

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
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6 TRANSCRIPT OF PROCEEDINGS
7 Hearing
8 January 17, 2007
9 Jefferson City, Missouri
Volume 10

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12 In the Matter of Missouri Gas)
Energy's Tariffs Increasing Rates)
13 for Gas Service Provided to) Case No. GR-2006-0422
Customers in the Company's)
14 Missouri Service Area)

15

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KENNARD L. JONES, Presiding,
17 REGULATORY LAW JUDGE.

18

19 JEFF DAVIS, Chairman,
CONNIE MURRAY,
20 STEVEN GAW,
COMMISSIONERS.

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

2 JUDGE JONES: We are reconvening with
3 GR-2006-0422, the rate case of Missouri Gas Energy.
4 Before we move to testimony, there are a couple of things.
5 Mr. Franson, you moved for a motion for summary judgment
6 on an issue?

7 MR. FRANSON: Yes.

8 JUDGE JONES: It's not allowed in a rate
9 case.

10 And, Mr. Poston, there was a problem with
11 discovery requests to MGE. Mr. Mitten, have you had an
12 ample opportunity to review the material in order to
13 cross-examine Mr. Ted Robertson?

14 MR. MITTEN: Your Honor, I didn't receive
15 that material from Public Counsel until 4:30 yesterday
16 afternoon, and the only reason I got it then is Mr. Noack
17 brought it with him from Kansas City. Apparently the
18 responses to four of my six Data Requests that dealt with
19 the Environmental Response Fund were mailed from Public
20 Counsel's office on Friday afternoon to Mr. Noack in
21 Kansas City.

22 I believe that was done with the
23 expectation if not the intent to deny me that information
24 until yesterday at the earliest and perhaps not even 'til
25 today because they knew that, Monday being a federal

1 holiday, there would be no mail service. I would note
2 that despite the fact that the two responses that relate
3 to the Infinium software amortization were e-mailed to me
4 with a notation that they were still working on the
5 responses that related to the environmental response fund,
6 I did not receive a copy of the four responses that
7 related to the environmental response fund either in the
8 mail or a copy of the cover letter that went to Mr. Noack.

9 So I'm going to renew my objection to
10 Mr. Robertson's testimony regarding the environmental
11 response fund because again Public Counsel, despite the
12 fact that the Bench was very clear that that information
13 was supposed to have been gotten to me by the end of last
14 week, didn't get it to me until Mr. Noack delivered it to
15 my office late yesterday afternoon.

16 JUDGE JONES: Mr. Poston?

17 MR. POSTON: Judge, one, I was not aware
18 that those were being mailed to the Kansas City office,
19 but I will note that all of the data that was being
20 requested were things that could be found in a publicly
21 available record, the Commission's records. They were
22 wanting to know testimony of the Public Counsel going
23 back -- in MGE cases going back to 1994. Those are things
24 that Mr. Mitten could have sat down in the Commission's
25 record room and found himself. Instead, we had to pull

1 our archive, pull boxes out and go through these ourselves
2 and find these, and it was very time consuming. And he
3 pushed that time-consuming factor on to us when he could
4 have very well done the homework himself.

5 JUDGE JONES: Mr. Mitten, is that true? Is
6 that information that you could have gotten yourself?

7 MR. MITTEN: Your Honor, I asked very
8 specific questions.

9 JUDGE JONES: The question is, could you
10 have gotten the information yourself, not who you asked
11 the question to. Just could you have gotten it yourself?

12 MR. MITTEN: I could have researched the
13 files, but I couldn't tell what testimony the witness was
14 relying on, and that was what I asked him for.

15 JUDGE JONES: Mr. Poston, couldn't you have
16 told him just what the testimony was you were relying on
17 and allowed him the opportunity to research it himself?

18 MR. POSTON: Well, I don't have those Data
19 Requests in front of me to see if that's what he asked. I
20 think, you know -- well, I don't have that in front of me
21 to know if that's what he asked. I'd like to see a copy
22 of it.

23 JUDGE JONES: Do you have the Data Request,
24 Mr. Mitten?

25 MR. MITTEN: I do in my file, yes.

1 JUDGE JONES: Why don't you get that?

2 MR. POSTON: Well, I've just been provided
3 just one of the Data Requests. This one is requesting
4 documents that are publicly available, OPC testimony,
5 briefs, statements of positions. I mean, these are all
6 things that are in the record.

7 JUDGE JONES: Mr. Mitten?

8 MR. MITTEN: The discussion that we had a
9 moment ago focused on one of the Data Requests, and that's
10 the one that I dug out and gave to counsel a moment ago.
11 Again --

12 JUDGE JONES: But the one that you gave him
13 was supposed to prove your point. Apparently it hasn't.

14 MR. MITTEN: Can I give the Bench a copy of
15 the Data Request?

16 JUDGE JONES: Sure. That's why I stood up
17 ready to receive it in the first place.

18 MR. MITTEN: I wanted to make sure I had
19 the right one that Mr. Poston was referring to.

20 JUDGE JONES: And, Mr. Mitten, let me ask
21 you, have you read Mr. Robertson's -- is it direct
22 testimony or rebuttal?

23 MR. MITTEN: Rebuttal.

24 JUDGE JONES: Have you read it?

25 MR. MITTEN: Yes.

1 JUDGE JONES: I'm going to deny your
2 request, and if you have questions for him, ask him. If
3 you're not ready to ask him questions, then don't. This
4 is information that you could have gotten yourself. That
5 burden shouldn't have been put on the Office of the Public
6 Counsel.

7 Now, in all fairness, I will tell you when
8 I came in here today, particularly in light of me
9 directing the Office of Public Counsel to get you that
10 information last week, I was all prepared to rule in your
11 favor, but upon further review, in looking at this
12 information, you could have done the work yourself.

13 MR. MITTEN: Your Honor, I could have done
14 the work myself.

15 JUDGE JONES: That's my point.

16 MR. MITTEN: But the purpose of
17 interrogatories is to direct the parties to provide
18 information that is relevant to the testimony that they
19 filed in the case.

20 JUDGE JONES: Or to burden them in pretrial
21 preparation.

22 MR. MITTEN: There were six Data Requests,
23 a total of six Data Requests.

24 JUDGE JONES: Do you have the other five?

25 MR. MITTEN: I don't have all of them with

1 me, no.

2 JUDGE JONES: Well, then you're not even
3 ready to argue this issue.

4 MR. MITTEN: Well, yes, I am ready to argue
5 the issue.

6 JUDGE JONES: This one, looking at this
7 one, this is information you could have gotten yourself.

8 MR. MITTEN: And they could have objected,
9 either on that basis or --

10 JUDGE JONES: Despite that, you could have
11 gotten it yourself, and you said that that's true
12 yourself. You said it's true.

13 MR. MITTEN: I could have spent a lot of
14 time --

15 JUDGE JONES: Exactly, or they could have
16 spent a lot of time. Somebody had to spend a lot of time,
17 and it's for your benefit, so it's your benefit to spend a
18 lot of time.

19 MR. MITTEN: Your Honor, the company in a
20 rate case is required to respond to countless Data
21 Requests from all of the parties.

22 JUDGE JONES: But you also have a burden of
23 proof.

24 MR. MITTEN: I do, and they have a burden
25 to support the testimony and to respond to reasonable

1 interrogatories that are designed --

2 JUDGE JONES: But this is not reasonable.
3 This is unreasonable. Why would you ask somebody to tell
4 you something that you can find out yourself?

5 MR. MITTEN: Because I'm interested in the
6 information that supports the position that they've taken
7 in this case.

8 JUDGE JONES: What you're trying to do is
9 possibly show a contradiction in their past testimony?

10 MR. MITTEN: Yes.

11 JUDGE JONES: Okay. You can bring that out
12 in cross-examination today. You can simply ask
13 Mr. Robertson what he testified to in these past cases.

14 MR. MITTEN: I'm not interested in
15 Mr. Robertson's testimony in past cases. I'm interested
16 in testimony of other Public Counsel witnesses.

17 JUDGE JONES: Then ask him about that. In
18 any event, your motion is denied. I'm not going to
19 belabor the point. We're already a day late in this
20 hearing. So your motion is denied.

21 MR. MITTEN: Very well.

22 JUDGE JONES: Let's move on to
23 Mr. Robertson's testimony.

24 Mr. Poston, did you want to make an opening
25 statement?

1 MR. POSTON: I do have an opening
2 statement.

3 JUDGE JONES: Go right ahead.

4 MR. POSTON: May it please the Commission?
5 This issue is the environmental response fund that MGE has
6 proposed to set up, and two years ago the Commission
7 rejected MGE's attempt to establish this same
8 environmental response surcharge that MGE is requesting in
9 this case, and two years ago the Commission rejected it
10 for very good reason.

11 In Case No. GR-2004-0209 the Commission's
12 Report and Order stated, quote, MGE's proposal to include
13 \$750,000 per year in its cost of service for future
14 environmental cleanup costs is based entirely on
15 speculation regarding costs that the company may never
16 incur. Once again, MGE is asking for costs the company
17 may never incur.

18 Now, they're asking for 500,000 from
19 ratepayers instead of 750,000, a small change to a
20 proposal the Commission clearly rejected, and the
21 Commission's rejection had nothing to do with the amount
22 of the fund.

23 The Commission's Report and Order went on
24 to find, quote, the creation of a prefunded source for the
25 payment of these cleanup costs would remove much of

1 Southern Union's incentive to ensure that only prudently
2 incurred and necessary costs are paid. If the money has
3 already been recovered from ratepayers and is being held
4 in the fund, Southern Union would have little incentive to
5 not pay it out to settle claims brought against it, end
6 quote.

7 Southern Union and Western Resources have
8 an agreement whereby each company assumes a certain amount
9 of liability. And Southern Union's liability was a
10 consideration in the purchase price for MGE, meaning
11 Southern Union was already compensated for assuming the
12 manufactured gas plant liability. Ratepayers did not
13 participate in that agreement and had no input in whether
14 Southern Union's purchase price and the assumption of
15 liability was proper. The ratepayers should not be held
16 liable for the environmental liabilities that Southern
17 Union chose to assume.

18 And with that, I will conclude, and
19 Mr. Robertson is here to testify.

20 JUDGE JONES: Will you raise your right
21 hand, Mr. Robertson?

22 (Witness sworn.)

23 JUDGE JONES: Thank you, sir. You may be
24 seated.

25 MR. POSTON: I can't recall. Have you

1 testified?

2 THE WITNESS: (Witness nodded.)

3 MR. POSTON: Okay.

4 JUDGE JONES: Well, he has testified,

5 haven't you?

6 THE WITNESS: Yes, I have.

7 JUDGE JONES: Has all your testimony been

8 entered into evidence, Mr. Poston?

9 MR. POSTON: I believe so, yes.

10 MR. MITTEN: I believe it was subject to my

11 objections regarding the testimony on Infinium software

12 amortization and this issue.

13 JUDGE JONES: Okay.

14 MR. POSTON: It was my understanding that

15 your overruling was actually accepting our testimony.

16 JUDGE JONES: It is. Other than that,

17 Mr. Mitten, do you have any objection to Mr. Robertson's

18 testimony?

19 MR. MITTEN: No.

20 JUDGE JONES: Exhibit 204, 205 and 206 are

21 admitted into the record.

22 (EXHIBIT NOS. 204, 205 AND 206 WERE

23 RECEIVED INTO EVIDENCE.)

24 JUDGE JONES: And now we'll have

25 cross-examination from MGE.

1 MR. MITTEN: Thank you.

2 TED ROBERTSON testified as follows:

3 CROSS-EXAMINATION BY MR. MITTEN:

4 Q. Good morning, Mr. Robertson.

5 A. Good morning.

6 Q. Could you please turn to page 20 of your
7 rebuttal testimony in this case?

8 A. Okay.

9 Q. Now, on that page and continuing over to
10 the next page, you list a number of reasons that the
11 Public Counsel objects to the establishment of the
12 environmental response fund; is that correct?

13 A. I do.

14 Q. I want to focus for purposes of my
15 questions on the first reason, where you say that it is,
16 quote, likely that prior ratepayers have already provided
17 the company with a return on and of, a return of its
18 investment in the MGP operation. Is that a correct
19 recitation of your testimony on that page?

20 A. Yes.

21 Q. Now, with respect to your claim that
22 ratepayers provided the company with a return on the
23 investment, on page 21 of your testimony, in reason No. 6,
24 you indicate that the return on component of prior rates
25 included recognition of this risk factor. And I assume by

1 this risk factor, you mean the risk of remediation costs
2 associated with the former MGP plants?

3 A. Which I attribute to be business risk.

4 Q. Would you please answer my question. Is
5 that, in fact, what you meant by that statement on page 21
6 of your testimony?

7 A. Business risk, yes, of the operation.

8 Q. Again, let me reask the question. When you
9 said the return on component of prior rates included
10 recognition of this risk factor, were you referring to the
11 risk associated with the remediation of the former MGP
12 sites?

13 MR. POSTON: Objection, this is asked and
14 answered.

15 JUDGE JONES: No, it hasn't been.

16 THE WITNESS: As an expense incurred by the
17 company, those are expenses, yes.

18 BY MR. MITTEN:

19 Q. So your answer would be yes to that
20 question?

21 A. Yes.

22 Q. Now, I asked you to provide me in --

23 MR. MITTEN: Could I approach the witness,
24 please, your Honor?

25 JUDGE JONES: Yes, you may.

1 MR. MITTEN: Your Honor, I don't intend to
2 enter this as an exhibit, but I will distribute copies to
3 the parties so they can follow along during my cross.

4 BY MR. MITTEN:

5 Q. Now, you've seen what I've handed you,
6 which is Data Request 2002 in this case; is that correct?

7 A. I've seen the Data Request and I gathered
8 the information.

9 Q. All right. Now, in that Data Request, I
10 asked for specific --

11 MR. MITTEN: Excuse me, your Honor. I'm a
12 little ahead of myself. I wanted to give him another Data
13 Request. Let me do that right now.

14 JUDGE JONES: That's fine.

15 MR. MITTEN: I don't intend to mark this
16 one either, but I will distribute copies.

17 BY MR. MITTEN:

18 Q. All right. Mr. Robertson, I'd like you to
19 focus on Data Request 2005. Have you seen that Data
20 Request before?

21 A. I have.

22 Q. And did you respond to that Data Request?

23 A. I guess you could say that I responded.

24 It's my signature. I had the people gather that
25 information, aggregate it and send it to you.

1 Q. In that Data Request, I asked you to
2 provide me three specific -- information regarding three
3 specific points: One, copies of prefiled testimony that
4 dealt with environmental remediation risk related to MGP
5 sites as a factor that impacts the investors' expected
6 rate of return. Second, testimony that quantified that
7 risk. And third, testimony that expressed a belief that
8 the witnesses' recommendation regarding the return on
9 common equity adequately compensated the company for its
10 potential environmental remediation risk; is that correct?

11 A. It is.

12 Q. And in response to that, you provided me
13 copies of the testimony of Public Counsel witness John
14 Tuck in Case No. GM-94-40, the testimony of Public Counsel
15 witness Mark Burdette in Case No. GR-96-25, the testimony
16 of Public Counsel witness Mark Burdette in GR-98-140, the
17 testimony of Public Counsel witness Mark Burdette in
18 GR-2001-292, the testimony of Public Counsel witness
19 Travis Allen in GR-2004-0209, and the testimony of Public
20 Counsel witness John Tuck in Case No. GR-2004-0209; is
21 that correct?

22 A. That's correct.

23 Q. Now, before you sent me this testimony that
24 I've just referred to, did you personally review it to see
25 if it provided me specific information that I had asked

1 for in the Data Request?

2 A. The way I understood the Data Request, you
3 asked for what -- the quantification?

4 Q. I asked for three things in the Data
5 Request, which I went over a moment ago. And if you need
6 me to, I'll go over them again.

7 Q. Well, the point being that the information
8 that is in that testimony encompasses all the risks
9 associated with the company. If there's anything in there
10 regarding specifically to environmental costs, it would be
11 included in it. It was not specifically broken out. I
12 don't know that it's actually specifically broken out.

13 Q. Again, I asked you if you had reviewed this
14 testimony to see if it provided me any or all of the
15 specific information that I requested in my Data Request.

16 A. I can tell you that in those cases I have
17 read that testimony at one time or another. Did I read it
18 just before I sent it to you? No.

19 Q. So you didn't check to see if the
20 information I specifically requested was in any of the
21 paper that you sent me in response to this Data Request?

22 A. Did I check to see if it specifically
23 delineated environmental costs? No. But does the
24 testimony regarding the company's total rate of return
25 which encompasses all the costs? Yes.

1 MR. MITTEN: Your Honor, may I approach the
2 witness?

3 JUDGE JONES: Yes, you may.

4 BY MR. MITTEN:

5 Q. I've handed you the copies of the testimony
6 that you sent me in response to Data Request 2005, and I
7 would ask you to show me in any of that testimony where
8 the witness identified MGE's environmental remediation
9 risk that's related to the MGP sites as a factor that
10 impacts the rate of return.

11 A. I can't specifically break that out.

12 Q. Do you know if it's in there?

13 A. I know that they proposed -- first off,
14 there's two points here.

15 Q. I asked a very specific question,
16 Mr. Robertson.

17 A. And I answered. The answer to the question
18 is, I can't specifically break out the environmental
19 costs. I can tell you that they gave an overall
20 recommendation of the weighted rate of return, which would
21 include all costs associated with the company. But the
22 point being --

23 MR. MITTEN: Your Honor, could I --

24 JUDGE JONES: Let him finish his response.

25 THE WITNESS: The point being, though, in

1 my testimony I'm not referring to these -- the testimony
2 of these witnesses. The rate of return I'm discussing was
3 in the rate of return that occurred when the manufactured
4 gas plant was in operation.

5 BY MR. MITTEN:

6 Q. So that was prior to MGE owning the
7 property?

8 A. That plant hasn't been in service since
9 probably before the 1950s.

10 Q. That's a yes or no question, Mr. Robertson.

11 A. They bought the plant in 1994.

12 Q. So the rate of return that you were
13 referring to in your testimony was a rate of return earned
14 by companies other than MGE?

15 A. The companies that operated manufactured
16 gas plant, yes.

17 Q. So is it your testimony today that MGE has
18 not been compensated through the rate of return for the
19 risk associated with remediation of the MGP plants?

