

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 July 23, 2004
9 Jefferson City, Missouri
 Volume 23

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13 In the Matter of Missouri)
14 Gas Energy's Tariffs to)
15 Implement a General Rate) No. GR-2004-0209
16 Increase for Natural)
17 Gas Service)

16

17 MORRIS L. WOODRUFF, Presiding,
18 SENIOR REGULATORY LAW JUDGE.

18

19 CONNIE MURRAY,
20 JEFF DAVIS,
21 COMMISSIONERS.

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23 REPORTED BY:

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24 TARA SCHWAKE, CRR, CCR, RPR, CSR
25 MIDWEST LITIGATION SERVICES

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1 PROCEEDINGS

2 JUDGE WOODRUFF: Welcome back.

3 We're here for the true-up portion of the hearing
4 in Case No. GR-2004-0209, which is Missouri Gas
5 Energy's tariffs to implement a general rate
6 increase for its natural gas service.

7 And we will begin by taking entries
8 of appearance beginning with Staff.

9 MR. SCHWARZ: Tim Schwarz, P.O. Box
10 360, Jefferson City, Missouri, 65102, appearing
11 for Staff, Public Service Commission.

12 JUDGE WOODRUFF: Thank you. And for
13 MGE?

14 MR. HACK: Robert Hack appearing for
15 Missouri Gas Energy.

16 MR. MICHEEL: Douglas Micheel
17 appearing for the Office of Public Counsel.

18 JUDGE WOODRUFF: And looking around
19 the room I don't see anyone here for any of the
20 other parties. Let me begin with a couple
21 preliminary matters.

22 MGE filed a motion to amend the
23 testimony of Mr. Noack to actually substitute a
24 set -- a different group of testimony. Does
25 anyone have any objection to that motion? Hearing

1 none, that motion will be granted.

2 As far as procedures today, I assume
3 I'll give you all an opportunity to make a mini
4 opening like we did with the other issues, one
5 mini opening to begin the day.

6 Since there has only been direct
7 testimony filed on these issues, I am assuming
8 that the parties will wish an opportunity to
9 possibly file or to elicit some rebuttal testimony
10 from their witnesses on direct, if you understand
11 what I'm saying. Does anyone have any objection
12 to that procedure? That's what we'll do, then.

13 I think that's all, so let's go
14 ahead and begin with the mini opening, and
15 beginning with MGE.

16 MR. HACK: Good morning. The
17 true-up is -- has revealed two more issues for
18 Commission decision. Property tax assessed by the
19 State of Kansas on gas and storage and rate case
20 expense.

21 The Kansas property tax issue is the
22 result of a new law passed this year in Kansas
23 which purports to authorize the assessment of ad
24 valorem taxes on gas held in storage by companies
25 like MGE for tax years beginning January 1, 2004.

1 The evidence will show that on July
2 2, 2004, Kansas assessing authorities began the
3 process of imposing these new taxes which will be
4 paid by December 31, 2004.

5 This tax assessment is based on the
6 value of gas held in storage as of January 1,
7 2004, which is the same cutoff date used for the
8 calculation of property taxes included in MGE's
9 revenue requirement in this case. Consequently,
10 there is no mismatch and this is not an out of
11 period adjustment.

12 However, MGE does question the
13 lawfulness of this new statute, and we plan to
14 take the steps necessary to challenge it. But
15 while we believe that our position on that issue
16 is sound, there's no guarantee the Kansas courts
17 will agree with us. And in any event, we've been
18 advised that we'll have to -- we'll need to pay
19 the assessment during the appealing process.

20 Although we have requested rate
21 recovery of these taxes, we acknowledge the
22 possibility, in fact, our desire that our efforts
23 to overturn this law may well be successful.

24 Therefore, if the Commission is
25 unwilling to include these new taxes and rates,

1 MGE would request that the Commission include in
2 its order an accounting authority order permitting
3 MGE to defer any such taxes actually incurred for
4 recovery in a subsequent rate case.

5 With regard to the issue of rate
6 case expense, the Staff and Public Counsel argue
7 that the fees MGE has incurred in presenting and
8 defending its position on rate of return are
9 excessive.

10 The evidence will establish that
11 this is simply another issue on which the Staff
12 and Public Counsel argue that what should be done
13 now is what has been done before without any
14 apparent regard for whether what has been done
15 before actually achieved the intended objective.

16 Both Staff and Public Counsel say
17 gee, MGE has spent considerably more than it spent
18 in its first two rate cases so the cost of this
19 case must be unreasonable. They make these
20 claims, however, despite the fact, the undisputed
21 fact that MGE's rates, past rates, have not
22 permitted MGE to achieve its authorized --
23 Commission authorized rate of return, one of the
24 fundamental objectives of the regulatory process.

25 In light of this track record of

1 inadequate earnings, MGE decided that a fresh look
2 and a fresh approach was needed. Ultimately, what
3 we seek, which is rates that appropriately balance
4 the interest of customers and shareholders, is in
5 the interest of all constituencies. The cost
6 necessary to achieve such rates include the fees
7 MGE has incurred on the rate of return issue in
8 this case.

9 Thank you very much.

10 JUDGE WOODRUFF: Thank you. For
11 Staff?

12 MR. SCHWARZ: May it please the
13 Commission. The Staff does not agree with MGE's
14 characterization of the Kansas property tax issue.
15 It is not properly a true-up issue. There's no
16 question that the State of Kansas has enacted a
17 new statute and begun the process to assess the
18 gas inventory held in Kansas by MGE for property
19 taxes.

20 However, the actual assessment forms
21 themselves, that is, the forms that go back to the
22 Kansas Department of Revenue advising that
23 department how much the quantity of gas that MGE
24 held, those forms aren't even due until August the
25 1st, two weeks from now.

1 The actual tax itself is not due
2 until December 31, and then only half of the tax
3 is due. The other half not being due until June
4 of 2005.

5 Those -- those actual expenditures
6 will clearly take place outside of the true-up
7 period, certainly outside of the test year. They
8 are not proper true-up costs.

9 However, Staff understands that
10 although providing MGE funds in this rate
11 proceeding based on whatever the actual property
12 tax bill might be would be inappropriate. Staff
13 has suggested that the appropriate way of dealing
14 this -- with this issue is to provide MGE with an
15 accounting authority order to hold those costs for
16 consideration once they are known and measurable
17 in a future rate case.

18 Staff does not deny that MGE should
19 have the opportunity to prepare and present a rate
20 case as it chooses. However, it still needs to
21 make the expenditures for the presentation of the
22 rate case in a reasonable and prudent manner.

23 Staff does not necessarily see any
24 justification in the record for the kinds of
25 expenditures, the size of expenditures that MGE

1 made in this case, and certainly there's very
2 little evidence of any significant control and
3 coordination in MGE's selection of its -- of some
4 of its attorneys and witnesses. And Staff and I'm
5 sure Public Counsel will explore that issue as
6 well. Thank you.

7 JUDGE WOODRUFF: Public Counsel.

8 MR. MICHEEL: May it please the
9 Commission. I think, as Mr. Hack and Mr. Schwarz
10 have both said, there are essentially two
11 contested issues in this case. And the first
12 contested issue is the idea of the property tax
13 for the ad valorem taxes with respect to the
14 Kansas gas properties -- or the gas held in
15 storage, excuse me, in Kansas.

16 I would point the Commission to
17 Exhibit 10, which is the corrected rebuttal
18 testimony of Mike Noack that's already been
19 admitted into evidence in this proceeding. And
20 specifically on page 4 of that testimony is set
21 out the items that the parties agreed upon to
22 true-up and agreed with the issues in the true-up
23 hearing, this true-up hearing, and I would note
24 the absence, the complete absence of property tax
25 as a true-up issue.

1 So out of the box, I believe raising
2 the property tax issue violates the agreement that
3 the parties had agreed to. And -- and the
4 Commission can read that testimony, it's in the
5 record, but simply put, property taxes was not
6 something that we agreed would be trued up. And I
7 think we've made an agreement, we need to stick to
8 the agreement. MGE had that agreement. So first
9 of all, out of the gate, I don't think property
10 taxes are appropriate.

11 Secondly, I think that the evidence
12 is going to show, and I think you've heard, that
13 these taxes are not known and measurable. There's
14 no way of determining whether or not MGE is going
15 to have to pay these taxes or not.

16 Third, you've heard both Mr. Schwarz
17 and Mr. Hack suggest that an accounting authority
18 order may be appropriate. I would say that an
19 accounting authority order within the confines of
20 the true-up hearing is wholly inappropriate.

21 If the Company believes and the
22 Staff believes that it's appropriate that the
23 Company receive an accounting authority order for
24 this item, the Commission should order MGE -- or
25 MGE has the opportunity at any time to file a

1 request for an accounting authority order, and
2 that would allow the parties to do more discovery.

3 I will tell you, the first we heard
4 of this property tax issue is when Mr. Noack filed
5 his testimony. So it's something new, we have not
6 done any discovery on it. And I will also tell
7 you that AAO, the standard for AAO is something
8 extraordinary and unusual, and unfortunately for
9 MGE, I don't believe that the payment of taxes is
10 something extraordinary and unusual.

11 But with respect to the AAO request,
12 this is the inappropriate forum to be asking for
13 an AAO. And if they want an AAO, they should file
14 an application for an AAO consistent with the
15 Commission rules and the Commission can deal with
16 it then.

17 With respect to the second issue,
18 rate case expense, Mr. Hack indicated in his
19 opening that we were taking a fresh look and a
20 fresh approach, and obviously MGE has a right to
21 present the case it wants. But the fees and
22 charges that they seek to charge to rate payers
23 must be reasonable.

24 And the evidence will demonstrate in
25 this case that there were no unique or novel

1 issues with respect to this case, nothing new, and
2 that the vast majority of fees that we're talking
3 about are related to the issue of the cost of
4 capital. In other words, the capital structure
5 and the rate of return, and that's an issue that
6 this Commission deals with in every single case.

7 The evidence will demonstrate that
8 the 670 to \$690 per hour that one of MGE's outside
9 firms paid -- or that MGE paid to its outside firm
10 is unreasonable and beyond the realm of a
11 reasonable fee. The evidence will demonstrate
12 that -- that most company -- or most firms, for
13 example, Brydon, Swearengen & England that have
14 been practicing 30 years in this area, charge
15 somewhere around \$200 an hour.

16 Secondly, the evidence will
17 demonstrate that with respect to one of the
18 Company's outside consultants, that they were paid
19 \$30,000 for approximately, according to that
20 individual's deposition, 25 hours of work. And
21 we've imputed some extra work, but that still
22 comes out to 8, \$900 an hour for work.

23 And that's more than twice what they
24 paid their other expert in the cost of capital,
25 and they paid that individual \$140 an hour. What

1 the Office of Public Counsel has recommended is
2 doubling that fee to \$280 an hour.

3 Simply put, the record evidence will
4 demonstrate that the \$1.3 million worth of rate
5 case expense that MGE is seeking in this case is
6 unreasonable.

7 JUDGE WOODRUFF: Thank you. During
8 the opening statements, Mr. Finnegan has joined
9 us. Would you like to enter your appearance, sir?

10 MR. FINNEGAN: Yes, I would.
11 Jeremiah Finnegan appearing on behalf of Jackson
12 County, University of Missouri-Kansas City, and
13 Central Missouri State University. And I'm also
14 here today for Mr. Conrad's clients, Missouri Gas
15 Users Association.

16 JUDGE WOODRUFF: Would you like to
17 make an opening statement?

18 MR. FINNEGAN: Briefly.

19 JUDGE WOODRUFF: Go ahead.

20 MR. FINNEGAN: I'll be quite brief.
21 Basically the -- my clients echo the sentiments of
22 the Staff and the Office of Public Counsel with
23 respect to legal fees. We're not charging
24 anything like that and never have. We'd like to,
25 but unfortunately, it's not in this region, that's

1 for sure.

2 With respect to the gas -- the
3 property tax on the gas inventory, we echo the
4 sentiments of Mr. Micheel, but I'd ask -- adjust
5 one thing here, that the concern of the
6 transportation customers on this tax is that, like
7 other gas related taxes, a portion of this would
8 be allocated to the gas transportation customers,
9 even though the gas transportation customers do
10 not use the gas inventory. The gas inventory is
11 solely there for the sales customers, and they're
12 the ones who use it.

13 Thank you.

14 JUDGE WOODRUFF: Thank you, sir.
15 That's all the parties, so we'll move on to the
16 first witness, which I believe is Mr. Noack.
17 Please raise your right hand.

18 (Witness sworn.)

19 JUDGE WOODRUFF: You may be seated,
20 and you may inquire.

21 MICHAEL NOACK, testified as follows:

22 DIRECT EXAMINATION BY MR. HACK:

23 Q State your name for the record,
24 please.

25 A Michael R. Noack, N-o-a-c-k.

1 Q And Mr. Noack, did you cause to be
2 prepared and filed in this proceeding certain
3 corrected true-up testimony which has been marked
4 for identification purposes as Exhibit No. 49?

5 A Yes, I did.

6 Q If I were to ask you the questions
7 posed in that testimony today, would your answers
8 be substantially the same as are contained
9 therein?

10 A Yes, they would.

11 Q And are those answers true,
12 accurate, and correct to the best of your
13 information, knowledge, and belief?

14 A Yes, they are.

15 MR. HACK: With that, I would move
16 the admission of Exhibit 49, and move on to just
17 some brief questioning in the nature of rebuttal
18 testimony.

19 JUDGE WOODRUFF: All right. Exhibit
20 49 has been offered into evidence. Is there any
21 objection to its receipt? Hearing none, it will
22 be received into evidence. And you can further
23 inquire.

24 MR. HACK: Thank you.

25 Q (By Mr. Hack) On the question of

1 the Kansas property tax, has -- has, in your
2 opinion, has MGE, quote, trued up this item to
3 April 30, 2004?

4 A No. We've only trued it up to
5 December 31, 2003, similar to -- to what we did
6 with the other property taxes included in this
7 case.

8 Q Would that really be called a
9 true-up, as that word has been used in this case?

10 A No, in fact, no, we did not true it
11 up to April 30th. We have -- or I have included
12 in this case the expected level of tax based on
13 the December 31 balance in storage priced at the
14 closing NYMEX price for December.

15 Q And can you explain how the parties
16 have calculated property taxes for the other plant
17 items in revenue requirement?

18 A For the other plant items, we
19 basically agreed to -- to the level of property
20 tax, and -- and in doing so, what we did was we
21 arrived at a property tax expense based upon the
22 plant balance at June 30, 2003, which was the date
23 of our test year.

24 We updated that particular expense
25 using the same effective property tax rate. We've

1 updated it to the level that would be taxed on
2 plant balance as of December 31, 2003.

3 Q And how does that date compare to
4 the balance of storage date that would be used for
5 the calculation of this Kansas storage gas tax?

6 A The -- the value of the gas in
7 storage is also as of December 31, 2003.

8 Q Now, in response to some testimony
9 from Staff Witness Hyneman, has the Company
10 considered any alternatives to its request to
11 include these storage -- gas storage taxes in
12 rates in this case?

13 A Yes. We've -- we've proposed an
14 alternative, which would be to ask the Commission
15 to grant, in this case, an AAO for these taxes.
16 And in fact, the first mention of AAO for this
17 particular item was requested of me by Mr.
18 Hyneman, if we would be interested or willing to
19 put something like this into an AAO. And at the
20 time I -- I said I don't know, or probably not.
21 But after we've reconsidered, we -- as an
22 alternative, we would accept an AAO in this case
23 for those taxes.

24 Q And do you think it would be
25 reasonable to require MGE to file a separate

1 application, incur extra costs, just to go through
2 that AAO process on this item?

3 A Not with it sitting right here on
4 the table at this time where everything is -- is
5 known. I mean, it -- it is something that
6 literally just became known and was booked as of
7 June 30, 2004. It is actually been booked to
8 MGE's fiscal year ended June 30, 2004.

9 Q Will this tax produce any additional
10 revenues for MGE?

11 A No. Only -- only expense.

12 Q Let's move on to rate case expense.

13 A number of comments have been made regarding
14 fiscal controls in the testimony of either or both
15 the Staff and Public Counsel. Do you recall those
16 comments?

17 A Yes.

18 Q Can you respond to -- to those
19 comments?

20 A Um, I believe so. I mean, when --
21 when we first decided to file for a rate increase,
22 and we filed in November of 2003, we filed the
23 case similar to every other case that we filed, or
24 at least to the last case that we filed that I was
25 in charge of, and that is we used Mr. Dunn as our

1 rate of return witness, we used Mr. Sullivan for
2 our depreciation expense.

3 We -- I'm trying to think of other
4 outside experts. In this case we used Mr.
5 Cummings for our revenues simply because he was no
6 longer employed by Southern Union Company. He had
7 done all of our revenues for the last three cases,
8 so he basically had a -- the best knowledge of all
9 of our revenues and weather and normalization so
10 we used him again. But beyond that, everything
11 was -- was ordinary when compared to the previous
12 rate case.

13 It wasn't until later in the process
14 when -- we knew from past that Staff and the
15 Office of Public Counsel, but primarily Staff was
16 recommending some -- some fairly -- very low rates
17 of return on equity in some of the previous cases.
18 And at that time we discussed with Mr. Herschmann
19 the possibility of possibly using him if the need
20 arose to -- to help us with the cost of capital
21 testimony and cross examination of witnesses.

22 Q Has Mr. Herschmann had experience in
23 significant pieces of complex litigation?

24 A He has. He's been -- he was -- he
25 was our chief litigator in the Southwest Gas

1 litigation which -- which went on for a period of
2 three or four years with very favorable results to
3 Southern Union Company.

4 MR. HACK: There has been -- before
5 I move on, I'm going to ask to have an exhibit
6 marked.

7 JUDGE WOODRUFF: Okay. This will be
8 No. 50.

9 (Exhibit 50 marked for
10 identification.)

11 Q (By Mr. Hack) I've just handed you
12 a document that has been marked as Exhibit 50.
13 Can you identify it?

14 A Exhibit 50 is MGE's response to
15 Staff Data Request No. 322 and 323. The data
16 requests were requested on May 26th of 2004, and
17 they were responded to on June 18th of 2004.

18 Q And can you briefly describe the
19 contents of Exhibit 50?

20 A Exhibit 50 is asking for -- through
21 DRs 322 and 323, is asking for various information
22 regarding the hiring or retaining of Mr.
23 Herschmann, and then expert witnesses Mr. Warren,
24 Mr. Sullivan, Dr. Morin, Mr. Gillen, Mr. Dunn, and
25 Mr. Cummings in this rate case.

1 They wanted to know the employees
2 that made the decision to hire these consultants,
3 the basis for the decision to hire them,
4 documentation related to the decision, any
5 internal documentation, the date the decision was
6 made, copies of the Company's policies and
7 procedures to acquire and use consultants in the
8 course of our business, and any RFPs that might
9 have been sent out before we hired any
10 consultants.

11 Q Does -- do the contents of this
12 exhibit show, in your opinion, a lack of fiscal
13 control with respect to MGE's administration of
14 this rate case?

15 A I don't believe so, no.

16 Q The -- what issue or bundle of
17 issues were the firm of Kasowitz Benson, the firm
18 of Watson Bishop, Christina Dodds, and Professor
19 Morin retained to address?

20 A All three of those were retained to
21 address the issue of cost of capital and all the
22 component parts of cost of capital, being capital
23 structure, cost of equity, cost of debt, the way
24 that the capital structure is prepared, just all
25 -- all the different various issues.

1 Q And what's the approximate total
2 dollar value of that issue in this case?

3 A Um, at the last reconciliation, I
4 believe it was somewhere in the neighborhood of 23
5 to \$24 million. And then if you add our request
6 for an efficiency adjustment, it would add another
7 2 million to that number.

8 Q Is -- is that a significant issue,
9 in your opinion, in this case?

10 A It's a significant issue in my
11 opinion, and it was a very significant issue in
12 the opinion of my superiors in MGE and the
13 corporate officers.

14 Q And is -- do you think the rates
15 from this case will be in effect for longer than a
16 year?

17 A Absolutely. I mean, we're hoping
18 that -- that they're in effect for as much as four
19 years.

20 Q There -- there's also been some
21 question raised about a \$575 an hour billing for
22 Mr. Herschmann's firm. Do you recall that
23 question?

24 A Um, that was -- that was a statement
25 in Mr. Hyneman's testimony and the true-up

1 testimony, that he did not know a reason why all
2 of a sudden Mr. Herschmann's rate had jumped from
3 575 to 625 and then subsequently to 690.

4 Q Can you explain how that happened?

5 A Yes. In the Southwest Gas
6 litigation, that was, as I mentioned earlier, a
7 very long litigation that lasted in the
8 neighborhood of three to four years. And at least
9 at the end of that litigation, the Kasowitz firm
10 had agreed to artificially lower their rates from
11 the 625 an hour that they were charging normally
12 for Mr. Herschmann's time to 575 for -- for their
13 time in the Southwest Gas litigation.

14 When the first invoice was issued,
15 that changed -- their bookkeeping department
16 simply used the Southwest Gas litigation rate for
17 that invoice of 575. At the time his normal rate
18 was 625, and then in 2004, his rate increased to
19 690 an hour.

20 Q Thank you. With respect to Exhibit
21 50 that we discussed earlier, Data Requests 322
22 and 323, did you -- did MGE also provide that to
23 the Office of Public Counsel?

