

1 STATE OF MISSOURI
2 PUBLIC SERVICE COMMISSION
3
4
5 TRANSCRIPT OF PROCEEDINGS
6 Hearing
7 May 15, 2006
8 Jefferson City, Missouri
9 Volume 2

10 In the Matter of the Application)
11 of Trigen-Kansas City Energy)
12 Corporation for a Certificate of)
13 Public Convenience and Necessity)
14 Authorizing It to Construct,) Case No. HA-2006-0294
15 Install, Own, Operate, Control,)
16 Manage and Maintain a Steam Heat)
17 Distribution System to Provide)
18 Steam Heat Service in Kansas City,)
19 Missouri, as an Expansion of Its)
20 Existing Certified Area)

21
22 STEVEN C. REED, Presiding,
23 REGULATORY LAW JUDGE.

24 CONNIE MURRAY,
25 STEVE GAW,
LINWARD "LIN" APPLING,
COMMISSIONERS.

26 REPORTED BY:

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FOR: Staff of the Missouri Public
Service Commission.

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

2 JUDGE REED: This is the evidentiary
3 hearing in the matter of Trigen-Kansas City Energy
4 Corporation for a certificate of convenience and
5 necessity. The case number is HA-2006-0294. I am Steve
6 Reed, the Regulatory Law Judge assigned to this case.

7 Let's have entries of appearance, beginning
8 with the Applicant, Trigen.

9 MR. KEEVIL: Yes, your Honor. Appearing on
10 behalf of Trigen-Kansas City Energy Corporation,
11 Jeffrey A. Keevil of the law firm Stewart & Keevil, LLC.
12 Our address is 4603 John Garry Drive, Suite 11, Columbia,
13 Missouri 65203.

14 JUDGE REED: And the Staff?

15 MR. FRANSON: Robert Franson appearing on
16 behalf of the Missouri Public Service Commission, P.O.
17 Box 360, Jefferson City, Missouri 65102.

18 JUDGE REED: How about Truman Medical
19 Center?

20 MR. PORTER: David Porter representing
21 Truman Medical Center, Office of General Counsel,
22 2301 Holmes, Kansas City, Missouri 64108.

23 JUDGE REED: And Missouri Gas Energy?

24 MS. CARTER: Diana Carter on behalf of
25 Missouri Gas Energy. The address is 312 East Capitol

1 Avenue, P.O. Box 456, Jefferson City, Missouri 65102.

2 JUDGE REED: Anyone from Office of Public
3 Counsel? I see no one.

4 A couple preliminary matters I wanted to
5 mention. We had exchanged some e-mails last week with
6 regards to opening statements, closing arguments and that
7 sort of thing. As I understand it, the parties have
8 agreed that there would be no opening statement, we would
9 do a closing argument at the end of the evidence instead
10 of filing Briefs, and that I would ask that the transcript
11 be expedited so that we can have it by Friday, May 19th,
12 if possible.

13 I have -- I received the order, the
14 proposed order of witnesses and the order of
15 cross-examination. We'll follow that, unless anyone has
16 changes they want to propose.

17 MR. PORTER: Your Honor, if I may?

18 JUDGE REED: Yes, sir.

19 MR. PORTER: For Truman Medical Center,
20 Mr. Wagner had an early morning commitment and is expected
21 to be here between 10:30 and 11. Should he not be here
22 when we're done with Mr. Kirk, we may need to adjust the
23 order, but he is on his way.

24 JUDGE REED: All right. Very good. Is
25 there anything else that you -- anyone wanted to bring to

1 the Bench's attention this morning, preliminary matters?

2 (No response.)

3 JUDGE REED: Okay. I think what we'll do
4 is we will go off the record here in a second and we'll
5 mark these exhibits, and we'll get started in a few
6 minutes. We're off the record.

7 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)

8 (EXHIBIT NOS. 1 THROUGH 7 WERE MARKED FOR
9 IDENTIFICATION BY THE REPORTER.)

10 JUDGE REED: First, we'll begin with
11 Trigen's witnesses.

12 MR. KEEVIL: Judge, I would call Brian Kirk
13 to the stand.

14 (Witness sworn.)

15 JUDGE REED: Mr. Keevil, go ahead.

16 MR. KEEVIL: Thank you, Judge.

17 BRIAN KIRK testified as follows:

18 DIRECT EXAMINATION BY MR. KEEVIL:

19 Q. Mr. Kirk, would you state your name for the
20 record, please.

21 A. Brian Kirk.

22 Q. By whom are you employed and in what
23 capacity?

24 A. I'm the vice president, general manager of
25 Trigen-Kansas City Energy Corporation.

1 Q. Okay. Now, are you the Brian Kirk who has
2 caused to be prepared and filed in this case the direct
3 testimony of Brian P. Kirk, which has been previously
4 marked as -- actually there's two versions, a highly
5 confidential version and a non-proprietary version which
6 have been marked 1HC and 1NP, as well as highly
7 confidential and non-proprietary versions of surrebuttal
8 testimony which have been marked Exhibit 2HC and 2NP, or
9 just 2, I guess? There's really no NP, I guess, after
10 those exhibit numbers. But are you that Brian Kirk?

11 A. Yes, I am.

12 Q. Do you have any changes or corrections you
13 wish to make to either of those?

14 A. No.

15 Q. If I were to ask you the questions
16 contained in those exhibits, specifically Exhibit 1 and
17 1HC and 2 and 2HC, if I were to ask you the questions
18 contained in those exhibits, would your answers be the
19 same as contained therein?

20 A. Yes.

21 Q. Are those answers true and correct to the
22 best of your information, knowledge and belief?

23 A. Yes.

24 MR. KEEVIL: Judge, with that, I would
25 offer Exhibit 1 and 1HC and 2 and 2HC into the record.

1 JUDGE REED: Are there any objections?

2 (No response.)

3 JUDGE REED: I see no objections.

4 Exhibits 1, 1HC, 2 and 2HC will be admitted into the
5 record.

6 (EXHIBIT NOS. 1, 1HC, 2, 2HC WERE RECEIVED
7 INTO EVIDENCE.)

8 MR. KEEVIL: Thank you, Judge. I tender
9 the witness for cross.

10 JUDGE REED: Thank you. Let's see.
11 Mr. Porter?

12 MR. PORTER: No questions, your Honor.

13 JUDGE REED: All right. Mr. Franson?

14 MR. FRANSON: Thank you, your Honor.

15 CROSS-EXAMINATION BY MR. FRANSON:

16 Q. Good morning, Mr. Kirk.

17 A. Good morning.

18 MR. FRANSON: Your Honor, as a preliminary
19 matter, may I approach the SmartBoard? I want to call up
20 an exhibit and see if Mr. Kirk can tell us something about
21 it.

22 JUDGE REED: Yes. Go ahead.

23 MR. FRANSON: Thank you.

24 BY MR. FRANSON:

25 Q. Mr. Kirk, I'd like for you to turn to your

1 direct. Let's make it the NP version of your testimony
2 because I believe it is there. I believe it's Exhibit 3.
3 And what I'm asking about is a map that you've prepared.
4 If you could compare your -- I'm sorry. It's NP
5 Schedule BPK-5. If you could compare your exhibit, NP
6 Schedule BPK-5 to what you see up on the SmartBoard, it is
7 my belief that is an exact duplication of your exhibit.
8 Could you take a look and verify that?

9 A. Yes, it appears to be.

10 Q. Okay. And let's talk a little bit about
11 what exactly this is. What is the exhibit that's up on
12 the SmartBoard?

13 A. Okay. It's a map of both Trigen's existing
14 service territory as well as the area that we propose to
15 expand into.

16 Q. Okay. If you could look down at the lower
17 right, there's a legend there; is that correct?

18 A. That's correct.

19 Q. The solid blue line, what is that?

20 A. That is Trigen's -- that's the boundaries
21 of Trigen's existing service territory.

22 Q. Okay. The dotted blue line, what is that?

23 A. That is the proposed expansion area for
24 Trigen service territory.

25 Q. Okay. Within that --

1 MR. FRANSON: Well, your Honor, at this
2 time I would offer this. And I believe we are up to
3 Exhibit No. 8, and I will -- it is already saved
4 electronically, and I will be able to print this out at
5 the end of the hearing. I would offer Exhibit 8 into
6 evidence at this time.

7 JUDGE REED: Is there any objection? This
8 exhibit is already part of the record, I think, as the
9 Appendix A to the direct testimony of Mr. Kirk.

10 MR. FRANSON: It is, your Honor. That is
11 correct. But I wanted it up here just in case there's any
12 discussion of it as the course of the hearing progresses.

13 BY MR. FRANSON:

14 Q. Mr. Kirk, what exactly is your position
15 with Trigen?

16 A. I'm the vice president and general manager
17 of Trigen.

18 Q. And how long have you been with Trigen?

19 A. I've been with Trigen since 1995.

20 Q. Okay. If any tariffs were going to be
21 prepared by Trigen, what would your role be in that?

22 A. My role would be probably leading the
23 preparation of the tariff.

24 Q. If the Commission approves your CCN, will
25 you immediately be filing specimen tariffs to set out

1 terms and conditions of service that would incorporate
2 your new service territory?

3 MR. KEEVIL: Judge, I don't know if this
4 will help speed things along, but I think where
5 Mr. Franson's going is filing a tariff to reflect the new
6 service territory in Trigen's tariff. What we have
7 proposed here is the current tariffs would simply apply to
8 the new territory, and I indicated in our Prehearing Brief
9 that Trigen would recognize that if the certificate is
10 granted, we will have to file a tariff to reflect the new
11 territory as being covered by the tariff. I don't know if
12 that helps or not.

13 JUDGE REED: Is that what you were asking,
14 Mr. Franson?

15 MR. FRANSON: That is pretty much what I'm
16 asking.

17 JUDGE REED: Okay.

18 BY MR. FRANSON:

19 Q. And actually, Mr. Kirk, let's just make it
20 real simple. You'll file tariffs promptly with the legal
21 description and everything else you would need for this
22 new territory; is that correct?

23 A. That's correct.

24 Q. Okay. Now, the discussions that you had
25 with Truman, were you involved in those?

1 A. Yes.

2 Q. What was your role in those discussions?

3 A. Essentially describing Trigen's service,
4 marketing the service to -- potential service to Truman.

5 Q. And was Truman the one that initiated those
6 discussions?

7 A. Truman initiated, yes.

8 Q. And just so I'm clear, if this is granted,
9 Truman will be taking service under your existing tariffs
10 and rates?

11 A. That's correct.

12 Q. There's no special contract at this point
13 in time?

14 A. No.

15 Q. Okay. Now, Trigen, does it have anyone it
16 competes with?

17 A. For heating services, yes. There's the gas
18 company and the electric company.

19 Q. Let's give names to those -- to that gas
20 company. What's that?

21 A. Missouri Gas Energy.

22 Q. Okay. And, in fact, they're here today as
23 a party, correct?

24 A. Correct.

25 Q. And the electric company, which electric

1 company is that?

2 A. Kansas City Power & Light.

3 Q. Okay. Now, let's tread lightly here.

4 Let's only go with names that are public. Has Trigen ever
5 had an opportunity to gain a customer from either MGE or
6 KCPL?

7 A. Yes, we have.

8 Q. Have you ever lost customers to either KCPL
9 or MGE?

10 A. Yes, we have.

11 Q. So that is not at all unusual?

12 A. That's correct.

13 Q. Okay. But you offer similar services, but
14 certainly not identical with an electric company?

15 A. No, not identical, but we can provide
16 heating service.

17 Q. And the same, you provide similar but not
18 identical services to a gas company?

19 A. That's correct.

20 Q. Okay. Now, are you aware that MGE in its
21 testimony has accused Trigen of cherry picking an MGE
22 customer?

23 A. Yes, I'm aware.

24 Q. What does the term cherry pick mean to you?

25 A. To me, it would mean actively seeking to

1 take the highest margin, highest volume customers from
2 another -- from another provider.

3 Q. Is that what you're doing here?

4 A. No. We're trying to expand our service
5 territory to meet a customer's request, serve a customer
6 and potentially serve other customers that might be
7 interested in our service.

8 Q. Okay. This service territory that you are
9 expanding into, is that within -- to your knowledge, is
10 that within the service territory of any other
11 Commission-regulated utilities in the Kansas City area?
12 Specifically expansion of your service territory, is that
13 in anyone else's service territory?

14 A. To my knowledge, it's within the service
15 territory of those other two utilities.

16 Q. Specifically that's MGE and KCPL?

17 A. Yes.

18 Q. Okay. So is it fair to say that in the --
19 if your service territory is expanded, that some customers
20 may have a choice of going with Trigen, with MGE or KCPL?

21 A. That's correct.

22 Q. And it may be that some of those customers
23 would remain a customer of more than one, it could be
24 Trigen and MGE, or Trigen and KCPL or some other
25 combination?

1 A. I think it's conceivable that would happen,
2 but more than likely they would be with one or the other.

3 Q. Okay. In fact, to your knowledge, hasn't
4 Truman said that they would remain a customer of MGE as a
5 transportation customer, though with reduced revenues, if
6 this CCN and the whole construction goes through?

7 A. That's my understanding.

8 Q. Now, is it your belief that this project
9 will be universally beneficial to both Trigen and its
10 existing customers?

11 A. Yes, I do.

12 Q. Is it fair to say there's no absolute
13 guarantee of that?

14 A. No absolute guarantee, but I believe it
15 will be.

16 Q. Now, you're aware that Staff is
17 recommending approval of this, but with two conditions; is
18 that correct?

19 A. Yes, I understand.

20 Q. Okay. I believe my questions on the first
21 condition will go to Truman based on the brief, so let's
22 talk about Condition No. 2. Is Mr. Sim Trigen's primary
23 witness on that subject?

24 A. Yes, sir.

25 Q. Okay. Now, my questions are going to go to

1 your HC Schedule BPK-2, if you could turn there. However,
2 I do not believe -- I believe you will be able to answer
3 my questions without revealing any highly confidential
4 information. If you find that that is not correct, will
5 you please tell me?

6 A. Okay.

7 Q. I'm going to ask you to refer to BPK-2 on
8 your HC schedule. If you could review that briefly, then
9 I've got a couple questions.

10 MR. KEEVIL: Mr. Franson, are you going to
11 need to clear the room to ask the question?

12 MR. FRANSON: I don't think so. My --
13 well, actually I probably do. Judge, I'm going to ask
14 about three or four questions that have to do with that
15 schedule. And now that I think about it, the -- I'm
16 asking if the calculations include certain things, and to
17 be on the safe side, perhaps we do need to go in-camera
18 and clear the room for anyone who is not authorized to
19 hear this.

20 JUDGE REED: Okay. We'll go in-camera in
21 just a minute.

22 (REPORTER'S NOTE: At this point, an
23 in-camera session was held, which is contained in
24 Volume 3, pages 23 to 27 of the transcript.)

25

1 JUDGE REED: Just a minute. Bear with me,
2 would you please? I think -- Ms. Carter, I think you're
3 next, if you're ready.

4 MS. CARTER: I was talking with Mr. Keevil
5 trying to figure out if anything there actually was HC.

6 MR. KEEVIL: I would defer that to
7 Mr. Kirk. What Mr. Franson just asked you, was any of
8 that highly confidential?

9 MS. CARTER: I have some similar questions.

10 MR. FRANSON: That's fine, Judge, if we
11 want to declassify that. If Trigen is fine with that, I
12 have no objection. I was -- I'm always leery when we're
13 on -- when we're referring to an HC schedule, but
14 certainly if --

15 JUDGE REED: All right. When we get to
16 something that may be HC, Mr. Keevil, you'll let us know,
17 please.

18 MR. KEEVIL: I would hope that Mr. Kirk
19 would let me know.

20 MR. FRANSON: And, Judge, are we back on
21 public?

22 JUDGE REED: We're back.

23 CROSS-EXAMINATION BY MS. CARTER:

24 Q. I've attempted to design the questions so
25 we don't get into HC material, but make sure and let me

1 know if we do.

2 A. Okay.

3 Q. Regarding the economic feasibility study
4 discussed on page 5 of your direct testimony, is a
5 specific form of financing assumed in developing the
6 study?

7 A. A specific form. It's customer financed is
8 what we're -- oh, is what we're looking at for financing
9 the pipeline.

10 Q. Was that your original assumption on
11 financing, was that it would be customer financed?

12 A. From early on, yes.

13 Q. Would you consider that the same, then, as
14 the conditions that would be imposed if the Commission
15 accepts the proposed conditions of Staff with regard to
16 100 percent payment up front from Truman?

17 MR. KEEVIL: Judge, again, I'm going to
18 object to that being outside the scope of Mr. Kirk's
19 testimony. That is clearly what Mr. Sim has testified to,
20 rather than what Mr. Kirk has testified.

21 JUDGE REED: Can you answer the question?

22 THE WITNESS: Could you please rephrase the
23 question? I'm not sure what the question is.

24 BY MS. CARTER:

25 Q. Yes. I'd asked about the specific form of

1 financing with regard to the economic feasibility study,
2 and you said it was for consumer financing. And I was
3 wondering if you can answer for me, do you consider that
4 the same as what Staff is proposing with their condition
5 that it be a 100 percent payment by Truman?

6 A. Initially we thought we'd be financing
7 most -- most of -- or I'm sorry -- the customer would be
8 financing most, if not all, but it's -- materially, it's
9 pretty close to the same thing.

10 Q. Are you able to answer for me if Truman's
11 savings would be affected by Staff's recommendation in
12 that regard?

13 A. They might be.

14 Q. I would assume in an unfavorable manner?

15 A. Yeah. Yes.

16 Q. If the Commission imposes the condition for
17 100 percent advance from Truman, how would Trigen
18 calculate any refund amount to be made?

19 A. My understanding is the way the -- the way
20 this was discussed was that if further customers,
21 follow-on customers come on, there would be some
22 mechanism. At this point I don't know how the mechanism
23 would work, but these follow-on customers would contribute
24 toward a refund back to.

25 Q. Is it fair to say that Trigen hasn't worked

1 that out yet, or is that just not within your knowledge?

2 A. Trigen hasn't worked that out yet.

3 Q. Do you know yet over what time period a
4 refund may take place?

5 A. No, we haven't worked that out.

6 Q. Have you considered the economics of the
7 project for Truman based on Staff's recommendations?

8 A. No, I haven't done that.

9 Q. Do you know if Mr. Sim would have or
10 someone else with Trigen?

11 A. No.

12 Q. Have you had any discussions with Truman
13 regarding the possible need for a 100 percent customer
14 advance?

15 A. No, I haven't.

16 Q. Is it then safe to assume that from
17 Trigen's perspective, the 100 percent customer advance
18 isn't material?

19 A. It's material, but I believe the savings
20 are still significant for Truman.

21 Q. Mr. Franson asked you about cherry picking
22 customers, and you said you didn't think that that was
23 what Trigen was doing because you weren't actively seeking
24 a large volume customer; is that correct?

25 A. Well, the customer did contact us, and we

1 would be extending our territory, so the same terms of
2 service would extend through that whole expansion.

3 Q. Would you be going through this same
4 process if a very small volume customer asked for you to
5 extend your service area?

6 A. We would -- I would look at the economics
7 of it, but it's unlikely that the economics would make
8 sense.

9 Q. Without revealing the details of the
10 feasibility study, if at all possible, so we can avoid
11 getting into HC information, I'd like to ask you a few
12 questions about what was included. Were depreciation
13 expenses associated with the project investment included
14 in the study?

15 A. I'm not sure.

16 Q. Would someone else be better able to answer
17 that question?

18 A. Yes, Mr. Sim.

19 Q. Are you able to answer for us if property
20 taxes were included?

21 A. I'm not certain.

22 Q. How about insurance related to the
23 investment?

24 A. No.

25 Q. They were not included?

1 A. There's construction insurance, things like
2 that related to the construction of pipeline, but not --
3 not beyond that.

4 Q. And were those insurance costs included,
5 then, in your feasibility study?

6 A. They would have been included. They would
7 have been part of a rules-of-thumb numbers for the
8 construction of the pipeline.

9 Q. Were any interest expenses or other Trigen
10 financing costs associated with the feasibility study?

11 A. I'm not certain of that.

12 Q. Would Mr. Sim be better able to answer
13 that?

14 A. Yes.

15 Q. What types of variable expenses were
16 included in the study?

17 A. It would be the steam usage, so forth, the
18 expected steam usage of the customer.

19 Q. Would that have been under the fuel and
20 consumables heading that you referred to earlier?

21 A. Yes.

22 Q. Were there any other operation and
23 maintenance expenses included in the feasibility study?

24 A. Yes, it was -- it was -- it was all rolled
25 in there, yes.

1 Q. And did I understand, then, right your
2 answer to Mr. Franson, nothing was separately identified?

3 A. That's correct.

4 Q. You just labeled them as fuel and
5 consumables?

6 A. Right.

7 Q. Can you tell us what was included within
8 the label fuel and consumables, as far as operations and
9 maintenance expenses?

10 A. Okay. It would be -- it would be the fuel,
11 fuel, water, consumables required to serve the customer.
12 It takes into consideration the line losses and so forth,
13 and that's essentially the -- what's in there.

14 Q. Do you know if any customer service
15 expenses were included within the feasibility study?

16 A. Not specifically. They're kind of rolled
17 into that number, but I don't think they're highly
18 significant.

19 Q. What number would they have been rolled
20 into?

21 A. Fuels and consumables.

22 Q. Were there any general or administrative
23 expenses included within the feasibility study?

24 A. Again, they would have been rolled into
25 that. They're not very consequential because we don't

1 expect to add much in the way of any personnel or
2 anything.

3 Q. You don't believe you or another Trigen
4 manager might be monitoring the project or putting --

5 A. We would be, but it's fairly -- not very
6 material compared to our overall responsibility.

7 Q. Does the feasibility study calculate the
8 traditional revenue requirement or regulated cost of
9 service associated with Trigen's investments?

10 A. No, it doesn't.

11 Q. Can you tell us, then, for certain that
12 rates of other customers would not -- other Trigen
13 customers would not be adversely affected by the project?

14 A. I know that this is accretive to earnings.
15 I can't -- it actually improves the revenue coming into
16 the -- coming into the company.

17 Q. Even without all those missing items?

18 A. Yes, it will improve. It will improve the
19 revenue of the company.

20 Q. Did the study provide a calculation on the
21 payback period or rate of return to Trigen associated with
22 the project?

23 A. Not in this feasibility study.

24 Q. Was there a different study done?

25 A. It's -- I didn't personally -- actually,

1 I -- there's a pro forma that was done, and we showed a
2 rate of return to the -- to the company.

3 Q. Do you know if that was attached to
4 someone's testimony?

5 A. I'm not sure. I'm not sure if -- I'm not
6 sure if it's in here.

7 Q. If you could just point that out for me
8 sometime later in the hearing.

9 A. Okay.

10 Q. Does the project involve any highway
11 crossings?

12 A. Yes, it does.

13 Q. How about railroad crossings?

14 A. There's one rail crossing.

15 q. No river or stream crossings, though,
16 correct?

17 A. No.

18 Q. Will boring be necessary at any of the
19 crossings?

20 A. We expect the highway crossing and the rail
21 crossing to require borings.

22 Q. In response to MGE Data Request 20 and 22,
23 is it correct that you indicated that Trigen would be
24 willing to pay all costs associated with a need to repair
25 or replace existing MGE facilities as a result of this

1 project?

2 A. That's correct.

3 Q. Were those repair or replacement costs
4 explicitly included in the feasibility study?

5 A. They weren't explicitly included, but we
6 have rules of thumb that we use for construction where
7 there's interference from other utilities.

8 Q. To what extent, then, were they reflected
9 in the feasibility study?

10 A. They're reflected in that overall number,
11 but not based on specific information but based on sort of
12 customary and things we've run into in the course of
13 business. So we have a pretty good idea. Our territory
14 is in an area with a lot of interference from a lot of
15 different utilities.

16 Q. As a part of that feasibility study or
17 leading up to that study, did you obtain any information
18 on the precise location or type of MGE facilities along
19 the route?

20 A. We didn't get precise information.

21 Q. What information did you obtain?

22 A. We had -- we have some historical maps of
23 where facilities are. They may not be entirely up to
24 date, but we know generally the frequency and the
25 magnitude of other -- location of other utilities in

1 general, MGE as well as other companies.

2 Q. And as you stated with MGE, I'm assuming,
3 then, that Trigen's willing to pay for all costs needed to
4 repair or replace KCP&L facilities as a result of the
5 project?

6 A. That's correct, or relocate as necessary.

7 Q. And were any of those repair or replacement
8 costs explicitly included in the feasibility study?

9 A. Again, they're part of -- they're part of
10 that rolled into the numbers.

11 Q. And so you wouldn't have obtained any
12 specifics on location or facilities involved?

13 A. We did have -- we have some general maps of
14 the area, know where some of their mains and facilities
15 go.

16 Q. Would the same be true with water and sewer
17 facilities, that nothing explicitly was dealt with in the
18 feasibility study?

19 A. That's correct.

20 Q. Did the feasibility study include any
21 sensitivity analysis to take into account, for example,
22 the variation in Truman's steam usage over time?

23 A. No, we didn't do sensitivity.

24 Q. I'm going to be asking you a few items with
25 regard to any sensitivity analyses. Did you take into

1 account the length of the service agreement with Truman?

2 MR. KEEVIL: Judge, I'm going to object.

3 He just said he didn't do a feasi-- or sensitivity
4 analysis, and to the extent that she asks questions
5 regarding sensitivity analysis, then it's irrelevant or
6 asked and answered.

7 MS. CARTER: I wanted to make sure we're on
8 the same page as to what he took sensitivity analysis to
9 mean, since I had a few specifics with regard to
10 sensitivity analysis. It will go very quickly. He can
11 tell me if the same is true, that you didn't do any
12 sensitivity analysis in that regard.

13 JUDGE REED: The objection's overruled. Go
14 ahead, Ms. Carter.

15 BY MS. CARTER:

16 Q. My questions were with regard to steam
17 usage over time, length of service agreement with Truman,
18 variation in fuel expenses, rate changes for Trigen in a
19 subsequent rate case, MGE transportation service rates,
20 Truman's cost of gas paid to its marketers, and then also
21 variation in construction costs due to pipe cost
22 increases, the need to repair MGE facilities, need to
23 repair KCP&L facilities, need to repair water or sewer
24 facilities, permitting costs and street cutting fees. Did
25 you conduct any sensitivity analysis with regard to any of

1 those items?

2 A. I didn't -- I didn't perform a sensitivity
3 analysis, but we put some ample contingencies in our
4 figure for the construction costs.

5 Q. What would be that ample contingency?

6 MR. KEEVIL: I think that's -- is that HC?

7 MR. FRANSON: That probably is, would be my
8 belief.

9 JUDGE REED: Is it HC, Mr. Kirk? Do you
10 know the answer?

11 THE WITNESS: I would consider it HC.

12 JUDGE REED: And you do know the number,
13 you know what -- you're going to give us a number?

14 THE WITNESS: A range. I know a range.

15 JUDGE REED: All right. Hold on a second.

16 (REPORTER'S NOTE: At this point an
17 in-camera session was held, which is contained in
18 Volume 3, pages 41 through 42 of the transcript.)

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1 JUDGE REED: Okay. Go right ahead.

2 BY MS. CARTER:

3 Q. On page 7, line 7 and 8 of your direct
4 testimony, you indicate that Truman has documented
5 substantial cost savings with regard to the proposal. Has
6 Trigen conducted any independent analysis of expected cost
7 savings to Truman?

