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STATE OF MISSOURI  
  
PUBLIC SERVICE COMMISSION

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TRANSCRIPT OF PROCEEDINGS  
  
Hearing  
  
October 20, 1999  
Jefferson City, Missouri  
Volume 2

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In the Matter of the Application of       )  
Missouri Gas Energy, a Division of       )  
Southern Union Company, for the        ) Case No.  
Issuance of an Accounting Authority    ) GO-99-258  
Order Relating to Year 2000 Compliance)  
Projects.                                   )

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LEWIS R. MILLS, JR., Presiding,  
DEPUTY CHIEF REGULATORY LAW JUDGE.  
M. DIANNE DRAINER,  
CONNIE MURRAY,  
COMMISSIONERS.

-----

REPORTED BY:  
  
MELINDA ADOLPHSON, CSR  
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21  
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1 P R O C E E D I N G S

2 JUDGE MILLS: We're on the record this  
3 morning in Case No. GO-99-258, in the matter of the  
4 application of Missouri Gas Energy, a division of  
5 Southern Union Company, for the issuance of an  
6 Accounting Authority Order relating to Year 2000  
7 compliance projects. We're on the record this  
8 morning for an evidentiary hearing.

9 Let's do opening statements beginning with  
10 Mr. Hack.

11 MR. HACK: Robert J. Hack, appearing on  
12 behalf of Missouri Gas Energy, 3420 Broadway,  
13 Kansas City, Missouri 64111.

14 JUDGE MILLS: Mr. Bates?

15 MR. BATES: Bruce H. Bates, appearing on  
16 behalf of the Staff of the Missouri Public Service  
17 Commission, Post Office Box 360, Jefferson City,  
18 Missouri 65102.

19 JUDGE MILLS: Mr. Micheel?

20 MR. MICHEEL: Douglas E. Micheel,  
21 appearing on behalf of the Office of the Public  
22 Counsel and the Public, P.O. Box 7800, Jefferson  
23 City, Missouri 65102-7800.

24 JUDGE MILLS: Thank you. Let's go off the  
25 record.

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1 (OFF THE RECORD.)

2 (EXHIBIT NOS. 1 THROUGH 5, 6NP, 6HC and 7  
3 WERE MARKED FOR IDENTIFICATION.)

4 JUDGE MILLS: If there are no preliminary,  
5 I think we're ready to proceed with opening  
6 statements beginning with the Company.

7 MR. HACK: Good morning. May it please  
8 the Commission and the Commissioners and the RLJ.  
9 My name is Robert Hack. I'm appearing for Missouri  
10 Gas Energy in this Y2K AAO case today, that's year  
11 2000 Accounting Authority Order.

12 The matter before you was initiated by an  
13 application filed by MGE last December. On  
14 October 6th of this year, the Staff and MGE filed a  
15 Stipulation and Agreement proposing to resolve all  
16 the issues in this case. OPC opposes that  
17 Stipulation and Agreement.

18 The Stipulation and Agreement, whose terms  
19 I will address in specifics a little bit later, is  
20 supported by record evidence, first of all. Second  
21 of all, it's fully consistent with Commission  
22 precedent and practice regarding deferral  
23 extraordinary expenditures in the past, and it's  
24 also consistent with uniform system of accounts.

25 The granting of an AAO for Y2K

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1 expenditures qualifies for a deferral under the  
2 terms of the USA OA and past precedent as being  
3 extraordinary. Both the US OA and Commission  
4 precedent define extraordinary as events which are  
5 of unusual nature and infrequent occurrence and  
6 significant effect.

7 Further, such events are abnormal,  
8 significantly different from the company's normal  
9 operations and are not expected to recur in the  
10 foreseeable future. Y2K readiness activities fit  
11 the definition of extraordinary as I've just  
12 defined it above to a T.

13 These activities are driven by the  
14 transition to the year 2000, an event which has  
15 never occurred in recorded time, certainly not in  
16 the age of computers. And it's an event which will  
17 not occur again. Frankly, maybe it will occur in  
18 8,000 years when we roll over to the year 10,000,  
19 but until then it's not an issue that's going to  
20 come up. I don't consider that recurring with  
21 reasonable frequency.

22 The second part of the Y2K Compliance  
23 Project that makes it extraordinary is that it  
24 entails a comprehensive inventory and audit of the  
25 entire range of the company's microchip-based

1 computer systems all within a relatively short  
2 period of time.

3 The breadth of the Y2K activities project  
4 clearly distinguishes it from the ordinary computer  
5 upgrades; software modifications that occur on a  
6 day-to-day basis. MGE and, frankly, the rest of  
7 the world, will not be repeating these Y2K  
8 activities next year, in 2001, in 2002, 2003 nor  
9 did we perform these activities in 1996, 1995.  
10 They are unique, they are extraordinary and they  
11 are of significant effect.

12 Another item to be discussed today is  
13 whether or not the costs that are proposed to be  
14 deferred are already included in rates. I think  
15 the Company has been very scrupulous in defining  
16 and proposing to defer costs that are only  
17 incremental. And by that I mean not already  
18 recovered in rates. The stipulation requires that,  
19 first of all.

20 Second of all, if the Company just  
21 willy-nilly defers all kinds of costs, whether  
22 they're allocable to MGE or not, whether they're  
23 related to Y2K or not, we expose ourselves to a  
24 disallowance in the future. If that disallowance  
25 occurs, we'll have a write-off on our books. The

1 write-off will impair our income during the period  
2 in which the write-off occurs. We don't want that  
3 to occur, so it's in our interest to defer only  
4 appropriate items.

5 Public Counsel in contrast to the  
6 positions of the Staff and MGE, which are fully  
7 supported by precedent in US OA, has come up with a  
8 couple of new concepts that are utterly devoid of  
9 any support in past Commission precedent or,  
10 frankly, even in the US OA, and I submit they don't  
11 enjoy the support of good policy either.

12 OPC asserts that deferral authority should  
13 not be granted unless it can be shown that deferral  
14 authority is necessary for the Company, in this  
15 case MGE, to maintain its financial integrity.  
16 This isn't in the US OA. It's not in past  
17 Commission precedent.

18 What it is, is a standard one of the  
19 criteria for granting emergency rate relief. We're  
20 not here seeking emergency rate relief. We're here  
21 seeking deferral authority on account of an event  
22 which is extraordinary.

23 Second, or additionally, OPC suggests that  
24 because the transition to the year 2000 was known  
25 and predictable, that Y2K -- that deferral

1 authority is not appropriate. Again, this is a  
2 criteria constructed out of old cloth. It's not  
3 supported by the US OA perform system of accounts,  
4 not supported by past Commission precedent, and,  
5 frankly, it is beside the point in terms of  
6 analyzing whether or not the event is  
7 extraordinary.

8 Through the end of September the Company  
9 has incurred actual Y2K compliance expenditures in  
10 the neighborhood of \$1.7 million. That's material  
11 and significant. It effects our earnings and,  
12 frankly, it qualifies for deferral.

13 To sum up on that point before I address  
14 the specifics in the Nonunanimous Stipulation, you  
15 really have a pretty clear choice here, follow past  
16 Commission precedent as MGE and the Staff suggest  
17 or embark on a new course for deferral authority.

18 The year 2000 is a world-wide concern.  
19 It's an event which the Commission has recognized  
20 through recreation in opening of a docket. We  
21 think that the evidence really supports the  
22 extraordinary nature of the event and granting the  
23 deferral authority.

24 To wrap up here quickly, the stipulation  
25 was filed on October 6th. It really has about six



1 or seven substantive points. First, MGE and the  
2 Staff propose to grant deferral authority beginning  
3 July 1 of 1998, which by the way is after the  
4 conclusion of the true-up period in MGE's last rate  
5 case, through February 28 of the year 2000. That  
6 applies only to incremental operating expenses,  
7 meaning to say that capital expenditures will not  
8 be deferred, investment.

9 Second, MGE and the Staff have agreed that  
10 the amortization of the year YK year 2000 deferral  
11 should begin immediately in the year 2000. So  
12 we'll begin amortizing to expense in writing down  
13 the unamortized balance of deferral immediately.  
14 That's subparagraph B on page 2 of the  
15 stipulation. And what that does is, really, is  
16 consistent with some AAOs that have been granted in  
17 the past.

18 We have also proposed that a 10-year  
19 amortization period be used for both book and  
20 ratemaking purposes. Clearly, if we're going to  
21 begin writing the amortization to the -- begin the  
22 amortization to expense, we need an amortization  
23 period, so we propose 10 years.

24 Under C we have specifically left to a  
25 future rate case the rate base treatment of the

1 year 2000 deferral. That can be argued by anybody  
2 and decided by the Commission at that time.

3 D, the question of materiality of the Y2K  
4 expenditures can be reviewed in that subsequent  
5 rate case. And that was kind of a big point to  
6 give up for us. We're fully confident that we will  
7 meet the materiality threshold, but given the fact  
8 that we still have two and a half, three months to  
9 go until the year 2000, Staff was concerned about  
10 the use of estimates and the ability of both the  
11 Staff, other parties and the Commission to look at  
12 those costs in a subsequent rate case, and we said,  
13 Okay. That offers protection to the customers and  
14 in our view reasonable assurances to the Company.

15 E, of the stipulation, says that if MGE  
16 doesn't file a rate case within basically two years  
17 of the conclusion of the deferral period set out in  
18 this document, we're not permitted to seek rate  
19 recovery of the deferral. That's the sunset  
20 clause, I think it can be called, and that's  
21 consistent with past precedent.

22 The final item is that the stipulation  
23 stands as precedent only for the treatment of MGE's  
24 year 2000 costs and also makes specific reference  
25 to our ability to seek additional deferral

1 authority should we incur significant year 2000  
2 costs after February of 2000. We don't expect that  
3 will be necessary in that event. Nobody would be  
4 required to support such a request and the  
5 Commission would not be required to grant it. We  
6 would simply be permitted to request it.

7 In a nutshell, the stipulation offers a  
8 reasonable resolution of this case. It offers  
9 protection to the customers, it offers assurances  
10 to the Company. It's consistent with past  
11 precedent, and MGE for one asks you to adopt it.  
12 Thank you.

13 JUDGE MILLS: Thank you.

14 Mr. Bates?

15 MR. BATES: Thank you, your Honor. Good  
16 morning. May it please the Commission. I'll be  
17 brief this morning because the Staff of the  
18 Missouri Public Service Commission associates  
19 itself with remarks Mr. Hack made on behalf of  
20 Missouri Gas Energy.

21 We would just like to make a few points.  
22 As the Commission is well aware in Accounting  
23 Authority Order or AAO is a request to defer costs  
24 from one period to another. We believe that the  
25 Commission has addressed this in the past in a

1 different context in the case of: In the matter of  
2 the Application of Missouri Public Service for the  
3 Issuance of an Accounting Order Relating to its  
4 Electrical Operations, Case No. EO-91-358 and the  
5 case of In the matter of the Application of  
6 Missouri Public Service for the Issuance of an  
7 Accounting Order Relating to its Purchase Power  
8 Commitments, Case No. EO-91-360. These cases were  
9 consolidated together.

10 The Commission found in that case that  
11 only extraordinary items should be deferred. They  
12 should be unusual, unique and not recurring. They  
13 should also not involve speculative events. Staff  
14 does believe that the year 2000 costs at issue in  
15 this case are unusual and will be nonrecurring and  
16 fit all the other criteria of that case.

17 While the Commission held properly in that  
18 case that the decision should be made on a  
19 case-by-case basis, the Commission's discretion  
20 here is broad. If the costs are truly  
21 extraordinary, recovery of a rate should not be  
22 delayed indefinitely. To limit the definition of  
23 extraordinary events the acts of God or when the  
24 integrity of service to the customer is threatened  
25 the Office of Public Counsel argued in that case,

1 is as the Commission held too restrictive.

2 To directly quote from that decision,  
3 quote, There may be instances which occurred that  
4 are neither acts of God nor threatened provision of  
5 service but that are nonetheless unusual, unique  
6 and nonrecurring where deferral would be justified  
7 and reasonable, unquote.

8 Staff clearly believes and agrees with  
9 Missouri Gas Energy that that is also the case in  
10 this case. And that the year 2000 costs will be  
11 material to the overall financial operations of  
12 Missouri Gas Energy. With that, we ask that the  
13 Commission approve the Nonunanimous Stipulation and  
14 Agreement entered into by Missouri Gas Energy and  
15 the Staff of the Missouri Public Service  
16 Commission. Thank you.

17 JUDGE MILLS: Thank you.

18 Mr. Micheel?

19 MR. MICHEEL: May it please the  
20 Commission. We disagree. I mean, that's why we're  
21 here. The facts the way we see them are not the  
22 facts the way the other two parties see them.

23 First of all, I think the evidence is  
24 going to indicate that the Y2K expenditures that  
25 they are seeking deferrals for are not

1 extraordinary. First of all, I think if you've  
2 read, and I know you've read Mr. Robertson's  
3 testimony, they are not unusual nor are they  
4 unpredictable.

5           The evidence will show that MGE has  
6 undertaken numerous computer upgrades, that  
7 computer systems change all the time, that they are  
8 not unpredictable. That the fact that the  
9 computers read the date as two little digits was  
10 something that the computer programmers planned.

11           The evidence will show that MGE knew as  
12 early as, if not earlier, than 1993 that there  
13 would be a Y2K issue and that certain computer  
14 systems may have to be changed. The evidence also  
15 will show that no other utility in the State of  
16 Missouri save MGE has requested in a contested case  
17 proceeding an AAO or accounting authority order for  
18 Y2K issues. As a matter of fact, two companies,  
19 specifically, Union Electric and St. Joseph Light  
20 and Power have claimed that Y2K expenditures indeed  
21 are not unique and are not unusual.

22           To paraphrase Union Electric from their  
23 Brief in EM-96-149, they stated, Regardless of how  
24 one characterizes the importance of year 2000  
25 maintenance expenses by themselves, there is no

1 basis to conclude that these expenses are  
2 extraordinary within the meaning of the uniform  
3 systems of accounts.

4           Secondly, I think the evidence will show  
5 that these costs are recurring. Computer upgrades  
6 happen all the time. What the Staff and MGE ask  
7 you to do is take a myopic look and say standing  
8 alone the year 2000 is unique. Granted, the year  
9 2000 only happens once and the next millennium  
10 problem is 1,000 years away. The point being and  
11 the broader picture being, computer systems become  
12 obsolete all the time. This is something that  
13 utilities do in the regular course of business.  
14 It's not unique.

15           Third, I think the evidence will show that  
16 the expenditures related to the Y2K expenses that  
17 are sought to be deferred are not material. First  
18 of all, I think the evidence will show at least  
19 currently that they do not meet the  
20 5 percent threshold in the uniform system of  
21 accounts.

22           Indeed, if the expenditures met the  
23 5 percent threshold today, the uniform system of  
24 accounts specifically states in general instruction  
25 No. 7, that they do not have to come and ask this

1 Commission for approval to defer those expenses.  
2 It's only according to the uniform system of  
3 accounts, when those expenditures do not meet the  
4 5 percent threshold, that they have to come to this  
5 Commission and ask pursuant to the uniform system  
6 of accounts to defer the expenditures.

7 I would direct you to Mr. Robertson's  
8 attachment 3 to his rebuttal testimony, where he  
9 has set out all of those accounts for your  
10 reading.

11 Secondly, I think the fact that paragraph  
12 60 of the Nonunanimous Stipulation and Agreement  
13 that the parties have presented to you, is a tacit  
14 admission that there is some question whether or  
15 not these expenses are indeed material. That issue  
16 is left open, in my understanding of the  
17 Nonunanimous Stipulation and Agreement, for  
18 argument in the rate case. So I think that  
19 indicates that indeed these items are not material  
20 or at least there's a question about whether or not  
21 they are material.

22 Fourth, I think the evidence is going to  
23 show that certain of the costs that the companies  
24 are asking -- or the Company and the Staff are  
25 asking to be deferred are already included in



1 rates. An example will be legal expenses and  
2 overtime expenses and things like that.

3 Now, the Staff and MGE are going to argue,  
4 Well, these are incremental costs over and above  
5 what's built in to the rates -- what was built into  
6 the rates in GR-98-140. The evidence will show  
7 that when you're determining legal expenses,  
8 overtime expenses and things like, that you use an  
9 annualization or a normalization to kind of smooth  
10 things out. Some things are in, some things are  
11 out. But on a going-forward basis, that is  
12 supposed to cover overtime, for example, or legal  
13 expense.

14 Finally, Public Counsel has asked the  
15 Commission to look at the issue of whether or not  
16 if this deferral is not granted, MGE's or Southern  
17 Union Company's financial integrity will be  
18 threatened. We think that this is a standard that  
19 the Commission should look to and a standard that  
20 they should think about in making these type of  
21 deferrals.

22 The underlying reason we have these  
23 deferrals is because, well, the Company, in theory,  
24 isn't going to have an opportunity to recover these  
25 costs. But if their financial integrity is not at

1 all at issue or is not threatened, we assume for  
2 ratemaking purposes that the Company is meeting  
3 reasonable operating expenses. And therefore  
4 what's the need for the deferral.

5 I think when the evidence is all through,  
6 you will come to the conclusion that the year 2000  
7 costs are not extraordinary or unusual. They are  
8 not unpredictable. They are recurring. They are  
9 not material. And I think it's important to note  
10 that MGE is the only company seeking an AAO  
11 deferral out of all the Missouri regulated  
12 utilities that I'm aware of.

13 JUDGE MILLS: Thank you.

14 Mr. Hack, I think you're first.

15 MR. HACK: Thank you, your Honor. MGE  
16 will call June Dively to the stand.

17 (WITNESS SWORN.)

