

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION

3
4 TRANSCRIPT OF PROCEEDINGS

5 On-the-Record presentation

6
7 December 23, 2009
8 Jefferson City, Missouri
9 Volume 15

10 In the Matter of Missouri Gas)
11 Energy and its Tariff Filing to) Case No.
12 Implement a General Rate Increase) GR-2009-0355
13 for Natural Gas Service)

14 RONALD D. PRIDGIN, Presiding
15 SENIOR REGULATORY LAW JUDGE
16 ROBERT M. CLAYTON, III, Chairman,
17 JEFF DAVIS,
18 TERRY JARRETT,
19 KEVIN GUNN,
20 ROBERT S. KENNEY,
21 COMMISSIONERS

22
23
24
25 REPORTED BY: Monnie S. Mealy, CCR, CSR, RPR
 Midwest Litigation Services
 3432 W. Truman Boulevard, Suite 207
 Jefferson City, MO 65109
 (573) 636-7551

1 A P P E A R A N C E S

2 For Staff of the Missouri Public Service Commission:

3 Mr. Robert S. Berlin
4 Public Service Commission
5 Governor Office Building, Suite 800
6 200 Madison Street
7 P.O. Box 360
8 Jefferson City, MO 65102-0360
9 (573) 526-7779

7 For Office of Public Counsel and the Public:

8 Mr. Marc Poston
9 Office of Public Counsel
10 200 Madison Street
11 P.O. Box 2230
12 Jefferson City, MO 65102
13 (573) 751-5558

12 For Missouri Gas Energy:

13 Mr. Paul A. Boudreau
14 Brydon, Swearngen & England
15 312 E. Capitol Ave.
16 Jefferson City, MO 65102-0456
17 (573) 635-7166

18 Mr. Todd Jacobs
19 Attorney at Law
20 3420 Broadway
21 Kansas City, MO 64111
22 (816) 360-5976

23

24

25

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

2 JUDGE PRIDGIN: All right. Good morning. We're
3 on the record. This is case GR-2009-0355. It's December
4 23rd, 2009, about 8:30 in the morning. We're at the Hotel
5 Governor Office Building in Jefferson City, Missouri.

6 We are back on the record pursuant to my notice
7 of December 3rd, I believe it is, setting an on-the-record
8 presentation for the comment cards, which are labeled as
9 Exhibit 106.

10 I would like to get entries of appearance from
11 counsel. And then if -- if any party has brought
12 witnesses, if you could identify those witnesses, please.
13 Starting with the company, please.

14 MR. BOUDREAU: Thank you. Let the record
15 reflect the appearance of Paul A. Boudreau, with the law
16 firm of Brydon, Swearngen & England, 312 East Capitol
17 Avenue, Jefferson City, Missouri. Here with me today also
18 on behalf of the company is Todd Jacobs. Thank you.

19 JUDGE PRIDGIN: And did -- I'm sorry.
20 Mr. Boudreau, did MGE have any witnesses?

21 MR. BOUDREAU: I apologize. Yes. MGE has two
22 witnesses that we'd like to put on the stand today. One
23 being Pam Levetzow, and we'd like to recall Mike Noack.

24 JUDGE PRIDGIN: All right. Thank you. On
25 behalf of the staff, please?

1 MR. BERLIN: Appearing on behalf of the Staff of
2 the Missouri Public Service Commission, Robert S. Berlin.
3 And with me today is Staff's Consumer Services Manager,
4 Ms. Gay Fred, who has already appeared before the
5 Commission in this case.

6 JUDGE PRIDGIN: Mr. Berlin, thank you. On
7 behalf of the Office of Public Counsel, please.

8 MR. POSTON: Thank you, Marc Poston appearing
9 for the Office of Public Counsel and the public. And with
10 me today is Barbara Meisenheimer.

11 JUDGE PRIDGIN: Mr. Poston, thank you. Any
12 other counsel wishing to enter an appearance? All right.
13 Seeing none, let me let the parties know how I intend to
14 proceed this morning.

15 We do have an agenda scheduled for 9:30, and so
16 we will need to break at or before 9:30 to be sure the
17 Commissioners have time for agenda, and then we will
18 resume after agenda.

19 And what I would like to do is open this up for
20 Bench questions of the lawyers. And after -- and I'm not
21 sure if we'll get this done before break or not. But
22 after the Bench has had a chance to question counsel on
23 Exhibit 106, we will then see if the Bench either wants to
24 hear from witnesses or if the parties would like to hear
25 from witnesses.

1 But I believe the Bench would like to ask some
2 questions of the lawyers first before we proceed with any
3 witnesses, if at all. So is there anything from counsel
4 before we open this up?

5 MR. BOUDREAU: Yes, if I might. I certainly
6 have no objection to -- to the Commissioners putting
7 questions to -- to counsel as -- as an opening matter.

8 As I indicated, I have two people -- two
9 witnesses here today to testify. And I would certainly
10 like the opportunity to put them on the stand to testify
11 on this issue, keeping in mind that, as you know, that the
12 records in the case hasn't been closed yet and that we're
13 here today to deal with an exhibit that's been admitted
14 into the record over the company's objections.

15 But we certainly have not had an opportunity to
16 put on any rebuttal evidence concerning that exhibit. And
17 we think it's a matter of just fairness and due process
18 that we should have an opportunity to complete the record
19 with respect to this one outstanding matter.

20 So with that in mind, and, in fact, the
21 Commission's order indicates that the parties had -- one
22 of the purposes of this hearing is for the parties to
23 present witnesses.

24 JUDGE PRIDGIN: Certainly. All right. Thank
25 you. Anything further from counsel before we proceed to

1 Bench questions with counsel? All right. At this time,
2 let me open this up for Bench questions. And -- or any
3 opening statements or anything before -- before
4 Commissioner Jarrett has any questions?

5 MR. BOUDREAU: All right. Commissioner Jarrett.

6 COMMISSIONER JARRETT: Thank you, Judge. And
7 first of all, let me say I appreciate your indulgence in
8 coming here today on Christmas Eve Eve to discuss this
9 issue. But I had some questions that I needed -- felt I
10 needed clarification on. So, again, I appreciate your
11 indulgence.

12 I'd like to start, Mr. Poston, with you. And
13 when I say you, I mean you in your capacity as the
14 attorney for OPC, not personally. So if I say you, I
15 don't mean you personally.

16 MR. POSTON: Okay. I understand.

17 COMMISSIONER JARRETT: I mean you as OPC
18 Counsel. The first issue that I wanted some clarification
19 on was exactly what you did as far as the comment cards.

20 I'm looking at -- I'm going to refer to the
21 transcript of the evidentiary hearing, Volume 11, dated
22 October 29, 2009. And I'm looking specifically at --
23 excuse me. I'm looking at Volume 13 of the evidentiary
24 hearing dated October 2nd, 2009. Excuse me. I seem to be
25 missing a volume.

1 Let me just -- I'll start out -- maybe we won't
2 even do that. I'll start out with your 11/11/09 filing,
3 Public Counsel's reply to MGE's objection regarding
4 customer comments.

5 And I'm looking specifically at page 2 under the
6 heading Response to Customer Comment Objections. And it's
7 paragraph No. 4. And I quote, "MGE argues that the
8 customer comment cards are inadmissible if offered as
9 testimonial evidence and would constitute hearsay."

10 OPC's response is that OPC did not request that
11 the comment cards be considered as testimonial evidence,
12 nor did OPC request that the Commission take notice of the
13 comments to prove the truth of any matters asserted in the
14 comment.

15 So I guess my question, point blank to you is,
16 did you ever offer the comment cards into evidence?

17 MR. POSTON: I believe I offered them to take
18 notice. I don't believe I offered them into evidence.

19 COMMISSIONER JARRETT: Correct. Okay. I just
20 wanted to clarify that.

21 MR. POSTON: And I'm not sure, practically
22 speaking, what the difference would be between those two.

23 COMMISSIONER JARRETT: Right. But you did not
24 offer them into evidence. You just asked that this
25 Commission take official notice of the cards; is that

1 correct?

2 MR. POSTON: I believe that's what I said when I
3 was standing up and asking it during the -- the hearing.
4 I'd have to look back through my pleadings to see if I, in
5 fact, argued that they should be evidence as well. But I
6 don't have those before me. But when I made the request
7 to have the Commission consider these and look at these,
8 it was just to take official notice. Yes.

9 COMMISSIONER JARRETT: Okay. And then my next
10 question is, now that they are in evidence, I'd like some
11 clarification, since you were the proponent of the cards,
12 as to what exactly the purpose -- as -- as one of the
13 decision-makers in this case, what am I supposed to take
14 from these cards in making my decision?

15 MR. POSTON: I would say listen to the customers
16 of MGE and what they have to say about MGE's proposal.

17 COMMISSIONER JARRETT: I'm going to refer now to
18 your brief, initial brief, of the Office of the Public
19 Counsel. And I'm looking at page 15 at the bottom of page
20 15. And it is under heading E, MGE's customers oppose a
21 high fixed charge, and it's the second sentence of the
22 last paragraph.

23 Quote, This negative customer response is
24 corroborated by the opposition to MGE's rate increase in
25 high fixed charge in the 12,000 customer comments. And

1 then you cite Exhibit 106. So let me get one of those
2 cards.

3 And I'm not going to identify these by name of
4 the people, but I'll refer to them by the number that was
5 assigned them by EFIS so they are able to be identified.
6 the number is P201002541. And the comment is, "Rate
7 increase - no! Take a cut for your company like everyone
8 else is doing to survive."

9 Now, let me see if I'm correct. You state in
10 your brief that the negative customer response is
11 corroborated by the opposition to MGE's rate increase and
12 high fixed charge in the 12,000 customer comments.

13 So you're trying to prove that the customers are
14 against a rate increase and the high fixed charge. This
15 card says he's against the rate increase. Isn't that
16 offered for the truth of the matter asserted?

17 MR. POSTON: Am I offering -- you mean, am I
18 putting up those comments for the truth of the matter
19 asserted? That truth being what?

20 COMMISSIONER JARRETT: The truth being that
21 people are against the rate increase as you state in your
22 brief. The negative customer response is corroborated by
23 the opposition to MGE's rate increase and high fixed
24 charge in the 12,000 customer comments. That's the fact
25 you're trying to prove.

1 MR. POSTON: I --

2 COMMISSIONER JARRETT: And the card says, I'm
3 against the rate increase. So that goes to prove the
4 fact. But that's for the truth of the matter asserted,
5 isn't it?

6 MR. POSTON: I would consider it more like a
7 position statement of customers, their position regarding
8 the rate increase, their positions on the high fixed
9 charge.

10 COMMISSIONER JARRETT: They're against the rate
11 increase. That's what they're saying.

12 MR. POSTON: And I'm saying --

13 COMMISSIONER JARRETT: And that's why you're
14 offering it, to show that they're against the rate
15 increase?

16 MR. POSTON: Right.

17 COMMISSIONER JARRETT: Thank you. Now, OPC's
18 position has always been that MGE is entitled to some rate
19 increase; isn't that correct?

20 MR. POSTON: I believe our -- our numbers have
21 shown, yes, that there is --

22 COMMISSIONER JARRETT: So you may have a
23 disagreement with the company or Staff as to what amount
24 that should be, but OPC has always indicated that -- that
25 MGE is entitled to a rate increase?

1 MR. POSTON: I think based off of some of
2 Staff's -- Staff's work, we've -- that we have not
3 contested those.

4 COMMISSIONER JARRETT: As a matter of fact, you
5 entered into an stipulation and agreement that would give
6 MGE a rate increase; isn't that correct? You're a
7 signatory to that?

8 MR. POSTON: That's correct. Yes.

9 COMMISSIONER JARRETT: Okay. So to the extent
10 of all the cards that say, We don't like a rate increase,
11 isn't that now irrelevant? And I understand -- I'm not
12 talking about the high fixed charge. I'm just talking
13 about the rate increase.

14 MR. POSTON: I don't know if I would say it's
15 irrelevant. I think, you know, these customers took the
16 time to -- to send in, to write in their comments, and the
17 Commission still hasn't approved the stipulation.
18 So I would say it's still relevant.

19 COMMISSIONER JARRETT: Okay. And so you want us
20 to still consider the cards where the people say they're
21 just against a rate increase in general, and then, also,
22 the ones that talk about the high fixed charge?

23 MR. POSTON: Yeah. I'm not asking you to weed
24 out any particular comments.

25 COMMISSIONER JARRETT: Okay. Now, you cite

1 Exhibit 106 in your brief.

2 MR. POSTON: Correct.

3 COMMISSIONER JARRETT: And you've indicated
4 pretty much now that you want us to consider all of the
5 cards. Do you think under the statute where we have to
6 certify that we've either heard all the evidence or that
7 we have read all of the relevant portions of evidence that
8 is cited in the briefs that we have to read all
9 12,000-some-odd cards?

10 MR. POSTON: I'm not sure about that. I have
11 not researched that.

12 COMMISSIONER JARRETT: You don't have any
13 opinion as to that? Mr. Boudreau, how about you? Do you
14 have an opinion as to that?

15 MR. BOUDREAU: I believe that I addressed that
16 question in at least one of the pleadings that I filed.
17 And the statute, I don't have it handy, indicates that the
18 Commission is required to certify that its read the parts
19 of the record that are -- are -- that are cited to it, I
20 believe. I'd have to pull out the statute.

21 But I think that if -- if somebody brings up the
22 issue of looking at the cards, it may, in fact, obligate
23 the Commission to take a look at them to the extent that
24 they look at those or to the extent that those cards are
25 used to -- to validate or to support the claim of the

1 party that's asserting it.

2 COMMISSIONER JARRETT: Mr. Berlin, any thoughts?

3 MR. BERLIN: I have nothing to add on that,
4 Commissioner Jarrett.

5 COMMISSIONER JARRETT: Okay. Thank you,
6 Mr. Poston. I don't have any further questions right now.
7 I did want to talk a little bit with Mr. Boudreau next.
8 Did you have any notice that the Commission was going to
9 admit the cards into evidence?

10 MR. BOUDREAU: No. No. I'm trying to think if
11 there was any circumstance that -- that the company was
12 made aware of before the time that Public Counsel moved
13 that the Commission take official notice of them as part
14 of the record in the case.

15 COMMISSIONER JARRETT: I do know back -- reading
16 back through the testimony of -- and the transcripts of
17 the exchanges that you always objected to taking official
18 notice of the cards, that -- because that was the only
19 thing that was tee'd up in the hearings.

20 MR. BOUDREAU: I believe -- that's what I was
21 going to say. I think that was the only thing that at the
22 -- at the time that I was lodging the objections that I
23 was addressing was the -- the request that official notice
24 be taken.

25 COMMISSIONER JARRETT: All right. And I take

1 it, then, today you have some witnesses you want to put on
2 to address that and, I guess, sort of make a reverse offer
3 of proof since they're already admitted?

4 MR. BOUDREAU: Well, I think that now that the
5 cards have been admitted, I think what I will do, and I
6 will state this for the record now and probably later on,
7 is that the company still -- still objects to the
8 admission of the exhibit, doesn't waive its objections to
9 the admission of the exhibit and hopes that it will be
10 considered and requests that the Commission acknowledges
11 and considers it a standing objection.

12 But, you know, realistically, the order has
13 issued allowing Exhibit 106 into the record. And we'd
14 like an opportunity now, which we haven't had previously,
15 to address what those comment cards contain, our analysis
16 of what the comment cards have -- have actually provided
17 in terms of information relevant to the -- to the issues
18 in this case.

19 COMMISSIONER JARRETT: Right. Okay. Thank you.
20 And I look forward to that. I guess, Judge, I have a
21 couple of questions of Ms. Gay -- or Ms. Fred. Excuse me.
22 Ms. Gay Fred. Could you swear her in real quick?

23 JUDGE PRIDGIN: Certinaly. And, Ms. Fred, if
24 you'll raise your right hand to be sworn, please.

25 GAY FRED,

1 being first duly sworn to testify the truth, the whole
2 truth, and nothing but the truth, testified as follows:

3 JUDGE PRIDGIN: Thank you very much.
4 Commissioner.

5 COMMISSIONER JARRETT: Thank you. I guess my
6 question is, from what I understand, that order said was
7 we admitted the 12,000-some-odd comment cards that are
8 back here in the box as Exhibit 106. But did we receive
9 other comments from the public that weren't in those card
10 form?

11 MS. FRED: Yes, we did.

12 COMMISSIONER JARRETT: And what were those?

13 MS. FRED: Those cards -- or those comments
14 would have either come through e-mail to the Commission
15 through the EFIS system. It could have been a phone call
16 to our hotline, making a statement regarding the case at
17 the proposed rate increase.

18 Or at the local public hearing, customers were
19 given the opportunity to have a form that they could
20 simply make their statements and also resubmit back to the
21 Commission.

22 COMMISSIONER JARRETT: Okay. And about how many
23 of those types of comments did we receive?

24 MS. FRED: I don't have an exact number.

25 COMMISSIONER JARRETT: Hundreds? Less than a

1 thousand?

2 MS. FRED: Less than a thousand.

3 COMMISSIONER JARRETT: More than 500?

4 MS. FRED: Not likely, no.

5 COMMISSIONER JARRETT: More than 400?

6 MS. FRED: No.

7 COMMISSIONER JARRETT: More than 300?

8 MS. FRED: Yes.

9 COMMISSIONER JARRETT: So between 300 and 400

10 comments?

11 MS. FRED: I would say that's a -- a good guess.

12 COMMISSIONER JARRETT: Okay. And just so we
13 know, how many cards did we receive? I know we've been
14 talking 12,000, but really how many are there?

15 MS. FRED: Today, there's 12,096.

16 COMMISSIONER JARRETT: 12,0096 okay. Thank you.

17 And -- so let me open it up to counsel. Do you believe
18 those were admitted into evidence in our order?

19 Mr. Boudreau?

20 MR. BOUDREAU: My understanding from the -- from
21 the Commission's order ruling on the comment cards is that
22 official notice was not taken, but that the cards were
23 admitted into the record as documents, you know, all -- my
24 contention would be as testimonial evidence. I mean,
25 they're documents, but, in essence, it's testimonial

1 evidence.

2 So my -- my understanding of the order is that
3 the cards themselves are an exhibit in the record in this
4 case. I don't know if that's responsive to your question.

5 COMMISSIONER JARRETT: Well, the question is are
6 the comments that I just discussed with Ms. Fred, are they
7 covered by that order?

8 MR. BOUDREAU: Oh.

9 COMMISSIONER JARRETT: Are they in evidence as
10 Exhibit 106?

11 MR. POSTON: I would say -- I would say yes. I
12 mean, although they said comment cards, what they referred
13 to is the 12,000, and I interpret that as being the 12,000
14 comments, whatever format the customers were sending that
15 in because they were all putting into that same database.
16 So that's my interpretation all 12,096 --

17 COMMISSIONER JARRETT: Cards.

18 MR. POSTON: -- cards or e-mails or calls,
19 however it came in. Customer comments is, I think, the
20 important thing, not necessarily customer comment cards.

21 COMMISSIONER JARRETT: What about the cards --
22 what about the comment -- Ms. Fred, did we have some
23 comments that came in after we issued that order?

24 MS. FRED: You mean public comment cards?

25 COMMISSIONER JARRETT: Cards or e-mails or

1 filings in EFIS or calls.

2 MS. FRED: Yes.

3 COMMISSIONER JARRETT: About how many did we
4 receive after the order?

5 MS. FRED: I'm sorry. I don't have a count on
6 that.

7 COMMISSIONER JARRETT: A dozen? Any idea?

8 MS. FRED: I have no idea.

9 COMMISSIONER JARRETT: But we did receive some?

10 MS. FRED: Yes.

11 COMMISSIONER JARRETT: Okay. Mr. Poston, are
12 those part of 106?

13 MR. POSTON: I would think that perhaps the
14 Commission might need to resend another order letting
15 those in. I'd have to look at -- the way they wrote the
16 order. I didn't read it as being open and any -- you
17 know, as comments come in, they continue to be added to
18 that exhibit.

