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STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Hearing

August 28, 2006
Jefferson City, Missouri
Volume 1

In the Matter of Missouri Gas Energy's Purchased Gas Adjustment (PGA) Factors to be Audited in Its 2002-2003 Actual Cost Adjustment	Case No. GR2003-0330 et al.

MORRIS L. WOODRUFF, Presiding,
DEPUTY CHIEF REGULATORY LAW JUDGE
JEFF DAVIS, Chairman,
CONNIE MURRAY,
STEVE GAW,
ROBERT M. CLAYTON III
LINWARD "LIN" APPLING,
COMMISSIONERS.

REPORTED BY:

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P R O C E E D I N G S

(ALL DIRECT, REBUTTAL AND SURREBUTTAL TESTIMONY OF THE WITNESSES, INCLUDING NP AND HC, WERE MARKED FOR IDENTIFICATION BY THE COURT REPORTER PRIOR TO THE COMMENCEMENT OF THE HEARING.)

JUDGE WOODRUFF: Let's come to order, please. And Mr. Duffy just left the room. Did we want to go ahead?

MR. REED: Let's just go ahead.

MS. WHEELER: That's okay.

(MR. DUFFY ENTERED THE ROOM.)

JUDGE WOODRUFF: All right. Well, welcome, everyone.

We're here today in Case No. GR-2003-0330, which is the Missouri Gas Energy's purchased gas adjustment factors audited in their 2002-2003 actual cost adjustment. And that was also consolidated with the prior year's case for the 2001-2002 cost adjustment.

We're going to begin today by taking entries of appearance, and then we'll take a short break and I'll go upstairs and get the commissioners for opening statements.

So for entries of appearance, we'll begin with Staff.

MR. REED: Yes, Judge. Steven Reed for the Staff of the Public Service Commission. The address is 200 Madison Street, P.O. Box 360, Jefferson City, Missouri 65102.

JUDGE WOODRUFF: Thank you. For MGE.

MR. DUFFY: Good morning, your Honor. Gary W. Duffy and Janet Wheeler, from the law firm of Brydon, Swearengen & England, PC, P.O. Box 456, Jefferson City, Missouri 65102, appearing for Missouri Gas Energy.

JUDGE WOODRUFF: Thank you. And for Public Counsel.

MR. POSTEN: Good morning. Marc Posten appearing for the Office of the Public Counsel, P.O. Box 2230, Jefferson City, Missouri 65102.

JUDGE WOODRUFF: And for End Bridge Pipeline? Is anyone here for End Bridge Pipeline?

(NO RESPONSE.)

JUDGE WOODRUFF: I don't see anyone. All right. They tell me I don't have any sound. I may have turned off the button. We had no sound over the internet. Okay. Any preliminary matters anyone wants to bring up while we're -- before we break to get the commissioners?

MR. REED: No, Judge.

JUDGE WOODRUFF: All right. With that, then, we are on break, then, until 8:45.

(A recess was taken.)

JUDGE WOODRUFF: All right. Let's go ahead and get started. The commissioners may be joining us in a few minutes or they may be watching upstairs for the moment. Let's get started with opening statements, then, and we'll start with MGE.

MR. DUFFY: Thank you, your Honor. As I explained before we went on the record, I'm going to display a chart that contains some schedules that are in the prefiled testimony. The chart has an HC marking on it, but I will not say anything that's HC out loud, so this, in my opinion, does not have to be any kind of an HC proceeding. And we're passing out copies of what's being displayed so the people in the hearing room can follow along.

Good morning. My name is Gary Duffy. I'm here representing Missouri Gas Energy. I'm gonna try to explain to you a little bit about what this case is about in this opening statement.

A natural gas company needs to predict what level of demand its customers will place on the system in an extremely cold situation. Once it makes such a prediction, it needs to have contracts in

place to assure that it has enough supplies of the natural gas itself and enough capacity on the pipelines to transport that gas to meet the demand of its customers.

Unlike an electric company, we cannot start up another generating plant on short notice to meet the demand. Unlike an electric company also, even a brief loss of service for a gas company has very significant consequences because unlike an electric company, we can't just flip a switch and restart -- restart a gas distribution system.

This case concerns how you go about the process of predicting that extreme level of consumption, all the factors that you have to take into consideration in obtaining capacity to meet that full case. So it's about making forecasts and about making commitments based on those forecasts.

Focusing on the forecast aspect just for a moment, it's about trying to extrapolate from what you know, to try to predict something that you cannot know until it actually happens. You don't know when it will happen, you don't know how cold it will get or how long it will linger, you do not know how much gas your customers will use under those extreme conditions.

MGE's evidence will show that you also have to factor in other -- other unknowns over which you have no control. You do not know whether you will be able to rely 100 percent on the producing gas wells because severe cold in the Midwest and the Rockies is likely to affect natural gas production areas. You do not know whether there will be disruption on one of the pipelines that's bringing the gas into Kansas City.

Under those conditions it's also extremely unlikely that you can get additional capacity from a pipeline. Getting pipeline capacity under normal conditions is something -- if something has to be built, it can take multiple years due to construction and regulatory approval lead times. So predicting what will happen in an extreme situation is not an exact science.

The Staff examining the two ACA periods from July 1, 2001 to June 30, 2003 has alleged that MGE did a sloppy job of predicting this extreme demand. And as a result, they allege we contracted for more pipeline capacity than was needed.

Staff made some data assumptions, put them into an algebraic equation that produced a number and then compared that number with the level

of capacity that MGE had under contract. Staff's number was lower than MGE's number.

Staff then said MGE should give back the annual cost of that difference in capacity for those two years. I think that's similar to going to your insurance agent and saying that you want your homeowner's insurance premiums refunded for the last two years because your house did not burn down. That's called hindsight and it's not supposed to be a part of the prudence review process.

MGE's evidence will show the predicting demand and contracting for capacity to meet that demand is not as simple as what the Staff did. MGE's evidence will show that Staff made judgment errors in the assumptions it used in its equation that affect the results of its equation.

This graph, one of the two graphs you have in front of you which is marked HC, but again, I'm not gonna talk about anything that's HC, is schedule JJR-9. It's attached to Mr. Reed's rebuttal testimony. Mr. Reed will be on the stand in a few minutes.

You will see evidence in this case such as this graph that helps to illustrate what's going on in this case. This graph plots temperature and

gas usage for the Kansas City area on MGE's system. The vertical access is natural gas volumes. The horizontal access is temperature, what is expressed in heating degree days.

All of these data points that you see are actual observations, they -- reflecting usage levels at the corresponding temperatures. This represents all available data at the time MGE was making the contract decision that's being challenged in this case. So that shows how much gas people on the system were using at a particular temperature.

Now, all of these data points, the gray ones and the black ones, were used by the Staff in the Staff's equation. Mr. Reed, for his approach which, if you've read the testimony, you understand he used it to test the reasonableness of what MGE did, he only used these 12 black dots. Again, all the gray dots are the Staff, the black dots are Mr. Reed's data points. But the Staff used all of them.

Now, I want to draw your attention to this oval in the upper right corner. This is the general area that everyone is aiming at in their general respective predictions. It's what I call the great unknown. No one in this room, or anyone else for that matter, knows how cold it might get in

Kansas City in the future. No one knows when it will happen. No one knows how much natural gas MGE's customers will use when everyone's furnace, stove, water heater and other gas appliances are running as hard as they can.

MGE's evidence will show that from a statistics standpoint, if you were using a regression analysis on that data, you want the mean or average of your data to be as close to the number you're trying to predict, which is somewhere up here in the great unknown, as possible.

I'm gonna say that again. You want the mean or average of your data to be as close to the number you're trying to predict as possible in order for your regression equation to be as accurate as possible.

Now, this graph also shows the mean of the Staff data. That's this vertical column right here. It also shows the mean of the data that MGE's, Mr. Reed, relied on. That's here. You can see for yourself which one of the two is closer to the number that you're trying to predict.

MGE's evidence will show that because the Staff used so much usage data from relatively warm days, days that were not even below freezing,

that that judgment call skewed the results of the Staff's equation downward.

The next graph that I'm going to refer to is attached to Mr. Reed's surrebuttal testimony, and it's JJR-16. Now, this builds on the one we just looked at. It has the same data points, the same usage scale and temperature scale. What has been added are those two lines.

The gray line going through the Staff's data represents Staff's predicted wintertime demand from zero HDD, zero heating degree days, all the way down in the left-hand corner, to what they say would be the design day conditions up there in the great unknown.

The black lines going through Mr. Reed's data points show where his equation predicts usage at his assumed coldest temperature which was about one half of one degree different from what the Staff used.

Now, which prediction is better or more reasonable or more accurate? More importantly, no matter which forecast is more accurate, could either one be labeled as being imprudent?

MGE's evidence will show that if you backcast Staff's predictions onto actual cold weather

situations that are in the peak day range, high usage/cold temperatures, and that's basically these black dots that Mr. Reed relied upon for his data inputs, Staff's method consistently underpredicts the demand that actually occurred.

In other words, it did not do a good job of predicting accurately. You can even see that on this graph, since the gray line is below all of those data points that Mr. Reed used that plot high usage on very cold days.

So here's what the Staff is predicting the usage would be on a high usage cold day, and here's what the actual experiences were. You can see for yourself that it underpredicted the actual demand when it was backcast onto real situations.

MGE's evidence will show also that there were other problems with the Staff's approach, including its consistent failure to consider real world elements of the capacity contracting process and operating performance, all of which lead to the conclusion that Staff's approach is unreliable.

Because Staff's approach is unreliable and because it does not consider all of the relevant factors, it should not be used as the sole standard by which to judge the reasonableness of MGE's

prediction or as the basis for a prudence disallowance.

Now, notably, the Staff is not challenging any decisions that were made or implemented in this two-year period with regard to capacity commitments. Notwithstanding this, we will show that MGE's decisions before and during this two-year period were within a range of reasonable behavior.

In conclusion, MGE's evidence will show that the Staff method was developed after the fact. The Staff recommendation based on that method should not be used to disallow millions of dollars simply because MGE's prediction at the time does not exactly match the results of Staff's prediction method. The Staff recommendation should be rejected. Thank you.

JUDGE WOODRUFF: Thank you, Mr. Duffy. End Bridge Pipeline is not here. Does Public Counsel wish to make an opening statement?

MR. POSTEN: Thank you. My name is Marc Posten. I represent the Office of Public Counsel. I'll be very brief. We support the position of the Staff and disallowance of capacity costs that were the result of imprudent decision-making by MGE. Rate payers should not have to pay for these imprudent

decisions.

MGE has the burden in this case of proving to the Commission that the four million plus and the excess capacity purchases were prudent, and we believe MGE has not done so and urge the Commission to disallow the cost identified by Staff. Thank you.

JUDGE WOODRUFF: Thank you, Mr. Posten. Mr. Reed, for Staff.

MR. REED: Thank you, Judge. Before I begin, I have an exhibit that's not part of the testimony that's been filed today, and I'd like to pass it out.

JUDGE WOODRUFF: All right. Do you wish to mark it -- premark it as an exhibit, or is this just for purposes of the --

MR. REED: It's for demonstration at present, Judge.

JUDGE WOODRUFF: All right.

MR. REED: Four for the bench.

JUDGE WOODRUFF: Mr. Reed, could I have one more?

MR. REED: Sure. My name is Steve Reed. I appear for the Staff of the Public Service Commission here this morning.

MGE made poor planning decisions. They

contracted for too much pipeline capacity, they paid too much money for it, and now they seek to pass those costs on to the customers.

But MGE can't pass those costs along unless the Commission gives to MGE its blessing on the planning decisions that we're gonna talk about in this case because those planning decisions resulted in increased costs.

I want to set the stage for the case you're gonna hear the next couple days. MGE is a monopoly provider of natural gas to customers in the Kansas City, Joplin and St. Joseph and the surrounding areas. Its customers are captive and have no choice but to pay what MGE bills them and the Commission approves.

The Commission is the proxy for competition. The Commission exercises its regulatory authority in the place of competition to make sure that MGE's customers pay no more than is just and reasonable.

If MGE were a competitive company, it would buy no more pipeline capacity than would be necessary to meet its needs. It would thus stay competitive, it would keep its costs down, it would keep its rates down and it would keep its customers.

MGE customers should pay no more than they would have to pay if MGE were competitive and efficient. MGE customers should not pay one penny more than its necessary pipeline and the necessary costs.

How much are we talking about in the cases that we're gonna try over the next few days? It's over four million dollars. Where did MGE fail in the planning process itself? What's required of MGE is that they be prudent, that they be reasonable, that they be careful when planning for customer use, that they use reasonable care, exercising due diligence.

MGE was not careful, not reasonable, not prudent, did not exercise due diligence. And how do we assess MGE's actions in this case? This is a prudence review. MGE does enjoy the presumption of prudence in its decisions, and Staff has the burden to overcome that presumption.

What do we mean to overcome the presumption? Raise a serious doubt about MGE's decision-making. To raise a serious doubt about careful planning on the part of the MGE. To raise a serious doubt about MGE's exercise of due diligence. Staff has come forward and will present to the

Commission serious doubts about MGE's planning and decision-making.

In their planning for the 2001 to 2003 ACA periods at issue, MGE made decisions about a historical peak cold day to use in their calculations that was so far off the mark that nobody could figure out where they got it. This is the mystery peak cold day number that you'll hear about in this case. They used this inflated number to forecast the demand of their customers, but it was so high that it skewed everything to the high side, including what they believe they needed for pipeline capacity.

This decision cost customers money, it cost a lot of money. The results of that decision were too much pipeline capacity and increased costs.

Then it wasn't until testimony was filed in 2006 by MGE five years after they filed this reliability report filed in July 2001, five years later, they explained this number, this mystery peak cold day number. That should raise a serious doubt about MGE's decision-making. MGE did not separate their service area into separate service areas for planning purposes.

They then applied this mystery peak cold day number to the entire service area. MGE serves

Kansas City, St. Joseph, Joplin and the surrounding areas. In calculating customer demand, they lumped the entire system together. Joplin is over 200 miles south of St. Joseph. It's warmer. The pipeline capacity that serves it is different from Kansas City and St. Joe.