24 A Yes. Anything that -- that was
25 filed on EVIS, the same materials that I actually

1 filed on EVIS, I filed or through -- through
2 e-mail, I sent to every party in this case.

3 Q And what's the date of the Company's
4 response on that Data Request?

5 A It's June 18th. Of 2004.

6 Q Which was before the filing of the
7 true-up testimony in this case. Correct?

8 A That's correct. Yes.

9 MR. HACK: MGE would move the
10 admission of Exhibit 50.

11 JUDGE WOODRUFF: Exhibit 50 has been
12 offered into evidence. Are there any objections
13 to its receipt? Hearing none, it will be received
14 into evidence.

15 MR. HACK: Just a few more items. I
16 have a few more exhibits to mark.

17 JUDGE WOODRUFF: Okay.

18 Q (By Mr. Hack) Mr. Noack, there have
19 also been questions raised about the invoices of
20 certain consultants. Do you recall that?

21 A Yes. I do.

22 Q And in particular, I think the
23 invoices -- the consultants involved were Mr.
24 Dunn, the Kasowitz firm, Black and Veatch for Mr.
25 Sullivan, and then the Klett, Rooney firm, Mr.

1 Quain. Correct?

2 A That's correct, yes.

3 Q Have you helped me prepare the
4 invoices of these -- of these companies and
5 individuals that have been submitted to MGE for
6 this rate case?

7 A Yes, I have.

8 (Exhibit 51 marked for
9 identification.)

10 Q (By Mr. Hack) I've handed you a
11 document which has been marked as Exhibit 51. Can
12 you identify it, please?

13 A Exhibit 51 is a copy of all of the
14 Kasowitz, Benson, Torres & Friedman invoices which
15 MGE or Southern Union Company has received to date
16 for time spent on the MGE rate case.

17 Q And are these the dollars that are
18 included on behalf of the Kasowitz firm or with
19 respect to the Kasowitz firm in MGE's rate case
20 expense quantification in this case?

21 A I know for sure the February 23rd,
22 2004, invoice is -- is included. The March 31,
23 2004, invoice is included. Included in my true-up
24 exhibits and testimony was an estimate for the
25 time that's included on the July 19th, 20, and

1 21st invoices. Which is, I believe, very close to
2 what these invoices actually reflect.

3 MR. HACK: Okay. We would move the
4 admission of Exhibit 51.

5 JUDGE WOODRUFF: Exhibit 51 has been
6 offered into evidence. Are there any objections
7 to its receipt? Hearing none, it will be received
8 into evidence.

9 MR. HACK: Another exhibit marked,
10 please, this will be 52.

11 JUDGE WOODRUFF: This will be 52.

12 (Exhibit 52 marked for
13 identification.)

14 Q (By Mr. Hack) Can you identify
15 Exhibit 52, please?

16 A Exhibit 52 is a copy of all the
17 invoices received from John C. Dunn & Company for
18 this case, and all of these invoices have been
19 included in my true-up exhibits and referred to in
20 my true-up testimony.

21 MR. HACK: MGE would move the
22 admission of Exhibit 52.

23 JUDGE WOODRUFF: Exhibit 52 has been
24 offered into evidence. Any objection to its
25 receipt? Hearing none, it will be received into

1 evidence.

2 MR. HACK: Two more.

3 JUDGE WOODRUFF: This will be 53.

4 (Exhibit 53 marked for
5 identification.)

6 Q (By Mr. Hack) Can you identify
7 Exhibit 53, please?

8 A Exhibit 53 is -- are copies of the
9 invoices from Klett, Rooney, Lieber & Schorling,
10 which is the firm for which Mr. Quain works for.
11 These are the invoices for his time involved in
12 the rate case. And also in my true-up testimony
13 and exhibits.

14 I will say that the very last
15 invoice which we just received a copy of yesterday
16 is in -- in the amount of \$20,115.25. It's dated
17 July 22, 2004. And that is less than the number
18 that I was originally given by Mr. Quain's firm
19 and which I included in the true-up testimony.
20 The number I had in there was thirty two five for
21 their last invoice, and in fact, it's 20,115.

22 MR. HACK: MGE would move the
23 admission of Exhibit 53.

24 JUDGE WOODRUFF: Exhibit 53 has been
25 offered into evidence. Are there any objections

1 to its receipt? Hearing none, it will be received
2 into evidence.

3 MR. HACK: 54.

4 JUDGE WOODRUFF: 54.

5 (Exhibit 54 marked for
6 identification.)

7 Q (By Mr. Hack) Can you identify
8 Exhibit 54, please?

9 A Exhibit 54 are copies of all of the
10 Black and Veatch invoices, which is Mr. Sullivan's
11 engineering firm, which I have included in the
12 rate case expense and the true-up exhibits.

13 MR. HACK: MGE would move the
14 admission of Exhibit 54.

15 JUDGE WOODRUFF: Exhibit 54 has been
16 offered into evidence. Any objections to their
17 receipt? Hearing none, it will be received into
18 evidence.

19 Q (By Mr. Hack) Just a little bit
20 more. At what point in this rate case process did
21 MGE become aware of the positions other parties
22 were taking with respect to various items in the
23 case?

24 A Well, not until the time which other
25 parties filed their testimony and exhibits, which

1 would have been, I believe, April 15th, or
2 possibly -- I can't remember the dates of
3 depositions, but, you know, so it was either at
4 the time of deposition or at the time that the
5 direct case was filed by the different parties.

6 Q And approximately how much time does
7 MGE or did MGE have after finding out the
8 positions these parties were taking to -- to
9 respond to those positions in testimony?

10 A Well, we had -- between the time
11 that the direct case was filed by them, which I
12 believe was April 15th, until the time that
13 rebuttal testimony was filed, and I don't have the
14 date for that, I don't remember what date that
15 was.

16 Q Was it about April -- or May 24th?

17 A That sounds about right.

18 Q So about how much time is that?

19 A That would be a little more than a
20 month, five weeks.

21 Q In your opinion, does that amount of
22 time, that five week period, provide sufficient
23 time to go through a competitive bidding process?

24 A No. There would be no way at all to
25 go through a competitive bidding process. We

1 would first have to put together some kind of
2 request for proposals setting forth, you know,
3 what -- what is our guidelines that we're looking
4 for, and then we would have to send it out, give
5 the parties time to respond, submit it, and then
6 we would have to go through all the different
7 proposals and pick one. Which would leave no time
8 to, even if we had any time, to -- to do any work
9 product.

10 Q And what else is going on during the
11 period of time between when the other parties
12 filed their direct testimony and MGE files its
13 rebuttal testimony?

14 A Well, we're -- we are getting ready
15 to file our rebuttal testimony, at least I am.
16 Mr. Hack is -- is working with the other attorneys
17 in preparing -- probably getting ready for cross
18 examination. I mean --

19 Q Was there a prehearing conference?

20 A Excuse me, I forgot all about the
21 prehearing conference which took about a week.

22 Q Were there local public hearings?

23 A Yes, there were local public
24 hearings which we needed to have somebody there
25 at. In this case I think it was Mr. Hack was at

1 most of them.

2 Q Is it necessary, in your opinion,
3 for the Company's regulatory personnel, at least
4 some Company regulatory representative to be at
5 the local public hearings?

6 A Yes. Just so that we are made aware
7 immediately of concerns and are able to address
8 those concerns, if need be.

9 Q How big is MGE's regulatory staff?

10 A We have -- let's see. Two? And
11 then we have an administrative assistant.

12 MR. HACK: And does -- that's
13 enough. Thank you.

14 JUDGE WOODRUFF: All right. For
15 cross examination, then, we'll begin with Jackson
16 County and Midwest Gas.

17 MR. FINNEGAN: I wonder if I could
18 defer on this until after Staff and Public Counsel
19 so I don't step on their thunder?

20 JUDGE WOODRUFF: If no one objects,
21 that's fine. Public Counsel?

22 CROSS EXAMINATION BY MR. MICHEEL:

23 Q Mr. Noack, have you provided
24 previous bills from the firm of Klett, Rooney,
25 Lieber & Schorling to the Office of Public Counsel

1 via data requests?

2 A That -- I believe so, but I -- what
3 number I couldn't tell you, but anything that I
4 submitted to Staff, I also either directly sent to
5 Miss Bolin or submitted via an update to one of
6 their data requests.

7 Q And in response to Staff data
8 requests, you had sent the -- the Klett, Rooney,
9 Lieber & Schorling bills; is that correct?

10 A I believe with the exception of the
11 last one, yes.

12 Q And let me -- do you have a copy of
13 Exhibit 53 in front of you, sir?

14 A I do.

15 Q And if you would look through that
16 exhibit quickly, is it correct that with the
17 exception of the last billing that you just
18 referred to, all of the Klett, Rooney, Lieber &
19 Schorling bills are not set out on an hourly
20 basis; isn't that correct?

21 A That is what was supplied to Staff
22 does not include the time listing, that is
23 correct.

24 Q Now, let's go to the last one that
25 is attached there that is dated July 22nd, and

1 that was yesterday; is that correct?

2 A That is correct.

3 Q And this is the first time that
4 either the Office of Public Counsel or the Staff
5 have seen this setout time billing; is that
6 correct?

7 A This particular invoice?

8 Q Yes, sir.

9 A It's the first time that I had seen
10 it also. Yes.

11 Q And did you -- did anyone from
12 Southern Union call and request Klett, Rooney set
13 out their hours of work?

14 A No. I believe -- I believe if -- if
15 I were to call back to Southern Union, I believe
16 there's probably another page attached to these
17 other invoices which has the hours. And I just
18 wasn't aware that they were missing until I got
19 this particular invoice.

20 Q So you didn't know how they were
21 billing MGE?

22 A Well, I knew that they were billing
23 on an hourly basis, yes.

24 Q But the invoices you had previously
25 didn't indicate that, did they, Mr. Noack?

1 A The invoices that I had previously
2 did not detail the hours that were spent.

3 Q Do you have any reason why this --
4 this new hourly set out billing is a month behind?
5 In other words, the work that was provided here
6 ended on, it looks like 6/24?

7 A Do I have -- services rendered
8 through June 25th, '04. And your question is why
9 is --

10 Q Why is it a month behind?

11 A I have no idea what their billing
12 process is, however long it takes them to prepare
13 a bill and submit it to their clients. It could
14 be 30 days, could be 60 days.

15 Q You talked about, with Mr. Hack, the
16 Kasowitz Benson billings. Do you recall that?

17 A Yes.

18 Q Is it correct that -- when did MGE
19 file this case? Was it in November of '03?

20 A It was.

21 Q First part of November of '03?

22 A Yes, it was.

23 Q And do you know when direct
24 testimony was due by the Staff and the Public
25 Counsel?

1 A It was due, I believe, in April.

2 Q In April?

3 A Yes.

4 Q Are you aware that Kasowitz Benson
5 began billing the Company for its work on this
6 rate case in December of '03?

7 A Yes, I'm aware, and I think I
8 mentioned that in -- in my discussion with Mr.
9 Hack, that we did have preliminary discussions
10 with the firm because we had seen what -- what the
11 different return levels had been in previous --
12 more recent cases before the Commission. So we
13 had discussed with them the possibility that we
14 may want to use them.

15 Q And indeed, Mr. Herschmann and his
16 firm did significant billing even before the Staff
17 or Public Counsel testimony was filed. Is that
18 correct?

19 A I have -- I do have one bill dated
20 March 31 for \$83,000.

21 Q And there's an April 30th bill that
22 shows some April work; is that correct?

23 A That is correct.

24 Q And that's done before the testimony
25 was filed?

1 A Yes, it is.

2 Q You talked with Mr. Hack regarding
3 some litigation that the firm of Kasowitz Benson
4 had done, the Southwest Gas litigation. Do you
5 recall those questions?

6 A I do.

7 Q Is it correct that the Southwest Gas
8 litigation was not a rate case before a regulatory
9 body?

10 A Yes, that's true.

11 Q And that case was about a merger and
12 acquisition; is that correct?

13 A Yes, it was.

14 Q Is it correct this is the first time
15 that Mr. Herschmann or Mr. Fay have litigated a
16 regulatory rate case?

17 A I believe that's correct, yes.

18 Q Is it correct that rate of return
19 and return on equity is an issue in every rate
20 case?

21 A Unless it's settled, yes.

22 Q And would you agree with me that
23 it's typically one of the largest issues in terms
24 of revenue requirement impact?

25 A Depending on the difference between

1 the parties, yes. It would be, could be very big
2 dollar impact.

3 Q And so in your -- you've had a lot
4 of experience as a consultant and in-house with
5 MGE; is that correct?

6 A Yes.

7 Q And so it's been your experience
8 that rate of return is always an issue in rate
9 cases; isn't that correct? It could be settled,
10 but it's always one of the bigger issues?

11 A Very seldom would we file for a rate
12 of return and find out that the other parties
13 either are the same or higher than we are.

14 Q And that's when you've been on both
15 sides?

16 A Probably so.

17 Q Is it correct that -- that -- you
18 would agree with me that property taxes was not an
19 item that was agreed to be trued up; is that
20 correct?

21 A We agreed to not true-up the
22 property taxes on plant put in service between
23 January 1 and April 30th of '04.

24 Q Is it correct that MGE did not
25 include this property tax in its initial direct

1 testimony?

2 A That's correct because we didn't
3 know about it.

4 Q Is it correct that MGE did not
5 mention this property tax in its rebuttal
6 testimony?

7 A Again, because we were not aware.

8 Q Is it correct that MGE did not raise
9 this issue in its surrebuttal testimony?

10 A Because we were unaware of it.

11 Q So in all of that testimony there
12 was no mention of this property tax issue; is that
13 correct?

14 A That is correct.

15 Q And you would agree with me that
16 property taxes is not an item that was agreed to
17 be trued up; is that correct?

18 A It's -- it's the way that you are
19 phrasing that -- that statement -- property taxes
20 were -- were an updated item through December 31st
21 based on plant through December 31st. Any plant
22 additions after December 31st, it was agreed that
23 there would be no true-up of property taxes for
24 those plant additions.

25 Q In your surrebuttal testimony, did

1 you true-up property taxes for this item? Or did
2 you update property taxes for this item?

3 A For the gas storage?

4 Q Yes.

5 A As I said before, no, because I
6 didn't know about it.

7 Q Did you file corrected testimony
8 where you did update items, corrected direct
9 testimony?

10 A Possibly. I -- I did a corrected
11 rebuttal, I believe. I did an updated direct
12 testimony for December.

13 Q That's what I meant. Updated direct
14 testimony, which was admitted as Exhibit No. 9.

15 A Yes. Absolutely.

16 Q In that updated direct testimony,
17 did you update for this property tax number?

18 A Was not aware of it at the time.

19 MR. MICHEEL: May I approach the
20 witness, Your Honor?

21 JUDGE WOODRUFF: You may.

22 Q (By Mr. Micheel) I'm handing you a
23 copy of Exhibit 10, Mr. Noack, which is your
24 corrected rebuttal testimony in this case, and I'm
25 asking you to focus on page 4 there. And does

1 that indicate on page 4 that MGE and the Staff
2 have recommended a true-up through April 30th,
3 2004, covering certain items?

4 A Yes, it does.

5 Q And is property tax one of the items
6 listed there?

7 A Um, no. As I said before, because
8 we agreed not to include any property tax update
9 on plant added after December 31st.

10 Q I'm going to ask you some questions
11 about the AAO option. Is it correct that property
12 taxes are something that MGE must pay in the
13 regular course of its business?

14 A Yes, it is.

15 Q Is it correct that there is nothing
16 ordinary -- or extraordinary or unusual about the
17 payment of property taxes?

18 A Not the property taxes that we have
19 been historically paying.

20 Q Is there a uniform system of
21 accounts that includes property taxes?

22 A Yes, there is.

23 Q And what account is that?

24 A I believe it's Account 408.

25 Q And that's specifically for property

1 taxes; is that correct?

2 A There's probably -- it's probably a
3 sub account or something, yes. There is an
4 account for property taxes.

5 Q So there's nothing extraordinary or
6 unusual about the payment of property taxes; is
7 that correct?

8 A There's nothing unusual about the
9 payment of property taxes on the plant in service
10 as we've been paying them, correct.

11 Q Do you know what the standard is in
12 Missouri for granting an AAO?

13 A That it needs to be extraordinary,
14 but as far as how it -- it's directly worded, no,
15 I couldn't tell you that.

16 MR. MICHEEL: Just a minute, Your
17 Honor.

18 JUDGE WOODRUFF: Sure.

19 Q (By Mr. Micheel) Let me ask you
20 this, Mr. Noack. In your original direct
21 testimony which has been filed as Exhibit No. 8 in
22 this case, admitted into evidence, is it correct
23 that you requested that property taxes be part of
24 the true-up?

25 A I don't recall, Mr. Micheel.

1 MR. MICHEEL: May I approach?

2 JUDGE WOODRUFF: You may.

3 THE WITNESS: In my direct testimony
4 it does have property taxes as an item for
5 true-up.

6 Q (By Mr. Micheel) And that changed
7 to -- from your corrected rebuttal testimony, that
8 changed; is that correct?

9 A It was agreed with Staff and
10 possibly OPC, also, to exclude property taxes on
11 plant added after December 31st. As a true-up
12 item.

13 MR. MICHEEL: That's all I have,
14 Your Honor.

15 JUDGE WOODRUFF: Thank you. For
16 Staff?

17 CROSS EXAMINATION BY MR. SCHWARZ:

18 Q Good morning, sir.

19 A Good morning, Mr. Schwarz.

20 Q I want to talk about, I guess, rate
21 case expense, first of all. Is Kasowitz, Benson,
22 Torres & Friedman, KBTF henceforward, are they
23 currently doing any other work for Southern Union
24 besides work related to this case?

25 A I wouldn't know that, just because I

1 am not involved with -- with Southern Union
2 Corporation and what kind of litigation they have
3 going or ongoing.

4 Q But you are the witness that
5 Southern Union has proffered to this Commission to
6 -- to discuss the reasonableness of the rate case
7 expense that's been charged in this case. Is that
8 correct?

9 A I'm the witness for rate case
10 expense, yes.

11 Q Let me ask you this. Back in
12 November and December when MGE realized that it
13 might not agree with Staff's position on capital
14 structure and return on equity, did MGE contact,
15 for instance, Lathrop & Gage or Shughart,
16 Thompson, Kilroy or Shook, Hardy & Bacon or Bryan
17 Cave, Missouri law firms with litigation, major
18 litigation, complex litigation capabilities, to
19 see what kind of rates they might be able to get
20 on a piece of major litigation?

21 A No, I don't believe so.

22 Q Why not?

23 A We're very comfortable with Mr.
24 Herschmann. He does a wonderful job for us, we
25 thought he did a wonderful job in this case for

1 us, and there was no need to get a different
2 counsel.

3 Q That's not responsive to my
4 question. My question is -- is, did you check
5 alternate price service providers for this
6 particular issue? It goes -- I'm talking about
7 the reasonableness of the charges, not the
8 competency of the representation at this stage.

9 A Mr. Schwarz, you asked --

10 MR. HACK: Excuse me. Asked and
11 answered. The question initially was, did you
12 check. The answer was no. The next question was
13 why, and Mr. Noack explained why.

14 JUDGE WOODRUFF: That is my memory
15 of what happened, too. If we -- if there's an --
16 your question, we can have the court reporter read
17 it back.

18 Q (By Mr. Schwarz) Why did you not
19 consider price or cost in the matter?

20 MR. HACK: Objection. Assumes facts
21 not in evidence.

22 JUDGE WOODRUFF: Sustained.

23 Q (By Mr. Schwarz) Did -- did you --
24 did Southern Union check prices on -- from other
25 law firms?

1 A No. We did not.

2 Q Why did you not?

3 A Because we're very comfortable with
4 Mr. Herschmann. He has done litigation work for
5 the corporation that was excellent litigation
6 work. And this is a -- was a \$25 million issue
7 that we decided needed our full attention with the
8 best that we had available to us to use. In that
9 case, it was Mr. Herschmann.

10 Q So that, if I understand your
11 answer, then, price was no object in this matter?

12 A I'm not saying price was no object.
13 Obviously we looked at the cost. But the issue,
14 again, was worth \$25 million, and we had an
15 attorney that had a proven track record for
16 Southern Union Company, and there was no reason
17 for us to change from that attorney.

18 Q You're not suggesting that Mr.
19 Herschmann had a proven track record in regulatory
20 matters, are you?

21 A No, I've already testified that I
22 think this was his first rate case.

23 Q Let me ask -- let's try to approach
24 it from a little different. What is Southern
25 Union's relationship with Watson Bishop?

1 A I believe Watson Bishop and
2 Christine Dodds is basically used in connection
3 with the KBTF firm and Mr. Herschmann. She's like
4 a second chair to Mr. Herschmann.

5 Q Where is Watson Bishop located, Ms.
6 Dodds located?

7 A Gosh, I believe it's Austin, Texas.

8 Q And did Southern Union formerly
9 operate properties in Texas?

10 A Their corporate headquarters was --
11 used to be in Austin, Texas.

12 Q Did Southern Union use Watson Bishop
13 in regulatory matters in Texas?

14 A I don't know the answer to that, Mr.
15 Schwarz.

16 Q Somebody at Southern Union knows
17 that answer; is that correct?

18 A I suppose, yes.

19 Q And -- but Southern Union hasn't
20 brought anybody down here who can -- is
21 knowledgeable on that subject, i.e., you?

