

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF MISSOURI GAS ENERGY'S TARIFFS  
TO IMPLEMENT A GENERAL RATE INCREASE FOR  
NATURAL GAS SERVICE**

**Case No. GR-2004-0209**

**DEPOSITION OF DAVID MURRAY**

**May 4, 2004**

COPY

**ASSOCIATED COURT REPORTERS**

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STATE OF MISSOURI

PUBLIC SERVICE

In the Matter of Missouri Gas )  
Energy's Tariffs to Implement a ) Case No. GR-2004-0209  
General Rate Increase for Natural )  
Gas Serviced. )

VIDEOTAPED DEPOSITION OF DAVID MURRAY,  
a witness, produced, sworn and examined on the 4th day of  
May, 2004, between the hours of 8:00 a.m. and 6:00 p.m. of  
that day at the law offices of Brydon, Swearengen &  
England, 312 East Capitol Avenue, in the City of  
Jefferson, County of Cole, State of Missouri, before

KELLENE K. FEDDERSEN, RPR, CSR, CCR

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and Notary Public within and for the State of Missouri,  
commissioned in Cole County, Missouri, in the  
above-entitled cause, on the part of Missouri Gas Energy,  
pursuant to Notice.

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1 APPEARANCES  
2 FOR MISSOURI GAS ENERGY:  
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(573)751-4857

1 DAVID MURRAY, being sworn, testified as follows:  
2 DIRECT EXAMINATION BY MR. HERSCHMANN:  
3 Q. Mr. Murray, my name is Eric Herschmann.  
4 I'm an attorney representing Southern Union Company and  
5 MGE here today. I'm going to ask you a series of  
6 questions. If you don't understand the question, will you  
7 please tell me so I'll try to rephrase it for you?  
8 A. Yes.  
9 Q. And is it reasonable for us to presume that  
10 if I ask you a question and you answer the question, you  
11 obviously understood the question and clearly understood  
12 the answer that you gave?  
13 A. Yes.  
14 Q. And the reason I'm doing that is because I  
15 want to make sure that, before answering a question, you  
16 understand exactly what's being discussed between the two  
17 of us.  
18 A. Yes.  
19 Q. Okay. Now, I understand that you submitted  
20 some prepared direct testimony in this matter; is that  
21 correct?  
22 A. That's correct.  
23 MR. HERSCHMANN: Can we mark this, please?  
24 (MURRAY EXHIBIT NO. 1 WAS MARKED FOR  
25 IDENTIFICATION BY THE REPORTER.)

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1 ALSO PRESENT: John Niehaus, Videographer  
2 John Quain  
3 Dennis Morgan  
4 Rick Marshall  
5 John Dunn  
6 Matt Barnes  
7 Chuck Hyneman  
8 Travis Allen

8 SIGNATURE INSTRUCTIONS:  
9 Presentment waived; signature requested.  
10 EXHIBIT INSTRUCTIONS:  
11 Attached to original.

14 INDEX  
15 Direct Examination by Herschmann 4  
16  
17 MURRAY EXHIBITS INDEX  
18 Exhibit No. 1 Prepared Direct Testimony of  
19 David Murray 4  
20 Exhibit No. 2 Photocopy of the back cover of  
21 Professor Morin's book 70  
22  
23  
24  
25

1 BY MR. HERSCHMANN:  
2 Q. I'm handing you what we've marked as Murray  
3 1. Can you take a moment to look at that exhibit?  
4 Can you tell us if this is the prepared  
5 testimony that you submitted in this matter?  
6 A. Yes, it is.  
7 Q. And did you sign the affidavit on the  
8 second page of the deposition?  
9 A. Yes, I did.  
10 Q. And is it an accurate statement as you sit  
11 here today that the testimony that's contained in Exhibit  
12 1 is true and correct?  
13 A. I do have some corrections that need to be  
14 made to this testimony.  
15 Q. And when did you first discover that you  
16 need to make corrections to your testimony?  
17 A. It was about a couple weeks ago.  
18 Q. Is there a reason you didn't submit the  
19 corrections prior to today?  
20 A. No. I planned on submitting them with  
21 rebuttal testimony. That's usually the way I handle  
22 corrections.  
23 Q. And can you tell us what corrections --  
24 well, withdrawn.  
25 Who did you discuss your testimony with

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1 prior to today?  
2 A. My attorneys, attorneys assigned, Bob  
3 Berlin, Robert Franson, to some extent with Bob  
4 Schallenberg, a couple of my colleagues.  
5 Q. Who are the colleagues that you discussed  
6 it with?  
7 A. Matt Barnes.  
8 Q. Who else?  
9 A. John Kiebel.  
10 Q. John Kiebel?  
11 A. Yes.  
12 Q. Who else?  
13 A. The -- whenever I was discussing the issue  
14 that I notice where I made a mistake was with the Office  
15 of the Public Counsel Witness Travis Allen.  
16 Q. That's Mr. Allen sitting here?  
17 A. Yes, he is.  
18 Q. Who else?  
19 A. May have had some discussions with Tim  
20 Schwarz.  
21 Q. Mr. Schwarz is counsel for the Staff --  
22 A. Yes.  
23 Q. -- of the Commission?  
24 A. Yes.  
25 Q. Anyone else?

1 -- his opinion, his insight as to the testimony.  
2 Q. When you say there's some issues that came  
3 up with the testimony, what do you mean?  
4 A. As far as some of the inclusion of, you  
5 know, some -- some wording that we had in there in our  
6 testimony as the financial analysis department for some  
7 time as to whether or not we should keep that testimony  
8 within what we file.  
9 Q. You mean -- let me take a step back. You  
10 submitted prepared testimony previously, right?  
11 A. Yes, I have.  
12 Q. And is that based on a standard type of  
13 form or testimony that's contained in the computer system  
14 at the Staff's office?  
15 A. Some of the testimony we have is  
16 standardized somewhat.  
17 Q. And you discussed with Mr. Schallenberg  
18 whether that standardized testimony would still be  
19 applicable to this case or whether it should be withdrawn?  
20 A. Not necessarily this case. Just any cases  
21 going forward.  
22 Q. Well, any of the recent rate cases that's  
23 been before the Staff, you tried to make a determination  
24 whether or not that testimony should be, let's say,  
25 stricken from the model or kept in?

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1 A. Not that I recall.  
2 Q. Tell us about your conversations with  
3 Mr. Schallenberg. When did those occur and what was  
4 discussed?  
5 A. I discussed the -- you know, I told him  
6 that I had made a mistake and that I wanted to make him  
7 aware of that, because obviously he's the individual in  
8 charge of more or less looking at possible settlement  
9 issues of any case. So I thought it was very important  
10 for me to -- to make sure he was aware of it. It wasn't  
11 -- the correction did not have a large impact on my  
12 recommendation, but he still needed to be made aware of  
13 that correction.  
14 Q. So was there only one mistake?  
15 A. It's one mistake, but it affects some of  
16 the numbers throughout the testimony.  
17 Q. And what was Mr. Schallenberg's response?  
18 A. We all make mistakes and we'll just get it  
19 taken care of.  
20 Q. And did you review your testimony as  
21 contained in Exhibit 1 with Mr. Schallenberg before you  
22 submitted it?  
23 A. He didn't ask to specifically look at the  
24 testimony. I think when there were some issues that came  
25 up with the testimony, he -- he reviewed it and gave his

1 A. We're constantly trying to improve the work  
2 product. So we'll look at some of the -- you know, some  
3 of the testimony that's in some of the standardized  
4 portions and see if there's anything that we can, you  
5 know, change to improve the work product and get the point  
6 across a little bit better.  
7 Q. Let's just talk about this for a moment.  
8 You're here submitting testimony on behalf of the Missouri  
9 Staff as it relates to MGE, right?  
10 A. Yes.  
11 Q. And your jurisdiction or your concern is  
12 strictly Missouri, right?  
13 A. Yes.  
14 Q. You're not claiming to have any  
15 jurisdiction or oversight over any other operations of  
16 Southern Union outside of Missouri, right?  
17 A. No.  
18 Q. And I know in your prior testimony you  
19 referenced the Hope case. Do you remember that?  
20 A. Yes.  
21 Q. And you've referenced the Bluefield case  
22 previously, right?  
23 A. Yes.  
24 Q. And those cases still apply in this  
25 jurisdiction, right?

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1 A. Yes.  
2 Q. The Supreme Court hasn't reversed those  
3 decisions, right?  
4 A. Not that I'm aware of.  
5 Q. Have you ever shepherdized any of those  
6 cases?  
7 A. No.  
8 Q. Have you ever shepherdized any of the cases  
9 that you've looked at?  
10 A. No.  
11 Q. When's the last time -- withdrawn.  
12 The first time you submitted testimony as  
13 it related to MGE in 2001, do you recall that testimony --  
14 A. Yes.  
15 Q. -- you submitted?  
16 And you discussed your testimony with  
17 Mr. Bible before you submitted it, right?  
18 A. Yes, I did.  
19 Q. And Mr. Bible gave you his -- well,  
20 somebody at some point gave you the standard testimony,  
21 right?  
22 A. Yes.  
23 Q. And did someone explain to you when you  
24 first got there that this is the standard testimony that  
25 we use for each of the rate cases that come before the

1 into the professional world.  
2 Q. So you -- that's back when you were still  
3 in school; is that right?  
4 A. That's correct.  
5 Q. And when you graduated college, did you  
6 major in rate of return areas?  
7 A. Finance. Finance.  
8 Q. Well, was there a course that you took that  
9 was directed towards rate of return while in college?  
10 A. The finance curriculum we -- actually, the  
11 model that is used in utility regulation has been referred  
12 to as discounted cash flow model. Obviously it's been a  
13 model that has been, you know, changed and manipulated  
14 somewhat to -- to be able to estimate the rate of return  
15 for a utility company.  
16 In the financial curriculum at the  
17 University of Missouri - Columbia, it was referred to as  
18 the dividend growth model, the Gordon growth model or the  
19 dividend discount model. There's a few -- there's a few  
20 ways to label that model.  
21 And the original intent of that model was  
22 to determine -- for an investor to try to determine what  
23 they think is a reasonable price to pay for a given  
24 security. So yes, I had -- I had experience with -- with  
25 that model as far as -- as far as in my studies with the

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1 Commission?  
2 A. Yes.  
3 Q. And when you first came to the Commission,  
4 in what year was that?  
5 A. June of 2000.  
6 Q. And prior to coming to the Commission in  
7 June of 2000, you were employed by the Department of  
8 Insurance; is that correct?  
9 A. That's correct.  
10 Q. And did you have any rate of return  
11 testimony that you submitted while employed at the  
12 Department of Insurance?  
13 A. No, I did not.  
14 Q. Did you have any rate -- return on equity  
15 testimony that you submitted or worked on while at the  
16 Department of Insurance?  
17 A. No, I did not.  
18 Q. When -- prior to working for the Department  
19 of Insurance, where did you work?  
20 A. I worked at United Parcell Service.  
21 Q. And did that have anything to do with rate  
22 of return or return on equity or anything we're discussing  
23 today?  
24 A. No. It was a position to help me with my  
25 expenses in college. That was my position before I got

1 University of Missouri - Columbia.  
2 Q. Well, when you were in college, did you  
3 apply the model in any real world situations?  
4 A. Other than maybe trying to determine the  
5 valuation of a stock, no. Not in the context that  
6 we're -- that it's used in utility regulation. Like I  
7 said, this is somewhat unique that the model has been  
8 changed to try to arrive at what -- what a witness feels  
9 the discount rate, the cost of capital is for a given  
10 security.  
11 Q. So if I understand at least generally, the  
12 testimony that you're submitting today, you're doing that  
13 on behalf of the Staff, correct?  
14 A. Yes.  
15 Q. And it's your opinion as to what the return  
16 on equity should be and the rate of return, right?  
17 A. Yes.  
18 Q. And you're the fact witness at the Staff  
19 who's proposing to address those issues, right?  
20 A. Yes.  
21 Q. And there are some portions of this  
22 testimony that you used back in 2001, right?  
23 A. Yes.  
24 Q. And there's some portions of this testimony  
25 that you know based on prior depositions came from years

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1 ago from other witnesses, right?  
2 A. Yes.  
3 Q. And your experience in the DCF modeling  
4 came from some classes that you may have taken in college,  
5 right?  
6 A. Yes.  
7 Q. And the first time you ever used it in a  
8 practical environment was when you came to work for the  
9 Missouri Staff, right?  
10 A. That's correct.  
11 Q. And was it Mr. Bible that explained to you  
12 how he felt the DCF model should be applied?  
13 A. I wouldn't say Mr. Bi-- Mr. Bible coached  
14 me along with what I was reviewing, as far as both the  
15 regulatory, utility regulatory financial -- finance text,  
16 such as I see you have Roger Morin there and David  
17 Parcell. I also had to look back at some of my -- some of  
18 my textbooks from college that I actually kept and -- and  
19 found useful since I started dealing with rate of return  
20 on a more intensive basis again.  
21 And so obviously I went back and did some,  
22 you know, some more studying on -- you know, from my own  
23 perspective, instead of just relying on -- my boss is a  
24 working manager. He has things that he's doing, and so a  
25 little bit of the responsibility lies on me to -- to study

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1 and get back up to speed with these models.  
2 Q. Let's take a step back, then, to the first  
3 time you submitted any testimony on rate of return. In  
4 which case was that?  
5 A. I believe it was some -- the telephone  
6 cases. Those were the first cases I was assigned to when  
7 I started working for the Staff. And you're taking me  
8 back four years, so I'm going to try to recall from  
9 memory. I believe one of those cases was Oregon Farmers  
10 Mutual. I should just refer to my -- that would make  
11 sense.  
12 Q. I think we're at A1.  
13 A. Attachment A to my testimony, you see that  
14 I filed direct testimony in Ozark Telephone Company,  
15 direct testimony in Northeast Missouri Rural Telephone  
16 Company, rebuttal for Oregon Farmers Mutual Telephone  
17 Company.  
18 Q. And whatever is contained on Attachment A1,  
19 would that cover the area?  
20 A. Yes.  
21 Q. And do you recall testifying in the  
22 Missouri Gas Energy 2001 case that you had assisted in  
23 preparing rate of return testimony, but not actually done  
24 the actual calculations yourself; that was your first  
25 involvement?