The historical peak cold day chosen by MGE to use in their calculations in 2001 has never occurred, it may never occur. Those decisions by MGE raise serious doubts about their decision-making.

MGE can't find its data. It's unavailable, it's lost. Staff lost MGE for a series of regression analyses that it says it ran for the 2001-2002 ACA period, and MGE responds it's unavailable. MGE can't find the regression analysis that they ran to calculate the base load and heat load numbers included in that reliability report. That raises serious doubt about MGE's careful and prudent planning.

Now, because they couldn't find the data, the regression analyses that they say they run, which it turns out may have been done in as early as 1994, or maybe it was 1996, depending upon who at MGE you ask, they used one single data point to calculate their heat load and base load factors, and they

called it a regression analysis. That's not efficiency, that's expediency. That's not the careful way to plan, that's the careless way to plan, that's the easy way.

I handed out some information to everybody here which is a chart that I had prepared. What you'll hear during the course of this case is that it's based on some of the information that MGE has provided and some that Staff has provided in calculations that I've made. So I understand that it may be -- it's subject to admissibility at a later time. But nonetheless, for demonstrative purposes, I want to talk a little bit about this chart.

And if I put it on the Elmo, it won't be -- it is a lot of HC data, so it won't be on the web; is that right, Judge?

JUDGE WOODRUFF: That's correct.

MR. REED: Now, we'll talk about it later, but there's just two or three things I want to mention about the chart. Staff's calculation about the peak day requirement is included on this chart. And what it shows is that according to Staff's calculations, over 100 decatherms per day of excess capacity is available.

You can see the columns with MGE, Staff

and actual. And peak day requirement calculated by Staff is included there. Staff has recommended only a 60,000 decatherm per day disallowance because we allow a margin of error which you see in the allowed reserve portion. That, in itself, cost customers over $5,500 per day. What kind of money are we talking about when we do these calculations? They're so important to the cost the customers have to pay.

This chart also shows the amount of gas actually used on the peak -- the actual coldest day that occurred during those two years. It's under the numbers "actual." If you look down at the "peak day requirement," that's the amount actually used on the coldest day for those two years under "actual," and across you see the peak day requirement.

I wanted to mention this because the actual peak day requirement for those two years, the actual that was needed to serve the coldest day was over 300,000 decatherms less than MGE calculated it would need if the peak -- if a truly severely cold day took place.

Now, I wanted to bring these numbers out because I think the Commission should understand how much money is at issue when these kind of calculations are done, because 300,000 decatherms per

day is over $25,000 a day which is as much as ten million dollars in a year. So with that kind of money that the customers may have to pay every year, careful, thoughtful planning is required.

What else do we find from these calculations, is that based on MGE's claims they were careful and diligent, if a design peak day had occurred, Joplin would have run out of gas. This raises serious doubt about MGE's planning decisions.

While Joplin's running out of gas because MGE's planning was deficient, resulted in contracting too much pipeline capacity for Kansas City and St. Joseph which costs the customers over four million dollars, is that prudent? No, it's not.

MGE's own expert, Mr. Reed, will tell you that the Commission should develop a record of the facts, not the opinions, the facts as MGE knew them at the time. What did MGE know? You'll hear no evidence from MGE explaining their demand forecast. What you will hear is what you heard in opening statement by Mr. Duffy: Staff did this, my expert did this.

Mr. Kirkland, who will testify, didn't even work for MGE during the period of time we're

talking about except for the latter half of one of the years, so he wasn't involved in the planning process.

The expert MGE has retained to come here from Boston and testify does an after-the-fact analysis using a completely different methodology than MGE. He runs his numbers and says well, MGE's numbers are like mine, so their analysis is okay. But you know, in his testimony he also says that prudence applies to decisions, not results. So just because his result is like MGE's doesn't mean it's okay, does it? Prudence applies to decisions.

And just to finish up, this case is not a battle of experts. There are experts from the Staff who testify, there's an expert for MGE who testifies, but the purpose of expert testimony is to help the Finder of Fact understand the issues.

That's what these experts are here for, to help you make the determination. It's not who you believe best, it's not who you like the best, it's not who does the best on the stand. It's does the Commission understand, because you have to make the determination.

Prudence applies to decisions. So the Commission should be focused on the decisions that

MGE made when planning for the 2001-2002 and the 2002-2003 periods. So what did MGE do in their planning process? What did they know at the time they prepared this? What's the explanation for these decisions right here?

We have hundreds of pages of testimony, we have hundreds of DR's, data requests that were sent between the parties. We have prehearing briefs, we have witnesses who prepared for hours, who plan to testify. We have attorneys who are gonna argue ad nauseam to you. But what really matters in this case is this right here. This is what MGE did. These are the decisions they made.

And so the question is who prepared this thing? Who put the data in here? Why did they make these decisions? Were these decisions made carefully exercising due diligence? Where is the regression analysis they say they ran? Why one data point to calculate such an important thing? Why choose this mystery peak historical cold day number that took five years to explain? Why not separate the service areas? That's what this case is about. Listen for that testimony.

JUDGE WOODRUFF: Thank you, Mr. Reed. Oh, I'm sorry.

MR. REED: I'm done.

JUDGE WOODRUFF: I thought you were putting something else on the Elmo. Sorry about that.

COMMISSIONER CLAYTON: Can I ask Mr. Reed a couple questions?

JUDGE WOODRUFF: Go right ahead.

COMMISSIONER CLAYTON: I wanted to ask a couple of questions of the attorneys just so I can try to get focused on a few things. First of all, on the exhibit, which I'm not sure if it's been numbered --

JUDGE WOODRUFF: It's not an exhibit. It's just for illustration purposes.

COMMISSIONER CLAYTON: Is this an HC document?

JUDGE WOODRUFF: I believe so, yes.

COMMISSIONER CLAYTON: It is?

MR. REED: Yes, sir.

MR. DUFFY: Your Honor, the numbers in the document would be all HC.

COMMISSIONER CLAYTON: All HC. Okay. Thank you. And can -- for MGE's purposes, is it possible to look at this document and determine whether the figures appear to be accurate?

MR. DUFFY: We can try to check that, but I don't think we've attempted that because this is the first we've seen this document.

COMMISSIONER CLAYTON: Okay. Well, I don't want to put you on the spot for that. It just -- it brings up a number of figures that I'm sure we'll hear about later on.

MR. DUFFY: I would agree.

COMMISSIONER CLAYTON: Okay. Thank you, Judge.

JUDGE WOODRUFF: All right. I believe the first witness, then, is Mr. Reed for MGE.

MR. DUFFY: Missouri Gas Energy calls John Reed to the witness stand.

(The witness was sworn.)

JUDGE WOODRUFF: You may be seated, and welcome to Missouri.

THE WITNESS: Thank you.

JUDGE WOODRUFF: You may inquire.

MR. DUFFY: Thank you.

DIRECT EXAMINATION BY MR. DUFFY:

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

A. My name is John J. Reed.

Q. Mr. Reed, are you the same John J. Reed

that caused to be prepared and filed what have been marked as Exhibits 1, 2 and 3, representing your direct, rebuttal and surrebuttal testimony, each of which have HC and NP versions in this proceeding?

A. Yes.

Q. Do you have any corrections to any of those documents that you want to share with the Commission?

A. I have one correction which appears in Exhibit 3 and specifically on schedule JJR-15 in Exhibit 3, and even though this exhibit -- this schedule is labeled as HC, I can explain the correction without getting into HC items.

On that schedule, the fourth line down has a series of numbers that read, "Ms. Jenkins' current approach."

The fourth line in the next section of the table also has a line that reads, "Ms. Jenkins' current approach." On that line currently there are NA's that appear. In place of those NA's, the numbers from the fourth row should be replicated. So the same four numbers going across the four columns should appear in the four columns in the second portion of the table as well for Ms. Jenkins' current approach.

Q. Are there any other changes you have?
A. That's it.
Q. If I asked you the same questions that appear in these documents today with those changes, would your answers be the same as they appear?
A. Yes.
Q. Are those answers true and correct to the best of your knowledge, information and belief?
A. Yes, they are.
MR. DUFFY: Your Honor, at this time I would offer into evidence what's been marked for purposes of identification as Exhibit No. 1-HC, 1-NP, 2-HC, 2-NP, 3-HC, 3-NP and tender the witness for cross-examination.
JUDGE WOODRUFF: Thank you. Exhibits 1, 2, 3-HC and NP have been offered into evidence. Are there any objections to their receipt?
MR. REED: I have -- I do have an objection to the direct testimony, only of Mr. Reed, your Honor. If you look at pages -- pages 12 to page 22, beginning on page 12, line 9.
JUDGE WOODRUFF: Just a moment, let me get to that. Page 12, line 9?
MR. REED: Yes.
JUDGE WOODRUFF: All right.

MR. REED: Beginning at page 12, line 9 and running through page -- running into page 22, line 18, you'll see that there are about ten pages there of legal conclusions expressed by Mr. Reed. I don't believe that Mr. Reed is an attorney, and I think that this is improper for an expert to talk about because this is the law upon which this case is determined. So I have a couple of case citations, but I think generally speaking, it's pretty clear that experts can't testify to legal conclusions.

JUDGE WOODRUFF: Your response, Mr. Duffy?

MR. DUFFY: Your Honor, we agree that Mr. Reed is not an attorney and therefore, the discussion that Mr. Reed has noted could not be a legal conclusion by an attorney. Prudence is an issue in this case. Prudence has experts who talk about it, experts are entitled to rely and talk about documents and principles that they rely upon.

We believe that Mr. Reed's record of testifying in numerous prudence proceedings on the issue of prudence itself needs -- brings a perspective of prudence that needs to be brought to the Commission's attention.

You'll note in here that he's excerpted

quotes from decisions of the Public Service Commission. So we believe that this is explanatory material that helps to put things into context in a prudence review situation and therefore, we do not believe that it is objectionable under these circumstances.

JUDGE WOODRUFF: Mr. Reed, any further argument?

MR. REED: No, Judge.

JUDGE WOODRUFF: All right.

MR. REED: No, Judge. I'm sorry. Did you hear me?

JUDGE WOODRUFF: I did hear you, yes. Again, which pages were you talking about, Mr. Reed? Beyond 12, line 9, upper --

MR. REED: Yes, Judge. It was line -- it was page 12, line 9 to page 22, line 18. All of the testimony that's included in those cases is legal testimony.

JUDGE WOODRUFF: Well, I noticed this testimony also when it was filed that it tends to be a legal argument and it's a legal argument that's been repeated in the prehearing briefs. However, I'm gonna allow it in as an explanation of the witness's understanding of the law, not necessarily as a legal

conclusion that he has made, because he's not a lawyer is my understanding and is not -- Mr. Duffy, correct me if I'm wrong. You're not offering this as legal proof or...

MR. DUFFY: No, your Honor. Our legal arguments, as you noted, would be in the briefs. Because he's an expert on the area of prudence, this goes to explain and expound upon his understanding of what is prudence, how it works, how do you apply it in this situation.

JUDGE WOODRUFF: All right. So it's essentially the basis of his opinion; is that --

MR. DUFFY: Yes, your Honor.

JUDGE WOODRUFF: On that basis I'm gonna allow it in. The objection is overruled. Anything further, Mr. Reed?

MR. REED: No, sir.

JUDGE WOODRUFF: All right. Exhibits 1, 2 and 3-HC and NP are admitted into evidence.

(EXHIBIT NOS. 1-HC, 1-NP, 2-HC, 2-NP, 3-HC AND 3-NP WERE RECEIVED INTO EVIDENCE AND MADE A PART OF THE RECORD.)

JUDGE WOODRUFF: And for cross-examination, End Bridge Pipeline is not here. Public Counsel wish to cross?

MR. POSTEN: No cross, thank you.

JUDGE WOODRUFF: For Staff then.

CROSS-EXAMINATION BY MR. REED:

Q. Mr. Reed, good morning.

A. Good morning.

Q. I have some preliminary questions I want to begin with before I get into the substance of my cross-exam. I wanted to ask you about your itinerary last week. Can you tell me where you were?

A. Certainly. Monday I was testifying in U.S. District Court in Connecticut. That case carried over into Tuesday. Wednesday I was testifying at the Connecticut Public Utilities Commission which carried over into Thursday. Friday I was supposed to be traveling to my home in Vermont.

Q. But you weren't or you were?

A. I'm sorry. On Friday?

Q. Friday.

A. Friday my plans changed because of another client commitment.

Q. The client commitment that came up at the last minute?

A. It came up that week.

Q. Can you tell me what day that week?

A. I think it probably came up Tuesday. It

could have been Tuesday night.

Q. When did you travel to Missouri?

A. Yesterday, Sunday.

Q. Did you meet with Mr. Duffy yesterday?

A. Yes.

Q. Whenever you prepare your direct, rebuttal and surrebuttal testimony, do you generally do a draft first?

A. Yes. We usually prepare drafts either in the form of an outline or a sketch of the testimony.

Q. After you prepare a draft, for instance, of your direct testimony, would you send that to Mr. Duffy and offer -- and ask for comments?

A. Frequently we provide a draft to counsel and to the client, and they are able to comment on it.

Q. Do you remember specifically in this case whether Mr. Duffy commented on your direct testimony?

A. No, I don't remember. And typically I don't see the comments of the attorneys when they provide them anyway.

Q. I wanted to ask about your -- what I call your legal conclusions on pages 12 to 22 of your testimony. Is that something that Mr. Duffy helped

you with?

A. No, not in the least.

Q. That's something that you prepared on your own?

A. Yes. In fact, if you'll take note, it's essentially the same written testimony that I submitted in Missouri before in a matter before this Commission relating to storage practices.

Q. And was that testimony that Mr. Duffy helped you prepare?

A. No.

Q. What's your total bill so far in this case?

A. I don't know.

Q. What do you bill an hour?

A. My rate is $450 an hour, I believe. There are others involved in the project whose rates probably range from $150 an hour to 300 an hour.

