this case Western
25 Resources, provide you with what you've called -- what's

1 been described as an archeology survey for the plants and
2 locations?

3 A. I have no idea.

4 Q. Did they provide you a list of the
5 insurance coverage that they had at the time?

6 A. I do not know.

7 Q. Who knows whether or not MGE is aware of
8 the insurance policies?

9 A. I do not know.

10 Q. Will you agree with me that the agreement
11 says insurance is the first line of recovery?

12 A. That's what this contract says, little "I."
13 I mean, that's what the line says.

14 Q. And Southern Union signed this asset
15 purchase agreement or entered into this with Western
16 Resources?

17 A. I believe so, yes.

18 Q. Mr. Noack, would you agree with me that the
19 Commission has an Accounting Authority Order mechanism?

20 A. Yes. I've had --

21 Q. And would you agree --

22 A. -- some dealings with those.

23 Q. -- that the purpose of an AAO is to allow a
24 company, just in general, to accumulate expenses for the
25 next rate case?

1 A. It allows a company to accumulate expenses
2 without having any certainty as to how they will be dealt
3 with in the next rate case, yes.

4 Q. Is there any certainty as to any expense in
5 the next rate case?

6 A. No, probably not, which is why we're asking
7 for something like this in this case.

8 Q. Which, in fact, places all the risk on the
9 ratepayer?

10 A. Well, I don't -- no, I don't see it that
11 way.

12 Q. Well, will customers receive refunds if
13 they pay more into the fund than is expended for
14 environmental remediation costs?

15 A. Absolutely.

16 Q. And that occurs only when the Commission
17 orders; is that right? That's your proposal?

18 A. Well, it would occur if the Commission
19 ordered it, or it would occur at the time that MGE or
20 Southern Union saw that the remediation and cleanup
21 efforts were completed, and we would on our own say, I
22 think we're finished, we have this much money left,
23 Commission, can we please give it back?

24 Q. When would you estimate that that would
25 occur, that they would decide that all remediation efforts

1 were completed?

2 A. I don't know that, that answer. I don't

3 know that anybody knows what that answer is right now.

4 Q. Can we agree it's probably not in the next

5 two or three years?

6 A. I don't know the answer to that.

7 Q. Would you agree with me that the fund and

8 the funding cannot be changed outside of a general rate

9 proceeding or a complaint case? In other words, that

10 there has to be a filing with the Commission, and it's

11 likely to be your next general rate case?

12 A. To change the amount of the 750?

13 Q. Yes.

14 A. I believe that's probably true, yes.

15 Q. You refer to a FERC case involving

16 Williams, which is now known as Southern Star. Williams

17 is an interstate pipeline, right?

18 A. Yes, it is.

19 Q. And they are regulated at the FERC,

20 correct?

21 A. That is correct.

22 Q. Would you agree that that case involved a

23 Stipulation & Agreement?

24 A. Yes, absolutely.

25 Q. And what had been a heavily litigated case?

1 A. I suppose it was -- I suppose it was
2 litigated, and the result was a settlement that the
3 Commission Staff agreed to.

4 Q. And when you say Commission Staff, you are
5 talking about this Commission Staff recommending to the
6 Commission that it accept the Stipulation & Agreement; is
7 that correct? You're not referring to FERC Staff, FERC
8 Commission Staff?

9 A. No. The Missouri Public Service
10 Commission intervened in that case and signed off on the
11 Stipulation & Agreement as being fair.

12 Q. And in that case, Williams had already
13 expended the environmental cleanup costs, right?

14 A. I believe that in that case, some was
15 included in their O&M expenses, a level was put into their
16 O&M expenses.

17 Q. In other words, it would have been in a
18 rate case?

19 A. I think, yeah, part -- it was litigated,
20 right.

21 Q. We've talked about in your direct testimony
22 on Schedule H-28, you state that the fund which you're
23 proposing should be given credit for the accrued liability
24 in the amount of \$3 million recorded on Southern Union's
25 books, and we've talked about this 3 million?

1 A. That's correct.

2 Q. How is that accrued liability, how is that
3 treated within the fund?

4 A. Well, we would -- we would set up --
5 basically we would run everything that we've incurred to
6 date as being part of this fund that we're setting up.
7 And so essentially, we'd be starting off with a balance in
8 the fund of some amount that's left over after we've paid
9 all these expenses.

10 Q. From the 3 million?

11 A. From the 3 million, from the insurance
12 proceeds, from everything to date.

13 Q. Is there anything currently that limits
14 future insurance proceeds that you may collect?

15 A. That I have no idea. Probably just
16 insurance company and their liquidity and whether or not
17 they agree to pay it.

18 Q. You have received some insurance refunds in
19 the past?

20 A. As is shown on the response to DR 9.5, yes.

21 Q. That last page?

22 A. That's correct.

23 Q. Does the asset purchase agreement that
24 we've referred to that's no longer highly confidential
25 that was attached to both Ms. Bolin's and Mr. Harrison's

1 testimony obligate Western Resources to reimburse Southern
2 Union for some of the cleanup costs?

3 A. There's a sharing mechanism there, but I'm
4 not -- you know, I don't know to what extent Southern
5 Union/MGE would have to litigate to obtain this money.

6 Q. Are you saying you don't know?

7 A. No. I said, there -- there is a sharing
8 built in up to a maximum aggregate amount of \$15 million.

9 Q. A potentially responsible party is someone
10 else who might be involved in a cleanup. Can we agree
11 that that's a very general definition?

12 A. I guess --

13 Q. Well, you define it then.

14 A. That might be a better question for
15 Mr. Fish there.

16 Q. How many potentially responsible parties
17 have been identified that may be responsible for the
18 cleanup of these gas plants?

19 A. I don't remember the number now. I think
20 it's in a data response that I've provided to Staff, but I
21 can't remember the exact number.

22 Q. Might Mr. Fish be able to tell us?

23 A. Probably, yes.

24 Q. How many insurance companies have been
25 identified?

1 A. That I do not know.

2 Q. You agreed with Mr. Micheel, didn't you,
3 that MGE does not have to receive actual rate recovery
4 from this Commission before receiving reimbursement from
5 Western Resources under the environmental agreement?