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1 A. I assisted in rate of return testimony, I  
2 believe, on a water case. The Ozark, Northeast and Oregon  
3 Farmers Mutual, I prepared the testimony and prepared the  
4 studies.  
5 Q. And you submitted this testimony after  
6 joining -- six months after you joined the Commission; is  
7 that correct?  
8 A. That's approximately correct.  
9 Q. And you mentioned Professor Morin's book.  
10 When's the first time you obtained a copy of that?  
11 A. It's -- it's on file over at -- over in our  
12 department on our book shelf, so as soon as I started  
13 working there.  
14 Q. So you had access to the book, the earliest  
15 would be June of 2000, right?  
16 A. Yes.  
17 Q. And when you first got to the Commission --  
18 well, withdrawn.  
19 Prior to joining the Missouri Staff, did  
20 you ever give any lectures on rates of return?  
21 A. No.  
22 Q. You ever publish any books dealing with  
23 rates of return or return on equity?  
24 A. No.  
25 Q. Did you ever write any articles about rates

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1 of return, return on equity?  
2 A. Yes.  
3 Q. Okay. And when prior to June of 2000 did  
4 you write an article as it relates to rate of return?  
5 A. I didn't say I wrote an article. I said --  
6 you said read an article.  
7 Q. No. No.  
8 A. You said write?  
9 Q. Write.  
10 A. I didn't understand what you said. I  
11 thought you said read an article.  
12 Q. I tend to speak quickly. I apologize.  
13 A. No, I did not write an article.  
14 Q. And have you published any peer review  
15 studies as it relates to rate of return or return on  
16 equity?  
17 A. No.  
18 Q. Have you consulted with any other staffs at  
19 any other commissions in any other jurisdictions as to how  
20 they're applying the DCF model in their recommendations  
21 regarding rate of return?  
22 A. No.  
23 Q. Have you ever tried to contact Professor  
24 Morin to see whether the methodology that you've been  
25 using is correct?

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1 A. I have not contacted Professor Morin for  
2 that specific reason, no.  
3 Q. Well, have you contacted Professor Morin  
4 for any reason?  
5 A. I had a -- I went to a utility finance  
6 seminar that he sponsors out in Washington, D.C. and --  
7 and listened to what he had to say as far as his ideas  
8 about cost of capital in the utility environment.  
9 Q. When did you go to that course?  
10 A. It was probably -- it was a couple years  
11 after I started. I don't recall exactly.  
12 Q. It would be some point after you submitted  
13 your testimony in 2001 as it relates to Ozark, Northeast  
14 and Missouri Gas Energy, right?  
15 A. Yes.  
16 Q. Do you still have the textbooks that you  
17 had in college that you say would have addressed the rates  
18 of return methodologies that you're using?  
19 A. The dividend growth model, yes.  
20 Q. And would you mind providing us later on  
21 with a listing of those books, and if you could tell us  
22 what editions they are?  
23 A. Yes.  
24 MR. FRANSON: Objection. That will call  
25 for a Data Request.

1 A. Yes.  
2 Q. What did you tell him?  
3 A. I told him that I -- when I was reviewing  
4 my testimony and reviewing Mr. Allen, Travis Allen's  
5 testimony with the Public Counsel, I noticed that there  
6 was a different -- I'm going to get into the mistake right  
7 now so you know what it is -- a different common equity  
8 balance in my capital structure.  
9 And -- and after talking to Travis Allen,  
10 he indicated it looks like that I used the June 30th, 2003  
11 balance instead of the update period of December 31st,  
12 2003. So once I -- once I discussed that with him and  
13 verified it myself, that was indeed the mistake.  
14 Q. That actually reminds me, what is a  
15 true-up?  
16 A. The true-up is April 30th.  
17 Q. No. What is a true-up?  
18 A. The true-up is at the end -- we just  
19 referred to update. There's the test year, which is  
20 what's originally filed. Then you have the update, known  
21 and measurable changes. True-up period comes up -- comes  
22 up after the hearings, based on the update period, and  
23 true-up is if there's anything that is extraordinary that  
24 Staff or the company wants to include within its  
25 recommendation for purpose of updating the revenue

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1 MR. HERSCHMANN: Okay.  
2 MR. FRANSON: That way the burden's on you  
3 to request it, so it doesn't leave a burden on the  
4 witness.  
5 MR. HERSCHMANN: Not a problem.  
6 BY MR. HERSCHMANN:  
7 Q. Are you making any claim at all that  
8 Southern Union or MGE are in violation of any orders or  
9 agreements with the Missouri Public Service Commission?  
10 A. No.  
11 Q. Not making any claims that Southern Union  
12 has violated any SEC regulations, right?  
13 A. No.  
14 Q. There's no claims of any mismanagement by  
15 Southern Union, right?  
16 A. No.  
17 Q. And in all the times that you've submitted  
18 testimony, whether it be prepared testimony or testimony  
19 under oath, you believe that to be truthful and accurate,  
20 right?  
21 A. Yes.  
22 Q. When you told Mr. Schallenberg that you  
23 thought you made a mistake and he said, we all make  
24 mistakes, did you discuss with him how you came to the  
25 conclusion that you made a mistake?

1 requirement.  
2 Q. Let me make sure I understand this. So  
3 you're saying -- I think it's the last question in your  
4 testimony, right before the attachment that you had.  
5 A. Yes.  
6 Q. You say that Staff -- is the Staff  
7 proposing a true-up audit in this case? Yes, I'm  
8 recommending a true-up audit be performed for the purpose  
9 of updating the capital structure and associated embedded  
10 costs through April 30th, 2004.  
11 A. Yes.  
12 Q. And does that mean that -- making it  
13 something that a lawyer can understand -- doing like a  
14 reconciliation, you can use the April 30th numbers?  
15 A. It's more or less -- with an update you can  
16 do that within the period of time where testimony's being  
17 filed before the hearing where you can actually update the  
18 numbers, which actually a lot of witnesses went ahead and  
19 updated within their direct testimony through December  
20 31st, 2003.  
21 A true-up period, usually those -- that  
22 information is not going to be available until after the  
23 hearing --  
24 Q. All right.  
25 A. -- the evidentiary hearing, and many times

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1 there will be discussion as to what items can be tried up  
2 through the true-up period, which is April 30th, 2004 in  
3 this case.

4 Q. So I just want to make sure that I'm clear  
5 on this. Since it's May 4th, there's some numbers that  
6 are available now that weren't available April 29th,  
7 you're going to take those April 30th numbers and apply  
8 them to whatever calculations you did; is that right?

9 A. I will look at the capital structure  
10 numbers, see what's occurred with -- within Southern Union  
11 since the update period, which is December 31st, 2003, see  
12 what kind of changes occurred. That includes, like I  
13 said, the actual amounts of the capital and the capital  
14 structure, the costs associated with those securities  
15 within the capital structure. That's typically what, as  
16 far as -- I'm speaking from a rate of return perspective  
17 only. That's typically what we would look at within a  
18 true-up.

19 Q. And then you make adjustment based on the  
20 new numbers; is that right?

21 A. We make adjustments based on the update  
22 period, December 31st, 2003 numbers, because that's what I  
23 filed.

24 Q. Right. But I'm saying -- I just want to  
25 make sure I understand this. When you say you want to do

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1 Q. And at that time you told Mr. Swearngen  
2 sitting here that you had not read any of the cases in  
3 their entirety. Do you remember that testimony?

4 A. I do remember that, yes.

5 Q. Was that truthful testimony back then?

6 A. Yes, it was.

7 Q. And you understand that the United States  
8 Supreme Court has set a standard as it applies to rates of  
9 return for utilities, right?

10 A. Yes.

11 Q. And the first time you submitted the  
12 testimony -- let me withdraw that.

13 Tell me how you created your testimony back  
14 in 2001. How did you decide which questions to ask  
15 yourself and how did you decide which answers to give?

16 A. I started with -- with the template of  
17 Mr. Ron Bible's testimony from a previous MGE case and  
18 made changes, additions as needed. Obviously then the  
19 main part of the -- of the testimony is the schedules.  
20 That was all updated. That actually gets into the  
21 quantitative analysis of what is reasonable as far as a  
22 recommended return on equity and rate of return as of the  
23 time period for that case.

24 But as far as the specifics of what I  
25 updated and didn't update back in that case, I don't

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1 a true-up audit as of April 30th, you're going to look at  
2 numbers from December 31st, then you're going to look at  
3 numbers from April 30th, and if there are changes in the  
4 numbers that you deem to be somewhat significant, you're  
5 going to make the changes based on April 30th numbers,  
6 right?

7 A. Yes, based on April 30th.

8 Q. Okay. You mentioned Professor Morin's  
9 book, and you said that it was available to you in June of  
10 2000. When is the first time that you read his entire  
11 book?

12 A. Probably within a couple months that I  
13 started working there. I can't recall. I mean, it's --  
14 it was sporadic to be able to read it, the entire book,  
15 obviously. I do -- I was assigned duties where I couldn't  
16 read it all through the whole book within a week or two  
17 when I started because I had other things I had to do as  
18 well.

19 Q. And, you know, you have a portion of your  
20 testimony that deals with legal standards; is that right?

21 A. Yes.

22 Q. And the first time you submitted the  
23 testimony dealing with legal standards as it relates to  
24 MGE was back in 2001, right?

25 A. Yes.

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1 recall.

2 Q. Well, I'm not asking you whether you  
3 updated the schedules. I'm asking, do you sit down at a  
4 computer and say, I have to submit prepared testimony, you  
5 know, all right, I'm going to ask myself these questions,  
6 or did someone say to you, here's the template, here's the  
7 questions that you ask, here's some of the standard  
8 answers, update the schedules as it applies to these  
9 numbers?

10 A. There were parts of the testimony that  
11 were, you know, the same as what I had -- what Ron Bible  
12 had written in 1998. Like I said, I updated what I felt  
13 was necessary for purpose of that case, and I don't recall  
14 exactly what I updated at that time.

15 Q. Let me ask you this: How could you know  
16 what you need to update, let's say, on the legal standards  
17 if you'd never read the cases yourself?

18 A. I don't know that I updated anything  
19 specifically with the -- with the legal standards.

20 Q. I guess I'm asking, how do you know whether  
21 or not you needed to update things or you didn't need to  
22 update things if you never read the cases?