Q. Who else is involved in this case besides you?

A. Staff members on our -- at our firm that have been involved include Melissa Bartos, Marissa Ihara, I-h-a-r-a, James Stevens and Malcolm Ketchum.

Q. And in terms of actually preparing the, I guess I call them the calculations or the analyses.

Do you understand what I mean by that?

A. I think so.

Q. I mean taking the data and running the regression analyses and things like that. Do you do that or do your staff members do that?

A. Usually the staff members make the first attempt, then they review it with me and we frequently redo it.

Q. Do you bill monthly?

A. Our bills are submitted monthly, yes.

Q. You would submit monthly bills to MGE for this case, for instance?

A. Yes.

Q. Do you take a retainer at the beginning of the case?

A. No.

Q. Do you get paid to fly?

A. Our expenses are covered.

Q. What, about a what, three-hour flight from where, Boston?

A. If we work on the plane on the project, then we bill to the project. If we work on other projects, we bill to other projects.

Q. What about the previous case that you testified in here, what was your total bill on that

case?

A. I have no recollection.

Q. Thousands?

A. It was certainly thousands.

Q. Tens of thousands?

A. Yes.

Q. Hundred thousand?

A. That I can't recall.

Q. It wouldn't be -- you wouldn't be surprised if it were 100,000?

A. For the last case? No, I guess I wouldn't be surprised if it approached 100,000.

Q. The reliability reports that we're talking about in this case were prepared by MGE, correct?

A. Yes.

Q. And the periods we're gonna discuss are 2001 to 2003 basically, right?

A. Correct.

Q. Did you have any part in preparing these reliability reports?

A. No.

Q. Were you -- did you take any part in MGE's decision-making during the periods of time that are at issue here, 2001 through 2003?

A. "Any part" perhaps is a bit broad. We have done work on peak day planning and capacity planning for MGE before that point. In the mid to late 1990's we did work for the company on these areas.

Q. Mid to late 1990's?

A. Yes.

Q. Did you help with the selection of the historical peak cold day that MGE used in this report?

A. No.

Q. Now, as I understand these ACA's, after the period runs, Staff of the Public Service Commission files a recommendation about whether a disallowance should be made in their opinion. And then in these cases, you came in after those Staff recommendations were filed, correct?

A. Yes.

Q. Do you remember when you got involved specifically in this case?

A. I don't recall a specific date, but it was approximately 16 to 18 months ago.

Q. Have you prepared testimony in other ACA cases in other states?

A. The acronym is different, but certainly

I have prepared testimony in other gas cost reconciliation files.

Q. Gas cost reconciliation is the same kind of thing as the actual cost adjustment here in Missouri?

A. Yes.

Q. How many times have you prepared testimony in those kinds of cases?

A. I'm gonna guess between four and six times.

Q. Okay. Between four and six. You would agree with me in these prudence reviews which you've done before, that an important issue is what -- what the company knew at the time they made their decisions to forecast customer demand?

A. Yes, what the company knew or could have known or should have known, yes.

Q. In other words, their conduct, their decision-making at the time they did their planning is what's important?

A. That's one of the things that's important, yes, and then of course, the consequences of their decisions.

Q. Have you reviewed all of MGE's records that MGE utilized to prepare this -- these

reliability reports that we'll be talking about?

A. I don't know that we have. We have received and reviewed all of the records we felt were necessary. We submitted numerous data requests to the company and all of them were answered, but I can't say that we asked for or received everything that the company used in preparing its reliability reports.

Q. Everything that you thought was relevant?

A. Yes.

Q. I want you to look at your direct testimony with me and I want to talk about that with you. In that direct testimony you addressed Staff's recommendations for disallowances, and there are two recommendations filed by Staff in December of 2003 and December of 2004, correct?

A. Yes. Can you give me a page reference as to where you're at?

Q. I think it's in the "purpose" section, page 2 and 3.

A. Okay.

Q. So as I understand it, the purpose of your direct testimony is to basically rebut Staff's recommendations, correct?

A. It was to address the recommendations that they had in the two reports that related to these ACA periods, not necessarily to rebut them.

Q. The purpose of your direct testimony was not to explain what MGE did in these reports; it was, rather, to address Staff's recommendations, correct?

A. It was to address Staff's recommendations, of course, which went to their own analysis of what the company did, so certainly we got into a review of what the company did and the decisions they made based on that analysis.

Q. Well, if we look through the balance of your direct testimony, what I see here is your discussion of design day and peak day demand in general. Do you remember that from your testimony?

A. Certainly.

Q. And then we have an explanation of the purpose of a demand day forecast. Do you recall that?

A. Yes.

Q. Then you explained why utilities do them, design day demand forecasts. Do you recall that?

A. Yes.

Q. Then we have ten pages of testimony

discussing the prudence standard. You remember that?

A. Yes.

Q. On page 22 you ask yourself if Staff's recommendations of December 3 and December 4, '04, the years '03 and '04, meet the legal standards you have analyzed in the previous ten pages; do you remember asking that?

A. Certainly.

Q. And as I read that question, I wondered what your answer would be. Do you recall your answer?

A. Do you want to point me to the page?

Q. Page 22.

A. Yes, I recall the answer.

Q. The answer was no?

A. That's correct.

Q. Then you asked yourself if the Commission Staff is following the Commission's prudence standard, and again you answered no?

A. Yes, that's correct.

Q. So your opinion is that the Staff of the Missouri Public Service Commission is not following Missouri law; that's your opinion?

A. Again, without expressing a legal opinion, it's my view that the approach they've

utilized here is not consistent with the policy in this state or in other states with regard to a prudence investigation.

Q. Now, you performed your own design day demand forecast. Am I saying that right? Because I'm still struggling with the terms that are used in these cases, but that's what it's called, correct?

A. Yes, that's correct.

Q. Design -- design day demand forecast. And this is separate from the one that MGE performed in this report?

A. Yes, that's the whole point.

Q. It's not a reproduction of MGE's work?

A. That's correct.

Q. In other words, you didn't go back, use the same methodology and come up with the result and see if it's similar to what they came up with? You used a different methodology?

A. We used our own methodology to try and ascertain whether the decisions they made were appropriate.

Q. In your testimony on page 10 you suggest there's a problem with Staff's proposed design day weather determination. You remember that, don't you, page 10?

A. Yes.
Q. Then you talk about heat load on page 37. Jumping around a bit here. 37 there's a problem with Staff's estimate of heat load as well, correct?
A. Correct.
Q. Page 38, problem with Staff's approach from a statistical perspective, correct?
A. Yes.
Q. Finally, you conclude that your numbers are not materially different from MGE's, correct?
A. My results are not, that's correct.
Q. Your results are similar to those that MGE obtained?
A. Yes.
Q. Okay. If you look at the schedules attached to your testimony there, I think there's a list of them on the first -- page 1. The schedules that you've attached include Staff's memo or memos, Staff's calculations, correct, and then there's one exhibit relating to MGE. It's the historical July and August demand for Kansas City?
A. Is that a question?
Q. That's a question.
A. I would say all of the exhibits relate

to MGE. They all relate to the analysis of the peak day and design day planning process the company uses.

Q. Well, it says "Staff's memo," so Staff's memo may relate to MGE's decision, correct?

A. Yes, that's my point.

Q. The only schedule attached here that includes MGE data is JJR-6, MGE's historical July and August demand for Kansas City.

A. Let me just be clear. Exhibit JJR-4 includes data we got from the company. Exhibit -- schedule JJR-5 provides data we got from the company, as does 6, as does 7, as does 8. Those are all the ones attached to my direct testimony.

Q. Well, what I want to ask you about is in terms of the analysis that you did. What I understand you did is that you took MGE's data and you did your own analysis, correct?

A. Generally, yes.

Q. Okay.

A. That's one step that we did.

Q. And then what we see included in this -- some of the schedules in your testimony is a comparison of your analysis to Staff's analysis, correct?

A. It's a comparison of the results of my analysis to the results of the company's analysis and

the results of the Commission Staff's analysis. And it goes to the point of looking at the decision-making process that underlies the company's peak day design day planning process.

So it looked at all three, it compared the results, because those results were part of the decision-making process that underlay the company's decision to make the capacity commitments it did. And that is the entire point, of course, is that the decisions that are at issue here are the capacity commitments.

What we're -- we're not seeking to determine whether the planning process is prudent; we're seeking to determine whether the decisions which are the capacity commitments are prudent.

Q. So --

A. We then -- if I could just finish the answer. We then looked to the process by which those decisions were made, and I've compared the process that I think represents best standards to the process that the Staff is recommending and to the process that the company used.

Q. In order to analyze the decisions of MGE, you ran a separate analysis, and the results were similar, so your conclusion is, therefore, MGE's

analysis was reasonable?

A. No. That's a very important distinction. My conclusion is the company's decisions were reasonable. That is what's at issue in this case are the company's decisions.

Q. And in your direct testimony where is -- is there any testimony that MGE's decisions are reasonable?

A. Well, if that doesn't come across, let me make it very clear right now.

Q. I asked -- the question is --

A. Okay.

Q. -- in your direct testimony, point to that testimony that says MGE's decisions are reasonable.

A. I'm not sure that I used those words, and without going back and reviewing every page of 100 pages, I'm not sure I can point to you that type of language. That is the issue, as I understand it, in this case.

Q. In terms of the specifics of the testimony that you prepared, is there any mention of whether it was appropriate for MGE to include all three of these service areas as a total system for planning purposes?

A. No, that wasn't the point of my testimony. Again, I'm not trying to offer a defense or critique of the company's methodology. I'm trying to ascertain whether what I think is a best-practices methodology would have come to the same conclusion.

Q. The results of your analysis are similar to MGE's analysis; your opinion is since the results are similar, MGE's analysis was reasonable?

A. Again, let me restate that. The answer is no, that's not the conclusion I've drawn. The conclusion I've drawn first and foremost is that the Commission Staff's disallowance, recommended disallowance is unreasonable because it's a flawed analysis.

Q. Would you say that MGE's forecast, the demand forecasts are better than Staff's?

A. That's an interesting question. That really depends on how one grades, and I've thought about that. If I were asked to evaluate the Staff's approach versus the company's approach, I would say that the Staff's approach probably gets higher marks in terms of theoretical underpinnings and worse marks in terms of actual predictive ability of the equations they've produced.

The company, on the other hand, I think

their methodology actually has a better predictive ability but probably worse theoretical underpinnings.

So are you trying to ascertain how good a forecast it is or how theoretically defensible it is? You get different marks on those two different criteria.

Q. Then Staff's -- I'll withdraw that question. Now, you would agree with me that MGE did not separate these three service areas for planning purposes?

A. No, at this time, that's correct.

Q. You did in your analysis?

A. That's correct.

Q. Staff did as well?

A. Yes. To be clear, when I said "at this time," the company does separate it now.

Q. It does separate it now?

A. Yes.

Q. But it didn't in 2001 through 2003?

A. That's right. It's continued to refine its analytical approach.

Q. I wanted to ask about the peak day choice for design day planning. Again, I'm still struggling with the terminology here, but I want to make sure you understand me.

The peak day -- I guess it would be called the historical peak day choice for design day planning; does that make sense?

A. It depends on what your question is. Just go ahead.

Q. Okay. Now, in terms of your analysis, did you consider that -- that coldest historical day somewhere in your calculations?

A. Did I consider the coldest historical day?

Q. Yes.

A. Yes.

Q. Okay. Because there is a day out there that we can look back to that was very, very cold, and we call that the historical peak day?

A. Yes.

Q. Okay. Now, did Staff consider that historical peak day as well in its analysis?

A. Yes, Staff considered it, the company considered it, I considered it.

Q. What was that number?

A. Different for different parts of the service territory. The day as I recall -- I'm not sure if this is in the HC category.

Q. Well, I think the number -- I think the

number itself is -- oh, it depends?

MR. DUFFY: I would say that, you know, if you're gonna say 81.9 heating degree days, without anything else, I don't think in this context it would necessarily be highly confidential.

BY MR. REED:

Q. Okay. Well, if I -- if we get -- I think right now I'm looking for you to tell me what that day was as opposed to what any of the company's -- as opposed to you telling me what the company chose.

A. The day as I recall was in December of 1989. I don't recall the exact date. The value was approximately 81.5 heating degree days.

Q. For?

A. Can I keep going with the answer without getting into --

Q. For Kansas City?

A. Yes, for Kansas City.

Q. And for Joplin, what was it?

A. For Joplin, the coldest recorded as I recall was 72, 72.1.

Q. Nearly -- that's a nine-degree difference, correct?

A. Yes, nine heating degree days

difference.

Q. And now, as I understand it, 81.5 heating degree days would be some temperature below zero. Can you tell me what that is?

A. It's an average recorded across the day, and what that says is you are on average 25 degrees, 26 degrees -- let's see. 65 -- it would be 16 degrees actually below zero on average.

Q. Okay. 16 and the 72.1 would be about 11?

A. No, nine.

Q. Nine?

A. 72.1 -- you take 65 as the base.

Q. Okay.

A. So minus 7.1 on average.

Q. How do you find that number?

A. Where do you derive the number?

Q. Yes.

A. From weather data, either from the government weather service or from a private weather service.

Q. Now, is that number, that historical peak cold day number, that's important in planning for customer demand, is it not?

A. Yes.

Q. Is it something that you would expect

MGE to know when they plan for the periods 2001 through 2003?

A. As to what the historic peak day was?

Q. Yes.

A. Yeah, I expect they knew that, yes.

Q. Okay. I think I can -- I think I can talk about, without getting into HC material, what Staff offered as the historical peak day.

MR. DUFFY: You're looking to me for approval?

MR. REED: Yes, yes.

MR. DUFFY: Again, I think if all you're talking about is a heating degree number standing by itself --

MR. REED: Okay.

MR. DUFFY: -- that simply reflects what probably is public record information of how cold it was.

MR. REED: I think it is, but I want to make sure that I don't step over the line because this is --

MR. DUFFY: And I appreciate your concern.

BY MR. REED:

Q. All right. Staff offered 81.5 heating degree days as the historical -- the historical peak

day, correct? That's the coldest observed?

