

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

HEARING
February 15, 2001
Jefferson City, Missouri
Volume 1

In the Matter of Missouri Gas)
Energy's Application for Variance)
from Sheet Nos. 24.18 and 61.4 to) Case
permit the Use of Certain Federal) No. GE-2001-393
Refunds and Unauthorized Use)
Charge Collections for the Benefit)
of Low-Income Customers in the)
Company's Service Area.)

BEFORE:

VICKY RUTH, Presiding,
REGULATORY LAW JUDGE.
SHEILA LUMPE, Chair,
CONNIE MURRAY,
ROBERT G. SCHEMENAUER,
KELVIN SIMMONS,
M. DIANNE DRAINER, Vice-Chair
COMMISSIONERS.

REPORTED BY:

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22 FOR: Staff of the Missouri Public Service
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1 P R O C E E D I N G S

2 (Written Entries of Appearance filed.)

3 JUDGE RUTH: Good morning. My name is Vicky
4 Ruth. I am the Regulatory Law Judge assigned to this
5 case.

6 We are here for a hearing in GE-2001-393.
7 It's "In the matter of Missouri Gas Energy's
8 application for variance from Sheet Nos. 24.18 and
9 64 -- I'm sorry -- 61.4 to permit the use of certain
10 federal refunds and unauthorized use charge
11 collections for the benefit of low-income customers in
12 the Company's service area."

13 Today's date is Thursday, February 15th,
14 2001. It's 1:35.

15 I'd like to begin with entries of
16 appearance.

17 MGE, would you please begin?

18 MR. HACK: Yes. Robert J. Hack, appearing
19 on behalf of Missouri Gas Energy. My address is
20 3420 Broadway, Kansas City, Missouri, 64111.

21 JUDGE RUTH: Okay. Staff, do you want to go
22 next?

23 MR. SCHWARZ: Thomas R. Schwarz, Jr., P.O.
24 Box 360, Jefferson City, Missouri, 65102, appearing
25 for the Staff of the Missouri Public Service

1 Commission.

2 JUDGE RUTH: Okay. Public Counsel.

3 MR. MICHEEL: Douglas E. Micheel, appearing
4 on behalf of the Office of the Public Counsel and the
5 public, P.O. Box 7800, Jefferson City, Missouri,
6 65102-7800.

7 JUDGE RUTH: Okay. And Midwest Gas Users'
8 Association?

9 MR. CONRAD: Stuart W. Conrad of the law
10 firm of Finnegan, Conrad & Peterson, 3100 Broadway,
11 Suite 1209, Kansas City, Missouri, 64111.

12 JUDGE RUTH: And is there anyone here
13 representing Mid-America Assistance Coalition,
14 Incorporated?

15 MR. HILL: Yes. David R. Hill from the
16 firm Blackwell, Sanders, Peper, Martin, 2300 Main,
17 Suite 1000, Kansas City, Missouri, 64108.

18 JUDGE RUTH: Thank you.

19 I'd like to note that on February 8th, 2001,
20 the Commission issued an order granting intervention
21 to Mid-America Assistance Coalition, and due to the
22 expedited nature of this case, the Commission granted
23 that application, stating that if there were any
24 objections to it, the party could object at the
25 beginning of today's hearing.

1 Are there any objections to the intervention
2 of Mid-America Assistance Coalition?

3 (No response.)

4 JUDGE RUTH: Okay. Seeing no objections,
5 that intervention will stand.

6 Are there any other preliminary matters we
7 need to address?

8 (No response.)

9 JUDGE RUTH: Okay. Seeing no response, we
10 will move on.

11 The procedure for today's hearing will be,
12 we'll start with opening statements. The order of the
13 parties will be MGE, Staff, Public Counsel, Midwest
14 Gas Users' Association, and then Mid-America
15 Assistance Coalition. The order of the witnesses and
16 cross-examination, if any, will be the same as the
17 opening statements.

18 We're going to take a five-minute break, go
19 off the record, and I'm going to call the
20 Commissioners.

21 (A recess was taken.)

22 JUDGE RUTH: Let's go back on the record,
23 please.

24 Before the break we were just getting ready
25 for the opening statements. We'll proceed with that

1 now.

2 We'll start with MGE.

3 Please be sure and use the microphone.

4 MR. HACK: Would you like me to use the
5 podium, or does that matter?

6 JUDGE RUTH: It's up to you.

7 MR. HACK: It's up to me. I'll try it.

8 This is my first time in here in this room.
9 It's beautiful.

10 Good afternoon. May it please the
11 Commission and the RLJ, I'm here today on behalf of
12 Missouri Gas Energy urging you to approve the
13 application for variance we filed as quickly as
14 possible. By approving the variance, MGE has
15 requested you, the Public Service Commission, will
16 help make substantial financial assistance available
17 to gas customers truly in need. Denial of the
18 variance MGE has requested will preclude approximately
19 900 households from receiving any meaningful financial
20 assistance for this winter's heating bills.

21 As you have to be keenly aware, the double
22 whammy of cold weather and high gas prices has
23 resulted in soaring gas bills for customers this
24 winter. Reports are that the November and December
25 are the -- that we just experienced are the coldest in

1 recorded history. Natural gas prices reached
2 unprecedented heights this winter.

3 This is an extraordinary time. Recognizing
4 this extraordinary situation, many entities across the
5 state have taken action to help. The City of Kansas
6 City has eliminated three -- a 3 percent emergency tax
7 on natural gas gross receipts. The cities of Monett
8 and Independence have taken action to temporarily cut
9 or waive gross receipts taxes on natural gas service
10 in those towns.

11 I understand that the City of St. Louis has
12 taken action to make approximately \$1.1 million
13 available for financial assistance for heating bills
14 this winter.

15 The Governor's Office and the General
16 Assembly have taken action, have addressed a number of
17 bills through the budget process, as well as the
18 standard legislative process, to address the extra --
19 this extraordinary situation.

20 The application for variance filed by MGE
21 provides the Commission with the opportunity to take
22 action to provide assistance in this extraordinary
23 time as well.

24 By the application for variance MGE is not
25 simply standing idly by and redirecting other people's

1 money. On February 13th, MGE delivered to the
2 Mid-America Assistance Coalition a check for a quarter
3 of a million dollars. So even if the Commission
4 denies the application for variance, some meaningful
5 assistance will be made available.

6 In addition, in mid-December when the
7 weather turned particularly bitter, MGE issued a sort
8 of call to arms through the media and implored
9 households without heat to call MGE and get service
10 turned on. MGE restored service to approximately
11 700 households during that period of time for little
12 more than a promise to pay.

13 Just recently MGE has made arrangements with
14 the Division of Family Services to provide financial
15 assistance of about \$15,000 so that temporary workers
16 can be hired for Jackson and Clay Counties for DFS
17 offices to process LIHEAP paperwork that is currently
18 backed up to the tune of about six weeks. As they
19 say, every little bit helps.

20 MGE's public affairs personnel have been to
21 numerous meetings at which Commission -- Commissioners
22 and Commission Staff have attended as well. One of
23 the constant refrains that is reported to be heard
24 during these meetings is customers having income
25 levels just too high to qualify for LIHEAP or ECIP

1 funds. MGE's application for variance goes directly
2 to this issue.

3 With the assistance of MAAC, the Mid-America
4 Assistance Coalition, the distribution plan embodied
5 in the application was designed to provide assistance
6 to customers who will not qualify for other
7 assistance. This goal is primarily achieved by using
8 200 percent of poverty level as the income
9 qualification criteria. LIHEAP and ECIP funds are
10 typically available only to those who have incomes at
11 150 percent of poverty or less.

12 To bring some -- some specificity to this,
13 at the 150 percent level, a family of four making more
14 than \$2,131 a month would be ineligible for LIHEAP
15 funding. That's not a lot of money. The 200 percent
16 level would raise the eligibility to \$2,842.

17 In a nutshell, approving the application for
18 variance would provide assistance to the working poor,
19 to the elderly who would not otherwise qualify for
20 assistance. No other programs have come forward to be
21 developed to provide money to these customers.

22 MGE has the utmost confidence in MAAC's --
23 the Mid-America Assistance Coalition's ability to
24 efficiently and effectively administer these funds.
25 MAAC performed similar work in 1997. The results were

1 solid as expected.

2 It should also be clearly understood that
3 the funds will be fairly allocated among MGE service
4 territory. The details of this computation plan show
5 that about 75 percent of the money will go to the KC
6 Metro area and about 25 percent will go, what we call
7 outstate, St. Joe, Warrensburg, the southern region.
8 If you look at MGE's overall revenues, that fairly
9 approximates where our revenue streams come from,
10 service territory-wide.

11 Given the extraordinary bills we've seen
12 this winter, given the de minimus impact the
13 overall -- the overall customer base would see if the
14 standard tariff provisions were followed with these
15 refunds, and given the substantial impact that these
16 funds would have, or could have, on the lives of more
17 than 1,000 households under the proposal made by MGE,
18 we frankly don't understand why the proposal would not
19 be granted.

20 No party has alleged the proposal to be
21 unlawful. No party has alleged that the Commission
22 lacks authority to grant the proposal. The only
23 parties who have opposed the proposal, the Staff and
24 Public Counsel, have done so because they believe the
25 proposal violates traditional cost causation

1 principles.

2 MGE doesn't quarrel with these arguments.

3 In fact, we agree with them under normal
4 circumstances. These circumstances aren't normal, and
5 those cost causation principles shouldn't govern in
6 this extraordinary time.

7 The Commission should grant the application
8 for a variance as requested by MGE and provide
9 substantial and meaningful assistance immediately to
10 customers during this winter season.

11 I do have here with me Steve Cattron, our
12 president and chief operating officer, and I will put
13 him on the stand for a little bit so you may ask him
14 questions.

15 Thank you.

16 JUDGE RUTH: Thank you.

17 And, Staff, would you go next?

18 MR. SCHWARZ: Thank you, Ms. Ruth.

19 The Staff's understanding of the purpose of
20 this hearing today is that the Commission wanted
21 certain legal issues addressed, and also was of the
22 opinion that it needed further information in deciding
23 this case.

24 The Staff is unclear as to the information
25 that the Commission thinks that it might need, but we

1 have with us today Dan Beck of the Gas Tariff
2 Department who would be prepared and I think has a
3 general knowledge of items that I hope would address
4 any questions that you have.

5 In its initial response to MGE's application
6 for waiver, the Staff didn't address any issue as to
7 whether or not the waiver -- granting the waiver would
8 be precluded by law. After considering it
9 specifically, we would call the Commission's attention
10 to Section 393.130.2, which precludes a utility from
11 charging one customer one price for natural gas and a
12 similarly situated customer another price for gas.
13 That is, there needs to be uniformity of rates within
14 service classes for utilities.

15 Another consideration is that it might
16 possibly be single-issue ratemaking, which, while not
17 precluded by statute, is precluded by case law. That
18 is, you are considering, it would appear, the single
19 element of customer needs of one subclass of customers
20 without necessarily considering the factors affecting
21 other subclasses of customers. So those are two items
22 that the Staff thinks that the Commission should
23 consider while pondering this issue.

24 I would like to say that back in 1997, I
25 think it was, the Staff had the opportunity to work

1 with the Mid-America Assistance Coalition and had a
2 perfectly wonderful experience with MAAC's
3 administration of certain contributions that MGE made
4 in settlement of two complaint cases involving the
5 '96-97 billing problems that they had.

6 And, certainly, Staff appreciates the need
7 of low-income customers. I am struck, however,
8 that -- that while narrowing or focusing on a subclass
9 of residential customers, many of whom have already
10 received assistance, either through government
11 programs or through privately funded programs, that
12 there has been no addressing of the needs of
13 particularly the small general service customers.

14 It is a widely diverse group. The
15 limitation on the class is that it can take up to
16 10,000 CCF of gas per month. Wide variation of
17 circumstances. I mean, that's obviously the small
18 business, the mom-and-pop operation, and the
19 newspapers are just as replete with reports of small
20 businesspersons who are suffering the same effects of
21 cold weather and high gas prices as are the
22 residential customers. And while it may not be a
23 large amount that the proposed waiver would shift,
24 it's the only amount that those customers will see by
25 way of relief this year.

1 With that, I'll conclude my opening remarks,
2 and, certainly, anticipate questions from the
3 Commission.

4 JUDGE RUTH: Thank you.
5 Public Counsel?

6 MR. MICHEEL: I have some demonstrative
7 handouts -- or should I give them all to you?

8 JUDGE RUTH: And these are for demonstrative
9 purposes?

10 MR. MICHEEL: Yeah. They are just some
11 statutes and a case. There is a bundle of them.

12 JUDGE RUTH: Would you go ahead and give one
13 to the court reporter, please, and we'll mark this as
14 Exhibit 1 for demonstrative purposes.

15 (EXHIBIT NO. 1 WAS MARKED FOR
16 IDENTIFICATION.)

17 MR. MICHEEL: May it please the Commission,
18 the Office of the Public Counsel's opposition to the
19 variance requested by Missouri Gas Energy in this
20 proceeding is rooted in Public Counsel's belief that
21 this Commission lacks the statutory authority to grant
22 the requested variance.

23 I've handed out a packet of two statutes and
24 a case for you to look at as I go through my opening.
25 I will be making my legal arguments here.

1 First, under Section 393.130.2, as
2 Mr. Schwarz referred to, no gas corporation may charge
3 more for its service than allowed by law or by order
4 or decision of the Commission. In addition, a gas
5 corporation may not directly or indirectly rebate to
6 customers part of what has been collected when such
7 results in a lesser compensation by one person for the
8 same service than paid by another for a like and
9 contemporaneous service under the same or
10 substantially similar circumstances. And that
11 language is bolded there as part of the statute.

12 A similar prohibition against the disparate
13 refunds appears in Section 393.140, Subparagraph 11.
14 This section provides that a refund is lawful only
15 when regularly and uniformly extended to all under
16 like circumstances.

17 The third item I've provided there for the
18 Commission's review is a case in the matter of Laclede
19 Gas Company. It's found at 5 MO P.S.C. (N.S.) 540,
20 pages -- and I'm specifically talking about Pages 544
21 and 545, and it was decided by this Commission in
22 1954.

23 This Commission in 1954 had occasion to
24 analyze Section 393.130.2 and 393.140, Subsection 11.
25 In this decision the Commission expressed the opinion

1 that refunds and rebates could not be ordered unless
2 the refund and rebate is regularly and uniformly
3 extended to all under like circumstances.

4 Such analysis is consistent with the
5 statutory language at 393.130.2 and 393.140,
6 Subsection 11, and is as valid today as it was in
7 1954.

8 The Missouri Supreme Court in McBride & Sons
9 Builders, Inc. versus Union Electric Company found at
10 526 SW 2d 310, specifically at Page 313, in 1975, had
11 occasion to comment on the meaning of Subsection 11 of
12 393.140. The Court noted Subsection 11 prohibits any
13 corporation to "refund or remit in any manner or by
14 any device any portion of the rates or charges
15 specified unless done uniformly and consistently."

16 In this case, Missouri Gas Energy does not
17 seek to regularly and uniformly extend the refunds at
18 issue to all customers under like circumstances as
19 required by law and its current tariffs. MGE seeks to
20 provide refunds to only a certain group of residential
21 customers. Such a refund is not consistent with the
22 statutory requirement of 393.130.2 and 393.140,
23 Subsection 11, and should be rejected by this
24 Commission.

25 The purpose of the Public Service Commission

1 Law, Section 386 through 393, is to secure equality in
2 service and rates for all who need or desire these
3 services and who are similarly situated. May
4 Department Store Company versus Union Electric,
5 107 SW 2d, Page 41, 1937.

6 To allow MGE to place these refunds with the
7 Mid-America Assistance Coalition would be wholly
8 contrary to the purpose of the Public Service
9 Commission Law. Although it is correct that this
10 Commission has a considerable amount of discretion in
11 setting rates, this discretion can only be used within
12 the circumference of the powers conferred on it by the
13 General Assembly, State ex rel Utility Consumers
14 Council of Missouri v Public Service Commission,
15 585 SW 2nd 41, 1979.

16 The General Assembly clearly and
17 unambiguously set out this Commission's authority to
18 grant refunds. Those refunds are only lawful when
19 regularly and uniformly extended to all under like
20 circumstances.

21 Look, the Public Service Commission Law was
22 established to regulate investor-owned utilities and
23 their rates to ensure uniformity of rates to similarly
24 situated customers and to ensure that such service is
25 safe and adequate. The Public Service Commission Law

1 was not designed to directly further social assistance
2 goals or agendas regardless of how laudable the social
3 assistance goal.

4 As an officer of the court and an attorney
5 who regularly practices before this Commission, I have
6 a duty to point out the provisions of the law and my
7 belief as to what those provisions require whether I
8 personally agree with those provisions or not.

9 Granting MGE's requested variance also would
10 result in undue and unreasonable discrimination,
11 contrary to Section 393.130.1. The fundamental theory
12 of ratemaking for public utilities is that there shall
13 be but one rate for a particular service and a charge
14 made to one patron or consumer different than that
15 made to another for the same service under like
16 circumstances constitutes undue discrimination.

17 In State ex rel McKittrick versus Missouri
18 Public Service Commission, 175 SW 2d 857 at Page 866,
19 in 1943, the Court -- it was held that a utility may
20 have two or more rates if they are for different -- if
21 they are for a different character of service, but to
22 have two or more rates for the same service is the
23 thing forbidden by the nondiscrimination statute.

24 If this Commission grants the requested
25 variance, certain residential customers will, in

1 effect, be paying a different rate for service than
2 other similarly situated residential customers. This
3 is exactly the type of discrimination that the Public
4 Service Commission Law seeks to eliminate.

5 Such a proposal would result in intra-class
6 rate level differences. For the purposes of setting
7 rates, all residential customers should be treated the
8 same. To date, the Commission has not created a
9 disadvantaged/low-income customer class. Such a class
10 creations may be desirable, but there is currently no
11 such customer class and this Commission does not have
12 the authority to create such a customer class in this
13 proceeding.

14 Setting aside the legal prohibitions that
15 should properly prevent this Commission from granting
16 the requested variance, there are policy reasons for
17 not granting the requested variance.

18 First, granting MGE's request would result
19 in the body of ratepayers making a charitable
20 contribution to the Mid-America Assistance Coalition.
21 Ratepayers should not be made unwitting contributors
22 to charitable concerns preferred by the Company.

23 Although MGE shareholders may find it
24 desirable to contribute shareholder dollars to worthy
25 charitable causes, ratepayers should not be made to

1 give a forced donation to the Mid-America Assistance
2 Coalition. If customers choose to donate to MAAC,
3 they can do so of their own volition.