23 A. Because those cases were, you know, fairly  
24 standard and longstanding precedent within rate of return  
25 regulation, at least from the staff financial analysis



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1 department's concern.  
2 Q. Do you think anything's changed in those  
3 cases as they apply to these -- this rate case?  
4 A. No.  
5 Q. The court hasn't abandoned it, right?  
6 A. Not that I'm aware of.  
7 Q. There hasn't been an expanding of the  
8 court's decisions by any other courts, right?  
9 A. Not that I'm aware of.  
10 Q. Do you recall testifying previously that  
11 there was a Pennsylvania Supreme Court case?  
12 A. Yes.  
13 Q. And do you recall testifying that the  
14 Pennsylvania Supreme Court expanded the United States  
15 Supreme Court's rulings in Blue -- Bluefield and Hope?  
16 A. I'm sorry. Can you repeat the question?  
17 MR. HERSCHMANN: Can you read that back  
18 please?  
19 THE REPORTER: "Question: And do you  
20 recall testifying that the Pennsylvania Supreme Court  
21 expanded the United States Supreme Court's rulings in  
22 Blue -- Bluefield and Hope?"  
23 THE WITNESS: I believe I -- that was my  
24 testimony in the previous MGE rate case.  
25 BY MR. HERSCHMANN:

1 A. Can you please explain your question?  
2 Q. Do you know what shepherdizing means?  
3 A. No, I do not.  
4 Q. Okay. Tell me how you -- well, I'll take a  
5 step back, and then I'll explain a little greater detail.  
6 How did you select which cases to look at  
7 when you first decided to submit your testimony?  
8 A. The cases that are within the testimony  
9 were in the testimony before, before I started working in  
10 the financial analysis department.  
11 Q. So somebody handed you some cases that were  
12 highlighted and some testimony and says, this is what we  
13 use, right?  
14 A. I was handed the cases after I -- when I  
15 was reviewing the testimony. They just said, these are  
16 the cases that we rely upon in establishing the legal  
17 precedent for purposes of explaining how we go about the  
18 rate of return study. And -- and then once I was given  
19 those cases, yeah, there were highlighted portions.  
20 Q. And you testified back in 2001 that you had  
21 not read those cases in their entirety prior to submitting  
22 your testimony, right?  
23 A. That's correct.  
24 Q. And when you were in college, is it safe to  
25 say that the professors weren't handing you out cases and

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1 Q. And can you just explain to me how you  
2 understand the hierarchy of the court systems to work  
3 between, let's say, Pennsylvania, Missouri and the United  
4 States Supreme Court, your just general understanding as  
5 to how the courts interact with each other?  
6 A. Obviously each state has their own  
7 jurisdictional -- jurisdictional courts, and then if  
8 there's something within a state court that is raised to  
9 the level of that state's Supreme Court and the plaintiff  
10 still does not agree with that, then they may raise it to  
11 the level of the Supreme Court of the United States of  
12 America.  
13 Q. And that's your understanding of how the  
14 court system works?  
15 A. That's my understanding.  
16 Q. So when you testified back in 2001 that the  
17 Pennsylvania Electric Company case expands, you used the  
18 word expands, or later on use the word extends the U.S.  
19 Supreme Court testimony, you now realize that's not  
20 accurate, right?  
21 A. Whenever we -- we got into discussion of  
22 extending, I realize that may not have been the proper  
23 terminology to use, and that's why that's been changed.  
24 Q. And have you shepherdized the Pennsylvania  
25 case?

1 asking you to go shepherdize those cases since you don't  
2 know what shepherdizing is as of today, right?  
3 A. I'd say that's safe to say.  
4 Q. And the Pennsylvania case, does the  
5 Pennsylvania court have any jurisdictional bearing on  
6 Missouri?  
7 A. Not that I'm aware of.  
8 Q. And shepherdizing is, so you understand, is  
9 a means of checking cases to see whether they've been  
10 distinguished, reversed, remanded, whether it's followed.  
11 I'll give you questions of a lot of different information  
12 about them.  
13 Have you ever asked counsel at the Staff to  
14 say, can you check whether or not the Pennsylvania case --  
15 actually it's going to be a good objection. I'll withdraw  
16 that question. I'll withdraw that objection. That's a  
17 good question.  
18 All right. Has anybody ever handed you  
19 cases and said, these are follow-ups or things that have  
20 been distinguished, on any of the cases that you've cited?  
21 A. I don't believe I've been given anything  
22 that indicates it's a follow-up on cases that have been  
23 cited, no.  
24 Q. Now, you mentioned in your testimony the  
25 Munn case, Bluefield, Natural Gas Pipeline and Hope

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1 decisions, and this is the same testimony that has, in  
2 essence, been lifted and put back into each one of your  
3 testimonies, right?  
4 A. Yes.  
5 Q. And then on page 6 of your testimony, you  
6 say, through these and other court decisions. Can you  
7 identify for us what other court decisions are you talking  
8 about and where did you get them from?  
9 A. I don't recall the specific court decisions  
10 I'm referring to there.  
11 Q. Generally, where would you have gotten  
12 other court decisions?  
13 A. It could be court decisions -- I mean, as  
14 far as any specifics, I don't recall. There could be  
15 court decisions within Missouri or there could be court  
16 decisions within other states that -- that address the  
17 issue that public utilities operate more efficiently as  
18 monopolies. I mean, it's fairly -- it appears to me to be  
19 a pretty longstanding principle that that's how we view  
20 the best operation of regulated utilities.  
21 Q. I'll move to strike that answer as  
22 nonresponsive.  
23 The question was, where would you have  
24 gotten these other court decisions?  
25 A. There's citations of court decisions

1 thought were appropriate.  
2 Q. Did someone tell you you should use the  
3 Pennsylvania case in your testimony?  
4 A. Like I said, that case was within the  
5 testimony before I started with the department, and it  
6 just -- I agree with the principle behind it, and I feel  
7 it's appropriate to discuss that principle.  
8 Q. Well, the first time you decided to use the  
9 Pennsylvania case, you didn't know it related to the Three  
10 Mile Island, right?  
11 A. I believe there was some ignorance on my  
12 part within that case.  
13 Q. I mean, the question, and I'll read from  
14 page 33 of your testimony, do you know whether or not the  
15 Three Mile Island accident had anything to do with the  
16 Pennsylvania case which you have cited in your testimony?  
17 Answer: No.  
18 Is that truthful testimony then?  
19 A. Yes, it was.  
20 Q. And now you know that it did have to do  
21 with Three Mile Island, right?  
22 A. Yes, I do.  
23 Q. And a little different than the current  
24 circumstances with MGE, Three Mile Island and how MGE  
25 operates?

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1 within, mainly in Parcell's book, in Roger Morin's book.  
2 I don't recall the specific cases. Those are not cited in  
3 my testimony. There's -- quite often in any cost of  
4 capital textbook there's citations to many court cases  
5 that more or less provide the timeline of how things have  
6 evolved within rate of return regulation and what the  
7 standards are.  
8 Q. Tell me how you would go about, if you're  
9 reading Morin's book for argument sake and he had a case  
10 citation, how would you obtain a copy of that case?  
11 A. Well, sometimes I do my own research, but I  
12 would more than likely, if I didn't know where to go for  
13 sure, I would check with an attorney.  
14 Q. Do you recall in submitting your testimony  
15 checking with any attorney saying, I just read Morin's  
16 book, he references this case in this jurisdiction and I  
17 want to see what it says?  
18 A. No.  
19 Q. Do you recall ever doing that?  
20 A. I believe I just -- I recall asking about  
21 the Permian Basin case, which is a case that is cited  
22 within Mr. Parcell's book, to get an idea of what's in  
23 that case to see if there's any cases I can substitute  
24 for -- for, say, the Pennsylvania case. But I didn't feel  
25 like it was going to suit the needs that I -- that I

1 A. I'd say there's some differences there.  
2 Q. Pretty drastic ones, right?  
3 A. I don't think they have any nuclear  
4 regulation -- or nuclear generation within their  
5 operations.  
6 Q. Is there anything more drastic besides not  
7 having nuclear generation in the operations?  
8 A. Within a utility framework, I'd say, yes.  
9 Q. It was Three Mile Island. I mean, a pretty  
10 monumental event, I mean, as relates to a shutting down of  
11 a nuclear reactor and stuff?  
12 A. I think we just hit the 25-year anniversary  
13 of that and it caught the attention of the media. Yes, it  
14 is.  
15 Q. And that's nothing remotely near MGE,  
16 right?  
17 A. No, they do not have nuclear generation.  
18 Q. And you understand that the Pennsylvania  
19 Supreme Court discussed the fact that the property would  
20 not -- was no longer used or useful for the Pennsylvania  
21 customers, right?  
22 A. I understand that.  
23 Q. Any property that's sitting here that MGE  
24 uses that's not being used for the customers of MGE?  
25 A. Not that I'm aware of, but I don't evaluate

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1 the rate base issues.

2 Q. What do you mean by that?

3 A. I'm not looking at -- that's not part of my  
4 testimony to review what should be included in rate base,  
5 what's used and useful for -- for MGE. That's not the  
6 subject of my testimony.

7 Q. Well, when you recommend an authorized rate  
8 of return, do you think it's something that MGE should be  
9 able to at some point meet?

10 A. Can you please -- I don't understand your  
11 question.

12 Q. Sure. When you talk about making a  
13 recommendation for an authorized rate of return, should it  
14 be a realistic number?

15 A. It should be a fair and reasonable  
16 authorized rate of return.

17 Q. And it should be something that Southern  
18 Union -- or withdrawn.

19 It should be something that MGE has the  
20 opportunity to earn, right?

21 A. I don't control whether or not they have  
22 the opportunity to earn it. I recommend a fair and  
23 reasonable rate of return. Now, whether or not they can  
24 earn that return is something that maybe is subject to the  
25 operations of the company. That's not within my control.

1 they -- they can't be that far off from what we think  
2 they're earning on their authorized rate of return.

3 Obviously there's disputes amongst the various expert  
4 witnesses within this case that -- that are going to argue  
5 that certain things should be included and not included.

6 Q. But you've never looked at that issue,  
7 right?

8 A. No.

9 Q. Did you read the other witnesses' testimony  
10 in this case when it was first submitted?

11 A. Portions of some of the other witnesses.

12 Q. How did you select which portions to read?

13 A. I think some Staff, you know, attorneys or  
14 personnel, and I don't recall exactly who, alerted me that  
15 there are some witnesses addressing issues about return on  
16 equity and rate of return. So I reviewed that just to see  
17 what -- what their testimony was regarding that.

18 Q. Can you list for us the testimony -- or the  
19 portions of the testimony that you read, which witnesses?

20 A. Of course I read John Dunn, obviously, and  
21 also reviewed some of John Quain's testimony. Looked at  
22 small portions of Oglesby's, small portions of Mike  
23 Nowack's. I think that's the extent of it.

24 Q. Anyone from the Staff's testimony that you  
25 reviewed?

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1 Q. Well, you told us beforehand that there's  
2 no claim of mismanagement by Southern Union, right?

3 A. Not that I'm aware of.

4 Q. No complaints have been filed, right,  
5 between -- as of now, sitting here today?

6 A. I don't know. I don't review the  
7 complaints. There may have been complaints filed with our  
8 consumer services division on MGE. I don't review that.

9 Q. As you are sitting here today, you're  
10 unaware of any complaints that are pending, right?

11 A. I'm ignorant of whether or not there's any  
12 complaints filed.

13 Q. And you're telling us that you make a  
14 recommendation as to an authorized rate of return without  
15 factoring in whether or not that number is realistic for  
16 MGE ever to earn it? That's just not your job?

17 A. No. I recommend a fair and reasonable  
18 authorized rate of return. Whether or not they're able to  
19 earn that return is not within my control.

20 Q. And you don't factor in whether or not --  
21 for argument's sake, you've never looked to see whether or  
22 not MGE has ever earned its authorized rate of return,  
23 right?

24 A. I think there's dispute on that in this  
25 case. I think from Staff's overall revenue requirement,

1 A. No, I didn't review anybody specifically  
2 from the Staff.

3 Q. Did you, prior to submitting your  
4 testimony, have any conversations with anyone on the Staff  
5 about what generally the authorized rate of return  
6 recommendation would be?

7 A. Can you repeat the question, please?

8 MR. HERSCHMANN: Can you read that back,  
9 please?

10 THE REPORTER: "Question: Did you, prior  
11 to submitting your testimony, have any conversations with  
12 anyone on the Staff about what generally the authorized  
13 rate of return recommendation would be?"

14 THE WITNESS: I had individuals on Staff  
15 review my testimony as far as what they feel the rate of  
16 return would or should be. I hate to use the term would  
17 be. I don't think that, you know, within our analysis  
18 we're trying to determine what it would be. We're trying  
19 to determine what we think it should be based on an  
20 analysis of the capital and economic environment.

21 But I do have -- my boss, Ron Bible, used  
22 to be the person that would review my testimony. He has  
23 been since mobilized, so I don't have him to review it. I  
24 did discuss some of my initial conclusions with him before  
25 he was mobilized. I didn't have all my testimony written.

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1 Usually he's the one that I bounce off a lot of my ideas  
2 on what I'm looking at as far as my recommendation.