18 JUDGE MILLS: You may be seated.  
19 JUNE DIVELY, being first duly sworn, testified as  
20 follows:

21 DIRECT EXAMINATION BY MR. HACK:

22 Q. State your name, please.

23 A. My name is June Dively.

24 Q. Ms. Dively, did you prepare and cause to  
25 be filed in this proceeding direct testimony, which

1 has been marked for identification as Exhibit 2 and  
2 surrebuttal testimony, which has been marked for  
3 identification as Exhibit 3?

4 A. I did.

5 Q. Do you have any corrections that need to  
6 be made to either of those testimonies at this  
7 time?

8 A. Yes, I do. I have a correction that I  
9 would like to make to my surrebuttal testimony on  
10 page 7, line 11. After 1006A, I'd like to insert a  
11 parenthetical that says, As Attachment 3.

12 Q. And prior to going on the record, do you  
13 recall me handing out Attachment 3 to the parties  
14 and the Bench?

15 A. Yes, I do.

16 Q. It should be labeled as Attachment 3.  
17 Subject to that correction, Ms. Dively, if I were  
18 to ask you the questions contained in Exhibits 2  
19 and 3 today, would your answers be substantially  
20 the same?

21 A. They would.

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

24 A. They are.

25 MR. HACK: MGE would offer Exhibits 2 and

1 3 and tender Ms. Dively for cross-examination.

2 JUDGE MILLS: Are there any objections to

3 the admission of Exhibits 2 or 3? Hearing none,

4 they will be admitted.

5 (EXHIBIT NOS. 2 AND 3 ARE RECEIVED INTO

6 EVIDENCE AND MADE A PART OF THE RECORD.)

7 JUDGE MILLS: Cross-examination,

8 Mr. Bates?

9 MR. BATES: We have no questions, your

10 Honor.

11 JUDGE MILLS: Mr. Micheel?

12 MR. MICHEEL: Thank you, your Honor.

13 CROSS-EXAMINATION BY MR. MICHEEL:

14 Q. Ms. Dively, I'm trying to understand the

15 year 2000 problem as it's presented in this

16 proceeding.

17 A. Okay.

18 Q. Is it correct that the year 2000 problem

19 started decades ago when early computer had very

20 limited memory and storage space?

21 A. That's my understanding.

22 Q. And so the issue base is that all computer

23 hardware and software that's stored in information

24 using two digits, for example, may read the year

25 2000 as 1900 and not 2000; is that correct?

1           A.    Yeah.  That's one of the possibilities  
2   with the problem, uh-huh.

3           Q.    And would you agree with me that all  
4   computer programs that would read 00 as 1900 are  
5   obsolete and must either be upgraded or replaced?

6           A.    I would agree that as of the year 2000,  
7   the change to the year 2000, that's a true  
8   statement.

9           Q.    Would you agree with me that Southern  
10   Union Company, and when I use that, I use that  
11   interchangeable with MGE because MGE is a division  
12   of Southern Union; is that correct?

13          A.    Yes, that's correct.

14          Q.    Would you agree that Southern Union  
15   recognized that its computer applications would not  
16   be adequate for the future as early as 1993?

17          A.    I would agree that as early as 1993 that  
18   the company was looking at updating certain  
19   significant systems, and at that time the issue of  
20   the viability of that system beyond the year 2000  
21   was addressed.

22          Q.    Would you agree with me that SUC regularly  
23   upgrades and replaces obsolete computer equipment?

24          A.    I would agree that they replace some  
25   obsolete computer equipment, but that it does not

1     happen with -- at the same magnitude as the Y2K  
2     issues are.

3           Q.     For example, like, take -- I don't know if  
4     MGE uses a window-base system, you know, Windows  
5     operating system 3.1 was replaced with Windows 95  
6     and Windows 98 with Windows MT; is that correct?

7           A.     Well, that's a good example, because  
8     Southern Union actually replaced 3.1 with Windows  
9     95, but did not replace Windows 95 across the  
10    board. So Southern Union has never had a habit of  
11    just going through and automatically upgrading.

12          Q.     Would you agree with me that Southern  
13    Union will continue to upgrade and replace computer  
14    equipment as technology changes?

15          A.     If it's necessary to the function of the  
16    business.

17          Q.     For example, if you're looking into buying  
18    a new billing system, and some of your hardware or  
19    software is not compatible with that billing  
20    system, you would change out the old --

21          A.     Absolutely. If it were critical to that  
22    new billing system, we would.

23                 MR. MICHEEL: I need to get an exhibit  
24    marked, your Honor.

25                 JUDGE MILLS: Okay. We're up to No. 8.

1                   (EXHIBIT NO. 8 WAS MARKED FOR  
2   IDENTIFICATION.)  
3   BY MR. MICHEEL:  
4       Q.   Let me know when you're ready,  
5   Ms. Dively.  
6       A.   I'm ready.  
7           JUDGE MILLS:  Mr. Micheel, before you  
8   proceed, let's identify Exhibit 8 for the record as  
9   Public Counsel DR 1007 and response thereto.  
10           Go ahead.  
11   BY MR. MICHEEL:  
12       Q.   Ms. Dively, could you turn to the page  
13   marked at the top Attachment 2, and that's an  
14   E-mail from a Todd James to Dave Pearson?  
15       A.   Yes, sir.  
16       Q.   And then there's a bold heading named  
17   Non-Technical Overview.  Do you see that on that  
18   page?  
19       A.   Yes, I do.  
20       Q.   And I'm focusing on the second paragraph,  
21   With that in mind.  Could you read that paragraph  
22   to yourself?  And let me know when you're ready.  
23       A.   I'm ready.  
24       Q.   And that's an E-mail from Todd James to  
25   Rick Gernereth; is it not?

1           A.    Yes, it is.

2           Q.    And Rick Gemereth is the Vice President of  
3 information technologies for Southern Union  
4 Corporation?

5           A.    Yes, he is.

6           Q.    And is it correct that that indicates many  
7 existing systems in technologies that computer  
8 technology systems that SUC utilizes would have  
9 been upgraded or replaced as a result of an  
10 infrastructure upgrade irrespective of whether the  
11 Y2K event took place?

12          A.    Right.  That's why we're not requesting  
13 any of those costs to be recovered under the Y2K  
14 expenditures.  Mr. James' original E-mail here  
15 indicated \$2.5 million in hardware, which is  
16 summarized on Attachment 1 of the same DR as  
17 hardware.  The original budget included the  
18 replacement of all the PCs and that's why that  
19 figure was so high.

20                The company looked at it and found out  
21 that for Y2K we did not have to replace all the  
22 PCs.  And, in fact, could accomplish the Y2K  
23 activities through a patch.  And instead evaluated  
24 all of the PC requirements and instituted a  
25 one-third replacement, annually replacing the PCs.



1           Q.   And that E-mail also indicates, does it  
2   not, and just quoting says, While many existing  
3   systems and technologies would have been upgraded  
4   or replaced as a result of the infrastructure  
5   upgrade, the Y2K factor has accelerated any  
6   potential activities, isn't that correct?

7           A.   At that time they were under the  
8   impression that it would accelerate the activities  
9   of doing the replacements. As I just said, they  
10   didn't have to replace them. They were able to  
11   take a different tactic and go through and do an  
12   evaluation of a patch, so this isn't relevant to  
13   what actually happened.

14          Q.   Is it your testimony that this E-mail is  
15   only about the personal computers?

16          A.   This E-mail, the predominant amount of the  
17   cost, the predominant amount of the hardware cost  
18   related to the network and PCs. And that's what I  
19   was addressing when I was making that comment.

20          Q.   Are any costs related to PCs being  
21   requested for deferral?

22          A.   To the best of my knowledge for deferral  
23   there are only PCs currently in capital, and they  
24   relate to the SCADA/EGM project, and were  
25   incremental replacements because it would not have

1 had to have been replaced if it were not for the  
2 change in the SCADA/EGM project. There are also  
3 two -- I think there are two that are under lease,  
4 but other than that there are no PC replacements in  
5 our numbers.

6 Q. And is that DR response that has been  
7 marked for purposes of identification as Exhibit 6,  
8 the Company's response to Public Counsel's data  
9 request -- or Exhibit 8 -- excuse me -- data  
10 request 1007?

11 A. Would you repeat that question?

12 Q. Sure.

13 A. I got lost.

14 Q. The data request that you have in front of  
15 you that's been marked for purposes of  
16 identification as Exhibit 8, is that the company's  
17 response to that data request?

18 A. To this data request at that time, yes.

19 MR. MICHEEL: I would move for the  
20 admission of Exhibit 8, your Honor.

21 JUDGE MILLS: Are there any objections to  
22 the admission of Exhibit 8?

23 Hearing none, it will be admitted.

24 (EXHIBIT NO. 8 WAS RECEIVED INTO EVIDENCE  
25 AND MADE A PART OF THE RECORD.)

1 BY MR. MICHEEL:

2 Q. Do you believe that Southern Union Company  
3 and MGE's Year 2000 expenditures constitute  
4 5 percent of income before extraordinary items are  
5 taken into account consistent with the uniform  
6 system of accounts general instruction No. 7?

7 A. I believe that the Company will meet the  
8 significance tests. However, I do not believe that  
9 it's a requirement to meet that significance test  
10 for the Commission to determine that this is an  
11 extraordinary event and to allow the Company to  
12 defer those costs for future rate recovery.

13 Q. Do you have a copy of your surrebuttal  
14 testimony, which has been marked Exhibit No. 3,  
15 with you?

16 A. Yes.

17 Q. Could you turn to page 6?

18 A. Yes.

19 Q. And I'm focusing on the question there.  
20 The question is, Does the Company anticipate Y2K  
21 expenditures will meet the 5 percent significance  
22 test, and your answer is yes; is that correct?

23 A. Yes.

24 Q. If the Company believes they are going to  
25 meet the 5 percent income before extraordinary

1 items, why did the Company file an AAO? Isn't it  
2 correct that pursuant to general instruction 7, the  
3 Company to defer costs if it meets the 5 percent  
4 doesn't need Commission authority?

5 A. That is true that according to general  
6 instruction No. 7 if the Company incurred costs of  
7 5 percent -- more than 5 percent, that they would  
8 not have to ask permission, but this is an ongoing  
9 project. It wasn't a singular event at a specific  
10 time. So the final outcome of the total dollar  
11 cost is not known at this time.

12 So we've requested the accounting  
13 authority order basically to cover the issue of  
14 whether or not it's an extraordinary event. And we  
15 recognize through the Stipulation and Agreement,  
16 Nonunanimous Stipulation and Agreement, that we  
17 will review the significance issue during the next  
18 rate case.

19 Q. So you're not certain at this point  
20 whether or not you're going to meet the 5 percent  
21 threshold; is that correct?

22 A. I feel certain, but I don't know.

23 Q. Let me ask you this: So this is a series  
24 of events; is that correct? It's not a one-time  
25 singular event of the Y2K items?

1           A.   Actually I disagree with that  
2    characterization.  I think it is a single event  
3    with a series of activities.  And if I misspoke  
4    earlier, then I apologize for that.  But it has a  
5    series of activities related to a singular event.  
6           Q.   Okay.  But nevertheless it's a series of  
7    different activities related to that event; is that  
8    correct?  
9           A.   That is correct.  
10          Q.   Would you agree with me, Ms. Dively, that  
11    if an item such as the year 2000 cost is less than  
12    5 percent of income for extraordinary items, other  
13    factors may be reviewed by the Commission to  
14    determine whether the deferral should be allowed?  
15          A.   Yes.  
16          Q.   Would you agree with me that those other  
17    factors could be whether or not the Company's  
18    financial integrity is impaired?  
19          A.   The other factors are whatever the  
20    Commission chooses to look at.  
21          Q.   And that could be one of the factors,  
22    whether or not the Company's financial integrity is  
23    impaired; is that correct?  
24          A.   Yes.  That could be one of the factors.  
25          Q.   And another factor could be whether or not

1 the costs are material, isn't that correct?

2 A. Yes.

3 Q. Would you agree with me that materiality  
4 is an issue with respect to granting accounting  
5 authority orders?

6 A. I agree that according to general  
7 instruction No. 7 that it definitely does present  
8 an issue. However, general instruction No. 7 also  
9 says that an event can be found extraordinary if  
10 the costs are not material.

11 Q. And indeed in your testimony that you have  
12 offered, your surrebuttal testimony on page 6, you  
13 quote from the Missouri Public Service case where  
14 the Commission says, Whether the event has material  
15 or substantial effect on the utility earnings is  
16 also important but not a primary concern, isn't  
17 that correct?

18 A. Yes.

19 Q. So at least in the Missouri Public Service  
20 case the Commission indicated that materiality is  
21 an important issue, isn't that correct?

22 A. Yes.

23 Q. And indeed would you agree with me that  
24 the Staff believes materiality is an important  
25 issue?

1           A.    Yes.

2           Q.    And, in fact, in the Nonunanimous

3   Stipulation and Agreement filed by the parties, you

4   have reserved -- you, when I say you, I mean the

5   Staff and MGE -- have reserved the issue of

6   materiality, isn't that correct?

7           A.    Yes.  But I'll point out that they go on

8   to say in that same paragraph that you've cited

9   that this 5 percent standard is thus relevant to

10   materiality and whether the event is extraordinary,

11   but it's not case dispositive.

12          Q.    Certainly.  It's a factor to look at,

13   isn't that correct?

14          A.    Yes, it is a factor.

15          Q.    And I never indicated it was case

16   dispositive, did I, Ms. Dively?

17          A.    No.

18          Q.    Okay.  Does Southern Union Company have a

19   plan to replace 100 percent of its personal

20   computers every three years?

21          A.    My understanding is subsequent to -- or

22   sometime during 1999 the Company has worked with

23   Dell Computer Systems in Austin, and has decided to

24   replace all computer systems annually.  They're

25   going to make a one-third replacement of all

1 computer systems.

2 Q. And why is that?

3 A. Because of the advances and changes in

4 technologies.

5 Q. So computer technology changes quite

6 rapidly; is that correct?

7 A. Hardware changes quite rapidly. So does

8 software, yes.

9 Q. And so companies are constantly upgrading

10 or having to change their computer systems; is that

11 correct?

12 A. Companies have to be cognizant of it and

13 make changes that are appropriate for their

14 business.

15 Q. Because if you wait and technology gets

16 way out in front of you, the fix is a lot harder to

17 make, isn't that correct?

18 A. Yes. I'll point out that normally

19 hardware upgrades take place with more frequency

20 than a software upgrade of a major system.

21 Q. Are there any costs related to hardware

22 upgrades or review of hardware which the company is

23 seeking deferral for in this proceeding?

24 A. There is -- I do not have the cost in

25 front of me, but there are some SCADA/EGM



1 hardware. There are some costs associated with the  
2 security system in the building. There is some  
3 cost -- intercosts related to -- I think it's a  
4 taping piece of equipment. Off the top of my head  
5 that's what I can remember.

6 Q. Indeed the Company in its Y2K undertaking  
7 is reviewing all of its software and all of its  
8 hardware to determine whether or not it's Y2K  
9 compatible, isn't that correct?

10 A. Yes. Which is truly an unprecedented  
11 level of review.

12 Q. Is it correct that the Company's first  
13 year 2000 estimate was less than \$6.5 million for  
14 the total company?

15 A. Yes.

16 Q. What's that estimate now?

17 A. It's at 4.5 million.

18 Q. It's at 4.5 million. What percent or  
19 amount of that \$4.5 million are capital in nature,  
20 capital costs in nature?

21 A. I have not done that calculation. I will  
22 tell you it's my understand that about a million,  
23 so about 25 percent.

24 Q. Okay. And what percent or amount of Y2K  
25 expenditures are expenses?

1           A.    75 percent.

2           Q.    Okay.  And what percent or amount of those  
3   expenditures, those expenses, that 75 percent that  
4   we're talking about, relate to Y2K project team  
5   members and the expenses with respect to the  
6   project team members?

7           A.    One percent.

8           Q.    One percent.  Is it correct that the Y2K  
9   project team members are employees of either  
10   Southern Union Companies, Southern Union Gas or  
11   Missouri Gas Energy?

12          A.    Yes.  But we have no payroll dollars, I  
13   will point that out.  There are no payroll dollars  
14   in the figures.  We're only looking at incremental  
15   costs.  So to the extent that there are cost  
16   related to employees and they are abnormal types of  
17   travel costs related to Y2K.  There may be some  
18   other miscellaneous costs, but there's no payroll  
19   in there.

20          Q.    Let me go back to the project team member  
21   cost.  You say they are only one percent of the  
22   overall cost; is that correct?

23          A.    I made a note.  My estimate would be that  
24   they would be approximately one percent when it  
25   relates to travel and expense reports.  And when I

1 say project team members, I'm talking about  
2 internal project team members, not external project  
3 team members.

4 MR. MICHEEL: May I approach the witness,  
5 your Honor?

6 JUDGE MILLS: Yes.

7 BY MR. MICHEEL:

8 Q. Let me hand you a spreadsheet, Ms. Dively,  
9 that is derived from the Company's responses to  
10 Public Counsel data request 1004A, 1007A and 10,054  
11 that breaks down by invoice cost, the incremental  
12 cost provided with respect to Y2K. Do those  
13 invoices and costs look familiar to you,  
14 Ms. Dively?

15 A. They do look familiar.

16 Q. And do you see on that first page there  
17 where on the right-hand column we have capital,  
18 project team expense and other expense?

19 A. Yes, I do.

20 Q. Would you take some time and look at how  
21 those items are broken out, and see if you can  
22 quickly agree or disagree with me as to whether or  
23 not those are classified properly?

24 MR. MICHEEL: I just have one copy.

25 JUDGE MILLS: Are you planning to offer

1     this as an exhibit at some point?

2                 MR. MICHEEL:  I wasn't, but we can do  
3     that.  We can make extra copies.

4                 JUDGE MILLS:  If there's going to be a  
5     substantial amount of questioning about it, it  
6     makes it easier to follow in the record if we do  
7     have copies marked.