4 Second, all ratepayers have been facing
5 hardships due to the increased cost of gas. MGE's
6 proposal is particularly burdensome on the small
7 general service customers who cannot seek relief from
8 MAAC.

9 Missouri Gas Energy points out in its papers
10 that Tariff Sheet No. 24.18 specifically recognizes
11 the Commission's authority to deviate from the normal
12 disposition of funds when it states, "unless the
13 Missouri Public Service Commission shall otherwise
14 order". That is correct. However, such deviation
15 cannot go beyond the Commission's statutory authority.

16 The requested treatment of refunds at issue
17 is contrary to Section 393.130.2 and 393.140,
18 Subsection 11. Public Counsel believes the tariff
19 language allows the Commission to change the method
20 the refunds are provided to all customers, i.e., the
21 Commission can expedite the refund to all customers or
22 the Commission could require the Company to provide
23 refund checks to all customers.

24 However, pursuant to statute, the Commission
25 cannot order the refunds be returned only to a

1 discrete group of similarly situated customers as
2 requested by MGE and the Mid-America Assistance
3 Coalition.

4 I would point out, to the extent allowed by
5 law, the Office of the Public Counsel has been very
6 active in proposing and supporting programs directed
7 at assisting low-income customers. However, in this
8 case, in good conscience, we do not believe the Public
9 Service Commission Law allows this Commission to
10 allocate these funds in the manner requested by
11 Missouri Gas Energy.

12 As noted by the Greek philosopher Aristotle,
13 the law is reason, free from passion. If you review
14 the requirements of Sections 393.130.2 and 393.140,
15 Subsection 11, setting aside the passion evoked by
16 this proceeding, I believe you will come to the
17 conclusion that this Commission does not have the
18 statutory authority to grant the requested variance.

19 JUDGE RUTH: Thank you.

20 And Midwest Gas Users'. And would you go
21 ahead and go to podium? I think I can hear better.

22 MR. CONRAD: Okay. Midwest Gas Users'
23 represents transportation customers.

24 It might be useful to take just a moment to
25 look at where the refunds are coming from, because I

1 think that will help you-all to understand why we are
2 taking no position on this specific request that is
3 before you.

4 I forget the number, and Mr. Hack can
5 correct me if he -- if this is wrong, but my
6 recollection is roughly a million dollars,
7 a-million-one came back to Missouri Gas Energy from
8 Williams Natural Gas as a result of --

9 JUDGE RUTH: I hate to interrupt.

10 MR. CONRAD: You want me to use that?

11 JUDGE RUTH: I do, yes.

12 MR. CONRAD: -- came back to William -- or
13 to Missouri Gas Energy from Williams as a result of a
14 reduction in the rate for storage services, storage
15 services the rate for which is regulated by FERC.

16 And as is the custom at FERC, those dollars
17 are collected, but they are often collected pursuant
18 to a refund, an obligation to refund by Williams in
19 that case.

20 Now, MGE presumably purchased the storage
21 services to provide reliable service to its system's
22 supply customers; that is, residential or
23 commercials, those who purchase their natural gas from
24 MGE. Accordingly, the dollars coming back relate to
25 that use.

1 Midwest, as a transportation customer group,
2 would be in a position to make its own arrangements,
3 or our members, more specifically, would make their
4 own arrangements with Williams for storage services
5 either directly with Williams or indirectly through
6 brokers or marketers. And in either of those two
7 events, our people would have had a corresponding
8 refund coming back to them or for their benefit from
9 Williams as a result of their service purchased --
10 their storage services purchased.

11 Despite the fact -- forgive the editorial
12 comment, but despite the fact that this Commission in
13 its two prior rate decisions on this company has
14 nonetheless insisted on imposing the costs of not only
15 the storage, but the storage inventories on my
16 customers, regardless of that, our customers believe
17 that this -- these dollars that have come back to MGE
18 in this case are not ours, and we have no interest in
19 them. And for that reason, with respect to that
20 portion of the fund, as Mr. Micheel so eloquently
21 states in other cases, we have no dog in this fight.

22 Approximately \$500,000 of the amount that is
23 sought to be disbursed here is overcharge -- shall I
24 say unauthorized overrun charges. Now, I don't know
25 how many customers are involved. We were surprised,

1 as we said in our pleading, to see the amount.

2 But, again, Midwest represents and has done
3 so for the period of time that I have represented
4 them, which is close to 25 years now, customers who
5 are -- that should be responsible with respect to
6 their use of the system. Since transportation began
7 on this system in 1986 and '87 in Post-order 436, we
8 have unswervingly held to that position.

9 We do not believe that responsible
10 transporters should use overruns to gain the system,
11 just as we did not believe, and ultimately people
12 agreed with us, that MGE should not look to
13 transportation customers' gas supplies as its source
14 of supplies of last resort. Our people should not be
15 borrowing sales customers' gas, which is what they do
16 if they overrun on entitlement.

17 If they are told and communicated and said,
18 You have to curtail your use because your supply is
19 cut off, and they continue to do it, that's wrong, and
20 they are using somebody else's gas. They should pay
21 for that gas that they have used, and it's quite
22 appropriate, in my view, to have them pay a penalty
23 for that as a deterrent.

24 The only thing that we have asked this
25 Commission with respect to this controversy is with

1 respect to that issue, that it is often not an
2 intentional matter that a customer overruns. I don't
3 know the circumstances. Mr. Hack may not know them.

4 At this point we have simply asked that any
5 order that were to grant this relief not be written in
6 such a way that it would deprive those customers of
7 any reasonable ability that they might have in the
8 circumstances to challenge whether or not those
9 charges are appropriate in that circumstance.

10 I don't know that they are not. I don't
11 know that they are. My understanding is that
12 Mr. Hack, on behalf of his client, has indicated in
13 his -- in their pleadings that they have no problem
14 with that condition and I don't understand anybody
15 else to do so.

16 Accordingly, Midwest finds itself in the
17 position, with the exception of that narrow issue, of
18 really not having a dog in that fight either. Lest I
19 be misunderstood, if these were dollars that were
20 being refunded to this company that had been generated
21 with respect to usage by transportation customers of
22 some service, we would have a position on that,
23 because those would be our dollars.

24 But these are not our dollars, and,
25 therefore, we are taking intentionally no position

1 with respect to whether this Commission can, or
2 should, choose a particular subclass of a class of
3 customers as a target for relief.

4 My hope is that that will clarify our
5 position. I think I had to -- I felt it necessary to
6 file one thing, a second pleading to just clarify that
7 because I felt in reading a responsive pleading back
8 to that that it was perceived that we were somehow
9 supporting something, and I intentionally specifically
10 tried to take no position with respect to the
11 entitlement within that particular class. These are
12 simply not our dollars, and it's -- we don't have a
13 dog here to fight about. If we did, we would be.

14 Thank you all.

15 JUDGE RUTH: Thank you.

16 And Mid-America Assistance Coalition?

17 MR. HILL: Thank you.

18 May it please the Commission and Judge Ruth,
19 my name is David Hill. I'm here appearing in place of
20 my partner Carl Zobrist who had a pre-existing
21 commitment out of town.

22 We are representing the Mid-America
23 Assistance Coalition on a pro bono basis and are very
24 happy to be here. Many times a lawyer cannot say that
25 he is here representing the side of truth and justice,

1 but we are, and -- and we trust that the Commission
2 will see it that way.

3 Mid-America Assistance Coalition is a
4 non-profit corporation. They are experienced in the
5 facilitation of assistance to the poor and those in
6 need. Jan Marcason, the executive director of MAAC,
7 is here today and will offer testimony as to both MAAC
8 and its proposed system for distributing the funds
9 that MGE has offered to -- in this application has
10 offered to transfer to MAAC for distribution to the
11 poor and to those in need.

12 Frankly, MAAC is baffled by the fact that
13 Staff and even more so Public Counsel see fit to fight
14 this so hard. And, Judge Ruth, prior to the
15 Commissioners coming in, we had said that briefing
16 would not be necessary. In light of the fact that
17 Public Counsel in effect read you a brief, briefing
18 may be necessary.

19 MAAC is confident the Public Counsel is
20 wrong on the law, that this is lawful, that the
21 Commission does have legal authority to grant MGE's
22 application, and if the Commission has any doubt about
23 that whatsoever, MAAC is ready, able, and willing to
24 provide briefing on those points.

25 In fact, in MAAC's view, granting the

1 application is the only reasonable decision for the
2 Commission in this case. In their papers, neither
3 Staff nor Public Counsel argued that this application
4 proposed anything that was illegal. Now Public
5 Counsel appears to argue that, but in their papers
6 they didn't.

7 Clearly, this is not illegal. This does not
8 violate the tariff. It does not violate the law. It
9 does not violate the regulations.

10 Public Counsel and Staff argued that MAAC
11 and those in need ought to go to try to get help from
12 the Legislature. They ought to go to the Governor.
13 They ought to throw themselves on the mercy of the
14 elected representatives. Well, I'm sure, as everyone
15 knows, we've already done that. We're doing that.
16 We're seeking assistance from public officials. We're
17 seeking assistance everywhere.

18 The sad fact of the matter is that the need
19 outstrips the ability of the elected officials, at
20 least thus far, to provide assistance for those in
21 need.

22 They say -- Public Counsel and Staff say
23 that the money should go back to the ratepayers. It
24 should go back to those that paid it. Well, of course
25 with respect to the unauthorized use charges, the

1 ratepayers didn't pay it. Those charges were levied,
2 as I understand it, on those customers of MGE who
3 essentially violated the MGE tariff by drawing
4 unauthorized gas in the month of December 2000, I
5 believe.

6 And with respect to the dollars received as
7 a result of the Williams refund ordered by FERC, those
8 dollars, according to the FERC order in the case, are
9 for funds paid by -- or due to ratepayer payments made
10 from approximately 1993 to the year 2000. There is
11 hardly going to be a one-to-one match with respect to
12 the refunds given over even to ratepayers were the
13 Commission to order that.

14 I for one am a new resident of an area
15 served by MGE, and so I would be receiving my 50-cent
16 windfall were this ordered to go back to the
17 ratepayers of MGE, because I didn't pay MGE at any
18 time from 1993 to 2000. I for one am more than glad
19 to forgo my 50-cent, or whatever it would be,
20 windfall. But the point is that there is not going to
21 be a one-to-one match, even were the Commission to
22 order those refunds be given back to the MGE
23 ratepayers.

24 What is clear -- well, I should mention one
25 other thing. Public Counsel -- and, of course,

1 hearing Public Counsel's argument a few minutes ago
2 was the first time I had heard it. They cite a number
3 of statutory provisions, all of which sound as if they
4 prohibit undue discrimination. Well, that's true.
5 Undue discrimination is prohibited. And what does
6 "undue discrimination" mean? It's discrimination
7 that's undue. It's not all discrimination.

8 With all due respect for Public Counsel and
9 for Staff, MAAC would assert that those most in need
10 are those to be benefited by the application made by
11 MGE. MAAC absolutely does not care one way or the
12 other whether this benefits MGE. MAAC couldn't care
13 less. MAAC cares about its customers, those who are
14 unable to pay their bills.

15 As Mr. Zobrist said in the pleading he
16 drafted, these truly are unique circumstances.

17 This Commission is empowered by the law to
18 act in the public interest, and MAAC cannot too
19 strenuously state that the public interest compels the
20 granting of this application. This application is in
21 the interest of those in society who are most in need.
22 And if the Commission cannot see their way to grant
23 this application to provide assistance for these
24 people, then it's difficult to understand what
25 interest this Commission is protecting.

1 MAAC urges the Commission to take what it
2 views as the only reasonable -- the only reasonable
3 action here, and that is to grant the application.
4 Denial of the application would in the most literal
5 sense leave the most vulnerable people in our society
6 out in the cold.

7 Thank you very much.

8 JUDGE RUTH: Thank you.

9 Okay. As we discussed before the hearing,
10 we're going to go back to MGE.

11 If you have witnesses that you want to put
12 on at this time, this is your opportunity to present
13 your evidence, and the Commissioners may also have
14 some questions for you or the witnesses that you
15 brought.

16 MR. HACK: We do have Steven Cattron, the
17 president and chief operating officer of Missouri Gas
18 Energy, and I would like to call him to the stand, if
19 I might.

20 JUDGE RUTH: Please.

21 Sir, would you raise your right hand.

22 (Witness sworn.)

23 JUDGE RUTH: Please state your full name for
24 the record.

25 THE WITNESS: Steven W. Cattron.

1 STEVEN CATTRON testified as follows:

2 DIRECT EXAMINATION BY MR. HACK:

3 Q. Would you spell it, too, please.

4 A. C-a-t-t-r-o-n. Steven with a "V."

5 Q. Mr. Cattron, by whom are you employed?

6 A. I'm employed by Missouri Gas Energy, a
7 division of the Southern Union Company.

8 Q. And what is your position with MGE?

9 A. I am the president and chief operating
10 officer.

11 Q. Mr. Cattron, did you give me and your other
12 senior staff members some fairly broad instructions in
13 mid-December of last year?

14 A. Yes, I did.

15 Q. Would you please indicate to the Commission
16 what those instructions were?

17 A. Yes. I would be happy to.

18 And maybe just a little background. In my
19 tenure with Missouri Gas Energy, this was really the
20 first winter that I had personally experienced the
21 severity of the type of impact on consumers, not
22 necessarily from price but purely from weather alone.

23 In early December I basically gave guidance
24 and direction to my senior staff that I wanted us to
25 do what was right for consumers, and that basic

1 philosophy set us out on the path, as Mr. Hack
2 indicated earlier, step one was really to begin to
3 restore service to those without.

4 The week of December 11th, we restored
5 service to over 700 customers during a period of time
6 when we were experiencing wind chills in the 20 to
7 30 below, and we had employees that were in -- in that
8 weather for 16 hours straight restoring service to
9 those customers.

10 That fundamental philosophy is at the heart
11 of the application we have filed here today and really
12 has continued through a number of meetings and
13 activities -- Mr. Hack mentioned a few of those --
14 where we were providing backing support to the
15 Division of Family Services. We have significantly
16 liberalized our budget plan. We refer to it as our
17 ABC plan to make payment arrangements much easier.

18 And we are beginning just recently with a
19 community outreach program where we are going to the
20 communities, especially in those in greatest need, and
21 trying to align our energy assistance group like MAAC,
22 like DFS, like others, and really going to the
23 communities, primarily the faith based, but also in
24 the senior citizen aspects, and really trying to reach
25 out to help customers during these unprecedented

1 times.

2 Q. Mr. Cattron, have you or your staff been to
3 any public forums to hear customers talk about the
4 difficulties presented by gas bills this winter?

5 A. Yes. I have personally. A number of my
6 staff are allocating significant time to those public
7 hearings.

8 And I think most important, not only through
9 public hearings, I think one of the most common
10 receipts of communication my office receives today are
11 those on fixed income and those that are not receiving
12 any type of assistance. And those letters are coming
13 in at a rate that I have not personally experienced in
14 my tenure with the company.

15 Q. Are you aware, and it's probably through the
16 application that you may be aware of if MGE were
17 not -- or if the Commission were to deny the
18 application, of the average monetary value that a
19 typical customer would see from the refunds that -- at
20 issue here?

21 A. Yes. On average -- I've had my staff look
22 at that and do some calculations, and, on average,
23 that impact would be about 15 cents a month on the
24 average typical consumer.

25 Q. Are you aware of whether the Kansas

1 Corporation Commission has taken action that could be
2 characterized as similar to the request that MGE has
3 made here?

4 A. Yes, they have. On behalf of Kansas Gas
5 Service, I know that as a result of their service
6 territory abutting up to ours and the Kansas City
7 metropolitan area consumers, the Kansas Corporation
8 Commission has taken action; in fact, probably even
9 more aggressive action than what we have proposed
10 here.

11 Q. Where were you employed before you came to
12 work for MGE, Mr. Cattron?

13 A. At Kansas City Power & Light.

14 Q. When you were employed by Kansas City
15 Power & Light, did you have occasion to do substantial
16 work in the state of Kansas before the Kansas
17 Corporation Commission?

18 A. Yes, I did.

19 Q. And, Mr. Cattron, are you -- do you have
20 substantial experience in the regulatory arenas of
21 both Kansas and Missouri?

22 A. Yes, I do.

23 Q. As a layman -- I'm not asking for your legal
24 opinion -- what is your understanding of the
25 similarities or differences between the general

1 statutory authority of the Kansas and Missouri
2 commissions?

3 A. You threw that "statutory" word in there.

4 But I guess probably in my professional
5 experience, I would say that the commission
6 authorities are -- I would perceive, as being very
7 similar.

8 Q. Is there anything else you would like to
9 tell the Commission right now?

10 A. I think probably the only thing I would like
11 to share with the Commission is that it's probably
12 disappointing to even have to be sitting here today.

13 This is simply about trying to do the right
14 thing, and as a -- as a group, and I will include all
15 of us, as regulators, as utility executives, we spend
16 a lot of time, a lot of energy on maybe why we can't
17 do something, and I think this -- we are in
18 unprecedented times, and I think we need to begin
19 looking for why we can do things rather than devoting
20 our time, our energy on the reasons why we can't.

21 I've been around regulation my entire
22 professional career, and my own personal belief is we
23 devote -- we collectively devote a lot of our
24 attention to why things can't be done, rather than
25 focusing our attention on what needs to be done and

1 what we need to do to make it happen.

2 I sit here now and I say if this Commission
3 determines you don't have the authority, I would love
4 to engage in a conversation with you that says, What
5 do I need to do to help you get the authority in order
6 to make this happen? I absolutely believe that has to
7 happen. This is to help people that otherwise do not
8 get help. These are -- we have specifically designed
9 this to help those that would not otherwise get the
10 assistance.

11 MR. HACK: Thank you very much.

12 That's all of the questions for me.

13 JUDGE RUTH: Okay. Just a moment, please.

14 Chair Lumpe, do you have questions for this
15 witness?

16 CHAIR LUMPE: Yes.

17 QUESTIONS BY CHAIR LUMPE:

18 Q. Mr. Cattron, I have two that I would just
19 like to clarify.

20 It was mentioned by Staff, the small service
21 group. Would they -- first, is there a refund due
22 that group also, that class?

23 A. If -- if we were to follow traditional
24 procedures, there are a couple of different options
25 that could be done. One would be that some of these

1 dollars would flow back through our PGA clause.

2 Another option could be possibly just to reduce the
3 deferred cost balance, and then if you followed normal
4 procedures, then those would flow through.

5 When I share with you that the average
6 impact is 15 cents, that's on all customers.

7 Q. The small service group as well as --

8 A. Yes. Now.

9 Q. -- residential?

10 A. Excuse me. I didn't mean to interrupt you.

11 Q. The small service group as well as the
12 residential, it would be 15 cents?

13 A. I do not have that specific calculation. I
14 actually asked my staff to calculate that on the
15 average consumer impact for all of Missouri Gas Energy
16 customers.