3 I did have other Staff personnel and  
4 attorneys review my testimony, and I don't recall that  
5 they specifically asked me, you know, do you think this  
6 rate of return should be higher or lower, what have you.  
7 BY MR. HERSCHMANN:

8 Q. Which Staff members did you discuss this  
9 with?

10 A. The testimony?

11 Q. You said you discussed it with some Staff  
12 members. Was Mr. Schallenberg one of them?

13 A. The testimony. As far as the testimony,  
14 not the recommendation itself. There was nobody that  
15 asked me to change my recommendation. The testimony was  
16 reviewed by -- by Bob Berlin, Mr. Robert Franson. Bob  
17 Schallenberg later reviewed it. There's also -- John  
18 Kiebel gave me some -- some information on what he thought  
19 I could change on just some basically cleanup language.

20 Q. Who's John Kiebel?

21 A. He's an individual that's filling in in our  
22 department since my boss has been mobilized, helping out.

23 Q. Okay. Where did he come from?

24 A. Engineering and management services.

25 Q. And is that another part of the Missouri

1 He's not here, and I can't tell you that his -- he's a  
2 little older than I am. He has a lot of experience. He's  
3 50 years old. I'm sure he's done a lot of things, and I'm  
4 sure there's probably something in his testimony that may  
5 give you more insight on that.

6 Q. Well, is it safe to say that the person who  
7 gave you primary guidance as to how things are done at the  
8 Commission when you first arrived was Mr. Bible?

9 A. Yes.

10 Q. And he was your boss, right?

11 A. Yes.

12 Q. He's the one that handed you this canned  
13 testimony, right?

14 A. He handed me some of the testimony that he  
15 had done in the previous MGE rate case.

16 Q. And he's the one that explained to you how  
17 the Staff generally dealt with rate cases, right?

18 A. Yes.

19 Q. And did he tell you at that time that,  
20 prior to joining the Missouri Commission, he had no  
21 experience with the regulated industries?

22 A. No.

23 Q. Did he tell you that he had no regulatory  
24 experience at all prior to joining the Missouri  
25 Commission?

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1 Staff?

2 A. It's another department with the Staff.

3 Q. And what knowledge did he have as related  
4 to ROR?

5 A. He -- before I came on board with the  
6 Staff, he helped out with our department another time when  
7 we were short-staffed. So his experience, you know, that  
8 was under Ron Bible, when he was helping us with, you  
9 know, some -- some of the more minor projects in order to  
10 help ease the workload that we were experiencing. Now  
11 he's, like I said, once again he's helping out with our  
12 situation.

13 Q. What does the engineering management  
14 services do?

15 A. Mainly the quality service, customer  
16 service-type issues.

17 Q. Now, what experience did Ron Bible have as  
18 related to regulated utilities or the regulatory industry  
19 prior to joining the Missouri Commission?

20 A. Well, I'm not Ron Bible, but I will tell  
21 you what I know about his experience. He worked for a  
22 credit rating agen-- or not a credit rating agency, but a  
23 credit card company, and he also did some statistical  
24 analysis with the Air Force.

25 As far as rate of return, I don't know.

1 A. No.

2 Q. Let me read to you a portion of Mr. Bible's  
3 testimony from November 3rd of 2000.

4 Question: Prior to joining the Missouri  
5 Commission in August of 1997, did you have any regulatory  
6 experience?

7 Answer: No.

8 Had you worked for any companies that had  
9 been regulated by the Missouri Commission prior to '97?

10 Answer: No.

11 Did Mr. Bible ever explain to you how he  
12 came to obtain the canned testimony that's been submitted  
13 by the Staff for several years?

14 A. I don't recall if he did or not.

15 Q. You ever talk to Mr. Schallenberg about it?

16 A. No, I haven't.

17 Q. Do you have any drafts of your testimony in  
18 this case?

19 A. I believe I may have some drafts from  
20 review.

21 Q. And where are those drafts now?

22 A. At my office.

23 Q. And did you run different schedules than  
24 what's attached to your testimony here today?

25 A. I don't believe I ran any different

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1 schedules. I may have made some corrections to the  
2 schedules, as I pointed -- as I found some things as far  
3 as maybe a mistran-- a transposed number, something of  
4 that nature. Nothing really material as far as I can  
5 recall, except for the corrections I just pointed out  
6 today.

7 Q. Just so we're clear, is it your testimony  
8 that you never discussed with anyone prior to preparing  
9 your testimony what the general range of your  
10 recommendation should be as relates to the authorized rate  
11 of return in this case?

12 A. No. I think I had indicated that before  
13 Ron Bible was mobilized, that I talked about the range  
14 that I was looking at for my recommended return on equity.  
15 I think I made that pretty clear in my previous answer  
16 that I did talk to him specifically about that.

17 I thought that I could at least get to that  
18 point, and maybe not necessarily write the testimony and  
19 prepare all the schedules, but get an idea as to what I  
20 was seeing after I did my study as to what I think a  
21 reasonable return on equity recommendation would be for  
22 MGE in this case, because I knew that I only had limited  
23 time to bounce that off of him.

24 Q. And what did Mr. Bible tell you after you  
25 bounced it off of him?

1 that we were going to be able to have December 31st, 2003  
2 updated information, it just seemed to make sense to go  
3 ahead and let's give the picture of what's going to happen  
4 with the update period now, instead of waiting until  
5 rebuttal.

6 Q. Did you ever go back and look at what you  
7 had calculated out as being return on equities for  
8 comparable companies to see whether or not your prior  
9 testimony was accurate?

10 A. I don't understand your question.

11 Q. Did you ever -- well, previously you've  
12 used comparable companies to come up with a  
13 recommendation, right?

14 A. Yes.

15 Q. Did you ever go back and look at what your  
16 recommendation had been based on what the reality was?

17 A. Once again, I don't understand. Are you --  
18 the reality of my recommendation versus what actually  
19 occurred?

20 Q. Right. You used a proxy group, right?

21 A. Yes.

22 Q. You did some calculations, right?

23 A. Yes.

24 Q. And you assumed certain things in doing  
25 your calculations, right?

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1 A. He said it appeared to be reasonable.

2 Q. Did Mr. Bible review any of the financial  
3 information that you used?

4 A. I believe he -- actually, let's make this  
5 clear, because he was being -- it wasn't announced that he  
6 was being mobilized 'til probably sometime in March. He  
7 was initially assigned to this case. So he was working  
8 with my colleague, Matt Barnes, there with preparing the  
9 schedules. So he -- he was actually initially assigned to  
10 the case, and because of situations with being mobilized  
11 with the military, I had to take this case on.

12 Q. And did Mr. Bible provide you with a draft  
13 of the information that he already calculated prior to  
14 being mobilized?

15 A. I believe some of the schedules were --  
16 were currently in process.

17 Q. So who actually made the mistake, then,  
18 using the June 30th numbers, you or Mr. Bible?

19 A. I'll take responsibility for that. I think  
20 it's my mistake. I should have caught that before it was  
21 submitted.

22 Q. And in the documents that he gave you, was  
23 he using the June 30th numbers as well?

24 A. I think the initial -- the initial start of  
25 the schedules was the June 30th data. Once we determined

1 A. Yes.

2 Q. And then you made a recommendation as to  
3 what you thought would happen in the future, right?

4 A. The recommendation I made is not  
5 necessarily what -- and I -- I think I understand your  
6 question here, but if I don't understand it, please  
7 correct me. That you're asking me if the return on equity  
8 that's actually achieved by a company actually is  
9 consistent with what I came up with the cost of equity.  
10 Is that your question?

11 Q. Yes.

12 A. Well, I think that's -- that's the  
13 important thing to understand here. The cost of equity  
14 that I arrive at is not necessarily going to be an  
15 indication of what the return on equity is going to be. A  
16 company can earn more than its cost of equity. It can  
17 earn less than its cost of equity.

18 Just because a company earns a return on  
19 equity of 18 or 19 percent in one year because the weather  
20 was extremely cold doesn't mean that that makes my cost of  
21 equity recommendation of 9 percent inaccurate.

22 Q. And when -- tell us, how do you believe  
23 that you comply with the Daubert standard in submitting  
24 your testimony?

25 A. Can you explain what the Daubert standard

1 is?  
2 Q. Have you ever heard of Daubert?  
3 A. No.  
4 Q. Do you know whether Missouri's a Daubert  
5 state or not?  
6 A. No.  
7 MR. FRANSON: Objection. That calls for a  
8 legal conclusion. That is not in his testimony.  
9 Therefore, it's --  
10 MR. HERSCHMANN: Well, he's got a section  
11 on legal. Let me see.  
12 MR. FRANSON: Daubert is not mentioned. If  
13 it is, point it out and go from there.  
14 MR. HERSCHMANN: Doesn't make a difference  
15 if it's mentioned or not. You can answer the question.  
16 BY MR. HERSCHMANN:  
17 Q. You have a section in your testimony for  
18 every case that you've submitted testimony on behalf of  
19 the Missouri Commission dealing with legal issues, right,  
20 legal criteria?  
21 A. Yes. Excuse me. Not every testimony.  
22 Every major rate case, rate of return testimony.  
23 Q. I'm sorry. Have you ever heard of Daubert?  
24 A. No, I haven't.  
25 Q. Have you ever reviewed the Federal Rules of

1 selecting companies that were operating within the same  
2 industries, that's why they call it a pure play analysis,  
3 is probably the most critical aspect of picking companies  
4 that are comparable to the company you're trying to  
5 compare them to.  
6 Q. Move to strike that as nonresponsive.  
7 The question is, what methodology did you  
8 use to determine that that is an accepted procedure, the  
9 criteria that you used? You list certain criteria, right?  
10 A. (Witness nodded.)  
11 Q. Is that correct? You have to answer  
12 verbally.  
13 A. Yes.  
14 Q. What methodology did you use under the  
15 Supreme Court standard to determine whether or not that's  
16 acceptable?  
17 A. The methodology is a commonly recognized  
18 way to come up with a comparable group is through looking  
19 at companies within the same industry. I don't know that  
20 you have a scientific methodology for that. It's -- I  
21 recall specifically seeing something from a mergers and  
22 acquisitions conference where they indicated the No. 1  
23 issue to look at when choosing comparable companies is  
24 whether a company's in the same industry, because that's  
25 the way you determine whether or not they're in an

1 Evidence?  
2 A. No, I haven't.  
3 Q. Have you ever looked at any cases dealing  
4 with qualifications or basis for submitting expert  
5 testimony?  
6 A. No, I haven't.  
7 Q. Have you ever tested the methodologies that  
8 you are using to make sure that they comply with the  
9 Supreme Court precedents as it relates to expert  
10 testimony?  
11 A. No, I haven't.  
12 Q. The canned testimony that you've continued  
13 to use as to the parameters for selecting proxy groups,  
14 what methodology did you use to verify that that is an  
15 accepted methodology in this industry?  
16 A. The methodology of the discounted cash flow  
17 model?  
18 Q. Not the discounted cash flow. The issue of  
19 the criteria you used to select the proxy group. What  
20 methodology did you use to test whether or not that's  
21 accepted in this industry?  
22 A. You're referring to the criteria that I  
23 used to select my comparable companies?  
24 Q. Right.  
25 A. It's fairly widely recognized that

1 industry that has equivalent business risk and other sorts  
2 of risk that are involved with that, such as regulation  
3 and things of that nature.  
4 I don't think that there's -- there's any  
5 scientific issue there as far as understanding that --  
6 that that will give you a comparable group of companies.  
7 MR. HERSCHMANN: Move to strike that again  
8 as nonresponsive. Let me --  
9 MR. FRANSON: Well --  
10 MR. HERSCHMANN: You can say objection and  
11 it's preserved. I mean --  
12 MR. FRANSON: Well, hold on. There's also  
13 going to be a response here. You have a --  
14 MR. HERSCHMANN: If you're going to give a  
15 speaking objection, I'm going to ask the witness to step  
16 out, or we can take a break and we can make a record and  
17 then go forward. I mean, I'm going to get the answer to  
18 these questions. We can go about it different ways.  
19 MR. FRANSON: That's not what we're talking  
20 about.  
21 MR. HERSCHMANN: All right.  
22 MR. FRANSON: Why don't I --  
23 MR. HERSCHMANN: Well, let me -- we'll go  
24 on for a second, and then we'll take a break and make a  
25 record.

1 MR. FRANSON: No, we aren't going to move  
2 on. The problem is --

3 MR. HERSCHMANN: Hold it. Hold it. Let's  
4 do this. Let's take a break. You can step out, stop the  
5 video, then we can make a record. We don't have to have  
6 speaking objections with the witness here. All right?  
7 So --

8 MR. FRANSON: Now, wait a minute. Why do  
9 you want the witness out? You made all your objections in  
10 front of the witness. Why do you want the witness out?  
11 What's the purpose of that?

12 MR. HERSCHMANN: Because the rules require  
13 that you either make an objection, you can move to strike  
14 the testimony, you can state the basis for the objection.