19 But, again, I haven't researched this to see if
20 that's something that -- you know, that's the way an
21 exhibit can be handled. I just don't know.

22 COMMISSIONER JARRETT: Mr. Berlin, do you have
23 any thoughts on that?

24

25 MR. BERLIN: Commissioner Jarrett, was your --

1 was your question that Staff believes the cards are
2 admitted into evidence?

3 COMMISSIONER JARRETT: The question is -- the
4 cards are admitted into evidence as Exhibit 106.

5 MR. BERLIN: Yes.

6 COMMISSIONER JARRETT: My question is, there's
7 other comments other than the cards, people calling in,
8 people faxing something in, people entering comments in
9 EFIS, things that are not those cards, but they're
10 comments, nonetheless. And my question is, are they part
11 of Exhibit 106 based on our order that we issued?

12 MR. BERLIN: My understanding of the order,
13 Commissioner Jarrett, is that the order deals with the
14 comment cards specifically.

15 COMMISSIONER JARRETT: Okay. Thank you. I
16 appreciate that.

17 MR. BOUDREAU: And if I might correct my earlier
18 comment -- and I apologize for being unclear on that -- I
19 would echo Mr. Berlin's view. My understanding was that
20 the order that the Commission issued dealing with the
21 evidentiary matter dealt with the topic that was at hand
22 at the time, which was the topic of the comment cards that
23 Mr. Poston asked that the Commission take official notice
24 of. So I assumed that it was limited to the topic at
25 hand.

1 COMMISSIONER JARRETT: And, Ms. Fred, is there
2 any deadline listed anywhere that -- where people can file
3 comments or call in with comments or file comments in
4 EFIS?

5 MS. FRED: There's no deadline. Customers can
6 continue to send in comments if they wish. I was just
7 referencing the notice to see if we had a deadline on
8 that. It doesn't appear there was.

9 COMMISSIONER JARRETT: Okay. So, theoretically,
10 Mr. Poston, if we were to include those in -- in -- they
11 are -- assuming for purposes of argument that they are
12 included in Exhibit 106, we would have to leave Exhibit
13 106 open until we issue our order because comments could
14 continue to come in?

15 MR. POSTON: I think the Commission could do
16 that. Yes. I believe one of the comments was -- came in
17 as early as last Friday. So if the Commission wanted to
18 open it -- but I guess that runs into some problems since
19 we're already briefing. And, you know, at some point, I
20 think the Commission is going to have to close that
21 exhibit.

22 COMMISSIONER JARRETT: So -- yes. I mean, if we
23 left it open and a card came in five seconds before we
24 voted on the order and we hadn't considered it, then we
25 would be violating our statute that says we have to read

1 everything that's cited in the briefs or, you know, the
2 evidence that's cited in the brief. So there would have
3 to be some sort of cut-off, I would agree. All right. I
4 don't have any he further questions of the, of the
5 attorneys. Thank you.

6 JUDGE PRIDGIN: Commissioner Jarrett, thank you.
7 Does the Bench have any further questions for counsel?

8 COMMISSIONER DAVIS: Did anyone confess?

9 JUDGE PRIDGIN: I don't think so.

10 COMMISSIONER DAVIS: No. No questions.

11 JUDGE PRIDGIN: Commissioner Gunn?

12 COMMISSIONER GUNN: I'll ask this to all of the
13 parties. When is weight and sufficiency of evidence
14 determined? Is that at the time of admission or at some
15 later point?

16 Don't all jump in at once. Let me -- I'll do it
17 this way. Mr. Poston, when is weight and sufficiency of
18 evidence determined? Is it determined at the time of
19 admission?

20 MR. POSTON: I'd say -- no. I'd say at
21 admission you're determining the admissibility of
22 evidence.

23 COMMISSIONER GUNN: And so you're not
24 determining whether you give it equal or lesser weight to
25 any other piece of evidence?

1 MR. POSTON: That's right.

2 JUDGE PRIDGIN: Would the other parties agree to
3 that?

4 MR. BOUDREAU: I'm not sure I disagree with that
5 statement. I think that the Commission gives it the --
6 the record is open. The evidence comes in. The
7 Commission decides, or whatever body it is decides, what
8 weight to give the evidence at the time that they're
9 contemplating the case.

10 JUDGE PRIDGIN: Okay. And, Mr. Boudreau, are we
11 free to disregard evidence that we deem to be either not
12 important or not relevant to our decision that has been
13 admitted into the record?

14 MR. BOUDREAU: I believe so.

15 COMMISSIONER GUNN: So the fact that something
16 is admitted into the record and doesn't necessarily mean
17 we're going to rely on it in our order?

18 Let me put it to you this way. Let me make it
19 easier for you. If our order does not reference customer
20 comment cards or if we were to take the customer comment
21 cards into account and still give the company --
22 essentially agree with all the rest of the company's
23 position, would that still be a valid order?

24 MR. BOUDREAU: I'm not sure what the order says
25 about what the Commission has. You have five individuals

1 on the Commission giving whatever weight that they may
2 consider is -- is appropriate to whatever topic they're
3 considering at any one time. So the order may or may not
4 go through a litany.

5 And I -- and I've seen a variety of -- of orders
6 from the Commission of greater and lesser detail about
7 what the Commission gave particular weight to. Sometimes
8 they're relatively on the point. Sometimes they're
9 relatively expansive on the point. So I'm not sure the
10 order gives really clear guidance where that's concerned.
11 I think that --

12 COMMISSIONER GUNN: But the Commission's
13 decision is the order that we issued.

14 MR. BOUDREAU: This is true.

15 COMMISSIONER GUNN: And -- and the tariffs that
16 we approve and the tariffs that you would -- the -- the
17 order you have to comply with has to be based on competent
18 and substantial evidence.

19 MR. BOUDREAU: Yes. And that order may or may
20 not include things that were mentioned in the hearing.

21 MR. BOUDREAU: That is also -- yeah. That is
22 correct.

23 COMMISSIONER GUNN: And we are free to do that?

24 MR. BOUDREAU: I believe so.

25 COMMISSIONER GUNN: All right. So you're not

1 saying that -- let's say we did make a mistake. The
2 record right now isn't so tainted that the Commission
3 could not or would have no ability to issue a valid order
4 in this case?

5 Let me give you an easier example. Let's say
6 that we issue an order outside -- along with -- we approve
7 the stipulation and agreement, which you agreed to. Then
8 we issue an order which essentially agrees with your
9 position on every single item.

10 MR. BOUDREAU: Yeah. What -- what you're saying
11 is a no harm/no foul sort of scenario.

12 COMMISSIONER GUNN: I'm -- let's -- let not say
13 that there's no harm because I don't want -- I don't want
14 to go into that. I'm asking does this Commission, as we
15 stand today, have the ability to issue a valid order? Or
16 has the admission of the comment cards so tarnished the
17 record that it is impossible for us to do so?

18 MR. BOUDREAU: I think -- let me take a scenario
19 which I think answers your question. If the Commission
20 issues order -- not that it has to do this, but expressly
21 say that we're giving absolutely no credence to the
22 comment cards, we're giving no weight whatsoever to the
23 comment cards. Would that order be valid? I mean, I
24 think that goes to your question about whether the
25 record --

1 COMMISSIONER GUNN: What if we didn't mention
2 it? What if we --

3 MR. BOUDREAU: Well, I'm just saying that --
4 that you wouldn't necessarily have to say that. But if
5 the order came out and said, We're giving no weight to --
6 to the comment cards, here's our decision, I don't think
7 the record is so tainted that you can't -- that the
8 Commission could not issue -- issue a decision in this
9 case.

10 COMMISSIONER GUNN: So there is the concept of
11 harmless error if -- if there was, in fact, error at this
12 point as a -- as a general concept?

13 MR. BOUDREAU: I suppose as a general concept,
14 that's correct. Yes

15 COMMISSIONER GUNN: As a general concept. Okay.
16 If Commissioners had reviewed these comment cards outside
17 of the record, would those Commissioners be able to
18 participate in making the decision? Would they be --
19 would you request that they recuse themselves?

20 MR. BOUDREAU: It's -- it's a good question,
21 which is why I'm pausing to think through it. I think the
22 question each Commissioner needs to -- to consider is
23 whether, in fact, they're giving the cards any particular
24 weight on any particular -- or let me put this -- let's
25 not just limit it to the cards.

1 The question is whether the Commission, in
2 considering input that it may have received from public
3 comment at a meeting that you'd gone to or whatever -- I
4 think the question you need to ask yourself, each
5 Commissioner needs to ask himself is, am I making my
6 decision based on anything that I've heard?

7 And if the answer is yes, I heard this comment
8 and, therefore, I'm deciding this issue this way, that's
9 problematic. But in terms of just the general noise in
10 the background and the feedback that the Commissioners get
11 in the public forums that they regularly attend, you're
12 going to hear things.

13 And I don't think the Commissioners are
14 necessarily disqualified by the fact that people say
15 things to them, whether they be verbally, you know, on a
16 face-to-face meeting or in a -- in a -- we've dealt for
17 years with e-mails from customers which the Commission
18 regularly posts as ex parte communications.

19 And the fact that you get that, the fact that
20 you've read that, I don't think disqualifies you. I mean,
21 I think that what -- what you have to do is give the
22 parties a chance to provide some sort of rebuttal, which
23 you do, in essence, by posting them. And that gives me
24 and my client an opportunity to look at what's being said.

25 And if there's something in there that's

1 concerning, we'll put on evidence to say, this isn't
2 really how it happened, or this isn't really a concern,
3 and here's why.

4 COMMISSIONER GUNN: And at local public hearing,
5 you have the opportunity to cross-examine.

6 MR. BOUDREAU: Exactly. At local public
7 hearings, we have a chance to put questions to the
8 witnesses. And in this case, you'll recall that for some
9 of the witnesses -- we had one of our -- one of our
10 witnesses, Russ Finegold, go back and take a look at the
11 billing history for some of these individual customers,
12 and we had an opportunity to say here's more information
13 about this so that you can understand it in context.

14 COMMISSIONER GUNN: Right. So judges typically
15 review evidence to determine whether it's inadmissible or
16 admissible.

17 MR. BOUDREAU: Yes.

18 COMMISSIONER GUNN: And aren't the protections
19 -- aren't the hearsay protections really in order to
20 prevent lay juries from becoming prejudiced?

21 MR. BOUDREAU: I don't know that the limitation
22 is lay juries. I think the -- the limitation is on the
23 reliability of the testimony.

24 COMMISSIONER GUNN: Absolutely. Absolutely.
25 But don't reviewing courts typically give much more

1 deference to Bench trials, for example, than they do jury
2 trials? There is -- there is an assumption that judges in
3 their capacity as judges have the ability to essentially
4 separate the wheat from the chaff.

5 MR. BOUDREAU: I'm not sure that I disagree with
6 that statement.

7 COMMISSIONER GUNN: Let me -- then let me say,
8 they have a better ability than juries to separate the
9 wheat from the chaff. And they're not always perfect.
10 And when they're not perfect, they're -- they're --

11 MR. BOUDREAU: From -- from my review of
12 numerous appellate decisions, there seems to be some
13 recognition from the appellate courts that a judge tried
14 case, that the Judge understands the weight -- I mean,
15 just instinctively because of the training of the Lawyer,
16 presumably understands the value of hearsay testimony
17 versus sworn and cross-examined testimony whereas a lay
18 jury -- or a lay decision-maker may not.

19 COMMISSIONER GUNN: Right. Okay. Does anybody
20 else want to weigh in on any of the questions that I've
21 asked? I just don't want to --

22 Mr. BERLIN: Commissioner Gunn, I might --
23 excuse me -- just add -- add to -- to this discussion that
24 the Commission is certainly entitled to rely on Staff's
25 expert witness, Ms. Fred, the Consumer Services Manager,

1 who has already testified as to the receiving, processing
2 and evaluation of the customer comment cards.

3 And as an expert, she's -- this is the type of
4 information that she would rely on in forming any kind of
5 an opinion or evaluation of those comment cards. So I
6 don't know if that's helpful, but --

7 COMMISSIONER GUNN: Look, I -- I understand -- I
8 understand the concern of the company. I really do.
9 But I'm -- I'm not entirely sure that this is that big of
10 a deal.

11 For example, the fact that a single comment card
12 -- and I -- I've reviewed, you know, a substantial amount
13 of them. But if it's -- if a comment card says, Single
14 fixed variable rate sucks, you know, we're not -- that's
15 great. I mean, that's okay. We understand that that's
16 what they're thinking. That doesn't necessarily mean that
17 it does.

18 And I think that we have the ability to kind of
19 determine how much weight we give to these -- how much
20 weight we give to these comment cards. But, I mean, I
21 understand your concern, and I appreciate -- I appreciate
22 you guys taking the opportunity to do that, and I look
23 forward to hearing your witnesses. And I don't have any
24 further questions.

25 JUDGE PRIDGIN: Okay. I believe Commissioner

1 Jarrett had some questions.

2 COMMISSIONER JARRETT: Yes. I just wanted to
3 follow up a little bit with Commissioner Gunn's questions
4 to you, Mr. Boudreau. I -- I understand that judges are
5 given a little leeway by the appellate courts in that
6 they're -- they may be able to give weight or less weight
7 to certain evidence.

8 But don't the appellate courts also recognize
9 the Judges know how to exclude evidence that should be in
10 the record?

11 MR. BOUDREAU: I -- I think this is also true
12 that they feel like -- I think there's a recognition that
13 on a judge-tried case, on a Bench-tried case that you
14 probably have less of a problem in the first instance with
15 having incompetence in the record.

16 So I -- I agree with you on that point that the
17 record's usually a little bit tighter. Well, that's an
18 inappropriate way of putting it, inaccurate way of putting
19 it. I think that there's a recognition, as you say, that
20 -- in judge-tried case that the Judge is ruling on the
21 evidence at the outset in the first place. And if he
22 recognizes something as not being admissible, he'll rule
23 that way.

24 COMMISSIONER JARRETT: Right. And then I wanted
25 to follow up with Mr. Berlin and throw this open to

1 everything. You talked about Ms. Fred and the fact that
2 she had processed the cards and taken a look at them and
3 reviewed them. Mr. Poston also talked -- I think Ms.
4 Meisenheimer looked at several of them.

5 And this is more of a policy question, I guess.
6 Isn't the real purpose of -- of the comments, the cards,
7 the comments that are filed in EFIS, really for the
8 parties? They're the ones that can sit down and read
9 those comments. And if they see problems, they can go
10 interview those folks and develop evidence if they need to
11 rebut it or to use that in their case.

12 The purpose of the cards really isn't -- they're
13 never really admitted into evidence. I've never sat in a
14 case where comment were ever admitted as an exhibit in a
15 rate case. So, really, aren't they for the parties to --
16 to review, as Mr. Boudreau said, provide witnesses to
17 rebut if -- if they want to some of that information or
18 the Staff if they see a pattern of, you know, say, poor
19 service or something, that they can go to those folks,
20 interview them, put on evidence of poor service to
21 disallow some costs?

22 Isn't that really what the card are for, not for
23 the Commissioners to read them necessarily? And I'd throw
24 that to every -- to all the attorneys.

25 MR. BERLIN: Okay. I -- Commissioner Jarrett, I

1 would probably have to agree with that because just
2 looking at -- at a rate case in general -- or, rather,
3 rate cases, we have in EFIS a letter file. And if a
4 customer sends in a letter or some kind of a comment or an
5 e-mail, I know that those types of comments in past cases
6 have gone into a letter file and are available for the
7 parties to review.

8 I know that they're designated HC. And then I
9 would have -- you know, Ms. Fred can certainly answer, you
10 know, what she has -- her group has done in the past to
11 address any particular issues that come up through
12 comments or letters that are submitted in the context of a
13 rate case.

14 MR. BOUDREAU: I can echo that in a more
15 specific way. And I -- and I think it's correct in the
16 sense that -- that as these comment cards came in to
17 Staff, Staff was -- was reviewing them.

18 And I -- and my understanding is that if there
19 was a comment that dealt with a service issue, with a, you
20 know, problem with service that those comment were passed
21 on by Staff to our folks at the company to follow up on.

22 So there was some of that actual activity going
23 on, that as comments came in, Staff would review them. If
24 there was something that they thought deserved some follow
25 up, they'd notify the company's folks, who -- who, in

1 fact, would follow up on them.

2 So I -- I think it did have some value in that
3 regard, I suppose, in the sense that if there was
4 something that was brought to the -- to the attention of
5 the Staff and through the Staff to the company, those were
6 things that the company could address.

7 MR. POSTON: I'm going to have so disagree. I
8 think the comments are for Staff, for the company, for
9 Public Counsel and for the Commission.

10 I think at least from the perspective of the
11 customers that wrote the comments, I would imagine they
12 did not write those comments thinking that the Commission
13 would not be seeing them, that they would just be going to
14 the parties and not before the -- the Commission that is
15 actually making the decision on the case. And so I -- I'd
16 say that those comments are for the Commission and the
17 parties.

18 COMMISSIONER JARRETT: So -- so you think in the
19 minds of the people that send in comments, whether they be
20 the comment cards or they call in or they file something
21 in EFIS or they fax something in that they want the
22 Commission to consider this in making their decision just
23 like they consider the record evidence that we get from
24 evidentiary hearings?

25 MR. POSTON: I think they want them, yes, to

1 read their comments. And I think -- Gay has a copy of it,
2 but I think -- I think it invites comment to the
3 Commission. I think the -- at least by the wording of it,
4 it's going to the Commission.

5 MR. BERLIN: Commissioner Jarrett?

6 COMMISSIONER JARRETT: Yes.

7 MR. BERLIN: I'd like to point out, I think a
8 lot may depend upon the nature of the comment itself.
9 Like in -- in this case, I know -- and I'm looking at a
10 comment card.

11 It is a request for public comment. So that, in
12 the mind of a customer, may be viewed as something that
13 they are required to do. But it -- it does say that it's
14 a notice of request for rate increase, notice of public
15 hearing, request for public comment. So this comment card
16 does add a little bit different twist to comments.

17 COMMISSIONER JARRETT: Right. But if we're
18 supposed to consider those in our decision, isn't the
19 standard competent and substantial evidence upon the
20 record? How is an unworn card that is submitted or an
21 unsworn e-mail submitted into EFIS, how is that competent?

22 It's not been -- the witness hasn't been
23 cross-examined. It hasn't been offered into evidence. No
24 foundation has been laid. No relevancy has been
25 established. Aren't we -- aren't we making a reversible

1 error if we consider those if it's not competent evidence?

2 MR. POSTON: I think that goes towards what
3 Commissioner Gunn was talking about is the weight that you
4 give that evidence. I think that will go a long way
5 towards whether there is some type of error committed in
6 the Commission's order.

7 COMMISSIONER JARRETT: Right. But as a judge,
8 you don't put in incompetent evidence. You keep it out,
9 don't you? I mean, doesn't a judge keep out incompetent
10 -- if the Judge knows it's incompetent evidence, doesn't
11 he have a duty to keep it out?

12 MR. POSTON: I would think. And how do you
13 define incompetent evidence?

14 COMMISSIONER JARRETT: Well, it's not sworn.
15 There's no foundation been laid. No relevancy has been
16 established.

17 MR. POSTON: I think there has been foundation
18 laid for -- for the comments.

19 COMMISSIONER JARRETT: Well, what is that
20 foundation?

21 MR. POSTON: I think the foundation was that it
22 was a request sent out by the Commission to the parties.
23 The comments came in to Ms. Fred's office where they were
24 processed and entered into the record. That's the
25 foundation for the cards.

1 COMMISSIONER JARRETT: Foundation for the cards.
2 Okay. But the foundation for the admission of the cards
3 is a different question.