8 A. I've -- I've looked at what I believe would
9 be Truman's savings versus continuing to use gas.

10 Q. So I understand, have you done an
11 independent analysis or you've reviewed Truman's analysis?

12 A. I've done an independent analysis.

13 Q. In your analysis, did you utilize
14 independent information or did you take figures that
15 Truman provided to you?

16 A. I used some historical information on their
17 usages of commodities, but as far as getting pricing and
18 things like that, I used some of my own projections and
19 information I had as far as fuel prices going forward and
20 things like that.

21 Q. Would you obtain that information from MGE
22 as a comparison basis?

23 A. More -- it was more kind of commodity
24 indexes and things like that. I do know, I'm somewhat
25 familiar with MGE's tariff, so what drove it more was the

1 gas price, the commodity gas price.

2 Q. So your analysis wasn't specific to MGE's
3 tariff or the cost related thereto?

4 A. Oh, it included -- it included MGE's
5 tariff.

6 Q. What time period was used in your
7 independent analysis?

8 A. I used -- as far as projecting gas prices,
9 used 12 months or 18 months gas trip, NYMEX gas trip.

10 Q. For 2005?

11 A. It would have been -- I would have --
12 probably it was 2005 when I looked at those numbers.

13 Q. Are you aware that some sources are
14 predicting a decrease in gas costs?

15 A. Yes, I'm aware of that.

16 Q. Would a 10 percent reduction in gas prices,
17 for example, have a sizeable adverse impact on the
18 economic viability of the project to Truman?

19 A. No, I don't think so.

20 Q. What percentage do you think would need to
21 hit in terms of a decrease in gas costs?

22 MR. KEEVIL: Objection, calls for
23 speculation.

24 JUDGE REED: Overruled.

25 THE WITNESS: It would be in the

1 neighborhood of -- almost have to be a 50 percent
2 decrease.

3 BY MS. CARTER:

4 Q. Does your analysis assume that MGE's
5 transportation service rates will remain stable over time?

6 A. Yes, they do.

7 Q. In your response to MGE Data Request
8 No. 16, you indicated that Trigen projected annual steam
9 usage and steam revenues for Truman. Over what time
10 period did Trigen base its projections?

11 A. Could you repeat that?

12 Q. In response to MGE Data Request No. 16, you
13 indicated that Trigen projected annual steam usage and
14 steam revenues for Truman. And I was asking what time
15 period that was over?

16 A. It was -- it was historical period, I
17 believe 2004.

18 Q. Did you look at multiple years to determine
19 how stable annual steam usage is likely to be?

20 A. There were two years of data provided to me
21 by Truman. They were relatively stable.

22 Q. You felt two years was enough to tell
23 whether or not usage would be stable?

24 A. Yes.

25 Q. At page 10 of your direct testimony, you

1 describe Truman as a high load factor customer. What
2 minimum load factor constitutes a high load factor, in
3 your opinion?

4 A. I would say somewhere in the range of
5 25 percent would become high load factor.

6 Q. And is that the load factor that was
7 contained in the project statistics in the economic
8 feasibility study?

9 A. I used -- the load factor was whatever
10 Truman's usage was. I don't know. I don't know offhand
11 what that was.

12 Q. You don't know if it was the 25 percent
13 number --

14 A. No.

15 Q. -- you said that would --

16 A. No, I don't.

17 Q. Are you aware that MGE's large volume
18 service or transportation service tariff allows MGE to
19 discount substantially its volumetric rates to customers
20 who have alternative energy sources?

21 MR. FRANSON: Your Honor, I have to object
22 on relevance, and the reason is that Truman is not a
23 customer of that class. They are a transportation
24 customer. Therefore, what other things may be allowed
25 would not be relevant.

1 JUDGE REED: Is it relevant, Ms. Carter?

2 MS. CARTER: My understanding is
3 transportation service customers are eligible for the
4 discounts, yes.

5 JUDGE REED: Do you know the answer?

6 THE WITNESS: I don't know. I don't know.

7 BY MS. CARTER:

8 Q. Would it be safe to assume, then, that you
9 didn't incorporate the possibility that MGE could exercise
10 that provision and lower their rates for Truman?

11 MR. FRANSON: Again, your Honor,
12 hypothetical theoretical possibilities of what MGE could
13 do do not have relevance to whether this CCN should be
14 allowed. The fact is, the evidence is, all the prefiled
15 evidence, that didn't happen. Truman went to Trigen. So
16 all of the things and hypothetical things that MGE may be
17 able to do are simply, while interesting, not relevant to
18 the particular issue here. So I would object on that
19 basis.

20 JUDGE REED: The objection's overruled.
21 Would you repeat the question?

22 MS. CARTER: I would, and perhaps I'll
23 rephrase that and you can see the relevance from our end.

24 BY MS. CARTER:

25 Q. If MGE were to exercise such a provision

1 and lower its rates for Truman, did you contemplate if
2 that happened that Truman may then reduce their steam
3 usage?

4 A. I -- I don't understand the question.

5 Q. My understanding is this is primarily about
6 costs and that Truman is going with whoever's going to
7 give them lower cost?

8 A. Right.

9 Q. If MGE's costs go down because they're
10 eligible to give a discount under their tariff, I'm
11 assuming then steam usage rate, the amount of steam usage
12 may go down. Was that taken into consideration in your
13 feasibility study?

14 A. I don't --

15 MR. KEEVIL: I'm going to object to that.
16 I don't understand this either. If she's talking about
17 steam usage going down if MGE discounts the rate --

18 JUDGE REED: Well, as I understand it, if
19 MGE's rates go down, then Truman may use more gas and less
20 steam. Correct?

21 MS. CARTER: Yes.

22 BY MS. CARTER:

23 Q. It's pretty much a yes or no on whether or
24 not that was taken into consideration in your feasibility
25 study. You indicated you only used two years of steam

1 usage numbers. Did you take into account the possibility
2 that their usage may go down because they rely more
3 heavily on MGE's gas if that price goes down?

4 MR. KEEVIL: I'm going to object to that,
5 too, as misstating the evidence. She said MGE's gas. The
6 evidence is MGE doesn't even sell them gas. They buy
7 their gas from someone else and merely transport it across
8 MGE.

9 MS. CARTER: I'm sorry. Transportation
10 costs, if that cost were to go down.

11 THE WITNESS: No, I didn't -- I didn't.

12 JUDGE REED: The objection's overruled. He
13 answered the question.

14 BY MS. CARTER:

15 Q. Is it correct that you believe that your
16 company currently has an earnings deficiency?

17 A. Yes.

18 Q. With a continuing earnings deficiency, is
19 it correct to assume, then, that filing a rate case is
20 inevitable?

21 A. We expect to file a rate case at some
22 point.

23 Q. How soon do you expect to file a rate case?

24 A. It would probably be this year.

25 Q. I'm assuming you'd expect, then, to

1 increase your rates as a result of this case?

2 A. That's correct.

3 Q. Would those higher rates Trigen expects to
4 receive, were they built into the feasibility study for
5 serving Truman?

6 A. No, they weren't.

7 Q. And why is that?

8 A. Because I used all current information. I
9 used current fuel cost. Otherwise, it's speculative. So
10 I used the information I had, which is current, current
11 tariffs, current fuel costs, current competitive costs.

12 Q. In your discussions with Truman, did you
13 indicate that Trigen -- that you believe Trigen has a
14 earnings deficiency and that you planned on filing a
15 general rate case?

16 A. I told -- I didn't -- the first part of
17 your question, no. I told -- I told Truman that we
18 expected to file a rate case, and that we would probably
19 be increasing our request somewhat, filing for an
20 increase.

21 Q. And I'm sorry. Then you did tell them that
22 you --

23 A. I didn't say anything about an earnings
24 deficiency. I didn't use that language.

25 Q. But you did indicate that steam rates may

1 go up?

2 A. That's correct.

3 Q. Do you believe the economics of the project
4 for Truman would be adversely affected by an increase in
5 Trigen's rates?

6 A. I believe -- yes, but I believe it's still
7 a good project and it's still positive for the customer.

8 Q. Referring to page 9 of your direct
9 testimony, you describe Trigen's steam capacity and its
10 current peak demands. Would you agree that Trigen's
11 current peak is less than 25 percent of Trigen's capacity?

12 A. Yes, it is.

13 Q. If Truman is added as a customer, as you
14 anticipate, would it be fair to say that less than
15 50 percent of Trigen's capacity will still be used at
16 peak?

17 A. Yes.

18 Q. Do you believe that it's reasonable to
19 require customers to pay for the entire cost of its
20 installed capacity when less than 25 percent or even
21 50 percent of the capacity is required for service?

22 MR. KEEVIL: Judge, I'm going to object to
23 that, too, because now she's getting into rate case stuff.
24 We're not seeking to change the tariff rates. We're
25 merely seeking to expand the territory, apply the current

1 tariffs. If they have rate case matters, that would be
2 something for a rate case.

3 JUDGE REED: Are you withdrawing the
4 question?

5 MS. CARTER: Yes.

6 JUDGE REED: All right.

7 BY MS. CARTER:

8 Q. What will happen to Trigen's investment in
9 the costs on Trigen's other customers if there's an
10 advance from Truman and then it's refunded back to Truman,
11 gas prices go down, and Truman goes and switches back to
12 MGE as their primary supplier?

13 A. Repeat the question, please.

14 Q. There's lots of ifs in there. Sorry about
15 that. If there is an advance from Truman, as Staff has
16 proposed as a condition, but then later refunded by Trigen
17 to Truman, gas prices go back down, making it again more
18 economical to use gas. What happens to the Trigen
19 investment to extend into that blue dotted area and the
20 cost to other Trigen customers?

21 A. All right. Just one more time, if you
22 could.

23 Q. I think I can actually make that much more
24 simple. In your opinion, what's going to happen with
25 regard to the investment costs and the other customers of

1 Trigen if Truman decides to switch in a year because now
2 gas service appears more economical?

3 A. It's part of our installed plan or
4 installed rate base that the cost would be spread over the
5 system.

6 Q. So your customers would get to pick that up
7 again?

8 A. That would be my understanding.

9 Q. It's my understanding you expect operating
10 costs and efficiency improvements with this proposed
11 expansion, correct?

12 A. That's correct.

13 Q. Does Trigen anticipate exercising its
14 option, I believe it's under your tariff, to lower steam
15 usage rates to all customers, Sheet 1 of your tariff?

16 A. We don't expect to reduce rates to our
17 customers.

18 Q. Even though it would be an operating cost
19 and efficiency improvement, that's not going to positively
20 impact other rates?

21 A. It allows us to spread the fixed costs
22 over -- over a wider base, so I think its positive for the
23 customers as a whole. There's more contribution to cover
24 fixed costs.

25 Q. But no positive impact in rates?

1 A. It would moderate the amount of increase in
2 rates.

3 Q. Are you aware that Truman's testimony by
4 David Wagner indicates that Truman paid MGE more than
5 157,000 in 2005?

6 A. I read that in the testimony.

7 Q. And that upon receiving service from
8 Trigen, the payments will fall by 90 percent?

9 A. Yes, I'm aware of that.

10 Q. Would you agree, then, that as a result of
11 MGE's loss of transportation customer revenue, other MGE
12 customers may pay higher rates following a subsequent MGE
13 rate case?

14 MR. KEEVIL: Objection, calling for
15 speculation.

16 JUDGE REED: Overruled. Answer if you can.

17 THE WITNESS: Yes.

18 BY MS. CARTER:

19 Q. The same that you're arguing with regard to
20 your company, the exact opposite is going to take place
21 with MGE, correct?

22 A. Yes.

23 Q. In your testimony, page 5, lines 11 and 12,
24 I believe, of your direct, you indicated that the addition
25 of Truman will be accredited to earnings. How long after

1 service --

2 MR. FRANSON: You may want to -- I think
3 you said accredited.

4 MS. CARTER: I'm sorry.

5 BY MS. CARTER:

6 Q. Accretive to earnings. How long after
7 service is established will it take before this statement
8 is correct, how long after service under the proposal?

9 A. It would be that the -- that the earnings
10 or that the revenue from Truman would be accretive to
11 earnings?

12 Q. Yes.

13 A. I'm not certain exactly, but it's very
14 soon.

15 Q. Can you define that for us any more
16 precisely than very soon?

17 A. It's within a year. Year, two years. One
18 to two years.

19 Q. Does the form of financing affect that
20 statement?

21 A. Yes.

22 Q. And how so?

23 A. Because the customer is financing most of
24 the expansion.

25 Q. In your response to Staff Data Request

1 No. 10, you indicated that Trigen's letter of application
2 for steam service is included. Do you have a reason to
3 believe that that letter would be considered highly
4 confidential?

5 MR. KEEVIL: I'm going to object to that
6 for a second, Judge, until we find it.

7 MS. CARTER: I won't ask anything else
8 until you find it.

9 MR. FRANSON: While looking for it, where
10 might we find it?

11 MS. CARTER: It's the response to Staff
12 Data Request No. 10. You indicate it's included with the
13 application, and I think it was Appendix F. I'm guessing.

14 MR. FRANSON: Of the application?

15 MS. CARTER: Yes. I'm going to go ahead
16 and put out my question.

17 BY MS. CARTER:

18 Q. What I'd like to know is if you or any
19 other Trigen employee drafted the letter or a form of the
20 letter for Truman?

21 MR. KEEVIL: I think it's actually
22 contained in -- it's Data Request 6. 10 refers to 6.

23 BY MS. CARTER:

24 Q. I'm sorry. Did you find that, Mr. Kirk?

25 A. I found the letter from Truman. I found

1 the letter.

2 Q. Because before you answer, in case you
3 think it's something confidential in nature. Did a Trigen
4 employee, you or another Trigen employee draft that letter
5 or a form of the letter for Truman?

6 A. I did not draft this letter, but I sent
7 text because the customer wasn't familiar with our
8 application process, and it's probably very close to this
9 text because it was -- the customer wanted to know what
10 the -- what the procedure was for applying for a
11 certificate.

12 Q. Is the entire letter similar to the text
13 you sent?

14 A. I believe it is. I believe it is.

15 MR. FRANSON: Your Honor, I know we're
16 being very careful here, but I would remind everyone that
17 this particular letter is denoted highly confidential.

18 MS. CARTER: And I'm not going to ask you
19 to read it to me.

20 BY MS. CARTER:

21 Q. What role did you or other Trigen employees
22 acting on behalf of Trigen play in preparing or soliciting
23 the letters contained in Appendix E to your application?

24 A. I was involved in asking those -- those
25 individuals to show support.

1 Q. Did you provided the text for those
2 letters?

3 A. I sent some text to one of the individuals,
4 yes, and I also prepared talking points, I think, for --
5 related to it.

6 Q. Did you or another Trigen employee assist
7 in the preparation of the attachment to Mr. Blunford's
8 letter, part of Appendix E?

9 A. Yes, I assisted in the preparation of that.

10 MS. CARTER: That's all I have right now.

11 JUDGE REED: Thank you, Ms. Carter. We'll
12 have questions from the Bench, if there are any.
13 Commissioner Murray, do you have any questions?

14 COMMISSIONER MURRAY: I have none, thank
15 you.

16 JUDGE REED: Thank you. Commissioner Gaw?

17 COMMISSIONER GAW: Not right at this
18 moment. I may later.

19 JUDGE REED: All right. I wanted to ask
20 one question if I could.

21 QUESTIONS BY JUDGE REED:

22 Q. The map up here with the proposed service
23 area, the -- it's not a square. It's a rectangle that
24 goes south there. How did you determine how big it would
25 be and what would be within that rectangle?

1 A. Essentially it was the -- the idea behind
2 it was directly getting to the customer that's shown
3 interest, so we gave about a four-block swath because
4 construction -- construction issues might force us out of
5 a certain lane, so we wanted to have a couple streets that
6 we could bring the pipe down. That's ultimately what it
7 was.

8 We did go a little bit further because we
9 thought there were some potential loads right in that
10 general area, in the Hospital Hill area that might be
11 interested at some point in serving Trigen, but
12 essentially it was kind of -- we drew a fair-- we feel
13 fairly narrowly to make it to the customer that expressed
14 interest.

15 JUDGE REED: All right. Thank you.

16 COMMISSIONER GAW: Let me go ahead, Judge.
17 I'm sorry. I have a few questions.

18 QUESTIONS BY COMMISSIONER GAW:

19 Q. Give me the scope of your testimony first
20 of all. What is it that you're covering? I've been
21 trying to understand from these objections about who's
22 doing what in this, and I'd like to have it clarified by
23 you.

24 A. Okay. I'm mainly -- as VP and general
25 manager, basically operate the system, manage the system.

1 The accounting type of things, finance, I would not --
2 would not fall under mine. That would be Mr. Sim.

3 Q. Okay.

4 A. But generally the feasibility, the aspects
5 of -- practical aspects of getting the pipe there.

6 Q. From the standpoint of the actual cost of
7 the project, is that yours or someone else's?

8 A. That would be mine.

9 Q. Okay. On the map behind you, if you would,
10 and you may have already -- I'm sure you've already hit
11 this, but if you could point to the area that you
12 currently -- you're currently serving and the lines that
13 are currently in it out there.

14 A. Sure. The bold blue lines here are our
15 existing service territory, River Market and the loop, the
16 I-70, I-35, I-670 loop. And then this is the extension
17 area, dotted lines and rectangle that projects to the
18 south.

19 Q. And how far is that?

20 A. It's approximately, to get to the border
21 there, about nine-tenths of a mile. Actually, to get to
22 Truman, about three-quarters of a mile.

23 Q. Okay. And I'm assuming that the cost of
24 this project is highly confidential?

25 A. It's in the highly confidential feasibility

1 study, yes.

2 Q. And how many potential customers exist in
3 that area, if you can say without us going into HC, into
4 closed session?

5 A. I haven't qualified them.

6 Q. More than one?

7 A. More than one, yeah.

8 Q. Okay. And are these just steam heat
9 customers that are potentially there?

10 A. Yes, these would be steam heat.

11 Q. Is there -- help me to remember. Does
12 Trigen still have affiliation with chilled -- chill
13 system?

14 A. That's correct. Trigen Missouri. Trigen
15 Missouri is the chilled water affiliate.

16 Q. And are any of these potential chilled
17 water customers?

18 A. We don't have any plans for extending
19 chilled water at this time, or Trigen Missouri doesn't
20 have any plans.

21 Q. Would that require a different pipe system?

22 A. That's correct. It would be separate
23 facilities.

24 Q. Okay. And in order to serve this area, is
25 the only thing that's necessary the building of this line

1 that you show on the map?

2 A. Essentially, yeah. We would run a pipeline
3 and then tie, interconnect with existing Truman
4 facilities.

5 Q. Do those facilities currently exist at
6 Truman, or will they have to construct them internally?

7 A. They have a steam distribution network that
8 we'll tie into. So they currently exist, to answer your
9 question.

10 Q. What does it run off of? Do they have a
11 boiler system internally there?

12 A. They have a separate boiler plant that
13 actually produces steam for the complex.

14 Q. And who provides the energy source for that
15 boiler?

16 A. It's Missouri Gas Energy.

17 Q. Okay. The red lines that are up there, are
18 those all highways?

19 A. Those are highways, yes, sir.

20 Q. And I can't tell what the other coloration
21 is for the streets here on the map.

22 A. It's black for the secondary roads.

23 Q. Okay. In the current amount of distance on
24 the lines that you have, what is that, approximately how
25 much?

1 A. We have six and a half miles of steam
2 network for downtown. It's about a mile and a half from
3 the northern terminal from the plant down to the bottom of
4 the loop.

5 Q. At one point in time we had a case in here
6 not terribly long ago dealing with the redundancy of some
7 area of your system. Can you show me on the map where
8 that was or where that is?

9 A. Yes. This doesn't show our existing steam
10 network line, but it's approximately here at 14th and
11 McGee, and that's the arena construction, related to the
12 arena construction.

13 Q. So the portion that you're showing up there
14 is not the entire system, it's just the main lines, would
15 that --

16 A. Actually, this doesn't depict the lines
17 itself. It's more -- it's the geography of the area.

18 Q. It's just a circle of the area --

19 A. Exactly.

20 Q. -- that you're currently covering?

21 A. Right.

22 Q. Now, the dashed blue lines, do they
23 represent where you -- the actual laying of a line or just
24 an extension of territory also?

25 A. Extension of territory. The lines would be

1 on one of the streets.

2 Q. It would just be a single line?

3 A. Correct.

4 COMMISSIONER GAW: I believe that's all I
5 have at this time. Thank you, Judge.

6 JUDGE REED: Thank you. Mr. Kirk --
7 Mr. Keevil, is there any redirect?

8 MR. KEEVIL: Yeah. I don't think I have
9 much, Judge, but if we could take a short break, I'd
10 appreciate it.

11 JUDGE REED: All right. Let's take a short
12 recess. Ten minutes.

13 (A BREAK WAS TAKEN.)

14 JUDGE REED. It was brought to my
15 attention, Mr. Keevil, before you got up that I forgot to
16 allow recross based on questions from the Bench. So
17 Mr. Porter for Truman?

18 MR. PORTER: Thank you, your Honor.

19 RECROSS-EXAMINATION BY MR. PORTER:

20 Q. Mr. Kirk, I just have one question that
21 hopefully won't need a follow-up. In response to
22 Commissioner Gaw's question about Truman's steam
23 facilities, you were asked about where Truman procures
24 the -- or what utility services that -- those existing
25 facilities, you indicated that was MGE. Is it your

1 understanding that MGE provides gas for Truman's current
2 facilities?

3 A. It's my understanding that they're the
4 local distribution company for the gas. The gas is
5 purchased -- a transportation customer of MGE. That's my
6 understanding.

7 Q. So to your knowledge, Truman Medical Center
8 does not purchase gas for its existing facilities that are
9 the subject of this case from MGE; is that right?

10 A. Yes.

11 MR. PORTER: That's all I have.

12 JUDGE REED: All right. Thank you. Next
13 is Mr. Franson.

14 MR. FRANSON: No questions, your Honor.

15 JUDGE REED: Thank you. Ms. Carter?

16 RECROSS-EXAMINATION BY MS. CARTER:

17 Q. I think you stated in response to one of
18 Commissioner Gaw's questions that you were extending the
19 proposed area beyond Truman; is that correct?

20 A. That's correct.

21 Q. And you're doing that in order to possibly
22 serve businesses that currently are using MGE or KCP&L; is
23 that correct?

24 A. That's correct.

25 Q. Do you know how many other MGE customers

1 may be impacted?

2 A. I don't know specifically. There's
3 several.

4 Q. Have you been approached by any of these
5 several businesses?

6 A. I have not been approached.

7 Q. Have you contacted any of those businesses?

8 A. I haven't contacted them.

9 Q. Have you made any of them aware of your
10 plans in this proceeding?

11 A. I haven't made them aware, no.

12 Q. You said that as if there might be
13 something else out there.

14 A. They might know about it. They might know
15 about it through whatever.

16 Q. Do you know if your company has produced
17 anything with regard to this proceeding to inform them of
18 the possibility of switching service from MGE to Trigen?

19 MR. KEEVIL: Judge, I'm going to object as
20 being far beyond anything Commissioner Gaw asked about.

21 JUDGE REED: I'm going to allow it. It's
22 overruled. Go ahead.

23 THE WITNESS: I don't know exactly what you
24 mean by what we would have prepared.

25 BY MS. CARTER:

1 Q. You had said they may be aware of your
2 plans in this regard, and I was wanting to know if you've
3 put something out there that they may have been aware of
4 the plans?

5 A. No.

6 Q. And is that the same with regard to other
7 employees of your company, that you're aware of?

8 A. Yes.

9 MS. CARTER: Thank you.

10 JUDGE REED: Thank you. And now I think
11 we're ready for redirect, Mr. Keevil.

12 MR. KEEVIL: Judge, I'm going to try to do
13 this without getting into HC stuff, or if I do, I'll try
14 to do it all together, but forgive me if it lends to a
15 rather herky-jerky sort of recross here.

16 REDIRECT EXAMINATION BY MR. KEEVIL:

17 Q. Mr. Kirk, Ms. Carter during her first round
18 of questions for you asked about the form of financing
19 that Trigen was proposing or had proposed for this
20 project, and you indicated that it was customer financing,
21 but only partially.

22 Now, without -- perhaps we can't do this
23 without getting into HC stuff, and if not, please tell me,
24 but Trigen's initial proposal regarding the financing now
25 would have provided for what amount of customer financing

1 vis-a-vis the Trigen financing? Or if you can't answer
2 that without going HC, let me know.

3 MR. FRANSON: Your Honor, before we do, the
4 likely response to that would be a number and/or a
5 percentage, which is also a number, and that sounds very
6 highly confidential to me.

7 JUDGE REED: You mean the percentage?

8 MR. FRANSON: The percentage and/or the
9 dollar amount.

10 BY MR. KEEVIL:

11 Q. Mr. Kirk, does the highly confidential
12 feasibility study which was attached to your direct
13 testimony as an exhibit specifically provide in that
14 feasibility study how much of the project was proposed --
15 is proposed to be financed by Truman and how much is
16 proposed to be financed by Trigen?

17 A. Yes, it does.

18 Q. Okay. Now, as for the portion to be
19 financed by Trigen, that is to -- that's to be internal
20 financing, correct?

21 A. Correct.

22 Q. So given that that's an internal financing,
23 would you agree that there would be no incremental
24 interest associated with that?

25 A. Yes.

1 Q. Ms. Carter asked you several questions
2 about what costs were included in your O&M calculation in
3 the preparation of your feasibility study. Do you recall
4 those?

5 A. Yes.

6 Q. What incremental O&M in your opinion would
7 be included in this project?

8 A. Okay. The primary would be the additional
9 steam that would need to be produced to bring to Truman.
10 Then again, fuel and consumables. There would be no
11 additional operators or labor added. It would be just
12 essentially de minimis additional operations and
13 maintenance costs.

14 Q. So essentially there is no incremental O&M
15 associated with this project beyond the fuel and
16 consumables figure which was included in your feasibility
17 study?

18 A. That's correct.

19 Q. Ms. Carter also asked you whether in the
20 preparation of your comparison of Truman's savings,
21 whether you included the as-yet-to-be-filed Trigen rate
22 case. I believe your indication was that you did not,
23 that you based your study on the Trigen's current rates;
24 is that correct?

25 A. That's correct.

1 Q. Okay. Now, are you aware of if MGE has a
2 rate increase case currently pending before this
3 Commission?

4 A. I understand they filed a rate increase
5 case, yes.

6 Q. And in your analysis, did you include MGE's
7 increased rates or did you use their current
8 transportation rates?

9 A. I used their current transportation rates.

10 Q. Okay. In your study -- or let me back up.
11 Are you aware of whether Kansas City Power & Light Company
12 has a rate case currently pending before this Commission?

13 A. Yes, I'm aware of that.

14 Q. You're aware they do?

15 A. That they do have a case.

16 Q. And in your analysis of the economics to
17 Truman, did you use the future Kansas City Power & Light
18 rates from their pending rate case or did you use their
19 current rates?

20 A. I used their current rates.

21 Q. Ms. Carter asked you a question, and I
22 believe I've got this correct, with several different
23 qualifiers to the effect that if Trigen refunds the entire
24 construction advance advanced by Truman back to Truman and
25 if gas prices fall, and if Truman switched back to taking

1 gas from MGE and away from steam, what would the rate
2 impact be on Trigen's other customers. Do you recall
3 that?

4 A. I do recall.

5 Q. What would the rate impact be on Trigen's
6 other customers?

7 A. There actually wouldn't be rate impact
8 because the margin from the additional customers would
9 have paid for those refunds back to Truman.

10 Q. And when you say the additional customers,
11 you mean the additional customers in the proposed
12 expansion area in addition to Truman?