8     BY MR. MICHEEL:

9                 Q.  Have you had a chance to look at those,  
10    Ms. Dively?

11                A.  Yes, I have.

12                Q.  And are they classified in your mind  
13    properly?

14                A.  I cannot speak to all of these that you  
15    handed to me here, obviously because I haven't had  
16    enough time to go back and review them.

17                Q.  Certainly.

18                A.  But I do see one blatant thing that I  
19    would not classify the way it is classified here,  
20    and that's the cost related to Resilience  
21    Consulting.  You have them under project team  
22    expense.  Resilience Consulting is an outside  
23    consulting company that was hired specifically for  
24    the Y2K costs, and it's an abnormal expense for the  
25    Company.  And when this project was over, that

1 individual to the best of my knowledge will be  
2 gone.

3 So if you were to remove those costs,  
4 they, with a quick addition in my head, are over  
5 300,000 of your total cost of 332. So that would  
6 get you down to the one percent that I was talking  
7 about.

8 Q. Is Mr. Hanson a member of the project  
9 team?

10 A. He is an external member of the project  
11 team.

12 Q. Okay. So he is part of the SUC Y2K  
13 project team; is that correct?

14 A. He is an external member of the Y2K  
15 project team, yes.

16 COMMISSIONER DRAINER: Excuse me. Can I  
17 ask for a clarification so that I know what I'm  
18 looking at?

19 MR. MICHEEL: Yes.

20 COMMISSIONER DRAINER: What you handed the  
21 witness is information that you received from the  
22 data request, and then you consolidated the  
23 information on this sheet? This was not something  
24 that the Company gave to you in this form?

25 MR. MICHEEL: That's correct,

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1 Commissioner. It's something that we got through  
2 discovery that we've attempted to go through and  
3 breakdown and classify as capital costs, project  
4 team expense and other expenses.

5 COMMISSIONER DRAINER: Okay. Thank you.  
6 I just wanted to be clear what I was looking at.

7 MR. MICHEEL: Your Honor, I think it would  
8 probably be best for the record that we reserve a  
9 late filed exhibit with this item and file it.

10 JUDGE MILLS: It would be.

11 MR. HACK: MGE would object to the  
12 admission of this exhibit. We haven't been able to  
13 study it. It obviously was not prepared by us.  
14 It's five pages of densely packed numbers  
15 apparently sorted by Mr. Robertson, and it can't be  
16 verified by us in this time frame, so we'd object  
17 to lack of foundation.

18 JUDGE MILLS: Okay. I think we're getting  
19 a little ahead of ourselves. We haven't got it  
20 marked. We haven't gotten it offered.

21 MR. MICHEEL: Let me lay some foundation,  
22 your Honor.

23 JUDGE MILLS: Let's not do it as a  
24 late-filed exhibit. When we take a recess, if we  
25 can just get three copies made, we can offer them

1 and you can provide copies to the parties and the  
2 rest of the copies to the Bench. We can have it  
3 marked and then we can argue about whether we  
4 should admit it.

5 MR. MICHEEL: Let me ask that this exhibit  
6 be marked as Exhibit No. 9, if I can get it marked,  
7 your Honor?

8 JUDGE MILLS: That's fine.

9 BY MR. MICHEEL:

10 Q. Ms. Dively, do you have before you what's  
11 been marked for purposes of identification as  
12 Exhibit 9?

13 A. I do.

14 Q. And does that appear to you to be expenses  
15 included in response to Public Counsel data request  
16 with respect to the Company's year 2000 project?

17 A. I assume that that's where they came from,  
18 but I can't verify that up here.

19 Q. So you're not familiar with any of those  
20 costs?

21 A. I am familiar with some of them, but I  
22 just can't speak to the entirety of it.

23 Q. Do most of them look familiar to you?

24 A. I would say some of them look familiar to  
25 me.

1           Q.    With the exception of treating the  
2   Consulting Dynamics Group as project team expenses,  
3   did you see any other -- or the Resilience  
4   Consulting as project team expenses, did you see  
5   any other problems that you had?

6           A.    That's the only one off the top of my head  
7   that I saw, but that doesn't mean that I don't  
8   think maybe there are problems with other  
9   classifications. I can't make that determination  
10  by looking at this sheet.

11               MR. MICHEEL: I'll withdraw Exhibit No. 9,  
12  your Honor.

13               JUDGE MILLS: Okay. I'm not sure if this  
14  will make the record more clear or less clear, but  
15  I think since it was never actually marked, we  
16  won't even use Exhibit 9 up, and we'll just call  
17  the next exhibit that comes along 9.

18               MR. MICHEEL: Then why don't we do that,  
19  your Honor. I need to mark another exhibit, and  
20  we'll call that No. 9. I apologize.

21               JUDGE MILLS: All right.

22               (EXHIBIT NO. 9 WAS MARKED FOR  
23  IDENTIFICATION.)

24  BY MR. MICHEEL:

25           Q.    Let me know when you're ready, Ms.



1 Dively.

2 A. I'm ready.

3 Q. Ms. Dively, I've handed you what's been

4 marked for purposes of identification as

5 Exhibit 9. That's the Company's response to Public

6 Counsel data request 1054. And have you had a

7 chance to look at that data request response?

8 A. Yes, I have.

9 Q. And is that indeed the Company's response

10 to that data request?

11 A. Yes.

12 Q. And does that provide all documentation

13 and cost for the Y2K costs?

14 A. All the documentation was voluminous and

15 was provided at the office.

16 Q. I mean, that's a reconciliation of those

17 costs, isn't that correct?

18 A. It attempted to reconcile a schedule that

19 was put together by OPC to this -- the schedule

20 that the Company had put together.

21 MR. MICHEEL: With that, your Honor, I

22 would offer Exhibit No. 9.

23 JUDGE MILLS: Are there any objections to

24 this Exhibit 9?

25 Hearing none, it will be admitted and

1 identified for the record as Public Counsel GR 1054  
2 and MGE response thereto.

3 (EXHIBIT NO. 9 WAS RECEIVED INTO EVIDENCE  
4 AND MADE A PART OF THE RECORD.)

5 BY MR. MICHEEL:

6 Q. Ms. Dively, would you provide me a  
7 definition of an annualized expense or cost  
8 included in rates, your definition?

9 A. An annualized expense included in rates?

10 Q. Uh-huh.

11 A. For instance, a pro forma payroll for an  
12 individual which takes their hourly rate and  
13 multiplies it by the number of hours in a year and  
14 that's the annual expense for that employee.

15 Q. How about an annualized cost, is there any  
16 difference in your mind between cost and expense?

17 A. An annualized cost would -- actually an  
18 employee could be an example of that also. You  
19 might have an employee who works on capital  
20 projects and non-capital projects, you would  
21 annualize it, and you would apply an expense factor  
22 to it, and you would have an expense piece and you  
23 would have a capital piece.

24 Q. Would you provide me your definition of a  
25 normalized expense level or cost level included in

1 rates?

2 A. A normalized cost is a cost that it's at  
3 it's normal base level has variations, and you  
4 would take the normal base level of those costs for  
5 some period of time and maybe take that for your  
6 average of the normal expected cost. And you do  
7 that because sometimes normal costs will have  
8 variations in the amount that's expended. To the  
9 extent you have abnormal costs, you normally remove  
10 them.

11 Q. So there are peaks and valleys, and the  
12 idea of a normalization is to smooth out those  
13 peaks and valleys and determine its normal cost?

14 A. To smooth out the peaks -- the normal  
15 peaks and valleys. If you have an abnormal peak,  
16 you would remove that abnormal peak before you did  
17 the normalization.

18 Q. Let me ask you this: In the Company's  
19 last rate case, GR-98-140, do you know if the  
20 Commission approved in rates a level of legal  
21 expense, legal costs?

22 A. A level of legal costs was approved in the  
23 last rate case.

24 Q. How about a level of overtime payroll?

25 A. A level of overtime payroll was included

1 in this rate case.

2 Q. How about a level of computer maintenance  
3 expense?

4 A. That one I don't specifically know.

5 Q. How about a level for computer software  
6 amortization?

7 A. I don't specifically know that.

8 Q. Do you have any reason to believe that  
9 there wasn't a level of computer maintenance  
10 expense built in to --

11 A. No. I have no reason to believe there  
12 wasn't.

13 Q. Let me ask you this: Did the Commission  
14 disallow or remove any cost associated with  
15 capitalized computer hardware or software that was  
16 found to be used or useful in GR-98-140, if you  
17 know?

18 A. I wouldn't know that.

19 Q. If the capitalized expenditures incurred  
20 for the Y2K project, in this case, are capitalized  
21 plant, isn't it likely that if they are found to be  
22 used and useful in the unamortized portion will be  
23 built into rates in the Company's next general rate  
24 case?

25 A. Yes.

1 Q. When does the Company plan on filing its  
2 next general rate case, Ms. Dively, if you know?

3 A. I wouldn't know.

4 Q. Are you preparing a rate case presently?

5 A. I'm not involved in any type of rate case  
6 preparation.

7 Q. Are you aware of whether the Company is  
8 preparing a rate case?

9 MR. HACK: Asked and answered.

10 Objection.

11 THE WITNESS: No.

12 BY MR. MICHEEL:

13 Q. On page 7 of your surrebuttal testimony,  
14 Exhibit 3 at line 14, you state that the 506,759 is  
15 a 5 percent level for MGE; is that correct?

16 A. Yes, I do.

17 Q. Is it correct that your calculation used  
18 to derive the 5 percent amount includes an interest  
19 amount that reduces revenues?

20 A. Can you say that another way? What are  
21 you asking me?

22 Q. Does your 5 percent calculation include  
23 interest in it, interest expense in it?

24 A. Does the \$506 include interest?

25 Q. The \$506,759 include an amount for

1 interest expense?

2 A. If you're asking me if the number that I  
3 applied the 5 percent to had a reduction for  
4 interest expense, yes, because I believe that  
5 general instruction No. 7 bases it on the income,  
6 the net income of the Company before tax or after  
7 tax, if you tax effect the event.

8 Q. And is that interest expense for purposes  
9 of regulatory accounting, is that an operating  
10 expense?

11 A. No. But it is subtracted to get to your  
12 net income net. Net income from operations  
13 basically.

14 Q. What's the current Y2K expenditures direct  
15 and allocated for MGE right now?

16 A. Right now I don't have the current number  
17 split out just like you're asking me, so I will  
18 give you what I have. We have total costs for MGE  
19 of 903,000. That includes 262,000 of capital costs  
20 and 641,000 of deferred costs, and that's MGE's  
21 allocated piece. We have total Y2K expenditures of  
22 about 1.8 million, with 1.2 million being expense  
23 and 600,000 being capital.

24 Q. Just so I get the MGE cost correct,  
25 Ms. Dively, it's 903,000, is that correct, total?

1           A.    That's as of September 30th, uh-huh.

2           Q.    And it's broken out to 262,000 for capital  
3 costs and 641,000 for deferred costs; is that  
4 correct?

5           A.    That is correct.

6           Q.    Is the 641,000 number that you asked  
7 there, is that the amount that the Company is  
8 seeking to defer via the AAO or there's some  
9 expenses included in that that you're not seeking  
10 deferral for?

11          A.    We are not seeking deferral of the  
12 carrying costs. The original computation, I think  
13 may have had \$5,000 of a carrying cost. However, I  
14 didn't -- in my \$641,000 estimate, I did not update  
15 the depreciation expense or the property tax  
16 expense. And I figure that's probably some offset  
17 there.

18          Q.    Does the \$903,000 total number include the  
19 allocated portion from SUC?

20          A.    Yes.

21          Q.    Does that amount include any accruals?

22          A.    Not to the best of my knowledge.

23          Q.    Is it correct in MGE's last rate case that  
24 it identified many computer software systems  
25 changes that it had done?

1           A.    I don't know.

2           Q.    Let me just ask you, are you aware of the

3 most recent customer service system upgrade that

4 MGE undertook?

5           A.    I am aware that there was some issues with

6 the customer service system, but I really wasn't

7 privy to any of the information.

8           Q.    Were you aware that the Company upgraded

9 its premiss data system?

10          A.    No.

11          Q.    Were you aware that the Company upgraded

12 its FPI main segmentation system?

13          A.    No.

14          Q.    Were you aware that the Company upgraded

15 its land-based digital mapping system?

16          A.    No. And I point out that an upgrade can

17 be anything from a very, very, very minor change to

18 a program to something that's much more

19 significant. An upgrade is a word that is used

20 very, very loosely.

21          Q.    Do you know whether or not the Company

22 developed any of these software systems on their

23 own or whether they purchased them all from outside

24 vendors?

25          A.    I have no idea.



1           Q.    Do you know, just as general business,  
2   when you're putting in a different computer system  
3   or upgrading a computer system, whether you test  
4   those systems prior to implementing them?

5           A.    It's my understanding that that's a normal  
6   practice.

7           Q.    So you would agree that prior to putting  
8   in a new computer system or software system in  
9   place, the Company tests those items fully, isn't  
10   that correct?

11          A.    Well, I'm going to -- I have a concern  
12   with the word fully.  The Company tests the system  
13   for its functionality.  The Company does what would  
14   be a reasonable test of functionality of that  
15   system, that computer hardware.  But I would never  
16   agree with the word fully.  There may be some  
17   aspects of testing a system that Company may not  
18   choose to do.

19          Q.    For example, are you aware in GR-98-140  
20   that the Company made some changes to its billing  
21   system to prevent some billing errors that  
22   occurred --

23          A.    Yes.

24          Q.    -- that had occurred in the past?

25          A.    I am aware of that.

1           Q.    And do you know whether or not the Company  
2   before implementing that system tested those to  
3   make sure it worked as it was supposed to or drawn  
4   up on the drawing board?

5           A.    No, I do not know that.  I would assume  
6   that they did, but I do not know that.

7           Q.    Do you think that testing would be a  
8   prudent business decision on part of the Company  
9   prior to implementing a new system?

10          A.    For functionality, yes.

11          Q.    On page 9 of your surrebuttal testimony,  
12   Ms. Dively, you indicate that MGE and SUC have  
13   incurred costs to investigate vendors and suppliers  
14   Y2K compliance, isn't that correct?

15          A.    Yes.

16          Q.    Is it correct that the vendor, supplier  
17   investigation consisted primarily of just sending  
18   letters requesting compliance information from the  
19   company or companies?

20          A.    I know that that was one aspect of it.  I  
21   think to the extent that there were -- the vendor  
22   provided internal systems, the actual systems were  
23   tested in addition to getting the compliance  
24   statement from the company.

25          Q.    Do you know what the costs were of those

1 that were incurred for those types of activities?

2 In other words, the vendor and supplier  
3 investigation?

4 A. No, I do not.

5 Q. Do you know if those were -- the vast  
6 majority of those costs were from law firms sending  
7 letters to vendors or suppliers?

8 A. No, I do not. The total legal costs that  
9 I had was, like, 18,200 that I had identified out  
10 of the total 1.8 million.

11 Q. On page 9 of your surrebuttal testimony,  
12 you discuss the fact that MGE has developed  
13 contingency plans; is that correct?

14 A. Yes.

15 Q. Is it correct that most, if not all of the  
16 costs incurred to develop the contingency plans  
17 were incurred by the Y2K project committee  
18 personnel?

19 A. I don't know that.

20 Q. Let me ask you this: Does the Company's  
21 current rates have a normalized level of employee's  
22 salaries and associated expenses built in?

23 A. Yes. That's why there are no payroll  
24 costs in here other than if we anticipate having  
25 some incremental overtime in the costs that are

1 primarily on January 1st as part of the contingency  
2 plan in the event that there is a disaster that  
3 we're not aware of, and that is a definitely  
4 identifiable incremental cost to the Company.

5 Q. On page 10 of your surrebuttal testimony,  
6 you cite Mr. Robertson's testimony presented in the  
7 Union Electric case; is that correct?

8 A. Yes.

9 Q. Did you read all of Mr. Robertson's  
10 testimony presented in that case, Ms. Dively?

11 A. I don't think I read the whole thing, no.

12 Q. And why didn't you read the whole thing,  
13 Ms. Dively?

14 A. There's some issues in there that weren't  
15 relevant to the Y2K issue.

16 Q. And you opined that how?

17 A. I didn't understand that.

18 Q. How did you figure that out that there  
19 weren't issues that were relevant to the Y2K issues  
20 in that testimony?

21 A. I don't have his testimony in front of me  
22 to look at. I may have misspoken, but I thought  
23 there was more than just the Y2K issue that he  
24 addressed. And to the extent I looked at a lot of  
25 different testimony in the UE case, and to the

1 extent that there were things being discussed that  
2 weren't related to Y2K, I didn't bother reading  
3 them.

4 Q. So you did read the testimony of all other  
5 participants with respect to Y2K in that case; is  
6 that correct?

7 A. Not all other participants.

8 Q. Did you read, for example, Union  
9 Electric's testimony in that case?

10 A. No, I did not.

11 Q. So you weren't aware of whether or not  
12 Union Electric was claiming that the Y2K expenses  
13 were not indeed extraordinary; is that correct?

14 A. I'm only aware to the extent that you can  
15 infer those things from the rebuttal and  
16 surrebuttal testimony of Ms. Westerfield and  
17 Mr. Robertson.

18 Q. Okay. So you only read Ms. Westerfield's  
19 and Mr. Robertson's testimony in that case?

20 A. Yes.

21 Q. Is it correct that Mr. Robertson's UE  
22 testimony states that Y2K costs incurred by UE were  
23 not extraordinary?

24 A. Yes.

25 Q. Okay. Do you know whether or not

1 Mr. Robertson recommended that all of UE's Y2K  
2 costs be capitalized?

3 A. Yes. I think he made that recommendation.

4 Q. Do you know why Mr. Robertson did not  
5 split out the year 2000 UE Y2K expenses from the UE  
6 Y2K capital cost?

7 A. I recall that he said that he felt that  
8 the activities extended the life of the various  
9 pieces of the plan.

10 Q. Let me ask you this: If a computer system  
11 becomes obsolete and then something is done to  
12 extend its life, doesn't the authoritative  
13 accounting literature state that the cost incurred  
14 should be capitalized and amortized over the life  
15 of the system?