4 MR. POSTON: I think the foundation would be the
5 same.

6 COMMISSIONER JARRETT: Well, yeah. But you get
7 a card in, you don't know who -- they put a name on it.
8 You don't know that that's really them or not, right?

9 MR. POSTON: That's true. I think -- I think
10 it's a pretty good assumption that -- that that is a
11 correct name.

12 COMMISSIONER JARRETT: If someone comes in here
13 gets under oath and they state their name, we can -- they
14 may be lying, but at least we can rely on it that they're
15 here, they're sworn, they're subject to cross-examination.

16 But the comments are. We don't know who those
17 really come from. One person could have written all
18 12,000 of those cards.

19 MR. POSTON: But I don't think that's a
20 legitimate concern. I think more than likely these are
21 12,000 separate customers of MGE that sent these in.

22 COMMISSIONER JARRETT: Right. So we should
23 consider those cards equally with the witnesses that were
24 sworn here? Is that what you're saying?

25 MR. POSTON: No. That's not what I'm saying.

1 COMMISSIONER JARRETT: Okay. Then what are you
2 saying?

3 MR. POSTON: I'm just asking the Commission to
4 read the comments. That's all I'm really asking.

5 COMMISSIONER JARRETT: Okay.

6 MR. BOUDREAU: I would disagree with just one
7 statement that Mr. Poston made. I don't think it's a
8 question. If -- if evidence is incompetent, I don't think
9 it's entitled to any weight. I don't think it's a
10 question of just let it in and give it the weight that you
11 want to give it.

12 COMMISSIONER JARRETT: Right.

13 MR. BOUDREAU: I think that's -- I think that's
14 the whole basis behind it. If it's not competent
15 evidence, it shouldn't be given any weight. That's my
16 argument.

17 Now having said that, the Commission has ruled
18 the way it has ruled, and I'm not necessarily trying to
19 revisit that topic.

20 COMMISSIONER JARRETT: Right. And -- and just
21 for the purposes of the conversation, I have a card here
22 in front of me, P201008660 that has no name on it. It's
23 anonymous. So I don't know how you lay a foundation for
24 that. But I don't have any others questions. Thank you.

25 JUDGE PRIDGIN: Commissioner Jarrett, thank you.

1 Anything further before we break to agenda?

2 COMMISSIONER KENNEY: Just quickly.

3 JUDGE PRIDGIN: Commissioner Kenney. I'm sorry.

4 COMMISSIONER KENNEY: And this is -- I'll just
5 open this up for all the attorneys, two points, just so I
6 can clarify this, and you address this after we come back.
7 Isn't this really an issue of admissibility versus weight
8 and sufficiency?

9 And my second question is, what is the effect of
10 Section 386.410 on all of this discussion? So we can --
11 if somebody wants to take a stab at it in the next five
12 minutes, that's fine. Or we can wait until after we come
13 back. But those -- those are the two questions that I
14 have.

15 MR. BOUDREAU: If -- if I might, just to address
16 the first of your two questions, is -- and I'll just
17 reiterate what I just said, that my -- my view of it is
18 that if the evidence is not competent evidence, it's
19 entitled to no weight.

20 So I don't think it's a matter of, you know, the
21 weight that you give to something in the -- I don't think
22 -- I don't think, for instance, the Commission can say,
23 Well, we recognize this is incompetent testimony. That's
24 not what the Commission has said. But I don't think that
25 you can say we think it's incompetent testimony, but we'll

1 allow it in the for the weight that it's entitled to.

2 I don't think -- I don't think it's a matter of
3 gradations of weight. It's either -- if it gets into the
4 record, it's got competence for purposes of being
5 considered by the Commission. And if it doesn't, I mean,
6 presumably, if it's kept out the record, it doesn't have
7 competence.

8 So I don't think it's a matter of saying, Well,
9 we'll let it in even though nobody was here, nobody was
10 sworn. We don't even know who wrote what on a card and
11 we'll just give it the weight that we think it's entitled.

12 I don't think that's the standard. I think that
13 you make a decision about whether or not it's competent
14 testimony. It's either in the record or it's out of the
15 record. And then once it's in the record, then you can
16 get -- I mean, presumably, at that point, it's competent
17 testimony and you can give it the weight that you want to,
18 as they do with any -- any witness that comes and
19 testifies or any group of witnesses that testified at
20 cross purposes on the issue.

21 You can say, well, we give more weight to
22 Mr. X's testimony than we give to Mr. Y's testimony on
23 this issue. But you have to cross that threshold of
24 admissibility in the first place.

25 I can move on to the second question, which is

1 the statutory section that you asked about. I think that
2 that's considered -- that is intended as a remedial
3 statute. I don't think it was intended to be basically a
4 -- you know, a catch-all for anything else that can't be
5 justified under a -- you know, other basis of testimony.

6 I mean, if something gets in erroneously, you
7 know, there may be some remedial -- some remedial relief
8 given under that statute. But I don't think it was
9 intended to say, Well, we don't have sworn testimony.
10 We don't have -- we haven't given anybody an opportunity
11 to cross-examine this witness. We haven't given anybody a
12 chance to offer rebuttal testimony. But never mind, you
13 know, we're going to let it in because the statute just
14 kind of is a -- is a catch-all for everything. I don't
15 think it was intended in that way.

16 COMMISSIONER KENNEY: And that -- that goes to
17 Commissioner Gunn's point. If -- if we -- 386, I think --
18 and I think you're agreeing with this -- it's remedial in
19 that if something does erroneously get in, 36 is -- acts
20 as a limiting instruction, so to speak, and deems it
21 harmless error.

22 MR. BOUDREAU: Well, I guess it's a somewhat
23 circular thing. I think that if something gets in, what
24 we had is the issue in this case squarely presented. So
25 to -- to say that -- to say that, Well, we're just going

1 to -- we're going to set all these technical evidentiary
2 objections aside and just let it in and we'll use this to
3 kind of fix the decision we made, I don't think that's
4 what -- how the statute was intended.

5 I think the statute was intended for a more
6 limited purpose. Like I said, remedial and not
7 necessarily lended itself in terms of admitted testimony.
8 That's -- that's my view, for what it's worth.

9 COMMISSIONER GUNN: I have a couple more when we
10 break.

11 JUDGE PRIDGIN: Anything before we break to
12 agenda?

13 COMMISSIONER JARRETT: Just one quick question,
14 If you -- if you read that that it is totally remedial and
15 everything we would do is harmless error, that would mean
16 the appeals court would never reverse us.

17 MR. BOUDREAU: I think the problem is that if
18 you say that it's the catch-all for everything, then there
19 really aren't any rules of evidence. I mean, they're just
20 kind of more suggestions or, you know --

21 COMMISSIONER JARRETT: We could let anything we
22 want in, and the Appeals Court would just say, Well, we
23 can't do anything about it because --

24 MR. BOUDREAU: That's my concern with that
25 interpretation of that statute.

1 COMMISSIONER JARRETT: Nothing further.

2 COMMISSIONER KENNEY: And just to be clear, I'm
3 not providing my interpretation. I'm asking for your
4 all's interpretation. So I'm assuming that when we come
5 back, Mr. Berlin and Mr. Poston will address that if they
6 so desire.

7 JUDGE PRIDGIN: All right. Thank you. Anything
8 further before we go into recess for agenda? All right.
9 We'll go off the record. Let's try to resume -- I'm just
10 guessing agenda will last till roughly 10:30.

11 If the Commissioners are still in agenda, we
12 will need to wait until they're done. But as of now,
13 let's plan to go back on the record roughly 10:30. Is
14 there anything further from counsel? All right. Thank
15 you. We are in recess.

16 (Break in proceedings.)

17 JUDGE PRIDGIN: Good morning. We're back on the
18 record. We left off, I believe, Commissioner Kenney had
19 asked some questions, and he should rejoin us shortly.
20 And I think Commissioner Gunn has some questions before I
21 turn it over to him.

22 Let me ask if any party wishes any access to the
23 customer cards. They're -- they're back here on a cart,
24 and Commissioner Jarrett had brought those down here.
25 And, obviously, you're welcome to look at them or use

1 them. But if nobody has any intention of using them, we
2 can lock those back up. So anybody plan on looking at
3 those or using those today?

4 MR. BOUDREAU: I don't -- I don't think so.

5 JUDGE PRIDGIN: No? Hearing nothing. Okay.
6 All right. Thank you. We'll get those secured. And I'm
7 sorry. Commissioner Gunn, did you have some questions for
8 counsel?

9 COMMISSIONER GUNN: I do. I do. First of all,
10 let me thank everybody for coming here today. And I
11 appreciate it. And I think while members of the
12 Commission might disagree, I thinks it's an interesting
13 legal point.

14 And I -- we've had a couple hearings lately, not
15 just in this case, but in other cases where we've had an
16 opportunity to kind of discuss some of these legal issues
17 that surround this. And I think it's very interesting and
18 there's been some insight. Instead of just doing kind of
19 the things we've always done or not always done, I think
20 we're delving a little bit deeper into what some of these
21 things mean. And -- and I think maybe we're pointing out
22 some places where statutes aren't very clear and maybe we
23 need to -- maybe we need to clear them up and we're
24 delving into this. So I appreciate everybody -- everybody
25 coming here.

1 I want to go back to Mr. Boudreau for a second
2 because I think you brought up an interesting point. When
3 Commissioner Kenney asked you about admissibility versus
4 weight and sufficiency and you said that basically that if
5 it's admitted into evidence, it's competent. And -- or at
6 least that's the assumption of the -- of the body, of the
7 decision-makers.

8 And then, therefore, that's -- that's the
9 threshold that you have to have -- to get. I have a
10 couple questions based on that. So if -- if it crosses
11 that threshold and it is -- and it is admitted into
12 evidence, then are you saying that some weight must then
13 be given to it, or among the gradation of weight that
14 could be given to it, could be zero?

15 MR. BOUDREAU: I -- I think my -- my view of
16 that is -- is you've correctly characterized it is that if
17 they're admitted into the record, presumably, the body
18 that's admitted it that has made a decision that it was
19 competent testimony.

20 That being the case, at that point, I think you
21 do get into the discussion about what, if any, weight can
22 be given to it. And, frankly, I think it can be given --
23 at that point, the various Commissioners in this case can
24 give them whatever weight that they think they are due.
25 And that might be nothing, and it could be very high

1 depending on the Commissioners.

2 As you said at one point -- and at some point,
3 an opinion issues, and it's the opinion the Commission has
4 as a body.

5 COMMISSIONER GUNN: Right.

6 MR. BOUDREAU: And it may be an amalgamation of
7 the different views of the individual -- the individual
8 Commissioners have.

9 COMMISSIONER GUNN: Right. But -- but just the
10 fact that it's admitting doesn't make a presumption that
11 any weight will be given to it. We can still disregard
12 that as either just not important or -- or --

13 MR. BOUDREAU: I want --

14 COMMISSIONER GUNN: I hate to use the term
15 irrelevant because I may have already -- we may have
16 already made a determination that it's relevant.

17 MR. BOUDREAU: I would say that, you know, once
18 the Commission has made the determination that it should
19 be admitted into the record, then I -- I think the
20 Commission can give that evidence whatever weight it -- it
21 thinks that it deserves.

22 COMMISSIONER GUNN: Okay. And can -- can -- can
23 evidence that was -- and this is going to be kind of a
24 strange scenario, but bear with me. Can evidence that was
25 admitted then -- the -- the competence of that evidence be

1 in a way withdrawn? Let me give you an example. And it's
2 kind of a strange example. But let's say that Staff puts
3 on a -- puts on a witness. They enter testimony. No one
4 decide to cross -- cross-examine that witness.

5 And then the record closes. And then we read in
6 the front page of the newspaper the next day that the
7 person has been carted off and is clinically insane. And
8 I know it's kind of funny. But now we have kind of an
9 outside the record indication that maybe nothing that they
10 said has -- has any -- any -- any weight and may be, in
11 fact -- he was not competent when he made it.

12 I'm using competence to kind of -- to give an
13 extreme example, but I'm trying to -- I'm trying to get to
14 the point about whether -- whether evidence necessarily
15 stays competent if -- if it is later determined not to be.

16 And let me give you -- let me give you another
17 example. Let's say a 500-page exhibit is introduced at
18 the hearing, and only one page is referenced, and the
19 Commissioners don't have an opportunity to read all 500
20 pages. But no one has an objection to it being admitted
21 because that one page seems logical and reasonable at the
22 time.

23 But then if you read the entire 500 pages, you
24 come to realize that it's -- it's either wholly irrelevant
25 or it's not really saying what -- what it was purportedly

1 saying or there's some other indications in the rest of
2 the document that make that one page really -- really not.
3 I mean, does that -- does that go to your point about --
4 about it not being competent evidence, or does it go back
5 to the point that the Commission then will still be under
6 the assumption that it's competent evidence but just will
7 give it no -- no weight?

8 MR. BOUDREAU: It's -- both good questions. I
9 think -- and I've dealt with this issue in terms of there
10 have been times with exhibits that the parties just wanted
11 one page and -- and -- you I've been on both side of these
12 things where I've said I want the whole document in there
13 to give that one page context or vice versa.

14 Just depends on the document, depends on the
15 issue of the day. I -- think that once -- once a document
16 is -- is, you know, admitted into the record without
17 objection presumably in this case, you know, that somebody
18 says I want this document in the records so that we can --
19 so I can refer to this page. Once the entire document is
20 in there, I don't think there's anything to prevent any
21 party from referring to any other page in the document for
22 any purpose.

23 And then I think it's still a question of
24 weight. If there's some question to be given to it to say
25 that, Well, if you look back here in the last chapter, it

1 really throws everything that's referenced here on the --
2 on the page of interest into question. I think that's
3 just an argument a party makes at that point is that, you
4 know, Party X wants to -- wants you to draw this
5 conclusion about this page, but that conclusion isn't
6 valid because if you look at all the qualifiers and
7 footnotes back here --

8 COMMISSIONER GUNN: So it goes weight and
9 sufficiency, not necessarily competence?

10 MR. BOUDREAU: That's the -- that's kind of the
11 way I've always viewed it in terms of practitioners.

12 COMMISSIONER GUNN: What if all the parties
13 agreed that, You know what? We should -- we shouldn't
14 consider this. It was a mistake to -- even the offering
15 party says, you know, it was a mistake for us to do it.
16 It really -- you know, under an obligation that -- that a
17 lawyer might have in front of the Tribunal to say, You
18 know what? The evidence that we presented is -- is not
19 really relevant to the proceeding. Would that -- would
20 that still go to weight, or would -- or would -- and I'm
21 not -- I'm curious about this because it's --

22 MR. BOUDREAU: It's a good question. That's why
23 I'm pausing. Because you -- if -- you have offered me a
24 good question, and I'm just trying to think through from a
25 practitioner's standpoint my view of the topic.

1 COMMISSIONER JARRETT: Commissioner, could I
2 just interject? I'm sorry.

3 COMMISSIONER GUNN: Sure. No. No problem.

4 COMMISSIONER JARRETT: And I'll pose this to
5 Mr. Boudreau. I mean, if -- if you had offered a piece of
6 evidence that you later find out is incompetent or should
7 not have been admitted, would it be your duty to come to
8 the -- come to the Commission and withdraw that exhibit or
9 file a motion to withdraw it?

10 Or if you as -- if somebody else had offered a
11 piece of evidence that later, for example, the -- the
12 example he gave of the person was carted away and they're
13 certifiably insane, wouldn't it be upon to you file a
14 motion to strike that piece of evidence and let the -- let
15 the Tribunal know that this is no longer competent
16 evidence because --

17 MR. BOUDREAU: I think it depends procedurally
18 on how the topic comes up. And I'm trying to think of a
19 circumstance where I've dealt with that about. I think,
20 as a practical matter, if -- if something comes to my
21 attention that I think -- that I offered in good faith
22 that -- that, you know, on further reflection or further
23 information doesn't -- doesn't necessarily lend to the
24 conclusion that I originally offered it for, I do one of
25 two things.

1 I either say that typically in a brief or a
2 pleading, or I just don't rely on it in terms of making
3 arguments. I don't go back to it to say, This proves this
4 particular point. I'm not sure that I've ever come across
5 a circumstance where I've -- where I've offered to
6 withdraw an exhibit from the record.

7 I think it gets you to the same -- the same
8 effective place is that I'm no longer suggesting that this
9 has any particular value for the point that I'm trying to
10 make. And I'm either silent on the point because I don't
11 say, you know, Look at Exhibit 105. You know, I don't
12 point to Exhibit 105 or -- or if you have to for some
13 other reason, I'm -- you know, my practice it to try and
14 be as frank and forthright with any tribunal in front of
15 which I'm trying the case.

16 COMMISSIONER KENNEY: And to that point, it begs
17 the question, one, if that's a perjured piece of testimony
18 or some other piece of false piece of evidence, it's not
19 your job to be an advocate for the opposing side.

20 MR. BOUDREAU: Well, I think that's right. I'm
21 not -- I'm not supposed to take advantage of a
22 circumstance. If I -- I've never come across a
23 circumstance where I've offered what I found out later to
24 be perjured testimony. If I had, I would certainly bring
25 that to the attention of any Tribunal, be it a judge or

1 Commissioner.

2 I can't say that I've had that experience. But
3 I think that would be my obligation as an attorney to say
4 that, you know, this witness testified to X, and I found
5 out, you know, much to my chagrin later on that it may
6 have been perjured testimony.

7 COMMISSIONER KENNEY: But if it's just merely
8 incompetence or you find out later or whatever reason,
9 it's not your obligation to --

10 MR. BOUDREAU: Or another party, for instance,
11 comes up with enough information to show that this
12 document that I thought stood strongly for Proposition X,
13 maybe there's something I wasn't aware of. Maybe there's
14 some context that I didn't appreciate at the time, that
15 will cause me, you know, for purposes of advocating my
16 case to either not refer to it or to admit that, you know,
17 that we pointed to this.

18 But it -- it doesn't stand as strongly for that
19 proposition or it doesn't support the proposition. So I
20 -- I don't know that I'm -- other than perjured testimony,
21 and that's a circumstance I haven't run into, I haven't --
22 I can't think of a circumstance where I've gone in and
23 said, I'd like to withdraw this exhibit.

24 COMMISSIONER KENNEY: So regardless --
25 regardless of that -- and I think that -- I understand

1 your point. And I -- and I think that's -- that's a good
2 answer to the -- to the question.

3 There are at least two points in the procedural
4 process in which the Commission can disregard or give very
5 little weight to evidence. The first is preadmission.
6 But then there's the -- that opportunity post-admission as
7 well.

8 So admission, while it is a threshold in order
9 to get through, and we may disagree as to whether or not
10 that threshold has been met, everyone would agree that
11 it's -- I don't -- I wouldn't want to call it a cure, but
12 the mere admissibility of -- of something, there is the
13 opportunity for the Commission to then disregard that post
14 admission?

15 MR. BOUDREAU: I think -- I think so. I think
16 so.

17 JUDGE PRIDGIN: Would all the other parties
18 agree with that?

19 MR. POSTON: Yes.

20 MR. BERLIN: Yeah.

21 COMMISSIONER KENNEY: Whether we should or not
22 is another story. But that's a legally viable position to
23 take?

24 MR. BOUDREAU: And I think that comes back to
25 something I was touching off Commissioner Kenney because

1 he was asking about the meaning of that statute. And as
2 we all know, as lawyers, the arguments about hearsay in
3 the abstract can be very finally parsed, and there can be
4 differences of opinion about what constitutes hearsay and
5 what doesn't whether an exception gets it in or it
6 doesn't.

7 And at some point, the Administrative Law Judge
8 or the Commission itself needs to just make a decision.
9 This stuff is either coming in or it's not coming in. And
10 I think -- I think the statute that -- that Commissioner
11 Kenney was referring to is designed probably to deal -- I
12 would suggest to deal with the circumstance where the
13 Commission makes a ruling, you know, a tough call, makes a
14 rule and a reviewing court looks at it and says, Well,
15 they were wrong, but, you know, you have this cure, you
16 know.