13 A. That's correct.

14 Q. And you're saying they would have funded
15 the refunds back to Truman?

16 A. That's correct.

17 Q. The -- Ms. Carter also asked you about MGE
18 discounting to attempt to become more competitive with
19 Trigen's service. And I think Mr. Porter asked you a
20 moment ago, the service that Truman is currently taking
21 from MGE, which we're dealing with in this case, is
22 transportation service, correct?

23 A. That's correct.

24 Q. So Truman's buying the gas from someone
25 other than MGE, correct?

1 A. That's correct.

2 Q. Okay. Again, I'm going to try to do this
3 without going HC, but perhaps we won't be able to. Well,
4 let me back up. Between those -- you have the commodity
5 portion of the gas that Truman's buying from someone other
6 than MGE and you have the MGE transportation rate
7 component in Truman's total bill?

8 A. Correct.

9 Q. Which of those two is most significant?

10 A. The commodity is much more significant than
11 the transportation cost.

12 Q. Do you have any ballpark estimate of --

13 A. I don't think -- I think at current rates,
14 the transportation is less than 10 percent probably
15 commodity cost.

16 Q. Okay. Let me ask you this: If MGE waived
17 all of its transportation rate to Truman, would in your
18 opinion Truman still have a substantial savings from
19 Trigen due to the commodity price it was paying for gas?

20 A. Yes, I do.

21 Q. There were some questions about the project
22 being accretive to Trigen's earnings, and I believe that
23 is shown in your highly confidential feasibility study
24 attached to your direct testimony, correct?

25 A. Correct.

1 Q. And without getting into numbers, does that
2 study show that the project would be accretive to Trigen's
3 earnings in the first year?

4 A. Yes, it does.

5 Q. And if Truman paid more of a construction
6 advance than was envisioned under your feasibility study,
7 would that have any impact on the project being accretive
8 to earnings?

9 A. Yes, it would. It would even shorten that
10 period during which -- by which it was accretive.

11 Q. It would be accretive even faster?

12 A. That's correct.

13 Q. Now, just for clarification here, the
14 project as proposed by Trigen, in your opinion and based
15 on your feasibility study, is economic and feasible even
16 if Truman is the only customer in this new area to sign up
17 for Trigen's service, correct?

18 A. That's correct.

19 MR. KEEVIL: Judge, this next one I'm going
20 to have to get into HC, I think, for this next question.

21 JUDGE REED: All right. Just hold on one
22 second.

23 (REPORTER'S NOTE: At this point an
24 in-camera session was held, which is contained in
25 Volume 3, pages 74 through 75 of the transcript.)

1 JUDGE REED: Thank you, Mr. Keevil.

2 MR. FRANSON: Your Honor, just to make the
3 record clear, Exhibit No. 8 that's up on the SmartBoard,
4 I've had that reduced to paper in an 8 1/2 x 11. I'd like
5 to offer that at this time in lieu of what's on the
6 SmartBoard, though I would like to keep that up in case
7 there's any more references to it.

8 JUDGE REED: All right. Has everyone seen
9 the hard copy of Exhibit No. 8?

10 (EXHIBIT NO. 8 WAS MARKED FOR
11 IDENTIFICATION BY THE REPORTER.)

12 JUDGE REED: Are there any objections to
13 No. 8?

14 (No response.)

15 JUDGE REED: Seeing none, Exhibit 8 is
16 received.

17 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE.)

18 MR. FRANSON: Your Honor, I believe
19 Exhibit 8 had already been received. This is merely
20 adding to the form of it, in the sense it's a paper.

21 JUDGE REED: Mr. Kirk, that's it for now.
22 I'm not going to excuse you yet. Do you plan on sticking
23 around for the rest of the hearing?

24 THE WITNESS: Yeah. I would like to get
25 home to my son's baseball game this evening if possible.

1 That would mean leaving around four, if possible. But if
2 I've got to stay --

3 JUDGE REED: Well, we'll see where we are.
4 Maybe Mr. Keevil could remind me about that point in the
5 day and we can see where we are.

6 Mr. Keevil, your next witness.

7 MR. KEEVIL: I would call Murray Sim, your
8 Honor.

9 JUDGE REED: Mr. Sim, could you raise your
10 right hand, please.

11 (Witness sworn.)

12 JUDGE REED: Thank you.

13 MURRAY S. SIM testified as follows:

14 DIRECT EXAMINATION BY MR. KEEVIL:

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

17 A. Murray S. Sim.

18 Q. By whom are you employed and in what
19 capacity?

20 A. I'm employed by ThermalSource, LLC, a
21 sister company of Trigen-Kansas City Energy Corp, but I
22 also act as treasurer of Trigen-Kansas City Energy Corp.

23 Q. Okay. Are you the same Murray Sim who has
24 caused to be prepared and prefiled in this case the
25 surrebuttal testimony of Murray Sim which has been

1 remarked as Exhibit 3?

2 A. Yes.

3 Q. Do you have any additions or corrections
4 you wish to make to that testimony?

5 A. No.

6 Q. If I were to ask you the questions
7 contained in Exhibit No. 3, the surrebuttal testimony of
8 Murray Sim, would your answers be the same as contained
9 therein?

10 A. Yes.

11 Q. Are those answers true and correct to the
12 best of your information, knowledge and belief?

13 A. Yes.

14 MR. KEEVIL: Judge, with that I would offer
15 Exhibit No. 3 into the record.

16 JUDGE REED: Are there any objections?

17 (No response.)

18 JUDGE REED: No objections. No. 3 is
19 received.

20 (EXHIBIT NO. 3 WAS RECEIVED INTO EVIDENCE.)

21 MR. KEEVIL: Tender the witness for cross,
22 your Honor.

23 JUDGE REED: Thank you. I think -- I think
24 Mr. Porter, you're next.

25 MR. PORTER: Truman has no questions, your

1 Honor.

2 JUDGE REED: All right. Thank you.

3 Mr. Franson?

4 MR. FRANSON: Thank you, your Honor.

5 CROSS-EXAMINATION BY MR. FRANSON:

6 Q. Good morning, Mr. Sim.

7 A. Good morning, Mr. Franson.

8 Q. Okay. A few questions for you. Let's
9 start by following up. You were here during the testimony
10 of Mr. Kirk; is that correct?

11 A. Yes.

12 Q. There was a hypothetical question from
13 Ms. Carter, and the hypothetical was followed up in
14 redirect. Specifically it had to do with what if a
15 variety of things, such things as we go out and the time
16 the project's over, the -- and by that I mean it's
17 constructed, we assume that money has been refunded from
18 this project to Truman, whether it's most or all of their
19 amount that they've advanced. Do you remember that
20 question?

21 A. Yes, I do.

22 Q. Okay. Now, let's -- let's project forward
23 in time a little bit. What is the proposed construction
24 date that this will be finished? When is this project
25 supposed to be finished?

1 A. I believe it's approximately year end.

2 Q. Okay. Let's assume --

3 A. And that's conditional upon a very fast

4 Commission approval. It's about a six months construction

5 time frame.

6 Q. Let's go out and assume that you've done

7 that and let's go into 2007. The economics change, gas

8 prices go down, Truman wants to go to MGE as a customer.

9 Is there anything to prevent that?

10 A. No.

11 Q. Okay. Now, I'm not asking --

12 A. Not in the current thinking, if they stay

13 on regular tariffs.

14 Q. Okay. Now, there's a possibility that

15 sometime they may not be on regular tariffs and might have

16 a special contract?

17 A. That's always a possibility.

18 Q. But that is not the contemplated situation

19 at this point in time?

20 A. That's correct.

21 Q. Let's assume that in 2007 Truman makes a

22 business decision, despite all the money they've forwarded

23 and everything and it hasn't been refunded to them, they

24 could go become a -- Truman could become an MGE customer.

25 That's possible, isn't it?

1 A. Yes.

2 Q. Now, Staff Condition No. 2, what is your
3 understanding of that?

4 A. Mr. Harris' testimony, Staff Condition
5 No. 2?

6 Q. Yes.

7 A. Is basically to put the -- any investment
8 that Trigen may or may not make totally at risk.

9 Q. At risk of -- in other words, Trigen would
10 pick up any risk for that; is that correct?

11 A. That's right, effectively insulating other
12 existing customers on the system from any implications
13 from that.

14 Q. Now, let's add one more condition to my
15 hypothetical. We're in mid 2007. For whatever reason,
16 Truman has decided to take gas service, and it is no
17 longer a Trigen customer. And we'll assume also there are
18 no other customers, and we will also assume that the
19 Commission order did not make Staff Condition No. 2 --
20 your CCN was not subject to Staff Condition No. 2. Are
21 you with me on where we're going?

22 A. I -- I hope so.

23 Q. Okay. Let's go through it very briefly.
24 Mid 2007.

25 A. Uh-huh.

1 Q. You've got your CCN.

2 A. Uh-huh.

3 Q. But only with Condition No. 1. Condition
4 No. 2 was not part of it. The project is completed, and
5 that now -- and you're up and running, and then for
6 whatever reason Truman goes off your system. You have no
7 other customers. You've got some cost there, don't you?

8 A. We may not. The testimony of Truman
9 Medical Center currently, as I understand Mr. Wagner's
10 testimony, is that they are now planning to front all of
11 the construction cost. In that case -- you said there's
12 no other customers in the service territory -- we would
13 hold that refund at that point, and that refund or that --
14 the advance from the customer would exactly equal the
15 pipeline cost, so there would be no other cost to other
16 customers.

17 Q. Okay. There would be some costs to
18 maintain that pipeline, wouldn't there?

19 A. There would not be.

20 Q. Why do you say that?

21 A. We have a fixed O&M contract with Johnson
22 Controls. That contract would only change if there's a
23 change in the work force. So if there's no change in work
24 force contemplated, and we do not believe there would be,
25 there would be zero incremental O&M cost under our

1 contract with Johnson Controls.

2 Q. So you're telling us that you could do this
3 complete expansion with no additional O&M cost, even if
4 you lost all of the expected revenue stream?

5 A. That's correct.

6 Q. Okay. Let's assume that your studies and
7 beliefs are wrong, there are costs. Under your scenario,
8 with no Condition No. 2, who's going to pay them?

9 A. I'm sorry. I can't answer that question.
10 I don't have enough information to answer that question.

11 Q. Okay. Well, let's consider the options.
12 Who would be your other customers? That's the only
13 option, isn't it?

14 A. I've just testified that there's no
15 incremental cost other than fuel and consumables for this
16 operation. If Truman Medical Center advances all the
17 cost, there's no conceivable way that there would be costs
18 for other customers in that case.

19 Q. That's based on your feasibility study and
20 your best belief, isn't it?

21 Q. And current contracts in place with Johnson
22 Controls, that's correct.

23 Q. Let's assume you're wrong, there are costs.
24 Who pays them?

25 MR. KEEVIL: I'm going to object to that.

1 That would involve a future rate case, and at this point
2 would be speculative who's paying that.

3 MR. FRANSON: Au contraire, your Honor.
4 There's only one option, it's the other customers, and if
5 the witness -- I mean, that's all the witness needs to
6 say. That's the only option, and it's not -- granted it's
7 a hypothetical, but it's a proper hypothetical, and the
8 witness continues to evade the question.

9 JUDGE REED: Do you have an answer,
10 Mr. Sim?

11 THE WITNESS: Judge, the answer is I don't
12 know. There's not enough information. If he would add
13 that the Commission would approve in a future rate case
14 these costs for sharing with other customers, then I could
15 answer the question.

16 JUDGE REED: All right. Thank you. So the
17 objection's overruled. Next question, Mr. Franson.

18 BY MR. FRANSON:

19 Q. Okay. Well, let's -- your testimony is
20 based on your best belief and best intent that this will
21 be a successful venture, isn't that true, Mr. Sim?

22 A. Yes.

23 Q. It's also possible, despite your best
24 efforts and best beliefs, that it may not turn out as you
25 believe. Isn't that also true?

1 A. I would say it is virtually no probability
2 of that happening.

3 Q. Okay. Virtually no probability. Can you
4 absolutely guarantee that today?

5 A. The only way that that would happen is
6 somehow that gas prices and coal -- we are a coal-fired
7 utility. As coal and gas prices go in lock concert
8 downwards, that somehow 100 years of history would have to
9 change, that gas would somehow have to fall below coal
10 prices in the marketplace for that to happen. I suppose
11 that's possible.

12 Q. Thank you. Now, isn't it fair to say that
13 you believe significant incremental net earnings, and I
14 believe the term -- that would be the significant
15 operating income will be generated if there's a zero
16 initial investment? And by that I mean -- let's move on.

17 Okay. In your testimony, you say Staff has
18 presented no analysis or study to support any contention
19 that is contrary to your -- to your expected success with
20 this addition; is that correct?

21 A. Yes.

22 Q. Okay. Isn't it also true, though, that
23 there's been a very short time period to do this case here
24 before the Commission?

25 A. I'm not familiar with the normal length of

1 time in cases such as this in front of this Commission, so
2 I have no relativity to even judge that.

3 Q. Okay. Now, how is it that -- without
4 separate books and records that deal with this project,
5 how is it that you're going to know the simple accounting
6 and the economics of how this expansion, what it actually
7 meant to your company?

8 A. Well, it depends on what point in time
9 we're at. If the point in time is where Truman is the
10 only customer, it's a fairly simple analysis where you
11 take the revenues from Truman less the incremental fuel
12 and consumables cost, which could be calculated with a
13 special study, that if there's no incremental staff, as I
14 said, and there wouldn't be for this particular case,
15 there would be no O&M costs that would be, you know,
16 incremental here. It would be a simple matter of taking
17 the total revenues less the incremental fuel and
18 consumable costs to calculate the margin. It becomes much
19 more complicated with more customers on the system.

20 Q. Let me ask you this: You are a policy
21 witness for Trigen here today; is that a fair statement?

22 A. I would say policy and finance and
23 accounting matters.

24 Q. Okay. Now, let me ask you this: Let's
25 assume that in the very near future the Commission says

1 your CCN is approved subject to Staff Conditions 1 and 2.
2 Will Trigen accept that and go forward with this project
3 or will that end this project?

4 MR. KEEVIL: Objection, calls for
5 speculation.

6 MR. FRANSON: No. I believe he's the right
7 one. We heard all the way through that he is the one on
8 finances, and if someone can answer that here today, I
9 believe he's the one, Judge.

10 JUDGE REED: I understand your point,
11 Mr. Franson, but I think the objection's well taken
12 because Trigen may not be ready to answer that today.
13 That may be a question they'll have to answer later. So
14 the objection is sustained.

15 MR. FRANSON: Your Honor, I'll rephrase the
16 question, but I'll limit it in time.

17 BY MR. FRANSON:

18 Q. Do you know at this point in time, not some
19 future decision you might make, whether at this point in
20 time if condition -- if the CCN was approved by the
21 Commission subject to Staff Conditions 1 and 2, whether
22 Trigen would go forward with the project?

23 A. I'll try to answer to the best of my
24 ability. Condition No. 1 is not in my control. It's in
25 Truman Medical Center's control. If they -- if we get a

1 check from them and that check's equal to the pipeline
2 cost or close to it, we would -- we would go forward with
3 Staff condition 2. It would cost us some money, but we
4 would do it.

5 MR. FRANSON: With that, I don't believe I
6 have any further questions, your Honor.

7 JUDGE REED: Ms. Carter?

8 MS. CARTER: Thank you.

9 CROSS-EXAMINATION BY MS. CARTER:

10 Q. Did you assist in the preparation of the
11 feasibility study that was included as Appendix C to the
12 company's application?

13 A. No, I did not.

14 Q. Have you reviewed that study?

15 A. Yes, I have.

16 Q. Did the study as filed include depreciation
17 expense associated with the project?

18 A. No. That's not a cash item.

19 Q. So it was not included?

20 A. The study is incremental cash flow
21 analysis. It is not an accounting revenue requirement
22 analysis in any way.

23 Q. So then wouldn't have included incremental
24 income tax expenses?

25 A. No.

1 Q. Nor incremental property tax expenses?

2 A. I'm unsure of how property tax works in the
3 city and county surrounding our service territory. I
4 don't know if the incremental plant cost less the amount
5 of contribution of advance made by the customer offsets
6 each other for property tax purposes or not in this
7 jurisdiction.

8 Q. Was that taken into account in the
9 feasibility study, one way or the other?

10 A. It was not.

11 Q. Without looking at those items, how are you
12 able to conclude then that the project is accretive to
13 earnings?

14 A. Those items would be so small in their --
15 in the incremental nature of them to have virtually no
16 impact on the analysis.

17 Q. Is it correct, though, that you include
18 those types of expenses when you discuss the 100 percent
19 advance scenario?

20 A. No, we did not.

21 Q. You don't count for depreciation and
22 incremental income tax expenses, referring to page 5,
23 line 17 through 21 of your testimony?

24 A. What was the line numbers again?

25 Q. I believe line 17 through 21. You state,

1 after detecting depreciation expense and recognizing any
2 incremental income tax consequences.

3 A. Uh-huh. Yes.

4 Q. Perhaps I'm misreading that. It was my
5 understanding that you would take those expenses into
6 account.

7 A. Well, they would be on our books and
8 records.

9 Q. But you didn't take those into account with
10 the feasibility study?

11 A. No.

12 Q. And with regard to those separate books and
13 records and Staff's concern -- I'm sorry if you already
14 said this to Mr. Franson, but have you estimated
15 administrative costs associated with this requirement?

16 A. I'm sorry. With what requirement?

17 Q. The Staff's concern regarding keeping
18 separate books and records.

19 A. We have not estimated it directly, but we
20 have a very thin staff both in Kansas City, we have three
21 employees, and in our Milwaukee back office we have eight
22 accountants. They are all fully occupied. We would
23 either have to hire incremental consulting help for
24 special studies or, you know, add on an employee to be
25 able to handle this. So the incremental cost would be the

1 lower of the consulting cost for special study or an
2 incremental employee.

3 Q. I'm sorry. I'm not sure if I got the
4 answer out of there. Have you estimated the
5 administrative costs that would be associated with keeping
6 separate books and records?

7 A. And I answered, not directly.

8 Q. Are you able to approximate that amount for
9 us sitting here today?

10 A. No.

11 Q. Referring to page 7 of your direct
12 testimony -- I'm sorry -- surrebuttal testimony, you
13 indicate that Trigen would be willing to indemnify other
14 customers from any losses from the expansion if the
15 company can keep 50 percent of any gain. Am I stating
16 that correctly?

17 A. Yes, that's correct.

18 Q. However, you also argue that there's
19 basically no chance of any loss; is that correct?

20 A. I believe that's correct, yes.

21 Q. Do you believe that it would be sound
22 regulatory policy to let you keep 50 percent of the gain
23 when you're so confident that there would be no loss?

24 A. As a policy matter, whenever there's an
25 asymmetrical risk/benefit sharing, while in this

1 particular case it might not be true, in the future it
2 sets as a policy matter for our future decision making, so
3 customers 2, 3, 4, X after this, we would take that into
4 account in our decision-making, the risk of -- potentially
5 a risk of capital if -- if there's no upside potential for
6 us.

7 Q. Based on that response, then, I'd assume
8 that you'd agree that your proposal is asymmetric?

9 A. Well, we're trying to be --

10 MR. KEEVIL: Objection. That misstates his
11 answer.

12 MS. CARTER: Well, you can certainly --

13 MR. KEEVIL: He didn't say his proposal was
14 asymmetric.

15 THE WITNESS: I think the Staff's proposal
16 is asymmetric. I've said so. I was -- because I was
17 trying to take into account the risk of this and others
18 that we would undertake would be good projects, and I was
19 trying to provide a fair middle ground. This is not what
20 we recommend, but if the Commission decides that any
21 capital we may have in this project would be at risk, that
22 there would be some extra normal upside for us, that's the
23 American way.

24 BY MS. CARTER:

25 Q. Referring to page 8 of your testimony, you

1 state that Trigen has excess capacity and by adding new
2 customer margins, future per unit rates will be lower than
3 they would otherwise be; is that correct?

4 A. I'm sorry. You're going to have to say it
5 slower and louder.

6 Q. Sorry about that. I'm referring to page 8
7 of your testimony, that you're stating that Trigen has
8 excess capacity and by adding new customer margins, future
9 per unit rates will be lower than they would otherwise
10 have been.

11 A. That's what I said, yes.

12 Q. And these lower rates would possibly result
13 from a Trigen general rate case, correct?

14 A. Well, the lower rates there is a relative
15 thing on either having these customers or not having these
16 customers sometime in the future. They would only be
17 realized -- any rate change is only realized in a rate
18 case.

19 Q. And correctly stating -- or let me know if
20 I'm not -- that an increase wouldn't be as much; is that
21 what you're saying?

22 A. Yes. If we added -- well, Truman itself,
23 if you just limit it to Truman itself, the margin from
24 Truman would lower any potential rate increase in the
25 future, and any other customers in addition to Truman

1 would be more so.

2 Q. And in any such future rate case, it's your
3 understanding that the Commission would determine whether
4 or not Trigen's capacity is used and useful and could
5 exclude portions that would not be deemed used and useful?

6 MR. KEEVIL: Objection, calls for legal
7 analysis, used and useful.

8 JUDGE REED: Sustained.

9 BY MS. CARTER:

10 Q. You may not be able to answer my follow-up
11 question, then, but I wanted to see if I'm correct that
12 Trigen's existing customers could see lower per unit rates
13 without the addition of the new customer margins; is that
14 your understanding?

15 A. From what frame of reference are you asking
16 the question? This is with Truman and without other
17 customers?

18 Q. No. It would be without Truman, period.
19 Without this expansion, if you were to have a new rate
20 case.

21 A. Then our rates would be -- at some point
22 we're limited by the competition in the market. Setting
23 that aside, our rates would otherwise be higher without
24 Truman.

25 Q. And why is that?

1 A. The margin from Truman would reduce the
2 amount of a future rate request.

3 Q. And that would be even with the
4 determination -- I think I'm going to draw the same
5 objection -- that a large portion of your system would not
6 be deemed used and useful?

7 MR. KEEVIL: Objection, calls for legal
8 analysis.

9 JUDGE REED: Sustained.

10 BY MS. CARTER:

11 Q. Are you aware of any instance where Truman
12 Medical Hospital wasn't able to deliver care to their
13 patients because of MGE's service?

14 A. I have no information on that.

15 MS. CARTER: That's all I have at this
16 time. Thank you.

17 JUDGE REED: All right. Thank you. I just
18 want to clarify something if I could, Mr. Sim.

19 QUESTIONS BY JUDGE REED:

20 Q. On page 7 of your testimony, I don't have a
21 firm understanding of the 50 percent gain that Trigen is
22 proposing here in the event the Commission imposes that
23 second condition regarding holding the customers harmless.
24 Can you explain that for me?

25 A. Yes, Judge. Again, as a policy matter,

1 whereas in this specific case we believe there's really no
2 probability that there would be a loss on this investment,
3 particularly given Mr. Wagner -- Truman Medical Center's
4 witness Wagner's statement that I read that said that
5 100 percent of the pipeline cost would be advanced by the
6 customer, we would have, you know, a cash margin day one
7 in that particular instance.

8 And if -- given that, this isn't our first
9 recommendation. Our first recommendation is the second
10 condition would not be applied, but if it was, the fair
11 thing for -- to send a message to Trigen and potentially
12 other utilities as a policy matter by this Commission is
13 that you don't want future capital projects such as this
14 to be risk adjusted, where if there's a risk that we may
15 not, you know, get our capital back, that we would
16 hesitate in making the investment.

17 In this particular case, in the Truman
18 case, it's not that case for us, but in the future it may
19 be. And as a policy matter, as a regulatory policy, if
20 there's a downside and there's only a downside, you'd
21 think there would be some type of symmetrical upside, even
22 if it wasn't a one-for-one match. And we're not trying to
23 be greedy here. We're trying to have some type of fair
24 allocation of risk between the downside and a reward for
25 that risk, taking that risk on the upside.

1 Q. Explain to me what you mean by 50 percent
2 of any gain. Gain from what?

3 A. I'm sorry. The 50 percent gain would be
4 the margin above a fully allocated revenue requirement to
5 Truman. So in -- in regulatory accounting, it would be
6 once all the embedded costs and a normal rate of return on
7 investment, depreciation, cash and non-cash items have
8 been fully allocated to Truman, that the amount of margin
9 remaining above that that would otherwise be accredited,
10 if you will, to the existing customer base, that we would
11 keep that accounting margin before it was spread back to
12 other customers.

13 JUDGE REED: Okay. I understand that now.
14 Thank you.

15 Any questions to follow up on the cross
16 from the Bench up here? Any recross to follow those
17 questions?

18 MR. FRANSON: Yes, but I don't believe I'm
19 first.

20 JUDGE REED: Who is first?

21 MR. PORTER: No, your Honor.

22 JUDGE REED: Mr. Porter? Thank you.
23 Mr. Franson?

24 MR. FRANSON: Thank you, your Honor.

25 RE-CROSS-EXAMINATION BY MR. FRANSON:

1 Q. Okay. Mr. Sim, you were talking to the
2 Judge about this 50 percent sharing mechanism. Are you
3 aware of any cases in Missouri or any other jurisdiction
4 that have adopted such a sharing mechanism?

5 A. In Missouri, no. In other jurisdictions,
6 there have been -- in a fair number of jurisdictions there
7 have been award and penalty mechanisms on everything from
8 fuel cost to investment to performance of plants, where
9 there is a downside if the -- if certain things, certain
10 triggering events happen and there's upside.

11 Usually there's -- typically there's some
12 type of dead band in the middle where there's no reward or
13 penalty, but once a trigger point is reached both on the
14 downside and the upside, there are rewards and penalties.
15 I think it's fairly common in other jurisdictions.

16 Q. Okay. While interesting, that was not my
17 question. Here you have made a specific proposal. My
18 question is, do you know of any other states that have
19 utilized anything like your proposal? You've got this
20 expansion. The company says, we're at risk for any
21 downside to this, and then we want this specific
22 50 percent -- what did you call it, 50 percent of any
23 gain? Do you know of any states that have adopted this
24 specific proposal?

25 A. And I answered the question that this is a

1 policy matter of a reward and penalty from a regulator on
2 a regulated entity, and that those things are common in
3 other jurisdictions.

4 Q. Understood that there may be rewards and
5 penalties and things like that in other states. My
6 question, though, remains. This specific proposal of
7 50 percent of what you call any gain, are you aware of any
8 other states that have used that specific number in
9 conjunction -- in line with your proposal?

10 A. So a 50 -- what your question is -- and I'm
11 just trying to understand specifically what you're trying
12 to ask me. You're saying for a 50 percent upside versus
13 100 percent downside, that kind of reward and penalty
14 scheme; is that what you're trying to say?

15 Q. Your proposal came from somewhere. Was it
16 based on anything but from other jurisdictions?

17 A. Yes. It was based on my experience and my
18 knowledge of what regulators have done elsewhere.

19 Q. Okay. But the specific idea of 50 percent
20 of any gain with the company saying, we will take any
21 downside, do you know of any jurisdictions that have done
22 that specific thing?

23 A. Yes, I believe there have been such -- I
24 can't cite specifically which ones, but my -- in my
25 experience, there have been an asymmetric sharing of gains

1 and penalties in other jurisdictions and a 50 percent
2 upside or 100 percent downside, I'm sure, is specifically
3 out there somewhere. It's just a question of doing the
4 research.

5 Q. Now, in your testimony, are you aware that
6 of the cases cited -- well, actually your proposal was in
7 response to Mr. Harris' testimony; is that correct?

8 A. That's correct.

9 Q. Now, and you seem to take issue with what
10 you called the 100 percent downside; in other words, if
11 there was any downside to this whatsoever, Trigen would
12 pay it, so you have a -- you're taking issue with that; is
13 that correct?