A. For Kansas City.

Q. For Kansas City?

A. That's correct.

Q. And Staff chose 72.1 as that for Joplin, correct?

A. Yes.

Q. Now, for your design day numbers that you used in your calculations, you used different numbers for Kansas City and Joplin?

A. Correct.

Q. Well, what were the numbers you used?

A. 81.9 for Kansas City and 76.3, as I recall, for Joplin.

Q. Okay. And we'll get into it in a minute how you calculated those, but I want to ask right now what may be HC material, so if we can go in-camera?

JUDGE WOODRUFF: All right. We're gonna go in-camera now. If there's anyone in the room that needs to leave, please do so.

(REPORTER'S NOTE: At this point, an in-camera session was held, which is contained in Volume 2, pages 53 through 73 of the transcript.)

JUDGE WOODRUFF: Okay. We're back in regular session. We're actually about due for a break. Let's take a break now, and we'll come back at 10:35.

(A recess was taken.)

JUDGE WOODRUFF: Before we get started, you used Exhibit 10-HC, Mr. Reed, but you didn't offer it into evidence. Do you wish to do so at this point?

MR. REED: Not at this point in time, Judge.

JUDGE WOODRUFF: All right. Thank you. We'll come up for questions from the bench then. Commissioner Clayton.

QUESTIONS BY COMMISSIONER CLAYTON:

Q. Good morning, Mr. Reed.

A. Good morning.

Q. I want to ask some questions about Exhibit 10-HC even though it hasn't been admitted.

JUDGE WOODRUFF: We're not in-camera now. If you have any --

COMMISSIONER CLAYTON: I'll try to keep them general in nature.

BY COMMISSIONER CLAYTON:

Q. First of all, have you had an

opportunity to review Exhibit 10-HC?

A. Only a few moments. I have not had an opportunity to actually review the validity of the data that are presented there.

Q. Okay. So you can't agree or disagree to the accuracy of the figures that have been supplied on that document?

A. For many of them, that's correct.

Q. Have you reviewed the brief filed by the Staff attorney in this case, the prehearing brief?

A. Yes.

Q. Would you agree that the figures used in part of Exhibit 10-HC are also used in Staff's prehearing brief? If you need a specific reference, I'll give you one.

A. Are you referring to the table that appears on page 12?

Q. I'm getting to it. I'm working my way through it here. Yes, that would be the total system calculation, it appears. And my just basic review of it, it appeared to be the same.

A. Yes, it does.

Q. Have you had an opportunity to review Staff's prehearing brief and evaluate the figures that have been used in the chart listed on page 12?

A. I had an opportunity to review it shortly before the hearing. I've not done so for the purpose of trying to verify the numbers. I had a pretty strong reaction to the table when I saw the brief because I think it's a very misleading table, but I've not tried to verify the numbers.

Q. Why would you say it's misleading? If you don't know if the figures are accurate or not accurate, then I guess my question is how is it misleading?

A. In two ways. First, the line labeled "peak day requirement" is a dramatic comparison of apples and oranges. The numbers under the MGE line and the -- MGE column and the Staff column are design day numbers. They are predictions of send-out on a design day, not a peak day.

Q. What is the design day?

A. The design day is the coldest day in 100 years that we've -- and we're trying to predict what the send-out will be on that basis.

Q. And what did you call -- you said it wasn't a peak day requirement. What was your exact terminology?

A. It's the design day send-out.

Q. Design day send-out.

A. And to compare that to actual send-out on a peak day which is a weather -- weather as it actually occurred, is just, in my opinion, a gross mischaracterization or a miscomparison of the numbers. They really are apples and oranges and are intended to be. The second reason I felt --

Q. Hey, hey, I'll tell you, before we go to the second, keep -- hang on to that a second. But before we leave the first, unless you want to describe both, but I'd like to go in-depth on the first one before we leave --

A. Go ahead.

Q. -- if that's okay. So the peak day requirement you called as the design day send-out, correct?

A. Yes, the first two columns, the MGE column and the Staff column represent estimates of design day send-out.

Q. And what was the definition of a design day send-out?

A. It's the send-out you expect to occur when the weather achieves a one day in 100-year standard. So on a day when it's so cold, really coldest in 100 years kind of weather, that's what you would expect to occur.

Q. Okay. And what would be the definition of a peak day requirement?

A. A peak day is simply the coldest day that occurs each year, so it could be that it's 40 degrees warmer than a design day. So a peak day occurs every year based upon the weather that actually occurs; it's the coldest day of the year.

Q. So is a peak day after the fact or is a peak day a planning --

A. It's entirely an after-the-fact number.

Q. So peak day is after the fact, and the design day send-out is an estimate for future planning?

A. Yes.

Q. Okay. Now, when you say "design day send-out," you said it was the coldest day in a 100-year period, previous 100-year period, I suppose?

A. Yes. The way we actually design that design day is -- through statistical inference, we estimate the mean and the standard deviation of the population and derive a figure that's expected to be the coldest day in 100 years. It's not necessarily something that was actually achieved in 100 years.

Q. So it's not the actual coldest day in 100 years, it's the statistical calculation of what

you would assume to be the coldest day in 100 years?

A. And as it turns out --

Q. I don't understand that, I'm gonna tell you right now. I don't understand if it's not the coldest day in 100 years, I don't understand what you're doing.

A. Okay. I'll give you two answers. The first is it turns out that the two here are almost identical. The coldest day in 100 years and what we would statistically expect to be the coldest day in 100 years are almost the same.

But with that nice coincidence, the way you derive the predicted coldest day in 100 years is to take all of the coldest days of the past hundred years as they actually occurred, you come up with --

Q. So you'd have 100 pieces of data?

A. Exactly. You develop the average or mean of those data points. You then develop what is called the standard deviation around that mean. It's the dispersion around that mean.

You then, under what we all know as the bell curve, a normal distribution, which has the mean in the middle approximately two standard deviations above that mean represents the point that is the one in 100 occurrence.

So we use the statistical measures to determine the standard deviation, you add approximately two standard deviations to that mean, and that derives the estimate of what would be the one in 100 occurrence.

In this case we've now had on the record, the statistical value is 81.9 heating degree days. The actual day that is the coldest day that's occurred is 81.5, so we're only four tenths of a degree day off which is very, very close.

Q. The figure that is listed in the MGE column next to peak day requirement for the year 2001-2002, that figure is actually a figure that reflects the design day send-out based on the statistical calculation of the coldest day in 100 years?

A. Yes, it's what we would have expected to have sent out, assuming that it was on average 16.5 degrees below zero for the day, on average.

Q. Do you agree that the figure that's listed in that column, in that box is the accurate figure for MGE's design day send-out for that year?

A. That actually would be something I'd have to go back to the reliability report, the source material, to verify. It's close.

Q. I mean, is it -- is it close enough that -- to -- when you say it's close, I mean, are we within a couple of points? Are you saying it's close within a couple of hundred thousand?

A. No. It's close within a couple of percentage points.

Q. Okay. Okay. The column that is reflected by Staff under "peak day requirement" on this chart, Exhibit 10-HC, the figure that is there, is that a design base send-out calculation?

A. Yes.

Q. Okay. And then in the actual column that follows that, that's in the row "peak day requirement" under "actual," what does that figure represent?

A. The amount -- actual amount of send-out that occurred on the coldest day of 2001-2002, that's at least purportedly what it is from Reed's presentation of this material. It's not something we verified. It's also not something I would consider to be relevant because on that day it was probably 30 degrees warmer than a design day which tells us nothing about what --

Q. So is that actual figure actually -- is it the -- since that's an actual figure, it's not a

forward-looking figure. Is it accurate to call that a peak day requirement?

A. It's not a requirement.

Q. It's not an estimate, so it's different than the design day send-out calculations under the prior two columns, correct?

A. Very definitely.

Q. So what was your description? What term did you use for that figure?

A. It's actual send-out on a peak day.

Q. So is it fair to say that that peak day would be the coldest day of the year?

A. The coldest day that actually occurred in that year, yes.

Q. I don't know, is that different than what I said, coldest day of the year, is it different, what you just said?

A. I think it's the same thing.

Q. Okay. The coldest day of the year?

A. Yes.

Q. Got to use these nonstatistical terms. It's been a long time since statistics. Is there a definition of the "term peak day requirement" as used in this chart?

A. No. That's a mixture of two different

concepts.

Q. One is the design day send-out and what was the second concept?

A. The other would be actual peak day send-out.

Q. It's a combination of the design day send-out and --

A. The actual peak day send-out. The first two numbers are design day send-out and the third -- and the actual column is the actual peak day send-out. They reflect different weather and one is a statistical prediction and one is just what literally flowed through a meter.

Q. Well, with each of these definitions, does that change the concept that the first two columns are estimates and the third column is actually usage?

A. No, that's still the correct.

Q. Okay.

A. As we've been discussing, I should say that I have had an opportunity to review some of the numbers that are in the Staff column, and again, without getting into HC discussions --

Q. Sure, keep it general, if you would.

A. -- they appear to be wrong. So I'm

troubled by the numbers as well as the implications from the format and the message that's trying to be delivered from the table.

In the message as I recall from Mr. Reed's opening statement was when he introduced this, that customers should not pay more than -- one penny more than what was necessary. This in no way, shape or form tells you what was necessary.

Q. This form doesn't show you what's necessary?

A. Absolutely not.

Q. Well, what would be necessary in MGE's mind would be the number that's in their column, and Staff says what was necessary in the second column, correct?

A. In terms of a planning criteria, that's correct. The actual has nothing to do with what was necessary.

Q. Okay. Would you agree that the figures would be useful in highlighting the potential errors that occur in planning or the limitations of planning?

A. If one were to take this actual column and try to use that to review the errors that occur in planning, all it would tell you is the error of

predicting weather as opposed to the error of predicting how much gas you actually need to hold.

I mean, this actual day was far, far warmer than a design day. You would not want to plan based upon one actual day to the next. I mean, if you planned -- a good example from this table, if you planned for the actual day in 2001-2002, you then, when you got to 2002-2003 which was still far below design conditions, you'd have to shut off 10 percent of your customers; you're 10 percent short.

Q. Is Staff advocating that the actual number be used?

A. No.

Q. Are they requesting a disallowance of -- from MGE's capacity figure down to the actual figure?

A. No. They -- the Staff memoranda proposed a disallowance based upon the difference between two planning criteria.

Q. Now, have you been able to evaluate the planning criteria that Staff used in deriving the figure in its column designated as peak day requirement?

A. Yes.

Q. Does the Staff use the 100-year methodology that you used?

A. They come to a one in 87-year determination. I use a one in 100-year, but they're not meaningfully different.

Q. But they came to different conclusions?

A. Yes. They arrived at --

Q. If they're not -- if it's one in 87, one in 100, where does the difference occur?

A. The difference occurs in estimating the send-out response to weather more than estimating what the peak weather is. It's more the function of predicting what customer demand will be on that cold day rather than predicting what the cold day will be.

And again, we can get into that if you'd like, but that is the statistical analysis, the subject of much of my evidence, that the Staff's analysis is really statistically flawed and underestimates the likely demand on a design day.

Q. Why -- explain to me how it underestimates the demand and walk me through it, if you could.

A. Sure. There's three components of a design day send-out. The first is the design day weather, the second is your estimate of what is called base use. That's the portion of the send-out that's not weather-sensitive. And the third is the

proportion that is the temperature-sensitive use.

The first, then, added to that is a reserve margin and added to that is growth for future years. If we take those five components one by one, we don't differ much for Kansas City on the design day weather. 81.9, 81.5 are very close. We differ more for Joplin.

On the second component, it's estimate of what the consumption is that's the base load consumption, the part that's not weather-sensitive. Staff's estimate is less than half of what ours is, and Staff's estimate is less than half of what has actually occurred. That is highly troubling to me.

Q. Say that last part again, or the last component of your --

A. Yeah. Staff's estimate for base use is less than half of what ours is, and it's less than half of what has actually occurred in months where there is no weather-sensitive send-out. July and August are our examples.

Q. So in that statement you're saying that it's less than -- Staff's base use is less than half of what you believe should have been used --

A. Yes.

Q. -- correct?

A. Correct.
Q. And less than half of the actual use?
A. Yes, actual use --
Q. Now, before you said actual use is an irrelevant figure that shouldn't be used. Should it be used here?
A. It is usable here because we actually have days where the weather matches base use days. So base use is what you should have a send-out when there are no heating degree days, there's no heating load on your system.

We can't do that for a design day because there hasn't -- a design day only occurs once every 100 years. But for days in which there are no heating degree days, those happen every year, many of them throughout the summer. That's a day when the average temperature is above 65 degrees.

So we have lots of observations every year as to what base use is, and Staff's estimate is less than half of what has actually occurred.

Q. Just for the Joplin?
A. No, for all the entire system.
Q. For system-wide?
A. Yes.
Q. Well, I wrote down that you were

referring to the Joplin system, so that was incorrect?

A. That's incorrect.

Q. So this is a system-wide base use calculation?

A. Correct. It's half of the system-wide actual.

Q. Half of the system -- was less -- see, I'm writing this stuff down and I'm not writing it down properly. The base use calculation used by Staff for system-wide was less than half than what MGE's calculation was; is that accurate?

A. Yes.

Q. Okay. And system-wide, you were saying that the Staff calculation was less than half of the actual base use, correct?

A. Correct.

Q. Okay. Got that right. So that's system-wide. What is the difference between the first and the third component of that calculation? You said weather was No. 1, and then you went to temperature. What is the difference in those two components?

A. No, no. No. 1 was weather, No. 2 was base load, No. 3 was temperature-sensitive load. That's the load, the send-out that's a function of

how cold it is.

Q. Okay.

A. And that third component is where the next difference is between us and Staff. We believe that send-out in response to weather is a little bit higher than Staff does.

And then on the fourth and fifth components, just to complete those quickly, on the reserve margin we agree with Staff. And on the growth estimate we agree with Staff.

So out of the five components, the second and third are the source of most of our difference. The weather estimate is the source of some of the difference for Joplin.