17 Q. I was just curious whether the refund could
18 not flow back to the small service group, whatever
19 their allocation was, but for the residential group to
20 go into the pool, as it were, and not be refunded.

21 But you're talking about using all of the
22 refund to go to the residential needy?

23 A. We are -- we would direct all of those funds
24 to MAAC for their distribution to those, and the
25 guidelines would be for those at the 200 percent

1 poverty level. And those would be residential
2 consumers.

3 Q. All right. So the refunds that would
4 potentially have gone to the small service group would
5 also be going back to residential?

6 A. Yes --

7 Q. Okay.

8 A. -- under this proposal.

9 And I might -- I might share, if I could,
10 very quickly some of the things we are doing for the
11 small business. And, most importantly, the first
12 group we have started with is the not-for-profits, and
13 we are proactively contacting all not-for-profit
14 entities within our service territory -- and I'm
15 talking now from St. Joe to Joplin; this is not just
16 in the Kansas City metropolitan area -- and reaching
17 out to assist them in either making pay arrangements
18 with them -- we're even extending and expanding our
19 budget plan to those groups as well, and then we are
20 doing a similar program with the small commercial
21 accounts as well.

22 Q. The other question I have was triggered by
23 Mr. Conrad, who said that he was surprised at how
24 large the fund -- the penalty amount amounted to.

25 If they were to challenge that and discover

1 that the -- that there was an overage in penalties, in
2 other words, that the fund really was not that big,
3 what -- how would you refund that?

4 A. I think the proposal addresses that very
5 nicely in that we have designed that for those refunds
6 that are collected rather than those refunds charged.

7 And as Mr. Conrad said, he was wanting to
8 protect that opportunity for his customers to
9 challenge that. I think that opportunity presents
10 itself and those funds that would be distributed then
11 would be those funds that were collected, rather than
12 those funds that were charged. So I think that
13 opportunity in our proposal as it's currently before
14 you takes that into account.

15 Q. All right. So there -- so that number is
16 sort of not a firm number of the penalty amount?

17 A. It's firm based on the information that MGE
18 has -- has provided to those customers, and at this
19 point, I'm unaware of any challenges of those fees.

20 Q. Okay.

21 A. But they're -- I'm just simply unaware if
22 there are any.

23 Q. Okay. But conceivably there could be and
24 that could reduce that number?

25 A. Yes.

1 Q. All right.

2 A. Just that one component piece for those
3 unauthorized use charges.

4 CHAIR LUMPE: All right.

5 MR. HACK: If I might just jump in -- I
6 apologize.

7 But we have received approximately
8 80 percent of the dollars that have been billed
9 under -- under that portion of the application, so the
10 money is basically coming in unchallenged.

11 CHAIR LUMPE: All right. But there is a
12 potential 20 percent that hasn't come in yet that
13 could be, or --

14 MR. HACK: Certainly one large customer just
15 declared bankruptcy --

16 CHAIR LUMPE: Yes.

17 MR. HACK: -- you know, so there are always
18 those issues. But, I mean, they could be challenged.
19 There is no question.

20 CHAIR LUMPE: Okay. Well, I was just
21 curious whether we are throwing out a number here of a
22 million something, and I'm wondering if there is an
23 amount there that would be less than the
24 million-something that we're talking about.

25 MR. HACK: At this point, of the

1 three-fifty-six that is subject to the unauthorized
2 use charges, my understanding is that we've received
3 approximately two-fifty of it. So, in any event,
4 we're above a million if you go two-fifty, two-fifty,
5 six-twenty.

6 CHAIR LUMPE: Okay. I think those are all
7 of the questions I have of Mr. Cattron.

8 THE WITNESS: Thank you.

9 JUDGE RUTH: Okay. Let me step in. I have
10 to apologize. I completely skipped cross-examination
11 after we had direct, and I need to go back and let
12 Staff then cross-examine the witness, if you have
13 questions.

14 MR. SCHWARZ: Thank you.

15 CROSS-EXAMINATION BY MR. SCHWARZ:

16 Q. Mr. Cattron, would you describe Neighbors
17 Helping Neighbors?

18 A. Yes. Neighbors Helping Neighbors is a
19 program that the Company provides the opportunity to
20 our consumers to contribute to a fund that is also
21 distributed to MAAC for the assistance of utility
22 assistance to all consumers.

23 Q. And does MGE make solicitations with bill
24 inserts and that sort of thing --

25 A. Yes, we do.

1 Q. -- during the year?

2 A. Yes. We promote Neighbors Helping
3 Neighbors.

4 Q. So all of your customers have the
5 opportunity to voluntarily contribute to a low-income
6 assistance?

7 A. They all have that opportunity, yes.

8 Q. Are you aware of legislation in Kansas
9 which would direct all of the refunds attributable to
10 ad valorem tax refunds to low-income energy
11 assistance?

12 A. Not specifically. I'm vaguely aware of the
13 ad valorem tax refunds and Kansas Gas Service's
14 attempt to try to use those to mitigate the impact of
15 this winter's gas prices.

16 Q. Would you favor granting the Commission the
17 authority that you were advocating to make this kind
18 of transfer from shareholders to low-income energy
19 customers?

20 A. I'm not sure I understand the question. But
21 the \$250,000 is shareholder funds that the Company
22 contributed earlier this week.

23 Q. Well, I ask you to recall -- my recollection
24 is you made a statement that if the Commission
25 concludes that it doesn't have the authority to do

1 this kind of action that you would be glad to help in
2 any way that you can to get them that authority.

3 And my question is, would you be willing for
4 the Commission to have the same authority to take
5 shareholder money as well as to redistribute ratepayer
6 money?

7 A. I think this company has experienced exactly
8 what you're talking about in prior cases. So I don't
9 think there is any question whether this Commission
10 has that authority or not. We have experienced it.
11 And I must say, not in my tenure.

12 MR. SCHWARZ: Well, I'd ask for an answer to
13 my question. He advocated assistance in getting the
14 Commission the authority to take money from one group
15 of ratepayers and give it to another group of
16 ratepayers, and I'm wondering if he would be willing
17 to have the specific -- the Company would advocate
18 that same authority with respect to its shareholder as
19 he's advocating for a specific subgroup of ratepayers,
20 and I did not get an answer. I think I'm entitled to
21 a yes or no answer.

22 JUDGE RUTH: Please answer the question with
23 a yes or a no.

24 THE WITNESS: And could you summarize that
25 one more time for me?

1 BY MR. SCHWARZ:

2 Q. You said the Company would advocate for the
3 Commission for the authority to grant this kind of
4 waiver, or rather, this kind of channeling of one
5 ratepayer's refund to another ratepayer.

6 Would you favor the Commission having the
7 authority to do that with respect to diverting
8 shareholder money to a particular group of ratepayers?

9 A. No. Management has the capability to make
10 that decision.

11 Q. Is it true that in your Direct Testimony in
12 the current MGE rate case that you advocate that MGE's
13 charitable contributions be reimbursable by the
14 ratepayers?

15 A. I don't recall specifically. It's been a
16 while since I've looked at that testimony, what my
17 testimony specifically addresses. I do talk about in
18 that testimony looking at regulatory process and
19 looking for regulatory change in the way we go about
20 the process today. But I don't recall specifically.

21 Q. Do you know how many small general service,
22 SGS, customers MGE has?

23 A. No, I do not.

24 Q. Do you think that if an MGE ratepayer saw a
25 dollar or \$5 fall out of his pocket that he would bend

1 over and pick it up and put it back in his pocket?

2 A. I certainly believe most -- most individuals
3 would.

4 Q. Is it possible that what might be de minimus
5 to a corporate executive or a blue-stocking law firm
6 attorney might be of more substance to someone on the
7 lower end of the economic scale?

8 A. I'm not sure of your question. You're
9 wanting my opinion on what?

10 Q. Do you think it's possible that someone on
11 the lower end of the economic scale as opposed to a
12 corporate executive or a blue-stocking attorney might
13 find what is de minimus a different matter? They
14 might have a different view of what's de minimus?

15 A. I think everybody has different views. I
16 don't know what -- I mean, we're trying to get help to
17 the people you are talking about. I don't know.

18 Q. How many of -- well, let me ask you this:
19 Are any of your SGS customers eligible for Neighbors
20 Helping Neighbors?

21 A. I believe that's a residential program only.

22 Q. So that small mom-and-pop grocery stores or
23 barbershops aren't eligible for any of the Neighbors
24 Helping Neighbors?

25 A. I don't believe so.

1 Q. Do you if they are eligible for low-income
2 energy assistance through LIHEAP or ECIP?

3 A. I don't know.

4 Q. How do you determine -- how have you
5 determined who's most in need?

6 A. Our guideline was looking at what the
7 LIHEAP process was currently -- it was elevated to
8 150 percent, so then we went on to 200 percent. And
9 we're trying to address those that don't have access
10 to the LIHEAP funds and the ECIP funds, is how we
11 tried to create this.

12 We tried to go and capture a benefit for
13 those in the next tier. In these public hearings that
14 we've been to, we have customers that literally are
15 \$10 -- I have personally seen the situation where a
16 customer had \$10 more in their income and, therefore,
17 did not qualify for any benefit whatsoever.

18 Q. And wouldn't that be true no matter where
19 you draw the line?

20 A. Absolutely. But this is another thousand
21 customers that hopefully we can benefit.

22 Q. Do you have any idea how many residential
23 customers you have?

24 A. I don't know specifically. Our total
25 customer base is right at 490,000. I would estimate

1 our residential count would probably be in the 440,000
2 to 450,000 range.

3 Q. At the time that MGE would make this
4 transfer of funds to MAAC, would that discharge all of
5 MGE's obligations to see that the money got where the
6 Commission intended it to go, or would -- well, would
7 that -- writing the check to MAAC, in your opinion,
8 would that end MGE's obligation under its tariffs and
9 Commission orders?

10 A. I don't know. When you use the word
11 "obligation," I don't know. We will have interest in
12 continuing to monitor and see how those funds are
13 distributed and see who is receiving the benefit.
14 That is something we will have interest in. So when
15 you say "obligation," I'm not sure how I should
16 interpret that word.

17 Q. Well, I don't -- and I don't mean to really
18 make any -- I mean, we've worked with MAAC before. I
19 have the highest respect for them. On the other hand,
20 unanticipated things happen all of the time.

21 If for some reason the funds were -- never
22 arrived at the intended -- to the intended recipients,
23 would MGE have any further legal obligation?

24 MR. HACK: If I can jump in, we will -- we
25 would execute a contract with MAAC for administration

1 of these funds. MAAC is a corporate body, and I do
2 not mean this in any disparaging way towards MAAC at
3 all, but to the extent that they did not perform in
4 accordance with the contract, then we would have legal
5 rights that we would need to exercise with respect to
6 MAAC. And I do not at all expect that that would ever
7 occur.

8 MR. SCHWARZ: Nor does -- I'm certainly not
9 suggesting or implying anything.

10 I think that's all that I have.

11 JUDGE RUTH: Thank you.

12 Public Counsel, would you like to
13 cross-examine the witness?

14 MR. MICHEEL: Thank you, your Honor.

15 CROSS-EXAMINATION BY MR. MICHEEL:

16 Q. Mr. Cattron, is it correct also that some of
17 these refunds from natural gas should be returned to
18 the large general service customers also?

19 A. If they are non-transport customers.

20 Q. So we're not just talking about refunds that
21 go to the residential or the small general service.
22 We're talking about all customers except for the
23 transportation customers with respect to these
24 refunds; is that correct?

25 A. Yeah. You said these refunds are supposed

1 to go to them. I'm not sure I agree with that. We
2 have a proposal here today that differs from that.

3 Q. Let's step back.

4 Have you read your tariffs?

5 A. Probably not all of them, no.

6 Q. Have you read your tariffs with respect to
7 these refunds?

8 A. This one specifically?

9 Q. Yes.

10 A. Not all of them, no.

11 Q. So you are not aware whether or not your
12 tariff provision 24.18 requires these refunds to go to
13 the large general service customers also?

14 A. I have the advice of counsel that what we
15 have proposed here today could be authorized by this
16 amount -- by this Commission.

17 Q. Do you know whether or not those refunds are
18 supposed to be given to the large general service
19 class?

20 A. No, I do not.

21 Q. You also talked in response to Mr. Hack
22 about innovative programs to serve customers. Do you
23 recall those questions?

24 A. Yes.

25 Q. Does your company -- would your company

1 support a percentage-of-income program for low-income
2 customers?

3 A. I have people looking at one right now. I
4 think that is something that may have some merits for
5 us to pursue, and I would love to have you-all join
6 with us in those types of plans.

7 Q. Would your company support an arrearage-
8 forgiveness program for low-income customers?

9 A. Very possibly. Again, all of those elements
10 we need to sit down and discuss. But I think the
11 unprecedented situation we find ourselves in this year
12 hopefully will provide us some opportunities to pursue
13 some things we haven't pursued in the past.

14 Q. Is it correct that the rates, for example,
15 that large general service customers pay are different
16 in some respects than the rates that residential
17 customers pay?

18 A. Yes, they are.

19 Q. Is it correct with respect to the small
20 general service customers that those rates are
21 different than residential customers or large general
22 service customers pay?

23 A. I think they are different. I don't know
24 specifically.

25 Q. In your regulatory experience, are you aware

1 of whether or not public service commissions are
2 allowed to allow customers within the same class, for
3 example, the residential class, if companies are
4 allowed to serve those customers at different rates?

5 A. At different rates?

6 Q. Similarly situated customers at different
7 rates.

8 A. Could you ask your question again.

9 Q. Sure. Based on your regulatory experience,
10 your years and years, are you aware of whether or not
11 public service commissions can allow rates to serve
12 similarly situated customers at different rates?

13 A. If it is not undue discriminatory, the
14 answer would be yes.

15 Q. And how do you define "unduly
16 discriminatory"?

17 A. I always look to advice of counsel on how to
18 define that?

19 Q. So you don't have your own definition?

20 A. No, I do not.

21 Q. Let me give you a hypothetical.

22 Say, you and I neighbors. Okay? And you
23 are paying \$1 for your gas and I'm paying \$5 for my
24 gas, and we're both residential customers, have the
25 exact same house, exact same usage.

1 Do you have an opinion about whether or not
2 that's unduly discriminatory?

3 A. If I take a situation and now add income to
4 it and we wanted to talk about a percent of income
5 plan, then I would say, no, they wouldn't be.

6 Q. That wasn't my hypothetical.

7 Let's assume we have everything equal,
8 Mr. Cattron. You and I make the same money, live in
9 the same house, have the same usage. You're paying
10 \$1; I'm paying \$5.

11 A. And your question is --

12 Q. Do you have an opinion about whether or not
13 that would be undue discrimination?

14 A. I would think that in that situation you
15 would see similar bills, similar philosophies applied
16 to those customers.

17 Q. Well, that wasn't my question.

18 Is that undue discrimination?

19 A. I don't have an opinion on what "undue
20 discrimination" is.

21 Q. Do you think it is appropriate from a
22 regulatory standpoint to charge similarly situated
23 customers different rates?

24 A. Could you ask that again, please?

25 Q. Do you think it is appropriate from a

1 regulatory standpoint to charge similarly situate
2 customers different rates?

3 A. It depends on your definition of "similarly
4 situated."

5 Q. Let's take residential customers. Do you
6 think it is appropriate to charge residential
7 customers different rates for the same service?

8 A. No.

9 Q. Do you think it is appropriate to charge
10 small general service customers different rates for
11 the same service?

12 A. No.

13 MR. MICHEEL: Thank you very much,
14 Mr. Cattron.

15 JUDGE RUTH: Okay. Midwest Gas Users'
16 Association, do you have any cross?

17 MR. CONRAD: Just a couple of very quick
18 things.

19 JUDGE RUTH: Please speak into the mike.

20 MR. CONRAD: Well, I'll get it there in a
21 moment.

22 CROSS-EXAMINATION BY MR. CONRAD:

23 Q. Just a couple of very quick things,
24 Mr. Cattron.

25 The exchange with Chair Lumpe, you appear to

1 respond to the concern that I had voiced about the
2 ability of transportation customers to challenge an
3 imposition or a claimed imposition of an overrun
4 charge. Do you recall that discussion?

5 A. Yes, I do.

6 Q. I take it that you don't have any trouble
7 with the condition that I had encouraged the
8 Commission to put in any order that they might
9 approve, because I understand your testimony here
10 today to be that you are only seeking to use dollars
11 that are actually paid, so that would subsume that
12 anyone who challenged and was able to make a challenge
13 could -- would not be part of this; is that correct?

14 A. I -- Mr. Conrad, I have not read your
15 filing, but based on my understanding from discussions
16 with Mr. Hack, I think we are saying the same thing,
17 yes.

18 Q. Okay. Now, the only other thing I wanted to
19 ask you about, and just to see if I got my numbers
20 here right, you indicated that your staff had
21 calculated for you an average value or cost, or
22 whatever terminology you want to use, of 15 cents a
23 month. Do you recall that?

24 A. Yes.

25 Q. Now, if I did the math, would I be correct

1 in my assumption that an average residential customer
2 in this area uses about 125 to 130 MCF of gas a year?

3 A. Maybe in a normal year. I'm not sure where
4 we are this year.

5 Q. An average residential customer,
6 Mr. Cattron?

7 A. I don't know. I don't know the number.

8 Q. What, you don't know what number your staff
9 used to develop the 15 cents?

10 A. No. I simply have the 15 cents.

11 Q. I see. How much does this refund amount to
12 per MCF?

13 A. I don't know. The only thing I have,
14 Mr. Conrad, is 15 cents per average customer for a
15 typical customer.

16 Q. Well, work with my number for just a second,
17 and let's make the assumption that an average
18 residential customer uses 130 MCF in a year.

19 Would you agree with me that that would work
20 out to be \$1.80 for that customer at your 15-cent-a-
21 month rate? Twelve times 15 cents.

22 A. Yes.

23 Q. You need a calculator?

24 A. No. I got that one.

25 Q. Now, if that's the case, then we would be

1 looking at a refund that was approximately 1.4 to
2 1.5 cents per MCF?

3 A. With your -- with your assumption of
4 130 or -- yes.

5 Q. And I get that by dividing the 130 back into
6 the 1.80.

7 Now, you mentioned that -- I think in
8 response to a question from Mr. Micheel that small
9 general service customers who were not transportation
10 customers would potentially participate in this under
11 your proposal.

12 Do you recall where the threshold is for
13 those customers to qualify for transportation?

14 A. No, I do not.

15 Q. Well, since we don't do things subject to
16 check, would you agree with me that a small commercial
17 customer would likely be larger in use than a
18 residential customer?