22 A No. No. I don't know the answer to
23 the question, no.

24 Q Specifically what was Ms. Dodds
25 retained to do in this case?

1 A Um, I guess I am -- I term her like
2 a second chair to Mr. Herschmann. She -- she did
3 a lot of the preparation and assisted Mr.
4 Herschmann in the preparation of all these
5 witnesses, issues, cross examination questions. I
6 mean, anything that needed to be done, she -- she
7 assisted in doing.

8 Q What's her area of expertise?

9 A I -- I don't know the answer to
10 that, Mr. Schwarz.

11 Q Let me ask you this. Southern
12 Union, MGE retained Thelen, Reid & Priest in this
13 case, specifically Jim Warren. What's his area of
14 expertise?

15 A Income taxes.

16 Q You retained the firm of Lathrop &
17 Gage in this case. What was their area of
18 expertise?

19 A Lathrop & Gage, their sole purpose
20 in this case and what those charges resulted from
21 were as a result of numerous data requests
22 involved with the environmental costs of the
23 corporation and Missouri Gas Energy. They assist
24 us in environmental matters and they gathered all
25 the materials, and it was a substantial number of

1 materials for the responses to the DRs.

2 Q Right. The partners from Lathrop &
3 Gage that worked on your matters are specifically
4 experts in environmental and insurance matters.
5 Is that correct?

6 A I suppose. I mean, that's what
7 we're using them for.

8 Q All right. But you don't know what
9 Ms. Dodds' specialty is?

10 A No. I know she was involved with --
11 with this Southwest Gas litigation also, but no, I
12 don't.

13 Q You had indicated that Southern
14 Union had negotiated reduced rates with KBTF
15 during litigation, civil litigation, merger and
16 acquisition litigation in which Mr. Herschmann is
17 apparently an expert. You didn't negotiate
18 reduced rates in this case in which Mr. Herschmann
19 had no subject matter expertise. Is that correct?

20 A Evidently not.

21 Q Do you know why?

22 A No, I don't.

23 Q Do you know if -- if Southern Union
24 asked?

25 A I have no idea, no.

1 Q Who are the two regulatory staff
2 members that MGE has? You and who else?

3 A Mr. Hack and myself.

4 Q And Kimm is your --

5 A Is our assistant, yes.
6 Administrative. She is the one that runs the
7 department.

8 Q Do you have a copy of Exhibit 51
9 there?

10 A Yes, I do.

11 Q I am looking at the Kasowitz invoice
12 that's dated May 31, and it's -- looking at page
13 6.

14 A I don't have a page 6, Mr. Schwarz.

15 MR. SCHWARZ: May I approach?

16 JUDGE WOODRUFF: You may.

17 THE WITNESS: I have it. I'm sorry.

18 Q (By Mr. Schwarz) Are you with me?

19 A Yes, I am.

20 Q What are the travel expenses that
21 are charged on that page?

22 A \$3,461.97.

23 Q And who -- who incurred those
24 expenses?

25 A I would assume it was --

1 Q No, no, please don't assume. Please
2 don't assume. Do you know or not?

3 A No, I don't have detail of what
4 those travel expenses were.

5 Q Do you know what the local
6 transportation is?

7 A No.

8 Q Do you know where the local
9 transportation is?

10 A No, I do not.

11 Q Do you know what business meals are?

12 A No, I don't.

13 Q If you look at the last page of this
14 exhibit, those -- a summary page for June, are you
15 with me?

16 A Yes. Page 7?

17 Q There's a charge of \$1,375.09 for
18 automated research. What is that for?

19 A I don't know.

20 Q Back on the May bill there's a
21 charge for the same item, automated research, for
22 438. Do you know what that was for?

23 A No, I do not.

24 Q Flipping back through the other
25 invoices, I don't see any other months where

1 automated research was charged. Would you know
2 why it wasn't charged in earlier months and was
3 charged in later months?

4 A No.

5 Q The summary sheet of April 2004.
6 Well, I'll tell you, it lists travel expenses of
7 \$1,437.80. Do you know who incurred those travel
8 charges?

9 A No, I do not.

10 Q So as -- as to those items, you
11 can't say if they were reasonable or not, can you?

12 A I don't -- I don't know the detail
13 behind those expenses, no.

14 Q Is that a yes? You cannot say that
15 those are reasonable charges?

16 A I can't say that they're
17 unreasonable charges.

18 MR. SCHWARZ: Judge, I am entitled
19 to a yes or no answer.

20 JUDGE WOODRUFF: If you can answer
21 yes or no, please do.

22 THE WITNESS: I don't think I can
23 answer yes or no on that question, sir, Your
24 Honor. I don't know whether they're either
25 reasonable or unreasonable.

1 Q (By Mr. Schwarz) So you cannot
2 testify that they are reasonable.

3 A No, I cannot.

4 Q We've -- we've heard discussion, I
5 think, that Mr. Herschmann has -- has specialized
6 in litigation of -- of corporate matters and
7 mergers and acquisition matters for Southern
8 Union. That litigation was in federal courts; is
9 that correct?

10 A Um, I believe so.

11 Q So that if -- if Mr. Herschmann
12 brings anything to the table in this matter, he
13 should certainly, as a litigator, be familiar with
14 the rules of evidence?

15 A I would assume so.

16 Q So you would expect that he would
17 have prepared motions in limine, that is, motions
18 challenging testimony, motions challenging
19 evidence, on a regular basis?

20 A In what context? In this case?

21 Q No. In his general practice. That
22 the life of a litigator includes making challenges
23 to evidence and to limit evidence. If you don't
24 know, just say so.

25 A You know, I don't know all the

1 wonderful intricacies of being a lawyer.

2 Q So in terms of economics, if -- if
3 Mr. Herschmann had a comparative advantage over
4 something that he specialized in that made him do
5 things better and more efficiently than others, it
6 should be in trial preparation matters in complex
7 litigation. Would you agree with that?

8 A I -- I suppose.

9 Q Are you or anyone at MGE responsible
10 for auditing and challenging the invoices of KBTF?

11 A I believe, first off, that the
12 invoice gets submitted to Dennis Morgan at
13 Southern Union Corporation, the general counsel of
14 the corporation, and he will look at those and
15 approve them. And then I -- I would think that
16 they would also be run by Mr. Hack for -- at least
17 for him to take a look at.

18 Q Do you know if Mr. Hack reviews the
19 invoices prior to payment?

20 A Since this is a corporate invoice, I
21 don't know if there's formal approval by Mr. Hack,
22 no.

23 MR. SCHWARZ: Okay. Thank you. I
24 want to switch to property taxes for a while, now,
25 if I might. I have an exhibit I'd like marked.

1 JUDGE WOODRUFF: All right. It will
2 be 858.

3 (Exhibit 858 marked for
4 identification.)

5 Q (By Mr. Schwarz) Do you recognize
6 this?

7 A Yes. I just within the last couple
8 of days had it prepared and submitted to the
9 Staff.

10 Q And the third page of the exhibit
11 which says response to DR 0384, that's MGE's
12 response?

13 A That is correct.

14 Q This is not the first time that the
15 State of Kansas has attempted to assess a tax on
16 gas inventory held in storage; is that correct?

17 A That's correct.

18 Q And MGE was one of the parties that
19 resisted that imposition?

20 A Yes. Yes.

21 Q And so MGE was aware that that was
22 -- has been an issue in Kansas; is that correct?

23 A Yes.

24 Q And in MGE's last rate case, the
25 property tax on gas inventory was an issue, was it

1 not?

2 A Um, as I recall, it was something
3 that, again, it kind of arose at the last --
4 during the last part of the case. And I don't
5 know that it was so much an issue in the last
6 case. I mean, it was agreed upon to include an
7 amount in the case, which I -- the No. 4 here to
8 this response, was \$400,000. So I mean, "issue"
9 I'm not sure is -- is the proper word.

10 Q It was a subject?

11 A Yes. It was a cost that -- that we
12 all agreed to.

13 Q How did the property tax go from
14 \$400,000 a year to \$1.2 million a year between the
15 last case and this case?

16 A The cost of gas is substantially
17 higher.

18 Q Tripled?

19 A Triple.

20 Q You have attached to Exhibit 58 what
21 purports to be a bill, a tax bill from I think
22 Meade County?

23 A Yes. I'm there.

24 Q Okay. Just above the total tax due
25 line there's a notation, stored gas - late filing.

1 A Yes.

2 Q Do you know what the penalty for
3 late filing is in Kansas?

4 A No, I do not. I don't -- I don't
5 see -- well, I see a delinquent tax interest rate
6 of 11 percent here, but I don't see a charge for
7 it.

8 Q I'm not talking about a penalty for
9 late payment, I'm talking about a penalty for late
10 filing an assessment. And I think you indicated
11 that you don't know, I just --

12 A No, I don't know.

13 Q Okay. Do you know what it is in
14 Missouri?

15 A No.

16 MR. SCHWARZ: Okay. Another
17 exhibit.

18 JUDGE WOODRUFF: This will be 859.

19 (Exhibit 859 marked for
20 identification.)

21 Q (By Mr. Hack) In your true-up
22 testimony, you have a -- it's Exhibit 49. Third
23 page from the end, you have a copy of a letter
24 from John Hughes with the Kansas Department of
25 Revenue?

1 A Okay. Yes, I see it.

2 Q Okay. And that letter indicates
3 that the deadline for the enclosed forms is August
4 1 of 2004.

5 A Yes.

6 Q So your assessment forms which will
7 form the basis of any property tax, those forms
8 aren't even due until August the 1st; is that
9 correct?

10 A Right. They're due at the end of
11 next week.

12 Q Right. And is what has been marked
13 Exhibit 59 -- 859, I'm sorry, is that the forms?

14 A This may be some of the forms. I
15 don't fill out the property tax renditions, so I
16 couldn't tell you whether or not these are all of
17 the forms, some of the forms, or any of the forms.

18 Q Thank you. But the -- look now, if
19 you would, the last page of your -- of schedules
20 of your true-up testimony is a series of
21 computations; is that correct?

22 A That's correct.

23 Q And did you do those computations?

24 A No, they were prepared by our tax
25 department.

1 Q So they are -- they don't -- they do
2 not represent actual tax bills received from the
3 State of Kansas?

4 A No. They do not.

5 Q And do you know if MGE has filed the
6 property tax renditions at this stage?

7 A We are in, as I just said, we are in
8 the process of preparing them right now.

9 Q So the -- so MGE hasn't even
10 finalized the -- the assessment forms at this
11 stage?

12 A No, we have not. We've just booked
13 the expense. Or the liability, excuse me.

14 Q Going back to Exhibit 858 and the
15 property tax bill from Meade County, Kansas?

16 A Yes.

17 Q It says just under the mail to item,
18 it says payment instructions. First half due
19 12/20/2000, second half due 6/20 of 2001.

20 Correct?

21 A Yes.

22 Q And that is for taxes that were --
23 property taxes that were assessed as of January 1
24 of 2000. For tax year 2000. Is that correct?

25 A Yes. I believe so.

1 Q So Kansas property taxes, half of
2 them are payable in the tax year, and the other
3 half is payable in June of the following year; is
4 that your understanding from this bill?

5 A Yes.

6 Q And is December 20, 2004, within the
7 true-up period in this case?

8 A No.

9 Q Is June 1st of 2005 within the
10 true-up period in this case?

11 A No.

12 MR. SCHWARZ: I think that's all I
13 have.

14 JUDGE WOODRUFF: Do you wish to
15 offer 858 and 859?

16 MR. SCHWARZ: I'm sorry. I would
17 offer Exhibit 858 at this time.

18 JUDGE WOODRUFF: And 859 is not
19 going to be offered?

20 MR. SCHWARZ: I would ask that -- I
21 think there's enough foundation for that. I would
22 ask the Commission to take official notice of the
23 Kansas property tax forms which can be found on
24 the Department of Revenue -- actually, they can't.
25 They're not posted yet. No. I'm not going to

1 offer 859.

2 JUDGE WOODRUFF: Okay. 858 has been
3 offered. Any objection to its receipt? Hearing
4 none, it will be received into evidence. 859 is
5 not offered. All right.

6 Mr. Finnegan, do you have any
7 questions?

8 MR. FINNEGAN: I have just a few,
9 Your Honor.

10 CROSS EXAMINATION BY MR. FINNEGAN:

11 Q I'll try to keep this brief, I'm
12 just going to limit it to the gas inventory tax.
13 I believe you just stated the tax won't be paid
14 until December 20th? Part of it December 20th and
15 some of it in June of 2005; is that correct?

16 A I believe so.

17 Q Okay. And when you do pay this,
18 will you pay it under protest?

19 A Yes, I believe so. Yes.

20 Q Okay. And in your testimony on page
21 6, you indicate that you believe that this is
22 unlawful -- this law is unlawful and that at some
23 point the -- it will be declared so.

24 A That's -- that's our hope and
25 belief, yes.

1 Q And when that happens, are you
2 planning to refund the money if you were allowed
3 it in this case?

4 A Well, that's -- again, we -- as Mr.
5 Hack stated in his opening statement, as an
6 alternative, we're -- we're asking for an AAO to
7 be granted in this case in which in that scenario,
8 if that happened, then there would never be
9 anything that we would come back and ask the
10 Commission for next -- in the next rate case.

11 Q In the alternative proposal.
12 Correct?

13 A In -- that's correct.

14 Q But wouldn't it be fair to refund
15 the -- if you did receive this and it didn't have
16 an AAO, wouldn't it be fair to refund it to the
17 customers since you didn't have to pay it?

18 A Well, I mean, every -- every cost
19 that we have in a rate case to a certain extent
20 that we are normalizing going forward, you know,
21 we either may exceed, we may be below that cost.
22 We usually exceed that cost, and we don't get to
23 go back and say, can we have that extra expense
24 that we incurred.

25 And it would be the same thing here.

1 We believe it's there, it's sitting there, Kansas
2 passed a law that they, in their opinion, feel is
3 -- is adequate to get this tax collected. And so
4 I put it into the case. But it's like any other
5 cost. I mean, no, I wouldn't recommend that we
6 refund it.

7 Q If the Commission ordered you to do
8 so, would you be willing -- would you do so?

9 A If the Commission ordered us to
10 refund this?

11 Q Yes.

12 A We would follow Commission orders,
13 yes.

14 Q Okay. Now, the -- so your proposal
15 here is to put it in rates, so it would be
16 collected from all classes of customers; is that
17 correct?

18 A It would be put into rates and it
19 would be collected on the basis of whatever rate
20 design the Commission granted.

21 Q Would that include recovery of some
22 portion of the costs from the transportation
23 class?

24 A Possibly or probably, yes.

25 Q And did you not testify before this

1 Commission in GR-98-140 that the transportation
2 class should not have any costs related to gas
3 inventory assigned to it?

4 A I think I probably did. Yes.

5 Q And is that testimony in this case
6 as Exhibit 623?

7 A I believe so.

8 MR. FINNEGAN: That's all the
9 questions.

10 JUDGE WOODRUFF: All right.

11 Questions from the bench? Commissioner Murray?

12 COMMISSIONER MURRAY: I don't have
13 many questions, thank you, Judge.

14 BY COMMISSIONER MURRAY:

15 Q Good morning.

16 A Good morning.

17 Q Could you go through each of the
18 issues in the true-up and just give the effect on
19 revenue requirement between the various parties?
20 Do you have that?

21 A I don't think I have that directly
22 quantified, Commissioner, but I think I can go
23 through and do it pretty -- with the assistance of
24 Mr. Hyneman's testimony. I can probably come up
25 with a pretty good estimate.

1 JUDGE WOODRUFF: We're about due for
2 a break anyway. Would you like an opportunity to
3 get this during the break?

4 THE WITNESS: I believe that would
5 work because I can get ahold of my surrebuttal
6 testimony and exhibits, and I think I can just
7 kind of go through and rapidly kind of give an
8 indication.

9 JUDGE WOODRUFF: That would save us
10 some time. Let's go ahead and take a break then,
11 15 minute break, we'll come back at 10:20.

12 (Off the record.)

13 JUDGE WOODRUFF: All right. We're
14 back on the record, back on the internet. And Mr.
15 Noack, have you completed those calculations?

16 THE WITNESS: Yes, I have, Your
17 Honor. There are two -- two issues that I need to
18 quantify for Commissioner Murray. The first is
19 rate case expense, and the initial filing, MGE
20 requested \$200,000 a year, which was a rate case
21 exhibit of 600,000 amortized over three years.

22 In this true-up are a three year
23 amortization of the rate case expenses, \$461,111,
24 which is an increase of \$261,111. Unless we -- we
25 look at a four year amortization period, in which

1 case --

2 Q (By Commissioner Murray) I'm sorry,
3 I have to stop you, you lost me already.

4 A Okay.

5 Q The true -- you said initially the
6 request was 600,000 amortized over three years.

7 A For a \$200,000 a year revenue.

8 Q And now the -- are you telling me
9 the additional request, or the total request now
10 for rate case expense?

11 A The -- using a three year basis, the
12 additional request is \$261,111, making the total
13 annual rate case expense \$461,111.

14 Q Okay.

15 A If we look at a four year
16 amortization period, the total would be 345,833,
17 for an increase of 145,833 per year.

18 Q But over an additional year.

19 A Correct.

20 Q Sir, was -- I didn't see -- okay.
21 That was an alternative proposal, then?

22 A Correct. The other item is property
23 taxes on gas and storage. The additional amount
24 that's in my true-up testimony is a \$1,269,059,
25 and as an alternative, we have suggested being

1 granted an AAO for this amount in this case. And
2 we would talk about it, I guess, in the next case
3 if it came to pass.

4 Q Okay. So that is a straight revenue
5 requirement difference?

6 A Yes.

7 Q And the capital structure
8 differences, how does -- how does that affect the
9 revenue requirement?

10 A Our rate of return in -- in my
11 rebuttal exhibits, our overall rate of return was
12 9.333 percent. In the true-up which I have filed,
13 the overall rate of return is 9.348. So it's only
14 a 15 basis point difference which -- that should
15 only amount to about probably around \$100,000.

16 Q Okay. And I understand you're just
17 estimating that?

18 A Yes. Yes.

19 Q Then in terms of Staff's position,
20 true-up position on capital structure, do you know
21 what effect that has on revenue requirement from
22 Staff's previous position?

23 A I believe the Staff change in
24 capital structure results in about a \$2.7 million
25 increase in their overall requirement.

1 Q Okay. And what is the total revenue
2 requirement that is MGE's position today?

3 A Including the efficiency adjustment,
4 it's \$40,056,176. Before the efficiency
5 adjustment, it's \$37,900,620.

6 Q I'm sorry, for some reason I'm
7 drawing a blank on the efficiency adjustment?

8 A It's the increase in rate of return
9 of 25 basis points.

10 Q And I didn't ask you about Public
11 Counsel's position on capital structure of -- I
12 don't think the position changed from the -- for
13 the true-up period; is that -- except that they
14 would have -- they didn't change the methodology
15 anyway, let's put it that way?

16 A I don't believe so, no.

17 COMMISSIONER MURRAY: Okay. I think
18 the other things have been pretty well covered.
19 Thank you.

20 THE WITNESS: Thank you.

21 JUDGE WOODRUFF: I don't have any
22 questions, so for recross, begin with Public
23 Counsel?

24 MR. MICHEEL: No, Your Honor.

25 JUDGE WOODRUFF: Staff?

1 MR. SCHWARZ: No.

2 JUDGE WOODRUFF: Mr. Finnegan?

3 MR. FINNEGAN: No, Your Honor.

4 JUDGE WOODRUFF: All right.

5 Redirect.

6 REDIRECT EXAMINATION BY MR. HACK:

7 Q Regarding the Kansas property tax
8 question?

9 A Yes.

10 Q And the issue of whether those taxes
11 would be classified as extraordinary under the
12 accounting authority order analysis, has MGE in
13 the past had to pay property taxes in the State of
14 Kansas on its storage gas there?

15 A No, we have not. Initially the
16 issue first came up about four years ago, and we
17 thought we were going to have to pay property
18 taxes on the storage, but we were able to
19 successfully litigate that and get that stopped.

20 Q And when -- when did the Company
21 find out about this item? What time specifically?

22 A It was the first part of July, or
23 mid-July. I mean, just before I prepared my
24 true-up testimony.

25 Q And when -- was this before or after

1 the evidentiary hearing?

2 A It was after. It was between the
3 evidentiary hearing and the time that the true-up
4 testimony was due.

5 Q Can you just kind of briefly
6 describe what is a true-up and how, for example,
7 property taxes would have been trued up if they
8 were a subject of the true-up in this case?

9 A Well, the true-up, in this case, is
10 -- it's basically meant to eliminate some of the
11 items between the time that we file our case and
12 the time that the rates actually go into effect.
13 So we file with a test year as of June 30, '03,
14 initially.

15 We update our test year once through
16 December 1 for the items that we -- that we know
17 about, the measurable items, and then we do a
18 final -- basically a final, what we call a
19 true-up, to take into consideration those items
20 that are easily quantifiable as -- as either
21 increase or decrease between December and, in this
22 case, April 30th.

23 The second part of your question?
24 I'm sorry, Mr. Hack.

25 Q If property taxes were to be trued

1 up from 12/31/03 to April 30, '04, how would that
2 mechanically be done?

3 A We would simply take the effective
4 rate for property taxes that we used as of
5 December 31 and we would apply that property tax
6 rate to any plant additions that we would have
7 added to the case between December and April 30th
8 of '04. So we would have just -- we would have
9 quantified property taxes on the additional plant
10 that we included in the case.