20 A. Due to the -- through the rate of return,
21 that's correct, because they assumed the liability
22 themselves, Southern Union did.

23 Q. Okay. Now, let's turn to the cost of
24 capital testimony that's been filed in this case. Have
25 you reviewed any of the cost of capital testimony that was

1 filed by either the company's witness, the Staff's witness
2 or Public Counsel's witness in this case?

3 A. I don't recall that Public Counsel filed
4 cost of capital.

5 Q. Mr. Trippensee is who I'm referring to.

6 A. I have not read his testimony, and I have
7 read portions of the company's testimony and I've read
8 portions of the Staff's, yes.

9 Q. Well, do you know if any of those three
10 witnesses has testimony that identified MGE's
11 environmental remediation risk that's related to MGP
12 sites?

13 A. I don't know.

14 Q. Do you know whether or not they quantified
15 that risk?

16 A. I don't know.

17 Q. And do you know whether they expressed a
18 belief that their recommended rate of return adequately
19 compensated investors for those risks?

20 A. I don't know.

21 Q. So if I can recap the testimony, you have
22 no information that any cost of capital witness in any MGE
23 proceeding since MGE acquired the Missouri gas properties
24 of Western Resources has ever included any of the three
25 issues that I described in my Data Request 2005 in his or

1 her testimony?

2 A. Well, that's not entirely accurate. John
3 Tuck, in the GM-94-40, the purchase case, wrote testimony
4 regarding the capital structure of the company, but a
5 portion of his testimony also related to the acquisition
6 premium that the company paid, and a portion of that
7 acquisition premium was related to the environmental
8 liabilities that the company assumed. So to the extent
9 that they've identified an acquisition premium and a
10 portion of that being the environmental liabilities...

11 MR. MITTEN: May I approach the witness?

12 JUDGE JONES: Yes, you may.

13 BY MR. MITTEN:

14 Q. I've handed you a copy of the testimony
15 filed by John Tuck for the Office of the Public Counsel in
16 Case No. GM-94-40, which is a proceeding wherein Southern
17 Union acquired the Missouri gas properties of Western
18 Resources. Is that the Tuck testimony that you just
19 referred to?

20 A. It is.

21 Q. Mr. Robertson, I'm going to ask you a very
22 specific question, and I want you to give me a very
23 specific answer. Would you look through that testimony
24 and show me one place -- one place where Mr. Tuck mentions
25 the risks associated with remediation of the MGP sites?

1 A. Well, your question, does it say
2 environmental?

3 JUDGE JONES: Mr. Robertson, just play a
4 word game and look through the testimony and see if you
5 see the word risk or environmental or something like that.
6 Tell him if you see it there.

7 THE WITNESS: Not risk or environmental,
8 associated with environmental.

9 BY MR. MITTEN:

10 Q. So that's nowhere in that testimony?

11 A. No, but if you know the rest of the story,
12 it is.

13 Q. And it's your testimony that the
14 acquisition premium was intended to cover that?

15 A. As it relates to this time frame, the
16 company's outside auditors, the company assumed \$3 million
17 up front that they would not share with Western Resources.
18 It would be theirs up front. Their outside auditors
19 required them to record that as acquisition premium. In
20 Mr. Tuck's testimony, he's discussing the acquisition
21 premium in total.

22 Q. Now, we're talking about two different
23 things. We're talking about \$3 million acquisition
24 adjustment that relates to environmental remediation and
25 we're talking about an acquisition premium, and those are

1 two different things, aren't they?

2 A. No, not as far as the company is concerned.
3 The company booked that 3 million as an acquisition
4 premium.

5 Q. I've put up on the board what I believe is
6 a definition of acquisition premium. Do you agree with
7 that definition?

8 A. Yes, I do.

9 Q. So an acquisition premium is everything
10 over the net book price that is paid for a utility; is
11 that correct?

12 A. Essentially, yes.

13 Q. And is it your testimony that in the case
14 of Southern Union's acquisition of the gas properties of
15 Western Resources, the acquisition premium was \$3 million?

16 A. Oh, no. The acquisition premium was
17 actually -- the total purchase price of the company was
18 about -- I think it was over 300 million, and the
19 acquisition premium total was a little over 44 million
20 total.

21 Q. So the acquisition premium was \$44 million,
22 but the acquisition adjustment that related to the former
23 MGP sites was only a piece part of that \$3 million; is
24 that correct?

25 A. Well, at the time they bought the

1 company --

2 Q. A simple yes or no answer I think will
3 suffice, Mr. Robertson.

4 A. At the time of the purchase --

5 MR. MITTEN: Your Honor --

6 THE WITNESS: -- in general time frame,
7 yes.

8 MR. MITTEN: -- will you please direct the
9 witness to answer my question?

10 JUDGE JONES: Just say yes or no.

11 THE WITNESS: Yes.

12 BY MR. MITTEN:

13 Q. Now, is it your testimony that
14 Southern Union or Western Resources anticipated that that
15 \$3 million acquisition adjustment would be sufficient to
16 cover all investigation and remediation costs associated
17 with the former MGP sites that Southern Union was
18 acquiring?

19 A. It's actually interesting that you brought
20 that up.

21 Q. That's a yes or no question, too,
22 Mr. Robertson.

23 A. The answer is no.

24 Q. So the parties contemplated that it would
25 cost more than \$3 million; is that correct?

1 A. The parties contemplated -- it was their
2 belief at the time it would cost no more than the
3 18 million, which is the total of the 3 million that SU
4 immediately booked and the 15 million that they would
5 share with Western Resources.

6 Q. And your basis for that statement is what,
7 Mr. Robertson?

8 A. A response from the company to a Data
9 Request -- Public Counsel Data Request 1033 in
10 Case GR-96-285. And that was a request that asked for a
11 response to another party's -- Kansas Pipeline Operating
12 Company's Data Request No. 11 in that same case.

13 Q. Could I see a copy of that Data Request,
14 please?

15 A. I suppose you could.

16 Q. Do you have it with you right now?

17 A. I'm looking at it right now.

18 MR. MITTEN: Your Honor, could I look over
19 the witness' shoulder or ask his counsel to hand me that
20 Data Request response?

21 JUDGE JONES: Yes.

22 THE WITNESS: Actually, I think my counsel
23 has a copy.

24 MR. POSTON: Which number was that?

25 THE WITNESS: 1033 in Case GR-96-285, and

1 where I reference is the next to the last question on the
2 second page where they provide an estimate of the cleanup
3 costs by site. The company responded, however, at the
4 present time, based upon information available to
5 management, the company believes that the cost of any
6 remediation effort that may be required for those sites
7 for which it may ultimately have responsibility will not
8 exceed the aggregate amount subject to the sharing --
9 substantial sharing by Western Resources under the
10 environmental liability agreement.

11 So my answer was, I guess, that they didn't
12 think it was going to exceed the 18 million when they
13 negotiated the contract.

14 BY MR. MITTEN:

15 Q. Earlier in the paragraph you just quoted
16 from, it talks about the environmental liability agreement
17 providing for a tiered approach to the allocation of
18 certain liabilities. Do you see that?

19 A. Which one are you on, please?

20 Q. Well, I'm at the --

21 A. Second page?

22 Q. No. I'm on the first page.

23 A. Okay.

24 Q. The paragraph that begins --

25 A. The questions are in bold. Can you tell me

1 the question?

2 Q. It says, describe the current status of the
3 company's responsibility and plans for environmental
4 cleanup of manufactured gas plant sites.

5 A. I'm with you.

6 Q. And a few lines down from that --

7 A. Yes.

8 Q. -- it says that the environmental liability
9 agreement provides for a tiered approach to the allocation
10 of certain liabilities.

11 A. Yes. I'm with you.

12 Q. And were you present last week during my
13 cross-examination of Mr. Harrison?

14 A. I believe I was, yes.

15 Q. So you're familiar that under the
16 environmental liability agreement, there are three tiers
17 of responsibility; is that correct?

18 A. Could you please describe what you mean by
19 the three tiers?

20 Q. Well, the first tier, the people who are
21 primarily responsible under that agreement are the
22 insurance companies, other potentially responsible
23 parties, and ratepayers; is that correct?

24 A. I don't believe that's what this is talking
25 about. I don't believe the tier that's discussed in this

1 question is regards to how they would try to recover the
2 costs.

3 Q. Let's just focus on the environmental
4 liability agreement, which is appended to your rebuttal
5 testimony as a schedule. Under the terms of that
6 agreement, the first tier of responsibility for the
7 remediation costs are to be borne by insurance companies,
8 other potentially responsible parties, and ratepayers; is
9 that correct?

10 A. Could you point me to that, where you're
11 referring?

12 Q. Okay. Turn to page 3 of your Schedule
13 TJR-1.

14 A. I'm there.

15 Q. All right.

16 A. Yeah.

17 Q. Shared liability, insurance first line of
18 recovery. Do you see that?

19 A. Uh-huh.

20 Q. All right. If you could turn over to
21 page 4 of your schedule, two little I, potentially
22 responsible party, first line of recovery. Do you see
23 that?

24 A. I do.

25 Q. Turn over to page 5, three little I,

1 recovery of remediation costs through regulated cost of
2 service. Do you see that?

3 A. I do.

4 Q. And going down to the bottom of page 5 and
5 continuing over to page 6, little IV, buyer's initial sole
6 liability amount. Upon exhaustion of relief contemplated
7 under subparagraph C, single I, double I and triple I,
8 buyer shall thereafter be solely liable. Do you see that?

9 A. I do.

10 Q. So doesn't that suggest to you that the
11 first tier would be made up of insurance companies, other
12 potentially responsible parties and ratepayers, and the
13 second tier would be made up of the sole responsibility of
14 the buyer, which would be Southern Union?

15 A. See, the way I understand this agreement to
16 be is that before Southern Union can collect from Western
17 Resources, Southern Union will attempt to get recovery
18 from these three tiers before the seller becomes liable.
19 That's my understanding of what the agreement says.

20 Q. But the agreement does say that upon
21 exhaustion of the relief contemplated under the three
22 paragraphs that relate to insurance companies, other PRPs
23 and ratepayers, then Southern Union's sole liability would
24 kick in. Isn't that what it says?

25 A. That's what it says, but Western Resources

1 is --

2 Q. That's fine.

3 A. -- the fourth provider.

4 Q. And then we'll get to the third tier
5 of liability, which if you go down on page 6 in
6 subparagraph little V, the buyer/seller shared amount,
7 and that paragraph begins, upon exhaustion of relief
8 contemplated under subparagraphs C-1 through 4, which
9 again would be insurance companies, other potentially
10 responsible parties, ratepayers and then the sole
11 liability of Southern Union, then the shared liability of
12 Southern Union and Western Resources would kick in. Isn't
13 that what that means?

14 A. The reason I'm kind of hesitating here is I
15 agree with you to the point, except that there was a -- in
16 the agreement, the liability agreement, there was -- MGE
17 had a certain amount of time to identify costs for sites
18 to which this -- Western Resources would share costs with.
19 After that time, Southern Union became solely liable for
20 any costs related to those, yes. Now --

21 Q. So if --

22 A. -- does that answer your question?

23 Q. So if Southern Union didn't meet those time
24 frames, then the shared liability of Western Resources
25 would go away?

1 A. That's in the agreement, yes.

2 Q. But that would still mean that the first
3 and second tiers that I talked about a moment ago would
4 remain in place as primarily and secondarily liable for
5 the remediation costs under the environmental liability
6 agreement?

7 A. Well, the way I understand the agreement to
8 be is, MGE took on the first 3 million. Anything after
9 that, if they couldn't recover from the three tiers as
10 you're describing it, they would then share with Western
11 Resources half and half, up to 15 million. But the point
12 being -- the other part being, if any costs or any sites
13 were discovered after that, I believe it was 1996 time
14 frame, SU took on sole liability. I think they were
15 negotiating this contract in the '93-'94 time frame. They
16 couldn't know what's going to occur then.

17 But at the time they negotiated the
18 contract, it was best of their belief that they were only
19 going to incur only up to 18 million and no more. I think
20 that was -- and I'm not an attorney, but I think that
21 paragraph related to protecting Western Resources from
22 something that may occur years out they didn't know about.

23 Q. But with regard to your belief that
24 Southern Union was primarily responsible for \$3 million,
25 when you look at the language of subparagraph 4 that

1 begins on page 5 and continues on to page 6, where it says
2 upon exhaustion of relief contemplated under the three
3 preceding subparagraphs, buyers shall thereafter be solely
4 liable, that to you means that Southern Union was
5 primarily liable?

6 A. Only for a -- only for half of the
7 15 million. They were liable for that, and after that
8 15 million was exhausted --

9 Q. I think the --

10 A. -- they didn't think the amount was going
11 to exceed that.

12 Q. I think the agreement will speak for
13 itself. So let's move on to another area that I wanted
14 to talk to you about, Mr. Robertson. Let's go back to
15 page 20 again of your rebuttal testimony.

16 A. Okay.

17 Q. You also say that prior ratepayers have
18 already been compensated through the return of their
19 investment in the MGP operation; is that correct?

20 A. I did.

21 Q. And by return of, you mean through
22 depreciation rates; is that correct?

23 A. Yes, essentially that's correct.

24 Q. And you specifically state that they were
25 compensated for the costs associated with dismantling and

1 decommissioning the MGP plant; is that correct?

2 A. I did.

3 Q. Were environmental remediation costs
4 included within the cost of dismantling and
5 decommissioning those MGP plants?

6 A. I don't know. Neither does the company.
7 When I asked them for that information, they were unable
8 to provide it.

9 Q. So you weren't suggesting by your testimony
10 on page 20 that the company has been compensated through
11 depreciation rates for the costs of remediation of those
12 environ-- of the MGP sites; is that correct?

13 A. Say that again.

14 Q. Based on what you just told me a moment
15 ago, you were not suggesting in the testimony on page 20
16 of your rebuttal testimony that MGE, through depreciation
17 rates, has been compensated for the cost of remediating
18 the former MGP sites?

19 A. In my testimony I'm referring to the
20 shareholders of the company that operated those plants,
21 they were compensated through the recovery of depreciation
22 on those plants.

23 Q. For environmental cleanup?

24 A. For whatever costs the rates were
25 determined at that time, which would have incorporated --

1 Q. Excuse me. Did that include environmental
2 cleanup costs?

3 A. Actually, when I asked the company for --

4 Q. It's a yes or no answer, Mr. Robertson.

5 A. Included all costs associated at that time.

6 Q. Including environmental cleanup costs?

7 A. All costs.

8 JUDGE JONES: So that's a yes?

9 THE WITNESS: Yes.

10 BY MR. MITTEN:

11 Q. Now, do you consider yourself an expert on
12 depreciation?

13 A. I have more knowledge than a layman as a
14 CPA, so yes.

15 Q. Excuse me. Have you ever done a
16 depreciation study?

17 A. No.

18 Q. Have you ever sponsored depreciation
19 testimony before this Commission?

20 A. I believe I have. I would have to research
21 it, but I believe I have.

22 Q. Are you an engineer?

23 A. No.

24 Q. And most depreciation studies are done by
25 engineers; isn't that a fair statement?

1 A. I don't know if that's accurate. I know
2 that at the Commission rate cases a lot of the studies are
3 done by engineers, but that's not necessarily true.

4 Q. But you're an accountant?

5 A. I am, by training.

6 Q. So let's look at the depreciation issue
7 from an accounting standpoint.

8 MR. MITTEN: Your Honor, may I approach the
9 witness?

10 JUDGE JONES: Yes, you may. Are we still
11 talking about environmental?

12 MR. MITTEN: Yes.

13 JUDGE JONES: Okay.

14 MR. MITTEN: Your Honor, I don't intend to
15 have this marked. It's an excerpt from the Uniform System
16 of Accounts for gas utility companies that's been
17 prescribed by this Commission. So I would ask that the
18 Commission take official notice of the USOA for gas
19 companies for purposes of my inquiry.

20 JUDGE JONES: The Commission takes official
21 notice of this document.

22 MR. MITTEN: This is just an excerpt. This
23 is not the entire USOA, and I'm just really interested in
24 the definitions that are included in the system of
25 accounts.

1 JUDGE JONES: The definitions that are in
2 this document that you've given me here?

3 MR. MITTEN: These are the definitions from
4 the Uniform System of Accounts.

5 JUDGE JONES: Okay. I agree with you that
6 these are the definitions of the uniform -- are these all
7 of the definitions?

8 MR. MITTEN: I believe so, yes.

9 JUDGE JONES: Okay. Go ahead. Ask your
10 questions.

11 BY MR. MITTEN:

12 Q. Mr. Robertson, please turn to page 2 of the
13 excerpt that I just gave you, and on page 2 on the right
14 column is the definition of depreciation as used in the
15 Uniform System of Accounts. Could you read that over to
16 yourself?

17 JUDGE JONES: Actually, I'd like you to
18 read it out loud for the record, so I don't have to grab
19 this piece of paper when I'm reading the transcript.

20 THE WITNESS: Depreciation --

21 BY MR. MITTEN:

22 Q. By all means, read it out loud.

23 A. -- as applied to depreciable gas plant
24 means the loss in service value not restored by current
25 maintenance incurred in connection with the consumption or

1 prospective retirement of gas plant in the course of
2 service from causes which are known to be in current -- in
3 current operation and against which the utility is not
4 protected by insurance. Among the causes to be given
5 consideration are wear and tear, decay, action of the
6 elements, adequacy -- inadequacy, obsolescence, changes in
7 the art, changes in demand and requirements of public
8 authorities, and in the case of natural gas companies, the
9 exhaustion of natural resources.

10 Q. Now, could you tell me where in that
11 definition there is language that suggests to you that the
12 costs of environmental remediation are to be included in
13 depreciation rates?

14 A. I think in part you have to look over to
15 No. 10, which is in the bottom of the column to the left
16 of that.

17 Q. Cost of removal?

18 A. Cost of removal.

19 Q. Why don't you read that into the record,
20 too?

21 A. It means -- the cost of removal means the
22 cost of demolishing, dismantling, tearing down or
23 otherwise removing gas plant, including the cost of
24 transportation and handling, incidentals thereto. It does
25 not include the cost of removal associated -- activities

1 associated with asset retirement obligations that are
2 capitalized as part of the tangible long-life assets that
3 give rise to the obligation. And then in parens it says,
4 see general section 24.

