

1                   BEFORE THE PUBLIC SERVICE COMMISSION

2                                 STATE OF MISSOURI

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4                                 TRANSCRIPT OF PROCEEDINGS

5   HEARING

6   January 11, 2007

7   Jefferson City, Missouri

8   Volume 8

9   \_\_\_\_\_

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

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16             KENNARD L. JONES,  
                       SENIOR REGULATORY LAW JUDGE.  
17             CONNIE MURRAY,  
                       STEVE GAW  
18             LINWARD "LIN" APPLING,  
                               COMMISSIONERS.

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

2 (Staff Exhibit Nos. 112, 113, 114, 114-A, 129  
3 and 130 were marked for identification.)

4 JUDGE JONES: We're on the record with Case  
5 No. GR-2006-0422 and we will begin today with the issue of  
6 property tax refunds. Mr. David Winter of the Staff of  
7 Missouri Public Service Commission is on the stand.

8 (Witness sworn.)

9 JUDGE JONES: Thank you, sir. You may be  
10 seated.

11 MR. MEYER: Would you like to -- would you  
12 like me to present my opening first or --

13 JUDGE JONES: If you have an opening, go right  
14 ahead.

15 MR. MEYER: The company has suggested that  
16 Staff's proposed treatment of the property tax refunds is  
17 somehow retroactive rate-making. This suggestion is being  
18 made to confuse the matter. In fact, it is simply not  
19 retroactive rate-making.

20 Retroactive rate-making has been addressed by  
21 the appellate courts, and the Supreme Court has been quite  
22 explicit. In the UCCM case, which this Commission has  
23 reviewed frequently, it set the standard that the Commission  
24 can only consider past excess recoveries to determine what  
25 rate a utility should charge in the future to eliminate excess

1 charges in the future. That's retroactive rate-making.

2 The key to the prohibition against retroactive  
3 rate-making is this: The Commission may not redetermine rates  
4 already established and paid without depriving the utility or  
5 the consumer, if the rates were originally too low, of its  
6 property without due process. Staff does not propose to do  
7 this in this case.

8 The \$5 million property tax refund was  
9 received during the test year. Yes, it related to taxes paid  
10 before the test year, but it was received during the test year  
11 and Staff is proposing to take that into account in setting  
12 future-looking rates.

13 What Staff does in a rate case under the test  
14 year concept is to take a snapshot of the company's incoming  
15 revenues and outgoing expenses and work with those to  
16 determine the appropriate rates. The property taxes were  
17 part -- refund was part of that mix.

18 The company wants you to just ignore the  
19 refund. Staff disagrees. Staff believes that it's reasonable  
20 for the ratepayers to share in the benefit that they paid for.  
21 They paid for the taxes initially as those were built into the  
22 revenue requirement. They paid for more than the taxes that  
23 the company ultimately paid taking into account for the  
24 refunds. And although everything the company did may have  
25 been reasonable and prudent, the ratepayer should still be

1 entitled to share in a portion of those returns.

2 DAVID WINTER testified as follows:

3 DIRECT EXAMINATION BY MR. MEYER:

4 Q. Mr. Winter, could you tell us your name and  
5 spell it, please?

6 A. My name's David G. Winter. It's just like the  
7 season, W-i-n-t-e-r.

8 Q. And what is your address?

9 A. PO Box 360, Jefferson City, Missouri 65102.

10 Q. And by whom are you employed and in what  
11 capacity?

12 A. I'm an accountant with the Missouri Public  
13 Service Commission.

14 Q. You're aware that testimony was pre-filed in  
15 this case?

16 A. Yes.

17 Q. Did you prepare the pre-filed testimony in  
18 this case which has been previously marked for identification  
19 as Exhibit 112, Direct Testimony of David Winter?

20 A. Yes, I did.

21 Q. And did you prepare the pre-filed testimony  
22 which has previously been marked for exhibit -- or  
23 identification as Exhibit 113, David Winter Rebuttal?

24 A. Yes, I did.

25 Q. And the testimony previously marked as

1 Exhibit 114, David Winter Surrebuttal?

2 A. Yes, I did.

3 Q. And previously marked as Exhibit 114-A, did  
4 you prepare that, which was David Winter true-up?

5 A. Yes, I did.

6 Q. Do you have any corrections or additions to  
7 make to that pre-filed testimony at this time?

8 A. I have one correction to my Surrebuttal. It  
9 is on page 2, line 7. I misspelled Noack. The correct  
10 spelling should be N-o-a-c-k. And I apologize to the company  
11 witness for misspelling his name. Other than that, that's all  
12 I have.

13 Q. Are the answers that you have provided true  
14 and accurate at this time to the best of your knowledge and  
15 belief?

16 A. Yes, they are.

17 Q. And so if I were to ask you those questions  
18 today that are contained in your pre-filed testimony, would  
19 your answers be the same?

20 A. Yes, they would.

21 MR. MEYER: I'd offer Exhibits 112, '13, '14  
22 and 14-A into the record.

23 JUDGE JONES: Any objection to those exhibits?

24 MR. MITTEN: No objection.

25 JUDGE JONES: Exhibits 112, 113, 114 and 114-A

1 are admitted into the record.

2 (Exhibit Nos. 112, 113, 114 and 114-A were  
3 received into evidence.)

4 BY MR. MEYER:

5 Q. Mr. Winter, are you aware of Staff accounting  
6 schedules that were previously marked and filed in this case?

7 A. Yes, I am.

8 Q. Are you aware of -- or did you prepare or was  
9 it prepared under your supervision, Staff accounting schedules  
10 October 2006 previously marked for identification as  
11 Exhibit 129?

12 A. Let me -- let me verify what 129 is. Yes.

13 Q. And did you prepare or was it prepared under  
14 your supervision, Staff accounting schedules dated  
15 December 20th, 2006, previously marked as Exhibit 130?

16 A. Yes, I did.

17 Q. Are there any corrections or changes to your  
18 knowledge that need to be made to those schedules?

19 A. No, there are not.

20 MR. MEYER: I would offer Staff's Exhibits 129  
21 and 30, the Staff accounting schedules from October and  
22 December of 2006.

23 JUDGE JONES: Any objection?

24 MR. MITTEN: No objection.

25 JUDGE JONES: Staff Exhibits 129 and 130 are



1 admitted into the record.

2 (Staff Exhibit Nos. 129 and 130 were received  
3 into evidence.)

4 MR. MEYER: And with that, I would tender the  
5 witness for cross-examination.

6 JUDGE JONES: Cross-examination, Missouri Gas  
7 Energy.

8 CROSS-EXAMINATION BY MR. MITTEN:

9 Q. Mr. Winter, good morning.

10 A. Good morning. How are you this morning?

11 Q. I'm fine. Thank you.

12 Now, let me see if I can phrase the issue that  
13 we're talking about here today. During the test year in this  
14 case, the company received property tax refunds of  
15 approximately \$5.5 million that related to tax years 2002,  
16 2002 -- 2003 and 2004. And Staff proposes to set those  
17 refunds up in a deferred account and to amortize them over  
18 five years and thereby reduce the amount of property tax  
19 expense that would be included in rates for rate-making  
20 purposes; is that correct?

21 A. Yes. The company booked these costs above the  
22 line. The Staff believes that there should be some  
23 recognition that the ratepayer pay these monies so we  
24 suggested to recommend to the Commission that amortization be  
25 set up.

1           Q.       I want to see if I fully understand the effect  
2 of what Staff is purporting to do. There is an anticipated  
3 actual level of -- actual anticipated level of property tax  
4 expense that the company is going to experience during the  
5 period of time that rates set in this case are in effect; is  
6 that correct?

7           A.       That is true. We based upon -- I think Staff  
8 Witness Mapeka sponsored the property tax adjustment for the  
9 company.

10          Q.       And then there would be Staff's  
11 amortization --

12          A.       I'm going to move. I can't see.

13          Q.       -- is that correct?

14          A.       Yes.

15          Q.       And you would subtract the amount, the annual  
16 effect of that amortization, so that the amount of property  
17 tax expense that's actually included in rates in this case  
18 would be a net property tax expense; is that right?

19          A.       That is true.

20          Q.       And I think it's obvious, but the anticipated  
21 actual level of expense for the period of time that rates in  
22 this case are going to be in effect is going to be more than  
23 the net property tax expense that's actually included for  
24 rate-making purposes?

25          A.       With the amortization in there, it is, yes.

1           Q.       Are you familiar with the definition of  
2       retroactive rate-making that was included in  
3       Mr. Oligschlaeger's pre-filed testimony in this case?

4           A.       Yes, I am. I quoted that on page 2 of my  
5       Surrebuttal Testimony.

6           Q.       That doesn't read very well so I won't try to  
7       put that up there.

8                   JUDGE JONES: Just read it to him.

9       BY MR. MITTEN:

10          Q.       And since you've quoted Mr. Oligschlaeger's  
11       definition, I assume you don't disagree with that definition?

12          A.       No, I do not.

13          Q.       And you believe that Staff's proposed property  
14       tax adjustment in this case conforms to the definition that  
15       Mr. Oligschlaeger included?

16          A.       That our adjustment is retroactive making or  
17       not retroactive making?

18          Q.       That was a poorly phrased question. Let me go  
19       back.

20          A.       Okay.

21          Q.       You don't believe that what Staff is proposing  
22       to do with respect to property tax refunds in this case  
23       constitutes retroactive rate-making?

24          A.       No, we do not. Because it happened during the  
25       test year.

1           Q.       So it doesn't constitute setting rates to  
2 reimburse customers related to past over-earnings?

3           A.       No, it does not.

4           Q.       Okay. Would you agree with me that when  
5 someone pays a utility bill -- say they have \$100 utility bill  
6 and they send that check into the company. It's impossible to  
7 tell what portion of that \$100 is for property taxes and for  
8 wages and for pensions, for rate of return. It's just  
9 deposited in the company's accounts and used to pay the  
10 company's bills; isn't that right?

11          A.       What the customer pays is a rate that's set  
12 based upon the revenue requirement, cost of service that has  
13 been established. It's impossible -- it's impossible to  
14 determine if a certain percentage is for property taxes in the  
15 case today or certain percentage is for bad debts or whatever.  
16 It's a rate that's been charged through the rate design to the  
17 customer.

18          Q.       So would you agree with me it's impossible to  
19 know whether -- during 2002, 2003 or 2004, it's impossible to  
20 know whether ratepayers overpaid for property taxes?

21          A.       The Staff's contention is that in 2002, 2003  
22 and 2004, that the rates were set properly for property taxes.

23          Q.       But if you don't know what portion of the  
24 payments are for property taxes, you can't know how much  
25 customers paid for property taxes. Wouldn't you agree with

1     that?

2             A.       That was built -- the property taxes were  
3     built into the Staff's cost of service.  So a piece of that --  
4     what they pay was for the property taxes.

5             Q.       An assumption as to the level of property  
6     taxes that would be incurred during the period rates are in  
7     effect was built into the revenue requirement.  Correct?

8             A.       There was an assumption for property taxes  
9     built into the revenue requirement as a cost of service, yes.

10            Q.       But actual property taxes could be greater or  
11    lesser than the assumed amount.  Wouldn't you agree?

12            A.       That's true.  We take an estimate based upon  
13    the best information we have to perform the calculation for  
14    property taxes, pensions, any other cost of service on a  
15    going-forward basis during the test year to determine what the  
16    cost of service of the company is.

17            Q.       And since you can't tell what the actual level  
18    of expense that the company is experiencing at the time it's  
19    collecting rates, again, wouldn't you agree with me that it's  
20    impossible to tell, just from the fact that customers paid  
21    rates, whether they overpaid or underpaid for property taxes?

22            A.       I don't -- could you repeat the question  
23    again, please?

24            Q.       Would you agree with me that it's impossible  
25    to tell whether a customer overpaid or underpaid for property

1 taxes simply by the fact that they paid rates that contained  
2 an assumed level of property taxes?

3 A. The rates had property taxes built into them.  
4 Now, whether the customer paid -- overpaid or underpaid, I  
5 cannot tell you.

6 Q. Okay. And the fact that the company got a  
7 property tax refund, doesn't that simply tell you that the  
8 company paid more property taxes than it owed for 2002, 2003  
9 and 2004?

10 A. The company on its own went back --

11 MR. MITTEN: That's a yes or no question, your  
12 Honor.

13 JUDGE JONES: Can you speak into the mic?

14 THE WITNESS: Oh, I'm sorry. I'm coughing, so  
15 I don't want to cough into the mic.

16 JUDGE JONES: And could you repeat the -- do  
17 you want a Halls cough drop?

18 THE WITNESS: Huh?

19 JUDGE JONES: Do you want a cough drop?

20 THE WITNESS: Maybe here in a second. Depends  
21 on how much longer --

22 JUDGE JONES: Could you repeat the question?

23 BY MR. MITTEN:

24 Q. The fact that the company received property  
25 tax refunds, doesn't that simply tell you that the company

1 overpaid its property taxes in 2002, 2003 and 2004?

2 A. Based upon their appeal and the winning of the  
3 appeal, then that indicates that the property taxes should  
4 have been less than what was set in rates.

5 MR. MITTEN: I have no further questions.  
6 Thank you, Mr. Winter.

7 JUDGE JONES: Do you have questions from the  
8 Office of Public Counsel?

9 MR. POSTON: No.

10 JUDGE JONES: Let me see. I don't have any  
11 questions. Redirect from the Staff of the Commission?

12 MR. MEYER: Nothing. Thank you.

13 JUDGE JONES: Mr. Winter, you may step down.  
14 Is that all your witnesses from Staff?

15 MR. MEYER: That is all of our witnesses.  
16 Thank you.

17 JUDGE JONES: Missouri Gas Energy?

18 MR. MITTEN: Call Mr. Noack to the stand. I'd  
19 like to do an opening statement first.

20 JUDGE JONES: Go right ahead.

21 MR. MITTEN: During the test period in this  
22 case, MGE received approximately 5 1/2 million in property tax  
23 refunds related to tax years 2002, 2003 and 2004. Both the  
24 company and Staff agreed that the revenue that MGE received  
25 due to these refunds is nonrecurring and that the refunds

1 relate to past periods when rates lawfully set by the  
2 Commission were in effect.

3               Staff proposes that the full amount of these  
4 refunds be returned to the company's customers and would  
5 accomplish this by setting up a deferred credit equal to the  
6 amount of the refund and amortizing that credit balance over  
7 five years. This means that the level of property taxes  
8 recovered through rates would be artificially reduced with a  
9 difference to be made up through the amortization of the  
10 deferred credit.

11              Staff's proposal must be rejected by the  
12 Commission because it constitutes unlawful retroactive  
13 rate-making. As the Missouri Supreme Court has determined, in  
14 setting rates, the Commission can consider past excess  
15 recovery by a utility only insofar as this is relevant to its  
16 determination of what rate is necessary to provide a just and  
17 reasonable return in the future.

18              That means that the refunds that MGE received  
19 in the past can only be considered insofar as they provide  
20 useful information as to what level of property tax expense  
21 the company will actually incur in the future. Those refunds  
22 cannot, as Staff proposes, be used to offset the amount of  
23 property tax expense that MGE will actually experience during  
24 the period rates set in this case are in effect.

25              In concluding, it's interesting to note that



1 not only does MGE believe Staff is -- what Staff is proposing  
2 constitutes retroactive rate-making, so does Staff's own  
3 witness. Mark Oligschlaeger in his testimony, on a somewhat  
4 related issue, correctly defines retroactive rate-making as  
5 prohibiting setting rates for the future that attempt either  
6 to reimburse past losses to the company or to return to the  
7 customer past gains that the company received.

8 MGE believes that both the evidence and the  
9 law that applied to the issue of property tax refunds in this  
10 case require the Commission to reject Staff's adjustment.  
11 Thank you.

12 JUDGE JONES: Let me ask you a couple of  
13 questions. If the Commission finds that this is not  
14 retroactive rate-making, then that's the end of this issue.  
15 Well, let me put it this way. This is just a legal  
16 determination. Is that true or not?

17 MR. MITTEN: I think it is ultimately a legal  
18 determination, yes.

19 JUDGE JONES: And educate me on retroactive  
20 rate-making. It seems to me that the purpose of it is so that  
21 current ratepayers carry the burdens and get the benefits of  
22 what's going on with their rates.

23 MR. MITTEN: It prohibits a company from  
24 trying to collect through future rates, past losses or for the  
25 Staff or the Commission to try and recoup past gains and flow

1     them through to the customers.

2                     What retroactive rate-making basically says is  
3     that rates for the future have to be set based upon a  
4     reasonable estimation of what the revenues, expenses and  
5     investment are going to be in the future. The past is past  
6     and you can't consider that.

7                     JUDGE JONES: What about this issue of the  
8     test year and that those refunds are received during the test  
9     year? That's not a factual dispute, is it?

10                    MR. MITTEN: It's not a factual dispute, but  
11     it's irrelevant.

12                    JUDGE JONES: How so?

13                    MR. MITTEN: Well, again, the tax refunds can  
14     only be used under the UCCM case for the Commission to  
15     determine whether or not they have a bearing on what future  
16     property tax expense is likely to be for the company. That's  
17     not how Staff has used them in this case.

18                    They have set a level of anticipated property  
19     tax expense. It was -- that was the discussion I went through  
20     with Mr. Winter. There is an estimated actual level of  
21     property tax expense that Staff believes the company will  
22     experience during the period of time that rates set in this  
23     case are in effect.

24                    Staff has then used the amortization of the  
25     property tax refunds to reduce that, so it's artificially

1     reducing it. And the net tax expense that's going to be  
2     included in rates, if Staff's proposal is adopted, is a level  
3     that even Staff believes is not going to occur during the  
4     period of time that rates set in this case are in effect. The  
5     UCCM case very clearly says you can't do that.

6                     JUDGE JONES: Okay. We'll have  
7     cross-examination from the Staff of the Commission.

8     MICHAEL NOACK testified as follows:

9     CROSS-EXAMINATION BY MR. MEYER:

10            Q.     Good morning, Mr. Noack.

11            A.     Good morning.

12            Q.     Very briefly, MGE believed that its property  
13     tax assessments were too high; is that correct?

14            A.     Based on the actual earnings that we had  
15     realized in those years, yes, we believe that our taxes were  
16     too high.

17            Q.     So the company appealed the assessments over  
18     the course of several years?

19            A.     Yes.

20            Q.     And you believe that that was the reasonable  
21     and prudent thing to do?

22            A.     Yes. Absolutely.

23            Q.     Okay. The appeal process concluded during the  
24     test year of 2005; is that correct?

25            A.     Yes, it did.

1 Q. And that resulted in a refund to MGE?

2 A. A refund for the tax years of 2002, '3 and '4.

3 Q. Did MGE pay some or all of the consulting or  
4 cost to litigate the appeals during 2005?

5 A. Ask that one more time. I'm sorry.

6 Q. Did MGE pay some or all of the consulting or  
7 costs to litigate, attorneys' fees, to litigate the appeal  
8 during 2005?

9 A. To the extent that we had a -- a consultant  
10 working with us, I believe they got paid in 2005. But the --  
11 any other costs that would have been incurred at the corporate  
12 level or any other level would have been paid throughout the  
13 period that we were going for -- excuse me, trying to obtain  
14 the refunds.

15 Q. That period would include calendar year 2005  
16 though?

17 A. Yes, it would have.

18 Q. Okay. Do you know, did MGE make any  
19 adjustment to its requested revenue increase to eliminate  
20 those consulting or litigation costs during the test year?

21 A. Well, the -- the costs that were paid to the  
22 outside consultants, they are not included in the -- in the  
23 rate case, no. They're not included in the test year. The --  
24 the costs associated with the corporate tax department, I  
25 don't believe those were included in there either, no.

1           Q.       Does the company consider the refunds that it  
2       received a gain?

3           A.       A gain?

4           Q.       Yes.

5           A.       No. We consider them as a -- as basically a  
6       refund of taxes that we shouldn't have had to pay in 2002, '3  
7       and '4. Probably the -- you know, it could have been treated  
8       as an extraordinary item if it were more material, but because  
9       of the materiality, it was just lumped in with the tax expense  
10      during the test year.

11          Q.       Did the company book those refunds above the  
12      line, do you know?

13          A.       Yes. That's what I just said, yes.

14          Q.       All right. Since the costs were booked above  
15      the line, do you believe the company's own actions then would  
16      indicate they believed that the refunds were actually  
17      regulated activity pertaining to customer rates?

18          A.       Well, what the company's view of these,  
19      besides obviously our attorney speaking to the retroactive  
20      rate-making piece, is that these are also non-recurring events  
21      that we've basically adjusted out of the test year because  
22      they will not happen in the future.

23                    Along with that, the taxpayers have -- are  
24      getting a benefit because we have actually lowered the  
25      property taxes going forward by a substantial amount, almost

1     \$2 million a year from what they were paying. So they are  
2     getting a benefit going forward of what we have done in the  
3     past.

4             Q.       But you agree that the refund did come in  
5     related to customer -- to regulated related activities; is  
6     that correct?

7             A.       It was a nonrecurring item that we adjusted  
8     out of the test year, yes.

9             Q.       Okay. But the refund was received during the  
10    test year --

11            A.       Yes.

12            Q.       -- you agree?

13                    And it was booked during the test year as  
14    well?

15            A.       Yes. And it was adjusted out of the test year  
16    in our case as a nonrecurring item.

17                    MR. MEYER: That's all I have. Thank you.

18                    JUDGE JONES: Thank you. Any questions from  
19    the Office of Public Counsel?

20                    MR. POSTON: No, thank you.

21    QUESTIONS BY JUDGE JONES:

22            Q.       Forget about retroactive rate-making and all  
23    this accounting stuff. Who paid the property tax initially?  
24    Whose money -- whose pocket did it ultimately come from?

25            A.       In -- the ratepayers paid a part of that.

1 Q. Do you know what part?

2 A. Yes. I mean, in -- I think in case 2004-209,  
3 if I recall correctly, property taxes were set at a level of  
4 about -- a little over \$8 million. In 2001-292, they were set  
5 at a level at probably right at about -- upper 6's or 7  
6 million dollars. And that would have been for test year ended  
7 2000, I believe.

8 Then in 2001, the taxes were above the level  
9 set in the rate case. 2002, '3 were set above the level in  
10 the rate case, as was 2005 -- or 2004, excuse me.

11 So while we went back and got a refund of  
12 those taxes, we also were not able to recover from -- from the  
13 customers, and we didn't ask to recover from customers, any  
14 shortfall of taxes, as they went up as our plant went up, that  
15 were paid but not recovered through rates.

16 Q. Okay. Now, let's say we had a room full of  
17 ratepayers in here and they don't know anything about the law,  
18 they don't know anything about accounting. All they know is  
19 they paid money to you all, you paid a property tax and you  
20 got a \$5 million refund. And let's assume they're all holding  
21 scythes and farm equipment. What are you going to do with  
22 that money now? Do you think they should get something back?  
23 This is an angry mob I'm talking about.

24 A. No. We're setting rates for the future.  
25 The -- the rates going forward are not going to -- we're not

1 going to be getting any property tax refunds going forward.  
2 We've -- we've paid more in -- in property taxes than we've  
3 collected from them --

4 Q. I see.

5 A. -- in rates. We also had other expenses that  
6 went up just through inflation. Through bad debts is another  
7 item that they weren't paying us through rates that we had to  
8 continue to pay.

9 We are not in an over-earning position. I  
10 would say if we were over-earning, then -- then possibly we  
11 could be talking about something a little different. But --  
12 but we aren't and never have been. And, you know, we went  
13 after those property tax refunds as a way to pick up  
14 shortfalls in the rates and prevent us from having to come in  
15 immediately after the last rate case.

16 JUDGE JONES: Okay. That's all I have. Any  
17 recross?

18 MR. MEYER: Nothing. Thank you.

19 JUDGE JONES: Any redirect?

20 MR. MITTEN: One question.

21 REDIRECT-EXAMINATION BY MR. MITTEN:

22 Q. Mr. Noack, in response to Staff's question,  
23 you had indicated that the company going forward had reduced  
24 its property tax burden by about \$2 million and indicated that  
25 taxpayers would be getting a benefit from that. Did you mean



1 ratepayers?

2 A. Yes, I did. The ratepayers going forward.  
3 The -- the amount of taxes that are in their rates going  
4 forward, the ratepayers, the amount of taxes in their rates  
5 going forward will be lower by \$2 million a year.

6 MR. MITTEN: No further questions. Thank you.

7 JUDGE JONES: Plan on running for office, huh?

8 THE WITNESS: No. Never.

9 JUDGE JONES: Okay. Let's move onto -- now,  
10 did you all want to just do unrecovered cost of service  
11 amortization or environmental response?

12 MR. WINTER: Mr. Schallenberg is --

13 MR. MEYER: I think we need to get a few  
14 people in the room.

15 JUDGE JONES: Is everybody in the room for  
16 environmental response or is that something that --

17 MR. MEYER: I can already say no because --

18 JUDGE JONES: Let's go ahead and take a  
19 10-minute break. I want to find out what's going on in the  
20 agenda.

21 (A recess was taken.)

22 JUDGE JONES: We're going to go ahead and  
23 continue with the next issue, unrecovered cost of service  
24 amortization. MGE, you can go ahead and do your opening  
25 statement and call your first witness.

1                   MR. MITTEN: Thank you, your Honor. In its  
2 last general rate case, in an effort to assure that the rate  
3 design ultimately approved by the Commission would give the  
4 company a realistic opportunity to earn its cost of service,  
5 MGE asked for three things.

6                   The first, the company asked the Commission to  
7 authorize a weather normalization clause or a weather  
8 mitigation rate design similar to the one that had previously  
9 been approved for Laclede Gas Company.

10                  Second, MGE asked the Commission to base its  
11 weather normalization adjustments on recent weather data that  
12 would more accurately predict weather and, therefore, customer  
13 usage for the period rates set in the last case would be in  
14 effect.

15                  And third, the company asked the Commission to  
16 approve an attrition adjustment to normalize sales volumes  
17 that recognize the fact that MGE has experienced a consistent  
18 decline in average per customer usage.

19                  None of the company's requests were granted.  
20 So when weather in MGE's service area for the first three  
21 months of 2006 was much warmer than expected, average customer  
22 usage fell more than 27 percent below the level that was  
23 assumed for rate-making purposes in the last case.

24                  As a result, MGE fell \$15.6 million short of  
25 recovering its cost of service. MGE seeks to recover this

1     shortfall through its unrecovered cost of service amortization  
2     adjustment, which proposes to amortize the 15.6 million  
3     shortfall over five years.

4                     Staff opposes MGE's proposal on grounds that  
5     it constitutes unlawful retroactive rate-making. The company's  
6     witness on this issue, Mr. Noack, has stated in his pre-filed  
7     testimony that Staff's position is probably correct.

8                     But one of the reasons that MGE is taking this  
9     issue to hearing is to point out to the Commission that by  
10    opposing the company's unrecovered cost of service adjustment  
11    while still promoting its own property tax refunds adjustment,  
12    Staff wants to have it both ways on retroactive rate-making.

13                    When it benefits ratepayers, Staff seems to  
14    argue that the doctrine of retroactive rate-making can be  
15    ignored. But when it benefits the company, the laws must be  
16    strictly enforced. That's wrong.

17                    And the Commission can settle this issue by  
18    rejecting both the company's proposed unrecovered cost of  
19    service adjustment and Staff's proposed property tax refunds  
20    adjustment. But the Commission can't adopt one adjustment  
21    while rejecting the other because not only would that be  
22    unlawful, it would be fundamentally imbalanced and unfair.

23                    But there's another reason that the company  
24    has taken this issue to hearing in this case. And that's to  
25    emphasize the real world consequences to MGE of failing to

1 properly normalize customer usage for rate-making purposes and  
2 for failing to adopt a rate design that makes recovery of the  
3 company's legitimate cost of service dependent on selling more  
4 and more gas to customers who demand less and less.

5                   The negative effect of these two phenomenon  
6 was primarily responsible for the \$15.6 million shortfall that  
7 MGE experienced during the first half of 2006. These negative  
8 effects on earnings can be mitigated or eliminated in this  
9 case if the Commission adopts the expense normalization  
10 methodology and the straight fixed variable rate design that  
11 the company is proposing in this case.

12                   I'm finished with my opening statement and I  
13 would call Mr. Noack to the stand.

14                   JUDGE JONES: Okay. Mr. Noack, you remain  
15 under oath and we'll go ahead and cross-examine --

16                   MR. FRANSON: Your Honor, prior to  
17 cross-examination, at this time I would make a motion for  
18 summary determination on this issue.

19                   Staff has asserted that this is retroactive  
20 rate-making, which is the straight legal issue. That has now  
21 been conceded not only in the testimony of Mr. Noack, but in  
22 the opening statement of Mr. Mitten, plus we see it in the  
23 prehearing brief of MGE. Thus, there is agreement -- and also  
24 I believe Office of Public Counsel through the testimony of  
25 Mr. Robertson has so asserted.

1                   And what we hear in the opening statement of  
2 Mr. Mitten is this whole issue is not standing on its merits  
3 because we've just heard it's illegal. What we're hearing is  
4 it's for all these other reasons and just to muddy up the  
5 waters.

6                   Judge, this is what would classically be  
7 called a throw-away issue. We've heard it is retroactive  
8 rate-making. There's no other justification offered for it  
9 except as MGE believes it relates to another issue, that being  
10 the property tax issue. This issue on its own has absolutely  
11 no merit. There's complete agreement among the parties that  
12 it is illegal, retroactive rate-making and for that reason, it  
13 should be summarily dismissed at this time and I would so  
14 move.

15                  JUDGE JONES: I know that in your argument --  
16 I should say in your argument -- you phrase your argument in  
17 such a way to eliminate any consideration of the property tax  
18 refund issue. It seems like when we were on that issue, there  
19 was some reference that Mr. Oligschlaeger admitted that that  
20 was retroactive rate-making also.

21                  MR. FRANSON: Judge, I don't agree that  
22 Mr. Oligschlaeger adm-- well, the allegation is that -- well,  
23 first of all, Mr. Oligschlaeger did not admit that the  
24 property tax issue is retroactive rate-making.

25                  JUDGE JONES: So he didn't say that in his

1 testimony?

2 MR. FRANSON: No, he did not. I believe MGE  
3 has tried to interpret it that way. What I'm saying, Judge,  
4 is property tax issue, rate design and all those other things,  
5 those issues like this issue must stand on their own merits.  
6 Either the Commission decides them in favor of MGE or they  
7 decide them another way. But the way the list of issues, the  
8 way the litigation is, each issue stands on its own.

9 This issue on its own is, as Mr. Mitten said,  
10 thrown out simply for illustrative purposes. While that's  
11 fascinating from an academic standpoint, this issue on its own  
12 is illegal rate -- illegal retroactive rate-making.

13 We have Staff asserting it and saying it. We  
14 have OPC agreeing with that. We have MGE, the only parties  
15 that have put in -- forth evidence saying to the Commission,  
16 we all agree this issue on its own is retroactive rate-making.  
17 It is classic retroactive rate-making and that is simply not  
18 allowed in this state. And this issue, without regard to  
19 anything else, should be summarily dismissed.

20 JUDGE JONES: I may have missed something, but  
21 did you all file a motion for summary determination of this?

22 MR. FRANSON: No.

23 JUDGE JONES: Why did you wait until now to  
24 make that motion?

25 MR. FRANSON: Judge, I don't know that I have

1 to make it at a more convenient time, but --

2 JUDGE JONES: Well, you mentioned the word  
3 "convenient." Now, if I were to grant this motion, that means  
4 I have to write an order granting a motion for summary  
5 determination, take it to agenda on Tuesday so the Commission  
6 can vote on it. Right?