11 Q As of what date would that plant --
12 would you use the plant?

13 A April 30th of 2004.

14 Q And is that the methodology that you
15 have proposed for the storage gas?

16 A No. We are using December 31st,
17 2003, like we are with all the rest of the plant.

18 Q For the plant -- the property taxes
19 assessed on the plant balances as of 12/31/03,
20 Missouri plant, when will those property taxes be
21 paid?

22 A I believe they will be paid at the
23 -- they will be paid in 2004.

24 Q When in 2004?

25 A I believe at the end of the year in

1 December.

2 Q Okay. There was a question about --
3 from Mr. Schwarz about the discounted rate
4 applicable to the Kasowitz Benson billings for the
5 Southwest Gas litigation. Do you recall that
6 question?

7 A Somewhat, yes.

8 Q Can you briefly discuss what perhaps
9 might be a significant difference between Mr.
10 Herschmann's participation in that case versus the
11 length and extent of his involvement in this case?

12 A Well, in the -- the Southwest Gas
13 litigation was -- was a three or a four year
14 project, I'll call it, or litigation, and Mr.
15 Herschmann was the chief litigator in that case.
16 I mean, he was basically in charge of everything
17 there.

18 In -- in the rate case here, he had
19 an issue, albeit the most important issue in the
20 case, but -- but he concentrated on the rate of
21 return, capital structure issue, and that was all
22 that he was asked to handle until this particular
23 case.

24 Q And in terms of the length of time
25 of his involvement in this case versus the

1 Southwest Gas case, how would you compare and
2 contrast that?

3 A I couldn't tell you on hours,
4 comparison of hours.

5 Q How about on a months basis?

6 A Well, again, as I said, it was a
7 three or four year project, and in this case it
8 was roughly December through June. So a seven
9 month.

10 Q And in that seven month process,
11 when did the bulk of the work occur?

12 A Probably the biggest would have been
13 in May and June. Of -- during the hearing phase
14 and the month preceding the hearing. So the last
15 two months.

16 MR. HACK: Thank you. Thanks.

17 JUDGE WOODRUFF: All right, Mr.
18 Noack, you may step down, and you are excused if
19 you need to be.

20 THE WITNESS: Thank you.

21 JUDGE WOODRUFF: Next name on the
22 list is, I believe, Travis Allen.

23 MR. MICHEEL: We would call Travis
24 Allen, Your Honor.

25 (Witness sworn.)

1 TRAVIS ALLEN, testified as follows:

2 DIRECT EXAMINATION BY MR. MICHEEL:

3 Q Would you state your name?

4 A Travis Allen.

5 Q And how are you employed?

6 A I am employed as a financial analyst
7 with the Office of Public Counsel.

8 Q And are you the same Travis Allen
9 who has caused to be filed direct, rebuttal, and
10 surrebuttal testimony in this case?

11 A Yes, I am.

12 Q And did you file your true-up
13 testimony in this case which has been marked for
14 purposes of identification as Exhibit 233?

15 A Yes, I did.

16 Q And if I asked you all those
17 questions today, would your answers be
18 substantially similar or the same?

19 A Yes, they would.

20 Q Do you have any corrections you need
21 to make?

22 A No, I do not.

23 MR. MICHEEL: With that, Your Honor,
24 I would move the admission of Exhibit 233 and
25 tender Mr. Allen for cross.

1 JUDGE WOODRUFF: All right. 233 has
2 been offered into evidence. Are there any
3 objections to its receipt? Hearing none, it will
4 be received into evidence.

5 MR. MICHEEL: I get to do some
6 rebuttal.

7 JUDGE WOODRUFF: Yes.

8 Q (By Mr. Micheel) Mr. Allen, you
9 included a short-term debt in your capital
10 structure, did you not?

11 A Yes.

12 Q And can you explain why you did
13 that?

14 A The reason that I included
15 short-term debt was because Southern Union Company
16 has had a history of maintaining a short-term debt
17 balance, less construction work in progress,
18 greater than 2 percent of their capital structure.

19 The last time prior to, I believe
20 it's April of 2004, that the Company had
21 short-term debt less than nine figures was in
22 February of 2001, and that -- in February of 2001,
23 their short term debt balance was \$91 million. So
24 I thought -- it's my belief that, including
25 short-term debt into to the capital structure is a

1 better illustration of how they used short-term
2 debt.

3 Q And did you hear anything in the
4 initial hearing that caused you to believe that
5 Southern Union Company was going to end its use of
6 short-term debt?

7 A I didn't hear anything in the
8 hearing that made me -- that convinced me that
9 there was a change in that policy with the use of
10 short-term debt, no.

11 MR. MICHEEL: That's all I have,
12 Your Honor.

13 JUDGE WOODRUFF: All right. Thank
14 you. For cross examination we begin with Staff?

15 MR. SCHWARZ: No questions.

16 JUDGE WOODRUFF: Jackson County and
17 Midwest Gas?

18 MR. FINNEGAN: No questions.

19 JUDGE WOODRUFF: MGE.

20 CROSS EXAMINATION BY MR. HACK:

21 Q Good morning.

22 A Good morning.

23 Q Has Southern Union's common equity
24 ratio increased in the period from 12/31/03 to
25 4/30/04?

1 A Yes. If you look at Schedule TA-1
2 on my true-up testimony, the common equity ratio
3 is 28.37 percent.

4 Q And that would compare to your
5 calculated common equity ratio of 26.1 percent as
6 of December 31?

7 A That's correct.

8 Q And I think you just testified in
9 response to a question from Mr. Micheel that
10 Southern Union Company's short-term debt ratio
11 actually fell -- actual short-term debt balances
12 fell to zero percent as of April 30th, 2004. Is
13 that correct?

14 A The figure that I have from a data
15 request response was approximately \$28 million of
16 short-term debt as of April 30th, 2004.

17 Q Has the Staff included any
18 short-term debt in its capital structure at this
19 point?

20 A The Staff has excluded short-term
21 debt as of true-up testimony.

22 Q If -- you did not calculate in your
23 true-up testimony any update to the hypothetical
24 capital structure that you put forward in your
25 earlier testimony in this proceeding, correct?

1 A That is correct.

2 Q Now, the -- but -- but your
3 short-term debt recommendation has fallen, has it
4 not, from December 31 to April 30?

5 A Yes, that's correct.

6 Q And your amount of preferred --
7 percent of preferred stock has also fallen from
8 your recommendation as of December 31 to your
9 recommendation as of April 30. Correct?

10 A It has fallen slightly.

11 Q And both your calculated short-term
12 debt amount and preferred amounts, the percentages
13 had an impact on your overall hypothetical capital
14 structure recommendation, did they not?

15 A They did have an impact, yes.

16 Q Can you help me understand the
17 impact of those changes in your true-up testimony
18 on this so-called actual capital structure, how
19 they would affect your hypothetical capital
20 structure using the same methodology that you used
21 earlier in the case?

22 A I'm not sure I understand your
23 question.

24 Q What I want you to do is apply the
25 same methodology to calculating the hypothetical

1 now that you did earlier, but using the -- your
2 current short-term debt and preferred stock
3 ratios.

4 A You want me to do that right now --

5 Q Yes, I do.

6 A Okay. I would need a calculator and
7 it would take some time to do.

8 Q I saw you playing with a calculator
9 earlier. Do you not have one?

10 A That wasn't mine.

11 MR. HACK: Thank you, Doug.

12 JUDGE WOODRUFF: Before you start,
13 let me ask you how long will it take?

14 THE WITNESS: It's going to take
15 probably -- by hand it's going to take probably 45
16 minutes.

17 JUDGE WOODRUFF: Obviously we're not
18 going to do it with you on the stand at this
19 point.

20 MR. HACK: Took me about ten
21 minutes, I think you can probably do it quicker
22 than that.

23 JUDGE WOODRUFF: Well -- Mr.
24 Micheel?

25 MR. MICHEEL: You know, it's going

1 to take this witness as long as it's going to take
2 this witness. I guess Mr. Hack is a wunderkind at
3 this, but he's going to do his best. He's asked
4 him to do something he hasn't done.

5 I objected in the hearing to this
6 kind of calculational items. I mean, they could
7 have put in a witness had they wanted to about
8 what those calculations were. They could have
9 asked Mr. Noack on rebuttal testimony what those
10 calculations were. And so I mean --

11 JUDGE WOODRUFF: All right. I'm
12 going to certainly allow you to ask him to make
13 that calculation. I'm not going to delay the
14 hearing while he does it. We're not going to
15 finish before lunch, so --

16 MR. HACK: That's fine.

17 JUDGE WOODRUFF: He can finish it
18 during lunch. You can ask other questions and
19 we'll come back to that response after lunch.

20 Q (By Mr. Hack) Are you aware that
21 Southern Union recently, on July 20th, announced
22 plans to make a public offering of 11 million
23 shares of common equity?

24 A You said July 20th? Eleven million
25 shares?

1 Q Yes.

2 A Yes.

3 MR. HACK: I'd like to have an
4 exhibit marked.

5 JUDGE WOODRUFF: All right. This
6 will be No. 55.

7 (Exhibit 55 marked for
8 identification.)

9 Q (By Mr. Hack) Can you identify
10 Exhibit 55?

11 A I don't have a copy.

12 Q I apologize. Sorry.

13 A The title of the document is
14 Southern Union news release, Southern Union
15 announces public offering of common stock.

16 Q And let me just ask you a couple of
17 questions. What's the date on that news release,
18 Mr. Allen?

19 A July 20th, 2004.

20 Q In your estimation, do financial
21 analysts rely on media advisories issued by
22 companies such as Exhibit 55 in the ordinary
23 course of undertaking their financial analysis
24 work?

25 A I'm sorry, can you restate that or

1 say that again?

2 Q Do financial analysts rely on media
3 advisories issued by companies such as Exhibit 55
4 in the ordinary course of undertaking financial
5 analysis work?

6 A It's certainly something that is
7 looked at, yes.

8 Q And is it something that financial
9 analysts tend to rely upon in the ordinary course
10 of their work?

11 A It is some -- well, it is something
12 that's looked at. The degree of reliability, it
13 goes to -- to weight and the individual analyst,
14 so.

15 Q Do you have any reason to doubt the
16 accuracy of what's put forth in Exhibit 55?

17 A This is the first time I have seen
18 this specific document. And I haven't read it,
19 so.

20 Q If you'd like to read it?

21 A Give me a chance to read it and --

22 Q Yeah.

23 A Yeah. I don't have any reason to
24 believe that there's any inaccuracies in here.

25 Q And does Exhibit No. 55 indicate

1 that Southern Union is taking steps that, if
2 successful, will continue to increase its common
3 equity ratio as a percent to total capitalization?

4 A In the fifth paragraph it states
5 Southern Union expects to use the net proceeds
6 from its offering of common stock to reduce debt
7 and for general corporate purposes.

8 Q So I'm asking you to answer my
9 question, which was, does Exhibit 55 indicate to
10 you that Southern Union is taking steps that, if
11 successful, will increase its common equity ratio
12 as a percent of total capitalization?

13 A If successful, yes.

14 MR. HACK: Okay. That's all I have
15 except for wanting to get an update of the impact
16 of those changes on his hypothetical.

17 JUDGE WOODRUFF: Did you wish to
18 offer 55?

19 MR. HACK: Yes, I would, thank you.

20 JUDGE WOODRUFF: 55 has been offered
21 into evidence. Any objections to its receipt?

22 MR. MICHEEL: Object to lack of
23 foundation. This witness hasn't seen it before.

24 JUDGE WOODRUFF: The objection will
25 be overruled, and 55 is admitted.

1 MR. HACK: Thank you.

2 JUDGE WOODRUFF: And we will recall
3 him, then, after lunch. Mr. Micheel, do you have
4 something to say?

5 MR. MICHEEL: Then I will do my
6 redirect after lunch?

7 JUDGE WOODRUFF: Based on what's in
8 already, and then we'll give an opportunity for
9 redirect after those questions come in. All
10 right. We'll come up to questions from the bench.
11 Commissioner Murray?

12 BY COMMISSIONER MURRAY:

13 Q Good morning.

14 A Good morning.

15 Q Your trued up embedded cost of
16 preferred stock. What was the embedded cost of
17 preferred stock prior to the true-up? In your
18 calculation?

19 A There was no change in the embedded
20 cost.

21 Q No change. And was that the same
22 for long-term debt?

23 A There was a change in the embedded
24 cost of long-term debt prior to true-up, the
25 embedded cost was 7.17 percent, and the trued up

1 embedded cost of long-term debt was 7.397 percent.
2 That was based on information that the Company had
3 supplied me.

4 Q Okay. And then the trued up
5 embedded cost of the short-term debt was what in
6 the -- before the true-up?

7 A Prior to the true-up it was 1.93
8 percent. And the trued up embedded cost of
9 short-term debt was 1.87 percent.

10 Q And what was the change to the
11 weighted average cost of capital between your
12 original and your trued up?

13 A The original weighted average cost
14 of capital range was 7.32 percent to 7.41 percent,
15 and the subsequent trued up weighted average cost
16 of capital range was 7.56 percent to 7.65 percent.

17 Q And did you make any calculation
18 regarding how that affects the revenue
19 requirement? What would be a dollar difference in
20 revenue requirement?

21 A I didn't make such calculation.

22 COMMISSIONER MURRAY: I think that's
23 all I have. Thank you.

24 JUDGE WOODRUFF: Mr. Davis, do you
25 have any questions?

1 COMMISSIONER DAVIS: Give me just a
2 second.

3 JUDGE WOODRUFF: Sure.

4 COMMISSIONER DAVIS: No questions at
5 this time.

6 JUDGE WOODRUFF: All right. Thank
7 you.

8 COMMISSIONER MURRAY: I have one
9 more.

10 JUDGE WOODRUFF: Go ahead,
11 Commissioner Murray.

12 COMMISSIONER MURRAY: Thank you.

13 Q (By Commissioner Murray) In the
14 short term, on page 4 of your true-up testimony?

15 A Uh-huh.

16 Q I'm sorry, that's not where I want
17 to be. Just a second. Well, I don't have to
18 refer you to a specific point, I can just ask you
19 the question. The 1.93 that is now your true-up
20 amount for short-term debt, is that based on a
21 monthly calculation?

22 A That's based on a 13 month average
23 level of short-term debt less construction work in
24 progress. So it had been trued up apparently --
25 approximately four months. Cut off the last four

1 months from direct testimony and added the latest
2 four months. So from December to April. That
3 accounts for the -- the change in the embedded
4 cost. I don't know if you have a copy of my
5 rebuttal testimony with you?

6 Q I don't.

7 A Okay. Well, in -- in the rebuttal
8 testimony I made a correction to my short-term
9 debt calculation and revised Schedule TA-4.
10 You'll see short-term debt is revised from
11 12/31/02 to 12/31/03. In true-up testimony it had
12 been updated to 4/30/2003 to 4/30/2004. So
13 there's four months of new data there and that's
14 what accounts for the change.

15 Q I think you just said from 4/30 -- I
16 -- you -- correct me if I'm wrong, but I think
17 what you meant to say, and maybe you said this,
18 but I didn't hear it that way, was the true-up was
19 from 12/31/03 to April 30th of '04.

20 A Yes. That's correct, but what I was
21 speaking of was I calculated short-term debt over
22 a 13 month period. So from April 30th, 2004 back
23 to April 30th of 2003.

24 Q I have to think about why you would
25 do it that way. I'm not --

1 A The reason I do it that way is to
2 come up with a weighted cost and to come up with a
3 better approximation of how a company continuously
4 uses short-term debt. What is their -- their
5 history with it, and I think it gives a better --
6 better gauge of how a company consistently uses
7 short term debt.

8 If a person is to just take a
9 snapshot approach, what you could see is companies
10 manipulating short-term debt balances to keep it
11 out of the capital structure.

12 Q Okay. So by doing -- doing it back
13 and averaging it, do you think that is more
14 representative of what the company normally
15 maintains for a short-term debt ratio?

16 A That's correct.

17 COMMISSIONER MURRAY: All right.
18 Thank you.

19 THE WITNESS: You're welcome. Thank
20 you.

21 JUDGE WOODRUFF: All right. Recross
22 based on questions from the bench, beginning with
23 Staff?

24 RE CROSS EXAMINATION BY MR. SCHWARZ:

25 Q Mr. Allen, if a company were to

1 manipulate its levels of short-term debt, would it
2 not make that manipulation before the beginning of
3 the test year?

4 A It would depend on how the analyst
5 calculated short-term debt. We're -- you know,
6 if, for example, if Commission had established a
7 precedent of always looking at the last month of
8 the test year, then the company could manipulate
9 short-term debt by making sure that short-term
10 debt had gone to a zero balance by the last month
11 of the test year.

12 Q Did MGE or Southern Union do that in
13 this case?

14 A They significantly drew down their
15 short-term debt as of -- like I said, it had -- it
16 had consistently been nine figures, meaning, you
17 know, hundreds of millions of dollars, up until
18 April 30th of 2004, which -- when it went to \$28
19 million.

20 JUDGE WOODRUFF: All righty. And
21 Jackson County, Midwest Gas?

22 MR. FINNEGAN: No questions.

23 JUDGE WOODRUFF: MGE?

24 RE CROSS EXAMINATION BY MR. HACK:

25 Q You're not suggesting here today

1 that MGE or Southern Union Company is manipulating
2 its short-term debt balances, are you?

3 A I'm not making any accusations of
4 why it was drawn down, I'm just -- I'm just making
5 my argument for why it should be a -- an average
6 over the last year as opposed to a snapshot
7 approach to short-term debt calculations.

8 Q In response to a question from
9 Commissioner Murray, you indicated that your
10 overall weighted average cost of capital
11 recommendation in the initial phase of the hearing
12 had been 7.32 percent to 7.41 percent. Correct?

13 A That was after I made the
14 corrections in rebuttal testimony, that's the --
15 what the cost of capital was, yes.

16 Q And that was based on your so-called
17 actual capital structure recommendation?

18 A That was based on my actual capital
19 structure recommendation.

20 Q And you had another alternative
21 capital structure recommendation in your
22 testimony, did you not?

23 A In my rebuttal testimony I performed
24 a hypothetical capital structure.

25 Q And what was the overall weighted

1 average cost of capital associated with your
2 recommendations, alternative though they may be,
3 associated with the hypothetical capital
4 structure?

5 A I didn't make a weighted average
6 cost of capital calculation using the hypothetical
7 capital structure.

8 Q You didn't make a calculation in
9 that regard?

10 A I didn't make a -- you know what? I
11 may have. Let me look back at my rebuttal and
12 see.

13 Q If you look at page 16.

14 A Yeah. I was mistaken. Looking at
15 page 16 of my rebuttal testimony, the range for
16 the weighted average cost of capital was 7.49
17 percent to 7.61 percent.

18 Q And I -- I'd like you to -- those
19 are the -- the updated calculations you're going
20 to do during the off time related to the
21 hypothetical capital structure and the impact of
22 the changes, I'd like to get comparable numbers as
23 of 4/30 from you. Okay?

24 A Calculated weighted average cost of
25 capital? Is that --

1 Q Exactly.

2 A Okay.

3 MR. HACK: Thank you.

4 JUDGE WOODRUFF: Redirect?

5 REDIRECT EXAMINATION BY MR. MICHEEL:

6 Q Commissioner Murray asked you some
7 questions about the short-term debt balances. Do
8 you recall those questions?

9 A Yes.

10 Q And you indicated -- could you just
11 tell me how your -- your short-term balance
12 calculations differ from the Staff's and why you
13 believe yours is more appropriate?

14 A The Staff witness simply took what I
15 call a snapshot approach to short-term debt
16 calculation, the -- the level of short-term debt
17 in the direct testimony, the test year was up till
18 12/31/03. So he simply took a snapshot of what
19 was a short-term debt balance and what was the
20 construction work in progress balance as of
21 December 31, 2003, to come up with his -- his
22 recommendation.

23 And in the true-up, he used the
24 updated balance, I believe, as of April of 2004.
25 Whereas my approach is to look at it over a course

1 of a year to see how -- what kind of balance, how
2 they consistently use short-term debt.

3 Q Mr. Hack asked you some questions
4 about Exhibit 55, a press release. Do you recall
5 those questions?

6 A Yes, I do.

7 Q Do you recall, if you could look at
8 your true-up testimony, when that testimony was
9 filed?

10 A It was filed on July 19th, 2004.

11 Q And that press release came out
12 when?

13 A July 20th, 2004.

14 Q Does that press release indicate any
15 other uses for that common equity offering other
16 than general corporate purposes?

17 A Further down on paragraph 5, it says
18 Southern Union tends to physically settle the
19 forward sale agreements and use proceeds to
20 finance potential acquisitions, including a fund
21 -- or including to fund a portion of its equity
22 interest in CCE holdings.

23 Q And are you familiar with what CCE
24 holdings is?

25 A Yes. That is a joint venture that

1 they are entering into with GE to make a
2 competitive bid on a Enron pipeline -- or a former
3 Enron pipeline company.

4 Q Are you aware whether or not
5 Southern Union Company's filed an application
6 before this Commission for approval to do -- to
7 purchase that pipeline?

8 A Yes, they have filed an application
9 to do so.

10 MR. MICHEEL: That's all I have,
11 Your Honor, at this time.

12 JUDGE WOODRUFF: Right. And you can
13 step down now, we'll recall you after lunch.

14 THE WITNESS: Okay.

15 JUDGE WOODRUFF: Next name on the
16 list is Kim Bolin.

17 MR. MICHEEL: We would call Ms.
18 Bolin, Your Honor.

19 JUDGE WOODRUFF: Thank you.

20 (Witness sworn.)