But to be fair, Staff's recommendations really don't include a disallowance for Joplin. The disallowance really relates to Kansas City/St. Joe. So in terms -- if you're focusing on the ultimate issue in this case which is whether there should be a disallowance --

Q. Well, is it -- is it fair to say that a portion of the total dollar amount at issue in this case does relate to Joplin and the difference in weather?

A. Actually, it doesn't.

Q. It does not?
A. No. All of the disallowance actually relates to Kansas City and St. Joe.
Q. Are the dollar amounts HC?
A. No.
Q. The dollar amounts at issue in the case, are they HC?
JUDGE WOODRUFF: That's not HC.
BY COMMISSIONER CLAYTON:
Q. Okay. I wrote down, trying to move figures around various pieces of paper up here, we've got about four million dollars at stake in this case for the issues involved in this component; is that correct?
A. Yes, two million per year for two years.
Q. For the two years. So it was about 2.041 million for '01/'02 and 2.015 million for '02/'03. Is that --
A. Yes.
Q. -- roughly? At least I wrote one thing down.
A. Yes, sir. That's better than about.
Q. There's a reference in the Staff brief that makes a point of bringing up that MGE failed to supply documentation associated with a regression

analysis for the years in question. Did you see that in their brief?

A. I did.

Q. And I believe there's been some discussion about that here this morning. Does that cause any concern for you that certain documentation can't be identified or presented as part of the planning process, what occurred years ago?

A. Not particularly. I always, of course, would like to see all of the evidence and information preserved and produced. The regression analysis, as I understand it, was used simply as a check on the company's estimates for heat load or heat-sensitive send-out. It wasn't the primary vehicle that they used for making that estimate. Therefore, it wasn't really part of the their forecasting technique.

I think Mr. Kirkland can probably speak to that in more detail, but it's certainly not something I needed in order to validate the decision the company made which was the contracting decision for capacity, but certainly it's always better to preserve documents than not.

Q. Okay. Can you -- you made reference to some of the figures not being accurate in a basic review of Exhibit 10-HC. I was wondering if you

could identify the errors that you noticed offhand?

A. Well, let's take one, for example, and just again, I'm trying to do this quickly, but --

JUDGE WOODRUFF: Remember, we're not in-camera, so...

THE WITNESS: Yes. This would require we move on to the sealed record if we're gonna discuss the numbers.

BY COMMISSIONER CLAYTON:

Q. Well, why don't we start with identifying which boxes are not accurate.

A. Okay.

Q. And we'll mark those, and then we'll see whether we need to go in-camera.

A. For example, if we were to -- the one that quickly jumped out at me was in the Staff column for 2001-2002, and the number that's labeled with the label of "peak day requirement."

Q. Yes.

A. And if I could ask you to turn also to schedule JJR-8 HC, page 2 of 3.

Q. Would you state that again?

A. Yeah, it's --

Q. JJR --

A. -- JJR-8.

Q. HC?

A. HC, page 2 of 3.

JUDGE WOODRUFF: Is that attached to your direct?

THE WITNESS: Yes. And if we look there --

JUDGE WOODRUFF: Just a moment while I find it here.

COMMISSIONER CLAYTON: I'm a big fan of prefiled testimony. In fact, I'm such a big fan, I didn't bring any down with me.

BY COMMISSIONER CLAYTON:

Q. So we're looking for Exhibit 8?

A. Yes.

MR. DUFFY: No, it's not Exhibit 8. It's Exhibit 1 and it's schedule JJR-8 in Exhibit 1, near the very back of it, page 2 of 3.

COMMISSIONER CLAYTON: I've got JJR-8. Which page on that one?

THE WITNESS: Two of three.

BY COMMISSIONER CLAYTON:

Q. Two of three. Go ahead.

A. And if we were to look at line 7 which it says, "Total projected design day demand," if you go across there to the very far right-hand column

called "total," that number for 2001-2002 should be what's in this box for Staff on the table we've just been discussing, and it's materially different.

Q. Okay.

A. And in fact, so is the same -- same problem arises for 2002-2003 which would lead me to question all of the numbers on the chart.

Q. Well, I think the initial -- well, I'll get to that. Hang on just a second. Where is the figure for 2002-2003, which line would be comparable?

A. That is on line 12.

Q. Line 12.

A. Far right-hand column.

Q. Now, is this your exhibit?

A. It is. It's a replication.

Q. Are you saying you know the Staff position better than they do?

A. Well, all I'm saying is the numbers don't seem to match what we've been given before.

Q. Where did these figures come from in your exhibit?

A. That's their -- you'll see footnote 2 on Exhibit -- I'm sorry. Schedule JJR-8, it is from Staff response to data request number 139 in this case.

Q. Okay. Would there be any difference in the allowed reserve row on any of these? That doesn't seem to be in disagreement. The changes in those figures would then throw off the excess reserve and the percentage of capacity in Exhibit 10-HC, correct?

A. Yes.

Q. All right. Do you see any other errors on Exhibit 10-HC that come to mind?

A. That's all I've really had a chance to review. I haven't tried to go back and review the MGE numbers.

Q. Is it relevant to look at the individual systems, the KC and St. Joe system versus Joplin, or is it a better way of reviewing this by looking at total system?

A. I think it's relevant to look at the separate parts of the system as well.

Q. Okay.

A. As I said, the disallowances really relate to the Kansas City and St. Joseph service areas but I think it's appropriate to look at both.

Q. Okay. Did you review any other years other than 2001-2002? I know you've got some other years in your -- in JJR-8, you've got other years.

What type of comparison did you do with other years planning and the methodology used in those years?

A. We've done two things. First, both Staff and we agree that you should make a prediction for at least four to five years and make your capacity decisions based upon the projected requirements over that interval, not just at the beginning of that interval, and we've done that, Staff has done that.

So really, the comparison isn't between capacity held today and demand today. The appropriate one which Staff has done, not on Exhibit 10, but the appropriate one is between capacity held today and expected demand over the next five to ten years. We actually have gone out ten years in our analysis. Staff, I think, just went out five.

We've also looked at the company's subsequent reliability reports after the two years in question here as we also have looked at the ones that preceded these two years. And we've looked at consistency of results and consistency of methodology. So we have evaluated data beyond the two years.

But again, I think it is important to

understand that even Staff agrees that you should not do a simple comparison between capacity today and demand today. If you're sitting in the 2001-2002 time frame, you need to predict demand over at least a five-year period.

Q. Is there something special about the 2001-2002 season and the 2002-2003 season that make them unique in comparison to other years?

A. No. Both in terms -- again, it's been said already in this record that there were no capacity commitments made in these two years, so the capacity itself did not change. There were capacity decisions made in earlier years that flowed through to these years, of course, but both in terms of the planning criteria, in terms of the capacity that was available, I don't think these years are unique.

COMMISSIONER CLAYTON: I don't think I have any more questions. Thank you, Mr. Reed.

THE WITNESS: Thank you.

JUDGE WOODRUFF: Commissioner Appling, do you have any questions?

QUESTIONS BY COMMISSIONER APPLING:

Q. Good morning, John.

A. Good morning.

Q. How you doing?

A. Good. How are you?

Q. I think I have one question, and being an old retired colonel out of the army, I have a lot of planning behind me and just makes me, you know, wonder about planning and decision-making and all that stuff.

It would seem to me one of the most important or one of the important factors that MGE would consider in a cluster of important things that would lead them to a decision here would be checking and rechecking and double-checking the numbers that we are discussing here. To me that just -- should not slip by a company that has years of experience, that we check and recheck and double-check.

A. I agree.

Q. And I feel that your responsibility and my responsibility in the roles that we are playing here, we have a responsibility to teach as we go. So my question is, and you discussed early on today about you -- you need to correct me on this because I'm probably wrong on this -- you talk about looking at MGE's decision and not so much in their planning process of why they got to the decision. Am I in a ball park or did you look at the planning?

A. Yes, I looked at both. What I said was

the issue in terms of a disallowance is looking at the actual decision they made with regard to how much capacity they signed up for.

Q. Uh-huh.

A. That is the genesis of the costs in that they're at issue in this case. All parties looked at the decision-making process by which they made that commitment. But I think the real -- the focus needs to be on the commitment itself: Was it a prudent or imprudent commitment? And if it was imprudent, what were the cost consequences of that imprudence?

Q. And in this case it adds up to be about four million dollars?

A. That's Staff's allegation.

Q. All right. So you would agree with me that that is an issue or an area that the company should have paid some attention to? And I'm not saying that they didn't, but I'm saying that that's one worthy of checking, rechecking and double-checking?

A. I agree that the entire process by which you make a commitment to pipeline capacity is one that should be carefully undertaken.

COMMISSIONER APPLING: Okay. Thank you very much.

JUDGE WOODRUFF: I have no questions, so we'll go to recross. Public Counsel, any recross?

MR. POSTEN: No questions.

JUDGE WOODRUFF: Staff?

MR. REED: Just a couple. Just a couple things to follow up.

RECROSS-EXAMINATION BY MR. REED:

Q. I wanted to begin with, Mr. Reed, you had indicated that in the 2001-2002 period, MGE used the regression analyses as a check for their calculations of heat load; do you recall?

A. Yes.

Q. In the 2001-2002 reliability report, MGE indicates that a series of regression analyses are performed on the historic data to determine the base and weather-sensitive or heat load factors. You're aware of that?

A. Generally I recall that statement.

Q. So it indicates that the regression was used to determine the heat load?

A. Yes.

Q. Okay. Now, you say that they used a regression analysis as a check, correct?

A. Yes.

Q. If they didn't use a regression analysis

to begin with, what did they use?

A. My understanding is they used the actual send-out on the coldest day minus the base load send-out, so they're trying to estimate just the temperature portion -- temperature-sensitive portion of the send-out, and then divided that by the number of heating degree days or effective heating degree days on that day.

Q. Is that a regression?

A. That I would not describe as a regression.

Q. And so the reliability report that says, "A series of regression analyses were performed to determine the heat load factor" is inaccurate?

A. My understanding is the output of that analysis was the check, not the actual calculation.

Q. With regard to 10-HC, the exhibit?

A. Yes.

MR. REED: Are we -- are we in-camera now, Judge?

JUDGE WOODRUFF: We are not in-camera.

MR. REED: Could we go in-camera as I finish?

JUDGE WOODRUFF: We can go in-camera. Is there anyone in the room that -- it doesn't look

like there is.

(REPORTER'S NOTE: At this point, an in-camera session was held, which is contained in Volume 2, pages 104 through 105 of the transcript.)

JUDGE WOODRUFF: All right. We're back from the in-camera portion. That was recross, so we'll go to redirect.

MR. DUFFY: Can I inquire at this time as to whether Staff intends to offer Exhibit 10 into evidence or not?

JUDGE WOODRUFF: You need to use your microphone.

MR. DUFFY: Can I inquire at this time as to whether Staff intends to offer Exhibit -- what's been marked as Exhibit 10-HC into evidence or not?

MR. REED: I don't intend to offer it right now. I may at some point after editing, offer a portion of the exhibit.

JUDGE WOODRUFF: All right. Then any redirect, Mr. Duffy?

MR. DUFFY: Yes, a few.

JUDGE WOODRUFF: If you'd come up to the podium, please.

MR. DUFFY: Okay.

REDIRECT EXAMINATION BY MR. DUFFY:

Q. Mr. Reed, I believe you were asked early on in cross about what your involvement with the MGE planning process was, and what I heard you say was

that you had been involved perhaps early on in the process and I'm not sure that you completed your answer.

So could you briefly describe what your involvement has been with the MGE planning process over a long period of time?

A. Over the past ten or 11 years, we've had a number of opportunities to work with the company on these issues. It began, I believe, in 1995 when we were asked to help establish some statistical measures and peak day planning criteria for the company.

When I say "we," by the way, I should clarify that. I was with a firm called Reed Consulting Group at that time and I was the CEO of that firm. And Reed Consulting Group was retained by MGE to provide that type of analysis and support and I was involved in that.

We did a follow-up study about two years later, as I recall 1997, for the company on planning standards, and then we've been involved since 2002 with regard to various issues that the Staff has raised in Missouri on gas supply management and gas supply funding activities

Q. I heard you give some or make some

assessments of the planning process. Are you in a position to tell the Commission what your overall impression of MGE's planning process is from the first exposure you had to it through today? Is it sloppy, inept, third graders losing their homework or is it something else?

A. I think it's well within industry norms, both then and now. I think it's undergone a process of continuous improvement which certainly is something I'd like to see, but as of 1995 when we first became involved, I think it is within industry norms. I think it remains there today.

So as I said, I -- I would not even come close to labeling this as being sloppy, incompetent or third graders losing their homework.

Q. Even though we can't seem to locate this particular regression analysis that everybody keeps talking about?

A. That really doesn't enter into the quality of the analytical procedures the company is using.

Q. Why not?

A. Docket retention is a separate issue and I recognize, as I said, maintaining documents is important. But we are judging in this case the

quality of the decision that was made to contract for capacity and that should not rise or fall as to whether some supporting document was retained.

Q. You were asked some questions by Mr. Reed and I believe he focused on your direct testimony in particular, and my understanding was he was trying to make the point that you didn't say anywhere in your direct testimony that MGE's decisions were reasonable.

And I believe your response was, "I can't, you know, locate it exactly," so why don't we just deal with that. What is your opinion of the relevant decisions that MGE made with regard to this case? Are they reasonable or unreasonable?

A. The decisions that Staff has identified, which are particularly the pipeline capacity commitments that it made shortly before this two-year period, were reasonable without a doubt. They were well within the bounds of reasonable conduct by a prudent, well-run gas distribution utility.

Q. There was a lot of questioning about the calculations for Joplin, and I'm showing that there was not apparently available capacity under contract to meet a projected design day. Could you comment on what relevance or what significance, if any, that has

in what we're talking about today?

A. Again, it does not enter into the disallowance recommendation that Staff has put forth in this case. Again, to just restate that, the disallowance they've put forth relates exclusively to the Kansas City/St. Joe service areas.