19 A. Yes, I would.

20 Q. So we might see an average -- an average SGS
21 customer being something in excess of 130 -- 125,
22 130 MCF a year?

23 A. Some of the smaller businesses that we were
24 referring to earlier, I'm not sure you would see much
25 difference in the consumption, but as a class, that

1 assumption, I think, would be valid.

2 Q. So if that same cents per MCF, then those
3 customers would be participating at a higher average
4 rate than 15 cents per MCF?

5 A. That would be the impact.

6 Q. Excuse me. Fifteen cents per month?

7 A. That would be the impact, yes.

8 Q. Now, the last thing that I had is you made
9 some reference to something going on over in Kansas,
10 and I think you responded that you were familiar with
11 a legislative act over there.

12 Do you recall that?

13 A. My recollection, Mr. Conrad, was that I'm
14 aware that Kansas Gas Service is attempting to use
15 some of the ad valorem tax refunds to try to mitigate
16 the impact of gas prices this winter. And I'm not
17 sure whether that's a legislative activity. I'm not
18 sure where that is, quite honestly.

19 Q. Are you aware that Kansas Gas Service has
20 just done that with respect to the residential refunds
21 and that all they have done is just accelerate that?

22 A. I don't have the -- I don't have complete
23 knowledge of the details of it. I know they have some
24 programs in place that were approved probably 30,
25 60 days ago.

1 MR. CONRAD: Okay. Thank you. That's all.

2 JUDGE RUTH: Okay. And Mid-America
3 Assistance Coalition, do you have any cross?

4 MR. HILL: No questions. Thank you.

5 JUDGE RUTH: We'll go back to questions from
6 the Bench.

7 COMMISSIONER DRAINER: I have a question.

8 First, I do want to recognize that
9 Representative Carol Jean Mays is with us, and I do
10 want to thank you for coming over.

11 This is -- I've done a lot of cases here at
12 the Commission since 1986 where I've seen
13 telecommunications companies change hats, and AT&T and
14 Bell will go after each other, and the next time I
15 look around they are on the same team.

16 I don't know that I've ever seen where we
17 have something wanting to help in these extraordinary
18 times a group of consumers and had the parties be
19 forced in the position they are, and I keep thinking I
20 need to pinch myself because this can't be what's
21 going on, but it is.

22 QUESTIONS BY COMMISSIONER DRAINER:

23 Q. And my question, and why I wanted to have
24 this hearing today is, with all due respect to the
25 witnesses that are coming on, is I believe this is a

1 legal issue and that the only evidence that I need
2 outside of the legal opinions is, Mr. Cattron, are
3 these extraordinary times, or am I overreacting or
4 being hysterical to believe that these are
5 extraordinary times for our customers in Missouri that
6 have to pay gas bills?

7 A. My personal opinion, these are extraordinary
8 times. This is unprecedented. We have never
9 experienced this before, and I certainly hope we don't
10 again.

11 Q. And, finally, when we look at customers,
12 residential customers, with the types of gas bills
13 that you're seeing these customers pay, have you ever
14 seen low-income customers have to pay such an extreme
15 percent of their income for just one commodity?

16 A. No, I have not.

17 Q. And, again, am I being hysterical, or is it
18 an extreme amount of income they are having to pay to
19 have their homes heated?

20 A. It is a significant percent of their
21 personal income.

22 COMMISSIONER DRAINER: Okay. Thank you.

23 Having said that, what I need to know, and I
24 will ask the attorneys.

25 And Mister -- and I would like to note that

1 Mr. Hill, you said that you thought we might need to
2 brief this. I had thought today what I was going to
3 hear was the legal reasons why we can or cannot do
4 this. However, I will vow to you that you make a very
5 excellent point that in neither the Staff or Public
6 Counsel's comments did they throw up on the board
7 393.130, Paragraph 2, and tell us that we cannot do it
8 because of the similar circumstances.

9 So I want Mr. Hack and I want Mr. Hill first
10 to answer for me -- and we'll give it to Mr. Hill
11 since it's coming your way. Mr. Hack wants time to
12 think more. Good move.

13 The statute states --

14 MR. HILL: Excuse me, Commissioner.

15 Which statute?

16 COMMISSIONER DRAINER: I'm on the 393.130,
17 and where it states at the end, under the same or
18 substantially similar circumstances or conditions.

19 And what I want to know is, can I in these
20 extraordinary times where a group of our consumers
21 that I am charged in upholding the statutes but also
22 making sure they have just reasonable rates, are their
23 circumstances not now similar to other residential
24 customers because of the magnitude of the bills that
25 they must pay?

1 You can't turn off your heat. It's not like
2 an air-conditioner. I would contend that you have to
3 keep cool in the summer, too, but you have to keep
4 warm in the winter.

5 Have we placed a group of consumers in such
6 a situation that their circumstances are not similar
7 to other residential customers and that allows this
8 Commission the ability to make a policy decision and
9 an exception? And this is an attorney question. This
10 is a legal point, and you need to tell me what your
11 interpretation of this is.

12 MR. HILL: Thank you for the question,
13 Commissioner. And my answer will be given to you just
14 based on looking at the statute, hearing the argument
15 of Public Counsel, and in response to the question as
16 you've stated.

17 If the answer is you cannot grant this
18 application in these circumstances, in this time, then
19 the Commission must not have the authority or the
20 power to do much of anything; it must not have the
21 discretion to do much of anything.

22 The tariff provision that at least I
23 understand applies to the refund -- the Williams
24 refund specifically says on the tariff sheet, "unless
25 otherwise ordered by the Commission." So the fact

1 that the Commission could otherwise order is built
2 into the tariff sheet itself. If -- so in that
3 respect, MAAC would submit it's not even a variance
4 from the tariff sheet to -- to allow the refunds to be
5 treated in this way.

6 If this -- looking at 393.130, and I was
7 just trying to look at it as you were asking your
8 question, Commissioner, it refers to same or
9 substantially similar circumstances or conditions.
10 The people who will receive this assistance, if they
11 don't receive this assistance -- and keep in mind, and
12 Ms. Marcason can speak more to this point -- in large
13 part the people who will receive this assistance are
14 people who are not eligible to receive any other kind
15 of assistance.

16 These people are at substantial risk, and
17 some of them in all virtual certainty will lose
18 service unless they receive the assistance that we're
19 talking about right here today. If the Commission
20 denies this application, there are people without a
21 doubt who have heat today who will not have heat.
22 It's as simple as that.

23 COMMISSIONER DRAINER: Thank you.

24 Mr. Hack, having been the past General
25 Counsel here at the Commission and being very

1 knowledgeable about our statutes, can I ask how you
2 would address my question?

3 MR. HACK: If I look back, I was always one
4 who wanted to find you authority.

5 COMMISSIONER DRAINER: You were also one
6 that always told me cost-causer/ratepayer, so let's
7 not look back.

8 MR. HACK: That was with my policy hat on,
9 not my legal hat on.

10 If you look at 393.130.2, and you look also
11 at 393.140 in the general discrimination prohibitions,
12 it is not all discrimination that is prohibited. If
13 all discrimination was prohibited, we would have one
14 rate for all customers. But we have made judgments
15 that customer classes, customer types are different.

16 Getting to the specifics of 393.130.2, the
17 key phrase, as you pointed out, is "under the same or
18 substantially similar circumstances or conditions."

19 I would submit to you that the income levels
20 and the criteria that are proposed in the distribution
21 plan are perfectly appropriate guides to differentiate
22 the customers who will qualify for this money versus
23 those who will not. And that provides you a just and
24 reasonable basis to differentiate among these
25 customers during this extraordinary time.

1 We're not asking you to do this forever.
2 We're asking you to do this now, today, next Tuesday,
3 last Tuesday in light of the weather and the prices.

4 COMMISSIONER DRAINER: And so it is the
5 criteria that will be used that will -- would allow us
6 to discriminate one set of residential ratepayers from
7 another set, and it's not undue discrimination. It
8 would be discriminating based on income level, and
9 that would allow this -- it to be a policy decision an
10 not be against the statutes?

11 You believe that we were given the authority
12 and the flexibility, because it doesn't say. It
13 doesn't say here that all residential ratepayers must
14 pay the same rate and all small business and all --

15 MR. HACK: What we have done, or tried to
16 do, with MAAC's assistance is give you a rational and
17 reasoned approach to treating customers differently.

18 COMMISSIONER DRAINER: Okay.

19 MR. HACK: And I think any court in the land
20 would look at it and say, this is appropriate.

21 If we would have said -- instead of what
22 we've done in here, if we would have said if you have
23 a red car, then you should be eligible for these
24 funds, then I think I would probably be on the side of
25 the Public Counsel's Office in saying, you know,

1 that's not a good -- that's not rational. That
2 doesn't get us to an overriding legitimate objective.
3 What we've proposed to you does.

4 COMMISSIONER DRAINER: Okay. Thank you.

5 And then I would ask the Office of the
6 Public Counsel, because your basis and the Staff's
7 basis seem to be -- in your original pleadings you did
8 not cite these statutes, but you do now, if this
9 language was not in the statute, if this were not a
10 legal issue, if it were just a policy issue and you
11 did not believe that there was anything that legally
12 stopped us from making and approving this decision,
13 would the Public Counsel still be opposed to the
14 proposal presented to us by MGE?

15 MR. MICHEEL: Certain portions of it, but
16 our main thrust, as I said in my opening,
17 Commissioner, is my view of the statutory
18 prohibitions --

19 COMMISSIONER DRAINER: Well, now -- now,
20 Mr. Micheel, let's -- let's play the same -- let's be
21 fair here. You asked that they -- that they not
22 change your assumptions when you were talking to
23 Mr. Cattron.

24 What I'm asking you is, if these statutes
25 were not here and there was not this language, the

1 substantially similar circumstances and conditions
2 that you're hanging your hat on, if that was not
3 there, would you be before us or would you be saying
4 that you applaud MGE's proposal and it's okay?

5 MR. MICHEEL: As I stated in my opening,
6 Commissioner --

7 COMMISSIONER DRAINER: I'm asking now. I
8 don't want you to go back to your opening.

9 MR. MICHEEL: I'm telling you what I said in
10 my opening --

11 COMMISSIONER DRAINER: No. I want you just
12 to answer the question, and you don't have to preface
13 it with what you said in your opening.

14 What would your position be if there was
15 nothing statutorily that you were hanging your hat on?

16 MR. MICHEEL: It would be unfair to the
17 small general service class and large general service
18 class of customers.

19 COMMISSIONER DRAINER: So you would be
20 representing the large general service classes?

21 MR. MICHEEL: No. The small general service
22 class.

23 COMMISSIONER DRAINER: So the small general
24 service classes or the small businesses that you would
25 be representing, and you would still not -- okay.

1 Thank you. I understand your answer.

2 And then I would ask Mr. Schwarz the same
3 question.

4 From a legal point of view, if you did not
5 have 393.130, Paragraph 2 that you were hanging your
6 hat on, would the Staff still be opposed to this
7 one-time adjustment from a policy point of view?

8 MR. SCHWARZ: Yes.

9 COMMISSIONER DRAINER: Okay. Thank you.

10 MR. SCHWARZ: I would. And I would like to
11 point out that it is -- it is probable that MGE
12 discontinued service to more people -- more
13 residential customers last year than they did this
14 year.

15 In December of this year -- and it's
16 marvelous. It's wonderful. But in December in an
17 entire system they disconnected eleven residential
18 customers, and my understanding is that service was
19 restored.

20 My point being that -- that as far as
21 customers being off of service, this is probably not
22 an extraordinary year. The question that we're
23 dealing with is how is --

24 COMMISSIONER DRAINER: Mr. Schwarz --

25 MR. SCHWARZ: Yes.

1 COMMISSIONER DRAINER: -- I really
2 appreciate that you want to talk to me about the
3 winter months and the gas issues, but I really need
4 you just to answer my question so that we are only
5 having this afternoon a hearing. And I did want to
6 know if it was a policy position of Staff to still
7 oppose it, and I heard you say yes.

8 Okay. Finally, the two final points I do
9 need to ask the attorneys.

10 One, Mr. Hack, Mr. Conrad mentioned some
11 things with Kansas, and you were asking your witness
12 about the statutes or -- the statutes in Kansas.

13 Can you tell me, do you know whether the
14 Kansas statutes have similar language or have the same
15 language that we are directed by here at the Missouri
16 Public Service Commission?

17 MR. HACK: I cannot tell you that I know
18 specifically.

19 COMMISSIONER DRAINER: Okay. Thank you very
20 much.

21 And then, Mr. Micheel, I did want to ask
22 you, and this was in your opening statement toward the
23 end, you stated that the Office of the Public Counsel
24 has been very active in working with low-income
25 groups.

1 And I guess what I'd like to ask, has the
2 Office of the Public Counsel outside of meetings and
3 seminars or interacting with low-income groups, has
4 the Office of the Public Counsel ever brought to this
5 Commission any rate design that would recognize the
6 needs of low-income or ask for any special tariff
7 considerations for low-income households?

8 MR. MICHEEL: Yes.

9 COMMISSIONER DRAINER: Can you tell me what
10 those have been?

11 MR. MICHEEL: For Missouri Gas Energy we've
12 recommended an experimental weatherization plan along
13 with Laclede Gas Company and I believe Union Electric.

14 I think that all of the rate designs overall
15 that we proposed before this Commission are directed
16 to ensuring that rates for everyone are just and
17 reasonable.

18 COMMISSIONER DRAINER: Well, no. But I'm
19 asking you with respect to what you stated about
20 low-income. If you have asked for us to differentiate
21 and have programs that benefited specifically
22 low-income residential versus other residential
23 households.

24 MR. MICHEEL: And I said we had the
25 weatherization program, but that benefits all

1 customers in our view. It does not benefit a certain
2 group of customers intra-class.

3 COMMISSIONER DRAINER: Okay. So the answer
4 would be no, the Office of the Public Counsel has
5 never proposed an intra-class, as you call it, program
6 for any of the companies to administer for low-income?

7 MR. MICHEEL: To the best of my knowledge.

8 COMMISSIONER DRAINER: Okay. Thank you.

9 I have no other questions.

10 JUDGE RUTH: Commissioner Murray?

11 COMMISSIONER MURRAY: Thank you.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Mr. Cattron, I heard you earlier say you
14 were disappointed to be here today, that you're simply
15 trying to do the right thing. Did I hear you
16 correctly?

17 A. Yes.

18 Q. Well, I'd like to point out that I would
19 imagine that everybody here is attempting to do the
20 right thing. I think when Staff and Office of the
21 Public Counsel have brought before us what they
22 consider to be a legal issue, they are attempting to
23 do the right thing. I think as the Commission, when
24 we bring you here to answer our questions about this
25 proposed variance, that we are attempting to do the

1 right thing.

2 And I think first and foremost we have to
3 uphold the law. I have not heard anything that
4 convinces me today that we legally can do what you're
5 asking us to do. And I don't personally care how
6 popular it might be or how good it might look to any
7 group of people. If it is not within our jurisdiction
8 and within our authority according to the law, I would
9 never be in favor of doing it.

10 If it is something that we don't have the
11 authority to do that perhaps we should in the future
12 do, then the place to go would be to the Legislature
13 to get us that authority, but not to come here and ask
14 us to do something that is beyond our authority.

15 So I just wanted to clarify that, that
16 although you're disappointed to be here, there is a
17 good reason that you are here.

18 A. And, thank you. Until today I knew of no
19 legal issue that anybody were raising that would make
20 any suggestion that this was unlawful, and I was going
21 on the advice of my counsel when we presented this
22 proposal that what we had here was not asking you to
23 do something you did not have the authority.

24 And as our -- Mr. Hack has indicated today,
25 we still feel that you have the authority to do that.

1 Q. And I understand that, and I also understand
2 that it has been argued here today by counsel that
3 they were, quote -- and I'm paraphrasing, blind-sided
4 because the statute was not cited by the Office of
5 Public Counsel or by the Staff in their pleadings in
6 this matter.

7 However, in my preparation for this hearing
8 today, I pulled out that very statute, 393.130.2. And
9 I said to myself, How could we possibly do this in
10 light of that statute?

11 I don't see why it would have been difficult
12 for any party here today, in preparing for --
13 particularly for MGE and preparing for asking for this
14 variance, to make sure that legally we could grant it.
15 And I would think that they would have been prepared
16 to look at this statute which on its face says we
17 cannot do what you're asking us to do.

18 And if they think -- if your counsel thinks
19 that we can do it, your counsel should have been
20 prepared with an argument as to why we can do it even
21 in light of that statute. And I don't think that it
22 would have been incumbent upon some other attorney to
23 point out that there is a statute that applies. So I
24 would -- you know, I find that argument to be a little
25 unpersuasive.

1 MR. HACK: At the pain of interrupting,
2 would it be proper for me to respond?

3 COMMISSIONER MURRAY: No. I think if you
4 need to respond to that, that we should address the
5 issue of whether this should be addressed in briefs.
6 I don't -- you know, if you want to argue that because
7 you didn't know about this statute until it was
8 brought before you by Office of Public Counsel and the
9 Staff that you need to -- to argue it in briefs and
10 that Mr. Hill needs to present his argument in briefs,
11 then perhaps you need to bring that before us.

12 But I don't need your response unless you're
13 going to point out specifically to me right now how
14 this chapter authorizes us to do what you're asking us
15 to do.

16 MR. HACK: Two points, if I may.

17 One, I have not argued that we've been
18 blind-sided.

19 Two, in response to Commissioner Drainer's
20 question, I believe I have pointed to your authority
21 to make rational distinctions between customers, and I
22 believe that that authority within 393.130.2 dovetails
23 nicely with the criteria set out in our application
24 and particular distribution plan. And I would be
25 happy to brief it to more fully flesh that out.

1 COMMISSIONER MURRAY: I did hear you say
2 that earlier. Thank you.

3 BY COMMISSIONER MURRAY:

4 Q. And I'd like to ask you, Mr. Cattron, the
5 Staff in its pleadings did raise the argument that you
6 have not suggested any standards by which to gauge
7 when a departure from the principles -- the ordinary
8 ratemaking principles are justified or is justified,
9 when such a departure is justified, or how great that
10 departure can be. And I did not see that either.

11 And I'm just wondering what -- you're saying
12 that we should be able to discriminate, and it
13 wouldn't be undue discrimination if we separated the
14 low-income customers from the other customers and set
15 them out sort of as a different class. And I believe
16 what I'm hearing you say is that's not undue
17 discrimination and we can do that.

18 But what -- you know, where is the line?
19 What is undue discrimination? How do you ask this
20 Commission to make that determination?