21 KIM BOLIN, testified as follows:

22 DIRECT EXAMINATION BY MR. MICHEEL:

23 Q Would you state your name?

24 A Kimberly Bolin.

25 Q And how are you employed, Ms. Bolin?

1 A As a public utility accountant for
2 the Missouri Office of the Public Counsel.

3 Q And are you the same Kim Bolin who's
4 caused to file your true-up testimony which has
5 been marked for purposes of identification as
6 Exhibit 234?

7 A Yes, I am.

8 Q And if I asked you the same
9 questions contained therein, would your answers be
10 the same or substantially similar?

11 A Yes, they would.

12 Q Do you have any corrections or
13 additions you need to make to that testimony?

14 A No, I do not.

15 MR. MICHEEL: With that, Your Honor,
16 I would move the admission of Exhibit 234.

17 JUDGE WOODRUFF: All right. 234 has
18 been offered into evidence. Are there any
19 objections to its receipt? Hearing none, it will
20 be received into evidence.

21 Q (By Mr. Micheel) Ms. Bolin, are you
22 aware that MGE has requested an AAO for the
23 property tax issue in this case?

24 A I'm aware of that, yes.

25 Q Could you explain -- do you know,

1 first of all, whether property tax -- whether that
2 request would meet, in your opinion, the
3 requirements for an AAO before this Commission?

4 A I do not think they would meet the
5 requirements. Property tax is not extraordinary
6 or unusual for a utility company to have to pay.

7 Q Were you here today when Mr. Noack
8 testified earlier?

9 A Yes, I was.

10 Q Could you tell me what your view of
11 the purpose of a true-up hearing is?

12 A True-up hearing is to update the
13 numbers, the methodologies used in arriving --
14 used in arriving at the numbers. The revenue
15 requirement are not changed, but it is up to use
16 the most current numbers.

17 Q Do you know if there was an
18 agreement on issues that would be trued up at this
19 true-up hearing?

20 A Yes, I was aware of the agreement,
21 it was in Mr. Noack's rebuttal testimony.

22 Q Do you know whether that agreement
23 included property taxes?

24 A It did not.

25 Q Do you have an opinion about whether

1 it's appropriate to take new issues that could
2 have or should have been in the original case and
3 raise those issues in a true-up proceeding?

4 A I said I thought the true-up
5 proceeding is -- my understanding is true-up
6 proceeding is the methodologies are same, numbers
7 are updated, so I do not believe so. This is just
8 a number update.

9 Q Do you have a view of whether or not
10 this is raising an entirely new issue?

11 A Yes, it is.

12 Q And do you think that's appropriate?

13 A I do not think it is appropriate.

14 Q Do you think it is appropriate for
15 an accounting authority order to be granted for
16 this item?

17 A No, I do not. Like I said, I do not
18 think property taxes are anything unusual or
19 extraordinary about them.

20 Q Do you know if -- would you consider
21 these property taxes to be known and measurable?
22 If not, why not; if so, why?

23 A I do not believe they're known and
24 measurable. I have not seen the final bill from
25 the taxing authority on this. There's even

1 question if MGE -- if they're going to appeal this
2 law of -- challenge it. They may not have to pay
3 this in the future. There's lots of uncertainties
4 here.

5 Q And do you have an opinion about
6 whether items should be known and measurable
7 before they're included in a revenue requirement?

8 A I think they should be known and
9 measurable to be included in a revenue
10 requirement.

11 Q Do you believe that the property tax
12 expense is known?

13 A It is not known and measurable yet.

14 Q Okay. Mr. Hack entered into
15 evidence today Exhibit 51, the billings from
16 Kasowitz, Benson, Torres & Friedman. Do you
17 recall that?

18 A Yes, I do.

19 Q And you did not include those
20 billings in your true-up testimony. Is that -- my
21 understanding correct on that?

22 A That is correct. My true-up
23 testimony was based on using estimates that MGE
24 provided.

25 Q When did you receive the Kasowitz,

1 Benson, Torres, Friedman billings?

2 A I received them yesterday.

3 Q So that was after your testimony was
4 filed on July 19th?

5 A That is correct.

6 Q Have you reviewed those billings?

7 A Yes, I have. And the hours match
8 what was used in the estimate that MGE provided
9 me.

10 Q After you've reviewed those
11 billings, have you changed your opinion with
12 respect -- based on that review with respect to
13 your recommendation included in your true-up
14 testimony?

15 A No, I have not. Like I said, the
16 hours were the same. What the hours were on these
17 invoices were the same as what MGE provided as an
18 estimate.

19 Q And did you see anything that --
20 that raised issues with you in the invoices?

21 A I saw one issue where they were
22 working on an Enron deal, which I know this is not
23 part of this case, and I've seen a lot of the
24 invoices of reviewing documents, the same thing
25 that I've seen for other law firms doing the same

1 work.

2 Q So is it safe to say you've seen
3 some, what you view as duplicative work?

4 A Yes, I did.

5 Q With respect to Exhibit 53, the
6 billings from Klett, Rooney, Lieber & Schorling,
7 had you reviewed -- had you reviewed the billings
8 from Klett, Rooney, Lieber & Schorling prior to
9 today?

10 A All of them but the last invoice
11 that was provided today.

12 Q And that invoice indicated that it
13 was provided on July 22nd, did it not?

14 A I believe it did.

15 Q And out of all the Klett, Rooney,
16 Schorling invoices that you reviewed, were they
17 all set out based on an hourly breakout?

18 A No, they were not. They were set
19 out that Southern Union Company pays this law firm
20 a \$20,000 a month retainer fee, and then it just
21 listed MGE's part as dollar amount. No hourly
22 breakout.

23 Q After looking at these billings,
24 does -- do they change your opinion or your
25 testimony with respect to your true-up testimony

1 and the appropriate level of rate case expense?

2 A No, they do not.

3 Q Did you see -- let me ask you this.

4 Is -- is rate of return, cost of capital an issue
5 in essentially every rate case before the
6 Commission?

7 A It is usually an issue before the
8 Commission.

9 Q And is it usually an issue that is
10 of substantial monetary value?

11 A Yes, it is.

12 Q It's either one of the large -- one
13 or two of the largest issues in every rate case?

14 A It usually is, yes.

15 Q Have you had occasion as -- in your
16 employment as a regulatory auditor for the Office
17 of Public Counsel to review rate case expense?

18 A Yes, I have, and that is something I
19 usually review in each case. I may not write
20 testimony on it, but I do review the billings
21 associated with rate case expense.

22 Q And how long have you been an
23 auditor with the Office of the Public Counsel?

24 A For almost ten years.

25 Q Have you ever seen attorneys' fees

1 in the 670 to \$690 an hour range?

2 A No, I -- no.

3 Q Have you ever seen attorneys' fees
4 anywhere close to that?

5 A No, I have not.

6 MR. MICHEEL: With that, Your Honor,
7 I'll tender her for cross examination.

8 JUDGE WOODRUFF: All right. For
9 cross examination, we go to Staff.

10 CROSS EXAMINATION BY MR. SCHWARZ:

11 Q Ms. Bolin, did MGE have Missouri
12 property taxes in its test year expenses?

13 A I believe they did, yes.

14 Q Did they have Kansas property taxes
15 in their test year expenses?

16 A I didn't look at property tax
17 expense that well to be able to tell you right
18 offhand. I'm not sure.

19 Q Is it safe to say they didn't have a
20 Kansas property tax on gas inventories held in
21 Kansas?

22 A They did not.

23 Q I think in response to a question
24 from Mr. Micheel, you indicated there were a lot
25 of uncertainties surrounding the Kansas property

1 tax?

2 A I did say that, yes.

3 Q If -- assume for me, if you will,
4 that the tax bill would be \$1.2 million per year.
5 Would that be a significant property tax bill?

6 A I don't know what you would define
7 as significant, but --

8 Q Well, what do you think significant
9 -- you give me a definition of significant.

10 A Enough for AAO purposes is 5
11 percent of net income before extraordinary items.

12 Q Do you think that it is in the rate
13 payers' interest to have MGE challenge the
14 imposition of a Kansas property tax on gas
15 inventories?

16 A I think it's in their -- it's in the
17 rate payers' benefit and the Company's benefit.

18 Q How does it benefit the Company?

19 A It's something they won't have to
20 pay in the future, an expense they won't incur.

21 Q But if it is, in fact, a legitimate
22 tax, then the rate payers will pay that?

23 A That is correct.

24 Q So it -- the benefit -- property
25 taxes are a pass-through, are they not?

1 A That's correct.

2 MR. SCHWARZ: Thank you.

3 JUDGE WOODRUFF: All right. Jackson
4 County?

5 MR. FINNEGAN: No questions.

6 JUDGE WOODRUFF: All right. MGE?

7 CROSS EXAMINATION BY MR. HACK:

8 Q Hi.

9 A Hello.

10 Q Do you know whether, on the property
11 tax question, do you know whether MGE has ever had
12 to pay property taxes in the State of Kansas or to
13 any assessing authority in the State of Kansas on
14 the value of the gas held on MGE's account in
15 storage facilities in Kansas?

16 A I'm not aware of that. This issue
17 just came to the surface following the true-up and
18 I have not been able to do enough research.

19 Q So you do not know?

20 A I do not know.

21 Q You have no idea?

22 A That's correct.

23 Q Assume for me that the answer is no,
24 that MGE has never paid such taxes. Can you do
25 that?

1 A I'll assume that for now.

2 Q Would the requirement to pay such
3 taxes be at least a significant change from the
4 historical past?

5 A If they hadn't had to do it in the
6 past, there would be a change. I don't know if
7 you would consider it significant, but it would be
8 a change.

9 Q Well, let's talk about significant.
10 Do you typically take positions on insignificant
11 issues in rate cases like this?

12 A No, I do not.

13 Q And what issues have you testified
14 on?

15 A Rate case expense in this issue.

16 Q Okay. So what's the difference
17 between the Company and the OPC in terms of total
18 dollar amount of rate case expense?

19 A I think when we were talking about
20 significance, we were talking about significance
21 to the total revenue requirement and net operating
22 income to the Company for AAO purposes.

23 Q That's not the question I asked you.
24 What's the difference, to your knowledge, between
25 the Company's position and the OPC position on

1 rate case expense? Is it \$1.2 million?

2 A No, it is not.

3 Q Is it considerably less than \$1.2

4 million?

5 A Yes, it is.

6 Q Is it less than \$500,000?

7 A On an annual basis, yes.

8 Q Is it less than \$300,000?

9 A On an annual basis, yes, it is.

10 Q So at least according to one issue

11 that you've devoted a fair amount of time to in

12 this case, \$1.2 million is more significant than

13 the value of that issue. Correct?

14 A Dollar-wise, it's more significant.

15 Q Is MGE going to generate any

16 revenues through the payment of these Kansas gas

17 storage taxes?

18 A No, they will not.

19 Q So if MGE is required to pay these

20 taxes and they're not included in rates, what's

21 the impact of that going to be on MGE's earnings?

22 A It will be less, but there may be

23 other items out there that compensate for that.

24 Items that --

25 Q Like what?

1 A I am not for sure right off the top
2 of my head. You may lose a couple employees in
3 your payroll expense will more than cover --

4 Q Couple of employees are going to
5 equal \$1.2 million?

6 A No, that's not what I'm talking
7 about. I'm talking about there are items that are
8 -- you may not incur expenses that are built in to
9 the cost of service for this rate case expense.
10 You may incur expenses that are more. That is
11 just part of this procedure.

12 Q So you can't identify any right now,
13 can you?

14 A Not right now.

15 Q Do you think the Commission should
16 use the best information that it has to set rates?

17 A I think they have seen a lot of the
18 information in the direct case. I think this
19 issue is out of the scope of the case.

20 Q That's not the question I asked you.

21 A I think they should use the numbers
22 that we agreed to update for the issues that we
23 agreed to update.

24 Q And that's not responsive to the
25 question. Do you think the Commission should use

1 the best information that it has in setting rates?

2 A I believe they should use the most
3 current information for the issues that we agreed
4 to update.

5 Q Is the answer yes or no, or can't
6 you answer yes or no?

7 A I just believe that we agreed to --
8 we agreed not to update property tax expense. So
9 I do not think they should look at this number.

10 MR. HACK: Despite -- can I approach
11 the witness?

12 JUDGE WOODRUFF: You may.

13 Q (By Mr. Hack) I've handed you
14 Exhibit 50, that's DR 322. Have you seen that
15 document before, Ms. Bolin?

16 A Yes, I have.

17 Q And can you tell me about when you
18 saw it?

19 A Not right off -- I've seen so many
20 DR responses, I can't tell you the exact dates.

21 Q Just about when. It was before
22 today, wasn't it?

23 A Yes, it was.

24 Q And it was before you filed your
25 true-up testimony, correct?

1 A Yes, it was.

2 Q You're not a lawyer, are you?

3 A I am not an attorney, no.

4 Q Have you ever worked for a law firm?

5 A No, I have not.

6 Q Have you ever had any specific

7 training in assessing the reasonableness of

8 attorneys' fees or legal fees?

9 A Training? No, I have not had any

10 training. I've had --

11 Q That's enough. I just asked you

12 about training. You indicate on page 5 of your

13 true-up testimony that you once testified in a

14 case regarding appropriate rate case expense.

15 Correct?

16 A Yes, I have.

17 Q That testimony -- that issue did not

18 involve the reasonableness or appropriateness of

19 the level of legal fees paid. Correct?

20 A That is correct. Involved other

21 aspect of rate case expense.

22 Q Have you ever hired a lawyer or a

23 law firm?

24 A No, I have not.

25 Q Would you consider the rate of

1 return issue to be an important issue in this
2 case?

3 A I would consider it an important
4 issue.

5 Q And in fact, in terms of dollar
6 value, it equates to probably close to 90 percent
7 of the value of the issues in dispute, does it
8 not?

9 A I'm not sure an exact number, but I
10 know it's, if I remember hearing right, it's worth
11 23 million at one time?

12 Q So is that -- you can't put a
13 percent on it?

14 A Not right now.

15 Q Not at all? Not even close?

16 A I don't -- I can't calculate all the
17 issues right now. I don't have the reconciliation
18 with me.

19 Q You haven't looked at it?

20 A I have looked at it, but I do not
21 have it with me.

22 Q Would you consider the rate of
23 return issue to be the most significant issue in
24 terms of dollar value in this case?

25 A I know depreciation was another big

1 issue, but I think -- this issue was the most --
2 had the biggest dollar impact on the case.

3 Q In hiring a lawyer or a law firm, do
4 you think it's reasonable to look for a track
5 record of success?

6 A I think it's reasonable to look at
7 the experience of the law firm, yes.

8 Q In hiring a law firm or lawyer, do
9 you think it's reasonable to consider whether the
10 lawyer or law firm has familiarity with the
11 client?

12 A Familiarity with the client and the
13 issue at hand, yes.

14 Q Would you agree that lawyers and law
15 firms come in different levels of quality and
16 effectiveness?

17 A I don't know about quality and
18 effectiveness.

19 Q They're all bad in your view? Is
20 that the --

21 A The effectiveness part, I'm not
22 really sure on that.

23 Q So you think all lawyers perform the
24 same? They're the same quality, same
25 effectiveness?

1 A No, I wouldn't say that.

2 Q So they do come in different levels
3 of quality and effectiveness; is that correct?

4 A I would think they would, yes.

5 Q Yeah. Just like accountants or
6 baseball players or swimmers or any other thing
7 you might choose to pick. Right?

8 A I guess so.

9 Q Have you personally ever evaluated
10 the effectiveness of a lawyer or law firm?

11 A No, I have not.

12 Q Would you know how to go about doing
13 so?

14 A No, I would not.

15 Q Do you believe perhaps that the
16 results a lawyer or law firm are able to attain
17 affect the value that lawyer or law firm services?

18 A Could you repeat the question?

19 Q Do you believe that the results a
20 lawyer or law firm are able to attain affect the
21 value of that lawyer or law firm's services?

22 A It may affect how a person -- how a
23 company would value what they would pay the law
24 firm.

25 Q Do you think that a significant

1 amount of responsibility was imposed on Mr.
2 Herschmann, Mr. Fay, and Ms. Dodds in their
3 engagement on the rate of return issue in this
4 case?

5 A They spent considerable amount of
6 time.

7 Q I'm asking you do you think there
8 was a significant amount of responsibility that
9 was imposed on those individuals.

10 A Responsibility just as every other
11 party had in preparing for this case.

12 Q And that's a significant amount of
13 responsibility, correct?

14 A Significant amount of time and
15 responsibility.

16 Q Do you believe it's reasonable for
17 lawyers to prepare for litigation?

18 A Yes.

19 Q How do you think lawyers prepare for
20 litigation?

21 A You review the documents that have
22 been filed with the Commission.

23 Q What else?

24 A Ask their experts the opinions that
25 they have of the documents.

1 Q Anything else?

2 A Prepare cross examination.

3 Q Anything else?

4 A Review any other prior Commission

5 orders.

6 Q Anything else?

7 A Review statutes, Commission rules.

8 Q There could probably be other things

9 they might do also?

10 A Probably would be. Just depended on

11 the attorney, I'm sure.

12 Q Do you have an opinion on how much a

13 lawyer or law firm ought to prepare for litigation

14 like a rate case dealing with a rate of return

15 issue worth more than \$20 million?

16 A No, I do not have an estimate on

17 what time each attorney should spend on this case,

18 and I don't think I've reported that their -- Mr.

19 Herschmann's time was excessive.

20 Q So you have no opinion on that?

21 A No, I do not.

22 Q Do you think that Mr. Herschmann and

23 Mr. Fay and Ms. Dodds were able to perform any

24 significant amount of work for clients other than

25 MGE during the course of their engagement on the

1 MGE rate case?

2 A I am not -- I do not examine their
3 workload.

4 Q So you don't know.

5 A I don't know.

6 MR. HACK: We would move to strike
7 Schedule KKB-7 of Ms. Bolin's true-up testimony,
8 in addition to the question beginning on page 5,
9 line 14 to the end of that page, and page 6, line
10 1 through line 8.

11 And the basis for the motion to
12 strike is that these -- the documents KKB-7 and
13 the attachment to it clearly are hearsay in an out
14 of court statement, an opinion offered in writing
15 by Mr. Dandino, who is not here to testify. The
16 memo is offered to prove the truth of the matters
17 asserted in the memo, and that's classic example
18 of hearsay and that ought to be struck. The
19 testimony that I referred to simply reaches
20 conclusions on the basis of that hearsay
21 testimony.

22 JUDGE WOODRUFF: Which, again, can
23 you tell me which --

24 MR. HACK: Yes, page 5, line 14
25 through the end of the page, and page 6, line 1

1 through line 8.

2 JUDGE WOODRUFF: Response from
3 Public Counsel?

4 MR. MICHEEL: First of all, Your
5 Honor, this testimony has already been admitted
6 into evidence, there was no objection to its
7 admission.

8 Second of all, I think under
9 Missouri law, experts are allowed to rely on
10 hearsay testimony in forming their opinions, and
11 this was completely appropriate to -- for Ms.
12 Bolin, an expert in regulatory accounting, to rely
13 on the memorandum from Mr. Dandino regarding
14 attorneys' fees.

15 And I think the cases are legion out
16 there that indicate that experts can rely on
17 hearsay testimony. I think it's completely
18 consistent with the 490.065, the expert rule. So
19 that's my response.

20 MR. SCHWARZ: If I might, I also
21 think that it's akin to the situation that we had
22 with Mr. Noack's direct testimony where his entire
23 direct testimony was based on a -- on the issue of
24 depreciation, was based on a depreciation study
25 which not only was attached to his testimony, but

1 had, at that stage, not been proffered in
2 evidence.

3 So I think -- and the Commission
4 ruled that Mr. Noack's testimony was appropriate.
5 I think that it -- consistent with that ruling,
6 that Ms. Bolin's reliance on the attached
7 information is appropriate.

8 JUDGE WOODRUFF: Mr. Hack, your
9 response?

10 MR. HACK: Taking the last part
11 first. Mr. Noack, in his direct testimony, was
12 not offering any opinions as to the reasonableness
13 or justification for any depreciation rates, he
14 was simply sponsoring the adjustment based upon
15 the study.

16 In this matter here, Ms. Bolin has
17 taken a hearsay document, included it in her
18 testimony, drawn conclusions from that document,
19 despite the fact that she's testified that she has
20 no training in the assessment of the
21 reasonableness of legal fees, no experience in the
22 assessment of the reasonableness of legal fees,
23 she's not a lawyer, she doesn't have any education
24 in the reasonableness of legal fees.

25 And as a consequence, there has been

1 no reasonable foundation laid under 490.065, sub
2 3, that would qualify her as an expert in this
3 particular area, the assessment of the
4 reasonableness of legal fees. That's different
5 than the assessment of rate case expense overall.
6 We're talking about legal fees, what lawyers do.
7 She's testified she doesn't really know what they
8 do, and I think it's hearsay.

9 MR. MICHEEL: I'd like to respond to
10 that, Your Honor. That's part and parcel of why
11 Ms. Bolin went to Mr. Dandino and asked him this
12 question so she could educate herself as to what
13 lawyers do and what's an appropriate fee.