7 MR. FRANSON: Right.

8 JUDGE JONES: From a practical standpoint,  
9 making that motion now makes absolutely no sense.

10 MR. FRANSON: From a litigation standpoint,  
11 which is the standpoint I'm coming from, Judge --

12 JUDGE JONES: We're not in a civil court. If  
13 I were a circuit judge, it would be a different issue, but  
14 we're dealing with a different beast right here. I can't  
15 grant or deny that motion right now. You do realize that,  
16 don't you?

17 MR. FRANSON: I believe that, yes, I do.  
18 However, I do have the ability and the obligation on behalf of  
19 a client to make that. And when another attorney gets up here  
20 and concedes it --

21 JUDGE JONES: Well, you say it was conceded in  
22 the briefs.

23 MR. FRANSON: Yes. It's also conceded even  
24 earlier than that in the testimony of Mister --

25 JUDGE JONES: My point, again, being then why,

1 out of just a practical necessity, wouldn't you have made that  
2 motion at an earlier date where it could have been ruled on  
3 and disposed of instead of brought up right now?

4 MR. FRANSON: Judge, I'm not saying I could  
5 not have made that motion earlier. I'm saying that I'm making  
6 it now and --

7 JUDGE JONES: Okay. My question is still why  
8 didn't you make it earlier?

9 MR. FRANSON: I just chose not to. And I  
10 probably wasn't going to make it, but I did not expect the  
11 opening statement we got. I assumed that MGE had -- was  
12 really serious about this issue.

13 And when you read the testimony, it's not real  
14 clear. Because then when it -- yes, this is retroactive  
15 rate-making and we did it for all -- as it ties to all these  
16 other issues. You got to give us all these other issues.  
17 That's all fine and interesting, but this issue on its own,  
18 there's agreement among --

19 JUDGE JONES: It pretty clear to me from the  
20 brief and from the testimony that everybody agrees that this  
21 is retroactive rate-making and that they think -- you know,  
22 they tie it in with the issue of the property tax refund.

23 But still on its own, there's everything in  
24 the record already, even before his opening statement, says  
25 that this was retroactive rate-making upon which your motion



1     could have been -- upon which you could have moved for a  
2     summary determination. So it sounds like your answer to why  
3     you didn't make that motion before now is I don't know.

4                   MR. FRANSON: Judge, all I can tell you is  
5     that I didn't make it before and I'm making it now.

6                   JUDGE JONES: Well, just to keep from  
7     belaboring the point, I'm not going to rule on it now.

8                   MR. FRANSON: Thank you.

9                   JUDGE JONES: We'll go ahead and go with the  
10    first witness, Mr. Noack.

11                  MR. FRANSON: Thank you, your Honor. May I  
12    proceed, your Honor?

13                  JUDGE JONES: Yes, you may.

14    MICHAEL NOACK testified as follows:

15    CROSS-EXAMINATION BY MR. FRANSON:

16                  Q.     Mr. Noack, were you involved in conversations  
17    with anyone at MGE, whether that would be -- well, let me ask  
18    you, who's your immediate supervisor?

19                  A.     Mr. Hack.

20                  Q.     Did you and Mr. Hack discuss the reason MGE  
21    brought this unrecovered cost of service issue?

22                  A.     Yes.

23                  Q.     Was one of your reasons to make a point and  
24    tie it to other issues like property taxes and rate design?

25                  A.     No. Absolutely not. No, we didn't --

1 Q. What was your --

2 A. We didn't have any idea that the Staff was  
3 going to make such a -- an adjustment in property taxes when  
4 we filed this case.

5 Q. Okay. Mr. Noack, my question is not property  
6 taxes, not rate design, not any others. Why, to your  
7 knowledge, did MGE bring this unrecovered cost of service  
8 issue that we're talking about here today?

9 A. Because for the first six months of 2006 with  
10 the tools we had in place, we had no chance of earning our  
11 rate of return, our authorized rate of return. And so I made  
12 this adjustment and then in lieu of making the adjustment, I  
13 also testified in my Direct Testimony that we would request an  
14 AAO.

15 Q. Okay. Let's go to a hypothetical question.  
16 If you need to write down my premise, please do so.

17 Let's go forward to the year 2010. You're  
18 still employed in your current capacity at MGE. And by the  
19 way, what is your current capacity at MGE?

20 A. I am director of pricing and regulatory  
21 affairs.

22 Q. Okay. Assume that you're in here and we'll  
23 say we're in a -- all the testimony has been filed, it's  
24 May of 2010, Test year is 2009. During the first three months  
25 of 2009, MGE over-recovered their cost of service because

1     there was an abnormally cold winter.

2                     Would you believe under that scenario that it  
3     would be appropriate for some industrious person, say,  
4     somebody from the Office of Public Counsel, some MGE customer  
5     or anybody to come in and ask for -- that MGE be required to  
6     give back money because they over-recovered for the first  
7     three months of the test year?

8             A.     If -- if, with all other things, it turned out  
9     that MGE for those three months or for that year was in an  
10    over-earnings position, Staff or OPC or some other party could  
11    come in and I guess file an over-earnings complaint with the  
12    Commission and have the Commission look and see if we were  
13    over-earning, yes.

14            Q.     Okay. Mr. Noack, I didn't ask about the  
15    possibility of going out and filing a complaint. I'm going  
16    for the exact scenario that we've got here. You're in for a  
17    rate case, you're saying that for part of the test year, three  
18    months of 2006 -- which actually I guess is part of the update  
19    period; isn't that correct?

20            A.     It's -- it's -- yes, six months updated, yes.

21            Q.     Okay. Then let's change it. Let's say that  
22    2009, the first three months are part of the update period.  
23    Okay. Now, what I'm saying is, in the context of an MGE rate  
24    case, not bringing a complaint, could some industrious  
25    individual, whoever it might be, whether it's Office of Public

1 Counsel, a customer or anybody else, file for an AAO saying,  
2 Look, during these three months, it was a cold winter. MGE  
3 over-recovered. And let's just say it's a miracles of all  
4 miracles, it's \$15.6 million exactly and they want to amortize  
5 it over five years.

6 What would be your opinion as a regulatory  
7 expert on that kind of thing? Would that be permissible?

8 A. I think that they would have to come in and  
9 they would have to file it as -- as an over-earnings  
10 complaint. That's what I said before. I -- there are  
11 mechanisms in place just like there's a mechanism here where  
12 I've made this adjustment.

13 You got to remember that along with this  
14 adjustment being made, Staff has also made a \$3 million  
15 adjustment to increase our revenues because we had warmer than  
16 normal weather in the test year. So that has reduced  
17 our -- our revenue requirement by \$3 million.

18 Q. Okay. Mr. Noack, this will go a lot quicker  
19 if you'll concentrate on what I'm asking.

20 A. I'm trying to answer your questions exactly as  
21 you ask them.

22 Q. What I'm asking -- let's change it around.  
23 You've over-earned and it's about \$15.6 million. We'll just  
24 assume that that's the case. Would the same type of  
25 adjustment, where MGE would pay back money to customers, be

1 appropriate?

2 A. You would have to look at everything involved.  
3 If we are over-earning and someone wanted to file a complaint  
4 case that we are over-earning, then, yes, they could file it,  
5 the Commission might find that it's appropriate, that rates  
6 should be reduced. But, no, I don't think they're going to  
7 order that it be refunded.

8 Q. Okay. Do you believe this adjustment, as a  
9 regulatory expert, is appropriate; is that correct? Without  
10 regard to any of the other events in the case, you actually  
11 advocate that the Commission give you an extra 3.1 or 2  
12 million dollars because you under-earned during the first  
13 three months of the test year; is that correct?

14 A. My testimony says -- and, you know, I can --  
15 it's probably best to -- to quote it, if I can find.

16 Q. Which part are you going to quote from?

17 A. Hold on just a second. Let me find it so I  
18 don't get it wrong.

19 On page 6 of my Surrebuttal Testimony I state,  
20 I cannot disagree with Mr. Oligschlaeger's assertion that  
21 MGE's proposed unrecovered cost of service amortization  
22 constitutes retroactive rate-making. Whether it's prohibited  
23 is a question perhaps answered by a lawyer, but the answer to  
24 that question may be affected by whether the item is viewed as  
25 extraordinary, which I will address later.

1                   And where that comes into play is where in the  
2 alternative, in my direct, we requested an AAO.

3           Q.       Okay. What I'm asking, whether it's through  
4 an AAO or -- you believe that warm weather can constitute an  
5 extraordinary event sufficient to gain an AAO; is that  
6 correct?

7           A.       I think it's something that -- that can  
8 definitely be looked at, talked about, what have you because,  
9 you know, we didn't have any -- anything in place to mitigate  
10 the -- the weather. It was extraordinarily warm last winter  
11 and we did fall very short in the first six months and it  
12 continued through all of 2006.

13          Q.       Okay. Would you agree with me that under your  
14 current rate design, it is possible to have a cold winter and  
15 the company benefits? Is that possible?

16          A.       It's possible.

17          Q.       Okay.

18          A.       It didn't happen.

19          Q.       Okay. I'm not asking if it happened, but it  
20 is possible?

21          A.       Sure.

22          Q.       And probably in the history of an LD-- of some  
23 LDC somewhere, that may have happened; is that correct?

24          A.       We had a colder than normal winter in 2001,  
25 but our usage still didn't meet what the rates were set on.

1           Q.       Okay. Mr. Noack, I have no doubt you know  
2       where I'm going. I'm just asking, would the simple reverse  
3       adjustment when the company has earned more than it should  
4       have under its rates because of an abnormally cold winter, in  
5       your opinion, be sufficient for an AAO to adjust so the  
6       company would have to pay some money back ultimately? Would  
7       that be an appropriate thing ultimately?

8           A.       If, with everything else taken into  
9       consideration, the company had a windfall, then someone could  
10      request an AAO that it be paid back, yes. But you need to  
11      take everything else into consideration.

12          Q.       Okay. Now, isn't it true that the criteria  
13      for an AAO is not only an extraordinary event, but it also  
14      must be non-recurring?

15          A.       I believe that's probably so.

16          Q.       Okay. Isn't it true that basically every year  
17      the weather during the winter heating season is either going  
18      to be warmer than the normal, colder than the normal or it's  
19      going to hit the normal exactly?

20          A.       Probably so, yes.

21          Q.       Okay. So isn't it true that just strictly on  
22      weather, that that would not -- the weather ordinarily by  
23      itself, without regard to anything else, is not necessarily an  
24      abnormal event?

25          A.       Normally it's not.

1                   MR. FRANSON: Thank you. No further  
2 questions.

3                   JUDGE JONES: Any cross-examination from the  
4 office of Public Counsel?

5                   MR. POSTON: Yes. Thank you.

6 CROSS-EXAMINATION BY MR. POSTON:

7               Q.       MGE's proposing to set rates that permit MGE  
8 to recover what you consider to be past losses. Correct?

9               A.       Well, what we consider it as unrecovered cost  
10 of service is what we're calling this, yes, or in lieu of  
11 that, requesting an AAO.

12            Q.       Would you agree that such a request meets your  
13 definition of retroactive rate-making that you've stated in  
14 your testimony?

15            A.       Yes. As I read in the Surrebuttal Testimony  
16 the adjustment would probably be considered retroactive  
17 rate-making, yes.

18            Q.       And you stated in your testimony that Missouri  
19 Supreme Court has held that retroactive rate-making is not  
20 permitted in Missouri?

21            A.       Correct.

22            Q.       And you previously testified that it would be  
23 wrong to allow MGE to recover past losses through future  
24 rates; is that correct? Direct, page 8.

25            A.       Yes.



1           Q.       And I'd like to briefly look at your Schedule  
2   MRN-5.

3                   MR. FRANSON:   Which testimony is that?

4                   MR. POSTON:   I believe that is on your  
5   surrebuttal.   Surrebuttal.

6                   THE WITNESS:   Could I go back for just a  
7   second?   You said something about direct, page 8.   I'm there  
8   and I don't see it.   I don't think --

9   BY MR. POSTON:

10           Q.       Your answer's on the record and it says what  
11   it says.

12           A.       Fine.

13                   JUDGE JONES:   Well, wait a minute.   If the  
14   reference is wrong, let's get it correct now so I don't read  
15   the transcript later and I'm trying to find it.

16   BY MR. POSTON:

17           Q.       Direct, page 8, I've got written down lines 15  
18   through 18.

19           A.       The third type of cost and approach relates to  
20   the actual test period.

21           Q.       Okay.   Sorry.   Maybe it's rebuttal.   Yes, I'm  
22   sorry.   Rebuttal.   Is that the appropriate reference?

23           A.       What was the reference again now?   Now I've  
24   got kind of lost my train.   I'm sorry.

25           Q.       You've stated here that it would be wrong to

1 allow MGE to recover past losses through future rates.

2 A. That is correct. That's exactly what it says.

3 JUDGE JONES: Okay.

4 BY MR. POSTON:

5 Q. Okay. In turning to your surrebuttal,

6 Schedule MRN-5 --

7 A. Yes.

8 Q. So would you agree that on this schedule for  
9 year ending 2005, year ending December 31st, that authorized  
10 rate of return was 8.36. The achieved rate of return was  
11 7.62 percent and so for at least the test year of this case,  
12 the return deficiency for MGE was less than three-quarters of  
13 1 percent?

14 A. That's what it appears to show, yes.

15 Q. Three-quarters of 1 percent. And that doesn't  
16 even include the property tax refund that MGE received of  
17 8.3 million; is that correct?

18 A. I wasn't in this -- this wasn't in this year.  
19 This was 12/31/06 and that was in '05.

20 Q. Oh, these -- that says -- that's '06?

21 A. I believe it says '06. Or maybe it's '05.  
22 I'm sorry. I can't read with my own glasses.

23 Q. It does look like a six, but --

24 A. It does. Yes.

25 Q. Okay. And do you know MGE's return for the

1 12 months ending June of 2006?

2 A. Based on this, the achieved rate of return is  
3 approximately 5.74 percent.

4 Q. 2006?

5 A. Oh, I'm sorry. No, I do not know. I  
6 apologize.

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

8 JUDGE JONES: Redirect?

9 MR. MITTEN: Just a few questions.

10 REDIRECT EXAMINATION BY MR. MITTEN:

11 Q. Mr. Noack, let's look again at your Schedule  
12 MRN-5. Did I understand you to say that the earnings that are  
13 reflected for 12/31/2005 did not take into account and reflect  
14 the tax refund, property tax refund that the company received?

15 A. No, I believe it does re-- let's see here. It  
16 has a footnote that says it excludes property tax refunds.

17 Q. Now, Public Counsel suggested that for  
18 calendar year 2005, the difference between what MGE actually  
19 earned and what it was authorized to earn was only  
20 three-quarters of 1 percent?

21 A. That's correct.

22 Q. In dollars, what are we talking about?

23 A. In dollars, that would amount to a return  
24 deficiency of approximately \$4 million and a revenue  
25 deficiency of \$6.4 million.

1 Q. Do you consider either of those significant?

2 A. Yes. Very much so.

3 MR. MITTEN: No further questions. Thank you.

4 JUDGE JONES: Okay. Mr. Noack, you may step  
5 down?

6 THE WITNESS: Thank you.

7 JUDGE JONES: I do want to caution you all  
8 because all the Commissioners weren't here for the property  
9 tax refund issue or the unrecovered cost of service  
10 amortization issue, some witnesses may be called back up. So  
11 with that, you can go ahead and have a seat.

12 THE WITNESS: Thank you.

13 JUDGE JONES: And we'll move on through this  
14 issue and then go on to environmental response fund hoping  
15 that Commissioners will be here for Mr. Helfrich.

16 MR. MITTEN: Your Honor, Mr. Helfrich needs to  
17 get on and off the stand by noon. Would it be possible to  
18 take him out of turn?

19 JUDGE JONES: Okay. Let me put it this way,  
20 we're doing everything we can to accommodate him. You all had  
21 plenty of time to make this schedule up. You knew he had to  
22 leave before noon before you put him on for today. Right?

23 MR. MITTEN: Yes.

24 JUDGE JONES: So why didn't you put him on  
25 yesterday or tomorrow or why didn't you put this issue before

1 the property tax refund issue?

2 MR. MITTEN: We offered to put him first thing  
3 this morning.

4 JUDGE JONES: Okay. Now, knowing that certain  
5 Commissioners might have an interest in environmental  
6 response -- this environmental response fund, knowing that  
7 agenda would be on Thursday at 9:30 and knowing on Monday that  
8 this hearing would be started at 9:30 every day, you've put  
9 your own self in a corner. Right?

10 It's like going to a party without a ride and  
11 looking for a ride home and expecting somebody to give it to  
12 you to keep you from being stranded. Okay? I'm trying to  
13 accommodate you to the best extent I can, but at the same time  
14 if there are questions that Commissioners have of him, then  
15 he's got to avail himself.

16 MR. MITTEN: And we understand that. My  
17 concern is there are two other witnesses on this issue. If  
18 their testimony, including cross-examination, takes an  
19 appreciable portion of the hour that we have between now and  
20 noon, then there's no chance to get Mr. Helfrich on and off  
21 within that time period. If we took him now, there's a  
22 possibility that that could occur.

23 JUDGE JONES: So if we put him on now and the  
24 Commissioners who might otherwise have questions for him  
25 aren't here now, then we've defeated the purpose.

1                   COMMISSIONER MURRAY: Judge, why don't we find  
2 out if the other Commissioners are available now? There's no  
3 meeting going on now.

4                   JUDGE JONES: Let's adjourn for five minutes.

5                   (A recess was taken.)

6                   JUDGE JONES: Okay. We're back on the record.  
7 And we're going to now -- we're going to come back to the  
8 issue of unrecovered cost of service amortization and move on  
9 to environmental response fund. And first witness is  
10 Mr. Thomas Helfrich from MGE. Did you want to make an opening  
11 statement by the way?

12                  MR. MITTEN: If we're going to try the issue,  
13 yes, I do.

14                  JUDGE JONES: Go right ahead.

15                  MR. MITTEN: To enable the company to meet its  
16 obligation to pay costs associated with the environmental  
17 remediation of several manufactured gas plant or MGP sites  
18 that Southern Union Company acquired as part of its purchase  
19 of the Missouri gas operations of Western Resources, MGE is  
20 seeking authority to establish an environmental response fund  
21 and to recover \$500,000 annually through rates to fund the  
22 ERF.

23                         In addition to funds provided by ratepayers,  
24 MGE will contribute to the ERF one half of everything that it  
25 collects from insurance carriers and other potentially

1 responsible parties or PRPs who may also be responsible for a  
2 share of the remediation costs, less the cost the company  
3 incurs to obtain those additional funds. In addition -- in  
4 addition, any funds received from Western Resources will also  
5 be contributed.

6 Monies held in the ERF will then be used to  
7 pay current and future costs that MGE reasonably and prudently  
8 incurs to investigate and remediate the MGP sites.

9 As part of the acquisition transaction, which  
10 the Commission reviewed and approved, Southern Union and  
11 Western Resources entered into an environmental liability  
12 agreement which apportioned potential liability for the  
13 environmental cleanup of the former MGP sites.

14 Under the terms of that agreement, primary  
15 responsibility for the costs of investigation and remediation  
16 are to be born by insurance carriers, other PRPs and  
17 ratepayers. Southern Union was then responsible for up to  
18 \$3 million of costs, which has already been contributed and  
19 spent.

20 After contributions from the sources I just  
21 mentioned are exhausted, the environmental liability agreement  
22 obligates Southern Union and Western Resources to jointly  
23 contribute up to an additional \$15 million in costs. The  
24 evidence in this case will show that since it has been  
25 responsible for the Missouri MGP sites, Southern Union has

1 incurred approximately \$10 million in investigation and  
2 remediation costs.

3 Almost all of the costs incurred to date  
4 relate to two sites in the Kansas City area. These costs  
5 include historical research regarding the sites themselves as  
6 well as research designed to identify other PRPs and insurance  
7 carriers who may be liable for a portion of the remediation  
8 costs, the costs of soil and water testing, costs associated  
9 with the disposal of contaminated materials and miscellaneous  
10 costs for experts and legal fees to assure that liability is  
11 not improperly imposed on MGE and to pursue contributions from  
12 others.

13 The company's evidence in this case also shows  
14 that it is estimated that additional expenditures of between  
15 1 million and 10 million dollars will be required for the two  
16 Kansas City area sites I previously mentioned. In addition,  
17 MGE may also be liable for remediation costs for manufactured  
18 gas plant sites in Joplin and Independence.

19 To date, these costs have largely but not  
20 entirely been offset by the \$3 million contributed by Southern  
21 Union and from contributions that have been obtained from  
22 insurance carriers and other PRPs. But because these sources  
23 have been nearly exhausted, MGE is, again, proposing ERF to  
24 obtain needed contributions from the company's customers.

25 Seeking recovery through rates of a portion of



1 the remediation costs is also required by the environmental  
2 liability agreement before Western Resources can be called  
3 upon to contribute its share of the remediation costs.

4               Although the proposed ERF is a departure from  
5 traditional modes of rate-making, funding mechanisms similar  
6 to the one MGE is proposing in this case have been adopted by  
7 more than 20 states where remediation of MGP sites is  
8 required.

9               Amounts in the ERF will be held in trust and  
10 disbursements from the fund will only be made to cover the  
11 reasonable and prudent costs related to remediation. Staff  
12 and Public Counsel will be able to review all disbursements  
13 from the fund and to challenge any disbursements they believe  
14 are improper and any disputes regarding disbursements will be  
15 resolved by the Commission. And when MGE's responsibility for  
16 remediating the MGP sites is completed, any monies left in the  
17 fund will be returned to ratepayers.

18              Although both Staff and Public Counsel oppose  
19 the proposed environmental response fund, MGE believes the  
20 evidence will show that the objections they raise are  
21 unfounded.

22              Moreover, unless something is done to soon  
23 address the ratepayers' obligation to help pay the company's  
24 continuing cost of remediation, MGE's ratepayers face the  
25 specter of rate shock when a bill for these costs is finally

1 presented for recovery through rates at the end of the  
2 remediation process.

3 The environmental remediation of former MGP  
4 sites is a problem that requires outside the box solutions.  
5 MGE's proposed environmental response fund is such a solution  
6 that protects the interests of both the company and its  
7 customers and for that reason, we ask the Commission to adopt  
8 the ERF in this case.

9 JUDGE JONES: Thank you.

10 MR. MITTEN: We would call Thomas Helfrich as  
11 our first witness.

12 JUDGE JONES: Is it Helfrich?

13 THE WITNESS: Yes.

14 COMMISSIONER MURRAY: Can I ask counsel a  
15 question just before we move on?

16 JUDGE JONES: Yeah.

17 COMMISSIONER MURRAY: Some of the things that  
18 you stated there in your opening were -- seemed to be marked  
19 as highly confidential in the testimony. Was there anything  
20 there that was not supposed to be in open session?

21 MR. MITTEN: The environmental liability  
22 agreement was marked highly confidential by Public Counsel.  
23 We don't believe that it needs to be confidential and we were  
24 not intending to treat it as such for purposes of the hearing.

25 COMMISSIONER MURRAY: All right. Thank you.

1 (Witness sworn.)

2 JUDGE JONES: Thank you, sir. You may be  
3 seated. Start with cross-examination from Staff of the  
4 Commission.

5 MR. MITTEN: We need to introduce his  
6 testimony.

7 JUDGE JONES: Oh, I'm sorry.

8 THOMAS HELFRICH testified as follows:

9 DIRECT EXAMINATION BY MR. MITTEN:

10 Q. Would you please state your name and business  
11 address for the record?

12 A. Thomas, middle initial J., Helfrich,  
13 H-e-l-f-r-i-c-h. Business address is 17 Cassens Court,  
14 Fenton, Missouri, 63026.

15 Q. Mr. Helfrich, by whom are you employed and  
16 what is your job title?

17 A. Burns and McDonnell Engineering Company, and  
18 my job title is program manager.

19 Q. You have before you a document which has been  
20 marked for identification as Exhibit 22 consisting of nine  
21 pages of questions and answers. Is that your pre-filed  
22 testimony in this case?

23 A. Yes.

24 Q. Was that testimony prepared by you?

25 A. Yes.

1           Q.       Are there any changes or corrections that you  
2   need to make to the testimony at this time?

3           A.       No.

4           Q.       If I ask you the questions that are contained  
5   in that testimony, would your answers be the same as are  
6   reflected there?

7           A.       Yes.

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

10          A.       Yes.

11                   MR. MITTEN:  I have no further questions of  
12   this witness.  I would offer Exhibit 22 into evidence and  
13   tender the witness for cross-examination.

14                   JUDGE JONES:  Any objection to Exhibit 22?  
15   Exhibit 22 is admitted into the record.

16                   (Company Exhibit No. 22 was received into  
17   evidence.)

18                   JUDGE JONES:  Cross-examination by Staff?

19                   MS. SHEMWELL:  Thank you, Judge.

20   CROSS-EXAMINATION BY MS. SHEMWELL:

21           Q.       Sir, would you state your name for me again,  
22   your last name?

23           A.       Helfrich.

24           Q.       You're a professional engineer with Burns and  
25   McDonnell?

1 A. Yes, ma'am.

2 Q. You have investigated other of these  
3 manufactured gas plant sites?

4 A. Yes, I have.

5 Q. In many other states?

6 A. Yes, ma'am.

7 Q. On page 2 of your testimony, you state that  
8 M-- on line 13, you state that Mr. Noack has stated that MGE  
9 has incurred approximately 9.9 million in MGP-related costs  
10 since 1994.

11 Have I read that correctly?

12 A. Yes, you have.

13 Q. You don't know if MGE has paid that out of its  
14 pocket, do you?

15 A. No, I don't.

16 Q. As I turn to page 4, line 5, you indicate that  
17 in your experience, the cost of investigation and remediation  
18 of other sites may exceed 1 million; is that correct?

19 A. Yes. That's specifically in reference to the  
20 St. Joseph --

21 Q. That was fine. I just asked if you said may.  
22 Thank you, sir. As I drop down to line 9 on that same page,  
23 It is not known whether or when MGP investigation activities  
24 may be undertaken at these sites.

25 There you're referring to Joplin and

1 Independence sites of MGE; is that correct?

2 A. Yes.

3 Q. Do you know if MGE owns those sites?

4 A. To the best of my knowledge, they occupy those  
5 sites. They have facilities -- service center type facilities  
6 at those sites.

7 Q. Do you know if they own them?

8 A. No, I do not.

9 Q. At the bottom of that page, you indicate at  
10 line 21 that, It is not possible to predict the timing and  
11 magnitude of MGP investigation at this time; is that correct?

12 A. Yes.

13 Q. And you indicate that, Even once -- and I'm  
14 quoting, Even once the investigative and remedial process has  
15 been initiated, the timing of any investigative and remedial  
16 activity at MGP -- again, all caps -- sites is subject to  
17 numerous variables. Correct?

18 A. Yes.

19 Q. The timing, I continue on page 5, is greatly  
20 influenced by the nature and extent of the contamination that  
21 may be encountered at the site. Right?

22 A. Yes.

23 Q. And at line 13 on page 5 you indicate, Another  
24 factor that greatly influences the timing and magnitude of any  
25 investigative and remedial action is the actions of state

1 and/or federal environmental agencies which exercise  
2 jurisdiction over the MGP sites and regulate the investigative  
3 and remedial activities. Right?

4 A. Yes.

5 Q. In Missouri, is Missouri Department of Natural  
6 Resources, that I'll call MDNR, the agency exercising  
7 jurisdiction over these sites?

8 A. In Missouri it's either MDNR or US EPA.

9 Q. Has EPA taken jurisdiction over any of these  
10 sites?

11 A. Not to my knowledge.

12 Q. Do you know if any of these sites are on the  
13 EPA, capital -- all in caps -- C-E-R-C-L-A, CERCLA list?

14 A. I'd have to check that. I don't know.

15 Q. You have stated in your testimony however,  
16 that it's impossible to predict the timing or activities of  
17 what the regulatory agencies are going to do and when?

18 A. Yes.

19 Q. Thank you. And you describe that process on  
20 page 6 when you say at line 3 that, Numerous submittals and  
21 approvals must take place, and conclude at the end of line 4  
22 and on 5, The magnitude of the project often changes during  
23 the approval process. Correct?

24 A. Yes.

25 Q. What type of contaminated or what type of

1 hazardous materials are found on these sites?

2 A. There are a number of different types of  
3 materials or byproducts that came from the manufactured gas  
4 process that drive the investigation or remediation  
5 activities. The primary driver at these site is what's  
6 commonly referred to as tar. The tar contains hazardous  
7 constituents. You've probably heard of Benzene,  
8 Benzo(a)pyrene are known carcinogens. Those are the  
9 constituents that drive these activities.

10 Q. And what is the general process of -- I  
11 guess my question is a little more specific. Is the solution  
12 to contain it in place or to remove it?

13 A. Both of those are solutions, along with many  
14 others. There are very complicated sites and there's no one  
15 solution that fits all of them.

16 Q. What about MGE's? May there be one solution  
17 that fits all of these similarly situated --

18 A. No.

19 Q. -- sites?

20 A. It would be a number of different options --

21 Q. Okay.

22 A. -- and a number of different alternatives.

23 Q. On page 7, you indicate, Even intuitively --  
24 I'm sorry, at line 14 -- It is impossible to ascertain the  
25 magnitude of something you cannot see.



1                   And you're stating that because these plants  
2 are now covered with dirt or have surface over them so that  
3 you can't actually see them?

4           A.       The remnants of the plants have long since  
5 been covered over by activities in the past hundred years and  
6 there's no -- in most cases, there are no obvious visible  
7 indications that this was a former manufactured gas plant.

8           Q.       And it's safe for people to be on the sites  
9 because MGE has some of its service sites at some of these  
10 locations; is that correct?

11          A.       That's not been investigated at all, these  
12 sites, but at the --

13          Q.       Let me rephrase. MGE has personnel operating  
14 out of some of these sites. Do you know that?

15          A.       Yes, that's correct.

16          Q.       Okay. You said on page 8 that, Remediation  
17 costs up to the time remediation commences are often  
18 underestimated. That's line 1 and 2. Correct? Would you  
19 agree with me that -- or often underestimated. Would you  
20 agree with me that they could possibly be overestimated as  
21 well? Is that possible?

22          A.       That's always a possibility.

23          Q.       And on line 3 you indicate, It's not possible  
24 to ascertain, generally, the costs at this time.

25                   Is that your testimony?

1           A.       Well, my testimony is that it's not possible  
2   to ascertain the magnitude of the MGP investigation and  
3   remediation that may be required of MGE.

4           Q.       And what you're talking about though is the  
5   costs. Right? The costs of doing that, the time?

6           A.       Timing -- the timing and the cost, correct.

7           Q.       Are you aware that the State of Missouri has  
8   passed a statute that addresses recovery of environmental  
9   costs?

10          A.       I was aware that there was a bill, I believe  
11   it was, that was proposed. I'm not aware of the current  
12   status of that though.

13                   MS. SHEMWELL: Thank you. That's all I have,  
14   Judge.

15                   JUDGE JONES: Any cross-examination from the  
16   office of Public Counsel?

17                   MR. POSTON: Yes. Thank you.

18   CROSS-EXAMINATION BY MR. POSTON:

19          Q.       Good morning, Mr. Helfrich.

20          A.       Good morning.

21          Q.       My name's Mark Poston. I'm with the Office of  
22   the Public Counsel. I only have, I think just two questions.