15 MR. FRANSON: That's what I'm trying to do,  
16 and that's what you're not allowing me to do.

17 MR. HERSCHMANN: You can say objection  
18 form, which is really all you need to do to preserve it.  
19 Right? After that, there are no other objections. And if  
20 you're going to make a speech as to -- and I don't know  
21 what you're going to say yet.

22 MR. FRANSON: That's the problem, you  
23 don't.

24 MR. HERSCHMANN: That -- that's why if it's  
25 going to be any type of speaking objection, all right,

1 MR. HERSCHMANN: We're doing this pursuant  
2 to the federal rules, which are applicable, or to the  
3 Missouri rules, which are applicable in depositions. I  
4 can pull out the statutes that tells you it's applicable.  
5 I'm sure you know that. So we're taking the deposition in  
6 compliance with the rules. The rules specifically say  
7 what type of objection you can make.

8 MR. FRANSON: Which Missouri rule says  
9 that?

10 MR. HERSCHMANN: I think I can get them.  
11 Just a minute.

12 MR. FRANSON: What I'm trying --

13 MR. HERSCHMANN: Wait a minute. I'll get  
14 them. I have no problem getting the book out.

15 MR. FRANSON: What I'm trying to do is  
16 state my objection. I'm not in any way suggesting you  
17 can't ask your questions and get answers.

18 MR. HERSCHMANN: Right. Right. If you --

19 MR. FRANSON: But if you would let me  
20 finish --

21 MR. HERSCHMANN: Well, I don't -- well, my  
22 only concern is I don't know what you're going to say, and  
23 normally the objection is to form. Everything else is  
24 preserved. Right? So if you want me to, you know, pull  
25 out the rules that apply, all right, then I'll pull out

1 then I'm going to excuse the witness. If you want to say  
2 objection and want to address it during a break, I'm more  
3 than happy to do that.

4 MR. FRANSON: Okay. Is it my turn now?

5 MR. HERSCHMANN: Well, I don't know what  
6 you're going to do. If you're going to tell me --

7 MR. FRANSON: That's right.

8 MR. HERSCHMANN: Then let's do this. Let's  
9 take a break. We can discuss it off the record and then  
10 come back on.

11 MR. FRANSON: No, I don't want to discuss  
12 it off the record. I want to discuss it on the record.

13 MR. HERSCHMANN: Well, we can do it on the  
14 record. I'm not going to let you make --

15 MR. FRANSON: Then let's do it on the  
16 record.

17 MR. HERSCHMANN: Then let's go off the  
18 video. We're going to take a break off the video. You  
19 can leave the transcript. Can you step out of the room,  
20 please?

21 MR. FRANSON: No, he is not going to step  
22 out. You seem to have this desire --

23 MR. NIEHAUS: Still on the record?

24 MR. FRANSON: Yeah, I want still on the  
25 record.

1 the rules that apply.

2 MR. FRANSON: Okay. At some point is it my  
3 turn?

4 MR. HERSCHMANN: Sure. As long as it's not  
5 a speaking objection, it's always your turn.

6 MR. FRANSON: Okay. You have made repeated  
7 motions to strike based on nonresponsive. The problem I'm  
8 having with that is, just because you don't like his  
9 answer, that does not mean it's nonresponsive. So what  
10 I'm asking is, each time you do that, we can do it one of  
11 two ways. one, we can respond at that point, or two,  
12 later on we can take it up with the RLJ if you ever offer  
13 any or all of this into evidence or anyone else does.

14 But I want it clear that just because you  
15 don't like his answer, that does not mean he's not being  
16 responsive.

17 MR. HERSCHMANN: Oh, I completely agree  
18 with you. I'm doing this solely to preserve the record so  
19 if we go to court one day, the court's going to rule upon,  
20 whether it be the RLJ level or in -- at the courthouse,  
21 we're going to get a ruling from a judge as to whether or  
22 not the question I asked and the answer he gave is  
23 responsive.

24 It's my subjective view, but I need to  
25 preserve the record that way. That's the only way to do

1 it.

2 MR. FRANSON: That's fine.

3 MR. HERSCHMANN: If I had the ability to  
4 strike the testimony, I'd strike it left and right. No  
5 one's provided me with that authority. So --

6 MR. FRANSON: Okay.

7 MR. HERSCHMANN: I apologize, then, because  
8 I didn't understand where you were going. All right. Let  
9 me just -- a couple questions, and then we'll take a  
10 break. Okay?

11 BY MR. HERSCHMANN:

12 Q. Have you read -- well, let's start with  
13 Professor Morin. You said there were two textbooks that  
14 you primarily rely upon. Do you remember giving testimony  
15 in the 2001 case, you said Professor Morin's testimony  
16 and -- I'm sorry -- Professor Morin's book and there was  
17 another book. Do you remember the name of that?

18 A. Yes. It was David Parcell's book, The Cost  
19 of Capital, A Regulatory Practitioner's Guide.

20 Q. Do either one of those primary sources use  
21 the criteria that you list in your testimony as to how to  
22 select comparable companies?

23 A. I don't recall if there's any as far as the  
24 specifics. I do believe that within those textbooks it  
25 refers to selecting companies within the same industry.

1 order to be able to review and determine what's  
2 appropriate within a growth rate. If you have a new  
3 company, then the information that you have is fairly  
4 limited.

5 Now, as far as how they specifically  
6 address that in the textbook, I don't recall.

7 Q. Have you ever seen any textbook that have  
8 used the criteria that you've used in your testimony here  
9 to select the comparable companies?

10 A. All these criteria?

11 Q. Yes.

12 A. In their entirety? I don't recall  
13 specifically anything where it sets out the specific  
14 criteria I have here.

15 Q. And is it accurate that you just adopted  
16 this criteria from what was given to you in the prior  
17 prepared testimony, or at least most of the criteria?

18 A. Part of it. I believe I added something as  
19 far as the capitalization. This is adopted from testimony  
20 that I wrote in the last MGE rate case. I don't see that  
21 it's inappropriate. I think it's very appropriate  
22 criteria and continues to be pertinent to the case at  
23 hand.

24 Q. I understand that's your opinion. What I'm  
25 trying to understand is whether or not you made any effort

1 That is one thing I recall that's extensively throughout  
2 both of those textbooks, whether or not it's -- if it's a  
3 natural gas company, whether or not it's in the natural  
4 gas industry; if it's an electric company, whether or not  
5 it's within the electric industry. I think you'll find  
6 that within that textbook there's quite a few references  
7 to using, you know, those type of companies as comparable  
8 companies.

9 Q. You repeated several times that it'd be in  
10 the natural gas industry, and I know that you've been  
11 deposed previously as to whether or not these criteria  
12 have anything to do with comparable risks. Do you  
13 remember that?

14 A. Yes.

15 Q. And I think it's three times now that  
16 you've said that they're in the natural gas industry.  
17 Other than being in the natural gas industry, are there  
18 any other criteria that you used that have been accepted  
19 by either Parcell or Professor Morin?

20 A. I don't recall. They may -- they may have  
21 a couple of them as far as the capitalization less than  
22 5 billion; of course, not that specific amount. They may  
23 have something in there. Whether or not there's enough  
24 information available, obviously that's something that any  
25 analyst has to -- you have to have enough information in

1 to validate the criteria that you've used based on  
2 accepted methodologies in the regulatory finance by either  
3 using Professor Morin, Professor Parcell or any other  
4 recognized expert in the industry?

5 A. I think this might help with the --

6 Q. I'm sorry.

7 A. -- with the iss-- well, could you define  
8 methodology? You keep on saying regulatory methodology.  
9 Please define methodology. What do you mean by  
10 methodology?

11 Q. Did you use -- well, withdrawn.

12 Did you use any type of methodology in your  
13 testimony in this case?

14 A. Yes, I did.

15 Q. Okay. What methodology did you use?

16 A. The methodology I used incorporates many  
17 things as far as all the cost of capital models that I  
18 used, the criteria I used to select comparable companies,  
19 the various ways of estimating growth rates within the  
20 discounted cash flow model, the evaluation of the current  
21 interest rate environment.

22 There are many things. This is not  
23 something you can narrow down to one specific thing that  
24 is a methodology that encompasses the entire cost of  
25 capital analysis. There are many things that come into



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1 play.  
2 And picking comparable companies based on  
3 the fact that they're in the same industries is entirely  
4 appropriate and probably the most important criteria to  
5 use, which I'd like to add that the subset of my  
6 comparable companies is within Mr. Dunn's comparable  
7 companies.  
8 Q. Did you consult with Mr. Dunn before you  
9 gave your testimony?  
10 A. No. I read his testimony.  
11 Q. And the criteria that you've used you used  
12 over and over again -- withdrawn.  
13 You said when you wrote the testimony in  
14 2001 you used this criteria, and previously you told us  
15 that you got the testimony from someone else and the  
16 criteria were already there, right?  
17 A. Yes.  
18 Q. So you didn't create these criteria out of  
19 the blue yourself, someone else handed it to you, meaning  
20 Mr. Bible, right?  
21 A. I confirmed that they were appropriate. I  
22 don't -- I don't write testimony unless I'm comfortable  
23 with the criteria that's used.  
24 Q. Now, you've said now I think it's five  
25 times that the companies in the same industry, and

1 the debt at Panhandle was -- was less costly than actually  
2 the debt at the gas distribution level. I believe one of  
3 the concerns within the Panhandle acquisition was whether  
4 or not there was going to be any increased cost of capital  
5 that's going to result from that acquisition being  
6 attempted to be passed on to the MGE ratepayers.  
7 Q. And you didn't want that to happen, right?  
8 A. No. I think it's inappropriate for that to  
9 happen.  
10 Q. You wanted Panhandle to be segregated,  
11 right?  
12 A. We attempted to have Panhandle segregated.  
13 Q. And eventually Staff signed a stipulation,  
14 right?  
15 A. I don't think we agreed that it was  
16 segregated.  
17 Q. Are you saying that Staff signed a  
18 stipulation reaching an agreement with Southern Union that  
19 was then so ordered by the Missouri Commission and you  
20 didn't agree with the terms that were part of it?  
21 A. I submitted testimony and there was a  
22 Stipulation & Agreement that was achieved. Obviously  
23 there's individuals that are in charge that decide what's  
24 appropriate for a Stipulation & Agreement. There are many  
25 times there are things that are in Stipulation & Agreement

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1 Mr. Dunn actually used all the companies that are in the  
2 natural gas LDC industry, right?  
3 A. I'd say he used companies that are actually  
4 not just natural gas distribution, they're -- they have  
5 some nonregulated, more so -- more nonregulated in his  
6 comparable companies than are in my comparable companies.  
7 That would explain why the business risk profile in some  
8 of his companies is higher than what a typical natural gas  
9 distribution company is.  
10 Q. Do you recall submitting testimony in  
11 relationship to Southern Union's acquiring Panhandle?  
12 A. Yes.  
13 Q. Were you truthful in that testimony?  
14 A. Yes.  
15 Q. Did you review that testimony with other  
16 members of the Missouri Staff prior to submitting it?  
17 A. Yes, I did.  
18 Q. Anything in that testimony that you now  
19 realize was completely incorrect?  
20 A. I don't know if there's anything in there  
21 that was completely incorrect. Not that I recall.  
22 Q. Was there anything that you've changed your  
23 testimony saying, I've looked at it now and I was wrong  
24 when I said these things?  
25 A. Well, I was surprised to find that the --

1 that -- that I don't necessarily -- you know, that aren't  
2 part of my issues. So, I mean, there's been confirmation  
3 that there's not separation of Panhandle and Southern  
4 Union.  
5 Q. Make sure we're clear. Do you disagree  
6 with the terms of the stipulation that was signed by the  
7 Staff and Southern Union and then ordered by the  
8 Commission? Are there terms of that stipulation that you  
9 disagree with?  
10 A. There were compromises made. I'm not  
11 saying that I disagree with them. I'm saying there's  
12 compromises that are made in any type of Stipulation &  
13 Agreement.  
14 Q. And you told us previously that there is no  
15 claim that Southern Union or MGE have violated any  
16 agreements or orders with the Missouri Commission or  
17 Staff, right?  
18 A. Not as of this point in time, no.  
19 Q. Is Panhandle's debt nonrecourse to Southern  
20 Union?  
21 A. Yes, it is.  
22 Q. Do you have any reason to believe that  
23 that's been changed, that the debt that is now passed on  
24 to Southern Union can affect MGE customers?  
25 A. The -- the debt is rec-- nonrecourse. That