6 A. I don't have any problem with the first
7 part of the question. It's the latter part that I may not
8 agree with. But no, we do not have to get rate recovery.
9 We have to seek rate recovery.

10 Q. Let me state it different. Yes, you're
11 required to seek rate recovery. Thank you.

12 All right. Now, do you know, other than
13 seeking rate recovery, what other steps you might have to
14 take to get reimbursement from Western Resources?

15 A. You know, just basically what's covered in
16 this agreement. It kind of speaks for itself as to the
17 steps that we have to go through, the hoops that have to
18 be jumped through to get any potential recovery.

19 Q. You said on page 5 of your surrebuttal
20 because of the specific design features of the
21 environmental response fund, you don't think it
22 constitutes single issue ratemaking. Would you describe
23 the specific design features that you're referring to
24 there?

25 A. Well, it's -- I'm not real big on the

1 definition, I guess, of single issue ratemaking, but we're
2 setting -- we're setting costs aside in this separate
3 fund. We can't control the types of costs that are going
4 through here.

5 Q. You're not really setting costs aside,
6 right, you're setting funds?

7 A. We're setting funds aside. Excuse me.
8 Yes.

9 Q. And the costs that you described?

10 A. You can't really control those costs, that
11 they're going to be applied to this.

12 Q. And you don't know what they're going to
13 be?

14 A. I do not know what they're going to be.

15 Q. Or when they're going to be incurred?

16 A. No.

17 MS. SHEMWELL: Okay. That's all I have.
18 Thank you.

19 JUDGE WOODRUFF: Come up for questions from
20 the Bench.

21 Commissioner Davis?

22 COMMISSIONER DAVIS: No questions at this
23 time.

24 JUDGE WOODRUFF: Commissioner Appling?

25 COMMISSIONER APPLING: No questions.

1 JUDGE WOODRUFF: I have a couple of
2 questions, and you may not be the best person to answer
3 this. If not, we'll defer to somebody else.

4 QUESTIONS BY JUDGE WOODRUFF:

5 Q. It's a very basic question. What is
6 manufactured gas? Everybody's been talking about it.
7 There's nothing in the record explaining what it is, so
8 I'd like to get that in there if I could.

9 A. I can't do a very good job of explaining
10 it, but in an exhibit to my surrebuttal testimony -- and I
11 think I can point to a page. It's MRN surrebuttal
12 Schedule 3. It is page 11 -- 13 of 61 on surrebuttal
13 Schedule MRN-3. In the Massachusetts order that I put in,
14 there is a historical and technical background that deals
15 with development of the manufactured gas industry and all
16 the problems with it and, I mean, just a litany of what
17 happened.

18 Q. Okay. Very good. That will be very
19 helpful. Then I assume this isn't a problem that's
20 limited to MGE's service territory, other LDCs around the
21 country have the same problems?

22 A. That's correct. And that was the purpose
23 of putting in several of these commission orders and
24 examples in the -- in my testimony.

25 Q. Okay. Do you know what the other Missouri

1 LDCs are doing with this?

2 A. No.

3 Q. Is this an issue for them?

4 A. I would assume that at some point it's

5 going to become an issue with them, yes, but I don't know

6 what they're doing right now.

7 Q. You've been talking about insurance

8 proceeds. Who bought the insurance?

9 A. Boy, that I cannot answer. I don't know

10 the answer to that, your Honor.

11 Q. Was it something MGE purchased, or do you

12 know?

13 A. I don't know.

14 Q. Do you know if Mr. Fish would know?

15 A. I don't know that either. I'm sorry.

16 JUDGE WOODRUFF: I'll ask him. All right.

17 That's all the questions I have then. We'll go back for

18 recross based on my questions.

19 Kansas City and Joplin are not here.

20 Federal Agencies?

21 MR. PAULSON: No, sir.

22 JUDGE WOODRUFF: Jackson County and Midwest

23 Gas are not here. Public Counsel?

24 MR. MICHEEL: No, sir.

25 JUDGE WOODRUFF: Staff?

1 MS. SHEMWELL: Just one. Thank you.

2 RECROSS-EXAMINATION BY MS. SHEMWELL:

3 Q. Mr. Noack, all of those states that you

4 list, do you know if those LDCs have actually incurred

5 expenses?

6 A. Yes. In fact, I think I've got a tariff

7 from one of the companies in Massachusetts that is in

8 effect right now, and they are incurring, they are

9 recovering, and they are sharing insurance proceeds.

10 Q. My question was, did they actually incur

11 expenses, they paid out expenses?

12 A. Yes.

13 MS. SHEMWELL: Thank you. That's all.

14 JUDGE WOODRUFF: Redirect?

15 MR. SWEARENGEN: Yes. Thank you.

16 REDIRECT EXAMINATION BY MR. SWEARENGEN:

17 Q. Mr. Noack, you referred the Bench to one of

18 your schedules in response to the question about a

19 description of manufactured gas or manufactured gas plant;

20 is that true?

21 A. Yes, I did.

22 Q. And is it your understanding that that

23 description, although it might not be specific to

24 Missouri, would be applicable to the manufactured gas

25 plant facilities that you have discussed in your testimony

1 and that we're concerned about here in the state of
2 Missouri?

3 A. Yes, it deals with actually the
4 manufactured gas process, et cetera, yes.

5 Q. Ms. Shemwell was asking you some questions
6 about the FERC proceeding involving Williams Natural Gas
7 Company.

8 A. Yes.

9 Q. What is it -- what is your understanding as
10 to the party that actually signed onto the agreement in
11 the Williams case as it relates to the Missouri
12 Commission? Who was the party that signed the agreement
13 in the Williams case?

14 And you may want to refer to your
15 surrebuttal Schedule MNR-2 before you answer that.

16 A. It's the comment on page 215 of my
17 Schedule 2, the comments of the Missouri Public Service
18 Commission in support of the Stipulation & Agreement have
19 been submitted by Dana Joyce, General Counsel, and signed
20 by Ms. Shemwell as the Assistant General Counsel of the
21 Missouri Public Service Commission.

22 Q. So it's your understanding these comments
23 were submitted on behalf of the Missouri Public Service
24 Commission itself?