5 Q. Okay. Let's focus on the cost of removal
6 definition. What language in that definition suggests to
7 you that the cost of environmental remediation is included
8 in depreciation rates?

9 A. As far as the depreciation and the cost of
10 removal together, it has to do with the -- I guess if you
11 want to say the example in depreciation is by the action
12 of the elements as one example.

13 Q. Again, I'm asking you what language in
14 either of those two definitions suggests to you that the
15 cost of environmental remediation is to be included in
16 depreciation?

17 A. I'm trying to answer that question.

18 Q. I'm sorry.

19 A. In the depreciation, I mean, one specific
20 thing I would associate with it would be the action of the
21 elements, which was the operation of the gas plant. In
22 the cost of removal, demolishing, dismantling, tearing
23 down and otherwise removing the gas plant, manufactured
24 gas plant remediation effort relates to the removing of
25 waste associated with that plant. It occurred when that

1 plant was in operation.

2 Q. And it's your testimony that action of the
3 elements is the same thing as the waste product created
4 through the manufactured gas process?

5 A. I would interpret that as being a portion
6 of the operation of the company itself, yes. I mean, the
7 depreciation is essentially associated with the plant
8 itself, but it encompasses the factor of cost removal and
9 salvage also.

10 Q. Let me get at this a different way, then.
11 Have you done any review of any of the orders of this
12 Commission that related to the gas properties in question
13 when they were owned by Western Resources that led you to
14 believe that the cost of environmental remediation was
15 being recovered by Western Resources through depreciation
16 rates?

17 A. To Western Resources?

18 Q. Yes.

19 A. No.

20 Q. All right. Let me ask you another
21 question. I believe the evidence in this case suggests
22 that manufactured gas plants date back to the mid 19th
23 century, that the operation of those plants generally
24 ceased 50 or more years ago, that the fact that there were
25 environmentally harmful byproducts was something that

1 people became aware of after they ceased operation, and
2 the obligation to clean up those environmentally harmful
3 substances did not occur until federal legislation that
4 was enacted within the last 30 years or so.

5 Given all that, is there really any way
6 that the costs of environmental cleanup, which were not
7 known, could have been included in depreciation rates for
8 the manufactured gas plants?

9 A. First part, I think the parties, based on
10 my reading -- and I can't cite you a specific source at
11 the moment -- they knew that the waste products at a
12 certain time were harmful back then, potentially harmful.

13 Q. But did they know they had a responsibility
14 to clean them up?

15 A. I think you have to kind of look at the
16 regulatory ratemaking process. All the costs of operation
17 are included in the rates that are authorized by the
18 Commission. So any responsibility had to clean those
19 plants up was included in that return at that time.

20 Q. But if they didn't have any responsibility,
21 then it wouldn't have been included in depreciation rates;
22 is that right?

23 A. I believe they had that responsibility.

24 Q. And the source of that responsibility was
25 what?

1 A. The operation of the manufactured gas
2 plant.

3 Q. There was a legal -- there was a legal
4 responsibility that simply attached the operation of the
5 plant?

6 A. As we were talking about the depreciation,
7 the dismantling, the obsolescence, the wear and tear of
8 the plant, that depreciation rate would encompass the
9 costs associated with that.

10 Q. Can you cite a specific federal or state
11 law that would have required remediation of the
12 manufactured gas plants during the period of time that
13 they were in operation?

14 A. To my knowledge, CERCLA came into effect in
15 1980, I believe, but there may have been some remediation
16 or environmental laws earlier than that. I believe in my
17 readings I've seen something, not something --

18 Q. CERCLA came into effect long after the
19 manufactured gas plants had been closed down?

20 A. That's true.

21 MR. MITTEN: I don't think I have any
22 further questions. Thank you, Mr. Robertson.

23 JUDGE JONES: Cross-examination from Staff
24 of the Commission?

25 MR. FRANSON: No questions, your Honor.

1 JUDGE JONES: Commissioner Murray?

2 COMMISSIONER MURRAY: Thank you.

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good morning, Mr. Robertson.

5 A. Good morning.

6 Q. This is indeed becoming a complex issue.

7 A. It has been going on since 1994 and longer,
8 probably a little longer.

9 Q. With regard to your testimony and the
10 reasons that you include or deny all the company's
11 requests, I want to talk to you a little bit more
12 specifically about your claim that it is likely that prior
13 ratepayers have already provided the company with a return
14 on and a return of its investment in the MGP operations.

15 And then you go on to say that the return
16 of that is to depreciation, including costs to dismantle
17 and decommission the plant. Is there any way to determine
18 what costs to dismantle and decommission the plant were
19 included in depreciation rates?

20 A. It's ironic that you ask that, because in
21 the past I've tried to do that. I mean, certainly to
22 develop any issue, we believe the company should recover
23 any costs that they -- that are appropriate and
24 reasonable. So before we actually started arguing this
25 issue in past cases, for example, in the Case GR-96-285 I

1 referenced earlier, I sent Data Requests asking --
2 specifically No. 1010 asking for decommissioning costs
3 that occurred during the time that plant was in operation.

4 Q. Hold on a second. That was costs that
5 occurred, but did that relate to what was being included
6 in depreciation?

7 A. Yes. Yes. That's associated with the
8 depreciation.

9 Q. All right.

10 A. And the company responded they hadn't
11 researched the issue, they didn't know. He said I could
12 probably find it in the records of the Public Service
13 Commission. I also asked for costs associated -- they had
14 byproducts that they sold unregulated. The tar -- the tar
15 that they're asking for cleanup they actually sold as a
16 non-regulated product, these entities did.

17 So I tried to determine how those costs
18 were incorporated into the rates then. The company said
19 they hadn't researched that, they didn't have access to
20 it.

21 And the same way with the rate of return.
22 I asked for the rate of return that occurred during the
23 time those plants were in operation. I asked that in Data
24 Request 1012 in GR-96-285. The company responded they
25 hadn't researched that issue either.

1 So what I'm trying to say is, I have tried
2 to find out what occurred during that time frame those
3 plants were in operation, keeping in mind that the top tar
4 byproducts they're talking about they sold as
5 non-regulated products. The company was unable to supply
6 the information. They had the burden of proof.

7 Q. And that's where it remained --

8 A. And that's essentially where it stopped.

9 Q. -- about the amount the products were sold
10 for?

11 A. No. I tried to find that information
12 out, too. They didn't have access. It's understandable
13 they didn't really have access to information. MGE bought
14 the company in 1994. We're talking about plant that has
15 been out of service for well over -- now, probably well
16 over 60 years or more. So I didn't fully expect them to
17 have the information, but I believe it to be a valid
18 point. And if we could have got the information, we could
19 have found -- had a broader understanding of what
20 occurred.

21 Q. Is it likely that in the initial
22 calculation of depreciation for dismantling and
23 decommissioning a plant prior to CERCLA, that the costs
24 that had -- that were depreciated would have been anywhere
25 near what the actual costs of dismantling and

1 decommissioning would turn out to be?

2 A. First off, to some degree, you may be
3 correct in that assessment. But then you have to
4 understand, which I know you do, in regulatory ratemaking
5 when a rate is set and it's authorized by the Commission,
6 that rate encompasses all the costs associated with that
7 plant. And we believe that to have occurred.

8 Q. So is it your position, then, that if --
9 once rates are set, once the depreciation is set for
10 dismantling and decommissioning the plants and then
11 something else comes along like a new environmental
12 regulation or a new discovery of some contamination or
13 something that was not considered at that time, that
14 there's just no way to change it?

15 A. Well, first off, if you took the viewpoint
16 that the plant was still in service, providing service to
17 regulated ratepayers, something may come along and you may
18 have to readjust the rate. I would agree that that's
19 probably what would happen. We're talking about plant
20 that's been long out of service that's been demolished.

21 In addition, you not only have to remember
22 the depreciation portion, they earned a rate of return on
23 that plant also, which was a higher return -- if they did
24 regulation the way we do it now, which was a higher return
25 than a risk-free rate of return in order to compensate

1 them for the business risk of the unknown. So from that
2 perspective, we believe they recovered those costs.

3 But from your question, that if something
4 changes, should the rate be modified, it could have been
5 if the plant was still in service, but it's not.

6 Q. So it's critical that the plant is no
7 longer in service for your position, right?

8 A. Absolutely.

9 Q. And the fact that future costs are not
10 sufficiently fixed or known and measurable?

11 A. I think that's probably true, yes. At
12 least the company's response to my Data Request also
13 agreed with that. They don't necessarily know what's
14 going to happen. Understanding also in this case they
15 don't have any costs built into this case at the moment.
16 They just asked for a fund going forward.

17 Q. Now, and I'm really struggling to
18 understand this issue and where all of the parties are
19 coming down on it. I think you'd probably agree it's not
20 a simple issue.

21 A. I agree.

22 Q. You state on page 20 of your rebuttal
23 testimony, when you're listing the other reasons that the
24 request should be denied, as No. 4 you say, guaranteeing
25 full recovery of the costs from ratepayers removes the

1 incentive for the company to control costs and may lessen
2 other PRPs willing to contribute to cleanup efforts. Are
3 you taking the position that some recovery of the costs
4 should be from ratepayers?

5 A. No. I actually believe none of the costs
6 should be recovered from ratepayers for numerous reasons.
7 As we've been discussing about the plant's not in
8 existence now, we believe the costs associated with that
9 plant were recovered by ratepayers back when it was in
10 existence. But also the environmental liability limit
11 issue wasn't even negotiated with Western Resources.

12 In that agreement the company did not
13 believe that the costs associated with this, I firmly
14 believe this, did not believe it was going to exceed
15 \$18 million, and that \$18 million was made up of the
16 3 million which Southern Union took up front and then
17 15 million that Southern Union and Western Resources would
18 share once those costs were known, if they could not be
19 recovered by the tiers that Mr. Mitten discussed earlier.

20 Q. Okay. And you were asked some questions
21 about that environmental liability agreement earlier, do
22 you recall that, and you stated at the time that you are
23 not an attorney?

24 A. Well, I'm not an attorney, that's correct.

25 Q. I'm assuming when you review a contract

1 like this, you're glad you're not an attorney?

2 A. Sometimes I wish I wasn't an accountant.
3 the point being is that I have had -- I mean, certainly
4 the accounting training we had, we had certain law,
5 aspects of business law. So I have read the contract, and
6 I've read this contract many times over the last 10 years
7 or more, actually 12 years probably.

8 Q. Well, I am an attorney and I don't find it
9 very easy to understand. Let me go on with your other
10 reasons that you list for denial of the company's request.
11 No. 5 you say, the company has not completed its pursuit
12 of recovery of the costs incurred from insurers and other
13 PRPs.

14 What at this point in time are you saying
15 that the company should be doing, or are you saying that
16 that time just has not arrived yet?

17 A. Actually, I think the company is doing what
18 it should be doing with regards to what it agreed to do
19 with Western Resources in that liability agreement.

20 They agreed to go out and look for
21 insurance companies, look at insurance companies, look at
22 other potentially responsible ratepayers, and also -- or
23 other potentially responsible parties and also ratepayers,
24 which they're doing here, and try to seek to recover those
25 costs from those parties. And that's what they agreed to

1 do in the contract, that's what they're doing, and they're
2 still doing.

3 Q. But your position is that they should not
4 recover anything from the ratepayers?

5 A. I don't think so, no. And besides that,
6 the point -- according to their agreement, that point has
7 not even been reached yet where I think ratepayers --
8 well, the agreement does say they should try to seek it
9 from ratepayers essentially, but because of insurance
10 recoveries they've received, they've just barely got --
11 it's a material amount, but they've got over the amount
12 of 3 million that SU agreed to assume on its own up front.

13 So they haven't agreed to try to seek the
14 costs from Western Resources yet, but if they don't
15 recover these additional costs of 3 million from other
16 insurance companies, ratepayers or other PRPs, then they
17 go to Western Resources and recover up to seven and a half
18 million dollars. I guess let me try to answer the
19 question. The level of costs contemplated by the
20 liability agreement have not been reached yet.

21 Q. And it's my understanding that a part of
22 the reason for the company's seeking to set up this fund
23 is that as these costs develop, they're likely to be quite
24 large, and that it is their position that the ratepayers
25 are responsible for a portion of these costs, and that by

1 setting up this fund at this time, that would avoid any
2 potential ratepayer shock. Is that your understanding?

3 A. I do. That is their position, if you --
4 first, it is their position why they want to set up the
5 fund. Second, the ratepayer shock is if you believe that
6 ratepayers should actually have to pay for any of these
7 costs, and potentially that could occur down the road if
8 the Commission decides they should, which I'm recommending
9 they don't. It's our belief they should not. So that
10 depends whether those costs will be passed on to
11 ratepayers in the first place.

12 Q. All right. Let's just talk about the last
13 two of your reasons that you listed here on page 21 of
14 your rebuttal. No. 6, implicit in the company's rate of
15 return is a risk factor for unknown and unanticipated
16 expenditures, such as environmental compliance costs.

17 Are you saying that there was an adjustment
18 to the otherwise required rate of return to account for
19 risk of unknown and unanticipated expenditures, including
20 environmental compliance costs?

21 A. Absolutely. That's what business risk is.

22 Q. Do you know how much was attributed to that
23 kind of risk in setting the return?

24 A. As we discussed a few moments ago with you,
25 that I sent Data Requests in a prior case trying to get

1 that information from the company. They were unable to
2 provide that information, so I cannot quantify that.

3 But I can tell you that in the regulatory
4 ratemaking process, public utilities are provided with a
5 return or the authorization to earn a return that exceed
6 the risk bearing rate. That difference is composed of
7 both financial risk and business risk. So to some degree
8 that business risk was built into the return of these
9 companies as they operated.

10 Q. These companies. So how long -- how
11 many -- at what point in time did that risk factor become
12 included in the return that they were allowed to earn?

13 A. Whatever rates were set by the Commission
14 at that time that the plant was operating.

15 Q. So from the initiation of the operation of
16 the plant, there was a risk factor for environmental
17 compliance included in the return that they were allowed?

18 A. For business risk, which encompasses any
19 unknown.

20 Q. Does Public Counsel take the position in
21 rate cases today that such a risk factor for unknown or
22 unanticipated environmental compliance costs should be
23 included in determining a rate?

24 A. Mr. Mitten asked me that same question, did
25 you specifically identify, split out environmental costs

1 as a portion of the rate. And I don't believe any of our
2 witnesses actually split out individual items at all.
3 They just developed a risk, that excess risk, that
4 business risk associated with the market factors that
5 occurred at that time.

6 Q. Okay. And do you know in this particular
7 case what risk factors are included in Public Counsel's
8 recommendation?

9 A. Actually, I don't. I believe
10 Mr. Trippensee filed some testimony regarding the capital
11 structure rate of return. I have not read his testimony,
12 so I don't know.

13 Q. But you think he would have included a
14 business risk factor in determining the rate?

15 A. I don't know if he did a full capital
16 structure, cost of capital, rate of return-type analysis,
17 so I don't know the answer to that question. I can tell
18 you that up until our last cost of capital rate of return
19 witness we had, when they did a full analysis, they
20 include business risk in. It's a normal part of every
21 analysis that these persons do in rate cases. I don't
22 know how in depth Mr. -- how in depth the testimony he did
23 or how in depth an analysis he did for them.

24 Q. Does that business risk differ from company
25 to company?

1 A. I would think it probably would, yes.

2 Q. Is it your position that it is always
3 appropriate to include business risk, particularly unknown
4 and unanticipated expenditures such as potentially
5 environmental compliance costs?

6 A. Based on my knowledge, I would think that
7 the business risk is appropriate because what I understand
8 it to be is the reason the company gets this return in
9 excess of the risk-free rating securities is because
10 they're taking on risk with the operation of the company.
11 So therefore, they need this higher return to compensate
12 them for that risk that they're taking on. So is it
13 appropriate this business risk should be allowed in? I
14 say yes.

15 Q. Where does that risk get factored in? Is
16 that after the -- after a set of comparables is
17 established and --

18 A. I believe that's correct.

19 Q. All right. Let's go on to the second part
20 of your No. 6 there, the return on component of prior
21 rates, including recognition of this risk factor. Okay.
22 That's what we've just been talking about. So the
23 stockholders have already been compensated for the costs
24 through the rate of return?

25 A. I believe so, yes.

1 Q. No. 7, the FMGP remediation costs are
2 associated with plant that is no longer in service, which
3 is what we talked earlier, and therefore, no longer used
4 and useful. The company does not currently own nor
5 operate any manufactured gas plants. It does own some of
6 the plant sites where manufactured gas plant was formerly
7 operated, but no coal gas is manufactured there now.
8 Therefore, current and future ratepayers did not and will
9 not receive service from any FMGP. Did I read that
10 accurately?

11 A. I believe so, yes.

12 Q. So because of the fact that current and
13 future ratepayers are not receiving any service, will not
14 receive any service from any of these gas plant sites,
15 it's your position that they should not be responsible for
16 any environmental costs associated therewith; is that
17 accurate?

18 A. That is one of the reasons, yes.

19 Q. If the company owns some of the sites where
20 these plants were formerly operated and then in the future
21 uses those sites to provide service, would that position
22 change?

23 A. No. Actually, they use some of those sites
24 now.

25 Q. To provide service to current --

1 A. For example, the -- one of the sites has
2 field operations for St. Joseph on it. It has -- another
3 one has a facility called the central plant. They have
4 plant that is used in the current provision of service to
5 ratepayers. To my knowledge, nobody has made an
6 adjustment to boot out that plant or return on that plant
7 or return of that plant that's currently used in provision
8 of service.

9 All we're talking about here are costs for
10 remediation of those sites associated with that
11 manufactured gas plant. We're not talking about the
12 recovery or return on the plant that's currently in
13 service, even though they're the same sites. To my
14 knowledge, nobody's booted -- or booted -- recommended an
15 adjustment to reduce those costs, to disallow those costs
16 associated with that plant that's currently in service,
17 currently used in providing of service to ratepayers, even
18 though that same site is also the site where these
19 remediation efforts have or will occur.

20 Q. Okay. So you would distinguish between an
21 environmental compliance cost that was associated with the
22 site that was not associated with the gas plant that is no
23 longer in service?