Q. So if I can paraphrase, and you correct me if I'm wrong, Staff is focusing on the fact that they say that MGE had too much capacity in the Kansas City area compared to what they think it really needed, and so they want to disallow the four million dollars we've talked about as a result of that.

There is no allegation that's been made that there should be some disallowance related to the historical situation that Joplin may have had, less capacity under contract than what the projections indicated should have been there; is that correct? And please correct me if I'm wrong.

A. Yes. No, your paraphrasing is correct.

Q. Was Joplin in danger because of the situation that has been discussed here earlier today?

A. No, I don't think so. And Mr. Kirkland can address that more. But the company was working to balance its resource portfolio and ensure that it had adequate capacity in all of its service areas.

But certainly there doesn't appear to have been any imminent danger at that point to Joplin and the integrity of service there.

Q. Maybe this is more appropriate for Mr. Kirkland, but if you know, are there any capacity constraints that -- in other words, was it a fact that MGE could not obtain capacity from the pipeline serving Joplin area or it didn't want to obtain capacity to serve the Joplin area?

A. I think he's probably more able to speak on that. I understood that they could not transfer capacity from the Kansas City service territory to Joplin, but my understanding was the pipelines would have to -- well, I think he can explain whether there was capacity available from the pipelines at that time frame.

Q. Okay. And I think there may be some confusion about, you know, the purpose of your analysis because you said you did not attempt to replicate exactly what MGE did. You decided to do something on a theoretically different basis.

So can you discuss briefly why you feel that your analysis justifies or gives a passing grade of reasonableness to MGE's decision by taking that kind of an approach?

A. Yes, it's an important distinction. I wasn't asked to grade the company's performance or the Staff's performance. I was asked to comment on Staff's particular recommendation in this case which was the disallowance of four million dollars. And that was four million dollars associated with a specific capacity decision made shortly before the two-year period at issue in this case.

I decided the best way to analyze that question from a prudence perspective, which I think is the appropriate standard, was to apply best practices in the industry, to do the peak day planning analysis utilizing those best practices and to say what is the decision you would have made based upon best practices.

If I had found a meaningful difference between the decision that would have been made on a best practices basis and what the company did, I then would have considered the range of acceptable behavior, how much above or below that best practices decision would I consider to be reasonable.

As it turned out, there was virtually no difference between the decision the company made and the decision that I think the company or another company would have made utilizing best practices, so

that we didn't really have to get into defining the range of behavior or the range of conduct.

What troubles me most about Staff's position is they determine what they think is an appropriate measure. They then determine other possible approaches. They recognize that there's a range but then they select their point estimate as being the basis for calculating the disallowance and saying any number that deviates from that point estimate that they have come up with represents a disallowance.

And that's a grossly inappropriate approach, in my opinion, based upon the use of the prudence standard. You should define that range of acceptable behavior, you should disallow the cost incurred there outside of that range, and the Commission Staff didn't do that. They picked the best estimate in their minds and said that anything that deviates from that single best estimate should be disallowed.

Q. There was also questions asked you about, okay, MGE only picked one number representing a experienced cold day for Kansas City and they applied that to Joplin.

Can you briefly discuss whether you

think that was best practice, whether that was within the range of industry standard approaches, or was that imprudent behavior?

A. It was certainly acceptable. The company used weather data from Kansas City as the surrogate for weather data in Joplin. But it then regressed that or analyzed that based upon the total send-out of the system, not the send-out for just Joplin.

By doing that, it aggregated the system. We ourselves and Staff use a surrogate for weather in Joplin; we used Springfield. The company used Kansas City. It doesn't mean that there's a systematic error in their analysis, because again, they are analyzing total send-out based upon the prevailing weather in Kansas City.

So there's no systematic bias or error in the analysis. Would it have been more towards best practices if they divided the service territories? Yes, and we recommended that they do that in the future and they have adopted that in the future. But it's certainly well within industry norms to aggregate up to a common observation point, in this case Kansas City, for the analysis they performed.

Q. And just so we're sure about the decisions that we have been talking about, tell me what your understanding is as to the decision that MGE made or the decisions that MGE made that the Staff has alleged were imprudent decisions?

A. There were two pipeline decisions that they initially indicated they were questioning. That's my reading of their report. I think I can talk about this without HC.

Q. That's my intention for you to do so, if you can.

A. One was on Pony Express, one was on Southern Star. The Pony Express decision actually was a decision made in 1996 and committed to at that time. The Southern Star was simply a renewal of existing capacity on more favorable terms. It was not an expansion of the capacity.

The Commission Staff now seems to be focusing just on the second decision, the Southern Star decision, and alleging that the company should have, when they had the opportunity, reduced the amount of capacity they had under contract and foregone the other benefits, the flexibility, the capacity of released revenues and so forth that they derived from that decision.

So there was no more capacity entered into, but my understanding, it is the second decision which is a 2000 decision that Commission Staff is now questioning.

Q. Okay. So to paraphrase, the Staff's allegation is MGE's failure to lower the capacity it had under contract is really what's responsible for this four thousand -- four million dollar recommended disallowance?

A. Yes.

Q. And did you investigate the prudence, best practices industry standards aspect of MGE's decision when it did not reduce, when it presumably had the opportunity to reduce?

A. Yes.

Q. And what was your conclusion on that?

MR. REED: Your Honor, I'll have an objection to the legal conclusion that Mr. Reed is about to give us because the question asked what his opinion was about MGE's prudence. I think that's for the Commission.

JUDGE WOODRUFF: Response, Mr. Duffy?

MR. DUFFY: I was trying to give it to him from the same context that we've been looking at here. You know, was it imprudent, was it within the

industry best practices standard, you know, a range of -- in other words, how would he describe it. So I can rephrase it to say, you know, how would you describe MGE's decision at that point not to reduce capacity, if that works.

JUDGE WOODRUFF: With the rephrasing, I'll overrule the objection.

MR. REED: And I'll object that the question is vague.

MR. DUFFY: Can we let the witness determine that, your Honor?

JUDGE WOODRUFF: I'll overrule the objection. The witness can answer the question.

THE WITNESS: I think their decision was reasonable and well within industry norms for the conduct of a well-run, well-managed gas utility.

BY MR. DUFFY:

Q. Can you elaborate as to the basis for your conclusion?

A. The company evaluated the costs and benefits of holding to capacity, they evaluated the design send-out under design conditions for their service territory. And as I have said throughout my evidence, the number they predicted for design send-out, I think is the right number. It's

certainly well within a range of an appropriate design day forecast for the company's service territory.

So they were making their decision based upon good estimates, they were making their decision based on the right type of information, what was the cost of holding capacity, what were the benefits they got from holding the capacity, what was the time frame that they should plan for in terms of holding the capacity, and what were the consequences if they didn't hold the capacity in terms of both a shortfall and in terms of possibly having to contract for that capacity in the future at much higher costs. All of those are the right questions to ask. They came, in my opinion, to the right answers and the decision they made was the right decision.

Q. Does the fact that actually experienced temperatures in recent time periods that are presumably reflected on what's been marked for purposes of identification as Exhibit 10-HC that are under those design day estimates have any bearing in your mind on MGE's decisions?

A. No. To try and label the decisions as being right or wrong, prudent or imprudent, reasonable or unreasonable on that basis is classic

use of hindsight. It's exactly the wrong type of analysis to be utilizing to try and make that determination.

The fact that it was much warmer than normal in no way, shape or form affects the reasonableness of the company's decision.

Q. Could it, in fact, be colder at some point in the future than MGE or the Staff or you have estimated?

A. Yes, and send-out could be higher than the predicted design send-out.

Q. Why -- why do you then pick one in 100 years if it's possible that it could be colder?

A. It's a balancing of the cost of holding capacity versus the consequences of being short. As we've talked about in my evidence and as Mr. Kirkland talks about, the consequences of being short on a peak day, a design day when it actually occurs are nearly catastrophic in many cases in terms of loss of service, in terms of the property damage, the economic damage and in terms of the cost of having to go out and relight the system, pilot light by pilot light, valve by valve, meter by meter. I've studied outages like that on gas distributions. It's something that should be avoided at nearly all cost.

Q. And I believe we did a -- you did a calculation as to what the cost versus -- the cost of this capacity per customer per year would be compared to what, you know, customers' potential loss would be in your testimony; is that right?

A. Yes.

Q. Could you briefly summarize that?

MR. REED: I object, your Honor. It's irrelevant, the cost. That was nothing that was -- that anyone got into on cross-examination or questions from the bench. It's beyond any of that -- those questions and it's irrelevant as well.

JUDGE WOODRUFF: I believe it is beyond the scope of anything that went -- was brought up in the cross or questions from the bench, so I'll sustain the objection.

MR. DUFFY: Very well. That's all the questions I have at this time.

JUDGE WOODRUFF: All right. Thank you. Then Mr. Reed, you can step down.

THE WITNESS: Thank you.

JUDGE WOODRUFF: I believe the next witness is Mr. Kirkland. I know on the schedule he was scheduled to go tomorrow. Is he available to go today?

MR. DUFFY: He is available to go today, your Honor.

JUDGE WOODRUFF: All right. We're gonna go ahead and take a break for lunch before we bring him up, however. We'll take a break for lunch and we'll come back at one o'clock.

(A recess was taken.)

JUDGE WOODRUFF: Welcome back from lunch. And I believe we're ready to begin with the next witness, which should be Mr. Kirkland.

MR. DUFFY: MGE calls David Kirkland to the stand.

(The witness was sworn.)

JUDGE WOODRUFF: You may be seated and you may inquire.

DIRECT EXAMINATION BY MR. DUFFY:

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

A. David Kirkland.

Q. Are you the same David Kirkland that caused to be filed in this case what has been marked for purposes of identification as Exhibit 4, the direct testimony, Exhibit 5, rebuttal testimony of David Kirkland and 6, the surrebuttal of David Kirkland?

A. Yes, I am.

Q. Do you have any changes or corrections to any of those documents today?

A. Actually, I do have a few.

Q. Could you tell me the first one, please?

A. Excuse me. The first one, I think, has been submitted, but in my direct testimony under the table of contents starting on line 22, the -- on the left-hand side of the page, the schedules are misnumbered.

For example, on line 22 it starts out by reading, "Schedule No. 5," but over to the right-hand side of the page, it says, you know, "Schedule No. 7" or "DNK No. 7." So the schedule numbers on the right are the correct numbering.

Q. Okay. What would be the next correction?

A. Let's see. The -- there's a correction on page No. 15 of my direct, line 20, and the schedule is shown as "DNK-14," it's actually DNK-16.

Q. What's the next one?

A. Turn to page 10 of my rebuttal testimony, on line 9, the date should be May 28th, 1996. It's shown as "May 1st, 1996."

Q. Do you have any others?

A. Yeah, and there's one other on that page and this -- in my testimony here, we were listing a sequence of activities by Missouri Gas Energy and by the Staff, and I'd like to note that around line 20 we should note that for the 1997-'98 heating season, Missouri Gas Energy added 10,000 MMBTU of capacity for southwest Missouri.

I mean, this information is shown elsewhere in my testimony. It's shown in the reliability report and it's also shown on the DNK-15, but it was omitted in this list, so I thought it was important to note that.

Q. So run that by me again. On line --

A. Well, actually, it would be between lines 20 and 22, I guess -- or between 20 and 21. In that time period for the 1997-1998 heating season, Missouri Gas Energy added 10,000 MMBTU of capacity for southwest Missouri.

Q. Okay. Any other changes or corrections?

A. No, there are not.

Q. With those changes that you have just stated, if I asked you the questions that appear in what have been marked for purposes of identification as Exhibits 4, 5 and 6, would your answers be the same as they appear therein?

A. Yes, they would.

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

A. Yes, they are.

MR. DUFFY: At this time I'd like to offer into evidence Exhibits 4, 5 and 6.

JUDGE WOODRUFF: Exhibits 4, 5 and 6 which are both NP and HC are offered into evidence. Are there any objections to their receipt?

(NO RESPONSE.)

JUDGE WOODRUFF: Hearing none, they will be --

MR. REED: Judge, I do have an objection --

JUDGE WOODRUFF: All right.

MR. REED: -- to Exhibits 4 and 5. Those would be the direct and the rebuttal testimony of Mr. Kirkland. As the Commission's aware, the issue in this case is whether this $4.057 million should be disallowed because MGE was imprudent in the two periods at issue, or as the issue continues, whether Staff's methodology is inappropriate.

So the question before us is really the appropriate -- appropriateness of the methodology,

and Mr. Kirkland doesn't really get into any of the issues or the underlying data that are at issue until his surrebuttal, so I have no objection to that.

Mr. Kirkland didn't address the methodology used by MGE, he didn't even work for MGE during the time period that these reliability reports were prepared, he played no role in developing the demand forecast at issue, and there's no foundation for his testimony because he didn't work there and has no personal knowledge of MGE's practices during the time periods before and when these reliability reports were prepared.

JUDGE WOODRUFF: Mr. Duffy, a response?

MR. DUFFY: Well, as near as I can tell, he's objecting, at least on some of the stuff, the things that aren't in there so I don't know exactly how to respond to that.

But my main response would be Exhibit 4 contains the reliability reports that were filed prior to this period through this period. The Staff's allegations were that MGE did sloppy planning.

So we have given the Commission MGE's documents, the exact planning document that was filed with the Commission. It shows how it was done, it

shows what considerations were taken into it, so we have attempted to provide the Commission with all of the material that was relied upon by MGE in making these decisions.

There's an issue about what did the Staff do with those documents and so those documents are appropriate. Mr. Kirkland, I believe, has or can testify that he's reviewed all of this stuff. He's here to stand cross-examination on what MGE did on these things.

He, in his testimony, in his direct testimony and his rebuttal testimony, I believe he does refute the Staff's position in this case, so I would say that his -- his motion to, I guess, withhold or strike Exhibits 4 and 5 is not well taken.

JUDGE WOODRUFF: I'm gonna overrule the objections. Exhibits 4, 5 and 6, both NP and HC, will be admitted into evidence.

(EXHIBIT NOS. 4-NP, 4-HC, 5-NP, 5-HC, 6-NP AND 6-HC WERE RECEIVED INTO EVIDENCE AND MADE A PART OF THE RECORD.)