25 A. Yes.

1 Q. And not its Staff?

2 A. Yes.

3 Q. Thank you. Now, the Staff has indicated it
4 has no opposition to Missouri Gas Energy recovering
5 prudently incurred costs in connection with this issue,
6 and there was some discussion in response to
7 Ms. Shemwell's question about the true-up proceeding.

8 Can you tell the Commission in your view
9 what would happen if the true-up proceed with respect to
10 determining whether or not these costs are prudently
11 incurred?

12 A. Well, at the time that the Staff would come
13 in and audit -- well, I guess the easiest way to explain
14 it is in my direct testimony on Schedule H-28, Item C, I
15 am suggesting that Missouri Gas Energy would file an
16 annual report with the Commission and serve on all other
17 parties on a highly confidential basis a summary and
18 accounting of all costs incurred during such year which
19 have been applied to the fund.

20 And then it goes on to say, a separate
21 accounting shall be maintained on the company's books and
22 accruals for accruals and expenditures for environmental
23 response cost. Each of the parties retain their right to
24 review and challenge any costs that they believe do not
25 fall within the definition of environmental response cost

1 as defined in subparagraph A above.

2 So we would file a report annually
3 detailing all activity in the fund, and parties would have
4 the ability to come in and audit those costs. And if they
5 so deemed some weren't prudent or shouldn't be a part of
6 that fund, we could either agree to that at the time or we
7 could bring that up before the Commission for their
8 decision.

9 Q. Is that process you just described the
10 true-up process that I had talked about earlier?

11 A. Yes.

12 Q. And is that similar to your understanding
13 of how the purchased gas and ACA process works for natural
14 gas companies under this Commission's jurisdiction?

15 A. It's similar to that, yes, in that we
16 expend the costs and then after -- a year after the fact
17 or somewhat, sometime after a year is up, the Commission
18 comes in and audits those costs through the ACA audit.

19 Q. Now, you were asked a question about the
20 types of costs that are involved in this process, and I
21 think you gave a partial answer. Do you have a copy of
22 the Public Counsel's Ms. Bolin's direct testimony handy?

23 A. I have pieces of her testimony handy.

24 MR. SWEARENGEN: Could I approach the
25 witness? I might simplify it if I do that.

1 JUDGE WOODRUFF: You may.

2 THE WITNESS: At least I used to.

3 BY MR. SWEARENGEN:

4 Q. Looking at her testimony that I've just
5 handed you, starting on page 9, if you could read into the
6 record the question that begins on line 11 and the answer,
7 please.

8 A. Question: What costs are included in
9 company's proposed environmental response fund? Answer:
10 Manufactured gas plant remediation costs are included in
11 the company's proposed environmental response fund. MGP
12 remediation costs can be defined as all investigations,
13 testing, land acquisition, appropriate remediation and/or
14 litigation costs and expenses or other liabilities,
15 excluding personal injury claims specifically related to
16 gas manufacturing facility sites, disposal sites or sites
17 to which material may have mitigated -- excuse me -- may
18 have migrated as a result of the operation or
19 decommissioning of gas manufacturing facilities.

20 Q. My question to you is, generally speaking,
21 would you agree with her statement as contained in her
22 testimony that you just read into the record?

23 A. Yes.

24 Q. Thank you.

25 Mr. Micheel asked you about the company's

1 response to Staff Data Request No. 9, and I believe that
2 he had that marked as Exhibit 230 and it's been made a
3 part of the record.

4 I'm going to hand you the company's
5 response to Staff Data Request 9.1, which is the next part
6 of that Data Request series concerning this issue, and ask
7 you to read into the record the question asked and the
8 company's response.

9 Go ahead and do that, please.

10 A. The question is, on page 23 of your Mike
11 Noack direct testimony, he says that MGE expended
12 \$6,320,000 in FMGP-related costs during the test year.
13 However, the company's response to DR No. 9 states that
14 the company has not expensed any cost associated with
15 cleanup of FMGP in Missouri during 2001, 2002 and 2003.
16 How are these costs being booked and to what account are
17 they being assigned? Also, how was the annual funding of
18 \$750,000 mentioned in Mike Noack's testimony determined?
19 Please cite an authority for the way the company wants to
20 book these costs.

21 Q. And then read into the record, if you
22 would, please, the company's response or answer to that
23 Data Request.

24 A. Currently these costs are being booked at
25 the corporate level through Account No. 253015. No costs

1 are being booked at the MGE level at the present time.
2 The \$750,000 is an estimate of an appropriate level to use
3 to establish a fund from which future costs can be paid.
4 It is also an attempt to prevent future rate shock at such
5 time as the costs are incurred.

6 It is intended that all monies paid into
7 the fund will be held in a separately segregated
8 interest-bearing account. MGE is attempting to model
9 methods established by both the Massachusetts Commission
10 and FERC.

11 Q. And when you say -- you make reference to
12 the Massachusetts Commission, is that the case that you
13 have referenced in your testimony and attached a decision
14 as a schedule?

15 A. Yes, it is.

16 Q. And the FERC proceeding would be the
17 Williams proceeding that you've just discussed earlier; is
18 that true?

19 A. That's correct.

20 Q. MGE is an operating division of Southern
21 Union Company; is that true?

22 A. That's true.

23 MR. SWEARENGEN: That's all I have. Thank
24 you.

25 JUDGE WOODRUFF: Thank you. Then

1 Mr. Noack, you can step down.

2 You can call your next witness.

3 MR. SWEARENGEN: Alan Fish.

4 (Witness sworn.)

5 JUDGE WOODRUFF: You may inquire.

6 ALAN F. FISH testified as follows:

7 DIRECT EXAMINATION BY MR. SWEARENGEN:

8 Q. Would you state your name for the record,
9 please.

10 A. My name is Alan F. Fish.

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

13 A. Southern Union Company, and I'm director of
14 environmental services.

15 Q. Did you prepare for purposes of this
16 proceeding certain rebuttal testimony in question and
17 answer form, consisting of four pages and an affidavit?

18 A. Yes.

19 Q. Do you have a copy of that testimony in
20 front of you this morning?

21 A. Yes, I do.

22 MR. SWEARENGEN: Could I ask the Judge what
23 number has been assigned to that?

24 JUDGE WOODRUFF: Fish Rebuttal is 22.

25 MR. SWEARENGEN: Thank you.

1 BY MR. SWEARENGEN:

2 Q. If I asked you the questions contained in
3 your rebuttal testimony, which has been marked for
4 identification as Exhibit 22, would your answers this
5 morning be the same?