21 A. I -- as I testified earlier, I don't know
22 what "undue discrimination" is and can't give you, I
23 don't think, necessarily the parameters of that.

24 And I think we are -- we are in
25 extraordinary times right now, and I think

1 extraordinary times opens the door to do things for
2 not the long haul but for a very short, isolated
3 period of time that does end up in a situation that
4 does not provide undue discrimination, is not
5 discriminatory. Whatever words we want to use, it
6 isn't doing something that is a precedent.

7 Q. So we're saying that we can -- even if it
8 doesn't fit really within the statutes, we can do it
9 if it's just for a short period of time?

10 A. Again, if I could very quickly, when the
11 Staff and the OPC filed their initial response
12 opposing this, my first question of my general counsel
13 was, Were there legal issues raised? And we
14 discussed -- he advised me at that point in time that
15 no legal issues were raised and that this Commission,
16 in his opinion, had the authority under the statutes
17 that existed.

18 We would not be bringing to this Commission
19 without first engaging the Staff and others in the
20 legislative process that would need to be pursued if
21 we didn't believe you had the authority already. We
22 would not want to put you in that position.

23 Q. Okay. Now, let me ask you a few things
24 about the specifics of your proposal.

25 It's my understanding that we're talking

1 about 900-- almost \$997,000 worth of refunds, plus the
2 250,000 that MGE is contributing; is that correct?

3 A. There is the Company contribution. Then
4 there's two components. There is a refund component
5 and there is an unauthorized-use-charge component.

6 Q. And they total around \$997,000?

7 A. I think depending on what's totally paid in,
8 it could be a little more than that. But we're right
9 in that ballpark.

10 Q. All right. So that comes up to 1.2 million,
11 roughly, a little more than that.

12 So as I understand the proposal here and the
13 plan for distribution of funds that you're proposing
14 to enter into with MAAC --

15 A. Yes.

16 Q. -- what I understand would happen there
17 would be that you would send money to MAAC --

18 A. Yes.

19 Q. -- would be Step No. 1?

20 A. Yes.

21 Q. Step No. 2, or it might be Step No. 3, MAAC
22 would take its 4 percent of that?

23 A. The specifics here on the full
24 administration of it, Jan Marcason is here and, I
25 think, could really address those specific questions

1 on the administrative side much, much better than I
2 could.

3 But, in general, there is an administrative
4 fee that would be paid to MAAC for the administrative
5 purposes.

6 Q. Which come out of the refund?

7 A. Comes out of the total dollars that would be
8 contributed.

9 Q. And if those total dollars go back as -- as
10 the statute would have them go back without a -- and
11 your tariff would have them go back without a variance
12 being granted, would there be any administrative fee
13 taken out of that?

14 A. We've already contributed our 250,000.

15 Q. I'm not talking about your 250,000.

16 A. But what I was going to say is that if part
17 of the concern is that some of those refunds would be
18 paid to MAAC, I can contractually have the fee be
19 taken out of the 250,000 that the Company has
20 contributed, if that -- if I understand your question.

21 Q. Okay. Let me just ask you this then: As
22 I -- as I figure that 4 percent, it amounts to around
23 \$49,000 out of the total 1.2 million. I'm assuming it
24 was 1.2.

25 A. I think the fee was in the \$40,000 to

1 \$50,000 range.

2 Q. It was close to 50,000.

3 So you're saying that if we grant this
4 variance -- well, first of all, you've said you would
5 add 250,000 to the \$976,000?

6 A. It's already contributed.

7 Q. Okay. And your 250,000 is already
8 contributed.

9 At this point, MAAC would get 4 percent of
10 that 250,000; is that correct?

11 A. Yes.

12 Q. But if we grant the variance, they will get
13 4 percent of the 1.2 million; is that correct?

14 A. I don't know the specifics on the contract,
15 but if that's the way it's worded that they are on a
16 percent fee, then the answer would be yes.

17 Q. Okay. And then the way I read the plan,
18 also, the plan for distribution, it looks as if then
19 MAAC would allocate 50 percent to the various
20 agencies? Now, do you have an understanding of that?

21 A. Jan could do a much better job than I can.

22 Q. And she is with MAAC?

23 A. Yes.

24 Q. And MGE does not really have a good
25 understanding of --

1 A. I don't have a good understanding. My -- my
2 Director of Public Affairs who is the direct interface
3 point probably has a much better -- I certainly hope
4 has a much better understanding than I do.

5 Q. Okay. But you're wanting us to basically
6 approve an agreement that you're entering into with
7 MAAC --

8 A. Yes.

9 Q. -- as a part of granting this variance?
10 And you are the utility that we regulate.
11 And MAAC would be the age-- or the entity that would
12 be distributing the funds back to the ratepayers. Is
13 that correct so far?

14 A. Yes.

15 Q. So are you asking -- are you -- in asking us
16 to approve your arrangement with MAAC, are we
17 releasing you, our regulated utility, from the proper
18 disbursement of those funds?

19 A. No, as I think I was asked that question
20 earlier in a similar way by counsel for the Staff.
21 And, no, we still have a responsibility. They have a
22 contractual responsibility with us, and we have every
23 reason to ensure that the administrative aspects of
24 this is done in the way it was intended under the
25 contractual arrangements. That was not the intent to

1 have you release that or release us.

2 COMMISSIONER MURRAY: Okay. I guess my
3 other questions, then, should be reserved for another
4 witness.

5 Thank you.

6 THE WITNESS: Thank you.

7 COMMISSIONER MURRAY: One more thing I would
8 like to say. I do appreciate what -- that MGE is
9 attempting to assist in these difficult times, and,
10 believe me, we understand -- we all understand there
11 are difficult times, and we have heard from the
12 ratepayers just as you have heard from the ratepayers,
13 so we do understand it is difficult times.

14 But I would just like to emphasize that I
15 don't think that this Commission should be asked to
16 do -- to bend the law, regardless of how extraordinary
17 the times are.

18 THE WITNESS: I agree with you there.

19 Thank you.

20 JUDGE RUTH: Commissioner Schemenauer?

21 COMMISSIONER SCHEMENAUER: Thank you.

22 QUESTIONS BY COMMISSIONER SCHEMENAUER:

23 Q. Good afternoon, Mr. Cattron.

24 A. Good afternoon.

25 Q. You didn't know you were going to be grilled

1 quite this bad?

2 A. No, I didn't.

3 Q. I just have a few questions for you.

4 Bad debt expense, your company is
5 experiencing a larger amount of uncollectibles this
6 year than normally because of the weather and the cost
7 of the commodity; is that correct?

8 A. Our receivables are up. It is -- quite
9 honestly, it's too early to tell what the impact on
10 bad debt expense is going to be, but I would estimate
11 and predict that it will be higher than it was a year
12 ago, yes.

13 Q. And your proposal will, in effect, reduce
14 the uncollectible write-offs that you're going to have
15 to do at some point, I would assume? Is that logical?

16 A. I think on the surface it's logical, but I
17 think to try to predict what the impact on
18 uncollectibles are as a result of this is very, very
19 difficult.

20 Q. Well, if your uncollectibles are higher as a
21 result of this, and the people get no relief, you
22 are -- you are authorized in a rate case to charge
23 that expense to all of the ratepayers, aren't you,
24 your uncollectibles?

25 A. What is determined to be a normal level,

1 yes.

2 Q. Okay. So if -- the higher your
3 uncollectibles are, if there is no relief for the
4 people who can't pay, it will probably in some way be
5 passed on to everybody, isn't that logical, through a
6 rate increase?

7 A. Bad debts is allocated across all customers.

8 Q. Okay. On small general service customers,
9 mom and pops, I think someone called them, referred to
10 them as --

11 A. Yes.

12 Q. -- wouldn't they have residential bills
13 also?

14 A. Yes, they do.

15 Q. And if they can't pay them, wouldn't they be
16 eligible for some relief?

17 A. Again, if they met the qualifications --

18 Q. Right.

19 A. -- of the 200 percent poverty guideline, the
20 answer would be yes.

21 Q. Okay. And my last question to you: Are any
22 other refunds in the mail to MGE from, say, Williams
23 or anybody else?

24 A. Not at this time, but active with the Staff
25 here, there are negotiations around . . .

1 And, Mr. Hack, you might help me with the
2 right word on what we're all working towards.

3 Q. Well, you don't have to get specific, but, I
4 mean, this could be repeated if you are successful? I
5 guess what I'm trying to --

6 A. I think we're a ways off on the other one.

7 Q. Okay.

8 A. And it's one that your Staff has been very
9 active in and taken a leadership role on a national
10 basis even.

11 COMMISSIONER SCHEMENAUER: Okay. I would --
12 I would like to have Mr. Hill and Mr. Hack maybe to
13 give me their legal interpretation of something I'm
14 going to read that was part of Section 393.140(11)
15 that Mr. Micheel passed out.

16 It starts on Line 9, and it says, "Unless
17 the Commission otherwise orders," and I'm going to
18 make that in parentheses, "no change shall be made in
19 any rate or charge or in any form of contract or
20 agreement or any rule or regulation relating to any
21 rate, charge, or service, or in any general privilege
22 or facility, which shall have been filed and published
23 by a gas corporation," et cetera, and then it says,
24 "except after 30 days notice," and then it continues,
25 "The Commission for good cause shown may allow changes

1 without requiring the 30 days' notices under such
2 conditions as it may prescribe."

3 And then the second-to-the-last sentence on
4 the page, it says, "The Commission shall have power to
5 prescribe the form of every such schedule and from
6 time to time prescribe by order such changes in the
7 form thereof as it may be deemed wise."

8 Would either of these two statutory
9 provisions -- wouldn't they give us some authority to
10 use some common sense judgment?

11 MR. HACK: The "unless otherwise ordered"
12 section that begins on Line 9 really is mirrored in
13 Sheet No. 24.18.

14 The decisions you make are not fixed for all
15 time. The application we have filed is designed to be
16 a one-time shot. That doesn't mean four years from
17 now that we might not want to do something like this
18 and ask to do it again. But it's -- we're not
19 intending to change things forever.

20 But I would agree with you, yes. "Unless
21 otherwise ordered" does recognize inherent day-to-day
22 authority to change things.

23 The second-to-the-last sentence really
24 recognizes the same concept. You are a body of
25 continuing jurisdiction. Unlike a court which has

1 specific case-by-case jurisdiction, you regulate us
2 all of the time.

3 COMMISSIONER SCHEMENAUER: Mr. Hill, do you
4 have any thoughts on that?

5 MR. HILL: I agree with what Mr. Hack said,
6 Commissioner. This authorizes you to do, I believe,
7 what MGE is asking for permission to do. This statute
8 merely says that you are authorized to grant this sort
9 of application. As I said earlier, Staff and Public
10 Counsel seem to be arguing that you don't have any
11 power to do much of anything. This statute says
12 otherwise.

13 COMMISSIONER SCHEMENAUER: And I guess as
14 one who formally wrote statutes, don't we all
15 recognize that many statutes contradict each other,
16 and it's up to the interpreting authority to decide
17 which interpretation to follow?

18 MR. HILL: I believe, Commissioner, that's
19 where this Commission is statutorily empowered to act
20 and to act in the public interest.

21 COMMISSIONER SCHEMENAUER: Thank you.

22 That's all of the questions I have.

23 JUDGE RUTH: Thank you.

24 Commissioner Simmons?

25 COMMISSIONER SIMMONS: Thank you, Judge.

1 QUESTIONS BY COMMISSIONER SIMMONS:

2 Q. Good afternoon, sir.

3 A. Good afternoon.

4 Q. I have a series of questions. One, I'm
5 going to go back to a question that was raised to you
6 earlier. I didn't get the second part of the
7 question.

8 It was talked about that the typical
9 customer would receive about 15 cents a month.

10 Fifteen cents a month for how long, or do
11 you know the answer to that?

12 A. I think the 15 cents assumed a 12-month
13 period.

14 Q. A twelve-month period?

15 A. Because I also had an estimate of about \$2.
16 So I had both a monthly estimate and an annual
17 estimate, so that was assuming that that would be
18 distributed over a 12-month period, I'm fairly
19 certain, Commissioner.

20 Q. Okay. Second question, we -- it was brought
21 up about the Kansas Commission dealing with the Kansas
22 Gas Service program. And --

23 A. Yes.

24 Q. -- would you call that similarly situated to
25 what we're looking at today?

1 A. There is a component that's very similar,
2 yes. The company over there did make a contribution
3 similar to what we have done, and then they've also --
4 I think they've actually established a surcharge on
5 residential bills that is then going into a fund that
6 is then being distributed.

7 Q. Is it being distributed through the same
8 type of agency like the Mid-America Assistance
9 Coalition?

10 A. I think -- I think they are doing it through
11 the Salvation Army, so through a --

12 Q. Not-for-profit?

13 A. Non-for-profit.

14 Q. Earlier -- I'm going to ask Mr. Hill and
15 Mr. Hack a question.

16 Earlier Public Counsel and Staff argued
17 Section 393.130, that it applies as it relates to
18 today's proceedings.

19 I'm going to ask you individually, why
20 does -- Section 393.130.2, why does that not apply to
21 today's proceedings?

22 MR. HACK: I'll try and answer as clearly as
23 I can. I think, by and large, 393.130, the entire
24 section, governs the Commission whenever it acts.

25 The real point of your question is, What

1 does it mean? Does it preclude the Commission from
2 granting the relief that MGE has requested?

3 And my understanding of the Public Counsel
4 argument is that they are saying that 393.130.2, in
5 particular the non-discrimination provisions thereof,
6 preclude you from redirecting, re-allocating the
7 refunds in the manner we have proposed.

8 I would suggest to you that instead of
9 dis-empowering the Commission, the provisions on which
10 they rely in 393.130.2 actually empower the
11 Commission. They provide you with the authority to
12 make rational and -- and reasonable and just
13 differences, distinctions among different types of
14 customers.

15 And we are asking you to make those
16 distinctions on the basis of, in essence, income and
17 whether you -- you, this type of customer, are able to
18 achieve assistance in any other way than through this
19 funds.

20 COMMISSIONER SIMMONS: Would it be reading
21 into this statute to say that this Commission also has
22 the ability to deal with what's in the public
23 interest?

24 MR. HACK: The -- absolutely. The case law
25 is clear that the purpose the Commission was created

1 was to serve the public interest.

2 COMMISSIONER SIMMONS: Mr. Hill, same
3 question, if you would, please.

4 MR. HILL: Thank you, Commissioner.

5 I do agree with what Mr. Hack just said.

6 I have two points. First of all,
7 Section 393.130 says in the middle part of that
8 paragraph "except as authorized in this chapter."
9 Therefore, I would submit the Commission has the power
10 to exercise the public interest in carrying out this
11 paragraph.

12 Secondly, the same or substantially similar
13 circumstances or condition that we were mentioning
14 below, or that we discussed earlier, we would submit
15 would allow the Commission to differentiate between
16 customers in certain circumstances, particularly the
17 extraordinary circumstances we have here. As I
18 mentioned earlier, what MGE is asking the Commission
19 to do and what it would be doing by approving this
20 application is absolutely not a violation of the law.

21 COMMISSIONER SIMMONS: Next question, and
22 I'm going to ask Staff or the Office of the Public
23 Counsel to help me with this one.

24 I guess earlier, as I read the original
25 pleadings, I did not understand Staff -- or I think it

1 may have been said, but I did not understand Staff or
2 the Office of the Public Counsel to raise legal issues
3 in its original pleadings, is that correct, or did
4 you?

5 MR. SCHWARZ: That is -- your understanding
6 is correct. There were no specific legal issues or
7 suggestions along those lines raised in Staff's
8 initial pleading.

9 COMMISSIONER SIMMONS: I know that it was
10 said earlier that we wanted the Commission to deal
11 with some of the legal issues. I would say that I
12 want to deal with some of the public policy issues
13 that have been raised. That would have been my point
14 of either clarification or to understand some of the
15 things that may come out of this particular
16 proceeding.

17 And in the same way that we deal with legal
18 issues we also deal with public policy issues. We
19 also deal with what is in the public interest. And
20 that was some of the -- I guess, some of the things
21 that I wanted to also hear with this particular
22 proceeding.

23 Any reason or rationale, Staff, why we
24 didn't raise early legal issues as related to the
25 original pleadings?

1 And, Public Counsel, you can tell us the
2 same thing.

3 MR. SCHWARZ: Frankly, they weren't the
4 items that were pressing on us at the time. You may
5 recall that we had a short trigger on putting the
6 response together. And, frankly, I had -- I had
7 thought about the issue of inter-class distinctions.
8 I had not simply thought about intra-class
9 distinctions or single-issue ratemaking.

10 MR. MICHEEL: Commissioner, if I may?

11 COMMISSIONER SIMMONS: Yes.

12 MR. MICHEEL: First of all, at the bottom, I
13 recognize it in my papers I did not cite the statutory
14 sections, and if I'm going to be -- plead guilty to
15 anything here today, it's going to be I didn't cite
16 the statutory sections.

17 But my papers clearly point out that these
18 refunds should go to all of the ratepayers per the
19 Company's tariffs and -- and per the regulatory
20 statutes that we operate under. So, Commissioner,
21 implicit in the papers that I filed were the
22 underlying principles that we see in 393.130.2 and
23 393.140(11).

24 Now, granted, it's my fault that I didn't
25 say, See these statutory sections, but the thrust and

1 the purpose and the meaning and our argument, I think,
2 is at least set out in our papers.

3 COMMISSIONER SIMMONS: Okay.

4 Mr. Hack, earlier in your opening statements
5 you talked about a similar program that occurred in
6 1997 with the Mid-America Assistance Coalition. I'm
7 not familiar with that program. Could you explain or
8 elaborate?

9 MR. HACK: That was -- MGE itself had
10 contributed about \$550,000 as a part of a resolution
11 of a couple of docketed matters here at the Commission
12 that were billing complaints that had been filed by
13 the Staff and the Public Counsel. We settled those.
14 As a part of the settlement, MGE contributed \$550,000
15 to MAAC to be administered in a very similar fashion
16 to what we have proposed here.

17 So it's -- it's kind of like it, and it's
18 kind of not like it. The distribution plan is
19 virtually identical. The source of the money is
20 somewhat different.

21 MR. MICHEEL: Commissioner, if I may respond
22 to that, in the 1995-96 winter period MGE had
23 unfortunately overbilled numerous customers, and the
24 Staff had also filed a complaint about some problems.
25 And those funds were settlements of a complaint and

1 those funds came exclusively from the MGE
2 shareholders, so -- and I think in my papers I dropped
3 a footnote to that thing.

4 But I just want to make it clear that we are
5 being consistent. And our argument here is not with
6 the way MAAC would handle the funds. Obviously, when
7 we settled our case, we think they did a fine job and
8 a good job with those funds. That's not the issue the
9 way I see it.