14 MR. KEEVIL: Judge, I'm going to object to
15 this if I can because I think it's going beyond questions
16 from the Bench, which dealt with the 50 percent sharing
17 mechanism proposal.

18 MR. FRANSON: Your Honor, your questions
19 were very general to explain this proposal. Where it came
20 from, what it's based on, I think is fair inquiry.

21 JUDGE REED: And where do you want to go
22 with it from there?

23 MR. FRANSON: Well, your Honor, he said
24 also that he knew of no cases -- well, I want to go into
25 the Missouri cases, which are cited in Mr. Harris'

1 testimony, and they have to do with he proposed this in
2 reaction to Mr. Harris, and I --

3 JUDGE REED: Did you plan to ask him about
4 these Missouri cases that are in the testimony?

5 MR. FRANSON: Yes, I did.

6 JUDGE REED: Well, I don't think we need to
7 go into that with this witness. He's not a lawyer. He
8 may have some familiarity with them, but --

9 MR. FRANSON: That's what I'm asking him.
10 I won't be asking him to recite the facts and state the
11 conclusions of law, but in order to do his testimony,
12 while he may not be a lawyer, he certainly would have an
13 understanding as to other technical witnesses on a daily
14 basis before the Commission.

15 JUDGE REED: Why don't you give us a
16 rephrased question that gets to the point and ask him yes
17 or no whether he agrees or disagrees with your point.

18 BY MR. FRANSON:

19 Q. Is it your understanding that the cases
20 cited by Mr. Harris, in those cases, the companies picked
21 up any risk if their business venture was not successful?

22 A. The companies picked up any risk if their
23 business was not successful?

24 Q. Specifically the gas cases cited by
25 Mr. Harris.

1 A. Well, first off, they're not the same
2 situation as what we have here. Those are speculative
3 investments by gas companies to extend service to new
4 territory. We do not have a speculative investment, I
5 hope, in this regard.

6 Q. I think we all hope it's not speculative,
7 but my question remains, whatever the speculation or
8 whatever the situation in those cases, is it your
9 understanding the gas cases cited by Mr. Harris, that the
10 companies would be totally at risk for any failure or
11 problems that may arise?

12 A. Yes, that's my understanding.

13 Q. Okay. And is it fair to say your
14 understanding here is that for Trigen to pick -- to assume
15 that risk, then they must -- then your proposal is you're
16 saying it's only right and just that we have this sharing
17 mechanism?

18 A. This is a different situation, different
19 kind of utility, and a -- and a completely different set
20 of facts, and with that, I'd say yes.

21 MR. FRANSON: No further questions.

22 JUDGE REED: Okay. Are we finished with
23 recross based on questions from the Bench?

24 I'm sorry. Ms. Carter I think is next.

25 MS. CARTER: No questions.

1 JUDGE REED: So we're back to redirect.

2 Mr. Keevil?

3 REDIRECT EXAMINATION BY MR. KEEVIL:

4 Q. Mr. Sim, I have just a few questions for
5 you here. For the first time Mr. Franson was asking you
6 questions, he asked you some questions regarding what he
7 was referring to as Conditions 1 and 2, and I believe at
8 some point during your response you indicated that
9 Condition 1 was not within your control because that deals
10 with TMC financing the entire construction cost for the
11 project. Do you recall that?

12 A. Yes.

13 Q. Now, is it true also, however, that part of
14 that Condition 1 involves the potential refund of the
15 construction advance provided by Truman for construction
16 of the project?

17 A. Yes.

18 Q. In regard to that portion of this
19 condition, the refund issue, Trigen would have definite
20 interest in that, correct?

21 A. Yes.

22 Q. What is your understanding of the grounds
23 upon which any potential refunds of that construction
24 advance might be made?

25 A. A pro rata share of the construction

1 advance would be refunded back to Truman as new customers
2 are added to the system.

3 Q. Now, during questions from Ms. Carter, she
4 asked you a few questions about the feasibility study, and
5 I believe you stated that -- or she was asking what costs
6 were included in the study, and you indicated that the
7 cost study shown in the feasibility study is an
8 incremental analysis and not an embedded cost of service
9 analysis, I believe; is that correct?

10 A. Yes, that's correct.

11 Q. What is the significance of that
12 distinction?

13 A. Decisions are made in business and
14 particularly in the utility business based on incremental
15 cash inflows and outflows, not on a fully embedded
16 accounting basis.

17 Q. There were also questions regarding the gas
18 cases Mr. Franson referred to. Does Trigen view this
19 project as a speculative project?

20 A. No.

21 Q. Why is that?

22 A. We have a firm commitment from the customer
23 that they want service. The customer has solidified that
24 by offering an advance of 100 percent of the cost of the
25 pipeline, based on Mr. Wagner's testimony.

1 Q. And is it your understanding that this
2 project will be accretive to the earnings of Trigen, even
3 if Truman is the only new customer added in the expansion
4 area?

5 A. Absolutely.

6 Q. There were some questions also regarding
7 the -- Mr. Franson I believe was asking the questions
8 regarding impact on existing customers if Truman were to
9 decide in the future to leave your system after joining
10 for a while.

11 Worst-case scenario, if Truman is the only
12 customer added in the new area, which I believe was one of
13 Mr. Franson's hypothetical qualifiers, and if Truman goes
14 off the system at some point in the future, and again
15 worst-case scenario, it would be possible, would it not,
16 for Trigen to simply shut the valve at the end of the
17 existing service territory and cut off service in that new
18 area completely?

19 A. Well, that's what we do to avoid line
20 losses.

21 Q. Exactly. That was my point. There would
22 be no impact on existing customers if that were to happen,
23 correct?

24 A. With 100 percent cash advance from the
25 customer, it would be equal to the pipeline cost. There

1 would be no cost spread back to other customers.

2 MR. KEEVIL: Thank you. That's all I have.

3 JUDGE REED: All right. Thank you. I
4 think the next witness is from Truman Medical Center,
5 correct?

6 MR. PORTER: Yes, your Honor. I spoke with
7 Mr. Wagner at our last break. I would anticipate his
8 arrival in the next 10 to 15 minutes. I talked to
9 Mr. Franson. He said he could put on a witness out of
10 order, if that would be acceptable.

11 MR. FRANSON: If I can have about two
12 minutes and get my materials, I will be calling Alan Bax.

13 MR. KEEVIL: Judge, are we still on the
14 record?

15 JUDGE REED: Yes, we are on the record.

16 MR. KEEVIL: I had a question, but I was
17 going to wait until we went off.

18 MR. FRANSON: Actually, Judge, if we're
19 going to stay on the record, I found what I need. I'm
20 ready to call Mr. Bax.

21 JUDGE REED: Okay. Let's go. Mr. Bax?

22 MR. FRANSON: Staff would call Alan bax,
23 your Honor.

24 MR. KEEVIL: Your Honor, since we're going
25 to stay on the record, may Mr. Sim be excused? He has to

1 go back to St. Louis and catch a flight. We were
2 wondering if he could be excused.

3 JUDGE REED: Well, if he has to go for the
4 flight, yes, I'll excuse him. My concern is that the
5 Commissioners may come back and have some questions, but
6 if he needs to go, then he needs to go.

7 MR. KEEVIL: Is there any way of knowing, I
8 mean, at what point --

9 JUDGE REED: Probably after lunch I would
10 know for certain.

11 MR. KEEVIL: You would know around one or
12 so?

13 JUDGE REED: Right. So it just depends on
14 what time that flight is.

15 Mr. Bax, raise your right hand.

16 (Witness sworn.)

17 MR. FRANSON: May I proceed, your Honor?

18 JUDGE REED: Yes, go ahead.

19 ALAN J. BAX testified as follows:

20 DIRECT EXAMINATION BY MR. FRANSON:

21 Q. Sir, please state your name.

22 A. Alan J. Bax.

23 Q. Mr. Bax, how are you employed?

24 A. Employed as a Utility Engineering
25 Specialist 3 with the Public Service Commission.

1 Q. Okay. Now, as part of this process, in
2 this case, have you prepared testimony?

3 A. Yes, I have.

4 Q. Okay. And I believe that's been marked as
5 Exhibit 5; is that correct?

6 A. Yes.

7 Q. Okay. Now, do you have that testimony in
8 front of you?

9 A. Yes.

10 Q. Okay. If you -- do you have any changes,
11 corrections, additions or deletions to your testimony?

12 A. No.

13 Q. If you were asked the same questions today,
14 would your answers be the same?

15 A. Yes.

16 Q. To the best of your knowledge, are your
17 answers truthful and correct?

18 A. Yes.

19 MR. FRANSON: Your Honor, at this time I
20 would offer into evidence Exhibit No. 5 and --

21 BY MR. FRANSON:

22 Q. Well, before I do that, Mr. Bax, you only
23 had one version of your testimony, and it was not
24 designated HC; is that correct?

25 A. Correct.

1 MR. FRANSON: Your Honor, I would offer
2 into evidence Exhibit No. 5.

3 JUDGE REED: Any objection to No. 5?

4 (No response.)

5 JUDGE REED: No objections. No. 5 is
6 received.

7 (EXHIBIT NO. 5 WAS RECEIVED INTO EVIDENCE.)

8 MR. FRANSON: With that, your Honor, I
9 would tender the witness for cross-examination.

10 JUDGE REED: All right. I think we begin
11 with Mr. Keevil for Trigen, cross-examine?

12 MR. KEEVIL: I have none at this time, your
13 Honor.

14 JUDGE REED: All right. Thank you.
15 Mr. Franson? I'm sorry.

16 MR. FRANSON: I don't have any, your Honor.

17 JUDGE REED: I'm on the wrong one.

18 Mr. Porter?

19 MR. PORTER: No questions, your Honor.

20 JUDGE REED: Okay. Ms. Carter?

21 MS. CARTER: I do.

22 CROSS-EXAMINATION BY MS. CARTER:

23 Q. Mr. Bax, referring to your rebuttal
24 testimony, do you have a copy of that with you?

25 A. Yes.

1 Q. Page 3, lines 14 and 15, you were asked the
2 question, will Trigen be able to provide district steam
3 service in the proposed expansion area while maintaining
4 reliable service to existing customers, and your answer is
5 yes, correct?

6 A. Yes.

7 Q. Would the same be true with regard to MGE's
8 ability to continue providing services in that area while
9 maintaining reliable service to all of its customers?

10 A. Yes.

11 Q. Turning to page 4 of your testimony, lines
12 14 through 16, you state that you on behalf of Staff state
13 that you're unaware of any catastrophic incidents that
14 have occurred due to steam leaks, leaks affecting the
15 integrity of other facilities, but you also state that
16 potential does exist. Am I reading that correctly, that
17 there is potential for catastrophic incidents?

18 A. Yes.

19 Q. Looking to lines 19 and 20, also on page 4,
20 you say, in addition to higher material and installation
21 costs associated with steel pipe, MGE cites increased
22 maintenance costs due to the need to install cathodic
23 protection. Do you agree that there are increased
24 maintenance costs with replacing plastic pipe with steel
25 pipe?

1 A. Yes.

2 Q. The conclusion of your testimony, you state
3 that you believe granting of the requested authority would
4 be in the public interest if the Commission agrees to the
5 two recommendations outlined in Staff Witness Harris'
6 testimony. Is it correct, then, to assume that if those
7 two conditions are not imposed, you believe that it would
8 not be in the public interest to grant the requested
9 authority?

10 A. That is -- that is Staff's position, yes.

11 Q. With regard to that public interest
12 standard, what is your understanding of the public to be
13 considered?

14 MR. FRANSON: Your Honor, I must object.
15 We've had this kind of objection before. While Mr. Bax is
16 certainly our witness on certain things, the definition of
17 public and how that was arrived at are questions that are
18 better directed to Mr. Harris, and they are, in fact,
19 developed in his testimony.

20 JUDGE REED: Okay. I was going to ask if
21 he addressed the issue of public in his testimony.

22 MR. FRANSON: He did. Mr. Bax did not.
23 Not in his testimony.

24 MS. CARTER: If I may, Judge, he does state
25 that it's his opinion it would be in the public interest

1 with the two conditions, and I'd like to know in making
2 his assessment in that regard, what public he considered.

3 JUDGE REED: I think that's a good point,
4 so the objection's overruled. Go ahead.

5 BY MS. CARTER:

6 Q. Mr. Bax, to back up, you say it would --
7 you believe it would be in the public interest with the
8 two Staff conditions in making that determination. Who
9 did you consider as the public?

10 A. The public was considered to be Trigen's
11 customers.

12 Q. So you did not consider the impact on MGE's
13 customers; is that correct?

14 A. No.

15 Q. And please let me know if I'm getting into
16 something that is outside your area of expertise, but
17 would you disagree that there will be underutilization of
18 MGE infrastructure if the requested authority is granted
19 or that there may be?

20 MR. FRANSON: I'm going to object as to the
21 relevance of whether -- whether there is or whether there
22 is not any underutilization of MGE's infrastructure would
23 have no bearing on whether this CCN should be granted.

24 MS. CARTER: I would certainly respectfully
25 disagree, in that I believe we have a disagreement as to

1 who the public is, whereas there is plenty of case law
2 that says public should not be limited to a particular
3 group, and MGE customers' rates could go up if there's a
4 finding of underutilization and we're narrowing funds to
5 be spread.

6 MR. FRANSON: The question wasn't about
7 rates, your Honor, it was about the specific
8 underutilization of MGE's system.

9 JUDGE REED: I think she's getting at her
10 definition or her arguments for what the public is, so I'm
11 going to allow the question. I don't recall specifically
12 what it was. Maybe the witness does remember the
13 question.

14 MR. KEEVIL: Judge, before you go on, if I
15 could interject here?

16 JUDGE REED: Go ahead.

17 MR. KEEVIL: If she's talking about
18 underutilization, I'm going to object, too, because I'm
19 not sure it's been established that MGE' facilities aren't
20 currently underutilized to some extent until -- if she's
21 going to get into if this, then underutilization, I think
22 she first has to establish that they're fully utilized at
23 present.

24 JUDGE REED: We will see what the witness
25 knows. Your objection is overruled, Mr. Keevil.

1 BY MS. CARTER:

2 Q. I'll try to restate for you after all of
3 that. Would you disagree that there would be
4 underutilization or possibly greater underutilization of
5 MGE infrastructure that could result from the requested
6 authority being granted?

7 A. Possibly.

8 Q. And would you disagree that will be a loss
9 of revenue to MGE by the requested authority being
10 granted?

11 A. With current information, it looks that
12 way.

13 Q. Looks like there would be a loss of revenue
14 for MGE?

15 A. Yes.

16 Q. Then would you also agree that MGE's
17 customers may, in turn, face a rate increase down the
18 road?

19 A. There is one -- there is one filed.

20 MS. CARTER: Thank you.

21 JUDGE REED: I don't have any questions.

22 Mr. Bax, is there -- I guess we'll go to redirect then.

23 REDIRECT EXAMINATION BY MR. FRANSON:

24 Q. Mr. Bax, when you were doing your analysis
25 and preparing your testimony in this case, at that point

1 in time were you aware of any specific concerns by MGE in
2 this case about underutilization of their facilities or
3 any safety concerns? Were you made aware of any in your
4 analysis?

5 A. In reviewing the documents in the case, a
6 potential safety concern was raised.

7 Q. But did MGE -- right. And you address that
8 in your testimony, correct?

9 A. Yes.

10 Q. Did MGE ever contact you and bring any
11 other matters to your attention?

12 A. No.

13 Q. Okay. Now, when you are working on a case
14 like this, you look at the public interest standard,
15 correct?

16 A. Yes.

17 Q. And isn't it true that in this case,
18 Mr. Harris, Staff Witness Harris defined public for Staff
19 in his testimony?

20 A. Yes.

21 Q. Okay. Now, if I may -- well, isn't it true
22 that Mr. Harris defined public as including at least those
23 consumers taking and receiving utility service from
24 Trigen's steam operation in downtown Kansas City?

25 A. Yes.

1 Q. And you primarily focused on Trigen's
2 existing customers in your analysis?

3 A. Well, I would say yes, uh-huh.

4 Q. Did you focus exclusively?

5 A. Not exclusively.

6 Q. Okay. Besides Trigen's existing customers,
7 what other elements of the public might you have
8 considered?

9 A. We have a public safety concern.

10 Q. Did you -- and you considered the public
11 safety concern?

12 A. General public safety concern.

13 Q. That's addressed in your testimony?

14 A. That would -- that would be in -- in
15 reviewing -- in reviewing how Trigen could safely install
16 the -- install the facilities in the proposed expansion
17 area.

18 Q. Okay. And fair to say you have presented
19 expert testimony on other CCN cases for other utilities?

20 A. Yes.

21 Q. And do you often break down public so
22 minute to include the possible impact upon other
23 utilities?

24 A. The -- that's on a case-by-case basis.

25 MR. FRANSON: No further questions, your

1 Honor.

2 JUDGE REED: All right. Thank you,

3 Mr. Bax. That's all.

4 Mr. Porter?

5 MR. PORTER: Your Honor, if we could just

6 take a short break, I can see if he's here.

7 JUDGE REED: What we could do, we could go

8 to Mr. Harris, if he's ready for Staff.

9 MR. FRANSON: Can we take a five-minute

10 break before we do that, your Honor?

11 JUDGE REED: If we need a break, let's take

12 five minutes. It's about 11:21. Let's come back at

13 11:26.

14 (A BREAK WAS TAKEN.)

15 JUDGE REED: We're going back on the

16 record. It's my understanding that Mr. Wagner is here and

17 ready to testify.

18 MR. PORTER: Truman Medical Center calls

19 David Wagner.

20 JUDGE REED: Mr. Wagner, could you raise

21 your right hand, please.

22 (Witness sworn.)

23 JUDGE REED: Thank you.

24 DAVID WAGNER testified as follows:

25 DIRECT EXAMINATION BY MR. PORTER:

1 Q. Could you state your name for the record,
2 please.

3 A. David Wagner.

4 Q. Mr. Wagner, by whom are you employed?

5 A. Truman Medical Center.

6 Q. And in what capacity are you employed at
7 Truman Medical Center?

8 A. I'm the senior director of support
9 services.

10 Q. Mr. Wagner, did you have cause to be
11 prepared direct testimony in this case that has been
12 prefiled?

13 A. Yes.

14 Q. And has that testimony been premarked as
15 Exhibit No. 4, if you'll look at the first page of your
16 testimony?

17 A. Yes, it has.

18 Q. And do you have a copy of that in front of
19 you?

20 A. Yes, I do.

21 Q. In looking at your prefiled direct
22 testimony, are there any changes, additions or deletions
23 that you would make to that testimony as you sit here
24 today?

25 A. No.

1 Q. And are the answers that you have given in
2 this prefiled testimony true and accurate to the best of
3 your knowledge and belief?

4 A. Yes, they are.

5 Q. And if I were to ask you the same questions
6 as are set out in the direct testimony of Exhibit 4, would
7 you provide the same answers as are contained in
8 Exhibit 4?

9 A. Yes, I would.

10 MR. PORTER: Your Honor, I would offer
11 Exhibit 4.

12 JUDGE REED: Are there any objections to
13 No. 4?

14 (No response.)

15 JUDGE REED: I see no objections.
16 Exhibit 4 is received.

17 (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE.)

18 MR. PORTER: Thank you, your Honor. Tender
19 the witness for cross.

20 JUDGE REED: And first is Mr. Keevil from
21 Trigen.

22 MR. KEEVIL: I have no questions at this
23 time, Judge.

24 JUDGE REED: Thank you. Mr. Franson?

25 MR. FRANSON: Briefly, your Honor. Thank

1 you.

2 CROSS-EXAMINATION BY MR. FRANSON:

3 Q. Good morning, Mr. Wagner.

4 A. Good morning.

5 Q. A couple questions for you.

6 A. Excuse me if I may. And you are with?

7 Q. I'm Robert Franson. I'm an attorney for
8 the Staff of the Public Service Commission.

9 A. Okay. Thank you.

10 Q. Certainly. A couple questions. How does
11 Trigen currently get its energy needs met? Do you know
12 about that, how they currently meet their energy needs now
13 versus how it would be after this CCN was granted?

14 MR. KEEVIL: Judge, I think he misspoke
15 there and asked how Trigen currently gets --

16 MR. FRANSON: I'm sorry. I mean Truman.

17 THE WITNESS: I'm sorry. You had me
18 confused.

19 BY MR. FRANSON:

20 Q. Do you know how Truman currently meets its
21 energy needs, and by that I mean who are their suppliers
22 and what is that particular supply used for? And I want
23 to ask about before the CCN, meaning you become a large
24 Trigen customer and then -- before and after. So let's
25 start, how does Truman currently meets its energy needs?

1 A. Well, there are two locations at Truman
2 Medical Center. There's one in the downtown area and then
3 there's one in eastern Jackson County. And currently both
4 of those meet its energy needs by producing steam onsite
5 with boilers that are either fired by natural gas or by
6 fuel oil. And then as far as other power needs, of
7 course, we have electrical, which is supplied by KCPL in
8 the downtown area and is supplied by Aquila at the eastern
9 Jackson County location.

10 Q. Okay. Now, at your downtown -- let me ask
11 you to turn around. Could you look at the map there.
12 That's been marked as Exhibit 8. Could you take a look at
13 that and then show us where Truman Medical Center is
14 located?

15 A. It will take me a second.

16 Q. Okay.

17 A. It's pretty convoluted there.

18 Q. Actually --

19 JUDGE REED: Mr. Franson, why don't you
20 approach?

21 MR. FRANSON: I will.

22 THE WITNESS: I'm sorry. I've just got to
23 find my bearings here.

24 BY MR. FRANSON:

25 Q. If I may approach I'm going to give you the

1 same thing just on paper. It may be a little easier. Let
2 me give you Exhibit No. 8. If you could take a look at
3 that?

4 A. Sure. Okay. I was going the wrong way.
5 Sorry.

6 JUDGE REED: Just show him where it is,
7 Mr. Franson.

8 THE WITNESS: Sorry. There it is, Truman
9 Medical Center, right there (indicating).

10 BY MR. FRANSON:

11 Q. So that's your downtown location?

12 A. Yes.

13 Q. On Exhibit 8?

14 A. It's a little faded.

15 Q. Sorry about it being faded.

16 A. That's all right.

17 Q. What I'd like you to do, you talk about
18 having two locations. I want to focus on downtown.

19 A. Okay.

20 Q. You're currently, for electrical needs, a
21 KCPL customer; is that correct?

22 A. That is correct.

23 Q. Let's assume that this was granted, this
24 CCN and you become a larger Trigen customer. Would you
25 still be a KCPL customer?

1 A. Yes, sir.

2 Q. Okay. You're currently an MGE
3 transportation customer; is that correct?

4 A. That's correct.

5 Q. And if you expanded your steam operations
6 and took service from Trigen, would you still be an MGE
7 customer?

8 A. We would be. Yes, we would be a
9 transportation customer of MGE still.

10 Q. And the impact of that, I believe,
11 is addressed in your testimony, is that correct, the
12 impact -- the revenue impact on MGE is addressed in your
13 testimony?

14 A. Yes.

15 Q. Okay. Then you currently generate your own
16 steam at the downtown facility; is that correct?

17 A. Yes, it is.

18 Q. Why do you believe it's beneficial to go to
19 Trigen for steam?

20 A. The main reason why it is beneficial is
21 because the cost of natural gas has doubled and sometimes
22 has tripled from what it used to be, so the cost of
23 producing steam using natural gas right now has really
24 risen to the point to where we can buy steam that's
25 already been produced at a lot lower rate.

1 Q. Okay. Now, let's assume that the
2 Commission approves this application and the facilities
3 are installed. How will Truman initially take service?
4 By that I mean are you going to be a tariffed customer of
5 Trigen?

6 A. I believe that's correct, yes.

7 Q. Okay. Then have your studies taken into
8 account any possible rate increases by Trigen?

9 A. The initial studies have shown pretty much
10 a fairly flat rate over a period of time, the performance
11 that we looked at.

12 Q. Okay. You're aware it's possible that
13 Trigen at some point could come in for a rate case?

14 A. Yes, sir.

15 Q. And you took that possibility into account
16 in your decisions?

17 A. Yes, we did.

18 Q. Okay. Now, are you familiar with what I'm
19 going to call Staff Condition No. 1?

20 A. No, I'm not.

21 Q. Okay. You pay the whole thing. Let's call
22 that Staff Condition No. 1.

23 A. Okay.

24 Q. Now do you know what I'm talking about?

25 A. We pay the --

1 Q. You advance the construction costs.

2 A. Oh, okay. Yeah. Sure. I understand.

3 Q. Okay. That's --

4 A. The advance. Yes.

5 Q. That was one of Staff's recommendations.

6 A. Yes.

7 Q. In your Brief, the prefiled Brief filed by
8 Mr. Porter, there is a statement about that. Do you know
9 what I'm referring to?

10 A. I do know about the talk of the advance,
11 yes.

12 Q. Let me ask you -- I'm just going to quote
13 from your Brief. Staff has recommended that the
14 Commission grant Trigen's application with two conditions:
15 A, that Truman advance the entire cost of Trigen's expense
16 in the project. And your Brief says as for Condition A,
17 Truman is willing to finance the entire cost of Trigen's
18 expansion project. TMC will submit evidence of its
19 willingness to provide such financing to meet Staff's
20 recommended condition. No. 1, are you willing to do that?

21 A. Yes, we are.

22 Q. Let's not go into numbers because that
23 might be highly confidential material. But question, you
24 said that you would provide financing to meet Staff's
25 recommended condition. What have you got for us today?

1 You're telling us you'd do it. Do you have something
2 specific beyond that that you brought with you today?

3 A. No, I do not. We have explored several
4 avenues and we have not made any decision on which avenue
5 we're going to pursue based on the outcome of this
6 hearing.

7 Q. But you see no problem in being able to
8 meet that condition; is that what you're saying here
9 today?

10 A. That's correct. We see no problem.

11 MR. FRANSON: I don't believe I have any
12 further questions of Mr. Wagner.

13 JUDGE REED: Ms. Carter?

14 MS. CARTER: Yes, thank you.

15 CROSS-EXAMINATION BY MS. CARTER:

16 Q. You'd asked Mr. Franson who he was. I am
17 Diana Carter, and I'm the attorney for MGE.

18 A. Okay. Thank you.

19 Q. You missed out on that preliminary matters.

20 A. Thank you very much.

21 Q. On page 4 of your testimony, you describe
22 the basis for your cost savings analysis. Is that cost
23 savings analysis based on your 2005 experience?

24 A. No. The time that we ran this was based on
25 a fiscal year of ours, which was 2004. We have not since

1 ran a complete 2005 analysis to update those numbers.

2 Q. It would be the fiscal year ending December
3 '04?

4 A. It would have been -- our fiscal year ends
5 on June 30th.

6 Q. On page 6, lines 2 through 5, you explain
7 that Truman paid approximately 157,000 to MGE for
8 transportation service and that MGE will lose about
9 90 percent of that amount or somewhere around 140,000; is
10 that correct?

11 A. I don't remember indicating there would be
12 a percentage that they would lose. I did. You're right.
13 You know, at this time, that's pure speculation because we
14 will keep some of the meters that -- well, we'll keep all
15 of them as a matter of fact, but we still will use this
16 steam in various areas of the hospital, as well as we will
17 be using the natural gas for our east facility.

18 Q. Sitting here today then, do you think that
19 90 percent figure needs to be changed?

20 A. You know, it's kind of a guess at this
21 point. It may be not quite that high.

22 Q. I'm going to be asking you a few more
23 questions that are assuming the 90 percent.

24 A. Okay.

25 Q. So if you need to adjust that, let me know.

1 A. Okay.

2 Q. Also on page 6, at lines 13 and 14, you
3 indicate that you conservatively estimate Truman's savings
4 to be almost five times the amount of MGE's lost revenue.
5 Are you saying, then, that your conservative savings could
6 be almost 700,000, or am I missing something on the math?