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1 doesn't mean that there isn't any possibility of impact on  
2 MGE's customers in the future.  
3 Q. Do you have a reason to believe that  
4 nonrecourse debt is going to impact MGE's customers in the  
5 future?  
6 A. If -- the debt itself being nonrecourse is  
7 really not the issue. As I explained in my testimony, at  
8 one time Southern Union had a business risk profile of  
9 three. Panhandle on a stand-alone basis had a business  
10 risk profile of five. Now on a consolidated basis, the  
11 business profile of Southern Union on a consolidated basis  
12 is now a four.  
13 Now, if that's happened, then because of  
14 the fact that Southern Union consolidated, which includes  
15 MGE, has a higher business risk profile, the credit rating  
16 agencies are going to require more stringent financial  
17 ratios in order for Southern Union, which includes MGE, to  
18 maintain any specific credit rating.  
19 So yes, it is having an impact on the way  
20 Southern Union is going to be able to finance MGE's  
21 operations.  
22 Q. What's the basis for that statement?  
23 A. Standard & Poor -- my review of Standard &  
24 Poor's analysis.  
25 Q. How often do you personally consult with

1 that's correct.  
2 Q. What is your definition of nonrecourse?  
3 A. If Panhandle should go bankrupt, then the  
4 debtholders of -- of the Panhandle debt cannot go after  
5 Southern Union's assets if bankruptcy should occur.  
6 Q. What are the priorities that you understand  
7 to exist in a bankruptcy proceeding as it relates to debt,  
8 common equity, preferred stock, bondholders? What's your  
9 general understanding?  
10 A. Obviously the common stockholders are last  
11 in line. Then comes preferred, depending on what type of  
12 preferred. There's some hybrids out there nowadays. I  
13 believe Southern Union had some TOPrS, which is a -- it's  
14 a hybrid. So that would be more or less classified as  
15 debt, and more subord-- that would be subordinate to the  
16 senior debt. And then comes debt, as far as within the  
17 context of a bankruptcy proceeding.  
18 Q. You mentioned TOPrS. What do you  
19 understand TOPrS to be? What does the acronym stand for?  
20 A. Trust obligated preferred securities. It's  
21 something that I believe Enron initiated back in the early  
22 '90s. They were one of the first ones to use the  
23 security, and it was a way to issue a security that had  
24 the characteristics of debt, the tax deductibility of  
25 debt, but at the same time it was receiving some weight as

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1 anyone at Standard & Poor's?  
2 A. It depends. It's just if there's specific  
3 questions on maybe a research report or -- or maybe some  
4 issues we have going on with a case. Once every few  
5 months.  
6 Q. Who do you talk to at Standard & Poor's?  
7 A. I don't talk to any one consistent analyst,  
8 because obviously there's various analysts that follow  
9 companies. I believe I've talked to Judith Waite at one  
10 time. I've talked to -- some of these names, I'm  
11 just -- are not coming to mind. I know there's one that I  
12 talk to more often than not, and for whatever reason, his  
13 name's not coming to mind.  
14 Q. Has anyone from Standard & Poor's told you  
15 testimony that you just gave us or is that your  
16 interpretation of their change in risk profile?  
17 A. It's documented within Standard & Poor's  
18 reports.  
19 Q. So this is not your opinion, you're just  
20 telling us what you think Standard & Poor's says?  
21 A. I'm telling you what I know what Standard &  
22 Poor's says.  
23 Q. But you didn't write any commentary on  
24 that, you're reading someone else's stuff and you're --  
25 A. Yes. I'm relying on their commentary,

1 equity with credit rating agencies.  
2 Q. You understand that TOPrS is trust  
3 originated preferred securities?  
4 A. Trust originated preferred securities,  
5 correct. And it goes by quite a few different names, just  
6 like some of these other trade-type financings, there's --  
7 sometimes it's hard to narrow down because there's all  
8 sorts of names for them.  
9 Q. Do you understand that Merrill Lynch  
10 created TOPrS, not Enron?  
11 A. Enron used it. I don't know that Merrill  
12 Lynch -- I mean, if they created it, I don't know.  
13 Q. Do you know if the Missouri Commission ever  
14 considered whether TOPrS is debt or equity?  
15 A. I believe they did.  
16 Q. What did they determine?  
17 A. They determined it was equity.  
18 Q. You said that Southern Union and Panhandle  
19 were not segregated. What do you mean by that? In what  
20 way are they not segregated?  
21 A. For all intents and purposes, their  
22 operations are, you know, considered part of the corporate  
23 family. I've seen some comments with Standard & Poor's  
24 that indicates that cash is going to flow freely between  
25 Panhandle and Southern Union because it is an integral

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1 part of the business. There really isn't anything  
2 specifically separating the two, which is evidenced by the  
3 fact that they have the same credit rating and Standard &  
4 Poor's have said that they will continue to have the same  
5 credit rating because they view it as a consolidated  
6 enterprise and the credit risk of one is the same as the  
7 credit risk of another, and because of the fact that they  
8 feel that management will pay the debt service at Southern  
9 Union or Panhandle in however way it can, regardless where  
10 the money comes from.

11 Q. Can Southern Union guarantee any of  
12 Panhandle's obligations?

13 A. I believe that was a condition in the  
14 merger case where it was said that we would not allow them  
15 to.

16 Q. And did Southern Union agree to that  
17 condition?

18 A. It's in the Stipulation & Agreement, so I  
19 believe that's the case.

20 Q. So are you now saying that Southern  
21 Union -- it's your testimony that Southern Union intends  
22 to violate that agreement?

23 A. I'm indicating what Standard & Poor's says,  
24 that if there's -- if the management needs to do it, they  
25 will -- cash will go to pay the debt service at -- at

1 MR. FRANSON: At some point here in the  
2 next few minutes, could we take a break?

3 MR. HERSCHMANN: Sure. Literally I'm  
4 almost there.

5 THE WITNESS: Let me back up. You wanted  
6 to know one other -- one other person I talked to at  
7 Standard & Poor's, Todd Shipman. I don't know why I just  
8 thought about that, but I did.

9 BY MR. HERSCHMANN:

10 Q. Not a problem. Thank you. Todd Shipman?

11 A. Todd Shipman.

12 Q. So -- we're almost at a break. I apologize  
13 we've gone this long.

14 Now, you said the investors are the whole  
15 range. You mean shareholders, bondholders, preferred  
16 stock, the full range of investors, right?

17 A. Anybody that invests capital into the  
18 company, that's correct.

19 Q. And when S&P gives a credit rating, what  
20 are they taking about?

21 A. They're talking about the creditworthiness  
22 of the company as far as its ability to meet the interest  
23 expense on the debt outstanding.

24 Q. And when you have a credit rating, they  
25 rate your debt, right?

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1 Panhandle or Southern Union.

2 Q. I want to make sure I'm very clear on this.  
3 Are you now saying that Standard & Poor's says that if  
4 Panhandle goes into bankruptcy, Southern Union is going to  
5 violate an Order of this Missouri Commission to which the  
6 Staff had stipulated and signed an agreement with Southern  
7 Union based on what S&P says?

8 A. I'm not saying that they will violate. I'm  
9 just indicating that this is what Standard & Poor's sees  
10 as far as when they evaluate the creditworthiness of the  
11 company.

12 Q. Did you ever contact S&P and tell them, by  
13 the way, while I'm talking to you, you said this, but are  
14 you aware of the order and the stipulation that says  
15 Southern Union is prohibited from doing it and has agreed  
16 not to do it?

17 A. No, I haven't talked to them specifically  
18 about that.

19 Q. Do you recall that the Supreme Court talks  
20 about balancing the interests of customers and investors?

21 A. Yes.

22 Q. What do you understand investors to be?

23 A. Investors can be the whole range, your debt  
24 investors, your equity investors, your preferred stock  
25 investors, the whole gambit.

1 A. They can rate specific debt issuances.  
2 They also have a corporate credit rating which evaluates  
3 the overall creditworthiness of the company.

4 Q. And Southern Union's BBB credit rating --  
5 withdrawn.

6 What is the rating on Southern Union's  
7 debt?

8 A. Right now it's BBB with S&P.

9 Q. And do you agree that the stipulation and  
10 order from the Missouri Commission forbids the flowing of  
11 cash freely between the Panhandle and Southern Union  
12 entities?

13 A. I believe there was a condition that  
14 referred to restrictions on cash down to Panhandle, not  
15 necessarily cash up from Panhandle.

16 Q. And you have no reason to believe, sitting  
17 here today, that Southern Union has or will violate that  
18 agreement, right?

19 A. I don't have any evidence that they  
20 violated.

21 Q. Or that they will do it, right?

22 A. I don't know if they will violate it.

23 Q. Do you have any evidence?

24 A. I don't have any evidence. I mean,  
25 obviously if it is violated in the future, that would have

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1 to be determined at that point in time.

2 Q. Right. I'm asking you, sitting here today,  
3 do you have any evidence that Southern Union intends to  
4 violate any provisions of the agreement?

5 A. No, I don't have any evidence that Southern  
6 Union intends to violate that provision.

7 MR. HERSCHMANN: Why don't we take a break?

8 MR. NIEHAUS: We're going off the record at  
9 10:30 a.m. Off the record.

10 (A BREAK WAS TAKEN.)

11 MR. NIEHAUS: We're back on the record at  
12 11:04 a.m.

13 BY MR. HERSCHMANN:

14 Q. Before we broke -- and, again, I apologize  
15 for the exchanges that counsel and I have had, and we've  
16 agreed not to talk over each other -- you mentioned seeing  
17 Professor Morin's book that I had sitting here, and you  
18 told us earlier that you had read his book; is that right?

19 A. Yes.

20 MR. HERSCHMANN: Can you mark this, please,  
21 as Exhibit 2?

22 (MURRAY EXHIBIT NO. 2 WAS MARKED FOR  
23 IDENTIFICATION BY THE REPORTER.)

24 BY MR. HERSCHMANN:

25 Q. Can you take a look, just take a moment to

1 regulatory finance?

2 A. He's one of the most widely quoted, that's  
3 correct.

4 Q. And you've testified previously that you  
5 read his book and relied upon it, right?

6 A. I've read his book and relied on portions  
7 of his book.

8 Q. Anything in Professor Morin's book that you  
9 deem to be incorrect?

10 A. I've had disputes with some of his  
11 judgments on the discounted cash flow model and whether or  
12 not it deserves an upward or a downward adjustment because  
13 of some contradictions I found within his book.

14 Q. You're not a professor of finance, right?

15 A. No, I'm not.

16 Q. You don't lecture at any universities,  
17 right?

18 A. No, I don't.

19 Q. You're not -- you've never lectured on  
20 finance for the regulatory industry at the Center for the  
21 Study of Regulatory Industry, right?

22 A. No, I haven't.

23 Q. Do you have a bachelor's degree in  
24 electrical engineering?

25 A. No, I don't.

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1 read Murray Exhibit 2 to yourself.

2 MR. FRANSON: Mr. Herschmann, this Murray  
3 Exhibit 2, besides having some information about  
4 Dr. Morin, has other things in the background, various  
5 equations and things like that.

6 MR. HERSCHMANN: I'll show you the book.  
7 That's what --

8 MR. FRANSON: Oh, okay. So it is actually  
9 the back cover of the book. Okay. Thank you.

10 MR. HERSCHMANN: So the record is clear --

11 MR. FRANSON: That's what I needed to know.

12 MR. HERSCHMANN: -- what Murray Exhibit 2  
13 is is a photocopy of the back portion of this book that  
14 was published in 1994.

15 THE WITNESS: It's fun rate of return type  
16 of equations. That's what's on the back, for purposes of  
17 the record. Yes, I've read it.

18 BY MR. HERSCHMANN:

19 Q. And would you agree that Dr. Mor-- I'm  
20 sorry -- Professor Morin is an expert on regulatory  
21 finance?

22 A. I believe he's an authoritative figure,  
23 that's correct.

24 Q. And do you believe Professor Morin to be  
25 one of the leading authoritative figures in the country on

1 Q. Do you have a Ph.D. in finance?

2 A. No, I don't.

3 Q. You haven't lectured at Wharton, right?

4 A. No, I haven't.

5 Q. You haven't lectured at Dartmouth College,  
6 right?

7 A. No.

8 Q. You don't give any seminars on regulatory  
9 finance, right?

10 A. No.

11 Q. You haven't written any articles about it,  
12 right?

13 A. No.

14 Q. Have you been quoted in any regulatory  
15 finance periodicals or books as being an authoritative  
16 figure?

17 A. Not that I'm aware of.

18 Q. Have you ever been qualified as an expert  
19 in any court in the country?

20 A. I've been qualified as an expert in front  
21 of the Missouri Public Service Commission, but not -- I  
22 haven't testified in court.

23 Q. Okay. Let me -- please listen to my  
24 question carefully, then. With all due respect, I move to  
25 strike the last part -- the last answer as not responsive.