24 A. No. I would distinguish between -- I would
25 distinguish between -- perhaps you could ask the question

1 again. Maybe I'm confused.

2 Q. Maybe I didn't state it correctly. But if
3 there were an environmental compliance cost associated
4 with the site of a former gas plant that's no longer in
5 service but it's not related to that gas plant, you would
6 distinguish that environmental compliance cost from the
7 environmental compliance cost strictly related to the gas
8 plant that's no longer in service; is that correct?

9 A. I almost think you asked the same two parts
10 of the same question. Let me see if I can clarify. The
11 environmental remediation costs associated with the
12 manufactured gas plant, which is not in service, we do not
13 think ratepayers should recover.

14 Q. Right.

15 A. There is associated with the sites we're
16 talking about, at least the ones the company owns --
17 there's some they don't own -- they have some plant on
18 there they're currently using to provide service.

19 Q. Yes.

20 A. Nobody's proposed a disallowance to remove
21 those costs. I would even add that I believe the company
22 has incurred in the past several years remediations
23 related to, I believe it was a mercury cleanup associated
24 with certain mercury metering devices they used to have.
25 I don't believe we've made a recommendation to remove

1 those costs because those meters were used in the
2 provision of current service to ratepayers, so those type
3 costs we have not recommended be disallowed.

4 Q. Okay. I think either I didn't state my
5 question properly or you didn't understand my question,
6 but I think your answer was that, yes, you do make that
7 distinction between costs that are for plant that is
8 currently in service and costs related to these gas plants
9 that are no longer in service?

10 A. That I do, yes. As far as you stated it
11 there, I agree with you.

12 COMMISSIONER MURRAY: All right. I think
13 that's all I have, unless Commissioner Gaw raises some
14 other questions that I have to follow up on.

15 JUDGE JONES: Commissioner Gaw?

16 COMMISSIONER GAW: Boy, that encourages me
17 not to ask any questions, doesn't it? Actually, that was
18 helpful to me to listen to. I don't think I have as many
19 questions as a result.

20 QUESTIONS BY COMMISSIONER GAW:

21 Q. I do want to ask, sort of following up on
22 that very last exchange, for you to give me a circumstance
23 where -- and let me give you sort of a pattern here
24 hypothetically that doesn't exist in this case, and tell
25 me what your position would be.

1 If you had a manufactured gas facility that
2 had been operating up to the present time, and I realize
3 the technology on that went out of fashion, but perhaps
4 has come back into fashion on other fronts, let's assume
5 one of those sites was operating and had an environmental
6 issue similar to the one that exists or may exist at these
7 sites. Would Public Counsel's position be that it would
8 allow those environmental costs, if they were incurred, to
9 be recovered from ratepayers?

10 A. I think that probably goes back to
11 Commissioner Murray's question.

12 Q. Yeah, it's a follow-up on that.

13 A. About where if you've got a current plant
14 or plant-incurred operation and something happens, would
15 you change the depreciation rate to account for those
16 additional costs that they may incur. And I would say
17 just on the top high level, probably so. There may be
18 other factors --

19 Q. There may be other arguments?

20 A. There may be other arguments why not, but
21 you'd have to do the analysis at the time. Just on a high
22 level, if the plant in service additional costs become
23 known and are measurable, and let me just say reasonable,
24 determined to be reasonable, you would probably change the
25 depreciation rate and/or some factors so that the company

1 would be allowed to recover those costs.

2 Q. Okay. Now I'm going to work backwards from
3 there for a moment. I'm not sure how successful I'll be
4 at this. If we say that this manufactured gas facility
5 closed ten years ago, it was in operation until then, but
6 the liability is potentially where it is today, what would
7 you have to know and what generally would impact your
8 position if that were the case?

9 A. I don't think my position would change from
10 what we're recommending in this case. If that plant was
11 gone, it's not in service to ratepayers. The return they
12 earned on the plant, the recovery of depreciation,
13 decommission costs associated with that, we believe the
14 ratepayers would not been -- not ratepayers -- the
15 shareholders would have been fairly compensated for that
16 plant.

17 As an example, if they had done that, if
18 this plant had shut down and the company had sold it,
19 let's say they sold that piece of property to another
20 utility or private party and the sale price garnered them
21 a gain, they would not have provided any of that gain to
22 ratepayers, so why should they associate with any loss or
23 future loss associated with that plant.

24 Q. Is that because of the tie in with this
25 liability to the real estate itself? Is that a factor in

1 that?

2 A. I think it is a factor to some degree. As
3 an example, when Southern Union negotiated the purchase
4 from Western Resources, I believe the purchase agreement
5 states that Southern Union assumed certain liabilities and
6 received compensation for assuming those liabilities,
7 which -- and a portion of those liabilities were these
8 potential remediation costs we're talking about. And I
9 believe at least a portion of that compensation they
10 received was perhaps the lower price that they paid for
11 the company in total.

12 I mean, that's my interpretation of what it
13 means. But if they had known that they were going to
14 incur more costs than the 18 million they thought the
15 limit would actually end up being, I think they probably
16 would have probably continued to negotiate a lower price.

17 Q. The contractual liability arrangements that
18 are contained therein impact the relationship between
19 those who are in the contract who are parties to the
20 contract; is that generally correct?

21 A. That's my understanding.

22 Q. Now, if they mention liability of other
23 entities within that contract who are not parties to the
24 contract, do you know whether or not those entities are
25 bound by the terms of that contract?

1 A. First off, they don't mention the other
2 parties having liability being the -- there is -- let me
3 qualify that a little bit. Potentially insurance
4 companies, potentially the potential responsible parties,
5 the PRPs that they discuss, they potentially have some
6 legal responsibilities. But ratepayers have no legal
7 responsibility.

8 Q. But do you know whether or not that
9 contract impacts the liability one way or the other of
10 entities who are not parties to the contract?

11 A. If I understand your question correctly,
12 the parties that negotiated the contract, they're the only
13 parties to the contract.

14 Q. Okay. Now, the liability -- they're the
15 only ones that are bound by the terms of the contract?

16 A. That's my understanding, yes.

17 Q. And so as you were saying, I guess,
18 ratepayers are mentioned, insurance companies are
19 mentioned, those entities are not in any way bound from
20 your standpoint in the way you're examining this thing by
21 the terms of that contract to which they were not a party?

22 A. Not by that contract, no.

23 Q. Now, I want to ask you if you're familiar
24 with the liabilities under the federal laws as it relates
25 to what entities are responsible for environmental costs

1 associated with a particular site or particular piece of
2 real estate. Are you familiar with that?

3 A. It's been a while since I read the CERCLA
4 legislation, but I can tell you that just about anybody
5 that has owned the property or has even transported to it
6 or had almost anything at all to do with that property or
7 plant can be a potentially responsible -- can be held to
8 be potentially responsible.

9 Q. And do you know -- so that could go back to
10 previous owners of the title to that real estate to the
11 point to which the environmental problem was begun?

12 A. Certainly. As I've been involved in this
13 issue and several cases, several different companies in
14 this state, as part of the company's investigation, they
15 often go back and try to find out who owns properties so
16 that they can still see if they and/or any successors to
17 them are still in operation, so they can just try to get
18 them in, get some recovery from them, and it has occurred.

19 Q. And does that impact -- I know you've
20 already made the statement that an incident that occurred
21 with a plant that closed down ten years ago, Public
22 Counsel would still be opposed to recovery here, but as
23 you move back in time from that ten-year period and you
24 add additional entities on as owners to that real estate,
25 if I move that plant closing back in time, does that add

1 to the number of issues that Public Counsel has with
2 recovery of these environmental costs from ratepayers?

3 A. I don't think it adds to the number of
4 issues. It just adds to the number of potential parties
5 that could be responsible for the payment of those costs.

6 Q. But doesn't it also add to the number of
7 unknown and potentially unmeasurable amount that might be
8 attributable to ratepayers?

9 A. Certainly. If you had multiple owners,
10 want recovery they received on the plant, what return they
11 received on the plant. I mean, they just don't know.

12 Q. Did you in your testimony suggest any
13 issues as an additional issue related to this that -- what
14 sometimes comes up in rate cases about whether a
15 particular generation of ratepayers is -- should be paying
16 the costs of another generation of ratepayers?

17 A. I think Mr. Noack did in his testimony. He
18 brought it up. I believe, and I don't know that I did it
19 in this case, but I think we have in the past argued to
20 some degree that you would be -- if you allowed the costs
21 to be recovered in rates for current ratepayers, they're
22 actually -- you'll be asking them to pay for costs
23 associated with plant that they never received service
24 from. So, yes, we didn't specifically make that point I
25 don't believe in this testimony, but we have in prior

1 testimony.

2 Q. Is that another thing that the Commission
3 could consider in deciding this issue?

4 A. I think they should, yes.

5 Q. And I guess I'll leave it at this, because
6 I think Commissioner Murray's covered most of these other
7 points for me. Are some of these plants as I understand
8 it plants that were actually in operation and begun prior
9 to 1900?

10 A. The short answer is yes. I believe that
11 the coal gasification process where they did this
12 manufactured gas plant technology, 1880, 1890s is where it
13 was developed, based on my reading, around that time
14 frame. So yes, from that time frame up until probably the
15 1920s, 1930s, it was pretty active.

16 I think the -- if I recall correctly, the
17 reason the process has died out, and I can't tell you the
18 exact time frame in there, is interstate pipelines came
19 into being, and once the interstate pipelines came into
20 being, they could ship gas, natural gas or cheaper gas
21 from the reserves out west east, and it was just cheaper
22 and cleaner.

23 Q. At least that was the case up until
24 recently perhaps?

25 A. Yeah. You're probably right about that.

1 Q. There are some coal gasification processes
2 that are -- that are currently being constructed around
3 the country, I guess, for other purposes today?

4 A. I don't know.

5 Q. Well, what I was going to -- getting at is
6 whether or not then some of these plants were actually in
7 operation prior to the formation of the Public Service
8 Commission?

9 A. I don't recall. Early 1900s, 1912.

10 Q. Perhaps 1913?

11 A. 1913. Potentially, yes, but I would think
12 that my understanding of when they were really prevalent
13 was probably teens, '20s and '30s. So it's not so much
14 that -- I mean, it certainly took a while, and I can't
15 tell you exactly. It certainly took a while for them to
16 expand around the country. I would think at the time that
17 they were primarily in operation they were under
18 regulation of the Public Service Commission.

19 Q. We don't have a -- you said you have not
20 been able to find it, and I guess my question is, is there
21 anything that you know of in the record at this point that
22 indicates what kind of recovery was given for those plants
23 during the time frame when they were in operation?

24 A. Certainly tried to get some information in
25 the past regarding that. The company was unable to

1 provide it. So in answer to your question, we wouldn't
2 have any -- have no real idea what they were doing for
3 when the plant was under the operation of the authority of
4 the Public Service Commission and/or if it was operating
5 before that actually occurred also.

6 Q. And do we know which companies owned these
7 sites when they were in operation?

8 A. I believe that I've got a Data Request
9 response. Back when MGE bought the company, they -- they
10 had a certain amount of time to go out and do research to
11 try to identify all sites they would be potentially liable
12 for, and they hired a company to do an analysis to try to
13 find sites. I believe I have a document that was provided
14 in a data -- as a matter of fact, I know I do, that was
15 prepared by this consultant they hired. The consultant --
16 I think I read it the other day or portions of it. They
17 said they couldn't guarantee it was all encompassing, but
18 it's a pretty detailed document that's fairly thick. It's
19 specifically only to MGE, though, so potential sites.
20 It's not in the record, though.

21 Q. It's not in the record?

22 A. Huh-uh.

23 Q. Do you recall whether you examined that
24 document thoroughly enough to be able to tell me whether
25 the entities that own these pieces of ground were

1 regulated when the operations were conducted?

2 A. From memory, I can tell you that for a good
3 portion of the time, they certainly were regulated, yes.

4 Q. All of them?

5 A. I can't -- I can't say specifically all of
6 them. At least several of them were.

7 Q. At this point, we don't really have that
8 information in the record?

9 A. No.

10 COMMISSIONER GAW: That's all I have.
11 Thank you.

12 THE WITNESS: Thank you.

13 JUDGE JONES: Any recross from Staff?

14 MR. FRANSON: No, your Honor.

15 JUDGE JONES: Any recross from Missouri Gas
16 Energy?

17 MR. MITTEN: Just a couple of questions.

18 RECROSS-EXAMINATION BY MR. MITTEN:

19 Q. Mr. Robertson, I'm trying to get at the
20 importance you attribute to Southern Union's acquisition
21 of the gas properties in question from Western Resources.
22 Let's assume that transaction had never occurred in 1994,
23 and it was Western Resources who was seeking recovery of
24 remediation costs associated with these MGP sites. Would
25 Public Counsel's position on that be any different?

1 A. Actually, it's funny how some of these
2 questions come up, we've just recently discussed amongst
3 ourselves in the office. The position would still be the
4 same. Our position would be the same. This plant is not
5 in operation. We believe that any costs associated with
6 it, ratepayers at the time paid those costs, shareholders
7 earned them already.

8 Q. Would your answer be the same if state and
9 federal environmental laws imposed remediation liability
10 on the owner of the property, irrespective of whether or
11 not that owner had ever operated a manufactured gas plant?

12 A. First off, my position would be the same,
13 and second off, that is the current situation.

14 Q. And you also mentioned that you had asked
15 the company for records regarding rates, depreciation
16 rates, et cetera, for the actual manufactured gas plant
17 operations when they were in operation and the company had
18 not been able to provide that to you?

19 A. I did, that's correct.

20 Q. If the company had been able to get that
21 information and if that information had shown you that the
22 cost of environmental remediation were not included in the
23 rate of return or the depreciation rates, would Public
24 Counsel's position in this case be any different?

25 A. I don't know how that could have happened.

1 If you're earning a return of the cost and you're earning
2 a return on the plant service and it's authorized by the
3 Commission, it encompasses all costs. I don't know how
4 they could sit there and unless the Commission had
5 specifically said in its Order, these costs are not
6 included in the current rates we've authorized. Maybe if
7 they did that, your question would be -- I would agree
8 with. But I don't know that they did that. My knowledge
9 of regulatory ratemaking, if they didn't do something to
10 that -- something along that line, specifically saying
11 these costs are not included in rates we're authorizing,
12 then those costs were included in those rates.

13 Q. Well, in setting the rate of return, both
14 Staff and the company's witnesses in this case use a proxy
15 group of comparable local distribution gas companies for
16 their discounted cash flow analysis to see what rate of
17 return investors require of those companies and how that
18 compares to the rate of return investors might require for
19 MGE.

20 Do you know whether any of the proxy
21 companies that were used in either Staff or company's
22 analysis in this case have MGP site remediation
23 responsibilities?

24 A. Actually, I didn't read their testimony,
25 either Staff's or the company's cost of capital witness

1 testimony completely in the -- as I testified earlier, I
2 looked at parts of both of them, in particular the
3 company's. I essentially looked at the summary of what
4 the capital structure was and what the rates of return
5 were based on debt that they were asking.

6 Q. If those proxy companies don't have any MGE
7 remediation responsibility, then in using the rate of
8 return investors expect for those proxy companies and
9 extrapolating that to what the rate of return requirement
10 for MGE would be, wouldn't the Commission have to
11 specifically identify and adjust for the MGP remediation
12 in setting the rate of return for MGE?

13 A. Well, again, I'm not the cost of capital
14 witness, but I would say the comparable group that you're
15 talking about is just that, a comparable group. When the
16 Commission sets the overall rate of return for MGE, it's
17 based on what they believe MGE's return should be.

18 Q. But if there's a specific risk that applies
19 to MGE but doesn't apply to any of the proxy companies,
20 wouldn't some upward adjustment be required for the rate
21 of return for MGE?

22 A. I don't know.

23 MR. MITTEN: No further questions. Thank
24 you.

25 JUDGE JONES: And redirect from the Office

1 of Public Counsel?

2 MR. POSTON: Yes, thank you.

3 REDIRECT EXAMINATION BY MR. POSTON:

4 Q. MGE's counsel provided you with a stack of
5 past Public Counsel testimony and asked you whether that
6 testimony specifically discussed environmental remediation
7 risk. Do you recall that?

8 A. I do.

9 Q. And can you explain why that testimony
10 would or would not specifically list environmental
11 remediation risk in the document?

12 A. I don't know that any cost of capital rate
13 of return witness specifically breaks out all the factors
14 associated with the business risk that they've
15 incorporated into their analysis of the rate of return
16 amount the utilities should be authorized to earn. I've
17 read several cost of capital witnesses' testimony over the
18 years, and there have been situations for what they
19 believe risk to be they either propose an upward movement
20 or downward movement for one reason or another. But I
21 don't know that they actually break out the costs, try to
22 identify each and every business risk that the company
23 will possibly encounter.

24 Q. And you were also asked about testimony
25 from Mr. Tuck who filed on behalf of Office of the Public

1 Counsel, and whether the words environmental appeared in
2 his testimony. And I believe you responded that
3 essentially that it is included, if you know the rest of
4 the story, I think were your words. Can you explain what
5 is the rest of the story?

6 A. Well, in the purchase, the company
7 essentially paid almost \$44.5 million in excess of what
8 the book value of the company was. We argued that was the
9 acquisition premium, the total acquisition premium. In
10 the environmental liability agreement, the company agreed
11 with Western Resources that the first \$3 million of any
12 remediation cost that they would encounter would be the
13 sole responsibility of Southern Union.

14 Southern Union's outside accountants at
15 that time required the company to book that \$3 million as
16 an acquisition premium, et cetera. So what I believe
17 Mr. Tuck's testimony encompasses is -- his discussion on
18 acquisition premium, a portion of that relates to that
19 \$3 million that the company booked as acquisition premium.

20 Q. You were shown a copy -- or you discussed
21 the environmental liability agreement between Southern
22 Union and Western Resources, and could you just briefly
23 explain your understanding of how the liability works
24 under that agreement?

25 A. Well, it's really fairly simple. The first

1 \$3 million is the liability. The parties agreed that the
2 liability would be Southern Union's. Anything in excess
3 of that 3 million up to 15 million the parties would share
4 between them 50/50, meaning Southern Union would be
5 responsible for 7.5 million, as would Western Resources.