23                   Are you an expert in the area of regulatory  
24   rate-making for monopoly utilities in the state of Missouri?

25          A.       No.

1           Q.       Then you couldn't tell me the definition of  
2     the term "known and measurable" as it pertains to regulatory  
3     rate-making of monopoly utilities?

4           A.       Not as it relates to that.

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

6                   JUDGE JONES: Commissioner Murray.

7                   COMMISSIONER MURRAY: Yes, thank you.

8     QUESTIONS BY COMMISSIONER MURRAY:

9           Q.       Good morning.

10          A.       Good morning.

11          Q.       This mechanism that's being proposed here for  
12     the environmental response fund, you've worked in other  
13     jurisdictions, you've testified in other state jurisdictions;  
14     is that correct?

15          A.       I have worked in other jurisdictions. I've  
16     testified but not before a Public Service Commission or  
17     Utility Commission.

18          Q.       Okay. Well, are you aware of any other  
19     funding mechanisms for environmental recovery, environmental  
20     cost recovery that have been proposed in other states?

21          A.       No. I'm not aware of them. I'm just aware  
22     that they exist or don't exist, but not any details.

23          Q.       Okay. How did you come to participate in this  
24     case?

25          A.       I was asked by Missouri Gas Energy in December

1 if I would be interested in preparing testimony as it relates  
2 to the investigation and remediation of MGP sites in general  
3 and specifically with respect to these sites in Missouri.

4 Q. Okay. So you are more broadly familiar with  
5 MGP sites and --

6 A. Yes. I've worked on over 230 MGP sites across  
7 the country.

8 Q. All right. So basically your testimony is not  
9 necessarily in support of a mechanism so much as it is in  
10 support of the proposition that this is potentially a very  
11 large cost that is at this point -- the magnitude of which at  
12 this point is impossible to know?

13 A. That's correct. You know, the -- the work,  
14 the investigation, remediation work will be done at some point  
15 in time. It's just that the timing and the magnitude of that  
16 work is nearly impossible to predict.

17 Q. Okay.

18 COMMISSIONER MURRAY: I don't think I have any  
19 questions. Thank you.

20 THE WITNESS: You're welcome.

21 JUDGE JONES: Any recross from Staff of the  
22 Commission?

23 RECROSS-EXAMINATION BY MS. SHEMWELL:

24 Q. Mr. Helfrich, Commissioner Murray asked if you  
25 were familiar with these sites. And I'd like to just ask one

1 question. You said some of these are 125 to -- 100 to 125  
2 years old; is that right?

3 A. Yes, ma'am.

4 Q. Do you know when the last time any of these  
5 were used in Missouri?

6 A. In the entire state?

7 Q. These, MGE.

8 A. Oh, MGE's?

9 Q. I'm talking about MGE's.

10 A. I would -- I don't know the exact date. It  
11 was prior to 1950, after 1900, but what exact date in there, I  
12 don't recall off the top of my head.

13 MS. SHEMWELL: Thank you, sir.

14 THE WITNESS: You're welcome.

15 JUDGE JONES: Any recross from the Office of  
16 Public Counsel?

17 MR. POSTON: No.

18 JUDGE JONES: Any redirect from Missouri Gas  
19 Energy?

20 MR. MITTEN: Just a couple of questions.

21 REDIRECT EXAMINATION BY MR. MITTEN:

22 Q. Mr. Helfrich, Ms. Shemwell asked you regarding  
23 your testimony on page 4, lines 7 through 9, whether or not  
24 MGE owned the two sites that are mentioned there. Do you  
25 recall that?

1           A.       Yes, I do.

2           Q.       From an environmental liability standpoint,  
3       does it matter whether or not MGE owns the sites? Can it  
4       still be liable for environmental cleanup even if it doesn't  
5       own them?

6           A.       Yes.

7           Q.       And Ms. Shemwell also asked you if it was  
8       possible to overestimate the cost of environmental  
9       remediation. Do you recall that question?

10          A.       Yes, I do.

11          Q.       Based on your experience, is it more likely  
12       that costs for environmental remediation will be  
13       underestimated or overestimated?

14          A.       More likely that they would be underestimated.

15                   MR. MITTEN: No further questions. Thank you.

16                   JUDGE JONES: Okay. With that, sir, you may  
17       step down and you are excused.

18                   THE WITNESS: Thank you.

19                   MR. MITTEN: And the company would like to  
20       thank the Regulatory Law Judge, the Commission and the parties  
21       for their accommodation of Mr. Helfrich.

22                   JUDGE JONES: Although I would move to say no  
23       problem, I won't say that, but you're welcome.

24                   MR. MITTEN: Call Mr. Noack to the stand.

25                   JUDGE JONES: Mr. Noack.

1 MS. SHEMWELL: Are we going to press on with  
2 this, Judge? My understanding is that we were going to go  
3 back to the other topic. I apologize. I did not understand.

4 JUDGE JONES: No. We're going to go ahead and  
5 finish with this issue.

6 MS. SHEMWELL: Okay. I need to step upstairs  
7 for one minute then. I apologize.

8 JUDGE JONES: Okay.

9 MS. SHEMWELL: I will be back as quickly as I  
10 can.

11 JUDGE JONES: Are you the attorney for Staff  
12 on this issue?

13 MS. SHEMWELL: I am.

14 JUDGE JONES: Okay. We'll stop until  
15 Ms. Shemwell gets back.

16 (A recess was taken.)

17 MR. MITTEN: Your Honor, Mr. Noack's testimony  
18 has already been admitted so I would offer him for  
19 cross-examination.

20 JUDGE JONES: Thank you. We'll move onto  
21 cross-examination from Staff.

22 MS. SHEMWELL: Thank you, Judge.

23 MICHAEL NOACK testified as follows:

24 CROSS-EXAMINATION BY MS. SHEMWELL:

25 Q. Good morning, Mr. Noack.

1           A.       Good morning.

2           Q.       You talked about your environmental response  
3 fund proposal in the past. Right?

4           A.       Yes, we have.

5           Q.       Has the Commission approved it?

6           A.       No, they have not.

7           Q.       Southern Union knew about these costs when it  
8 purchased the properties from Western Resources; is that  
9 right?

10          A.       They were aware -- excuse me. They were aware  
11 that the possibilities of these existed, yes.

12          Q.       They only knew about the possibility?

13          A.       Well, I mean, we knew that -- they knew that  
14 there were MGP sites that possibly had cleanup costs involved,  
15 yes.

16          Q.       Do you know what kind of due diligence was  
17 done to determine the potential cost?

18          A.       No, I do not.

19          Q.       Do you know what steps MG-- or Southern Union  
20 I suppose, not MGE, took to limit its liability for  
21 environmental costs?

22          A.       No. Beyond the -- the agreement with Western  
23 Resources, I'm not.

24          Q.       And let's move to that agreement. I'm going  
25 to call it the purchase or sales agreement. Do you have



1 another term you would prefer?

2 A. No.

3 Q. With Western Resources --

4 MR. MITTEN: Could I inquire? Is counsel  
5 talking about the entire purchase and sale agreement or only  
6 the portion as it relates to environmental liability?

7 MS. SHEMWELL: I'll get there. Thank you.

8 JUDGE JONES: Is all of that in the record?  
9 The whole agreement is in the record. Right?

10 MR. MITTEN: Just the environmental liability  
11 agreement is in the record in this case.

12 BY MS. SHEMWELL:

13 Q. I'm going to refer to the portion attached to  
14 Mr. Harrison's testimony. Have you seen that, sir?

15 A. I've seen it. I don't have it up here with  
16 me.

17 Q. Do you need to see? Let's ask a few questions  
18 and if you need to see it, I'll be happy to hand you a copy of  
19 Mr. Harrison's testimony. And I believe that Mr. Mitten has  
20 indicated it's not highly confidential. Is that your  
21 understanding, sir?

22 A. That's my understanding.

23 Q. And that agreement requires MGE to seek rate  
24 recovery. Correct?

25 A. That's my understanding.

1           Q.       In order for Western Resources, which is now  
2 West Star; is that right?

3           A.       I believe so, yes.

4           Q.       To participate in paying for these  
5 liabilities. Is that your understanding?

6           A.       Well, it's not the only, but it is one of the  
7 requirements.

8           Q.       Okay. And it doesn't require you to actually  
9 get rate recovery, but says you must seek rate recovery; is  
10 that right?

11          A.       That, Ms. Shemwell, is -- is something I don't  
12 understand. I mean, I can't answer that. That's part of the  
13 contract. And that is a legal question that I can't address.

14                   MS. SHEMWELL: If I may approach, Judge.

15                   JUDGE JONES: You may.

16 BY MS. SHEMWELL:

17          Q.       Okay. I'll just leave this with you.

18          A.       Yeah. That's fine.

19          Q.       Thank you. This is attached to Mr. Harrison's  
20 Rebuttal Testimony. And I've handed it to Mr. Noack so that  
21 he may refer to it. Do you have that in front of you, sir?

22          A.       I do.

23          Q.       And just for identification, it's titled  
24 Environmental Liability Agreement. Correct?

25          A.       Yes, it is.

1 Q. And the date on the first page of the  
2 Schedule 1-1 at the top says, Environmental Liability  
3 Agreement. Right?

4 A. Yes.

5 Q. And on page 2, under Article 2, Covered  
6 matters are defined, and it says, Shall mean and refer to all  
7 environmental claims and environmental costs related to the  
8 assets or business which, in parenthesis, one, arise out of or  
9 are based upon environmental laws, and in parenthesis, small  
10 ii, are not included in assumed liabilities. Correct?

11 A. Correct.

12 Q. Do you know what liabilities were assumed?

13 A. No.

14 Q. Still on page 3, under C, shared liabilities,  
15 under small i in parenthesis, it indicates that, Insurance is  
16 the first line of recovery. Correct?

17 A. Correct.

18 Q. And it indicates that, The seller will  
19 undertake a survey of the plants and provide the buyer with  
20 results of the survey within 30 days after closing.

21 Do you know if that survey was provided to  
22 MGE?

23 A. I don't have any idea.

24 Q. Then in the middle of that page it indicates  
25 that, Seller agrees that the insurance coverage disclosed by

1 that survey shall constitute the first line of recovery. Do  
2 you know if the seller discovered and disclosed insurance  
3 coverage?

4 A. No.

5 COMMISSIONER MURRAY: Excuse me.

6 Ms. Shemwell, what document are you referencing?

7 MS. SHEMWELL: I'm in their environmental  
8 contract from the purchase that's attached to Mr. Harrison's  
9 Rebuttal at Schedule 1-1.

10 COMMISSIONER MURRAY: Thank you.

11 BY MS. SHEMWELL:

12 Q. Have there been insurance carriers involved in  
13 payment for environmental costs since MGE purchased this?

14 A. We've received insurance recoveries, yes.

15 Q. Who are the potentially responsible parties  
16 for these sites?

17 A. I do not know.

18 Q. On page 4, under, again, small ii in  
19 parenthesis, it indicates, Potentially responsible parties are  
20 identified for the purposes of cost sharing, that after  
21 deduction of certain expenses, anything recovered -- I'm  
22 paraphrasing here -- be paid to buyer and credited against the  
23 cost incurred with respect to such required remediation.

24 Have you followed me there, sir?

25 A. Yes.

1           Q.       And do you agree with my interpretation of  
2   that statement?

3           A.       It appears to be what the contract says, yes.

4           Q.       I guess my question is then, how can MGE get  
5   any recovery from potentially responsible parties if you don't  
6   know who they are?

7           A.       I don't -- I didn't say that MGE or Southern  
8   Union doesn't know who they are. I said I don't know who they  
9   are.

10          Q.       Okay. So someone at MGE may know?

11          A.       I would assume they would, yes.

12          Q.       When you testify that MGE has incurred costs,  
13   does that mean that MGE is out of pocket for environmental  
14   costs, has paid out of pocket any costs?

15          A.       No. I don't believe to date that any of the  
16   costs that have been paid have actually come out of MGE's  
17   pockets.

18          Q.       Will they eventually? Is that your  
19   speculation or will it be Southern Union?

20          A.       No. Eventually they will be -- they will be  
21   coming out of MGE's pockets.

22          Q.       When?

23          A.       I would assume -- I think --

24          Q.       Do you know?

25          A.       No, I don't. Probably as soon as all the

1 insurance recoveries where we get to -- we're in a net paying  
2 position right now unless we come up with more insurance  
3 recoveries. So I would assume very shortly.

4 Q. But that's an assumption?

5 A. It is.

6 Q. MGE doesn't own many of these sites; is that  
7 correct?

8 A. I believe there were six on the list that MGE  
9 owns and we've since sold one.

10 Q. And are there 14 total on the list?

11 A. I believe so.

12 Q. These plants are not used to serve current  
13 customers?

14 A. The old MGP plants aren't used, but the --

15 Q. Okay. And as long as you've been with MGE,  
16 these have not been used to manufacture gas?

17 A. As long as I've been alive, they haven't been  
18 used to.

19 Q. Your proposed environmental response fund,  
20 which I'm going to call ERF, actually pre-collects for costs;  
21 is that correct?

22 A. That's correct.

23 Q. And at this point you don't know what the  
24 costs are going to be?

25 A. No.

1           Q.       You can't tell this Commission that, in fact,  
2       there will be rate shock at some point, can you?

3           A.       No. I can't tell exactly what the costs are  
4       going to be, no.

5           Q.       They're not known and measurable at this  
6       point, are they?

7           A.       No.

8           Q.       Are you aware that the State of Missouri has  
9       recently adopted a statute that contains a mechanism for  
10      recovery of environmental costs at statute -- the number is  
11      386.266? Are you aware of that, sir?

12          A.       Is that the same as Senate Bill 179?

13          Q.       I think it was House Bill, for clarification.

14          A.       House Bill.

15          Q.       Would you like to look at this, sir?

16          A.       I mean, is that the same -- is it the same  
17      legislation you're talking about? I've been a part of several  
18      roundtable discussions related to environmental costs.

19          Q.       Recovery of environmental costs?

20          A.       Recovery of environmental costs.

21          Q.       But you can't state that the round -- let me  
22      ask. Were the roundtables here at the Commission?

23          A.       They were.

24          Q.       You don't know if they are addressing  
25      specifically Section 386.266. Is that what you're saying? Do

1     you want to see it, sir?

2             A.       Sure. Please.

3             MS. SHEMWELL: If I may approach, Judge.

4             THE WITNESS: I probably need to see my

5     handouts to have it, you know, appear recognizable.

6     BY MS. SHEMWELL:

7             Q.       May I take this?

8             A.       You can have it.

9             Q.       You need to look at your own testimony? Is  
10    that what you're saying?

11            A.       No, no. I'm talking about the roundtable  
12    handouts.

13            Q.       You don't have those with you?

14            A.       No, I don't. What am I looking at here?

15            Q.       These are the updates (indicating).

16            A.       This one I'm -- and this appears to be what I  
17    recognize as the 179 legislation, yes.

18            Q.       Do you need to continue to refer to that?

19            A.       I don't know what you're going to ask me about  
20    it, so --

21            MS. SHEMWELL: Okay. Judge, so that we may  
22    both look at this, I would ask that I may be allowed to stay  
23    right here. Is that acceptable?

24            JUDGE JONES: That's fine. As long as -- you  
25    got to share the same mic. I hope nobody has a cold or



1 anything.

2 BY MS. SHEMWELL:

3 Q. How are you feeling?

4 A. Better than David.

5 Q. So Mr. Noack, you would agree that in this  
6 statutory section, the Missouri legislature has created a  
7 mechanism for electrical, gas or water corporations to apply  
8 to the Commission to approve rate schedules authorizing rate  
9 adjustments for prudently incurred costs?

10 A. Yes.

11 Q. Thank you, sir. Do you have any questions  
12 that MGE could use this process to apply to the Commission for  
13 prudently incurred -- for recovery of prudently incurred  
14 environmental costs?

15 A. No. It's our hope that eventually something  
16 will come of that and a rulemaking will be -- will come out of  
17 this and we'll have some -- some rules and --

18 Q. Thank you.

19 A. -- to do this.

20 Q. And there are other mechanisms as well as  
21 this, such as an AAO. Would you agree with that?

22 A. Yes.

23 Q. Or a tracking mechanism?

24 A. Yes.

25 Q. Yes. You indicated that you had sold one of

1 the manufactured gas plant sites; is that correct?

2 A. I believe so, yes.

3 Q. Did you make -- was there a capital gain on  
4 that?

5 A. I don't -- if -- if there was, it was a very,  
6 very small gain. I think it was like \$685 or something like  
7 that is my recollection of what -- what that was.

8 Q. As you sold that site, was anything set aside  
9 for the cost of remediation?

10 A. Out of the \$685? I don't think so, no.

11 Q. Will MGE remain a potentially responsible  
12 party, a PRP, for that site?

13 A. I can't answer that. I would -- I would  
14 assume since it's still on the list of sites, I would assume  
15 so. It just -- on the list it says that it's no longer owned  
16 by MGE.

17 Q. Are any of the environmental costs that MGE  
18 has incurred, are they actually recorded on MGE's books?

19 A. No.

20 Q. And we've agreed that even though you use the  
21 term "incurred," that MGE has not been out of pocket anything.  
22 That was our understanding. Right?

23 A. Everything has been through the corporate  
24 books so far.

25 Q. And you've had insurance recoveries from --

1 all in caps -- A-E-G-I-S and National Indemnity. Correct?

2 A. Correct.

3 MS. SHEMWELL: That's all I have for this  
4 witness at this time. Thank you.

5 JUDGE JONES: Cross-examination from the  
6 Office of Public Counsel.

7 MR. POSTON: Yes. Thank you.

8 CROSS-EXAMINATION BY MR. POSTON:

9 Q. MGE has never operated a manufactured gas  
10 plant; is that correct?

11 A. No, they have not.

12 Q. And when Southern Union purchased MGE, it knew  
13 there were potential -- there was potential for MGP liability.  
14 Correct?

15 A. I would assume that they did.

16 Q. And those outstanding liabilities were taken  
17 into account in the purchase price; is that correct?

18 A. I would assume so. I wasn't part of the  
19 negotiations -- involved in negotiations so I would assume so.

20 Q. The document detailing how the manufactured  
21 gas plant liabilities would be handled between Southern Union  
22 and Western Resources is the environmental liability agreement  
23 that we've been discussing; is that correct?

24 A. Correct.

25 Q. Is that agreement still in effect?

1           A.       I believe so.

2           Q.       Have any costs associated with cleanups for  
3 prior years been deferred and which would be included or which  
4 would be paid by the environmental response fund?

5           A.       I don't believe we've -- we've -- no, I don't  
6 think so. I don't believe we've deferred any costs. We're  
7 just -- we're tracking the costs right now. And we basically  
8 have a list of what we've spent to date and offset those with  
9 the insurance recoveries that we've received to date. So  
10 there is a liability account on corporate books, yes. I mean,  
11 I believe there is an account set up on corporate for those,  
12 not on MGE's books.

13          Q.       So does that mean that costs that have already  
14 incurred would end up being paid by this fund?

15          A.       Well, I think at some point to the extent that  
16 we haven't -- we don't get insurance recovery, we would  
17 probably seek recovery of them, yes. We haven't yet, no.

18          Q.       In your Surrebuttal Testimony, page 12, are  
19 you there?

20          A.       Yes.

21          Q.       And you state here that you don't agree that  
22 manufactured gas plant costs must be known and measurable to  
23 be included in rates; is that correct?

24          A.       That's what -- that's what my answer says on  
25 page 12, yes.

1           Q.       And can you name me any case in the state of  
2 Missouri where costs that were not known and measurable were  
3 included in the determination of regulated rates?

4           A.       I am not really familiar with -- with  
5 electric, but I'm going to assume that to the extent that  
6 anything is being set aside for decommissioning costs, if --  
7 if there is such a thing, that would be the type of costs that  
8 might be included in rates for future payment. And that's the  
9 type of thing we're trying to do here.

10          Q.       I mean, can you name me a specific case where  
11 you know that --

12          A.       No.

13          Q.       -- that those costs were included?

14          A.       No.

15          Q.       And on page 15, you refer to a Williams'  
16 case --

17          A.       Yes.

18          Q.       -- where environmental costs were occurred at  
19 the FERC -- or in a FERC case. Correct?

20          A.       Correct.

21          Q.       And was that payment reached per a settlement  
22 by the parties?

23          A.       I believe the -- the recovery of the annual  
24 costs of the million seven was part of the stipulation and  
25 agreement. I think the refund percentages was part of a --

1 was -- was something from a past decision.

2 Q. And in that case, did the environmental costs  
3 pertain to manufactured gas plant remediation?

4 A. If I can take a look, I'm not -- I need to  
5 look at my exhibit real quick.

6 No, it involved cleanup of PCBs.

7 Q. And in the settlement agreement in that case,  
8 do you know what the parties that agreed to that settlement  
9 perhaps what -- you know, what the give and take was? What  
10 they received as, say, compensation for their agreement?

11 A. No, I do not.

12 Q. In MGE's last general rate increase case you  
13 proposed a similar fund, which would have collected 750,000  
14 per year instead of the 500,000 requested in this current  
15 case. Correct?

16 A. That's correct.

17 Q. And that was rejected by the Commission; is  
18 that correct?

19 A. Yes.

20 Q. Were any manufactured gas plant remediation  
21 costs actually reported in MGE's financial books of record for  
22 the period covered by this rate case?

23 A. No.

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

25 JUDGE JONES: Commissioner Murray?

1 COMMISSIONER MURRAY: Just a couple.

2 QUESTIONS BY COMMISSIONER MURRAY:

3 Q. Good morning -- yes, good morning again,  
4 Mr. Noack. If we were to set up this environmental response  
5 fund and then no costs were actually incurred, what would  
6 happen?

7 A. The fund -- since -- since we're proposing to  
8 segregate the funds into an interest-bearing account and  
9 nothing got spent, they would be refunded to the customers.

10 Q. When would that happen?

11 A. Whatever -- at what time we would decide that  
12 there weren't going to be any costs, you know, however that  
13 came about.

14 Q. So is the company proposing that \$500,000 be  
15 set aside every year until such time as there are costs  
16 incurred?

17 A. Yes, we are.

18 Q. And there's nothing specific designated as a  
19 true-up period or --

20 A. Well, as we would spend funds as part of the  
21 proposal, I mean, that we make, that as -- as the funds are  
22 spent, they would be subject to review by the Commission, OPC  
23 or I guess any other party that had an interest. Similar to  
24 the way that our gas costs are looked at now as -- you know,  
25 make sure that they're prudent, that they should be refunded

1 through this fund.

2 Q. So in other words, the intent is to set this  
3 fund up in this rate case. Next time you come in for a rate  
4 case, if there were costs incurred during that test year, make  
5 application for recovery through the fund that had been set  
6 up --

7 A. I don't think --

8 Q. -- or is it an automatic recovery out of the  
9 fund and then a true-up to determine that your costs were  
10 prudently incurred and that the appropriate amount was  
11 recovered out of the fund?

12 A. We would set up the fund and we would -- we  
13 would pay costs out of the fund as -- as they were incurred.  
14 And then, you know, on a yearly basis that those funds would  
15 be subject to audit, to review by the Commission.

16 And then at the time of the next rate case, we  
17 would prepare a report telling you, I guess, the status of the  
18 fund, whether or not it was probably accomplishing what it was  
19 supposed to, whether it needed to be larger, smaller, you  
20 know, that -- that would be what I would envision supplying  
21 you at the next rate case.

22 Q. Are you familiar with other jurisdictions that  
23 have done something similar?

24 A. I did a lot of research, Commissioner, and  
25 there are very many jurisdictions that seem to be doing --



1 they're doing something. Some will set aside costs on an  
2 annual basis. Some have it in the way of a surcharge. Some  
3 are using something similar to RAAO process. And I believe  
4 one has actually got it going through the PGA.

5 But, yes, I looked at approximately 20 -- 24,  
6 25 different jurisdictions to see how different companies were  
7 being -- were -- were recovering their environmental costs.

8 Q. Now, Ms. Shemwell asked you about the new law  
9 that had passed in Missouri; is that correct?

10 A. Yes.

11 Q. And I'm assuming that it would not be the  
12 company's intent to seek recovery under that new law for  
13 environmental costs as well as have an ERF fund established;  
14 is that correct?

15 A. No, Commissioner, no.

16 Q. That's not correct?

17 A. We would not seek both.

18 Q. Okay.

19 A. That is correct. We would not seek both.  
20 If -- it was our hope that, you know, by now those -- those  
21 roundtables and stuff would have resulted in a -- in a  
22 rulemaking that we could use, but -- but they just didn't and  
23 it's kind of bogged down and so we're asking for the fund.

24 Q. So in terms of the new law that was passed, is  
25 it not being implemented in the manner in which you initially

1 thought that it would be?

2 A. Well, it's my understanding that it's part of  
3 the -- of the law. The first thing that had to happen before  
4 it could be used by the Commission would be there would have  
5 to be a rulemaking. And it would set the -- the conditions as  
6 to how we would go about filing for recovery of environmental  
7 costs. And it would set how we would recover those. I mean,  
8 what type of costs, what -- when we would recover them, how we  
9 would recover them, etc.

10 And then we would come to you in a rate case  
11 with those costs set out in those conditions and ask for  
12 recovery of them. And you would have a basis to -- to allow  
13 us recovery.

14 Q. Have you personally participated in that  
15 rulemaking process?

16 A. Yes, I have.

17 COMMISSIONER MURRAY: All right. I think  
18 that's all I have. Thank you.

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

20 JUDGE JONES: Commissioner Gaw, do you have  
21 questions on environmental response fund?

22 COMMISSIONER GAW: I have questions on that  
23 and something else too.

24 QUESTIONS BY COMMISSIONER GAW:

25 Q. Mr. Noack, I'll try not to take too much time

1 on this issue, but I would like to have a little bit of a  
2 better understanding of these plants. And if you wouldn't  
3 mind telling me again how is it that MGE got these  
4 manufactured gas plants that are the subject of this  
5 environmental issue?

6 A. Well, it's -- it's my understanding,  
7 Commissioner, that just as the property has passed through the  
8 years from owner to owner, that liability has basically passed  
9 down through those -- those purchases. You can't get rid of  
10 it.

11 Q. That's not really what I'm asking, although  
12 that may tie back into it in a minute. I need a little bit  
13 more basic understanding of these properties and how MGE came  
14 to acquire the properties. The liability and whether it's  
15 tied to them or not is, I understand, an issue. But I  
16 don't -- I want to know the history. How did MGE come to  
17 acquire these properties or Southern or whoever it is that  
18 owns title to them?

19 A. Well, I'm not sure I could answer that. It  
20 would be my understanding it was part of the gas plant in  
21 service at one point in time.

22 Q. For who?

23 A. For the original gas -- I think it was called  
24 The Gas Company back in the 1800's that was the -- you know,  
25 the precursor of gas service company.

1           Q.       Now, don't go too fast for me here because I'm  
2   try-- I want to understand how this chain works.

3           A.       Well, I'm not sure I know the chain,  
4   Commissioner.

5           Q.       Is that in testimony somewhere?

6           A.       I don't think so, no. I do not believe  
7   there's -- the history is in testimony.

8           Q.       What do we have in testimony about the  
9   acquisition of this property or what do you know that you can  
10   tell me?

11          A.       The only thing that we have in testimony that  
12   I'm aware of is the agreement that Mr. Harrison put in his  
13   testimony, the environmental protection agreement with -- it  
14   was part of the purchase agreement with Western Resources in  
15   1994. Which -- I don't want to speak to legalese, but it  
16   was -- it was a partial indemnification, I guess, as you will,  
17   to Western that they would only be limited -- they would be  
18   limited in their liability up to some amount.

19          Q.       Okay. But I need a more basic understanding  
20   of what was being transferred to or from Western.

21          A.       All of the gas property.

22          Q.       And that was being transferred to Western?

23          A.       From Western to --

24          Q.       From Western --

25          A.       -- Southern Union.

1 Q. -- to Southern Union?

2 A. Right.

3 Q. Okay. And about when did that happen?

4 A. 1994.

5 Q. Is that all of the properties that we're  
6 dealing with were the subject of that transaction in this  
7 issue on the environmental?

8 A. Yes.

9 Q. Okay. And what were these properties used for  
10 after they were acquired by Southern?

11 A. The -- the properties that are owned by MGE  
12 now, the -- the five remaining properties, our central plant  
13 is on one of them. It's in the northeast part of Kansas City,  
14 Missouri. There's a service center in Independence that sits  
15 on one of them. There is a service center I believe in  
16 St. Joe that sits on one of them. And there's one in Joplin  
17 where our -- our local office I believe is and our -- our --  
18 basically our central plant for the southern region.

19 Q. Okay.

20 A. And I would assume that those are where the  
21 plants, you know, were at one point in time.

22 Q. So the use of these facilities that you  
23 mentioned is not -- none of them are being used obviously for  
24 production of gas at this point, haven't been for years --

25 A. Right.

1 Q. -- correct?

2 But it's been used as a piece of property  
3 where service centers have been either put up or moved into an  
4 existing building or something?

5 A. Yes.

6 Q. Now, how did these properties get -- are these  
7 properties titled in Southern or in MGE? And I'll follow up  
8 after you answer that.

9 A. I don't -- I don't know the answer to that,  
10 Commissioner. I don't know how they'd be titled.

11 Q. Well, MGE's --

12 A. They're on our books, on MGE's books.

13 Q. How did they get there, do you know?

14 A. They would have been on Western Resources'  
15 books, I mean, as it was part of the plant that -- that was  
16 identified and listed in the sale transaction.

17 Q. Actually, I guess what I'm asking is, how did  
18 they get on MGE's books internally at Southern?

19 A. They aren't. I mean --

20 Q. Do you understand my question?

21 A. -- we're a division, we have our own -- we  
22 have our own set of books, I mean --

23 Q. Right. But who makes the decision when  
24 Southern acquires property about what division gets to put  
25 that property on their books? Who makes that call at

1 Southern?

2 A. I don't know. I don't know the answer to  
3 that. But I mean, if --

4 Q. It would be Southern though, not MGE that  
5 would make that decision when Southern acquired the property  
6 about which division would actually show the property on their  
7 books. Correct?

8 A. Probably so, but --

9 Q. That's just the nature of the beast, isn't it?  
10 I mean, you've got a division of a corporation, the  
11 corporation itself, through its decision-making process,  
12 evaluates where it's going to place the property on its  
13 internal books.

14 A. Well, we -- I don't think it's quite -- quite  
15 that -- I'm trying to think of the word I'm looking for. We  
16 bought the -- Southern bought the gas properties from Western  
17 and I don't think Southern Union can just indiscriminately  
18 move a piece of property from MGE's books to Southern Union's  
19 books if -- you know, if we're using the property.

20 Q. But you weren't using the property -- MGE  
21 wasn't using the property as a division of Southern prior to  
22 the acquisition of the property by Southern, were they?

23 A. No.

24 Q. So when it was acquired by Southern, that  
25 decision to acquire it was made I assume by the overall

1 corporate decision makers at Southern?

2 A. Yes.

3 Q. And then someone at Southern, I assume, or the  
4 decision makers at Southern decided this is going to be  
5 considered internally as an MGE asset?

6 A. Yes. They were buying Missouri properties,  
7 yes.

8 Q. Now, was there anything unique about these  
9 properties that were acquired that tied them into a special  
10 need of MGE in its performance of its regulated activities?