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1 Has any court, any judge sitting in a  
2 courtroom, either state or federal level, designated you,  
3 admitted you as an expert witness?  
4 A. Not in court, no.  
5 Q. Did you ever read Dr. Morin's earlier  
6 treatise on the cost of capital that was published in  
7 1984?  
8 A. Maybe portions of it.  
9 Q. Where did you obtain that version of the  
10 book?  
11 A. We had that in our department as well.  
12 Q. Have you ever acted as an -- withdrawn.  
13 Have you ever submitted any testimony on  
14 behalf of any companies previously?  
15 A. No, I have not.  
16 Q. Have you ever appeared before any other  
17 commissions other than the Missouri Commission?  
18 A. No, I have not.  
19 Q. Do you ever receive any calls for any  
20 consultation from any regulatory agencies asking for your  
21 opinion on rates of return?  
22 A. Not specifically on rates of return, no.  
23 Q. And it's your testimony that things that  
24 are contained in Dr. Morin's book that you've acknowledged  
25 as one of the leading cited treatises in the country you

1 attorney/client.  
2 MR. HERSCHMANN: Are you instructing him  
3 not to answer?  
4 MR. FRANSON: On that question, yes, I am.  
5 BY MR. HERSCHMANN:  
6 Q. Let me see if I can break it down. What  
7 did you discuss with Mr. Schwarz -- withdrawn.  
8 Mr. Schwarz is one of the attorneys at the  
9 Commission, right?  
10 A. Yes, he is.  
11 Q. What did you discuss with Mr. Schwarz as it  
12 relates to the submission of your testimony in this  
13 matter?  
14 MR. FRANSON: Objection, and the witness is  
15 directed not to answer on the basis of attorney/client  
16 privilege.  
17 BY MR. HERSCHMANN:  
18 Q. Did you discuss -- well, withdrawn.  
19 Did you provide drafts of your submitted  
20 prepared testimony to any attorneys for review prior to  
21 submission?  
22 A. Yes, I did.  
23 Q. And which attorneys did you provide it to?  
24 A. Mr. Bob Berlin, Mr. Robert Schallenberg,  
25 Mr. Tim Schwarz.

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1 disagree with?  
2 A. There's a contradiction, yes, there is.  
3 Q. Did you ever contact Dr. Morin to inform  
4 him that you disagree with what he says?  
5 A. No.  
6 Q. Did you ever send any letters to the  
7 publishers to say that Dr. Morin is wrong?  
8 A. No.  
9 Q. Have you ever heard any court rule that  
10 Dr. Morin's application of the information as contained in  
11 his book is inaccurate?  
12 A. I'm not aware of such.  
13 Q. Did you determine that Dr. Morin was wrong  
14 back in 2001 when you submitted your testimony in this  
15 case?  
16 A. No.  
17 Q. Now, you told us previously that in  
18 preparing your testimony you consulted with the two  
19 attorneys that were here, right?  
20 A. Yes.  
21 Q. And you spoke to Mr. Schwarz, right?  
22 A. Yes.  
23 Q. And can you tell us what you discussed with  
24 each of the attorneys about your testimony?  
25 MR. FRANSON: Objection as to

1 Q. Is Mr. Schallenberg an attorney?  
2 A. Did I say Mr. Schallenberg?  
3 Q. Yes.  
4 A. I'm sorry. I meant Mr. Robert Franson.  
5 Q. And did you receive comments back from any  
6 of the attorneys on your testimony?  
7 A. Yes, I did.  
8 Q. Did you adopt those comments into your  
9 testimony?  
10 MR. FRANSON: Objection as to  
11 attorney/client, and the witness is directed not to answer  
12 that question.  
13 BY MR. HERSCHMANN:  
14 Q. You mentioned previously that in  
15 relationship to Panhandle, there's the potential that it  
16 could affect MGE customers. Do you remember that  
17 testimony?  
18 A. Yes.  
19 Q. And did you mean that it could affect MGE  
20 customers in relationship to rates?  
21 A. Yes.  
22 Q. How do rates get imposed in the state of  
23 Missouri?  
24 A. I don't understand your question.  
25 Q. Well, can MGE just increase their rates if

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1 they wanted to?  
2 A. Unilaterally?  
3 Q. Right.  
4 A. No.  
5 Q. Do they actually have to file an  
6 application with the Missouri Commission?  
7 A. Yes, they do.  
8 Q. And then do Staff become a party to that  
9 proceeding?  
10 A. Yes, we do.  
11 Q. Does the Office of the Public Counsel  
12 become a party to the proceeding?  
13 A. Typically they do. Yes, they do.  
14 Q. Is there potential for other parties to  
15 intervene and join the matter?  
16 A. Yes.  
17 Q. And then after that occurs, does the  
18 Missouri Commission make a decision whether or not to  
19 authorize an increase in rates?  
20 A. If it proceeds to hearing and goes through  
21 the full litigation process, that's correct.  
22 Q. So if, for argument's sake, you were right  
23 that S&P's statement that cash will flow freely between  
24 Panhandle and Southern Union and it would impact Missouri  
25 ratepayers, Southern Union would have to go back to the

1 Commissioners themselves are going to allow Southern Union  
2 to disregard the Commission's order as it relates to  
3 Southern Union's acquisition of Panhandle?  
4 A. No, I do not.  
5 Q. Now, when you selected your proxy group,  
6 you pulled information from 2002; is that right?  
7 A. For the -- yeah, for selection of the  
8 criteria. Let me just refer to my testimony here.  
9 Q. Sure.  
10 A. Actually, the information in order to -- to  
11 determine the comparable group was based on the natural  
12 gas industry summary from Edward Jones as of  
13 December 31st, 2003. So that, you know, is not  
14 necessarily 2002 calendar year information.  
15 Q. When you took the five-year averages, and  
16 if you look at Schedule 15-2, you selected that from 1997  
17 and 2002, right?  
18 A. Yes.  
19 Q. And were the 2003 financial numbers  
20 available to you as of April 15th of 2004?  
21 A. I didn't do my study as April 15, 2004.  
22 That's the date the testimony was filed. The time the  
23 study was being performed, the only information that we  
24 had at our disposal was ValueLine's rating reports as of  
25 December 19, 2003.

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1 Missouri Commission to get approval, right?  
2 Let me withdraw that question. That wasn't  
3 clear. I apologize.  
4 You told us that S&P has said that cash  
5 will flow freely between Panhandle and Southern Union,  
6 right?  
7 A. Yes.  
8 Q. And you told us you had a concern that  
9 Missouri ratepayers may be impacted negatively by Southern  
10 Union's investment of Panhandle, right?  
11 A. That's a possibility, yes.  
12 Q. And the only way that the ratepayers can be  
13 impacted negatively is if the rates go up, right?  
14 A. I disagree with that.  
15 Q. Well, let's talk about on a financial  
16 basis. If Southern Union -- withdrawn.  
17 If MGE wants to charge more money to  
18 Missouri ratepayers, they have to get permission, right?  
19 A. Yes.  
20 Q. And the Missouri Commission can say no,  
21 right?  
22 A. Yes.  
23 Q. And they can get no increase, right?  
24 A. It's a possibility, yes.  
25 Q. Do you have any reason to believe that the

1 Q. Do you know whether or not -- or how many  
2 weeks before your testimony was submitted that 2003  
3 numbers came out?  
4 A. I don't recall.  
5 Q. If the 2003 numbers were available several  
6 weeks before you submitted your testimony, was there a  
7 reason you didn't use 1998 to 2003?  
8 A. The study had already been performed. I  
9 didn't see any reason to -- I don't know if it was  
10 available or not. A lot of times the information that is  
11 available is estimates because the annual reports that are  
12 filed by the companies can be fairly late in the game and  
13 when we're already doing our analysis.  
14 Q. If the 2003 information was available and  
15 that would drastically change the numbers contained on  
16 Schedule 15.2 and forward, would that cause you any pause  
17 in changing your recommendations?  
18 A. No.  
19 Q. When you did the 1997 to 2002, did you take  
20 the numbers in 1997 and the numbers in 2002, or did you  
21 use the data for all the preceding -- succeeding years?  
22 Do you understand my question?  
23 A. I don't understand your question.  
24 Q. Sure. When you took the annualized  
25 compound growth rates, did you take the numbers in 1997

1 and the numbers in 2002 and then determine what the growth  
2 rate is, or did you take 1997, 1998, 1999, 2000, 2001 and  
3 then 2002?

4 A. What you're referring to is -- and I'm  
5 going to kind of add some words to what you -- the  
6 question you asked. What you're referring to is an  
7 arithmetic average, I believe, of 1997, 1998, 1999, 2000,  
8 2001, 2002. If you're doing an arithmetic average, you  
9 would be looking at all those specific dates.

10 I'm using a compound average which looks at  
11 the beginning and the ending point, which determines a  
12 compound growth rate for that period of time. So I don't  
13 know if you understand exactly what I just explained to  
14 you, but I believe that gets to the heart of your  
15 question.

16 Q. So the answer would be, you looked at the  
17 information in 1997 and 2002 and then made your  
18 calculations, right?

19 A. That's how you calculate a compound growth  
20 rate, yes.

21 Q. And did you ever look at the information in  
22 '98 or '99 or one of the intervening years to see whether  
23 there were any anomalies during those years that may  
24 impact your calculations?

25 A. No. And let me just clarify something.

1 And when I reviewed that, I realized that  
2 Southern Union was attributing 646,818,000 common equity  
3 to Panhandle's operations, along with the assumed debt of  
4 1.205 billion -- that's a round figure -- of long-term  
5 debt, which includes current maturities on that debt.

6 And then in order to determine what the  
7 capital structure may be if you excluded Panhandle, you  
8 would have to take both of these items out. And that was,  
9 like I said, specifically within the 10K filed with the  
10 SEC by Panhandle itself. So I have no reason to dispute  
11 the accuracy of those numbers.

12 Q. Are you a CPA?

13 A. No, I'm not.

14 Q. The methodology that you just described,  
15 does that conform to Generally Accepted Accounting  
16 Principles?

17 A. I don't know.

18 Q. Did you consult with anyone at the Missouri  
19 Commission to find out whether your proposed methodology  
20 had anything to do with GAAP?

21 A. Not specifically with GAAP. I talked about  
22 the process that I did with a couple of people.

23 Q. Who did you discuss it with?

24 A. Bob Schallenberg.

25 Q. What did Mr. Schallenberg tell you?

1 You said any information within 1998 through 2001. If  
2 there were anomalies within that data, that's not going to  
3 affect that compound growth rate. That compound growth  
4 rate is based on 1997 and 2002, as you just indicated.

5 Q. And is it then accurate that you looked at  
6 five years and ten year datas and then averaged the five  
7 year and ten year datas together?

8 A. Yes.

9 Q. In some portion of your testimony you talk  
10 about attempting to back out Panhandle from Southern  
11 Union. Do you recall that?

12 A. I recall that. I don't recall the specific  
13 page.

14 Q. I think it's going to be page 22.

15 A. Starts at 21.

16 Q. Start at 21, exactly right. Thank you.

17 A. I recall that, and I see it now.

18 Q. Can you tell us what methodology you used  
19 to back out Panhandle from Southern Union?

20 A. Quite simple. I just looked at the  
21 Southern Union's balance sheet as of December 31st, 2003,  
22 which could be an annual report or a response to a Data  
23 Request from us, the Staff. And then I just looked at  
24 Panhandle's 10K, which was filed at the SEC as of  
25 December 1st, 2003.

1 A. He seemed to think it was appropriate,  
2 being that it was SEC financial statements and that's the  
3 equity that Panhandle would -- associates with -- or  
4 excuse me -- Southern Union associates with Panhandle,  
5 which is very close to the purchase price above and beyond  
6 the assumed debt. So it's only reasonable to assume that  
7 that's the equity that is associated with Panhandle.

8 Q. When you say it's only reasonable to  
9 assume, you're saying that as a layperson, right, not as  
10 an accountant?

11 A. No, I'm not an accountant.

12 Q. So you don't have any expertise to provide  
13 in relationship to whether or not that is in conformity  
14 with the Generally Accepted Accounting Principles, right?

15 A. I don't have accounting expertise, but it's  
16 just something that, if you're going to exclude  
17 Panhandle's operations, there's obviously equity  
18 associated with that, with its -- you know, with the  
19 financing of that -- of that operation, which is proven by  
20 the fact that Southern Union paid cash above and beyond  
21 the assumed debt. I mean, what else would you call that?

22 Q. Well, obviously I'm not an accountant. So  
23 what I'm trying to get at, this is your layperson's  
24 opinion as to how you should go about doing that?