6 But in order to get Western Resources to
7 pay anything, they would first have to try to get recovery
8 of those costs from either -- and also Western Resources
9 was part of this, too, because I think they were the
10 original owners of the insurance companies. They would
11 first try to get recovery of the costs from the insurance
12 providers, other PRPs, which would be, as Commissioner Gaw
13 discussed, other owners, former owners of the plant, and
14 ratepayers and in a rate case scenario as we're in right
15 now.

16 To the extent they could not get recovery
17 from those parties and it became out-of-pocket cost for
18 Southern Union, then Southern Union and Western Resources
19 would share in those costs up to that \$15 million level as
20 the company stated to me in Data Request response in
21 GR-96-285. After that they believed that Southern Union
22 had sole liability for those costs.

23 Q. And that's the -- is that the Data Request
24 that you discussed with MGE's counsel and that I provided
25 a copy for MGE's counsel and you had a discussion briefly

1 about the language from the Data Request; is that correct?

2 A. That is correct. It was the response to
3 OPC Data Request 1033 in Case GR-96-285, and in that there
4 was a sentence where it talks about the \$3 million, the
5 \$15 million sharing, and then after that Southern Union
6 would be solely liable for any such costs and expenses in
7 excess of 18 million. The Data Request also says at the
8 time the company didn't think the costs would exceed that
9 \$18 million mark; that is, at the time they negotiated the
10 contract.

11 Q. What concerns do you have making ratepayers
12 liable under the environmental liability agreement?

13 A. Well, as we stated in testimony, the
14 plant's not in service. It's not providing any service to
15 current ratepayers. It's related to plant that's been out
16 of service and not utilized for decades. So primarily
17 that's one of the reasons, one of the primary reasons.
18 Current ratepayers shouldn't be responsible for costs
19 associated with remediation of that plant.

20 And for many other factors, we believe the
21 shareholders at the time that plant was in operation
22 earned the return on that plant, compensated for
23 potentially any business risk associated with it, and also
24 for recovery of the plant during its operation.

25 Q. And you were asked a question on whether

1 environmental cleanup costs were included in the cost to
2 dismantle and decommission plants. What is your
3 understanding of what would have been included in those
4 costs as they relate to environmental-type cleanup?

5 A. Any costs associated with the usage of the
6 plant and the ultimate removal, dismantling, cleanup with
7 the plant and also any potential salvage they may have
8 recovered when they did that, when they dismantled the
9 plant.

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

11 JUDGE JONES: Okay. At this time let's
12 take a short five-minute break. Commissioner Gaw will
13 have questions for Staff's witness James Gray on the issue
14 of weather normalization. We'll take that up after this
15 break, and then move on to the remaining two issues in the
16 case.

17 (A BREAK WAS TAKEN.)

18 JUDGE JONES: Let's go ahead and go back on
19 the record. We are back on the record, and ready to have
20 questions from Commissioner Gaw of Staff's witness James
21 Gray on the issue of weather normalization.

22 Mr. Gray, will you take the stand, and you
23 remain under oath.

24 JAMES GRAY testified as follows:

25 QUESTIONS BY COMMISSIONER GAW:

1 Q. Mr. Gray, I just have a few questions and
2 maybe not even that many. I'm trying to get a better
3 understanding when you're utilizing your test year number
4 for heating degree days.

5 A. Yes.

6 Q. And you have a different -- a methodology
7 for coming up with what the weather has been over a
8 certain period of time, such as your 30 year -- your
9 30-year period?

10 A. Curt Wells, Staff witness Curt Wells gave
11 me those numbers, yes.

12 Q. What I'm looking for is, what relevance is
13 the test year number? Do you just substitute the number
14 that you come up with with your methodology, whether it's
15 the 30-year number or the 10-year rolling number that we
16 heard about from the company for the test year number or
17 do you adjust the test year number? That's what I'm
18 trying to determine.

19 A. I adjust the test year number to the
20 weather that Staff witness Curt Wells gives me.

21 Q. So in essence you're substituting --

22 A. Yes.

23 Q. -- whatever that number is --

24 A. Yes.

25 Q. -- for your 30-year average?

1 A. I develop a coefficient, if you may, of
2 usage per heating degree day.

3 Q. Yes.

4 A. And then I adjust the weather, like one
5 heating degree day moves times that coefficient.

6 Q. Okay. Is that the same thing as
7 substituting the number from the 30-year --

8 A. Yes.

9 Q. -- average?

10 A. Yes. To Mr. Curt Wells', yes.

11 Q. That's all I needed to know. The numbers
12 have been put in, I think, that he ran, correct, from the
13 other day when I asked for those numbers on moving that
14 30-year over to -- up to the current year instead of doing
15 it up through 2001, I believe it was, those numbers are
16 already in the record?

17 MR. REED: They are. There was an exhibit.
18 We weren't exactly sure what. We did bring an exhibit
19 that Mr. Gray prepared and gave to me this morning that
20 calculates the volume usage based upon these updated
21 numbers that Mr. Wells has presented.

22 COMMISSIONER GAW: Is that in the record?

23 MR. REED: We have it this morning.

24 COMMISSIONER GAW: If that could be put in
25 the record, that would be great.

1 MR. REED: If we can mark it as 110A.

2 (EXHIBIT NO. 110A WAS MARKED FOR
3 IDENTIFICATION BY THE REPORTER.)

4 BY COMMISSIONER GAW:

5 Q. Okay. Do you have this exhibit in front of
6 you?

7 A. Yes, I do.

8 Q. All right. Could you tell me what
9 conclusions it reaches in comparing the numbers that are
10 generated in using the updated 30-year period comparing it
11 to the 30-year period that Staff utilized?

12 A. Yes. Just the very top left one there, for
13 Kansas City International Airport, underneath that is the
14 weather that Staff witness Wells gave me, and you can see
15 there's a difference of 70 heating degree days, and that's
16 a one -- 1.3 percent difference.

17 Q. Okay.

18 A. Now, if you go to my normalized volumes for
19 Kansas City residential, for example, in my direct I have
20 303,697,648 CCFs. This is sort of a back of the envelope,
21 if you may, calculation. That would decrease my volumes
22 by 3,261,130, or about 1.07 percent. It's not quite a
23 one-to-one relationship.

24 Q. Okay.

25 A. And it's the same for all these others,

1 these other two districts.

2 Q. Okay.

3 A. And beneath that I've got a -- just for
4 information, the 30-year versus a 10-year.

5 Q. Okay. All right. And what would this do
6 to rates?

7 A. I couldn't answer that. Staff witness
8 Harrison would have to.

9 Q. Could you say whether it would increase or
10 decrease rates? That's what I'm looking for, not a
11 number.

12 A. It would -- if it's a negative here, it
13 would -- it would decrease.

14 Q. Decrease the rates. So, in essence, going
15 to a 30-year -- updated 30-year will decrease the rates
16 for Kansas City?

17 A. And St. Joseph.

18 Q. And St. Joe?

19 A. And it would slightly -- perhaps it would
20 slightly increase it for Joplin.

21 Q. Okay. It's not really that helpful to the
22 company to update the 30-year numbers, is it, if I
23 understand this correctly?

24 A. Apparently so.

25 COMMISSIONER GAW: Yes. I think that's all

1 I have. This is admitted, Judge. That's the only
2 questions I have. Thank you very much for doing that,
3 sir.

4 JUDGE JONES: Is Staff offering 110A?

5 MR. REED: Yes, Judge, I'd like to offer
6 110A.

7 JUDGE JONES: Any objection?

8 MR. BOUDREAU: No objection.

9 JUDGE JONES: Staff's Exhibit 110A is
10 admitted.

11 (EXHIBIT NO. 110A WAS RECEIVED INTO
12 EVIDENCE.)

13 JUDGE JONES: Commissioner Murray, did you
14 have any questions?

15 COMMISSIONER MURRAY: Give me just a
16 minute, please.

17 QUESTIONS BY COMMISSIONER MURRAY:

18 Q. I probably shouldn't do this because I
19 haven't thought this through very well, Mr. Gray, but the
20 document that you supplied here, the first line is
21 updating the 30-year normal periods, correct, with the
22 most current years following the last official update, an
23 update?

24 A. Yes. That's just something Staff witness
25 Wells went from 1976 to 2005, is my understanding.

1 Q. And the result of that was a negative
2 difference?

3 A. Yes, the heating degree days went down.

4 Q. Which means it was colder?

5 A. It means it was slightly warmer.

6 Q. Slightly warmer. Which means that the
7 rates would have reduced?

8 A. I spoke -- I misspoke a little bit. When
9 the usage goes down, the rates go up. I'm sorry. I
10 always deal with volumes. I don't deal with rates. It's
11 very -- it's backwards to me. I apologize.

12 Q. No. I just wanted to clarify that, because
13 that confused me. And then if you look at the difference
14 between 30 year and the 10 year, you see a more
15 substantial difference, correct?

16 A. Yes.

17 Q. But in the same direction?

18 A. Yes.

19 COMMISSIONER MURRAY: Okay. Thank you.

20 JUDGE JONES: Any recross, Missouri Gas
21 Energy?

22 MR. BOUDREAU: I just have one question.

23 RECROSS-EXAMINATION BY MR. BOUDREAU:

24 Q. Your exchange there with Commissioner
25 Murray clarified one of the questions I was going to ask

1 you. The other one I had is, in response to a question
2 from Commissioner Gaw, he had asked you about the
3 relevance of the -- I think it was the term the test year
4 number, and I think you used that phrase. Do you recall
5 that? You said you changed -- you used the test year
6 number and then adjusted it?

7 A. Vaguely I do.

8 Q. That's what I wanted to understand, the
9 context of the phrase --

10 A. Sure.

11 Q. -- test year number.

12 Do you recall that reference?

13 A. No, I don't.

14 Q. Okay.

15 A. It refers to test year heating degree days?

16 Q. I think he was asking you what you did with
17 the weather information that you got from witness Wells,
18 and you were explaining that --

19 A. I would assume perhaps he meant the test
20 year normalized usage.

21 Q. Okay. That was right. When you say the
22 test year -- okay. Test year normalized usage. So that's
23 what you're trying to get to?

24 A. I'm sorry. Test year actual usage should
25 be adjusted to a normalized usage.

1 Q. Okay. And the test year actual usage will
2 be the NOAA data from the test year 2005; is that correct?

3 A. Are we talking -- I don't understand. Are
4 we talking CCFs or are we talking heating degree days?

5 Q. I can tell I'm just muddying the record
6 here in an effort to get some clarity. I may just drop
7 it. I was trying to understand a phrase that I thought I
8 heard you use.

9 A. I'm sorry. I don't quite recall.

10 MR. BOUDREAU: Let's just leave it at that,
11 then, because I don't think this is going anywhere. Thank
12 you very much. No further questions.

13 JUDGE JONES: Any recross from the Office
14 of Public Counsel?

15 MR. POSTON: No.

16 JUDGE JONES: Any redirect from Staff?

17 MR. REED: No, thank you.

18 JUDGE JONES: Mr. Gray, you may step down.

19 Let's go ahead and move on to the next
20 issue, see if we can make some headway until noon, at
21 which time we will have lunch. I'm going to ask the
22 parties, we have Infinium software and Kansas property tax
23 AAO. It's not clear to me -- is it clear to you-all which
24 of those issues might be finished quicker?

25 MR. MITTEN: Company and Staff are in

1 agreement on the Infinium software, and my
2 cross-examination of Mr. Robertson is pretty brief. I
3 think we can finish that.

4 JUDGE JONES: Infinium software it is.

5 MR. THOMPSON: If it was up to me, Judge,
6 we could finish both of these issues.

7 JUDGE JONES: Let's let MGE go first. Why
8 don't we have an opening statement from MGE, if you have
9 one.

10 MR. MITTEN: I did my opening statement on
11 this issue last week, but I'll be happy to do it again.

12 JUDGE JONES: No. Please don't.

13 MR. MITTEN: Thank you. I would call
14 Mr. Noack to the stand.

15 JUDGE JONES: Mr. Noack, you remain under
16 oath and we'll go on to cross-examination from the Staff
17 of the Commission.

18 MICHAEL NOACK testified as follows:

19 CROSS-EXAMINATION BY MR. THOMPSON:

20 Q. Good morning, Mr. Noack.

21 A. Good morning.

22 Q. The Infinium software is still in use
23 today; isn't that correct?

24 A. Yes. We are using it for time entry.

25 Q. And when Mr. Robertson talks about the

1 change from Infinium to Oracle and Power Plant as
2 something that was imposed on MGE by its parent, in fact,
3 it's true there is no distinction between MGE and Southern
4 Union in a legal sense; isn't that correct?

5 A. I believe so. That's correct.

6 MR. THOMPSON: No further questions. Thank
7 you, sir.

8 JUDGE JONES: Any cross from the Office of
9 Public Counsel?

10 MR. POSTON: Yes, thank you.

11 CROSS-EXAMINATION BY MR. POSTON:

12 Q. Mr. Noack, did MGE in late 2004 or early
13 2005 terminate its license to operate the Infinium
14 software system?

15 A. Right. We decided not to renew it, that's
16 correct. Yes.

17 Q. Then if MGE is still using the time entry
18 portion of the Infinium software, is it doing so without
19 permission of the software's developer and owner?

20 A. No, I don't believe so. But we're getting
21 into areas that I can't answer the question on.

22 Q. Do you have a copy of the contract that
23 states you can still utilize the system without paying the
24 Infinium system developer owner licensing fees?

25 A. I don't have it, no.

1 Q. Did Public Counsel request a copy of that
2 contract that supports your utilizing this system, the
3 Infinium system?

4 A. They might have. If they did, we've
5 attempted to provide everything that we could to Public
6 Counsel.

7 MR. POSTON: Can I approach the witness,
8 please?

9 JUDGE JONES: Yes, you may.

10 MR. MITTEN: Your Honor, since there isn't
11 an additional copy of that Data Request, would it be
12 permissible for me to look over the witness's shoulder
13 while counsel examines him on it?

14 JUDGE JONES: Sure.

15 BY MR. POSTON:

16 Q. Just one quick question on this. This is a
17 Data Request from Public Counsel to MGE; is that correct?

18 A. Yes, it is.

19 Q. And isn't it also correct that in this
20 document MGE states that the contract I was just asking
21 you about, you stated that that contract cannot be found?

22 A. Yes, that's what it says.

23 Q. Moving on away from that Data Request, was
24 a cost/benefit study prepared to determine the economic
25 consequences of abandoning the Infinium software system

1 for the Oracle and Power Plant systems?

2 A. Not to my knowledge.

3 Q. Did Public Counsel request a copy of the
4 capital budgets and capital budget analysis that should
5 have supported Southern Union's decision to move to the
6 Oracle and Power Plant systems?

7 A. They did.

8 Q. And did you provide those documents?

9 A. We weren't able to find those. There was
10 nothing we were able to provide, no.

11 Q. Did you attempt to get those analyses from
12 Southern Union?

13 A. Yes, we did.

14 Q. And that was not available? What was the
15 response?

16 A. That there wasn't anything that they could
17 find.

18 Q. And isn't it accurate that most of the cost
19 which MGE is requesting pertains mostly to enhancement
20 costs, software modifications in the Infinium system?

21 A. Well, not necessarily, but -- because there
22 were -- there was approximately \$7 million of total
23 investment on MGE's books. Now, the initial year of the
24 software, 4 million of that was booked, and then
25 subsequent to that, there were enhancements. So

1 two-thirds of the -- a little less than two-thirds of the
2 balance is initial investment in the software, and the
3 balance is enhancements, upgrades, those kind of
4 purchases.

5 Q. Is the 4 million that you just mentioned
6 fully amortized as of February '07?

7 A. Yes. It will be as of February of '07,
8 yes.

9 Q. And I believe you testified that the
10 Infinium software is being used for a time entry system?

11 A. That's correct, yes.

12 Q. Is that the only use?

13 A. I believe so, right now.

14 Q. And how long does MGE intend to use it for
15 this purpose?

16 A. I believe the intent is March of 2007, but
17 that may extend longer if we don't convert the payroll
18 system over.

19 Q. And what portion of the total enhancement
20 costs pertain to the time entry system still being
21 utilized?

22 A. I can't answer that. I don't know the
23 answer to that.

24 Q. Isn't it true that nearly all the cost you
25 seek to recover relates to software modifications that

1 have nothing to do with time entry or payroll processing?

2 A. Repeat that one more time.

3 Q. Isn't it true that nearly all the costs you
4 seek to recover relate to software modifications that have
5 nothing to do with time entry or payroll processing?

6 MR. THOMPSON: I object, your Honor.
7 That's the same question that he just answered he didn't
8 know, rephrased.

9 JUDGE JONES: Mr. Poston, what was the last
10 question you asked? I'm assuming you remember it.

11 MR. POSTON: I asked him what portion of
12 the total enhancements pertain to time entry.

13 JUDGE JONES: And then what was the next
14 question?

15 MR. POSTON: Isn't it true that nearly all
16 the costs you seek to recover relate to software
17 modifications that have nothing to do with time entry or
18 payroll processing?

19 JUDGE JONES: Go ahead and answer the
20 question. I'll overrule the objection.

21 THE WITNESS: I don't know.

22 MR. POSTON: I'd like to approach the
23 witness again, please.

24 JUDGE JONES: You may.

25 BY MR. POSTON:

1 Q. Please identify the document that I've just
2 handed you.

3 A. It's MGE's response to Missouri
4 Commission's Staff's Data Request 0071.3.

5 Q. And does this -- what is the Data Request
6 asking?

7 MR. THOMPSON: I'm going to object to this
8 line of questions, your Honor, because Public Counsel
9 hasn't provided a copy of that document to Staff.

10 Thank you.

11 JUDGE JONES: Does that mean you withdraw
12 your objection?

13 MR. THOMPSON: I do withdraw it. Thank
14 you, your Honor.

15 THE WITNESS: The description is, please
16 provide all original cost documentation regarding the
17 following intangibles: CSS enhancement, S2K enhancement
18 and the mainframe enhancement. Please provide complete
19 detailed description of the functioning of each of these
20 intangibles. Please also explain why MGE needed to
21 purchase the intangibles listed above.

22 BY MR. POSTON:

23 Q. And these are the enhancements for the
24 Infinium software; is that correct?

25 A. Yes, they are.

1 Q. And in the response, MGE has provided a
2 list of detailed description, is that correct, with the
3 detailed cost documentation on those enhancements; is that
4 correct?