11 A. At the time we purchased them?

12 Q. Yes.

13 A. Yes. I mean, like with central plant, that's  
14 where all the trucks and heavy equipment is kept.

15 Q. Was it kept there prior to acquisition by  
16 Southern?

17 A. I believe so, yeah. That was -- that was  
18 where Western Resources had a -- the plant, the property.

19 Q. Okay. I need to know a little bit more about  
20 what goes on at central so I can understand what you're  
21 telling me. What's the use of that central plant?

22 A. Central -- central plant is where our -- our  
23 field operations is basically run out of for the Kansas City  
24 part of the territory.

25 Q. Okay.



1           A.       And they keep their -- their heavy trucks, the  
2 backhoes, all of that heavy equipment there.

3           Q.       Yes.

4           A.       We have engineering there, we have -- well,  
5 basically most of our -- our Kansas City field operation  
6 people are there.

7           Q.       Okay.

8           A.       There are -- there are also several in Lee's  
9 Summit. Since that's so far south from downtown, we have  
10 another -- another area out there. We have an area in  
11 Independence where we keep, you know, equipment and stuff and  
12 in St. Joe and Joplin, same type of situation.

13          Q.       Okay. And just from a historical standpoint,  
14 this predates things here with me so I'm asking you some  
15 questions just to understand. Was all of this Western  
16 Resources' property, is that -- does that -- was that  
17 transferred at the time that MGE came into existence --

18          A.       Yes.

19          Q.       -- within Southern?

20          A.       Yes.

21          Q.       So Southern bought what was Western Resources'  
22 property and turned it into what has become MGE?

23          A.       That's correct.

24          Q.       Okay. That helps me to understand this a  
25 little better. So in regard to these properties then, were

1 all of them that you're discussing here in regard to a  
2 liability on the environmental side used for the purpose that  
3 they're currently used at when they were acquired by Southern?

4 A. I believe so, yes.

5 Q. And you don't know the history, I believe you  
6 said, of how these companies came to get into Western  
7 Resources?

8 A. No. That -- that predates me also.

9 COMMISSIONER GAW: Judge, I think that's all  
10 the questions I have on this topic. I do have other  
11 questions.

12 JUDGE JONES: On what?

13 COMMISSIONER GAW: I have a few other  
14 questions on other issues.

15 JUDGE JONES: Any issues in particular?

16 COMMISSIONER GAW: Yes.

17 JUDGE JONES: You can go ahead and step down.

18 Do you want to ask him those other issues or  
19 what?

20 COMMISSIONER GAW: Yes. I know you want me  
21 to.

22 JUDGE JONES: Well, we got to go back to  
23 unrecovered cost of service amortization. Is that one of the  
24 issues you want to talk about?

25 COMMISSIONER GAW: No.

1 JUDGE JONES: What do you want to talk about?

2 COMMISSIONER GAW: I want to talk to him about  
3 the conservation program.

4 JUDGE JONES: Okay.

5 COMMISSIONER GAW: Do you want to do that now?

6 JUDGE JONES: Yeah.

7 MS. SHEMWELL: I have a few questions as a  
8 result of Commission questions for this witness.

9 JUDGE JONES: Go ahead.

10 COMMISSIONER GAW: However you want to do it.

11 JUDGE JONES: Go ahead.

12 RE-CROSS-EXAMINATION BY MS. SHEMWELL:

13 Q. Mr. Noack, Commissioner Murray asked you about  
14 other states and you indicated to her that you'd done some  
15 extensive research; is that correct? Is that your memory?

16 A. That's correct.

17 Q. Have you identified any states that have this  
18 exact mechanism that you have proposed?

19 A. I didn't -- I didn't go real deeply in depth,  
20 but there are a couple of states that have a -- a fund, so to  
21 speak, an amount -- a set amount that is set aside on an  
22 annual basis, yes, to cover --

23 Q. Do you know if those are statutorily  
24 authorized?

25 A. Versus Commission authorized?

1 Q. Yes.

2 A. No, I do not.

3 MS. SHEMWELL: If I may approach, Judge.

4 JUDGE JONES: Yes, you may.

5 BY MS. SHEMWELL:

6 Q. Thank you. Mr. Noack, you and Commissioner  
7 Murray discussed this new statute and I'm going to -- and you  
8 discussed the fact that there's a rulemaking pending. Shall  
9 I -- is that a fair term?

10 A. No. It's not even pending yet. We haven't  
11 gotten that far.

12 Q. But I'm going to point you to paragraph 9 of  
13 386.266 and I'll just read this to you and ask you to read it  
14 along. Any electrical, gas, or water corporation may apply  
15 for any adjustment mechanism under this section whether or not  
16 the Commission has promulgated any such rules.

17 Have I read that correctly?

18 A. Yes.

19 Q. Were you aware of this section?

20 A. Well, I mean, I'm aware of it to the extent  
21 that it was discussed in the roundtable. And we've -- we've  
22 asked for this mechanism (indicating).

23 Q. As opposed to going through the mechanism that  
24 would be provided for by the statute?

25 A. Well, where was that again?

1           Q.       Here is the beginning (indicating) and here is  
2 the --

3           A.       Any electrical, gas or water corporation may  
4 apply for any adjustment mechanism under this section whether  
5 or not the Commission has promulgated any such rules.

6                   Well, we have applied for a mechanism in this  
7 case.

8           Q.       And are you saying that that mechanism then is  
9 made under this statute and would comply with the requirements  
10 of this statute?

11                   MR. MITTEN: Your Honor, I think this is --  
12 he's not a lawyer, he's not a legal expert. He wouldn't know  
13 whether or not the proposal the company's making is complying  
14 with that statute. If Staff has a legal argument, I suggest  
15 they make it in the brief, but this is not the right witness  
16 to be asking those questions to.

17                   MS. SHEMWELL: Well, Mr. Noack has said he  
18 participated in the roundtables so I think he has some  
19 familiarity of the statute. My point is that the statute  
20 permits him to go ahead and apply specifically for a mechanism  
21 under the statute whether or not the Commission has rules.  
22 And I guess my question is then, have they applied for a  
23 mechanism under this statute.

24                   JUDGE JONES: Do you know whether you've  
25 applied under the statute?

1 THE WITNESS: No. I'm going to say no, we  
2 haven't.

3 JUDGE JONES: Okay. No, you don't know or no,  
4 you haven't?

5 THE WITNESS: We weren't reading that statute  
6 when we asked for this mechanism.

7 JUDGE JONES: Okay.

8 BY MS. SHEMWELL:

9 Q. You discussed with Commissioner Gaw that some  
10 of these sites are currently used for certain operations. Are  
11 all of them used by MGE?

12 A. When you say "all of them," what are you  
13 referring to?

14 Q. The six that you have brought up.

15 A. The five that we have left, yes.

16 Q. Yes.

17 A. I believe so. I believe we have active plant  
18 in service or used and useful plant in service on those sites.

19 Q. That is not involving these particular plants  
20 though. Right? When Mr. Helfrich said they are underground  
21 now --

22 A. Right.

23 Q. So this plant is not used and useful?

24 A. No.

25 MS. SHEMWELL: I think that's all I have.

1 THE WITNESS: Nor is it in our rate-base.

2 MS. SHEMWELL: Okay. Thank you.

3 JUDGE JONES: Any recross from the Office of  
4 Public Counsel?

5 MR. POSTON: Yes, thank you.

6 RECROSS-EXAMINATION BY MR. POSTON:

7 Q. In response to a question from Commissioner  
8 Murray, I believe Ms. Shemwell brought this up. You said you  
9 looked at other states for similar type funds?

10 A. Yes.

11 Q. In how many of these cases had the utility  
12 agreed to accept such liability and been compensated for  
13 assuming such liability?

14 A. I don't understand what you're asking me  
15 there. I'm sorry.

16 Q. In how many of the cases that you looked at,  
17 the examples you looked at, had the utility that had that type  
18 of a funding mechanism agreed to accept these environmental  
19 liabilities through something similar to an environmental  
20 liability agreement and been compensated for assuming such  
21 liability?

22 A. I don't know.

23 Q. And to your knowledge, in the state of  
24 Missouri when a utility sells a property and realizes a gain,  
25 is that gain shared with ratepayers?

1           A.       To the -- to the extent that it's retired  
2 through mass asset accounting, I believe probably, yes. But  
3 if there are separate things that are sold, no, it would -- it  
4 would be a gain or loss below the line.

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

6                   JUDGE JONES: Any redirect from Missouri Gas  
7 Energy?

8                   MR. MITTEN: A few questions.

9 REDIRECT EXAMINATION BY MR. MITTEN:

10           Q.       Mr. Noack, Commissioner Murray asked you about  
11 the funding level for the ERF --

12           A.       Yes.

13           Q.       -- and you mentioned that it was \$500,000. Is  
14 there a provision in the ERF to adjust that annual funding  
15 level if it's determined to be too much or not enough? Maybe  
16 I've confus-- in subsequent rate cases, would the funding  
17 level be adjusted if the company believed it was necessary to  
18 do so?

19           A.       I don't think we've put anything in the fund  
20 that would necessarily give us opportunity to adjust it  
21 outside of a rate case.

22           Q.       But it could be adjusted in a rate case?

23           A.       We could go into the next rate case, yes, we  
24 could go and ask for a higher or lower level, yes.

25           Q.       Commissioner Gaw asked you a number of



1 questions about in whose name certain properties were titled.

2 Do you recall those questions?

3 A. Yes.

4 Q. Now, MGE is a division of Southern Union

5 Company is that right?

6 A. That's correct.

7 Q. Does MGE have a legal status of its own?

8 A. I don't know. I don't -- I don't know the

9 legal --

10 Q. So do you know whether or not MGE is legally

11 capable of having property in its own name?

12 A. I don't know.

13 Q. Public Counsel also asked you some questions

14 about the liability that Southern Union assumed as part of its

15 purchase of the Western Resources properties in Missouri. Do

16 you recall those questions?

17 A. I do.

18 Q. Are you familiar enough with CERCLA to know

19 whether or not it matters for liability under CERCLA whether

20 MGE had assumed liability under the purchase and sale

21 agreement or not?

22 MS. SHEMWELL: I don't believe anyone asked

23 Mr. Noack about CERCLA or anything about it, Judge. I think

24 this is beyond the scope of Commission questions and recross.

25 JUDGE JONES: Objection sustained.

1 MR. MITTEN: I have no further questions.

2 JUDGE JONES: Okay. Commissioner Gaw has  
3 questions on conservation. For clarity purposes in the  
4 transcript, let's go ahead and finish this issue and then move  
5 to conservation questions. So you can step down and we'll  
6 move onto Staff's witness.

7 COMMISSIONER GAW: Judge I'm not available at  
8 two o'clock. I have a meeting.

9 JUDGE JONES: Go ahead and ask the questions  
10 then. We'll go ahead and go with conservation.

11 MICHAEL NOACK testified as follows:

12 QUESTIONS BY COMMISSIONER GAW:

13 Q. Mr. Noack, I don't have a lot of questions on  
14 this. It looks like you just touched on this issue in your  
15 testimony generally. Would that be the case or --

16 A. Primarily I put a dollar amount in the revenue  
17 requirement, yes.

18 Q. But you have been exposed to this issue I know  
19 in the past rate cases to some degree, at least we've had a  
20 conversation about it in the past rate case.

21 A. Yes, we have.

22 Q. I'm just curious. I asked yesterday one of  
23 your witnesses about the level of involvement that MGE  
24 personnel may have in trying to study programs that might be  
25 out there around the country. And I wondered if you had any

1 additional information about whether you have individuals who  
2 have been assigned or who have, as a part of their duties,  
3 looking at conservation or efficiency programs that exist  
4 around the country?

5 A. Yes. To -- Mr. Hendershot mentioned  
6 Pam Levetzow, that's L-e-v-e-t-z-o-w, yesterday, who is  
7 director of community and governmental affairs. And she  
8 spends, I know, a good part of -- well, not -- some of her  
9 time dealing with organizations like Huey, the Metropolitan  
10 Energy Association. I know she has contact with Bob Jackson  
11 on a regular basis.

12 You know, and -- and meets with -- I know  
13 currently she's meeting with Empire, Kansas City Power &  
14 Light. I don't know if Aquila's involved in this, about  
15 putting together joint projects in Kansas City and Joplin  
16 where -- where we would cooperate with the electric utility in  
17 programs that would aid our customers in conservation  
18 practices. They would involve, you know, Energy Star  
19 practices, things like that.

20 But I know that -- that those have just kind  
21 of recently begun, those -- those conversations with Empire  
22 and KCP&L, but they are ongoing. And I think those are kind  
23 of at the request -- it's my understanding, of Ryan Kind of  
24 the Of-- Office of Public Counsel that -- that we be involved  
25 with them.

1           Q.       Has she been attending seminars or programs  
2     that are put on by DOE, trade associations, not for profits  
3     that focus in on energy conservation and efficiency, do you  
4     know?

5           A.       I can't speak directly to the things that --  
6     that she's attended, but I know she has, you know, come down  
7     to different programs here in Jeff City at various times, but  
8     no, I cannot speak to -- to the types of things that she's  
9     gone to or attended.

10          Q.       Would there be anybody else at MGE who would  
11     be doing that?

12          A.       No.   Pro-- probably the only other person  
13     that -- you know, I got heavily involved in the long-term  
14     energy and affordability task force.   I don't know how many  
15     meetings I went to, it was probably in the teens, but so --

16                   And I know that Mr. Hendershot, while he said  
17     he hasn't attended things, has been doing lots of research  
18     over the last four months looking at companies all over the  
19     United States and trying to find a program that, number one,  
20     would benefit our -- our customers; number two, would be  
21     something that would be easily administered both from the  
22     customer's standpoint and the company's standpoint; and three,  
23     it would be something that Staff, OPC and the Commission would  
24     approve of.

25          Q.       I asked him yesterday, I'll ask you this

1 today. Was his research -- when did company take a position  
2 in regard to its proposal on conservation in this case?

3 A. Well, the testimony that was filed was -- was  
4 filed in Rebuttal Testimony.

5 Q. Okay.

6 A. But -- but we took a position long before  
7 that. It was -- I mean, I think Ms. Meisenheimer yesterday  
8 made mention of a meeting that -- that she attended with  
9 company and Staff. And I believe Mr. Poston was there also.  
10 But that meeting was -- was at the request of Missouri Gas  
11 Energy.

12 What I can't remember is if it was immediately  
13 preceding our filing of the case or immediately after. It  
14 was -- it was one or the other. It was very close to the  
15 filing.

16 Q. Okay.

17 A. And -- and what the purpose of the meeting  
18 was, was to come down here and discuss with Staff and OPC the  
19 problems that we have been having in the past with earning our  
20 authorized rate of return. And the fact that -- that the  
21 cause of that is primarily weather driven and, you know,  
22 having so much of our revenue dependent on volumetric rates.

23 As part of that meeting, it was really MGE  
24 with myself and Mr. Feingold, who we knew going in that to  
25 request be it a weather normalization plan or straight fixed

1 variable rates, that as part of that request, we were going to  
2 need to develop conservation programs to offer to the  
3 Commission as part of this total package.

4 And -- and we told Staff and -- and Office of  
5 Public Counsel that we were willing to do that. We did not  
6 put forth any proposals at the time. We kind of waited for --  
7 for Staff and -- and OPC to I guess come up with what they  
8 wanted to see first and then see if we could actually do  
9 something like that.

10 And -- and that's how that all came about. We  
11 did not totally ignore -- we knew going in that we had to --  
12 had to tie a conservation program to the rate design we were  
13 requesting.

14 Q. Okay. So the research that was done in this  
15 last four months was basically subsequent to the position  
16 taken by MGE on its proposal for conservation?

17 A. Yeah. It was -- it was part of -- yes.

18 Q. So, in essence, was it mainly researched just  
19 to support the position that MGE had taken?

20 A. No. It was researched to -- to come up with  
21 the -- with probably the best plan to put forth initially.

22 Q. Well, the reason I'm confused about that is  
23 that it sounds like you're telling me that you took a position  
24 on the program and then followed it up with research rather  
25 than the other way around. And that's the -- that's the

1 reason I'm asking these questions --

2 A. I understand.

3 Q. -- in part. And -- and I guess just to be a  
4 little bit more illustrative here about why I'm asking these  
5 questions, it -- because DNR isn't a party in this case, it  
6 appears that the only thing that's been put forward to  
7 consider by the Commission is what MGE has proposed as a  
8 conservation program, which potentially makes it difficult to  
9 examine how that program fits in with other possibilities that  
10 are out there and that have been utilized around the country.  
11 Because no one has put forth much, if any, evidence other than  
12 through inquiry here from the Bench about those other  
13 programs.

14 And I'm trying to understand how it is that we  
15 got to this point. And I'm not trying to place all of the  
16 responsibility here on MGE. I'm just -- I want you to tell me  
17 if I'm wrong about how it appears from the standpoint of how  
18 this proposal developed by MGE is a piece to me understanding  
19 how this whole proposition got here from all the parties.

20 A. Well --

21 Q. If I'm wrong about that -- about what it  
22 appears to be, please tell me if you think that that -- that  
23 conclusion is incorrect about how the MGE proposal got  
24 developed and the research that was done.

25 A. It is -- it's not -- not totally accurate.

1 Again, when we -- when we put the case together, before we  
2 filed it, we -- we knew that to -- to offer up this kind of  
3 rate design proposal, we would have to include with that some  
4 kind of conservation program.

5                   Whether that came out of settlement  
6 discussions, something, you know, or just -- you know, a  
7 proposal that Staff, OPC came up with or whether it was  
8 something that -- that we found other companies using that we  
9 thought would benefit our customers, those were all parts of  
10 what we considered in doing.

11                   And unfortunately, we -- the dialogue I guess  
12 that -- that we normally have probably with -- with other  
13 parties regarding some of this stuff probably wasn't as good  
14 as -- as always has been.

15           Q.       Yes.

16           A.       But --

17           Q.       Do you recognize going to this -- this  
18 proposal of having just a straight customer charge, it is a  
19 significant departure from what has been done in the past in  
20 Missouri, on how rates are charged for LDCs?

21           A.       It's -- it's a significant change, yes.

22           Q.       Do you know if all other things were -- remain  
23 the same, about how much revenue increase MGE would have  
24 received annually since the last rate case if this customer  
25 charge that's being proposed here would have been in effect as



1     opposed to what was in effect? Have you made that calculation  
2     or some general --

3             A.       No.

4             Q.       -- determination?

5             A.       But Mr. Feingold has got that calculation in  
6     the form of a chart in his exhibit. It's in his Direct  
7     Testimony. I don't have his Direct Testimony with me, but I  
8     believe it's -- might be Schedule 9.

9             Q.       Schedule 9.

10            A.       Now, I can tell you for the first six months  
11   of 2006 --

12            Q.       Yes.

13            A.       -- for residential class it was \$11 million.

14            Q.       11 million. Do you remember -- we can get  
15   that chart if you'd like to look at it. Give me an idea about  
16   what it would have been in other time frames.

17            A.       Right. It would just be showing you the  
18   information that you're requesting.

19                    COMMISSIONER GAW: That would be fine.  
20   Someone have that chart they could give to the witness?

21                    MR. MITTEN: We're looking for it.

22                    MR. BOUDREAU: Did you bring Russ's testimony?

23                    THE WITNESS: I don't believe I did.

24                    MR. MITTEN: We don't seem to have a copy.

25                    THE WITNESS: I'm sure we have numerous copies

1     upstairs so --

2                   COMMISSIONER GAW:   Does anyone else have it  
3     down here?

4                   MR. POSTON:   What's the schedule?

5                   THE WITNESS:   Russell Feingold's Direct  
6     Testimony.

7                   MR. FRANSON:   Got it right here.

8                   THE WITNESS:   It's -- it's Schedule 9.   It's  
9     the one that shows the margin shortfall.   Your Honor.

10    BY COMMISSIONER GAW:

11                 Q.     You can just keep it there if you'd like and  
12     give me an idea about what it says to you, Mr. Noack.

13                 A.     In the -- what it is, is it's the residential  
14     impact of weather is -- is what the -- what the schedule is  
15     purporting to show in dollars.   You requested from the -- from  
16     the last rate case?

17                 Q.     Or something that can give me some sort of an  
18     annual idea of what -- what --

19                 A.     Well, for 2002, the shortfall was  
20     approximately \$8 million.

21                 Q.     Okay.   That was prior to the last rate case.

22                 A.     Right.

23                 Q.     Go ahead if you can come forward from that.

24                 A.     2003 it appears to be somewhere in the  
25     neighborhood of \$2.5 million.

1 Q. Okay.

2 A. 2004, approximately \$6 million.

3 Q. Okay.

4 A. And 2005, approximately \$6 million.

5 Q. Okay. Now, correct me if I'm wrong, but MGE  
6 has not proposed in this conservation proposal or efficiency  
7 proposal that it has made along with the decoupling request on  
8 rates, to put in any dollars that would be non-ratepayer  
9 dollars into the conservation effort?

10 A. There -- there -- to me that -- that kind of  
11 becomes a question of semantics in that in my -- in my true-up  
12 testimony, I offered to the Commission that if this rate is  
13 accepted, that MGE would accept a million dollar decrease in  
14 the overall revenue requirement.

15 Now, you could say that, okay, that's a --  
16 that's a decrease to the revenue requirement or you can say  
17 it's giving -- offering the Commission a million dollars to  
18 spend on conservation programs, whatever program they want to  
19 spend it on. But once we get down to, I guess, what you would  
20 say is a -- a shareholder return, I can't give that away.

21 Now, there is probably another hundred and  
22 thirty or forty thousand dollars that we would be willing --  
23 and this would definitely be ratepayer dollars, with the  
24 seasonal disconnect. I know Ms. Meisenheimer has done a  
25 calculation at -- at different levels of the straight fixed

1 variable service charge and that amount of money based on the  
2 seasonal disconnects from last year would amount to about  
3 \$140,000.

4 And MGE would propose to add up to that  
5 \$140,000 or the first \$140,000 of any seasonal disconnects  
6 that were experienced to -- to a conservation program.

7 Q. Are you aware that some of the proposals that  
8 have been made by companies and actually have been made by  
9 companies when they are going to and advocating a decoupling  
10 provision have put in company dollars as a part of the  
11 proposal in company dollars toward conservation and  
12 efficiency?

13 A. I'm not aware specifically of the -- of the  
14 companies that are doing that, no. But, again, once again, I  
15 think, you know, our testimony addresses that in a certain  
16 extent, that, you know, we realize the value of this and we're  
17 willing to -- to take a million dollars less for it.

18 Now, if you want to go ahead and give us the  
19 million dollars and we will take that ratepayer money and --  
20 or that company money and apply it to programs or the  
21 shareholders will forego it and it goes to the ratepayers that  
22 way.

23 COMMISSIONER GAW: I think I'll stop there,  
24 Mr. Noack. Thank you very much.

25 THE WITNESS: Thank you.

1 JUDGE JONES: At this time we'll have recross  
2 from Staff of the Commission.

3 MR. FRANSON: No questions, your Honor.

4 JUDGE JONES: Office of Public Counsel?

5 MR. POSTON: Just a few.

6 RE-CROSS-EXAMINATION BY MR. POSTON:

7 Q. You stated several times that it was your  
8 belief that when you brought your rate design proposal,  
9 revenue decoupling, that you would need to bring conservation  
10 programs.

11 A. Yes.

12 Q. And why? Why is that?

13 A. Well, because part of the -- the reason for  
14 this is with the strict -- straight fixed variable rate  
15 design, we don't have to depend on volumetric sales anymore.  
16 And, you know, it's in our best interest to -- to promote  
17 conservation if it doesn't affect the bottom line and our  
18 ability to earn a return.

19 Q. So what's the relationship then between the  
20 rate design and conservation? If you thought that there  
21 needed to be a conservation program attached to it, what's  
22 that relationship?

23 A. When you say -- well, with -- with the rates  
24 not being dependent on selling volumes of gas to the  
25 residential customer, it will help -- you know, by promoting

1 conservation, it should help customers lower their bill, help  
2 conserve the natural resource, natural gas. Is that what  
3 you're asking? I mean, that's, I think, the purpose of it.

4 Q. I mean, it's because your rate design would,  
5 in fact, reduce conservation incentives and so you felt the  
6 need to then bring in more conservation -- pro-conservation  
7 type programs?

8 A. See, that is 100 percent entirely wrong at  
9 least as far as what I feel. Now, Ms. Meisenheimer can feel  
10 that, but I do not see how this rate design in any way, shape  
11 or form detracts from conservation. It -- just if somebody  
12 wants to conserve, and I think people do, this doesn't affect  
13 that and it doesn't affect us helping them conserve.

14 Q. But you still felt the need to bring in a  
15 conservation program. You said that several times with this  
16 rate design. But you're saying there's no tie between rate  
17 design and conservation?

18 A. No, there is. I'm saying there is. We would  
19 like to help customers lower their bill. With this rate  
20 design, we can.

21 Q. Okay. And are the energy efficiency and  
22 conservation programs that you have proposed, is that the most  
23 MGE's willing to offer in exchange for the revenue decoupling  
24 rate design?

25 A. I don't know that that's -- that's our final

1 offer, no. I mean, I've just offered another \$140,000 just  
2 now to Commissioner Gaw.

3 Q. Okay. If you add that in, is that the most  
4 you're willing to offer?

5 A. I don't know. I mean, that's something I need  
6 to discuss with Mr. Hack and he has to discuss I'm sure with  
7 others.

8 Q. You looked at Mr. Feingold's Schedule 9 and  
9 you discussed what you called revenue shortfalls for each of  
10 the years that were discussed; is that correct?

11 A. Yes.

12 Q. Would you agree that each year indicated on  
13 that chart that MGE earned a positive return?

14 A. We didn't earn our authorized return --

15 Q. That's not what I asked.

16 A. -- we did not have a loss.

17 Q. Did you earn a positive return?

18 A. We earned a positive return, yes, it's not a  
19 negative return.

20 Q. And would you agree that you earned a return  
21 between 5.74 percent and 8.29 percent, in that range?

22 A. I think that probably is --

23 Q. I believe that's your MRN-5.

24 A. Yes.

25 MR. POSTON: Thank you. That's all.

1                   COMMISSIONER GAW: Judge, I have just a couple  
2 questions. I apologize for this. It's really just in  
3 addition.

4 FURTHER QUESTIONS BY COMMISSIONER GAW:

5           Q.       Mr. Noack, are you familiar with Kansas City  
6 Power & Light's initiatives on conservation under the  
7 regulatory plan at all?

8           A.       No. But I believe that's one of the things  
9 that Ms. Levetzow is working with Kansas City Power & Light  
10 on.

11          Q.       Are you familiar with the concept of having  
12 remote thermostat adjustment?

13          A.       No. I'm not -- I'm not familiar with their  
14 stuff.

15          Q.       Okay. Do you know whether Kansas City Power &  
16 Light and MGE customers overlap; in other words, that they  
17 could be customers of both?

18          A.       Oh, absolutely.

19          Q.       And do you know if it's possible -- if you  
20 don't know, I understand. Is it possible that a thermostat  
21 that is remotely controlled by Kansas City Power & Light on  
22 electric would also relate to a gas furnace in the same home  
23 or would that be a different thermostat?

24          A.       You know, I don't -- I don't know. If  
25 they're -- if they're controlling the thermostat, I would



1     assume they could control it 24 hours a day and it would  
2     affect whether -- depend on whether you've got it set to heat  
3     or cool.

4             Q.       Yes.

5             A.       But I don't know the answer to that, but I  
6     would --

7             Q.       Would that be one of the things that you all  
8     could look into with KCP&L?

9             A.       I -- I'm sure we could, yes.   Yes.

10            COMMISSIONER GAW:   Okay.   I don't have  
11     anything further.   I apologize for that, Judge.

12            JUDGE JONES:   Any recross based on these  
13     questions?

14            MR. FRANSON:   No, your Honor.

15            JUDGE JONES:   Any redirect?

16            MR. MITTEN:   No.

17            MR. BOUDREAU:   We have none.   Thank you.

18            JUDGE JONES:   Okay.   At this time let's go  
19     ahead and break for lunch.   It's almost one o'clock.   We'll  
20     come back at 2:00.   Now, do you all -- we have two issues  
21     remaining --

22            MR. FRANSON:   Judge, I'm sorry.   We had some  
23     things I wanted to ask Commissioner Gaw.   We had three  
24     witnesses, Staff does, specifically intending to come back to  
25     answer questions for him.   I just wondered when you wanted to

1 do that?

2 COMMISSIONER GAW: On what issues?

3 MR. FRANSON: Well, there is Ms. Ross, she had  
4 some additional information that was something you'd asked her  
5 on Tuesday, programs in other states and specific information.  
6 There's Mr. Wells, you'd asked for '76 through 2005, some  
7 information on weather normals. And then I don't know exactly  
8 what your question was for Mr. Gray, but all three of those  
9 people are available at your convenience.

10 MR. POSTON: And, likewise, we don't know if  
11 Commission was done with Ms. Meisenheimer.

12 MR. FRANSON: And we had left  
13 Ms. Meisenheimer, she was still subject to cross-examination  
14 and I think that was still an open issue also whether there  
15 were any more questions from the Commission.

16 COMMISSIONER GAW: Mr. Gray, the inquiry I had  
17 of him has to do with how the -- just technically, how the  
18 test year is modified by the weather normalization heating  
19 degree days. It's just so I can technically understand how  
20 that works.

21 MR. FRANSON: Okay.

22 COMMISSIONER GAW: The issue -- the other  
23 questions that I had are about producing the documents, I  
24 don't have any questions. I just wanted the document. And if  
25 people have -- if parties have cross -- so I don't need to be

1 here on that.

2 MR. FRANSON: Well, I know that Ms. -- I know  
3 that Mr. Wells has produced a document that we believe answers  
4 your question. We'd be happy to bring him back and offer that  
5 and then --

6 COMMISSIONER GAW: As long as he's answered  
7 the question, I probably don't have any questions about it,  
8 but if parties have about how he arrived at it, that would be  
9 a different deal.

10 MR. FRANSON: Thank you.

11 COMMISSIONER GAW: So, Judge, however that  
12 works out.

13 JUDGE JONES: Okay.

14 COMMISSIONER GAW: Mr. Gray's the only one  
15 that I wanted to hear specifically about that explanation.

16 MR. FRANSON: I just need to know a time to  
17 have Mr. Gray in here.

18 JUDGE JONES: Tomorrow.

19 COMMISSIONER GAW: I'm not going to be here  
20 tomorrow, but I can look at the transcript. Either way is all  
21 right as long as you understand what I'm asking.

22 MR. FRANSON: I'm not sure I do so -- I mean,  
23 I understand you have a technical question, but I'm not sure I  
24 know what that question is. But if the Judge does --

25 COMMISSIONER GAW: I've got a public hearing

1 in Moberly tomorrow.

2 JUDGE JONES: Well, we're going to go to lunch  
3 now. Does anybody have any questions for Ms. Meisenheimer on  
4 the issues that were left yesterday, natural gas, low-income  
5 weatherization?

6 MR. FRANSON: I had a few more.

7 MR. BOUDREAU: I may have several questions,  
8 not many.

9 JUDGE JONES: Okay. Then we'll come back to  
10 her after lunch. We'll continue with these questions on the  
11 issues of unrecovered cost of service amortization and then  
12 environmental response fund unless you all want to do it a  
13 different way, but I want to finish today what we have  
14 scheduled to finish today.