6 A. Yes.

7 Q. And are those answers true and correct to
8 the best of your knowledge, information and belief?

9 A. Yes.

10 Q. Are there any changes you need to make with
11 respect to any of those responses?

12 A. There is just one future change, and our
13 suite number's changing from 1900 to 1950.

14 Q. All right. Can you refer to the piece of
15 testimony that you're talking about?

16 A. I believe that's the first question on
17 would you please state your name and business address.

18 MR. SWEARENGEN: Thank you. That's all I
19 have with that, your Honor. I would tender the witness
20 for cross-examination.

21 JUDGE WOODRUFF: Do you wish to offer?

22 MR. SWEARENGEN: I would offer the exhibit
23 into evidence.

24 JUDGE WOODRUFF: This is the only time he's
25 appearing?

1 MR. SWEARENGEN: That's right.

2 JUDGE WOODRUFF: Exhibit 22 has been

3 offered into evidence. Any objections to its receipt?

4 (No response.)

5 MR. SWEARENGEN: Hearing none, it will be

6 received into evidence.

7 (EXHIBIT NO. 22 WAS RECEIVED INTO

8 EVIDENCE.)

9 JUDGE WOODRUFF: For cross-examination,

10 Kansas City and Joplin are not here. Federal Agencies

11 have any questions?

12 MR. PAULSON: No, sir.

13 JUDGE WOODRUFF: Jackson County and Midwest

14 Gas are not here. Public Counsel?

15 MR. MICHEEL: No questions for Mr. Fish

16 today, your Honor.

17 JUDGE WOODRUFF: Staff?

18 CROSS-EXAMINATION BY MS. SHEMWELL:

19 Q. Mr. Fish, I'm Lera Shemwell. I represent

20 the Staff in this case.

21 How many potentially responsible parties

22 have been identified for the MGE sites that we're talking

23 about today?

24 A. I don't know that number.

25 Q. How many insurance companies that may have

1 policies that could -- with which a claim could be filed
2 have been identified?

3 A. Yeah. I understand your question. I don't
4 know that number either. Those are not part of my scope.

5 Q. On page 3 of your testimony, at line 9, you
6 indicate a statement included in the -- and I'm going to
7 get it out. MDNR is Missouri Department of Natural
8 Resources, correct?

9 A. Correct.

10 Q. -- regarding source removal, and then you
11 also refer to a Department of Natural Resources May 7th
12 letter. How much money has MGE expended as a result of
13 receipt of these letters from the Department of Natural
14 Resources --

15 A. I think those numbers were given --

16 Q. I'm sorry -- or their recommendations?

17 A. Do what now?

18 Q. The recommendations made in these letters.

19 A. Well, that project's ongoing actually.
20 You're asking for total costs --

21 Q. Yes.

22 A. -- in response to this?
23 I don't know the answer.

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

1 JUDGE WOODRUFF: Thank you.

2 I have a question, and you probably heard

3 it before when I asked Mr. Noack.

4 QUESTIONS BY JUDGE WOODRUFF:

5 Q. We've been talking about insurance

6 policies. Do you know where these insurance policies came

7 from, who paid for them?

8 A. I don't specifically know the answer to

9 that. I'm assuming that the entity that was operating the

10 gas plant at the time of operation were the ones that paid

11 the premiums on the insurance policies.

12 Q. So these might be insurance policies from

13 about 60, 70 years ago?

14 A. Right.

15 Q. Somebody's getting a nice surprise then,

16 aren't they?

17 Okay. So it's not MGE that's been buying

18 these insurance policies?

19 A. To my knowledge, no.

20 Q. Okay.

21 A. And to clarify, the environmental insurance

22 policies today are very specific to projects.

23 Q. If you were to buy one now, you mean?

24 A. If you were to buy an insurance policy now,

25 it would have environmental exclusions, and you'd have to

1 buy a policy specifically for whatever purpose you were
2 doing.

3 Q. What kind of pollutants are being found at
4 these sites?

5 A. The -- it's basically a coal tar, which is
6 the driver for these projects.

7 Q. As I understand it, manufactured gas was
8 manufactured by -- I think it was described as roasting
9 coal, is that right --

10 A. Right.

11 Q. -- and there's a residue left over?

12 JUDGE WOODRUFF: All right. That's all the
13 questions I have, then. Does anyone wish to do any
14 recross?

15 (No response.)

16 JUDGE WOODRUFF: Then we'll move to
17 redirect.

18 MR. SWEARENGEN: No redirect. Thank you.

19 JUDGE WOODRUFF: All right. Then,
20 Mr. Fish, you can step down.

21 THE WITNESS: Thank you.

22 MR. SWEARENGEN: And may he be excused?

23 JUDGE WOODRUFF: You may be excused.

24 MR. SWEARENGEN: Thank you.

25 MR. MICHEEL: We would call Ms. Bolin, your

1 Honor.

2 JUDGE WOODRUFF: Thank you. And Ms. Bolin,
3 you've previously testified and you're still under oath as
4 well.

5 KIMBERLY BOLIN testified as follows:

6 DIRECT EXAMINATION BY MR. MICHEEL:

7 Q. Ms. Bolin, with respect to the portion of
8 your testimony related to the manufactured gas plant and
9 environmental slush fund, did you have any corrections you
10 needed to make to that testimony?

11 A. Yes, I do. My first correction is in my --

12 JUDGE WOODRUFF: Ms. Bolin, wait just a
13 second. This is your rebuttal or surrebuttal?

14 THE WITNESS: Direct and rebuttal.

15 JUDGE WOODRUFF: Okay. You can go ahead.

16 THE WITNESS: In my direct testimony, on
17 page 11, line 21, the word "form" should read "from." And
18 then in my rebuttal testimony, page 24, line 10, the
19 sentence that reads "that, and the fact that the company
20 does own," it should have "does not own."

21 BY MR. MICHEEL:

22 Q. With those corrections, if I asked you
23 those questions relating to the manufactured gas plants
24 issue in this case, would your answers be the same?