16 A. There are other pronouncements that  
17 specifically address software types of costs that  
18 require expensing according to general account  
19 principals, you know, having said that should the  
20 Commission decide that the appropriate thing to do  
21 is capitalize all these costs, not to defer them.  
22 That's certainly an option. And with the  
23 Commission's ruling, the Company then can do that  
24 under FASB 71. But the Company with the other  
25 authoritative pronouncements that are out that have

1     been promulgated cannot just choose to expense  
2     certain software testing costs without the  
3     Commission's ruling.

4           Q.    What authoritative pronouncements are you  
5     discussing in your answer?

6           A.    I do not have them in front of me,  
7     so . . .

8           Q.    So you don't know their numbers if it's an  
9     ETIF --

10          A.    No. I don't know the numbers off the top  
11     of my head.

12          Q.    -- pronouncement or --

13          A.    I see you're aware of them also, but I do  
14     not have them with me.

15          Q.    Okay. So you're not -- let me ask you  
16     this: Do you know whether or not the Southern  
17     Union Company has adopted SOP 98-1 for use in its  
18     accounting?

19          A.    I'm not aware.

20          Q.    Okay. Who would know that at the Company,  
21     if you know?

22          A.    Stuart Harper.

23          Q.    On page 13 you discuss -- of your  
24     surrebuttal testimony, again, Exhibit, I believe  
25     it's 3, you discuss Case No. 00-99-43; is that

1 correct?

2 A. I mention it.

3 Q. Why was that case established, Ms. Dively?

4 A. As I stated here, it's my understanding

5 that the Commission wanted to open a case to look

6 at the Y2K issues in order to make sure that it was

7 meeting its mission of ensuring public safety. The

8 Commission was concerned that if the Y2K issues

9 were not addressed, that if there were safety

10 issues later, I would assume that they would feel

11 remiss in not having looked at it.

12 Q. Did Case No. 00-99-43 approve ratemaking

13 treatment for Y2K costs, Ms. Dively?

14 A. I don't know the final outcome of that

15 case. My point was to make -- the reason that I

16 mention it here is to show that Y2K issues are a

17 national concern. They're huge. It's an abnormal

18 event. It's such an abnormal event that the

19 Commission itself entered into this docket to look

20 at it. Now, that's why it's here for me.

21 Q. And you know that's why the Commission

22 opened that docket because it's an abnormal event;

23 is that your testimony today, Ms. Dively?

24 A. I inserted those words. I do not know

25 what the actual intent was, but I know that we have



1 the docket specifically to address Y2K cost, and  
2 I -- you know, no one -- that is abnormal to the  
3 best of my knowledge.

4 Q. Do you know whether or not the Commission  
5 has opened generic dockets, for example, to look at  
6 the other issues before the Commission?

7 A. I think that that has happened, to look at  
8 other issues. But this specific issue drew a lot  
9 of attention both from the Commission and  
10 nationally.

11 Q. Did Case No. 00-99-43 approve deferral of  
12 Y2K costs, Ms. Dively?

13 A. I'm not aware that it did, but I'm not  
14 aware of the final outcome of that case.

15 Q. Did that docket portend any type of  
16 ratemaking treatment?

17 A. I don't know.

18 Q. How many companies that are regulated by  
19 the Missouri Public Service Commission have  
20 received a year 2000 AAO outside of the Stipulation  
21 and Agreement?

22 A. I don't know that.

23 Q. Did you undertake any sort of  
24 investigation to determine whether or not since  
25 this is such a worldwide issue and nationwide issue

1     whether or not other Missouri utilities had  
2     requested year 2000 AAOs?

3           A.    No.  I did not believe it was relevant to  
4     whether or not we chose to request an AAO.  We  
5     don't know why other people choose to do or not to  
6     do what's available to them.

7           Q.    Are you aware that specifically Union  
8     Electric and St. Joseph Light and Power have  
9     claimed that the year 2000 expenses are not  
10    extraordinary, unique?

11          A.    I'm aware that UE did to the extent that I  
12    read the material, and it was in their best  
13    interest to do so in that docket.

14          Q.    Okay.  And are you aware about St. Joe  
15    Light and Power?

16          A.    No.

17          Q.    Did you read Mr. Robertson's testimony?

18          A.    Yes, I did.

19          Q.    Did he discuss that fact in this  
20    testimony?

21          A.    I don't recall off the top of my head.

22          Q.    On page 14 of your surrebuttal testimony,  
23    and I'm focusing on lines 11 through 12, you state  
24    that testing systems for Y2K compliance has never  
25    been a normal business activity of the Company; is

1     that correct?

2           A.     That is correct.

3           Q.     And I think we've already established

4     this, but the Company did test its billing and

5     customer service systems when it re-engineered them

6     in 1998 and '99, isn't that correct?

7           A.     No.

8           Q.     They didn't test those systems?

9           A.     No, they didn't test them.  When they were

10    acquiring those systems, they asked of the vendors

11    whether or not the systems would be functional in

12    the year 2000.  It was a part of the normal inquiry

13    process of purchasing that software.  That software

14    was tested to -- related to the functionality at

15    that time.

16          Q.     Perhaps my question was inartfully

17    worded.  We had discussed earlier the changes that

18    the Company had made in their billing system to

19    prevent billing errors that had occurred in the

20    '96, '97 time frame.  Do you recall those

21    questions?

22          A.     Yes, I do.

23          Q.     And do you know whether or not the Company

24    tested those systems after they were re-engineered?

25          A.     No, I don't know.  I assume that they did.

1 Q. I think that was your answer --  
2 A. Yes.  
3 Q. -- earlier that you thought that they did  
4 test them.  
5 A. Yeah. I think they did, but . . .  
6 Q. Would you agree with me that testing  
7 systems is something a company does before placing  
8 a system in service?  
9 A. Testing the functionality of the system  
10 for its intended purposes.  
11 Q. For example, the automatic meter reading  
12 system that the Company employs, are you familiar  
13 with that?  
14 A. Yes.  
15 Q. Do you know whether or not they tested  
16 that system before they rolled it out?  
17 A. Yes.  
18 Q. That's something that you do before when  
19 you do any sort of technology upgrade, isn't that  
20 correct?  
21 A. You test the functionality of the system.  
22 Q. Let me ask you this, if you know: Has  
23 Public Counsel objected to MGE capitalizing its Y2K  
24 capital costs?  
25 A. I don't know.

1           Q.    Are any operation maintenance and AFUDC  
2 amounts included in the proposed deferrals?

3           A.    There are no AFUDC amounts and maintenance  
4 costs, no.

5           Q.    Operation maintenance?

6           A.    There are only incremental costs related  
7 to the Y2K activities.

8           Q.    And you would agree with me that the Staff  
9 has objected to including capital cost in the  
10 deferrals; is that correct?

11          A.    Yes.  And the Company did not intend to  
12 propose that the capital costs would be included in  
13 the deferrals.

14          Q.    Are you aware that the Itron Company, who  
15 is the provider for the automated meter reading  
16 systems provided MGE with software and hardware to  
17 make its system Y2K compliant free of charge?

18          A.    I am aware that it provided the Company  
19 with software.  I think the hardware was Y2K  
20 compliant.

21          Q.    Was the Infinium accounting system  
22 represented to be Y2K compliant when it was  
23 purchased?

24          A.    To the best of my knowledge it was, but  
25 the Company would be remiss in not testing those

1 systems. Even today regardless of whether it was  
2 disclosed to the Company that the systems were Y2K  
3 compliant, if the Company did not test those  
4 systems for that compliance, it would be remiss  
5 indeed if something were to go wrong.

6 Q. Did the system indeed need upgrading?

7 A. I'm not aware if they were individual  
8 upgrades or patches required to the AS400. I'm not  
9 sure if it was internal programming that took  
10 place.

11 Q. Let me talk to you about the customer  
12 service and phone system, the new phone system.  
13 Was that represented as being Y2K compliant when it  
14 was purchased?

15 A. I do not know.

16 Q. Have you read Mr. Gemereth's testimony?

17 A. Yes, I did.

18 Q. Do you know whether or not he claims it  
19 was --

20 A. I don't recall.

21 JUDGE MILLS: Let's take a 10-minute  
22 recess. We're off the record.

23 (OFF THE RECORD.)

24 JUDGE MILLS: Please proceed,  
25 Mr. Micheel.

1 BY MR. MICHEEL:  
2 Q. Ms. Dively, has the Company's cash flow  
3 been significantly impaired by the year 2000  
4 expenditures?  
5 A. I can't specifically address cash flow. I  
6 would doubt it.  
7 Q. When would you consider the Company's  
8 financial position to be impaired?  
9 A. I can't make that determination.  
10 Q. Has MGE incurred outside computer  
11 programmer cost for other projects not related to  
12 the year 2000 issue?  
13 A. Yes.  
14 Q. Did you work as a consultant for MGE  
15 during their last rate case, GR-98-140?  
16 A. Yes.  
17 Q. How much were you paid?  
18 A. I don't recall.  
19 Q. Ballpark?  
20 A. I don't recall. I really don't.  
21 Q. Over \$100,000?  
22 A. For the one rate case, I doubt it. I  
23 don't recall.  
24 Q. Did the Company request an AAO for your  
25 services?

1           A.    No.

2           Q.    On the project team costs, do they exclude

3           items that do not apply to MGE or all of the costs

4           just going to be allocated pursuant to the

5           allocation method determining GR-98-140?

6           A.    The project team cost, I assume you mean

7           the travel and the project administration, all of

8           those costs I do not recall exactly how we proposed

9           to allocate them. I could get the data response

10          that showed how we proposed to allocate them, but I

11          do not recall.

12          Q.    Is it correct that the Company was seeking

13          to defer some outside programmer expenses?

14          A.    To the extent that the outside programmers

15          are working on the Y2K project and the Y2K project

16          is an abnormal event and the costs are incremental

17          to the Company, yes.

18          Q.    What are the programmers' functions? What

19          do they do?

20          A.    I can only answer program.

21                MR. MICHEEL: I need to get an exhibit

22          marked, your Honor.

23                JUDGE MILLS: Okay. We're up to No. 10.

24                (EXHIBIT NO. 10 WAS MARKED FOR

25          IDENTIFICATION.)



1 BY MR. MICHEEL:  
2 Q. Take a look at that and let me know when  
3 you're ready, Ms. Dively.  
4 A. I'm ready.  
5 Q. Ms. Dively, do you have before you what's  
6 been marked for purposes of identification as  
7 Exhibit 10, MGE's response to Public Counsel data  
8 request 1055?  
9 A. Yes.  
10 Q. And with the exception of the work paper  
11 that was marked highly confidential that is not  
12 attached so we can make this a public document, is  
13 that the Company's response to that data request?  
14 A. It is.  
15 Q. And is it correct to the best of your  
16 knowledge and belief?  
17 A. It is.  
18 MR. MICHEEL: Your Honor, I would move for  
19 the admission of Exhibit 10.  
20 JUDGE MILLS: Are there any objections to  
21 the admission of Exhibit 10? Hearing none it will  
22 be admitted.  
23 (EXHIBIT NO. 10 WAS RECEIVED INTO EVIDENCE  
24 AND MADE A PART OF THE RECORD.)  
25 MR. MICHEEL: That's all the

1 cross-examination that I have for Ms. Dively.  
2 Thank you very much.  
3 JUDGE MILLS: Thank you.  
4 QUESTIONS BY JUDGE MILLS:  
5 Q. I have just a couple of questions for  
6 you. One actually is from Mr. Gemereth's testimony  
7 and is really in the nature of a clarification  
8 question that I'm hoping you can answer.  
9 Do you have a copy of his testimony with  
10 you?  
11 A. No, I don't.  
12 MR. HACK: May I approach the witness and  
13 stand up here with her as she reads it?  
14 JUDGE MILLS: Sure.  
15 BY JUDGE MILLS:  
16 Q. On page 6?  
17 A. Yes, sir.  
18 Q. It's starting a lines -- oh, about the  
19 sentences -- the two sentences beginning at line 5  
20 and continuing with line 8. And I think it's just  
21 maybe my reading or perhaps it's not worded very  
22 well. The customer service system was replaced in  
23 1995?  
24 A. Yes. The customer service system was  
25 acquired as part of the acquisition of MGE and was

1 implemented across the Southern Union Companies in  
2 1995.

3 Q. Okay. Because the problem sentence says  
4 it was implemented by Southern Union's predecessor  
5 in 1991?

6 A. And that is exactly what I was trying to  
7 say, is that particular system was implemented in  
8 MGE back in 1991. Then the company was acquired by  
9 Southern Union and fully implemented the CSS system  
10 in 1995 across the entire company.

11 Q. I understand. Okay. Now, the next  
12 question I had is when the Commission was trying to  
13 determine or if the Commission wants to try to  
14 determine materiality of these expenses, should we  
15 be looking at the total cost to Southern Union's  
16 operating income, or should we be looking at the  
17 costs allocated to MGE relative to MGE's operating  
18 income?

19 A. That is an issue that I think there are  
20 different opinions on that particular issue. I  
21 believe --

22 Q. Why don't you just give me yours?

23 A. My opinion is that it should be the total  
24 company. It's a total company issue.

25 JUDGE MILLS: That's all the questions

1     that I have. Are there questions from the parties  
2     based on those questions?

3             MR. MICHEEL: I have one, your Honor.

4             JUDGE MILLS: Okay. Staff, first?

5             MR. BATES: No, your Honor. I'm sorry.

6             JUDGE MILLS: Mr. Micheel.

7     FURTHER CROSS-EXAMINATION BY MR. MICHEEL:

8             Q. Judge Mills asked you a question about  
9     setting materiality, the materiality threshold, do  
10    you recall those questions?

11            A. Yes.

12            Q. Is it correct that MGE's rates are set on  
13    MGE's costs specifically and not total SUC costs?

14            A. Yes. Except for the fact that we do have  
15    allocated joint and common costs which are incurred  
16    back to corporate.

17            Q. And are those allocated joint and common  
18    costs are to reimburse the SUC corporate costs for  
19    items that those folks do that relate to providing  
20    service in Missouri, isn't that correct?

21            A. Yes. And another way to look at it is  
22    that MGE's books do not reflect its true net  
23    income, and so what we have to do is allocate the  
24    joint and common cost to MGE so that the books can  
25    reflect its true operations.

1                   MR. MICHEEL: Thank you, Ms. Dively.

2                   JUDGE MILLS: Redirect?

3   REDIRECT EXAMINATION BY MR. HACK:

4           Q.     Has Public Counsel proposed that in this

5   case that MGE capitalize its Y2K costs?

6           A.     No.

7           Q.     In order for MGE to do so consistent with

8   generally accepted accounting principals, other

9   requirements, would we need an Order from the

10   Commission?

11          A.     Yes.

12          Q.     Are you aware whether or not Laclede was

13   granted a Y2K AAO in its 1998 rate case?

14          A.     I'm under the impression that they were.

15          Q.     You have talked a little bit about

16   functionality testing of computer systems. What do

17   you mean by that?

18          A.     Functionality testing relates to testing

19   the hardware and/or the software to perform the

20   function which it's purchased to perform. So a

21   billing system, you purchase a billing system, you

22   test it to verify that it's going to produce bills

23   accurately and efficiently as expected.

24          Q.     And would that functionality testing

25   routinely include Y2K compliance testing?

1           A.    No, it would not.  It has not.  It never  
2   has.

3           Q.    OPC in cross-examination asked you to look  
4   at DR No. 1007.  I believe it's been marked as  
5   Exhibit 8.  Do you have that in front of you?

6           A.    Yes, I do.

7           Q.    What is the date of the Company's response  
8   to that DR?

9           A.    January 22, 1999.

10          Q.    And I think you discussed with Mr. Micheel  
11   that the Company's estimate of Y2K cost has since  
12   changed?

13          A.    Yes, it has.

14          Q.    The current estimate is what now?

15          A.    Four and a half million.

16          Q.    And as you sit here today, do you have  
17   any opinion as to whether or not Southern  
18   Union will come in overall under that  
19   four-and-a-half-million-dollar budget?

20          A.    I believe that Southern Union will come in  
21   under the four-and-a-half-million-dollar budget  
22   probably closer to three and a half.  That is my  
23   opinion.  What I see is a company that is very  
24   interested in keeping the Y2K cost as low as  
25   possible, so we construe any decrease in the

1 anticipated cost to be a positive thing and are  
2 trying every effort to reduce the overall costs.

3 Q. You were also asked, I believe some  
4 questions about the Infium system, which I think  
5 was rolled out when?

6 A. I think it was in 1995.

7 Q. As well as the CSS system, which was  
8 rolled out for MGE's predecessor in -- when was  
9 that?

10 A. '91.

11 Q. And for Southern Union?

12 A. In '95.

13 Q. In '95. Do you have an opinion as to what  
14 impact -- let me back up a little bit.

15 Were those systems represented at the time  
16 they were rolled out to be Y2K compliant?

17 A. It is my understanding that they were.

18 Q. By the vendors?

19 A. By the vendors.

20 Q. Do you have an opinion as to what impact,  
21 if any, the foresight on the part of the Company to  
22 purchase Y2K compliant systems well in advance of  
23 the year 2000 had on its overall Y2K costs?

24 A. Yes. I believe it substantially reduced  
25 the Y2K costs. Regardless of whether it had been

1 represented to the Company to be Y2K compliant, the  
2 Company would have had to test those systems for  
3 compliance. However, if it had not been addressed,  
4 there could have been substantial programming  
5 dollars required in order to fix any Y2K issues.  
6 So overall the Y2K expenses that we're looking at  
7 today are substantially less than what they  
8 probably would have been had the Company not had  
9 that foresight.