15 MS. SHEMWELL: Staff is interested in --

16 JUDGE JONES: It doesn't matter in which order  
17 we do all those things.

18 MS. SHEMWELL: -- finishing environmental  
19 response fund today.

20 JUDGE JONES: But do you care how we do it is  
21 what I'm asking?

22 MR. POSTON: What you proposed is fine.

23 MR. FRANSON: That's fine with us, Judge.

24 MR. BOUDREAU: I don't think it will take  
25 long. I've got maybe a half dozen questions for

1 Ms. Meisenheimer.

2 JUDGE JONES: Okay. I got a feeling we're  
3 going to finish these other two issues before five o'clock  
4 even and tomorrow at noon this room is going to be taken for a  
5 public hearing. I propose we keep moving through the  
6 schedule. Now, what we --

7 MS. SHEMWELL: We'll have to vacate this room  
8 by 5:30 for the public hearing.

9 JUDGE JONES: We're going to stop at 5:00  
10 today and we have to stop at noon tomorrow. Now, if we're  
11 not -- if we can't finish everything by noon tomorrow, the  
12 only alternative would be to go to 305 and finish. And you  
13 all are fine with that? Well, you don't really have a choice.

14 MR. FRANSON: We'll go wherever you tell us,  
15 Judge.

16 JUDGE JONES: As far as the information  
17 Commissioner Gaw wants from whoever, tell him to write it  
18 down, pass it around and submit it into evidence. Because if  
19 we don't know what the question is, what's the point in  
20 putting him on the stand?

21 MR. FRANSON: I guess, Judge, the point of  
22 putting him on the stand would be that for two of our  
23 witnesses -- not for Mr. Gray, we'll have to bring him in if I  
24 understood Commissioner Gaw correctly --

25 JUDGE JONES: Bring him in for what purpose?

1                   MR. FRANSON: Because he has a technical  
2 question about --

3                   JUDGE JONES: Commissioner Gaw will not be  
4 here to ask that question.

5                   MR. FRANSON: Okay. Then from Mr. Gray, I  
6 don't -- unless we know exactly what the question is, I don't  
7 think we can respond. On Mr. Wells and Ms. Ross, we have  
8 specific documents that we would like to offer into evidence  
9 and at least I think we're going to need to offer that to the  
10 other parties as an opportunity in case they had any  
11 questions.

12                  And I know we have circulated Ms. Ross's  
13 document but I haven't checked with the other parties. On  
14 Mr. Wells' document, it has not been circulated with the  
15 specific idea that we believed he needed to come back in and  
16 answer questions. And if that document answers it, then we  
17 would know, but since that's not going to be how --

18                  JUDGE JONES: Just circulate the document. If  
19 it's okay with everyone, it will be part of the evidence. If  
20 it doesn't answer whatever the question was, then it will be  
21 just another piece of paper in the file.

22                  MR. FRANSON: Thank you, Judge.

23                  JUDGE JONES: Mr. Poston, did you have  
24 something?

25                  MR. POSTON: I was just going to say we had no

1 problem with Anne's document. We haven't seen Mr. Wells'  
2 document, but doubt we'll have a problem with it.

3 JUDGE JONES: With that then, we're off the  
4 record. We'll come back at two o'clock.

5 (A recess was taken.)

6 JUDGE JONES: Go ahead, Mr. Franson.

7 MR. FRANSON: I think, if I may, I've got some  
8 folks here. I'm believing I'm not going to have an objection  
9 to this. What I've got is a one-page Staff response to a  
10 request by Commissioner Gaw that was put to Mr. Curt Wells.

11 And that was left that if we had a document to  
12 which there was no objection by the other parties, that we  
13 would offer it. I'd like to do that at this point in time.  
14 And it would be I believe Staff Exhibit No. 132. And I do  
15 have the number of copies I believe I would need. So if I may  
16 approach the court reporter at this time?

17 JUDGE JONES: You may. You say it's Curt  
18 Wells?

19 MR. FRANSON: What it is Judge is --

20 JUDGE JONES: Is it relevant to Curt Wells'  
21 testimony?

22 MR. FRANSON: Yes, it is a -- yes, it is.

23 JUDGE JONES: Let's make it 109-A.

24 MR. FRANSON: 109-A. Thank you. If I may  
25 approach, Judge?

1 JUDGE JONES: Yes.

2 (Staff Exhibit No. 109-A was marked for  
3 identification.)

4 MR. FRANSON: Judge, in response to questions  
5 that Mister -- that Commissioner Gaw had asked Mr. Wells,  
6 Staff prepared this exhibit and that was left that this has  
7 been distributed to the other parties that are here today.  
8 And at this time I -- and we've marked this as Exhibit 109-A.  
9 At this time I would move for the admission of Exhibit 109-A.

10 JUDGE JONES: Any objections?

11 Exhibit 109-A is admitted into the record.

12 MR. FRANSON: Thank you, your Honor.

13 (Staff Exhibit No. 109-A was received into  
14 evidence.)

15 JUDGE JONES: Is that it, Mr. Franson?

16 MR. FRANSON: At this time, yes, Judge.

17 JUDGE JONES: Do you have recross for  
18 Ms. Meisenheimer?

19 MR. FRANSON: Yes. I had some additional  
20 recross. If I might proceed, your Honor.

21 JUDGE JONES: Okay. Let me, for the record,  
22 be clear. We're back on the topic now of low-income  
23 weatherization and natural gas conservation or one or the  
24 other or both. I don't know. I'm just asking whichever it  
25 is?



1                   MR. FRANSON: We're taking them both together  
2 was my understanding.

3                   JUDGE JONES: Go ahead.

4 BARBARA MEISENHEIMER testified as follows:

5 RE-CROSS-EXAMINATION BY MR. FRANSON:

6           Q.       Good afternoon, Ms. Meisenheimer.

7           A.       Good afternoon.

8           Q.       Just so we're clear, your testimony,  
9 especially your surrebuttal, contains some questions and some  
10 criticisms of MGE's proposal regarding conservation program;  
11 is that correct?

12          A.       Yes.

13          Q.       Okay. But Office of Public Counsel didn't put  
14 forth their own proposal at any time?

15          A.       Not in this case.

16          Q.       Okay. Now, hypothetically, assume the  
17 Commission in its Report and Order adopts the rate design that  
18 MGE has put forth and that this program would be funded by  
19 ratepayers and they set up -- there's a collaborative group  
20 putting forth -- working on the details to implement this  
21 program.

22                   Would the Office of Public Counsel, whether  
23 that was you or anyone else in your office, be willing to  
24 participate in that program?

25          A.       We would be willing to participate, I believe,

1 to the extent that our resources allow us to do so. And I  
2 assume that when you said the "program," you mean the entire  
3 package of both the informational piece as well as the --

4 Q. Yes.

5 A. -- heater --

6 Q. You mean the --

7 A. -- rebate.

8 Q. -- water heater perhaps?

9 A. The water heater rebates.

10 Q. Yes.

11 A. Yes.

12 MR. FRANSON: With that, Judge, I don't  
13 believe I have any further questions.

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

16 MR. BOUDREAU: Yes. Just a few questions.  
17 Thank you.

18 JUDGE JONES: Go right ahead.

19 RECROSS-EXAMINATION BY MR. BOUDREAU:

20 Q. Good afternoon, Ms. Meisenheimer.

21 A. Good afternoon.

22 Q. I want to take you back -- I think it's in  
23 some context of some questions that you received from  
24 Commissioner Gaw. And he mentioned some language in the  
25 Report and Order in MGE's last rate case.

1           A.       Yes.

2           Q.       I see you have it handy. I want to take you  
3 back to the language that he referred to on page 66.

4                   JUDGE JONES: Is that of the Report and Order  
5 in that case?

6                   MR. BOUDREAU: Yes. This is the Report and  
7 Order in Case No. -- for the record, Case No. GR-2004-0209.

8                   JUDGE JONES: Thank you.

9                   THE WITNESS: Yes, I'm there.

10 BY MR. BOUDREAU:

11           Q.       And I believe he read to you the first  
12 sentence and the last -- or second full paragraph on that  
13 page. Well, let me read the sentence. I believe he read to  
14 you the following sentence: The Commission is interested in  
15 further consideration and development of the PAYS program.  
16 And I believe you agreed with him that that was the language  
17 in the order; is that correct?

18           A.       Yes.

19           Q.       Is it also true that the following -- the  
20 sentence immediately following that is, However, such  
21 consideration needs to take place in a broader setting than is  
22 afforded in -- or is afforded by MGE's rate case?

23           A.       Yes.

24           Q.       Okay. Thank you. What was the date of that  
25 order? Do you --

1 A. The effective date?

2 Q. The issue date, please.

3 A. The issue date, September 21st, 2004.

4 Q. Okay. Thank you. With respect to the PAYS  
5 program or the -- with respect to the PAYS program, can you  
6 tell me how many natural gas LDCs in the United States have  
7 either voluntarily adopted the PAYS -- a PAYS program or have  
8 been directed to implement a PAYS program?

9 A. Natural gas?

10 Q. Natural gas, LDCs.

11 A. There may be work going on in Michigan that  
12 I -- you know, I don't know all the details of or the point  
13 it's at in the process, but other than that, no natural gas  
14 companies that I know of.

15 Q. I want to take you back to the final report of  
16 the energy affordability task force. You remember? You and I  
17 had vis-- I know you may not have a copy of it. I just want  
18 to revisit that topic with you. Do you recall whether one of  
19 the recommendations to the Commission in that task force  
20 report was to investigate Pay As You Save type programs for  
21 residential and small commercial customers?

22 A. May I see a copy of that?

23 Q. Yes, yes.

24 MR. BOUDREAU: May I approach the witness,  
25 please?

1 JUDGE JONES: Yes, you may.

2 THE WITNESS: As I indicated, I participated  
3 in the early meetings of this task force and I remember that I  
4 had, in fact, raised PAYS as something that I thought should  
5 be considered by that task force. So -- and I passed material  
6 on to Ruth O'Neill. I'm glad to see that it made it into the  
7 report.

8 BY MR. BOUDREAU:

9 Q. So at the bottom of the page that you just  
10 looked at then, just so the record's clear --

11 A. Yes. Page 26, Other recommendations. Yes.

12 Q. Thank you. Oh, before I take this from you,  
13 would you agree with me that the date of the report is  
14 March 31st, 2005?

15 A. Yes.

16 Q. Thank you. Can you tell me whether an  
17 investigatory docket has been established for that purpose?

18 A. For PAYS --

19 Q. Yes.

20 A. -- specifically?

21 Q. Yes.

22 A. Not to my knowledge.

23 MR. BOUDREAU: I believe that's all the  
24 questions I have for this witness. Thank you.

25 JUDGE JONES: Any redirect from the Office of

1 Public Counsel?

2 MR. POSTON: Yes.

3 REDIRECT EXAMINATION BY MR. POSTON:

4 Q. You were just asked about what natural gas  
5 program -- or companies I guess had implemented the PAYS  
6 program. And are you aware of other companies that have?

7 A. Yes, I am. In New Hampshire, the -- the PAYS  
8 program was extended through 2007 by order of the  
9 New Hampshire Commission and there are at least two companies  
10 that participate. The variety of types of measures that are  
11 included in terms of energy efficiency included things from  
12 light bulbs to heaters, electric heaters.

13 MR. BOUDREAU: I think I'm going to object. I  
14 think I asked her the question about if she knew of any other  
15 companies and she mentioned Michigan and now we're off into a  
16 different state. So I'm not quite sure where we're going with  
17 this, but I think I'm going to object on the grounds that it  
18 appears that her prior answer may have been incomplete.

19 JUDGE JONES: Ms. Meisenheimer, was your prior  
20 answer incomplete?

21 THE WITNESS: No, it was not. He asked me  
22 about natural gas. He did not ask me about any type of energy  
23 program.

24 MR. BOUDREAU: Well, then I'll make my  
25 objection on the grounds of relevance. If it's not a natural

1 gas utility, what relevance does it have in this case?

2 JUDGE JONES: Mr. Poston?

3 MR. POSTON: It's a utility that's offering  
4 conservation programs that been discussed at length in this  
5 case.

6 JUDGE JONES: Is the PAYS program an issue in  
7 this case even or is it something that was thought about in  
8 the last case that perhaps should have been thought about in  
9 this one?

10 MR. BOUDREAU: I think the only reason it came  
11 up is that Commissioner Gaw directed some questions to  
12 Ms. Meisenheimer. It's not a proposal in this case, to my  
13 knowledge, by any party.

14 JUDGE JONES: I probably shouldn't have heard  
15 any questions about the PAYS program then.

16 MR. POSTON: Well, Judge, the way I understood  
17 the purpose of Mr. Boudreau's questions were to try to paint a  
18 picture that this program was not being used and so I'm  
19 following up to show that it is being used.

20 JUDGE JONES: Go ahead and finish the question  
21 and answer, by the way. Objection's overruled.

22 THE WITNESS: Okay. So it is an active  
23 program in New Hampshire. And also in the state of Michigan I  
24 believe that it's been proposed to the Michigan Commission.

25 Nancy Brockway, who used to be a Commissioner,

1 a State Commissioner in New Hampshire as well as Harlan  
2 Latchman, who actually was a consultant for us in the last MGE  
3 case in terms of helping me develop a PAYS proposal, presented  
4 testimony. And the Staff there in Michigan, I believe at  
5 least one of their witnesses, filed in support of establishing  
6 the potential tariffs that would pave the way for a company if  
7 it chose to do so -- a natural gas company, if it chose to do  
8 so, to provide the program.

9 BY MR. POSTON:

10 Q. Mr. Boudreau also asked you questions about  
11 the task force report. What was the name of that report?

12 A. I don't have a copy of it with me. If he  
13 would be kind enough to let me see it, I would read the full  
14 title. It was rather long. It's titled The Final Report of  
15 Missouri Public Service Commission's Cold Weather Rule and  
16 Long-Term Energy Affordability Task Force.

17 Q. And do you agree with all of the findings,  
18 conclusions from that report?

19 A. Personally, I do not and I raised concerns  
20 regarding this report within our office.

21 Q. And what type of concerns do you have?

22 MR. BOUDREAU: Well, I think I'm going to  
23 object. The report itself was signed on to by the Office of  
24 the Public Counsel. I mean, now we have a witness on the  
25 stand basically renegeing on what was contained in the report



1 and agreed to by the Office of the Public Counsel.

2 JUDGE JONES: Why is that objectionable then?

3 If anything, it just shows inconsistency in the report.

4 MR. BOUDREAU: Well, is she -- well, I guess  
5 what -- as a point of order, I'd ask whether this witness is  
6 qualified to take a position on behalf of the Office of Public  
7 Counsel about the recommendations in this task force report.

8 JUDGE JONES: I don't think she's doing it. I  
9 think she's giving her own personal opinion.

10 MR. BOUDREAU: Okay. With that, if it's her  
11 own personal opinion, then --

12 JUDGE JONES: She has qualified it as her  
13 personal opinion.

14 MR. BOUDREAU: Okay.

15 JUDGE JONES: Ms. Meisenheimer, go ahead. Why  
16 do you disagree with the report?

17 THE WITNESS: Well, in particular, one of the  
18 things that concerned me about this report was a  
19 recommendation regarding what type -- or that there should be  
20 an investigation of perhaps alternative types of rate designs.

21 And, you know, I don't think that necessarily  
22 any type of rate design that partially decouples would  
23 necessarily be offensive, but I just want it to be clear that  
24 part of my objection to this report was that it could be  
25 construed as us agreeing to rate designs that we viewed as

1 being too far in terms of shifting responsibility from -- from  
2 the company to the customer in terms of the risk.

3 BY MR. POSTON:

4 Q. And yesterday I believe Commissioner Appling  
5 asked you questions about concerns that you had with the  
6 conservation programs that were being proposed. Do you  
7 recall?

8 A. Yes.

9 Q. And in particular, there's the water heater  
10 program and you discussed some of your concerns; is that  
11 correct?

12 A. Yes.

13 MR. POSTON: Your Honor, I have an exhibit I'd  
14 like to have marked.

15 JUDGE JONES: Okay. Let's mark it as 203-A.

16 (OPC Exhibit No. 203-A was marked for  
17 identification.)

18 BY MR. POSTON:

19 Q. Ms. Meisenheimer, have you seen this document  
20 before? Oh, I didn't give it to you.

21 A. Did you give me one? Yes. This one I've  
22 seen.

23 Q. Can you identify this document, please?

24 A. This is a document -- actually it is -- I did  
25 research regarding the Energy Star designation and I spoke

1 specifically about this in my testimony on page 8 regarding a  
2 designation for water heaters that -- the Energy Star program,  
3 there is no set criteria for Energy Star status for water  
4 heaters. And this is a document that I found on the  
5 Energy Star website describing why today there have been no  
6 standards established for -- or no adopted standards for water  
7 heaters.

8 Q. And so how is this tied into the conversation  
9 you were having yesterday, the concerns that you were raising?

10 A. Well, one of the concerns that I was trying to  
11 explain to Commissioner Appling is that I think that it is  
12 very important to demonstrate that a program that you're going  
13 to spend ratepayer money on has a likelihood of success in  
14 terms of producing effective and -- or an efficient -- an  
15 efficiency level that will actually result in benefits to  
16 customers.

17 And with respect to water heaters, in  
18 particular, one of the reasons that no standards have been  
19 developed yet, as explained in the letter that I found on that  
20 Energy Star website, one of the reasons is that, in fact, the  
21 technology is so far advanced, that you don't get much  
22 differentiation in the efficiency of water heaters.

23 And so it's less likely that there are going  
24 to be significant savings and that's explained in this -- in  
25 this letter.

1           Q.       And this letter -- well, first, which website  
2 did you find this on?

3           A.       Well, it's labeled at the bottom, it's the  
4 Energy Star website. It's a government website.

5           Q.       Federal government?

6           A.       Yes.

7           Q.       And what federal agency are they associated  
8 with?

9           A.       The Department of Energy is actually -- that's  
10 who ti-- titled the letter that I'm referring to.

11          Q.       And is that how you got to the EnergyStar.gov  
12 website was through Department of Energy?

13          A.       Well, I searched for Energy Star to begin  
14 with, arrived at a website describing Energy Star, which from  
15 there I was directed to a letter that -- this letter from the  
16 Department of Energy describing why, in fact, there are not  
17 currently any formal standards for -- for Energy Star status  
18 for water heaters.

19          Q.       And so you personally -- did you personally  
20 print this off from that website?

21          A.       Yes. This was part of the research that I did  
22 when I was trying to evaluate the -- the potential benefits  
23 the program that the company was describing.

24                   I -- I mean, this has a -- obviously down at  
25 the bottom you'll notice there's a print date of 1/10/2007. I

1 actually had visited this website and reviewed this letter  
2 much earlier than that, but I thought that it -- it was -- it  
3 was relevant given the amount of focus and -- and specifically  
4 listening to the company's response regarding the -- the  
5 claimed benefit of the water heater program that they're  
6 proposing.

7 Q. And according to this, what individual wrote  
8 this letter? Who wrote this?

9 A. It's signed by Richard H. Carney, manager  
10 Energy Star program, US Department of Energy.

11 MR. POSTON: Your Honor, I offer Exhibit 203-A  
12 into the record.

13 MR. BOUDREAU: May I voir dire the witness on  
14 this? I may have an objection, but I --

15 JUDGE JONES: Sure you can.

16 VOIR DIRE EXAMINATION BY MR. BOUDREAU:

17 Q. Ms. Meisenheimer, what part of your  
18 Surrebuttal Testimony was this a basis of? I mean, what  
19 research -- you said this was research that you did. With  
20 respect to what aspect of your Surrebuttal Testimony?

21 A. Might I direct you to page 8? It's on line --  
22 it begins on line 4 and specifically I said, It is my  
23 understanding that standards for an --

24 Q. I can see the testimony.

25 A. -- Energy Star designation have not been

1 finalized.

2 And so this is the basis for that claim that  
3 they had not been finalized.

4 Q. Okay. Was that testimony -- was that  
5 testimony disputed?

6 A. Well, I -- the --

7 Q. I mean, was that testimony of yours part of  
8 the questioning that you got from any of the Commissioners or  
9 the other parties yesterday?

10 A. It was discussions -- Commissioner Appling  
11 asked me, you know, what were my concerns regarding the  
12 program. And I explained to him that one of my concerns about  
13 the program is with this -- with this 6-- .62 standard --

14 Q. Yes.

15 A. -- and it was in that context --

16 Q. Okay.

17 A. -- that --

18 Q. So this is additional research that you've  
19 done supplemental to when you filed this testimony?

20 A. Absolutely not. This is testimony -- this is  
21 material that I reviewed in prep-- in preparing my testimony.  
22 I simply went back and copied off a copy to -- to  
23 illustrate --

24 MR. BOUDREAU: Let me make my objection at  
25 this point. At this point I think it's just redundant of the

1 testimony that she's already offered and questions that she's  
2 already answered.

3                   Second of all, much like the letter from  
4 Attorney General Jay Nixon which seemed to be so offensive to  
5 the Office of Public Counsel the other day, it's a letter from  
6 somebody. So what, you know, pertinence does it have to  
7 what's going on here right now?

8                   JUDGE JONES: I'm going to sustain the  
9 objection. I mean, her statement with regard to the energy  
10 level was pretty clear. I mean, I don't think it needs  
11 proving so --

12                  MR. POSTON: The objection's sustained?

13                  JUDGE JONES: Not unless -- do you have  
14 argument that might convince me otherwise?

15                  MR. POSTON: Well, I mean, I don't see the  
16 relation, one, between this and the letter from the Attorney  
17 General.

18                  JUDGE JONES: Well, I'm not making that  
19 correlation.

20                  MR. POSTON: Okay.

21                  JUDGE JONES: The point is her statement was  
22 about the energy level and that it doesn't necessarily mean  
23 that -- what was your statement again, Ms. Meisenheimer, about  
24 the .62?

25                  THE WITNESS: Well, the .62, the company chose

1     that number and we heard on the stand from their witness, and  
2     it was the first time I'd ever heard it, that they were then  
3     claiming that that in -- that that encompassed 75 percent of  
4     water heaters or better than 75 percent. And that that -- I  
5     felt that somehow they were claiming that that made it a  
6     positive program, one that was likely to produce or could be  
7     viewed as producing a benefit.

8                     And what I was trying to show is that actually  
9     water heaters, they're so close together in efficiency that  
10    there doesn't seem to be enough benefit that Energy Star would  
11    even give them the designation.

12                    MR. BOUDREAU: If that's now the rationale for  
13    the testimony, my objection expands that it's just  
14    supplemental Surrebuttal. I mean, it's not really responsive  
15    to the cross-ex-- or the questions that the witness got from  
16    the Commissioners.

17                    MR. POSTON: Judge, it was responsive because  
18    it was a question from Commissioner Appling about her  
19    concerns. And it doesn't matter when her concerns came about.  
20    You know, if they came about when the company's witness was  
21    sitting up there, regardless, that's when, you know, some of  
22    her concerns came about.

23                    But she also testified that concerns came  
24    about in the surrebuttal so she's got additional concerns.  
25    And this document -- we think it's very important that the



1 Commission be aware of this if they are considering approving  
2 this conservation program.

3 MR. BOUDREAU: It appears to me we've got two  
4 rationales. On the one hand, she's saying, well, I testified  
5 on page 8 of my surrebuttal and this is just backup of that  
6 testimony. And now, you know, now I'm hearing, well, this is  
7 just something additional, you know, something came up that  
8 another witness said and I thought that maybe I should throw  
9 something else in here at this point.

10 MR. POSTON: Those aren't exclusive.

11 MR. BOUDREAU: As far as I'm concerned, either  
12 of those grounds is objectionable.

13 MR. POSTON: It was an issue raised during  
14 questions from the Bench and we believe we're entitled to -- I  
15 believe I'm entitled to redirect her on this and offer  
16 evidence on this.

17 JUDGE JONES: I'm still going to sustain the  
18 objection. I understand that your opinion is that the offer  
19 of conservation that they're trying to make is not a true  
20 offer of conservation. It may not even make a difference.  
21 That's an opinion you make. They say it does, you say it  
22 doesn't. I don't think this piece of paper actually is going  
23 to make a difference one way or another so I'll sustain the  
24 objection.

25 REDIRECT EXAMINATION (CONT'D) BY MR. POSTON:

1           Q.       Well, Ms. Meisenheimer, is there anything in  
2 particular in this letter that you think should be -- in  
3 addition that should be brought out?

4           MR. BOUDREAU: I object. I think we've just  
5 gone through this. Now we're using the letter again. I think  
6 the objection was just sustained. I'll renew the objection.

7           MR. POSTON: Okay.

8           JUDGE JONES: Why are you still talking about  
9 this letter? I want to hear from Bob Schallenberg on  
10 unrecovered cost of service amortization. I don't -- I mean,  
11 I don't understand why we're still --

12          MR. POSTON: I'm trying to have my opportunity  
13 to provide redirect examination on issues that had been raised  
14 and on the basis of her opinions and testimony.

15          JUDGE JONES: So Commissioner Appling asks her  
16 how she feels about the program. She says she thinks it's  
17 crappy and she goes and gets a piece of paper that says, see.  
18 That doesn't make her statement any more true. It's still  
19 true she thinks that it doesn't do anything, that it doesn't  
20 reach the goal that it's supposed to reach.

21          MR. POSTON: Well, it certainly doesn't if you  
22 don't allow the letter into evidence when it's a Department of  
23 Energy -- I mean --

24          JUDGE JONES: It still is a letter, as pointed  
25 out by somebody, written -- I don't even know who it's written

1 to.

2 MR. POSTON: It's from the Department of  
3 Energy. If you look at the heading, it's from the manager of  
4 the Energy Star program, which is clearly an issue in this  
5 case when we talk about these conservation programs that  
6 they're proposing. And so I just move once again to enter --  
7 for the acceptance of this letter.

8 MR. BOUDREAU: And I'll renew my objections.  
9 I won't burden the record by repeating them. I'll just renew  
10 my objections.

11 JUDGE JONES: Objection sustained.

12 MR. POSTON: I have nothing further.

13 JUDGE JONES: Okay.

14 MR. FRANSON: Judge, if I may, the other  
15 matter I wanted to -- before we go away from this issue, is  
16 Commissioner Gaw had asked Ms. Ross some questions and we had  
17 circulated a document which I believe should probably most  
18 properly be designated 106-A because it would really go along  
19 with Ms. --

20 JUDGE JONES: Now, what is this iss-- what  
21 does this have to do with -- low-income weatherization also?

22 MR. FRANSON: Yes. And this was a question  
23 that Ms. Ross was asked by Commissioner Gaw about what is done  
24 in other states, some of the qualifications and some of the  
25 things that are being done.

1                   We prepared a document. I've circulated it to  
2     the other parties. At this time I'd like to approach, have it  
3     marked. I'm going to suggest 106-A because it would really go  
4     along with Ms. Ross's surrebuttal. And hold on just one  
5     moment. And this is informational purposes that was in  
6     response to Commissioner Gaw's questions to Ms. Ross.

7                   JUDGE JONES: I take it no one has any  
8     objection to this?

9                   MR. BOUDREAU: None. Thank you.

10                   (Staff Exhibit No. 106-A was marked for  
11     identification.)

12                   MR. FRANSON: At this time, your Honor, I  
13     would move for admission of Exhibit 106-A.

14                   JUDGE JONES: Exhibit 106-A is admitted into  
15     the record.

16                   (Staff Exhibit No. 106-A was received into  
17     evidence.)

18                   MR. FRANSON: And, Judge, I would also have  
19     one more, which I'll denote 106-B. There was questions about  
20     the Internet energy audits. And this is also offered for the  
21     same reason that it is in response to a question to Ms. Ross  
22     by Commissioner Gaw. And if I may approach and offer that,  
23     Judge.

24                   (Staff Exhibit No. 106-B was marked for  
25     identification.)

1 JUDGE JONES: Is there any objection to 106-B?

2 MR. BOUDREAU: None, thank you.

3 JUDGE JONES: Hearing none, 106-B is admitted  
4 into the record.

5 (Staff Exhibit No. 106-B was received into  
6 evidence.)

7 MR. FRANSON: And, Judge, with that, I don't  
8 have anything further on this issue and I would be ready for  
9 the next one.

10 JUDGE JONES: Okay. With that, we'll call up  
11 Mr. Schallenberg on the next issue of unrecovered cost of  
12 service. Mr. Schallenberg, you remain under oath.

13 MR. FRANSON: May I proceed?

14 JUDGE JONES: Yes, you may.

15 MR. FRANSON: Thank you, Judge.

16 Judge, there is a time on issues that you got  
17 to wonder why are we here. I'm going to raise that issue, why  
18 are we here on what has been called unrecovered cost of  
19 service. Let's start with the question, what is this specific  
20 issue, focusing only on this issue?

21 Now, MGE is saying let's talk about this in  
22 conjunction with all the other issues. No, let's not do that.  
23 Let's consider this issue on its merits. Does it have any  
24 merits? No. Is it illegal? It most certainly is.

25 The testimony of Mr. Oligschlaeger where you

1 get a definition of the term "retroactive rate-making" that  
2 has been quoted with -- by all the parties here with approval,  
3 it's not disagreed with. It's accepted. Is this retroactive  
4 rate-making? It is classic retroactive rate-making. And  
5 we've also heard it's patently illegal.

6 Now, where does that bring us on this issue?  
7 That should end the issue. However, now MGE's tried to say  
8 well, we've got this issue of property tax. Judge, the Staff  
9 has never said that property tax as -- in Staff's position is  
10 retroactive rate-making. The Staff has not put forth an issue  
11 that it believes is illegal.

12 But here we've got a position that MGE accepts  
13 through the testimony of Mr. Noack, through the opening  
14 statement of Mr. Mitten, through the brief. This was not put  
15 forth as a serious issue. This was put forth as a bargaining  
16 chip, as a tool to show that they -- what they believe on  
17 other issues. This issue on itself must be denied because it  
18 is retroactive rate-making.

19 And it also goes against the most basic of  
20 rate principles. And that is, once rates are set, there's a  
21 certain amount of risk that a business has. If the rates are  
22 not sufficient to bring in the revenue they need, that's just  
23 one of those risks. If the -- and they've got a remedy for  
24 that. That's to come in for a rate case.

25 If, however, rates are more than sufficient,

1 then that's a benefit they keep. And Mr. Noack didn't want to  
2 answer the question directly, but let's just go right to it.  
3 I cannot imagine that MGE or any other utility if they -- if  
4 their rates say they can come up to authorized rate of return  
5 and they exceed that, are they going to come in here and say,  
6 we're earning too much, we need a rate decrease. Don't think  
7 so. That might not even be prudent management. It may make  
8 them stay out longer, and yes, if parties are aware of that,  
9 there is a remedy. It's called a complaint.

10 But that has nothing to do with the fact that  
11 here we've got some -- they're saying, well, let's go back and  
12 recover more money from customers for past utility service  
13 because we didn't get enough.

14 That is the sole issue here today. And I  
15 would encourage the Commission when you're considering this  
16 issue, focus on this issue on its merits by itself. And it  
17 has no merits and it is patently illegal and for that reason,  
18 MGE's request to recover what they call the unrecovered cost  
19 of service should be denied.

20 JUDGE JONES: Let me ask you something.  
21 Everybody agrees on the amount of the unrecovered cost of  
22 service. Right?

23 MR. FRANSON: I believe so.

24 JUDGE JONES: Are there any factual  
25 disagreements about this issue?

1                   MR. FRANSON: Well, as far as the accounting  
2 numbers, I don't think so. I think it really comes down to a  
3 bottom line, can they have it or not. And there seems to be  
4 agreement on that is no. So there seems to be general  
5 agreement on the facts and legal issues.