25 A. Yes, they would.

1 MR. MICHEEL: I would tender Ms. Bolin for
2 cross.
3 JUDGE WOODRUFF: Okay. Thank you. For
4 cross-examination, begin with Staff.
5 MS. SHEMWELL: No questions, thank you.
6 JUDGE WOODRUFF: Kansas City and Joplin are
7 not here. Federal Agencies?
8 MR. PAULSON: No questions.
9 JUDGE WOODRUFF: Jackson County and Midwest
10 Gas are not here. For MGE then?
11 MR. SWEARENGEN: Yes.
12 CROSS-EXAMINATION BY MR. SWEARENGEN:
13 Q. Good morning, Ms. Bolin. How are you?
14 A. Good morning.
15 Q. Looking at your direct testimony, starting
16 on page 9, am I correct in understanding that you discuss
17 there why you think the company will incur these cleanup
18 costs that we've been talking about?
19 A. Line 21, I give a little history on the
20 manufactured gas cleanup.
21 Q. And I can deduce from your discussion of
22 that history that you think that the company will incur
23 these costs on a going-forward basis at some level?
24 A. I believe the company will incur, but I do
25 not believe ratepayers should pay for it.

1 Q. Turning over to page 10 of your direct
2 testimony, am I correct that you identify there six
3 particular manufactured gas plant sites that could require
4 cleanup by Missouri Gas Energy?

5 A. I say that they own these six potential
6 sites that they have listed.

7 Q. And those sites could require cleanup; is
8 that true?

9 A. The company has identified them as
10 potentially -- potential sites for cleanup.

11 Q. And do you have any reason to dispute that?

12 A. Not at this time.

13 Q. And you also recognize as many as 14 other
14 locations in which Missouri Gas Energy might have some
15 cleanup responsibilities; is that true?

16 A. Those are sites the company has identified.

17 Q. And do you have any reason to dispute the
18 accuracy of those?

19 A. I have not put any dispute in my testimony.

20 Q. And today sitting here, you have no reason
21 to dispute that; is that true?

22 A. I have not researched completely each site.

23 Q. So the answer is yes?

24 A. Yes.

25 MR. SWEARENGEN: Thank you. That's all I

1 have.

2 JUDGE WOODRUFF: All right. Thank you. I

3 have no questions from the Bench, so no recross. Any

4 redirect?

5 MR. MICHEEL: No, your Honor.

6 JUDGE WOODRUFF: Then, Ms. Bolin, you can

7 step down. I believe the next witness is Paul Harrison

8 for Staff.

9 (Witness sworn.)

10 JUDGE WOODRUFF: You may be seated. You

11 may inquire.

12 MS. SHEMWELL: Thank you.

13 PAUL R. HARRISON testified as follows:

14 DIRECT EXAMINATION BY MS. SHEMWELL:

15 Q. Would you state your name for the record,

16 please.

17 A. My name is Paul R. Harrison.

18 Q. Where do you work, Mr. Harrison?

19 A. I work for the Missouri Public Service

20 Commission as a regulatory auditor.

21 A. Do you have any corrections to your

22 testimony, Mr. Harrison?

23 A. Yes, I do. On my amended direct testimony,

24 on page 11 --

25 JUDGE WOODRUFF: Wait just a moment while I

1 get that out here. Okay. That was on your amended
2 direct?

3 THE WITNESS: Amended direct.

4 JUDGE WOODRUFF: Go ahead.

5 THE WITNESS: Line 19.

6 JUDGE WOODRUFF: Which page?

7 THE WITNESS: Page 11, where it shows "the
8 schedule showed that," those four words need to be taken
9 out. And then the first letter of "all" needs to be
10 capitalized.

11 BY MS. SHEMWELL:

12 Q. Is that all, Mr. Harrison?

13 A. That's all the changes I have.

14 Q. Did you prepare the exhibits that have been
15 marked 813 Harrison amended direct, 814HC and NP, Harrison
16 rebuttal, and 815, Harrison surrebuttal?

17 A. Yes, I did.

18 Q. With these corrections, is your testimony
19 true and correct to the best of your knowledge and belief?

20 A. Yes, it is.

21 MS. SHEMWELL: Thank you. I offer these
22 exhibits into evidence.

23 JUDGE WOODRUFF: All right. I had a
24 question about the rebuttal testimony. It's marked as HC,
25 but I believe the only HC in it is that schedule that we

1 indicated earlier is no longer HC; is that correct?

2 MS. SHEMWELL: There's another page, Judge,
3 that's been marked HC, page 9. But he's quoting there, I
4 think, from the environmental liability agreement. So
5 it's possible that the entire thing, and perhaps MGE would
6 review that and we can let you know.

7 JUDGE WOODRUFF: All right. Do you
8 disagree?

9 MR. SWEARENGEN: I can't speak to that
10 right now. We'll take a look at it.

11 JUDGE WOODRUFF: I'll go ahead and admit
12 both of them, and if you indicate later that it's not HC,
13 let me know. All right. Is this the only time
14 Mr. Harrison will be testifying?

15 MS. SHEMWELL: I don't believe so. I think
16 he will be back, unless we were to settle issues, Judge,
17 but we're expecting him back.

18 JUDGE WOODRUFF: We'll deal with anything
19 like that that comes up the last day of the hearing, then.
20 At this point then I'll mark 812, 813, 814 and 815 as
21 being offered, and defer making a ruling.

22 MS. SHEMWELL: Actually, we're not offering
23 812. 813 replaces 812, so we're offering 813, 814 and
24 815.

25 JUDGE WOODRUFF: So we'll just cross out

1 812. All right.

2 MS. SHEMWELL: Thank you.

3 JUDGE WOODRUFF: Thank you. Then for

4 cross-examination, begin with Public Counsel?

5 MR. MICHEEL: Yes, your Honor, I have a

6 couple of questions.

7 CROSS-EXAMINATION BY MR. MICHEEL:

8 Q. Mr. Harrison, is it Staff's position that

9 if MGE has prudent costs related to sites not owned by

10 MGE, that they should be recovered from ratepayers?

11 A. It's Staff's position that if MGE incurs

12 environmental expenses prudently, then yes, we would allow

13 a level.