7 A. You're correct.

8 Q. You think your savings will be 700,000 by
9 changing --

10 A. Yes, we do.

11 Q. -- to steam?

12 And over what period of time?

13 A. A year's period.

14 Q. On line 13 of that same page you say
15 purported lost MGE revenues. What do you mean by
16 purported?

17 A. On which? I'm sorry.

18 Q. On line 13.

19 A. 13. Okay.

20 MR. FRANSON: Which page?

21 MS. CARTER: We're still on page 6.

22 MR. FRANSON: Thank you.

23 THE WITNESS: Okay.

24 BY MS. CARTER:

25 Q. I'm sorry. It's line 14.

1 A. Thank you.

2 Q. You refer to the purported lost MGE
3 revenue.

4 A. The purported is just the amount of revenue
5 that we spent with MGE in 2005. That's what I'm referring
6 to, the 157,000.

7 Q. And that's the amount you actually paid?

8 A. Yes, it is.

9 Q. So you don't dispute that there will be a
10 losses of revenue to MGE?

11 A. No, don't dispute that.

12 Q. Do you have your Data Request responses
13 with you, by any chance?

14 A. It's possible.

15 Q. I was going to ask you a couple questions
16 about the Data Requests that were put to your company by
17 MGE, specifically DRs 5 and 6.

18 A. Okay. I'm not sure what all that refers
19 to, so you'll have to enlighten me. I'm sorry.

20 Q. That's why I was hoping you maybe would
21 have it in front of you.

22 A. It could be here. Why don't you go ahead
23 and ask me the question, and I may be able to just bring
24 it from memory.

25 Q. In DR 6 you're asked with regard to Truman,

1 what is the anticipated steam usage to take the place of
2 gas on a pro forma basis using 2005 as a typical usage
3 year? And then you provide some numbers in your response.

4 A. Okay. I believe I can come up with that.

5 Are we talking about --

6 MR. PORTER: Your Honor, I think all of
7 these have been produced -- these numbers have been
8 produced HC.

9 MS. CARTER: Yes. I was trying to avoid
10 him having to actually say the numbers, but it might be
11 easier. Mr. Noack ...

12 THE WITNESS: We have an estimated total --

13 JUDGE REED: Hold on a second. We're going
14 to have to go in-camera.

15 MR. FRANSON: We've got actual numbers. I
16 think we do need to be HC.

17 THE WITNESS: Okay.

18 (REPORTER'S NOTE: At this point an
19 in-camera session was held, which is contained in
20 Volume 3, pages 131 through 133 of the transcript.)

21

22

23

24

25

1 JUDGE REED: Okay. Go ahead.

2 BY MS. CARTER:

3 Q. Do you know if any other time periods were
4 used to determine whether Truman's expected steam usage
5 would be changing over time?

6 A. No, it has not been at this point.

7 Q. So you couldn't say if the steam usage may
8 be say 5 percent or 10 percent higher or lower than the
9 amounts you used?

10 A. No, I could not.

11 Q. So then am I correct that the savings
12 analysis does not take into account the possible variation
13 in level of steam usage?

14 A. It does not, but when you look back over
15 our history, we've stayed pretty much flat in our steam
16 usage over the last four to five years to where we don't
17 really change that much.

18 Q. Did you perform any sensitivity analysis to
19 determine possible savings from steam versus gas due, for
20 example, to changing gas commodity prices?

21 A. No.

22 Q. Are you aware that some reports show that
23 gas prices may come down in 2006 as compared to the last
24 couple years?

25 A. Well, some of the things I've been looking

1 at still show the long range being very high. It depends
2 on which report you look at sometimes.

3 Q. If you were able to cut your gas commodity
4 cost by 10 percent and lock in those prices for several
5 years, would you still be interested in pursuing service
6 with Trigen?

7 A. Yes, we would.

8 Q. If, in fact, the cost savings were not
9 significant, would you still be interested in pursuing
10 service with Trigen?

11 A. There would have to be a significant change
12 in gas prices for the cost savings to not be significant.

13 Q. And if that occurs, if the cost savings
14 were not significant, would you still be interested in
15 switching service to Trigen?

16 A. I think we'd have to review that again.

17 Q. Are you aware that Trigen believes they
18 currently have an earnings deficiency? Are you familiar
19 with that term?

20 A. I'm familiar with the term, but no, I'm not
21 aware of that.

22 Q. They've indicated previously that they
23 believe they do have an earnings deficiency and that it's
24 likely a rate case will be filed this year. Were you
25 aware of that?

1 A. I had heard some rumors of that, yes.

2 Q. Did you take into consideration in
3 evaluating their proposal that likely rates will be going
4 up?

5 A. Yes.

6 Q. If Trigen's steam rates were to be
7 10 percent higher, were to go up 10 percent, would you
8 still want to use steam service?

9 A. Yes, we would.

10 Q. Has any Trigen representative provided you
11 with an assurance about the steam rates that Truman would
12 pay in the future?

13 A. No.

14 Q. I believe you stated at the beginning that
15 you plan on taking service under the tariff; is that
16 correct?

17 A. That's correct.

18 Q. Do you have any plans to later enter into a
19 contract with Trigen?

20 A. We have not talked about any plans like
21 that, nor have we made any plans of that nature at this
22 point.

23 Q. So I'm assuming you haven't spoken in terms
24 of a length of an agreement?

25 A. No.

1 Q. I think you stated that you would be fine
2 with Staff's condition of a 100 percent advance, correct?

3 A. That is correct.

4 Q. Would the size of that payment make any
5 difference to your position here?

6 A. No.

7 Q. There's no amount of that payment that
8 would change your opinion?

9 A. Based on the projected savings and the
10 payments, we still feel that this is a very good venture
11 for us to go forward in.

12 Q. Do you have an idea of what the costs are?

13 MR. PORTER: Your Honor, I think that gets
14 to numbers again.

15 BY MS. CARTER:

16 Q. And you don't need to tell me the dollar
17 amount. Are you aware of what that dollar amount is, what
18 the construction costs will be?

19 A. We're aware of a range that there might be
20 out there, yes.

21 Q. You agree that it's a substantial dollar
22 amount for the construction?

23 A. Well, I think it's a reasonable amount for
24 what we're looking at doing.

25 Q. Would that make any difference if that

1 advance will not be refunded to Truman by Trigen?

2 A. No.

3 Q. So even without the refund, you feel that
4 would be cost effective?

5 A. Yes, we do.

6 Q. I believe you stated at page 5, lines 14
7 and 15 of your testimony that if gas costs were to go
8 down, you then have available two options, you might
9 switch back to MGE; is that correct?

10 A. That's correct.

11 MS. CARTER: That's all I have for now.

12 Thank you.

13 JUDGE REED: Thank you.

14 QUESTIONS BY JUDGE REED:

15 Q. Mr. Wagner, I need to ask you a couple
16 questions, if I could.

17 A. Yes, sir.

18 Q. How is Truman Medical Center supported?

19 Tell me the source of funds to keep the place running.

20 A. Truman Medical Center is supported in
21 several different things. Of course, we have
22 reimbursement for care that we give to our patients, is
23 the main way that it's supported, and that's through
24 commercial insurance and Medicare, Medicaid programs, and
25 money that we get from both the City and the County.

1 Q. The money from the City and the County, is
2 that money from taxpayers, I take it, correct?

3 A. Yes.

4 Q. Can you -- you don't have to give me any
5 numbers, but is that sum significant in terms of your
6 overall source of funding?

7 A. No.

8 Q. It is not?

9 A. No, it is not.

10 JUDGE REED: All right. Any recross based
11 on my questions?

12 (No response.)

13 JUDGE REED: Redirect?

14 REDIRECT EXAMINATION BY MR. PORTER:

15 Q. Mr. Wagner, earlier we had testimony that
16 gas prices would have to fall in the neighborhood of
17 50 percent to undercut the viability of the current
18 project contemplated between Truman and Trigen. In your
19 experience in facilities management, have you ever seen a
20 50 percent reduction in natural gas costs?

21 A. No.

22 Q. As you look forward to the utility costs
23 for Truman Medical Center into the foreseeable future, do
24 you anticipate a significant reduction in the cost of
25 natural gas?

1 A. No.

2 MR. PORTER: I have nothing further, your
3 Honor.

4 JUDGE REED: All right. Thank you.
5 Mr. Wagner, you're excused.

6 THE WITNESS: Thank you.

7 JUDGE REED: Looks like the right time to
8 take a lunch break. It's 11:55. We'll reconvene at
9 1 o'clock. We'll begin with Mr. Harris.

10 (A BREAK WAS TAKEN.)

11 JUDGE REED: Okay. We're back on the
12 record. Mr. Sim is back on the stand and, Mr. Sim, at
13 this time I'll remind you that you're still under oath,
14 having been sworn earlier today. At this time we may have
15 some questions from the Bench.

16 THE WITNESS: Okay.

17 MURRAY SIM testified as follows:

18 QUESTIONS BY COMMISSIONER GAW:

19 Q. Good afternoon, sir. If I -- if these
20 questions should go to someone else, just tell me. Okay?
21 First of all, in regard to how the line that would be
22 constructed would be handled in rates, can you tell me
23 what the thought is of the company as to placing the --
24 what would be placed in rate base?

25 A. Commissioner, without having our rate case

1 developed or filed, it's -- it's difficult to say, but --
2 and I'm not from Missouri, so I don't understand all of
3 Missouri regulation. But under FERC rules, if I can be
4 generic, I think I can walk through this, just to put the
5 basis of accounting that I'll give to you.

6 Q. Okay.

7 A. A -- we -- the Truman Medical Center
8 has testified, their witness has testified that they would
9 provide 100 percent of the pipeline cost as a contribution
10 -- or I'm sorry -- as an advance, customer advance. So if
11 we were -- and of course, this doesn't take place until a
12 rate case is effective. But let's just say that at any
13 given point in time a rate case could be effective. So
14 let's say today the pipeline was in place and today rates
15 were in effect from a new rate case.

16 The accounting would be that on day one
17 there would basically be zero impact on rate base because
18 you would have a plant in service line and you would have
19 a negative line in rate base exactly equal to it. As time
20 marches by and, again, I'm going from day one into the
21 future, let's say a month or a quarter would go by,
22 depreciation on the pipeline would occur. It's a non-cash
23 accounting thing. There's no payment to anyone for this.

24 So the plant in service would have a double
25 deduct. There would be an X cost of the pipeline and

1 there would be one month or some accumulating balance of
2 depreciation that would actually subtract from that plant
3 in service to provide a net plant. So the net plant value
4 would slowly drop over time as it's depreciated, while the
5 customer advance would stay on the books as a flat number.

6 So in effect, after one month, two months,
7 three months, as we walk forward in the future, assuming
8 for this point no new customers are added to the system
9 and everything stays as it is, there would actually be a
10 negative rate base accrued -- accruing that would slowly
11 be growing. Let me march again into the future, if I can.
12 Stop me if I'm speaking too much here, but --

13 Q. No. That's fine.

14 A. -- let's say a year or two goes by and
15 another customer comes into the system, in the expansion
16 territory. Not knowing who this customer is, we don't
17 think at this point in time we have any customers
18 immediately coming on, but let's say a couple years from
19 now there's a new customer.

20 Then the margin from that customer, that
21 new load would create a refund back to Truman. And so the
22 customer advance or a part thereof now becomes a kind of
23 contribution in aid of construction. And so it turns into
24 -- I'm sorry. At this point -- I'll get to that later.
25 At this point the refund amount goes down. You have a

1 depreciating plant line, and depending on what the new
2 customers put up for refund, if any, you probably have a
3 small net refund balance.

4 So now you have plant in service, less
5 accumulated depreciation, minus a smaller refund amount.
6 And if we walk into the future, let's say, ten years
7 and -- or let's say five years. I don't know what the
8 rule is in Missouri, so forgive me if I get this wrong.
9 And there's a point in time that the remaining refund on
10 the books effectively goes away because time has elapsed,
11 and I don't know the time frame in Missouri.

12 But let's say it's five years. So it's
13 five years and a month, then we would reverse the refund.
14 Whatever the remaining refund balance would be, and it
15 becomes a contribution in aid of construction on our books
16 and becomes a permanent reduction in plant in service at
17 that point.

18 So it depends really on the timing of rate
19 cases, the type of new customers coming in, the amount of
20 refunds that -- or advances those customers may make, if
21 any, and the amount of refunds that are given back to
22 Truman in depreciation over time.

23 I'm sorry for the long list, but there's a
24 lot of things that impact rate base. And so at any given
25 point in time, it could actually have a negative --

1 negative rate base effect. I would think in the early
2 years that's what it would be. But I believe that over
3 time it would either have a zero net impact, certainly
4 negative, or if it was positive at all, it would be very
5 small.

6 Q. Okay. Now, I may ask if -- in a minute if
7 Staff witnesses agree with that analysis in regard to
8 rates, but I want to make -- I want to see if I understand
9 what you said to me at the very first of that. Assuming
10 that Truman does what is proposed here and paid
11 100 percent of the costs of extending the line, then did
12 you say that the amount in rate base initially for that
13 line would be zero?

14 A. Would be zero at time zero.

15 Q. At time zero?

16 A. Right.

17 Q. And then the actual accounting process,
18 then, if -- is showing some depreciation even though the
19 initial amount shown on the books is zero?

20 A. Well, there's two entries that go in.

21 Q. Yes.

22 A. One is the cost of the pipeline would go
23 under plant in service, some plant in service account, and
24 it would depreciate. Then you would have the accumulated
25 depreciation to get a net plant. And then below the net

1 plant line on the rate base statement, you would then
2 actually subtract out the customer advance.

3 Q. Okay.

4 A. Again, I don't know exactly the form of
5 rate base statements in Missouri. I've not testified here
6 before.

7 Q. Okay. I understand. Now, if you could
8 give me just a little bit better understanding of what
9 these contributions are that might be given by additional
10 customers. Are they -- are those amounts, how are they
11 categorized again?

12 A. Well, if a customer comes on the system and
13 if the customer is not like right on the pipe, if they are
14 a block away or something and it costs us money to hook
15 them up, and we negotiated an advance from them --

16 Q. Yes.

17 A. -- that advance may or may not be equal to
18 the refund going back to Truman. The refund might be
19 greater. But there could be additional advances coming in
20 from additional customers being hooked up. I don't know.
21 It would depend on the deal and depend on the
22 circumstances.

23 Q. Let me start with the simple -- the simple
24 question. That is, let's assume they're right on the
25 line.

1 A. Okay.

2 Q. Is it contemplated that there will be an
3 additional amount contributed by those customers that are
4 right on the line?

5 A. No, probably not. Probably in that
6 circumstance if -- let's say there's zero hookup cost for
7 a customer.

8 Q. Yes.

9 A. Let's just take a hypothetical.

10 Q. And we're talking about on this new line?

11 A. Right, on the new line. Then really what
12 you've got is you've got the margin from the new customer
13 that's added, let's say customer No. 2, would help fund a
14 refund, probably in this case a partial refund of some
15 amount. Again, it depends on the circumstance and the
16 margin and the customer load back to Truman.

17 Q. The margin that you're talking about, that
18 is margin that comes out of what the normal rates would be
19 that that customer would be paying?

20 A. Yes.

21 Q. That that customer would be paying?

22 A. That's right.

23 Q. Under the tariffed rates?

24 A. That's right.

25 Q. Okay. So there isn't contemplated some

1 additional contribution back over and above that --

2 A. No.

3 Q. -- to pay back to Truman, it comes out of
4 the profit margin on the rates?

5 A. Right. Well, as you know -- as you well
6 know, that the rates are set based on average cost. The
7 incremental cost to hook up a new customer consists of the
8 capital to -- that you have in whatever pipeline or meter
9 to hook up the customer. If -- let's just say for
10 instance that's zero.

11 Really the incremental cost to hook up a
12 new customer is fuel and water and other, maybe some
13 chemicals to generate the fuel. We have -- I don't know
14 if you heard the testimony before, but we have much more
15 capacity than load, so we're not talking about incremental
16 power plant costs in any way, shape or form.

17 And if it's right on the form, if we have
18 no incremental pipeline cost, then really the incremental
19 cost is just the fuel. And assuming that our rates are
20 set well above that level, then that margin is an
21 incremental cash from the customer between the tariff
22 rates or whatever rates they would be on less the
23 incremental cost to serve that customer.

24 Q. Now, does there exist some agreement with
25 Truman in regard to what portion of those marginal profits

1 are -- for lack of better phrasing, will be used to pay
2 Truman back?

3 A. No. We have no formal agreement with
4 Truman.

5 Q. Is it -- that seems to me to be something
6 that Truman might be interested in, but I'm -- if --

7 A. That would normally be in a tariff.

8 Q. Okay.

9 A. I mean, it would normally be written down
10 in a tariff. We have in our tariff some honestly
11 relatively vague language on this. We plan, I think, to
12 file a rate case yet this year.

13 Q. Yes.

14 A. Probably yet this summer, and we will
15 promise to address any language that's needed to clean
16 this up.

17 COMMISSIONER GAW: That's all I have, I
18 think, right now, Judge. Thank you.

19 JUDGE REED: All right. Thank you. We can
20 have recross based on the questions from Commissioner Gaw,
21 if anybody has additional questions.

22 MR. FRANSON: Staff has no questions, your
23 Honor.

24 JUDGE REED: Mr. Porter?

25 MR. PORTER: TMC has no questions.

1 MS. CARTER: No questions.

2 JUDGE REED: No questions? All right.

3 Okay. I guess that's it for Mr. Sim. Thank you.

4 MR. KEEVIL: He is excused, then, your

5 Honor, so he can catch his flight back?

6 JUDGE REED: Yes. Yes, he's excused.

7 MR. KEEVIL: Thank you.

8 JUDGE REED: I think next was Mr. Harris

9 for Staff, correct?

10 MR. FRANSON: I believe so, your Honor.

11 Your Honor, I believe I put away my exhibit numbers.

12 (Witness sworn.)

13 MR. FRANSON: May I proceed, your Honor?

14 JUDGE REED: Yes. Go ahead.

15 MR. FRANSON: Thank you.

16 V. WILLIAM HARRIS testified as follows:

17 DIRECT EXAMINATION BY MR. FRANSON:

18 Q. Sir, please state your name.

19 A. V. William Harris.

20 Q. Mr. Harris, how are you employed?

21 A. I'm employed as a regulatory auditor for

22 the Staff of the Missouri Public Service Commission.

23 Q. And how long have you been so employed?

24 A. Eleven years.

25 Q. Okay. In your capacity as regulatory

1 auditor, did you prepare testimony in this case?

2 A. Yes.

3 Q. Okay. Let's talk about that briefly. I
4 believe that's been marked as -- that is your rebuttal
5 testimony; is that correct?

6 A. Yes, it is.

7 Q. It's been marked as Exhibit 6, and as
8 Exhibit 6HC; is that correct?

9 A. Yes.

10 Q. Okay. Do you -- and you are the same
11 V. William Harris who prepared this testimony?

12 A. Yes, I am.

13 Q. Do you have any corrections, additions or
14 deletions or other changes to your testimony?

15 A. Yes. I have two very minor cosmetic
16 changes.

17 Q. Okay.

18 A. On page 5, line 2 --

19 Q. Let's make sure we don't go into highly
20 confidential, Mr. Harris.

21 A. Yes. No, there's nothing highly
22 confidential.

23 Q. Page 5, line 2.

24 A. Three-quarters of the way over to the
25 right-hand side, the word approval should read approve.

1 Q. Okay. Do you have -- and your other
2 change?

3 A. On page 8, line 19, the word quality should
4 be replaced with the word hospital.

5 Q. Okay. Any other changes?

6 A. No. That's it.

7 Q. Mr. Harris, if you were asked the same
8 questions that appear in your testimony today, would your
9 answers be substantially the same?

10 A. Yes.

11 Q. And that would still be your truthful
12 testimony?

13 A. Yes.

14 MR. FRANSON: Your Honor, at this time I
15 offer into evidence Exhibit 6, which is the rebuttal
16 testimony of V. William Harris, and Exhibit 6HC, which is
17 the highly confidential version of the same testimony.

18 JUDGE REED: Are there any objections?

19 (No response.)

20 JUDGE REED: I see no objections, so
21 Exhibit 6 and 6HC are received into evidence.

22 (EXHIBIT NOS. 6 AND 6HC WERE RECEIVED INTO
23 EVIDENCE.)

24 MR. FRANSON: With those exhibits being
25 received into evidence, your Honor, I would tender the

1 witness for cross-examination.

2 JUDGE REED: Thank you, Mr. Franson. I
3 believe we'll start with Mr. Keevil for Trigen.

4 CROSS-EXAMINATION BY MR. KEEVIL:

5 Q. Good afternoon, Mr. Harris.

6 A. Good afternoon, Mr. Keevil.

7 Q. I'm going to try to stay out of specific
8 figures here so we can avoid going in-camera if possible,
9 but if you think otherwise, by all means, let me know and
10 we can go in-camera. Okay?

11 A. Okay.

12 Q. Now, as I understand your -- first of all,
13 let me have you turn to the bottom of page 2 of your
14 testimony, beginning there with the executive summary and
15 continuing on over to the top of page 3. As I understand
16 it, Staff is recommending that the Commission approve
17 Trigen's application provided that approval contain
18 certain conditions that the company's -- by company, I
19 mean Trigen -- existing customers are held harmless from
20 any negative financial consequences that could arise as a
21 result of the project; is that correct?

22 A. Yes.

23 Q. Okay. Again, if I understand it correctly,
24 there are basically two conditions or two elements to your
25 hold harmless conditions; No. 1, that Truman or TMC should

1 finance the entire construction cost of the project,
2 and, 2, that existing customers of Trigen would be
3 insulated from any operating losses as a result of service
4 territory expansion; is that correct?

5 A. Yes.

6 Q. Now, you've been in the hearing room
7 virtually all day today, correct?

8 A. Yes, I have.

9 Q. So did you hear the testimony of TMC
10 witness Wagner?

11 A. Yes, I did.

12 Q. And did you hear him testify that TMC would
13 be willing to finance the entire construction cost for the
14 project?

15 A. Yes, I did.

16 Q. Okay. So would that satisfy your first
17 condition set forth in your testimony?

18 A. Yes.

19 Q. Now, related to that condition, although
20 you don't really state it as a condition, but related to
21 that, you mention the issue of refund of the Truman
22 construction advance back to Truman by Trigen in your
23 testimony; is that correct?

24 A. Yes.

25 Q. Okay. Now, if I can -- give me just a

1 second here. First, let me ask you this. And again,
2 without getting into HC information, you attached to your
3 testimony a highly confidential DR response from Trigen,
4 correct?

5 A. Yes, I did.

6 Q. Okay. Now, if you look at the -- when I
7 say the last paragraph, I'm not referring to the footnote
8 and I'm not asking you to read this out loud, but look at
9 the last paragraph there on that response. I think I can
10 say the first three words of the sentence without
11 divulging anything too highly confidential. The sentence
12 that begins, in the future. Do you see that sentence,
13 Mr. Harris?

14 A. Oh, yes.

15 Q. Okay. Now, was it your intent in your
16 testimony to propose some other refund basis than what
17 Trigen indicated it was willing to do in that data
18 response?

19 A. No, that was not my intent.

20 Q. So you were not -- you and Staff are not
21 proposing refunds based on some other -- I believe in your
22 testimony somewhere, and I apologize, I can't find the
23 page reference, you make some statement about potential
24 refunds if the project eventually proves to be successful,
25 but without saying anything about the addition of new

1 customers or anything of that nature, but I just want to
2 make clear, you were not intending to propose some
3 different refund mechanism other than what is set forth in
4 that DR response from Trigen?

5 A. No.

6 Q. Okay. Okay. So your other condition,
7 then, the second of the Staff proposed conditions, if
8 you'd turn to page 8 of your testimony, beginning on
9 line 21, then continuing on to the top of page 9, you
10 observe that Trigen will not separately account for the
11 TMC expansion because the project is expected to be
12 accretive to the earnings of Trigen, correct?

13 A. Yes.

14 Q. Okay. Now, have you reviewed the feas--
15 the highly confidential feasibility study attached to
16 Mr. Kirk's testimony as HC Schedule BPK-2?

17 A. Yes, I have.

18 Q. And you also in your testimony discuss, I
19 believe it's four natural gas utility expansion cases,
20 correct?

21 A. Yes.

22 Q. And you claim those cases support your
23 second proposed condition, correct?

24 A. Yes.

25 Q. Okay. Now, going back to the highly

1 confidential feasibility study, without disclosing -- if
2 you can answer this without disclosing any highly
3 confidential information, would you agree that the
4 feasibility study projects that the annual gross margin
5 Trigen expects to realize from Truman Medical Center is
6 significant to Trigen's operation?

7 A. Yes. I believe that their projected -- the
8 projections they have in the feasibility study would be
9 significant.

10 Q. Okay. And now that -- as you stated
11 earlier, you heard Mr. Wagner testify. Now that Truman
12 Medical has committed or indicated they're willing at
13 least to fully finance Trigen's project construction cost,
14 would you believe that the relative risk of this project
15 to Trigen and to its existing customers is further
16 reduced?

17 A. Well, I don't know that it would reduce the
18 amount of capital investment by Trigen. It wouldn't
19 necessarily impact operational expense or any risk that
20 the contract is not actually signed and the revenues don't
21 actually materialize.

22 Q. Did you say it would not affect capital
23 cost or it would?

24 A. It would affect the capital cost, the
25 capital construction costs.

1 Q. And were you here earlier today when I
2 think it was Mr. Sim stated that Trigen or its parent
3 company, I don't remember which, has a contract with JCI
4 to provide certain O&M services?

5 A. Yes.

6 Q. And that that -- it is a fixed price
7 contract, so it would not be affected by the addition of
8 this territory to Trigen's system?

9 A. Yes, I was here for that.

10 Q. Now, in regard to that series of cases
11 involving natural gas utilities which you refer to to
12 support your second condition, obviously you're generally
13 familiar with those cases, correct?

14 A. Yes, I am.

15 Q. Were any of those natural gas expansion
16 cases premised on or economically feasible as a result of
17 providing service to one single customer in the proposed
18 expansion area?

19 A. No, they were -- none of them were premised
20 on just one customer.

21 Q. Okay. In fact, the feasibility of all of
22 those expansions relied on attracting multiple customers
23 after the fact, correct?

24 A. Yes.

25 Q. And those involved residential -- well, the

1 full array of potential customers, correct, not just a few
2 office buildings or if they hooked up an office building,
3 it still would not have made it a viable project in those
4 gas cases?

5 A. Are you asking me if they hooked up just
6 one office building, if it would make it a viable project?

7 Q. Right, in the gas case examples.

8 A. No. The project has several customers
9 within the area, not just one.

10 Q. And would you also agree that in those
11 cases there was significant disagreement among the
12 multiple parties as to the likely conversion rate of -- I
13 believe in those cases they were propane customers --
14 significant evidentiary disagreement among the parties as
15 to what percentage of people in that area were likely to
16 convert from their current propane use to the proposed
17 natural gas use?

18 A. Yes, that was one of the many issues that
19 the parties didn't see eye to eye on.

20 Q. And, in fact, the parties were very far
21 apart on it, were they not?

22 A. Yes.

23 Q. Okay. Now, you -- let's see. I guess
24 again on page 8, beginning on line 21, regarding your
25 observation that Trigen has not expressed a willingness to

1 maintain separate books and records or a separate tracking
2 system for the cost and revenues related to the TMC
3 expansion, you have been to Trigen's offices at the Grand
4 Avenue plant several times, correct?