6                   JUDGE JONES: So I mean, assuming there's --  
7 apparently there's not agreement on the legal issue or the  
8 issue would have been settled. Why do we have factual  
9 witnesses on an issue that has no factual dispute?

10                  MR. FRANSON: Well, Judge, first of all, there  
11 is agreement on the legal aspect and it has not been settled  
12 so I can't agree with you there.

13                  JUDGE JONES: Well, the attorney for MGE's  
14 about to push his button on the microphone and say we disagree  
15 legally.

16                  MR. FRANSON: Let him. But if he's now going  
17 to say that this is not classic retroactive rate-making, he's  
18 going to be going against his opening statement, he's going to  
19 be going against his witness's testimony, he's going to be  
20 going against the brief. Why is it here? MGE wanted it --  
21 this issue in there and they're entitled to do that just like  
22 other parties are. They said, we want to litigate this and we  
23 won't settle it. We're here.

24                  JUDGE JONES: Okay. I still don't understand  
25 why we have factual witnesses if there are no factual



1 disputes.

2 MR. FRANSON: Because MGE raised an issue and  
3 Staff had to respond it and that's just how our system works.  
4 You know, if a party wants to put forth an issue, the other  
5 parties have no choice if they disagree with the bottom line  
6 on it but put forth testimony and bring it before the  
7 Commission.

8 JUDGE JONES: MGE, did you want to chime in on  
9 this?

10 MR. MITTEN: I did. I think there is a  
11 potential factual issue. With regard to the law on this  
12 issue, it has been MGE's position and its testimony, in its  
13 prehearing brief and in my opening statement that the property  
14 tax refund issue and this unrecovered cost of service issue  
15 are, with respect to retroactive rate-making, two sides of the  
16 same coin.

17 Now, I heard Staff's counsel on the property  
18 tax issue offer an interpretation of the UCCM decision this  
19 morning that I think is contrary to what the Supreme Court  
20 decided. But let's assume for purposes of argument that the  
21 Commission disagrees and accepts Staff's interpretation of  
22 that decision.

23 If that's the case, then MGE has an  
24 alternative with regard to this unrecovered cost of service  
25 issue that we have proposed and that is that an AAO issue so

1     that the company can be allowed an opportunity to recover the  
2     unrecovered cost of service.

3                     That's the reason that testimony was offered  
4     and it's that alternative, in the event you accept the Staff's  
5     interpretation of the UCCM decision, that we are continuing to  
6     try this issue today.

7                     JUDGE JONES:   Okay.

8                     MR. FRANSON:   Judge, if I may.

9                     JUDGE JONES:   Yes, Mr. Franson.

10                    MR. FRANSON:   Again, Mr. Mitten's statements  
11     are very much missing the point.  This issue is an issue.  I  
12     don't know what number it is in the list of issues.  Well,  
13     let's call it issue No. 1 currently at hand.  This issue  
14     either stands on its merits or it doesn't.

15                    JUDGE JONES:   I realize you're trying to make  
16     them mutually exclusive.

17                    MR. FRANSON:   Right.  I am and I will continue  
18     to do so for the simple reason they are mutually exclusive.

19                    JUDGE JONES:   Doesn't matter how many times  
20     you say it.  You only can say it once.

21                    MR. FRANSON:   Well, there's another  
22     alternative, Judge, just to finish up my opening statement,  
23     which I don't think is the case because Mr. Noack told us in  
24     his testimony it's not.  I asked him, was this brought forth  
25     as a bargaining chip, as a throw-away issue to cloud the issue

1 and try and tie it to property tax? He said no.

2 Well, taking that at -- him at his word, then  
3 there should be no connection. But every time there's  
4 discussion of this issue, it's, well, what about property tax?  
5 What about this? What about that? Well, Judge, there is  
6 agreement on this issue.

7 Now, we've talked about the retroactive  
8 rate-making. Now we'll talk about the AAO. The AAO at a  
9 minimum would require two things. One, an extraordinary  
10 event. Warm weather is not an extraordinary event. It is  
11 under the current rate design, in fact, it -- not only that,  
12 it is the whole reason that MGE has brought forth this other  
13 rate design to mitigate the effects of weather.

14 Now, that means weather is something they face  
15 all of the time. Warm, then they're under-recovering on their  
16 rate -- their -- what they want and what they expect in their  
17 rates. If it's cold, they -- under the current rate design,  
18 they recover too much.

19 Warm weather, normal weather, cold weather,  
20 those are facts of life. Those are not extraordinary events.  
21 And it's -- you've got to have an extraordinary event that  
22 causes you to have some kind of loss. This is not an  
23 extraordinary event and Mr. Noack on the stand admitted that  
24 normally the weather is not an extraordinary event.

25 And I would submit not only is it normally

1 not an extraordinary event, it is just a fact of life and it's  
2 a business risk of an LDC. That's why you come in and try and  
3 mitigate it. Thank you.

4 JUDGE JONES: Is there any cross-examination  
5 of Mr. Schallenberg on this issue?

6 MR. MITTEN: I have some brief  
7 cross-examination.

8 JUDGE JONES: Go right ahead.

9 ROBERT SCHALLENBERG testified as follows:

10 CROSS-EXAMINATION BY MR. MITTEN:

11 Q. Good afternoon, Mr. Schallenberg.

12 A. Good afternoon.

13 Q. If I can preface my remarks by saying it's  
14 been a long time since you and I were in the same hearing room  
15 together and it still feels a little weird to know that you're  
16 on the other side of the table on this issue.

17 Let me direct your attention to page 7 of the  
18 testimony that you have adopted in this case. Do you have  
19 that?

20 A. Yes, I do.

21 Q. Beginning at line 8, there is an answer that  
22 says, Yes, to the extent MGE believes there are methodological  
23 problems with how its rates have been set in the past  
24 concerning estimates of customer usage or other items, the  
25 proper course of action would be to propose prospective

1 solutions for those concerns; is that correct?

2 A. Yes.

3 Q. Now, are you aware that in the company's last  
4 rate case, they proposed to increase the portion of their  
5 costs that are recovered through the fixed monthly charge?

6 A. I would have to say I'm not sure. I'm not  
7 that familiar with their last rate case. I can say  
8 generically in almost all the gas LDCs that are filed within  
9 the last several years, proposals have been -- and I cannot  
10 think of the exception -- to raise the customer charge.

11 Q. Well, assume for purposes of my question that  
12 that was the company's proposal in its last rate case. If  
13 that had been adopted by the Commission, would that have  
14 mitigated the under-recovery that's at issue here?

15 A. Yes.

16 Q. And assume for purposes of this question that  
17 in the company's last rate case it proposed a weather  
18 mitigation rate design for the volumetric component of its  
19 rates. Now, had that been adopted by the Commission, would  
20 that have mitigated the revenue shortfall that's at issue  
21 here?

22 A. Yes. In hindsight.

23 Q. Looking prospectively, the company has  
24 proposed a straight fixed variable rate design in this case.  
25 If that rate design proposal is adopted, would that help

1 mitigate the kind of situation that caused the revenue  
2 shortfall that's at issue here?

3 A. I would say no. Because if you go forward and  
4 you adopt the weather mitigation rate design and the weather  
5 is colder, then, in essence, the company will be worse off  
6 then it would have been without the rate design change.

7 Q. But aren't the company's fixed costs being  
8 recovered through a fixed charge so they're not subject to  
9 fluctuation in weather?

10 A. That's right. If you adopt the company's rate  
11 design. But your question was in terms of what their exposure  
12 would be. If we have cold weather in the future, the company  
13 will recover less fixed cost than they would have under the  
14 proposed rate -- under the fixed and the variable type of rate  
15 design.

16 Q. My question was under the fixed and variable  
17 rate design -- excuse me, it would be the straight fixed  
18 variable rate design. Let me make sure I understand your  
19 question. If that is adopted going forward, would that kind  
20 of rate design mitigate the situation that's at issue here and  
21 that caused the revenue shortfall?

22 A. It will if weather is warmer than normal.

23 Q. But it won't if weather is colder?

24 A. If weather is colder than normal, the company  
25 will recover less fixed costs. It will recover less money if

1 the weather is colder than normal than it would if we adopt  
2 the weather mitigation rate design. The weather mitigation  
3 rate design, in essence, allows the company to earn more in  
4 warmer than normal situations, but it will allow the company  
5 to earn less than that if the weather is colder than normal.

6 Q. But it would still allow the company to  
7 recover its fixed costs regardless of the weather?

8 A. I'd say yes, but unless you assume no volumes,  
9 the company's going to recover some fixed cost. My answers to  
10 you are what amount of the fixed costs they will recover even  
11 with the rate design that exists today they will -- they will  
12 recover some fixed costs as long as they have some volume.

13 MR. MITTEN: I don't have any further  
14 questions. Thank you, Mr. Schallenberg.

15 JUDGE JONES: Any cross-examination from the  
16 Office of Public Counsel?

17 MR. POSTON: No, thank you.

18 JUDGE JONES: Commissioner Murray?

19 COMMISSIONER MURRAY: Give me a minute.

20 QUESTIONS BY COMMISSIONER MURRAY:

21 Q. The issue that we are focusing on right now is  
22 the unrecovered cost of service amortization; is that right?

23 A. Yes.

24 Q. And the treatment that MGE is seeking here, is  
25 that something that you have seen proposed in other cases?

1           A.       I saw it -- I've seen it proposed one other  
2     time by Laclede Gas in response to a Commission general  
3     inquiry about what to do about the reduction in the corporate  
4     federal income tax rate from I think it was 47 or 48 percent  
5     to 34 percent. And in their response, they proposed a -- a  
6     clause that would go back and forth so that they could earn  
7     their rate of return, no more, no less.

8           Q.       And what did the Commission do with that  
9     proposal?

10          A.       Commission did not accept that proposal and  
11     that was -- the corporate rate was -- reduction was just built  
12     into their next rate case.

13          Q.       Okay. Now, you see this as retroactive  
14     rate-making. Is that accurate?

15          A.       Yes.

16          Q.       And also single-issue rate-making?

17          A.       I don't know that I would -- I guess if you  
18     look at a single issue to the extent that you're -- you're  
19     taking all the company's costs and revenues and taking that  
20     end result and adjusting it, I guess you could look at it as a  
21     single issue.

22          Q.       Now, the company is not asking for AAO  
23     treatment; is that correct?

24          A.       I thought as an alternative to not accepting  
25     their adjustment in the rates, I'm under the impression -- and



1 I think I addressed it on page 6 of the testimony, there's  
2 mentioned that -- Mr. Noack mentions a possibility of an  
3 Accounting Authority Order may need to be granted in lieu of  
4 this unrecovered cost adjustment.

5 Q. And in order to grant AAO treatment, we would  
6 traditionally require that it be an extraordinary event, would  
7 we not?

8 A. Yes. Well, I say unless you modify the  
9 criteria for an AAO, which could be done, but you would have  
10 to change the criteria.

11 Q. Are you recommending that we do that?

12 A. No.

13 Q. Do you consider the weather effects on the  
14 revenue that was achieved to be an extraordinary event?

15 A. No.

16 COMMISSIONER MURRAY: I think that's all I  
17 have. Thank you.

18 JUDGE JONES: Commissioner Appling?

19 COMMISSIONER APPLING: I have no questions.

20 JUDGE JONES: Any recross? MGE? OPC? Any  
21 redirect?

22 MR. FRANSON: Yes, briefly.

23 REDIRECT EXAMINATION BY MR. FRANSON:

24 Q. Mr. Schallenberg, could you turn to page 3,  
25 beginning at line 19 of your testimony and read over to

1 page 4, line 5? And please tell me when you're done with  
2 that.

3 A. It was page 3, line 9?

4 Q. Line 19.

5 A. 19 okay.

6 Q. To page 4, line 5.

7 A. I've finished reading that again.

8 Q. Okay. Now, do you recall the questions from  
9 Mr. Mitten that if certain -- you had to accept certain  
10 premises about the last MGE rate case, that if they'd had a  
11 certain rate design, then maybe things would have been  
12 different? Do you remember that?

13 A. Yes.

14 Q. Okay. Would you agree that once rates are set  
15 for a company, we'll use MGE as an example, that there are  
16 certain risks that they take on a going-forward basis,  
17 specifically regarding their cost of service? What I'm asking  
18 is, would they -- don't they take the risk that what they  
19 actually collect in rates might not meet their exact cost of  
20 service and that based on unforeseen things, cost of service  
21 could be higher than what their rates are allowing for?

22 A. Yes. There are risks, but there's also  
23 opportunities.

24 Q. Okay. We're coming to that. Now,  
25 opportunities. What kind of opportunities?

1           A.       To the extent that you can reduce your costs  
2 after the rates are set to lower levels than the costs used to  
3 set your rates, you can have a positive or favorable result.

4           Q.       Okay. Isn't it fair to say that both risks  
5 and opportunities go with the utility such as MGE once rates  
6 are set?

7           A.       Yes.

8           Q.       Okay. Now, let's turn to an AAO for a moment.  
9 You had questions from Commissioner Murray that you don't  
10 consider warm weather to be an extraordinary event requiring  
11 an AAO; is that correct?

12          A.       That's -- that's -- I think I said warmer than  
13 normal, but yes.

14          Q.       Okay. What about colder than normal?

15          A.       No.

16          Q.       Does that go back to warmer than normal  
17 weather is a risk, colder than normal weather is a  
18 opportunity?

19          A.       Yes. I mean, it -- it has -- it could have  
20 positive or favor -- positive or negative results, depending  
21 on the weather, on the company's earnings potential.

22          Q.       Okay. And I'm not sure if Commissioner  
23 Murray -- I think this question came up. Are you aware of any  
24 case where the -- where some -- a company has come in and  
25 said, we've had warmer than normal weather, we've lost

1 revenue, we've lost our opportunity to make our rate of  
2 return, therefore, we need an AAO?

3 A. I've never seen the request under that --  
4 that -- that scenario for an AAO. I've only --

5 Q. Have you seen such a request at all?

6 A. No.

7 Q. And do you know of any Commission decisions  
8 regarding an AAO where the extraordinary event was a claim of  
9 warm weather?

10 A. Not warm weather. There's been storms, but  
11 not -- not -- not warm -- not temperature.

12 MR. FRANSON: Okay. With that, Judge, I don't  
13 believe I have any further questions.

14 JUDGE JONES: Thank you, Mr. Schallenberg.  
15 You may step down.

16 Now we'll hear from the Office of Public  
17 Counsel's witness Ted Robertson.

18 MR. POSTON: Judge, I don't have any opening  
19 remarks. I think this has been pretty much conceded.

20 MR. FRANSON: Have you offered his testimony  
21 before?

22 JUDGE JONES: No.

23 MR. POSTON: No, I haven't.

24 (Witness sworn.)

25 JUDGE JONES: Thanks. You may be seated.

1 TED ROBERTSON testified as follows:

2 DIRECT EXAMINATION BY MR. POSTON:

3 Q. Please state your name.

4 A. Ted Robertson.

5 Q. Are you the same Ted Robertson who caused to  
6 be filed in this case testimony that has been marked -- and I  
7 need to find the numbers.

8 JUDGE JONES: 204, 205 and 206.

9 MR. POSTON: Thank you.

10 THE WITNESS: Yes.

11 BY MR. POSTON:

12 Q. Do you have any changes or corrections to that  
13 testimony?

14 A. No.

15 Q. If I asked you the questions that appear in  
16 your testimony -- if I asked you the same questions today,  
17 would your answers be the same?

18 A. Yes, they would.

19 MR. POSTON: Your Honor, I offer Exhibits 204,  
20 205 and 206 into the record and tender this witness for  
21 cross-examination.

22 JUDGE JONES: Any objections?

23 MR. MITTEN: Yes. The company objects to  
24 portions of Exhibit 205 and 206. On the 27th of December, the  
25 company submitted data requests to the Public Counsel on two

1 issues: the issue of Infinium software amortization and the  
2 issue of environmental response fund.

3           Those answers under the procedural order  
4 issued by the Commission were due on Monday of this week. I  
5 have yet to receive those and I need the information that I  
6 was hoping to derive from those questions in order to prepare  
7 for my cross-examination in this case. I believe since Public  
8 Counsel has failed to respond to legitimate data requests  
9 which were not objected to, that it ought not have the benefit  
10 of the pre-filed testimony on either of those two issues.

11           So on Exhibit 205 I am objecting to those  
12 portions of Mr. Robertson's testimony that deal with the  
13 former manufactured gas plant remediation and Infinium  
14 software amortization. And on Exhibit 206, I am objecting to  
15 those portions of the testimony that deal with the Infinium  
16 software amortization.

17           JUDGE JONES: Did you have a data request,  
18 OPC?

19           MR. POSTON: Yes. But the way we interpret  
20 the Commission's order, those are not due until next Tuesday.

21           JUDGE JONES: Wait a minute. What Commission  
22 order are you talking about? Because there can't be much  
23 interpretation to a date.

24           MR. POSTON: Let me explain. In the parties'  
25 proposed procedural schedule, they proposed conditions. And

1 one of the conditions the parties proposed was a 10-day  
2 turnaround after November 21st. The conditions the Commission  
3 ordered did not include that.

4 On page 2 of the Commission's order regarding  
5 procedural schedule test year and true-up, Commission states,  
6 The Commission finds the following conditions should be  
7 applied. I don't see that condition in here.

8 JUDGE JONES: Mr. Mitten?

9 MR. MITTEN: If you'll look a little bit above  
10 that on the Commission's order it says, The Staff of the  
11 Commission has proposed a procedural schedule on behalf of the  
12 parties. The Commission will adopt the proposed procedural  
13 schedule.

14 My interpretation is that they have  
15 incorporated Staff's recommendation by reference and that  
16 document specifically states that after November 21st, the  
17 response time for all data requests moves from -- or becomes  
18 10 calendar days and 5 days for objection.

19 MR. POSTON: The proposed -- if I may respond.

20 JUDGE JONES: Go ahead.

21 MR. POSTON: The proposed procedural schedule  
22 on page 3 it states, paragraph 8, The parties further request  
23 that the Commission approve the following conditions along  
24 with the procedural schedule.

25 I mean, it's clearly setting out two different

1 items, the procedural schedule and the conditions.

2 JUDGE JONES: Well, let me -- forget about  
3 what all those orders and proposals say. When is the DR  
4 request due according to you, Mr. Poston?

5 MR. POSTON: Twenty days from -- is it the  
6 26th or 27th?

7 JUDGE JONES: What day would that be?

8 MR. POSTON: I believe that was next Tuesday  
9 was the way I was --

10 JUDGE JONES: Next Tuesday?

11 MR. POSTON: Yes.

12 JUDGE JONES: Meaning after the hearing is  
13 done?

14 MR. POSTON: That is correct.

15 JUDGE JONES: That doesn't even make sense,  
16 does it? Does it make sense to you that they should get  
17 information about the hearing next Tuesday that was conducted  
18 this week?

19 MR. POSTON: It makes sense if they don't get  
20 their data request to us in a timely manner when we're in the  
21 throes of preparing for a hearing and they unload a bunch of  
22 data requests on us.

23 JUDGE JONES: When did you make your data  
24 request, Mr. Mitten?

25 MITTEN: The 27th of December. And it



1 wasn't a truckload of data requests. There were I believe  
2 six.

3 JUDGE JONES: And the data request was about  
4 Infinium software?

5 MR. MITTEN: They dealt with Infinium and the  
6 environmental response fund.

7 JUDGE JONES: I mean, it seems to me that any  
8 information about the Infinium software would be in your  
9 possession.

10 MR. MITTEN: I was asking the witness to  
11 amplify certain statements that he had made in his testimony.  
12 And that's not information that we would have.

13 JUDGE JONES: Okay. So you want him to  
14 expound on some things that he's made testimony to?

15 MR. MITTEN: To explain the basis for some of  
16 his statements so that we would have the opportunity to review  
17 that information and use it for impeachment.

18 My problem is, Judge, I am significantly  
19 disadvantaged in my ability to prepare cross-examination for  
20 this witness because I have not had an opportunity to have him  
21 explain some of the testimony.

22 JUDGE JONES: Now, you do realize that there  
23 were some motions made prior to the hearing with regard to  
24 other testimony?

25 MR. MITTEN: There may well have been, but my

1 grounds for my motion didn't become ripe until Monday of this  
2 week. And I have been dealing with counsel for the Public  
3 Counsel since that time trying to get responses to my data  
4 request. And as I'm sitting here today, I still don't have  
5 them.

6 MR. POSTON: The --

7 JUDGE JONES: Have you all been talking?

8 MR. POSTON: Yes, we have.

9 JUDGE JONES: Why don't you just tell him what  
10 he needs to know?

11 MR. POSTON: We don't have that information  
12 prepared. We're working on this case and it was our  
13 understanding this was not due until next Tuesday. And --

14 JUDGE JONES: Now we're back to the same  
15 thing. Just think about that.

16 MR. POSTON: I understand. But the rules are  
17 what the rules are. There's a 20-day turnaround.

18 JUDGE JONES: You don't follow the rules just  
19 because the rules are the rules. If they don't make sense, it  
20 seems like you'd question them at least.

21 MR. POSTON: This testimony, Mr. Robertson's  
22 testimony, was filed on December 11th. For him to say that he  
23 has not had an ample opportunity to question him on these  
24 matters is incorrect. He's had since December 11th. Within  
25 the time frame of the 20-day turnaround, he had time to do

1     that.  He did not.

2                   JUDGE JONES:  Well --

3                   MR. POSTON:  And he has an opportunity to  
4     question Mr. Robertson here today on any matter that they  
5     believe he needs to be questioned on.

6                   MR. MITTEN:  That's not an adequate remedy.  
7     The whole purpose of cross-examination is to test the validity  
8     of the witness's testimony.  If I ask him the questions today,  
9     he can say anything he wants to say and I have no opportunity  
10    to check on it.

11                  JUDGE JONES:  Okay.  I'll tell you what.  
12    Here's the remedy then.  We're going to talk about unrecovered  
13    cost of service amortization.  We're not going to talk about  
14    Infinium software, we're not going to talk about environmental  
15    response with regard to Ted Robertson.  Rather, we're going to  
16    reconvene next Wednesday to talk about those issues.  How  
17    about that?  Is that okay with everybody?

18                  MR. MITTEN:  That's fine with me.

19                  JUDGE JONES:  Office of Public Counsel?

20                  MR. POSTON:  If that's what the Judge wants to  
21    do, I mean, we don't --

22                  JUDGE JONES:  I want you all to be on board.  
23    That seems to be the only remedy.  If you don't think he  
24    should get that information until next Tuesday, he should have  
25    the opportunity to cross-examine him.  You do agree with that.

1 Right?

2 MR. POSTON: I disagree that the schedule  
3 should be delayed because of their delay in getting a data  
4 request to us timely.

5 MR. MITTEN: Judge, I would like to have a  
6 ruling that I'm entitled to the information before next  
7 Tuesday. That doesn't give me much time to check out what he  
8 tells me in the responses and then be prepared for a hearing  
9 on Wednesday. Again, I think the procedure order is very  
10 clear that we have a 10-day turnaround and because of the  
11 weekend, they actually had more than 10 days to produce these  
12 responses.

13 JUDGE JONES: Okay. This sounds like a  
14 discovery request issue more than it does an evidentiary  
15 issue. In that sense, I'm going to overrule the objection.  
16 And as far as the information that he needs, whatever it is,  
17 get it to him by tomorrow and we'll reconvene next Wednesday  
18 and ask whatever questions he needs to ask that have to do  
19 with those issues.

20 MR. FRANSON: Judge, if I may, I will be  
21 passing this information along to other people. We will  
22 reconvene next Wednesday about Infinium software and what  
23 other issue?

24 JUDGE JONES: Just with regard to  
25 Mr. Robertson's testimony. He'll be the only person that

1     testifies next Wednesday.

2                   MR. FRANSON:   Okay.   And that will be on  
3     Infinium and what?   What was --

4                   JUDGE JONES:   Environmental responses.

5                   MR. FRANSON:   Thank you.

6                   MR. POSTON:   Judge, before we set that in  
7     stone, maybe it would be helpful to first understand what this  
8     information is that's being requested.

9                   JUDGE JONES:   That's between the two of you.  
10    You got to figure that out.   I don't want to play interpreter  
11    when everybody's speaking English.   So you all figure out what  
12    the information is.

13                   If you continue to have a discovery problem  
14    over it, then we'll talk -- you call me on the phone like our  
15    rules require under discovery issues and we'll resolve it that  
16    way or not.   We'll have a hearing on that issue if you all  
17    need to.

18                   But in the meantime, we'll reconvene next  
19    Wednesday at 9:00 a.m.   Let me check -- I'm pretty sure I have  
20    the calendar reserved for that day.   If not, I'll tell you  
21    otherwise by e-mail.

22                   MR. POSTON:   So is Mr. Robertson then not  
23    testifying on any of these issues until then?

24                   JUDGE JONES:   He's testifying today on  
25    unrecovered cost of service amortization.   He's not testifying

1 on environmental response fund or Infinium software.

2 MR. POSTON: Okay.

3 JUDGE JONES: And now we'll move onto  
4 cross-examination -- did you want to -- your testimony's  
5 admitted.

6 (Exhibit Nos. 204, 205 and 206 were received  
7 into evidence.)

8 JUDGE JONES: Cross-examination from Staff?

9 MR. FRANSON: Thank you.

10 CROSS-EXAMINATION BY MR. FRANSON:

11 Q. Mr. Robertson, this issue that we're here on  
12 today, you only address -- that being the unrecovered cost of  
13 service, you only address that in your surrebuttal or did you  
14 address that in your rebuttal?

15 A. Actually, I did it in Direct Testimony and --

16 Q. Okay.

17 A. -- and the -- and the surrebuttal.

18 Q. Okay. Do you have Mister -- the testimony  
19 that Mr. Oligschlaeger filed that was adopted by  
20 Mr. Schallenberg with you?

21 A. No, I didn't bring it down with me.

22 MR. FRANSON: Judge, I don't believe I have  
23 any further questions of the witness. Thank you.

24 JUDGE JONES: Any cross-examination from  
25 Missouri Gas Energy?

1 MR. MITTEN: No questions, your Honor.

2 JUDGE JONES: Questions from the Bench?

3 QUESTIONS BY COMMISSIONER MURRAY:

4 Q. Good afternoon, Mr. Robertson.

5 A. Good afternoon, Commissioner.

6 Q. Is your position on this issue of unrecovered  
7 cost of service amortization -- that's the issue we're on  
8 right now. Correct? Is that the same as Staff's position?

9 A. It's essentially the same position, yes. We  
10 believe it's -- it's retroactive rate-making and that it's --  
11 it's not really a cost that could be allowed in the  
12 determination of the company's rates.

13 Q. How do you feel about considering it an AAO?

14 A. I'm completely against it. Don't believe it's  
15 extraordinary. Believe it's -- if you look at regulatory  
16 rate-making, if you keep in mind the company's allowed to --  
17 in rates they're allowed to earn return on investment and to  
18 recover prudent expenses, this is neither.

19 This is an additional sum of money that they  
20 claim that their current rates did not allow them to earn.  
21 And so, therefore, they want to just plop it on top of -- of  
22 the stuff, the calculations, the annualizations that  
23 determined rates going forward.

24 COMMISSIONER MURRAY: Thank you.

25 THE WITNESS: Thank you.

1 JUDGE JONES: Commissioner Appling?

2 COMMISSIONER APPLING: No questions.

3 JUDGE JONES: Any recross? Any redirect?

4 MR. POSTON: No, thank you.

5 JUDGE JONES: Mr. Robertson, you're excused  
6 until next Wednesday.

7 Now, we have one other witness on today for  
8 the environmental response fund.

9 MR. FRANSON: Judge, could I -- I don't  
10 know -- never mind. The people I need are right there.  
11 Judge, at this point or maybe after the environmental response  
12 fund, I'd like to offer some exhibits that I believe -- that  
13 we had pre-filed but I don't believe there will be any  
14 objection to. They are primarily on issues that have either  
15 been settled or did not go forward. It's just to clean up and  
16 we can either --

17 JUDGE JONES: We'll do that off the record  
18 when we're done.

19 MR. FRANSON: Thank you.

20 JUDGE JONES: Ms. Shemwell, whenever you're  
21 ready, go ahead.

22 MS. SHEMWELL: Thank you, Judge. Just a very  
23 brief statement, if I may. Good afternoon. May it please the  
24 Commission.

25 Staff opposes inclusion of the manufactured



1 gas plants and the environmental response fund for a number of  
2 reasons. These plants are at least more than 60, if not  
3 100 years old. Mr. Noack testified they're not in rate-base,  
4 which leads to the conclusion that they're certainly not used  
5 and useful. The cleanup costs are unknown and unmeasurable as  
6 Mr. Helfrich admitted in his testimony. MGE is has not  
7 expended any money at all on cleanup costs and Southern Union  
8 knew about these costs when it purchased the property from  
9 Western Resources, Inc.

10 There are other potentially responsible  
11 parties who should pay first, including the insurance  
12 companies. And something that's new in this particular case  
13 is the Missouri legislature has now provided a mechanism for  
14 recovery of environmental costs in Section 386.266, which has  
15 provided the policy in Missouri governing recovery of these  
16 costs.

17 The agreement that Southern Union entered into  
18 with Western Resources only requires that MGE seek recovery of  
19 these costs, and I would direct the Commission to Schedule 1-5  
20 of Mr. Harrison's Rebuttal Testimony where it indicates on  
21 that page that, The buyer shall request recovery of these  
22 costs.

23 And with that, Judge, I will call Mr. Paul  
24 Harrison to the stand.

25 (Witness sworn.)

1 JUDGE JONES: Thank you, sir. You may be  
2 seated.

3 PAUL HARRISON testified as follows:

4 DIRECT EXAMINATION BY MS. SHEMWELL:

5 Q. Mr. Harrison, have you prepared Direct and  
6 Rebuttal Testimony in this case?

7 A. Yes, I have.

8 Q. And which part of your testimony addresses  
9 this particular issue of the environmental response fund?

10 A. My Rebuttal Testimony.

11 Q. That has been marked as Exhibit 120; is that  
12 correct?

13 A. That's correct.

14 Q. And you have both NP and HC versions of that  
15 testimony; is that correct?

16 A. That is correct.

17 Q. Do you have any corrections to your testimony?

18 A. I do not.

19 Q. If I were to ask you the same questions today,  
20 would your answers be substantially the same?

21 A. Yes, they would.

22 Q. Is your testimony true and correct to the best  
23 of your knowledge and belief?

24 A. Yes, it is.

25 MS. Shemwell: Judge, I would offer

1 Mr. Harrison's Rebuttal, both HC and NP, that's marked as  
2 Exhibit 120. So we'll mark those 120-HC and NP, if that's all  
3 right, into evidence and tender the witness for cross.

4 JUDGE JONES: Any objection?

5 MR. MITTEN: No objection.

6 JUDGE JONES: Exhibit 120 is admitted into the  
7 record.

8 (Staff Exhibit No. 120 was received into  
9 evidence.)

10 MS. SHEMWELL: Thank you.

11 JUDGE JONES: Any cross-examination from  
12 Missouri Gas Energy?

13 MR. MITTEN: Yes.

14 CROSS-EXAMINATION BY MR. MITTEN:

15 Q. Good afternoon, Mr. Harrison.

16 A. Good afternoon.

17 Q. If you could please turn to page 5 of your  
18 Rebuttal Testimony. And I would specifically direct your  
19 attention to the testimony that appears at lines 12, 13 and  
20 14.