MR. DUFFY: Your Honor, before I tender the witness for cross-examination, I want to deal with one matter. Ms. Jenkins has made a factual

assertion in her surrebuttal testimony on page 7, line 7. It's a one-sentence factual allegation on whether the Southern Star contract was provided to the Staff in a particular ACA period.

Because this factual allegation was raised for the first time in surrebuttal, I want to ask Mr. Kirkland on the stand at this point if he has any information regarding this factual allegation that she has made as to whether something was provided or wasn't provided. And then, of course, he can be crossed on that at some point.

But I want to supplement his testimony to the -- to deal with this one factual allegation that was raised in surrebuttal that we would not have had an opportunity to respond to.

JUDGE WOODRUFF: Any objection to that procedure?

MR. REED: No, Judge.

JUDGE WOODRUFF: All right. Go ahead.

BY MR. DUFFY:

Q. Mr. Kirkland, I'm gonna read you a one-sentence excerpt from Ms. Jenkins' surrebuttal testimony that hasn't been admitted into evidence yet and then I'm gonna ask you to comment on that.

Her -- the sentence in particular is on

page 7 starting on line 7 that says, "The contract indicating the changes to SSC," which is the Southern Star Center, "was provided to Staff in the 2001-2002 ACA review, not the 2000-2001 ACA review."

Then there's a footnote 1 to that and the footnote says, "The Southern Star contract was provided in the company's response to DR No. 32, Case Number GR-2002-348, the 2001-2002 ACA review."

My question to you is, do you have any knowledge about her allegation that the contract, the Southern Star contract was not provided to the Staff in the 2000-2001 ACA review?

MR. REED: Your Honor, I guess I should preface this with an objection as to foundation. Is the witness going to testify to personal knowledge?

MR. DUFFY: Yes.

MR. REED: All right. Then I have no objection.

THE WITNESS: In answer to the question, I actually did go back and take a look at the record and I found that in Case GR-2001-382, DR No. 6 is where the contract that's in question was furnished and the record should be furnished on July the 20th of 2001.

MR. DUFFY: That's all the questions I

have on this matter, your Honor.

JUDGE WOODRUFF: All right. Thank you.

MR. DUFFY: Unless there's something further on that, I would be ready to tender him for cross-examination.

JUDGE WOODRUFF: All right. For cross-examination then, End Bridge is not here. Public Counsel have any cross?

MR. POSTEN: No questions.

JUDGE WOODRUFF: For Staff then.

MR. REED: Sometimes I forget the order, Judge. I'm sorry.

JUDGE WOODRUFF: That's all right.

CROSS-EXAMINATION BY MR. REED:

Q. Mr. Kirkland, as I understand it, since you've been employed by MGE, you have gone back for a number of years, I take it, and looked at records MGE has dating back for many years; would that be accurate?

A. Are you addressing the reliability reports?

Q. Yes, sir.

A. Okay. Actually, I have gone back and taken a look at the reliability reports starting back in 1996 and I have attached a number of those to my

testimony.

Q. You've attached the reliability reports themselves, correct?

A. Yes, I have.

Q. And the data which was used by MGE in order to produce those reliability reports, have you reviewed that information as well?

A. Actually, the data that was used to produce those reliability reports are not in my possession. When we moved the office from Austin, Texas to Kansas City back in the year of 2003, we looked for that information, didn't find it and still haven't found it.

Q. Do you know, Mr. Kirkland, specifically what documents MGE would have used to develop its forecast for the 2001-2002 and the 2002-2003 periods?

A. I believe some of those documents were send-out reports, and actually we do have electronic file of that information so --

Q. The send-out --

A. -- we need to make certain --

Q. I'm sorry. I didn't mean to interrupt.

A. Yeah.

Q. The send-out reports, what do they give us?

A. Well, we need to make certain we don't confuse people with the terminology. There is a program called Send-Out that we've used in the development of some of the reports, and so we did receive electronic files.

Q. Well, one of the things I wanted to ask you about has to do with send-out data, okay, the amount of gas that's actually going out to customers. Now, that's something different than the Send-Out program that you're talking about, right? Are you familiar with send-out data?

A. I believe I am.

Q. Okay. Have you -- for MGE, have you looked back to that send-out data that MGE would have had for the ACA periods at issue?

A. I haven't personally looked at the data, no, I have not.

Q. Can you tell me this, though: Is it appropriate to remove interruptible load from the data that MGE used in their demand forecast?

A. Well, insomuch as I don't believe Missouri Gas Energy has any interruptible load by tariff, I don't know that that's a question that --

Q. It has no interruptible load?

A. That's my understanding.

Q. Okay. It has no interruptible load now or it had none in the 2001 through 2003 period?

A. It has no interruptible load now. I'm not familiar with -- what period did you mention?

Q. 2001 through 2003.

A. I'm only familiar with the interruptible load that we would have starting with 2003.

Q. Starting with 2003. As I understand it, you became employed by MGE December 31st, 2002?

A. That is correct.

Q. Can you tell me, would it be appropriate to remove any end user transportation customer usage from the data that MGE used in its demand forecasts?

A. Yes, it would.

Q. It would be?

A. Yes, because the company doesn't have an obligation to transport that supply except across the distribution system.

Q. And that is regardless of whether there's design day or not, correct?

A. I'm trying to understand your question.

Q. Well, maybe I'll withdraw the question, okay?

A. Okay.

Q. I mean, let me do that. Now, do you

know whether, for the ACA periods at issue in this case, whether MGE removed that end user transportation customer amount from the data it used in its demand forecasts?

A. Well, that was clearly the practice that I had seen in the reliability reports, so I would expect that that did happen.

Q. You recall how MGE calculated its base load for the forecasts that we're talking about in this case?

A. From the description that I read in the reliability reports, the company used summer load data from, let's say, the months of June, July and August.

Q. Now, you've indicated that there's no interruptible load now, but back in the 2001-2003 period, do you know whether MGE removed any interruptible load data from the calculation of the base load?

A. I do not know.

Q. You played no role -- you played no role in obtaining and arranging the capacity portfolios that MGE had during the two years at issue in this case, correct?

A. That is correct.

Q. When you came on, you were in the middle of the second ACA period that was running; is that accurate? In other words, the 2003 -- 2002-2003 period was running and you came in December 31st, 2002; is that correct?

A. That's correct.

Q. So the planning had been done. I wanted to ask you about some testimony in your surrebuttal where you explained MGE's use of the mystery peak day that I've referred to earlier. Do you know what that number is that I'm talking about?

A. Well, could you define the mystery peak day better for me?

Q. Well, we can -- we can go in-camera, but do you recall, were you here when I -- when we did opening statements this morning?

A. Well, I remember your statement about the mystery peak day, yes.

Q. Do you remember what that number was that I was referring to?

A. Could you refresh my memory?

Q. Well, it's the number used in the 2001 through 2003 reliability reports by MGE. Do you remember that number?

A. Yes, I do.

Q. I just don't want to go in-camera unless we have to.

A. I understand.

Q. Now, that number --

MR. DUFFY: Your Honor, may I just suggest for clarity that counsel show the number to the witness just so we're all assured that they're both talking about the same number? Nobody has to say it out loud, but --

JUDGE WOODRUFF: That sounds like a good idea.

MR. REED: Okay. I have it here.

JUDGE WOODRUFF: If you'd like to approach, go ahead.

MR. REED: Thank you.

BY MR. REED:

Q. Page 2 of this reliability report, that's the 2001-2002 report, and this is the number I'm referring to right here.

A. Yes, that is -- we're talking about the same number.

Q. All right.

A. That's an effective degree day number just for definition.

Q. An effective degree day number. I

noticed that in your surrebuttal, you called it a gas day number; do you recall that?

A. No, I don't.

Q. Here in your surrebuttal on page 14, we have the date there, then it says "gas day."

A. Could you tell me which line you're...

Q. Oh, it's line 27.

A. On page 14?

Q. Yes.

A. Of my surrebuttal?

Q. Yes, sir, page 14, surrebuttal, line 27.

A. Okay. This is -- this is information that -- I believe it's pulled from the reliability report directly.

Q. The note that you've indicated down there just below that information about the gas day says, "Note: Calculated heating degree days are corrected for wind chill." Do you see that?

A. I do.

Q. Was that in this reliability report, that note?

A. In the 2000 reliability report?

Q. Yes.

A. I'm sorry. I'm trying to understand --

Q. Yes, the 2001-2002 reliability report.

A. I'd have to check. Would you like for me to do that now?

Q. No, not right now. But we may come back to that, okay?

A. Okay.

Q. Now, in Staff's recommendations that were filed in December of 2003 and December of 2004, there was reference made to this number that we've agreed we're talking about, this effective heating degree day as you've referred to it, correct?

A. Uh-huh.

Q. December of 2003, December 2004, there's not another mention of this number about why it was chosen by MGE until your surrebuttal in 2006. Are you aware of that?

A. Okay.

Q. Okay. So we have mention of it in the 2001-2002 reliability report and then MGE doesn't say anything about why they chose this number for five years. Are you aware of that?

A. Well, I'm aware of that, but I mean, I mean, this number was fully described in my direct testimony through the reliability reports that were attached.

Q. In the reliability reports that were

filed between, what, 1997 and 2001, something like that?

A. I believe it starts with the July 1996 reliability report.

Q. And you attached all those to your testimony and there's no mention made of why that number was chosen until your surrebuttal.

A. Well, I guess I'm missing the point here.

Q. You don't have to get the point. It was a question. There was no mention again by MGE of this number until your surrebuttal, yes or no?

A. I don't recall.

Q. You would agree with me that it is MGE's responsibility to arrange for its pipeline capacity portfolio?

A. Yes, it is.

Q. It is. And it is MGE's responsibility to calculate the demand that its customers will need?

A. That's correct.

Q. You would agree with me?

A. Uh-huh.

Q. It is MGE's obligation, correct?

A. That's our responsibility, to make certain that we have --

Q. Okay.

A. -- a system and the systems that provide us arranged our designs such that we can meet our delivery obligations.

Q. Would you expect that the decisions that MGE makes about its capacity portfolio and its demand forecasts improve over time?

A. Well, I guess I'd have to understand what you mean by improvement.

Q. Would you say that MGE gets better at forecasting the demand of its customers?

A. Well, I guess it depends on the starting point and, you know, how you define improvement over time.

Q. Have there been any changes in the way that MGE forecasts the demand of its customers?

A. Yes, there have.

Q. What are those?

A. Well, each year the -- starting in 1996, the company would take a look at the peak day consumption on their system and, you know, calculate a heat load value for that day. They would also look at the base load consumption and decide whether to change that number or to leave the number the same that was reported in the previous year.

And so over the period of time from 1996 forward, the company was looking at the activity or the performance of demand on their system to determine what the usage characteristics were.

Q. Does MGE still use the number that we've identified for the peak heating degree day in its 2001-2002 reliability report?

A. We have not used that number in the last two reports that we've submitted to the Commission.

Q. Mr. Kirkland, can you tell me what -- I have a number of questions. It's about capacity costs. Are you familiar with how much it costs per decatherm to purchase pipeline capacity? Does that question make sense to you?

A. It does.

Q. Okay. Can you tell me that? Can you tell me about how much per decatherm it costs?

A. Well, that information is published in the pipeline tariffs, so I mean, I'd like to reference that to you first. But I mean, generally speaking, the cost can range anywhere from, I'll just say roughly 30 cents per day to much higher values depending on which pipeline you're looking at and what service area -- I mean, it all depends on where -- where you're looking for pipeline

transportation costs. I mean, clearly they differ in different parts of the country.

Q. Okay. Now, can you give me the range for MGE, the range from the lowest to the highest that MGE would pay for that capacity?

A. Well, I'm thinking that somewhere in the 25 to 30 cent range, and I guess you're speaking about what period? Let me -- let me clarify that. I started to answer --

Q. Well, now.

A. Oh, now?

Q. Yeah.

A. In the 30 to 40-cent range, and they could be higher or they will be higher on one of the pipelines that serve us.

Q. When we talk about 30 to 40 cents per day, can you tell me -- can you tell me what that is describing? Is that decatherms per day? Is that what you would say 30 to 40 cents per decatherm per day?

A. Right.

Q. Okay. Can you translate for me how many additional decatherms are needed for any increase in the heating degree day? In other words, if the temperature gets colder, so the HDD goes up, then?

A. I understand.

Q. What is the cost in -- what do you need in decatherms in order to meet that one-degree change?

A. In our review from the reports that were submitted up until recently, and by recently I mean the -- the report that we submitted in October of 2004, the reports prior to that, the -- what you're asking for is what's called the heat load factor. And the heat load factor that the company had calculated over time ranged from about 10,200 to a high of 10,600 based on the coldest day observed in the years between 1996 and roughly 2000-2001, somewhere in that -- in that range.

Q. 10,200 to 10,600 decatherms per day per HDD?

A. Per -- per effective heating degree day. I need to make that clear because that's the way the calculation was done. I mean, the company looked at when, and when is definitely a characteristic that must be included when you look at the gas consumption of your customers.

Q. Okay. I just want to make sure I get the terminology right because I'm still struggling with this a little bit. But we're talking about for

each heating degree day change, for each one, and I know you talk about this in terms of heat load because that covers the whole -- all your customers; is that right?

A. Yes.

Q. That's what you want to make sure you -- okay. So for each change, one-degree change in HDD, the requirement for additional gas is 10,200 to 10,600 decatherms per day?

A. Yes.

Q. Okay. I just want to make sure I understand it. That's all. Now, Staff in this case has alleged that MGE has excess capacity to the tune of 60,000 decatherms per day. You're aware of that allegation, correct?

A. Yes, I am.

Q. Okay. And let me give you an example. If a company had 300 decatherms per day in excess capacity, do you know what the daily cost for that would be?

A. Depends on how much you're paying for it.

Q. In this case Staff has -- Staff has alleged that 60,000 decatherms per day costs two million a year and you'll find that in their

testimony. So if -- if there were 300,000 decatherms per day excess capacity, that would actually cost about ten million per year. Is that math right?