5 A. Yes, we've printed out basically our
6 continuing property record for this -- for this item.

7 Q. And looking at this document, can you point
8 me to which of these specific enhancements relate to the
9 time entry system, would be used for the time entry
10 system?

11 A. I haven't -- I haven't done that because I
12 haven't requested -- I haven't requested what you're
13 asking me in this case. I'm not asking for any kind of
14 cost recovery for time entry modules. I'm asking for
15 amortization of the remaining balance of the entire
16 Infinium software system that wasn't completely amortized,
17 but so, no, I don't know which of these has anything to do
18 with time entry.

19 MR. POSTON: Your Honor, I move to have
20 this document, Data Request No. 71.3, marked as an exhibit
21 and offer it into the record.

22 JUDGE JONES: Let's mark it as Exhibit 208.
23 Can you describe it for me, Mr. Poston?

24 (EXHIBIT NO. 208 WAS MARKED FOR
25 IDENTIFICATION BY THE REPORTER.)

1 MR. POSTON: It was a Data Request from
2 Staff to MGE requesting detailed cost documentation of the
3 Infinium software enhancement.

4 JUDGE JONES: What's the DR request number?

5 MR. POSTON: 71.3.

6 JUDGE JONES: Any objection?

7 MR. THOMPSON: No objection.

8 MR. MITTEN: No objection.

9 JUDGE JONES: Exhibit 208 is admitted into
10 the record.

11 (EXHIBIT NO. 208 WAS RECEIVED INTO
12 EVIDENCE.)

13 BY MR. POSTON:

14 Q. Has MGE obtained Commission authorization
15 that the abandonment of the Infinium system was an
16 extraordinary retirement?

17 A. No. That's essentially what I think we're
18 really requesting here.

19 Q. And has MGE requested or been authorized an
20 AAO from this Commission to account for the Infinium
21 system undepreciated cost?

22 A. No.

23 Q. Did the entire Southern Union Company
24 switch to the Oracle system for all its components?

25 A. Yes, I believe so.

1 Q. Isn't it true that Panhandle Eastern did
2 not entirely switch over?

3 A. No, that's not correct.

4 MR. POSTON: If I could have just a moment,
5 please. I'd like to approach the witness again.

6 JUDGE JONES: You may.

7 MR. MITTEN: Your Honor, the same request,
8 since he intends to interrogate the witness regarding the
9 Data Request response and that's the only copy, may I look
10 over his shoulder while he answers the questions?

11 JUDGE JONES: You may.

12 MR. THOMPSON: Well, I'm going to raise the
13 same objection I raised in the last one.

14 JUDGE JONES: You don't have a copy?

15 MR. THOMPSON: Absolutely.

16 MR. POSTON: It's my only copy. I don't
17 intend to -- I'll be happy to give him a copy once I've
18 asked the question.

19 JUDGE JONES: Why don't you look over his
20 shoulder, too?

21 BY MR. POSTON:

22 Q. This is Data Request 1020, is that correct,
23 from Public Counsel to yourself?

24 A. Yes, it is.

25 Q. And I've highlighted a section on I believe

1 the first page of your response. Does not this indicate
2 that Panhandle Eastern did not entirely convert over to
3 Oracle?

4 A. No. All it says is since Panhandle
5 Pipeline or PEPL is on its own set of books, Panhandle's
6 own set of books happens to be the Oracle software that
7 they already had when Southern Union purchased them.

8 Q. Is that answer the way it's listed on that
9 sheet? Is that how you answered?

10 A. Allocation based on more than inquiry user
11 account since PEPL is on own set of books, only allocate a
12 portion of HR/PR. Panhandle's own set of books is using
13 the Oracle system, only it's with their license.

14 MR. POSTON: Okay. Thank you.

15 MR. MITTEN: Does that conclude your
16 questioning on that?

17 MR. POSTON: On that one, yes. I believe
18 that's all I have. Thank you.

19 JUDGE JONES: Commissioner Murray?

20 COMMISSIONER MURRAY: Thank you.

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Good morning, Mr. Noack.

23 A. Good morning.

24 Q. The original costs of the Infinium
25 software, I assume, were given an estimated life span and

1 depreciated; is that correct?

2 A. That's correct. The -- when we purchased
3 the Infinium software in I believe it was 1996 -- 1995,
4 excuse me, the estimated useful life was ten years.

5 Q. Okay. And they were -- when did -- when
6 was the Infinium software no longer used?

7 A. We switched over entirely to the Oracle,
8 with the exception of the time entry, I believe in 2005.

9 Q. Well, wouldn't that have been pretty much
10 depreciated then? That was ten years.

11 A. Yes. In fact, the original investment in
12 the Infinium software was almost fully amortized. What
13 happened was, is that each year after that, going up
14 through primarily 2001, there were -- there were either
15 enhancements or modifications made to the system. And
16 what probably should have been done at the time was to
17 take those modifications or enhancements and amortize them
18 over a length of time where they would be fully amortized
19 the same time as the primary software would have been.

20 But instead what we did was we gave each of
21 the enhancements a new 10-year life. So at the time that
22 the original software got written off, we still had a
23 balance of the enhancements, due to the fact that we
24 started over each time one was put into place.

25 Q. Okay. So that means that -- and at what

1 point in time did those enhancements begin to take place?

2 A. Well, for example, in 1996, we had
3 enhancements of 642,000. In '97 there was 681,000. In
4 '98, 499,000. '99 was 230,000; 2000, 351,000; and 2001
5 was 316,000.

6 Q. So up to the year 2001?

7 A. That's correct.

8 Q. The company was not planning to change
9 software systems; is that accurate?

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

11 Q. And at the time that there was a decision
12 made to go from Infinium software to another software, did
13 you say there was no cost/benefit analysis done?

14 A. There was none that corporate supplied me.
15 I requested one. I don't know if -- I suppose they
16 couldn't find it. I don't -- anyway, there was not a
17 cost/benefit analysis that they were able to provide me.

18 Q. Okay. What about the new software, is that
19 included somewhere in this rate case?

20 A. Yes, it is. If you were to look at my
21 original filing, which is Exhibit 4, and go to
22 Schedule H-13, on line 19 --

23 Q. I'm sorry. Exhibit 4 is attached to what?

24 A. Exhibit 4 is my original or direct
25 testimony, and it's Schedule H-13.

1 Q. All right. I'm there.

2 A. It should be the schedule of amortization
3 expense. Line 19 and line 20, those are the Oracle
4 software costs and the Power Plant software costs that are
5 being amortized currently.

6 Q. And what is the estimated life span for
7 those?

8 A. It appears to be ten years.

9 Q. And your position is, and I think Staff is
10 in agreement, if I'm correct, is that the unamortized
11 amount of the Infinium software that was related to the
12 enhancements or other modifications that were not
13 depreciated should be amortized over the next five years;
14 is that correct?

15 A. That's correct, yes. The unamortized
16 balance on Schedule C-1 of that same exhibit, I should
17 point out that you will see where MGE has made an
18 adjustment on line 3 to remove the plant investment in the
19 Infinium system out of our rate base. So we're not asking
20 for a return on the Infinium software.

21 Q. Okay. So -- but it was -- were the
22 enhancements included in the rate base?

23 A. The enhancements were included in the rate
24 base, yes. Yes.

25 Q. During previous rate cases between 1995 and

1 now?

2 A. That's correct.

3 Q. And this adjustment on line 3 of
4 Schedule C-1 is to remove the remainder of the Infinium
5 software from rate base?

6 A. It removes the plant investment in its
7 entirety, and then on Schedule D-1, we removed the reserve
8 for depreciation also. So it is -- it is entirely out of
9 the -- out of the rate base.

10 Q. So this amor-- this five-year amortization
11 is just to recover the return of the investment and those
12 enhancements; is that correct?

13 A. That's correct, yes. As I think I said
14 earlier, I mean, it's probably one of those things that
15 when we enhanced the system, we probably should have
16 amortized each of the enhancements over a life -- or at
17 least requested the Commission for a life that would
18 correspond to those enhancements being used up at the same
19 time as the software, so everything would be fully
20 amortized at the same time in 2007.

21 Q. And then you would have -- well, you were
22 recovering a return on those enhancements, currently you
23 are until they come out of rate base; is that correct?

24 A. Yes.

25 Q. And the difference --

1 A. And currently we're recovering amortization
2 until the new rates go into effect.

3 Q. Well, if they're in rate base, you're
4 recovering a return on and they're also being depreciated?

5 A. That's correct, yes.

6 Q. But they're being depreciated at 10-year
7 life span for each one of them individually versus
8 incorporated into the initial life span of the entire
9 system?

10 A. That's correct.

11 Q. What would have been the -- how would that
12 have resulted in different dollars, different amounts of
13 recovery to the company had you rolled it into the initial
14 recovery period?

15 A. Well, as an example, in 1996 where we have
16 an investment of \$642,000, instead of having annual
17 amortization of \$64,000, we would have requested that
18 amortization of that enhancement be over nine years, so
19 that would have been approximately 90 -- let's see. It
20 would have been approximately \$90,000 a year instead of
21 60, and that's too much. 70,000 instead of 60. Excuse
22 me.

23 Q. So basically the difference would have
24 been -- I mean, there wouldn't have been a difference in
25 the amount of return on, but there would have been a

1 difference in the amount of -- you would have collected
2 the return of the investment --

3 A. That's correct.

4 Q. -- by now?

5 A. Yes. Yes.

6 Q. But you wouldn't have earned anything
7 different in terms of --

8 A. We probably would have earned a little bit
9 less because in each subsequent rate case the accumulated
10 depreciation or accumulated amortization would have been a
11 little higher, which would have meant that the net value
12 of the software would have been a little lower in the rate
13 base.

14 Q. So if we grant your request on this issue
15 in this case, will the net result be that you recover a
16 little bit more than you would have had you done it the
17 way you're suggesting you probably should have done it?

18 A. No. We would be -- no. I believe we'd be
19 only recovering the total amount of the investment, the
20 return of the investment. We wouldn't return -- we
21 wouldn't recover anything extra in the return of the
22 investment. I guess one could say that by doing it this
23 way, we may have recovered a little bit extra in the
24 return on investment, but I don't know exactly what that
25 would be. It wouldn't be very much.

1 COMMISSIONER MURRAY: Okay. I think that's
2 all I have. Thank you.

3 JUDGE JONES: Recross, Staff?

4 MR. THOMPSON: No, thank you, your Honor.

5 JUDGE JONES: Any recross from the Office
6 of Public Counsel?

7 MR. POSTON: Just one.

8 RE CROSS-EXAMINATION BY MR. POSTON:

9 Q. Commissioner Murray asked you some earlier
10 questions about the Oracle software. Does that software
11 include a time entry system?

12 A. I don't believe so, no. I believe the time
13 entry and the payroll system will be -- I believe that may
14 be ADP, something completely different.

15 Q. What is ADP?

16 A. It's -- I believe ADP is the name of the
17 company. It's Automated Data Processing is what the ADP
18 stands for, and they -- they specialize in payroll
19 processing.

20 Q. Who does the Southern Union payroll now,
21 what type of software?

22 A. I can't answer that. I don't -- I don't
23 know. We're using Infinium, I know MGE is, for the time
24 entry, but beyond that, I couldn't answer that question.
25 I don't know.

1 Q. What do you intend to use for the time
2 entry after March of '07?

3 A. Well, we'll use Infinium unless we've
4 switched over to whatever the new system is.

5 Q. And that's not a system that's in the
6 Oracle? That's not part of the Oracle?

7 A. I don't believe so, but --

8 Q. But you're not sure?

9 A. I don't think so, no, but I'm not sure.

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

11 JUDGE JONES: Any redirect?

12 MR. MITTEN: Just a couple of questions.

13 REDIRECT EXAMINATION MR. MITTEN:

14 Q. Mr. Noack, both Commissioner Murray and
15 Mr. Poston asked you whether or not prior to conversion
16 from Infinium to Oracle Southern Union had a cost/benefit
17 analysis or economic analysis of that conversion. Do you
18 recall those questions?

19 A. Yes, I do.

20 Q. From a cost standpoint, how has the
21 conversion worked out for MGE? Is MGE currently paying
22 more or less for Oracle than it previously paid for
23 Infinium?

24 A. Well, the allocated portion to MGE is
25 substantially less than what the initial Infinium

1 investment was.

2 Q. Substantially, can you quantify that for
3 me?

4 A. We had 6 -- almost \$6.8 million of
5 investment in Infinium, and the new system is
6 2.6, something like that.

7 Q. And Commissioner Murray also asked you a
8 series of questions about on a net-net basis considering
9 both depreciation and rate of return, MGE might make out
10 better or worse if the company is allowed to amortize the
11 Infinium software. Do you recall those questions?

12 A. Yes.

13 Q. And you suggested, I believe, that there
14 might be a small increment of additional rate of return
15 that the company could have earned doing it the way that
16 it ended up handling the enhancements to the Infinium
17 system?

18 A. That's correct.

19 Q. Just to put that in context, over the last
20 five years, how many of those five years has MGE earned
21 its authorized return?

22 A. Oh, we've never fully -- we've never earned
23 our authorized rate of return in any of those years.

24 MR. MITTEN: No further questions. Thank
25 you.

1 JUDGE JONES: Thank you, Mr. Noack. You
2 may step down.
3 We'll go ahead and move on to Staff's
4 witness.
5 MR. THOMPSON: Staff calls Paula Mapeka.
6 JUDGE JONES: By the way, Mr. Thompson, did
7 you want to make an opening statement?
8 MR. THOMPSON: No, I'll waive an opening
9 statement. Thank you.
10 JUDGE JONES: You may proceed,
11 Mr. Thompson.
12 MR. THOMPSON: Thank you, your Honor. I
13 wonder if I might ask you the status of Exhibit 122, 123
14 and 124.
15 JUDGE JONES: They've all been admitted.
16 MR. THOMPSON: Thank you. In that case,
17 I'll tender Ms. Mapeka for cross-examination.
18 JUDGE JONES: Any cross-examination from
19 Missouri Gas Energy?
20 MR. MITTEN: No questions, your Honor.
21 JUDGE JONES: Cross-examination from the
22 Office of Public Counsel?
23 MR. POSTON: Yes, thank you, just a few.
24 PAULA MAPEKA testified as follows:
25 CROSS-EXAMINATION BY MR. POSTON:

1 Q. Ms. Mapeka, isn't it accurate that most of
2 the costs MGE is requesting pertains mostly to enhancement
3 costs?

4 A. Yes, sir.

5 Q. And what portion of the total enhancement
6 costs pertain to the time entry system that MGE alleges is
7 still being utilized?

8 A. I don't know.

9 Q. Could you please turn to page 6 of your
10 rebuttal testimony, and if you could please read lines 1
11 through 3. I believe the question is, what is the
12 Infinium software system? And then you provide an answer
13 on
14 lines 1 through 3 on page 6. Could you please read that?

15 A. The Infinium software is an intangible
16 asset that MGE was using for its day-to-day operations
17 until December 2004 when the company reclassified this
18 asset as non-utility plant and is now using this software
19 for time entry.

20 Q. Thank you. Are costs associated with an
21 asset classified as non-utility plant normally allowed in
22 the determination of regulated rates?

23 A. I'm sorry. Come again.

24 Q. Are costs associated with an asset
25 classified as non-utility plant normally allowed in the

1 determination of regulated rates?

2 A. Not that I'm aware of.

3 Q. I'm sorry. Did you say not that --

4 A. Not that I'm aware of.

5 Q. Can you please explain to me what the term
6 used and useful means in the regulation of monopoly
7 utilities?

8 MR. THOMPSON: I'm going to object, your
9 Honor, because the term applies to rate base items, and
10 this is not a rate base item.

11 JUDGE JONES: Mr. Poston?

12 MR. POSTON: Just a moment, please.

13 JUDGE JONES: Objection sustained. Move on
14 to your next question.

15 MR. POSTON: Judge, if I could have a
16 moment to discuss what could -- what's included in rate
17 base and not with my witness and give me an opportunity to
18 respond.

19 JUDGE JONES: Are you asking your witness
20 to help you out with a legal argument on whether or not
21 the objection should be sustained?

22 MR. POSTON: I'm asking my witness to
23 briefly discuss with me rate base and what's normally
24 included in rate base.

25 JUDGE JONES: Okay. Go ahead.

1 MR. POSTON: Judge, the used and useful
2 concept is used in regards to the amortization portion
3 that MGE seeks for the software.

4 JUDGE JONES: The objection is sustained.

5 MR. POSTON: I have no more questions.

6 JUDGE JONES: Commissioner Murray, do you
7 have questions?

8 COMMISSIONER MURRAY: I don't believe so,
9 thank you.

10 JUDGE JONES: Any redirect, Staff?

11 MR. THOMPSON: No redirect, your Honor.

12 JUDGE JONES: Ms. Mapeka, you may step
13 down.

14 JUDGE JONES: Now, we'll move on to OPC's
15 witness. Mr. Poston, did you have an opening statement
16 you want to make?

17 MR. POSTON: Yes, I do, very brief. May it
18 please the Commission? Southern Union made a choice to
19 switch to a new software knowing that MGE was still using
20 a fully functional software that did not need to be
21 replaced, but they did it anyway. MGE's customers should
22 not be held responsible for this and should not have to
23 pay for two different software programs that do the same
24 thing. Rejecting the software from inclusion in rates
25 will send a signal to Southern Union not to be wasteful.

1 And with that, I turn it over to
2 Mr. Robertson.

3 JUDGE JONES: Any cross-examination from
4 the Staff of the Commission?

5 MR. THOMPSON: No, your Honor.

6 JUDGE JONES: Any cross-examination from
7 Missouri Gas Energy?

8 MR. MITTEN: Very limited.

9 TED ROBERTSON testified as follows:

10 CROSS-EXAMINATION BY MR. MITTEN:

11 Q. Mr. Robertson, at page 23 of your rebuttal
12 testimony, you state the Public Counsel's main objection
13 to the company's proposed treatment of this issue is that
14 we believe it violates the regulatory used and useful
15 standard. Is that what your testimony says there?

16 A. That's correct.

17 Q. And then in the next sentence you define
18 the used and useful standard as the rate base on which a
19 return may be earned is the amount of property used and
20 useful at the time of the rate inquiry in regulating a
21 designated utility service. Did I correctly quote there?