14 And Mr. Dandino, in response to her
15 request, provided her with a memorandum on that
16 issue so she could get the education and the
17 background that she needed to make a determination
18 about whether or not these fees are reasonable.
19 The level of fees are reasonable. And I think
20 that an expert is allowed to do that.

21 MR. HACK: Then they should have
22 offered Mr. Dandino as a witness.

23 JUDGE WOODRUFF: All right. I'm
24 ready to make a ruling on it. Ms. Bolin has made
25 it clear she's not an expert on the question of

1 the reasonableness of attorneys' fees, therefore,
2 she has no right to rely upon hearsay statements
3 on that particular issue. Those statements are
4 hearsay for which the author of that hearsay
5 cannot be cross examined. I'm going to go ahead
6 and grant the motion to strike.

7 MR. HACK: Thank you.

8 JUDGE WOODRUFF: Okay. Questions
9 from the bench, then? Commissioner Murray?

10 COMMISSIONER MURRAY: Thank you.

11 BY COMMISSIONER MURRAY:

12 Q Miss Bolin, does your prefiled
13 testimony address at all the issue of property
14 taxes?

15 A No, it does not. We -- I was not
16 aware of this issue until I read Mr. Noack's
17 true-up testimony.

18 Q Okay. So is it fair to assume that
19 no Office of Public Counsel witness prefiled
20 testimony for the true-up addressed the property
21 tax issue?

22 A That's correct.

23 Q And is that because Office of Public
24 Counsel did not consider it an issue for true-up
25 that you didn't consider it?

1 A We did not think property tax was an
2 issue and we were not aware of this situation in
3 Kansas.

4 Q And then after becoming aware of it,
5 did you consider the aspect of AAO treatment for
6 it?

7 A We didn't consider that. We don't
8 think it's an extraordinary item or an unusual
9 item. We do not think it would be something to
10 have an AAO.

11 Q And if the property tax is actually
12 incurred, does the Company ever have an
13 opportunity to recover that if it is not included
14 here?

15 A The next opportunity they have to
16 recover it is in the next rate case, when it will
17 be built into the cost of service.

18 Q And that would only be if they file
19 a rate case that would have the test year to
20 include -- would it be 2004 or 2005?

21 A I am not sure exactly when these
22 property taxes are due. And if they'll be paid,
23 paid in protest, if they'll be refunded, there are
24 so many unknown and not measurable items here.

25 COMMISSIONER MURRAY: Okay. I think

1 that's all. Thank you.

2 JUDGE WOODRUFF: Commissioner Davis?

3 BY COMMISSIONER DAVIS:

4 Q Miss Bolin, if MGE has an expert
5 witness and we strike a portion of that expert
6 witness' testimony, then should we allow them to
7 recover the costs of all of that expert witness'
8 time, whatever they have charged them?

9 A I don't know that that would be
10 appropriate. I know they're allowed to present
11 their case. I had not thought of that issue
12 before, if striking testimony would affect what we
13 would include in rate case, but -- I've not
14 considered that yet.

15 COMMISSIONER DAVIS: No further
16 questions.

17 JUDGE WOODRUFF: All right. Move
18 back to recross, beginning with Staff.

19 MR. SCHWARZ: No questions.

20 JUDGE WOODRUFF: Jackson County,
21 Midwest Gas?

22 MR. FINNEGAN: No questions.

23 JUDGE WOODRUFF: MGE?

24 MR. HACK: None.

25 JUDGE WOODRUFF: All right.

1 Redirect.

2 REDIRECT EXAMINATION BY MR. MICHEEL:

3 Q Miss Bolin, in response with respect
4 to the AAOs, you indicated that there's a
5 definition of extraordinary that's necessary.
6 Could you explain that a little further for me?

7 A Extraordinary is an item that does
8 not occur on a year to year basis or any time
9 frame. It's something that is -- rarely happens.

10 Q Is there a definition of
11 extraordinary in the uniform system of accounts?

12 A It is something that they do not
13 have an account to take care of. You would not --
14 does not have an account to book that item.

15 Q And is there a specific level of 5
16 percent that a company needs to meet?

17 A For the net operating income before
18 extraordinary items, yes.

19 Q And do you think that a \$1.2 million
20 amount would meet that definition?

21 A I doubt it would.

22 Q Mr. Hack asked you some questions
23 about whether, you know, this is a significant
24 issue, the \$200,000. Is that a different standard
25 that you would apply to an AAO as you would apply

1 to this case?

2 A Yes, it is.

3 Q And that standard is set out in the
4 uniform system of accounts, the definition of
5 extraordinary item, is it not?

6 A That is set out, yes.

7 Q And are you aware of whether or not
8 this Commission has adopted the uniform system of
9 accounts?

10 A Yes, they have.

11 Q In your review of the -- you were
12 asked some questions regarding the attorneys' fees
13 in this case. Do you recall those questions?

14 A Yes, I do.

15 Q And in your review, did you have an
16 occasion to review a survey from the Missouri Bar
17 regarding attorneys' fees?

18 A Yes, I did review a survey.

19 MR. HACK: Objection. This -- this
20 subject matter has already been struck.

21 MR. MICHEEL: I'm entitled, Your
22 Honor, to ask her if she also reviewed the survey.
23 I mean, she can read.

24 JUDGE WOODRUFF: Objection is
25 overruled.

1 Q (By Mr. Micheel) Did you review a
2 survey of attorneys' fees in preparing your
3 testimony?

4 A Yes. It was the Missouri Bar
5 Economic Survey of 2003.

6 Q And what did that survey reveal
7 regarding attorneys' fees?

8 MR. HACK: Objection, hearsay.

9 MR. MICHEEL: I think she's an
10 expert and she's allowed to rely on hearsay, Your
11 Honor.

12 JUDGE WOODRUFF: I've already ruled
13 she's not an expert on the question of attorneys'
14 fees, the reasonableness of attorneys' fees, so
15 I'm going to sustain the objection.

16 Q (By Mr. Micheel) Mr. Hack asked you
17 if results were important for attorneys. Do you
18 recall those questions?

19 A Yes, I do.

20 Q Do you know if the Company has filed
21 -- Mr. Herschmann filed at least three motions to
22 strike testimony in this case?

23 A I don't know if it was three, but I
24 know at least -- it was several motions to strike.

25 Q Why don't you assume for me -- well,

1 do you know if he's been -- if the Company's been
2 successful in striking any of the rate of return,
3 cost of capital testimony of any of the witnesses?

4 A I know he's not successful in David
5 Murray's, they were not successful in Travis
6 Allen's or John Tuck's.

7 MR. MICHEEL: That's all I have,
8 Your Honor.

9 JUDGE WOODRUFF: All right. Thank
10 you. Ms. Bolin, you may step down.

11 COMMISSIONER DAVIS: Wait. Can I
12 ask another question?

13 JUDGE WOODRUFF: Certainly. Go
14 right ahead.

15 BY COMMISSIONER DAVIS:

16 Q Miss Bolin, do you think people
17 ought to be paid on the basis of their results in
18 certain cases?

19 A I don't know if you --

20 Q Miss Bolin, if, hypothetically
21 speaking, if we have an issue that's worth \$25
22 million, and we were to find -- to award
23 substantially all of that, then shouldn't the
24 people who obtained those results be more
25 qualified to -- to be rewarded for obtaining those

1 results?

2 A I don't think we look at it that way
3 in rate case expense for regulatory matters.

4 Q Okay. So if our attorney -- if an
5 attorney here comes here and loses, then they
6 ought to be able to get paid the same, too?

7 A Yes.

8 Q Okay. Everybody's utility bills
9 ought to be the same? They ought to be charged
10 the same rate for everything?

11 A Everybody's utility bills? Could
12 you clarify that a little bit?

13 Q I don't know. I mean, should we all
14 pay the same -- should we all pay the same utility
15 bill no matter how much we use?

16 A No, we shouldn't.

17 Q Why not?

18 A We usually base it on how much of
19 that utility we use. There is a flat customer
20 charge and then it's based on usage.

21 Q So if you need more legal work, then
22 you should be able to go out and hire more legal
23 work. Correct?

24 A The utility should be able to go out
25 and hire more legal work; is that what you're

1 saying? Or -- I'm not --

2 COMMISSIONER DAVIS: I just asked a
3 question. I don't have any more questions.

4 JUDGE WOODRUFF: Yes, Commissioner
5 Murray?

6 BY COMMISSIONER MURRAY:

7 Q I wasn't going to, but since
8 Commissioner Davis asked you another question,
9 I'll go back to one that I had. You were
10 questioned about the AAO and it being -- there
11 being standards in order to -- for us to grant an
12 AAO. Is that right?

13 A That's correct.

14 Q And you were asked about a threshold
15 of 5 percent.

16 A Mm-hmm.

17 Q Do you know if that is -- where did
18 you get -- what did you use to base your answer
19 that yes, there was a 5 percent threshold?

20 A I believe it is in the USOA -- I
21 don't know if it's in that account or in previous
22 Commission orders. Just my general knowledge of
23 it, I am aware of this. I believe it may be in
24 the USOA.

25 Q Uniform system of accounts?

1 A Yes.

2 Q It defines an AAO --

3 A It defines an extraordinary item.

4 Q Okay. But it's my recollection, and
5 you can correct me if you think I'm wrong, because
6 my recollections are always -- I shouldn't say
7 always, are often far from perfect, but it is my
8 recollection that that has been at issue in some
9 of the AAO proceedings that we have had, whether
10 or not we should apply a 5 percent threshold
11 standard.

12 A It may have been an issue in some of
13 those cases, yes. I'm not aware of one right now
14 that I can think of, but it may have been an
15 issue.

16 Q Okay. So you're not sure whether
17 that is an actual standard that we applied to
18 determining whether to grant an AAO?

19 A I think it's one that helps you
20 determine. I don't know if they always meet that
21 requirement when you've granted an AAO, when the
22 Commission's granted an AAO, but.

23 COMMISSIONER MURRAY: Okay. Thank
24 you.

25 JUDGE WOODRUFF: Thank you. Does

1 anyone wish to recross based on those questions?

2 MR. HACK: Just one.

3 JUDGE WOODRUFF: All right. Go
4 ahead.

5 RECROSS EXAMINATION BY MR. HACK:

6 Q And I have to ask you to bear with
7 me because I don't have the USOA in front of me,
8 but as I recall the USOA, the 5 percent language
9 in there is that the 5 percent is a presumption of
10 extraordinary. So if you get to 5 percent or
11 more, then you're clearly extraordinary; however,
12 if the quantification of the amount is less than 5
13 percent, it may still be called extraordinary. Is
14 that your understanding of the -- of what the --

15 A I don't have that right in front of
16 me. I'm not sure the way you've worded that if
17 that is the correct way.

18 Q But you're not sure it's not the
19 correct way either?

20 A That's true.

21 MR. HACK: Okay.

22 JUDGE WOODRUFF: Redirect? All
23 right. Ms. Bolin, you can step down. Take a
24 break for lunch, we'll come back at 1 o'clock with
25 Travis Allen back on the stand to answer that

1 question.

2 (Off the record.)

3 JUDGE WOODRUFF: All right, we're
4 back on the internet, let's go ahead and go on the
5 record. We're back from lunch, and as indicated,
6 Mr. Allen is back on the stand to answer questions
7 from MGE on cross.

8 (Witness previously sworn.)

9 TRAVIS ALLEN, testified as follows:

10 CROSS EXAMINATION BY MR. HACK:

11 Q I think when we broke, you were
12 going to go run some numbers to try and determine
13 what the impact of the changes you made or
14 calculated for the short-term debt ratio and the
15 preferred equity ratio would have on -- as of
16 April 30, '04, would have on the weighted average
17 cost of capital resulting from the use of your
18 hypothetical capital structure. Is that generally
19 consistent with what you thought you were doing
20 over the break?

21 A Yes.

22 Q Can you tell me the results of that
23 update?

24 A The capital structure would be
25 common equity 35.42 percent; preferred equity 5.71

1 percent; long-term debt 53.07 percent; short-term
2 debt 5.80 percent.

3 The weighted average cost of capital
4 using that capital structure and a return on
5 equity of 9.01 percent would be 7.61 percent --
6 I'm sorry. 7.67 percent, and the weighted average
7 cost of capital using the aforementioned
8 hypothetical capital structure with a return on
9 equity of 9.34 percent would be 7.79 percent.

10 MR. HACK: Thank you. That's all I
11 had.

12 JUDGE WOODRUFF: All right. Thank
13 you. I have no questions from the bench, so
14 there's no recross. Redirect?

15 REDIRECT EXAMINATION BY MR. MICHEEL:

16 Q Mr. Allen, did you -- did you
17 prepare a schedule with respect to that --

18 A Yes.

19 Q -- calculation?

20 MR. MICHEEL: Your Honor, I guess
21 with that, I'd just want to get that schedule
22 marked so we can put it into the record.

23 JUDGE WOODRUFF: All right. Go
24 ahead and mark it.

25 MR. MICHEEL: I think it would be

1 Exhibit 235, Your Honor.

2 JUDGE WOODRUFF: That is correct.

3 It will be 235.

4 (Exhibit 235 marked for
5 identification.)

6 Q (By Mr. Micheel) Do you have a copy
7 of Exhibit 235?

8 A No.

9 Q Let me hand you a copy of Exhibit
10 235 and ask you, is that -- is that your
11 calculation that you just spoke with Mr. Hack
12 about?

13 A Yes, it is.

14 Q And could you tell me just for the
15 record what assumptions went into that? Or what
16 methodologies you utilized?

17 A The methodology that I utilized was
18 -- um, it's described on the second page of the
19 handout. It lays out exactly how the hypothetical
20 capital structure was calculated and it is
21 consistent with the way that I did it in my
22 rebuttal testimony.

23 Q And the 9.01 percent and the 9.34
24 percent that you responded to Mr. Hack, is that
25 your ROE recommendation in this case?

1 A That is my ROE recommended range,
2 yes.

3 MR. MICHEEL: With that, Your Honor,
4 I'd move the admission of Exhibit 235.

5 JUDGE WOODRUFF: Exhibit 235 has
6 been offered into evidence. Any objections to its
7 receipt? Hearing none, it will be received into
8 evidence.

9 MR. MICHEEL: I think that's all
10 that I have, Your Honor.

11 JUDGE WOODRUFF: All right. Thank
12 you. You can step down. I believe we move over
13 to Staff, then, with David Murray.

14 MR. SCHWARZ: And I believe his
15 testimony will be Exhibit 858?

16 JUDGE WOODRUFF: No, we're up to
17 860. 859 was your Kansas revenue evaluations that
18 was not offered.

19 (Exhibit 860 marked for
20 identification by the court reporter.)

21 (Witness sworn.)

22 DAVID MURRAY, testified as follows:

23 DIRECT EXAMINATION BY MR. SCHWARZ:

24 Q Good afternoon. Would you state
25 your name for the record, please?

1 A David Murray.

2 Q And are you the same David Murray
3 who has caused to be filed true-up direct
4 testimony which has been marked Exhibit 860 in
5 this case?

6 A Yes, I am.

7 Q If I ask you the same questions
8 today, would your answers be the same?

9 A Yes, they would.

10 Q Do you have any corrections to make?

11 A No, I do not.

12 Q Are your answers true and correct to
13 the best of your information, knowledge, and
14 belief?

15 A Yes.

16 MR. SCHWARZ: I would offer Exhibit
17 860, and I have a little rebuttal to do.

18 JUDGE WOODRUFF: All right. 860 has
19 been offered into evidence. Any objections to its
20 receipt? Hearing none, it will be received into
21 evidence.

22 Q (By Mr. Schwarz) You used what has
23 been characterized as a snapshot capital
24 structure; is that correct?

25 A It's the capital structure as of the

1 true-up date without any averages, that's correct.

2 Q And with respect to that approach,
3 why do you think that reflecting a zero short-term
4 debt would be appropriate?

5 A If -- in response to Data Request
6 0374, MGE provided short-term debt balances,
7 although average monthly short-term debt balances
8 all the way up to the true-up period, April 30th,
9 and actually even went one step further and
10 provided May 31, 2004, average short-term debt
11 balance.

12 And I thought about some of the
13 things that Mr. Allen discussed in his testimony
14 about whether or not if you use a -- you know,
15 what is referred to as a snapshot. I don't like
16 to characterize it like that myself, I like to
17 characterize it as, you know, the -- what's their
18 financial situation right now.

19 And I recognize that there are times
20 when short-term debt balance may decrease to zero
21 in one month and then shoot right back up to the
22 level that it was at before in the month prior,
23 before it was paid down to zero. And I thought
24 about that argument, and it's something that has
25 to be looked at to determine whether or not that's

1 -- that has occurred.

2 And when I looked at the response
3 that MGE provided at the end of 2003, the
4 short-term debt balance was at 295 million
5 approximately, and then for each month thereafter
6 it was gradually being paid down.

7 And as of April 30, even though it
8 indicates 20 million, that's not the end of the
9 month balance, that's average balance for that
10 month. I think the balance sheet that I received
11 indicated a zero end of month balance for April.
12 So that is the average. And therefore, the end of
13 month balance for May was also zero.

14 So there's two months there where
15 it's been a zero balance. And as of -- this is
16 something I had to rely on Mr. Noack's verbal
17 indication, but as of June 30th, 2004, they had a
18 balance of 21 million. So it went back up, but it
19 wasn't, you know, but it wasn't a major amount.

20 So just because of that decline
21 since the end of the year, I don't see that
22 there's any type of, you know, one month
23 manipulation or what have you that looks like it,
24 you know, would cause me concern here, and that's
25 why I decided to go ahead and use the true-up

1 period for all of my capital components.

2 MR. SCHWARZ: Very good. Thank you.

3 JUDGE WOODRUFF: Okay. For cross
4 examination --

5 MR. SCHWARZ: I guess I need to
6 offer the exhibit and tender the witness.

7 JUDGE WOODRUFF: I think you
8 actually already offered the exhibit.

9 MR. SCHWARZ: Okay.

10 JUDGE WOODRUFF: For cross
11 examination, we begin with Public Counsel.

12 MR. MICHEEL: I have no questions,
13 Your Honor.

14 JUDGE WOODRUFF: Okay. Looks like
15 Jackson County and Midwest Gas have not returned
16 after lunch yet, so we go to MGE.

17 CROSS EXAMINATION BY MR. HACK:

18 Q Good afternoon, Mr. Murray.

19 A Good afternoon.

20 Q Just real quickly, has Southern
21 Union's common equity ratio increased during the
22 period from December 31, 2003 to April 30, 2004?

23 A Yes, it has, a little bit.

24 Q And in fact, it's increased over 4
25 percentage points, has it not?

1 A Let me check my testimony. I'll
2 follow along with you. That is correct. It's
3 slightly over 4 percent.

4 Q And as you just explained in
5 discussion with Mr. Schwarz, Southern Union
6 Company's short-term debt ratio as a percent of
7 total capitalization has also -- has decreased in
8 the period from 12/31/03 to April 30, '04,
9 correct?

10 A Yes, and I reflected that.

11 Q Are you aware, Mr. Murray, that
12 Southern Union recently, on July 20th, 2004,
13 announced plans to make a public offering of 11
14 million shares of its common stock?

15 A I saw the release, I think on the
16 website. I -- I have -- Southern Union's stock
17 has a -- is a stock that I follow on CBS
18 MarketWatch so I was aware that that occurred.

19 MR. HACK: May I approach?

20 JUDGE WOODRUFF: You may.

21 Q (By Mr. Hack) I'm going to hand you
22 a document which was earlier marked and received
23 as Exhibit 55. Can you kind of briefly take a
24 look at that?

25 A I had already looked at it whenever

1 you handed that out.

2 Q Okay. Do you have any reason to
3 doubt the accuracy of the contents of that
4 document?

5 A No, I do not.

6 Q And does that -- does that Southern
7 Union meeting -- does Exhibit 55 indicate to you
8 that Southern Union is taking steps that, if
9 successful, will continue to increase its common
10 equity ratio as a percent of total capitalization
11 as we go forward in time?

12 A I don't know from this document that
13 you can surmise that the equity ratio is going to
14 increase. Obviously as was -- as was pointed out
15 earlier, too, this is being issued -- these shares
16 are being issued in conjunction with a probably
17 fairly significant transaction for Southern Union
18 in acquiring cross country pipeline operations.

19 And that is a case that is currently
20 pending with this -- with this Commission, and I
21 actually am working on the GO-2005-0019 case and
22 am still waiting for specific financials as far as
23 whether or not there will be debt issued in
24 conjunction with that transaction as well.

25 So I think just looking at this

1 alone, it would require a lot of speculation to
2 say the ratios are going to improve.

3 Q Let's look at the document a little
4 bit. Of the 11 million, how many are -- does the
5 document indicate are in relation to the forward
6 sale agreements?

7 A It's 6 million -- 6.2 million. For
8 forward sale. Plus the over allotment.

9 Q So 4.8 million of the offering is
10 not related to the forward sale. Correct?

11 A Yes.

12 MR. HACK: Thank you. That's all.

13 JUDGE WOODRUFF: Thank you. I have
14 no questions from the bench, so no recross. Any
15 redirect?

16 MR. SCHWARZ: No.

17 JUDGE WOODRUFF: Okay. Mr. Murray,
18 you can step down.

19 THE WITNESS: Thank you.

20 JUDGE WOODRUFF: Next is Chuck
21 Hyneman.

22 (Witness sworn.)

23 MR. SCHWARZ: Mark his direct as
24 861, and the true-up accounting schedule is 862.

25 (Exhibits 861 and 862 marked for

1 identification.)