10 Q. And just for the benefit of the record,  
11 what does the Infinium system do?

12 A. The Infinium system is basically the  
13 financial package, general ledger, payroll,  
14 employee management.

15 Q. It is also known by the name S2K?

16 A. S2K, Infinium -- I'm sorry.

17 Q. In discussing with Mr. Micheel the  
18 Company's PC, personal computer, change-out plan, I  
19 think you indicated that it was the Company's  
20 policy to change out one-third of its computer  
21 systems annually. Did you mean to say that?

22 A. No. I think I meant to say personal  
23 computer systems.

24 Q. Okay.

25 A. And this is a new policy, I might add,



1     that is subject to change. It may not end up that  
2     way.

3             Q.    Mr. Micheel also asked you about why the  
4     Company chose to file an AAO. Can you answer that  
5     question again for me, please?

6             A.    Yes. The Company chose to file an AAO to  
7     set aside the issue of whether the event is  
8     extraordinary.

9             MR. HACK: That's all I have.

10            JUDGE MILLS: Thank you. You may step  
11     down.

12            (WITNESS IS EXCUSED.)

13            JUDGE MILLS: Mr. Bates, your witness,  
14     please?

15            MR. BATES: Yes, your Honor. We call to  
16     the stand Charles Hyneman.

17            MR. HACK: Before we get started, MGE  
18     would like to offer Exhibit 1, direct testimony of  
19     Rick Gemereth.

20            JUDGE MILLS: Are there any objections to  
21     the admission of Mr. Gemereth's testimony?

22            Hearing none, it will be admitted.

23            (EXHIBIT NO. 1 WAS RECEIVED INTO EVIDENCE  
24     AND MADE A PART OF THE RECORD.)

25            (WITNESS SWORN.)

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1 JUDGE MILLS: Please, go ahead.

2 MR. BATES: Thank you, your Honor.

3 CHARLES HYNEMAN, being first duly sworn, testified

4 as follows:

5 DIRECT EXAMINATION BY MR. BATES:

6 Q. Would you please state your name for the

7 record?

8 A. Charles R. Hyneman.

9 Q. And what is your business address?

10 A. It's 3675 Noland Road, Independence,

11 Missouri 64055.

12 Q. Mr. Hyneman, did you prepare and cause to

13 be filed rebuttal testimony, which has been marked

14 for purposes of identification in this case as

15 Exhibit No. 4?

16 A. Yes.

17 Q. Are there any corrections, changes or

18 additions to that testimony which you would want to

19 make at this time?

20 A. No.

21 Q. If I asked you the same questions today,

22 would your answers be the same?

23 A. Yes, they would.

24 Q. Are your answers true and accurate to the

25 best of your information, knowledge and belief?

1           A.    Yes, they are.

2                   MR. BATES:  Your Honor, with that I move

3   for admission of Exhibit No. 4 at this time.

4                   JUDGE MILLS:  Are there any objections to

5   the admission of Exhibit 4?  Hearing none, it will

6   be admitted.

7                   (EXHIBIT NO. 4 WAS RECEIVED INTO EVIDENCE

8   AND MADE A PART OF THE RECORD.

9                   MR. BATES:  And, your Honor, I tender this

10   witness for cross-examination.

11                  JUDGE MILLS:  Thank you.

12                  MGE?

13                  MR. HACK:  I'd love to ask Chuck some

14   questions -- Mr. Hyneman, but no questions at this

15   time.

16                  JUDGE MILLS:  Mr. Micheel?

17                  MR. MICHEEL:  Yes, your Honor.

18   CROSS-EXAMINATION BY MR. MICHEEL:

19                  Q.    Would you agree with, Mr. Hyneman, that

20   Laclede Gas Company sought deferral of year 2000

21   costs in a previous case, GR-98-374?

22                  A.    I'm aware that they sought deferral of

23   year 2000 costs in their last rate case.  Prior to

24   their last rate case.  I'm not sure of the number.

25                  Q.    And are you aware that that rate case was

1 settled by a Stipulation and Agreement?

2 A. Are you talking about the case where

3 they -- the Stipulation and Agreement included the

4 agreement to recommend year 2000 AAO.

5 Q. That's correct. Why don't you turn to

6 page 2 of your rebuttal testimony, Mr. Hyneman, and

7 that's been marked as Exhibit No. 4. And I'm

8 focusing on your Q and A starting there at line

9 18. And I'm focusing specifically on your answer

10 there at 20 and 21.

11 A. Oh, okay. Yes, I agree.

12 Q. Would you agree with me, Mr. Hyneman, that

13 that case was settled by a Stipulation and

14 Agreement?

15 A. Yes, it was.

16 Q. Would you agree with me, Mr. Hyneman, that

17 no other Missouri utility sought deferral authority

18 for its year 2000 costs?

19 A. Other than Laclede, that statement is

20 correct.

21 Q. And indeed you so state in your rebuttal

22 testimony, isn't that correct? Again, on page 2.

23 A. Could you direct me where that statement

24 is?

25 Q. Sure. Lines 21 and 22.

1           A.    Correct.

2           Q.    And isn't it a fact that AmerenUE and

3   St. Joe Light and Power took the position that year

4   2000 costs were normal computer costs, isn't that

5   correct?

6           A.    Yes.  In my opinion because it was in the

7   best interest of the company to take that position.

8           Q.    And you so state that in your rebuttal

9   testimony, isn't that correct?

10          A.    Yes, I do.

11          Q.    Would you agree with me, Mr. Hyneman, that

12   we should look only at the specific facts and

13   circumstances surrounding an event to determine

14   whether deferral is appropriate?

15          A.    I would definitely look at the specific

16   facts and circumstances surrounding that event, but

17   I would also include Commission practice, policy

18   and precedent in a determination for the Staff to

19   recommend deferral authority.

20          Q.    So on page 5 of your rebuttal testimony

21   where you state, starting at line 14, The Staff

22   believes that each extraordinary event is unique

23   and the accounting treatment for each extraordinary

24   event ought to be tied to specific facts and

25   circumstances surrounding that event, you would

1     also add now look at past precedent also?

2           A.   Well, that statement is true as written,  
3     but in a more encompassing view, I think you would  
4     be remiss to not look at past precedent to see how  
5     such costs have been treated in the past.

6           Q.   Is it correct that your belief that the  
7     year 2000 costs that Staff and the Company have  
8     agreed to defer here are in your view more akin to  
9     the fact of God-type AAOs, isn't that correct?

10          A.   That is not correct.

11          Q.   Would you turn to page 6, lines 17 and 18  
12     of your rebuttal testimony?

13          A.   I'm there.

14          Q.   And I'm focusing there. Isn't it correct  
15     that in that paragraph you state that the costs are  
16     more akin to the act of God-type AAOs?

17          A.   No. And if I'm going to address this, I  
18     read this point in Mr. Robertson's testimony, and I  
19     won't say he did it intentionally, but I think his  
20     characterization and my statements are out of  
21     context. And if you read the question at the  
22     bottom of page 5 it's, how do MGE's SLRP AAO  
23     deferrals differ from its proposed year 2000  
24     deferrals. So throughout that answer to that  
25     question, I was merely explaining the difference in

1 the two AAO deferrals. That's all the question --  
2 the answer was intended to do.

3 Q. So is it your testimony, Mr. Hyneman, that  
4 the year 2000 AAO is not akin to the act of  
5 God-type AAOs?

6 A. Akin? I'm not too sure how you would  
7 define akin.

8 Q. Similar to.

9 A. They are similar in the fact that Staff  
10 believes they are extraordinary events. But I  
11 think what your focus was on, was that I was  
12 characterizing that they were similar because they  
13 have a shorter deferral period than the MGE service  
14 line of replacement program.

15 Q. Let me ask you this, Mr. Hyneman: Would  
16 you agree that the year 2000 issue was caused when  
17 programmers saved space and processing time by  
18 storing the absolute minimum amount of data  
19 necessary for business functions, therefore they  
20 used the date field using only the last two digits  
21 of the year?

22 A. Yes. It's my understanding that memory at  
23 that time was very, very expensive. And to cut  
24 costs they took that shortcut. Now, whether they  
25 are aware that it would result in costs later on,

1 I'm not aware.

2 Q. So that was a conscious decision made by  
3 the computer programmers at that time to use two  
4 digits, isn't that correct?

5 A. Not being a computer programmer, that's  
6 what I've read.

7 Q. Do you have any reason to doubt that,  
8 Mr. Hyneman?

9 A. No, I don't.

10 Q. Did you read Mr. Gemereth's testimony?

11 A. The MGE witness, Mr. Gemereth?

12 Q. Yes.

13 A. Yes.

14 Q. And doesn't Mr. Gemereth so state in his  
15 direct testimony in this case?

16 A. Don't recall.

17 Q. Okay. Provide your understanding of the  
18 phrase incremental operating expenses for me.

19 A. In the context of the Stipulation and  
20 Agreement reached between the Company and the  
21 Staff?

22 Q. I just want generally for right now.

23 A. Generally. Incremental operating expenses  
24 will be cost -- expenses as opposed to capital  
25 costs incurred directly as a result of an event or



1 transaction.

2 Q. Would you agree with me that there's a  
3 difference between the items defined as capital  
4 items and items defined as operating expenses?

5 A. Certainly.

6 Q. Would you agree with me that Staff has not  
7 specifically audited or listed the specific costs  
8 that are proposed by the Stipulation and Agreement  
9 to allow MGE to defer?

10 A. Intentionally did not set out a list of  
11 specific costs, correct.

12 Q. And you haven't audited any of the costs  
13 that are presently being incurred, isn't that  
14 correct?

15 A. Well, that would depend on your definition  
16 of audit.

17 Q. Have you reviewed any of the invoices to  
18 identify what the costs were incurred for?

19 A. I reviewed invoices just to the extent to  
20 read the invoices that were provided to OPC by the  
21 Company. But I didn't look at any invoices in a  
22 determination that I made, no.

23 Q. Would you agree with me the fact that in  
24 the context of the settlement that Laclede Gas  
25 Company was authorized to defer year 2000 costs

1     that it should not have precedential value in this  
2     context in this case?

3           A.    I would agree with that, yes.

4           Q.    Would you agree that Laclede Gas Company  
5     subsequently did not get specific recovery of its  
6     2000 deferrals?

7           A.    I'm aware that that's an opinion held by  
8     certain individuals involved with the case.  I'm  
9     not sure what dollars were any requirement of  
10    calculation under the settlement number.

11          Q.    Because that was a settlement, isn't that  
12    correct?

13          A.    I think that issue -- the issue of the  
14    accounting authority order, I think it was bundled  
15    issue of settlement, so I don't know specifically  
16    about recovery on those issues.

17          Q.    Do you know whether or not the Company  
18    received rate base treatment for any Y2K expenses?

19          A.    I don't think they -- in fact, I'm sure  
20    they did not.

21          Q.    Would you agree with me, Mr. Hyneman, in  
22    Missouri Gas Energy's last rate case, GR-98-140,  
23    there was a level built into rates for legal  
24    expense?

25          A.    Yes, I would.

1 Q. Could you agree with me in their last rate  
2 case, their being MGE's, GR-98-140, there was a  
3 level built into rates for MGE's overtime expense?

4 A. Normalized level of overtime, correct.

5 Q. Would you agree with me that other than  
6 MGE's estimates of the total Southern Union  
7 Corporation's year 2000 costs, you don't know the  
8 exact level of year 2000 expenses, isn't that  
9 correct?

10 A. I wouldn't believe that anyone knows the  
11 correct level of year 2000 expenses.

12 Q. I note in both your testimony, your  
13 rebuttal testimony and the Stipulation and  
14 Agreement, the Nonunanimous one filed that you  
15 recommend a 10-year amortization period for the  
16 year 2000 deferrals; is that correct?

17 A. For booking purposes, yes.

18 Q. And would you agree with me that the short  
19 period, the 10 years is consistent with the life of  
20 computer systems found to be reasonable by the  
21 Commission in a prior MGE rate case, GR-96-285?

22 A. That was for an account computer  
23 equipment, which encompasses, I think at that time  
24 even software and computer equipment and possibly  
25 even office furniture equipment. But the rate

1 determined for that account was at 10 percent.

2 Q. And was it a 10-year-amortization period;  
3 is that correct?

4 A. Uh-huh.

5 Q. And did you state that on page 20 of your  
6 rebuttal testimony, correct?

7 A. I believe so.

8 Q. And if I understand your testimony there  
9 at page 20, lines 1 through 7, one of the reasons  
10 that you have recommended the 10-year period is  
11 because the Commission determined that MGE's useful  
12 life of computer systems is only 10 years, isn't  
13 that correct?

14 A. Right. The 10-year figure which the Staff  
15 proposed for booking purposes now, not for  
16 ratemaking purposes, was based on the 10-year  
17 figure ordered by the Commission in that rate  
18 case.

19 Q. Well, none of the items deferred are  
20 guaranteed for ratemaking purposes pursuant to an  
21 AAO, isn't that correct, Mr. Hyneman?

22 A. That's correct.

23 Q. So when I'm asking my questions, I'm not  
24 asking about the ratemaking treatment, because I  
25 think we all understand that this isn't about

1     ratemaking treatment today, isn't that correct?

2           A.     Well, I made a distinction because in the  
3     Stipulation and Agreement that was agreed to, was  
4     that 10 years would be used for ratemaking purposes  
5     also. The Staff proposed and if you recall in the  
6     Staff recommendation, our proposal was 10 years for  
7     booking purposes, not for ratemaking.

8           Q.     So it's your testimony that the  
9     Nonunanimous Stipulation and Agreement requires  
10    certain ratemaking treatment; is that correct?

11          A.     It doesn't require it, no. The only thing  
12    that it does do is that the parties have agreed  
13    that it would be used. It doesn't determine any  
14    ratemaking recovery whatsoever.

15          Q.     So in the next rate case is the Commission  
16    Staff free to argue for a 20-year amortization  
17    period?

18          A.     It would -- I would think that would be  
19    very unreasonable. We would never argue for a  
20    20-year amortization period of such costs.

21          Q.     Because you have agreed for a 10-year  
22    amortization period?

23          A.     Well, we agreed because our position was  
24    that was a reasonable amortization period.

25          Q.     And that's a reasonable amortization

1 period for ratemaking purposes, isn't that correct?

2 A. It would be a Staff position, yes.

3 Q. Is that your personal position?

4 A. My personal position would be that, I  
5 think it would be a reason to be somewhat shorter  
6 than 10 years.

7 Q. Let me ask you this: Would you agree with  
8 me that some computer systems only have a useful  
9 life of 10 years, generally?

10 A. Some computers?

11 Q. Computer systems.

12 A. I would agree that some computer systems  
13 life could be 10 years.

14 Q. And could be less, isn't that correct?

15 A. That's correct.

16 Q. Would you agree with me that obsolescence  
17 of computer systems is not new?

18 A. I would say the fact that computer systems  
19 become obsolete or that fact is not new since the  
20 introduction of computers in the business, the  
21 economy. The pace of obsolescence has accelerated,  
22 I believe, but it's not a new phenomenon.

23 Q. Indeed in auditing in Missouri Gas Energy,  
24 have you seen them change computer systems or  
25 upgrade computer systems on a relatively frequent

1 basis?

2 A. I've seen -- I'm aware of modifications,  
3 software modifications to billing systems and such,  
4 but I'm not aware of any wholesale replacement of  
5 computer systems, which I would define as including  
6 the hardware and software.

7 Q. And are you aware of whether or not those  
8 software modifications extend the life of those  
9 computer systems?

10 A. I'm not sure. I know we agreed to  
11 amortize the project team, the billing enhancement  
12 project team cost, and I'm trying to remember how  
13 exactly. But over the remaining life of the  
14 Company's CSS computer system. And I'm not aware  
15 if those costs improved the efficiency of the  
16 program or extended the life. I'm not aware.

17 Q. So you're not aware of what the Staff  
18 position was with respect to those modifications  
19 that it did indeed in Staff's view extend the life  
20 of computer systems?

21 A. I apologize. I had several different  
22 issues, and I was not extremely familiar with the  
23 position. Or if I was, I seemed not to recall it  
24 exactly.

25 Q. I recommend Mr. Shaw's testimony in that

1 case for your reading pleasure.

2 Would you agree with me that materiality  
3 is a factor to consider in both granting an AAO and  
4 determining whether the company should be allowed  
5 to recover deferred costs?

6 A. I would say more so in the latter, but,  
7 yes, to some extent.

8 Q. Let me ask you this: Does your  
9 calculation of materiality on page 22 of your  
10 rebuttal testimony exclude items properly  
11 classified as capital costs?

12 A. I'm sorry, Mr. Micheel. You will have to  
13 repeat that question.

14 Q. If you turn to page 23 of your rebuttal  
15 testimony --

16 A. Okay.

17 Q. -- and, I guess I'm focusing there on  
18 lines 11 through 18. Does your calculation of  
19 materiality there exclude items properly classified  
20 as capital costs?

21 Q. Okay. I guess to answer that and on line  
22 17 where I say that Staff believes these costs at  
23 this level would meet an appropriate level of  
24 materiality, what I would be referring to would be  
25 operating expenses, not capitalized costs.



1 Q. And my question to you --  
2 A. More capital related costs.  
3 Q. -- Mr. Hyneman is, did that calculation  
4 include or exclude capital costs?  
5 A. The calculation did not consider in it  
6 capital costs.  
7 Q. So it excluded capital costs; is that your  
8 testimony?  
9 A. There is no intent to include or exclude.  
10 I can explain it further. The calculation was done  
11 in one of the elements of this case materiality.  
12 One of the reasons you can't determine materiality  
13 at this point is we don't know what the operating  
14 results of Southern Union or MGE is for the  
15 12-month period for when the majority of these  
16 costs were incurred.  
17 But relying on estimates based on past  
18 income levels, I determine what an average income  
19 level would be. Just took 5 percent of that net  
20 income, grossed it up for taxes to determine a  
21 level, which would be an estimate of materiality  
22 level. It didn't say to include specific  
23 capitalized costs or operating expenses at all.  
24 Those weren't consider in the calculation.  
25 Q. So in your opinion MGE's AAO application

1 is premature because we don't know what the costs  
2 are; is that correct?