14 Q. Even for sites not owned, currently owned

15 by MGE; is that correct?

16 A. We would have to look at it, analyze it.

17 We'd have to receive all the data from it.

18 Q. Are you aware that Staff in other cases

19 filed testimony saying it was inappropriate for ratepayers

20 to pay costs related to site cleanup on sites not owned by

21 a company?

22 A. No, I was not aware of that.

23 MR. MICHEEL: May I approach the witness,

24 your Honor?

25 JUDGE WOODRUFF: You may.

1 MR. MICHEEL: Your Honor, I need to
2 approach the witness and show him the direct testimony of
3 Shirley J. Norman, a Staff witness in Case No. ER-89-337.
4 It was admitted into the record as Exhibit 42 in that
5 case.

6 JUDGE WOODRUFF: You may.

7 BY MR. MICHEEL:

8 Q. If you would, Mr. Harrison, just take some
9 time -- I don't want to trick you or anything -- and just
10 read this summary of Staff's position, and then read into
11 the record from page 14 of her testimony, lines 19 through
12 22, over to page 15, lines 1 through 4.

13 A. Okay. Starting out at line 17, No. 2, it
14 says, any income tax benefits derived from the cost
15 recovery are to be flowed through to the ratepayers. MPS
16 ratepayers will not be charged for a share of MGP cleanup
17 costs for the sites which are no longer owned by MPS,
18 because MPS shareholders have already benefitted from
19 gains realized on the sale of the MGP land.

20 The Commission, for prospective purposes
21 regarding future events, should reexamine its policy
22 relating to gains on sales of land and units of property
23 to recognize that if ratepayers are asked to share in
24 economic losses, they should also share in economic gains.

25 Is that it?

1 Q. Does that indicate to you at least
2 Ms. Norman on behalf of the Staff in this particular case
3 had indicated that ratepayers should not be charged for
4 even prudently incurred costs for cleanup of manufactured
5 gas plant sites not owned by the company?

6 A. Yes, that would indicate that to me.

7 Q. And that's because the company, when it old
8 that property, kept all of the gain from that sale; isn't
9 that correct?

10 A. That's correct.

11 Q. And that's still the Commission policy,
12 isn't it correct, that companies keep 100 percent of the
13 gain from the share -- from the sale of the property?

14 A. Yes, it is.

15 Q. So has the Staff changed its position?

16 A. Not that I'm aware of.

17 MR. MICHEEL: That's the only questions I
18 have, your Honor.

19 JUDGE WOODRUFF: All right. Thank you.
20 Kansas City and Joplin are not here. Federal Agencies, do
21 you have any questions?

22 MR. PAULSON: No, sir.

23 JUDGE WOODRUFF: Thank you. Jackson County
24 and Midwest Gas are not here, so MGE?

25 MR. SWEARENGEN: Thank you.

1 CROSS-EXAMINATION BY MR. SWEARENGEN:

2 Q. Good morning, Mr. Harrison. How are you?

3 A. Doing fine.

4 Q. Take a look at page 7 of your rebuttal

5 testimony, if you would, please.

6 A. I'm there.

7 Q. There on line 14, you indicate in response

8 to Staff Data Request No. 9.1, the company states that

9 currently MGP cleanup costs are being booked at the

10 Southern Union's corporate level. No costs are being

11 booked at the MGE level at the present time. That's your

12 testimony, correct?

13 A. That is correct.

14 Q. Is it your understanding that there's a

15 difference between Missouri Gas Energy on the one hand and

16 Southern Union Company on the other hand?

17 A. One of the Data Requests that I received, I

18 believe was 9.2, gave me a breakout of what was in that

19 account for Southern Union, and I followed up with another

20 DR and that was 9.5, and that is where it broke it up by

21 MGE.

22 Q. Let me ask you, I don't think you really

23 answered the question I was asking you. And the question

24 is, in your mind, is there a difference between MGE on the

25 one hand and Southern Union Company on the other hand?

1 A. Well, Southern Union Company -- or MGE is a
2 subsidiary of Southern Union.

3 Q. And when you say it's a subsidiary, has
4 someone told you that or is that based on your
5 investigation or independent knowledge?

6 A. My knowledge of working on this case.

7 Q. So your statement that because MGE, in your
8 view, the subsidiary has not booked any costs, that that
9 is a reason that they should not be allowed for rate
10 recovery in this proceeding?

11 A. No. My reasons for that is the company
12 specifically booked against MGE. They still have about
13 \$113,000 in reserve.

14 Q. Well, when you say that currently MGP,
15 meaning manufactured gas plant, cleanup costs are being
16 booked at Southern Union's corporate level, in your mind,
17 is that a reason that they should not be allowed for rate
18 recovery?

19 A. No.

20 Q. Then why is this statement in your
21 testimony?

22 A. I was responding to -- putting the response
23 in here for the company's response to this Data Request.

24 Q. And what's the relevance of that?

25 A. To originally show how this was booked

1 against Southern Union.

2 Q. And for purposes of the Staff's position in
3 this case, does it make any difference how Southern Union
4 booked these costs?

5 A. I don't think so.

6 Q. Okay. Thank you. There's no question in
7 your mind, is it, that MGE has incurred environmental
8 cleanup costs in the past?

9 A. I will agree that they've incurred
10 expenditures.

11 Q. For environmental cleanup cost?

12 A. For environmental costs.

13 Q. Do you have any doubt that MGE will
14 continue to experience these costs in the future at some
15 level?

16 A. From the data I've received, no.

17 Q. You have no doubt that they will?

18 A. I expect them to continue to incur costs.

19 Q. Would you agree that the company faces the
20 risk of not being able to recover these costs from its
21 customers?

22 A. I don't know.

23 Q. Do you know if the company is now
24 recovering these costs from its customers through rates?

25 A. Not to my knowledge.

1 Q. But under the company's proposal in this
2 proceeding, they would have an opportunity to recover
3 those costs from customers, correct?

4 A. They are proposing to have \$750,000
5 included in rates.

6 Q. And then, given your earlier testimony that
7 those costs are not now being recovered in rates, would
8 you agree that, absent approval of the company's proposal
9 in this case or something similar to it, would it be fair
10 to assume that the company will not be able to recover
11 these costs from its customers?