10 COMMISSIONER SIMMONS: Let me ask you this
11 question: If this Commission were -- were to grant
12 this variance, Mr. Micheel, I guess what recourse
13 would you have for the customers? Would you have a
14 situation whereby you believed that that would call
15 for you to take legal action that would be different
16 than what you saw this Commission having the authority
17 to actually do?

18 MR. MICHEEL: Certainly, Commissioner, my
19 office, if we feel we're aggrieved by a decision of
20 the Commission, has the authority to appeal those
21 Commission decisions. But, I mean, I view my job
22 as -- in this -- in this case kind of like being Old
23 Yeller. You know, we have the law out there. It's my
24 job to bark and direct the Commission to what I think
25 my view of the law is. And so that's what we're doing

1 here.

2 With respect to whether or not my office
3 would pursue an appeal on this case, I don't know, but
4 I think I have an obligation as an officer of the
5 court to point out our view of what the law is and
6 also to advocate on behalf of all of the residential
7 ratepayers and the SGS customers, and that's all I'm
8 trying to do here, Commissioner.

9 COMMISSIONER SIMMONS: Thank you.

10 That's all of the questions I have.

11 JUDGE RUTH: Commissioner Lumpe?

12 FURTHER QUESTIONS BY CHAIR LUMPE:

13 Q. Just a couple of more, Mr. Cattron, because
14 there has been some suggestion that this is a one --
15 is this refund a one-time refund, or is this an
16 ongoing refund?

17 A. It's a one-time.

18 Q. All right. And does it last a year, or how
19 long is that refund played out?

20 A. No. We'll receive one distribution for that
21 refund.

22 Q. I see. And you would not give that -- or
23 would you have given that refund, then, in one credit
24 to all people? It would be a one-time credit to all
25 of the customers?

1 A. As I -- as I mentioned earlier, the two
2 primary alternatives, one, would be just to simply
3 reduce the deferred gas cost in the PGA that exist
4 today, or the other would be to simply lower that PGA
5 by that amount which would credit all customers that
6 see that PGA on their bill.

7 Q. So it's a one-time block of money that comes
8 to you one time? It doesn't -- it isn't an ongoing
9 credit month after month after month?

10 A. Right. Let me talk about both components.
11 One, we were just talking about the refund
12 just now.

13 Q. Uh-huh.

14 A. The other one, the unauthorized use, is for
15 a defined period of time where that unauthorized use
16 occurred, and that was for the month of December.

17 Q. All right. So for the month of December,
18 whatever the penalties were in that particular month,
19 but there would be penalties potentially in other
20 months, but that is the one-month accumulation of
21 penalties that you would be using?

22 A. That's -- yes, that's what's in this
23 proposal.

24 Q. So if there were penalties in months going
25 out, other months, that indeed would then -- where

1 would that go? Where does that money go?

2 A. That is not part of this proposal.

3 Q. Where does it go? Does it get refunded?

4 A. It would go -- those funds, as a matter of
5 routine, would go back into the PGA process.

6 Q. Okay. Let me ask you, because in the
7 St. Joe and the Empire merger there were proposals
8 that we create subgroups of low-income people, and I
9 think it was proposed by DNR, the energy office there,
10 and we did not -- we did not pursue that.

11 In your rate case are you prepared to
12 address subgroups such as non-for-profits as opposed
13 to for-profit small business and low-income people as
14 opposed to not low-income people?

15 A. At this time as the case is filed, that is
16 not in that case. But we are currently assessing
17 whether there ought to be some proposals like that
18 that comes though this Commission for consideration.

19 Q. Is there any reason you couldn't incorporate
20 it in your case?

21 A. Not to my knowledge.

22 Q. All right. Let me ask one more question.

23 Is MAAC a middle intervener? In other
24 words, you give to MAAC and then MAAC gives it to
25 other groups? Is that what I heard? Or do they

1 actually do the disbursing to individuals?

2 A. If I could, Chairperson, I would like to
3 defer that to MAAC to answer that.

4 CHAIR LUMPE: Okay. Can Mr. Hill answer
5 that?

6 MR. HILL: Sure. And Ms. Marcason will
7 address that in more detail, but MAAC administers the
8 distribution of funds to the local service agencies
9 who then -- like the Salvation Army that would then --

10 CHAIR LUMPE: Do they take administrative
11 stuff off the top, too, then, so -- I mean, do we
12 have you having administration, them having
13 administration, and we have a whole lot of
14 administration stuff?

15 MR. HILL: There isn't any part of the funds
16 that would be used for that to my knowledge,
17 Commissioner, so that there is --

18 CHAIR LUMPE: By you or by the other
19 entities? You get a 4 percent fee?

20 MR. HILL: (Nodded head.)

21 CHAIR LUMPE: Okay. Now, when you send it
22 to the Salvation Army, do they get a fee?

23 MR. HILL: Ms. Marcason may be able to
24 address that, but not to my knowledge.

25 CHAIR LUMPE: Okay.

1 MR. HACK: I'll attempt to answer that,
2 because I've had a little bit of experience.

3 The answer is, to my knowledge, no. And the
4 money actually never leaves MAAC's bank. They -- they
5 basically issue electronic dollars available to 30 or
6 40 agencies that are listed to the back of the
7 application. Those agencies, in essence, grant
8 vouchers to customers. The process then works back
9 through the system electronically. Those vouchers
10 are, in essence, cashed in, and we, through an
11 electronic funds transfer, apply moneys to those
12 customers' accounts.

13 BY CHAIR LUMPE:

14 Q. The funds that are given -- have been given
15 to MAAC in the past, have they all been shareholder
16 funds?

17 A. Actually, the Neighbors Helping Neighbors
18 program that I mentioned earlier is actually the
19 program where customers contribute.

20 Q. That's a voluntary thing?

21 A. That's voluntary. MAAC actually administers
22 those. And they do that for a number of other
23 companies. I know when I was at Kansas City Power &
24 Light, they administered the program over there as
25 well.

1 Q. Was that shareholder money?

2 A. No. It was a program similar to Neighbors
3 Helping Neighbors, and I don't recall.

4 Q. A voluntary program?

5 A. Yes.

6 Q. And that gets me to, I think, the one
7 concern that was raised about people contributing
8 non-voluntarily to an organization, however wonderful
9 it may be, that they really did not intend to
10 contribute to. And I know that in the past we have
11 been concerned about making customers give to
12 charities that may not be of their choice.

13 And so I have -- for the first time we're
14 not -- this is not voluntary, and this is not
15 shareholder money. This is involuntary money going to
16 a charity that that person may not have wished to give
17 to.

18 A. And I guess my response to that,
19 Chairperson, is to simply say this is extraordinary
20 times. And, I guess --

21 Q. I understand.

22 A. -- I am asking the Commission to maybe make
23 some modification to what has been a fairly consistent
24 precedent with this Commission in that regard and to
25 modify that.

1 CHAIR LUMPE: Okay. Thank you.

2 JUDGE RUTH: Vice-chair Drainer?

3 COMMISSIONER DRAINER: Very quickly, I just
4 wanted to make something clear. And, Mr. Micheel, I
5 didn't want him beating himself up that he was guilty
6 of anything on whether or not he cited the statutes.

7 I believe we -- I wanted to be clear on
8 whether it was just policy or just a legal point. I
9 guess I believe that both Staff and Public Counsel
10 gave us some good -- their -- what they considered
11 good policy reasons in their original, and what came
12 to my mind was that that's policy and -- and where are
13 the statutes that would legally allow me to or not?

14 So I think that's what today is about, and
15 you did give us the handouts to review, and I
16 appreciate that.

17 And, Mr. Schwarz, you referenced the same
18 statute, and I appreciate that.

19 And then I don't think that any of you are
20 here asking us to bend the law. It's having looked at
21 those statutes and it's how are they interpreted and
22 your positions on that.

23 And I -- I just noticed that Mr. Hill had
24 asked just to do a brief, having more time to brief
25 than those specific statutes, and, again, I think

1 that's a fair due process. So I think this is a
2 process, and you've all been doing it step by step
3 with us and on an expedited basis, and I appreciate
4 all that you have brought us and are bringing us
5 today.

6 So I don't want anyone to feel beaten or
7 guilty. I applaud you for helping us think and stop
8 and take the time to think and not just act or react.

9 MR. HILL: Commissioner, if I could just say
10 one thing: We're working pro bono so I'm perfectly
11 happy not to brief it, but the last thing in the world
12 we would want to have happen is for the Commission to
13 deny this application because it was -- it didn't have
14 available to it in written form the legal argument
15 that might enable the Commission to grant it. We are
16 perfectly happy for the Commission to --

17 COMMISSIONER DRAINER: I think Mr. Zobrist
18 would probably be thrilled to brief it.

19 MR. HILL: I'll make sure I assign that to
20 him.

21 Thank you, Commissioner.

22 COMMISSIONER DRAINER: But I do appreciate
23 all that you are trying to show us today, all of you.

24 Thank you.

25 JUDGE RUTH: Commissioner Murray.

1 COMMISSIONER MURRAY: I just have a little
2 bit of follow-up here, a few questions I forgot to ask
3 earlier.

4 FURTHER QUESTIONS BY COMMISSIONER MURRAY:

5 Q. The \$250,000 that MGE has already
6 contributed and already paid to MAAC, that will be
7 distributed to those at 200 percent of poverty level;
8 in that correct?

9 A. Yes.

10 Q. Okay. And then the -- if the block of the
11 refund money were to be credited back through the PGA
12 process, that amount would be the entire refund; is
13 that correct? That would not take -- that would not
14 have any administrative fee of \$40,000 or \$50,000
15 taken from it?

16 A. That's -- let me be sure I -- if you're
17 saying that the refund simply went into the PGA
18 process?

19 Q. Yes.

20 A. It will be the full dollar value of that
21 refund process.

22 Q. And then I wanted to ask you, and I -- I
23 would assume that you or, at least if you're not,
24 perhaps Mr. Hack is familiar with the plan for
25 distributions through this charitable or social

1 service agency which is actually Attachment 2 --

2 MR. HACK: I am.

3 BY COMMISSIONER MURRAY:

4 Q. -- of your application?

5 A. If I could, I'll defer to Mr. Hack.

6 COMMISSIONER MURRAY: Okay. Then, Mr. Hack,
7 I would ask you at Page 3 of that Attachment 2 --

8 MR. HACK: Yes.

9 COMMISSIONER MURRAY: -- under Paragraph 9
10 it says, "As conditions for receiving payment for
11 eligible customers under this program, MGE agrees,"
12 and then it sets out three bullets there that MGE
13 agrees to.

14 MR. HACK: Uh-huh.

15 COMMISSIONER MURRAY: Can you tell me, what
16 is MGE agreeing to there that it would not be doing
17 absent the waiver? Specifically, point by point can
18 you indicate that MGE would not be -- would or would
19 not be doing each of those things without the waiver?

20 MR. HACK: As far as the first bullet point,
21 I don't think there is anything different that we
22 would be doing with or without the waiver; the same
23 with the second bullet point; the same with the third
24 bullet point.

25 COMMISSIONER MURRAY: Okay. Thank you.

1 MR. HACK: This document was pulled from a
2 '97 document that was drafted by a number of people,
3 so I can't tell you exactly why that's there.

4 COMMISSIONER MURRAY: Okay. And since you
5 seem to be the one that's familiar with this, I'm
6 going to ask you this question again, instead of the
7 witness.

8 After MAAC receives the money from MGE,
9 then, as I read the agreement, MAAC allocates
10 50 percent to the agencies, various agencies, holds
11 50 percent in a trust account to be distributed later
12 at its discretion, and my question is, do you know
13 that money -- first of all, the allocation of the
14 50 percent never actually leaves MAAC, does it, until
15 it's actually sent back to MGE? It's just allocated;
16 is that right?

17 MR. HACK: Yeah. It's communicated
18 electronically that you, XYZ agency, have available
19 \$42,000.

20 COMMISSIONER MURRAY: Okay. And then that
21 money is sitting there for some period of time in some
22 kind of a trust account?

23 MR. HACK: Right.

24 COMMISSIONER MURRAY: Is that earning
25 interest?

1 MR. HACK: I assume that there is some
2 interest and there is also probably some trust fees
3 and that those are -- are typically washed.

4 I think my recollection is that back in '97
5 the fees associated with the trust account were
6 actually larger than the interest. My recollection,
7 again, is that when we were distributing \$550,000 in
8 '97 it was 100 percent gone in six weeks.

9 COMMISSIONER MURRAY: Who gets the fees for
10 the trust account?

11 MR. HACK: The bank.

12 COMMISSIONER MURRAY: And MAAC -- this is in
13 MAAC's trust account?

14 MR. HACK: At a bank.

15 COMMISSIONER MURRAY: At a bank. And the
16 bank is charging a fee to hold that money, even though
17 MAAC is the one that's disbursing it and making all of
18 the decisions regarding it?

19 MR. HACK: Most banks, to my understanding,
20 charge fees for their services. I'm not trying to be
21 cute.

22 COMMISSIONER MURRAY: Right.

23 MR. HACK: But the administration of the
24 money is done by MAAC. The -- what the bank does is
25 hold it. Then they -- they send it back to MGE, I

1 think, on either a biweekly or monthly basis with
2 account numbers and that kind of stuff, so that the
3 bank does perform a function.

4 MR. HILL: Commissioner, if I might just
5 address that, Ms. Marcason may be able to provide some
6 more detail.

7 But, certainly, when it comes to a trust
8 account, it certainly is standard for a bank to charge
9 a fee for administering a trust account as a trustee.
10 The -- I can assure you, and I'm sure Ms. Marcason
11 will assure you as well, that MAAC has acted prudently
12 in -- in obtaining its bank accounts and in trying to
13 obtain the greatest possible return and the lowest
14 possible trust fee for those accounts.

15 COMMISSIONER MURRAY: Okay. I may be being
16 naive here, but I -- I'm not sure what the bank would
17 have to do beyond what MAAC is doing. I can see how
18 if you had turned over an account to a bank and said,
19 You have to take care of determining the distributions
20 and this kind of thing, then there would be a fee
21 charged for that. If the bank is simply holding that
22 money and disbursing it at MAAC's direction, I don't
23 see that they are performing much of a function.

24 MR. HILL: Well, I mean, I'm sure the
25 bankers would take issue with that.

1 But, again, Commissioner, it's not -- I
2 mean, we're not establishing the trust fee. The fee
3 is -- and Ms. Marcason may be able to address what the
4 fee is. I don't know what it is. But there -- I'm
5 sure there is a fee that would be routine by any --
6 any bank and associated with a trust fee.

7 If -- we certainly understand that this
8 is -- to the extent a bank receives a fee it is a --
9 it is money that our customers, our constituents don't
10 receive. MAAC has every reason to ensure that that
11 trust fee is as low as it absolutely possibly can be.
12 And I'm quite confident that if MAAC could avoid
13 paying the trust fee, it would.

14 COMMISSIONER MURRAY: Okay. But it's
15 undisputed that if we grant this variance that the
16 refunds that go back to the ratepayers, whichever
17 class of ratepayers this Commission decides to go to,
18 will be lowered by your 4 percent plus whatever
19 percentage that the bank takes?

20 MR. HILL: Well, to the extent there is a --
21 a fee by the bank -- I'm not admitting there is one.
22 I mean, maybe Ms. Marcason can address that. I know
23 it's perfectly standard for banks to accept -- or to
24 charge a trust fee for administering a trust account.

25 The 4 percent fee that's set forth in the

1 agreement, that's -- that is true that MAAC would
2 receive that -- that sum. But I -- I think as
3 Mr. Cattron mentioned a minute ago, if it would make
4 the Commission more comfortable in approving this that
5 part of the 250,000 would be allocated to pay the
6 administrative fee. I think I understood Mr. Cattron
7 to say he wouldn't object to that.

8 COMMISSIONER MURRAY: Okay. Then I'm going
9 to have to pursue that a little bit further because
10 when Mr. Cattron said that, the fact is that MAAC
11 would still be getting the 4 percent out of the total
12 dollar amount, the \$1.2 million; is that correct?

13 MR. HILL: Commissioner, I'm sorry. I don't
14 want to be argumentative about this. But, I mean,
15 MAAC doesn't work for free. I mean, it's --

16 COMMISSIONER MURRAY: Just answer my
17 question, Mr. Hill, or I'm going to just defer to your
18 witness. I don't want to sit here and argue with
19 counsel.

20 MR. HILL: I'm not sure what I -- to be
21 honest about it, Commissioner, I'm not sure what
22 you're asking.

23 COMMISSIONER MURRAY: Then I'll just defer
24 this to your witness.

25 MR. HILL: Thank you.

1 THE WITNESS: Commissioner Murray, is there
2 something I could help you with in that regard?

3 BY COMMISSIONER MURRAY:

4 Q. Well, you mentioned that the 200-- MGE would
5 be willing to have their fee taken out of the 250,000,
6 but it would still be the same fee, would it not, the
7 same total, 4 percent on the total?

8 A. If we can get this thing done and we get
9 past the legal issue, if it takes another \$40,000 to
10 get this done, I'll contribute another \$40,000.

11 Q. So what you're committing to is MGE paying
12 the fee above and beyond what you've already done?

13 A. What I was proposing earlier is that if you
14 were concerned about those funds that would otherwise
15 go back to customers, that part of those funds were
16 now not flowing to customers, what I had suggested
17 earlier is that I would take and pay a flat fee for
18 the purposes of administering whatever amount of
19 dollars we take there.

20 Q. Okay.

21 A. I would pull those moneys out of
22 shareholders' money.

23 Q. All right.

24 A. Now what I'm saying is, if that's the only
25 issue in our way -- maybe I'm negotiating a little

1 bit.

2 Q. I doubt that --

3 A. And I probably shouldn't do that.

4 Q. I doubt that's the only issue in your way,
5 but thank you for that.

6 A. Thank you.

7 JUDGE RUTH: Okay. It's a few minutes after
8 4:00, and I think it would be a good idea to take a
9 ten-minute break. We'll try and be back promptly at
10 12 after. We'll make it 15 after. That gives you
11 12 minutes.

12 Off the record. Thank you.

13 (A recess was taken; whereupon, the witness
14 left the stand.)

15 JUDGE RUTH: Let's go back on the record,
16 please.

17 We'll continue with some questioning here.

18 Commissioner Simmons, did you have a couple
19 of questions?

20 COMMISSIONER SIMMONS: I had just one
21 question, and it will go probably back to some of --
22 or one of the comments I made earlier. My comment was
23 in the area of public policy and this Commission's
24 ability to deal with the public interest.

25 And I guess my question probably is going to

1 be to the attorneys and whether or not they are aware
2 of any statutes, particularly in the state of
3 Missouri, that probably allows us to protect -- I'm
4 glad one person did that, because now I'm not the only
5 one guilty of firing it up.