17 And I think that's the distinction. That's what
18 I mean by remedial, you know, that you deal with -- you
19 have to deal with a topic. Not every ruling is going to
20 be spot on. And I think that gives some flexibility for a
21 reviewing board to say, Well -- you know, to use the legal
22 term, not a big deal.

23 You know, we've got -- you know, we've got some
24 statute that gives them a little bit of leeway to make a
25 mistake on a ruling. That's different, I think, than when

1 you deal with the issue squarely. I mean, as -- you know,
2 kind of like what we've had in this circumstance where the
3 arguments were made and it's being used basically as the
4 basis for the ruling itself. That's where I have a
5 problem.

6 COMMISSIONER KENNEY: The way basically --

7 MR. BOUDREAU: As I understand the order, the
8 order that came out that dealt with the comment cards
9 said, We can allow this in because the statute allows us
10 to see.

11 COMMISSIONER KENNEY: I got you. I understand
12 what you're saying.

13 MR. BOUDREAU: I don't think that's an
14 appropriate -- I don't think that's a correct reading of
15 the statute.

16 COMMISSIONER KENNEY: I understand. So I had a
17 question here, and I just -- I forgot. But I'll move on
18 and ask you a couple things. One is do you agree that
19 state of mind exception is a valid exception to the
20 hearsay rule?

21 MR. BOUDREAU: As an abstract matter? Yes.

22 COMMISSIONER KENNEY: As an abstract matters,
23 yes. Not In this case, but as a general.

24 MR. BOUDREAU: I understand that to be an
25 exception to the hearsay rule, yes.

1 COMMISSIONER KENNEY: Do you believe that -- let
2 me go back. I had a question here, and it was a really --
3 it was actually a good question, and I can't think of it.
4 I'll let someone else go, but I'll come back because I
5 know I'll think of this as soon as I --

6 MR. POSTON: Could I provide one more response
7 briefly to something that Mr. Boudreau said?

8 COMMISSIONER GUNN: Sure.

9 MR. POSTON: I don't necessarily agree that when
10 something is admitted into the record that that is a
11 finding of competence, that that's competent evidence.
12 It's definitely not a decision that's being made by the
13 Commission.

14 Generally, it's something that the Judge allows,
15 you know, gives the parties time to object. But I think
16 where the evidence is competent and substantial, that's
17 something that's determined by the Commission when they
18 weigh the evidence of the case. So I don't think that's
19 necessarily -- by admitting it the Commission is saying
20 that that is competent evidence.

21 COMMISSIONER JARRETT: I do have a question.

22 JUDGE PRIDGIN: Commissioner Jarrett.

23 COMMISSIONER JARRETT: And, Commissioner Gunn, I
24 -- just go to your thought about not remembering the
25 question, I'm brilliant in the shower in the morning.

1 When I come here, I can't remember anything.

2 COMMISSIONER GUNN: Right.

3 COMMISSIONER JARRETT: But anyway, I guess the
4 way -- he was against admitting these into evidence, and I
5 wrote a dissent on that. I guess -- and I understand that
6 when evidence is admitted, we can give it whatever weight
7 we deem appropriate.

8 My concern is that if we don't say anything in
9 the order, then a reviewing court isn't going to really
10 know what we relied on necessarily. And if it shouldn't
11 be in there, we could get reversed.

12 My other concern is that we've sort of made a
13 big deal about these cards being admitted into evidence.
14 And one of the reasons why some argued that they should be
15 admitted into evidence is because we have to listen to the
16 people and we don't want people to think that we don't
17 hear them.

18 Well, if we put in our order that, Yeah, we
19 admitted these cards, but we give them no weight, we're
20 basically then telling the people that we didn't listen to
21 them. But if we don't do that and we've relied on the
22 cards, then, in my opinion, we've made reversible error.

23 So it's a conundrum. Do you mention it or not
24 in the order? And if you -- if you say that, yeah, we
25 took -- we let these cards in, but we don't give them any

1 weight, then you're telling the people that, yeah, we
2 really didn't listen to you.

3 So that's kind of -- I don't know if I -- I
4 don't know if I'm asking for any comments on that or not,
5 but that's just sort of my -- my thinking. I mean, I'm in
6 a real conundrum on -- on that and how to deal with these
7 now that they are in evidence.

8 COMMISSIONER GUNN: I -- I remembered what my
9 question and comment was going to be, and it kind of goes
10 to -- to Commissioner Jarrett's point. And I think that
11 -- I think that there's a lot -- there might be a lot of
12 fluff that goes in an order.

13 But at the end of the day, you -- so you may
14 have extra stuff. You may have irrelevant stuff. But as
15 long as the core decision is supported by competent and
16 substantial evidence from the record, I think -- I think
17 you're going to be fine.

18 But -- but I want to go back to 483 -- 386.410
19 for a second. And I want to -- I want to -- I don't
20 disagree that Section 2 is -- could be read as remedial.
21 But I want to go back to Section 1. Section 1 talks about
22 how we're not bound by the technical -- technical rules of
23 evidence.

24 And I understand there's a difference between
25 formality and technicalities and all these things. But

1 from a policy standpoint, isn't one of the ways that we're
2 different from a court is that, in a court, the philosophy
3 is we have a very narrowly -- we have very narrow issues
4 here. And so the philosophy is, we keep everything out
5 except what is immediately relevant to -- to what the
6 issue is because there are a lot of dangers that are --
7 that go on with that.

8 Isn't the informality of these proceedings --
9 flip that a little bit? Isn't -- aren't these statutes
10 policy standpoints to say, We want Commissioners to make
11 informed decisions? And we don't want to tie the hands of
12 the Commissioners from -- in making decisions based on the
13 best information that they have possible?

14 So the idea is -- or at least from policy
15 standpoint, they're looser on what information we get in
16 as long as the report and order that comes out of that is
17 based on the competent and substantial evidence that's --
18 that's in the record?

19 I mean, that's -- that's kind of the way I -- I
20 look at -- at this, that what's -- what comes in is less
21 important than what goes out because that report and order
22 has to be based on something other than -- I don't think
23 anybody would disagree that if we wrote a report and order
24 that was based solely on -- we had a -- you know, we said,
25 Okay, 90 percent of these cards said we should be against

1 a rate increase and 10 percent say we should be for it.
2 That 90 percent wins. We write an order that says the
3 customer has decided they didn't want a rate increase, so
4 we're not going to give it to them. I think -- I think
5 everybody would agree -- maybe not -- maybe not everybody,
6 but I think everybody would agree that that would not --
7 that would not be a valid order. That would be not based
8 on competent and substantial evidence in the record if
9 that was the sole reason for our -- for our rate increase.
10 Does anybody disagree with that?

11 MR. BOUDREAU: So, I mean -- so I understand the
12 question, what you're saying is that if the sole basis for
13 the rate increase is what is -- is what customers say
14 about it --

15 COMMISSIONER GUNN: In this particular case, if
16 we wrote a report and order that said, We are denying
17 everything that MGE wants because 90 percent of the
18 customer cards said they didn't want it and only 10
19 percent said it was okay, so that -- that makes up our
20 mind. And that -- we wrote that in a two-page -- two-page
21 order and sent it out.

22 That would be an invalid -- I mean, I think that
23 would be reversed as quicker than any order that we've
24 ever put out.

25 MR. BOUDREAU: Yeah. I think it would be

1 defective on a number of grounds.

2 COMMISSIONER GUNN: On a whole different number
3 of grounds. So the order on its face has to -- has to
4 rely upon -- and so that's -- and people can respond to
5 this or not. But I think here that the -- what comes out
6 -- the report and order, the -- things that we rely on the
7 things that we cite to in the record, the things that we
8 discuss or talk about, that's the important document to
9 determine by anyone, both in terms of trying to comply
10 with that report and order from the company, from a
11 reviewing court, from anybody deciding that they want to
12 appeal the order or not appeal the order.

13 That's -- that's the keystone in which
14 everything -- everything paces. So the -- what -- and
15 that report and order, hopefully, narrows down a lot
16 because we're -- we're entitled to disregard all kinds of
17 testimony.

18 I mean, if we -- if we think that an expert just
19 doesn't -- just doesn't get it, we can -- we can -- we can
20 kick that out. So I guess that's -- and people can
21 respond to that or not. But I think that there is a --
22 that's the key difference and that's part of the reason
23 why the statute says, You guys can kind of make up your
24 own procedures here because -- and we're not holding you
25 to what a -- what a courtroom -- what a regular judicial

1 branch courtroom acts like because you're -- you're
2 different. You're -- you know, you're -- and there may be
3 different philosophies ,so I don't know if people want to
4 respond to that.

5 But that -- that would be my only kind of policy
6 decision point in all of this. So --

7 MR. BOUDREAU: I'm not sure I necessarily
8 disagree. I mean, I think there's a recognition on the
9 part of the courts that -- that the agency procedures are
10 a little bit looser, you know, because of the subject
11 matter they deal with and the informalities of how the
12 case is dealt with.

13 And you mentioned the technical versus the
14 non-technical. I will say, however, you know, that
15 technical rules of evidence could go to rules of
16 admissibility of the test -- the -- the reference to the
17 statute says the Commission won't be bound by technical
18 rules of evidence.

19 Ruling on admissibility talking about, you know,
20 the admissibility of testimonial evidence is not a
21 technical rule of evidence. It's a fundamental rule of
22 evidence.

23 And, in fact, the rules -- there are rules of
24 evidence that govern proceedings before any state agency,
25 Missouri Administrative Procedure Act. They are, I think,

1 in recognition that agencies have a little bit broader
2 discretion on the subject matter, broader responsibilities
3 on the subject matter. I think those rules are looser
4 than, you know -- as they're written are looser than the
5 rules evidence that govern proceedings of courts.

6 So I think that's contemplated, and I think
7 that's part of the reason why there is the -- the language
8 of -- of the medial rulings. I think that's why that's
9 there is to recognize that we're in a somewhat different
10 -- somewhat different arena in -- in trying cases before
11 Commissioners, some of whom in the past, by the way,
12 haven't been lawyers. It's more typical now for the
13 Commissioners to be lawyers.

14 COMMISSIONER GUNN: Right. Right.

15 MR. BOUDREAU: It wasn't that long ago when you
16 had, you know, a lot of accountants, people with other
17 disciplines. That's, I think, one of the values of having
18 the administrative law judge. You've got somebody who can
19 deal with the gatekeeper for the record.

20 So I don't think I disagree with what you're
21 saying. I think there's a recognition that the -- that
22 the -- the way that the record's handled, the procedures
23 for dealing with evidence are looser, more relaxed, a
24 little bit more forgiving than they would be in a court of
25 law. But there are -- I mean, I guess the --

1 COMMISSIONER GUNN: There are rules. There are
2 thresholds.

3 MR. BOUDREAU: Yeah. There are rules.

4 COMMISSIONER GUNN: And I don't disagree with
5 that, so -- so --

6 MR. BERLIN: Commissioner Gunn, I'd like to make
7 a comment. And this may go to Commissioner Kenney's
8 question as well. And I'd like to point you to a case.
9 And that is --

10 COMMISSIONER GUNN: Always dangerous, Bob.

11 MR. BERLIN: And that's an AT&T case versus
12 Public Commission. It's cited as 701 Southwest Second
13 745. And on page 755 of that case, the Western District
14 says, and I quote, "The Commission, however, because of
15 its unique nature does not have to apply the technical
16 rules of evidence with the same force and vigor as in an
17 action brought in a court of law." So that's a case that
18 I think bears on this matter. And --

19 COMMISSIONER GUNN: And I don't think
20 Mr. Boudreau was disagreeing with that. He was just
21 saying that there is a -- there is a floor to -- to that
22 -- to that decision, that we don't disregard all of the
23 rules of evidence because there are some that are so
24 fundamental to due process and fair hearing that you can't
25 -- that they're not -- that they rise above technical.

1 And I don't mean to mischaracterize Mr.
2 Boudreau's comment but I think that's where he was going.

3 MR. BERLIN: And then I'd like to just point to
4 one other case or maybe two. But there was a case that
5 I'll cite as 221 Southwest Second 206. And this is
6 DeWeiss versus Morris, Director of Revenue.

7 And that -- that case addresses hearsay evidence
8 and conclusions based upon hearsay that do not qualify as
9 competent and substantial evidence upon the whole record
10 essentially to validity of a final decision finding rule
11 of order of an administrative officer or body.

12 It also states that the fact that technical
13 rules of evidence do not control has been considered to
14 permit leading questions and other informalities, but not
15 to abrogate the fundamental rules of evidence. And that's
16 what that case stands for.

17 And then there's just one other case I'll point
18 the Commission to. And that is another Western District
19 case, and that is cited at 685 Southwest Second 216.
20 And that is a DeMarco Sales case versus Public Service
21 Commission and Laclede Gas. And that deals with testimony
22 of an employee that relied upon hearsay. That may be
23 helpful.

24 COMMISSIONER GUNN: Okay. I don't have any
25 questions. But, again, I want to reiterate, I want to

1 thank everybody for the discussion today. I look forward
2 to hearing MGE's witnesses. But it's -- it's good for us
3 to have these kind discussions about -- about what these
4 statute mean, what the standards are, so as going forward,
5 both this Commission and future Commissions have an idea
6 about -- about where we should be and what's going on. So
7 I appreciate everybody's -- everybody's indulgence. And I
8 have nothing further, Judge.

9 JUDGE PRIDGIN: Commissioner Gunn, thank you.
10 And if I recall correctly, as we went off the record,
11 Commissioner Kenney had posed some questions and had
12 expressed an interest for counsel to answer those
13 questions when we returned from agenda.

14 And so if I recall correctly, Commissioner
15 Kenney had asked some questions and given counsel some
16 time. And I don't know if you wanted to re-ask those or
17 if counsel recalled what the questions were.

18 COMMISSIONER KENNEY: Well, I think to some
19 degree that my question -- well, at least the question
20 with respect to the applicability of the technical rules
21 of evidence in Section 386.410, that's been answered. My
22 other question was --

23 MR. POSTON: It was admissibility versus
24 competent and substantial.

25 COMMISSIONER KENNEY: Thank you. So if anybody

1 wants to opine, that's fine. I don't know that it's
2 necessary at this point. I mean, I think somewhere in all
3 of the question discussion, both of my questions have
4 probably been sufficiently answered.

5 JUDGE PRIDGIN: Okay. Is there any further
6 comment to Commissioner Kenney's questions? All right.
7 Is there anything further from the Bench before we see if
8 counsel have witnesses they'd like to put on? All right.
9 Mr. Boudreau, I think you expressed an interest in putting
10 on witnesses?

11 MR. BOUDREAU: Yes. I have two individuals that
12 I'd like to ask to take the stand. One of whom is Pam
13 Levetzow. She's MGE's Director of Customer and Government
14 Relations. And the other is Michael Noack, who is the
15 Director of Pricing and Regulatory Affairs. And I'd like
16 to ask them to take the stand in that order.

17 JUDGE PRIDGIN: Okay.

18 MR. BOUDREAU: I'd also, if I might, just have a
19 short opportunity to address the Commission about the
20 issue of the comment cards in the nature of opening
21 remarks if that would be acceptable?

22 JUDGE PRIDGIN: Certainly.

23 MR. BOUDREAU: May it please the Commission.

24 JUDGE PRIDGIN: Mr. Boudreau.

25 MR. BOUDREAU: Keeping in mind Commissioner

1 Jarrett's observation, that it is indeed Christ -- the eve
2 of Christmas Eve, I'll try and keep this short in terms of
3 both my comments and in terms of my presentation of
4 witness testimony. But I would like to -- to make some
5 opening remarks.

6 OPENING STATEMENT

7 BY MR. BOUDREAU:

8 MR. BOUDREAU: And with that, I want to say that
9 we're here today as -- as a continuation of the hearing in
10 this case, primarily to address Exhibit 106, which is the
11 exhibit number that's been assigned to the customer
12 comment cards that have been admitted into the record
13 pursuant to an order issued by the Commission on December
14 2nd, 2009.

15 According to that order scheduling this hearing,
16 the stated purpose -- or one of the stated purposes, in
17 any case, is to allow parties to comment upon and present
18 witnesses regarding Exhibit 106.

19 Now, as the Commission is -- is well aware, MGE
20 has objected to making the comment cards part of the
21 record in this case on the grounds that important
22 procedural protections provided in the Missouri
23 Administrative Procedure Act have not been followed and
24 that no adequate foundation for them has been laid and
25 that they represent unsworn and inadmissible hearsay

1 testimony.

2 I'm not going to belabor the point, we've talked
3 about that quite a bit, you know, in the pleadings and in
4 the exchanges with the Commission. But in any event, the
5 Commission has ruled on this objection, and we're here to
6 address certain questions raised by -- by those comment
7 cards.

8 MGE does not -- well, I think with regard to
9 that, we'd like to address the comment cards today. But I
10 would like the Commission to understand that this doesn't
11 constitute a waiver of our objections and that the
12 objections still stand and our -- hopefully, they will be
13 recognized as standing objections.

14 But with that, I would like to proceed. MGE
15 does not believe that giving consideration to the comment
16 cards is a good way to set regulatory policy. There's no
17 way to test the voracity or accuracy of what's written on
18 them, and, consequently, no way to make a meaningful
19 assessment of them.

20 This view is consistent with the company's legal
21 objections to date. Additionally, the blank cards tend to
22 invite negative comments as opposed to expressions of
23 contentment from satisfied customers.

24 Now, this is not to say that the company ignores
25 customers' comments. It -- it does not, however, view

1 them as -- as reliable basis for making business or
2 operational decisions necessarily.

3 Nevertheless, the cards have been admitted into
4 the record by the Commission, and the company has
5 undertaken to review them to see if any general
6 conclusions can be drawn from the comments that have been
7 made.

8 Today's hearing will address one of MGE's stated
9 concerns by providing it an opportunity to present
10 evidence in the form of witness testimony as rebuttal
11 concerning those comment cards. So thank you for this
12 opportunity, and I just want to acknowledge that.

13 MGE is pleased to have the opportunity today,
14 but in doing so, as stated, doesn't waive its previously
15 stated objections. We simply just can't stand mute, you
16 know, given the ruling that the Commission's already made.

17 MGE's concerns all along have been about the way
18 the comment cards are being used and characterized. We're
19 concerned about the desire to use the comment cards as a
20 measure of customer satisfaction with MGE's bills and, in
21 particular, as a measure of customer satisfaction or
22 sentiment about straight fixed variable rates.
23 Specifically, we don't believe that they're a reliable
24 source for such information.

25 The comment card mechanism does not represent a

1 random sample of MGE's customers. And by that, I mean the
2 12,000 cards are not representative of -- of all the
3 customers served by MGE. They're what -- what is
4 considered in statistical parlance as a self-selected
5 sample in that the people in the group have chosen to be
6 in the group as opposed to a group that has been chosen by
7 some recognized disinterested sampling method.

8 And anybody who remembers anything about their
9 introductory college statistics course should recognize
10 that this doesn't represent a valid statistical sample.

11 Also, it's not a survey, frankly, in any
12 meaningful sense of the term. This can be shown by simply
13 asking yourselves what is the card surveying? And I would
14 suggest that just inviting people to -- to tell us what's
15 on your mind is not a meaningful survey of any topic at
16 issue.

17 The comments that one receives from such a
18 solicitation are likely to be, and, in fact, are, all over
19 the place. The comment cards are not a reliable indicator
20 of customer satisfaction. Customers expect to be
21 satisfied with the service that they receive and the price
22 they pay for it.

23 Having your expectations met is not something
24 that most people write about. The bottom line is that an
25 open-ended comment card of the type used in this case does

1 not lend itself -- or lends itself primarily to negative
2 feedback.

3 MGE is also concerned that someone will say that
4 the 12,000 comment cards evidence some unprecedented level
5 of customer concern about the straight fixed variable rate
6 design. And there's no basis for reaching this
7 conclusion.