12 MS. SHEMWELL: Judge, that's calling for
13 speculation.

14 JUDGE WOODRUFF: Overruled.

15 THE WITNESS: As I stated in my testimony,
16 they can come back at a later date with an AAO.

17 BY MR. SWEARENGEN:

18 Q. And is it your testimony that an AAO would
19 allow the company to recover these costs?

20 A. An AAO would defer the costs until the next
21 rate case when that determination would be made.

22 Q. Have you researched this topic of how other
23 jurisdictions are handling the recovery of environmental
24 cleanup costs?

25 A. I have read the attachments to Mr. Noack's

1 testimony.

2 Q. Then you're aware that similar recovery
3 mechanisms are in place in other jurisdictions?

4 A. Yes, but they are different from what's
5 being recommended here.

6 Q. Are you familiar with the Massachusetts
7 recovery mechanism?

8 A. I read the document.

9 Q. And is it your testimony that it's not
10 similar to what's being proposed here?

11 A. No, it is not.

12 Q. At the federal level, are you familiar with
13 what has been done?

14 A. No, I am not.

15 MR. SWEARENGEN: That's all I have. Thank
16 you.

17 JUDGE WOODRUFF: Thank you. I have no
18 questions from the Bench, so no recross. Any redirect?

19 REDIRECT EXAMINATION BY MS. SHEMWELL:

20 Q. Mr. Harrison, Mr. Micheel had you read into
21 the record a statement by Staff Witness Shirley Norman,
22 and I believe it was a 1993 Aquila case. Do you remember
23 that?

24 A. Yes, I do.

25 Q. That was a rate case indicating that if the

1 Commission should rule that customers should bear the
2 economic losses, that reexamination of the Commission
3 policy on assignment of economic gain to shareholders
4 would be appropriate. Is that still Staff's opinion?

5 A. I don't know.

6 Q. Do you agree that Staff may change its
7 opinion or policy depending upon events in a particular
8 rate case?

9 A. I agree with that statement.

10 Q. Would Staff engage an audit in a rate case
11 before recommending recovery of any particular costs?

12 A. Could you repeat the question, please?

13 Q. Would Staff engage in a complete audit
14 before recommending recovery of costs in a rate case?

15 A. Yes.

16 Q. You talk about MGE being a subsidiary with
17 Mr. Swearengen. Is, in fact, MGE a division?

18 MR. SWEARENGEN: I'm going to object, your
19 Honor, she's leading the witness.

20 JUDGE WOODRUFF: Overruled.

21 THE WITNESS: I would agree with that
22 statement.

23 BY MS. SHEMWELL:

24 Q. Mr. Harrison, do you know the level of cost
25 that MGE will incur next year related to cleanup of the

1 manufactured gas plant sites?

2 A. No, I do not.

3 Q. In its response to DR 9, Exhibit 230, do

4 you have that?

5 A. Yes, I do.

6 Q. Did MGE make a distinction between MGE and

7 Southern Union Company?

8 A. No, it does not. It just says the company

9 has not expensed.

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

11 you.

12 JUDGE WOODRUFF: All right. Thank you.

13 Then you can step down, Mr. Harrison. It's time for a

14 break before we go on to the next issue.

15 Mr. Franson?

16 MR. FRANSON: Your Honor, before you break,

17 I have a request. We announced -- specifically MGE and

18 the Staff announced yesterday that we have some agreement

19 in principal, and that still stands. We've actually

20 expanded it to include another issue that I'm not sure I

21 can say right now.

22 However, I will also tell you there are

23 discussions going on regarding revenues right now, and we

24 would -- that's actually -- I believe the next scheduled

25 thing scheduled for three o'clock. We would like to ask

1 that that be moved up to two o'clock, if that's acceptable
2 to both yourself, the Commission and the other parties,
3 and we adjourn until that time to give us an opportunity
4 to see if we can, in fact, present some kind of agreement
5 on the issue of revenues.

6 JUDGE WOODRUFF: All revenues or just parts
7 of it or --

8 MR. FRANSON: It's my understanding that
9 we're working on the entire picture, Judge. Either it
10 will be litigated in its entirety or it will be settled,
11 or the third possibility is bits and pieces would be
12 brought out of that. But I really don't think I can go
13 into any more detail.

14 JUDGE WOODRUFF: That's fine. I don't need
15 any more detail than that. Obviously if it settles, then
16 everybody's happy.

17 MR. FRANSON: Right.

18 JUDGE WOODRUFF: If it's not settled, then,
19 of course, we're losing two hours of hearing time. Is
20 there any other issue that we could move on to to fill
21 that time?

22 MR. FRANSON: Well, from the Staff's
23 perspective, the answer to that would be yes. However, I
24 can't speak for the other parties. If we take -- maybe
25 rather than a 15-minute break, if we take a 30-minute

1 break, I may be able to answer that.

2 MR. SWEARENGEN: Let me speak to that, if I
3 could. I don't think we're prepared to go forward on
4 anything in the interim, but I have a couple of other
5 suggestions involving some issues that are scheduled for
6 Friday that we think we can move up to Wednesday.

7 JUDGE WOODRUFF: Okay.

8 MR. SWEARENGEN: I think we're in pretty
9 good shape on this case right now schedule-wise.

10 JUDGE WOODRUFF: It does seem to be.

11 MR. SWEARENGEN: I haven't really discussed
12 these with all the parties, so let me make the suggestions
13 and then we'll discuss it off the record.

14 I think the late payment issue could be
15 moved from Friday to tomorrow morning, say at 10:30, if
16 that would be okay. And then the other issue would be the
17 legislative lobbying cost issue. We could move that from
18 Friday to sometime on Wednesday also, perhaps in the
19 afternoon.

20 MR. FRANSON: And that would be consistent
21 with Staff's understanding, your Honor, that we would be
22 in favor of that. However, that is something we have not
23 been able to discuss with the other parties, specifically
24 Public Counsel.

25 MR. MICHEEL: I'm ready to try those issues

1 right now, your Honor.

2 MR. FRANSON: I guess that takes care of
3 that concern.

4 JUDGE WOODRUFF: Let's go ahead and take a
5 break, then, until two o'clock and you can work on your
6 agreement.

7 (A BREAK WAS TAKEN.)