21 A. Okay.

22 Q. There you state, The primary reason for  
23 Staff's opposition is that MGE and WRI have already recognized  
24 and accepted that they, their insurers and potentially other  
25 PRPs are responsible for the cost of the MGP remediation; is

1     that correct?

2             A.       That's correct.

3             Q.       Now, that doesn't accurately reflect the terms  
4     of the environmental liability agreement, does it?

5             A.       I believe in the environmental liability  
6     agreement it states that in a specific order that the  
7     insurance, the PRPs and Western Resources, Southern Union is  
8     responsible, yes.

9             Q.       Well, why don't you turn to the environmental  
10    liability agreement and let's focus first on Article 1 where  
11    it says Assumption of Liability. Could you read the portion  
12    on Article 1 --

13            A.       Is that on page 1 there?

14            Q.       Yes, it is. I'm sorry.

15            A.       Okay.

16            Q.       Do you have that?

17            A.       I'm there.

18            Q.       Could you read to yourself the portion of  
19    Article 1 that appears on the first page?

20                    MS. SHEMWELL: While he does that, Judge, if I  
21    may note for the record, this is stamped as highly  
22    confidential but it has been released by the company.

23                    JUDGE JONES: So you're making note of the  
24    company's waiver?

25                    MS. SHEMWELL: That's correct.

1 JUDGE JONES: Okay.

2 THE WITNESS: You want me to read all of that  
3 paragraph 1?

4 BY MR. MITTEN:

5 Q. Just this portion that's on page 1.

6 A. Okay. I've read that.

7 Q. Now, that generally says that the buyer, in  
8 this case Southern Union, assumes responsibility for the  
9 liability except as otherwise provided; is that correct?

10 MS. SHEMWELL: I believe the word is  
11 "hereinafter" just for the record.

12 MR. MITTEN: Excuse me. Except for as  
13 hereinafter provided. I apologize, Ms. Shemwell.

14 THE WITNESS: That is correct.

15 BY MR. MITTEN:

16 Q. Okay. Could you turn to page 3 of the  
17 agreement? Now, in Article 2, subsection C, Shared  
18 Liability --

19 A. Okay. I'm there.

20 Q. -- there it says that, Insurance is a first  
21 line of recovery. Correct?

22 A. That's correct.

23 Q. And if you will turn to page 4, that would be  
24 Article 2, C, two little ii. It says, Potentially responsible  
25 party also first line of recovery. Correct?

1           A.       That's correct.

2           Q.       And if you could turn over to page 5,  
3 subsection 3, little i, there it provides for recovery of  
4 remediation costs through regulated cost of service; is that  
5 correct?

6           A.       That's correct.

7           Q.       Doesn't that mean ratepayers?

8                   MS. SHEMWELL: Let me say that as long as  
9 Mr. Mitten is asking Mr. Harrison to read portions of this  
10 into the testimony, that's fine. To the extent that he is  
11 asking Mr. Harrison to make legal conclusions about what that  
12 means, I'm going to object.

13                   MR. MITTEN: Your Honor, Mr. Harrison has  
14 already made conclusions as to what the agreement states.  
15 That's what I'm cross-examining him about.

16                   MS. SHEMWELL: Certainly he can make a  
17 conclusion about his reading, but it's not a legal conclusion  
18 because he's not a lawyer.

19                   MR. MITTEN: I'll accept the fact he's not a  
20 lawyer and I'm just taking his comments for what they're  
21 worth.

22                   JUDGE JONES: Go ahead and ask him your  
23 question.

24 BY MR. MITTEN:

25           Q.       Three, where it says, Recovery of remediation

1 costs through regulated cost of service, that means  
2 ratepayers, doesn't it?

3 A. That means ratepayers, yes.

4 Q. But you didn't include ratepayers in the list  
5 of people who are responsible in your testimony; is that  
6 right?

7 A. No. No. But in my testimony I said that --  
8 that Western Resources and Southern Union has accepted  
9 responsibility. I did not say that the ratepayers had not.

10 Q. Well, but you only listed MGE, WRI, insurers  
11 and PRPs.

12 MS. SHEMWELL: Asked and answered, your Honor.

13 BY MR. MITTEN:

14 Q. Is that correct?

15 JUDGE JONES: Go ahead and answer the  
16 question. Objection overruled.

17 THE WITNESS: That is the way I list it in my  
18 testimony, yes.

19 BY MR. MITTEN:

20 Q. Now, my reading of this agreement, there are  
21 three tiers of liability. Let me see if it matches your  
22 reading of the agreement. The first-line parties are  
23 insurance companies, other potentially responsible parties and  
24 ratepayers; is that correct?

25 A. And also Southern Union.

1 Q. Southern Union is a first-line responsibility?

2 A. Well, it's like -- in this agreement it's like  
3 listed as a fourth item down.

4 Q. Okay. Let's look at the fourth item down.  
5 Buyers initial sole liability -- and we're talking about the  
6 \$3 million amount that Southern Union was responsible for  
7 under this environmental liability agreement. Right?

8 A. Correct.

9 Q. Would you read the phrase that begins after  
10 liability amount? It says, Upon exhaustion of relief  
11 contemplated under subparagraphs C-1, 2 and 3; is that right?

12 A. Yes, it does.

13 Q. So MGE's -- excuse me. Southern Union's  
14 liability under this doesn't kick in until insurance  
15 companies, other PRPs and ratepayers have contributed; is that  
16 correct?

17 A. Per this contract, that's what it's saying.  
18 But I would also say that --

19 MR. MITTEN: Your Honor, I don't think there's  
20 a question on the table.

21 JUDGE JONES: I'm going to let him expound on  
22 his answer.

23 THE WITNESS: I would also say though that  
24 this Commission is not bound by this contract. This was a  
25 contract that was made between Western Resources and Southern



1 Union.

2 Q. But I'm asking about your testimony where you  
3 purport to interpret the contract.

4 A. Okay.

5 Q. So, again, back to my three tiers of  
6 liability. The first-line liability is insurance companies,  
7 other potentially responsible parties and ratepayers.  
8 Correct?

9 A. That's correct.

10 Q. The second line is the \$3 million that  
11 Southern Union is solely responsible for. Correct?

12 A. That's the way they say it, yes.

13 Q. And the third line would be a \$15 million pot  
14 that Southern Union and Western Resources are jointly  
15 responsible for; is that correct?

16 A. By the way this agreement's put together.

17 Q. Okay. Now, let me ask you to turn back to  
18 page 3 of the agreement, subsection C i.

19 A. Okay. I'm there.

20 Q. On the third line, Environmental insurance  
21 archaeology survey is referenced.

22 A. Okay.

23 Q. Do you know what that is?

24 A. I would assume from reading this document,  
25 that it's a -- to get a listing of all the insurance potential

1 that's out there.

2 Q. Okay. So do you know what an insurance  
3 archaeologist does?

4 A. No.

5 Q. So one of the responsibilities is to get a  
6 complete -- as complete a list of insurance companies as can  
7 be developed. Correct?

8 A. Right. Within 30 days.

9 Q. Well, but that would be an ongoing effort.  
10 There certainly is a 30-day requirement here, but wouldn't it  
11 be prudent for MGE to seek out insurance companies wherever  
12 and whenever it finds them?

13 A. Yes, it would. Sorry.

14 Q. Now, let me ask you to turn over to page 4  
15 again where it discusses potentially responsible party  
16 liability. About halfway down the paragraph on page 4, I see  
17 the phrase, In the event PRP recovery is protracted.

18 Does that suggest to you that PRPs may not be  
19 opening their wallets and throwing money at MGE to help  
20 remediate these natural gas sites?

21 MS. SHEMWELL: Judge, I'm going to object.  
22 That requires speculation on the part of the witness.

23 JUDGE JONES: Objection sustained.

24 BY MR. MITTEN:

25 Q. When you read this document, what meaning did

1     you put to that phrase?

2             A.       That if a PRP recovery was delayed, then all  
3     other parties could be accelerated.

4             Q.       And why do you think PRP recovery might be  
5     delayed?

6             MS. SHEMWELL:  Again, requires speculation,  
7     your Honor.

8             JUDGE JONES:  Objection sustained.

9     BY MR. MITTEN:

10            Q.       Let me ask you to look a little bit higher on  
11   page 4 and subsection 1 where it talks about insurance  
12   recovery.  I see the phrase --

13            MS. SHEMWELL:  Just for the record, I believe  
14   that's subsection small i.

15            MR. MITTEN:  Excuse me, i.  Pardon me.

16            THE WITNESS:  What page are we on?

17   BY MR. MITTEN:

18            Q.       We're still on page 4.  It's the paragraph  
19   above the potentially responsible party paragraph.

20            A.       Okay.  I'm there.

21            Q.       There appears in that paragraph the phrase, In  
22   the event insurance recovery is protracted.

23                    What did you think when you read that part of  
24   the contract?

25            A.       That if the insurance recovery was delayed,

1 then the parties shall accelerate the shared costs.

2 Q. Now, is it your understanding that the bills  
3 that the company has paid thus far have been paid out of, one,  
4 the \$3 million that Southern Union contributed and, two,  
5 whatever contributions they have been able to get from  
6 insurance companies and other potentially responsible parties?

7 A. Yes.

8 Q. In putting together your testimony to  
9 articulate Staff's position, did you attempt to determine what  
10 other insurance companies might be liable and what other  
11 potentially responsible parties might exist to contribute  
12 additional funds?

13 A. I believe we submitted data requests to the  
14 company and they gave us a listing of all matter -- all  
15 cover -- or all matters that was covered and it had a listing  
16 of all but there was no reconciliation that could be done.

17 Q. Did you, based upon that or any subsequent  
18 data requests or any discussions with the company, attempt to  
19 estimate how much additional insurance money or how much  
20 additional money might be available from other PRPs?

21 A. No. We asked company that question and we  
22 were not able to get a response.

23 Q. You weren't able to get a response? What does  
24 that mean?

25 A. They did not know.

1 Q. They didn't know?

2 A. Right.

3 Q. Did you attempt to estimate that for purposes  
4 of formulating Staff's position on this issue?

5 A. No.

6 Q. Now, one of the contentions that you make in  
7 your testimony is that the costs that will be recovered from  
8 the fund are not currently known and measurable; is that  
9 correct?

10 A. That is correct.

11 Q. Now, it's my understanding that dispersements  
12 will be made from the fund only after invoices are submitted  
13 and costs are actually incurred. Is that your understanding?

14 A. Could you repeat the question, please?

15 Q. It's my understanding that under the company's  
16 proposal, dispersements from the environmental response fund  
17 will be made only after actual costs are incurred and actual  
18 invoices have been submitted. Is that your understanding?

19 A. Are we talking about the ERF?

20 Q. Yes.

21 A. The 500,000 that we're including in rates at  
22 this time --

23 Q. I'm --

24 A. -- or wanting to include?

25 Q. I'm not necessarily talking about the amount.

1 I'm just talking about how the fund is going to operate.

2 A. Okay.

3 Q. When the company incurs a cost --

4 A. Okay.

5 Q. -- it will attempt, after it has already paid  
6 that cost, to get recovery from the environmental response  
7 fund. Is that your understanding?

8 A. I believe that's what it says.

9 Q. So at the time dispersements are made from the  
10 fund, they will be known and measurable. Wouldn't you agree?

11 A. At some future date, possibly.

12 Q. But at some future date, at the time that the  
13 company attempts to take money from the fund to reimburse  
14 itself for expenses, those expenses will be both known and  
15 measurable?

16 MS. SHEMWELL: Objection, your Honor. Asked  
17 and answered.

18 JUDGE JONES: What was your question again,  
19 counselor?

20 MR. MITTEN: The witness stated at some future  
21 time, and I'm trying to nail down what the future time would  
22 be.

23 JUDGE JONES: Objection overruled.

24 THE WITNESS: The future time whenever --  
25 whenever they incur the cost or whenever they have the

1 invoice, at some point in time in the future, yes, that would  
2 be known and measurable. At this point in time, no.

3 BY MR. MITTEN:

4 Q. Okay. But prior to any dispersements from the  
5 fund, those costs will indeed be known and measurable.  
6 Correct?

7 A. Yes.

8 Q. Now, you have also suggested that the  
9 company's proposal constitutes single-issue rate-making and  
10 retroactive rate-making; is that correct?

11 MS. SHEMWELL: Judge, I believe that's a  
12 misstatement. Mr. Harrison has indicated that it could --  
13 could constitute that.

14 JUDGE JONES: Okay. Just --

15 MR. MITTEN: Let me rephrase the question.

16 JUDGE JONES: Yeah. Just rephrase the  
17 question.

18 BY MR. MITTEN:

19 Q. In your testimony did you indicate that the  
20 company's proposal could constitute single-issue rate-making  
21 and could constitute retroactive rate-making?

22 A. What I stated in my testimony is, To the  
23 extent ERF is intended to be used as a true-up or tracking  
24 mechanism and current customers are required to pay for the  
25 cost of service not covered from past customers or be

1 reimbursed for past overpayments in rates, past rates were set  
2 too low or too high, my counsel advised me that MGE's proposal  
3 could constitute single-issue and retroactive rate-making.

4 Q. Now, I define single-issue rate-making as  
5 attempting to adjust rates based upon a single item of expense  
6 without taking into consideration all other items of expense,  
7 rate of return, investment, etc. Is that how you understand  
8 single-issue rate-making?

9 A. Yes.

10 Q. Now, the company's proposal is being submitted  
11 for consideration in the context of a general rate case when  
12 all issues of cost, investment and rate of return are under  
13 consideration?

14 A. Yes. But at a later date it's going to be  
15 trued up and that's going to be outside of a rate case and  
16 it's going to be treating that issue different from all the  
17 other issues. That's my understanding.

18 Q. So it's your -- excuse me. I didn't mean to  
19 interrupt you. It's your understanding that the true-up at  
20 some future date, by simply trueing up expenses that have  
21 been -- or a fund that has been authorized in the context of a  
22 general rate case, that that might constitute single-issue  
23 rate-making?

24 A. Yes.

25 Q. And we've had a lot of discussion about



1 retroactive rate-making today, but generally speaking, my  
2 understanding of that is attempting to recover past costs or  
3 to distribute past gains. And for purposes of my question, I  
4 want to focus on the past cost aspects of that.

5 A. Okay.

6 Q. Under the company's proposal, at the time --  
7 first of all, the costs that the company is proposing to  
8 recover through the environmental response fund are costs that  
9 are going to be incurred currently or in the future; is that  
10 correct?

11 A. Right. The 500 -- the 500,000 ERF is what I'm  
12 talking about in this statement here. In the actual true-up,  
13 using it as a true-up mechanism.

14 Q. And any dispersements that are made from that  
15 fund will be for current or future expenses. Correct?

16 A. At the time the true-up is done, it will be  
17 going back and trueing up either any overpayments or  
18 underpayments, over- or under-recovery from what was  
19 established in previous set rates.

20 Q. And I'm not talking about the true-up. I'm  
21 talking about the dispersements. The costs that the company  
22 is going to seek to recover from this fund --

23 A. Okay.

24 Q. -- are all costs that are going to be incurred  
25 now or in the future; is that correct?

1 A. I would agree to that.

2 Q. And not in the past?

3 A. The way I perceive the true-up mechanism --

4 Q. Again, I'm not talking about the true-up  
5 mechanism. I'm talking about dispersements from the fund.

6 A. Okay.

7 Q. And when we're focusing on dispersements,  
8 those are not for costs that were incurred in the past?

9 A. Dispersements from the ERF? Is that what  
10 you're talking about?

11 Q. Yes. That's what I'm talking about.

12 A. That would be -- that would happen at that  
13 time sometime in the future.

14 Q. Now, you also state in your Rebuttal Testimony  
15 that MGE's proposed ERF has a flaw in design in that it  
16 provides no incentive for MGE to seek recovery from insurers  
17 or other PRPs; is that correct?

18 A. Could you point me to where you're looking at,  
19 what page? Okay. I'm there on page 6.

20 Q. Did I correctly characterize your testimony?

21 A. Could you repeat your question?

22 Q. My understanding of your testimony is that you  
23 state that the proposed environmental response fund has a flaw  
24 in design, that was a phrase you used, in that it provides no  
25 incentive for MGE to seek recovery from insurers and other

1 potentially responsible parties; is that correct?

2 A. Actually, it says, Automatic recovery of the  
3 remediation costs from MGE customers and rates reduces the  
4 incentive for the company to seek partial or complete recovery  
5 of the costs from other past owners of the plant sites or  
6 company's insurers.

7 Q. Okay. That's fine. Now, appended to  
8 Mr. Noack's Surrebuttal in this case was a copy of a decision  
9 from the Massachusetts Department of Public Utilities. Do  
10 you recall that?

11 A. Yes, I do.

12 Q. Did you happen to review that document in  
13 connection with your testimony today?

14 A. The rate-making concept of it, yes.

15 Q. Could you turn to that document for a moment?  
16 Do you have a copy of it, by the way?

17 A. I believe so.

18 MR. POSTON: Where are we looking? I'm sorry.

19 MR. MITTEN: It is Schedule MRN-3 to  
20 Mr. Noack's Surrebuttal Testimony.

21 MR. POSTON: Thank you.

22 MS. SHEMWELL: Judge, just to the extent that  
23 he's going to ask Mr. Harrison to interpret another  
24 Commission's order or policy, if it's the order and it  
25 requires a legal interpretation, I'm going to object.

1                   MR. MITTEN: Could I ask the question before  
2 she objects to it?

3                   JUDGE JONES: Yeah. What, are you reserving  
4 an objection or something? Just wait until he asks the  
5 question. Objection denied at this time.

6 BY MR. MITTEN:

7                   Q. Do you know whether the Massachusetts  
8 Commission -- first of all, this was a generic proceeding  
9 where the Massachusetts Commission was attempting to deal  
10 with issues of MGP remediation costs that applied to all gas  
11 utilities in the state of Massachusetts, isn't it?

12                  A. Yes. From the dates of 1822 to 1978.

13                  Q. In this order, did the Massachusetts  
14 Department of Public Utilities address the issue of whether or  
15 not cost reimbursement from ratepayers would be a disincentive  
16 to collecting those costs from insurers and other potentially  
17 response parties?

18                  MS. SHEMWELL: Judge, I'm going to raise the  
19 issue of relevance to what this Commission's going to do. It  
20 certainly isn't controlled by anything the Massachusetts  
21 Commission may or may not have done.

22                  MR. MITTEN: No one's suggesting it's  
23 controlled, but I am entitled to impeach the witness's  
24 testimony. He has testified that it is his belief that an  
25 automatic cost recovery mechanism provides a disincentive to

1 seek recovery from insurance companies and other PRPs and I'm  
2 simply inquiring as to whether or not the Massachusetts  
3 department dealt with that issue in this order.

4 MS. SHEMWELL: I will say Mr. Noack's  
5 testimony can stand on its own without Mr. Harrison's  
6 interpretation of Mr. Noack's testimony.

7 JUDGE JONES: Well, that's from Mr. Noack's  
8 testimony?

9 MS. SHEMWELL: Yes.

10 JUDGE JONES: I don't want to read his  
11 testimony twice; in other words, his testimony and then in Mr.  
12 Harrison's testimony.

13 MR. MITTEN: I'm not proposing to inject  
14 Mister -- if you'll just leave -- I only have a couple more  
15 questions.

16 JUDGE JONES: Okay. In that sense, the  
17 objection's overruled and ask two more questions you have.

18 BY MR. MITTEN:

19 Q. Could you turn to page 49 of that Mass DPU  
20 order? Yeah, it's in his Surrebuttal Testimony. And could  
21 you begin reading aloud the paragraph that begins Early in  
22 hearings?

23 A. Early in hearings, the department expressed  
24 concern least allowing rate recovery of all or a major part of  
25 MGP cleanup costs as urged by the gas company petitioners on

1   behalf would eliminate a powerful incentive on the part of the  
2   companies to press their claims against their insurance  
3   companies. Section 6 of the settlement agreement recognizes  
4   and accommodates this concern. It provides that half of all  
5   recovery against insurers or other PRPs would be retained by  
6   the gas company so over-recovering while the other half --

7           Q.       So recovering, not over-recovering.

8           A.       Okay. Recovering while the other half would  
9   be returned to ratepayers with adjustment for expenses for  
10   prosecuting the claim. This provision allays the department's  
11   concern that any scheme for rate treatment put in-- put into  
12   effort before insurance law is clarified and claims are  
13   pursued to a conclusion must maintain a strong incentive for  
14   gas companies to assert their policy rights vigorously.

15          Q.       And in MGE's proposed environmental response  
16   fund, this is precisely the proposal the company has made.  
17   Any recovery it receives from insurance companies and other  
18   PRPs, the company will keep half after expenses for pursuing  
19   those claims are deducted; is that correct?

20          A.       That is their proposal.

21                   MR. MITTEN: I have no further questions.  
22   Thank you.

23                   JUDGE JONES: We have cross-examination from  
24   the Office of Public Counsel?

25                   MR. POSTON: Just one.

1 CROSS-EXAMINATION BY MR. POSTON:

2 Q. The environmental liability agreement  
3 discussed a little bit about ratepayer liability. And did  
4 ratepayers sign this?

5 A. No, they did not.

6 MR. POSTON: That's all. Thank you.

7 JUDGE JONES: Commissioner Murray, any  
8 questions?

9 COMMISSIONER MURRAY: No questions, thank you.

10 JUDGE JONES: Commissioner Appling?

11 COMMISSIONER APPLING: No questions.

12 JUDGE JONES: Redirect?

13 MS. SHEMWELL: Thank you, your Honor.

14 REDIRECT EXAMINATION BY MS. SHEMWELL:

15 Q. Mr. Harrison, you discussed with Mr. Mitten  
16 whether or not you had looked at the amount of recovery from  
17 MGE. Do you remember that discussion?

18 A. Yes.

19 Q. And you indicated that you could -- you got  
20 some information but you could not reconcile it. Would you  
21 explain that, please?

22 A. Data Request 1004 and 1011 asked that the  
23 company reconcile between these two documents. One of them  
24 pertains to the covered matters and the other one pertains to  
25 what's on the company's books.

1                   What's on the company's books has got a credit  
2   balance of about 1.7 million, the other document has got about  
3   \$4 million on it. And after the duplicate 3.4 million's taken  
4   out from the Port Authority, it pulls it down to \$790,000, but  
5   that still leaves about \$2.5 million.

6                   So we asked the company to do a reconciliation  
7   of these two documents and they said it was literally  
8   impossible to do.

9                   MS. SHEMWELL: Judge, if I may approach.

10                  JUDGE JONES: You may.

11   BY MS. SHEMWELL:

12                  Q.     Are these the documents to which you were  
13   referring?

14                  A.     Yes, it is.

15                  Q.     And would you say what 1004 is more  
16   specifically?

17                  A.     It's Office of Public Counsel's Missouri Data  
18   Information Request Response, Case No. GR-2006-0422, data --

19                  MR. MITTEN: Could I please see a copy of that  
20   before the witness testifies on it?

21                  JUDGE JONES: Yes.

22   BY MS. SHEMWELL:

23                  Q.     Would you please identify this?

24                  A.     This is Office of Public Counsel Missouri Data  
25   Information Request Response, Case No. GR-2006-0422, Data



1 Request No. 1011.

2 Q. And are these Missouri Gas Energy's responses  
3 to data request made from the Office of Public Counsel?

4 A. Yes, it is.

5 Q. And do those contain the numbers to which you  
6 just referred?

7 A. Yes, they do.

8 MS. SHEMWELL: Judge, I'd like to mark these  
9 as exhibits, please.

10 MR. MITTEN: Do we get copies?

11 MS. SHEMWELL: I'll get copies. It is the  
12 company's responses to data requests so it's not like it's  
13 information they haven't seen. I'll get copies in just a  
14 moment.

15 MR. MITTEN: But I don't have them with me  
16 right now.

17 JUDGE JONES: Do you want her to run upstairs  
18 and make copies before I rule on this?

19 MR. MITTEN: I don't have a problem before you  
20 rule -- well, actually I'd like to see the document before you  
21 rule so I'll know whether or not I want to make an objection.  
22 I had an opportunity to do a very cursory review a moment ago.

23 JUDGE JONES: Go ahead and check it out.

24 MS. SHEMWELL: Judge, these are both HC and we  
25 have a No. 121 available because Mr. Harrison doesn't have

1 surrebuttal. Perhaps these could be 121.

2 JUDGE JONES: He doesn't have surrebuttal?

3 MS. SHEMWELL: That's right.

4 JUDGE JONES: Okay.

5 MS. SHEMWELL: If it pleases the court, 1004  
6 could be 121-A and it's HC and --

7 JUDGE JONES: What is 1004? Is that a DR  
8 request number?

9 MS. SHEMWELL: It is.

10 JUDGE JONES: Okay.

11 MS. SHEMWELL: And 1011 is the other DR number  
12 and it could be 121-B. It is also highly confidential.

13 JUDGE JONES: All right. They're marked as  
14 such.

15 MS. SHEMWELL: I'd like to offer them into  
16 evidence.

17 JUDGE JONES: Any objection?

18 MR. MITTEN: No objection.

19 JUDGE JONES: Exhibits 121-A and 121-B are  
20 admitted into the record.

21 (Staff Exhibit Nos. 121-A and 121-B were  
22 received into evidence.)

23 BY MS. SHEMWELL:

24 Q. When you were saying that you had asked data  
25 requests and you could not get a reconciliation, were you

1 referring to one of these documents, Mr. Harrison?

2 A. Between those two documents.

3 Q. Okay. Thank you. Mr. Mitten asked you about  
4 whether or not these costs are known and measurable. Are they  
5 currently known and measurable?

6 A. They are not.

7 Q. He asked you about future costs being paid.

8 Can you say when the liabilities for these costs were  
9 incurred?

10 A. No.

11 Q. And are you aware of the Statute 386.266 that  
12 requires a mechanism for recovery?

13 A. Yes.

14 Q. Has MGE pursued that, in your opinion? Does  
15 this program meet that statute? Do you have an opinion about  
16 that?

17 A. I don't believe it does, no.

18 MS. SHEMWELL: That's all I have. Thank you,  
19 Judge.

20 JUDGE JONES: Okay. Mr. Harrison, you may  
21 step down.

22 Let's take a 10-minute break and come back and  
23 continue with the Infinium software issue.

24 (A recess was taken.)

25 JUDGE JONES: Let's start off with Mr. Noack

1 on Infinium software.

2 MR. MITTEN: Could I give a brief opening  
3 statement on this issue?

4 JUDGE JONES: Yes, you may.

5 MR. MITTEN: If it pleases the Commission. In  
6 2005, MGE discontinued the use of certain general ledger and  
7 related financial reporting capabilities of the Infinium  
8 software system that it employed for several years. However,  
9 the evidence in this case will show that the company continues  
10 to use several of the other capabilities of that system.

11 MGE has not fully recovered the original cost  
12 of the Infinium system and approximately 1,230,000 remains on  
13 the company's books. MGE and Staff agree that this  
14 unrecovered balance should be amortized over a five-year  
15 period and recovered through rates.

16 Public Counsel opposes any amortization of the  
17 remaining costs on grounds that the Infinium software is no  
18 longer used and useful and, therefore, the cost of that system  
19 should not be recovered from ratepayers.

20 The company's testimony in this case  
21 establishes that Public Counsel's position is both factually  
22 and legally wrong. Public Counsel is factually wrong because  
23 MGE continues to use several of the capabilities of the  
24 Infinium system in fulfilling its obligation to provide  
25 service to its customers.

1                   And Public Counsel's position is legally wrong  
2     because the concept of used and useful is a standard that  
3     applies to rate-based issues where a utility is attempting to  
4     earn a return. But that's not what's involved here.

5                   MGE is not trying to earn a return on the  
6     balance of the Infinium costs that remain on the company's  
7     books. As Mister -- instead, the company is simply trying to  
8     recover those remaining costs.

9                   As Mr. Noack explains, MGE's request is  
10    analogous to situations that the Commission has dealt with in  
11    the past where telephone companies have been allowed to  
12    recover the costs of switching equipment that is removed from  
13    service prior to being fully depreciated. Thank you.

14                  MR. POSTON: Judge, if I could make a  
15    motion -- I probably should have made this before he got  
16    started.

17                  JUDGE JONES: Go ahead.

18                  MR. POSTON: I move that we move this whole  
19    issue back until Wednesday since MGE's now getting another  
20    five days or whatever to prepare for this issue, it was not  
21    supposed to be on until tomorrow and then we could work out  
22    the Infinium software data request issue that we have with  
23    them.

24                  JUDGE JONES: Does anybody have a problem with  
25    that?

1                   COMMISSIONER APPLING: Are you going to be  
2 here on Wednesday?

3                   THE WITNESS: I guess I am now. Now I am.

4                   JUDGE JONES: Well, if nobody has a problem  
5 with that, we'll do that then. And you might as well stay  
6 where you are because you're first on the next issue.

7                   MR. FRANSON: That will be at 9:00 a.m.?

8                   JUDGE JONES: At 9:00 -- man, will you write  
9 this down, for crying out loud?

10                  MR. FRANSON: I got it. I just want to be  
11 sure because I'll pass it on to someone else. Thank you,  
12 Judge.

13                  JUDGE JONES: Okay. Let's skip that and go to  
14 unrecovered rate case expense.

15                  MR. MITTEN: If it pleases the Commission.

16                  JUDGE JONES: You got that one prepared  
17 already?

18                  MR. MITTEN: I do.

19                  COMMISSIONER APPLING: It really doesn't  
20 please the Commission.

21                  MR. MITTEN: Commissioner Appling, you've gone  
22 all day without saying that.

23                         The factual evidence relating to the issue of  
24 rate case expense is undisputed. In the Report and Order  
25 issued in MGE's last general rate case, the Commission allowed

1 rate case expense of approximately \$894,000 and authorized  
2 recovery of that amount through three-year amortization.

3 Rates approved in that case took effect on  
4 October 2nd, 2004 so by the end of 2006, approximately  
5 25 percent of the amount the Commission authorized MGE to  
6 collect or about a quarter of a million dollars still has not  
7 been recovered from ratepayers.

8 MGE's proposed solution to this problem is to  
9 add the uncollected balance of rate case expense from the last  
10 case to whatever amount of rate case expense is determined to  
11 be reasonable in the current case and then amortize the total  
12 over three years. This will allow the company to recover the  
13 full amount of the rate case expense that the Commission has  
14 found MGE is entitled to collect from its customers.

15 Staff also recommends a three-year  
16 amortization of rate case expenses, but Staff opposes  
17 including within the amount to be amortized the unrecovered  
18 portion of rate case expenses from the company's last case.

19 As expressed in the testimony of Staff's  
20 witness on this issue, Staff's position is based on policy to  
21 recommend recovery in rates only of normalized rate case  
22 expense on a prospective basis. Staff's witness will also  
23 testify that Staff believes it is inappropriate to allow  
24 specific recovery in rates of amounts related to past  
25 proceedings.

1                   With all due respect to Staff's policy  
2     concerns and what it believes to be appropriate, MGE believes  
3     that when those concepts conflict with an order of the  
4     Commission, the Commission's order always wins.

5                   In MGE's last case, the Commission made a  
6     determination as to the reasonable amount of rate case expense  
7     and authorized the company to collect that amount. That is  
8     precisely what MGE proposes to do, but that will only occur if  
9     Staff's position on this issue is rejected. Thank you.