2 CHARLES HYNEMAN, testified as follows:

3 DIRECT EXAMINATION BY MR. SCHWARZ:

4 Q Could you state your name for the
5 record, please?

6 A Charles R. Hyneman.

7 Q And are you the same Charles Hyneman
8 who caused to be filed true-up direct testimony
9 which has been marked as Exhibit 861 and true-up
10 accounting schedules which has been marked Exhibit
11 862?

12 A Yes.

13 Q Do you have any corrections to make
14 to that testimony?

15 A No, I do not.

16 Q If I asked you the same questions
17 today as were propounded in the prefiled
18 testimony, would your answers be the same?

19 A Yes, they would.

20 Q And were those answers true and
21 correct to the best of your information,
22 knowledge, and belief?

23 A Yes, they are.

24 MR. SCHWARZ: I do have some
25 rebuttal, if I might.

1 JUDGE WOODRUFF: Do you want to
2 offer it now?

3 MR. SCHWARZ: I'll offer the
4 Exhibits 861 and 862.

5 JUDGE WOODRUFF: And what was 862?

6 MR. SCHWARZ: Accounting schedules.

7 JUDGE WOODRUFF: That were prefiled?

8 MR. SCHWARZ: Yes.

9 MR. HACK: Your Honor, with respect
10 to 861, I'd just ask you to defer ruling until
11 cross.

12 JUDGE WOODRUFF: All right. 862
13 then, the accounting schedules, is there any
14 objection to their receipt? Hearing none, they
15 will be received into evidence. I'll defer ruling
16 on 861 until cross. All right. You may proceed.

17 Q (By Mr. Schwarz) Mr. Hyneman,
18 you're a regulatory auditor?

19 A Yes.

20 Q Also a CPA?

21 A Yes.

22 Q As a regulatory auditor, is -- does
23 one aspect of your work involve checking the
24 accuracy of the regulated utilities' books and
25 records?

1 A Yes, it does.

2 Q And can you describe the kinds of
3 things you do as far as checking the accuracy of
4 books and records?

5 A Well, we compare the documents
6 received by the company to its ledgers and balance
7 sheet and income statement and -- and as far as
8 the accuracy is concerned, yes.

9 Q And do you also check that the costs
10 that were actually incurred once you verified
11 those, that those costs were reasonable?

12 A Yes, we did.

13 Q In that regard, what do you look for
14 from a regulated utility?

15 A Well, we look for costs incurred to
16 determine reasonableness. We compare them to
17 costs they have incurred in the past, costs that
18 other utilities have incurred in this
19 jurisdiction, and just any documentation we can
20 have to -- to get a comfortable feeling that the
21 costs are reasonable.

22 Q Might you look for bids or requests
23 for proposals?

24 A Yes.

25 MR. HACK: Objection, leading.

1 MR. SCHWARZ: It's foundation.

2 JUDGE WOODRUFF: Overruled.

3 THE WITNESS: Yes. If the company
4 has solicited bids to determine the
5 competitiveness of certain costs, that would be
6 one item we would look at in our review of
7 reasonableness.

8 Q (By Mr. Schwarz) Something less
9 than a formal RFP might be adequate, mightn't it?

10 A Yes, any documentation, phone call,
11 solicitation to determine bids, just any
12 documentation to support reasonableness of a cost
13 would be part of a review.

14 Q Did any of MGE's DR responses
15 provide evidence that support the reasonableness
16 of Mr. Herschmann's fees?

17 A No.

18 Q Is there anything in Mr. Noack's
19 testimony that is evidence of the reasonableness
20 of those fees?

21 A No, there is not.

22 Q Have -- have you audited rate case
23 expense in prior MGE rate cases?

24 A Yes.

25 Q Have you audited rate case expense

1 in other utility proceedings?

2 A Yes, I have.

3 Q Is an audit of rate case expense
4 something that a regulated utility should
5 reasonably anticipate?

6 A Yes, it is.

7 MR. SCHWARZ: I tender the witness
8 for cross.

9 JUDGE WOODRUFF: All right. For
10 cross examination, we go to Public Counsel?

11 MR. MICHEEL: Nope.

12 JUDGE WOODRUFF: Jackson County,
13 Midwest Gas?

14 MR. FINNEGAN: No questions.

15 JUDGE WOODRUFF: MGE?

16 CROSS EXAMINATION BY MR. HACK:

17 Q Good afternoon, Mr. Hyneman.

18 A Hello, Mr. Hack.

19 Q Do you recommend the -- that the
20 Commission grant an AAO allowing MGE to defer the
21 new Kansas storage gas property taxes for
22 potential recovery in a future case to the extent
23 they're actually incurred?

24 A It would be my position that this
25 type of cost, the best way to handle it would be

1 for MGE to seek an accounting authority order
2 instead of inclusion in rates. Yeah, I think the
3 AAO would be appropriate for this type of cost.

4 Q So do you recommend that the
5 Commission grant an AAO in this case?

6 A I don't know the specifics of an AAO
7 in this case, but the use of the AAO vehicle would
8 be appropriate, yes. But I don't -- I have to
9 look at a specific request to determine if it's --
10 if it's appropriate.

11 Q We made the request, so do you
12 recommend that the Commission grant it?

13 A Well, the generic use of an
14 accounting authority order for this type of cost
15 would be something that I believe I would support.

16 Q And do you recommend that the
17 Commission grant such an accounting authority
18 order in this case?

19 A Generically speaking, yes.

20 Q Specifically I'm asking you, not
21 generically.

22 A Well, I mean, allowed deferral under
23 an AAO for future consideration, yes.

24 Q Correct.

25 A Right.

1 Q Page 3 of your testimony, true-up
2 testimony, lines 9 through 12, what did you review
3 in connection with the rate case expenses claimed
4 for recovery by utilities in rate increase
5 proceedings?

6 A The Staff had analysis done by
7 another Staff witness for rate case expense, and I
8 relied upon that analysis to determine the rate
9 case expense included in rate cases.

10 Q Did you provide that analysis to
11 MGE?

12 A No, I did not. I was not asked for
13 that.

14 MR. HACK: I'm going to move to
15 strike line 12, page 3 of Mr. Hyneman's true-up
16 testimony on the basis that it's hearsay. We
17 don't have this analysis, we've never had the
18 opportunity to review this analysis, we don't know
19 what the analysis entails, we don't know what
20 companies are included, we don't know over what
21 period of time. The person who prepared the
22 analysis is not here subject for cross
23 examination, and I think it's improper hearsay.

24 JUDGE WOODRUFF: You're talking
25 about page 3, lines 9 through 12?

1 MR. HACK: Actually, just line 12,
2 Your Honor. The conclusion. It's offered to
3 prove the truth of the matter asserted in this
4 statement.

5 JUDGE WOODRUFF: Response from
6 Staff?

7 MR. SCHWARZ: Mr. Hyneman said that
8 he himself has reviewed rate case expense. I
9 think that this, again, is simply background
10 material that an expert is entitled to rely on.
11 Mr. Hyneman is here as a member of the Staff and
12 the -- I -- I think that's a sufficient basis for
13 leaving it in.

14 MR. HACK: There's been no
15 foundation laid that Mr. Hyneman has any
16 particular expertise with respect to the
17 assessment of legal fees. We don't know what
18 issues were involved in these other cases, we
19 don't know what the dollar value of the issues
20 were in these other cases, we don't know anything
21 about these other cases. There's no foundation.

22 MR. SCHWARZ: That's not the basis
23 of his testimony. His testimony is --

24 JUDGE WOODRUFF: Just a minute. I'm
25 going to overrule the objection. The objection is

1 overruled.

2 MR. SCHWARZ: Then I will not say
3 anything further.

4 Q (By Mr. Hack) Did your -- did this
5 review, to the best of your knowledge, the one we
6 were just talking about of rate case expense
7 claimed by the utilities, did it involve or
8 encompass an analysis of how many internal
9 employees each of the respective companies subject
10 to the analysis had in their regulatory affairs
11 departments or had devoted to regulatory
12 responsibilities?

13 A No, it did not.

14 Q Did the analysis encompass rate case
15 expenses claimed for recovery by utilities in
16 complaint or rate decrease proceedings?

17 A No, it did not.

18 Q Why not?

19 A That's a complete different type of
20 proceeding than a rate case. It would go on for
21 extended periods of time and most likely involve
22 more litigation so that the two would not be
23 comparable.

24 Q They both have to do with setting
25 rates for public utilities, correct?

1 A Generically, yes. However, the cost
2 incurred would be considerably different because
3 of the period of time, and I notice from my
4 experience a lot of complaint cases turn into rate
5 cases so that extends to the period of time over
6 for -- over a period of years. So the analysis
7 would not be accurate if you were to try to do
8 that.

9 Q So it's okay to spend more if you're
10 in an over earnings position, but it's not okay to
11 spend more when you're trying to get your earnings
12 up to an authorized level?

13 MR. SCHWARZ: I object to the form
14 of the question, it's argumentative.

15 JUDGE WOODRUFF: Overruled.

16 THE WITNESS: I don't -- I don't
17 understand the question.

18 Q (By Mr. Hack) Is it okay, according
19 to your analysis in excluding rate decrease or
20 complaint proceedings, for companies, then, to
21 spend more rate case expense when they're in an
22 over earnings position than when they're in an
23 under earnings position?

24 A No. This case is a rate case. It's
25 a standard rate case. So we compared the costs

1 for other standard rate cases. Complaint cases
2 don't resemble rate cases to the extent that
3 they're drawn on for extended periods of time,
4 they involve extensive litigation, and the costs
5 would just not be comparable. It would be an
6 apples and oranges comparison.

7 Q So I go back to my question. You
8 then believe that it's okay for companies to spend
9 more on rate case expense in an over earnings
10 situation than in an under earnings situation?

11 A I did not say that.

12 Q I'm asking you. Do you believe that
13 or not?

14 A No, I don't believe that.

15 Q Then why didn't you include those
16 companies in this analysis?

17 A Because the -- a comparison of rate
18 case expense incurred in rate cases, which are set
19 by timelines and -- and have standard specified
20 time periods and rules, are quite different than a
21 generic complaint case hearing. They're not
22 comparable.

23 It would be like comparable rate
24 case expense for this case with one of your merger
25 cases. They're just not comparable. Not that you

1 should spend more on your merger cases than a rate
2 case, it's just that you can't compare the two.

3 Q You specifically mention the
4 UtiliCorp Case GR-2001-672. Do you recall that?

5 A That's correct.

6 Q What was the result of that case?

7 A I believe that case -- I know it was
8 litigated, but I don't know if it ended in a
9 stipulation agreement or not.

10 Q There was a \$16 million rate
11 reduction resulting from this case, wasn't it?

12 A Sixty?

13 Q Sixteen.

14 A I can't recall, but that doesn't
15 sound familiar.

16 Q So you think it was a rate decrease
17 resulting from a case?

18 A Well, I think it was a rate case
19 filed that ended up in a settlement of a decrease,
20 yes.

21 Q So you think it was a settled case?

22 A I can't recall, to be honest with
23 you. I know it was a rate case that was
24 litigated.

25 Q And do you think it resulted,

1 whether it was settlement or litigated, in a rate
2 decrease for UtiliCorp United?

3 A I think it did, yes.

4 Q And you think that UtiliCorp United
5 would have considered that a successful result of
6 that rate case?

7 A I think they did, yes.

8 Q A \$16 million reduction?

9 A Yes. I think they agreed to the
10 stipulation on the premise that they were
11 satisfied in an over earnings situation to --

12 Q You just told me you didn't know
13 whether it was litigated or settled.

14 A I believe that they settled that
15 amount, that's what I recall. And if they did
16 settle at that amount, then that would be --

17 Q What if they didn't settle at that
18 amount? You think they were happy with a 16
19 million reduction result?

20 MR. SCHWARZ: Objection, calls for
21 speculation.

22 JUDGE WOODRUFF: Sustained.

23 Q (By Mr. Hack) When was the hearing
24 in MGE's Case GR-96-285?

25 A I can't recall the month. I think

1 it was --

2 Q How about the year?

3 A I think it was 1997.

4 Q Have consulting and legal fees
5 increased since 1997?

6 A I don't know specifically.

7 Q You haven't reviewed any consulting
8 or legal fees in cases since that time?

9 A Yes, I have reviewed your legal
10 costs for MGE, but did I do a comparison of what
11 they were this year compared to what they were in
12 the past to see if there was, in fact, an
13 increase? No, I did not.

14 Q So you don't have any general
15 knowledge of whether consulting and legal fees
16 have increased since 1997?

17 A No, but I did do analysis --

18 MR. HACK: That's enough. Move to
19 strike anything after no.

20 JUDGE WOODRUFF: You've responded.

21 Q (By Mr. Hack) When was the hearing
22 in Case No. GR-98-140?

23 A I believe it was in a time period of
24 1999.

25 Q And do you know whether consulting

1 and legal fees have increased since 1999?

2 A Now, are you saying generic across
3 the board consulting fees?

4 Q Consulting and legal fees, yeah.

5 A On a nationwide basis, Missouri
6 specific, I don't know.

7 Q You have no idea?

8 A No.

9 Q The Staff has not disputed Mr.
10 Noack's conclusion that MGE has not achieved its
11 Commission authorized earning levels over the past
12 eight fiscal years; is that correct?

13 A I have not done analysis to
14 determine if they have or have not; or if they
15 have not, what caused that.

16 Q I am asking you whether the Staff
17 has disputed Mr. Noack's conclusions.

18 A I don't recall seeing a dispute by
19 the Staff of that.

20 MR. HACK: May I approach the
21 witness?

22 JUDGE WOODRUFF: You may.

23 Q (By Mr. Hack) Can you identify what
24 I just handed to you, Mr. Hyneman?

25 A Yes, it's the rebuttal testimony of

1 Mark L. Oligschlaeger in Case No. GR-2004-0209,
2 this case.

3 Q And on page 12 of that document,
4 there are some bracketed question and answer on
5 line 17, I believe, through 21; is that right?

6 A Yes.

7 Q Could you read that question and
8 answer?

9 A Yes. Question: Having made these
10 points concerning MGE's earning analysis, do you
11 disagree that MGE has had a tendency to under earn
12 in its short history to date?

13 Answer: No. Given the fact that
14 MGE has added much plant and service to its rate
15 base in recent years and the nature of the rate
16 making process in Missouri, that phenomenon is
17 exactly what would be expected to happen.

18 Q Thank you. Do you know when the
19 increased rates for MGE from Case No. GR-96-285
20 took effect?

21 A No, I do not.

22 Q Do you know if they took effect
23 during the eight year earnings analysis conducted
24 by Mr. Noack that Mr. Oligschlaeger was referring
25 to in the passage you just read?

1 A I believe they did.

2 Q Do you know when the increased rates
3 from GR-98-140 took effect?

4 A No, I do not.

5 Q And I would ask you again the same
6 question. Did those increase rates take effect
7 during that eight year period encompassed by Mr.
8 Noack's earnings analysis to which Mr.
9 Oligschlaeger's passage that you just read refer?

10 A Yes.

11 Q So whatever rate relief MGE
12 persuaded the Commission to grant in case Nos.
13 GR-96-285 and GR-98-140 was not sufficient to
14 enable MGE to actually achieve its Commission
15 authorized returns. Correct?

16 A Well, not sufficient -- I mean, MGE
17 made management and took decisions to incur costs
18 that may have led to that not achieving a certain
19 ROE. Now, whether they did or didn't, you know,
20 you've got analysis to indicate you haven't, but
21 what's the cause of that? I haven't seen any
22 analysis to indicate the cause of that.

23 Q Whatever the cause, the rates did
24 not produce actual earnings for MGE equal to or
25 greater than the Commission authorized return.

1 Correct?

2 A Well, that's the opinion --

3 Q Yes or no, please?

4 A That is the opinion of Mr.

5 Oligschlaeger.

6 Q That's not your opinion?

7 A I haven't done such analysis.

8 Q And you don't rely on what Mr.

9 Oligschlaeger does? You don't consider it

10 reliable?

11 A I -- I consider it reliable to an

12 extent, but I haven't formulated that opinion.

13 Q So you don't believe what he said?

14 A I didn't say that.

15 MR. SCHWARZ: Objection,

16 argumentative.

17 JUDGE WOODRUFF: Sustained.

18 Q (By Mr. Hack) Have you ever heard

19 the phrase you get what you pay for?

20 A Yes, I have.

21 Q You think that phrase can be true?

22 A Yes, I do.

23 Q Do you know the total revenue

24 requirement value of the bundle of the rate of

25 return issues in this case?

1 A I know it's significant.

2 Q Give me an estimate, please.

3 A Approximate \$20 million.

4 Q Is it more than that?

5 A It could be.

6 Q Okay. And rates from this case will

7 likely remain in effect for a period longer than a

8 year, correct?

9 A That's correct.

10 Q In fact, the Staff apparently

11 expects the rates to remain in effect for three

12 years; isn't that correct?

13 A Yes.

14 Q So really, the value of the rate of

15 return issue is probably closer to three times

16 that more than \$20 million figure you just cited;

17 isn't that correct?

18 A Well, if you multiply that by the

19 three years, it would be three times that amount.

20 On a dollar basis.

21 Q Or more than \$60 million?

22 A That's correct.

23 Q Given the magnitude of the dollars

24 at stake on the rate of return issue, don't you

25 think the Company would want the best team

1 possible working on the issue?

2 A That would always be the case. The
3 same dollar difference was -- was involved in the
4 GR-2001-292 case, yet MGE did not expend the level
5 of cost in that case which it did on this case. I
6 mean, rate of return and capital structure for
7 this Company has always been significant, and in
8 the past it has been 19, \$20 million. So that is
9 not different.

10 Q Let me ask you this. When did the
11 rates from 2001-292 take effect?

12 A I don't recall.

13 Q Would those rates have taken effect
14 during that eight year period encompassed in Mr.
15 Noack's earnings analysis that Mr. Oligschlaeger
16 referred to?

17 A I don't know for sure. I don't
18 remember the cutoff date of his analysis.

19 Q What amount has the Staff included
20 in MGE's revenue requirement for, in this case,
21 for the Commission assessment?

22 A I could get you that number.

23 Q Please do.

24 A That number is \$1,419,500. \$590,
25 excuse me.

1 Q And this approximately 1.4 million
2 would be paid by MGE's customers year in and year
3 out until MGE's rates are changed again, correct?

4 A Yes.

5 Q Do you know what MGE's new PSC
6 assessment is beginning July 1, '04?

7 A No, I'm not aware that has been
8 determined.

9 Q And what's the annual amount of rate
10 case expense MGE is seeking to include in revenue
11 requirement?

12 A I believe it's in the range of
13 430,000.

14 Q Under the three year normalization,
15 or about 345 under the four year normalization?

16 A Yes. Yes, that's correct.

17 Q In your true-up testimony, you've
18 also commented about the extent of billing detail
19 on the invoices for the services of Mr. Dunn, Mr.
20 Quain, and Mr. Sullivan. Do you recall that?

21 A Yes, I do.

22 Q And you had an opportunity to review
23 billings and invoices with respect to these
24 individuals prior to the true-up. Correct?

25 A Yes. Actually, this issue was

1 assigned to another auditor who assumed that
2 responsibility, but that auditor has since been on
3 leave, so I picked up this issue. So I didn't
4 specifically, prior to the true-up, review those
5 invoices.

6 Q So the Staff at least had an
7 opportunity to review some invoices from these
8 individuals prior to the true-up, correct?

9 A Some, a limited number, yes.

10 Q Well, does the Staff -- but this
11 concern about vagueness of invoices wasn't raised
12 or brought to the attention of MGE until you filed
13 your true-up testimony. Correct?

14 A Until I reviewed the invoices, that
15 is correct.

16 Q Does the Staff have an official
17 policy to withhold concerns until the very last
18 minute?

19 A I don't know that the invoices that
20 we have received at that time, which specific
21 invoices they were and which problems in the
22 documentation existed. I know the issue was
23 raised after I reviewed the invoices.

24 Q So the Staff doesn't have a policy
25 of withholding concerns until the very last

1 minute?

2 A No, we don't have a policy.

3 Q Then can you explain why these
4 concerns weren't brought to the attention of MGE
5 sooner in this process?

6 A I know rate case expense at that
7 level prior to the true-up, I think the total
8 level was around -- that I saw documentation of
9 was approximately 147,000. Going through all
10 those invoices at that time I don't believe would
11 be an efficient use of time. When the level of
12 rate case expense started to exceed \$1 million, in
13 that area, then it required more scrutiny than it
14 would at the small dollar level. So that's when a
15 detailed review of invoices occurred.

16 Q Are you aware that Mr. Dunn filed
17 direct, rebuttal, and surrebuttal testimony,
18 attended the prehearing conference, responded to
19 data requests, had his deposition taken, and
20 prepared for and testified during the evidentiary
21 hearing?

22 A Yes.

23 Q And the Staff was present or at
24 least had the opportunity to observe and review
25 most of this work. Correct?

1 A No, I don't think we reviewed his
2 work in the preparation of his testimony.

3 Q I said most of this work. Did you
4 review his testimony? Did the Staff have an
5 opportunity to review his testimony?