8 JUDGE WOODRUFF: We're back from lunch.
9 And can the parties inform me as to where we're at,
10 Mr. Franson?

11 MR. FRANSON: Well, I think we can, Judge,
12 and I'm -- I think -- well, we have a draft of a document
13 that would cover the issues that we have talked about
14 before, that being alternative minimum tax, depreciation,
15 net cost of removal, accounting for pension expenses,
16 revenues, and bad debts.

17 And it is the intent of Staff and, I
18 believe, of the company, and this is a partial
19 nonunanimous stipulation, that that would be filed by the
20 end of today, in which case it would be our intent not to
21 try the revenue issues. Rather, this would be in place of
22 that on the issues I have listed.

23 Mr. Hack, does this sound consistent with
24 your understanding?

25 MR. HACK: Yeah.

1 JUDGE WOODRUFF: When you say it's
2 nonunanimous, have the other parties been consulted?

3 MR. FRANSON: The other parties have seen
4 an earlier draft. There have been some revisions to this
5 in the sense that it's been broadened, but on all of the
6 specifics, no, they have not been fully informed, partly
7 because not all of the parties are here. That being --
8 well, you can see who's not here, Judge. On the other
9 hand, Mr. Micheel has been kept apprised of various drafts
10 as they have evolved.

11 JUDGE WOODRUFF: What's your position on
12 this?

13 MR. MICHEEL: Let me just say that our
14 position is, you know, we're not going to join this
15 Stipulation & Agreement. These are issues that we didn't
16 have testimony on, but we're not going to -- so we're not
17 going to support it, we're not going to oppose it, we're
18 not going to ask for a hearing pursuant to the
19 Commission's rules with respect to nonunanimous
20 stipulations, your Honor.

21 So we're not going to stand in the way,
22 unless I see something that pops out here that's just
23 completely unacceptable, which I have not seen to date,
24 and I've looked at, I think, the most recent draft.

25 MR. FRANSON: And that is consistent with

1 my understanding that Mr. Micheel has received the most
2 recent draft.

3 JUDGE WOODRUFF: Okay.

4 MR. HACK: And just maybe perhaps to be
5 further responsive, it is my belief, and I want to stress
6 belief, that we've crafted the settlement in a way that
7 won't offend any of the other parties. It should not
8 touch upon the issues that they've expressed an interest
9 in, and while they'll have to speak for themselves, we've
10 tried to be careful not to tread in their areas.

11 JUDGE WOODRUFF: That's, of course, the
12 concern that if somebody opposes the nonunanimous
13 stipulation, it basically is not worth a whole lot.

14 MR. HACK: And the reason it's called
15 nonunanimous is only because we haven't been able to
16 gather everybody together to find out whether it is --
17 even whether they could go as far as OPC has indicated a
18 willingness to go. So we thought it best to go ahead and
19 get a document on file so that they could review it and
20 that we could at least get the process underway.

21 MR. FRANSON: And consistent, at least,
22 with Staff's understanding of the rules, your Honor, we
23 have no choice but to denominate it Nonunanimous Partial
24 or Partial Nonunanimous Stipulation & Agreement, blah,
25 blah, blah.

1 JUDGE WOODRUFF: That's fine. You can call
2 it anything you want.

3 MR. FRANSON: Really? Do we have absolute
4 leave?

5 JUDGE WOODRUFF: You can call it cabbage if
6 you want. You can call it pots, anything you want. I
7 just remember the last rate case we were in on this was
8 mine as well. We had a nonunanimous stipulation that
9 wound up eventually becoming a unanimous stipulation, but
10 after a lot of heartache and grief. I'm sure you all
11 remember that as well.

12 MR. HACK: Some of these gray hairs, I
13 think, resulted from that.

14 JUDGE WOODRUFF: Okay. So I assume that
15 means we do not have to take any testimony today?

16 MR. FRANSON: That would be Staff's
17 suggestion, that we don't need to do that. However, I
18 would ask, Judge, if we need to go ahead and set a time.
19 It is my understanding that if -- that this would take
20 care of some issues, but the next issue we were going to
21 bring over from Friday would be the legislative lobbying
22 issue, which is scheduled for Friday if we are going to
23 set a time.

24 And the only other thing, Judge, I believe
25 there is also the -- there's another issue on Friday which

1 escapes my mind right now that we had talked about
2 bringing over, and I believe that is actually encompassed
3 in this agreement. So perhaps if we could --

4 JUDGE WOODRUFF: That would be late payment
5 charge.

6 MR. FRANSON: Yes, sir, and that is
7 included herein. So actually even though we are talking
8 about legislative and lobbying right now, that is not
9 incorporated into this agreement. So perhaps we need to
10 set a time tomorrow where we could try that issue.

11 MR. MICHEEL: I would recommend just doing
12 it at 8:30. That way I can get my day done and start
13 focusing on preparation for the cost of service and the
14 low income information.

15 JUDGE WOODRUFF: I would agree. There's no
16 reason to do it any other time other than 8:30. Get it
17 done as soon as we can.

18 MR. FRANSON: Staff is fine with that, your
19 Honor.

20 JUDGE WOODRUFF: And you indicate you'll be
21 getting the partial Stipulation & Agreement filed this
22 afternoon?

23 MR. FRANSON: That is our intent, your
24 Honor. We need to talk briefly about final language, run
25 it through the final channels, and we would intend to have

1 it filed.

2 JUDGE WOODRUFF: The sooner we get it, the
3 better. The Commissioners at agenda this morning
4 indicated they might want to have an on-the-record
5 presentation about any partial stipulations. So
6 presumably we could do that on Friday.

7 MR. FRANSON: Judge, I will tell you one of
8 the standard provisions that you see in these things is a
9 reference to Staff's suggestions in support. It would be
10 Staff's intent to file those as soon as possible,
11 hopefully no later than Thursday.

12 JUDGE WOODRUFF: Okay. Very good. With
13 that, then, we'll -- anything else anybody wants to bring
14 up?

15 (No response.)

16 JUDGE WOODRUFF: All right. With that,
17 then, we'll adjourn until 8:30 tomorrow morning. Thank
18 you all.

19 WHEREUPON, the hearing of this case was
20 recessed until June 30, 2004.

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