10                  JUDGE JONES: Okay. Mr. Noack, you remain  
11     under oath. We'll move onto questions from Staff.

12                  MR. FRANSON: Okay. Thank you, Judge.

13     MICHAEL NOACK testified as follows:

14     CROSS-EXAMINATION BY MR. FRANSON:

15                  Q.     Mr. Noack, let's assume that the Commission  
16     orders what you want in this case. So you're going to --  
17     you're going to get two things. One, will be whatever your  
18     normalized rate case expense is from the current case, that  
19     being GR-2006-0422, you will get that. Correct? Or you would  
20     expect to?

21                  A.     Yes.

22                  Q.     Okay. Now, if you add something to that from  
23     a prior time, that being this amortization amount -- and by  
24     the way, how much is that?

25                  A.     In my true-up testimony, I have computed the



1 balance all the way out to when the actual rates would go into  
2 effect, which would be March of '07. And that remaining  
3 balance is 148,971.

4 Q. Okay. Isn't it true then that you would be  
5 double recovering? You're already going to have a normalized  
6 expense and then you're going to just add to that? So you're  
7 actually recovering more than your current expense if you get  
8 both here?

9 A. No. I'm not going to be double recovering,  
10 no.

11 Q. Okay. Isn't it true that rate case expense is  
12 ordinarily normalized rather than -- it's ordinarily  
13 normalized. Correct?

14 A. Sometimes it's normalized. In the last case,  
15 I think the Commission authorized us to defer it and amortize  
16 it over three years.

17 Q. Okay. But it was MGE's determination to come  
18 in prior to three years, isn't that correct, for a rate case?

19 A. We had -- yes, that's -- that's -- yes.

20 Q. Okay. Now, have you ever had a situation  
21 where you were amortizing something and you couldn't get it  
22 because you came in before that amortization period was up?

23 A. I can't recall of any. If you have  
24 suggestions of what they might be, I -- I can't think of any  
25 off the top.

1           Q.       Okay. But you're not denying the possibility  
2 of that being something that could happen if you had, say, a  
3 five-year amortization on an issue, you come in in three, what  
4 usually happens to years four and five?

5           A.       Probably ask for it in the next case.

6           Q.       Okay. Let me ask you, isn't that retroactive  
7 rate-making?

8           A.       No. I don't see it as such. We've -- I mean,  
9 if -- if that's -- if it's the case where we've been  
10 authorized to -- to defer something and, you know, amortize it  
11 and collect it over a three-year period, I mean I'm just --  
12 I'm reading the order, Mr. Franson, and if I read it wrong,  
13 then, you know, the Commission will tell me that.

14                   MR. FRANSON: I guess -- what it comes down to  
15 is, the definition of -- well, let's just stop where we are.  
16 Thank you, Judge. I don't believe I have any further  
17 questions. I think this will be resolved in the brief.

18                   JUDGE JONES: Any cross-examination from the  
19 Office of Public Counsel?

20                   MR. POSTON: No, thank you.

21                   JUDGE JONES: Commissioner Murray?

22 QUESTIONS BY COMMISSIONER MURRAY:

23           Q.       Mr. Noack, can you shed a little light on this  
24 unrecovered rate case expense? I'm sorry. I didn't have my  
25 microphone on.

1                   Can you shed a little light on this  
2 unrecovered rate case expense? There was an amount set in  
3 your last rate case; is that correct?

4           A.       That's correct.

5           Q.       Now, and what was that based on? Was that  
6 based on a normalized --

7           A.       No. It was -- it was -- our rate case expense  
8 in the last case was I think approximately \$1.3 million. And  
9 the Commission denied about 500,000 -- 4- to 500,000 dollars  
10 of that rate case expense, mostly that had to do with  
11 Mr. Hershman's (ph.) billing rates, but -- so I would say it  
12 was in the neighborhood of \$850,000.

13          Q.       All right. And that was set as the amount  
14 that you were allowed to recover in rates?

15          A.       Yes. Yes, Commissioner.

16          Q.       And of that, you have recovered all but -- or  
17 by March you will have recovered all but about 149,000 of  
18 that; is that correct?

19          A.       That's correct.

20          Q.       And for your current rate case expenses, is  
21 there disagreement as to the amount?

22          A.       No, I don't believe so. Not at this time.  
23 We've got -- I've got an estimate in my true-up of \$700,000.  
24 I think Ms. Mapeka in the Staff's case has probably got what  
25 we've incurred to date, which -- which isn't really terribly

1 far off from what we are and she is going to accept, you know,  
2 the costs through the hearing and -- and the brief probably  
3 so -- or an estimate of what those will be. So, no, I don't  
4 think -- with regard to rate case expense, we don't have a --  
5 an issue.

6 Q. Okay. The company decides when to file a rate  
7 case. Correct?

8 A. Yes, Commissioner.

9 Q. And was it purely the timing of this rate case  
10 that prevented from recovering the full amount of rate case  
11 expense from your last rate case?

12 A. I think it -- it was that, plus it was the --  
13 the fact that in reading the Commission's order, we -- we took  
14 those expenses out of the income statement, we deferred them  
15 in accordance with -- with the order.

16 And what's going to happen is that if we don't  
17 get recovery of those costs in this rate case, we're going to  
18 have to actually write those off in calendar year 2007. Just  
19 according to the financial accounting standards, if we aren't  
20 going to get rate recovery of it, then we have to write it  
21 off.

22 COMMISSIONER MURRAY: Okay. Thank you.

23 QUESTIONS BY COMMISSIONER APPLING:

24 Q. I'm sorry. I'm sure Commissioner Murray asked  
25 the question. How much more money is it necessary for you to

1 recover?

2 A. From the last case?

3 Q. Yes.

4 A. What -- what's still on our books to be  
5 recovered is \$148,000.

6 Q. And how do you anticipate that working? We're  
7 going to amortize that over a five-year period of time or we  
8 going to add it to the front of your recovery? How do you see  
9 that --

10 A. Well, what I've recommended is that it just be  
11 lumped in with the current rate case expense and we'll --  
12 we'll just re-amortize it over three years with the other rate  
13 case expense. That way we won't have to write it off.

14 COMMISSIONER APPLING: Thank you.

15 JUDGE JONES: Any recross from Staff of the  
16 Commission?

17 MR. FRANSON: Yes.

18 RECROSS-EXAMINATION BY MR. FRANSON:

19 Q. Mr. Noack, what is meant by the term -- for  
20 example, in Ms. Mapeka's testimony, page 28, line 4 it says,  
21 This adjustment normalizes rate case expenses over a  
22 three-year period.

23 What does the term "normalize" mean in that  
24 context?

25 A. She's trying to smooth out the amount of

1 expense from period to period.

2 Q. What is the difference between normalization  
3 of expenses and amortization?

4 A. Amortization is -- is taking something and --  
5 and writing it off over a certain period of time.

6 Q. Okay. So they serve two different functions?

7 A. Yes.

8 MR. FRANSON: Okay. Thank you very much. No  
9 further questions.

10 JUDGE JONES: Any recross from the Office of  
11 Public Counsel?

12 MR. POSTON: No, thanks.

13 JUDGE JONES: Any redirect from Missouri Gas  
14 Energy?

15 MR. MITTEN: No redirect.

16 JUDGE JONES: Thank you, sir. You may step  
17 down.

18 Did you have an opening statement?

19 MR. FRANSON: Yes, I did. Judge, the last  
20 Commission order on this does say amortization. That seems to  
21 be what the company's hanging its hat on. Staff  
22 traditionally, the Commission traditionally and in almost any  
23 other case has normalized an expense like this, which is  
24 exactly what Staff is proposing here. You just heard  
25 Mr. Noack explain the difference between normalizing and

2                   The company decided they would come in for a  
3   rate case, they did that. That's totally within their  
4   control. Expenses are quite often amortized over longer than  
5   three years. Mr. Noack didn't know they'd ever lost that but  
6   he didn't offer anything else, either.

13 And that would conclude my opening statement  
14 at this time. If it pleases the Commission, I'd call  
15 Ms. Mapeka.

17 JUDGE JONES: Thank you.

18 MR. FRANSON: Your Honor, this is the first  
19 time Ms. Mapeka will have been up so I'll have some testimony,  
20 exhibits.

22 DIRECT EXAMINATION BY MR. FRANSON:

23 Q. Ma'am, please state your name.

24 A. Paula Mapeka.

25 Q. And, ma'am, how are you employed?

1           A.       I'm employed as a utility regulatory auditor  
2 one by the Missouri Public Service Commission.

3           Q.       Okay. You're a member of the Staff?

4           A.       Yes, I am.

5           Q.       And, ma'am, did you prepare some testimony in  
6 this case?

7           A.       Yes, I did.

8           Q.       Okay. I need to ask you, did you prepare  
9 Direct Testimony?

10          A.       Yes, I did.

11                   MR. FRANSON: I believe that, Judge, is  
12 Exhibit 122.

13 BY MR. FRANSON:

14          Q.       Did you prepare Rebuttal Testimony?

15          A.       Yes, I did.

16          Q.       And did you prepare -- and that would be  
17 Exhibit 123. And Exhibit 124, did you prepare surrebuttal?

18          A.       Yes, I did.

19                   MR. FRANSON: Okay. Your Honor, if I may  
20 approach the court reporter with some exhibits.

21                   (Staff Exhibit Nos. 122, 123 and 124 were  
22 marked for identification.)

23 BY MR. FRANSON:

24          Q.       Ma'am, do you have copies of your testimony  
25 with you?



1           A.       Yes, I do.

2           Q.       Okay. In fact, that would be all three

3 copies, your direct, your rebuttal and surrebuttal?

4           A.       Yes, sir.

5           Q.       Let's start with your Direct Testimony,

6 Exhibit 122. Do you have any corrections, deletions or

7 additions to your testimony?

8           A.       No.

9           Q.       Not to your -- okay. That's Exhibit 122.

10 Same question, but your Rebuttal Testimony, Exhibit 123?

11          A.       Yes, I do.

12          Q.       Okay. Could you take us to the first one of

13 those and give us page number and line number and then the

14 correction?

15          A.       For my rebuttal, page 6, lines 2.

16          Q.       Okay. What is the change?

17          A.       Where it says, Operations until 2005, it

18 should change to say, Operations until December 2004.

19          Q.       December 2004. Okay. In addition to that, do

20 you have any other changes to your Rebuttal Testimony?

21          A.       Not that I'm aware of.

22          Q.       Okay. Exhibit 124, your Surrebuttal

23 Testimony, do you have any corrections, additions or deletions

24 to that testimony?

25          A.       No.

1           Q.       Okay. Ms. Mapeka, if you were asked the same  
2 questions and gave the answers that appear in your testimony,  
3 Exhibits 122, 123 and 124, would your answers today be  
4 substantially similar to the answers you gave in your  
5 testimony?

6           A.       Yes.

7           Q.       So your testimony would be substantially  
8 similar if you were asked all these questions today?

9           A.       Yes.

10                  MR. FRANSON: Your Honor, at this time I would  
11 offer into evidence Exhibits 122, 123, and 124, that being  
12 Ms. Mapeka's Direct, Rebuttal and Surrebuttal Testimony.

13                  JUDGE JONES: Any objections to Exhibits 122,  
14 123 and 124?

15                  MR. MITTEN: No objection.

16                  JUDGE JONES: Exhibits 122, 123 and 124 are  
17 admitted into the record.

18                  (Staff Exhibit Nos. 122, 123 and 124 were  
19 received into evidence.)

20                  MR. FRANSON: And with that, your Honor, I  
21 would pass the witness for cross-examination.

22                  JUDGE JONES: Any questions from Missouri Gas  
23 Energy?

24                  MR. MITTEN: Just a few.

25 CROSS-EXAMINATION BY MR. MITTEN:

1 Q. Good afternoon, Ms. Mapeka.

2 A. Good afternoon.

3 Q. I'm going to have to ask you to clear up some  
4 confusion that has developed for me regarding this issue since  
5 Mr. Franson's opening statement. He seemed to distinguish  
6 between normalizing rate case expenses and amortizing rate  
7 case expenses. And I'll have to admit that in 30 years of  
8 trying rate case expenses, I always thought they were pretty  
9 much the same. Could you tell me what the difference is?

10 A. With amortization, this is when expenses are  
11 spread over a fixed period of time in order for the company to  
12 recover those expenses. But with normalization, this is when  
13 the expenses can either be fluctuating and an average amount  
14 can be used in order to -- for rate -- for rate-setting  
15 purposes and it can be smoothed out over a given period of  
16 time.

17 And with normalization also, like in this  
18 instance with rate case expenses, it doesn't -- it's not an  
19 expense that is incurred by the company on a yearly basis. So  
20 in this case, for example, the company's recommended  
21 three-year normalization. That means we'll take that  
22 expense -- the expenses incurred and spread them over three  
23 years. And normally these expenses are usually in-- incurred  
24 in a test year.

25 Q. Does the Missouri Commission usually speak in

1 terms of normalization when it refers to rate case expense in  
2 its rate orders or does it refer to amortization?

3 MR. FRANSON: Your Honor, I'm going to object.  
4 What that is calling for is certainly beyond this witness's  
5 knowledge in that it calls for a comment on every Commission  
6 order, presumably limited to a rate case, that's ever come  
7 out. And there's no foundation for that.

8 And also such a matter is -- what the  
9 Commission has done in other cases in totality is certainly  
10 not relevant. If there was certainly a specific case that  
11 Mr. Mitten may want to refer to, that may be a different  
12 matter.

13 JUDGE JONES: Well, what the Commission has  
14 done is always relevant to what it's going to do. If it's  
15 outside the scope of her knowledge, she can just say I don't  
16 know. She doesn't have to know.

17 MR. FRANSON: Thank you, your Honor.

18 JUDGE JONES: The objection's overruled and  
19 you can answer the question.

20 THE WITNESS: I don't know.

21 BY MR. MITTEN:

22 Q. Would it be fair to characterize amortization  
23 as a normalization methodology? It's a method that allows you  
24 to spread a cost that's not annually recurring over a period  
25 of time that you think is relevant or meaningful?

1           A.       Could you repeat that question?

2           Q.       Is amortization a normalization methodology in  
3   that it allows you to spread a cost that is periodically  
4   recurring but not annually recurring over whatever period you  
5   think that recurrence will occur?

6           A.       The word can be used synonymously with  
7   normalization, but what we say here is with normalization we  
8   are not guaranteeing the company that they're going to recover  
9   the full costs.

10          Q.       So in this case, is Staff proposing  
11   normalization of rate case expenses as opposed to amortization  
12   of rate case expenses?

13          A.       Yes.

14          Q.       But in the last case, the Commission ordered  
15   an amortization of the rate case expenses; is that correct?

16          A.       It is correct. But we believe that the word  
17   "amortization" was used synonymously with the word  
18   "normalization."

19          Q.       Ms. Mapeka, how did you pick a three-year  
20   period to normalize rate case expenses in this case? Did it  
21   relate to the interval that you thought would exist between  
22   this case and the next case that MGE is likely to file?

23          A.       MGE requested a three-year normalization in  
24   their prior case and in the same case they requested a  
25   three-year amortization so we used that three years.

1           Q.       The company also requested to recover the  
2 unrecovered cost of the last case. So you don't take  
3 everything the company requests at face value, do you?

4           A.       I don't believe we do.

5           Q.       So did you come to an independent judgment as  
6 to whether or not three years was an appropriate interval to  
7 use to normalize rate case expenses in this case?

8           A.       We thought it would be appropriate.

9           Q.       Now, in the opening statement in this case,  
10 MGE's lawyer noted that since 1996, this is the fifth rate  
11 case that MGE has filed. Assuming for purposes of this  
12 question that that's correct, that's an average of every two  
13 years, isn't it?

14          A.       I haven't looked at the documentation.

15          Q.       Five divided by -- or ten divided by five is  
16 two. Correct?

17          A.       That is correct.

18          Q.       So if, in fact, historically MGE has filed a  
19 rate case every two years, if you're going to normalize rate  
20 case expense, shouldn't it be based on a two-year  
21 normalization rather than a three-year normalization?

22          A.       It's at the company's discretion when they can  
23 come in for a rate case. So in this case if they requested a  
24 three-year normalization, we gave them a three-year  
25 normalization.

1           Q.       But the company requested a three-year  
2 amortization, didn't it?

3           A.       In this case, they did.

4           Q.       But there's a difference between a  
5 normalization and an amortization. And since Staff is making  
6 that distinction, I'm asking you, based upon history, which  
7 shows that the company comes in on an average of every two  
8 years, if you're going to normalize rate case expenses as  
9 opposed to amortizing them, shouldn't you be using a two-year  
10 interval instead of a three-year interval?

11          A.       In either case the company can come in for a  
12 rate -- rate increase whenever they want to. We don't give  
13 them a time limit to when they can come in for a rate  
14 increase.

15          Q.       So as far as you're concerned, past history is  
16 really not relevant in determining what the appropriate  
17 interval for normalization is?

18          A.       We were going by what the company recommended.

19               MR. MITTEN: I have no further questions.

20 Thank you.

21               JUDGE JONES: Any questions from the Office of  
22 Public Counsel?

23               MR. POSTON: No, thank you.

24               JUDGE JONES: Commissioner Murray?

25               COMMISSIONER MURRAY: Thank you.

1 QUESTIONS BY COMMISSIONER MURRAY:

2 Q. Good afternoon.

3 A. Good afternoon.

4 Q. I want to pursue this issue of normalization  
5 of rate case expenses just a little bit with you. We looked  
6 earlier at the issue of normalizing weather. And in order to  
7 do that, you look at a -- you determine a method by which you  
8 are going to calculate what is a normal year for heating  
9 degree day purposes and then adjust the test year to come  
10 closer to that normal.

11 Now, when you're normalizing a rate --  
12 normalizing rate case expenses, it seems to me that you would  
13 attempt to determine what is the normal for frequency of rate  
14 case filing, determine what were the costs of the rate case  
15 and then divide it by this normal interval. Would that be the  
16 way that you would normalize rate case expenses?

17 A. Yes.

18 Q. So that if a company came in every two years  
19 for a rate case, it would seem logical that you would  
20 normalize the rate case expense by dividing it by two?

21 A. Yes, we would. But in this case, the company  
22 recommended a three-year normalization and we were going by  
23 what the company had recommended.

24 Q. Did they recommend normalization or  
25 amortization?



1           A.       In this case they recommended amortization.

2           Q.       Okay.

3           A.       But we are recommending normalization.

4           Q.       But amortization would be the number of years

5 over which you would spread the recovery; is that correct?

6           A.       True. But now we -- we are recommending

7 normalization even though we say we are recommending the

8 normalization over three years. At the same time, we are not

9 guaranteeing full recovery of those costs.

10          Q.       Well, do you think the normal interval that

11 MGE files rate cases is three years?

12          A.       In this case, as pointed out by the attorney,

13 it's two years.

14          Q.       So if you were really trying to arrive at

15 recovery of rate case expenses over the normal interval of

16 time, it would be more likely to be two years, would it not?

17          A.       Yes, it would.

18          Q.       And if you -- for example, if rate case

19 expenses were a million dollars, just for ease of numbers

20 here, and you had a two-year normalization, that would be

21 \$500,000 per year; is that correct?

22          A.       Correct, yes, ma'am.

23          Q.       But if you did it as a three-year

24 normalization, that would only be about 330,000 --

25          A.       About 300, yes, ma'am.

1 Q. -- per year?

2 So if you did it over three years, you would  
3 be short -- and they actually came in every two years, they  
4 would not recover about a third of their rate case expenses;  
5 is that right?

6 A. That is correct. But at the same time, if  
7 they came in after five years, they would also end up  
8 over-recovering on those rate case expenses. So it's not a  
9 guarantee that --

10 Q. So that recovery continues until their next  
11 rate case even if the normalization was done on the basis of  
12 two years and yet they waited five years?

13 A. Yes. They would continue recovering on those  
14 costs.

15 Q. So the purpose of normalizing rate case  
16 expenses, is that purpose to try to estimate what is the most  
17 likely period of time before the next rate case?

18 A. What we're trying to do with -- is to help the  
19 company recover the costs that they've incurred in a test year  
20 pertaining to rate case expenses and allowing them to recover  
21 those costs over three years.

22 But in the event that they come before the  
23 three years are up, we don't consider those costs into the new  
24 test year amounts or the new test year rate case expense  
25 amounts.

1           Q.       Just as you wouldn't try to get them to return  
2 the over-recovery if they didn't file a rate case --

3           A.       Yes.

4           Q.       -- within that period of time?

5           A.       Yes, ma'am.

6           Q.       Are you familiar with other rate -- have you  
7 worked on any other rate cases?

8           A.       I worked on the Empire rate case.

9           Q.       And do you recall what the rate case -- what  
10 the normalization was in that one? I don't recall.

11          A.       In -- in the Empire case, we -- we didn't  
12 include the expenses from the prior rate case --

13          Q.       Okay.

14          A.       -- into their current rate case expense  
15 amounts.

16          Q.       But do you recall what was used for the  
17 normalization?

18          A.       A two-year period.

19          Q.       Two-year. And Staff's only reason for using  
20 three years here was the fact that the company had asked for  
21 amortization over three years?

22          A.       That and the fact that in the previous rate  
23 case, they also had requested a three-year normalization.

24                   COMMISSIONER MURRAY: Okay. Thank you.

25                   JUDGE JONES: Any recross from Missouri Gas

1 Energy?

2 MR. MITTEN: No, your Honor.

3 JUDGE JONES: Office of Public Counsel?

4 MR. POSTON: No.

5 JUDGE JONES: Any redirect?

6 MR. FRANSON: Yes, your Honor.

7 REDIRECT EXAMINATION BY MR. FRANSON:

8 Q. Ms. Mapeka, I need to make sure you can see  
9 this. Okay. Now in response to some questions from  
10 Mr. Mitten and Ms. -- and Mister -- and I'm sorry, and  
11 Commissioner Murray, we've talked about the concept of  
12 amortization and normalization. We've talked about what those  
13 mean.

14 Now, let's talk about MGE coming in -- let's  
15 forget a moment the unrecovered part. Let's talk about --  
16 let's assume that they recovered -- that the Commission  
17 authorizes them to recover \$1 million in rates for rate case  
18 expense. And let's also assume that the Commission says that  
19 will be normalized. Okay?

20 So what would that mean to you? I mean, how  
21 would you interpret such an order from a rate-making  
22 standpoint? What would be the ongoing effect of that? Would  
23 there be a built -- an amount built in for recovery in the  
24 rates for rate case expense?

25 A. Yes.

1           Q.       Okay. Let's say that the Commission uses a  
2 three-year normalization. What would that amount be if it's a  
3 \$1 million rate case expense?

4           A.       I believe it would be 333,333.3333.

5           Q.       Okay. Let's say 333,333.34 and then give or  
6 take a penny. Okay. Let's assume that, number one, their  
7 actual expenses were \$1 million. Okay. They, in year one,  
8 collect this amount (indicating). Correct?

9           A.       Yes, sir.

10          Q.       In year two they recover the same amount.  
11 Correct?

12          A.       Yes, sir.

13          Q.       Okay. Now, let's assume, first of all, that  
14 they come in in year three. So they still would be expecting  
15 to recover this, but you're telling us that under  
16 normalization, they wouldn't recover that third year; is that  
17 correct?

18          A.       Depending on when they would come in on that  
19 year, they would recover what --

20          Q.       They would recover maybe part of it depending  
21 on --

22          A.       Yes.

23          Q.       Okay. Let's also -- so they could -- in this  
24 third year, if they came in, they could recover part of it  
25 depending on when the new rates take effect?

1           A.     Yes, sir.

2           Q.     Okay. I believe Mr. Noack testified about  
3 that; is that correct?

4           A.     Yes, sir.

5           Q.     Okay. Now, let's also assume that they don't  
6 come in in year three and they recovered this same amount. So  
7 we're out three years. They recovered their full million  
8 dollars; is that correct?

9           A.     Yes, sir.

10          Q.     Okay. Let's assume that they don't come in in  
11 year four. For whatever reason, they're not in. Would they  
12 not collect the same amount in the fourth year?

13          A.     They would.

14          Q.     Okay. And there they would have recovered  
15 their million dollars plus an extra 333,333.34; is that  
16 correct?

17          A.     That is correct.

18          Q.     And under this scenario they're out four  
19 years, they would have had no new rate case expense; is that  
20 correct?

21          A.     That is correct.

22          Q.     Okay. And the same would be true if they  
23 stayed out five years or six years?

24          A.     The same would be true.

25          Q.     Okay. Now, you also got some questions

1 about -- from Mr. Mitten about a two-year normalization rather  
2 than a three=year. Had you ever heard that from MGE before  
3 today?

4 A. Not that I'm aware of.

5 Q. In fact, wasn't it true that the company  
6 recommended three years recovery of rate case expense rather  
7 than two years; is that correct?

8 A. Yes, sir.

9 Q. Okay. Now, let me ask you one other thing.  
10 Let's start with this \$1 million. If you had \$1 million here  
11 of rate case expense built into rates and then that was built  
12 in each year, they recovered 1 million each year say for the  
13 next three years, wouldn't that -- that wouldn't be  
14 appropriate because that would be recovery of, say, \$3 million  
15 for an expense of 1 million; is that correct?

16 A. I'm sorry. I don't follow.

17 Q. Okay. What I'm saying is, the reason you  
18 don't -- isn't it true that the reason you don't take the full  
19 million dollars is you need to break that up a little bit so  
20 there is not likely to be an over-recovery? What I'm asking  
21 is, if they collected a million dollars the first year, then a  
22 million dollars the second year, they would have  
23 over-recovered their actual rate case expense; is that  
24 correct?

25 A. Over what period?

1           Q.       Okay. Let me ask you. If you built in a  
2 million dollar rate case expense in the first year, you would  
3 do the same thing in the second year, wouldn't you?

4           A.       Yes.

5           Q.       Okay. Why would that not be appropriate to  
6 recover a \$1 million rate case expense?

7           A.       I'm assuming you're talking about the  
8 1 million as in what was incurred in the test year expense.

9           Q.       Yes. Yes.

10          A.       Because by the time we go to the second year,  
11 they would have already fully recovered in the first year.

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

14                   JUDGE JONES: Thank you. You may step down.

15                   We're going to adjourn now. We have hearings  
16 happening tonight. Things are going to start changing in this  
17 room so I'll see you all tomorrow. Let's start -- let's start  
18 at 8:30 tomorrow, see if we can finish up everything so  
19 Wednesday will be a clean slate. You all have a good evening.

20                   WHEREUPON, the hearing was adjourned until  
21 8:30 a.m., January 12th, 2006.

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1	I N D E X	
2	PROPERTY TAX REFUNDS ISSUE	
3	DAVID WINTER	
4	Direct Examination by Mr. Meyer	845
5	Cross-Examination by Mr. Mitten	848
6	MICHAEL NOACK	
7	Cross-Examination by Mr. Meyer	858
8	Questions by Judge Jones	861
9	Redirect Examination by Mr. Mitten	882
10	UNRECOVERED COST OF SERVICE AMORITIZATION ISSUE	
11	MICHAEL NOACK	
12	Cross-Examination by Mr. Franson	872
13	Cross-Examination by Mr. Poston	879
14	Redirect Examination by Mr. Mitten	882
15	ENVIRONMENTAL RESPONSE FUND ISSUE	
16	THOMAS HELFRICH	
17	Direct Examination by Mr. Mitten	890
18	Cross-Examination by Ms. Shemwell	891
19	Cross-Examination by Mr. Poston	897
20	Questions by Commissioner Murray	898
21	Recross-Examination by Ms. Shemwell	899
22	Redirect Examination by Mr. Mitten	900
23		
24		
25		

1	MICHAEL NOACK	
2	Cross-Examination by Ms. Shemwell	902
3	Cross-Examination by Mr. Poston	914
4	Questions by Commissioner Murray	918
5	Questions by Commissioner Gaw	921
6	Recross-Examination by Ms. Shemwell	930
7	Recross-Examination by Mr. Poston	934
8	Redirect Examination by Mr. Mitten	935
9	PAUL HARRISON	
10	Direct Examination by Ms. Shemwell	1009
11	Cross-Examination by Mr. Mitten	1010
12	Cross-Examination by Mr. Poston	1029
13	Redirect Examination by Ms. Shemwell	1030
14	CONSERVATION ISSUE	
15	MICHAEL NOACK	
16	Questions by Commissioner Gaw	937
17	Recross-Examination by Mr. Poston	948
18	Further Questions by Commissioner Gaw	951
19		
20		
21		
22		
23		
24		
25		

1	LOW-INCOME WEATHERIZATION AND NATURAL GAS CONSERVATION ISSUE	
2	BARBARA MEISENHEIMER	
3	Recross-Examination by Mr. Franson	960
4	Recross-Examination by Mr. Boudreau	961
5	Redirect Examination by Mr. Poston	965
6	Voir Dire Examination by Mr. Boudreau	972
7	Redirect Examination (Cont'd) by Mr. Poston	976
8	ROBERT SCHALLENBERG	
9	Cross-Examination by Mr. Mitten	987
10	Questions by Commissioner Murray	990
11	Redirect Examination by Mr. Franson	992
12	TED ROBERTSON	
13	Direct Examination by Mr. Poston	996
14	Cross-Examination by Mr. Franson	1005
15	Questions by Commissioner Murray	1006
16	UNRECOVERED RATE CASE EXPENSE ISSUE	
17	MICHAEL NOACK	
18	Cross-Examination by Mr. Franson	1039
19	Questions by Commissioner Murray	1041
20	Questions by Commissioner Appling	1043
21	Recross-Examination by Mr. Franson	1044
22		
23		
24		
25		

1	PAULA MAPEKA	
2	Direct Examination by Mr. Franson	1046
3	Cross-Examination by Mr. Mitten	1049
4	Questions by Commissioner Murray	1054
5	Redirect Examination by Mr. Franson	1059
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	EXHIBITS INDEX		
2		MARKED	REC'D
3	Exhibit No. 22		
4	Testimony of Thomas Helfrich		891
5	Exhibit No. 109-A		
6	MGE Case No. GR-2006-0422 Hearing Afternoon		
7	session, January 10, 2007 Staff Response to		
8	Request by Commissioner Gaw	959	959
9	Exhibit No. 106-A		
10	Document prepared by Ms. Ross	979	979
11	Exhibit No. 106-B		
12	Home Energy Saver document	979	980
13	Exhibit No. 112		
14	Direct Testimony of David Winter	843	847
15	Exhibit No. 113		
16	Rebuttal Testimony of David Winter	843	847
17	Exhibit No. 114		
18	Surrebuttal Testimony of David Winter	843	847
19	Exhibit No. 114-A		
20	True-up Testimony of David Winter	843	847
21	Exhibit No. 120		
22	Rebuttal Testimony of Paul Harrison		1010
23	Exhibit No. 121-A		
24	Data Request No. 1004		1033
25			

1	Exhibit No. 121-B		
2	Data Request No. 1011		1033
3	Exhibit No. 122		
4	Direct Testimony of Paula Mapeka	1047	1049
5	Exhibit No. 123		
6	Rebuttal Testimony of Paula Mapeka	1047	1049
7	Exhibit No. 124		
8	Surrebuttal Testimony of Paula Mapeka	1047	1049
9	Exhibit No. 129		
10	Staff Accounting Schedules dated October 2006	843	848
11	Exhibit No. 130		
12	Staff Accounting Schedules dated December 2006	843	848
13	Exhibit No. 203-A		
14	Energy Star website document	969	
15	Exhibit No. 204		
16	Direct Testimony of Ted Robertson		1005
17	Exhibit No. 205		
18	Rebuttal Testimony of Ted Robertson		1005
19	Exhibit No. 206		
20	Surrebuttal Testimony of Ted Robertson		1005
21			
22			
23			
24			
25			