5 A. Yes, I have.

6 Q. Have you been on a tour of the station
7 facility itself?

8 A. Yes, I have.

9 Q. Would you consider or would you describe
10 the offices or the production plant to be opulent?

11 A. No.

12 Q. Have you observed a lot of personnel, such
13 as accountants and engineers and secretaries and lawyers
14 and whatever running around the hallways of Trigen's
15 offices?

16 A. No. I believe the offices locally are
17 mostly operational folk. Most of the accounting or legal
18 and what have you are in the corporate headquarters.

19 Q. So the -- do you, in fact, know how many
20 accounting, legal and that sort of thing from headquarters
21 are assigned to Trigen as opposed to one of the other
22 headquarter's companies?

23 A. No, I don't.

24 Q. In fact, there are really just a few people
25 located in the Trigen-Kansas City offices to handle the

1 matters that require attention, correct?

2 A. Yes.

3 Q. Now, having looked at your testimony and
4 also Staff's Prehearing Brief, I'm still somewhat unclear
5 on one thing here. And are you or is Staff recommending
6 that the Commission order Trigen-Kansas City to establish
7 and maintain separate books and records or a separate
8 tracking system for the costs and revenues related to the
9 Truman -- related to this expansion project?

10 A. The only two conditions that Staff is
11 asking the Commission to impose on this are the -- the
12 100 percent financing proposal and the condition that
13 customers be held harmless.

14 The separate accounting to me is an
15 important issue because I don't know how the company can
16 determine how beneficial or detrimental it is to the
17 existing customers if they don't separately maintain the
18 costs and revenues associated with the project. I don't
19 know, you know, how a margin can be determined when the
20 costs aren't separately tracked. So although I don't
21 consider it one of the two main conditions, I think it
22 would certainly be very beneficial in the achievement of
23 the second one.

24 Q. It would be beneficial to?

25 A. Well, it would be clear as to what the

1 actual costs were, and then knowing the actual revenues,
2 you could determine the margin and how profitable or
3 detrimental it might be.

4 Q. Okay. So are you -- I'm not still not
5 clear. Are you recommending they be ordered to maintain
6 separate --

7 A. Not that they be ordered, no.

8 Q. How about would it be possible for them to
9 do what you said this terms of determining profitability
10 or whatever of the new area by use of a special study
11 after the fact?

12 A. A special study after the fact?

13 Q. After the area had been in operation for
14 some time?

15 A. I think it would determine -- I mean, it
16 would be determined by the kind of accounting records and
17 books that they did keep in conjunction in order to track
18 the costs. If the costs can be separately identified in
19 some future study, then -- you know, then that's fine.
20 Then you could compare those to the resulting revenues and
21 come up with a determination.

22 But again, I'm a little unclear if the
23 costs aren't separately tracked, I suppose one could go
24 back through each -- in a special study one could go
25 through each individual work order and each individual

1 item or listing in the work order and determine if it's
2 related to this project or not, or if it's related to
3 something else. It would seem to require to me more
4 effort than just keeping the separate records.

5 Q. Okay. I think you indicated that you agree
6 that Trigen doesn't have a lot of excess personnel running
7 around the office there in Kansas City to maintain books
8 and records; is that correct?

9 A. Yes.

10 Q. Okay. So would you also agree that
11 Trigen-Kansas City has been under significant earnings
12 pressure for the past several years?

13 A. That seems to be the case, yes.

14 Q. So I want to be clear here. In spite of
15 the significant earnings pressure, Staff is recommending
16 that Trigen-KC incur additional costs to hire accountants
17 either as employees or on a contract basis to record,
18 allocate and track the operating results of this expansion
19 area separate from its operations in its current
20 certificated area?

21 MR. FRANSON: Your Honor, I'm going to have
22 to object. That's a very gross mischaracterization of
23 Staff's testimony. Staff's testimony is specifically --

24 JUDGE REED: Let's let him answer that
25 question. If that's a gross mischaracterization, I think

1 the witness will tell us that. So the objection is
2 overruled.

3 THE WITNESS: Would you repeat the
4 question?

5 BY MR. KEEVIL:

6 Q. Okay. I think you stated that you agreed
7 that Trigen was under significant earnings pressure, has
8 been for the past several years, correct?

9 A. Yes.

10 Q. Okay. Now, so I just want to be clear that
11 in spite of that significant earnings pressure, Staff is
12 recommending that Trigen incur the additional cost of
13 hiring accountants either as employees or on a contract
14 basis to record and allocate and track the operating
15 results of this expansion area separate from its
16 operations in its currently certificated area?

17 A. Staff is not recommending that they hire or
18 fire or anything else. We're not recommending anything on
19 a personnel basis. If they can come up with some magical
20 way of knowing what costs are -- are specific to this
21 project and which costs aren't without separately tracking
22 them through some kind of software, maybe not necessarily
23 actual accountant or whatever. I don't know, you know,
24 what process they would take.

25 But it's important and it's necessary to

1 determine whether a project is profitable or not by being
2 able to distinguish which costs are specific to that
3 project.

4 Q. To use your words, putting aside magic,
5 they would under Staff's proposal then incur additional
6 costs, correct?

7 A. Most likely.

8 Q. In a time that they have been under several
9 years of significant earnings pressure, correct?

10 A. Yes.

11 MR. KEEVIL: Okay. Thank you, Judge.
12 That's all I have.

13 JUDGE REED: All right. Thank you,
14 Mr. Keevil. Mr. Porter?

15 MR. PORTER: Truman has no questions.

16 JUDGE REED: All right. Thank you.
17 Ms. Carter?

18 CROSS-EXAMINATION BY MS. CARTER:

19 Q. Has Staff made any assessment regarding
20 whether or not there's a need for the service that would
21 be provided?

22 A. Whether or not there's a need?

23 Q. Yes.

24 A. No.

25 Q. Are you aware of any complaint by Truman

1 with regard to MGE's services?

2 A. No, I'm not. Only that maybe gas prices
3 are too high, but --

4 Q. On page 5, line 1 of your testimony, am I
5 correct in the assessment that you're saying that the
6 necessary or convenient standard of RSMo. 393.170.3
7 requires that the Missouri public be benefited by the
8 proposal?

9 MR. FRANSON: Are you pointing to something
10 specific or are you asking him for a legal conclusion?

11 BY MS. CARTER:

12 Q. Page 5, line 1, your testimony reads, if it
13 is not demonstrated that the Missouri public will be
14 benefited by this proposal. Do you see that, Mr. Harris?

15 A. Yes.

16 Q. And is that then your assessment of the
17 necessary or convenient standard of 393.170.3, that there
18 needs to be a benefit to the Missouri public?

19 A. No, I'm not saying that that -- that a
20 benefit has to be established for it to be necessary or
21 convenient for the public service. Staff counsel who --
22 who I rely on as far as that case law concerning that
23 standard, certainly if it's demonstrated that the public
24 is benefited, that would certainly meet a -- you know, the
25 requirement that it's necessary or convenient. But I'm

1 not saying that it's necessary, that that stan-- you know,
2 I'm not saying that's the standard.

3 Q. On that same page, lines 14 and 15, is it
4 correct that you're defining the public to be considered
5 primarily as Trigen's customers?

6 A. Yes, primarily.

7 Q. Did you consider MGE's customers as part of
8 the public in your assessment?

9 A. What Staff is defining as the public
10 interest in this case are the customers -- Trigen's
11 customers that are directly impacted by the outcome of
12 this case. MGE's customers are certainly indirectly
13 affected, as are patients at Truman Medical Center that
14 may not have service provided by either utility but may be
15 all electric.

16 So there's several groups and facets of the
17 public that are indirectly affected by the outcome of this
18 case. But as far as those that are directly affected,
19 that would be confined to the customers receiving the
20 Trigen service.

21 Q. Those who you say were indirectly impacted,
22 did you take those groups of the public into
23 consideration?

24 A. I took them into consideration in the fact
25 that they weren't overlooked. As far as -- as far as

1 determining what is, you know, the important members of
2 the public that are directly affected, they weren't
3 included in that.

4 Q. Would you agree that MGE will lose
5 transportation revenue if the project proceeds and Truman
6 switches to steam service?

7 A. If the figures that Truman has provided
8 both in DRs and through Mr. Wagner's testimony are
9 correct, they will lose some transportation revenues.

10 Q. And that loss will be greater with each new
11 customer that switches from MGE to Trigen; is that
12 correct?

13 A. I would assume. I would really have to
14 look at each individual customer, but that would seem to
15 be the case.

16 Q. And would you agree that the lost revenue
17 likely will be recovered from other MGE customers
18 following a subsequent rate case?

19 A. Not necessarily. In a rate proceeding
20 there's so many different avenues you have to look at. I
21 mean, those -- the lost revenues from that would go into
22 the rate case, the cost of fuel at the time. There are
23 several offsetting factors that -- I mean, that would
24 certainly go into the case, but it wouldn't necessarily
25 raise MGE's rates.

1 Q. If all other factors remain the same, if
2 all other things remain equal, how could it not raise the
3 rates for other customers?

4 MR. KEEVIL: I'm going to object to that as
5 being unduly vague. I mean, is she talking about all
6 customers or just other transportation customers?

7 JUDGE REED: Are you talking about all
8 or -- all customers or transportation customers?

9 MS. CARTER: I was actually asking in
10 general about MGE's ratepayers.

11 JUDGE REED: Do you understand the
12 question?

13 THE WITNESS: I believe so.

14 JUDGE REED: All right. The objection's
15 overruled.

16 THE WITNESS: Would you repeat it, though,
17 please?

18 BY MS. CARTER:

19 Q. Yes. Would you agree -- well, you stated
20 that you didn't necessarily agree that there would be a
21 rate increase for MGE's remaining customers as a result of
22 loss of revenue; is that correct?

23 A. Yes.

24 Q. And I was asking you to explain, if all
25 other factors remain equal, how would there not be a

1 corresponding rate increase when there's a loss of
2 revenue?

3 A. I am not sure that would be something that
4 Staff would address at the time of the rate case. It
5 would not seem likely that if all things were -- were the
6 same, it would seem likely that it would result in a
7 change for the transportation customers. But again,
8 that's something -- that's -- I don't like to try to look
9 into the future and predict, you know, what's going to
10 happen in a rate case, because there's so many things that
11 go into it.

12 Q. On page 8 of your testimony, lines 1
13 through 7, you indicate that Truman had demonstrated
14 significant savings in switching to steam service,
15 correct?

16 A. Yes.

17 Q. The quantification that is relied upon is
18 the information provided by Truman in response to Staff
19 Data Request 11; is that correct?

20 A. Yes, it is.

21 Q. Earlier you heard the testimony of David
22 Wagner?

23 A. Yes.

24 Q. And he stated a dollar amount that he
25 projected would be the estimated savings. Did you hear

1 that dollar amount?

2 A. Yes, I did.

3 Q. And do you agree that that is the estimated
4 savings, switching from MGE to Trigen for steam service?

5 A. From what I have seen of their analysis, I
6 would say that that's probably very close. Now, I
7 haven't, you know, gone out into the field and examined
8 their records and then seen how accurate I think his
9 numbers are, but certainly from his calculation, that
10 seems to be in the -- in the ballpark.

11 Q. Would you agree that any potential savings
12 would be impacted by a change, excuse me, in Trigen's
13 steam rates?

14 A. I'm sorry. Would you repeat that?

15 Q. Yes. We were talking about the estimated
16 savings.

17 A. Uh-huh.

18 Q. Would you agree that those savings would
19 decrease if there were a rise in Trigen's steam rate?

20 A. Most likely.

21 Q. And the savings would be less significant
22 if there was a drop in the gas costs?

23 A. Probably.

24 Q. Would you agree with the statement by
25 spreading Trigen's fixed costs over a larger customer and

1 sales base, the addition of a high load factor customer
2 such as Truman will help ameliorate the fixed cost burden
3 that would otherwise be placed on existing Trigen
4 customers?

5 A. Where are you -- are you referencing that
6 from someplace?

7 Q. I am, but not from anything that is in
8 evidence. I'm reading from a Prehearing Brief that was
9 filed in this matter.

10 A. Oh, okay.

11 Q. Would you agree with that statement?

12 MR. KEEVIL: I'm going to object to that as
13 a mischaracterization. That is in evidence, and I believe
14 it's Mr. Sim's surrebuttal testimony.

15 MS. CARTER: Oh, well, I certainly wasn't
16 trying to imply it wasn't.

17 JUDGE REED: Well, I think the
18 question --

19 MS. CARTER: I was reading from the Brief,
20 which is not in evidence.

21 JUDGE REED: The objection's overruled, if
22 that was an objection. The question's clear, the witness
23 can answer it.

24 BY MS. CARTER:

25 Q. Do you agree with that statement or do you

1 need me to --

2 A. One more time, please. I was looking
3 through -- I was going to find the Brief itself so I could
4 read it.

5 Q. And that may be easier if you have a clean
6 copy. Mine is marked up. It's the Prehearing Brief of
7 Trigen.

8 MR. FRANSON: What page is it on?

9 MS. CARTER: I'm reading at the bottom of
10 page 6, the last two lines, and then it continues on to
11 the first line of page 7.

12 THE WITNESS: Okay. You said it was
13 Trigen's Prehearing Brief?

14 BY MS. CARTER:

15 Q. Yes.

16 A. Okay. And I'm -- again, what page?

17 Q. It begins at the bottom of page 6. Two
18 lines up from the bottom it starts with, by spreading
19 Trigen's fixed costs.

20 A. Okay. And you're asking me if I agree with
21 that?

22 Q. Yes.

23 A. Yes.

24 Q. Would you then also agree with the
25 following statement: By spreading MGE's fixed costs over

1 a smaller customer and sales base, the loss of a high load
2 factor customer such as Truman Medical Center will
3 increase the fixed cost burden that would otherwise be
4 placed on existing MGE customers?

5 A. If that were a true statement, I probably
6 would agree with that, but I'm not sure that Truman is
7 considered a high load factor, as far as a transportation
8 customer is concerned. I don't know how they rate in
9 relationship with other MGE transportation customers.

10 Q. So your ability to agree with that
11 statement would depend on the load factor assigned?

12 A. Yeah, if it is considered a high load
13 factor.

14 MS. CARTER: Thank you.

15 JUDGE REED: Thank you. Questions from the
16 Bench, Commissioner Gaw?

17 QUESTIONS BY COMMISSIONER GAW:

18 Q. Good afternoon.

19 A. Good afternoon, Commissioner.

20 Q. Earlier I was asking some questions in
21 regard to how the line, the new line that's proposed to be
22 laid would be handled as far as rates were concerned, if
23 it were built, under the proposal. Can you give me an
24 idea about what Staff's view is in regard to how rates --
25 how rate base would look if we assume that Truman is

1 advancing the cost of putting in the line?

2 A. Okay. Rate base would look pretty much the
3 way Mr. Sim described. There would be a separate
4 accounting, an offset if you will, showing the customer
5 advance. There would be depreciation accrued to lower the
6 net plant. But in a rate case, in a ratemaking procedure,
7 that rate base is kept -- would be kept separate from the
8 company supplied rate base and wouldn't enter into a
9 revenue requirement in the rate case.

10 Q. Okay. Is there a scenario where the --
11 where the value of that additional gas line would come
12 into rate base in the future?

13 A. Well, if -- let me think about that for a
14 moment.

15 MR. KEEVIL: Commissioner, did you say gas
16 line, by the way?

17 COMMISSIONER GAW: I hope I didn't, but
18 maybe I -- I shouldn't have said that. I should have said
19 steam line, but I think I said gas line.

20 BY COMMISSIONER GAW:

21 Q. Steam line should be the correct phrase. I
22 apologize.

23 A. I suppose if for some unknown reason the
24 company decided to -- actually, I can't really think of a
25 way that it would enter into rate base in a rate case

1 proceeding.

2 Q. Okay. Now, if that's the case, then what
3 is it that Staff is concerned about in regard to ensuring
4 that there -- there's not some additional expense to other
5 ratepayers?

6 A. Okay.

7 Q. Explain that a little bit to me.

8 A. Okay. As I cited in my direct testimony,
9 there -- there have been prior cases before the Commission
10 where natural gas companies file to extend their service
11 territories in the areas where other utilities were
12 providing service. In those instances, those companies,
13 much like Trigen in this case, were -- felt very confident
14 that they would have a profitable business. Obviously, a
15 utility company's not going to move into a new service
16 territory and start spending a lot of money if they don't
17 think they're going to recover it and be profitable in the
18 process.

19 Q. Let me stop you for a moment, just so I can
20 get some clarity. It is possible, is it not, that a
21 company may in some cases actually see an advantage in
22 constructing new plant just simply from the standpoint
23 that that plant can be placed in rate base, rather than
24 whether or not it's actually going to generate additional
25 profits, speaking very generally and, of course, not with

1 respect to this case?

2 A. Yeah.

3 Q. Okay. But in this case, when you're giving
4 me examples where they would look at the -- at whether or
5 not it's profitable or not, when you say that, are you
6 talking about their bottom line in rates, as opposed to
7 whether or not they're actually receiving some sort of net
8 profit exclusive of depreciation in the rate base?

9 A. They were looking in terms of profit. They
10 considered it to be a profitable venture. Fortunately, in
11 these past cases the Commission saw the need to include
12 the imposition of the condition that -- first of all, in
13 the first case, in the Tartan case, it was -- the
14 agreement was reached in a settlement that Tartan would
15 bear the risk. And then the Commission of course approved
16 it in the Order.

17 In the Aquila case, as far as the Rolla
18 service area, the Commission ordered that as a condition.
19 Unfortunately, in both those cases especially, it's a good
20 thing that the Commission did make those conditions
21 because, as it would have it, the projections made by the
22 companies weren't -- didn't come to fruition. Some of the
23 construction costs were overrun, a lot of -- and so
24 Mr. Keevil mentioned earlier, a lot of expected conversion
25 didn't occur.

1 There were several factors, but they turned
2 out to be very unprofitable projects, and the -- the two
3 companies that were -- that bore the risk of their
4 decisions to go ahead with their projects ended up having
5 to sell, you know, the properties at a substantial loss.
6 And like I say, fortunately because of foresight of the
7 Commission, it was the shareholders that ended up biting
8 the bullet, so to speak, instead of existing customers.

9 Q. But in this case, I need to have a better
10 understanding because in this case you -- the value of the
11 additional plant is being contributed, correct?

12 A. Yes, the --

13 Q. So what is it that's the risk here as far
14 as the other customers and consumers are concerned? Help
15 me to see that a little clearer.

16 A. Okay. While the contributed capital, the
17 construction work is being contributed, there are
18 operational costs. I think this morning Mr. Kirk
19 identified the largest one as fuel expense, but there are
20 several costs necessary to operate and maintain a system,
21 fuel cost being probably the larger one. There's
22 administrative costs, maintenance as time goes by on the
23 line. There's several expenses that may occur outside of
24 the initial construction costs.

25 Q. Such as?

1 A. Again, fuel expense is the main one.

2 Q. Okay. Now, in regard to those expenses,
3 does the -- do steam producers, do they have access to
4 the -- to fuel adjustment provisions under 179?

5 A. Trigen, their steam is produced by burning
6 coal.

7 Q. Yes, but my question is whether or not they
8 have -- as a company, they qualify at some point for the
9 fuel adjustment provisions in 179. Do you know?

10 A. I don't believe so. I don't know, but I
11 don't believe so.

12 Q. So any costs that they have, fuel costs and
13 otherwise, it would -- would be looked at and examined in
14 the context of the next rate case, correct?

15 A. Correct.

16 Q. And then overall, those expenses and a
17 determination of what the appropriate revenues would be
18 would be factored into the next rate case, and there would
19 be rates that would be authorized pursuant to that rate
20 case, correct?

21 A. That's correct, as far as the rate case is
22 concerned.

23 Q. Now, transition from that point to me and
24 help me to understand how there would be the potential for
25 this to be unprofitable for them to add this customer.

1 A. Okay.

2 Q. Break it down for me so that I can
3 understand what Staff's point is here.

4 A. The point, Commissioner, is that this whole
5 feasibility study that they've performed is done on
6 projections of what they believe will happen or at least
7 hope will happen. As Mr. Sim noted earlier, when --
8 during cross-examination, these gas cases I'm referring to
9 are speculative. As he stated, this is not speculative,
10 he hopes, and we all hope so.

11 But the entire feasibility study is based
12 on projections and things we hope -- or things that the
13 company hopes will happen, and it's -- what it comes down
14 to, for instance, the one fuel expense part of it, what
15 they have in the feasibility study, what's been projected
16 there could end up being considerably higher over time.

17 The revenues that they expect may not come
18 to pass because it's my understanding that there's not an
19 actual contract been signed with Trigen -- I mean with
20 Truman. So there's a great risk for the -- for the
21 current ratepayers if, you know, it can't be --

22 Q. Okay. Give me your worst-case scenario
23 about what Staff is concerned about that ratepayers may
24 have to pay for.

25 A. Okay. We're concerned that the current

1 ratepayers may have to pay for costs that are not covered
2 through the revenues.

3 Q. Such as?

4 A. Such as fuel expense cost.

5 Q. Okay. But fuel expense costs are built
6 into the rates, correct? They're built into the rates
7 already. Current rates are set, tariff. A new rate case
8 comes along, there would be new rates set based upon
9 whatever those fuel costs were determine by the Commission
10 to be or whatever the agreement was that might be reached
11 if there might be an agreement or stipulation.

12 What is it about those fuel costs that
13 would -- that would potentially shift additional burdens
14 over to the other ratepayers?

15 A. It's not just the fuel costs.

16 Q. But you brought specif-- you specifically
17 raised the fuel cost issue, and I'm just trying to
18 understand what it is that could cause the other
19 ratepayers to get or have placed upon them additional
20 costs because of having this add -- add-on consumer?

21 A. Okay. As I mentioned, the operational
22 costs are going to be the responsibility of Trigen. If
23 there's never an actual contract signed, the revenues
24 don't materialize, and then the expenses outside of the
25 construction will have to be picked up by someone. In

1 this case it would be the existing customers.

2 Q. Now, okay. I'm going to stop you again.
3 If it turned out that this didn't mature and there was no
4 contract signed and they had hired -- say they'd hired a
5 few people to take on this responsibility, you're not
6 telling me that Staff would be proposing to this
7 Commission that, despite the fact that there was no reason
8 to have these additional employees because there was not
9 additional duties, there were no additional duties for
10 them to perform, since there was no contract, that Staff
11 would be saying, we think that's a prudent thing for them
12 to do to have these additional employees on?

13 A. I'm not sure I understand what you're
14 asking me.

15 Q. I'm trying to understand why there is not
16 already protection built into the analysis in a rate case
17 to that Staff would, in your scenario where you have no
18 contract that matures, to project those other ratepayers.
19 And in particular, I'm trying to understand why Staff
20 would ever advocate or consent to ratepayers having to
21 bear that expense for additional employees and operational
22 expenses for a contract that never matured.

23 A. Staff wouldn't.

24 Q. So how do -- how do we get from you to --
25 rather your concerns about the ratepayers having to bear

1 those expenses?

2 A. Well, how we get there is if the company
3 ends up in this project spending more than the revenue
4 they take in, then it's going to be paid -- the extra
5 expense is going to be paid by the existing customers,
6 unless there's a provision holding those customers
7 harmless and putting Trigen at risk to bear the burden of
8 those costs or under-realized revenues.

9 Q. But we're talking about fuel, fuel cost,
10 right?

11 A. That's one thing.

12 Q. Operational costs?

13 A. Maintenance costs.

14 Q. Okay. Now -- all right. Let's -- maybe
15 maintenance costs will help me. So if there were
16 maintenance costs on the line that were -- that was built
17 under the proposal that extends the amount of profit
18 margin that they had from the new customer, that might be
19 a possibility?

20 A. Yes.

21 Q. Wasn't there some testimony earlier about
22 there being someone else, a third party responsible for
23 the maintenance of the line?

24 A. Yes, there was. We -- Staff believes,
25 though, that when always the administrative overheads and

1 operation things that go in, and I just don't -- you know,
2 don't believe that any line can be cost free, so to speak.
3 There's a lot of overhead costs and other things that
4 factor into it.

5 Q. Does Staff --

6 A. Mr. Kirk's time if nothing else, I mean,
7 and this proceeding and the -- you know, there's a lot of
8 different --

9 Q. Well, this proceeding is -- this proceeding
10 is happening already, so the only question is how it
11 factors into the next rate case, right?

12 A. Uh-huh.

13 COMMISSIONER GAW: Okay. I think I'll just
14 stop there and let the attorneys see if they have any
15 questions that might help clear it up for me a little
16 better. Thank you, Judge.

17 JUDGE REED: We'll have recross from --
18 let's see, Mr. Keevil, I think first.

19 MR. KEEVIL: Probably have to go HC,
20 in-camera for this.

21 JUDGE REED: Right away, right now?

22 MR. KEEVIL: Yeah.

23 (REPORTER'S NOTE: At this point an
24 in-camera session was held, which is contained in
25 Volume 3, pages 184 through 189 of the transcript.)

1 MR. FRANSON: Am I ready to proceed?

2 JUDGE REED: Go right ahead, Mr. Franson.

3 REDIRECT EXAMINATION BY MR. FRANSON:

4 Q. Mr. Harris, isn't it true that at the time
5 that you wrote your testimony and made your proposals,
6 that Truman at that time had not stepped up and said,
7 we'll do 100 percent of the financing costs?

8 A. Yes. It was a different amount at that
9 time.

10 Q. Okay. You heard the testimony of Mr. Sim,
11 didn't you?

12 A. Yes.

13 Q. Okay. And in his testimony, he says Trigen
14 only goes with sure thing proposals; isn't that true?

15 A. Yes.

16 Q. Isn't it also true that in his testimony
17 before the Commission he said that he hopes -- I believe
18 you had a note -- he hopes this is a successful venture?

19 A. Yes. The statement was, this is not
20 speculative, I hope.

21 Q. Okay. And isn't it true that everything we
22 have here is based on feasibility studies which are based
23 on projections?

24 A. Yes.

25 Q. And there was always the chance that this

1 might not be a successful venture?

2 A. Yes. That's my point. I don't want the --
3 I want to ensure that the existing customers aren't harmed
4 if it's not a successful venture.

5 Q. And the fact that some questions and things
6 have come up here today that might even improve the
7 prospects of this project, those aren't enough to change
8 your recommendation of Condition No. 2?

9 A. That's correct. As Mr. Kirk stated
10 earlier, there's no guarantee.

11 Q. Okay.

12 A. The chances of the -- you know, it being
13 successful may be improved based on certain things, but
14 there's still -- the company still doesn't guarantee that,
15 you know, no harm, unless they're willing to accept the
16 condition.

17 Q. Okay. Now, based on the testimony of
18 Trigen witnesses, is it your understanding that this
19 expansion to Truman Medical Center will result in a
20 significant profit or margin to the company? And by
21 company I mean Trigen.

22 A. I'm sorry. Would you repeat the question?

23 Q. Is it your understanding that based upon
24 the testimony of Trigen witnesses, that the expansion to
25 Truman Medical Center, the expansion of their service

1 territory and everything that goes with the construction,
2 according to the Trigen witnesses will result in
3 significant profit or margin to the company?

4 A. Yes, according to the testimony.

5 Q. Do you believe that the administrative
6 costs to track the cost of the expansion to Truman Medical
7 Center would be significant?

8 A. Do I believe they would be significant?

9 Q. Yes.

10 A. No.

11 Q. If there is profit from the expansion to
12 Truman Medical Center, could the costs be recovered from
13 those profits?