8 The 12,000 number, as I stated before, is
9 essentially meaningless in that this was the first time a
10 customer notice of this sort was ordered to be sent out
11 with the customer -- or ordered to be sent out with the --
12 with a customer comment card cut-off.

13 There's no historical context in which to
14 measure the magnitude of the response. And the question
15 that needs to be asked is was it uncharacteristically
16 large?

17 I mean, who is to know? We have no experience
18 from which to derive an answer. Any reliance on this
19 number as one having independent significance is pure
20 conjecture.

21 It is being suggested that the cards represent a
22 plebiscite to accept or reject straight fixed variable
23 rate design. And the problem with this contention is the
24 comment card form did not identify rate design as a topic
25 to be addressed in the response.

1 And additionally, neither -- as far as I
2 understand from the record today, neither Public Counsel
3 nor the Staff's Consumer Services Department did an
4 analysis to determine what proportion for the cards, if
5 any, addressed the topic of rate design, and,
6 specifically, straight fixed variable rate design.

7 Now, the fact that MGE objected to the admission
8 of the comment cards does not mean that it's paid no
9 attention to them. From the perspective of running a
10 responsive customer service driven enterprise, it makes no
11 sense to marginalize customer input.

12 And the fact of the matter is that individuals
13 at the company have been reviewing those comment cards
14 well before the issue of their evidentiary value became an
15 issue in this case.

16 You know, against this background, MGE has
17 reviewed all of the comment cards to determine how many of
18 them can fairly be said to address the issue of rate
19 design and, specifically, straight fixed variable rate
20 design.

21 Even from the small group of customers who chose
22 to respond, it's not a significant issue. The testimony
23 you will hear today will further support the company's
24 contention all along that the transition to a straight
25 fixed variable rate design has essentially been a

1 non-event for a large majority of the company's customers.

2 Only a small number of those sending in the
3 comment cards squarely addressed the topic. And the
4 number of customers expressing a concern about straight
5 fixed variable rates is a mere fraction of percent of
6 MGE's residential customer class.

7 Importantly, a significant percentage of that
8 group are actually better off under straight fixed
9 variable rate design than they would be under a volume
10 metric based rate design as advocated by Public Counsel.

11 The bottom line here is that there's no basis in
12 this record, even taking the comment cards into
13 consideration, for the Commission to conclude that the
14 fixed monthly charge under the current rate design taken
15 together with the commodity charge, or the PGA, is a
16 source of widespread customer discontent.

17 The company will offer today the testimony of
18 Pamela Levetzow, MGE's Director of Customer and Government
19 Relations, an individual with 26 years of experience in
20 the utility business.

21 And she will tell the Commission the process
22 followed by MGE to review all of the comment cards that
23 were posted as of December 9th. She will tell you about
24 the criteria the company used to determine which of the
25 comment cards addressed rate design. And a number of

1 comment cards that, in fact, did so.

2 As Director of Customer and Government
3 Relations, Ms. Levetzow has responsibility for monitoring
4 customer complaints for MGE. And in that capacity, she
5 attended all but one of the local public hearings in this
6 case.

7 She has had hands-on experience working directly
8 with customers who have filed complaints with the
9 Commission since the year 2000. And as such, she can put
10 the nature of the customers responses the rate filing in
11 this case in proper context.

12 She, along with other MGE personnel personally
13 reviewed the comment cards. And she will be happy to
14 discuss those efforts with you today.

15 The company will also offer the testimony of
16 Michael Noack, Director of Pricing and Regulatory Affairs,
17 who further analyzed the comment cards to ascertain
18 generally which of the customers addressing straight fixed
19 variable rate design in their comment cards were actually
20 financially better off than they would have been under a
21 volume metric based rate design.

22 You will recall Russell Finegold did the same
23 thing in surrebuttal testimony with regard to those
24 customers that addressed the issue of rate design at the
25 local public hearings.

1 Mr. Noack is in a position to present his
2 analysis of a subset of customers who lodged objections to
3 the fixed monthly charge under straight fixed variable
4 rates. Again, this testimony should help the Commission
5 put this information in proper context in this case.

6 Not surprisingly, you will find Mr. Noack's
7 analysis is very much in line with many of the conclusions
8 you've already heard from previous witnesses in this case.
9 And with that, I'd like to call Pam Levetzow to the stand,
10 please.

11 JUDGE PRIDGIN: If you'd come forward to be
12 sworn, please. If you'll raise your right hand to be
13 sworn, please.

14 PAM LEVETZOW,
15 being first duly sworn to testify the truth, the whole
16 truth, and nothing but the truth, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BOUDREAU:

19 JUDGE PRIDGIN: Thank you very much. Please
20 have a seat. Mr. Boudreau, when you're ready, sir.

21 MR. BOUDREAU: Thank you.

22 Q (By Mr. Boudreau) Would you state your name for
23 the record, please?

24 A Yes. It's Pam Levetzow.

25 Q Would you spell your last name for the court

1 reporter, please?

2 A Yes. Its L-e-v, as in victory, e-t, as in Tom,
3 z, as in zebra, o-w.

4 Q And what is your business address, Ms. Levetzow?

5 A 3420 Broadway, Kansas City, Missouri, 64111.

6 Q By whom are you employed?

7 A Missouri Gas Energy.

8 Q And how long have you been employed with
9 Missouri Gas Energy?

10 A Since February of the year 2000.

11 Q And in what capacity have you been employed by
12 the company?

13 A Essentially, the same capacity that I'm in now,
14 which is the Director of Customer and Government
15 Relations.

16 Q Okay. Would you tell the Commission generally
17 your responsibilities as Director of Customer and
18 Government Relations?

19 A Sure. We wear a number of hats, not the least
20 of which are internal and external communications,
21 community relations.

22 We also are the group that handles the customer
23 complaints, which -- we also have the group that manages
24 all of our -- we call it our customer advisor program, and
25 they're the individuals that work with our low income,

1 elderly and disabled customers.

2 We are also responsible for marketing,
3 communication and education, legislative affairs as well
4 as our work group manages our energy efficiency program.

5 Q Do you have any responsibilities connected with
6 the LIHEAP program?

7 A Yes, I do through our customer advisors.

8 Q Okay. Can you tell the Commission your
9 educational background, please?

10 A Yes. I have a Bachelor's degree from Northwest
11 Missouri State in Personnel Management and Psychology.
12 And I have a Master's in Business Administration from
13 Baker.

14 Q Baker University?

15 A Baker University.

16 Q And can you give the Commission a background on
17 your professional -- a synopsis of your professional
18 background?

19 A Sure. The most recent 26 years has been in the
20 utility industry. I spent 17 years at Kansas City Power &
21 Light. At one point in my career, I was there in a
22 personnel capacity and later took a position that was
23 their first ever community affairs rep. They hadn't had
24 one of those before.

25 And I followed that with finishing off my career

1 there in media relations. I jointed MGE in February of
2 2000 and took a lot of those kinds of responsibilities
3 with me and began doing those at MGE, plus some other
4 duties.

5 Q Have you previously testified before the
6 Commission?

7 A No.

8 Q Okay. And I take it you're here to testify on
9 behalf of Missouri Gas Energy today; is that correct?

10 A I am.

11 Q Are you aware of notice that was sent out to
12 MGE's customers in August to advise them about the
13 company's rate increase request in this case?

14 A Yes, I am.

15 MR. BOUDREAU: I'd like to have an exhibit
16 marked, if I might.

17 JUDGE PRIDGIN: All right.

18 MR. BOUDREAU: I'm sure everybody's seen this
19 already. Here's some copies for the Commissioners. I
20 hope that's enough. Has that exhibit been given a
21 number?

22 JUDGE PRIDGIN: I am up to 116, and I don't know
23 if any other exhibits have been marked yet. Let me refer
24 to Madam Court Reporter.

25 MR. BERLIN: Judge, I had premarked Exhibit 116,

1 so I think that number is taken.

2 JUDGE PRIDGIN: Okay. Then this will be 117.

3 Thank you, Mr. Boudreau.

4 MR. BOUDREAU: Okay. 117.

5 Q (By Mr. Boudreau) Ms. Levetzow, I've just
6 handed you a document that's been marked for
7 identification as Exhibit 117. Do you recognize that
8 document?

9 A I do.

10 Q What is that document?

11 A This is the bill insert that we sent to all of
12 our customers in August of 2009 -- or 2008.

13 Q And how have you become familiar with this
14 document?

15 A One of the responsibilities of our work group is
16 to make sure that these are laid out and printed and
17 inserted our bills. That's one of our external
18 communications responsibilities.

19 Q Okay. And this, to your knowledge, is the
20 customer notice and -- the customer notice that was sent
21 out to MGE's customers in this case?

22 A Yes.

23 MR. BOUDREAU: With that, I'd offer Exhibit 117
24 into the record.

25 JUDGE PRIDGIN: 117 is offered. Any objections?

1 Hearing none, 117 is admitted.

2 (Exhibit No. 117 was offered and admitted into
3 evidence.)

4 Q (By Mr. Boudreau) Ms. Levetzow, I'd ask you if
5 you wouldn't mind describing the general features, the
6 principal features of the comment card.

7 A Sure. It's essentially an eight and a half by
8 11 sheet of paper, and it was designed to be a tri-fold.
9 And it has copy on one side in one of those columns that's
10 primarily information about how customers can attend local
11 public hearings, where they're located, the time, the
12 date, that kind of thing.

13 And it follows with a little bit of a
14 description about what a public hearing consists of. And
15 then there are three different ways they can also
16 communicate, either with the MPSC or OPC or Missouri Gas
17 Energy.

18 Q Okay.

19 A On the reverse side of that, the other panel
20 that's got a lot of copy on it is the part that references
21 specifically what MGE has filed for in terms of
22 \$32.4 million.

23 It tells customers when rates would be expected
24 to take effect. It gives some acronyms for different
25 customer classes and then proceeds to show the current and

1 proposed non-gas rates and the average monthly increase
2 that would be proposed for each of those customers.
3 And it also lets them know that there are different --
4 redefinition of classes of customers potentially.

5 And then there is a line hear that actually lets
6 them know where they can get any and all public
7 information available about the rate case.

8 The last thing it has, which is the bulk of the
9 paper, is essentially a comment card as it's labeled that
10 asked for the customer's particular information, name,
11 address, phone, city, e-mail, zip and whether or not
12 they're a current customer.

13 And then there's several widely spaced lines
14 that ask for comments. The back side, of course, is the
15 part that's designed to be the self-mailer that was
16 addressed to the attention of the Consumer Services
17 Department.

18 Q Thank you for that. You mentioned that -- the
19 information about the local public hearings. I want you
20 to -- this is a little bit out of order. Did you, in your
21 capacity with MGE, attend local public hearings in this
22 case?

23 A I did. all but one.

24 Q Okay. Now, you did -- did you have any
25 involvement in MGE's 2006 rate case?

1 A I did.

2 Q Would you describe the nature of your
3 involvement in that case?

4 A Sure. The -- this rate case, the 2006 rate case
5 and the rate case prior to that, the e-mails and phone
6 calls that went to MGE as listed on these kinds of inserts
7 actually come to me directly. So I -- I've been involved
8 in that piece of it as well as the layout and design of
9 the inserts that we've sent notifying customers of public
10 hearings.

11 Q Okay.

12 MR. BOUDREAU: Thank you. I'd like to mark
13 another exhibit now, if I could.

14 JUDGE PRIDGIN: All right. This will be 118.

15 Q (By Mr. Boudreau) Ms. Levetzow, you've been
16 handed -- and I apologize. I have limited copies of this
17 particular document, but I'll have Ms. Levetzow identify
18 it. You've been handed a document marked for
19 identification as Exhibit 118; is that correct?

20 A Yes.

21 Q Do you recognize that document?

22 A I do.

23 Q And how do you recognize that document?

24 A This is the insert that was labeled notice of
25 local public hearings that was sent to our customers, I

1 believe, in September of 2006.

2 Q Okay. So that's the customer notice that was
3 sent out for MGE or on --

4 A Correct.

5 Q -- by MGE in the 2006 rate case?

6 A Yes.

7 Q Okay. And how are you familiar with this?

8 A Again, my work group is responsible for making
9 sure these documents are laid out, printed and then
10 inserted correctly to our customers.

11 Q And you did so in the 2006 rate case with
12 respect to that document?

13 A I did.

14 Q Okay.

15 MR. BOUDREAU: With that, I'll offer Exhibit 118
16 into the record, please.

17 JUDGE PRIDGIN: 118 is offered. Any objections?
18 Hearing none, 118 is admitted.

19 (Exhibit No. 118 was offered and admitted into
20 evidence.)

21 Q (By Mr. Boudreau) And I want to go back to
22 Exhibit 117, which is the customer notice that went out in
23 this case. Are you with me?

24 A Yes.

25 Q And you had talked about the -- the card cut-off

1 feature?

2 A Right.

3 Q Does the form of the card -- or does the form of
4 the comment card solicit a view or information concerning
5 any particular topic?

6 A Well, I would -- I would say no in that the only
7 direction customers got was customers may also send
8 written comments using the attached card. And then the
9 card itself just says Comments on it.

10 Q And it does ask whether they're a customer of
11 MGE; is that correct?

12 A Yes.

13 Q Does the form of card specifically request a
14 customer's view on the topic of rate design?

15 A No.

16 Q Okay. So the card doesn't foreclose customers
17 from addressing any subject of interest to them; is that
18 correct?

19 A Correct. Right.

20 Q And is there any limitation on the topics that
21 they can address?

22 A No.

23 Q In the context of carrying out your duties in
24 the areas of customer communications and marketing over
25 this past 26 years, have you had any experience utilizing

1 customer surveys?

2 A Yes.

3 Q And can you describe for the Commission your
4 experience with regard to that topic?

5 A Sure. Kansas City Power & Light and MGE both on
6 occasion have used what are called customer comment cards
7 or survey cards where they ask very specific information
8 from customers trying to garner feedback about service
9 issues or ways we serve customers.

10 Oftentimes, there are four or five questions,
11 yes or no, please fill in additional information, that
12 kind of thing.

13 Q Based on that experience, is it fair, in your
14 view, to characterize the comment card mailing in this
15 case as a customer survey?

16 A No.

17 Q Okay. And why do you say that?

18 A Well, typically, a survey is something that you
19 can tabulate. You set up a rating or a tabulate or count
20 numbers or that kind of thing. And this doesn't lend
21 itself to that.

22 Q Okay. Okay. In the context of carrying out
23 your responsibility of marketing and customer
24 communications, have you had any occasion to conduct
25 research on the use of comment cards as a way to measure

1 customer sentiment?

2 A Sure. I have.

3 Q Do you have an opinion on the value of using
4 blank comment cards as a way to gauge customer
5 satisfaction?

6 A Yes.

7 Q What is that opinion?

8 A My -- well, my opinion is that my experience and
9 my education in my Master's program and some research that
10 I've done indicates that when you send out a comment card
11 like this, it typically solicits input from extremes. And
12 that can be extremely happy or extremely unhappy
13 customers.

14 Most customers expect to be satisfied. And as
15 such, they don't typically respond to this kind of thing.

16 Q Is it typical, in your view, to get responses --
17 well, you may have answered this. Is it typical to get
18 responses from people, in your experience, that are
19 satisfied with their service and rates?

20 A Typically not, no.

21 Q Okay.

22 A Typically, those are the customers we don't hear
23 from.

24 Q Do you consider comment -- the comment cards
25 returned to the Commission to be a random sample of MGE's

1 customers?

2 A No.

3 Q And why not?

4 A Whenever you do customer research, whether it's
5 mail or phone or whatever, there is a population randomly
6 selected, and then you spend time with those randomly
7 selected entities to gather information.

8 This was sent out to everyone with instructions
9 that said, Write comments.

10 Q Okay. Now, in your capacity as Director of
11 Customer and Government Relations, do you deal with
12 customer phone calls, inquiries and other communications
13 like e-mails?

14 A I do.

15 Q Okay. Would you describe the nature of those
16 activities?

17 A Sure. As I mentioned earlier, I've done that in
18 the context of the rate cases, this one and the previous
19 two, and then, also, just on a year-round basis.

20 A lot of times customers in any way, shape or
21 form either ask to have their calls elevated to public
22 relations, community relations, whoever they ask for. A
23 lot of times, they just come to our work group.

24 Q Okay. So is it fair to say from -- from that
25 testimony that you have dealt one-on-one with customers in

1 the context of this particular rate case?

2 A Yes.

3 Q Okay. Are -- is your number given to the
4 customers as a contact -- as a point of contact?

5 A What we did this time is we actually listed our
6 customer service number, and then that was forwarded on to
7 me. Once the customer indicated they had questions and
8 really wanted to talk to somebody in-depth, then I would
9 get those.

10 Q Okay. Thank you. Okay. Now, I take it in --
11 in carrying out your responsibilities that you've made
12 yourself familiar with the mechanics of Missouri Gas
13 Energy's straight fixed variable rate design so that you
14 can explain it to customers?

15 A Yes.

16 Q Okay. Are you aware of how many customer
17 comment cards returned to the Commission in this case have
18 been made available on a special link on its EFIS system?

19 A Yes.

20 Q And how many would that be?

21 A I believe it's 12,096. And that's as of
22 December 9th.

23 Q Okay. Do you think that the fact that
24 approximately 12,000 customer cards were sent to the
25 Commission indicates that MGE's customers are opposed in

1 significant numbers to the straight fixed variable rate
2 design?

3 A No. In the context of -- in this case, just
4 using residential numbers, there are 440,000 residential
5 customers. So this would be a fairly small percentage of
6 that population.

7 Also, keep in mind that these cards went to
8 every customer class, which means in that population of
9 cards were opinions from other customer classes as well.

10 Q Okay. Did the company set up a process to
11 review the comment cards?

12 A We did.

13 Q And you were involved in that process?

14 A Yes, I was.

15 Q What was the objective of the review that the
16 company made of the comment cards?

17 A The objective was to look through the cards and
18 identify those customers who had referenced in any way
19 what appeared to be our fixed customer straight fixed
20 variable rate design.

21 Q Okay. And why -- why was the focus on the -- on
22 the straight fixed variable rate design?

23 A On that topic? Well, it was my understanding at
24 least one party was concerned about the relevance of these
25 cards on that specific issue. So it made sense to go back

1 and look at all of them and find out if that was the case.

2 Q Now, how did the company go about ascertaining
3 how many of the comment cards returned to the Commission
4 addressed the issue of rate design as opposed to other
5 matters?

6 A Okay. Basically, there were a group of us that
7 looked at the cards a little bit in some -- you know, in
8 scanning and in summary and tried to identify what are all
9 the possible ways a customer could reference that topic?
10 And then we began looking for them.

11 Q What were the -- so you established some
12 criteria for that purpose?

13 A I did, yes.

14 Q And could you tell the Commission what the
15 criteria were?

16 A Sure. We looked for any reference to fixed
17 monthly charge, fixed customer charge, service charge,
18 non-gas costs, if they used \$24.62 cents in a sentence, if
19 they referenced something between their summer and winter
20 bill, anything of that nature.

21 I think that's the whole list. I'm going to
22 double-check myself because I had to write them down.

23 A Yeah. I think that's pretty much it. So it was
24 a pretty broad list.

25 Q So were you satisfied with the criteria that

1 were used?

2 A Yes.

3 Q Okay. What was done when a reviewer decided
4 that a card met one or more of the criteria?

5 A Essentially, there were five of us. And what we
6 did is we each divvied up a part of that 12,000. And we
7 would scan them on EFIS visually. And if it appeared to
8 in any way, shape or form reference any of these terms,
9 we'd print them off.

10 Q And what was done with the cards that were
11 printed?

12 A We essentially took that pile then that we ended
13 up with and sent them back through a second time through
14 two individuals in our Law Department that had also been a
15 part of that group of five to look at them again a little
16 bit closer.