A. The math is correct, yes.

Q. Okay. Now, if -- if each change in HDD requires over 10,000 decatherms per day, what you want to plan for is that peak coldest day number that you might ever expect, but if it never reaches that point, you're not gonna use that capacity. We know that.

But if you choose a -- a design day or a peak day that might occur that is lower than that number that MGE chose in its 2001-2002 reliability report, you remember what that number was, correct?

A. Uh-huh, I do.

Q. If you actually chose a number that was, say, 82 as the design day that you're aiming for, that's three HDD difference, correct?

A. I can't answer that.

Q. That's -- that's a good point. You're ahead of me. If we had a three-degree difference in HDD, though, that would be three times 10,200, would it not?

A. In this example, I mean, yes.

Q. That would be 30,000 decatherms per day

at -- is it 30 to 40 cents per decatherm per day? Is that what we talked about earlier?

A. Yes.

MR. REED: Okay. Thank you, Mr. Kirkland.

JUDGE WOODRUFF: Thank you. And then we'll come up for questions from the bench. Commissioner Murray.

COMMISSIONER MURRAY: I don't have anything, thank you.

JUDGE WOODRUFF: Commissioner Appling?

COMMISSIONER APPLING: No questions.

JUDGE WOODRUFF: Thank you.

QUESTIONS BY JUDGE WOODRUFF:

Q. I do have one question. And we were talking about excess -- excess capacity. Staff has alleged that the company has excess capacity. Has any of that capacity been sold and is that an issue in this case at all?

A. Well, I mean, the company has an incentive mechanism in place to sell capacity that's not used year-round and it's a competitive market out there that we participate in. We make offers to parties that are active in the purchasing capacity every month, and sometimes that's a daily activity if

they call us.

So I mean, to the extent that we're not using the capacity in the summertime, we will sell it and in the winter months we will sell that capacity subject to recall. So we try to gain value of the capacity that's not -- not being used at the time for our customers.

Q. That's not been an issue in this case; is that right?

A. The revenue that we get associated with releasing capacity?

Q. Uh-huh.

A. It's -- it's not been an issue in this case, though I do address some concerns about -- I mean, this very issue in my direct testimony.

JUDGE WOODRUFF: Okay. That's all I have then. Any recross based on those questions? Public Counsel, Staff?

MR. REED: No, sir. Thank you.

JUDGE WOODRUFF: All right. Any redirect?

REDIRECT EXAMINATION BY MR. DUFFY:

Q. Mr. Kirkland, you were asked by Mr. Reed, I guess you said that you played no role in the planning or the obtaining of the capacity that is

the subject of this proceeding; is that correct?

A. That's true.

Q. Did you review the planning that MGE did with regard to the capacity that's at issue in this case?

A. Well, what I did is review the reliability reports that were submitted. I mean, I've read through them and I've found that, I mean, several things were encompassed in the reliability report. I think this is an important point because the reports go beyond just the calculation of what the forecast volume could be for Missouri Gas Energy's customers.

I mean, the reports also address the amount of -- and what the demand forecast would be, the amount of capacity that they have on the system by pipe. They talk about any changes that have been made during -- during the last year or capacity opportunities that could be upcoming. They talk about the different supply basins that gas comes from and I'm speaking generally here over the period of time starting in 1996.

I mean, these subjects are discussed in different levels of detail and each year's report, depending on what was -- what was happening and what

the company had done during this time period.

So I mean, the reason I want to mention this is that capacity planning is more than just calculating a forecast. I mean, clearly, we operate in a competitive market. We certainly want to have the lowest cost, delivered cost for our customers. There's no incentive for us to have capacity under contract that's not utilized by the company.

The market area in which we operate as far as pipeline capacity is competitive and the pipelines that serve us are typically sold out and excess capacity is not -- I mean, it's not available.

And so, I mean, that's -- that's an important point in decision-making with respect to how much capacity you contract for, and in this case whether you turn any capacity back as has been suggested by Staff or recommended by Staff.

So there's -- I mean, there's any number of considerations that go into acquiring capacity. I mean, there's economic reliability. I haven't touched on reliability but I would because, I mean, there's several things that can happen on a pipeline or within the supply areas that can affect the amount of gas that's delivered to us. The -- do I need to go on?

Q. No, not as far as in response to that question. My next question to you would be --

A. Pardon me.

Q. My next question would be, you've done this kind of capacity for other gas companies. When you reviewed what MGE did, did anything stick out in your mind as being stupid or bad or sloppy?

A. No, it didn't. You know, when I look at the reports and how they're put together, I mean, the forecast that was done from year to year, the analysis that was done of the forecasts that have been put together from 1996 going forward.

In particular, the company would put together a forecast of what their demand was and what their capacity was and in chart form to show when -- when the demand would exceed the capacity under contract. And typically what I found was that the capacity under contract was sufficient to cover a three to five-year period going forward. And so, I mean, in my mind that was prudent planning on the part of the company.

The -- I mean, the demand forecast as far as using the 85 heating degree day, that information came from a nationally recognized weather source, AccuWeather. And the -- I mean, the analysis

was done on a wind-adjusted effective heating degree day basis.

So, you know, I think that -- I mean, you might characterize the analysis as a conservative, but that's what pipelines need to be. They need to be able to serve their customers on a peak day considering how cold it can be and also the uncertainties associated with getting your supply from the supply basins because wellhead supply can freeze off. I've had direct experience in that in my background. And pipelines, their capacity can change. I mean, compressors can fail. And so...

Q. Mr. Reed asked you about the mystery -- mystery peak day or the mystery peak number. Have you been able to figure out what the mystery's all about yet?

A. Well, I would have to ask him what the mystery is. I don't know the answer to that. I think it's an unfair characterization.

Q. Why? Why is it unfair?

A. Well, I mean, as I stated earlier, the company -- initially they got a design number that came from the predecessor owner and they looked at that number, they questioned the number, and they went back to the -- to AccuWeather to verify what the

temperature ranges were and the wind speeds were for the day in question.

The coldest day in question had been observed in the previous -- I guess that time, just the previous ten years, for example. Maybe it was the previous -- I don't know --

Q. It was 1989?

A. It was 1989 is when it was. And so, I mean, this analysis took place in about 1996. So I think they -- I mean, they asked the right questions, they got the information from AccuWeather and they put together their plans on the basis of this cold record.

And I mean, it -- I mean, it was a very, very cold period for Kansas City, but I might add, I don't know that that's the coldest weather ever experienced in Kansas City because I went out and I did a Google search for cold weather in Missouri and I found out in 1905 it was minus 40 in Warsaw which is about 135 miles from Kansas City.

So the records didn't show the high and the low that day, but it was, I mean, it was very, very cold. So I mean, does that give me any comfort that the design standard that we put together is foolproof? I mean, I can't predict the weather going

forward.

Q. True. You've talked about -- or I guess this mystery HDD thing involves wind-adjusted HDD's as opposed to what, plain vanilla HDD's. Is that what this controversy seems to be about as far as you can tell?

A. I don't know that there's any controversy about wind adjustment or not.

Q. Okay. Well, by controversy I was referring to this allegation that somehow it's a mystery. When you were hired by MGE, had you ever heard of wind-adjusted HDD's?

A. Absolutely, yes.

Q. Okay. Is there anything wrong with using -- anything wrong from an industry standard perspective for using wind-adjusted HDD's?

A. No, I don't believe so. I mean, it's interesting to note that you don't make any adjustment of your heating degree days until the average wind speed for the day exceeds ten miles per hour.

Q. Okay. Now, is it okay to mix wind-adjusted HDD's and nonwind-adjusted HDD's in the same calculation?

A. You need to be consistent so that you're

using one or the other.

Q. Because it's apples and oranges otherwise?

A. Well, that's true.

Q. Okay. Let's take a look at page 14 and 15 of your surrebuttal testimony that Mr. Reed was asking you about. Are you with me?

A. I'm with you.

Q. Starting on line 13 of page 14 and continuing to line 2 of page 15, that's indented. Is that -- did you indent that for a reason? And I guess I'm referring to your explanation on lines 10 and 12 that it appears to be that this is an excerpt from the 1996 report rather than your testimony itself.

A. I believe that's correct.

Q. Okay. So you intended, what appears on line 13 through line 2 on the next page, to be a copy or an excerpt from the 1996 reliability report that's otherwise attached here to your direct testimony; is that right?

A. Yes, that's correct.

Q. And what was the purpose of you -- why did you feel like you had to put that in here?

A. Well, I thought it was important for us

to explain how the 85 HDD number was determined. I mean, that's what this explanation does; it shows the source of the information --

Q. So this shows, then, that -- and this report -- the report from which this was excerpted was filed with the Commission in 1996, so the Staff has seen, since 1996, that this was wind-adjusted and it had an explanation regarding the wind adjustment?

MR. REED: Objection, leading.

JUDGE WOODRUFF: Sustained.

BY MR. DUFFY:

Q. Okay. Do you know -- well, let's see. Based on the record as you've been able to review it, how long has -- how long should the Staff have been aware that there were wind-adjusted HDD's used in MGE's forecast?

MR. REED: Objection. Calls for speculation.

JUDGE WOODRUFF: Overruled.

THE WITNESS: Well, I know that the company filed a 1996 report, I believe, I'd have to check the date. I'm not certain of the date. It was, I think -- it may be July of 1996. And so the report has been -- or this information has been in their possession since that time.

I also know that the Staff has reviewed the reliability reports in every year that they were filed up until recently and they haven't commented on the ones that we did recently. But '96, '97, '98, no report was filed in '99, 2000. But the Staff prepares -- reviews the reports and prepares an evaluation and makes comments and recommendations regarding the work that was done and submitted by Missouri Gas Energy. So I mean, I take a lot of comfort that they've seen this information.

MR. DUFFY: I don't think I have anything else.

JUDGE WOODRUFF: All right. Then Mr. Kirkland, you may step down. Next witness, then, is for Staff, Ms. Jenkins. We'll take a break before we get there. We'll come back at 2:00.

(A recess was taken.)

JUDGE WOODRUFF: All right. Just before the break, or actually just after we took the break, there was an off-the-record discussion about how to proceed in this case.

Mr. Duffy, do you just want to summarize what was discussed?

MR. DUFFY: It's my understanding from the discussions, your Honor, that the parties are

agreeable to take a break at this point, and we will resume tomorrow morning at whatever time you deem appropriate. We will put Ms. Jenkins on the stand, and we'll go through her direct and we'll cross her tomorrow, and hopefully we'll be through with this case sometime tomorrow, early afternoon, perhaps.

JUDGE WOODRUFF: All right. Mr. Reed, is that agreeable?

MR. REED: That's correct, your Honor.

JUDGE WOODRUFF: For Public Counsel as well?

MR. POSTEN: That's fine. Thank you.

JUDGE WOODRUFF: Well, that's what we'll do then. We'll resume this hearing tomorrow morning at 8:30, and at this point, then, we are adjourned for the day. Thank you.

(WHEREUPON, the hearing of this case was recessed until August 29, 2006.)

MGE'S EVIDENCE:

JOHN REED
Direct Examination by Mr. Duffy 25
Cross-Examination by Mr. Reed 31
JOHN REED (IN-CAMERA)
Cross-Examination by Mr. Reed 54

JOHN REED
Questions by Commissioner Clayton 74
Questions by Commissioner Appling 98
Recross-Examination by Mr. Reed 101

JOHN REED (IN-CAMERA)
Recross-Examination by Mr. Reed 104

JOHN REED
Redirect Examination by Mr. Duffy 106

DAVID KIRKLAND
Direct Examination by Mr. Duffy 121
Cross-Examination by Mr. Reed 129
Questions by Judge Woodruff 145
Redirect Examination by Mr. Duffy 146

STAFF'S EVIDENCE:

LESA JENKINS
Direct Examination by Mr. Reed 162
Cross-Examination by Mr. Duffy 163

LESA JENKINS (IN-CAMERA)
Cross-Examination by Mr. Duffy 238

LESA JENKINS
Redirect Examination by Mr. Reed 242

EXHIBITS INDEX

	MARKED	RECEIVED
Exhibit No. 1-NP Direct Testimony of John J. Reed	3	30
Exhibit No. 1-HC Direct Testimony of John J. Reed	3	30
Exhibit No. 2-NP Rebuttal Testimony of John J. Reed	3	30
Exhibit No. 2-HC Rebuttal Testimony of John J. Reed	3	30
Exhibit No. 3-NP Surrebuttal Testimony of John J. Reed	3	30
Exhibit No. 3-HC Surrebuttal Testimony of John J. Reed	3	30
Exhibit NO. 4-NP Direct Testimony of David N. Kirkland	3	126
Exhibit No. 4-HC Direct Testimony of David N. Kirkland	3	126
Exhibit No. 5-NP Rebuttal Testimony of David N. Kirkland	3	126
Exhibit No. 5-HC Rebuttal Testimony of David N. Kirkland	3	126
Exhibit No. 6-NP Surrebuttal Testimony of David N. Kirkland	3	126
Exhibit No. 6-HC Surrebuttal Testimony of		

	MARKED	RECEIVED
Exhibit No. 7-NP Direct Testimony of Lesa A. Jenkins	3	163
Exhibit No. 7-HC Direct Testimony of Lesa A. Jenkins	3	163
Exhibit No. 8-NP Rebuttal Testimony of Lesa A. Jenkins	3	163
Exhibit No. 8-HC Rebuttal Testimony of Lesa A. Jenkins	3	163
Exhibit No. 9-NP Surrebuttal Testimony of Lesa A. Jenkins	3	163
Exhibit No. 9-HC Surrebuttal Testimony of Lesa A. Jenkins	3	163
Exhibit No. 10-HC Total System Chart	66	*
Exhibit No. 11-HC MGE 2002-2003 ACA, GR-2003-0330 Data Request No. 268	166	166
Exhibit No. 12-NP FERC decision	201	201
Exhibit No. 13-NP Page from textbook on linear regression analysis	215	215
Exhibit No. 14-NP Cover pleading and the report that was filed	231	231

* Neither offered nor received.