14 A. Yes.

15 Q. Okay. And also finally whether they were
16 tracked as they went along by new personnel or whatever it
17 took or by a special study later, there would still be
18 costs involved; isn't that true?

19 A. Yes, that's true.

20 Q. Okay. So by doing a special study later,
21 there would be no avoiding costs to do that, would there?

22 A. That's true. The special study would
23 involve costs.

24 MR. FRANSON: No further questions, your
25 Honor.

1 JUDGE REED: Thank you, Mr. Franson. I
2 believe that's it, Mr. Harris. You're excused. Let's
3 take ten minutes before we start with Mr. Noack.

4 (A BREAK WAS TAKEN.)

5 JUDGE REED: Okay. Back on the record.
6 Mr. Noack, please raise your right hand.

7 (Witness sworn.)

8 JUDGE REED: Thank you.

9 MICHAEL NOACK testified as follows:

10 DIRECT EXAMINATION BY MS. CARTER:

11 Q. If you'll please state your full name.

12 A. It's Michael Noack, N-o-a-c-k.

13 Q. By whom are you employed and in what
14 capacity?

15 A. I'm employed by Missouri Gas Energy. I am
16 the director of pricing and regulatory affairs.

17 Q. Have you caused to be prepared for the
18 purposes of this proceeding certain testimony in question
19 and answer form?

20 A. I have.

21 Q. And is it your understanding that that
22 testimony has been marked as Exhibit 7 and 7HC for
23 identification?

24 A. Yes.

25 Q. Do you have any changes that you would like

1 to make to that testimony at this time?

2 A. The only change that I should point out,
3 and it's really not a change, it's when I redacted my
4 highly confidential testimony and made it the
5 nonproprietary version, on pages 4, and the line numbers
6 did not match up. So there is -- the language is all the
7 same, but the spacing was different. So there's a little
8 problem there.

9 Q. If I asked you the questions which are
10 contained in Exhibit 7 and 7HC today, would your answers
11 be the same?

12 A. Yes, they would.

13 Q. Are those answers true and correct to the
14 best of your information, knowledge and belief?

15 A. Yes, they are.

16 MS. CARTER: Your Honor, I offer Exhibit 7
17 and 7HC for admission into evidence and tender the witness
18 for cross-examination.

19 JUDGE REED: Any objections to 7 and 7HC?

20 (No response.)

21 JUDGE REED: Hearing no objection, 7 and
22 7HC are received into evidence.

23 (EXHIBIT NOS. 7 AND 7HC WERE RECEIVED INTO
24 EVIDENCE.)

25 JUDGE REED: Mr. Franson?

1 MR. FRANSON: Oh, I get to go first? Okay.

2 CROSS-EXAMINATION BY MR. FRANSON:

3 Q. Mr. Noack, does MGE ever have customers
4 approach them and say, we'd like your service?

5 A. Yes, we do.

6 Q. You don't turn them down?

7 A. If we can serve them, we will serve them.

8 Q. And that's true whether they're currently
9 receiving the same type of services from another energy
10 source regulated by the Commission, isn't it?

11 A. It's true if it's within our certificated
12 areas.

13 Q. Okay. Take a look to your right there at
14 Exhibit No. 8. Is that entire area in MGE's service
15 territory?

16 A. I assume you're talking about the dashed
17 area.

18 Q. Yes.

19 A. Or the whole map?

20 Q. The whole map actually.

21 A. The whole map to my belief is in our
22 territory, yes.

23 Q. So isn't it true MGE faces competition
24 with, let's say, Kansas City Power & Light?

25 A. Yes.

1 Q. And with Trigen for that matter?

2 A. In the -- where the -- the area with the
3 dark blue around it, yes, I believe that's true.

4 Q. Now, in this particular case, we've got a
5 customer, Truman Medical Center, that actually approached
6 Trigen; is that correct?

7 A. I don't know who approached who.

8 Q. Okay. Have you heard the evidence today
9 that it was Truman who approached Trigen?

10 A. I know that if that's what was said, that's
11 fine.

12 Q. Let me put it this way. You wouldn't have
13 any reason to disagree with the idea that the evidence has
14 been Truman went to Trigen and said, we would like your
15 steam service?

16 A. No.

17 Q. Okay. Now, assuming that is correct, and
18 let's take MGE's position, MGE wants the Commission to say
19 no to this certificate of convenience and necessity,
20 correct?

21 A. Ultimately, that is the final statement in
22 my testimony, yes.

23 Q. Okay. And let's avoid the reasons for just
24 a moment. The end result of that is, Truman is denied the
25 service from Trigen that it wants; isn't that correct?

1 A. Ultimately, yes, that would probably be the
2 result.

3 Q. Now, let's take the public interest
4 standard. Your testimony and your Brief by counsel would
5 suggest that it's broader than just the interests of the
6 existing Truman customers; is that correct?

7 A. Broader than the existing Trigen customers.

8 Q. Thank you. Yes, than the existing Trigen
9 customers.

10 A. Yes. It's my testimony that the Missouri
11 Gas Energy customers should be taken into consideration
12 here also.

13 Q. Okay. Now, would you agree that Truman
14 Medical Center is a member of the public that should be
15 considered?

16 A. Yes.

17 Q. Okay. So they have interests that might be
18 contrary to MGE; is that correct?

19 A. They have interest that -- yes, they could
20 be contrary to our interests. Yes.

21 Q. Okay. But what the Commission needs to
22 look at is the entire public interest; is that your
23 understanding?

24 A. I believe that's -- that's what I'm
25 testifying to, yes.

1 Q. Okay. Now, also assuming that all of
2 the premises that Truman and Trigen have put forth here
3 today, that -- that being that this expansion of Trigen's
4 service territory would be very beneficial and would save
5 Truman -- I believe the amount was \$700,000 a year, let's
6 assume that is correct. If MGE's position is upheld and
7 the certificate is not granted, then Truman will continue
8 to pay more for energy services, isn't that correct, based
9 on the evidence we've heard?

10 A. Whatever the number is. I don't know what
11 the number is. I haven't been in the room when you've
12 talked about the loss of the extra cost or what have you,
13 but whatever. Truman will pay something different than
14 what they're paying now.

15 Q. Well, in any event, whatever the number is,
16 it would -- okay. Let's move on. Mr. Noack, do you have
17 a fallback position, that being that if this is granted,
18 it should be the -- it should be with Staff's conditions,
19 or is it just flat out MGE says no, don't do it?

20 A. I don't have a fallback position, no. It's
21 our position that we have a certificate in this area to
22 serve Truman as a heating customer. We're prepared. We
23 have the facilities in place to do it. We're prepared to
24 do it, and we believe we should be allowed to do it.

25 MR. FRANSON: Thank you. I don't believe I

1 have any further questions of this witness.

2 JUDGE REED: Thank you, Mr. Franson. Next
3 is Mr. Porter.

4 MR. PORTER: No questions, your Honor.

5 JUDGE REED: Thank you, sir. Mr. Keevil?

6 MR. KEEVIL: Judge, I apologize. Give me
7 just a second.

8 CROSS-EXAMINATION BY MR. KEEVIL:

9 Q. Good afternoon, Mr. Noack.

10 A. Good afternoon.

11 Q. Let me start off by asking you a follow-up
12 to what you just told Mr. Franson. I think you just said
13 that Truman is a steam customer that MGE is currently
14 serving. Did I hear you say that?

15 A. No. I said they are a heating customer
16 that MGE is currently serving.

17 Q. And MGE is serving them by delivering gas
18 to them that -- as a transport customer of MGE's, correct?

19 A. That is correct.

20 Q. And Truman then takes the gas and makes
21 their own -- self-generates steam on their premises,
22 correct?

23 A. That's my understanding, yes.

24 Q. Okay. So you're not -- you're not
25 testifying today that MGE is providing a steam service

1 anywhere in this territory, correct?

2 A. No, I'm not.

3 Q. Okay. In fact, MGE does not provide
4 district steam heating service; is that correct?

5 A. That's correct.

6 Q. I believe you also told Mr. Franson just a
7 moment ago that MGE believes that you should be allowed to
8 continue serving Truman. Did I hear you say that
9 correctly?

10 A. That's correct.

11 Q. Now, other than Truman's choice to leave
12 MGE, assuming that Trigen is allowed to expand its
13 certificate, what would there be preventing MGE to
14 continuing to serve Truman?

15 A. If there's no demand for gas, then we won't
16 be delivering gas to them.

17 Q. Yeah, but you were speaking in terms of
18 being allowed to continue to serve them. They'll still be
19 in your territory, and you'll still be allowed to serve
20 them, it'll just be Truman's choice not to take service
21 from you, correct?

22 A. That's correct.

23 Q. Now, beginning I guess on page 5 of your
24 testimony, you recommend that the -- or you address MGE's
25 recommendation that the Commission deny Trigen's

1 application, correct?

2 A. Yes.

3 Q. Now, are you familiar with MGE's response
4 to Trigen's DR No. 1?

5 A. Probably. I probably am. I'm sure I
6 signed it.

7 Q. Okay. Do you have a copy of your DR
8 responses with you?

9 A. Yes, I do. I have it.

10 Q. Okay. Now, the -- I want to make sure.
11 That's not a highly confidential response, correct?

12 A. No.

13 Q. A -- Part A there of the question states --
14 or asks, I should say, are there any circumstances under
15 which Trigen could have proposed to expand its service
16 territory into an area that overlaps MGE's certificated
17 area that would not have resulted in MGE opposing Trigen's
18 request? Did I read that question correctly?

19 A. Yes, you did.

20 Q. Okay. And your answer was, probably not,
21 unless it was an area in which MGE has not yet invested in
22 the gas infrastructure needed to serve customers. Did I
23 read that correctly?

24 A. That's correct.

25 Q. Okay. I believe you've stated to

1 Mr. Franson -- well, maybe not this broadly. Let me ask
2 you this: Is MGE certificated to provide service in all
3 of Kansas City?

4 A. I believe so. I'm not positive that every
5 section would be covered, but I believe it is.

6 Q. Okay. And does MGE or has MGE invested in
7 gas infrastructure throughout Kansas City?

8 A. I would -- yes, they have invested in
9 Kansas City, yes.

10 Q. So if you -- if you take your answer here
11 that there are -- are there any circumstances under which
12 Trigen could have proposed to expand, and your answer
13 probably not unless it was an area in which MGE had not
14 yet invested, what part of Kansas City would that be?

15 A. I don't know exactly where, you know, if
16 there's some empty fields or lines somewhere in the city
17 limits of Kansas City where we haven't laid infrastructure
18 yet. There probably are, and we don't have anything in
19 place yet.

20 Q. So you might have not opposed had Trigen
21 sought a certificate to serve an empty field, but other
22 than that, you would have opposed any Trigen application
23 for expansion in Kansas City, correct?

24 A. If we were currently serving customers with
25 our infrastructure, yes.

1 Q. I believe you said other than empty fields,
2 that covers the entire Kansas City area, correct?

3 A. Probably does, yes.

4 Q. If I look at page 4 of your testimony, I'm
5 going to try to do this without getting into the highly
6 confidential customer names that you have there, but I
7 will just be referring to them generally. Beginning on
8 page 4, you generally discuss certain customers that MGE
9 presently serves in the proposed Trigen expansion area,
10 correct?

11 A. That's correct.

12 Q. Okay. Now, without disclosing the customer
13 names, your surrebuttal testimony on lines 13 through 15
14 identifies four large customers other than Truman which
15 are located in the proposed expansion area, correct?

16 A. That is correct.

17 Q. Now, are any of those four customers full
18 requirements customers of MGE or do they purchase their
19 natural gas commodity from a third party and pay MGE to
20 transport the gas?

21 A. All of these customers take transportation
22 service from MGE.

23 Q. Okay. Now, on line 21 of page 4, you
24 stated that MGE will suffer a, to use your words, a
25 substantial revenue shortfall in the range of \$300,000,

1 correct?

2 A. That's correct.

3 Q. Okay. Now, just so the record is clear, it
4 is not your contention, is it, that MGE would lose
5 \$300,000 solely due to the loss of Truman, but when you
6 say 300,000, you're referring to Truman plus the four
7 customers listed on lines 13 through 15?

8 A. Yes, I am.

9 Q. So they would be, according to your
10 testimony, five customers, if you lost all five, you could
11 lose close to 300,000, correct?

12 A. Yes.

13 Q. In fact, to get to that 300,000, you
14 rounded up, did you not?

15 A. I'm not sure that I did, but I don't -- I
16 don't recall whether I rounded up or down, Mr. Keevil.
17 It's fairly close to 300,000, I believe.

18 Q. We're talking about the 300,000. Okay.
19 I'm trying to remember where that -- let me move on for a
20 second, if I could here.

21 MR. KEEVIL: Now, this may be HC. I guess
22 I'll have to throw my client out of the room here. I do
23 have an HC question here, Judge.

24 JUDGE REED: Okay. Give me just a second.

25 (REPORTER'S NOTE: At this point an

1 in-camera session was held, which is contained in
2 Volume 3, pages 206 through 207 of the transcript.)

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1 MR. KEEVIL: Are we back, Judge?

2 JUDGE REED: Yes.

3 BY MR. KEEVIL:

4 Q. Going back to the non-confidential portion
5 of your testimony, Mr. Noack, page 4, where you're
6 referring to the line 21, that \$300,000 figure, it would
7 appear to me to -- and I believe you said a minute ago --
8 refer to the four customers listed on lines 13 through 15,
9 correct?

10 A. Yes, plus -- plus Truman.

11 Q. Well, now where does it say plus Truman?

12 A. Well, the -- I mean, I'm just -- I've
13 got -- that's kind of a -- you can just assume that. I
14 mean, we have four other -- we have four customers here
15 and we have Truman, and the sum of those five customers is
16 over \$300,000.

17 Q. But that would be five customers rather
18 than just those four?

19 A. Yes.

20 Q. Okay. Do you have your response to DR 23
21 with you?

22 A. Staff 23?

23 Q. No. I'm sorry. Trigen's 23, to MGE.

24 A. I do.

25 Q. Now, as I read your response to this Data

1 Request, MGE is not claiming that the Commission should
2 place MGE's potential loss of transportation revenue and
3 related margin as a matter of higher priority above the
4 question of whether current MGE transportation customers
5 such as Truman could materially reduce their energy costs
6 by meeting their energy needs with district steam rather
7 than natural gas; is that correct?

8 A. That's correct. I'd say no.

9 Q. Okay. Does MGE believe that the Commission
10 should force Truman to remain a captive customer of MGE if
11 other lower cost energy supply options are available?

12 A. We are recommending that --

13 Q. Excuse me, Mr. Noack. That was a yes or no
14 question, and perhaps you'd like to look at your response
15 to DR No. 24 before you answer. Let me know when you get
16 to DR 24.

17 A. I have 24.

18 Q. Does paragraph A of DR 24 ask, in
19 recommending that the Commission deny the proposed
20 extension, does MGE believe that the Commission should
21 force TMC to remain a captive customer of MGE if other
22 lower cost energy supply options are available?

23 A. The answer is no.

24 Q. The answer to that is no?

25 A. Right. That's what I just said, yes. I

1 answered that no.

2 Q. Okay. In the future you might wait for the
3 question before you answer it, but I appreciate that.

4 So MGE does not believe the Commission
5 should force TMC to remain a captive customer if lower
6 cost energy supply options are available, correct?

7 A. That's correct.

8 Q. Now, turn to page 6 of your rebuttal if you
9 would -- or surrebuttal, if you would. Now, on page 6,
10 lines 1 through 6, I understand you to be stating that
11 Truman did not approach MGE about entering into a special
12 contract in lieu of bypassing MGE; is that correct?

13 A. That's correct.

14 Q. Do you have a copy of your response to DR
15 25 with you?

16 A. I have it.

17 Q. This Data Request specifically refers to
18 this portion of your surrebuttal testimony, correct?

19 A. It says, yes, lines 1 through 6.

20 Q. Now, in response to Part A, you indicate
21 that you don't know whether MGE could have significantly
22 reduced the delivered cost of gas to Truman under a
23 special contract because, according to your response, you
24 have not seen Truman's highly confidential cost analysis,
25 correct?

1 A. That's correct.

2 Q. Okay. And in response to Part B of this
3 Data Request, you indicate that MGE would not have
4 proposed to discount the commodity cost of gas under a
5 special contract in order to make MGE's service price
6 competitive with Trigen's service, correct?

7 A. Correct. We don't sell the commodity to
8 Truman.

9 JUDGE REED: Just a second. Mr. Noack,
10 could I make sure that you're speaking into the microphone
11 when you respond?

12 THE WITNESS: Yes.

13 JUDGE REED: There may be some question
14 about whether we're picking up sufficiently. So please
15 try to.

16 THE WITNESS: I'm sorry, your Honor.

17 JUDGE REED: Please try to do so.

18 BY MR. KEEVIL:

19 Q. To follow up on that last line of
20 questions, Mr. Noack, would you agree that the
21 transportation rate component is a minor part of the total
22 cost of gas which Truman is paying?

23 A. I don't have any idea what the -- the cost
24 is that Truman's paying, but if it's like -- if it's
25 similar to the index prices, yes, it would be minor.

1 MR. KEEVIL: Thank you. Nothing further,
2 Judge.

3 JUDGE REED: Thank you. I don't have any
4 questions for Mr. Noack. Is there redirect?

5 MS. CARTER: There is not. Thank you.

6 JUDGE REED: Thank you. According to my
7 chart here, that's the last witness, correct? The
8 exhibits that the parties have intended to offer into
9 evidence have been offered, and I believe all of those
10 that have been offered have been received, 1 through 8; is
11 that correct?

12 There's some witnesses whom I have not
13 excused yet, but at this point in time I'll excuse all
14 witnesses.

15 MR. KEEVIL: Mr. Kirk's son thanks you,
16 Judge.

17 JUDGE REED: And we'll take -- why don't we
18 take about five minutes for everybody to collect
19 themselves, and then we'll begin closing arguments. How
20 much time do we need for closing? Mr. Keevil, what's your
21 preference?

22 MR. KEEVIL: For time?

23 JUDGE REED: Yeah, how much time.

24 MR. KEEVIL: I think the rule allows
25 applicant 30 minutes and no more than 10 minutes of that

1 to be reserved for response.

2 JUDGE REED: Do you need that much time?

3 MR. KEEVIL: I don't think I'm going to,
4 Judge. I certainly hope I will not, but just to be on the
5 safe side, I was going to say that and then come up short
6 rather than not.

7 JUDGE REED: All right. Well, Mr. Franson,
8 do you need that much time?

9 MR. FRANSON: No, your Honor, I didn't
10 remember what the rule allowed, but in this case I would
11 say ten or less should do it.

12 JUDGE REED: All right. Ms. Carter, is
13 that enough time?

14 MS. CARTER: That is significantly more
15 than the time I assume we would need, so I guess if they
16 take 20 minutes and 10 minutes, I might have to respond to
17 more things than I thought.

18 MR. FRANSON: I thought Mr. Keevil was
19 talking about 30 and then some.

20 MR. KEEVIL: According to the rule I'm the
21 only one that gets to reserve.

22 JUDGE REED: All right. Mr. Porter, do you
23 intend to make a closing?

24 MR. PORTER: I do. Ten minutes will be
25 more than adequate.

1 (A BREAK WAS TAKEN.)

2 JUDGE REED: Mr. Keevil, you're first.

3 MR. KEEVIL: Your Honor, to address that
4 question, off the top of my head, I'm not familiar with
5 the Staff No. 2 condition ever being applied over
6 objection of the applicant in a contested hearing to a
7 certificate expansion application in a situation where one
8 customer, specific customer made the project economical,
9 but I'm just not aware of it. I'm not saying it's never
10 been done, but I'm not familiar with it ever having been
11 done.

12 To the more general closing argument, then,
13 you know obviously what you have in this case is two
14 issues, as Mr. Franson's issues list indicated: No. 1,
15 should the requested certificate be granted, and if so,
16 should any conditions be imposed?

17 Issue 1, I submit the answer to issue 1 is
18 a resounding yes. Nothing presented today would cause any
19 change that I'm aware of in the Prehearing Brief which we
20 filed on this issue. And as mentioned in that Brief,
21 there are basically five factors or criteria that you need
22 to consider; No. 1, need for the service, and despite
23 MGE's opposition to the granting of the certificate, even
24 MGE doesn't claim, as Mr. Noack admitted, even they don't
25 claim to provide district steam heating service in the

1 requested service area. Therefore, there will be no
2 duplication of service and no duplication of facilities.
3 MGE has gas facilities, but they do not have the requisite
4 steam heating, district steam heating facilities.
5 Currently there is no such service offered in the area.
6 Truman has requested it, and I would submit that the need
7 is therefore clear.

8 Also, you might bear in mind the definition
9 of necessity, and this was one of the few things I was
10 surprised at the Prehearing Briefs seemed -- everyone
11 seems to be in agreement that the case law definition of
12 necessity, as in public convenience and necessity,
13 necessity is defined in the cases to mean that the
14 additional service would be an improvement justifying the
15 cost, not that it be absolutely indispensable. And,
16 therefore, need should not be an issue here.

17 Again, the five factors, starts with need.
18 The second factor, is the applicant qualified? No one has
19 claimed otherwise. Trigen is clearly qualified to provide
20 the service.

21 No. 3 factor, financial ability. Again,
22 there's been no claim by anyone that Trigen does not have
23 the financial ability to provide the service.

24 No. 4 factor, is the project economically
25 feasible? Trigen is the only party to have presented any

1 evidence on the economic feasibility of the proposal, and
2 I'm not going to go into the HC stuff, but you've all
3 looked at it. It's attached to Mr. Kirk's direct
4 testimony, and it shows that the project is economically
5 feasible even if Truman is the only new customer added in
6 the expansion area.

7 Those last three factors, is the applicant
8 qualified, does the applicant have the financial ability,
9 is the project economically feasible, those are all proven
10 by the feasibility study, and all of those are uncontested
11 on the record evidence.

12 The fifth factor, does the application or
13 would the granting of the application promote the public
14 interest? If you look at the cases, first of all, they
15 tell you that if the answer to the first four questions is
16 yes, then the fifth question is usually a conclusionary
17 finding of yes. Obviously we believe the first four are
18 yes. Therefore, this one should be also.

19 However, you do not have to merely rely on
20 this being a conclusionary finding because there are
21 numerous specific examples referred to, and I'm not going
22 to go through all of them, in our Prehearing Brief, from
23 the testimony of Mr. Kirk and from the testimony of
24 Mr. Wagner of Truman. I would just refer you to pages 6
25 through 10 of our Prehearing Brief.

1 Also, the letters of support which were
2 attached to the Verified Application as Exhibit E, I
3 believe it is, further shows that this application would
4 be in the public interest.

5 MGE is really the only party arguing
6 otherwise, and they've presented nothing that should cause
7 the Commission to buy into their argument. As the
8 responses that you heard to DRs 23 and 24 -- excuse me. I
9 think I'm catching Ms. Carter's illness. I'm certainly
10 losing my voice.

11 As their responses to those DRs would show,
12 they simply don't want more competition in this area.
13 They have nothing to lose by coming to you today and
14 opposing Trigen's application because MGE's already got a
15 service -- or already has the entire Kansas City area as
16 part of their territory, so they have nothing to lose
17 coming here and opposing Trigen's attempt to expand their
18 service territory.

19 Also, as pointed out in our Prehearing
20 Brief, MGE's argument we believe has already been rejected
21 in the State ex rel Webb Tri-City Gas Company case and the
22 Tartan Energy case. Again, those are discussed in more
23 detail in our Prehearing Brief.

24 Finally on this point, MGE refers to the
25 People's Telephone case in support of their argument that

1 this petition or this application should not be granted.
2 However, that -- that particular case dealt with one
3 telephone company seeking to expand into the service area
4 of another telephone company. In fact, the head notes of
5 the case even refer to them as Telephone Company 1 and
6 Telephone Company 2.

7 As stated previously, that's not what we
8 have here. We have a steam heating company seeking to
9 expand into an area served by a natural gas company.
10 These are not the same type services. Sure, they compete
11 for energy load, but they are not the same service.
12 Bottom line is, the requested certificate should be
13 granted.

14 Issue 2, should any conditions be imposed?
15 Staff proposed two conditions, as you know by now; No. 1,
16 that Truman should finance the entire cost of the project
17 construction, and No. 2, Trigen should be completely at
18 risk for any operating losses from the proposed project.

19 Now, in regard to that first condition,
20 that's up to Truman basically. We certainly are not
21 opposed to them financing the entire cost of the project.
22 However, I wanted to mention that, as you may recall
23 during the testimony of Mr. Harris, there was some
24 question regarding the refund issue, refund of the
25 construction advance, and what Trigen and Truman have

1 discussed previously and what Trigen has previously
2 indicated a willingness to do is to refund a pro rata
3 share of the construction advance based on certain
4 conditions as new customers are added to the new line in
5 the new territory.

6 Frankly, I don't think you even need to get
7 into the refund issue in your Order. I would request
8 basically that you didn't. But to the extent that you do,
9 I think it's important that you recognize that, even
10 though Mr. Harris' testimony could be read in a different
11 way, he said that's -- he was not proposing refunds on any
12 other conditions other than what Trigen and Truman had
13 previously discussed.

14 The second condition, Staff's second
15 condition, this frankly should just be outright rejected.
16 First of all, back in 1996 Trigen received a certificate
17 to expand its service territory. This hold harmless
18 separate books and records condition was not required in
19 1996 for Trigen to expand. Likewise, it should not be
20 required now, particularly in light of the fact that
21 neither Staff or anyone else presented any evidence that
22 this project was not going to be economically feasible.

23 Unlike those gas cases that Staff relies
24 heavily on in which there was conflicting projections of
25 conversions to natural gas, this project is economically

1 feasible based on Truman alone, and Truman is obviously
2 willing and interested in signing up. Otherwise, they
3 wouldn't be here today.

4 Furthermore, as Mr. Sim has testified,
5 maintaining separate books and records or a separate
6 tracking mechanism as Staff has proposed would simply
7 subject Trigen to incurring additional costs
8 unnecessarily. Trigen runs a lean operation. Mr. Harris
9 admitted that. And there's no need to impose this.

10 There are other reasons referred to in our
11 Prehearing Brief, and I'm not going to go through them
12 all. I'll just refer you to the Prehearing Brief.

13 Finally, if the condition is imposed, and I
14 do say if, if the second condition is imposed placing
15 100 percent of the down side risk on Trigen, Trigen should
16 be allowed to keep 50 percent of any gain. That is, on a
17 cost of service basis one-half of the margin above the
18 Commission authorized rate of return would not be
19 recognized for ratemaking purposes to reduce the overall
20 revenue requirement. This seems only fair if all of the
21 down side risk is placed on Trigen.

22 Now, Trigen did not propose this in the
23 direct case because this whole condition matter only came
24 up when Staff raised it in their rebuttal. Our preference
25 is simply to have no Condition 2 and no corresponding

1 50 percent sharing mechanism. But if you do the Condition
2 No. 2, then we believe you should also allow this
3 50 percent of any gain sharing mechanism. Frankly, it
4 would be easier for everyone, the Commission included,
5 simply to not impose the condition.

6 With that, I think I will close, Judge, but
7 I think I indicated earlier that, as the applicant, I did
8 want to reserve response time. Thank you.

9 JUDGE REED: Thank you, Mr. Keevil.
10 Mr. Porter?

11 MR. PORTER: Thank you, your Honor.

12 Truman Medical Center comes today to this
13 arena not as a normally participating member with the
14 Public Service Commission, but comes here because of a
15 project that is vital to the continued operation and
16 success of our institution.