3 A. Well, all AAOs in that definition than  
4 in -- well, I would say the majority of them would  
5 be premature. Most AAO applications are filed  
6 prior to the actual incurrence of the majority of  
7 the costs. In fact, that's been the case with the  
8 AAOs that I've been involved with.

9 Q. Does the --

10 A. That's one of the reasons why we have to  
11 make estimates of materiality.

12 Q. Does the Nonunanimous Stipulation and  
13 Agreement allow MGE to defer costs related to  
14 contingency planning?

15 A. I don't know. I would not recommend rate  
16 recovery contingency cost.

17 Q. That wasn't my question, Mr. Hyneman. And  
18 let me make it crystal clear. Does the  
19 Nonunanimous Stipulation and Agreement allow MGE to  
20 defer those type of costs?

21 A. The Nonunanimous Stipulation and Agreement  
22 allows MGE to defer incremental operating expenses  
23 related to the year 2000. I would not consider  
24 contingency costs to be an incremental operating  
25 expense related to year 2000.

1           Q.    Then is it part of the Staff and Company's  
2   agreement not to include incremental contingency  
3   planning costs in the deferrals?

4           A.    There was no prearranged agreement on what  
5   specific costs will be included in that.

6           Q.    So as you sit there today, you don't know  
7   what costs are defined as incremental operating  
8   expenses for deferral pursuant to the Stipulation  
9   and Agreement; is that correct?

10          A.    Could you repeat that question, please?

11          Q.    Sure.  As you sit there today, you don't  
12   know what costs are defined as incremental  
13   operating costs for purposes of the deferrals  
14   allowed pursuant to your Nonunanimous Stipulation  
15   and Agreement; is that correct?

16          A.    I know what the Staff would consider  
17   incremental operating expenses.  I don't know the  
18   Company's total interpretation of what that may be  
19   or what they may be included under that definition  
20   in their subsequent rate case.

21          Q.    Well, I thought you-all had agreed to  
22   defer certain operating expenses.  And what I'm  
23   trying to understand is what operating -- what  
24   incremental operating expenses did you, being Staff  
25   and the Company, agree to defer?

1           A.   Well, if you'd look under the definition  
2   of operating expenses in the uniform system of  
3   accounts, those that are incremental to the year  
4   2000 project.  And if I can -- I can reference the  
5   Stipulation and Agreement and read that language  
6   more closely.

7           Q.   That would be fine.  I'd draw your  
8   attention to paragraph 6A on page 2.

9           A.   Okay.

10          Q.   I guess my question is once again, are  
11   contingency planning costs part of the incremental  
12   operating expenses that are allowed to be deferred  
13   pursuant to your Stipulation and Agreement with  
14   Missouri Gas Energy?

15          A.   It would be the Staff's position.  That  
16   would be no.

17          Q.   And has the Company agreed with the  
18   Staff's position?

19               MR. HACK:  Objection.  Mr. Hyneman is in  
20   no position to testify as to what the Company  
21   believes.  And the Stipulation is clear.  It says  
22   what it says.

23               MR. MICHEEL:  Well, your Honor, I don't  
24   think it's clear.  I'm trying to understand what  
25   costs are included as incremental operating

1 expenses, and this witness, who is one of the  
2 parties, and testifying on behalf of the parties,  
3 what's included in the Stipulation and Agreement  
4 can't tell me.

5 JUDGE MILLS: Well, I think it's a fair  
6 question to ask him what he thinks is included. I  
7 don't think that he can speculate as to MGE's  
8 interpretation. I think the objection is well  
9 founded. Sustained.

10 THE WITNESS: Mr. Micheel, I can elaborate  
11 then on what I believe is included in that. The  
12 types of costs that would make up the majority of  
13 the deferral, if that's --

14 MR. MICHEEL: Your Honor, at this point  
15 there's not a question pending, and I'd just ask  
16 you to direct the witness to wait for me ask him a  
17 question, then answer my questions.

18 JUDGE MILLS: I think that's fair,  
19 Mr. Hyneman.

20 THE WITNESS: I apologize.

21 MR. MICHEEL:

22 Q. Let me ask you this, Mr. Hyneman: When  
23 did Missouri Gas Energy first become aware of the  
24 potential Y2K problems?

25 A. I believe it's sometime in the 1993, 1994

1 time frame.

2 Q. To your knowledge did the Commission  
3 mandate or limit computer date fields to only two  
4 digits, or was that a decision made by computer  
5 programmers?

6 A. I know it's an action accomplished by  
7 computer programmers. Whether they made that  
8 decision, I'm not sure.

9 Q. Did the Commission mandate it?

10 A. Not that I'm aware of.

11 Q. Are carrying costs and AFUDC considered  
12 capital costs or O and M expenses for purposes of  
13 regulatory accounting?

14 A. Could you repeat the question?

15 Q. Sure. Are carrying costs and AFUDC  
16 considered capital costs or O and M expenses for  
17 purposes of regulatory accounting?

18 A. Carrying costs and allowance for fund used  
19 during construction mean the same thing,  
20 generally. They are a capital-related cost for  
21 construction working process. They are deferred  
22 and become part of the capitalized cost.

23 Q. Does MGE and Southern Union Company, and  
24 I'm using those as the same because MGE is a  
25 division of Southern Union, do they prepare an

1 income statement and a balance sheet on a monthly  
2 basis?

3 A. The Company stated they do not prepare  
4 such statements for MGE.

5 Q. Does Southern Union Company prepare an  
6 income statement and balance sheet on a monthly  
7 basis?

8 A. They have in the past. Whether they  
9 currently do, I'm not aware.

10 Q. Does Southern Union Company continually  
11 track and aggregate its Y2K costs?

12 A. Yes.

13 Q. If you know, Mr. Hyneman, did MGE create a  
14 project team to work on its customer service  
15 billing system programs?

16 A. Yes, it did.

17 Q. Did MGE request an AAO for those costs?

18 A. No, it did not.

19 Q. I've got a question about the workings of  
20 the Stipulation, paragraph 6E, and I just want your  
21 understanding. Paragraph 6E says that the general  
22 rate proceeding is not initiated with respect to  
23 MGE by February 28, 2002. MGE shall not be  
24 permitted to seek recovery of the year 2000  
25 deferrals. For purposes of this question I want

1     you to assume that MGE files a rate case on  
2     February 27, 2002. Can you make that assumption  
3     for me, Mr. Hyneman?

4           A.     Would that be one day prior to the  
5     two-year cut off?

6           Q.     Yes, it would.

7           A.     Yes, I can make that assumption.

8           Q.     How will you determine whether the  
9     deferrals that begin July 1st, 1998 were  
10    necessary? How will the Staff do that?

11          A.     Were necessary, do you mean material?

12          Q.     Let's start there. How will you determine  
13    whether they are material?

14          A.     Well, you would look at historical  
15    documents of the company's income during that  
16    period.

17          Q.     Would you audit the company for the years  
18    1998 and 1999?

19          A.     In speaking personally as an action I  
20    would do, I would review the income statement for  
21    that time period where the majority of those costs  
22    were incurred. And if it looks like those costs  
23    were material, then I would probably say that's  
24    sufficient. If it was borderline, whether it would  
25    be, then maybe further audit work would be



1 required.

2 Q. Would you make a determination about

3 whether or not the company was earning its

4 authorized rate of return?

5 A. Yes.

6 Q. And how would you go about doing that?

7 A. Well, you would look at the earnings for

8 the period to its most recent authorized return on

9 equity by the Commission.

10 Q. So in a rate case review you would be also

11 reviewing data from 1998, 1999, the year 2000,

12 isn't that correct?

13 A. For purposes of determining if that cost

14 were materiality -- were material -- excuse me --

15 and meaning that that one, the 5 percent level,

16 which we've adopted is one criteria for

17 materiality, I would look at the income for that

18 period.

19 Q. So you wouldn't look to those periods to

20 determine whether or not the company was earning

21 its authorized return to necessitate the recovery

22 of these deferrals?

23 A. I would look at that period where the

24 costs were incurred, yes.

25 Q. So in 2002 you would be looking at the

1 company's 1998 and 1999 costs; is that correct?

2 A. I would probably -- because the majority  
3 of the year 2000 costs, I believe were incurred in  
4 1999, I would probably be looking for the 1999  
5 level.

6 Q. Because you would agree with me it would  
7 be inappropriate, would it not, to compare 1999  
8 costs with, for example, costs incurred by the  
9 company in 2001, isn't that correct? And that  
10 would violate the matching principal, wouldn't it?

11 A. I don't think the matching principal would  
12 come into play in that review, but it would be more  
13 appropriate to look at the costs incurred in that  
14 period.

15 Q. When the Staff audits a company in a  
16 general rate case proceeding, does it just take the  
17 public books or does it audit the company's books  
18 to determine whether or not those numbers are  
19 correct?

20 A. For any given account are we saying?

21 Q. In other words, does it just look at the  
22 company's financial statements or does it look at  
23 the information behind those financial statements?

24 A. It would analyze each account based on  
25 previous cost incurred to see if it was

1 reasonable. And based on that, based on that  
2 reasonable test, it may require further audit  
3 work.

4 MR. MICHEEL: Thank you very much,  
5 Mr. Hyneman.

6 QUESTIONS BY JUDGE MILLS:

7 Q. I have just one question and it may be a  
8 long one. Can you go through with me and point out  
9 the differences between the conditions as contained  
10 in the Nonunanimous Stipulation and Agreement and  
11 the conditions that were contained in your original  
12 Staff memorandum?

13 A. Yes. And I believe there is just one  
14 slight difference.

15 Q. Okay.

16 A. But I can do that. Okay. In the Staff  
17 memorandum or recommendation, Staff recommended the  
18 company use a 10-year amortization period for  
19 booking. We didn't make any kind of recommendation  
20 for ratemaking purposes at all. In negotiations  
21 that led to the agreement, the parties agreed to a  
22 10-year for both booking -- excuse me -- 10-year  
23 amortization for both booking and ratemaking  
24 purposes.

25 And I believe in the original

1 recommendation -- I'll have to refer it -- that we  
2 recommended the deferral cut off be December 31st,  
3 1999. And I believe I modified that in my rebuttal  
4 testimony. The difference would be in the Staff  
5 recommendation, I believe it's December 31st, and  
6 we subsequently agreed to February 28 or 29.

7 Q. The memorandum is attached to your  
8 testimony, I believe --

9 A. Right.

10 Q. -- as schedule 2?

11 A. Right. And recommendation No. 1, the  
12 deferral is through December 31st, 1999, and in the  
13 Stipulation and Agreement No. 6A, that was February  
14 28 of the year 2000. I'm not aware of any other  
15 changes. And the change about the deferral period  
16 is addressed and explained in my rebuttal  
17 testimony.

18 Q. It looks to me as though the Nonunanimous  
19 Stipulation and Agreement amortization begins on  
20 January 1 of 2000. Under your initial  
21 recommendation the amortization was to begin not  
22 later than January 31st, 2000. That's page 5 of 5  
23 on your recommendation, item No. 4. Is that a  
24 difference?

25 A. Yes. I'm sorry. January 1st as opposed

1 to January 31st. I don't think that's a  
2 substantive change, but it's a minor difference.

3 Q. Are there any other differences?

4 A. Not that I'm aware.

5 JUDGE MILLS: That's all the questions  
6 that I have. Are there questions for this witness  
7 based on questions from the Bench?

8 Mr. Hack?

9 MR. HACK: Nope.

10 JUDGE MILLS: Mr. Micheel?

11 MR. MICHEEL: Just one.

12 FURTHER CROSS-EXAMINATION BY MR. MICHEEL:

13 Q. And it relates to your schedule 2 to your  
14 rebuttal testimony that Judge Mills was asking you  
15 about the differences. I note there on page 5 of 5  
16 that you state whether or not the costs are  
17 extraordinary costs. Do you see that? Isn't it  
18 correct now that pursuant to the Stipulation and  
19 Agreement that the Staff believes that the costs  
20 are indeed extraordinary or meet that extraordinary  
21 criteria?

22 A. Staff believes that the event that drives  
23 the cost are extraordinary.

24 Q. Okay. And the jury is still out then on  
25 whether or not the costs are extraordinary; is that

1 correct?

2 A. Well, including the materiality in the  
3 definition of extraordinary, the final  
4 determination of materiality Staff recommends to be  
5 made in a rate case, yes.

6 MR. MICHEEL: Thank you very much.

7 JUDGE MILLS: Redirect, Mr. Bates?

8 MR. BATES: Thank you, your Honor.

9 REDIRECT EXAMINATION BY MR. BATES:

10 Q. Mr. Hyneman, I just have a few questions  
11 for you.

12 Based on the question from Judge Mills a  
13 few minutes ago about January 1st versus January  
14 31st, we were still talking about the same month of  
15 January, though, are we not?

16 A. Correct. There will be one monthly  
17 amortization made during that period.

18 Q. Do you believe that MGE's year 2000  
19 situation could be defined as an act of God?

20 A. No.

21 Q. Are you familiar with the year 2000 issue  
22 in the recent Union Electric credits case,  
23 Case No. EO-96-14?

24 A. Yes, I am.

25 Q. What was UE's position on credit treatment

1 of year 2000 costs in that case to your knowledge?

2 A. Union Electric, as I explained in my  
3 testimony, is operating under an experimental  
4 alternative regulation. And they are in what can  
5 be viewed as a continuous test year. So their  
6 position was that all the year 2000 costs that were  
7 expensed in that year should be, in essence,  
8 recovered in rates in that one-year period, that  
9 they were normal expenses and not capital. And the  
10 motivation that -- I believe behind that would  
11 increase their revenue requirement or decrease the  
12 amount of credits that would have to return to the  
13 customers if it pursued that position.

14 Q. And how does that compare with the case  
15 we're trying here today?

16 A. There really is no comparison. This is  
17 what very well be, these costs will be incurred --  
18 very well may be incurred outside of the test  
19 year. If MGE doesn't file for a rate case, these  
20 costs are costs incurred outside of the test year  
21 period where it would not be in the best interest  
22 of the company to recommend expenses to expense  
23 those costs, because they would never be  
24 recovered. It would be the best interest of the  
25 company to affirm for a recovery of subsequent

1 period. So the motivation for a company operating  
2 in a continuous test year as opposed to costs  
3 incurred outside of a test year are completely not  
4 related.

5 Q. Are you aware of St. Joseph Light and  
6 Power's recent rate case No. ER-99-247?

7 A. Yes.

8 Q. And do you know what St. Joseph's  
9 recommended rate treatment for year 2000 cost was  
10 in that case?

11 A. Very similar to Union Electric's --

12 MR. MICHEEL: I'm going to object at this  
13 point, your Honor. I let him discuss what Union  
14 Electric's motivations were, but I'm not going to  
15 let him discuss -- I mean, first of all, I don't  
16 think he can speak for what a company's motivations  
17 were or weren't. He can give his opinions as to  
18 why the company did what they did, but I would  
19 object to his characterization of this is what  
20 motivated the company to do what it did.

21 JUDGE MILLS: I don't believe that was the  
22 question, at least not yet.

23 Could I have that last question read back,  
24 please?

25 (THE LAST QUESTION WAS READ BACK BY THE



1 REPORTER.)

2 JUDGE MILLS: I don't think that question  
3 deals with motivation at all. I don't see that  
4 there's a basis for objection to that particular  
5 question on that basis, so it's overruled.

6 THE WITNESS: It was St. Joe Light and  
7 Power's position in that case that the year 2000  
8 costs would be expensed as incurred and not  
9 deferred.

10 BY MR. BATES:

11 Q. And so would the comparison between that  
12 case and the case that we're trying today be then  
13 similar to the comparison between what you  
14 described between the Union Electric case and the  
15 case we're trying today?

16 A. Yes. The Union Electric case and the  
17 St. Joe Light and Power case all involved costs  
18 incurred during a test year period, which is not  
19 similar to the question we're talking about  
20 Southern Union today.

21 Q. Do you perceive a difference between costs  
22 associated with contingency planning for year 2000  
23 and -- excuse me -- I'm sorry. And an actual  
24 contingency cost associated with post December  
25 31st, 1999 system failures associated with the year

1 2000?

2 A. There would be a distinction, which the  
3 Staff makes. And if I can get back to contingency  
4 cost, my understanding of the contingency cost  
5 would be costs for future events that are  
6 contingent upon happening. Any cost to include in  
7 that category if they are based on future events,  
8 would not be included --

9 Q. Okay.

10 A. -- to be recovered. But the difference --

11 Q. I'm sorry. Go ahead.

12 A. But the difference is that costs that are  
13 related to any problems incurred post year 2000  
14 would not be authorized for deferral under this  
15 Accounting Authority Order and that was recognized  
16 by the Company. Those costs they could seek  
17 deferral authority in a future accounting  
18 authority.

19 Q. Just to make that clear, when Mr. Micheel  
20 asked you about contingency costs, how did you  
21 interpret his use of the term contingency costs?

22 A. Contingency cost, in my understanding in  
23 this case, is the cost that Southern Union is  
24 building in for potential future events to be  
25 recognized.

1 Q. Would the answer you gave Mr. Micheel be  
2 the same if he had asked you about contingency  
3 planning costs?

4 A. My statement or my position is costs are  
5 not incurred as a direct result in incremental cost  
6 and expense for year 2000 would not be recovered or  
7 should not be deferred.

8 Q. In your opinion might a prudent company  
9 incur contingency planning costs related to the  
10 year 2000?

11 A. Yes.

12 MR. BATES: That's all. Thank you.

13 JUDGE MILLS: You may step down.

14 (WITNESS EXCUSED.)