6 A Yes.

7 Q How about the deposition? Did the
8 Staff have a chance to review the deposition?

9 A Yes.

10 Q How about the evidentiary hearing?
11 Did the Staff have a chance to look at that?

12 A His deposition, yes.

13 Q And his testimony was the product of
14 bringing his deposition, correct?

15 A Is the product.

16 Q Sure.

17 A But I thought you were talking about
18 having the chance to --

19 Q You got a chance to see the end
20 product.

21 A Yes.

22 Q Don't these activities provide a
23 clear indication of the kind of work Mr. Dunn was
24 performing in this case?

25 A The kind of work, yes.

1 Q Are you aware that Mr. Sullivan of
2 Black and Veatch filed rebuttal and surrebuttal
3 testimony?

4 A Yes, I am.

5 Q Participated in the prehearing
6 conference, responded to data requests, had his
7 deposition taken, prepared for evidentiary hearing
8 prior to settlement of the depreciation issue?

9 A Yes.

10 Q And the Staff was present or at
11 least had the opportunity to observe or review
12 much of this work. Correct?

13 A Work product, yes.

14 Q And these activities that the Staff
15 had a chance observe and review provide a clear
16 indication of the kind of work Mr. Sullivan was
17 performing in this case, don't they?

18 A I haven't claimed anything to the
19 contrary. Correct.

20 Q And Mr. Quain filed direct and
21 surrebuttal testimony, participated in the
22 prehearing conference, responded to data requests,
23 had his deposition taken, and prepared for and
24 testified during that evidentiary hearing.
25 Correct?

1 A Correct.

2 Q And the Staff had a chance to
3 observe much of this work product. Correct?

4 A That's correct.

5 Q Would you agree that the size of the
6 Company's regulatory department or the number of
7 employees it has devoted to regulatory
8 responsibilities can affect the level of external
9 resources needed to process a general rate
10 proceeding effectively?

11 A It can. I mean, MGE has used
12 employees to testify that have not been part of
13 its regulatory department as other companies have.
14 As your personnel director testified in this case,
15 she's not part of regulatory, but -- so you do
16 have the resources of the whole company to
17 prosecute a rate case.

18 So I don't know if a distinction if
19 they're in a specific regulatory department is
20 distinction with substance or not. I don't know.

21 Q That really wasn't my question. My
22 question was, and please listen, would you agree
23 that the size of a company's regulatory department
24 or the number of employees it has devoted to
25 regulatory responsibilities can affect the level

1 of external resources needed to process a general
2 rate proceeding effectively? It's really a simple
3 yes or no question.

4 A Well, I really can't say yes or no,
5 to be honest, because just because a person at MGE
6 is not assigned, under your heading, regulatory
7 department does not mean that that person cannot
8 testify and prosecute and file testimony in a rate
9 case as you have done in this case.

10 Q And I -- you didn't listen to my
11 question. I'll say it again. Would you agree
12 that the size of a company's regulatory department
13 or the number of the employees it has devoted to
14 regulatory responsibilities can affect the level
15 of external resources needed to process a general
16 rate proceeding effectively?

17 A Under that very generic question, I
18 would say yes.

19 Q In MGE's first three rate cases, are
20 you aware that Dr. Cummings filed testimony for
21 MGE on a number of issues, including revenues,
22 class cost of service, rate design?

23 A I think substantially revenue
24 issues. I'm not aware of any issues other than
25 revenue issues that he testified.

1 Q And during those cases, Dr. Cummings
2 was an employee of Southern Union Company; is that
3 right?

4 A That's correct.

5 Q And consequently, whatever was paid
6 to Dr. Cummings during those cases was not
7 classified as rate case expense, correct, but was
8 instead a part of the salary paid at the corporate
9 level and allocated to MGE through the joint and
10 common costs of allocation?

11 A Well, his salary would be, I
12 believe. Maybe the incremental cost to travel to
13 and fro, that may have been charged to rate cases.

14 Q Fair enough. But it's somewhat
15 different in this case at least with respect to
16 Dr. Cummings, correct?

17 A Yes.

18 Q Because in this case Dr. Cummings is
19 no longer an employee of the Company? Right?

20 A Yes.

21 Q So his costs are classified as rate
22 case expense, whereas in prior cases his costs --
23 at least his salary was not included in rate case
24 expense. Right?

25 A That is correct.

1 Q So a variety of factors, like the
2 one we just discussed with Dr. Cummings, can
3 affect the level of rate case expense from one
4 case to another. Correct?

5 A Yes.

6 Q Yet, in the simple comparison of
7 rate case expense from case to case, you've made
8 no effort to capture or explain these differences.
9 Have you?

10 A You've pointed out one instance
11 where -- that could lead to an increase in rate
12 case expense. I'm sure analysis could be done for
13 other instances that could be offsetting.

14 Q What I've asked you, Mr. Hyneman, is
15 whether you've made an attempt to capture or
16 explain those differences.

17 A No, I have not.

18 Q How many witnesses filed testimony
19 on behalf of the Staff in this case?

20 A I don't know that, answer to that.

21 Q What revenue requirement did the
22 Staff initially recommend for MGE in its direct
23 testimony in April 15, 2004?

24 A Best recollection was 0 to \$2
25 million range. I can't recall offhand. It was a

1 low number.

2 Q Yet, now barely three months later,
3 the Staff's recommendation stands at \$12.7
4 million, correct?

5 A As a result of compromises and
6 corrections and true-up, yes, it's brought 12.7.

7 Q And the bulk of the Staff's change
8 in revenue requirement position came after the
9 conclusion of the prehearing conference, didn't
10 it?

11 A I would say I would agree to that.

12 Q In fact, the bulk of the Staff's
13 change in revenue requirement position came after
14 the filing of surrebuttal testimony; isn't that
15 right?

16 A I would say yes.

17 Q And a significant portion of the
18 Staff's change in revenue requirement position
19 came after the commencement of evidentiary
20 hearings on June 21, right?

21 A I would say a significant portion
22 was included in the partial stipulation agreement
23 that was presented to the Commission during the
24 hearings. And a significant portion was a part of
25 the true-up, approximately \$4 million.

1 Q In addition to choosing the location
2 of Southern Union's CEO and Chairman of the
3 Board's office and selecting outside counsel for
4 work by the Company on this rate of return issue
5 in this case, are there any other management
6 functions you'd like to undertake for Southern
7 Union?

8 MR. SCHWARZ: Objection.

9 JUDGE WOODRUFF: Sustained.

10 Questions from the bench,
11 Commissioner Murray?

12 COMMISSIONER MURRAY: Thank you.

13 BY COMMISSIONER MURRAY:

14 Q Mr. Hyneman, I want to be sure I'm
15 understanding your position here. On the recovery
16 of property taxes at issue here, did I understand
17 you to say that you do recommend that the
18 Commission grant an accounting authority order for
19 the deferral of these property tax amounts?

20 A Yes.

21 Q And you are not an attorney; is that
22 right?

23 A That's correct.

24 Q And -- but you filed testimony
25 regarding the rate case expenses, including the

1 attorney fees, did you not?

2 A Yes. I -- in the past and in this
3 case, I have.

4 Q Thank you. And did MGE make -- move
5 to strike your testimony regarding the attorney
6 fees?

7 A Not that I'm aware of, no.

8 Q And did you do -- I'm sure you
9 looked at Ms. Bolin's testimony on this issue?

10 A Yes, I have. Yes, I have.

11 Q Did you do any kind of a similar
12 analysis regarding comparable -- regarding other
13 attorney fees in the State of Missouri?

14 A Not in support of the recommendation
15 to the Commission, but I did use my experience
16 with that to determine at the level -- the \$690
17 cost per hour for Mr. Herschmann is unreasonable.
18 I used my experience auditing MGE's legal fees to
19 make that determination.

20 Q And you based your analysis purely
21 on the fact that you had never seen that in a rate
22 case in Missouri?

23 A No, ma'am. I reviewed substantially
24 all of the Missouri Gas Energy's legal fees in the
25 GR-2001-292 case, and that's a substantial number.

1 And I reviewed substantially all of the invoices
2 in this case. Spent many hours going over the
3 details of the individual invoices.

4 Q Comparing two MGE cases?

5 A Comparing all MGE's legal expenses
6 that they incurred. All legal expenses.

7 Q In two cases before this Commission?

8 A Yes. This case and the GR-2001-292
9 case.

10 Q And from that comparison, is that
11 the basis, the only basis that you used to
12 determine the amount that you would recommend to
13 be included in rate case expense or legal fees,
14 would be -- well, this includes more than legal
15 fees, but your rate case expense true-up
16 recommendation is --

17 A Yes.

18 Q -- I believe you gave two
19 alternatives, did you not?

20 A And basically that's a range. Yes,
21 ma'am.

22 Q Okay. And that range was between --

23 A I think it's between 650,000 and
24 750,000.

25 Q And how did you determine the top of

1 that range?

2 A The top of the range is -- that we
3 felt is the highest level of rate case expense
4 that was included in a rate case in Missouri. We
5 did a review, the Staff did a review, that's the
6 number we found. It's not with a absolute
7 certainty whether that is the truth, but our
8 analysis show that 750,000 was the highest level.

9 Q So I'm -- I have to assume from that
10 that you're saying that rate case expenses should
11 not increase over time?

12 A No, ma'am. MGE's previous rate
13 cases were in the 570,000 range in the GR-96 case
14 and the '98 case. And if you gross those up at 4
15 percent inflation each year since they occurred,
16 in fact, I've done that analysis, that amount in
17 2004 dollars would be approximately 730,000. So
18 those costs were determined reasonable in there.

19 And if you assume a continual 4
20 percent increase every year, you carry forth that
21 reasonable level to be 730,000. So that supports
22 the range that the Staff is proposing. And that
23 assumes, I think it's a very conservative
24 estimate, that each year that these legal fees,
25 consulting fees will increase their rates 4

1 percent. I think that's very conservative given
2 the economy over the past several years.

3 Q Okay. So your range took into
4 account a 4 percent increase per year in the cost
5 of a rate case?

6 A Yes. If you -- if you gross those
7 numbers up in the Commission's GR-98-140 days,
8 they list the two numbers, if you gross both of
9 those up starting from '96 case going forward,
10 starting the '98 case going forward, they're both
11 approximately -- one is \$735,176, that's the 285
12 case, and the GR-98-140 case is 733,336. So it's
13 very similar in that range. Those dollar amounts
14 fall within the range the Staff is proposing.

15 Q Okay.

16 A The bottom of the Staff range does
17 not assume that they had a constant 4 percent
18 increase. The 650,000. But the top of the range
19 is even more than the 4 percent increase.

20 Q All right. Now, you also indicated
21 that at the time you filed your true-up direct
22 testimony, that only approximately \$750,000 of
23 MGE's proposed \$1.3 million rate case expense is
24 supported by invoices. Is more than that \$750,000
25 now supported by invoices?

1 A Yes. I received an e-mail from Mr.
2 Noack, I believe it was Wednesday evening about
3 4:30, saying that he finally got the invoices in
4 from April, May, and June for Mr. Herschmann and
5 Mr. Fay, and that those -- those were received at
6 that time, but that was subsequent to the filing
7 of my testimony.

8 Q And I understand that you're -- you
9 are disputing some of the reasonableness of the
10 invoices that are in the record, but what is the
11 total amount of the invoices that are now in the
12 record?

13 A The total amount of invoices that
14 are now in the record are approximately \$1.2
15 million. That's -- I -- last night I worked on
16 updating all these and I got to 1.2. There are
17 still some invoices that haven't been submitted
18 from corporate and some that I just don't have.

19 Q Okay. So you're not disputing that
20 these costs were incurred.

21 A No, ma'am.

22 Q Your dispute is with the
23 reasonableness of incurring that level of cost; is
24 that right?

25 A The reasonableness of the cost and

1 the lack of documentation to support the cost, and
2 I don't want to call it haphazard, but the lack of
3 following strict internal controls in improving
4 the costs. Those were concerned that I isolated
5 to this rate case expense, because when I reviewed
6 the legal costs during the year, I notified that
7 their controls were sufficient, the documentation
8 on the invoices were sufficient, but I'm noticing
9 a lot less, the different standard now than I did
10 during the case.

11 Q Now, in the true-up issues list that
12 we received under rate case expense, that document
13 states Staff supports rate recovery of \$650,000
14 amortized over three years, which is at the bottom
15 of your range. Is that your testimony, that you
16 support the very bottom of your range?

17 A No, that -- that may not be worded
18 artfully. I think we would support the -- any
19 number within that range, 650 to 750. I think
20 that would be a more accurate depiction of our
21 position.

22 Q And has the top of your range
23 increased at all as you have seen the additional
24 invoices?

25 A No. I -- I looked at different

1 scenarios, ways that I could try to justify that,
2 and I couldn't come to that.

3 COMMISSIONER MURRAY: Thank you.

4 JUDGE WOODRUFF: I have no
5 questions, so we'll go to recross, beginning with
6 Public Counsel?

7 MR. MICHEEL: No.

8 JUDGE WOODRUFF: Jackson County?

9 MR. FINNEGAN: No questions.

10 JUDGE WOODRUFF: MGE?

11 MR. HACK: None.

12 JUDGE WOODRUFF: Redirect?

13 REDIRECT EXAMINATION BY MR. SCHWARZ:

14 Q Commissioner Murray asked you if
15 Staff was challenging the amount of invoices, and
16 you indicated no. Do you recall that?

17 A Yes.

18 Q If the cost of a six inch main
19 increased from \$2 to \$7 per foot, would that cause
20 Staff to inquire as to the reason for the increase
21 in the -- in the cost of pipe?

22 A A review of the documentation, an
23 invoice --

24 Q Well, that would confirm that the
25 price went from \$2 to \$7.

1 A Yes.

2 Q But then Staff would also expect
3 that MGE or any utility would have some
4 justification as to the reasonableness of that
5 change.

6 A Yes. If the overall level of that
7 cost increase was significant, then we would try
8 to determine if MGE took action to minimize that
9 significant cost increase, yes.

10 Q And if -- if the Company supported
11 that the cost of plastic had quintupled or that
12 the new product was physically better, you --
13 Staff would expect that the Company would have
14 some documentation, some explanation of that
15 change readily available in its records, would it
16 not?

17 A Yeah, and it does. It prepares
18 budgets on a routine basis and does what they call
19 variance analysis, and any variance from budgeted,
20 they do have an explanation to explain the cost
21 increase.

22 Q Was there any such background
23 support or evidence supporting the increase in
24 costs in MGE's testimony in this case?

25 A For which costs?

1 Q I'm sorry, rate case expenses.

2 A No.

3 Q Was there any of that kind of
4 evidence in the DR responses that Staff received
5 from MGE?

6 A No.

7 Q Do you have in front of you or
8 available to you Staff DR 0322 which has been
9 marked as Exhibit 50 in this case?

10 A Yes, I do.

11 Q The fourth page in is the response?

12 A And I may comment that this document
13 is classified highly confidential, so any word --
14 you know, that we may be into a highly
15 confidential area?

16 MR. MICHEEL: I don't see the
17 marking of highly confidential on the document,
18 Your Honor. It's been admitted into evidence as
19 not highly confidential, and MGE offered it, so.

20 THE WITNESS: Well, on my copy it is
21 marked highly confidential, so.

22 JUDGE WOODRUFF: Which exhibit are
23 we in?

24 MR. SCHWARZ: Exhibit 50.

25 MR. HACK: We have offered it

1 already, so.

2 JUDGE WOODRUFF: It's not highly
3 confidential. All right. You can go ahead and
4 respond.

5 Q (By Mr. Schwarz) So the response
6 begins on the fourth page in. Are you with me?

7 A The response to Staff DR 322 and
8 323.

9 Q Yes.

10 A Yes.

11 Q And that indicates that the decision
12 to retain Messrs. Herschmann, Sullivan, Morin,
13 Cummings, and Quain for the purposes of this
14 proceeding was made by Rob Hack in connection with
15 others. Is that correct?

16 A That is correct.

17 Q Did the Company provide any
18 memoranda between or among these gentlemen as to
19 the reasonableness of securing the particular
20 services of the particular witnesses?

21 A As to the reasonableness?

22 Q Yes.

23 A I have not seen any, no.

24 Q Have -- have -- has MGE provided any
25 indication that they, in fact, checked with the

1 availability and price of other attorneys or other
2 consultants for the provision of services in this
3 case?

4 A No, they have not.

5 Q I believe in your testimony, you
6 indicate that the Company's -- strike that.

7 Is -- is Staff, in fact,
8 recommending a -- an increase in rate case expense
9 for MGE in this case compared to the Commission
10 ordered levels in MGE's first two rate cases?

11 A That was part of the analysis done
12 to determine an overall range to recommend for
13 this case, yes.

14 Q All right. Is it the utility's
15 obligation to establish the reasonableness of the
16 levels of expense in a rate case, or is that the
17 duty of opposing parties?

18 MR. HACK: Objection. This is
19 beyond the scope of any cross from either me or
20 questions from the bench.

21 JUDGE WOODRUFF: Also seems to be
22 calling for a legal conclusion. I'll sustain the
23 objection.

24 Q (By Mr. Schwarz) Okay. I want to
25 switch briefly back to the property tax area for a

1 moment. Do accounting authority orders from the
2 Commission typically contain findings concerning
3 the deferral periods, the bookkeeping
4 requirements, and the reservation of rate making
5 treatment?

6 A Yes, they do.

7 Q Has MGE indicated a position on an
8 AAO for Kansas property taxes on those matters in
9 this true-up process?

10 A No. They requested an AAO. I
11 haven't seen any specific terms and conditions of
12 that request.

13 Q Are you -- strike that.

14 Would Staff recommend the Commission
15 issue an AAO for MGE regarding the Kansas property
16 taxes without some detail on those items?

17 A I think a generic -- if it's done in
18 this proceeding, a generic statement that they
19 cannot defer on their books and records subsequent
20 to, you know, a time period and not -- and specify
21 that it is in no way granting any specific rate
22 making treatment, I think that would be
23 sufficient.

24 MR. SCHWARZ: Thank you. That's
25 all.

1 JUDGE WOODRUFF: All right. Thank
2 you. All right, then, Mr. Hyneman, you can step
3 down. And I believe that concludes all the
4 evidence in this case.

5 There was a motion for extension of
6 time to file briefs that was filed earlier this
7 morning, I'll go ahead and deal with that now. Is
8 that what you're coming forward for, Mr. Franson?

9 MR. FRANSON: It is, Your Honor.
10 The only thing I would say, it is unanimous in the
11 sense that no party objects to it.

12 JUDGE WOODRUFF: Okay. Well, the
13 motion asks for two changes. One would be to move
14 the filing of initial briefs from next Friday,
15 June [sic] 30th to Monday, August 2nd. I
16 certainly don't have any problem with doing that,
17 and so that portion of the motion will be granted.

18 The second part would be to move it
19 to -- the reply briefs from the 16th, which is a
20 Monday, to Wednesday, the 18th. I'm not inclined
21 to do that, because at that point it's -- it's
22 eating into the time the Commission has to make a
23 decision, and we're running short on time on that
24 anyway.

25 MR. HACK: Can I perhaps be heard

1 briefly on that? The difficulty I'm having is we
2 want to be flexible and allow the parties -- we
3 understand issues have come up, but I'm scheduled
4 to go on vacation the 6th through the 14th. And
5 while I am hopeful that I can get at least my part
6 of the reply brief done before I leave on the 6th,
7 there's some editing and whatnot that needs to
8 occur when I get back.

9 So even if we could go until even
10 noon on the 17th, that would be helpful to me,
11 because that was part of my request to move the
12 initial briefing over the weekend.

13 JUDGE WOODRUFF: All right. I can
14 live with that, noon on the 17th. My concern
15 about it is trying to get it onto agenda on the
16 19th for discussion with the Commission.

17 MR. HACK: I understand.

18 JUDGE WOODRUFF: Noon on the 17th
19 will work. So I will grant the motion for
20 extension time to file briefs, for initial briefs
21 be due on August 2 and reply briefs to be due on
22 August 17 at noon.

23 Mr. Micheel, is there something else
24 you want to bring up?

25 MR. MICHEEL: I just want to ask,

1 has the Commission changed its policy with respect
2 to motions to strike, that they can be made after
3 evidence has been admitted into the record?

4 JUDGE WOODRUFF: I don't know if
5 there's been any policy change been made. The
6 motion to strike was made and was --

7 MR. MICHEEL: So motions to strike
8 can be made after evidence has already been
9 admitted into the record?

10 JUDGE WOODRUFF: That was done in
11 this case, and if you have a problem with that,
12 you can certainly --

13 MR. MICHEEL: Oh, I will.

14 JUDGE WOODRUFF: -- file a request
15 for reconsideration.

16 MR. MICHEEL: I understand that,
17 Your Honor, I just want to know if on a going
18 forward basis, that's something we're going to
19 continue to do.

20 JUDGE WOODRUFF: I can't make a
21 decision for all the other judges. I just made a
22 decision in this case.

23 Okay. With that, then, anything
24 else anyone wants to bring up? We are adjourned.

25 (Off the record.)

1 I N D E X

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8 TRAVIS ALLEN

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2	49 Corrected true-up testimony	
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3	Received	2478
4	50 MGE's response to Staff Data	
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5	For Identification	2483
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7	51 Invoices to date from	
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10	52 Invoices from John C. Dunn &	
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11	Received	2489
12	53 Invoices from Klett, Rooney,	
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13	For Identification	2490
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15	54 Invoices from Black and	
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16	Received	2491
17	55 07/20/04 Southern Union news	
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18	For Identification	2543
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20	233 True-up testimony of Travis	
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22	234 True-up testimony of Kim	
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24	235 Calculation prepared by Mr.	
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1	858	Property tax bill from Meade	
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