17 Q And the purpose being?

18 A Well, the purpose being is that when you've got
19 five different people looking at them, you know, the
20 degree to which we -- we gave very specific things to look
21 for. You want to make sure you send them back through a
22 common filter again, so that's what we did.

23 Q You mentioned that you were one of several
24 reviewers. Is that the case?

25 A I was. Yes.

1 Q And what was your -- what was your involvement
2 in the review of the comment cards?

3 A Well, first of all, I volunteered. In my
4 capacity as -- in taking both the calls, e-mails and being
5 at public hearings, it only made sense, frankly, for me to
6 look at these also, so I asked to do so.

7 I was only able to get through about 2,000. But
8 I got through 2,000 of those and looked at it pretty
9 carefully.

10 Q Okay.

11 A And --

12 Q So it -- is it your testimony today that this
13 review process basically involved all of the customer
14 comment cards filed through December 9th, did you say?

15 A Yes.

16 Q Okay.

17 A 12,096.

18 Q Okay. Given that there were a number of
19 different reviewers involved, are you comfortable that the
20 work that has been done is accurate and reliable?

21 A Yes.

22 Q And why do you say that?

23 A I say that because we finished our first review.
24 And the two other individuals that were going to go back
25 through and do this again, they sort of checked

1 themselves. In other words, in their preliminary sort,
2 they looked to see of the cards they looked at how close
3 were they in their own interpretation, and they were very,
4 very close. So they were looking at it in a very similar
5 way. So those two individuals then divvied up that pile
6 and went through it a second time.

7 Q And it -- did you also have a chance to review
8 the -- the -- as you described it, the pile of cards that
9 was filtered?

10 A I did.

11 Q Okay.

12 A When they finished their portion, we had about
13 10 percent of the 12,000 cards, which is about 1200 cards
14 that seemed to in some way, shape or form reference the
15 rate structure itself.

16 Q What was that number again, please?

17 A About 1200.

18 Q Okay. So what I chose to do is I went through
19 half. I went through -- in fact, I went through the
20 second half of the alphabet and looked at them again just
21 to see what was in there and to see, you know, very
22 specific comments related to the topic at hand.

23 Q Okay. So to circle back on this, the number --
24 out of the 12,000 comment cards that were reviewed by you
25 and other members -- or other employees of MGE, how many

1 of those in -- in your assessment dealt with the topic of
2 rate design?

3 A 1200.

4 Q Okay. And that's approximately what percent of
5 the total comment cards?

6 A If you just use it in the context of residential
7 only, it's three-tenths of a percent.

8 Q Well, I -- but of the cards -- of the 1200
9 cards --

10 A 10 percent.

11 Q 10 percent of the 12,000 dealt with the topic of
12 rate design?

13 A Correct. Yes.

14 Q And the company serves how many residential
15 customers?

16 A 440,000.

17 Q Okay. So the 1200 cards, what -- what
18 percentage would that be of the total residential customer
19 base?

20 A That would be about three-tenths of a percent.

21 Q Okay. Now, do you think it's reasonable to
22 conclude that 1200 comment cards identified as addressing
23 rate design are an indication that there's significant
24 customer discontent with that rate design?

25 A No.

1 Q And why do you say that?

2 A Again, the -- the nature of surveys or comment
3 cards or whatever tend to only elicit opinions from the
4 extreme. So, essentially, what that means would be
5 428,000 customers didn't have a statement about that one
6 way or the other.

7 Q Okay. Okay. You said your primary goal was to
8 ascertain the number of comment cards that addressed rate
9 structure; is that correct?

10 A Correct.

11 Q Based on your personal review of nearly 2,000
12 comment cards, I believe was your testimony, can you tell
13 the Commission the general nature of other matters that
14 may have been addressed by customers?

15 A Sure. I was frankly a little bit surprised how
16 many customers read this and thought they were supposed to
17 vote. So we got several that said no. We had several
18 that were blank. The bulk of them, I would say,
19 understandably so, stated that they didn't want their
20 rates to go up however, they chose to articulate that.

21 Mostly, they told us they didn't want it to go
22 up. There were a fairly significant percentage of
23 customers that were older adults that are on Social
24 Security, and they wanted us to know that apparently not
25 too long prior to this card going out, they had been

1 notified that their Social Security benefits were going to
2 freeze for two years. And they were really concerned
3 about increases on their utility bills in that context.

4 We had -- interestingly enough, this was about
5 the time that we recalculate the -- recalculate our level
6 payment plan, so we had several customers writing in
7 asking when their level payment plan was going to be
8 adjusted. And the very next bill, about the time they put
9 a postage stamp on this, they were notified they were
10 going down.

11 So the other thing I found a little bit
12 surprising was someone in the context of the economy and
13 things much bigger than a rate case, there was quite a bit
14 of political commentary, you know, people concerned about
15 the state of affairs as a whole, references to see one
16 political administration or another.

17 I mean, they were pretty much all over the map.
18 We had several that I know Gay sent to us that were
19 customers expressing a question or a concern or something
20 they wanted us to look into.

21 We had one individual tell us we probably saved
22 his life because we red tagged one of his appliances. We
23 had customers ask us will this rate increase affect my
24 taxes on my bill? And they were -- anything that they
25 could think of with a blank piece of paper they thought

1 they should use it as an opportunity to say or ask.

2 Q Okay. You testified earlier that you're also
3 responsible for handling customer phone calls, inquiries
4 and e-mails; is that correct?

5 A Yes.

6 Q And how would you characterize the nature of the
7 calls and communications that you received in the context
8 of this rate case?

9 A Fairly typical of the prior two rate cases. I
10 would suggest to you that most, if not all, customers were
11 letting me know they didn't understand rates and they
12 definitely didn't want them to go up. My calls and
13 e-mails were actually down a little bit from prior years.

14 Q Now, based on your experience dealing with those
15 customers, do you -- do you think that you were able to
16 adequately address those -- those questions and inquiries
17 to the customer's satisfaction?

18 A Yes, in that oftentimes they don't understand
19 how rates are set. They don't understand where their
20 rates come from. They may still have lingering questions
21 about how the rate structure works.

22 And for the most part, once you can really sit
23 and talk with them, they do understand. Now, at the end,
24 they still don't wish for their rates to go up. That part
25 doesn't change. But at least their understanding of -- of

1 what's going on is a little bit more clear.

2 Q Okay. Now, based on your personal involvement
3 in this case and your -- and your history with the company
4 since year 2000 -- and by your personal involvement, I
5 mean your attendance at the local public hearings, your
6 direct involvement in following up on customer complaints,
7 your review of the comment cards, has there been a
8 significant adverse customer reaction, in your view, to
9 the use of the straight fixed variable rate design?

10 A No.

11 Q Do you think that customers are coming to
12 understand the new rate design?

13 A Yes.

14 Q Are you aware that one party in this case is
15 asking the Commission to replace the straight fixed
16 variable rate design to the residential class with a
17 volume metric base rate design that was in place prior to
18 2007?

19 A Yes, I am.

20 Q Now, based on your personal experience handling
21 customer inquiries and complaints that MGE has filed since
22 about mid 2007 when straight fixed variable rates were
23 implemented, do you expect customers to be confused about
24 a change if the Commission were to go back to a volume
25 metric based rate design?

1 A Yes.

2 Q Would you expect to receive a lot of calls and
3 inquiries?

4 A Yes.

5 Q Okay. Do you have any concerns about the
6 reactions from -- the reaction that you might receive from
7 MGE's customers?

8 A Yes.

9 Q Okay. Do you have some historical context that
10 you can give the Commission?

11 A Well, since I've only been in the gas business
12 since 2000, if you recall, that's about the time that the
13 actual cost of gas started to become even a topic of
14 conversation. Up until that time, gas prices were very,
15 very low.

16 And since that time, they have been sort of like
17 a roller coaster. As a result, probably the better part
18 of the last nine years, we've spent in one way or another
19 educating customers on just that piece of their bill, what
20 does that mean in the context of their bill and the
21 context of MGE's role and that kind of thing.

22 I would suggest to you that the Missouri Public
23 Service Commission Staff has worked with us and done a
24 really good job of that, too. But after nine years, we're
25 just there where customers are really starting to

1 understand that part of rate-making. So they do not
2 necessarily understand how any of their utility rates are
3 set. And it takes a little bit of time and a lot of
4 patience and good communication and education for them to
5 get that information. But it isn't something that's done
6 effectively with everyone instantaneously.

7 So my concern would be any time you make a
8 change, whatever it is, whatever your opinion of what a
9 change should be, it creates confusion and consternation
10 and the same level of potential dissatisfaction.

11 Q Do you recall a particularly active customer
12 calling experience in the winter of 2000, 2001 caused by a
13 spike in gas prices?

14 A Yes. It was awful.

15 Q What occurred? What were the circumstances that
16 occurred in that winter?

17 A Again, I was still pretty new. But what I
18 discovered was now gas prices are high and staying high.
19 But now we had a cold winter. So you put those two things
20 together, and customers were just panicked, outraged,
21 frightened, confused.

22 And we went to an awful lot of what we're
23 essentially town hall meetings and public meetings where
24 we were there to try to explain that to customers.

25 Q If the Commission were to order MGE to

1 re-institute the old volume metric based rate design and
2 the same nexus of events were to occur, is it reasonable
3 to expect the same level of public distress?

4 A I believe so.

5 Q Have you been involved in -- I think you
6 testified earlier you've been involved in dealing with
7 customer service and particular customer complaints
8 throughout your career with MGE?

9 A I have.

10 Q Have you observed a trend in the number of
11 complaints lodged by MGE's customers during your time with
12 the -- with the company?

13 A Well, generally speaking, our complaints are
14 down in terms of the normal or efficient complaints, and
15 we work really hard at that by trying to address
16 customer's concerns when we get them on the phone or
17 however we get them. So --

18 Q You mentioned that you had some involvement with
19 the company's LIHEAP program?

20 A Yes.

21 Q What is a LIHEAP an acronym for?

22 A Low Income Heating Energy Assistance Program.

23 Q Have LIHEAP customers expressed concern about
24 this straight fixed variable rate design, to your
25 knowledge?

1 A Not in any way that we've been able to identify
2 that -- that they're LIHEAP customers, no.

3 Q Okay. And why -- why would -- why would you not
4 -- why haven't they?

5 A Well, my expectation would be that the customers
6 that we have are typically LIHEAP recipients are
7 generally, obviously, low income customers, but they also
8 tend to be higher than average users.

9 Q Okay.

10 A And so for them, this rate structure is very
11 beneficial.

12 Q Okay. I want to circle back with the experience
13 that the company and this Commission had during the winter
14 of 2000, 2001. Do you recall your testimony about that?

15 A I do.

16 Q Were LIHEAP customers particularly impacted by
17 the spike of gas prices in the winter of 2000, 2001?

18 A Yes.

19 Q And -- and why were they particularly affected?

20 MR. POSTON: Judge, I'm going to object. This
21 seems to be going beyond customer comment cards. He's
22 going into LIHEAP and -- I just don't see how this relates
23 to the comment cards.

24 JUDGE PRIDGIN: Mr. Boudreau?

25 MR. BOUDREAU: Well, if it's any comfort to

1 anybody, it's the last question I'm asking this witness.
2 But I think it is connected in the sense that what we're
3 trying to do is get -- I think the purpose of -- of Public
4 Counsel's offer of the comment cards was to give the
5 Commission some indication of what customers were
6 interested in, you know, the issues that affect them in
7 terms of the company's billings.

8 Ms. -- Ms. Levetzow has testified about her
9 involvement not just with the comment cards but as the
10 individual that handled customer complaints, not unlike
11 the testimony that was -- that was given by Staff witness
12 Gay Fred about, you know, the nature of inquiries that are
13 being made and the issues of importance.

14 So I think it does go to whether, you know --
15 whether this -- the rate design has been a problem for
16 customers and what their perception of it is.

17 JUDGE PRIDGIN: All right. I'll -- I'll --
18 Mr. Poston?

19 MR. POSTON: Judge, I would say that under that
20 argument, he could put up any witness and argue any issue
21 in this case. It still doesn't touch on the comment
22 cards, I don't think.

23 JUDGE PRIDGIN: All right. I'll overrule it. I
24 mean, I think it's going to -- I think it's going to the
25 company's experience and customer comments and this rate

1 case versus prior rate cases and the format of the -- of
2 the customer comment cards in this case as compared to the
3 last case. So that's why I'm overruling it. I'm sorry.
4 Mr. Boudreau.

5 Q (By Mr. Boudreau) Do you need me to repeat the
6 question, Ms. Levetzow?

7 A Yes, please.

8 Q I just wanted to circle back around to the
9 experience that the company had in 2000, 2001 with the
10 spike in gas prices and the cold winter and your -- in the
11 context of your responsibilities for dealing with LIHEAP
12 customers, and ask you if you were aware whether LIHEAP
13 customers were particularly impacted by the spike in gas
14 prices during that winter?

15 A And -- and they were because at that time, not
16 only was the temperature driving the units of gas that
17 they used which affects them on cost of gas side, but also
18 the volume metric charge that we had at the time, but then
19 on the cost of gas side, it also was higher than it had
20 been in a very long time. So they were getting it in both
21 places.

22 Q Okay. That's all the -- actually, I do have one
23 more question. Could you summarize your testimony to the
24 Commission, please?

25 A Sure. I think my experience tells me that

1 customers' input and opinion is very important, and we
2 take that kind of thing very seriously. However, a free
3 form card like this really doesn't lend itself to trying
4 to draw any conclusions.

5 It gives the customers a way of -- of giving us
6 information. For the most part, the results were what we
7 would have expected. They do not wish their rates to go
8 up and they wanted us to know that.

9 I think there were a lot of things going on at
10 the time that drove some of these cards. It might not
11 have happened if it had been sent at a different time or
12 different year, and we may have gotten different comments
13 from different people.

14 But the gist of it is that there really were not
15 that many cards in there where they were very specifically
16 concerned about their rate structure. They were concerned
17 about their bill, however we do this. The -- I'm trying
18 to think. I think that's it.

19 MR. BOUDREAU: I think I'm done with this
20 witness. Thank you.

21 JUDGE PRIDGIN: Mr. Boudreau, thank you. Any
22 cross? Mr. Poston?

23 MR. POSTON: Yes.

24 CROSS-EXAMINATION

25 BY MR. POSTON:

1 Q Thank you. Good morning. I think it's good
2 morning.

3 A It is, almost. Good morning.

4 Q If you could please look at Exhibit 117 and that
5 is the notice that went out.

6 A Sure.

7 Q And would you agree that this notice does not
8 give consumers Public Counsel's proposed rate design; is
9 that correct?

10 A It does not reference the rate design. That is
11 correct.

12 Q Would you agree that customers can't look at
13 this and see that, Okay, there's one proposal which would
14 be a \$29.83 fixed charge and there's this other proposal,
15 more of a \$15 fixed charge and comment on -- you know,
16 with a volume metric rate and comment on that? Would you
17 agree with that?

18 A I would agree that it does not give them any
19 information other than a proposed non-gas rate column.

20 Q Nothing other than MGE's proposal; is that
21 correct?

22 A Correct. Sure.

23 Q And you were also asked a question about what
24 kind of direction customers were given. And on the -- the
25 side that actually has the comment card, up at the top,

1 would you agree that it states that the Commission seeks
2 input on MGE's proposal, and that's what customers were to
3 comment on?

4 A No.

5 Q You don't agree with that?

6 A No. What it says is -- is they seek input at
7 the following public hearings.

8 Q Look at the very -- the first sentence.

9 A Uh-huh.

10 Q Can you read that first sentence?

11 A PSC seeks input from MGE's customers on MGE's
12 proposal. Is that far enough?

13 Q That part right there?

14 A Yes. It says that.

15 Q Okay. So that is the input that they are
16 seeking on this comment card. Would you agree?

17 A No.

18 Q Okay. And why is that?

19 A Because one of the concerns we had about this
20 card is the more print you get, the less customers follow
21 and read it all. Essentially, right here, it tells them
22 what you're seeking at these public hearings. Then it
23 gets down here, and it says, Before taking comments and
24 explains the public hearings, and then it goes into other
25 ways to communicate. And those other ways to communicate

1 then become electronic, phone call, e-mail and this
2 comment card.

3 Q So you think customers would look at that and
4 say, They're asking me to comments about anything, not
5 just the MGE's proposal?

6 A Yes. And that was our experience. I think
7 that's why we got blank cards and customers asking things
8 that were not proposal specific. And I think it's where
9 it's worded. I do. I think it's way down here where it
10 says, Also, send -- I'm sorry. Also, send written
11 comments using the attached comment card.

12 Q Okay. Do you see on the comment card itself it
13 says on the top of it, Missouri Gas Energy rate increase
14 request? Is that on the top of the comment card itself?

15 A Yes.

16 Q And you talked about your experience with
17 surveys. Would you support, say, in MGE's next case, rate
18 case, a customer survey that was more specific to rate
19 design where you gave the specific rate design proposals
20 before the Commission and allow customers to comment that
21 way?

22 A Not necessarily.

23 Q You would -- not necessarily support it or
24 oppose it?

25 A I haven't given it enough thought to determine

1 if there is a written way to do that which is essentially
2 what you're suggesting.

3 Q Okay. Would there be any problems with doing it
4 that way?

5 A I'd need to give it more thought. We know that
6 there were problems doing it this way, so we'd want to
7 really think about that before we went down that path
8 again.

9 Q And when did you start your review of the cards?

10 A I don't remember the exact date. But it was not
11 too long after we were getting access through EFIS. So I
12 want to say the beginning of December, maybe. I don't
13 remember the exact date.

14 Q Okay. So at the time you started reviewing
15 them, you were well aware of MGE's objections to the
16 Commission considering these cards?

17 A Not necessarily, no. I did it primarily because
18 it's my job. And I didn't have access prior to that. So
19 I asked if I could look at them.

20 Q You're saying you were not aware of MGE's
21 objections to this?

22 A I was aware in the beginning when we took some
23 objections the way it was being laid out, yes, because I
24 was involved in that part.

25 Q Okay. Were you aware at the time you started

1 reading the cards?

2 A Yes.

3 Q And you -- when you went through them, you
4 stated that there was catch phrases and terms that you
5 looked for?

6 A Yes.

7 Q And you also, I guess, stated that you only
8 looked at these for straight fixed variable purposes,
9 right? You didn't look at them for anything else?

10 A In my case, I was actually looking at them for
11 everything. And I actually pulled out some cards that I
12 wanted to go back and look at because of the nature of my
13 job. But my purpose for doing so was to look for straight
14 fixed variable, yes.

15 Q And could comments have referenced opposition to
16 a high fixed charge without using one of your catch phrase
17 terms that you and your Staff were looking for?

18 A I don't -- I don't know how it could have.

19 Q What were those terms again that you used that
20 you looked for?

21 A We looked for fixed monthly charge, customer
22 charge, service charge, non-gas costs, \$24.62, and then
23 anything where they used, for example, the words summer
24 and winter bills in the copy.

25 Q Okay. So you didn't look for high fee,

1 something like that perhaps?

2 A Well, we were looking for fee and charge, yes.

3 Q Okay. But you didn't mention that before, the
4 word fee before?

5 A I don't know that very many customers use the
6 word fee. They tend to use the word charge off their
7 bill.

8 Q And you weren't looking for terms like that?

9 A Not specific --

10 Q Charge?

11 A Right.

12 Q And you said that once you picked the 2,000,
13 then you did a second check of that 2,000, right?

14 A No. There were five of us that went through all
15 12,096. And of those cards that we printed and put in a
16 pile, we had two other individuals go through them a
17 second time and look at them.

18 Q Okay. And so there was no second go through of
19 the -- all of the 12,000?

20 A Yes. Oh, no. No. I'm sorry. I misunderstood
21 your question. No. There was one review of all 12,000
22 cards. And then those cards that appeared to have any of
23 these words that might reference that rate structure went
24 through a second review.