15 MR. MICHEEL: We would call Mr. Robertson,  
16 your Honor.

17 (WITNESS SWORN.)

18 JUDGE MILLS: You may be seated.

19 Please, go ahead.

20 TED ROBERTSON, being first duly sworn, testified as  
21 follows:

22 DIRECT EXAMINATION BY MR. MICHEEL:

23 Q. Would you state your name, address and how  
24 you're employed?

25 A. My name is Ted Robertson. I am an

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(573)442-3600 COLUMBIA, MO 65201

1 accountant for the Missouri Office of the Public  
2 Counsel. Our address is P.O. Box 7800, Jefferson  
3 City, Missouri 65102.

4 Q. And have you caused to be filed what has  
5 been marked for purposes of identification your  
6 rebuttal testimony, Exhibit 6NP and Exhibit 6HC and  
7 your surrebuttal testimony, which has been marked  
8 for purposes of identification as Exhibit 7?

9 A. That's correct.

10 Q. And do you have any corrections to either  
11 of those testimonies that you're aware of?

12 A. No, I do not.

13 Q. And if I asked you the questions contained  
14 in those testimonies, would your answers be the  
15 same or substantially similar?

16 A. Yes, they would.

17 MR. MICHEEL: With that, your Honor, I  
18 would move for the admissions of Exhibits 6NP and  
19 HC and Exhibit 7 and tender Mr. Robertson for  
20 cross-examination.

21 JUDGE MILLS: Are there any objections to  
22 the admission to 6NP, 6HC and Exhibit 7?

23 Hearing none, they will be admitted.

24 (EXHIBIT NOS. 6NP, 6HC AND 7 WERE RECEIVED  
25 INTO EVIDENCE AND MADE A PART OF THE RECORD.)

1 JUDGE MILLS: Cross-examination,  
2 Mr. Bates?  
3 MR. BATES: Thank you, your Honor.  
4 CROSS-EXAMINATION BY MR. BATES:  
5 Q. Good morning, Mr. Robertson.  
6 A. Good morning.  
7 Q. Would you agree in general that a utility  
8 should account for costs on their books and records  
9 in a similar manner to the manner in which items  
10 are treated for rate purposes when that's possible?  
11 A. Would you repeat that, please?  
12 Q. Would you agree in general that a utility  
13 should account for costs on their books and in  
14 their records in a similar manner -- in a similar  
15 matter -- manner -- excuse me -- to how they would  
16 treat items for rate purposes when that's possible?  
17 A. Yes.  
18 Q. I'd like to refer you to page 27 of your  
19 rebuttal testimony?  
20 A. I'm there.  
21 Q. On page 27 of your rebuttal testimony, is  
22 it correct that you state that the Office of Public  
23 Counsel believes that year 2000 costs should be  
24 capitalized and not expensed?  
25 A. You're referring to page 4 -- excuse me --

1 line 4?

2 Q. Yes. Beginning there.

3 A. The question refers to Union Electric  
4 Company's assessment of its Y2K costs. And in  
5 Union Electric Company, that case, we recommended  
6 that all the Y2K costs be capitalized and not  
7 expensed because the Company was not able to split  
8 out the costs that were expensed versus capital.  
9 So therefore our only position was that because we  
10 couldn't identify what the expenses were, all the  
11 costs should be capitalized.

12 Q. So is that or is that not an accurate  
13 statement of OPC's position on accounting and rate  
14 treatment and all year 2000 costs?

15 A. As long as you don't take it out of the  
16 context of the UE case, yes. If you take it out of  
17 context of the UE case, Y2K costs should be  
18 identified as capital costs versus O and M  
19 expenses, and then you determine how to treat those  
20 once they were identified.

21 Q. Assume for me, if you will, that Missouri  
22 Gas Energy agreed the year 2000 cost should be  
23 capitalized. Could the Company then account for  
24 year 2000 software costs as capital items without  
25 obtaining authorization for that treatment from the

1 Commission?

2 A. Repeat the question, please.

3 Q. If MGE agreed that Y2K costs should be

4 capitalized, could they then account for Y2K

5 software costs as capital items without obtaining

6 authorization for that treatment from the

7 Commission?

8 A. Yes.

9 Q. Are you aware what GAAP is?

10 A. Generally accepted accounting principals.

11 Q. Isn't it true that GAAP principals require

12 immediate expensing of Y2K costs?

13 A. No.

14 Q. Why is that not true?

15 A. Because they don't.

16 Q. Are you aware of a document entitled EITF

17 Abstract, Issue No. 96-14?

18 A. Yes, I am.

19 Q. What is that?

20 A. It's the emergent issues tax forms

21 discussing on their proposal of what you do with

22 Y2K costs.

23 Q. Is that accepted as general accepted

24 accounting principal?

25 A. It's a lower category than FASB

1 statements, which are financial accounting standard  
2 board statements.

3 Q. Does the EITF 96-14 require a recommended  
4 immediate expensing of Y2K costs?

5 A. It does.

6 Q. Would OPC have supported AAO request from  
7 MGE that would have called for capitalization of  
8 Y2K costs in the manner that OPC recommends?

9 A. Say that again now.

10 Q. Would your office, the Office of Public  
11 Counsel, have supported an AAO request from  
12 Missouri Gas Energy tha would have called for  
13 capitalization of Y2K costs in any manner that OPC  
14 could have recommended?

15 A. Are you asking me if we would have agreed  
16 or stipulated with Staff to an AAO if the Company  
17 agreed to capitalize the cost? Is that what you're  
18 asking?

19 Q. Yes. Is there any way that you would have  
20 done that?

21 A. I don't understand your question. It's  
22 nonsensical, because if the Company incurred the  
23 cost and wanted to capitalize them, they have the  
24 opportunity of doing that now. I don't know why  
25 they would need an AAO.



1           Q.    Which statement allows not to expense the  
2   Y2K software cost?

3           A.    The financial statement, the account  
4   standard board statement No. 71 and the statement  
5   of position.  I believe it's 86-1.

6           Q.    Okay.  Could you explain your  
7   understanding of that statement?

8           A.    In general FASB 71 is kind of a catch-all  
9   statement.  It's probably directly focused on  
10   regulatory proceedings or public utilities and such  
11   in that costs that would normally be expensed or  
12   treated in one matter or capitalized, if the  
13   Commission, Public Service Commission, decides to  
14   treat them in another matter, the companies can do  
15   that.  And it wouldn't be considered GAAP.  They  
16   would be considered non-GAAP.

17          Q.    Do you have an opinion as to the  
18   appropriate life of capitalized year 2000 costs set  
19   for depreciation purposes?

20          A.    Do I have an opinion of what an  
21   appropriate life should be?

22          Q.    Yes.

23          A.    I can tell you that in the Union Electric  
24   case, which is the one that's most recent, Staff  
25   proposed, I believe a 10-year amortization for

1     those costs. And we did not oppose that. I  
2     believe we even stated that 10 years sounded  
3     reasonable.

4           Q.    Do you know of your knowledge what MGE's  
5     current depreciable life for computer hardware and  
6     software is?

7           A.    I know from the last case, specifically  
8     GR-98-140, that some computer costs related to the  
9     CSS system, we all agreed to -- it was either 9.5  
10    or a 10-year amortization of the remaining cost for  
11    that system. And I believe we even, in some of  
12    the -- we may have agreed to a 10-year amortization  
13    for some costs related to the billing process for  
14    engineering that the Company did.

15          Q.    And would those appreciable life costs,  
16    would they include maintenance cost?

17          A.    What do you mean by maintenance?

18          Q.    Whatever your understanding is.

19          A.    If they were capitalized, they were  
20    considered capital assets, maintenance is a --  
21    maintenance expense is treated as an O and M  
22    expense or as an expense.

23          Q.    Maybe I should ask you how you would  
24    define maintenance?

25          A.    I just did.

1 Q. Does OPC normally recommend that  
2 maintenance cost be treated -- excuse me -- I asked  
3 that wrong.

4 How does OPC normally recommend that  
5 maintenance costs be treated for rate purposes?

6 A. If an item is determined to be a  
7 maintenance item or maintenance expense, we  
8 normally recommend that it be flowed through the  
9 income statement as an OM expense.

10 Q. Would you agree that at least a portion of  
11 MGE's Y2K costs might fall under your general  
12 definition of maintenance?

13 A. No.

14 Q. Not any part of it?

15 A. Not under the definition we've taken.

16 Q. Do you agree that the FASB 71 requires the  
17 Commission approval to treat costs other than those  
18 that fall under the GAAP?

19 A. Say that again.

20 Q. Do you agree that the FASB 71 requires the  
21 Commission approval to treat costs such as AAOs  
22 that might fall other than those under GAAP?

23 A. FASB 71 is GAAP. Okay. So there's not a  
24 dichotomy there. It's the same thing. FASB 71, as  
25 far as your question of what the Commission does,

1 the accounting would treat costs that the  
2 company -- that the Commission decides to treat in  
3 a different manner. The accounting world would  
4 consider them GAAP as long as the Commission allows  
5 the Company the opportunity to recover those  
6 costs. That's all that FASB 71 says.

7 Q. I'm referring now to your surrebuttal  
8 testimony page 40 -- excuse me -- page 20?

9 A. Surrebuttal?

10 Q. Yes. And ask you once you've reached page  
11 20 to look at line 4. You refer there to  
12 materiality. Where did you -- I'm sorry. You will  
13 have to answer the question verbally.

14 A. Yes, I did.

15 Q. Where did you get your definition of  
16 materiality there?

17 A. Based on my experience and my training.

18 MR. BATES: Your Honor, may I have a  
19 moment?

20 JUDGE MILLS: Yes.

21 MR. BATES: Thank you, your Honor.

22 BY MR. BATES:

23 Q. Mr. Robertson, are you aware of the  
24 Commission's Report and Order in combined cases  
25 OE-91-358 and EO-91-360?

1           A.    I have a copy of it before me.

2           Q.    Okay.  And do you not refer to that

3           language in that Commission's Report and Order on

4           page 17 of your surrebuttal testimony?

5           A.    Yes.  I have referred to EO-91-358.

6           Q.    And, in fact, don't you refer to it in

7           support of your position in this case?

8           A.    I have.

9                   MR. BATES:  Okay.  May I approach the

10          witness?

11                   JUDGE MILLS:  Yes, you may.

12          BY MR. BATES:

13          Q.    I'd like to hand you a copy of the

14          Commission's Order in that case.  Do you recognize

15          that as such?

16          A.    Yes.  I have two now.

17          Q.    Okay.  I'd like to refer you to page 11?

18          A.    Yes.  I'm there.

19          Q.    And I'd ask you to read to yourself the

20          first full paragraph on that page beginning with

21          the words, Public Counsel.

22          A.    Okay.  You want me to just read it to

23          myself, correct, or to the record?

24          Q.    Read it out loud, if you would?

25          A.    Public Counsel would have the Commission

1     impose a strict standard for determination of what  
2     is an extraordinary event.   Public Counsel  
3     recommends that the Commission only allow the  
4     deferral of costs associated with acts of God or  
5     when the integrity of the service to customers is  
6     threatened.   The Commission agrees that when these  
7     circumstances occur, they very possibly would be  
8     extraordinary events.   However, to limit  
9     extraordinary events to these situations is too  
10    restrictive.   There may be instances which occur  
11    that are neither acts of God nor threatened the  
12    provision of service that are nonetheless usual,  
13    unique and nonrecurring where deferral would be  
14    justified and reasonable.

15           Q.    Mr. Robertson, do you believe that the  
16    Commission was correct in this language?

17           A.    Do I believe the Commission was correct  
18    in --

19           Q.    Do you believe that their definition of  
20    what the -- that the restrictions being too  
21    restrictive is justified?

22           A.    They came to that determination.

23           Q.    Do you agree with it?

24           A.    I have no reason not to agree with it.

25           Q.    I'd like to refer you to page 21 of your

1 surrebuttal testimony and beginning on line 5, I  
2 believe. Am I correct that you quote from the  
3 Commission's Report and Order in case EO-98-358?  
4 A. Okay.  
5 Q. Would you read that aloud, please?  
6 A. The decision -- beginning with line 5?  
7 Q. Yes.  
8 A. The decision of deferred cost associated  
9 with an event turns on whether the fact -- the  
10 event is, in fact, extraordinary and nonrecurring.  
11 The Commission finds that these are decision that  
12 are best performed on a case-by-case basis.  
13 Factors such as those proposed by Staff as criteria  
14 can influence that decision, but the primary focus  
15 is on the uniqueness of the event, either through  
16 its occurrence or its size.  
17 Q. Do you agree with the Commission's  
18 opinion?  
19 A. I agree that that's what they found in  
20 that case, yes.  
21 Q. Just to make sure, I may have asked you  
22 unclearly. Do you agree with the Commission's  
23 decision in that case?  
24 A. Well, that's a good point. Let's -- I  
25 just want to make sure. I've got EO-98-358 at the

1 top. Make sure that's the right case number.

2 MR. MICHEEL: It's a typographical error.

3 THE WITNESS: It may be a typo. Yes, it  
4 is. As a matter of fact, it should be EO-91-358.  
5 Just so we don't get confused.

6 BY MR. BATES:

7 Q. I'm sorry. And you're correct.

8 A. Okay. Your question was, did I think the  
9 Commission -- do I agree with the Commission's  
10 position in that case?

11 Q. Yes.

12 A. First, let me point out that in that case,  
13 OE-91-358, that was for the specific rebuilding the  
14 co-conversion project. EO-91-360 was consolidated  
15 with the other case. That was for some capacity  
16 power contracts, I believe. Okay. In EO-91-360,  
17 the Commission disallowed the AAO for the capacity  
18 power contracts. Okay. So we're only talking  
19 about EO-91-358 for specific rebuild and the  
20 co-conversion.

21 My understanding of the reason the  
22 Commission granted the AAO in that case has to do  
23 with the occurrence or its size was because the  
24 financial stability of the company may have been at  
25 risk since the cost to do that project were around



1 the range of 23 percent of income. So, yes, I do  
2 agree with the Commission.

3 Q. Do you believe that reoccurrence and size  
4 of a particular incident is relevant? In your mind  
5 must they both occur or could they occur separately  
6 and still be justified?

7 A. Well, what we're talking about here is --  
8 I guess you're still referring to the granting of  
9 the AAO?

10 Q. Yes.

11 A. My understanding of the Commission's  
12 standards, and that's what we're trying to follow,  
13 was there are basically three legs to the standard  
14 that the fact that the event or the activities are  
15 unusual as business operations, nonrecurring and  
16 material of cost, so the three-legged stool. So we  
17 would look at all three things. To look at one  
18 isolated from the other would not be -- would not  
19 be appropriate.

20 Q. Okay. And why not?

21 A. Because the Commission has a standard for  
22 what it takes to get an AAO. We're trying to meet  
23 what the Commission's standard is.

24 Q. And you agree then with what the  
25 Commission standard has laid out in its decision

1 is?

2 A. I'm telling you that's what the Commission  
3 has determined the standard to be, and we're trying  
4 to make sure that the standard is met. Whether I  
5 agree with it personally or not, has nothing to do  
6 with what the standard is.

7 Q. But I guess my question really -- I  
8 understand your answer -- but the question is, do  
9 you agree with the Commission's standards?

10 A. And I will tell you -- to answer that  
11 question specifically, I haven't given it any  
12 thought to determine whether I agree or disagree.

13 MR. BATES: I believe that's all the  
14 questions I have. Thank you, Mr. Robertson.

15 THE WITNESS: Thank you, sir.

16 JUDGE MILLS: Mr. Hack, do you have a  
17 substantial amount of questions?

18 MR. HACK: Depends how cooperative  
19 Mr. Robertson is. I don't think so.

20 JUDGE MILLS: Okay. It's noon, but let's  
21 go ahead and go on with them and we'll see how far  
22 we get.

23 MR. HACK: I'll try and be quick.

24 JUDGE MILLS: Please proceed.

25 CROSS-EXAMINATION BY MR. HACK:

1 Q. Mr. Robertson, to your knowledge does MGE  
2 routinely have its phone center open on New Year's  
3 Day?

4 A. To be honest with you, I don't really  
5 know. All I know is what I read in this case is  
6 that you were going to open it on New Year's Day.  
7 Whether you have in the past, I have no knowledge.

8 Q. And I would assume that you would answer  
9 the question the same, do you know whether MGE  
10 routinely has its phone center open on Sundays?

11 A. I'm sorry. I don't know the answer to  
12 that question either.

13 Q. And I would assume the same answer would  
14 hold true if I asked you whether you knew if MGE  
15 routinely had its phone center open at 11 p.m. of  
16 New Year's Eve?

17 A. Again, I don't know the answer to that  
18 question.

19 Q. Do you know whether MGE has ever held its  
20 phone center open on New Year's Day?

21 A. I do know that in, I believe the -- what  
22 was it? December, January '97, '98 period when  
23 they were having all the billing problems, that  
24 they extended a lot of the hours of the phone  
25 center. They brought in a bunch more people to

1     answer the phones.  So during that time frame was  
2     really hectic for the company.  Did they stay open  
3     past 11 p.m., I don't know.

4           Q.    So you don't know whether we've ever been  
5     open -- our phone center has been open at 11 p.m.  
6     on New Year's Eve or on New Year's Day?

7           A.    I do not know.

8           Q.    You don't know.  Or on a Sunday?

9           A.    I don't know.

10          Q.    Have you asked those questions?

11          A.    I'm sorry?

12          Q.    Have you asked those questions?

13          A.    No.

14          Q.    I'll try and maybe clarify some confusion,  
15     at least confusion I had.  Absent a ruling from the  
16     Commission to treat on its books, for a utility to  
17     treat on its books an item differently than  
18     otherwise provided in GAAP, would you agree with me  
19     that a company is obligated to follow GAAP?