25 A. This is my financial analysis expert

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1 opinion.  
2 Q. Did you just become an accountant in the  
3 last question?  
4 A. No. I said this is my financial analysis  
5 expert opinion. I'm a financial analyst.  
6 Q. Are you telling us that, as a financial  
7 analyst, you have the expertise to determine the proper  
8 way under accounting principles to back out Panhandle from  
9 Southern Union's consolidated capital structure?  
10 A. I'm saying from a financial analyst  
11 perspective, I realize that any time an acquisition is  
12 made, some of that includes debt, some of that includes  
13 equity. And this 646,818,000 of common equity closely  
14 approximate the cash price paid for Panhandle of  
15 662 million. So just from analyzing the numbers, which is  
16 what financial analysts do, this seems quite appropriate,  
17 and it's also -- the equity is filed with the SEC in the  
18 10K.  
19 Q. If it turns out that your process is  
20 completely wrong under accounting principles, does that  
21 change your opinion at all?  
22 A. I'd have to see what -- what you think is  
23 wrong with it.  
24 Q. It wouldn't be from me, sir. I'm asking if  
25 it turns out that GAAP says your process is completely

1 MR. FRANSON: Objection, because again  
2 attorney/client privilege.  
3 MR. HERSCHMANN: You're going to again  
4 instruct him not to answer that?  
5 MR. FRANSON: He's again instructed not to  
6 answer.  
7 BY MR. HERSCHMANN:  
8 Q. Do you recall making an adjustment in your  
9 testimony of 32 basis points in relationship to MGE?  
10 A. Yes, I did.  
11 Q. What were you trying to adjust for when you  
12 made that calculation?  
13 A. The risk differential between MGE and the  
14 comparable companies.  
15 MR. HERSCHMANN: Can we just take a  
16 one-minute break?  
17 MR. NIEHAUS: We're going off the record at  
18 11:28 a.m. Off the record.  
19 (A BREAK WAS TAKEN.)  
20 MR. NIEHAUS: We're back on the record at  
21 11:39 on Tape 2.  
22 BY MR. HERSCHMANN:  
23 Q. Mr. Murray, when we were talking about you  
24 using the 2002 data and I asked you if the 2003  
25 information was available, would you update your

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1 wrong, would that change your opinion?  
2 A. No, because I think this is the equity  
3 associated with Panhandle.  
4 Q. And you're as sure of that answer as  
5 everything else you've put in your testimony, right?  
6 A. Yes.  
7 Q. Can you tell us for each of the attorneys  
8 that reviewed your testimony exactly what changes they  
9 suggested to you? First question.  
10 MR. FRANSON: Objection, attorney/client  
11 privilege, and the witness is directed not to answer that  
12 question.  
13 BY MR. HERSCHMANN:  
14 Q. Can you tell us, did you adopt any of the  
15 attorneys' changes in your testimony prior to submitting  
16 it in this case?  
17 MR. FRANSON: Same objection. And again,  
18 the witness is directed not to answer that question.  
19 BY MR. HERSCHMANN:  
20 Q. Did you ever have any meetings with the  
21 attorneys that you've mentioned and any other Staff  
22 members at the Commission in relationship to this case?  
23 A. Yes, I did.  
24 Q. Tell us what was discussed in those  
25 meetings.

1 calculations if there were some significant changes, the  
2 question is, would you make those adjustments?  
3 A. No.  
4 Q. What is the reason that you would not make  
5 adjustments if the information was available to you prior  
6 to submitting your testimony?  
7 A. Because I reviewed the information I have  
8 as far as growth rates and I noticed that the historical  
9 and projected were fairly close. And I don't know that,  
10 especially when you're doing a proxy group analysis, that  
11 there's going to be that much of a difference if you  
12 update a few of the historical numbers.  
13 I'm not just looking at the historical  
14 numbers when I determine what is an appropriate growth  
15 rate. And so just because there may be some updated  
16 historical information or what have you, I don't know that  
17 the -- the growth prospects have fundamentally changed  
18 that much.  
19 Q. Did you even look at the 2003 numbers prior  
20 to preparing your testimony in this case?  
21 A. No.  
22 Q. Did you discuss with anyone the changes in  
23 the economy between 2001, 2002 and 2003?  
24 A. We discuss the changes in the economy on a  
25 frequent basis within our department as far as the



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1 financial and the capital markets.  
2 Q. Do you think that stocks generally  
3 increased between 2002 and 2003 or not?  
4 A. They did.  
5 Q. Have you discussed the increase in the  
6 price of stocks and the overall economy with anyone at the  
7 Commission in relationship to your testimony?  
8 A. In relation to the testimony, I don't  
9 believe so.  
10 Q. Did you discuss with Mr. Schallenberg the  
11 fact that, hey, if we use the 2003 numbers, all the  
12 calculations are going to go up?  
13 A. No, I did not.  
14 Q. You agree this case is important to MGE,  
15 right?  
16 A. Yes, I do.  
17 Q. It's important to the ratepayers, right?  
18 A. Yes, it is.  
19 Q. It's important to the Staff of the  
20 Commission, right?  
21 A. Yes, it is.  
22 Q. It's important to the Commissioners  
23 themselves, right?  
24 A. Yes, it is.  
25 Q. And yet you quote information that's from

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1 as recently as 2004 in your testimony, right?  
2 A. I do.  
3 Q. And yet when it comes to the actual  
4 financial numbers that would impact your total  
5 recommendations, you didn't make the effort to use the  
6 most available financial information, right?  
7 A. I used the most available information I had  
8 at the time I did the study.  
9 Q. ValueLine cut you off in April of 2004?  
10 A. ValueLine never cut us off. It was the  
11 information we had when we were doing the study.  
12 Q. You have access to ValueLine whenever you  
13 want, right?  
14 A. Yes.  
15 Q. You could have access to ValueLine up until  
16 the day you submitted your testimony, right?  
17 A. Yes, we do.  
18 Q. And if ValueLine had come out with more  
19 recent numbers prior to your submitting and preparing your  
20 testimony, you still didn't make the effort to use those  
21 calculations, right?  
22 A. No.  
23 Q. You're still telling us you complied with  
24 Hope and Bluefield, right?  
25 A. Yes, I am.

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1 MR. HERSCHMANN: Take a lunch break.  
2 MR. NIEHAUS: Going off the record at  
3 11:43 a.m.  
4 (AN OFF-THE-RECORD DISCUSSION WAS HELD.)  
5 MR. NIEHAUS: We're back on the record at  
6 11:43 a.m.  
7 BY MR. HERSCHMANN:  
8 Q. I'm sorry. I forgot to ask you this.  
9 During the breaks, did you have the occasion to talk to  
10 anybody?  
11 A. Just talked to them within the room.  
12 Q. Okay. Did you talk to anybody about your  
13 testimony?  
14 A. No.  
15 Q. Did you talk to anyone from the Public  
16 Counsel's office during the breaks?  
17 A. No.  
18 MR. HERSCHMANN: Okay. Why don't we take  
19 our break?  
20 MR. NIEHAUS: We're going off the record at  
21 11:44 a.m.  
22 (A BREAK WAS TAKEN.)  
23 MR. SWEARENGEN: We are finished for today.  
24 MR. FRANSON: And does that mean you don't  
25 plan to resume this any time soon without notice and

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1 things like that?  
2 MR. SWEARENGEN: Of course not.  
3 MR. FRANSON: Okay. That's what I thought.  
4 Staff will -- Mr. Murray will waive presentment, but not  
5 signature on the written transcript.  
6 And I also note Mr. Micheel didn't make it  
7 back, but Staff had no redirect. I have no idea whether  
8 Mr. Micheel had any questions or not, but that's all I  
9 have to say.  
10 (PRESENTMENT WAIVED; SIGNATURE REQUESTED.)  
11  
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1 CERTIFICATE OF REPORTER  
2 STATE OF MISSOURI )  
 ) ss.  
3 COUNTY OF COLE )  
4  
5 I, KELLENE K. FEDDERSEN, RPR, CSR, CCR, and  
6 Notary Public within and for the State of Missouri, do  
7 hereby certify that the witness whose testimony appears in  
8 the foregoing deposition was duly sworn by me; that the  
9 testimony of said witness was taken by me to the best of  
10 my ability and thereafter reduced to typewriting under my  
11 direction; that I am neither counsel for, related to, nor  
12 employed by any of the parties to the action to which this  
13 deposition was taken, and further that I am not a relative  
14 or employee of any attorney or counsel employed by the  
15 parties thereto, nor financially or otherwise interested  
16 in the outcome of the action.  
17  
18  
19 KELLENE K. FEDDERSEN, RPR, CCR  
Notary Public, State of Missouri  
(Commissioned in Cole County)  
My commission expires 3/28/05.  
20  
21  
22  
23  
24  
25

1 ERRATA SHEET  
2 Witness: David Murray  
In Re: MGE Tariffs/GR-2004-0209  
3  
4 Upon reading the deposition and before subscribing  
thereto, the deponent indicated the following changes  
should be made:  
5  
6 Page Line Should read:  
Reason assigned for change:  
7 Page Line Should read:  
Reason assigned for change:  
8  
9 Page Line Should read:  
Reason assigned for change:  
10 Page Line Should read:  
Reason assigned for change:  
11  
12 Page Line Should read:  
Reason assigned for change:  
13 Page Line Should read:  
Reason assigned for change:  
14  
15 Page Line Should read:  
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16 Page Line Should read:  
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18 Page Line Should read:  
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19 Page Line Should read:  
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20  
21 Page Line Should read:  
Reason assigned for change:  
22 Page Line Should read:  
Reason assigned for change:  
23  
24 Reporter: Kellene K. Feddersen, RPR, CSR, CCR  
25

Page 95

Page 97

1 SIGNATURE PAGE  
2 STATE OF MISSOURI )  
 ) ss.  
3 COUNTY OF COLE )  
4  
5 I, David Murray, do hereby certify:  
6 That I have read the foregoing deposition;  
7 That I have made such changes in form and/or  
8 substance to the deposition as might be necessary to  
9 render the same true and correct;  
10 That having made such changes thereon, I hereby  
11 subscribe my name to the deposition.  
12 I declare under penalty of perjury that the  
13 foregoing is true and correct.  
14 Executed the \_\_\_\_ day of \_\_\_\_\_, 2004, at \_\_\_\_\_  
15  
16  
17  
18 DAVID MURRAY  
19 Notary Public:  
My commission expires: \_\_\_\_\_  
20  
21  
22  
23  
24 KF/DAVID MURRAY  
MGE Tariffs/GR-2004-0209  
25

1 Midwest Litigation Services  
714 West High Street  
2 P.O. Box 1308  
Jefferson City, MO 65102  
3  
4 Phone (573)636-7551 \* Fax (573)636-9055  
5  
6 May 4, 2004  
7 Robert Franson  
8 Missouri Public Service Commission  
200 Madison Street, Suite 800  
9 P.O. Box 360  
Jefferson City, MO 65102  
10 In Re: MGE/GR-2004-0209  
11 Dear Mr. Franson:  
12 Please find enclosed your copy of the deposition of David  
Murray taken on May 4, 2004, in the above-referenced case.  
Also enclosed is the original signature page and errata  
13 sheet.  
14 Please have the witness read your copy of the transcript,  
indicate any changes and/or corrections desired on the  
errata sheet and sign the signature page before a notary  
public.  
15  
16 Please return the errata sheet and notarized signature  
page to Mr. Herschmann for filing prior to trial date.  
17 Thank you for your attention to this matter.  
18 Sincerely,  
19  
20 Kellene K. Feddersen, RPR, CSR, CCR  
21 Enclosure  
cc: Eric Herschmann  
22  
23  
24  
25

Office only

IN DATE: \_\_\_\_\_

SENT OUT DATE \_\_\_\_\_

Job # \_\_\_\_\_

## Reporting Job Sheet

Page: 1 of 1

court memo ☐ yes ☒ no

Reporter: Kellene Feddersen

Videographer: John Niehaus

Today's date: 5-05-04

Date of Job: 5/4/2004

Case #: GR-2004-0209

Case Style: MGE tariffs

Job For: ☐ Taylor ☒ ACR ☐ Spherion ☐ Esquire ☐ Other

Request # 13323

Deposition(s) of/page count: David Murray - 97 pgs.

☒ regular ☐ expert

wait time :

Appearance hrs: 4.5 Miles:

Behalf of: MGE

Signature: ☐ Waived ☒ Read & Sign Sig page to: Franson

☒ Original to: Jim Swearengen

☒ Copy ☒ Condensed ☒ ASCII ☐ e-transcript ☐ email email address eherschmann@kasowitz.com  
Office only (Exhibits \_\_\_\_\_ Video \_\_\_\_\_ Sent out via \_\_\_\_\_)

☒ Copy to: Robert Franson

☐ Condensed ☒ ASCII ☐ e-transcript ☐ email email address  
Office only (Exhibits \_\_\_\_\_ Video \_\_\_\_\_ Sent out via \_\_\_\_\_)

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