17 Truman Medical Center is a nonprofit
18 organization located in Kansas City, Missouri, charged
19 under contract with the City of Kansas City, Missouri and
20 Jackson County, Missouri with serving the indigent of
21 Kansas City and Jackson County in the provision of health
22 care regardless of the ability to pay.

23 Much of the afternoon has been spent
24 listening to testimony about issues related to guarantees.
25 Can we guarantee that the Trigen/Truman transaction will

1 absolutely positively guarantee work in the way that the
2 projections indicate? And almost to a person the
3 witnesses have ultimately had to say, no, there is no
4 guarantee.

5 But, your Honor, I come today to tell you
6 that there are certain guarantees that are related to this
7 case. Guarantee No. 1 is that tomorrow at Truman Medical
8 Center 20 uninsured people will sit in our financial
9 counseling center seeking medical care for which they
10 cannot pay. Within the next week an uninsured mom will
11 show up at our birthing center at our Hospital Hill campus
12 to give birth to her child and will not have a payor
13 source to pay for that care. Within the next week, your
14 Honor, a homeless person will show up at our emergency
15 department needing care for any number of conditions that
16 the person will not have the financial ability to pay for
17 that care.

18 Those, your Honor, are guarantees. Those
19 will happen, and we know those things will happen because
20 they happen every week at Truman Medical Center. And one
21 of the ways that Truman Medical Center continues its
22 effort to provide that care to the public is to look for
23 operational efficiencies and cost savings that can stretch
24 a continually shrinking health care dollar to provide for
25 those most in need, those most at risk and those most

1 MGE is, according to Mr. Noack, an \$81,000 potential cost
2 revenue loss in transportation fees that Truman Medical
3 Center pays. Compared to the public that is served and
4 the dollars that are being saved that can be put into care
5 for the indigent and uninsured of Kansas City, Missouri
6 and Jackson County, Missouri, we believe on balance this
7 application of Trigen should be approved so that the
8 expansion can take place to Truman Medical Center.

9 JUDGE REED: Mr. Franson?

10 MR. FRANSON: Thank you, your Honor.

11 In answer to Commissioner Gaw's question,
12 we'd like to do a pleading. I don't think I can fully
13 develop that in the minutes we've had here. So perhaps at
14 the end we can talk about the timing of that. I do
15 believe that expansions like this to do one particular --
16 to serve one particular customer are somewhat rare, but a
17 pleading would be the preferred way to go on this.

18 Judge, it comes down to, is this project in
19 the public interest? Staff would say yes, with two
20 conditions. One, it's already been met. Mr. Wagner
21 testified for Truman. Mr. Porter just talked about it.
22 It has, in fact, been met. That removes No. 1.

23 No. 2, remembering the testimony of
24 Mr. Wagner, Mr. Wagner did not want to concede that there
25 could be a down side to this. During the testimony of

1 Mr. Kirk, he very candidly said, if there is a down side
2 to this and there are costs that have not been foreseen
3 because this project doesn't go as planned, they'd be
4 spread out over other customers. Mr. Wagner conceded that
5 it's not based on speculation, he hopes? It's everyone's
6 best effort. That's not -- that's not denied in any way
7 by Staff that it's still projections. Sometimes you're
8 wrong.

9 Now, I believe it was during Commissioner
10 Gaw's questions it came up, well, what happens in a rate
11 case? Well, we have scenario No. 1 where this would --
12 this condition would be imposed. Then if there are costs
13 that haven't been foreseen, and Truman insists there's
14 not, it is not going to happen, but if it doesn't happen,
15 then no harm, no foul. Trigen is held -- has held its
16 customers harmless and it's whole. Everything's gone just
17 the way they said. No problem.

18 If it is not imposed and there's a problem,
19 then Staff's audit in the next rate case will bring this
20 matter to the forefront, though the biggest issue was how
21 are we going to know it. Here Trigen says, no, we're not
22 going to track these costs separately because of the
23 administrative burden it would have. But then, on the
24 other hand, they recognize the need for them. Mr. Harris
25 clearly testified about that, that we need these costs

1 tracked. But Trigen says, well, we could do a special
2 audit, a special project. That still costs money, maybe
3 substantial amount of money, because they'd have to go
4 through all these invoices and establish one by one.

5 Quite frankly, Condition 2 is reasonable,
6 and it's a reasonable policy determination at this time
7 that any cost be borne by Trigen. If there aren't any,
8 they're in good shape. This is not un-- this is not
9 different, that much different than the gas cases in this
10 regard.

11 Bottom line, this is an expansion. There's
12 a certain amount of risk. And we can debate from now
13 until whenever that the gas case cited by Mr. Harris are
14 more speculative, but the bottom line, the analogy is very
15 clear. There's some inherent risk in these types of
16 matters. That's why Staff made the recommendation.

17 Now, Mr. Harris considered his
18 recommendation at the time he did his testimony. At that
19 time, Truman had not stepped up and said, we will finance
20 the entire project. However, even though that helps and
21 is a not unsubstantial benefit, it doesn't change the fact
22 that there -- that Condition 2 is the best way to go based
23 on hard evidence from other cases that appear in
24 Mr. Harris' testimony.

25 If Trigen's right and this is a benefit,

1 there's accretion of revenues, there's growth in revenues,
2 fine. They don't lose anything. If they're wrong, then
3 all they've done is said, we will step up and back up what
4 our evidence is.

5 Their unwillingness to do that and the
6 candor of Mr. Kirk in particular, but the bottom line
7 candor of Mr. Sim, they know there's risk in this. They
8 know that despite their best efforts and their best
9 analysis, it's not a guarantee. Other customers are not
10 here. They're not represented. They're not here to state
11 an opinion, and for that reason this is a reasonable way
12 to go, approve this certificate subject to Staff's two
13 conditions.

14 And that will conclude my closing remarks.
15 Thank, your Honor.

16 JUDGE REED: Thank you, Mr. Franson.

17 COMMISSIONER MURRAY: Judge, can I ask
18 counsel a question?

19 JUDGE REED: Go ahead.

20 COMMISSIONER MURRAY: Mr. Franson, I had
21 sent the Judge a question to ask. I don't believe it was
22 asked, Judge, did you? You didn't ask counsel the
23 question?

24 JUDGE REED: I did, but no one knows the
25 answer for certain.

1 COMMISSIONER MURRAY: But my -- I'd like to
2 know, is that Condition No. 2, does it have any time
3 limit? Is it just a hold harmless forever? What kind of
4 guidelines are attached to your condition?

5 MR. FRANSON: Well, it would attach to the
6 project, Commissioner Murray, but it -- I'm not sure I
7 thought of it. It's attached to the project as long as
8 that project goes on, but Staff's condition would actually
9 not change any ratemaking principles. This would -- if
10 the Condition No. 2 was imposed, then what we would have
11 is a new customer receiving Trigen steam service under the
12 existing rates, and everything would be -- we've heard a
13 lot of accounting evidence of how this would go.

14 And Commissioner, I'm sorry, I'm just not
15 prepared to go into how all of this will work, but my
16 understanding is, very briefly, that the financing changes
17 the accounting. That has been explained, and the rate
18 base has been explained, but what this condition would
19 focus on is the possibility of a down side, that being
20 costs that we haven't -- that nobody's anticipated, that
21 the other customers would be insulated, and I guess that
22 would be as long as the -- as there might be any such
23 costs.

24 COMMISSIONER MURRAY: My earlier question,
25 which I guess has been asked, was, is there a precedent

1 for doing something like this? I know there were cases
2 that were cited in the testimony of Mr. Harris, but it
3 seems to me in looking at them that they're
4 distinguishable. Has there been anything that's really
5 comparable?

6 MR. FRANSON: If by that you mean is there
7 an existing service territory where you extend it in some
8 fashion and go out to serve one customer, that is a
9 question that I just have a very vague inkling of what my
10 pleading will say. I haven't had time to develop it, and
11 I --

12 COMMISSIONER MURRAY: You are going to?

13 MR. FRANSON: -- think I can develop it
14 much better.

15 Yes, and I think that's a matter that the
16 Judge will bring up with counsel right after the hearing
17 concludes.

18 COMMISSIONER MURRAY: All right. Thank
19 you. Thank you, Judge.

20 JUDGE REED: Yes. Ms. Carter?

21 MS. CARTER: MGE's role in this proceeding
22 was simple, and my closing will accordingly be short and
23 simple. It is not for MGE to prove safety problems or a
24 detriment to the public. It is for Trigen to prove that
25 the requested certificate is necessary or convenient for

1 the public service and in the public interest pursuant to
2 statute.

3 This proposed expansion is not just about
4 Truman Medical Center requesting steam service. The
5 dotted line shown on Exhibit 8 goes right past Truman
6 Medical Center. There will be a loss of revenue to MGE
7 and an underutilization of MGE's infrastructure
8 investment.

9 If by spreading Trigen's fixed costs over a
10 larger customer and sales base, the addition of Truman
11 Medical Center will decrease the fixed cost burden that
12 would otherwise be placed on Trigen's customers, then
13 likewise by spreading MGE's fixed costs over a smaller
14 customer and sales base, the loss of Truman Medical Center
15 will increase the fixed cost burden that would otherwise
16 be placed on MGE's existing customers.

17 Case law dictates that the public is not
18 just Truman Medical Center, and it's certainly not just
19 Trigen's other existing customers. MGE's customers are a
20 part of the public and should be considered by the
21 Commission in reviewing Trigen's application.

22 If the requested authority is granted by
23 this Commission, it should not be done lightly, and if it
24 is going to be granted, it should be done with full
25 knowledge of the possible adverse impact on MGE and its

1 remaining customers. Thank you.

2 JUDGE REED: Thank you.

3 MR. KEEVIL: Am I back up, Judge?

4 JUDGE REED: Yes, sir.

5 MR. KEEVIL: This will be very short.

6 Mr. Franson in response to a question from Commissioner
7 Murray I believe said that if that Condition No. 2 is
8 imposed, that it would go on forever, leaving the distinct
9 impression in my mind that it wouldn't even go away at the
10 conclusion of the next rate case.

11 The cases that I'm familiar with where
12 similar conditions were imposed, although distinguishable
13 on other bases which I've discussed in our Prehearing
14 Brief, in those cases, again the ones that I recall, the
15 separate books and records condition went away at the next
16 rate case after the certificate was grant. Apparently
17 that's not what Staff is proposing here.

18 MR. FRANSON: Your Honor, I'm going to have
19 to object. I -- I don't like to object during closing
20 argument. However, I was not speaking to separate books
21 and records. That is not Staff's Condition No. 2.
22 Staff's Condition No. 2 is a hold harmless, and that was
23 established very clearly during Mr. Harris' testimony,
24 that the separate books and records is not what Staff's
25 Condition No. 2 is. And I did not address Staff --

1 ongoing separate books and records. I addressed a hold
2 harmless condition that might go on for quite a while, as
3 Mr. Keevil said forever.

4 JUDGE REED: I think we all recall what you
5 said about that, Mr. Franson, so that objection is
6 overruled. Mr. Keevil, please continue.

7 MR. KEEVIL: Thank you, Judge. Never
8 having heard an objection during a closing statement, I'm
9 not quite sure where to go from there, but let's try this.
10 Continuing with Mr. Franson's ill-advised second
11 condition, as Mr. Franson referred to Mr. Harris'
12 testimony, Staff admits that Trigen is under earnings
13 pressure and has been for several years. Yet they want to
14 impose this condition which would impose on its own these
15 additional costs.

16 He referred to administrative burdens. He
17 very distinctly did not refer to the additional costs
18 which would be imposed. And they seek to do this without
19 presenting any study or analysis to show that there's
20 anything wrong whatsoever with the feasibility study that
21 Trigen has proposed. To quote Mr. Franson, they're basing
22 this condition on, quote, hard evidence from other cases
23 which imposed this condition.

24 Well, the hard evidence in the other cases
25 may have been relevant in those cases. Unfortunately for

1 Staff's position here, there is no such hard evidence in
2 this case to support such condition.

3 Finally, you heard Mr. Porter refer to the
4 \$700,000 savings figure estimated by Truman. One thing
5 I'm not sure whether he mentioned or not, but that's an
6 annual sum. That's not a total sum. That's an annual
7 sum, and that's a conservative estimate.

8 You've also heard what MGE claims they
9 would lose if the -- if Truman were allowed to switch to
10 Trigen service, how much that is. I'm not going to use
11 the figure. I think it's highly confidential. But
12 compare that figure that you heard Mr. Noack claim MGE
13 would lose on an annual basis to that \$700,000 annual
14 figure you heard Mr. Porter testify Truman would save
15 conservatively, and just decide where the public interest
16 is. Thank you.

17 JUDGE REED: Thank you all. We may have
18 some questions from the Bench here. Commissioner Murray,
19 do you have any other questions?

20 COMMISSIONER MURRAY: No, I don't. Thank
21 you.

22 JUDGE REED: Commissioner Gaw, do you have
23 anything?

24 COMMISSIONER GAW: Maybe a few. And this
25 is to anyone who wants to contribute here. I understand

1 you may be filing something subsequent, but to the extent
2 that you have the information now, does everyone agree in
3 regard to the factors that the Commission should examine
4 in determining whether or not to grant this expansion of
5 the certificate to Trigen? Is there a disagreement on the
6 factors?

7 MR. KEEVIL: You mean those five that I
8 referred to?

9 COMMISSIONER GAW: Yes.

10 MR. KEEVIL: I think all of the attorneys
11 covered those same five in their Prehearing Brief.

12 COMMISSIONER GAW: Okay. Now, the first
13 factor, since you brought it up, what is it again?

14 MR. KEEVIL: First factor is, is there a
15 need for the proposed service --

16 COMMISSIONER GAW: Okay.

17 MR. KEEVIL: -- in the area?

18 COMMISSIONER GAW: And has everyone in
19 their Prehearing Brief cited the cases that they --
20 they're satisfied with in dealing with that issue?

21 JUDGE REED: I think the cases were
22 substantially the same except maybe a case that Ms. Carter
23 had cited to.

24 COMMISSIONER GAW: Thank you, Judge. In
25 regard to the need for service, are there any cases that

1 specifically deal with the question of whether or not the
2 particular service is being provided currently but by an
3 alternative provider?

4 MS. CARTER: I did not brief that issue.

5 MR. KEEVIL: I don't understand the
6 question. I'm sorry.

7 COMMISSIONER GAW: Well, maybe I'm
8 misunderstanding the first factor, the first question. If
9 there's a need for the service, does that -- does that
10 question revolve around whether or not a need is already
11 being provided, that particular need is already being
12 provided, and how narrow is the term need defined in any
13 of those cases?

14 MS. CARTER: I believe Mr. Keevil brought
15 something up in his Prehearing Brief that I did not
16 address, which is what you're asking about, if the
17 duplication can be from alternative types.

18 COMMISSIONER GAW: That's what I'm looking
19 for, if any of the cases address that question. In this
20 case, as I understand it, Truman is utilizing steam heat
21 from its own infrastructure in the building or around the
22 premises. So steam heat is being provided under one
23 argument in this case, and MGE is supplying the fuel for
24 that, or at least the transportation for the fuel.

25 So is that -- is that need in any of those

1 cases defined in such a way that that would suggest that
2 there is not a need for the service because it is already
3 being provided? That's my first question is whether or
4 not there's case law addressing that issue.

5 MS. CARTER: I would request that maybe we
6 could add that to the list to be included in the short
7 pleading.

8 MR. FRANSON: Commissioner, I believe the
9 answer to that question is yes. I remember seeing the
10 cases, but what it had to do with was separate types of
11 utilities, for instance, steam and gas or steam and
12 electric or gas and electric, and the idea being that just
13 because you already have a service territory, you are not
14 protected from another energy provider coming in in that
15 competition --

16 COMMISSIONER GAW: Let me give you a
17 different scenario here that would directly -- that would
18 assume that the service was exactly the same, and tell me
19 whether there are any cases on this. Let's assume that a
20 new gas provider abuts the MGE territory -- another gas
21 provider, excuse me, abuts the MGE territory and wishes to
22 extend its service into the MGE territory to serve a
23 customer.

24 What kind of analysis would there be on the
25 first factor if this Commission were asked to allow that

1 expansion?

2 MR. KEEVIL: That's where you get into an
3 analysis of duplication of facilities and adequacy of
4 service by the incumbent provider.

5 COMMISSIONER GAW: That's what I would
6 assume. Does anyone have anything in addition to offer to
7 that? Is there -- are there cases that address that
8 issue?

9 MS. CARTER: Yes.

10 MR. KEEVIL: There are cases where -- I'm
11 not aware of regulated versus regulated, but I know there
12 are cases where regulated electric was seeking to go into
13 say a rural electric area over a -- well, actually, I
14 don't know if this is what you're referring to, but the
15 cases that I've cited in the Brief, the State ex rel Webb
16 Tri-City or Tri-State involved a gas company going into an
17 area formerly served by propane or LPG dealers, which was
18 not exactly the same service, but similar.

19 COMMISSIONER GAW: Okay. And I recognize
20 those are -- those cases may be out there, and I'm not
21 sure whether we would have ever had an example where you
22 had two regulated entities that were providing the exact
23 same service and one sought permission to move into a
24 portion of the other's territory.

25 MR. KEEVIL: I'm not aware of both of them

1 regulated and providing exactly the same service seeking
2 to move -- one seeking to move into the other, I'm not
3 aware off the top of my head. It may have happened, but
4 I'm not aware of them.

5 MR. FRANSON: It seems to me I saw a case
6 like that, but the date of 1918 is standing out.

7 COMMISSIONER GAW: Well, those early cases
8 would probably be more likely to have some of those kinds
9 of problems. And I'm not trying to suggest that that is
10 an analysis that should be -- that we should give here.
11 I'm just trying to understand this one piece at a time,
12 taking away the differences and then adding some of
13 differences back in.

14 So if that -- if that information is
15 available, if you have anything, that might be helpful.

16 MR. FRANSON: And that's the regulated/
17 regulated, where it --

18 COMMISSIONER GAW: If you have any with two
19 regulated companies that are providing the exact same
20 service, and then I understand that you already have some
21 cases cited dealing with a regulated and a nonregulated
22 utility, some perhaps providing the exact same service,
23 some providing something slightly different but might be
24 interpreted as being somewhat the same kind of a service,
25 such as the propane versus the natural gas company,

1 correct? Am I correct about that?

2 MR. FRANSON: Yes.

3 MS. CARTER: Yes.

4 COMMISSIONER GAW: And then this -- this
5 particular step then would have to do with -- I guess my
6 question would be whether or not those cases have any
7 bearing on that first factor in regard to this case that's
8 in front of us, would be my final question on that one?

9 Is there -- is there an issue on the
10 second? I may not have written these down in proper
11 order, Mr. Keevil. What's the second factor?

12 MR. KEEVIL: Is the applicant qualified to
13 provide the service?

14 COMMISSIONER GAW: There's no question
15 about that, is there? No one is disputing that?

16 MR. KEEVIL: No one that I'm aware of.

17 COMMISSIONER GAW: I haven't heard it
18 today. What's the next one?

19 MR. KEEVIL: Financial ability.

20 COMMISSIONER GAW: And is anyone disputing
21 that factor? No one. Okay. And then the next one?

22 MR. KEEVIL: Is the project or proposal
23 economically feasible?

24 COMMISSIONER GAW: I'm assuming that there
25 is some question of that from some of you.

1 MR. FRANSON: Well, from Staff's viewpoint,
2 it is limited. Mr. Keevil is correct, we did not file
3 testimony that called that into question. However, it is
4 very clear it's based on projections, and that's the
5 purpose of No. 2, looking for, I guess, pretty much an
6 absolute guarantee, but it's -- I'm not sure it's in --
7 that the economic feasibility is in question so much as
8 the ultimate guarantee of that.

9 COMMISSIONER GAW: Well, but that's the
10 only factor that -- where you could suggest that we should
11 be utilizing that condition, isn't it?

12 MR. FRANSON: No, sir. It could be No. 5,
13 which is the ultimate public interest standard, and so
14 that's probably more where we would put it much more than
15 No. 4. And that's the service must promote the public
16 interest. It would be Staff's position without
17 Condition No. 2, it does not meet that test.

18 COMMISSIONER GAW: All right. Anyone else
19 on that -- on the economic, is it economically feasible?

20 Now, Mr. Keevil, I thought I heard you
21 saying about an improvement -- does the improvement
22 justify the cost? What is that under?

23 MR. KEEVIL: Commissioner, that's fairly
24 frequently cited definition of the term necessity as used
25 in this context, as in is the proposed service necessary

1 or convenient for the public service and should a
2 certificate of convenience and necessity be granted?

3 To me, it relates to the need and may go
4 back to your initial question. And the way necessity has
5 been defined is that the additional service would be an
6 improved justifying the cost.

7 And to me, that relates directly to that
8 need question that you were asking, and you get a
9 different answer arguably, or you could get a different
10 answer in a situation where you have an electric seeking
11 to serve a territory already served by an electric versus
12 a situation where we have -- like we have here where we
13 have a steam heating company seeking to serve in a
14 territory already served by a gas company.

15 COMMISSIONER GAW: All right. And then in
16 the last category, in determining overall public interest,
17 did you say this is -- is this an in the public interest
18 standard or not detrimental?

19 MS. CARTER: In the public interest.

20 MR. FRANSON: It's --

21 MS. CARTER: I would say in the public
22 interest.

23 COMMISSIONER GAW: Okay. Is there any
24 dispute about that in this case?

25 MR. FRANSON: It's necessary and convenient

1 for the public interest, which is maybe somewhere but
2 certainly not identical, but I think all five conditions
3 go right toward that, and we're still talking about an
4 overall public interest.

5 COMMISSIONER GAW: And my question still
6 is, is this an in the public interest standard or is it a
7 not contrary to the public interest standard or not
8 detrimental to the public interest?

9 MR. KEEVIL: I think it falls under the
10 Condition No. 5, Commissioner, which is, does the proposal
11 promote the public interest.

12 MR. FRANSON: Agreed.

13 COMMISSIONER GAW: I would -- I would put
14 that in the -- in the is it in the public interest
15 definition, which is different than, as you all know, than
16 we have in some other public interest analysis in regard
17 to who has -- who has the burden of it perhaps.

18 Okay. So in that one, do all of the cases
19 generally -- do any of the cases give specifics under
20 No. 5, any specific guidance, more than the other factors
21 that you've already mentioned?

22 MS. CARTER: You'd be familiar with the
23 recent Aquila case that --

24 COMMISSIONER GAW: Which one?

25 MS. CARTER: The more recent Court of

1 Appeals opinion that said about land use issues, which
2 obviously wouldn't be relevant in this proceeding, but is
3 something that could be considered as part of the public
4 interest.

5 COMMISSIONER GAW: But in regard to this
6 particular topic, have there been specific factors that
7 have been delineated under No. 5?

8 MR. KEEVIL: Commissioner, that's the one
9 where the cases, many of the cases come right out and say,
10 if the answer to the first four is yes, then this one
11 should be yes, too.

12 COMMISSIONER GAW: That's why I'm sort of
13 asking about this. So is it -- do all of the cases
14 suggest that you determine the public interest by looking
15 at the first four factors? That's where I was headed.

16 MR. KEEVIL: You can look at additional
17 factors, but it's -- a lot of them are case specific, I
18 mean fact specific, and --

19 COMMISSIONER GAW: There's no question when
20 you get into these public interest questions there can be
21 a lot of subjectivity that gets blended into it, and I'm
22 looking to see what objective factors might have been
23 utilized in other cases. So if there are others that you
24 haven't mentioned specifically that you want to add in or
25 can point to, other than what you've already done, that

1 would be helpful.

2 Okay. I think that's all I have, Judge.

3 JUDGE REED: All right. Thank you. Now,
4 there was one more issue. I want to repeat the question
5 that Commissioner Murray had that I'd like you to try to
6 address, and we'll talk about the time frame in just a
7 second.

8 But just to repeat that question or those
9 questions was, has the Commission ever applied Staff's
10 Condition 2 to another company seeking to expand territory
11 to serve a specific customer? And the other question had
12 to do with the Ameren case when it applied to serve
13 Noranda. So that may be a case that's on EFIS that all of
14 you can take a look at.

15 MR. FRANSON: And, your Honor, if I may,
16 one other case that -- where this condition came up in a
17 different context but that folks might want to look at is
18 Case No. EO-2004-0108. Had to do with Union Electric
19 transferring property to AmerenCIPS, and I would direct
20 No. 9 transmission, which appears at page 56, a condition
21 that there be a study to hold the customers harmless be
22 done. And I just bring that up. While it's not exactly
23 what we're talking about, it is a similar condition and
24 parties will probably need to be aware of that.

25 JUDGE REED: You-all take a look at that

1 and see if you want to put that in your relatively short
2 pleading addressing those questions as well as those that
3 Commissioner Gaw had, and I'd like --

4 MR. KEEVIL: At the risk of further
5 confusing myself, Commissioner Gaw, your first question
6 was, are there any cases where you had two regulated
7 companies providing exactly the same service, one seeking
8 to move into the territory of the other, and how is the
9 question of need analyzed for in such a situation, and
10 does that have any bearing on this case?

11 COMMISSIONER GAW: Yes.

12 MR. KEEVIL: Did I get --

13 COMMISSIONER GAW: That's basically
14 correct. And what I -- if you -- if there have been cases
15 that start out with something that's very clearly not okay
16 and then as you move the facts in other cases that it
17 becomes more gray and more subjective to analysis, I mean,
18 that would be helpful. There may not be that kind of a
19 past record.

20 MR. KEEVIL: The ones that I recall
21 actually where that came close -- again, they weren't two
22 regulated, but they were like a regulated and a rural
23 coop. They were still usually -- the certificate was
24 granted usually, even in that situation, because they came
25 back to the question of adequacy of service, which again I

1 think when you correlate it over to this case, we're not
2 talking about the same service anyway. So the analysis
3 sort of falls apart.

4 COMMISSIONER GAW: I recognize your
5 argument and why this would be different, but if it
6 becomes more obvious that even -- if there were a case out
7 there that suggested that two regulated companies were
8 analyzed and one attempted to move into the other one's
9 territory and it was allowed, I'd like to know that.

10 If it was disallowed and there's some
11 rationale that starts degrading as you move away from that
12 fact situation, that would be helpful to see. And I
13 recognize that those cases may not be there, but that's --
14 if that helps you.

15 MR. KEEVIL: Thanks.

16 JUDGE REED: I was thinking of trying to
17 get something on file by Friday.

18 MR. FRANSON: Can we kick it over into
19 Monday?

20 JUDGE REED: How about Monday?

21 MR. FRANSON: Wonderful.

22 JUDGE REED: That would be the 22nd.

23 MR. FRANSON: That wouldn't hurt your
24 timetable, would it?

25 MR. KEEVIL: I was going to say, it just

1 depends on when the Order -- if you go back, I think it's
2 in what Mr. Franson filed with the proposed schedule, we
3 were hoping to receive an Order authorizing the
4 certificate with an effective date of June 1st or as close
5 thereto as possible, because you heard the testimony
6 earlier that you're looking at roughly a six-month
7 construction timeline, and the Trigen and Truman people
8 were certainly hoping to get as much of this heating
9 season in as possible.

10 So yeah, I wouldn't think the difference
11 between Friday and Monday would make much difference in
12 terms of your Order coming out. Correct me if I'm wrong,
13 Judge.

14 JUDGE REED: No. I hope to have the
15 transcript Friday. I think having this pleading by Monday
16 would be -- would be fine.

17 MR. KEEVIL: Okay. Thanks.

18 JUDGE REED: Is there anything else? Okay.
19 We're adjourned.

20 WHEREUPON, the hearing of this case was
21 concluded.

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