22 A. And that is a quote from the Principles of
23 Public Utility Regulation, 1969.

24 Q. Do you understand that with respect to the
25 Infinium amortization adjustment, the company is not

1 requesting a rate of return on the balance of that
2 adjustment?

3 A. They are not asking for a return on the
4 balance.

5 Q. And if you could turn now to page 8 of your
6 surrebuttal testimony, there you reference Account 182.2
7 of the Uniform System of Accounts; is that correct?

8 A. On line 1?

9 Q. Yes.

10 A. That's correct.

11 MR. MITTEN: May I approach the witness,
12 your Honor?

13 JUDGE JONES: Yes, you may.

14 MR. MITTEN: Your Honor, I don't intend to
15 have this marked or entered as an exhibit since the
16 Commission has already taken administrative notice of the
17 Uniform System of Accounts for gas utilities, but I did
18 want to hand out copies for purpose of the parties being
19 able to follow along on my cross.

20 BY MR. MITTEN:

21 Q. Mr. Robertson, could you please review the
22 document I just gave you and tell me if that is a
23 description of Account 182.2 from the Uniform System of
24 Accounts?

25 A. I believe that's correct.

1 Q. And that description says that the account
2 shall include, and I'll drop down to No. 2, when
3 authorized by the Commission significant unrecovered costs
4 of plant facilities where construction has been canceled
5 or which have been prematurely retired; is that correct?

6 A. That's correct.

7 Q. And that's what the company's asking for in
8 this case per Mr. Noack's testimony earlier this morning,
9 correct?

10 A. It's talking about construction, so no.

11 Q. But it doesn't limit it to construction.
12 It says where construction has been canceled or which have
13 been prematurely retired?

14 A. Okay. That's what it says.

15 Q. And that's what the company's asking for
16 with respect to this particular adjustment; is that
17 correct?

18 A. That the company's asking for a premature
19 retirement?

20 Q. Yes. That's your contention, isn't it?

21 A. An abandonment, premature retirement, sure.

22 Q. Now, at page 12 of your surrebuttal, you
23 state that Public Counsel opposes the Infinium
24 amortization because ratepayers should not be required to
25 pay duplicate charges, that is, pay twice for the same

1 service?

2 A. Starting on line 5, item 2?

3 Q. Yes.

4 A. Is what you're referencing?

5 Q. Yes.

6 A. That's correct.

7 Q. Now, I sent you a Data Request asking for

8 an explanation of that statement, and in response you

9 simply quoted back to the testimony to -- see, let me see

10 if I can get at it this way: What did you mean when you

11 said ratepayers should not have to pay for the same thing

12 twice?

13 A. Essentially that since the company has

14 adopted the Oracle -- or Oracle system, Power Plant

15 systems, those operating systems are now performing the

16 processes that the Infinium system used to perform, and

17 therefore, since the Infinium software enhancements

18 primarily are not being utilized, there should be no

19 recovery of the cost associated with those .

20 Q. So it's not your contention that the

21 company has already recovered once the cost of Infinium

22 that it's trying to recover in this case?

23 A. Actually, I don't have a copy of the

24 response to your Data Request, but I think that was the

25 answer I gave you. I think I told you that the company is

1 asking for the amortization of the unamortized cost and,
2 as of the true-up date, I think October 31, 2006, the
3 total amount that had -- that was unamortized approximated
4 \$999,000, I believe.

5 Q. But again, the company's not trying to
6 recover twice the cost of the Infinium system?

7 A. They're not trying to recover twice the
8 Infinium system --

9 Q. That was my question.

10 A. -- but they are trying to recover costs on
11 the same processes that are performed.

12 Q. Now, you heard Mr. Noack testify earlier
13 that since the company has converted to Oracle, the costs
14 of the Oracle system are significantly less than were the
15 costs of the Infinium system. Do you recall that
16 testimony?

17 A. Well, as I mentioned just in this last
18 response, as of October, the unamortized costs is -- for
19 the Infinium system enhancements primarily is about
20 999,000. The costs associated with Oracle/Power Plant
21 systems that were assigned to MGE, I believe, is in the
22 \$2.6 million range. Your question being was the total
23 cost of the Infinium system when it was first installed?

24 Q. That wasn't my question at all. My
25 question was, again referring to Mr. Noack's testimony

1 earlier this morning, he said as a result of the
2 conversion from Infinium to Oracle, annual costs to the
3 company are significantly less now than they were. Do you
4 recall that testimony?

5 A. Generally, yes.

6 Q. If, as you're contending, using the Oracle
7 system and trying to recover the unrecovered balance of
8 the Infinium system is inappropriate, is it Public
9 Counsel's belief that the company should have delayed
10 conversion to Oracle until it fully recovered the cost of
11 the Infinium system?

12 A. That was a decision to be made by Southern
13 Union, MGE's management.

14 Q. And I understand that, but I'm asking you,
15 is that Public Counsel's position?

16 A. Can you point me in my testimony where I
17 stated that?

18 Q. I didn't say you'd stated it in your
19 testimony. I'm asking you today, as you sit on the stand,
20 is it Public Counsel's position that the company should
21 have delayed implementing the Oracle system, which saves
22 the company a substantial amount of money, until it had
23 fully recovered the cost of Infinium?

24 A. Public Counsel does not -- to my knowledge,
25 does not have the authority to tell the company --

1 JUDGE JONES: Mr. Robertson, we're hungry.
2 Just answer the question, man. What's the position? Do
3 you think they should have waited 'til they recovered or
4 should they have converted when they did?

5 THE WITNESS: If he's asking me whether
6 I --

7 BY MR. MITTEN:

8 Q. What's your opinion?

9 A. -- told them not to convert, I don't know.

10 JUDGE JONES: Okay. He doesn't know what
11 his opinion is on that.

12 MR. MITTEN: No further questions. Thank
13 you.

14 JUDGE JONES: Commissioner Murray?

15 COMMISSIONER MURRAY: I won't keep us long,
16 Judge, from lunch.

17 QUESTIONS BY COMMISSIONER MURRAY:

18 Q. You were asked a question about the 182.2
19 of the Uniform System of Accounts for unrecovered plant
20 and regulatory study costs. Do you recall that?

21 A. Yes.

22 Q. And the reference there was made to
23 significant unrecovered costs of plant facilities where
24 construction has been canceled or which have been
25 prematurely retired. And I was looking through the

1 definitions that we were given earlier from the Uniform
2 System of Accounts Part 201, subchapter F, and I don't see
3 any definition there for plant facilities. Do you know
4 what plant facilities means?

5 A. It says -- essentially, plant facilities
6 means pretty much any investment made by the company of
7 like a capital nature.

8 Q. So would that include the software?

9 A. Sure, yeah. They had that capitalized in
10 their plant Account 303, so, yes, it is a capital item,
11 so, yes, it is a plant facility.

12 COMMISSIONER MURRAY: Okay. That's my only
13 question. Thank you.

14 JUDGE JONES: Any recross from Staff?

15 MR. THOMPSON: No, thank you, your Honor.

16 JUDGE JONES: Missouri Gas Energy?

17 MR. MITTEN: No questions, your Honor.

18 JUDGE JONES: And redirect from the Office
19 of Public Counsel?

20 MR. POSTON: Thank you.

21 REDIRECT EXAMINATION BY MR. POSTON:

22 Q. Can you please explain why you think the
23 Infinium software is not used and useful?

24 MR. THOMPSON: Objection, your Honor. You
25 already ruled, your Honor, that used and useful doesn't

1 apply.

2 MR. POSTON: MGE asked him specific
3 questions about used and useful. I'm basing this off of
4 questions that were asked.

5 JUDGE JONES: He is. Answer the question,
6 Mr. Robertson.

7 THE WITNESS: Yes. In addition -- first
8 off, if you look at the company's response to Staff Data
9 Request 71.3, you'll look at that and there's a listing of
10 enhancement costs that support the total -- essentially
11 almost all the total of what the company's attempting to
12 recover through this amortization, essentially the
13 unamortized cost of all the Infinium costs they've
14 incurred from the beginning to the end.

15 Those costs that haven't been amortized
16 listed one by one for each of the enhancements, each of
17 the modifications, going down that list, and there is -- I
18 found on that list nothing to do with time entry. Most of
19 it relates to any other type of process that they modified
20 the system to. That is completely unrelated to any
21 service to the current ratepayers -- being provided to
22 current ratepayers.

23 For example, there's an entry related to
24 the building and the development of its website, MGE's
25 website. That has nothing to do with time entry. That's

1 well over \$100,000. I don't remember exactly what it is.
2 If you look at each one of those items that are
3 supported -- that are supporting the cost they're trying
4 to seek recovery of, the unamortized amounts, they have
5 nothing to do with time entry. They have nothing to do
6 with any process that's being performed by Infinium
7 software systems or enhancements for the company.

8 So therefore, those costs are not used and
9 useful, those processes are not used and useful, so the
10 costs associated with them should not be recovered from
11 ratepayers.

12 BY MR. POSTON:

13 Q. And you in one of your answers to MGE
14 counsel's question was that you didn't think that the
15 Commission -- or the company should be able to recover
16 twice for the same processes. Is that what you were just
17 talking about or is it --

18 A. That is correct. I mean, the Oracle, the
19 new system, the Oracle system and the Power Plant system
20 which the company's now using perform all of the processes
21 that were formerly performed by the Infinium system for
22 the most part. Essentially what they've got, they've got
23 Oracle and Power Plant doing those processes now. They
24 don't have the Infinium system doing them. It's basically
25 not doing anything other than this alleged time entry, and

1 so therefore you shouldn't be allowed to recover costs for
2 one plant that's doing the processes and then another
3 plant you've abandoned that's not doing anything. That's
4 basically it.

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

6 JUDGE JONES: Thank you, Mr. Robertson.

7 You may step down.

8 At this time let's take our lunch break and
9 come back at, say, 1:15.

10 (A BREAK WAS TAKEN.)

11 JUDGE JONES: Let's go ahead and go back on
12 the record with Case No. GR-2006-0422, and we'll move on
13 to the issue of Kansas property tax Accounting Authority
14 Order. Begin with Missouri Gas Energy.

15 MR. COOPER: Thank you, your Honor. As a
16 part of its routine operation, MGE keeps a portion of its
17 natural gas supply in storage in underground formations in
18 the state of Kansas. In June of 2004, the Kansas
19 Legislature enacted a law that permits Kansas counties to
20 assess property taxes against the value of natural gas
21 held in storage in Kansas. The statute is referred to as
22 Senate Bill 147.

23 The law enacted in 2004 was not Kansas's
24 first attempt to tax natural gas held in storage in that
25 state. Kansas had also attempted to assess and collect

1 property taxes on such gas prior to 2003. However, in
2 October of 2003, the Kansas Supreme Court issued a
3 decision in an appeal brought by MGE and other companies
4 in which it held that out-of-state natural gas
5 distributors such as MGE were entitled to a merchant's
6 inventory exemption from the property tax by the terms of
7 the Kansas constitution. The 2004 law was enacted as an
8 attempt to close that avenue of defense.

9 In October 10 of 2004, MGE filed an
10 application for an Accounting Authority Order from this
11 Commission that would authorize deferred accounting
12 treatments for the new property taxes incurred by MGE in
13 the state of Kansas as a result of Senate Bill 147 pending
14 its appeal of that statute.

15 On September 8 of 2005, this Commission
16 issued its Report and Order in GU-2005-0095, and therein
17 granted MGE an Accounting Authority Order allowing MGE to
18 record on its books a regulatory asset representing the
19 expenses associated with the property tax to be paid to
20 the State of Kansas pursuant Senate Bill 147 for tax years
21 2004, 2005 and 2006.

22 In issuing this Order, the Commission's
23 Order stated as follows: It would not be appropriate to
24 allow MGE to recover millions of dollars from its
25 ratepayers for taxes that it might never have to pay. On

1 the other hand, these taxes are a legitimate cost of doing
2 business which the ratepayers should be responsible for.
3 It would not be fair to MGE's shareholders to shift that
4 burden on to them if those taxes ultimately must be paid.

5 Furthermore, it was MGE's decision to
6 challenge the legality of the Kansas tax, a decision that
7 could greatly benefit its ratepayers, that has placed MGE
8 in this difficult position. If MGE had accepted the
9 Kansas taxes without challenge, it could have simply
10 passed the added taxes on to its ratepayers by filing a
11 rate case. Instead, by looking out for the interests of
12 its ratepayers, it has created the possibility that it
13 will not be able to recover several millions to which it
14 would otherwise be entitled. It is that conundrum that
15 makes an AAO an appropriate means for dealing with the
16 potential Kansas tax liability.

17 The Order further stated that MGE could
18 maintain this regulatory asset on its books until the
19 beginning of the month after the final judicial resolution
20 of the legality of that tax, and thereafter commence
21 amortization of the preferred amounts with the
22 amortization to be completed over a five-year period.

23 Since the issuance of this AAO, there are
24 two new facts that have developed. First, the Board of Tax
25 Appeals for the State of Kansas has agreed with the

1 company and ruled that the Kansas property tax is
2 unconstitutional. Second, the matter has been transferred
3 to the Kansas Supreme Court for determination on appeal.
4 The only significant fact that has changed from when this
5 AAO case was tried is that the appellate process has taken
6 longer than anticipated.

7 Based on these circumstances, MGE believes
8 that there is no reason for the Commission to vacate the
9 existing AAO as suggested by the OPC. Further, MGE
10 believes that because of the additional time this matter
11 has taken, it is reasonable for the Commission to extend
12 the AAO such that MGE may defer its liabilities associated
13 with this tax through the conclusion of MGE's next rate
14 case and to also start any necessary amortization at that
15 time.

16 Now, before we call Mr. Noack to the stand,
17 I would ask that the Commission take administrative notice
18 of its Report and Order in Case No. GU-2005-0095, which I
19 believe has been cited to by all three witnesses on this
20 issue, and I have copies for anyone that would like a copy
21 of that.

22 JUDGE JONES: Thanks.

23 MR. COOPER: At this time MGE would call
24 Mr. Michael Noack to the stand and tender him for
25 cross-examination.

1 JUDGE JONES: Mr. Noack, you remain under
2 oath, and is there cross-examination from the Staff of the
3 Commission?

4 MR. THOMPSON: Just very little, your
5 Honor.

6 JUDGE JONES: Go right ahead.

7 MICHAEL NOACK testified as follows:

8 CROSS-EXAMINATION BY MR. THOMPSON:

9 Q. Mr. Noack, if the Commission rules in favor
10 of Public Counsel's position on this issue, will that make
11 any difference to the revenue requirement in this case?

12 A. No, I don't believe so.

13 Q. And the same thing is true if it rules in
14 the position of the company has suggested; isn't that
15 correct?

16 A. That's correct.

17 Q. So there's actually no money hanging on
18 this issue at this time?

19 A. No.

20 MR. THOMPSON: No further questions. Thank
21 you.

22 JUDGE JONES: Any cross-examination from
23 the Office of Public Counsel?

24 MR. POSTON: Yes, thank you.

25 CROSS-EXAMINATION BY MR. POSTON:

1 Q. Mr. Noack, does the Missouri AAO you're
2 requesting allow you to defer property tax expense for
3 three years, 2004, 2005 and 2006?

4 A. Yes, that's my understanding.

5 Q. Isn't it correct that the Kansas property
6 tax case currently being litigated only pertains to
7 property tax for the years 2004 and 2005?

8 A. You know, I don't know the -- I guess the
9 particulars from that standpoint. I know that we're still
10 accruing property taxes for '06, we did -- I mean we've
11 got \$2.4 million, but I don't know the answer to that. I
12 think that's more of a legal question.

13 Q. The property tax that you are required to
14 pay for 2006, this would occur in 2007, correct?

15 A. Yes, I believe so. I mean, it's for
16 storage gas in 2006, yes.

17 Q. And if the amount of those taxes impacted
18 MGE's revenues to a level that it deemed unreasonable, MGE
19 could file a general rate increase seeking to recover
20 those payments; isn't that correct?

21 A. Assuming we had to pay them, I suppose,
22 yes.

23 Q. Is MGE seeking a refund in the State of
24 Oklahoma for property tax on gas stored in that state?

25 A. I can't -- I don't know the exact status of

1 what the Oklahoma litigation is in. I mean, it's much
2 smaller. We're dealing with \$100,000 a year versus the
3 almost \$2 million a year. I believe in Oklahoma we
4 actually have to pay the tax up front, so yes, we would be
5 probably trying to get a refund.

6 Q. And that's a similar type of tax, right?

7 A. That is correct, yes.

8 Q. And has MGE requested an AAO in the state
9 of Missouri to pass those refunds in Oklahoma back to
10 ratepayers should it prevail on the tax dispute issue in
11 Oklahoma?

12 A. No, but I don't -- I know in this case we
13 don't have any Oklahoma property taxes built into the
14 case, so the ratepayers wouldn't be paying for those
15 property taxes.

16 Q. Your answer is no, there's no intention
17 from MGE to pay those back or to --

18 A. No, no. They're not in rates now.

19 Q. Would MGE oppose an OPC request for an AAO
20 to defer the refund for repayment to ratepayers in the
21 event MGE prevails in Oklahoma?

22 A. Well, for one, it's --

23 Q. It's a yes or no question. Would you
24 oppose that request?

25 A. I don't know that I'd oppose it, no.

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

2 JUDGE JONES: Commissioner Murray?

3 COMMISSIONER MURRAY: Let me think just a
4 minute. I surely can ask something that can be objected
5 to.

6 QUESTIONS BY COMMISSIONER MURRAY:

7 Q. Mr. Noack, this issue, as I understand it,
8 just if you get -- if the company's position prevails,
9 that just simply allows you to continue to book those
10 projected amounts into an AAO for potential recovery
11 later; is that correct?

12 A. That's correct.

13 Q. Gives you no recovery -- no certain
14 recovery and certainly no recovery of anything that you
15 are not eventually charged; is that correct?

16 A. That's correct.

17 COMMISSIONER MURRAY: Thank you.

18 QUESTIONS BY JUDGE JONES:

19 Q. You may not know the answer to this. I
20 don't know, but why was this even brought up in this case?

21 A. Because under the terms of the order in the
22 AAO, we had -- in the last case, we had anticipated that
23 this issue would have been decided in some way, shape or
24 form by the State of Kansas by now, and they haven't. So
25 we have to request really an extension of this AAO

1 basically to cover potential property taxes while they
2 continue to deliberate. I believe it's in the Supreme
3 Court of Kansas right now.