25 Q Okay. So you did a second review of the ones

1 that you had already determined were referencing the --
2 rate design, high fixed charge?

3 A Yes.

4 Q And of those 2,000, how many did the customers
5 say they -- they wanted a high fixed charge, they
6 supported a high fixed charge?

7 A My 2,000 were a part of that 12. I didn't count
8 just the ones in my particular pile.

9 Q Okay. Did you see any?

10 A Yes.

11 Q Okay.

12 A Sure.

13 Q An idea of how many said they liked the high
14 fixed charge?

15 A How many said they liked it?

16 Q They supported it, they wanted the Commission to
17 continue with the high fixed residential charge.

18 A I don't recall a customer saying that exact said
19 word.

20 Q Did you -- did a customer say anything like
21 that, anything similar to that that would show support for
22 a high fixed charge?

23 A Yes. There were customers, for example, that
24 said, I'm okay with raising rates as long as -- for
25 example, one said you don't touch my taxes and my taxes

1 don't go up.

2 Q Okay. And you consider that support for the
3 high fixed charge?

4 A I consider that a reference in some way.

5 Q Okay. What I'm hearing is -- I'm not hearing
6 you identify any customers that sent comments that you
7 read that said they support a high fixed charge. Is that
8 accurate?

9 A I would say the nature of these cards were
10 customers that were letting us know they didn't want their
11 rates to go up and, therefore, were not likely to say that
12 they wanted one way or another any kind of rate structure.
13 I don't think there were very many in there that would say
14 that, no.

15 Q Okay. So you can't give me a number. The ones
16 you looked at that actually supported the -- of the 2,000
17 -- or was it 1200?

18 A 1200.

19 Q Of the 1200, you can't give me any number of how
20 many of those actually were in favor of high fixed charge?

21 A No. No.

22 Q Would you agree that the vast majority of them
23 were opposing those -- those 1200?

24 A No. I would agree that they all referenced it
25 in some way, which is what we were looking for, any

1 reference at all.

2 Q And were you here when Ms. Fred testified about
3 customer reaction to straight fixed variable, about it
4 being negative? Were you here?

5 A I wasn't present. I was watching.

6 Q And assuming that that is -- was her testimony
7 -- can you explain where your conclusions about customer
8 reactions would be different than Ms. Fred who testified
9 she read through 9,000 of those cards?

10 A She read a lot more than I did. If her answer
11 -- if I recall, her answer was specifically in the context
12 of these cards. Yes.

13 And I think in her review process, she indicated
14 that she really wasn't looking to count or number them.
15 So she was doing the best that she could to draw a
16 conclusion from what she looked at over 9,000 cards.

17 All can I tell you is we looked at all of them
18 and looked specifically for those words to try to
19 determine if that was really the case. And it wasn't.
20 What they did say almost -- a large, large number is they
21 didn't want their rates to go up. And that's all they
22 were trying to tell you. They just have various ways of
23 trying to articulate it.

24 JUDGE PRIDGIN: Mr. Poston, could you give the
25 court reporter just a moment, please?

1 (Break in proceedings.)

2 JUDGE PRIDGIN: Thank you. All right. Thank
3 you. I'm sorry. Mr. Poston, any further questions?

4 MR. POSTON: No, thank you.

5 JUDGE PRIDGIN: All right. Mr. Berlin, any
6 cross?

7 MR. BERLIN: Yes, Judge.

8 CROSS-EXAMINATION

9 BY MR. BERLIN:

10 Q Good morning, Ms. Levetzow. I'm Bob Berlin.
11 I'm Staff counsel. I have just a few questions for you.

12 A Okay.

13 Q I think in some questions from Mr. Boudreau, you
14 indicated that you had some communications with Gay Fred
15 about the customer cards?

16 A Yes.

17 Q Could you describe the nature of those
18 communications and dealings?

19 A Sure. Unbeknownst to me, first of all, she
20 didn't know they were coming. And we both started getting
21 a lot of them. And we contacted her and asked her if she
22 was having that experience.

23 And so the other piece of that was as her Staff
24 would find things that she thought somebody ought to
25 really look at, she sent them to us. Some of those were

1 just questions. Some of them were A, B, C, whatever they
2 might be, which I think they did a really good job of
3 calling those out. So that was primarily it.

4 Q Okay. And so can you describe some of the types
5 of -- of things that you indicated were not necessarily
6 germane to the rate case that -- that you received in the
7 comment cards?

8 A Sure. My observation is customers had a lot of
9 things on their mind, and this was the only time anybody
10 gave them a blank sheet of paper to put it on there. So
11 they would tend to say, you know, things about their
12 concern about raising rates of any kind at this time in
13 this economy.

14 They would reference their electric utilities.
15 They would reference anything that was really going on in
16 their lives that they wanted us to know made them
17 concerned about having to pay more for the same service.

18 Q Did any customers send in payments to your
19 knowledge?

20 A Well, I did know that we -- what do you mean did
21 they send in payments?

22 Q Any payments with the cards.

23 A Oh, sure. Yeah. Yes. On occasion, instead of
24 just sending the card as it's self-addressed, they would
25 include their payment to their bill, so we had to get

1 those, also. They got a little confused.

2 Q Okay. And I -- I think earlier you described
3 for Mr. Boudreau a review process and -- of the cards.
4 And could you describe to me how many sets of eyes
5 actually looked at the 1200 cards that you had isolated as
6 dealing with rate design?

7 A Sure. Let me start at the beginning a little
8 bit, though, so we make sure we have the right numbers in
9 the right place. The 12,096 cards, there were five
10 individuals who looked at sections of those. In my case,
11 it was about 2,000.

12 Those became a pile as it were, of printed
13 versions. There were two individuals that were part of
14 that original five that then, in turn, looked at that
15 pile. The pile was bigger than 1200. So as they went
16 through it and realized there were some of us had
17 over-interpreted our direction or whatever it might be,
18 they culled it down, then, to about 1200 cards.

19 Q So did each one of the 1200 cards have two
20 separate reviews or --

21 A The cards that are in that pile of 1200 have
22 been looked at twice at minimum.

23 Q Okay.

24 A Half of them, I went back and looked at again.

25 Q Okay.

1 A Just for my own benefit.

2 Q And of those 1200 cards, how many -- you know,
3 based upon your observation and the observations of your
4 Staff, how many of those cards showed an understanding of
5 the straight fixed variable rate design?

6 A I would say not very many. I will give you an
7 example. There was one customer that still thinks we have
8 a volume charge and, frankly, basically described our rate
9 design to us and said that's what we ought to do, the
10 point being is he had all the different billing
11 components, and he wasn't really clear on which was which.
12 And he was confused.

13 Q Is it -- is it your opinion that there is some
14 confusion out there on the matter of rate design?

15 A Oh, sure. I think there -- you know, we've been
16 at this now since 2007. And I think we've done a pretty
17 good job. And we've been able to work with a lot of
18 customers over that period of time. But there's always
19 more time that needs to be spent doing that.

20 Q Earlier, you had addressed I think a couple
21 questions from Mr. Boudreau about complaints or -- would
22 you agree with me that there are some inquiries and
23 complaints that are handled by the Public Service
24 Commission Staff that don't find their way to your staff?

25 A My understanding from their process is that we

1 may not always see the inquiries. But we do see the
2 complaints.

3 MR. BERLIN: Yeah. No further questions, judge.
4 Thank you.

5 JUDGE PRIDGIN: Mr. Berlin, thank you. Any
6 Bench questions? Commissioner Jarrett?

7 COMMISSIONER JARRETT: I don't have any
8 questions, Judge. Thanks.

9 JUDGE PRIDGIN: Commissioner Gunn?

10 COMMISSIONER GUNN: I just have a quick
11 question.

12 CROSS-EXAMINATION

13 BY COMMISSIONER GUNN:

14 Q When you do customer satisfaction surveys or any
15 sort of polling or anything like that, what's typically
16 your sample size?

17 A Well, it isn't so much a sample size. It's
18 usually only concerning those customers who have actually
19 had an experience. So, for example, oftentimes, they're
20 for field employees. So any customer that's -- we've been
21 there to do work, they would get a survey, and they would
22 say, Tell us about your experience. And it was really for
23 process improvement.

24 Q Right. Okay. And I understand the idea of
25 self-selection. Usually, people don't return those cards

1 unless they're ticked off or extremely happy about stuff.

2 A Right.

3 Q So you don't do regular random samplings of --

4 truly random samples of your customers to determine

5 satisfaction or --

6 A No.

7 Q -- other process?

8 A No.

9 COMMISSIONER GUNN: Okay. All right. I don't

10 have anything else. Thanks for taking the time. I

11 appreciate it.

12 A You're welcome.

13 JUDGE PRIDGIN: Commissioner Gunn, thank you.

14 Commissioner Kenney?

15 COMMISSIONER KENNEY: I don't have any

16 questions. Thank you.

17 A You're welcome.

18 JUDGE PRIDGIN: Any recross based on Bench

19 questions? Mr. Poston?

20 MR. POSTON: No questions.

21 JUDGE PRIDGIN: Mr. Berlin?

22 MR. BERLIN: No questions.

23 JUDGE PRIDGIN: Redirect?

24 MR. BOUDREAU: I have just one question.

25 REDIRECT EXAMINATION

1 BY MR. BOUDREAU:

2 Q In response to a question from Mr. Berlin, you
3 made a reference to customers not wanting a rate increase,
4 and I think you used "at this time in this economy." Can
5 you -- can you tell me what -- what you're meaning in
6 terms of the timing that those cards went out? What is at
7 this time and this economy? What's the reference?

8 A Well, two things. Depending on who you are and
9 what you believe, we're in the worst economy ever or we're
10 not. But customers hear a lot about that, and they're
11 concerned about the present and they're concerned about
12 the future. So -- and that's understandable.

13 The other piece is the older adults that were in
14 there are SSI recipients, and they had just been notified
15 apparently fairly recently that -- their benefits are
16 fixed and set. So any increase in their lifestyle was
17 going to be a big concern to them.

18 Q When did the cards go out?

19 A August.

20 Q Of 2000 --

21 A Eight.

22 MR. BOUDREAU: Okay. That's all the questions I
23 have. Thank you.

24 JUDGE PRIDGIN: All right. Thank you. This
25 looks to be -- it's about ten after 12. Do we need time

1 to break for lunch? And I understand, Mr. Boudreau, you
2 have Mr. Noack.

3 MR. BOUDREAU: I do. And if it it's comfort to
4 anybody, the questions I have for him are much more
5 abbreviated. It will be a very quick presentation.

6 JUDGE PRIDGIN: All right. And then Mr. Berlin,
7 did you plan on putting Ms. Fred on the stand? I believe
8 you pre-labeled an exhibit.

9 MR. BERLIN: Yes, Judge.

10 JUDGE PRIDGIN: All right. And then any other
11 witness other than Ms. Fred?

12 MR. BERLIN: Just Ms. Fred.

13 JUDGE PRIDGIN: And Mr. Poston?

14 MR. POSTON: We had not planned on putting Ms.
15 Meisenheimer, but, of course, she's here if there's
16 questions.

17 JUDGE PRIDGIN: She's available. Well, then let
18 me -- well, let me -- let me poll the parties. And I'm
19 sorry. Ms. Levetzow, I forgot to excuse you. Let me poll
20 the parties briefly in the Bench. I -- it's my preference
21 to -- to break for lunch, if nothing else to give our
22 court reporter a break because she's -- she's working
23 hard. And we can perhaps take an abbreviated lunch and
24 then hopefully wrap it up fairly quickly this afternoon.
25 Would roughly about 1:15 or so work for the parties to

1 resume?

2 MR. BOUDREAU: Sure.

3 MR. BERLIN: Sure.

4 MR. BOUDREAU: Yeah. That -- no problem.

5 JUDGE PRIDGIN: I'm sorry. Mr. Poston?

6 MR. POSTON: If there's going to be no Bench

7 questions for Ms. Meisenheimer, I was going to go ahead

8 and -- she wasn't even going to be here today, but I was

9 going to let her go home unless there was going to be

10 Bench questions.

11 JUDGE PRIDGIN: All right. And I don't know --

12 COMMISSIONER GUNN: I don't have any questions.

13 That's fine with me.

14 COMMISSIONER KENNEY: I won't have any

15 questions.

16 JUDGE PRIDGIN: All right. Thank you.

17 COMMISSIONER JARRETT: Thank you, Ms.

18 Meisenheimer.

19 MS. MEISENHEIMER: Thank you.

20 JUDGE PRIDGIN: Can I be a Scrooge and say I

21 haven't decided and make you come back? But I won't do

22 that. All right. Mr. Poston, thank you. And, Ms.

23 Meisenheimer, thank you.

24 Is there anything further from counsel before we

25 adjourn for lunch? All right. It's about 12:15. Let's

1 try to resume about 1:15. Thank you. We're off the
2 record.

3 (Lunch recess.)

4 JUDGE PRIDGIN: Good afternoon, we're back on
5 the record. As we went to lunch, if I recall correctly,
6 MGE wants to call Mr. Noack to the stand. Staff has Ms.
7 Fred to put on the stand. And I believe those are all the
8 witnesses that the parties have left for today. Is that
9 correct?

10 MR. BOUDREAU: Yes. That's my understanding.

11 MR. BERLIN: That's correct.

12 JUDGE PRIDGIN: All right. Is there anything
13 else from counsel or from the Bench before Mr. Noack takes
14 the stand?

15 COMMISSIONER JARRETT: Judge, I just would like
16 to note for the record that Commissioner Gunn is wearing a
17 green tie, I'm wearing a red tie, and you have a Christmas
18 tree tie on, so I think we're in the Christmas spirit
19 here, too.

20 JUDGE PRIDGIN: We are.

21 COMMISSIONER GUNN: Absolutely.

22 JUDGE PRIDGIN: All right. Mr. Noack, if you
23 could come forward to be sworn, please, sir. If you'll
24 raise your right hand to be sworn, please.

25 MICHAEL NOACK,

1 being first duly sworn to testify the truth, the whole
2 truth, and nothing but the truth, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. BOUDREAU:

5 JUDGE PRIDGIN: Thank you, sir. Please have a
6 seat. Mr. Boudreau, when you're ready, sir.

7 MR. BOUDREAU: Thank you.

8 Q (By Mr. Boudreau) Would you state your name for
9 the record, please, sir?

10 A Michael Noack, N-o-a-c-k.

11 Q Are you the same Michael Noack who has
12 previously testified in this case?

13 A I am.

14 Q Were you here this morning when Pam Levetzow
15 testified about the Commission's review -- or the
16 company's review, excuse me, of the comment cards returned
17 to the Commission by MGE's customers?

18 A I was.

19 Q Do you recall her testimony that approximately
20 of the -- of the -- that of -- let me rephrase that. Do
21 you recall her testimony that of the approximately 12,000
22 cards reviewed, about 10 percent or roughly 1200 of them
23 were determined to have addressed the issue of rate
24 design?

25 A I do. Yes.

1 Q Have you undertaken any further analysis with
2 respect to those approximately 1200 comment cards that
3 were, to paraphrase her testimony, copied and put on the
4 pile?

5 A Yes, I did.

6 Q Okay. And what analysis have you performed?

7 A What I did was I looked at the gas usage for the
8 last 12 months for every 20th customer who submitted a
9 comment card addressing the rate design.

10 Q Okay. And when you say every 20th card, about
11 how many -- well, about -- how many customers did that --
12 did that total?

13 A The total number ever customers that I obtained
14 usage for was 71 customers.

15 Q Okay. Did you reduce your analysis of those
16 customer usage characteristics to a document?

17 A I did.

18 MR. BOUDREAU: I'd like to have another document
19 marked for identification.

20 JUDGE PRIDGIN: I believe this will be No. 119.

21 MR. BOUDREAU: Okay. Have you marked that?

22 THE COURT REPORTER: Yes.

23 Q (By Mr. Boudreau) Let me just put that up there
24 for general reference.

25 A Okay.

1 MR. BOUDREAU: That was 119, Judge Pridgin?

2 JUDGE PRIDGIN: Yes, sir.

3 Q (By Mr. Boudreau) Mr. Noack, I think you've
4 been provided with a copy of what's been marked for
5 identification -- identification as Exhibit 119; is that
6 correct?

7 A I have.

8 Q Is that correct?

9 A Yes.

10 Q Do you recognize that document?

11 A I do.

12 Q And what is that document?

13 A It's a schedule entitled Missouri Gas Energy
14 Analysis of Comment Cards, SFV Versus Traditional Rate
15 Design.

16 Q Okay. Was this -- was this the -- the written
17 form of the analysis that you were previously describing?

18 A Yes, it is.

19 Q And was this document prepared by you or under
20 your direct supervision?

21 A I prepared this document.

22 MR. BOUDREAU: Okay. At this time, I would like
23 to offer Exhibit 119 into the record, please.

24 JUDGE PRIDGIN: 119 has been offered. Any
25 objections?

1 MR. POSTON: Yes. I do object.

2 JUDGE PRIDGIN: Mr. Poston?

3 MR. POSTON: At this late stage in the hearing,
4 we have no way to verify these numbers, find out which
5 customer cards were pulled, verify the usage that is
6 claimed on here, verify the way these were pulled through
7 the sample.

8 I mean, this is just a bunch of numbers coming
9 in last minute. And so on that basis, I -- I object.

10 JUDGE PRIDGIN: Mr. Boudreau?

11 MR. BOUDREAU: Well, I'd point out that,
12 basically, Public Counsel's opened the door to this
13 analysis by offering -- or asking the Commission to take
14 notice of the customer cards.

15 The Commission has allowed the customer cards
16 into the record. This is our opportunity to present
17 rebuttal testimony concerning an exhibit that they've
18 sponsored.

19 The timing, it seems to me, has little to do
20 with it. If he's got questions to ask Mr. Noack about how
21 he sampled or, you know, what -- how he went about
22 choosing the cards or how he went about doing his
23 analysis, I think Mr. Noack will explain much of that in
24 the next series of questions.

25 But I don't -- I don't think that -- you know,

1 that he hasn't had this for some time in advance indicates
2 that somehow he's prejudiced. You know, the witness will
3 testify to it, and he's got an opportunity to cross.

4 MR. POSTON: Well, Judge, I have no way to
5 verify any of these numbers just by asking him. There's
6 no work papers. I'd like to see all 1200 of the comments
7 that they've selected as being representative of what
8 they're saying it represents and how he pulled the
9 individual numbers.

10 You know, these are things that can't be
11 verified just from this document here. There just needs
12 to be additional procedures.

13 JUDGE PRIDGIN: Well, do you wish to voir dire
14 the witness on document or -- I mean, otherwise, that
15 sounds like something you could get into in
16 cross-examination. But, I mean, if you think the
17 foundation is lacking, you're welcome to voir dire.

18 MR. POSTON: Well, I would prefer just to have
19 this not be admitted because it's putting a bunch of
20 numbers, and I don't see any other support for it.

21 MR. BOUDREAU: I think there's an adequate
22 foundation for the admission of this document. He's about
23 to testify about what he's done. He's testified that he's
24 -- that he generated this document, that this is his work
25 product. And he's about to explain the significance of it

1 to the Commission.

2 And, frankly, it bears directly on the point
3 that we're dealing with here today, which is Exhibit 106,
4 which is in the record because Mr. Poston wanted it in the
5 record.

6 MR. POSTON: Well, I think what 106 is is
7 comments from customers. This is MGE's interpretation of
8 whether those customers were, you know, specific comments
9 that they've selected and usage numbers that I can't
10 verify.

11 I can't sit here and verify -- even with him
12 sitting up there asking him questions, I can't verify that
13 independently, which generally is something that, you
14 know, we would be allowed to do with an exhibit like this.

15 JUDGE PRIDGIN: All right. I'll -- I'll
16 overrule it. 119 is admitted. Mr. Boudreau? I'm sorry.

17 MR. BOUDREAU: Yes. Thank you.

18 Q (By Mr. Boudreau) Mr. Noack, would you explain
19 to the Commission the information that you've compiled on
20 Exhibit 119?