6 COMMISSIONER DRAINER: Vicky.

7 JUDGE RUTH: Shame on me.

8 COMMISSIONER SIMMONS: But getting to the
9 question, are you aware of any statutes in the state
10 of Missouri that allow us to protect one class over
11 another because of circumstances beyond their control?

12 MR. HACK: I am unaware of any language in
13 the PSC Law --

14 COMMISSIONER SIMMONS: Not PSC. The
15 statutes, in general.

16 MR. HACK: There has to be something. I
17 can't -- I don't know where it is.

18 COMMISSIONER SIMMONS: But you would believe
19 that there are statutes that would allow for public
20 policy and for the public interest to protect one
21 class over another even in circumstances that were
22 beyond the control of that particular class?

23 MR. HACK: I think the emergency authority
24 of the Governor would be an example. I don't know
25 whether it's in the statute or the state constitution,

1 but I think that would be something that might be very
2 apropos to what we're proposing here.

3 COMMISSIONER SIMMONS: And that would go to
4 serve the public interest?

5 MR. HACK: Certainly.

6 COMMISSIONER SIMMONS: Mr. Micheel, are you
7 dying to jump in on that one?

8 MR. MICHEEL: I'm not dying to jump in,
9 Commissioner, but I certainly have to add my two
10 cents.

11 Obviously, the Commission has certain
12 statutory authority, but the Commission can only act
13 with the circumference of that statutory authority.

14 I've given you two statutory sections today
15 that I believe specifically prevent this Commission
16 from granting desperate treatment between similarly
17 situated residential customers. I believe it is an
18 intra-class difference and that the statutes, the
19 Public Service Commission Law which we commonly call
20 Chapter 386 through Chapter 393, prevent this
21 Commission from doing it.

22 Specifically, 393.140, Subparagraph 11 is
23 very specific. "Nor shall any corporation refund or
24 remit in any manner or by any device or any portion of
25 the rates or charges so specified, except as such as

1 are regularly and uniformly extended to all persons
2 and corporations under like circumstances.

3 And the way we set rates in Missouri,
4 Commissioner, we set up different customers classes,
5 and you cannot treat customers within the same class
6 in a different way. And to -- this Commission cannot
7 utilize its discretion. As I said in my opening, this
8 Commission does have a lot of discretion, but you do
9 not, do not have the discretion to rewrite the
10 statutes. And it's my view that that's what you would
11 be doing if you granted this variance.

12 COMMISSIONER SIMMONS: Staff, would you like
13 to respond?

14 MR. SCHWARZ: The Commission does not have
15 plenary authority to correct all of the wrongs that it
16 might perceive. It acts within the ambience of the
17 Public Service Commission Law that is generally
18 Chapters 386 to 394, if you include the muni safety,
19 and then you, of course, have 700. There are other
20 statutory provisions that the Commission deals with
21 other than 386 through 394. Those are the principal
22 ones.

23 But the Commission is a creature of statutes
24 and operates within the limits of those statutes. And
25 I am not aware of any general authority to act outside

1 the limits of the authorizing statutes.

2 COMMISSIONER SIMMONS: Are you aware of any
3 circumstances where this Commission has ever acted in
4 the public interest even though what you say is we
5 have 386, but have we ever acted in the interest of
6 public interest even though on the face of the statute
7 it may be questionable or it may be -- maybe the
8 statute doesn't speak to something directly?

9 MR. SCHWARZ: Well, I think that certainly
10 within the statutory framework there are many things
11 which are delegated, and the cases repeatedly say that
12 within the areas that the General Assembly has granted
13 the Commission discretion, its discretion is very
14 broad. But there are areas where the statutes are
15 specific and the courts will limit the Commission as
16 the statutes prescribe.

17 And, you know, as to the meaning of
18 particular statutory language, that's why we all went
19 to law school so we could argue about what the
20 statutes mean. But once the courts determine it,
21 certainly the Commission is bound.

22 COMMISSIONER SIMMONS: Did you want to
23 comment at all, Mr. Hill?

24 MR. HILL: I won't take up Commission's
25 time.

1 Our position is that there is clearly
2 statutory authority here to do what MGE is asking,
3 Commissioner.

4 COMMISSIONER SIMMONS: Thank you.

5 That's all of the questions I have.

6 JUDGE RUTH: Okay. Thank you.

7 At this time the Commission would like to
8 allow MAAC the opportunity to call its witness.

9 MR. HILL: Thank you, Judge Ruth.

10 We would call to the stand Jan Marcason, the
11 executive director of the Mid-America Assistance
12 Coalition.

13 JUDGE RUTH: Ms. Marcason, is that how you
14 pronounce it?

15 THE WITNESS: Marcason.

16 JUDGE RUTH: Marcason. Would you please
17 raise your right hand?

18 (Witness sworn.)

19 JUDGE RUTH: Please state your name for the
20 record and go ahead and spell it.

21 THE WITNESS: Jan Marcason, M-a-r-c-a-s-o-n.

22 JAN MARCASON testified as follows:

23 DIRECT EXAMINATION BY MR. HILL:

24 Q. Ms. Marcason, by whom are you employed?

25 A. The Mid-America Assistance Coalition.

1 Q. And your position?

2 A. I'm the executive director.

3 Q. How long have you been employed by what
4 we're referring to here today as MAAC?

5 A. Since November of 1989.

6 Q. Would you describe MAAC for the Commission,
7 please?

8 A. MAAC is an administrative organization. It
9 is an agency that's set up to help track clients of
10 emergency assistance and effectively distribute
11 resources to those in the community.

12 And our constituencies are low-income
13 citizens, the agencies that serve low-income citizens,
14 and public policy makers who -- we have a
15 sophisticated computer network that links all of the
16 agencies together, and we provide data to public
17 policy makers to make better informed decisions.

18 Q. Could you just describe in general terms for
19 the Commission some of the programs your agency
20 currently is -- is administering and particularly with
21 respect to funds to assist utility customers?

22 A. All of our agencies -- the backbone of all
23 of our programs is our computer network, and we
24 have -- we house a database at our agency, and 117
25 mostly emergency assistance agencies, and those are

1 food pantries predominantly, some homeless shelters,
2 are hooked into that common database, and that
3 provides information sharing across state, county, and
4 city boundaries so we can effectively distribute and
5 manage resources.

6 And as a -- as a unit, we provide, first --
7 the first line is the information referral service.
8 People in need call our agency and are able to be
9 directed to sources of help. Because of our on-line
10 management of the utility assistance, we can send them
11 to an agency that actually has assistance to help
12 them. So it doesn't waste their time and it doesn't
13 waste the agency's time.

14 Our utility fund management administers five
15 separate funds that total approximately \$500,000 every
16 year. It's -- it's managed by an independent
17 allocations committee, chaired by one of the
18 evaluators from the University of Missouri, Kansas
19 City. It has all private citizens on that, including
20 some city and county, across both states, Kansas and
21 Missouri, and it independently allocates utility
22 assistance according to geographic service areas and
23 according -- I mean, areas of need, and according to
24 an evaluation of agencies that provide that service.

25 We house a homeless case management program.

1 Our staff trains all of the case managers that work
2 with homeless families and individuals throughout the
3 community, trains all of the new case managers,
4 provides monthly support groups for those case
5 managers, and also administers a fund from Jackson
6 County, Missouri that is used to support homeless
7 families that are going back into stable housing.

8 And we have been asked by the City of Kansas
9 City to house a homeless services coalition
10 coordinator. It's a new position, and to provide an
11 incubator and mentoring for that program so it can, A,
12 submit data into our database so we can look at
13 predictors from the emergency assistance standpoint of
14 those who might become homeless and prevent that
15 crisis, but also to encourage agencies along the
16 continuum of care to work cooperatively.

17 Q. Would you describe for the Commission just
18 in the most general terms how the program currently
19 under consideration today would work once those funds,
20 if approved by the Commission, were transferred to
21 MAAC by MGE?

22 A. Right. Already the funds that we have from
23 MGE, the \$250,000, were distributed in a trust
24 account. We hold each of our funds -- we administer
25 them according to the guidelines of each particular

1 fund.

2 They are in a trust account. The agencies
3 have been selected to administer those funds and
4 assign a percentage of the total, so each -- according
5 to the services they provide, the number of services,
6 and their capabilities for service.

7 And the reason we decided to adminis-- to
8 first allocate 50 percent of the funds is we aren't
9 sure that every agency will have the capacity to
10 distribute those funds quickly, as we hope, and so
11 those agencies that do have the administrative
12 capacity and are using the funds will do that
13 immediately, and then those -- so the second
14 distribution could be made available to them early on.

15 And those that aren't, the funds could be
16 shifted to those agencies with the capacity, because
17 they do not receive an administrative. They use their
18 existing staff. It's an added bonus to them.

19 They have so many clients who call their
20 agency who they are not able to serve because of
21 limited funds, especially funds that are limited
22 because of income eligibility. So this would make a
23 broader eligibility for income -- this income class
24 between 150 and 200 percent of poverty, but it would
25 be added onto the funds that an agency traditionally

1 has.

2 Q. You may have just answered this question,
3 but who specifically will be eligible for these --
4 these funds? What's the -- the income level that
5 makes them eligible for the distribution of these
6 funds?

7 A. Because much -- there was a lot of federal
8 funding that was -- that was made available through
9 LIHEAP, millions of dollars in additional funds, those
10 funds can only be used by folks who make up to
11 125 percent of poverty. Then the ECIP, Emergency
12 Crisis Intervention Program, which the community
13 action agencies distribute goes up to 150 percent of
14 poverty. We were seeing more and more retired folks
15 living on pensions, senior citizens, working families
16 who just miss that 150 percent of poverty.

17 And so we designed this fund within MGE to
18 be predominantly for those folks who make between
19 150 and 200 percent, or those folks who just aren't
20 eligible for -- they've applied for LIHEAP or ECIP but
21 for different reasons are not eligible. We're trying
22 to maximize the total package of utility assistance.

23 Q. Based on your contact with the MAAC
24 constituents as well as with the social services
25 agencies, what's your opinion about the need for the

1 funds that we're talking about today?

2 A. Well, we heard -- we went to a Committee to
3 Keep Missourians Warm meeting this morning, and we
4 know that a lot of the community action agencies
5 are already out of the ECIP funds, and that was
6 \$6 million, I think, of additional money, so we know
7 that agencies are desperately in need of utility
8 assistance.

9 More and more folks -- twice as many folks
10 have called our agency for help this year between
11 December 1st and now as did last year, and we were
12 only able to help three-fifths of those last year. So
13 we know that there are many folks who are not going to
14 be able to be served, and especially those that are
15 the working poor. And with welfare reform, we're
16 getting them back to work, but then they are denied
17 assistance.

18 Q. Earlier in this hearing Staff counsel was
19 very complimentary of MAAC, and I believe Public
20 Counsel as well stated that they didn't have any
21 particular issues or problems with the agreement that
22 MAAC has worked out with MGE for the distribution of
23 these funds.

24 But one element of that agreement is for a
25 4 percent administrative fee to go to MAAC. Is that

1 similar to other administrative fees that are charged
2 for other programs you administer? And how did you
3 come up with the 4 percent fee?

4 A. To give you a little bit of background, we
5 have an administrative budget of about \$580,000. We
6 have ten staff members. And that's for all of our
7 programs, that administrative.

8 For our utility assistance program we have
9 for probably -- for the 15 years we've been
10 incorporated, we have managed funds for Kansas City
11 Power & Light and others, and we have charged between
12 8 and 12 percent for those funds. It hovers around
13 right 10 percent. Ten percent is about a break-even
14 point. Those that are less than that, the
15 corporations make up the difference with some
16 additional funding.

17 For these one-time -- we also manage what's
18 called Project Warmth in Kansas City, and it's a
19 one-time fundraising, and it raises about \$175,000,
20 and for that fund we have asked for the last five or
21 six years that I can remember a 4 percent fee.

22 We've also recently established with some of
23 the local churches and other congregations a fund
24 that's one-time called Share the Warmth, made up of
25 all of the participants of churches, and, again, we

1 have charged a 4 percent administrative fee.

2 Q. It's fair to say you can't perform your
3 services for free?

4 A. We perform a lot of services for free.

5 Q. But you can't perform them all?

6 A. But we charge -- we can't charge them -- we
7 have to charge for -- to keep the agency going.

8 Q. The question was raised earlier with respect
9 to fees on trust accounts --

10 A. Right.

11 Q. -- that MAAC keeps.

12 Would you identify the bank that MAAC uses
13 and tell us what the trust account fee is and the
14 basis for that fee?

15 A. We use First Star bank in Kansas City. It's
16 also where we're housed, so it's very convenient.

17 But we do have a trust agreement with them.
18 The trust account is \$75 per quarter, and for that --
19 the way that our computer system works, the agencies
20 that are the distribution sites interview the clients
21 and enter information about the proposed grant in the
22 computer system. They submit all of the
23 documentation.

24 Our Staff does the final approval, looks
25 over all of the paperwork, and if it is approved, they

1 mark it paid. And then twice a month the computer
2 generates a report that is sent to the bank, and the
3 bank cuts a check. Included with that is the customer
4 and their account number, and then that goes directly
5 to the utility company. And for most of our accounts,
6 it goes to many different utility companies. For this
7 one, it would go for MGE customers.

8 Q. The trust account fee that -- would you set
9 up a new trust account for these funds?

10 A. We have -- we always set up new trust
11 accounts. That is part of our service.

12 Q. And the fee for that that's charged by the
13 bank is \$75 a quarter?

14 A. Right. And the experience from the last
15 go-around, we -- the idea is to get the money back --
16 a lot of these folks are very scared or concerned that
17 they have such high bills. They need immediate
18 relief. They are nervous that their utilities are
19 going to be shut off. So the money is quickly turned
20 around, and last time it was six weeks, I think it
21 was. So the idea is to seize it quickly.

22 Q. Even if it took you six months to distribute
23 the funds, the total fee would be \$150?

24 A. Right.

25 Q. And is it correct that that would not come

1 out of these funds? It would come out of MAAC's
2 general administration budget?

3 A. Part of our administration.

4 Q. Is MAAC providing any compensation or quid
5 pro quo or anything to MGE in return for the -- the
6 offer by MGE to provide these funds to MAAC?

7 A. No.

8 MR. HILL: I have no other questions.

9 Thank you.

10 JUDGE RUTH: Okay. Commissioner Murray, do
11 you have any questions for this witness or for
12 counsel?

13 COMMISSIONER MURRAY: Do you want to let
14 them cross?

15 JUDGE RUTH: Well, there was some discussion
16 beforehand. If there aren't any strong objections, we
17 were going to skip cross of the witness.

18 Mr. Conrad?

19 MR. CONRAD: Am I up?

20 JUDGE RUTH: If you have cross that you want
21 to do.

22 MR. CONRAD: Just very briefly.

23 CROSS-EXAMINATION BY MR. CONRAD:

24 Q. Ms. Marcason, are you the only witness for
25 MAAC today?

1 A. We have our utility fund manager and
2 accountant with me. If you have specific accounting
3 questions, he is probably better prepared.

4 Q. My question doesn't have anything to do with
5 specific accounting.

6 A. Okay.

7 Q. You heard -- you have been here most of the
8 afternoon?

9 A. I think all of the afternoon.

10 Q. Okay. You heard your counsel, Mr. Hill,
11 indicate earlier that he had discovered that
12 transportation customers had violated the MGE tariffs.
13 Do you recall him saying that?

14 A. Vaguely.

15 Q. Do you have any knowledge of such
16 violations, ma'am?

17 A. Of violations of tariffs?

18 Q. Yes, ma'am.

19 A. No.

20 Q. I was going to ask you if you would name
21 those customers for me.

22 A. I don't -- I don't know those facts.

23 Q. So you as the principal witness for MAAC
24 have no evidence on that issue at all?

25 A. No.

1 Q. So your counsel's statement, then, earlier
2 was without factual foundation; is that correct?

3 A. I'm sorry. Tell me the statement again.

4 Q. Do you have a factual foundation for your
5 counsel's statement?

6 A. I do not.

7 MR. CONRAD: Thank you.

8 JUDGE RUTH: Is there any other
9 cross-examination for this witness?

10 (No response.)

11 JUDGE RUTH: Commissioner Murray.

12 QUESTIONS BY COMMISSIONER MURRAY:

13 Q. Good afternoon.

14 The -- you were just answering that First
15 Star Bank in Kansas City charges \$75 per quarter for
16 administration of that trust account.

17 A. Yes. Right.

18 Q. Then the money that is in that account
19 starting out at -- if this waiver is granted, it would
20 be starting out at somewhere around \$1.2 million.

21 That money that is sitting in that account
22 until it's actually disbursed, what kind of interest
23 is it earning?

24 A. David, I -- could he answer? I don't --

25 Q. Okay. You don't know the answer to this?

1 Then you're probably not my witness -- the witness
2 that I want to ask either, but just let me make sure
3 that I don't have any that you can answer.

4 I guess I would just ask you, back on -- in
5 the plan for distribution of funds through charitable
6 or social service agencies that MGE attached to its
7 request for a variance here, in the third paragraph --
8 do you have that?

9 A. Of the attachment?

10 Q. Attachment 2.

11 A. "MGE proposes to use the expertise" --

12 Q. Yes.

13 A. Yes, uh-huh.

14 Q. Yes. That's the paragraph.

15 It then references MAAC and the standard
16 intake form that it has developed, and the last
17 sentence in that paragraph, "In so doing it works with
18 public, civic, and charitable organizations to plan
19 the allocation and prioritization of the community's
20 emergency assistance resources."

21 A. Right.

22 Q. In working with public, civic, and
23 charitable organizations, who does MAAC get paid for
24 in those instances -- get paid by in those instances?

25 A. Our funding -- approximately 70 percent of

1 our agency's funding is through foundations, the
2 Greater Kansas City Community Foundation, Kauffman
3 Foundation, Bank of America Charitable Trust. The
4 major foundations are our -- our -- those are -- those
5 are our major support in Kansas City.

6 COMMISSIONER MURRAY: Okay. I believe
7 that's all of the questions I have.

8 THE WITNESS: We are also a United Way
9 planning affiliate, so a portion of our money is from
10 the United Way.

11 JUDGE RUTH: Commissioner Simmons, do you
12 have any questions for this witness?

13 COMMISSIONER SIMMONS: I have no questions.

14 JUDGE RUTH: Ordinarily, we would have
15 recross. I suggest, because of the timing, and I
16 think most of the issues have been covered, that we
17 skip recross. If you object to changing the procedure
18 in that way, please tell me.