20          A.    Other than an item ordered by the  
21     Commission?

22          Q.    (Nods head.)

23          A.    I think what you're asking me is, if the  
24     company incurs an expense, and they are going to  
25     treat it other than GAAP, do they need Commission

1 approval to do that?

2 Q. Correct.

3 A. Okay. And I would tell you that's

4 probably correct.

5 Q. Under FASB 71?

6 A. Well, maybe I'm a little confused then

7 because --

8 Q. And I'm confusing it even more. I

9 apologize. FAS 71 specifically authorizes a

10 regulatory body to approve or order a company to

11 treat an item of expense differently than the other

12 provisions of GAAP would otherwise require?

13 A. That's true, yes.

14 Q. And you need a Commission order under FAS

15 71 in order to do that, correct?

16 A. I would say you don't specifically have to

17 go in and get that Commission order when you incur

18 the expense. As long as -- there are many

19 different scenarios where if you incur the expense,

20 if you're still meeting your rate of return, you

21 satisfy the FAS 71, so . . .

22 MR. HACK: May I approach the witness?

23 JUDGE MILLS: Yes.

24 BY MR. HACK:

25 Q. Can you identify this document for me,

1 Mr. Robertson, please?

2 A. It appears to be my surrebuttal testimony  
3 in Union Electric Company EO-96-14.

4 Q. Are you familiar with it? You can leaf  
5 through it, if you would like?

6 A. Sure.

7 Q. I have bracketed on page 10 of that  
8 testimony a question which begins on line 4 and the  
9 answer which ends on line 8. Would you read into  
10 the record, please, that question and answer?

11 A. Sure will. Question, Mr. Baxter asserts  
12 in his rebuttal testimony that the cost incurred by  
13 the company to ensure is Y2K compliant were  
14 basically a normal, every day maintenance expense.  
15 Do you agree with this assessment? No.

16 Q. No?

17 A. That's correct.

18 Q. I think you testified earlier that the  
19 basis of your recommendation in the UE case to  
20 capitalize all of UE's Y2K compliance cost was  
21 founded upon the notion that UE could not split out  
22 its Y2K costs between capital expense; is that  
23 correct?

24 A. That was one of them, yes, in reference to  
25 the terms of the question.

1           Q.    Is it correct that in this case MGE has  
2    been able to split out its Y2K costs between  
3    capital and expense?

4           A.    They have done so to some degree, but we  
5    do believe that they've made a mistake in many of  
6    the expenses, yes, and claiming expenses.

7           Q.    Because you think they should be  
8    capitalized?

9           A.    That's correct.

10          Q.    And what expenses are those?

11          A.    First off, let me say -- to answer your  
12    question, one example would be contract programmer  
13    costs. We think a portion of those costs should  
14    probably be capitalized. In that context we  
15    haven't gone in to make a -- or done an analysis to  
16    determine ratemaking here. Okay. We try to  
17    identify what the costs were. We've taken what the  
18    Company has classified is, what is capital or OM,  
19    and we've done a summary review on what those costs  
20    were.

21                If we were going in on a ratemaking  
22    aspect, we would look at each of those costs such  
23    as contract programmer costs, determine what they  
24    did and whether, according to accounting  
25    literature, they should be capitalized. On a

1 superficial view, I think some of the items  
2 shouldn't be capitalized. The companies call them  
3 an expense. But we are not doing a ratemaking.

4 Q. And you have, you your office and you  
5 yourself, have made no recommendation that certain  
6 items should be capitalized or for that matter, all  
7 of MGE's Y2K compliance cost should be capitalized,  
8 have you?

9 A. As I just said, this is not a ratemaking  
10 situation. We're not attempting to recommend to  
11 the Commission any ratemaking aspect for the cost.

12 Q. What was the end of the true-up period in  
13 MGE's last rate case, GR-98-140?

14 A. At the end of the true-up period?

15 Q. Yes.

16 A. It seems to me that the -- were the rates  
17 put in, like, the very first of September?

18 Q. September 2.

19 A. September 2. So the end of the true-up  
20 was probably -- was it July; is that correct?

21 Q. Would you disagree with me if I told you  
22 it was May 31, 1998?

23 A. I would not disagree.

24 Q. Turning to your surrebuttal testimony,  
25 page 8, line 19?



1           A.    Page 19?

2           Q.    Page 8, line 19.  And on that line you

3   have used the words exploited?

4           A.    Yes.

5           Q.    Can you help me understand what you mean

6   by that?

7           A.    I think it has a lot -- a good example

8   would be what Ms. Dively said where this is a

9   nationwide problem that has been recognized by all

10   parties, the media, television, paper.  Everywhere

11   you look Y2K has been considered maybe the doomsday

12   day.  You have people moving into the mountains and

13   storing food and water, kind of scenario.  When I

14   say exploited, I mean, maybe the television and the

15   reporters and newspapers, maybe in order to sell a

16   few newspapers, have made this a little more

17   dramatic than what it actually is.

18          Q.    Do you believe that society should not be

19   concerned about the Y2K issue?

20          A.    Well, actually I haven't really thought of

21   it in the view of what society should be concerned

22   with.  I thought more in the view of what Missouri

23   ratepayers should be concerned with, Missouri

24   Commission.  Now, if you want to consider that

25   society, I can agree with that.

1 Q. I'm asking what you think.

2 A. I just explained it.

3 Q. So you think society should be

4 concerned with the Y2K issue?

5 A. I think Missouri ratepayers and the

6 Commission should be concerned.

7 Q. And you have no opinion about society in

8 general?

9 A. Sorry. Haven't taken it that far.

10 Q. I'd ask you to do that right now.

11 A. As an accountant in a regulatory arena, I

12 don't know if I have the credentials to do that.

13 I'm not a scientist.

14 Q. You have no opinion whatsoever on that?

15 A. I would say that based on my testimony

16 here, in my view has been dramatized far more than

17 the issue has been.

18 Q. Do you have a bank account?

19 A. I have several bank accounts.

20 Q. Do you have any concerns about the ability

21 of your bank to handle your money with the

22 transition of the year 2000?

23 A. Mr. Hack, I'm a very conservative person.

24 I have not yet pulled a penny out of either of my

25 bank accounts.

1 Q. That doesn't answer my question, though.  
2 A. I have no concern.  
3 Q. No concern whatsoever?  
4 A. That was -- maybe it was a little flippant  
5 answer. I apologize for that. I don't plan to  
6 pull any money out of my bank accounts because of  
7 Y2K concerns.  
8 Q. Do you think your bank has made efforts to  
9 ensure that it is Y2K compliant?  
10 A. I get literature every month saying that  
11 they have in my bank statements.  
12 Q. Do you think it's reasonable that they do  
13 so?  
14 A. I think it's one of their  
15 responsibilities, yes, I do.  
16 MR. HACK: That's all.  
17 JUDGE MILLS: I don't have any questions.  
18 Let's go right to redirect.  
19 REDIRECT EXAMINATION BY MR. MICHEEL:  
20 Q. Mr. Robertson, Mr. Bates asked you about  
21 the EITF 96-14. Do you recall those questions?  
22 A. Yes, I do.  
23 Q. Is there another accounting statement or  
24 pronouncement that is higher in the hierarchy of  
25 accounting pronouncements that you believe relates

1 to the year 2000 cost?

2 A. Yes, there is. The EITF issue statement  
3 96-14 is a lower ranking -- it is GAAP, but in the  
4 ranking of accounting literature it's a lower  
5 ranking GAAP, meaning that financial accounting  
6 standard board statements 71 is ranked No. 1 in  
7 GAAP in the pyramid, in the hierarchy. So anywhere  
8 that there's a -- what do I want to say? A  
9 conflict in accounting literature among the  
10 different statements, the statement given the  
11 higher priority in the hierarchy rules, meaning FSB  
12 statement 71, has higher ranking -- has to be  
13 followed over EITF 96-14.

14 We also believe that statement on SOPs,  
15 statement operating position 98-1, is a higher  
16 ranking account literature than EITF 96-14 and is  
17 to be considered when determining how to, for  
18 accounting purposes, treat the cost.

19 Q. And do you know what treatment SOP 98-1  
20 requests are portend for Y2K costs?

21 A. Generally the statement has a -- separates  
22 the cost in kind of a category, I believe  
23 investigation, implementation kind of category  
24 meaning that certain costs to investigate what kind  
25 of activities you would want to change or modify or

1 do should be capitalized -- or excuse me -- cost to  
2 implement or develop such as, like, programmers  
3 cost should be aggregated and capitalized,  
4 because -- and the premiss behind it is that you  
5 create something that has life. It's going to last  
6 a while. It's not expenses. It's just incurred  
7 upon an annual basis. It's created a system that's  
8 going to last for several years, and then you try  
9 to spread it over the life of that system. So  
10 that's why you capitalize expenses.

11 Q. Mr. Bates asked you some questions about  
12 the excerpt you had from EO-91-358 on page 17 of  
13 your surrebuttal testimony with respect to the  
14 issue of financial integrity. Do you recall those  
15 questions?

16 A. Yes, I do.

17 Q. Do you have an opinion about whether or  
18 not financial and the Company's financial integrity  
19 is an issue to be looked at in whether or not an  
20 AAO should be granted?

21 A. Yes, I do. It's very important. To sit  
22 there and just -- that's why I say materiality is  
23 not just a calculation of a dollar amount itself.  
24 Materiality in the US OA instruction No. 7 lists  
25 percentage of 5 percent income. The reason they

1 use the 5 percent is basically an accounting  
2 concept that 5 percent income would influence an  
3 investor's decision-making process, would be  
4 material from that aspect. But that's just a  
5 simple calculation.

6 As to goes to doing an AAO, you can do  
7 that 5 percent calculation, but you also have to  
8 see if the cost -- if those costs of companies  
9 incurring them are harming the company in some  
10 way. Are they lowering their return, their  
11 Commission approved return, is the company earning  
12 more than its return, is it earning slightly less?

13 Let's say that the cost -- let's say that  
14 the costs do somehow lower the return. Let's say  
15 that the company is allowed an order of 10 percent,  
16 but now the costs say you can specifically identify  
17 the cost as the factor, the lower the return is now  
18 9 percent. Was the company harmed to some kind of  
19 detriment? Are they going bankrupt? Are the bond  
20 holders going to recall their notes? Can the  
21 company come in and file for a general rate  
22 increase to get back up to 10 percent if that's  
23 what they should be earning.

24 So, yes, financial integrity -- you can't  
25 just look at materiality and say that's all there

1 is to it. Financial integrity and how the company  
2 is effected by those costs are very important for  
3 the AAO.

4 Q. Mr. Bates also asked you a question about  
5 page 21 of your surrebuttal testimony, and I  
6 believe had you read into the record lines 5  
7 through 10 with respect to occurrence and the size  
8 of an occurrence. Do you recall those questions?

9 A. Yes, I do.

10 Q. Do you have an opinion about whether or  
11 not based upon the occurrence that -- and the  
12 occurrence of the year 2000 cost, whether that  
13 occurrence is something that would require an  
14 Accounting Authority Order be issued in this case?  
15 Do you think the occurrence is nonrecurring and  
16 unique?

17 A. Let me reference to this language itself.  
18 EO-91-358, the reason the Commission agreed to the  
19 AAO was because they were concerned with the  
20 financial stability -- the financial integrity of  
21 the company, because the costs were to be  
22 approximately 23 percent of income. So there my  
23 opinion was, was that a reasonable conclusion for  
24 the Commission came to for them to come to? They  
25 did and it makes some sense to it.

1           In relations to the cost the company, MGE  
2   is incurring for Y2K costs that they want to defer,  
3   they are small. They are very tiny compared to  
4   this kind of scenario. In my view, there's no  
5   comparison between what occurred in the EO-91-358  
6   and what the Company is asking for in this  
7   situation.

8       Q.   So do you have an opinion about whether or  
9   not the size and occurrence, even if you take those  
10   independently in this case, support the Company and  
11   Staff's request for an AAO?

12       A.   In this case, no.

13       Q.   Okay. Mr. Hack asked you several  
14   questions about the phone center. Do you recall  
15   those?

16       A.   I do.

17       Q.   Were those questions relevant as to  
18   whether or not the Commission should grant MGE an  
19   AAO for this case?

20       A.   No. Because as I understand what the  
21   questions were attempting to do was trying to show  
22   that, Well, do we have our phone system open on  
23   Sundays? Therefore if we're going to open on  
24   Sunday this time or on January 1 or New Year's Eve,  
25   we're going to incur additional overtime costs.



1           In the last case, and every case I've ever  
2   been in and worked on, we do a payroll  
3   annualization. Part of that payroll annualization  
4   is to do an overtime normalization, overtime hours,  
5   overtime costs. That's because these costs  
6   fluctuate. It just does. That's where you do the  
7   normalization. Sometimes it would be high,  
8   sometimes it would be low.

9           So the reason we do the normalization is  
10   to help the company receive more stable rates. One  
11   day, if they were open one day, 10 days additional  
12   coming up, the likelihood of that impacting a  
13   normalized amount to any significant degree is  
14   nothing. I mean, because you would take those  
15   costs and spread them over a normalized -- an  
16   average normalization 5 years.

17           So if they incur \$10,000 of additional  
18   overtime costs coming up. What would be billed in  
19   the next rate case one-fifth of that, \$2,000. It's  
20   not an important issue. Other than the fact we  
21   normalize overtime hours and overtime costs.

22       Q.   Mr. Hack also had you read a portion of  
23   your Union Electric testimony into the record. Do  
24   you recall those questions?

25       A.   Yes, I do.

1 Q. Did that question and answer there on page  
2 10 of your surrebuttal testimony -- excuse me if I  
3 said rebuttal -- did that indicate that you believe  
4 that Y2K expenses are extraordinary?

5 A. Was that page 10?

6 Q. Yes. Of your surrebuttal testimony in the  
7 UE case.

8 A. I'm sorry. Yes.

9 Q. I can provide that to you. I didn't know  
10 you didn't have a copy of that. By that question  
11 and answer were you insinuating there that year  
12 2000 expenses are extraordinary?

13 A. No, I was not. What Mr. Hack has done  
14 here is taken one Q and A out of a discussion. If  
15 you continue on with the discussion or read prior  
16 to it, you see that what we've said about these  
17 expenses that UE was incurring were, they were not  
18 basically a normal, every day maintenance expense.  
19 Meaning that the expenses the Company incurred for  
20 its Y2K compliance issue, extended the life of the  
21 project, extended the life of the systems.

22 And therefore by extending the life of the  
23 system, they should be capitalized so that those  
24 lives should be properly allocated to each and  
25 every year going forward that they actually exist.

1     Where they have maintenance expenses, not the  
2     normal every day kind. They extended the life of  
3     the system. They didn't just provide a temporary  
4     fix of something.

5           Q.    Were you insinuating there that they were  
6     extraordinary for purposes of Accounting Authority  
7     Order analysis?

8           A.    I did not.

9           MR. MICHEEL: That's all I have, your  
10    Honor.

11          JUDGE MILLS: Thank you.

12          Is there anything further for this  
13    witness? I don't believe so.

14          You may step down.

15          (WITNESS EXCUSED.)

16          Let's talk about a briefing schedule. The  
17    rules --

18          MR. HACK: Can we do more thing, offer  
19    Exhibit 5, the Stipulation and Agreement jointly  
20    MGE and Staff?

21          JUDGE MILLS: Sure. You can offer it.

22          MR. MICHEEL: I don't know why it should  
23    be in, your Honor. It's already been filed in the  
24    case papers.

25          JUDGE MILLS: I was going to ask that

1 question. Is there any reason why this particular  
2 pleading should be made a piece of evidence in the  
3 record as opposed to a pleading like all the other  
4 pleadings?

5 MR. HACK: The reason is we've addressed  
6 in our testimony the Agreement in principal, June  
7 Dively did in her surrebuttal testimony. This  
8 flushes out the record and says, Here is what the  
9 agreement is. It does not represent anything  
10 obviously that the Public Counsel believes, but  
11 that's foundation there.

12 JUDGE MILLS: It's a pleading. It's not  
13 sworn testimony. It's not truly evidence. It is a  
14 part of the record as a pleading as all of the  
15 other pleadings are. I'm going to allow it as a  
16 pleading. I'm not going to admit it as a piece of  
17 evidence.

18 MR. HACK: And we would just simply ask  
19 that that be made an offer of proof as to evidence  
20 of agreement between MGE and the Staff.

21 JUDGE MILLS: Okay. The Commission rules  
22 provide that briefs are 20 days and 10 days unless  
23 there's reason to do it otherwise. Does anybody  
24 have an opinion on what the briefing schedule ought  
25 to be in this case?

1           MR. HACK: 20 and 10 is fine. If we might  
2 be able to get an estimate of when the transcript  
3 would come out?

4           JUDGE MILLS: It's usually about 10 days  
5 to two weeks.

6           MR. MICHEEL: Could we go off the record?

7           JUDGE MILLS: Yes.

8           (OFF THE RECORD.)

9           JUDGE MILLS: Initial briefs are due  
10 before Thanksgiving, and the reply briefs due --

11          MR. HACK: Right after.

12          JUDGE MILLS: Yeah. Somewhere around the  
13 third, fourth of December.

14          MR. HACK: We'd kind of like to have a  
15 Commission Order before Y2K, but that may be --

16          MR. MICHEEL: 20 and 10 is fine with me.

17          JUDGE MILLS: Then I'll be sure to not  
18 have something to do right after Thanksgiving or  
19 right after a holiday. But if that's okay with  
20 everybody, then once the transcript comes out, I  
21 will issue a notice setting roughly a 20 and 10  
22 days for initial briefs and reply briefs. And if  
23 the parties have objections to that, they can say  
24 something then.

25          Anything further that we need to do on the

1     record?  
2             Hearing nothing, we're adjourned.  
3             WHEREUPON, the hearing was concluded.  
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