21 A Yes. What is contained on Exhibit 119 is 12
22 months of use -- of usage analysis for the 71 customers
23 that I pulled out of the 1200-plus comment cards that were
24 deemed to have made reference to the rate design. Because
25 of the -- the information, the name of the customer is

1 highly confidential, I have just named these customers 1
2 through 71. As I said, the first -- first part of the
3 schedule shows the 12 months of usage for the last 12
4 months for each of these customers.

5 Below, there's a heading that says, Annual
6 Usage, Cost at SFV. And what that cost at SFV is is 12
7 months at the straight fixed variable rate of \$24.62
8 cents, plus their annual usage in CCF times the most
9 recent PGA that we have in effect of \$69.07 per CCF.

10 The next line, Cost at a Traditional Rate Design
11 uses a customer charge of \$13.64, a volume metric charge
12 which consists of a delivery charge of \$15.443, and,
13 again, a PGA charge of \$69.07 per CCF to come up with what
14 the cost for the last 12 months would be at a -- a
15 traditional rate design.

16 The next line is the difference between what the
17 cost would be at a straight fixed variable rate versus
18 what the cost would be at the traditional rate design,
19 what we had two cases ago.

20 And then the last line there is the percent
21 difference in price between straight fixed variable and
22 the traditional rate design.

23 The next heading down is winter usage. And what
24 I've done there is take the usage for the five winter
25 months for each of these customers, again, similar to what

1 I did before, cost it first at the straight fixed variable
2 rate which in this case would be five months at \$24.62 and
3 the volume above times the PGA rate of \$69.754, compare
4 that to what the cost in the wintertime would be at a
5 traditional rate design of customer charge and volume
6 metric charge.

7 Q Okay.

8 A And, again, show the difference and show the
9 percent difference for each of these 71 customers.

10 Q So using customer one as an example, explain to
11 the Commission the -- the significance of the numbers that
12 we're looking at. What -- what can you draw -- what
13 conclusions did you draw from just looking at Customer 1?

14 A Customer 1 for the last 12 months uses -- used a
15 total CCF of 542. For the 12 months, their cost at
16 straight fixed variable rate design and the PGA rate that
17 I mentioned before would be \$673.51.

18 Under our old rate design from two cases ago,
19 that cost would be \$625.45 or \$48.06 less under a
20 traditional rate design than what the straight fixed
21 variable rate design is. Just looking at the wintertime
22 one, costs are traditionally higher. It's cold -- could
23 be very cold.

24 The cost at straight fixed variable rates is
25 \$439.09. The cost at the traditional rate design is

1 \$454.16, where straight fixed variable would actually have
2 been \$15 dollars less in the wintertime than what
3 traditional rate design was.

4 Q Okay. And you have some numbers highlighted
5 throughout the various pages. Could you explain to the
6 Commission the significance of the highlighting?

7 A Under the -- under the heading Annual Usage, the
8 numbers that are highlighted are those customers where the
9 traditional rate design is higher than the straight fixed
10 variable rate design. And same way down in the category
11 that's titled Winter Usage.

12 If you go down farther, I've kind of summarized
13 those highlighted areas. And it shows that the total
14 number of customers with year-round savings under straight
15 fixed variable was 14 of these 71 customers or almost 24
16 percent while the total number of these customers with
17 wintertime savings under a straight fixed variable rate
18 design is 54 or 76 percent.

19 Q Okay. Thank you. Why did you only look at
20 every 20th card?

21 A Well, to look at all 1200 would have been a
22 very, very large project simply because I had to go into
23 the CSS or Customer Service System and obtain the usage
24 for all of these customers. So just going and basically
25 random -- taking each -- every 20th card that -- that came

1 back seemed to be a reasonable method of doing that.

2 Q Okay. Have you reached any conclusions about
3 the usage characteristics of those customers who have
4 comment cards that address the issue of rate design?

5 A Well, the usage -- or the characteristics show
6 that, you know, these customers can use from very little
7 -- like Customer 19 who uses -- used 60 CCF in a year to a
8 customer like customer 70 that used 1350 CCF in a year.

9 Most of the customers that return the comment
10 cards dealing with their -- the rate design use less than
11 an average residential customer. But most of these
12 customers would have benefited in the wintertime from this
13 rate design. They would have seen somewhat of a reduction
14 in their bill.

15 Q Okay. So do you have a view about how many of
16 MGE's total residential customer -- customers are likely
17 to oppose the fixed -- or oppose a fixed uniform monthly
18 charge?

19 A Well, from -- from the comment cards that were
20 sent out, we have less than one-half of 1 percent of the
21 customers that actually commented negatively about the
22 rate design.

23 If you look at -- at our customers like a
24 frequency distribution of -- of our customers' annual
25 usage, there's roughly 6 to 7 percent of our customers

1 that I would expect would -- would not like our rate
2 design at all.

3 MR. BOUDREAU: I'd like to mark one last
4 exhibit. I think this is my last exhibit. I think that's
5 120 if I'm keeping track of the numbers correctly.

6 Q (By Mr. Boudreau) Mr. Noack, do you have
7 available to you a document that's been marked for
8 identification as Exhibit 120?

9 A I do.

10 Q Do you recognize that document?

11 A I do.

12 Q What is that document, please?

13 A Exhibit 120 is a Response to Staff Data Request
14 326 in the rate case. It -- it shows the residential
15 frequency analysis of customers and usage for the year
16 ended 2008.

17 It generally shows for the first -- first two
18 lines usage in 50 CCF increments. Then it goes to 100
19 until you get to 2,000 CCF. And then it goes to a
20 thousand until you get to 5,000 CCF. And then it's just
21 the number of customers that use over 5,000 CCF in a year.

22 Q Was this document prepared by you or under your
23 direct supervision?

24 A Yes, it was.

25 Q And you said it was in response to a Staff Data

1 Request?

2 A It was.

3 MR. BOUDREAU: Okay. With that, I'd offer
4 Exhibit 120 into the record.

5 JUDGE PRIDGIN: 120 is offered. Any objections?
6 Hearing none, 120 is admitted.

7 (Exhibit No. 120 was offered and admitted into
8 evidence.)

9 Q (By Mr. Boudreau) Would you please explain to
10 the Commission the significance of this table as it
11 relates to the customer usage characteristics, and,
12 specifically, the fixed monthly charge under MGE's
13 straight fixed variable rate design?

14 A Well, as I -- as I just mentioned, the first
15 five lines, which would be usage of zero through 400
16 entails approximately 6 to 7 percent of our customers.
17 Those customers would -- would probably not like the
18 straight fixed variable rate design.

19 The majority of our customers, however, which
20 I've kind of indicated in the yellow, which are between
21 400 and 1300 CCF usage, those would be what I would
22 consider to be our heating customers.

23 And while those customers below -- that use
24 below, say, 800 and 24, which is what an average
25 residential customer uses, these customers would -- would

1 probably experience a savings under the straight fixed
2 variable rate design in the wintertime as, you know,
3 compared to the traditional rate design.

4 Q Okay. So have you drawn any conclusions about
5 customer sentiment as it relates to the fixed monthly
6 charge under MGE's straight fixed variable rate design?

7 A Well, just that, as I said, 80 percent of our
8 customers are -- are in this band that -- that are heating
9 customers and that -- probably the majority of these
10 customers don't -- shouldn't care whether or not there's a
11 straight fixed variable rate design or not.

12 MR. BOUDREAU: Okay. I have no further
13 questions if this witness. I'll tender him for
14 cross-examination.

15 JUDGE PRIDGIN: Mr. Boudreau, thank you. Any
16 cross, Mr. Poston?

17 MR. POSTON: Yes. Thank you.

18 CROSS-EXAMINATION

19 BY MR. POSTON:

20 Q Good afternoon, Mr. Noack.

21 A Good and, Mr. Poston.

22 Q Turning back to that Exhibit 120, where would
23 you draw the line as far as where an average customer's
24 annual usage?

25 A Between -- in the line that says 801 to 900.

1 Q Okay. And so on an annual basis, not just
2 looking at winter usage, would you agree that on an annual
3 basis, customers below that usage below that would pay
4 more under straight fixed variable?

5 A Customers that -- that use less than 824 CCF
6 would pay a little more, yes, under straight fixed
7 variable.

8 Q So when you gave your 6 or 7 percent that
9 wouldn't like the rate design, you were talking just about
10 winter -- using your winter usage numbers; is that
11 correct?

12 A Well, the -- the 6 or 7 percent that I'm
13 referring to, which -- which would be from 0 to 400 are --
14 they may very well not be heating customers, so they're
15 going to use little throughout the year.

16 Q Okay. So when you identified that, that's all
17 you were talking about is those 0 to 400?

18 A Yes.

19 Q So under -- if we look at annual usage, then the
20 percentage of customers that would pay more under the
21 straight fixed variable and you need to add up all the way
22 up to the 801, which -- what would that be? Can you add
23 that up for me, please?

24 A 43 percent use up to 800.

25 Q Okay. So then when we look at annual usage,

1 under the straight fixed variable, 43 percent of your
2 customers would pay more?

3 A Would pay a little more. Yes.

4 Q And looking at your Exhibit 119.

5 A Yes.

6 Q Just look at Customer 12.

7 A Customer 12.

8 Q And do you have that customer's comment card?

9 A I do.

10 Q And can you read what that customer said?

11 A Absolutely. Sure. The customer writes, "My
12 bill is out of sight. My home is all electric except the
13 pilot light on my gas fireplace. I think it's ridiculous
14 that I am paying 30 to \$35 a month for this service. MGE
15 says I must pay a minimum, but that's a little extreme.
16 So no, you shouldn't raise our rates."

17 Q Okay. So do you have comment cards, the comment
18 cards for each one of these, all 71?

19 A I believe I do. Yes.

20 Q If you wouldn't mind turning to the comment card
21 for No. 10?

22 A I'm there.

23 Q And what does that -- what does that comment
24 say?

25 A "If Missouri Gas Energy wants to change its

1 rates, then the monthly customer service charge be
2 dropped. For me, that's \$24.23 per month times 12 months
3 equals 290.76 per U. The only customer service I received
4 in 15 years is a monthly bill. I don't think it costs
5 them this amount just to keep my gas used record. They
6 should also drop the city franchise fee. I shouldn't have
7 to pay this city assessed fee so that Missouri gas service
8 can sell natural gas to me."

9 Q Now, that -- you -- is that all?

10 A That's all. Yes.

11 Q And you -- you indicate in here that under the
12 traditional, that customer would pay a little more, right?

13 A No. They would pay a little less. Yes. Under
14 the traditional, they would pay a little more, yes.

15 Q That's the only one you identify on this first
16 page?

17 A On the first page. That's correct.

18 Q And under traditional rate design, would --
19 isn't it accurate to say that that customer would have
20 more of an opportunity to reduce their annual charges
21 through conservation and efficiency?

22 A Well, to the -- I don't know to what extent they
23 may have already done that. But yeah. It's a
24 possibility. Absolutely.

25 MR. POSTON: I think that's all I have. Thank

1 you

2 JUDGE PRIDGIN: Mr. Poston, thank you.

3 Mr. Berlin?

4 MR. BERLIN: Yes, Judge. Thank you.

5 CROSS-EXAMINATION

6 BY MR. BERLIN:

7 Q Mr. Noack, just to clarify Exhibit 120, you had
8 indicated 824 CCF is the average annual usage of an MGE
9 customer; is that -- is that correct?

10 A Residential customer, yes. Approximately. Yes.

11 Q Okay. And I -- I know there's -- we're talking
12 about straight fixed variable rate design, and we've been
13 talking a little bit about the traditional volume metric
14 rate design. Is -- is there a level of usage where both
15 rate designs collect the same amount of revenue from the
16 customer?

17 A At approximately 824, they should be the same.

18 MR. BERLIN: Okay. Thank you. No further
19 questions.

20 JUDGE PRIDGIN: Mr. Berlin, thank you. Let me
21 see if we have any Bench questions. Commissioner Jarrett?

22 COMMISSIONER JARRETT: Yes.

23 CROSS-EXAMINATION

24 BY COMMISSIONER JARRETT:

25 Q I just had one, Mr. Noack. I think

1 Mr. Boudreau's last question to you and your answer to
2 that was that I believe the folks in the yellow band on
3 Exhibit 120 shouldn't have any strong feelings either way
4 about the rate design?

5 A That -- that's what I said. Yes.

6 Q Right. And I just wanted to ask why?

7 A Well, these are heating customers that -- that
8 their -- their usage could probably fluctuate up and down.
9 But the majority of their bill is going to be their gas
10 costs. They'll be the customer that's going to typically,
11 depending on what the cost of gas is, have probably
12 between 65 and 75 percent of their bill in their PGA
13 costs.

14 So you know, somebody using four to -- to 700,
15 they might have a little bit more under the straight fixed
16 variable, but we'll be able to offer them a lot in the way
17 of hopefully help in conserving through our programs, too.
18 So --

19 COMMISSIONER JARRETT: Thank you, Mr. Noack. No
20 further questions.

21 JUDGE PRIDGIN: Mr. Jarrett, thank you.
22 Commissioner Gunn, any questions?

23 COMMISSIONER GUNN: I have nothing.

24 JUDGE PRIDGIN: Commissioner Kenney, any
25 questions?

1 COMMISSIONER KENNEY: No, thank you.

2 JUDGE PRIDGIN: Recross based on those
3 questions?

4 MR. BOUDREAU: I have none. Oh, I'm sorry.

5 JUDGE PRIDGIN: I'm sorry. Mr. Poston?

6 MR. POSTON: No.

7 JUDGE PRIDGIN: Mr. Berlin?

8 MR. BERLIN: None.

9 JUDGE PRIDGIN: Redirect?

10 MR. BOUDREAU: Now I'll jump in. I apologize.

11 JUDGE PRIDGIN: That's all right.

12 MR. BOUDREAU: I have none.

13 JUDGE PRIDGIN: All right. Thank you,
14 Mr. Noack. Thank you very much, sir. You may step down.
15 I'm assuming there's no objection, and you may be excused.

16 MR. NOACK: Thank you.

17 JUDGE PRIDGIN: Mr. Noack, thank you. Any
18 further witnesses, Mr. Boudreau?

19 MR. BOUDREAU: None for the company. Thank you.

20 JUDGE PRIDGIN: All right. Thank you.
21 Mr. Berlin?

22 MR. BERLIN: Yes, Judge. The Staff calls Gay
23 Fred.

24 JUDGE PRIDGIN: Ms. Fred, if you'll come forward
25 to be sworn, please. If you'll raise your right hand to

1 be sworn.

2 GAY FRED,

3 being first duly sworn to testify the truth, the whole
4 truth, and nothing but the truth, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BERLIN:

7 JUDGE PRIDGIN: Thank you very much. Please
8 have a seat. Mr. Berlin, when you're ready, sir.

9 MR. BERLIN: Thank you.

10 Q (By Mr. Berlin) Good afternoon, Ms. Fred.

11 A Good afternoon.

12 Q Are you the same Gay Fred that provided
13 testimony before the Commission earlier?

14 A Yes.

15 Q Okay. And when you provided that testimony
16 before the Commission at that time, did you have your
17 professional credentials with you?

18 A No, I did not.

19 MR. BERLIN: Judge, may I approach?

20 JUDGE PRIDGIN: You may.

21 Q (By Mr. Berlin) Ms. Fred, I just handed you a
22 document that has been premarked as Exhibit 116. Can you
23 identify that document for me?

24 A Yes. This document is a summary of my
25 professional credentials.

1 Q And is this summary of your professional
2 credentials true and correct to your best information,
3 knowledge and belief?

4 A Yes.

5 Q Okay.

6 MR. BERLIN: Judge, I'll move to -- to admit
7 this document marked as Exhibit 116, the professional
8 credentials of Ms. Fred, into evidence.

9 JUDGE PRIDGIN: All right. Thank you,
10 Mr. Berlin. 116 has been offered. Any objections?
11 Hearing none, 116 is admitted.

12 (Exhibit No. 116 was offered and admitted into
13 evidence.)

14 MR. BERLIN: Judge, I tender the witness for any
15 questioning from the Bench or from the parties.

16 JUDGE PRIDGIN: All right. Thank you,
17 Mr. Berlin. Any cross, Mr. Poston?

18 MR. POSTON: No, thank you.

19 JUDGE PRIDGIN: Mr. Boudreau?

20 MR. BOUDREAU: None. Thank you.

21 JUDGE PRIDGIN: Bench questions? Commission
22 questions? Commissioner Jarrett?

23 COMMISSIONER JARRETT: I have no questions.
24 Thank you.

25 COMMISSIONER KENNEY: Nor do I.

1 COMMISSIONER GUNN: None from me.

2 JUDGE PRIDGIN: Ms. Fred, thank you very much.

3 You may step down. I'm assuming there's no objection that
4 she be excused. All right. Ms. Fred, thank you very
5 much. Mr. Berlin, any further witnesses?

6 MR. BERLIN: No further witnesses, Judge.

7 JUDGE PRIDGIN: Mr. Poston, any further
8 witnesses?

9 MR. POSTON: No.

10 JUDGE PRIDGIN: All right. Anything further
11 from counsel or from the Bench? All right. Hearing
12 nothing, we will go off the record. The evidence will be
13 closed. If there's nothing further from the parties,
14 Happy Holidays.

15 MR. POSTON: Thank you.

16 MR. BOUDREAU: Thank you.

17 MR. POSTON: Judge, when would we expect to get
18 the transcripts from this?

19 JUDGE PRIDGIN: Can we go off the record to
20 discuss transcript time?

21 MR. POSTON: Yes.

22 JUDGE PRIDGIN: All right. We're off the
23 record.

24 (The proceedings were concluded at 1:50 p.m. on
25 December 23, 2009.)

1 REPORTER'S CERTIFICATE

2

3 STATE OF MISSOURI)

4)ss.

5 COUNTY OF OSAGE)

6

7 I, Monnie S. Mealy, Certified Shorthand Reporter,
8 Certified Court Reporter #0538, and Registered
9 Professional Reporter, and Notary Public, within and for
10 the State of Missouri, do hereby certify that I was
11 personally present at the proceedings as set forth in the
12 caption sheet hereof; that I then and there took down in
13 stenotype the proceedings had at said time and was
14 thereafter transcribed by me, and is fully and accurately
15 set forth in the preceding pages.

16

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal on December 28, 2009.

19

20

21

22 _____
Monnie S. Mealy, CSR, CCR #0539

23

Registered Professional Reporter

24

25

1	I N D E X	
2		PAGE
3	Opening Statement by Mr. Boudreau	1093
4		
5	WITNESS: PAM LEVETZOW	PAGE
6	Direct Examination by Mr. Boudreau	1101
7	Cross-Examination by Mr. Poston	1131
8	Cross-Examination by Mr. Berlin	1141
9	Cross-Examination by Commissioner Gunn	1145
10	Cross-Examination by Mr. Boudreau	1147
11		
12	WITNESS: MICHAEL NOACK	PAGE
13	Direct Examination by Mr. Boudreau	1151
14	Cross-Examination by Mr. Poston	1163
15	Cross-Examination by Mr. Berlin	1167
16	Cross-Examination by Commissioner Jarrett	1167
17		
18	WITNESS: GAY FRED	PAGE
19	Direct Examination by Mr. Berlin	1170
20		
21	Reporter's Certificate	1173
22		
23		
24		
25		

		E X H I B I T S		
	EXHIBIT	DESCRIPTION	OFFERED	ADMITTED
1				
2				
3	116	Professional Credentials	1171	1171
4		of Gay Fred		
5				
6	117	Customer Comment Card	1105	1106
7				
8	118	Notice of Local	1109	1109
9		Public Hearings		
10	119	Analysis of Comment Cards	1153	1156
11	120	Response to Staff Data	1162	1162
12		Request		

(Original exhibits were retained by the Public
Service Commission.)