19 MR. HILL: I have no objection, Judge, but I
20 maybe can offer a response to the Commissioner's
21 question about the interest rate that's charged on the
22 First Star account.

23 COMMISSIONER MURRAY: I would prefer to ask
24 your witness -- the other witness. You have a witness
25 here that has that background and that information.

1 MR. HILL: We didn't intend to call him as a
2 witness, so we'll take a pass on that. Thank you.

3 COMMISSIONER MURRAY: When you say you will
4 take a pass, you mean you're not going to answer my
5 question unless I let you do it as counsel?

6 MR. HILL: Insofar as once I call the
7 witness, he hasn't been prepared to testify, and so he
8 would be open to any other questions, I think that's
9 right, Commissioner.

10 JUDGE RUTH: Okay. If there are no other
11 questions, then, for this witness, you may step down.

12 (The witness was excused.)

13 JUDGE RUTH: Staff, do you intend to call a
14 witness?

15 MR. SCHWARZ: I have with me Dan Beck, and
16 I'm not sure what areas of inquiry the Commission
17 might have of him, but I'm certainly willing to call
18 him. Yes, I will call Mr. Beck.

19 JUDGE RUTH: Mr. Beck, would you please raise
20 your right hand.

21 (Witness sworn.)

22 JUDGE RUTH: Please be seated and state your
23 full name and spell it for the record.

24 THE WITNESS: Daniel I. Beck, B-e-c-k.

25 JUDGE RUTH: Staff.

1 DANIEL I. BECK testified as follows:
2 DIRECT EXAMINATION BY MR. SCHWARZ:
3 Q. Mr. Beck, by whom are you employed?
4 A. The Missouri Public Service Commission
5 Staff.
6 Q. And what's your position with the Staff?
7 A. I am a utility regulatory engineer.
8 Q. Are you currently assigned to the Gas
9 Department?
10 A. Yes. I'm in the Gas Tariff Section.
11 Q. So is it part of your function to review
12 tariffs?
13 A. Yes, that and rate design.
14 Q. How long have you worked for the Commission?
15 A. Approximately eleven years.
16 Q. And you have participated in rate cases
17 during that period?
18 A. Yes, I have.
19 Q. In various capacities?
20 A. Yes, I have.
21 Q. Are you familiar with MGE's waiver
22 application?
23 A. Yes, I am.
24 Q. Would it be your opinion that the proposed
25 redistribution of refunds and overcharges would

1 constitute a -- an intra-class discrimination within
2 the residential class?

3 A. Yes. I think that similar situated
4 residential customers would be -- I've heard testimony
5 on -- on -- or discussions on several groups. One
6 group I haven't heard up until now is simply the
7 customers that have the same income as the specific
8 groups called out here, but the ones that simply don't
9 become eligible. They don't make this contract. They
10 will not -- they will not benefit from this money.

11 Q. The parties have referred to the
12 Section 393.130, Subsection 2, which contains the
13 language "under the same or substantially similar
14 circumstances or conditions."

15 In your tenure at the Commission, has the
16 "same or substantially similar circumstances" ever
17 been used to refer to the personal characteristics of
18 individual customers, that is, their income or their
19 hair color or similar personal characteristics?

20 A. No.

21 Q. What is -- as a long-time staff member, is
22 your understanding of "under the same or substantially
23 similar circumstances or conditions"?

24 A. The normal things that I'm used to dealing
25 with are things like the type of service that they are

1 provided, the type of equipment that they need to get
2 service, how they use the products, the commodity that
3 they receive, that type of thing.

4 MR. SCHWARZ: Thank you.

5 I have no further questions.

6 JUDGE RUTH: OPC?

7 CROSS-EXAMINATION BY MR. MICHEEL:

8 Q. Mr. Beck, from a public policy standpoint,
9 do you think it's appropriate to allow intra-class
10 subsidization to occur?

11 A. I think that it really is not because it's
12 just something that we've never attempted to do
13 before.

14 Q. Are you aware of any other case in your
15 tenure before this Commission where the Commission has
16 granted an intra-class different rate; in other words,
17 two separate rates, for example, for residential
18 customers?

19 A. The only thing that I'm aware of would be
20 rates that would be specific to two types of customers
21 that have two totally different usage characteristics
22 like those who have space heating and those who don't.
23 There used to be some tariffs in that regard, but
24 that's the only type of tariffs that I'm aware of.

25 Q. Do you have an opinion about whether or not

1 if this Commission grants the requested variance
2 whether or not there will be some intra-class
3 difference between customers?

4 A. I think this would cause that, and I think
5 it would be a -- for a very specific group of
6 customers only those customers who were elig-- who
7 were eligible and ultimately received benefits from
8 this program.

9 MR. MICHEEL: Thank you.

10 That's all I have.

11 JUDGE RUTH: Okay. Please proceed. I'll
12 let MGE --

13 MR. HACK: If I was -- I didn't want to go
14 out of order, but I did have a couple of questions.

15 CROSS-EXAMINATION BY MR. HACK:

16 Q. Mr. Beck, are you aware with the -- of the
17 low-income weatherization plan on MGE's system?

18 A. Yes, I am.

19 Q. Does that apply to residential customers?

20 A. Yes.

21 Q. Are all -- are all residential customers on
22 MGE's system eligible for that program?

23 A. Eligible for -- no.

24 Q. For example, a customer in Joplin is not
25 eligible for that program, are they?

1 A. I have a vague recollection of some of the
2 specifics, but I don't think it's fair for me to say
3 when I -- I don't recall that particularly.

4 Q. Do you vaguely recollect that it's basically
5 limited to residential customers in Kansas City?

6 A. It seems it was -- that it was dealing with
7 specific areas, and I -- but I don't recall exactly
8 what those areas were. It would seem logical it would
9 be Kansas City, but I can't --

10 Q. Are you aware of whether there are any
11 income guidelines for eligibility for that program?

12 A. Yes, I am. I'm sure there are.

13 Q. And would it be fair to say, or would you
14 disagree with me if I told you that generally that
15 program was targeted to weatherize lower-income
16 customers' homes?

17 A. That's my understanding.

18 Q. Would you agree with me, Mr. Beck, that that
19 is a distinction made between residential customers
20 that currently exists in MGE's tariff?

21 A. Yes, I guess I would.

22 MR. HACK: That's all I have. Thank you.

23 MR. HILL: Just two questions.

24 CROSS-EXAMINATION BY MR. HILL:

25 Q. Mr. Beck, are you a lawyer?

1 A. No.

2 Q. You're not here to offer a legal opinion of
3 any kind, are you?

4 A. No, I'm not.

5 Q. Have you conducted any study related to the
6 proposal offered by MGE, any rate impact study, any
7 customer impact study, anything like that?

8 A. Yes. I've made some analysis trying to --
9 trying to somehow make a calculation of the flow of
10 benefits to MGE.

11 Q. Has that been provided to anyone?

12 A. No. No one requested it. And to be honest
13 and fair, that -- that analysis was completed two days
14 ago.

15 MR. HILL: Thank you. I have no other
16 questions.

17 JUDGE RUTH: Does that raise any questions,
18 Commissioner Murray?

19 COMMISSIONER MURRAY: I've got a couple of
20 questions. Thank you.

21 QUESTIONS BY COMMISSIONER MURRAY:

22 Q. Just the last -- I'd like to first ask about
23 the last thing you said.

24 You've done some calculation about the flow
25 of benefits to MGE. What benefits are you talking

1 about?

2 A. Basically, it was alluded to in some earlier
3 discussions, but it's almost a guarantee that the
4 uncollectible or bad debt expense, whichever one you
5 want to call it, will be lowered because of this
6 program. And it -- I was looking at those numbers
7 trying to understand how those would specifically
8 impact MGE's revenue flow.

9 Q. And that would be something that would be
10 reasonable for us to look at because it would affect
11 all of the ratepayers of MGE; is that correct?

12 A. I think it's -- it actually does two things.
13 It would affect all of the ratepayers in the long
14 term, but in the short term, rates have already been
15 set in GR-98-140. Those rates included the -- a level
16 of uncollectible expense that was stipulated to by
17 both Staff and the Company and other intervenors. And
18 so by this agreement, it would seem to me that it's
19 revisiting that issue.

20 Q. And have you completed those calculations?

21 A. Yeah. I've -- or at least the analysis that
22 I have.

23 The ultimate problem is -- is that I cannot
24 say with 100 percent clarity how many of the customers
25 we're talking about have -- how large their arrearages

1 are, how much of an impact this program will have for
2 them, and then ultimately because there is a
3 requirement that they sign an agreement with MGE to --
4 for paying back the additional funds, what the total
5 additional funds will be. Since we don't know who
6 those -- these customers are yet, we really can't pin
7 that down.

8 So what I did instead was I made some
9 calculations and made some assumptions trying various
10 levels of both the arrearages and the customers'
11 ability to pay those arrearages to try to calculate
12 those income flows.

13 Q. So is what I'm hearing you say that we don't
14 know the effect to all of the ratepayers of granting
15 this -- this variance should we grant it, that we
16 don't have that information today to know?

17 A. No. We -- ultimately, we will not know what
18 impact this has on the Company's total uncollectibles
19 which they will likely be asking for in future rate
20 case. So it's -- but what we -- you know, I guess
21 what we do know is that when rates are set, as in
22 GR-98-140, the customer -- the Company then agrees to
23 provide service until which time the rates are reset.
24 And so from that standpoint, that's what I think this
25 proposal is doing.

1 Q. Do you know of any other instance in which
2 this Commission has granted a variance of this nature?

3 A. I do not.

4 Q. Have you been at this Commission --

5 A. I mistakenly said 11 years a while ago, and
6 it's actually closer to 14.

7 Q. Okay. Then have you been at this Commission
8 to -- during times in which -- during times that might
9 have been classified as extraordinary circumstances or
10 very unusual circumstances?

11 A. I think that -- that the winter of '96-97
12 was an extraordinary circumstance that actually caused
13 us to redo the whole PGA process in terms of how the
14 filings were made and the timing of that. So the one
15 thing it seems as there is always another
16 extraordinary circumstance, but I will say this has
17 been quite bad.

18 Q. And in that period in which the PGA/ACA
19 process was reworked, at that time there was provision
20 made that -- maybe I don't want to go there. I
21 probably can't say that clearly enough to say what I
22 really want to say.

23 Okay. You've heard MGE say that they have
24 already turned \$250,000 of shareholder money over to
25 MAAC for distribution to customers up to 200 percent

1 of poverty level. Were you here to hear that?

2 A. Yes, I heard that.

3 Q. And did you also hear Mr. Cattron say that
4 if we -- if this Commission chose to grant the
5 variance that has been requested that MGE shareholders
6 would provide the entire 4 percent fee charged by MAAC
7 above and beyond the refund money that is going to
8 MAAC? Is that correct?

9 A. That's understood in his proposal, yes.

10 Q. Beyond those two things, if we granted this
11 variance, what would MGE be doing for its customers
12 that it wouldn't do without the variance?

13 A. Basically, the only thing that MGE would
14 be -- it would be distributing funds from the
15 residential small general service, large general
16 service, and the lighting class, and taking those
17 funds and giving them to a specific group of
18 customers.

19 Q. So, in other words, if we grant this
20 variance, we're actually taking refunds from some
21 customers and saying we're not going to give you your
22 fund. We're only going to give that refund to a small
23 number of MGE customers?

24 A. And these -- that's true. And these are
25 refunds that were specifically paid by customers years

1 past, and they are now -- after settling a litigation
2 process, they are now being refunded. So it's not
3 like it's money they never had. It's money they had
4 to give up once -- at one time, and they are finally
5 getting it back.

6 Q. And under MGE's tariff, they are supposed to
7 get it back; is that correct?

8 A. That's correct.

9 Q. And if we grant this variance, not only will
10 we be taking some ratepayers' refunds and giving it to
11 other ratepayers, but we will also be saying to those
12 ratepayers who would no longer be getting refunds that
13 a part of that is going to be contributed to MAAC --

14 A. That's correct.

15 Q. -- is that correct, involuntarily on those
16 customer's parts, as far as we know?

17 A. That's --

18 Q. We have no knowledge whether they would
19 voluntarily agree to that; is that correct?

20 A. That's correct. Given the -- given the
21 discussions I've had with customers this winter, I
22 don't think that they would be willing to give up
23 anything.

24 Q. And with your discussion -- in your
25 discussions with customers, is it your opinion that

1 almost every customer felt the impact of this season's
2 unusual rates?

3 A. I have not talked to a natural gas customer
4 that hasn't expressed their concern and their hardship
5 over the current gas prices.

6 Q. And would it be Staff's position that
7 wherever possible, to relieve any of the customers
8 with money that is due them, we should be doing so?

9 A. Yeah. And I guess that was something that
10 I'm honestly drawing a blank whether we put in our
11 proposal, but we have discussed the idea of simply
12 providing these refunds, instead of the usual 12-month
13 manner, much more quickly. It would seem to be more
14 logical to us.

15 Q. But providing them to the customers to whom
16 they are due under the tariffs?

17 A. That's right. Just speeding up the
18 process.

19 COMMISSIONER MURRAY: Okay. Thank you.

20 That's all of my questions.

21 JUDGE RUTH: We'll go off the record.

22 (A recess was taken.)

23 JUDGE RUTH: We'll go back on the record.

24 First, Commissioner Simmons, I wasn't sure.

25 Did you have a question?

1 QUESTIONS BY COMMISSIONER SIMMONS:

2 Q. Good afternoon, sir.

3 I know it's late. A quick question for you:

4 You pay taxes. Right?

5 A. Yes, I do.

6 Q. Do you receive the benefit of LIHEAP funds?

7 A. No.

8 Q. You mean the government takes your tax money
9 and places it in LIHEAP funds and you don't receive
10 the benefits of it?

11 A. That's -- that's correct.

12 Q. So a small group of people receive the
13 benefit of that?

14 A. Yes.

15 Q. Is that similar to the issue that was just
16 presented to you?

17 MR. SCHWARZ: I'll object. It calls for a
18 legal conclusion.

19 COMMISSIONER SIMMONS: Should I ask the
20 attorney?

21 MR. SCHWARZ: I would be glad to answer.

22 COMMISSIONER SIMMONS: Okay. Go ahead.

23 MR. SCHWARZ: Taxes are general impositions
24 for the operation of the government. They are -- it
25 is a distinct and different power under the

1 constitutions, both state and federal, than the police
2 power, which is the power exercised by this
3 Commission.

4 The Commission exercises a police power
5 which is, in fact, quite distinct from the power of
6 taxation which is administered under the revenue
7 statutes by the Department of Revenue.

8 COMMISSIONER SIMMONS: Good legal argument.

9 The average person may say there were some
10 similarities in what I just presented.

11 MR. SCHWARZ: There are certainly
12 similarities, and, overall, I'm not sure that this
13 Commission doesn't touch as many Missourians as the
14 Department of Revenue does, an they touch basically
15 everybody. So, yes, there are similarities, but there
16 are differences, and the differences are significant.

17 The JI Case -- I'm trying to think. It's
18 been a while since I did state and local taxation for
19 the Tax Commission, but the distinction between the
20 taxation power and the police power are ancient and
21 quite well delineated.

22 COMMISSIONER SIMMONS: So that's where you
23 would draw the observation that there is the
24 difference. You make the legal argument that that's
25 the difference?

1 MR. SCHWARZ: Yes, absolutely. Absolutely.

2 COMMISSIONER SIMMONS: Okay.

3 MR. CONRAD: And without receding from my
4 position that we are taking no position, I would
5 observe that I have missed, Commissioner, the notice
6 of the election for this Commission. The Legislature,
7 sir, is elected. This Commission is not.

8 COMMISSIONER SIMMONS: And your conclusions
9 is what?

10 MR. CONRAD: You do not have taxing
11 authority. The Legislature gives this Commission a
12 limited power, and the courts say that they -- you
13 have only those powers that are given to you by the
14 Legislature and those that are necessarily incident
15 thereto.

16 COMMISSIONER SIMMONS: So you're pointing
17 out the dissimilarity --

18 MR. CONRAD: The dissimilarity between a tax
19 situation and setting a rate.

20 COMMISSIONER SIMMONS: Duly noted.

21 That's all of the questions I have.

22 JUDGE RUTH: Thank you.

23 I want to give the parties the opportunity
24 to have recross and redirect if you need it. If you
25 have questions, though, I ask that you be concise on

1 the point.

2 Recross? Is there any recross from the
3 parties?

4 (No response.)

5 JUDGE RUTH: Redirect?

6 MR. SCHWARZ: A couple of redirect, if I
7 may.

8 REDIRECT EXAMINATION BY MR. SCHWARZ:

9 Q. With reference to the MGE weatherization
10 program, are you aware that -- if it was adopted in a
11 general rate case, or was that an ad hoc proceeding?

12 A. That was in a general rate case, and it was
13 also part of a stipulation.

14 Q. Is it considered an experimental program?

15 A. Yes, it is.

16 Q. Do you know if there have been evaluation
17 reports prepared and submitted to the Commission on
18 that program? If you are not sure, say so.

19 A. I'm aware that they are, but I have not
20 reviewed them specifically.

21 Q. That's fine. Do the participants in the
22 program pay a different rate than other residential
23 customers of MGE?

24 A. No, they do not.

25 MR. SCHWARZ: I think that's all I have.

1 JUDGE RUTH: Okay. I don't believe that the
2 Commission has any questions for a witness that would
3 be from Public Counsel or from Midwest Gas Users'. If
4 you want to put one on, I can give you some time.

5 MR. MICHEEL: Just for the record, your
6 Honor, I didn't bring a witness.

7 JUDGE RUTH: Okay. Well, that settles that.
8 And I assume the same then for Midwest Gas
9 Users'.

10 MR. CONRAD: Well, I'll also decline the
11 unusual opportunity to testify. We didn't plan to
12 have a witness, ma'am.

13 JUDGE RUTH: Thank you.

14 That will conclude the hearing, except I
15 would like to discuss briefing schedule.

16 MR. CONRAD: Do you want to do that on the
17 cord or off the record?

18 JUDGE RUTH: We'll go off the record for
19 just a moment.

20 (A recess was taken.)

21 JUDGE RUTH: We have had a very brief
22 discussion looking at the calendar so that the parties
23 can give me an idea when they would be able to provide
24 briefs, and the consensus has been that briefs could
25 be provided on an expedited basis on Wednesday by

1 4 p.m. That's Wednesday the 21st.

2 The parties have been encouraged to file the
3 briefs ahead of that time if at all possible, with the
4 understanding that the Commission will try to discuss
5 this item at an agenda as soon as possible.

6 So, again, the briefs are due no later than
7 4 p.m. on Wednesday, February 21st.

8 And that will conclude the hearing.

9 WHEREUPON, the hearing was concluded.

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