4 Q. That tells me why you are requesting the
5 relief from the Missouri Public Service Commission, but
6 why is it in this particular case? Why didn't you just
7 file it in an AAO case? Is that a question your counsel
8 would need to answer or --

9 MR. COOPER: Probably is, your Honor, yes.

10 JUDGE JONES: Okay.

11 MR. COOPER: And I don't know that I'll
12 have a satisfactory response for you, but I think the
13 answer is that it has -- while it doesn't have revenue
14 requirement impact in this case, it is generally a
15 ratemaking issue. The company was in for this rate case,
16 and seemed to be an efficient and timely opportunity to
17 address that matter.

18 JUDGE JONES: I see. All right. Any
19 recross from Staff?

20 MR. THOMPSON: No, your Honor.

21 JUDGE JONES: Any recross from the Office
22 of Public Counsel?

23 MR. POSTON: No.

24 JUDGE JONES: Any redirect?

25 MR. COOPER: Yes, your Honor.

1 REDIRECT EXAMINATION BY MR. COOPER:

2 Q. Mr. Noack, you were asked by Mr. Poston
3 whether you would oppose any accounting authority request
4 that the Public Counsel might make pertaining to refunds
5 of Oklahoma property taxes that might be similar in nature
6 to these Kansas property taxes. Do you remember that?

7 A. Yes.

8 Q. Now, I think prior to that, perhaps you had
9 explained that there are no dollars in this rate case
10 pertaining to those Oklahoma property taxes; is that
11 correct?

12 A. That's correct. We've backed them out.

13 Q. Okay. And as a follow on to that, then,
14 would you explain to us why refunds would not be
15 applicable to the rate case process here in Missouri that
16 might result from those Oklahoma property taxes?

17 A. Well, really, the only -- I guess the only
18 thing I can say there is we've not charged ratepayers for
19 the amount of taxes that have been paid in Oklahoma that
20 are in dispute thus far, so I guess there would be no
21 reason to return them to the ratepayers.

22 MR. COOPER: That's all the questions I
23 have.

24 Your Honor, I would ask one other thing
25 here. The question came up during Mr. Noack's -- or

1 Mr. Poston's cross-examination of Mr. Noack concerning
2 2006 property taxes in the State of Kansas and whether
3 those had been appealed. As a result of that, I would
4 like to ask the Commission to take notice of a matter
5 before the Board of Tax Appeals for the State of Kansas,
6 Docket Nos. 2006-5157-PV through 2006-5184-PV and Docket
7 No. 2006-9453-PVX, specifically an Order granting motion
8 to stay proceedings and granting joint motion for
9 consolidation that does apply to those -- the appeal of
10 those 2006 Kansas property taxes.

11 JUDGE JONES: Notice will be taken.

12 Mr. Noack, you may step down.

13 Now we'll hear from Staff.

14 MR. THOMPSON: Staff calls Paula Mapeka,
15 and I will tender the witness for cross.

16 JUDGE JONES: Any cross-examination from
17 Missouri Gas Energy?

18 MR. COOPER: No, your Honor.

19 JUDGE JONES: Any from the Office of the
20 Public Counsel?

21 MR. POSTON: No questions.

22 JUDGE JONES: Commissioner Murray?

23 PAULA MAPEKA testified as follows:

24 QUESTIONS BY COMMISSIONER MURRAY:

25 Q. Good afternoon.

1 A. Good afternoon.

2 Q. Is it accurate that the only difference
3 between the Staff's position and the company's position on
4 this issue is the point at which the amortization would
5 begin; is that correct?

6 A. Yes, ma'am.

7 Q. And the Staff's position is that it begin
8 by the end of the year 2007 or when a final decision from
9 the Kansas courts is handed down; is that correct?

10 A. Yes, ma'am.

11 Q. And the company's position, as you
12 understand it, is that the deferral would extend until the
13 conclusion of the next rate case?

14 A. Yes, ma'am, but according to their position
15 paper, they do concur with Staff.

16 Q. So there's no longer any disagreement then
17 between the company and Staff?

18 A. No, ma'am.

19 COMMISSIONER MURRAY: Thank you. That's
20 all I have.

21 JUDGE JONES: Any recross, Missouri Gas
22 Energy?

23 MR. COOPER: No, your Honor.

24 JUDGE JONES: Office of Public Counsel?

25 MR. POSTON: No, thank you.

1 JUDGE JONES: You may step down.

2 Now we'll hear from the Office of Public
3 Counsel. Did you want to make an opening statement,
4 Mr. Poston?

5 MR. POSTON: Yes.

6 JUDGE JONES: Go right ahead.

7 MR. POSTON: The cost that MGE is asking to
8 recover for Kansas property taxes has not been incurred
9 and, therefore, is not known and measurable. Accordingly,
10 the AAO should be discontinued and the deferrals
11 associated with it should be removed.

12 To our knowledge, there's been no final
13 decision on the Kansas property tax from the Kansas
14 courts. If MGE does incur such a cost, the proper way to
15 address it would be for MGE to seek emergency rate relief
16 for the actual expenditures incurred, or MGE can seek
17 recovery in its next rate case.

18 MGE has a similar dispute regarding similar
19 taxes in the State of Oklahoma. As you heard Mr. Noack
20 testify to, in that case, MGE is seeking over \$1 million
21 in refunds. Has MGE requested an AAO to flow these refund
22 dollars back to MGE ratepayers? No. Yet here MGE wants
23 ratepayers to pay for the Kansas property tax.

24 This double standard requested by MGE
25 should be rejected and the AAO discontinued. Thank you.

1 JUDGE JONES: Thank you. Is there
2 cross-examination from the Staff of the Commission?

3 TED ROBERTSON testified as follows:

4 CROSS-EXAMINATION BY MR. THOMPSON:

5 Q. Good afternoon, Mr. Robertson.

6 A. Good afternoon.

7 Q. I'm looking at your direct testimony, and
8 it seems to tell me that you opposed the grant of this AAO
9 in the first instance; is that correct?

10 A. The Office of Public Counsel did.

11 Q. Did you testify in that case?

12 A. I believe at the time the witness for our
13 office was Kimberly Bolin, who now works for the Staff.

14 MR. THOMPSON: No further questions.

15 JUDGE JONES: Any cross-examination from
16 Missouri Gas Energy?

17 MR. COOPER: No, your Honor.

18 JUDGE JONES: Commissioner Murray?

19 QUESTIONS BY COMMISSIONER MURRAY:

20 Q. Just briefly. Good afternoon.

21 A. Good afternoon.

22 Q. I heard known and measurable mentioned in
23 your counsel's opening statement on this issue. Is known
24 and measurable something that is required for an AAO to be
25 granted?

1 A. Probably not. I mean, the criteria that
2 the Commission has adopted for the granting of the AAO has
3 changed somewhat over the years since when it was first
4 initiated probably in 1990 or so. I think the criteria is
5 extraordinary, unique, unusual, not recurring, and even
6 one time or another I read a Commission order where
7 materiality may be an aspect of it. None of those terms
8 is known and measurable.

9 COMMISSIONER MURRAY: Thank you. That's
10 all I have.

11 THE WITNESS: Yes, ma'am.

12 JUDGE JONES: Any recross from Staff of the
13 Commission?

14 MR. THOMPSON: No thank you, your Honor.

15 JUDGE JONES: Any recross, Missouri Gas
16 Energy?

17 MR. COOPER: No, your Honor.

18 JUDGE JONES: Any redirect?

19 MR. POSTON: No, thank you.

20 JUDGE JONES: You may step down,
21 Mr. Robertson.

22 Looks like we've gone through every issue
23 and every witness. There are some -- there's some
24 testimony that hasn't been admitted into the record,
25 probably because those issues were thrown out or settled.

1 Did you-all want to enter those, that testimony into the
2 record regardless?

3 MR. COOPER: Your Honor, as to Exhibits 19,
4 20 and 21, which are the direct, rebuttal and surrebuttal
5 testimonies of Mr. Tom Sullivan, MGE would like to offer
6 those at this time. Mr. Sullivan is the company's witness
7 on depreciation, and those pieces of testimony are, I
8 believe, referenced by the stipulation as to depreciation
9 that was previously filed with this Commission and to
10 which no objection has been filed as of this point.

11 JUDGE JONES: Any objection now?

12 MR. POSTON: No.

13 MR. THOMPSON: No objection.

14 JUDGE JONES: Hearing none, Exhibits 019,
15 020 and 021 are admitted into the record.

16 (EXHIBIT NOS. 019, 020 AND 021 WERE MARKED
17 FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

18 JUDGE JONES: And Staff, it looks like Greg
19 Macias and Guy Gilbert.

20 MR. FRANSON: Yes, your Honor.

21 JUDGE JONES: Ann Allee.

22 MR. FRANSON: We will not be offering Ann
23 Allee because her issue was withdrawn. But on the issue
24 of depreciation, we will offer the testimony of Greg
25 Macias and Guy Gilbert, which I am pulling as we speak.

1 Respectively, Guy Gilbert is Exhibit 118, and
2 Mr. Macias -- and he only had surrebuttal, your Honor, and
3 on Greg Macias, I show that as 115 for his direct, 116 for
4 his rebuttal and 117 for his surrebuttal, and I would
5 offer Exhibits 115, 116, 117 and 118 at this time.

6 JUDGE JONES: Any objection?

7 (No response.)

8 JUDGE JONES: Exhibit 115, 116, 117 and 118
9 are admitted into the record.

10 (EXHIBIT NOS. 115, 116, 117 AND 118 WERE
11 MARKED FOR IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

12 JUDGE JONES: Was Exhibit 119 offered, the
13 direct of Paul Harrison?

14 MR. FRANSON: I assume it was, but if it
15 wasn't, your Honor, just out of an abundance of caution I
16 will offer all three, Paul Harrison direct, Paul Harrison
17 rebuttal, Paul Harrison surrebuttal, 119 through 121. I'm
18 assuming it was, but I do actually, I believe, still have
19 copies here, so I would certainly not want to take any
20 chances. So I will offer those at this time.

21 Actually, I only have his in -- no, that's
22 incorrect. I do have them all. So I would offer all
23 three of those. Actually, Judge, I only have his -- I
24 have Exhibit 119, which is his direct, Exhibit 120, which
25 is the NP version of his rebuttal, the HC of his rebuttal,

1 which I believe has been marked as probably 120A.

2 THE REPORTER: 120HC.

3 MR. FRANSON: 120HC. Thank you. Your
4 Honor, I'm assuming -- and I will certainly get a copy of
5 his surrebuttal and provide that to you.

6 JUDGE JONES: For some reason I have his
7 name -- his surrebuttal and his name scratched through.

8 MR. FRANSON: That would explain why.

9 JUDGE JONES: So he has no surrebuttal.
10 Okay. So Exhibits 119 and 120?

11 MR. FRANSON: 120 and 120HC.

12 JUDGE JONES: 119 is the only one that
13 hasn't been offered and entered into the record, so we'll
14 do that. It's admitted.

15 (EXHIBIT NO. 119 WAS MARKED FOR
16 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

17 JUDGE JONES: And all of OPC's testimony
18 has been admitted into the record.

19 MR. FRANSON: Your Honor, there was some
20 other testimony I wanted to offer. Starting with Dan
21 Beck, he had direct testimony on the issue of class cost
22 of service. I don't believe I had assigned him an exhibit
23 number on my list. I apologize for that. I would show
24 135 as our next number, and I would offer that at this
25 time.

1 JUDGE JONES: You said Dan Beck direct?

2 MR. FRANSON: Yes, sir.

3 JUDGE JONES: Any objection?

4 MR. POSTON: No.

5 JUDGE JONES: Exhibit 135 is admitted.

6 (EXHIBIT NO. 135 WAS MARKED FOR
7 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

8 JUDGE JONES: Mr. Franson, what do you have
9 for Exhibit 132, 3 and 4?

10 MR. FRANSON: For 133 I have the direct of
11 Kim Bolin, the direct of Joan Wandel for 134, but I'm not
12 sure they have been offered yet, because I still have the
13 direct of Kim Bolin.

14 JUDGE JONES: Has 132 been offered?

15 MR. FRANSON: Not that I show. I'm not
16 sure what it is, actually.

17 JUDGE JONES: Because I don't have either
18 of those exhibit numbers.

19 MR. FRANSON: Well, then let me make 132
20 the direct testimony of Kim Bolin, and I would offer that
21 at this time, your Honor. That was a bunch of different
22 issues that ended up not actually going to hearing.

23 JUDGE JONES: So why do we want them in the
24 record?

25 MR. FRANSON: In case there are any

1 questions about those issues, your Honor.

2 JUDGE JONES: But there aren't any
3 questions on it. You just want to put them in there to
4 put them in there?

5 MR. FRANSON: Yes.

6 JUDGE JONES: Any objection?

7 MR. POSTON: No.

8 JUDGE JONES: And Exhibit 132, which is
9 direct of Kim Bolin, is admitted into the record.

10 (EXHIBIT NO. 132 WAS MARKED FOR
11 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

12 JUDGE JONES: And 133 was what again? I'm
13 sorry.

14 MR. FRANSON: 133 I show would be the
15 direct of Joan Wandel, which is the same type of thing as
16 133.

17 JUDGE JONES: 133 is admitted into the
18 record.

19 (EXHIBIT NO. 133 WAS MARKED FOR
20 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

21 JUDGE JONES: And 123, do we have something
22 for that?

23 MR. FRANSON: Judge, I still have copies of
24 the testimony of Michael Ensrud, that being his direct and
25 rebuttal. Does that show as having been entered?

1 JUDGE JONES: They've been admitted into
2 the record.

3 MR. FRANSON: Okay. And Mr. Gray's
4 testimony was admitted. Your Honor, pursuant to the --
5 we're at 134. I would ask that that be the direct
6 testimony of Thomas Salt. That was on the class cost of
7 service, and that was mentioned in the stipulation.

8 JUDGE JONES: I know that's listed as 131.

9 MR. FRANSON: Your Honor, I stand
10 corrected. It is 131. Then I believe the testimony of
11 Mr. Warren, Henry Warren was admitted, and I'm -- and
12 Mr. Wells and our accounting schedules. So, Judge, with
13 that --

14 JUDGE JONES: Does that mean there is no
15 134?

16 MR. FRANSON: There must not be. It may
17 confuse the record if we need to change Dan Beck to 134,
18 but --

19 JUDGE JONES: It doesn't matter. There's
20 just no 134.

21 MR. FRANSON: Curt Wells had three pieces
22 of testimony, and those were, I believe, marked as 107,
23 108 and 109. I'm assuming you show those as in?

24 JUDGE JONES: Yes.

25 MR. FRANSON: Okay. The direct testimony

1 of Henry Warren was 111. I show that's in. I've just got
2 some copies here that I shouldn't ordinarily have. I
3 appreciate the indulgence. And 110, Mr. Gray's direct was
4 in, and Mr. Ensrud's direct and rebuttal, which we had
5 marked as 125 and 126, do you show those in, Judge?

6 JUDGE JONES: Yes.

7 MR. FRANSON: Okay. Then with that, and
8 our accounting schedules being in, I'll double check here,
9 but I don't believe I'm going to have anything else,
10 Judge.

11 This next matter I don't know if we need to
12 do on the record, but Mr. Boudreau and I were talking
13 about the subject of the true-up hearing. Paul.

14 MR. BOUDREAU: I don't think there's any
15 issues between the company and Staff as far as true-up. I
16 haven't completely closed the circle with Office of Public
17 Counsel, but just to let you know, it's not looking
18 probable that we'll need to have a true-up hearing, but
19 I'm not sure that I'm willing to commit on behalf of
20 everybody yet, but we ought to be able to get you some
21 information on that shortly.

22 JUDGE JONES: You mean even those parties
23 who aren't here right now?

24 MR. BOUDREAU: Well, it seems to me it's
25 more going to be an issue between Staff and company and

1 Public Counsel than it will be with the other parties, but
2 it's looking unlikely, just to let you know.

3 JUDGE JONES: Mr. Poston?

4 MR. POSTON: I was just going to say that
5 I'll look into it and talk it over with my office. As
6 soon as I can get back to them, I will.

7 JUDGE JONES: Just e-mail everybody. We'll
8 do it that way. is there anything else?

9 MR. FRANSON: Not on the record, no, your
10 Honor.

11 JUDGE JONES: Well, is there something you
12 want to talk about off the record?

13 MR. FRANSON: I want to ask you when you
14 think we might to have the transcript.

15 JUDGE JONES: As soon as I can finish
16 typing it up.

17 I don't know. I've asked that it be
18 expedited. I guess that's -- I hate to ask the court
19 reporter a question if she puts this on the record --
20 records her own. How soon do you all think you can have a
21 transcript?

22 THE REPORTER: I would have to talk to the
23 other reporters. I'm not sure what position they're in,
24 but if you can tell me when you need it, then I can tell
25 them.

1 JUDGE JONES: I don't want to make an
2 unreasonable request. When are the Briefs due?

3 MR. BOUDREAU: Briefs are due
4 February 15th.

5 JUDGE JONES: February 15th. How long do
6 you-all need have the transcript in order to be able to do
7 your homework?

8 MR. FRANSON: Well, Judge, the safest best
9 answer to that is the sooner the better because -- but I
10 don't know that I have a specific answer to that. I'm
11 assuming you aren't going to want to change that briefing
12 date.

13 JUDGE JONES: No, I'm not changing the
14 briefing date.

15 MR. FRANSON: So the sooner we have --

16 JUDGE JONES: Let's just say as soon as
17 possible, then. I'll have someone from our office contact
18 you-all to get a date certain. Is there anything else we
19 need to discuss?

20 (No response.)

21 JUDGE JONES: Okay. With that, then, we're
22 off the record.

23 WHEREUPON, the hearing of this case was
24 adjourned.

25

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

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

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

15 Given at my office in the City of
16 Jefferson, County of Cole, State of Missouri.

17 Kellene K. Feddersen, RPR, CSR, CCR
18 Notary Public (County of Cole)
19 My commission expires March 28, 2009.
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